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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SIERRA CLUB, Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; COUNTY OF ORANGE, Real Party in Interest.	G044138 (Super. Ct. No. 30-2009-00121878-CU-WM-CJC) O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, James J. Di Cesare, Judge. Petition denied.

Venskus & Associates, and Sabrina D. Venskus for Petitioner.

Michel & Associates and C.D. Michel for Members of the GIS Community as Amici Curiae on behalf of Petitioner.

Law Offices of Michael W. Stamp, Michael W. Stamp, and Molly Erickson for The Open Monterey Project as Amicus Curiae on behalf of Petitioner.

M. Rhead Enion for Academic Researchers in Public Health, Urban Planning and Environmental Justice as Amici Curiae on behalf of Petitioner.

Meyer, Klipper & Mohr, Christopher A. Mohr, Michael R. Klipper; Coblentz, Patch, Duffy & Bass, Jeffrey G. Knowles, and Julia D. Greer for Consumer Data Industry Association, Corelogic, LexisNexis, The National Association of Profession Background Screeners, and the Software & Information Industry Association as Amici Curiae on behalf of Petitioner.

Holme Roberts & Owen, Rachel Matteo-Boehm, Katherine Keating and Leila Knox for Media and Open Government, First Amendment Coalition, Freedom Communications, Inc., publisher of the Orange County Register, Los Angeles Times Communication LLC, doing business as Los Angeles Times, The Associated Press, Bay Area News Group, Bloomberg News, Courthouse News Service, Gannett Co., Inc., Hearst Corporation, Lee Enterprises, Incorporated, The McClatchy Company, Patch Media Corporation, The San Francisco Examiner, Wired, American Society of News Editors, Association of Capitol Reporters and Editors, California Newspaper Publishers Association, Citizen Media Law Project, Electronic Frontier Foundation, First Amendment Coalition of Arizona, National Freedom of Information Coalition, Openthegovernment.org, The Reporters Committee for Freedom of the Press, and Society of Professional Journalists as Amici Curiae on behalf of Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, Mark D. Servino, Rebecca S. Leeds, and Karen L. Christensen, Deputy County Counsel, for Real Party in Interest.

Best Best & Krieger and Shawn Hagerty for League of California Cities and California State Association of Counties as Amici Curiae on Behalf of Real Party in Interest.

* * *

The issue in this case is whether the California Public Records Act (the Act) (Gov. Code, § 6250 et seq.) requires a government agency to disclose to any requesting person (who pays the cost of duplication) the database associated with a geographic information system.[1] In a petition for writ of mandate, Sierra Club asserts such a right to a database developed by the County of Orange (the County).[2] The County argues that under section 6254.9 of the Act, the database is *not* a public record and therefore the County may charge a licensing fee for its disclosure. We conclude section 6254.9 excludes from the Act's disclosure requirements a geographic information system database like the one at issue here. Therefore, the County may properly charge a licensing fee for its geographic information system database.

FACTS

Stipulated Facts

The parties stipulated in writing to the following facts.

The database sought by Sierra Club is the "OC Landbase," i.e., "the County's parcel geographic data in a GIS file format." "GIS" stands for "geographic information system." "'GIS file format' means that the geographic data can be analyzed, viewed, and managed with GIS software." "The OC Landbase is a parcel-level digital basemap identifying over 640,000 parcels in Orange County with geographic boundaries

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[1] All statutory references are to the Government Code unless otherwise stated.

[2] The trial court's denial of Sierra Club's petition for writ of mandate is "immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." (§ 6259, subd. (c).)

of parcels, Assessor Parcel Numbers [and] street addresses, with links to text information such as the name and addresses of the owner(s) of the parcels."

"The County currently distributes the OC Landbase in a GIS file format" "to members of the public, if they pay a licensing fee and agree to the license's restrictions on disclosure and distribution." The OC Landbase in a GIS file format does not contain any computer programs.

The County agreed to provide Sierra Club with copies of the source documents containing the parcel related information (such as assessment rolls and transfer deeds)"in Adobe PDF electronic format or printed out as paper copies," rather than in a GIS file format. But "Sierra Club cannot use the analytical, display and manipulation functions of its GIS software on the OC Landbase if the County produces [the information] in Adobe PDF format or printed out on paper."[3]

The Proceedings Below

Sierra Club asked the superior court to issue a writ of mandate "compelling the County to provide the OC Landbase in a GIS file format to the Sierra Club for a fee consisting of only the direct costs of [duplication], and with no requirement that the Sierra Club execute a non-disclosure or other agreement with the County." Before

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[3] By order dated October 8, 2010, we granted Sierra Club's request for judicial notice of parts of the legislative history of section 6253.9 and official ballot information on Proposition 59 (adding article 1, section 3(b) to the state Constitution). We hereby grant the County's motion for judicial notice of Assembly Bill No. 1293 (1997-1998 Reg. Sess.), and a Sierra Club amici's request for judicial notice of its exhibits A through L, i.e., the court records from *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1326 (*Santa Clara*), the legislative history of section 6253.9, and Assembly Bill No. 1968 (2007-2008 Reg. Sess.). We hereby deny Sierra Club's request for judicial notice of the County's GIS needs assessment study and a Sierra Club amici's request for judicial notice of exhibits M through X, consisting of news articles and internet web pages.

ruling, the court heard oral argument, allowed extensive briefing, and conducted a two-day evidentiary hearing.

At the evidentiary hearing, Sierra Club's expert witness (Bruce Joffe) read aloud the following definition of "GIS" from a specialized technical dictionary on geographic information systems: "An integrated collection of computer software and data used to view and manage information about geographic places and [analyze] spatial relationships and model spatial processes." Joffe opined this definition was a "misstatement" because "GIS is software that integrate[s] data models and other spatial processes." But on cross examination, Joffe admitted that he "used" the following definition for "GIS" in a 2003 document: "Geographic Information System, the collection of computers, software, databases, and data that enable geospatial data to be received, manipulated, displayed, and distributed."

The court found that the "County offered persuasive testimony and evidence that the term 'GIS' refers to 'an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes.'" The court further found the County showed "that all of the revenue collected from licensing the OC Landbase in a GIS file format accounts for only 26% of the costs to keep the OC Landbase up to date." The court, identifying the issue as "whether the OC Landbase in a GIS file format falls within the scope of Section 6254.9's computer mapping system exception" from public disclosure, held that "Section 6254.9's legislative history indicates that it was designed to protect computer mapping systems from disclosure, including the data component of such systems, and to authorize public agencies to recoup the costs of developing and maintaining computer mapping systems by selling, leasing, or licensing the system."

DISCUSSION

The Act requires government agencies to make public records promptly available to any requesting person "upon payment of fees covering direct costs of duplication, or a statutory fee if applicable," unless the record is "exempt from disclosure by express provisions of law." (§ 6253, subd. (b).) "'Public records'" are defined to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (§ 6252, subd. (e).)

The "Act states a number of exemptions that permit government agencies to refuse to disclose certain public records." (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1282.) "A qualifying agency refusing to disclose a public record must 'justify' its decision 'by demonstrating that the record . . . is exempt under' one of the" Act's express exemption provisions. (*Ibid.*)

At issue in this case is the Act's exclusion from mandatory disclosure for "computer mapping systems" within the meaning of section 6254.9. Under section 6254.9, subdivision (a), "[c]omputer software developed by a state or local agency is *not* itself a public record" under the Act and therefore the agency may "sell, lease, or license" it.[4] (Italics added.) Subdivision (b) of section 6254.9 defines "'computer software'": "As used in this section, 'computer software' includes computer mapping systems, computer programs, and computer graphics systems." Section 6254.9 further provides: "(c) This section shall not be construed to create an implied warranty . . . for errors, omissions, or other defects in any computer software as provided pursuant to this section.

[4] In this opinion, we refer to the exclusion from public disclosure established by section 6254.9 as an exclusion, rather than an exemption, since governmentally-developed "computer software" within the meaning of that statute is not a public record.

[¶] (d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter. [¶] (e) Nothing in this section is intended to limit any copyright protections."

Both parties agree that the OC Landbase is a GIS database.[5] They disagree on whether a computer mapping system, within the meaning of section 6254.9, includes only the GIS computer program, or alternatively, the GIS computer program *and* database. Sierra Club argues "the correct interpretation of section 6254.9 is that computer databases containing GIS data are not considered software under the [Act]," relying heavily on standard dictionary definitions of "computer software" and "data." The County contends the "OC Landbase data, which is in a GIS file format, is part of a computer mapping system" and therefore excluded from disclosure under section 6254.9.

Section 6254.9 does not define the term "computer mapping systems." We must therefore interpret section 6254.9 in accordance with established principles of statutory construction. Our standard of review is de novo. (*An Independent Home Support Service, Inc. v. Superior Court* (2006) 145 Cal.App.4th 1418, 1424.) "Our fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's

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[5] We do not define what constitutes a "GIS database," since the only question before us is whether the OC Landbase (an undisputed GIS database) is excluded from public disclosure under section 6254.9.

purpose, legislative history, and public policy." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.)

Section 6254.9's language is susceptible to both parties' interpretations, i.e., a "computer mapping system" might or might not include data along with the associated computer program. We must focus on the ambiguous phrase "computer mapping system," not the standard dictionary meaning of "computer software," because section 6254.9 contains its own definition of computer software. "'When a legislature defines the language it uses, its definition is binding upon the court even though the definition does not coincide with the ordinary meaning of the words. . . .'" (*Cory v. Board of Administration* (1997) 57 Cal.App.4th 1411, 1423-1424.)

Moreover, if dictionary definitions controlled the outcome in this case, the word "system" is defined as a "complex unity formed of many often diverse parts subject to a common plan or serving a common purpose." (Webster's 3d New Internat. Dict. (2002) p. 2322.) Thus, a computer mapping *system* should include more than solely a computer *program* component. (In addition to computer data and programs, a computer system could also include hardware or infrastructure, although these last two components cannot be physically copied and disclosed.)

We must thus interpret "computer mapping system," as used in section 6254.9, to determine whether the term includes a computer mapping *database*. We turn first to section 6254.9's legislative history.[6] As originally introduced in the Assembly on February 11, 1988, the statute allowed a government agency to sell "proprietary information" and defined that term to "include[] computer readable data bases, computer programs, and computer graphics systems." An Assembly amendment dated April 4,

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[6] The trial court granted Sierra Club's request for judicial notice of the legislative history of section 6254.9. Pursuant to Evidence Code section 459, subdivision (a), we take judicial notice of the same material in the record.

1988 (first amended bill) changed the term "proprietary information" to "computer software," but kept the same definition quoted above. The first amended bill also added a statement that nothing in the section was intended to affect the public record status of information "merely because it is stored in a computer." A Senate amendment dated June 9, 1988 (second amended bill) changed the term "computer readable data bases" in the definition of computer software to "computer mapping systems." A Senate amendment dated June 15, 1988 (final amended bill) added the sentence, "Public records stored in a computer shall be disclosed as required by this chapter."[7]

The City of San Jose sponsored the bill. A report of the Assembly Committee on Government Organization stated the first amended bill's purpose was to allow San Jose, which had "developed various computer readable mapping systems, graphics systems, and other computer programs," "to sell, lease, or license the software at a cost greater than the 'direct costs of duplication.'" (See *Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465 [legislative committee reports are cognizable legislative history].) The report stated San Jose was "concerned about recouping the cost of developing the software." The report stated the "bill draws a distinction between computer software and computer-stored information" and "declares that information is not shielded from the [Act] 'merely because it is stored on a computer.'"

A San Jose memorandum (contained in the legislative file of the Senate Committee on Governmental Organization) stated: "The City of San Jose, like many other government agencies[,] has developed various computer readable data bases,

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[7] The bill originally proposed to amend section 6257 (repealed in 1998), as opposed to enacting a new section.

The first amended bill stated that computer software "developed or maintained by" a government agency is not a public record. The second amended bill deleted the phrase, "or maintained," due to the Finance Department's observation that if an agency did not develop the particular software, it did not own such software and could not legally lease or sell it without the owner's consent.

computer programs, computer graphics systems and other computer stored information at considerable research and development expense. For example, the City's Department of Public Works has recently completed development of a data base for a computer mapping system known as the Automated Mapping System (AMS). [¶] The AMS is the product of eight years of efforts on the part of Public Works to collect and store on computer magnetic tape, city wide information regarding the location of public improvements and natural features. This wide range of data can be arranged in various ways to produce many types of maps for specialized uses, such as fire response, sewer collection, or police beat maps. Public Works estimates that development costs to date have exceeded $2 million dollars." (*Quarterman v. Kefauver* (1997) 55 Cal.App.4th 1366, 1373 ["[s]tatements by the sponsor of legislation may be instructive"].)

The Department of Finance opposed the first amended bill on April 28, 1988, noting that the inclusion of databases in the definition of "computer software" was contradictory to the statute's statement that nothing in the section was intended to affect the public record status of information merely because it is stored in a computer. The contradiction resulted because "data bases are organized files of record information subject to public records laws" and making them subject to sale or licensing was contrary to the people's right to access public information under section 6250.[8] The "Fiscal Analysis" section stated: "The potential revenue generated by the sale of computer programs, graphics, and information data bases could be substantial depending on the price of the information, program or graphics, and conditions of the sales or licensing agreement."

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[8] The Department of Finance also objected that the bill would permit the state to sell software or data bases which it maintained and did not own, and the bill did not protect the state from warranty liability. The second amended bill addressed both these concerns in subdivisions (a) and (c) of section 6254.9.

As noted above, the Senate amended the bill on June 9, 1988 to, inter alia, revise the statute's definition of computer software to include "computer mapping systems" instead of "computer readable data bases." The Department of Finance then dropped its opposition to the bill. The Finance Department's June 16, 1988 report identified its position on the second amended bill as "neutral," noting in the "Specific Findings" sections that the bill "specifically includes computer mapping systems as computer software, thereby permitting their sale" and that the bill "specifies that any data that may be stored on a computer still retains its public record status." The "Fiscal Analysis" section of the Finance Department's report continued to state: "The potential revenue generated by the sale of computer programs, graphics, and *information data bases* could be substantial depending on the price of the information, program or graphics, and conditions of the sales or licensing agreement." (Italics added.)

A Senate staff analysis of the second amended bill stated the bill's purpose was to "clarify that computer software is not itself a public record and to authorize a public agency to sell, lease, or license the software at a cost greater than [the cost of duplication]. The bill would permit the city of San Jose and other government agencies to recoup development costs of computer databases sold to the public." The report described the statute as specifying that "'computer software,' *as defined*" is not itself a public record. (Italics added.) The report noted that San Jose "has developed various computer readable data bases and other computer stored information for various civic planning purposes" and that a "number of private parties have requested use of the city's software under the [Act] for profit-making purposes."

A Senate Rules Committee report concerning the final amended bill stated in the section titled "Arguments in Support" that the bill "would permit the city of San Jose and other governmental agencies to recoup development costs of computer databases sold to the public."

An Assembly report concurring in the Senate amendments to the final amended bill stated that the Senate amendments "[s]pecifically reference computer mapping systems and make other technical revisions." The "Comments" section of the report states that San Jose "has developed computer readable mapping systems, graphics systems, and other computer programs for civic planning purposes" and that the "city is concerned about recouping the cost of developing the software."

The Department of Finance, in its June 20, 1988 report stating its neutral position on the final amended bill, reiterated its finding that the bill permitted the sale of computer mapping systems and that the potential revenue generated by the sale of "information data bases" could be substantial. The Director of the Department of Finance signed an identical report on August 9, 1988.[9]

A Republican analysis for the Assembly Governmental Organization Committee stated the final amended bill revised the Act "to allow agencies to recover development and maintenance costs of computer software by selling or licensing computer programs and data bases that have been developed sometimes at considerable public expense. Passing such costs along to those who will use them for business-oriented purposes is in the taxpayers' best interest. [¶] This does not affect the ability of the public to obtain information stored on computers." (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1297 [Republican analysis of Assembly bill showed legislative history and intent].)

The bill passed unanimously through the Assembly and the Senate with support from many local governments and no known opposition. On August 22, 1988, the Governor signed the bill adding section 6254.9 to the Government Code.

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[9] Sierra Club postulates that the Department of Finance's references to information data bases "were unintentional and more likely a case of editing oversight." But we cannot presume that a passage in a government document is simply the product of an editing mistake, particularly a document which was signed and submitted on four separate dates by different individuals.

The legislative history of section 6254.9 reveals that the computer mapping systems developed by San Jose and other government entities consisted of databases. San Jose's description of its computer mapping system includes *no* references to any *mapping* computer programs developed by it.

The legislative history also reflects a concern that the original bill's definition of computer software to include all "computer readable data bases" was too broad, encompassing information potentially desired by credit bureaus, title companies, and newspapers. As noted by the Department of Finance, a database is simply an organized file of information. Thus, the expansive phrase "computer readable data bases" would have excluded from disclosure all organized information stored on a computer.

Balancing these considerations, and based on section 6254.9's legislative history, we interpret "computer mapping systems" to include a GIS database like the OC Landbase. This interpretation effectuates the bill's purpose of allowing San Jose to recoup the development costs of its database known as the Automated Mapping System. Significantly, San Jose also sought the ability to recoup the cost of developing its computer graphing systems, and as a result, "computer graphing systems" are also included in section 6254.9's definition of computer software.[10] The Legislature, by substituting "computer mapping systems" for "computer readable data bases" in the statutory definition of computer software, narrowed the definition sufficiently to preserve the public records status of most computer-stored information, while excluding from public disclosure a narrow and specific type of database (i.e., a computer mapping database). A computer mapping database is not excluded "merely" because it is stored on a computer, but because its development is time-consuming and costly and the

[10] The definition of computer graphing systems is not before us.

Legislature has made a policy decision that local governments should be allowed to recoup some of their development costs.[11]

If "computer mapping systems" were interpreted to include only computer *programs*, it is unclear what purpose the inclusion of the phrase in section 6254.9 was intended to achieve, since the legislative history does *not* show that any local government or agency sought the ability to recoup the developmental costs of a proprietary computer *program* associated with a mapping system. Indeed, GIS software is sold by third party vendors, weakening any market a government might have for its proprietary computer program associated with a mapping system. Here, the County licenses mapping software from third parties; similarly, Sierra Club uses "a program called Arc Map."

Furthermore, if "computer mapping systems" denotes only mapping computer *programs*, then the phrase is superfluous since section 6254.9's definition of computer software already includes computer programs. (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22 [courts avoid "constru[ing] statutory provisions so as to render them superfluous"]; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 234 [if two terms have same meaning, one is "mere surplusage"].) A court interpreting a statute should try to give "effect . . . , whenever possible, to the statute as a whole and to every word and clause thereof, leaving no part or provision useless or deprived of meaning." (*Weber v. County of Santa Barbara* (1940) 15 Cal.2d 82, 86.)

Having reviewed the legislative history of section 6254.9, we turn to the statutory framework of which the section is a part. The Act's statutory scheme is consistent with our interpretation that computer mapping databases are excluded from public disclosure. The Act exempts many types of information from disclosure (§§ 6254 — 6254.29) without regard to whether the data is stored in a computer. Thus, section 6254.9, subdivision (d)'s statement that "[p]ublic records stored in a computer

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[11] Here, the County contends it has spent over $3.5 million during the last five years to maintain the OC Landbase.

shall be disclosed as required by this chapter" is not a mandate that all computer-stored information must be divulged under the Act.

Sierra Club argues that section 6253.9 of the Act requires the County to disclose the OC Landbase in the electronic format requested by Sierra Club. But section 6253.9 applies to electronically formatted "information that constitutes an identifiable public record *not exempt from disclosure pursuant to this chapter*" and requires such information to be made "available in an electronic format when requested by any person . . . ." (*Id.*, subd. (a), italics added.) The statute's legislative history reveals that an "earlier version" failed to specify its nonapplication to information exempted from disclosure under the Act; this earlier version drew opposition "related to the proprietary software and security exemption," which opposition was withdrawn after the bill was amended.[12] Furthermore, a specific provision (such as section 6254.9 regarding computer mapping systems) "'prevails over a general one relating to the same subject.'" (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 942.)

Looking outside the Act, other California statutes are consistent with our interpretation that a computer mapping system includes the integrally associated database. The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 (Health & Saf. Code, § 25299.10 et seq.) concerns underground petroleum storage tanks. Article 12 thereof requires the State Water Resources Control Board to "upgrade the data base" to "*include* the establishment of a statewide GIS mapping system . . . ."[13] (Health & Saf. Code, § 25299.97, subd. (b), italics added.) The database is to be "*expand*[*ed*]" to

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[12] Sierra Club notes one purpose of section 6253.9 was to obviate the duplication cost of making paper copies. Here, the parties stipulated the County offered Sierra Club the information in "Adobe PDF electronic format or printed out as paper copies . . . ."

[13] The database covers "discharges of petroleum from underground storage tanks." (Health & Saf. Code, § 25296.35 [formerly § 25299.39.1].)

"*create* a cost-effective GIS mapping system that will provide the appropriate information to allow agencies to better protect public drinking water wells . . . ." (*Id*., subd. (c)(1), italics added.) "GIS mapping system" is defined as "a geographic information system that collects, stores, retrieves, analyzes, and displays environmental geographic data in a data base that is accessible to the public." (*Id*., subd. (a)(3).) Although the state has chosen to make this particular GIS database accessible to the public, thereby foregoing its rights under section 6254.9, what is pertinent to our inquiry here is that the database is an integral part of the GIS mapping system.

Similarly, the Elder California Pipeline Safety Act of 1981 (safety regulation of hazardous liquid pipelines) contains a virtually identical definition of "GIS mapping system." (§ 51010.5, subd. (i).) In addition, Health and Safety Code section 25395.117, subdivision (b) requires the Department of Toxic Substances Control to "revise and upgrade the department's database systems . . . to enable compatibility with *existing databases of the board, including the GIS mapping system* established pursuant to Section 25299.97." (Italics added, see Health & Saf. Code, § 25395.115, subd. (d).)[14]

Sierra Club points out that the California Constitution mandates that a statute be "narrowly construed if it limits" the people's right of access to government

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[14] Outside California, statutes of Illinois, Iowa, Maryland, Nevada, and North Carolina exempt GIS databases from public disclosure or allow government entities to charge fees for them. (5 Ill. Comp. Stat. 140/7, subd. (1)(i) [protecting "[v]aluable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body"]; Iowa Code, § 22.2, subd. (3)(*b*) ["geographic computer database"]; Md. Code Ann., State Gov't. § 10-901 subd. (f)(2) ["'System' includes data that define physical and nonphysical elements of geographically referenced areas"]; Nev. Rev Stat. Ann., § 23.054 ["'geographic information system' means a system of hardware, software and data files on which spatially oriented geographical information is digitally collected, stored, managed, manipulated, analyzed and displayed"]; N.C. Gen. Stat., § 132-10 [reasonable fee may be charged for "Geographical information systems databases and data files"].)

information. (Cal. Const., art. I, § 3, subd. (b)(1) & (2).) We have construed section 6254.9 as narrowly as is possible consistent with its legislative history. Moreover, article 1, section 3, subdivision (b)(5) of the California Constitution specifies it "does not repeal or nullify, expressly or by implication, any . . . statutory exception to the right of access to public records . . . that is in effect on the effective date of this subdivision . . . ." Section 6254.9 was in effect on November 3, 2004, the subdivision's effective date.

We turn to Sierra Club's remaining counter arguments. Sierra Club relies heavily on an Attorney General opinion which concluded that a GIS database does not constitute a computer mapping system for purposes of section 6254.9. (88 Ops.Cal.Atty.Gen. 153 (2005).) But that opinion considered only the language of section 6254.9 and did not examine (or even mention) its legislative history. The opinion contains scant analysis of the issue: "[T]he term 'computer mapping systems' in section 6254.9 does not refer to or include basic maps and boundary information per se (i.e., the basic *data* compiled, updated, and maintained by county assessors), but rather denotes unique computer *programs* to process such data using mapping functions — original programs that have been designed and produced by a public agency. (See, e.g., §§ 6254.9, subd. (d), 6253.9, subd. (f) [distinguishing 'record' from 'software in which [record] is maintained'], 51010.5, subd. (i) [defining 'GIS mapping system' as *system* 'that will collect, store, retrieve, analyze, and display environmental geographic data . . . .' (italics added)]; see also *Cadence Design Systems, Inc. v. Avant! Corporation* (2002) 29 Cal.4th 215 [action between two 'software developers' who design 'place and route software']; *Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 171 [delay in implementation of elections system because necessary 'software' not yet 'developed' and tested]; Computer Dict. (3d ed. 1997) p. 441 [defining 'software' as '[c]omputer programs; instructions that make hardware work']; Freedman, The Computer Glossary: The Complete Illustrated Dict. (8th ed. 1998) p. 388 ['A common misconception is that software is also data. It is not. Software tells the hardware how to

process the data. Software is "run." Data is "processed"'].)" We have already discussed most of the authorities on which the Attorney General relied, i.e., sections 6254.9, subdivision (d) (public record status of information stored in a computer), 6253.9 (requested electronic format), and 51010.5 (Elder California Pipeline Safety Act of 1981), and standard dictionary definitions of "software." The relevance of *Cadence Design Systems* to the issue before us is unclear. There, the parties designed "'place and route' software, which enables computer chip designers to place and connect tiny components on a computer chip," and the issue involved trade secret law. (*Cadence Design Systems*, at p. 218.) In any case, opinions of the Attorney General are "not binding on" the courts. (*City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, 952.)

Finally, Sierra Club relies on *Santa Clara*, *supra*, 170 Cal.App.4th 1301. But the appellate court there declined to consider whether Santa Clara County's GIS basemap was a computer mapping system excluded from disclosure under section 6254.9 because the issue was raised only by Santa Clara County's amici curiae. (*Santa Clara*, at p. 1322, fn. 7.) Instead, the case examined whether Santa Clara County's GIS basemap was exempt from public disclosure under (1) section 6255 of the Act (the "catchall exemption" allowing an agency to justify nondisclosure by showing the public interest is best served by nondisclosure) (*Santa Clara*, at p. 1321), (2) copyright law, or (3) "federal law promulgated under the Homeland Security Act" (*id.* at p. 1321). The Court of Appeal stated in dicta in a footnote that Santa Clara County had conceded in the trial court that its basemap was a public record and that this "concession appears well founded," based on the Attorney General's opinion discussed above. (*Id.* at p. 1332, fn. 9). The Court of Appeal stated it had taken judicial notice of, but did *not* rely on, the legislative history of section 6254.9 "in resolving this proceeding." (*Santa Clara*, at p. 1312 & fn. 4.) Indeed, the party requesting disclosure of the basemap had argued

against the court's taking judicial notice of section 6254.9's legislative history. (*Santa Clara*, at p. 1312, fn. 4.)

Based on our review of the legislative history and purpose of section 6254.9, the Act's statutory scheme, and other relevant statutes, we conclude the County has met its burden of proving that its OC Landbase is part of a computer mapping system and therefore excluded from public disclosure. (*Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889, 896 [agency opposing disclosure bears burden of proving exemption applies].)

Relevant actions taken by the Legislature subsequent to the passage of section 6254.9 do not change our conclusion. Almost a decade after enacting section 6254.9, the Legislature passed Assembly Bill No. 1293, *supra*, adopting the Strategic Geographic Information Investment Act of 1997 (proposed § 8301 et seq.). But the Governor vetoed the bill. (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199 [bill passed by Legislature but vetoed by Governor was cognizable and relevant history].) The legislation would have established state funding through grants "for the development of new, and maintenance of, framework data bases for geographic information systems." (Legis. Counsel's Dig. Assem. Bill No. 1293, *supra*, p. 2) The Legislature recognized "the high cost of creating and maintaining geographic information data bases," and stated, "Public agency policies for pricing the data range from covering the cost of data duplication, to recouping the costs from compilation and maintenance of the data bases." (Assem. Bill. No. 1293, *supra*, § 1, subd. (m).) The Legislature expressly intended "to provide an alternative source of funds for public agencies to create and maintain geographic information data bases without having to sell the public data." (Assem. Bill No. 1293, *supra*, § 1, subd. (n).) Significantly, the proposed legislation defined "Geographic information system" as "an organized collection of computer hardware, software, geographic information, and personnel designed to efficiently capture, store, update, manipulate, analyze, and display

all forms of geographically referenced information." (Assem. Bill No. 1293, *supra*, § 2; Proposed Gov. Code, § 8302, subd. (f).) The proposed legislation would have required "any recipient of a grant [to] make data developed or maintained with grant funds available to disclosure under the [Act] and require that the electronic data . . . be placed in the public domain free of any restriction on use or copy." (Assem. Bill No. 1293, *supra*, § 2; Proposed Gov. Code, § 8306, subd. (a)(7).)

A decade later, Assembly Bill No. 1978 (2007-2008 Reg. Sess.) was introduced to amend section 6254.9 by defining computer mapping systems. Proposed section 6254.9, subdivision (b)(2) would have provided: "Computer mapping systems include, assembled model data, metadata, and listings of metadata, regardless of medium, and tools by which computer mapping system records are created, stored, and retrieved." The bill was referred to two committees, but they took no action on it. A Sierra Club amici argues that because the bill "did not make it out of committee," the Legislature effectively ratified the Attorney General's interpretation of "computer mapping systems" to exclude data. But "'failure of the bill to reach the [chamber] floor is [not] determinative of the intent of the [chamber] as a whole that the proposed legislation should fail.'" (*Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, 243-244.) Moreover, legislative acquiescence may be inferred "when there exists both a well-developed body of law interpreting a statutory provision and numerous amendments to a statute without altering the interpreted provision." (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1156.) Neither of those conditions is met here.

Sierra Club stresses the potential impact of our decision, warning that geographic data is increasingly used by government agencies and the public. We reiterate that the OC Landbase is excluded from disclosure because it is a basemap that constitutes an integral part of a computer mapping system, not simply because it contains some geographic data. Section 6254.9 must be interpreted narrowly to exclude from

disclosure only a GIS database such as the OC Landbase. (Cal. Const., art. 1, § 3, subd. (b)(2).) By enacting section 6254.9 in 1988, the Legislature encouraged and enabled local governments to develop and maintain computer mapping systems by allowing the agencies to recoup some of their costs.[15] Whether the increasing use of GIS data in our society requires reconsideration of section 6254.9's exclusion from disclosure is a matter of public policy for the Legislature to consider. (*In re Marriage of Tavares* (2007) 151 Cal.App.4th 620, 628 [the Legislature, not the judiciary, determines public policy].)

DISPOSITION

The petition for extraordinary writ is denied.

IKOLA, J.

WE CONCUR:

O'LEARY, ACTING P. J.

MOORE, J.

[15] In the County's consolidated answer to Sierra Club's various amici, the County states such amici praise "the usefulness and functionality of computer mapping systems." The County argues it spends "millions of dollars to maintain and update the OC Landbase" precisely because of its "great utility," and that without licensing fees, the County would be forced to reduce services.