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9 CALIFORNIA FIRST AMENDMENT COALITION

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SANTA CLARA**

13 The CALIFORNIA FIRST AMENDMENT
14 COALITION,

15 Petitioner,

16 v.

17 COUNTY OF SANTA CLARA and PETER
KUTRAS, JR., as the County Executive of the
18 County of Santa Clara,

19 Respondents.

CASE NO. 1-06-CV-072630

**SUPPLEMENTAL REPLY BRIEF OF
PETITIONER CALIFORNIA FIRST
AMENDMENT COALITION IN SUPPORT
OF MOTION FOR JUDGMENT ON
PETITION FOR WRIT OF MANDATE**

Date: February 21, 2007

Time: 10:00 a.m.

Dept.: 12

Judge: Hon. James P. Kleinberg

Action Filed: October 11, 2006

1 **INTRODUCTION**

2 In an all-out effort to protect its ability to continue to sell the Basemap Data instead of
3 providing that data for the cost of duplication to members of the public who request it under the
4 Public Records Act (“PRA”), Respondent County of Santa Clara (“the County”) has submitted the
5 basemap, in its entirety, to both the United States and California departments of homeland security,
6 and asserts that simply by doing so, it is automatically entitled to withhold that data from CFAC
7 under the PRA under Government Code § 6254(bb) and 6 C.F.R. § 29 *et seq.*, incorporated into the
8 PRA through the exemption in Government Code § 6254(k) for records “the disclosure of which is
9 exempted or prohibited pursuant to federal or state law.”

10 As explained below, while these provisions limit the ability of state and federal departments
11 of homeland security to release critical infrastructure information (“CII”) provided to those
12 departments, and would limit the County’s ability to release CII that it had obtained from another
13 state or local agency, neither exempts the County’s release of its own Basemap Data under the PRA.
14 And even if these exemptions would even arguably apply to CFAC’s request in the first instance, the
15 County would have waived any such protections under § 6254.5 of the California Public Records
16 Act by providing this information to third parties with the financial means to pay for the data
17 (including such entities as Covad Communications Company and Michael Baker Jr. Inc.).

18 For both of these reasons, the County’s purported concerns (which it only articulated after
19 CFAC filed its opening brief in this case) about the release of the Hetch Hetchy right-of-way can
20 only come into play under Government Code § 6255, the PRA’s catch-all exemption, which requires
21 the County to establish that the public interest in withholding the Basemap Data from members of
22 the public who cannot afford to pay the County’s price “clearly outweighs” the public interest served
23 by its disclosure under the PRA. But the County cannot meet that burden where, as here, it is
24 already providing the Basemap Data to third parties who purchase it, and, in any event, the location
25 of the easements are already publicly available -- and indeed, can be plainly seen on the Assessor’s
26 parcel maps available on the County’s own website. Moreover, the County can provide CFAC with
27 the Basemap Data without the easement lines and without creating the so-called “negative” highlight
28 to which the County refers, simply by making adjustments to the data before it is released to CFAC.

1 Under the PRA, the County is obligated to segregate exempt from nonexempt materials in order to
2 serve the objective of the PRA, even in those cases where doing so imposes a tangible burden on the
3 County. Govt. Code § 6253(a); *E.g.*, *Connell v. Superior Court*, 56 Cal. App. 4th 601, 615 (1997).

4 Weighed against this is the public interest favoring disclosure -- an inquiry that focuses not
5 on CFAC's own intended use of the Basemap Data, but rather the ways in which the Basemap Data
6 can be used by the public at large. Information in the hands of governments is becoming
7 increasingly sophisticated. Where, as here, the public can use the Basemap Data to better understand
8 and monitor the government with regard to a wide range of its activities, *see* Supp. Joffe Decl., ¶¶
9 10-16, CFAC's writ petition must be granted.

10 **I.**

11 **THE COUNTY MAY NOT RELY ON EITHER 6 C.F.R. PART 29**
12 **OR GOVERNMENT CODE § 6254(bb) AS A BASIS FOR REFUSING TO DISCLOSE ITS**
13 **OWN BASEMAP DATA UNDER THE PUBLIC RECORDS ACT**

14 In its supplemental opposition, the County contends that it may withhold the Basemap Data
15 on two grounds not asserted in its January 2007 opposition. *First*, it contends that it may withhold
16 the data under 6 C.F.R. Part 29, incorporated into the PRA through Government Code § 6254(k).
17 *Second*, it contends that it may withhold the data under Government Code § 6254(bb).¹

18 As explained below, while these provisions provide for the confidentiality of CII maintained
19 by the state and federal departments of homeland security, and also prevent state and local agencies
20 from disclosing CII originating from a third party (*e.g.*, another government agency or a private
21 party), neither of these provisions allow the County to refuse a PRA request for its *own* Basemap
22 Data merely because it has submitted that data to federal and state homeland security officials.

23 **A. The Basemap Data May Not Be Withheld Under The Critical Infrastructure**
24 **Information Act Or The Act's Administrative Rules At 6 C.F.R. Part 29**

25 As an initial matter, the County asserts that the Basemap Data is exempt under 6 C.F.R. § 29
26 *et seq.* The rules set forth at Part 29 implement Title II, Section B of the Homeland Security Act,

27 _____
28 ¹ Although the County noted Government Code § 6254(bb) in a footnote to its opposition, it did not
then assert the exemption, nor did it offer any explanation as to why that provision would apply here.

1 referred to as the Critical Infrastructure Information Act of 2002 and codified at 6 U.S.C. §§ 131
2 through 134.² Section 133 of the Critical Infrastructure Information Act sets forth the protections for
3 voluntarily shared CII and provides, in relevant part:

4 **(a) Protection**

5 **(1) In general**

6 Notwithstanding any other provision of law, critical infrastructure
7 information (including the identity of the submitting person or entity) that is
8 voluntarily submitted to a covered Federal agency for use by that agency
9 regarding the security of critical infrastructure and protected systems, analysis,
10 warning, interdependency study, recovery, reconstitution, or other informational
11 purpose, when accompanied by an express statement specified in paragraph (2)

12 * * *

13 (E) shall not, *if provided to* a State or local government or government
14 agency –

15 (i) be made available pursuant to any State or local law
16 requiring disclosure of information or records;

17 (ii) otherwise be disclosed or distributed to any party by said
18 State or local government or government agency *without the written
19 consent of the person or entity submitting such information*; or

20 (iii) be used other than for the purpose of protecting critical
21 infrastructure or protected systems, or in furtherance of an
22 investigation or the prosecution of a criminal act; and

23 6 U.S.C. § 133(a)(1) (emph. added). Although this section prevents a state or local government
24 agency that is provided with another party's CII from releasing that information without the consent
25 of the person or entity that submitted the information, § 133(a)(1)(E), nothing in § 133 or anywhere
26 else in the Critical Infrastructure Information Act allows the County to withhold the Basemap Data
27 under the PRA merely because the County has submitted that information to the Department of
28 Homeland Security. Indeed, Congress foreclosed this argument by subsection (c), which specifies:

*Nothing in this section shall be construed to limit or otherwise affect the ability of a
State, local, or Federal Government entity, agency, or authority, or any third party,
under applicable law, to obtain critical infrastructure information in a manner not*

² These United States Code sections correspond to sections 211 through 215 of Public Law 107-296,
the Homeland Security Act of 2002.

1 *covered by subsection (a) of this section*, including any information lawfully and
2 properly disclosed generally or broadly to the public and to use such information in
any manner permitted by law.

3 6 U.S.C. § 133(c) (emph. added).

4 Where, as here, CFAC is not seeking CII submitted by the County from a covered federal
5 agency, and is not seeking the information from another state or local government agency who
6 received it from a covered federal agency, the Critical Infrastructure Act simply does not provide a
7 rule of confidentiality that would operate as a PRA exemption under Government Code
8 § 6254(k). Ignoring this statutory framework, the County relies on 6 C.F.R. § 29.8(g) -- which, if
9 read in isolation, would no doubt seem to provide an across-the-board exemption under the PRA to
10 any material that any state or local agency chooses to submit to the Department of Homeland
11 Security. But this section cannot be reconciled with 6 U.S.C. § 133(a) & (c), which reflects
12 Congress' clear intent to provide an exemption to state and local open records laws only in those
13 instances where (1) federal authorities share CII that it obtained from one state or local agency to
14 another state or local agency, and (2) the *receiving* state or local agency is presented with a request
15 for that information under an applicable state or local law requiring the disclosure of public records.

16 Indeed, when read in the context of 6 C.F.R. § 29.8 as a whole, it is clear that § 29.8(g) is
17 intended to track the limited non-disclosure provisions of 6 U.S.C. § 133(a), which are designed to
18 encourage private enterprise and others with critical infrastructure information to submit information
19 in their possession to federal authorities -- *not* to create a regulatory scheme that would allow an
20 agency to avoid state and local laws requiring the disclosure of public records merely by submitting
21 information to the Department of Homeland Security. *See* 6 U.S.C. § 133; 6 C.F.R. Part 29 (copies
22 attached to CFAC's Appendix of Non-California Authorities).³ In light of the clear language of 6
23 U.S.C. § 133, 6 C.F.R. § 29.8(g) simply cannot be given the meaning that the County attributes to it.
24 A reviewing court "must give effect to the unambiguously expressed intent of Congress." *FDA v.*
25 *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000); *accord, e.g., Chevron U.S.A., Inc. v.*
26 *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984) (judiciary "must reject

27 _____
28 ³ As noted in the introduction to 6 C.F.R. Part 29, 85 percent of critical infrastructure is in the hands
of the private sector.

1 administrative constructions which are contrary to clear congressional intent”); *Bradford Hosp. v.*
2 *Shalala*, 136 F. Supp. 2d 428, 431 (W.D. Pa. 2001) (“in construing an ambiguous regulation, we
3 examine whether an agency’s interpretation is compatible with the intent of Congress”).⁴

4 Though not necessary to the determination of CFAC’s writ petition, it also appears doubtful
5 that the Basemap Data qualifies as CII in the first instance. In addition to the fact that the County
6 already provides the Basemap Data to third parties -- disclosures that are made not on the basis of
7 those who have cleared a security clearance, but rather to those who are willing and able to pay the
8 County’s asking price -- the location of the Hetch Hetchy right-of-way is publicly available
9 information, and thus does not qualify as “information not customarily in the public domain” within
10 the meaning of 6 U.S.C. § 131(3) (definition of “critical infrastructure information” for purposes of
11 the Act). In addition to the examples of the publicly-available nature of the Hetch Hetchy right-of-
12 way included in the Schriener Declaration and the Second Supplemental Joffe Declaration, the
13 County makes the location of the Hetch Hetchy right-of-way publicly available on the website of the
14 Santa Clara County Assessor’s office.⁵

15 **B. Government Code § 6254(bb) Only Applies To Records In The Possession Of The**
16 **California Department Of Homeland Security, And May Not Be Invoked By The**
17 **County Simply Because It Has Provided That Information To The State**

18 Just as the County’s discussion of 6 C.F.R. Part 29 ignores the enabling legislation, its
19 interpretation of Government Code § 6254(bb) -- one of the PRA’s enumerated exemptions -- only

20
21 ⁴ Notably, the agency rule relied on by the County also provides that state and local governments
22 “may use [CII] only for the purpose of protecting critical infrastructure information or protected
23 systems, or as set forth elsewhere in these rules.” 6 C.F.R. § 29.8(d)(2). To the extent § 29.8 was
24 interpreted in the manner the County advances – as applying to all CII information maintained by a
25 state and local government, rather than just that CII obtained by one state or local government from
26 another state or local agency – the County would be unable to use the Basemap Data for many of the
27 functions which it now contends are critical to county operations. Its ability to sell the Basemap
28 Data to third parties would also be severely curtailed.

26 ⁵ Attached as Exhibit A are three Assessor’s parcel maps available on the website of the Santa Clara
27 County Assessor’s Office (<http://eservices.sccgov.org/ari/search.do>). Each of these Assessor’s
28 parcel maps shows the location of the Hetch Hetchy right-of-way. CFAC submits these in response
to the County’s Pursuant to California Evidence Code sections 452(c) and 452(h), hereby requests
judicial notice of each of the Assessor’s parcel maps attached as Exhibit A.

1 works if one ignores the last sentence of that exemption. Section 6254(bb) provides:

2 Critical infrastructure information, as defined in Section 131(3) of Title 6 of the
3 United States Code, that is voluntarily submitted to the California Office of
4 Homeland Security for use by that office, including the identity of the person who or
5 entity that voluntarily submitted the information. As used in this subdivision,
6 “voluntarily submitted” means submitted in the absence of the office exercising any
7 legal authority to compel access to or submission of critical infrastructure
8 information. *This subdivision shall not affect the status of information in the
9 possession of any other state or local governmental agency.*

8 § 6254(bb) (emph. added).

9 Section 6254(bb) was added to the PRA in September 2006. Like its federal counterpart,
10 nothing in § 6254(bb) allows the County to withhold the Basemap Data merely because it has
11 submitted that information to the California Department of Homeland Security. Section 6254(bb)
12 only exempts CII *in the possession of the California Office of Homeland Security* --- *not*
13 information in the hands of other government agencies, such as the County in this case. Any other
14 interpretation would fly in the face of the plain language of the statute, and would also violate the
15 requirement in Article I, § 3 of the California Constitution that a statute is to be “broadly construed if
16 it furthers the people’s right of access, and narrowly construed if it limits the right of access.” As
17 such, the County’s argument that the Basemap Data is exempt under § 6254(bb) must fail as well.

18 **II.**

19 **EVEN IF THE BASEMAP DATA COULD BE WITHHELD AS CII BY VIRTUE OF 6 C.F.R.**
20 **PART 29 OR GOVERNMENT CODE § 6254(bb), THE COUNTY’S DISCLOSURE OF**
21 **THAT DATA TO THIRD PARTIES CONSTITUTES A WAIVER UNDER THE PRA**

22 Even assuming *arguendo* that the Basemap Data could be theoretically withheld under one of
23 the provisions discussed above simply by virtue of the County’s submission of that data to federal
24 and state homeland security officials, the County’s sale of that data to nongovernmental third parties
25 would nevertheless obligate it to disclose the data to CFAC under the PRA. Section 6254.5 of the
26 PRA provides, in relevant part:

27 Notwithstanding any other provisions of the law, whenever a state or local agency discloses a
28 public record which is otherwise exempt from this chapter, to any member of the public, this
disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or

1 other similar provisions of law.

2 Government Code § 6254.5. *See also, e.g., Masonite Corp. v. County of Mendocino Air Quality*
3 *Management Dist.*, 42 Cal. App. 4th 436, 454 (1996) (recognizing waiver of trade secret protection
4 under § 6254.5 for those materials that had already been voluntarily disclosed); *Black Panther Party*
5 *v. Kehoe*, 42 Cal. App. 3d 645, 656 (1974) (“[R]ecords are completely public or completely
6 confidential. The Public Records Act denies public officials any power to pick and choose the
7 recipients of disclosure”); 86 Op. Atty Gen. Cal. 132, 137 (2003) (“Disclosure to one member of the
8 public would constitute a waiver of the exemption [§ 6254.5], requiring disclosure to any other
9 person who requests a copy”).

10 Like the County’s objections grounded in copyright and the Uniform Trade Secrets Act, to
11 the extent 6 C.F.R. Part 29 creates an exemption to disclosure, it must operate through Government
12 Code § 6254(k), the PRA exemption for records “the disclosure of which is exempted or prohibited
13 pursuant to federal or state law.” As such, both of the exemptions cited by the County in its
14 supplemental opposition are “exemptions specified” in Government Code § 6254, and are subject to
15 the waiver provisions of § 6254.5.

16 Although § 6254.5 allows an agency to disclose records to other governmental agencies
17 without invoking the waiver provisions of that section, § 6254.5(e), the County does not restrict its
18 sales of the Basemap Data only to other governmental agencies. As of August 2006, the County had
19 entered into 15 so-called “Agreements for Basemap Cooperative Use” with 18 different entities,
20 including utility companies, a cable company, and a non-profit corporation. Matteo-Boehm Decl.,
21 Exh. D (August 28, 2006 letter from Leslie Orta to Rachel Matteo-Boehm, at p. 2); Exh. E
22 (agreement with Covad Communications, Inc., agreement with Michael Baker Jr., Inc., in
23 conjunction with a project for SBC).⁶ In addition, the County’s spreadsheet reflecting sales of the
24

25
26 ⁶ Covad is a broadband company with its headquarters in San Jose. In December 2005, the County
27 agreed to sell the Basemap Data to Covad for \$130,942.72. Baker is an engineering and energy
28 management firm that has assisted SBC GIS West (“SBC”) in compiling GIS information. In
November 2004, the County agreed to sell the Basemap Data to Baker and SBC for \$158,750.80.
The County agreed to deliver the Basemap Data to Baker in an “ESRI Geodatabase or shapefile
format on CD or DVD” -- the same formats requested by CFAC. Matteo-Boehm Decl., Exh. E.

1 Basemap Data indicates sales to such entities as Greeninfo Network and Enviromine Inc. Matteo-
2 Boehm Decl., Exh. D. (August 28, 2006 letter from Leslie Orta to Rachel Matteo-Boehm, at p. 2,
3 and attached spreadsheet).

4 The County offers three reasons why the waiver provisions of Government Code § 6254.5
5 should not apply. *First*, it argues the confidentiality provisions of 6 C.F.R. § 29.8 preempt the
6 PRA's waiver rule. But even if § 29.8 operated to exempt the data in question (and, as shown above,
7 it does not), nothing in the Critical Infrastructure Information Act prevents a local agency from
8 disclosing CII where it chooses to do so. *See, e.g.*, 6 U.S.C. § 133(a)(D) (covered federal agency
9 may disclose CII received by a submitting party with the written consent of that party); §
10 133(a)(E)(ii) (state or local agency that is provided with the CII of another party may disclose CII
11 with the written consent of the submitting party); *accord* 6 C.F.R. § 29.8(d) (providing for disclosure
12 upon written consent). Accordingly, the County's preemption argument fails. *Next*, the county
13 argues that its disclosure of the Basemap Data, with confidentiality clauses, to private utility
14 companies such as SBC falls within the carve-out in Government Code § 6254.5(c) for disclosures
15 "[w]ithin the scope of disclosure of a statute which limits disclosure of specified writings to certain
16 purposes," but 6 C.F.R. § 29.2(b), cited by the County in support of this argument, does not make
17 any allowances for such a disclosure, nor is there any indication that the County limited SBC's use
18 of the data to protecting CII. In addition, the County makes no mention of its disclosure of the data
19 to Covad Communications or other third parties. *Finally*, the County states that "the initial portion
20 of Government Code § 6254 does not include waiver as a basis for compelling disclosure," but the
21 PRA's waiver provision, § 6254.5, clearly applies to "the exemptions specified in Section[] 6254."

22 III.

23 **SINCE THE BASEMAP DATA CANNOT BE WITHHELD UNDER EITHER 6 C.F.R. PART**
24 **29 OR GOVERNMENT CODE § 6254(bb), THE HETCH HETCHY RIGHT-OF-WAY**
25 **MUST BE CONSIDERED, IF AT ALL, AS PART OF THE § 6255 ANALYSIS**

26 For the reasons described above, the disclosure of the Hetch Hetchy right-of-way as part of
27 the Basemap Data must be considered, if at all, in the context of Government Code § 6255, the
28 PRA's catch-all exemption. In its supplemental opposition, the County complains that CFAC is an

1 “out of county entity with no stake in the outcome.” But in considering the public interest served in
2 disclosure under that section, the focus is on the *public*’s interest in disclosure of the Basemap Data,
3 not the purpose to which CFAC in particular may put it. As the Court of Appeal has instructed:

4 “If the records sought pertain to the conduct of the people’s business there *is* public
5 interest in disclosure. The *weight* of that interest is proportionate to the gravity of the
6 governmental tasks sought to be illuminated and the directness with which the
7 disclosure will serve to illuminate.” ... The existence and weight of this public
8 interest are conclusions derived from the nature of the information. The purpose for
9 which the requested records are to be used is not just ‘generally’ irrelevant; we have
specifically held, “What is material is the *public* interest in disclosure, not the private
interest of the requesting party; section 6255 does not take into consideration the
requesting party’s profit motives or needs.”

10 *Connell*, 56 Cal. App. 4th at 617-18 (quoting *Citizens for a Better Environment v. Department of*
11 *Food and Agriculture*, 171 Cal. App. 3d 704, 715 (1985) and *State Bd. of Equalization v. Superior*
12 *Court*, 10 Cal. App. 4th 1177, 1191 (1992)) (emph. in original).

13 The Basemap Data at issue here bears on government decisions ranging from property tax
14 assessments, to issuance of permits and zoning variances, to the equitable deployment of public
15 services, and disclosure of that data is necessary to allow members of the public to effectively
16 monitor the government. The County is fully capable of disclosing the Basemap Data without also
17 disclosing the location of the Hetch Hetchy right-of-way.⁷ But even if it were true that the
18 easements could not be removed from the map without creating a so-called “negative” highlight, that
19 would still not constitute a sufficient public interest against the disclosure of the Basemap Data
20 where, as here, the location of the right-of-way is publicly available.⁸

21
22
23 ⁷ As noted in paragraph 4 of the Second Supplemental Joffe Declaration, the Basemap Data can be
24 released to the public without disclosure of the easement lines through means that do not create a
25 negative highlight, and the County has not offered any evidence, in the Second Supplemental Colley
26 Declaration or otherwise, to contradict this fact.

27 ⁸ Apparently recognizing the public availability of the location of the easements, the County
28 contends, in its supplemental opposition, that the basemap can be used in conjunction with other
publicly-available data to show above-ground infrastructure such as access to valves, crossover
facilities, and pump stations. Notably, the County does not contend that this information is included
within the basemap *itself*; and in any event, as the County itself acknowledges, the data is publicly
available.

1 CONCLUSION

2 The California First Amendment Coalition thanks the Court for the opportunity to respond to
3 the County's supplemental opposition, and renews its request that the Court issue an order requiring
4 the County to release the Basemap Data under the Public Records Act, for a fee that does not exceed
5 that permitted by the PRA.

6 Dated: March 12, 2007

7 HOLME ROBERTS & OWEN LLP
8 ROGER R. MYERS
9 RACHEL E. MATTEO-BOEHM
10 KYLE L. SCHRINER

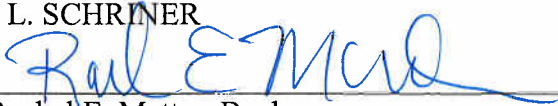
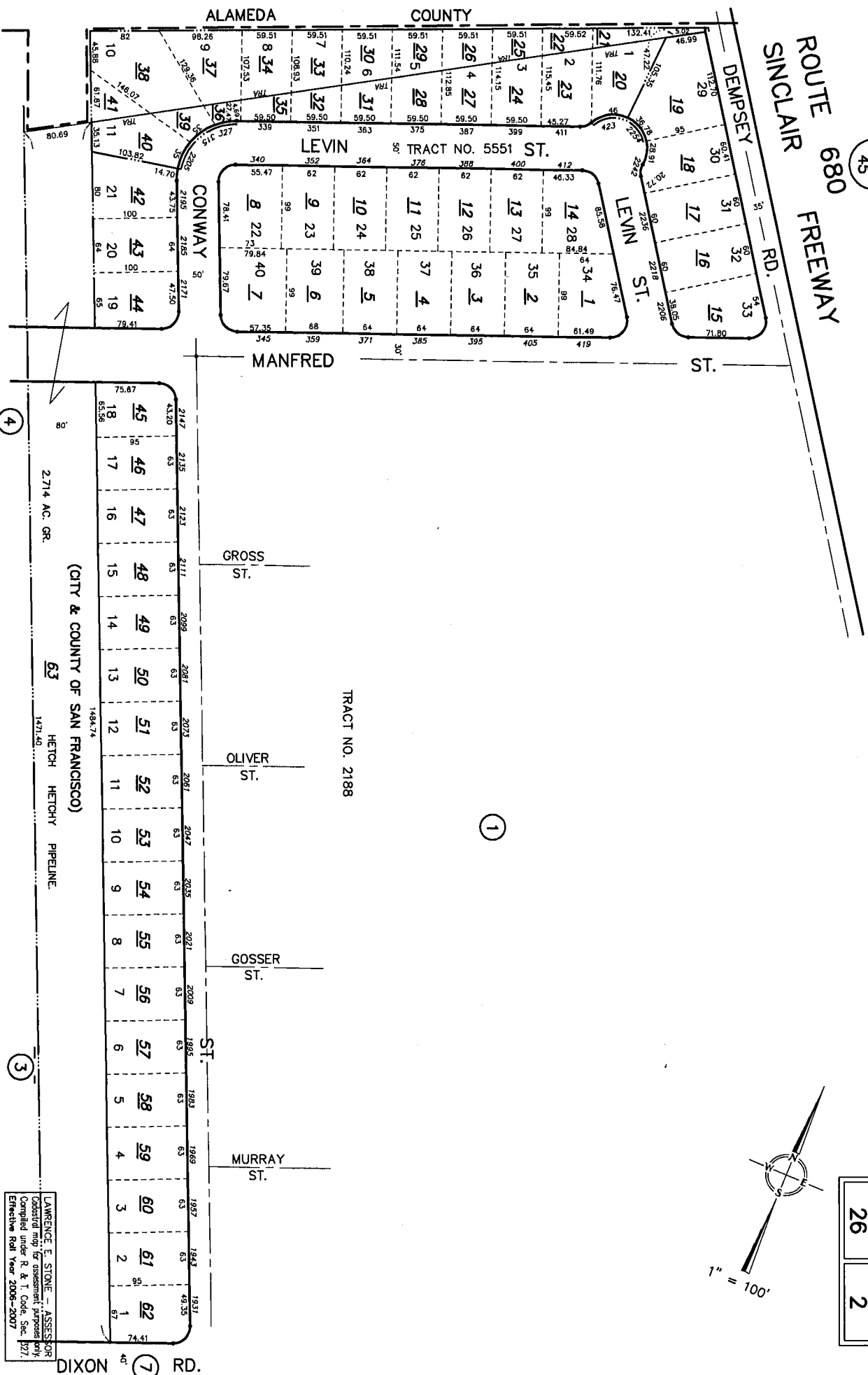
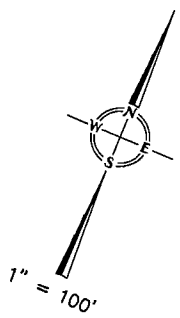
11 By: 
12 Rachel E. Matteo-Boehm
13 Attorneys for Petitioner
14 California First Amendment Coalition

EXHIBIT A

ROUTE 680
SINCLAIR
FREEMWAY



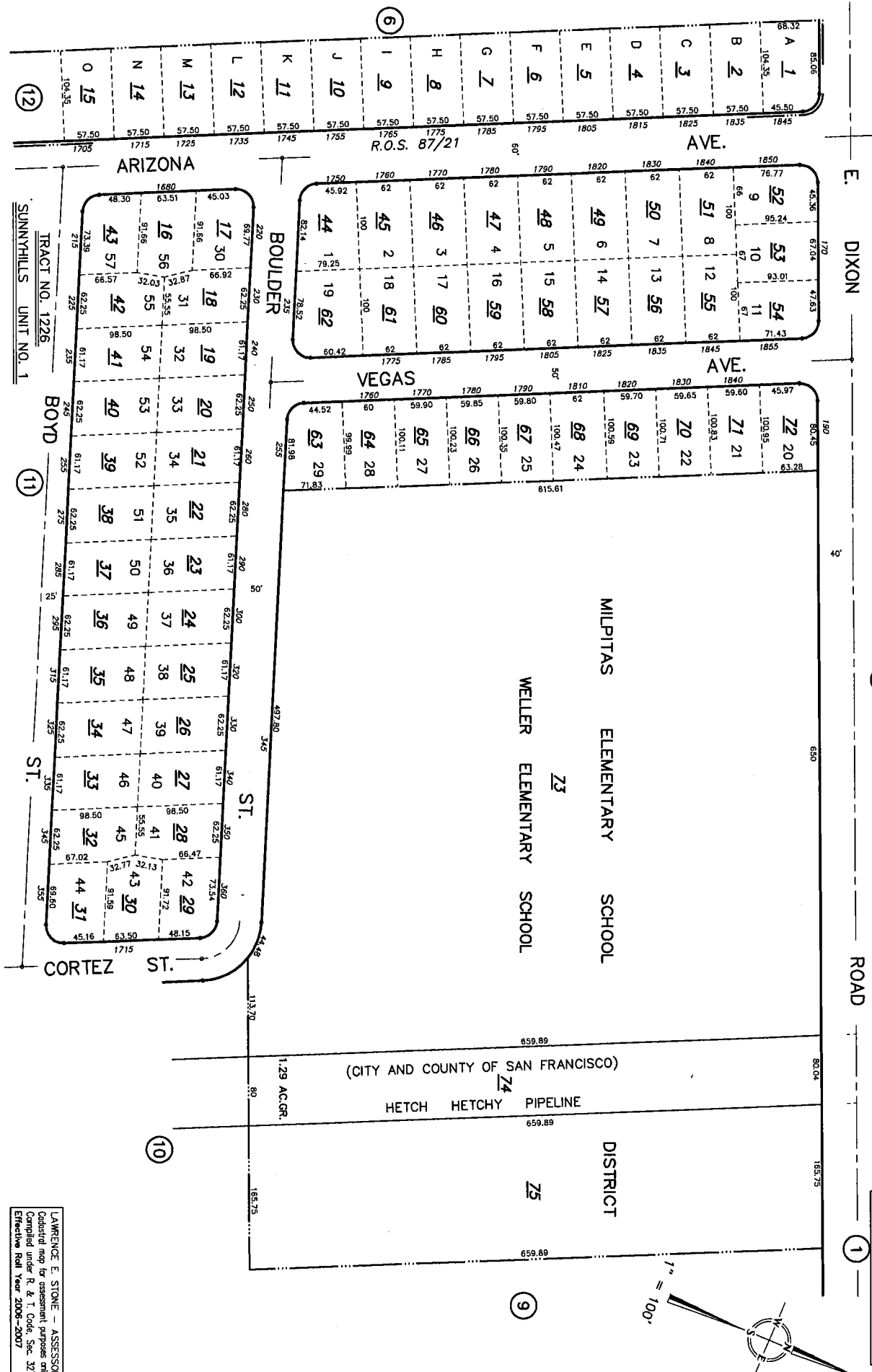
LAWRENCE E. STONE, ASSESSOR
 Industrial map for assessment purposes only.
 Compiled under R. & T. Code, Sec. 427.
 Effective Roll Year 2008-2007

4

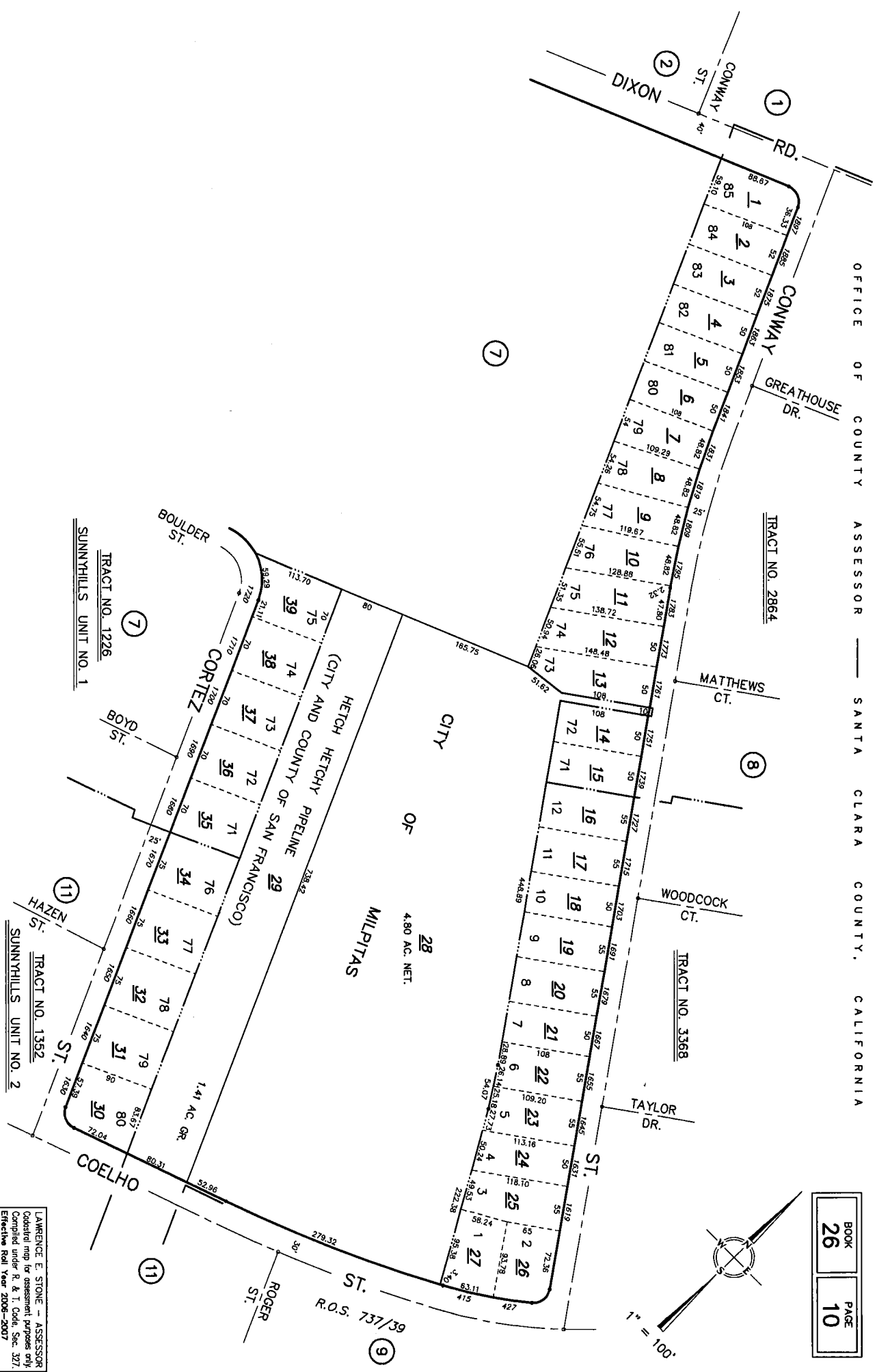
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LAWRENCE E. STONE - ASSESSOR
 Certified map for assessment purposes only.
 Compiled under R. & T. Code, Sec. 327.
 Effective Roll Year 2006-2007



LAWRENCE E. STONE - ASSESSOR
 Cadastral map for assessment purposes only
 Compiled under R. & T. Code, Sec. 327.
 Effective Roll Year 2006-2007

PROOF OF SERVICE
CCP § 1010.6, CCP § 1013, CCP § 1013A

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 560 Mission Street, 25th Floor, San Francisco, California 94105.

On March 12, 2007, I served the foregoing document(s) described as:

1. **SUPPLEMENTAL REPLY BRIEF OF PETITIONER CALIFORNIA FIRST AMENDMENT COALITION IN SUPPORT OF MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE**

on the interested party/parties in this action as follows:

Robert A. Nakamae, Esq. Deputy County Counsel Office of the Santa Clara County Counsel 70 West Hedding Street 9 th Floor, East Wing San Jose, CA 95110-1770 Tel: (408) 299-5900 Fax: (408) 292-7240 Email: robert.nakamae@cco.sccgov.org	<i>Attorneys for County of Santa Clara and Peter Kutrass, Jr.</i>
---	---

BY PERSONAL SERVICE: I caused the above-mentioned document(s) to be personally served to the offices of the addressee as indicated above.

BY FACSIMILE: I communicated the above-mentioned document(s) via facsimile transmittal to the addressee as indicated above. The transmission was reported complete and without error by a transmission report issued by the facsimile transmission machine as defined in California Rule of Court 2003 upon which the said transmission was made immediately following the transmission. A true and correct copy of the transmittal report bearing the date, time and sending facsimile machine telephone number shall be attached to the original proof of service.

BY ELECTRONIC MAIL (E-MAIL): I caused the above-mentioned document(s) to be served via electronic mail from my electronic notification address to the electronic notification address of the addressee as indicated above. The document was served electronically and the transmission was reported complete without error.

1 BY FEDERAL EXPRESS: I caused the above-mentioned document(s) to be sent via
2 Federal Express overnight delivery. By placing a true and correct copy of such document(s)
3 enclosed in a sealed envelope or package designated by the express service carrier and deposited in a
4 facility regularly maintained by the express service carrier or delivered to a courier or driver
5 authorized to receive documents on its behalf, with delivery fees paid or provided for, addressed to
6 the address last shown by that person on any document filed in the action as indicated above.

7 BY MAIL: By placing a true and correct copy of such document(s) enclosed in a
8 sealed envelope addressed to the offices indicated above. I am "readily familiar" with the firm's
9 practice of collection and processing correspondence for mailing. Under that practice it would be
10 deposited with U.S. postal service on that same day with postage thereon fully prepaid at San
11 Francisco, California in the ordinary course of business. I am aware that on motion of the party
12 served, service is presumed invalid if postal cancellation date or postage meter date is more than one
13 day after date of deposit for mailing in affidavit.

14 Executed on March 12, 2007, at San Francisco, California.

15 I declare under penalty of perjury under the laws of the State of California that the above is
16 true and correct.

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Della Grant