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7 CALIFORNIA FIRST AMENDMENT COALITION

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10
11 The CALIFORNIA FIRST AMENDMENT
12 COALITION,

13 Petitioner,

14 v.

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

17 Respondents.
18

CASE NO. _____

**CALIFORNIA FIRST AMENDMENT
COALITION'S VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE**

[Cal. Civ. Proc. Code §§ 1086, 1088.5]

19 Comes now the California First Amendment Coalition ("CFAC") and declares:

20 1. Petitioner CFAC is a nonprofit public interest organization dedicated to advancing
21 free speech and open government rights. Since its founding in 1988, CFAC has been a crucial
22 counterweight to the tendency, at all levels of government, toward greater secrecy and declining
23 accountability.

24 2. Respondent Peter Kutras, Jr. is the County Executive of the County of Santa Clara
25 (the "County"). Mr. Kutras ultimately has custody of the County's Geographic Information System
26 "GIS" basemap and included data elements sought by CFAC in this Petition.

27 3. The County is a local agency within the meaning of Government Code § 6252(a).
28

1 4. CFAC is informed and believes, and on that basis alleges, that Mr. Kutras and the
2 County are in possession of the GIS basemap and data elements sought by this Petition.

3 5. Santa Clara County possesses and maintains geographic information systems,
4 commonly referred to as "GIS," which include applications, software, hardware, and data
5 components. Included within the GIS are databases about real property located within the County.
6 A true and correct copy of the Santa Clara County GIS Strategic Plan 2002 Final Report, which is
7 available as a PDF on Santa Clara County's web site, is attached as Exhibit A to this Petition. A list
8 of the categories of information which may be found within the County's GIS appears on pages 47-
9 55 of the Strategic Plan.

10 6. At the core of the County's GIS is the GIS basemap, which, according to page 43 of
11 the County's Strategic Plan, contains "foundational data that supports most GIS application needs
12 across most of the GIS users." Among the information included within the GIS basemap is data
13 reflecting the boundaries of individual parcels of property, the assessor's parcel number ("APN")
14 associated with each parcel, the address of each parcel, and each parcel's "air parcel" status (a term
15 that relates to condominiums). The basemap is aligned with other GIS maps and data, enabling
16 several different types of data to be viewed and analyzed at the same time.

17 7. The County currently sells the basemap data, in electronic form, to members of the
18 public. However, the County charges significant fees for the data. The amount of those fees
19 depends on the amount and type of data purchased. According to the County's GIS Basemap Data
20 Request form, the "one-time" fee to obtain County-wide parcel information alone (not including any
21 address or Assessor Parcel Number data) would be 56 cents per parcel; at approximately 450,000
22 parcels, the total cost would be approximately \$250,000. A true and correct copy of the County's
23 GIS Basemap Data Request form, which was provided to CFAC by the County, is attached as
24 Exhibit B to this Petition. A true and correct copy of a spreadsheet from the County reflecting all
25 sales of GIS basemap data elements, which was provided to CFAC by the County, is attached as
26 Exhibit C to this Petition.

27 8. In addition, the County requires every party receiving all or a portion of the GIS
28 basemap data to enter into a Mutual Non-Disclosure Agreement. A true and correct copy of that

1 nondisclosure agreement, which was provided to CFAC by the County, is attached as Exhibit D to
2 this Petition.

3 9. Under the California Public Records Act, Government Code §§ 6250 *et seq.* (“PRA”),
4 all records -- including electronic records -- containing information relating to the conduct of the
5 public’s business that are prepared, owned, used, or retained by any state or local agency, and that
6 are not subject to the PRA’s statutory exemptions to disclosure set forth in Government Code §§
7 6254 and 6255, must be made publicly available for inspection and copying upon request. Govt.
8 Code §§ 6253, 6253.9. In addition, copies of public records must be made available for a fee that
9 ordinarily does not exceed the direct cost of duplication. *Id.*

10 10. In addition, in November 2004, Californians overwhelmingly approved Proposition
11 59, which created a new constitutional right of public access to information “concerning the conduct
12 of the public’s business.” Cal. Const., Art. 1 § 3(b)(1). This new constitutional provision requires
13 that a “statute, court rule, or other authority, including those in effect on the effective date of this
14 subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly
15 construed if it limits the right of access.” *Id.*, § 3(b)(2).

16 11. Accordingly, on June 12, 2006, CFAC Executive Director Peter Scheer sent a letter to
17 Richard Rapacchietta, the County’s Information Technical Support Services Manager, requesting
18 that the County provide CFAC with a copy of the following identifiable electronic records, on CD
19 disks, pursuant to the PRA and Article 1, Section 3 of the California Constitution:

20 Specifically, we ask that you provide us with one copy of the most current version of
21 Santa Clara County’s Geographical Information System (GIS) basemap, including the
22 following:

23 ---Data elements: Closed parcel polygons, in .shp format, each tagged with Assessor
24 Parcel Number (APN), suitable for linking to corresponding Assessor parcel records.

25 ---Descriptive attribute data: For each closed parcel polygon, the APN, Situs
26 Address, Air Parcel status and address, and Annotation text illustrating the parcel’s
27 address (not linked to the parcel record).

28 We understand the county’s GIS basemap reflects integrated countywide coverage
and has been geographically registered with the county’s orthophotography. Please
provide the requested data, on CD disks, in both .shp format and in the county’s
geodatabase format.

1 Mr. Scheer's June 12 letter also noted a recent opinion of the California Attorney General, 88 Op.
2 Atty Gen. Cal. 153 (October 3, 2005), in which the Attorney General concluded that records similar
3 to those requested by CFAC were public records subject to disclosure under the PRA. A true and
4 correct copy of Mr. Scheer's June 12 letter is attached as Exhibit E to this Petition.

5
6 12. On June 26, 2006, respondents, through Lead Deputy County Counsel Susan Swain,
7 sent CFAC a letter denying CFAC's request pursuant to Government Code §§ 6254(k), 6254.9, and
8 6255. The June 26 letter also asserted that the GIS basemap was protected by copyright, and that the
9 Attorney General opinion referenced by CFAC in its June 12 letter was not "persuasive." Ms.
10 Swain's letter concluded by stating, "[i]f we have misunderstood your request and you are
11 requesting a copy of the County's parcel map ... please let me know." A true and correct copy of
12 Ms. Swain's June 26 letter is attached as Exhibit F to this Petition.

13 13. On August 14, 2006, CFAC, through its attorneys, had a telephone conversation with
14 Ms. Swain, in which she stated that the County owned the copyright to the GIS basemap, and
15 confirmed that the County was relying on copyright as a basis for denying CFAC's PRA request.

16 14. On August 16, CFAC, through its attorneys, sent a follow-up letter to Ms. Swain,
17 renewing CFAC's PRA request of June 12, 2006 with the modification that CFAC no longer planned
18 to make the GIS basemap data available free on CDs – as it had so indicated in its June 12 PRA
19 request – but that CFAC expressly reserved the right to use and/or display the requested data for
20 news reporting and other similar purposes. For example, CFAC may provide access to the data to
21 neighbors of a proposed real estate development for purposes of evaluating that development.
22 CFAC's August 16 letter requested that the County inform it as to whether it would release the
23 requested GIS basemap in light of this modification; requested further information about the "parcel
24 map" referenced in Ms. Swain's June 26 letter; and requested additional public records relating to
25 the GIS basemap. A true and correct copy of CFAC's August 16 letter, erroneously dated August
26 15, is attached as Exhibit G to this Petition.

27 15. On August 25, 2006, the County, through its Deputy County Counsel James Rees,
28 legal counsel to the Assessor, sent CFAC's attorneys a letter providing a further description of the
parcel map referenced in Ms. Swain's June 26 letter and stating that the Assessor's parcel map is

1 posted on the County Assessor's web site. A true and correct copy of Mr. Rees' August 25 letter is
2 attached as Exhibit H to this Petition.

3 16. On August 28, 2006, the County, through Deputy County Counsel Leslie Orta, sent a
4 letter to counsel for CFAC denying CFAC's renewed request for the GIS basemap and its data
5 elements. Mr. Orta's letter also discussed and attached certain records requested by CFAC in its
6 August 16 letter. A true and correct copy of Ms. Orta's August 28 letter, with all of the attachments,
7 to that letter, is attached as Exhibit I to this Petition.

8 17. On August 30, 2006, the County, through Ms. Orta, sent a letter to counsel for CFAC
9 attaching copies of 14 Agreements for Basemap Cooperative Use (including two copies of the
10 agreement with the City of Cupertino), together with page 47 of the County's GIS Strategic Plan
11 referenced in Ms. Orta's August 28 letter. A true and correct copy of Ms. Orta's August 30 letter,
12 with all of the attachments to that letter (excluding the redundant copy of the agreement with the
13 City of Cupertino), is attached as Exhibit J to this Petition.

14 18. Despite CFAC's efforts to obtain access to the GIS basemap and data elements
15 requested in its June 12 letter, including its subsequent notification to the County that it no longer
16 planned to make the data available free on CD, the County has refused to make copies of the
17 requested data available under the PRA, thus necessitating this action.

18 19. The County's refusal to grant CFAC's request for copies of the public records
19 described herein is not justified by Government Code §§ 6254(k), 6254.9, or 6255, and its denial of
20 access to these records constitutes a willful violation of the PRA and Article 1, § 3 of the California
21 Constitution, as amended by passage of Proposition 59 in 2004. Cal. Const. Art. 1 § 3; Govt. Code
22 §§ 6253, 6253.9.

23 20. CFAC is a member of the public and a party beneficially interested in the outcome of
24 these proceedings and has a clear, present and substantial right to the relief sought herein. Cal.
25 Const. Art. 1 § 3; Govt. Code §§ 6253, 6253.9, 6258, 6259.

26 21. Unless CFAC obtains the requested public records, the public will be denied
27 information prepared at public expense pertaining to the conduct of the public's business that is
28 essential to monitor its government. Public access to copies of the basemap and requested data

1 elements would allow ordinary members of the public to have the same information as County
2 officials, real estate development companies, insurers, and other special interests. Such access
3 would, among other things, enable the public to evaluate the County's assessment of property taxes,
4 issuance of permits, treatment of tax delinquent properties, and issuance of zoning variances.

5 22. CFAC has no plain, speedy and adequate remedy at law other than that sought herein.

6 23. The PRA provides that whenever a member of the public believes that public records
7 are being improperly withheld by a covered agency, that member of the public may bring a verified
8 petition to the superior court of the county where the records or some part thereof are situated for an
9 order requiring the officer or person charged with withholding the records to disclose the public
10 records. Govt. Code § 6259(a). The PRA further provides that if the Court finds that the public
11 official's decision to refuse disclosure is not justified, the Court shall order the public official to
12 make the record public. Govt. Code § 6259(b).

13 24. Pursuant to California Government Code § 6259(d), CFAC is entitled to recover its
14 costs and attorneys' fees from the County.

15 WHEREFORE, petitioner CFAC prays as follows:

- 16 1. That the Court issue a peremptory writ of mandate directing respondents to
17 provide CFAC with a copy on CD of the GIS basemap, including the data elements requested in
18 CFAC's June 12 letter, in the electronic format(s) requested in that letter;
- 19 2. That CFAC be awarded its attorneys' fees and costs; and
- 20 3. For such other and further relief as the Court deems proper and just.

21 Dated: October 11, 2006

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

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By:



Rachel Matteo-Boehm
Attorneys for Petitioner California First
Amendment Coalition

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VERIFICATION

I, Rachel E. Matteo-Boehm, am a partner in the law firm of Holme Roberts & Owen, counsel of record for petitioner California First Amendment Coalition. I have read the foregoing Petition for Writ of Mandate. With the exception of paragraphs 11 and 12, the facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts relating to my communications with respondents' counsel in this case, I, rather than petitioner, verify this petition.

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

DATED: October 11, 2006



Rachel E. Matteo-Boehm

VERIFICATION

I, Peter Scheer, am Executive Director of petitioner California First Amendment Coalition. I have read paragraphs 11 and 12 of the foregoing Petition for Writ of Mandate. The facts alleged in those paragraphs are within my own knowledge and I know these facts to be true.

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DATED: October __, 2006

Peter Scheer

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VERIFICATION

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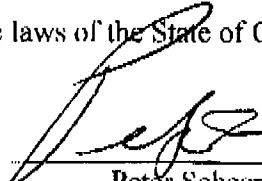
Rachel E. Matteo-Boehm

VERIFICATION

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

DATED: October 10, 2006



Peter Scheer