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COUNTY OF SANTA CLARA
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

CALIFORNIA FIRST AMENDMENT
COALITION

Petitioner,

v.

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

Respondents.

No. 1-06-CV072630

**COUNTY OF SANTA CLARA'S AND PETER
KUTRAS, JR.'S SUPPLEMENTAL
OPPOSITION TO PETITIONER
CALIFORNIA FIRST AMENDMENT
COALITION'S MOTION FOR JUDGMENT**

Judge: Hon. James P. Kleinberg
Dept.: 12
Time: 10:00 am
Hearing: February 21, 2007

Action Filed: October 11, 2006

1 **I. INTRODUCTION**

2 Respondents COUNTY OF SANTA CLARA and PETER KUTRAS, JR. (hereafter
3 collectively “Respondents”) respectfully submit this supplemental opposition to Petitioner
4 CALIFORNIA FIRST AMENDMENT COALITION’s (“CFAC” or “Petitioner”) Motion for
5 Judgment. At the February 21, 2007 hearing, the Court invited Respondents to file this brief to
6 address issues raised by Petitioner’s filing of two declarations at the hearing.

7 The two new declarations do nothing to overcome the plain and simple requirements of
8 Government Code § 6254(bb) and 6 C.F.R. § 29 *et seq.* – submission plus validation equals
9 exemption. Issues such as public disclosure, availability in the public domain, background
10 checks, or timeliness of submissions are classic “red herrings.”¹ All that is required is
11 submission and validation. A closer examination of these declarations only restates the
12 obvious: that the GIS mapping system is sensitive information that is protected from disclosure
13 by the Federal and State governments.

14 **II. LAW AND ARGUMENT**

15 **A. THE GIS MAPPING SYSTEM IS EXEMPT AS PCII OR CII**

16 **1. Government Code § 6254(k) and 6 C.F.R. § 29 *et seq.***

17 There are two simple, unambiguous requirements for protection of Protected Critical
18 Infrastructure Information (“PCII”): (1) submission of PCII to the PCII Program Manager (6
19 C.F.R. § 29.5 (2006)); and (2) validation of the submitted information as PCII by the PCII
20 Program Manager (6 C.F.R. § 29.6(e) (2006)). Respondents satisfied both requirements and
21 nothing in either declaration negates this fact. Respondents submitted the mapping system to
22 the U.S. Department of Homeland Security (“DHS”). DHS validated the GIS mapping system
23 as PCII. (See Paragraph 3 and Exhibit A to the Second Supplemental Colley Declaration).

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25 ¹ Petitioner’s arguments regarding waiver by disclosure do not prevail over the exemption
26 provided by 6 C.F.R. § 29.8(g), which expressly states that validated Protected Critical Infrastructure
27 Information (“PCII”) is exempt from state disclosure laws – preempting any claim of waiver pursuant to
28 state law. *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949. Moreover, Respondents’ disclosure (with
confidentiality clauses) to private utility companies such as SBC – phone and internet service – is well
within the statutory definition of PCII as protected communications and data transmission systems. 6 C.F.R.
§ 29.2(b). Therefore, the disclosure is exempt pursuant to Government Code § 6254.5 (c). Finally, the
initial portion of Government Code § 6254 does not include waiver as a basis for compelling disclosure.

1 The effect of meeting these two requirements is clearly spelled out in the statute – the
2 GIS mapping system is exempt from the California Public Records Act (“CPRA”). All Federal,
3 State and local government entities *shall protect and maintain* information as required by the
4 CII Act. 6 C.F.R. § 29.5(c) (2006) [emphasis added]. PCII *shall be treated as exempt* from
5 disclosure under the Freedom of Information Act and any State or local law requiring disclosure
6 of records or information. 6 C.F.R. § 29.8(g) (2006) [emphasis added].

7 **2. Government Code § 6254(bb)**

8 The two requirements for this exemption are equally simple: (1) Critical infrastructure
9 information² (“CII”), (2) that is voluntarily submitted³ to the California Office of Homeland
10 Security (“OHS”). Government Code § 6254(bb).

11 Again, Respondents already satisfied these two requirements and nothing in the
12 declarations negate this fact. The GIS mapping system is CII. Respondents and DHS
13 voluntarily submitted the GIS mapping system to OHS, and OHS has acknowledged receipt of
14 the CII. (See Exhibit B to the Second Supplemental Colley Declaration). And once again, the
15 effect is obvious – the GIS mapping system is exempt from the CPRA pursuant to Government
16 Code § 6254(bb).

17 **B. SCHRINER DECLARATION**

18 **1. Paragraph 2**

19 Petitioner had more than three weeks to digest Respondents’ opposition, and could do no
20 better than a feeble submission on the day of the hearing. A February 21, 2007 Google search
21 of the same terms identified in paragraph 2 of the Schriner declaration resulted in a total of
22 94,800 hits. (See Exhibits C and D to the Second Supplemental Colley Declaration). Yet, the
23 best Petitioner could do was to attach an exhibit Respondents already filed, and an outdated
24 exhibit from an out of county map. The best evidence of the “strength” of these two exhibits is

26 ² Government Code § 6254(bb) points to 6 U.S.C. § 131(3) for the definition of CII. It is very
27 similar to the definition of PCII.

28 ³ Government Code § 6254(bb) defines “voluntarily submitted” as submitted in the absence of the
office exercising any legal authority to compel access to or submission of critical infrastructure information.

1 Joffe's lack of acknowledgment that these maps serve as a tool to aid terrorists or respond to
2 terrorist attacks. Joffe's declaration is silent as to the benefit of these maps.

3 **2. Paragraph 3**

4 Respondents already included this exhibit in support of their opposition. (See Exhibit B
5 to the January 30, 2007 Colley Declaration). Page 2 of the exhibit is nothing but a very high
6 level map that does not expose precise locations of the Hetch Hetchy water lines, or other
7 critical components such as isolation valves, vaults, venturi (water flow) meters, crossover
8 valves, crossover facilities (which allow water to continue to flow while sections of the pipeline
9 are out of commission), pump stations, V-SAT dishes, etc. It simply tells the reader that the
10 Hetch Hetchy water supply system comes to the Bay Area somewhere through Alameda
11 County, then winds its way somewhere south of the bay, then proceeds somewhere up the
12 peninsula, and finally ends up somewhere in San Francisco. This map has no planning or
13 response value.

14 **3. Paragraph 4**

15 The Schriener Declaration then attaches an outdated Modesto County map purportedly
16 showing the location of the Hetch Hetchy water supply system – albeit in another county. This
17 map is not georeferenced, and only tells the reader that the Hetch Hetchy easement is
18 approximately 1,200 feet north of the Coffee Road and Claratina Avenue intersection.

19 This information is not useful to planning for or responding to attacks. It does not help
20 with planning ease of access, or identifying surrounding structures, privacy/seclusion, or
21 locations of other critical structures – valves, crossovers, pumping stations, etc. On the other
22 hand, the GIS mapping system can be used to identify this critical infrastructure when combined
23 with orthophotography publicly available – some of which is detailed enough to locate manhole
24 covers. (Paragraph 7 to the Second Supplemental Colley Declaration).

25 **C. SECOND SUPPLEMENTAL JOFFE DECLARATION**

26 **1. Paragraph 3**

27 With the GIS mapping system in hand, one can quickly and easily find the Hetch Hetchy
28

1 water supply system.⁴ Although the actual lines are buried underground, the GIS mapping
2 system combined with publicly available, detailed orthophotographs will show the easements
3 and the above-ground infrastructure access to valves, crossover facilities, pump stations, etc.
4 All of these items would have no significance, unless they were georeferenced and matched
5 with the location of the Hetch Hetchy water supply system.

6 **2. Paragraph 4**

7 Respondents cannot “easily disclose” data without disclosing the location of the Hetch
8 Hetchy water supply system because Petitioner requested the parcel polygons. Removing data
9 layers to remove the Hetch Hetchy water supply system location will result in a “negative”
10 highlight – it would appear to the viewer as though Respondents took Liquid Paper correction
11 fluid and painted a white line across the map. Clearly, this will not serve the purpose of
12 protecting the location of the Hetch Hetchy water supply system.

13 At the Court’s request, Respondents will make a sample of this “redacted” map available
14 for an *in camera* inspection. Government Code § 6259.

15 **3. Paragraph 5**

16 Joffe contends that the Hetch Hetchy water supply system is visible from the Google
17 Earth maps. They are not. (See Exhibit E to the Second Supplemental Colley Declaration).

18 As for the San Francisco Public Utilities Commission, the publicly available easement
19 maps are high level, not to scale, and not georeferenced. These maps do not have information
20 needed to plan or respond to an attack – isolation valves, vaults, venturi meters, crossover
21 valves, crossover facilities, pump stations, V-SAT dishes, etc. The GIS mapping system will
22 enable all of this. (See Paragraph 9 and Exhibit F to the Second Supplemental Colley
23 Declaration).

24 Finally, Joffe is only speculating as to what “hundreds of property owners” know about
25 property easements and right of ways. His “opinion” is without proper foundation.
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⁴ Joffe takes offense with “water pipelines.” Substituting “water supply system” will not change the analysis.

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4. Paragraph 6 and 7

Joffe now claims to be a member of the *Geospatial* Working Group (paragraph 6) and the *Geographic* Working Group (paragraph 7). However, Joffe never disclosed this in any of his prior declarations, his resume, or either of his two websites. Neither group discloses Joffe as a member. (See Exhibits G, H and I to the Second Supplemental Colley Declaration).

Nevertheless, his opinions on this issue are irrelevant. Joffe or the “GWG” are not the final arbiters of what is or is not PCII – that authority ultimately belongs to the PCII Program Manager, a member of DHS. In the present case, the PCII Program Manager already validated the GIS mapping system as PCII. Again, submission plus validation equals exemption pursuant to 6 C.F.R. § 29 *et seq.* and Government Code § 6254(bb).

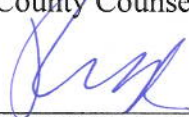
III. CONCLUSION

Petitioner may not like the PCII and CII exemptions; Petitioner may not agree with them. But Petitioner cannot ignore the DHS and OHS validation of the GIS mapping system as PCII and CII. Nor can Petitioner now ask this Court to ignore the plain and simple requirements (that have been met), the PCII and CII validations, and the exemptions provided therein. Doing so will only serve a greater disservice to the residents of Santa Clara County as it will put PCII into the public domain, contrary to the express mandate of DHS and OHS and for the “benefit” of an out-of-county entity with no stake in the outcome.

Dated: March 2, 2007

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By: _____


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