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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.
20
21

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.

