

1 ROGER MYERS (CA State Bar No. 146164)  
RACHEL MATTEO-BOEHM (CA State Bar No. 195492)  
2 KYLE L. SCHRINER (CA State Bar No. 215853)  
3 HOLME ROBERTS & OWEN LLP  
560 Mission Street, 25<sup>th</sup> Floor  
4 San Francisco, CA 94105-2994  
Telephone: (415) 268-2000  
5 Facsimile: (415) 268-1999

6 Attorneys for Petitioner  
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

22  
23  
24  
25 By: 

26 Rachel Matteo-Boehm  
27 Attorneys for Petitioner California First  
28 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.

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

DATED: October \_\_, 2006

\_\_\_\_\_  
Peter Scheer

