



**I'm from the Government
(*Planning Department*)
and I'm here to help you!**

Presenter:

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ARRL Volunteer Counsel
ARRL Life Member

Really Important Legal Notice

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Every situational is factually unique. As Harry Callahan said, “. . .you've got to ask yourself a question: Do I feel lucky? Well, do ya, punk?” What that means is no matter what you read here, and no matter what you think you know, you're better off taking a step back, evaluating the matter at hand, and making a reasoned decision with advise of your legal counsel after researching the facts.

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Tour of the Presentation

- Get ready...take aim...
- PRB 1... “Waiter! Reality Check, Please!”
- California’s AB 1228 (G.C. 65850.3)
- CC&Rs: Read the fine print!
- Tips on how to put your best foot forward, instead of in your mouth...



Ready, aim...

W6JLK (Extra)

Formerly: *KD6MR, KP6AY, WB6FDE, WN6FDE*

Licensed since 1971

Life Member of the ARRL since 1975ish

ARRL Volunteer Counsel

ARRL Volunteer Examiner

FCC General Radio Telephone w/ Ship Radar

Was 1st Phone/Radar; was 2nd Phone; was 3rd Phone

Worked for local governments since 1984

Wireless for past 16+ years

Ordinances

Zoning hearings

Tower height requirements

RF safety issues (Co-author of FCC's guide to local governments)

Attorney at Law (2006)

Admitted in California



Shoot!



PRB 1...

“Waiter! Reality check, please!”

- National policy established by the FCC defining the relationship between antennas (antenna structures) and local zoning considerations.
- Limited preemption of local zoning considerations
- Codified at 47 C.F.R. § 97.15(b)



PRB 1...

“Waiter! Reality check, please!”

- History
 - 1984: ARRL Petitions FCC to preempt local government restrictions on amateur radio antenna structures
 - 1985: FCC adopts PRB 1.
 - 1999: ARRL petitions FCC to extend PRB 1 to preempt CC&Rs (more on this, later).
 - 2000; ARRL petitions FCC to reconsider 1999 denial.



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(a) [deals with antennas in excess of 200' AGL or near public airports]

(b) Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.)

[64 FR 53242, Oct. 1, 1999]



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California's PRB 1 Law (Gov. Code § 65850.3) (2003)



CALIFORNIA REPUBLIC





California's AB 1228 (Gov. Code § 65850.3) (2003)

65850.3. Any ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, shall not preclude amateur radio service communications, shall reasonably accommodate amateur radio service communications, and shall constitute the minimum practicable regulation to accomplish the city's or county's legitimate purpose. It is the intent of the Legislature in adding this section to the Government Code, to codify in state law the provisions of Section 97.15 of Title 47 of the Code of Federal Regulations, which expresses the Federal Communications Commission's limited preemption of local regulations governing amateur radio station facilities.



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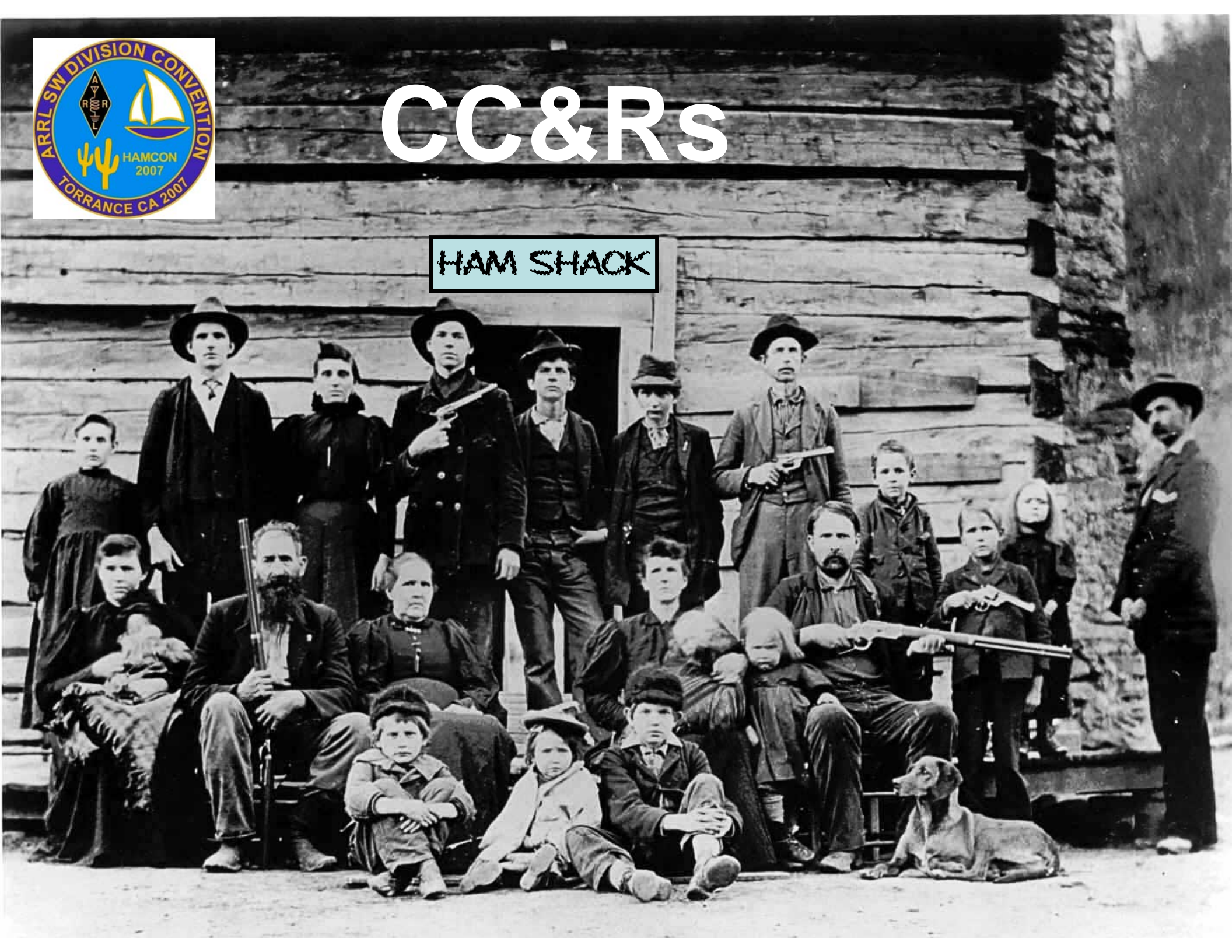
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CC&Rs

HAM SHACK





CC&Rs: Read the fine print!

- CC&Rs = Covenants, Codes, and Restrictions
- Covenant = *An enforceable promise*
- Status of a **private contract** between private parties
- CC&R's can be '**enforced**' by others bound by the same terms (called an 'equitable servitude')



CC&Rs: Read the fine print!

- PRB 1 and CC&Rs (2001):

- **ARRL to FCC:**

Ah, would you please extend PRB 1 to preempt those pesky CC&Rs and similar private contracts based on OTARD?

- **FCC to ARRL:**

Thanks for asking, but the answer is **no**.

But while we're on the subject, we will talk about **OTARD**, and you *won't like* what we have to say.



PUTTING YOUR BEST FOOT (AND CASE) FORWARD

- Some basics (Information collection):
 - **What, exactly, are the local zoning rules in your community governing amateur radio antenna structures? Get a copy (likely online) and study them.**
 - **What previous cases have been decided under the current rules? Ask to review the files and find out why the cases were approved or disapproved. Explain why you're asking ("...so I can do the best job putting together my application...")**
 - **Ask the counterperson for all of the forms you'll need, and find out all of the fees you're going to be asked to pay.**



PUTTING YOUR BEST FOOT (AND CASE) FORWARD

- Some basics (Information collection):
 - Know, exactly, what you're going to ask permission to do.
 - Loser: "I want to put something up about 65 feet in the air."
 - Better: "I want to erect an XYZ tower with a LMN rotator and an ABC yagi. Here's a drawing..."



YOUR PLANNER'S RESPONSE





STOP! TAKE A BREATH...

- Things to remember...the odds are very high that:
 - Your planner has little or no experience with ham tower projects;
 - Your planner has no technical expertise in RF propagation;
 - Your planner thinks this is just like a cell tower;
 - Your planner would now like to take a long vacation.



PLANNER CPR:

- HELP restart the planner's heart by:
 - Keeping your voice calm and friendly at all times;
 - Take the time to explain, in detail, your project and why you need what you're asking for;
 - How?



Making Your Case

Planner: “Why does it have to be that tall? It not permitted by our code.”

You: “Let me show you the engineering for the XYZ yagi antenna. That engineering justifies the height I need.”

- Roll your own antenna? NEC and EZNEC are your friends...use ‘um if you’ve got ‘um.
- Commercial antenna? Your antenna manufacturer is your friend...use ‘um to get NEC/EZNEC outputs
- Show the relationship between height above terrain versus the angle of the main lobe (launch angle). Show the launch angle for multiple heights around your requested height. Explain why a low launch angle is critical for HF long-haul communications. ***This is likely the most important evidence you can submit to justify your height request!***
- **BEWARE: NEVER, NEVR, NEVER USE THE “R” WORD!**
- ***But be prepared to show compliance with FCC OET Bulletin 65 for amateur operations.***



Making Your Case

- **Before and at the hearing:**
 - Find out what the hearing notice range is (typically 300 to 500 feet). Figure out who might have a problem and reach out. Inviting your neighbors over before the hearing to discuss your project, and ham radio in general, is a good move. Be sure to mention you held the meeting at your hearing.
 - Get a copy of the planner's report as soon as it's available. Carefully review it. Be prepared to respond to every negative point (if any).
 - Prepare ***and repeatedly practice*** an opening and closing speech. Practice responses to potential objections. Watch the clock! If you've never been to a planning hearing before, consider going to observe the process *before* it's your turn!
 - Dress in formal attire.



Making Your Case

- **At the hearing:**
 - **Explain why under both PRB 1 and G.C. § 65850.3 your project is justified in light of the engineering documentation you provided.**
 - **IT'S CRITICAL TO GET "THE TROOPS" (Hams, neighbors, others) TO THE HEARING, AND TO GET THEM TO SPEAK IN SUPPORT OF YOUR PROJECT!!!! (Each fills out a speaker's card).**



Making Your Case

- **If you have to deal with an appeal:**
 - Get a copy of the formal reasons for denial. In an appeal you should appeal every denial basis.
 - **Explain why the initial decision maker erred. DO NOT ATTACK, but be clear, and explain (again) why, under both PRB 1 and G.C. § 65850.3, the project justified in light of the engineering evidence you provided, and that the initial decision maker erred.**
 - **IT'S EVEN MORE CRITICAL TO GET "THE TROOPS" (Hams, neighbors, others) TO THE HEARING, AND TO GET THEM TO SPEAK IN SUPPORT OF YOUR APPEAL!!!! (Each fills out a speaker's card).**



TO VC OR NOT TO VC

“The Volunteer Counsel (VC) Program has several goals. It was developed to provide a better means of tracking and, when necessary, opposing local ordinances and statutes that might have a detrimental effect on the Amateur Radio Service and League members.”

“The League does not expect a VC to represent an amateur free of charge. When HQ makes referrals, the point is made that VCs make their living practicing law and amateurs should not expect free or reduced cost legal representation unless it is at the discretion of the VC. Volunteer Counsels are asked, however, to provide an initial consultation *gratis* so that the amateur may knowledgeably decide what further steps to take.”



TO VCE OR NOT TO VCE

“The Volunteer Consulting Engineer (VCE) Program provides assistance to amateurs who may need to meet structural requirements set forth by local zoning authorities. Such engineering requirements are often necessary to obtain a permit to erect an antenna support structure. Hams often need an "expert witness" to certify that the tower in question meets or will meet the engineering requirements of local ordinances. Amateurs who need assistance are referred to Volunteer Consulting Engineers in their area.

“VCEs are not expected to provide their services for free, but are asked to provide an initial consultation *gratis* and to consider giving discounted rates to amateurs where possible to meet a common goal for the good of Amateur Radio in the community. .”



Thanks to Southwest Division Director **Richard Norton, N6AA** for asking me to STICK OUT MY NECK and other body parts to make this presentation!

YOU CAN DOWNLOAD AN ADOBE PDF OF THIS PRESENTATION AT:

TelecomLawFirm.com

No, sorry, I don't do VC work in planning case, but if you find yourself dealing with RFI or other interference issues, give me a call!