Ham Radio Tower Regulation by Local Governments

Presented by:

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- **Admitted to practice law in California (2006) and New Mexico (2013)**
- **Licensed by FCC since early 70s (holds an excessive number of licenses & certs)**
- **Licensed CSLB Communications (C7) license (since 1980)**
- **45+ years in telecom engineering/safety reviews**
- **RF, broadband, fiber, outside plant safety, code compliance, RF safety**
- **40+ years consulting on telecom matters > 1,500 governments/firms;**
- **25+ years of wireless leasing, siting, and planning matters >2,000 cases/matters**
- **Expert witness/trial advisor in 40+ wireless, wired telecom cases**
  Co-author, Co-editor of FCC's "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance"

- **Member: IMLA; NATOA (Twice Member of the Year); Senior Member of the Society of Broadcast Engineers; Fellow, Society of Telecommunication Engineers (UK); Sr. Member, Society of Telecommunications Engineers (US).**

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- **Education/Teaching**
  Doctor of Law and Policy, Northeastern Univ., Boston, MA
  Master of Law *with distinction*, Strathclyde Univ. School of Law, Glasgow, Scotland
  Juris Doctor *cum laude*, Abraham Lincoln School of Law, Los Angeles, CA

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…because without them, how would attorneys survive?

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Sorry, but if you don't write down the three code words, I **cannot** give them to you after the fact.

Let’s get Federal!

It all starts with FCC PRB-1

Back then, in the 80’s

PRB = ***Private Radio Branch***

https://www.fcc.gov/wireless/bureau-divisions/mobility-division/amateur-radio-service/prb-1-1985

FCC PRB-1…

- 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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FCC PRB-1…….

- National policy established by the FCC defining the relationship between ham antennas (including antenna structures) and local zoning considerations.
- *Limited* preemption of local zoning considerations
- **FCC PRB-1 is codified at 47 C.F.R. § 97.15(b), which says…**

PRB-1……..
“Waiter! Reality check, please!”

Sec. 97.15 Station antenna structures.

(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]

PRB-1……

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[64 FR 53242, Oct. 1, 1999]

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 *Over the Air Receiving Devices*.'

Interlude 1:

Ham antenna-related stuff you'll want to know about when dealing with a ham tower permit application…

Interlude 1: Some basics about how antennas work

- **Higher frequencies** (generally above 30 MHz): shorter distance
  - Usually used hams making contact with other hams in the same region (1 mile to ~50 miles, *but sometimes a bit farther*…as you'll see in a few slides). Commonly used with hand-held or mobile radios that are line-of-sight or via a 'repeater.' Usually uses vertical omnidirectional antennas as short as a few inches tall or as long a 5 feet tall. Less frequently uses directional antennas that may be a few feet in boom length. Usually used by "technician", "general", "advanced" and "Extra Class" ham operators.
- **Lower frequencies** (generally up to 30 MHz): longer distance
  - Usually used hams making contact with other hams in the same region up to world-wide. Usually uses more powerful desktop radios that are most commonly installed in a 'ham shack.' Usually uses vertical omnidirectional antennas 5 feet and taller, but also may use a directional (yagi/beam) antenna Usually used by "General Class", "Advanced Class" and "Extra Class" ham operators.

Interlude 1: *Ham 'stuff' you'll run into in planning!*

- FCC **classes** of ham radio licenses:
- **Novice Class**: No longer issued to new applicants since May 15, 2000, but prior-existing licenses remain renewable. Gives ***VERY LIMITED*** access to "HF" ("high frequencies") and ***VERY LIMITED*** access to UHF ("ultra high frequencies").
- **Technician Class**: Currently the 'entry level' license. Gives **SOME** access to HF and **EXTENSIVE ACCESS** to VHF and UHF ("very high frequencies" and "ultra high frequencies").
- **General Class**: Currently the 'middle of the road' ham license. Gives access to **MOST** ham radio low and high frequencies.
- **Advanced Class**: No longer issued to new applicants since May 15, 2000, but prior-existing licenses remain renewable. Gives access to **ALMOST ALL** ham radio low and high frequencies.
- **Extra Class**: The 'top of the line' license. Gives access to **ALL** ham radio low and high frequencies.

Interlude 1: *Ham 'stuff' you **WILL** run into in planning!*

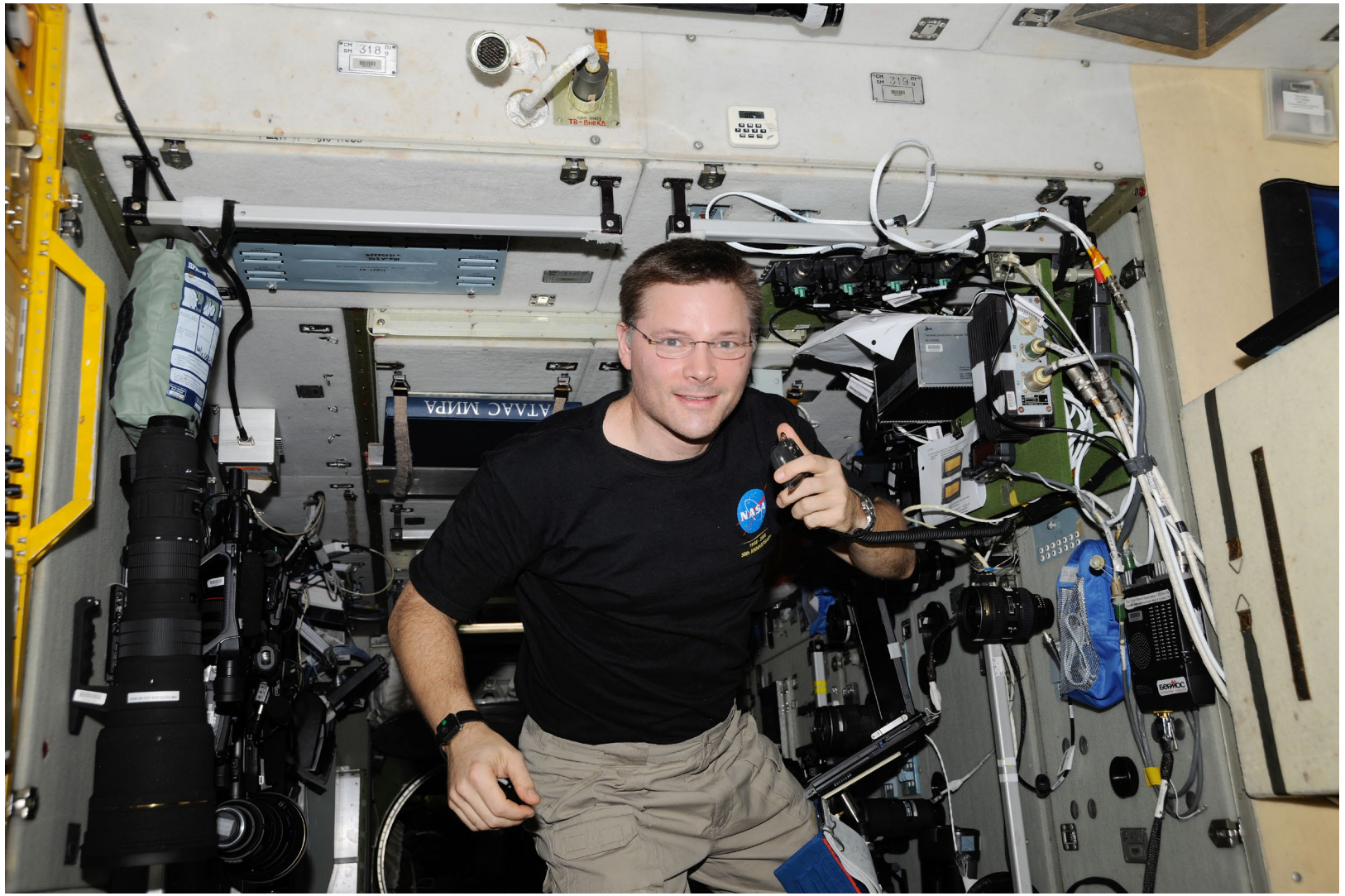
Multi-band ham shack

https://n0agi.com/welcome/n0agis-ham-radio-shack-welcome/

Interlude 1: *Ham 'stuff' you **WILL NOT** run into in planning!*

CW1

Multi-band ham shack



NASA Astronaut **Doug Wheelock**, KF5BOC operating **NA1SS**.

This is a VHF/UHF ham radio, used for recreational and educational purposes, and also used for NASA emergency communications.

By NASA - http://spaceflight.nasa.gov/gallery/images/station/crew-24/html/iss024e013398.html
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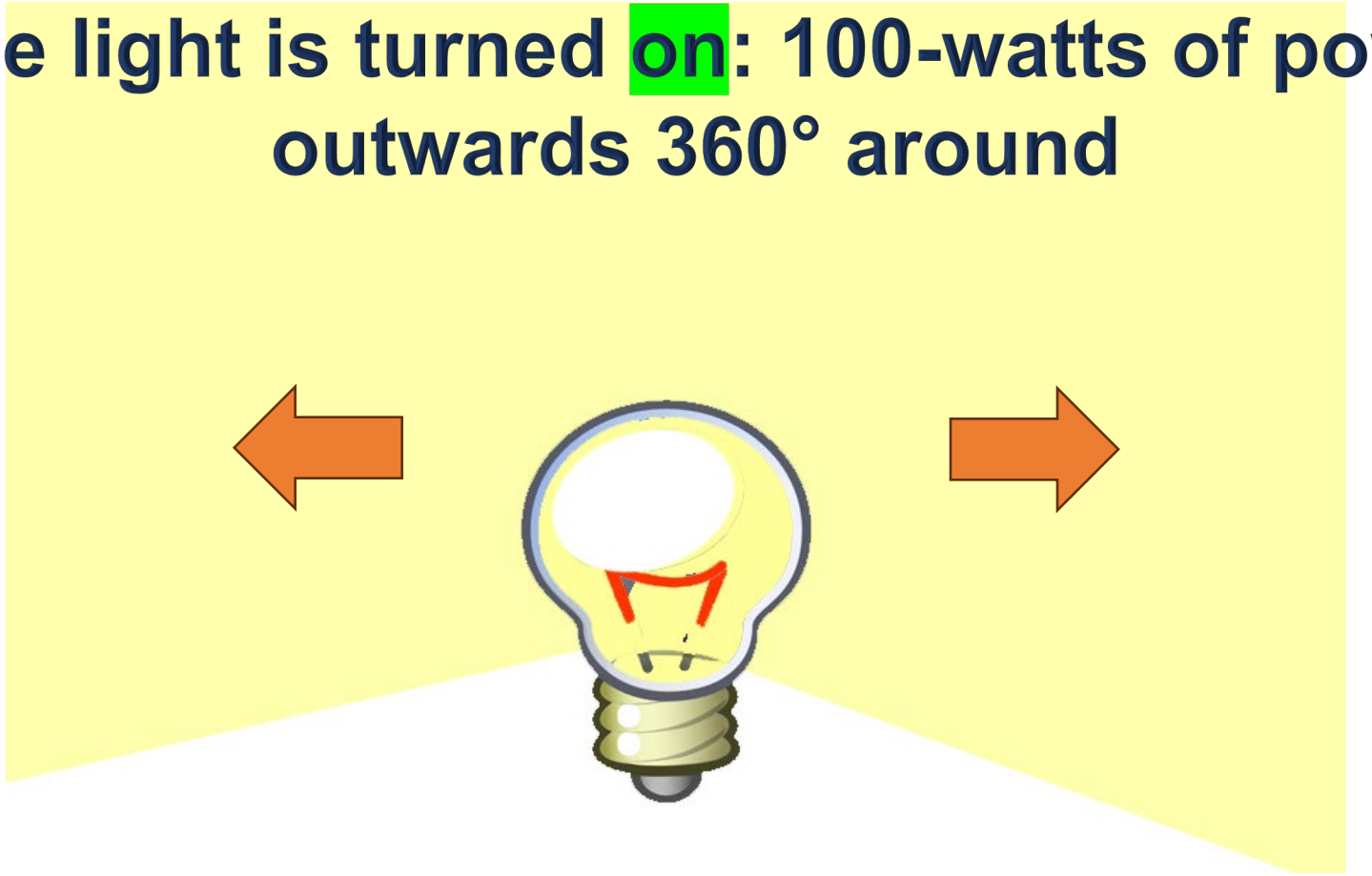
Interlude 2: Omni-directional and Beam Antennas. Let's Analogize!

The 100-watt light bulb is our antenna,
and the light it produces is our RF signal.

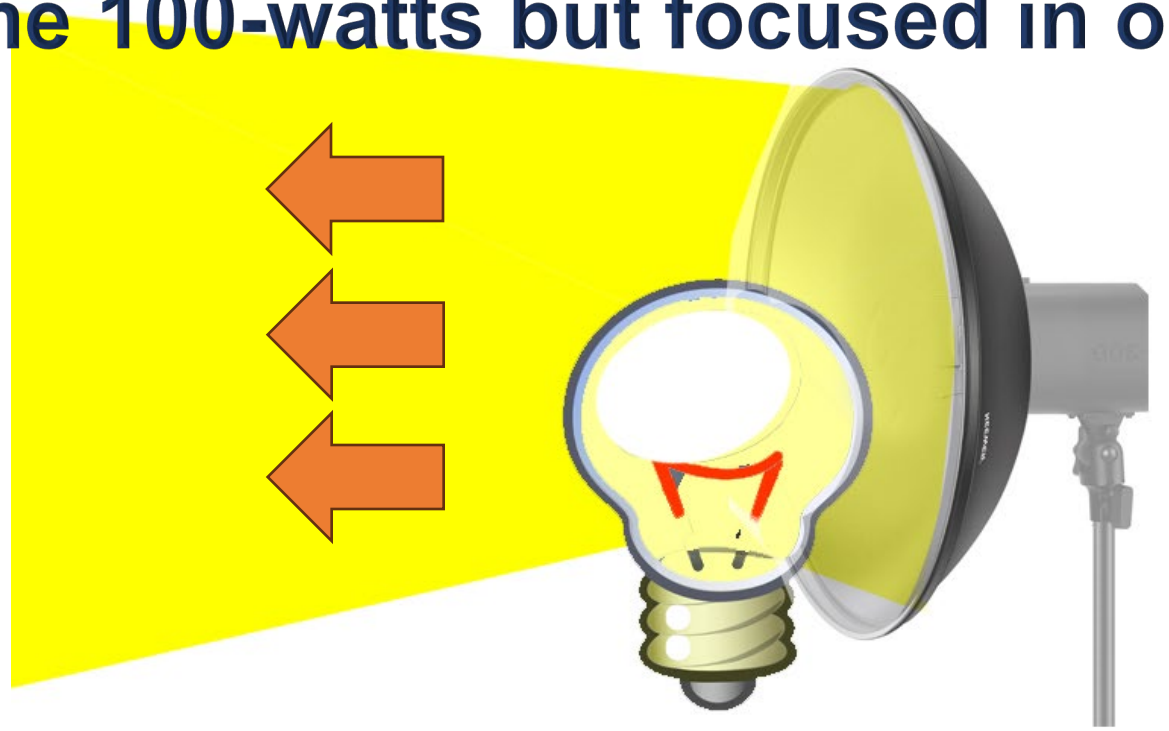
The light is turned off: no power.

The ~~light bulb~~ antenna is powered.
It's an **omni-directional** antenna.



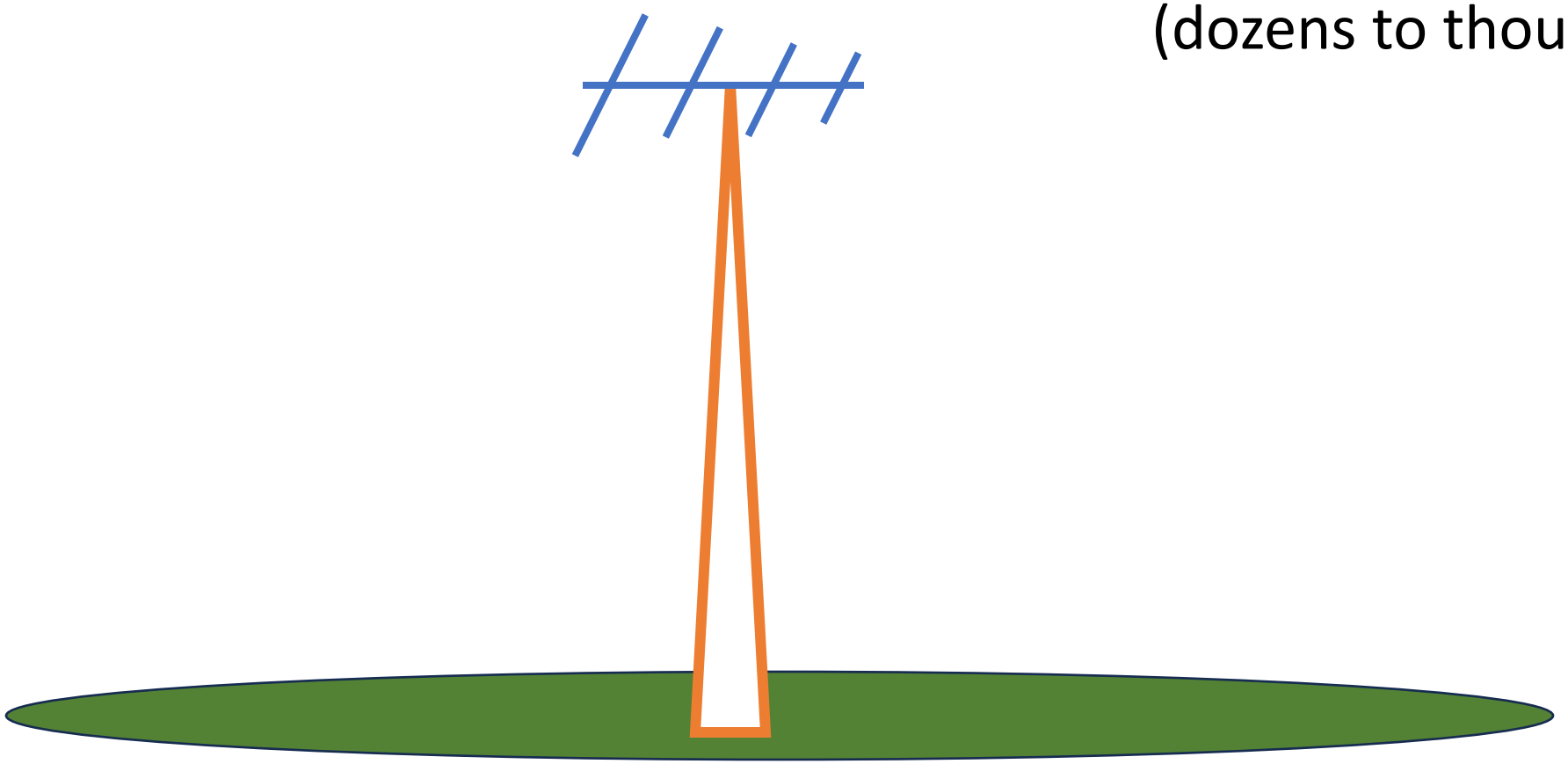
With a reflector ‘focusing’ the ~~light~~ signal in **one** direction, we have a **beam** antenna.

The light is turned on: 100-watts of power
same 100-watts but focused in one direction



Interlude 2: More about how beam and omni-directional antennas work.

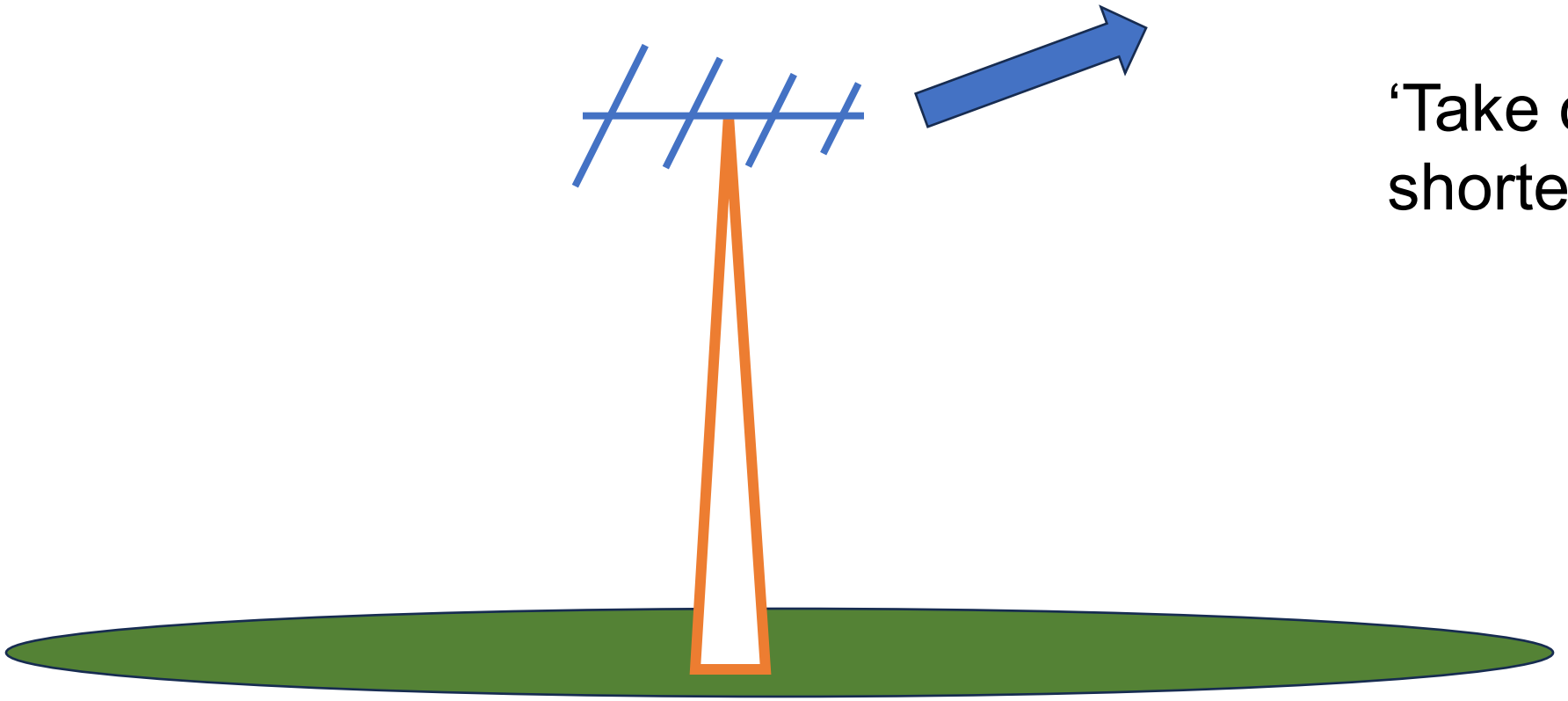
- Yagi ‘Beam’ Antenna



Used for longer distances (dozens to thousand of miles)

Interlude 2: Some basics about how antennas work

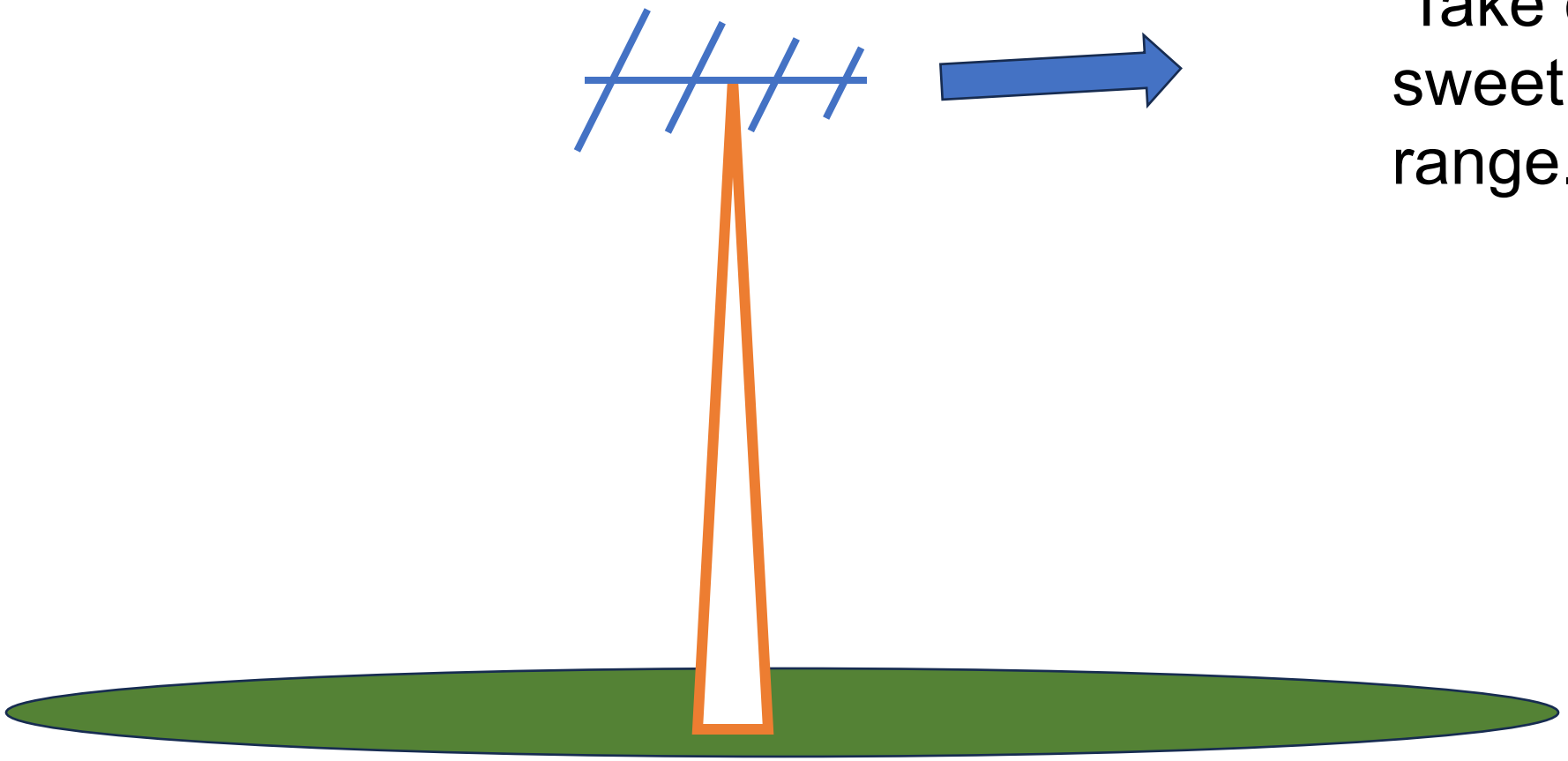
- Yagi ‘Beam’ Antenna



‘Take off angle’ is high; shorter range

Interlude 2: Some basics about how antennas work

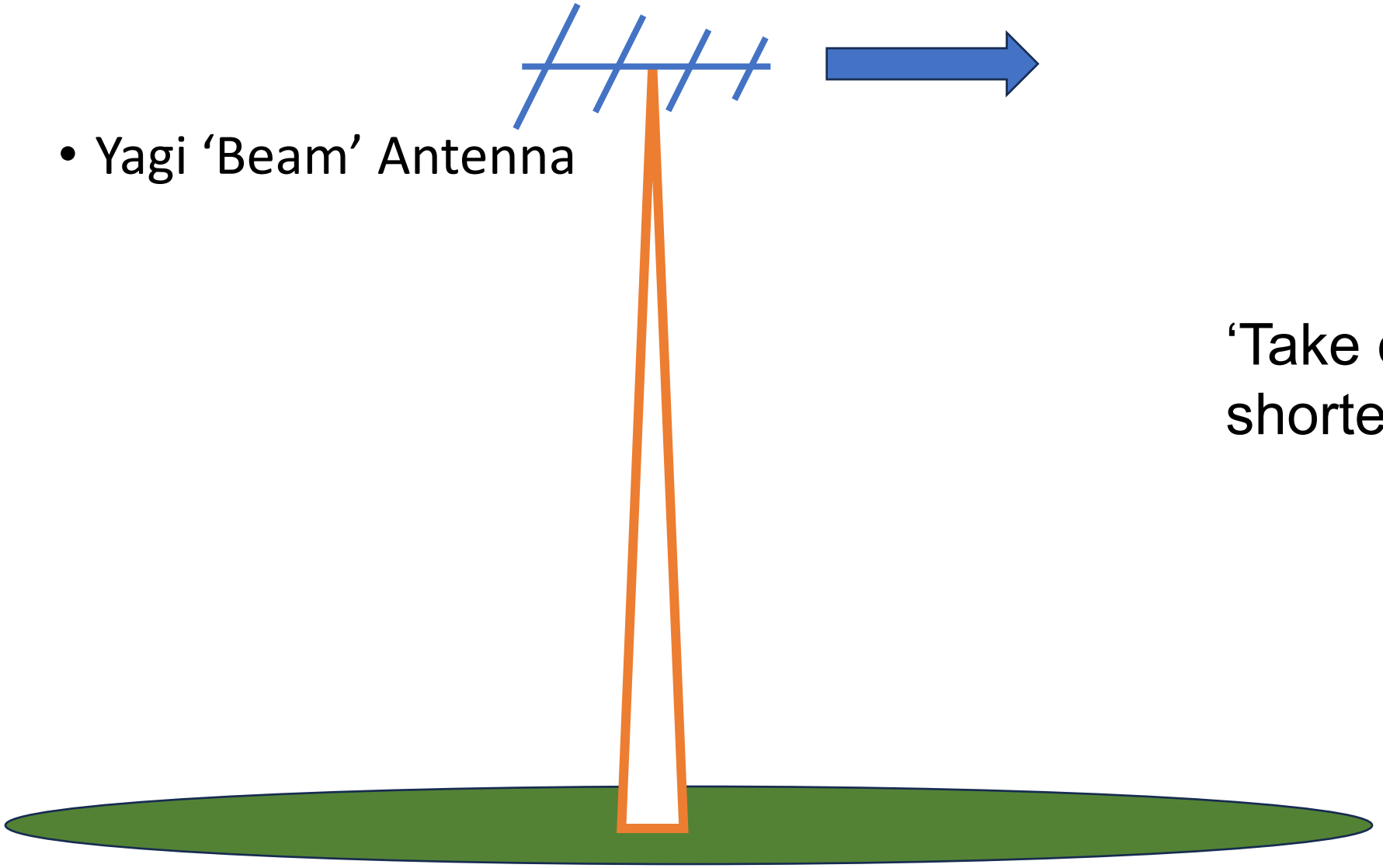
- Yagi ‘Beam’ Antenna



‘Take off angle’ is in the sweet spot for the best range.

Interlude 2: Some basics about how antennas work

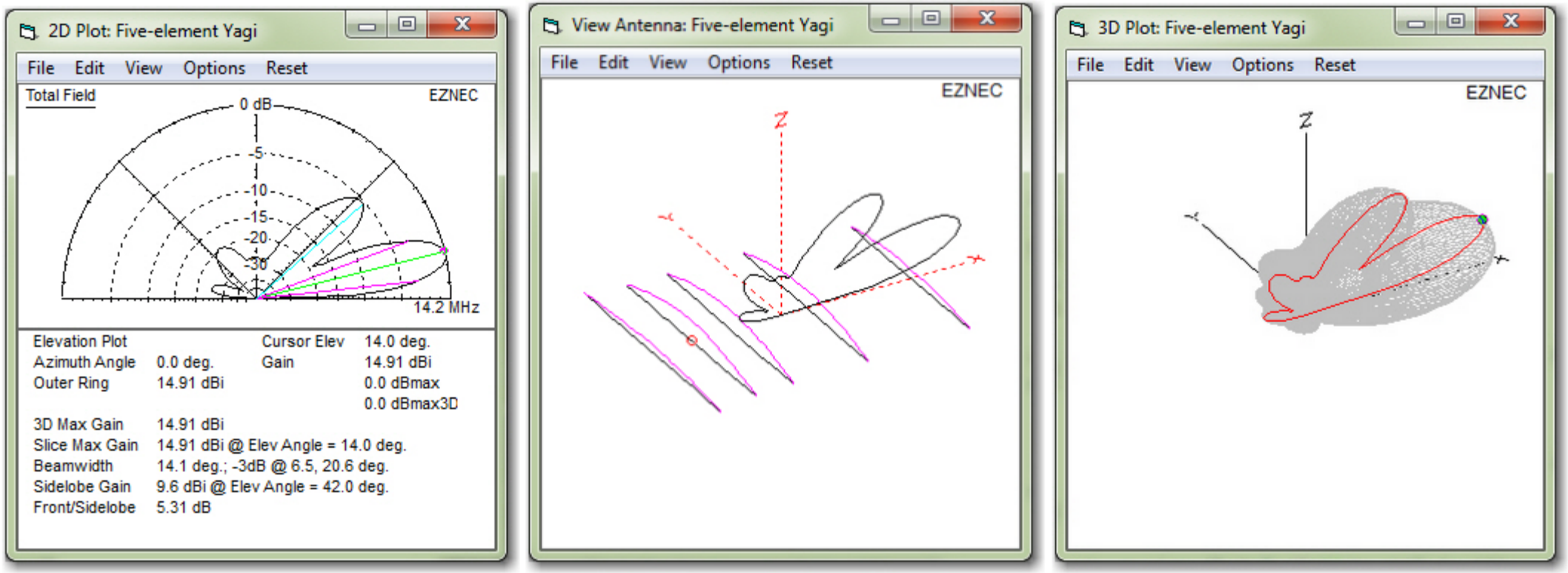
- Yagi ‘Beam’ Antenna



‘Take off angle’ is low; shorter range

What's the right antenna height, thus the right tower height?

- There's a report for that! Numerical Electromagnetics Code "NEC"
  ("EZ NEC PRO" is both popular and *free.)*

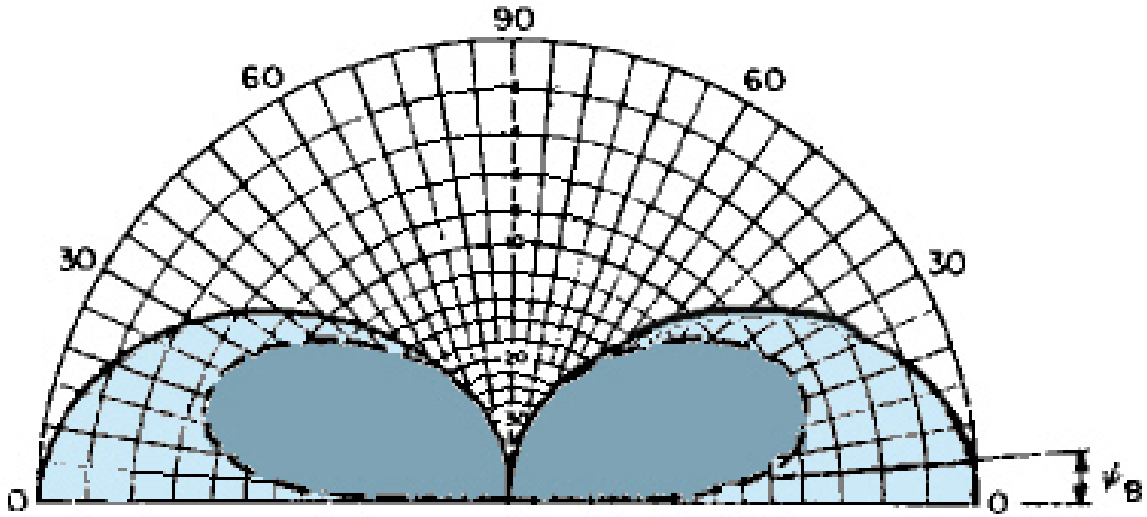


*(**Hint**: It's far easier to justify a particular tower height based on engineering…not guessing)*

Interlude 2: Some basics about how antennas work

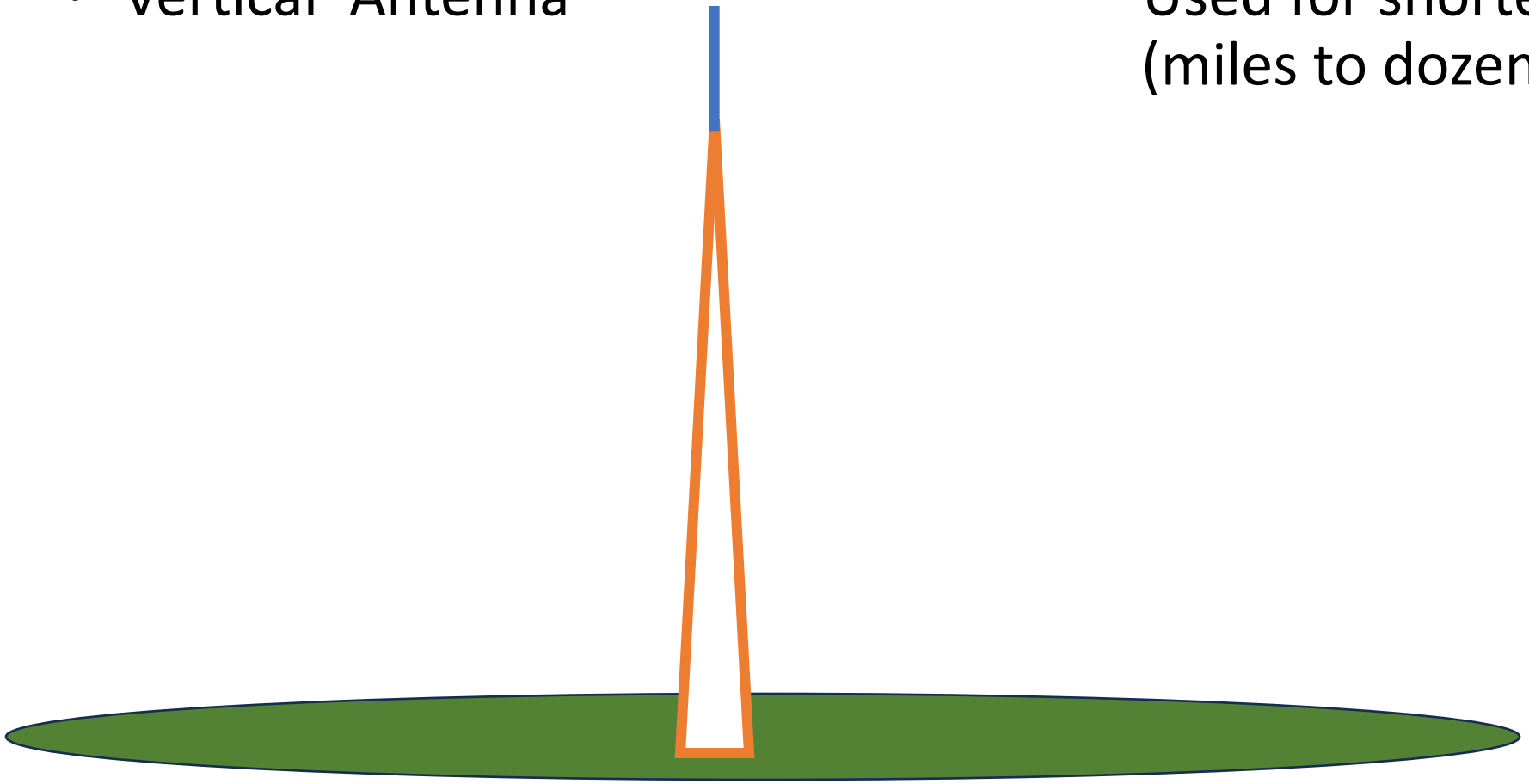
- Omnidirectional Antennas

Transmits equally well in **all directions** towards the horizon.



Interlude 2: Some basics about how antennas work

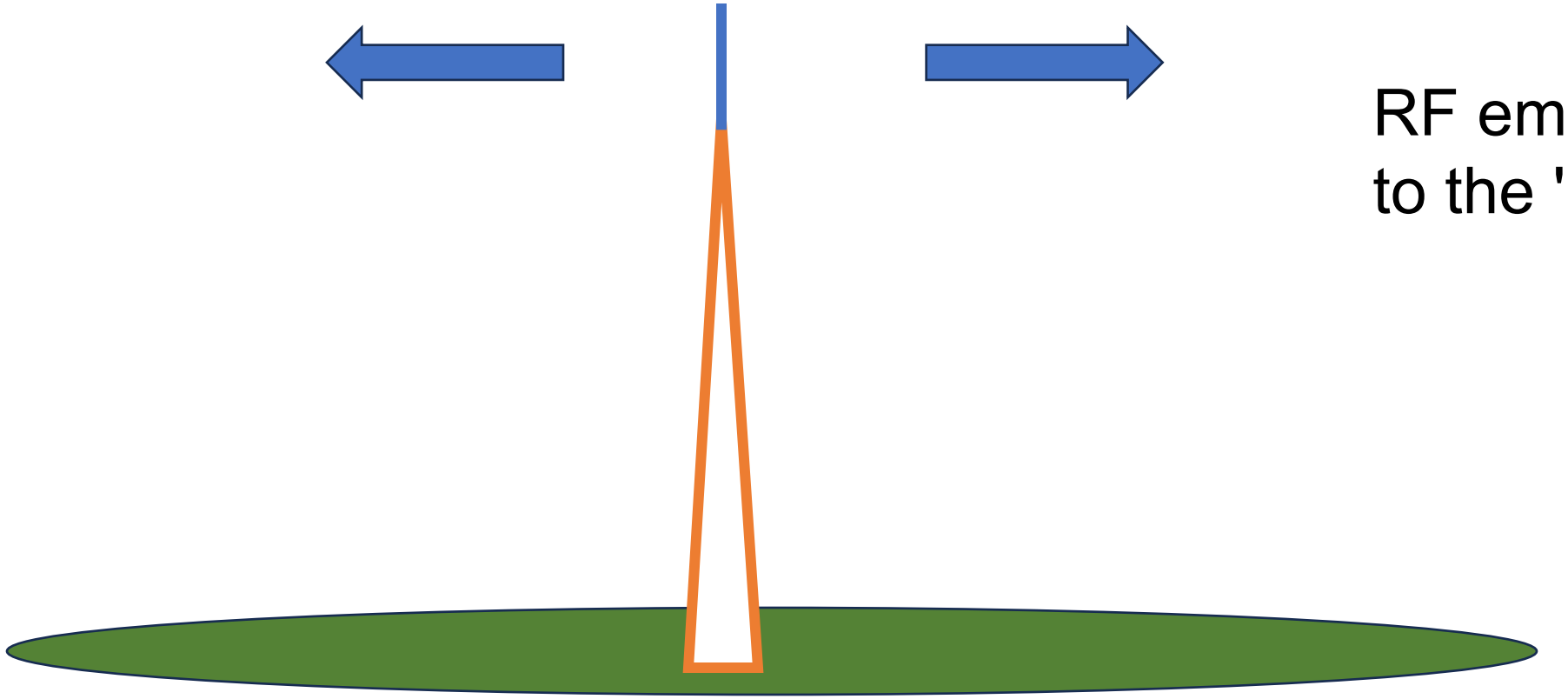
- ‘Vertical’ Antenna



Used for shorter distances (miles to dozens of miles)

Interlude 2: Some basics about how antennas work

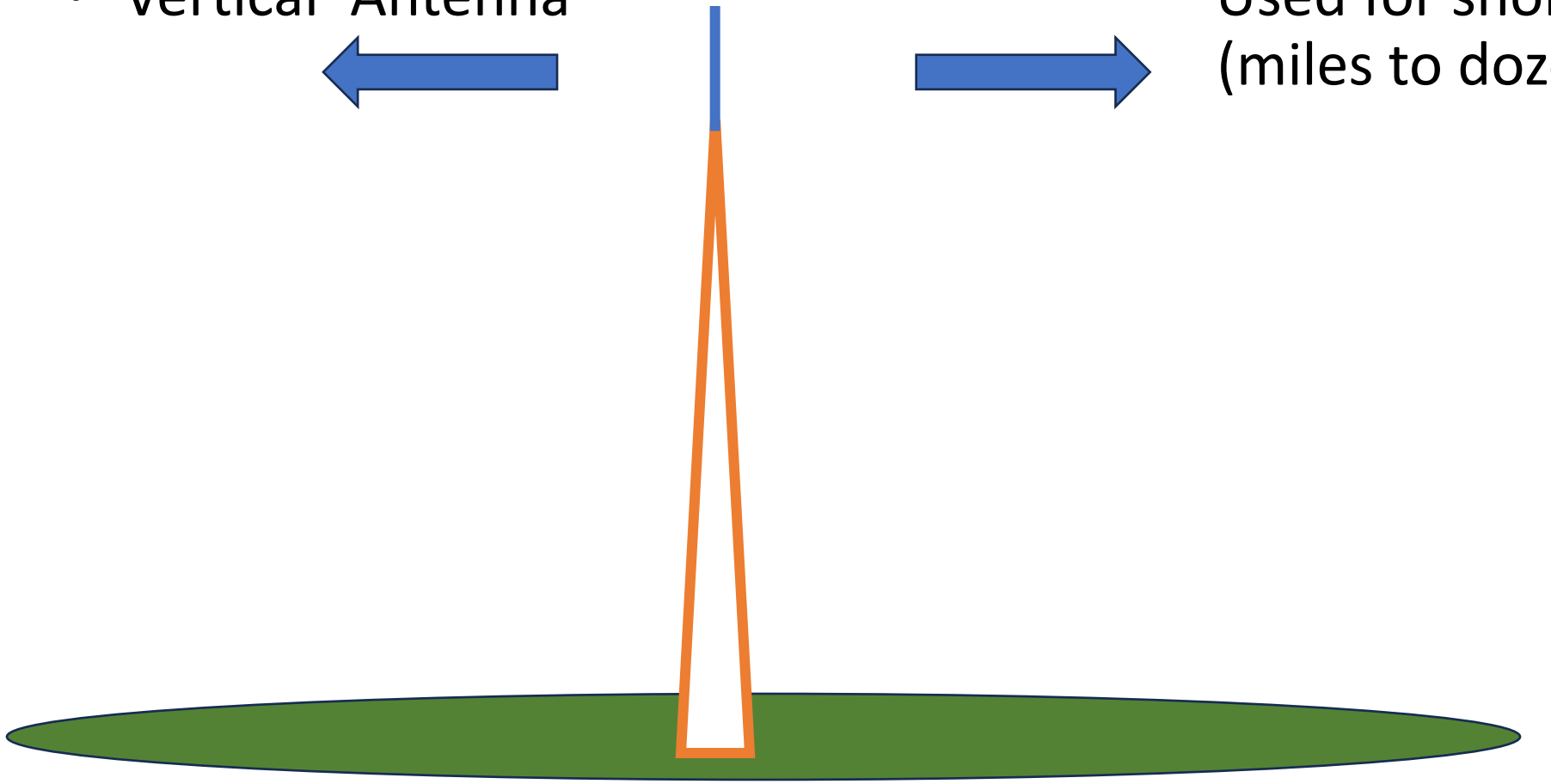
- ‘Vertical’ Antenna



RF emissions are
to the 'radio' horizon

Interlude 2: Some basics about how antennas work

- ‘Vertical’ Antenna



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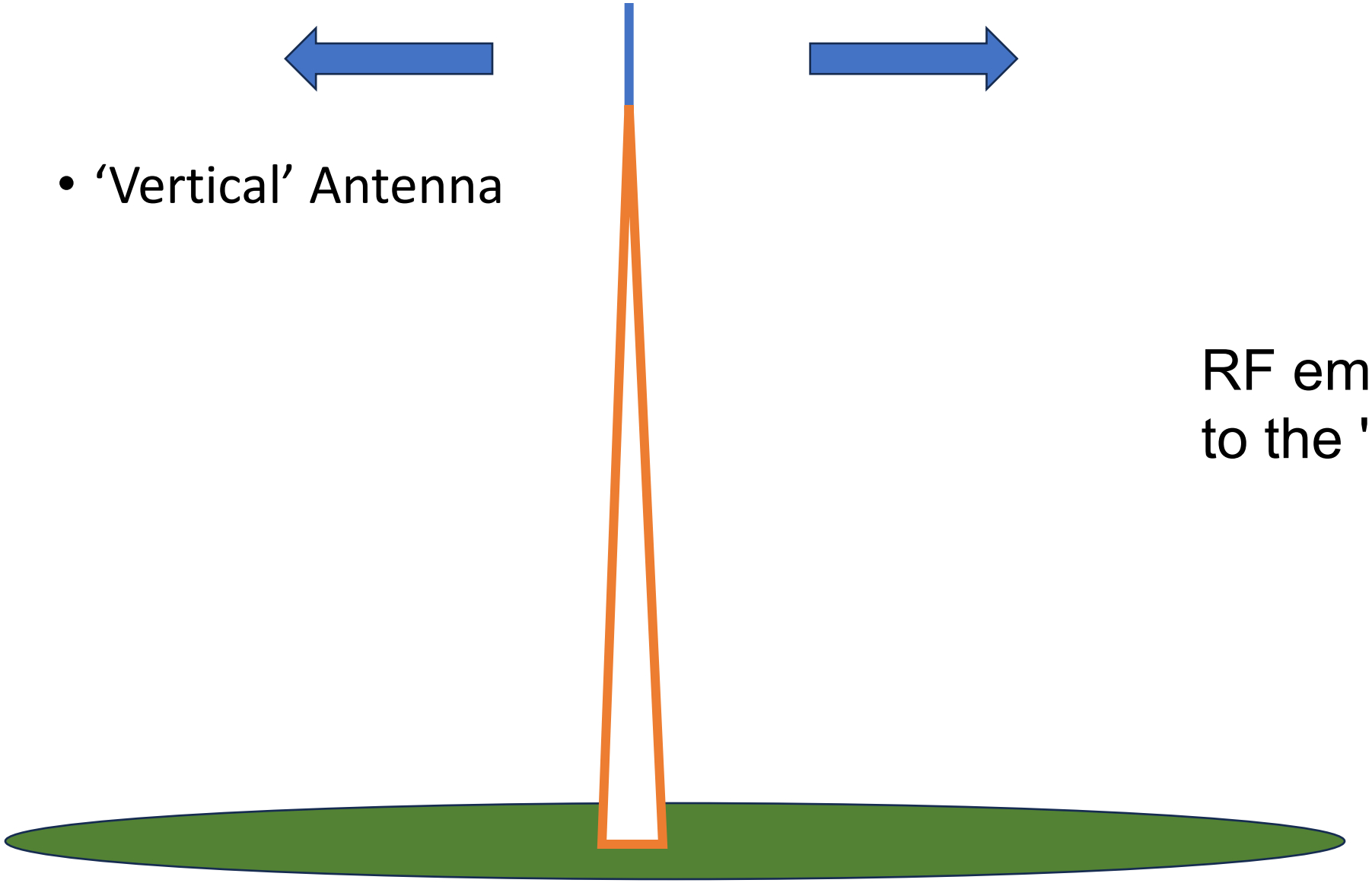

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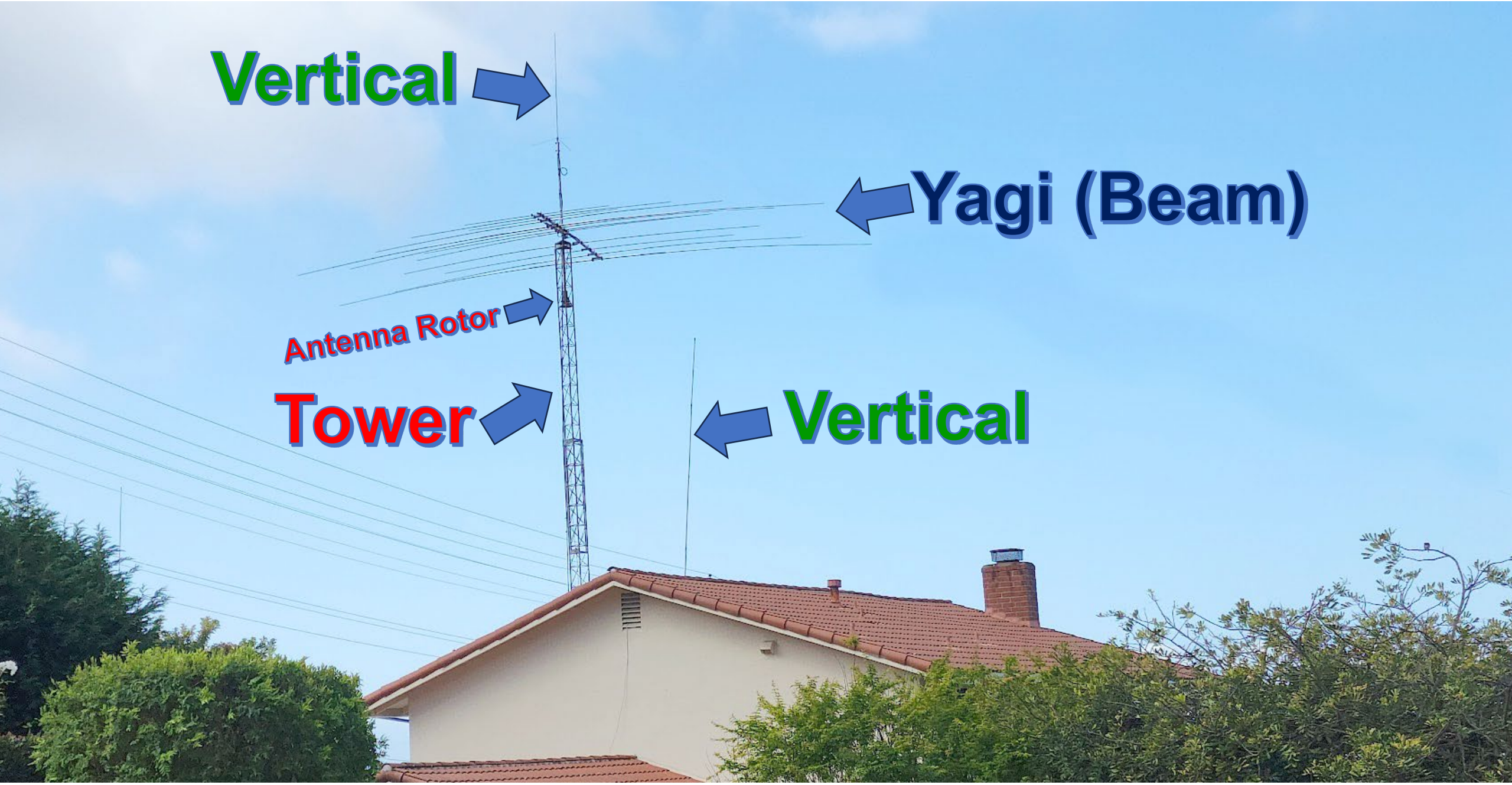
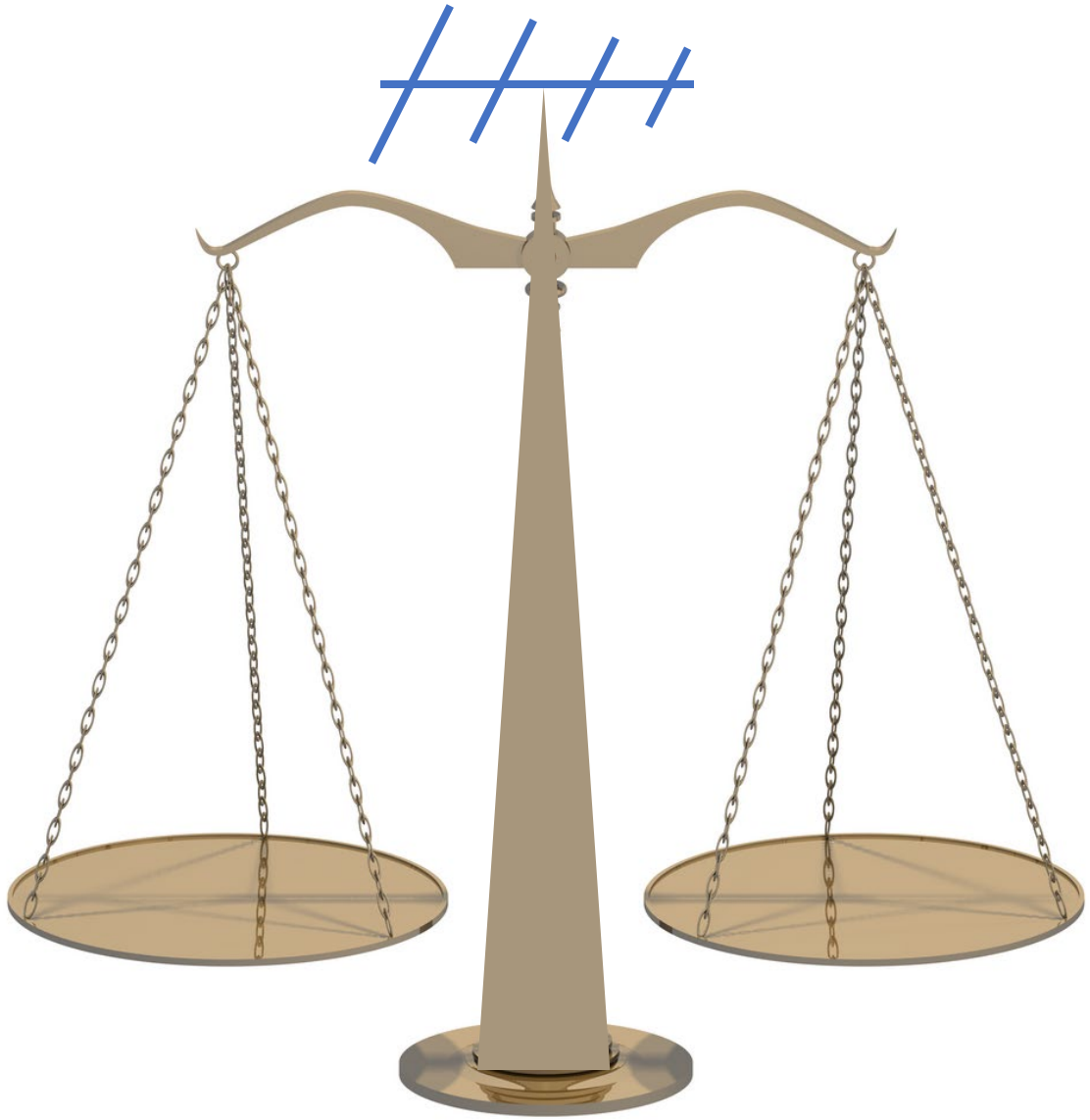


And now, back to the law…

This time a bit closer to home.



California's PRB-1 Law

Gov. Code § 65850.3 (2003)

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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More basics you'll want to know about…how antennas work

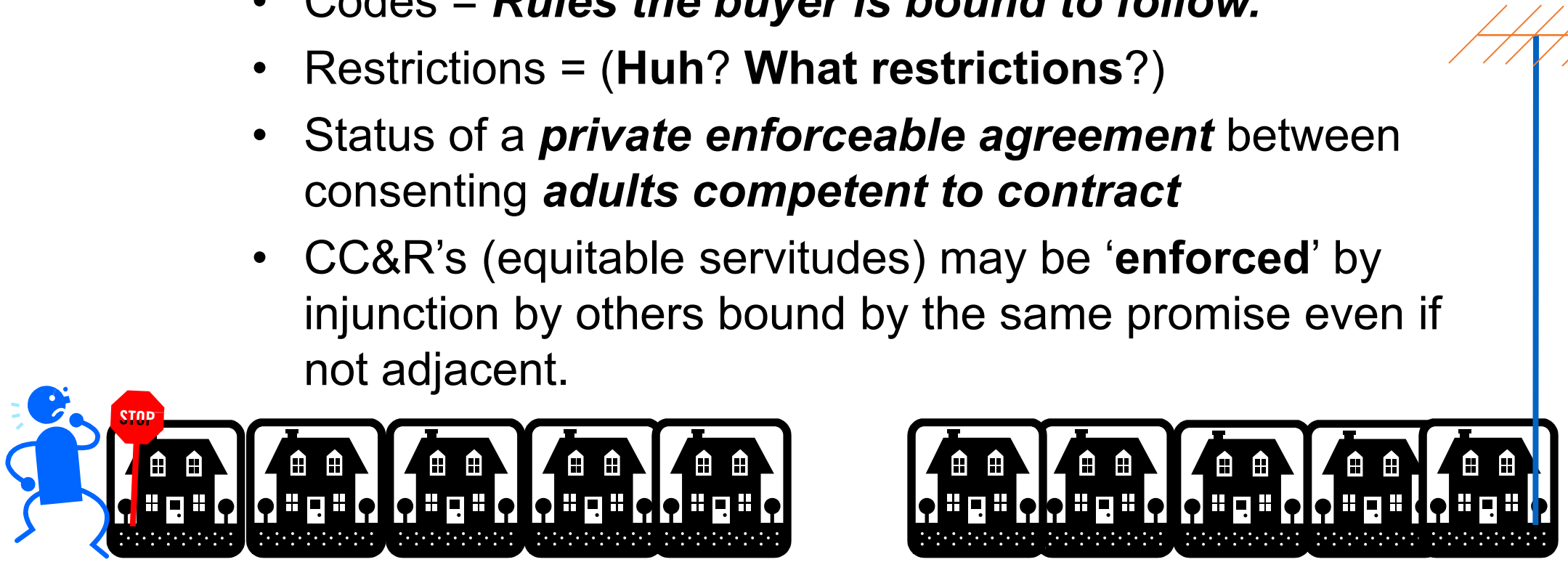
Some additional basics:

- Antennas are the 'interface' between the station transmitter and receiver (sometimes called a 'transceiver') coupling radio frequency energy to the air, and vice versa.
- Sometimes you'll hear about 'signal propagation.' That refers to how the signal is transmitted, and sometimes how far.
- As you've ready learned, some antennas are omnidirectional (vertical antennas, as an example) and some antennas are directional (yagi antennas, for example).


CC&RS
HAM SHACK

CC&Rs: It's a contract t*h*ang!

- CC&Rs = *Covenants, Codes, and Restrictions*
- Covenants = ***Enforceable promises.***
- Codes = ***Rules the buyer is bound to follow.***
- Restrictions = (**Huh**? **What restrictions**?)
- Status of a ***private enforceable agreement*** between consenting ***adults competent to contract***
- CC&R's (equitable servitudes) may be '**enforced**' by injunction by others bound by the same promise even if not adjacent.



https://content.next.westlaw.com/practical-law/document/Ie733ba3c508b11e498db8b09b4f043e0/Equitable-Servitude

STOP!

- It's **NOT** a government's job to enforce private CCRs and equitable servitudes.
- What ***might*** be prohibited by private CCRs is **NOT** a sound reason for a local government to deny or to extraordinarily condition a government permit for a ham radio tower or antenna.

“Ham Radio…For some, it can be well within… The Antenna Zone!”…

What's a Municipal Attorney to do…and know?

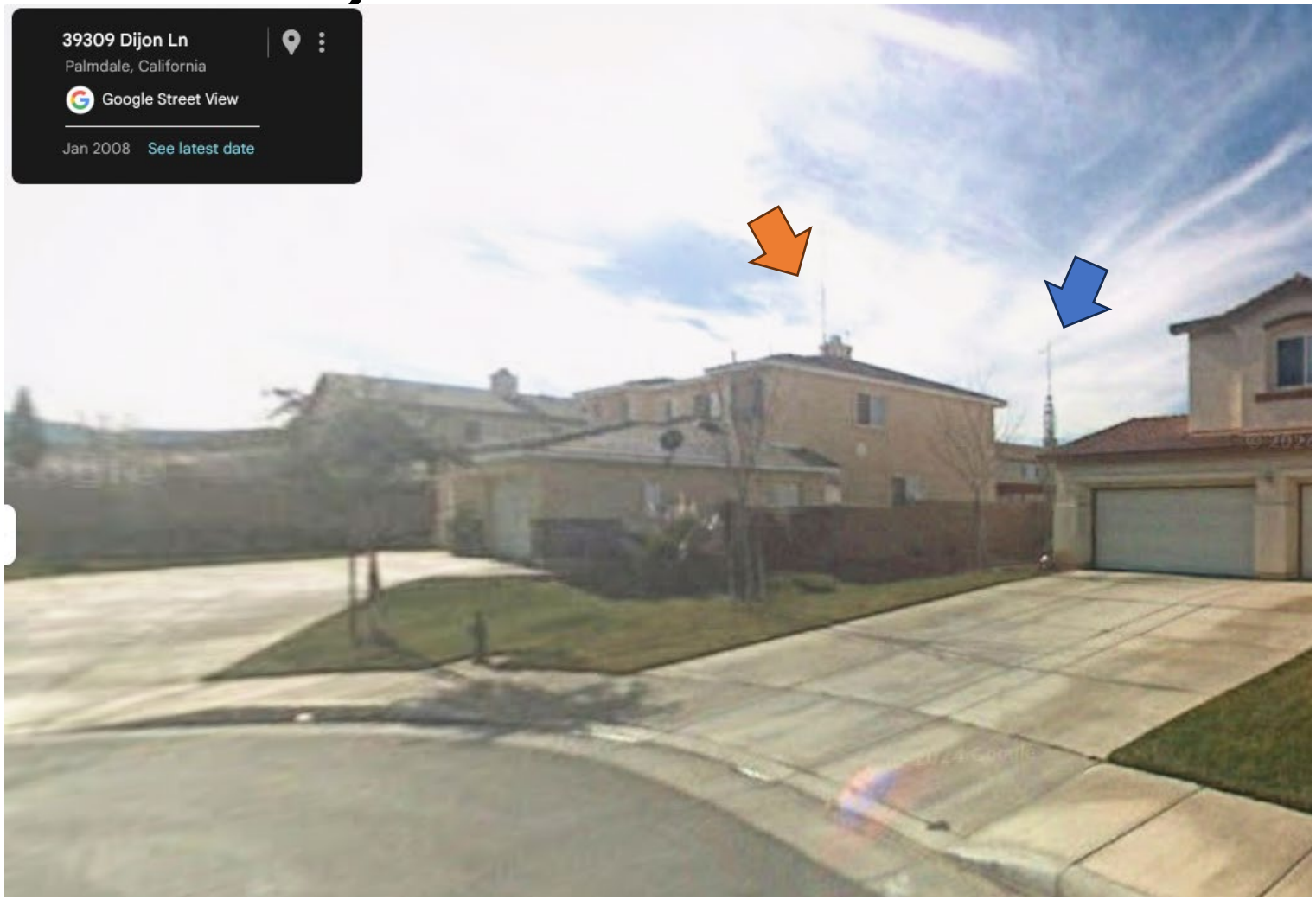
- For most municipal attorneys, this ***is*** an obscure area of local and federal interest that is largely preempted by state and federal regulations.
- Those state and federal regulations lack specifics… but **not** enforceability.
- Let's visit ***Zubarau v. City of Palmdale*** **(2011):** A Palmdale, California ham, Alex Zubarau, WB6X successfully…in part…sued the City to keep his antenna tower after it was approved with a permit, then the permit was revoked.

See: https://www.arrl.org/news/california-supreme-court-declines-to-hear-antenna-zoning-case

Zubarau v. City of Palmdale

- In 2005, Zubarau applied to the City of Palmdale (in the desert north of Los Angeles) for a building permit to erect a ham tower on his property. The City approved his request, and Zubarau installed a crank-up tower with an ultimate height of 55 feet, but did not install an antenna atop the tower. He also installed a 23 foot tall tower on his house, yielding a total tower height of 43 feet upon which he installed an inverted-V antenna (a slopping antenna) on the tower.
- In January 2007, Zubarau installed a 4-element ‘beam’ antenna on the 55 foot tower, which triggered neighbor complaints to the City.

Zubarau v. City of Palmdale



2008

Zubarau v. City of Palmdale

- ARRL Southwestern Division Vice Director **Marty Woll, N6VI** said that the neighbors assertions consisted of what he called “the typical complaints: aesthetic impact, diminution of property values and RF interference.” The RFI complaints were general in nature; no direct evidence was shown of actual RFI, but the City’s Planning Commission staff took the position that “based on anecdotal evidence presented by the homeowners, the transmissions occurring from the antenna are causing interference with electrical equipment in the surrounding neighborhood.”
- Woll said that after Zubarau installed the Beam Antenna in 2007, the City of Palmdale -- acting on a petition signed by almost 70 of Zubarau’s neighbors -- voted to revoke Zubarau’s original building permit after he had relied on it in putting up his tower. “In order to gain a continuance, Zubarau told the Planning Commission he would remove the [Beam Antenna], in essence, reverting his antenna configuration back to the way to it was before he installed the antenna” Shaffer said. “At the next hearing, he was ordered to remove not only the antenna, but the support structure, as well.”

Zubarau v. City of Palmdale

- Zubarau exhausted his administrative remedies, then he challenged the City's action in the Superior Court. On February 6, 2009, Los Angeles Superior Court Judge David Yaffe issued a ruling in favor of Zubarau. The Superior Court's ruling invalidated the permit revocation by the City required the City allow Zubarau to replace the tower.
- In January 2011, the California Court of Appeal, Second Appellate District found that the Palmdale antenna ordinance, as it pertained to the height limit for vertical antennas, was "unenforceable" because it allowed a radio amateur to have a vertical antenna up to 75 feet high when measured from the ground but limited the "active element of the antenna array" to 30 feet. The ordinance did not define "array" or "active element" and did not specify from where the 30 permitted feet for such "array" was to be measured. The Court found that if even one reasonable interpretation of the ordinance could be found, the ordinance could be upheld, but that in this case, no one could understand what the limitations were and how they could be applied. That portion of the City's ordinance was therefore unconstitutional and unenforceable.

Zubarau v. City of Palmdale

- The Appellate Court also held that the City's ordinance was unenforceable *to the extent* that it attempted to regulate radio frequency interference (RFI). The Court explained that only the FCC could regulate RFI, and that any State or municipal law that attempts to regulate RFI is preempted.
- But…the Appellate Court also held that Palmdale properly ordered Zubarau to remove his permitted 55-foot crank up tower. The Court held that the small, VHF/UHF vertical on the roof constituted "reasonable accommodation" under PRB-1 and California PRB-1 statute (Cal Gov Code 65850.3).
- The Appellate Court said that leaving Zubarau with a VHF/UHF antenna constituted a reasonable accommodation because it allowed him to be active in some part of Amateur Radio. There was no analysis of the "minimum practicable regulation" test in PRB-1 and the California statute, so that part of the three-prong PRB-1 test was left unexamined. The Court of Appeal said they thought this was a reasonable accommodation because it allowed Zubarau to be active in some part of Amateur Radio. Most hams will disagree!

Zubarau v. City of Palmdale

- The California Supreme Court **declined** to hear the case.

2024

A HAM TOWER APPLICATION HITS THE PLANNING COUNTER. THE PLANNER'S RESPONSE?

Advising a Ham Operator just like any other applicant…and staff!

- Some basics (Information collection):
  - **Make sure the Planner gives the ham ALL of the forms needed, and lists all of the fees.**
  - ***Question: Are the fees consistent with the requirement that the rules (including the fees) "shall constitute the minimum practicable regulation to accomplish the city's or county's legitimate purpose." (Remember:*** **This is NOT a cell tower application!)**
  - **Recommend the ham download a copy (likely online as part of the municipal code) and study them. Recommend that the ham…and the Planning Director…review the local zoning codes.**
  - **Review previous planning ham tower cases have been decided under the current code.**

PUTTING YOUR PLANNER'S BEST FOOT (AND PLANNING CASE) FORWARD

- Some more basics (Information display):

  Know, exactly, what you're being asked to approve.

  - **Loser: "The applicant wants to put various antennas up on a tower about 65 feet in the air."**

  - **Better: "The applicant seeks permission to erect an XYZ tower that extends to a maximum height of 65 feet, with a 4-element ABC yagi antenna that is rotated by a LMN rotator. The next slide is a drawing of the proposed configuration…"**

STOP! TAKE A BREATH…

- Things to remember…the odds are very high that:
  - Your planner AND the ham have little or no experience with ham tower permitting projects;
  - Your planner thinks the ham radio project is just like a cell tower…it's not;
  - Your planner has little or no technical expertise…and the ham has little or no legal expertise.

STOP! TAKE A BREATH…

- And your planner thinks that Radio Frequency is…

PLANNER CPRF:

- HELP restart your planner's heart by:
  - Knowing about and be ready to explain 47 C.F.R. § 1.1307 *et seq* … the FCC's RF emissions guidelines.
  - Yes, hams are subject to the FCC's RF safety guidelines!
  - Remember that ***if*** the RF emissions demonstrate compliance with the FCC's RF emissions guidelines, that's the end of that exploration.

Making Your Case

- **At the hearing expect the ham/applicant to:**
  - **…explain why under both PRB-1 and G.C. § 65850.3 (and perhaps Section 6409(a)) the ham's project is justified *in light of the engineering documentation provided*.**
  - **…pull in "THE TROOPS" (Hams, friendly neighbors, CERT members, others) attend the hearing to speak in support of the project. They get their minutes, too!**

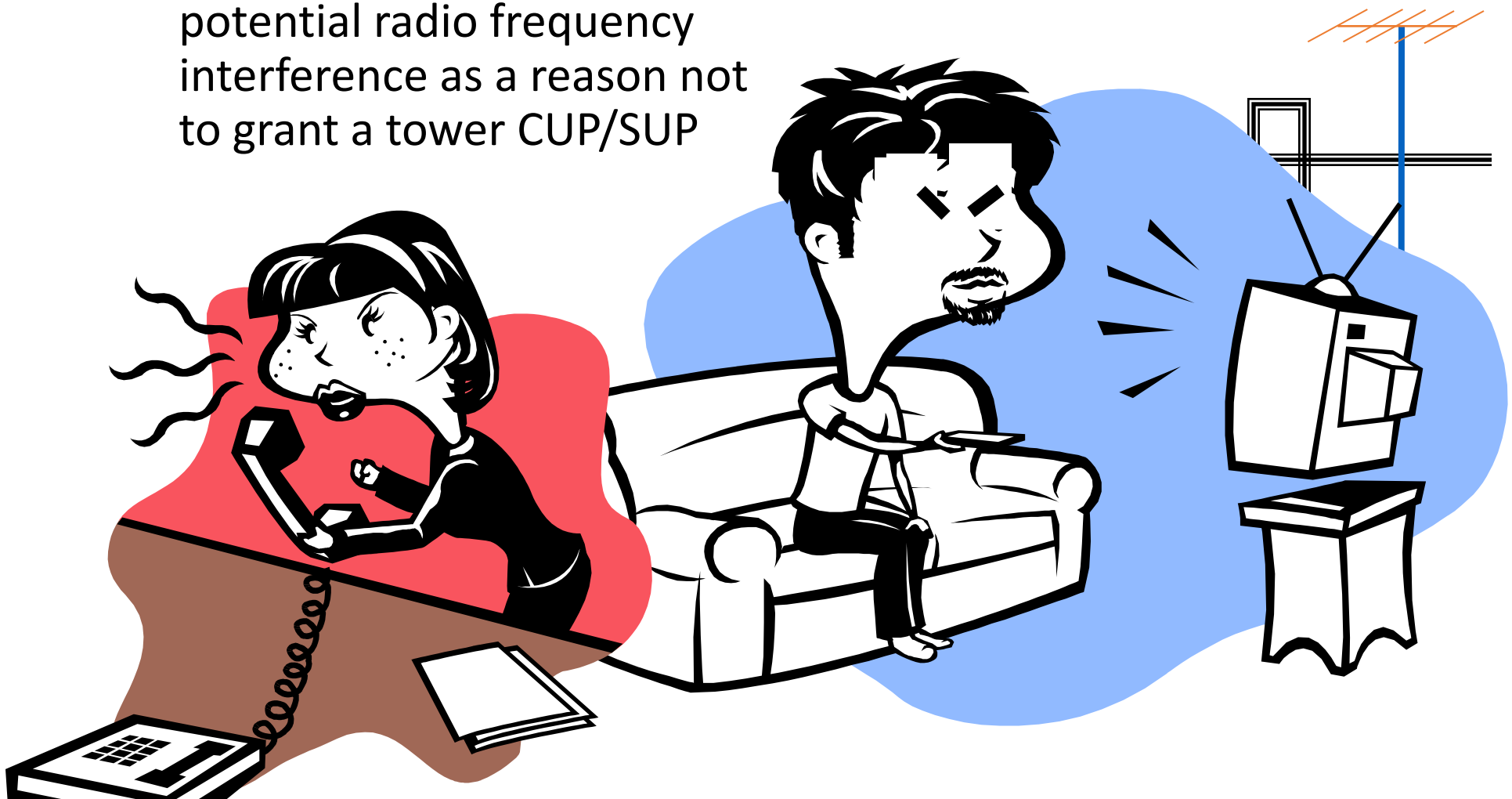
Making Your Case

- **If you have to deal with a denial and an appeal:**
  - Inspect the appeal for specificity and timeliness. Is the appeal timely, and is limited to what is appealed?
  - **Be prepared to explain, clearly, why the initial decision maker did not make a mistake. Explain why, under both PRB-1 and Cal. Gov. Code § 65850.3, (and perhaps Section 6409(a)) the appeal is [insert the 'is' here].**

Yo__’re Inte_fe_ring w___th me

But is the interference from the amateur’s station?

- Neighbors claim current or potential radio frequency interference as a reason not to grant a tower CUP/SUP



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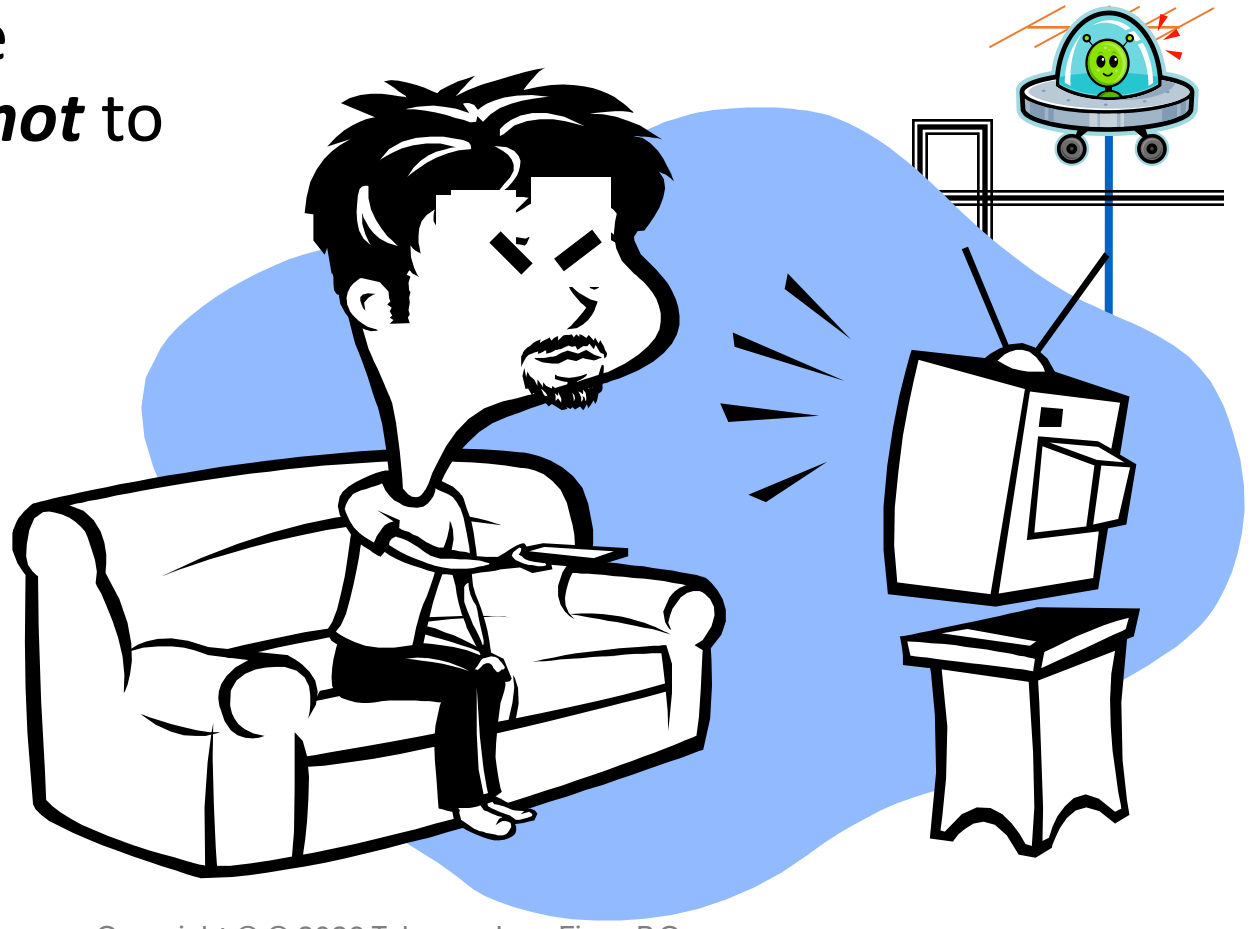
- Neighbors may say **space aliens** may visit the tower as a reason ***not*** to grant a permit.

- Okay…not really!



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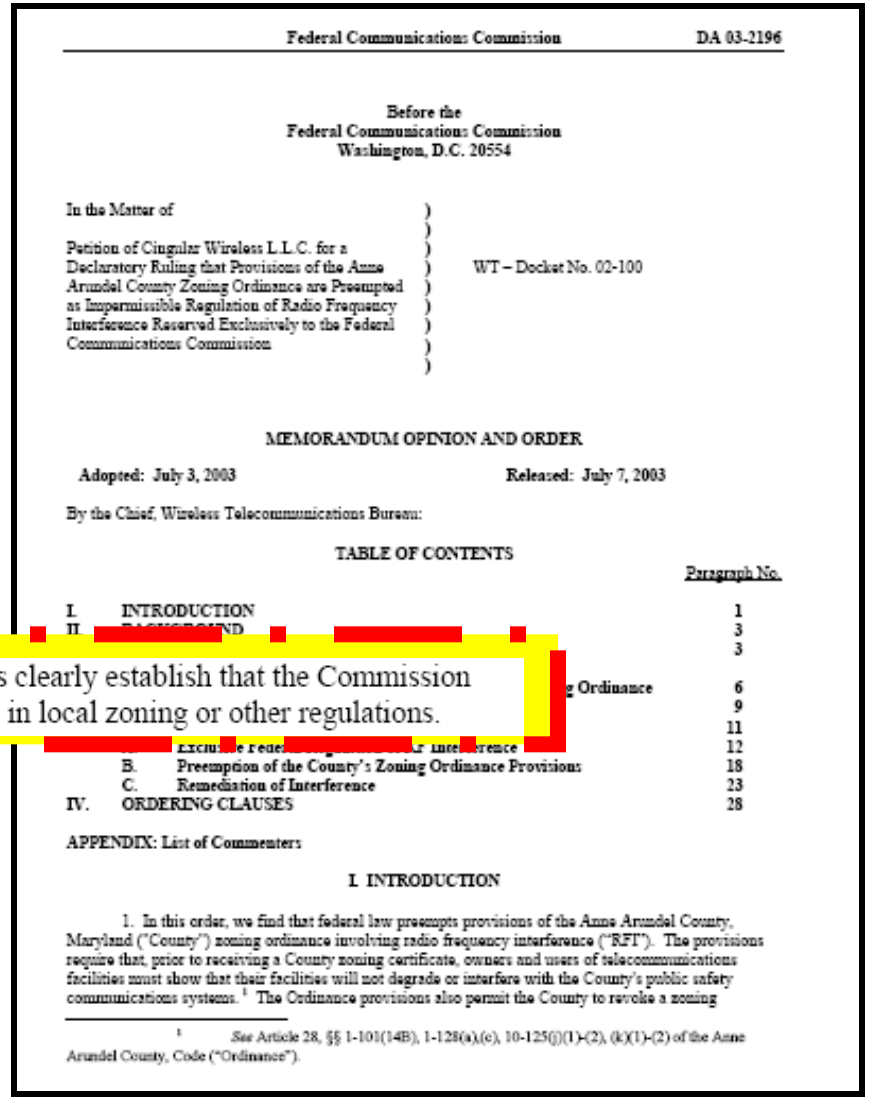
17. Taken together, these Commission and court decisions clearly establish that the Commission has sole jurisdiction to regulate RFI, to the exclusion of provisions in local zoning or other regulations.



Federal Communications Commission DA 03-2196

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition of Cingular Wireless L.L.C. for a Declaratory Ruling that Provisions of the Anne Arundel County Zoning Ordinance are Preempted as Impermissible Regulation of Radio Frequency Interference Reserved Exclusively to the Federal Communications Commission

WT – Docket No. 02-100

MEMORANDUM OPINION AND ORDER

Adopted: July 3, 2003 Released: July 7, 2003

By the Chief, Wireless Telecommunications Bureau:

TABLE OF CONTENTS

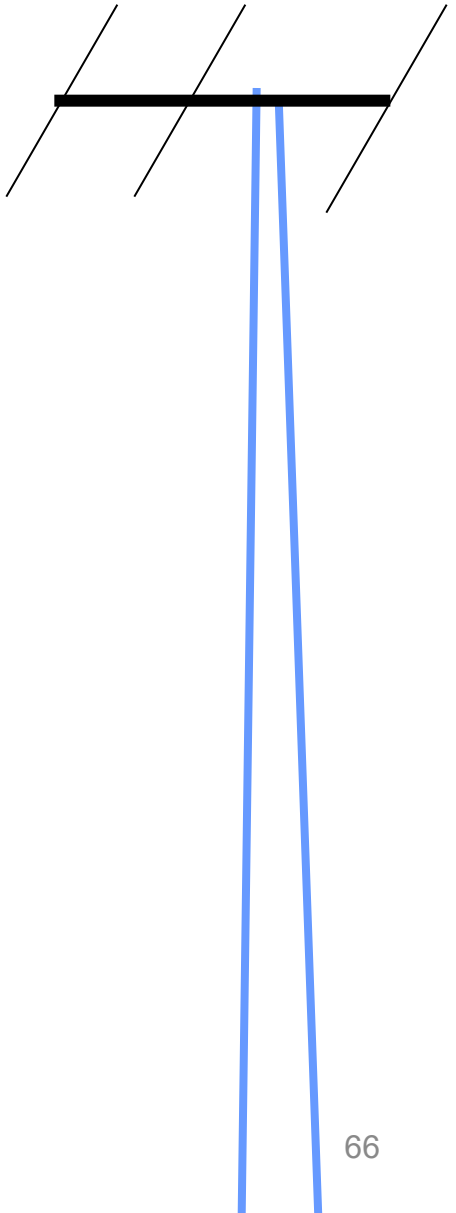
I. INTRODUCTION

1. In this order, we find that federal law preempts provisions of the Anne Arundel County, Maryland ("County") zoning ordinance involving radio frequency interference ("RFI"). The provisions require that, prior to receiving a County zoning certificate, owners and users of telecommunications facilities must show that their facilities will not degrade or interfere with the County's public safety communications systems. [1] The Ordinance provisions also permit the County to revoke a zoning

[1] *See* Article 28, §§ 1-101(14B), 1-128(a),(c), 10-125(j)(1)-(2), (k)(1)-(2) of the Anne Arundel County, Code ("Ordinance").

Yoiu’sre Intuxzerfeering wizth da Birdz

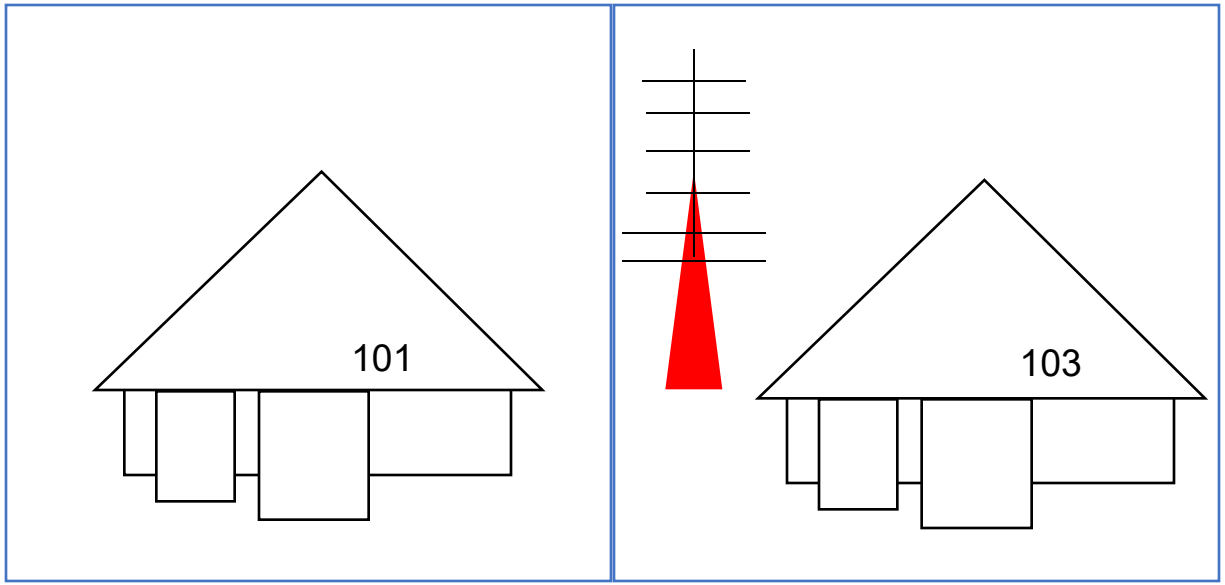
The neighbors may claim that:



“Amateur antennas are an anti-American abomination affecting, attracting and annihilating airborne aviary (and additional adorable and agile animals) all approaching amateur antenna arrays at any angle, and all absolutely absent any angst, anger, and agitation against anyone, anywhere, and anytime!”

The planning case a local government <u>will</u> likely win

Yes, the perspectives are all screwed up. Tough.



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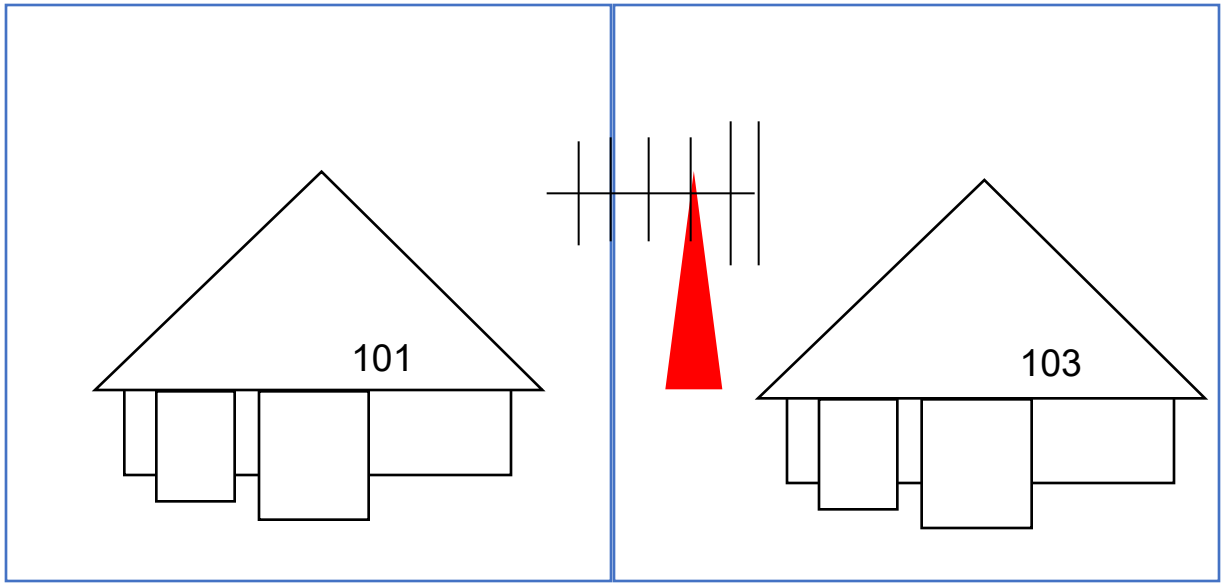

Abrams v. Rancho Palos Verdes: Cell tower cases and local governments 42 U.S.C. § 1983 Exposure?

The City of Rancho Palos Verdes, California granted Mark Abrams, WA6DPB a permit to construct a 52½ foot tall ham antenna tower at his home.

Later, when the City determined Abrams, who owned a radio relay company also used the antenna tower for commercial radio purposes, the City forced Abrams to stop that use until he obtained a conditional use permit. Abrams applied, but the Planning Commission **denied** the CUP making finds under 47 U.S.C. 332(c)(7).

Abrams then sued RPV in federal district court, alleging the City violated his rights under the Telecom Act of 1996. Abrams sought damages from the City under a 42 U.S.C. § 1983 for damages related to federal civil rights violations.

The federal district found for Abrams and ordered the City to grant Abrams the permit. However, the court **refused** Abrams' request for 1983 damages. The court said Congress intended for violations of rights under the Telecommunications Act to include only remedies specifically found in that Act.

All this for a ham tower? What are we looking at???

City of Rancho Palos Verdes v. Abrams. (n.d.). *Oyez*. Retrieved 30, 2026, from https://www.oyez.org/cases/2004/03-1601

Abrams v. Rancho Palos Verdes: Cell tower cases and local governments… 42 U.S.C. § 1983 Exposure?

The 9th Circuit Court of Appeals **reversed** and ruled that because the Telecom Act did not contain a "comprehensive remedial scheme," so Abrams could seek damages under other federal laws. The 9th Court remanded the case back to the District Court for determination of money damages and attorney's fees.

The City sought for review by the U.S. Supreme Court, which granted cert.

Justice Scalia delivered the opinion of the Court: "The City conceded below, and neither the City nor the Government as amicus disputes here, that §332(c)(7) creates individually enforceable rights; we assume, arguendo, that this is so. ***The critical question, then, is whether Congress meant the judicial remedy expressly authorized by §332(c)(7) to coexist with an alternative remedy available in a §1983 action. We conclude not.***" (Emphasis added.)

City of Rancho Palos Verdes v. Abrams. (n.d.). *Oyez*. Retrieved 30, 2026, from https://www.oyez.org/cases/2004/03-1601


Whew! You made it to the end…
…finally, but first some recommendations.

Recommendations 1 of 2:

1. Don’t treat ham radio applications like cell site applications;
2. Consider a simplified ham radio tower/antenna CUP application;
3. For towers that exceed the zone height, consider requiring a NEC-type report to support your findings (many antenna makers will provide);
4. Consider whether the application/inspection fees you charge are potential barrier to ham communications;
5. Avoid inverse condemnation and setback issues;
6. While there is **no** *federal shot clock* for ham tower projects, remember that (in California) the Permit Streamlining Act still applies;
7. Consider the public service/public safety benefit of having trained and ready emergency communicators in your community;

Recommendations 2 of 2:

8. There are very few ways to camouflage a ham radio antenna (and forget about a camouflage for lower frequency…longer distance…yagi/beam antennas);
9. For tower foundations, many tower manufacturers will provide a PE-stamped foundation plan.
10. The FCC RF emissions safety rules **DO** apply to ham radio operations;
11. DO NOT try to regulate radio frequency interference concerns;
12. This is an area of law where there are relatively few court decisions; and
13. Consider a CUP that runs with the licensee, ***not*** with the land (CUP transfer to another licensed ham okay; else terminate the CUP upon transfer to a non-ham).

GOOD LUCK!

End

(But wait…there's just one bit more)

How to receive your MCLE certificate…

a) Go back to this program's page on MCLE.TV and fill out an online request for you MCLE Certificate.

b) You'll need to provide:

   i. Your Full Name, Bar Number, and State(s) you're licensed as an attorney;
   ii. Your Street Address, Telephone Number, AND email Address;
   iii. This program number: **HAM26040;**
   iv. The **THREE CODE WORDS** (this is a '**MUST DO**' to get your credit).

c) You'll also have to fill out California's 'sign in sheet' for the State Bar's reference, even if you're only from outside of California.

d) You'll be asked to provide your feedback on this presentation. **Pretty please…**

e) Once you've done the above, you'll receive your Certificate of Attendance by return email!

Please check out our other MCLE programs.

"A Practical Guide to Radio Frequency Emissions Safety"
Cal Bar Public Law Section Journal Article
(Also, see our *Current* MCLE Program at MCLE.TV)

"What Landlords Should Know About Cell Site Leasing"
Cal Bar Real Property Section Journal Article
(Also, see our MCLE Program at MCLE.TV)

"What Landlords Should Know About Cell Site Lease Sales"
(See our MCLE Program at MCLE.TV)

~3,000 Cell Site Example Photographs:
http://www.CellTowerPhotos.com

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