

# ***SURVEY NOTES***

Volume 15 Issue 5

May 2009

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**CALIFORNIA LAND SURVEYORS ASSOCIATION, SAN DIEGO CHAPTER**  
5519 Clairemont Mesa Blvd, Mail Box 261, San Diego, California 92117  
[www.sd-surveyors.org](http://www.sd-surveyors.org)

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**Chapter Meeting**  
Wednesday, May 20, 2009

**Decompression Session**  
**Post 2009 LS Exam**

The San Diego Chapter would like to invite everyone for pizza and drinks to support those who attended the LS review classes and those who sat for the 2009 LS exam. All candidates are welcome to come decompress from their LS Exam preparation. Pizza, salad and soft drinks will be free for all candidates.

In an effort to make the LS review class the best it can be, we are welcoming feedback from the candidates regarding the review class. Mike Hart, the program coordinator, and other instructors will be available to listen to your input on how to keep our successful program current and progressive.

## **Location**

### **Giovanni's Italian Restaurant**

9353 Clairemont Mesa Boulevard  
San Diego, CA  
858-279-6700

4:30 p.m. Executive Board Meeting  
6 p.m. Social/Networking  
6:30 p.m. Dinner and Open Discussion

Please RSVP through our CLSA San Diego Chapter website no later than **Tuesday, May 18<sup>th</sup>**

The website address is <http://www.sd-surveyors.org>.

Please click on the "Dinner Reservations" button and fill in all of your reservation information there.  
**If paying with a credit card, please remember to bring in a copy of your receipt for check in.**  
*Those who do not make a reservation cannot be guaranteed a meal.*

***Dinner for all non-examinees \$13***

**Pizza, Salad and Soft Drinks**  
Price includes tax & tip

**EXECUTIVE BOARD MEETING**

April 15, 2009

Meeting held at the Best Western Seven Seas Mission Valley

**Board Members Present:**

*Pat McMichael, President  
Casey Lynch, Vice President  
Justin Pallamary, Treasurer  
Blake Torgersen, Secretary  
Andy Karydes  
Anne Hoppe*

**Other Committee Members Present:**

*Lonie Cyr  
David Viera  
Jack Gechter*

Pat McMichael opened the meeting at 4:30 p.m.

The minutes for the March 2009 meeting were reviewed. Casey MOVED to approve the minutes. Anne SECONDED. The motion CARRIED.

**Presidents Report – Pat**

- The CLSA Conference held March 28 - April 1, 2009 was discussed. It was very beneficial and informative for those who attended.
- The Chapter Calendar and Committee Positions were reviewed.
- Pat reminded us about the Trigstar program and encouraged participation.
- A new BLM Manual of Instructions will be released in 2009. Mike Hart will highlight the changes at our October chapter meeting.
- The Orange County Chapter will host the Cuomo Golf Classic on April 27<sup>th</sup> at Anaheim Hills. The entry fee is \$150 per individual or \$500 per team. [Note: This event was later cancelled.]

**Vice Presidents Report – Casey**

- Options for subsidizing the cost of the chapter meetings for students and/or other groups were discussed.
- Anne MOVED to subsidize two chapter meetings this year (the Pat Tammy meeting in July or August and the new BLM Manual introduction meeting in October) so that non-licensed individuals working in the surveying profession will be charged only \$15. Andy SECONDED. The motion CARRIED.

**Treasurer's Report – Justin**

- The General Fund has a balance of \$11,925.70, and the Education Fund has \$19,404.21.
- The 90 day CD for the Curt Brown Scholarship Fund was about to mature. Long term CD options were reviewed and discussed.
- Pat MOVED to split the Scholarship Fund into three equal amounts and place them in a 1 year, 2 year, and 3 year CD, each to be renewed as a 3 year CD when they mature, so that 1 of the 3 CDs will renew each year. Blake SECONDED. The motion CARRIED.
- Pat MOVED to transfer \$4500 from the Education Fund to the Scholarship Fund before depositing into the CDs. Several people SECONDED. The motion CARRIED.

**Secretary's Report – Blake**

- The Quarterly Report was sent to the CLSA Central Office.

**Education Committee:**

**LS Review Class Subcommittee – Jack Gechter**

- The decompression session at Giovanni's next month was discussed, which is free for those who attended the classes. Lonie MOVED to continue the Chapter's tradition of also making the meeting/meal free to the instructors, as well as providing them with \$100 gift certificates as a sign of appreciation to their families. The motion was SECONDED. The motion CARRIED.
- Problems were reported with the ftp site set up for the LS Review Class study materials. E-mail will serve as a temporary work-around, and the Website committee will arrange to have a new ftp site set up for the future.

**Education Foundation \ Scholarship Subcommittee –**

- The Chapter's donation to the Cuomo scholarship fund will be made at the Joint Orange/San Diego chapter meeting in September.

**Community College Report – David Johnson**

- Ken Shumaker will be recognized in an upcoming meeting for his contributions at Cuyamaca College.

**Annual Golf Tournament Subcommittee – David Johnson**

- The committee has not yet determined the location for the tournament.

**Membership Committee – Dave Ambler**

- There are currently 131 members.

**Legislative Committee – Anne Hoppe**

- The committee is monitoring active bills which affect remainder parcels on parcel maps, map dedication form, & lot line adjustments.

**Workshop Committee –**

- State CLSA is holding a workshop on Condos in June.

**Website Committee – Anne Hoppe**

- The ftp site issues will be addressed.
- Email's about the website and items for posting should be sent through the Website Committee, not directly to Guy.

**Joint Professional Practices Committee – Lonie Cyr**

- The next meeting will be April 16<sup>th</sup>.

**New Business**

**Old/Unfinished Business**

- Oceanside monumentation policy.
- City of SD monument preservation.
- Lifetime memberships.
- Student subsidized meetings, student night, LSIT night.

The meeting was adjourned at 6:15 p.m.

**GENERAL MEETING**

April 15, 2009

Meeting held at the Best Western Seven Seas Mission Valley

Pat McMichael opened the meeting at 7:15 p.m.

Justin introduced scholarship recipient Mario Flores and presented him with a check.

Pat conducted chapter business and reviewed the Executive Board Meeting.

Sean Englert and Justin Pallamary presented information about private survey records (much of the information was furnished by Mike Pallamary). Many of the old survey records, notes, and maps from before the filing requirement are maintained by individuals or private survey companies in the county. The research for survey records should "be extended to include privately held survey notes as evidenced by found monumentation or as may be referred to on recorded maps and surveys."

There is a list of known private survey records with contact information on the Chapter Website.

The meeting was adjourned at around 8:00 p.m.

**Education/Seminars/Workshops**

***(Seminar Locations are in San Diego unless otherwise noted)***

**Real Estate Market Studies: Critical Decision Tool or Superfluous Information?** teleconf May 4. **Construction Lien Law** May 12. **More Affordable and Sustainable Communities: The Role of Good Design for Workforce Housing** teleconf May 13. **Making It Through the Land Entitlement Process** teleconf June 2. **Current Issues in Cell Tower Regulation and Zoning Rules** teleconf June 11. Contact [www.lorman.com](http://www.lorman.com) or (866) 352-9539.

**Leica Geosystems Presents: Get Connected** May 11 San Diego, May 12 Anaheim. Contact Cori Vernam [coriv@servco1.com](mailto:coriv@servco1.com) or 800-938-0606.

**Simplifying Geospatial Data Integration** May 6. **The Autodesk Imagine Virtual Event** May 19. **Helpful Tips for Intersection Design** June 12. **Road Rehabilitation: A Real Project Demonstration** July 24. For more info on these Autodesk web-casts contact <http://www.autodesk.com/roadswebcast1>.

**ESRI Survey and Engineering GIS Summit** July 11-14. Contact [www.esri.com/segsummit](http://www.esri.com/segsummit)

**Cuyamaca College** - Beginning and advanced Survey Classes, including Surveying CADD, Boundary Control and Legal Principles. [www.cuyamaca.edu](http://www.cuyamaca.edu) Or 619-668-4040.

**Geospatial Analysis and Technology** – Seminars, courses and software training. Contact [register@ucx.ucr.edu](mailto:register@ucx.ucr.edu) or call 951-827-4105. Web-site: [www.UCRExtension.net/geo](http://www.UCRExtension.net/geo)

**CSU Fresno Geomatics Engineering Dept.** Contact [www.csufresno.edu/geomatics/](http://www.csufresno.edu/geomatics/) for program and on-line courses.

**CSU Pomona Surveying Program** [http://www.csupomona.edu/%7Ece\\_surv/surveng/index.html](http://www.csupomona.edu/%7Ece_surv/surveng/index.html)

**Santiago College GIS/GPS Surveying Program** - see [www.sac.edu/degrees/geography\\_information\\_degree.htm](http://www.sac.edu/degrees/geography_information_degree.htm)

**GIS Certification** – thru URISA <http://www.gisci.org/>

### **CLSA San Diego Survey Student Stipends**

The Stipend program's goals are to: provide funding for local students taking college level survey related classes. They will receive \$100 for an A, \$75 for a B, \$50 for a C. It will be limited to one survey class per student per semester. The Class must have been completed within the last 6 months. Applicants must be current members of the San Diego Chapter of CLSA. Licensed Land Surveyors are ineligible. All applications are subject to approval by the executive board. Applicants need to mail in a copy of their grade (of a surveying class) to: CLSA San Diego, 5519 Clairemont Mesa Blvd. Mail Box 261, San Diego, California 92117.

#### **California Land Surveyors Association CLSA Education Foundation**

P.O. Box 9098, Santa Rosa, CA 95405  
Telephone: (707)578-6016 FAX: (707)578-4406

The 2006 Scholarship application is available at  
<http://www.californiasurveyors.org/files/scholarsh.html>

#### **Local School Outreach**

I have been cordially invited to attend a night of "recognition" on behalf of the pro-active involvement I have had with our local schools. (I have attached hereon). This is also a great reminder about the commitment that others have made in approaching and speaking at schools.

Hopefully a few of you have also been invited, and would love to share a table with you.

If you could help remind our peers, as school is only 2 months away till summer? Thanks so much.

p.s. – I would like to capture a few photos at this event, and hopefully follow up with a small article to our organization, reiterating the help of spreading the word (if it's okay with rest of board?), as we head into next year's school year.

Thanks so much my friends.

Justin S. Pallamary, PLS

### **Announcements**

#### **Private Survey Records**

NOTE: Some of the records may not be available to the public, or may be available at a cost. Please direct all additions, corrections or revisions to Todd Thomas at (858) 694-3864, e-mail at [todd.thomas@sdcounty.ca.gov](mailto:todd.thomas@sdcounty.ca.gov) or Sean Englert (c/o C.L.S.A. San Diego Chapter) at 760-230-6025, e-mail at [sean@coastal-land-solutions.com](mailto:sean@coastal-land-solutions.com)

<b>THE RECORDS OF</b>	<b>LICENSE NO.</b>	<b>INFORMATION AVAILABLE FROM</b>
Algert, Henry	RCE 6170	Algert Engineering (619) 420-7090
Allen, Daniel	RCE 913	Unknown
Anderson, Czerny	LS 2129	Unknown
Aufdenspring, Frank	LS 2740	Unknown
Barkdull, Thomas	LS 2317	Destroyed

Barker, P.S. (1930 to 1956)	LS 1344 RCE 9985	Brian Polley Land Surveying (760) 745-3805
Bartels, F.W.	LS 2881	Craig and Associates (619) 297-3974
Biggs, Dan	RCE 26112	Stevens Cresto Engr. (858) 694-5660
Bliss, John C.	LS 2300	Unknown
Boaz, Grady	LS 2804	Brian Polley Land Surveying (760) 745-3805
Bobbett, Bill	LS 2896	San Diego County Surveyor (858) 694-3864
Bobbett, Stephen	RCE 27711	Unknown
Bronson, Frederick S.	LS 2318	Destroyed
Brown, Curtis	LS 2554	Lintvedt, McColl and Associates (619) 294-4440
Browne, N.P.	LS 1162	San Diego County Surveyor (858) 694-3864
Clarke, William G.	LS 3663	Larry Naiman, PLS
Clarke, William J.	LS 3078	Larry Naiman, PLS
Cobb, Donald	LS 3129	Coastal Land Solutions, Inc. (760) 230-6025
Covert, John	RCE 2718	Unknown
Craig, Thomas E.	RCE 13862	Glenn Ferguson, PLS
Cromwell, George	RCE 121	Vista Irrigation District
Cullmer, Robert E.	LS 2286	William A. Steen and Associates (619) 460-9000
Curren, Dorothy	LS 2340	Destroyed
Curren, Roland	LS 2341	Destroyed
Daniels, Albert	LS 2201	Lintvedt, McColl and Associates (619) 294-4440
Day, Percy L.		Vault of Coachilla Water District
Day, Raymond W.	RCE 4191	Unknown
Dye, Harlan	LS 2784	Snipes-Dye Associates (619) 697-9234
Eaton, V.M.	RCE 919	Unknown
Edwards, H.L. (After 1950)	RCE 1341	Craig and Associates (619) 297-3974
Edwards, H.L. (Prior to 1950)	RCE 1341	William A. Steen and Associates (619) 460-9000
Elder, George	LS 2236	Lintvedt, McColl and Associates (619) 280-3100
Erb, John	RCE 18486	ERB Engineering (858) 748-2130
Fefferman, Robert	RCE 6404	Coastal Land Solutions, Inc. (760) 230-6025
Freeland, E.L.	RCE 32	Christensen Engineering and Surveying (619) 271-9901
Galer, Mel	LS 3284	Destroyed
Glover, Norman	LS 1880	San Diego County Surveyor (858) 694-3864
Hall, Raymond	RCE 8629	Lintvedt, McColl and Associates (619) 294-4440
Hale, Sidney	LS 2821	Unknown
Hays, Bill (After 1975)	LS 3465	Unknown
Hays, Bill (Prior to 1975)	LS 3465	Destroyed
Henry, Thomas M.	RCE 24760	Tat Wai (619) 268-3050
Hogan, Ronald D.	RCE 18095	Glenn Ferguson, PLS
Isbell, James	LS 2411	Barbara Medley, PLS (760) 414-9996
Jaeger, Karl F.	RCE 4847	Eric Ricci (619) 296-3183
Johnson, Arthur D.	RCE 5713	San Diego County Surveyor (858) 694-3864
Johnson, M. Kent	LS 5387 RCE 20192	Destroyed
Jones, Robert	LS 2806	Jerome Pinney
Kanters, E.C.	RCE 469	Unknown
Kelso, G.S.	LS 3231	Boyle Engineering (858) 268-8080
Kibbey, Gerald S.	LS 1693	William A. Steen and Associates (619) 460-9000
King, Will		Lintvedt, McColl and Associates (619) 294-

		4440
Klagge, E. Keith	LS 4300	Earth Technology (858) 536-5610
Lander, Earl T.	LS 3375	Hartley-Imgrund Inc. (760) 746-7001
Lee, Wayne	LS 3900	Unknown
Lemons, Owen C.	RCE 17109	Carl Lemons
Livett, Alfred	RCE 7808	San Diego County Surveyor (858) 694-3864
Lobenstein, David A.	LS 875	Lintvedt, McColl and Associates (619) 294-4440
Luedtke, Norris	LS 2845 RCE 11063	Destroyed
MacInnes, Arthur	RCE 1604	Unknown
Marquardt, Dean	RCE 11101	Destroyed
McAllister, E. Lyle	LS 2801	William A. Steen and Associates (619) 460-9000
McCarty, Dennis (after 1990)	LS 3788	Chris Collins (760) 224-7653
McCray, Earl	LS2528	Snipes-Dye Associates (619) 697-9234
McGetchen, Robert	LS 2444	Destroyed
McGowan, B.E.	RCE 2058	Unknown
Newton, Clarence (Lee) after 1970	LS 2875	Coastal Land Solutions, Inc. (760) 230-6025
Newton, Clarence (Lee) prior to 1970	LS 2875	William A. Steen and Associates (619) 460-9000
Nolan, Ivan	LS 2412	William A. Steen and Associates (619) 460-9000
Nothomb, William, R.	LS 2813	Craig and Associates (619) 297-3974
O'Malley, Patrick	LS 2933	Unknown
Oldham, Waldo J.	LS 3701	San Diego Land Surveying (858) 565-8362
Olson, Willard	RCE 7452	Unknown
Pechstein, Ernest B.	LS 2834	San Diego County Surveyor (858) 694-3864
Peterson, James S.	LS 2334	Christensen Engineering and Surveying (619) 271-9901
Phelps, B.D.	RCE 1534	Municipal Engineers (619) 239-8171
Pillsbury, A.C.	LS 931	Unknown
Potts, Walter (Bud)	LS 3565	Susan Potts
Powell, G.S.	LS 2290	Unknown
Powell, G.S. (Old maps and plats for the Ed Fletcher Co. only)	LS 2290	Rick Engineering Co. (619) 291-0707
Ring, Allen D.	RCE 8490	Eric Ricci (619) 296-3183
Rogers, Donald	LS 3056	Municipal Engineers (619) 239-8171
Rogers, Stanley C.	LS 2783	William A. Steen and Associates (619) 460-9000
Rumsey William	LS 400	Lintvedt, McColl and Associates (619) 280-3100
Rumsey, William	LS 400	William A. Steen and Associates (619) 460-9000
Shaw, Lester	LS 2001	Unknown
Shoulders, Oliver	RCE 9120	Destroyed
Shuttleworth, Thomas	LS 2717	Pallamary and Associates 858-454-4094
Smith, E. Brian	RCE 13817	Conrad C. Hammann, RCE 33069
Spencer, Raymond	LS 3065	Coastal Land Solutions, Inc. (760) 230-6025
Switzer, Joseph	LS 2995	Charles Bratcher, PLS
Tanner, John	RCE 9525	Destroyed
Theorux, Carl	RCE 25931	Jerome Pinney
Thomas, Myron	RCE 19255	John R. Thomas, PLS 760-789-8323
Vance, Richard J.	LS 3250	Unknown
Wai, Tat	RCE 26433	Tat Wai (619) 268-3050
Watters, C.G.	RCE 9695	Helix Municipal Water District
Weeks, John C.	LS 2632	William Karn Surveying (760) 728-1134

Weeks, Leroy I.	LS 1953	William Karn Surveying (760) 728-1134
Welsch, Harry	LS 2966	Glenn Ferguson, PLS
Wilhelm, John	LS 2416	San Diego County Surveyor (858) 694-3864
Wilson, W. Ryan	RCE 22671	Mikio Hamada (760) 489-5834
WindinStadt (Map 815)		Sweetwater Authority, Jim Smith (619) 422-8395 X642
Wittman, Merrill	RCE 6752	Destroyed
Young, R.E.	RCE 8454	Robert Young (619) 466-0466

Revised April 15, 2009

### **CLSA Needs Your Help on Preservation of Railroad Monumentation!**

WE NEED YOUR HELP! ACSM is continuing to work the proposed Preservation of Railroad Monumentation legislation through Congress and have found a lot of interest in the issue, but they need our help. The Members of Congress and staff they have spoke to about the issue would like to hear real life examples of how this issue affects property owners in their Districts. That's where your help comes in. They need your stories!

Please ask your chapter members to help. Have they experienced difficulties because railroad monumentation was removed? How did it affect their work? How did it affect the property owners who hired them? No story is too small. Every story shows the importance of this issue. Please have your chapter members send their stories to ACSM and they'll use them as they continue to bring this important issue to Congress.

Please forward stories to:

Trish Milburn, ACSM

Email: [trisha.milburn@acsm.net](mailto:trisha.milburn@acsm.net)

cc: [CLSA@californiasurveyors.org](mailto:CLSA@californiasurveyors.org)

California Land Surveyors Association  
526 So. E Street, Santa Rosa, CA 95404  
Telephone: 707.578.6016 FAX: 707.578.4406

### **Close but not quite: New survey readings show Four Corners marker off by 2.5 miles**

SALT LAKE CITY (Associated Press) -- Tourists who think they're putting a hand or foot in each of four states at the Four Corners area are apparently missing the mark \_ by about 2.5 miles. National Geodetic Survey officials say the Four Corners marker showing the intersection of Arizona, Colorado, New Mexico and Utah is about 2.5 miles west of where it should be.

The only place in the United States where four state boundaries come together was first surveyed by the government in 1868 during the initial survey of Colorado's southern boundary. The survey was inaccurate.

Officials said Monday the accurate location lies to the east of U.S. 160 in Colorado and northeast of the San Juan River as it flows into New Mexico.

- thanks to Dan Hall for this info. Contact Dan if you have a real chain so he can correct the error.

### **Coastal Commission Concerns**

- in from Mile Pallamary. Any views expressed are those of Mike Pallamary and may not necessarily be the views of the California Land Surveyors Association or the San Diego Chapter of CLSA.

The California Court of Appeal (6th Dist.) ruled the California Coastal Commission's defense of its issuance of a permit allowing construction of a house in an on the ground failure to issue the permit would have been a compensable taking was not supported by substantial evidence in the record. This case is the latest chapter in a seven-year-long battle between McAllister and his neighbors on the Big Sur coast over a house they want to build on their property. In 1977, the commission granted a previous owner a development permit for a house on two adjoining two-acre lots at Kasler Point. He started construction, but later abandoned the project and sold the parcels. The new owner sold the land to in 1999 to the present owners. After McAllister objected to their first plan for the house, the county approved a redesigned plan and a merger of the two parcels in 2004. Not satisfied, McAllister appealed to the commission, which found there was a substantial issue concerning protection of coastal resources requiring a hearing. After the hearing, the

commission approved the project and granted the coastal permit with conditions. McAllister went to court seeking to overturn the commission's decision. In 2007, the court ruled in favor of the commission and the owners.

This case involves the interaction of two coastal development policies. The California Coastal Act provides that environmentally sensitive habitat areas must be protected against any significant disruption of habitat values, and only uses dependent on those resources are allowed within those areas. The subject property is within the range of an endangered insect species, the Smith's Blue Butterfly, and contains plants the butterflies use. Although the butterflies have not been observed on the property, they have been seen on adjoining property. Also, the proposed project could diminish potential butterfly habitat. Given those circumstances, the parties agreed that the Coastal Act ordinarily would require the commission to deny a development permit, the court said. But, the court noted, the Coastal Act also provides that it is not intended to authorize the commission or a local government to exercise the power to grant or deny a permit in a way that would take or damage private property for public use without the payment of just compensation. The commission argued that provision allows it to permit non-resource-dependent uses in habitat areas where necessary to avoid an unconstitutional taking. The court agreed that where a Coastal Act restriction would require denying a permit and the denial would deprive an owner of economic benefit or productive use of his land, the commission theoretically has two options: deny the permit and pay compensation or grant the permit with conditions that mitigate the impacts the limitation was designed to prevent. However, because the commission does not have the authority to buy property, it instead limits application of resource protection policies to the extent necessary to allow a landowner a constitutionally reasonable economic use of his property.

The commission contends that is exactly what it did in this case. It said that implicit in its approval of the project was the understanding that denying residential use of the property would result in a finding that the owner had been deprived of all beneficial use of the property. It might well be, the court said, that denying the permit would amount to a taking. However, the record did not support a finding that the commission approved the project for that reason. Given the significance of easing a fundamental development restriction in habitat areas to allow a non-resource-dependent use, "one would expect the record to reflect some discussion of both the restriction and the taking issue," the court said. In fact, the record is silent on that point, the court continued. Neither the staff reports nor the commission's revised findings discuss whether the proposed construction is a resource-dependent use or whether strict application of the habitat area policy would require denying the permit. Under those circumstances, the court could not infer the commission considered the threshold question whether the project was a permissible use in the area, or whether denying the permit would amount to a taking. Therefore, it concluded, the case must return to the commission for a new hearing to consider the taking issue.

McAllister v. California Coastal Commission, 169 Cal. App. 4<sup>th</sup> 912, 87 Cal. Rptr. 3d 365 (12/30/2008).

- more from Mike

As you may know, the California Coastal Commission has *used* (edited remark) the English language such that a lot line adjustment, that is settling a dispute between two adjoining property owners is "Development" even though nothing is physically moved, altered, built, or demolished.

The CCC has now declared fireworks to be "Development." Yep, that's right! 4<sup>th</sup> of July, Mom and Apple Pie, Chevrolet fireworks are not permitted under the Coastal Act because the use of fireworks constitutes "Development."

Your taxpayer dollars are going to be hard at work defending the CCC. As taxpayers, I am sure this is how you want your money spent.

You just can't make this stuff up!

### ***CA Coastal Commission Snuffs Out Annual Fireworks Display***

*Mendocino Residents Protest Illegal Coastal Commission Action; PLF Attorneys Mount Legal Challenge*

**Sacramento, CA; June 18, 2008:** Residents of the small Mendocino County coastal village of Gualala today gathered at the San Francisco headquarters of the California Coastal Commission to protest a recent decision by the Commission shutting down the town's annual Fourth of July fireworks display.

"By shutting down a beloved annual Fourth of July fireworks festival, the California Coastal Commission is playing the Fourth of July 'Grinch'," said PLF attorney Paul J. Beard II. "The Coastal Commission has no legal authority to interfere with Gualala's fireworks program, and we've filed a lawsuit to stop this abuse of power."

In order to rationalize the Commission's interference with the Gualala fireworks program, Commission staffers argued that Gualala's 15-minute fireworks display constitutes "development." "They're playing word games," replied PLF's Beard. "The Coastal Act, which governs the Commission, uses the term 'development' over 550 times. It is clear that 'development' means activities that result in lasting physical alterations to the coastal zone – not the type of brief activity we are discussing here."

Representing Gualala residents organized as the Gualala Festivals Committee, PLF attorneys have filed a lawsuit challenging the Commission's cease-and-desist order against Gualala's fireworks program. A hearing on a request to stay the Commission's order, so that this year's display can go on, will be held this afternoon at Mendocino Superior Court in Ukiah. But regardless of how the court rules on the stay, PLF's underlying lawsuit against the Commission's attempt to halt the fireworks will go forward, so that the fireworks display can return in future years.

"The residents of Gualala are within their rights to have their annual Fourth of July fireworks display," said Paul Beard. "They have obtained the necessary permits and insurance. They are passionate about this activity. It is a tradition that they enjoy and one that bonds them as a community."

"Pacific Legal Foundation got involved because the residents of Gualala need assistance," Beard continued. "Also, as the leading public-interest legal organization dedicated to limited government, PLF has a history of fighting abuses of power by the California Coastal Commission."

"If the Commission recognizes no principled limit on what can be classified as 'development,' absurd results will follow," said Beard. "Driving a car, camping, picnicking, sunbathing, surfing, swimming, breathing, or just being in the coastal zone would all require applications for a development permit, or a request for an exemption. The legislature could not have envisioned such absurd results."

"Time and again, up and down the coast, the Commission has tried to meddle in local matters where it has no jurisdiction," said Beard. "In lawsuits brought by PLF, courts have consistently slapped down the Commission for going beyond its legal authority. We are hopeful for the same result in this case."

Commission staffers had urged the panel to issue a cease-and-desist order against the fireworks program, claiming that it disturbed birds in the area. "A threat to birds has not been established," said Beard. "And birds are regulated by California's Department of Fish and Game and the Fish and Game Commission. This is not within the Coastal Commission's jurisdiction."

The case is of statewide interest. "The Coastal Commission's attempt to micromanage Gualala's Fourth of July celebrations has implications for coastal fireworks displays from one end of the California coast to the other," Beard said. "We are in court, fighting for the right of Gualala residents to be free from unjustified, illegal meddling by a bureaucracy that has gone beyond its legal limit."

#### About Pacific Legal Foundation

Pacific Legal Foundation ([www.pacificlegal.org](http://www.pacificlegal.org)) is the oldest and most successful public interest legal organization dedicated to property rights and limited government. A short video on PLF's mission and 35-year history may be viewed at <http://youtube.com/watch?v=HnBSIRQwxKU>.

### **El Granada family sues Coastal Commission**

Sterlings say state is mandating farming

By Greg Thomas [ [greg@hmbreview.com](mailto:greg@hmbreview.com) ]

An El Granada family filed suit against the California Coastal Commission on March 25 in order to retain 143 acres without converting the bulk of it to farmland.

Dan and Denise Sterling live in a mobile home with their four children at the top of a hill in El Granada. For the past nine years, the Sterlings have sought to build a house on their land, but have been stifled by layers of government regulation. In applying for a building permit in 2005 for their latest redesigned home – a 6,456-square-foot house, seven water storage tanks and a septic system – they hit a snag.

"What the Coastal Commission is asking us to do in return for a building permit is to put the remaining acreage into agriculture easement," Dan Sterling said. "But it doesn't stop there. They want control of what and how we farm. And even then, they can come in here whenever they want."

That's Sterling's biggest issue. He says he'd lose control over all but 10,000 square feet of his property but still be liable to keep it up to state standards. And as far as he's aware, no one has ever farmed any portion of the property – terrain marked by steep hills of trees and brush.

"Even if they could justify a need for this type of easement, acquiring 142 acres to go to agricultural conservation or easement use, in return for one home, is grossly disproportionate," said Dave Breemer, the Sterlings' attorney.

Breemer, an attorney with Pacific Legal Foundation, called the Sterlings' suit a "landmark case" and the commission's actions "unconstitutional." The Foundation is representing the Sterlings pro bono.

"This is a big issue because (the Coastal Commission has) been doing this to people in San Mateo County for years and they haven't been called to the mat on it," Breemer said.

Calls seeking comment from the Coastal Commission were not returned before Review deadline.

Breemer said he's waiting for the commission to compile administrative records and call a hearing.

### Surveyor's Right of Entry

This might be an opportunity to educate the landowner and the SD County Sheriff regarding Surveyor's right of entry. Here is the photo of the sign that was found last week in "friendly" Alpine by a friend. The road lead to a County NAD 83 tie point and I guess the owner had met a few surveyors that he did not like.

CLSA has a nice new brochure that they will send if you need any on right of entry, but here is the text : See attached Codes. An interpretation of the way the law is written, only those licensed are exempt from trespass law, but it's better than not at all...

Check with Crissy for brochures - [clsa@californiasurveyors.org](mailto:clsa@californiasurveyors.org)



### PENAL CODE

**602.** Except as provided in paragraph (2) of subdivision (v), subdivision (x), and Section **602.8**, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

**602.8.** (a) Any person who without the written permission of the landowner, the owner's agent, or the person in lawful possession of the land, willfully enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or who willfully enters upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands, is guilty of a public offense.

(c) Subdivision (a) shall not apply to any of the following:

(4) Any person licensed pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code who is engaged in the lawful practice of land surveying as authorized by Section 846.5 of the Civil Code.

### CIVIL CODE

**846.5.** (a) The right of entry upon or to real property to investigate and utilize boundary evidence, and to perform surveys, is a right of persons legally authorized to practice land surveying and it shall be the responsibility of the owner or tenant who owns or controls property to provide reasonable access without undue delay. The right of entry is not contingent upon the provision of prior notice to the owner or tenant. However, the owner or tenant shall be notified of the proposed time of entry where practicable.

(b) The requirements of subdivision (a) do not apply to monuments within access-controlled portions of freeways.

(c) When required for a property survey, monuments within a freeway right-of-way shall be referenced to usable points outside the access control line by the agency having jurisdiction over the freeway when requested in writing by the registered civil engineer or licensed land surveyor who is to perform the property survey. The work shall be done within a reasonable time period by the agency in direct cooperation with the engineer or surveyor and at no charge to him.

### BUSINESS AND PROFESSIONS CODE

8774. (a) The right of entry upon or to real property to investigate and utilize boundary evidence, and to perform surveys, is a right of persons legally authorized to practice land surveying, and it is the responsibility of the owner or tenant who owns or controls property to provide reasonable access without undue delay. The right of entry is not contingent upon the provision of prior notice to the owner or tenant. However, the owner or tenant shall be notified of the proposed time of entry where practicable.

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Members are encouraged to receive email newsletters. Request an email copy only: [48wake@cox.net](mailto:48wake@cox.net)

Notices, original articles and other relevant information are encouraged for publication in the newsletter. There are many interesting and pertinent articles in other publications. Reviews of these articles are encouraged, but provide a review and a link to the article rather than copying the whole article in this newsletter. Newsletter is distributed by the first Wed of the month. Send reports and articles to Allan Wake by the last Saturday of the month. Email to [48wake@cox.net](mailto:48wake@cox.net)

### Advertising policy approved by the Board:

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**Perrie Kelley ~ Sept. 1934 - August 2008**

*I'm sad to say I just found out about the death of Perrie Kelley, a retired City of San Diego Surveyor. Kelley, as he was known, was a real character. He worked many years as a Party Chief for the City. He valued team work and instilled the work ethic of "let's get the job done right the first time." And Kelley's crews pretty much did good work, particularly quick and accurate in construction surveying. One of his legacies was doing sounding surveys throughout Mission Bay, starting with the City as a chain man in the late 50s when Mission Bay was just mud flats, and then chief in the late 70s and 80s when more dredging was needed. His crews also did the preliminary and construction surveying of the new highway from Hwy 905 through Otay Mesa to the US/Mexico border (a project that took one year) and the completion of Mira Mesa Blvd. through hill and dale, an old olive orchard and horse country.*

*You may encounter Kelley's field notes compiled from the late 60s thru the early 90's, when he retired. Upon retirement Kelley and his wife Barbara moved to North Carolina, where he looked forward to the golfing opportunities.*

*Bill Cardenas, who worked with Kelley, remembers him as an old time straight shooter. Bill fondly regards Kelley as his "Daddy" because Kelley was Bill's first chief.*

*All who worked with or knew Kelley I'm sure will agree that he was quite a remarkable man. Kelley and many of his fellow Surveyors would get together for "friendly" poker games from time to time, where a good time was had by all. He had a sense of humor, could take a joke, but always carried himself with dignity and decorum. Kelley will always hold a special place in my memory.*



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