

## 1. ALASKA STATE LAW—SAFETY AND PRIVACY

The LTFUAS is confident that the FAA will regulate safety of UAS flights in Alaska. While safety is critically important, the LTFUAS also recognizes that certain codes of conduct must be followed to ensure harmonious UAS operations in Alaska.

### 1.1.1 Self-Regulation by Three National Organizations

The LTFUAS considered the recommendations of the following three national organizations that have adopted rules and codes of conduct regarding UAS operations. The LTFUAS adopted the IACP rules in the legislation introduced during the legislative session. During the committee process, the decision was made that it would be ill advised to adopt a dated publication. Instead the bill incorporated applicable guidelines from the publication.

- **IACP:** International Association of Chiefs of Police Recommended Guidelines (Appendix B) for the use of Unmanned Aircraft was adopted in August 2012. The Alaska Department of Public Safety has also adopted these guidelines as their doctrine with the exception of increasing the flight approval responsibility from a “supervisor” to the director’s office.
- **AUVSI:** Association for Unmanned Vehicle Systems International states: “As an industry, it is incumbent upon us to hold ourselves and each other to a high professional and ethical standard. As with any revolutionary technology, there will be mishaps and abuses; however, in order to operate safely and gain public acceptance and trust, we should all act in accordance with these guiding themes and do so in an open and transparent manner. We hope the entire UAS industry will join AUVSI in adopting this industry [Code of Conduct](#).”<sup>1</sup>
- **AMA:** Academy of Model Aeronautics’ [AMA Policies for Radio Controlled Model Aircraft Operations Utilizing First Person View, Failsafe, Stabilization and Autopilot Systems](#) guides model aircraft operators.<sup>2</sup>

In the same manner that the FAA does not regulate model aeronautics, the LTFUAS does not intend to adopt requirements of hobbyist activities using UAS.

### 1.1.2 Model Aircraft Rules and Definitions

The technology differences between UAS and model aircraft used for sport or recreation use is narrowing each day. Technology is advancing by leaps and bounds, while at the same time becoming more affordable and integrated into off-the-shelf-systems for consumers and hobbyists. While there are many technical documents and references through the FAA Modernization and

<sup>1</sup> Unmanned Aircraft System Operations Industry “Code of Conduct.” Accessed January 13, 2014. Available at <http://www.auvsi.org/conduct>

<sup>2</sup> AMA Policies for Radio Controlled Model Aircraft Operations Utilizing First Person View, Failsafe, Stabilization and Autopilot Systems. Revision 07/20/2013. AMA Advanced Flight Systems Committee Report 101. Available at <http://www.modelaircraft.org/files/AFSCREPORT101.pdf>

Reform Act, the general difference between UAS and model aeronautics is the operation and intent of the operator not the aircraft.

If the activity or intent of the activity is used for commercial operations or contributing to the creation of a product or service, it is considered commercial activity, and it is subject to the FAA regulations and rule as stated in the FAA Modernization and Reform Act of 2012 and FAA UAS Road Map 2013.

If the activity is for sport and recreation use as defined by FAA SEC 336 SPECIAL RULE FOR MODEL AIRCRAFT of the Modernization Act, it is controlled by a cooperative agreement between the FAA and a Community Based Organization (CBO), such as the Academy of Model Aeronautics (AMA).

The AMA has been successful in self-regulating operations for hobbyists and aviation safety for over 77 years. During those 77 years, the AMA faced many challenges of new technologies such as analog to digital radio, coordinating operations within the airspace and the ever changing aircraft designs and capabilities not unlike the latest multi-rotor and First Person View (FPV) capabilities. To address the current safety requirements and interest of model aircraft operators, the AMA has developed and updated its general safety code AMA Publication 105-Safety Code and advanced aircraft rules publication 550-First Person View and 560-Autopilot effective January 1, 2014, to keep up with the FAA rule making and technology advances. Refer to Appendix C.

It was discussed that a notice should be provided at the time of purchase of each model aircraft to review the AMA flight operation guidelines for appropriate use of model aeronautics. The LTFUAS did not adopt a requirement for notice regarding hobbyists since so many aircraft are purchased outside of Alaska and would not be required to provide the notice.

### 1.1.3 Alaska State Law and Personal Privacy

The State of Alaska and its local governments cannot dictate the use of the NAS but can consider rules that better define the FAA guidelines, can consider legal repercussion for entities found in violation of adopted laws, and can provide for specific privacy laws regarding the use of UAS in Alaska.

The State of Alaska Constitution provides privacy protection, “although not unlimited, has been held to be broader than the protection afforded by the United States Constitution. Both the Alaska

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#### Legal Services

##### **Constitutional Protection of Privacy:**

*The Constitution of the State of Alaska explicitly protects the right of privacy against government intrusion. Art. I, sec. 22 provides: “The right of the people to privacy is recognized and shall not be infringed. The Legislature shall implement this section.”*

##### **Alaska Statutory Protections:**

*AS 11.41.270 Stalking, nonconsensual conduct prohibits monitoring by technical means*

*AS 11.61.116 Sending an explicit image of a minor*

*AS 11.61.120(a)(6) Harassment: publishing or distributing certain images*

*AS 11.61.123 Indecent viewing or photography*

*AS 11.76.113 Misconduct involving confidential information in the first degree*

*AS 11.76.115 Misconduct involving confidential information in the second degree*

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Constitution and the Fourth Amendment to the United States Constitution require a warrant by a governmental agency for the search of a place where a person has a reasonable expectation of privacy.”<sup>3</sup>

Although much attention regarding UAS privacy focuses on government use and the Fourth Amendment, it is non-governmental use that is likely to raise some of the most significant privacy challenges in coming years. For private entities, the key constitutional question is the extent of their First Amendment privilege to gather information.

Civil use of unmanned aircraft will fall under the federal and state laws including such provisions as trespassing, invasion of privacy, intrusion upon seclusion, publication of private facts, stalking and harassment, and business privacy.

The LTFUAS, with guidance from Legislative Legal Services, considered many scenarios of possible violations of state and federal law that might occur with the use of unmanned aircraft. Legislative Legal Services provided the document, [Observations from Above: Unmanned Aircraft Systems and Privacy](#),<sup>4</sup> that presented a variety of scenarios that have been tried in court and some that should be discussed as they pertain to UAS and personal privacy. The Legal Services memo outlining the areas of statute that protect personal privacy can be found in Appendix D.

Privacy protection considerations reviewed by the LTFUAS include but are not limited to the following.

- 1. If data is gathered by a government agency, it is a public record. However, AS 40.20.120 provides certain protections for private information. Use of inadvertently captured information in a criminal prosecution may depend on who captures the information and whether the person whose actions have been captured has a reasonable expectation of privacy.**

It was discussed that data captured by a government-operated UAS would be treated similarly to data captured by other technology such as cell phones, manned aircraft, satellite images, voice recorders, etc. Case law is substantial in determining if the person would be considered to have a reasonable expectation of privacy and when a warrant would be required to obtain and use any data collected.

CH 48 (HB65) SLA08 Personal Information Protection Act also addresses the collection, storage, and breach of privacy. This act would include any data captured by a UAS.

- 2. As technology continues to advance beyond “normal” application of current laws, a balanced approach that recognizes the inherent difficulty in predicting the future must be adopted when drafting new laws.**

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<sup>3</sup> Memorandum: Alaska Laws Protecting Privacy (Work Order No. 28-LS0990). September 30, 2013. Division of Legal and Research Services, Legislative Affairs Agency, State of Alaska, Juneau.

<sup>4</sup> John Villasenor. 2013. Observations from Above: Unmanned Aircraft Systems and Privacy. Harvard Journal of Law & Public Policy. Available at [http://www.harvard-jlpp.com/wp-content/uploads/2013/04/36\\_2\\_457\\_Villasenor.pdf](http://www.harvard-jlpp.com/wp-content/uploads/2013/04/36_2_457_Villasenor.pdf)

The LTFUAS determined that we cannot foresee the future applications of technology (of UAS or other technologies); therefore, creating restrictions in law based on assumptions is not recommended.

### **3. How should Alaska manage unintentionally captured images or data?**

Discussion as of December 2013 concluded that there are adequate statutes, case law, and data retention guidelines that resolved the concerns of the LTFUAS in the area of unintentionally captured images or data. Discussion during the legislative session of 2014 indicated that data collection will be an area the LTFUAS will need to continue to monitor.

#### ***Observations From Above: UAS and Privacy***

*This document was published in the Harvard Journal of Law and Public Privacy by John Villasenor, a senior fellow in Governance Studies and the Center for Technology Innovation, the Brookings Institution.*

*The Task Force discussed many of the scenarios posed by the author when considering the need for Alaska law.*

**Recommendation:** The LTFUAS also requests that the Department of Administration review its data retention schedules with particular emphasis on law enforcement data captured inadvertently and allowing that data to be destroyed.

### **4. The tie between safety and privacy is tightest with respect to rules requiring the operator of a UAS to be able to see the aircraft at all times. Public UAS operated in association with the expedited authorizations in Section 334(c)(2)(C) of the FAA Modernization and Reform Act of 2012 (FMRA) have a “line of sight” requirement.**

The LTFUAS assumes that FAA regulations adopted in the next several years will continue to require visual line-of-sight operation. “Sense and avoid” technology will become more mature and some non-line-of-sight missions may be permitted by the FAA. Non-line-of-sight operations and other unknown technological advances may bring new challenges that will require the Legislature to review industry guidelines and state laws in the future.

### **5. Unmanned aircraft may bring efficient advances to law enforcement; however, the public seems to be highly sensitive to law enforcement using unmanned aircraft.**

After reviewing many possible uses of UAS, the LTFUAS determined that existing law already affords the public with adequate protections.

- **Routine Technology:** The use of UAS is treated much the same as any other technological tool used to protect the public. The Department of Public Safety has adopted the IACP Guidelines for UAS, and the LTFUAS found those guidelines to be superior for rules of law enforcement use.

Specific guidelines from the IACP were offered as a provision of the legislation.

- **Public Navigable Airspace:** The question of what constitutes “public navigable airspace” for UAS operated by the government is central to privacy policy. The LTFUAS found that almost every law enforcement scenario discussed was already protected by existing law.
- **Role of Imaging Technology:** Rules and case law exist that protect citizens from inappropriate use of capturing data that is “more than the human eye could ever see.”
- **Extended Surveillance:** Law enforcement does not intend to use UAS for standard patrol activities at this time. Limiting flight hours was not seen as an acceptable control because long flights may be necessary in the event of search and rescue or natural disaster remediation operations.
- **Obtaining a Warrant:** After much discussion, it was decided that using UAS to gather data would require a warrant in similar situations as using any other data gathering device (such as voice recording, photography, and thermal imaging with manual technology). No additional laws are required to obtain a warrant for UAS data gathering.

#### Voluntary Approaches

*The International Association of Chiefs of Police (IACP) adopted model guidelines for the use of UAS for law enforcement purposes.*

*The Association for Unmanned Vehicle Systems International (AUVSI) Code of Conduct calls for a commitment to “respect the privacy of individuals.”*

*Academy of Model Aeronautics (AMA) has also adopted operational policies and guidelines for advanced flight systems used in radio-controlled model aircraft.*

It is the understanding of the LTFUAS that all law enforcement entities must first obtain a court order to use UAS over private property for criminal investigation against any person. This will be offered as a provision of the recommended legislation.

- **Weaponized Aircraft:** FAA guidelines do not allow anything to be dropped from an unmanned aircraft.
- **Visibility:** Law enforcement is planning to use high-visibility marking on any UAS they will use. Application of navigational lighting and/or high-visibility paint is being considered.
- **Public Education:** It is apparent that public education is necessary for all agencies using UAS but sensitivity is heightened for law enforcement uses.

#### Law Enforcement

*Public protection will benefit greatly from unmanned aircraft for the purposes of search and rescue, crash scene documentation time, natural disaster monitoring, wildfire management, amber and silver alerts, hostage situations, and other life safety extremes. Some efforts will require warrants to proceed and some will be allowed under a Certificate of Authorization (COA).*

It is the opinion of the LTFUAS that existing privacy laws are adequate to govern the use of unmanned aircraft.

It is the opinion of the LTFUAS that since Alaska has been chosen as one of the FAA UAS Test Sites, we have the opportunity to participate in the use of UAS in a variety of ways that would put Alaska in the position to establish policy guiding the use of UAS for the rest of the United States to consider.