

Unmanned Aircraft Systems Legislative Task Force

Summarized Minutes of the October 2, 2013 Teleconference

Task Force Members in Attendance:

- Representative Shelley Hughes, Co-Chair
- Senator Donny Olson, Co-Chair
- Ginger Blaisdell, Staff to Rep. Hughes
- David Scott, Staff to Senator Donny Olson
- Lieutenant Steve Adams, Commissioner Designee, Department of Public Safety
- Steve Strait, Aviation Advisory Board, Governor's Office and DOT/PF
- Steve Colligan, Representative Member for the Academy of Model Aeronautics

Guest Attendee:

- Jen Haley, Peak 3

Meeting Summary:

I. Welcome and Introductions

Representative Shelley Hughes

Task Force responsibilities per HCR6

The duties of the task force shall include (1) reviewing regulations and guidance from the Federal Aviation Administration regarding unmanned aircraft systems; (2) providing written recommendations, together with suggested legislation, for a comprehensive state policy for unmanned aircraft that protects privacy and allows the use of unmanned aircraft systems for public and private applications; and (3) submitting, not later than January 15, 2014, an initial report to the legislature and, not later than July 1, 2014, submitting a final report to the legislature.

Attendees' Comments and Priority Concerns

- **#1 Public Privacy**

Discussed the need to secure public privacy as this technology becomes more widely used

Perceived privacy problems coming from stalkers, photographers, etc. not as much of a concern coming from law enforcement intelligence gathering

- **Transition from Hobby to Business use of UAS**

UAS is viewed as a "disruptive technology"

Concerns regarding designations of and uses in national air space

- **Not too restrictive so that the "good" of the technology is unusable or untimely**

- The future could bring UAS in larger scale transportation
- Safety and Guidelines for pilots and UAS flights

II. Brief Overview of Documents Provided and their Recommendations

Ginger Blaisdell

Legal Services Memo regarding Alaska Laws Protecting Privacy:

This document was requested to identify constitution articles and state statutes that protect the privacy of Alaska citizens. Excerpts following:

Page 2: “Both the Alaska 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.” “The U.S. Supreme Court has considered use of aerial surveillance and found that surveillance by a manned aircraft is not an intrusion into a private area that renders an overflight ...; however the placement of a global positioning device on a person’s vehicle is an intrusion that constitutes a search.” “The Court might find the use of a technology that exceeds human observational capacity the sort of intrusion that constitutes a search requiring a warrant or an accepted exception.”

To the Task Force: What exceptions may need to be considered in legislation?

Page 3 and 4: chart of Alaska Statutes providing personal privacy:

AS 11.41.270 Stalking

AS 11.61.116 Sending and explicit image of a minor

AS 11.61.120(a)(6) Harassment

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

“If the data is gathered by a government agency, it is a public record. However, AS 40.25.120 provides certain protections for private information. AS 40.25.120(a)(6)(C) protects information gathered by law enforcement the disclosure of which ‘could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness.’”

Page 5: Inadvertent capture of evidence of illegal activity:

“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.”

To the Task Force: Under What circumstances would a court grant a search warrant to follow up on information inadvertently obtained, but not in “plain view.”

Page 6: “A court could determine that information inadvertently captured in otherwise lawful surveillance is likewise a good faith exception. However, Alaska’s appellate courts have not decided where to adopt this exception.”

Observations from Above: Unmanned Aircraft Systems and Privacy (Harvard Journal of Law and Public Policy):

Excerpts following:

Page 461 “When drafting new laws it is critical to adopt a balance approach that recognizes the inherent difficulty of predicting the future of any rapidly changing technology.”

Page 467 Mesa County, Colorado Sheriff’s office has one of the only current FAA Certificates of Authorization for operational (as opposed to training) use of UAS.”

Page 475 “The questions of if, when, and under what circumstances non visual line of sight operation will be permitted will have an impact on privacy.” “As ‘sense and avoid’ technologies become more mature, these sorts of non-line of sight operation may eventually be permitted.”

Page 487-488 “...future development that might enable the Government to ‘see’ into the interior of the home from the outside. This concern was reflected in the Court’s expressed desire to protect people from ‘advancing technology’ that might discern all human activity in the home and the resulting need to adopt a rule taking account of more sophisticated systems that are already in use or in development.

To the Task Force: How should Alaska law address law enforcement activities that might be considered “uncommon practice” or “routine” in reference to advanced technological capabilities? (such as thermal imaging)

Page 494 “What is the constitutionality of warrantless use of an extremely high-resolution (but widely available) camera on a UAS to observe the curtilage of a suspect’s home?”

Page 495 “For financial, regulatory, and logistical reasons, law enforcement agencies will usually use small UAS. Today, these platforms generally have flight durations measured in hours, rendering their continuous use for days or weeks to perform surveillance impractical. But future developments will make long-term surveillance with UAS possible.”

To the Task Force: Should duration of flight hours be a consideration for exemptions of warrantless observations and intelligence collection or general flight use for any purpose?

Page 498 Residual Privacy Rights When a Warrant is Obtained – consideration of search warrant for use of a wire tap compared to implications of using UAS.

Page 498 Non-Government Unmanned Aircraft and the First Amendment

Page 503 “... in common law, a plaintiff generally must establish, at a minimum, that the intrusion was intentional and that it would be highly offensive to a reasonable person.”

To the Task Force: Do we need to consider definition of “highly offensive to a reasonable person?”

Page 508 Voluntary Approaches of self-managed rules of UAS

To the Task Force: Do we want to adopt specific guidelines from the International Association of Chiefs of Police, AUVSI, Academy of Model Aeronautics, etc.?

Page 511 Suggestions for legislation:

- Consider the role that could be played by unintentionally captured images
- Legislation that would include a blanket prohibition on government use of private UAS data in criminal investigations would also be ill advised, as well as inconsistent with what routinely occurs in noninvasive settings.
- Any new legislation should recognize that images of public spaces from UAS will sometimes also include images of private spaces (nearby homes).
- State statute and scope of Federal Preemption: does not prevent state from passing any laws relating to how aircraft are flown.
- A state does not have the authority to enact UAS privacy laws that would decrease the safety of flight operations.

Aerospace State Association:

EPIC document excerpts following:

Page 3 Does the Task Force want to:

- consider public reporting requirements detailing the use of UAS
- consider audits of UAS operators
- restrict or provide narrow exemptions for warrant requirements for law enforcement use of UAS
- prohibit broad surveillance by UAS by law enforcement
- IACP requires high visibility marking on all UAS

UAS Privacy Considerations excerpts following:

Page 2 provides six recommendations for Task Force consideration

1. Warrants
2. Data Concerns
3. Individual Consent
4. Weapons
5. Endorsing professional guidelines (IACP)
6. Emphasize FAA regulations

III. N-8900 Overview of FAA Unmanned Aircraft Systems Operational Approval

Oct 24

Ro Bailey and/or Greg Walker will provide an overview of the FAA operations guidelines for use of UAS at the October 24 meeting.

IV. Discussion of other areas to consider for legislation:

- Economic development – marketing this industry for Alaska
- Insurance concerns for AUS operators as a business obstacle

V. Task Force Timeline and Next Meeting Date/Time

Representative Hughes

Ginger will summarize the documents discussed at this meeting for continued discussion at the October 24 meeting.

All who are interested are encouraged to sign up to attend the UAS Interest Group Annual Meeting on October 22-23. This meeting is coordinated jointly by UAF and FAA/DOI. The meeting has been moved to the UAA campus and more details will follow. Registration fee is \$185 for both days. Please contact: Diana Campbell dlcampbell@alaska.edu or register online at

<http://registration.gi.alaska.edu/uas2013/reserved>

<http://registration.gi.alaska.edu/uas2013/presenters>

October 24th will be the next meeting of the task force. It will occur immediately following the Alaska UAS Interest Group Conference on October 22 and 23 in Anchorage. Meeting will be held at the Anchorage Legislative Information Office on 4th Ave.

Task force meet at 8:30am – 11:30am to review follow up information from Oct 3 meeting

1:00pm Public Testimony:

- 1:00-2:30pm Business Recommendations and Concerns
- 2:45-4:00pm Privacy Concerns
- 4:00-4:30pm Public Testimony Wrap Up

4:30pm Task Force Next Steps

- Incorporate public suggestions into legislation
- Next meeting set

Adjournment