

## Your Launch Pad for Drone Regulations

### LAW

DRONES are everywhere. The Federal Administration Aviation made drone registration mandatory in December 2015, and a year later,

there were 670,000 registered; in the first three months of 2017, 100,000 more users registered. There may be close to three million in the country now, and the FAA predicts there will be seven million civilian drones by 2020. The FAA also issues Remote Pilot Certificates, which now number 37,000, enabling the use of drones in commercial operations.

Their practical uses are mind boggling and growing daily: package delivery, emergency medical response, storm tracking, finding lost people (the first may have been in Saskatchewan, Canada, in May 2013), chasing criminals, 3-D mapping, protecting wildlife by catching poachers, identifying nesting areas so impacts can be avoided, measuring deforestation, monitoring farm crops and applying pesticides or water, disaster mitigation, structural safety inspections, border patrol, construction progress reporting—to name a few.

Plus, they're just fun.

While land-use commissioners are unlikely to regulate drones directly—most of the operational aspects are not land uses—commissioners need to think about the impacts of drones and advise local decision makers to help get ahead of the rapidly emerging phenomenon. Drones can be a great tool for planning. Local regulation should facilitate their use, subject to a few important restrictions. The problem right now is some local governments are adopting local regulations without thinking through the implications.

Learn a little about drones first, then put on your thinking caps and try to look over the horizon—figuratively at least—and plan for the future of drones in your community.

### Who's in charge here?

That's a good question, and there isn't a clear answer, yet. It's a little like the legal issues with fracking, or even air quality and wetlands protection. Do federal laws control, is the state the leader, or can local governments regulate?

This is the “preemption” issue. It's about who has jurisdiction. In a recent case in federal court, one man sued another for shooting down his drone when it overflew the shooter's residence. The federal judge dismissed the case, holding that the federal government had no real interest in what happened on private property at a low altitude.

By the latest count, 36 states have some kind of drone law. An excellent source is the National Council of State Legislatures and its report *Taking Off: State Unmanned Systems Policies* (ncsl.org). The Center for the Study of Drones at Bard College has also published “Drones at Home: Local and State Drone Laws,” along with some other useful information, at [dronecenter.bard.edu](http://dronecenter.bard.edu).

The division of authority, for the most part, remains unsettled, but the federal government is attempting to refine its jurisdictional reach, and some states are stepping up to lay down the law.

### Civil rights and privacy

Drones put an eye in the sky at small expense. Think of the typical complaint: “Bombastic Builders, Inc. has an enormous, illegal construction and demolition debris dump in the back 40. You have to do something about it.” A ground search might require a warrant or probable cause. Could you send in a drone instead?

Well, you're not quite cleared for takeoff yet.

In the 1989 case *Florida v. Riley*, a helicopter flying at 400 feet over the defendant's mobile home allowed the sheriff to obtain a warrant for what he believed was marijuana growing in a nearby greenhouse.



The Federal Aviation Administration allows drone usage at or under 400 feet.

The U.S. Supreme Court split five to four in finding that the overflight was not a search. But would that hold up today? The U.S. Supreme Court has held that aircraft can overfly properties at 400 feet and higher without a search warrant—but drones can only fly at 400 feet or lower, per the Federal Aviation Administration rules. Complicating this question, effective April 14, 2017, the FAA has virtually prohibited all drone flights at any altitude over 133 military facilities, thus exercising control over the airspace down to the ground ([tinyurl.com/k2nnqfz](http://tinyurl.com/k2nnqfz)).

Beyond illegal searches is the looming question of the threat of drones to privacy. Overflights at or above 400 feet are one thing, but a drone in the backyard at second-floor bedroom level with a camera is another.

The challenge here is to liberally permit drone uses over private property for appropriate uses while protecting civil rights and privacy. For example, requiring some local approval before flying a drone over private property may seem like a good idea, but it will slow and complicate the job of emergency responders and insurance adjusters working across

numerous states and municipalities that need to get damage assessments as fast as they can. Instead, regulations should at a minimum provide that if the property owner or manager expressly permits the flight, no other approval is required.

### Things to consider in local regulation

Use these dos and don'ts to build your local regulations.

#### DON'T:

**REQUIRE LOCAL LICENSES** and pilot testing

**ADOPT UNNECESSARILY COMPLICATED** regulations subject to interpretation

**ATTEMPT TO REGULATE** federal airspace (navigable airspace)

**BAN DRONES** entirely or overly restrict them to low levels

#### DEAL WITH THE TECHNOLOGY

and equipment—the federal government does that

#### DO:

**LIMIT RESTRICTIONS** to those essential to protect public safety, such as limiting drones over places of public assembly

**CONSIDER PRIVACY**, but focus on the operator, not the drone

**BE PROACTIVE** in promoting flexible, liberal, and generally as-of-right operations in the public interest, including surveying, agriculture, mapping, resource assessment, and reasonable investigations of potential land-use violations

#### MAKE SURE THERE IS UNFETTERED

use of drones for law enforcement, emergency response, and damage mitigation, including damage assessments by public and private entities

### Make the best of it

Drones are going to be great workhorses for us in many ways. All they need is a little nudging to be sure they are headed in the right direction—and for you to become their horse whisperer. ■

—Dwight Merriam, FAICP

Merriam founded Robinson+Cole's land-use group in 1978. He represents land owners, developers, governments, and individuals in land-use matters.

## HISTORY



Members of the Civilian Conservation Corps work in Prince George's County, Maryland, circa 1935.

## The Civilian Conservation Corps

IN 1933, Congress authorized a major part of President Franklin D. Roosevelt's New Deal: the Civilian Conservation Corps. The CCC employed more than three million Depression-stricken young men during its nine years of operation.

Best known for planting billions of trees and building national and state park structures, the CCC also played an important role in disaster mitigation and recovery. When local resources were unequipped to handle the massive cleanup after the Great New England Hurricane of 1938, the CCC was mobilized to clear millions of downed trees and other storm debris—and the job was so big, it took two years and some help from the Works Progress Administration to complete. The CCC also constructed miles of levees, thousands of dams, and many other flood-control structures.

The program was put to rest in 1942, when the U.S. transitioned to a wartime economy and millions of men were drafted into military service, but the CCC's completed projects continue to provide economic benefits to cities across the nation.

—Ben Leitschuh

Leitschuh is APA's education associate.

## RESOURCE FINDER

Like it or not, unmanned aerial vehicle (drone) use is on the rise. Prepare your community with these resources.

### APA RESOURCES

*Drone's Eye View*, Craig Guillot  
*Planning*, October 2015:  
[planning.org/planning/2015/oct/drones.htm](http://planning.org/planning/2015/oct/drones.htm)

*Know Your Drone*, Monte Mills  
*Planning*, May 2015:  
[planning.org/planning/2015/may/legal-sons.htm](http://planning.org/planning/2015/may/legal-sons.htm)

### WEB RESOURCES

*Cities and Drones*  
National League of Cities:  
[Tinyurl.com/mnophzu](http://Tinyurl.com/mnophzu)

*7 Ways Drones Are Helping People in Need*  
Smart Cities Council: [tinyurl.com/n8ka2kc](http://tinyurl.com/n8ka2kc)