

## **Trespass by small Unmanned Aircraft System's (Drones)**

Unlike physical trespass by a person, there is relatively little protection from flights of small Unmanned Aircraft Systems (sUAS's) commonly referred to as "drones" over private property, including farms. This is in spite of the fact drone law is an active area in the courts.

## **Federal Drone Laws**

The Federal Aviation Administration (FAA) maintains that all airspace starts at ground level. Most airspace is uncontrolled and available to the public. Claiming a lack of authority, the agency refuses to regulate privacy issues.

The agency does, however, have safety regulations for drone users.

General Safety – sUAS's must yield right of way to manned aircraft. sUAS's may not be used in emergency response areas such as wildfires. sUAS's may not be flown over people. sUAS's may not operate at night-time, meaning 30 minutes before official sunrise to 30 minutes after official sunset, unless the pilot has a FAA 107 license. Pilots must be able to see their sUAS's at all times (unaided, "Visual Line-Of-Sight"). Operators determined to be flying in a "careless and reckless manner" have received between FAA fines ranging from hundreds to hundreds of thousands of dollars. sUAS operating under a covered structure are no longer in public airspace.

## **sUAS's Must Be Registered and Marked –**

Regardless of whether the sUAs is being controlled by a "hobbyist" for recreational purposes, or by a commercial operator charging for services, sUAS's weighing more than ½ pound must be registered using Federal Drone Registry website. Registration, which is valid for three years, also provides a registration number which must be affixed to the drone. While technically penalties for flying an unregistered sUAs could include fines and jail time, to date enforcement has consisted of warning letters.

## **Remote Pilot Certificate –**

For professionals who sell drone footage (such as a realtor, agricultural consultant or photographer) the operator must take and pass an FAA exam and receive a remote pilot certificate (FAA 107 license) which is valid for two years. Remote pilots working for non-profit organizations that are collecting donations, holding conferences, paying salaries etc. meet the definition of commercial operators.

Not exceed 400 Feet above ground level – Airspace above 400 feet is regulated and controlled by the FAA for passenger traffic. Most near misses with planes occur at greater than 400, roughly equivalent to a 13 story building.

Don't Fly In Restricted Airspace – sUAS operators may not fly in restricted areas unless having first contacted authorities for approval. sUAS operators can use a variety of mobile apps, for example FAA's B4UFLY, to determine which airport, landing strips, helipads areas or other areas are restricted. Some types of restricted airspace include:

- Within five miles of an airport.
- Over a stadium.
- Local restrictions (i.e. Washington D.C. & Golden Gate Bridge are no-fly zones).
- Temporary Flight Restriction (TFRs are declared during emergencies like wildfires).

### **State Drone Laws**

In 2014 the California legislature strengthened privacy protection with the passage of the so-called Paparazzi Law. The law prohibited the use of recording devices on people without their consent, regardless of whether or not the recorder had committed physical trespass. The law was inclusive of any sound or visual images collected when the subject had a reasonable expectation of privacy, including "private, personal, and familial activity." Unfortunately, while activities in a family's backyard would certainly be protected, cows in a dry-lot have no expectation of privacy.

What if the sUAS is frightening my livestock? California Department of Fish and Wildlife regulations related to Harassment of Animals reads "...no person shall harass, herd or drive any game or nongame bird or mammal or fur-bearing mammal... harass is defined as an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering." Additional charges could be brought based on the California Penal Code relate to Cruelty to Animals (PC 597(b)). Lastly, some counties, municipalities, state and national parks also have drone restrictions which may be relevant. In addition, some jurisdictions may have noise or nuisance ordinances which could be applicable.

### **Shooting Down a sUAS: Legal Liability**

The FAA has confirmed that sUAS's are aircraft, thus, technically harming a sUAS is a felony, potentially carrying a penalty of up to 20 years in prison. However, while there have been perhaps a dozen sUAS shootings in recent years, to date no one has been prosecuted in federal court for shooting down a "plane." Never-the-less, shooting down a sUAS does carry legal liability. Criminal cases have been brought against sUAS shooters in the categories criminal mischief, malicious destruction of property or reckless discharge of a firearm. Civil cases have also been made for repair or replacement of damaged

sUAS. In 2015 a Modesto sUAs operator was awarded \$850 after his sUAS was shot down hovering near his neighbor's property line. More advanced sUAS models may cost tens of thousands of dollars.

#### Managing a sUAS Incident Over Your Dairy

- Contact local law enforcement immediately and ask that patrol officers respond to possible trespass in progress.
- If the sUAS operator is physically present on your property then all information contained in the section above, Trespass by People is applicable.
- Prior to the incident, determine if the sUAs over your farm is flying in a restricted airspace, such as within five miles of an airport. Use FAA's B4UFLY Mobile App.
- Capture video and/or pictures of the drone operation for later use as evidence:
  - The person operating the sUAS and his location.
  - Pictures of any vehicles and license plates the operators are using.
  - A sUAS disturbing livestock.
  - A sUAS operating under a covered structure.
  - A sUAS flying over people or cars.
  - sUAs activity where there is an expectation of privacy (backyards, offices).

When the patrol officers arrive provide them with videos, pictures and/or descriptions of any of the prohibited activities describes in the bullet points above.

- Request that officers ensure that the sUAS operators do not 1) interfere with your farm's operation and 2) that the sUAS operations are in compliance with state and federal laws. To that end ask the officers to:
  - Ensure that the pilot's sUAS and vehicles do not create unsafe traffic conditions on adjacent public roads and do not interfere with farm operations.
  - Confirm that the sUAS has FAA registration and observe that the drone is marked with that registration number.
  - If the pilot claims to be a commercial operator have him provide those credentials.
- Damaging a sUAS in any way invites potential legal repercussions.