State Regulation of Drones – Establishing the Rules of the Road

NELC Legislative Summit
Los Angeles, California, July 31, 2018
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Federal Role

• Aviation Safety
  – Airframe certification & pilot competency; and
  – Aircraft registration and equipage.

• Efficient Use/Management Navigable Airspace
  – Navigation procedures and flight paths.

• Protect People/Property On Ground/In Air
  – Air traffic control to separate aircraft.
State Government

• Plenary police power to establish & adjudicate property & privacy rights

• Manned Aviation
  – land use and zoning power to establish and site airports; and
  – takeoff and landing.

• Drone ports; backyard takeoff & landing.
Causby – U.S. Supreme Court (1946)

• North Carolina Chicken Farmer case.
• Private landowners “exclusive control of the immediate reaches of the enveloping atmosphere.”
• “Immediate reaches” undefined.
• “A landowner owns at least as much of the space above the ground as he can occupy or use” even if he does not in any physical manner occupy that stratum of airspace or make use of it in the conventional sense.”
Conflict Re: Low-Altitude Airspace

• FAA Part 107 authorizing visual line of sight drone operations provided they remain below 400 feet navigable airspace.

• Some contend that means the FAA has declared between the tops of blades of grass and 400 feet to be navigable airspace within the control of the FAA.

• What about your *Causby* right of ownership of the “immediate reaches” of airspace above your land, and State’s plenary police power over private property.
Areas of State Governmental Interest

- Insurance (accident & injury);
- Registration (tax purposes);
- Advance notice (not advance permission);
- Government buildings, critical infrastructure & public assemblages not within purview of federal protection; and
- Reasonable time, place and manner restrictions on flight operations.