



Nov. 25, 2020

The Honorable Elaine Chao
Secretary
United States Department of Transportation
1200 New Jersey Ave., SE
Washington, D.C. 20590

The Honorable Steve Dickson
Administrator
Federal Aviation Administration
800 Independence Ave., SW
Washington, D.C. 20591

Dear Secretary Chao and Administrator Dickson,

We are writing on behalf of the state and local government-elected officials, whom our collective organizations represent, to share our frustration and significant concerns with the lack of outreach and formal consultations regarding a forthcoming “unified legal position” concerning unmanned aerial systems (UAS) by your agency’s Joint Lawyers Working Group on Federal Preemption and the Regulation of Unmanned Aircraft Systems (Department of Transportation (DOT) Preemption Working Group). To learn about the existence of such a group in a Government Accountability Office’s report on unmanned aircraft systems report was unsettling in light of how well our members have worked with your agency in the successful implementation of the DOT’s UAS Integration Pilot Program.

While we clearly recognize that commercial and recreational use of unmanned aircraft systems has the potential to provide significant social and economic benefits in the United States, we also believe the federal government should be deferential when taking action that affects the policymaking discretion of state and local governments. In fact, federal preemption poses risks to innovation and economic development by preventing new technologies from achieving scale. Further, state, and local governments play a key role in the governance of these devices and as such, should be participants in the decision-making regarding how these devices will be used and managed in our communities.

Cooperation between the federal government and state and local governments works. The federal-aid highway program has created the world’s preeminent transportation system through state departments of transportation that also seamlessly shares road closure, emergency response information, and time, manner, and place restrictions on millions of automobiles and mobile apps used by most drivers on the roads today. This cooperative system

relies on each level of government working together, and it has scaled to tens of millions of daily trips.

It is no secret that the integration of commercial and recreational drones into the national airspace system has raised complex legal, technical and policy questions that have yet to be resolved including, but not limited to:

- Does the FAA have the authority to regulate all drone operations, including low-altitude operations?
- How will property rights and nuisance claims, an area of law traditionally within state and local police powers, be impacted by drone low altitude operations?
- Whether and to what extent Congress intended to preempt states, localities, and tribes from regulating UAS operations at low altitudes?
- What authority do federal, state, local and tribal governments have to protect against invasions of physical privacy and personal data privacy involving UAS operations?
- What is the scope of civil and criminal trespass authority in low altitude airspace?

Answers to these questions and others will help ensure the safety and security of states and communities across the country as well as the national airspace, and it is imperative that federal, state, and local governments work in close coordination going forward.

Public input regarding the answers to these questions is essential. It is imperative that federal, state, and local governments work in close coordination going forward. We strongly believe that state and local involvement in planning and implementing will not only bring about greater economic benefits for the country but will also ensure that benefits arrive sooner. However, we remain concerned that the department would issue a legal opinion of major significance and request that your agency formally engage in a public rulemaking with the appropriate notice and comment opportunities.

National Conference of State Legislatures

The United States Conference of Mayors

National League of Cities

National Association of Counties

American Association of State Highway and Transportation Officials