

Local Authority to Address UAS Impacts

John Putnam, Kaplan Kirsch & Rockwell LLP

Daniel Reimer, Denver International Airport

March 9, 2018



Today's Flight Plan

- Safety and local interests
- Federal regulation
- Local regulation
- Local use
- Predictions

Local Uses of UAS

- City use
- EMS
- Property management
- Resource management
- Code enforcement
- Utilities



Photo credit: <http://increasinghumanpotential.org>

Why Do Cities Care About Others' Use of UAS?

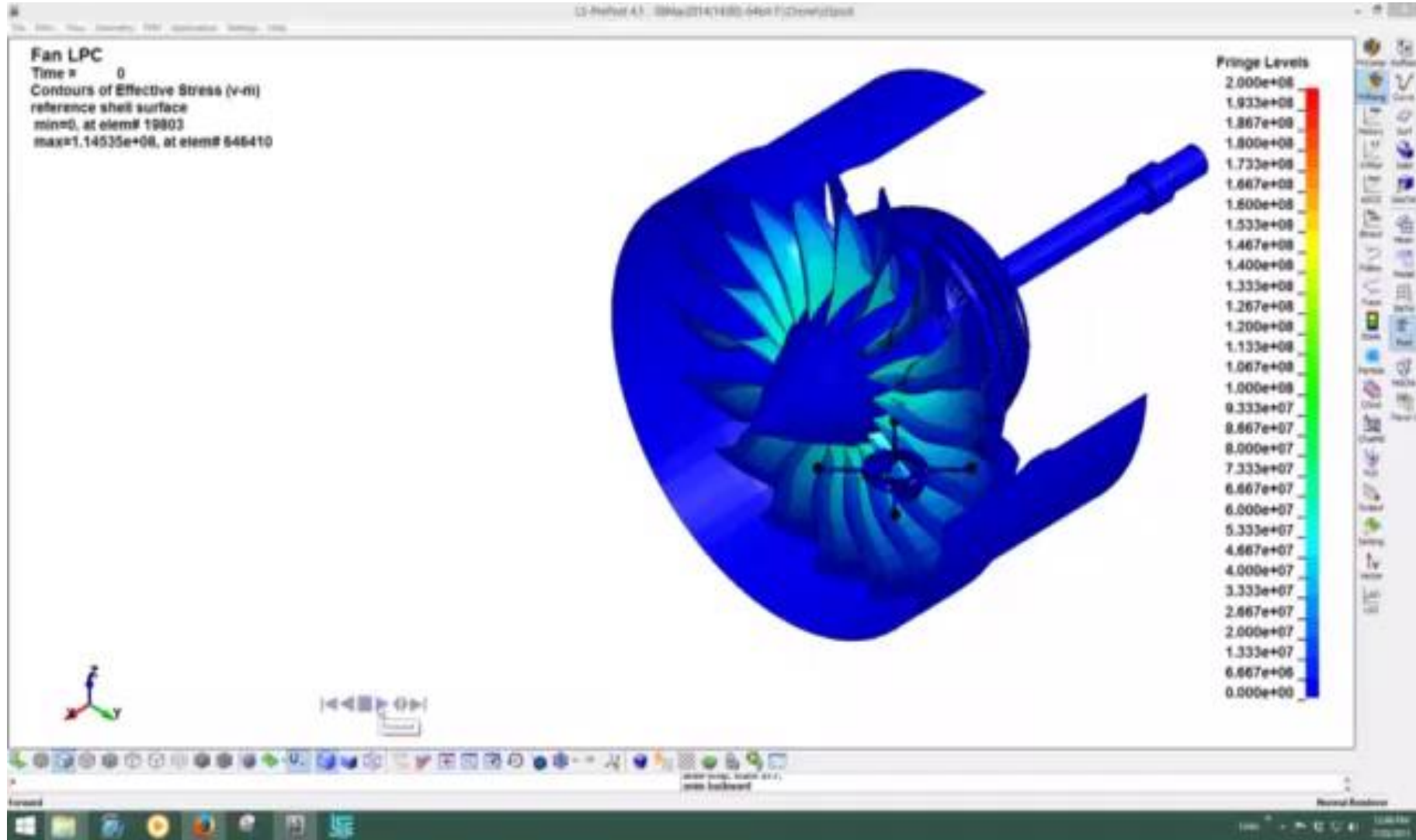
- Economic development and recreation interest
- Safety
 - Airport operations
 - Large crowds
 - Interference with fire, police
 - General
- Privacy
- Protection of critical operations
 - Parks
 - Jails
 - Utilities
- Proprietary interests

UAS Safety Concerns: Concerns, but Not Guns or Cars....



Photo credit: *The Durango Herald*





Video credit: Virginia Tech

Level 1	Green
Level 2	Yellow
Level 3	Orange
Level 4	Red



Figure 240. Summary of collision severity levels on commercial transport jet

Source: FAA ASSURE, UAS Airborne Collision Severity Evaluation – Quadcopter (2017)

Why we can no longer have nice things....





National Transportation Safety Board Aviation Incident Final Report

Location:	Hoffman Island, NY	Incident Number:	DCA17IA202A
Date & Time:	09/21/2017, 1920 EDT	Registration:	None
Aircraft:	DJI Phantom	Aircraft Damage:	Destroyed
Defining Event:	Midair collision	Injuries:	1 None
Flight Conducted Under:	Part 107: Small UAS		

Analysis

The United States Army UH-60M helicopter was operating under visual flight rules within Class G airspace about 300 ft above mean sea level (msl) when it collided with a privately owned and operated DJI Phantom 4 small unmanned aircraft system (sUAS). The helicopter sustained minor damage and landed uneventfully; the sUAS was destroyed. Although the pilot flying the helicopter saw the sUAS before impact and immediately applied flight control inputs, there was insufficient time to avoid the collision.

FAA's General Authority

- Sovereignty of airspace
- Aircraft and flight
 - No careless or reckless flight (14 C.F.R. § 91.13)
 - Altitudes (14 C.F.R. § 91.119)
- Preempts wide range of local rules

FAA Regulation Focuses on Use and User



FAA's Part 107

- Commercial and public use
- Parameters
 - Less than 55lbs
 - Visual line of sight (VLOS)
 - Daylight hours or civil twilight with lighting
 - Below 100mph
 - Below 400 AGL or 400 feet of structure
 - Licensed remote aircraft operator
- Waivers available



FAA Recreational Drone Regulations

- Congressional exemption in 2012
 - Community standards
- FAA registration rule (Dec. 2015)
- D.C. Circuit invalidated last Spring
 - *Taylor v. Huerta*
- Congress reinstated registration requirement

FAA Airport/Air Traffic Notification Requirements

Commercial (Part 107)	Public (Part 107)	Model UAS
Air Traffic must AUTHORIZE near major airports; no airport notification	Air Traffic must AUTHORIZE near major airports; no airport notification	Must NOTIFY Air Traffic <u>and</u> airport within 5 miles

FAA: Events/Overflights

- Restricted/prohibited flight areas
- Major sporting events
- Prohibited over people who are not “directly participating”, except in:
 - Covered structure
 - Stationary vehicle

Types of Local Regulations

- Bans or moratoria
- Safety
 - Careless/reckless operation
 - Location regulation (airports, sensitive locations, parks, height)
 - Weaponizing
 - Interference with civic functions (firefighting, police, etc.)
- Protection of privacy from government
 - Ban
 - Requirement for warrant
 - Limits on use
 - Data retention
- Protection of privacy/property rights (private parties) from private parties
 - Height limits
 - Use of images
 - Trespass
 - Prior permission

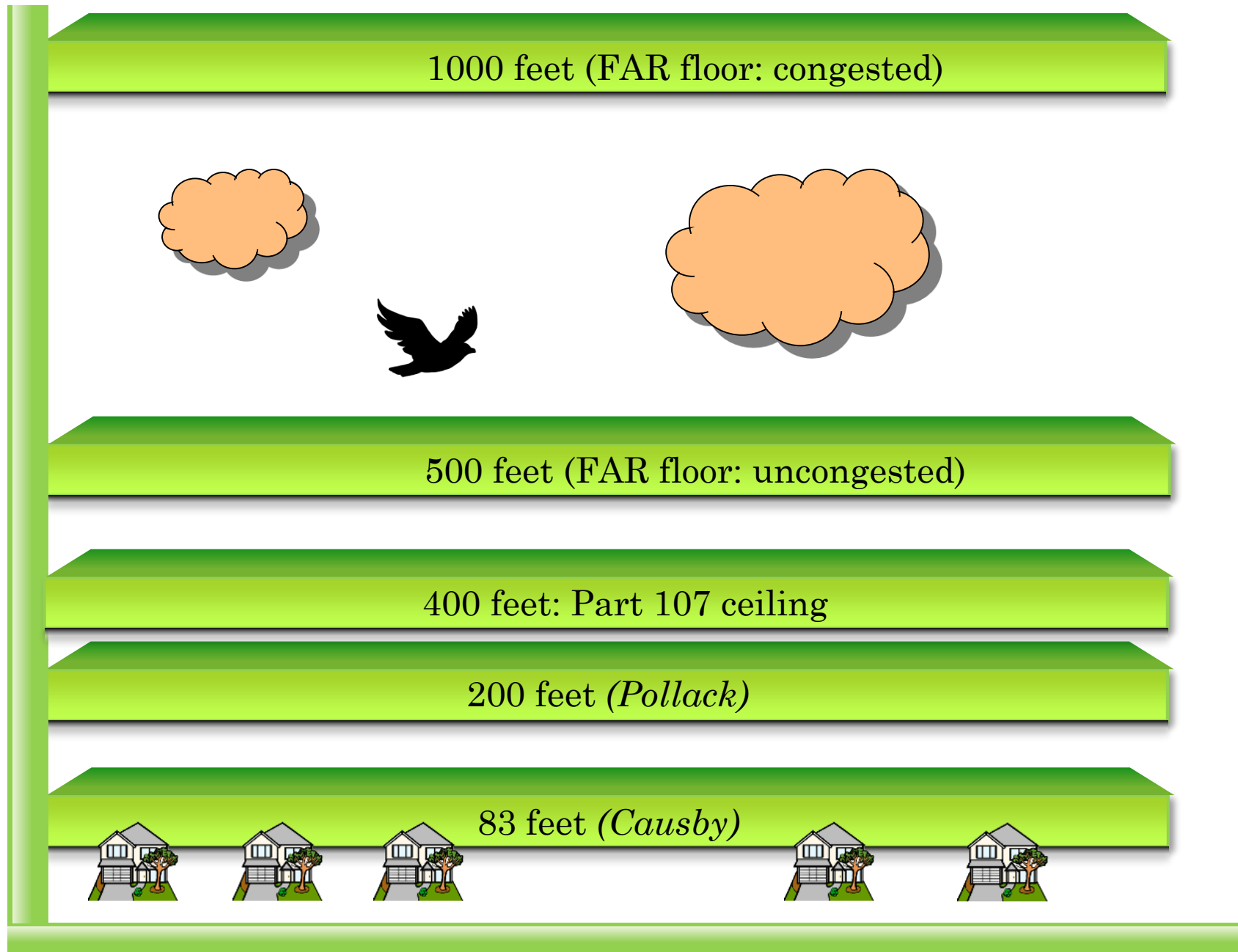
Colorado Examples

- Vail
 - Prohibits UAS in critical areas
- Cherry Hills Village
 - Recreational focus
 - Registration
 - Careless/reckless use
 - Over City/private property
 - Harassment
- Telluride
 - Reckless/careless use
 - Harassment of wildlife
 - Trespass if no prior permission
- Boulder County and City
 - Open Space
- Deer Trail



Preemption Considerations

- Pervasive federal control of aircraft and flight
 - Also radio communications
- Local authority over land use, trespass, general health and safety
- Airspace
 - Line between private and public airspace
 - Property interest of landowner
 - U.S. sovereign airspace



FAA Position on Preemption

- No express statement in Part 107
- FAA Fact Sheet on State and Local Regulation of UAS (December 2015)
 - Some provisions preempted
 - State/local law may be appropriate for:
 - Privacy
 - Trespass/property rights
 - Intellectual property

Singer v. City of Newton (D. Mass. 2017)

- Challenge to local ordinance
- Registration requirements upon owners of all pilotless aircraft
- Ban on the use of a pilotless aircraft below an altitude of 400 feet over private property without express permission of the owner of the private property
- Ban on use over City property without prior permission.
- Ban on use "beyond the visual line of sight of the Operator"

Singer v. City of Newton (D. Mass. 2017)

- No field preemption
- Must consider conflict preemption
- The following measures conflicted with federal regulation
 - Registration
 - Requirement for prior permission for flight below 400 feet over private property
 - Requirement for prior permission over Newton property
 - Line-of-sight rules

UAS-Specific v. General Rules

- Land use, protection from trespass, and general safety rules not preempted
- Non-aviation-specific provisions
 - Operating in park (Park Regs 14.3)
 - Trespass (e.g., C.R.S. 18-4-502-04)
 - Careless/reckless behavior (e.g., C.R.S. 18-3-208; Sec. 38-93)

UAS-Specific v. General Rules (continued)

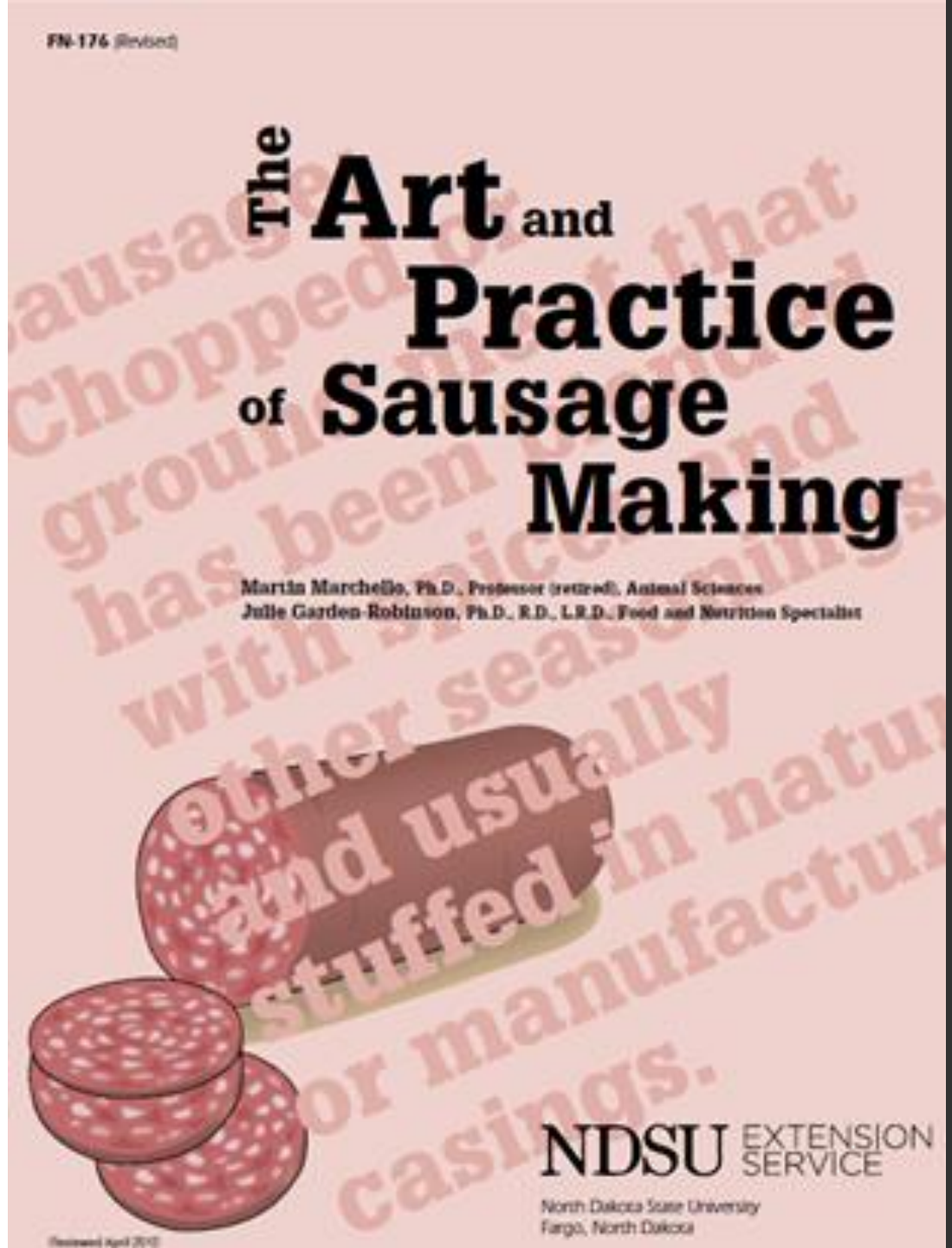
- Peeping Tom/Stalking (e.g., Sec. 38-88)
- Interference with fire, police, etc. (e.g., Sec. 38-31)
- Use of weapons (e.g., 38-117, -121)
- Do these optimally cover UAS contexts?
- Enforcement of federal standards?

Heightened Preemption Risks

- Regulation of flight differently than FAA
- Restrictions on use in navigable airspace
 - Unlimited ceiling of prior permission
- Restriction of federally-permitted operations
- Regulation of aircraft
- UAS-specific rule

On the Horizon

- FAA Reauthorization (August???)
 - 21st Century AIRR Act (House)
 - FAA Reauthorization Act (Senate)
 - Drone Federalism Act
- FAA Airspace Pilot Program
- FAA Drone Advisory Committee
- Court Decisions



Enforcement Needs/Issues

- Legal authority to cite
- Training for police, code enforcement
- Public education
- Tools
 - Communications
 - Other (radar, etc.)
- Coordination (Airport, FAA, land managers, other jurisdictions)
- Prosecution (DA, PACE, civil actions)
- Willingness to litigate
- Major Challenges
 - ID of user
 - Uncertainty about authority

Local Government Risk Management Considerations

- Own and operate or lease services?
- Scope of insurance
- Mutual aid agreement provisions
- Internal policies regarding use
- Safety
- Data retention
- Use of video/images
- Training and compliance
- 4th Amendment considerations
- Trespass

Questions?

John Putnam
jputnam@kaplankirsch.com
www.kaplankirsch.com
303.825.7000



KAPLAN KIRSCH ROCKWELL

projects that keep life moving.

Dan Reimer
dan.reimer@flydenver.com
www.flydenver.com
303.342.2565

