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The Rise, and Risk, of Construction Drones

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Drone usage on construction projects is ready to take off. With recent enhancements in performance and capability, it will soon be hard to imagine a large construction project without drones playing some role. Consider this vision of the construction site of the future:

[D]rones would regularly whirl overhead, constantly taking photos. Software in the cloud would compare volumes, to see how much dirt was moved, if a structure was built or if erosion is a problem. Regular reports would be emailed to leaders on site, keeping them abreast of progress. "Yes the chiller was delivered and installed, yes this work was done. It triggers off inspection. It triggers off payment, all these other steps."

Matt McFarland, *What Drones Can Do For Construction Sites*, Washington Post (Nov. 12, 2015), available [here](#).

As construction companies grow larger and more national in scope, drones will offer them another tool to manage projects from afar and an opportunity to reduce travel time for key managers. As the vision above illustrates, drones may facilitate the increased automation of the construction management process. Increasingly, drones are being used for such activities as:

- Inspection of work-in-place that is dangerous or difficult to access
- Real-time monitoring of construction progress (by project managers or the owner)
- Documentation and verification of the progress schedule
- Surveying and mapping of a jobsite or parcel of land
- Documenting compliance with environmental laws and regulations

Contractors and subcontractors should also be prepared for other uses of drones. How much longer until government inspectors begin to employ drones? Will OSHA send out fleets of drones to ensure safety regulations are being followed? Much remains to be seen how these devices will be used as they become more prevalent, and how they may clash with privacy laws and due process, but a prudent contractor should follow these issues and position themselves accordingly.

Shifting Sands of Regulation

Before any contractor fires up a drone on its construction site, a measure of due diligence is in order. The body of law and regulations governing drone usage is very much in flux. The FAA currently requires a Section 333 exemption in order to use drones for commercial purposes. The drone must be registered and the pilot must be licensed. If the drone is less than 55 pounds, the FAA will grant a "blanket" Certificate of Authorization ("COA") for flights at or below 200 feet. Any drone flights outside of these parameters must also obtain a separate COA. Final rules are expected to be released later this year.

Potholes in the Sky

The rewards of using drones on construction sites will likely outweigh the risks, but those risks should be managed instead of ignored. Besides the risk of running afoul of FAA rules and regulations (which can be [costly](#)), contractors who wish to use drones should recognize, consider and mitigate other risks that may be lurking in the clouds:

- Whether there is insurance coverage for liability arising out of the use of drones. One carrier has suggested that standard commercial general liability policies may not provide coverage due to a common exclusion for "aircraft," and that FAA regulations may influence how that contractual term is defined.
- Personal injury or property damage if communications and controls with the drone are lost in mid-flight. (Currently, proposed rules do not allow for operation of drones over people who are not directly involved with its operation.)
- Invasion of privacy or trespass claims if drone usage is not carefully tailored.

Sweet Drone Alabama

In Alabama, the Governor established the Alabama Drone Task Force in 2014 to meet with stakeholders and develop a recommended statewide plan for the use of drones by the state. However, because of a lack of finality in the FAA rules, the task force [reportedly](#) has delayed any substantive recommendations. Likewise, and to be expected, there appear to be no reported case law or statutes in Alabama that mention or reference drones. Of the [first thousand](#) Section 333 exemptions granted by the FAA, only 11 were from Alabama. However, local contractors are already utilizing drones at construction sites in the Birmingham area, and those instances will soon be the norm.

If you have any questions please contact [Kevin Garrison](#) or any member of our [Construction group](#).