



February 11, 2013

By facsimile and United States mail

Supervisor Richard Valle
Supervisor Scott Haggerty
Public Protection Committee
1221 Oak Street, Suite 536
Oakland, CA 94612

Re: Request by Sheriff for Approval of Unmanned Aerial System ("UAS")
Public Protection Committee Hearing February 14, 2013

Dear Supervisors Valle and Haggerty:

The American Civil Liberties Union of Northern California writes in regard to the Sheriff's request that the Board approve the purchase of a UAS. We commend the Sheriff for his efforts to draft a policy that attempts to address privacy concerns and to solicit the input of the ACLU. We are also very appreciative of the Board's interest in this issue and invitation of public input. The Sheriff has helpfully addressed a number of the concerns we have raised, but we remain concerned that the Sheriff's proposed policy as currently written does not provide sufficient privacy safeguards. We applaud the Sheriff for his commitment not to use the UAS for suspicionless surveillance. But we simply urge that written, enforceable safeguards mirror his intent. At present, they do not.

The policy as drafted authorizes the use of the UAS for precisely the type of surveillance that the Sheriff agrees in principle should not be permitted. For example, it would authorize the use and retention of data for purposes unrelated to the reason for which the UAS was deployed. This is a significant loophole that would permit potentially pretextual, privacy-invading uses of the UAS. Data collected in the name of search and rescue could be retained for intelligence gathering and analysis. In conjunction with other existing policies, this would lead to the submission of UAS-collected data to the Northern California Regional Intelligence Center, also known as a "fusion center," where data – in some instances, about constitutionally protected activity – are stockpiled and analyzed in the name of so-called terrorism prevention. In addition, the proposed policy would take the form of a Sheriff's Office General Order and can therefore be altered unilaterally by the Sheriff, without Board or public approval or even input. For these and other reasons discussed in greater detail below, the Sheriff's proposal does not contain sufficient privacy safeguards. Stronger, enforceable safeguards must be in place before the Board authorizes approval of the UAS. We urge you not to approve purchase of the UAS until such time as there is a clear demonstration that the benefits of a UAS will outweigh the financial, safety, and privacy costs, and the Sheriff develops or the Board adopts strong, enforceable safeguards.

MICHELLE A. WELSH, CHAIRPERSON | DENNIS McNALLY, AJAY KRISHNAN, FARAH BRELVI, ALLEN ASCH, VICE CHAIRPERSONS | KENNETH SUGARMAN, SECRETARY/TREASURER
ABDI SOLTANI, EXECUTIVE DIRECTOR | KELLI EVANS, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR
LAURA SAPONARA, COMMUNICATIONS DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS
PHYLLIDA BURLINGAME, ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, DIANA TATE VERMEIRE, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

We first address our general concerns with respect to UASs and why they pose greater threats to privacy than conventional forms of surveillance. We then address our specific concerns and recommendations with respect to the Sheriff's proposed policy, and conclude with a summary of our comments.

I. Privacy concerns raised by UASs and other new surveillance technologies

There can be no doubt that society stands to benefit from advances in technology, but far too often new surveillance technology is adopted without a meaningful evaluation of costs and benefits.

UASs raise significantly greater privacy concerns than conventional forms of surveillance. UASs differ from conventional aircraft and raise significantly greater privacy concerns for two reasons – cost and surreptitiousness. Manned aircraft are expensive to purchase, operate, and maintain. This expense has traditionally imposed a natural limit on the government's aerial surveillance capability and thus serves as a deterrent to abuse. But when technological advances dramatically lower the cost of collecting data, the natural deterrent to abuse is removed and the need for strong legal safeguards becomes paramount.¹ In addition, a UAS is intended to operate surreptitiously. A nude sunbather enjoying a sunny afternoon in the privacy of her backyard can run for cover to protect her modesty when a helicopter flies overhead, but might never know if a UAS were flying overhead and recording her naked image for unknown uses.

Privacy concerns are not mitigated by the limited flight duration of the UAS the Sheriff seeks to acquire. The Sheriff has repeatedly emphasized that he seeks to purchase a small UAS with a limited flight duration. While the UAS the Sheriff seeks to acquire has specific technological capabilities and limitations, the features of this particular UAS do not provide inherent or sufficient privacy safeguards because technology advances. Because Alameda stands to be the first jurisdiction in California to purchase a UAS, it will serve as a leader and the privacy principles it adopts will be used as a model throughout the state and entire country. Once these principles are adopted, they will be also used as the template for any additional UAS – with potentially far greater technological capability – that the Sheriff may seek to acquire in the future. Privacy protections adopted now therefore must account for the inherently invasive nature of the data collection made possible by a UAS and advances in technology.

¹ Justice Alito, writing for four Justices of the United States Supreme Court, recently discussed this point, in a case in which the Supreme Court unanimously held that installation of a GPS tracking device on a suspect's vehicle is a "search" within the meaning of the Fourth Amendment for which a warrant is presumptively required. *See United States v. Jones*, 132 S.Ct. 945 (2012). As Justice Alito explained, "[i]n the pre-computer age, the greater protections of privacy were neither constitutional nor statutory, but practical. Traditional surveillance for any extended period of time was difficult and cost and therefore rarely undertaken.... In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative.... A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way." *Id.* at 963-64 (Alito, J., concurring).

A meaningful cost-benefit analysis, including a privacy impact assessment, should be conducted before the Board approves acquisition of a UAS. Without a meaningful analysis, we risk wasting taxpayer dollars on equipment that does not deliver its promised benefits and risks infringing more privacy than we as a society are prepared to accept. Take for example, the “naked scanners” installed at airports across the country in 2010. They were supposed to keep us safer, but in the process subjected passengers to virtual strip searches by revealing detailed images of their bodies. Purchase and implementation hurtled forward over privacy objections, and even though the United States’ Government Accountability Office questioned the scanners’ effectiveness.² But just last month, the Transportation Security Administration announced that it will be removing all 174 of the machines currently in use because the manufacturer did not deliver on promised privacy safeguards.³ A more thoughtful cost-benefit analysis – including an analysis of financial as well as privacy costs – *before* the scanners were acquired could have saved taxpayers \$45 million.

Other jurisdictions are proceeding cautiously. Given the enormous privacy implications, other jurisdictions are proceeding cautiously and we urge Alameda County to do so as well. Just last week, Mayor Mike McGinn of Seattle announced that the Seattle Police Department will abandon its plan to use two UASs it had already acquired. The decision came on the heels of a hearing before the City Council at which the program drew strong criticism.⁴ Also last week, Charlottesville, Virginia adopted a resolution endorsing a two-year moratorium on the use of UASs.⁵ The Virginia legislature has also passed legislation with bipartisan support that would establish a two year moratorium of UAS usage by state and local agencies; the bill awaits the governor’s signature.⁶

II. The Sheriff’s proposed policy contains insufficient privacy safeguards

We commend the Sheriff for his efforts to develop privacy safeguards, to memorialize them in writing, and to invite public input. We also commend the Sheriff for his commitment to the principle that the UAS should not be used for suspicionless surveillance. But we have grave concerns that the policy as drafted undermines that principle by authorizing precisely the type of

² See United States Government Accountability Office, Statement for the Record To the Committee on Homeland Security, House of Representatives, January 27, 2010, available at http://www.wired.com/images_blogs/threatlevel/2011/03/GAO-report-on-body-scanners.pdf, and David Kravets, “Airport ‘Nude’ Body Scanners: Are They Effective?” *Wired*, March 8, 2011, available at <http://www.wired.com/threatlevel/2011/03/scanners-part3/>.

³ See Mike Flacy, “TSA to Yank Controversial ‘Naked’ Full-Body Scanners Out of Airports,” *Digital Trends*, January 20, 2013, available at <http://www.digitaltrends.com/lifestyle/tsa-will-finally-remove-controversial-naked-full-body-scanners/>.

⁴ See Manuel Valdes, Associated Press, “Seattle mayor ends police drone efforts,” February 7, 2013, available at <http://www.nbc29.com/story/21079234/seattle-mayor-ends-police-drone-efforts>.

⁵ Liat Clark, “Charlottesville anti-drone resolution sparks similar action across US,” *Wired*, February 7, 2013, available at <http://www.wired.co.uk/news/archive/2013-02/07/charlottesville-bans-drones>.

⁶ See Kevin Cirilli, “Bob McDonnell considers Virginia drone ban,” *Politico*, February 6, 2013, available at <http://www.politico.com/story/2013/02/bob-mcdonnell-considers-virginia-drone-ban-87282.html>.

surveillance that the Sheriff agrees should not occur. We have four main concerns with the current proposed policy.

A. Data collected for one purpose should not be used for any other purpose

The policy lacks a critical privacy safeguard – a requirement that information collected for one purpose be used only for the purpose for which it was collected. Search and rescue, hazardous materials spills response, and bomb disposal missions hold much public appeal; intelligence gathering and analysis less so. It is absolutely essential to prohibit the cross-purposing of UAS-collected data to ensure that data collected for search and rescue purposes is not then reviewed, analyzed, and disseminated for intelligence purposes. Because the proposed policy lacks a prohibition against cross-purposing UAS-collected data, the policy actually authorizes the very type of generalized surveillance the Sheriff agrees should not occur.

Sheriff's Office agreements with other agencies strongly suggest that the UAS will be used for intelligence gathering purposes. The need for an express prohibition against cross-purposing of UAS-collected data is acute in light of the Sheriff's Office's agreements and understandings with other agencies – in particular, documents governing the Sheriff's participation in the Northern California Regional Intelligence Center ("NCRIC") and Cal-EMA grant conditions – which could be construed *to oblige him* to review and disseminate UAS-collected data for intelligence purposes.

The Sheriff's Office participates in NCRIC, a joint venture with other law enforcement agencies. As described in the Sheriff's Office's General Order 5.32 (attached as Appendix A), NCRIC, also known as a "fusion center," provides a central location for the collection and analysis of terrorism, homeland security, narcotics, gangs, organized crime and public safety related information, and also produces and disseminates intelligence products. *See* General Order 5.32, §III-C.

Existing Sheriff's policies require all personnel to gather, relay, and report to the Northern California fusion center so-called "terrorism-related information" or "criminal intelligence," which is broadly defined to include "Suspicious Circumstances" such as photographing bridges.⁷ Absent an express prohibition on cross-purposing of UAS-collected data, General Order 5.32 would appear to require Sheriff's Office personnel to review UAS-collected data for "suspicious circumstances" and submit any such data to the fusion center. This

⁷ General Order 5.32 provides that all Sheriff's Office "personal *shall* be responsible for gathering, relaying and reporting terrorism-related information/criminal intelligence," which is defined to include "Suspicious Circumstances (i.e., possession of multiple forms of identification; *photographing* or engaging in apparent surveillance of bridges, refineries or significant public/private facilities or infrastructure; possession of literature advocating terrorist activities; *association with persons* believed to be involved with terrorist activities.)." *See* General Order 5.32, §IV-A-1-a (emphasis added). Personnel are required to submit this information to the fusion center. *See* General Order 5.32, §IV-2.

means that data about local photographers could easily end up in a fusion center, based on their mere exercise of First Amendment protected activity.⁸

In addition, the Sheriff's grant application to the California Emergency Management Agency ("Cal-EMA") certifies that the UAS will be used in furtherance of the Homeland Security Grant Program's priority of "Building Prevention and Protection Capabilities." (See Appendix B.) To satisfy this priority, proposed projects must "expand ... capacity to detect and mitigate the threat posed by" terrorists through "interdiction and disruption of terrorist activity through enhanced understanding and recognition of pre-operational activity and other crimes, that may be precursors or indicators of terrorist activity." See FY 2012 Federal Funding Opportunity Announcement at page 29-30.⁹ In other words, projects that meet this element of the grant program must expand surveillance and intelligence gathering capacity. While the grant program also funds projects that improve capacity for response and recovery to natural disasters and terrorist threats, *see id.* at page 27, the Sheriff's Office certified that the UAS would be used to expand surveillance and intelligence gathering capacity. See Appendix B.

Based on documents governing the Sheriff's participation in the Northern California fusion center and his grant application to Cal-EMA, we have grave concerns that the UAS will be used for intelligence gathering purposes.

The proposed policy as written exacerbates concerns that the UAS will be used for intelligence gathering. Concerns about potential use of the UAS are not adequately mitigated and indeed exacerbated by the language of the proposed policy.

Section VII of the policy states: "Upon completion of each sUAS mission the recorded data *shall be reviewed and evaluated* for evidentiary value." (Emphasis added.) In conjunction with General Order 5.32, this would appear to mean that Sheriff's Office personnel will be required to review data gathered on a search and rescue mission for unrelated potential "suspicious circumstances" (such as the photographing of bridges), which then *must* under Sheriff's policies be submitted to the Northern California fusion center.

Section VII goes on to state: "Data of identifiable individuals captured during a sUAS mission shall not be retained unless there is reasonable suspicion that evidence of criminal activity is present." This statement would authorize retention of images simply because someone is jaywalking. It would also authorize retention of images of political protesters who are doing nothing more than arguably obstructing the sidewalk. In short, this provision opens the UAS to potential abuse by authorizing generalized surveillance and information gathering, in some instances, about constitutionally protected activity. In conjunction with General Order 5.32, this information would then be disseminated to the Northern California fusion center.

⁸ This concern is not abstract. Prior public records act requests to the Central California Intelligence Center show that a photographer in Galt was the subject of a suspicious activity report based on his photographing of a freeway overpass.

⁹ This document is available at http://www.fema.gov/pdf/government/grant/2012/fy12_hsgp_foa.pdf.

The Sheriff has rejected the ACLU's recommendation that the policy prohibit cross-purposing of UAS-collected data, stating that he cannot "turn a blind eye" to serious criminal activity. But it is important to place this concern in the context of the Sheriff's request. At present, the Sheriff seeks the Supervisors' approval to acquire a UAS. We are not asking the Sheriff to ignore information to which he already has access. We simply seek to ensure that the future framework for gathering information is not established in a way that is susceptible of abuse or invites private violations. Moreover, the language of the proposed policy goes far beyond authorizing the Sheriff not to turn a blind eye to serious criminal activity and instead affirmatively requires analysis of information collected by the UAS and stockpiling of data for purposes entirely unrelated to the emergency response. The Sheriff can accomplish his goal of not turning a blind eye in a manner that is far more sensitive to privacy concerns than the language of his proposed policy, but he has declined to do so.

Recommendation: The Board should not approve acquisition of a UAS absent a prohibition against using data collected for one purpose to be used for any other purpose. Absent such a prohibition, and in conjunction with other Sheriff's policies and agreements, the proposed policy would authorize the UAS to be used for the very type of intelligence gathering the Sheriff agrees in principle should not occur.

B. Privacy safeguards must be enforceable and not subject to unilateral alteration

The Sheriff seeks Board of Supervisor approval to purchase the UAS. This request acknowledges the Board's role and authority under the County Charter.¹⁰ But the Sheriff's proposed usage guidelines take the form of a proposed Sheriff's Department General Order. This means that they can be changed unilaterally in the future, without public or Board input.

The decision to acquire new surveillance technology with capital, operating and maintenance costs, unknown potential civil liability arising from accidents or misuse, and dramatic civil liberties impacts should be made with robust participation by the public and civilian elected leaders. If the Board of Supervisors votes to approve acquisition of a UAS, based on an understanding that it will only be used according to a particular set of principles with various cost (financial and privacy) implications, then those principles should not be subject to future unilateral amendment by the Sheriff.

The Board has authority to regulate use of any UAS acquired by the County. The Sheriff has suggested that the Board may lack authority to regulate his use of the UAS, due to his status as an elected constitutional officer. Statutes and caselaw support the view, however, that the Board may indeed enact limitations on the use of any UAS that the County may acquire.

¹⁰ See, e.g., Charter of the County of Alameda, §54 ("No expenditure shall be made unless a specific appropriation shall have been made therefore in the annual appropriation ordinance...."); §56 ("The Board of Supervisors shall authorize the disbursement of all public moneys....").

First, the Board as the legislative branch exercises general supervisory authority. *See, e.g.,* Gov. Code §25303 (“The board of supervisors shall supervise the official conduct of all county officers....”); §25353 (“The board may purchase, receive by donation, lease, or otherwise acquire ... real or personal property” and “manage, and control the property”); §26227 (“The board of supervisors ... may appropriate and expend money ... to establish county programs or to fund other programs ... including but not limited to, the areas of ... public safety”).

Although Section 25303 states that the Board “shall not obstruct the investigative function of the sheriff,” or the “investigative and prosecutorial function of the district attorney,” cases finding the Board to have exceeded its supervisory authority involve unusual situations where the Board seeks to seek to undertake a wholesale reorganization of the sheriff’s or district attorney’s office, for example, by transferring investigative staff from one office to another. *See Hicks v. Board of Supervisors of Orange County*, 69 Cal.App.3d 228 (1977). At the same time, the Supreme Court has acknowledged that “the operations of the sheriff’s and probation departments and the conduct of employees of those departments are a legitimate concern of the board of supervisors.” *Dibb v. County of San Diego*, 8 Cal.4th 1200, 1209 (1994). In rejecting a challenge to the establishment of a civilian review board to examine complaints against sheriff’s and probation department employees, the Supreme Court recognized that the Board of Supervisors might legitimately “be concerned about public distrust of investigations conducted by ... the sheriff” and “hopeful that [the civilian review board] would restore public confidence.” *Id.* (internal quotation marks, citation omitted).

Any ordinance regulating use of a UAS would not, unlike *Hicks*, involve a wholesale reorganization of the Sheriff’s Office and instead reflect, as in *Dibbs*, the Board’s legitimate interests in overseeing the conduct of sheriff’s employees, addressing public distrust of investigations involving the use of potentially intrusive technology, and ensuring public confidence in the Sheriff’s Office. Such an ordinance would therefore fall within the Board’s legitimate supervisory authority.

Second, the Board exercises control over the County’s expenditure of funds and may thus impose limitations on the use of an item subject to its appropriation authority. Under the County Charter, no expenditure shall be made without Board approval for the appropriation. *See* Charter of the County of Alameda, §§54, 56. The Government Code expressly authorizes the Board to impose “controls” on appropriations. *See* Cal. Gov. Code §29092. Based on this statute, a court in Fresno recently rejected a legal challenge by the Sheriff to the Board of Supervisors’ effort to control her budget by, among other things, reducing budgeted positions. *See Mims v. County of Fresno Board of Supervisors*, Fresno Superior Court, Case No. 10CECG00528, at 28 (Dec. 5, 2012) (Government Code §29092 “is not a mere reporting requirement; it is a tool by which the Board may control departmental spending”).

Recommendation: The Board should not approve acquisition of a UAS unless privacy protections are enforceable and not subject to unilateral alteration by the Sheriff.

C. The Board must have a meaningful mechanism for evaluating the costs and benefits of the UAS

As discussed above, a meaningful cost-benefit analysis should be conducted *before* the UAS is acquired. This is necessary to avoid a waste of taxpayer funds, as occurred when the federal government installed – and then subsequently decided to remove – naked scanners at airports across the country, at a cost of \$45 million.

At a minimum, however, the UAS should only be authorized as a pilot project, requiring Board approval to extend use beyond an initial pilot period. A pilot project approach would allow the Sheriff, the Board, and the public to determine whether the UAS delivers on benefits promised by vendors, and whether those benefits outweigh the financial and privacy costs, including for example, whether the UAS can be used in a way that minimizes third-party impacts and whether safeguards were adhered to during the pilot period. Although the proposed policy nominally designates the UAS a “one year pilot program,” there is no indication that continued use of the UAS beyond the one year pilot period would require further Board authorization. Absent an express requirement to this effect, this program would be a “pilot” project in name only.

Recommendation: The Board should not approve acquisition of a UAS without first requiring a cost-benefit analysis with privacy-impact assessment. At a minimum, the UAS should not be approved except on a pilot project basis requiring Board approval for continued use after the initial pilot period.

D. The UAS should not be used for criminal law enforcement purposes without a warrant

Finally, the proposed policy authorizes use of the UAS without a warrant for criminal law enforcement purposes. This is inconsistent with the Sheriff’s emphasis of the emergency response purpose of the UAS acquisition. It also provides insufficient privacy safeguards.

UASs pose privacy concerns qualitatively different from those raised by traditional forms of aerial surveillance because of their relative inexpensiveness and surreptitiousness. During the initial pilot phase of the UAS, the only authorized missions should be for emergency response or, if the purpose is criminal investigation, a warrant should be obtained. This is necessary to ensure that privacy rights are not violated while the law struggles to keep up with technological advances.

GPS tracking devices provide a useful illustration. For years, law enforcement took the position that GPS tracking devices could be installed on a suspect’s vehicle without a warrant because the device would merely track the suspect moving about on public streets. Privacy advocates argued that a warrant was required, and it took years for the Supreme Court to settle the debate, which it finally did last year, unanimously, and on the side of privacy advocates. *See United States v. Jones*, 132 S.Ct. 945 (2012). But in the intervening years, untold numbers

of individuals were investigated without the judicial protections of a warrant. To avoid similar privacy invasions from UAS usage while constitutional law undergoes the often slow process of adapting to technological change, the Board should require a warrant for any criminal investigation use of a UAS. This would mean deleting 5(a) and 5(i) from the list of authorized missions in Section V.¹¹ Particularly during the initial pilot phase, there is no need to expand uses of the UAS into uncharted territory.

Recommendation: The UAS should not be authorized for use for criminal investigation purposes absent a warrant based on probable cause.

III. Summary of Concerns and Recommendations

We summarize below our general concerns with respect to UASs:

- UASs raise significantly greater privacy concerns than conventional forms of surveillance because of their relative inexpensiveness and surreptitiousness.
- Privacy concerns are not mitigated by the limited flight duration of the UAS the Sheriff seeks to acquire because technology advances and the privacy principles in Alameda County will serve as a template here and elsewhere into the future.
- A meaningful cost-benefit analysis, including a privacy impact assessment, should be conducted before the Board approves acquisition of a UAS to avoid a waste of taxpayer funds, as occurred with the naked scanners which cost taxpayers \$45 million and which TSA has now decided to remove from airports.
- Other jurisdictions – such as Seattle, Charlottesville, and the state of Virginia – have recognized the grave privacy concerns raised by UAS and are proceeding cautiously. Alameda should do the same.

We are concerned that the Sheriff's policy as drafted authorizes the very surveillance that he agrees should not occur and does not provide sufficient privacy safeguards. We summarize our concerns with the policy below:

- ***The policy allows data collected for one purpose to be used for other purposes, inviting surveillance of the type the Sheriff agrees should not occur.*** Sheriff's Office protocols regarding collection and submission of data to the Northern California fusion center and the Sheriff's grant certification to Cal-EMA strongly suggest that the UAS will be used for intelligence gathering purposes. The proposed

¹¹ Section 5(a) also authorizes use of the UAS for "Post-incident crime scene preservation and documentation." This is in any event far too broad because it authorizes use of the UAW to document *any* crime scene. Jaywalking is a crime. Virtually any political protest will involve arguable crimes to the extent individuals gather on the sidewalk and could be construed as obstructing passage.

policy as written exacerbates concerns that the UAS will be used for intelligence gathering by requiring the analysis and evaluation of UAS-collected data, even for purposes unrelated to the emergency response purposes for which the UAS was deployed, and by authorizing retention of data even when conduct as trivial as jaywalking is captured. The policy as drafted thus invites potentially pretextual uses of the UAS. The Board should not approve acquisition of a UAS absent a prohibition against using data collected for one purpose to be used for any other purpose.

- ***The policy can be changed unilaterally by the Sheriff.*** The Board has authority to regulate use of any UAS acquired by the County pursuant to its general supervisory and budgetary authority. If the Board votes to approve acquisition of a UAS, based on an understanding that it will only be used according to a particular set of principles with various cost (financial and privacy) implications, then those principles should not be subject to future unilateral amendment by the Sheriff. The Board should not approve acquisition of a UAS unless privacy protections are set forth in an ordinance or other enforceable document.
- ***The Sheriff's proposal lacks a meaningful mechanism for the Board to evaluate the costs and benefits of the UAS.*** The County should conduct a cost-benefit analysis with privacy impact assessment to decide whether to acquire a UAS. At a minimum, however, the UAS should only be authorized as a pilot project, requiring Board approval to extend use beyond the initial pilot period. Although the Sheriff has designated the UAS a "pilot project," there is no requirement that the Sheriff obtain Board approval to continue using the UAS beyond the pilot period.
- ***The UAS should not be used for criminal law enforcement purposes without a warrant.*** The proposed policy authorizes use of the UAS without a warrant for criminal law enforcement purposes. This is inconsistent with the Sheriff's emphasis of the emergency response purpose of the UAS acquisition. It also provides insufficient privacy safeguards. Technology advances often outpace the law. Particularly during the initial pilot phase, there is no need to expand uses of the UAS into uncharted territory. Other jurisdictions, recognizing the potential dangers of UAS usage, have abandoned entirely their plans to deploy a UAS or called for a wholesale moratorium. Permitting criminal law enforcement usage – but *only* with a warrant – would be a far more modest but nonetheless important step in protecting privacy rights in the face of new technology.

Public Protection Committee
February 11, 2013
Page 11

Unless and until such time as these concerns are addressed, we urge the Board not to approve acquisition of the UAS.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda Lye', with a stylized flourish at the end.

Linda Lye
Staff Attorney
ACLU of Northern California

Enclosures

cc (via email only):

Sheriff Gregory Ahern
Captain Tom Madigan
Gabriella Raymond, County Counsel's Office
Christopher Miley, Deputy Chief of Staff, Supervisor Valle
Shawn Wilson, Chief of Staff, Supervisor Haggerty

APPENDIX A

ALAMEDA COUNTY SHERIFF'S OFFICE GENERAL ORDER	NUMBER: 5.32
	RELATED ORDERS: CALEA 46.3.2
	ISSUE DATE: September 27, 2007
	REVISION DATE: April 27, 2010
CHAPTER: Law Enforcement Operations	SUBJECT: Reporting Terrorism Related Information

- I. **PURPOSE:** To establish procedures for reporting and relaying terrorism-related information and terrorism-related criminal intelligence to the proper task force or agency.
- II. **POLICY:** All personnel shall be responsible for gathering, relaying and reporting terrorism-related information or intelligence which they receive from others or which they directly discover or observe, to the proper task force, group and/or agency. Personnel shall only gather intelligence of an individual's personal activities when it is related to terrorist activity.
- III. **DEFINITIONS**
 - A. **Information:** Individual items of information which may be related to terrorism. Such information can be derived from many sources, including, but not limited to: the media, official reports, databases, exchanges of information at formal and informal meetings, citizens and public safety/law enforcement personnel, and disseminations of information to and between local, regional, state, federal and international agencies focused on addressing the issue of terrorism. Information may be factual and/or derived from opinions and/or observations.
 - B. **Terrorism Intelligence:** The end product to a process that converts individual items of information which may be related to terrorism either into evidence, insights, conclusions or assessments. This information can then form the basis for the development of law enforcement strategies, priorities, policies or investigative tactics regarding specific crime(s), suspect(s) and/or criminal organization(s) who or which might be involved in terrorism. The intelligence process includes systematic collection of raw information which, after collation, evaluation and analysis, is disseminated to the appropriate personnel, units, task forces or agencies.
 - C. **Northern California Regional Intelligence Center (NCRIC):** A joint venture between Alameda County and fourteen other Counties in the Northern District

of California. NCRIC is a local, state and federal cooperative public safety and private sector information fusion center. The center provides a central location for the collection, evaluation, analysis and dissemination of terrorism, homeland security, narcotics, gangs, organized crime and public safety related information. The Center produces and disseminates intelligence products, conducts training and establishes and maintains liaison with public safety agencies and private sector organizations operating in the Bay Area.

IV. PROCEDURE:

A. PERSONNEL RESPONSIBILITIES

1. All personnel shall be responsible for gathering, relaying and reporting terrorism-related information/criminal intelligence. Terrorism-related information or intelligence may include but not be limited to activities falling into the following categories:
 - a. Suspicious Circumstances (i.e. possession of multiple forms of identification; photographing or engaging in apparent surveillance of bridges, refineries or significant public/private facilities or infrastructure; possession of literature advocating terrorist activities; association with persons believed to be involved with terrorist activities)
 - b. Organized crime activity
 - c. Vice activity
 - d. Civil disorder
 - e. Controlled substance law violations
 - f. White collar crime
 - g. Hate/bias related crime
 - h. Gang-related activity
 - i. Crimes related to fraud, theft and robbery (with focus on materials which could be used to make explosive devices or to hide or conceal personal identities)
 - j. Theft of uniforms and badges
2. All personnel acquiring terrorism-related information/intelligence will:

- a. Take appropriate action as necessary.
- b. Make an official report regarding acquisition of the information/intelligence consistent with report-writing guidelines, procedures and orders.
- c. Route a copy of the report containing the information/intelligence to the Agency NCRIC Liaison.

David Darrin, Deputy Sheriff
Alameda County Sheriff's Office
Intel Officer, Northern California Regional Intelligence Center
[REDACTED]
(415) 436-8530 Main, [REDACTED]

B. NCRIC RESPONSIBILITIES

1. The NCRIC collects, evaluates, and analyzes incident reports of suspicious activities reported by the private sector and public safety communities, in an effort to identify potential trends or patterns of terrorism, narcotics, gang, organized crime and related criminal operations within the Bay Area. The NCRIC then produces and disseminates reports and bulletins to public safety agency and private sector personnel who have the right and need to know the information. The NCRIC provides analytical and technical support to public safety agencies investigating suspected terrorist, narcotics, gang and organized crime related criminal activities.
2. The NCRIC will be responsible for analyzing, disseminating and storing terrorism-related information and intelligence.
3. The NCRIC will disseminate terrorism-related information and intelligence based on a "need to know" and "right to know" basis. Many factors are considered, including the nature and sensitivity of the information or intelligence, as well as the positions or authority of those designated as recipients.
4. The NCRIC functions as a vehicle for two-way communication between the FBI-Joint Terrorism Task Force, State Terrorism Threat Assessment System, public safety and private sector communities within our fifteen county regions.
5. The NCRIC has a "24/7" Duty Threat Officer who can be contacted to report terrorism-related tips and leads. The Duty Threat Officer can be reached to relay information/intelligence at [REDACTED] or at www.ncric.org

APPENDIX B



Alameda County Sheriff's Office

Office of Homeland Security and Emergency Services
4985 Broder Boulevard, Dublin, CA 94568-3309

Gregory J. Ahern, Sheriff

Director of Emergency Services
Captain - Marshal

25% LAW ENFORCEMENT

25% of FY2012 SPSGP must be used dedicated to Law Enforcement Terrorism Prevention-oriented Activities. Alameda County Operational Area will use Projects B, E, F, G, and H to ensure that this requirement is met. The projects will support Building Prevention and Protection Capabilities.

CALIFORNIA EMERGENCY MANAGEMENT AGENCY

CFDA # 97.067

Adaptations to this document may result in delayed application approval, certification requests, or reimbursement requests. Subgrantee may be asked to recheck and/or re-submit any altered Financial Management Forms Worksheet.

Alameda County Sheriff's Office

Project A: M & A	Investment 1, 5 Objective 1.1, 5.1 Capability Supported: Planning, Information Sharing and Dissemination	Assist Operational Area with the management and administration of the State Homeland Security Grant Program.	Fund staffing needs to comply with all the grant requirements.	At the 6-month mark, this project will be % complete and \$ funds will be expended. At the 12-month mark, this project will be 50% complete and \$30,150 funds will be expended. At the 18-month mark, this project will be % complete and \$ funds will be expended.
Project B: Interoperability	Investment 3 Objective 3.1 Capability Supported: Communications	Project is being carried over from previous years. The East Bay Regional Communications System is a regional interoperability communication project. It is a two county P-25 compliant communications system in the final stages of buildout. Funding will be used to purchase consoles for the dispatch centers.	The completion of the EBRCSA system will provide regional interoperability for public agencies within Alameda and Contra Costa counties as well as providing a platform to allow connection between North Bay, South Bay and West Bay systems. The targeted completion date is January, 2013.	At the 6-month mark, this project will be % complete and \$ funds will be expended. At the 12-month mark, this project will be 100% complete and \$50,000 funds will be expended. At the 18-month mark, this project will be % complete and \$ funds will be expended.
Project C: CERT	Investment 4 Objective 4.1 Capability Supported: Continuity Preparedness and Participation, Planning	CERT funding is needed to educate citizens through out the operational area about disaster preparedness and to train them in basic disaster response skills.	CERT members can assist others in their neighborhood when professional responders are not immediately available to help. CERTs provide useful information to responders and support their efforts, as directed, at the disaster site.	At the 6-month mark, this project will be % complete and \$ funds will be expended. At the 12-month mark, this project will be 50% complete and \$50,000 funds will be expended. At the 18-month mark, this project will be % complete and \$ funds will be expended.
Project D: Hazmat Trailer	Investment 9 Objective 5.1, 5.3 Capability Supported: CBRNE Detection, Response and Decontamination Capabilities	Livermore/Pleasanton Fire seeks funds to purchase a trailer to be used to house and transport Type II Hazmat Team equipment for their Hazmat Team. L/P Fire is a part of a County, Regional and State set of resources. As a part of the Cal EMA Mutual Aid System, the team could be requested to respond anywhere within the state should the need arise.	Obtaining this trailer would enable L/P Fire's Hazmat team to safely store and transport Type II Hazmat equipment that can't be carried on the current vehicle. Acquiring this equipment is vital to the Hazmat team's ability to serve this geographically isolated area of Alameda County and will enable it to meet the needs of the State Mutual Aid Plan.	At the 6-month mark, this project will be % complete and \$ funds will be expended. At the 12-month mark, this project will be 50% complete and \$50,000 funds will be expended. At the 18-month mark, this project will be % complete and \$ funds will be expended.
Project E: EOD	Investment 3 Objective 5.1, 5.3 Capability Supported: CBRNE Detection, Response and Decontamination Capabilities	Explosive Detector to be used by Alameda County Bomb Technicians to determine explosive products (liquids and solids) while providing explosive ordnance disposal services to the cities of Alameda County unincorporated areas and throughout Region 2. The Bomb Squad supports all first responders in these areas.	The detector is needed to ensure all Bomb Technicians have the appropriate analysis equipment necessary to work in hazardous environments where exposure to explosive, chemical, biological, radiological material is possible. It will provide a higher level of personal protection for Bomb Technicians while conducting operations.	At the 6-month mark, this project will be % complete and \$ funds will be expended. At the 12-month mark, this project will be 100% complete and \$50,000 funds will be expended. At the 18-month mark, this project will be % complete and \$ funds will be expended.
Project F: Portable Scan System	Investment 1, 5 Objective 5.1, 5.3 Capability Supported: Information Analysis/Information Sharing, CBRNE Detection, Response and Decontamination Capabilities	Portable scanning and mapping instrument for Alameda County Crime Lab. The Crime Lab is utilized by all the cities in the county, East Bay Regional Parks and the California Highway Patrol. ACSO is the Mutual Aid Coordinator for Region II; the scanner will be available for use throughout the 16 county region.	The Scanning system provides a detailed reconstruction of a crime scene for documentation purposes. It is accepted as evidence in U.S. courts for both Civil and Criminal cases. The system has applications for Vulnerability and Threat Assessment, Post Blast Investigation, CBRNE Response and Fire Scene Reconstruction.	At the 6-month mark, this project will be % complete and \$ funds will be expended. At the 12-month mark, this project will be 50% complete and \$42,000 funds will be expended. At the 18-month mark, this project will be % complete and \$ funds will be expended.

Project	Investment's Objective	Project Description	Need	Performance Measures
Project G: Unmanned Aerial System	Investment's Objective 1.1, 5.1 Capability Supported: Intelligence and Information sharing and Dissemination, Planning	ACSO seeks funds to purchase an Unmanned Aerial System equipped with video downlink to provide real-time, situational analysis for first responders in the operational area and Region 2 in emergencies and/or terrorist related events. The UAS will be operated by licensed pilots from the Sheriff's Air Command Unit.	An UAS would be a valuable asset to the operational area in all disciplines. In the aftermath of an emergency or terrorist event, the UAS can provide live camera feed to assist with direction of first responders and damage assessment. The UAS will enhance our ability to respond through out the region.	At the 6-month mark, this project will be % complete and \$____ funds will be expended. At the 12-month mark, this project will be % complete and \$____ funds will be expended. At the 18-month mark, this project will be 100% complete and \$31,646 funds will be expended.
Project H: Urban Shield	Investment's Objective 5.1, 6.1 Capability Supported: Planning, CBRNE Detection, On Site Incident Management	Urban Shield is a full scale exercise designed to test the adequacy of regional policies, plans, procedures and protocols during an emergency or terrorist related event. Regional first responders are involved in the planning, coordinating and/or managing this event.	Urban Shield is unique because of its focus on training during the exercise. This training provides first responders, homeland security officials, emergency management officials, and other personnel with the knowledge, skills and abilities needed to perform key tasks in large scale disasters or terrorist events.	At the 6-month mark, this project will be % complete and \$____ funds will be expended. At the 12-month mark, this project will be 100% complete and \$50,000 funds will be expended. At the 18-month mark, this project will be % complete and \$____ funds will be expended.
Project I: MMRS	Investments 4.6, 5: Objectives 4.1, 5.1, Capability Supported: Planning, Mass Prophylaxis, CBRNE Detection, Response and Decontamination Capabilities	Funds are needed to purchase essential mass casualty response equipment and conduct training to prepare the community with the knowledge and experience to deal with large scale emergencies involving hazardous materials and/or potential WMD events in their jurisdictions or within the region.	MMRS funding allows the Op Area to continue planning, equipping and training for Mass Casualty events to protect the health of the population in an emergency and/or terrorist event.	At the 6-month mark, this project will be % complete and \$____ funds will be expended. At the 12-month mark, this project will be 50% complete and \$110,000 funds will be expended. At the 18-month mark, this project will be % complete and \$____ funds will be expended.
Project J	Investment Goal Objective			At the 6-month mark, this project will be % complete and \$____ funds will be expended. At the 12-month mark, this project will be % complete and \$____ funds will be expended. At the 18-month mark, this project will be % complete and \$____ funds will be expended.
Project K	Investment Goal Objective			At the 6-month mark, this project will be % complete and \$____ funds will be expended. At the 12-month mark, this project will be % complete and \$____ funds will be expended. At the 18-month mark, this project will be % complete and \$____ funds will be expended.
Project L				At the 6-month mark, this project will be % complete and \$____ funds will be expended. At the 12-month mark, this project will be % complete and \$____ funds will be expended. At the 18-month mark, this project will be % complete and \$____ funds will be expended.
Project M	Investment Goal Objective			At the 6-month mark, this project will be % complete and \$____ funds will be expended. At the 12-month mark, this project will be % complete and \$____ funds will be expended. At the 18-month mark, this project will be % complete and \$____ funds will be expended.