



December 3, 2012

By facsimile and United States mail

Board of Supervisors
1221 Oak Street, Suite 536
Oakland, CA 94612

Re: Request to withhold approval of drone/unmanned aerial system; Agenda Item 22 on December 4, 2012 Board of Supervisors hearing

Dear Honorable Members of the Board of Supervisors:

At its November 6, 2012 meeting, the American Civil Liberties Union of Northern California and many concerned Alameda County residents testified about the dangers of drones in our community. At that time, President Wiley referred the matter to the Public Protection Committee. We recently learned, however, that buried on the agenda for tomorrow's Board of Supervisors' hearing (Agenda Item 22) is a request by the Sheriff to apply for, receive, and administer grant funds for the drone. We are particularly troubled because the documents submitted to the Board by the Sheriff are not candid about the Sheriff's intended use of the drone. While the Sheriff emphasizes "search and rescue" type uses, documents from the California Emergency Management Association ("Cal-EMA") make clear that the Sheriff intends to use the drone for surveillance and intelligence gathering.

Regardless of whether the Board ultimately decides to approve acquisition of a drone, there can be no doubt that the topic raises important and complex legal and public policy issues. Because drones pose unique dangers for privacy invasions and are subject to potential abuse, any decision by the County to purchase a drone should be made through an open and transparent process with ample opportunity for public participation and comment. We therefore request that you withhold approval for the Sheriff to receive or spend any funds on a drone until such time as the Public Protection Committee has the opportunity to hold a hearing on the matter and the full Board has the opportunity to consider whether drones are appropriate in our community and if so what safeguards should be in place to ensure that drones are not abused. We are concerned that the Sheriff's effort to push through summary approval of Agenda Item 22 would effectively usurp the Board's authority to decide these important matters in a considered and transparent manner.

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Documents recently obtained by the ACLU of Northern California from the Sheriff's Office reveal that the Sheriff has already applied for and received from Cal-EMA approval for a grant in the amount of \$31,646 "to purchase an Unmanned Aerial System equipped with video downlink to provide real-time situational analysis." The memorandum submitted by the Sheriff to the Board states that the drone would be used for "search and rescue missions, tactical operations, disaster response, recovery and damage assessment, explosive ordnance response, wild land and structure fire response and response to Hazmat incidents. (November 26, 2012 letter to Board of Supervisors re: 2012 Homeland Security Program, Attachment 22 to December 4, 2012 Agenda)

But this omits highly important information. *Cal-EMA documents show that the Sheriff intends to use the drone for surveillance.* In particular, Cal-EMA documents show that the Sheriff's grant application identified the purpose of acquiring the drone as "Intelligence and Information sharing." (Cal-EMA October 12, 2012 grant at page 10.)¹ In addition, the Sheriff certified to Cal-EMA that the drone would be used for "Law Enforcement Terrorism *Prevention-oriented* activities." (Cal-EMA October 12, 2012 grant notification at page 19.) It is unclear how search and rescue missions would *prevent* terrorism. Clearly, if the Sheriff's certification to Cal-EMA is true, his office intends to use the drone for surveillance and intelligence gathering – a purpose not clearly disclosed to the Board in the Sheriff's submissions in connection with this agenda item.

This is simply the latest example of the Sheriff's failure to be sufficiently candid with the public or the Board about its efforts to acquire a drone. When news of the potential drone acquisition first came to light in October, the Sheriff's office claimed, as reported in an article dated October 18, 2012, that it was "only in the preliminary stages of possibly purchasing unmanned aerial vehicles."² But six days earlier, on October 12, 2012, the department had already received notification that it had been awarded \$31,646 in Homeland Security Grant Funds from the California Emergency Management Agency to cover the purchase of an "unmanned aerial system." And presumably, it had applied for those funds well in advance of October 2012. Applying for and receiving grant funds to buy a drone hardly seems "preliminary."

In addition, the Sheriff has now sought approval to "apply for, accept and administer" funds from Cal-EMA for the drone. *See* Agenda Item 22, December 4, 2012 Board of Supervisors Agenda. But the Sheriff has not apprised the Board of significant information relating to this request, for example, that it has already proceeded far down the path of

¹ We would be happy to provide a copy of this lengthy document upon request.

² Ari Bloomekatz, "Privacy issues raised in Alameda County's possible use of drones," Los Angeles Times, October 18, 2012, available at <http://latimesblogs.latimes.com/lanow/2012/10/alameda-county-drones.html>.

administering the grant – having gone so far as to have solicited and received bids from three companies for a drone. Documents obtained by the ACLU of Northern California through a Public Records Act request show that three vendors have submitted proposals, each of which *exceeds* the grant amount awarded by Cal-EMA for this purpose by Cal-EMA. Lockheed Martin’s AR425 QuadRotor would cost \$49,981. Aeryon Labs, Inc. has offered two quotations, one, for its Aeryon Scout Pro system, which would cost \$107,500 and the other, for its Aeryon Scout Civilian System, which would cost \$67,500. This company is offering optional thermal infrared and video zoom capabilities at additional cost. Finally, a third vendor, ING Engineering, has quoted its VTOL “Scout” system, at a cost of Canadian Dollars \$89,500 (approximately US\$90,157), with optional thermal imaging and zoom features at additional cost. The Sheriff has not informed the Board that it has solicited these bids or that they exceed available grant funds, or explained how it intends to make up the difference.

Moreover, by burying the request for drone authorization in a larger request on the Board’s lengthy agenda, the Sheriff is bypassing the expressed will of the Board to take up this matter through the Public Protection Committee.

Although the Sheriff’s submission to the Board of Supervisors represents that his office will operate the drone in compliance with the law, the Board of Supervisors has not yet had an opportunity to determine whether the County should even purchase a drone, let alone what safeguards should be in place to protect privacy. Those decisions are weighty ones, and the Board should not countenance the Sheriff’s effort to usurp the authority to make them in due course. But approving Agenda Item 22 would do precisely that. For the foregoing reasons, we request that you withhold approval for the receipt and expenditure of drone funds at this time.³

Sincerely,



Linda Lye
Staff Attorney

³ This can be accomplished either by withholding approval of agenda item 22 in its entirety, or modifying the draft resolution submitted by the Sheriff in connection with this item. The resolution submitted by the Sheriff could be amended as follows (proposed addition in underline): “NOW, THEREFORE, BE IT RESOLVED that the Sheriff, by title is authorized on behalf of the Board of Supervisors of the County of Alameda, to apply for this grant and accept funds and execute on behalf of the County of Alameda the Grant Award Agreement, including any extensions or amendments thereof, provided that no funds shall be expended in connection with an unmanned aerial system except after express subsequent approval by the Board of Supervisors. The Sheriff is allowed to enter into agreements to administer the funds and act as the recipient to the following sub-recipients: City of Oakland, the City of Fremont, the Livermore-Pleasanton Fire Department and others as deemed necessary to accomplish the appropriate funding to local emergency management organizations within the parameters of the grant.”