



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai'i

BY EMAIL AND CERTIFIED MAIL

July 9, 2019

Suzanne D. Case
Chairperson
Board of Land and Natural Resources
PO Box 621
Honolulu, HI 96809
suzanne.case@hawaii.gov

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Governor, State of Hawai'i
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State Capitol
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Hawai'i DLNR DOCARE
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Clare E. Connors
Attorney General
Hawai'i Department of the Attorney General
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Honolulu, HI 96813
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Re: DLNR's Acquisition of a Long Range Acoustic Device (LRAD)

Dear Chairperson Case, Chief Redulla, Governor Ige, and Attorney General Connors:

The ACLU of Hawai'i Foundation ("**ACLU of Hawai'i**") has learned that the State of Hawai'i Department of Land and Natural Resources ("**DLNR**") Division of Conservation and Resources Enforcement ("**DOCARE**") recently purchased a long-range acoustic device ("**LRAD**"), a military-oriented weapon commonly known as a "sound gun" or "sound cannon." Specifically, procurement records show DOCARE bought an LRAD 100X MAG-HS system ("**LRAD 100X**") from LRAD Corporation.¹ We previously wrote to you to request a meeting to discuss our concerns about DLNR's acquisition of the LRAD 100X. We instead received the attached July 1, 2019 letter from Chairperson Case, which referred to peaceful protestors as "nonviolent noncombatants," and maintained that the LRAD was "not listed in DLNR's use of force continuum," while also claiming that it was a "legitimate useful

¹ Solicitation No. Q19001912, *Portable Battery Powered Public Address and Hailing System Kit*, HAWAII STATE PROCUREMENT OFFICE (May 20, 2019), <https://hiepro.ehawaii.gov/public-display-solicitation.html?rfid=19001912>.

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tool for law enforcement in appropriate situations in compliance with law and standard use of force policy.”² This letter raised more questions than it answered.

We write now in response to Chairperson Case's July 1, 2019 letter to express our concerns about DLNR's acquisition of the LRAD 100X, and to demand that DLNR and DOCARE publicly commit to not deploying LRAD for *any* anti-protest or crowd control purposes, including in connection with the likely protests around the Thirty Meter Telescope (“TMT”) on Mauna Kea.³ Given the uncertainty around the timeline for TMT's construction—and the timing and scope of related protests—***we ask that you respond in writing making such commitment by July 19, 2019.***

At the outset, LRAD is a device created and intended for military use. In fact, LRAD was explicitly developed as a sound weapon “in response to the deadly October 2000 terrorist attack on the U.S.S. Cole.”⁴ That the precise LRAD 100X model purchased by DLNR is frequently sold in large quantities for use by military operations⁵ further confirms LRAD's military origins.⁶ While some descriptions of LRAD—including DLNR's⁷—frame it as an innocuous “communications” device, LRAD Corporation's own marketing statements reveal the truth: LRAD is a “high-intensity directional acoustic hailer” designed for use by “military personnel” “in the harshest military conditions” and “allow[ing] for *near instantaneous escalation across the force protection spectrum.*”⁸ In sum, LRAD is an acoustic weapon used to force compliance by causing pain.

² See Attachment A (July 1, 2019 Ltr. from Suzanne Case to Mateo Caballero).

³ See, e.g., *Activists Pledge More Protests as Thirty Meter Telescope Construction Given Green Light to Proceed*, HAWAII NEWS NOW (June 20, 2019), <https://www.hawaiinewsnow.com/2019/06/20/authorities-dismantle-structures-mauna-kea-set-up-by-tmt-protesters>.

⁴ LRAD Corp., *LRAD Overview* – [206], YOUTUBE (Aug. 1, 2017), <https://youtu.be/nEemjN0PJ6Q?t=4>; see also LRAD Corp., *Annual Report (Form 10-K)*, at 1 (Dec. 21, 2018), <https://seekingalpha.com/filings/pdf/13122642.pdf> (noting “the October 2000 attack on the USS Cole” as the reason why “LRAD products were initially developed”).

⁵ See, e.g., Press Release, *LRAD Corporation Announces \$1.7 Million in Defense and Homeland Security Orders*, LRAD Corp. (June 11, 2019), <https://www.marketwatch.com/press-release/lrad-corporation-announces-17-million-in-defense-and-homeland-security-orders-2019-06-11> (announcing \$1.7 million in orders of the “LRAD 100X” by “the U.S. Military,” “Japan's Coast Guard,” and “homeland security” agencies in Southeast Asia).

⁶ See, e.g., Brochure, *Vehicle Mounted Solutions*, LRAD CORP. (Jan. 8, 2014), https://lradx.com/dsei/assets/lrad_brochure_vehicle_mounted_solutions.pdf (marketing brochure stating that “LRAD Corporation provides leading defense corporations and government/military organizations with . . . deterrent solutions across the spectrum of contingency operations” and advertising “LRAD 100X” as “meet[ing] stringent US Navy/US Army requirements”); LRAD Corp., *Annual Report (Form 10-K)*, at 1 (Dec. 21, 2018), <https://seekingalpha.com/filings/pdf/13122642.pdf> (“LRAD systems are deployed by the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard, as well as international military services . . .”).

⁷ See Attachment A, at 1 (describing LRAD as being “used . . . to ensure public safety communications and emergency warnings are clearly heard and understood”).

⁸ LRAD Corp., *Products / Overview* (as of Apr. 8, 2015), available at <https://web.archive.org/web/20150408100425/http://www.lradx.com:80/site/content/view/33/47> (emphasis added); see also Press Release, *supra* note 5 (LRAD CEO touting LRAD's “escalation of force (“EOF”) capabilities”).

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Indeed, LRAD has devastating effects on people. The LRAD technology concentrates and directs acoustic energy (that is, sound) in a narrow beam at a target, making for an incredibly loud, powerful, and painful sound.⁹ As one victim of LRAD explains, "Your brain feels like it's vibrating in a bowl of jelly on the table."¹⁰ The LRAD 100X, in particular, has a maximum output of 140dB, which is equal to the sound of a gunshot or firecracker, and to which "any exposure . . . causes *immediate damage* (and causes actual pain)."¹¹ Unsurprisingly, as Amnesty International has warned, when "[u]sed at close range, loud volume and/or excessive lengths of time, LRADs can pose [] serious health risks which range from temporary pain, loss of balance and eardrum rupture, to permanent hearing damage."¹² For this reason, DLNR's observation that "the 100X is the smallest [LRAD] system offered"¹³ is beside the point when even "the smallest" device can cause so much harm.

We also know how LRAD technology has been abused in connection with civilian protests and other First Amendment-protected activity. Law enforcement first unleashed the device on peaceful protesters at the G20 summit held in Pittsburgh in 2009,¹⁴ causing pain and permanent hearing loss to both protesters and bystanders alike.¹⁵ Then it was deployed at Occupy Wall Street in 2011.¹⁶ And then Ferguson, Missouri in 2014.¹⁷ And once again, at Standing Rock.¹⁸

⁹ See Alex Pasternack, *The New Sound of Crowd Control*, VICE (Dec. 17, 2014), https://www.vice.com/en_us/article/gkve7q/the-new-sound-of-crowd-control (describing technology); see also LRAD Corp., *LRAD 100X MAG-HS Specifications Datasheet* (last accessed July 9, 2019), https://www.dropbox.com/s/1a8q2hx1vcqqoof/LRAD_Datasheet_100X-MAG-HS%20%281%29.pdf?dl=0 (noting LRAD 100X's "directionality, power & range").

¹⁰ Jerod MacDonald-Evoy, *What is it Like When The Police Use an LRAD 'Sound Cannon' To Disperse a Crowd?* ARIZONA MIRROR (Nov. 26, 2018), <https://www.azmirror.com/blog/what-is-it-like-when-the-police-use-an-lrad-sound-cannon-to-disperse-a-crowd>.

¹¹ *What is a Decibel, and How is it Measured?*, HOWSTUFFWORKS (last accessed July 9, 2019), <https://science.howstuffworks.com/question124.htm> (emphasis added).

¹² *On the Streets of America: Human Rights Abuses in Ferguson*, AMNESTY INTERNATIONAL, at 14 (Oct. 2014), <https://www.amnestyusa.org/files/onthestreetsofamericaamnestyinternational.pdf>.

¹³ Attachment A, at 2.

¹⁴ See, e.g., glassbeadian, *Long Range Acoustic Device (LRAD) G20 Pittsburgh*, YOUTUBE (Sept. 26, 2009), https://www.youtube.com/watch?v=QSMYy3_dmrM (depicting police's use of LRAD on peaceful civilians).

¹⁵ Brian Bowling, *Pittsburgh To Pay Researcher Who Suffered Hearing Loss During G-20 Summit*, TRIBLIVE.COM (Nov. 14, 2012), <https://archive.triblive.com/news/pittsburgh-to-pay-researcher-who-suffered-hearing-loss-during-g-20-summit> (noting Pittsburgh "agreed to pay \$72,000 to a professor who experienced permanent hearing loss").

¹⁶ See Carl Franzen, *LRAD Defends 'Sound Cannon' Use At Occupy Wall Street*, TALKING POINTS MEMO (Nov. 17, 2011), <https://talkingpointsmemo.com/idealab/lrad-defends-sound-cannon-use-at-occupy-wall-street>.

¹⁷ Lily Hay Newman, *This Is The Sound Cannon Used Against Protesters in Ferguson*, SLATE (Aug. 14, 2014), <https://slate.com/technology/2014/08/lrad-long-range-acoustic-device-sound-cannons-were-used-for-crowd-control-in-ferguson-missouri-protests.html>.

¹⁸ See Wes Enzinna, *I Witnessed Cops Using Tear Gas, Rubber Bullets, and Sound Cannons Against Anti-Pipeline Protesters*, MOTHER JONES (Oct. 31, 2016), <https://www.motherjones.com/politics/2016/10/standing-rock-protests-pipeline-police-tasers-teargas>; Alleen Brown, Will Parrish, & Alice Sperti, *Leaked Documents Reveal Counterterrorism Tactics Used At Standing Rock To 'Defeat Pipeline Insurgencies'*, THE INTERCEPT (May 27, 2017),

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In light of the above, the ACLU of Hawai'i has various concerns about DLNR's purchase of an LRAD. As an initial matter, it is unclear why DLNR—whose mission is to “[e]nhance, protect, conserve and manage Hawaii’s unique and limited *natural, cultural and historic resources*”¹⁹—has any need for a *military-oriented* sound gun. A weapon like the LRAD does not belong in DLNR's arsenal in the first instance.

The ACLU of Hawai'i is particularly concerned about how DLNR's possession of an LRAD device will impact the likely protests relating to the construction of the TMT. The direct physical and psychological harms that any deployment of the LRAD by DLNR would have on protesters is obvious—and such deployment would constitute excessive force in violation of the Fourteenth Amendment.²⁰ But in addition—and perhaps even more concerning—is the chilling effect that DLNR's *possession* of an LRAD has on people's desire and ability to exercise their First Amendment rights in the first place.²¹ In other words, regardless of whether DLNR actually *uses* LRAD at Mauna Kea, many people very likely will be too afraid to exercise their rights to assemble and protest at all, lest they suffer the same kinds of harms that past LRAD victims have suffered. Worse, this chilling effect deters not only protesters, but also journalists, observers, and other bystanders, further showing the indiscriminate, overbroad influence of LRAD.

Those concerns are amplified by the fact that it is unclear whether and how LRAD falls on DLNR's use-of-force continuum. DLNR has made directly contradictory statements on this issue. On the one hand, DLNR claims its LRAD 100X “is not a weapon and is not listed in DOCARE's use of force continuum.” But in the same letter, DLNR claims its LRAD 100X “is a legitimate useful tool for law enforcement in appropriate situations in compliance with law and *standard use of force policy*.”²² This lack of clarity suggests that DLNR itself does not know the situations in which it will use LRAD, and whether and how any use will be constrained to avoid needless and excessive harm. This is alarming. Until DLNR has clear policies and guidelines around LRAD use, DLNR should not use an LRAD.

<https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies> (noting law enforcement intelligence update describing LRADs).

¹⁹ Mission Statement, DLNR (last accessed July 9, 2019), <http://dlnr.hawaii.gov>.

²⁰ See *Edrei v. Maguire*, 892 F.3d 525, 529 (2d Cir. 2018) (“[W]e hold that purposefully using a LRAD in a manner capable of causing serious injury to move non-violent protesters to the sidewalks violates the Fourteenth Amendment under clearly established law.”), *cert. denied*, No. 18-810, 2019 WL 2166409 (U.S. May 20, 2019).

²¹ See, e.g., *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (“This court has held that government officials violate [the First Amendment] when their acts ‘would chill or silence a person of ordinary firmness from future First Amendment activities.’” (quoting *Mendocino Environmental Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir.1999)).

²² Compare Attachment A, at 1, with *id.* at 2 (emphasis added).

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For all these reasons, the ACLU of Hawai'i now calls on the DLNR to reassure the people of Hawai'i that it will not deploy LRAD for *any* anti-protest or crowd control purposes, including specifically in connection with the likely protests around the TMT on Mauna Kea.

This commitment should be easy for DLNR and DOCARE to make. The entire "justification" DOCARE provided to Chairperson Case for the purchase of its LRAD 100X is natural disasters.²³ Indeed, as DOCARE's request for approval stated, "The volcanic eruption of Kilauea Volcano and the high number of Hurricane activity experienced by the State of Hawaii in 2018 . . . show[ed] the need for equipment capable of providing warning to the public in remote and rural areas."²⁴ The "other situations" used to justify the purchase of the LRAD 100X are: "tsunami inundation zone evacuation," "response to High Surf and coastal flooding episodes," and "support of the [DLNR]'s wildland fire responses."²⁵ Given that DOCARE purchased its LRAD for natural disaster warnings, it should have no difficulty abstaining from using that device for anti-protest or crowd control purposes—purposes on which DOCARE did not rely in seeking an appropriation.²⁶

But if for some reason DLNR cannot make this public commitment, the ACLU of Hawai'i stands ready to respond appropriately—as it has done before—in defense of people's First Amendment rights. We note that courts are squarely on our side. Two lawsuits challenging law enforcement use of LRAD resulted in resounding victories for First Amendment rights. *Piper v. City of Pittsburgh*—involving a professor who suffered permanent hearing loss while attending the 2009 G20 Summit—ended in a settlement in which Pittsburgh both paid monetary damages and implemented a new policy limiting LRAD use.²⁷ And in a 2018 opinion in *Edrei v. Maguire*—involving half a dozen activists and journalists at a 2014 New York City protest—the United States Court of Appeals for the Second Circuit "h[e]ld that purposefully using a LRAD in a manner capable of causing serious injury to move non-violent

²³ See Attachment B (Mar. 29, 2019 Request for Approval from Jason K. Redulla to Suzanne D. Case). KAHEA obtained Attachment B from DLNR through open records requests. Had KAHEA not made these requests, it is unclear whether and when the public would have learned about DLNR's acquisition of the LRAD 100X.

²⁴ *Id.*

²⁵ *Id.*

²⁶ If, however, DOCARE used "natural disasters" as a pretext to obtain an LRAD to be used for anti-protest or crowd control purposes (at Mauna Kea or elsewhere), that would raise a separate set of serious concerns. *Cf. Dep't of Commerce v. New York*, No. 18-966, 2019 WL 2619473 (U.S. June 27, 2019) (remanding decision to add citizenship question to 2020 Census because of the "significant mismatch between the decision the [Commerce] Secretary made and the rationale he provided" and noting the importance of agencies "offer[ing] genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public").

²⁷ Press Release, *City of Pittsburgh Settles G-20 Lawsuits*, ACLU OF PENNSYLVANIA (Nov. 14, 2012), <https://www.aclupa.org/news/2012/11/14/city-pittsburgh-settles-g-20-lawsuits>.

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protesters" constitutes "excessive force" and "violates the Fourteenth Amendment under clearly established law."²⁸ We hope DLNR heeds the guidance these two suits provide.

While LRAD might legitimately be used during natural disasters,²⁹ it simply has no place at protests and mass gatherings. Used in that way, LRAD is dangerous not only to the human body, but also to people's rights to free speech and assembly—and to democracy itself. The G20 Summit, Occupy Wall Street, Ferguson, and Standing Rock were enough. Mauna Kea should not be next.

We look forward to hearing from DLNR and DOCARE. If you have any questions or comments, please contact me at 808-522-5905 or wkim@acluhawaii.org.

Sincerely yours,



Wookie Kim
Staff Attorney

Enclosures: Attachment A (July 1, 2019 Ltr. from Suzanne Case to Mateo Caballero)
Attachment B (Mar. 29, 2019 Request for Approval from Jason K. Redulla to Suzanne D. Case)

²⁸ *Edrei*, 892 F.3d at 529; see also Nick Pinto, *NYPD Use of Sound Cannons For Crowd Dispersal Can Qualify As Excessive Force, Judge Rules*, GOTHAMIST (June 14, 2018), https://gothamist.com/2018/06/14/lrad_sound_cannon_lawsuit.php.

²⁹ Such use would still need to be subject to appropriate policies, guidelines, and training—components that do not presently appear to exist with respect to DLNR's LRAD 100X.

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 1, 2019

Mr. Mateo Caballero
Legal Director
Attorney General
P.O. Box 3410
Honolulu, HI 96801

Dear Mr. Caballero,

This letter is in response to your email of June 24, 2019 concerning our Division of Conservation and Resources Enforcement's (DOCARE) purchase of a Long Range Acoustic Device.

Long Range Acoustic Device (LRAD) systems are currently used in 72 countries and in more than 400 U.S. cities, counties, and states to ensure public safety communications and emergency warnings are clearly heard and understood.

DOCARE officers are often called upon in their roles as State Law Enforcement Officers to provide warnings in emergency situations for public safety purposes.

Over the past year, DOCARE officers have had the responsibility of warning large groups of people of impending hurricanes and the Kilauea eruption in Puna.

DLNR Division of Conservation and Resources Enforcement (DOCARE) purchased a 100x portable battery powered public address and hailing system kit from LRAD Corporation this year.

The LRAD Corp. states: "The system purchased by the Hawaii Dept. of Land and Natural Resources is used for public address and emergency notifications. LRAD is not a 'sound cannon.' The LRAD 100X system has been used by local law enforcement agencies to broadcast evacuation notices; for instance during wildfires in Colorado last year:

<https://www.lradx.com/video/lrad-100x-used-broadcast-fire-evacuation-notices-colorado/>

The public address and hailing system is not a weapon and is not listed in DOCARE's use of force continuum.

The assertion that DOCARE utilized an LRAD in association with protests on Maui's Haleakala several years ago is completely false.

The purchase of a portable battery powered public address and hailing system kit by DOCARE was done following state procurement rules and is a matter of public record.

Attachment A

This was in no way a "secret purchase" as alleged by Kahea. Kahea made two open records requests, to which DOCARE responded in full.

The recent television report depicted a completely different model with different capabilities and was not an accurate depiction of the device acquired by DLNR/DOCARE. We note that the 100X is the smallest such system offered by LRAD.

We understand and acknowledge the concerns raised regarding use of excessive force on nonviolent noncombatants. The LRAD system purchased by DOCARE is not intended to be used in that way. The LRAD is a legitimate useful tool for law enforcement in appropriate situations in compliance with law and standard use of force policy.

If you have further questions, please feel free to contact DOCARE Chief Jason Redulla at Jason.K.Redulla@hawaii.gov.

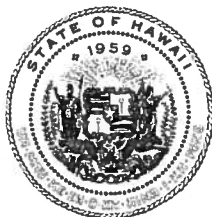
Sincerely,



Suzanne D. Case
Chairperson

cc: Jason Redulla
Linda Chow

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 29, 2019

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TO: Suzanne D. Case, Chairperson
Department of Land and Natural Resources

FROM: Jason K. Redulla, Acting Division Administrator
Division of Conservation and Resources Enforcement

SUBJECT: Request for Approval to Purchase Equipment or Motor Vehicles

Pursuant to EM 18-03 *FY 19 Budget Execution Policies and Procedures*, we request your approval to purchase the following:

1. Description

Request to purchase one (1) man portable long-range, battery powered, public address system device and accessories.

2. Justification

The volcanic eruption of Kilauea Volcano and the high number of Hurricane activity experienced by the State of Hawaii in 2018 caused the Division of Conservation and Resources Enforcement to conduct public safety operations. These operations have shown the need for equipment capable of providing warning to the public in remote and rural areas. These types of operations also include the need for equipment to respond to and provide the means for public address and warning in other situations such as tsunami inundation zone evacuation and response to High Surf and coastal flooding episodes and support of the Department's wildland fire responses.


3. Cost and Means of Financing

- Estimated cost: \$25,000.00
- Source of Funds: General Funds. Appropriation G-045 will be used.
- Budgeted: Yes

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DEPT OF LAND AND
NATURAL RESOURCES

Please call Jason Redulla at 587-0066 if you have any questions or require additional information.

☒ Approved ☐ Disapproved



SUZANNE D. CASE
Chairperson



Date