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JOSEPH E. HOLLAND COUNTY CLERK, RECORDER AND ASSESSOR

January 17, 2014

RECEIVED January 17, 2014 **Commission on State Mandates**

Ms. Heather Halsey Executive Director Commission on State Mandates 980 9th Street, Suite 300 Sacramento, CA 95814

Re: Comments on Draft Staff Analysis and Proposed Statement of Decision Post Election Manual Tally (PEMT) (10-TC-08)

Dear Ms. Halsey:

Santa Barbara County wishes to thank the Commission on State Mandates for accepting our request for an extension of the comment period on the Draft Staff Analysis and Proposed Statement of Decision on the Post Election Manual Tally (PEMT) (10-TC-08).

We would like to state our concurrence with the comments submitted by the California State Association of Counties (CSAC) on December 12, 2013 to the Commission on the above referenced claim. Rather than repeat what they have so eloquently conveyed, I would like to expand upon one of the subjects mentioned, the requirements for counties to comply with The Help America Vote Act (HAVA) for federal elections and specifically the method of compliance for Santa Barbara County.

HAVA Section 301(a)(3)(A) provides that the voting system shall "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." In addition, Section 301(a)(3)(B) provides that States may satisfy this requirement "through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place."

In 2003, the State of California submitted the "State Plan" on how the state intended to comply with HAVA. This submission of a State Plan was required if a state wished to receive HAVA funds. Included in this plan was to have one accessible voting system at each polling place.

In order to comply with HAVA Section 301 (a)(3)(A) and (B) and Elections Code Section 19227 (b) which stated "At each polling place, least one voting unit approved pursuant to subdivision (a) by the Secretary of State shall provide access to individuals who are blind or visually impaired." Santa Barbara County used funding sources available to procure the Election Systems & Software, Inc. (ES&S) AutoMARK Voter Assist Terminal and sought the approval from the Secretary of State's Office to certify a blended system using our existing Diebold Elections Systems, Inc (DESI) AccuVote-OS optical scan voting system and the AutoMARK Voter Assist Terminal.

The Secretary of State's office reviewed and accepted our request with the condition that the "Users of this blended system must adhere to the **Official Use Procedures for Use of the ES&S AutoMARK in conjunction with the Diebold GEMS/AccuVote-OS System** as approved by the Secretary of State". The approval of this request along with the Official Use Procedures for Use of the ES&S AutoMARK in conjunction with the Diebold GEMS/AccuVote-OS System (hereinto referred to as the Official Use Procedures) are included in this response as Attachment A.

On September 29, 2006 Santa Barbara County received permanent approval for use of the blended system. In September of 2007, Santa Barbara County submitted a Voting System Change Notification Form to seek approval to use a modified version of the GEMS Election Management System and the AccuVote OS Firmware Version. The written notification for any changes is a condition of our use of the blended system. The condition states, "No substitution or modification of the voting system shall be made with respect to any component of the voting system, including the Use Procedures, until the Secretary has been notified in writing and has determined that the proposed change or modification does not impair the accuracy and efficiency of the voting systems sufficient to require a re-examination and approval."

The vote by mail period begins 29 days before the election. California Elections Code Section 3018 provides for the voting of vote by mail ballots in the office of the election official up through the close of polls on Election Day. Therefore, as of October 20, 2008, Santa Barbara County was allowing voters to vote in our offices and by mail.

In order to protect, as stated in California Elections Code Section 19225 (e) "the incontrovertible right of all citizens regardless of blindness or visual impairment to vote" and as stated in California Elections Code Section 19225 (f) "for individuals who are blind or visually impaired to cast and verify their ballots independently", Santa Barbara County had an AutoMARK voter assist terminal available in our offices for those voters during the 29 day period prior to the election. California Elections Code Sections 19225 (e) and (f) were in effect in 2008 and have since been added and renumbered as other sections effective January 1, 2014.

The November 4, 2008 General Election was a federal election and Santa Barbara County's compliancy with HAVA was dependent on the use of the AutoMARK voter assist terminal as part of a blended system which included a "voting system" certified by the Secretary of State's office. Furthermore, a condition for use of the blended system was to adhere to the

Comments on Draft Staff Analysis and Proposed Statement of Decision Post Election Manual Tally (PEMT) 10-TC-08 Submitted by Santa Barbara County

Official Use Procedures, which included the tabulation of the AutoMARK ballots on the AccuVote central count machines.

The emergency regulations for the Post Election Manual Tally became effective on October 20, 2008. In order for the County of Santa Barbara to make any changes to our "Use Procedures" our written notification needed to be submitted to the Secretary of State for review.

California Elections Code Section 15002 requires the Secretary of State to review and amend administrative procedures for the use of voting systems by January 1st of each evennumbered year.

Additionally, California Elections Code Section 15003 requires elections officials to adopt semifinal official and official canvass procedures to conform to the applicable voting system procedures that have been approved by the Secretary of State. It further required these procedures to be available for public inspection no later than 29 days before the election.

Therefore, by nature of our blended system certification, that fact that we had already begun using our voting system and the deadlines imposed by the California Elections Code Sections 15002 and 15003, we believe that we were compelled to continue with the use of our system and procedures adopted by our County.

Again, the comments submitted only address one of the points conveyed in the response submitted by CSAC on December 12, 2013 in an effort to clarify the circumstances Santa Barbara County faced with respect to compliance with state and federal laws and regulations.

If you have any questions regarding these comments, please feel free to contact me at (805) 696-8963 or by email to <u>rbischo@co.santa-barbara.ca.us</u>.

Sincerely,

Rinie Buschof

Renee Bischof Chief Deputy Registrar of Voters Santa Barbara County

Cc: Geoff Neill, CSAC

Attachment A – Secretary of State Approval for Use Of Blended System



BRUCE McPHERSON | SECRETARY OF STATE | STATE OF CALIFORNIA

OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT 1500 11th Street | Sacramento, CA, 95814 | tel 916.653.7244 | www.ss.ca.gov

May 11, 2006

Billie Alvarez Elections Division Manager Santa Barbara County 130 E. Victoria St., Suite 200 Santa Barbara, CA 93101

Dear Ms. Alvarez:

We have reviewed your request for approval to use the Election Systems & Software, Inc. (ES&S) AutoMARK device in conjunction with your existing Diebold Elections Systems, Inc (DESI) AccuVote-OS optical scan voting system.

This proposed blended system, consisting of the DESI AccuVote-OS, firmware version 1.96.4, DESI AccuVote-OS Central Count, firmware version 2.0.12, DESI GEMS Election Management System, version 1.18.19, ES&S AutoMARK Voter Assist Terminal, version 1.0, ES&S AutoMARK Information Management System (AIMS), version 1.0, and ES&S Unity Election Management System, version 2.4.3.1, is approved for use in California only for the June 6, 2006 Primary Election subject to the following conditions:

- Users of this blended system must adhere to the Official Use Procedures for Use of the ES&S AutoMARK in Conjunction with the Diebold GEMS/Accuvote-OS System as approved by the Secretary of State; and
- Any jurisdictions that use this blended system for the June 6, 2006 Primary Election must submit a written report about how well the systems functioned and any recommendations of ways to improve such blended system use in the future. This report is due to the Secretary of State no later than close of business on July 10, 2006.

Sincerely,

BRUCE McDANNOLD Interim Director Office of Voting Systems Technology Assessment

OFFICIAL USE PROCEDURES FOR USE OF THE ES&S AUTOMARK IN CONJUNCTION WITH THE DIEBOLD GEMS/ACCUVOTE-OS SYSTEM

1. INTRODUCTION.

1.1 System description and components.

- Diebold AccuVote-OS, firmware version 1.96.4
- Diebold AccuVote-OS Central Count, firmware version 2.0.12
- Diebold GEMS Election Management System, version 1.18.19
- ES&S AutoMARK Voter Assist Terminal, version 1.0
- ES&S AutoMARK Information Management System (AIMS), version 1.0
- ES&S Unity Election Management System, version 2.4.3.1

1.2 **Overview.**

These procedures were developed and apply only to jurisdictions using the Diebold mark sense voting system with the components described above, together with one ES&S AutoMARK per polling place to provide accessibility support to special needs voters in compliance with HAVA. The procedures assume that the jurisdiction will contract with a third party vendor to provide AutoMARK programming and print ES&S compatible ballots for use with the AutoMARK devices.

In general, the jurisdiction (and their vendor) is required to adhere to the governing Use Procedures approved by the Secretary of State for use with the respective systems. These procedures set forth the specific additional procedures required by the combination of these system components.

2. BALLOT DEFINITION.

For absentee and precinct voters whose ballots will be tabulated on the Diebold AccuVote-OS (AV-OS) and the AccuVote-OS Central Count (AV-OS CC), the paper ballots will be printed in accordance with the governing Use Procedures approved by the Secretary of State for use with that system.

Ballots used by voters voting on the AutoMARK will be printed in accordance with the governing Use Procedures approved by the Secretary of State for use with that system.

3. SYSTEM INSTALLATION AND CONFIGURATION.

The jurisdiction shall comply fully with the governing Use Procedures approved by the Secretary of State for the Diebold AV-OS, AV-OS CC and the Diebold GEMS Election Management System (GEMS) with respect to acceptance testing, installation and configuration.

The jurisdiction will comply fully with the governing Use Procedures approved by the Secretary of State for the AutoMARK with respect to acceptance testing, installation and configuration of the AutoMARK.

4.0 **ELECTION SET-UP AND DEFINITION.**

4.1 Programming and configuration of election management system/software, including audit records to be generated and retained.

County will program the election in its respective election management system, including district, contest and candidate set-up, precinct consolidation and polling place assignment. System reports will be proofed for correct race information, ballot type configuration, precinct consolidation, and polling place assignment. All audit records and reports will be retained as legally required.

4.2 **Programming and configuration of vote recording/tabulation devices,** including audit records to be generated and retained.

Election definition and data from the county's respective election management system will be exported according to the system specifications and imported into the GEMS system, and GEMS ballots will be created by county elections staff. All memory cards will be created by county elections staff according to the governing Use Procedures for the AccuVote system approved by the Secretary of State. Additionally, the jurisdiction will fully comply with the additional security procedures in the handling of memory cards specified by the Secretary of State in his Diebold Certification on February 17, 2006, section 4f.

Election definition and data from the county's respective election management system will be exported according to the system specifications and sent to ES&S staff, under contract with the county elections official, for import into the Unity system. AutoMARK ballots and flash memory cards will be created, on the version of Unity and AIMS certified for use with this version of the AutoMARK, by ES&S staff under contract with the county elections official, and in accordance with the Use Procedures on file with the Secretary of State. Flash memory cards will be created by ES&S staff, under contract with the county elections official, according to the governing Use Procedures approved by the Secretary of State.

All audit records will be generated and retained as specified by the governing Use Procedures for both systems approved by the Secretary of State. The required proof and audit reports from Unity and AIMS will be generated and provided by the jurisdiction, who shall review, proof and review all such reports *prior* to programming of the AutoMARK units.

4.3 System diagnostic testing procedures, including audit records to be generated and retained.

The jurisdiction will fully comply with the governing Use Procedures for each system approved by the Secretary of State.

4.4 **System Proofing.**

In system proofing, the jurisdiction will fully comply with the governing Use Procedures of the applicable Diebold system as approved by the Secretary of State. The jurisdiction will contractually require that ES&S fully comply with the requirements for system proofing as provided in the governing Use Procedure for the AutoMARK system, as approved by the Secretary of State.

Additionally, the jurisdiction will proof the AutoMARK ballots against the GEMS ballots and the elections management system reports to ensure the following:

- correct assignment of contests to ballot types,
- correct assignment of candidates to contests,
- correct assignment of "Vote For" number to contests,
- correct spelling of all materials including instructions,
- candidate names,
- occupational designations,
- district and contest names.

The jurisdiction will ensure that all contests and candidates are in proper order as required by the CA Elections Code and the rotation assignment for the county.

4.5 Logic and accuracy testing of system and components.

Logic and accuracy testing will be completed on all AV-OS units and AV-OS CC units as required in the governing Use Procedures approved by the Secretary of State for the Diebold system.

Logic and accuracy testing will be completed on all AutoMARK units as required in the governing Use Procedures approved by the Secretary of State for the ESS AutoMARK system.

4.6 **Ballot Tally Programs.**

The jurisdiction will fully comply with the governing Use Procedures for the AccuVote OS approved by the Secretary of State. The AutoMARK system does not tally ballots so there is no requirement to submit the ballot tally program to the Secretary of State.

4.7 Election Observer Panel.

The jurisdiction will create and follow an Election Observer Panel plan that addresses the combination of systems and fully complies with the requirements specified in the governing Use Procedures approved by the Secretary of State for each system.

4.8 Hardware maintenance and preparation for use.

The jurisdiction will fully comply with the governing Use Procedures for both systems approved by the Secretary of State.

5. POLLING PLACE PROCEDURES.

5.1 General requirements

The jurisdiction shall fully comply with the governing Use Procedures for the Diebold System and the ES&S AutoMARK system as approved by the Secretary of State, with respect to:

- Precinct supplies, delivery and inspection
- Polling place set-up
- Opening the polls
- General polling place procedures
- Provisional voters
- Closing the polls and vote reporting
- Securing audit logs and backup records
- Troubleshooting and problem resolution

5.2 Special Needs Voters

5.2.1 **Polling place procedures**.

At the polling place, voters requesting assistance in marking their ballot will sign the official roster like all other voters. There will be no special designation on the roster that would identify voters issued an AutoMARK ballot. The poll worker will write the voter's precinct number, ballot type and party on a secrecy envelope designed for the AutoMARK ballot. The voter will be directed to the AutoMARK station where he/she will receive an AutoMARK ballot and instructions on using the device in accordance with the governing Use Procedures approved by the Secretary of State for the AutoMARK system.

5.2.2 Ballot Security/Secrecy.

After the voter has cast his/her ballot, in order to ensure the anonymity of the vote, the ballot will be ejected directly from the AutoMARK device into the secrecy envelope, sealed and deposited in a locked ballot box. The ballot box will remain locked and will be opened only by the elections official after the close of the polls.

6. ABSENTEE/MAILED BALLOT PROCEDURES (CENTRAL TABULATION).

The jurisdiction shall fully comply with the governing Use Procedures approved by the Secretary of State for the Diebold System .

7. SEMI-OFFICIAL AND POST-ELECTION PROCEDURES.

The jurisdiction shall fully comply with the governing Use Procedures approved by the Secretary of State for the Diebold System .

Ballots cast on the AutoMARK by special needs voters will not be tabulated during the semi-official canvass.

8. OFFICIAL CANVASS AND POST-ELECTION PROCEDURES.

8.1 Canvassing AutoMARK voted ballots .

8.1.1 The ES&S AutoMARK ballots cast at the polls on Election Day will be duplicated onto the Diebold (GEMS) ballots for counting on the AccuVote central count machines. This process will take place during the official canvass. Elections Code §15208 and 15210 govern the segregation and duplication of ballots.

The AutoMARK ballots will arrive from the polls in individually sealed envelopes that are transported in a locked or sealed ballot container. During the canvass, with two people present, the envelopes will be opened and handled only by elections staff who do not have access to the polling place rosters. There will be no way that the ballot cast can be tied back to a voter.

The precinct information written on the envelope will be transferred to the ballot. The ballots will be sorted by precinct (sorted by party, then by precinct, if it is a primary election). For every precinct and party (if applicable) that has marked AutoMARK ballots, a corresponding number of Diebold ballots will be pulled and paired with the AutoMARK ballots.

The duplication board will consist of three members. One member calls the votes from the AutoMARK ballot card, one member duplicates the votes cast onto the Diebold ballot, and the remaining member verifies that the votes are being called and duplicated correctly.

The AutoMARK ballot will be stamped as "Void" and the corresponding Diebold ballot will be stamped with "Duplicate." Each duplicated ballot will be assigned a unique serial number that will correspond to the voided AutoMARK ballot. Serial numbers are assigned sequentially. The information, including the precinct number, party and the serial number for the ballots, will be written on a duplication log.

With the AutoMARK ballots, there should not be a question as to voter intent, as the ballots will be clearly marked. However, in the case of a question, the voter intent must be determined by a supervisor. The guidelines set by the Secretary of State shall be followed and the decision of the supervisor shall be documented. This documentation shall be maintained with the voided ballot.

The duplicated ballots will be batched, counted on the AccuVote-OS central count system and added to the precinct vote totals.

All election materials, including logs and ballots, will be stored in accordance with election law and system Use Procedures on file with the Secretary of State.

8.2 **OTHER**

In all other respects, the jurisdiction will fully comply with the governing Use Procedures approved by the Secretary of State for the Diebold system.

9. MANUAL RECOUNT PROCEDURES.

The jurisdiction will fully comply with the governing Use Procedures approved by the Secretary of State for the Diebold system.

10. SECURITY.

For the Diebold components of the system, the jurisdiction will fully comply with the governing Use Procedures approved by the Secretary of State for that Diebold system.

For the AutoMARK component of the system, the jurisdiction will fully comply with the governing Use Procedures approved by the Secretary of State for the AutoMARK system.

11. BIENNIAL HARDWARE CERTIFICATION AND NOTIFICATION.

For the Diebold components of the system, the jurisdiction will fully comply with the governing Use Procedures approved by the Secretary of State for that Diebold system.

For the AutoMARK component of the system, the jurisdiction will fully comply with the governing Use Procedures approved by the Secretary of State for the AutoMARK system. Post Election Manual Tally (PEMT) 10-TC-08 Declaration Supporting Comments on Draft Analysis and Proposed Statement of Decision

I, Renee Bischof, Chief Deputy Registrar of Voters for the County of Santa Barbara, declare under penalty of perjury, that the information provided herein is true and complete to the best of my personal knowledge, information or belief and that this declaration is executed this 17th day of January, 2014, at Santa Barbara, California.

Kenie Bischip

Renee Bischof Chief Deputy Registrar of Voters County of Santa Barbara

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 21, 2014, I served the:

Claimant Comments

Post Election Manual Tally (PEMT), 10-TC-08 Former California Code of Regulations, Title 2, Sections 20120, 20121, 20122, 20123, 20124, 20125, 20126 and 20127; Register 2008, No.43 County of Santa Barbara, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 21, 2014 at Sacramento, California.

Lorenzo R. Duran Commission on State Mandates 980 Ninth Street, Suite 300 Sacramento, CA 95814 (916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/16/14

Claim Number: 10-TC-08

Matter: Post Election Manual Tally (PEMT)

Claimant: County of Santa Barbara

TO ALL PARTIES, INTERES TED PARTIES, AND INTERES TED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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