DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
1500 11th Street, 6th Floor | Sacramento, CA 95814 | Tel (916) 653-7244 | Fax (916) 653-4620 | www.sos.ca.gov

May 2, 2008

Mr. Stephen Jones
Auditor-Controller, Recorder, Clerk
Merced County
2222 "M" Street
Merced, CA 95340

Dear Mr. Jones:

By this letter, the Secretary of State is administratively approving the use of the AutoMARK A200 with the ES&S Unity Version 2.4.3.1 voting system for the June 3, 2008, election subject to the conditions listed below. These conditions are identical to those placed on the use of the AutoMARK A200 with the ES&S Unity Version 2.4.3.1 voting system when administrative approval was granted for the February 5, 2008, election.

- The administrative approval will apply only to the June 3, 2008, Statewide Direct Primary Election and will expire on June 3, 2008.
- This administrative approval shall only apply in the counties of Colusa, Marin, Merced and Solano that currently own the AutoMARK A200.
- Before any use in the June 3, 2008, Statewide Direct Primary Election, jurisdictions must reinstall all software and firmware on all AutoMARK A200 ballot marking devices. AutoMARK software and firmware must be reinstalled using the currently approve version that was obtained prior to the February 5, 2008, Presidential Primary. Prior to reinstallation, jurisdictions must capture an image of the software and firmware installed on each AutoMARK A200, and submit a copy of the image to the Secretary of State. If the county directs the vendor to implement this condition, the vendor may only act under the continuous supervision of the county election staff.
- To prevent potential viral propagation of malicious software that could be introduced through an AutoMARK device, all memory cards used in the AutoMARK devices to configure them for an election must be reformatted by a physically and logically isolated computer using commercial off-the-shelf software (not developed by ES&S) before the memory card can be reinserted into any other component of the voting system during that election or any subsequent election.
- Jurisdictions must conduct Logic and Accuracy testing on each AutoMARK A200 machine both prior to and after the June 3, 2008, Statewide Direct Primary Election. The Logic and Accuracy testing must be conducted in accordance with the prevailing approved California Use Procedures for the certified ES&S Unity Version 2.4.3.1 voting system using paper ballots cast by the AutoMARK device. In Colusa, Merced and Solano Counties, the voted paper test ballots must be scanned using the M100 scanner component of the Election Systems and Software Unity Version 2.4.3.1 voting system. A complete incident report shall be submitted to the Secretary of State for any

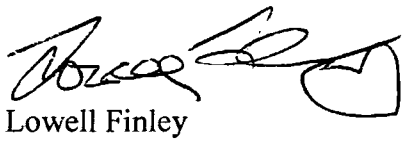
ballot generated by the AutoMARK during the logic and accuracy test that is not accurately read by the M100 scanner. The requirements of this paragraph concerning scanning do not apply to Marin County, which does not use ES&S scanners or tally components but instead remakes all voted AutoMARK ballots onto optical scan ballots compatible with another voting system vendor's scanner and tally components.

- ES&S shall be required to reimburse the four affected counties for any and all additional costs associated with complying with these conditions. In the event that ES&S fails to do so, the Secretary of State will seek to recover those costs in litigation pending in San Francisco Superior Court against ES&S regarding the AutoMARK A200 matter.
- These conditions supplement, and do not replace or eliminate, the conditions the Secretary of State has placed on the use of the Election Systems and Software Unity Version 2.4.3.1 with AutoMARK 1.0 voting system.

Please note this is a limited administrative approval. This approval is *not* being granted pursuant to a notice and request for approval from ES&S under Elections Code §19213 or §18564.5, and therefore may not be construed as a determination or approval made pursuant to those sections of law. ES&S has recently requested such approval for use of the AutoMARK A200 with Unity Version 2.4.3.1 but our review of the voluminous material submitted in support of that request is not complete. ES&S has also submitted the AutoMARK A200 as part of its application for certification of its Unity 3.0.1.1 voting system. However, ES&S is currently in the certification process and it is uncertain whether the new system will ultimately be certified and if so, when that certification will occur.

If you have questions or I can be of any other assistance, please don't hesitate to call me or any member of the Office of Voting Systems Technology Assessment staff at (916) 653-7244.

Sincerely,



Lowell Finley
Deputy Secretary of State
Voting Systems Technology and Policy