APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson

Mr. Marc Carrel

Mr. John Mott-Smith

Ms. Caren Daniels-Meade

Mr. David Jefferson

Mr. Lee Kercher

STAFF

Mr. Michael Wagaman

Mr. Stephen Stuart

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
CHAIRPERSON KYLE: I'm going to call the meeting to order.

Good morning, my name is Mark Kyle, I'm the Chair of the Voting Systems and Procedures Panel.

I want to welcome the public, election officials, and vendor representatives here this morning.

I want to particularly welcome the new Riverside County Registrar of Voters, Margaret Dunmore, she's in the audience. Welcome. You have big shoes to fill and I'm glad you're stepping up to the plate and we look forward to working with you.

Two of our Panel members are absent today, Tony Miller, who I begrudgingly allowed a vacation day to so they wouldn't have a family dispute, and Deborah Jones who is out due to illness, I believe.

Caren Daniels-Mead will be joining us momentarily.

But we have a few items on the agenda, so I want to get going. And according to staff, Hart InterCivic has requested that they go first due to time constraints with their flights, and my understanding is that the other vendor representatives have not objected to that. So if that is the case, I'm seeing no heads shaking to the contrary.

Mr. Wagaman, would you please begin with what was
Item Number 3.

MR. WAGAMAN: Thank you, Mr. Chair.

CHAIRPERSON KYLE: Can you direct us to the correct tab, since we have 28 tabs or so in there.

MR. WAGAMAN: You're on Tab Number 9, sir.

CHAIRPERSON KYLE: Thank you.

MR. WAGAMAN: Tab Number 9 is the staff report for this application. This is an upgrade from their currently certified system 3.2 to their new version which will be system 3.4. The system numbers consist of several subcomponents. First is BOSS 3.5.4. This is an upgrade from their current version of BOSS, which is 3.4.0. BOSS is used before the election to create the ballot definition. The modifications consist of several fairly minor anomaly fixes and also improvements to the audio function and some other minor changes.

The second component is Ballot Now, Version 2.3. That is actually the same. The modifications on that are from Version 2.2.6. It consists of two anomaly fixes. Ballot Now is used to produce the paper ballots, it's not used to tally paper ballots, it's just used in the front end on the paper ballot system.

SERVO 2.0.1.0 is the currently certified version. SERVO is used to back up data from the JBCs and the eSlates and to reset them for new elections.
Rally 1.2.0 again has not been modified. It's a package used to collect data from the memory boxes, the mobile memory boxes, which are then transferred to Tally, which is Tally Version 3.2.0. Again, it's not modified from the currently certified version. Tally is actually what is used to tabulate results.

Component Number 6 is the JBC Version 2.3.8, which is a modification from the currently certified Version 2.0.13. The JBC is used to activate the DREs in the precincts to create the voter access cards, or the voter access numbers or access codes. The system does not use cards.

The modifications are to add additional functionalities, two of those are of note. The first is support of a bar code reader, rather than what is done now, which is the poll worker would hand figure out which ballot to create for a voter. There will be a bar code printed next to the voter's name in the roster, that will be scanned using the bar code, and would automatically tell the unit what ballot style is appropriate for that voter and then bring that ballot style up and create the appropriate access code.

The second is a change that excludes provisional ballots from the tally tape produced by the JBC. Obviously, this is not as relevant as provisional ballots are not...
allowed to be used in this upcoming election, and actually

cannot be used by the system under California law

regardless, which I will get to further.

Item 7 is the eSlate, which is the actual DRE

itself. It's a modification from Version 2.0.13 to Version

2.3.8. The modification is some added functionalities and

anomaly corrections. The major added functionality is

support for contests that graph onto one or more pages.

The final components, 8 and 9, are two pieces of

cOTS hardware, they're COTS scanners used with a paper-based

system. Those are the two pieces of hardware currently used

in the County of Orange. The way this system works, unlike

some of the other optical scan systems you've seen in the

past, is it only captures the ballot image, it does not

tabulate at all off the scanner. It captures that ballot

image, that ballot image is then used later to do the actual

tabulation and counting.

Moving on to the testing results. This system

does have a NASED number issued, N-1-04-12-12-005. That is

to the 1990 standards. For state testing, two issues of

note. One, the two scanners that are used in Orange County

were not included as part of the state testing, the reason

being these are fairly large pieces of equipment. So one of

the recommendations you will see later is that prior to the

system actually being used, we would go down and do that
testing. It's not of particular concern to either the staff
or the state's technical consultant because again these are
Hart COTS pieces of hardware that are not used to tabulate
the actual votes.

In addition, during state testing it was
identified that the vendor had developed several other
additional programs that were used to develop additional
functionalities. If you have questions about that, I can go
into them. Because these are not COTS pieces of software,
one of the recommendations you will again see in the staff
report is that any of these additional programs not be
installed on the same computer that is running the certified
software. None of these components are required in order to
meet the California requirements for certification, they
just provide additional functionalities beyond that.

A review of relevant state and federal regulations
was completed, a couple of points of note. The vendor has
updated their procedures to add additional security
measures. It's chapter nine in both the Ballot Now and the
eSlate procedures. All those changes are going to be issues
again familiar to the Panel from the last couple of
certifications. The system does not include a voter-
verified paper audit trail, so, therefore, under the April
30th directive, would only be able to be used in the county
that currently uses is, Orange, and would have to be
modified by July 1 of 2006.

One thing of note. On the Voting Rights Act of 1965, there was one minor change where Tagalog has been renamed as Filipino in the code. It still is the same language, it's still supported as required.

On the casting of provisional fail safe ballots, there is obviously a requirement in California that they not be cast on a DRE. Even if that was not in place, the system actually would not be allowed to use the electronic provisional ballots, the reason being because it does not support the partial county as required to be only counted in the races where the person was eligible. It's not capable of doing that. It's also not capable of putting up that ballot image prior to acceptance or rejection of that provisional ballot. Therefore, all provisional ballots under the system would have to be cast using the Ballot Now, a paper-based system, and that's what's reflected in their use procedures.

An additional consideration, as noted before, it does not include the voter-verified paper audit trail and it would be subject to all of the additional security requirements from the April 30th directive from the Secretary.

Public comment. We didn't have any timely comments received prior to the binders being distributed to
the Panel. We did receive some late comments with have been
distributed to the Panel this morning.

Moving on to the recommendations from staff.

Staff recommends the certification of Hart InterCivic's
eSlate system Version 3.4 consisting of BOSS Version 3.4.0,
Ballot Now Version 2.3, SERVO Version 2.0.10, Rally Version
1.2.0, Tally Version 3.2.0, eSlate 3000 Version 2.3.8, JBC
1000 Version 2.3.8, along with the Kodak i830 and Fujitsu
4099 with the following conditions:

One, staff shall successfully test the two
scanners in conjunction with System 3.4 by October 5th of
2004. That date was selected because that's the next
hearing date for this Panel, so as to allow us to report
back by that date.

Two, that none of these additional software
packages developed by Hart shall be installed on the same
system, on the same computer running any of the certified
components.

Three through five are language developed
previously under a previous application, they all relate to
compliance with the April 30th directive.

Item Number 6 is the standard language we've now
been applying to each vendor allowing for modification of
the procedures to improve the accuracy, security or
reliability of a system. There was a desire to see that
included at the last meeting, so I put it in here. There is
some additional standard language we include relating to
compliance with the Voting Rights Act, those kinds of
things, which I have not included, but would also be
recommendations.

That concludes the staff report. The vendor is
present if you have any questions for them or if you have
any questions for staff.

CHAIRPERSON KYLE: Thank you, Mr. Wagaman.

Any questions from the Panel?

Well, let me start to the far left, Mr. Mott-

Smith.

PANEL MEMBER MOIT-SMITH: I'm interested in
Condition Number Four. The voting system shall only be used
in the County of Orange?

MR. WAGAMAN: Correct. That is the only county
that is currently using the Hart system, and under the
Secretary's directive, the DREs cannot be added to an
additional county that is not currently using it unless it
includes a voter-verified paper audit trail which this
system does not. So, therefore, the certification would be
limited to that one county.

CHAIRPERSON KYLE: Mr. Jefferson.

PANEL MEMBER JEFFERSON: Just for my edification,
the version number for eSlate goes from 2.0.13 to 2.3.8.
That actually appears to be several substantial changes in the software, in other words, a big jump; is that correct?

MR. WAGAMAN: Part of the reason for that is there is a system that was not applied for certification here, System 3.3, so there were two jumps in changes. The firmware is where there biggest changes occurred, in particular to support that bar code functionality which was in response to some of the issues seen in the March election.

PANEL MEMBER JEFFERSON: And you're talking about eSlate firmware?

MR. WAGAMAN: Unlike some of the other systems, the eSlate and the JBC are much more closely linked to the -- the activator and the DRE are much more closely linked, they are actually daisy chained together under this particular system. So that's why you notice the firmware version numbers are the same because they work in tandem.

PANEL MEMBER JEFFERSON: Okay. So I guess where my question was coming from, is we're only a few weeks before the election and we're asked to certify what appears to be a fairly large change in the firmware?

MR. WAGAMAN: I would defer to the vendor to talk about all the specifics in the code, but the changes are actually fairly minor, even --

PANEL MEMBER JEFFERSON: They are?

MR. WAGAMAN: -- though there's a significant jump
PANEL MEMBER JEFFERSON: Okay.

CHAIRPERSON KYLE: Thank you, Michael.

Do you want to direct that and ask the vendor about any clarification on that?

Can I ask the vendor's representative to come forward please and address this issue for a minute.

PANEL MEMBER JEFFERSON: And if you could be a little more specific about what the various changes are between 2.0.13 and 2.3.8? I just wasn't sure I have the whole sense of what they were?

CHAIRPERSON KYLE: If you can start out by stating your name and spelling it for the record, please.

MR. FLOM: Okay. My name is Scott Flom, F-l-o-m. I'm the Vice-President of Operations for Hart InterCivic.

As far as the firmware versions go, the changes to this were as Mr. Wagaman said pretty minor. They dealt with, one, the bar code interface, two, adding some kind of new messages. If there's any delay due to traffic on the network between the devices, the voter is presented with a message now that says please wait while your ballot is being loaded or while your vote is being cast. Prior to that, they were not given any information.

Other than that, there really haven't been any major changes to the system.
PANEL MEMBER JEFFERSON: Do you have a version history document, not with you today, but I mean I assume you do?

MR. FLOM: Uh-huh.

PANEL MEMBER JEFFERSON: I mean I guess in the future I would like to request that we see some version so we know the whole sequence of version numbers and the changes that come up. For now this is fine.

MR. FLOM: Okay. We can provide that to the state.

PANEL MEMBER JEFFERSON: And then, Mr. Chairman, I had one other question not related to this.

CHAIRPERSON KYLE: Go ahead.

PANEL MEMBER JEFFERSON: That was, this being a DRE system, at our last hearing, we recommended certification for one election only, and my question was does the same reasoning apply to this system, should we be consistent on this point?

CHAIRPERSON KYLE: Very logical of you, Mr. Jefferson, good question. Before we go back to that question, because I was actually wondering the same thing, I want to see if there were any questions of the staff or vendor.

Ms. Daniels-Meade.

PANEL MEMBER DANIELS-MEADE: Mr. Chairman, I was
just wondering since it's not specifically spelled out in
the recommendation, in the conditions for recommendation, if
we also should require that provisional ballots, just to
make it official, that provisional ballots will be cast on
paper ballots only?

MR. WAGAMAN: If you want me to include that, that
will be fine. It's, as I said, already in the procedures,
but I can include it there as well.

PANEL MEMBER DANIELS-MEADE: I think it may be
important to just point it out.

CHAIRPERSON KYLE: Let me also, just for process
sake, formally move that these additional public comments be
moved in the record and copies provided.

PANEL MEMBER DANIELS-MEADE: So moved.

PANEL MEMBER CARREL: Second.

CHAIRPERSON KYLE: Thank you.

Any opposition?

The ayes have it.

So they're part of the record since they came in
after. And I'm assuming staff counsel that these came in,
these are all relevant to this agenda item?

STAFF COUNSEL STUART: I just saw them at the same
time you guys did.

MR. WAGAMAN: They are relevant to items before
the Panel today, not this particular item, but one or more
of the items today.

   CHAIRPERSON KYLE: All right. We'll move them in
to the record anyways.

   Now, let's go back to your question, Mr.

Jefferson. Do you have any thoughts on it?

   PANEL MEMBER JEFFERSON: Well, as you know, we
were a divided panel last time about whether or not to say
strictly one election only or to certify for four or five
months and not bother the Secretary of State with a specific
ruling should any special election that we don't anticipate
come up. My main concern is that we just be consistent,
whichever of those decisions we come out with is okay, but I
think we should treat all DRE systems alike with respect to
our intent to rethink certification issues.

   MR. WAGAMAN: To provide two points, one point of
clarification and one point of information. The system last
week in which the Panel recommended that additional item was
not a DRE system, it was an optical scan system.

   PANEL MEMBER JEFFERSON: Excuse me.

   MR. WAGAMAN: Two, the reason it was not included
in the staff report is there was a request from the Chair at
the last meeting that staff investigate local elections and
the timing of local elections in those particular
jurisdictions, and I want to provide that information to the
Panel before it made a recommendation relating to that
particular item.

What staff did discover is that, as Mr. Mott-Smith pointed out at the last meeting, a lot of local jurisdictions do not know when they will have their elections coming up, they are anticipating elections early in 2005. In fact, to provide some information on the problem in nailing this down, Sacramento County at the last meeting said that they did not anticipate elections until later in 2005, came back to staff and informed us that they, in fact, anticipate an election in December of 2004 for one small local election. So as early as December of this year, we will anticipate local elections coming, and that would then under that particular language require additional action by the Secretary of State's office, if the system was to be used in that election.

CHAIRPERSON KYLE: Assuming that the Secretary adopts the recommendations of the Panel.

MR. WAGAMAN: Right.

CHAIRPERSON KYLE: And part of the work was to try to ascertain the factual basis and what might go forward in terms of information for the Secretary so he could make a more informed decision as to whether to adopt that recommendation or modify it or reject it outright.

PANEL MEMBER CARREL: Mr. Chair, to comment on this issue, I think it was the most split issue we've dealt
with in two years here, which was this issue with a 4-3 vote
last week. So I don't know why we even need to do it for a
DRE system which explicitly in certification expires and
needs to come back to us for review sometime next year
because it needs to incorporate a voter-verified paper trail
before either June 2006, given the Secretary's directive, or
January 2006, if the Governor signs new legislation which is
on his desk which would impose it to be January of 2006. So
I think if we're planning on doing a review of systems next
year, and I think it's wise to do that, I think we can still
do a review of systems knowing full well that this may be
used in one county next year.

And to add to the discussion about where and when
there might be elections next year, there's also been
pundits suggesting that the Governor may himself call
another statewide election on a measure regarding
reorganization of state government. So I think everything's
totally up in the air. I don't know that it's necessary as
a condition of this certification.

CHAIRPERSON KYLE: Other discussion?

PANEL MEMBER MOTT-SMITH: I'm in support of Mr.
Carrel's statement. Basically, I think we can accomplish
the review without confusing the situation in 2005.

CHAIRPERSON KYLE: In terms of consistency, Mr.
Jefferson, I guess that I would agree that we have adequate
conditions on this one. What we should really do is revisit last week's with more information to provide to the Secretary so that he can either adopt wholesale or modify that particular recommendation so it more accurately comports with maybe something along these lines.

Then I'll open it to any public comment on this particular submission having to do with Hart InterCivic eSlate.

Kim Alexander.

MR. WAGAMAN: And are we going to have any limitations on time this morning?

CHAIRPERSON KYLE: Yes, we are. Three minutes.

MS. ALEXANDER: Good morning. Kim Alexander and the California Voter Foundation.

I have a question about the Hart procedures. I'm just looking over the procedures for the eSlate electronic voting system, and on page 20 is the procedures for closing the polls. And Item 4.6.5 says "the polls close screen on the JBC includes the capability for printing the tally report, follow the instructions in the eSlate manual."

I'm wondering if these procedures actually require that there's a printing of the tally report at the close of polls or if it's something that will remain optional. This printing of vote totals from voting machines is something that is included in the Secretary of State's April 30th
decertification orders and the certification requirements,
and some of the electronic voting machines in the state have
the capability to print a summary report at the close of
polls of all the votes cast on each machine, and the ones in
Riverside don't. So I would like to see some clarity on
whether in Orange County on the eSlate systems there will be
or there won't be a printing of the total votes at the close
of polls that would be posted outside the polling place, as
is required under the Secretary of State's new security
directives. That's all, thank you.

CHAIRPERSON KYLE: Any one on the Panel want to
address that issue? Any Panel member? Caren?
PANEL MEMBER DANIELS-MEADE: I would just agree
with that, that we should insert the same type of language
that we did on past procedures, that requirement they print
to report.

MR. WAGAMAN: Staff has already been into that, if
it's an oversight, then it will be an oversight on staff's
part if it's not included. It's something we are looking
for in all the procedures.
PANEL MEMBER CARREL: Do we know what's in the
election manual now?

MR. WAGAMAN: That's what I'm right now looking
for.

CHAIRPERSON KYLE: Do we have anyone either from

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the vendor or the county that could address that issue?

MR. FLOM: Again, my name is Scott Flom with Hart InterCivic.

And in the primary election in Orange County it was a requirement of the poll workers to print the close poll report at the end of the day and post those. And unless the county has other direction from the Secretary of State's office, we'll continue that practice.

CHAIRPERSON KYLE: Thank you very much.

Let's just make it an explicit part of the condition.

MR. WAGAMAN: Is the Panel's desire that procedures are added as a condition of certification?

PANEL MEMBER CARREL: Added to the procedures, please.

CHAIRPERSON KYLE: Consistent with earlier similar directives in the April 30th and May 14th, meaning it has to be done.

Any further comments?

Then I will entertain a motion --

PANEL MEMBER CARREL: Moved.

CHAIRPERSON KYLE: -- to adopt.

PANEL MEMBER MOTT-SMITH: Second.

CHAIRPERSON KYLE: The recommendations to the staff with the modifications suggested by the Panel and duly
noted by staff.

   All those in favor?

   (Ayes.)

CHAIRPERSON KYLE: And opposed?

Any abstaining?

The ayes have it.

Let's go to Agenda Item Number 1, please.

MR. WAGAMAN: I just want to make sure we have a

vendor representative, which we do.

With the acceptance of the Panel members, I would

actually address Items 1 and 2 together, they're both

applications from Diebold.

CHAIRPERSON KYLE: That's fine.

MR. WAGAMAN: I will go through the staff reports

for each individually, but that allows me to deal with those

items at the same time.

Item Number 1, which is Tab Number 1 in the staff

report, is a modification to the Diebold AccuVote optical

scan system. A Panel Member brought up this issue before,

this is a different version of firmware that is designed

specifically for central count purposes. The version number

is 2.0.12. Unlike the previously certified versions from a

couple weeks ago, 1.94w and 1.96.4, instead of the results

being stored to a removable memory card, the results are

transmitted from the optical scan directly to GEMS via

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In addition, one other operational difference is the printer built into the AccuVote-OS does not print the zero tape and the tally tape and the summary tape at the end, the reason being no results are stored on that unit, so therefore it's not capable of doing that. Instead those zero tapes and those summary tapes are produced directly from GEMS itself.

The affected item on the application is the Accufeed. The Accufeed is a piece of hardware, it has no firmware associated with it. What it is is it's a piece of equipment that sits on top of the AccuVote-OS and runs the ballots through so the ballots can be run through at a higher rate of speed. It can store around 200 ballots at a time. So it's not a particularly high speed scanner, but it is a higher speed scanner than the manual process that would otherwise be used.

It's worthy of note that the Accufeed was not tested with the other two firmware version numbers, so therefore, if the Panel takes the staff recommendation, the Accufeed could only be certified with the firmware Version 2.0.12.

Item 3 is the GEMS 1.18.19 that has come before the Panel several times before. Federal testing. We have received letters from the ITAs that federal testing has been
completed, however, we have not received the final reports
and a NASED number has not been issued. When we get to the
staff report, you will see a recommendation that both of
those be received prior to final certification and with the
time sensitive date as was requested from the Panel at the
last meeting.

State testing was successfully completed here in
Sacramento in early September. Review of compliance with
state and federal laws was completed. Most of these are the
exact same thing, so I want to cover it under the previous
certification procedures, the same as the procedures
previously reviewed by the Panel, the same security
measures. There was one section added relevant to the
operation of a central count OS. That was section 1.3.8 in
the procedures, that's the only modification from the
previously certified version of the procedures, proof that
those documents have been received.

Additional considerations. The vendor's intent,
if this is not certified, is to only use the 1.94w and the
1.96.4. There were other versions of the central count
firmware in the field, as identified during the RNG audit.
Those versions we have not been able to verify certification
of, therefore, again we're going to recommend as has been
done in the past that if this version is certified, that any
of those versions be replaced with the now certified version

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at vendor expense.

Public comment. Again, there were late comments received which were distributed to the Panel under the previous item.

Recommendations from staff are that Diebold Election Systems Inc's GEMS 1.18.19, AccuVote-OS 2.0.12, and Accufeed be certified with the following conditions: That the final ITA reports be received by September 27th, 2004. That date was selected based on conversations between staff and also the independent consultant and also the vendor with the ITAs. It was also based on the amount of time provided to the previous vendor to complete that process.

Two, that the vendor must obtain and submit a copy of federal qualification for all systems and components, again, by September 27th.

Three, Uncertified equipment will be currently certified with what would now be certified equipment by the November election.

And Item 4 is again that standard language as relevant to modifications to the procedures to encourage the security and reliability and accuracy of the system, again with all of the other standard boilerplate language that we had in the past.

That completes the Item 1 staff report.

The Item 2 staff report would be Tab Number 5 in
This is an additional software package that will go along with the AccuVote-TS system. The program is called VCProgrammer, Version Number 4.1.11. It would be used with all the same components previously certified with the TS, the GEMS 1.18.19, the AccuVote-TS 4.3.15D and the Key Card 1.0.1.

VCProgrammer is used to facilitate early voting. As the Panel may note from the previous meeting, the card activators currently certified are only able to hold eight ballot styles, which is obviously not enough for an early voting situation where you need all the ballot styles in the jurisdiction. What VCProgrammer does is it installs on a COTS piece of hardware and basically any PC, it is then loaded with a file that's created by GEMS that contains all the various ballot styles available up to the election. It can then be used in one of two modes, an automatic or a manual mode.

Under the automatic mode, the system is used in conjunction with the county's voter registration system, so a poll worker would select the voter from the voter registration system and the system will then automatically create that voter access card without any other steps required by the person using the system.

Under manual mode, it did not need to be used with
the voter registration system. Instead, the poll worker
would figure out what precinct and what ballot style is
relevant and manually select that, and then that card would
be created.

VCProgrammer has not been previously certified in
California, it was applied for previously but was not
certified.

GEMS again is the same version used before, the
difference in its interaction is before VCProgrammer created
that text file that is used by VCProgrammer to create the
various ballot styles.

The AccuVote-TS, the interaction is the same and
it takes the card that's been created by in this case
VCProgrammer and is used to activate the system. And the
Key Card Tool, again, creates the ability to use a dynamic
user to find passcodes and encryption and can be used in the
same way with VCProgrammer as it is with the stylus to have
that functionality.

Again, on the item of federal testing, we have
received the letters, we have not received the reports or
the NASED number. So, again, you'll have the same
recommendation with that same date of September 27th for
them to complete that process, with the qualification on
both systems will be to the 1990 standards.

State testing, again, was completed by the state
and the state's technical consultant. Two security issues were raised that are relevant to the way the system works. Because this program is designed to be installed on a PC, it does raise certain security concerns because the PC could be out in the field outside of the physical security of the county's office, and because it may or may not be used in interaction with the voter registration system.

Because the system is going to be used in different ways in each county, the security method that is recommended by staff, that as the Secretary has required in the past, that the counties using the systems submit a security plan for how they are going to use it, because security issues that may apply to one county may not apply to a different county depending on how they are using this particular program.

The other issue identified is that this text file that's generated by GEMS can be potentially modified. It's not protected in any way. That will not affect the tabulation. It would affect, if it was modified, it could create an error where somebody's card is activated -- the poll worker activates the card as a Democratic ballot, when in fact it's a Republican ballot, the TS would still say it's a Republican ballot. It would not do anything other than create that confusion potentially there. But, again, because of that issue, the recommendation is that the
counties submit security procedures for how to prevent those kind of problems.

Review of compliance with state and federal laws was completed. Again, the firmware version or the procedures are the same as those that have come before the Panel before. There was a modification to recognize all the various ways that cards can be activated and making the differentiation between the operation, for example, of stylus and the operation of VCProgrammer. That was section number 3.2 in those procedures. Other than that, they are the same procedure with the same additional security you'll find that the Panel seen before.

Documents have been received for this application. Again, because this system does involve touchscreen DRE that does not include the voter-verified paper audit trail, there will be a timing out on it and it will also be limited to those counties that currently use that TS system, it's the same language from the previous certification on the TS.

Public comment. Again, there was some late comments received, that's been distributed to the Panel. Therefore, the staff recommendation is that Diebold's VCProgrammer 4.1.11, GEMS 1.18.19, AccuVote-TS 4.3.15D, and the Key Card Tool Version 1.0.1 should be certified with the following conditions:

Submission of the ITA reports again by September
27th. That the federal qualification with NASED number be
received by September 27th. Three, this isn't a new one,
but any jurisdiction intending to use the VCProgrammer in
the election must submit a security to and receive approval
of that plan from the Secretary of State's office for that
election. The security plan shall specifically include
information on the physical and technical security of the
computers running VCProgrammer, how the jurisdiction will
prevent tampering with the files associated with
VCProgrammer, and how the county will prevent the creation
and use of unauthorized voter access cards using
VCProgrammer.

    Items 4 through 6 are the additional requirements
from the April 30th directive from the Secretary. The
counties it would be limited to are obviously different from
the previous one. It would be Alameda, Plumas and the
County of Los Angeles for early voting only.

    And Item 7 is again that boilerplate language
relating to modification of procedures to enhance the
security, accuracy, reliability of the system.

That concludes the staff report. We do have a
representative of the vendor present, if there are questions
for them as well.

CHAIRPERSON KYLE: I'm going to open up discussion
on the first application having to do with AccuVote-OS
2.0.12.

Any questions or comments from the far left?

Working my way this way.

Mr. Carrel.

PANEL MEMBER CARREL: There was a comment in Mr. Freeman's report that says some records are retained in memory and the security of the system for counties is a requirement of tamper-proof seals and/or locks to be used prior to and during by counties during operation for denial of service types of attack. I'm just wondering if that is — and I can't find it, because I don't know where to look, in the procedures?

MR. WAGAMAN: Can you say what you're looking at so I can check into that?

PANEL MEMBER CARREL: Page 3 of 4 on Tab 2. The third paragraph says no records. He recommends getting approved seals and locks.

MR. WAGAMAN: There is a requirement in the procedures for approved seals and locks that was already part of the previous language.

PANEL MEMBER CARREL: Okay, thanks.

CHAIRPERSON KYLE: I have a couple. Then for the submission, what are the affected counties?

MR. WAGAMAN: The vendor would be better qualified to answer that because some of the counties that currently

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use central count optical scan may not be using this
version, they may be using the previous version, the 1.94W
or the 1.96.4.

CHAIRPERSON KYLE: Okay. So do we have any idea
where this may or may not be installed?

MR. WAGAMAN: I have that information, I do not
believe I have it with me. I have to send somebody up to go
get that for me.

CHAIRPERSON KYLE: Okay.

Can I have a vendor representative step forward,
because I also have another question that has to do with
this.

So if you would identify yourself for the record,
please?

MR. SINGLETON: For the record, I'm Marvin
Singleton, S-i-n-g-l-e-t-o-n.

Mr. Chairman, I believe the majority of the
counties do use central count for their processing of
absentee and election ballots, the absentee processing of
ballots.

CHAIRPERSON KYLE: Okay.

MR. SINGLETON: I don't have a specific number, I
would say a majority. I do not think Los Angeles is because
of their Ink-A-Vote system, but I would say a majority of
the counties do use it.
CHAIRPERSON KYLE: Okay.

MR. WAGAMAN: We're having somebody retrieve that information right now.

CHAIRPERSON KYLE: Okay.

MR. WAGAMAN: So if you want to proceed with public comment and the other comments from the Panel members, we'll have that before you reach your final deliberations.

CHAIRPERSON KYLE: Okay. In one of your comments -- would you stay there, Mr. Singleton.

One of your comments earlier, Mr. Wagaman, had to do with if we didn't get certification, if we didn't get the ITA report and the NASED number, that it would default in part to 1.94W and 1.96.4?

MR. WAGAMAN: Correct. They can still count their ballots using those other version numbers, it just would not be as efficient a process. So they could use that other firmware version.

CHAIRPERSON KYLE: So are 1.94W and 1.96.4, are those the current installations?

MR. SINGLETON: Yes.

CHAIRPERSON KYLE: Right now?

MR. SINGLETON: As Mr. Wagaman said, if this version does not meet the various criteria, all that would be required is to pre-sort the ballots by precincts and they
would use the 1.96.4 or the 1.94W to count the ballots in that jurisdiction.

CHAIRPERSON KYLE: My concern is granting conditional certification today, maybe in an effort to be efficient, install the new version and not get the certification in a timely fashion. And then have to go through some of the rigamarole we went through in March of this year where we had to uninstall and default back to 1.94W.

MR. SINGLETON: We have previously announced to all the California customers to plan not to use it. So it's much easier to continue that thinking, and if we were to receive the state condition, it would be just replacing the memory chip sets in the optical scan machines that are at the counties.

CHAIRPERSON KYLE: So leave the 1.94W, the 1.96.4 and wait until the date certain with the ITA report and the NASED number. And then does that allow enough time for timely installation?

MR. SINGLETON: Yes, sir. All you're doing is basically changing the memory chip sets and the machines are already at the election office centrally located. The central count is not used in a field environment at a precinct, so these would be a limited number of machines.

Some counties use two machines, some counties might use ten,
so it's a matter of changing the chip sets out.

MR. WAGAMAN: Yes. As the vendor was saying, this
is a central count system, so you're having to park your
equipment in with the precinct count equipment.

CHAIRPERSON KYLE: I just don't want to put the
counties through the grief and then the expense in terms of
the staff time of installing and reinstalling or
uninstalling if we don't have it. And in the
recommendation, Mr. Wagaman, what was the date that the
recommendation is for?

MR. WAGAMAN: It was the September 27th date.

That was based again on conversations with the federal
process about where they are in that status, both from us,
from the vendor and from Mr. Freeman. It's also an
equivalent amount of time that you provided ES&S when this
issue arose on the 9th.

CHAIRPERSON KYLE: Okay. Can I hear from any of
the counties?

Thank you, Mr. Singleton.

Can I hear from any of the counties if they
believe the 27th isn't an adequate time?

MS. HENCH: Debbie Hench, San Joaquin County
Registrar of Voters.

It's questionable. Some of the counties, we start
October 4th issuing absentees. We can't start counting them
until seven days before the election. And what this process
does is saves time, especially for the large counties that
have -- you know, we're going to have around 70,000
absentees, Alameda may have 200,000 absentees. If you have
to hand sort those, that's when you start getting the delay.
You know, central count is a real help in that process
because you just feed them through, the computer is sorting,
not us.

So if you wait until the 27th, we really don't
know what the impact is. We know we have until that seven
days before, but you want to test it. You don't want to
say, okay, I hope we got it today, we can run them today.
We don't want to do that because we have to do our logic and
accuracy tests on that just like everything else.

CHAIRPERSON KYLE: Okay. Thank you, that's
helpful.

MR. WAGAMAN: And obviously if we receive the
federal reports tomorrow, if the Panel were to take that
action, then we receive those reports tomorrow.

PANEL MEMBER JEFFERSON: What do we know about the
likelihood of that?

CHAIRPERSON KYLE: What do we know about the
likelihood of that was the question?

MR. WAGAMAN: The likelihood is everyone is of the
belief that we will have them by the 27th, we may have them
sooner than that, but obviously one of the effects that has
happened is of us putting time certainty is now all the
vendors are pushing the ITAs to complete their reports in a
timely fashion. So it's going to be an issue of what order
they take things, so which order they come through, the
final NASED numbers being issued, I don't know.

CHAIRPERSON KYLE: Ms. Daniels-Mead, did you have
any questions or comments?

PANEL MEMBER DANIELS-MEADE: No. The only concern
I had to do with the technical expert's recommendation with
respect to tamperproof seals and Marc brought that up and we
were assured that that procedure is sound.

CHAIRPERSON KYLE: Okay. We'll take public
comment on this particular point.

Kim, you're going to pass? Thank you.

Maureen Smith, did you want to comment on this one
or speak in general?

MS. SMITH: In general about the two items, just a
big question, it's not a comment.

CHAIRPERSON KYLE: Okay. And identify yourself
for the record.

MS. SMITH: My name is Maureen Smith from Peace
and Freedom Party and Santa Cruz County.

My question is the same as one of the questions I
asked at the last meeting, does this system allow for back
door entry and, you know, are you taking that into
consideration in whether or not you're going to approve it?

And to finally ask one other question, I won't
have to ask it later, I still have to ask one question at
the very end, but that is it is my understanding that all
systems will be looked at and not just DRE systems after the
election? It was my understanding from a decision at the
last meeting, and I want to be accurate in my understanding.

Thank you.

CHAIRPERSON KYLE: Thank you.

Any Panel reaction, comment.

PANEL MEMBER JEFFERSON: With regard to your
question about the back door, this system does use GEMS
1.18.19 and all of the same issues that have been discussed
before still apply to this one, if that answers your
question.

MS. SMITH: It does.

CHAIRPERSON KYLE: Mr. Clark, I assume you want to
speak on this point?

MR. CLARK: My name is Brad Clark, I'm the
Registrar of Voters in Alameda County.

And as a user of the optical scan central count,
if it's available, I have a question of the Panel who's
talking about security seals on the system. I don't know
where to put it, we don't have a memory card, so we can't
 seal that. We don't print out tapes, so we can't -- we can
seal the printer compartment, but we don't print anything.
So I would just kind of like to know where you want me to
put this seal, because I don't see the usefulness of it when
we're using these machines in our computer room, which is an
alarmed, locked room with only our staff in it. And I don't
see what there is to seal, unless I'm missing something. I
understand in the polling place why we want to seal, you
know, where the compartments are, but in our central count
environment I don't see because there's no memory card.

MR. WAGAMAN: The specific issue that Mr. Freeman
is referring to is on the back of the unit there are several
ports that are available. The county is using the system,
those ports may or may not be accessible. If the Accufeed,
for example, is on top of the unit, those ports are not
accessible, so you would not be able to have those same
tampering issues relevant. If the Accufeed is not on top of
it, then those ports in the back would be potentially
accessible, which is where under the current procedures come
in play that a log of any time those ports are accessible
would need to be kept, and that's what's under the existing
language in the procedures.

MR. CLARK: Yes. And we use the Accufeed.

MR. WAGAMAN: So at that point it will just be an
issue of whenever those ports were accessible, like the
Accufeed was removed for some reason, a log would need to be kept with those under procedures.

PANEL MEMBER CARREL: Mr. Clark, when you test the machine prior to the election, do you test it with the Accufeed on and do you keep the Accufeed on until the election?

MR. CLARK: Yes.

PANEL MEMBER CARREL: So you're not removing it and then you seal it up and then reattach it?

MR. CLARK: We do remove the Accufeed if they malfunction. If the Accufeeds jam or something and they have to be serviced, they are taken off.

PANEL MEMBER CARREL: But once you test it, you keep the Accufeed attached if it is working properly?

MR. CLARK: Right.

PANEL MEMBER CARREL: So then there would be no need to seal up the ports?

MR. CLARK: Right.

PANEL MEMBER CARREL: Because they're being used?

MR. CLARK: Correct.

Thank you.

CHAIRPERSON KYLE: Thank you.

Any other comments?

MR. WAGAMAN: Well, I have that additional information for the Panel members as well.

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CHAIRPERSON KYLE: Relevant to this point?

MR. WAGAMAN: Relevant to the counties using the central count.

CHAIRPERSON KYLE: Okay, please tell us.

MR. WAGAMAN: During the RNG audit, the following counties were identified that used a version of the central count. It would Alameda, Fresno, Humboldt, Kern, Marin, Placer, San Joaquin, San Luis Obispo, Santa Barbara, Tulare, San Diego, and Solano. Obviously Solano is no longer using this particular system. So that would be a total of 11 counties. And again, as the vendor indicated, most of those counties it sounds like would have a desire to use this system again, whether all of them will would be on county discretion.

CHAIRPERSON KYLE: Thank you.

I'm going to entertain a motion to adopt this one before we move on to the other one. To adopt the staff recommendation with the conditions as they currently stand.

PANEL MEMBER DANIELS-MEADE: So moved.

PANEL MEMBER CARREL: Second.

CHAIRPERSON KYLE: This is just for Item Number 1 on the agenda for the Diebold collection system in AccuVote-OS 2.0.12.

All those in favor?

(Ayes.)
CHAIRPERSON KYLE: Opposed? Abstentions?

The ayes have it.

Let's move to discussion on questions regarding Agenda Item Number 2 on VCProgrammer.

Panel Members, any comments or questions? I'll start from my right this time.

PANEL MEMBER DANIELS-MEADE: Oh, sure. Get me to the right tab first.

MR. WAGAMAN: Tab Number 5.

CHAIRPERSON KYLE: I have a couple questions regarding training.

You mentioned that procedures are similar to the other ones, however, this is a situation where it seems to have been a training issue in March where we had problems. And I'm wondering if since it's a different system than what was used in March?

MR. WAGAMAN: Well, when I said the same procedures, I was referring to the procedures when the Panel adopted the procedures for the TS, which was a month and a half ago. So it's those same procedures with the addition of language about the functionality of the VCProgrammer. And the VCProgrammer has now been certified for use in the state.

CHAIRPERSON KYLE: Right. So I have a certain question for the vendor, and if any of the client counties
want to come, I would welcome their two cents.

How much training is clearly and explicitly
articulated in the procedures so that we don't have
something like machines unplugged for several days and the
batteries inadvertently drained down?

MR. SINGLETON: The VCP{rogrammer has it's own user
manual that has been distributed. If you're asking for
specific hours, you'll have to ask that. But this is only
used in the TS counties, so it would be Alameda, Plumas, and
Los Angeles. So the training of the TS system in itself
would include training on the VCP{rogrammer. It is not a
battery operated device, it is powered by the host system.
So it plugs into a PC or a server or a laptop where used.

CHAIRPERSON KYLE: Okay.

MR. SINGLETON: So that's not any type of --
CHAIRPERSON KYLE: That's not an issue?
MR. SINGLETON: No, sir.
CHAIRPERSON KYLE: Okay. Are there any other
issues that might come up given just some of our past
experience and before we go forward and possibly give the
stamp of approval on something like this. I just want to
make sure that those kinds of issues have been thought
through and addressed.

MR. SINGLETON: I understand. To our knowledge,
there are no system failure, single point of failures. If
the counties use them in the automatic mode as indicated by
the staff, it is tied directly to the voter database, or
voter registration database of that county. Otherwise,
there are no other components to it. It encodes a card at
the early voting location and that is it.

CHAIRPERSON KYLE: Okay. Mr. Clark, I see you
want to comment.

If you could stick around, Mr. Singleton, because
I have a couple other questions along these lines.

MR. CLARK: Again, Brad Clark, I'm the Registrar
of Voters from Alameda County.

The way VCProgrammer works, it only works at our
early voting sites, so it's only our own staff using it, the
poll workers don't use this. And it's hooked into our
regular database, it's loaded onto PCs that the staff
members at the front counter would use. They put in a
voter's name and find that voter in the database, and then
the system automatically assigns the correct ballot type and
precinct to it to burn the card.

Without VCProgrammer, you have to use a
touchscreen device which has all the precincts in the county
on it and the staff person has to look up the voter, find
the precinct, and scroll through the thousands of precincts
in the county and find the right one to burn the card, where
VCProgrammer finds it for them and automatically burns the
card for them.

And, again, it's internal staff using it, it's not poll workers using it, so the training is really fairly simple, it's pretty much like issuing a paper absentee ballot, pretty much the same process.

CHAIRPERSON KYLE: And how many early voting sites do you have, Mr. Clark?

MR. CLARK: For this election, we're only going to have one, just our own office.

CHAIRPERSON KYLE: Right.

MR. CLARK: In the past we have had five. But we have always done them in city clerk's offices so that we've always trained city staff. We've never had them out at shopping centers or places like that, we've always done them in government buildings. So we've always had public employees who were doing this, either City Clerk staff or Registrar of Voters staff.

CHAIRPERSON KYLE: Thank you for that clarification.

MR. WAGAMAN: And on that same point, since we don't see county registrars from the other counties present, I believe all the counties from our discussions were planning on using staff, not volunteers, to be using the equipment. Plumas County is again planning on using it just at that central location. Los Angeles, I believe, is
considering using it out at remote locations as well.

CHAIRPERSON KYLE: That's great.

Another question. In the last example, the last submission, there was a default that if the ITA report and the NASED number was not forthcoming by the 27th, it would revert back to the 1.94W and 1.96.4. What happens here if we don't, since we likewise don't have an ITA and a NASED number?

MR. WAGAMAN: I can provide the information on what we would require, what the vendors' response will be after the --

CHAIRPERSON KYLE: Okay. I'd like to hear yours and I'd like to hear yours.

MR. WAGAMAN: For our purposes, VCProgrammer would not be certified for use, so it could not be used. So the county would then either not be able to support its early voting program and would not use that or it would have to use a different functionality to support it such as what was described by Mr. Clark about using the ability of the units. Though I believe most counties would probably -- I would have to default to the vendor as to what those counties alternate plans for early voting would be.

MR. SINGLET ON: The situation described by Mr. Clark is the fallback if the ITA doesn't have the letter.

You take a TS system that would have been in use in the
early voting, take it off line, and make it the activator.

So the staff person would be looking at a paper poll book, so that when someone walked in be able to look it up in the precinct and then scroll through on the menu bar of the screen of the TS. Then they would type in that code, insert the voter coder card and it would kick back out with that ballot style that they would give to the voter. So there is a backup.

CHAIRPERSON KYLE: Mr. Clark, when does your county plan on beginning early voting?

MR. CLARK: Well, since we're doing early voting only in our office, we wanted to start on October 4th and absentee voting on that day.

CHAIRPERSON KYLE: Okay. So September 27th would conceivably be a deadline that would work for you?

MR. CLARK: It should, because this would only apply to about five computers and all in the central office. So this is one of the reasons we did not do outstation early voting this time was because we knew it might be late when we got the certification for VCProgrammer.

CHAIRPERSON KYLE: If you could stick around, I'm told that there are a couple other questions that might be directed to you and --

PANEL MEMBER MOIT-SMITH: I'm just going to follow up that Los Angeles County couldn't be here today, but they
did call last night and this morning and they expressed two
things. One is that they do need to know sooner rather than
later, and the message was they needed to know today about
the VCProgrammer.

But they also indicated that the security
considerations in the staff report were fine with them and
that they would amend the security report that they are
submitting this Friday to incorporate all of the staff's
recommendations.

CHAIRPERSON KYLE: Thank you.
Caren?

PANEL MEMBER DANIELS-MEADE: No, I don't have
questions.

CHAIRPERSON KYLE: I have one more before I turn
to the left.

In the staff recommendation, Mr. Wagaman, you
suggested Condition Number 3 that security plans be
submitted on the physical and technical security of the
computers running VCProgrammer, which I think is an
outstanding idea. However, it lacks a date specific as to
when we should get those plans so we can review them and
give them back.

MR. WAGAMAN: That's correct. That was probably
an omission on the part of staff. The staff recommendation
would be that either prior to use which would be whenever
they use their early voting or it would be linked to that
September 27th date just to keep everything consistent.

CHAIRPERSON KYLE: Mr. Clark, can you just comment
on that whether that is something that's -- how that would
impact you and your county?

MR. CLARK: We could comply with that.

CHAIRPERSON KYLE: Okay. If we tied it all to the
27th?

MR. CLARK: That shouldn't be a problem.

PANEL MEMBER MOTT-SMITH: Could I ask Brad a
question on behalf of Los Angeles, so I understand it.

MR. CLARK: Do I get a raise and a larger staff?

(Laughter.)

PANEL MEMBER MOTT-SMITH: Chris' comment this
morning was that they really needed a decision right away.
You said you're doing it just in your office, Plumas is
doing it just in their office. LA is doing it out into the
communities. Can you explain to me why there would be a
difference in their urgency versus your urgency?

MR. CLARK: I'm not exactly sure how they link
their early voting sites to their database. When we want to
do this with a city clerk's office, we have to get lines
into the city clerk's office so they can link and do these
transactions, and Los Angeles may be having to do that for
one thing. Or if they are doing laptop computers, they're
probably having to load those laptops with their database.

And I don't know how many sites they have. We had like four
sites outside the office where I think they had many more
sites than that. I think they have fifty or something like
that. So I just assume that it's a bigger job.

CHAIRPERSON KYLE: Mr. Singleton.

MR. SINGLETON: I believe that when we were doing
the testing, we made query of Los Angeles and the number was
closer to 20. They expressed using the laptop and they were
going to consider using the network in automatic mode. And
I think that would be their time delay of when you set up
the network infrastructure in various locations, it may or
may not be within your normal confines. There is a period
you have to get out and establish a link and do your testing
from a network perspective.

CHAIRPERSON KYLE: Mr. Mott-Smith, I think given
the fact that there's not a NASED number or an ITA, I, for
one, would have severe trepidations about telling Los
Angeles anything other than it might be conditionally
certified depending on the outcome of this, despite
potential operational hurdles.

PANEL MEMBER CARREL: I would concur with your
trepidations. Being an LA resident, I voted for early
voting in March. They do use a laptop and that brings my
concern, because they also don't use staff at all sites.
They do have volunteers at some sites, so training does become an issue. I don't know though if they have staff just working laptops and that's an issue I think we can -- I would have liked someone from LA to clarify, I don't know if there is anyone here that can give that answer.

My concern is those laptops and placing the VCProgrammer on those laptops and the security of those laptops so that they're not used for something else after testing, the assurance of virus protection to make sure that it's clear of viruses before VCProgrammer is installed. And I don't know what the requirements are for that?

MR. WAGAMAN: Well, there are some specific things that are required in the procedures that are general issues. Specific to each individual county, as I said the operation is different. In that particular situation where a county was using it outside of the office on a laptop, the things we would be looking at are who are the people who have access to that. There are ways you can use the Key Card Tool so you can make it such that the cards activate it by the VCProgrammer for early voting would not be able to be used on election day. So the concerns about them just creating card block would be mitigated, things along those lines. Like you said in the procedures as I recall it makes reference to the same security should be built around any computer using VCProgrammer, any computer running GEMS,
which would include, as you said, the virus protection and
those kind of issues. But again, it's going to be relevant
to how counties use it and where we need to build up the
wall around the VCP programer.

PANEL MEMBER CARREL: And you have the condition
of a security plan from each county be submitted before they
install VCP programer, correct?

MR. WAGAMAN: Correct. And I believe the Chair
has expressed an interest in modifying that to the 27th?

PANEL MEMBER CARREL: Yes. I would have to concur
with that. And it's not just the technical security
regarding virus protection of the software, it's also
physical security of the laptops so that there's access
limited, not only for password protection, but physical, you
know, where they're stored after they're tested and
installed and between each early voting day.

My concern is less that they are going to pull up
a Democratic ballot when they are intended to have a
Republican ballot, but that when they pull up a ballot a
race would be left off or that they will allow a key card to
be used multiple times. And that I think is of bigger
concern than the wrong ballot, because I think someone
obviously will notice the difference there. They may not if
a judges' race is left off or what have you.

I do recognize that there is a backup to use the
TS machines and that there are TS machines at none of the
early voting sites in Los Angeles. So there is a means to
program these cards clearly, the VCProgrammer's the
preferred method since they can program them very quickly
and in large numbers, but it seems like a small aspect of
the whole system. But the PCM device which sought to do the
same thing was the critical failure point in San Diego. And
part of it was -- and although this is early voting, it's
not going to be as critical now, I'm just wondering out of
curiosity, and I don't know if this is something the vendor
can answer or you can answer, but is the software that's in
VCProgrammer the same software from the PCM device?

Mr. Wagaman: No. It's a different software
package.

Panel Member Carrel: Okay.

Mr. Wagaman: And I can't quite speak to all the
differences, whether it's developed in parallel or it's a
completely separate development track, the developer would
have to answer that, but it's not the same firmware.

Panel Member Carrel: Okay, thank you.

Would the vendor like to comment?

Mr. Viadel: Hi, I'm Tad Viadel, I'm Director of
Software Development.

In answer to your particular question is
VCProgrammer the same software as is used in the PCM, the
answer is no, it's a totally different development group.

VCProgrammer actually has been used in other places for quite a while.

PANEL MEMBER JEFFERSON: Without a NASED number?

MR. VIADEL: In places that don't require certification.

PANEL MEMBER JEFFERSON: Okay.

CHAIRPERSON KYLE: Like where?

MR. VIADEL: Canada. The other thing, just for clarification, what's stored on the smart card is strictly the ballot identifier, not a set of races, so there's no ability to leave off a key race, just so you understand that.

PANEL MEMBER CARREL: When you say Canada, isn't there just one jurisdiction in Canada that uses your touchscreen machines?

MR. VIADEL: No. There's multiple.

PANEL MEMBER CARREL: Okay. Thanks.

CHAIRPERSON KYLE: Mr. Jefferson.

PANEL MEMBER JEFFERSON: I guess I'm concerned about what we're being asked to do today. This is a major new subsystem, not a lot of experience with it in the United States in jurisdictions that require certification. It's never been certified in California for use, it doesn't have a NASED number yet, although I do expect one. But for a
system that's new, a subsystem that's new, we're being asked

to conditionally certify, we don't even have an ITA report

on it. I'm uncomfortable about even conditionally

certifying it without an ITA report considering it's a new

subsystem. Not that we can't revisit it again before the

election, but without --

MR. WAGAMAN: With one point of clarification, we

won't be getting a report from Wylie because it's not

firmware and the system integration is from CIBER so without

-- it's the only report we wouldn't be receiving.

PANEL MEMBER JEFFERSON: And so that we do have?

MR. WAGAMAN: We have the letter, not the report.

PANEL MEMBER JEFFERSON: The letter, not the

report, okay.

And then the condition on conditional

certification here is that the counties submit a security

plan which we have not seen and which in my opinion, since

this is a major important subsystem, really belongs in the

procedures and should be in the procedures for us to

recommend certification on, rather than as sort of an

afterthought. In other words, the status of this part of

the system, the status of the security surrounding this, is

important enough to me that it deserves formal procedural

status, not a kind of procedural afterthought to our

recommendation. I guess I would like to see the ITA report

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and the security plans before I would feel comfortable
voting recommending conditional certification, but I'd also
like to hear the other Panel Members points of view on this.

PANEL MEMBER CARREL: I'll speak to that. I don't
have a problem issuing conditional certification with one of
the conditions being a security plan that needs to be
approved if we clarify that installation can't be done until
we approve the security plan.

PANEL MEMBER JEFFERSON: Well, it's all right. Is
it we this Panel who will approve it, because I would like
to see it?

PANEL MEMBER CARREL: I don't know what the
process would be.

MR. WAGAMAN: The current language refers to that
would have to be approved prior to use. It's approved by
the Secretary of State's office, it does not speak to which
panel will be reviewing that. The one problem with bringing
it before this panel is as Mr. Clark has indicated, some
jurisdictions plan on using it prior to our next scheduled
meeting of October 5th.

PANEL MEMBER CARREL: Well, we can always schedule
another meeting.

MR. WAGAMAN: That would be at the Panel's
discretion.

PANEL MEMBER JEFFERSON: Well, and there was also
a concern, there was some mentioning of possible use in a
network manner in Los Angeles County where they have many
outlying. And I haven't seen the architecture of this
networking system. That immediately raises security alarm
bells in my mind, and maybe there's nothing to worry about,
but without documents, I can't review it. And that's my
concern.

CHAIRPERSON KYLE: I would agree with that point,
because it's one thing to have a stand alone PC, it's
another thing to have a network with a server, and it opens
up a whole other level.

Let's get some other comments from either of the
other --

MR. WAGAMAN: Well, I think you guys are
proceeding from -- I will ask the Panel, there are some
security measures in the procedures at section 3.2.31, if
you want to look at some of those things. It doesn't cover
everything, because again of the differentiations between
how the system would be used in each jurisdiction, page 21,
tab 8.

CHAIRPERSON KYLE: While we're looking at this,
let me ask, Mr. Clark, since it's early voting and you're
using at the one site only, presumably taking one of the
TS's out of circulation, quote, unquote, to be used in the
early voting would have minimus impacts since they're going
to be sitting around anyways until election day; is that correct, setting aside the ease of use or the pros and cons of --

MR. CLARK: Yes, we would have a TS available to use to do that to do the cards. I think that the possibility of error by the staff person in giving the wrong ballot out is significantly higher if you used the TS machine and you're having to find a thousand different precincts, rather than having the computer select it.

CHAIRPERSON KYLE: Thank you.

PANEL MEMBER CARREL: I'm looking at the language here and the procedures, and I'm noticing they're sort of recommendations and not requirements, which --

MR. WAGAMAN: Again -- oh, go ahead.

PANEL MEMBER CARREL: So I would recommend changing some of these advisable, should, to must and required. It says it's advisable to have one person responsible for installing the program and loading files and having access, key personnel should be consulted and most likely must be used to facilitate installation and operation, care should be taken to limit access to only the necessary files in creation of voter access files, and internet access should be disabled during this period, if possible. I would recommend requiring internet access be disabled during the period. The files should be promptly
removed at the close of early voting. I would suggest that we change it to must be promptly removed and other things like that. Which one?

CHAIRPERSON KYLE: Physical security.

PANEL MEMBER CARREL: Physical security, i.e., being locked in a segregated room as most GEMS servers are may have to be given up as these computers are also utilized in the daily office environment. Most companies have applied additional security to actual computers to limit access and should.

I mean we should change that to counties must apply additional security and try to define additional security regarding physical security as well as technical security. It does mention log sheets should be kept to track users as well as reconciliation at the end of the day. The end of the day to balance the numbers of cards issued against the total ballots cast. I think that's critical in regard to the point counted earlier regarding multiple use by an individual card. And then it says physical access will also be limited. So I think these begin to address our concerns, but I don't think they do it as directly as they should or as they must.

PANEL MEMBER DANIELS-MEADE: Or it would be advisable.

CHAIRPERSON KYLE: Well, Mr. Clark, let me ask you
another question. Would that be a laptop used in other
daily office environments or would it be a dedicated laptop?

MR. CLARK: In Alameda County, we don't use
laptops.

CHAIRPERSON KYLE: Stand alone desktop?

MR. CLARK: Yes.

CHAIRPERSON KYLE: And would it be one that would
be utilized for other purposes during the day during the
week?

MR. CLARK: Yes. Generally these are loaded on
only the people at the front counter who are doing either
hand-entered absentee applications or serving the public
that comes in. And the supervisor and the assistant in the
absentee section have it loaded on their PCs. I don't have
it on mine.

PANEL MEMBER CARREL: Why don't we table this
until the end of the hearing and take a break before so that
we can move onto other issues. I know there's still concern
here and I hope there's more information we can gather.

CHAIRPERSON KYLE: Well, before we do that, let me
just see if there are any other Panel comments.

PANEL MEMBER MOTT-SMITH: Basically, I was going
to support Mr. Carrel's suggestion that a security plan be
submitted before installation and that Mr. Jefferson would
be part of the review of that process. It strikes me that
this is only for early voting, two out of three counties are in their headquarters environment, and I mean Mr. Clark makes a compelling argument that this provides a greater security against error than the prior system and that's something that we should be looking at. I'd be willing to go forward on that with those conditions.

CHAIRPERSON KYLE: Two of the counties are going to have single site, however the largest county is going to have multiple sites and isn't going to have stand alone computers, it's going to be networked, so it's going to be most problematic there.

PANEL MEMBER MOIT-SMITH: Again, that's where I think the security plan would be part of that, and I think Mr. Jefferson's participation in that would certainly satisfy my concerns.

CHAIRPERSON KYLE: I'm going to open up to public comment, then I'll entertain your idea, Mr. Carrel.

All right. Ms. Alexander.

MS. ALEXANDER: Kim Alexander, California Voter Foundation.

I just have two comments about that. The first is that if it's only applying for early voting sites, if and when you do certify this, perhaps the certification could specify that this only applies to early voting, that VCProgrammer can only be used for early voting, if that's
not already one of the conditions, that you consider for the conditional certification.

And the other point to make is that early voting, while it is a nice idea and it's popular, it's not required under law, it's not absolutely necessary to happen, and if you see a security risk as I see it at risk going forward, as I do, based on the discussion I've heard with early voting sites in LA County at remote locations staffed by volunteers working on networked laptops that have lots of ports on them that may or may not be plugged up, that makes me rather uneasy, as I think it does you too. And so I just want to remind you that it's not required under law that this even happen at all. Thank you.

CHAIRPERSON KYLE: Thank you.

Lucille Moyer.

MS. MOYER: Thank you. My name is Lucille Moyer, I'm from San Jose, California. I hadn't planned to comment on this, but I have a couple of questions about this.

One of you just brought up the idea, Mr. Jefferson probably, about ending up with more votes than you have voters. And when that happens, even though things are just lock boxes, there's, you know, audit trails of who touched what and who had what plan and all that stuff, in the end when you count it and you've got more votes than you have voters, what do you do? Computers can only regurgitate the
same information, they can't recount anything. What do you do? That's what I want to know. You know, how do you fix it? Do you call the voters back to vote again? You know, how do you recount it with no paper trail.

So I just want to know if you guys have a contingency plan for recounting these votes that can't be recounted. So it's just a question that always just keeps coming up. No matter what the issue is, it always comes down to the same issue. So I mean I would like to hear some kind of answer about what are you going to do about it when you've got more votes than you have voters. Thanks.

CHAIRPERSON KYLE: Thank you.

It seems to me that there's a desire, at least among half the Panel to get more information on this. The question I would pose is whether we seek that information and roll this over to a later date, which would be my recommendation, or somehow that you think us delaying it until discussion after the next submission will bring clarity. I'm not sure how that would do it, otherwise I wouldn't entertain it. Do you think there's information that can be gathered within an hour?

PANEL MEMBER CARREL: Well, we could table this or set another date prior to the next meeting and have discussion after we have more information. I think the concern here is Los Angeles County which we don't have.
information on, there's no representative here from, and
from all three counties using this early voting, we don't
have clarification about the security procedures they're
going to implement. So maybe what we do is we -- I mean I
don't think we can do anything else other than, if we're
planning on approving this, is approve it conditionally with
security plans, and if security plans come in, they have to
be approved prior to the installation of the system in a
county. The only other option is not approving it in any
county.

CHAIRPERSON KYLE: Well, that's certainly an
option I'm considering.

Mr. Jefferson.

PANEL MEMBER JEFFERSON: See, I'm not sure what
the difference is between approving it conditionally now
pending the approval of a security plan later and not
approving it conditionally now and tabling it and
considering it later. And I don't want to send a signal to
the counties that this is all but done when I at least don't
feel that it is all but done. And I am comfortable, pretty
comfortable, with Alameda and Plumas Counties, and maybe we
could separate the consideration of them from Los Angeles,
but we have too little information about Los Angeles and I
think too much hinges on the details there. And even so,
and I am still concerned about conditional conditional
certification. I mean I think we should consider it when we have all the relevant information.

PANEL MEMBER CARREL: I guess my point is that it seems that as a program itself that's not what we're concerned about. We're concerned about implementation by the counties. And so the certification of the system as a system or subsystem, it seems to be adequate to serve what we're trying to achieve with regard to what the vendor is supposed to promote and it meets the technical requirements per our testing. What we're concerned about is implementation by the counties and the procedures implemented by the counties, and so I would recommend it just can't be implemented in the county unless counties meet certain specified requirements such as providing us a security plan that's approved by us. Because we're basically putting it on the counties anyway. But if we don't certify it based on something that's up to the counties, it seems like we are laying blame on a system that is technically satisfactory according to our technical advisors, even though the implementation is what's at question.

PANEL MEMBER JEFFERSON: But it's not even that, we have no NASED certification. We don't have that either.

PANEL MEMBER DANIELS-MEADE: But we don't have that for any of --
PANEL MEMBER CARREL: And the clear condition is we need to receive NASED certification before anyone can use it anyway, apart from the security requirements, and we need to receive that by September 27th.

CHAIRPERSON KYLE: Well, I think you have defined the issue though, David, and that is do we conditionally certify it with conditions later or do we table it until we have more information on the 27th. And that would be a federal NASED number, federal qualification, and more specific security plans, and an ability for staff to work with the counties in addressing some of the concerns that we've raised. I don't believe it does meet the technical requirements, I'm of the opinion it's still -- once we get the NASED number, I would feel comfortable saying that, but we don't have the NASED number. We do have a new system, and it gives me pause for thought. Maybe we do bifurcate it into the small counties where it's stand alone and Los Angeles.

So I would like to suggest that we take a ten-minute break. And I don't want to make it longer, because we have one more agenda item and we have to be out of the room today. So I think we can do it all, but I have 11:41, I would like to reconvene at a quarter of, at 11:45, so that gives us just six or seven minutes to run out.

PANEL MEMBER DANIELS-MEADE: That would be three
CHAIRPERSON KYLE: I'm sorry --

PANEL MEMBER CARREL: I have 11:38.

CHAIRPERSON KYLE: I'm sorry, ten minutes.

(Thereupon a recess was taken.)

CHAIRPERSON KYLE: We got some information through Martin Singleton who got a hold of Los Angeles and gave the information to Mike Wagaman.

Mike, would you mind reading that.

MR. WAGAMAN: The County's intent is to use --

CHAIRPERSON KYLE: For Los Angeles, right?

MR. WAGAMAN: The County of Los Angeles' intent is to use VCProgrammer at 16 locations, one would be at the central Norwalk facility, the other 15 would be remote locations, eleven of those would be using PCs, four would be using laptops. The program would be linked through a network to their voter registration database. They would be using it in the automatic mode that was described during the original staff report.

PANEL MEMBER CARREL: Does that mean that each laptop and PC would have the program on there or the program would come through the network?

MR. WAGAMAN: No. The program is loaded on that, then it would be linked through the network in order to link to that voter registration system in order to use it in
PANEL MEMBER JEFFERSON: So when you say the network, Los Angeles county is big, we're not talking about a local network here, we're talking about a big virtual private network?

MR. WAGAMAN: I don't have additional information on the nature of the network. That would be one of those things we would be looking at in the security plan, either with or without the Panel meeting again, that's one of those things that we would be specifically looking at.

CHAIRPERSON KYLE: So let me see if I can recapitulate. Basically, we have a few concerns. One is the distinction between smaller counties that are using a single point and the larger county. The other is addressing security plans and security procedures that are adequate to using a PC or a desktop. It doesn't go to the count tabulations, so we're really just talking about precinct assignment. And we learned from discussions, if I characterize this correctly, Mr. Clark, with Alameda that the front desktop computers that are being used would be with a local area network or the servers based in your office and just locally. Is it with all of the county or just to the elections division?

MR. CLARK: May I answer from here?

CHAIRPERSON KYLE: Sure.
MR. CLARK: The front counter is just to our server.

CHAIRPERSON KYLE: Can you hear him?

MR. CLARK: The front counter is just to our elections servers. The supervisor and her assistant are on the county intranet.

CHAIRPERSON KYLE: The county intranet system, okay.

Okay. Slightly stymied here. I'll entertain a motion.

PANEL MEMBER CARREL: I would turn my recommendation into a motion that we conditionally certify with all the conditions, including that this only be used for early voting, and with an additional condition that this program cannot be installed in any county until the county receives approval from a security plan for how they intend to use VCProgrammer.

PANEL MEMBER DANIELS-MEADE: Second.

MR. WAGAMAN: Can I ask a couple questions on the motion?

CHAIRPERSON KYLE: Certainly.

MR. WAGAMAN: That would also include the change of requiring a submission date on the 27th; is that correct?

CHAIRPERSON KYLE: Correct.

PANEL MEMBER CARREL: Yes.
MR. WAGAMAN: And would that also include Mr. Mott-Smith's language about approval, including that of the Chair of the Technical Oversight Committee?

PANEL MEMBER CARREL: I don't know if that needs to be part of the motion, but I think from a staff consideration, using Mr. Jefferson or his review would be advisable.

MR. WAGAMAN: Thank you.

CHAIRPERSON KYLE: I would also like to have discussed the procedures as they were written are inadequate and they need to be strengthened, so it isn't just a security plan coming from the counties, but the procedures that we currently have where we have shoulds and may.

MR. WAGAMAN: Submission from the vendor modified procedures to make the requirements, the section 3.2.3.1 requirements as a post recommendation prior to your approval?

CHAIRPERSON KYLE: Correct.

Is the maker of the motion.

PANEL MEMBER CARREL: I would agree to include that as a condition.

PANEL MEMBER JEFFERSON: May I ask a question?

CHAIRPERSON KYLE: Sure.

PANEL MEMBER JEFFERSON: I would just like to know what is the process we will go through to make it our final,
or will this be our Panel's final recommendation to the Secretary of State or will we go through another step as a Panel? Just a question.

PANEL MEMBER CARREL: If we approve this motion, the only further steps would be from staff, hopefully in consultation with you, reviewing the security plans, and to sign off on the procedural changes. But I mean we would recommend that the Secretary not concur with the recommendation until the procedures are modified as well, so he doesn't do a final sign off until those procedures are changed. And I'm sure the vendor can make those modifications to the procedures within the next several days. It usually takes them three or four days to sign off.

CHAIRPERSON KYLE: The alternative is that we could set a date of the 27th to make sure all the ducks are lined up in a row.

MR. WAGAMAN: And I have the schedule for the availability of this room, if the Panel decides to go that direction so you can schedule dates.

CHAIRPERSON KYLE: What's the 27th look like?

MR. WAGAMAN: The 27th, it looks like there's a meeting in the morning, I don't know if it extends all day until 5:00 o'clock. So this room would be reserved on both the 27th and 28th. So we would have to either look at an earlier date on the 24th or the 29th.
CHAIRPERSON KYLE: Or find an alternate venue.

MR. WAGAMAN: Or find an alternate venue, correct.

PANEL MEMBER CARREL: I would recommend Los Angeles, then we would get our answers quicker.

PANEL MEMBER MOTT-SMITH: I would like to speak in support of the motion. It seems to me that at least in my mind that the legitimate security issues either have been addressed or can be addressed and can be addressed through a process that involves staff, David, and the approval of the Chair.

And I think we have a significant interest in trying to move this forward. Early voting is an opportunity for persons with disabilities in Los Angeles County who don't have access to accessible voting to be able to cast a private and independent vote. It's an opportunity for people with language limitations to also vote in the language that they're most comfortable in. So I think it's important that we move this forward and do signal that we are going to try and move this forward unless we run into something insurmountable with the security review.

PANEL MEMBER DANIELS-MEADE: I'm in favor of the motion myself.

CHAIRPERSON KYLE: Any other discussion?

Mr. Kercher.

PANEL MEMBER KERCHER: Based upon the way that the
devices are being used both in the small and the large counties, it's not clear to me that we can receive procedures that will ensure that internet access can be disabled. And I will want to know that that is something that can be accomplished, and I don't think we can do that until we see the procedures. There's a possibility that they cannot provide procedures to limit internet access as recommended in the generalized procedures, and I don't feel comfortable supporting the motion to certify these.

CHAIRPERSON KYLE: Okay. Any further discussion?

PANEL MEMBER CARREL: Let me clarify the motion as to the procedures.

CHAIRPERSON KYLE: Okay.

PANEL MEMBER CARREL: We need to reiterate what the condition is with regard to revising the procedures by the vendor, or how I can propose it.

MR. WAGAMAN: I don't have the exact language, but it would say something to the effect that prior to the September 27th date, the vendor must submit modified procedures regarding security of VCProgrammer, specifically modifying section 3.2.3.1 to make its recommendations requirements.

PANEL MEMBER CARREL: That's very good, thank you.

CHAIRPERSON KYLE: Okay. So we would be looking at modifying Recommendation Number 3 to set a date specific
of September 27th, adding Number 8, only used for early
voting, Number 9, can't be installed prior to I'm going to
say September 27th as an outside date.

PANEL MEMBER CARREL: What can't be installed?

CHAIRPERSON KYLE: The VCProgrammer can't be
installed on --

PANEL MEMBER CARREL: Well, we should say it can't
be installed until --

CHAIRPERSON KYLE: Approval.

PANEL MEMBER CARREL: Well, the vendor has to
submit revised procedures by September 27th, and then it
can't be installed in any county until and unless security
procedures have been approved by the Secretary of State and
that can be no earlier than September 27th.

CHAIRPERSON KYLE: I don't want to make it
contingent only on -- or I would oppose the motion if it is
only contingent of security measures, because we're still
waiting for a NASED number. And let's say we get a good
security plan and we don't have a NASED number by the 27th.

PANEL MEMBER CARREL: I would concur.

CHAIRPERSON KYLE: So if all of the conditions are
met, the vendor plan, county plan, NASED number.

MR. WAGAMAN: Compliance with all the other
federal --

CHAIRPERSON KYLE: All right. Then that I could
PANEL MEMBER CARREL: I concur. I didn't mean to ignore the NASED number.

CHAIRPERSON KYLE: It's a minor detail.

PANEL MEMBER DANIELS-MEADE: Mr. Chair, I'm not certain that we need to actually make Number 8, I believe you called it, for the early voting. Because if you read the condition that was already set forth in the recommendation from the staff, it says the AccuVote-TS shall only be used in the counties of Alameda, Plumas, and Los Angeles for early voting, and only in the county using the AccuVote-TS with security measures, blah, blah, blah. So we've already covered it, early voting, in that.

MR. WAGAMAN: The language applied was actually provided from the previous certification of the TS and it was originally meant to say Alameda and Plumas for any purpose on the TS, and early voting only in Los Angeles, but you can modify the language.

PANEL MEMBER DANIELS-MEADE: Right. Other than the fact that simply by putting a comma after Alameda and taking out the and, and agreeing to have it read Alameda, Plumas and Los Angeles for early voting.

CHAIRPERSON KYLE: Does that comport with your planned use though, Mr. Clark? It does? Okay.

What are you going to use for regular voting, the
MR. CLARK: Well, for the regular voting, we're using the Stylus.

CHAIRPERSON KYLE: Oh, right. Okay.

All right. Then do you accept that as -- I think you're right.

PANEL MEMBER CARREL: Concur.

CHAIRPERSON KYLE: All right.

PANEL MEMBER CARREL: Accepted.

CHAIRPERSON KYLE: Modify the language here.

PANEL MEMBER CARREL: As modified.

CHAIRPERSON KYLE: All right.

Then all those in favor -- any further comments, I'm sorry.

PANEL MEMBER CARREL: We had public comment.

CHAIRPERSON KYLE: We have a second.

All those in favor say aye.

(Ayes.)

CHAIRPERSON KYLE: All those opposed?

(No.)

CHAIRPERSON KYLE: That's two no's and four ayes.

I want to add that I think we should have some type of report back from the staff prior to or about the 27th so that there can be public notice on this point.

MR. WAGAMAN: Is the Chair's desire to have that
in a report on the October 5th meeting date or as a report
issued on the website as an adjunct to the current staff
report?

CHAIRPERSON KYLE: That will be my desire that we
have a --

PANEL MEMBER CARREL: A status update is what
you're saying?

CHAIRPERSON KYLE: Yes, a status update.

PANEL MEMBER CARREL: The NASED was received and
new procedures and what are they and did we receive a
security plan?

CHAIRPERSON KYLE: Correct.

MR. WAGAMAN: So we would post the revised
procedures as soon as they become available and then we
would post an update as far as the security plans and NASED,
et cetera, the other requirements by the 27th.

Mr. Stuart points out I can actually have to the
28th so that I have a chance to read the reports.

CHAIRPERSON KYLE: We'll give you until the 28th.

Okay. Let's move to the new Number 4, the old
Number 5.

MR. WAGAMAN: We're going to be at Tab Number 14.

This is an application from Sequoia Voting Systems
for a modification to their currently used WinEDS, AVC Edge,
Optech 400C package. There are four system components. The
first is WinEDS, it's a modification from their currently
certified Version 3.0.99 to Version 3.0.134. WinEDS is the
election management system software package.

The modifications to WinEDS fall into three
general categories. The first category relates to the
interaction between WinEDS and the 400C. The 400C was
previously certified with the condition that it had to be
used in conjunction with the EMS Arrow central tabulation
software, the reason being there was during state testing an
anomaly identified where the results were not properly
recorded in the interaction between WinEDS and the 400C, so,
therefore, it was required that the 400C had to be used in
conjunction with that EMS Arrow. The vendor has made
modifications to correct that, so the 400C can now properly
work with the WinEDS correctly.

The second modification is that the 400C would now
be able to support multicard ballots, which is a desire from
at least one of the counties to make use of that
functionality.

The second category relates to interactions
between the WinEDS and the AVC Edge. One of those is that
it allows the audio function to follow the same rotation
rules as the rest of the ballots. Rather than the audio
just reading in alphabetical order, the audio would be
rotated in the same order the ballots are rotated on the
screen.

In addition, there's an anomaly corrected where under the previous version under certain situations, the review screen would appear in English when you're voting, for example, on a character-based ballots, like the Chinese ballot, the rest of the ballot would appear in Chinese, but the last page, the review screen, would appear in English. That's been corrected.

The third category are added or modified reports. Things like an added report on provisional ballot status, modifications to the Statement of Vote, and a modification to turn out registration reports.

The second component is the AVC Edge 4.2A. It's a modification from the currently certified Version 4.2. There's a typo in the staff report on that. The AVC Edge is a self-contained touchscreen voting device. The modification is to correct for a single anomaly that was identified wherein certain situations where a ballot that was a vote for more than one on the review screen would wrap over two columns that in some situations it would cause an error where the system would basically crash and have to be restarted. The vendor had not identified all the various things that had to happen in order to cause that error to happen, but it has been corrected under this new Version 4.2A.
The third component is the card activator, Version 4.3.2. This is the firmware on the unit that actually activates the voter access cards. It's unchanged from the previously certified version.

The fourth component is the Optech 400C, Version 1.02B. This is a central count optical scan system. It's an older system that predates actually the existence of Sequoia. It has not been modified from the previously certified version, however, some of its functionalities have been changed by the WinEDS as previously discussed with it being able to be used correctly with WinEDS and it now being able to support the multicard ballots.

The federal process. We have again received the letters from the ITAs, however, we have not received final reports and we have not received the final qualification number. So again there will be a recommendation that those be put as conditions with a time specific date. The final qualification will be to the 1990 standards.

State testing. The state test finally was completed in late August in Oakland. During state testing, one thing was an anomaly identified where the system recording function cannot support a California primary. It was not capable of reporting a split on a DTS versus declared and then the aggregate. There is a capability of it that was demonstrated using a program called Report
Viewer, however, Report Viewer was not part of the federal qualification process. So the recommendation which we'll get to later as to both requiring Report Viewer to go through that independent review prior to being used in a primary and the requirement of Report Viewer to not be installed on a computer running WinEDS until that process is completed, which we'll get to later.

A review of the state and federal laws.

Obviously, there is a problem as related to its compliance with the California primary rules. There was also an issue identified where the system does include a provisional write-in, and automatic resolution of provisional ballots that were cast in the wrong precinct. However, it was identified that that process does not work for split precincts. So for those ones, the ballot can still be hand recreated, because the system does allow you to view the ballot image prior to acceptance or rejection. So the system can still meet provisional requirements for California, however, the procedures have been modified to say that that automatic function cannot be used in ballots involved in a split precinct.

In addition, the system provides procedures submitted for the revised procedures, they have been modified to add the additional security requirements, again, along the same lines as discussed with previous vendors.
The system does not currently include a voter-verified paper audit trail, so it will have recommendations for restrictions from the April 30th directive, including that it will timeout after July 1 of 2006 and that it would be limited to those counties that used the system in the March election as applies to the AVC Edge.

Again, as discussed, there was another issue identified during federal testing where the resolve write-in process on the system, there's an automatic resolve write-in that can be done directly through the WinEDS that was identified that that would create potential discrepancies between the summary report and the precinct reports, therefore, the federal ITAs are going to recommend that that not be used. The procedure has been modified saying that they cannot be used, so write-in resolution would have to be done through a manual process, not through the built in process in WinEDS.

For these couple of anomalies I've mentioned, these are preexisting anomalies in the currently certified versions, these are not new anomalies, they were just not previously identified.

I've covered the issue as related to the fail safe provisionals. Procedures have been reviewed, for additional considerations again to acquire from April would apply.

Late public comments were received and distributed
to the Panel previously under the previous item.

As to the recommendations. Staff recommends certification of the Sequoia Voting Systems WinEDS 3.0.134, AVC Edge 4.2A, Card Activator 4.32, and Optech 400C 1.02B with the following conditions, and I'll touch on each of the conditions as we go through them.

Conditions 1 and 2 relate to the submission of ITA reports and the final federal qualification, again, with a specific due date of September 27th, the same date as the previous applicant.

Items 3 and 4 relate to the function of the Report Viewer program that, A, may not be installed on a computer running WinEDS, as it's not gone through that federal qualification process. It's not required to run a general, but it is required to run a primary, which leads to Item 4, which is that the source code for that be successfully reviewed by independent tester designated by the Secretary of State office prior to its use in a California primary, prior to the use of WinEDS 3.0.134 in a California primary.

Item Number 5 relates to the write-in resolution function in WinEDS not being used. As discussed, it would have to be used through a manual process.

Item 6 through 8 relate to compliance with the April 30th directive. The vendor has expressed some concern as related to that language and agreements that have been
made subsequently relating to the memorandum. So I understand some counties with the vendor, et cetera, although I hope the vendor will elaborate on those concerns after the conclusion of the staff report.

And Item Number 9 --

CHAIRPERSON KYLE: Mr. Wagaman, I just want to point out you have a verb tense that's incorrect in the first sentence.

MR. WAGAMAN: Of which --

CHAIRPERSON KYLE: Of Number 6.

MR. WAGAMAN: I would point out that that language actually came from the esteemed Mr. Miller.

Item Number 9 --

CHAIRPERSON KYLE: Number 7 you were on. You were on Item 7.

MR. WAGAMAN: Item 6 through 8 all relate to that compliance with the April directive, again, with that one concern that the vendor has raised, which they can come back on.

And Item Number 9 is again that standard language as relates to modifications of the procedures at a later date.

That concludes the staff report. If there are any questions of staff or, as I said, the vendor would like to comment on at least one of the recommendations.
CHAIRPERSON KYLE: Any comments or questions for Mr. Wagaman from the Panel.

Mr. Jefferson.

PANEL MEMBER JEFFERSON: I'm going to be embarrassed, but what is the write-in resolution function?

MR. WAGAMAN: The write-in resolution function is a person on the DRE will cast their ballot, type in the name of the write-in, that is now stored as what's called an unresolved write-in, which you can see what that unresolved write-in was, you can look at it. And then the way it's designed is they can go through and say this one is accepted, this is a certified write-in, this one isn't and reject it, or they can say they wrote in the name of somebody already on the ballot and assign that vote to that particular person on the ballot and do that process.

The issue is that when doing so, it will cause in some situations, the summary report will be correct but the precinct reports will not be. The way that is resolved under this system and would be resolved under the recommended certification is they can print a report that has all of the unresolved write-ins and then hand count those back in after the fact. So they can't use the automated function of the system.

PANEL MEMBER DANIELS-MEADE: Well, since we're asking silly questions, and I'm not sure if this is silly or
not, but I'm not certain, I have to admit by the time I got
to this last night it was getting real close to midnight
because it's far back in the binder, but there was concern
expressed on page 15 with respect to the fail safe for
provisional ballots and the inability to resolve those
except manually. Do we have something in our recommendation
that addresses that issue, because it's not immediately
jumping out at me?

MR. WAGAMAN: It is not, as I recall, in this
particular opinion. And you all have to remember I wrote
this a little ways ago, but it's not specifically included
in the recommendations for certification, it is included in
the procedures. If you want to add it as a condition on the
certification, that will be at the Panel's discretion.

PANEL MEMBER CARREL: I have two questions. Item
Number 4 or Recommendation Number 4, it talks about the
source code of the Report Viewer should be successfully
reviewed by an independent tester designated by the
Secretary of State's office prior to its use in a California
primary. I'm wondering does that preclude us requiring
federal testing?

MR. WAGAMAN: According to the Secretary of State
directive, that Report Viewer had to be completed by -- that
would have to be done by the federal process, and that's who
we would designate as the --
PANEL MEMBER CARREL: No. But does this condition
mean that we're not requiring it to go through federal
testing and get approved by an ITA and NASED?

MR. WAGAMAN: That language does not require that
it be, and again, at the discretion of the Panel, if you
wanted to make that as a requirement that the Report Viewer
would have to be federally qualified prior to its use in a
California primary, that would be at the Panel's discretion.

PANEL MEMBER CARREL: I would so recommend that
that change would be made.

And then Number 6 and Number 7, the language is
similar, but you do talk about as further clarified by the
Secretary of State memorandum of understanding and other
agreements in 7 and you don't mention it in 6. I'm
wondering if that shouldn't be included in 6 as well?

MR. WAGAMAN: This language was taken directly
from the certification issue that under the Diebold TS
certification with modifications for which counties are
relevant. So if you would prefer to modify that
certification, modify that language, that's again at the
Panel's discretion. But that's where the language
originated from.

PANEL MEMBER CARREL: Well, I'm just suggesting
that the security measures contained in the directive may
clarify it and modified by the memorandum, and I don't know
if there's a different memorandum or if it's the May 14th memorandum which should have been included in 6 as well.

MR. WAGAMAN: If that's a modification the Panel takes, staff would take the option of including that in the other items for other DREs that have included that exact same language.

PANEL MEMBER JEFFERSON: So another questions regarding Report Viewer. Again considering that we are planning to revisit our entire certification procedures and so on and due to the discussion earlier today and last Thursday, since the Report Viewer is only intended for primary elections.

MR. WAGAMAN: The Report Viewer is similar to those additional utilities I described under the Hart system. It can be used to report other additional reports not generated by WinEDS. So the vendor may in fact use it in the general election, but that's the reason the staff recommendation is that you put the same requirements you put on Hart which is that if it's a piece of software that's programmed by the vendor that has not gone through federal testing, that it does not touch the same computer that's running the certified set of systems.

PANEL MEMBER JEFFERSON: No. What I was trying to get at is that we are going to be again reconsidering all of our certification standards and so on and all of these
systems will be reconsidered, and no matter how we decide to
do that, it's going to be well before the next primary; am I
correct? And so the language here seems to suggest that the
certification we are recommending might last as long as the
next primary and I just did not want to leave that
impression if that's not our recommendation.

MR. WAGAMAN: It's my understanding the vendor's
intent is not to use the system, they'll have a new version
by then. This was presuming the action that this version is
preferred. In the staff recommendation, this version is
preferable to the currently certified version, the .99
version, as all the problems described herein are common
between the .99 and the .134.

PANEL MEMBER JEFFERSON: I understand that. I'm
just referring to the mention of the primary election,
that's all. I understand your point that it's preferable.

PANEL MEMBER CARREL: Rethinking, we may just want
to strike Number 3 and Number 4 because Report Viewer would
only be used in California primaries, and if we don't
mention it explicitly, it implicitly needs to go to federal
review, and I don't know that there's a need to mention a
primary in here either. Leaving 3 in saying that it can't
be installed, I think is necessary.

MR. WAGAMAN: The only recommendation from staff
would be that you would include language that would say the
WinEDS cannot be used for a California primary then.

PANEL MEMBER CARREL: Yes.

CHAIRPERSON KYLE: So that's your recommendation, Marc?

PANEL MEMBER CARREL: That would be my recommendation, yes, that WinEDS not be used for a primary and that we then remove 4 and 5. We modify 4 to say that and remove 5. No, I'm sorry, not 5. Let me correct this.

We leave in 3 and we change 4 to say that WinEDS cannot be used for a primary, Win Version 3.0.134.

CHAIRPERSON KYLE: Other comments from the Panel?

PANEL MEMBER JEFFERSON: Just so I understand, Marc, I'm just trying again to be consistent with our previous usage and whatever we say regarding whether this is a certification for one election only or for a time period, however we resolved that issue for Hart and for ES&S, if we revisit the ES&S decisions last Thursday. I just want to make this consistent. But mentioning the primary seems not consistent, mentioning it at all seems not consistent for WinEDS or for Report Viewer, that's what I was trying to get at. Am I misunderstanding?

MR. WAGAMAN: I would actually provide two points of clarification. One, this is a unique situation. None of the applications that previously came before the Panel was capable of running a general but not a primary, which is why
that additional language would be desired. On a staff
level, we would still recommend leaving in the language on
3, that would be a parallel to the language that you
required for the Hart system that again these additional
utilities that have not gone through federal testing not be
installed on the same computer that is running the certified
qualified software.

PANEL MEMBER JEFFERSON: Which means what?

MR. WAGAMAN: Report Viewer, is that it provides a
very similar function to one of those utilities that was
described under the Hart report.

PANEL MEMBER MOTT-SMITH: It may be worthwhile to
be more precise about the term California primary election
because I assume you mean a state direct primary, not a
vacancy election nor necessarily if there's a local
election?

MR. WAGAMAN: Correct. The election it can't run
and support is one that requires that split between DTS and
declared.

PANEL MEMBER MOTT-SMITH: So maybe just say a
state direct primary.

CHAIRPERSON KYLE: Anything else, John?
Lee?
Caren?

All right. Then does the vendor? You don't have
MR. BISHNARDO: Thank you. I'm Pat Bishnardo with Sequoia Voting Systems.

I think we're comfortable with the recommendation that the clarification as I understand it that Mr. Carrel mentioned about the condition on making sure that the requirements of the directive from the state included both agreements from the state, the county, and the agreements the state has with vendors. I think as long as all that is incorporated, then that was the only concern I had.

Everything else would be fine in our opinion.

Thank you.

CHAIRPERSON KYLE: Any questions or comments?

Okay. I believe there are public comments?

No, you will pass? Because you're the only one written down.

Come forward, Ms. Moyer.

You have the floor.

MS. MOYER: Lucille Moyer, San Jose, California.

I just want to make a comment reading through the compliance with state and federal laws and regulations for Sequoia and also for Diebold. As it turns out, on the WinEDS, it's the administrative review and analysis. Page 5 is missing from this report. This gentleman only gave us and made one copy of it for us that has it included, but I
think everybody else's package, page 5 is missing.

But the section that I'm referring to, this seems to be pretty --

CHAIRPERSON KYLE: Before you go on.

Is that true and can we make a page 5?

AUDIENCE MEMBER: There's 20 full copies up at the back.

MS. MOYER: Okay, sorry. It's missing.

CHAIRPERSON KYLE: Tab Number 5. For those of you who want a complete set, there's Tab Number 5 up at the table.

MS. MOYER: Yes. Thanks for doing that.

But what I noticed, it looks like this is information that is just standard for each of these things.

But in section, it's Item Number 4, section 103A.4, the system shall be auditable for the purposes of an election recount and contest procedure. The answer for Diebold says the system meets this requirement and the response for Sequoia is a little bit longer. But that's not what my concern is.

My concern is that in both cases they may be auditable for who handled what, when, and where, but they are not suitable for a recount because you can't recount them. Bringing up my same subject, you cannot recount the votes accurately, because there are no votes to recount.

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It's all electronic and it's just going to regurgitate the same identical information. If there is any kind of a close call between candidates, when it's recounted you're going to get the exact same information, it's not going to be recountable because there's no paper ballot. So I just want to go on record once again as stating we need to go back to paper ballots.

And the other question that I have is that the Panel didn't respond, Mr. Jefferson did privately when we talked, about what are you going to do when you find out there's a big problem at election time. Mr. Wagaman said to me it's up to the counties to certify the vote in their counties to resolve any issues if big discrepancies are quite obvious. You know, I think another lady in the audience mentioned that in a hispanic community most oftentimes you would expect a higher percentage of the vote to go to the hispanic candidate, and in some elections, that didn't happen, and those were glaring probably warning signals or red flags to take a look at the vote.

But what I still want to know and I'm hoping I'm going to get some kind of answer today, in general, is what are you going to do, what's the procedure, you know? The Panel here is doing its best to resolve all the issues, but you're handing out your decisions to the counties and approving what are we going to do, approve and certify these
machines. But then to have the counties be responsible for figuring this out when the voters are flipping out in their counties, it seems to me unfair.

I'd like to know what the Panel or the state has decided to do in the case that it's clearly been that a vote has clearly been fraud or error or whatever. And I would like some comment from the Panel today about what the responsibilities is here for fixing it. Thank you.

CHAIRPERSON KYLE: You're welcome. Just for point of information, we'll take your question under submission. You're welcome to stick around and talk with the Panel or staff afterwards, but it's not our role to answer every question that comes up, though we try to address a lot of them that are relevant and on point to the agenda items.

MS. MOYER: Well, is there any kind of --

CHAIRPERSON KYLE: So after the meeting, if you want to come up and talk, then you can do it. Otherwise we can engage in e-mail responses. And there is an answer to your question, at least in part. Whether you will find it satisfactory, I don't know, but there's an answer.

And Ms. Smith.

MS. SMITH: Less than half a minute.

Maureen Smith.

I just want to go on record that Peace and Freedom
Party opposes any and all systems that have any ability for breach of security, and that would include this one with the backdoor.

Thank you.

CHAIRPERSON KYLE: Thank you.

Any questions or comments from the Panel?

PANEL MEMBER CARREL: Is there a motion?

CHAIRPERSON KYLE: No, there’s not a motion. I would entertain a motion in any direction from anyone.

PANEL MEMBER CARREL: I would so move using the conditions expressed earlier by staff.

PANEL MEMBER DANIELS-MEADE: Second.

MR. WAGAMAN: As a point of clarification, would that include or not include striking Item Number 3.

CHAIRPERSON KYLE: Because it was first recommended that it would, then your recommendation that it would not.

MR. WAGAMAN: And I’m not a member of the Panel.

PANEL MEMBER CARREL: I would prefer to keep Item Number 3. I think the question was how to address the term primary that was Item Number 4 was the resolution on that.

MR. WAGAMAN: State direct primary election is the language I heard from Mr. Mott-Smith.

CHAIRPERSON KYLE: So can we go through those conditions again?
MR. WAGAMAN: One, the vendor must submit the final ITA reports by September 27th, 2004. Two, that they must contain a federal qualification by the same date. Three, that the Report Viewer should not be installed on the same computer running WinEDS. Four, that WinEDS shall not be used in a California state direct primary election.

CHAIRPERSON KYLE: So modified from its current?

MR. WAGAMAN: Correct. Four will be modified. Five would be as written, the write-in resolution function should not be used.

Six would be modified that after the period it would add as further clarified by the Secretary of State's memorandum dated May 14th, 2004, and any other agreement between the vendor and the Secretary of State.

CHAIRPERSON KYLE: Correct. And also make it contained rather than contain.

MR. WAGAMAN: Item Number 7 would read as originally, with the modification from the Chair.

Item Number 8 would again read as written.

And Item Number 9 would read as written.

CHAIRPERSON KYLE: Were there any others?

PANEL MEMBER DANIELS-MEADE: We're not going to address the issue of testing it all then in our recommendation? Testing WinEDS. Report Viewer, I'm sorry.

PANEL MEMBER CARREL: No, it's been removed.
MR. WAGAMAN: We've removed that, right. That's correct.

PANEL MEMBER CARREL: Which would instead imply that we would need to have a certification so we don't want to confuse that issue.

PANEL MEMBER DANIELS-MEADE: I understand that. I just want to make sure we're not addressing it in that.

CHAIRPERSON KYLE: Any discussion on the motion?

All those in favor?

(Ayes.)

CHAIRPERSON KYLE: Those opposed?

Any abstentions?

The ayes have it.

Going to the last agenda item, other business. We have reports.

MR. WAGAMAN: A couple of reports back. I'll go back to my notes.

We have a letter we received today from Brian Hancock of the federal process. The ES&S federal NASED number should be issued by Friday. So we have received that. Friday of this week is the 17th.

CHAIRPERSON KYLE: On which items?

MR. WAGAMAN: On all of the items contained in that, it would be the Unity, Model 550, Model 650. There would be other components contained within that federal...
qualification that were not contained in the state certification.

We're going to report back on local stuff in general, I will put together a more detailed report for the Secretary for consideration on that issue.

And I forgot to bring the other thing.

CHAIRPERSON KYLE: Thank you. Any other report?

PANEL MEMBER JEFFERSON: Just a question about the report.

CHAIRPERSON KYLE: Okay.

Mr. Jefferson.

PANEL MEMBER JEFFERSON: As it stands, if we do not get that certification for the ES&S systems that we conditionally certified last week by Friday, does that mean that they will not be used? In other words, is this a hard deadline this time?

MR. WAGAMAN: Well, the hard deadline is what's contained in the certification which was the 21st, which is the following Tuesday, I believe.

PANEL MEMBER JEFFERSON: Okay.

MR. WAGAMAN: But I'm reporting back that we expect it by Friday.

PANEL MEMBER JEFFERSON: Thank you.

MR. WAGAMAN: And that's from the ITA itself, it's not a notification from the vendor.
PANEL MEMBER CARREL: And on the reports, the
staff reports that you forgot today, can you distribute them
as part of our binder materials for the next meeting and
then report on them.

MR. WAGAMAN: That was the intent was to include
it as a tab in the binder and I didn't realize it didn't
make its way in there and therefore I don't have it with me.

PANEL MEMBER CARREL: Thank you.

MR. WAGAMAN: It was intended to be a tab 20.

PANEL MEMBER CARREL: Thank you.

CHAIRPERSON KYLE: Okay. There was one person
wishing to comment on other business.

Ms. Smith, was there anything you wanted to say?

MS. SMITH: Yes, thank you.

Maureen Smith, again, the last time today, at
least.

I'm still on the issue of the paper ballots. I
met with Jess Durazo and his assistant in Santa Clara
County, and it appears to me that they are trying their best
to have some kind of paper, up to the point of even allowing
people to use their sample ballots, which sounds very good
to me. This is what I was told, that they were approved by
the Board of Supervisors for additional paper ballots, not
counting absentee ballots, 25 percent of the expected
turnout at the polls, regular paper ballots. Then they had
another line of defense, if you want to call it that, of having provisional ballots to be used for those who want paper ballots. And the final thing was allowing people to use their sample ballots as their voting ballot.

So I actually was pleased by that. I hope it's the same plan he turned in.

What I wanted to know, if the other Sequoia counties are doing a similar thing or if this is even something that you know. It's part of your whole process, I don't think I'm out of order in asking this in any way, because Kevin Shelley said that, you know, everybody will be entitled to a paper ballot at the polls. That's my first question.

The second one is related to, again, but only this time to the money. I did write to Governor Schwarzenegger, I did not get an answer, but I heard yesterday that some of the HAVA monies had been released, and I was wondering if you knew about it and if it included that money that would allow you to do the advertising for a person's right to a paper ballot?

CHAIRPERSON KYLIE: Mr. Carrel, do you want to speak to that?

PANEL MEMBER CARREL: On that issue, unfortunately, the funds that were released by the administration and the Department of Finance did not include
voter education funds, except those funds used by counties for voter education, specifically or exclusively requested by them for that purpose. We don't have control over what -- we're not coordinating what each county is doing individually, our statewide program for voter education was not approved so we can't spend money on that at the state level.

MS. SMITH: Thank you.

CHAIRPERSON KYLE: That's not the most current information though. We have yet to receive a response from our most recent request for funding. So your letter has not been sent, we await a response. We may find something out today.

PANEL MEMBER CARREL: Yes. Just to clarify, the first set of money did not included that, although we did ask again, and that leaves us back where we are.

CHAIRPERSON KYLE: Thank you for your help.

And as to the first question, I can't remember, but if you come up afterwards, I'm sure I can answer it.

I'm going to entertain a motion to adjourn.

PANEL MEMBER DANIELS-MEADE: So moved.

PANEL MEMBER CARREL: Seconded.

CHAIRPERSON KYLE: All those in favor?

(Ayes.)

CHAIRPERSON KYLE: Opposed?
Then the meeting is adjourned.

Thank you very much all for attending.

(Thereupon the meeting of the Voting Systems and Procedures Panel was concluded at 12:46 p.m. on September 14, 2004.)
CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing Voting Systems Panel proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Voting Systems Panel proceedings, or in any way interested in the outcome of said Voting Systems Panel proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of October 2004.

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