

DOCKETED

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EXHIBIT A

Confidentiality Designation

Shelby M. Gatlin, CCO
31 Natoma Street, Suite 120
Folsom, CA 95630
916.805.5240
Shelby@calcerts.com



May 1, 2019

Via CEC Docket 19-HERS-01

Mr. Drew Bohan
Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, California 95814
Drew.Bohan@energy.ca.gov

**Re: Request for Confidential Designation for CalCERTS, Inc.'s 2019 HERS
Provider Application**

Dear Director Bohan:

CalCERTS, Inc. is currently applying for recertification as a Home Energy Rating System (HERS) Provider, pursuant to Chapter 4, Article 8, Sections 1670-1675 of Title 20 of the California Code of Regulations, (hereinafter referred to as "HERS Regulations"). CalCERTS is presently a certified HERS Provider, receiving approval from the California Energy Commission (Commission) for applications submitted in 2003 through the current code. With each application, CalCERTS has requested and received a designation that proprietary application materials be maintained as confidential pursuant to section 1674(b) of the HERS Regulations. This letter serves as CalCERTS' formal request for a Confidential Designation for its 2019 application.

Pursuant to section 2505 of Title 20 of the California Code of Regulations and section 6254 of the California Government Code, CalCERTS is permitted to request a Confidential Designation for each application submitted to the Commission. Further, repeat requests for Confidential Designations are automatically granted if the facts and circumstances relevant to confidentiality remain unchanged from the prior application. (See 20 CCR 2505(a)(4).) This letter serves as CalCERTS' formal request pursuant to these provisions.

Attached to this letter please find the following:

- Attachment A: The California Energy Commission's Application form CEC-13, for Confidential Designation.
- Attachment B: A copy of the California Energy Commission's July 25, 2016 letter granting Confidential Designation to CalCERTS for information related to CalCERTS' Training Overview, Materials and Exams; Rater Agreements; 1674 HERS Requirement Summary; Registry and Registry Testing and Manuals.
- Attachment C: A certification executed by CalCERTS' CEO, Charlie Bachand, which states that CalCERTS' 2019 recertification application meets the criteria for a Confidential Designation.

If you have any questions about this request, please do not hesitate to contact me at Shelby@calcerts.com or by phone at (916) 805-5240.

Sincerely,



Shelby M. Gatlin, Esq.
Chief Compliance Officer
CalCERTS, Inc.

Attachments

Cc: (email only)

Charlie Bachand, CalCERTS, Inc.
Lorraine White, California Energy Commission
Chief Counsel's Office via the Docket Unit, California Energy Commission





ATTACHMENT A

Application for
Confidential Designation (CEC-13)



**APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)**

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

All confidential filings: Individual documents may not exceed 30 MB¹ or be password protected.² The application must be a separate document from the confidential materials. The application itself is not confidential and is a public record. The application will be reviewed and acted upon by the Executive Director in consultation with the Chief Counsel of the Energy Commission. (§ 2505, subd. (a))

If you have questions, contact the Docket Unit at (916) 654-5076 or email: docket@energy.ca.gov.

Existing proceedings: Applications for confidentiality and the confidential documents must be uploaded directly to the Docket Unit through the e-filing system. Paper copies or CDs do not need to be submitted. Links to the e-filing system are provided on most proceeding webpages labeled “**Submit e-filing.**” Alternatively, go to: <http://www.energy.ca.gov/e-filing/index.html>. Registration is necessary the first time documents are uploaded. Once registration is complete, to submit a confidential filing click on **Quick Actions** from the **DASHBOARD** and select **Submit Confidential e-filing** from the dropdown list. The application must be uploaded first followed by one or more confidential files.

Filings not associated with any proceeding: Applications for confidentiality and the confidential materials must be submitted directly to the **Docket Unit** in paper form or on a CD, but not by email. Two copies must be submitted, on separate media if electronic, each marked with a descriptive title and “Confidential.” (§ 1208.1)

TO: Energy Commission Docket Unit

Applicant:

Address:

Phone and E-mail:

Proceeding or Project Name:

Docket Number:

1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. **Information or data seeking a designation of confidentiality must be included with this application.**

1(b). Specify the part(s) of the information or data for which you request confidential designation.

¹ Contact the Docket Unit if you cannot reduce the size of your file.
² If you wish to protect the files while in transit, you may combine them in a password-protected .zip file..



APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

I certify under penalty of perjury under the laws of the State of California that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: _____

Signed: Michael C. Baden



APPLICATION FOR CONFIDENTIAL DESIGNATION
(Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

Name (print or type): _____

Title: (print or type) _____

Representing: _____

Include additional signature blocks if there are multiple partners in the project with shared responsibilities for making the request.



ATTACHMENT B

2016 Confidential Designation Confirmation

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

July 25, 2016

Michael Bachand
CEO
CalCERTS, Inc.
31 Natoma Street, Suite 120
Folsom, CA 95630

**RE: Application for Confidential Designation for CalCERTS
 2016 HERS Provider Application
 Docket No. 16-HERS-01**

Dear Mr. Bachand:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of CalCERTS, Inc. (Applicant). The application seeks confidential designation for the following documents (Confidential Records):

- 1) *Exhibit B – Training Materials;*
- 2) *Exhibit C – Subscriber Agreement;*
- 3) *Exhibit D – Rater Agreement;*
- 4) *Exhibit E – Rater Code of Ethics;*
- 5) *Exhibit F – Certification of Facts of Michael E. Bachand;*
- 6) *Exhibit G – Quality Assurance Policy;*
- 7) *Exhibit H – Corporate Documents;*
- 8) *Exhibit I – HERS Requirements 1674;*
- 9) *Exhibit J – Registry User Manual;*
- 10) *Exhibit K – FV/DT Compliance Rater Field House Exam;*
- 11) *Exhibit L – Rater Written Exam Policies; and*
- 12) *Exhibit M – Training Program Overview.*

The application states that confidentiality is sought for proprietary information and trade secrets contained in Applicant's 2016 HERS Provider Application. Applicant states that there is no feasible method aggregating the Confidential Documents to protect the value of the materials and that the Confidential Documents have not previously been disclosed publicly.

Michael Bachand
July 25, 2016
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A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "If the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses these four elements for Exhibits B, C, D, I, J, L, and M: 1) the specified application materials contain proprietary information pertaining to Applicant's HERS Provider curriculum; 2) public disclosure of the documents would allow competitors to access and duplicate Applicant's proprietary materials; 3) Applicant expended significant resources to ensure the proprietary documents submitted to the California Energy Commission were comprehensive and effective; and 4) unless posted publicly, the materials cannot be legitimately acquired or duplicated by others.

Government Code section 6254(g) exempts from disclosure under the California Public Records Act "test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination" In this case, the training materials and exam questions contained in Exhibits B and L are supplied to the California Energy Commission as part of Applicant's HERS Provider application.

For Exhibits B, C, D, I, J, L, and M, the application is clear that confidentiality is being sought for trade secret information related to Applicant's recertification as a HERS Provider. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep Exhibits B, C, D, I, J, L, and M from public disclosure.

Michael Bachand
July 25, 2016
Page 3

Applicant requests that the information be kept confidential for ten years. Ten years allows for the passage of two additional code cycles before disclosure of the confidential information. After two code cycles, Exhibits B, C, D, I, J, L, and M will be outdated and disclosure of the information will pose less of a competitive disadvantage to Applicant. Therefore, it is appropriate to grant confidential designation for ten years, or an additional two code cycles.

As Applicant acknowledged in correspondence with California Energy Commission Staff Council, Exhibits E, F, G, H, and K do not meet the threshold for confidential designation, because the documents do not contain proprietary material or have previously been disclosed to the public. These identified exhibits are not subject to protection from public access and may be made available, as needed.

For the reasons stated above, the request for confidential designation for the Exhibits B, C, D, I, J, L, and M is granted for ten years. Confidential designation is not granted for Exhibits E, F, G, H, and K, and these identified exhibits are not subject to protection from public disclosure by the California Energy Commission.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning this matter, please contact Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. P. Oglesby', with a long horizontal line extending to the right.

Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
William Dietrich, California Energy Commission, Existing buildings and
Compliance Office



ATTACHMENT C

Confidential Designation
Certification of
Michael C. Bachand

CERTIFICATION OF CHARLIE BACHAND

1. I am the Chief Executive Officer of CalCERTS, Inc., an approved Home Energy Rating System ("HERS") Provider, and have personal knowledge of the facts set forth in this certification.

2. In 2003, CalCERTS submitted an application to the California Energy Commission (Commission) for approval to engage in the business of training, instruction, and certifying HERS Raters pursuant to sections 1670-1675 of Title 20 of the California Code of Regulations.

3. CalCERTS also submitted a request for a Confidential Designation of its application materials, pursuant to section 2025 of Title 20 of the California Code of Regulations.

4. The Commission certified CalCERTS as a HERS Provider and approved the Confidential Designation for CalCERTS' application materials.

5. Since 2003, CalCERTS has requested and has repeatedly received Confidential Designations for its application materials for recertification as a HERS Provider.

6. CalCERTS' application for recertification as a Provider under the 2019 Building Energy Efficiency Standards is substantially similar to the information contained in previous applications. All the facts and circumstances relevant to confidentiality remain unchanged.

I declare under penalty of perjury, under the laws of the State of California, that all statements contained in this certification are true.

Signed: *Charlie C. Bachand*

Charlie Bachand
Chief Executive Officer
CalCERTS, Inc.

Date: May 1, 2019