

**DOCKETED**

<b>Docket Number:</b>	22-HERS-01
<b>Project Title:</b>	2022 HERS Provider Applications for the 2022 Building Energy Efficiency Standards
<b>TN #:</b>	244550
<b>Document Title:</b>	Supplemental Request for Confidential Designation for CalCERTS, Inc's HERS Training
<b>Description:</b>	N/A
<b>Filer:</b>	Jennifer Brazell
<b>Organization:</b>	CalCERTS, Inc.
<b>Submitter Role:</b>	Applicant
<b>Submission Date:</b>	8/11/2022 3:32:00 PM
<b>Docketed Date:</b>	8/11/2022



August 11, 2022

Via CEC Docket 22-HERS-01

Mr. Drew Bohan  
Executive Director  
California Energy Commission  
1516 Ninth Street, MS-39  
Sacramento, CA 95814  
[Drew.bohan@energy.ca.gov](mailto:Drew.bohan@energy.ca.gov)

**RE: Supplemental Request for Confidential Designation for CalCERTS, Inc.'s  
HERS Training**

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, 2009, 2013, 2016 and 2019. 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 2022 HERS Training.

For previous Confidential Designations CalCERTS has submitted 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).) The circumstances relevant to confidentiality remain the same as previous years. Our HERS Training Courses are trade secrets and business proprietary information. CalCERTS has been granted Confidential Designations for all Training Materials for all Applications starting with its 2003 application. **See Attachment A.** A declaration has been provided in our Application Exhibit K attesting the fact the applications

are substantially similar. (See 20 CCR 2505(a)(4), see CalCERTS Certification of Facts, Exhibit K, section 6. The Commission has requested additional information regarding the legitimacy of the confidential nature of the following documents:

Exhibit B: Training Overview

Exhibit C.1a: Residential HERS Alterations Manual

Exhibit C.1b: Residential Alterations Fundamentals Training Slides

Exhibit C.2a: Residential New Construction HERS Manual

Exhibit C.2b: Residential Newly Constructed Buildings Training Slides

Exhibit C.3a: Nonresidential HERS Manual

Exhibit C.3b: Nonresidential HERS Training Slides

Exhibit C.4: 2022 Update Training

Exhibit D: Training Exams

Exhibit E: Field House Exams

Exhibit F: Challenge Exams

Each of these documents were submitted with a Confidential Designation. The following information is supplemental to the original Confidential Designation.

The elements which the Commission requested additional information are:

(1) the specific nature of the advantage

CalCERTS 'proprietary training materials are essential for business operations and for approval by the Commission under 20 CCR 1670 et seq. Our investment in a qualified training program is an essential component of our ability to be approved as a HERS Provider. If our training materials are distributed without protection, we will lose our investments and be significantly prejudiced in our ability to operate as an approved HERS Provider. CalCERTS has spent resources synthesizing Title 24 Energy Code into training materials to be sold as well as invested in equipment, property and employees to properly conduct training. Specialized subject matter experts have been retained to create this original content and the content is protected by copyright. Course curriculum is only available to CalCERTS clients. These clients are required to sign an agreement/contract to keep the training information protected for any further distribution or duplication. CalCERTS does not allow anyone other than private clients access to our training materials.

(2) how the advantage would be lost

If the materials were to become public, CalCERTS would lose the profit to be made off of the materials created thus losing any benefit to synthesizing the material or maintaining any equipment or property it invested in for the purpose of training, CalCERTS would also lose the advantage from the time and funds invested into training employees who conduct, sell or compile (etc.) the training materials. CalCERTS controls who has access to training materials, and requires anyone who has access to sign an agreement to keep the information from public distribution. CalCERTS Training is the best in the country for HVAC commissioning and verification. Our Training is the most expensive training because it is unmatched in the industry. HERS Raters who complete our training are proven to be the best trained for practical work skills. If our training is not protected, anyone wanting to compete with CalCERTS as a HERS Provider would be able to enter the marketplace with a significant advantage since they would be able to bypass the investment needed for all training requirements.

(3) the value of the information to the applicant

CalCERTS has invested many years into creating its training material since its first course in 2003, as well as invested in equipment, property and its employees in order to conduct it. Creation of the training materials represents hundreds of thousands of dollars in investment into the propriety and protected product. Over the course of operations, CalCERTS has invested millions of dollars into this specialized HERS Training.

(4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Expertise and time are required to review the public code and synthesize the relevant information. Expertise and funds are required to obtain and maintain relevant equipment and property. Expertise and time are required to conduct and maintain the synthesized materials. CalCERTS has invested heavily in developing industry expertise, and has been developing this expertise since 2003. If distributed to the public generally, anyone wanting to compete with CalCERTS could use tools to plagiarize, and copy this proprietary information. It would be highly prejudicial to CalCERTS for the Commission to distribute its work product to potential competitors.


CalCERTS goes to great lengths to protect its proprietary training information. All test materials are collected from students. Exams, quizzes, and answer keys are collected from students by CalCERTS trainers, and/or protected in our LMS through account restrictions. Our LMS limits the ability of students to capture the training materials. CalCERTS protects its information by requiring its HERS Raters to enter a Subscription Agreement that forbids distribution of our proprietary materials.


In addition, Exhibit D, E, and F should be kept Confidential according to section 6254(g) of the California Government Code as they include test questions and scoring keys.

Sincerely,




Jennifer Brazell  
Project Management Specialist

 (916) 805-5243

 [www.calcerts.com](http://www.calcerts.com)

 [jennifer@calcerts.com](mailto:jennifer@calcerts.com)

 31 Natoma, Suite 120  
Folsom, CA 95630

# Attachment A

July 30, 2003 - RE: Application for Confidential  
Designation of HERS Provider Application



## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

July 30, 2003

Michael E. Bachand  
CalCERTS  
200 Crestridge Lane  
Folsom, CA 95630

RE: Application for Confidential Designation of HERS Provider Application

Dear Mr. Bachand:

On July 10, 2003, the California Energy Commission (Energy Commission) received your application for confidential designation of your Home Energy Rating System (HERS) application, including the CalCERTS™ Rater Training Manual. Your HERS application includes:

- Personal Profile and Conflict of Interest Affidavit;
- Subscriber & Rater Agreement and Rater Affidavit;
- Miscellaneous Supporting Documents;
- Quality Assurance Program; and
- 3-Day Lesson Plan for Rater Training Program.

Your request for confidentiality states, in part:

Calcerts™ . . . applies for . . . non-disclosure of all **Confidential Information, Trade Secrets** or proprietary business information that would provide an unfair business advantage to a competitor that is required for the application and approval process of CalCERTS™ as a provider. ¶ . . . ¶ **Confidential Information and Trade Secrets** include without limitation: Calcerts™ Rater Training Program Manual and amended pages as required by Title 24 code or the Energy Commission[,] . . . Calcerts™ HERS Provider Application [and] Calcerts™ Lesson Plans . . . ¶ **The Confidential Information** has been developed or obtained by Calcerts™ by the investment of significant time, effort and expense, and the **Confidential Information** is a valuable, special and unique asset of Calcerts™, which provides Calcerts™ with a significant competitive advantage, and needs to be protected from improper disclosure. ¶ . . . ¶ Therefore [,] the requested term of perpetuity for the secrecy and the confidentiality of the **Confidential Information** under this Designation is required to preserve the investment of significant time, effort and expense by Calcerts™ and to maintain the competitive advantage and livelihood of Calcerts™ investors and employees.

Michael E. Bachand  
July 30, 2003  
Page 2

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "unless the applicant has failed to make any 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, sec. 6254(k); Evid. Code, sec. 1040.) The 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. . . .

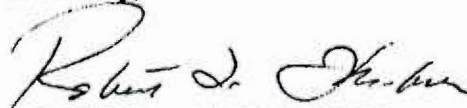
(*Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, sec. 757, comments b, p. 5.)

Non-disclosure of trade secret or business proprietary information, such as the information that you have submitted in parts of your HERS application and Training Manual, is expressly confidential pursuant to the Public Records Act. Accordingly, the following sections of your HERS application are granted confidentiality in their entirety for five years from the date of award: Subscriber & Rater Agreement and Rater Affidavit; Miscellaneous Supporting Documents; Quality Assurance Program; and 3-Day Lesson Plan for Rater Training Program.

The section of your HERS application entitled "Personal Profile and Conflict of Interest Affidavit" is not granted confidential status. Moreover, your request to have your grant of confidentiality established in perpetuity has not been demonstrated.

Finally, persons may petition to inspect or copy those 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 Energy Commission's regulations at California Code of Regulations, title 20, section 2506. If you have any further questions concerning this matter, please call Fernando De Leon at (916) 654-4873.

Sincerely,



ROBERT L. THERKELSEN  
Executive Director

cc: Bill Pennington, MS-28  
Bryan Alcorn, MS-28