

DOCKETED	
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October 2, 2023

Via Email

Jennifer Brazell
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**Application for Confidential Designation: HERS Provider Application for
2022 Code Cycle
Docket No.22-HERS-01**

Dear Jennifer Brazell:

The California Energy Commission (CEC) received CalCERTS, Inc.'s (applicant) application for confidential designation filed August 2, 2023, (TN 251468) covering CalCERTS Low Rise Multifamily (LRMF) Application Status Update.

The applicant requests that the above document be kept confidential for a minimum of ten years, or an additional two code cycles. The applicant identifies proprietary business information and trade secrets as the basis for confidentiality. The applicant states there is no feasible method of aggregating the information and that the information has been protected from public disclosure.

Confidentiality Claims:

Proprietary Business Information and Trade Secrets

An application for confidential designation 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 Commission to keep the record confidential." The executive director's determination made in response to an application for confidential designation is subject to a reasonableness standard. It is the applicant's burden to make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705, 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

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, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Discussion

The applicant has not made a reasonable claim that the CalCERTS LRMF Application Status Update is exempt from disclosure as business proprietary or trade secrets. The document contains comments from the applicant on the CEC's efforts to implement the 2022 LRMF program and chronicles the history of discussion among CalCERTS, CEC staff, and CHEERS on the LRMF program and references documents filed into the docket by CalCERTS. The information contained in the status letter is not unique to CalCERTS and has been previously discussed in meetings with CEC staff and stakeholders (e.g., the lack of schema and the issuance of a new form, LMCC-MCH-02). Thus, it is not clear how the narrative in the status letter summarizing the issues already known to those involved with implementation of the LRMF program, could be a trade secret providing CalCERTS with a business advantage. Further, it is not clear how any advantage would be lost if the information contained in the status letter were to be disclosed.

Executive Director's Determination

For the reasons stated, confidentiality is denied for CalCERTS' LRMF Application Status Update.

You may request that the CEC determine the confidentiality of records for which the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

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Be advised that under the California Code of Regulations, title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel.

The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set in the California Code of Regulations, title 20, sections 2506-2507.

For more information, email confidentialityapplication@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director