

**DOCKETED**

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<b>Project Title:</b>	2022 HERS Provider Applications for the 2022 Building Energy Efficiency Standards
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October 21, 2024

**Via Email**

Jonathan Johnson  
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**Application for Confidential Designation: Golden State Registry 2022 HERS  
Provider Applications for the 2022 Building Energy Efficiency Standards  
Docket No. 22-HERS-01**

Dear Jonathan Johnson:

The California Energy Commission (CEC) has received two applications for confidential designation from Golden State Registry (applicant), dated October 7, 2024 (TN 259477) and October 11, 2024 (TN 259525). The applications request confidential designation for the following records:

Application TN 259477

- Ex C2d- Mathematical Equations Necessary to Utilize the Rating System

Application TN 259525

- Ex C2a GSR Training Course 2022 1-12
- Ex C2b GSR Training Course 2022 13-18

In each application, Golden State Registry requests that the above-referenced documents be kept confidential for a period of 10 years. Golden State Registry notes the documents are part of their HERS Provider application and contain proprietary information and trade secrets. The applicant notes that information for which confidential designation is sought is maintained as confidential by the applicant and will only be disclosed to Golden State Registry staff and those who undertake Golden State Registry's Rater training program.

**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(k), 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 applications address the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) for all three records under both applications by stating:

- 1) *The specific nature of the advantage* – The applicant has heavily invested money and time to develop the training materials for its rater training program, as part of its application to become a HERS Provider.
- 2) *How the advantage would be lost* – If the information were to be made public, competitors could duplicate the training materials at no cost to themselves, which would result in the applicant losing their competitive advantage.
- 3) *The value of the information to the applicant* – No specific dollar amount but the information is required to become a HERS Provider.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information can only be accessed by Golden State

Registry employees and will only be show to those who undertake Golden State Registry's Rater training program.

The applicant has made a reasonable claim that are exempt from disclosure as business proprietary or trade secrets.

### **Executive Director's Determination**

The applicant has made a reasonable claim that the records identified above, which contain information on customer energy consumption, can be maintained as confidential. The records are confidential for a period of six years, or two additional code cycles, to be consistent with previous similar confidentiality determinations for the applicant (TN 249122). This period is appropriate because it ensures that Golden State Registry's provider application and testing and educational materials will be confidential while in use. After two additional code cycles, the risk of harm from these documents being publicly available is diminished since Golden State Registry will have submitted two new applications to be certified as a HERS provider and refined or altered their testing/education material.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

If you have questions, please email [confidentialityapplication@energy.ca.gov](mailto:confidentialityapplication@energy.ca.gov).

Sincerely,



Drew Bohan  
Executive Director