

**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>	262094
<b>Document Title:</b>	CHEERS Cmt #3 GSR - Conditions on Approval
<b>Description:</b>	N/A
<b>Filer:</b>	Shelby Gatlin
<b>Organization:</b>	CHEERS
<b>Submitter Role:</b>	Other Interested Person
<b>Submission Date:</b>	3/5/2025 11:56:32 AM
<b>Docketed Date:</b>	3/5/2025

March 5, 2025

Docket 22-HERS-01

**CHEERS Comments #3 RE: Golden State Registry Provider Application****Purpose & Intent of the Regulations - Conditions on Approval**

As part of CHEERS' operation as a HERS Provider, it must comply with bespoke conditions on its approval, in addition to the intent of the HERS regulations. In the 2022 approval, the conditions are prominent in [Exhibit B](#).

Since CHEERS' initial approval under new ownership in 2013, it has actively participated in a transparent, public process with the CEC - one where conflicts of interest were openly discussed, rigorously analyzed, and addressed through ongoing dialogue and revised conditions. This included hypotheticals and example scenarios from the CEC, for CHEERS to address. (See examples of this correspondence in Attachment A.) Since 2012, and prior to CEC approval, conditions related to conflict of interest have been reviewed, revised, and docketed.

CHEERS' Conditions on Approval process has been a docketed, public process:

- 2013: <https://efiling.energy.ca.gov/GetDocument.aspx?tn=210456-2&DocumentContentId=11303>
- 2016: <https://efiling.energy.ca.gov/GetDocument.aspx?tn=221235&DocumentContentId=24314>
- 2019: <https://efiling.energy.ca.gov/GetDocument.aspx?tn=227355&DocumentContentId=58458>

Given this history, CHEERS asserts that the Golden State Registry (GSR) must be subject to similarly stringent public review and oversight. The GSR application, by its very nature, presents an inherent conflict of interest due to its relationship with iPermit and Service Champions. It is imperative that the CEC establishes clear, enforceable conditions of approval specifically addressing these conflicts, and make them publicly available for review. Such measures would not only ensure that GSR's independence is rigorously maintained—aligning with the HERS regulations that require clear separation among Raters, Providers, and Builders/Subcontractors—but also protect the integrity of the program and consumer interests.

The HERS regulations do **not** limit conflicts of interest to financial interests. The regulations require **independence** between Raters, Providers, and Builders/Subcontractors. (20 CCR 1673(j), see also definitions 20 CCR 1671)

The CEC recently reviewed the issues of independence. With the adoption of the Energy Code

Compliance (ECC) Program, the CEC published two prominent Staff Reports discussing HERS and its authorizing legislation.

- [The 2022 Update of the Home Energy Rating System Requirements \(January 2023 CEC-400-2022-017-F\)](#) (Whole House Staff Report)
- [2025 Update of the Field Verification and Diagnostic Testing Requirements \(November 2023 CEC-400-2023-011\)](#) (FV&DT Staff Report)

A key objective of the authorizing legislation is to effectively address the “quality of workmanship in the HVAC industry” and to protect consumers. (See p. 8 FV&DT Staff Report.) A key concern of the program has been unchecked conflicts of interest, especially as applied to family members. (Id. at p. 27)

Simply because the ECC Program does not get triggered until January 1, 2026, does not mean the intent and purpose of authorizing legislation that led to the ECC Program can be ignored. The CEC should always exercise discretion in alignment with the intent and goals of the legislation. (*Yamaha Corp. of America v. State Bd. of Equalization*, 19 Cal. 4<sup>th</sup> (Cal. 1998).) GSR’s independence as a Provider must be reviewed.

Like CHEERS, GSR must go through the process of exploring, identifying, and resolving conflicts of interest within its application. Conditions on approval should be clear and easily enforced. For example, the CEC can use its access in the CHEERS registry to confirm CHEERS is complying with its conditions.

CHEERS supports the addition of a second Provider, provided that the approval process is conducted with the same level of fairness and transparency that CHEERS has experienced. Like the process it has repeatedly used with CHEERS, the CEC must develop, publish, and adhere to explicit conditions of approval for the Golden State Registry that directly address its inherent conflicts—ensuring that any affiliations with iPermit and Service Champions do not compromise the integrity of the HERS program.

Sincerely,



Jim Hodgson  
Chief Executive Officer, CHEERS

Attachment

# Attachment A

CEC Staff Correspondence with CHEERS

June 21, 2012

**Energy Commission Staff Comments on Potential ConSol/CHEERS Conflicts of Interest or the perception of conflict of interest.**

Energy Commission staff would like ConSol to elaborate on how it will address potential conflicts of interest arising from its acquisition and operation of the California Home Energy Efficiency Rating Services' (CHEERS) HERS (Home Energy Rating Services) provider program. In addition to conflicts under the HERS regulations, staff points out potential areas where a *perception* of a conflict or "self-dealing" may arise and draw criticism upon the Energy Commission or ConSol.

The regulations implementing the HERS program are at 20 Cal. Code Regulations, section 1670 et seq. Section 1673, subd. (j), Conflict of Interest, states:

- (1) Providers shall be independent entities from Raters.
- (2) Providers and Raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.
- (3) Providers and Raters shall be independent entities from any firm or person that performs work on the home for a California Home Energy Audit or a California Whole-House Home Energy Rating.

EXCEPTION to Section 1673(j)(3): California Whole-House Home Energy Raters, who are working as or for a Building Performance Contractor certified under an Energy Commission-approved Building Performance Contractor program as part of a Provider's Rating System as specified in Section 1674(e) of the regulations and in the HERS Technical Manual, shall not be required to be an independent entity from the person(s) or firm(s) performing the work on a home. This exception shall not apply to California Field Verification and Diagnostic Testing Raters performing field verification and diagnostic testing of newly constructed homes or alterations to existing homes to verify compliance with the requirements of Title 24, Part 6.

Under Section 1671,

*Independent Entity* means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in Section 1673(j).

and

*Financial Interest* means an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than five percent of the outstanding equity securities of a publicly traded corporation.

Here, ConSol has represented in its preliminary draft (i.e., unsigned or dated) application to be a HERS Provider, submitted to Commission staff on or about June 13, 2012, that it will address these issues as follows:

Para. 13. Explanation of how ConSol Program Management (like Fresno) and Ratings (Compliance or Whole House/EEM) will be handled to avoid a conflict of interest, especially in conjunction with Section 1673(j), mentioned above.

[a] ConSol understands that it may continue to perform HERS inspections as long as the ConSol raters do not submit work to CHEERS registry.

[b] ConSol will continue to perform T-24 compliance work. Since the builder chooses the HERS registry and finalizes the approval of the CF-1Rs, it is ConSol's understanding that the builder can choose to register their projects in CHEERS.

[c] ConSol plans to offer its services as an energy efficiency program manager. The energy efficient features recommended by these programs will be installed by contractors and installers that are not at all under the direct supervision of ConSol. Therefore, ConSol's understanding is that the contractors and installers that perform work under these programs will be able to use the CHEERS registry if they wish.

Staff has the following concerns with these statements.

Para. 13[b]

ConSol states it will continue to perform energy code compliance work on behalf of builders. It is critical that if ConSol does this work, it must remain an "independent entity" with no "financial interest" in the builders or the contractors or subcontractors performing the underlying improvements to the homes. That is, there must be no ownership, debt, or employment relationship between ConSol and any builder for which it performs compliance work or any contractor or subcontractor performing improvements to the homes, and that ConSol does not advocate or recommend the use of any product or service as a means of gaining increased business. ConSol should attest to or provide additional evidence of these critical facts.

Concerns regarding compliance would arise if ConSol were to have any advertising, list of businesses with which it has done work, identification on websites or print material, or oral statements that would give the impression of positive or negative views regarding a builder or contractor, or vice versa. Perceptions of conflict which could lead to criticism of the Commission or ConSol or reduce the credibility of the HERS program, or actual conflicts could arise if ConSol were to perform any work for a builder or contractor in other than a Provider capacity that is then submitted to ConSol for field verification or rating in its Provider capacity.

Para. 13[c]

Sections 1671 and 1673, subd. (j), prohibit any provider, rater, builder, or entity performing work on a home from having a financial interest in each other, or advocating or recommending the use of any product or service as a means of gaining increased business with another provider, rater, builder, or contractor or subcontractor installing improvements in a home being rated. Section 1673, subd. (j)(3), allows one exception (which is not applicable at this time):

California Whole-House Home Energy Raters, who are working as or for a Building Performance Contractor certified under an Energy Commission-approved Building Performance Contractor program as part of a Provider's Rating System [are not] required to be an independent entity from the person(s) or firm(s) performing the work on a home. [But this] exception shall not apply to California Field Verification and Diagnostic Testing Raters performing field verification and diagnostic testing of newly constructed homes or alterations to existing homes to verify compliance with the requirements of Title 24, Part 6.

Similar to Para. 13[b], above, ConSol should attest to or provide additional evidence that it does not have a financial interest in, or advocates or recommends the use of any product or service as a means of gaining increased business with CHEERS, and CHEERS-certified rater, builder, or contractor or subcontractor.

### **Potential situations where conflict of interest could occur or be perceived as occurring**

To assist ConSol (and the Energy Commission) in preparing to respond to potential criticism of their status as both a HERS Provider and as an energy consultant, Staff requests that ConSol develop potential responses to questions arising from the following hypothetical situation.

#### **Scenario**

A Builder contracts with ConSol to perform T-24 calculations, and the Builder elects to have a ConSol employee upload data to a HERS Provider to generate a CF-1R.

The ConSol employee uploads data, generates a CF-1R through the ConSol/CHEERS registry and signs as the document author.

The ConSol/CHEERS Registry prompts the Builder to sign the CF-1R.

The CF-1R has HERS verification measures identified.

The Builder hires a HERS Rater(s) to perform Field Verification.

The HERS Rater either fails or tries to fail one of the measures.

The Builder is a ConSol client, and pressures ConSol to influence or encourage the Rater to pass the measure without corrections.

#### **Questions regarding this scenario**

How will ConSol respond to this pressure by the builder to get the measure passed?

How will ConSol provide the oversight required as a Provider for CF-1Rs resulting from its own employees' T-24 calculations?

Could there be more HERS measures identified to increase the registration of documents through the ConSol CHEERS registry?

Could there be misuse of measures or credits that won't be identified by the Provider?

How will ConSol provide the checks and balances over work in the Registry where its employees have been involved with the calculations?

### **Additional questions**

How would ConSol answer questions about listing clients on its website and the perception that it is advocating for a client builder or contractor as a means of gaining increased business?

Is there a list of clients on ConSol's website?

Does any dual marketing exist?

How would ConSol handle it if one of the local government programs that it manages (i.e., Fresno) advocates the use of specific contractors and those contractors use the ConSol/CHEERS Registry?

How would ConSol answer questions or concerns regarding Mike Hodgson's relationship with CBIA and how that could be perceived as a conflict of interest, preferential treatment to builders, or extreme expectations from builders because of that relationship?

ConSol should discuss how its Energy Consultants are going to make the decisions as to what energy saving features are included in the Title-24 documentation. They now have an economic interest in choosing a HERS measure over another equally cost effective energy feature. How will they assure to all parties involved that their decision process is in the best interest of the client?

Since ConSol will be involved in the design process, it is possible that parties will suspect that the Providers' design staff will be giving "insider information" to the HERS Raters. How will ConSol ensure random selection of a sample group member to test from within the sample group? How will ConSol perform true random Quality Assurance as entity of itself?

The best way for ConSol to avoid conflicts of interest or the Energy Commission and ConSol to avoid criticism regarding perceived conflicts, which could result in complaints that would be required to be handled through the Energy Commission's formal complaint process, or possibly litigation, would be for none of ConSol's non-Provider work to result in any submissions into the CHEERS Registry. This would result in the following with respect to paragraph 13:

[a] ConSol understands that it may continue to perform HERS inspections. ConSol will not perform HERS inspections when ConSol is involved in projects pursuant to [b] or [c] below.

[b] ConSol will continue to perform T-24 compliance work. ConSol will not perform HERS inspections for projects for which it performs compliance work. ConSol will not accept projects, for which it has performed compliance work, into the CHEERS provider registry.



[c] ConSol plans to offer its services as an energy efficiency program manager. ConSol will not provide any HERS ratings for projects participating in these programs. ConSol will not accept projects which participate in these programs into the CHEERS provider registry.

Staff looks forward to ConSol's response to the above.