

DOCKETED

Docket Number:	16-HERS-01
Project Title:	HERS Providers' Application for the 2016 Standards
TN #:	213961
Document Title:	Response to Application for Confidentiality - Conserva Alliance
Description:	N/A
Filer:	Sabrina Savala
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	10/11/2016 12:38:24 PM
Docketed Date:	10/11/2016

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

October 10, 2016

Alex Trochez
Chief Executive Officer
Conserva Alliance
1001 Avenida Pico C246
San Clemente, CA 92673

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

Dear Mr. Trochez:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of Conserva Alliance. The application seeks confidential designation for the following documents:

1. Conserva Alliance Application Cover Page and Submission Checklist;
2. Presentation – Conserva Alliance Training 2013 HERS Residential Prescriptive Alterations;
3. Presentation – Conserva Alliance Training 2016 HERS Residential Prescriptive Alterations;
4. Conserva Alliance HERS Test Pool of Questions 2013;
5. Conserva Alliance HERS Test Pool of Questions 2016;
6. Conserva Alliance Training 2013 and 2016 Field Proctor Report Card;
7. Conserva Alliance Challenge Test Experience Questionnaire 2013 2016;
8. Conserva Alliance Davis Field Guide Required Measures 2013;
9. Conserva Alliance Davis Field Guide Refrigerant Charge & Airflow 2013;
10. Conserva Alliance Davis Field Guide Required Measures 2016;
11. Conserva Alliance Davis Field Guide 2016 Refrigerant Charge & Airflow;
12. Conserva Title 20 Requirements Response;
13. Conserva Alliance Quality Assurance Staff Document;
14. Conserva Alliance Complaint Response System;
15. Conserva Alliance Quality Assurance Method;
16. Conserva Alliance Audit Process Forms;
17. Conserva Alliance Expectations of QA Auditor;
18. Conserva Alliance QA Audit Homeowner Notification;
19. Conserva Alliance HERS Rater Agreement 2013;
20. Conserva Alliance HERS Rater Agreement 2016;

21. Conserva Alliance LLC Member Status;
22. Enalasys Recert;
23. Enalasys Calibration Documentation;
24. Enalasys Technician Certification Agreement;
25. Enalasys Field Performance Monitoring Form;
26. Enalasys Student Training Evaluation Form;
27. Presentation – Enalasys Duct-Title Training 2013;
28. Presentation – Enalasys ChargeRite Field Training 2013;
29. Enalasys Certificate;
30. Enalasys Technician Written Exam 2013;
31. Presentation – Enalasys TPQCP Training 2016;
32. Conserva Alliance Principal Place of Business Place to Serve Legal Process;
33. Conserva Alliance LLC Amendments Name Change Articles of Organization 8 11 16;
34. Conserva Alliance Certificate of Good Standing;
35. Conserva Alliance Filing Information Aug 2016;
36. Conserva Group Original Articles of Organization 9 8 2015;
37. Conserva Alliance Application Letter to CEC;
38. Conserva Alliance Statements of Compliance;
39. Enalasys 2016 TPQCP Recertification Letters; and
40. Enalasys Training Sign In Sheet.

The application states that confidentiality is sought for information regarding an application for HERS Providership, containing training materials, rater agreements, certification statements, articles of organization, and responses to required HERS application parameters. The application states that the documents contain names of companies and people and their pertinent addresses as well as intellectual property. The documents cannot feasibly be aggregated.

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.

For documents numbered 1 through 31, the application addresses the required four elements: 1) the documents 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) the documents have not been disclosed publicly and can only be acquired by a participating student enrolled in Applicant's HERS training course.

Government Code § 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 documents 1 through 31 are supplied to the California Energy Commission as part of Applicant's HERS Provider application.

For documents 1 through 31, the application is clear that confidentiality is being sought for trade secret information related to an application for certification as a HERS Provider. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep documents 1 through 31 from public disclosure.

Applicant requests that the information be kept confidential for three years. Three years allows for the passage of one additional code cycle before disclosure of the confidential information. After one code cycle, information contained in the documents may 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 three years, or one additional code cycle.

As acknowledged by Applicant in correspondence with California Energy Commission Staff Council, documents 32 through 40 do not meet the threshold for confidential designation, because the documents do not contain proprietary material or have

previously been disclosed to the public or it is in the public's interest to allow for public disclosure. These documents 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 documents 1 through 31 is granted for three years. Confidential designation is not granted for documents 32 through 40 and these documents 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. Oglesby', with a stylized, cursive script.

Robert P. Oglesby
Executive Director

cc: Docket Unit, California Energy Commission
William Dietrich, California Energy Commission
Rashid Mir, California Energy Commission
Suzie Chan, California Energy Commission