

# Memorandum

To: Docket Office

Date: July 31, 2008

From: **California Energy Commission**  
1516 Ninth Street  
Sacramento CA 95814-5512

<b>DOCKET</b> 08-CRI-1	
DATE	JUL 31 2008
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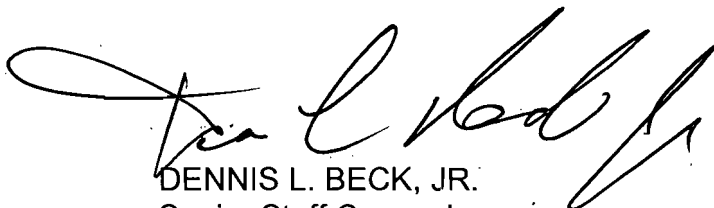
Subject: Complaint of California Living & Energy and Duct Testers, Inc., Against Energy Sense / MASCO, and Supporting Documents

Docket # 08-CRI-01

Please docket the following documents, which should have the same title as the subject line of this memorandum.

The documents are 96 pages in length and include the complaint filed with the Chief Counsel's Office by California Living & Energy and Duct Testers, Inc. (collectively "complainants") against Energy Sense / MASCO (collectively "respondents") on July 9, 2008. They also include letters, e-mail, and other documents submitted by the complainants in support of the complaint.

Please let me know if you have any questions. Thank you.



DENNIS L. BECK, JR.  
Senior Staff Counsel

Corporate Office  
3015 Dale Court  
Ceres, CA 95307  
(209) 538-2879  
(209) 538-2885 Fax

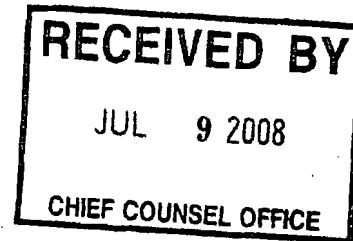


**CALIFORNIA  
LIVING & ENERGY**  
Title 24 Compliance - Residential/Non Residential

Southern California Office  
31900 Mission Trail, Suite 242  
Lake Elsinore, CA 92530  
(951) 471-1443  
Fax (951) 471-1887

Date: June 5, 2008

To: Dennis L. Beck Jr. Esq.  
Senior Staff Council  
California Energy Commission  
1516 Ninth Street, MS-14  
Sacramento, Ca. 95814



Dear Mr. Beck:

When Dave Hagarty and I met with you, Bill Pennington, Tav Commons and William Staack our goal was to build upon the base that the California Energy Commission worked so hard to achieve. Saving energy and the environment will be tough without a foundation of integrity and honesty. HERS Raters will not be able to meet the goals set by the CEC without proper training and the integrity that goes with it.

Therefore, per our meeting on March 12<sup>th</sup> 2008 and your written direction we respectfully submit the following complaint:

**I. Identification of Alleged Violator [§1231(b)(2) & (7)]**

Energy Sense/MASCO Group of Companies and Subsidiaries  
2339 Belville Road  
Daytona Beach, FL 32119  
Phone (386) 763-4955  
David Bell, Building Science Manager  
Email: dave.bell @mascocs.com

As you are aware from previous correspondence, Energy Sense is a subsidiary of MASCO Corporation. Due to the nature of this relationship, there is a significant financial interest shared between the two entities. This relationship is confirmed within the "Report of Investigation on MASCO Contractors Services and its subsidiaries in California" attached hereto as *Exhibit A5* and the letter from Dave Bell, President of Energy Sense, attached hereto as *Exhibit A3*

**II. Statement of Statute, Regulation, Order or Decision Upon Which the Complaint is based [§1231(b)(4)]**

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In accordance with Article IV, Section 1231(4) of Title 20 of the California Code of Regulations, we submit that MASCO and Energy Sense are in violation of several relevant Codes and Statutes and ordinances, including, but not limited to, California Code of Regulations, Title 20, § 1670 thru 1673 & Title 24, Chapter 7 of the 2005 Residential ACM Manual ("2005 ACM"). Based upon these violations, we formally request an immediate investigation of the above-described companies.

### III. Statement of Facts [§ 1231(b)(3)]

The following is a non-exhaustive list of specific instances in which MASCO and its subsidiaries have violated the requirements of sections 7.3, 7.4, 7.5, 7.5.1, 7.5.2, 7.5.3, 7.6 & 7.8 of the 2005 ACM.

- A. In 2006, a MASCO owned company, Coast Building Products, received contracts to perform independent 3<sup>rd</sup> party inspections while also receiving contracts to install insulation, fireplace mantels, garage doors, etc on Pulte Home Project Alturas in San Jose and the Avondale and Toscana projects in Mountain House. (See Exhibit A1 attached hereto and incorporated herein by reference)
- B. On March 5, 2007, Pulte Homes issued a report regarding work being done on their projects. In this report, they have identified MASCO as performing some of the Energy Star and Title-24 inspections. This is a clear violation of the relevant *Standards* as MASCO and its related companies carried out the installation of the very products MASCO and their subsidiaries were inspecting. (See Exhibit A1 (a) attached hereto and incorporated herein by reference)
- C. David Bell, the President of Energy Sense has confirmed in writing that Energy Sense is, in fact, a subsidiary of MASCO. He has also verbally disclosed to several parties his belief that, because MASCO is a large corporation with numerous sister companies and subsidiaries, MASCO et al can disregard CEC standards. In the attached letter, he states:

"... Independent entity is defined as 'having no financial interest in or advocating or recommending the use of Product or Service as a means of gaining increased business.'

Rich Dunn, manager of MASCO's Coast Building Products gave Larry Stubbart in our office an advertisement that promotes exactly that. (See the 1<sup>st</sup> page of Exhibit A7 attached hereto and incorporated herein by reference)

- D. Please refer to the correspondence from William Staack, senior Staff Counsel of the CEC. Mr. Staack writes "

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“Without supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following presumptions:”(Please refer to the letter attached hereto as Exhibit A2 for the full text of Mr. Staack’s letter)

Based upon the meeting held at the CEC in March of 2008, Mr. Staack is aware of the evidence disclosed during the course of this investigation.

- E. There are several other instances, such as Tom Hamilton Director of CHEERS stating in an e-mail to Tav Commins “Coast Building Products is fully aware of the regulatory requirements and supports the intent of the regulations” yet nothing was asked or mentioned about conflict of interest regarding sister companies or their corporate structure by Mr. Hamilton. Even though I told Tom about the relationship between sister companies under the MASCO umbrella the provider, CHEERS did nothing. (See Exhibit A7 attached hereto and incorporated herein by reference.)
- F. Please find enclosed herewith all letters and documentation which were presented at a meeting held on March 12, 2008 and attended by Bill Pennington, William Staack, Dennis Beck, Tav Commins (all of the CEC), Bill Lilly and Dave Hegarty.

#### **IV. Authority Under Which Commission May Take Action [§1231(b)(6)]**

We believe that the staff of the California Energy Commission has the authority and mandate from the California State legislature and CPUC to investigate this complaint. This action or complaint is being initiated at the request of Dennis Beck, Senior Staff Counsel to the CEC.

#### **V. Requested Action [§1231(b)(5)]**

Per section 1231(5) we, the petitioners formally request that MASCO and its related companies and subsidiaries, known and unknown, immediately cease all HERS and RESNET associated testing/inspections in California.

#### **VI. Identification of Complainant [§1231(b)(1)]**

California Living & Energy  
A Division of William Lilly & Associates, Inc.  
3015 Dale Court  
Ceres, CA 95307

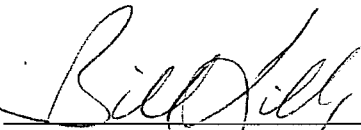
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(209) 538-2879

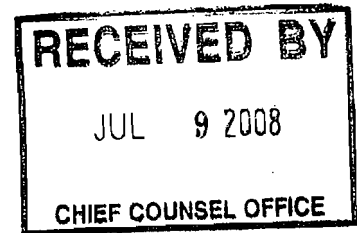
We are attaching letters of support from other Rater Companies. They have seen the data we have and support what we are striving to accomplish.

**VII. Declaration Under Penalty of Perjury [§1231(b)(8)]**

We, the undersigned declare to the best of our knowledge and under penalty of perjury to the truth and accuracy of all factual allegations contained in this complaint and request for investigation.

By:   
\_\_\_\_\_  
Bill Lilly, President  
California Living & Energy  
A division of William Lilly & Associates, Inc.

0000004



July 7, 2008

California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Attention: Dennis Beck, Esq., Senior Attorney

Dear Mr. Beck:

Our company, Energy Inspectors is a residential energy consulting company, and 3<sup>rd</sup> party HERS rating company, inspecting and certifying homes as energy efficient in California since 1999. We are a California Flex Your Power honoree, a two time EPA Energy Star Partner of the Year, and one of the leading HERS raters in the nation, with operations in four states having certified over 75,000 Energy Star homes, and many more homes as energy efficient for programs such as Title 24, and utility sponsored programs.

We are writing to you in support of the concept of having independent third party inspections and certification of energy efficient homes in California. Third party independence is necessary to ensure that there is no conflict of interest that would have a detrimental impact on the end consumer. By independent third party, we mean that the inspecting or certifying entity should have no financial interest in any aspect or component of the property being inspected and certified, including the installation of any building components being inspected or certified as per California regulations.

Though this would appear to be a straight-forward, and unambiguous definition, we understand that there exist clear violations of this statement by companies that inspect the work of affiliate companies with common ownership. To our knowledge, some of these violations have been brought to the attention of the CEC, and yet absolutely no action has been taken to remediate the situation.

We would ask that you review your policies with regards to these definitions and conflict of interest in the marketplace, and take the action required to remediate this situation to protect the California consumer. Any other course of action would be detrimental to the well being of our population, and against CEC regulations.

Page 1 of 2

We believe that these regulations were developed for consumer protection, but for reasons that remain unknown to us, have been ignored and remain unenforced by the CEC. We ask that you stand by your regulations and in the interest of the California consumer, insure that these regulations are enforced, and limit the exposure of the consumer to the unintended consequences of conflict of interest in new home inspections.

Respectfully,

Energy Inspectors Corporation

A handwritten signature in black ink, appearing to read 'G. LeBron', written in a cursive style.

Galo LeBron, CEO

*Page 2 of 2*

**CERTIFIED ENERGY CONSULTING**

4782 N FRUIT AVE  
FRESNO, CA 93705  
www.certified-ec.com

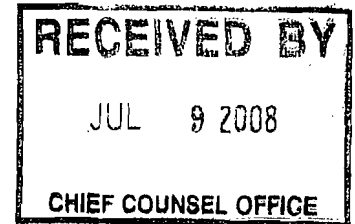
Office: 559-226-1840 Mobile: 559-960-7899

Toll Free FAX: 888-488-8804

June 30, 2008

RE: MASCO and its subsidiary, Energy Sense

To Whom It May Concern:



I am a HERS rater and CEPE in Fresno and I am concerned about the integrity of the HERS profession in California. An installing contractor named MASCO has a subsidiary company named Energy Sense that does their 3<sup>rd</sup> party verification and compliance certification. Others have defined this arrangement as a clear conflict of interest. I agree.

When I first learned of the MASCO/ Energy Sense arrangement I was confused because I was under the impression that the sole reason HERS raters existed was to eliminate conflicts of interests. I may be mistaken, but logic would follow that if an Energy Sense HERS rater legitimately failed an inspection of Masco's work, his or her job would be on the line or, at the very least, he or she would considered a "whistleblower".

HERS raters serve an important role in California's efficiency goals. We also protect the consumer. Our third party status is compromised when installing contractors are allowed to inspect their own work...even at arm's distance.

I urge the California Energy Commission to pursue an open and honest discussion of whether or not there is a conflict of interest with MASCO and its subsidiary, Energy Sense. I also urge the Commission to investigate any allegations of violations or irregularities concerning MASCO and Energy Sense. By doing so, the Commission will set an important precedent that will encourage others to report legitimate violations of the HERS regulations thus preserving the spirit and intent of those regulations.

Sincerely,

A handwritten signature in dark ink, appearing to be "John Richau", written over a faint circular stamp.

John Richau  
HERS Rater

0000007





Bill Lilly <bill.lilly@califliving.com>

## FW: Masco, Energy Sense and Conflict of Interest rules

Dave Hegarty <DaveHegarty@ducttesters.com>

Sat, Jul 5, 2008 at 1:38 PM

To: Bill Lilly <bill.lilly@califliving.com>

Mr. Beck  
FYI

From: Dave Hegarty

Sent: Saturday, July 05, 2008 1:37 PM

To: Robert Scott

Cc: 'John Richau'

Subject: Masco, Energy Sense and Conflict of Interest rules

RECEIVED BY

JUL 9 2008

CHIEF COUNSEL OFFICE

Dear CHEERS:

This will be the third time I am writing you and charging The BOARD of CHEERS, as to the most apparent CONFLICT OF INTEREST RULES violation by Energy Sense, A MASCO Company. Masco is doing business in the State of California and under their wholly owned subsidiary ENERGY SENSE and with CHEERS accreditation in violation of the Conflict Of Interest Rules and guidelines. I have charged the Board and Robert Scott with investigating and determining the charges that Masco is operating in without fear under CHEERS accreditation and in violation. Please see the guidelines herein cut and pasted directly from the CEC explanations:

CEC-400-2005-005-CMF

Revision 3

## 2. Compliance and Enforcement

Page 2-16 - Compliance and Enforcement – Roles and Responsibilities

Example 2-7

Question

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

Answer

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and

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verified. They can have no financial interest in the installation of the improvements. HERS raters cannot be employees of the builder or subcontractor whose work they are verifying. Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected.

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as contract administrator for the contract, including scheduling the HERS rater, invoicing, and payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

**0000010**

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**0000011**

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

Please note the highlighted text and the third sentence. I understand this is an issue that has come to the Board on several occasions without resolve. As a certified CHEERS HERS Rater, I have asked CHEERS and I have provided written requests for investigation. I have provided first and second hand documentation to CHEERS which I am sure has made its way to BOARD members. I have not received anything in writing back from the BOARD as to investigations being implemented or actions taken on this matter. It is clear in this paragraph above that CHEERS has an obligation to provide "increased scrutiny of HERS raters" under the CONFLICT OF INTEREST RULE. I was told that an investigation would be done based on my request in writing, and that it would occur within 30 days. The results of any investigation that was promised and is part of the CEC charge to Providers has not been received to this date. My request was made more than 90 days ago. I ask with all due respect, when will any investigation take place and when might we expect a determination based on an investigation to arrive in our hands? And along this same vein, I have requested, in writing, a dispute or request for investigation procedure from CHEERS and have not received it to date. I have talked with Tav Cummins at the CEC and he informs me that all Providers must have a complaint system and procedure for investigation of complaints in written form for Raters and the public to access. Is this true and, if so, when might I expect that policy?

It is my belief that Masco flies in the face of the Code and rules about Conflict of Interest, as you know. But as another CHEERS put it, "the continued lack of investigation and action or determination of Masco's violation, especially in our current Energy Market, only encourages other major subcontracting interests to look closer at the Masco business model and the benefits they gain from their self testing model. Can you imagine if other major installers and manufacturers involve themselves in the HERS industry, like Masco has done, to enhance their bottom line, would there be REAL ENERGY SAVINGS. This is making a mockery of the California Energy plan". And I would have to agree with this statement. I ask CHEERS, and THE BOARD to take a good look at the implications and the violations that they have in their possession and that have been forwarded to them, and read the letter from the CEC to Masco written over a year ago and determine if there is a violation of the Conflict of Interest Rule and to make a stand of the issue as to the BOARD's determination. I ask the BOARD to make a ruling on this issue, and set the record straight as to whether it is a conflict or not. And if found to be a conflict, take the appropriate actions to resolve the issue of Masco's accreditation under CHEERS. Even though the Raters under Masco's Energy Sense umbrella, are individuals, CHEERS certified them under the Masco, Energy Sense corporate umbrella. And as you know, Masco is soliciting work from builders/developers from all their building services companies, and all of these companies are wholly owned by Masco. That is a direct violation of the Conflict of Interest rule. By continuing to ignore this issue, we are laying the ground work for more MAJOR companies to employ the same business model (in violation) and risk the real energy savings that California has enjoyed by implementation of our ENERGY CODES. As a State that is 23% better than the rest of the nation, and with the recognition that we have gained for that wise move, how do we now explain the lack of attention to the core of our CODE?

As you know, Bill Lilly of California Living and Energy, has submitted a written formal complaint to the CEC for request for and determination of, the Masco violation. I am privileged to support that document and request and ask CHEERS to also honor that request as a formal, written request for CHEERS formal investigation into the matter. His documentation is open to your scrutiny and I will provide (have already done so) copies of and additional information as to the matter and happenings. It is still my contention that whatever the violations or lack of quality of inspection having been done by Masco Raters, is not the real issue. But that Masco is, as a corporate owner of Energy Sense with better than the allowable financial interest, in violation of the CONFLICT OF INTEREST rule because of the ownership share and their "stake" in the builders business and that they continue to

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0000013

TITLE 24 COMPLIANCE  
Residential & Commercial  
Home Comfort problems  
[www.califliving.com](http://www.califliving.com)  
(209) 538-2879  
(951) 471-0346



**CALIFORNIA  
LIVING & ENERGY<sup>SM</sup>**

*A division of William Lilly and Assoc. Inc.*

Title 24 Compliance-Residential/Non-Residential  
3015 Dale Ct. Ceres, CA 95307  
**Southern California Office:**  
31900 Mission Trails, Suite 242  
Lake Elsinore, Calif. 92530

ENERGY CONSULTING  
Duct Testing 3<sup>rd</sup> Party HERS Rater  
Insulation Inspection & Certification  
Mechanical & Engineering Design  
Fax (209) 538-2885  
(951) 471-1887

## Supporting Documentation of MASCO Violation

### A. March 12 introductory letter at CEC meeting

#### A1. Pulte Homes e-mail regarding MASCO Conflict of interest A1a Pulte labels MASCO

#### A2. CEC letter to Dave Bell of MASCO's Energy Sense

#### A3. Letter to Tav Commings of CEC from Dave Bell

#### A4. Insurance certificate demonstrating financial connection between Insulation Company and MASCO .

#### A5. Investigated report on Masco Contractor Service

#### A6. Copy of Business card showing connection between MASCO and Sacramento Building Products

#### A7. Supporting e-mail & MASCO package offer to Builders

**0000014**

Corporate Office  
3015 Dale Court  
Ceres, CA 95307  
(209) 538-2879  
(209) 538-2885 Fax



**CALIFORNIA  
LIVING & ENERGY**  
Title 24 Compliance - Residential/Non Residential

Southern California Office  
31900 Mission Trail, Suite 130  
Lake Elsinore, CA 92530  
(951) 471-1443  
Fax (951) 471-1887

Date: March 12, 2008

To: William Pennington  
California Energy Commission  
1516 Ninth Street  
Sacramento, Ca. 95814-5512

William Staack  
Senior Staff Counsel  
1516 Ninth Street  
Sacramento, Ca. 95814-5512

**Re: Financial and Perceived Conflict of Interest under the California Home Energy Rating System (HERS) Program**

Dear Sirs

Per our communication, verbal and written, since March 10, 2005 I have consistently brought to you and others at the California Energy Commission evidence of MASCO violation of the Standards as set fourth in 2005 Residential Compliance Manual and other publications. The evidence that was brought to your attention directly relates to the financial conflict and collusion between MASCO and its subsidiaries performing independent 3<sup>rd</sup> party testing. This could have been address in the beginning when the Provider contacted Douglas Beaman and Associates to investigate the conflict of interest. Like everything else their report was put on the shelf. The former Director of CHEER, Tom Hamilton stated, "As such MASCO can do what they want as long as the program does not include any HERS required verification according to the CEC guidelines". MASCO sells and installs many products on subdivisions, which creates an obvious financial conflict when they test and/or inspect those installations.

In October 2002 you wrote "Independent third party field verification is required for the Standards that require such verification. The MASCO quality control does not satisfy this requirement." Even though the subject of my question and your response is related to MASCO's EFL program the situation that started this investigation has not changed. In fact, MASCO has continued to demonstrate a blatant disregard for the Standards as set forth and passed by the California Energy Commission. California Energy Commission has stated in many different forums the concept of an independent 3<sup>rd</sup> Party Rater and how important it is for the integrity of the inspection process on new construction and to the benefit of the consumer. MASCO with its wholly owned subsidiaries has ignored this

**0000015**



Standard to the detriment and disregard of the homebuyer and energy conservation in California.

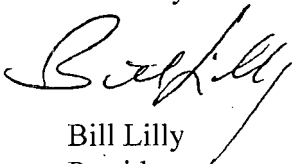
The purpose of our meeting is to bring documentation showing there is a financial (as well as perceived financial conflict) arrangement between MASCO and its subsidiaries therefore violating the Standards as set forth by the CEC and the State of California. This makes a mockery of the trust of the citizens of our State when a large Corporation can disregard the Standards that protect the consumer. I have divided the evidence as follows:

- A1. Pulte Homes e-mail regarding MASCO Conflict of interest
- A2. CEC letter to Dave Bell, President of MASCO's Energy Sense
- A3. Letter to the CEC from Dave Bell
- A4. Insurance certificate demonstrating financial connection between Insulation Company and MASCO
- A5. Private Investigator's report on Masco Contractor Service
- A6. Copy of Business card showing connection between MASCO and Sacramento Building Products
- A7. Supporting e-mail with a copy of a promotion to package all of MASCO services including HERS testing.
- A8. Copy of State Energy Standards MASCO violated

Based on the attached information and California's written statute the CEC needs to issue a cease and desist order to MASCO and its subsidiaries to stop all 3<sup>rd</sup> Party testing in the State of California as soon as possible.

California needs to stand up against a large Corporation like MASCO to send a message to other States such as Arizona that the consumer cannot be deceived or exploited. The fox will no longer be guarding the chicken coop.

Sincerely



Bill Lilly  
President

Cc: Galo LeBron, Energy Inspectors  
Scott Johnson, Action Now  
Dave Hagarty, Duct Testers

**0000016**

Bill Lilly

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Friday, March 31, 2006 11:39 AM  
To: Bill Pennington  
Cc: Mike Bachand; California Energy Commission; John Eash; Jeff; Larry; Bill H; Anita; Dick; thamilton@cheers.org  
Subject: 3rd party violation

A1

Bill

In October of 2002 you wrote me stating that "... The MASCO quality control process does not satisfy this requirement." With your response I mistakenly thought that this situation would not come up again. Well, it has.

Another part of the 3rd party agreement state "...HERS raters cannot have any financial interest in the Builder's or contractor's business...". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain House. Coast Building Products (an insulation company) has the independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as independent 3rd party. Suppose (this is make believe and will never happen) the Builder said unless you pass this house you may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks

Bill

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

-----Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Friday, March 10, 2006 12:44 PM

0000017

To: Robert Danth, ~~Bob Hotten, Gary Gertel~~  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Pennington at the CEC ruled against Masco's EFL system several years. This is a little different in form then the previous ruling therefore I will need get confirmation from the CEC. Thanks for the understanding  
Bill

-----Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 08, 2006 11:11 AM  
~~To: Robert Danth~~  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: Altura bid & 3rd party

Robert

2nd issue

There is a independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and sub-contractors such as insulators can not perform independent 3rd party testing on a subdivision that they have a financial interest in. Under the State statue the sub-contractor can not install or repair anything on a subdivision where they are the 3rd party inspectors. This law has been reviewed and up held by the State.

3rd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know this will never happen) who complains about some sort of energy problem. It will help you the Builder to state that you hired somebody who does not install or repair any energy related product such as HVAC, insulation, fireplaces etc. to inspect their house. You need to have somebody who is really independent and who can testify in court for you, if needed. We carry Error and Omission Insurance they don't.

4th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11

0000018

(209) 538-2885 Fax  
bill.killy@califliving.com  
www.califliving.com

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]@Pulte.com]

Sent: Wednesday, March 08, 2006 7:06 AM

To: Bill Holbrook

Cc: Larry Stubbart

Subject: RE: Altura

Yes, it was the HERS bid. Coast Building Products was awarded the HERS inspections for both Altura and Devon Square. The decision was made largely due to the fact that that CL&E can no longer get primary wording in their insurance certificates. The other factor was price, their bid to perform the inspection was more competitive. Hope this helps Bill, let me know if there are any additional questions or concerns. Thanks.

Robert

0000019

AI

## Christine Weeks

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From: [REDACTED]@Pulte.com]  
Sent: Wednesday, March 29, 2006 11:55 AM  
To: Christine Weeks  
Subject: RE: Toscana @ Mountain House

Masco was awarded the energy star testing at Avondale and Toscana due to insurance issues with California Living & Energy which I believe have since been resolved. Sorry for the confusion.

-----Original Message-----

From: Christine Weeks [mailto:christine.weeks@califliving.com]  
Sent: Wednesday, March 29, 2006 11:44 AM  
To: [REDACTED]  
Cc: Bill Holbrook (E-mail); Larry Stubbart (E-mail)  
Subject: Toscana @ Mountain House

~~Subject:~~

The testing department is trying to set up this project, so that when the super calls for testing we are ready, in doing this we discovered that we don't have a signed bid for testing. Please sign and mark payment method and then fill out the Information Request page and either fax or e-mail signed bid back to me.

Thanks,  
Christine Weeks  
Marketing & Sales Assistant  
California Living and Energy  
christine.weeks@califliving.com  
209-538-2879 Ext. 13

CONFIDENTIALITY NOTICE: This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you have received this communication in error, please notify the sender immediately by email and delete the message and any file attachments from your computer. Thank you.

A4

0000020

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



May 15, 2007

A2

Mr. David R. Bell  
President – EnergySense  
14655 Northwest Freeway, Suite 102  
Houston, TX 77040

**RE: Possible Conflict of Interest under the California Home Energy Rating System (HERS) Program**

Dear Mr. Bell:

Thank you for your letter (which was not dated) responding to the California Energy Commission staff's (henceforth referred to as staff) concerns that a potential conflict of interest under the California Home Energy Rating System Program (HERS) exists between EnergySense and its parent company Masco Corporation and one or more of Masco subsidiaries. Under the HERS regulations, California Code of Regulations, title 20, sections 1670 through 1675, there is no conflict of interest if (1) providers<sup>1</sup> are legally independent entities from the raters<sup>2</sup> who provide field verification and diagnostic testing, and (2) providers and raters are legally independent entities from the builders, and subcontractors who install energy efficiency improvements that are field verified and or diagnostically tested under the HERS program.

From the facts provided in your letter, it appears that EnergySense would be considered a rater under the HERS regulations (Cal. Code Regs., tit. 20, § 1671) because it provides the raters to conduct site inspection for data collection, field verification, and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards. Also as stated in your letter, EnergySense uses raters that are certified by and registered with CHEERS, a HERS provider under California Code Regulations, title 20, section 1671.

It is staff's understanding that EnergySense is a subsidiary under corporate control of parent company, Masco Corporation and that Masco Corporation, has subsidiaries under its corporate control (e.g., Masco Services Group Corporation, Builder Services Group, Inc. and American National Services) that participate in the HERS Program. It is staff's

<sup>1</sup> Providers means an organization that administers a home energy rating system in compliance with ... [the HERS Regulations] Cal. Code Regs., tit. 20, §1671.

<sup>2</sup> Rater means a person performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards. ... Cal. Code Regs., tit. 20, § 1671.

0000021

understanding that the nature of the Masco Corporation structure operating under the HERS program is as follows:

1. The parent Masco Corporation is a supplier of energy efficiency products that are installed under the HERS program;
2. The subsidiary Masco Services Group Corporation and its subsidiaries, Builder Services Group, Inc. and American National Services, are installers of energy efficient products that include products produced by parent Masco Corporation, and
3. The subsidiary, EnergySense, provides raters to conduct site inspection, data collection, HERS field verification, and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards of products produced by the parent Masco Corporation, and installed by subsidiaries Builder Services Group, Inc. and American National Services.

A conflict of interest exists under California Code of Regulations, title 20, section 1673 (i)(2) if a rater is not an independent entity from the builder and from the subcontractor who install energy efficiency improvements under the HERS program.<sup>3</sup> An independent entity as defined in CCR title 20 section 1671 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.<sup>4</sup> Financial interest means an ownership interest, debt agreement, or employer/employee relationship, but does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation. (Cal. Code Regs., tit. 20, §1671)

Without supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following presumptions:

1. Parent company Masco Corporation, a supplier of energy efficiency products installed under the HERS program, has a financial interest as defined under California Code of Regulations, title 20, section 1671 in its subsidiaries EnergySense (a HERS rater), Masco Services Group Corporation (a HERS installer) and its subsidiaries, Builder Services Group, Inc (a HERS installer) and American National Services (a HERS installer).

---

<sup>3</sup> Cal. Code Regs., tit. 20, §1673 (i) Conflict of Interest.

(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. Emphasis added.

<sup>4</sup> Cal. Code Regs., tit. 20, §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(i). Note: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors

2. As a subsidiary of parent Masco Corporation, EnergySense may not be operating as an independent entity as defined in California Code of Regulations, title 20, section 1671 because it is under corporate control of its parent, Masco Corporation, and EnergySense may advocate and recommend the use of Masco's energy efficiency products installed under the HERS program or advocate and recommend the use of Masco Corporation subsidiaries that install energy efficiency products under the HERS program.

Please provide staff with the corporate structure that exists legally between parent Masco Corporation and subsidiary EnergySense with reference to the potential conflict of interest under the HERS regulations. Such information should include but is not limited to the following:

1. Percent of corporate voting shares that the parent, Masco Corporation, owns directly or indirectly through one or more of its subsidiaries, of subsidiary EnergySense.
2. Names of any persons that are employed as a board members and/or officers in more than one of the companies under the Masco Corporation structure including the parent and any subsidiaries that provide products or services under the HERS program.
3. Does parent Masco Corporation have corporate authority over its subsidiary EnergySense for any of the following?
  - (a) Selecting the directors.
  - (b) Appointing a majority of the members of the governing board.
  - (c) Using or directing the use of the individual assets of EnergySense to achieve the objective of the parent.
  - (d) To examine the financial reports and business plans, and to otherwise hold EnergySense and its management accountable for performance expectations of the parent.
  - (e) Have voting control provisions in EnergySense's articles of incorporation or provisions that prohibit amendments of the articles without the approval of the parent.
4. Did parent Masco Corporation prepare any of the bylaws defining the designation and authority of officers, their terms of office, and their removal (for cause or no cause) for EnergySense?
5. Do EnergySense's bylaws include procedures whereby parent Masco Corporation elects and removes directors or prohibit amendments of its bylaws without the parent Masco Corporation's approval?
7. Does parent Masco Corporation, or any of its subsidiaries have a debt agreement with EnergySense?
8. Does parent Masco Corporation, or any of its subsidiaries have any employees who are also employees of EnergySense?

**0000023**



9. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) mention EnergySense in any written, verbal, radio or television advertising or information? If so, please submit a copy of that information.
10. Does EnergySense mention parent Masco Corporation or any of its subsidiaries in any written, verbal, radio or television advertising or information? If so, please submit a copy of that information.
11. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) provide customer referrals to EnergySense? If so, please submit examples of the full range of referral messages that are provided.
12. Does EnergySense provide customer referrals to parent Masco Corporation or any of its subsidiaries? If so, please submit examples of the full range of referral messages that are provided.
13. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) mention in bid responses or price sheets any services provided by EnergySense? If so, please submit copies of these documents.
14. Does EnergySense mention in bid responses or price sheets any services provided by parent Masco Corporation or any of its subsidiaries? If so, please submit copies of these documents.

If you have any questions concerning this letter and the staff's request for supplemental information, please contact Bill Pennington, Building and Appliance Office, at (916) 654-4939.

Sincerely,

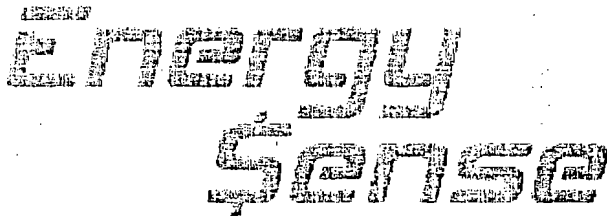
William Staack  
Senior Staff Counsel

WS/jm

cc: Dick Ratliff, Staff Counsel IV  
William Pennington, ERDA  
Tav Commins, ERDA

0000024

1-9-07  
ltr to tau  
C CEC  
A3



Dear Tay:

I write in response to your recent question about EnergySense, Inc.

EnergySense is a subsidiary of Masco Corporation and is in the process of being registered to do business in California. Masco is a multi-billion dollar public company and a leading provider of home improvement and building products and of installation services for insulation and other products. EnergySense was formed to provide inspection, testing, and other consulting services to builders, general contractors and subcontractors in residential and commercial construction. In California, these services include arranging for and administering energy ratings and energy efficiency field verification and diagnostic testing for purposes of EnergyStar, California's Title 24, and other energy efficiency programs offered by builders and others (such as the *Environments For Living*® program offered by another Masco subsidiary). EnergySense provides these services using raters who are appropriately trained and qualified and, for purposes of Title 24 testing and inspection, who are certified by and registered with CHEERS.

A sister Masco Company of EnergySense is Masco Services Group Corp. ("MSG"). MSG is a leading services company that, through its subsidiaries, installs insulation and a variety of other building products from over 300 locations across the United States, including in California. In California, these installation services are provided through its subsidiaries, Builder Services Group, Inc. and American National Services, Inc. and their respective subsidiaries. These various subsidiaries are sister companies of EnergySense. From time to time, EnergySense raters will inspect and/or test for purposes of Title 24 compliance installation work performed by a California branch of one of these sister companies (a "Branch"). In these instances, EnergySense would provide its services under, depending on the builder's preference, a contract with the builder; a three-party contract between the builder, the Branch and itself; or a contract with the Branch, which, in turn, would contract with the builder to provide installation services and independent inspection and/or testing services. The last situation is very much like a California Energy Commission (CEC) approved three-party contract, but allows the builder greater convenience and efficiency. EnergySense recently entered into a master subcontract agreement with Builder Services Group, Inc. and American National Services, Inc. for those instances where the builder selects the last alternative.

0000025

for insulation

Regardless of which option is selected, we believe that EnergySense can inspect and/or test installation work performed by a Branch for purposes of Title 24 consistent with the requirements set forth in 20 CCR 1673(i). According to Section 1673(i), the rater (the person performing the inspection or test) must be an "independent entit[y]" from the builder and (subcontractor installer) of the energy efficient improvement being tested or inspected. In Section 1671, an "independent entity" is defined as "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," the builder or subcontract installer of the energy efficient improvement being tested or inspected. Section 1671 also defines "financial interest" as "an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation."

*Under these definitions, EnergySense's raters are independent entities from any Branch. They have no financial interest in any Branch – that is, they have no ownership interest in or debt agreement with, and are not employees of, any Branch. Moreover, they do not advocate or recommend to any builder that it use any Branch as a means by which to gain more business with that branch. Indeed, EnergySense's subcontract agreements with Builder Services Group, Inc. and American National Services, Inc. expressly preclude EnergySense and its raters from doing so. Similarly, under these definitions, EnergySense, as opposed to its raters, is an independent entity from any Branch. EnergySense, like MSG, is a direct subsidiary of Masco and, as such, has no financial interest in either MSG or any Branch.*

More importantly, EnergySense is confident that its raters can, and will, inspect the work of a Branch just as they would for the work of any other installer – objectively and independently. EnergySense expects its raters to conduct their tests and inspections honestly, independently, and in compliance with all applicable regulations and RESNET guidelines regardless of who the customer or installer may be. Indeed, the raters must do so in order to maintain their HERS certification according to agreements the rater signs with the HERS provider. In addition, EnergySense operates from locations separate from the Branches, and the branch managers of the EnergySense locations, who have direct oversight responsibility for the daily activities and operations of the raters, do not have any direct oversight or management responsibility for any Branch. Similarly, the managers of the Branches do not have any oversight or management responsibility for any EnergySense rater.

The independence and objectivity required and expected of EnergySense's raters in these situations is further demonstrated by the master subcontracts between EnergySense and Builder Services Group, Inc. and American National Services, Inc. These contracts provide that: EnergySense use only trained, qualified, experienced and certified raters who are registered with a HERS provider approved by the California Energy Commission. As extra oversight, CHEERS regularly monitors the test and inspection results of EnergySense's raters and, therefore, is in a position to identify and address any concern with the independence of an EnergySense rater in these situations. In this regard, earlier

0000026

this year when he was the Executive Director of CHEERS, Tom Hamilton expressed his view that EnergySense's structure and operation as outlined above would be consistent with the conflict of interest requirements of 20 CCR 1673(i) and the related regulations.

In sum, if EnergySense raters test or inspect any work of a Branch, they can do so in compliance with the requirements of 20 CCR 1673(i), and EnergySense's operation is designed to ensure independent and objective test and inspection results from its raters in these situations. In addition, since MASCO is a large publicly traded company, MASCO has dramatically more oversight than most companies and would not risk its reputation to gain business.

I hope that my explanation has been helpful. Please do not hesitate to contact me if you would like to discuss this matter further or would like additional information.

Sincerely,

David R. Bell  
President - EnergySense  
(386) 763-4955

0000027

**Bill Lilly**

**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Wednesday, August 16, 2006 9:26 AM  
**To:** Rich Giometti; Larry; Jeff; Dick; Daniel Diaz; Bill H; Anita  
**Subject:** FYI Masco

A 4

**FYI, Larry received a copy of Masco's insurance and they do have Errors and Omission insurance. Make sure the Builders require them to have it if they are going to inspect or test in their subdivision.**

**Thanks**

**Bill**

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

*Living the environment one house at a time*

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**0000028**

**-917 (8-89) OLD REPUBLIC INSURANCE COMPANY****THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS**  
**MASCO FORM RR**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

	SCHEDULE
<b>Name of Person or Organization:</b> PACIFIC MOUNTAIN PARTNERS, INC. PACIFIC MOUNTAIN PARTNERS, LLC <del>FAIRWAY VILLAS @ HIDDENBROOKE,</del> <del>LC</del> <i>PMP @ CreekSide Meadows LLC</i> <del>PMP AT RIVER RANCH, LLC</del>	Any person or organization that the Named Insured is required to name as an Additional Insured by reason of a written contractual provision.

E: CREEKSIDE

/HO IS AN INSURED (Section II) is amended to include a person or organization as defined above. We shall indemnify the Additional Insured for all covered damages proximately caused by the negligently performed or completed work of the Named Insured. We shall further reimburse the Additional Insured for reasonable attorney's fees and necessary litigation incurred in defending against covered damages proximately caused by the negligently performed or completed work of the Named Insured, except for those attorney's fees and litigation costs paid by another insurer.

Our duty to indemnify and to reimburse attorneys' fees and litigation costs shall not exceed the product arrived by multiplying the total dollar amount of liability for covered damages, or the total dollar amount of attorneys' fees and litigation costs, by that percentage of legal liability attributable to the Named Insured for covered damages as determined by a trier-of-fact in an arbitration or trial.

This endorsement controls and supercedes all other Additional Insured endorsements issued to any Additional Insured under this policy unless the Named Insured executes a written contract specifically referring to this endorsement and requiring the Named Insured to provide Additional Insured coverage under different terms. In such circumstance, the written contract shall be controlling as to the limited subject matter of this endorsement.

**FORM INDEX**

Masco Corporation

MWZY 55525

Effective 6-30-06

**0000029**



2410 San Ramon Valley Blvd., Suite 230  
San Ramon, CA 94583

**AX**

DATE:	08/15/06	E-MAIL:	susan@pacificmtpart.com
TO:		FROM:	Susan
COMPANY:	COAST BUILDING PRODUCTS	DEPARTMENT:	Accounting
C:		PHONE:	(925) 855-7200
AX:	209-538-2885	FAX:	(925) 855-1348

SUBJECT: Insurance coverage for **COAST BUILDING PRODUCTS**

I have reviewed the Certificate of Insurance dated **08/09/06** for the above insured. However, in accordance with the "Insurance Requirements" contained in our Contract, the following **checked items** *ll require attention:*

- ☐ Comprehensive General Liability, Bodily Injury and Property Damage:
  - ☐ Each occurrence/aggregate: \$1,000,000
  - ☐ Occurrence Basis (Modified Occurrence or Claims Made Insurance is not acceptable). Include Bodily Injury, Broad Form Property Damage, Completed Products, completed Operations, Premises/Operation, contractual, Owners and Contractors Protective
  - ☐ Underground contractors must provide Explosion/Collapse/Underground (XCU)
- ☐ Automobile Liability, Bodily Injury, Property Damage:
  - ☐ Each Occurrence/aggregate: \$1,000,000
  - ☐ Any Automobile (includes owned, nonowned and hired)
- ☐ Workers Compensation:
  - ☐ Employer's Liability with policy limits of \$1,000,000
  - ☐ Waiver of Subrogation
- ☐ Professional Liability:
  - ☐ Employer's Liability with policy limits of \$1,000,000
- ☒ Additional Insured Endorsement:
  - ☒ Form CG20 10 11 85 covering:
    - ☒ Pacific Mountain Partners, Inc.
    - ☒ Pacific Mountain Partners, L.L.C.
    - ☒ Terrace View at Five Canyons, L.L.C.
    - ☒ Pacific Mountain at Madera, L.L.C.
    - ☐ Fairway Villas at Hiddenbrooke, L.L.C.
    - ☐ PMP at Creekside Meadows, L.L.C.
    - ☐ Countryside at Kerman, L.L.C.
    - ☐ PMP at Mossdale Landing, L.L.C..
  - ☒ Endorsement to include the following provision:
 

"This insurance shall apply as **primary** insurance as respects to the additional insureds named above and any other insurance available to the additional insureds shall be excess and not contributory with the insurance afforded by this policy."
- ☒ Job description to read:
  - ☒ Terrace View at Five Canyons
  - ☒ The Villas at Hiddenbrooke
  - ☒ Coronado/ Montelena
  - ☐ Hidden Grove at Walker Ranch
  - ☐ Countryside
  - ☐ Citrus at Mossdale Landing
- ☒ Certificate Holder:
  - ☒ Pacific Mountain Partners, Inc.
  - ☒ Pacific Mountain Partners, L.L.C.
  - ☒ Terrace View at Five Canyons, L.L.C.
  - ☒ Pacific Mountain at Madera, L.L.C.
  - ☐ Fairway Villas at Hiddenbrooke, L.L.C.
  - ☐ PMP at Creekside Meadows, L.L.C.
  - ☐ Countryside at Kerman, L.L.C.
  - ☐ PMP at Mossdale Landing, L.L.C.
- ☒ Insurance carriers must be "A" rated.

Please issue a **REVISED** certificate reflecting the above and mail the **ORIGINAL** to my attention immediately. Payments may be held as a result of noncompliance to insurance requirements.

0000030



Please resend this Endorsement  
with corrected names

2410 San Ramon Valley Blvd., Suite 230  
San Ramon, CA 94583

**AX**

<b>ATE:</b>	08/15/06	<b>E-MAIL:</b>	susan@pacificmtpart.com
<b>O:</b>		<b>FROM:</b>	Susan
<b>COMPANY:</b>	COAST BUILDING PRODUCTS	<b>DEPARTMENT:</b>	Accounting
<b>C:</b>	847-953 5390	<b>PHONE:</b>	(925) 855-7200
<b>AX:</b>	209-538-2885	<b>FAX:</b>	(925) 855-1348

**SUBJECT:** Insurance coverage for **COAST BUILDING PRODUCTS**

I have reviewed the Certificate of Insurance dated **08/09/06** for the above insured. However, in accordance with the "Insurance Requirements" contained in our Contract, the following **checked items** *ll require attention:*

- ☐ **Comprehensive General Liability, Bodily Injury and Property Damage:**
  - ☐ Each occurrence/aggregate: \$1,000,000
  - ☐ Occurrence Basis (Modified Occurrence or Claims Made Insurance is not acceptable). Include Bodily Injury, Broad Form Property Damage, Completed Products, completed Operations, Premises/Operation, contractual, Owners and Contractors Protective
  - ☐ Underground contractors must provide Explosion/Collapse/Underground (XCU)
- ☐ **Automobile Liability, Bodily Injury, Property Damage:**
  - ☐ Each Occurrence/aggregate: \$1,000,000
  - ☐ Any Automobile (includes owned, nonowned and hired)
- ☐ **Workers Compensation:**
  - ☐ Employer's Liability with policy limits of \$1,000,000
  - ☐ Waiver of Subrogation
- ☐ **Professional Liability:**
  - ☐ Employer's Liability with policy limits of \$1,000,000
- ☐ **Additional Insured Endorsement:**
  - ☐ **Form CG20 10 11 85** covering:
 

<input type="checkbox"/> Pacific Mountain Partners, Inc.	<input type="checkbox"/> Fairway Villas at Hiddenbrooks, L.L.C.
<input type="checkbox"/> Pacific Mountain Partners, L.L.C.	<input type="checkbox"/> PMP at Creekside Meadows, L.L.C.
<input type="checkbox"/> Terrace View at Five Canyons, L.L.C.	<input type="checkbox"/> Countryside at Kerman, L.L.C.
<input type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C.
  - ☐ Endorsement to include the following provision:  
*"This insurance shall apply as **primary** insurance as respects to the additional insureds named above and any other insurance available to the additional insureds shall be excess and not contributory with the insurance afforded by this policy."*
- ☒ **Job description to read:**

<input type="checkbox"/> Terrace View at Five Canyons	<input checked="" type="checkbox"/> Hidden Grove at Walker Ranch
<input type="checkbox"/> The Villas at Hiddenbrooke	<input type="checkbox"/> Countryside
<input type="checkbox"/> Coronado/ Montelena	<input type="checkbox"/> Citrus at Mossdale Landing
- ☒ **Certificate Holder:**

<input checked="" type="checkbox"/> Pacific Mountain Partners, Inc.	<input type="checkbox"/> Fairway Villas at Hiddenbrooke, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain Partners, L.L.C.	<input checked="" type="checkbox"/> PMP at Creekside Meadows, L.L.C.
<input type="checkbox"/> Terrace View at Five Canyons, L.L.C.	<input type="checkbox"/> Countryside at Kerman, L.L.C.
<input type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C.
- ☐ Insurance carriers must be "A" rated.

ase issue a **REVISED** certificate reflecting the above and mail the **ORIGINAL** to my attention immediately. Payments may be held as a result of noncompliance to insurance requirements.

0000031



**REPORT OF INVESTIGATION**

**MASCO CONTRACTOR SERVICES**

**Northern California Organization and Activities**

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CA Secretary of State

CA Contractor's Licenses

Inspection of Premises

Addendum

**Masco Environments For Living Requirements**

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**REPORT PREPARED MAY 18, 2006 FOR**

Bill Lilly  
California Living & Energy  
3015 Dale Court  
Ceres, CA 95307

**0000032**

CA Secretary of State Indices:

The names *Masco Contractor*, *Masco Contractors* or *Builders Service Group* were not discovered in the CA Secretary of State Corporate indices. This search includes Limited Partnerships and/or Limited Liability Companies.

Note that *Masco Contractor Services* is incorporated in Florida under the name, *Builders Service Group*, but indexed as Masco Contractor Services Central, Inc. The name MASCO as part of a company name is utilized in at least twenty-four separate Florida corporations.

It was determined that Masco Contractor Services owns 27 insulation companies in California, as follows:

Bakersfield: Western Insulation, LP  
Ceres: Western Insulation, LP  
Concord: Coast Building Products  
Corona: Paragon Schmid Building Products (2 Locations)  
Fountain Valley: Paragon Schmid Building Products  
Fresno: Western Insulation, LP  
Fresno: Sacramento Building Products  
Hayward: Western Insulation, LP  
Lancaster: Western Insulation, LP  
Marysville: Sacramento Building Products  
Modesto: Sacramento Building Products  
Nipomo: Western Insulation, LP  
Ontario: Western Specialties  
Palm Desert: Paragon Schmid Building Products  
Poway: Schmid Building Products  
Rancho Cucamonga: Paragon Schmid Building Products  
Redding: Sacramento Building Products  
Sacramento: Sacramento Building Products  
Sacramento: Western Insulation, LP  
Salinas: Coast Building Products  
San Diego: Western Insulation, LP  
San Jose: Coast Building Products  
Santa Barbara: Santa Barbara Building Products  
Santa Rosa: Coast Building Products  
Tulare: Sacramento Building Products  
Valencia: Paragon Schmid Building Products

0000033

Those insulation companies located in Northern California, as shown below, were searched in the California Secretary of State corporate indices with the following results:

1. Sacramento Building Products (see #5 below)
2. Western Insulation
3. Coast Building Products (see #6 below)
4. Century Insulation
5. Sacramento Insulation (see #1 above)
6. Coast Insulation (see #3 above)

CA Entity	CA ID #	Address	Agent	Date Filed/	Status
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Western Insulation, LP	2001-06600006	1029 Technology Park, Glen Allen, VA 23059	CT Corporation System	3/6/01	Active
Coast Insulation Contractors, Inc	C1542005	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	9/18/86	Active
Sacramento Insulation Contractors	0455372	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	8/1/63	Active

**0000034**

***Note that all insulation contracting companies must be licensed by the CA Board of Contractors.***

Licenses for associated Masco insulation companies found in CA Contractor's License indices:

Co. Name and/or dba	Address on License	CA License No.	Status
Sacramento Insulation Contractors dba Sacramento Building Products	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	202026	Current
Sacramento Insulation Contractors dba Central Fireplace	Same as above	847391	Current
Western Insulation, LP*	Same as above	794484	Current
Coast Insulation ** Contractors, Inc. dba Coast Building Products	Same as above	465440	Current
Masco Contractor Services Central Inc dba Century Insulation	2339 Beville Rd Daytona Beach, FL 32119 386- 304-2222	424061	Expired as of 12/31/2001

\* 9 companies utilizing the name Western Insulation are shown on the CA Contractor's License indices. Of these, only one is currently active (shown above). *Additional corporate information on inactive companies available upon request.*

\*\*6 companies utilizing the name Coast Insulation are shown on the CA Contractor's License indices. Of these, only one is currently active (shown above). *Additional information on inactive companies available upon request.*

**0000035**

Licenses found in CA Contractor's License indices using *Masco Contractor Services* as search term: (4 inactive companies found and NOT shown below. Additional information n inactive companies available)

Co. Name and/or dba	Address on License	License No.	Status
Builder Services Group, Inc. dba Gale Insulation	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	709417	Current
Masco Contractor Services Central, Inc. Db Gearhart Building Products	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	716847	Current
Builder Services Group, Inc. dba B S I Building Products	2339 Beville Rd Daytona Beach, FL 32119 386- 304-2222	814508	Current

0000036

Masco is active in many other contracting areas, and is actively seeking business to acquire. The following information appears on their web site.

\* \* \* \* \*

*With over twenty years of experience, and over 80 acquisitions, Masco Contractor Services (MCS) has a long history of acquisition success. At MCS, acquisition success means acquiring successful companies, keeping the employees and customers satisfied, and helping the sellers achieve their objectives. When those objectives are met, we know the results will be positive for our company*

*Masco Contractor Services (MCS) is looking to grow through the acquisition of well-managed, profitable companies that add to the company's strategic growth objectives. We look for acquisitions that provide positive opportunities for both the seller and Masco Contractor Services. Specifically, we are looking for the following types of companies that provide installation services to builders and homeowners:*

*Insulation Contractors  
Guttering Contractors  
Shelving Contractors  
Mirror and Shower Enclosure Contractors  
Cabinet Distribution and Installation Companies  
Structured Wiring  
Garage Doors*

*Other: We are always willing to consider other business opportunities with strategic value to the company.*

*Masco Contractor Services is flexible in helping sellers achieve their objectives. As a prevailing philosophy, the employees of the seller are very valuable to MCS and therefore, we work hard to retain the employees of the acquired company, including the sellers (where possible) and managers. MCS is a growing company that provides career opportunities and extensive benefits to all of our employees.*

\* \* \* \* \*

0000037

## INSPECTION OF PREMISES:

### Pulte Homes: *Avondale* and *Toscana* in Mountain House, California

On May 10, 2006, an inspection of *Avondale* and *Toscana*, sub-divisions designated as designed and constructed by Pulte Homes, was initiated. An on-site visit to Mountain House did not reveal any sub-divisions within this Community identified as *Avondale* or *Toscana*. Information regarding both *Avondale* and *Toscana* was located during an internet search however, and Pulte Homes currently does have 4 distinct communities in Mountain House. These are entitled *Gable Lane*, *Cambridge Townhomes*, *Terra Bella* and *Amberlea* and are located within the Bethany Neighborhood. The sales offices for these Pulte homes were closed and no additional information could be obtained. The information center at Mountain House was then contacted. The clerk at this center informed us that a meeting was scheduled later this month with the various builders currently working in Mountain House. At that time, dates were to be scheduled for ground breaking of additional subdivisions to be built in the new Altamont Neighborhood, and among them would be the Pulte Developments, *Avondale* and *Toscana*. Future plans for Mountain House include twelve separate neighborhoods or 'villages', although only two neighborhoods, Bethany and Wicklund, are currently developed. A map of the proposed villages was given to us along with other promotional materials.

On May 11, 2006, contact was made with Pulte sales representatives for *Gable Lane* in Mountain House to discuss any knowledge of building plans for *Avondale* and/or *Toscana*. The representative stated that the unseasonable rains this spring have delayed the building plans and they have been told that construction will probably not start until late this summer, and to expect the models to be ready in early winter. This salesperson was very knowledgeable and proud of the energy efficiency records of Pulte Homes and wanted us to know that they (Pulte) exceed the standard Energy Star requirements and have achieved a Platinum rating, however he had no knowledge of current and/or future insulation companies used and/or any current and/or future 3<sup>rd</sup> party testing contractors.

0000038

## INSPECTION OF PREMISES:

Pulte Homes: *Legends, Gables* and *Groves* at Magnolia Park, in Oakley, California

On May 10, 2006, an inspection of *Legends, Gables* and *Groves* at Magnolia Park, subdivisions designated as designed and constructed by Pulte Homes was initiated. Information regarding *Legends*, and *Groves* at Magnolia Park was located during an internet search however, no current mention of *Gables* was found.

Contact was made with the Pulte Construction crew across the street from the Magnolia Park Sign (photo attached). They informed us that both *Gables* and *Groves* were still in the planning stages but that model homes were currently being built for *Legends*. When asked about the Energy Star ratings of Pulte homes and, how, exactly, they were rated and built, the construction foreman said that as far as he knew, Pulte in Brentwood had always used California Living and Energy Consultants for their 3rd party verifier. He added that he had no real knowledge whether any other company was to be used in Oakley, however he had heard that the new development would be using a subsidiary of California Living and Energy Consultants. (Brentwood and Oakley are divided by Nerolly Street and the construction crew trailers were actually in Brentwood. Pulte had subdivisions on the Brentwood side and Magnolia Park is scheduled for the Oakley side.)

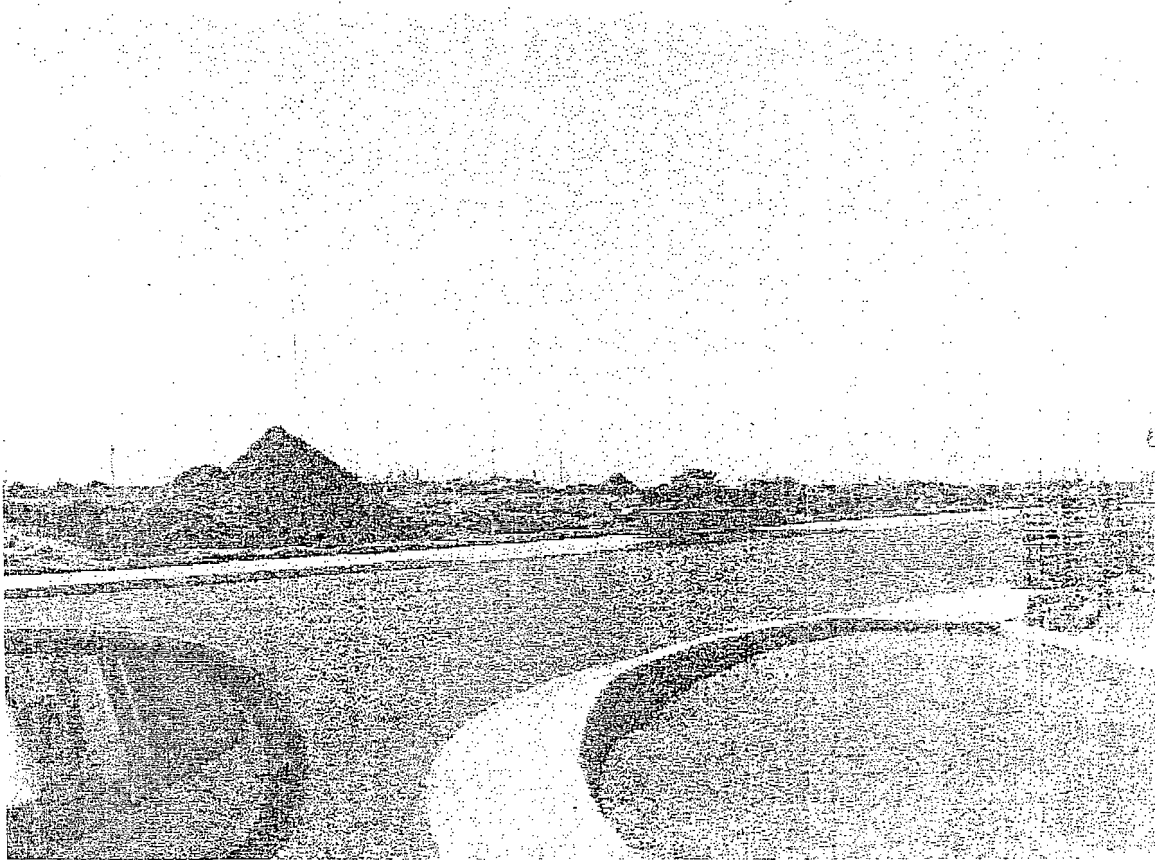


0000039



## INSPECTION OF PREMISES:

Pulte Homes: *Legends*, *Gables* and *Groves* at Magnolia Park, in Oakley, California

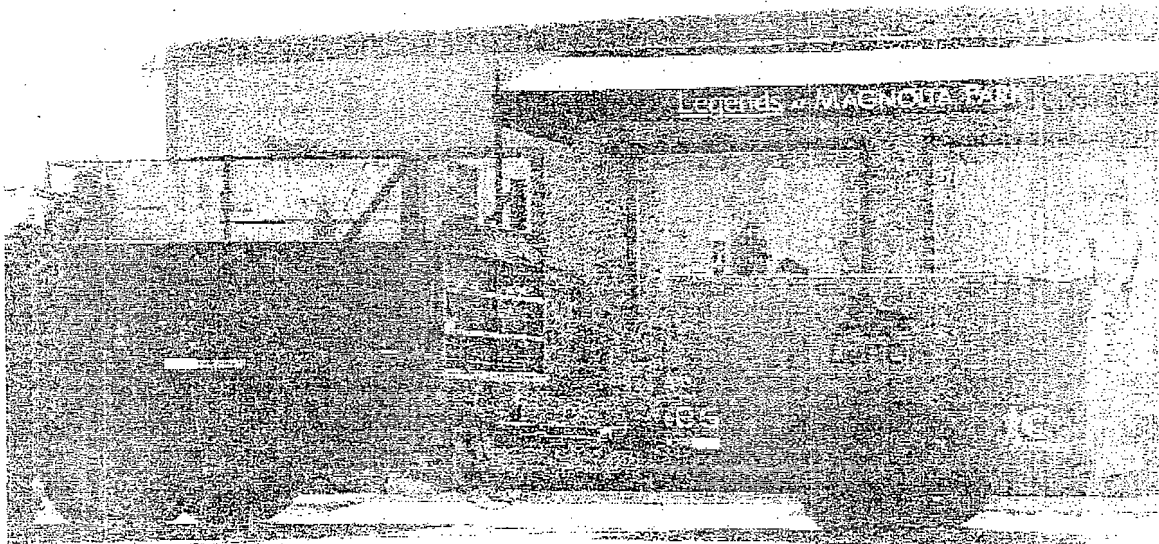


On May 11, 2006, a visual inspection of what appears to be beginning construction of *Legends* was made. (Photo above) Additionally, contact was made with sales representatives for *Estates* in Brentwood to discuss any knowledge of building plans for *Legends*, *Gables* and *Groves* at Magnolia Park. This salesperson appeared very knowledgeable and proud of the energy efficiency records of Pulte Homes and wanted us to know that they (Pulte) exceed the standard Energy Star requirements and have achieved a Platinum rating for their *Classics* and *Estates at Rose Garden*. He said that he had heard that Pulte was planning a new approach to achieving this rating but, at this time, he didn't know exactly what that approach would be.

0000040

## INSPECTION OF PREMISES: COMMENTS

Since the four of the five sub-divisions in question have not yet been built, no information on either the insulation company chosen or the rating company used would be available. However, since the construction of the model homes at Legends in Oakley has begun, the City of Oakley Building Permits Department was contacted for any insulation sub-contractor information. The clerk in this department, who identified herself as Ann, stated that a permit was issued for each and every home planned but that only the name of the general contractor was listed on the permit. She recommended contact with Pulte, Northern California in Pleasanton as a possible source of information. She said it was also possible that the foreman at the construction site could have the list of sub-contractors. No one was found in the site trailer during our visit.



0000041

## ADDENDUM:

### Pulte Homes, Northern California: Pleasanton, CA.

Pulte Northern California, Sales Department was contacted and an individual who identified herself as Danay, stated that the sales office for *Legends at Magnolia Park* would be opening sometime in the middle to the end of June 2006. She predicted that the model homes for *Legends* would be ready sometime in the middle of this summer. She also believed that the sales offices for *Toscana* and *Avondale* in Mountain House would open sometime in July although the model homes would not be ready until sometime this fall. Danay said that the "Platinum Rating" mentioned by the Pulte sales staff in Brentwood was specific to an entire community. Since the Mountain House community is constructed of many neighborhoods and many builders, this rating would not be utilized in Mountain House; however current plans showed that the Oakley developments would be built in accordance with new requirements that were actually in excess of the platinum rating.

Pulte Northern California, Purchasing Department was contacted and an individual who identified himself as Gary, stated that the insulation contractor being used for *Legends at Magnolia Park* was Coast Building Products, a Masco Company located in Concord, CA. Gary then stated that the inspection/building process was verified by EFL (Environments for Living), also a Masco division (or program). This process involves an entire construction program (See following information) and complete information regarding this program can be found on the Masco-csc.com website. Gary stated that this program was used in certain communities only and that other areas, such as those planned in Mountain House, were not using this program. He further said that the other communities utilized used California Living and Energy Consultants for their 3rd party verifier.

References to a company identified as *Energy Sense* were located during an Internet search. Specific biographical information on the representative sent to the national RESNET (Residential Energy Services Network) conferences in 2004 and 2005 were discovered. In that article, *Energy Sense* was referred to as "recently acquired by Masco Corporate Services" and that they worked with Pulte Homes in Texas, among others, also in Texas. In a search of California corporate indices (including LLC and LP), no mention of any company called *Energy Sense* was found. A similar search of the California Contractor Licenses indices and the Energy Star list of California inspectors authorized by CalCERTS, CBPCA, CHEERS or Home Enalasis' did not reveal any references to companies identified as *Energy Sense*.

0000042

## MASCO "ENVIRONMENTS FOR LIVING" REQUIREMENTS:

### ***Builder Responsibilities:***

As the builder, you shall:

- Design and construct your homes to include the Program Requirements.
- Remain solely responsible for the design and construction of your homes.
- Ensure that your subcontractors understand their responsibilities in meeting the Program Requirements. This shall include ensuring that your subcontractors have completed the *Environments For Living* program's field training. It may also include amending your current agreements with subcontractors to reflect new responsibilities.
- Make any adjustments in the sequencing of trades needed to ensure that the Program Requirements are followed.
- Ensure that all applicable building codes are satisfied.
- Contact the *Environments For Living* headquarters if you believe there is a Program Requirement that conflict with a building code requirement in your location.
- Comply with the requirements of the International Energy Conservation Code for all items not addressed in the Program Requirements if you build in an area with no building code in effect.

Working together, it is our goal to provide your customers with a more comfortable and more energy-efficient home that promotes a healthier environment. The *Environments For Living* program provides homes with benefits beyond the energy and comfort guarantees that are available.

Homes that meet the *Environments For Living* Program Requirements have increased durability, enhanced indoor air quality, and manage excess internal moisture better than traditionally designed and constructed homes that fail to meet the program's performance criteria and fail to incorporate the Program Requirements.

### ***Framing:***

There shall be an air barrier\* enclosing the conditioned space.\*\* Air barrier continuity is required throughout the structure, including at features such as knee walls, soffits, garage interfaces, intersecting walls, tubs and showers, and dropped ceilings.

\*Air barriers define the location of the pressure boundary. The pressure boundary is defined as that location where 50% or more of the air pressure drop across an assembly occurs.

\*\* The conditioned space is that area within a building provided with heating and/or cooling systems capable of maintaining a minimum of 50 degrees F during the heating season and a maximum of 85 degrees F during the cooling season, or communicates directly with a conditioned space. (Reference: International Residential Building Code for One- and Two-Family Dwellings, 2000.)

### ***Thermal Envelope:***

Insulation shall be installed according to manufacturer's specifications, which include attention paid to gaps, voids, compression and wind intrusion. Insulation and the air barrier shall be installed in physical contact with each other.

For Gold, Platinum and Diamond level homes, windows shall have a solar heat gain coefficient (SHGC) of 0.53 or lower in cold climates (Zone 7) and 0.40 or lower in other climates.

For Gold, Platinum and Diamond level homes, windows shall have an overall U-value as certified by the National Fenestration Ratings Council (NFRC) of .35 or lower in cold climates (Zone 7) and .75 or lower in other climates.

Climate regions shall be defined in the Department of Energy Climate Map.

**0000043**

### **Airsealing:**

The air barrier separating the conditioned space from non-conditioned space shall be continuous. Depending on the program level, homes shall meet the following performance criteria for air tightness:

**Silver** - .50 cfm or less per square foot of envelope area at 50 pascals

**Gold** - .35 cfm or less per square foot of envelope area at 50 pascals

**Platinum** - .25 cfm or less per square foot of envelope area at 50 pascals

*cfm = cubic feet per minute*

All Homes shall be measured using a blower door, following the test protocol described in the *Environmental For Living* program's Testing Protocol.

### **Pre-Drywall:**

Holes shall be sealed with a material capable of stopping airflow. Fibrous insulation shall not be used as an air barrier in any application.

All penetrations in the top and bottom plates shall be sealed, including bottom plates to concrete slabs.

All soffits, chases, drop ceilings, and tub and shower surrounds shall be capped with a rigid material capable of stopping airflow.

The insulation in kneewalls shall be fastened in such a way that it will be in physical contact with the dry wall / air barrier.

### **Post-Drywall:**

Penetrations through drywall shall be sealed with a material capable of stopping airflow.

### **Mechanicals:**

#### **Heating-Cooling-System Design-Performance**

Mechanical systems shall be sized according to the ACCA Manual J. Room-by-room load calculations using the ACCA Manual J shall be submitted for each plan to verify sizing.

Furnaces, water heaters and boilers within conditioned spaces (including basements) shall be sealed combustion or power vented units. All other combustion appliances shall be vented to the outside. Vent-less fireplaces or space heaters are not allowed.

Airflow to each room shall match designed airflow calculations from the ACCA Manual J to within +/- 10% of the average requirements for that room based on the average of 4 orientations of that specific home.

Airflow across the indoor coil and/or heat exchanger shall conform to the manufacturer's specifications.

Refrigerant charge shall be installed per the manufacturer's specifications. Inert gas (nitrogen) shall be used during any brazing/soldering of refrigerant lines.

Indoor and outdoor HVAC system components shall be "matched" according to the ARI Directory.

**0000044**

**Ducts:**

Air supply and distribution ducts located in non-conditioned spaces shall be insulated with a minimum of R-6.

All duct connections shall be sealed with a UL listed mastic product.

Depending on the program level, homes shall meet the following performance criteria for duct tightness:

**Silver** - 5% of the conditioned floor space area in cubic feet per minute or less at 25 pascals.

**Gold** - 3% of the conditioned floor space area in cubic feet per minute or less at 25 pascals.

**Platinum** - 3% of the conditioned floor space area in cubic feet per minute or less at 25 pascals. If ducts are within conditioned space, 7% of the conditioned floor space area in cubic feet per minute or less at 25 pascals.

Homes shall be measured with a duct test rig using the test protocol described in the *Environments For Living* program's Testing Protocol.

**Ventilation:**

Outside air shall be provided in every home at a minimum rate of 7.5 cfm per person plus .01 cfm per square foot of conditioned floor area. Persons per home shall be calculated using the sum of the number of bedrooms plus one. Outside air requirements shall not exceed the minimum rate requirement by more than 10% unless accounted for in the designed load calculations.

Outside air supplied by supply-only or balanced ventilation systems shall be filtered and shall include a manual damper or other means of control.

All kitchens shall have a spot ventilation system located at the cooking station(s) capable of exhausting 100 cfm to the outside.

All bathrooms shall have a ventilation system capable of exhausting 20 cfm continuous or 50 cfm intermittent to the outside.

**Pressure Balancing:**

All rooms within the conditioned space - except baths and laundry - shall not exceed +/- 3 pascals pressure differential with respect to the outside when interior doors are closed and the air handler is operating. Additional returns, transfer grilles, or jump ducts may be needed to balance each room (not part of Silver program requirements).

**Carbon-Monoxide Detectors:**

Hardwired and removable (plug in type) carbon monoxide (CO) detectors shall be installed as follows in houses having attached garages, fireplaces, wood stoves, or combustion appliances:

- Removable detectors shall be installed within one foot of the ceiling (manufacturer must approve the location). A minimum of one detector per house level or story.
- Alarms shall be placed near or outside each sleeping area (one alarm can serve the typical three bedrooms at the end of a hall).

0000045

- In homes with two or more sleeping areas, one alarm for each area.
- Any bedroom having a fireplace shall have one alarm in the room in addition to the alarm outside the room.
- Homes with elevators that open to a garage must have one alarm near each elevator door opening to the interior of the residence.
- Detectors shall be installed in accordance with manufacturer's recommendations.

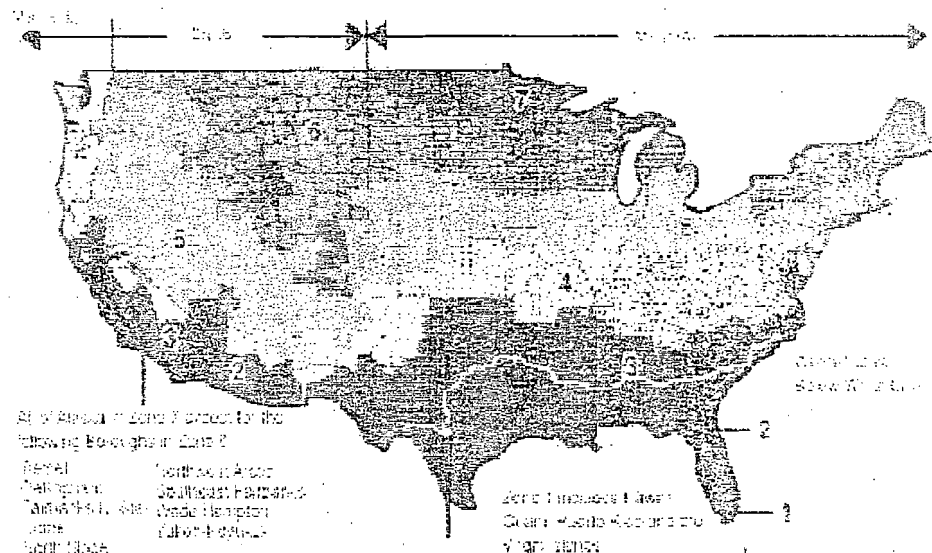
### ***Moisture-Management:***

Water management shall be provided as specified in the EEBA Water Management Guide. Moisture that enters building assemblies shall be allowed to dry either to the interior, exterior or both sides.

Low permeance paints (less than 1 perm, ASTM E96), vinyl wallpaper, sheet polyethylene, foil-backed gypsum board, or any other low permeance material (less than 1 perm ASTM E96) shall not be used on the interior of walls and ceilings in Zones 1-3.

Very low permeance materials (less than 0.1 perm, ASTM E96), such as polyethylene, shall not be used on the interior of walls and ceilings in Zones 4-5.

Climate regions shall be defined by the Department of Energy Climate Map.



For more information regarding the above contact us at 866-912-7233.

### ***Testing-Protocol:***

Homes will be tested for duct tightness, air tightness and pressure balancing. Visual inspections shall be done for framing, thermal envelope, ventilation and carbon monoxide detectors for requirement of the Program Requirements.

Duct tightness shall be measured using a duct test rig and meet the Program Requirements for the level

**0000046**

of participation. Air tightness and pressure balancing shall be measured using a blower door test rig and meet the Program Requirements for the level of participation.  
All tests and inspections will be performed by a party authorized by the *Environments For Living* program.

### **Testing/Frequency:**

#### **Participating-Homes**

The first two production homes of each plan within a subdivision will be tested and inspected for compliance with the Program Requirements. At least 10% of all homes in the subdivision will be tested and inspected for compliance with the Program Requirements.

#### **Silver-Gold-Platinum-Diamond/Production-Homes**

The first two production homes of each plan within a subdivision will be tested and inspected for compliance with the Program Requirements. At least 15% of all homes in the subdivision will be tested and inspected for compliance with the Program Requirements.

#### **Custom/"Plus"-Homes**

All homes shall be tested and inspected for compliance with the Program Requirements.  
The *Environments For Living* program reserves the right to amend the testing frequency as may be necessary to assure compliance with these program requirements, in which case additional fees may be required.

ENVIRONMENTS FOR LIVING

0000047



CONSERVATION FOR THE CALIFORNIA LIFESTYLE

**TITLE-24/ENERGY STAR EXPERTS**  
**ENGINEERING**  
**Electrical-Mechanical-Civil**



**CALIFORNIA**  
**LIVING & ENERGY**

A Division of William Lilly & Associates, Inc.

TITLE 24 COMPLIANCE-RESIDENTIAL/NON-RESIDENTIAL  
3015 DALL COURT 31600 MISSION TRAIL  
CERES, CA 95307 LAKE ELSDORE CA 92530  
209-538-2879-FX 209-538-2885 951-471-1443-FX 471-1857

**INDEPENDENT HERS RATERS**  
**DUCT TESTING PROFESSIONALS**

AC

TO: BILL LILLY

FROM: DICK SNEDDEN

SUBJECT: MASCO

Number of pages w/ cover sheet: 2

Bill:

Here's a business card Dave Short left with us. It does say they are a Masco Co.

Thanx!

Dick

0000048

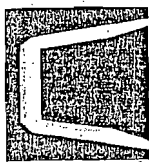


1733 Morgan Road #250  
Modesto, CA 95358  
(209) 531-8000  
(209) 556-0834 Fax  
(209) 346-1420 Cell  
e-mail: david.short@masco.com

**David Short**  
HERS, EFL  
Product Manager

Insulation • Fireplaces • Mantels • Rain Gutters  
Garage Doors • Closet Organizers • CA Lic. #202026

0000049



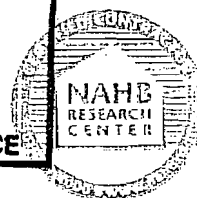
**COAST**  
BUILDING  
PRODUCTS

Division of MASCO CONTRACTOR SERVICES

**RECEIVED BY**

JUL 9 2008

CHIEF COUNSEL OFFICE



**LINE OF PRODUCTS**

**BRAND OF PRODUCTS**

**Installed by COAST Building Products**

**INSULATION**

Owens Corning, Certainteed, Icynene,  
Insulation

**FIREPLACE**

Superior, Lennox, Avalon

**GARAGE DOOR  
& OPENER**

Northwest Door, Wayne Dalton, Clopay  
Door  
(Opener-Liftmaster, Wayne Dalton)

**MANTEL**

Hearthco

**CABINETS**

Merillat \*

**PAINT**

BEHR Paint\*

**GUTTER**

Seamless Steel, Aluminum Gutter

**FIRE CAULKING**

Hilti

**EFL - Green**

Environments for Living

Insulation Inspection Services  
GE Ecomagination Green

**HERS TESTING**

Home Energy Rating System

Testing and Inspection Services\*

\* Indicates Manufacturers products, additional products includes Millgard  
Windows, Delta Faucets, Kwikset Corp.

0000050

A7  
Supporting e-mail

bill

From: "Bill Pennington" <Bpenning@energy.state.ca.us>  
To: <blilly@californialivingenergy.com>  
Cc: "John Eash" <Jeash@energy.state.ca.us>  
Sent: Sunday, October 06, 2002 10:17 AM  
Subject: Re: Re:

Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement.

>>> "bill" <blilly@californialivingenergy.com> 10/05/02 02:28PM >>>  
Bill

It has been several months since you e-mailed me regarding your inquiry into Masco's program in response to my concern for what I believe is clearly (and legally) a conflict of interest. You stated that you are waiting for an explanation from Masco. Have you received it yet?

Bill, the market is changing quickly, please let me know as soon as possible what your decision is.

Sincerely

Bill Lilly

California Living & Energy  
(209)538-2879  
(949)250-1165  
(209)538-2885 Fax

----- Original Message -----

From: Bill Pennington

To: [blilly@californialivingenergy.com](mailto:blilly@californialivingenergy.com) ; [thamilton@cheers.org](mailto:thamilton@cheers.org)

Cc: [bholbrook@californialivingenergy.com](mailto:bholbrook@californialivingenergy.com) ; John Eash ; Rob Hudler ; [martyn@energysoft.com](mailto:martyn@energysoft.com) ; [WHughes@smud.org](mailto:WHughes@smud.org) ; [billm@soldata.com](mailto:billm@soldata.com)

Sent: Wednesday, June 26, 2002 3:56 PM

Subject: Re:

Commission staff is awaiting a letter from MASCO explaining their process. When that arrives we will decide how it relates to the conflict of interest rules.

>>> "blilly" <[blilly@californialivingenergy.com](mailto:blilly@californialivingenergy.com)> 06/26/02 10:30AM >>>

Tom

Thank you, I value your help tremendously. This helps alot.

Sincerely

Bill

California Living & Energy  
3649 Mitchell Rd Suite C  
Ceres, California 95307  
(209) 538-2879  
(209)538-2885 Fax  
[califliving@afo.net](mailto:califliving@afo.net)

----- Original Message -----

From: Tom Hamilton

To: [blilly](mailto:blilly) ; [Bill Pennington](mailto:Bill Pennington)

Cc: [Bill Mattinson](mailto:Bill Mattinson) ; [bill holbrook](mailto:bill holbrook) ; [Martyn Dodd](mailto:Martyn Dodd) ; [Rob Hudler](mailto:Rob Hudler) ; [Wade Hughes](mailto:Wade Hughes)

Sent: Wednesday, June 26, 2002 8:43 AM

Subject: RE:

Bill

Here is my 2cents on the matter. I am not sure what Envrionments for Living is. I assume it is a program that is sponsored by Masco, not by the CEC, DOE, or EPA. As such Masco can do what they want as long as the program does not involve any HERS required verifications according to the CEC guidelines. If the builder uses any measure to reach T-24 or Energy Star that requires HERS verification (TXV, ducts, etc) then they

0000051

**Bill Lilly**

**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Wednesday, March 09, 2005 12:18 PM  
**To:** Bill Pennington (E-mail)  
**Cc:** Dave (E-mail); Dick (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail); John Eash (E-mail); Bryan Alcorn (E-mail)  
**Subject:** RE: Masco Process

**Bill**

*Thank you for getting back to me. Your message answered my question that there is no changes regarding the 3rd party HERS rater from being independent from a company program such as Masco's Environments for Living.*

*We believe there is several projects being built by Pulte in Southern California and one in Stockton that have this issue. We still need to do more checking with Brad Townsend and the Providers.*

*Thank You*

**Bill**

**California Living & Energy**  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

**Note: New e-mail & Web Site**

-----Original Message-----

**From:** Bill Lilly [mailto:bill.lilly@califliving.com]  
**Sent:** Tuesday, March 08, 2005 9:02 AM  
**To:** Bill Pennington (E-mail)  
**Cc:** Dave (E-mail); Dick (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail); John Eash (E-mail); Bryan Alcorn (E-mail)  
**Subject:** Masco Process

**Bill**

*On October 06, 2002, you responded to a question I had regarding Masco 3rd party quality control process as it applies to Energy Star and/or Title-24 independent field verification. You wrote (see attached):*

*"Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement."*

*Has anything changed?*

*<< File: Masco email from CEC 03-08-05.pdf >> Please respond soon, there are several projects in Northern and Southern California that need to be addressed.*

**0000052**

Bill Lilly

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Thursday, March 10, 2005 10:23 AM  
To: 'Delilah Levy'  
Cc: 'Bill H (E-mail)'; 'Jeff (E-mail)'; 'Larry (E-mail)'; 'Terry (E-mail)'; 'Dawn Carton'; 'Tom Hamilton';  
Dave (E-mail); Dick (E-mail)  
Subject: RE: Energy Star

Delilah

Thanks for the input, I'll follow up from here. FYI, Jaime Padron works for Sacramento Insulation which is owned by Masco Contractors Service along with Paragon Insulation. They both participate in Masco's Environments for Living Program. They are not allowed to be the 3rd party Rater for their own EFL Program. " The MASCO quality control process does not satisfy this requirement"

Thanks

Bill

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3015 Dale Ct.  
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(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com  
Note: New e-mail & Web Site

-----Original Message-----

From: Delilah Levy [mailto:dlevy@cheers.org]  
Sent: Thursday, March 10, 2005 9:54 AM  
To: bill.lilly@califliving.com  
Cc: 'Bill H (E-mail)'; 'Jeff (E-mail)'; 'Larry (E-mail)'; 'Terry (E-mail)'; Dawn Carton; Tom Hamilton  
Subject: RE: Energy Star

Bill,

Thanks for your e-mail. I am not sure what the issue is. I am not aware of the insulation companies that you mentioned and Jaime Padron does not work for those companies. As far as Jaime's activity, I suggest that you contact him directly.

Thank you again for your continuing support.

Delilah Levy

Administrative Assistant

CHEERS

9400 Topanga Cyn. Blvd., Suite 220

Chatsworth, CA 91311

www.CHEERS.org

-----Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]

Sent: Wednesday, March 09, 2005 12:50 PM

To: Delilah Levy (E-mail)

Cc: Bill H (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail)

Subject: Energy Star

Delilah

It was good seeing you at RESNET last week, I hope all is well.  
I am trying to find out if Paragon Insulation and Sacramento Insulation  
(or Jaime Padron) tried to put any houses on the registry for Energy Star  
or  
Title-24.

If they did, there may be a conflict of interest.

California Living & Energy

3015 Dale Ct.

Ceres, California 95307

(209) 538-2879 x11

(209) 538-2885 Fax

bill.lilly@califliving.com

www.califliving.com

Note: New e-mail & Web Site

Bill Lilly

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Wednesday, April 05, 2006 10:42 AM  
To: Tav Commins  
Cc: Larry; Jeff; Dick; Bill H  
Subject: RE: 3rd party violation

Pulte  
confirmation

iv  
Thank you (and Bill) for following up on this. This is very important.  
First time I checked they are using Tom Hamilton at CHEERS as their  
provider.  
Thanks again

Bill Lilly  
President  
California Living & Energy  
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(99) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

**Note: New e-mail & Web Site**

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-Original Message-----

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]  
Sent: Monday, April 03, 2006 9:29 AM  
To: bill.lilly@califliving.com  
Subject: Re: 3rd party violation

Pennington asked me to look in to this.

Do you know who the HERS provider is for Coast Building Products?

"Bill Lilly" <bill.lilly@califliving.com> 03/31/06 11:38 AM >>>

October of 2002 you wrote me stating that "... The  
SCO quality control process does not satisfy this requirement."  
In your response I mistakenly thought that this situation would  
come up again. Well, it has.  
Another part of the 3rd party agreement state "...HERS raters cannot

0000055



have any financial interest in the Builder's or contractor's business...". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain House. Coast Building Products (an insulation company) has the independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as independent 3rd party. Suppose (this is make believe and will never happen) the Builder said unless you pass this house you may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks

Bill

Bill Lilly  
President  
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1015 Dale Ct.  
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(209) 538-2885 Fax  
bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

---Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Friday, March 10, 2006 12:44 PM  
To: Robert Dauth; Deb Heden; Gary Oertel  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Huntington at the CEC ruled against Masco's EFL system several years. This is a little different in form then the previous ruling therefore I need get confirmation from the CEC. Thanks for the understanding

Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 08, 2006 11:11 AM  
To: Robert Dauth  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook

subject: Altura bid & 3rd party

Robert

1st issue

There is a independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and sub-contractors such as insulators can not perform independent 3rd party testing on a subdivision that they have a financial interest in. Under the State statute the sub-contractor can not install or repair anything on a subdivision where they are the 3rd party inspectors. This law has been reviewed and upheld by the State.

2nd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know this will never happen) who complains about some sort of energy problem. We will help you the Builder to state that you hired somebody who does not install or repair any energy related product such as HVAC, insulation, fireplaces etc. to inspect their house. You need to have somebody who is really independent and who can testify in court for you, if needed. We carry Error and Omission Insurance they don't.

3rd issue

Oh yea, if price is an issue then talk to us.

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(99) 538-2885 Fax  
l.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

--Original Message-----

From: Robert Dauth [<mailto:Robert.Dauth@Pulte.com>]  
Sent: Wednesday, March 08, 2006 7:06 AM  
To: Bill Holbrook  
Cc: Larry Stubbart  
Subject: RE: Altura

As it was the HERS bid. Coast Building Products was awarded the HERS inspections for both Altura and Devon Square. The decision was made solely due to the fact that that CL&E can no longer get primary wording on their insurance certificates. The other factor was price, their bid to perform the inspection was more competitive. Hope this helps Bill, please let me know if there are any additional questions or concerns. Thanks.

Robert

0000057

Bill Lilly

From: Bill-Lilly [bill.lilly@califliving.com]  
Sent: Thursday, April 13, 2006 10:23 AM  
To: Tav Commins; bill.lilly@califliving.com  
Cc: Rich Giometti; Bill H; Dick; Jeff; Larry  
Subject: 3rd party violation

Tav

I little confused or maybe I'm not the sharpest tool in the shed. I am not clear what Tom is saying. As you can see with the attached e-mail on our the previous correspondence, Pulte Homes/Northern California already gave Coast Building Products the contract to do the 3rd party testing on two subdivisions. Coast Building Products persented themselves as the "independent" 3rd party rater. I have read the sections you sent me many times plus the corresponding Building and procession code, Contractor License law and hundreds of sub-contracts sent to us by General Builders as to what

a Legal entity. These Builders legally become a single financial entity with the Sub- Contractor. And by contractual definition the sub-contractor who is installing or repairing a product such as insulation on a subdivision can not be an independent 3rd party rater on that subdivision testing or inspecting anything. There is a mutual financial interest. "By law HERS raters must be independent entities from the Builder or subcontractor installer..." Besides, when the law states "independent" what does that mean? From what is written in the section you sent me plus all other applicable laws means you should not be getting money from the back door or should I say the appearance of the back door.

I have heard many times from the CEC that raters are another inspector similar to a city Building inspector. I'm sure there are some jurisdictions that would frown on one of there inspectors owning a tile company who has the contract to install tile on a subdivision and as a part of his job they were supposed to inspect that subdivision up to the frame. Anyway, we must not only support the "intent of the CEC regulations" but actually obey them. And if we have to error lets at least error on the side of independence. I am not a lawyer and maybe I just do not get it. Maybe I need to consult somebody more wiser then I am and if I am wrong I will drop it.

Free-party contracts can and have worked but it is still based on the CEC concept of "rafer independence".

Thanks

They  
own  
insulation  
subcontractor  
tile company  
plumbers

Bill Lilly  
President  
California Living & Energy  
5 Dale Ct  
Es, California 95307  
(916) 538-2879 x11  
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2006

0000058

bill.lilly@califliving.com

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## Note: New e-mail & Web Site

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-----Original Message-----

From: Tav Commmins [mailto:Tcommmins@energy.state.ca.us]

Sent: Wednesday, April 12, 2006 8:22 AM

To: bill.lilly@califliving.com

Subject: RE: 3rd party violation

Below is Tom's response. I have included the information on third party contract from page 2-16 of the residential

Coast Building products does have raters that are certified by CHEERS. Concerning the projects that are happening with them at this point. Pulte has been releasing the bid specs for the projects and Pulte has received submitted bids for their projects. Coast Building products is fully aware of the regulatory requirements and the intent of the CEC Regulations. Due to their internal quality assurance Coast Building products has implemented appropriate approaches including, but not limited to the 'three-party agreement' to ensure their clients that they are receiving a valuable service, not just a service that is an expense.

Sample 2-7

Question

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

Answer

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities not affiliated with the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS raters can not be employees of the builder or subcontractor whose work they are verifying. Therefore, HERS raters cannot have any financial interest in the builder's or contractor's business or promote or recommend the use of any product or service that they are verifying. Section 5.3.5 of the CBC prohibits a special inspector from being employed (by contract or otherwise) by the contractor who performed the work that is being inspected.

The Energy Commission expects HERS raters to enter into a contract with the builder (not with subcontractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a subcontractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as contract administrator for the contract, including scheduling the HERS rater, invoicing, and compliance and Enforcement - Field Verification and/or Diagnostic Testing Page 2-17

5 Residential Compliance Manual March 2005

When provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation

of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

>>> "Bill Lilly" <bill.lilly@califliving.com> 04/05/06 10:42 AM >>>

Tav

Thank you (and Bill) for following up on this. This is very important. Last time I checked they are using Tom Hamilton at CHEERS as their Provider.

Thanks again

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]  
Sent: Monday, April 03, 2006 9:29 AM  
To: bill.lilly@califliving.com  
Subject: Re: 3rd party violation

Bill Pennington asked me to look in to this.

Do you know who the HERS provider is for Coast Building Products?

iv

> "Bill Lilly" <bill.lilly@califliving.com> 03/31/06 11:38 AM >>>

1

On October of 2002 you wrote me stating that "... The ASCO quality control process does not satisfy this requirement." In your response I mistakenly thought that this situation would come up again. Well, it has. Another part of the 3rd party agreement state "...HERS raters cannot have any financial interest in the Builder's or contractor's business...". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain View. Coast Building Products (an insulation company) has an independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as an independent 3rd party. Suppose (this is make believe and will not happen) the Builder said unless you pass this house you

0000060

may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks

Bill

Bill Lilly  
President  
California Living & Energy  
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209) 538-2879 x11  
209) 538-2885 Fax  
bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

---Original Message---

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Friday, March 10, 2006 12:44 PM  
To: Robert Dauth; Deb Heden; Gary Oertel  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbett; Bill Holbrook  
Subject: RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Cunningham at the CEC ruled against Masco's EFL system several years. This is a little different in form than the previous ruling therefore I will need get confirmation from the CEC. Thanks for the understanding  
Bill

---Original Message---

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 08, 2006 11:11 AM  
To: Robert Dauth  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbett; Bill Holbrook  
Subject: Altura bid & 3rd party

Robert

Issue  
There is an independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and contractors such as insulators can not perform independent 3rd party

3/2006

0000061

esting on a subdivision that they have a financial interest in. Under  
the State statue the sub-contractor can not install or repair anything  
on a subdivision where they are the 3rd party inspectors. This law has  
been reviewed and up held by the State.

3rd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know  
this will never happen) who complains about some sort of energy problem.  
It will help you the Builder to state that you hired somebody who does  
not install or repair any energy related product such as HVAC,  
insulation, fireplaces etc. to inspect their house. You need to have  
somebody who is really independent and who can testify in court for you,  
if needed. We carry Error and Omission Insurance they don't.

4th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
resident  
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(509) 538-2879 x11  
(509) 538-2885 Fax  
billlilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

---Original Message---

From: Robert Dauth [mailto:[Robert.Dauth@Pulte.com](mailto:Robert.Dauth@Pulte.com)]  
Sent: Wednesday, March 08, 2006 7:06 AM  
To: Bill Holbrook  
Cc: Larry Stubbert  
Subject: RE: Altura

As it was the HERS bid. Coast Building Products was awarded the HERS  
inspections for both Altura and Devon Square. The decision was made  
largely due to the fact that CL&E can no longer get primary wording  
on their insurance certificates. The other factor was price, their bid  
to perform the inspection was more competitive. Hope this helps Bill.  
Let me know if there are any additional questions or concerns. Thanks.

Robert

0000062

Bill Lilly

From: Tay Commins [Tcommins@energy.state.ca.us]  
Sent: Monday, June 05, 2006 1:05 PM  
To: bill.lilly@califliving.com  
Subject: RE: 3rd party conversation

Sorry about taking so long.  
I was out of the office most of last month doing trainings at conferences, building departments, and HVAC changeouts.  
I actually started composing an e-mail this morning to send to Tom. I am requesting a time this week if possible to have a call with the three of us to go over your concerns and hopefully agree on next steps.  
I hope to get back to you today or tomorrow with a date and time.

> "Bill Lilly" <bill.lilly@califliving.com> 06/05/06 11:35 AM >>>

It has been almost two months since I have e-mailed you regarding this issue and I have subsequently talked to Bill Pennington at the CABEC conference. I have not heard anything from the CEC!  
On my side, the Private Investigator and some of our people have found a few possible violations (PI has more research to do). It seems a company called Energy Sense is the 3rd party rater on the Pulte Projects in question.  
Masco owns Energy Sense per David Short of Sacramento Building Products. Sacramento Building Products is owned by Masco. The Three party contract for the Pulte Projects is under Coast Insulation, a Masco company, which is using another company called Energy Sense- go figure. The Mama and Papa but they say they are not related.  
I hope the investigation is incorrect and there is no malfeasance. The more we look the more questions that are raised. Such as, where is everybody on this?

Please respond.  
Thanks  
Bill

Masco is already on the internet using Energy Sense in Texas, it seems logical they would use it in California. David Short, who used to work for Pulte, had lunch with one of our Managers and was trying to find out how far our investigation has gotten. mmm

Bill Lilly  
President  
California Living & Energy  
35 Dale Ct.  
Folsom, California 95307  
916 538-2879 x11

2006

0000063



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Note: New e-mail & Web Site

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-----Original Message-----

From: Bill Lilly [<mailto:bill.lilly@califliving.com>]

Sent: Monday, April 17, 2006 9:30 AM

To: Tav Commins

Cc: Rich Giometti; Anita; Bill H; Christine Weeks; Dick; Jeff; Larry

Subject: 3rd party conversation

iv

Thanks for speaking with me this morning. Per our conversation, you will view

the issues we discussed with Bill Pennington regarding Coast Building products violation (what I believe) of the third party independent requirements

stated in the residential manual plus the independence of any three party contract they may have entered in to. Then you will contact the required people on how

you are monitoring this situation. I personally come to believe there may be a possible ethical issue with the three party contract as it is now constituted in the Standards. Or why would the CEC state " ...Energy Commission does not recommend it...". I plan on challenging the "three party contract" in the future.

Thanks

Lilly

President

California Living & Energy

Dale Ct.

San Jose, California 95307

(209) 538-2879 x11

106

0000064

Bill Lilly

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Monday, June 05, 2006 11:36 AM  
To: Tav Commins  
Cc: Rich Giometti; Anita; Bill H; Dick; Jeff; Larry  
Subject: RE: 3rd party conversation

Tav

It has been almost two months since I have e-mailed you regarding this issue and I have subsequently talked to Bill Pennington at the CABEC conference. I have not heard anything from the CEC!

On my side, the Private Investigator and some of our people have found some possible violations (PI has more research to do). It seems a company called Energy Sense is the 3rd party rater on the Pulte Projects in question. Masco owns Energy Sense per David Short of Sacramento Building Products. Sacramento Building Products is owned by Masco. The Three party contract for the Pulte Projects is under Coast Insulation, a Masco company, which is using another company called Energy Sense- go figure. Same Mama and Papa but they say they are not related. I hope the investigation is incorrect and there is no malfeasance. The more we look the more questions that are raised. Such as, where is every body on this?

Please respond.

Thanks

Bill

PS Masco is already on the inter net using Energy Sense in Texas, it seems logical they would use it in California. David Short, who used to work for us had lunch with one of our Managers and was trying to find out how far our investigation has gotten. numm

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

Note: New e-mail & Web Site

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0000065

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-----Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]

Sent: Monday, April 17, 2006 9:30 AM

To: Tav Conunins

Cc: Rich Giometti; Anita; Bill H; Christine Weeks; Dick; Jeff; Larry

Subject: 3rd party conversation

Tav

Thanks for speaking with me this morning. Per our conversation, you will review the issues we discussed with Bill Pennington regarding Coast Building Products violation (what I believe) of the third party independent requirements as stated in the residential manual plus the independence of any three party contract they may of entered in to. Then you will contact the required people on how they are monitoring this situation. I personally come to believe there may be a possible ethical issue with the three party contract as it is now constituted in the Standards. Or why would the CEC state " ...Energy Commission does not recommended it...". I plan on challenging the "three party contract" in the future.

Thanks

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

0000066

e-mail Subdron

Questions Regarding the Investigation of Masco Contractor Services:

1. Note\* *Masco Contractor Services* is incorporated in Florida under the name, *Builders Service Group*, but indexed as *Masco Contractor Services Central, Inc.* The name *MASCO* as part of a company name is utilized in at least 24 separate Florida corporations. Do you want us to Investigate all of the Masco related entities or just a few?

2. The name *Masco Contractor*, *Masco Contractors* or *Builders Service Group* were not discovered in the CA Secretary of State Corporate indices. This search includes Limited Partnerships and/or Limited Liability Companies

3. Are we interested in insulation companies only? (Masco is active in many other contracting areas, see next pages). Would you like the Investigation to include named personnel of CA companies? Any Masco officer names to be searched?

4. Do you want copies of any FBNs, Articles of Incorporations, Statements of Officers? Would you want the companies searched in Civil Court in each of the respective counties?

5. County searches requested: Sacramento, Santa Clara, Alameda, Stanislaus, San Joaquin. Any additional counties? San Francisco, Marin, Sonoma, Solano, Contra Costa?

Named companies in email as follows: Note that all insulation contracting companies must be licensed by the CA Board of Contractors.

1. Sacramento Building Products (see #5 below)
2. Western Insulation
3. Coast Building Products (see #6 below)
4. Century Insulation
5. Sacramento Insulation (see #1 above) - - -
6. Coast Insulation (see #3 above)

File - 11 @ Magnolia Park  
21 1st Legend  
21 1st Legend  
21 1st Legend  
21 1st Legend  
21 1st Legend  
21 1st Legend

CA Entity	CA ID #	Address	Agent	Date Filed/	Status
-----------	---------	---------	-------	-------------	--------

Western Insulation, LP	2001-06600006	1029 Technology Park, Glen Allen, VA 23059	CT Corporation System	3/6/01	Active
Coast Insulation Contractors, Inc	C1542005	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	9/18/86	Active

0000067

Bill Lilly

From: Tav Commins [Tcommins@energy.state.ca.us]  
Sent: Friday, September 08, 2006 1:39 PM  
To: bill.lilly@califiving.com  
Subject: MASCO

I talked to the MASCO rep several weeks ago and also send him an e-mail with a list of all the requirements for conflict of interest.

I told them to put together a letter explaining to us how their new company does not violate the conflict of interest requirements.

I have not had a response to date.

Tav

916 653-1598

10-16-06 9:30 AM

He called Masco 2 or 3 times

& no response from Masco.

He thinks he received a letter from Masco, Masco says. So, Tav will contact them again for a response if they get no response by 10-20-06

He will say that other Rate companies can say Masco is not following CEC guidelines. I will follow up on 10-23-06

0000068

## **HERS Regulations**

### **' 1673. Requirements for Providers.**

#### **(i) Conflict of Interest.**

- (1) Providers shall be independent entities from raters who provide field verification and diagnostic testing.
- (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.

### **' 1671. Definitions.**

**Financial Interest** means an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation.

**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(i).

**NOTE:** The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors.

## **Residential Compliance Manual**

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

#### Question

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

#### Answer

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS raters can not be employees of the builder or subcontractor whose work they are verifying. Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected.

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as contract administrator for the contract, including scheduling the HERS rater, invoicing, and Compliance and Enforcement – Field Verification and/or Diagnostic Testing Page 2-17

*2005 Residential Compliance Manual March 2005*

payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

**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(i) of the California Home Energy Rating System Program regulations (California Code of Regulations,

Title 20, Division 2, Chapter 4, Article 8). **Financial Interest** means an ownership interest, debt agreement,

or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation.

NOTE: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit

conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors.

0000071



Bill Lilly

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Monday, October 16, 2006 3:40 PM  
To: Bill Pennington; doug@dougbeaman.com; bill.lilly@califliving.com; Tav Commins  
Cc: Rich Giometti; Larry; Jeff; Dick; Bill H  
Subject: RE: MASCO Conflict of Interest

Tav

I really appreciate you getting back to me. Let me see, I'm having a little trouble understanding... MASCO's (possessive) subs can verify work completed by another MASCO sub... mmmm I think I get it, there goes the concept of "independent" EERS rater.

Tav, sorry for the poor effort of frustrated satire.

Thanks  
Bill

---Original Message---

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]  
Sent: Monday, October 16, 2006 1:41 PM  
To: bill.lilly@califliving.com; doug@dougbeaman.com; Bill Pennington  
Subject: MASCO Conflict of Interest

Just talked to Dave Bell, National Sales Manager with MASCO. He will be sending me the letter this week from MASCO explaining how MASCO's subs can verify work completed by another MASCO sub.

12-8-06 Tuesday  
I left message

0000072

Bill Lilly <blillycl@califliving.com>

3CO  
pages

ommins <Tcommins@energy.state.ca.us>  
lilly@califliving.com

Fri, Jan 5, 2007 at 2:13 PM

are working on the reply letter to Masco regarding one Masco sub company providing HERS verification  
another Masco sub company.

ve you seen or do you have any advertising literature from Masco regarding this process?

lly <bill.lilly@califliving.com>  
To: bill.lilly@califliving.com  
iv Commins <Tcommins@energy.state.ca.us>

Sat, Jan 6, 2007 at 3:07 PM

I follow up on this Monday. I will get you something as soon as possible. Give me until this Wednesday to get back to you.  
nks

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

0000073

G i

Bill Lilly <billlilly@energy.state.ca.us>

## Re: MASCO Conflict of Interest

messages

av Commins <Tcommins@energy.state.ca.us>

o: William Staack <Wstaack@energy.state.ca.us>

c: bill.lilly@califiving.com

Tue, Jan 9, 2007 10:03 PM

Sorry I did not get the attached letter to you sooner. I did not think I could send it to you. I received the OK from Bill P. to send it out.

The letter from MASCO is attached. It lists the subsidiaries. I believe that CHEERS will be doing the HERS verifications.

Tav

>>> William Staack 01/09/07 10:28 AM >>>

Could I get the name Corporate names used by:

(1)Masco Inc.,

(2)Masco Contractor Services and its two separate corporate subsidiaries that : (a) installs energy efficiency products and (b) does the HERS.

A search online of the California Secretary of State provides no useful information. More detail information is available for a fee--but I want to contact the Secretary of State legal office to see if it can be waived for a sister agency doing an enforcement investigation.

Bill Staack, Esq, P.E.  
Senior Attorney  
Legal Office  
California Energy Commission  
(16) 654-3873

>> Bill Pennington 01/08/07 6:44 PM >>>  
< Thanks.

>> William Staack 01/05/07 3:14 PM >>>

I have not had time to search on the Secretary of State page from MASCO and its subs due to litigation regulations and DOE petition. I should be able to get to it next week.

Bill Staack, Esq, P.E.  
Senior Attorney  
Legal Office  
California Energy Commission  
(16) 654-3873

> Bill Pennington 01/05/07 1:53 PM >>>  
wanted to ask how we're doing on the followup to the 12/21 meeting??

0000074

Tav Commins 12/11/06 9:58 AM >>>

Received a request to move the date. The mtg has been rescheduled to the 21st.

Last month November 8th we had a meeting regarding MASCO sub companies doing HERS verification of other MASCO sub companies. We came up with several questions we wanted to MASCO.

Over the last month with holidays, vacation, travel and a death in my family I have only been at work 6 days. My memory is not complete enough to remember the questions we had developed.

We would like to get back together and see if we can decide what the questions should be.

LEGAL- CEC response - final.DOC  
41K

ly <bill.lilly@califliving.com>  
To: bill.lilly@califliving.com  
v Commins <Tcommins@energy.state.ca.us>

Tue, Jan 9, 2007 at 7:01 AM

Thank you for letting me read Masco's letter. I did not receive your response to Masco. After reading Masco's letter, I thought, maybe I do not understand what a "subsidiary" is. So I went to Webster's dictionary for look see and thankfully the definition has not changed since I was in school "company controlled by another". Since they are not a non profit I would suspect they have a financial interest (Section 1671) in a subsidiary they own. Sometimes these things just come to me. Tav, I think it is just a lot of smoke and mirrors. But I must admit it is well written.  
Thanks

I will try to get the information you requested.

-----  
Sent: Tuesday, January 9, 2007 11:01 AM  
To: 'Bill Lilly' <bill.lilly@califliving.com>  
Subject: RE: MASCO Conflict of Interest

LEGAL- CEC response - final.DOC  
41K

ly <bill.lilly@califliving.com>  
To: bill.lilly@califliving.com  
Mike Bachand <mike@calcerts.com>  
Dick <dick.snedden@califliving.com>, Randy Chaffey <randy.chaffey@califliving.com>, Larry <larry.stubbert@califliving.com>

Tue, Jan 9, 2007 at 7:01 PM

----- Forwarded message -----  
From: Bill Lilly <bill.lilly@califliving.com>  
Date: Jan 9, 2007 7:23 PM

0000075

Re: MASCO Conflict of Interest

Page 1 of 1

Subject: Re: MASCO Conflict of Interest

From: Tav Commins <[Tcommins@energy.state.ca.us](mailto:Tcommins@energy.state.ca.us)>

LEGAL- CEC response - final.DOC  
41K

0000076

Bill Lilly <bill.lilly@califliving.com>

ASCO

Bill Lilly <bill.lilly@califliving.com>

Fri, Jan 19, 2007 11:13 AM

Reply-To: bill.lilly@califliving.com

Tav Commins <Tcommins@energy.state.ca.us>

Larry <larry.stubbert@califliving.com>, Dick <dick.snedden@califliving.com>, Randy Chaffey <randy.chaffey@califliving.com>

av

Sorry it has taken so long to get this info to you. We just got this Wednesday. As you can see from the communication between John Kindorf of Pulte and Evonne Revitt of Pg&E, Masco clearly has the HERS contract for Wyndam and Stratford Communities. Regardless of the subsidiary name they use, MCS, Energy Sense etc it still is addressed as Masco, it is all interrelated. Dick Kindorf and Rich Dunn still use the Masco e-mail address. I am also e-mailing what we compiled the calcs with for Wyndam. I suggest you call Evonne or Linda Turkette at PG&E for more detailed information on other subdivisions Masco is providing the HERS rating. there is financial connection between all of these legal entities as well as a real world connection. Please keep me updated.

||

3: I would like to talk to you about why we believe in 100% 3rd party testing and what an easy sell it has been with the Gail

Bill Lilly

bill.lilly@califliving.com  
15000 1st St  
San Diego, CA 92128  
www.califliving.com  
619-538-2400

#### attachments

Wyndam @ Mountain House EFL-Energy Star 05-22-06.doc  
69K

PulteMasco.pdf  
23K

0000077

## W: Pulte projects

Larry Stubbett <larry.stubbett@califliving.com>  
: "Bill Lilly (E-mail)" <bill.lilly@califliving.com>

Fri, Jan 19, 2007 11:11 AM

BL:

Here is the information we need for Tav.

LS

-----Original Message-----

From: John Kindorf [mailto:John.Kindorf@Pulte.com]  
Sent: Wednesday, January 17, 2007 2:58 PM  
To: Rich.Dunn@mascoecs.com; david.short@mascoecs.com;  
larry.stubbett@califliving.com  
Cc: Revitt, Evonne; Zack Jones  
Subject: FW: Pulte projects

Attached are Request for Payment letters for projects where Masco  
(CHEERS) performs HERS Rating and CLE performed the Title 24/Energy Star  
calculations just in case you never got them from us.  
In addition to the communities above, Masco has HERS Rating contracts at  
Wyndam and Stratford. Note that PG&E has no record of these 2 newer  
communities.

Expect that CLE and Masco can work together to ensure the rebates are  
available to Pulte for all lots at Wyndam and Stratford and that the  
PG&E application has been filed.

John Kindorf  
Purchasing Manager SFD  
Pulte Homes  
10 Stoneridge Mall Road, 5th Floor  
San Antonio, CA 94588  
Tel: (925) 249-3246  
Fax: (925) 249-4374  
Cell: (925) 383-5455

Original Message-----

From: Revitt, Evonne [mailto:ERH2@pge.com]  
Sent: Wednesday, January 17, 2007 11:17 AM  
To: John Kindorf  
Cc: Turkatte, Linda  
Subject: FW: Pulte projects

John,

Attached are the acceptance letters and Request For Payment Forms for 6  
of 7 active projects that I have for you. I am still waiting for  
an acceptance letter and Request For Payment form for the Magnolia Park  
lands project and will get that to you as soon as it is ready.

me

me Revitt

0000078

G&E  
955 41st Avenue, Suite B-2  
Capitola, CA 95010  
Tel: (916) 213-4032  
Fax: (831) 479-5806

-----Original Message-----

From: Revitt, Evonne  
Sent: Wednesday, January 17, 2007 10:42 AM  
To: 'John Kindorf'  
Subject: Pulte projects

John,

Below are the applications that I show we have for you. Were the other projects submitted under different names. Attached is a PDF file listing all projects that we have for you.

The only active projects in our database from your list below are:

Terra Bella @ Mountain House  
Amberlea @ Mountain House  
Rondale  
Toscana  
Magnolia Park legends, Groves, and Gables

I will send you the acceptance letters for these.

Evonne

-----Original Message-----

From: John Kindorf [mailto:[John.Kindorf@Pulte.com](mailto:John.Kindorf@Pulte.com)]  
Sent: Friday, January 12, 2007 3:07 PM  
To: Revitt, Evonne  
Subject: RE: Magnolia Park Legends by Pulte

ble Lane - no application under that name Terra Bella - Terra Bella @  
Mountain House - active Amberlea - Amberlea @ Mountain House - active  
Rondale - active Toscana - active Gallery - no application under that  
name Classics - no application under that name Arbors - no application  
under that name Estates - no current application under that name, all  
expired or paid Legends - Magnolia Park Legends - active Groves -  
Magnolia Park Groves - active Gables - Magnolia Park Gables - active  
Terra - expired Wyndam - no application under that name Stratford -  
no application under that name

John Kindorf  
Marketing Manager SFD  
Pulte Homes  
1 Stoneridge Mall Road, 5th Floor  
San Ramon, CA 94588  
(925) 249-3246  
(925) 249-4374  
(925) 383-5455

-----Original Message-----

From: Revitt, Evonne [mailto:[ERH2@pge.com](mailto:ERH2@pge.com)]  
Sent: Friday, January 12, 2007 11:31 AM  
To: John Kindorf  
Subject: Magnolia Park Legends by Pulte

0000079



John,

Regarding Magnolia Park Legends, have you had a rater change? Cal  
living said they are not doing the HERS rating on this project. Do you  
now who the rater is and what HERS provider they are using? We are  
unable to locate this project in the provider database.

Thank you,

Evonne

Evonne Revitt  
G&E  
955 41st Avenue, Suite B-2  
Capitola, CA 95010  
h: (916) 213-4032  
AX: (831) 479-5806

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Thank you.

attachments

2007PulteMagPkGrovesRFP.pdf  
98K

2007PulteMagPkGrovesAcpt.pdf  
41K

2007PulteMagPkGablesRFP.pdf  
110K

2007PulteMagPkGablesAcpt.pdf  
41K

2007PulteToscanaRFP.pdf  
74K

2007PulteToscanaAcpt.pdf  
41K

2007PulteAvondaleRFP.pdf  
85K

2007PulteAvondaleAcpt.pdf  
41K

0000080

Bill Lilly <blillycle@gmail.com>

MASCO

Bill Lilly <bill.lilly@califliving.com>

Fri, Mar 16, 2007 at 10:00 AM

-To: bill.lilly@califliving.com

av Commings <Tcommings@energy.state.ca.us>

arry <larry.stubbert@califliving.com>, Dick <dick.snedden@califliving.com>, Randy Chaffey <randy.chaffey@califliving.com>

Bachand <mike@calcerts.com>, galo@wredco.net

I left a message on your voice mail checking on the status of the Masco investigation. I am looking at subdivisions where Masco is doing 5 different trades. This is an obvious violation of your own rules. there is financial conflict between independent 3rd party testing and the way Masco is doing it. At this time I am trying to decide what is the best way to legally. the private investigation is done. Where do we go from here? I do know this if your legal department decides in favor of Masco I will challenge it legally. Please update me.

Thanks

0000081

ly@homesbyfrontiers.com>, Steve Mothersell <scmothersell@scmhomes.com>, Steve Woodhouse  
woodhouse@florsheimhomes.com>, Sue Straw <spstraw@centexhomes.com>, "Tclendenning@Dunmorehomes. Com  
ndenning@dunmorehomes.com>, Ted Gowdy <tgowdy@centexhomes.com>, Ted Ridenour <tridenour@scmhomes.com>  
' Whitsitt <twhitsitt@scmhomes.com>, Thomas W Comber <TWComber@drhorton.com>, Tiffany Mueller <TMueller@centex  
as.com>, Tim Stanley <tstanley@greenbriarhomes.com>, Tim Thomas <Tim.Thomas@ryland.com>, "Todd H. Temasco  
d@harlynhomes.com>, Todd Leffler <tleffler@lefcoinc.com>, Todd Lukesh <tlukesh@sigprop.com>, "Tom Doucette @  
tiers" <tdoucette@homesbyfrontiers.com>, Tony D Ponzo <adponzo@drhorton.com>, Tony Occhino <tocchino@sunbelt  
Oleson <Troy@pacificmtprt.com>, Randy Chaffey <randy.chaffey@califliving.com>, "Bill Lilly (E-mail)"  
Lilly@califliving.com>, Jeff <jeff.chapman@califliving.com>, Larry <larry.stubbert@califliving.com>, Lexine Lilly  
ne.lilly@califliving.com>, Dick <dick.snedden@califliving.com>, Anita <anita.lilly@califliving.com>, Jeremiah Ellis  
miah.ellis@califliving.com>, Josh Stime <josh.stime@califliving.com>, Rick Fayad <rick.fayad@califliving.com>

## Dear Builder

This is an update to the on-going Masco/EnergySense investigation regarding HERS testing. The attorneys for the California Energy Commission have issued a letter to MASCO regarding a conflict of interest under the California HERS Program. This is an important issue in case you are using MASCO and it's subsidiaries for HERS verification.

If you have any questions please contact Randy, Dick, Larry, Jeff, Lexine or myself.

A quote on page 2 from the letter written by the attorneys for the CEC to MASCO on March 16, 2007 "While the supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the MASCO Corporation structure because of the following presumptions:"

Sincerely

Bill

President  
California Living & Energy  
5 Dale Ct.  
Fresno, California 95307  
www.califliving.com  
531 538-2879 x11

0000082



Bill Lilly &lt;billilycle@gmail.com&gt;

## date on MASCO Investigation

lilly &lt;bill.lilly@califliving.com&gt;

Wed, May 30, 2007 at 11:11 AM

-To: bill.lilly@califliving.com

clockhart@delvallehomes.net, clockheart@delvallehomes.net, dnazaren@ryland.com, ehamilton@dunmorehomes.com, in@delvallehomes.net, gthacher@khov.com, jjorgensen@griffinindustries.com, jrleathers@centexhomes.com, Chad A. Levens@drhorton.com, Toby Panfil <tpanfil@drhorton.com>, Abram John <AbramJ@matthewshomes.com>, Ada O'Donnell <adonnell@stanpac.com>, Amar A Singh <AASingh@drhorton.com>, "Anishiura@Barryswensonbuilder. Com" <anishiura@barryswensonbuilder.com>, Arachelle Laranang <ALaranang@drhorton.com>, "Aroper@Centexhomes. Com" <aroper@centexhomes.com>, Bill Walls <BWalls@mcmillin.com>, "Blinder@Centexhomes. Com" <blinder@centexhomes.com>, Blinder@drhorton.com <BLKoller@drhorton.com>, Bo Crane <bcrane@stanpac.com>, Bob Dinsmore <bdinsmore@centexhomes.com>, Bob Dolliver <dolliver@andersonhomes.com>, Bob Frasier <bfrasier@centexhomes.com>, Bob Raymus <bob@raymushomes.com>, "Bob@Denovahomes. Com" <bob@denovahomes.com>, Brad Durga <bdurga@denovahomes.com>, Brandon Hill <Brandon.Hill@pulte.com>, Brett Deschamps <bdeschamps@centexhomes.com>, Brett Deschamps <bdeschamps@drhorton.com>, Carrol Stubbs <cstubbs@brookfieldhomes.com>, Chris Glenn <CGlenn@khhcorp.com>, Chris Jones <cjones@matthewshomes.com>, Chris Silver <csilver@ponderosahomes.com>, Chuck DeGarmo <degarmo@griffinholdings.net>, "Craig Walker @ Shea Homes" <craig.walker@sheahomes.com>, Dale Blanchard <dbleanchard@drhorton.com>, Dale Lovelace <dlovelace@scmhomes.com>, Dan Biggs <danb@raymus.com>, Dan Matiller <dmatiller@anderson-homes.com>, "Danielle R. Capicotto" <drcapicotto@mdch.com>, Dave Jagoe <djagoe@ljarch.com>, Dave Kay <dave.kay@sheahomes.com>, David Lee <dlee@ryland.com>, Deb Heden <Deb.Heden@pulte.com>, Debra Wright <dwright@woodleyarch.com>, "Don Hofer @ Shea Homes" <don.hofer@sheahomes.com>, Doug Eikenbary <deikenbary@lyonhomes.com>, Doug Livenspargar <Doug.Livenspargar@pulte.com>, Doug Nazarenus <dnazarenus@ryland.com>, Drew Layland <dlayland@matthewshomes.com>, "DRHorton - Samuel Lee (E-mail)" <drhorton@drhorton.com>, Edward Gaudreau <egaudreau@greenbriarhomes.com>, Eric Brent <Eric.Brent@pulte.com>, "Eric Keller @ Shea Homes" <eric.keller@sheahomes.com>, "Fposey@Ryland. Com" <fposey@ryland.com>, "Garret Becker @ Beckers Homes" <bhomes@aol.com>, Gary Stone <gsstone5316@aol.com>, "Gcherrada@Centexhomes. Com" <gcherrada@centexhomes.com>, "Gdmiller@Centexhomes. Com" <gdmiller@centexhomes.com>, "Glen Martin @ Stanpac" <gmartin@stanpac.com>, Greg marcon <gmarcon@centexhomes.com>, Gregory Bakel <gregory.bakel@sheahomes.com>, "Gferriols @ Sigprop" <gferriols@sigprop.com>, "Iabaptista@Centexhomes. Com" <iabaptista@centexhomes.com>, "James Brenda @ JKH Homes" <james@jkbhomes.com>, Janet Hughes <jhughes@h-homes.com>, Jay Williamson <jwilliamson@khhcorp.com>, "Jeff Douthit @ Lennar" <Jeff.Douthit@lennar.com>, "Jeff. Frankel@Lyonhomes. Com" <jeff.frankel@lyonhomes.com>, "James L. Lincoln Property Co." <couch@legacypartners.com>, Jill Marie Johnson <JillMJohnson@drhorton.com>, "Jas @ Matthewshomes. Com" <jjones@matthewshomes.com>, Joe Miller <Joe.Miller@meritagehomes.com>, John Dougherty <jdougherty@meritagehomes.com>, John ford <jford@passporthomes.com>, John Kindorf <John.Kindorf@pulte.com>, "John Kindorf @ Shapecal" <jkmohr@shapecal.com>, John Severino <JSeverino@stanpac.com>, "John Vosbein @ Florsheim Homes" <john.vosbein@florsheimhomes.com>, Joseph Hanna <jhanna@stanpac.com>, Julie Collier <jcollier@newamericaohomes.com>, "Kl Havens @ Drhorton" <klhavens@drhorton.com>, Karin Lucken <kyluck@drhorton.com>, Ken Breckenridge <Ken.Breckenridge@ryland.com>, "Kevin Allen @ Pulte" <Kevin.Allen@pulte.com>, Matt Innes <minnes@scmhomes.com>, "Melanie. Grello@Lennar. com" <m.grello@lennar.com>, Michael J. Schafer <mjschafer@missionhomes.net>, "Michael K. Peterson @ Pinn Bros. Construction" <martinp@pinnbros.com>, "Michelle. Donathen@pulte. com" <Michelle.Donathen@pulte.com>, Mike Bacha <mikebacha@calcerts.com>, "Mike Caresco @ Caresco Development" <carescohomes@aol.com>, Mike Demboski <mikedemboski@pulte.com>, "Mike Perry (BAD)" <Mike.Perry@pulte.com>, "Mike Tregoning @ Shapell Industries of Norcal" <mtregoning@sincal.com>, Mitch Flanagan <mflanagan@griffinindustries.com>, "Mjschafer@Adobefinancial. Net" <mjschafer@adobefinancial.net>, Monaca Smith <MSmith2@stanpac.com>, Mort Newman <mnewman@greenbriarhomes.com>, "Mwitkowski@Griffinindustries. Com" <mwitkowski@griffinindustries.com>, Nancy L Springer <NLSpringer@drhorton.com>, "Nancy L. Springer @ Centexhomes" <nluttle@centexhomes.com>, Nick Quantone <nquantone@fcbhomes.com>, Nicole Bures <nzbures@griffinindustries.com>, "NM Johnson @ NM Johnson" <NMJohnson@drhorton.com>, Pam Nelson <pnelson@braddockandlogan.com>, "Pervin @ Suncal. Com" <pervin@suncal.com>, Peter Lezak <plezak@drhorton.com>, "Peter. Beucke@Lennar. com" <Peter.Beucke@lennar.com>, "Raquelm @ Pinnbros" <raquelm@pinnbros.com>, "Rbrown@Stantec. Com" <rbrown@stantec.com>, Richard Gruber <richardg@raymushomes.com>, "Rgarchar @ Lafferty Homes" <rgarchar@laffertyhomes.com>, "Rlarsen@Khov. Com" <rlarsen@khov.com>, Robert Dauth <rdauth@pulte.com>, "Robert Sprague @ Mandarich Development" <roberts@mandarichdevelopments.com>, Rocky Richardson <Rocky.Richardson@pulte.com>, "Rwalker@Ponderosahomes. Com" <rwalker@ponderosahomes.com>, "Ryan McDonald @ Garymcdonaldhomes" <rymcdonald@garymcdonaldhomes.com>, Sam Aboujudom <SAboujudom@shhomes.com>, Sandy Jennings <sandy.jennings@pulte.com>, Sandy Pritchard <Sandy.Pritchard@pulte.com>, Scott W Johnson <SWJohnson@drhorton.com>, "St Wallace @ Caltel" <stwallace@catel.com>, Sean Quackenbush <seanq@wathen-castanos.com>, "Seana. Annastass@Lennar. com" <seana.annastass@lennar.com>, Serena Martinez <serena@wathen-castanos.com>, Shannon Ward <sward@suncal.com>, "SAEllis @ Drhorton" <SAEllis@drhorton.com>, Sheri Catlett <sheri@jkbhomes.com>, "Sjohnson@Dunmorehomes. Com" <sjohnson@dunmorehomes.com>, Ssmith <ssmith@denovahomes.com>, Stan Chestlock <scheslock@centexhomes.com>, "Sknickerbocker @ Matthewshomes" <sknickerbocker@matthewshomes.com>, Steph Peeks <steph@denovahomes.com>, "Steve Hay @ Denovahomes" <shay@denovahomes.com>

0000083

Bill Lilly <bill.lilly@califiving.com>

## MASCO Letter

Commins <Tcommins@energy.state.ca.us>  
Bill Lilly <bill.lilly@califiving.com>

Tue, May 29, 2007 at 4:01 PM

Attached is the letter that went out May 15th.

You will see that on page the bottom of page 2 "Without supplementary documentation provided to the contrary it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following presumptions:"

Bill P. sent an e-mail this morning to William Staack the attorney who wrote the letter asking when we should follow up.

MASCO Conflict of Interest-MAY15rev.doc  
83K

0000084

Bill Lilly <bill.lilly@califliving.com>

# MASCO Results -

Bill Lilly <bill.lilly@califliving.com>

Tue, Jun 19, 2007 11:11 AM

Reply-To: bill.lilly@califliving.com

From: Tav Commins <tcommins@energy.state.ca.us>, "Pennington, Bill" <Bpenning@energy.state.ca.us>

Tav

I hold all is well and you are enjoying your vacation. If it is not your vacation well... continue working.

Since our last e-mail I have been wondering what were the results of CEC attorneys and their meeting with MASCO on June 12?

What amazes me is that everybody I talk to see a financial conflict even their two competitors (there is not many left) in California.

What does CHEERS think?

Thanks

Bill

President  
California Living & Energy  
1015 Dale Ct.  
Fresno, California 95307  
(209) 538-2879 x11

Per Tav

They are having a  
conference call Wed  
8-8-07. Tav asked me not  
to Broadcast what was being  
done.

0000085



Bill Lilly &lt;bill.lilly@califiving.com&gt;

## Masco

Tav Commins <Tcommins@energy.state.ca.us>  
 To: Bill Lilly <bill.lilly@califiving.com>

Mon, Nov 19, 2007 at 10:46 AM

I set up several mtg's with the group to ask MASCO several questions. Bill kept having to cancel. After receiving this msg on the 31st I sent an e-mail to my attorney suggesting that we just send MASCO an e-mail with the question.

I just went down today and talked to the attorney and he said he will send the e-mail requesting the information. It is only one question that should be easy for them to answer.

As long as my attorney sends the info we should have the info soon and it will be easy to make a conclusion.

Tav'

>>> "Bill Lilly" <bill.lilly@califiving.com> 10/31/2007 10:43 AM >>>

[Quoted text hidden]

to Tav

1207 I left message about status of  
 masco & what I heard from  
 Regenbaur

2-4-08 4:10 PM

I left message on status of Masco problem.  
 I received correspondence from Dave H. regarding  
 masco violations.

0000086



Bill Lilly &lt;bill.lilly@califliving.com&gt;

## Masco violations

Bill Lilly &lt;bill.lilly@califliving.com&gt;

Thu, Feb 14, 2008 at 10:02 PM

To: Tav Commins &lt;tcommins@energy.state.ca.us&gt;

Cc: Bill Mattinson <billm@soldata.com>, Bill Dakin <bldakin@davisenergy.com>, bretkillings@yahoo.com, Bert Sanchez <BSanchez@turlock.ca.us>, airapparent@comcast.net, Allen Amaro <amaroconstruction@yahoo.com>, donn@greenhomesavvy.com, donmull@ducttesters.com, DBlanke@semprautilities.com, Gordon Beall <foservices@comcast.net>, golferjohn@starstream.net, geodedb@idiom.com, Gary Wollin <gary@dougbeaman.com>, gmahoney@cityofdavis.org, hvacconsultant@msn.com, hoffmaninsulation@yahoo.com, hersrater@sbcglobal.net, info@greatvalley.org, jamader@rhainc.com, jennifer@hersolar.com, Linda Murphy <murphy@h-rn-g.com>, Linda Murphy <lsmt24@yahoo.com>, lsmt24@comcast.net, milkbet@sti.net, mhosiier@ci.manteca.ca.us, mike@calcerts.com, mwood@cityofdavis.org, miguel@whainc.com, mart@energysoft.com, Pepper <pepper@davisenergy.com>, paul@northbayenergy.com, passe.jonathan@epa.gov, Robert Scott <rscott@cheers.org>, Dave Hegarty <davehegarty@ducttesters.com>, Randy Chaffey <Randy.Chaffey@califliving.com>, Lexine Lilly <lexine.lilly@califliving.com>, Larry <larry.stubbert@califliving.com>, Jeff <jeff.chapman@califliving.com>, Mark Gallant <mark@title-24.com>, "G. LeBron" <galo@wredco.net>

Tav

Are you Serious? That question has been answered a long time ago. Per yours and Bill Pennington's request the CEC lawyers have been involved in this for over 18 months. This investigation has been going since March 10, 2005 per our conversations at that time. Dave Bell VP of MASCO even wrote you a letter stating "Energy Sense, like MSG is a direct subsidiary of MASCO...". Tom Hamilton (this has been going on for a long time) of CHEERS asked Doug Beaman & Associates to investigate this. Doug completed his investigation turned it over to you with no major discrepancy with what I told you. also, I personally hired a Private Investigator from San Francisco to verify this. One of his conclusions was "It was determined that Masco Contractor Services owns 27 insulation companies in California, as follows: He listed all of them. (talk about a monopoly). You sent a Letter to MASCO titled "Possible Conflict...". You actually received e-mail from one of the largest Builders in the Country confirming the relationship. What about the Masco insurance cert?

On a separate but equally egregious issue was MASCO's EFL Program which Bill Pennington wrote in 2002 "Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement."-I response is "da!"

there are other items we have reviewed in the past several years that illustrate their violation of the Standards.

Now, what does it take to call a violation, a violation? What more needs to be done for the California Energy Commission to act? This has dragged on for to long

sincerely  
Bill Lilly

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]

Sent: Wednesday, February 13, 2008 11:21 AM

To: DAVE HEGARTY

Subject: Re: FW: Masco

0000087



My lawyer wants to know what evidence you have that Sacramento Building Products, Western Insulation and Coast are all MASCO companies?

Tav

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 2/7/2008 11:46 AM >>>  
Tav; for your files and add one more rater as concerned for their (Masco) violation of conflict of interest. If everyone would contact the CEC about this, the issue would be brought to a head. dave

-----Original Message-----

From: George J. Nesbitt [mailto:geoedb@idiom.com]  
Sent: Thursday, February 07, 2008 10:57 AM  
To: DAVE HEGARTY  
Cc: Tcommmins@energy.state.ca.us  
Subject: Re: Masco

Great job.

When I went through the 2005 update training there were several MASCO Raters in the class. I don't know if previously they only owned product manufacturing. The subject of there buying install companies came up and the conflict of Rating jobs with installations by MASCO subcontractors. I guess I now know how it was (wasn't) handled.

All MASCO HERS Verifications should be disqualified, and given to truly independent Raters.

DAVE HEGARTY wrote:

Tav: sorry this took so long to get out. I am writing you to remind you that Masco's Energy Sense is doing all of D R Horton work for Rating and that, in Manteca, they (MASCO) are rating their own work as in Sacramento Building Products installation of insulation and D R Horton's QII measures. They (Masco) are doing the rating for Western Insulation and Coast as well. All Companies owned and operated by MASCO and profits relating to these Companies flow into the MASCO conglomeration. I am in possession of evidence in the form of movies and still pictures of the work being done at D R Horton, which shows the quality of the work being done and does not meet the QII measures standards from my perspective. It is with the greatest of concern and frustration that I call your attention to this matter. It is our greatest desire to call attention to this travesty and our understanding of CEC rules and guidelines and that MASCO is being allowed to continue to RATE for themselves and the clients that they can and do sway with energy measures to capture the insulation work of those clients. Why else would Masco spend the time, energy and money to develop a portion of their business that brings the least profit to their entire business model. Their interests reside in the reduction of cost to their client (and themselves), if they are used as the rater as opposed to legitimate raters with no secondary interest, and the protection Masco gets from SELF RATING in connection with sampling. Has Masco documented any time when they have asked the installation side to REWORK or has not passed the QII measures? The pictures I have, prove at least one thing, and that is that QII is not being taken seriously by Masco when it is their own installation (when one of their own companies is doing the install). We asked the Builder to see the CF6R forms and the CF4R forms for the installation, he did not understand or

0000088

recognize our request. Of course this could have been a cautious reaction to priority information, but I was convinced that he had no knowledge of the forms. It is a daily task and expense for our Rater companies to get the CF6R forms for each house under a Masco insulation contract. We struggle everyday to get them to respond to CEC rules on CF6R forms for each house to provide sample groupings and "tested" houses. It is Masco employees' knowledge that no one comes behind them to insure proper insulation installation and to fill out the CF6R for each house, just interview any onsite employee, they will let you know that never happens. Does Masco possess any documentation of failure or correction, and doesn't CEC rules and interpretations require it as a "perceived compromise" candidate.

At the very least, the quotes below are appropriate and provide a clear intent, especially under the Providers and their responsibility to "increased scrutiny" of such raters. Thanks for listening. Could CEC respond to this situation in a clear and timely manner? We appreciate your attention to this matter.

HERS raters are expected to be objective, independent, third parties when they are fulfilling

their duties as field verifiers and diagnostic testers. In this role they are serving as special

inspectors for local building departments. By law HERS raters must be independent entities

from the builder or subcontractor installer of the energy efficiency features being tested and

verified. They can have no financial interest in the installation of the improvements. HERS

raters cannot be employees of the builder or subcontractor whose work they are verifying.

Also, HERS raters cannot have any financial interest in the builder's or contractor's business or

advocate or recommend the use of any product or service that they are verifying. Section

106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other

means) by the contractor who performed the work that is being inspected

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS

providers to certify and oversee HERS raters throughout the state. These providers are

0000089

required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the

performance of their duties and to respond to complaints about HERS rater performance. In

cases where there may be real or perceived compromising of HERS rater independence, they

are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure

objective, accurate reporting of diagnostic testing and field verification results, in compliance

with Energy Commission adopted procedures.

Building

Dave Hegarty

No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.5.516 / Virus Database: 269.20.4/1275 - Release Date: 2/12/2008 3:20 PM

No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.5.516 / Virus Database: 269.20.4/1275 - Release Date: 2/12/2008 3:20 PM

--  
Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct  
Ceres, Ca. 95307  
209-538-2879 x11

0000090



Bill Lilly &lt;bill.lilly@califliving.com&gt;

## Masco

DAVE HEGARTY &lt;davehegarty@ducttesters.com&gt;

Mon, Feb 4, 2008 at 3:17 PM

To: Tav Commins &lt;tcommins@energy.state.ca.us&gt;

Tav: sorry this took so long to get out. I am writing you to remind you that Masco's *Energy Sense* is doing all of D R Horton work for Rating and that, in Manteca, they (MASCO) are rating their own work as in Sacramento Building Products installation of insulation and D R Horton's QII measures. They (Masco) are doing the rating for Western Insulation and Coast as well. All Companies owned and operated by MASCO and profits relating to these Companies flow into the MASCO conglomeration. I am in possession of evidence in the form of movies and still pictures of the work being done at D R Horton, which shows the quality of the work being done and does not meet the QII measures standards from my perspective. It is with the greatest of concern and frustration that I call your attention to this matter. It is our greatest desire to call attention to this travesty and our understanding of CEC rules and guidelines and that MASCO is being allowed to continue to RATE for themselves and the clients that they can and do sway with energy measures to capture the insulation work of those clients. Why else would Masco spend the time, energy and money to develop a portion of their business that brings the least profit to their entire business model. Their interests reside in the reduction of cost to their client (and themselves), if they are used as the rater as opposed to legitimate raters with no secondary interest, and the protection Masco gets from SELF-RATING in connection with sampling. Has Masco documented any time when they have asked the installation side to REWORK or has not passed the QII measures? The pictures I have, prove at least one thing, and that is that QII is not being taken seriously by Masco when it is their own installation (when one of their own companies is doing the install). We asked the Builder to see the CF6R forms and the CF4R forms for the installation, he did not understand or recognize our request. Of course this could have been a cautious reaction to priority information, but I was convinced that he had no knowledge of the forms. It is a daily task and expense for our Rater companies to get the CF6R forms for each house under a Masco insulation contract. We struggle everyday to get them to respond to CEC rules on CF6R forms for each house to provide sample groupings and "tested" houses. It is Masco employees' knowledge that no one comes behind them to insure proper insulation installation and to fill out the CF6R for each house, just interview any onsite employee, they will let you know that never happens. Does Masco possess any documentation of failure or correction, and doesn't CEC rules and interpretations require it as a "perceived compromise" candidate.

At the very least, the quotes below are appropriate and provide a clear intent, especially under the Providers and their responsibility to "increased scrutiny" of such raters. Thanks for listening. Could CEC respond to this situation in a clear and timely manner? We appreciate your attention to this matter.

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS

0000091

raters cannot be employees of the builder or subcontractor whose work they are verifying.

Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building

Dave Hegarty

**Duct Testers**  
by Dave Hegarty



**0000092**



Bill Lilly <bill.lilly@califliving.com>

## Masco

Bill Lilly <bill.lilly@califliving.com>

Tue, Feb 5, 2008 at 10:29 AM

To: Tav Commings <Tcommings@energy.state.ca.us>

Cc: DAVE HEGARTY <davehegarty@ducttesters.com>, Mark Alatorre <Malatorr@energy.state.ca.us>, William Staack <Wstaack@energy.state.ca.us>

Tav & Mark

Thanks for your concern. I can not stress enough how important I believe Masco's violation of the Standards are.

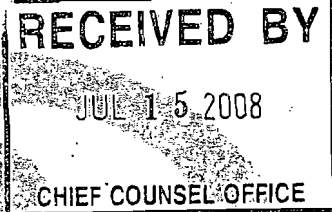
I talked to Hoffman Insulation yesterday and they said that MASCO is using a point system rebate for services provided on subdivisions which include installing insulation and inspecting HQI. Hoffman will try to get a copy of Masco's program. I will forward it to you as soon as I get it.

Bill

[Quoted text hidden]

—  
Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct  
Ceres, Ca. 95307  
209-538-2879 x11

0000093



# DuctTesters

by Dave Hegarty

July 9, 2008

California Energy Commission  
Dennis L. Beck Jr., Esq.  
1516 Ninth Street, MS-14  
Sacramento, California 95814

Re: Masco/Energy Sense

Dear Mr. Beck:

DuctTesters, Inc. is a Third Party HERS testing and energy consulting Company based in the Central Valley. We are EPA/Energy Star Partners, CABEC members and hold certification with all three California Providers. DuctTesters, Inc. is also proud to be a part of the new CalHERS nonprofit Rater organization, working toward Integrity, information and education in the California HERS industry.

We are asking you to include our Company in the complaint filed by California Living and Energy, Bill Lilly. As we expressed in our meeting with you on March 12, 2008, we also believe that Masco/Energy Sense is in Violation Title 20 as stated in Bill's "formal" complaint. We also believe that the violation includes "conflict of interest" against the California Contractors rules mentioned in your letter to Masco in 2006.

It is unclear to me what the rules and regulations are for CPUC's PUBLIC GOODS monies, but we believe that this continuing action by Masco/Energy Sense inspection of their own installations and then the certifying of California Energy Star Homes is in conflict with the intent of public goods monies distribution. How may a company certify an California Energy Star Home where window values verifications are required when the company that is verifying that measure is the same company that owns the window manufacturing and the installation companies, where public goods monies are distributed? This just one example and Masco, as you are aware, owns not only window companies by insulation and insulation installation companies.

While I have heard many incidents of reported Masco violations, I do have firsthand knowledge of improper business solicitation as you described in your letter dated May 15, 2007. While attending a meeting with a builder as an energy consultant, with the Utility representative present, the Energy Sense representative at the meeting, talked about other services that their company offered and could supply to the builder, that was currently not under contract with the builder. In this meeting the Energy Sense representative, clearly stated that Masco/Energy Sense was sanctified by not only the CEC but that they had a letter from Bill Pennington stating their legitimacy, that there was no conflict of interest letter from the CEC to Masco nor a "real or perceived conflict of interest" within the scope of Energy Sense operations. The builder asked for the letter to be sent to them concerning Masco/Energy Sense and Bill Pennington letter. I have followed up on that request through the builder but the builder has never received such a letter. This representative (employee) was insistent that their Company was "approved by Bill Pennington, himself."

0000094

If you would like details of this meeting as well as names of attendees and the builder, please feel free to contact me for additional information.

DuctTesters, Inc. is a strong advocate of the "third party" inspection process. We have been in the RNC market for many years and seen the need for accurate verification, as the CEC has deemed appropriate. We have all experience the "good intention" installations that were and still are a part of our industry. The "third party" system, implemented by the CEC in the last ten years has shown that it is working and the energy savings is real and measurable. In just this short time frame, as an example, who would of thought "tight ducts" would be a standard feature of an HVAC company's installation?

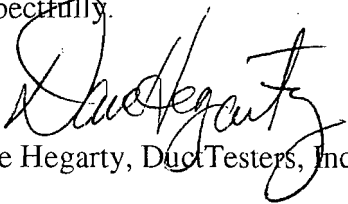
It is in the best interest of California and its citizens that the "third party" inspection system and processes remain, as intended and as Title 20 clearly states, without financial interest in the work or project that is being rated. We therefore ask that the CEC investigate and determine if a violation of the Conflict of Interest rules under Title 20 are being Violated by Masco/Energy Sense and if so take immediate action to remedy the situation, as we believe, is their obligation and responsibility.

DuctTesters, Inc. has also asked that an investigation of this possible violation be conducted by the Provider that certified Masco/Energy Sense. A formal request was made more than 90 days ago without conclusion. We believe, as we interpreted from our meeting with you on March 12, 2008, that CHEERS has responsibility in this situation to investigate and act without haste to review and react to any violation that is brought to their attention as to "conflict of interest" rules. We have asked CHEERS for a formal complaint process to be sent to us to further this request and to conclude the matter as to, conflict of interest and other violations of Masco employees. CHEERS has specific complaints and witnessed incidents, reported to them as to Masco/Energy Sense actual rating procedures. I would like to know that these have been investigated and what the outcome was, as well as remedy.

DuctTesters, Inc. and its Employees are asking the CEC to protect the "conflict of interest" rules, Title 20 and the California consumers from violations and continued lack of response from Masco/Energy Sense to respond to CEC legal staff. California citizens are paying a hefty toll for their State sponsored energy programs and Public Goods monies. They should have the confidence that their investment in the future energy savings is real and Credible.

Please uphold the intention of Title 20 and the "Third Party" verification process and find Masco/Energy Sense in violation, and provide the necessary protection that the people of California deserve.

Respectfully,



Dave Hegarty, DuctTesters, Inc.

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**DuctTesters Inc.**  
**P.O. Box 266**  
**Ripon CA 95366**

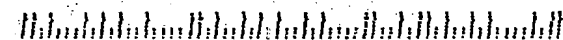
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**California Energy Commission**  
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