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Via CEC Docket 24-BSTD-01

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**RE: CalCERTS Second Set of Comments on 45-Day Language for 2025 BEES**

In the proposed 45-day language for the Field Verification and Diagnostic Testing Program, CEC staff have significantly increased the requirements for Quality Assurance (QA) inspections of homes that pass compliance via sampling. The seemingly simple addition to the requirements has added a huge QA burden on the Providers without any benefit to homebuyers or Raters.

In the past, HERS Providers were required to do QA and report on associated lots. This was part of the annual requirements and Providers had discretion on what lots and where to conduct the QA. Providers could collect this data in conjunction with other scheduled QAs on Raters for cost-effectiveness.

In the new proposed language, Providers are faced with very restrictive requirements and are mandated to impede production builders and the construction of residential developments if these requirements are not met. As written, it appears as though the CEC is leveraging Providers to disincentivize and hamper sampling.

As important, the language in the proposed regulations concerning sample groups more than quadruples the existing QA mandate on residential new construction projects with ZERO intent or purpose for those QAs to improve Rater performance.<sup>1</sup> Without modifications, the proposed language will result in the CEC having an unenforceable QA mandate.

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<sup>1</sup> There is a disproportionate focus on residential new construction projects. The proposed language for the FV&DT program significantly reduces QA requirements on Raters working on existing homes and quadruples QAs on residential new construction projects, rather than Raters. The same Raters will be QAd dozens of times with this mandate regardless of results of those QAs.

Excerpt of 45-day language below, with relevant sections in bold highlight.

**C. Types of Quality Assurance Review.** Quality Assurance Review shall take the form of onsite, shadow, and desk audits.

- i. Onsite Audits. The ECC-Provider performs an onsite audit following field verification and diagnostic testing by an ECC-Rater it certified. Onsite audits are performed at the invitation of the homeowner through the complaint process, at the request of the Commission, or at the discretion of the ECC-Provider. Every year, at least one onsite audit shall be performed by the ECC-Provider for each ECC-Rater it has certified either at random or as directed above. For Exemplary ECC-Raters the minimum onsite audit frequency shall be reduced from once per year to once per Triennial Code Cycle. **Additionally, onsite audits shall be performed for every seventh sample-group used in a single residential development.** The audit results shall be included in the annual reporting to the Commission (Section 10-103.3(d)11E) or provided in response to a request by the Commission. Onsite audits shall comply with the following:
  - a. Onsite audits must not be performed in the presence of the ECC-Rater and can be performed any time after the ECC-Rater has left the project site.
  - b. ECC-Raters must not be informed that their field verification and diagnostic test is receiving an onsite audit until the onsite audit is complete and the results are documented.
  - c. At a minimum, onsite audits shall include all of the following:
    - (i) A verification of correctly completed certificates of installation (if the ECC-Rater is acting as the Authorized Representative under Section 10-103(a)3A) and verification (Section 10-103(a)4) for the project.
    - (ii) Performance of the field verification and diagnostic test that was performed by the ECC-Rater.
  - d. A Passing result shall include the following at a minimum:
    - (i) Correct and completed certificates of installation (if the ECC-Rater is signature authorized under Section 10-103(a)3A) and verification (Section 10-103(a)4) for the

project free from false, inaccurate, or incomplete information.

(ii) All field verifications and diagnostic tests audit results that include a field test or measurement must pass as required in the Building Energy Efficiency Standards, Reference Appendices RA1, RA2, RA3, RA4, NA1, and NA2.

e. Onsite audits shall be performed when an ECC-Provider is investigating a complaint from a homeowner about a field verification and diagnostic test.

**f. Onsite audits shall be performed for every seventh sample- group used in a single residential development.**

**(i) The ECC-Provider shall perform the onsite audit at an untested home in the same sample-group being tested and a tested home.**

**(ii) If the ECC-Provider is refused access to the development, all sample-groups for the development will be considered conflicted data (Section 10-103.3(b)1B).**

The QA rules require Providers to do QA on every seventh sample group<sup>2</sup>. If the Provider cannot get into QA an associated lot in the seventh sample group there are consequences to the Builder, which would ostensibly make them have to forfeit sampling and convert to 100% testing or be locked out of the Registry as conflicted data. (10-103.3(d)5(C)(i)(f)(ii)). On residential projects

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<sup>2</sup> It is unclear how CEC Staff came up with this specification. Why the seventh? What data or analysis was conducted by the CEC to determine these intervals? In the Initial Statement of Reason the CEC cites the mandate as needed to “establish the frequency of audits.” This frequency was established in the prior versions of these regulations. CalCERTS regularly reviewed and reported on associated lot QAs as part of annual reporting. If other Providers did not meet these mandates, **the issue is the enforcement of the regulations by the CEC**. The solution is not the imposition of new more arduous regulations that could hurt housing. [Section: 10-103.3(d)5Cif Specific Purpose: The purpose of this addition is to establish the frequency of sample group onsite audits. Necessity: This addition is necessary to address an overall misunderstanding regarding ECC-Provider quality assurance audits for sample groups. The requirement makes clear that onsite audits are required at specific intervals. A robust and consistent quality assurance system is essential to confirm the efficacy of the ECC Program, which is necessary to accurately determine building energy efficiency standard compliance so that wasteful energy consumption is reduced, as directed by PRC 25402.]

for production Builders, there is no way to pivot to 100% testing at that juncture of the project, for either the Builder or the Rater. Having the data deemed conflicted would shut the project down entirely. (10-103.3(b)(1)(B)) According to the [Initial Statement of Reason](#) this mandate is intended to incentivize cooperation by Builders. However, it comes at the significant risk of impeding housing for thousands of California homebuyers.<sup>3</sup> CalCERTS has not had issues with superintendents providing access for QAs and is unaware of this perceived impediment.

There are some additional issues.

- It is untenable for Providers to have qualified staff to get to every seventh sample group throughout the state of California at a time convenient for the Builder. **More than 30% of all residential production projects in California use sampling.** The majority of these projects exceed seven sample groups. Sample groups can be, and sometimes are, as small as two lots. This new language would require Providers to have large numbers of QA staff geographically dispersed that can move quickly to not impede the Builders' schedules. The CEC did not conduct a cost analysis on these requirements or justify the specificity of the requirements.<sup>4</sup> *This is a huge amount of QA not targeting the skills or qualifications of any Rater. It's just expensive data gathering to be paid for by whom? Homebuyers?* As written, this mandate more than **quadruples** the QA requirements of the Providers for existing new construction residential projects.
- It is also unclear whether an associated lot and a tested lot are both required, per 10-103.3(d)5(C)(i)(f)(i), regardless of whether the Rater who performed the tested lot has already been successfully reviewed. The two provisions 10-103.3(d)(5)(C)(i) and 10-

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<sup>3</sup> As a Provider, CalCERTS has not reported issues with being able to work with Builders on associated sampling. It is unclear what problem the CEC is addressing with this rule. In the Initial Statement of Reason the CEC cites: Section: 10-103.3(d)5Cif(ii) Specific Purpose: The purpose of this addition is to encourage the developer to allow the ECC-Provider to conduct the sample grouped onsite audit, otherwise the sample groups will be considered conflicted data. Necessity: This addition is necessary because the ECC-Provider does not have a right of entry in the same way a local jurisdiction inspector does. Therefore, an incentive must be placed for the developer to grant testing access. A robust and consistent quality assurance system is essential to confirm the efficacy of the ECC Program, which is necessary to accurately determine building energy efficiency standard compliance so that wasteful energy consumption is reduced, as directed by PRC 25402.

<sup>4</sup> The cost analysis of this new requirement should have been included in the rulemaking, The CEC has access to Provider data that would allow them to understand that moving from a 1% mandate on associated lots to every seventh sample group is more than quadrupling the costs and oversight. These increased costs need to be explained as to how they help further the objectives of the Commission.

103.3(d)5(C)(i)(f)(i) need to be better clarified. Raters who work with sampling will be reviewed numerous times within a calendar year, regardless of Exemplary status and regardless of the QA findings of those QAs.<sup>5</sup> This mandate will impact residential production builders. It is a colossal waste of money since the Raters are being repeatedly reviewed for *no additional purpose*.

- The regulations are unclear as to what happens in the event the QA inspection determines the associated lot does not comply with T-24. If the home had been tested by a Rater there would be repercussions to the Rater for an inaccurate rating. Associated lots are not inspected. What is a Provider supposed to do if the QA indicates a compliance issue? Is this information also considered Conflicted Data even if given access? Is the project locked? **If so, the impacts are catastrophic for the project with no fault to anyone.** Or - is it simply reported with no other impacts? **If so, it is a very expensive requirement with no documented benefit to ratepayers.** Clarifications are needed in the regulations on what to do if the QA reveals a failure.

There needs to be a more reasonable mandate to collect qualitative information on associated lots; requirements that do not impede residential new construction and do not impose new and excessive QA costs to homebuyers. As a recommendation, CalCERTS suggests the CEC staff adopt a more flexible requirement that Providers conduct QA inspections on a certain percentage of associated lots registered, similar to the existing rules.<sup>6</sup> Or, when there is a QA on a tested lot for a Rater, require a QA on a sampled lot in conjunction with the tested lot.<sup>7</sup> This way the CEC can continue to collect data on sampling without unjustified costs or impediments.

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<sup>5</sup> Production builders that use sampling are typically rated by the same handful of large rating companies and Raters.

<sup>6</sup> **A reasonable percentage should not exceed 1% of associated lots registered.** With the adoption of the new Field Verification and Diagnostic Program, the CEC can better enforce the 1% mandate which should address the “overall misunderstanding” as related to sample groups cited in the Initial Statement of Reason. For example, the regulations could read Onsite Audits. The ECC-Provider performs an onsite audit following field verification and diagnostic testing by an ECC-Rater it certified. Onsite audits are performed at the invitation of the homeowner through the complaint process, at the request of the Commission, or at the discretion of the ECC-Provider. Every year, at least one onsite audit shall be performed by the ECC-Provider for each ECC-Rater it has certified either at random or as directed above. For Exemplary ECC-Raters, the minimum onsite audit frequency shall be reduced from once per year to once per Triennial Code Cycle. Additionally, onsite audits shall be performed for 1% of associated lots registered. The audit results shall be included in the annual reporting to the Commission (Section 10-103.3(d)11E) or provided in response to a request by the Commission.

<sup>7</sup> It is unclear if this is what is meant by 10-103.3(d)5(C)(i)(f)(i)).

Importantly, the CEC needs to be transparent on **the use and purpose** of QA data on associated lots. This data is not used to oversee Raters. It only functions to assess the efficacy of sampling. To date, CalCERTS is unaware of any instance where our QA data on associated homes has been used for analysis. Although expensive to gather and compile, CalCERTS is unaware of how the data has ever been used to help review the objectives of the code. If Providers are going to be required to gather the data and pass those costs to homebuyers, there needs to be assurances the costs are justified.<sup>8</sup>

Thank you for your consideration.

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<sup>8</sup> These comments are focused on the proposed language relative to sampling. There are other concerns with the proposed QA requirements that are not addressed here, but that have been discussed over the past 18-months with CEC Staff. As drafted the new FV&DT Testing QA requirements significantly reduced the oversight of Raters working to perform VF&DT work on HVAC changeouts. This work is most susceptible to inaccurate inspections, yet with these changes, the new regulations reduce Provider oversight over the most impactful of inspections relative to energy savings.