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June 4, 2025

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Re: Comments of the City of San Juan Capistrano – Notice of Preparation of a Draft Environmental Impact Report for the Compass Energy Storage Project (24-OPT-02)

The City of San Juan Capistrano (“City”) is the local government with land use and related jurisdiction over the areas of the proposed Compass Energy Storage Project (24-OPT-02) submitted to the California Energy Commission (“CEC”) by Compass Energy Storage, LLC. The Compass Energy Storage Project proposes construction and operation of a battery energy storage system (“BESS”) that would be capable of storing up to 250 megawatts (MW) of electricity for four hours (up-to 1,000 MW hours). But for the applicant’s attempt to circumvent the City’s local land use authority, the City would be the lead agency for this project under the California Environmental Quality Act (Pub. Resources Code, sections 21000 et seq.: “CEQA”). Notwithstanding the CEC’s lack of jurisdiction over the project, Public Resources Code section 25519(f) requires the City in a CEC opt-in application to review the Project application and submit comments to the CEC regarding, among other appropriate aspects, the project, its aesthetic and design features, compliance with local ordinances and regulations, community and economic benefits, and other areas the City would have authority over. Accordingly, the City hereby submits the following comments on the Notice of Preparation (“NOP”) of a Draft Environmental Impact Report issued by the CEC on May 5, 2025, for the Compass Energy Storage Project (“City NOP Comment Letter”).

Objection to CEC Jurisdiction and Standing Reservation of Rights

This NOP Comment Letter is filed pursuant to the City’s Objection to CEC Jurisdiction and Standing Reservation of Rights, filed with the CEC on May 31, 2024. The Standing Reservation of Rights details the City's standing objection to the jurisdiction of the CEC to proceed with the application process for the Compass Energy Storage Project. The City is participating in this

proceeding to protect its rights and advocate for its constituents while also being responsive to Commission staff requests for the City's review and comments with regard to the Compass Energy Storage Project, but is not waiving or intending to waive the City's Standing Reservation of Rights.

The CEC Does Not Have Jurisdiction Over the Compass Energy Storage Project

The Compass Energy Storage Project NOP states that the "The CEC is the lead agency under the California Environmental Quality Act (CEQA) for this project and under Public Resources Code section 25545.7, must prepare an environmental impact report for this project. Upon receipt of an application, the CEC has the exclusive authority to certify the site and related facility. With certain exceptions, the issuance of a certificate by the CEC is in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by federal law, and supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law." The City objects to this statement, as detailed in, and pursuant to its May 31, 2024, docket submission to the CEC entitled: "City of San Juan Capistrano Objection to California Energy Commission Jurisdiction over the Compass Battery Energy Storage Project." The CEC lacks jurisdiction to consider the Application under AB 205 because the Project was denied, or effectively denied, by the City after consideration of the Applicant's request to study a Rezone that would have established a Community Development Plan to govern the subject property and allow the Project pursuant to a conditional use permit.

Mandatory 30-Day Comment Period on NOP Did Not Start Until May 5, 2025

Pursuant to Public Resources Code section 21092.3 and CEQA Guidelines section 15082(a), a notice of preparation must be posted for thirty (30) days in the office and on the website of the county clerk of the county or counties in which the project will be located. Although the NOP is dated May 2, 2025, the NOP was not filed and posted with the Orange County Clerk Recorder until May 5, 2025, 3 days later.¹ Additionally, the City of San Juan Capistrano received the NOP on May 5, 2025.

By filing and posting the notice after the review period began, the public was not afforded a full 30-day review period. This unquestionably prejudiced the public's ability to submit comments on the NOP. This is a procedural violation of CEQA, and the NOP review period must be re-noticed to afford the public a full 30-day comment period. (Pub. Resources Code. section 21092.3 & CEQA Guidelines section 15082(a). The CEC's attempt to correct this issue by posting a note in the docket that the close of the comment period moved to June 4, 2025, misses the mark. The notice was not distributed or disseminated in the same way that the original notice was given and stakeholders directly affected may not have been aware of the additional time they had to submit comments.

¹ <https://cr.occlerkrecorder.gov/EirInternet/en/Eir/Eir>

Responsible and Trustee Agencies and Public Scoping Meeting

Per Public Resources Code section 21080.4(a) and CEQA Guidelines section 15082(a), a lead agency must send the NOP to all public agencies with authority over the project or resources affected by the project. The Compass Energy Storage Project NOP states “Responsible agencies for this project are State Water Resources Control Board and Regional Water Quality Control Board. The only trustee agency identified for this project is the California Department of Fish and Wildlife.” The list of responsible agencies is inaccurately narrow and should also include, at a minimum: Orange County Transportation Authority, Orange County Fire Authority, Orange County Flood Control District, Santa Margarita Water District, Moulton Niguel Water District, Southern California Regional Rail Authority (SCRRA), and South Coast Air Quality Management District (South Coast AQMD).

Additionally, for projects of “statewide, regional, or areawide significance,” the lead agency must consult with “transportation planning agencies” and agencies that have transportation facilities within their jurisdiction that may be affected by the project. (Pub. Resources Code, section 21092.4(a).) Transportation facilities include major local arterials and public transit within five miles of the project site, and freeways, highways, and rail transit service within ten miles of the project. (*Ibid.*) The project site is located immediately adjacent to the I-5 freeway and an active passenger and freight rail-line. For these reasons, the CEC must also provide direct notice of the NOP and scoping meeting to Caltrans.

The California Department of Education’s role is in overseeing school facilities and the California Attorney General, as a trustee agency, has the independent power and duty to protect the environment and natural resources of the State, including public health. The NOP should have been distributed to the California Department of Education and California Attorney General due to the Project site’s proximity, less than a mile, to schools and a census tract with a high pollution burden (89% pollution burden),² respectively. There is no evidence that the NOP was distributed to either of these entities and failure to notify them is a procedural violation of CEQA.³

The NOP states: “The CEC expects this event [public scoping meeting] will occur at the end of May pending confirmation of the venue and the availability of key participants. The informational/scoping meeting will be noticed via the project docket (weblink provided above) at least 10 days prior to its occurrence and will contain information specific to the public meeting and how to participate.” The NOP fails to provide additional information regarding how to connect to and access the scoping meeting. (Pub. Resources Code section section 21083.9(b).) The lack of information directly impacts members of the public who may not have access to the internet by limiting (or even precluding) their ability to participate and provide comment.

² State of California, Office of Environmental Health Hazard Assessment, California Communities Environmental Health Screening Tool: CalEnviroScreen 4.0.

³ <https://ceqanet.opr.ca.gov/2025050184>.

Despite the CEC's assurance that it would provide notice via the project docket 10 days before the scoping meeting, actual notice of the scoping meeting was not published until May 23, 2025, 6 days prior to the scoping meeting. Thus, responsible and trustee agencies, interested parties, and the public were given inadequate notice and, as a result, many were prevented from fully participating in the meeting. The public review period must be extended and an additional scoping meeting should be held with adequate notice.

City Comments on Notice of Preparation for Compass Energy Storage Project

The City hereby submits the following comments on the NOP for consideration by the CEC in its proposed environmental review of the Compass Energy Storage Project.

The City requests the preparation of a full-scope EIR analyzing all 20 environmental topics identified in State CEQA Guidelines Appendix G. The NOP identifies 17 areas of potential impact and does not provide justification for scoping out any environmental topics. A comprehensive analysis of all environmental topics must be included in the EIR. Specific environmental concerns are identified below.

Biological Resources

The NOP states that “impacts could affect various special-status wildlife species, including state and federally listed species. Ground disturbance proposed as part of the project could have adverse impacts to sensitive herpetofauna such as southwestern pond turtle (*Actinemys pallida*), should they be present in upland areas or be moving through the project site to upland aestivation sites.” The EIR must include an analysis of direct and indirect impacts to sensitive wildlife species (e.g., fairy shrimp, burrowing owl, crotch's bumblebee, western spadefoot, tricolored blackbird, and arroyo toad) as well as bats, monarch butterfly, and raptors. Additionally, the EIR must analyze direct and indirect impacts to special status plant species, riparian habitat, and wetlands within and adjacent to the Project site. Furthermore, the EIR must evaluate impacts to migratory wildlife corridors and wildlife nursery sites.

The NOP states that “The introduction or proliferation of weeds or other non-native wildlife to Oso Creek may also disrupt wildlife. Operational impacts from lighting and noise, or exposure to smoke from battery fires, could also occur.” The EIR must address direct and indirect impacts to biological resources due to invasive non-native plants, drainage and water quality features, fire, conflicts with electrical lines and maintenance, lighting, noise, as well as erosion impacts to Oso Creek.

Cultural Resources and Tribal Cultural Resources

The NOP states that “the cultural resources inventory report prepared by the applicant identified one resource that meets the California Register of Historical Resources criteria, qualifying it as a historical resource subject to the requirements of CEQA.” However, no reference to the report or the specific resource was provided in the NOP. The EIR must evaluate direct and indirect impacts to archaeological, tribal cultural, and historic resources within the area, including the Petitfils Ranch Property, and provide historic context/maps/aerial imagery and analysis for all resources considered to substantiate the findings.

Geology, Paleontology and Minerals

The NOP states that “the applicant conducted geotechnical and paleontological investigations of the project site.” However, no reference to these reports was provided in the NOP. The NOP fails to provide sources to support the information provided in this section. The NOP does not provide examples of the proposed mitigation that would reduce potentially significant impacts on geology and paleontological resources. Additionally, the NOP fails to provide a discussion on potential impacts to Mineral Resources within the Project area.

The EIR must fully evaluate impacts to geology and soils, paleontological resources, and mineral resources. The EIR must take into account the numerous historical geotechnical investigations that have been prepared for the property as they demonstrate significant constraints that prohibit the site’s development. For example, the adjacent creek is substantially eroding and undermining the integrity of the site’s eastern edge. Moreover, the Project area is susceptible to landslides; specifically, the Project site is located downslope of several rock slides as shown on the California Department of Conservation Landslide Inventory and Deep Landslide Susceptibility Map.⁴

Hazards, Hazardous Materials, and Wildfire

The NOP states that “The project would use standard construction hazardous materials and small quantities of hazardous materials during project operations that could pose a risk to workers and the public.” The NOP states the use of standard construction hazardous materials but fails to provide examples of the materials and whether these materials are standard to energy storage systems or standard buildings. Additionally, the NOP states the use of small quantities of hazardous materials during Project operations but fails to provide the type and quantity of the materials. The NOP is completely silent on the type of freight that moves along the adjacent railway and whether any disruption of freight on the line could exacerbate hazardous conditions on the project site. Based on recent events involving explosions/fires associated with battery storage, the size of the Project, and its proximity to nearby sensitive receptors, the NOP understates the potential of impacts related to hazards and hazardous materials.

⁴ <https://maps.conservation.ca.gov/cgs/lsl/app/>

The Project site and its surrounding area are located within a High Fire Hazard Zone as identified by CalFire and the City of San Juan Capistrano.⁵ Given the site's limited accessibility, with one point of access over an at-grade Quiet Zone railroad crossing near a high fire hazard zone, the EIR must evaluate whether there is adequate emergency access and evacuation. Additionally, as discussed above, the Project is in an area susceptible to landslides and the EIR must evaluate whether the Project would expose people to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

The Project is located downslope of several hundred homes with densely vegetated hillsides. The EIR must fully evaluate the risk of wildfire considering slope, prevailing winds, and other factors. Additionally, the EIR must evaluate health risks associated with the risk of fire and release of toxic gases and plastics.

Given that the proposed development would pose inherent and safety health risks to workers during construction and operations (as discussed on Page 11 of the NOP), a safety plan, fire protection plan, and evacuation analysis must be included and evaluated in the EIR. The EIR must evaluate whether the Project would expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires.

Land Use and Planning

The NOP states that "The City's Zoning Regulations do not contain regulations or criteria specifically addressing commercial BESS facilities. The City's Development Services Director determined that the project was not an allowable use under current zoning and would need a Comprehensive Development Plan to be prepared for consideration by the City Council." The EIR must evaluate Project's conflict with the City's General Plan and zoning, as well as any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. This is a significant impact that cannot be mitigated.

Public Health

The NOP states that "Regular on-site emissions during normal operation are not expected. CEC staff has not completed its analysis of the significance of the Project's potential construction or operational impacts and is yet to reach a definitive conclusion." The NOP does not provide evidence to support the statement that on-site emissions during Project operations are not expected. The EIR must include a complete and robust analysis of toxic air contaminants from a potential BESS fire and analyze all feasible mitigation to reduce such impacts.

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<https://sanjuancap.maps.arcgis.com/apps/webappviewer/index.html?id=aa7d86db88f4454cac758f28b809c2b1>

Transportation

The NOP states that “During project construction, there may be transportation impacts. There may be impacts to the local road system, particularly at intersections adjacent to the nearby high school during construction. It is anticipated these could be mitigated by controlling the timing of construction-related trips, to avoid the peak traffic periods of the school, through implementation of a Transportation Management Plan.” The NOP also provides a discussion only on construction-related transportation impacts and does not provide a discussion on potential transportation impacts related to Project operation. The EIR must include an analysis whether the Project would: 1) conflict with a program, plan, ordinance or policy addressing the circulation system, 2) result in significant impacts related to vehicle miles traveled, 3) increase hazards due to a geometric design feature, and/or 4) result in inadequate emergency access. The EIR must include an analysis of the Project’s construction and operational safety impacts, particularly with respect to the Project’s single point of access and at-grade railroad crossing, which is a designated Quiet Zone.

Visual Resources

The EIR must discuss whether the Project would result in construction-related impacts to visual resources. The NOP states that operation of the Project could have potentially significant impacts on visual resources; therefore, the EIR must identify the scenic resources/scenic vistas in the Project area. Additionally, the NOP states that aesthetic effects would be assessed from four key observation points, without providing references to where these points are located. Given the vast scenic resources in the area such as hillsides, ridgelines, and open space, the public should be given the opportunity to evaluate the key observation point locations. The EIR must evaluate aesthetic impacts from public viewpoints, including but not limited to the Bluff Trail to the west of the Project site, Spotted Bull Lane across the I-5, Camino Capistrano, and Colinas Ridge Trail. Additionally, the EIR must evaluate whether the Project would conflict with applicable zoning and other regulations governing scenic quality or create a new source of light or glare that would adversely affect day or nighttime views in the area (both in San Juan Capistrano and the bordering areas in Laguna Niguel and Mission Viejo).

Water Resources

The NOP states that “since the stormwater volume would not be expected to change, the project is not anticipated to increase the burden of flooding.” The EIR must include analysis on how the Project would not alter existing drainage patterns or increase or decrease the rate and amount of surface runoff.

Additionally, the NOP states that “Project control of erosion is anticipated to result in beneficial impacts when compared with existing conditions.” The EIR must provide an explanation of how the Project would control erosion impacts and why it would result in beneficial impacts as compared to existing conditions. The Project site is located adjacent to Oso Creek, which has a

documented history of substantial movement and erosion. The EIR must evaluate erosion-related water quality impacts to Oso Creek.

Moreover, the NOP states that “Based on Federal Emergency Management Agency flood insurance maps, the Project lies outside of the 100-year flood plain.” However, it fails to mention that the Project site is located directly adjacent to areas zoned as Zone A (Areas with a 1% annual chance of flood hazard) and Zone X (Areas with 0.2% annual chance of flood hazard).⁶ The EIR must disclose the proximity of the Project area to flood zones and include analysis of potential flood hazards to the site and infrastructure, taking into consideration Oso Creek’s bank instability and reduced channel capacity.

The NOP states that “During operations, stormwater collected within the BESS area would accumulate into an underground storage chamber to be pumped uphill into the Orange County Flood Control District storm drain and outfall into Oso Creek northeast of the site.” The EIR must evaluate the feasibility of an underground storage chamber with respect to infiltration, geologic stability, and groundwater. The EIR must evaluate impacts of the pump and size of the underground storage chamber. Additionally, the EIR must identify treatment of water quality and how the chamber would maintain adequate flow into Oso Creek.

The NOP states that “water for the project would be supplied by a local purveyor, the Moulton Niguel Water District.” However, the Project site is located within the service area of the Santa Ana Margarita Water District.⁷ The EIR must provide information on whether the Project would require additional infrastructure from the Santa Margarita Water District or water supply or service from or annexation into the Moulton Niguel Water District and the impacts must be analyzed as part of this EIR as a reasonably foreseeable consequence of the project.

Worker Safety and Fire Protection

The NOP states that “protective measures are employed to eliminate or reduce these hazards or to minimize the risk through special training, protective equipment, and procedural controls.” The EIR must include an analysis of how these measures would effectively reduce hazards that could result in accidents or serious injury, in addition to fire risks. As stated previously, a safety plan, fire protection plan, and evacuation analysis must be included in the EIR and the EIR must evaluate whether the Project would impair an adopted emergency response/evacuation plan.

⁶ <https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd&extent=-117.69393315357868,33.52521566170788,-117.65874257130334,33.54310184618601>

⁷ <https://www.smwd.com/327/Are-You-In-Our-Service-Area>

Summary

The City requests that all of these topics and environmental issues be addressed by the CEC in its proposed environmental review of the Compass Energy Storage Project. The Project has the potential to result in significant environmental impacts for the following environmental topics:

- Health and safety related impacts to nearby sensitive receptors;
- Adverse effects on the visual character and visual quality of views from publicly accessible vantage points;
- Significant adverse effects to special-status plant and wildlife species and sensitive habitats.
- Mortality and injury to raptors and bats as a result of operations and maintenance;
- A cumulatively considerable contribution to significant cumulative impacts to avian and bat species from collision with Project infrastructure;
- Substantial adverse change in the significance of a tribal cultural resource;
- Significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment;
- Substantial alteration to the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would result in substantial erosion or siltation on- or off-site; and
- Wildfire impacts in a high fire hazard zone regarding exposing people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes and exacerbating wildfire risks due to slope, prevailing winds, and other factors.

The CEC Cannot Make the Findings Necessary to Approve the Compass Energy Storage Project

The CEC cannot approve the Project unless it determines the facility is: 1) required for public convenience and necessity, and 2) that there is no more prudent and feasible means of achieving such public convenience and necessity. (Pub. Resources Code sections 25525 and 25545.8). In making the determination regarding the lack of a more prudent and feasible means to achieve the convenience and necessity of the Project, the CEC must consider the impacts of the facility on the environment, consumer benefits, and electric system reliability.

The Project does not conform with applicable State, local and regional standards, ordinances or laws. The Project does not conform with the City's ordinance prohibiting new commercial energy storage systems within the city, through April 1, 2026. The proposed location of the Applicant's Project is near established residential neighborhoods in San Juan Capistrano and downslope of several hundred homes in Laguna Niguel. Furthermore, the Project is adjacent to Oso Creek, which is an environmentally sensitive watercourse that flows to the ocean. Should a fire occur at the

proposed site, fire extinguishing compounds used to combat the fire (either from the ground or air) would have the potential of entering the creek and significantly impairing water quality and native flora and fauna.

Since the CEC has determined the application to be complete, Compass Energy Storage, LLC should **not** be allowed to supplement its application on this requirement, and any staff assessment should be based on what information is submitted in the public docket and additional information provided by the public, Tribes, and the City pursuant to its AB 205 review and comment rights. The CEC should not “fill in the gaps” for what has not been provided by the Applicant as of the time of application completion.

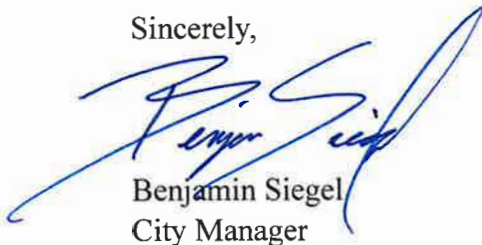
Lastly, the City has reviewed the CEC's prior decisions and legal opinions on public convenience and necessity and the so-called "LORS override." An extensive review shows that the CEC cannot make the required findings based on statutory language, relevant case law, and prior agency precedent, and importantly, the unique facts and circumstances of the project.

In preparing the staff assessment on this issue, the CEC must use and identify a threshold for renewable energy achievement, GHG reduction, consumer benefits and grid reliability that is objective, measurable and verifiable by the public as well as data that is publicly available and docketed (not just in the "project file"). The public convenience and necessity analysis must be transparent, and information submitted by the Applicant is not.

The City reserves the right and intends to provide the CEC with all of the regional and local ordinances, standards and policies that apply to the Project and additional information on the public convenience and necessity and net positive economic benefits issues as outlined in the City's Revised Reimbursement Request.

Thank you for the opportunity to comment on the NOP. Should the Project proceed, the City looks forward to reviewing the Draft EIR. If you have any questions regarding the information in this letter, please contact Paul Garcia, Principal Analyst, at (949) 443-6327 or by email at pgarcia@sanjuancapistrano.org.

Sincerely,



Benjamin Siegel
City Manager