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**City of San Juan Capistrano Comments on Applicant's Response to
Post Scoping Set 2 Data Request & Updated Application Materials**

Additional submitted attachment is included below.

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Via Docket 24-OPT-02

December 5, 2025

Drew Bohan
Executive Director
California Energy Commission
715 P Street
Sacramento, CA 95814
drew.bohan@energy.ca.gov

Re: City of San Juan Capistrano (“City”) Comments Regarding the Applicant’s Response to Post Scoping Set 2 Data Request and Updated Application Materials

Dear Mr. Bohan:

On November 14, 2025, the Project applicant’s response to the California Energy Commission (CEC) Post Scoping Set 2 Data Request for the Compass Energy Storage Project (“Project”), dated August 12, 2025, was added to the Project Docket Log (24-OPT-2). Additionally, the Project applicant submitted updated application materials, including an updated Project description, and indicated that other affected analyses in the application are in the process of being updated to incorporate the creek stabilization component and stormwater design. As such, the City reserves the right to review the updated application materials and forthcoming documents and to comment accordingly, consistent with our abilities under AB 205. As a reminder, on July 22, 2025, the City submitted an objection to the applicant’s request to modify the Project, as amending the application at this stage violates AB 205 and the due process rights of the City and other public and private stakeholders; we reassert that same objection here with respect to the updated submittals referenced above.

At this time, the City offers the following comments with respect to what has been submitted to date:

1. The Notice of Preparation Must be Recirculated for a New 30-day Review Period

The revised Project description reflects significant and material changes in both scope and regulatory considerations for the Project. The introduction of the Oso Creek rehabilitation and stabilization work encompasses approximately 2,600 linear feet and 12.49 acres, with an 80-foot-wide channel, regraded and revegetated slopes, and six instream rock stabilization structures. This expanded scope has driven significant increases in earthwork quantities, including large rises in cut, fill, and net export volumes associated with the creek modifications. This work also triggers significant additional regulatory permitting that was not in play prior to this change.

As a result of the introduction of work in and around Oso Creek, the overall project footprint has also grown substantially, nearly doubling in size from approximately 14.23 acres to approximately 27.16 acres. Importantly, the project footprint has expanded beyond property for which the applicant currently holds an option to purchase and/or improve, as discussed in a following section of this letter.

Collectively, these changes represent a material modification of the Project description and carry important procedural implications. The magnitude of the revisions warrant recirculation of the Notice of Preparation (NOP) and the need to conduct an additional Public Informational and Scoping Meeting to ensure compliance with CEQA requirements and transparent public engagement. The NOP was required to be sent to every federal agency involved in approving or funding the project. (State CEQA Guidelines, section 15082(a).) Based on the Project revisions posted to the docket on November 14, 2025, the Army Corps of Engineers and the United States Fish and Wildlife Service may have a significant role in permitting work proposed to occur in Oso Creek. These agencies should have received direct notice of the Project's environmental process to allow for the appropriate review under state and federal law.

In addition, the NOP must be recirculated because the Project description has significantly changed since the NOP was originally released on May 2, 2025 (the "Original NOP"). The NOP must provide responsible and trustee agencies, the Office of Land Use and Climate Innovation and the county clerk sufficient information describing the Project and the potential environmental effects to allow those entities to provide a meaningful response. (State CEQA Guidelines, section 15082(b).) The Original NOP said nothing about the Project's proposed, extensive work in Oso Creek. In fact, the only permit contemplated in the Project application was an NPDES Construction General Permit, not permits and other approvals that are now needed from federal agencies with discretionary authority over the Project. Thus, the aforementioned entities have not had an opportunity

to provide a meaningful response to the new information posted to the docket. The NOP must be revised to reflect the whole of the action, and must be reissued for a new 30-day review period to afford all interested entities an opportunity to comment on the full scope of the project. (State CEQA Guidelines, section 15082.)

2. New Protocol-Level Southwestern Pond Turtle Survey is Required

On August 12, 2025, CEC staff issued Post-Scoping Data Request Set 2 for the Project, including a biological resources request in response to a comment letter on the Original NOP from the California Department of Fish and Wildlife (CDFW). As part of this request, CEC staff asked the applicant to conduct visual surveys following the Western Pond Turtle Visual Survey Protocol for the Southcoast Ecoregion (USGS 2006) to confirm the presence or absence of southwestern pond turtles.

The southwestern pond turtle, a California Species of Special Concern and proposed Threatened species under the U.S. Endangered Species Act, requires thorough consideration under CEQA. The August 2025 Southwestern Pond Turtle Habitat Assessment and Survey Results, prepared by Dudek on behalf of the applicant, *do not* meet accepted biological standards or the requirements of the USGS (2006) protocol. The survey consisted of a single visual encounter in late August, outside the turtles' peak activity period (May-July), and did not cover all potential habitat or employ alternative detection methods. Despite these limitations, multiple turtles were observed, suggesting a resident breeding population may be present.

Because the survey likely underrepresents the species' presence and habitat use, any impact analysis or mitigation based on these data is uncertain and may underestimate potential harm. Given the species' pending federal protection, improper handling could trigger Endangered Species Act prohibitions. To address these shortcomings, additional surveys should be conducted in spring and early summer 2026 following full USGS (2006) protocols, ensuring multiple visits, complete habitat coverage, and proper detection methods. The Staff Assessment and Draft Environmental Impact Report for the Project should not be released until a new protocol-level survey has been completed and incorporated into the document.

3. Requirement for Authorization of Off-Site Land-Use Rights

The project footprint has expanded beyond the property for which the applicant currently holds an option to purchase and/or improve, extending into the railroad right-of-way and an adjacent private parcel (APN 637-082-14) owned by WILLIAMS ORCHARD LTD PTNSHP. Because the proposed improvements now occur on land outside the applicant's optioned control, the applicant must secure the necessary land-use rights for all off-site work before the CEC can process an

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application for a Project that would impact that property. We have yet to see any documentation indicating that the applicant has secured legal rights to the easement and private property now included in the expanded footprint.

Project processing should not proceed until the applicant demonstrates that authorization to perform these off-site improvements has been obtained from the owner(s) of record. The City reminds the CEC that its opt-in application requirements in Appendix B required a description of the legal interest that the applicant has in the off-site properties, and to the extent applicable, a list of all owners within 1,000 feet of the revised boundaries, among other requirements.

The City appreciates the opportunity to provide these comments and remains committed to working collaboratively with CEC staff to ensure a complete, accurate and legally adequate review of the Project. Given the substantive changes to the Project description, the deficiency in biological resource information needs, and the unresolved off-site land-use authorization issues described above, the City respectfully requests that the CEC refrain from further processing of the Project application until these matters have been fully addressed, the NOP revised and recirculated, and all necessary and proper surveys and investigations have been completed. The City looks forward to continued coordination and will provide additional comments upon receipt and review of the updated application materials.

Should 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

Cc : U.S. Army Corp of Engineers
U.S. Fish and Wildlife Service
California Department of Fish and Wildlife
Regional Water Quality Control Board
Orange County Transportation Authority
Orange County Public Works
Santa Margarita Water District
City of Laguna Niguel
Williams Orchard Limited Partnership