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May 10, 2024

Renee Longman
Project Manager
California Energy Commission
715 P Street
Sacramento, CA 95814
Renee.longman@energy.ca.gov

Subject: Notice of Receipt of Opt-In Application for Compass Battery Energy Storage Project (24-OPT-02)/ Request for Comments and Information

Dear Ms. Longman:

In a letter dated April 18, 2024, the California Energy Commission ("CEC") provided notice to the City of San Juan Capistrano ("City") of the CEC's receipt of an opt-in application for the Compass Battery Energy Storage project (24-OPT-02) (the "Opt-In Notice"). The application seeks to construct, own, and operate an approximately 250-megawatt ("MW") Battery Energy Storage System ("BESS") in San Juan Capistrano. The approximately 13-acre project site is located within the northern portion of San Juan Capistrano, adjacent to Camino Capistrano and Interstate-5 to the east.

The City acknowledges receipt of the April 18, 2024, local agency notice and, at this time, offers the following comments per Assembly Bill 205:

1. The CEC Lacks Jurisdiction to Review and Certify the Project

The City objects to the CEC's jurisdiction over the Project. As will be detailed in forthcoming comments, 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 process a Comprehensive Development Plan that would have rezoned the subject property and allowed the Project pursuant to approval of a conditional use permit. Therefore, the CEC has no jurisdiction over the Project under AB 205.

To the extent the City provides this response to the Opt-In Notice and further participates in this proceeding, it does so to protect its rights and advocate for its residents. Therefore, the City hereby preserves any and all rights, objections, and remedies, including challenge of the CEC's jurisdiction over the Compass Project, and does not waive such rights by participating in the proceeding.

2. Intent to Seek Reimbursement

In accordance with the language of AB 205, Public Resources Code Section 25538, and state mandates law, the City intends to seek reimbursement for its required participation in the proceeding and its review and comments on the application. The City requests that the CEC clarify whether 20 C.C.R. § 1715 applies to this proceeding and whether the City needs to submit a budget for its review and comment. The City also requests clarification as to what activities are eligible for reimbursement. In order to avoid confusion regarding the reimbursement process and minimize disputes with the Applicant, the CEC must issue guidance as to the required process and what areas of the application and the certification process are eligible for reimbursement.

3. Project Comments

A. Comments on City's Prior Denial of the Project

The Compass Project has been effectively denied by the City due to land use inconsistency. The City's denial is briefly mentioned in the application but the complete and full record of that denial and the reasons why the denial occurred has not been submitted by the Applicant. Further, the Applicant misrepresents the City's zoning designation, omits certain facts and determinations by the City that led to the denial of the Project, and falsely asserts that the project description has changed.

The City will provide the CEC with the full record of the applications, denial and land use inconsistency determinations.

B. Comments on Project Impacts

In addition to the reasons the City initially denied the Project, the City has numerous concerns with the Project, including critical challenges to public safety which will require detailed examination and are only amplified by the Project's proximity to residential uses, culturally sensitive areas, and environmentally sensitive areas. These concerns include, but are not limited to, fire, release of hazardous substances, pollution to adjacent waterbodies, and significant impacts to residents and adjacent communities.

The City reserves the ability to review the application and forthcoming environmental documents and review and comment accordingly, consistent with its obligations under AB 205.

4. Community Benefits Plan

The City objects to the Applicant's proposed plan or strategy and timeline for execution to obtain legally binding and enforceable agreements with a coalition of one or more community-based organizations as required by 20 C.C.R. § 1877(g). The proposed Community Benefits Plan lacks information regarding the specific Community Based Organizations the Applicant is negotiating with and is completely

unverifiable as to those organizations, or how such benefits would benefit the community at large. There is no specific information provided to the CEC about the entities or timeline for execution other than to state that there is a plan in place.

Further, the Applicant misrepresents its conversations with the City, as no meaningful discussion has occurred. The Applicant has not worked with the City "to identify community needs in the areas of public safety, parks and recreation, circulation, and the arts" as indicated in the so-called "plan." The City is unaware of any proposal that will be submitted to it or the timeline for such a proposal, if it even exists. The City has not indicated support for the Project, and, in fact, has expressly denied the Project. The CEC has had continuous and ongoing issues with project applicants in opt-in proceedings submitting so-called community benefits plans that have not come to fruition or were outright misrepresentations. The CEC must review, verify and hold the Applicant accountable for the purported community benefits plan prior to deeming this portion of the application complete.

5. Interim Ordinance

On May 7, 2024, the City Council adopted an Interim Ordinance to extend the City's prohibition on new commercial BESS within the city for ten months and fifteen days, pursuant to Government Code Section 65858(a), prohibiting any use, permit, variance, building permit, business license, or any other entitlement from being approved or issued for the establishment, construction, or operation of a commercial BESS facility within the City's boundaries. The Interim Ordinance is provided as Attachment 1.

The City will be providing further comments on the aforementioned issues. Should you have any questions regarding these concerns, please contact me at (949) 443-6327 or via e-mail at pgarcia@sanjuancapistrano.org.

Sincerely,



Paul M. Garcia
Principal Planner

Enclosure

c: Tamara Letourneau, Laguna Niguel City Manager
Dennis Wilberg, Mission Viejo City Manager
Engie North America
Saddleback Church
California Energy Commission
Army Corps of Engineers
California Department of Fish and Wildlife
U.S. Department of Fish and Wildlife
Ryan Baron, Partner, Best Best & Krieger LLP

URGENCY ORDINANCE NO. 1119**AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JUAN CAPISTRANO EXTENDING URGENCY ORDINANCE NO. 1116 PROHIBITING NEW COMMERCIAL BATTERY ENERGY STORAGE SYSTEMS WITHIN THE CITY OF SAN JUAN CAPISTRANO, ADOPTED AS AN URGENCY MEASURE; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA**

WHEREAS, the City of San Juan Capistrano, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in general, a Battery Energy Storage Systems (“BESS”) facility collects energy from the grid, stores it, and then discharges that energy later to provide electricity or other grid services when needed, typically at times of high demand; and

WHEREAS, Engie North America (“Applicant”) is proposing to construct a BESS facility on land currently owned by Saddleback Church located at the northern end of the city; and

WHEREAS, in December 2021, the City received entitlement applications and a letter of intent from the Applicant requesting to establish a BESS facility within the Planned Community (“PC”) District zoning designation; and

WHEREAS, the PC District zoning designation allows uses and structures permitted within the city subject to the approval of a Comprehensive Development Plan (“CDP”) consistent with the General Plan, pursuant to San Juan Capistrano Municipal Code (“Municipal Code”) Section 9-3.315(b). In the absence of an approved CDP, the PC District zoning designation allows identified interim uses pursuant to Municipal Code Section 9-3.315(c) subject to the development standards for the Agri-Business District, pursuant to Municipal Code Section 9-3.315(e)(3); and

WHEREAS, the Planning Director has the authority and responsibility to review uses not listed in the Municipal Code and permit such proposed unlisted use if it falls within the purpose and intent of the base district, is of a comparable nature to the principal, accessory, or conditional uses set forth in the base district, is not listed in the base district, and will not be detrimental to property in the vicinity of such use pursuant to Municipal Code Section 9-3.203; and

WHEREAS, on April 29, 2022, the Development Services Director determined that a BESS facility cannot be accommodated by an unlisted use determination under Municipal Code Section 9-3.203 as the required findings could not be met. As such, the preparation and approval by the City Council of a CDP would be required to allow the proposed use; and

WHEREAS, in September 2022, Saddleback Church submitted a request for the City Council to initiate a Rezone study to establish a CDP that would govern the

approximately 161-acre Saddleback Church Rancho Capistrano property. On November 1, 2022, the City Council denied the initiation of a Rezone study to create the proposed CDP; and

WHEREAS, the City's current Zoning Regulations do not contain criteria specifically for BESS facilities; and

WHEREAS, pursuant to Assembly Bill 205, an applicant proposing to build a qualifying energy facility may file an "opt-in application for certification" at the California Energy Commission ("CEC") and the CEC's permitting authority over the proposed project is "in lieu of any permit, certificate, or similar document required by a state, local, or regional agency, or federal agency, to the extent permitted by federal law, for those facilities"; and

WHEREAS, in reviewing so-called opt-in projects, the CEC functions as the Lead Agency for purposes of California Environmental Quality Act ("CEQA") review and must make certain findings in certifying an opt-in project; and

WHEREAS, in early 2023, Applicant opted to pursue a State approval process through the CEC, as opposed to seeking local approval through the City Council, and in February 2024, the Applicant formally withdrew its City applications; and

WHEREAS, in a letter dated April 18, 2024, the CEC provided notice to the City of the CEC's receipt of an opt-in application for the Compass Battery Energy Storage project (24-OPT-02) (the "Opt-In Notice"). The application seeks to construct, own, and operate an approximately 250-megawatt ("MW") BESS in the City of San Juan Capistrano. The BESS would be capable of storing up to 250 MW of electricity for four hours (up to 1,000 MW hours). The project would be composed of lithium-iron phosphate batteries, or similar technology batteries, inverters, medium voltage transformers, a switchyard, a collector substation, and other associated equipment to interconnect into the existing San Diego Gas & Electric ("SDG&E") Trabuco to Capistrano 138-kilovolt transmission line located approximately 500 feet from the project site and approximately 90 feet from the project property. The project would connect to the SDG&E electric transmission system via a proposed loop-in transmission line that would be constructed to transfer power to and from the proposed project. The loop-in transmission line would be supported by the replacement of two existing transmission poles and construction of one new transmission pole. Electric energy would be transferred from the existing power grid to the project batteries for storage and from the project batteries to the power grid when additional electricity is needed. No off-site transmission upgrades are required for the full capacity of the project, and an interconnection agreement with SDG&E and the California Independent System Operator has been executed. Following the construction of the switchyard by Applicant, ownership and operations would transfer to SDG&E; and

WHEREAS, this action by the Applicant to file the application with the CEC increases the urgency for the City to evaluate if, how, and where commercial BESS facilities can be accommodated safely within the city; and

WHEREAS, once CEC deems the application complete, CEC will be under a 270-day period to certify the project; and

WHEREAS, while the Applicant's proposed project may no longer require local entitlement approvals, there remain significant public safety-related concerns that must be analyzed prior to any BESS project moving forward within the city; and

WHEREAS, there have been several fires at BESS facilities both in California and nationwide while the proposed location is near established residential neighborhoods in San Juan Capistrano and downslope of several hundred homes in Laguna Niguel; and

WHEREAS, should a fire occur at the proposed BESS site adjacent to Trabuco Creek, an environmentally sensitive watercourse that flows to the ocean, 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; and

WHEREAS, Senate Bill 38 ("SB 38") requires every BESS facility in California to coordinate with local emergency management agencies, unified program agencies, and local first responders to develop an emergency response and emergency action plan for the facility to protect surrounding residents, neighboring properties, emergency responders, and the environment, and submit said plan to the county and the city where the facility is located; and

WHEREAS, SB 38 recognizes the many hazards that BESS facilities create, as it provides that the mandated emergency response and action plan may consider responses to potential offsite impacts, such as poor air quality, threats to municipal water supplies and water runoff, and threats to natural waterways. The plan may also include procedures related to shelter-in-place orders and road closure notifications; and

WHEREAS, California Government Code Section 65858 provides that, without following the procedures otherwise required prior to the adoption of a zoning ordinance, an urgency measure in the form of an interim ordinance may be adopted by a four-fifths vote of the City Council to protect the public from a current and immediate threat to the public health, safety, or welfare resulting from a contemplated zoning proposal; and

WHEREAS, Government Code Section 65868 further provides that such an urgency measure shall be effective for only forty-five days following its adoption, but may be extended beyond the initial forty-five day period, following compliance with that Section, for an additional ten months and fifteen days and subsequently for an additional twelve months; and

WHEREAS, at its April 2, 2024, City Council meeting, staff's findings demonstrated that the potential for development of new commercial BESS facilities within the city without adequate land use policies and standards in place to implement SB 38 and to prevent potentially catastrophic interference with nearby communities presents a current and immediate threat to the public's safety and welfare, and the approval of use permits, building permits, or other applicable entitlements for such uses would threaten public

safety and welfare; and

WHEREAS, at its April 2, 2024, meeting, the City Council voted to approve an interim ordinance prohibiting new commercial battery energy storage systems within the city, unless a use permit was approved prior to April 2, 2024, based upon a need for the immediate preservation of the public health, safety, and welfare as set forth herein, for an initial period of forty-five days while staff researched and selected the best recommended course of action to address the safety-related concerns regarding BESS facilities (“Urgency Ordinance No. 1116”); and

WHEREAS, the temporary prohibition on BESS facilities is scheduled to expire on May 17, 2024; and

WHEREAS, staff has issued a written report to the City Council on the progress of its study along with measures taken to alleviate the condition that led to the adoption of Urgency Ordinance No. 1116; and

WHEREAS, City staff is still in the process of conducting research to understand the impacts of BESS facilities and uses on community welfare and explore potential amendments to the City’s Municipal Code and General Plan in relation to BESS facilities; and

WHEREAS, staff remains concerned that the absence of adequate land use policies and standards to address BESS facilities, including those necessary to implement SB 38 and prevent potentially catastrophic impacts to nearby residents and environmental resources, poses a current and immediate threat to the public’s safety and welfare; and

WHEREAS, in light of the significant safety risks associated with BESS facilities, City staff seeks additional time to further investigate these issues, formulate recommendations for City Council consideration, and explore adjustments to the City’s General Plan and Zoning Regulations to mitigate the safety risks associated with BESS facilities.

NOW, THEREFORE, the City Council of the City of San Juan Capistrano does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. This Interim Ordinance is not subject to the CEQA (Public Resources Code §21000, et seq.) pursuant to CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.) Section 15060(c)(2) [activity will not result in a direct or reasonably foreseeable indirect physical change in the environment]. Here, this Interim Ordinance is merely extending the current prohibition on certain projects from proceeding for a period of time during which the City will study the potential development. As a result, this Interim Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. Further, the 10-Day Report merely describes actions previously taken to alleviate the conditions which led to the adoption of Urgency Ordinance No. 1116.

Alternatively, this Interim Ordinance is exempt from CEQA under CEQA Guidelines Sections 15061(b)(3) [it can be seen with certainty that there is no possibility the activity in question may have a significant effect on the environment], and, in the alternative, 15307 [Class 7 categorical exemption for regulatory activity to assure the protection of natural resources], and, in the alternative, 15308 [Class 8 categorical exemption for regulatory activity to assure the protection of the environment]. Here, this Interim Ordinance will extend the current prohibition on certain projects from being able to proceed for a period of time during which the City will study the potential development. This activity is meant to assure the protection of the environment and natural resources by studying the hazards associated with BESS facilities, such as unique fire and explosion hazards, for potential development of zoning regulations for BESS facilities. Currently, there are no commercial BESS facilities in the city. This Project merely preserves the status quo. Further, the 10-Day Report merely describes actions previously taken to alleviate the conditions which led to the adoption of Urgency Ordinance No. 1116.

Alternatively, this Interim Ordinance is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) because it prevents a clear and imminent danger that requires immediate action to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services. Here, this Interim Ordinance will extend the current prohibition on certain projects from being able to proceed for a period of time during which the City will study the potential development. This activity is meant to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services by studying the hazards associated with BESS facilities, such as unique fire and explosion hazards, for potential development of zoning regulations for BESS facilities. Further, the 10-Day Report merely describes actions previously taken to alleviate the conditions which led to the adoption of Urgency Ordinance No. 1116.

Section 3. This Interim Ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare based on the findings of this Interim Ordinance and corresponding action report. This Interim Ordinance shall take effect immediately upon adoption.

Section 4. Urgency Ordinance No. 1116 is hereby extended for ten months and fifteen days, unless earlier repealed by the City Council or extended in accordance with the provisions set forth in California Government Code Section 65858.

Section 5. No use permit, variance, building permit, business license, or any other entitlement for use shall be approved or issued for the establishment, construction, or operation of a commercial BESS facility for any location or property within the City of San Juan Capistrano, unless a use permit was approved prior to April 2, 2024, authorizing the establishment, construction, and operation of the commercial BESS facility, in which case the commercial BESS facility may continue in operation as approved but may not be replaced or modified in any manner that would require revision or amendment to the use permit under the City's Zoning Regulations. As used in this ordinance, the term "commercial" means the use of a BESS facility to provide electricity to third parties, for consideration.

