Ryan M. F. Baron
Partner
(949) 263-6568
ryan.baron@bbklaw.com

File No. 61147.30014

May 31, 2024

Via Email & CEC Docket 24-OPT-02

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

Re: City of San Juan Capistrano Objection to California Energy Commission Jurisdiction over the Compass Battery Energy Storage Project

Dear Mr. Bohan:

Best Best & Krieger LLP serves as the City Attorney to the City of San Juan Capistrano ("City") and represents the City in California Energy Commission ("Commission") Docket 24-OPT-02 concerning the Compass Energy Storage Project ("Project"). On April 12, 2024, Compass Energy Storage, LLC ("Applicant") filed an opt-in application seeking Commission review and certification of the Project under the Commission's purported authority under Assembly Bill ("AB") 205 ("Application").[1] Prior to the filing of the Application, however, the City Council effectively denied the same project on November 1, 2022 when it was submitted to the City as part of a Rezone study to establish a comprehensive development plan ("CDP") that would govern the property on which the Project would be located and would have allowed the Project to be sited on the property pursuant to a conditional use permit. In light of the prior denial, the Commission does not have jurisdiction over the Project and cannot certify it for the reasons discussed in this opposition and objection. Furthermore, the Commission's jurisdiction over another project that was previously denied by a local government is currently being challenged in California superior court, and therefore, this same issue is outstanding in state court.[2] For these reasons, the City requests that the Commission dismiss the Application on the grounds that it does not have jurisdiction over the Project. Or, in the alternative, the City requests that proceeding 24-OPT-02 be stayed until the state court resolves the pending litigation.

The Commission 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

[1] Pubic Resources Code § 25545 *et seq.*
[2] *Pit River Tribe, et al. v. California Energy Commission*, Case No. 23CV-0203737 (filed Nov. 28, 2023) (challenging the Commission's jurisdiction over the Fountain Wind Project after prior local government denial).

request to study a Rezone that would have established a CDP to govern the subject property and allowed the Project pursuant to a conditional use permit.[3] The California Legislature did not intend to allow an applicant for an AB 205 eligible project to circumvent the prior denial of a local government with land use authority. Rather, the Legislature intended a project applicant to choose to either avail itself of local government discretionary authority or opt into the Commission's "opt-in" certification process "in lieu of," or instead of, the local government's approval process. Furthermore, it is questionable whether AB 205 was properly enacted when the bill proceeded through a budget trailer bill process as urgency legislation and whether the adoption process and application of AB 205 to the Project unlawfully usurps local government discretionary authority.

I. BACKGROUND: THE CITY'S PRIOR REVIEW AND DENIAL OF THE COMPASS BATTERY ENERGY STORAGE PROJECT

The proposed Project that was submitted to the City, and is now before the Commission in approximately the same form and description, would establish a battery energy storage facility on a southern undeveloped portion of an 161-acre property owned and occupied by Saddleback Church Rancho Capistrano.[4] The current use of the property is for church uses and related accessory uses.[5] There are no other uses on the property.

The proposed Project consists of a 250-megawatt ("MW") battery energy storage system, a new access road, an SDG&E switchyard/substation, telecommunications facilities, perimeter walls, water storage tanks, landscaping, and a utility transmission line with two new utility poles, with a total development area of 22 acres.[6] The Project description anticipates grading consisting of 262,000 cubic yards of cut and 18,000 cubic yards of fill, with an additional 80,000 cubic yards of excavation for perimeter wall construction.[7] The proposed energy facility would be located in a viewshed adjacent to open space, a significant residential area adjacent to and overlooking the property, and would be visible from the Interstate 5 freeway.[8] The Project would also be immediately adjacent to and viewable by the City of Laguna Niguel, where a large residential community overlooks the site.

---

[3] City of San Juan Capistrano City Council Meeting, *Rezone (RZ) 22-006: Initiation of a Rezone to Create a Comprehensive Development Plan 22-01 to Govern Land Uses on the Approximately 161-Acre Saddleback Church Rancho Capistrano Property, Including a Proposed Energy Storage Facility Use Located at 29251 Camino Capistrano (APNs: 637-082-15,-16,-17,-64,-65,-66,-67,-68,-69,-71) (Applicant/Property Owner: Saddleback Valley Community Church) (460.20)*, Item F.2.a (Nov. 1, 2022), available at https://sjc.granicus.com/GeneratedAgendaViewer.php?view_id=3&clip_id=2628

[4] A copy of the applicable documents detailing the application and the City's denial are attached to these comments.

[5] Orange County Register, *Saddleback Takes Control of Crystal Cathedral Retreat* (May 12, 2010).

[6] *Compass Energy Storage Project: Comprehensive Project Description* at 1 (Dec. 2021) ("Project Description").

[7] *Id.* at 8-9.

[8] *City of San Juan Capistrano Agenda Report*, Item F.2.a, at Attachment 1 (Nov. 1, 2022).

A majority of the subject property, approximately 90 acres, was annexed by the City from the County of Orange in 2006 through a Preannexation Agreement between the parties. The County's zoning designation for the property at that time was Planned Community, and the church uses were to be allowed to continue under the City's zoning.[9] The Preannexation Agreement also specified that the property owner could request changes in the development regulations, but that such changes were subject to review and approval by the City in accordance with its municipal code.[10] The agreement further stated that any proposal for major changes to the land use or intensity of the property would require the preparation of a comprehensive development plan for the property.[11]

As required by and consistent with the Preannexation Agreement, the subject property has a current zoning designation by the City of Planned Community (To Be Determined "TBD").[12] Since the property has not been developed and is currently used for church and related accessory uses, it does not have an approved CDP to govern the allowable uses and establish development standards. The City's municipal code provides that one of the purposes and intent of the Planned Community ("PC") district is to provide open space, agricultural, and low density residential interim use subject to the approval of a comprehensive development plan. Table 3.15 of SJCMC section 9-3.315 provides a list of permissible interim uses in the PC zoning district, such as educational programs, churches and residential dwelling, but does not provide for a battery energy storage facility as a permissible use, and there are no other comparable uses allowed under the current zoning.

Before applying for Commission "opt-in" certification, the Applicant in December 2021 filed entitlement applications and a letter of intent with the City requesting conditional approval of the Project. On March 25, 2022, the Applicant, through its legal counsel, submitted a letter to the City arguing that despite the PC (TBD) zoning designation, the Project qualified for an unlisted use determination whereby the City's Development Services Director could approve the Project as a use of a "comparable nature" to the principal and accessory uses set forth in the Planned Community designation for the property. The Applicant further argued that the Project was not detrimental to the surrounding properties. On April 29, 2022, after reviewing the Project application in detail, the Development Services Director determined that (1) the proposed use did not qualify for an unlisted use determination and was not of a comparable nature to the current uses allowed, one of which was the extensive grading required; (2) the property was limited to certain interim uses listed in Table 3.15 of the City's municipal code because it did not have a CDP; and (3) the proposed use could have significant environmental impacts and that a finding of insignificance could not be made without completing an environmental impact report as required by CEQA. The Development Services Director further indicated that if the Project was to be approved as a proposed use, a CDP would need to be prepared for consideration of the City Council at the request of the Applicant. Notice of the Applicant's appeal rights were

[9] Agenda Staff Report at 2; Preannexation Agreement at Recitals and §§ 2.1 and 2.2.
[10] Preannexation Agreement at § 2.3.
[11] *Id.*
[12] SJCMC § 9-3.315.

provided in the City's letter, which were not exercised by the Applicant and any applicable statute of limitations expired.

In September 2022, Saddleback Church, as the property owner, submitted a request to the City Council to initiate a rezoning study to establish the CDP that would govern the 161-acre church property. The proposed CDP would identify the current uses on the site as allowable uses and propose the energy storage facility use as an allowable use with a conditional use permit.

On November 1, 2022, in accordance with San Juan Capistrano Municipal Code, and upon public notice to adjacent property owners and interested members of the public, the City Council considered initiation of a Rezone study to establish a CDP that, among other things, would allow the establishment of a battery energy storage use with approval of a conditional use permit. Upon presentations by the property owner and the Project proponent, public comments, and robust discussion and deliberation by members of the City Council, the City Council voted 3-2 to deny the request to initiate a Rezone study to establish a CDP that would govern the land uses on the approximately 161-acre church property. The Applicant did not appeal the City Council's denial or otherwise challenge the City's determination, and any applicable statute of limitations regarding the City's denial passed.

Despite the City's denial of the Rezone study to establish a CDP that would identify the current uses on the site as allowable uses and propose the energy storage facility use as an allowable use with a conditional use permit, and more importantly, the inability to permit the Project's use on the subject property based on the current zoning designation and impermissible use, on April 12, 2024, the Applicant filed an opt-in application with the Commission to review and certify the Project. Except for a purported insignificant reduction in grading activity, the Applicant submitted the same project configuration as is identified in the 2021 project description submitted to the City.[13]

II. ASSEMBLY BILL 205

A. Text of AB 205

AB 205 was signed into law by the Governor on June 30, 2022, giving the Commission extended siting authority over certain renewable energy facilities. AB 205 added Chapter 6.2 to Division 15 of the Public Resources Code, which Chapter governs the Commission and its

[13] As will be discussed in forthcoming City comments, the Applicant in its initial interactions with the Commission misrepresents the Project by indicating that due to the reduced grading that the City's prior zoning decision was based on a now outdated project description despite significant analysis by the City in its April 29, 2022 determination that a reduction in grading would not change the use incompatibility determination. The Applicant also misrepresents the City's zoning as to interim uses within this Planned Community (TBD) district by stating that the current land uses are compatible with the Project and related infrastructure. The City notes that the Applicant is required by Commission regulation to attest to its application under penalty of perjury and the Commission can and should review the Application for misstatements against the prior record and existing facts regarding the property and enforce its rules accordingly, or take the Applicant's veracity into account as part of any certification.

certification of nonfossil-fueled powerplants, energy storage, and related facilities. AB 205 permits an applicant proposing to build a qualifying renewable energy facility to file an application with the Commission on or before June 30, 2029, and that, "[u]pon receipt of the application, the Commission shall have the exclusive power to certify the site and related facility, whether the application proposes a new site and related facility or a change or addition to an existing facility[.]"[14] AB 205 further provides that "the issuance of a certificate by the Commission for a site and related facility . . . shall be *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, for the use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law."[15]

After the filing of an opt-in application with the Commission, the Commission must review the application as the CEQA lead agency and make a final determination on the application within 270 days of the Commission's notice of completion.[16] In making a final determination, the Commission is required, among other determinations, to take into account the traditional ecological knowledge of tribes, hold extensive public outreach, and refrain from certifying an application unless the applicant has "entered into one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or more community-based organizations."[17] The Commission must also find that the project has a net positive economic benefit.

B. History of AB 205 Enactment

AB 205 was enacted as a part of the 2022 state budget as a "budget trailer bill." Budget trailer bills are meant to supplement the main budget act by enacting corresponding changes in the State code. In the past several years, however, so-called budget trailer bills have begun to include more sweeping and impactful policy changes that are only loosely connected to the budget, thereby circumventing the typical legislative process and drawing critiques as undemocratic. Since budget trailer bills are negotiated behind closed doors, there is typically "no documented legislative history or intent available," and a court must rely on "the language of the bill itself" when interpreting legislative intent.[18]

AB 205 was introduced in the Assembly on January 8, 2021 with the generic placeholder language: "It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2021." On June 26, 2022, in the Senate Committee on Budget and Fiscal Review, the "opt-in" provision of the bill was proposed to "[a]llow specified clean energy projects to seek consolidated permitting at the Commission by June 30, 2029, if they adhere to specified labor standards[.]" On June 29, 2022, the bill was introduced for a third reading at the Senate Rules

[14] Pub. Res. Code § 25545.1.
[15] *Id*. (emphasis added).
[16] Pub. Res. Code §§ 25545.4 and 25545.7.
[17] *Id*. at § 25545.10.
[18] *California Hosp. Ass'n v. Maxwell-Jolly*, 776 F. Supp. 2d 1129, 1138 (E.D. Cal. 2011).

Committee with the same language that was introduced on June 26, 2022, and on the same day, the full language of the now-enacted bill was introduced. The bill was signed into law by the Governor on June 30, 2022. *Only four days passed between the public proposal of any substantive language in AB 205 and its enactment*.

There has been increased criticism in recent years of the State's use of budget trailer bills. When budget trailer bills are introduced, they contain generic placeholder language and then "stay like that for months while closed door negotiations take place between the Legislature, Governor's staff, and select stakeholders."[19] Budget trailer bills require only a simple majority to be enacted rather than a two-thirds vote, take effect as soon as they are signed by the Governor, and are negotiated behind closed doors rather than in legislative session. Therefore, state policymakers have used them ever more frequently to enact policy changes that would otherwise face strong opposition if introduced through a normal legislative procedure.[20]

Multiple city and county governments protested the inclusion of AB 205's opt-in provision for certifying new types of renewable energy facilities, given that it took permitting power away from local governments and placed it into the hands of the Commission. The League of California Cities voiced opposition to AB 205's "usurpation of local permitting authority," and the Rural County Representatives of California criticized the bill as being "overly broad, usurp[ing] local control, [and] exclud[ing] local governments from meaningful involvement in major development projects within their jurisdictions," among other things.[21]

III. THE COMMISSION LACKS JURISDICTION TO CERTIFY THE PROJECT

The Commission lacks jurisdiction over the Application because the Legislature in enacting AB 205 intended that an applicant choose either the local permitting or Commission certification pathway. The Legislature did not intend for an applicant to be able to go through the same or similar approval process twice and have a "second bite at the apple" or be able to "forum shop" for a more favorable project decision. Therefore, because the Applicant availed itself of the City's permitting process and was denied, the Applicant is now precluded from obtaining Project approval in a new forum and the Commission has no jurisdiction or other authority to further review or act on the Application other than to dismiss it. The only remedy

[19] The Curious Case of Budget Trailer Bills, https://www.counties.org/county-voice/curious-case-budget-trailer-bills.

[20] *See California Senate takes rare stand against misuse of budget 'trailer bills'*, Cal Matters, https://calmatters.org/commentary/2023/06/california-misuse-budget-trailer-bills/ (last visited July 26, 2023) ("California governors and legislators routinely misuse so-called budget 'trailer bills' to enact sweeping policy changes without the transparent processes that they deserve. . . . it ha[s] become common practice for governors and legislative leaders to put sweeping policy changes into trailer bills to make their passage easier."); see also Concerns mount on Newsom administration's use of budget process to fast track proposed laws, KRCA 3, https://www.kcra.com/article/california-gavin-newsom-criticism-fast-trackbills/44203421 (last visited Jul 26, 2023) (quoting Assemblyman Vince Fong, R-Bakersfield: "We are watching a broken budget process. We are now seeing budget trailer bills that are making significant policy decisions without any public input. They're being drafted behind closed doors, presented to the Legislature, presented to the public in very little time.").

[21] *See Legislators, Newsom negotiating behind closed doors over energy deal*, Cal Matters, https://calmatters.org/environment/2022/06/energy-deal-budget-talks/ (last visited August 9, 2023).

that was available to the Applicant at the time of the City's denial and thereafter was to petition the state superior court for a writ of mandate, which action is now time-barred by the applicable statute of limitations. Any other interpretation of AB 205 would create significant statewide legal and policy issues where local agency denials, and court decisions upholding those denials, could be dusted off and resurrected. This interpretation is also inconsistent with how other opt-in or *in lieu* laws and programs work. In addition, based on the Applicant's position here, it is questionable whether AB 205 was properly enacted when it proceeded through a budget trailer bill process as urgency legislation and the bill itself usurps local discretionary authority.

A. Statutory Interpretation of AB 205 Is That the Commission Cannot Review and Certify a Project that Has Undergone Local Review

The statutory language and legislative history of AB 205 demonstrate that, in enacting the bill, the Legislature intended to allow applicants seeking permits for eligible renewable energy projects to "opt-in" to the Commission certification process, thereby "opting out" of any other local permitting process, but did not intend to allow an applicant to pursue both avenues. This is further supported by the plain meaning and deliberate use of the words "in lieu of" in the statutory language and "opt-in" in the legislative description of the bill.

California courts review questions of statutory construction "independently"[22] where courts:

> look first to the words of a statute, "because they generally provide the most reliable indicator of legislative intent." (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 871, 39 Cal.Rptr.2d 824, 891 P.2d 804.) We give the words their usual and ordinary meaning (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299), while construing them in light of the statute as a whole and the statute's purpose (*Walker v. Superior Court* (1988) 47 Cal.3d 112, 124, 253 Cal.Rptr. 1, 763 P.2d 852). . . . "If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." (*People v. Snook* (1997) 16 Cal.4th 1210, 1215, 69 Cal.Rptr.2d 615, 947 P.2d 808.) "Only when the statute's language is ambiguous or susceptible of more than one reasonable interpretation, may the court turn to extrinsic aids to assist in interpretation." (*Murphy v. Kenneth Cole Productions, Inc*. (2007) 40 Cal.4th 1094, 1103, 56 Cal.Rptr.3d 880, 155 P.3d 284.)[23]

In this case, the language of AB 205 provides that an applicant seeking a permit for an eligible renewable energy facility "*may* file an application . . . for certification with the [Commission] to certify a site and related facility in accordance with this chapter," and that "the issuance of a certificate by the commission for a site and related facility pursuant to this chapter shall be *in*

[22] *Pineda v. Williams-Sonoma Stores, Inc*., 51 Cal. 4th 524, 529 (2011).
[23] *Id*. at 529–30.

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, for the use of the site and related facilities[.]"[24]

The language indicating that an applicant "may file" an application with the Commission is permissive rather than mandatory, and is specifically worded as such so that an applicant can choose between the new Commission certification process offered by AB 205 or an analogous local permitting process. Similarly, the language providing that the Commission's certification of an eligible facility is to be "*in lieu of* any permit, certificate, or similar document required by any state, local, or regional agency" indicates that an applicant may choose to file an application with the Commission rather than the local agency.[25] This is further bolstered by the way in which the Commission implemented AB 205 in adopting emergency regulations after AB's 205's enactment approving its application procedures as "Opt-in Regulations."

Other language in AB 205 supports this plain reading. Public Resources Code section 25545 defines the type of facilities that are eligible for Commission opt-in certification. Although section 25545(b)(2) includes "an energy storage system . . . that is capable of storing 200 megawatthours or more of energy," any project eligibility determination by the Commission under this subsection would only address the technical aspects of the Project and the threshold for battery energy storage as a "facility" eligible for certification. The fact that the Project is of a particular technology or MW output does not address the legal issue of jurisdiction over a project that was previously reviewed and denied. In fact, there is nothing addressing this issue in the opt-in application requirements.[26]

Public Resources Code Section 25545.1(a) states that upon receiving an application for an eligible facility, the Commission shall have exclusive power to "certify the site and related facility, whether the application proposes a *new* site and related facility or a change or addition to an *existing* facility." Section 25545.1(b) goes on to provide that "the *issuance* of a certificate by the commission for a site and related facility . . . shall be 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, for the use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law." Section 25545.1 then applies on a prospective basis, and cannot be applied retroactively to a project or to the City's prior review and denial. As the courts have held, "legislative enactments are generally presumed to operate prospectively and not retroactively

[24] Pub. Res. § 25545.1 (emphasis added).
[25] *See* Pub. Res. Code § 71022(a)(3) (indicating that an applicant for a permit may use a "consolidated permit application form that is authorized by subdivision (e) or (f) of Section 15399.56 of the Government Code *in lieu of* the separate application forms for each component environmental permit that would be provided by the consolidated permit agency and the participating permit agencies." (emphasis added)).
[26] Furthermore, the Applicant has not submitted the record regarding the City's review and denial of the Project as part of any analysis of other governmental approvals required by 20 C.C.R. § 1877.

unless the Legislature expresses a different intention."[27] In accordance with Civil Code section 3[28] and other court precedent, "in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application."[29] Section 25545.1 applies to new and existing sites. In this case, however, the Project is not a "new" or an "existing site," but a Project that was proposed and denied and is now barred from further review by the Commission. And, while the Commission's jurisdiction may apply on a going-forward basis to an application for a "new" project not previously proposed, the statute does not confer power on the Commission retroactively to review the same project that existed, here, prior to the enactment of AB 205. Had the Legislature intended for AB 205 to apply to denied projects, and projects proposed prior to its enactment, it would have expressly stated that in a clear manner. "[A] statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application,"[30] and there are several examples where the Legislature has done so.[31] There is no clear and unavoidable expression of retroactive intent, however, in either the plain language of AB 205 or in the legislative history.

Although Section 25545.1(a) states that the Commission has exclusive certification authority upon receipt of an application, it is a different issue altogether of whether the agency can even determine the matter at all and exercise its certification authority. For example, if a court or adjudicatory body has determined that a prior project denial was validly taken, then the agency could review the application for jurisdiction and the effect of the prior action but it could not override the court or adjudicatory body. So, in this case, while the Commission can review an application in order to determine its jurisdiction,[32] it is only with the issuance of certification of an eligible project that the Commission can preempt any local government "permit, certificate, or similar document" or supersede local authority (on a prospective basis). If the Legislature had intended for the Commission to have power over prior Projects or assert preemption retroactively, the Legislature is required by law to clearly and unavoidably express that intent. The Legislature did not do so.

Even assuming that the plain language of AB 205 supports Commission jurisdiction over the Project, a literal interpretation that sections 25545 and 25545.1 apply to previously denied projects or projects that pre-date AB 205 would result in absurd consequences that the Legislature did not intend. As the courts have held, if the statutory language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd

[27] See, *e.g.*, *Fox v. Alexis* (1985) 38 Cal.3d 621, 637; *White v. Western Title Co.*, 40 Cal.3d 870, 884; *Hoffman v. Board of Retirement* (1986) 42 Cal.3d 590; *Baker v. Sudo* (1987) 194 Cal.App.3d 936, 943; *Sagadin v. Ripper* (1985) 175 Cal.App.3d 1141, 1156; *Glavinich v. Commonwealth Land Title Ins. Co.* (1984)163 Cal.App.3d 263, 272.
[28] "No part of it is retroactive, unless expressly so declared."
[29] *Myers v. Philip Morris Companies, Inc.*(2002) 28 Cal. 4th 828, 844–45; *Evangelatos v. Superior Ct.*, (1988) 44 Cal. 3d 1188, 1208–09.
[30] *Id*.
[31] See, *e.g.*, Fin. Code § 4058.5; *In re Marriage of Buol* (1985) 39 Cal. 3d 751, 756.
[32] *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292.

consequences the Legislature did not intend.[33] In this case, Commission jurisdiction over the previously reviewed and denied Project would be wasteful by duplicating review and consuming the resources of the various state and local agencies to re-evaluate matters already decided. A second review would invite manipulation by the Applicant leading to overlapping agency evaluations, inconsistent determinations, and forum shopping. Findings by the prior agency with discretionary review would be "hollow" on such determinations as significant environmental impacts, community benefits, or economic benefit. And, final decisions that are now barred by the statute of limitations or even a final decision of a court (even the California Supreme Court) could be overridden and the doctrine of exhaustion of administrative remedies rendered meaningless. Finally, the entire concept of opt-in is absurd if a project can avail itself of local review and then during such review, or thereafter, turn around and choose to be subject to another approval process. There is absolutely no precedent or analogous federal or state law scheme of an "opt-in" permitting system or a similar system of preemption where an applicant can remove itself from the review of one agency and avail itself of another agency's jurisdiction for the same application and approval.

To the extent that AB 205's text is ambiguous, this interpretation of the "either-or" option is supported by the earlier version of AB 205 that was introduced in the Senate Committee on Budget and Fiscal Review on June 26, 2022, which read: "**Opt-in Permitting.** Allows specified clean energy projects to seek consolidated permitting at the Commission by June 30, 2029, if they adhere to specified labor standards[.]" The "opt-in" language clarifies that applicants were allowed to "opt-in" to the Commission process, thereby opting out of the traditional local process, but only if the applicant adhered to the aforementioned labor standards.

To be clear, Merriam Webster defines "in lieu of" as "in the place of : instead of." Merriam Webster further defines "opt-in" as "to choose to do or be involved in something."[34] Other plain meanings of "opt-in" include "to make a choice; choose." Nothing in the statutory language or legislative history indicates that an applicant would be allowed to file in both venues, or that an applicant should be able to go through the process twice. Thus, the Legislature was clear that selecting the particular approval process for AB 205 applications was disjunctive or, in other words, mutually exclusive. The Compass Battery Energy Storage Project does not get two bites at the apple.

B. The Applicant Did Not Challenge the City Council's Denial of the Project

The City conducted a thorough review of the comprehensive development plan and conditional use permit applications that would have allowed the Project as an approved use on the property. As discussed above, on March 25, 2022, the Applicant submitted a letter to the City Development Services Director asserting why the proposed Project could be processed under SJCMC section 9-2.337 for a conditional use permit, or in the alternative, why the Project qualified for an unlisted use determination under SJCMC section 9-3.203. On April 29, 2022, the City Development Services Director determined that the interim use of battery energy

[33] *Smith v. LoanMe, Inc.* (2021) 11 Cal5th 183, 190.
[34] Merriam-Webster.com, https://www.merriam-webster.com (last accessed August 9, 2023).

storage could not be accommodated under the Planned Community zoning district pursuant to Table 3-15 of SJCMC section 9-3.315. The Development Services Director further determined that the Project could not be accommodated by an unlisted use determination. The determination notified the applicant that SJCMC section 9-2.311 allowed the applicant to file an appeal of the director's decision to the Planning Commission within 15 days of the determination date. The applicant did not appeal the director's determination and failed to exhaust its administrative remedies.

In September 2022, the property owner submitted an application for initiation of a Rezone study to establish a CDP. The initiation of a CDP was submitted for the sole reason to permit the battery energy storage project. City development staff reviewed the applications and agendized the rezoning of the property for City Council consideration on November 1, 2022. The record contained the Project map, the applicant's letter of intent, the County-City Pre-Annexation Agreement, the battery storage project description, and the applicable City municipal code section that applied. After extensive deliberation, the City Council voted to deny the rezoning request. The Applicant had the ability to challenge the City Council's determination in state superior court through a petition for writ of mandate and did not do so.

In both the Development Services Director's determination regarding use compatibility on the subject property and the City Council's denial of initiating a Rezone study to establish a CDP, the Applicant did not appeal those decisions or otherwise exhaust its administrative remedies. Both decisions effectively denied the Project. The applicable statute of limitations now bars further challenges. The same Project that was before the City that is now time-barred by law has been re-submitted to the Commission in the same form, in approximately the same project description, and to be located on the same property and under the prior and current land use designations that were prohibited by the County and are prohibited by and incompatible with the City's zoning.

C. AB 205 Is in Conflict with the California Constitution as it Is a Violation of Separation of Powers for the Statute to be Applied to a Project Previously Denied by the City

If AB 205 is intended to apply to a project that has been previously reviewed and denied by the local agency with discretionary authority over the site and related facility, and such statute of limitations has passed on the local agency's denial, then AB 205, as with any law purporting to effectively modify a final adjudicatory action and applicable statute of limitations, or nullify or extend the administrative remedies period, is void and in violation of the constitutional separation of powers found in the California Constitution.

The California Constitution divides power equally among three branches of state government, which is comprised of the legislature, executive branch, and courts.[35] Although there is a certain overlap and interdependence among the three branches of government, each is

[35] Cal. Const., art. IV, § 1; art. V, § 1; and art. VI, § 1.

constitutionally vested with certain core or essential functions that the others cannot perform.[36] Protection of these functions is guarded by the separation of powers doctrine and is embodied in the California Constitution that states that one branch of state government may not exercise the powers belonging to another branch.[37] The purpose of separation of powers is to prevent both the concentration of power in a single branch of government and overreaching by one branch against another.[38] Administrative and local agencies, depending on how they are formed and what powers they are given, are comprised of the three branches of government and are bound by the same separation of powers limitations in exercising their powers.

A core function of the legislative branch is to make statutory law, which includes weighing competing interests and determining social policy. A core function of the judiciary is to resolve specific cases and controversies between parties. As part of that function, the courts interpret and apply existing laws, such as exhaustion of administrative remedies, decision finality and statutes of limitation.[39] Separation of powers principles compel the courts to carry out the legislative purpose of statutes and limit the courts' ability to rewrite statutes where drafting or constitutional problems appear. Those same principles also constrain legislative influence over judicial proceedings. When cases become final for separation of powers purposes, the Legislature may not change or interpret a statute or otherwise bind a court to an after-the-fact declaration of legislative intent. While the Legislature may amend a statute or otherwise change the law in a given area, it applies the changed law to pending and future cases. The amended statute or change in law may not re-adjudicate or otherwise disregard agency decisions or judgments that are already final.[40]

In *People v. Bunn*,[41] the California Supreme Court held that if a complaint is dismissed because the statute of limitations has run, and the Legislature later changes the law to allow such action after the time for appeal has expired, the Legislature's attempt to revive the action violates the separation of powers doctrine. Such law is deemed to be "retroactive legislation," which "prescribes what the law was at an earlier time, when the act whose effect is controlled by the legislation occurred . . ."[42] The *Bunn* court based its state constitutional rule on a prior decision by the U.S. Supreme Court that also addressed the issue of Congress retroactively changing a prior judicial decision. "When retroactive legislation requires its own application in a case already finally adjudicated, it does no more and no less than 'reverse a determination once made in a particular case.'"[43] Such legislation is a "clear violation of the separation-of-powers principle . . ." Once a judgment becomes final, "Congress may not declare that the law applicable to that very case was something other than what the courts said it was."[44] In that circumstance, use of the later

[36] *People v. Bunn* (2002) 27 Cal.4th 1, 14, 16 (*Bunn*).
[37] Cal. Const., art. III, § 3; *Bunn*, pp. 14, 16; *Mandel v. Myers* (1981) 29 Cal.3d 531, 539 (*Mandel*).
[38] *Bunn* at 16.
[39] *Id.* at 14–15.
[40] *Id.* at pp. 16–17 (citing to Mandel, p. 547).
[41] (2002) 27 Cal.4th 29, 115 (*King*).
[42] *Plaut*, 514 U.S. at 225.
[43] *Id.*
[44] *Id.* at 227.

law constitutes an impermissible retroactive attack on a judgment constitutionally subject to reopening only under the earlier law."[45]

In the present matter, the Project was reviewed and effectively denied by the City, and the denial for purposes of the statute of limitations cannot now be challenged or reconsidered. Under the relevant statute of limitations contained in Code of Civil Procedure Section 1094.6(b), the Applicant had 90 days to file a writ of mandate in California superior court. The Applicant did not pursue its only remedy at law, and as such, the City's decision is final. Should the Commission then seek to apply jurisdiction over the Project, it would, in effect, be interpreting and applying AB 205 in an unconstitutional manner because it is nullifying the final decision of the City and nullifying and/or extending the applicable statute of limitations that applies to theCity's determination on the Project. The Applicant then has an end-run around the time-bar prescribed by Code of Civil Procedure Section 1094.6. Furthermore, the Applicant filed its application for the same, unchanged Project and for an identical certification (*i.e.*, permit) *albeit* in a different venue, and as the courts have held, there are no new material facts or circumstances that would rescue the prior Project.[46] Therefore, Commission AB 205 jurisdiction would constitute retroactive legislation that would reverse the County's Project determination. The Commission then is disregarding the final decision and statute of limitations and allowing the matter to be re-adjudicated.[47]

Even more troubling is the scenario in which the Applicant would have timely filed a petition for writ of mandate within the 90-day statute of limitations and litigated the City's denial in the courts, and the courts upheld the City's decision. Under that scenario, the theory that Commission jurisdiction under Public Resources Code sections 25545 and 25545.1 attaches at the time the agency receives the application would effectively render a court's final decision null and void, or in effect extends the statute of limitations to correspond to the Commission's review and decision process. In other words, a court's final adjudication on the Project would be meaningless because the Commission could thereby resurrect the Applicant's claims in direct opposition to a court order. This result is the inevitable, logical extension of applying Commission AB 205 jurisdiction to the Project. In its most basic sense, any application of AB 205 that permits the

[45] *Id.* at 26.

[46] As has been previously demonstrated by the City, nothing has changed about the Project and the same Project the County reviewed has been re-submitted and re-packaged to the Commission, to which the courts have held that "When the original judgments against appellants in this action were entered, *there were no new facts or alternate statutes of limitations available to rescue their claims*. Instead, to paraphrase *Plaut*, this case involves judgments that the Legislature subjected to a reopening device that did not exist when those judgments were pronounced. Once final, 'a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was.' When taken as a whole, this passage defines finality for separation of powers purposes as the point at which the last court within a judicial system rules on a case. Once that occurs, a legislative body may not revive that very judgment by amending the statute of limitations." *Perez v. Roe* (2006) 146 Cal. App. 4th 171 (emphasis added).

[47] "Only those judgments that represent the last word from the entire judicial system are final under Plaut. Because the judicial branch consists of a hierarchy of courts—from district courts and appellate courts to the Supreme Court itself—a judgment has no conclusive effect for separation of powers purposes until the time for appeal has passed, or an appeal has been pursued and the review process is completed." *Id.* at 179.

retroactive reconsideration of a previously denied project is a violation of constitutional separation of powers.

Commission jurisdiction over the Project would also be in conflict with the doctrine of exhaustion of administrative remedies by creating, in effect, an appeal of the City's review to the Commission with the Commission exercising its own quasi-adjudicatory authority of the application for certification.[48] This also violates separation of powers. Prior to resorting to the courts, the Applicant was required to exhaust all administrative remedies with the City.[49] Under the doctrine, an administrative remedy is exhausted only upon "termination of all available, nonduplicative administrative review procedures."[50] The primary reason for the requirement to exhaust all remedies are concerns for "favoring administrative autonomy" and judicial efficiency "i.e., overworked courts should decline to intervene in an administrative dispute unless absolutely necessary."[51] In this case, the Applicant has exhausted its remedies with the City, and subsequently with the courts, and any review by the Commission would result in administrative compulsion and regulatory inefficiency by nullifying the finality of the City's decision and extending additional administrative remedies through the Commission. Moreover, it requires the City, per the requirement under AB 205, to, again, review and submit comments on the Project, forces the public to do so, and re-litigates consideration of the comprehensive development plan and use compatibility matters.

D. The Commission Has Never Clarified Its Jurisdiction Over Previously Denied Projects

In reviewing the Commission's implementation of AB 205, it has not clarified its jurisdiction over previously denied projects in Commission voting meetings, its AB 205 implementation webinar, or in any written decisions by agency counsel. Considering the importance of this issue to local agencies with discretionary authority over qualifying renewable energy projects, the Commission as a regulatory agency that acted on the Project application has a duty to do so in light of continued challenges to this jurisdiction.

---

[48] *Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315, 320 ("The exercise of discretion to grant or deny a license, permit or other type of application is a quasi-judicial function."); 2 Cal.Jur.3d, Administrative Law (3d ed. 2011) Administrative Adjudication, § 367 (administrative agency's adjudicatory powers are "quasi-judicial").)

[49] *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292; see *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1148.

[50] *California Correctional Peace Officers Assn. v. State Personnel Bd.*, p. 1151; see also *Jonathan Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917, 933 (exhaustion requires agency decision of "entire controversy"); *People v. Beaumont Investment, Ltd.* (2003) 111 Cal.App.4th 102, 124 (administrative process must "run its course"]; *Bleeck v. State Board of Optometry* (1971) 18 Cal.App.3d 415, 432 (exhaustion requires "a full presentation to the administrative agency upon all issues of the case and at all prescribed stages of the administrative proceedings").

[51] *Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 391; see also *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 501.

IV. RELIEF SOUGHT

The City requests that the Commission dismiss the Application on the grounds that it lacks jurisdiction to approve the Project under AB 205 in addition to the other reasons provided herein. In the alternative, the City requests that proceeding 24-OPT-02 be stayed until the state court resolves the pending litigation on this issue regarding the Fountain Wind Project proceeding.

Sincerely,

Ryan M. F. Baron
of BEST BEST & KRIEGER LLP

RMB:pa

cc: Ben Siegel, City Manager, City of San Juan Capistrano
Paul Garcia, Senior Planner, City of San Juan Capistrano
Jared Babula, Attorney, California Energy Commission

Attachment A

Attachment A

COMPASS ENERGY STORAGE PROJECT
Comprehensive Project Description

Prepared for:

Compass Energy Storage LLC c/o Broad Reach Power LLC

Prepared by:

DUDEK
27372 Calle Arroyo
San Juan Capistrano, California 92675

DECEMBER 2021

Printed on 30% post-consumer recycled material.

Table of Contents

SECTION PAGE NO.

ACRONYMS AND ABBREVIATIONS III

1 PROJECT DESCRIPTION 1

1.1 Introduction 1

1.2 Project Location 1

1.3 Project Background 1

1.4 Environmental Setting 2

1.5 Project Description 4

1.6 Construction 8

1.7 Operations and Maintenance Activities 11

2 REFERENCES CITED 13

ATTACHMENT

A Representative Photos

FIGURES

1-1 Project Vicinity 15

1-2 Project Site 17

1-3 General Plan Land Use Map and Zoning 19

TABLE

1-1 Site Grading and Preparation Equipment 9

INTENTIONALLY LEFT BLANK

Acronyms and Abbreviations

Acronym	Definition
AC	alternating current
BESS	battery energy storage system
BMP	best management practice
CAISO	California Independent System Operator
CDFW	California Department of Fish and Wildlife
DC	direct current
kV	kilovolt
MV	medium-voltage
NFPA	National Fire Protection Association
SCADA	supervisory control and data acquisition
SDG&E	San Diego Gas & Electric Company
USFWS	U.S. Fish & Wildlife Service

INTENTIONALLY LEFT BLANK

1 Project Description

1.1 Introduction

This comprehensive project description has been prepared for the City of San Juan Capistrano (City), which is the lead agency, for the approximately 250-megawatt battery energy storage system (BESS). The project will be located on approximately 15.5 acres of an approximately 58-acre parcel identified as Assessor Parcel Number (APN) 637-082-71 in the City of San Juan Capistrano, California.

The proposed Compass Energy Storage Project (Project) will be composed of lithium-ion batteries, inverters, medium-voltage (MV) transformers, a switchyard, a collector substation, and other associated equipment to interconnect into the San Diego Gas and Electric (SDG&E) Trabuco to Capistrano 138 kilovolt (kV) transmission line (Point of Interconnection). The switchyard will be owned by SDG&E. The batteries will be installed in non-habitable enclosures. The enclosures will have battery storage racks, with relay and communications systems for remote, automated monitoring and managing of the batteries. The BESS will also include a battery management system to control the charging/discharging of the batteries, along with temperature monitoring and control of individual battery cell temperature with an integrated cooling system. Batteries operate with direct current (DC) electricity, which must be converted to alternating current (AC) for compatibility with the existing electric grid. Power inverters to convert between AC and DC, along with transformers to step up the voltage, will be included as part of the Project.

The Project will connect to the SDG&E electric transmission system. Electric energy will 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. Following construction, the proposed use will not create emissions to air, will not require sanitary facilities, will generate minimal vehicle trips, and will only require water for landscape irrigation and to supply on-site fire hydrants.

1.2 Project Location

The proposed Project consists of approximately 15.5 acres of an approximately 58-acre parcel in the City of San Juan Capistrano, California (see Figure 1-1, Project Vicinity). The Project site is located in the northern portion of the City, adjacent to Camino Capistrano with Interstate-5 located to the east (see Figure 1-2, Project Site).

The Project site is currently undeveloped and is adjacent to the Saddleback Church Rancho Capistrano to the north, mostly open space to the south, Oso Creek to the south and east, Union Pacific Railroad and Interstate-5 to the east, and open space and residences outside of the City limits to the west. The SDG&E Trabuco to Capistrano 138 kV transmission line is located approximately 250 feet to the east and runs alongside the Union Pacific Railroad tracks.

1.3 Project Background

California's electric grid is a complex system providing reliable power to California residents. California continues to shift electric generation increasingly to renewable sources of energy such as solar, wind, geothermal, hydroelectricity, and biomass. California has installed 22,250 megawatts (MW) of utility-scale renewable energy systems and is home to some of the largest solar, wind, and geothermal power plants in

the world.[1] Grid energy storage technologies provide for multiple applications, such as energy management, backup power, load leveling, frequency regulation, voltage support, and grid stabilization.

Importantly, not every type of storage is suitable for every type of application, motivating the need for a portfolio strategy for energy storage technology. As noted by the US Department of Energy, "energy storage can reduce the need for major new transmission grid construction upgrades as well as augment the performance of existing transmission and distribution assets." Furthermore, "energy storage would also play a significant role in emergency preparedness and increasing overall grid resilience."[2]

The California Public Utilities Commission (CPUC) regulates Investor Owned Utilities (IOUs) within the State, subject to many requirements, including the California Public Utilities Code (Code). The Code was updated in 2014 to align with Assembly Bill 2514, which sets energy storage procurement targets for IOUs totaling 1,325 MW to be completed by the end of 2020 and implemented by 2024.[3] In addition, the CPUC sets requirements for utilities to procure Resource Adequacy, a product that ensure grid reliability, with specific targets set in areas where electric load is high. Furthermore, Senate Bill 100 was executed in 2018 requiring 100% of electricity procured to supply the state of California be from zero carbon resources by 2045.

Operation of the California electric grid involves management, regulatory oversight and participation from numerous stakeholders. The grid is managed by the non-profit public benefit corporation California Independent System Operator (CAISO). While utilities still own transmission assets, CAISO controls the routing of electrons, maximizing transmission system efficiency and generation resources, and supervising maintenance of the lines. CAISO matches buyers and sellers of electricity, facilitating over 28,000 market transactions every day to ensure enough power is on hand to meet demand.[4]

SDG&E is the electric energy provider for San Diego and southern Orange counties. SDG&E is continuing to diversify its portfolio of electric generation assets by integrating more renewable energy technology, such as wind and solar. Power from these renewable generation sources often is produced at different times of day, which may not align with peak use.[5] Battery energy storage technology allows the energy generated by renewables to be stored and tapped when the need arises. The technology is advancing rapidly as a grid resource and will support system load balancing by CAISO even when there is no sunlight for solar energy generation or blowing wind for wind powered energy generation.

1.4 Environmental Setting

Existing Zoning

The Project site is designated as LU 9.6 PC Planned Community in the San Juan Capistrano General Plan (City of San Juan Capistrano 1999) and as PC - Planned Community District in the City Zoning Ordinance (see Figure 1-3). Per discussions with City staff to date, battery energy storage system use would be considered comparable to the commercial radio and television towers and stations, radar installations, microwave relay stations, and

1 California Energy Commission. "Toward A Clean Energy Future, 2018 Integrated Energy Policy Report Update, Volume I." August 2018.
2 US Department of Energy. "Grid Energy Storage." December 2012.
3 AB2514 was approved September 29, 2010 entered into California Public Utilities Code Chapter 7.7, Sections 2835-2839. CPUC decision D14-10-045 October 16, 2014.
4 http://www.caiso.com/about/Pages/OurBusiness/Default.aspx
5 California Independent System Operator. "Advancing and Maximizing the Value of Energy Storage Technology: A California Roadmap." December 2014.

cellular towers and installations use category, which are an allowed interim uses in the PC Zone District subject to a conditional use permit. (City Zoning Ordinance, Table 3-15.)

Biological Resources

Dudek reviewed publicly available databases including the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDB), California Native Plant Society (CNPS), US Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI), U.S. Geological Survey National Hydrography Dataset and San Juan Capistrano General Plan and General Plan EIR to identify potential areas where sensitive biological resources have been previously recorded. Prominent biological features include observations of coastal California gnatcatcher *(Polioptila californica californica*) and Oso Creek, which meanders along the eastern and southern property boundary.

The Vegetation Communities Figure within the San Juan Capistrano General Plan EIR identifies the Project site as having an "Agriculture" vegetation community adjacent to Oso Creek which is identified as having a riparian vegetation community. Areas east of the Project site are identified as having a grasslands vegetation community.

The CNDDB notes coastal California gnatcatcher ("CAGN") within 0.25-miles of the project site. The CAGN is a small, non-migratory songbird (passerine) that occurs along the Pacific coastal regions of southern California and northern Baja California, Mexico. The range of the gnatcatcher closely follows that of coastal scrub (USFWS 2010). The species is listed as "Threatened" under the federal Endangered Species Act and its critical habitat protected in 2007. Mapped critical habitat is located approximately 0.5-mile south of the Project site at the confluence of Oso Creek and Trabuco Creek (USFWS 2007). CDFW has designated the CAGN as a "Species of Special Concern" (CDFW 2008).

No USFWS-designated critical habitat is designated within the Project boundary or in the vicinity of the Project site. According to the USFWS Information for Planning and Consultation (IPaC) database (USFWS 2021a), 9 federally listed wildlife species are identified as having the potential to occur in the vicinity of the project site. In addition, 3 flowering plant species and 24 migratory bird species have the potential to occur in the vicinity of the project site. Further biological studies will be completed to meet City of San Juan Capistrano processing requirements.

Oso Creek is mapped by the USFWS NWI as "Riverine R4SBC."

Oso Creek is also mapped as a "California Stream" by CDFW (CDFW 2021b) and discussed in the San Juan Capistrano General Plan and General Plan EIR (San Juan Capistrano 1999). Compass Energy Storage LLC has prepared a jurisdictional delineation to inform the design and placement of improvements to avoid work within CDFW jurisdiction.

Cultural Resources

City of San Juan Capistrano General Plan has mapped locations of historic buildings and structure shown on FigureCR-1 "Locations of Historic Buildings and Structures" (San Juan Capistrano 2019). Due to the undeveloped nature of the Project site, there is potential for undiscovered cultural resources at the Project site. Given the importance of historical resources to the City, a Phase I cultural resources assessment has been completed for the Project. No archaeological resources were identified in the Phase I cultural resources assessment. Two management recommendations are included as part of the Cultural Resources Inventory Report to reduce potential impacts to unanticipated archaeological resources and human remains during Project construction.

Geology and Soils

Based on the Safety Element of the City's General Plan, hillsides to the northwest and southwest of the Project site are "known or highly suspected landslide", and within the "10-kilometer contour from Newport-Inglewood Fault." The Project would be subject to the City's Seismic Hazard Mitigation Ordinance requirements for development

(San Juan Capistrano 1999). Compliance with standard building code requirements generally minimizes potential geologic risk. Geological evaluations are in the process of being completed to evaluate erosion potential along Oso Creek adjacent to the Project.

Noise

The Project site is an undeveloped area adjacent to open space, railroad right-of-way, Camino Capistrano, and Interstate-5. Interstate 5 and the railroad run north-south approximately 450 feet to the east of the Project site. Consequently, construction noise sources affecting noise levels on the Project site and in the vicinity would mainly include vehicular traffic and trucking operations. Noise-sensitive land uses include residential dwellings; transient lodging; hospitals and other long-term care facilities; public or private educational facilities; and libraries, churches, and places of public assembly. The nearest residences are located approximately 0.15 mile east of the Project site and approximately 0.2 mile west of the Project site. The Saddleback Church facilities are located approximately 0.3 mile north of the Project site. In addition to these sensitive receptors, users of the Oso Rancho Capistrano Trail could be impacted by construction noise. As described in the following sections, the main components of the proposed BESS will be housed in enclosures. The proposed Project facilities are not anticipated to generate significant noise and the Project will be designed to meet the requirements of the General Plan Noise Element and of the San Juan Capistrano Municipal Code, Title 9 Chapter 3 Article 5 Section 9-3.531, which specify a maximum noise level of 45-65 decibels dependent on time of day (City of San Juan Capistrano 2021).

1.5 Project Description

The Project will include the development of an approximately 250 MW battery energy storage system (BESS) and associated infrastructure within a development area totaling approximately 15.5 acres on an approximately 58-acre parcel, APN 637-082-71. A BESS is a stationary equipment that receives electrical energy and then utilizes batteries to store that energy to supply electrical energy at a future time. Power released or captured by the proposed Project will be transferred to and from the SDG&E Trabuco to Capistrano 138kV transmission line via a loop-in generation transmission line that will interconnect to a SDG&E switchyard that will be constructed within the project site. The Project will consist of lithium-ion batteries, installed in racks and contained inside non-habitable enclosures; inverters; medium voltage (MV) transformers; a SDG&E switchyard; a project substation; and other associated equipment (see Attachment A for photos of recently constructed BESS facilities). The Project will include the following components, which are described in more detail following the bulleted list:

- Battery Energy Storage System: Lithium-ion cells form the core of the battery energy storage system. The cells are the basic functional electrochemical unit containing an assembly of electrodes, electrolyte, separators, container, and terminals. Cells are the source of electrical energy by direct conversion of chemical energy, and they would be installed on racks and enclosed in either pre-fabricated or site-built, non-habitable enclosure.
- Power Inverters and Transformers: The battery cells operate on direct current (DC), while the electric grid uses alternating current (AC). Inverters will be installed to convert AC to DC when the energy is transferred from the grid to the battery and from DC to AC when the energy is transferred from the battery to the grid. Transformers step up the electrical voltage between the battery cells and the grid. The inverters and transformers will be located on concrete pads adjacent to the battery enclosures.
- Project Substation: A project substation will be installed that will include open rack, air insulated switch gear and the main power transformer to step up from 34.5 kilovolts (kV) to 138 kV, as well as a pole to connect Project Substation to the SDG&E Switchyard.

- SDG&E Switchyard: A SDG&E switchyard will be installed adjacent to the project substation that will include open rack, air insulated switch gear and the main power transformer to deliver power to the nearby Trabuco to Capistrano 138kV transmission line.
- Telecommunication Facilities: Telecommunication equipment, including underground fiber optics or supervisory control and data acquisition (SCADA), will be installed to remotely manage and monitor communication between the BESS and the electrical grid.
- Perimeter Wall: A perimeter wall will be constructed that consists of a pre-fabricated decorative wall that will be utilize for both visual enhancement and fire protection. In addition to the perimeter wall, a subterranean wall will be constructed along the eastern boundary of the Project site adjacent to the Oso Creek. Oso Creek is displaying erosion and has already begun to cause issues in the surrounding area. In an effort to protect the Project site and surrounding area from continuing erosion, a subterranean wall will be built on the eastern perimeter. This wall is expected to prevent the Oso Creek from eroding into the Project Site. A retaining/subterranean wall that will be both below and above-grade will also be constructed along the project western perimeter to provide slope stabilization. The construction methods and further detail regarding these walls is provided below in Section 1.6.
- Water Detention Basins: To meet regulatory standards and reduce potential for stormwater to be discharged off site in exceedance of existing conditions, an underground detention basin will be constructed in the southern portion of the site. The below grade water detention basin will retain stormwater flows in an effort to naturally percolate stormwater thru soils on site.
- Landscaping: The Project will incorporate landscaping near the northern and southern perimeter wall as included on the preliminary landscaping plans.
- Site Access and Security: On-site access driveways, perimeter precast walls, and nighttime directional lighting will be provided for the Project.
- Loop-In Transmission Line A 138 kV loop-in transmission line will be constructed to transfer power between the SDG&E Trabuco to Capistrano 138kV transmission line and the SDG&E switchyard constructed on site.

The facilities will be remotely operated year-round and be available to receive or deliver energy 24 hours a day and 365 days a year. After commissioning and during the operational life of the Project, qualified technicians would routinely inspect the battery energy storage system and conduct necessary maintenance to ensure safe operational readiness. If an issue arises, the system can remotely shut down and de-energize.

Battery Energy Storage System Enclosures

The lithium-ion batteries will be housed in racks similar to common computer server racks. The racks are typically made of aluminum, but sometimes may be composed of steel. The lithium-ion technology is considered one of the safest, best understood, and most efficient methods of energy storage on the market. The proposed facility will use a lithium-ion technology that has a long lifespan and boasts superior safety and stability characteristics. The battery racks will be designed and installed in accordance with the local seismic design requirements.

The battery racks will be housed in non-habitable enclosures. The BESS will be designed and installed in conformance with the nationally recognized National Fire Protection Association (NFPA) 855 Standard for the Installation of Stationary Energy Storage Systems, along with all applicable state and City fire protection requirements. The BESS development area will be connected with an improved access road. This improved access road shall be a 20-foot-wide gravel road that connects from the project entrance to the nearest main road.

A Battery Management System (BMS) is used in conjunction with the energy storage system (ESS), which can monitor the battery voltage, current, temperature, managing energy absorption and release, thermal management, low voltage power supply, high voltage security monitoring, fault diagnosis and management, external communication with PCS and Emergency Management System (EMS), and ensure the stable operation of the energy storage system.

Included in the BESS are the fire suppression system (FSS) and the heating, ventilation, and air conditioning (HVAC) system. The FSS system is composed of smoke detectors, gas detectors and aerosols, which serve the primary purpose of preventing fire spread in time should any open flame or gas signal appear in the battery system. The HVAC system is essentially liquid cooling, with the main function of maintaining the temperature of the battery system within the allowable operating temperature range. An Auxiliary distribution box will also be included which provides auxiliary power for the whole control system and liquid cooling system.

Fire Protection System

Compass Energy Storage LLC will use battery storage systems that are NFPA 855 Code compliant and UL certified and that include built-in failsafe and cooling systems designed to prevent thermal runaway and the spread of fire. A fire protection system will be installed to automatically shut down any affected battery storage components and prevent the spread of the fire to the other battery storage modules. The installation will also be compliant with 2019 CFC 1206 regarding installation of outdoor systems (see Appendix A).

A fire wall (10 feet tall, see Appendix B) will be installed around the perimeter of the development area for fire protection purposes – both to prevent wildfire from impacting the site and to reduce the chance of an on-site fire from escaping beyond the property. The fire wall shall also serve as a decorative wall for the project site. In addition, fire hydrants will be installed in accordance with Orange County Fire Authority standards.

The Orange County Fire Authority (the authority having jurisdiction) will have review and approval rights for the facility fire protection and suppression plans. The review/approval by the authority having jurisdiction will cover all applicable design, construction, and testing requirements of the NFPA 855 Code.

Loop-In Transmission Line

A loop-in transmission line will be constructed that will transfer power to and from the proposed Project and the SDG&E Trabuco to Capistrano 138kV transmission line approximately 500 feet to the east of the Project site, running north-south adjacent to the railroad.

Outdoor Electrical Equipment

MV transformers and additional electrical equipment will be installed outside the BESS enclosure. The collector substation will be located within the Project site. Components will include a main power transformer, control house, and switchgear. Underground wires and cabling will run from the battery cable collection box to a concrete pad housing the inverter and transformer. From the MV transformer, cabling will be run to the collector substation. All outside electrical equipment will be housed in the appropriate National Electrical Manufacturers Association (NEMA) rated enclosures and screened from view, to the extent possible, on all sides.

Inverters

Compass Energy Storage LLC uses only industry-standard, nationally (and internationally) recognized equipment. These inverters are unattended, stand-alone units that operate in all conditions. They operate in both a charge mode and a discharge mode. There will be on-site disconnects which may be used in the case of an emergency or unscheduled maintenance.

Telecommunication Facilities

The Project will include telecommunication facilities for communication with the SDG&E/CAISO facilities and to support remote Project operations monitoring. To provide for communication with SDG&E facilities, a fiber-optic cable will be used to connect the Project site switchyard with the SDG&E point of interconnection. Utility interconnection regulations require the installation of a second, separate, redundant fiber-optic cable. The redundant fiber-optic cable will also be installed within the Project footprint. For remote monitoring and operations communication, the Project will use local exchange carrier services, connecting to existing telecommunication fiber-optic lines owned and managed by local telecommunication providers.

Subterranean Wall/Earth Retention System

An earth retention system will be installed along the eastern Project boundary near Oso Creek to protect the proposed Compass BESS and SDG&E substation from future erosion. The current creek bed is approximately 40 feet below the proposed site development and existing grade. Therefore, the earth retention system will be designed to accommodate approximately 40 feet of reveal height (retain approximately 40 feet of soil behind the wall) assuming that the potential future erosion at the retention wall will progressively reach the depth of the current creek bed. Conceptually, the design consists of a cast in place concrete tangent pile wall with a tied back cast-in-place concrete pile cap.

Conceptual design analyses indicate the tangent piles are anticipated to be approximately 4 to 6 feet diameter fully reinforced cast-in-place concrete drilled pier elements. The piles are expected to extend to a depth up to approximately 80 to 90 feet below the ground surface.

To provide an anchorage point for tie back elements, a continuously reinforced cast-in-place concrete cap will be installed on top of the pile elements. The concrete cap will be structurally tied to the pile elements with reinforcement and will provide a pass-through sleeve for the tie back anchors to extend behind the wall into the soil. Conceptually, the pile cap will be nominally 8 to 10 wide, 6 to 8 feet deep and run continuously along the wall alignment.

Conceptual analyses indicate that the tie backs are needed to provide approximately 10 to 20 kips per foot of wall (measured along the alignment) horizontally for the static long-term loading conditions and approximately 20 to 30 kips per foot of wall horizontally for the seismic loading condition. In order to limit the total anchor tie back load, anchors are anticipated to be spaced between 3 and 6 feet on center along the wall alignment. Typically, tie back anchors are installed at a downward projecting angle, which is usually between 10 and 30 degrees from horizontal. The anchors will need to be at least 20 feet in length in order to ensure that they extend beyond active stress zone; however, the anchors will likely be at least 40 to 60 ft in total length in order to develop the necessary capacity. Tie backs could consist of helical anchors or grouted bars/tendon strands as required. In the event tie backs are not feasible due to congestion or insufficient capacity, alternative lateral support systems will be considered such as a dead man or a sister pile wall offset from the proposed earth retention system. The subterranean wall will be completely underground and not visible, once installed.

Landscaping

The Project shall incorporate landscaping near the northern and southern borders of the site. A preliminary landscape plan has been prepared to show the proposed Project site landscaping.

Site Access and Security

Interstate-5 is the largest highway in the area and provides regional access to the Project site from the north and south. Access to the Project site will be provided via an existing access road off of Camino Capistrano approximately 0.6 miles northeast of the Project site. Existing agricultural roads will be improved from the access road off Camino Capistrano to the Project site. Road improvements shall consist of converting dirt roads into gravel roads and widening the roads to 20-feet.

Precast walls will be installed around the perimeter of the Project site for safety and security purposes. Access will only be available to authorized personnel. A Knox box will be provided at all access gates to allow for emergency access.

Permanent motion-sensitive, directional security lights will be installed to provide adequate illumination around the substation area and points of ingress/egress. All lighting will be shielded and directed downward to minimize the potential for glare or spillover onto adjacent properties. Security cameras will be placed on site and monitored 7 days a week and 24 hours per day.

1.6 Construction

Schedule and Workforce

The physical construction/site activities of the proposed Project which includes all equipment listed in Section 1.5 is expected to last up to 15 months. Construction activities for the proposed Project generally fall into three main categories: (1) site preparation; (2) system installation; and (3) testing, commissioning, and cleanup.

The on-site construction workforce is expected to peak at approximately 80 individuals; however, the average daily workforce on site during construction is expected to be 50 individuals, comprising construction, supervisory, support, and construction management personnel. It is anticipated that the construction workforce will commute to the site each day from local communities and report to the designated construction staging yards at the beginning of each workday. Deliveries of equipment and materials will generate an estimated five to seven round-trips per day during peak construction periods.

The proposed Project will be constructed by several specialized construction contractors. Construction will primarily occur during daylight hours, Monday through Saturday between 7:00 a.m. and 6:00 p.m., as required to meet the construction schedule. Any construction work performed outside the normal work schedule will be coordinated with the appropriate agencies and will conform to City regulations.

Site Grading and Earthwork

Construction activities will include excavation and grading of the Project site. Site preparation and construction will occur in accordance with all federal, state, and City zoning codes and requirements. Noise-generating construction activities will be limited to Monday through Saturday between 7:00 a.m. and 6:00 p.m. All stationary equipment

and machines with the potential to generate a significant increase in noise or vibration levels will be located away from noise receptors to the extent feasible. The contractor will conduct construction activities in such a manner that the maximum noise levels at the affected buildings will not exceed established noise levels.

The Project site grading is anticipated to include 262,000 cubic yards (cy) of cut and 18,000 cy of fill. An additional 80,000 cy of excavation is anticipated for perimeter wall construction.

All applicable federal, state, and local requirements and best management practices (BMPs) will be incorporated into the construction activities for the Project site. Beginning work on the Project site will involve preparing the land for installation of the BESS-related infrastructure, access driveways, and temporary construction staging areas. The construction contractor will be required to incorporate BMPs consistent with the City zoning ordinance and with guidelines provided in the California Stormwater Quality Association's Construction BMP Handbook (CASQA 2019), as well as a soil erosion and sedimentation control plan to reduce potential impacts related to construction of the proposed Project. Prior to initial construction mobilization, pre-construction surveys will be performed, and sediment and erosion controls will be installed in accordance with state and City guidelines. Stabilized construction entrances and exits will be installed at driveways to reduce tracking of sediment onto adjacent public roadways.

Site preparation will be consistent with City BMPs and the South Coast Air Quality Management District Rule 403: Fugitive Dust (SCAQMD 2005). Site preparation will involve the removal and proper disposal of existing debris that would unduly interfere with Project construction or the health and safety of on-site personnel. Dust-minimizing techniques will be employed, such as placement of wind control fencing, application of water, and application of dust suppressants. Conventional grading will be performed throughout the Project site but minimized to the maximum extent possible to reduce unnecessary soil movement that may result in dust. Earthworks scrapers, excavators, dozers, water trucks, paddlewheels, haul vehicles, and graders may all be used to perform grading. Land-leveling equipment, such as a smooth steel drum roller, will be used to even the ground surface and compact the upper layer of soil to a value recommended by a geotechnical engineer for structural support. Soil movement from grading will be balanced on the site. However, Class II road base will be imported to create necessary compaction under the equipment, as determined by geotechnical testing and Project specifications.

Trenching will be required for placement of underground electrical and communication lines, and may include the use of trenchers, backhoes, excavators, haul vehicles, compaction equipment, and water trucks. After preparation of the site, concrete pads, equipment enclosures, and equipment vaults will be installed per geotechnical engineer recommendations. The SDG&E switchyard and project substation area will have a grounding grid installed and will be covered with aggregate surfacing for safe operation.

During this work, multiple crews will be working on the site with various equipment and vehicles, including vehicles for transporting the batteries and other equipment. As the BESS enclosures are constructed, the electrical collection and communication systems will be installed. The wiring will connect to the appropriate electrical and communication terminations and the circuits will be checked and commissioned prior to operation. It is estimated that site grading and preparation will require the equipment listed in Table 1-1.

Table 1-1. Site Grading and Preparation Equipment

Equipment Type	Preliminary Quantity
Bulldozer (e.g., CAT D7)	2
Grader (e.g., CAT D7)	2
Scraper (15–30 cubic yard)	4

Table 1-1. Site Grading and Preparation Equipment

Equipment Type	Preliminary Quantity
Water truck (3,000–5,000 gallon)	2
Self-propelled compactor	2
Dump truck	2
Tractor/loader/backhoe (e.g., Case 590)	2
Bobcat	2

Construction Water Use

During construction of the proposed Project, water will be required for common construction-related purposes, including but not limited to dust suppression, soil compaction, and grading. Dust-control water may be used during ingress and egress of on-site construction vehicle equipment traffic and during the construction of the energy storage equipment. A sanitary water supply will not be required during construction because restroom facilities will be provided by portable units serviced by licensed providers.

The water used is anticipated to be supplied by purchase from the local water purveyor.

Solid and Nonhazardous Waste

The Project will produce a small amount of solid waste from construction activities. This may include paper, wood, glass, plastics from packing material, waste lumber, insulation, scrap metal and concrete, empty nonhazardous containers, and vegetation waste. These wastes will be segregated, where practical, for recycling. Non-recyclable wastes will be placed in covered dumpsters and removed on a regular basis by a certified waste-handling contractor for disposal at a Class III (nonhazardous waste) landfill.

Hazardous Materials

The hazardous materials used for construction will be typical of most construction Projects of this type. Materials will include small quantities of gasoline, diesel fuel, oils, lubricants, solvents, detergents, degreasers, paints, ethylene glycol, dust palliatives, herbicides, and welding materials/supplies. A hazardous materials business plan will be provided to the City and/or Orange County Fire Authority as required. The hazardous materials business plan will include a complete list of all materials used on site and information regarding how the materials will be transported and in what form they will be used. This information will be recorded to maintain safety and prevent possible environmental contamination or worker exposure. During Project construction, material safety data sheets for all applicable materials present at the site will be made readily available to on-site personnel.

Hazardous Waste

Small quantities of hazardous wastes will most likely be generated over the course of construction. These wastes may include waste paint, spent construction solvents, waste cleaners, waste oil, oily rags, waste batteries, and spent welding materials. Workers will be trained to properly identify and handle all hazardous materials. Hazardous waste will be either recycled or disposed of at a permitted and licensed treatment and/or disposal facility. All hazardous waste shipped off site for recycling or disposal will be transported by a licensed and permitted hazardous waste hauler.

1.7 Operations and Maintenance Activities

The BESS and all associated equipment will be remotely monitored and controlled. Qualified technicians would visit the site approximately 1-2 times per month to conduct routine inspections and maintenance as well as semi-annual and annual services. Periodically, batteries and various components may be replaced or renewed to ensure optimal performance.

Stormwater Management

Stormwater will be treated in accordance with City requirements. A Preliminary Water Quality Management Plan (WQMP) will be prepared and submitted to the City. Outdoor equipment will be sealed or enclosed and will not affect stormwater quality.

Solid and Nonhazardous Waste

The Project will produce a small amount of waste associated with maintenance activities, which could include broken and rusted metal, defective or malfunctioning electrical materials, empty containers, and other miscellaneous solid waste, including typical refuse generated by workers. Most of these materials will be collected and delivered back to the manufacturer or to recyclers. Non-recyclable waste will be placed in covered dumpsters and removed on a regular basis by a certified waste-handling contractor for disposal at a Class III landfill.

Hazardous Materials

Limited amounts of hazardous materials will be stored or used on the site during operations, including diesel fuel, gasoline, and motor oil for vehicles; mineral oil to be sealed within the transformers; and lead-acid-based batteries for emergency backup. Appropriate spill containment and cleanup kits will be maintained during operation of the Project. A spill prevention control and countermeasures plan will be developed for site operations.

Hazardous Waste

Fuels and lubricants used in operations will be subject to the spill prevention control and countermeasures plan to be prepared for the proposed Project. Solid waste, if generated during operations, will be subject to the material disposal and solid waste management plan to be prepared for the proposed Project.

Decommissioning

Decommissioning of the Project at the end of its useful life would include the removal of BESS equipment from the foundations, disconnection of wiring, and removal of site infrastructure. Batteries and other equipment and materials will be recycled to the extent feasible to minimize disposal in landfills. The subterranean wall is anticipated to be left in place to protect the subject property from the potential for future erosion.

INTENTIONALLY LEFT BLANK

2 References Cited

California Stormwater Quality Association (CASQA). 2019. *Construction BMP Handbook*. December 2019. https://www.casqa.org/resources/bmp-handbooks.

California Department of Fish and Wildlife (CDFW). 2008. *California Bird Species of Special Concern*. Accessed February 24, 2021. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84247&inline

CDFW. 2021a. California Natural Diversity Database quadrant search: San Juan Capistrano. Accessed February 24, 2021. https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data.

CDFW. 2021b. *BIOS GIS Database*. Accessed February 24, 2021. https://apps.wildlife.ca.gov/bios/?tool=cnddbQuick

Department of Conservation (DOC). Division of Mines and Geology. 2001. *Seismic Hazard Report for the San Juan Capistrano 705-Minute Quadrangle, Orange County, California*. Accessed February 24, 2021.

Environmental Protection Agency (EPA). 1974. Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety. Washington, D.C. March 1974.

Natural Communities Coalition (NCC). 2020. *About NCC*. Accessed February 24, 2021. https://occonservation.org/about-ncc/

Orange County Transportation Authority (OCTA). 2016. *OCTA M2 Natural Community Conservation Plan/Habitat Conservation Plan*. Accessed February 24, 2021: https://www.fws.gov/carlsbad/HCPs/documents/OCTA_M2_NCCP_HCP_FPlan_1016.pdf

San Juan Capistrano, City of. 1999. City of San Juan Capistrano General Plan Community Design Element. December. Accessed February 24, 2021: https://sanjuancapistrano.org/Portals/0/Documents/Development%20Services/Planning%20and%20Zoning/General%20Plan/General%20Plan%209-Community%20Design%20Element-REV.pdf

San Juan Capistrano, City of. 2019. City of San Juan Capistrano General Plan Cultural Resources Element. December. Accessed February 24, 2021: https://sanjuancapistrano.org/Portals/0/Documents/Development%20Services/General%20Plan/General%20Plan%208-Cultural%20Resources%20Element-2-7-20%20Update.pdf

San Juan Capistrano, City of. 2021. City of San Juan Capistrano Municipal Code. February 24, 2021. http://www.qcode.us/codes/sanjuancapistrano/

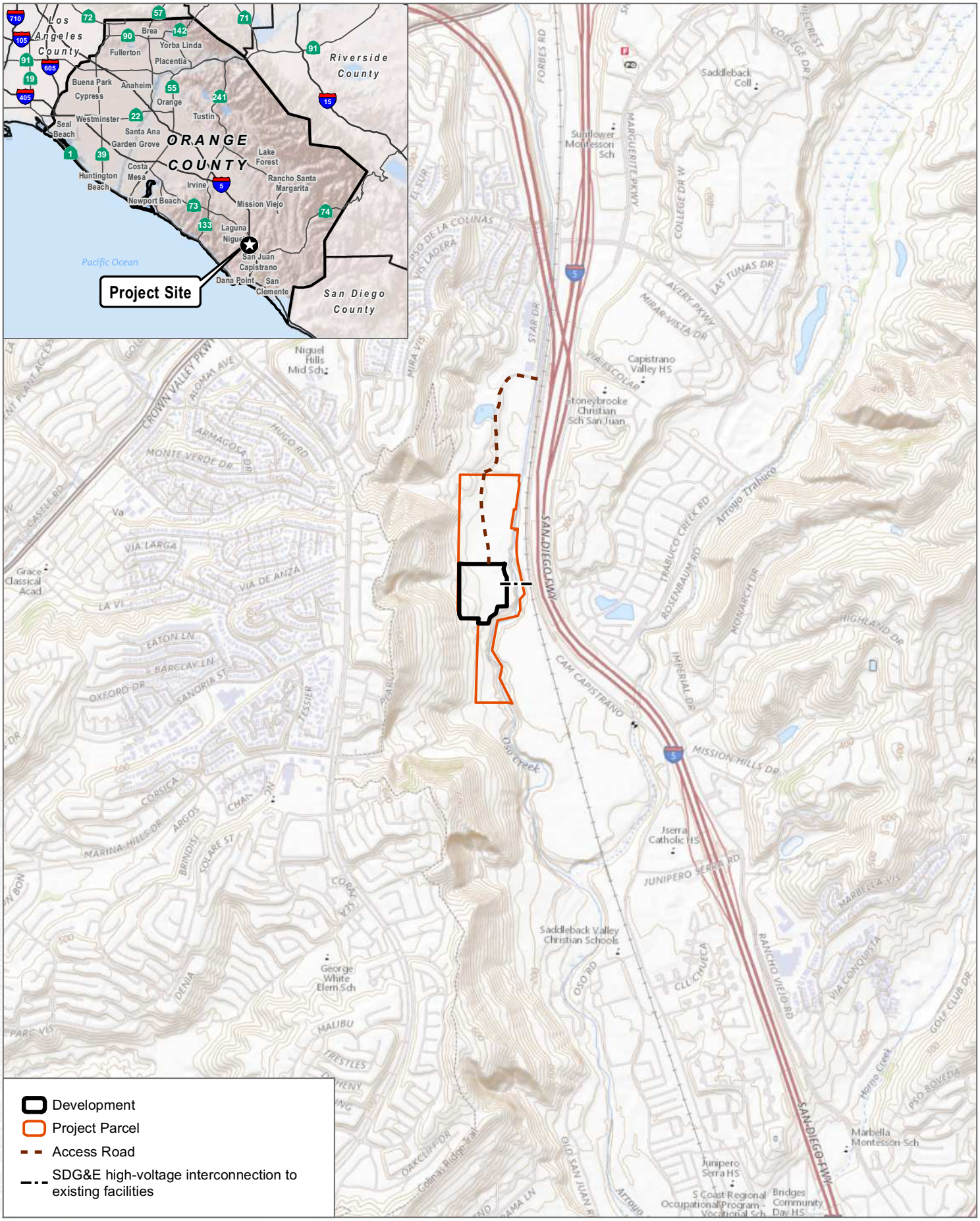
South Coast Air Quality Management District (SCAQMD). 2005. Rule 403 Fugitive Dust. Adopted May 7, 1976. Last amended June 3, 2005. https://www.aqmd.gov/docs/default-source/rule-book/rule-iv/rule-403.pdf?sfvrsn=4

U.S. Fish & Wildlife Service (USFWS). 2007. *Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Coastal California Gnatcatcher* (Polioptila californica californica)*; Final Rule*. December 19. Accessed February 24, 2021: https://www.fws.gov/carlsbad/SpeciesStatusList/5YR/20100929_5YR_CAGN.pdf

USFWS. 2010. *Coastal California Gnatcatcher* (Polioptila californica californica) *5-year Review: Summary and Evaluation.* September 29. Accessed February 24, 2021: https://www.fws.gov/carlsbad/SpeciesStatusList/5YR/20100929_5YR_CAGN.pdf

USFWS. 2021a. IPaC: Information for Planning and Consultation. Online project planning tool. Accessed February 24, 2021. https://ecos.fws.gov/ipac/.

USFWS. 2021b. *National Wetlands Inventory. Data Mapper*. Accessed February 24, 2021. https://www.fws.gov/wetlands/data/Mapper.html.



SOURCE: USGS Topo Series San Juan Capistrano Quadrangle

DUDEK

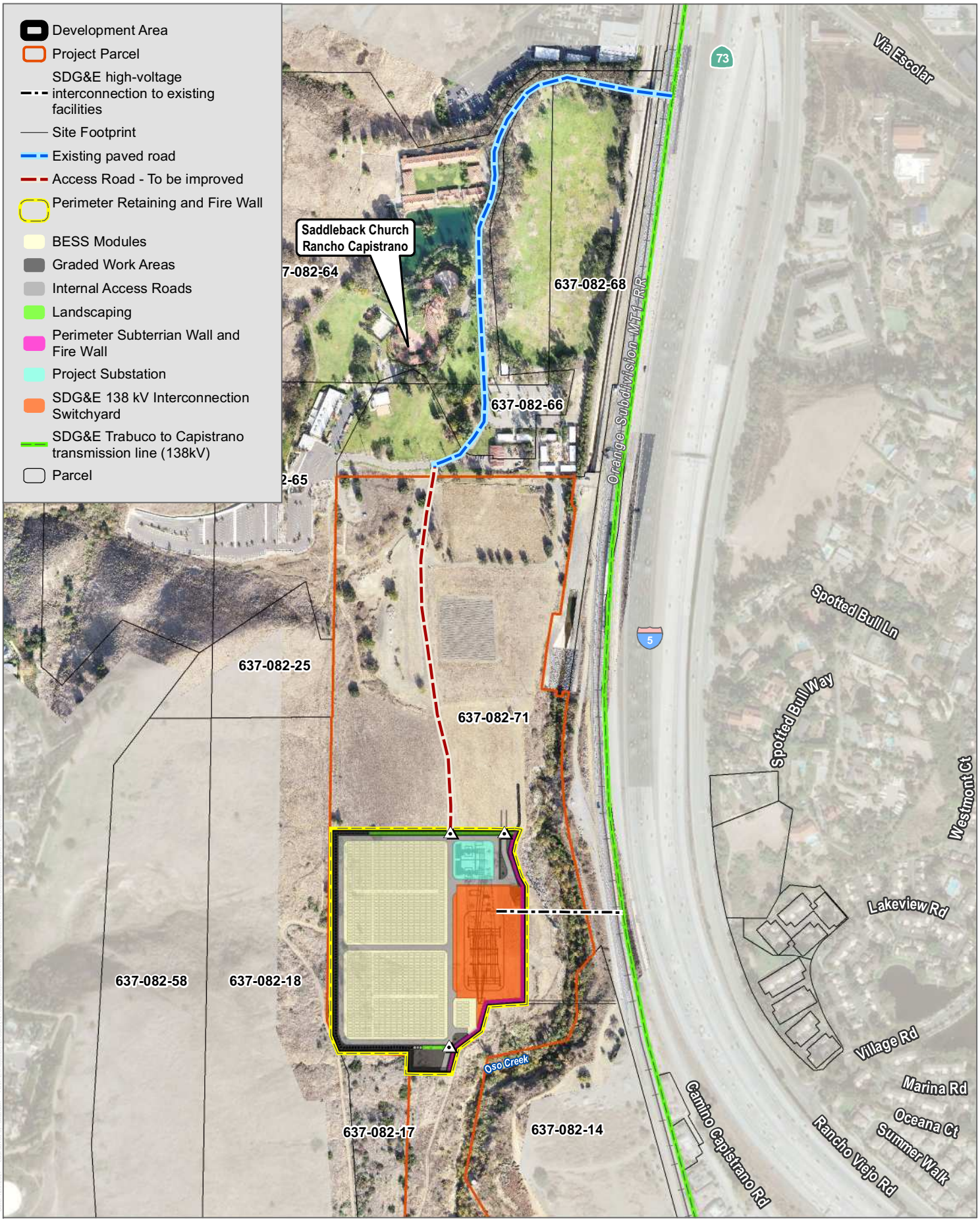
0 1,000 2,000 Feet

FIGURE 1-1

Project Vicinity

Compass Energy Storage Project

INTENTIONALLY LEFT BLANK



SOURCE: Esri World Imagery 2019; Open Street Map 2019

DUDEK

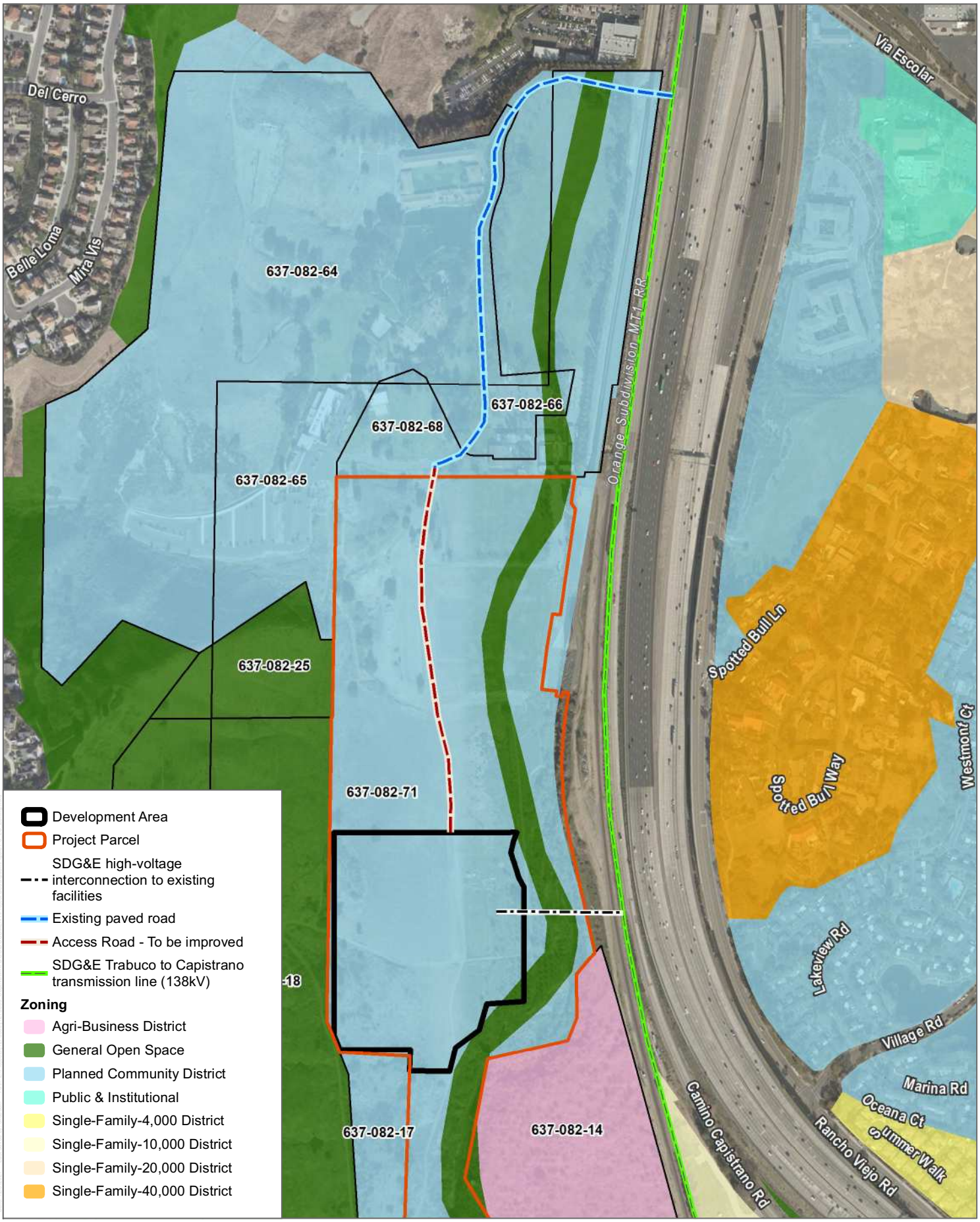
0 250 500 Feet

FIGURE 1-2

Project Site

Compass Energy Storage Project

INTENTIONALLY LEFT BLANK



SOURCE: Bing Maps 2020; City of San Juan Capistrano 2015

DUDEK

0 250 500 Feet

FIGURE 1-3

General Plan Land Use Map and Zoning

Compass Energy Storage Project

INTENTIONALLY LEFT BLANK

Attachment A

Representative Photos



Photo 1 – BESS containers being placed on concrete pad sites during construction.



Photo 2 – Overview of the BESS facilities located within an enclosed chainlink fence.



Photo 3 – BESS facilities and SCADA located within a fenced perimeter.



Photo 4 – BESS modules placed on concrete foundations during construction.



Photo 5 – Broad Reach Power LLC's fully operational North Fork Battery Project in Williamson County, Texas.

Attachment B

Attachment B

Brownstein

Brownstein Hyatt Farber Schreck, LLP
619.702.6100 main
225 Broadway, Suite 1670
San Diego, California 92101-5000

March 25, 2022

Ryan R. Waterman
Attorney at Law
619.702.7569 direct

VIA ELECTRONIC MAIL
(JRojas@sanjuancapistrano.org)

Mr. Joel Rojas
Director of Development Services
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

RE: Compass Battery Energy Storage Project – Unlisted Use Determination

Dear Mr. Rojas:

This letter supports the Compass Battery Energy Storage Project's conditional use permit (CUP) application. In particular, it focuses on why the Project qualifies for an unlisted use determination under San Juan Capistrano Municipal Code Section 9-3.203.

The Compass Battery Energy Storage Project is proposed by Broad Reach Power, a leading independent power producer focused on advanced energy storage and renewable platform operations in the United States. Broad Reach Power utilizes advanced energy storage technology, power market analytics, and innovative customer solutions to improve the reliability of the grid while allowing for more renewable power generation to operate thus helping to reduce the carbon intensity of the overall system. Broad Reach Power has more than 1.3 gigawatts (GW) of storage assets in operation or under construction and controls a 21 GW portfolio of utility-scale wind, solar and energy storage power projects across the country.

I. PROJECT BACKGROUND

The proposed Project is a 250 megawatt (MW) battery energy storage system in the City of San Juan Capistrano. The Project is intended to receive, store, and discharge electricity to the grid to facilitate California's transition to meeting its 100% carbon neutral electricity use mandate by 2045 pursuant to Senate Bill 100. For example, during daytime periods when solar energy generation exceeds demand, the Project can store that energy until it is needed when the sun goes down. In addition, its capacity to instantaneously discharge electricity to the grid as demand increases will assist the State in moving away from reliance on gas-fired peaker plants that emit greenhouse gases (GHG) and other types of air pollutants. The Project will have sufficient capacity to power approximately 200,000 homes. Finally,

it is proposed to interconnect with the grid at a particular place in the City in order to address a specific resource adequacy need in that portion of the regional transmission network, as required by the California Public Utilities Commission (CPUC).

The proposed Project will be located on the undeveloped southern end of an approximately 160 acre property (the Property) owned and operated by the Saddleback Rancho Capistrano Church (Saddleback Church). To facilitate the Project's interconnection to San Diego Gas & Electric's (SDG&E) 138 kV transmission line that runs parallel to the Property, a SDG&E substation will be constructed adjacent to the Project site. We are in the process of revising the project plans originally submitted with the CUP application in December 2021, which reduce the overall size of and significantly reduce the amount of grading associated with the Project. A preliminary revised site plan and visual simulations of the project are attached. (See Attachment A, Revised Project Site Plan, and Attachment B, Preliminary Visual Simulations of Proposed Project.)

Combined, the Project and the SDG&E substation will occupy an approximately 10.7 acre area towards the southern end of the Property, which will reduce the Project footprint by approximately five (5) acres from the December 2021 project application. The Revised Project Site Plan shows the former western edge of the proposed Project as a green line to graphically represent how the Project has pulled back from the hillside. (See Attachment A.)

The majority of the Property, including the Project site, has a General Plan land use designation of "Planned Community" and is zoned "Planned Community District" (PC District). Until a Comprehensive Development Plan (CDP) is adopted for the Property, the San Juan Capistrano Municipal Code specifies that certain interim uses are permitted in the PC District. (Municipal Code (MC), § 9-3.315(c)(1) and Table 3-15.) Conditionally permitted interim uses can be permitted with a CUP, while accessory uses are subject to accessory use permitting. (MC, § 9-3.315(c)(2).)

The Municipal Code grants the City's Director of Development Services the authority and responsibility to review and allow or deny uses not listed in the Code, referred herein as an "unlisted use" determination. As set forth in the Municipal Code, an unlisted use "shall be permitted as a principal, accessory or comparable [use] within a Base District if the Planning Director determines that such use falls within the purpose and intent of that Base District, is of a comparable nature to the principal, accessory or conditional uses set forth as permitted in the Base District, is not listed in another Base District, and will not be detrimental to property in the vicinity of such use."[1] (MC, § 9-3.203.)

[1] Municipal Code Section 9-3.203 uses the phrase "comparable mobilehome park" where the context of the ordinance suggests that the applicable phrase should be "comparable use." (emphasis added.) There are four other instances in the Municipal Code where the phrase, "comparable mobilehome park", also appears to have incorrectly replaced the phrase "comparable use." (See MC, §§ 9-3.307, 9-3.311, 9-3.519, and 9-3.549.) We assume for the purposes of our analysis that the phrase "comparable mobilehome park" in Section 9-3.203 is correctly read as "comparable use."

In initial discussions with the Development Services Department prior to submittal of the Project's CUP application and in the context of pre-application review, we understand that staff anticipated that an unlisted use determination under Municipal Code Section 9-3.203 could be made to allow the proposed Project with a CUP.

We submit this letter in further support of the Development Services Department's evaluation of Project now that the Project's CUP application has been submitted and is under consideration.

II. NO UNLISTED USE DETERMINATION IS NECESSARY FOR THE SDG&E SUBSTATION

As an initial matter, no unlisted use determination need be made for the SDG&E substation that will facilitate transmission of electricity to and from the Project because, while utility substations are not an explicitly defined use in the Municipal Code, the Code acknowledges that "quasi-public agencies such as utility providers" may propose projects within the City and provides a process for their review that is applicable in all zone districts. The Municipal Code states that to the extent those projects "are subject to the requirements of local agency review and approval, the City shall process all such proposals in accordance with the applicable provisions of [the] Code." (MC, § 9-2.337(a).) Accordingly, no unlisted use determination need be made for the SDG&E substation that will interconnect the Project to the grid.

Further, "utility substation[]" is a primary use type in the Public & Institutional land use designation in the General Plan. (San Juan Capistrano General Plan, Land Use Element, 5.0 at p. 28 ["The Public & Institutional use designation provides for schools, churches, fire stations, community centers, utility substations and office complexes. Other uses that are determined to be compatible with primary uses may also be allowed."] (emphasis added).)

Figure LU-1 of the General Plan Land Use Element identifies the Property as a Planned Community, and Table LU-3 further describes the Property's land mix as 80% Public & Institutional use and 20% Assisted Care Facility.[2] (San Juan Capistrano General Plan, Land Use Element, Table LU-3 [see the Crystal Cathedral Ministries Planned Community listing].) Accordingly, the SDG&E substation that will interconnect the Project to the grid is consistent with the General Plan's intended land use mix for the Property—80% Public & Institutional use, and 20% Assisted Care Facility.

[2] The Property is identified in the General Plan Land Use Element as the "Crystal Cathedral Ministries Planned Community." (See General Plan, Land Use Element, Figure LU-3.)

III. CONDUCTING AN UNLISTED USE DETERMINATION FOR THE COMPASS PROJECT

Neither the San Juan Capistrano General Plan nor the Municipal Code list "battery energy storage systems" as a use type. Accordingly, the Project constitutes an unlisted use in the Municipal Code for which an unlisted use determination must be made under Section 9-3.203.

As set forth in Section 9-3.203, an unlisted use—such as the battery energy storage system proposed for the Project—shall be permitted if the Director of Development Services determines that the use meets four criteria: (1) the use falls within the purpose and intent of that Base District, (2) is of a comparable nature to the principal, accessory or conditional uses set forth as permitted in the Base District, (3) is not listed in another Base District, and (4) will not be detrimental to property in the vicinity of such use.

We discuss how the Project meets these criteria in turn.

A. Within the Purpose and Intent of the Base District

Municipal Code Section 9-3.315, subsections (a)(1) – (5) set forth the purpose and intent of the PC District:

> (1) Encourage the use of modern land planning and design techniques to create developments integrating a mixture of different types of land uses;
>
> (2) Realize the economic, social, and aesthetic advantages of combining different types of land uses in a coordinated community design, such developments to be of sufficient size to provide related areas for various uses, which may include varying housing types; commercial retail and service activities industrial uses; recreation, school, and other public facilities and other appropriate land uses. The regulations for the Planned Community (PC) District are designed to permit the adoption of a Comprehensive Development Plan (CDP) providing for a diversity of uses, building relationships, and open spaces within planned building groups, while insuring compliance with the General Plan and this Code;
>
> (3) To insure, by means of land use regulations and specific conditions of approval, a more efficient use of open space, the separation of pedestrian and vehicular traffic, increased project amenities and compatibility with surrounding development;

(4) To achieve the coordinated planning and orderly development of different contiguous parcels of land by means of an approved Comprehensive Development Plan; and

(5) To provide open space, agricultural, and low density residential interim use of property until a Comprehensive Development Plan (CDP) is approved and implemented.

Saddleback Church currently occupies six percent (6%) of the Property with structures and associated infrastructure, while the remainder is used for playing fields, small scale agriculture, and open space. At this time, Saddleback Church wishes to continue its existing uses and is not ready to comprehensively plan for other uses for the remainder of the site and/or redevelopment or expansion of uses at its existing facilities through a CDP. Accordingly, the Project is proposed as an interim use.

Saddleback Church's existing uses plus the Project meet the purpose and intent elements for the PC District in the following ways.

First, the Project will maintain more than eighty-five percent (85%) of the site as open space and low intensity agricultural use, consistent with the purpose and intent of the PC District to allow open space and other low density interim uses of the Property until a CDP is approved and implemented. (Factor #5.)

Second, the Project will be an unmanned facility that will not interfere with existing church uses on the Property. The combination of church, battery energy storage, small scale agriculture, and open space uses provide economic and social benefits consistent with the purpose and intent of the base district. The battery storage facility in particular will provide new economic and social benefits to the Property, the City, and the region as it will expand the ability to store and utilize energy from renewable sources and enhance reliability of the electrical system. (Factors #1, 2, and 3.)

Third, the Project's proposed location on the southern portion of the Property will not interfere with future comprehensive planning efforts for the Property due to the unique orientation of the Property and how existing uses are arranged thereon. Oso Creek bounds the eastern side of the Property, and steep hillsides bound the western side. The sole vehicular access point for the Property is at the northern end from Camino Capistrano, with no access from the south. Existing development is focused in the northern portion of the Property, while the southern portion is undeveloped for a variety of reasons, including but not limited to steep slopes and lack of vehicular access. Accordingly, locating the Project on the southern portion of the Property enables Saddleback Church to put a portion of the Property to productive use without disrupting future comprehensive planning for the primary development zone of the Property in the northern portion. (Factors #4 and 5.) Locating the

Project in the southern portion of the Property will also preserve the majority of the southern portion of the Property in its current state as open space. (Factors #3 and 5.)

Fourth, once construction is complete, the Project will be unmanned and will not generate traffic. Accordingly, the Project will not pose a burden to the existing access to the Property or result in pedestrian and vehicular conflicts. (Factor #3.)

Fifth, through the CUP, the Project can be appropriately conditioned to ensure the use is compatible with the existing uses on site, other surrounding development, and future comprehensive planning efforts. (Factors #1, 3, 4 and 5.)

Accordingly, Saddleback Church's existing uses plus the Project are an appropriate combination of land uses for this Property until such time as a comprehensive plan for development of the entire site is developed.

B. Comparable In Nature to the Principal, Accessory or Conditional Uses Permitted in the Base District

The Project's battery energy storage system use is comparable to interim uses conditionally permitted with a CUP in Table 3-15 of the Municipal Code. For example, the Project's electrical interconnection equipment that will transmit electricity to and receive electricity from the SDG&E substation will have vertical elements and support structures comparable to "Radio and television towers and stations, radar installations, microwave relay stations, and cellular towers and installations (commercial)." (*Id.*) The Project is comparable to these types of facilities in that they have a similar vertical profile, are designed to serve an important public service to the City, and are unmanned facilities that do not generate traffic, air emissions, or noise. Further, like the "radio and television towers and stations" use, the equipment that comprises a battery energy storage system has a limited useful life that is substantially shorter than commercial, residential, or other types of development, which constitute more permanent uses.

Land disturbance to construct the Project, including anticipated grading, will be comparable to or less intensive than that required for two other permitted interim uses including (a) "Mining[,] oil drilling, and other resource extraction", which also includes "necessary incidental buildings and appurtenances", and (b) "Topsoil or fill dirt (processing and/or sales of)." (MC, § 9-3.315, Table 3-15.) Both of these conditionally permitted interim uses anticipate substantial and on-going earth movement and physical disruption, including the potential for environmental contamination. In contrast, the Project once constructed will be unmanned and persist in an unchanging state for its useful life, with little to no potential for environmental contamination.

The Project will be unmanned, and once constructed will not contribute to air quality, noise, or traffic impacts in the area. In this way, the Project will be comparable to and less impactful than many of the interim uses permitted with a CUP in the PC District. (See, e.g., MC, § 9-3.315, Table 3-15.)

C. Not Listed In Another Base District

The battery energy storage use is not a use listed in the General Plan or Municipal Code.

D. Not Detrimental to Property in the Vicinity of Such Use

Once constructed, the Project will not generate traffic, emit noxious air pollutants, or generate noise. The battery energy storage system will consist of a series of low-profile battery storage containers that are self-contained. In this way, the Project will not cause negative externalities to be experienced by surrounding properties.

The Project will also enable the San Juan Capistrano community to increase its capacity to utilize clean, renewable electricity sources, help the City, County, and State to meet their respective climate change and renewable energy goals, and support the resource adequacy requirements of the grid, while reducing the need to rely on fossil-fuel based sources to generate electricity that emit GHGs and other air pollutants. In this way, the Project will serve as a substantial benefit to surrounding properties.

The Project will also play a small but critical role in the generational shift that our society is undergoing in order to respond to climate change. The Intergovernmental Panel on Climate Change has issued two recent reports that emphasize society's imperative need to dramatically reduce GHG emissions to avoid the worst impacts of climate change, and describe the urgency with which our society needs to take these actions.[3] Significantly increasing the grid's capacity to accept, store, and discharge renewable energy at all times of the day while sustaining the stability of grid is a critical part of our societal shift away from fossil fuels to carbon free energy.

Although a California Environmental Quality Act (CEQA) analysis has not yet been performed, it is anticipated that the Project's most likely impact will be to aesthetics (i.e., public views from Camino Capistrano, Interstate 5 southbound, and public trails). These aesthetic impacts can be minimized to the extent feasible with landscape screening, perimeter walls, and Project placement on the lower, more level portion of the Property, which is at a lower elevation that the primary public viewing points of Interstate 5 to the east and the trails to the west. (See Attachment B, Preliminary Visual Simulations

[3] See Intergovernmental Panel on Climate Change, Sixth Assessment Report: Working Group I, The Physical Science Basis (June 2021), available at https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/; Working Group II, Impacts, Adaptation, and Vulnerability (Feb. 2022), available at https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/.

of Proposed Project.) In preliminary assessments conducted by Dudek, no other environmental impact areas appear to be capable of triggering a significant and unavoidable environmental impact.

On balance, the Project's benefits to surrounding properties will outweigh its impacts and, therefore, will not be detrimental to surrounding properties.

IV. CONCLUSION

Thank you for the opportunity to present further evidence and analysis supporting the Compass Battery Energy Storage System Project's CUP application. I hope that the enclosed analysis is helpful to you in your unlisted use determination for the Project.

Please do not hesitate to contact me if you have any questions or would like to discuss any aspect of the analysis provided in this letter at rwaterman@bhfs.com, or 619.702.7569.

Sincerely,

Ryan Waterman

Attachments

cc: Mr. Paul Garcia, City of San Juan Capistrano
Mr. Justin Alvord, Broad Reach Power
Mr. Brett Kotrba, Saddleback Rancho Capistrano Church

of Proposed Project.) In preliminary assessments conducted by Dudek, no other environmental impact areas appear to be capable of triggering a significant and unavoidable environmental impact.

On balance, the Project's benefits to surrounding properties will outweigh its impacts and, therefore, will not be detrimental to surrounding properties.

IV. CONCLUSION

Thank you for the opportunity to present further evidence and analysis supporting the Compass Battery Energy Storage System Project's CUP application. I hope that the enclosed analysis is helpful to you in your unlisted use determination for the Project.

Please do not hesitate to contact me if you have any questions or would like to discuss any aspect of the analysis provided in this letter at rwaterman@bhfs.com, or 619.702.7569.

Sincerely,

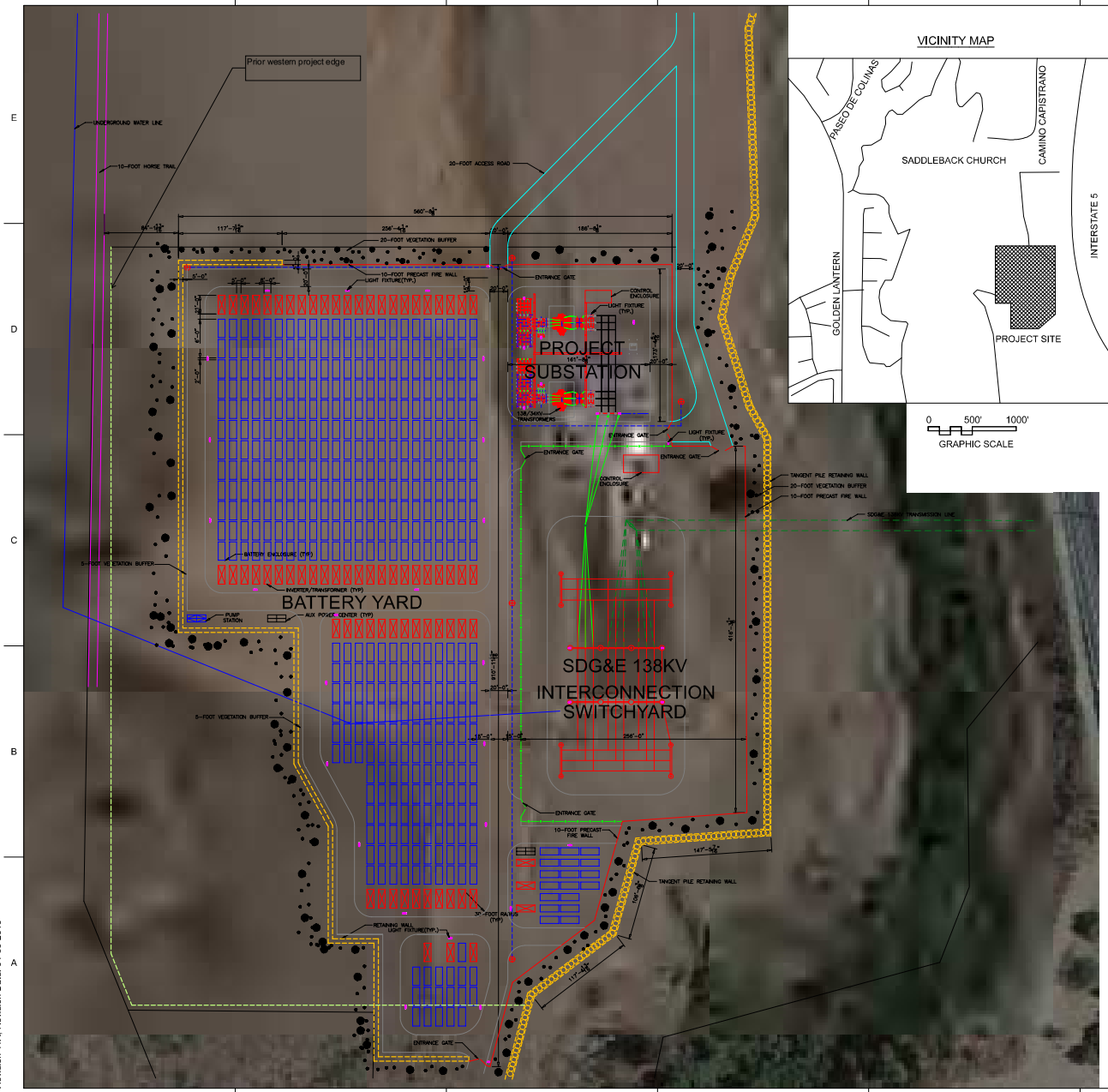
Ryan Waterman

Attachments

cc: Mr. Paul Garcia, City of San Juan Capistrano
Mr. Justin Alvord, Broad Reach Power
Mr. Brett Kotrba, Saddleback Rancho Capistrano Church

ATTACHMENT A

REVISED PROJECT SITE PLAN



VICINITY MAP

NOTES

1. PROJECT OWNER: COMPASS ENERGY STORAGE LLC
   C/O BROAD REACH POWER LLC
2. PROJECT OWNER ADDRESS: 333 CLAY STREET,
   SUITE 2800, HOUSTON, TX 77002
3. PROJECT OWNER PHONE: 240-893-2738
4. LAND OWNER: SADDLEBACK VALLEY COMMUNITY CHURCH
5. OWNER OF LAND ADDRESS: 29251 CAMINO CAPISTRANO
   SAN JUAN CAPISTRANO, CA 92675
6. ENGINEER OF RECORD: SARGENT & LUNDY
   55 EAST MONROE STREET, CHICAGO, IL 60603
7. UTILITIES SERVING PROJECT:
   ELECTRIC - SAN DIEGO GAS & ELECTRIC
   8326 CENTURY PARK COURT, SAN DIEGO, CA 92126
   800-411-7343
   WATER - MOULTON NIGUEL WATER DISTRICT
   26161 GORDON ROAD, LAGUNA HILLS, CA 92653
   949-831-2500
   SEWAGE - NOT APPLICABLE
   TELEPHONE AND CABLE - AT&T
   208 S AKARD STREET, DALLAS, TX 75202
   800-288-2020
   NATURAL GAS - NOT APPLICABLE
8. PROJECT PARCEL 637-082-71, TOTAL 59.73 ACRES
   LEGAL DESCRIPTIONS PROVIDED IN PRELIM TITLE REPORT
   LEASE OPTION HAS BEEN EXECUTED WITH LAND OWNER
   INCLUDING ACCESS RIGHTS, MEMORANDUM PROVIDED
9. LAND USE:

WITHIN 100FT	PLAN USE	ZONING
NORTH	LU 9.6 PC	PLANNED COMMUNITY DISTRICT
SOUTH	LU 9.6 PC	PLANNED COMMUNITY DISTRICT
EAST	AG BUS DIST	AGRIC BUSINESS DISTRICT
WEST	LU 1.0 GOS	GOS - GENERAL OPEN SPACE

10. EXISTING GARDENS AND ASSOCIATED ONSITE FACILITIES
    WILL BE REMOVED.
11. AREAS OF PROPOSED FACILITIES:
    BATTERY ENCLOSURES - 138,600 SQFT
    AUX POWER CENTERS - 500 SQFT
    INVERTERS/TRANSFORMERS - 12,600 SQFT
    PROJECT SUBSTATION - 38,500 SQFT
    SDG&E SWITCHYARD - 113,600 SQFT
    TOTAL - 303,800 SQFT
12. ALL DRIVE AND YARD SURFACES TO BE GRAVEL.
13. PROJECT TO BE CONSTRUCTED IN A SINGLE PHASE.

LEGEND

- BATTERY ENCLOSURE
- AUX POWER CENTER
- INVERTER / TRANSFORMER
- FIRE HYDRANT
- 20-FOOT ACCESS ROAD
- 10-FOOT HORSE TRAIL
- RETAINING WALL
- CHAIN LINK FENCE
- 10-FOOT PRECAST FIRE WALL
- 138kV TRANSMISSION LINE
- LANDSCAPING
- HYDRANT LINE

NORTH

PRELIMINARY

0 125' 250'
GRAPHIC SCALE

HOLD INFORMATION	
NO.	DESCRIPTION

CONTRACTOR/INSTALLER SHALL TAKE ALL APPROPRIATE PRECAUTIONS TO ENSURE THE SAFETY OF ALL PEOPLE LOCATED ON THE WORK SITE, INCLUDING CONTRACTORS/ INSTALLER'S PERSONNEL (OR THAT OF ITS SUB-CONTRACTOR(S)) PERFORMING THE WORK.

RELEASE INFORMATION		
REV.	DATE	DESCRIPTION
0	03-14-2022	ISSUED FOR COMMENTS

ISSUE PURPOSE:	-
SPECIFICATION:	-
PROJECT NO.:	-

I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF ENTER NAME.

ENTER NAME
ENTER DATE

MY LICENSE RENEWAL DATE IS: ENTER DATE
PAGES OR SHEETS COVERED BY THIS SEAL: THIS DOCUMENT ONLY.

CAD FILE NAME:	
PREPARED BY:	BCW
REVIEWED BY:	MAB
APPROVED BY:	-

ANY MODIFICATION OR ADDITION TO THIS DRAWING BY AN ORGANIZATION OTHER THAN SARGENT & LUNDY, IS NOT THE RESPONSIBILITY OF SARGENT & LUNDY.

CA LICENSE: C2119863

Sargent & Lundy

SARGENT & LUNDY
55 EAST MONROE STREET
CHICAGO, ILLINOIS 60603-5780

BROAD REACH POWER

PROJECT

COMPASS
BATTERY ENERGY STORAGE

DRAWING TITLE

GENERAL ARRANGEMENT

DRAWING NUMBER	REVISION
CMP-SE-101	
SHEET 1 OF 1	

$FILEABBREV$ $TIMES$ $DATE$

$PINFO1$
Form GDG-0401-01-09, ANSI (Imperial) MicroStation Border - Size D - 22 x 34
Revision 11A, Revision Date: 04-30-2010

ATTACHMENT B

PRELIMINARY VISUAL SIMULATIONS OF PROPOSED PROJECT



Attachment C

Attachment C

32400 PASEO ADELANTO
SAN JUAN CAPISTRANO, CA 92675
(949) 493-1171
(949) 493-1053 FAX
www.sanjuancapistrano.org

MEMBERS OF THE CITY COUNCIL

TROY BOURNE
SERGIO FARIAS
HOWARD HART
DEREK REEVE
JOHN TAYLOR

April 29, 2022

Ryan Waterman
Brownstein Hyatt Farber Schreck, LLP
225 Broadway, Suite 1670
San Diego, CA 92101

Subject: Compass Battery Energy Storage Project Unlisted Use Determination Letter

Mr. Waterman:

This letter is in response to your enclosed letter dated March 25, 2022, which asserts that the proposed Compass Battery Energy Storage Project (the "Project") may be processed under San Juan Capistrano Municipal Code ("SJCMC") Section 9-2.337 as submitted by a utility provider and also, in the alternative, the Project qualifies for an unlisted use determination under SJCMC Section 9-3.203. Project Manager Paul Garcia and I met with Justin Alvord (Broad Reach Power), Brett Kotrba (Saddleback Rancho Capistrano Church), and yourself on April 5, 2022, to further discuss the content of the letter.

After review and discussion of the letter, staff disagrees with your position for the following reasons:

1. The letter asserts that no unlisted use determination is necessary for the proposed SDG&E substation pursuant to SJCMC Section 9-2.337. This code section applies to projects proposed within the City limits by other agencies. More specifically, the code section identifies projects proposed by other governmental agencies or quasi-public agencies, such as utility providers. As you clarified in our meeting, Broad Reach Power, the applicant for the proposed Project is not a governmental agency or quasi-public agency. Furthermore, even if SDG&E was the Project applicant, Section 9-2.337 requires that such public improvement plans be processed in accordance with the applicable provisions of the City's Land Use Code.

   The subject property has a General Plan Land Use Element designation of Planned Community (Crystal Cathedral Ministries Planned Community) and a zoning district designation of Planned Community (To Be Determined). Since the property does not have an approved Comprehensive Development Plan, the property is subject to the interim uses listed in Table 3-15 of SJCMC Section 9-3.315 of the City's Land Use Code. Public utilities are not permissible interim uses in the Planned Community (PC) zoning district, which is applicable to the property. While public utilities would be

consistent with the subject property's General Plan Land Use Element designation of Planned Community (Crystal Cathedral Ministries Planned Community), which allows Public Institutional land uses, a proposed use also needs to be consistent with the base zoning district standards.

2. The letter acknowledges that the proposed use is not identified as a permissible interim use by the subject property's Planned Community (PC) zoning district but asserts that the proposed use meets the four criteria set forth in SJCMC Section 9-3.203 for allowing unlisted uses. The City disagrees with this assertion based on the required findings in SJCMC Section 9-3.203, which cannot be met for the following reasons:

    a. The proposed use is not of a comparable nature to the principal, accessory or conditional uses set forth as permitted in the Planned Community zoning district. The Project, as submitted on December 21, 2021, includes a substation, interconnection switchyard, and battery yard on approximately 15 acres and requires approximately 324,000 cubic yards of grading with a series of large retaining walls. This Project would function differently than "radio and television towers and stations, radar installations, microwave relay stations, and cellular towers and installations (commercial)," as the Project would not function as a mere communication facility, but rather would receive, store, and transmit electricity for use. Additionally, the storage component of such energy would be significantly greater than the above listed interim use.

    Lastly, the grading to accommodate the proposed use would be significantly greater than the grading required for the above listed interim use. The reduction of the acreage and grading, as described in your letter dated March 25, 2022, letter would not change this determination.

    b. The proposed use may be detrimental to property in the vicinity based on the visibility / aesthetics and also may pose potential danger with storage of such significant energy. This Project requires the preparation of an Environmental Impact Report (EIR) to analyze potential environmental impacts. The assertion that the Project would not be detrimental to property in the vicinity of the use cannot be substantiated without the completion of the EIR.

As a result, the proposed Project cannot be accommodated by the interim uses of the Planned Community zoning district under Table 3-15 of SJCMC Section 9-3.315. Further, it cannot be accommodated by an unlisted use determination under SJCMC Section 9-3.203. As such, a Comprehensive Development Plan (CDP), which identifies the proposed use as a permissible use, would need to be prepared for consideration by the City Council.

Pursuant to SJCMC Section 9-2.311, Appeals, any aggrieved person may file an appeal of a land use decision made by the Development Services Director. Therefore, if you wish to appeal my determination that the proposed Project cannot be accommodated by the interim uses of the Planned Community zoning district and cannot be accommodated by an unlisted use determination, you may file an appeal of my determination in writing with the City Clerk within fifteen (15) days of the date of this letter. The filing of a timely, complete, and valid

appeal application, as determined by the City Clerk, results in an appeal being heard by the Planning Commission within forty-five (45) days.

If you have any questions or concerns, please call me at (949) 234-4410 or e-mail me at jrojas@sanjuancapistrano.org.

Sincerely,

David Castaneda for
Joel Rojas
Development Services Director

cc: Paul Garcia, City of San Juan Capistrano
Jane Abzug, Best Best & Krieger, LLP

Attachment D

Attachment D

11/1/2022

F2a

City of San Juan Capistrano
Agenda Report

TO: Honorable Mayor and Members of the City Council

FROM: Benjamin Siegel, City Manager

SUBMITTED BY: Joel Rojas, Development Services Director

PREPARED BY: Paul Garcia, AICP, Senior Planner

DATE: November 1, 2022

SUBJECT: Rezone (RZ) 22-006: Initiation of a Rezone to Create Comprehensive Development Plan 22-01 to Govern Land Uses on the Approximately 161-Acre Saddleback Church Rancho Capistrano Property, Including a Proposed Energy Storage Facility Use Located at 29251 Camino Capistrano (APNs:637-082-15,-16,-17,-64,-65,-66,-67,-68,-69,-71) (Applicant/Property Owner: Saddleback Valley Community Church).

RECOMMENDATION:

Provide direction on whether to initiate a Rezone study to establish Comprehensive Development Plan 22-01 that would govern the land uses on the approximately 161-acre Saddleback Church Rancho Capistrano property, including a proposed energy storage facility use.

EXECUTIVE SUMMARY:

Saddleback Valley Community Church ("Applicant") occupies the approximately 161-acre Saddleback Church Rancho Capistrano property located in the northwest corner of the city (Attachment 1). The Applicant has submitted a request (Attachment 2) for the City Council to initiate a Rezone study to establish a Comprehensive Development Plan (CDP) that would govern the subject property and to change the zoning of the subject property from Planned Community (To Be Determined) to Planned Community (CDP 22-01). The Applicant is proposing that the CDP for the subject property allow the existing church uses by-right on the entirety of the subject property, and allow the establishment of an energy storage facility with approval of a Conditional Use Permit (CUP) on the southern portion of the subject property. The existing and proposed land uses are consistent with the property's General Plan Land Use designation.

Staff is seeking direction on whether to initiate the proposed Rezone study to establish a CDP for the Saddleback Church Rancho Capistrano property.

DISCUSSION/ANALYSIS:

Background

Saddleback Church occupies the approximately 161-acre subject property located east of the city boundary with the City of Laguna Niguel, south of the city boundary with the City of Mission Viejo and west of the I-5 freeway. The majority of the subject property was annexed from the County of Orange into the City in 2006 and was assigned a zoning and General Plan Land Use designation of Planned Community. The subject property is identified in the General Plan as the Crystal Cathedral Ministries Planned Community.

The City's Land Use Code provides that Planned Community zoning districts are to be regulated by an adopted CDP. However, due to a concern that the processing of a CDP would not be completed prior to the annexation, no CDP was established for the subject property and the zoning of the subject property is identified as Planned Community (To Be Determined). Given this situation, Article 2.2 of the Pre-annexation Agreement ("Agreement") stipulates that the uses on the subject property that were allowed by County entitlements shall not be deemed to be non-conforming uses under the City's zoning regulations and shall be allowed to continue (Attachment 3).

In addition, Article 2.3 of the Agreement stipulates that any proposal for major changes to the land use or intensity on the subject property, including, but not limited to: new uses; significant new grading or construction; new construction not in accordance with County entitlements or the City's Land Use Code; or new construction which is determined to be significant under the California Environmental Quality Act (CEQA), will require the preparation of a CDP.

Proposed Energy Storage Facility

In December 2021, the City received entitlement applications and a letter of intent from Compass Energy Storage, requesting to establish a battery energy storage facility on a southern undeveloped portion of the Saddleback Church Rancho Capistrano property. The proposed battery storage facility would be connected to the San Diego Gas & Electric Company's (SDG&E) electric transmission system to allow the facility to receive, store and discharge electricity to SDG&E's power grid as needed. During daytime periods when renewable energy production exceeds demand, the facility would store energy until it is needed by the power grid.

The proposed battery energy storage facility would include a new access road, an SDG&E switchyard/substation, telecommunications facilities, perimeter walls, water storage tanks, landscaping and a utility transmission line with two new utility poles. The proposed facility, and related infrastructure, would have a development area totaling approximately 22 acres. A significant amount of grading would be required for site preparation, perimeter wall construction and land stabilization due to the adjacent creek. A detailed description of the project, along with a conceptual site plan and photo of a similar facility in Texas, has been provided by Compass Energy Storage and is included with this report as Attachment 4.

Section 9-3.315 of the City's Land Use Code (Attachment 5) identifies interim uses permitted in the Planned Community zoning district until a CDP is approved and implemented. In April 2021, after review of the proposed project, staff notified Compass Energy Storage that because the Planned Community zoning district does not identify an energy storage facility as an allowed interim use, the preparation and approval of a CDP is required to allow the proposed energy storage facility use.

Proposed Rezone

In September 2021, 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. The proposed CDP would identify the uses currently operating on the property (i.e. a church use), uses allowed on the property by the General Plan and a proposed energy storage facility use.

As noted earlier in this report, the subject property has a General Plan Land Use designation of Planned Community and is referred to as the Crystal Cathedral Ministries Planned Community. The General Plan Land Use Element provides that the subject property is allowed to have a mixture of the following land uses:

80% Public Institutional (includes retreat center)

20% Assisted Care Facility (may include a wellness center)

As depicted on the Applicant's Letter of Intent, the Applicant is proposing that the CDP allow the existing church uses by-right on the entirety of the subject property and allow the establishment of an energy storage facility with approval of a CUP on the southern portion of the subject property. Compass Energy Storage has also submitted a CUP application, which would be processed concurrently with creation of the new CDP, pending initiation by the City Council. The existing and proposed land uses are consistent with the above General Plan Land Use mix.

Pursuant to Land Use Code Section 9-3.315, adoption of a CDP is processed in accordance with the provisions of the City's Rezone process. In this case, a Rezone would be processed to change the zoning of the subject property from Planned Community (TBD) to Planned Community (CDP 22-01).

Should the City Council elect to move forward with initiation of the requested Rezone study, a CDP which identifies all parcels within its boundaries, identifies permissible land uses, and establishes development standards would need to be submitted by the Applicant. A complete CEQA evaluation of the proposed CDP and proposed CUP application for an energy storage facility would be performed using an independent third-party consultant. The CEQA evaluation most likely would entail the preparation of an Environmental Impact Report (EIR). After preparation of the EIR, the proposed CDP/entitlement application package would be presented to the Design Review Committee and Planning Commission for review and recommendation. The Planning Commission's recommendation on the proposed CDP and entitlement applications would

then be presented to the City Council for final consideration at a duly noticed public hearing. This process is estimated to take approximately twelve months to complete.

FISCAL IMPACT:

There is no fiscal impact to the City associated with initiating a study of the establishment of a CDP. If initiated by the City Council, the cost for processing the requested Rezone and related project entitlement applications, including all studies and environmental review, would be charged to the developer deposit paid by the Applicant.

ENVIRONMENTAL IMPACT:

The initiation of a Rezone study has been determined to be statutorily exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines (Cal. Code Regs., § 15000 et seq.) section 15262. Under this exemption, a project involving only feasibility or planning studies for possible future actions which an agency has not approved, adopted, or funded does not require the preparation of an Environmental Impact Report or Negative Declaration. Here, the action before the City Council merely directs staff to undertake a study to determine the feasibility and potential impacts (including environmental impacts) of the requested Rezone. Undertaking this study is not a commitment to approve this Rezone, and the study itself will not lead directly to the implementation of any specific project. The action taken only directs staff to study and review the potential establishment of the CDP. Undertaking this study will have no legally binding effect on later activities.

Further, and for the same reasons as discussed above, the request to initiate the study is exempt from further CEQA review under State CEQA Guidelines section 15061(b)(3), which exempts projects that have no potential for causing a significant effect on the environment.

PRIOR CITY COUNCIL REVIEW:

Not applicable.

COMMISSION/COMMITTEE/BOARD REVIEW AND RECOMMENDATIONS:

Not applicable.

NOTIFICATION:

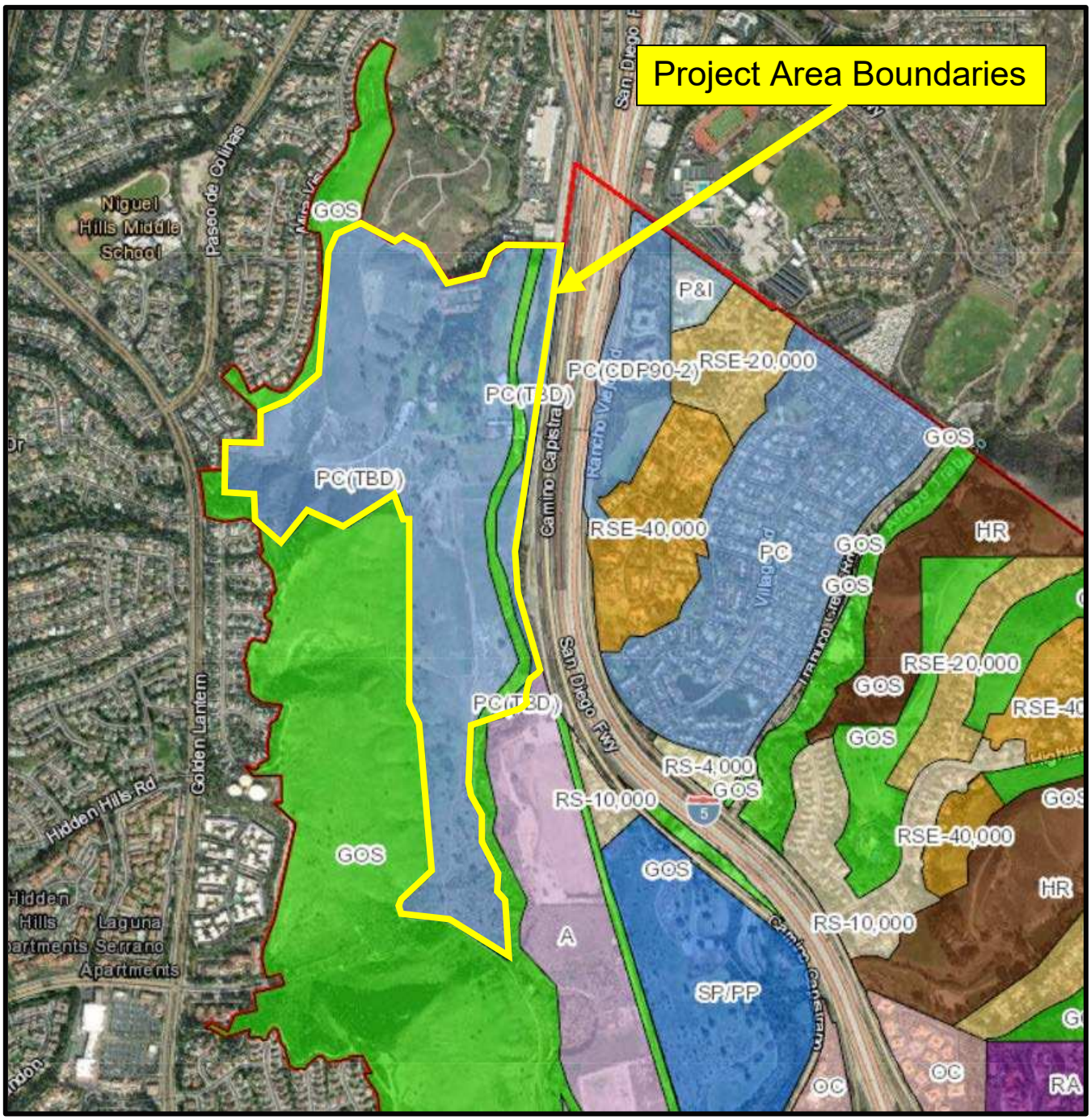
The proposed initiation of a Rezone study does not require publication of a formal public notice nor the notification of individual property owners. However, as a courtesy, the following parties have received a notification of this item:

Saddleback Valley Community Church
Compass Energy Storage
Property Owners within 1,000 feet of subject property
Interested Parties Notification List

ATTACHMENT(S):

Attachment 1 - Project Map
Attachment 2 - Applicant's Letter of Intent
Attachment 3 - Pre-annexation Agreement
Attachment 4 - Battery Storage Project Description
Attachment 5 - SJCMC Section 9-3.315

Project Map



ATTACHMENT 1

SADDLEBACK CHURCH

September 16, 2022

City of San Juan Capistrano, Development Services
32400 Paseo Adelanto
San Juan Capistrano, CA 92675
ATTN: Paul Garcia, Joel Rojas

Re: Comprehensive Development Plan Application for Saddleback Church Rancho Capistrano property

Dear City of San Juan Capistrano Development Services Department,

Saddleback Valley Community Church ("Saddleback Church") hereby requests that the City process a Comprehensive Development Plan ("CDP") for the approximately 161 acre Saddleback Church Rancho Capistrano property ("Property"), which is known as "Crystal Cathedral Ministries Planned Community" in the City's General Plan. Saddleback Church is joined in this process by Broad Reach Power ("BRP"), a leading developer of energy storage facilities.

The CDP will provide for the orderly development of the Property by defining existing allowable uses under the City's General Plan Land Use Element, as well as allowing development of the Compass project, a utility-scale battery energy storage facility that will include a project substation, a utility switchyard, and utility transmission. We understand a Conditional Use Permit ("CUP") application for the Compass project will be required and processed concurrently with the CDP. Please see Appendix A for a depiction of the property and the CDP proposed.

We would like to note that due to a shortfall in generation and capacity resources, there has been a significant push to increase the pace of renewables and energy storage onto the California grid in recent months. We appreciate the City's attention to this.

We look forward to working with the City staff on this application. Please be in touch with any questions or comments.

Best,

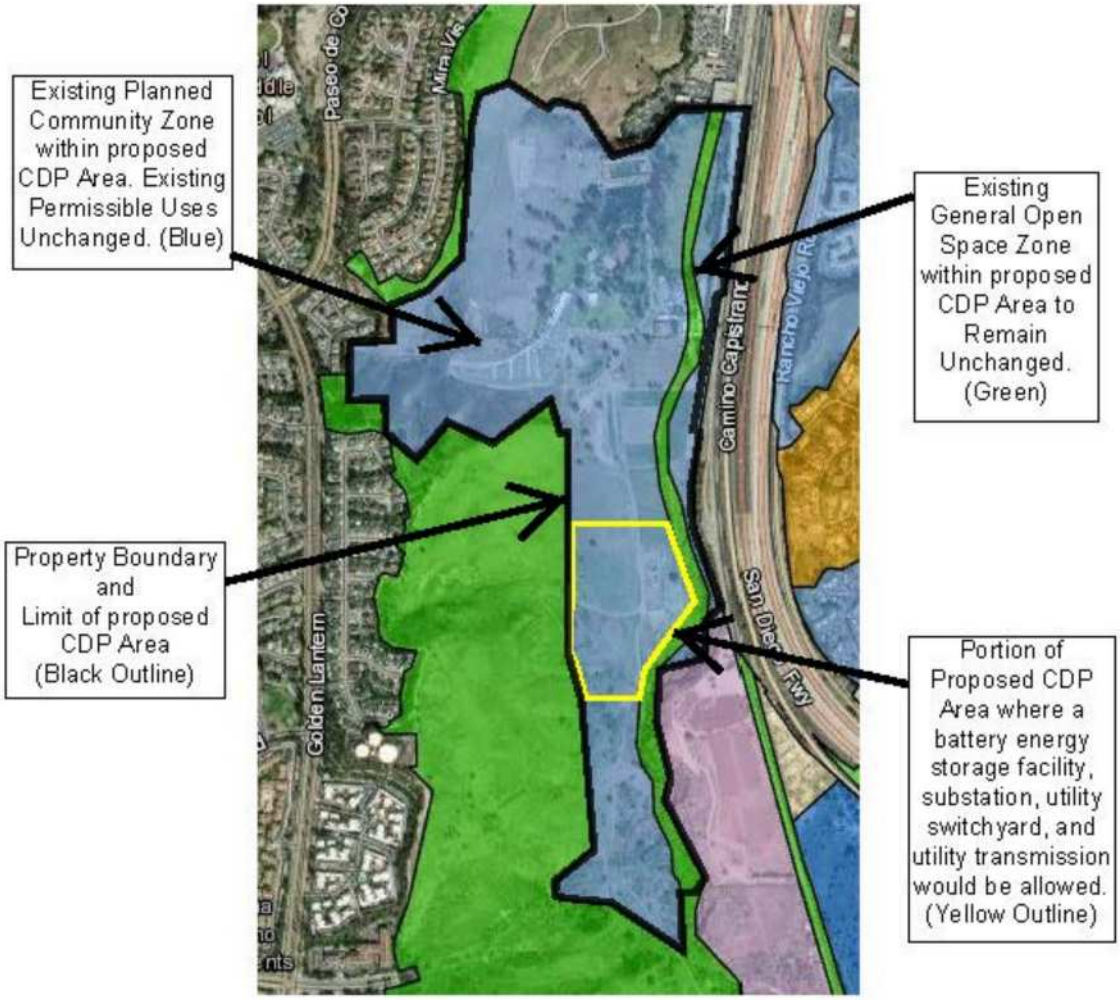
Saddleback Valley Community Church

By: Brett A Kotrba
Name: BRETT KOTRBA
Title: DIRECTOR OF OPERATIONS

ATTACHMENT 2

SADDLEBACK CHURCH

Appendix A: Depiction of CDP Area



This Document was electronically recorded by
FER Cert Mail A

RECORDING REQUESTED BY:

City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

AND WHEN RECORDED, MAIL TO:

Margaret R. Monahan, City Clerk
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Exempt from Recording Fees:
Gov Code 27383 & 6103
City of San Juan Capistrano

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

NO FEE
2006000858576 09:34am 12/22/06
100 200 A12 17
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

This Space for Recorder's Use Only

Title of Document: PREANNEXATION AGREEMENT (Crystal Cathedral Ministries)

ATTACHMENT 3

Recording Requested by And When Recorded Return to:

Meg Monahan
City Clerk
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, Ca. 92675

[Exempt From Recording Fees-G.C. 6103]

PREANNEXATION AGREEMENT

This Preannexation Agreement ("Agreement") is made this 19th day of September, 2006 (the "Execution Date"), by and between the City of San Juan Capistrano ("City") and Crystal Cathedral Ministries, a California nonprofit religious organization ("Owner"). The City and Owner are also referred to as "Parties" and individually as a "Party".

RECITALS

Whereas, Owner owns in fee simple title approximately 90 acres of real property west of the I-5 Freeway at the northern boundary of the City. The real property is described in Exhibit A and is referred to herein as the "County Property"; and

Whereas, the County Property is within the jurisdiction of the County of Orange (the "County Property") and the City has initiated annexation proceedings for the County Property pursuant to the provisions of Government Code Sections 56375.3; and

Whereas, in conjunction with the annexation of the County Property, the City has initiated a preannexation zone change for the County Property. The preannexation zone change contemplates the designation of the County Property, as Planned Community (PC) and the adoption of a Comprehensive Development Plan for the County Property which is consistent with the City's general plan designation for the County Property; and

Whereas, the Owner is supportive of the annexation of the County Property to the City but is concerned that the City and Owner will not be able to process a Comprehensive Development Plan for the County Property prior to the time the annexation of the County Property is completed and that as a result the existing uses on the County Property will be considered to be non-conforming uses under the zoning regulations of the City; and

Whereas, the City has no objection to the continuation of the existing uses on the County Property and is willing to carry forward the County entitlements to those uses as provided in this Agreement; and.

Whereas, the Parties agree that this Agreement will promote and encourage the annexation of the County Property to the City by providing the Owner, and its successors, assigns, and lenders, with certainty as to the Owner's ability to continue the existing uses of the Property; and

Whereas, City has found that this Agreement and the continuation of the uses on the County Property as provided in this Agreement are consistent with the General Plan of the City; and

Whereas, the City has processed, considered, and approved a Negative Declaration in connection with the adoption of the PC zoning designation for the County Property and this Agreement.

NOW, THEREFORE, City and Owner mutually agree as follows:

ARTICLE 1. GENERAL PROVISIONS

1.1 **Ownership of the Property**. The City and Owner acknowledge and agree that Owner has the requisite legal or equitable interest in the County Property, and thus, Owner is qualified to enter into and be a party to this Agreement in accordance with Government Code section 65865(b).

1.2 **Assignment of Rights**. Owner shall be permitted to assign or otherwise transfer this Agreement, and its rights and obligations hereunder, to any other person, firm or entity, but only if the prior written consent of the City or the City's delegate is obtained. Such consent of the City shall not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Owner or its successors in interest may assign or otherwise transfer this Agreement and its rights and obligations hereunder to any entity or entities owned or controlled either directly or indirectly by Owner (each such entity being a "Permitted Transferee"). Assignments or transfers of the Agreement, or rights or obligations thereunder, to a Permitted Transferee do not require the prior written consent of the City. As used in this subsection "owned or controlled by" means an entity in which Owner has either a direct or indirect equitable or beneficial ownership interest equal to at least 25%. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. To the extent of the interest of the Owner, and its assigns, in the County Property, the covenants of Owner set forth in this Agreement shall be covenants running with the land and enforceable to the full extent permitted by applicable law.

1.3 **Release Upon Transfer**. With respect to any permitted assignment pursuant to the provisions of Section 1.2, City shall release Owner from its obligations under this Agreement and any other agreements or undertakings pertaining to the transferred portion of the County Property, and release to Owner any bonds or other security posted to secure obligations under such agreements or undertakings, provided the transferee expressly assumes the obligations under such agreements and substitutes bonds or other security acceptable to City in place of the security to be released.

1.4 **Term**. Unless otherwise terminated as provided in this Agreement or otherwise provided, this Agreement shall continue in full force and effect until the adoption of a Comprehensive Development Plan agreed to by Owner.

1.5 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit A	-	Legal Description of the Property
Exhibit B	-	County Entitlements
Exhibit C	-	Specific Minor Modifications

ARTICLE 2. USE OF THE PROPERTY

2.1 Right to Continued Use of the Property. Pursuant to Government Code sections 65865.4 and 65866, Owner is hereby granted a the right to continue to use the County Property in accordance with the existing County development entitlements (the "County Entitlements ") in effect as of the Execution Date of this Agreement. The County Entitlements are described in Exhibit B attached hereto. City shall maintain a copy of the County Entitlements and this Agreement in the property file maintained by the Planning Department for the Property, and shall review any proposed modifications or alterations to the County property based on the County Entitlements. To the extent the County Entitlements do not address any particular development standard, then the applicable provisions of the City's Land Use Code (Title 9 of the San Juan Capistrano Municipal Code) shall apply provided they are not in conflict with the County Entitlements.

2.2 Permitted Uses. Upon annexation of the Property to the City, the County Entitlements shall be deemed to be the applicable development regulations for the Property to the same extent as if the County Entitlements had been adopted by City. The land uses allowed by the County Entitlements shall be permitted to continue and such land uses shall not be deemed non-conforming uses pursuant to Section 9-3.533 of the Land Use Code. Pursuant to Government Code section 65866, the City in subsequent land use actions applicable to the Property may apply new rules, regulations, and policies which do not conflict with the County Entitlements.

2.3 Owner-Requested Land Uses Changes. The County Entitlements may be amended from time to time by approval of a modification of the County Entitlement by the City which approval shall not be unreasonably withheld. Minor modifications may be approved by the Planning Director, including extensions of time; revisions to conditions of approval; revisions and refinements of an approved permit; and new or additional buildings or structures for the same uses as approved by the County Entitlements, provided that the permitted land uses are not changed or substantially intensified and that such minor modifications are found to be consistent with the City's General Plan and Land Use Code. The proposed modifications described in Exhibit C attached hereto are considered to be minor modifications. Owner may request, but shall not be entitled to, other changes, modifications, revisions or alterations in the development regulations for the Property. Any such change in the development regulations for the Property shall be subject to review and approval by the City in accordance with the San Juan Capistrano Municipal Code (the "Municipal Code") requirements as they relate to the proposed new development regulations. Any proposal for major changes to the land use or intensity on the County Property, including new uses; substantial additions of floor area; significant new grading or construction; uses involving significant numbers of users or parking requirements in excess of the conditions existing on the date of annexation; new construction not in accordance with the County Entitlements or the City's Land Use Code and not listed on Exhibit C; or new

construction which is determined to be significant under the provisions of the California Environmental Quality Act, will require the preparation of a Comprehensive Development Plan in accordance with the applicable provisions of the Land Use Code.

ARTICLE 3. PUBLIC BENEFITS

The Parties acknowledge and agree that the annexation and use of the County Property in accordance with the County Entitlements will not result in additional demands on public services beyond those currently provided and that the City and County will benefit by the elimination of the county island that is comprised of the County Property.

ARTICLE 4. REVIEW FOR COMPLIANCE

4.1 Periodic Review. The City Council may review this Agreement annually, on or before the anniversary of the Effective Date, in the City Council's discretion, in order to ascertain the good faith compliance by Owner, with the terms of the Agreement.

ARTICLE 5. DEFAULT AND REMEDIES

5.1 Dispute Resolution by Binding Arbitration. All disputes, claims, and questions regarding the rights and obligations of the Parties under the terms of this Agreement, or the breach thereof, shall be resolved solely by arbitration in Orange County, California in accordance with the rules and procedures of Judicial Arbitration & Mediation Services, Inc. (J.A.M.S.), by final and binding arbitration conducted before a neutral single retired judge or justice from the J.A.M.S. panel, at a location in Orange County California, in accordance with the J.A.M.S. rules and procedures in effect at the time such arbitration is commenced, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. If J.A.M.S. is unable or unwilling to serve as the arbitration provider, then the parties will either agree on a substitute provider and/or arbitrator, or one shall be appointed by the Orange County Superior Court in accordance with the provisions of Code of Civil Procedure Section 1280 et seq. In the event of any arbitration, the provisions of California Code of Civil Procedure Section 1283.05 are incorporated herein. The costs of the arbitration administration and the services of the arbitrator will be shared equally by the parties, but each party shall bear its own attorneys fees and costs, and neither will have the right to an award of such costs or fees from the other.

ARTICLE 6. MORTGAGEE PROTECTION

6.1 The Parties hereto agree that this Agreement shall not prevent or limit Owner in any manner, at Owner's sole discretion, from encumbering the County Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the County Property. The City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, the City will not unreasonably withhold its consent to any such requested interpretation or modification provided the City determine such interpretation or modification is consistent with the intent and purposes of this Agreement.

6.2 Any Mortgagee of the County Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the County Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the County Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from the City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If the City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, the City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such Party under this Agreement or (ii) thirty (30) days.

(d) Any Mortgagee who comes in to possession of the County Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the County Property, or party thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Plan applicable to the County Property or such part thereof so acquired by the Mortgagee.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony of evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

7.2 Severability. If any word, phrase, term, provision, clause, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the invalid provision shall be deemed to be severable from the, remaining provisions contained within the Agreement. The

Parties hereby state and acknowledge they would have adopted each and every provision contained within this Agreement notwithstanding the presence of an invalid provision.

7.3 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of the City shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

7.4 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

7.5 Waiver. Failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

7.6 No Third Party Beneficiaries. This Agreement is made an entered into for the sole protection and benefit for the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

7.7 Force Majeure. Upon the Effective Date of this Agreement, neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the Party's employment force), court actions (such as restraining orders or injunctions), or other causes of a similar nature beyond the Party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not extended under any circumstances of more than five (5) years.

7.8 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

7.9 Covenant Not to Sue. The Parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The Parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other Party to this Agreement, in law or in equity, or based on an allegation, or assert in any such action that this Agreement or any term hereof is void, invalid, or unenforceable.

7.10 County Property as a Private Undertaking. It is specifically understood and agreed by and between the Parties that the use of the County Property is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions

contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the City and Owner is that of a government entity regulating the use of private property, on the one hand, and the holder of a legal or equitable interest in such property and as a current or future holder of fee title to such property, on the other hand.

7.11 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The provisions of this Section 9.12 shall not require the taking of any actions which are prohibited by law or, except as expressly set forth in this Agreement, impair the lawful legislative discretion of the City as to those matters to which the law imparts legislative discretion to the City.

7.12 Corporate Authority. The person(s) executing this Agreement on behalf of each of the Parties hereto represent and warrant that (i) such Party are duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such Party is bound.

7.13 Notices. All notices under this Agreement shall be effective upon personal delivery, via facsimile so long as the sender receives confirmation of successful transmission from the sending machine, or three (3) business days after deposit in the United States mail, first class, postage fully prepaid and addressed to the respective Parties as set forth below or as to such other address as the Parties may from time to time designate in writing:

To City:	City of San Juan Capistrano 32400 Paseo Adelanto San Juan Capistrano, CA 92675 Attn: City Manager Facsimile: (949) 488-3874
To Owner:	Crystal Cathedral Ministries 29251 Camino Capistrano San Juan Capistrano, CA 92675 Attn: Cheryl Ellison Facsimile: (949) 347-4015

Copy to:	Manatt, Phelps and Phillips, LLP 695 Town Center Drive, 14th Floor Costa Mesa, CA 92626 Attn: Roger A. Grable, Esq. Facsimile: (714) 371-2537

7.14 Non-liability of City Officials. No officer, official, member, employee, agent, or representatives of the City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

7.15 Time of the Essence. The Parties expressly acknowledge and that time is of the essence in the performance of the provisions of this Agreement.

7.16 Execution Date. The Execution Date of this Agreement is that date on which all parties have executed this Agreement.

7.17 Effective Date/Condition Subsequent. This Agreement shall go into effect upon the Execution Date.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first set forth above.

City: CITY OF SAN JUAN CAPISTRANO

By _____
Mayor, City of San Juan Capistrano

By _____
Meg Monahan
City Clerk

ATTEST:
APPROVE AS TO FORM:

By _____
John Shaw, City Attorney

CRYSTAL CATHEDRAL MINISTRIES,
a California nonprofit religious organization

By: _____

By: _____

_____

STATE OF CALIFORNIA)
) SS.
COUNTY OF Orange)

On September 17, 2005, before Kristina I. Thomas a Notary Public, personally appeared Robert A Schuller, personally known to me -OR- [ ] proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Kristina I. Thomas
Signature of Notary



PUBLIC AGENCY FORM OF ACKNOWLEDGEMENT

State of California)
County of Orange) ss.
City of San Juan Capistrano)
(Gov't Code 40814 & Civil Code 1181)

On September 28, 2006, before me, Margaret R. Monahan, City Clerk, personally appeared David M. Swerdlin personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

(SEAL)

WITNESS my hand and official seal.

Margaret R. Monahan, City Clerk

OPTIONAL

Capacity Claimed by Signers

Mayor

Title

Signers are Representing

City of San Juan Capistrano

Description of Attached Document

Preannexation Agreement (Crystal Cathedral Ministries

Date: September 19, 2006

Exhibit A
Legal Description

SCHULLER RANCHO CAPISTRANO ANNEXATION AGREEMENT
EXHIBIT "A"

Prepared by Toal Engineering, Inc. Ph: (949) 492-8586 October 2006

IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF SECTIONS 25 AND 26, TOWNSHIP 7 SOUTH, RANGE 8 WEST, S.B.M., AS SHOWN ON A MAP RECORDED IN BOOK 90, PAGE 45 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHEASTERLY CORNER OF SAID PROPERTY; THENCE ALONG THE WESTERLY RIGHT-OF-WAY OF THE A.T. & S.F. R.R. SOUTH 8°07'10" WEST 1255.52 FEET; THENCE NORTH 89°21'43" WEST 20.16 FEET; THENCE SOUTH 8°07'10" WEST 346.69 FEET; THENCE NORTH 88°36'06" WEST 59.06 FEET; THENCE SOUTH 8°07'10" WEST 20.00 FEET TO A POINT ON THE EXISTING BOUNDARY OF THE CITY OF SAN JUAN CAPISTRANO; THENCE ALONG SAID BOUNDARY NORTH 88°36'06" WEST 153.94 FEET; THENCE NORTH 89°30'27" WEST 825.00 FEET; THENCE SOUTH 00°59'47" WEST 655.00 FEET; THENCE LEAVING SAID EXISTING CITY BOUNDARY NORTH 89°00'13" WEST 52.00 FEET; THENCE NORTH 14°17'03" 233.61 FEET; THENCE SOUTH 56°18'09" WEST 505.00 FEET; THENCE NORTH 66°56'07" WEST 331.55 FEET; THENCE SOUTH 42°31'33" WEST 352.00 FEET; THENCE NORTH 47°28'27" WEST 281.00 FEET; THENCE NORTH 00°55'22" WEST 232.00 FEET; THENCE SOUTH 89°04'38" WEST 238.05 FEET; THENCE NORTH 00°55'22" WEST 406.40 FEET; THENCE 89°04'38" EAST 301.64 FEET; THENCE NORTH 00°55'22" WEST 245.00 FEET; THENCE NORTH 66°31'58" EAST 240.00 FEET; THENCE NORTH 48°52'03" EAST 365.00 FEET; THENCE NORTH 4°50'38" EAST 943.40 FEET; THENCE NORTH 18°46'18" EAST 198.00 FEET; THENCE NORTH 64°41'05" EAST 222.73 FEET TO THE MOST SOUTHWESTERLY CORNER OF TRACT NO. 5241, AS SHOWN ON A MAP RECORDED IN BOOK 198, PAGES 13 THROUGH 16 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY; THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT 5241 SOUTH 57°29'40" EAST 327.95 FEET; THENCE NORTH 56°03'10" EAST 86.07 FEET; THENCE SOUTH 66°16'50" EAST 203.79 FEET TO THE MOST WESTERLY CORNER OF TRACT NO. 10896, AS SHOWN ON A MAP RECORDED IN BOOK 525, PAGES 14 THROUGH 21 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY; THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT 10896 SOUTH 32°46'10" EAST 352.77 FEET; THENCE NORTH 79°28'30" EAST 282.57 FEET; THENCE NORTH 30°46'30" EAST 190.05 FEET; THENCE NORTH 51°21'55" EAST 144.09 FEET; THENCE EAST 476.17 FEET TO THE POINT OF BEGINNING.

CONTAINING 93.4 ACRES, MORE OR LESS.



OLAV S. MEUM LS 4384

JN 13118

SCHULLER RANCHO CAPISTRANO ANNEXATION AGREEMENT
EXHIBIT "B"

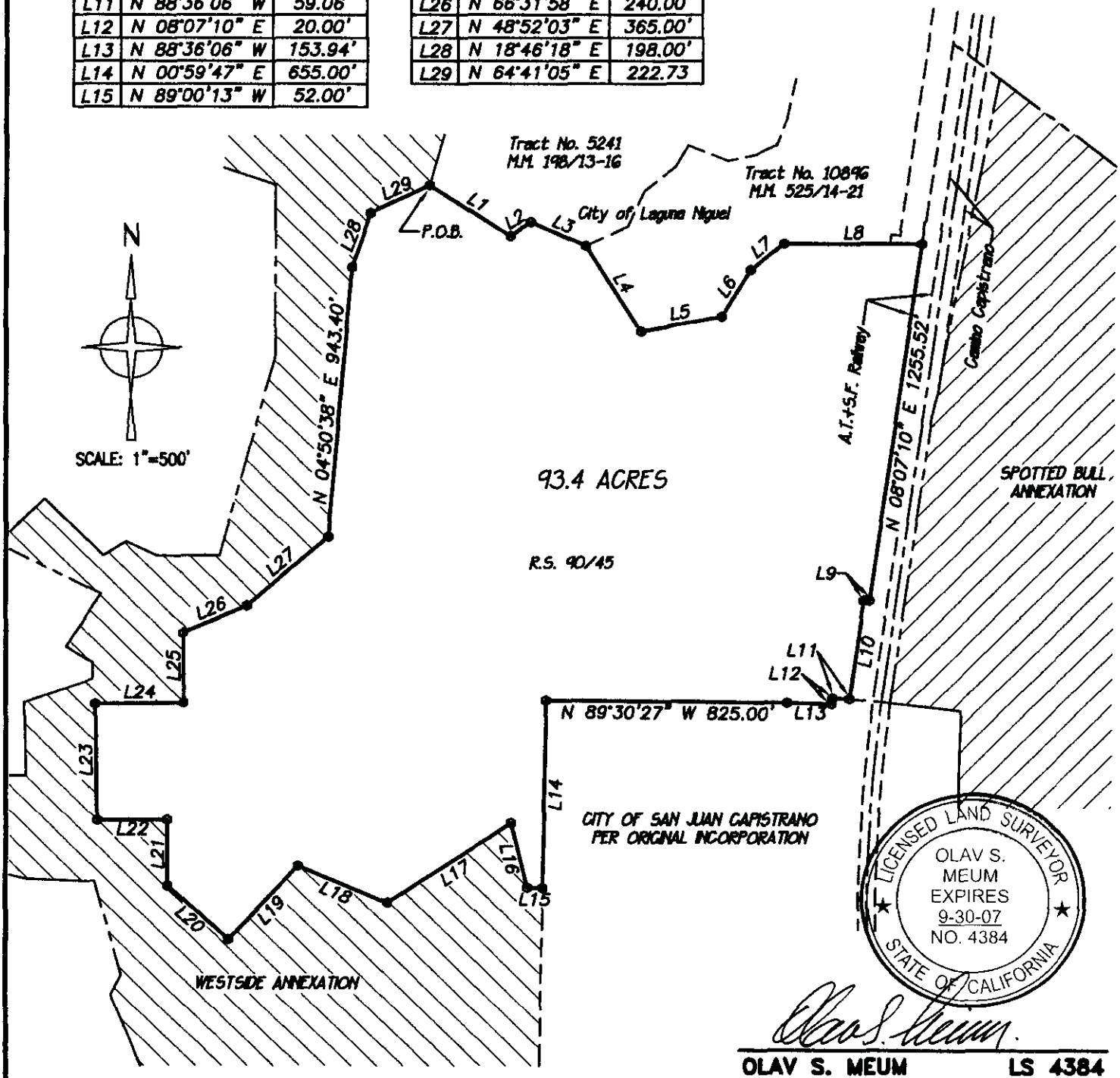
Prepared by Toal Engineering, Inc. Ph: (949) 492-8586 October 2006

#	BEARING	DISTANCE
L1	N 57°29'40" W	327.95'
L2	N 56°03'10" E	86.07'
L3	N 66°16'50" W	203.79'
L4	N 32°46'10" W	352.77'
L5	N 79°28'30" E	282.57'
L6	N 30°46'30" E	190.05'
L7	N 51°21'55" E	144.09'
L8	N 90°00'00" E	476.17'
L9	N 89°21'43" W	20.16'
L10	N 08°07'10" E	346.69'
L11	N 88°36'06" W	59.06'
L12	N 08°07'10" E	20.00'
L13	N 88°36'06" W	153.94'
L14	N 00°59'47" E	655.00'
L15	N 89°00'13" W	52.00'

#	BEARING	DISTANCE
L16	N 14°17'03" W	233.61'
L17	N 56°18'09" E	505.00'
L18	N 66°56'07" W	331.55'
L19	N 42°31'33" E	352.00'
L20	N 47°28'27" W	281.00'
L21	N 00°55'22" W	232.00'
L22	N 89°04'38" E	238.05'
L23	N 00°55'22" W	406.40'
L24	N 89°04'38" E	301.64'
L25	N 00°55'22" W	245.00'
L26	N 66°31'58" E	240.00'
L27	N 48°52'03" E	365.00'
L28	N 18°46'18" E	198.00'
L29	N 64°41'05" E	222.73

LEGEND

- SCHULLER PROPERTY EXISTING BOUNDARY
- CENTERLINE OF STREET
- EXISTING BOUNDARY OF THE CITY OF SAN JUAN CAPISTRANO



LICENSED LAND SURVEYOR
OLAV S. MEUM
EXPIRES 9-30-07
NO. 4384
STATE OF CALIFORNIA

OLAV S. MEUM LS 4384

JN 13118

Exhibit B
County Entitlements

1. Use Permit UP 82-52Z – Establishment of church uses within and existing building.
2. Use Permit UP 82-58Z – Established Rancho Capistrano Renewal Center for religious retreats and seminars.
3. Site Plan SP86-171A – Approval of use of two commercial coaches for Sunday School classrooms.
4. Use Permit UP90-096P and Site Development Permit SP90-136P – Approval of administrative building and parking area.
5. Changed Plan CP94056 for Use Permit 82-52Z – Approval of installation of six commercial coaches for classes and other uses.
6. Use Permit UP94-0102 – Approval of a private school for grades K-8.
7. Changed Plan for SP94-0102 – Approval of additional of two modular buildings for the expansion of the previously approved K-8 private school.
8. Change Plan CP99-0008 for Use Permit UP94-0102 – Approval of change plan to add grades 9 and 10 to the previous approval of Use Permit UP94-0102.

Exhibit C
Specific Minor Modifications

- **Gazebo** - the construction of a permanent Gazebo in the center courtyard of the existing Hacienda to support existing operations and functions of the Conference Center/Wellness Center. The Gazebo design will be complementary to the Spanish style of the Hacienda. If would include a permanent roof with a seating area for up to 400 people as well as a presentation area for the types of events that already occur at Rancho Capistrano. The Gazebo will be designed to allow for the inclusion of side panels that would allow for the Gazebo to be enclosed depending on weather and the type of event. The side panels may be sliding glass panels or solid panels and may be included in the initial construction of the Gazebo or could be installed later after the initial construction is complete.
- **Rancho Capistrano School Facility** - Remodeling of an existing approximately 5,000 sq. foot Rancho Capistrano campus maintenance facility into classrooms/meeting rooms and multi-purpose use area. The existing structure is wood frame and stucco. The primary remodeling will be to the interior space of the building. Remodeled entries may be included. The remodeled building will serve the existing permitted school enrollment.
- **Relocated Maintenance Facility** - The existing maintenance facility would be relocated at a similar size and configuration.
- **Rancho Capistrano School: Sports/Multi-Purpose Pavilion** - Construction of an approximate 6,000 to 8,000 sq. foot permanent sports/multi-purpose covered pavilion to support the existing permitted school enrollment located in the same area as the existing school facilities. This Pavilion will have a permanent roof and open-air sides and a hard surface floor. It will be used for sports such as basketball and volleyball, and will also be use for other school and Rancho Capistrano gatherings. As with the Gazebo, the Pavilion will be designed to allow for the inclusion of side panels that would allow for the Pavilion to be enclosed depending on weather and the type of event. The side panels may be sliding glass panels or solid panels and may be included in the initial construction of the Pavilion or could be installed later after the initial construction is complete.

COMPASS ENERGY STORAGE PROJECT

Comprehensive Development Plan
Battery Storage Project Description

Prepared by Broad Reach Power LLC
for Compass Energy Storage, LLC

October 2022

ATTACHMENT 4

Acronyms and Abbreviations

Acronym	Definition
AC	alternating current
BESS	battery energy storage system
BMP	best management practice
CAISO	California Independent System Operator
CDFW	California Department of Fish and Wildlife
DC	direct current
kV	kilovolt
MV	medium-voltage
NFPA	National Fire Protection Association
SCADA	supervisory control and data acquisition
SDG&E	San Diego Gas & Electric Company
USFWS	U.S. Fish & Wildlife Service

Project Description

1.0 Overview and Location

The current request to the City of San Juan Capistrano is to initiate a Comprehensive Development Plan (CDP) process to consider a rezone for the Saddleback Church property, and for that CDP to include a battery energy storage project within its existing PC boundaries. This would allow a portion of the property to be used for emission-free energy storage connected to the SDG&E electric transmission system. This preliminary description of the battery energy storage system (BESS) for the CDP has been prepared to provide context to the request for a CDP process. All the information provided is indicative of the type of project to be proposed in a future CUP application, but no project approvals are being requested at this time.

The Project will include the development of an approximately 250 MW battery energy storage system (BESS) and associated infrastructure within a development area totaling approximately 22 acres within the 160-acre property owned by the Saddleback Church, on the parcel identified as (APN) 637- 082-71. The proposed Project consists of approximately 6 acres with approximately 5 acres dedicated for the electrical switchyard, and landscaping screening, for a total of approximately 11 acres. The remaining acreage within development area will be for setback, buffers, roads and related infrastructure. The Project site is located in the northern portion of the City, adjacent to Camino Capistrano with Interstate-5 located to the east. The Project site is currently used by the church for various rural and ancillary activities and is adjacent to the Saddleback Church Rancho Capistrano to the north, mostly open space to the south, Oso Creek to the south and east, Union Pacific Railroad and Interstate-5 to the east, and open space and residences outside of the City limits to the west. The SDG&E Trabuco to Capistrano 138 kV transmission line is located approximately 250 feet to the east and runs alongside the Union Pacific Railroad tracks.

Electric energy will 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. Following construction, the proposed use will not create emissions to air, will not require sanitary facilities, will generate minimal vehicle trips, and will only require water for landscape irrigation and to supply on-site fire hydrants.

California's electric grid is a complex system providing reliable power to California residents. California continues to shift electric generation increasingly to renewable sources of energy such as solar, wind, geothermal, hydroelectricity, and biomass. Grid energy storage technologies provide for multiple applications, such as energy management, backup power, load leveling, frequency regulation, voltage support, and grid stabilization.

As noted by the US Department of Energy, "energy storage can reduce the need for major new transmission grid construction upgrades as well as augment the performance of existing transmission and distribution assets." Furthermore, "energy storage would also play a significant role in emergency preparedness and increasing overall grid resilience." SDG&E is the electric energy provider for San Diego and southern Orange counties. Power from these renewable generation sources often is produced at different times of day, which may not align with peak use. Battery energy storage technology allows the energy generated by renewables to be stored and tapped when the need arises.

1.1 Existing Zoning

The Project site is designated as LU 9.6 PC Planned Community in the San Juan Capistrano General Plan (City of San Juan Capistrano 1999) and as PC - Planned Community District in the City Zoning Ordinance (see Figure 1-3). Per discussions with City staff to date, battery energy storage system use would be part of a rezone of this PC (TBD), to PC (CDP 22-001), subject to a Comprehensive Development Plan process. A specific project application will be submitted for a Conditional Use Permit, combined with CEQA analysis, for the City's consideration, consistent with the CDP provisions.

1.2 BESS Project Description

A BESS is a stationary equipment that receives electrical energy and then utilizes batteries to store that energy to supply electrical energy at a future time. Power released or captured by the proposed Project will be transferred to and from the

SDG&E Trabuco to Capistrano 138kV transmission line via a loop-in generation transmission line that will interconnect to a SDG&E switchyard that will be constructed within the project site. The Project will consist of lithium-ion batteries, installed in racks and contained inside non-habitable enclosures; inverters; medium voltage (MV) transformers; a SDG&E switchyard; a project substation; and other associated equipment. In addition to the BESS, the Project include the following components, which are described in more detail following the bulleted list:

1.2.1 Project Components

- Access Road: A new road to provide access to the battery yard and SDG&E switchyard will be constructed along the east edge of the Saddleback property
- SDG&E Switchyard/Substation: An SDG&E switchyard to deliver power to the nearby Trabuco to Capistrano 138kV transmission line.
- Telecommunication Facilities: Telecommunication equipment, including underground fiber optics or supervisory control and data acquisition (SCADA), to remotely manage and monitor communication between the BESS and the electrical grid.
- Perimeter Walls: A perimeter wall will be constructed around the BESS that consists of a pre-fabricated decorative wall that will be utilize for both visual enhancement and fire protection. In addition to the perimeter wall, a subterranean wall would be constructed along the eastern boundary to protect against future erosion of Oso Creek. A retaining/subterranean wall will also be constructed along the project western perimeter to provide slope stabilization. The construction methods and further design detail regarding these walls is process and will be shared with the City for detailed review.
- Above Ground Water Storage Tanks: To meet regulatory standards and reduce potential for stormwater to be discharged off site in exceedance of existing conditions, a above ground water storage tanks will be constructed in the southern portion of the site to retain and release stormwater flows to naturally percolate stormwater thru soils on site.
- Landscaping: The Project will incorporate landscaping and vegetative screening near the northern and southern perimeter walls as part of detailed landscaping plans.
- Site Access and Security: On-site access driveways, perimeter precast walls, and nighttime directional lighting will be provided for the Project.
- Loop-In Transmission Line: A 138 kV loop-in transmission line will be constructed to transfer power between the SDG&E Trabuco to Capistrano 138kV transmission line and the SDG&E switchyard constructed on site. Two new steel poles will be constructed on the east side of Oso Creek and two wood poles will be replaced with steel poles to accommodate the new transmission line.

The facilities will be remotely operated year-round and be available to receive or deliver energy 24 hours a day and 365 days a year. After commissioning and during the operational life of the Project, qualified technicians would routinely inspect the battery energy storage system and conduct necessary maintenance to ensure safe operational readiness. If an issue arises, the system can remotely shut down and de-energize.

1.3 Environmental Setting

1.3.1 Biological Resources

A full analysis and surveys will be provided to the City in the forthcoming CUP application. Prominent biological features include Oso Creek, which meanders along the eastern and southern property boundary. The San Juan Capistrano General Plan EIR identifies the Project site as having an "Agriculture" vegetation community adjacent to Oso Creek which is identified as having a riparian vegetation community. Areas east of the Project site are identified as having a grasslands vegetation community. Mapped critical habitat for Coastal California gnatcatcher ("CAGN") is located approximately 0.5-mile south of the Project site at the confluence of Oso Creek and Trabuco Creek (USFWS 2007). No USFWS-designated critical habitat is designated within the Project boundary or in the vicinity of the Project site. Further biological studies will be completed to meet City of San Juan Capistrano processing requirements. Oso Creek is mapped by the USFWS NWI as "Riverine R4SBC." Compass Energy Storage LLC has prepared a jurisdictional delineation to inform the design and

placement of improvements to avoid work within CDFW jurisdiction.

1.3.2 Cultural Resources

A Phase I cultural resources assessment has been completed for the Project. No archaeological resources were identified in the Phase I cultural resources assessment. Two management recommendations are included as part of the Cultural Resources Inventory Report to reduce potential impacts to unanticipated archaeological resources and human remains during Project construction.

1.3.3 Geology and Soils

The Project would be subject to the City's Seismic Hazard Mitigation Ordinance requirements for development (San Juan Capistrano 1999). Compliance with standard building code requirements generally minimizes potential geologic risk. Geological evaluations are in the process of being completed to evaluate erosion potential along Oso Creek adjacent to the Project.

1.4 Battery Energy Storage System Enclosures and Fire Protection

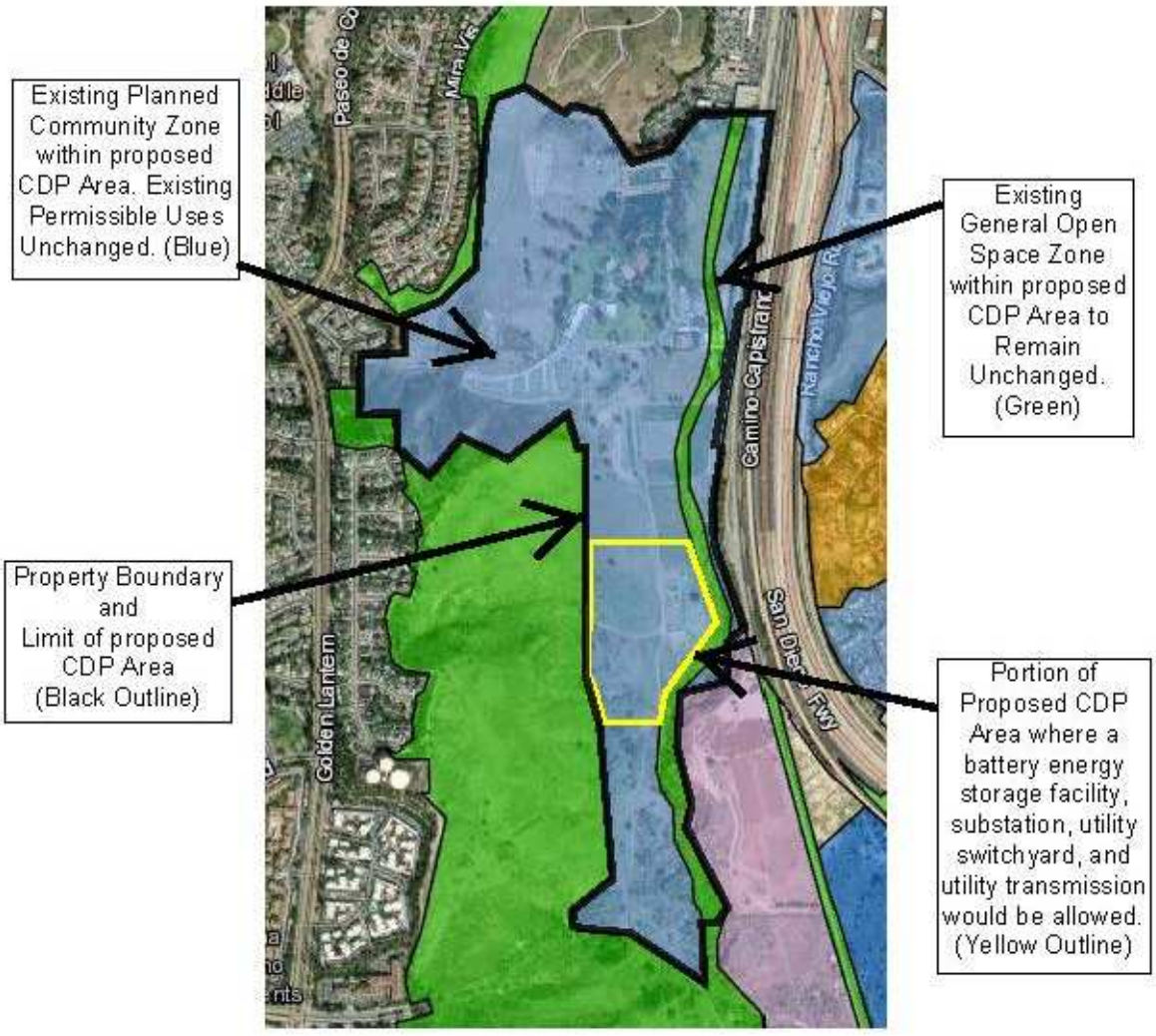
The proposed facility will use a lithium-ion technology that has a long lifespan and boasts superior safety and stability characteristics. The battery racks will be designed and installed in accordance with the local seismic design requirements, and with the nationally recognized National Fire Protection Association (NFPA) 855 Standard for the Installation of Stationary Energy Storage Systems, along with all applicable state and City fire protection requirements. The BESS development area will be connected with a 20-foot-wide gravel road connecting the project entrance to the nearest main road. A Battery Management System (BMS) is used in conjunction with the energy storage system (ESS), monitoring the battery voltage, current, temperature, managing energy absorption and release, thermal management, low voltage power supply, high voltage security monitoring, fault diagnosis and management, external communication with PCS and Emergency Management System (EMS), and ensure the stable operation of the energy storage system.

Included in the BESS are the fire suppression system (FSS) and the heating, ventilation, and air conditioning (HVAC) system composed of smoke detectors, gas detectors and aerosols, which serve the primary purpose of preventing fire spread in time should any open flame or gas signal appear in the battery system. The HVAC system is essentially liquid cooling, with the main function of maintaining the temperature of the battery system within the allowable operating temperature range. An Auxiliary distribution box will also be included which provides auxiliary power for the whole control system and liquid cooling system.

Compass Energy Storage LLC will use battery storage systems that are NFPA 855 Code compliant and UL certified and that include built-in failsafe and cooling systems designed to prevent thermal runaway and the spread of fire. A fire protection system will be installed to automatically shut down any affected battery storage components and prevent the spread of the fire to the other battery storage modules. The installation will also be compliant with 2019 CFC 1206 regarding installation of outdoor systems (see Appendix A).
A fire wall (10 feet tall, see Appendix B) will be installed around the perimeter of the development area for fire protection purposes – both to prevent wildfire from impacting the site and to reduce the chance of an on-site fire from escaping beyond the property. The fire wall shall also serve as a decorative wall for the project site. In addition, fire hydrants will be installed in accordance with Orange County Fire Authority standards.

The Orange County Fire Authority (the authority having jurisdiction) will have review and approval rights for the facility fire protection and suppression plans. The review/approval by the authority having jurisdiction will cover all applicable design, construction, and testing requirements of the NFPA 855 Code.

Project Vicinity on San Juan Capistrano Zoning Map



COMPASS BATTERY ENERGY STORAGE PROJECT
CONCEPTUAL SITE PLAN

LEGEND Battery Storage Component | SDG&E Substation | Landscaping, Retaining Wall and Access Road

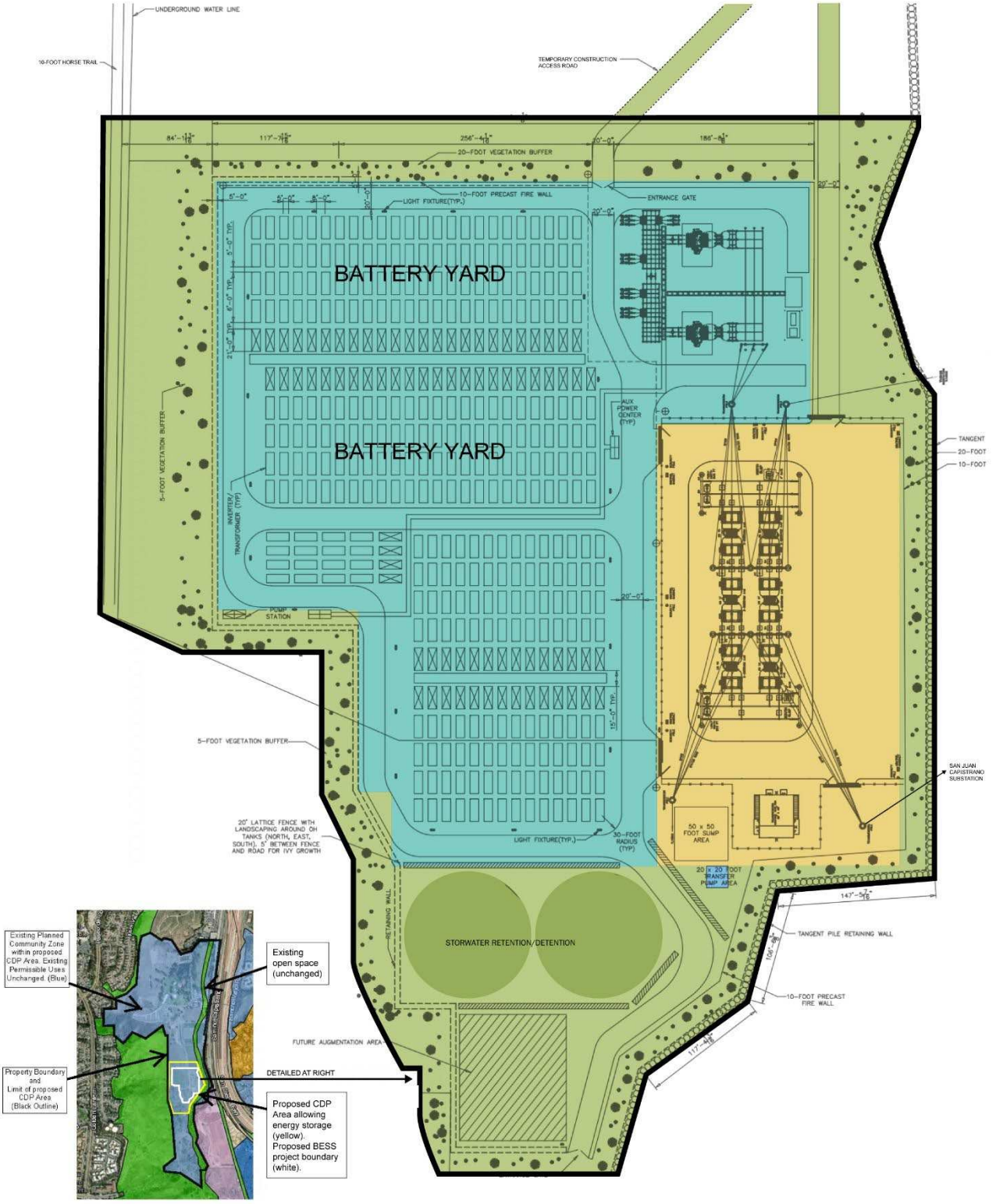




Photo 1 – Broad Reach Power LLC's fully operational North Fork Battery Project in Williamson County, Texas.

San Juan Capistrano, California Municipal Code

TITLE 9. LAND USE

CHAPTER 3. ZONING DISTRICTS AND STANDARDS

Article 3. Base District Regulations/Standards

Sec. 9-3.315. Planned Community (PC) District.

(a) Purpose and intent. The purpose and intent of the Planned Community (PC) District is to:

(1) Encourage the use of modern land planning and design techniques to create developments integrating a mixture of different types of land uses;

(2) Realize the economic, social, and aesthetic advantages of combining different types of land uses in a coordinated community design, such developments to be of sufficient size to provide related areas for various uses, which may include varying housing types; commercial retail and service activities industrial uses; recreation, school, and other public facilities and other appropriate land uses. The regulations for the Planned Community (PC) District are designed to permit the adoption of a Comprehensive Development Plan (CDP) providing for a diversity of uses, building relationships, and open spaces within planned building groups, while insuring compliance with the General Plan and this Code;

(3) To insure, by means of land use regulations and specific conditions of approval, a more efficient use of open space, the separation of pedestrian and vehicular traffic, increased project amenities and compatibility with surrounding development;

(4) To achieve the coordinated planning and orderly development of different contiguous parcels of land by means of an approved Comprehensive Development Plan; and

(5) To provide open space, agricultural, and low density residential interim use of property until a Comprehensive Development Plan (CDP) is approved and implemented.

(b) Permanent uses permitted. All uses and structures permitted within the City subject to the approval of a Comprehensive Development Plan and consistent with the General Plan shall be permitted in the Planned Community (PC) District.

(c) Interim uses permitted.

(1) Table 3-15 identifies the interim uses permitted in the Planned Community (PC) District until a Comprehensive Development Plan (CDP) is approved and implemented.

(2) Uses listed as conditionally permitted uses are subject to the review requirements and conditions contained in Section 9-2.317 Conditional Use Permit. Accessory use are subject to the review requirements and conditions contained in Section 9-3.501 Accessory Uses and Structures.

ATTACHMENT 5

(3) The “notes and exceptions” column of Table 3-15 indicates more precisely the use regulations for specific uses or operating characteristics. The notes and exceptions must be reviewed in conjunction with the other information for the class of use.

(4) Certain permitted uses and conditionally permitted uses may be subject to special conditions regarding location, operation, or the design of the use. The sections of this title governing these uses are identified in the “notes and exceptions” column of Table 3-15.

Table 3-15

Interim Uses in the Planned Community (PC) District

(please refer to end of table for notes)

Use	PC	Notes and Exceptions
Accessory uses incidental to the operation of a permitted use	A	
Animal grazing, breeding, boarding, raising, and training	P	a. Includes cattle, sheep, goats, and horses. b. Excludes hog production, commercial livestock feeding ranches, commercial dairies, commercial horse stables and equestrian centers, commercial kennels, and the commercial slaughtering, dressing, or sale of livestock, fowl, or other animals.
Apiaries	P	Subject to Section 9-3.510.
Bed and breakfasts	C	Subject to Section 9-3.509 Bed and Breakfasts.
Caretaker residence (temporary)	A	Allowed during the construction of a permanent single-family residence on an individual lot in accordance with the provisions of Section 9-3.553 Temporary Uses and Structures.
Cemeteries	C	
Church, religious, or fraternal	C	Includes synagogues, temples, mosques, and other buildings used for the purposes herein but excludes day care centers, and private and/or secondary educational facilities.
Drive-through facilities	C	As defined in Appendix A, contingent upon approval of a Discretionary Use Permit.
Egg production and sales and the production of chickens, poultry, pigeons, and other fowl, and the production of rabbits	P	Subject to the following requirements: 1. Any poultry, pigeon, rabbit, or other animal raising building or enclosure shall be located a minimum of 300 feet from any existing residential building not on the premises; and 2. The slaughtering or dressing for sale of poultry, pigeons or rabbits shall be permitted only if they are produced, raised, or fattened on the premises.
Educational and cultural programs	A	Shall be of a temporary nature and prior approval must be obtained from the Planning Director.
Employee quarters (detached)	A	Must be of a permanent character placed in permanent locations.

Use	PC	Notes and Exceptions
Farming	P	a. Includes all types of agriculture and horticulture. b. Excludes farms operated publicly or privately for the disposal of garbage, sewage, rubbish, or offal.
Home businesses	A	Subject to Section 9-3.523 Home Business.
Horse stables and equestrian centers (commercial)	C	Subject to Section 9-3.515 Equestrian Standards.
Kennels (noncommercial)	A	Subject to Section 9-3.525 Kennels.
Kennels (commercial)	C	Subject to Section 9-3.525 Kennels.
Mining oil drilling, and other resource extraction	C	Includes necessary incidental buildings and appurtenances.
Mobilehomes and modular homes on a permanent foundation system	A	Both shall be subject to the provisions of the development standards of Section 3-301 Residential Districts.
Nurseries, greenhouses, and plant storage resale and wholesale)	P	Including greenhouses, hydroponic gardens, and similar facilities.
Parks (private)	P	
Produce stands (temporary)	A	a. To be used for the sales of agricultural products produced on the premises. b. Subject to the following: 1. Such stands shall not be located closer than 20 feet from any street right-of-way; 2. Such stands shall be of wood frame type construction; and 3. The accessory signs used to identify the use shall be located on or adjacent to such stands as set forth in Section 9-3.543 Signs.
Radio and television towers and stations, radar installations, microwave relay stations, and cellular towers and installations (commercial)	C	Subject to Section 9-3.507 Antennas.
Residential dwelling (single-family)	A	One principal residential dwelling per lot as an accessory use to a principal use.
Topsoil or fill dirt (processing and/or sales of)	C	

P = Principal use permitted by right

— = Not permitted

A = Accessory use permitted by right (subject to Section 9-3.501, Accessory Uses and Structures)

C = Conditional use permit required (subject to Section 9-2.317, Conditional Use Permit)

(d) Development requirements. The following development requirements shall apply in the Planned Community (PC) District:

(1) Procedure for change of district designations to PC. Prior to the acceptance by the City of a district change petition pursuant to the provisions of Section 9-2.315 Change of Zone District, the applicant shall submit a CDP for the area in question. The Planning Director shall prescribe the type and form of information required for the CDP and shall ensure that it is of sufficient detail to allow adequate analysis of the proposed project.

(2) Adoption of Comprehensive Development Plans.

(A) Notification of the consideration of the CDP shall be incorporated into the public hearing notice relative to the district change petition required by the provisions of said Section 9-2.315 Change of Zone District.

(B) The CDP shall be reviewed with the district change petition pursuant to the provisions of said Section 9-2.315 Change of Zone District. Action by the City on the district change petition may be concurrent with, but may not precede, the approval of the CDP. The CDP may be approved, modified, conditionally approved, or denied in part or its entirety. If the CDP is approved, the City Council shall adopt the CDP by ordinance. The adopted ordinance shall specify all the conditions of approval, if any, along with other matters deemed appropriate by the City Council.

(C) After the adoption of the district change and the CDP, the designation number for the CDP shall be entered on the Official Zoning Map along with the PC district designation for the parcel or parcels in question. The PC district designation, with its CDP designation number, shall refer only to that specific CDP adopted by the City Council. A summary of allowable uses and development standards for the adopted CDP will be included in Appendix B Adopted Comprehensive Development Plans Summary. No other CDP shall be applied to the PC district, except as provided for through a CDP amendment.

(3) Amendment of Comprehensive Development Plans. An adopted CDP may be amended as follows:

(A) If the Planning Commission determines that the proposed amendment is consistent with the overall purpose and general design of the original adopted CDP, the Planning Commission may approve the amendment by resolution. The amended CDP shall then become the specific CDP associated with the PC district designation on the Official Zoning Map.

(B) If the Planning Commission determines that the proposed amendment is not consistent with the overall purpose and general design of the original adopted CDP, or there will be any alteration of land boundaries, the Planning Commission shall direct the applicant to submit the proposed amendment, together with a new district change petition, for processing pursuant to the provisions of subsection (2) of this subsection.

(e) Development standards,

(1) The permanent development standards for planned community developments shall be determined by the Planning Commission as follows:

(A) The Planning Commission shall assign the most applicable Base District development standards, as set forth in Article 3 Base District Regulations/Standards of this chapter, for each category of land use shown on the CDP; or

(B) Specific standards may be imposed as conditions of approval of the CDP provided they are more restrictive than the provisions of Chapters 1 through 5 of this Code; or

(C) A combination of subsection (A) and (B) of this subsection.

(2) Development regulations adopted as a part of the CDP shall supersede other requirements of this Land Use Code. In cases where an item is not addressed in the CDP, the appropriate provisions of this Code shall regulate. A summary of development standards for adopted CDPs are included in Appendix B Adopted Comprehensive Development Plans Summary.

(3) The development standards for the Agri-Business District, pursuant to Section 9-3.305 Industrial Districts, shall be applied for the interim uses identified in Table 3-15 until a CDP has been adopted and implemented.

(4) Common areas.

(A) The CDP, through appropriate legal instruments, such as CC&R, management agencies, and/or owner associations, shall provide means for the ongoing maintenance of all open space, private streets, parking lots, buildings, and the like in the Planned Community (PC) District. Such legal instruments shall be approved by the City and shall be appropriately recorded prior to the issuance of building permits.

(B) The CC&R or other legal instruments shall incorporate the provisions of the responsible homeowner association for the maintenance of any commonly-owned land should the City determine after reasonable and customary notice to the homeowner association that adequate maintenance is not being performed on such land.

(C) In the case of owner associations, no in-common holding may be sold or otherwise transferred to the control of any other entity, except one conceived and designed to fulfill the same basic purposes as the owner association.

(f) Development review.

(1) Individual development projects proposed to implement an adopted CDP or allowed interim use within the Planned Community (PC) District shall be consistent with such CDP, or this Land Use Code, and shall be subject to development review as set forth in Article 3 Development Review Procedures of Chapter 2 of this title.

(2) The Planning Director shall prescribe the type and form of information required for review of the CDP.

(g) Supplementary district regulations.

(1) For sign, parking, fence, swimming pool, and similar regulations for the Planned Community (PC) District, see Article 5 Supplemental District Regulations of this chapter.

(2) Supplementary district regulations adopted as a part of the CDP shall supersede other requirements of this Land Use Code. In cases where an item is not addressed in the CDP, the appropriate provision of this Land Use Code shall regulate.

(h) Environmental overlay standards. Standards related to management of project effects on sensitive natural resources (i.e. floodplains, ridgelines, etc.) shall be as set forth in Article 4 Environmental Overlay Districts of this chapter. (Ord. No. 869, § 2; Ord. No. 971, § 4, 2010; Ord. No. 995, § 2, 2012; Ord. No. 1076, § 9, 2020)

Contact:

City Clerk: 949-443-6308

Published by Quality Code Publishing, Seattle, WA. By using this site, you agree to the terms of use.

Attachment E

Attachment E

MINUTES
November 1, 2022
SAN JUAN CAPISTRANO CITY COUNCIL
REGULAR MEETING

BUSINESS SESSION:

Mayor Reeve called the Regular Meeting of November 1, 2022, of the City Council of the City of San Juan Capistrano to order at 5:11 p.m. Council Member Farias led the Pledge of Allegiance and Mayor Pro Tem Hart gave the invocation.

ROLL CALL:

COUNCIL MEMBERS PRESENT: Mayor Derek Reeve, Mayor Pro Tem Howard Hart, and Council Members Sergio Farias, and John Taylor.

COUNCIL MEMBERS ABSENT: Troy Bourne.

Agenda items are presented in the originally agendized format for the benefit of the minutes' reader but were not necessarily heard in that order.

CITY CLERK ANNOUNCEMENT: Per Assembly Bill 23, Maria Morris, City Clerk, announced that each Housing Authority Board Member is receiving a $50.00 stipend for conducting the Housing Authority meeting.

INTRODUCTIONS:

B1. COMMISSIONER INTRODUCTION: Ted Rosenfeldt, Parks, Equestrian and Community Services Commission; man Jerry Muir, former City commissioner.

B2. THE GROVES SENIOR APARTMENTS, PRESENTED WITH MAYOR'S AWARD FOR PROJECT OF THE YEAR; HERITAGE BARBECUE, PRESENTED WITH MAYOR'S AWARD FOR BUSINESS OF THE YEAR; AND PROVIDENCE MISSION HOSPITAL, SAN JUAN CAPISTRANO POLICE SERVICES, AND ORANGE COUNTY FIRE AUTHORITY STATION 7 PRESENTED WITH THE MAYOR'S AWARD FOR FIRST RESPONDER AND MEDICAL PROFESSIONALS HEROES OF SAN JUAN CAPISTRANO

ORAL COMMUNICATIONS:

- Barbara Szemenyei, City resident *(provided handouts);* Clint Worthington, no place of residence *(provided handouts);* Joanna Marquez, City resident.

PUBLIC HEARINGS:

D1. PUBLIC HEARING TO CONSIDER DISPOSITION AND DEVELOPMENT AGREEMENTS TO SELL 1.2-ACRES OF CITY-OWNED PROPERTY LOCATED AT 31776 EL CAMINO REAL AND 26874 ORTEGA HIGHWAY TO 26874 ORTEGA HIGHWAY LLC, CONTINUED FROM NOVEMBER 1, 2022, TO NOVEMBER 14, 2022 (600.30)

Council Member Taylor recused himself and left the Council Chamber due to real property interest.

Matisse Reischl, Assistant to the City Manager, provided an agenda report.

Mayor Reeve opened the public hearing. No public testimony was received.

Council Action: Moved by Mayor Pro Tem Hart, seconded by Council Member Bourne, and carried 4-0 with Council Member Taylor abstained to continue the Public Hearing to consider Disposition and Development Agreements to sell 1.2-acres of City-owned property located at 31776 El Camino Real and 26874 Ortega Highway to 26874 Ortega Highway LLC, from November 1, 2022, to November 14, 2022.

ROLL CALL:

AYES: COUNCIL MEMBERS: Bourne, Farias, Hart, and Mayor Reeve
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None
ABSTAINED: COUNCIL MEMBERS: Taylor

D2. PUBLIC HEARING TO CONSIDER PURCHASE AND SALE AGREEMENTS TO SELL 0.2-ACRES OF CITY-OWNED PROPERTY TO SJCM, LLC AND 0.13-ACRES OF CITY-OWNED PROPERTY TO SJC MISSION VENTURES, LLC LOCATED AT 31681 CAMINO CAPISTRANO, CONTINUED FROM NOVEMBER 1, 2022, TO NOVEMBER 14, 2022 (600.30)

Council Member Taylor recused himself and left the Council Chamber due to real property interest.

Matisse Reischl, Assistant to the City Manager, provided an agenda report.

Mayor Reeve opened the public hearing. No public testimony was received.

Council Action: Moved by Mayor Pro Tem Hart, seconded by Council Member Bourne, and carried 4-0 with Council Member Taylor abstained to continue the Public Hearing to consider Purchase and Sale Agreements to sell 0.2-acres of City-owned property to SJCM, LLC and 0.13-acres of City-owned property to SJC Mission Ventures, LLC located at 31681 Camino Capistrano, from November 1, 2022, to November 14, 2022.

ROLL CALL:

AYES: COUNCIL MEMBERS: Bourne, Farias, Hart, and Mayor Reeve
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None
ABSTAINED: COUNCIL MEMBERS: Taylor

CONSENT CALENDAR:

Council Action: Moved by Council Member Farias, seconded by Council Member Taylor, and carried unanimously to approve consent calendar items E1 through E4, E6 and E9, as recommended by staff, with Mayor Pro Tem Hart opposed to consent calendar E5.

E1. MOTION TO READ ORDINANCE BY TITLE ONLY, APPROVED.

E2. MOTION FINDING THAT CONDUCTING TELEPHONIC/VIRTUAL MEETINGS FOR CLOSED SESSION AND REGULAR MEETINGS AS ALLOWED PER ASSEMBLY BILL 361, PROMOTES SOCIAL DISTACING DURING THE COVID-19 PANDEMIC, APPROVED

E3. CITY COUNCIL MINUTES – REGULAR MEETING OF OCTOBER 18, 2022 (EXECUTIVE SESSION), APPROVED

E4. CITY COUNCIL MINUTES – REGULAR MEETING OF OCTOBER 18, 2022, APPROVED

E5. **ORDINANCE NO. 1105** ADOPTED ENTITLED "AN ORDINANCE OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA, APPROVING CODE AMENDMENT (CA) 20-001 TO AMEND THE MAMMOTH OFFICES PLANNED COMMUNITY COMPREHENSIVE DEVELOPMENT PLAN 90-02 TO ADD CHURCHES, WITH UP TO FOUR ANCILLARY RESIDENCES WHICH SHALL BE RESTRICTED TO USE FOR EMPLOYEES AND ARE NOT TO BE CHARGED RENT, WITH APPROVAL OF A CONDITIONAL USE PERMIT, AND REMOVING ALL OTHER USES OTHER THAN TELECOMMUNICATIONS TOWERS WITH APPROVAL OF A CONDITIONAL USE PERMIT AT THE PROPERTIES LOCATED AT 29402 RANCHO VIEJO ROAD (ASSESSOR'S PARCEL NUMBERS 650-011-34 & 650-011-39) (APPLICANT: THE PRS GROUP, PHILLIP SCHWARTZE) (PROPERTY OWNER: GRACE INTERNATIONAL), AND DETERMINE THAT THE PROJECT IS EXEMPT FROM CEQA REVIEW PURSUANT TO THE COMMON SENSE EXEMPTION" (440.25)

- Public Correspondence: Bob King, Save Our San Juan

ROLL CALL:

AYES:	COUNCIL MEMBERS: Bourne, Taylor, Farias, and Mayor Reeve
NOES:	COUNCIL MEMBERS: Mayor Pro Tem Hart
ABSENT:	COUNCIL MEMBERS: None

E6. REGULAR MEETING SCHEDULE REVISED BY ADDING A CITY COUNCIL MEETING ON MONDAY, NOVEMBER 14, 2022 (610.15)

E7. 2022 WALL OF RECOGNITION HONOREES: GERALD MUIR, ANN RONAN, AND DR. JULIE RYAN-JOHNSON (210.10)

Council Action: Moved by Council Member Bourne, seconded by Council Member Farias, and carried unanimously to select Gerald Muir, Ann Ronan, and Dr. Julie Ryan-Johnson for the 2022 Wall of Recognition.

E8. CITY MANAGER AUTHORIZED TO EXECUTE CHANGE ORDER NO. 1 TO THE CONSTRUCTION CONTRACT WITH RHOME PROFILE CONSTRUCTION CORP. IN THE AMOUNT OF $88,142 FOR DIFFERING SITE CONDITIONS AND REVISIONS TO THE DESIGN PLANS, FOR A TOTAL CONSTRUCTION CONTRACT AMOUNT OF $335,746; AND, $150,000 APPROPRIATED FROM THE PARKING MAINTENANCE FUND TO THE FISCAL YEAR 2022-2023 RAMOS STREET PARKING LOT EXPANSION PROJECT – PHASE 2 (CIP 20204) (600.30)

Council Member Taylor recused and left the Council Chamber due to a proximity to his residence.

Benjamin Siegel, City Manager, provided a report and responded to questions. Tom Toman, Public Works Director, responded to questions.

Council Action: Moved by Council Member Farias, seconded by Mayor Pro Tem Hart, and carried 4-0 with Council Member Taylor recused to authorize the City Manager to execute Change Order No. 1 to the Construction Contract with Rhome Profile Construction Corp. in the amount of $88,142 for differing site conditions and revisions to the design plans, for a total construction contract amount of $335,746; and, appropriate $150,000 from the Parking Maintenance Fund to the Fiscal Year 2022-2023 Ramos Street Parking Lot Expansion Project – Phase 2 (CIP 20204).

ROLL CALL:

AYES:	COUNCIL MEMBERS: Bourne, Farias, Hart, and Mayor Reeve
NOES:	COUNCIL MEMBERS: None
ABSENT:	COUNCIL MEMBERS: None
ABSTAINED:	COUNCIL MEMBERS: Taylor

E9. PAYMENT OF A $24,896.60 FEE IN LIEU OF CONSTRUCTING A HISTORIC DEPICTION PROGRAM AT THE NEW IN-N-OUT RESTAURANT ACCEPTED IN ACCORDANCE WITH CITY COUNCIL POLICY NO. 606 (910.50)

ADMINISTRATIVE ITEMS:

F1. CITY MANAGER

a. ADOPTION OF A CITY COUNCIL POLICY IMPLEMENTING A CITY SOCIAL MEDIA PLATFORM (610.30) – **CONTINUED TO THE NOVEMBER 14, 2022, MEETING**

- Public Correspondence: Heather Chapman, UNIDOS South OC.

F1b. UPDATE ON NEW CITY HALL AND CITY COUNCIL CHAMBER RELOCATION PROJECTS, RECEIVED AND FILED (200.30)

Matisse Reischl, Assistant to the City Manager, provided a PowerPoint presentation.

Council Action: Moved by Council Member Farias, seconded by Mayor Pro Tem Hart, and carried unanimously to receive and file the update.

F1. DEVELOPMENT SERVICES

b. REQUEST TO INITIATE A REZONE STUDY TO ESTABLISH A COMPREHENSIVE DEVELOPMENT PLAN 22-01 TO GOVERN LAND USES ON THE APPROXIMATELY 161-ACRE SADDLEBACK CHURCH RANCHO CAPISTRANO PROPERTY, INCLUDING A PROPOSED ENERGY STORAGE FACILITY USE LOCATED AT 29251 CAMINO CAPISTRANO, DENIED (460.20)

- Public Correspondence: Steven Rizzuto, Laguna Niguel resident.

Paul Garcia, Senior Planner, provided a presentation and responded to questions.

- Public Comments: Applicant Brett Kotrba, Community Valley Community Church; and David Oslosky, on behalf of Teresa Romero Carr, Laguna Niguel resident.

Council Member Farias made a motion, seconded by Mayor Reeve to initiate a Rezone study to establish Comprehensive Development Plan 22-01 that would govern the land uses on the approximately 161-acre Saddleback Church Rancho Capistrano property, including a proposed energy storage facility use, but motion failed due to approved substitute motion.

Substitute Council Action: Moved by Council Member Taylor, seconded by Mayor Pro Tem Hart, and carried 3-2 with Council Member Farias and Mayor Reeve opposed to deny the request to initiate a Rezone study to establish Comprehensive Development Plan 22-01 that would govern the land uses on the approximately 161-acre Saddleback Church Rancho Capistrano property, including a proposed energy storage facility use

ROLL CALL:

AYES: COUNCIL MEMBERS: Bourne, Taylor, and Mayor Pro Tem Hart
NOES: COUNCIL MEMBERS: Farias and Mayor Reeve
ABSENT: COUNCIL MEMBERS: None

SAN JUAN CAPISTRANO HOUSING AUTHORITY (Refer to Housing Authority Agency Minutes)

SUCCESSOR AGENCY TO THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY (Refer to Successor Agency Minutes)

COUNCIL ACTION ITEMS: None.

CITY COUNCIL REPORTS:

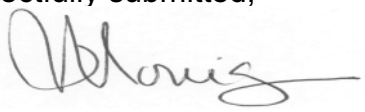
- Council Member Taylor thanked Mayor Reeve for those recognized under the Mayor's Awards.

CITY MANAGER REPORT: None.

ADJOURNMENT:

There being no further business Mayor Reeve adjourned the meeting at 7:27 p.m. to Monday, November 14, 2022, at 3:00 p.m. for an Executive Session, and 5:00 p.m. for the public Business Session, in the City Council Chamber.

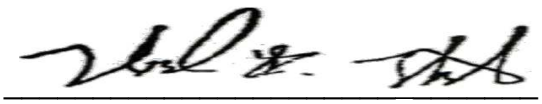
Respectfully submitted,



MARIA MORRIS, CITY CLERK

Approved: November 14, 2022

ATTEST:



HOWARD HART, MAYOR PRO TEM

NOTICE OF A CONTINUED PUBLIC HEARING
OF THE CITY COUNCIL
OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA

NOTICE IS HEREBY GIVEN, that the City Council of the City of San Juan Capistrano, California, continued the following Public Hearing:

PURCHASE AND SALE AGREEMENTS FOR SALE OF CITY-OWNED PROPERTY LOCATED AT 31681 CAMINO CAPISTRANO TO SJCM, LLC AND SJC MISSION VENTURES, LLC (ASSESSOR PARCEL NUMBERS: 124-181-02 AND 124-181-03)

From the Regular Meeting of November 1, 2022, 5:00 p.m., to an adjourned Regular Meeting to be held Monday, November 14, 2022, at 5:00 p.m. in the City Council Chamber, 32400 Paseo Adelanto, San Juan Capistrano.

DATED: November 2, 2022

Maria Morris, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS **AFFIDAVIT OF POSTING**
CITY OF SAN JUAN CAPISTRANO)

I, MARIA MORRIS, City Clerk of the City of San Juan Capistrano, do hereby declare that the above Notice was posted at or near the door of the City Council chamber on November 2, 2022, within 24 hours of the cancellation of the above-named meeting.

I declare under penalty of perjury that the foregoing is true and correct.

Maria Morris, City Clerk

NOTICE OF A CONTINUED PUBLIC HEARING
OF THE CITY COUNCIL
OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA

NOTICE IS HEREBY GIVEN, that the City Council of the City of San Juan Capistrano, California, continued the following Public Hearing:

PROPOSED SALE OF APPROXIMATELY 1.2-ACRE OF CITY-OWNED PROPERTY LOCATED AT 31776 EL CAMINO REAL AND 26874 ORTEGA HIGHWAY (ASSESSOR PARCEL NUMBERS: 124-160-55, 124-160-56, AND 124-160-57) TO 26874 ORTEGA HIGHWAY LLC, APPROVAL OF DISPOSITION AND DEVELOPMENT AGREEMENTS AND FINDING THE ACTIONS EXEMPT UNDER CEQA GUIDELINES EXEMPTION CLASS 32 FOR INFILL DEVELOPMENT

From the Regular Meeting of November 1, 2022, 5:00 p.m., to an adjourned Regular Meeting to be held Monday, November 14, 2022, at 5:00 p.m. in the City Council Chamber, 32400 Paseo Adelanto, San Juan Capistrano.

DATED: November 2, 2022

Maria Morris, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS **AFFIDAVIT OF POSTING**
CITY OF SAN JUAN CAPISTRANO)

I, MARIA MORRIS, City Clerk of the City of San Juan Capistrano, do hereby declare that the above Notice was posted at or near the door of the City Council chamber on November 2, 2022, within 24 hours of the cancellation of the above-named meeting.

I declare under penalty of perjury that the foregoing is true and correct.

Maria Morris, City Clerk

NOTICE OF ADJOURNMENT OF MEETING OF
CITY COUNCIL
OF THE CITY OF SAN JUAN CAPISTRANO, CALIFORNIA

NOTICE IS HEREBY GIVEN, that the City Council of the City of San Juan Capistrano, California, Adjourned its Regular Meeting of Tuesday, November 1, 2022, at 7:27 p.m. on to Monday, November 14, 2022, at 5:00 p.m. for a public business session in the City Council Chamber, 32400 Paseo Adelanto, San Juan Capistrano.

DATED: November 2, 2022

Maria Morris, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS **AFFIDAVIT OF POSTING**
CITY OF SAN JUAN CAPISTRANO)

I, MARIA MORRIS, City Clerk of the City of San Juan Capistrano, do hereby declare that the above Notice was posted at or near the door of the City Council Chamber on November 2, 2022, within 24 hours of adjournment of the above-named meeting.

I declare under penalty of perjury that the foregoing is true and correct.

Maria Morris, City Clerk