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13 ASSOCIATION

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF ORANGE

16 NEWPORT BEACH STEWARDSHIP  
17 ASSOCIATION,

18 Petitioner and Plaintiff,

19 v.

20 CITY OF NEWPORT BEACH,

21 Respondent and Defendant.

Case No. 30-2024-01428295-CU-WM-CXC

**AMENDED NOTICE OF MOTION AND  
MOTION FOR JUDGMENT**

Date: May 22, 2025  
Time: 2:00 p.m.  
Dept.: CX104  
Judge: Hon. Melissa R. McCormick

Date Filed: September 24, 2024

1                   **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2                   **PLEASE TAKE NOTICE** that on May 22, 2025 at 2:00 p.m., before the Honorable  
3 Melissa McCormick in Department CX-104 of the Superior Court of the State of California,  
4 County of Orange located at Civil Complex Center, 751 West Santa Ana Blvd., Santa Ana, CA  
5 92701, Petitioner Newport Beach Stewardship Association (“NBSA”) will and hereby does move  
6 this Court for Judgment on NBSA’s Verified Petition for Writ of Mandate and Complaint for  
7 Declaratory Relief pursuant to Code of Civil Procedure 1094. Because there is no dispute of  
8 material fact, “th[is] matter may be determined by the court by noticed motion of any party for a  
9 judgment on the peremptory writ.” (Code Civ. Proc. § 1094.) NBSA further seeks declaratory  
10 relief through this motion because such relief “is appropriate in a mandamus action.” (*Malott v.*  
11 *Summerland Sanitary Dist.* (2020) 55 Cal.App.5th 1102, 1109.)

12                   This motion is made on the grounds that Respondent and Defendant City of Newport  
13 Beach (the “City”) violated the requirement in Section 423 of the City Charter that any  
14 amendments to the City’s General Plan that allows for the development of 100 dwelling units or  
15 more be approved by a vote of the residents of Newport Beach. In July 2024, the City passed an  
16 ordinance that amended the Land Use Element of the City’s General Plan to allow for the  
17 development of over 8,000 new dwelling units without first obtaining voter approval under  
18 Section 423, and further passed an ordinance that amended the City’s Housing Element to remove  
19 the requirement for such voter approval. The City attempted to support its decision by invoking  
20 an exception to Section 423 for situations where state law “precludes” a vote of the residents of  
21 Newport Beach. That decision is entirely unsupported. The City’s claimed bases for  
22 “preclusion”—e.g., that voters may disapprove of the proposed amendments, resulting in  
23 potential consequences for the City such as a finding that the City is no longer in “substantial  
24 compliance” with State Housing Element law or potential use of the so-called “builder’s  
25 remedy”—are entirely speculative and based on a mischaracterization of state law.

26                   NBSA thus respectfully requests that the Court issue a writ of mandate that:

- 27                   (1) directs the City of Newport Beach to set aside Resolution No. 2024-51, which enacted  
28                   an amendment to the City of Newport Beach’s General Plan Land Use Element

1 without a Section 423 vote;  
2 (2) directs the City of Newport Beach to set aside Resolution Nos. 2024-58 and  
3 Resolution No. 2024-73, which adopted an amendment to the City of Newport  
4 Beach's Sixth Cycle Housing Element to remove a Section 423 vote requirement for  
5 its implementation; and  
6 (3) requires the City of Newport Beach to submit the proposed amendments to the Land  
7 Use Element to a Section 423 vote.

8 NBSA further requests that the Court provide the following declaration regarding state  
9 law:

- 10 • The City will remain in substantial compliance with state housing laws even if it  
11 misses the February 12, 2025 deadline to implement the Housing Element if such  
12 delay is caused by an attempt to obtain voter approval under Section 423 and the  
13 City has proposed and has made good faith efforts to implement a plan for  
14 obtaining such approval on a reasonable timeline; and  
15 • The City may reject builder's remedy applications submitted pursuant to  
16 Government Code § 65589.5 to the extent such applications are based on the  
17 City's purported failure to meet the February 12, 2025 deadline for  
18 implementation of the Housing Element, and so long as the City has proposed and  
19 makes good faith efforts to obtain voter approval under Section 423 on a  
20 reasonable timeline.

21 These declarations of state law incorporate a reasonable time frame for the City to obtain  
22 voter approval under Section 423, and thus NBSA requests that the Court retain jurisdiction to  
23 ensure that the City creates and follows a plan for obtaining Section 423 voter approval on a  
24 reasonable timeline. (*City of Carmel-By-The-Sea v. Bd. of Supervisors* (1982) 137 Cal.App.3d  
25 964, 971.)

26 This motion is based on this Amended Notice of Motion and Motion, and the concurrently  
27 filed Amended Memorandum of Points and Authorities, Proposed Order, Proposed Writ of  
28 Mandate, Supplemental Declaration of Bailey Heaps, and Supplemental Index of Exhibits; the

1 documents to be lodged with the Court including, the City’s purported Administrative Record, its  
2 purported Supplemental Administrative Record, and the documents in the Supplemental Index of  
3 Exhibits; the original filings for this Motion filed on December 4, 2024, including the original  
4 Notice of Motion and Motion, Memorandum of Points and Authorities, Proposed Order,  
5 Proposed Writ of Mandate, Declaration of Bailey W. Heaps in Support of Motion for Judgment  
6 and the exhibits attached thereto, the Movant’s Index, and the Request for Judicial Notice; as well  
7 as NBSA’s previously filed Verified Petition and Complaint, all files and records in this action,  
8 and such other evidence and argument as may be permitted.

9 Dated: April 16, 2025

KEKER, VAN NEST & PETERS LLP

11 By: /s/ Bailey W. Heaps

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