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Clerk of the Superior Court
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DAVID W. SMILEY, SBN 226616
EMAIL: dsmiley@ftblaw.com
DAVID S. DEMIAN, SBN 220626
EMAIL: ddemian@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE – SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

Attorneys for Petitioners/Plaintiffs Richard Lowenthal,
an individual, and Richard Lowenthal, as Trustee of the
Lowenthal-Tanimoto Family Trust dated April 3, 2006

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

RICHARD LOWENTHAL, an individual;
RICHARD LOWENTHAL, as Trustee of
the LOWENTHAL-TANIMOTO FAMILY
TRUST DATED APRIL 3, 2006,

Petitioners/Plaintiffs,

v.

CITY OF SAN DIEGO, a California public
agency; and
DOES 1 through 25,

Respondents/Defendants.

CASE NO: 25CU050929C

MEMORANDUM IN SUPPORT OF EX
PARTE APPLICATION FOR AN ORDER
SHORTENING TIME FOR A HEARING ON
PETITION FOR WRIT OF MANDATE

Assigned to:
Hon. Loren G. Freestone, Dept. C-64

Date: September 30, 2025
Time: 8:30 a.m.
Dept.: C-64

Petition Filed: September 23, 2025
Trial Date: Not Set

I

INTRODUCTION

Petitioner Richard Lowenthal (“Petitioner”) applies ex parte for an order shortening
time to hear his Petition for Writ of Mandate (the “Petition”), filed September 23, 2025, in this
Court, against Respondent the City of San Diego (“Respondent”). A true and correct copy of
the Petition is attached as Exhibit 1 to the declaration of David W. Smiley in support of
Petitioner’s ex parte application (“Smiley Dec.”) and incorporated by reference. (Smiley Dec.,
¶ 2.)

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1 Petitioner’s application to the City for approval of his residential development project is
2 currently set for public hearing on October 15, 2025. Despite request, Petitioner has not
3 received confirmation from the Respondent that it will be going forward. Because the
4 Legislature expressly provided that petitions under Section 65956 are entitled to priority “over
5 all civil actions or proceedings,” the hearing on the Petition must occur prior to October 15,
6 2025, to ensure that the public hearing proceeds as scheduled. If the Petition cannot be heard
7 prior to that date, Petitioner requests that the hearing on the Petition be set at the earliest
8 available hearing date on the Court’s calendar.

9 II

10 FACTUAL BACKGROUND

11 On January 31, 2024, Petitioner submitted Development Application No. PRJ-1111223
12 to Respondent. The application was deemed complete on February 22, 2025, and supported by
13 finalized reports as of June 9, 2025. (Smiley Dec., ¶ 2, Ex. 1, Petition at ¶¶ 17, 22.) The Permit
14 Streamlining Act (the “Act”) requires Respondent to issue a final decision within 180 days—
15 by August 21, 2025. Respondent failed to act by that deadline. (Gov. Code, § 65952.)
16 Respondent ultimately scheduled the hearing on the Application for October 15, 2025.

17 As a matter of law, the project is deemed approved under Government Code section
18 65956, subdivision (a). Nevertheless, Respondent has continued previously scheduled hearings
19 and continues to impose conditions and delay issuance of necessary approvals. (Gov. Code,
20 § 65952, subd. (a).) Despite request for confirmation, Respondent has failed and refused to
21 confirm that the October 15, 2025 hearing will be going forward as scheduled.

22 Petitioner filed the Petition on September 23, 2025, seeking a writ ordering the
23 Respondent to either proceed with the October 15, 2025 public hearing as scheduled or provide
24 notice and hold the required public hearing on a date within the time requirements set forth in
25 Government Code section 65952. Because the Petition is entitled to statutory priority under
26 Government Code section 65956, Petitioner now seeks an order shortening time so the Court
27 may promptly adjudicate the Petition and order the hearing to go forward on October 15, 2025.

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III

GOOD CAUSE EXISTS TO GRANT THE
ORDER SHORTENING TIME TO HEAR THE PETITION

Good cause exists to grant this ex parte application because the Legislature has expressly directed that petitions under Government Code section 65956 are entitled to priority over “all civil actions or proceedings.” Allowing the Petition to proceed on a standard civil timeline would directly contravene this statutory mandate and perpetuate the very delays the statute is designed to avoid. Courts also recognize that the purpose of the Act is to “expedite the processing of permits for development projects” and to prevent agencies from stalling indefinitely. (See *Ciani v. San Diego Trust & Savings Bank* (1991) 233 Cal.App.3d 1604, 1612.)

Here, Petitioner filed the Petition to enforce a clear statutory right: his application was automatically approved when the DSD failed to act by August 21, 2025. Each day of delay prolongs uncertainty, increases costs, and undermines the statute’s purpose. Accordingly, good cause exists under California Rules of Court, rule 3.1202, subdivision (c), to grant Petitioner’s application on an ex parte basis and advance the hearing to the earliest available date.

IV

CONCLUSION

For the reasons stated above, good cause exists for this Court to grant Petitioner’s ex parte application. Petitioner’s Development Application No. PRJ-1111223 is deemed approved by operation of law under Government Code section 65956 because Respondent failed to act within the statutory 180-day period. The Legislature has made clear that petitions brought pursuant to Section 65956 are entitled to priority over all civil actions or proceedings.

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1 Accordingly, Petitioner respectfully requests that this Court grant the ex parte application and
2 set the Petition for hearing for a date before October 15, 2025, or on the earliest available date
3 on the Court's calendar.

4 DATE: September 24, 2025

Respectfully submitted,

5 FINCH, THORNTON & BAIRD, LLP

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7 By: 

8 DAVID W. SMILEY

9 DAVID S. DEMIAN

10 Attorneys for Petitioners/Plaintiffs Richard
11 Lowenthal, an individual, and Richard
12 Lowenthal, as Trustee of the Lowenthal-
13 Tanimoto Family Trust dated April 3, 2006
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