

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

9/23/2025 5:41:32 PM

Clerk of the Superior Court
By G. Escorcia ,Deputy Clerk

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

VERIFIED PETITION FOR
WRIT OF MANDATE

[GOV. CODE, § 65956, SUBD. (a);
AND CODE CIV. PROC., § 1085]

ATTENTION: THIS PETITION IS
ENTITLED TO PRIORITY OVER ALL
CIVIL ACTIONS OR PROCEEDINGS
PURSUANT TO GOVERNMENT CODE
SECTION 65956.

INTRODUCTION

1. Petitioner Richard Lowenthal respectfully requests that this Court issue a
peremptory writ of mandate to the City of San Diego ("the City") and its Development
Services Department ("DSD"). The City's continued failure to act on a complete and compliant
development application has triggered the Permit Streamlining Act ("the Act"), which
mandates that the Project be deemed approved by operation of law. Alternatively, Petitioner
requests that this Court order the City to fulfill its ministerial duty to hold the required public
hearing without further delay.

/ / / / /

/ / / / /

1 2. This petition is not a mere procedural formality; it is a necessary action to
2 prevent the City’s prolonged inaction from causing further significant harm to Petitioner. Over
3 the course of months, the DSD has failed to comply with the clear and unambiguous deadlines
4 established by the Act. While the DSD’s Project Manager has repeatedly offered shifting and
5 belated hearing dates, her final demand for updated reports—months after the Application was
6 statutorily deemed complete—serves as a pretext for continued delay. This disregard for the
7 Act’s purpose to expedite housing development projects has caused, and continues to cause,
8 Petitioner significant financial damages in the form of extended carrying costs and increased
9 construction expenses.

10 3. The City’s persistent failure to act, despite a complete application and all
11 prerequisite submittals, has left this Court as the only recourse for a just and timely resolution.
12 The Act’s core purpose is to prevent exactly this type of bureaucratic stasis. By ordering the
13 DSD to either approve the Project or hold the hearing as scheduled, this Court will not only
14 uphold the letter of the law but also affirm the vital public policy of promoting efficient and
15 accountable government action in the housing development process.

16 JURISDICTION, VENUE, AND THE PARTIES

17 4. This Court has jurisdiction over this matter under Government Code section
18 65956 and Code of Civil Procedure section 1085.

19 5. Venue is proper in this Court because the City is a public entity located within
20 this judicial district.

21 6. Petitioner/Plaintiff Richard Lowenthal (“Mr. Lowenthal”) is, and at all times
22 mentioned was, an individual living in the State of California.

23 7. Petitioner/Plaintiff Lowenthal Tanimoto Family Trust dated April 3, 2006 (the
24 “Trust”) is, and at all times mentioned was, the owner of the real property located at 1720
25 Torrey Pines Road, San Diego, California and the subject of the Application at issue in this
26 petition. The Trust and Mr. Lowenthal are collectively referred to herein as “Mr. Lowenthal.”

27 8. Respondent/Defendant City of San Diego (“City”) is, and at all times mentioned
28 was, a public entity organized and existing under the laws of the State of California.

9. Mr. Lowenthal does not know the true names and capacities of the respondents/defendants named as DOES 1 through 25 and, therefore, sues them by fictitious names. Mr. Lowenthal is informed and believes that DOES 1 through 25 are persons or entities whose identities are presently unknown but who are in some manner responsible for or affected by the acts and omissions described herein. Mr. Lowenthal will amend this petition to allege their true names and capacities when ascertained.

10. At all times mentioned each respondent/defendant was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

GENERAL ALLEGATIONS

A. Project Background

11. This petition pertains to the development application for the construction of Mr. Lowenthal's residence at 1720 Torrey Pines Road, San Diego, California (the "Project"). The Project entailed the partial demolition and remodel of a 3,574 square foot one-story single dwelling unit to a two-story 14,265 square foot single dwelling unit over basement.

12. The Project is, and at all times mentioned was, a housing development project and “development project” within the meaning of the Permit Streamlining Act (the “Act”). (Gov. Code, § 65950 et seq.)

13. For the Project, Mr. Lowenthal hired Morengo Morton Architects, Inc. (“MMA”), to act as the Project’s lead architect and agent for the purposes of processing the Project’s applications and permits necessary for the construction of the Project. MMA is a noted local San Diego architectural firm with over 25 years of experience in Coastal design and entitlement processes throughout the coastal region of California.

14. The approval of the Project is, and at all times mentioned was, subject to California's Permit Streamlining Act (the "Act"). The primary public policy behind the Act is to expedite development projects by requiring government agencies to process permits within specified time limits, promoting faster project completion and economic growth. By setting

1 deadlines and providing consequences for inaction, the Act encourages timely decision-
2 making, prevents unnecessary delays, and ensures that development projects can move forward
3 efficiently.

4 B. The Application

5 15. Before construction of the Project could begin, Mr. Lowenthal was required to
6 obtain approval of the Project from various public agencies, including the City’s Development
7 Services Department (the “DSD”). The DSD was the lead and responsible agency for the
8 “Project” within the meaning of the Act. (Gov. Code, § 65950, subd. (a).)

9 16. On January 31, 2024, Mr. Lowenthal, through MMA, submitted Development
10 Application No. PRJ-1111223 (the “Application”) to the DSD to obtain approval for the
11 construction of the Project.

12 17. On February 22, 2025, the DSD notified Mr. Lowenthal that the Application
13 was complete.

14 C. The Application Approval Process and the DSD Delays

15 1. Statutory Deadlines Applicable to the Application Approval Process

16 18. The Act required the DSD to approve or disapprove of the Project within “180
17 days of the date on which the completed application or the development project has been
18 received and accepted as complete by the responsible agency.” (Gov. Code, § 65952.)

19 19. The Act further provides, “[i]n the event that a lead agency or a responsible
20 agency fails to approve or disapprove a development project within the time limits required by
21 this article, the failure to act shall be deemed approval of the permit application for the
22 development project.” (Gov. Code, § 65956, subd. (b).)

23 2. The DSD’s Failure to Timely Approve the Application

24 20. Based on the DSD’s February 22, 2025, Acceptance of the Application as
25 complete, the DSD was required to provide notice and hold a public hearing to approve or
26 disapprove the Application on or before August 21, 2025.

27 / / / /

28 / / / /

1 21. By email from the DSD's Project Manager, Karen Bucey ("Ms. Bucey"), to Mr.
2 Marengo dated May 6, 2025, Ms. Bucey told Mr. Marengo that "Hearing date of September 3
3 [2025] could be targeted if the Final Bio Report Comes In and the MND [Mitigated Negative
4 Declaration] is drafted late this month or early next month."

5 22. The DSD accepted all of the reports supporting the Application as complete on
6 June 9, 2025, but no hearing occurred on September 3, 2025.

7 23. By email from Ms. Bucey to Mr. Marengo dated May 28, 2025, Ms. Bucey
8 informed Mr. Marengo that the target hearing date on the Application was going to be October
9 1, 2025.

10 24. The DSD did not provide notice, hold a public hearing, and approve/disapprove
11 the Application by the August 21, 2025, statutory deadline and the Application was deemed
12 approved by operation of Government Code section 65956, subdivision (b).

13 25. By email from Ms. Bucey to Mr. Marengo dated August 15, 2025, Ms. Bucey
14 promised, "The hearing date for the project will be October 15, 2025."

15 26. By email dated September 3, 2025, Ms. Bucey demanded updated site plans,
16 biological studies, archeological reports, landscape plans, drainage study reports, an updated
17 stormwater requirements checklist and a geology update. These requests were improper as the
18 DSD had already accepted all reports as complete on June 9, 2025, and the Application was
19 deemed approved by operation of law on August 21, 2025.

20 27. Mr. Lowenthal has performed all conditions precedent to the approval of the
21 Application and is complying with Ms. Bucey's unreasonable requests for updated reports.

22 28. Despite Mr. Lowenthal's and Mr. Marengo's timely submissions, it is feared
23 that Ms. Bucey's belated requests for updated reports will be used as a pretext for the DSD to
24 continue the October 15, 2025, hearing date.

25 29. By letter dated September 12, 2025, Mr. Lowenthal by and through undersigned
26 counsel, objected to Ms. Bucey's belated requests for updated reports and requested written
27 confirmation that the October 15, 2025, hearing on the Application will go forward as
28 scheduled. As of the date of this petition no such confirmation has been received.

1 FIRST CLAIM FOR RELIEF: WRIT OF MANDATE

2 30. Mr. Lowenthal restates and realleges the allegations stated in paragraphs 1
3 through 29, above, as though set forth in full at this point.

4 31. For the DSD's violations of the Act, the Act authorizes the Court to issue an
5 order compelling the agency to provide the public notice or hold the hearing. Specifically, the
6 Act provides:

7 If any provision of law requires the lead agency or responsible agency to
8 provide public notice of the development project or to hold a public hearing, or
9 both, on the development project and the agency has not provided the public
10 notice or held the hearing, or both, at least 60 days prior to the expiration of the
11 time limits established by Sections 65950 and 65952, the applicant or the
12 applicant's representative may file an action pursuant to Section 1085 of the
Code of Civil Procedure to compel the agency to provide the public notice or
hold the hearing, or both, and the court shall give the proceedings preference
over all other civil actions or proceedings, except older matters of the same
character.

13 (Gov. Code, § 65956, subd. (a).)

14 32. A writ of mandate is appropriate under Code of Civil Procedure section 1085
15 where a public agency fails to perform a ministerial duty imposed by law.

16 33. The City through the DSD violated the Act by, among other things: (1) failing
17 to provide notice of hearing to approve the Application within the time limits proscribed by the
18 Act; and (2) failing to hold a hearing to approve the Application within the time limits
19 proscribed by the Act.

20 34. Mr. Lowenthal has performed all acts required for the timely approval of the
21 Application or was excused from performance.

22 35. Due to the City and the DSD's failure to timely make a determination approving
23 the Application within the statutory 180 days, the Application must be deemed approved under
24 Government Code section 65956, subdivision (b).

25 36. As a direct and proximate result of the DSD's failure to timely approve the
26 Project, Mr. Lowenthal has sustained significant damages in the form of extended carrying
27 costs and increased costs of construction from the resulting schedule delays.

28 / / / / /

1 37. Mr. Lowenthal petitions this Court for an order, ordering the City and its DSD
2 to approve the Project. (Gov. Code, § 65956, subd. (b).) In the alternative, Mr. Lowenthal
3 petitions this Court for an order, ordering the City and its DSD to proceed with the hearing on
4 the Application as scheduled on October 15, 2025. (Gov. Code, § 65956, subd. (a).)

5 EXPEDITED HEARING REQUESTED

6 38. Pursuant to Government Code section 65956, subdivision (a), Mr. Lowenthal
7 respectfully requests to set the hearing on this petition on or before October 15, 2025, or at the
8 earliest available date over other civil matters.

9 PRAYER

10 Wherefore, Petitioner prays as follows:

11 1. For a writ of mandate to be issued under Code of Civil Procedure section 1085,
12 declaring that Petitioner's Development Application No. PRJ-1111223 is deemed approved by
13 operation of law pursuant to Government Code section 65956, subdivision (a), and prohibiting
14 Respondent from imposing any further conditions, delays, or requirements inconsistent with
15 such deemed approval.

16 2. For a writ of mandate, ordering the City and its DSD to hold the hearing on
17 Petitioner's Development Application No. PRJ-1111223 on October 15, 2025.

18 3. For a writ of mandate, ordering the City and its DSD to provide notice and hold
19 a hearing on the Application on a date no later than the time limitations allowed by the Act.

20 4. For recovery of costs associated with bringing this writ petition. (Code Civ.
21 Proc., § 1095.)

22 / / / / /

23 / / / / /

24 / / / / /

25 / / / / /

26 / / / / /

27 / / / / /

28 / / / / /

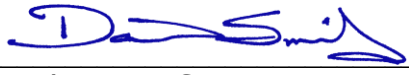
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. For such other or further relief as the Court deems just.

DATE: September 23, 2025

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: 

DAVID W. SMILEY

DAVID S. DEMIAN

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

3524.002/3TN0485.smt

VERIFICATION

I, Richard Lowenthal, as an individual and as Trustee of the Lowenthal-Tanimoto Family Trust, have read the VERIFIED PETITION FOR WRIT OF MANDATE.

The matters stated in the document are true based on either my own knowledge, or information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct to the best of my knowledge.

Executed on September 23, 2025, in San Diego, California.



RICHARD LOWENTHAL