

**Longtin's
LAND USE
PROCEDURES
& TIMELINES**

ABOUT THE AUTHOR

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Mr. Longtin is the author of *Longtin's California Land Use*, a comprehensive two-volume set of law and practice books. Mr. Longtin discontinued active law practice in 1996. However, he continues to study land use and to update *Longtin's Cal Land Use* annually.

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LAND USE PROCEDURES AND TIMELINES

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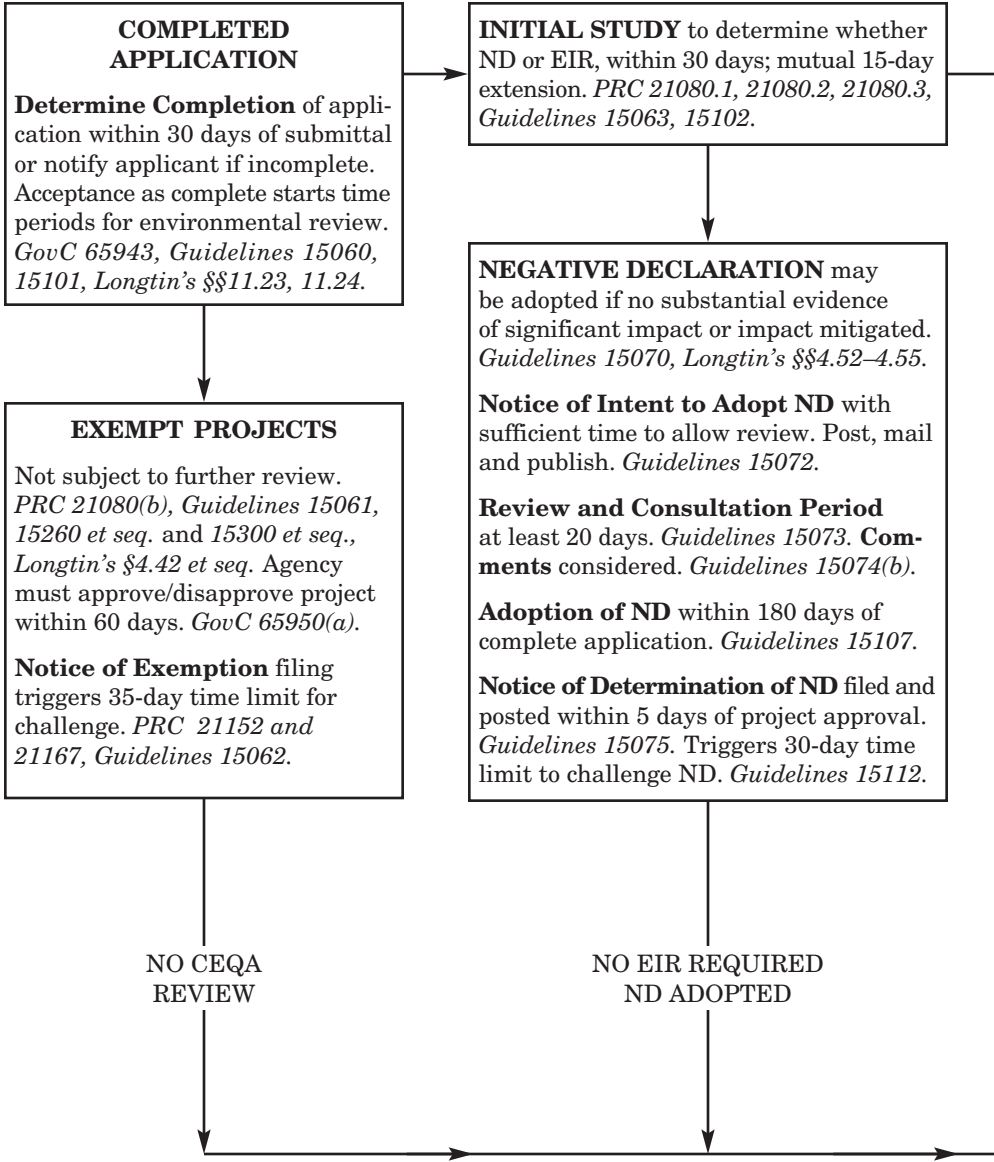
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ABBREVIATIONS

CCP Code of Civil Procedure	Longtin's . . . Longtin's California
CEQA California Environmental Quality Act	Land Use, legal text
EIR Environmental Impact Report	ND Negative Declaration
GovC Government Code	PRC Public Resources Code
Guidelines. . . CEQA Guidelines /	PSA Permit Streamlining Act
14 Cal. Code of Regulations	SMA. Subdivision Map Act

FLOW CHART AND TIME-



LINES — CEQA AND PSA

ENVIRONMENTAL IMPACT REPORT

EIR Required when project may have significant impact. *Longtin's §4.52.*

Notice of Preparation sent to other agencies for scope and content response within 30 days. *Guidelines 15082 and 15103.*

Draft EIR prepared by agency. *Guidelines 15084.* For content, see *Longtin's §4.62.*

Notice of Completion filed with specified agencies. *Guidelines 15085.*

Notice of Availability. Post, mail and publish. *Guidelines 15087.*

Public Review/Agency Consultation for minimum 30 days. *Guidelines 15087, 15105.*

Comments and Responses in final EIR. *Guidelines 15088 and 15132.*

Findings/Overriding Consideration Statement for approvals with significant effect. *Guidelines 15091, 15093.*

Final EIR Certification within 1 year of completed application. 90-day extension. *Guidelines 15108.*

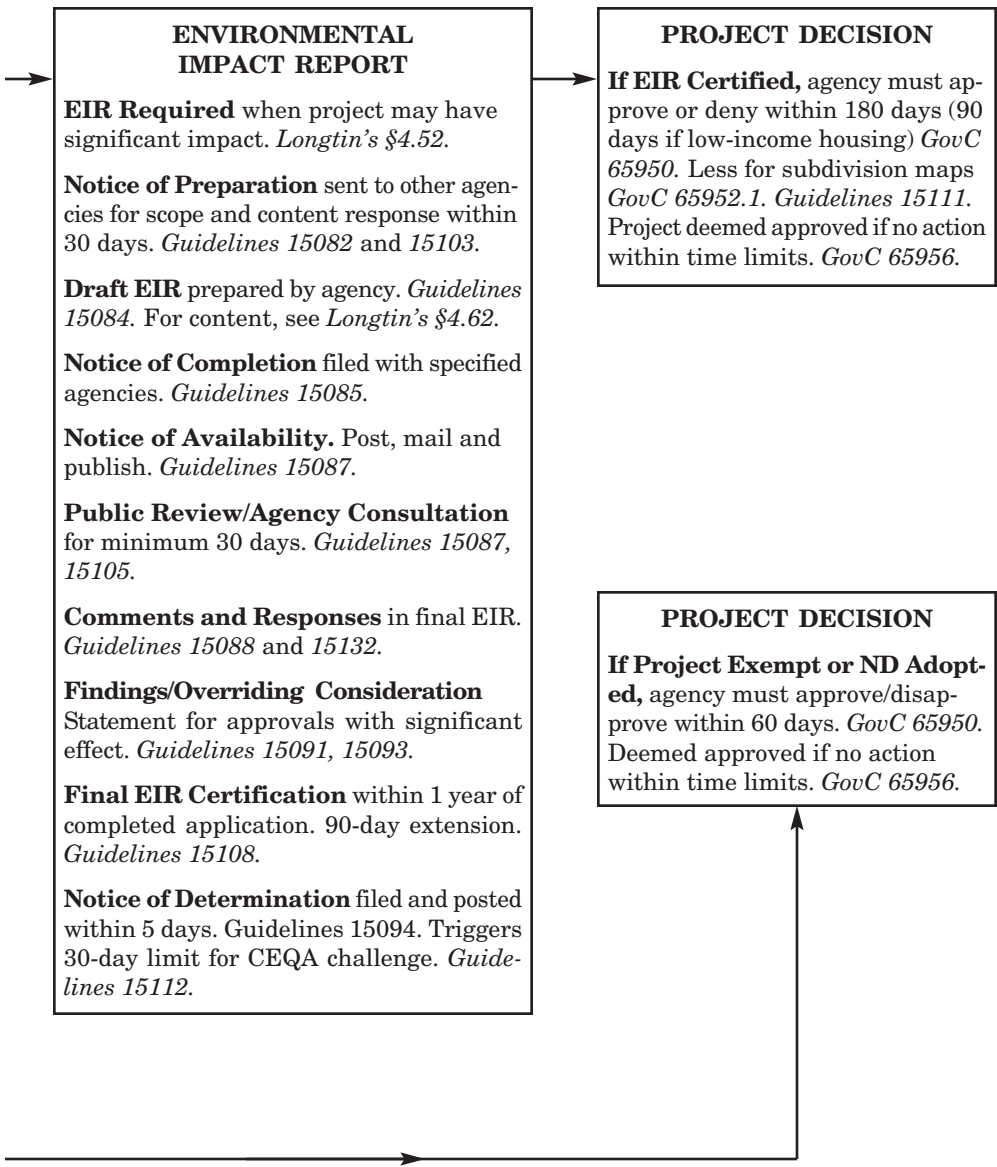
Notice of Determination filed and posted within 5 days. *Guidelines 15094.* Triggers 30-day limit for CEQA challenge. *Guidelines 15112.*

PROJECT DECISION

If EIR Certified, agency must approve or deny within 180 days (90 days if low-income housing) *GovC 65950.* Less for subdivision maps *GovC 65952.1.* *Guidelines 15111.* Project deemed approved if no action within time limits. *GovC 65956.*

PROJECT DECISION

If Project Exempt or ND Adopted, agency must approve/disapprove within 60 days. *GovC 65950.* Deemed approved if no action within time limits. *GovC 65956.*



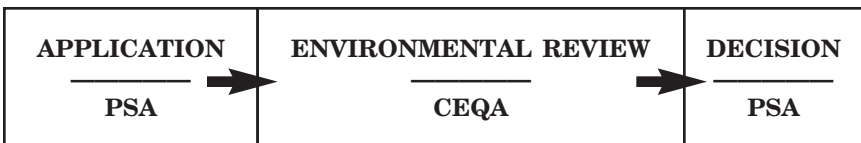
LAND USE PROCEDURES AND TIMELINES

Introduction and Scope. Most every land use project requires both application and decision pursuant to the Permit Streamlining Act (PSA) and environmental review under the California Environmental Quality Act (CEQA). Also, notice and hearing requirements are established by other laws. This procedural intersection can be complex and confusing.

This booklet contains a digest of the requirements and timelines for notice, review, decision and legal challenge for land use projects in California. It includes a flow chart, diagram and explanatory text, with liberal reference to authoritative sources. Although not comprehensive because of size limitations, the booklet covers areas most useful for most permit activities.

PROJECT APPLICATION AND REVIEW PERMIT STREAMLINING ACT (PSA)

PSA Meets CEQA: The Permit Streamlining Act (PSA) (*GovC §§65920 et seq./Longtin's §§11.22–11.27*) requires agencies to follow standardized procedures and strict time deadlines for application, review and approval of development projects. The PSA and CEQA work together like on/off lights. When application submitted, PSA turns on; when application completed, PSA turns off and CEQA turns on for environmental review; then CEQA turns off when review complete and PSA turns on again through project decision.



Applicability: PSA applies to “development projects,” which include all adjudicatory approvals such as subdivision maps and most discretionary development permits. It does not apply to ministerial actions such as building permits, lot line adjustments, and certificates of compliance. Nor does it apply to legislative actions, such as general plan or zoning changes. *Longtin's §11.22.*

Project Application: Agency specifies information required from applicant for development project. *GovC §§65940, 65941*. Upon receipt of application, agency has 30 days to determine and notify applicant whether application is complete for processing. If incomplete, resubmittal starts new 30-day review period. If agency fails to notify applicant of completion status within 30-day period, application is deemed complete. A completed application starts clock for agency review and decision. *GovC §65943, Longtin's §11.24*.

CEQA Review: Once application is complete, agency proceeds with CEQA process, making determinations on exemptions, negative declaration, or EIR certification, all within specified time periods. See CEQA, p. 6.

Project Decision: Following CEQA review and determination, PSA again becomes active, with strict time limits for project decision. After EIR certified, agency must approve or deny project within 180 days from date of certification. If low-income housing project, time shortened to 90 days. If project exempt from CEQA or if negative declaration adopted, agency must approve or deny within 60 days from determination. *GovC §65950*.

Subdivision Approvals: Time limits for approval of tentative subdivision maps (50 days for advisory agency/40+ days for appeal) may be shorter and must be followed (*Gov §§65952.1, 66452.1, 66452.2, 66452.5*). For CEQA reconciliation with short time limits for approval, see *Guidelines §15111*.

Deemed Approved: If no action is taken on project within specified time limits, project is deemed approved, but only if requirements for public notice and review are satisfied. Options available to applicant to ensure notice compliance. *GovC §65956(b), Longtin's §11.26*.

Time Extensions: PSA time limits for project decision may be extended once, by mutual agreement, not to exceed 90 days. *GovC §65957*. If there has been an extension under CEQA (see p. 10), to complete and certify an EIR, project must be decided within 90 days of certification. *GovC §65950.1*.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

In General

CEQA (*PRC* §§21000 *et seq.*) is a procedural statute designed to inform decision makers and the public about potential environmental effects of proposed land use activities. A major challenge for practitioners is compliance with the various notice, consultation and review periods required by CEQA and its Guidelines. CEQA works together with the PSA by commencing its environmental review after project application is complete. After CEQA review, the PSA controls again through project decision.

Based upon the type of project and its potential for environmental impact, CEQA review may follow one of three courses: (a) exemption; (b) negative declaration (ND); or (c) environmental impact report (EIR).

Exempt Projects

CEQA and its Guidelines exempt many types of activities from its requirements. See *PRC* §§21080–21080.33, *Guidelines* §§15061, 15062, 15260 *et seq.*, 15300 *et seq.* and *Longtin's* §§4.42 *et seq.* If project exempt, agency must approve or disapprove within 60 days. *GovC* §65950(a). Upon approving exempt project, agency or applicant *may* file notice of exemption, which triggers 35-day statute to challenge exemption determination. If notice not filed, time to challenge is 180 days from project approval. *PRC* §§21152, 21167, *Guidelines* §§15062, 15112.

Initial Study

An initial study, including consultations with applicant and other agencies, determines whether to prepare an ND or EIR. *PRC* §§21080.1–21080.3, *Guidelines* §15063(g). Agency must decide within 30 days. May be extended 15 days by mutual consent. *PRC* §21080.2. See *Guidelines* §§15063, 15102.

Negative Declaration (ND)

ND may be adopted when no substantial evidence that project may have significant effect. For projects where significant effect

identified, but mitigation measures reduce effect to insignificant, mitigated ND may be adopted. *PRC §21080(c), Guidelines §15070, Longtin's §§4.52–4.55.*

Content: For minimum required, see *Guidelines §15071.*

Notice of Intent to Adopt ND must be posted for 20/30 days and mailed to specified agencies and persons. *PRC §§21092, 21092.3, Guidelines §15072.*

Review and Consultation Period, for agencies and public, at least 20 days. Review period extended when ND sent to state clearinghouse. *PRC §§21091, 21092.4, Guidelines §§15073, 15206.*

Comments received during review period must be considered. *PRC §21091(d), Guidelines §15074(b).* Unlike EIR, comments not required to be attached to ND nor must lead agency respond.

Revised ND requires recirculation. *Guidelines §15073.5.*

Mitigation Measures: Where potential effects identified, but revisions in project reduce effect to insignificant, ND may be used. *Guidelines §15070(b).* Substitution of mitigation measures, prior to project approval, requires hearing and findings of equivalency. *PRC §21080(f), Guidelines §15074.1.*

Completion/Adoption of ND required within 180 days from completion of application. *PRC §21151.5, Guidelines §15107.*

Notice of Determination to be filed within five days of project approval and posted 30 days. *PRC §21152, Guidelines §15075.*

Statute of Limitations to challenge ND decision is 30 days if notice filed and posted, otherwise 180 days from project approval. *PRC §21167, Guidelines §15112.*

Environmental Impact Report (EIR)

EIR must be prepared when evidence supports “fair argument” that project may have significant effect on environment. See *Longtin's §4.52.* For criteria to determine significant effect, see *Guidelines §§15064, 15065.*

Notice of Preparation. Scoping: NOP to be sent to responsible and trustee agencies immediately. Agencies to specify scope and

content of information related to area of responsibility within 30 days. Scoping meeting if requested. *PRC §21080.4, Guidelines §§15082, 15103.*

Early Consultation: Early public consultation encouraged. *Guidelines §15083.* Consultation with water agencies required for specified large projects. Agencies to provide water supply adequacy assessment within 30 days of NOP. *Guidelines §15083.5.*

Draft EIR to be prepared by, or under contract to, agency. *Guidelines §15084.* For content of EIR, see *PRC §21100, Guidelines §§15120 et seq., Longtin's §4.62.*

Notice of Completion to be filed with OPR and state clearinghouse, if required, when draft EIR complete. *PRC §21161, Guidelines §15085.*

Notice of Availability. Public Review and Agency Consultation: NOA sent to affected agencies and requesting individuals. Post and mail to contiguous owners. *PRC §§21092, 21092.3, Guidelines §15087.* Lead agency to consult with affected agencies and request comments. *PRC §21092.4, Guidelines §15086.* Minimum consultation and public review period for draft EIR is 30 days, 45 days when submitted to state clearinghouse. *PRC §§21091, 21092, Guidelines §15105.*

Comments and Responses required in final EIR prior to certification. *PRC §21092.5, Guidelines §§15088, 15132.*

Final EIR. Certification prior to project approval and within one year from complete application, unless extended 90 days by mutual consent. *PRC §21151.5, Guidelines §15108.*

Findings and Statement of Overriding Consideration needed for approvals with remaining unmitigated significant effects. *Guidelines §§15091, 15093.*

Notice of Determination. Statute of Limitations: Agency may file and post notice within five days of approval. *PRC §21152, Guidelines §15094.* Notice triggers 30-day statute for CEQA challenge. *Guidelines §15112(c)(1).* If notice not filed, time extended to 180 days. *PRC §21167, Guidelines §15112(c)(5).*

NOTICE AND HEARING PROCEDURES

Due Process (*Longtin's §11.30*)

The constitutional principle of procedural due process requires that landowners and other affected parties must be provided adequate notice and opportunity to be heard prior to any government action that may affect significant property rights. As a practical matter, compliance with required statutory land use procedures will normally ensure due process compliance.

Notice (*Longtin's §11.31*)

Public hearing notice requirements for land use projects are covered by *GovC §§65090* and *65091* (notice requirements for CEQA determinations are in CEQA section, above). Generally, projects requiring legislative approval (general/specific plan and zoning amendments) only require publication and posting. *GovC §65090*. Adjudicatory decisions (tentative maps, variances, use permits, and other discretionary development permits) require both publication/posting *and* specific mailing to applicant and affected property owners. *GovC §65091*. For chart of notice requirements for specific permits and activities, see pp. 12–13.

Content: Date, time and place of hearing, description of property, and explanation of matter to be considered. *GovC §65094*.

Publication/Posting: 10 days prior newspaper publication or posting in three public places. *GovC §65090*.

Mailing: 10 days prior mailed notice to applicant and property owners within 300 feet. *GovC §65091*.

Hearing (*Longtin's §11.32*)

Minimum Standards: Agencies must adopt procedural rules for conduct of zoning hearings. Staff report and record of hearing usually required. *GovC §65804*.

Hearing Agenda to be posted 72 hours prior to agency meeting. *GovC §54954.2, Longtin's §11.42*.

Opportunity to be Heard: Affected parties have right to meaningful hearing and to raise specific objections. *Longtin's*

§11.32[4]. For burden of proof, evidence and issues to be considered, see *Longtin's* §§11.32[3]–[12].

Decision-Making Process: For discussion of bias and fairness, conflicts of interest and voting, see *Longtin's* §§11.40–11.45.

Findings: Required for adjudicative action, but not required for legislative action. Many exceptions. *Longtin's* §§11.50 *et seq.* See Chart of Procedures for Specified Activities, pp. 12–13.

Appeals: See *Longtin's* §11.32[13].

TIME LIMITS. PROCEDURAL DEFECTS. LITIGATION

Time Limits. Extensions

For time limits on specified PSA and CEQA activities, see text (pp. 5–8) and chart of timelines, pp. 2–3. CEQA time limits are directory, not mandatory. *Longtin's* §4.86[3]. Time periods may be extended by mutual consent, within limits. *Guidelines* §15108. And may be suspended for applicant delay. *Guidelines* §15109. “Deemed approved” provisions of PSA and SMA are mandatory. See p. 5.

Effect of Procedural Defects

Defective procedures generally do not invalidate permit or action unless party complaining suffered substantial injury and result would have been different. CEQA notices valid if agency makes “good faith effort.” *GovC* §§65010, 65093, 65945.7. See *Longtin's* §§11.31[5], 11.32[15]. However, *cumulative* errors may violate due process. See *Longtin's* §11.32[15].

Deadlines for Legal Challenge

The statute of limitations for challenges to land use decisions is short. *Guidelines* §15112. For most CEQA determinations, 30 days (*PRC* §21167); for most planning, zoning and subdivision decisions, 90 days (*GovC* §§65009(c), 66499.37). Many time limitations run from date of decision to filing legal action and service of process (*GovC* §65009(c)). For list of limitation periods for specific land use permits/activities, see chart, pp. 12–13.

Expediting Litigation

Cases involving CEQA compliance issues are entitled to calendar preference and other expedited procedures to quickly resolve litigation. *PRC §21167.1*.

CHART OF PROCEDURES

PERMIT or ACTIVITY	TYPE Determining type of action can determine due process applicability and standard of judicial review. See <i>Longtin's §§11.10-11.13.</i>	NOTICE/HEARING Public hearing notice requirements include publication/posting (<i>GovC 65090</i>) and mailing (<i>GovC 65091</i>). See p. 9.
General/Specific Plan Amendment	Legislative	Noticed hearing before planning commission and legislative body. <i>GovC 65353-65356, 65453.</i>
Zoning Amendment/Rezoning	Legislative	Noticed hearing before planning commission and legislative body. <i>GovC 65854-65857.</i>
Development Agreement	Legislative	Noticed hearing. <i>GovC 65867.</i>
Discretionary Permit, CUP/Variance	Adjudicative	Noticed hearing. <i>GovC 65905.</i> Due process.
Subdivision: Tentative Map, Parcel Map	Adjudicative	Noticed hearing. <i>GovC 66451.3.</i> Due process.
Final Map, Lot Line Adjustment, Certificate of Compliance	Ministerial	No hearing required
Permit Conditions and Fees	Legislative (adopting fee ordinance), adjudicative (imposing condition/fee on specific project)	Noticed hearing. <i>GovC 66016</i> (adopt fees); <i>65905</i> (permits); <i>66451.3</i> (subdivisions). Due process.
Building/Occupancy Permits	Ministerial	No hearing required
CEQA: Exemption Determination, ND Adoption, EIR Certification	Not necessary to determine	CEQA requires no public hearings. However, agencies are required to notice various determinations/decisions. See pp. 6–8.

FOR SPECIFIED ACTIVITIES

<p>FINDINGS As general rule, findings required for adjudicative decisions; not required for legislative or ministerial decisions. <i>Longtin's</i> §11.51.</p>	<p>STATUTE of LIMITATIONS See p. 10 and <i>Longtin's</i> §12.34.</p>	<p>JUDICIAL REVIEW/ REMEDY Invalidation, mandate and damages are common remedies for land use litigation. Ancillary remedies include injunctions, declaratory relief, civil penalties and attorney fees. See <i>Longtin's</i> §§12.01–12.09A and 12.40.</p>
<p>Not required. Except general plan amendment limiting housing. <i>GovC</i> 65302.8.</p>	<p>90 days. <i>GovC</i> 65009, 65860(b).</p>	<p><i>CCP</i> 1085 mandate review. If plan inadequate, compliance remedy. <i>GovC</i> 65750–65763. If inconsistency, invalidation remedy. <i>GovC</i> 65860(b).</p>
<p>Not required. Except zoning limiting housing <i>GovC</i> 65863.6; interim urgency ordinance <i>GovC</i> 65858; others <i>GovC</i> 65567.</p>	<p>90 days. <i>GovC</i> 65009, 65860(b). Except actions in support of affordable housing, 1 year. <i>GovC</i> 65009(d), (g).</p>	<p><i>CCP</i> 1085 mandate review. Invalidation and damages remedies. <i>CCP</i> 1095, <i>GovC</i> 65860(b) (consistency).</p>
<p>General plan consistency. <i>GovC</i> 65867.5.</p>	<p>90 days. <i>GovC</i> 65009, 65860(b) (consistency).</p>	<p><i>CCP</i> 1085 mandate review. <i>GovC</i> 65860(b) (consistency).</p>
<p>Topanga findings required. <i>Longtin's</i> §3.72[6].</p>	<p>90 days. <i>GovC</i> 65009.</p>	<p><i>CCP</i> 1094.5 mandate. Invalidation, damages remedies. <i>CCP</i> 1095.</p>
<p>Map approval findings. <i>GovC</i> 66473.5 and 66474.</p>	<p>90 days. <i>GovC</i> 66499.37.</p>	<p><i>CCP</i> 1094.5 mandate. Invalidation, damages remedies. <i>CCP</i> 1095.</p>
<p>Not required. Ministerial items.</p>	<p>90 days. <i>GovC</i> 66499.37.</p>	<p><i>CCP</i> 1085 mandate. Invalidation, damages remedies. <i>CCP</i> 1095.</p>
<p>Findings required as part of Discretionary Permit or Subdivision approval. See above.</p>	<p>Fee adoption/increase. 120 days. <i>GovC</i> 66022. Fee imposition protest. 90 days. <i>GovC</i> 66020(d). Legal challenge. 180 days from protest. <i>GovC</i> 66020(d).</p>	<p>Challenge to fee adoption, <i>CCP</i> 860 validation. <i>GovC</i> 66022(b). Challenge to imposed fee, invalidation/refund. <i>GovC</i> 66020(d)–(f).</p>
<p>Findings not required</p>	<p>90 days. <i>CCP</i> 1094.6.</p>	<p><i>CCP</i> 1085 mandate. Invalidation, damages remedies. <i>CCP</i> 1095.</p>
<p>Project approval despite significant effects. <i>Guidelines</i> 15091. Statement of overriding considerations. <i>Guidelines</i> 15093.</p>	<p>Exemption determination, 35 days. ND adoption or EIR certification, 30 days, unless notice not filed, then 180 days. See <i>Guidelines</i> 15112.</p>	<p><i>CCP</i> 1085 or 1094.5 “abuse of discretion” standard. <i>PRC</i> 21168 and 21168.5. Invalidation and compliance remedies. <i>PRC</i> 21168.9, <i>CCP</i> 1095. See <i>Longtin's</i> §4.90.</p>

