AB 52 Consultation Failure – Fatal CEQA Error

1. Statutory Requirements

• Public Resources Code (PRC) §21080.3.1(b): Lead agencies must notify California Native American tribes within 14 days of determining an application is complete.

• PRC §21080.3.1(d): If a tribe requests consultation, the lead agency shall begin consultation within 30 days of the request.

• PRC §21080.3.2(a): Consultation must be a meaningful, timely, government-to-government process, mutually respectful of tribal sovereignty.

• PRC §21082.3(d)(1): No Mitigated Negative Declaration (MND) may be adopted until consultation is completed in good faith.

2. Facts in This Case

• The Elem Indian Colony representative reached out regarding the Poverty Flats project, thereby triggering AB 52 consultation requirements.

• Instead of conducting government-to-government consultation, the IS/MND states the applicant will provide “tribal sensitivity training.”

• This unlawfully shifts responsibility away from Lake County (the lead agency), in direct violation of PRC §§21080.3.1–21080.3.2.

3. Why This is Legally Deficient

• Applicant-run sensitivity training is not consultation. Consultation must include assessment of potential tribal cultural resources, good-faith discussions of avoidance, preservation, or mitigation, and opportunity for the tribe to shape project outcomes.

• The IS/MND provides no record of completed government-to-government consultation, only a statement of applicant action.

• This procedural failure invalidates the MND. CEQA requires a legally adequate process, not a substitute.

4. Supporting Case Law

• Pit River Tribe v. County of Fresno (2006) 140 Cal.App.4th 1420, 1431–1432: Failure to consult with tribes on cultural resources is a prejudicial abuse of discretion under CEQA.

• Madera Oversight Coalition v. County of Madera (2011) 199 Cal.App.4th 48, 81–82: Agencies must conduct full cultural resource review; shortcuts are unlawful.

• California Clean Energy Comm’n v. County of San Diego (2014) 220 Cal.App.4th 1063, 1074–1075: Substituting inadequate processes for CEQA’s requirements renders approvals invalid.

• Golden Door Properties, LLC v. County of San Diego (2020) 50 Cal.App.5th 467, 521: CEQA requires good faith and thorough review; failure is a fatal flaw requiring an EIR.

5. Conclusion

By substituting applicant-led “sensitivity training” for mandatory AB 52 consultation, Lake County has committed a fatal CEQA error. The IS/MND cannot stand. A full Environmental Impact Report (EIR) is required to ensure legal compliance and tribal sovereignty protections.