

Chapter 8 — Cultural Resources and Tribal Consultation

Principle

Under AB 52 (PRC §§ 21080.3.1 – 21082.3), a lead agency must notify California Native American tribes within fourteen (14) days of deeming an application complete, and—if consultation is requested—must begin government-to-government consultation within thirty (30) days of that request. No Mitigated Negative Declaration (MND) may be adopted until consultation is completed in good faith. The CEQA Guidelines (§ 15064.5) further require accurate identification, evaluation, and mitigation of tribal cultural resources—not merely archaeological artifacts, but locations, practices, and landscapes of continuing tribal significance [A1].

Argument

Failure to Consult under AB52: The record demonstrates that while the Elem Indian Colony was initially contacted under Assembly Bill 52 (AB 52), the County failed to fulfill its statutory duty to complete consultation in good faith. Tribal Historic Preservation Officer (THPO) Clifford Mota of the Elem Indian Colony participated in an on-site visit with the project applicant, thereby initiating the consultation process as required under Public Resources Code (PRC) §§ 21080.3.1–21080.3.2. However, no agreement or mitigation measures were reached during or following that meeting [A2].

Following this unproductive site visit, grading and ground-disturbing activities commenced at the Poverty Flats project site without further notification to the tribe. In subsequent correspondence, Mr. Mota confirmed by email that he had not been notified of any grading or ground-disturbing activities following his site visit and non-agreement, underscoring that neither the County nor the applicant re-engaged or maintained the required government-to-government dialogue mandated under AB 52 [A3].

This sequence demonstrates that while initial contact occurred, the consultation process was not completed in good faith as required by AB 52. The failure to continue consultation after disagreement and before subsequent grading constitutes a procedural violation of PRC § 21082.3(d)(1), which prohibits adoption of a Mitigated Negative Declaration until consultation is fully resolved [A4].

Substitution of “Tribal Sensitivity Training” for Consultation: The April 25 2025 Initial Study/Mitigated Negative Declaration (ISMND) explicitly states that the project applicant—not the County—would conduct “*tribal sensitivity training*” as a mitigation measure in

place of formal consultation. This approach constitutes a direct violation of Public Resources Code (PRC) §§ 21080.3.1(d) and 21080.3.2(a), which mandate that consultation be conducted by the lead agency on a government-to-government basis, not by a private applicant acting in its stead. By delegating its statutory obligation to the applicant, the County effectively abdicated its role as a sovereign actor under CEQA and AB 52, converting a legal duty into an informal and non-binding gesture.

Applicant-led training is not legally recognized as consultation under AB 52 or CEQA. True consultation requires the identification and assessment of potential tribal cultural resources, good-faith dialogue regarding avoidance, preservation, or mitigation, and a documented opportunity for the tribe to participate in shaping project outcomes. None of these essential elements appear anywhere in the ISMND or the Planning Commission staff report, both of which contain only generalized statements of “training” and “awareness.” This procedural substitution stripped the process of its legal meaning and prevented the Elem Indian Colony from influencing protective measures for sacred or culturally significant areas.

California courts have consistently held that such deviations from CEQA’s required process are fatal legal defects. In *Pit River Tribe v. County of Fresno* (2006) 140 Cal.App.4th 1420, 1431–1432, the court held that failure to consult with tribes on cultural resources constitutes a prejudicial abuse of discretion. Likewise, *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, 81–82 confirmed that agencies must conduct a full and transparent cultural review, and *California Clean Energy Comm’n v. County of San Diego* (2014) 220 Cal.App.4th 1063, 1074–1075 held that substituting informal or applicant-led processes for CEQA’s mandated review renders project approval invalid. Finally, in *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 521, the court reaffirmed that good-faith, lead-agency-led consultation is a procedural prerequisite to lawful project adoption [A6] [A7] [A8] [A9].

Misrepresentation of AB 52 Consultation to the Planning Commission: During the May22, 2025 Planning Commission hearing, County staff presented a slide titled “AB 52 Tribal Notification,” which stated:

“Notification of the Project was sent to twelve local tribes on April 9, 2020. Tribal Consultation was requested. Tribal Consultation was conducted with Elem Colony on January 8, 2024 and concluded the same day.” [A5]

This slide was shown publicly as part of the County's staff presentation, and staff further stated that "no agreement was reached" with the Elem Indian Colony. This representation confirms that the only documented contact with the tribe occurred during a single-day interaction and that no further government-to-government dialogue, memorandum of understanding, or mitigation process followed. Such a one-time meeting does not satisfy the statutory definition of consultation under Public Resources Code §§ 21080.3.1–21080.3.2, which require ongoing, good-faith communication between sovereign entities until mutual understanding or agreement is reached.

By presenting this truncated interaction as a completed consultation, the County materially misled both the Planning Commission and the public into believing that AB 52 obligations had been met. In truth, no valid consultation process occurred, and the record contains no documentation of continuing dialogue, meeting notes, or mitigation discussions that would evidence compliance. The County's selective portrayal of these facts constitutes a material misrepresentation of CEQA compliance and a prejudicial abuse of discretion. Because this misinformation influenced the Planning Commission's approval of the Mitigated Negative Declaration, it undermines the integrity of the administrative record and further supports the need for recirculation of the IS/MND or preparation of a full Environmental Impact Report (EIR) to correct the procedural record and ensure lawful tribal engagement.

Factual Errors, Omissions, and Cultural Misidentification: The Natural Investigations 2023 Cultural Assessment relied upon by the County contains substantive factual inaccuracies and critical omissions that undermine the validity of the CEQA baseline for the Poverty Flats project. Most notably, the report erroneously identified the Patwin tribe as the historical occupants of the project area, despite extensive ethnographic and archaeological evidence confirming that the Elem Pomo are the ancestral inhabitants of the High Valley region. Historical sources, including regional ethnographies and tribal testimony, directly contradict this misattribution. By assigning the wrong tribal affiliation, the report misrepresents the ethnographic context of the site and establishes a false environmental baseline, in violation of CEQA Guideline § 15125(a) [A10]. This foundational error misleads decision-makers and the public about which sovereign tribal interests are affected and distorts the scope of potential cultural resource impacts.

Equally serious is the omission of recognized tribal cultural sites within and surrounding the project area. The Cultural Assessment failed to identify Schindler Creek (Cawb-die) as a traditional Clear Lake hitch spawning ground that holds continuing ceremonial and subsistence significance for the Elem Pomo. It also omitted reference to High Valley, historically known as a multi-tribal gathering and trade corridor, and Timber Road, a historic travel route connecting coastal and inland tribes. Each of these locations is eligible for consideration as a tribal cultural resource under CEQA Guidelines § 15064.5, which requires identification and evaluation of such resources before any ground disturbance. Their exclusion from the record reflects a failure to perform a competent field-level investigation consistent with CEQA's disclosure and mitigation standards.

Finally, the County's failure to allow tribal participation in site verification further compounds the procedural and substantive deficiencies. As confirmed by THPO Clifford Mota in correspondence with local representatives, the Elem Indian Colony was never contacted to review grading plans or participate in field inspections following the initial site visit and non-agreement. This omission deprived the tribe of its statutory right to verify findings, document sacred or archaeological areas, and contribute to meaningful mitigation. The absence of verified tribal review leaves the ISMND incomplete and renders its findings regarding cultural impacts unsupported by substantial evidence. Collectively, these factual inaccuracies, omissions, and procedural failures demonstrate that the County's cultural analysis does not meet CEQA's minimum requirements for adequacy, completeness, and good-faith disclosure.

Conclusion

By substituting an applicant-run training program for legally mandated AB 52 government-to-government consultation, Lake County committed a fatal procedural error under CEQA.

The record shows no evidence of completed consultation with the Elem Indian Colony, misidentification of tribal ancestry, and omission of documented sacred sites. Each constitutes a material failure to disclose and analyze significant tribal cultural resources. Under PRC § 21082.3(d)(1) and case law (Pit River Tribe, Golden Door), these violations invalidate the Mitigated Negative Declaration and require recirculation and preparation of a full Environmental Impact Report (EIR) with direct Elem Tribal consultation and field verification before any further project action.

Footnotes

[A1] Public Resources Code §§ 21080.3.1(b), 21080.3.1(d), 21080.3.2(a), and 21082.3(d)(1); CEQA Guidelines § 15064.5. (These provisions establish the mandatory procedures for early tribal notification, initiation of consultation, and completion of government-to-government dialogue in good faith prior to adoption of any Mitigated Negative Declaration), AB52_Consultation_Failure_Handout.pdf.

[A2] Cliff Mota Contract with Poverty Flats IMG_5783.jpeg.

[A3] Some light ready for you all.pdf (Email from Elem THPO Cliff Mota, July 24 2025), PRC §§ 21080.3.1–21080.3.2.

[A4] PRC § 21082.3(d)(1).

[A5] 2025-05-22 Max PC Slide AB 52 No Agreement Reached.JPG (Screenshot of Planning Commission Meeting Presentation - May 22, 2025 Slide titled “AB 52 Tribal Notification”), PRC §§ 21080.3.1–21080.3.2 (consultation was not completed in good faith).

[A6] Pit River Tribe v. County of Fresno (2006) 140 Cal.App.4th 1420 (Failure to consult constitutes prejudicial abuse of discretion).

[A7] Madera Oversight Coalition v. County of Madera (2011) 199 Cal.App.4th 48 (Agencies must conduct full cultural review; shortcuts invalidate approvals).

[A8] California Clean Energy Comm’n v. County of San Diego (2014) 220 Cal.App.4th 1063 (Substituting informal processes renders CEQA approval invalid).

[A9] Golden Door Properties, LLC v. County of San Diego (2020) 50 Cal.App.5th 467 (Failure to act in good faith triggers EIR requirement).

[A10] Cultural Resources Report Redacted ETHNOGRAPHIC OVERVIEW.pdf (p.10 Cultural Resources Assessment for the Cannabis Cultivation Operation at 10535 High Valley Road, Clearlake, Lake County, California,” Natural Investigations Company, December 2023. Confidential archaeological data omitted pursuant to Government Code §6254.10 and

ARPA §9(a), Cultural slopes short Binder final.docx (Cultural Misidentification and Omitted Sites – Poverty Flats Appeal Evidence).