DEMYSTIFYING AB 52 TRIBAL CONSULTATION UNDER CEQA

Navigating the California Environmental Quality Act (CEQA) is a complex endeavor for project developers, city planners, and environmental consultants. Since 2015, one of the most critical—and frequently misunderstood—components of CEQA compliance is the government-to-government tribal consultation process under Assembly Bill 52 (AB 52).

Recent case law, particularly the landmark 2025 decision in *Koi Nation of Northern California v. City of Clearlake*, helped clarify the consultation requirements and the consequences for violating them. AB 52 consultation is a government-to-government dialogue during which the consulting tribe's ancestral descendance from the project's geographic area must be proven with substantial evidence. Anything less is deficient to establish the tribal "expertise" CEQA requires to adequately reduce a project's impacts to tribal cultural resources ("TCR").

Accordingly, AB 52 consultation is not satisfied by a tribe's or monitoring entity's letter request to perform monitoring services for a project, or an unsubstantiated assertion of "cultural affiliation" to the project location. Lead agencies frequently resist the discerning and investigative role the Legislature assigned to them. Comments such as, "the City doesn't want to say who is and who isn't ancestrally affiliated," and "the City is erring on the side of inclusiveness," are common—they are also legally wrong. A lead agency lacks discretion to forego supporting its findings by substantial evidence in the administrative record, or to adopt "illusory" mitigation measures.

This article breaks down the fundamentals of tribal consultation, addresses common misunderstandings, and provides practical guidance for ensuring compliance.

AB 52 Consultation Triggers. AB 52 took effect on September 25, 2014, and applies to all projects that have a notice of preparation, notice of mitigated negative declaration, or notice of negative declaration filed on or after July 1, 2015. (California Legislative Information, Assembly Bill No. 52 (Chapter 532, Statutes of 2014).)

The Consultation Timeline. Crucially, the entire consultation process must be completed prior to the release of a negative declaration, mitigated negative declaration (MND), or environmental impact report (EIR). The AB 52 consultation process follows a strict statutory timeline:

STEP	ACTION REQUIRED	STATUTORY DEADLINE
1	Tribe Requests Notice [Pre-Consultation Requirement]	Tribes must submit to all lead agencies located within the geographic areas from which the tribe ancestrally descends, written requests that the lead agency notify the tribe of projects located in those affiliated areas.

		(California Public Resources Code § 21080.3.1.) The Tribe must provide contact information for receiving the requested notifications.
2	Lead Agency Notification	A lead agency must provide formal written notification to the tribal contacts that have requested notification (see Step No. 1, above) within **14 days** of: (a) determining a project application is complete, or (b) deciding to undertake the project. (Cal. Pub. Res. Code § 21080.3.1.) This notification must identify the project and invite the tribe to engage in formal consultation with the lead agency regarding the tribe's ancestral affiliation with the project's geographic location, and the tribe's TCRs that exist there and/or may be discovered.
3	Tribe Requests Consultation	Upon receiving the lead agency's formal, written notification (see Step No. 2, above), the tribe has **30 days** to formally request consultation with the lead agency for the subject project. This request for consultation **must be made by the tribe in writing**. (Cal. Pub. Res. Code § 21080.3.1.)
4	Consultation Begins	The lead agency must begin the consultation process within **30 days** of receiving the tribe's written request. (Cal. Pub. Res. Code § 21080.3.1.)

What Consultation Requires. Under Government Code Section 65352.4, "consultation" is defined as the "meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement". (*Id.*) If a tribe requests consultation regarding project alternatives, recommended mitigation measures, or significant effects, the consultation must include those topics. Consultation is considered concluded only when either:

1. The parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource; or
2. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

ADDRESSING COMMON MISUNDERSTANDINGS

Despite being in effect for nearly a decade, AB 52 implementation is still plagued by misconceptions. Recent case law and regulatory developments highlight several areas where lead agencies frequently stumble.

>>> Misunderstanding 1: Requesting Monitoring of a Project is Enough to Satisfy AB 52

WRONG! Simply sending a notification letter, requesting consultation, requesting to provide Native American monitoring for the project, or asserting "traditional" or "cultural" affiliation with the project location without providing supportive evidence of ancestral, lineal descent therefrom, **does not satisfy AB 52**.

In short, PRC § 21080.3.1(a) establishes the relevant nexus between ancestral/cultural affiliation and the "expertise" over tribal resources and tribal lands. Under both California and federal law, this "expertise" is inextricably tied to the tribe's actual ancestral connection to the specific geographic area. Accordingly, a tribe or entity that is unable to substantiate with its ancestral connection through credible evidence, lacks the requisite expertise both to: (1) provide essential input on mitigation measures that will actually reduce the projects impacts to TCRs below the threshold of significance; *and* (2) competently implement those measures in a manner sufficient to reduce project impacts below the threshold of significance.

Public Resources Code § 21080.3.1(a) states: "The Legislature recognizes that California Native American tribes may have *expertise* concerning *their* tribal cultural resources and practices." (*Id.* [emphasis added].) The legislature did *not* grant tribes generalized expertise over all Native American artifacts statewide; *it specifically limited the expertise of a legitimate California tribe to its resources only*.

The NAHC's "Best Practices Guidelines emphasize that tribes must demonstrate ancestral/cultural affiliation to be considered "experts" under CEQA. Therefore, the statutory presumption of tribal expertise does not and cannot apply to a tribe or tribal member that does not ancestrally descend from the geographic area at issue in a consultation.

Public Resources Code § 21080(e)(1) defines "substantial evidence" to include "expert" opinion—here, the only expert opinion is that of the ancestrally affiliated tribe.

>>> Misunderstanding 2: A Tribe's Written Assertion of Cultural Affiliation is "Substantial Evidence"

WRONG! The Governor's Office of Planning and Research (OPR) Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA (June 2017, updated February 2020) discusses the acceptable forms of tribal expert evidence. Taking from federal law, including 43 C.F.R. § 10.14(d) (NAGPRA), the OPR recognizes "geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition,

historical, or other relevant information or expert opinion" as substantial evidence. (*Id.*)

The OPR further explains that substantial evidence ". . . could include elder testimony, oral history, tribal government archival information, testimony of a qualified archaeologist certified by the relevant tribe, testimony of an expert certified by the tribal government, official tribal government declarations or resolutions, formal statements from a certified Tribal Historic Preservation Officer, or historical/anthropological records." (OPR Technical Advisory, at p. 5.) (S*ee Pueblo of Sandia v. United States* (10th Cir. 1995) 50 F.3d 856 [holding anthropological reports and tribal elder affidavits as admissible evidence].)

>>> Misunderstanding 3: Any Tribe or Entity Can Implement TCR Mitigation Measures

WRONG! Per CEQA Guidelines § 15126.4(a)(2), mitigation measures must be fully enforceable *and capable of actually reducing the environmental impact*. The Legislature made clear that only the ancestrally affiliated tribe has expertise regarding their own resources.

Accordingly, only the tribe that has provided substantial evidence of its ancestral affiliation with the project's geographic area, and in turn established its expertise under CEQA, is capable of effectively implementing the TCR mitigation measures. Implementation of sensitivity training or tribal monitoring, for example, by a tribe or entity lacking ancestral affiliation with the project would violate CEQA.

Critically, the harms to the ancestrally affiliated tribe that consulted pursuant to AB 52 that would result from a lead agency's unlawful delegation of TCR mitigation implementation would be irreparable and subject to extraordinary relief.

CLOSING THOUGHTS

The era of treating tribal consultation as a mere procedural hurdle is over. The *Koi Nation of Northern California v. City of Clearlake* (2025) 109 Cal.App.5th 815 decision represents the first published appellate opinion to overturn a project approval specifically for AB 52 violations, signaling a new level of judicial scrutiny.

Lead agencies and project developers must approach tribal consultation as a substantive, respectful, and thoroughly documented intergovernmental dialogue. By understanding the statutory requirements, implementing the ancestrally affiliated tribe's expertise through enforceable TCR mitigation measures, common pitfalls can be avoided, invaluable cultural resources are protected, and projects proceed without delay.