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Public Law Update - Appellate Decision Provides Guidance on CEQA/AB 52 Tribal Consultation Process

In *Koi Nation of Northern California v. City of Clearlake*, the First Appellate District of the California Court of Appeal overturned a Lake County Superior Court decision and concluded that the City of Clearlake (“City”) abused its discretion by failing to comply with the tribal consultation requirements of the California Environmental Quality Act (“CEQA”). (Cal. Ct. App., Mar. 14, 2025, No. A169438.)

The Court’s ruling is important because it is the first published appellate opinion to address the Assembly Bill 52 (“AB 52”) tribal consultation process, and provides several important and instructive points for lead agencies. This case demonstrates the need for public agencies to: (1) strictly follow the tribal consultation requirements of AB 52; and (2) ensure that any adopted Negative Declaration, MND or EIR records the tribal consultation process in sufficient detail, including the agency’s consideration of and analysis of issues raised during consultation.

At a minimum, the CEQA document and the administrative record should: (1) include information about the consultation, beyond just the date it took place; (2) inform decisionmakers and the public if mitigation measures were requested, what those mitigation measures were and whether the agency decided to implement them; and (3) the agency’s basis for determining that a consultation had concluded and when the agency made that determination. To the extent that a Tribe has not consented to the disclosure of such information to the public, it should be published in a confidential appendix to the CEQA document.

Factual Background

In early 2022, the City notified the Koi Nation of Northern California (“Koi Nation”) under AB 52 of a proposed private development in the City comprising a new four-story hotel and one-story meeting hall on a 2.8 acre parcel, plus a road extension to serve the project. The Koi Nation raised preliminary concerns with the project and identified a representative for consultation, who requested formal consultation in response to the City’s invitation to consult under AB 52.

According to the appellate opinion, only one meeting was held

between the City and the Koi Nation on March 9, 2022, and the Koi Nation's representative followed up in writing, requesting certain mitigation measures be applied to the project, comprising:

1. A cultural monitor during development and all ground disturbing activities pursuant to a monitoring agreement;
2. Incorporation of Habematolel Pomo of Upper Lake's Treatment Protocol as a mitigation measure; and
3. Cultural sensitivity training for pre-project personnel on the first day of construction.

The City held no further meetings with the Koi Nation (and documented no further consultation efforts), instead relying on its consultant's report that no tribal cultural resources had been discovered at the project site. The draft Mitigated Negative Declaration reflected this conclusion but did identify mitigation measures to reduce impacts to "unknown tribal cultural resources" that "could result in a substantial adverse change in the significance of a tribal cultural resource." The proposed mitigation measures partially reflected the cultural monitoring measure requested by the Koi Nation — cultural monitoring — but only if subsurface remains were uncovered. The other two mitigation measures requested by the Koi Nation were not included. The City Planning Commission then adopted a Mitigated Negative Declaration ("MND") under CEQA and approved the project.

The Koi Nation appealed the Planning Commission's decision to the City Council, raising concerns that the MND did not adequately address impacts to tribal cultural resources. Prior to the appeal hearings, the Koi Nation submitted a number of documents to the City Council that it deemed confidential. During the appeal hearing, the Koi Nation's representative explained that a confidential map that had been provided to the City Council showed that tribal cultural resources were "close in proximity" to the project site, the closest being a little more than 100 feet from the project boundary. The Koi Nation again requested mitigation measures, this time specifying the need for a tribal cultural resources monitor in addition to the cultural monitor during development and ground disturbance, incorporation of Habematolel Pomo of Upper Lake's Treatment Protocol, and cultural sensitivity training. The Koi Nation also noted that no agreement with the City on the presence or treatment of tribal cultural resources had been reached. The City Council agreed to modify the cultural monitor mitigation measure to "use a qualified cultural resources consultant and coordinate with a tribal resources expert from Koi Nation to identify and investigate" discovered remains, but otherwise denied the appeal.

Legal Background

At its highest level, CEQA requires a lead agency (typically a project's

approving body) to analyze whether its discretionary actions would have a significant effect on the environment. Assembly Bill 52 (Gatto, 2014) amended CEQA to define Tribal Cultural Resources and require lead agencies to consider impacts to Tribal Cultural Resources when preparing Environmental Impact Reports (“EIRs”) Negative Declarations, and Mitigated Negative Declarations.

Recognizing that California Native American Tribes have expertise with respect to their tribal cultural resources, AB 52 established a mandatory notice and consultation process to facilitate lead agencies’ consideration of tribal cultural resources. Consultation must be “meaningful” and must cover a range of issues including the identification of tribal cultural resources, potential project impacts, and, if needed, the adoption of binding mitigation measures to reduce any impacts to a less than significant level.

Until the Koi Nation decision, no appellate court had weighed in on the adequacy of a lead agency’s consultation with a California Native American Tribe regarding a project’s potential impact on tribal cultural resources.

Superior Court Decision

After having its administrative appeal of the project denied by the City, the Koi Nation filed a petition with the Lake County Superior Court alleging that the City failed to proceed in the manner required by law with respect to AB 52 tribal consultation. The Superior Court ruled in favor of the City, finding that the Koi Nation did not fulfill its duty to request consultation when it directed communications through its representative.

Appellate Court Ruling

On appeal to the First Appellate District, the Koi Nation raised three CEQA issues: (1) that the City failed to comply with AB 52’s tribal consultation procedures; (2) that the City failed to prepare an environmental impact report for the project; and (3) that the Mitigated Negative Declaration (“MND”) lacked the information required by CEQA. Amicus briefs in support of the Koi Nation were filed by the Attorney General, and amicus briefs in support of the City were filed by the League of California Cities and California State Association of Counties.

The Court of Appeal ruled in favor of the Koi Nation on the first issue, concluding that the City failed to comply with CEQA’s tribal consultation requirements, and did not address the Koi Nation’s other arguments.

In its decision, the Court reasoned that the Koi Nation’s communications through its representative were sufficient to satisfy

AB 52's request for consultation requirement. It also noted that the March 9, 2022 consultation meeting did not meet the requirements of CEQA/AB 52, as the City was unable to provide evidence that it had made any effort to reach mutual agreement on the presence of tribal cultural resources and their treatment.

The Court emphasized that "'meaningful discussion' is the hallmark of CEQA's tribal consultation requirement," and that "the consultation here was perfunctory at best." The Court further reasoned that the City had failed to consider the value and significance of the tribal cultural resources to the Koi Nation in its adoption of the MND and approval of the Project, and choosing to rely solely on the conclusion of its own City archeologist failed to meet the requirements of CEQA.

* * *

Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to land use and development projects, including CEQA and tribal consultation.

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