

Budget Change Proposal - Cover Sheet
DF-46 (REV 10/30)

Fiscal Year 2016-17	2830	Department 3780- Native American Heritage Commission	Priority No. 1
Budget Request Name <i>AB 52 Compliance</i>	Program	Subprogram	

Budget Request Description
Re-appropriation of \$997,000 for compliance with statutory requirements of Assembly Bill (AB 52), including database development and operation

Budget Request Summary

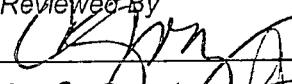
To comply with the statutory requirements of AB 52 (Chapter 532, Statutes of 2014), which amends the California Environmental Quality Act (CEQA), the Native American Heritage Commission (NAHC) requests re-appropriation of FY 2015-16 funding that was not spent during FY 2015-16 due to delays getting the project started and unexpected costs to upgrade the telephones and internet services. This request is to re-appropriate \$997,000 in general fund, to keep four (4.0) positions for mapping, stakeholder involvement and outreach, tribal consultation, training, and an upgraded telephone system and internet services to accommodate the new GIS system. The IT portion of this request was signed off during FY- 2015-16.

Requires Legislation Yes No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? Yes No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

*If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.*

Prepared By Cynthia Gomez	Date 05/10/2016	Reviewed By 	Date 5-10-2016
Department Director Cynthia Gomez	Date 05/10/2106	Agency Secretary 	Date 5-10-22/16

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Technology Agency

BCP Type: Policy Workload Budget per Government Code 13308.05

Original Signed by
PPBA **Amanda Martin** Date submitted to the Legislature **5/13/16**

BCP Fiscal Detail Sheet

BCP Title: Reappropriation for AB 52 Implementation

DP Name: 3780-001-BCP-DP-2016-MR

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Salaries and Wages						
Earnings - Permanent	-276	276	0	0	0	0
Total Salaries and Wages	\$-276	\$276	\$0	\$0	\$0	\$0
Total Staff Benefits	-96	96	0	0	0	0
Total Personal Services	\$-372	\$372	\$0	\$0	\$0	\$0
Operating Expenses and Equipment						
5301 - General Expense	-91	60	0	0	0	0
5302 - Printing	0	35	0	0	0	0
5304 - Communications	-5	45	0	0	0	0
5306 - Postage	-20	20	0	0	0	0
5320 - Travel: In-State	-90	90	0	0	0	0
5322 - Training	-20	30	0	0	0	0
5324 - Facilities Operation	-60	60	0	0	0	0
5326 - Utilities	-5	5	0	0	0	0
5340 - Consulting and Professional Services - External	-150	60	0	0	0	0
5340 - Consulting and Professional Services - Interdepartmental	0	35	0	0	0	0
5344 - Consolidated Data Centers	-99	25	0	0	0	0
5346 - Information Technology	0	75	0	0	0	0
5368 - Non-Capital Asset Purchases - Equipment	-85	85	0	0	0	0
Total Operating Expenses and Equipment	\$-625	\$625	\$0	\$0	\$0	\$0
Total Budget Request	\$-997	\$997	\$0	\$0	\$0	\$0
Fund Summary						
Fund Source - State Operations						
0001 - General Fund	-997	997	0	0	0	0
Total State Operations Expenditures	\$-997	\$997	\$0	\$0	\$0	\$0
Fund Source - Unclassified						
Total Unclassified Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Total All Funds	\$-997	\$997	\$0	\$0	\$0	\$0
Program Summary						
Program Funding						
2830 - Native American Heritage	-997	997	0	0	0	0
Total All Programs	\$-997	\$997	\$0	\$0	\$0	\$0

BCP Title: Reappropriation for AB 52 Implementation

DP Name: 3780-001-BCP-DP-2016-MR

Personal Services Details

	CY	BY	BY+1	BY+2	BY+3	BY+4
Salaries and Wages						
Total Salaries and Wages	\$-276	\$276	\$0	\$0	\$0	\$0
Staff Benefits						
5150900 - Staff Benefits - Other	-96	96	0	0	0	0
Total Staff Benefits	\$-96	\$96	\$0	\$0	\$0	\$0
Total Personal Services	\$-372	\$372	\$0	\$0	\$0	\$0

A. Budget Request Summary

This is a request to re-appropriate \$997,000 from the NAHC's FY 2015-16 budget to FY 2016-17. This request is a result of the delays and late start of the program's ability to hire personnel, upgrade the telephone system and the internet service to accommodate the GIS mapping project required to comply with AB 52.

B. Background/History

On September 25, 2014 the Governor signed AB 52 into law. The act amends Section 50907.94, and adds Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to the Public Resources Code, relating to Native Americans and thereby adds additional statutory responsibilities for the NAHC. NAHC received additional funding in FY 2015-16, but the work was delayed because personnel could not be hired as soon as expected, and it was discovered that the telephone system and internet service to accommodate the GIS mapping program needed to be upgraded.

NAHC contracts out its personnel and budget activities to the State Lands Commission. Staff were not hired until six months into the fiscal year due to the personnel processes. It also took additional time to train the staff. These delays hindered the amount of consultation with the tribes and outreach to the public agencies needed to collect all the data for the GIS mapping system. NAHC consulted with some tribes and approximately 65% of the Tribes responded, providing their respective cultural and traditional territories. For those tribes that were not consulted or did not respond, "default" maps of tribal cultural and traditional territories were created until consultation with all tribes could be completed in the following fiscal year (FY 2016-17).

NAHC contracts the GIS mapping system to the Natural Resources Agency (NRA). The NAHC staff meets regularly with the NRA to develop the database that will overlay the cultural and traditional tribal territories and public agency jurisdictions. The NAHC staff must consult with tribes to ensure accuracy of the information before providing it to NRA. This process is time consuming and labor intensive.

The staff will be cross-trained to increase productivity and limit delays from attrition.

Additional background on AB 52:

The statutory changes affecting the NAHC include:

PCR 21073: Definition of a "California Native American tribe" includes federally and non-federally recognized tribe on the NAHC contact list. There are a total of 164 tribes in California that include 109 federally recognized tribes and 55 non-federally recognized tribes. These tribal territories must be mapped through consultation with each tribe. This process requires staff to meet with the tribes during face-to-face meetings, and follow up telephone calls and correspondence to verify traditional and culturally affiliated territorial areas to insure protection of tribal cultural resources.

Public Resources Code (PRC) 21074: "Tribal Cultural Resource" (TCR) established as a new, separate, and distinct resource to be analyzed in the CEQA process. TCRs may be:

- (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
 - (A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
 - (B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
- (2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.
 - (b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

NAHC must also identify and provide a list to the 164 tribes of the public agencies that are within the traditional and culturally affiliated territories of each tribe. The NAHC will assist public agencies to identify those tribes that are traditionally and culturally affiliated within their CEQA project footprint. This requirement will assist the public agencies to consult with the tribes per PRC 21080.3.1 and PRC 5097.94.

PRC 21080.3.1

1. Public agencies must begin consultation with a California Native American tribe prior to the release of a Negative Declaration (ND), MND, or Environmental Impact Report (EIR) if:
 - a. The tribe is traditionally and culturally affiliated with the project area.
 - b. The tribe requested a writing to be formally informed of projects in the tribe’s traditional and culturally affiliated area.
 - c. After formal notification from the public agency, the tribe responds within 30 days by requesting consultation in writing. The request should also designate the tribe’s lead contact person or the public agency will defer to the contact person identified by NAHC.
2. Within 14 days of determining that an application for a project is complete or a project is approved. The public agency must formally notify tribes who have requested to be notified.
3. To expedite the requirements of this section, the NAHC shall assist the lead agency in identifying the California Native American tribes that are traditionally and culturally affiliated with the project area.

PRC 5097.94 was amended to add additional statutory responsibilities for the NAHC:

To provide each California Native American tribe on or before July 1, 2016, with a list of all public agencies that may be a lead agency pursuant to CEQA, within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the tribe may request the public agency to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation.

The GIS system will be in place by July 1, 2016, but NAHC will need to upgrade its internet service to accommodate it and map the tribes’ cultural and traditional territories. The NAHC will provide the list of public agencies to the tribes by July 1, 2016 using “default” maps for those tribes that have not provided their own cultural and traditional territories. The default maps are based on ethnographic studies, historical information, sacred lands files, and other available information and should be replaced by those territories provided by the tribes. Approximately 65% of the tribes have responded with information for their cultural and traditional territories, however more work and consultation must be done to accurately map all cultural and traditional territories of the tribes. Most of the 164 tribes have very limited resources and need assistance mapping their traditional and cultural territories.

NAHC has received numerous requests from public agencies and other stakeholders for assistance to identify the traditional and cultural territories. It is anticipated that these requests will increase in FY 2016-17.

C.State Level Considerations

California is the home to 109 federally recognized tribes and 55 non-federally recognized tribes, and according to last census the State has the largest Indian population in the Country. The Governor has also expressed his desire to strengthen and sustain effective relationships between the State and Indian tribes by identifying areas of mutual concern and working to develop partnerships. The Governor has therefore ordered as a policy of his Administration that every state agency and department subject to his executive control shall encourage communication and consultation with tribes.

The NAHC was created, under Governor Brown's first administration in 1976 to act as the State "trustee agency" for the protection of Native American human remains, associated grave goods, sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines located on public and private property. In that regard, the NAHC has specific statewide responsibilities identified in California Public Resources Code and Government Code that at their core focus on the facilitation of cooperation and collaboration between tribal governments, individual Native Americans, government agencies, landowners, developers, and environmental consultants. As indicated above, AB 52 amends CEQA and adds new time-sensitive statewide statutory responsibilities for the NAHC.

To comply with the new law the NAHC must provide each California Native American tribe on the NAHC "Contact List" a list of all public agencies that may be a lead agency within each tribe's traditional tribal territory, including the contact information for each agency, and information on how tribes may request notification from those agencies for the purposes of requesting consultation on CEQA projects within agency jurisdiction. The NAHC must also, by this date, assist public agencies in identifying the California Native American tribes that are traditionally and culturally affiliated with a project area. To accomplish this charge with the most accuracy, will require continued outreach to stakeholders statewide, including tribes, public agency representatives, and cultural resource management consultants to complete mapping of traditional tribal territories. Approximately 65% of the tribes have responded and provided their respective traditional and cultural territories, and for those that have not responded the NAHC has developed "default" maps of those territories based on ethnographic studies, historical information, sacred lands files, and other information available. Due to the political and cultural sensitivity of this project, it is important to continue to outreach to the remaining tribes to insure accurate documentation.

It is anticipated that public agencies will make more requests for tribes' cultural and traditional territories. NAHC has met with numerous public agencies regarding compliance with AB 52 projects, that include the Governor's high priority projects such as the high speed rail, energy, and levees.

D. Justification

Reappropriation of this funding will allow the NAHC to complete this effort consistent with the intent of the original appropriation. All California public agencies must comply with AB 52. Completing NAHC responsibilities will assist public agencies that have to comply with CEQA. This proposal is the best use of resources to allow the NAHC to comply with the statutory deadlines dictated by the Legislature in passing AB 52. The methodology used to develop this proposal is based on the estimated additional NAHC staff and resources required to fulfill the NAHC statutory responsibilities under the law. The NAHC will work with NRA to upgrade the telephone system and internet service to accommodate the GIS mapping system. The staff will continue its outreach to stakeholders and consultation with tribes. The NAHC will need to work with the Governor's Office of Planning and Research (OPR) on updating and enhancing the CEQANet Database to assist the NAHC in its statutory duties and to provide long-term solutions for the NAHC, tribal governments, and public agencies in CEQA compliance.

This proposal is consistent with the use of General Fund to comply with AB 52 and assist public agencies to comply with CEQA. NAHC is not aware of other funding to comply with the requirements of AB 52. The public need for this BCP is that CEQA is a public disclosure law and all public agencies must comply with CEQA when making decisions that may have a direct or indirect impact on the environment. This project will assist California Native American tribal governments to consult with public agencies during the CEQA process.

E. Outcomes and Accountability

The outcomes of this proposal are:

1. The NAHC has its database operational and accurate, listing all public agencies that may be a lead agency under CEQA for the 164 tribes' cultural and traditional territories. This includes upgrading the telephone and internet service to accommodate the database.
2. NAHC will consult with tribes to ensure accurate information on cultural and traditional territories.

3. The NAHC will work with OPR and other public agencies to comply with new CEQA requirements for tribal cultural and traditional territories.
4. NAHC staff will be trained and cross trained to limit delays in the workload due to attrition.

E. Analysis of All Feasible Alternatives

Redirection or Reclassifying Alternative: The NAHC does not have vacant positions to redirect or reclassify as an alternative to this proposal.

F. Implementation Plan

If the re-appropriation is approved, the NAHC will continue employment of 4.0 positions to consult with tribes and public agencies, provide traditional and cultural tribal territories to public agencies, map traditional and cultural territories for those tribes that do not have the resources to do so, upgrade the telephone system and internet services to accommodate the GIS mapping project and train staff to limit delays in the workload due to attrition.

G. Supplemental Information *None*

H. Recommendation

The NAHC recommends funding be reappropriated to complete this project.

**Native American Heritage Commission
AB 52 Funding, 2016-17 1 year LT Funding**

	2015-16 AB 52 Funding	Expiring June 30, 2016 AB 52	Re-Appropriation Proposed 2016-17
	8.0	(4.0)	4.0
TOTALS SLARIES & WAGES	\$534,000	(\$276,000)	\$276,000
NET TOTALS SALARIES & WAGES	\$534,000	(\$276,000)	\$276,000
STAFF BENEFITS	\$186,000	(\$96,000)	\$96,000
TOTALS; PERS SVS	\$720,000	(\$372,000)	\$372,000
<i>Staff Benefit Rate</i>	35%	35%	35%
OPERATING EXP & EQUIP			
GENERAL EXPENSE	\$168,000	(\$91,000)	\$60,000
PRINTING		\$0	\$35,000
COMMUNICATIONS	\$10,000	(\$5,000)	\$45,000
POSTAGE	\$30,000	(\$20,000)	\$20,000
TRAVEL-IN-STATE	\$100,000	(\$90,000)	\$90,000
TRAVEL-OUT-OF-STATE		\$0	
TRAINING	\$25,000	(\$20,000)	\$30,000
FACILITIES OPERATIONS	\$120,000	(\$60,000)	\$60,000
UTILITIES	\$10,000	(\$5,000)	\$5,000
CONSULTANTS-INTERDEPT'L		\$0	\$35,000
CONSULTANTS-EXTERNAL	\$210,000	(\$150,000)	\$60,000
CONSOLIDATED DATA CENTER	\$109,000	(\$99,000)	\$25,000
INFORMATION TECHNOLOGY		\$0	\$75,000
EQUIPMENT	\$100,000	(\$85,000)	\$85,000
TOTAL OPERATING EXPENSES	\$882,000	(\$625,000)	\$625,000
GENERAL FUND	\$1,602,000	(\$997,000)	\$997,000
	\$1,602,000	(\$997,000)	\$997,000 RE-APPROPRIATION REQUEST