



COMMITTEE TRANSMITTAL

September 11, 2017

To: Members of the Board of Directors

From:  Laurena Weinert, Clerk of the Board

Subject: Measure M2 Environmental Mitigation Program Restoration Projects Additional Funding Request

Regional Planning and Highways Committee Meeting of September 7, 2017

Present: Directors Delgleize, Do, Donchak, M. Murphy, Nelson, and Steel

Absent: Director Spitzer

Committee Vote

This item was passed by the Members present.

Committee Recommendations

- A. Authorize the Chief Executive Officer to negotiate and execute an amount up to \$805,000 to fund the expedited clean water permitting requirements.
- B. Authorize staff to amend the fiscal year 2017-18 budget to include the recommended funding amount.



September 7, 2017

To: Regional Planning and Highways Committee

From: Darrell Johnson, Chief Executive Officer

A handwritten signature in blue ink, appearing to read "Darrell Johnson", is located to the right of the "From:" line.

Subject: Measure M2 Environmental Mitigation Program Restoration Projects Additional Funding Request

Overview

Measure M2 includes a program to deliver comprehensive mitigation for the environmental impacts of freeway projects in exchange for streamlined project approvals from the state and federal wildlife agencies. On a parallel path, the Orange County Transportation Authority has developed a similar approach to work with the State Water Resources Control Board and the United States Army Corps of Engineers regarding state and federal clean water permitting requirements to facilitate expedited implementation of the Measure M2 freeway projects. A request for funding authorization to advance the streamlined permitting process is submitted for Board of Directors consideration and approval.

Recommendations

- A. Authorize the Chief Executive Officer to negotiate and execute an amount up to \$805,000 to fund the expedited clean water permitting requirements.
- B. Authorize staff to amend the fiscal year 2017-18 budget to include the recommended funding amount.

Background

Measure M2 (M2) includes an innovative comprehensive Environmental Mitigation Program (EMP) to address the biological impacts of M2 freeway projects. This is achieved through the development of a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP), approved by the California Department of Fish and Wildlife and the United States Fish and Wildlife Service (Wildlife Agencies). These documents were finalized and approved by the Orange County Transportation Authority (OCTA) Board of Directors (Board) in November 2016. The final permits were issued to OCTA by the

Wildlife Agencies in June 2017. It should be noted that the Board previously approved \$34.5 million in funding for the maintenance and operation of the seven Preserves, as committed to in the NCCP/HCP. Payments began in March 2017 to establish an account over a ten to 12 year time period.

On a parallel path, OCTA and the California Department of Transportation staff have been coordinating with the State Water Resources Control Board (State Board) and the Army Corps of Engineers (Corps), collectively referred to as Regulatory Agencies. This coordination has resulted in defining a process that would utilize some of the same mitigation within the NCCP/HCP to also obtain state and federal clean water permits to further streamline the M2 freeway projects. Separate funding is needed to meet the Regulatory Agencies' requirements. This request was presented to and endorsed by the Environmental Oversight Committee (EOC) on August 17, 2017. A summary of the additional funding needs is presented.

Discussion

The construction of the M2 freeway projects is anticipated to result in impacts to jurisdictional waters of the state and United States. These impacts will require that OCTA obtain Section 401 and 404 clean water permits from the Regulatory Agencies, which will require mitigation. On a parallel process to the NCCP/HCP, staff is finalizing program-level authorizations with the Regulatory Agencies, which is further described in Attachment A. This permit will enable OCTA to utilize mitigation included in the NCCP/HCP, as well as lay out an abbreviated process for project level 401 and 404 permit issuance.

Agency coordination has resulted in the determination that the Agua Chinon and Aliso Creek restoration projects, as well as a small portion of the Ferber Ranch Preserve, should satisfy the Regulatory Agencies mitigation needs for the M2 freeway projects. These restoration projects and this Preserve are also included in the NCCP/HCP. Fact sheets for both of these restoration projects are included as Attachment B and Attachment C. As previously discussed, state and federal regulatory requirements include additional compliance that is above and beyond what is required within the NCCP/HCP. For example, these regulations require specific language within the long-term protection assurances, as well as funding to cover long-term management needs of the mitigation sites.

After collaboration with the Regulatory Agencies and the restoration project property owners (County of Orange and The Irvine Company), it has been determined that additional management tasks are necessary to satisfy compliance needs. Additional tasks include activities such as biological monitoring, weed removal, photo documentation, and annual reporting. The Corps requires that funding is provided to facilitate these tasks in perpetuity. This amount has been estimated at approximately \$805,000. On August 17, 2017, the EOC endorsed the course of action and funding amount.

It is important to note that these additional funding needs are separate from the NCCP/HCP endowment. It is anticipated that a one-time payment will be made to a Corps-approved entity that will manage and disperse these funds to the land owners. For example, the National Fish and Wildlife Foundation has been approved to handle these types of services by the Corps.

The additional funding needs for Corps compliance was anticipated and included in the May 2015 Board-approved EMP Long-Term Funding Strategy and Guiding Principles. The EMP Guiding Principles contained the commitment to responsibly meet the M2 obligations, which include complying with regulatory requirements to ensure that freeway project mitigation obligations are met. In addition, the Long-Term Funding Strategy includes the commitment to complete the negotiations with the Corps and State Board, and allocate funding to meet regulatory permit requirements.

If OCTA does not provide this funding, additional mitigation opportunities would need to be explored. Specifically, mitigation would need to be identified within both the San Juan Creek and the San Diego Creek Special Area Management Plan areas to obtain clean water permits for the construction of the freeway projects. These watersheds are known to be challenging to locate mitigation opportunities and the same long term funding requirements would apply. This would take additional time and funding that is expected to exceed the amount presented herein.

Next Steps

Additional funding for the mitigation projects is required as a part of the regulatory permitting process related to clean water requirements. Upon Board approval, OCTA will issue a letter of commitment to the Corps for the restoration projects financial needs. In turn, the Corps and the State Board are anticipated to issue their programmatic authorizations which will help streamline the implementation of the M2 freeway projects. Additional steps are required, and OCTA will continue to work with the Corps and the State Board to complete the regulatory permitting process in order to obtain the applicable clean water authorizations, and are further described in Attachment A.

Summary

M2 includes an EMP that provides funding for programmatic mitigation to off-set impacts of the 13 freeway projects. To expedite the delivery of the freeway projects, this program was initiated in 2007 to implement early project mitigation through property acquisition and habitat restoration. This program is administered through a NCCP/HCCP, which was completed and approved by the Board in November 2016, and permits received in June 2017. State and federal programmatic clean water permits have also been developed and additional mitigation funding needs have been identified and presented for approval.

Attachments

- A. Draft United States Army Corps of Engineers and State Water Resources Control Board Mitigation Funding Needs Summary
- B. Aliso Creek Restoration Project
- C. Agua Chinon and Bee Flat Canyons Restoration Project

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United States Army Corps of Engineers and
State Water Resources Control Board
Mitigation Funding Needs Summary

Overview: The Orange County Transportation Authority (OCTA) is coordinating with the United States Army Corps of Engineers (Corps) and the State Water Resources Control Board (State Board) to obtain programmatic Clean Water Act (CWA) Section 401 and 404 permits for the Measure M2 (M2) Environmental Mitigation Program (EMP). These permits will provide OCTA with assurances that the mitigation provided to date is acceptable to offset potential M2 freeway project impacts to state and federal jurisdictional waters. OCTA will utilize a subset of the conservation efforts (i.e. mitigation) included in the Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). These mitigation sites are illustrated in Figure 1. Separate funding is required by the State Board and the Corps to comply with this process.

Background: On April 6, 2015, the Corps released a Special Public Notice regarding the proposed Section 404 Letter of Permission (LOP) procedures (i.e. program level permit) for the OCTA M2 EMP. These LOPs will establish alternative permitting procedures to address anticipated discharges into Waters of the United States (WOTUS) associated with constructing the freeway projects over the next 15-20 years. LOP procedures are expected to be established via issuance of a CWA Section 404 Individual Permit. The State Board has also committed to issuing an authorization to approve the use of M2 mitigation once the Corps issues the 404 permit. This State Board authorization will provide the needed mitigation assurances and will further streamline the implementation of the M2 freeway projects.

Discussion: The Corps regulations require compliance with the April 10, 2008 mitigation rule. In addition, some M2 freeway projects may impact the San Diego and the San Juan Creek watersheds. These watersheds are subject to federal regulations that include specific Special Area Management Plan requirements. These mitigation requirements are in addition to what the Wildlife Agencies (United States Fish and Wildlife Service and California Department of Fish and Wildlife) require, and what OCTA has committed to in the NCCP/HCP. These regulations also require the development and funding of a long-term management plan for all mitigation sites before the Corps or State Board can issue their permits.

In order to satisfy the applicable CWA compensatory mitigation requirements, OCTA is proposing the following:

1. Freeway project avoidance and minimization measures: Avoidance and minimization measures are a required component of the freeway projects design and construction processes.
2. Two mitigation sites that provide enhancement and rehabilitation of the Waters of the United States: The two sites that provide the most appropriate enhancement and rehabilitation of WOTUS are the Aliso Creek and Agua Chinon restoration projects (also included in the M2 NCCP/HCP). Both restoration projects are within already managed lands. OCTA has been coordinating with the Corps and the property owners

United States Army Corps of Engineers and
State Water Resources Control Board
Mitigation Funding Needs Summary

of the Agua Chinon (The Irvine Company and the County of Orange) and Aliso Creek (the County of Orange) projects. Coordination included the review of the existing management plans and land protection documents (i.e. irrevocable offers of dedication). The Corps has determined that additional management tasks and long-term protection assurances are required. The additional management tasks require OCTA to provide a one-time payment to a Corps-approved finance manager to fund long-term maintenance costs.

3. One mitigation site that provides preservation of important physical, chemical, and biological aquatic functions: Ferber Ranch provides preservation of important physical, chemical, and biological aquatic functions. OCTA will record a conservation easement to assure that the Ferber Ranch Preserve is protected. This is also a commitment within the NCCP/HCP. The clean water requirements can be addressed through the management actions being performed as part of the existing NCCP/HCP commitments. However, the Corps has requested that supplemental funds be set aside in case future conservation easement violations occur at Ferber Ranch.

Overview of Additional Mitigation Requirements:

Mitigation Project Name	Property Owner	Location	Summary of Management Tasks	Estimated Amount Needed*
Ferber Ranch Preserve	OCTA	Trabuco Canyon	None	\$10,000
Aliso Creek Restoration Project	County of Orange (OC Parks)	Aliso and Wood Canyons Wilderness Park	Biological surveys, spot treat weeds, photo documentation and reporting	\$718,500
Agua Chinon Restoration Project	County of Orange (OC Parks) and the Irvine Company	Unincorporated Orange County	Same as above	\$76,000

*Amount based on ~2.5% real interest earnings

Total: \$804,500

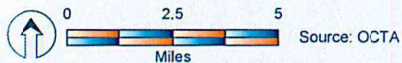
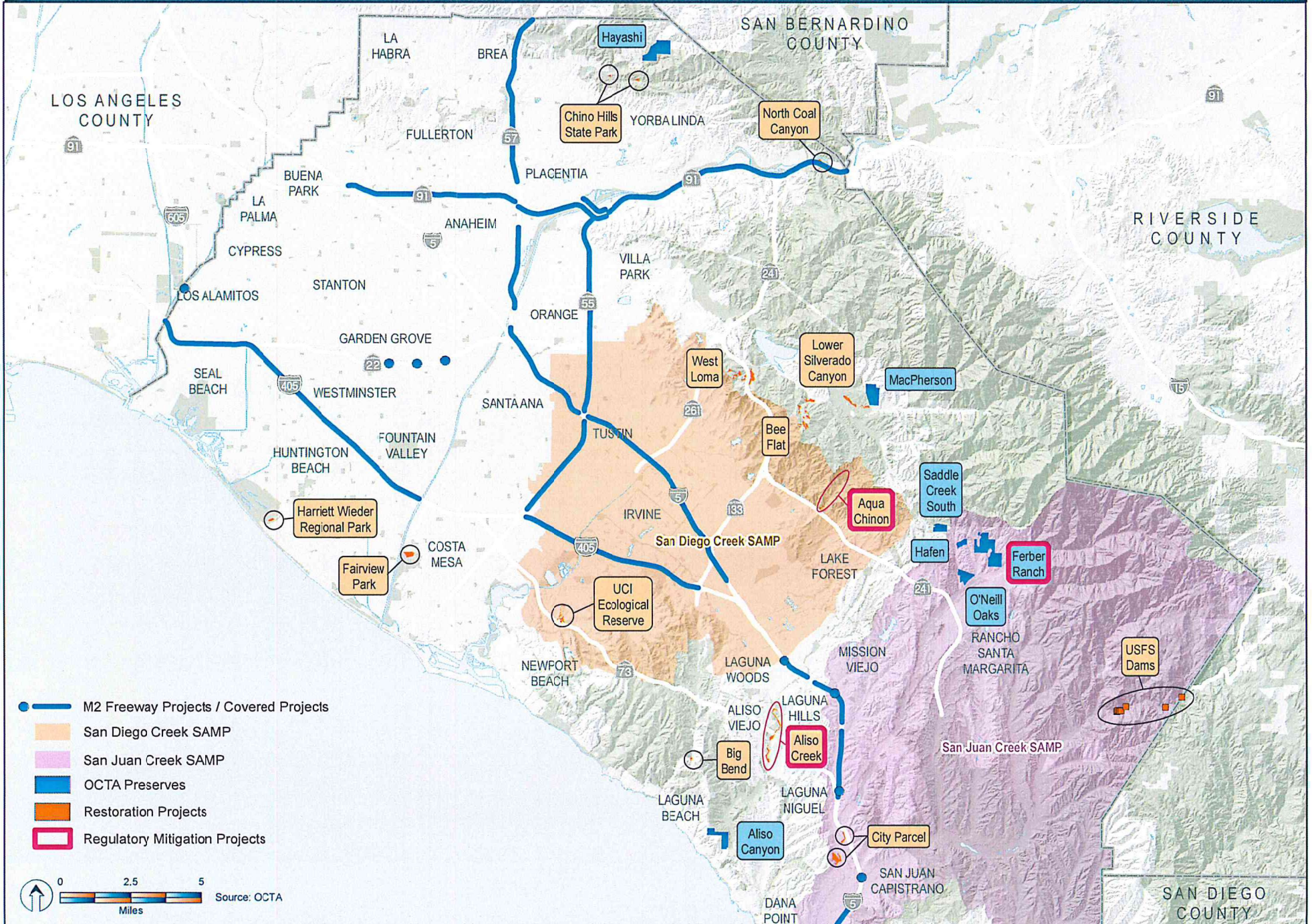
United States Army Corps of Engineers and
State Water Resources Control Board
Mitigation Funding Needs Summary

If the funding amounts are approved, OCTA must complete the following steps to meet the CWA permit requirements:

1. Issue a letter of commitment to the Corps for the restoration projects.
2. Continue coordination with the Corps and State Board to finalize the habitat and mitigation monitoring plans (i.e. restoration plans).
3. Obtain Section 401 and 404 authorizations from the State Board (general order/letter of authorization) and the Corps (LOP procedures).
4. Obtain an agreement between the Corps and a fund manager (i.e. San Diego Community Foundation, California Community Foundation, etc.) and make a one-time payment to the mutually-agreed upon fund manager.
5. Execute an agreement between OCTA and a fund manager to manage and disperse funds on behalf of OCTA to the restoration site land managers.
6. Continue to coordinate with the land owners, Corps, State Board, and the Wildlife Agencies to finalize or amend the land protection documents for the restoration sites.
7. Record a conservation easement over the Ferber Ranch Preserve.
8. Ensure the restoration projects meet their NCCP/HCP set success criteria and performance standards.
9. Record the assignment of assumption document with the land manager of the mitigation sites. This will transfer mitigation responsibilities to the land manager.
10. Request a letter from the Corps documenting mitigation release once the land protection documents have been recorded and funding for the long-term management has been obtained.

OCTA NCCP/HCP Preserves and Funded Restoration Projects

FIGURE 1





ALISO CREEK RESTORATION PROJECT

M2: ENVIRONMENTAL MITIGATION PROGRAM

OCTA's M2 Freeway Environmental Mitigation Program (EMP) provides comprehensive mitigation to offset the environmental impacts of the 13 Measure M2-funded freeway projects.

The EMP presents a comprehensive mitigation approach that provides not only replacement habitat, but also the opportunity to improve the overall functions and value of sensitive biological resources throughout Orange County.

Based on the evaluation of mitigation opportunities in the County, priority conservation areas were identified, including candidate parcels and properties that could be considered for wilderness preservation purposes. Properties were then selected for acquisition and restoration. These properties are protected to enhance wildlife connectivity, safeguard sensitive species and preserve substantial parcels of valuable habitat.



Western pond turtle

ABOUT ALISO CREEK

The Aliso Creek restoration project is located in the City of Aliso Viejo within the 4,000-acre Aliso and Wood Canyons Wilderness Park, owned and operated by the County of Orange. The project, managed by the Laguna Canyon Foundation, takes place within and around Aliso Creek. The northernmost boundary of the project is Moulton Parkway and the project boundaries extend southward to approximately 500 feet south of the junction of Alicia Parkway and Avila Road.

The wilderness park is located near the Trabuco Creek Wildlife Linkage and is a part of the 19,000-acre Laguna Coast Greenbelt and the 38,000-acre Nature Preserve of Orange County. The restoration site contains the following general vegetation types:

- Willow scrub
- Riparian woodland
- Coastal sage scrub

The following listed and non-listed special status species have been reported from the wilderness park:

- Least Bell's vireo
- Coastal California gnatcatcher
- Orange-throated whiptail
- Thread-leaved brodiaea
- Big-leaved crownbeard
- Catalina mariposa lily
- Western pond turtle

The restoration goal is to improve habitat quality for riparian plants and wildlife species by increasing native habitat diversity, density, and structure within 55 acres of Aliso Creek and associated regions.



AGUA CHINON AND BEE FLAT CANYONS RESTORATION PROJECT

M2: ENVIRONMENTAL MITIGATION PROGRAM

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The EMP presents a comprehensive mitigation approach that provides not only replacement habitat, but also the opportunity to improve the overall functions and value of sensitive biological resources throughout Orange County.

Based on the evaluation of mitigation opportunities in the County, priority conservation areas were identified, including candidate parcels and properties that could be considered for wilderness preservation purposes. Properties were then selected for acquisition and restoration. These properties are protected to enhance wildlife connectivity, safeguard sensitive species and preserve substantial parcels of valuable habitat.



ABOUT AGUA CHINON AND BEE FLAT CANYONS

The Agua Chinon and Bee Flat Canyons restoration project is located east of the city of Irvine in unincorporated Orange County. Although this was funded as one project, it involves restoring lands within two distinct geographical areas, Agua Chinon and Bee Flat Canyons.

The Agua Chinon mitigation site includes acreage owned by the OC Parks and The Irvine Company. The Bee Flat canyon site is owned by the OC Parks. Both sites are being managed by the Irvine Ranch Conservancy.

These restoration sites are within the Central and Coastal Subregion Habitat Reserve System created under the Orange County Natural Communities Conservation Plan/Habitat Conservation Plan.

The restoration sites are located within large areas of open space. The Cleveland National Forest is located east of the area, while there is commercial and residential development across State Route 241 to the west of the site. The restoration site contains the following general vegetation types:

- Grassland
- Coastal sage scrub
- Riparian

The following listed and non-listed special status species have been reported from the sites:

- Least Bell's vireo
- Coastal California gnatcatcher
- Orange-throated whiptail
- Coastal cactus wren
- Many-stemmed dudleya
- Intermediate mariposa lily

The restoration goal is to enhance degraded biological habitat areas in order to help protect these lands from invasive plant species and fire within 90 acres of Agua Chinon and Bee Flat Canyons.