

MEMORANDUM

To: Thomas G. Kennedy, Esq.
Law Offices of Thomas Kennedy

From: Andrew Antipas, Senior Ecologist
SGM, Inc.

Date: October 24, 2022

Re: **Compliance of Preliminary Plans for Society Turn Parcel with San Miguel County Wetland Regulations**

This memorandum was prepared to provide the information needed to comply with San Miguel County's (County) wetland regulations for the preliminary PUD/Subdivision plans (Project) for the Society Turn parcel that is owned by Genesee Properties, Inc. (Genesee). This memorandum summarizes the results of a wetland delineations completed for the Society Turn Parcel in 2008, 2015, and 2022. As part of this study, SGM analyze the Project's compliance with Section 404 of the Clean Water Act and the County's land use code. Table 1 summaries Section 404 (federal) wetland impacts at 0.004 acres and County wetland impacts at 0.082 acres.

Summary

The Society Turn parcel contains areas of wetlands that meet the tripartite test (vegetation, soils, and hydrology), for which direct impacts are regulated by the Clean Water Act as administered by the U.S. Army Corps of Engineer (USACE). The parcel also contains areas that meet the less restrictive definition of wetland under the County Land Use Code (LUC) and are subject only to regulation by the County. These wetlands are referred to as federal wetlands and county wetlands, respectively.

The Society Turn proposal has been developed to avoid impacts to wetlands to the maximum extent practical, however the preliminary plans do involve 0.004 acres of direct impact to federal wetlands, and 0.082 acres of direct impact to County wetlands. Most of the direct impacts are associated with the construction of required road/interchange improvements in the Colorado Department of Transportation's right-of-way along the south edge of Highway 145, and the impacts are necessary to accommodate the design parameters of these turning lanes as required and enforced by Colorado Department of Transportation (CDOT). These standards are set by CDOT to ensure the safe and functional operation of the turn lanes and public roadway, and as such the impacts are permissible under the Code and eligible for a Wetland Special Use Permit as a development "required to provide protection against property loss and/or damage" (Sec 5-2203 A, criteria I).

The 0.004 acres of impact to federal wetlands would require Section 404 permits from the USACE, in addition to Special Use Permit approval by the County. Since 0.003 acres of this impact is associated with the construction of a CDOT facility, Section 404 approval would be secured as a component of CDOT's Access Permit for the new entrance onto Highway 145. CDOT's Access Permit process includes a comprehensive environmental assessment of impacts from construction of the CDOT facility, including wetlands. Projects of this type are routinely approved by the USACE under Nationwide Permit 14: Linear Transportation Projects, which is a streamlined permitting mechanism specifically designed to accommodate small wetland impacts needed to construct roads. In addition, the installation of the water diversion for the augmentation pond would impact approximately 0.001 acres of wetlands and will require authorization under Nationwide Permit 58: Utility Line Activities for Water and Other Substances. As with the NWP-14, NWP-58 is a streamlined permitting mechanism routinely approved by the USACE.

In addition to direct impacts, there are portions of the proposed development that occur within the 100-ft protective buffer that the LUC establishes around wetlands. Based on an assessment of the development particulars, and the implementation of stormwater management and best practices during construction, these buffer zone impacts “would not adversely affect the adjacent wetland area(s)” (Sec 5-2203 C, criteria V), and are therefore also permissible under the LUC and eligible for a Wetland Special Use Permit.

Background

Wetlands are regulated under Section 5-22 of the LUC. According to Section 5-2201C, wetlands and streams are considered to be “waters of the county”. Furthermore, wetlands are defined as “... an area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation”. This definition relies on the presence of wetland (hydrophytic) vegetation to define a wetland, compared to the definition used for Section 404 of the Clean Water Act which requires wetland vegetation, soils, and water supply all to be present for some portion of the growing season. The LUC specifically exempts “normal and customary agricultural and ranching activities,” and clarifies that “waters of the county” do not include waters used for irrigation purposes.

Section 5-2201C also defines a “Buffer Zone” as “all areas where development could impact wetland areas, extending at least 100 feet around wetland areas” (i.e., areas that meet the County definition of wetlands described above, typified by a prevalence of hydrophytic vegetation).

SGM (formerly Bikis Water Consultants, LLC originally delineated the wetlands on the Society Turn parcels in the September 2008. The delineation used the standard USACE wetland delineation procedure, which requires the documented presence of wetland hydrology and saturated soil conditions in addition to hydrophytic vegetation. The USACE approved the delineation report in November 2008, and the project was assigned identification number SPK-2008-01513. USACE delineation approvals are valid for five years. Therefore, SGM repeated the wetland delineation process in July 2013, and the USACE approved the updated delineation report in May 2015. The 2008, 2013, 2015, and 2022 wetland delineations were substantially similar to each other, with no indication that wetland and hydrologic conditions on the Society Turn parcel are changing rapidly. In summary, the Society Turn parcel is relatively dry under natural conditions, although normal ranching irrigation activities have historically occurred on the parcel and continue to occur. Naturally occurring wetlands and hydrologic features on the Society Turn parcel are limited to the immediate vicinity of the San Miguel River and Remine Creek, where these features traverse the parcel.

Wetland Delineations

In August of 2022, SGM revisited the Project area, which has been expanded to include the CDOT right-of-way (ROW) along the northern limits of the parcel, as well as the portion of Highway 145, which heads south towards Rico, Colorado. Additional USACE wetlands along Remine Creek were delineated within the Highway 145 ROW. SGM also identified the areas where the County’s wetland definition applies beyond the extent of USACE-regulated wetlands. Figure 1 illustrates where federal and county wetlands were identified and delineation within and adjacent to the Society Turn parcel. The 2022 wetland delineation was based on a review of previous Society Turn delineation reports and supplemented by site visits in the summers of 2019, 2020, and 2022 to confirm conditions.

SGM has identified those areas within the project area that do not have wetland hydrology or soils and are therefore not regulated by the USACE, but which do display a prevalence of hydrophytic vegetation and are protected by the LUC. These areas of County wetlands include the south bank of the San Miguel River

immediately west of the Highway 145 bridge, and along the southside of Highway 145 between Remine Creek and the traffic circle (Figure 1).

County wetlands near the south bank of the San Miguel River are dominated by Baltic rush (*Juncus balticus*) and/or beaked sedge (*Carex utriculata*). These species are identified as facultative wetland and obligate wetland species, respectively, and both species are considered hydrophytic vegetation by the USACE and the larger scientific community. The county wetlands along Highway 145 are dominated by plain leaf willow (*Salix planifolia*), which is considered a wetland obligate. Based on the County's definition of a wetland, areas dominated by Baltic rush, beaked sedge, or willows qualify as wetlands, and would be protected under Section 5-22 of the code. Based on previous experience distinguishing USACE-regulated wetlands from County Wetlands, SGM included all areas with at least 50 percent cover of wetland vegetation as County wetlands and mapped these areas in the field using sub-meter accuracy GPS units. The area of County wetlands along Highway 145 are within the CDOT ROW, and County wetlands near the river also extends slightly onto the CDOT Highway 145 ROW.

The areas of Baltic rush and beaked sedge are relatively dry and provide limited wetland functions. Baltic rush and beaked sedge are both rhizomatous species that can extend out of wet areas into adjacent drier areas and can dominate grazed pastures since they are minimally palatable for livestock and wildlife. The vegetation in this area has been reduced and repeatedly impacted due to historic grazing, mining disturbance, and road construction. The remnant vegetation represents the most tolerant species remaining from the original assemblage, and the wetland functions currently provided are largely limited to erosion control, soil stabilization, and minimal forage.

Wetland Impacts from Proposed Development

The preliminary plans for the Society Turn parcel were overlain on the wetland delineations to quantify impacts to wetlands, streams, and the associated County 100-foot buffers. Figure 1 shows the results of this analysis, and Table 1 summarizes the proposed impacts.

Remine Creek Area

1. **Augmentation Pond.** An earthen pond is proposed for the western corner of the Society Turn parcel, which would be used to store water for subsequent discharge to replace out-of-priority depletions from the project during periods of a vested senior call on the San Miguel River. The pond is located within the County buffer zone of Remine Creek, on a dry terrace elevated above the channel of Remine Creek and the floodplain of the San Miguel River. Remine Creek's wetland consists of a narrow, incised channel dominated by willow (*Salix* spp.) with minimal undergrowth or soil development due to a steep gradient and rocky substrate. Although the construction of the pond would occur within 100 feet of Remine Creek, the pond's location on an elevated terrace above the riparian channel eliminates any potential impact to the Remine Creek wetlands.

The pond would be filled using a diversion structure on the right (west) bank of Remine and a feeder ditch as shown on Figure 1 that would permanently impact approximately 0.001 acres of wetlands regulated by the USACE requiring authorization under Nationwide Permit 58. The diversion structure would be located immediately south of the new culvert that would be installed as part of the highway 145 widening to construct the east bound turn lane discussed in Item 4 below. Impacts from this structure are included in the 0.004 acres of regulated wetlands.

2. **East bound merging and turning lane connecting to the Highway 145/Society Turn traffic circle.** Construction of this merging and turning lane just east of the Society Turn Parcel entrance and installation of utility lines servicing the project would permanently impact 0.115 acres of San

Miguel County regulated wetlands. The turning lane would also encroach on the San Miguel County 100-foot wetland buffer.

3. **Valley Commuter Trail (west side of project area).** A non-motorized trail is proposed that would connect the proposed Medical Center area at the west end of Society Turn parcel to the existing regional trail network, specifically providing a connection from the existing Remine Creek Trail north of the parcel to the Galloping Goose Trail located on the south bank of the San Miguel River. The County requested the applicant explore this connection and the plan for the trail is best option for its use and operation. There would be no direct impacts to wetlands as a result of the trail construction. However, a portion of the trail would be constructed within a wetland buffer. Stormwater would not be discharged from the proposed buffer zone developments into the wetlands but would be managed as shown in the drainage plan.
4. **East bound turning lane on Highway 145 into the Society Turn Parcel.** The construction of the turning lane would permanently impact 0.003 acres of USACE-regulated wetlands and will require Nationwide Permit 14 authorization prior to construction. Permanent wetland impacts were minimized to the greatest extent possible while maintaining Colorado Department of Transportation's design standards. This and the diversion structure discussed in Item 1 above are the only components of the entire Society Turn project that involve impacts to federal wetlands, and the impacts are necessitated by the design criteria and water use augmentation imposed.

San Miguel River / Highway 145 Bridge Area

1. **Valley Commuter Trail (east side of the project area).** Currently, the Galloping Goose trail and the Telluride Bike Path connect via an underpass under Highway 145, at the Highway 145 bridge over the San Miguel River. A non-motorized trail is proposed that would connect these existing trails at the east end of the parcel to the existing Remine Creek Trail on the north end of the parcel, via a cantilevered bike path built into the fill slope of the Highway 145 embankment and utilizing the existing Highway 145 Bridge. This bike path would redirect non-motorized traffic onto a trail loop around the perimeter of the parcel, thereby minimizing interaction between trail users and the business development of Society Turn parcel. Based on the proposed trail location and method of construction, there would be impacts to 0.007 acres of County wetlands on the south bank of the San Miguel River. Stormwater would not be discharged from the proposed buffer zone developments into the wetlands but would be managed as shown in the drainage plan.

In summary, the development proposal for the Society Turn parcel would cause permanent direct impacts to 0.004 acres federal wetlands and approximately 0.082 acres of county wetlands. There is also proposed development within the County's 100-foot wetland buffer zone. Proposed development within the buffer zone includes an augmentation pond because of its proximity to Remine Creek, along the southside of Highway 145 for the eastbound merging/turning lane, and a trail corridor along the west side of Highway 145 across the San Miguel River. As discussed above, the USACE would have jurisdiction over the 0.004 acres of direct wetland impact associated with east bound turning lane into the Society Turn parcel and diversion structure requiring authorization under NWP-14 and NWP-58. All other direct impacts (0.082 acres) and buffer zone impacts are regulated by San Miguel County, and which will require authorization under the County's Special Use Permit review process.

Evaluation of Compliance with LUC

Proposed permanent impacts to federal and county wetlands and buffers are illustrated in Table 1. This table also shows the criteria that are met for each impact in Section 5-22 of the County's LUC pertaining to issuance of a Wetland Special Use Permit (Permit).

Section 5-2203 D of the LUC requires that impacts to wetlands be avoided whenever possible and that unavoidable impacts be minimized. Furthermore, a Permit can only be issued when the applicant demonstrates at least one of the standards/criteria in Sections 5-2203 A. and 5-2203 C. of the LUC are met. Table 1 lists the criteria that are met for each impact for these two sections of the LUC. In general, all proposed impacts meet criteria II of Section 5-2203 C., which states that “The proposed activity is necessary to achieve access to property, and no other access route avoiding wetland and buffer zone areas is technically feasible.”

1. **Wetland avoidance.** It is not possible to avoid development within 100-feet of the wetland areas on the parcel, while still allowing for full development of the property as proposed. All efforts have been made to site development away from wetland areas, and to develop the site while preserving the existing hydrologic resources present.
2. **Compliance with LUC.** Table 1 shows the County criteria that are met for issuance of a wetland Permit for each proposed impact. The proposed impacts are required (a) to develop the property for residential use, (b) to protect property through the construction of stormwater basins mandated by the County, and (c) to maintain the water quantity and quality in the San Miguel River through augmentation as needed. All these uses are consistent with Section 5-2203 A. of the LUC. The development is proposed solely in the buffer zone, consistent with Section 5-2203 C. II of the LUC.

Best Management Practices

Best management practices (BMPs) will be used throughout the parcel during all stages of construction, to minimize impacts to wetlands and water quality during and after construction. This will include implementation of BMPs for stormwater and erosion control as part of the Stormwater Management Plan that will be prepared for the site. Examples of appropriate stormwater BMPs include straw bales, silt fences, and wattles. All disturbed areas will be revegetated for long-term stabilization.

Very truly yours,

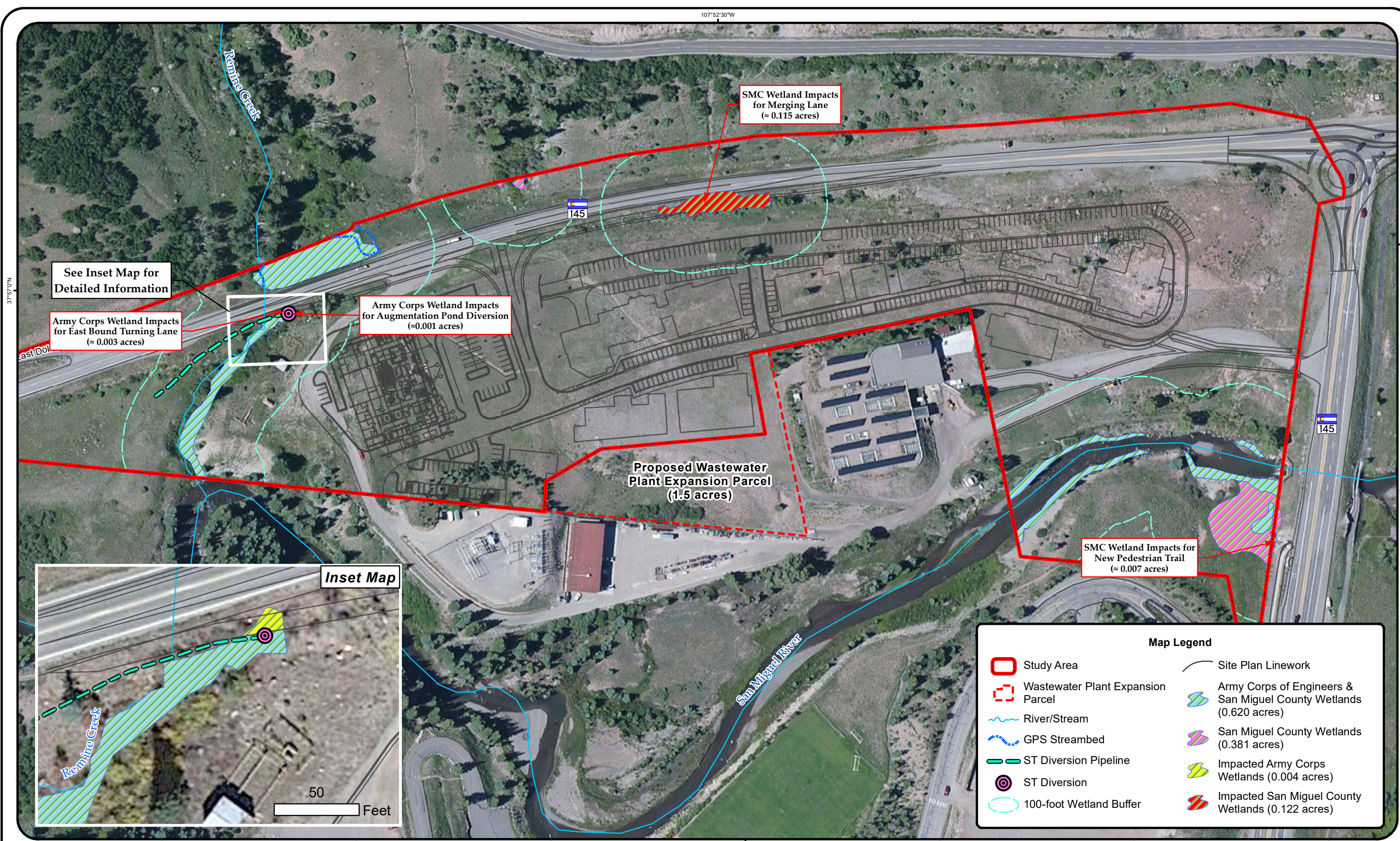


Andy Antipas
Senior Ecologist

Attachments: Figure 1. Society Turn Parcel Wetland Delineation and Impacts
Table 1. Summary of Impacts to Wetlands and Buffers

**Table 1. Description of Proposed Impacts to Wetlands and Buffers - Society Turn Parcel
San Miguel Valley Corporation**

| Location | Proposed Facility | Proposed Wetland Impacts (acres) | | Purpose | Criteria Met ⁽¹⁾ | |
|--|---|----------------------------------|--------------------------------|---|-----------------------------|--------------|
| | | Permanent Wetland Impacts | Activity in SMC Wetland Buffer | | Sec. 5-2203A | Sec. 5-2203C |
| San Miguel County Regulated Wetlands | | | | | | |
| 1 | Augmentation Pond construction | 0.000 | yes | Required for storage and provision of augmentation water. | I, II | V |
| 2 | Eastbound merging turning lane between the creek and traffic circle | 0.075 | yes | Merging and Turning Lane meeting CDOT design standards. | I, III | II, III |
| 3 | Non-Motorized Trail within CDOT Right-of-Way near San Miguel River | 0.007 | yes | Improve public access to regional trail network | III | V |
| Subtotal: | | 0.082 | | Impacts require authorization under San Miguel County Special Use Permit | | |
| US Army Corps of Engineers Regulated Wetlands | | | | | | |
| 1 | East bound turning lane into Parcel. Construction of diversion structure. | 0.004 | yes | Turning Lane into Parcel to CDOT design standards and water diversion for the augmentation pond | I, III | II, III |
| Subtotal: | | 0.004 | | Impacts require authorization under Section 404 of Clean Water Act | | |
| Total: | | 0.086 | | | | |
| Footnotes: 1) Sections of county Land Use Code pertaining to issuance of wetland Special Use Permits. | | | | | | |



See Inset Map for Detailed Information

Army Corps Wetland Impacts for East Bound Turning Lane (≈ 0.003 acres)

Army Corps Wetland Impacts for Augmentation Pond Diversion (≈ 0.001 acres)

SMC Wetland Impacts for Merging Lane (≈ 0.115 acres)

Proposed Wastewater Plant Expansion Parcel (1.5 acres)

SMC Wetland Impacts for New Pedestrian Trail (≈ 0.007 acres)

Inset Map

50 Feet

| Map Legend | | | |
|------------|-----------------------------------|--|--|
| | Study Area | | Site Plan Linework |
| | Wastewater Plant Expansion Parcel | | Army Corps of Engineers & San Miguel County Wetlands (0.620 acres) |
| | River/Stream | | San Miguel County Wetlands (0.381 acres) |
| | GPS Streambed | | Impacted Army Corps Wetlands (0.004 acres) |
| | ST Diversion Pipeline | | Impacted San Miguel County Wetlands (0.122 acres) |
| | ST Diversion | | |
| | 100-foot Wetland Buffer | | |