



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
HELENA REGULATORY OFFICE  
10 WEST 15<sup>TH</sup> STREET, SUITE 2200  
HELENA MT 59626

REPLY TO  
ATTENTION OF

February 3, 2006

RECEIVED

FEB 7 2006

Helena Regulatory Office  
Phone (406) 441-1375  
Fax (406) 441-1380

Ravalli County Planning Dept.  
K-06-02-197

Subject: Corps File Number 2005-90-698  
Legacy Ranch - Sunnyside Orchards, LLC  
Nationwide Permit 27 Verification

Mr. Andy Short, R.S.  
Landworks Consulting & Design, Inc.  
PO Box 7908  
Missoula, Montana 59807

Dear Mr. Short:

Reference is made to your request on behalf of Legacy Ranch - Sunnyside Orchards, LLC for Department of Army authorization to work in waters of the United States. The work is planned in conjunction with development of the 410-acre property located along the East Side Highway north of the community of Stevensville in Section 31, Township 10 North, Range 19 West, and in Section 36, Township 10 North, Range 20 West, Ravalli County, Montana.

Specifically, the following unavoidable impacts to jurisdictional waters are proposed:

1. Placement of approximately 4,500 linear feet of 24-inch diameter smooth-wall HDPE culvert into the Houchens-Johnson Ditch, also referred to as the Supply Ditch or the Houtchens-Templeton Ditch.
2. Approximately 0.7 acre of wetland fringe that is present along the edges of the ditch will be filled in conjunction with the placement of the culvert.
3. Work will be done before water is turned into the ditch for the 2006 irrigation season.
4. Groundwater present in the ditch will either be pumped back into the canal downstream of the project area or it will be pumped onto a field where it will infiltrate into the ground.
5. At least 0.7 acre of wetland will be established or restored in areas adjacent to the existing slope wetland near the center of the property. The ditch will be placed in a pipe, and will no longer intercept groundwater flows. Surface expression of ambient groundwater will be restored.
6. Existing and proposed wetland areas near the center of the property will be park areas, and will not be building lots or mixed use lots.
7. Disturbed areas will be seeded after construction is complete.

Under the authority of Section 404 of the Clean Water Act, Department of the Army permits are required for the discharge of fill material into waters of the United States. Waters of the U. S. include the area below the ordinary high water mark of stream channels and lakes or ponds connected to the tributary system, and wetlands adjacent to these waters. Isolated waters and wetlands, as well as man-made channels and ditches, may be waters of the U. S. in certain circumstances, which must be determined on a case-by-case basis.

Based on the information initially provided, the site contains jurisdictional waters of the U. S. under the authority of Section 404 of the Clean Water Act. If you disagree with this jurisdictional determination, you have the right to appeal the decision. If you would like more information on the jurisdictional appeal process, contact this office.

Based on the information provided we have determined that the proposed work is authorized by Department of the Army Nationwide Permit 27, found in the January 15, 2002 Federal Register (Vol. 67, No. 10, Part II), Issuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this nationwide permit and lists the General Conditions which must be adhered to for this authorization to remain valid. Attached to the fact sheet are the Regional Conditions for the nationwide permit program in Montana, which also apply to your proposed project.

In addition to conditions referenced above, the following **Special Conditions** apply:

1. **Perform work in the ditch and adjacent wetlands during low flow or in the dry.**
2. **Where practicable, salvage wetland vegetation and wetland soils from all wetland impact areas on the project. Use salvaged wetland soil and vegetation as the top layer in the wetland mitigation area.**
3. **Remove all waste material generated by the project or encountered during construction to an upland disposal site. Do not dispose of waste material within 50 feet of any wetland, drainage channel, irrigation channel, or stream.**
4. **Where temporary disturbance to vegetation within or adjacent to wetlands is necessary the vegetation must be bent over or cut off at the existing ground surface.**
5. **Do not use existing wetlands for temporary parking areas, staging areas, storage areas, or stockpiles.**
6. **Provide a brief report to the Corps to verify that at least 0.7 acre of new or re-established wetland area has developed. Include the following in the report:**
  - i. **Copies of the pre-project (baseline) and the final wetland delineation map for the wetland mitigation site. Include copies of the wetland delineation data sheets for the mitigation wetlands.**
  - ii. **Three sets of clearly labeled photographs taken from different reference points that show the mitigation area prior to disturbance; during construction; and during the final delineation.**
  - iii. **Verification that no more than 10% of the vegetative cover in the**

- wetland is comprised of noxious weeds.
- iv. Verification that the wetland area has been set aside and protected from development and other non-wetland uses.
  - v. The report should be prepared after two growing seasons have passed, and submitted to this office no later than December 31, 2007. Notify this office in writing prior to that date if monitoring is required beyond the 2006 and 2007 growing seasons, requiring a delay in report submittal.

Although an Individual Department of the Army permit involving a public interest review will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal, and local permits as required. Please note that deviations from the approved plans and specifications of your project could require additional authorization from this office.

The Montana Department of Environmental Quality waived Section 401 Water Quality Certification (401 Certification) for this specific project; however, this does not eliminate the need to obtain other permits that may be required by that agency.

You are responsible for ensuring that all work is accomplished in accordance with the terms and conditions of the nationwide permit. If a contractor or other authorized representative will be accomplishing the work authorized by the nationwide permit on your behalf, it is your responsibility to provide a copy of this letter and the attached conditions to them so they are aware of the limitations of this authorization. Any activity that fails to comply with all the terms and conditions of this authorization will be considered unauthorized and subject to appropriate enforcement action.

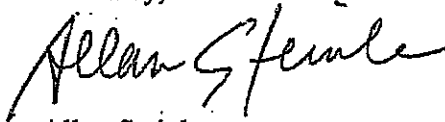
In compliance with General Condition 14 of the fact sheet, the attached Compliance Certification form must be signed and returned to this office upon completion of the authorized work and any required mitigation.

This verification is valid until the nationwide permit is modified, reissued or revoked. The nationwide permit is scheduled to be modified, reissued or revoked prior to March 18, 2007. It is incumbent upon you to remain informed of changes to the nationwide permit. We will issue a public notice announcing the changes when they occur. Public notices can be viewed on our website at [www.nwo.usace.army.mil/html/od-rmt/mthome.htm](http://www.nwo.usace.army.mil/html/od-rmt/mthome.htm). Furthermore, if you commence or are under contract to commence this activity before the date the nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions of this nationwide permit.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

If there are questions concerning this authorization please contact myself or Todd Tillinger of my staff at (406) 441-1375 and reference Corps File Number 2005-90-698.

Sincerely,



Allan Steinle  
Montana Program Manager

Enclosures:

Compliance Certification Form for Corps File Number 2005-90-698  
Nationwide Permit 27 Fact Sheet

Copies Furnished, with all Enclosures:

Legacy Ranch – Sunnyside Orchards, LLC  
39 Stevensville Cutoff Road West #C  
Stevensville, Montana 59870

Copies Furnished, without Enclosures:

Ravalli County Planning Department  
215 South 4<sup>th</sup> Street, Suite F  
Hamilton, Montana 59840

Mr. Cleatus and Mrs. Beryl Johnson  
4783 Hereford lane  
Stevensville, Montana 59870