



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OR 97208-2946

April 7, 2021

Regulatory Branch
Corps No. NWP-2020-477

Mr. Greg Smith
Malheur County Development Corporation
522 Southwest Fourth Street
Ontario, Oregon 97914
Malheurcountyedc@gmail.com

Dear Mr. Smith:

The U.S. Army Corps of Engineers (Corps) is evaluating your application for a Department of the Army (DA) permit to place fill in 1.58 acres of wetlands to construct a new intermodal transportation facility and associated infrastructure. The project is proposed in Wetland 4, Wetland 6 and Wetland 7 located at east of Arcadia Boulevard and west of Chestnut Avenue near Nyssa, Malheur County, Oregon at Latitude/Longitude: 43.913145°, -116.989313°. Please refer to the above-referenced Corps number in all correspondence.

Your application for a DA permit is hereby denied without prejudice. Generally, the Corps will not continue processing a permit application where a required federal, state, or local authorization and/or certification for the proposed project has already been denied. I reached this determination because on March 29, 2021, the Oregon Department of Environmental Quality (DEQ) denied the Clean Water Act Section 401 Water Quality Certification (WQC) for your proposed project. Section 401 of the Clean Water Act requires any applicant for a federal license or permit for an activity that results in a discharge of dredged or fill material into waters of the U.S. to obtain a 401 WQC or 401 WQC waiver from the certifying authority.

The DEQ is the certifying authority for this project. I have reviewed DEQ's denial and determined it satisfies the administrative requirements of the regulations at 40 CFR § 121.7(e). DEQ is being furnished a copy of this letter. This letter serves as notice to DEQ regarding a valid 401 WQC denial. DEQ's denial does not preclude you from submitting a new request for 401 WQC in accordance with the procedures at 40 CFR § 121.5. Please contact the DEQ directly with any questions regarding the DEQ's denial.

Denial of your DA permit without prejudice means you have the right to have the processing of your application reinstated if you subsequently obtain the 401 WQC. Please note, in our February 23, 2021, letter we requested additional information to

continue processing your permit application. To date, we have not received the requested information. To reinstate your application, you must also provide the requested information. Please be advised, during the course of evaluating your permit application you may receive requests for additional information until we have all the information necessary to complete a permit decision. You will need to submit a new permit application to the Corps if your proposed project has changed.

Since a DA permit is necessary for this work, do not commence construction before obtaining a valid DA permit. If you have any questions regarding this correspondence, please contact Mr. Thomas Sentner by telephone at (503) 808-4959 or email at thomas.f.sentner@usace.army.mil.

FOR THE COMMANDER, MICHAEL D. HELTON, PMP, COLONEL, CORPS OF ENGINEERS, DISTRICT COMMANDER:

Sincerely,

A handwritten signature in cursive script that reads "William D. Abadie".

William D. Abadie
Chief, Regulatory Branch

cc:

Anderson Perry & Associates, Inc. (Dana Kurtz, dkurtz@andersonperry.com)

Oregon Department of State Lands (Bethany Harrington, bethany.harrington@state.or.us)

Oregon Department of Environmental Quality (401applications@deq.state.or.us; Jeffrey Brittain, Jeffrey.brittain@state.or.us)