

Walmart site in The Dalles appealed again

BY NEITA CECIL
The Dalles Chronicle

A local citizens group opposing a proposed Walmart superstore in The Dalles has appealed for a second time a wetlands permit issued to the retail giant.

Citizens for Responsible Development in The Dalles filed an appeal Dec. 5 with the Oregon Court of Appeals of a final order by the Oregon Department of State Lands granting Walmart a permit to fill and remove wetlands.

The citizens group first appealed the permit after it was granted in May 2013. The appeal was heard in June 2014 before an administrative law judge, who ruled the permit could stand. In October, the department of state lands issued its final order implementing the judge's ruling, and the citizens group filed its appeal of the final order two months later.

Walmart spokesperson Delia Garcia said, "Our plans for the new store in The Dalles have weathered extensive review and legal scrutiny — and been approved at each and every step. The community has been very supportive throughout this prolonged process and we appreciate their patience. We look forward to the day we can provide our customers in the Gorge with an affordable option for the items that they need and use every day."

John Nelson, a lead member of the citizen group, said that, "As we have challenged it, Walmart has changed their solution, making it better and better and better."

The group still opposes the placement of the 18.1-acre Walmart site, near the junction of Interstate 84 and exit 82, which has some 49 rare wetlands called vernal pools scattered around it.

Walmart plans to build a 147,782 square-foot superstore on the property comprising retail, grocery and garden center, with 8.2 acres of parking lot, two acres of service area, and two acres of

landscaping. In all, it would cover some 16.1 acres of land with buildings and parking lots, all impervious surfaces which would cause runoff when it rains.

Walmart is proposing a series of bioswales — densely vegetated shallow ditches — that will collect and naturally filter the runoff before it is sent to either wetlands or the storm sewer system. The storm runoff system will filter out pollutants and sediments before discharging treated runoff into a wide rocky area upland of Chenoweth Creek.

Karl Anuta, a Portland attorney representing the citizen group, said several points will be raised on appeal. The first, he said, is whether the department of state lands is required to find a public benefit for a project in order to allow wetlands to be filled.

The department argued — and the judge agreed — that such findings are only required for projects affecting estuaries. Anuta contends the relevant case law is broader than that and is meant to include all wetlands.

Following the June 2014 hearing, the judge determined it was "inconclusive" whether a public benefit existed.

He said this project will be built on top of vernal pools, shallow depressions that are wet in the rainy season but dry the rest of the year. The October final order said vernal pools are among the rarest wetlands in the state and are "exceptionally difficult" to recreate.

"We felt filling them without a public benefit finding did not make sense," Anuta said.

Anuta said the second major issue is "the failure of the department to require Walmart to consider a smaller store as an alternative to the big superstore that Walmart wanted to do."

The judge found Walmart's analysis of nine other sites — which Anuta claimed was an insincere attempt to find an alternate — was thorough and

reasonable.

The citizens group proposed a two-story store with parking garage that would've taken up less space on the site.

Walmart said such a building would be too costly to build in a rural area, because it doesn't have a large enough customer base to recoup costs, and the judge agreed, saying the company had a right to make a profit.

In 2010, Walmart did shrink its parking lot 12 percent, eliminating 92 spaces, to reduce impacts on wetlands. It also moved the storm sewer outfall pipe well inland, away from its original outfall directly into Chenoweth Creek, which could have eroded the creekbed.

One change that came out of the June hearing was adding a device to the stormwater drainage system that will control whether storm runoff goes into the stormwater system or into wetlands.

The dam-like structure will send high and low amounts of storm runoff into the storm system, but send mid-range amounts into wetlands. The goal is to mimic as much as possible the natural water cycle of the site.

Anuta said the citizens group believes the dam-like structures will not be self-sustaining, as the law requires.

Walmart will have to monitor the dams for two years to make needed adjustments, and from then on, they would

be self-sustaining, according to the final order.

Bioswales will naturally filter runoff, and filters will mechanically filter them. Other methods of preventing water pollution from runoff will include regularly sweeping the parking lot.

While the citizens group contended the system would improperly require too much maintenance, contrary to the notion of being self-sustaining, the department's final order, written by its director, said, "I find that spending four hours per year on mowing the bioswales is not a regular or frequent activity."

The final order also notes the land deed has restrictions requiring the maintenance be done in perpetuity. The permit will require seven years of monitoring of the wetlands and the property's storm drainage system.

During the hearing, Anuta said Walmart's plan is "based on a 'trust me' approach." He said, "This lack of regular monitoring is astonishing."

Under the permit, Walmart will be allowed to permanently impact 2.174 acres of wetlands, and about .52 acres of that was occupied by a non-threatened species of fairy shrimp, according to a 2009 federal survey of the site.

State law requires projects that impact wetlands to mitigate the damage by several methods, including either creating new wetlands onsite or elsewhere.

Walmart chose to recreate them on-site. It plans to create 1.33 acres of new wetlands, restore .64 acres of damaged wetlands, enhance .58 acres of wetlands, and preserve 2.42 acres of wetlands. It will also preserve 7.75 acres of uplands that feed into the wetlands.

The project is 250 feet from Chenoweth Creek, which has a number of species of protected fish in it, and is 3,500

feet from the Columbia River. Walmart experts argued the drainage system on the site uses the most restrictive rules in the state for treating stormwater pollutants.

A department of state lands employee testified that "the permit conditions are some of the most comprehensive and robust ever required by the department," the final order stated.

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This week's Sudoku presented by:

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Answers on Page A9

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Fill in all 81 squares on the puzzle with numbers 1 to 9. You can use each number 1-9 only once in each nine square section, in each horizontal line of nine squares, and in each vertical column of nine squares. The puzzle is completed when you correctly fill every square.

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May Street Elementary is hosting the second annual Gorge OBOB Invitational Sunday, noon to 3 p.m.

This is a fun day for kids to practice battle against teams from other schools in advance of their school and Regional competitions (which happen in late February/early March). Fifteen

teams from Parkdale, Westside, Mosier Community School and May Street Elementary will attend, with over 60 kids expected to join the fun. These kids have been working hard to prepare; as a team, they must read 16 books and be ready to answer questions in only 15 seconds.

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