Exhibit "A"

BEFORE THE CITY COUNCIL

FOR THE CITY OF THE DALLES

WASCO COUNTY, OREGON

In the Matter of the Remand from LUBA regarding the City's approval (Resolution No. 09-013) of PacLand's Site Plan Review Application to develop an approximate 150,000 SF Wal-Mart Store.	**REMAND FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR SITE PLAN REVIEW APPLICATION** **SPR 379-08** **LUBA REMAND** **2009-048**

1. PROJECT DESCRIPTION

Pacland, on behalf of Walmart (the "Applicant"), seeks site plan review approval to construct a Walmart retail store on 18.08 acres (the "site") of a 67.2 acre vacant property located at the southeast corner of River Road and Interstate 84, commonly referred to as the Chenoweth Interchange (the "Application"). The proposed Walmart store will consist of an approximately 150,000 SF building located in the southern portion of the property along with surface parking, landscaping, lighting, access, and utility infrastructure improvements.

The Comprehensive Plan and Zoning District classification for the property is Commercial/Light Industrial ("CLI"). The site is located within the City limits on lot 2 of the recently approved Chenoweth Station Subdivision. The adjacent property to the north, south and east are zoned Industrial. The site is bounded to the west by railroad right-of-way and Interstate 84. An animal shelter is located to the northeast on Tax Lot 300. The aluminum plant to the south is in the process of being demolished.

2. PROCEDURAL MATTERS

2.1 PROCEDURAL BACKGROUND

After numerous public hearings, the City Council on March 9, 2009 adopted Resolution No. 09-013, affirming the Planning Commission's decision to approve the Application and imposed twenty (20) conditions of approval. The City's decision

was appealed to the Land Use Board of Appeals ("LUBA") by Citizens for Responsible Development in The Dalles ("CFRD"), Luise Langheinrich, John Nelson and Michael Leash ("Petitioners").

On October 8, 2009, LUBA ruled in favor of the City on all of the issues raised by Petitioners, except for one issue related to the 30th highest hour at the Chenoweth Interchange ("30th Highest Hour Issue"). LUBA 2009-048. The 30th highest hour is a technical term and is the national industry standard used by transportation engineers to be the most appropriate period of time to measure impacts created by a project, such as the proposed Walmart store.

Regarding the 30th Highest Hour Issue, LUBA stated it was Petitioner's position that the 30th highest hour for the Chenoweth Interchange, as measured by the nearest ODOT automatic trip recorder ("ATR") on I-84 at the Rowena Interchange, occurred on Sunday afternoon, July 29, 2007. LUBA further stated that the Applicant's traffic engineer used a Tuesday, July 10, 2007 from 4 PM to 6 PM as the 30th highest hour for the Chenoweth Interchange. Because of this difference of opinion, LUBA noted that it was the Petitioners position that the Applicant's traffic analysis was flawed and underestimated the impacts of the proposed Walmart at the Chenoweth Interchange. LUBA also noted that the City had accepted the Tuesday afternoon in July, 2007 as the correct 30th highest hour for measuring project impacts at the Chenoweth Interchange.

LUBA determined that the City Council's findings failed to adequately explain "…why traffic counts taken on a weekday satisfy the requirements to measure 30th highest hour volumes for traffic, when the 30th HHV for traffic as measured at the Rowena ATR occurred on a Sunday afternoon in July". LUBA also determined that "traffic counts taken at the Chenoweth Interchange on a weekend day may be necessary in order to reach an accurate conclusion about whether the proposed development will significantly affect that interchange, and thus require mitigation earlier than that…conditioned by the City." As a result, LUBA remanded the matter back to the City Council to address the 30th Highest Hour Issue.

On November 10, 2009, the Applicant requested the City Council to initiate a remand pursuant to ORS 227.181 (2) (a) and to limit the scope of the remand proceedings to the issue identified by LUBA in 2009-048. In that regard, the Applicant requested the opportunity to submit evidence explaining why traffic counts taken on a weekday (Tuesday) afternoon in July, 2007 satisfy ODOT's requirements for determining the 30th highest hour at the Chenoweth Interchange to measure project impacts. While not agreeing with Petitioner's position that a Sunday afternoon in July constituted the 30th highest hour for the Chenoweth Interchange, or LUBA's suggestion that it may be necessary to take counts on a weekend day at the Chenoweth Interchange, the Applicant also requested the opportunity to submit Sunday afternoon traffic

counts to measure project impacts to determine if the previously imposed conditions of approval by the City were adequate to mitigate impacts at the Chenoweth Interchange.

The City Council considered the Applicant's remand request at its regularly scheduled meeting on November 23, 2009. All parties in attendance were provided the opportunity to testify regarding the Applicant's request to initiate remand proceedings pursuant to LUBA's decision, including the attorney representing Petitioners, Citizens for Responsible Development in The Dalles. Their attorney submitted a letter dated November 23, 2009 requesting the City Council to (1) schedule a public hearing to consider Walmart's request; (2) allow Walmart to submit new evidence as set forth in Walmart's letter; (3) allow interested parties the opportunity to testify regarding any new evidence related to the Chenoweth Interchange; (4) require Walmart to follow ODOT guidelines for determining the 30th highest hour for the Chenoweth Interchange and calculate project impacts based on the 30th highest hour; (5) require Walmart to measure project impacts based on a Saturday and Sunday 30th highest hour calculation; (6) allow the public to submit their own evidence concerning the 30th highest hour selection and volume to capacity ratio; and (7) allow CFRD to introduce new evidence related to wetland issues.

The City Attorney advised the City Council regarding its legal authority to define/limit the scope of the remand proceeding. The attorneys for the Applicant and CFRD both acknowledged the City Council's authority to limit the scope of the remand proceeding to issues identified by LUBA.

Following the public testimony, the City Council voted to limit the scope of the remand hearing to the issues identified by LUBA related to the 30th Highest Hour Issue at the Chenoweth Interchange and to allow the Applicant to present new evidence related to those issues as requested in its letter to the City to initiate the remand. The City Council also voted to allow any party the opportunity to testify regarding any new evidence submitted by the Applicant related to the 30th Highest Hour Issue at the Chenoweth Interchange, and for any party to present testimony and evidence using Saturday as the weekend day for purpose of calculating the 30th highest hour. The City Council denied CFRD's request to introduce new evidence related to wetlands and expand the scope of the remand proceedings beyond the LUBA issues. The City Council noted that the attorney for CFRD acknowledged the City's authority to limit the scope of the remand to issues identified by LUBA, and that LUBA had previously agreed with the City regarding the wetland issue in LUBA 2009-048.

2.2 THE REMAND HEARING

The City Council conducted the remand hearing at its regularly scheduled meeting on December 14, 2009. All parties were provided the opportunity to testify, including the Applicant and members of CFRD, within the defined scope of the remand as established on November 23, 2009.

The Applicant submitted a traffic report from its traffic engineer, DKS Associates, entitled "Wal-Mart: Additional Traffic Analysis for LUBA Remand", dated December 2, 2009 addressing the 30th Highest Hour Issue for both a weekday (Tuesday) afternoon and a weekend (Sunday) afternoon ("DKS Remand Report"). The Oregon Department of Transportation ("ODOT") submitted a letter dated December 11, 2009 confirming and supporting the analysis performed by DKS Associates in its Remand Report. The City of The Dalles Engineer (the "City Engineer") submitted a letter dated December 14, 2009 confirming and supporting the analysis performed by DKS in its Remand Report. The Applicant also presented a PowerPoint summary of the DKS Remand Report to the City Council at the December 14, 2009 hearing.

CFRD submitted a letter from its attorney, Ken Helm dated December 14, 2009 and a response from Greenlight Engineering ("Greenlight"), dated December 11, 2009 responding to the DKS Remand Report.

Prior to the close of the remand hearing, a request was made by CFRD to continue the hearing to allow an opportunity to present additional evidence and argument. The Applicant concurred with this request. As a result, the City Council voted to keep the record open to December 21, 2009 to allow any party to submit any new evidence or argument related to the remand issues; voted to keep the record open to December 28, 2009 to allow any party to submit evidence in response to any evidence submitted on December 21, 2009; and allowed the Applicant to submit a Written Closing Statement by January 4, 2010, without the inclusion of any additional evidence.

On December 21, 2009, the Applicant through its traffic engineers, DKS Associates, submitted a response dated December 21, 2009 to Ken Helm's letter dated December 14, 2009, and to Green light's letter dated December 11, 2009.

On December 28, 2009, CFRD, through its attorney Ken Helm, submitted a letter dated December 28, 2009 in response to the DKS Associates response dated December 21, 2009.

On January 4, 2010, the Applicant, through its attorney, Greg Hathaway, submitted a Written Closing Statement. This Written Closing Statement did not include any new evidence.

3. SCOPE OF REMAND FINDINGS OF FACT AND CONCLUSIONS OF LAW

These Remand Findings of Fact and Conclusions of Law are limited to the remand issues identified by the City Council at its meeting of November 23, 2009 in response to LUBA's remand and referenced in Section 2.1 of this document. The City's prior Findings of Fact and Conclusions of Law adopted by the City on March 9, 2009 in Resolution No. 09-013 are still valid except for that portion related to the 30th Highest Hour Issue that is the subject of these Remand Findings of Fact and Conclusions of Law.

4. REMAND FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Remand Findings of Fact and Conclusions of Law are organized in the following manner: (1) A general summary of the Applicant's and CFRD's respective positions in this remand proceeding; (2) An identification of the specific assertions presented by the attorney for CFRD dated December 14, 2009 and the Greenlight letter dated December 11, 2009 and the City's Findings of Fact related to such assertions; (3) An identification of the specific assertions presented by the attorney for CFRD dated December 28, 2009 and the City's Findings of Fact related to such assertions; and (4) Conclusions of Law regarding the remand issues.

4.1 GENERAL SUMMARY OF THE APPLICANT'S AND CFRD'S RESPECTIVE POSITIONS

Ken Helm, the attorney for CFRD, in his letter dated December 14, 2009, and Greenlight, in its letter dated December 11, 2009, contend that there is no substantial evidence in the record to support the 30th highest hour used by the Applicant (i.e. a weekday afternoon in July) in measuring project impacts at the Chenoweth Interchange in compliance with ODOT's Analysis Procedures Manual ("APM"). CFRD also takes the position that it has never asserted in these proceedings that Sunday or Saturday is the 30th highest hour, but that the Tuesday PM peak hour used by the Applicant is not the 30th highest hour. Although CFRD does not provide any evidence of its own of the correct 30th highest hour in compliance with ODOT's APM, it suggests that other weekdays, and a Saturday weekend day be considered as the 30th highest hour for measuring project impacts at the Chenoweth Interchange. CFRD's suggestion to use a Saturday afternoon in July as the 30th highest hour is based on its assertion that this period of time is when Walmart is the busiest rather

than pursuant to ODOT's APM or even Rowena ATR data.

The Applicant takes the position that it has submitted substantial evidence and met its burden of proof regarding the 30th Highest Hour Issue by demonstrating that: (1) the Rowena ATR cannot be used to determine the 30th highest hour for the Chenoweth Interchange pursuant to ODOT's APM; (2) a weekday (Tuesday) afternoon in July, 2007 constitutes the 30th highest hour pursuant to ODOT's APM for purposes of measuring project impacts; (3) Sunday afternoon traffic impacts are 25% less than the impacts on a Tuesday afternoon at the Chenoweth Interchange if a Sunday afternoon is used as the 30th highest hour pursuant to the Rowena ATR (as suggested by LUBA); (4) ODOT and the City Engineer have both concurred that a Tuesday PM peak hour constitutes the 30th highest hour to measure project impacts at the Chenoweth Interchange in compliance with ODOT's APM; (5) the originally imposed conditions of approval per Resolution No. 09-013, mitigate project impacts under either a Tuesday PM peak hour or Sunday PM peak hour analysis; and (6) Saturday afternoon is not the 30th highest hour since the Rowena ATR demonstrates that its traffic volumes are 25% lower than Sunday afternoon's traffic volumes; and (7) the period of time for measuring project impacts is based on the appropriate 30th highest hour per ODOT's APM rather than the busiest time of a particular project.

4.2 CITY'S FINDINGS OF FACT REGARDING SPECIFIC ASSERTIONS PRESENTED BY CFRD THROUGH ITS ATTORNEY, KEN HELM IN HIS LETTER DATED DECEMBER 14, 2009, AND A LETTER FROM ITS TRAFFIC ENGINEER, GREENLIGHT DATED DECEMBER 11, 2009

The City's Findings of Fact address each paragraph of the Ken Helm letter dated December 14, 2009 and the Greenlight letter dated December 11, 2009. Each paragraph is displayed in boxes in consecutive order and is direct copies from their respective letters.

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Mr. Gene Parker
City Attorney
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The Dalles, OR 97058

December 14, 2009

Re: LUBA Remand of SPR 379-08 – December 2, 2009, DKS "Wal-Mart: Additional Traffic Analysis for LUBA Remand."

Mr. Parker:

As you know, I represent Citizens for Responsible Development in The Dalles. We have reviewed Wal-Mart's traffic analysis submitted in response to the city council's direction on LUBA's remand of application SPR 379-08. Attached is a review of the DKS analysis by Greenlight Engineering. Please enter both the Greenlight Engineering document and this letter into the record in this proceeding.

The reason the city's approval was remanded by LUBA is that the board found the city's findings did not adequately respond to CRD's evidence that showed Wal-Mart had not used the correct traffic counts for the 30th highest hour in calculating the impacts of the Wal-Mart store on the volume to capacity ratio of the Chenoweth Interchange. The additional information submitted by DKS in its December 2, 2009 document does nothing to change that.

CITY'S FINDING OF FACT

LUBA made the following findings:

- "We tend to agree with petitioners that the city's findings fail to adequately explain why traffic counts taken on a weekday satisfy the requirement to measure 30th highest hour volumes for traffic, when the 30th HHV for traffic as measured at the Rowena ATR occurred on a Sunday afternoon in July . . . Although the city may be correct that traffic at the other affected intersections that are located entirely within the city is busiest during the week that does not necessarily mean that traffic at the Chenoweth Interchange, located

directly on I-84, is busiest during the week, when ODOT's ATR counts at Rowena appear to at least call that conclusion into question." (page 14)

- ". . . traffic counts taken at the Chenoweth Interchange on a weekend day may be necessary in order to reach an accurate conclusion about whether the proposed development will significantly affect that interchange." (page 15)

LUBA's decision did not indicate that the previous DKS traffic analysis that used a weekday (Tuesday) PM peak hour as the 30th highest hour for the Chenoweth Interchange was flawed. Further, LUBA's decision did not determine that ODOT's and the City Engineer's previous concurrence with this approach was inappropriate. Instead, LUBA determined that the City's findings were not sufficient to demonstrate that "traffic counts taken on a weekday (Tuesday) afternoon satisfied ODOT's APM requirement to measure 30th highest hour volumes for traffic", especially in light of Petitioner's assertion that the Rowena ATR (located on I-84) indicated that the 30th highest hour was a Sunday afternoon. Additionally, LUBA suggested that it may be necessary to take traffic counts at the Chenoweth Interchange on a weekend day (Sunday afternoon) in order to reach an accurate conclusion about project impacts if the City was not able to make sufficient findings demonstrating that a weekday (Tuesday) PM peak hour was the 30th highest hour for the Chenoweth Interchange. The DKS Remand Report and PowerPoint presentation addressed both of these LUBA issues by providing the following:

- Detailed documentation of how ODOT methodology, pursuant to its APM, supports the selection of a weekday (Tuesday) PM peak hour in July as the appropriate 30th highest hour analysis period to measure project impacts.

- Additional Sunday PM peak hour impact analysis shows that even if the 30th highest hour occurs on a Sunday (based on the Rowena ATR), then the improvements previously conditioned on the developer pursuant to Resolution No. 09-013 will still mitigate project impacts at the Chenoweth Interchange.

- Documentation that Rowena ATR volumes are more than 25% lower on Saturday than on Sunday, and therefore that Saturday does not constitute the 30th highest hour and should not be used as the analysis period to measure project impacts at the Chenoweth Interchange.

Both ODOT and the City Engineer submitted letters confirming the analysis contained in the DKS Remand Report and the above conclusions.

The analysis by Greenlight Engineering shows that Wal-Mart's application continues to fail to demonstrate that the .75 volume to capacity ratio at the Chenoweth Interchange will be met. The DKS analysis lacks substantial evidence to support their choice for the 30th highest hour. The Sunday counts used by DKS essentially prove that the 30th highest hour times that they have chosen are far too low. Greenlight's analysis shows that even using the conservative 37th highest would increase the trip volume by approximately 1000 vehicle trips over what Wal-Mart has used. Thus, the DKS document cannot be the basis for amended findings complying with LUBA's order.

Remember that based on the 2007 DKS study and using DKS's preferred 30th highest hour estimates, the Chenoweth Interchange is only expected to function at a .72 V/C ratio.

Even the slightest increase in the 30th highest hour trip estimates is likely to push that V/C ratio past .75 which will result in a violation of the settlement agreement between ODOT and the city. Based on the current DKS analysis, the city cannot logically adopt findings which can comply with LUBA's remand. This is true at least in part because the Greenlight analysis so significantly calls into question, if not completely undercuts, the reasoning and evidence relied upon in DKS's December 2, 2009 submission.

CITY'S FINDING OF FACT

The City finds these statements to be inaccurate and misleading for the following reasons:

- The 0.72 v/c ratio referenced is an unmitigated 2010 analysis result reported in the *WM3 TIS* and is a misrepresentation of the improvements that will be provided by the project pursuant to the conditions of approval imposed in Resolution No. 09-013. A more accurate picture of the effects of the project on Chenoweth Interchange operating conditions can be seen by considering the 2027 analysis year with both project traffic and project mitigations included in the analysis. In a 2027 mitigated scenario, the two Chenoweth Interchange ramp intersections would operate at v/c ratios of 0.44 and 0.55 (which are both at least 20% lower than the 0.75 v/c ratio operating standard). Also, the nearby US 30/River Road intersection would operate at a v/c ratio of 0.64 (which is more that 20% lower than its applicable 0.85 v/c ratio operating standard). Because the developer is conditioned to provide financial assurance that the identified improvements will be constructed when warranted (as set forth in Resolution No. 09-013), the improvements will be installed as soon as they are needed to maintain compliance with ODOT's operating standards and the settlement agreement. The ODOT letter dated December 11, 2009 confirms this analysis, and ODOT is a party to the settlement agreement with the City.

- The DKS Remand Report and PowerPoint presentation, along with the confirming letters from ODOT and the City Engineer, demonstrate that traffic

counts taken during a weekday (Tuesday) PM peak hour in July, satisfy ODOT's 30th highest hour requirement pursuant to the ODOT's APM.

- The 1,000 vehicle trips referenced for the 37th highest hour were measured at the Rowena ATR, which cannot be used to determine the 30th highest hour for the Chenoweth Interchange ramp terminals because it has approximately two times higher traffic volumes. ODOT's APM specifies that data from an ATR should only be used to determine when the 30th highest hour occurs if traffic volumes are within 10% of project area (Chenoweth Interchange) volumes. In this case, the Average Annual Daily Traffic ("AADT") for the Rowena ATR is 19,460, while the AADT for the Chenoweth Interchange is 7,350, a 60% difference. Therefore, using the Rowena ATR as the 30th highest hour to make conclusions regarding the selected count hour for the Chenoweth Interchange is not in compliance with the ODOT's APM and inappropriate.

- Greenlight's assertion that the Sunday counts used by DKS (October 25, 2009) are higher than the Tuesday afternoon counts is not factually correct. Weekday PM peak hour traffic volumes are 3.5 % higher than Sunday PM peak hour volumes at the Chenoweth Interchange. This assertion has no merit because Greenlight did not apply a growth factor to the July, 2007 traffic counts so that volumes from different years could be accurately compared. The evidence demonstrates that the previously imposed mitigation conditions by the City in Resolution No. 09-013 will mitigate project impacts under either a Tuesday PM peak or Sunday PM peak analysis period.

CRD's suggestion and request is that the city council require Wal-Mart to conduct its own traffic counts at the appropriate time of year, in this case July, to determine with certainty, the correct 30th highest hour, and based on those counts recalculate the V/C ratio for the Chenoweth Interchange so that the city council can adequately determine whether the V/C ratio of .75 can be complied with. As the Greenlight analysis points out, Wal-Mart had the opportunity to do such counts in 2007 and 2008 and opted not to do so.

As a final matter, CRD continues to object to the city council's refusal to examine new information related to the wetlands on the Wal-Mart site. Wal-Mart's own information shows that dozens of additional wetlands have been discovered on the subject property and the area Wal-Mart intends to build upon. This fact has the potential to affect both the city council's former subdivision approval 62-08, and site plan approval in 379-09, in that roads, parking lots, utilities and other aspects of the development may need to be moved in order accommodate the wetlands. The question of how the wetlands will be mitigated is also unresolved. It is CRD's position that these changes will require new public hearings and review of any changes to the subdivision or site plan approvals.

Thank you for the opportunity to comment.

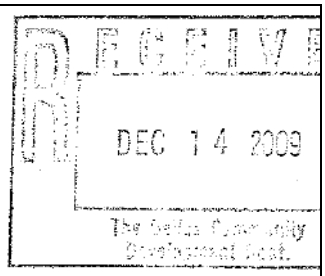
Ken Helm

CITY'S FINDING OF FACT

CFRD asserts that the City should require the Applicant to conduct traffic counts at the appropriate time of the year, and that the Applicant had the opportunity to do such counts in 2007 and 2008. The City finds that the Applicant took appropriate traffic counts in July, 2007 for the weekday (Tuesday) PM peak hour analysis, and the timing of those counts (as the 30th highest hour) has been confirmed by ODOT and the City Engineer as compliant with ODOT's APM. Additionally, the City finds that the Applicant took appropriate counts on October 25, 2009 for the weekend (Sunday) PM peak hour analysis and seasonally adjusted the counts pursuant to ODOT requirements as explained by the DKS Remand Report and PowerPoint presentation. The timing and seasonal factoring of those counts have been confirmed as appropriate by ODOT and the City Engineer. The City can rely on these counts as substantial evidence to assist in determining the appropriate 30th highest hour for the Chenoweth Interchange. The City finds Mr. Helm's suggestion to require the Applicant to conduct traffic counts in July, 2010 to determine the 30th highest hour is unnecessary and a tactic to delay the construction of the Walmart store.

GREENLIGHT ENGINEERING

TRAFFIC ENGINEERING/TRANSPORTATION PLANNING



December 11, 2009

City of the Dalles
313 Court Street
The Dalles, OR 97058

RE: Wal-Mart - Response to DKS December 2, 2009 Memorandum

This memorandum responds to the December 2, 2009 memorandum submitted by DKS Associates.

Executive Summary

- The TIS has failed to collect traffic counts or provide analysis of the 30th highest hour as required by ODOT's *Analysis Procedures Manual (APM).*
- The TIS has failed to provide substantial evidence that the chosen hour of analysis on Tuesday, July 10, 2007 is the 30th highest hour.
- Substantial evidence exists that the hour of analysis on Tuesday, July 10, 2007 is not the 30th highest hour.
- Substantial evidence exists that there were 134 weekday hours, 209 weekend or weekday PM hours in July 2007, and 1170 total hours in 2007 with a greater volume at the Rowena ATR than was chosen for analysis, which strongly suggests that the chosen hour of analysis is not the 30th highest hour.
- DKS has provided evidence that traffic on Sunday exceeds that of their chosen 30th highest hour baseline count, suggesting that their chosen count hour is not the 30th highest hour.
- The TIS has failed to provide an analysis of the 30th highest hour, as required by ODOT through the *APM.* Because the analysis is not based upon the 30th highest hour, there is no evidence to support that the study area intersections will operate with adequate v/c ratios during the 30th highest hour.
- The TIS Sunday analysis is flawed because it does not take into account the highly variable nature of the nearby recreational uses.
- The TIS fails to address weekend impacts at other ODOT intersections required for study.

CITY'S FINDING OF FACT

The City makes the following Findings of Fact regarding Greenlight's assertions set forth in its Executive Summary.

(1). The TIS has failed to collect traffic counts or provide analysis of the 30th highest hour as required by ODOT's Analysis Procedures Manual (APM).

City's Finding: The Applicant has provided substantial evidence of compliance with ODOT's APM (seven steps) in determining the 30th highest hour for the Chenoweth

Interchange. The DKS Remand Report and PowerPoint presentation demonstrates compliance with ODOT's APM and the analysis performed by the Applicant's traffic engineer has been confirmed and supported by ODOT and the City Engineer as compliant with ODOT's APM procedures for determining the 30th highest hour for the Chenoweth Interchange. The Applicant's analysis demonstrates that traffic counts were taken in July, 2007 satisfying steps 4 and 5 of the APM process. Although not legally required, the Applicant also took traffic counts on Sunday, October 25, 2009 (as suggested by LUBA) and demonstrated that even if a Sunday afternoon constituted the 30th highest hour per the Rowena ATR, that less project impacts occur during the Sunday PM peak hour than the Tuesday PM peak hour. This assertion by Greenlight has no merit.

(2). The TIS has failed to provide substantial evidence that the chosen hour of analysis on Tuesday, July 10, 2007 is the 30th highest hour.

City's Finding: The Applicant has provided substantial evidence of compliance with ODOT's APM (seven steps) in determining the 30th highest hour for the Chenoweth Interchange. The DKS Remand Report and PowerPoint presentation demonstrates compliance with ODOT's APM and the analysis performed by the Applicant's traffic engineer has been confirmed and supported by ODOT and the City Engineer as compliant with ODOT's APM procedures for determining the 30th highest hour for the Chenoweth Interchange.

(3). Substantial evidence exists that the hour of analysis on Tuesday, July 10, 2007 is not the 30th highest hour.

City's Finding: There is no substantial evidence in the record that demonstrates, under ODOT's APM, that the hour of analysis on Tuesday, July 10, 2007 is not the 30th highest hour. In challenging Tuesday afternoon as the 30th highest hour under ODOT's APM, Greenlight has previously asserted that a Sunday afternoon constitutes the 30th highest hour for the Chenoweth Interchange based on the Rowena ATR. The evidence in the record demonstrates, however, that the Rowena ATR is not applicable for determining the 30th highest hour for the Chenoweth Interchange, under ODOT's APM, since the ATR has approximately two times higher traffic volumes than the Chenoweth Interchange.

Greenlight has also asserted that a Saturday afternoon should be considered to be the 30th highest hour since that is the period of time when Walmart is busiest. The evidence in the record demonstrates, however, that the determination of the 30th highest hour is not based on the busiest period of time of a project, but pursuant to ODOT's APM. In this case, the evidence in the record demonstrates that a weekday PM peak hour constitutes the 30th highest hour for the Chenoweth Interchange rather than a Sunday or Saturday afternoon. The evidence in the record also demonstrates

that a Sunday analysis has less project impacts than a Tuesday PM peak hour analysis. The evidence further demonstrates that a Saturday afternoon is not the appropriate 30th highest hour to measure project impacts since traffic volumes (based on the Rowena ATR) are 25 % less than Sunday afternoon volumes.

Greenlight has further asserted that weekdays other than a Tuesday (July 10, 2007) should have been used as the 30th highest hour to measure project impacts. The evidence demonstrates, however, that ODOT's Development Review Guidelines provide that counts on the weekday should be conducted either on a Tuesday, Wednesday, or Thursday, unless directed by ODOT. ODOT uses Tuesday though Thursday counts to avoid the traffic variation related to flex working schedules and extended weekends (i.e. a Friday, or a Monday).

For the City Council, the critical evidence in determining the appropriate 30th highest hour for the Chenoweth Interchange is the analysis performed by the Applicant demonstrating compliance with ODOT's APM. That analysis concluded that the Rowena ATR cannot be used to determine the 30th highest hour for the Chenoweth Interchange and that a weekday PM peak hour is the appropriate 30th highest hour. Subsequently, the weekday in July chosen by ODOT, the City Engineer and the Applicant to measure project impacts was a Tuesday afternoon. The City Council finds the letters from ODOT and the City Engineer, confirming the analysis performed by the Applicant to be correct and very persuasive in accepting the Applicant's APM analysis.

(4) Substantial evidence exists that there were 134 weekday hours, 209 weekend or weekday PM hours in July 2007, and 1170 total hours in 2007 with a greater volume of the Rowena ATR than was chosen for analysis, which strongly suggests that the chosen hour of analysis is not the 30th highest hour.

City's Finding: This assertion by Greenlight is based upon data from the Rowena ATR and without merit. As previously stated, the Rowena ATR is not applicable in determining the 30th highest hour for the Chenoweth Interchange since the Rowena ATR volumes are not within 10% of the Chenoweth Interchange volumes per ODOT's APM. In the previous site plan review proceeding, Greenlight asserted (as recognized by LUBA) that a Sunday afternoon in July, 2007 constituted the 30th highest hour for the Chenoweth Interchange based on Rowena ATR data. As previously stated in these Findings, the Applicant conducted a Sunday afternoon analysis demonstrating that project impacts are less on a Sunday afternoon than a Tuesday afternoon, the chosen 30th highest hour per ODOT's APM.

(5). DKS has provided evidence that traffic on Sunday exceeds that of their chosen 30th highest hour baseline count, suggesting that their chosen count hour is not the 30th highest hour.

City's Finding: The City Council disagrees with Greenlight that "DKS has provided evidence that traffic on Sunday exceeds that of their chosen 30th highest hour baseline count'. The evidence actually demonstrates that traffic on a Tuesday afternoon in July exceeds traffic on a Sunday afternoon. Greenlight's assertion is flawed because it does not reflect a growth factor to the 2007 July (Tuesday) counts in comparison with the traffic counts taken by the Applicant on October 25, 2009. The importance of applying growth factors is an elementary traffic engineering principle and is needed in this instance in order for there to be a fair volume comparison of 2009 traffic data.

(6). The TIS has failed to provide an analysis of the 30th highest hour as required by ODOT through the APM. Because the analysis is not based on the 30th highest hour, there is no evidence to support that the study area intersections will operate with adequate v/c ratios during the 30th highest hour.

City's Finding: As previously stated, the Applicant did provide an analysis of the 30th highest hour for the Chenoweth interchange per ODOT's APM, and that analysis has been confirmed and supported by ODOT and the City Engineer. Furthermore, the evidence demonstrates that based on the chosen 30th highest hour per ODOT's APM, project impacts at the Chenoweth Interchange can be properly mitigated through the original conditions of approval imposed in Resolution No. 09-013 to ensure adequate v/c ratios. Greenlight's assertion regarding other "study area intersections" is inappropriate and beyond the scope of this LUBA remand proceeding.

(7. The TIS Sunday analysis is flawed because it does not take into account the highly variable nature of the nearby recreational uses.

City Finding: The Applicant's traffic counts for the Sunday analysis taken on October 25, 2009 were seasonally adjusted to July to account for recreational uses/traffic in accord with ODOT's requirements. ODOT and the City Engineer have confirmed the seasonal adjustment used by the Applicant.

(8). The TIS fails to address weekend impacts at other intersections required for study.

City Finding: LUBA's decision (2009-048) remanding the matter to the City related solely to the 30th Highest Hour Issue at the Chenoweth Interchange. On November 23, 2009, the City Council limited the scope of the remand to the 30th Highest Hour Issue related to the Chenoweth Interchange. Greenlight's assertion that the DKS Remand Report does not address weekend impact at other intersections required for study is not within the scope of this LUBA remand proceeding.

Tuesday, July 10, 2007 PM Hour Chosen is not the 30th Highest Hour

The DKS memorandum contends and provides further argument that the appropriate hour for analysis, or the 30th highest hour as required by ODOT's *Analysis Procedures Manual* (APM), occurs on Tuesday, July 10, 2007 between 4 and 6 PM.

We agree with DKS that the peak month is July and that the 30th highest hour also occurs in July at the Chenoweth interchange and also likely at the other intersections in the study area. We continue to strongly disagree with DKS that the Tuesday PM hour in July chosen for their analysis is the 30th highest hour, or even remotely approximates the 30th highest hour. There is absolutely no data in the record that provides substantial evidence that their hours of analysis are or approximate the 30th highest hour of the Chenoweth interchange or any other intersection. There is substantial evidence in the record that indicates that this particular Tuesday in July does not approximate the 30th highest hour. DKS provides only their opinion that their Tuesday hour of analysis is the 30th highest hour as required by ODOT's *APM*, but provides no evidence to support their finding.

CITY'S FINDING OF FACT

Greenlight asserts there is no data in the record that provides substantial evidence to support a weekday PM peak hour as the 30th highest hour. To the contrary, the DKS Remand Report and PowerPoint presentation provide substantial evidence documenting how ODOT's APM (discussed as seven steps) supports the selection of a weekday PM peak hour in July as the appropriate 30th highest hour analysis period for the Chenoweth Interchange. Additionally, ODOT and the City Engineer have both submitted confirming letters stating that traffic counts taken during a weekday PM peak hour in July satisfy ODOT's APM requirement to measure 30th highest hour traffic impacts at the Chenoweth Interchange.

Greenlight also asserts that there is evidence in the record that demonstrates that a weekday PM peak hour in July does not constitute the 30th highest hour for the Chenoweth Interchange. Although Greenlight does not specify such evidence in its letter, it appears that Greenlight is asserting that the Rowena ATR information disproves the use of a weekday PM peak hour as the 30th highest hour. As previously stated, the City finds that the Rowena ATR cannot be used as a basis to determine the 30th highest hour for the Chenoweth Interchange pursuant to ODOT's APM.

The ODOT Development Review Guidelines state "Counts on the weekday should be conducted either on a Tuesday, Wednesday, or Thursday, unless directed by ODOT." ODOT uses Tuesday through Thursday counts to avoid the traffic variation related to flex working schedules and extended weekends. In addition, the ODOT Development Review Guidelines indicate that "the weekday peak hour typically occurs during the work-related commute period, usually between 7:00-9:00 a.m. or 4:00-6:00 p.m." Therefore, Tuesday, July 10, 2007 from 4:00-6:00 p.m. satisfies all applicable criteria related to the 30th highest hour (i.e., it is the PM peak period on a weekday in July). This finding was supported by the City Engineer and ODOT.

Greenlight asserts that there is substantial evidence in the record that demonstrates that the particular Tuesday in July used by the applicant "does not approximate the 30th highest hour of the Chenoweth Interchange or any other intersection." First, pursuant to LUBA's remand decision and the scope of review for this remand proceeding as defined by the City Council on November 23, 2009, "any other intersection" beyond the Chenoweth Interchange is not part of this remand proceeding. Second, in the previous proceeding, Greenlight asserted that a Sunday afternoon in July represented the 30th highest hour for purposes of measuring project impacts. Although the DKS Remand Report demonstrates that a Sunday afternoon does not represent the 30th highest hour for the Chenoweth Interchange, a Sunday PM peak hour analysis was performed that demonstrates that this time period has less impacts on the Chenoweth Interchange than a Tuesday PM peak hour analysis. There is no substantial evidence in the record that demonstrates that any other weekday afternoon, other than the Tuesday afternoon assessed, represents the 30th highest hour pursuant to ODOT's APM..

DKS's conclusions are not based upon substantial evidence, do not accurately depict traffic conditions, and violate the parameters of the ODOT *APM* in that the analysis continues to not document the 30th highest hour conditions. Because the analysis does not approximate the 30th highest hour, it violates the *APM*. Because it violates the *APM* and is not based upon the 30th highest hour, there is no evidence to support that the Chenoweth Interchange or 6th Street Interchange will operate with acceptable v/c ratios and that the appropriate mitigation and the timing of that mitigation has been identified. There is no evidence to support that the study intersections can operate adequately during the 30th highest hour because this hour has never been analyzed.

CITY'S FINDING OF FACT

The DKS Remand Report and PowerPoint presentation provide detailed documentation of how ODOT's APM methodology supports the selection of a weekday (Tuesday) PM peak hour in July as the appropriate 30th highest hour analysis period for the Chenoweth Intersection. ODOT and the City Engineer have both submitted confirming letters stating that traffic counts taken during a weekday (Tuesday) PM peak hour in July satisfy ODOT's APM requirement to measure 30th highest hour traffic impacts. ODOT explicitly stated in their December 11, 2009 letter that "DKS followed the steps outlined in the APM to determine the appropriate method for arriving at the DHV for the I-84 Chenoweth Interchange ramps."

The assertion by Greenlight relies entirely on the Rowena ATR which has approximately two times higher traffic volumes than the Chenoweth Interchange ramp terminals. ODOT's APM procedures specify that data from an ATR should only be used to determine when the 30th highest hour occurs if traffic volumes are within

10% of project area volumes. Therefore, arguments based on Rowena ATR data do not follow ODOT analysis procedures and are inherently flawed.

Regarding the 6th Street interchange, impacts and mitigation measures were addressed in prior Planning Commission, City Council, and LUBA hearings and decisions, and all decision-making bodies agreed with the DKS analysis regarding this interchange. The scope of the remand hearing is limited to the issues identified by LUBA related to the Chenoweth Interchange. The comment related to the 6th Street Interchange is outside the LUBA Remand and inappropriate.

The DKS memorandum provides two key arguments that the weekday PM peak hour in July is the 30th highest hour. DKS argues that because "[t]he primary land uses surrounding the Chenoweth Interchange are industrial and residential…and…are primarily influenced by local traffic trends consisting of city residents and local employees who work, live and/or shop in The Dalles…" and because "[t]he Chenoweth Interchange entrance and exit ramps are not part of a key route to a prime recreational or tourist area, and while there are some nearby recreational amenities…(e.g., Columbia Gorge Discovery Center, the Dalles Riverfront Trail, and the Dalles Country Club), these are minor traffic generators", that the 30th highest hour occurs on Tuesday, July 10, 2007 or at least closely relates to the 30th highest hour. Both of these arguments are not supported by substantial evidence and lack any supporting data.

CITY'S FINDING OF FACT

The DKS Remand Report and PowerPoint presentation which include detailed documentation of how ODOT methodology (discussed as seven steps) supports the selection of a weekday PM peak hour in July as the appropriate 30th highest hour analysis period for the Chenoweth Interchange is substantial evidence that can be accepted by the City. ODOT and the City Engineer have both submitted confirming letters stating that traffic counts taken during a weekday PM peak hour in July satisfy ODOT's APM requirement to measure 30th highest hour traffic impacts at the Chenoweth Interchange. The Tuesday on which traffic counts were collected satisfies both criteria related to the 30th highest hour (i.e., it is a weekday and is in July).

In analyzing Step 3 of the seven step process for establishing the 30th Highest Hour, the DKS PowerPoint Presentation indicated that Note 2 provided "The 30th Highest Hour Volume (HV) will likely occur during the peak month on a weekday in large urban areas, and on weekends in recreational areas." DKS's analysis noted that large urban areas included cities such as Portland, Salem, Eugene, Redmond, and Bend. Although the City of The Dalles does not have the population of these identified large urban areas, DKS concluded the Chenoweth Interchange trends were more closely associated with a large urban area, based upon their analysis which indicated the primary land uses surrounding the Chenoweth Interchange were industrial and residential, and were primarily influenced by local traffic trends consisting of City

residents and local employees who work, live, and/or shop in The Dalles. DKS's Power Point Presentation included a description of recreational areas, including examples such as Mt. Hood, Black Butte, Sunriver, and the Oregon Coast. DKS's analysis noted the Chenoweth Interchange was not part of a key route to the beach, or any of the other identified recreational areas. Contrary to Greenlight's assertion, substantial evidence exists to support DKS's conclusions concerning the issues raised by the discussion of Note #2 for Step 3 of the seven step process for determining the 30th Highest Hour, and is supported by ODOT and the City Engineer.

> While it is true that some of the land uses surrounding the Chenoweth interchange are industrial and residential, commercial uses exist just as near to the interchange as do industrial or residential uses. Significant commercial uses exist between the Chenoweth interchange and the 6th Street interchange to the south such that certainly many drivers destined for businesses on 6th Street may find the Chenoweth interchange more attractive due to decreased travel time and distance.

THE CITY'S FINDING OF FACT

The commercial uses have already been accounted for in the 30th highest hour analysis performed to date because all traffic volumes—whether industrial, residential, or commercial—are accounted for in the traffic counts both during the weekday PM peak hour and the Sunday PM peak hour analysis at the Chenoweth Interchange.

> Additionally, traffic volumes at the Chenoweth interchange indicate, as DKS puts it, that "Sunday and weekday p.m. peak hour traffic volumes are very similar…" In fact, the Sunday traffic volumes are actually higher than the Tuesday, July 10th traffic volumes at two of the three intersections that were studied. The I-84 WB Ramp/River Road logically carries a higher volume of traffic on during a weekday period than a weekend due to the industrial uses to the north of the interchange. A comparison of these traffic volumes are provided in Table 1 and the figures below.
>
> **Table 1. Entering Volume at Intersections Reported by DKS Associates**

Intersection	Date		Sunday Higher Volume?
	Tuesday, July 10, 2007	Sunday, October 25, 2009	
River Rd/6th Street	574	621	Yes
I-84 EB Ramp/River Rd	521	543	Yes
I-84 WB Ramp/River Rd	322	271	No

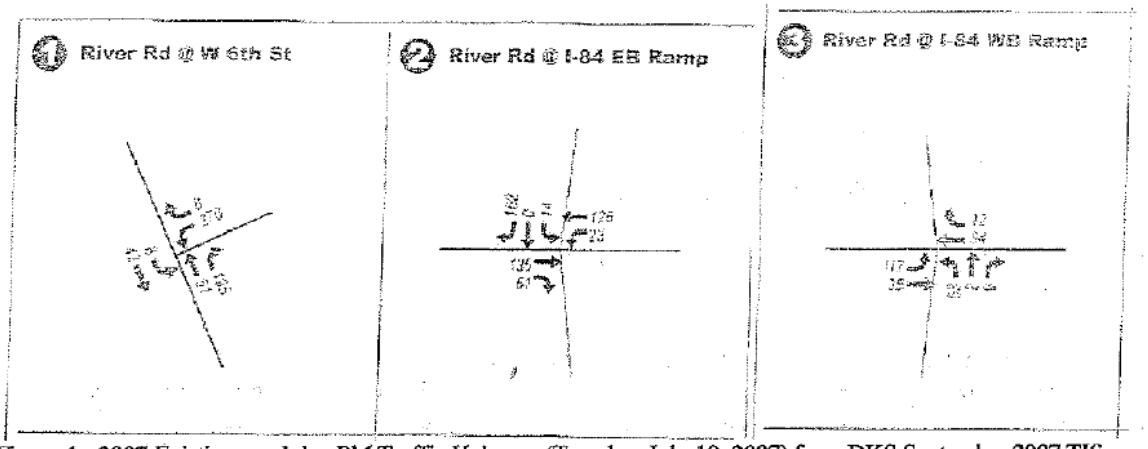


Figure 1: 2007 Existing weekday PM Traffic Volumes (Tuesday, July 10, 2007) from DKS September 2007 TIS

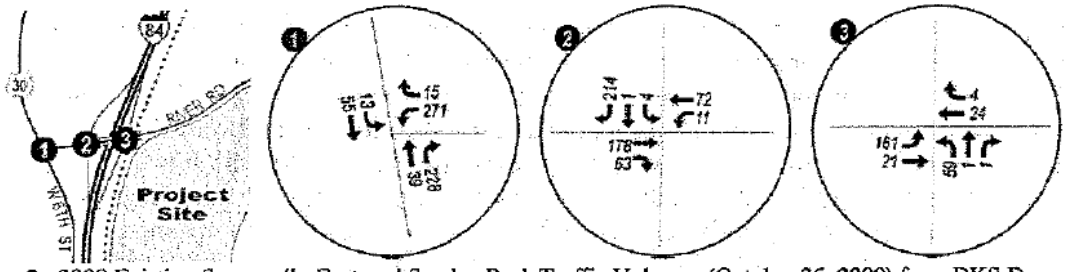


Figure 2: 2009 Existing Seasonally Factored Sunday Peak Traffic Volumes (October 25, 2009) from DKS December 2, 2009 memorandum

This result, while not surprising to us, provides evidence of higher traffic volumes on a Sunday than during DKS's purported 30th highest hour. Certainly this would not be expected if solely industrial and residential uses were dominant at this interchange, as residential and industrial uses both generate far fewer traffic on Sundays than weekday PM peak hours[1].

CITY'S FINDING OF FACT

Greenlight's comparison of 2007 weekday PM peak hour and 2009 Sunday PM peak hour count data is flawed because it does not apply a growth factor to the 2007 weekday counts. The importance of applying growth factors is an elementary traffic engineering principle and is needed in this instance in order for there to be a fair volume comparison of 2009 traffic data. An accurate comparison of the 2007 and 2009 counts using a growth factor was provided in Table 3 of the DKS Remand Report and the PowerPoint presentation. This comparison, however, was ignored by Greenlight.

To have the most accurate comparison of the 2007 and 2009 counts, a growth factor is needed for the 2007 counts and a seasonal factor is needed for the 2009 counts. The appropriate growth factor to apply is 1.046 (two years of 2.3% yearly growth, which is the rate that was provided by ODOT and has been assumed for all *WM3 TIS* analysis and has never been questioned). In addition, as documented in the DKS Remand Report, a more conservative seasonal adjustment factor than necessary (i.e., 1.22

instead of 1.17) was applied to the Sunday counts to assure a worst case evaluation. Therefore, when the more appropriate 1.17 seasonal adjustment factor, as well as the 1.046 growth factor, are applied to the respective count volumes, a comparison of the traffic counts indicates that Sunday PM peak hour counts are actually lower at all three intersections (see table below).

Intersection	Date (Peak Month)		Sunday Volume Higher?
	Weekday P.M. Peak Hour (with 1.046 growth factor)	*Sunday Peak Hr (with 1.17 seasonal factor)*	
US 30 (W 6th St)/River Rd	600	596	No, 1% lower
I-84 EB Ramps/River Rd	545	521	No, 4% lower
I-84 WB Ramps/River Rd	322	240	No, 25% lower

What is interesting here is that DKS conducted counts on Sunday, October 25, 2009 and Tuesday, July 10, 2007 and found that, seasonally adjusted, traffic is higher at two of the three study intersections on Sunday than on their purported 30th highest hour. While Wal-Mart generates less traffic on a Sunday than it does during a weekday PM peak hour, what does this say about their contention that they have correctly chosen the 30th highest hour. Their baseline traffic condition, supposedly based upon the 30th highest hour, is refuted with just one Sunday traffic count? What if other analysis hours were evaluated, such as a Saturday in July (when Wal-Mart would generate the most traffic) or during the various other weekday hours in July that have a much higher volume at the Rowena ATR than do the hours analyzed on Tuesday, July 10, 2007. What if Saturday traffic mirrors that of Sunday traffic? There is no evidence to suggest that it doesn't. It seems blatantly clear that there could be many hours that would better approximate the 30th highest hour based on this new information as well as the mountain of ATR data that suggests that during their analysis hour, there is far less traffic in the area than other hours.

CITY'S FINDING OF FACT

The DKS Remand Report and PowerPoint presentation provide detailed documentation of how ODOT's APM methodology supports the selection of a weekday PM peak hour in July as the appropriate 30th highest hour analysis period for the Chenoweth Interchange. ODOT and the City Engineer have both submitted supporting letters stating that traffic counts taken during a weekday p.m. peak hour in July satisfy ODOT's requirement to measure 30th highest hour traffic impacts at the Chenoweth Interchange. The Tuesday on which traffic counts were collected satisfies both criteria related to the 30th highest hour (i.e., it is both a weekday and is in July).

Greenlight raises the question of "what if other analysis hours were evaluated, such as a Saturday in July (when Walmart would generate the most traffic) or during the various other weekday hours in July that have a much higher volume at the Rowena ATR than do the hours analyzed on Tuesday, July 10, 2007". This point by Greenlight has been refuted by the evidence presented by the Applicant and confirmed by the letters from ODOT and the City Engineer in two ways: (1) under ODOT's APM

methodology, the only analysis hour to measure project impacts is the 30th highest hour. Once the 30th highest hour is determined, which in this case is a weekday PM peak hour in July (Tuesday), no other analysis hours are relevant or required to be evaluated; and (2) Greenlight continues to rely on the Rowena ATR to determine the 30th highest hour for the Chenoweth Interchange. The evidence demonstrates that under ODOT's APM, the Rowena ATR is irrelevant for purposes of determining the 30th highest hour for the Chenoweth Interchange.

The evidence demonstrates that the traffic volumes at the Chenoweth Interchange are actually higher during the weekday PM peak hour than the Sunday counts based on the Sunday analysis taking into account the appropriate comparative growth and seasonal factors. Regardless of the results of the counts, the Sunday analysis demonstrates that the Sunday project impacts are less than the weekday PM peak hour project impacts. The evidence also demonstrates that a Saturday PM peak hour in July is not appropriate for the 30th highest hour at the Chenoweth Interchange (using the Rowena ATR) since it has 25% lower volumes than a Sunday in July.

Additionally, what about at other intersections within the City, such as at the 6th Street Interchange? Are volumes also higher there on Sunday than the chosen hour? Would the same be true on a Saturday or during various other weekday PM hours?

CITY'S FINDING OF FACT

The City Council voted on November 23, 2009 to establish the scope of the remand hearing to be limited to the issues identified by LUBA related to the Chenoweth Interchange. The comment related to the 6th Street Interchange is outside the LUBA Remand and not appropriate in these remand proceedings.

Based upon this information, it would seem that the Chenoweth interchange experiences a different mix than primarily residential and industrial traffic than claimed, although not supported by data, by DKS. These facts refute one of the two key arguments raised by DKS that "local trends" of residential and industrial traffic result in the conclusion that the appropriate 30th highest hour is the Tuesday PM hour in July as chosen for their analysis.

CITY'S FINDING OF FACT

Greenlight has not submitted any evidence that the Chenoweth Interchange experiences a different mix than primarily residential and industrial traffic. The evidence demonstrates that the zoning surrounding the Chenoweth Interchange is primarily residential and industrial. Any traffic associated with commercial uses was included in the weekday afternoon (Tuesday) and Sunday afternoon analyses. The issue before the City Council, based on the LUBA remand, is to determine the correct

30th highest hour for measuring project impacts. The method for determining the 30th highest hour is to apply the process outlined in the ODOT APM. The DKS Remand Report and PowerPoint presentation applied this process and determined that: (1) the Rowena ATR is not applicable for determining the 30th highest hour for the Chenoweth Interchange; and (2) a weekday afternoon in July constitutes the 30th highest hour for the Chenoweth Interchange for measuring project impacts. These two conclusions were confirmed by ODOT and the City Engineer.

> **There is simply no evidence to support that traffic volumes of the chosen Tuesday PM hour in July is the 30th highest hour or even remotely approximates this hour. It is an undisputed fact that Wal-Mart's peak hour will occur on Saturday. There is a very high possibility, if not likelihood, that if a seasonally adjusted Sunday traffic volumes as reported in the DKS memo yield very similar traffic volumes (with several movements actually higher in traffic volume) than the July Tuesday PM hour, then a Saturday analysis in July, a Sunday analysis in July, or any of the hundreds of other hours that exceed the Tuesday analysis hour ATR volume could produce interchange volumes in excess of that of the Tuesday July PM hour chosen for analysis.**

CITY'S FINDING OF FACT

Greenlight mischaracterizes the purpose of the 30th highest hour and is inappropriately using Rowena ATR data as the basis for its conclusions. ODOT procedures specify that data from an ATR should only be used to determine when the 30th highest hour occurs if traffic volumes are within 10% of project area volumes. However, the Rowena ATR has approximately two times higher traffic volumes than the Chenoweth Interchange ramp terminals. As a result, pursuant to ODOT'S APM, the Rowena ATR cannot be used as a basis to determine the 30th highest hour for the Chenoweth Interchange.

Greenlight appears to assert that the 30th highest hour needs to be determined based on the time and day of greatest project impacts. Although peak hour project impacts may occur on a Saturday afternoon, this fact is not relevant for determining the 30th highest hour in accord with ODOT's APM requirements to measure project impacts during the 30th highest hour. Once the 30th highest hour is determined, project impacts are measured accordingly. For example, if the 30th highest hour in July occurs on a Tuesday afternoon, then project impacts are measured during that time. If the 30th highest hour occurs on a Sunday afternoon, then project impacts are measured during that time. As recited above, the 30th highest hour for the Chenoweth Interchange, using ODOT's APM, occurs on a weekday PM peak hour in July. This conclusion is supported by ODOT and the City Engineer.

In this remand proceeding, however, the Applicant has submitted evidence measuring project impacts during both a Tuesday PM peak hour and a Sunday PM peak hour analysis period to address the issues identified by LUBA. The Applicant also submitted evidence regarding the possible use of a Saturday afternoon in July as

the 30th highest hour to measure project impacts at the Chenoweth Interchange. The evidence demonstrates that: (1) the Sunday PM peak hour analysis would have less impact on the Chenoweth Interchange than a Tuesday PM peak hour analysis; (2) a Saturday afternoon in July is not an appropriate 30th highest hour at the Chenoweth Interchange since (per the Rowena ATR) it has 25% lower volumes than a Sunday afternoon in July; and (3) the original conditions imposed by the City in Resolution No. 09-013 mitigate project impacts for either a Sunday or Tuesday PM peak hour analysis.

> the weekday PM peak hour approximates the 30th highest hour. We also concur that The Dalles traffic patterns do not fit neatly into a "recreational area" pattern which would likely result in the analysis of just a weekend period. While we and DKS agree that The Dalles does not fit neatly into either category, DKS contends that the Tuesday in July chosen for analysis is the 30th highest hour, or is at least a close enough fit.
>
> DKS's conclusion does not instill much confidence, due to the absence of supporting data, that the Tuesday in July chosen for analysis is better in approximating the 30th highest hour conditions than a weekend in July or any of the numerous other weekday PM hours in July. DKS's conclusion is not based upon data, but upon the speculation of their two faulty conclusions. DKS fails to supply any data or substantial evidence to support their conclusion that the Tuesday hour chosen for analysis represents the 30th highest hour or approximate 30th highest hour than July weekend hours (with Wal-Mart generating the most traffic on Saturday) with higher area volume or any other weekday PM hour in July.

CITY'S FINDING OF FACT

Greenlight asserts that the Applicant has not submitted any evidence or data demonstrating that "the Tuesday in July chosen for analysis is better in approximating the 30th highest hour conditions than a weekend in July or any of the numerous other weekday PM hours in July", and therefore the Applicant's reliance on its chosen 30th highest hour to measure project impacts does not instill much confidence.

To the contrary, the City Council has a high degree of confidence that the correct 30th highest hour has been selected to measure project impacts, and that the originally imposed conditions of approval will properly mitigate those impacts, for the following reasons: (1) the Applicant's application of the ODOT's APM methodology for determining the 30th highest hour supports the selection of a weekday PM peak hour in July as the appropriate 30th highest hour analysis period to measure project impacts; (2) even under a Sunday PM peak hour analysis (as suggested by LUBA), demonstrates that the project will have less impact on the Chenoweth Interchange than the Tuesday PM peak hour analysis; (3) the original conditions of approval will properly mitigate project impacts under either a Tuesday or Sunday PM peak hour analysis; (4) a Saturday in July is not appropriate for the 30th highest hour since it has

25% lower volumes than a Sunday afternoon in July; and (5) the Applicant's analysis has been confirmed and supported by ODOT and the City Engineer. As a result, the City Council has more confidence in this information, than relying on assertions by Greenlight that ignores the evidence in the record and ODOT's APM procedures for determining the 30th highest hour.

Furthermore, the arguments and data provided by Greenlight rely entirely on the Rowena ATR, which has approximately two times higher traffic volumes than the Chenoweth Interchange ramp terminals. ODOT's APM procedures specify that data from an ATR should only be used to determine when the 30th highest hour occurs if traffic volumes are within 10% of project area volumes. Therefore, arguments based entirely on Rowena ATR data do not follow ODOT's APM procedures and are inherently flawed.

DKS argues that the weekday PM peak hour is the equivalent of the 30th highest hour and how traffic volumes on a Sunday at the Chenoweth interchange would not yield results equivalent to the 30th highest hour, DKS states that "the Sunday and weekday p.m. peak hour volumes are very similar…" The DKS traffic count data proves that seasonally adjusted Sunday traffic, well off-peak from peak I-84 traffic volumes and likely off-peak for tourism in The Dalles, traffic volumes are actually higher on a Sunday peak hour. It is important to note that **Greenlight Engineering has never contended that Sunday or Saturday is the 30th highest peak hour, but that the Tuesday PM hour chosen for analysis is not the 30th highest hour.**

CITY'S FINDING OF FACT

The City Council disagrees with these claims from Greenlight for the following reasons:

- Greenlight states that *seasonally adjusted* Sunday traffic is *off-peak* from peak I-84 traffic volumes. This is, by definition, incorrect because the purpose of the seasonal adjustment is to adjust the volumes so that they are equivalent to peak volumes in July (or at least approximate them for analysis purposes). On the contrary, the July weekday PM peak hour traffic counts and the seasonal factor that was applied to the Sunday October 25, 2009 traffic counts account for tourist traffic consistent with ODOT methodology.

- Greenlight improperly asserts that Sunday PM peak hour traffic is higher than weekday PM peak hour traffic. This assertion is erroneous because Greenlight did not apply a growth factor to the July, 2007 weekday so that volumes from different years could be accurately compared. In fact, as previously recited in these Findings, the weekday PM peak hour traffic volumes from July 2007 at the Chenoweth interchange are higher than the Sunday seasonally adjusted traffic volumes.

- Greenlight's claim that they have "never contended that Sunday or Saturday is the 30th highest peak hour, but that the Tuesday PM hour chosen for analysis is not the 30th highest hour." However, in Greenlight's letter dated February 6, 2009, they asserted that "the 30th highest hour . . . occurred on Sunday, July 29, 2007." Greenlight has continually referred to the Rowena ATR in their letters as the correct indicator of the 30th highest hour for the Chenoweth Interchange. LUBA also relied on Petitioners assertion that Sunday, July 29, 2007 was the correct 30th highest hour based on the Rowena ATR. LUBA 2009-048, pg. 10. In fact, it was because of this assertion that LUBA suggested that a Sunday analysis be performed, and the reason why the Applicant has performed the Sunday PM peak hour analysis for this remand proceeding. It is clear to the City Council and LUBA that Greenlight has always indicated that Sunday was the appropriate 30th highest hour to be used at the Chenoweth Interchange based on the ATR data.

It has been well established that July is the peak month and that the hours chosen for analysis occurred on Tuesday, July 10, 2007. It has also been well established that the hours chosen for analysis are based upon the 1171st and 1223rd highest hours of the nearest ATR. DKS contends that because of the "local trends", the appropriate 30th highest hour is a weekday PM hour in July. What they have failed to prove is that the chosen date, the Tuesday in July chosen for analysis is the 30th highest hour as required by ODOT's *APM*. Indeed, if DKS contentions are true, that the 30th highest hour at the interchange are governed by "local trends", then substantial evidence in the record should support this finding. However, exactly the opposite is true. Substantial evidence exists that the chosen hour of analysis is not the 30th highest hour. DKS seems to conclude that since neither "large urban area" or "recreational area" fit nicely, "large urban area" should control for the two reasons they describe.

CITY'S FINDING OF FACT

Based on earlier Findings of Fact, there is substantial evidence in the record supporting the conclusion that the 30th highest hour for the Chenoweth Interchange in a weekday (Tuesday) afternoon in July, 2007. There is also substantial evidence in the record that the Rowena ATR cannot be used to determine the 30th highest hour for the Chenoweth Interchange under ODOT's APM. Greenlight, however, continues to rely upon the Rowena ATR to determine the 30th highest hour for the Chenoweth Interchange. Because the 30th highest hour chosen for analysis by the Applicant was determined using ODOT's APM rather than detailed volumes from the Rowena ATR, it is a misrepresentation by Greenlight to say the analysis is based on the 1171st and 1223rd highest hours. To the contrary, based on the substantial evidence in the record, the Tuesday afternoon in July is actually the 30th highest hour.

Notwithstanding Greenlight's assertion, there is evidence in the record submitted by DKS (and accepted by ODOT and the City) that because of local trends, and the fact that The Dalles area has more characteristics of an urban area than a recreational area, that the 30th highest hour for the Chenoweth Interchange occurs on a weekday

afternoon. There is no evidence in the record to the contrary.

DKS provides on page 7 of their December 2, 2009 memorandum:

> "Can counts be taken during the 30th HV?"
>
> "Answer: Yes."
>
> "Discussion: Now that the 30th HV has been determined, counts should be taken during the 30th HV (i.e. peak month and peak hour of the week)..."

We agree that counts should and could have been taken during the 30th HV. However, we do not agree that they were. It should be noted that DKS has had the opportunity to collect traffic counts during this period in July on two occasions (July 2007 and July 2008), yet has opted not to do so.

CITY'S FINDINGS OF FACT

Greenlight asserts that traffic counts were not taken at the appropriate 30th highest hour time period, because Tuesday afternoon in July, 2007 does not constitute the 30th highest hour. In prior proceedings, however, Greenlight has taken the position that a Sunday afternoon in July constituted the 30th highest hour for the Chenoweth Interchange per the Rowena ATR. Even if Greenlight was correct that a Sunday afternoon in July is the correct 30th highest hour for measuring project impacts, the Applicant has conducted traffic counts on Sunday, October 25, 2009 and performed a Sunday analysis. The Applicant did perform traffic counts on a Tuesday in July, 2007, and therefore satisfied ODOT's APM criteria.

DKS concludes that "[t]herefore, the Chenoweth Interchange ramp terminals have characteristics that are more similar to a large urban area than a recreational area..." and that "[t]herefore, ODOT guidelines indicate that the 30th HV should be assumed to occur on a typical weekday during the peak month." Unfortunately, ODOT's guidelines indicate nothing of the sort. The guidelines describe how to appropriately develop 30th highest hour volumes. ODOT's *APM* states that "Experience has shown that the 30 HV in large urban areas usually occurs on a weekday during the peak month of the year,"and "[t]he 30th Highest Hour Volume will likely occur during the peak month on a weekday in large urban areas and on weekends in recreational areas." There is no such statement in the *APM* that an applicant should make assumptions that an area most nearly fits a "large urban area" and should use a blanket Tuesday PM hour if an area that we and DKS agree does not fit neatly into a "large urban area" or a "recreational area", but is somewhere in the "middle of the spectrum". ODOT's *APM* does not absolve the applicant of the need to determine the 30th highest hour or direct the applicant to make assumptions regarding what the 30th highest hour might be. This would seem especially true when there is compelling evidence that suggests that the chosen analysis hour does not approximate the 30th highest hour.

CITY'S FINDING OF FACT

In its introduction, ODOT's APM states the following:

"The Analysis Procedures Manual (APM) was created to provide a comprehensive source of information regarding current methodologies, practices and procedures for conducting long term analysis of Oregon Department of Transportation (ODOT) plans and projects. Although this information is extensive, *it is not intended to be exhaustive* . . . While the direction provided represents recommended best-practices for producing consistent and accurate results, it should be recognized that every project analysis presents a unique set of problems to address. *This manual is not intended to replace the need for sound engineering judgment, which must continue to be a vital part in the process of applying the methodologies to individual studies*." (page 1, italics added)

- Because the APM does not specifically identify what the appropriate peak hour is for a small urban area (such as The Dalles), the APM provides a process of checks and balances as was presented by the Applicant in the DKS Remand Report and PowerPoint presentation. In this remand proceeding, the APM was followed to determine the appropriate 30th highest hour at the Chenoweth Interchange. The assumptions and methodologies followed were consistent with the APM in that sound engineering judgment was used to make the weekday PM Peak hour determination based on the following three reasons:

- the seven steps provided in Figure 4-1 in the APM provided the conclusion that the weekday PM peak hour is the correct analysis period at the Chenoweth interchange.

- *The City of The Dalles Traffic Impact Study Guidelines* identifies the weekday PM peak hour as the typical analysis period for measuring project impacts.
- The sound engineering judgment applied by the Applicant's traffic engineer, DKS Associates, that The Dalles area functions more as an urban area than a recreational area for purposes of Step 3, Note #2, was coordinated with and agreed to by both the City Engineer and ODOT.

As shown in Appendix A of this memorandum, in July of 2007, considering only weekday periods, there were 134 hours during weekday periods with a higher ATR traffic volume than the hours chosen for analysis. It should logically be concluded, with all other factors being equal including the residential and industrial factors ("local trends") purported by DKS, that any number of these other 134 hours could conceivably result in a higher volume at the Chenoweth interchange than the Tuesday chosen for analysis, simply because there is additional traffic in the area.

As shown in Appendix B of this memorandum, in July of 2007, there were 208 hours during weekday and weekend periods with a higher ATR traffic volume than the hours chosen for analysis. As previously established by DKS, traffic volumes at the Chenoweth Interchange can exceed that of weekday periods.

As previously shown in our February 6, 2009 memo, there are 1170 hours during 2007 with a higher ATR traffic volume than the hours chosen for analysis. As previously established by DKS, traffic volumes at the Chenoweth Interchange can exceed that of weekday periods.

Likely, during these hours, volumes are higher for precisely the reason DKS states that the Chenoweth interchange falls "somewhere in the middle of this spectrum" of a "large urban area" and a "recreational area". The fact is that volumes vary widely due to these recreational users. DKS has failed to establish that volumes don't vary widely because they have relied solely upon their Tuesday in July data (the 1171st and 1223rd ATR peak hour). Certainly, the presence of I-84 and the numerous commercial establishments and other recreational opportunities in and around The Dalles have some impact on the traffic volume at the Chenoweth interchange.

CITY'S FINDING OF FACT

Greenlight is inappropriately using Rowena ATR data as the basis for its conclusions. ODOT'S APM procedures specify that data from an ATR should only be used to determine when the 30th highest hour occurs if traffic volumes are within 10% of project area volumes. The Rowena ATR has approximately two times higher traffic volumes than the Chenoweth Interchange ramp terminals.

Greenlight has previously asserted in its February 6, 2009, report that the 30th highest hour occurs on a Sunday afternoon in July. So even if Greenlight was correct, the Applicant has performed a Sunday analysis and demonstrated that the Sunday PM peak hour analysis shows less impact on the Chenoweth Interchange than a Tuesday afternoon assessment.

The July weekday peak hour with the highest ATR volume (Friday, July 20th, although still just the 37th highest hour of the year) had a combined hourly volume of 2471 vehicles, while the hours chosen for analysis had just 1573 and 1559 vehicles, respectively. The difference in the analysis hour versus the highest weekday PM hour is roughly 40%, or nearly 1000 vehicles traveling on I-84, possibly some using the Chenoweth interchange. This hour would seem to fall within DKS's apparent count parameters of a weekday PM hour in July. What remains unclear from DKS's

analysis is why Tuesday, July 10, 2007 was chosen (and continues to be defended) when so many other weekday PM hours as well as weekend hours (and it has been established that weekend traffic at the Chenoweth interchange can be greater on Sunday) carry such a higher volume and would logically and conceivably result in higher volumes at the Chenoweth interchange. Certainly, it would seem possible, if not likely, that the net result would be a higher reported volume at the Chenoweth interchange, greater than that reported in the DKS analysis and far closer to the actual 30th highest hour as required by ODOT's *APM*.

CITY'S FINDING OF FACT

The ODOT Development Review Guidelines state "Counts on the weekday should be conducted either on a Tuesday, Wednesday, or Thursday, unless directed by ODOT." ODOT uses Tuesday through Thursday counts to avoid the traffic variation related to flex working schedules and extended weekends. Therefore, it is inappropriate to use Friday traffic counts for weekday analysis. Instead, the weekday PM peak hour traffic counts collected by the Applicant in July on a Tuesday afternoon in 2007 are consistent with ODOT's APM methodology and was accepted by ODOT and the City Engineer.

The arguments and data provided by Greenlight rely entirely on the Rowena ATR, which has approximately two times higher traffic volumes than the Chenoweth Interchange ramp terminals. As stated earlier in these Findings of Fact, ODOT's APM procedures specify that data from an ATR should only be used to determine when the 30th highest hour occurs if traffic volumes are within 10% of project area volumes which is not the case here. Therefore, arguments based on Rowena ATR data do not follow ODOT APM procedures in this case and are inherently flawed.

It should logically be concluded that if there significantly more traffic in the area of analysis (as is true during the various weekday PM hours depicted in Appendix A and the various weekday PM and weekend hour as depicted in Appendix B) during various other weekday PM hours or weekend hours, that traffic at the Chenoweth interchange compared to that of the hour of the analysis, that the extra area traffic would have at least a marginal, yet currently unmeasured, impact.

CITY'S FINDING OF FACT

Appendices A and B contain Rowena ATR volumes, which are not the same as the Chenoweth Interchange volumes. Therefore, the Greenlight appendices do not support the conclusion that "there is significantly more traffic in the area of analysis".

ODOT procedures specify that data from an ATR should only be used to determine when the 30th highest hour occurs if traffic volumes are within 10% of project area volumes. However, the Rowena ATR has approximately two times higher traffic volumes than the Chenoweth Interchange ramp terminals, and is therefore not applicable for determining the 30th highest hour under ODOT's APM.

Furthermore, as shown in the DKS Remand Report, significant capacity would still be available at the Chenoweth interchange with the conditioned mitigations above and beyond the 2027 total traffic volumes with the estimated volume to capacities being 0.44 (EB ramp) and 0.55 (WB Ramp) and the ODOT standard being 0.75. These results demonstrate that the originally imposed mitigations per Resolution No. 09-013 will still allow for 20% additional capacity at the Chenoweth Interchange.

Flawed Sunday October 25, 2009 DKS Analysis at Chenoweth Interchange

The DKS memorandum reports that on a Sunday in October, the analysis of the Chenoweth interchange is adequate to serve the proposed development. However, because the traffic counts were taken on a Sunday at the end of October, the DKS analysis has very likely understated the impact of the various recreational traffic generators in or near the Dalles. Some of these generators are described by DKS as "minor traffic generators", a term that DKS neither defines nor quantifies.

CITY'S FINDING OF FACT

Greenlight's assertion is that counts taken on a Sunday in October, 2009 understate the impact of the various recreational traffic generators in or near The Dalles. The Applicant applied a seasonal adjustment factor to the October counts (to correspond to counts taken in July, 2007) pursuant to ODOT requirements to account for this recreational traffic.

The defined purpose of the seasonal adjustment factor in the ODOT APM is that "since manual counts are taken throughout the year, data derived from a count taken in a particular month may need to be converted to the peak month by applying a seasonal factor" (page 46). A seasonal factor was applied to the October Sunday peak hour counts and was specifically calculated for October 25th. The seasonal factor is documented in detail in the DKS Remand Report and PowerPoint presentation presented to the City Council on December 14, 2009. The DKS Remand Report documents how a more conservative seasonal adjustment factor than necessary was used for the Sunday analysis. This is because ODOT procedures indicate that interchange ramps should use the average of the mainline (I-84) and cross road (River Road) seasonal adjustments. However, the higher of the two (I-84's seasonal adjustment was 1.22) was used instead of the average (1.17) in order to be more conservative and provide additional weight to the analysis findings. This seasonal adjustment that was applied accounts for the various recreational traffic generators in the vicinity of the Chenoweth interchange and was accepted by ODOT and the City.

ODOT's *APM* states that "[u]sing a winter count…to represent the peak summer period will likely not represent turning movements accurately, as driving patterns change in the winter compared to the summer…suppose a count was taken at a rural intersection in the winter months with one of the minor legs of the intersection serving a campground…Simply factoring for the season would still leave the turning movements too low." It should be noted that the applicant has had the opportunity to collect traffic counts during this period in July on two occasions (July 2007 and July 2008), yet has opted not to do so.

CITY'S FINDING OF FACT

This APM quote was taken out of context. The focus of the particular paragraph being quoted is that seasonal factors greater than 30% should be avoided. The entire paragraph is provided below:

> "Seasonal factors greater than 30% should be avoided. Factors such as these indicate that a count was NOT taken at or close to the time that the 30 HV occurs. Using a winter count with a high seasonal factor to represent the peak summer period will likely not represent traffic turning movements accurately, as driving patterns change in the winter compared to the summer. As an example, suppose a count was taken at a rural intersection in the winter months with one of the minor legs of the intersection serving a campground beyond the intersection. The turning movement volume in the direction of the campground may be small or non-existent; say 5 vph [vehicles per hour]. Even with a seasonal factor of 50%, this would result in an adjusted volume of only 8vph, compared to an actual summer 30 HV that may be 20 vph. Simply factoring for the season would still leave the turning movements too low." (APM, page 46, underlines correspond to portions quoted by Greenlight)

Because the seasonal adjustment factor for the Sunday analysis performed by DKS Associates (documented in the December 2, 2009 memorandum) was 1.22 or 22% (i.e., less than 30%) and there are not any intersection legs that provide limited seasonal access, the argument provided misrepresents the clearly stated purpose of this paragraph in the APM.

In addition, it was not clear whether Sunday traffic counts would be necessary until after the LUBA remand, which was not provided until September 2009. Even in the remand, it was only stated that weekend traffic counts "*may* be necessary" (page 15, italics added). Therefore, the Applicant did not intentionally forgo the opportunity to collect weekend counts in July 2007, July 2008, and even July 2009. Instead, the Applicant chose to collect weekend traffic counts and did so following ODOT procedures, which allow counts to be taken in an off-peak month as long as the seasonal adjustment factor is less than 30%.

ODOT's *APM* also states "[v]olumes for the non-standard peak hour should be developed along with the PM peak hour volumes so that all of the volumes may be analyzed at a later date. Multiple sets of volumes may be necessary in these circumstances, which may include areas of heavy industrial, retail, or recreational uses; coastal routes; or on routes with highly directional commuter flows."

CITY'S FINDING OF FACT

This quote appears to be a misapplication of the point being made in the prior paragraph (i.e., that counts should have been collected in 2007 or 2008 during other hours in July besides during just the p.m. peak hour). The entire paragraph from the APM is provided below:

> "Generally PM peak hour volumes are higher than AM peak hour volumes. In areas where there are large industries with shift changes, the hour during the shift change may be as high as or higher than the PM peak hour for the remainder of the transportation network. If this is true, another set of volumes should be developed. Volumes for the non-standard peak hour should be developed along with the PM peak hour volumes so that all of the volumes may be analyzed at a later date. Multiple sets of volumes may be necessary in these circumstances, which may include areas of heavy industrial, retail, or recreational uses; coastal routes; or on routes with highly directional commuter flows." (APM, page 45, underlines correspond to portions quoted by Greenlight)

This paragraph does not apply to the Chenoweth Interchange. Instead, the DKS Remand Report and PowerPoint presentation to the City Council on December 14, 2009 provide detailed documentation of how ODOT's APM methodology supports the selection of a weekday PM peak hour in July as the appropriate 30th highest hour analysis period. ODOT and the City Engineer have both submitted supporting letters stating that traffic counts taken during a weekday PM peak hour in July satisfy ODOT's requirement to measure 30th highest hour traffic impacts. The Tuesday on which traffic counts were collected satisfies both criteria (i.e., it is both a weekday and is in July). ODOT explicitly stated in their December 11, 2009 letter that "DKS followed the steps outlined in the APM to determine the appropriate method for arriving at the DHV for the I-84 Chenoweth Interchange ramps."

Weekend Analysis not Provided at 6th Street Interchange

The December 2, 2009 DKS memorandum has analyzed traffic flow of just three of the study area intersections, while the previous traffic impact study work analyzed several more intersections. DKS has argued that a Tuesday PM peak hour in July approximates the 30th highest hour since at the Chenoweth Interchange ""[t]he primary land uses surrounding the Chenoweth Interchange are industrial and residential…". Although we have provided argument against this assessment, several of the study intersections required for analysis fit this characteristic even less than at Chenoweth. Certainly, the 6th Street exit serves primarily commercial and residential traffic, and likely carries a heavy recreational commercial traffic load (stop and go I-84 traffic). However, the 6th Street interchange did not benefit from a weekend analysis in the DKS memorandum although DKS's analysis provides evidence that Sunday traffic can be higher than weekday PM traffic. Our February 6, 2009 memorandum raised significant concerns not just regarding the Chenoweth interchange, but also of other intersections, namely the 6th Street interchange.

CITY'S FINDING OF FACT

The 6th Street interchange impacts and mitigation measures were addressed in prior Planning Commission, City Council, and LUBA hearings and decisions, and all decision-making bodies agreed with the DKS analysis. Furthermore, the City Council voted on November 23, 2009 to establish the scope of the remand hearing to be limited to the issues identified by LUBA. The comment related to 6th Street is outside the LUBA Remand.

Conclusion

- The TIS has failed to collect traffic counts or provide analysis of the 30th highest hour as required by ODOT's *Analysis Procedures Manual (APM)*.
- The TIS has failed to provide substantial evidence that the chosen hour of analysis on Tuesday, July 10, 2007 is the 30th highest hour.
- Substantial evidence exists that the hour of analysis on Tuesday, July 10, 2007 is not the 30th highest hour.
- Substantial evidence exists that there were 134 weekday hours, 209 weekend or weekday PM hours in July 2007, and 1170 total hours in 2007 with a greater volume at the Rowena ATR than was chosen for analysis, which strongly suggests that the chosen hour of analysis is not the 30th highest hour.
- DKS has provided evidence that traffic on Sunday exceeds that of their chosen 30th highest hour baseline count, suggesting that their chosen count hour is not the 30th highest hour.
- The TIS has failed to provide an analysis of the 30th highest hour, as required by ODOT through the *APM*. Because the analysis is not based upon the 30th highest hour, there is no evidence to support that the study area intersections will operate with adequate v/c ratios during the 30th highest hour.
- The TIS Sunday analysis is flawed because it does not take into account the highly variable nature of the nearby recreational uses.
- The TIS fails to address weekend impacts at other ODOT intersections required for study.

CITY'S FINDING OF FACT

The conclusions by Greenlight correspond to the same points in its Executive Summary that has been addressed above in the City's Finding of Fact.

Based upon the submitted traffic impact study and associated memorandums, our February 6, 2009 memorandum and our comments here, it is clear that the proposed development is not in compliance with City of the Dalles and ODOT requirements. The traffic impact study and application fail to provide substantial evidence that the standards are met or can be met with appropriate conditions of approval.

Thus far, the applicant's traffic engineer's analysis is inaccurate, flawed, and has understated the effects of the proposed development on the transportation system. Should you have any questions, feel free to contact me at 503-317-4559.

Sincerely,

Rick Nys

Rick Nys, PE, PTOE
Principal Traffic Engineer

CITY'S FINDING OF FACT

The City Council disagrees with Greenlight's conclusion. Appropriate analysis has already been performed, as indicated by the DKS Remand Report and PowerPoint presentation presented to the City Council on December 14, 2009. In addition, both ODOT and the City Engineer have found the DKS analysis to be in compliance with their respective requirements and have stated so in letters they have submitted for the record.

Furthermore, even if additional analysis were performed at the Chenoweth Interchange, it will not result in any additional project mitigations. This is because under the 2027 mitigated analysis scenario, the two Chenoweth Interchange ramp intersections were shown to operate at v/c ratios of 0.44 and 0.55. Therefore, they both have excess capacity of at least 20% before operations meet the 0.75 v/c ratio operating standard. Also, the nearby US 30/River Road intersection would operate at a v/c ratio of 0.64 (which also has excess capacity of at least 20% before meeting the applicable 0.85 v/c ratio operating standard). Because the developer is conditioned to provide financial assurance that the identified improvements will be constructed when warranted (as was set forth in the City of The Dalles Resolution No. 09-013), the improvements will be installed as soon as they are needed; therefore, even the exact timing of the improvements is inconsequential to the results of the DKS analysis.

4.3 CITY'S RESPONSE TO LETTER FROM KEN HELM DATED DECEMBER 28, 2009

The attorney for CFRD, Ken Helm, submitted a letter on December 28, 2009 in response to the Applicant's letter dated December 21, 2009 prepared by DKS Associates in response to Ken Helm's letter dated December 14, 2009 and Greenlight's letter dated December 11, 2009. This section of the Findings incorporates Mr. Helm's letter dated December 28, 2009 and provides the CITY'S FINDINGS to each assertion made by Mr. Helm.

CRD has reviewed Wal-Mart's traffic analysis submitted on December 28, 2009 and offer the following response. CRD continues to believe that Wal-Mart has failed to meet its burden of proof to demonstrate that the ODOT required 30th highest hour traffic volumes have been correctly calculated. Furthermore, CRD believes that the city cannot rely on the DKS Associates' memorandum of December 2, 2009, the recent rebuttal dated December 21, 2009 and the December 14, 2009 Power Point presentation as substantial evidence supporting a decision to approve Wal-Mart's application on remand from LUBA. The Greenlight Engineering analysis dated December 11, 2009 continues to contradict Wal-Mart's documentation, and therefore, cannot be used as the basis for revised findings that satisfy LUBA's remand order. CRD adheres to all of its prior arguments and without waiving any of those arguments offers the following comments.

CITY'S FINDING OF FACT

Contrary to Mr. Helm's assertion, the Applicant has satisfied its burden of proof to demonstrate the ODOT required 30th Highest Hour traffic volumes were correctly calculated. The DKS Remand Report dated December 2, 2009 and Power Point presentation provide detailed documentation of how ODOT's APM methodology supports the selection of a weekday PM peak hour in July as the appropriate 30th highest hour analysis period for the Chenoweth Interchange to measure project impacts. ODOT and the City Engineer have both submitted letters confirming the analysis contained in the DKS Remand Report that traffic counts taken during a weekday (Tuesday) PM peak hour in July satisfy ODOT's requirement to measure 30th highest hour traffic impacts at the Chenoweth Interchange. The Tuesday on which traffic counts were collected is both a weekday and is in July; therefore, it satisfies both criteria related to the 30th highest hour.

The arguments and data provided by Greenlight continue to rely entirely on the Rowena ATR, which has traffic volumes that are more than twice as high as the Chenoweth Interchange ramp terminals (as documented in the DKS Remand Report and Power Point presentation). ODOT procedures specify that data from an ATR should only be used to determine when the 30th highest hour occurs if traffic volumes

are within 10% of project area volumes. Here, the evidence demonstrates that the Chenoweth Interchange Average Daily Traffic ("ADT") is not within 10% of the ATR ADT. Therefore, Greenlight arguments that uses Rowena ATR data to make specific conclusions about the 30th highest hour at the Chenoweth Interchange are inherently flawed and not in compliance with ODOT's APM requirements for determining the 30th highest hour. The City Council finds that the Applicant has submitted testimony and evidence rebutting every issue raised by Greenlight and Mr. Helm, and determines that it is reasonable for the City Council to rely upon the documentation submitted by DKS Associates in support of the application and confirmed by ODOT and the City Engineer.

The DKS analysis continues to use the same Tuesday in July for its 30th highest hour despite Greenlight's showing that it is not the 30th highest hour. DKS asserts that July 10, 2007 from 4:00-6:00 pm is the appropriate analysis point. DKS incorrectly asserts that "[t]here is no substantial evidence in the record that demonstrates that any other weekday afternoon, other than the Tuesday afternoon assessed, represents the 30th highest hour pursuant to ODOT's requirements." There are two problems with this position. First, it is DKS and Wal-Mart's burden to demonstrate that substantial evidence exists to support this application. Second, Greenlight Engineering's analysis shows that the Tuesday in July selected is not the 30th highest hour no matter how the numbers are rationalized to reach that conclusion.

CITY'S FINDING OF FACT

As noted above, substantial evidence exists in the record to find the Applicant has satisfied its burden of proof to establish that the methodology used to calculate the 30th highest hour complied with the applicable ODOT APM requirements. The City Council finds there is substantial evidence in the record to establish that Greenlight's assertion that the Tuesday in July selected did not constitute the 30th highest hour, was based upon flawed rationale which did not comply with ODOT'S APM requirements for determining the 30th highest hour.

Greenlight Engineering correctly pointed out that DKS's own recent counts taken on Sunday October 30, 2009 demonstrate that the Tuesday in July counts relied on by DKS for the 30th highest hour are flawed. Rather than confront this contradiction, the DKS memo simply reasserts that the Tuesday traffic counts are correct. See page 12 of DKS December 21, 2009 memo.

CITY'S FINDING OF FACT

The DKS Remand Report and Power Point Presentation established that the assertion by Greenlight that the counts taken on Sunday October 25, 2009 revealed a flaw in the

Tuesday July traffic counts relied upon by DKS, was incorrect. Greenlight's comparison of the 2007 weekday PM peak hour counts and the Sunday peak hour counts was flawed because it did not apply a growth factor to the 2007 weekday counts. Evidence in the record establishes that with the application of an appropriate seasonal factor, a comparison of the traffic counts indicated the Sunday peak hour counts were actually lower at all three intersections (1% lower for the US 30/River Road insertion; 4% lower for the I-84 East bound ramps/River Road; and 25% lower for I-84 West bound Ramps/River Road).

Greenlight Engineering also found error in the judgment made in characterizing the impacts on the Chenoweth Interchange from nearby recreational areas. While DKS states that the Chenoweth Interchange has patterns analogous to a large urban area, no data is identified to support this conclusion in light of the fact that several recreational uses are nearby and already have an impact on the interchange. Again, rather than confront the contradiction, DKS simply asserts that the Tuesday in July is correct. That does not constitute substantial evidence; it's a conclusion that does not satisfy Wal-Mart's burden of proof.

CITY'S FINDING OF FACT

Mr. Helm does not cite any facts identifying the specific recreational uses nearby the Chenoweth Interchange, or any facts establishing the specific nature of the alleged impact of these recreational uses upon the Chenoweth Interchange. As noted previously, ODOT's APM included a provision indicating that "This manual is not intended to replace the need for sound engineering judgment…". Because the APM does not specifically identify what the appropriate peak hour is for a small urban area such as The Dalles, the APM provides a process of checks and balances as was presented by the Applicant in the DKS Remand Report and Power Point presentation. The APM was followed to determine the appropriate 30th highest hour at the Chenoweth Interchange for this remand proceeding. The sound engineering judgment applied by the Applicant's traffic engineer, DKS Associates, that The Dalles area functions more as an urban area than a recreational area for purpose of Step 3, Note #2 of the seven step analysis, was coordinated with and agreed to by both the City Engineer and ODOT staff. Both ODOT and the City Engineer have written letters in support of the DKS analysis and findings. These letters specifically mention that the appropriate 30th highest hour was correctly determined to be the weekday (Tuesday) peak hour.

Greenlight Engineering also identified other potential hours within the Rowena ATR data that are near in time to the Tuesday used by DKS, but which show a huge increase in vehicle volume. The 37th highest hour occurred on Friday, July 20, 2007 and showed a combined hourly volume of 2471 vehicles as compared to the 1573 and

1559 vehicle volume relied upon by DKS. Again rather than confront this huge disparity, DKS simply states that ODOT did not require counts on days other than Tuesday, Wednesday or Thursday. However, neither DKS nor ODOT explain why with respect to the Chenoweth Interchange, the Friday counts are not relevant. Without such an explanation, DKS's response amounts to little more than an assertion, which is not sufficient to constitute substantial evidence.

CITY'S FINDING OF FACT

The Remand Report and PowerPoint presentation submitted by DKS Associates established that Greenlight's reliance on the Rowena ATR data was significantly flawed. ODOT's APM procedures specify that data from an ATR should not be used when the Rowena ATR has approximately two times higher traffic volumes than the Chenoweth Interchange Ramp Terminals. Concerning the assertion that the Applicant filed to adequately address the relevance of traffic counts taken on a Friday, the ODOT Development Review Guidelines state "Counts on the weekday should be conducted either on a Tuesday, Wednesday, or Thursday, unless directed by ODOT." ODOT uses Tuesday through Thursday counts to avoid the traffic variation related to flex working schedules and extended weekends. Therefore, it is inappropriate to use Friday traffic counts for weekday analysis. Instead, the weekday PM peak hour traffic counts collected in July on a Tuesday afternoon are consistent with ODOT methodology and accepted by ODOT and the City Engineer.

CRD and Greenlight Engineering also assigned error to Wal-Mart's reliance on ATR data from 2006 when counts could have been done in July 2007, 2008 and 2009 to corroborate the earlier data. CRD continues to urge the city, and to believe that the only option to determine the correct 30th highest hour is to conduct counts in July 2010 to eliminate flaws and contradictions in the data relied upon by DKS.

CITY'S FINDING OF FACT

Contrary to Mr. Helm's assertion, the evidence in the record clearly establishes that the Applicant did not rely upon the Rowena ATR data from 2006 to establish the 30th highest hour for the Chenoweth Interchange. Concerning the assertion that the Applicant intentionally chose to forego the opportunity to conduct traffic counts in July 2007, 2008 and 2009, it was not clear whether any additional traffic counts, including Sunday traffic counts, would be necessary until after the decision issued by LUBA on October 8, 2009, remanding the application back to the City. Even in the remand decision, it was only stated that the weekend traffic counts "may be necessary" (page 15, italics added). Therefore, the Applicant did not intentionally forgo the opportunity to collect weekend counts in July 2007, July 2008, and even July 2009. The Applicant chose to collect weekend traffic counts and did so following

ODOT's APM procedures, which allow counts to be taken in an off-peak month a long as the seasonal adjustment factor, is less than 30%. The City Council finds the methodology used to support the documentation for the traffic counts provided by DKS Associates complied with ODOT's requirements for correctly determining the 30th highest hour volume for the Chenoweth Interchange, and there is no logical justification for requiring any further traffic counts, including counts taken in July, 2010.

As a final matter, the DKS response relies repeatedly on the traffic system mitigation projects previously identified by the city to assert that potential impacts will be taken care of even if the 30th highest hour calculations are incorrect. CRD continues to believe that since only two of those mitigation projects will be required prior to the time the proposed store opens that violations of the settlement agreement with regard to the .75 V/C ratio could occur before the other mitigation projects are fully built. Those temporary failures will also violate the settlement agreement with ODOT and subject the citizens of The Dalles to the adverse traffic impacts that the settlement agreement was intended to prevent.

CITY'S FINDING OF FACT

Greenlight asserted that based upon DKS's 2007 study and using DKS's preferred 30th highest hour estimates, the Chenoweth Interchange was expected to function at a .72 volume to capacity ratio. The 0.72 v/c ratio is an unmitigated 2010 analysis result reported in the WM3 Traffic Impact Study and is a misrepresentation of the improvements that will be provided by the project pursuant to the conditions of approval imposed in Resolution No. 09-013 and by this remand decision. A more accurate picture of the effects of the project on Chenoweth Interchange operating conditions can be seen by considering the 2027 analysis year with both project traffic and project mitigations included in the analysis. In a 2027 mitigated scenario, the two Chenoweth Interchange ramp intersections would operate at v/c ratios of 0.44 and 0.55 (which are both at least 20% lower than the 0.75 v/c ratio operating standard). Also, the nearby US 30/River Road intersection would operate at a v/c ratio of 0.64 (which is more than 20% lower than its applicable 0.85 v/c ratio operating standard). Because the developer is conditioned to provide financial assurance that the identified improvements will be constructed when warranted (as set forth in Resolution No. 09-013), the improvements will be installed as soon as they are needed to maintain compliance with ODOT's operating standards.

For the reasons stated above, and those previously raised in CRD's letter of December 14, 2009 and Greenlight Engineering's memo of December 11, 2009, CRD continues to believe that the 30th highest hour calculations relied upon by Wal-Mart

and the city undercount the vehicle volumes at the Chenoweth Interchange and that even with the mitigations identified by the applicant, the .75 V/C limit at the interchange could be violated as a result of allowing development of the proposed Wal-Mart store.

CITY'S FINDING OF FACT

As noted previously, there is substantial evidence in the record establishing that the Applicant complied with its burden of proof to establish that the 30th highest hour for the Chenoweth Interchange was properly calculated in accordance with ODOT's APM requirements. As noted above, substantial evidence exists in the record to find that with the recommended mitigations included in the conditions of approval, the affected Chenoweth Interchange intersections will operate within ODOT's required volume to capacity ratio.

5. CONCLUSIONS OF LAW

Based on the evidence in the record and the Findings of Fact referenced above, the City Council makes the following Conclusions of Law:

A. The Applicant has met its burden of proof demonstrating that a weekday (Tuesday) PM peak hour constitutes the 30th highest hour for purposes of measuring project impacts at the Chenoweth Interchange per ODOT's APM. The Applicant has further met its burden of proof demonstrating that the original conditions of approval imposed in Resolution No. 09-013 properly mitigate project traffic impacts at the Chenoweth Interchange in compliance with ODOT's operating standards and the settlement agreement between the City and ODOT.

B. The Applicant has demonstrated that the use of a Sunday afternoon in July, 2007 as the 30th highest hour to measure project impacts at the Chenoweth Interchange, shows that traffic volumes and project impacts are less on a Sunday afternoon in July, 2007 than traffic volumes and project impacts on a weekday (Tuesday) afternoon in July, 2007. The Applicant has also demonstrated that the original conditions of approval imposed in Resolution No. 09-013 properly mitigate traffic impacts at the Chenoweth Interchange in compliance with ODOT's operating standards and the settlement agreement between the City and ODOT, in either a Sunday PM peak hour or weekday (Tuesday) PM peak hour analysis.

C. Notwithstanding the Applicant meeting its burden of proof establishing the 30th highest hour as a weekday (Tuesday) afternoon in July, 2007 for the Chenoweth Interchange, the Applicant has also demonstrated that based on Rowena ATR Saturday PM peak hour volumes and Sunday peak hour volumes, that Saturday peak hour volumes in July, 2007 are 25 % lower than peak hour volumes on Sunday.

Therefore, the City Council concludes that Saturday afternoon should not be used as the 30th highest hour to measure project impacts at the Chenoweth Interchange.