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CASE: Wal-Mart DRC #04-0066

APPELLANTS: **United Food & Commercial Workers Union Local No. 367**
6403 Lakewood Drive W.
Tacoma, WA 98467

Tumwater Livable Communities
855 Littlerock Road SW #108-206
Tumwater, WA 98512

REQUEST: An appeal of the adequacy of the Final Supplemental Environmental Impact Statement (FSEIS) for the Tumwater Retail Store (Wal-Mart); an appeal of the administration determination to approve the site plan for the Tumwater Retail Store (Wal-Mart); and an appeal of the transportation concurrency ruling issued for the Tumwater Retail Store (Wal-Mart) by the Tumwater Public Works Director.

LOCATION: The property is located at 5900 Littlerock Road SW, Tumwater, WA, 98512.

PUBLIC HEARING: Hearing Examiner Rodney Kerslake convened the hearing at 1:07 p.m. He outlined the matter under consideration, more commonly known as the Wal-Mart appeal. Hearing Examiner Kerslake explained appeal proceedings and order of testimony. The appellants' case will be presented first followed by the respondents' case. Counsels have agreed to accommodate witness scheduling conflicts. The case is also scheduled for hearing on October 23, 24, and 26, 2007. He asked if there were preliminary matters to discuss. There were none offered.

TESTIMONY: Hearing Examiner Kerslake noted the Appellants' opening statement was contained in a pre-hearing brief. Appellants intend to proceed with witnesses.

Counsel Claudia Newman, on behalf of the Appellants, stated that's correct. She said she would start the day with economics. She asked Dr. Phil King to testify.

The following witnesses for the Appellants were sworn in by the Examiner:

- **Dr. Phil King**, 2513 Caravaggio Drive, Davis, CA

The following witnesses for Wal-Mart were sworn in by the Examiner:

- **Bill Reed**, Gardner Johnson, 319 SW Washington Street, Suite 1020, Portland, Oregon, 97204

The following exhibits were entered into the record:

- **Exhibit C-71:** A document titled, Wal-Mart Supercenters, What's in Store for Southern California, by Gregory Freeman
- **Exhibit A-8:** A document titled, The Economic Impact of Wal-Mart

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Supercenters on Existing Businesses in Mississippi, by Kenneth Stone and others

- **Exhibit A-10:** A document titled, Measuring the Economic and Sociological Impact of the Mega Retail Discount Chains on Small Enterprise in Urban, Suburban, and Rural Communities, by Edward Schils
- **Exhibit R-19.3:** Bill Reed's resume

Ms. Newman requested that all parties refer to Exhibit C-44, final EIS.

Ms. Newman: Do you have the study you prepared? **Dr. King:** Yes, I do.

Ms. Newman: Do you have the updated fiscal and economic impact analysis by Gardner Johnson? **Dr. King:** Yes, I do.

Ms. Newman: Please identify yourself and address for the record. **Dr. King:** I live at 2513 Caravaggio Drive in Davis, CA.

Ms. Newman: Your name is Dr. Philip King? **Dr. King:** Yes.

Ms. Newman: Could you tell us about your education and experience? **Dr. King:** I did my undergraduate degree in economics and philosophy at Washington University, my PHD in economics at Cornell, and I've been an assistant and associate professor and chair at San Francisco's State University for the last 20 years in economics.

Ms. Newman: Can you tell me about the sort of studies you primarily work on and work you've done in the past? **Dr. King:** My background is industrial organization and applied microeconomics. I've done a number of fiscal impact studies for the State of California and for numerous cities in California, particularly in southern California. I've also looked at a number of big box retail projects in the state of California including some Wal-Mart Supercenters and other big box stores.

Ms. Newman: So you've reviewed other impact analyses that were prepared for Wal-Mart Supercenters? **Dr. King:** Yes.

Ms. Newman: What information did you review regarding the Tumwater Wal-Mart proposal? **Dr. King:** First I looked at the original EIS; we call them EIRs in California, and particularly the Gardner Johnson report. I came to Tumwater and looked around. I looked at some other data from the state of California Department of Revenue and from various other sources that have statistics. I took photos at one point. I looked at the town.

Ms. Newman: When you say looked around, could you tell us more about your site visit here. **Dr. King:** Yes, I looked at the proposed site. I looked in particular at retail in Tumwater. I talked to some of the store managers, in particular the manager of Mega Foods, Southgate Shopping Center, and I also tried to get a sense for traffic at the various stores. I spoke with a number of people about what stores

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were doing well, what stores were not doing so well.

Ms. Newman: We have an exhibit already labeled R-10 that I understand will be submitted by Wal-Mart; it's actually Wal-Mart's exhibit. *Ms. Newman handed the exhibit to Dr. King.*

Ms. Newman: Dr. King, can you tell us what you're looking at, what that exhibit is? **Dr. King:** This looks like a map of supermarkets and big box stores in Tumwater in the area.

Ms. Newman: Can you identify the stores shown on the map? **Dr. King:** Home Depot, proposed Wal-Mart, Costco, Fred Meyer, Mega Foods, Albertsons, and Safeway.

Ms. Newman: As far as you know, is the map an accurate depiction of store locations? **Dr. King:** Yes.

Ms. Newman: Are there any other stores that you're aware of, or shopping malls, that are relevant to the analysis of economic impacts that are not identified on the exhibit? **Dr. King:** Potentially the Southgate Center with the Ace Hardware store.

Ms. Newman: Is there a way to roughly tell us where that's located on the map? **Dr. King:** I wouldn't want to do that from memory. We're surrounded by people that live in Tumwater. *Ms. Newman took the exhibit back.*

Ms. Newman: In fiscal year ending January 31, 2007, what was the profit Wal-Mart earned overall? **Dr. King:** Twelve billion according to their annual report.

Ms. Newman: That's not just their retail sales but the profit? **Dr. King:** That's their income or profit, yes.

Ms. Newman: Can you describe generally the methodology that was used by the EIS and Gardner to review economic impacts? **Dr. King:** In these types of analysis the most important thing to do is what's called a leakage analysis, which is to break down retail sales into demand and supply, and essentially look at whether Tumwater has an excess supply or an excess demand. In other words, what are the retail sales in Tumwater versus the demand? It is relatively easy to figure out sales because sales tax data is available. That's exactly what Gardner Johnson used. That's a standard approach. Demand data can be generated by looking at consumer expenditure surveys. There are a variety of ways of doing it. The standard way is from the federal government's consumer expenditure survey. In very simple terms, you have demand and supply. It's very basic economics.

Ms. Newman: In Tumwater, an EIS is required to disclose and analyze the significant adverse economic impacts of the Wal-Mart proposal. And here the EIS did include an analysis of economic impacts, is that correct? In general, is there a chapter on economic impacts? **Dr. King:** Yes, they talked about economic

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impacts.

Ms. Newman: What is your overall general conclusion of conclusions made for economic impacts of this Wal-Mart proposal? **Dr. King:** I would say the biggest problem with the study I saw that I put in my report in June 2006 is they did not break down this leakage analysis into individual retail categories.

Ms. Newman: Let me start at the beginning. Do you think conclusions in the EIS were correct about what the economic impacts would be? **Dr. King:** I had disagreements with a number of their conclusions.

Ms. Newman: What I'd like to do is go through the reason you disagree with those conclusions. You started to talk about a leakage analysis. Can you tell us what a leakage analysis is? **Dr. King:** It is essentially supply and demand. You look at the supply of retail in Tumwater. In this case and you look at the demand for retail by category, which is based on standard demand surveys usually from the federal government. So it's very simple supply and demand.

Ms. Newman: Does the Gardner report include such an analysis? **Dr. King:** It really only looks at the aggregate. In other words, they sum all of retail together and they say in the aggregate there is some leakage, roughly \$20 billion.

Ms. Newman: You testified earlier that you have looked at other reports. Is looking at the aggregate typical? Have you seen that in other reports? **Dr. King:** Every single report that I've looked at, and I've probably looked at three dozen, has it broken down into retail categories. In fact, the Gardner Johnson report breaks everything else down into retail categories. If you look through the report, they've gone through exhaustive fiscal analysis by retail category, they go through demand by retail category, they do everything by retail category except for the individual leakage analysis. That is unusual.

Ms. Newman: Tell us what retail category versus the aggregate means. **Dr. King:** These are categories created by the federal government, not by me or Gardner Johnson or anyone else, and are broken down into say, automobiles for example. Automobiles would be automobile sales and sales related to automobiles. General merchandise, which would be the main category Wal-Mart would fall into, which would include most Wal-Marts, a Target, K-Mart, stores like that, apparel stores like the Gap, various other retail categories including food.

Ms. Newman: When you say they looked at it from the aggregate you're saying when they use the word "retail" they lumped everything together to decide supply and demand of retail rather than talking about supply and demand for each individual category? **Dr. King:** When it came to the overall analysis of leakage versus surplus, they only looked at it in the aggregate. They broke it down into other categories in many other places. They only looked at it in the aggregate in the main report.

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Ms. Newman: Let's look at your report, which is in the final EIS, following page 2-11. There is a letter we can skip by. Attached to that letter are documents. The first attachment is titled, *Economic Analysis of a Proposed Wal-Mart Supercenter in Tumwater, Washington*. Did you prepare this? **Dr. King:** Yes.

Ms. Newman: And you prepared this analysis in response to the draft EIS? **Dr. King:** Yes.

Ms. Newman: Did you do a leakage analysis? **Dr. King:** Yes.

Ms. Newman: Can you show us where that is? **Dr. King:** Yes, it is Table 4 on page 8 of my report.

Ms. Newman: So this is basically what Gardner should have done and what you're arguing? **Dr. King:** Yes. I used their data from their first analysis. I was able to glean from what they had and from other sources what it would be.

Ms. Newman: Can you take us through this table and tell us what these numbers mean? **Dr. King:** Yes. People's eyes glaze over when they see a table with numbers. Table 4 is broken down into retail categories. This is a standard leakage analysis that I've always seen in these reports. I've never seen one left out. You have motor vehicles as the first category. You look at the total spending in Tumwater. Then you look at the percentage of Tumwater. You look at average nationwide spending and come up with the leakage. The number you need to look at is the final column, which is the difference from the national average. That essentially says that there is roughly \$45 million leaking out of Tumwater. In other words, when people in Tumwater go to buy cars, they don't go to Tumwater. On average, they would go elsewhere. Or, if they're having their car serviced, they might go outside of Tumwater. I would guess it would be primarily because you would go to buy a car outside of the City of Tumwater. So that indicates you have \$45 million leaking from the City in that category.

Ms. Newman: Let's look specifically at the general merchandise part of the table. Can you explain the significance of those numbers? **Dr. King:** If you look at general merchandise you can see that the total spending in Tumwater is quite large relative to the demand. In fact you can see that in the report prepared by Gardner Johnson. Their figure 3 has the percentage of retail sales at 44.6%. The numbers I'm using here are slightly different because it was based on an earlier report. The essential conclusion is Tumwater is generating a huge amount of sales in the category of general merchandise in the neighborhood of 40% to 50%. On the other hand, the total demand for general merchandise, and this is from nationwide surveys, I also checked this weekend for the State of Washington, when it's consistent it's around 13% to 14%. The average consumer spends 13% to 14% of their retail budget on general merchandise.

Ms. Newman: You mean consumers within the City is 14%? **Dr. King:** For anyone, anywhere. We're assuming that Tumwater citizens are similar to other

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citizens in the State of Washington. On the other hand, Tumwater sells between 40% to 50% of its total sales are in general merchandise. How do you explain the difference? Essentially what that means is it's supplying more than what's demanded. People are coming into Tumwater already to buy general merchandise. Roughly speaking, they're selling about three times as much in general merchandise as what is demanded. Supply is about three times as big as demand. Another way to put that is there is a surplus of about \$70 million of general merchandise. They sell \$70 million more in general merchandise than people in Tumwater demand.

Ms. Newman: Did you say Wal-Mart is general merchandise? **Dr. King:** Wal-Mart is categorized as general merchandise.

Ms. Newman: Is it normal for an area to have 50% of their retail be general merchandise? **Dr. King:** That's unusual. Certainly, what it means is Tumwater already has a large number of general merchandise stores that already serve as a regional draw for general merchandise. I would add when you look at food and beverage, Wal-Mart Supercenter also has a substantial component of groceries; there is also a \$28 million surplus for Tumwater. If you combine general merchandise, which the Wal-Mart Supercenter would sell, and food, which a Wal-Mart Supercenter would also sell in its grocery component, you have roughly already \$100 million in surplus. We could argue about whether it's \$90 or \$110, but it's going to be around \$100 million in surplus. These are 2005 numbers from Gardner Johnson's earlier report. Motor vehicles on other hand have a \$45 million leakage. When you look at the table you can see there are leakages in several other categories. The irony is the Wal-Mart Supercenter is going to provide retail in the two categories that Tumwater is already over supplied in, where it already has enough retail. There are a number of other categories, in fact most other categories, where Tumwater actually has a shortage and perhaps could use more retail. However, it does not need more retail according to this analysis from their data in general merchandise or in food and beverage.

Ms. Newman: Can you tie that back into the Gardner conclusion about there being a great demand for retail and why what you're doing creates a different conclusion. **Dr. King:** Gardner Johnson essentially lumped all retail together, which is a very unusual approach. I've never seen anyone do it that way. They say one size fits all and, therefore, we've got a \$20 million shortage or leakage. Then they say their report is okay because when added to growth over the next few years Wal-Mart Supercenter won't be a problem. The problem is you really need to break it down by retail category and typically what's done with these types of analyses. An automobile dealer is not a good substitute for a Wal-Mart and vice versa. A furniture store may not be a good substitute for an Albertsons or a Mega Foods. At a minimum, you need to identify what the categories are and discuss that. If they want to make the case that you can in fact absorb this Wal-Mart, they need to be honest about it and break it down by retail categories. They haven't done that. If they had done so, it would have clearly indicated that you already have a \$100 million surplus in two critical categories that Wal-Mart will provide, namely again

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general merchandise and food and beverages. Again, the Wal-Mart Supercenter according to Gardner Johnson will be about \$100 million in sales. In 2005 they said \$97 to \$98 million. In round terms you're going to take a City that has a \$100 million surplus in general merchandise and food and beverage and add another \$100 million in sales with a Wal-Mart. They're saying that this won't cause a problem.

Ms. Newman: This was a comment made in response to the draft EIS. The final EIS includes an updated analysis prepared by Gardner. You had pointed out this was lacking. Did Gardner do this leakage analysis in the updated report? **Dr. King:** No. They responded to some of my other comments, but they didn't deal with that issue.

Ms. Newman: From someone who is not an economist or has a PhD in economics, I saw a number of tables in there that looked like there was a breakdown of categories and they included all of the retail categories and numbers. On its face, to me that looked like a leakage analysis that you're talking about. Why was that not? **Dr. King:** They did it for everything else. That's what's strange about it. They did it for just about everything else. They even did it for demand and percentage of retail. They had the data but didn't spell it out and say, here it is. They went to exhaustive detail on a lot of these fiscal impacts and trying to account for the positive fiscal impacts. But they ignored this, which frankly is the key part of this type of analysis.

Ms. Newman: Are you disputing the methodology, or experts, or do you think this is a fundamental error that leads to an incorrect conclusion? **Dr. King:** I think it's a fundamental error. Let me tell you why. They based their fiscal impact analysis on an assumption that is not consistent with basic economics. You're going to add this Wal-Mart Supercenter and add all these sales, again roughly \$100 million, but in order to generate this fiscal impact you have to assume no one else is going to lose. In economics we call it a zero sum gain. If Wal-Mart gains \$100 million in sales, some of that comes at the expense of other stores such as Costco, Fred Meyer, Albertsons, and Mega Foods. You haven't really gained all of the sales tax dollars that they claim. The first issue is they're claiming a lot of sales tax dollars that probably are not going to occur simply because you're going to get sales displacement. Again, that's very fundamental economic theory. It's econ 101. If people shop at Wal-Mart, they're not going to shop somewhere else. People have a fixed amount to spend generally speaking on various retail categories. We all know that. They're not all of a sudden going to spend more just because there's a Wal-Mart here. In order to get that additional sales generated Gardner Johnson would have to argue that Wal-Mart is going to draw more customers from outside Tumwater. The problem is they're already doing that. It's clear from their analysis that Tumwater already serves as a retail hub in a few critical categories of general merchandise and of food and beverage. Tumwater already sells roughly three times as much general merchandise as people in Tumwater demand. Now you're going to build a Wal-Mart that will provide several times more general merchandise as people in Tumwater demand. And they're saying even more people will come.

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That just is incredible and frankly they don't really provide an analysis to justify that assumption. You need to take displaced sales into account. Wal-Mart is going to take sales away from Fred Meyer and Costco, and those are sales that are not gained. You don't gain sales tax dollars if people shop at Wal-Mart rather than Costco or Fred Meyer. All you've done is shift the sales tax from one store to another. Tumwater does not come out ahead in terms of sales tax dollars. You can make similar claims about some of the other revenue benefits they claim.

Ms. Newman: What exactly is a fiscal impact analysis in very general terms? **Dr. King:** A fiscal impact analysis looks at the amount of revenue generated by the project versus cost. In this case, it was done on the City. While Tumwater will gain some revenues from sales and property taxes and various other taxes, there will be additional costs for policing and various other costs associated with the store. And that's the type of analysis they did.

Ms. Newman: Were the conclusions in the analysis correct? **Dr. King:** No.

Ms. Newman: Is the fiscal impact conclusion is that Tumwater will gain quite a bit? **Dr. King:** Yes, according to Gardner Johnson.

Ms. Newman: Is your conclusion Tumwater will not gain quite as much in revenue? **Dr. King:** My conclusion was actually that they would gain very little, if anything.

Ms. Newman: What's the basis for that conclusion? **Dr. King:** Because most of the sales taxes from the Wal-Mart Supercenter will simply move away from the general merchandise and food stores that already exist in Tumwater and where there is already a substantial surplus.

Ms. Newman: How much bigger is this Wal-Mart than the average Home Depot? **Dr. King:** It's 207,000 square feet. If you add in the garden center, which most people usually include, it's 225,000 square feet. That's big. I think an average Home Depot is 160,000 square feet. It's huge. An average big super market is approximately 55,000 square feet, if you multiply an Albertsons times four.

Ms. Newman: The City has already approved a limit on the size of Wal-Mart at 187,000. **Dr. King:** Yes.

Ms. Newman: You gave some estimates in your report. Did you actually prepare a fiscal analysis for this project? **Dr. King:** I did a very brief one.

Ms. Newman: Did you want to get into a dispute about the precise estimates? **Dr. King:** My main conclusion is that most of the sales tax revenues will be shifted from other general merchandise and food retail to the Wal-Mart Supercenter. No one can exactly predict the future. Essentially, they're assuming all of these sales will be new to Tumwater. That's not realistic. We could get into a big dispute about whether it's this or that amount. But the basic principle here is really simple.

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You can't just say that all these sales are not going to take sales away from those other two categories when Tumwater already has a huge surplus.

Ms. Newman: So if you fix the fundamental errors in the Gardner report, perhaps the numbers in the fiscal analysis would be closer to what your numbers are? **Dr. King:** They would be much lower and perhaps even negative.

Ms. Newman: Imagine an argument might be made that something, even if Albertsons, Mega Foods or other stores close down, something will move in to replace them. So it will still be all gravy and still make a sale. What's your response to that? **Dr. King:** First of all, in my report I did say that Mega Foods and Albertsons were at risk. Coming here the first thing I heard was yes, in fact there are rumors that they could close. The Gardner Johnson report did respond to that comment in the more recent report. They said they can be re-tenantable. I would agree there's a reasonable chance that those stores could be re-tenantable. The problem particularly with Albertsons is you're taking a 55,000 square foot grocery store. Grocery stores are the anchor stores for neighborhood shopping centers. Everyone goes to a grocery store. You know what a local grocery store is. You know how important it is to a local anchor store. If you take that away and replace it with a furniture store, that's not going to provide the same quality of draw for the retail. It means that the other stores in the shopping center will not see as much traffic. You're going to see a less profitable center and, therefore, the people that own and operate the center will have less incentive to upkeep the center. With Mega Foods it's similar. You have a 30,000 square foot grocery store. That's hard to fill. I've heard some people say there might be a drug store that could move in there. A typical drug store is only about 15,000 square feet. Some places they put in Dollar Stores, which again are general merchandise. It would be hard to put in a Dollar Store in Tumwater. An important issue is all of those are less desirable tenants than the initial tenants. They will pay lower rents. Lower rents mean less upkeep. That is the beginning of a process of urban decay. Yes, probably Mega Foods could be re-tenanted, even the Gardner Johnson report said Albertson's would be difficult to re-tenant. But if it is, it will be a less desirable outcome. It brings about this process of urban decay. It's a gradual process and does not happen overnight. Tumwater is a fairly prosperous town and it will not look like a horribly blighted area. You will see a gradual deterioration. It could be avoided if Tumwater looked at the retail categories they need and designed retail to fit the City's needs. If you look at the leakage analysis you can see in fact there are retail categories where there is a need in Tumwater. Why doesn't the City say there's a need for electronic appliances, or more clothing, or more sporting goods, or whatever. Why don't you put some of those stores there? You could say, or go back and put a sports or clothing store in the Mega Foods or Albertsons stores. That's not a good fit. That will lead to a general decline. You don't put in a store that was originally designed as a supermarket and convert it to something else and then expect it to be as good a result as you could possibly get.

Ms. Newman: Do you agree with the real estate brokers that the Albertsons would be difficult to re-tenant? **Dr. King:** Yes.

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Ms. Newman: Why? **Dr. King:** Because it's such a large store and because it was really designed as a neighborhood shopping center with a grocery anchor store.

Ms. Newman: There was some mention of a Grocery Outlet store that relocated to Mega Foods in Lacey. The implication was that a Grocery Outlet would go into the stores here. What are your thoughts about that? **Dr. King:** I've been to 20-30 Grocery Outlet stores. They tend to be less attractive, tend to move into essentially vacated buildings, and tend to be smaller than 30,000 square feet. Again, it's this process of gradual deterioration of the store. A Grocery Outlet is not going to generate the amount of money compared to Mega Foods. Mega Foods is actually very healthy. It was selling at well above the national average of sales per square foot. That was a healthy store. If you put in a store that has less healthy sales, what happens is the owner of the store that leases it out wants to get some rent. Grocery Outlet will come in at a lower rent. The landlord has less of an incentive to upkeep the Grocery Outlet or other store. If that should happen you would see a gradual process of fiscal deterioration at that site.

Ms. Newman: I want to make sure this is part of the record. Mega Foods is how big? **Dr. King:** 30,000 square feet.

Ms. Newman: How big is the Albertsons? **Dr. King:** 55,000. I may be off a little bit.

Ms. Newman: Do you have an idea about whether Mega Foods will survive if Wal-Mart goes in? **Dr. King:** I've heard rumors. I talked to the manager of Mega Foods. He told me if Wal-Mart comes in, he would close. If Wal-Mart goes in, it is very likely Mega Foods will close. As I said in my report originally, both Albertsons and Mega Foods will close as a result of Wal-Mart moving in. Mega Foods was healthy in 2006. But it is very close by and competing in many of the same categories as Wal-Mart. Albertsons is not as strong, so it also is in danger of closing.

Ms. Newman: What about Southgate Center? I notice that's not on exhibit R-10. You mentioned that before. **Dr. King:** It was run down when I went there. I spoke to, I believe it was the manager of the complex, and you can just see by looking at it that it is not doing well. There's an Ace Hardware store which was the anchor store there is not doing well.

Ms. Newman: Does the Ace Hardware store compete with a Wal-Mart store? **Dr. King:** Potentially. They sell some of the same categories. They are in different retail categories.

Ms. Newman: I want to step into a different issue and ask about the trade area analysis that was performed. From my recollection, the initial report prepared by Gardner only looked at the impacts related to Tumwater. Is that correct? **Dr. King:** Correct.

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Ms. Newman: So, they didn't look at impacts or what was happening outside of the City? **Dr. King:** Correct.

Ms. Newman: How did that change in the updated report, or did it change? **Dr. King:** Not really. Not substantially.

Ms. Newman: Because if the updated report starts out saying that they look at the retail sales area, they look at all of the people that will come and shop in Tumwater, to show that it's a destination hub. **Dr. King:** In order to do that kind of analysis, you have to look again at demand and supply.

Ms. Newman: When you say that kind of analysis, what do you mean? **Dr. King:** Often what you see when you do these types of studies is they'll define a trade area, which is larger than a city. Tumwater is a relatively small city. Wal-Mart clearly is going to draw from a wider area than the City of Tumwater. It is fairly typical to look at a wider trade area. If you do that type of analysis, you can't just look at the demand and say there are all these people that will shop at these stores. You also have to look at supply and again you have to do a full leakage analysis.

Ms. Newman: Did they do that? **Dr. King:** No, they did not.

Ms. Newman: They did not look at the supply outside of the City, nor did they do a full category by category look at the supply outside the City. **Dr. King:** Right.

Ms. Newman: I want to talk about jobs and wages discussion in the EIS and in the updated report. Why don't you tell me what the conclusion was in the EIS and updated report? **Dr. King:** The report essentially looked at the jobs that would be generated by the construction of the Wal-Mart Supercenter as well as new jobs created by the Wal-Mart Supercenter. The main problem I saw goes back to what I mentioned earlier. They say that all these new jobs will be created by the Wal-Mart Supercenter. But you also have to look at the jobs that would be lost from other stores, even if the stores don't close, say Fred Meyer has a 10% reduction in sales, they will cut back on employees; i.e., fewer cash registers open, fewer stockers, etc. If Mega Foods closed, obviously they would eliminate their employees in the City. The same is true for Albertsons. The other thing they didn't take into account was that groceries, Mega Foods and Albertsons, are unions with higher wages. Roughly speaking, Wal-Mart's wages are about half compared to an Albertsons. That's a significant gap they didn't include. I think the most important thing is once again, they assume this Wal-Mart is going to create new sales and new jobs without looking at the negative side. They're only looking at one side of the ledger. You also have to look at the other side, which is if people spend \$100 million at Wal-Mart; they're going to be spending that \$100 million somewhere else. Therefore, the jobs that Gardner Johnson says will be created are grossly overestimated. In fact, it is quite easy to assume that there will be no net job creation and, in fact, there could be wages lost because some of the jobs that will be created at the Wal-Mart store will be substantially lower paying jobs than those that exist now at

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Albertsons and Mega Foods. That part of the analysis really was - had some significant emissions in terms of what they should have provided.

Ms. Newman: So what you said about wages, I just want to read from the updated study in the final EIS prepared on behalf of Wal-Mart, the Gardner study, "average wages and employees at the proposed development will average over \$10.10 per hour based on wages at other Wal-Mart locations in the south Puget Sound region. Expected wage level is competitive with the 2005 median retail hourly wage of \$11.34 in Thurston County." So they're saying it's competitive, and you're saying it's about half. Can you explain the discrepancy between your testimony and what they're saying here? **Dr. King:** The grocery industry wages are quite a bit higher. Groceries are a substantial component of a Wal-Mart Supercenter.

Ms. Newman: So what they're doing here is lumping in all retail that exists and, kind of like the leakage analysis, they're looking at the median retail hourly wage in every category and not just grocery. **Dr. King:** Right. Grocery is unusual, as it tends to have significantly higher wages.

Ms. Newman: Is it accurate to characterize the conclusion in the EIS that building the Supercenter will have no significant adverse environmental impacts in the area whatsoever? **Dr. King:** I would say that's inaccurate.

Ms. Newman: Is that what they concluded? **Dr. King:** Yes.

Ms. Newman: What's your overall conclusion about whether that is a correct conclusion? **Dr. King:** If they had done a proper leakage analysis broken down by category, what would be clear is Tumwater already has a substantial surplus in general merchandise and in food, which are the two areas that a Wal-Mart Supercenter sells in. Therefore, if you're adding on top of that surplus a lot of the sales that they claim in the fiscal impact study are not really new sales. They would just be transfer sales. Therefore, you're not going to realize all these fiscal benefits they claim. Furthermore, you're also going to get a number of store closings. You have to look at stores individually. You can't lump all retail together and say overall Tumwater has a leakage. You have to say, well, what are we looking at in the food category, what are we looking at in the general merchandise category, and other categories. In particular, I identified Albertsons and Mega Foods being at risk. It is not going to be easy to re-tenant those stores. If they are re-tenanted, they will be less desirable tenants. That leads to a general downturn in the quality of those centers. That is considered an environmental impact at least in the state of California.

Ms. Newman: In the study they seem to be saying that the growth of population is going to actually create a situation where Mega Foods and Albertsons can stay open, Wal-Mart, Costco, Fred Meyer, and everyone can be there, that the demand will be there based purely on population growth. What's your response to that? **Dr. King:** Again, it all goes back to the fact that you need to do it by retail category. Even if Tumwater continues to grow rapidly, it will take decades if ever

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for the area to generate sufficient demand for general merchandise and for food. Really what you should do and what other studies I have looked at similar to this is look at demand generated by retail category. If you project a certain population growth, you have to project that population growth in demand for each of those retail categories, not lump it together. Essentially, what they did is they made one huge mistake and repeated it over and over again and didn't respond to it. One other mention on population. I didn't dispute it in my report, but I would just point out that there has been a housing slow down nationwide. It's quite possible that the projections they used are overly optimistic. They are official government projections. I think that's legitimate. However, all those projections were made before the housing downturn. What happens if in fact Tumwater's growth slows, as personally I think it will, along with most other cities? What's going to happen then? Then you're going to have an even more difficult problem dealing with filling up the excess retail. Even if population projections are correct, they're still going to end up with a huge surplus in general merchandise and food.

Ms. Newman stated she had no further questions.

Cross-examination. Counsel Jack McCullough introduced himself.

Mr. McCullough: I have a couple of questions and clarifications because I'm not sure my notes are clear. At the beginning of your testimony, you referred to Table 4 in the report you submitted dated June 30, 2006 to the EIS. **Dr. King:** Yes.

Mr. McCullough: This was retail sales in Tumwater versus demand and it was by category. **Dr. King:** Yes.

Mr. McCullough: What I heard you say, and I want to make sure I have this right, is you compiled this table based on the information that was in the Gardner Johnson initial draft EIS report. **Dr. King:** It was not easy to do, but they did provide this table of percentages. I was able to infer backwards through those percentages. I also checked with sales tax data from the state. The data was not immediately obvious at all. I really had to go through some tortured calculations to figure it out.

Mr. McCullough: My question is this was intended to be a recapitulation of the data that had been presented before, but broken down by category. You weren't changing the trade area or anything like that? **Dr. King:** No.

Mr. McCullough: What I gather is your fundamental complaint with the reports in the record is that the Gardner Johnson group reached conclusions on a variety of these economic and fiscal impact issues without proper or adequate study, is that right? **Dr. King:** I wouldn't put it that way. They didn't do a detailed leakage analysis. Some of the assumptions they made did not make sense.

Mr. McCullough: So in order for these Gardner Johnson studies from which you could draw in your view legitimate conclusions, they'd have to include, for

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example, a proper leakage study. **Dr. King:** Yes, a detailed one to draw relevant conclusions.

Mr. McCullough: I guess that means that in your judgment you can't draw proper conclusions unless you have a proper leakage study. **Dr. King:** Right.

Mr. McCullough: You went on to contend that because of the surplus in sales in general merchandise and groceries that there would be a loss in sales with the advent of a new Wal-Mart at existing general merchandisers and grocery outlets in Tumwater. Is that right? **Dr. King:** Yes.

Mr. McCullough: Did you yourself conduct a proper leakage analysis with respect to the Wal-Mart store in Tumwater? **Dr. King:** I looked at available...

Mr. McCullough: I think it's a yes or no.

Ms. Newman: I disagree. He can answer how he'd like.

Dr. King: I'm not sure of the question. I was able to infer from their data what the leakage should be, mostly from this table with percentages. I also was able to do an analysis using sales tax data.

Mr. McCullough: Is it your testimony that you conducted an adequate leakage analysis for this proposal? **Dr. King:** Yes.

Mr. McCullough: You have a copy of that in your report? **Dr. King:** It's Table 4. It's a very straightforward analysis.

Mr. McCullough: So Table 4 is the sum total of your adequate leakage analysis for this proposal? **Dr. King:** And the corresponding text that goes with it.

Mr. McCullough: You've conducted other leakage analyses for other projects, I assume? **Dr. King:** Typically, when I look at these reports, the leakage analysis is already done. It is already broken down into detail.

Mr. McCullough: But have you independently ever conducted your own leakage analysis, not just studied or commented on leakage analyses prepared by others? **Dr. King:** I've looked at the data; put the data together, so I would say yes. Generally speaking, when I do these reports I look at the data presented.

Mr. McCullough: When you look at data you're commenting on reports prepared by others, but can you identify a single detailed sales leakage report that you've independently prepared yourself in your 20-year career? Just one? **Dr. King:** I have done reports where it discusses that. I don't know if I can identify one specific thing and say I prepared a full leakage analysis. The basic principles are very simple for this type of analysis.

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Mr. McCullough: You complained, you note that Tumwater is a regional hub and that it draws sales now from elsewhere outside the City limits. Is that right? **Dr. King:** Yes.

Mr. McCullough: Is that fact a significant issue in the preparation of the leakage analysis do you think? **Dr. King:** What's significant is the fact that because Tumwater already draws a lot of people from the surrounding area in those two categories, you're going to try to draw even more people. You've already got a lot of demand coming in to Tumwater. They're claiming that there will be more demand on top of that without justifying it.

Mr. McCullough: I'm not asking what they're claiming. I'm asking for your professional opinion. Do you think it would be important when preparing an adequate leakage study to include, when you know that a city like Tumwater is a regional hub and is drawing significant sales from outside the City, to include that information in a leakage analysis? **Dr. King:** Gardner Johnson should really do that.

Mr. McCullough: Again, we're not talking about what Gardner Johnson did. You've already testified about that. I'm asking in your professional opinion do you think that it would be important to have that information in a leakage analysis. **Dr. King:** Yes.

Mr. McCullough: I'm going to turn to Table 4. You testified earlier about Table 4 in your original report. Does Table 4 include sales information from outside the City? Does it include the regional draw sales in these sales categories? **Dr. King:** No.

Mr. McCullough: But, this is an adequate leakage study you said. **Dr. King:** This is a leakage study for Tumwater. Again, I'm just taking the data from the Gardner Johnson report here and recasting it. Gardner Johnson decided to focus on Tumwater, not me.

Mr. McCullough: That's correct. But I think your testimony, and we can read it back, was in your professional opinion it was important to include this regional data in an adequate leakage study. **Dr. King:** Yes.

Mr. McCullough: Is it your testimony now that what is an adequate leakage study should be limited to what Gardner Johnson focused on? **Dr. King:** No. My testimony would be I see my job here as showing the flaws in Gardner Johnson's report. And that is what I did.

Mr. McCullough: In your conclusion you also testified that with the advent of the Wal-Mart store, Tumwater would gain very little tax wise, that most taxable sales at the Wal-Mart would be essentially taken from other businesses in Tumwater. Is that right? **Dr. King:** Yes.

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Mr. McCullough: Did you conduct yourself an independent study to support that conclusion? **Dr. King:** No.

Mr. McCullough: You testified that you prepared a fiscal impact analysis. Is that right? **Dr. King:** I would say what I did was more illustrative. I wouldn't call that a full fiscal impact analysis, no.

Mr. McCullough: Did you have the opportunity to conduct a full analysis in this or any of the other areas we've discussed? Did you have the time? **Dr. King:** No.

Mr. McCullough: Were you asked to conduct any of these studies? **Dr. King:** I'm not sure of the question. I was asked to look at the report and find essentially flaws in the report.

Mr. McCullough: But you weren't asked to conduct a study of your own on these issues. **Dr. King:** This sounds semantical to me, whether you want to call this a study. This is a study, an examination of their report. It's based on their report, based on other data, and based on the site visit.

Mr. McCullough: On your fiscal impact, this illustrative piece you did, by the way, do you have a copy of that? **Dr. King:** It's in the report.

Mr. McCullough: So nothing other than what's in the report is what you're referring to? **Dr. King:** Right.

Mr. McCullough: Your conclusion was that the fiscal benefits to the City will be lower than projected and maybe even negative. Did you conduct any calculations other than what's in your report to suggest this? **Dr. King:** No.

Mr. McCullough: You talked about Mega Foods and Albertsons. Is it your testimony that with the advent of the Wal-Mart store that these stores will close? **Dr. King:** I believe I said there was a strong possibility that they would close. I don't remember the exact language. Basically, there is a strong likelihood that they would close.

Mr. McCullough: Strong likelihood? What is that based on? **Dr. King:** It's based on interviews with the manager of Mega Foods. It's based on looking at the demand in Gardner Johnson's study. The fact that you already have a surplus in food. It's based on the fact that Wal-Mart would have substantial sales in food and grocery. Therefore, again, if Wal-Mart sells \$20 million, \$30 million, \$40 million in groceries, that's going to come from somewhere. Albertsons is already doing poorly and Mega Foods would be a direct competitor for Wal-Mart. Both of those stores are at risk.

Mr. McCullough: Is that conclusion based on the work that you did in Table 4? **Dr. King:** No, there's another table as well, I believe. Table 1 and Table 2 where I actually looked at the grocery components for Tumwater.

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Mr. McCullough: The data in Table 1, was it based upon the city limits of Tumwater itself, or was it based on the larger regional area? **Dr. King:** It's based on main competitors in the City of Tumwater.

Mr. McCullough: And not the regional area is that correct? **Dr. King:** That's correct.

Mr. McCullough: You talked about urban decay. I heard your comments with store closures re-tenanting is, "a gradual process that may lead to less desirable outcome." Is that right? **Dr. King:** Yes, it will lead to physical deterioration and urban decay.

Mr. McCullough: In the City of Tumwater, is this a process inexorable for a particular store that's closed and re-tenanted that it will ultimately decay to the point that it is completely untenable? **Dr. King:** It depends on the context. I would say that Albertsons, if that store is not re-tenanted by a healthy grocery store, it's very likely that the shopping center will eventually deteriorate, yes.

Mr. McCullough: When you say deteriorate does that mean it will be untenable? It will be vacant? **Dr. King:** Eventually it could be vacated, yes.

Mr. McCullough: Could be or will be? **Dr. King:** Well first of all, you can have physical deterioration even if it's tenanted. It could be tenanted and physically deteriorate. Will it eventually get to the point where it's completely dark? I think that's quite possible. But I wouldn't say it's a 100 percent.

Mr. McCullough: The trade area analysis you testified about, you suggested that Gardner Johnson should have done a full leakage analysis based on the trade area. Is that right? **Dr. King:** They should have used a larger trade area other than just Tumwater. That's what I think would have been better.

Mr. McCullough: Let me get this right. I thought you just testified a few minutes ago that a proper leakage analysis such as you claimed you included in Table 4 is based just on the city limits of Tumwater. **Dr. King:** I essentially followed the data that Gardner Johnson used, which was just Tumwater.

Mr. McCullough: You, yourself, did not conduct a regional leakage analysis? **Dr. King:** No.

Mr. McCullough: You testified about jobs and wages and potential impacts. Did you, yourself, conduct a study of likely impacts to jobs and wages from opening the Wal-Mart store? **Dr. King:** No.

Mr. McCullough: You testified about potential impacts under the California Environmental Quality Act. Do you have any experience with preparing studies under the State Environmental Policy Act in the State of Washington? **Dr. King:**

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No, this is my first.

Mr. McCullough: You suggested that Gardner Johnson should have projected demand by retail category by taking into account population growth by retail category, is that right? **Dr. King:** Yes.

Mr. McCullough: Did you conduct... **Dr. King:** Demand by retail category.

Mr. McCullough: Did you conduct such a demand by retail category study yourself? **Dr. King:** No. I didn't see that as my job.

Mr. McCullough: You testified about housing. You started to speculate that housing projections may not be accurate because there is a nationwide downturn in housing starts. Is that right? **Dr. King:** Yes.

Mr. McCullough: Did you do any analysis here in the City of Tumwater or the Thurston County area to determine housing growth in this area or impact of the downturn in the last 90-180 days? **Dr. King:** I looked online and found that Tumwater has some of the same problems that a number of other places in the U.S. have.

Mr. McCullough: Finally, you said that you've typically conducted your analysis by looking at leakage analysis and fiscal impact reports prepared by others. **Dr. King:** I've done quite a few fiscal impact analogies.

Mr. McCullough: And not leakage analyses. I stand corrected. But as far as leakage done by others and commenting on those? **Dr. King:** Yes.

Mr. McCullough: That includes in connection with proposed Wal-Mart stores in the State of California? **Dr. King:** Yes.

Mr. McCullough: That would include Wal-Mart stores, for example, in American Canyon, California? **Dr. King:** Yes.

Mr. McCullough: And Henderson, California? **Dr. King:** Yes.

Mr. McCullough: And Antioch, California? **Dr. King:** Yes.

Mr. McCullough: And Chico, California? **Dr. King:** Yes.

Mr. McCullough: And Clovis, California? **Dr. King:** Yes.

Mr. McCullough: And Fairfield, California? **Dr. King:** Yes.

Mr. McCullough: And Gilroy California? **Dr. King:** Yes.

Mr. McCullough: And Hanford, Lodi, Marysville, Red Bluff, Redding, Stockton,

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and Yuma City? **Dr. King:** Yes.

Mr. McCullough: In any of those studies did you ever conclude that a Wal-Mart would not lead to urban blight? **Dr. King:** First of all, I've turned down studies where I've told people that it wouldn't lead to urban decay. So it's a bit misleading. Anytime you put in a 225,000 square foot Wal-Mart Supercenter in a small town, you're going to have some impacts. The reports I've done have been in areas where there could be potential impacts.

Mr. McCullough: Do you know the size of the Wal-Mart store proposed for the City? **Dr. King:** The report says 207,000 square feet but you also have to add in the garden center.

Mr. McCullough: So it's even larger than that. **Dr. King:** If you add in the sales of the garden center 225,000 square feet roughly.

Mr. McCullough: I have no further questions.

Jeffrey Myers, Attorney for the City of Tumwater introduced himself.

Mr. Myers: I have a couple of questions for you.

Dr. King: Could I ask for a glass of water; is that possible?

Mr. Myers: When you spoke to the manager of the Mega Foods store, did he provide you with any sales data or other economic analysis showing that his store would need to close in the event that a Wal-Mart opened? **Dr. King:** His data actually showed at the time that his store is doing fairly well. But he did tell me that a Wal-Mart would have a huge impact to his business.

Mr. Myers: As far as impacts on his business, did you discuss with him any ways in which an existing store can try to compete with Wal-Mart in the marketplace?

Dr. King: I don't remember doing that.

Mr. Myers: Are you familiar in the literature of recommended tips for existing stores to help them try to compete? **Dr. King:** I've seen some of that, yes.

Mr. Myers: And you're familiar with the work of Dr. Stone? **Dr. King:** Yes.

Mr. Myers: And Dr. Stone did studies of the affect of Wal-Mart in small towns in Iowa and also in Mississippi? **Dr. King:** Yes.

Mr. Myers: Dr. Stone's studies have a series of recommendations about how local merchants can compete when Wal-Mart moves into town. Are you familiar with those? **Dr. King:** I've seen it, yes.

Mr. Myers: Do you believe that if Mega Foods were to handle complementary or

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different merchandise than in the Wal-Mart Supercenter and look for voids within the Wal-Mart inventory that Mega Foods might be able to survive and compete? **Dr. King:** The issue really here is one that there's just going to be too much grocery capacity in Tumwater. The sales have to come from somewhere. If Mega Foods survives, then other stores are going to go out. Stone's work in particular has shown that Wal-Mart Supercenters drive a lot of supermarkets out of business. You can compete with Wal-Mart. Generally, the best way to do that frankly is to go upscale and become a Whole Foods or something like that. One store in the City could do that. Safeway is probably better positioned to do that than a Mega Foods. A small independent retailer, which is based on discount sales, is going to have a harder time. It's possible. If they did it, you still have to take those sales away from somebody else.

Mr. Myers: Is it possible then that if either Albertsons or Mega Foods were to close, they might be replaced with an upscale grocer like a QFC? **Dr. King:** Again, the sales have to come from somewhere. You have one that survives, and then another one will be in trouble.

Mr. Myers: My question is would that type of grocer be in a better position to compete with Wal-Mart than the existing tenants? **Dr. King:** Tumwater might support one of those types of stores. It's not going to be able to support a number.

Mr. Myers: Do you know if Tumwater currently has one of those types of stores? **Dr. King:** I don't know that.

Mr. Myers: With regard to the Southgate Center, is it your testimony that the Southgate Ace Hardware store would close if Wal-Mart opens? **Dr. King:** I think it's possible.

Mr. Myers: Possible, but not certain? **Dr. King:** Yes.

Mr. Myers: What's the basis of your understanding about the likelihood of the Ace Hardware store closing? What's the basis of that testimony? **Dr. King:** It's a weak store. It already has very weak sales. It would not take a lot to essentially close the store.

Mr. Myers: Do you know how old that shopping center is? **Dr. King:** I don't, but it's quite old.

Mr. Myers: Do you know when that shopping center was last renovated? **Dr. King:** I don't. It looks like it hasn't been renovated for quite some time.

Mr. Myers: Do you know whether the opening of the Home Depot has affected their sales? **Dr. King:** I'm sure it did. I don't know.

Mr. Myers: Can you explain to me why they're still open when Home Depot opened a couple of years ago? **Dr. King:** Sometimes it takes time for a store to

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close.

Mr. Myers: Let me ask you this. If Wal-Mart does not go in, do you have an opinion to the likelihood whether Southgate would close the Ace Hardware store anyway? **Dr. King:** It's possible even without a Wal-Mart that it would close. Wal-Mart would increase the likelihood.

Mr. Myers: How about another merchandiser like Tumwater Sports. Do you have any opinions about whether Wal-Mart would affect a business like Tumwater Sports? **Dr. King:** I didn't look specifically at that store. Wal-Mart does sell sports goods. But I think that would be less likely.

Mr. Myers: Did you do any sort of formal analysis of the other businesses within Tumwater to see whether any of them would be adversely affected besides Albertsons, Mega Foods, and Ace Hardware? **Dr. King:** Those are the main ones I looked at.

Mr. Myers: So the answer was no, you didn't look at any other businesses besides those three? **Dr. King:** I looked at Fred Meyer and Costco.

Mr. Myers: If Wal-Mart moves in, will there be a likelihood that Fred Meyer will go out of business? **Dr. King:** I didn't put that in my report. I think it's a possibility, yes.

Mr. Myers: Why didn't you put that in your report if you consider that a possibility? **Dr. King:** Because I don't want to make overly strong claims. I'm trying to be conservative here. When I looked at it, it was clear that the Mega Foods, Albertsons, and Ace were really the stores that could be hurt. Fred Meyer could also be hurt. Will it close? I am trying to be conservative and not trying to make wild claims. I didn't want to make that claim. I didn't think I could back it up.

Mr. Myers: Are you familiar with the study that was prepared by Mr. Freeman concerning the impact of Wal-Mart stores? **Dr. King:** Was this prepared for Tumwater? **Mr. Myers:** No, this is a study in southern California prepared by Gregory Freeman for the Los Angeles County Economic Development Corporation. **Dr. King:** Yes, I've seen it.

Mr. Myers: And that was a study that you identified to counsel as something that should be placed into evidence for this matter? **Dr. King:** Yes, right.

Ms. Newman: Are you going to try to show it's irrelevant in some way, or are you doing to use it? **Mr. Myers:** No, I'm going to ask him about it.

Ms. Newman: I'm not expecting to submit it as an exhibit. You can still ask questions about it.

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Mr. Myers: So then I'm taking it that you are not offering the *Wal-Mart Supercenters, What's in Store for Southern California* study as an exhibit.

Ms. Newman: I actually forgot there are two reports that I did want to submit that I forgot to submit on direct, but that is not one of them. I was going to submit the Schil's report I provided to you and one other. The Kenneth Stone report called *The Economic Impact of Wal-Mart Supercenters on Existing Businesses in Mississippi*.

Mr. Myers: The report from Mississippi.

Ms. Newman: Yes. We might need to discuss that because I haven't stipulated with Wal-Mart that I can include these.

Mr. Myers: Well, you offer them when you offer them.

Ms. Newman: Do you want me to wait until I do redirect?

Hearing Examiner Kerslake: I would think that is best.

Mr. Myers: Actually what I'd like to do is go ahead and ask you about the Wal-Mart southern California study. That was a study that talked about, I believe, the benefits of having lower prices? **Dr. King:** It talked about the fiscal impacts of Wal-Marts.

Mr. Myers: Was it not the conclusion of Mr. Freeman's study that consumers in the Los Angeles area would end up saving several hundred dollars per household per year? **Dr. King:** No, I don't remember to be honest. That may be true.

Mr. Myers: Let me ask you... *Mr. Myers approached the witness and provided him with a copy of the Freeman study.*

Mr. Myers: I handed you a copy of the Freeman study. The Freeman study concludes in the highlighted portions that consumers in Los Angeles will save \$524 per household per year. **Dr. King:** That's what it says.

Mr. Myers: That study then concludes that the savings those consumers will have will be redirected on additional spending within the area. **Dr. King:** That's what it says. This is taken out of context though. The study also talks about the negative affects of Wal-Marts.

Mr. Myers: And is it the point ...

Ms. Newman: I would like this to be submitted if we're going to have questions about it. I don't want to have questions out of context. So if you want to submit this as an exhibit. I object to the line of questioning for formally.

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Hearing Examiner Kerslake: Is it your intention **Mr. Myers** to have this document submitted into evidence?

Mr. Myers: Let me ask you about the document. Is this one of the documents that you've considered and relied on in preparing your testimony? **Dr. King:** I believe I used part of it, yes.

Mr. Myers: I'd like to offer this as exhibit C-71.

Hearing Examiner Kerslake: Any objection to what's been identified as exhibit C-71?

Ms. Newman: Could we get a full title name?

Hearing Examiner Kerslake: That was my next question.

Mr. Myers: Could you read the title on the first page of the document? **Dr. King:** The first page or on the top of ... *Wal-Mart Supercenters, What's in Store for Southern California*.

Mr. Myers: And that's by Gregory Freeman of the Los Angeles Economic Development Corporation? **Dr. King:** Yes.

Mr. Myers: And that's 2004. **Dr. King:** I believe so, January 2004.

Hearing Examiner Kerslake: Any objections to the admission of what's been marked and identified as C-71?

Mr. McCullough: Mr. Examiner, this was one of a series of reports that counsel for the Appellants indicated she might offer and sent out links to these. We were able to download I think five of the six. For some reason we were unable to get our computers to cooperate and download this one. I would like to reserve, if I could, so we could have a look at it following, I don't see any reason why testimony shouldn't move forward.

Ms. Newman: I just want to add I don't know, do you have an opportunity for further questions on that? **Mr. McCullough:** I don't know that we're going to have any further questions on that.

Hearing Examiner Kerslake: Why don't we take a break now and **Mr. McCullough** you will have an opportunity to take a look at that document.

Mr. McCullough: Take a peak at it, okay.

Ms. Newman: Okay.

Hearing Examiner Kerslake: Okay, we will be at recess until 20 minutes to the

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hour.

RECESS: Hearing Examiner Kerslake recessed the meeting from 2:30 p.m. to 2:43 p.m.

**TESTIMONY,
Continued** **Hearing Examiner Kerslake:** That concludes the afternoon recess in the matter. During the recess I inquired of Mr. McCullough if he had any objections to admission of what's been marked exhibit C-71, which is the Freeman Wal-Mart study. Mr. McCullough, I understand that you do not have any objections.

Mr. McCullough: I said no.

Hearing Examiner Kerslake: Very good. And I further understand Mr. McCullough that Ms. Newman offered several other exhibits previously, which have been previously provided to you. Ms. Newman, can you identify those? I don't have them. One's a Mississippi study...

Ms. Newman: We are offering two studies. One is called, *The Economic Impact of Wal-Mart Supercenters on Existing Businesses in Mississippi* by Kenneth Stone and others. The other is called, *Measuring the Economic and Sociological Impact of the Mega Retail Discount Chains on Small Enterprise in Urban, Suburban, and Rural Communities* by Edward Schils.

Hearing Examiner Kerslake: Have those been previously marked?

Ms. Newman: I did mark them, the Mississippi report is A-8 and the Schils report is A-10.

Hearing Examiner Kerslake: I understand those are admitted by stipulation? And the Freeman study has also been submitted by stipulation. As I recollect prior to the recess that Mr. Myers was making inquiries of the witness relative to the Freeman study.

Mr. Myers: That's correct, your honor. With regard to the Freeman study, just a couple of questions. On page 2, in the bottom paragraph, he refers to a disparity between union grocery workers and grocery workers at Wal-Mart as being \$2.50 to \$3.50 per hour more in the union grocery stores in southern California. Would you agree that is a correct assessment of the disparity in southern California? **Dr. King:** Nationwide the disparity is much bigger than that.

Mr. Myers: I'm asking about the disparity in southern California. **Dr. King:** I don't know to be honest.

Mr. Myers: You haven't done any studies about the disparity in southern California that would allow you to dispute that? **Dr. King:** That's correct.

Mr. Myers: Have you done any studies concerning the disparity between union and nonunion grocery stores in western Washington? **Dr. King:** No.

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Mr. Myers: In page 4 under study highlights he has two statements regarding the City of Los Angeles and the County of Los Angeles, which I think are related. And it has to do with redirected grocery savings creating additional jobs. Have you done any analysis to determine whether or not redirected grocery savings will in fact create additional jobs? **Dr. King:** No.

Mr. Myers: With regard to the Stone study that we stipulated to the admission of, I believe that study contains the tips I was referring to that marketers can use to compete with Wal-Mart. Is that your understanding as well? **Dr. King:** I know some of the studies do.

Mr. Myers: The study with regard to Mississippi... let me hand you a copy of that study... *Mr. Myers approached the witness and provided him a copy of the study.*

Ms. Newman: This is A-8, the Mississippi study? **Dr. King:** Yes A-8.

Mr. Myers: That study has a table in it that indicates which communities were looked at. It excludes communities with a population of over 100,000, is that right?

Dr. King: I don't know the exact number. I know he looked at small and medium-sized towns and cities.

Mr. Myers: Do you know the population of Thurston County, Washington? **Dr. King:** I know the population of Tumwater is much lower than 100,000. I would classify Tumwater as a small to medium sized city, which would be very similar to the types of cities, at least in terms of population, that was studied by Ken Stone in Mississippi.

Mr. Myers: Do you have page 3 in front of you? **Dr. King:** Yes.

Mr. Myers: The last sentence of that paragraph says that the samples consisted of 18 stores in counties with an average population of 45,450. Is that right? **Dr. King:** Yes.

Mr. Myers: Is it your opinion that that is comparable to Thurston County? **Dr. King:** No, Thurston County I'm sure is quite a bit larger.

Mr. Myers: Is it your opinion that Tumwater essentially functions autonomously from the nearby communities of Olympia and Lacey? **Dr. King:** It's not my opinion. Gardner Johnson seemed to conduct their analysis as if it did. But it certainly is not my opinion, no.

Mr. Myers: Do you know what the population of the urban area surrounding Lacey, Olympia, and Tumwater is? **Dr. King:** I don't know the precise number.

Mr. Myers: Would it surprise you to know that the Thurston County website says that nearly 140,000 residents live in the urban north county areas around the cities

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of Lacey, Olympia, and Tumwater? **Dr. King:** Sounds right.

Mr. Myers: Do you think that that's comparable to counties with an average population of 45,450 in rural Mississippi? **Dr. King:** I think a lot of the displacement affects would be quite similar.

Mr. Myers: I'm asking you do you think that the economy of an urban area with nearly 140,000 residents is comparable to a rural area of 45,450? **Dr. King:** It depends on the context.

Mr. Myers: That's all the questions that I have.

Hearing Examiner Kerslake: Thank you. I understand **Mr. McCullough** that something came up that required you ...

Mr. McCullough: Not a thing.

Hearing Examiner Kerslake: Redirect.

Ms. Newman: Thank you. On cross, Wal-Mart's counsel attempted to characterize your table as a recapitulation of the data in the Gardner report as if everything that needed to be studied was in the Gardner report. Are you demonstrating, rather than talking about data in the Gardner report, is your point that the conclusions in the Gardner report were incorrect because they didn't look at the data correctly? **Dr. King:** Yes.

Ms. Newman: In your testimony you concluded that there will be significant probable adverse economic impacts by this project that weren't adequately analyzed or disclosed in the EIS. Is that fair to say? **Dr. King:** Yes.

Ms. Newman: Do you need to conduct a formal study yourself to support that conclusion? **Dr. King:** No.

Ms. Newman: Why not? **Dr. King:** First of all, I see it as Gardner Johnson's responsibility and the Elis's responsibility to do the job. It's not my job to do what they should have done. I'm working for a citizens group frankly with rather limited funds. My job is to point out inconsistencies, omissions, and errors in their report, what is essentially what I did in my report, based on frankly a relatively limited budget and a limited amount of time.

Ms. Newman: Let me ask you this. Even if the citizens group had as much money as Wal-Mart has, would you be able to come up with the same conclusion that came up in your testimony without doing a formal study about problems with the conclusions in the Gardner report?

Mr. McCullough: I object. That's completely speculative. The witness has testified he hasn't. So if he hasn't, how can he say what the...

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Hearing Examiner Kerslake: I agree.

Ms. Newman: It's a very important point. This is a critical point that needs to be made.

Hearing Examiner Kerslake: I understand, but I think you're going to have to ask your question in a different manner. You've asked him if he's done his own study and he said no. If you had done your own study, what would you have come to? He didn't do a study.

Ms. Newman: I asked you earlier about your conclusion that there will be significant adverse environmental impacts and I said do you need to do a formal study to come up with that conclusion. You said no. I said why don't you need to do a formal study to support your conclusion that there will be significant adverse impacts. Is the information available...? **Dr. King:** There's enough information in the Gardner Johnson report certainly to indicate, first of all, the report has a number of omissions. They should have done certain things they didn't. Second of all, using the data that they have it's quite clear that there are problems that I mentioned in my testimony with general merchandise and food.

Ms. Newman: Okay, thank you. So if Gardner did redo the leakage analysis, actually did a leakage analysis that you described and they actually did it with the regional retail sales and not just looking at Tumwater, can you explain what that would look like. How would you go about doing that? **Dr. King:** You'd look at the entire area, whether it's Thurston County that was mentioned a minute ago, or perhaps you'd look at Olympia and Tumwater combined, and you would look at the total amount of retail supply versus the total amount of retail demand. And then you would look at the difference between supply and demand by retail category.

Ms. Newman: And you would do that by category, is that what you just said? **Dr. King:** Yes.

Ms. Newman: Did Gardner do that in the updated report? **Dr. King:** No.

Ms. Newman: There was some discussion about urban decay and some implication that it's going to take awhile for some areas to actually black out completely and stores to be untenanted. Is it fair to say that when areas begin to deteriorate, even if the stores are not gone but they actually go down in quality or lose sales, that there will be an impact on the fiscal revenue of the City? **Dr. King:** Yes.

Ms. Newman: I have no further questions. Oh, can I just clarify that, I'm sorry. That there will be an adverse fiscal impact on the revenue. Important word.

Hearing Examiner Kerslake: Thank you.

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Mr. Myers: I have a couple of questions just to clarify.

Hearing Examiner Kerslake: I hate to go to redirect, re-cross. We've got a limited amount of time and I'd like to limit it to direct cross and redirect. Unless I ask questions I will offer all counsel an opportunity should my questions... thank you. Now, are we going to go, Mr. McCullough, to your economic witness at this point?

Mr. McCullough: That is the intention Mr. Examiner.

Hearing Examiner Kerslake: I wanted to make sure. Thank you Dr. King. Mr. McCullough, your witness.

Mr. McCullough: We will call Bill Reed. Will you give us your name and address for the record?

Mr. Reed: My name is Bill Reed. I'm with the firm Gardner Johnson in the Portland office, at 319 SW Washington Street, Suite 1020, Portland, Oregon, 97204.

Mr. McCullough: Will you tell us a little bit about your background? **Mr. Reed:** I'm a principle with Gardner Johnson. We are a real estate, land use, public finance, and economic consulting firm with offices in Seattle and Portland, and newly in Eugene. I've been consulting on all of these issues for the last 10 years. We do numerous studies including feasibility of development for private and public interests, redevelopment issues, policy consultation on those issues, and public finance issues related to growth and development, among other things.

Mr. McCullough: Your educational background? **Mr. Reed:** Masters Degree in economics, concentration in econometrics and public finance from the University of Oregon, and Bachelors Degree in economics and mathematics from Baylor University.

Mr. McCullough: I'm not going to come over and show you a copy of what has been marked as exhibit R-19.3. I don't know if you have it. It is your resume. I'm going to dispense with this formality. I'd just like to point out to the Examiner that that's where it's located for the record.

Hearing Examiner Kerslake: Do I understand, unless I hear to the contrary, that exhibits have been stipulated to in terms of their admissibility unless I hear counsel jump up and say something to the contrary?

Ms. Newman: Yes.

Mr. McCullough: Yes.

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Hearing Examiner Kerslake: Very good. Thank you.

Mr. McCullough: Could you explain your role in this project? **Mr. Reed:** We were retained to conduct an economic and fiscal impact study of the proposed store upon the City of Tumwater for the EIS process.

Mr. McCullough: And that you did? **Mr. Reed:** Yes indeed.

Mr. McCullough: One of them appeared in the draft EIS. **Mr. Reed:** Correct.

Mr. McCullough: Maybe you can talk about the project, as you understand it, started at one size? **Mr. Reed:** Yes, during the draft EIS process, we studied basically what are now called alternative 1 and 2, which I believe are the store size, was in the 225,000 square foot range. After comments and work with the community, we were for the final EIS asked to revise the analysis to reflect that the store size had been reduced to roughly 187,000 square feet plus a 19,000 to 20,000 square foot garden center.

Mr. McCullough: So you actually conducted two studies? **Mr. Reed:** Correct.

Mr. McCullough: One appeared in the draft and one appeared in the final. **Mr. Reed:** Right. The draft showing impacts of a larger store footprint.

Mr. McCullough: So tell us quickly and very generally about current economic conditions in Tumwater, retail sales wise. **Mr. Reed:** Tumwater retail sales as the analysis shows actually is retail sales have grown roughly 20% over the last four or five years, not annually, but in total by about \$56.5 million since 2003. The retail environment is healthy, has grown with population growth in the area. Analysis that we have done checking with new Washington Department of Revenue data indicates that in 2006, the City actually had a very slight relatively speaking reduction in retail sales tax revenue by about 1.8% or \$4 million in 2006 relative to 2005. What we would call a hiccup in 2006, but strong growth since 2003.

Mr. McCullough: To what would you ascribe the hiccup in 2006? **Mr. Reed:** We verified number one that there was continued population growth in the area particularly in Tumwater. And there has been. The only conclusion we can come to is that significant new retail development in Lacey has attracted shoppers. There are more people here, there are more people in Lacey, retail growth has been occurring up there. We attribute it to that attraction.

Mr. McCullough: You looked at the economic impacts of the proposed store? **Mr. Reed:** Correct.

Mr. McCullough: Maybe we can go down the list. Could just summarize your conclusions in the record? Construction sales tax revenue? **Mr. Reed:** We estimate that construction of the smaller size store is \$8.7 million in construction revenues for different businesses in the area temporarily creating about 88 to 90

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jobs roughly, and an additional 8 to 10 jobs due to ripple effects such as vendors and suppliers benefiting from activity. So that's purely construction impacts.

Mr. McCullough: You were here earlier for the testimony this afternoon from Dr. King. Is that right? **Mr. Reed:** Correct.

Mr. McCullough: There's a lot of testimony about leakage analysis, right? **Mr. Reed:** Correct.

Mr. McCullough: In your first study, how did you go about looking at a leakage analysis for Tumwater? **Mr. Reed:** In the first study, we basically drew what we also would call a trade area. But in this case, it was the City alone using the jurisdictional boundaries, city limits of the City of Tumwater. And we compared spending of residents within Tumwater and visitors to Tumwater on the freeway stopping and shopping. The spending by residents potentially captured by retail in Tumwater and visitors stopping by and spending, the potential sales that are captured there, to total reported retail sales or taxable retail sales reported by the Washington Department of Revenue for the year 2004 in the draft EIS.

Mr. McCullough: You heard the testimony of Dr. King that in fact the geographic scope of the trade area should have been larger in his estimation. **Mr. Reed:** I heard that, correct.

Mr. McCullough: Did you address that in the report you prepared for the final EIS? **Mr. Reed:** In the final EIS we did it in response to that. And in response to that comment we did increase the trade area to reflect, conservatively still to reflect what likely Tumwater retailers are capturing in the way of sales.

Mr. McCullough: You included areas outside the municipal limits? **Mr. Reed:** We did. We included, the original trade area in the draft EIS was basically the zip code for the City. So largely the jurisdictional boundary as I recall. In the final EIS we went to 2000 census tracts that include the City of Tumwater and development and land largely to the west and slightly south of the City where residents live in incorporated areas and Tumwater is the most likely and most convenient shopping destination for those households.

Mr. McCullough: So that larger area is reflected in your second report? **Mr. Reed:** Correct, and in the final EIS. It is.

Mr. McCullough: What did the data show in terms of the likely increases in growth in retail spending over the next several years? **Mr. Reed:** Roughly double.

Mr. McCullough: In this larger trade area? **Mr. Reed:** Correct.

Mr. McCullough: What was the conclusion you reached in the first and second report as to the sales tax impacts of opening the new Wal-Mart store? **Mr. Reed:** We didn't identify, this basically further strengthened our conclusion or solidified

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in our minds the conclusion that there is even less of a reason to suspect there would be negative impacts in Tumwater due to stronger sales potential shown by the analysis.

Mr. McCullough: Did you hear Dr. King's testimony where he indicated, this is reflected in his comment to the draft EIS, that in a leakage analysis retail sales should be broken down by category? **Mr. Reed:** Honestly, I'm not aware of any specific requirement that that always be done, but it is certainly a methodology that is used. So, it can be used.

Mr. McCullough: Did you use it in the second report? **Mr. Reed:** In the second report we did.

Mr. McCullough: You heard Dr. King's testimony then that in at least two of those categories, general merchandise and grocery sales; Tumwater has a surplus as opposed to a leakage. Maybe you could explain what that is. **Mr. Reed:** The comments that Dr. King made reflect the static analysis that's done of one year of retail spending potential in the trade area and retail sales that are actually recorded by different retailers. The thing that needs to be mentioned here is that Tumwater is not the typical retail market compared to numerous areas in Washington, much less the Puget Sound, in that it's predominantly generally merchandise which you do sell groceries. People in this area shop at general merchandisers largely for their groceries as is evidenced by the Costco and Fred Meyer. The analysis and the criticism that Dr. King used to indicate surplus and leakage assumes that residents in this area basically mimic or reflect national averages with regard to what types of businesses they shop at. Unfortunately, the CE survey done by, I believe, the federal Bureau of Commerce reflects national shopping behavior averages. The Pacific Northwest for a long time, Costco's from here, Fred Meyer from Portland now owned by the Kroger Grocery conglomerate has, for quite a while, predominantly or more so a general merchandise retail broader market, particularly in Tumwater. The criticism that there are retail leakages or surpluses based on anything that remotely resembles national averages is very problematic.

Mr. McCullough: But nevertheless is the case from your data that there is a surplus in the sense that there's not a deficit, right? **Mr. Reed:** Right. I would point out I don't think that any of the retailers would consider the extra money they're making is a surplus. It's a matter of you have successful businesses drawing more business from a broader regional area.

Mr. McCullough: I guess what I'm getting around to is I heard Dr. King's point being that when you have a leakage in a community and you put in a new retail store, then what you're doing is capturing sales that are going elsewhere and keeping them in the community. Is that right? **Mr. Reed:** That's the attempt.

Mr. McCullough: But what we're seeing in Tumwater I take it is correct me, is the opposite? We're capturing sales from other areas, other jurisdictions. **Mr. Reed:** Correct. This is a retail hub destination.

Mr. McCullough: So I heard Dr. King, see how you respond to this, saying that in this circumstance, when you have this surplus when you put a new retailer in, you're just going to be basically taking jobs or taking revenues from existing retailers market and it becomes a zero sum game. **Mr. Reed:** That in my view in dealing with different market areas can only be true at best if an area is economically stagnant and can only necessarily happen if you're dealing with an economic area that is declining. Neither of which is occurring in Tumwater or Thurston County in general.

Mr. McCullough: Again in your second study, what did you find about sales and population growth in the broader market area? **Mr. Reed:** Over time, as basically documented and planned by Thurston County growth management, the area is going to be, the City and environs around within the trade area is over the next five to 10 years, going to be a significant area of growth and plan for that growth as a result. Although ledger comparisons, snapshot comparisons, might not necessarily show incredibly instant strong economic results. Retail takes a little bit of time when it opens up to stabilize over time. Growth over time supports that stabilization. And with all the growth that is anticipated and is being planned for, it is very reasonable to conclude that the surplus or the destination spending should continue.

Mr. McCullough: So what was your conclusion ultimately about the potential for net loss of jobs or sales within the market upon the opening of a proposed Wal-Mart store? **Mr. Reed:** Basically, I concluded there's really no reason to believe that that's going to happen.

Mr. McCullough: You had an opportunity to look at the issue of urban blight or urban decay, is that right? **Mr. Reed:** Correct.

Mr. McCullough: What was your conclusion about that? **Mr. Reed:** No reason to believe that that is a probable outcome of any of the actions of this proposal, basically.

Mr. McCullough: Dr. King's testimony that Mega Foods and Albertsons were at risk or possibly could close. Let's say for example that they did close. Would that by itself in your mind be evidence of urban blight? **Mr. Reed:** It is a long path from the closure of a store to blight based on our experience - looking at this issue.

Mr. McCullough: What happens if theoretically Mega Foods or Albertsons were to close... let me ask - do you expect that that would happen? **Mr. Reed:** It's possible. Honestly, it's ultimately up to how that chain or store intends to respond to the competition. If it closes, it's a highly visible location at one of the busiest intersections in Tumwater, right off the freeway. All major stores that this proposal would be nearby, all shoppers to the stores currently existing have to pass that intersection. It's a highly attractive location for anybody, including a grocery.

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Mr. McCullough: When selecting locations, do retailers like to be near other retailers? **Mr. Reed:** Absolutely. It's called retail gravity.

Mr. McCullough: What do you think the prospects of that scenario for re-tenanting one of the other or both stores? **Mr. Reed:** For both, strong prospects. I will say for the Mega Foods site, it's location, a lot of folks that look at redevelopment or re-tenanting opportunities would give their eyeteeth for that sort of intersection visibility - right in and right out - everything that classically marks a prime retail location. The Albertsons location, if it were to close, it would be more of a challenge because it does not have quite the same visibility. There are plenty of retailers that are shopping the Pacific Northwest who are larger that would still find that location attractive as well.

Mr. McCullough: You heard Dr. King's testimony there are certain retail categories, I think he cited sporting goods and clothing, for which there may be leakage here in the market, maybe under-represented in terms of sales. Did you also hear his testimony that it would be difficult to re-tenant the Albertsons store with other retailers? **Mr. Reed:** I did hear the comment, yes.

Mr. McCullough: Do you agree with that? **Mr. Reed:** I do not agree with that.

Mr. McCullough: Can you talk to us about that? **Mr. Reed:** I will mention specifically there are grocery retailers such as Trader Joe's that move into larger old Safeway stores in some areas. There are sporting good stores, GI Joe's which is now Joe's in the Oregon area. Part of its expansion policy for quite a while I understand has been to move into closed out grocery stores. To my knowledge they have done that to a certain extent when they've moved into Washington. Again, WinCo Foods is expanding in the region. Dick's is a larger sporting goods merchandising company that is looking to expand in the area and would take on that size of store - both of them.

Mr. McCullough: Are there other, we talked about grocery sales; I assume that there are various niches of grocery stores in the market. **Mr. Reed:** Absolutely.

Mr. McCullough: Are all of them represented in the Tumwater market? **Mr. Reed:** They're not all represented to my knowledge.

Mr. McCullough: Tell us about that. **Mr. Reed:** Number one, Wal-Mart is a well-documented retailer that is more so than other general retailers and grocery providers that appeals to and sells to more modest income households. Mega Foods to a certain extent is selling to those folks, but brand appeal and store allegiance, shoppers that prefer to shop at Wal-Mart do have more modest incomes. It's not here; they're traveling to Lacey and elsewhere to shop at those places for groceries. On the higher end, there's no Whole Foods, Trader Joe's, that sort of thing.

Mr. McCullough: I don't have further questions. Actually, let me just ask my

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summary question. I think this is reflected in your studies but **Mr. Reed**, what's your ultimate conclusion about whether the opening of a proposed Wal-Mart store here in Tumwater would lead to significant adverse environmental impacts in terms of urban blight arising from economic competition or closed stores? **Mr. Reed:** I believe the blight or urban decay consequences of this store are a very low probability. There will be significant competition as shoppers in the area get a feel for the store and later on make up their minds if they want to buy those items at Fred Meyer again or continue to shop at Wal-Mart or whatever they do, that blight and urban decay are not remotely in my view a probable outcome.

Mr. McCullough: Thank you. Nothing further.

Mr. Myers: The City has no questions.

Hearing Examiner Kerslake: Cross-examination, Ms. Newman?

Ms. Newman: Hello, Mr. Reed.

Mr. Reed: Hello.

Ms. Newman: You did prepare these studies, is that what you testified, that are in the final, and the draft EIS? **Mr. Reed:** Yes.

Ms. Newman: Did you, you must have agreed that there were some changes that needed to be made in this study in response to the comments, correct? **Mr. Reed:** Yes. We did make revisions in response to comments and they are reflected in the final EIS.

Ms. Newman: You testified earlier that you did include a leakage analysis in the updated study? **Mr. Reed:** Figure 14, I believe in the final EIS. Yes, Figure 14 is basically a comparison of ...

Ms. Newman: Is this in your study? **Mr. Reed:** Yes. It's on; I don't know if my pagination is the same. It's in the technical appendix, my technical appendix for FEIS. Figure 14 is a comparison of likely stable lines, sales, at Wal-Mart for groceries and for general non-grocery merchandise compared to 2005 retail sales in the trade area.

Ms. Newman: I'm sorry. I just clarified, there's only one line item in your 14 and it's titled *Tumwater Business Revenue Impacts from Alternative Store Proposal Operations*, is that right? **Mr. Reed:** I'm sorry...

Ms. Newman: We must have a different... there's a figure 13 titled *Tumwater Business Revenue Impacts from Primary Store Proposal Operations*? **Mr. Reed:** You have a different numbering.

Ms. Newman: What's the title of your figure 14? **Mr. Reed:** The title is

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Tumwater Retail Trade Area with Wal-Mart Supercenter Entry Comparison in the FEIS.

Ms. Newman: Is it in the beginning or ... **Mr. Reed:** It's on my page 20 of the analysis. I apologize for the different pagination change of things.

Ms. Newman: Can you look at the title of your figure... **Mr. Reed:** *Tumwater Retail Trade Area with Wal-Mart Supercenter Entry Comparison*.

Mr. McCullough: Figure 18? **Mr. Reed:** Okay.

Ms. Newman: And so, figure 18 is your leakage analysis? **Mr. Reed:** Yes.

Ms. Newman: Is there anything else in your report that is a leakage analysis, or does that compromise the entire... **Mr. Reed:** The accompanying text that goes with it. I would note, however, that figure 18 as it's numbered there before you is basically the conclusion of figures 17, 16, and 15, demonstrating retail spending of residents in the trade area. Those other tables provide support to the retail spending potential residents in Table 18 for the leakage analysis.

Ms. Newman: Did you hear Dr. King's description of a leakage analysis, what he said needed to be done? **Mr. Reed:** I heard his description, yes.

Ms. Newman: Is it your testimony that this is what Dr. King indicated needed to be done? **Mr. Reed:** This is actually a little bit more than that in that we compare the addition of Wal-Mart Supercenter in that table to spending in 2005 and spending in 2010 to show the market depth of retail spending that would potentially support the store over time. It is not one time period snapshot. It's a comparison over time.

Ms. Newman: Okay, but it is the same type of analysis that was in Dr. King's... **Mr. Reed:** Basically, yes.

Ms. Newman: Okay. **Mr. Reed:** A comparison of retail sales to entry of the store and existing retail sales in the market.

Ms. Newman: Did you do a comparison of... I'm sorry. Actually, during your testimony you stated that you looked at a larger area, you expanded your geographic scope in response to the comments that it was too narrow for the City of Tumwater, correct? **Mr. Reed:** Correct. We did.

Ms. Newman: But you didn't look at the impacts of the Wal-Mart outside of the City, did you? **Mr. Reed:** Could you elaborate on what you mean by outside?

Ms. Newman: Did you look at economic impacts to other businesses outside of the City of Tumwater city limits? **Mr. Reed:** No. We understood the scope was to look at the City itself.

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Ms. Newman: You didn't look at anything about the retail supply outside of the City limits, correct? **Mr. Reed:** Not in detail. We're not aware of any major retail concentrations, at least reported by major data sources in the trade area, to the west and south in the larger prescribed trade area. So we didn't look in detail, no.

Ms. Newman: So you're saying that, how do you define major data sources? **Mr. Reed:** Major or standard, notable, CoStar, different brokerage companies, those sorts of things.

Ms. Newman: You didn't do any analysis of the retail supply that exists outside the City of Tumwater? **Mr. Reed:** Within the standard trade area?

Ms. Newman: Right, within the trade area. **Mr. Reed:** Not within the trade area.

Ms. Newman: Did you do any analysis of the retail demand outside of the Tumwater city limits, not that people were shopping in Tumwater, but people that shop outside of Tumwater, within the trade area? **Mr. Reed:** Well, the numbers in figure 15 and figure 18 do include the annual spending of households that reside in that larger trade area, yes. Wherever they shop, but they are included as potential spending captured in Tumwater.

Ms. Newman: You didn't do any analysis of the retail demand by category within the trade area? **Mr. Reed:** Yes, figure 18 includes that. It is by detailed category.

Ms. Newman: You indicated that there's been strong growth since 2003 then there was a reduction in sales in Tumwater, which you describe as a hiccup, correct? **Mr. Reed:** There wasn't a huge decrease so a hiccup basically means a small decrease.

Ms. Newman: That's the last data that we have, correct? **Mr. Reed:** Reported by Department of Revenue, correct for a full calendar year.

Ms. Newman: So there is a potential that it's continuing to decrease? **Mr. Reed:** In the calendar year 2007, sure the potential is there. There are quarterly reports. We hesitate to draw conclusions on any of the data until we see a Christmas holiday season.

Ms. Newman: You stated that it was because there's a new development in Lacey that has attracted customers might be the cause of that hiccup, is that right? **Mr. Reed:** Both communities, both areas, both cities, have seen population growth and Lacey has seen significant retail growth in the last couple of years. So there are more people, more potential spending in the area. We can't prove it. We'd have to survey a sample in the trade area to find out exactly where they're shopping. The most credible conclusion is they're shopping more so up in Lacey.

Ms. Newman: So that would make it clear that some of the retail supply outside of

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Tumwater is relevant to an analysis of growth of retail in the area. **Mr. Reed:** It's relevant in that it demonstrates that people have to drive out of their community to shop somewhere. Retail is built on convenience and visibility. Development is. So if a community allows certain types of retail development that allows residents and people in the trade area to shop more conveniently in the City, then they're going to. It's relevant in the sense that people are driving a little ways to shop.

Ms. Newman: So the retail supply outside of Tumwater is relevant to the sales, whether there will be a reduction in sales potentially next year, correct? If you are going to analyze the impact of sales in the area, the retail supply outside of the City limits would be relevant to that analysis, correct? **Mr. Reed:** Only in, well it would be relevant only in how retail development within the, at least for this study, how retail development allowed and built in Tumwater allows residents to shop more locally. That's the only reason it would be relevant, at least the way this study was built.

Ms. Newman: When was the Home Depot built? **Mr. Reed:** I don't know the precise year.

Ms. Newman: Do you know approximately? **Mr. Reed:** I guess it's been within the last four years.

Ms. Newman: Do you know when the Costco was built? **Mr. Reed:** My understanding, the Costco was built in the 1990s, late 1990s is what I recall.

Ms. Newman: In the first study you drew a trade area that was defined as the City of Tumwater and then you decided to change that in the second study. Why did you decide to change? Why was the first trade area not a proper way to do the analysis? **Mr. Reed:** It was an overly conservative analysis in that retail sales in Tumwater are indeed being supported by residents of areas in the outlying areas of the City. And so to conclude that retail sales to residents within the City of Tumwater only was not the best way to look at. So we did expand that analysis to include the broader trade area.

Ms. Newman: But that analysis was just retail sales in the broader trade area, correct? **Mr. Reed:** In that earlier version...

Ms. Newman: No, in the second version. **Mr. Reed:** The second version the retail sales are for the jurisdiction of Tumwater reported by the Department of Revenue.

Ms. Newman: So I need to understand you testified that the... actually strike that. All right. I have no further questions.

Hearing Examiner Kerslake: Redirect, Mr. McCullough?

Mr. McCullough: I just have two questions quickly Mr. Reed. It occurs to me

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Mr. Examiner we've been talking a lot about these without the Examiner having the benefit of the draft and final EIS. You have it? Okay. Good.

Hearing Examiner Kerslake: I'm following along. You would have heard from me if I didn't.

Mr. McCullough: They want to have a discussion before the end of the day of what is in front of you now so that we're... so, back to where I was. Mr. Reed, you talked about figure 13 and the question you asked by Ms. Newman was, is this what constituted your leakage analysis.

Ms. Newman: Figure 18.

Mr. McCullough: Certainly. Thank you. Is that right? **Mr. Reed:** Yes.

Mr. McCullough: You testified this is the text and there were a couple of other tables and figures that supported it. **Mr. Reed:** Correct.

Mr. McCullough: Is there also more to it in that did you have to go through a process of identifying the trade area? **Mr. Reed:** Yes, for defining the broader trade area, yes.

Mr. McCullough: So that was a separate, professional judgment call you had to make? **Mr. Reed:** Correct. If you look outside the City to the west where households residing where Tumwater is the most convenient to shop and if there are households to the east, how far out are households more convenient to Tumwater than to Lacey.

Mr. McCullough: The last point you made also reflects the fact that you have to make a professional judgment call about what is called the capture rate? **Mr. Reed:** Correct.

Mr. McCullough: Is it fair to say there's more in your professional judgment that goes into the production of those tables than just the tables themselves? **Mr. Reed:** Sure. Largely from experience looking at the issue of how much retail a private project can capture and the same thing for public jurisdictions that are looking for redevelopment capture. It's not a science.

Mr. McCullough: A final question. You talked about looking at retail supply in the trade area outside of Tumwater? **Mr. Reed:** Yes.

Mr. McCullough: Exhibit-R11 will be shown to you.

Ms. Newman: Hold up, let me catch up.

Mr. McCullough: We can wait for a second here. **Mr. Reed:** Yes, R-11.

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Mr. McCullough: Can you tell us what R-11 is? **Mr. Reed:** R-11 is a map of the trade area that was drawn in the revised or final EIS with a comparison of the trade area shaded lightly and slightly darker shading for the jurisdiction of Tumwater for comparison purposes.

Mr. McCullough: Your testimony was that you did not assume or conduct an analysis of retail demand, rather supply, in the trade outside of the City? **Mr. Reed:** Correct.

Mr. McCullough: Is that because you thought that there was potential supply and you just decided to overlook it, or because you had other knowledge about whether there was supply or not? **Mr. Reed:** Our knowledge of the area is there's nothing that is not already competing with retail in Tumwater so there's not necessarily a new impact to them for any new retail development to occur, and there is nothing sizeable that we know of in detail, sizeable retail that's really worth significant consideration.

Mr. McCullough: In your knowledge of the area, had there been something sizeable out there in terms of retail supply, would you have looked at it? **Mr. Reed:** Absolutely.

Mr. McCullough: I've nothing further.

Hearing Examiner Kerslake: Thank you.

Ms. Newman: Rebuttal.

Mr. McCullough: Rebuttal, and then one other witness.

Ms. Newman: What other witness?

Mr. McCullough: Yours, on another day.

Ms. Newman: On another day, yes.

Hearing Examiner Kerslake: Thank you Mr. Reed.

Ms. Newman: Could we break for one minute?

RECESS: Examiner Kerslake recessed the meeting from 3:37 p.m. to 3:38 p.m.

Dr. Phil King returned to the witness stand.

Hearing Examiner Kerslake: Dr. King, you want to take the witness stand? I remind you that you remain under oath.

Ms. Newman: Good afternoon Dr. King. Thank you for sitting up there again.

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My first question is, were you present for the testimony of Mr. Reed? **Dr. King:** Yes.

Ms. Newman: He testified that figure 18 in the final EIS is a leakage analysis. Do you agree with that conclusion? **Dr. King:** No.

Ms. Newman: And why not? **Dr. King:** As I explained earlier a leakage analysis has to look at both supply and demand. You can see very clearly basically they look at City sales, add on Wal-Mart sales, but they don't include other retail sales. I heard him say they weren't significant at all but to me that would be all the more reason to include it. That data is readily available from Claritas and other commercial forces.

Ms. Newman: When you say they look at City sales, what does that mean? **Dr. King:** I assume that's City of Tumwater.

Ms. Newman: And so the number of City sales in automotive parts for example was \$12 million... **Dr. King:** \$12.4 million.

Ms. Newman: And then they look at the Wal-Mart retail sales... **Dr. King:** Right.

Ms. Newman: And then they look at the trade area spending. I want to take you through... I did not really understand your answer clearly. So I want to understand exactly why this is not a leakage analysis. So if you look at the table and explain exactly what you're saying again. **Dr. King:** Essentially they're comparing apples to oranges. They're looking at Tumwater sales versus trade area spending. So the demand is generated by the entire area, I assume it's this trade area that you spoke about, but the supply is only created by the City of Tumwater.

Ms. Newman: So what's missing from this? **Dr. King:** All of the retail from the rest of the trade area.

Ms. Newman: So they're missing that whole supply side. Tell me a little bit about your thoughts about how the trade area was defined. **Dr. King:** Frankly it looks like they chose the trade area to sort of maximize their case. They excluded Olympia. I'm not an expert. I don't live in Tumwater. I'm not an expert, but it's pretty clear to me just from spending a few days that Olympia should be part of the trade area. At least part of Olympia should be part of the trade area.

Ms. Newman: Why do you say that? **Dr. King:** Because I'm sure people in Olympia shop in Tumwater, particularly in the general merchandise category, which we all agree is a big draw for Tumwater.

Ms. Newman: Why do you think they left Olympia out? **Dr. King:** Well, then they might have to include the retail in Olympia, which I assume, would be substantial.

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Ms. Newman: You say you're not an expert in this area but you think people from Olympia shop in Tumwater. What makes you think that people from Olympia shop in Tumwater? **Dr. King:** First of all if you look at a typical trade area it tends to look much like a circle. This one you can see that basically the Wal-Mart in the upper northeast corner but you're assuming nobody is going to be shopping in the Wal-Mart in Tumwater from Olympia or from very many other places. There are other draws I know in Lacey, but still you should at least look at halfway between Tumwater and Lacey. You should look at Olympia, which is closer. Most of Olympia is closer to Tumwater than it is to Lacey. Maybe all of Olympia is closer. They should have done that. You can't just gerrymander your trade area to prove your point. You have to have some fundamental economic principle. Again, the economic principle is not difficult. It's where do people shop? Where do people that shop in Tumwater come from? If they come from Olympia, and I'm sure they do, you need to include Olympia. If they come from other areas east of Tumwater, which are not in this trade area from what I see, you need to include that. And you need to include the retail, which is in the trade area. You can't just say, well it's not significant. If it's not significant why not include it. Frankly, I don't think that's an adequate answer. I know that data is available for people who have the resources to subscribe to services like Claritas.

Ms. Newman: So, when you were testifying earlier you said that they should have considered analyzing a larger area and that the report had not done that. When you were defining what they should have done you said they should have looked at total retail supply and compared it with the total retail demand by category in the entire trade area. **Dr. King:** Yes.

Ms. Newman: During **Mr. Reed's** testimony he stated that they had included an analysis, an expanded geographic scope in the final EIS and did analyze the larger area and included it in the new report. Did they analyze the total retail supply compared to the total retail demand by category? **Dr. King:** No.

Ms. Newman: And what was missing? **Dr. King:** Supply outside of Tumwater.

Ms. Newman: Mr. Reed testified that your testimony assumed that residents reflect the national average regarding the type of shopping behavior, but that wasn't appropriate here because Tumwater is predominantly a general merchandising market and you can't base it on the national average. What's your response to that? **Dr. King:** I did actually look at the data for the State of Washington. It's very similar to the national data in terms of the percentage of general merchandise as opposed to nationals, which is around 13% to 14%. In their demand analysis that they did in the earlier report, they also had a general demand of about 13% to 14%. If you look at the State of Washington, it's still going to be about the same according to the State of Washington's data. I downloaded it from the web. This is the *Washington Gross Income Study*. Also, remember that they're talking about 44% or 50%, depending on which study you read. That's a lot more than 13% or 14%. Even if it was slightly higher in the State of Washington, it's not going to be

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three times as much. The data that I've seen indicates actually that Washington is not that different. Yes, you have Costco here but remember Wal-Marts are all over the country. Targets are from Minneapolis St. Paul, you have K-Marts all over the country. You have different general merchandise retailers in different parts of the country. I've never heard a study that said the Northwest has significant different habits in terms of buying general merchandise or other retail.

Ms. Newman: Mr. Reed testified that Trader Joe's and certain niche groceries are not represented in Tumwater and implied that they would move into the Albertsons or Mega Foods stores if they closed down. What's your response to that? **Dr. King:** A typical Trader Joe's is around 14,000 square feet. The Albertsons is 55,000 square feet. A Trader Joe's might be able to take a fourth of the Albertsons store but it certainly is not going to take all 55,000 square feet. Even Whole Foods would typically not be as large either if it could be sustained. Again, if you have grocery sales by a Trader Joe's or Whole Foods or any other store, that's going to take away from somebody else. People are not going to spend more on food just because you put in another grocery store. It really is a zero sum gain. If you add another grocery store here, it's going to take sales from somewhere else. Tumwater already has an oversupply of grocery stores. Let me rephrase that. Tumwater already has a surplus of grocery stores and already draws in people from outside probably from other areas, wider trade area, to buy groceries.

Ms. Newman: Mr. Reed also testified that there were a number of stores that might move in. For example, he suggested a GI Joe's might move in. Is that a formula retail store? Is that a national chain? GI Joe's? **Dr. King:** I haven't heard of it.

Ms. Newman: And a Grocery Outlet, is that a formula retail? **Dr. King:** A Grocery Outlet is a small grocery store typically 20,000 square feet.

Ms. Newman: Are you familiar with WinCo Foods? **Dr. King:** A typical WinCo is actually 90,000 square feet. First of all, if you had a WinCo in Tumwater, that would create other issues because they actually outsell Wal-Mart in terms of grocery sales. A WinCo would not fit in a 55,000 square foot or in a 30,000 square foot footprint.

Ms. Newman: Is that a formula retail? **Dr. King:** I'm not sure what you mean by formula.

Ms. Newman: Is it a chain? **Dr. King:** Yes, it's a chain. They tend to be. WinCo's are very large big box grocery stores.

Ms. Newman: Is a Grocery Outlet a chain? **Dr. King:** Yes, as far as I know.

Ms. Newman: And are there any chain stores, formula retail type stores that typically follow a Wal-Mart so you end up with, do you know what I mean by that? Grow up near Wal-Marts? **Dr. King:** Not really.

Ms. Newman: I think I have no further questions.

Hearing Examiner Kerslake: Cross-examinations Mr. McCullough?

Mr. McCullough: Just to make clear, did you yourself conduct any leakage analysis that would address the alleged deficiencies that you raised in your testimony? **Dr. King:** I conducted the analysis that we discussed earlier.

Mr. McCullough: The analysis we discussed earlier, I think your testimony was clear, was limited to both supply and demand to the municipal boundaries of Tumwater? **Dr. King:** Yes.

Mr. McCullough: And you have stated here, correct me if I'm wrong, in the last few minutes that it was deficient to look at that, you really need to look at supply and demand outside of the area? **Dr. King:** Yes.

Mr. McCullough: Did you conduct such a leakage analysis that addressed the so-called deficiencies you identified? **Dr. King:** No. I didn't think that was my job, to be honest.

Mr. McCullough: I have no further questions.

Hearing Examiner Kerslake: Mr. Myers, any cross?

Mr. Myers: No questions.

Ms. Newman: I have one redirect.

Hearing Examiner Kerslake: Very good.

Ms. Newman: Would you say that it's not possible to adequately understand or know the true environmental adverse economic impacts of the Wal-Mart without conducting that study that Wal-Mart's counsel referred to? **Dr. King:** You need to define a trade area that's a proper trade area for the, in this case the Wal-Mart Supercenter, and you need to do a proper leakage analysis which would include both retail supply and consumer demand. You can't just do, compare apples to oranges and say, well here's the retail supply in Tumwater. But we're going to expand the demand so it looks like everything's great. It's not the way you do it. In fact, I think it's kind of disingenuous to be honest.

Ms. Newman: I have no further questions.

Hearing Examiner Kerslake: Do we have any other witnesses out of turn by any of the parties?

Ms. Newman and Mr. McCullough both talking: ... didn't think we'd finish today.

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Ms. Newman: I do think we're going to be able to get through all this. I don't think it's too problematic if we end early.

Hearing Examiner Kerslake: I'm going to ask counsel to stay for a few minutes if we're done with evidence so we can sort of figure out the exhibit situation and maybe talk about when we're going to argue the continuance issue, or the need for additional days.

RECESS: **Examiner Kerslake recessed the hearing at 3:52 p.m. The hearing will reconvene at 9:00 a.m. on October 23, 2007.**

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services