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November 23, 2009

City Council, City of Tukwila  
6200 Southcenter Blvd.  
Tukwila, WA 98188

RE: City of Tukwila Draft Shoreline Master Plan

Dear Mayor, City Council Members:

Thank you for your work on the draft Shoreline Master Program. I am writing on behalf of Baker Commodities to request public comment on the draft SMP, and to offer preliminary comments.

First, we would like time to review the revised SMP and draft ordinances, first made available to the general public today (November 23, 2009) and up for discussion at tonight's Council of the Whole meeting. The voluminous documents include numerous changes to the draft SMP that have, until today, not been assembled in one place for review.

Second, given the number of changes since the last opportunity for public comment, we would very much appreciate the opportunity to carefully review all of the changes and provide the Council with comment, rather than having a draft plan pushed through to finality without a final opportunity to participate.

Third, there are a number of potential issues that remain important to Baker Commodities. These include the following:

1. Overall impact of proposed buffer width of 100' in the non-levee area;
2. Expanded definition of Shoreline jurisdiction to include floodways. Although there is an exemption, it seems to apply to levee areas only.
3. Vegetation requirements for any development/redevelopment, including new inclusion of native species, movement of root balls, and so forth.

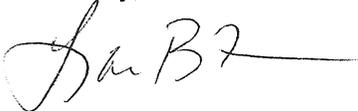
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4. Public access. The proposed requirements are an improvement over the original proposal from the Planning Commission, but if redevelopment of the Baker Commodities property is ever required, the burden remains shifted to Baker Commodities to prove a health & safety concern, despite Baker Commodities having reached a settlement agreement that states that no public access will be required for this property for any reason.
5. Protection of issues litigated in 1990s. As we have commented before, Baker Commodities litigated a number of issues in the 1990s, and provisions added to the Tukwila Municipal Code under § 18.66.120. We would like adequate time to review the implications of the ordinances to ensure these agreements have been adequately addressed.
6. Nonconforming development: Again, a number of issues associated with this kind of issue was litigated in the 1990s. Additional time to review and comment on these sections is critical to ensure that the agreements reached in the 1990s are adequately addressed.

We appreciate the work you as a council have invested in this process, but again, request time to review the voluminous documents and offer formal review and feedback on how these critical regulations affect the Baker Commodities property.

Sincerely,

A handwritten signature in black ink, appearing to read "Lara B. Fowler", with a long horizontal flourish extending to the right.

Lara B. Fowler

LF:lf

**Carol Lumb - feedback**

**From:** "Fowler, Lara"  
**To:** "Carol Lumb"  
**Date:** 12/07/2009 4:42 PM  
**Subject:** feedback  
**CC:** "Nora Gierloff" , "Dick Hinthorne"

Carol:

Thanks for your phone call on Friday afternoon. In reviewing the draft ordinances, revisions, and Ms. Gierloff's email from last week re: floodways, I wanted to follow up with a few thoughts for the draft SMP and accompanying ordinances.

Ordinance language:

On page 154 of tonight's Council packet, for the Ordinance modifying 18.44, Section E addresses non-conforming development. 1(a) references TMC 18.166.120, which is the section of code agreed to by the settlement with Baker Commodities in the 1990s. Thanks for including this reference.

In reviewing the settlement language, it refers not only to uses, but also structures. I would request that a reference similar to 1(a) be added in 2(a). I will bring a copy of the settlement agreement tonight.

Floodway vs. floodplains:

In her email, Ms. Gierloff noted that the blue areas are actually floodplains, not floodways. I have the map with me and it might be helpful to look at it this evening if we have a few minutes.

Regardless, the exemption the council is considering for levee areas could be clarified to include non-levee areas (i.e., those at least formerly protected by Howard Hanson dam). The exemption currently reads "For the purpose of determining shoreline jurisdiction the floodway shall not include those lands that have historically been protected by flood control devices and therefore have not been subject to flooding with reasonable regularity."

Because "flood control devices" does not seem to be defined anywhere, perhaps the definition could be modified to state "historically been protected by flood control devices such as levees or dams and therefore have not been subject to flooding with reasonable regularity."

I will aim to be there a little early and perhaps we can connect before the meeting starts, as I know that you are meeting with the mayor now. I'm also reachable on my cell phone (206-595-9727) any time up until the time of the meeting,

Thanks,

**Lara B. Fowler**  
 Attorney at Law

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## Carol Lumb - Comments from Baker Commodities

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**From:** "Fowler, Lara"  
**To:** , , , , , , , , ,  
**Date:** 12/14/2009 3:53 PM  
**Subject:** Comments from Baker Commodities  
**CC:** "Carol Lumb" , "Nora Gierloff" , "Dick Hinthorne"  
**Attachments:** "Carol Lumb" , "Nora Gierloff" , "Dick Hinthorne"

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Dear Members of the Tukwila City Council:

Thank you for your time and effort on the Shoreline Master Program. I am writing on behalf of Baker Commodities to request some modifications to the ordinances and supporting documentation under consideration tonight. As noted in previous comments, Baker Commodities remains concerned about the overall increase in buffer from 40' to 100', even with the potential for reduction with resloping. The proposed buffer changes impact at least 20% of the Baker Commodities property, and potentially more depending on how the shoreline jurisdiction is defined.

We also offer specific comments for your consideration.

### 1) Definition of Shoreline Jurisdiction

First, in the draft Shoreline Master Program, there is a definition of Shoreline Jurisdiction that includes "the channel of the Green/Duwamish River, its banks, the upland area, which extends from the ordinary high water mark landward for 200 feet on each side of the river, floodways and all associated wetlands within its floodplain. For the purpose of determining shoreline jurisdiction the floodway shall not include those lands that have historically been protected by flood control devices and therefore have not been subject to flooding with reasonable regularity."

We would propose language to clarify the exemption for floodways as there is no definition of a "flood control device":

For the purpose of determining shoreline jurisdiction the flood way shall not include those lands that have historically been protected by flood control devices **such as levees and dams** and therefore have not been subject to flooding with reasonable regularity."

### 2) Potential Amendments

Representatives of the Desimone Family have compiled proposed changes addressing three areas and offering language changes. These relate to A) the requirements and options in a non-levee area for resloping the bank and improving the buffer area; B) proposed amendments to 18.44.130 about changes to existing structures; and C) requirements for a change in non-conforming use that allow for more discretion. We have reviewed these proposed changes (see attached) and support them, as long as the existing reference to TMC 18.66.120 remains in place in TMC 18.44.130(E)(2)(a).

We appreciate your consideration of these proposed changes in tonight's discussion and will be happy to answer questions.

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