LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA, PETERSON & DAHEIM LLP

SEATTLE OFFICE
ONE UNION SQUARE
600 UNIVERSITY, SUITE 2100
SEATTLE, WASHINGTON 98101-4185
(206) 676-7500
FACSIMILE (206) 676-7575
REPLY TO SEATTLE OFFICE

TACOMA OFFICE
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 620-6500
FACSIMILE (253) 620-6565

Lara B. Fowler
Direct: (206) 676-7586
E-mail: lfowler@gth-law.com

October 16, 2008

Tukwila Planning Commission
c/o Department of Community Development
6300 Southcenter Blvd., #100
Tukwila, WA 98188

RE: Supplemental Comments to Shoreline Master Program Update

Dear Commissioners:

Thank you for extending the comment period for the proposed update to the Shoreline Master Program. I am writing to supplement and elaborate on my October 9, 2008 written comments and oral testimony on behalf of Baker Commodities, Inc.

First, I would like to reiterate Baker's concerns that the draft SMP would negatively impact the settlement it reached with the City in 1996.

Second, I have attached a map provided by Carol Lumb that indicates where the proposed buffer widths would affect buildings on Baker's property (see attached). Baker would have three buildings rendered non-conforming by adoption of the proposed SMP of either 100' or 125' in this location. Along with other business owners in the City, Baker is concerned about its ability to modify or rebuild those buildings if so needed. This concern is heightened because Baker has had to rebuild a building on its property a couple of years ago after a fire. Finally, imposition of these requirements and development standards directly violates the settlement agreement Baker reached with the City in 1996 (*see* attachment to 10/9/08 comment letter).

Third is the issue of public access. Baker recognizes that Section 11.6 of the draft SMP provides exemptions from the provision of on-site access. As I mentioned in my public testimony on October 9, 2008, however, this section shifts the burden to Baker as the applicant to prove that the exemptions can be met. Imposition of any required public access directly violates the settlement agreement Baker reached with the City in 1996; I attached a copy of this to my previous comment letter. Any public access requirement, or alternative access provisions, are

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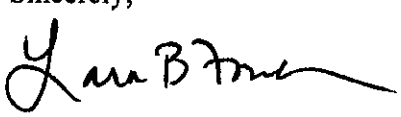
particularly troubling for Baker because there is no public road accessing the site; the only access is provided by a private road with an easement from the BNSF Railroad to cross the railroad tracks. Any public access to this area would violate the easement.

In addition to Baker's concern about having to prove the exemption requirements, Baker is also troubled by the fact that if the exemptions are actually met, section 11.6.C. imposes burdensome and not altogether clear alternative requirements. These requirements include providing public access at an adjacent street end; protecting easements or setbacks elsewhere; contributing materials or labor towards other projects; and payment into the City's Shoreline Public Access fund. These are potentially expensive and undefined alternatives, particularly when Baker has a legal agreement with the City that no public access whatsoever is required. In addition, the requirements are unclear as to whether all of the listed activities are required, or if they are presented as alternatives. I do not know if other entities have a settlement similar to Baker's about public access, but perhaps providing a complete exemption for such legal agreements might be an avenue for addressing Baker's concern about public access and the burden of proving any exemptions from section 11.0.

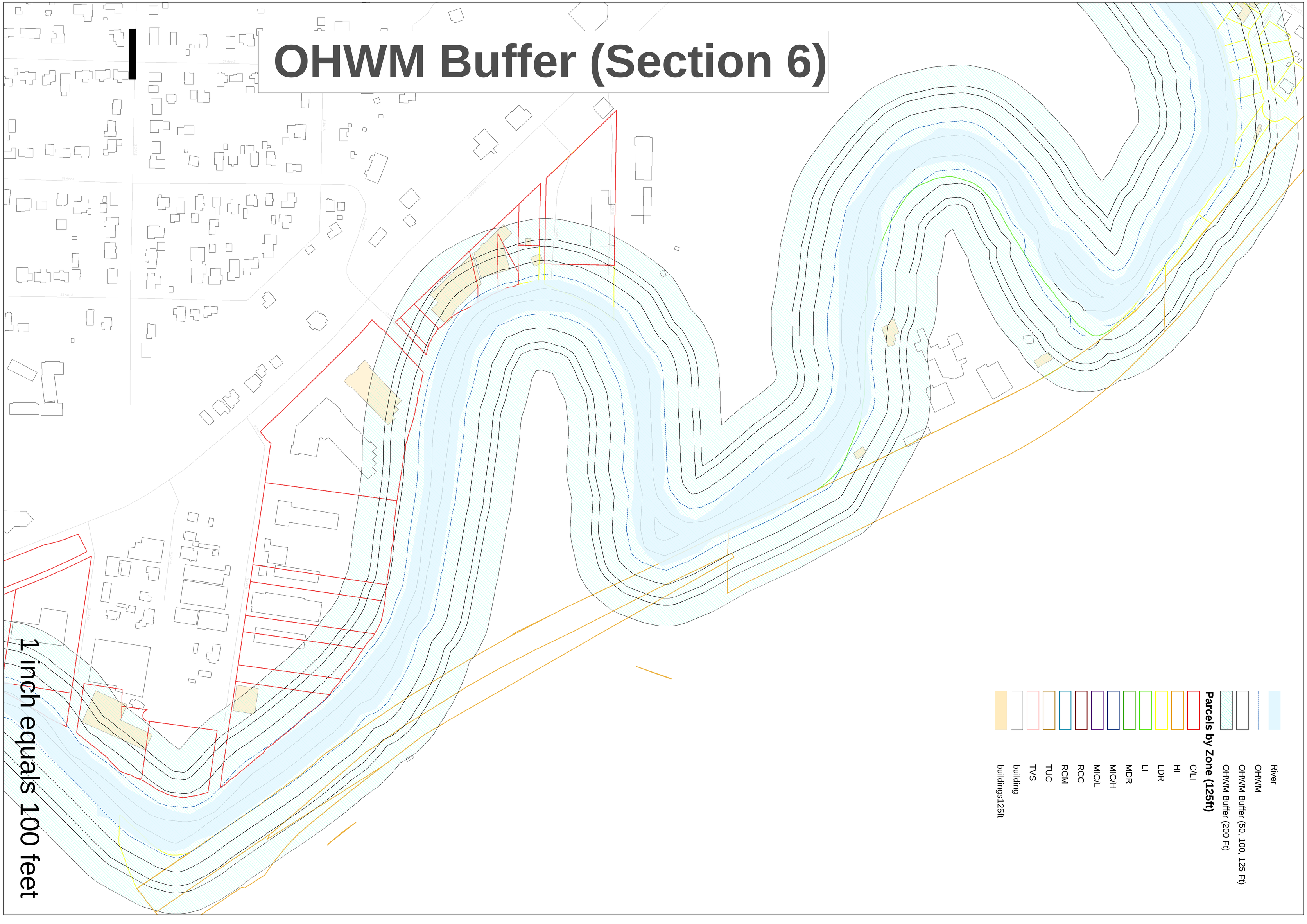
Given Baker's general concerns about the SMP as a whole, and the specific concerns raised by the potential impact to the legal settlement with Baker, we are working with Carol Lumb and the City attorney to review our questions. We look forward to the discussion, and appreciate your effort and attention to developing a draft SMP that works to both protect the environment and existing businesses within the community.

Sincerely,



Lara B. Fowler

LF:lf

cc: Mitch Ebright, Vice President, General Counsel, Baker Commodities, Inc.
Dick Hinthorne, General Manager, Baker Commodities, Inc.
Jack Pace, Director, Department of Community Development
Carol Lumb, Senior Planner, Department of Community Development

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