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June 14, 2006

Via U.S. Mail and E-mail: matthewk@co.island.wa.us

Island County Dept. of Planning & Community Development
Attn: Matt Kukuk
PO Box 5000
Coupeville, WA 98239

Re: 184/06 SHE for NBBBI Maintaining the Existing Rock Launch System

Dear Mr. Kukuk:

We submit the following comments on behalf of Friends of Holmes Harbor (FOHH), and in response to the Public Notice of May 31, 2006 for NBBBI's request to maintain its existing rock launch system, File Number 184/06 SHE. We request that these comments be made part of the Public Record.

This document also serves as written request for notice of hearings, a copy of the environmental checklist for the proposal, a copy of the final threshold determination, and a copy of the decision on File Number 184/06.

Friends of Holmes Harbor believes that an Environmental Impact Statement (EIS), limited in scope as addressed below, is required for 184/06 SHE.

In general:

- A. 184/06 SHE itemizes importing approximately 1,600 cu. yd. of 4-6 inch quarry rock on the southern end of the ramp to maintain a consistent grade where settling has occurred. That amount is 160 large dump truck loads of material. Based on a to-scale topographic drawing of the NBBBI property (Hydrogeologic Study Plan Revision No. 1 prepared by Parametrix dated August 18, 2005) the ramp is currently 38 feet wide on northern edge of Shoreview Drive. Importing 1,600 cu yd of material is equivalent to adding a layer of rock that is 38 feet wide, 3.25 feet thick, and stretches 350 feet into Holmes Harbor. This amount of material seems excessive for "maintenance" and will likely result in enlarging the ramp rather than merely maintaining what currently exists.
 1. Sealed engineering drawings detailing existing conditions, the exact location and depth of the material to be placed, to finished elevations, and specifications for the gradations of the fill material and placement and compaction methods must be submitted to justify permitting this amount of material being imported. Furthermore, the engineered drawings should

specify whether 4" to 6" material is the final top course or whether NBBBI intends to apply smaller material to the surface.

2. The east, west, north and south boundary of the "southern end" of the ramp, in addition to elevations, should be defined by survey to determine if the current footprint coincides with the existing permitted footprint. This survey needs to be performed by an independent surveyor who does not have a conflict of interest by an existing business relationship with the principals of NBBBI. The survey expense needs to be the burden of NBBBI. The survey is necessary so any additional near-shore habitat is not destroyed, damaged, or compromised, and to verify that the ramp is within the existing permitted footprint.
 3. The permit, when issued, should be a one-time permit and specific to this maintenance occurrence. Any permit, when issued, should not result in future maintenance of the ramp if all material to be imported is not used at this time.
- B. The word "settling" is not well defined. Settling can occur both vertically and horizontally. The existing ramp may or may not be within its original permitted boundary. Anecdotally, it has been observed that each time NBBBI has maintained the ramp it has become larger in all dimensions.
1. If settling or past maintenance has resulted in the ramp being widened beyond the past permitted boundary, the ramp should be brought into compliance as a condition of this permit in order to restore and to protect near-shore habitat.
 2. A survey of the NBBBI property boundary should be required to ensure that the NBBBI ramp is not encroaching on neighboring property.
- C. Water quality in Holmes Harbor has been downgraded due to high fecal coliform levels and the past and present operations of NBBBI need to be assessed. Presently, a literature review is being conducted by Washington State Department of Health (DOH) Environmental Health Assessment Department to determine whether the past and present operations of NBBBI should result in a risk assessment study, which would include sampling. FOHH understands that the preliminary report should be released in the near future.

As a result of the DOH downgrade of the tidelands in the southernmost portion of Holmes Harbor, a Shellfish Protection District is mandated by law. NBBBI is within the boundary of the Shellfish Protection District area and therefore subject to the requirements imposed by such a District. NBBBI has historically discharged stormwater commingled with contaminated process water to the infiltration basin constructed in the wetland. The wetland is hydrogeologically connected to Holmes Harbor. Infiltration basin overflows have been reported to Ecology; however, NBBBI did not always conduct the required testing of overflows. Therefore,

1. Disturbing the existing material in the ramp will cause turbidity and potentially dislodge contaminated particulate matter trapped within the ramp material.

The effect of disturbing existing material must be quantified, evaluated, tracked and mitigated.

2. Adding new material to the ramp will increase turbidity for an extended period of time as fines and other foreign material are washed by tidal action. The effect of adding new material must be quantified, evaluated, tracked and mitigated.
3. Dredging 150 cu. yd. of material at the north end of the ramp will cause turbidity and potentially release contaminants. This will likely worsen the fecal coliform problem because coliform settles into the mud and is redistributed in the water when disturbed. Any further spike in contaminants will only exacerbate an already bad situation. The effect of dredging must be quantified, evaluated, tracked and mitigated.

184/06 SHE will likely result in significant adverse environmental impacts. ICPCD should be applying the standard that an impact may be significant if its impact would be severe, even if its likelihood is not great, as stated in WAC 197-11-794. Even one significant impact is sufficient to require an EIS for an element of the environment as defined in WAC 197-11-444.

FOHH believes the scope of an EIS for 184/06 SHE should include the following, under WAC 197-11-444 Elements of the Environment:

1) Natural Environment

a) Earth

i) Geology

(1) No comment

ii) Soils

(1) The EIS should include how NBBBI plans to characterize and mitigate contaminated ramp soils during their proposed maintenance and how it will avoid similar problems from future operations.

(2) The effect of the project to Shoreview Drive should be analyzed and any adverse conditions mitigated. This includes the effect of heavy truck traffic, earth-moving equipment, and like events.

iii) Topography

(1) The EIS should evaluate the proposed finished elevations of the material to be added to the ramp to evaluate how the shoreline topography will be altered.

iv) Unique physical features

(1) No comment

v) Erosion/enlargement of land area (accretion)

(1) Maintaining the ramp will change the flow of tidal waters in Holmes Harbor. Adverse results of 184/06 to neighboring properties should be identified and mitigated.

b) Air

i) Air Quality

(1) The EIS should evaluate how short-term impacts from dust and

- particulate matter from placing the fill will be controlled and mitigated.
- ii) Odor
No comment
 - iii) Climate
(1) No comment
- c) Water
- i) Surface water movement/quantity/quality
Before placing any material into Holmes Harbor, the project proponent should be required to apply for and obtain coverage under a Clean Water Act section 404 permit from the Army Corps of Engineers, including, as appropriate, a CWA section 401 certification from the Washington State Department of Ecology and/or an HPA permit from the Washington Department of Fish and Wildlife.
 - ii) Runoff/absorption
(1) No comment
 - iii) Floods
(1) Several instances of the waters of Holmes Harbor crossing Shoreview Drive and entering the ship building facility have occurred in the past. With this maintenance, NBBBI will be further altering the flow of water in Holmes Harbor. NBBBI has not identified any mitigation in the likely event of a flood caused by a rain event, extreme high tide or a combination of both. Flooding of the NBBBI facility is documented in the **attached photos** and the flood effect of the maintained ramp should be analyzed for possible mitigation.
 - iv) Ground water movement quantity/quality
(1) No comment
 - v) Public water supplies
(1) No comment
- d) Plants and animals
- i) Habitat for and numbers or diversity of species of plants, fish, or other wildlife
(1) The NBBBI proposed ramp maintenance needs to be fully engineered. Impacts of 184/06 must fully define the mitigation required to avoid the potential severe environmental impact of 184/06 on near-shore habitat, plants and animals.
 - ii) Unique species
(1) Impacts on Dungeness crab, geoduck clams, hardshell clams, and other shellfish habitat.
(2) Impacts on herring and smelt spawning areas.
(3) Impacts on existing eelgrass beds.
(4) Impacts on coho, chinook and steelhead runs that use the area, including chinook and chum released from the Tulalip hatchery.
(5) Impacts on juvenile salmon habitat.
(6) Impacts on Orca whales, grey whales, eagles.
(7) Impacts of debris accumulating during frequent earth movement events.
(8) Impacts of disturbing the existing boat ramp to shellfish.

Monitoring alone is not a complete mitigation of these 8 potential impacts. The impacts must be identified and assessed. Potential mitigation

(including but certainly not limited to monitoring) must be identified and assessed.

iii) Fish or wildlife migration routes

(1) NBBBI may impact the migration routes of fish through disruption due to increased turbidity, increased submerged ramp height, or disturbance of the natural flow of water at the southern end of Holmes Harbor.

Mitigation of impact to fish or wildlife migration routes must be evaluated.

e) Energy and natural resources

i) Amount required/rate of use/efficiency

(1) No comment

ii) Source/availability

(1) No comment

iii) Nonrenewable resources

(1) Holmes Harbor is itself a nonrenewable resource. The EIS should consider the impact of an extreme environmental disaster at NBBBI during the maintenance. For example, oil spill or leakage from heavy equipment such as the oil spill that occurred on May 26, 2006 during the retrieval of a barge. This spill was not reported by NBBBI or Kreig Construction to DOE but was subsequently reported by the community.

DOE required clean up efforts, which were performed on June 8, 2006 nearly two weeks after the occurrence (**see attached photo & letter**).

The spill created an oil sheen on the surface waters of Holmes Harbor, further comprising the water quality. The limited EIS should also consider hazardous chemical or hazardous waste releases.

iv) Conservation and renewable resources

(1) NBBBI should discuss mitigation to the loss of recreation

v) Scenic resources

(1) No comment

2) Built environment

a) Environmental health

i) Noise

FOHH recognizes the need to perform construction maintenance of the ramp during the low tide conditions, yet the construction needs to coincide with the low tides and to be performed during normal business hours presently permitted to NBBBI. Working within NBBBI normal business hours should be a condition of the permit, when issued.

ii) Risk of explosion

(1) No comment

iii) Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials

1) Although not necessarily toxic, the movement of such a large amount of material has the potential of releasing toxics to the waters of Holmes Harbor during the maintenance operation. Heavy equipment is notoriously dirty with exposed areas of grease, oil, hydraulic fluids, and stained fuel tanks due to spills. Moving this equipment on the ramp will certainly result in petroleum product leakage onto the ramp material and then into Holmes Harbor on the next tide (such as

referred to in e) iii) (1). The potential impact of petroleum product spills, and necessary mitigation must be identified. In addition, the project proponent and its contractors should be required to submit a Spill Prevention, Control, and Countermeasure Plan before beginning work. Contractors working below the OHWM in Holmes Harbor should also be required to secure a bond to cover the cost of any necessary natural resource damage mitigation.

- 2) Any maintenance that includes dredging, the ramp, or any activity or disturbance of sediment in Holmes Harbor must include a requirement for complete contaminant characterization of the sediments in Holmes Harbor in the maintenance area. Sufficient data for the sediment in Holmes Harbor does not exist to assess the affects to public health. The analysis must also evaluate the potential for additional discharges to reach Holmes Harbor and the effect of those discharges on the Holmes Harbor environment. Appropriate mitigation should be identified and discussed.

b) Land and shoreline use

- i) Relationship to existing land use plans and to estimated population
(1) No comment.
- ii) Housing
(1) No comment.
- iii) Light and Glare
(1) Any maintenance or construction necessary under 184/06 must be performed during daylight hours and within NBBBI's presently permitted hours of operation.
- iv) Aesthetics
(1) No comment
- v) Recreation
(1) No comment
- vi) Historic and cultural preservation
(1) No comment
- vii) Agricultural crops
(1) No comment

c) Transportation

- i) Transportation systems
(1) Normal traffic on Shoreview Drive should not be interrupted for a period of more than 8 hours, at any given time, as a condition of 184/06. In no event should Shoreview Drive be closed to traffic other than during NBBBI normal hours of operation.
- ii) Vehicular traffic
Please see 2) c) i) (1) above
- iii) Waterborne, rail, and air traffic
(1) No comment
- iv) Parking
(1) No comment
- v) Movement/circulation of people or goods
(1) No comment
- vi) Traffic hazards

(1) Please see 2) c) i) (1) above. The Island County Sheriff's Department should be contacted concerning road closures during construction and a road closure schedule established, published and monitored.

d) Public services and utilities

i) Fire

(1) No comment

ii) Police

(1) No comment

iii) Schools

(1) No comment

iv) Parks or other recreational facilities

(1) No comment

e) Maintenance

i) Communications

(1) No comment.

ii) Water/storm water

(1) No Comment

iii) Sewer/solid waste

(1) No Comment

iv) Other governmental services or utilities

v) Enforcement of Island County Code and of the conditions of 184/06 have not been discussed. Violations of permits and unpermitted development are not uncommon at NBBBI, even to the extent of the "Empress of the North" launch and resulting environmentally catastrophic accident that precipitated NBBBI's requirement to produce the MPA. There is nothing in the historical pattern of behavior of NBBBI to indicate that NBBBI will voluntarily follow the conditions of the 184/06 permit as issued.

Island County has limited enforcement resources to cover the entire County. Island County enforcement resources may not be able to sufficiently monitor NBBBI's proposed maintenance and to prevent an environmental accident. There must be continuous IC oversight of NBBBI to safeguard the public and guarantee that all current and future permit conditions are followed.

Please contact the undersigned, or call Friends of Holmes Harbor at (360) 321-3644, with any questions or requests for additional information regarding any of these items.

Very truly yours,

SMITH & LOWNEY, P.L.L.C.

By: 

Richard A. Poulin
Of Counsel

Mr. Matt Kukuk

June 14, 2006

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cc: Susan Powell, U.S. ACE
Alice T. Nguyen, WADOE
Doug Thompson, WSFWD
Christine Goodwin, FOHH