

TO: Joe Burcar, Island County Department of Planning & Community Development
FROM: Friends of Holmes Harbor (FOHH)
SUBJECT: Comments on the limited scope EIS for the NBBBI 15 Year Master Plan
DATE: November 30, 2005

Friends of Holmes Harbor (FOHH) is responding to the Determination of Significance and Request for Comments on the Scope of the Environmental Impact Statement as published in the November 2, 2005, edition of the South Whidbey Record (the Notice).

Island County Planning and Community Development (ICPCD), as lead agency, proposes to limit the scope of the Environment Impact Statement (EIS) to five elements of the environment: air quality, fish and wildlife, noise, building height/design/lighting/landscaping, and navigation. ICPCD states in the Notice that it has limited the scope of the EIS after reviewing public comments, the Master Permit Application (MPA), supplemental information to the MPA, and professional reports.

FOHH has had access to the same documentation as ICPCD. FOHH believes that ICPCD must expand the scope of the EIS for a more rigorous, complete and legally sufficient EIS. 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. 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.

For instance, under WAC 197-11-444(2)(b)(v) and WAC 197-11-444 (2)(c)(v), Elements of the environment, Built Environment, an EIS must analyze significant impacts to recreation and movement/circulation of people or goods, respectively. The proposed rail launch system will interfere with beach access by persons enjoying recreational opportunities there. There is no proposal to mitigate the project's adverse environmental impact to these two elements of the environment posed by the proposed rail launch system. This is especially evident because the proposed rail launch system final engineered drawings have not been submitted. And, under WAC 197-11-444(2)(d)(i), Elements of the environment, Built Environment, concerning fire, the harm caused by a catastrophic fire would be so great that this constitutes a significant impact regardless how one rates the risk of that occurring. Again, there is no apparent mitigation of this adverse environmental impact posed by a catastrophic fire at a ship building facility of the magnitude proposed in the MPA.

In addition to the five areas of concern in the limited scope EIS, ICPCD is asking NBBBI to explore reasonable alternatives to the proposed building design and rail launch system and the impacts of the those alternatives on the five areas of concern. ICPCD, as lead agency, is required under SEPA to explore alternatives to determine if alternatives are feasible at a lower environmental cost. Most importantly, ICPCD must prepare and discuss, under SEPA, the no action alternative in the EIS to serve as a benchmark from which other alternatives can be compared.

The applicant seeks to utilize public land managed by DNR. Use of those DNR lands is an integral part of the project. Without use of those lands, the project could not proceed, therefore the NBBBI MPA expansion is not a wholly private project. NBBBI will be taking land from the public domain for private use and profit. As a private/public project, the EIS must consider not only “reasonable alternatives to the proposed building design and launch system and the impacts of those alternatives on the specific elements of the environment defined above” (from ICPCD), but also must consider alternate sites. NBBBI has such an alternate site at its Everett facility. In addition, the exclusion of alternative site analysis in WAC 197-11-440(5)(d) does not apply to exclude alternative sites which “have not been included or considered in existing planning or zoning documents.” *Id.* Island County has not considered the applicant’s Everett facility in any of Island County’s existing planning or zoning documents. Therefore, ICPCD must prepare and discuss, under SEPA, alternate sites in the EIS and the environmental cost of using alternate sites.

Moreover, to the extent that this project will require federal permits (e.g., an Army Corps permit for work in waters of the United States), the EIS will have to comply with federal requires established by the National Environmental Policy Act. NEPA does not include the same limitation on alternative site analysis that is included in the SEPA rules. Thus, alternative sites will need to be evaluated even if this were a wholly private project (which it is not).

FOHH requested in June 2005 that a matrix be prepared by the County that concisely shows each requirement, the agency responsible, NBBBI’s answer, and whether the answer is satisfactory in the opinion of the County. As two examples for items in the proposed matrix, there is no description of the design of the modular buildings including, but not limited to, foundations, HVAC, water supply, etc. and, NBBBI still says they will remove ‘large’ crustacean particles after periodically cleaning the surface of the rails. This will leave debris on the bottom causing an impact but NBBBI does not describe any mitigation.

As a further example, DOE recently issued a new Waste Discharge Permit (WDP) for NBBBI’s current operations and configuration. Any substantive change or expansion to the NBBBI operation or configuration will require NBBBI to apply for a new DOE Waste Discharge Permit. Under the WDP, DOE requires NBBBI to separate stormwater and process water. To accomplish this, NBBBI would have to build a new collection and containment system. NBBBI has responded to Ecology by saying the containment system would be too costly and that NBBBI will not perform certain operations during rainy weather. (Rain is undefined in terms of runoff or other objective terms.) However, SEPA requires mitigation of significant impacts even if the likelihood of the impact is not great. Any alternative that requires NBBBI to cease operations in the rain should be clearly identified in the EIS.

DOE considers separation of stormwater and waste water (the terms waste water and process water in this document mean water used during operations such as water blasting, bottom washing, bilge cleaning, etc.) at NBBBI mandatory due the nature of the contaminants in the waste water and the significant adverse environmental impacts associated with those contaminants which are typical of every shipyard. Based on NBBBI’s past violations, performance of work and expansion without proper permits, and unpermitted discharges, any “reasonable person” can seriously doubt whether NBBBI will not perform those certain

operations in the rain. Because the consequence of these activities occurring during rainy weather is great, the risk of these activities being performed during rainy weather need not be great for the potential impact to be considered “significant.” We also note that SEPA considers “monitoring and taking corrective action” as mitigation. NBBBI’s MPA offers no explanation for monitoring of stormwater and waste water flows, certain operation stoppage during rain, or corrective action or mitigation due to mingling of stormwater and waste water flows.

The County must have a mechanism to track requirements at such a detailed level. To date, FOHH and any other concerned citizen have not seen evidence that ICPCD has control of all of the applications of the MPA. FOHH again requests that in the ICPCD responses to prior comments and to the EIS Scoping comments, that ICPCD be specific in cross referencing its answers to specific MPA applications and other agency comments. It is the only way to ascertain whether all information has been submitted by NBBBI, whether NBBBI meets all applicable requirements and whether ICPCD has control of all the applications of the MPA. ICPCD should make such a tracking mechanism available to the public.

SEPA states that to simplify the EIS format, reduce paperwork and duplication, improve readability, and focus on the significant issues, some or all of the elements of the environment in WAC 197-11-444 may be combined.

FOHH believes the scope of the EIS for the NBBBI Master Permit Application should be enlarged and the EIS should include under WAC 197-11-444 Elements of the Environment:

1) Natural Environment

a) Earth

i) Geology

- (1) The South Whidbey Island Fault (SWIF) runs directly through Holmes Harbor. The NBBBI additional information makes no mention of seismology or of the dangers inherent in operating a ship building facility on the SWIF.

In the Journal of Ship Production, Vol. 2 No. 2, May 1986, Page 118, “marine railways are relatively susceptible to earthquake damage because of their relatively long groundways”.

Navy documentation, (MIL-SPD-1625A SH) Dry-docking Facilities Safety Certification Criteria for Docking US Navy Ships, Section 3.4 Marine Railways Subsection 3.4.1.2 states; “Stability in Normal Operating Position. After the ship and cradle are hauled out of the water, the ships’ weight is supported completely by the cradle and groundways. The dock in this position may be subjected to wind and earthquake forces and the stability analysis must account for the combined stability of ship and cradle. Earthquake forces must be considered in areas where such disturbances are likely to occur.

The EIS scope should be enlarged to include this element of the environment.

ii) Soils

(1) NBBBI has already begun to excavate under the existing concrete slab area and to use those soils as berm material. In the past, NBBBI has performed work over unpaved surfaces. Where areas were paved areas, the paving was often discontinuous or poorly maintained resulting in cracks and preferential pathways for contaminants to reach the soils below the slab. The area around the treatment system was not paved until this past summer. Historical releases of process water to discontinuous or cracked concrete surfaces resulted in contaminant releases to the soils beneath the slab, and likely to the shallow water table underlying the facility. No testing has been done to ensure that these soils are free from contaminants. The EIS scope should include how NBBBI plans to characterize and mitigate contaminated soils during their proposed expansion and how it will avoid similar problems from future operations.

(2) Island County Public Works and Road Division (the County Engineer) is requiring geotechnical analysis of the soils below Shoreline Drive prior to consideration of the preliminary engineering for the Shoreline Drive portion of the rail system. NBBBI must still provide the borings and provide the analysis to the County.

The EIS scope should be enlarged to include this element of the environment.

iii) Topography

(1) No comment

iv) Unique physical features

(1) No comment

v) Erosion/enlargement of land area (accretion)

(1) No comment

b) Air

i) Air Quality

(1) Within the current EIS scope

ii) Odor

(1) In January 2005, two Bercot Road residents complained to NW Air Pollution, Island County Sheriff, and directly to NBBBI of strong odors emanating from NBBBI. The odiferous material was never disclosed by NBBBI yet the residents experienced headache and unpleasantness.

The EIS scope should be enlarged to include this element of the environment.

iii) Climate

(1) No comment

c) Water

i) Surface water movement/quantity/quality

DOE is requiring that NBBBI separate stormwater and waste water. NBBBI has not identified mitigation in the likely event of mingling these waters. Please see above comments concerning this issue.

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. NBBBI plans on redirecting stormwater and process water from the existing infiltration basin to a new infiltration basin located to the south of the wetland.

The EIS scope should be expanded to include a full characterization of the sediment and surface water quality in the wetland. Also see comment in paragraph 2(a)(i)(1)(iii)(3) regarding wetland sediments.

ii) Runoff/absorption

(1) No comment except as related to Surface water movement/quantity/quality

iii) Floods

(1) Several instances of the waters of Holmes Harbor crossing Shoreline Drive and entering the ship building facility have occurred in the past. With an expansion, NBBBI can be working on several vessels at different stages of completion. A flood event could result in receding waters carrying toxic substances into Holmes Harbor, especially through the channels to the water provided by the rail launch system. NBBBI has not identified any mitigation in the likely event of a flood.

(2) It is a proven scientific fact that the sea level is rising at the current rate of 3 feet every 100 years. This impact is already being observed at Neah Bay. Any waterborne project needs to include an analysis of and mitigation for the rising sea level.

The EIS scope should be enlarged to include this element of the environment.

iv) Ground water movement quantity/quality

(1) NBBBI proposes to continue to discharge waste water to ground. Ecology is requiring NBBBI to conduct a hydrogeologic study of the groundwater quality, aquifer characteristics and flow direction in the vicinity of the proposed upland infiltration basin.

The EIS scope should be enlarged to include this element of the environment.

v) Public water supplies

NBBBI has not estimated in gallons, seasonality or peak demand the requirements for water that will be placed on the Freeland Water District (FWD). The FWD has explained their plans for new wells that are in response to the growth

projected for Freeland through the Freeland Sub-Area Plan. The FWD did not contemplate the NBBBI expansion in its planning.

The EIS scope should be enlarged to include this element of the environment.

d) Plants and animals

- i) Habitat for and numbers or diversity of species of plants, fish, or other wildlife
 - (1) The NBBBI proposed rail launch system is not fully engineered. Preliminary discussion of the impacts of the proposed rail launch system cannot fully define the mitigation required to mitigate the potential severe environmental impact to this element of the environment. In previous meetings, NBBBI stated that they were 98% sure that cross bracing of the proposed rail launch system would not be needed. Additional information submitted by NBBBI now indicates that “cross bracing may not be required”, but the submitted drawings show cross bracing 9” below the top of the rails. The severe impact of having cross bracing must be discussed in the EIS.

The EIS scope should be enlarged to include this element of the environment.

ii) Unique species

- (1) Impacts on Dungeness, 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 Orcas Whales, Grey Whales, Eagles.
- (7) Impacts of debris accumulating after frequent cleaning of crustacean particles from the surface of the rails.
- (8) Impacts of removing the existing boat ramp will harm shellfish.

The EIS scope should be enlarged to include this element of the environment. Monitoring alone is not a complete mitigation of these 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) The NBBBI proposed rail launch system is not fully engineered. Preliminary discussion of the impacts of the proposed rail launch system cannot fully define the mitigation required to mitigate the potential severe environmental impact to this element of the environment. If NBBBI is required to construct a barrier fence to provide for public safety, the migration routes of fish will be severely disrupted. If NBBBI uses cross bracing of the rails the migration routes of fish will be severely disrupted.

The EIS scope should be enlarged to include this element of the environment.

e) Energy and natural resources

i) Amount required/rate of use/efficiency

- (1) NBBBI has not estimated in gallons, seasonality or peak demand the requirements for water that will be placed on the Freeland Water District (FWD). The FWD has explained their plans for new wells that are in response to the growth projected for Freeland through the Freeland Sub-Area Plan. The FWD did not contemplate the NBBBI expansion in its planning.

The EIS scope should be enlarged to include this element of the environment.

ii) Source/availability

- (1) The MPA does not address the impact to other landowners (availability) of water.

The EIS scope should be enlarged to include this element of the environment.

iii) Nonrenewable resources

- (1) Holmes Harbor is itself a nonrenewable resource. The EIS should consider the impact of an extreme environmental disaster at NBBBI. (e.g., an oil spill, hazardous chemical or hazardous waste release, introduction of non-native species by bilge pumping).

The EIS scope should be enlarged to include this element of the environment.

iv) Conservation and renewable resources

- (1) Conservation of recreational Holmes Harbor, where people boat, swim, fish and gather shellfish would be severely impacted by the intrusion of a major industrial shipyard. The MPA does not discuss mitigation to the loss of recreation.

The EIS scope should be enlarged to include this element of the environment

v) Scenic resources

- (1) The NBBBI MPA makes little mention of mitigation of the severe impact of introducing an industrial shipyard to Freeland and to Holmes Harbor. The S.R. 525 view corridor will be severely impacted as will views from the homes of a large portion of residents along the Harbor.
- (2) NBBBI will be using public lands to implement the proposed rail launch system, severely impacting a public resource.
- (3) The possible introduction of navigation lights or buoys will severely impact the scenic resource of Holmes Harbor.

The EIS scope should be enlarged to include this element of the environment.

2) Built environment

a) Environmental health

i) Noise

- (1) Within the current EIS scope, NBBBI is requesting increasing the current hours of operation to 24/7. It should be noted that the Dakota Creek shipbuilding facility operates on a Monday through Friday, 7am to 5pm schedule and is also located in a downtown area (mixed business and residential). With expanded facilities, NBBBI should be reducing hours, not increasing them. NBBBI will be able to build multiple ships simultaneously, presumably increasing their competitiveness and profitability and certainly increasing their noise levels. Current operations bring numerous complaints of noise pollution from NBBBI. Residents are forced to schedule their weekend activities around NBBBI operations. Impacts from the proposed expansion will be worse. NBBBI should fully disclose all noise impacts and discuss all reasonable mitigation measures, including reduced hours similar to Dakota Creek.

The EIS scope must include a discussion of noise impacts and mitigation including reduced hours of operation.

ii) Risk of explosion

- (1) NBBBI is publicly open about its pursuit of military contracts. These contracts include maintenance of military vessels. Should NBBBI perform maintenance operations on military vessels carrying munitions, the risk of explosion from on-board munitions is increased exponentially beyond the normal high risk of explosion at any industrial site housing non-munitions explosive materials.

The EIS scope should be enlarged to include this element of the environment.

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

- (1) NBBBI will be greatly increasing the number of ships under construction at any one time. The amount of toxics or hazardous materials being handled with the potential for release also increases greatly. Without the final design of the proposed buildings and with the potential for multiple ships under construction prior to the completion of the proposed buildings the potential for release cannot be ignored.

The EIS scope should be enlarged to include this element of the environment.

- (2) Infiltration basin soils. NBBBI currently uses an infiltration basin to discharge stormwater to ground. Infiltration basin soils require periodic change out. Spent infiltration basin soils have been disposed without a permit at Justin Nichols residence on Coles Road and at Whidbey Topsoil to be mixed with compost and returned to use in the community without proper testing or community advisory.

The scope of the EIS should be expanded to address the releases to the environment and affects to public health from improper disposal of spent infiltration basin soils.

- (3) Contaminated wetland sediments. Since NBBBI's current infiltration basin is undersized (due to unpermitted expansions) NBBBI experiences frequent unpermitted overflows to the wetland. The wetland is likely contaminated from historic and ongoing releases from NBBBI's waste water discharge system.

Any alternative that involves any action in the wetland, including any potential mitigation, must include a requirement for a complete contaminant characterization of the wetland surface water and sediment. Sufficient data on the wetland does not exist to assess the affects to public health.

- (4) Historical discharges to Holmes Harbor. There have been ongoing discharges by NBBBI of commingled storm and waste water to Holmes Harbor. There have also likely been releases of contaminants associated with the illegal installation of the unpermitted rail system and other boat launching activities.

Any alternative that includes installation of a rail system, dredging, removal of 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 across from the shipyard. 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) NBBBI current zoning is for Rural Center. ICPCD commissioned and has in its possession the Freeland Sub Area Plan (FSAP), including population estimates for Freeland. NBBBI's existing land historically had been zoned Rural Residential longer than it has currently been zoned Rural Center. Significant residential and other low density development occurred pursuant to that zoning. Those uses still predominate in the area. NBBBI, through a series of zoning changes as recent as the early 1990's has been expanding the facility despite constant and continuous residential development in the neighborhood. Matt Nichols once promised the community that he would never build a boat over 45'. The future population (and current population) will be severely impacted by the NBBBI MPA. These significant land use conflicts must be addressed.

The EIS scope should be enlarged to include this element of the environment.

- ii) Housing
 - (1) No comment.
- iii) Light and Glare
 - (1) Within the current EIS scope
- iv) Aesthetics
 - (1) Within the current EIS scope
- v) Recreation
 - (1) NBBBI recently launched the X-Craft, a military vessel. During pre-launch ceremonies, public access to the waters of Holmes Harbor was severely impacted by the presence of and patrol by armed military patrol vessels. Citizen boaters were stopped by the armed military patrol vessels as they pursued normal recreation activities. Because Holmes Harbor is an integral part of Freeland's recreation facilities, the decision makers and the public should fully understand the severe negative impact to waterborne recreation activities and mitigation identified before any permit applications are considered. FOHH has brought this to the attention of ICPCD in its January 18, 2005 comments yet ICPCD has ignored this significant impact. This scenario is presently occurring at Todd Shipyards, a shipyard located on the industrial zoned Harbor Island, which contracts with the military.

The Washington State Patrol is currently monitoring the movement of suspected al Qaeda members through Whidbey Island. Military shipbuilding contracts will cause an increased risk of terrorist activity at NBBBI with subsequent severe risk to Freeland residents.

- (2) The rail launch system will create a double fence-like barrier to those walking along the beach and tidelands. The constraint of the rails in the flow of boat and pedestrian traffic impacts the character of Holmes Harbor and thus the freedom of movement in and around the harbor. Often, the development of a structure in a recreational landscape will promote activities not intended or foreseen by the developer. Children playing on the rails may not notice the rise in the tide and become stranded on the rails. These structures could be seen as an attractive nuisance causing harm to those who venture on and around them.
- (3) The rail launch system will encourage children, young people and even adults to venture out into the mud flats. This is a significant public safety issue. The mud flats are notoriously dangerous for people becoming mired in the mud. If help does not arrive a person could drown due to the inability to remove themselves from the mud.
- (4) The launching of large vessels requires using large tug boats. The propeller wash from the large tug boats used during the launch of the Empress of the North damaged private homeowner docks depriving homeowners use of their docks.

There is no proposed mitigation to increased propeller wash in the MPA.

The EIS scope should be enlarged to include this element of the environment.

- vi) Historic and cultural preservation
 - (1) Within the current EIS scope
- vii) Agricultural crops
 - (1) Within the current EIS scope
- c) Transportation
 - i) Transportation systems
 - ii) Vehicular traffic
 - (1) The traffic study performed by NBBBI assumes 24/7 operations. The assumption precludes a denial of 24/7 operations and the study does not discuss the impact of increased operations without an increase of hours of operation. Alternate scenarios and the resultant traffic impacts need to be discussed through a second traffic study.

The EIS scope should be enlarged to include this element of the environment.

- iii) Waterborne, rail, and air traffic
 - (1) Air traffic increase impacts, especially due to helicopter flights, must be included in the scope of the EIS. NBBBI has used the grassy area of their facility and also the current launch ramp as a de facto helipad. Impacts associated with this increased air traffic (including noise impacts) must be assessed. Reasonable mitigation measures should be identified and evaluated, including routing air traffic to Porter Field from where travelers would be carpooled to and from NBBBI.

The EIS scope should be enlarged to include this element of the environment.

- iv) Parking
- v) Movement/circulation of people or goods
 - (1) Please reference (2) Built Environment (v) Recreation (2) above.

The EIS scope should be enlarged to include this element of the environment.

- vi) Traffic hazards
 - (1) No comment.
- d) Public services and utilities
 - i) Fire
 - (1) The rail launch system will encourage children, young people and even adults to venture out into the mud flats. This is a significant public safety issue. The mud flats are notoriously dangerous for people becoming mired in the mud. If help does not arrive in adequate time, a person could drown. The fire department provides assistance to those in need and would be impacted by the rail launch

system.

The EIS scope should be enlarged to include this element of the environment.

ii) Police

- (1) The rail launch system will encourage children, young people and even adults to venture out into the mud flats. This is a significant public safety issue. The mud flats are notoriously dangerous for people becoming mired in the mud. If help does not arrive in adequate time, a person could drown. The sheriff department provides assistance to those in need and would be impacted by the rail launch system.

The EIS scope should be enlarged to include this element of the environment.

iii) Schools

- (1) No comment.

iv) Parks or other recreational facilities

- (1) NBBBI recently launched the X-Craft, a military vessel. During pre-launch ceremonies public access to the waters of Holmes Harbor were severely impacted by the presence of and patrol by armed military patrol vessels. Citizen boaters were stopped by the armed military patrol vessels as they pursued normal recreation activities. Because Holmes Harbor is an integral part of Freeland's recreation facilities the public should fully understand the severe negative impact to waterborne recreation activities and mitigation identified. The armed military patrol boats patrolled not only in front of NBBBI but also into the waters directly in front of Freeland Park.

The EIS scope should be enlarged to include this element of the environment.

e) Maintenance

i) Communications

- (1) No comment.

ii) Water/storm water

- (1) DOE has recently issued a Waste Discharge Permit (WDP) for NBBBI current operations and configuration. Any change to the NBBBI operation or configuration will require a new DOE Waste Discharge Permit. Under the WDP, DOE requires NBBBI to separate stormwater and process water and that would require NBBBI building an additional containment system. NBBBI has responded by saying the containment system would be too costly and that NBBBI will not perform certain operations while the weather is producing rain. (Rain is undefined in terms of runoff or otherwise.) However, SEPA requires analysis of of significant impacts and identification of possible mitigation even if the likelihood of the impact is not great, if the impact would be great. That is the case here.

DOE considers separation of stormwater and waste water (the terms waste water and process water in this document mean water used during operations such as water blasting, bottom washing, bilge cleaning, etc.) at NBBBI mandatory due the nature of the contaminants in the waste water and the significant adverse environmental impacts associated with those contaminants which are typical of every shipyard. Based on NBBBI's past violations, performance of work and expansion without proper permits, and unpermitted discharges, any "reasonable person" can seriously doubt whether NBBBI will not perform those certain operations in the rain. Because the consequence of these activities occurring during rainy weather is great, the risk of these activities being performed during rainy weather need not be great for the potential impact to be considered "significant." We also note that SEPA considers "monitoring and taking corrective action" as mitigation. NBBBI's MPA offers no explanation for monitoring of stormwater and waste water flows, certain operation stoppage during rain, or corrective action or mitigation due to mingling of stormwater and waste water flows.

The EIS scope should be enlarged to include this element of the environment.

iii) Sewer/solid waste

- (1) NBBBI's statement that it intends to hook up to the sewer system when it is installed in the Freeland area is totally irrelevant to the MPA. At a projected cost of nearly \$50,000 per acre, a sewer hook up for NBBBI will cost well over one million dollars unless a special consideration is granted to NBBBI. The County must disregard any mention of a sewer system hook up by NBBBI or request full analysis of the environmental and financial feasibility of this proposal. NBBBI installed a septic system without a permit until recently requesting an as-built permit.

The EIS scope should be enlarged to include this element of the environment.

- (2) Refer to the comments in paragraph 2(a)(iii)(2) regarding the proper characterization, handling and disposal of infiltration basin soils.

iv) Other governmental services or utilities

- (1) Enforcement of Island County Code and of the conditions of the Master Permit Application has not been discussed. Violations of permits and un-permitted development are not uncommon at NBBBI, even to the extent of the "Empress of the North" launch and environmental catastrophe accident that precipitated NBBBI having to produce the MPA. There is nothing in the past behavior of NBBBI to indicate that NBBBI will voluntarily follow the conditions of the MPA permit, if 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 expansion of the resulting increase in operations. Island

County was not able to prevent the “Empress of the North” launch and environmental catastrophe accident.

There must be constant and continuous Island County oversight of NBBBI to guarantee to the public that all current and future permit conditions are followed. Without enforcement by Island County, severe impacts to the environment are a certainty at NBBBI due to ICPCD inability to enforce during the past 3 decades. (ie. Email requesting illegal buildings walk through during July 2005, email July 18, 2005 re: no change of use permits for corporate offices or engineers offices.)

- (2) NBBBI is requesting a modification to the MPA and that they be allowed to reconfigure their storage area to become a production area prior to completion of the SEPA process and prior to completion of the EIS. ICPCD and NBBBI should be well aware that, under SEPA, the upland portion of the work within the MPA cannot be performed prior to approval of the Shoreline Conditional Use Permit (SCUP). NBBBI is requesting to ‘piecemeal’ the MPA and circumvent the SEPA process, a condition SEPA is designed to prevent.

The EIS scope should be enlarged to include this element of the environment, enforcement, and to assess the impacts to all elements of the environment if NBBBI’s practices continue as they have in the past, without regard to conditions imposed through the land use and permitting regulatory process. While it may be unusual for an EIS to assess impacts on the assumption that the permittee will not comply with permit conditions, NBBBI’s sorry track record here leaves the County with no option but to undertake that analysis.

Finally, while not technically a comment on the scope of the EIS, we ask that the County prepare a public participation plan outlining the steps the County plans to take to reach out to the Community to solicit input throughout the process.

Thank you for your consideration of these comments. We look forward to your utilizing them as you fashion an appropriate scope for the EIS. We are available to respond to any questions or requests for additional information regarding any of these items.

This letter incorporates by reference the concerns raised in our letters of January 18, 2005, and June 10, 2005 which commented on Nichols Brothers’ 15-Year Master Plan (Project No. 182-04) and proposed construction of a permanent pile-supported 1400-foot marine rail system.

Respectfully submitted,
Christine Goodwin, Pres.
Friends of Holmes Harbor