STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

November 8, 2007

REGISTERED MAIL
RB 670 439 475 US

Canyon Park Development, LLC
Attn: Roger Belanich and Jack Martin
22020 17th Ave SE, Suite 200
Bothell, WA 98021

REGISTERED MAIL
RB 670 439 489 US

Northshore School District
Attn: Laura Brent
Capitol Projects Office
22105 23rd Drive SE
Bothell, WA 98201

RE: Water Quality Certification Order #5214 for U.S. Army Corps of Engineers (Corps) Reference #200500908; Place Fill into 0.39 Acres of Wetlands for Construction of Canyon Park Commons and Northshore School District/City of Bothell Transportation Facility, Wetlands and No-Name Creek, Bothell, Snohomish County, Washington

Dear Sir or Madam:

On April 25, 2007, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the above referenced project. The U.S. Army Corps of Engineers issued Nationwide Permit #39, Residential, Commercial, and Institutional Developments, for the project on April 19, 2007. A Public Notice regarding the request was issued on May 16, 2007 for the proposed project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order. Please read and understand these conditions prior to beginning construction.

On April 20, 2007, Canyon Park Development, LLC submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On October 16, 2007, Ecology and Canyon Park Development, LLC jointly requested a CZM extension from the

Corps. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with Canyon Park Development, LLC's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Canyon Park Development, LLC's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:lce:cja

Enclosure

cc: Susan Glenn, U.S. Army Corps of Engineers
Matt Bennett, U.S. Army Corps of Engineers
Ginger Holser, Washington Department of Fish and Wildlife
DeeAnn Kirkpatrick, US Fish and Wildlife Service
Karen Walter, Muckleshoot Tribe
Robert Stowe, City of Bothell
Doug Jacobsen, City of Bothell
William Wiselogle, City of Bothell
William E. Shiels, Talasaea
Jason Walker, Talasaea
Dan Vaught, Northshore School District
Michael Ross, adjacent property owner
Public Utility District, No. 1, adjacent property owner
Fred Meyer Stores, Inc., adjacent property owner
Canyon Park Business Center Owners Association, adjacent property owner
Immunex Manufacturing Corp., adjacent property owner
Teachers Insurance and Annunity Assn., adjacent property owner
Anthony Ngo and Diane Vo, adjacent property owner

e-cc: Penny Keys, Ecology HQ
Loree' Randall, Ecology HQ
Paul Anderson, Ecology
Erik Stockdale, Ecology
Rebekah Padgett, Ecology
Lori Enlund, Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Canyon Park Development, LLC and Northshore School District in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	))))))))	**ORDER #5214** **Corps Reference No. #200500908** Place Fill Into 0.39 Acre Wetlands For Construction of Canyon Park Commons and Northshore School District/City of Bothell Transportation Facility, Wetlands and No-Name Creek, Bothell, Snohomish County, Washington.

TO: Canyon Park Development, LLC
Attn: Roger Belanich and Jack Martin
22020 17th Ave SE, Suite 200
Bothell, WA 98021

TO: Northshore School District
Attn: Laura Brent
Capitol Projects Office
22105 23rd Drive SE
Bothell, WA 98201

On April 25, 2007, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) and for proposed work in wetlands for commercial development. The Corps issued a Nationwide Permit (NWP) #39, Residential, Commercial, and Institutional Developments, for the project on April 19, 2007. During review of the project and the NWP, Ecology determined that an individual Section 401 Certification would be required. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on May 16, 2007.

Since submittal of the JARPA to Ecology and issuance of the Nationwide Permit, the project has been modified to include two separate projects within the footprint of the original proposal. This modification includes sale of three parcels to the Northshore School District, which, along with Canyon Park Development, LLC, is a co-applicant for the projects under review. The two projects to be covered by this 401 Certification include commercial and retail development by Canyon Park Development, LLC and a joint use maintenance facility by the Northshore School District and City of Bothell. These projects propose to place fill in 0.39 of an acre of wetlands for construction of commercial buildings and joint use public maintenance facilities and associated parking, and access roads. These impacts will be compensated for by:

- Creation of 0.66 of an acre of wetland on or adjacent to the project sites.
- Enhancement of 3.53 acres of onsite wetland.
- Enhancement of 3.08 acres of onsite wetland buffer.
- Enhancement of 2.77 acres of offsite riparian buffer.
- Rehabilitation of 0.67 of an acre of wetland on a parcel (TIAA parcel) adjacent to the project sites.
- Preservation of 3.53 acres of onsite wetland.

The project site is located at 21303 20th Avenue SE, in Bothell, Section 29, Township 27 North, Range 5 East, WRIA #8.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

A1. For purposes of this Order, the term "Applicant" shall mean Canyon Park Development, LLC and Northshore School District, and their agents, assignees and contractors.

A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #5214and Corps Reference #200500908.

A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 25, 2007 and revised in addendum received Nov 2, 2007. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA and project addendum is voided by subsequent changes to the project not authorized by this Order.

A4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

A5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.

A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.

A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

A11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars ($10,000) per violation for each day of continuing noncompliance.

B. Project Mitigation for Wetlands:

B1. These projects propose to place fill in 0.39 of an acre of wetlands; 0.01 of an acre of fill in two Category III wetlands by Canyon Park Development, LLC and 0.38 of an acre of fill in a Category II (0.35 acre) and a Category IV (0.3 acre) wetland by the Northshore School District. Compensatory mitigation for these wetland impacts will be provided by: 1) creating 0.96 of an acre of forested wetland onsite and on an adjoining parcel (TIAA site); 2) rehabilitating 0.67 of an acre of degraded palustrine emergent wetland on the TIAA site; 3) enhancing 4.15 acres of palustrine forested/scrub shrub wetland onsite and on the TIAA site; 4) preserving 6.18 acres of palustrine forested wetland onsite; and 5) providing 6.54 acres of buffer enhancement (3.78 acres onsite and at the TIAA site and 2.77 acres offsite at North Creek and 228th Street SE). These measures are described in the following documents, except as modified by this Order, and including any approved revisions:

a. Canyon Park Phase VII Critical Areas Mitigation Report (revised September 5, 2006), with accompanying plan sheets (Mitigation Plan) by Talasaea Consultants, Inc., dated April 20, 2007.

b. Revised mitigation plan drawings (Addendum) by Talasaea Consultants, Inc., dated November 5, 2007.

c. Letter updating revised applicant status and project description to Rebekah Padgett, Ecology, from Jason Walker, Talasaea Consultants, Inc. and Laura Brent, Northshore School District, dated November 2, 2007.

d. Letter discussing revised mitigation proposal to Paul Anderson, Ecology, from Jason Walker, Talasaea Consultants, Inc., dated November 2, 2007. Note: square footage for wetland impacts and mitigation should be taken from most recent plan set (Condition B1, b, above).

B2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for the development and mitigation sites:

a. Hydrologic Monitoring: Wetland mitigation areas shall be inundated or saturated to the surface for at least 10 percent of the growing season, defined as April to mid-November on Addendum Sheet W1.1, Objective E. Inundation or saturation to the surface shall be present a minimum of 14 consecutive days during April to mid-November. Hydrologic indicators (i.e., observation or signs of ponding, soil saturation, water marks, or soil redoximorphic features) will be used to monitor hydrology. Hydrologic monitoring shall continue for at least five (5) growing seasons after completion of restoration plantings.

b. Fertilizer: Only minimal amounts of slow-release fertilizer shall be used on the mitigation site and only within planting holes, as needed.

c. Timing: Site preparation and plant installation described in the Addendum shall be done concurrent to wetland impacts on the project sites.

d. Field Supervision: The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure that grading was completed as planned and plants are appropriately placed.

e. As-built Report: Submit a final as-built report for the wetland mitigation projects, with drawings, to Ecology (per condition A2) within 60 days of completing construction, including planting.

1. Provide one (1) electronic copy on compact disc and one (1) hard copy. Always prominently display the Corps Reference Number and Ecology Order Number.

2. Include the following information in the as-built report:
   i. Final site topography.
   ii. Photographs taken from permanent reference points.
   iii. Installed planting scheme with quantities, densities, sizes and approximate locations.
   iv. Types of habitat features (snags, rootwads, etc.) and their locations.
   v. Important dates including:
      a. When the development project's construction began.
      b. Starting and completion dates of the construction of the compensatory mitigation project, including grading and planting of the site.
   vi. Name and contact information of the parties responsible for the mitigation site, including the applicant, landowner, and wetland professional on site during construction.
   vii. Description of and reasons for any changes to the plan.
   viii. Description of any problems that occurred during construction.
   ix. List of any follow-up actions needed, with a schedule.
   x. Copy of the deed notification.

f. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation sites (such as a deed restriction, conservation easement, or similar instrument) to Ecology's 401/CZM Federal Project Manager along with the as-built report.

g. Performance Standards: The performance standards for the wetland mitigation shall be as listed in the Mitigation Plan, which details standards for plant survival and plant cover.

h. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in the Mitigation Plan. In addition, all mitigation monitoring shall take place over a period of ten (10) years, in years 1, 2, 3, 5, 7 and 10. **Two (2) copies of all monitoring reports shall be submitted to Ecology per Condition A2.**

i. Maintenance: Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met. Maintenance shall be performed as described in the Mitigation Plan.

j. Year 5 Delineation: The mitigated wetlands shall be delineated using the 1997 Washington State Wetlands Identification and Delineation Manual (or as updated) during the 5th year monitoring period to determine the actual area of wetlands rehabilitated.

k. Year 10 Rating: The 2004 Washington State Wetlands Rating System (or as updated) shall be applied to the mitigation area at the end of the 10-year monitoring period to determine the classification and rating of the rehabilitated wetlands.

l. Contingency Measures: The Applicant is responsible for the success of the mitigation site and the maintenance of existing functions of wetlands to remain on the development site. Contingency measures described on page 65 of the Mitigation Plan and page 6 of the Addendum shall be implemented as soon as monitoring shows that one or more performance standards have not been met.

C. Construction:

C1. Prior to clearing and grading in or near wetlands, the wetlands to remain undisturbed shall be protected from construction impacts. Bright orange construction fencing shall be installed prior to site clearing to mark the edge of the existing wetlands and stream channels to be protected. All project staff shall be trained to recognize the construction fencing that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered.

C2. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, a perimeter erosion control silt fence, etc.), shall be in place before starting clearing, filling, and grading work at the site.

C3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

C4. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

D. Stormwater Management Conditions:

D1. Applicant shall comply with Construction Stormwater General Permit # WAR-007475 for this project.

D2. Applicant shall cover the bus wash facility in order to minimize stormwater pollution to surface water. The covered bus wash shall use recycled water and only drain into the sanitary sewer system.

D3. Applicant shall cover fuel stations in order to minimize stormwater pollution to surface water. Stormwater under the fuel station cover shall drain into an oil/water separator before being discharged to the sanitary sewer system.

E. Emergency/Contingency Measures:

E1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.

E2. The facility shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.

E3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.

E4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state

waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:

a. Cease operations at the location of the violation.

b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.

d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E5. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

F. Timing Requirement:

F1. This Order is valid until all compliance requirements in this document have been met.

F2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

G. Reporting and Notification Requirement Conditions

G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200500908, Order #5214 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

G. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.

- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.

- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:		Deliver your appeal in person to:
The Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903	OR	The Pollution Control Hearings Board 4224 – 6th Ave SE Rowe Six, Bldg 2 Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:		Deliver your appeal in person to:
The Department of Ecology Appeals Coordinator P.O. Box 47608 Olympia, WA 98504-7608	OR	The Department of Ecology Appeals Coordinator 300 Desmond Dr SE Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
http://www.eho.wa.gov

To find laws and agency rules visit the Washington State Legislature Website:
http://www1.leg.wa.gov/CodeReviser

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated _____November 8, 2007_____ at Bellevue, Washington.

Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

Canyon Park Development, LLC and Northshore School District
Canyon Park Project
Water Quality Certification Order #5214

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #5214 Section 401 Water Quality Certification for the Canyon Park Development, LLC and Northshore School District Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

_____ _____
Signature Date

_____
Title

_____
Company