

March 30, 2015

**CITY OF BAINBRIDGE ISLAND, WASHINGTON
HEARING EXAMINER**

REPORT AND DECISION

Proceeding: Administrative Code Interpretation Appeal of Richard Lasser, Geoffrey R. Lane and Sally Isabel Heins

File number: ADM19190

Appellants: Richard Lasser, Geoffrey R. Lane and Sally Isabel Heins

Location: 6647 and 6651 NE Baker Hill Road

FINDINGS OF FACT

A. *Procedural History*

1. On behalf of the appellants listed above, Attorney Richard B. Shattuck on December 1, 2015, filed an appeal challenging a code interpretation issued on November 18, 2014, by the City's Director of Planning and Community Development (the "Director"). The issues requested for interpretation generally involved whether a regulated stream exists within a ravine on the Tangleberry plat on or near the appellants' properties and the potential regulatory effect on appellants' proposed view corridor maintenance of City codes controlling the removal of vegetation.

2. Based on the December 1, 2015, appeal statement, the Director's November 18, 2014, code interpretation and the definitions stated at BIMC 16.20.030, the prehearing order issued January 6, 2015, provided the following summary of issues:

A. What is the relationship between WAC 222-16-030 and the City's stream regulations? To what extent has the BIMC adopted the scheme of definitions and regulations governing streams provided in WAC Chapter 222-16? (The parties should note that within BIMC 16.20.030 there at least two applicable definitions to consider; BIMC 16.20.030(46) defines "streams" while BIMC 16.20.030(47) defines "stream types.")

B. Is the alleged watercourse located in the Tangleberry ravine a Type Ns stream under the BIMC as asserted within the Director's November 18, 2014, code interpretation?

C. What City regulatory restrictions, if any, apply to vegetation removal by the appellants in the Tangleberry ravine?

While the prehearing order is instructive in framing the issues, as a *de novo* proceeding the actual scope of review is determined by the facts introduced into the hearing record as analyzed pursuant to the applicable legal principles.

3. The prehearing order also set a January 20, 2015, deadline for parties' witness disclosures, prehearing motions and initial briefs. A January 23, 2015, supplemental order clarified that further briefing procedures would be taken up at the appeal hearing. Near the close of the January 29, 2015, hearing a final collective briefing deadline was set for February 18, 2015. Timely briefs were submitted by the appellants on January 20, and February 17, 2015, and by the City on January 29, and February 18, 2015.

4. A post-hearing motion filed by the appellants on February 20, 2015, seeks to have the Examiner strike the City's February 18, 2015, brief on the grounds that it attempts to interject new evidence into the record after its closure, both narrative description and a new exhibit. While the appellants' motion purports to identify the entire City brief as objectionable, its actual basis is less comprehensive. What is problematic about the City's brief are the portions attempting to provide new information describing the City's stream typing administrative process and attaching a Wild Fish Conservancy report as an example. But other elements of the brief dealing with the City's legal authority and analyzing the stream testimony offered at the hearing are unobjectionable. The appellants' motion to strike should be granted with respect to the first two sentences appearing within the second paragraph on page 2 of the City's February 18, 2015, brief (lines 20 to 29), from line 18 on page 3 through the sentence ending on line 14 of page 4, and to the attached Wild Fish Conservancy report.

5. By the same token, a portion of the appellants' February 17, 2015, brief appears also to contain evidential representations that are beyond the scope of the record and thus should not be considered in fashioning this decision. This excludable material comprises a discussion of the alleged inadequacy of the City's island-wide inventory of ravines that, according to the Examiner's recollection, lacks foundation in the hearing testimony. Thus, the three sentences within the appellants' February 17, 2015, brief beginning on line 21, page 6, and ending at line 3, page 7, will be disregarded as improperly evidential in character.

B. Regulatory Issues

6. The appellants are residents of the Tangleberry development, whose upslope lots possess desirable views of Rich Passage and Mount Rainier. Tangleberry also encompasses a wooded ravine where the native vegetative growth, if unmanaged, can obstruct these attractive views. At the bottom of the ravine is a watercourse that may or may not qualify, in whole or part, as a regulated stream within the City's codes. The testimony of the residents was to the effect that protective covenants were recorded some thirty years ago for the Tangleberry plat that sought to preserve view corridors via building height limits and vegetative removal procedures. The later adoption by the City of its Critical Areas Ordinance (CAO) without doubt operates to limit vegetation removal in the ravine and along a regulated stream, legally superseding any private covenants to the contrary. The essential issue presented by this code interpretation appeal is thus whether after adoption of the CAO the Tangleberry

residents retained any rights to remove trees from the ravine and, if so, what management activities are now permitted and which procedures must be followed.

7. While the Growth Management Act (GMA) and its implementing regulations provide a framework for development of CAOs by local jurisdictions and offer suggestions and models for going forward, the City is largely empowered under the GMA to make its own policy choices as to specific regulations. The GMA availed property owners and other citizens who were unhappy with the City's current CAO regulatory scheme an opportunity, immediately after its adoption, to challenge its compliance with state requirements before a Growth Management Hearings Board. But once the deadline for invoking this option expired, later challenges to the legal sufficiency of the CAO became foreclosed.

8. The City has ample legal authority to adopt its own CAO definitions of and regulations governing streams, stream types, ravines and their applicable buffers. It also has the option to adopt existing state schemes and models, or some unique combination of state and local provisions. The City has chosen to adopt its own singular definitions of a "ravine" and a "stream" and incorporate major concepts from the state Department of Natural Resources (DNR) forest practice regulations regarding "stream types". At BIMC 16.20.030.A the following definitions appear:

40. "Ravine" means a V-shaped landform generally having little to no floodplain and normally containing steep slopes, which is deeper than 10 vertical feet as measured from the centerline of the ravine to the top of the slope. Ravines are typically created by the wearing action of streams. The top of the slope is determined where there is a significant change in the slope to generally less than a 15 percent slope.

46. "Streams" means those areas in the city of Bainbridge Island where the surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices, or other artificial watercourses unless they are used by fish or used to convey streams naturally occurring prior to construction.

47. "Stream types" means a streams classification system based on fish usage and perennial or seasonal water regime as found in WAC 222-16-030 and meeting the standards listed below.

a. "Type F stream" means a stream that has suitable fish habitat. If fish usage has not been determined, water having the following characteristics are presumed to have fish use: streams segments having a defined channel of two feet or greater within the bankfull width and having a gradient of 16 percent or less. Determination of fish usage shall use the methodology found in Washington Department of Natural Resource's Forest Practice Board Manual, Section 13.

b. "Type Np" means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel

below the uppermost point of perennial flow.

c. "Type Ns" means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an above-ground channel system to marine waters, Type F, or Np waters.

9. Within the City's regulatory system a "stream" is thus characterized by a quantity of surface water flow "*sufficient to produce a defined channel or bed*", excluding artificial watercourses except when they are used by fish or replace streams that were originally natural. Not all watercourses that are defined as streams will be subject to stream typing under the City's scheme. For example, within the provisions governing the putative catch-all Type Ns category a watercourse segment demonstrating a defined channel will only be so typed if it is "*physically connected by an above-ground channel system to marine waters, Type F, or Np waters.*"

10. Streams and ravines are regulated by the City within BIMC 16.20.130 and .135. Within BIMC 16.20.130, the CAO section dealing with "fish and wildlife habitat conservation areas," subsection B(1)(b) provides as follows:

1. Classification. The following categories shall be used in classifying fish and wildlife habitat conservation areas:....

b. Streams. All streams which meet the criteria for Type F, Np and Ns waters as set forth in WAC 222-16-030 of the Department of Natural Resources Water Typing System and as further modified by the definitions in this chapter. Once a stream has been classified, the city must document the reasons for changes in the classification.

Protective buffers for typed streams are specified at BIMC 16.20.130.C(2). The total presumptive buffer width for both Type Np and Ns streams is 50 feet.

11. The development standards articulated at BIMC 16.20.130.C(2) also contain at subsection (g) a provision applicable to "streams in ravines":

g. Streams in Ravines – Buffers. For streams in ravines outside the Mixed Use Town Center with ravine sides 10 feet or greater in height, the buffer width shall be the greater of:

i. The buffer width required for the stream type; or

ii. A buffer width which extends 25 feet beyond the top of the ravine.

12. The City and appellants agree that major portions of the Tangleberry ravine are both greater than 10 feet in depth and subject to the CAO's regulations governing "geologically hazardous areas" based on slope angles of 40% or greater. The City's CAO mapping shows a major stretch of ravine dominated by 40%+ slopes over a distance of approximately 1200 feet running from Baker Hill Road south to Wild Rose Lane. The following exemption stated at BIMC 16.20.150.F(6) controls vegetation

management in the upper portions of the ravine above Wild Rose Lane where no stream buffer requirement applies:

6. The trimming and limbing of vegetation for the creation and maintenance of view corridors in accordance with the pruning standards of the International Society of Arboriculture; provided, that the soils are not disturbed and activity will not increase the risk of landslide or erosion. All vegetation removal must be based on a plan developed by a certified arborist and reviewed by a geotechnical engineer to determine if it will impact slope stability.

13. The appellants' argument that the watercourse in the Tangleberry ravine should not be regarded as a regulated stream is based primarily on a water typing technical memorandum dated June 14, 2014, produced by Robbyn Myers, a Certified Professional Wetland Scientist with BGE Environmental, LLC, based on her visit to the Tangleberry ravine on September 20, 2013. Ms Myers performed her water typing analysis according to the DNR Western Washington Board Manual as implemented by WAC 222-16-030 and/or 031. In December, 2013, she was able to persuade DNR to amend its water typing maps for the ravine area studied based on her field work.

14. Ms Myers evaluated the entire ravine watercourse system from its headwaters north of Baker Hill Road south to its marine water discharge point, dividing it into five analytical segments. Segment A extends about 300 feet north of Baker Hill Road and was described on her DNR Water Type Modification Form as a "ravine with no observed channel or surface water flow." The watercourse then crosses under Baker Hill Road within a 12-inch culvert into Segment B, a short transitional section which also was characterized by Ms Myers as a "wide ravine with no observed channel, water feature or surface water flow" from the culvert outlet to a berm feature at its lower end. At the hearing the City did not attempt to controvert or challenge Ms Myers's findings with respect to Segments A or B. Thus it appears undisputed that neither segment demonstrated the essential channel feature characteristic of a regulatory stream but that both form part of the ravine.

15. Segment C is the portion of the study area both with the most pronounced critical area features and, at a mapped length of over 1000 feet, the largest. It displays not only steep ravine slopes but also a perennial flow within the watercourse at the ravine bottom. Ms Myers provided the following description of Segment C within her 2013 work sheets:

"...ravine with impounded wetland area with an observed surface water, perennial. The surface water is present for approximately 100 feet both within the boundary of a wetland and as a water feature downgradient. Channel does not meet the requirements of WAC 222-16-031..."

16. Ms Myers expanded upon these descriptions within her June 20, 2014, technical memorandum:

"A single stretch of surface flow was observed within Segment C. The reach length is approximately 500 feet and in part, associated with a jurisdictional, sloped Category IV wetland of area less than 1000 square feet. Water was flowing and ponding during the field review (September 20, 2013). The surface water did not meet the criterion for minimum channel width (WAC 222-16-031), however, the presence of surface water directed a presumption that the stream segment was likely to retain flows at all times during a normal rainfall and thus a Type Np water. This Type Np water is isolated from upgradient and downgradient waters and is therefore determined as unmarked according to the Board Manual."

17. Ms Myers's 2013 field work for each segment was logged into a DNR document labeled "Water Type Modification Form (For changes to the Water Type Map)". It was thus explicitly performed to DNR requirements employing DNR criteria. A major question raised in this appeal is how much of the DNR administrative process has been imported into the City's scheme for regulating streams by the provisions of BIMC 16.20.030.A and 16.20.130.B quoted above, which both contain a sole specific reference to WAC 222-16-030. First, it should be noted that Ms Myers's report references are all to WAC 222-16-031, not 030. But in the Examiner's view this does not raise a decisive issue. WAC 222-16-031 is an interim regulation applicable until final water typing maps have been adopted, at which time 030 automatically becomes controlling. For our purposes there are no important substantive differences between 030 and 031. And Ms Myers, while citing 031, has consistently employed the newer 030 stream typing nomenclature.

18. More critical is the fact that the bases cited by Ms Myers in her report for declining to classify the perennial flow in Segment C as a Type Np water are in fact nowhere articulated in either WAC 222-16-031 or 030. Channel width and hydraulic isolation determinations are at most alluded to in WAC 222-16-030 and 031 at subsection (5). The actual criteria Ms Myers applied are presumably to be found somewhere in the Forest Practices Board Manual. The Examiner encountered no reference in WAC Chapter 222 stating that the Forest Practices Board Manual is to be regarded as an adopted regulation. The DNR website characterizes the Manual as "an advisory technical supplement to the forest practices rules, Title 222 WAC." In summary, neither the City's adopted definitions nor WAC 222-16-030 requires that a stream otherwise qualifying for a Np classification be excluded from regulation based on channel width or hydraulic discontinuity. While these criteria may indeed appear informally in the DNR literature, the City has not acted to adopt them.

19. Segments D and E downstream from Segment C resist definitive regulatory characterization based on the current record. Ms Myers's work sheets suggest the existence perennial flows through a conglomeration of ditches and swales that she believes may not be hydraulically connected. Although artificial in character, a ditch or swale that carries a perennial flow necessarily comprises at least a rudimentary defined channel or bed within the meaning of BIMC 16.20.030.A (46), which does not exclude such features if they are "*used to convey streams naturally occurring prior to construction.*" The regulatory status of ditches and swales conveying perennial flows will depend on their historical antecedents. Staff represented that City records document that the present artificial channels replaced a naturally occurring stream system. The City also contended that hydraulic connections can be logically implied from the ravine's topography and gradient plus the existence of older culverts. The City's mapping shows that the ravine begins to play out below Segment C but no evidence was offered as to where the regulatory feature actually terminates.

CONCLUSIONS

1. A code interpretation appeal is focused on the scope and meaning of adopted regulations. Fact-finding is mandated in such an appeal by the site-specific nature of the regulatory process to the extent necessary to ascertain which regulations should apply at what locations. But the fact-finding contained in this code interpretation procedure is provisional only. It does not collaterally estop or otherwise preclude the City or any property owner in the future from asserting different factual conclusions about the presence or absence of natural features based on the performance of more complete studies and investigations.

2. While both the code interpretation application and the City's response thereto were couched in terms of a unitary Tangleberry ravine feature, the appellants' technical study divided the ravine into five discretely defined segments based on site morphology, a procedure that was probably essential for any meaningful analysis to occur. The CAO appears to provide no mechanism for determining the extent of and classification for larger heterogeneous critical areas that have no intuitively obvious natural boundaries.
3. The Tangleberry properties targeted by this appeal are potentially regulated by the City based on two broad CAO features. One is the presence of a ravine of a depth and degree of steepness that all parties agree mandates it, where present, to be regulated by the City, and the second is the possibility that a regulated stream also lies at the bottom of some or all portions of the ravine. Since ravines are typically created by the action of streams, the City has adopted a regulatory provision, BIMC 16.20.130.C(2)(g), that deals with the two features in combination. Unlike the buffers imposed by the CAO on streams outside ravines, the buffer for a stream in a regulated ravine does not depend unconditionally on a requirement that the stream qualify for water typing under the DNR system as adopted by the City. The regulatory buffer is equal to the width imposed for the stream type or 25 feet from the top of the ravine, whichever is greater. Therefore if a stream in a ravine does not qualify for typing, by default the alternative 25 foot buffer applies under BIMC 16.20.130.C(2)(g). By its terms BIMC 16.20.130.C(2)(g) applies categorically to all "*streams in ravines*," not just DNR-typed waters.
4. Following generally the concept outlined in WAC 365-190-130, and in an gesture toward establishing a framework for coordinating agency management procedures, the City at BIMC 16.20.130 has referenced together under the heading "fish and wildlife habitat conservation areas" the marine critical areas and streams that it regulates as well as conservation areas designated by federal and state agencies. The City's stream regulations mainly appear in this section. Within this context BIMC 16.20.130.B(1) undertakes to establish the "*categories [that] shall be used in classifying fish and wildlife habitat conservation areas*." As quoted above, regarding such classifications BIMC 16.20.130.B(1)(b) incorporates the DNR stream typing methodology contained in WAC 222-16-030.
5. The appellants argue that the BIMC 16.20.130.B(1) reference to the DNR stream *typing* provisions effectively reads the City's stream *definition* out of the regulatory process. That is to say, appellants contend that BIMC 16.20.130.B(1) must be read to require every reference within BIMC 16.20.130 to a "stream" to be treated as a mandatory reference to a DNR-typed stream. If a stream as defined by BIMC 16.20.030.A(46) does not also qualify for DNR typing, appellants aver that it simply is not regulated at all under BIMC 16.20.130 regardless of code terminology appearing to the contrary.
6. The appellants' argument confers upon BIMC 16.20.130.B(1) a regulatory role that is neither supported by the language of the subsection nor by its relationship to the CAO scheme as a whole. Simply put, BIMC 16.20.130.B(1) requires the DNR typing to be used when classifying a stream but nowhere does it mandate that every regulated stream must be typed. Within the CAO scheme, typed streams are a refined subset of the larger universe of regulated streams. That is why the CAO provides separate definitions for "streams" and "stream types." Accepting appellants' argument would render the City's "stream" definition superfluous.
7. Further, within BIMC 16.20.130.C(2)(g) itself the terms "streams" and "stream types" are used separately in the precise manner set out in BIMC 16.20.030.A. Thus they clearly are not intended to be viewed as interchangeable. The section undertakes a generic regulation of streams in ravines but ties only one of the two buffer options to the stream typing. If the appellants' interpretation were correct,

all the references in BIMC 16.20.130.C(2)(g) would have simply been made to typed streams in ravines, not to both “streams” and “stream types”. The DNR stream typing methodology is concentrated on protection of fisheries habitat. The City's habitat protection goals are broader, and where multiple critical areas are present, the centrality of any single element logically becomes less essential. Plus the ravine definition at BIMC 16.20.030.A(40) supplies an inference that a regulatory ravine will normally have been created by a stream.

8. The differing policy orientations of the City and DNR must inform the code interpretation analysis. The DNR regulations at issue and the supporting Board Manual are primarily focused on forest practices – logging that the DNR both regulates on private lands and manages itself on public lands to generate public revenue. Notice is taken that stream protection was a relatively late addition to the DNR regulatory portfolio arising out of citizen and tribal concerns over destruction of fisheries habitat by uncontrolled logging practices. Unlike the City, DNR's regulatory agenda is driven by a relatively narrow focus on achieving the minimum stream protection levels necessary to insulate still viable salmonid habitats from further logging degradation. Unlike the City, DNR has no overarching mandate to protect habitat values unrelated to logging impacts nor a commitment to restore streams previously degraded. For the City, adopting the DNR water typing system is a regulatory convenience, not a passionate embrace of DNR values. The City's environmental goals are broader and more proactive than those of DNR, and its CAO reflects a wider range of regulatory objectives, including critical areas restoration.

9. In summary, the specific terms of WAC 222-16-030 do not operate to modify the application of the City's adopted water-typing regulations beyond the provisions stated in its Municipal Code. To the extent that differences between the DNR and City water typing procedures may in fact exist, such differences are to be found in documents other than WAC 222-16-030 and have not been incorporated into the City's regulatory framework. Individual segments of the Tangleberry ravine system studied by Ms Myers will qualify for CAO buffers either because a stream exists meeting the definition stated at BIMC 16.20.030.A(46) and such stream lies in a ravine within the meaning of BIMC 16.20.030.A(40) and is regulated by BIMC 16.20.130.C(2)(g); or, in the absence of a regulatory ravine, because a typed stream exists within the meaning of BIMC 16.20.030.A(47) that is subject to the Table 2 stream buffer requirements appended to BIMC 16.20.130.C(2). Where a ravine exists without a regulated stream, vegetation management within the ravine is permitted subject to the requirements of BIMC 16.20.150.F(6).

10. Applying the foregoing principles to the Tangleberry study segments (insofar as the record warrants), certain regulatory conclusions can be derived. For Segments A and B where there appears to be a ravine but no stream, no buffer is imposed and vegetation management may occur pursuant to BIMC 16.20.150.F(6). Segment C appears to be characterized by both a ravine and a Type Np stream as defined by BIMC 16.20.030.A(47) and is subject to either a Table 2 stream buffer or a 25-foot buffer from the ravine edge, whichever is greater. Some or all of Segments D and E may meet the basic stream definition if the present artificial channels generally correspond to pre-existing natural stream features. An unclassified stream within a regulatory ravine would be subject to the BIMC 16.20.130.C(2)(g) buffer scheme for streams in ravines. The presence of perennial flows could warrant a Type Np classification. Due to a continuity requirement a Type Ns water classification is a less likely outcome because it would be justified only if an above-ground channel exists either upstream to the Segment C Type Np water or downstream to marine waters.

11. There is a limitation on the factual questions that the current appeal record permits us to resolve. The locations of the trees that the appellants would like to manage for view protection have not been

specified in relation to the Myers report data, so more specific view management determinations cannot be made. The exact places where the regulatory ravine starts and ends cannot be determined from this record. Definitive information regarding whether Segments D and E qualify as a regulated stream and, if so, also as a typed water is lacking.

12. There are also important questions of interpretation that are implicit in the record but were not identified as appeal issues. These are mainly questions of continuity and relationship. Based on Ms Myers field work, it seems evident that some segments of her study area met the City's stream definition while others did not; some stream sections were subject to the City's water typing system and others were not; and some portions of the ravine met CAO regulatory thresholds while other fell short. Assuming agreement that a fragmentary regime where regulatory requirements can change every few feet serves neither public nor private purposes, how is this shifting accumulation of data to be translated into a coherent regulatory framework? Is the regulatory ravine a unitary entity that includes shorter intervening sections where slope or height criteria may not be fully met? Is a stream to be classified overall based on its highest or lowest typing characteristic, or is each segment classified separately?

13. In the absence of contrary regulatory instruction, the decision will assume that the critical areas entities to be managed are the segments identified within Ms Myers's June 14, 2014, study. On that basis, the current decision should provide adequate guidance if the appellants' focus is primarily on Segments A, B and C. But to the extent that Segments D and E remain at issue, more information would likely be needed to reach a definitive regulatory outcome. As described below, a procedure has been provided that can accommodate a limited range of followup questions concerning Segments D and E without necessitating a new administrative review process.

14. In terms of the appeal framework, the appellants carry the burden of proof to demonstrate that the Director's November 18, 2014, code determination that a City-regulated stream lies within the Tangleberry ravine was incorrect; BIMC 2.16.020.P(1)(k) provides that within an administrative review appeal the "*decision of the director shall be accorded substantial weight by the hearing examiner.*" The appellants' burden was met with respect to ravine Segments A and B, where the uncontroverted evidence was that neither a stream channel nor flow were encountered. The appeal failed emphatically with respect to Segment C, where both a regulatory ravine and a Type Np stream are clearly evident. And because the evidence was inconclusive regarding the existence and extent of a stream, applicable stream typing and a regulatory ravine, the appellants failed to sustain their burden of proof that the City's interpretation was erroneous with respect to Segments D and E. As intimated above, Examiner jurisdiction will be retained for the limited purpose of allowing the appellants opportunity to submit more detailed information regarding the characterization of these two lower elevation study segments.

DECISION

The Lasser, Lane and Heins Administrative Code Interpretation Appeal (ADM19190) is GRANTED in part and DENIED in part, as specified above in Conclusion no.14. Hearing Examiner jurisdiction is hereby retained to conduct further proceedings and modify this report with respect to Tangleberry ravine study Segments D and E, as provided within the following conditions:

1. Within 14 days of the date of this decision the appellants or their attorney may file with the Planning Director a written notice of intent to submit a further technical study analyzing the potential existence and locations of regulated critical areas within Tangleberry ravine study

Segments D and E. A copy of this notice shall also be provided to the Hearing Examiner's Office.

2. If a timely notice as specified above has been received, representatives of the appellants and the City's Planning Director shall confer and agree upon a plan for further technical study of Segments D and E based on the code interpretations set forth in this decision. The parties may stipulate to uncontested factual matters. If within 60 days of the filing of the notice of intent the City and appellants have not agreed on a study plan, either party may petition the Hearing Examiner to resolve any disputes and approve a study plan.
3. Within 14 days of completion of a technical study as agreed to or ordered, either party (or both) may petition the Hearing Examiner for a modification of this decision. Any such petition should specify the changes requested and the technical bases therefor. After receipt of a petition and the supporting technical report, the Hearing Examiner may reopen the hearing, receive new documents and testimony, and modify the findings and conclusions of this decision with respect to Segments D and E, as appropriate.
4. The jurisdiction retained by the Hearing Examiner over this proceeding shall terminate without further notice under either of the two following circumstances:
 - A. A written notice of intent to submit further technical studies has not been submitted within 14 days of the date of this decision as required by Condition no. 1 above, or
 - B. A written petition to the Hearing Examiner for a modification of this decision has not been submitted within 14 days of the date of completion the new technical study as specified by Condition no. 3 above.
5. A request for extension of the period for seeking judicial review of this decision will be favorably entertained if a written notice of intent to submit further technical studies has been timely filed in the manner required by Condition no. 1 above.

ORDERED March 30, 2015.



Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The exhibit list prepared by the Clerk of the Hearing Examiner's Office is attached.

A party with standing may seek judicial review of this decision by filing a timely suit in Kitsap County Superior Court under the Land Use Petition Act.