

From: [Colleen Kroe](#)
To: [Scott Olmsted](#)
Subject: RE: Does it meet the Type Ns definition?
Date: Thursday, February 4, 2021 2:57:34 PM

Hi Scott,

Stewart's email noted exactly what I was thinking. The intent of the Mercer Island Municipal Code, although not clearly written, is that "aboveground channel system" refers to a channel system that does not drain naturally into the subsurface (soil). A culverted watercourse would still be considered an aboveground channel system, and so a culvert not eliminate the stream from being regulated as a watercourse under the code. Otherwise, Mercer Island would not have a "Piped" classification for a watercourse under MIMC 19.16.010.

Also, the definition of a Piped Watercourse includes this language: "This definition does not include irrigation and drainage [ditches](#), grass-lined swales, canals, storm water runoff devices, or other courses **unless they are** used by fish **or to convey waters that were naturally occurring prior to construction.**" Considering that the city further regulates piped watercourses and development near them under MIMC 19.07.180.C.6, this further supports the intent that the code does not exclude channels upgradient of culverts from being regulated if they meet the definition of a watercourse in and of themselves.

Hope this helps. If you still want to meet tomorrow, please let me know.

-Colleen

Colleen Kroe, PWS

Principal Biologist

ESA | [Environmental Science Associates](#)
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From: Scott Olmsted <SOlmsted@esassoc.com>
Sent: Thursday, February 4, 2021 1:38 PM
To: Colleen Kroe <CKroe@esassoc.com>
Subject: FW: Does it meet the Type Ns definition?

Hi Colleen,

I pinged WDFW about the Mercer Island watercourse typing to get their take; see Larry's email below.

From: Fisher, Larry D (DFW) <Larry.Fisher@dfw.wa.gov>
Sent: Thursday, February 4, 2021 11:05 AM
To: Scott Olmsted <SOlmsted@esassoc.com>
Subject: RE: Does it meet the Type Ns definition?

Hi Scott:

I discussed this with my supervisor, Stewart Reinbold. He said this came up before on a watercourse in Kirkland. He said the culvert is an approved conveyance system and does not disqualify the watercourse as an Ns stream, since it does not flow naturally subsurface. That is my understanding of what he said.

If there are any further questions about it, Stewart may be reached at 425-301-9081.

Thanks

Larry Fisher

WDFW Area Habitat Biologist

16018 Mill Creek Boulevard

Mill Creek, WA 98012

Cell: 425-449-6790 – ***Please note phone change to just my cell phone.***

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From: Scott Olmsted <SOlmsted@esassoc.com>
Sent: Thursday, February 4, 2021 8:36 AM
To: Fisher, Larry D (DFW) <Larry.Fisher@dfw.wa.gov>
Subject: RE: Does it meet the Type Ns definition?

External Email

Hi Larry,

The stream is located on Mercer Island.

Thanks

From: Fisher, Larry D (DFW) <Larry.Fisher@dfw.wa.gov>

Sent: Thursday, February 4, 2021 8:32 AM
To: Scott Olmsted <SOlmsted@esassoc.com>
Subject: RE: Does it meet the Type Ns definition?

Hi Scott:

Before I respond to this, I want to make sure it is in my area. I need more info on the location to do that.

Larry Fisher

WDFW Area Habitat Biologist

16018 Mill Creek Boulevard

Mill Creek, WA 98012

Cell: 425-449-6790 – ***Please note phone change to just my cell phone.***

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From: Scott Olmsted <SOlmsted@esassoc.com>
Sent: Thursday, February 4, 2021 8:19 AM
To: Fisher, Larry D (DFW) <Larry.Fisher@dfw.wa.gov>
Subject: Does it meet the Type Ns definition?

External Email

Hi Larry,

We conduct 3rd party reviews of projects for a local government and are currently reviewing an “interesting” situation. The applicant, their lawyer, and their consultant claim the following:

- The property is located adjacent to a stream; the stream buffer extends onto a portion of the subject property.
- The segment of stream adjacent to the subject property is open channel, but the stream flows into a culvert under a road and then stays in a pipe until discharging to Lake Washington (see attached figure).
- The attorney and environmental consultant hired by the property owner indicate that while the stream meets the physical criteria for a stream, the stream does not meet the City’s definition of a Type Ns watercourse, which is the same definition found in the Washington Administrative Code a for Type Ns stream, because the stream flows into a pipe and is not an **“aboveground channel system”**
- The WAC and City’s Type Ns watercourse definition is as follows: **Type Ns, which include 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 **aboveground channel system** to Type S, F, or Np waters.

Have you encountered situations where an applicant asserts a stream should not be regulated because it does not meet the literal definition of a Type Ns water due to flows within a pipe, which is not an aboveground channel system?

If it is easier to discuss via phone, please call me at 206.789.2381

Thanks,

Scott

Scott Olmsted
Senior Associate

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