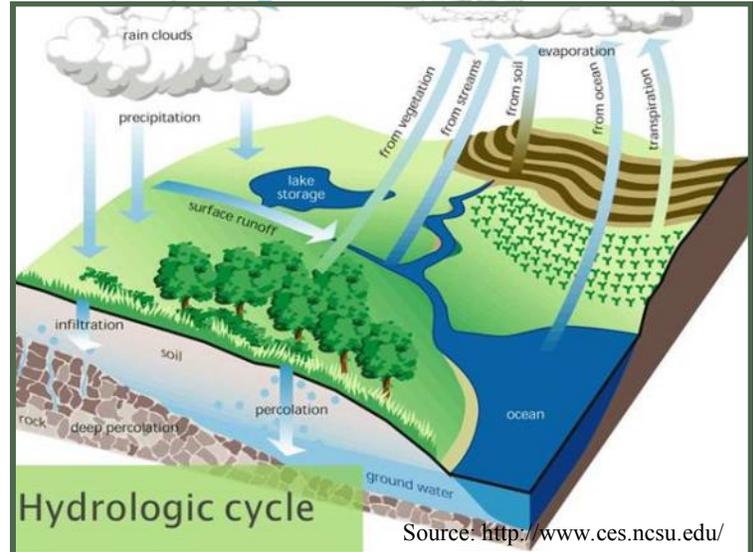


“It” Flows Downhill

“It” is stormwater runoff and it flows downhill. That’s a law of nature; but what about laws of man? What do our laws say about stormwater runoff and drainage?

Generally in North Carolina this is governed by common law. Basically, a downhill property owner has to receive water coming from property uphill. In other words, water has a right to go where it wants to go...downhill.



This common law includes three components:

1. The easement of the upper owner includes the right to accelerate and increase the natural flow, but does not include the right to divert waters.
2. “Natural flow” of water means that the upper owner cannot divert the water or cause it to flow upon the lower land in a different manner, nor in a different place from which it would naturally flow.
3. The lower owner may not obstruct the natural flow from above in any way.

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Who is Responsible for Maintenance?

While the Town of Hillsborough has a stormwater permit that allows the discharge of stormwater into the municipal separate storm sewer system (MS4), responsibility is limited in certain situations. The Town of Hillsborough is only responsible for maintaining stormwater conveyances (e.g. ditches, swales, pipes, culverts, catch basins, etc.) within town-owned property and street rights-of-way. Stormwater conveyances within state maintained roads, such as Churton Street, are the responsibility of NC DOT. Stormwater conveyances on private property are the responsibility of the property owner. In the case of a residential development the owner may be the homeowner’s association (HOA). Stormwater ponds, detention basins and other stormwater control measures installed on private property must also be maintained by the property owner or HOA. This even includes those installed to meet Town of Hillsborough development requirements. Additionally, the Town of Hillsborough has the right to inspect any aspect of the stormwater system to ensure proper function, even on private property.



Illegal discharges to the storm drainage system are considered "unreasonable" and are subject to violations and civil penalties



Erosion and sedimentation from stormwater runoff may be considered "unreasonable" depending upon the individual situation

Stormwater runoff is also governed by a principal known as "reasonable use" of property. A property owner has the legal right to make reasonable use of their property, even if their development alters the flow of water and causes some impact to downstream property owners. The upstream owner can incur liability but only when the change in runoff is **unreasonable and causes substantial damage.**

"Damage" may be caused by both a change in the **quantity** of stormwater water runoff (i.e. flooding/erosion) downstream or **quality** of the runoff (i.e. polluted runoff). Regardless, reasonable use and damage from runoff is determined on an individual, case by case basis.

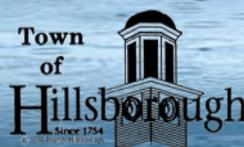
A property owner has the legal right to make reasonable use of their property

However, the Town of Hillsborough does require development to control stormwater runoff. Development subject to the town's Unified Development Ordinance (UDO) must "*control and treat the runoff generated from all surfaces from the first inch of rain*" as well as other standards. The UDO also requires undisturbed areas, known as riparian

buffers, along all streams. For existing development, Hillsborough's Town Code prohibits discharges to any stormwater conveyances—private or public—other than stormwater runoff. Violators are subject to fines and enforcement actions. Land disturbance and erosion control is also regulated. The Orange County Erosion Control Division implements and enforces an erosion control program for the town.

***Remember...
Our Stormwater Drains
to the Eno River!***

For more information, contact:



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