



Water Flows Downhill

Town of Hillsborough Information Sheet

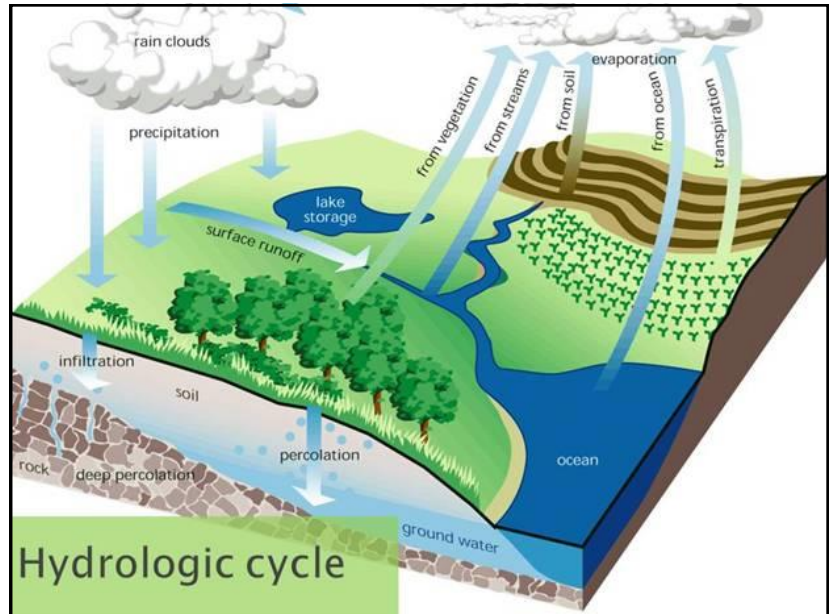
Stormwater runoff flows downhill. That's a law of nature; but what about laws of humankind? What do our laws say about stormwater runoff and drainage?

Generally in North Carolina, stormwater runoff and drainage are governed by common law. Basically, a downhill property owner has to receive water 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.

However, stormwater runoff is also governed by a principle known as "reasonable use" of property. Property owners have the legal right to make reasonable use of their property, even if development alters the flow of



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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 is only responsible for maintaining stormwater conveyances — such as ditches, swales, pipes, culverts and catch basins — within town-owned property and street rights-of-way. Owners of property that fronts a town-maintained street are required to mow drainage ditches and swales along their street frontage, per Section 7-7 of the town's municipal code.

Stormwater conveyances within state-maintained roads, such as Churton Street, are the responsibility of the North Carolina Department of Transportation. Stormwater conveyances on private property are the responsibility of the property owner. In the case of a residential development, the owner may be the homeowners association. Stormwater ponds, detention basins and other stormwater control measures installed on private property must also be maintained by the property owner or homeowners association. This even includes those installed to meet Hillsborough development requirements. Additionally, the town 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 use. They are subject to being treated as violations and incurring civil penalties.



Erosion and sedimentation from stormwater runoff may be considered unreasonable use depending on the individual situation.

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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 a change downstream in the quantity or quality of stormwater runoff, such as flooding/erosion or polluted runoff. Regardless, reasonable use and damage from runoff is determined on an individual, case-by-case basis.

Property owners have the legal right to make reasonable use of their property.

However, the town does require development to control stormwater runoff. Development subject to the Unified Development Ordinance must “*control and treat the runoff generated from all surfaces from the first inch of rain*” as well as other standards. The ordinance 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 are also regulated. The Orange County Erosion Control Division implements and enforces an erosion control program for the town.



Blocking storm drains or altering drainage on your property that results in nuisance flooding may be considered unreasonable use.

Stormwater and Environmental Services Division

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