

DOWNHILL DRAINAGE

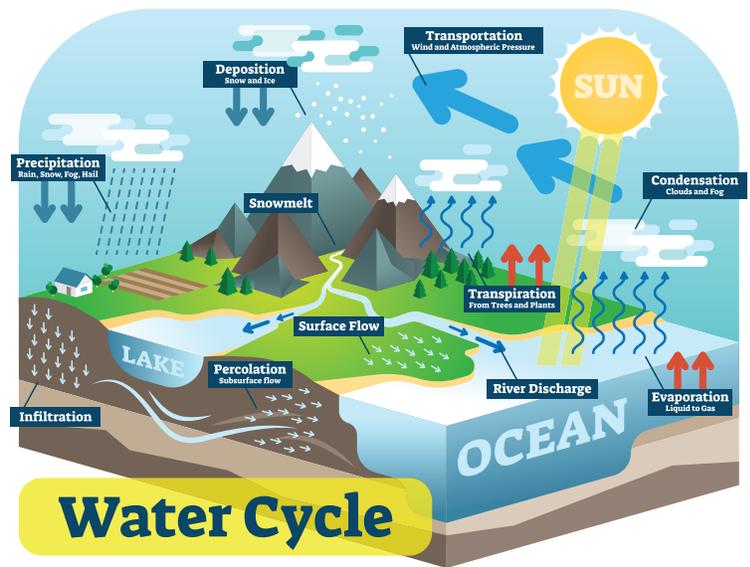
Water Flows Downhill

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 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***.

Who is Responsible for Maintenance?

While Orange County issues stormwater permits which allows for the discharge of stormwater into stormwater control measures, responsibility is limited due to drainage law.

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

Stormwater conveyances within state-maintained roads 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 development requirements. Additionally, Orange County has the right to inspect any aspect of the stormwater system to ensure proper function, even on private property.

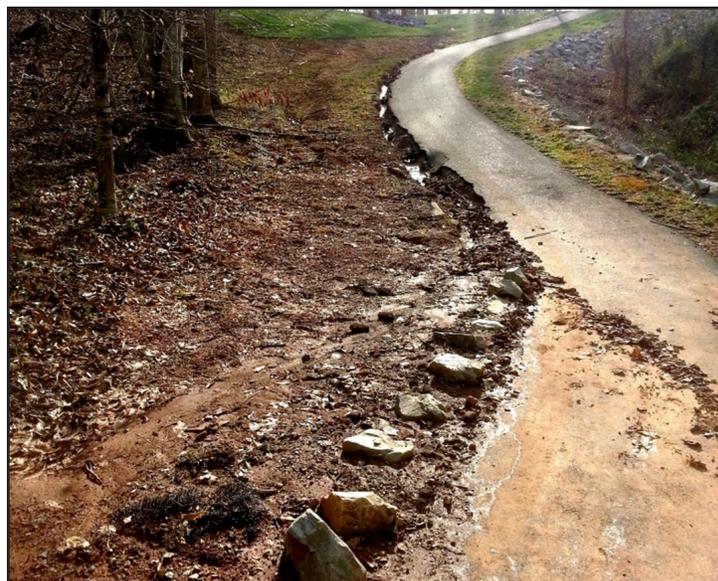


“Damage” may be caused by a change downstream in the quantity or quality of stormwater runoff, such as flooding/ erosion or polluted runoff. Regardless, reasonable use and damage from runoff is determined on an individual, case-by-case basis.

However, Orange County does require development to control stormwater runoff. Development subject to the Orange County 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.

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

For existing development, the UDO 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 throughout Orange County.



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



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



Illegal discharges to the storm drainage system are considered unreasonable use. They are subject to being treated as violations and incurring civil penalties.



For additional information and questions, please contact the Orange County Erosion Control and Stormwater Division at 919-245-2588 or erosioncontrol@orangecountync.gov

www.orangecountync.gov/Stormwater