

5. Rule of Reasonable Use

The Civil Law Rule obligates owners of lower land to receive the natural flow of surface water from higher lands. Since almost any use of land involves some change in drainage and water flow, a strict application of the civil law principles was impracticable in a developing society. Thus, a more moderate application of this rule to allow a landowner reasonable use of his or her property evolved.

The adopted Reasonable Use Rule allows each landowner to make reasonable use of his or her land even though by doing so, he or she alters in some way the flow of surface water thereby harming other landowners, with liability being incurred only when this harmful interference is found to be unreasonable and causing substantial damage.

The Reasonable Use Rule places responsibility on the landowner to make reasonable use of his or her land. While "reasonable use" is open for interpretation on a case by case basis, the implication for highway drainage is that provisions for, and treatments of, surface waters on properties are to be made in accordance with sound, reasonable, and acceptable engineering practices. Therefore, it is incumbent on engineers to evaluate the potential effects of surface water activities on both upstream and downstream properties and to include provisions in their design to hold these effects to reasonable levels.

Contacts

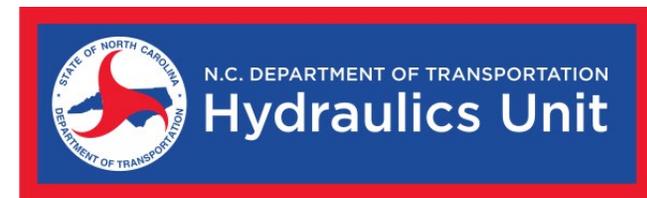
North Carolina Department of Transportation Hydraulics Unit

<https://connect.ncdot.gov/resources/hydro>

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Storm Drainage

A summary of the NCDOT
Drainage Policies and Procedures

Taken from NCDOT Guidelines for
Drainage Studies and Hydraulic Design
Chapter 2

1. Diversions

Diversions are defined as the act of altering the path of surface waters from one drainage outlet to another. It is NCDOT policy to design and maintain its road systems, so that no diversions are created thereby, insofar as is practicable from sound engineering practice. Anyone desiring to create a diversion into any highway rights-of-way shall not be allowed to do so unless written permission is obtained from the State Hydraulics Engineer. Permission will be granted only after it has been determined that:

- the additional flow can be properly accommodated without causing damage to the highway
- the cost for any required adjustments to the highway system will be borne by the requester
- Appropriate consideration and measures have been taken to indemnify and save harmless NCDOT from potential downstream damage claims.

It is NCDOT policy not to become a part to diversions unless refusal would create a considerable and real hardship to the requesting party.



2. Obstructions

When a drain is blocked below the highway, which is detrimental to highway drainage and is from natural causes, the division will take reasonable measures to remove the block or obstruction. Where the blockage is caused by wrongful acts of others, it is the policy of NCDOT to take whatever recourse deemed advisable and necessary to cause the party responsible to remove the blockage. Where a blockage occurs downstream of the highway, whether natural or artificial and is deemed of no consequence to the division on whether to remove it, the agency's policy is to remain neutral.



3. Subdivision Streets

When the Division of Highways accepts subdivision roads onto the system, it accepts the existing drainage system. It accepts only that part of any drainage system, whether piped or open ditch that is located inside the right of way. Responsibility for maintenance of other easements or stormwater facilities remain with the property owner where they are located.

The Division of Highways has no responsibility for subsurface drainage or altering ground water levels



4. Maintenance of Drainage Outside Right of Way

While it is the responsibility of NCDOT to provide adequate drainage for constructing and maintaining the State Highway System, it is not its policy nor responsibility to provide improved drainage for the general area traversed by such roads, unless incidental to the drainage of the road or highway itself. Drainage involvement outside the highway rights-of-way is limited to two general areas of justification.

- Sufficient benefit could be gained by such action to warrant the cost. These benefits would be in such areas as reduction in roadway flood frequency or extent, facilitation of maintenance, or a reduction in potential damages
- Work is required to correct a problem or condition created by some action of NCDOT

It is not the responsibility of NCDOT to eliminate flooding on private property that is not attributable to acts of the agency or its representative. In general, outlet ditches will be maintained for a sufficient distance downstream to provide adequate drainage for the highway facility. On large outlets serving considerable areas outside the right-of-way, the maintenance should be done on a cooperative basis, with the benefited properties bearing their proportionate share. Shares will, in general, be based on proportioning of runoff from the areas served by the outlet.