

## Drainage Issues and FAQ

The City and County public works departments maintain the drainage systems within the right of ways of City and County roads. Drains and drainage issues beyond the right of ways is generally an issue between private landowners. Drainage is a constant source of problems between neighbors, and the Engineering Office is a resource for answers to questions by property owners regarding responsibilities relating to the problems. Most of these questions can be addressed by application of the general rules of water drainage and flow control and diversion that have been applied in common law for hundreds of years. The following sentence summarizes these rules and conditions:

***A landowner may reroute water in any fashion he desires within the boundary of his property, provided that he continues to allow water that has been entering the property to continue to enter in the same location and quantities, and also provided that he continues to allow the water to exit in the same location and in approximately the same quantities as prior to the modifications.***

If a landowner violates these rules, he is considered to be creating a nuisance and may be subject to civil action by an affected landowner.

When a parcel of property is subdivided or cut with new lines, the creation of the new property boundary crossing a drain locks in the location that water must be allowed to flow through from that point forward. This applies whether the drain was newly created by a developer prior to selling and cutting lots, or whether the drain was a historical natural drain defined by the original land slopes. When a new buyer purchases the new lot or lots, that buyer purchases the drainage conditions with the land, and any modifications to the drains within the lot will be the responsibility of the new owner. The new owner cannot legitimately justify blocking the entrance of water to his lot or changing the discharge to a new location based on conditions that may have existed prior to the changes made by the developer, but instead must follow the above rule and make provision for routing the water through his lot.

Frequently Asked Questions for Drainage:

### **Why should I have to deal with somebody else's water on my land?**

Going back to old English Common Law, which is incorporated specifically in the state constitution, the legal history dictates that water does not belong to any individual, but is instead a "common enemy" that we all fight as it makes its way to the sea. In other words, mother nature delivers water in various methods to the earth, where it is either a resource or a curse, depending on the situation, that must be dealt with by each landowner it passes. The old common law formalized the concept of natural drains, which are the swales, ditches, gullies, creeks, and rivers that formed naturally as the landscape has evolved. Many lawsuits over the years have upheld the concept that it is not the water's presence that creates a new and valid tort claim, but instead, changes

to the existing conditions that increase or decrease substantially the amount of water entering or leaving a property.

**Why isn't the County responsible for fixing drains though my yard?**

Water drainage is considered to be a characteristic of a parcel when it is purchased, and is a factor in land values or lack of values. The County, by law, is prohibited from expending public resources on private property unless it is for a clearly definable public benefit. Installing, repairing, or improving drains in a private yard would result in an increase in the private property value at the taxpayer's expense. This remains the case even if the water is flowing from a drain pipe under a roadway, although the county may work on those portions of the drain that are located within the right-of-way owned by the County.

**Can my neighbor create a pond that backs up over my property without my permission?**

Not legally. However, to prevent it or obtain relief from the water, you would have to pursue the matter in the courts.

**Can't I put the water back to where it was before the development was built?**

It is unlikely that this would be possible unless every affected landowner between where you were changing the flow and where the flow re-enters the original natural drain were to agree. Once a developer changes the drains within his property and then creates the new lot lines, the drains are then redefined at the points they cross those lines. Any change would leave a landowner open to civil action.

**Can I put up a berm to block the water running from my neighbor's yard into mine?**

This would violate the rules for drainage in that you would be preventing water from entering your property where it has been entering and your neighbor could require you to remove the blockage. If you obtain your neighbor's agreement and the diverted water were routed to the drain below your property, this may be possible.