

## Section 5.04 Hillside Disturbance

A. *Purpose – Methodology.* The purpose of these hillside regulations is to limit the amount of hillside disturbance within each subdivision. The amount of hillside area that may be disturbed shall be based on the severity of the slope. Hillside areas shall mean any area having slopes equal to or greater than 20%, as measured from a topographical contour map prepared and stamped by an Arizona-registered land surveyor. The Town requires the submission of topographic contour maps having contour intervals not greater than two feet and at a scale not smaller than 1" = 20' for sites less than 10 acres. Sites 10 to 100 acres may utilize contour intervals not greater than five feet at a scale not smaller than 1" = 50'. Sites over 100 acres may utilize contour intervals not greater than five feet at a scale not smaller than 1"=100'. Individual noncontiguous areas of hillside or nonhillside that are less than 500 square feet that are located within larger areas nonhillside or hillside, respectively, may be included with the larger area of nonhillside or hillside that surrounds it. The percent of slope shall be determined by the spacing between the contours lines as shown on the preliminary plat. Following are the land disturbance allowance of slope interval areas of 500 square feet or more:

PERCENT OF SLOPE	PRESERVATION REQUIREMENT (%)	DISTURBANCE ALLOWANCE (%)
0 – 20%	0	100%
20% +	60%	40%

B. Exemption; Calculations. Except as otherwise specifically provided for in this Ordinance, there are no exempted disturbance activities. When permitted, exempted disturbance activities shall be subtracted from the gross area of the subdivision, and the required "Preservation Requirement" and "Disturbance Allowance" areas, as noted above in Subsection [5.04.A](#), shall be calculated from the net area of the subdivision (that area remaining after the area(s) of exempted disturbance have been subtracted from the gross area of the subdivision).

1. Limited Exemptions:

The following disturbance activities are exempted only from horizontal Hillside Disturbance Regulations contained in this Section [5.04](#).

- a. Disturbance within street rights-of-way, tracts of land for private roads meeting public road standards, and any roadway grading required by the Town Engineer outside of street rights-of-way or tracts for private roads meeting public road standards.
- b. Utility lines, or any other public improvement activities needed for the development of utility lines and associated equipment, outside of any disturbance caused by other development activities, either pre-existing or current, may be exempted from the requirements of this section upon administrative review by the Community Development Director or designee and approval of a "Utility Disturbance Permit" by the Town Council. Utility Disturbance Permits shall only be issued in conformance with the following conditions.

- i. The Community Development Director or designee shall find that the proposed disturbance is necessary.
    - ii. The Community Development Director or designee shall approve a re-vegetation and landscaping plan which shall be completed within a specified time frame and made a condition of the Utility Disturbance Permit.
    - iii. The Community Development Director or designee shall determine the method, if any, of covering open trenches during nonworking hours.
    - iv. The Community Development Director or designee shall specify the expiration date of the Utility Disturbance Permit.
    - v. Utility Disturbance Permits are project-specific and property-specific and are nontransferable.
    - vi. The Community Development Director or designee may, at his sole discretion, include any other reasonable condition he feels is necessary to ensure public safety and convenience.
    - vii. Any violations of the conditions of a Utility Disturbance Permit shall render the permit void.
  - c. All lots and uses deemed exempt under Subsection [5.02.C](#) of this Article.
  - d. An area up to 10 feet beyond the disturbance fence may be cleared during construction to provide additional fire protection, provided a plan to revegetate this area consistent with the native desert in place prior to construction is approved with the building construction plans. The revegetation must be accomplished prior to issuance of the occupancy permit.
2. Specified Nonexempt Activities: The following disturbance activities are specifically not exempted from the Hillside Disturbance Regulations contained in this Section [5.04](#):
- a. Disturbance activities for the development of any effluent watering field or any lake or pond intended for the storage of treated effluent, or any service and/or access road or any above or below ground pipeline or utility lines, whether or not the development of such fields, ponds, lakes, service/ access roads, pipelines or utility lines have been mandated or suggested by another governmental agency or Court.
  - b. Any "utility" disturbance, other than for a utility line and associated equipment as described above in Subsection [5.04.B.1.b](#).
3. In addition to the detailed information that is required to be provided to the Town to ensure compliance with this Article, as noted in Subsection [2.03.D.9](#) of this Ordinance, the property owner may submit to the Town an alternative method of calculating the "Preservation Requirement" and the "Disturbance Allowance" as set forth in Subsection [5.04.A](#). The Town Council may approve this alternative method of calculating the "Preservation Requirement" and the "Disturbance Allowance" at the time of preliminary plat consideration.

4. The Development Services Director may consider additional exemptions to or modifications of the disturbance area required by Section [5.04](#) of this Article when, in the determination of the Development Services Director, the specific situations of the lot (lot configuration, steep slope on the lot adjacent to the street, location of appropriate building site, etc.) make development of the specific lot impractical under the provisions of this Article. The relief allowed shall be the minimum necessary to facilitate construction on the property.

C. *Previously Disturbed Areas.* Any previously-disturbed hillside areas within a proposed subdivision, including but not limited to disturbance for purposes as described in Subsection [6.06.C](#) of this Ordinance, shall be counted toward the total amount of hillside disturbance within the subdivision and shall not be accepted by the Town as undisturbed hillside areas. If an applicant desires to salvage landscape materials for re-vegetation purposes prior to Final Plat approval, the applicant may do so at the risk of noncompliance with this Ordinance and denial of the final plat.

D. *Determination of Natural Grade.* The topography of land within the Town as of September 20, 1991 is considered to be natural grade by this Ordinance. Grading and/or other disturbance activities conducted since September 20, 1991 shall not be exempted from the hillside disturbance regulations of this Ordinance and cumulative hillside disturbance shall be offset at the time of subdivision approval pursuant to the regulations of this Section [5.04](#).

E. *Disturbance Buffers and Fencing.*

1. **Fencing:** Except as provided in Subsection [5.04.E.2](#), after a disturbance area is defined, an area at least equal to the hillside protection requirements of the lot, parcel, or tract, shall be protected by rope and flag and affixed in the ground to assure nonmovement. The roped-in area shall include all previously disturbed areas and all areas intended to be disturbed. There shall be no disturbance outside the roped-in area. However, the Development Services Director or designee may approve the re-vegetation of nondisturbance areas or hillside protection areas disturbed prior to September 21, 1991 in accordance with a landscape plan approved by the Development Services Director or designee. The rope and flag may be removed only after the completion of all construction activity on the lot.

2. **No Fencing:** Where the Department determines, in its sole discretion, that fencing as required by Subsection [5.04.E.1](#) would be impracticable, the Department may waive the fencing requirements of Subsection [5.04.E.1](#), and in such case, the area to be disturbed shall include a perimeter area of not less than 20 feet in width around all other construction or grading activities. The proposed disturbance perimeter, as shown on the approved set of grading plans, shall be iron-staked by an Arizona-registered land surveyor or Arizona-registered civil engineer, roped, and warning signs posted prior to any disturbance activity on the lot or parcel. This staking, roping and warning signage shall be inspected by the Town Engineer prior to any disturbance activity on the lot or parcel. The staking, roping and warning signage shall be maintained in the same location during all subdivision construction activities, and shall not be removed until final approval has been given by the Town, and in the case of the construction of a multifamily development, until the Town has issued a Certificate of Occupancy.

F. *Utility Disturbance.* Disturbance activities for utility line (including but not limited to water and sewer mains and laterals) installation shall include an area on center with the utility line at a width (may vary) necessary for such utility work. No disturbance activities are permitted outside of the area indicated to be disturbed.

G. *Subdivider Options.* In order to comply with the Land Disturbance Regulations of this Section [5.04](#), the subdivider of a subdivision wherein future disturbance activities will take place can choose either of the following two options:

1. Lot-by-Lot Hillside Protection Option: If the subdivider does not desire to utilize the Hillside Transfer and Protection Option set forth in Subsection [5.04.G.2](#) below to comply with the regulations of this Section [5.04](#), and no hillside protection measures are proposed (other than those measures required in Subsection 5.4.C above) in the platting process for the undisturbed, yet developable lots or parcels within the subdivision, each lot or parcel shall be required to individually meet the land disturbance requirements in this Article.

2. Hillside Transfer and Protection Option:

a. If the subdivider chooses to transfer allowable hillside disturbance from undisturbed hillside areas to lots, parcels, tracts or rights-of-way in a subdivision, the subdivider may do so by identifying an area acceptable to the Town and granting to the Town a Hillside Protection Easement(s). If the Hillside Transfer and Protection Option is utilized, all areas located outside of the Hillside Protection Easement(s) within the subdivision may be disturbed through the subdivision improvement process and/or through future development activity.

b. If the Hillside Transfer and Protection Option is chosen by the subdivider to preserve the required amount of hillside areas within the subdivision, the following regulations shall apply:

i. If a subdivision is located in two or more zoning districts, the amount of hillside slopes required to be preserved within each zoning district shall be calculated separately.

ii. The total amount of required undisturbed hillside areas for the subdivision can be preserved anywhere within the subdivision. Hillside Protection Easements can be placed on lots intended to be developed, instead of, or in addition to, tracts of land within the subdivision boundaries. In some Town-approved instances, hillside areas may be preserved outside of the subdivision boundaries.

iii. The following Hillside Protection Easement text shall be used for easements intended to meet the intent of this Section [5.04](#):

Owner hereby grants to the Town of Fountain Hills a perpetual easement upon, across, over and under all those areas designated as "Hillside Protection Easement" for the purpose of preserving the natural topography and vegetation of land area within the Final Plat of (Subdivision Name) in conformance with the Article [V](#) of the Town of Fountain Hills Subdivision Regulations. Except as authorized by the Town's Fire Marshal for fire safety, the owner or any of his heirs, successors, or assigns shall not perform nor allow to be performed, any construction; or cutting, filling, grading to the Topography; nor any grubbing, brushing, removal, or otherwise damage any vegetation, rock

outcropping, or other natural feature in the Hillside Protection Easement area without prior Town Council approval. A trail way may be a permitted use if approved by the Town Council.

H. *Clearance for Fire Safety.* The Fire Marshal is authorized to review and approve limited clearing and removal of plant material within a non-disturbance area on the lot for up to 100 feet from a structure to reduce fire danger from overgrowth and an accumulation of dead or dying plant material. The purpose of this section is to reduce fire danger by requiring the removal of material that creates a fire danger. This section does not allow any revegetation within the nondisturbance area. Any work done beyond what is authorized by the Fire Marshal will be in violation of this section and subject to applicable fines and fees.

I. *Enforcement – Remediation.* In the case of disturbance activities in violation of this section, the Community Development Director or designee has the authority to enforce these regulations including, but not limited to, the authority to require the immediate chain-link fencing of all disturbance perimeters, the authority to require the immediate revegetation of any Illegally-disturbed areas and/or the authority to issue project-wide stop work orders. Furthermore, disturbance activities in violation of this section are violations of the Fountain Hills Town Code, and are subject to Article [1-8](#) Penalty, Subsection A of the Town Code, as amended. (24-09, Amended, 04/02/2024; 20-07, Amended, 06/02/2020)

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**The Fountain Hills Subdivision Ordinance is current through Ordinance 24-09, passed April 2, 2024.**

Disclaimer: The town clerk's office has the official version of the Fountain Hills Subdivision Ordinance. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

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