

Douglas County Drainage Ordinance

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Amended
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Prepared on Behalf of the Douglas County Commission
by

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Introduction

Drainage activity represents the possibility of enhancing the property of one person, yet it almost always has an adverse impact on nearby lands. Drainage laws have attempted to reconcile this conflict by balancing the benefit gained from drainage against the harm to other property.

In 1985, the South Dakota Legislature concluded that the control of virtually all aspects of drainage was to be placed with the counties. New statutes required that county commissioners create a board of resolution to hear disputes on the local level and to publish a notice requiring drainage rights be registered with the county. The statutes also allowed counties to establish permit systems, thus, local boards could be involved in authorizing drainage projects.

What follows is an attempt by Douglas County to pursue the intent of such statutes. The Board of County Commission intends to create a board of resolution and a permit system, thereby taking an active role in Douglas County drainage issues.

Section 1.00 – Definitions

Contractor:

The person, firm, or corporation with whom the owner has executed an agreement to construct any portion of a drainage project in excess of forty percent (40%) of the projects total cost.

County Drainage Board: (may be called “The Board”)

The Board of County Commissioners shall constitute itself and serve as the County Drainage Board.

Dominant Estate:

Any Parcel of real property, usually at a higher evaluation, which has water able to drain onto servient estates.

Owner:

Any individual, firm, or corporation, public or private, or public agency, who has legal title to real property as shown by the records of the Register of Deeds in the county in which the real property is located. If the real property is sold under a contract for deed and the contract is on record in the office of the Register of Deeds, both the recorded owner and the purchaser as named in the contract for deed are deemed owners of the real property.

Permanent:

A drainage project fixed and in place for a period of time exceeding six months.

Permitted Drainage:

Any drainage project that has been submitted to the Douglas County Drainage Board and has received an authorized permit to drain.

Servient Estate:

Any parcel of real property, usually at a lower elevation, which is subjected to water draining upon it from a dominant estate.

Vested Right:

Any natural drainage right lawfully acquired by the owner or owners of either a dominant or servient estate prior to July 1, 1985 is deemed vested. Any drainage right lawfully acquired prior to July 1, 1985, arising from drainage which is natural with man-made modifications or entirely man-made is also deemed vested, provided the right is recorded with the Douglas County Register of Deeds within six years of July 1, 1985

Waterbody:

A river, stream, lake, pond, slough, wetland, marsh, or other water area.

Section 2.00 – COUNTY COMMISSION AS DRAINAGE BOARD

2.01 – The Board of County Commissioners shall constitute itself and serve as the County Drainage Board. The county auditor shall act as recorder of the official minutes of the Board.

2.02 – The Drainage Board shall have the following responsibilities:

- A. Review all applications for drainage permits under the provisions of this ordinance.
- B. The board shall only be responsible for resolving disputes involving Douglas County and Township right of ways. Other disputes will have to be resolved by filing an action in circuit court.

Section 3.00 – COUNTY DRAINAGE PERMIT

3.01 – A drainage permit shall be required of the following projects which are constructed after July 1, 1985, drain onto, and are located on real property adjacent to, Douglas County or Township right of ways:

- A. Works resulting in a water flow of 18 gallons per minute or more for a period exceeding 24 hours.
- B works draining any waterbody having an area of 1 acre or more.
- C. Any enlargement, rerouting, or other modification to a permitted drainage.
- D. Any enlargement, rerouting, or other modification to a vested drainage.
- E. Any drainage system or tile that flows water into or substantially onto any public road right of way, whether said road right of way shall be state, county or township.

3.02 – A permit is to be obtained by the owner on whose property the work is proposed. An owner may authorize an agent to act on his/her behalf in obtaining a permit, provided such an authorization is in written form.

3.03 – The fee for each owner permit shall be \$25.00. The permit fee will be used by the county to pay for the expenses associated with newspaper notices.

3.04 – An application for drainage permit shall be available during normal business hours (8:00 a.m. – 4:30 p.m.) from the Office of the Douglas County Auditor.

3.05 – Owner application materials shall consist of the following:

- A. Township map(s)
- B. Form requesting project information

3.05-1 - Owner applications shall be deemed complete upon receipt of the following in the county auditor’s office:

- A. Completed forms
- B. Township map (s) identifying the drainage project

C. \$25.00

3.06 – The official map for recording all permitted projects and vested drainage rights shall be the 7.5 minute topographic illustrations published by the U. S. Geological Survey. The official maps shall be on record in the county Register of Deeds office. Projects which do not require permits will not be recorded.

3.07- The Board may require, as a condition to the approval of any drainage permit application, a post-construction survey of the permitted drain at the landowner expense. Any permit to which such condition is attached will be perfected upon receipt of the conforming survey. The Board may attach any other conditions to an approved permit deemed necessary by the Board according to the circumstances of each application. No person shall authorize to use a drain that has been improperly constructed in accordance with permit requirements or conditions.

3.08- In any matter that the Board and an Owner may have a dispute or difference of opinion whether a drainage permit is required, the burden is on the owner to prove that a permit is not required.

3.09- A drainage permit shall expire and become void if the authorized drainage construction is not completed within 2 years of the effective date of the permit.

Section 4.00 – PUBLIC HEARING ON DRAINAGE APPLICATION(S)

4.01 – The Drainage Board shall set a date, time, and place for a public hearing on each project. Such date, time and place shall be set within 45 days of an application’s receipt. The purpose of the hearing is to establish a record on which to decide whether the application (s) to drain shall be granted. No hearing shall be required for Soil Conservation Service – approved (SCS) grass waterways. The permit for these projects will be automatically granted if documentation is provided on SCS approval.

4.02 – For all hearings, the Board shall publish notice in a newspaper of general circulation in the area of the proposed drainage once a week for 2 consecutive weeks. The second and final notice shall be published not more than 15 days, nor less than 5 days, before the date set for the hearing.

4.03 – The Board shall also, at the owner applicant’s expenses, provide copies of the owner’s completed application and notice of the hearing by certified letter, not less than 21 days from the date set for the hearing, to:

- A. Any neighboring county with land located on the bank of the watercourse in which water will be drained, within one mile of where the drain water exits the owner applicant’s real property.
- B. Any person who has notified the Board, in writing, of their objection to the proposed drainage project, and who has requested notification of such a hearing on the proposed drainage project.

4.04 – The Board may provide copies of the owner’s completed application and notice of the hearing not less than 21 days from the date set for the hearing to the following agencies:

- A. South Dakota Department of Water and Natural Resources – Division of Water Rights.
- B. U.S. Army Corps of Engineers – Regulatory Office in Pierre, South Dakota
- C. U.S. Fish and Wildlife Services – Pierre, South Dakota

D. Any other federal or state agency or department which may have an interest in the project.

4.05 – The requirement for a hearing and notice thereon may be waived by the Board in order to process applications for temporary emergency drainage. A hearing shall be conducted at the earliest opportunity if the emergency drainage is to be permanent.

4.06 – The decision whether to grant or deny a permit is based on a public interest review of the probable impact of the proposed activity and its intended use. When evaluating a drainage permit application, the Board shall consider, but not be limited to, the project’s impact on the following items:

- A. Flood hazards, floodplain values
- B. Erosion potential
- C. Water quality and supply
- D. Agricultural concerns
- E. General environmental concerns
- F. Aesthetics
- G. Fish and wildlife values
- H. Considerations of servient landowners

4.07 – The Board shall rule on the application(s) within 30 days after its hearing. The Board shall make its decision known in writing to the applicant(s). If the Application(s) is denied, the written notification shall include the reasons for the Board’s determination. No permit shall be granted until the owner application has reimbursed the county for all the expenses incurred by the county under Section 4.02 and Section 4.03.

Section 5.00 – PENALTY FOR NOT SECURING A DRAINAGE PERMIT

5.01 – Draining without a permit (or without a vested right) constitutes a class 1 misdemeanor which is punishable by a maximum \$1,000.00 fine, one year in jail, or both. A civil penalty of \$1,000.00 per day for each day of violation may be assessed by a court.

5.02 – The Drainage Board may require owners violating Section 5.01, at his/her own expense, to restore the drained area to its preconstruction condition. Such an order will be preceded by a restoration hearing. The Drainage Board shall set a date, time and place for the restoration hearing within (30) days of notifying the owner of the ordinance violation.

Section 6.00 – PENALTY FOR VIOLATION TERMS OF PERMIT

6.01 – Violating the terms and conditions of a permit, or violating the ordinances which constitute the permit system, is punishable by a maximum \$100.00 fine, 30 days in jail or both.

6.02 – The Drainage Board may require owners violating Section 6.01 to restore the drained property to its preconstruction condition, subject to the hearing provisions described in Section 5.02.

APPENDIX A
DOUGLAS COUNTY DRAINAGE PERMIT
TO BE COMPLETED BY OWNER

APPLICANT: _____

ADDRESS: _____

A. LOCATION OF THE LAND TO BE DRAINED: _____

TOWNSHIP NAME: _____

SIZE OF AREA BEING DRAINED: _____

PROPOSED RATE OF WATER FLOW: _____

SOURCE OF WATER TO BE DRAINED: _____

B. BRIEFLY EXPLAIN THE TYPE OF DRAINAGE PROPOSED (OPEN; COVERED; DEPTH; LENGTH; ETC.):

HOW WILL THE DREDGED OR FILL MATERIAL BE DISPOSED OF? _____

WHO DESIGNED THE PROJECT? _____

ESTIMATED PROJECT COST: _____

C. DESCRIBE THE PROPOSED ROUTE OF FLOW (INCLUDE INITIAL POINTS AND GENERAL COURSE;
ILLUSTRATE THE DRAINAGE ON THE TOWNSHIP MAP:

LIST THE NAMES AND ADDRESSES OF ALL SERVIENT LANDOWNERS WITHIN 2 MILES OF WHERE THE WATER WILL EXIT YOUR PROPERTY. (IF MORE ROOM IS NEEDED, USE THE BACK OF THIS SHEET)

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

WHAT MAKES THIS PROJECT NECESSARY? _____

WILL THE PROJECT HAVE AN IMPACT ON THE FOLLOWING? IF YES, EXPLAIN BELOW:

	YES	NO
- PUBLIC HEALTH: SAFETY AND WELFARE	_____	_____
- POLLUTION	_____	_____
- FLOOD AND STORM HAZARDS	_____	_____
- SEDIMENTATION AND EROSION	_____	_____
- WATER SUPPLY	_____	_____
- WATER QUALITY	_____	_____
- WATER RECHARGE AND DISCHARGE	_____	_____

OWNERS SIGNATURE: _____ DATE: _____

OFFICE USE ONLY:

DATE RECEIVED: _____ \$25.00 FEE PAID: _____ MAP ATTACHED: _____

APPENDIX B

VESTED DRAINAGE

- 1) Certain Drainage rights must be recorded in order to remain a vested property right according to South Dakota law.
- 2) What vested drainage rights to register:
 - a. Any natural drainage lawfully acquired prior to July 1, 1985, is automatically vested (no registration necessary)
 - b. Recording is required for natural drainage which has man-made modifications (i.e. ditches or drainage tile).
 - c. Recording is required for any drainage which is entirely man-made.
- 3) Vested rights recording materials shall consist of the following:
 - a. Township map (s)
 - b. Douglas County Vested Drainage Right Registration Form
- 4) Vested rights recording materials shall be recorded with the Douglas County Register of Deeds.

