

# **DRAINAGE ORDINANCE OF DOUGLAS COUNTY**

## **FINAL DRAFT (IV)**

**February 4, 2020**

Prepared by  
**PLANNING AND DEVELOPMENT DISTRICT III**

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# ARTICLE I

## GENERAL PROVISIONS

### **SECTION 101    TITLE**

These regulations shall be referred to as the Drainage Ordinance of Douglas County.

### **SECTION 102    AUTHORITY**

The authority for this ordinance is promulgated under SDCL 46A-10A and SDCL 46A-11.

### **SECTION 103    PURPOSE**

These regulations shall govern the drainage of water within the unincorporated area of Douglas County and are designed to enhance and promote the physical, economic and environmental management of the county; protect the tax base; prevent inordinate adverse impacts on servient properties; encourage land utilization that will facilitate economical and adequate productivity of all types of land; lessen government expenditure; conserve and develop natural resources; and preserve the important benefits provided by wetlands.

The specific purpose of the regulations shall be designed to address the following issues:

1. To prevent conflicts due to drainage. To reduce the conflict between parties due to the draining of land from one area to another.
2. To reduce or prevent flood hazard. To reduce the hazard to public health and safety caused by excessive storm water runoff.
3. To reduce or prevent flood drainage. To reduce or prevent damage to public and private property, including existing streams, drainage channels, and storm water drainage facilities which may be caused by excessive storm water runoff resulting during and after land development.
4. To protect and conserve resources. To protect and conserve water and land resources by implementing beneficial design features and conservation techniques.
5. To promote economic development. To promote orderly economic development and resource utilization.

### **SECTION 104    DRAINAGE BOARD**

The Douglas Board of County Commissioners shall serve as the County Drainage Board. The County Auditor shall act as recorder of the official minutes of the Board.

### **SECTION 105    DRAINAGE BOARD RESPONSIBILITIES**

The Board does not constitute itself as a Board of Resolution pursuant to SDCL 46A-10A-34 and will not hear nor reach decisions in individual drainage disputes between landowners. Rather drainage disputes between individual landowners may take their drainage dispute to the circuit court of the county wherein the dispute exists.

**SECTION 106 INTERPRETATIONS, ABROGATION, AND SEVERABILITY**

In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, morals, prosperity, and general welfare. It is not the intent to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where these regulations and other regulations, easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail. All other county regulations inconsistent with these regulations are hereby repealed to the extent of this inconsistency only. If any section, clause, provision or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

**SECTION 107 PURPOSE OF CATCH HEADS**

The catch heads appearing with the sections of this ordinance are inserted simply for convenience to serve the purpose of an index. The catch heads shall be wholly disregarded by any person, office, court or other tribunal in construing the terms and provisions of this ordinance.

**SECTION 108 SAVING CLAUSE**

These regulations shall in no manner affect pending actions either civil or criminal, founded on or growing out of any regulations hereby repealed. These regulations shall in no manner affect rights or causes of action, either civil or criminal, which may have already accrued or grown out of any regulations repealed.

**SECTION 109 DISCLAIMER OF LIABILITY**

The degree of public and environmental protection offered by this ordinance is considered reasonable for regulatory purposes and is based on the best available scientific and engineering considerations. The application of this ordinance shall not create liability on the part of Douglas County, or any officer or employee thereof.

## ARTICLE II DEFINITIONS

### **SECTION 201** **DEFINITIONS "A-E"**

**Abut** - Having a common border with or being separated from such a common border by a right-of-way, alley, or easement; for the purposes of this Ordinance the term 'abut' shall be synonymous with "adjacent" and "adjoining".

**Actual Construction** - Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially commenced, preparatory to building, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

**Benefitted Area** - The area within a drainage district or coordinated drainage area that receives the direct benefit from the drainage projects which have been constructed, or are to be constructed, within the district or drainage area.

**Blue Line Stream** - A natural drainage channel indicated by a solid blue line on the most recently published USGS 7.5-minute quadrangle maps. Lines may differ in color dependent upon the map's development.

**Board** - The Douglas County Board of County Commissioners.

**Closed Drain or Blind Drain** - A man-made drain or drainage scheme utilizing pipes, tiles or other materials and constructed in such a way that the flow of water is not visible.

**Contractor** - Any individual, firm or corporation who performs excavation, grading, construction or installation work involving a drainage project.

**Coordinated Drainage Area** - A defined geographic area containing one or more parcels of real property and established under the provisions of this chapter 46A-11 by a board or commission to provide a planned network or method of natural or man-made drainage, or both, to benefit all parcels of real property involved.

**Dominant Estate** - Any parcel of real property, usually at a higher elevation, which holds a common law or statutory right to drain water onto other real property.

**Drain** - A means of draining either surface or subsurface water through a system of ditches, pipes or tiles, natural, man-made or natural with man-made improvements including:

**Drainage Administrator** - An official duly appointed by the Board who is responsible for the administration and enforcement of this ordinance.

**Drainage Board** - Any county board designated under the terms of SDCL 46A-10A-2 or 46A-10A-34.

**Drainage District** - A drainage area with multiple owners that was established under state law prior to July 1, 1985 in which all planning, construction and maintenance of the drainage system conform with a master plan for the district and are funded through an assessment on the benefitted acres within the district.

**Drainage Map** – Any map adopted by resolution of the board that delineates the extent of county drainage, drainage project, or a coordinated drainage area.

**Drainage Plan** – A document which may illustrate by maps, charts, and other descriptive matter the policies of the board to interrelate all man-made and natural systems and activities relating to drainage under its jurisdiction.

**Drainage Project** - Any man-made improvements constructed or installed with the intent to drain water.

**Drainage Scheme** – A plan or system by which water is drained from one or more parcels of real property onto one or more parcels of real property.

**Due Diligence** - Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard but depending on the relevant facts of the special case.

**Engineer** – A professional, registered engineer.

**Entity** – An organization or being that possesses a separate existence. Examples of an entity include a person, estate, trust, and governmental unit.

**Established Water Course** – A fixed and determinate route, either natural or man-made, by which water has flowed from one parcel of real property to another and by which water has been discharged upon a servient estate for a period of time, on such a regular basis and in such quantities as to make it a predictably continuous activity.

## **SECTION 202 DEFINITIONS “F-P”**

**Governing Body** – A board of county commissioners, a city council, or a city commission.

**Hydric Soil** - Soil types which are formed under saturated conditions.

**Hydrophytic Vegetation** - Vegetative types typically adapted for life in saturated soil conditions.

**Lake** - A land depression having a greater depth of water and having more permanent standing water than either a slough or pond. This definition classifies lakes as type five wetlands or “inland open freshwater” as defined in U.S. Fish & Wildlife Service Circular 39.

**Landowner** - 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. If the real property is sold under a contract for deed and the contract is of record in the office of the Register of Deeds, both the recorded owner of the real property and the purchaser as named in the contract for deed are deemed owners of the real property.

**Lateral Drain** - A drain constructed after the establishment and construction of the original drain or drainage system and which flows into such original drain or drainage system.

**Legal Drain** – A drain or drainage scheme that is vested under the provisions of this chapter and chapter 46A-11; has been constructed by a person or by a unit of government under the provisions of past or present law; has been granted a drainage permit, if a permit is necessary under the provisions of this chapter and chapter 46A-11.

**Maintenance** - see Routine Maintenance

**Meandered Lake** - Any pond, slough, or lake which has had its boundaries established by metes and bounds in the documents of record or in the survey of public lands by the government of the United States.

**Modifications to Any Drain** - Modification to any drain shall mean constructing, relocating, extending, deepening, widening, straightening or otherwise altering a surface drain, closed drain, man-made or natural drain, natural water course, ditch, or any other drain for the purpose of a natural water course.

**Municipality** – A city or town, however organized, as defined in § 9-1-1.

**Natural Drain** - A drainage system on the surface of the ground which operates as part of a natural water course.

**Natural Water Course** – A fixed and determinate route by which water naturally flows from one parcel of real property to another due to the conformation of the land and by which water is discharged upon the land receiving the water. It is not necessary that the force of the flow of water be sufficient to form a channel having a well-defined bed or banks.

**Official Control** – Any ordinance, order, regulation, map, or procedure adopted by a board to regulate drainage.

**Ordinance** – Any ordinance, as defined in subdivision 7-18A-1(2), adopted by a board to regulate drainage of both rural urban areas to provide coordination of drainage projects, individual drainage efforts and drainage areas and to foster conformity with any county drainage plan.

**Owner** – See Landowner

**Party of Record** - Any person who submits oral or written testimony and evidence for the record of the state engineer’s public hearing.

**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.

**Person** - An individual, firm, partnership, association, corporation, contractor or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, and any political subdivision of the state.

**Pond** - A land depression where the soil is covered with six inches (15 centimeters) to three feet (0.91 meters) or more of water throughout the growing season. This definition classifies ponds as type four wetland or “inland deep marshes” as defined in U.S. Fish & Wildlife Service Circular 39.

**Private Drain** – A drainage system or scheme designed, constructed, and maintained by a person primarily for his own benefit or a natural drain, whether or not actively maintained, that provides a benefit primarily to one person.

## **SECTION 203**    **DEFINITIONS “Q-Z”**

**Routine Maintenance** - Any maintenance performed on a vested other drainage, permitted or right provided:

1. The repair or replacement of a closed or lateral drain does not increase the size, capacity or length of the existing drain and the original location of the drain is not altered.
2. The removal of sediment or vegetation from a natural drain or surface drain with man-made improvements if the maintenance does not exceed the original depth and capacity of the channel, or a depth one foot, whichever is less, and the original location of the drain is not altered.
3. The filing of a drain to repair damage caused by erosion.

**Rural or Rural Area** – Any territory outside a municipality as defined in § 9-1-1.

**Servient Estate** - Any parcel of real property, usually at a lower elevation, which is subject to a legal right allowing a dominant estate to drain water onto it.



**Slough** - Includes three types (refer to U.S. Fish & Wildlife Service Circular 39):

- (a) Type one sloughs are “seasonally flooded basins or flats” which includes land depressions where the soil is covered with water, or is waterlogged, during variable seasonal periods but is usually well drained during much of the growing season.
- (b) Type two sloughs are “inland fresh meadows” which includes land depressions where the soil is usually without standing water during most of the growing season but is waterlogged within at least a few inches (centimeters) of its surface.
- (c) Type three sloughs are “inland shallow fresh marshes” which includes land depressions where the soil is usually waterlogged throughout the growing season and is often covered with as much as six inches (15 centimeters) or more of water.

**Stream, Intermittent** - A natural drainage channel indicated by a dot and dash blue line on the most recently published USGS 7.5-minute quadrangle maps.

**Stream, Permanent** - A natural drainage channel indicated by a solid blue line on the most recently published USGS 7.5-minute quadrangle maps.

**Sub-Watershed** - The area drains into a specified lake or waterway as identified by the Natural Resources Conservation Services and displayed or described on the “Douglas County Hydrology Map.”

**Surface Drain** - A man-made drain on the surface of the ground.

**Unit of Local Government** – A municipality as defined in § 9-1-1, an irrigation district as defined in chapter 46A-9-2, a township as defined in chapter 8-1, a sanitary district as defined in chapter 34A-5, a conservation district as defined in chapter 38-8 or another special district.

**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.

**Water Management Board** – The state board created in § 1-40-15.

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

**Watershed** - The area of land which drains, either directly or indirectly, into a slough, pond, lake, stream or water course.

**Wetland** - Those areas which have a predominance of hydric soil, are inundated or saturated by water for at least 15 days during a growing season, and under normal circumstances support hydrophilic vegetation.

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## ARTICLE III

# DRAINAGE PERMITS

### **SECTION 301 DRAINAGE PERMITS REQUIRED**

A drainage permit shall be obtained by the owner on whose property the work is proposed, and any person, or entity, other than the owner, who is engaged as a contractor; provided the contractor presents an executed contract to conduct the prescribed work activities.

### **SECTION 302 PERMIT TYPES**

Drainage projects are hereinafter classified into three (3) types as detailed below:

1. **General Drainage** - A permit shall be required prior to commencing the excavation for, or the construction or installation of, a drainage project. Please refer to **Sections 307 and 310**.
2. **Routine Maintenance** - A routine maintenance permit shall be required prior to commencing with routine cleanout or maintenance of an existing drain, whether it is a vested drainage, permitted drainage or other drainage. Routine maintenance permits are not subject to **Section 306**. Please refer to **Sections 304 and 307**
3. **Drainage District or Coordinated Drainage Area** - Each individual drainage project constructed as a part of a drainage district or coordinated drainage area shall require a separate permit. However, multiple applications may be reviewed as a single project and notification shall be made accordingly. Please refer to **Section 310**.

### **SECTION 303 GENERAL DRAINAGE PERMITS**

A General Drainage Permit shall be required prior to commencing the excavation for, or the construction or installation of, a drainage project including, but not limited to, the following:

1. Modification of any vested drainage or of any permitted drainage with the intent of deepening, widening, extending or rerouting of the drainage channel or increasing the size of any closed drain.
2. Construction or installation of a lateral drain, surface drain or closed drain.
3. Any drainage or filling, in whole or in part of a pond, wetland or lake, or the filling of a drain of any kind.
4. Modification to any drain within an established drainage district, coordinated drainage area, or a drainage project created pursuant SDCL Chapter 46A-10 which were not inducted in the original plans.

5. Modification to any drain within the boundaries of a municipality which drains onto a rural area outside of its municipal boundaries.
  
6. Construction or installation of any drain within a residential, commercial or industrial development area which drains onto a rural area outside of its boundaries.

**SECTION 304 ROUTINE MAINTENANCE PERMITS**

A permit is required for proposed projects which were previously permitted by the Drainage Board/Drainage Administrator OR in existence prior to adoption of the November 1, 1988 Douglas County Drainage Ordinance. Landowners intending to perform routine maintenance of vested drainage, permitted drainage, or other drainage as defined herein are ~~not~~ required to obtain a permit, however, landowners are not required to comply with **Section 306**.

**SECTION 305 DRAINAGE DISTRICT OR COORDINATED DRAINAGE AREA PERMITS**

Any project proposed to incorporate or expand a duly organized drainage district or coordinated drainage shall secure a drainage permit. In the case of multiple applications from within the same District or Area such applications may be reviewed as a single project and notification shall be made accordingly.

**SECTION 306 DRAINAGE APPLICATION REQUIRED DOCUMENTS**

All applications for drainage permits shall include the following information:

1. A detailed, Site Plan, with property legal description, showing the benefiting properties and location of the proposed improvements. The Site Plan shall include:
  - a) Description of the length, type, depth and size of the drainage tile,
  - b) Location of the proposed outlet supported by latitude / longitude coordinates (GPS).
  - c) A copy of any recorded South Dakota Vested Drainage Records or Rights if applicable;
  - d) A copy of the U.S. Natural Resources Conservation Service (NRCS) or NRCS-CPA-026, with certified drainage systems and referenced wetland maps (where applicable);
  - e) Identification of sub-watershed(s) to be affected and watershed boundaries.
2. All easements and/or recordings for performing drainage work upon private or public property within Douglas County shall be signed and executed upon application submission.
3. Copies of all existing maintenance agreements and easements relative to the project shall be provided
4. Any application for any drainage into a road right-of-way must include the written approval of the appropriate Roadway Authority (State, County, or Township).
5. Any application for a proposed drainage project which would involve any underground construction on a road right-of-way must include written authority or a validated permit from the appropriate Roadway Authority (State, County, or Township) for occupancy in support of underground construction on road rights-of-way.

6. Documentation proving contact was made with all properties one-half (1/2) mile above and one (1) mile below the outlet of the proposed drainage.
7. A signed statement from the Applicant and Contractor, if applicable, acknowledging each party's understanding of the proposed project, the Drainage Ordinance, and Zoning Regulations applicable to the project as proposed;
8. The Drainage Administrator may also require that the applicant provide a detailed survey prepared by a professional engineer or surveyor; and
9. The applicant shall also provide copies of the complete application to other affected counties if the application be determined to be of statewide or inter-county significance.
10. Any other information which the Drainage Administrator may deem necessary for consideration in enforcing the provisions of this Ordinance.
11. The appropriate fees shall be submitted at the time of initial application for a Drainage Permit.

If the Drainage Administrator determines that the application is incomplete or if the information contained therein is insufficient to make an informed decision on the application, the application shall be returned to the applicant for revision.

#### **SECTION 307 AUTHORITY OF DRAINAGE ADMINISTRATOR TO GRANT DRAINAGE PERMITS**

The Drainage Administrator shall have the authority to grant or deny a drainage permit for the following projects. All other drainage permit applications shall be addressed by the Douglas County Drainage Board.

1. A proposed drainage project which outlets directly from the applicant's property into a Blue Line Stream, as delineated on the most recently published USGS 7.5-minute topographic maps.
2. A proposed drainage project which outlets directly into a permanent or intermittent stream not listed in Subsection (1) provided the Applicant has provided notice and obtained signatures in accordance with Section 312. Affidavit(s) of mailing must also be provided documenting all required notices.
3. Routine maintenance of any vested permitted or other drainage as defined in **Section 304**.

#### **SECTION 308 LIMITATION OF DRAINAGE ADMINISTRATOR AUTHORITY**

The Drainage Administrator shall not have the authority to grant a drainage permit for a proposed project which would have inter county significance

**SECTION 309 APPEALS OF DECISIONS MADE BY THE DRAINAGE ADMINISTRATOR**

Any decision of the Drainage Administrator may be appealed to the Drainage Board. The applicant or any person aggrieved by a decision shall file a written appeal with the Drainage Administrator within ten (10) working days of the Administrator's decision. Upon such filing, the Drainage Administrator shall forward the appeal to the Drainage Board.

**SECTION 310 AUTHORITY OF DRAINAGE BOARD TO GRANT DRAINAGE PERMITS**

The Douglas County Drainage Board shall have the authority to grant or deny a drainage permit for the following projects. All other drainage permit applications shall be addressed by the Drainage Administrator

1. A proposed drainage project which does not outlet into a permanent or intermittent stream provided the Applicant has provided notice and obtained signatures in accordance with **Section 312**.
2. A proposed drainage project which outlets directly or indirectly into a public or private road right-of-way provided a Township Supervisor and/or County Highway Superintendent has granted approval to drain into the right-of-way and provided the Applicant has provided notice and obtained signatures in accordance with **Section 312**.
3. A proposed drainage project which outlets drain water from one watershed with the intent to discharge the water into a different watershed. provided the Applicant has provided notice and obtained signatures in accordance with **Section 314**. A copy of the drainage permit application materials as required in **Section 306** shall be provided to all parties for review.

**SECTION 311 PUBLIC HEARINGS**

The Drainage Board shall set a date, time and place for a public hearing. Such date, time and place shall be set within forty-five (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.

**SECTION 312 NOTIFICATION OF OTHER PARTIES**

For all hearings, the Drainage Administrator shall, publish notice at least once a week for at least two successive weeks in a newspaper of general circulation in the area of the proposed drainage project. The Drainage Administrator shall at their discretion require the applicant to provide copies of the owner's completed application materials and notice of the hearing by depositing such notice with the United States Postal Service not less than ten (10) days prior to the hearing date to:

1. South Dakota Department of Water and Natural Resources - Division of Water Rights;
2. U.S. Army Corps of Engineers – Regulatory Office in Pierre, South Dakota;
3. USDA Natural Resource and Conservation Service;
4. The South Dakota Departments of Game, Fish & Parks and Department of Interior US Fish and Wildlife Service if directly affected and provided they have a recorded property interest in the water course into which the water is to be drained adjacent to the property to be drained or its drain outlet as described in the application.

5. The applicable street authority (e.g. Township Supervisor(s), Douglas County Highway Superintendent, South Dakota Department of Transportation) for the right-of-way of any highway or roadway within their jurisdiction which will be directly affected by the water to be drained.
6. 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; and
7. All downstream landowners for at least one-half (1/2) mile above and one (1) mile below the proposed outlet shall be contacted by the project landowner and have signed a waiver stating that they have no objection to the construction of the proposed drainage project.

**SECTION 313 HEARING BY BOARD**

Following notification in accordance with **Section 312**, the Drainage Board shall conduct a public hearing on a drainage permit application or the appeal of an administrative decision.

**SECTION 314 PERMITTING CONSIDERATIONS**

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 drainage permit application, the Board shall consider, but not be limited to, the project's impact on the following in accordance with **SDCL 46A-10A-20** as amended:

1. Does the land receiving the drainage remain rural in character;
2. Is the land being drained used in a reasonable manner;
3. The drainage does not create and unreasonable hardship or injury to the owner of the land receiving the drainage;
4. The drainage is natural and occurs by means of a natural water course or established water course;
5. The owner of the land being drained does not substantially alter on a permanent basis the course of flow, the amount of flow, or the time of flow from that which would occur; and
6. No other feasible alternative drainage system is available that will produce less harm without substantially greater cost to the owner of the land being drained.

In addition to the standards prescribed within State Statute the Douglas County Drainage Board shall consider the proposed project potential impacts upon the following:

1. Flood hazards and/or floodplains;
2. Erosion;
3. Water quality and supply;
4. Agricultural concerns;
5. General environmental concerns;
6. Aesthetics; and
7. Servient landowners.

**SECTION 315 CRITERIA TO DETERMINE DRAINAGE IMPACT**

The Drainage Board or its designated official shall be guided by the following criteria:

1. Drainage into receiving watercourses which do not have sufficient capacity to handle the additional flow and quantity of water shall be considered to have an adverse effect. The applicant shall be responsible to provide sufficient evidence with third party verification when requested by the Drainage Commission or the Drainage Board.
2. Whether drainage is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or in the absence of a practical natural drain, a reasonable artificial drain system is adopted.
3. The amount of water proposed to be drained.
4. The design and other physical aspects of the drain.
5. The impact of sustained flows.

**SECTION 316 BOARD AUTHORITY TO WAIVE WRITTEN APPROVAL REQUIREMENTS**

The County reserves the right to waive written approval or waiver requirements associated with a proposed drainage project. These powers shall be limited to when, in the Drainage Board's opinion, the failure or inability to obtain approval is not directly related to the real or perceived impacts of the proposed drainage project.

**SECTION 317 BOARD DECISIONS**

The Board shall rule on the application(s) within thirty (30) days after its hearing. The Board shall make their 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 applicant has reimbursed the county of all expenses incurred by the County.

**SECTION 318 CONDITIONS TO PERMITS**

Conditions may be attached to a drainage permit to ensure that the proposed drainage is accomplished in accordance with the purposes of this ordinance.

**SECTION 319 RECORDING OF EASEMENTS**

All easements or instruments related to an approved drainage project shall be recorded with the Register of Deeds prior to commencing actual construction.

**SECTION 320 RECORDING OF DRAINAGE PROJECT**

Upon approval of a Drainage Permit said permit and map illustrating all improvements shall be recorded with the Register of Deeds prior to commencing actual construction.

**SECTION 321 OFFICIAL MAPS**

The official map for recording all permitted and vested projects 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.



**SECTION 322 EMERGENCY PROVISIONS**

The requirement for a hearing and notices 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.

**SECTION 323 PRESERVATION OF LANDOWNERS RIGHTS AND SOVEREIGN IMMUNITY**

The granting or denial of a drainage permit shall in no way affect the legal rights which may otherwise exist between a landowner and any other property (dominant or servient estate). The County, in considering permit applications, shall be protected by the Doctrine of Sovereign Immunity and shall not be subject to any cause of action or claim brought by any person alleging an impact caused by the water which is the subject of the permit application.

**SECTION 324 COMPLIANCE WITH LAWS OR REGULATIONS NOT AFFECTED BY PERMIT APPROVAL**

A permit approved under the provisions of this ordinance shall in no way remove any responsibility on the part of any landowner, tenant or contractor to comply with all applicable local, state or federal laws or regulations.

**SECTION 325 DRAINAGE APPLICATIONS OF STATEWIDE OR INTERCOUNTY SIGNIFICANCE**

When an application is determined to be of inter-county significance, the County Commission or Drainage Board of each county affected shall make a determination on whether the permit shall be granted. Following notification in accordance with **Section 212**, the Drainage Board shall conduct a public hearing on such application. Approval by all affected counties is required for permit approval. In the event that one of the Commissions or Boards is aggrieved by the decision, the aggrieved county may petition the South Dakota Water Management Board for assistance in accordance with **SDCL 46A-10A-9.1** through **46A-10A-9.5**.

In determining whether the proposed drainage is of statewide or inter-county significance, the Board may consider the following criteria:

1. Proposed drainage would affect state or its political subdivisions property.
2. Proposed drainage of lakes having recognized fish and wildlife values.
3. Proposed drainage or partial drainage of a meandered lake.
4. Proposed drainage which would have a substantial effect on another county.
5. Proposed drainage which would convert previously noncontributing areas (based on twenty-five-year rainfall event - four percent chance) into permanently contributing areas.

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## ARTICLE IV

# ADMINISTRATION AND ENFORCEMENT

### **SECTION 401    POWERS AND DUTIES**

The Drainage Administrator is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration. The Drainage Administrator in conjunction with the Douglas County Commissioners may designate technical officers and/or inspectors, attorneys, or other employees that shall be authorized to assist in the administration and enforcement of this ordinance.

### **SECTION 402    RIGHT OF ENTRY**

Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Drainage Administrator or an authorized representative has reasonable cause to believe that there exists upon any premises an ordinance violation, the Drainage Administrator or an authorized representative may enter such premises at all reasonable times to inspect the same or to perform any duty imposed upon the Drainage Administrator by this ordinance, provided that if such property be occupied, the Drainage Administrator shall first present proper credentials and request entry; and if such property be unoccupied, the Drainage Administrator shall first make a reasonable effort to locate the owner or other persons having charge or control of the property and request entry. If such entry is refused, the Drainage Administrator or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Drainage Administrator or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any property shall fail or neglect, after proper request is made as herein provided, to promptly permit entry thereon by the Drainage Administrator or an authorized representative for the purpose of inspection and examination pursuant to this ordinance.

### **SECTION 403    ACTIVITIES WITHOUT NOTICE**

The Douglas County Drainage Board may at any time and on its own motion, without notice, remove silt, debris, weeds and other vegetative growth, repair damaged structures, retard an unapproved drainage or may take any other action as necessary to maintain the approved drainage improvements

### **SECTION 404    STOP ORDER AND INJUNCTION**

Whenever any work is being done contrary to the provisions of this ordinance, the Drainage Administrator may order the work stopped by notice in writing served on any persons engaged in or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Drainage Administrator to proceed. In the event of a violation or threatened violation of this ordinance, the Board, may institute injunction or other appropriate action or proceedings, in addition to other remedies, to prevent the unlawful construction or use of any drainage work.

**SECTION 405 ASSESSMENT AGAINST PROPERTY**

Any and all costs associated with the replacement, repair or reconstruction to a condition prior to the work performed in violation of this ordinance may be assessed against all of the landowner's real property. Assessments shall be levied in the same manner and method as other assessments pursuant to SDCL 46A-10A and 46A-11.

**SECTION 406 INSPECTION FEES**

Any person performing work without a permit as required under **Section 301** shall pay an inspection fee of \$1,000 in addition to the permit fee. These fees are in addition to the remedies set forth in other sections of this ordinance.

**SECTION 407 DRAINAGE PERMIT RESTRICTIONS**

Drainage permits issued on the basis of plans and applications approved by the Drainage Administrator authorize only the use, layout, and construction set forth in such approved plans and applications, and no other layout, depth, size or construction. Any layout, depth, size or construction in conflict therewith shall be deemed a violation of this Ordinance, and punishable as provided by **Section 411** of this ordinance. There is a single exception for the outlet. The actual outlet shall be placed within ten percent (10%) of the proposed outlet in the preliminary plan or the actual location difference/total distance of project.

**SECTION 408 FEE SCHEDULE**

The Douglas County Commission shall establish a schedule of fees and a collection procedure for Drainage Permits and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Drainage Administrator and may be altered or amended only by the Douglas County Commission. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application.

**SECTION 409 DRAINAGE PERMIT TO BE POSTED**

All drainage permits issued by the Drainage Administrator must be placed in a conspicuous location on the building site for the duration of the construction of work described.

**SECTION 410 PERMIT EXPIRATION**

If actual construction as it relates to the work described in any Drainage Permit has not begun within two (2) years from the date of issuance thereof, said permit shall expire; it shall be canceled by the Drainage Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work, as described in the canceled permit, shall not proceed unless and until a renewed permit has been obtained at no additional cost unless substantial changes have been made to the initial permit application.

**SECTION 411 VIOLATION AND PENALTY**

Any person draining water without a permit is guilty of a Class 1 misdemeanor and may be subject, in addition to any criminal penalty, a civil penalty not to exceed one thousand dollars (\$1,000) per day of violation in accordance with SDCL as amended. Any person violating any other provisions of this ordinance is guilty of a Class 2 misdemeanor and shall be punished pursuant to SDCL 7-18A-2. Each and every day the violation continues may constitute a separate offense.

Violating the terms and conditions of a permit, or violating the ordinances which constitute the permit system, is punishable by a maximum \$100 fine, thirty (30) days in jail, or both.

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