

**HANSON COUNTY
2010 DRAINAGE**

**ORDINANCE #30
With ORDINANCE #44
AMENDMENT**

ADOPTED

ORDINANCE # 30
HANSON COUNTY SD

2010 DRAINAGE ORDINANCE

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Article 1.00 General Provisions

1.01. TITLE. It is the policy of this Drainage Ordinance to encourage the activation and the reactivation drainage districts as allowed under the laws of the State of South Dakota. These regulations will be cited as the, “Hanson County Drainage Ordinance”.

1.02. AUTHORITY. This ordinance is promulgated under the authority of SDCL 46A-10A and SDCL 46A-11.

1.03. PURPOSE. These regulations govern the drainage of water within the unincorporated area of Hanson 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 to facilitate economical and adequate productivity of all types of land; lessen government expenditures; conserve and develop natural resources; and preserve the important benefits provided by wetlands.

1.04. INTERPRETATION, ABROGATION AND SEVERABILITY. These regulations are the minimum requirements for the promotion of public safety, health, convenience, comfort, morals, prosperity, and general welfare. There is no intent to repeal, abrogate, or impair any existing easements, covenants or deed restrictions which conflict or overlap; the more stringent restrictions are to prevail.

All other county regulations inconsistent with this ordinance are hereby repealed to the extent of the inconsistency.

If any portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected.

1.05. PURPOSE OF CATCH HEADS. The catch heads appearing with the sections of this ordinance are inserted for convenience. The catch heads will be disregarded in construing the terms and provisions of the ordinance.

1.06. SAVING CLAUSE. These regulations shall not affect pending actions, civil or criminal, founded on regulations hereby repealed. These regulations do not affect the rights or causes of action, civil or criminal, which have already accrued.

1.07. 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 creates no liability on the part of Hanson County, or any officer or employee thereof.

ARTICLE 2.00 DRAINAGE PERMITS

2.01. PERMITS REQUIRED. A drainage permit is required prior to commencing the excavation for, or the construction or installation of, a drainage project including, but not limited to the following:

- 1) Any draining or filling, in whole or in part, of a pond, wetland or lake;
- 2) Construction of any drain; or
- 3) Modification of any permitted drainage with the intent of deepening or widening any drainage channel, increasing the size of any drainage tile, or extending or rerouting any drainage work.

Exception: No drainage permit is required for tiling or draining done around a personal residence and within 100 feet of that residence.

2.02. APPLICATION FOR A DRAINAGE PERMIT. A person required to obtain a drainage permit will file an application on a form provided by the County and pay the filing fee with the Administrative Official.

The applicant must provide a detailed site plan showing the location of the proposed construction. The site plan must include a description of the type and size of the drain, and the location of the propose outlet. Any application for a proposed drainage project which empties into an existing drainage system must include a copy of any recorded vested drainage records or a copy of the U.S. Natural Resources Conservation Service or NRCS-CPA-026 with certified drainage systems and reference wetland maps. The applicant must obtain **written** approval of the governing agency for any drainage into a road right-of-way and **written** notification or approval of any landowners or their designated representative down to the first named watercourse. This waiver must state that the adjacent and downstream landowners have no objection to the construction of the proposed drainage project.

If the Administrative Official determines that the application is incomplete or if the information contained therein is insufficient upon which to make an informed decision about the application, the application will be returned to the applicant for revision. The Administrative Official may also require that the applicant provide a detailed survey prepared by a professional engineer or surveyor.

The applicant will also provide copies of the complete application to other affected counties if the application is determined by Drainage Board to be of statewide or inter-county significance.

2.03. DRAINAGE APPLICATION FEE. A non-refundable fee of **\$25** is charged for filing drainage application when the applicant has obtained the written approval of all downstream landowners down to the nearest named watercourse downstream from the drain outlet or the outlet drains

into a named stream in 2.04. If the applicant does not obtain the signatures of the downstream landowners, the non-refundable application fee is **\$100**. The application fee is to apply to each individual landowner where more than one landowner signs a single drainage application.

2.04. AUTHORITY OF ADMINISTRATIVE OFFICIAL TO GRANT DRAINAGE PERMITS. The Administrative Official has the authority to grant or deny a drainage permit for the following project. All other drainage applications are dressed by the Board.

- 1) A proposed drainage project which outlet directly into **Bloom Creek, Elm Creek, Enemy Creek, James River, Johnson Creek, Pierre Creek, Plum Creek, Rock Creek, Twelve Mile Creek or Wolf Creek** 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 all downstream landowners to the nearest named watercourse below the proposed outlet have signed a waiver stating that they have no objection to the construction of the proposed drainage project.
- 3) **A proposed drainage project which outlets directly into a road right-of-way and applicant has written approval from the appropriate government agency.**

The **Administrative Official** has the authority to require waivers from other landowners if:

- [a] the potential impact of the proposed drainage extends farther downstream than the nearest named watercourse.

- [b] the potential impact of the proposed drainage extends a distance greater than that described in item 1 of 2.04.

A permit approved by the Administrative Official is not effective until five working days after the approval.

The Administrative Official does not have the authority to grant a drainage permit for a proposed project which would have inter-county or interstate significance.

2.05. APPEALS OF DECISIONS MADE BY THE ADMINISTRATIVE OFFICIAL. A decision of the Administrative Official may be appealed to the Board. A person aggrieved by a decision must file a written appeal with the Administrative Official within 5 working days of the official's decision. When filed, the Administrative Official will forward the appeal to the Board.

2.06. HEARING BY BOARD. Following notification in accordance with 2.11, the Board will conduct a public hearing on a drainage permit application of the appeal of an administrative decision.

2.07. NOTIFICATION TO OTHER PARTIES. For all hearings required pursuant to this article, the County will, at the applicant's expense, publish notice in the County legal newspaper once a week for two consecutive weeks. The final published notice must be published not more than 15 days, or less than 5 days, before the date set for the hearing. At the county's direction, the applicant shall prominently post the property in a manner most visible to the nearest public right-of-way, giving notice for the permit hearing. The County will also give notice, at the applicant's expense, by postage prepaid, certified mail, not more than 30 days nor less than ten days from the date set for hearing to:

- 1) All downstream landowners, including established municipalities, riparian to the watercourse into which water will be drained, for a distance extending from the point of inception to the nearest named watercourse. Additional notification may be required at the discretion of the Board.
- 2) Any county which should be directly affected by the water to be drained.
- 3) The South Dakota Departments of Game, Fish & Parks and Environment & Natural Resources, if affected.
- 4) The State Highway Department, County Highway Department, Boards of Township Supervisors, for any proposed drainage which will affect the right-of-way of any highway or roadway.
- 5) Any person who has notified the County in writing of the person's objection to the drainage project proposed, and who has requested, in writing notification of the hearing on the drainage project proposed.

2.08. DRAINAGE APPLICATIONS OF STATEWIDE OR INTER-COUNTY SIGNIFICANCE.

When an application is determined to be a statewide or inter-county significance, the county commission or drainage board of each county affected shall make a determination (recommendation) on whether the permit will be granted. Following notification in accordance with 2.11, the Board will conduct a public hearing on the 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.

To determine if the proposed drainage is of statewide or inter-county significance, the Board may consider the following criteria:

- 1) Proposed drainage would affect property owned by the state or its political subdivisions.
- 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-4% chance) into permanently contributing areas.

2.09. EVALUATION OF PERMIT APPLICATIONS. The minimum factors considered in evaluating the impact of a proposed drainage project are:

- 1) Flood hazards, floodplain values;
- 2) Erosion potential;
- 3) Water quality and supply;
- 4) Agricultural production;
- 5) Environmental quality;
- 6) Aesthetics;
- 7) Fish and wildlife values; and
- 8) Considerations of downstream landowners and the potential adverse effect thereon including the following criteria:

- a) Uncontrolled drainage into receiving watercourses which do not have sufficient capacity to handle the additional flow and quantity of water will be considered an adverse effect.
- b) 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.
- c) The amount of water proposed to be drained.
- d) The design and physical aspects of the drain.
- e) The impact of sustained flows.

2.10. 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.

2.11. 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.**

2.12. EXPIRATION OF DRAINAGE PERMITS. A drainage permit expires and becomes void if the authorized construction is not commenced within 365 days of the effective date of the permit *unless written approval of the extension is given by the Drainage (Board) (Administrator).*

2.13. COMPLIANCE WITH LAWS OR REGULATIONS NOT

AFFECTED BY PERMIT APPROVAL. A permit approved under the provisions of this ordinance does not remove the responsibility on the part of landowners, tenants and contractors to comply with all applicable local, state or federal laws and regulations.

ARTICLE 3.00 DRAINAGE COMPLAINTS

3.01. JURISDICTION ON DRAINAGE DISPUTES. A party may take a drainage dispute directly to circuit court. However, pursuant to SDCL 46A-10A-34, the Board may address any drainage disputes in the unincorporated area of Hanson County. The Board may provide that certain types or categories of drainage disputes will not be heard by the Board and must be taken directly to circuit court.

3.02. FILING A COMPLAINT. Any landowner, in the county may file a drainage complaint by setting forth the facts of the dispute in writing and submitting it to the Administrative Official. The complaint will include the name and address of the complainant, the location of the property which has suffered damage or may suffer damage and the location of the property against which the complaint is being registered. When possible the complaint should detail the type and location of work, and when the work occurred. The Board may require a drainage dispute to include expert reports designated persons.

3.03. ADMINISTRATIVE OFFICIAL TO OFFER POSSIBLE RESOLUTION. DECISION ON JURISDICTION BY BOARD. Upon receipt of a drainage complaint the Administrative Official will investigate the facts, offer a recommendation for a resolution to the parties involved and, if requested by any affected party, forward the complain to the Board for a hearing. The Board will make a determination if it will accept jurisdiction over the particular type of drainage issue set forth in the complaint. If the board does not accept jurisdiction, the dispute may be

taken to circuit court. If the Board does accept jurisdiction a date for a public hearing on the drainage complaint will be set.

3.04. HEARING ON COMPLAINT. The Board will notify all affected parties of the time date, and place of the hearing. Any interested individual will have the opportunity to appear and be heard. The Board may make a decision regarding the drainage dispute at the hearing, may defer the item pending to obtain additional information from any of the disputing parties, or may hold additional hearings on the dispute.

3.05. APPEAL OF BOARD DECISION. Any affected party may appeal the Board's decision on a drainage dispute to circuit court.

ARTICLE 4.00 ADMINISTRATION AND ENFORCEMENT

4.01. POWERS AND DUTIES. The Administrative Official is authorized and directed to enforce provisions of this ordinance and establish rules for its administration. With County Commission approval, the Administrative Official may designate technical officers, inspectors, or other employees that may be authorized to assist in the administration and enforcement of this ordinance.

4.02. RIGHT TO ENTRY. When necessary to make an inspection to enforce provisions of this ordinance, or when the Administrative Official or an authorized representative has reasonable grounds to believe that there exists an ordinance violation, on any premises the Administrative Official or an authorized representative may enter the premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrative Official by this ordinance, provided that if the property is occupied, the Administrative Official will first present proper credentials and request entry; and if the property is unoccupied, the Administrative Official will first make a reasonable effort to locate the owner or other persons having charge of the property and request entry. If entry is

refused, the Administrative Official or an authorized representative will have recourse to every remedy provided by law to secure entry.

When the Administrative Official or an authorized representative has first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner, occupant or any other persons having charge, care or control of any property shall deny entry, after proper request is made as herein provided, for the purpose of inspection and examination pursuant to this ordinance.

4.03. STOP ORDER AND INJUNCTION. Whenever work is being done contrary to the provisions of this ordinance, the Administrative Official may order the work stopped by serving written notice on any persons engaged in or causing the work to be done, and these persons shall immediately stop the work until authorized by the Administrative Official to proceed. The Board may institute injunction or other appropriate action or proceedings, in addition to other remedies, to prevent the unlawful construction or use of a drainage work if there is a violation or threatened violation of this ordinance.

4.04. VIOLATION AND PENALTY. Any person draining water without a permit is **guilty of a Class 2 misdemeanor and may be subject, in addition to any criminal penalty, a civil penalty up to \$1000 per day of violation.** Any person violating any other provisions of this ordinance is guilty of a misdemeanor and may be subject to a fine of \$500.00, thirty (30) days in jail or both. Each and every day the violation continues may constitute a separate offense. **(Amended by Ordinance # 44)**

ARTICLE 5.00 DRAINAGE DISTRICTS

5.01. DRAINAGE DISTRICTS. It is the public policy of the Hanson County Drainage Board and the Hanson County Commissions, through the use of this Drainage Ordinance, to also encourage the use or activation and

use of those pre-existing drainage districts which are on file and a part of records within Hanson County, South Dakota.

ARTICLE 6.00 MISCELLANEOUS PROVISIONS

6.01. MISCELLANEOUS PROVISIONS. Effective date of regulations.

The regulations and procedures shall be effective as of twenty days after publication of the notice of adoption, to-wit, October 28, 2010.

ARTICLE 7.00 DEFINITIONS

7.01 DEFINITIONS. Unless otherwise noted, all terms in this ordinance are defined by their plain meaning.

The following specific definitions apply:

1. **ADMINISTRATIVE OFFICIAL.** The Planning Director duly appointed by the Board who is responsible for the administration and enforcement of this ordinance.
2. **BOARD.** The Hanson County Board of Commissioners.
3. **CONTRACTOR.** Any individual, firm or corporation who performs excavation, grading, construction or installation work involving a drainage project.
4. **COORDINATED AND DRAINAGE AREA.** A defined geographic area containing one or more parcels of real property and more than one land owner which is established via a public election to provide a planned network or method of natural or man-made drainage and funded through an assessment on the benefited properties.

5. DOMINANT ESTATE. Any parcel of real property, which holds a common law or statutory right to drain water onto other real property.
6. 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:
 - a. CLOSED DRAIN. A man-made drain or drainage scheme utilizing pipes, tiles or other material and constructed so the flow of water is not visible.
 - b. LATERAL DRAIN. A drain constructed after the establishment and construction of the original drain or drainage system and which flows into the original drain or drainage system.
 - c. NATURAL DRAIN. A drainage system on the surface of the ground which operates as part of a natural water course.
 - d. SURFACE DRAIN. A man-made drain on the surface of the ground.
7. 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 benefited acres within the district.
8. DRAINAGE PROJECT. Any man-made improvements constructed or installed to drain water.

9. HYDRIC SOIL. Soil types which are formed under saturated conditions.
10. HYDROPHITIC VEGETATION. Vegetative types adapted for life in saturated soil conditions.
11. LANDOWNER OR OWNER. Any individual, firm or corporation, public or private, or public agency, which has 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 purchaser as named in the contract for deed are owners of the real property.
12. MEANDERED LAKE. Any pond, slough, or lake which has had its boundaries established by metes and bounds in the documents or record or in the survey of public lands by the government of the United States.
13. NAMED WATER COURSE. The main stream beds of Bloom Creek, Elm Creek, Enemy Creek, James River, Johnson Creek, Pierre Creek, Plum Creek, Rock Creek, Twelve-mile Creek, and Wolf Creek are the named water courses in Hanson County.
14. 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.
15. SERVIENT ESTATE. Any parcel of real property, which is subject to a legal right allowing a dominant estate to drain water onto it.

16. 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.
17. STREAM PERMANENT. A natural drainage channel indicated by a solid blue line on the most recently published USGS 7.5-minute quadrangle maps.
18. VESTED DRAINAGE RIGHT. A right to drain water from one property to another which has been established on the basis of SDCL 46A-10A or 46A-11A. Any natural right acquired before July 1, 1985 is deemed vested. Drainage with man-made origins or improvements acquired prior to July 1, 1985 is deemed vested if recorded at the register of deeds office before July 1, 1992. Drainage districts are exempt from the recording requirements.
19. WATERSHED. The area of land which drains, directly or indirectly, into a slough, pond, lake, stream or water course.
20. WETLAND. Means land that (1) has predominance of hydric soils; (2) is inundated or saturated by surface or groundwater as a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) under normal circumstances does support a prevalence of such vegetation.
21. WATER COURSE. A fixed and determinant route, natural or man-made, by which water flows from one parcel of real property to another and by which water is discharged upon a servient estate for a period of time, on such a regular basis and in such quantities that it is (becomes) a predictably continuous

activity. 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.

22. REGISTERED AND RECORDED DRAINAGE SYSTEMS. Any drainage system that has been property filed at the Hanson County Courthouse with the Administrative Official.

Hanson County	Date: _____
Drainage Permit	Permit # _____

IN ALL CASES, THIS APPLICATION MUST BE ACCOMPANIED BY A MAP SHOWING THE PROPOSED DRAINAGE AREA.

Land of Land to be Drained: (Section Legal) _____

Area of Land to be Drained: _____ acres

Location of Outlet End of Drain: (describe to nearest 40 Acres, e.g. NE1/4 NE1/4 of 11-103-58 Jasper)

Nearest Named Downstream Watercourse:

Names of Downstream Landowners between outlet and nearest named watercourse (A "Drainage Acceptance Form") will be required of these landowners.

Downstream Landowner #1 _____

Downstream Landowner #2 _____

Downstream Landowner #3 _____

Downstream Landowner #4 _____

Downstream Landowner #5 _____

(list-add. If needed.) _____

If Outlet Drains into Road Right of Way, written approval is also required from the appropriate Government Agency.

Proposed Drainage Tile Length: _____ Lateral Length(s) _____

Tile Diameter Lateral 1) _____ to _____ to (largest)

Long 1) _____ to _____ to (largest)

Approximate Area Contributing Runoff to Drain _____ Acres
(43560sq ft = 1 Acre)

Proposed Finish:

Proposed Construction Start: _____

Drainage Contractor (if used) _____

Drainage Supervisor _____ Phone _____

Signature of Drainage (Landowner) Applicant: _____

Applicant Mail Address: _____

Applicant Phone: _____ Date: _____

Downstream Acceptance Forms

Submitted

Not Needed

Fee Paid _____

Signature Approving Authority _____

Title _____ Date _____

Hanson County Drainage Permit Acceptance Form

Waiver accepting proposed drainage project outletting on the property of _____ at (address) _____.

City _____ Hanson County, SD.

Legal Description Outlet _____

(describe to nearest 40 acres, e.ge. NE1/4 NE1/4 10-103-58)

I am aware that _____ (upstream landowner is proposing to drain or construct a drainage system that will drain additional water downstream to my property. I have no objection to this project and I am aware of the impact that it may have on my property.

Date: _____

Signature: _____

Name Print: _____

Signature: _____

Name Print: _____

Signature: _____

Name Print: _____

Signature of Drainage Applicant _____

Applicant Address: _____

Applicant Phone: _____

Above are all known downstream landowners from the outlet to the named watercourse.

This is not a permit. This is an acceptance form required from all downstream landowners whom the drainage may affect