

## Original Section

### SECTION 201.

For the purpose of this Ordinance, certain terms and words are hereby defined, unless the context otherwise requires. The word "shall" is mandatory and not discretionary.

1. "Board," a board of county commissioners.
2. "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 flow of water is not visible.
3. "Coordinated drainage area," a defined geographic area containing one or more parcels of real property and established by a board to provide a planned network or method or natural or man—made drainage, or both, to benefit all parcels of real property involved.
4. "Drainage scheme," a plan or system by which water is drained from one or more parcels of property onto one or more parcels of real property.
5. "Dominant estate," any parcel of real property, usually at a higher elevation, which holds a common law or statutory legal right to drain water onto other real property.
6. "Engineer," a professional, registered engineer.
7. "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.
8. "Governing body," a board of county commissioners, a city council or a city commission.
9. "Landowner" or "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 of the county in which the real property is situated. 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 for the respective county, 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.
10. "Legal drain," a drain or drainage scheme that:
  - a. Is vested under the provisions of SDCL 46A-10 and SDCL 46A-11;
  - b. Has been constructed by a person or by a unit of government under the provisions of past or present law; or
  - c. Has been granted a drainage permit.
11. "Municipality," a city or town, however organized.
12. "Natural drain," a drainage system which operates as part of a natural water course, as defined in subdivision (13) of this section.
13. "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 or volume of the flow of water be sufficient to form a channel having a well-defined bed or banks.
14. "Private drain," a drainage system or scheme designed, constructed and maintained by a landowner primarily for his own benefit or a natural drain, whether or not actively maintained, that provides a benefit primarily to one landowner.

15. "Rural" or "rural area," any territory outside a municipality.
16. "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.
17. "Unit of local government," a municipality, an irrigation district, a water project district, a water user district, a township, a sanitary district, a conservation district or other special district.
18. "Vested right," a right of water drainage from one parcel of property to another which is settled or accrued to the property on the basis of the state law.
19. "Water management board," the state board in SDCL1-40-15.
20. "Lake" means 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.
21. "Lateral drain" for the purpose of regulating the drainage of water means a drain constructed after the establishment and construction of the original drain or drainage system (for which a permit was obtained) and which flows into such original drain or drainage system.
22. "Meandered lake" means any pond, slough, or lake which has had its boundaries established by metes and bounds in the survey of public lands by government of the United States.
23. "Party of record" means any person who submits oral or written testimony and evidence for the record of the state engineer's public hearing.
24. "Persons" means a person, firm, partnership, association, corporation, 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.
25. "Pond" means 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.
26. "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.
27. "Watershed" means the area which drains into a slough, pond, or lake.
28. "Routine Maintenance," Any maintenance performed on an established/existing above ground drainage ditch or vested and/or properly registered drainage system provided:
  - a. 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.
29. The removal of sediment or vegetation from a natural or surface drain with man-made improvements if the maintenance does not exceed the original depth and capacity of the channel and the original location of the drain is not altered.

## SECTION 302. PERMITS FOR DRAINAGE PROJECT.

The permit for a "drainage project" constructed pursuant to South Dakota Codified Laws Chapter 46A10A and 46A-11 may encompass the entire assessed or benefited area. In order for a permit to encompass the entire assessed or benefited area, the drainage project must be designed to accommodate, as determined by the Board or its designated official, the drainage of the entire assessed area, and must be so stated on the application. However, a drainage project approved in accordance with this section may still require the approval of the Board prior to construction of lateral drains, as defined herein, within the assessed area.

## SECTION 305. FILING APPLICATION.

Any person desiring a drainage permit shall file an application on the County Permit Form:

1. The applicant shall supply a detailed site plan showing the location of the proposed construction, a description of the size of the drain, and the location of the proposed outlet, and any other information which the Drainage Board may deem necessary for consideration in enforcing the provisions of this ordinance.
2. If requested by the Board, the applicant shall provide an engineering analysis showing the downstream impacts of the proposed drainage. The analysis, at the discretion of the Board, may include a determination of the capacity of the drain and the receiving watercourse and a comparison of volume and timing of pre-drainage flows.
3. If the application is incomplete, or if the information contained therein is insufficient to enable the Board or its designated official to make an informed decision on the application, the application shall be returned to the applicant for correction.
4. Crossing a township road requires signatures of the majority of affected Township Supervisors.
5. The cost for filing all drainage permits shall be \$100.00.
6. Inlets and Outlets shall not be located in county Right-of-Ways.
7. As per SDCL 46A-10A-20 permitted drainage which is enlarged, re-routed or otherwise modified from the original drawings will require a new permit before construction can be completed.

## SECTION 308. HEARING ON APPLICATIONS OF STATEWIDE OR INTERCOUNTY SIGNIFICANCE.

Upon determination of an application of statewide or inter-county significance, the Board shall set the date, time and place for a public hearing on the application. The purpose of the hearing is to establish a record on which to base a decision as to whether the application to drain shall be granted, and if so, under what conditions the water is to be drained. A hearing shall not be required for a drainage project which is not of statewide or inter-county significance. However, the Board may hold hearings on such applications at its discretion.

Modified

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For the purpose of this Ordinance, certain terms and words are hereby defined, unless the context otherwise requires. The word "shall" is mandatory and not discretionary.

1. "Board," a board of county commissioners.
2. "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 flow of water is not visible.
3. "Coordinated drainage area," a defined geographic area containing one or more parcels of real property and established by a board to provide a planned network or method or natural or man—made drainage, or both, to benefit all parcels of real property involved.
- ~~3-4.~~ 4. "County Parcel Identification Number"- an identifying number assigned to parcel of land by the County Department of Equalization.
- ~~4-5.~~ 5. "Drainage scheme," a plan or system by which water is drained from one or more parcels of property onto one or more parcels of real property.
- ~~5-6.~~ 6. "Dominant estate," any parcel of real property, usually at a higher elevation, which holds a common law or statutory legal right to drain water onto other real property.
- ~~6-7.~~ 7. "Engineer," a professional, registered engineer.
- ~~7-8.~~ 8. "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.
- ~~8-9.~~ 9. "Governing body," a board of county commissioners, a city council or a city commission.
- ~~9-10.~~ 10. "Landowner" or "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 of the county in which the real property is situated. 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 for the respective county, 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.
- ~~10-11.~~ 11. "Legal drain," a drain or drainage scheme that:
  - d. Is vested under the provisions of SDCL 46A-10 and SDCL 46A-11;
  - e. Has been constructed by a person or by a unit of government under the provisions of past or present law; or
  - f. Has been granted a drainage permit.
- ~~11-12.~~ 12. "Municipality," a city or town, however organized.
- ~~12-13.~~ 13. "Natural drain," a drainage system which operates as part of a natural water course, as defined in subdivision (13) of this section.
- ~~13-14.~~ 14. "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 or volume of the flow of water be sufficient to form a channel having a well-defined bed or banks.

- ~~14-15.~~ \_\_\_\_\_ "Private drain," a drainage system or scheme designed, constructed and maintained by a landowner primarily for his own benefit or a natural drain, whether or not actively maintained, that provides a benefit primarily to one landowner.
- ~~15-16.~~ \_\_\_\_\_ "Rural" or "rural area," any territory outside a municipality.
- ~~16-17.~~ \_\_\_\_\_ "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.
- ~~17-18.~~ \_\_\_\_\_ "Unit of local government," a municipality, an irrigation district, a water project district, a water user district, a township, a sanitary district, a conservation district or other special district.
- ~~18-19.~~ \_\_\_\_\_ "Vested right," a right of water drainage from one parcel of property to another which is settled or accrued to the property on the basis of the state law.
- ~~19-20.~~ \_\_\_\_\_ "Water management board," the state board in SDCL1-40-15.
- ~~20-21.~~ \_\_\_\_\_ "Lake" means 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.
- ~~21-22.~~ \_\_\_\_\_ "Lateral drain" for the purpose of regulating the drainage of water means a drain constructed after the establishment and construction of the original drain or drainage system (for which a permit was obtained) and which flows into such original drain or drainage system.
- ~~22-23.~~ \_\_\_\_\_ "Meandered lake" means any pond, slough, or lake which has had its boundaries established by metes and bounds in the survey of public lands by government of the United States.
- ~~23-24.~~ \_\_\_\_\_ "Party of record" means any person who submits oral or written testimony and evidence for the record of the state engineer's public hearing.
- ~~24-25.~~ \_\_\_\_\_ "Persons" means a person, firm, partnership, association, corporation, 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.
- ~~25-26.~~ \_\_\_\_\_ "Pond" means 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.
- ~~26-27.~~ \_\_\_\_\_ "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.
- ~~27-28.~~ \_\_\_\_\_ "Watershed" means the area which drains into a slough, pond, or lake.
- ~~28-29.~~ \_\_\_\_\_ "Routine Maintenance," Any maintenance performed on an established/existing above ground drainage ditch or vested and/or properly registered drainage system provided:

- a. 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.

~~29-30.~~ The removal of sediment or vegetation from a natural or surface drain with man-made improvements if the maintenance does not exceed the original depth and capacity of the channel and the original location of the drain is not altered.

#### SECTION 302. PERMITS FOR DRAINAGE PROJECT.

The permit for a "drainage project" constructed pursuant to South Dakota Codified Laws Chapter 46A10A and 46A-11 may encompass the entire assessed or benefited area within a single parcel of land as identified by the County Parcel Identification Number. In order for a permit to encompass the entire assessed or benefited area within a single parcel of land, the drainage project must be designed to accommodate, as determined by the Board or its designated official, the drainage of the entire assessed area within a single parcel of land, and must be so stated on the application. However, a drainage project approved in accordance with this section may still require the approval of the Board prior to construction of lateral drains, as defined herein, within the assessed area.

#### SECTION 305. FILING APPLICATION.

Any person desiring a drainage permit shall file an application on the County Permit Form:

1. The applicant shall supply a detailed site plan showing the location of the proposed construction, a description of the size of the drain, and the location of the proposed outlet, and any other information which the Drainage Board may deem necessary for consideration in enforcing the provisions of this ordinance.

2. If requested by the Board, the applicant shall provide an engineering analysis showing the downstream impacts of the proposed drainage. The analysis, at the discretion of the Board, may include a determination of the capacity of the drain and the receiving watercourse and a comparison of volume and timing of pre-drainage flows.

3. If the application is incomplete, or if the information contained therein is insufficient to enable the Board or its designated official to make an informed decision on the application, the application shall be returned to the applicant for correction.

4. Crossing a township road requires signatures of the majority of affected Township Supervisors.

~~5.5.~~ Each parcel of land as identified by the County Parcel Identification Number, must have its own separate drainage permit.

- ~~6.~~ The cost for filing all drainage permits shall be \$100.00.

- ~~7.6.~~ Inlets and Outlets shall not be located in county Right-of-Ways.

- ~~8.7.~~ As per SDCL 46A-10A-20 permitted drainage which is enlarged, re-routed or otherwise modified from the original drawings will require a new permit before construction can be completed.

#### SECTION 308. HEARING ON APPLICATIONS OF STATEWIDE OR INTERCOUNTY SIGNIFICANCE. HEARING ON APPLICATION FOR DRAINAGE PERMIT

~~Upon determination of an application of statewide or inter-county significance, the Board shall set the date, time and place for a public hearing on the application. The purpose of the hearing is to establish a record on which to base a decision as to whether the application to drain shall be granted, and if so, under what conditions the water is to be drained. A hearing shall not be required for a drainage project which is not of statewide or inter-county significance. However, the Board may hold hearings on such applications at its discretion. The Board may hear several permits at the same public hearing if the permits are connected under a common drainage scheme.~~