

ORDINANCE _____

**2013 REVISED DRAINAGE ORDINANCE
OF DAVISON COUNTY**

Davison County

**Adopted _____
Effective _____**

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ACKNOWLEDGEMENTS

The Davison County Board of Commissioners, under Chapter 46A-10A-2 established a Davison County Drainage Commission on October 25, 2011. The Drainage Commission is comprised of two County Commissioners and five residents of the county, from various locations and backgrounds. The terms of office are four people serving three year terms and three people serving two year terms.

The Davison County Drainage Commission will follow the Drainage Ordinance for Davison County which was established on July 1, 1987 and revised on August 27, 2013. The Drainage Commission will act on all drainage applications and complaints that are presented to the Drainage Commission for action. The 2013 revision allowed for Administrative Approval of drainage permits which do not require a full board hearing.

The Davison County Drainage Commission is a quasi-judicial board. A quasi-judicial body is an entity such as an arbitrator or tribunal board, generally of a public administrative agency, which has powers and procedures resembling those of a court of law or judge, and which is obligated to objectively determine facts and draw conclusions from them so as to provide the basis of an official action. Such actions are able to remedy a situation or impose legal penalties, and may affect the legal rights, duties or privileges of specific parties. Any decisions the Drainage Commission makes will stand unless taken to a Court of Law. The purpose of the Drainage Commission is to help citizens resolve drainage issues without referring the matter to the court system. The Drainage Commission must follow the South Dakota Codified Law, and provide unbiased decisions in the best interests of Davison County.

DRAINAGE HISTORY

Until 1992, a land owner in Davison County could record with the Register of Deeds office Vested Drainage Rights for drainage work completed prior to 1985. The Register of Deeds office and the Drainage Administration office has ascertained all the vested drainage rights records filed prior to 1992.

During the 1920's and 1930's there were twelve drainage projects designed by the State Engineer, after the county was petitioned to form a Drainage District. However, not all were constructed and several have experienced natural and man-made changes over the last century. Those that were actually constructed were assessed back to the property owners who benefited from the project and are on file with the Planning and Zoning Administrator, who also serves as the Drainage Administrator. Today, residents can see an open ditch on their property. However, most residents are not aware of the buried drainage tile projects that exist on their property; which could result in damage to the drainage system upon any excavation in the area.

According to the current drainage ordinance any drainage work requires an application to be completed. The results of the application will determine if the permit can be administratively approved, or if the project will require a drainage permit approved by the Davison County Drainage Commission.

ARTICLE 1
DEFINITIONS

Section

01:01 Definitions.

SECTION 1:01. DEFINITIONS. For the purposes of this ordinance, certain terms and words are hereby defined. Unless otherwise noted, all terms contained in this ordinance are defined by their plain meaning.

- 1) **ADMINISTRATIVE OFFICIAL.** The Administrator duly appointed by the Davison County Commission who is responsible for the administration and enforcement of this ordinance. The Administrative Official may also be referred to as the Planning and Zoning Administrator.
- 2) **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.
- 3) **BOARD.** The Board of Davison County Commissioners.
- 4) **CONTRACTOR.** Any individual, firm or corporation who performs excavation, grading, construction or installation work involving a drainage project.
- 5) **CONTRIBUTING AREA.** An area that adds water to the current drainage system, based on a 25 year rainfall event.
- 6) **COORDINATED 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 benefitted properties.
- 7) **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.
- 8) **DRAIN.** A means of draining either surface or subsurface water through a system of ditches, pipes or tiles, either 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 materials and constructed in such a way that 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 such original drain or drainage system.

- c. LEGAL DRAIN. A drain or drainage scheme that:
 - i. Is vested under the provisions of chapter 46A-10A-1 and chapter 46A-11.
 - ii. Has been constructed by a person or by a unit of government under the provisions of past or present law; or
 - iii. Has been granted a drainage permit, if a permit is necessary under the provisions of chapter 46A-10A-1 and chapter 46A-11.
 - d. NATURAL DRAIN. A drainage system on the surface of the ground which operates as part of a natural water course.
 - e. SURFACE DRAIN. A man-made drain on the surface of the ground.
- 9) DRAINAGE COMMISSION. A commission, appointed by the Board of County Commissioners, of three or more members, the total membership of which shall always be an uneven number and at least one member of which shall be a member of the Board of County Commissioners.
 - 10) 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.
 - 11) DRAINAGE PROJECT. Any man-made improvements constructed or installed with the intent to drain water.
 - 12) LAKE. A body of relatively still water of considerable size, localized in a basin, that is surrounded by land apart from a river, stream or other form of moving water that serves to feed or drain the lake.
 - 13) 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 the purchaser as named in the contract for deed are deemed owners of the real property.
 - 14) 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.
 - 15) NATIONAL MAP. A framework for geographic knowledge needed by the Nation. It provides public access to consistent, high quality, geospatial data and information from multiple partners to help inform decision making by resource managers and the public.

- 16) NON-CONTRIBUTING AREA. An area that does not add water to the current drainage system, based on a 25 year rainfall event.
- 17) 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.
- 18) PLANNING AND ZONING ADMINISTRATOR. The Administrator duly appointed by the Davison County Commission who is responsible for the administration and enforcement of this ordinance. The Planning and Zoning Administrator may also be referred to as the Administrative Official.
- 19) POND. A body of standing water, either natural or man-made, that is usually smaller than a lake.
- 20) ROUTINE MAINTENANCE. Maintenance performed on a vested drain, existing non-vested drain, natural drain, or intermittent stream.
- 21) 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.
- 22) 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.
- 23) STREAM, PERMANENT. A natural drainage channel indicated by a solid blue line on the most recently published USGS 7.5 minute quadrangle maps.
- 24) UNITED STATES GEOLOGICAL SURVEY (USGS) 7.5-MINUTE MAP. The 1:24,000 scale topographic maps, also known as 7.5-minute quadrangles, which were completed in 1992. This map has been replaced by *The National Map*.
- 25) 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-11. 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.
- 26) WATERSHED. The area of land which drains, either directly or indirectly, into a slough, pond, lake, stream or water course.
- 27) WETLAND. Those areas which have a predominance of hydric soil (formed under saturated conditions), are inundated or saturated by water for at least 15 days during a growing season, and under normal circumstances support hydrophilic vegetation (typically adapted for life in saturated soil conditions).

**ARTICLE 2
DRAINAGE PERMITS**

Section

- 02:01 Application for a Drainage Permit.
- 02:02 Filing with Register of Deeds.
- 02:03 Regular Permits Required.
- 02:04 Routine Maintenance Permits Required.
- 02:05 Evaluation of Permit Applications.
- 02:06 Conditions attached to Permits.
- 02:07 Notification of Drainage Commission Hearing.
- 02:08 Global Positioning System Information required.
- 02:09 Fees.
- 02:10 Administrative Approval of Drainage Permits.
- 02:11 Administrative Approval for County Coordinated Drainage Ditch Permits.
- 02:12 Effective date of Administrative Drainage Permits.
- 02:13 Expiration of Drainage Permits.
- 02:14 Appeals of Decisions made by the Administrative Official.
- 02:15 Hearing by the Drainage Commission.

SECTION 2:01. APPLICATION FOR A DRAINAGE PERMIT. A person requesting to complete any type of drainage work must complete an application and pay the required filing fee to the County prior to commencement, to include projects which are administratively approved. The fact a drainage project may be eligible to receive a routine maintenance permit under Section 2:04, below, does not mean an application is not required. All drainage work in Davison County requires an application under this Section 2:01. Some drainage work in Davison County may not require a board hearing, but all will require a permit.

The application shall be filed on a form provided by the County (Appendix A) and may include the following, if applicable:

- 1) A detailed site plan showing the location of the proposed construction, which shall include:
 - a. The location of the proposed drainage system; to include the inlet, outlet, and all other drains.
 - b. The direction of the water flow.
 - c. The destination of water from the outlet, up to 1 mile.
- 2) A list of all landowners ½ mile upstream, 1 mile downstream, and ¼ mile buffer on both sides.
- 3) The geographic location of the land to be drained, to include the proposed outlet.
- 4) A description (if any) of any watercourse, lake, slough, draw, natural drain-way, stream, creek, river, drain or ditch that is involved in the application.
- 5) Any structures unable to be altered in the drainage path.
- 6) A description of the type and size of the drain, to include the elevation at the inlet and the outlet.
- 7) Any application for a proposed drainage project which would empty into an existing drainage system shall include a description of the type and general location of the existing system.

- 8) Call South Dakota One Call for locates.
- 9) Signature of Road authority
- 10) Signature of Applicant/property owner
- 11) Signature of Land renter
- 12) Signature of Contractor
- 13) Signature of Planning & Zoning Administrator
- 14) Signature of Drainage Commission Chairperson
- 15) Signature of County Auditor
- 16) Signature of Abutting property owners (Appendix B)

If the Planning and Zoning 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. The Drainage Commission may also require that the applicant provide a detailed survey prepared by a professional engineer or surveyor. The applicant shall also provide copies of the completed application to other affected counties if the application be determined to be of statewide or inter-county significance in accordance with Article 3. Applications within the same section can be combined, with one fee.

SECTION 2:02. FILING WITH REGISTER OF DEEDS. Upon completion of all drainage projects granted a permit, a “Record of Drain” document must be recorded at the Register of Deeds office; to include payment of the appropriate fee. Routine Maintenance, in accordance with Section 2:04, is not required to be recorded at the Register of Deeds.

SECTION 2:03. REGULAR PERMITS REQUIRED. Other than drainage projects excepted from routine maintenance permitting requirements under Section 2:04 below, all drainage projects require a permit. Permits for drainage may be administratively granted by the Davison County Planning and Zoning Administrator if the required waivers (Appendix B) from upstream, downstream, and buffer land owners are provided in accordance with Section 2:01 (15), and the Administrator determines the project does not meet the criteria to be heard by the Drainage Commission. Landowners may also request the application be heard by the Davison County Drainage Commission. Drainage projects constructed as part of a drainage district or coordinated drainage area shall require only one permit for the entire project.

Prior to the commencement of work, drainage permits are required for, but not limited to the following:

- 1) Construction or installation of a new surface (open ditch) or closed drain (tile).
- 2) Any draining or filling, in whole or in part, of a pond, wetland, or lake.
- 3) Construction of any lateral drain to a current legal drain.
- 4) Modification of any permitted drainage with the intent of deepening or widening any drainage channel, increasing the size of any drainage tile, or extending, altering, or rerouting the drainage work in any way.
- 5) Improvements to a drainage district or a coordinated drainage area which were not included in the original plans.
- 6) Any drainage work completed inside municipality boundaries which will drain into the county.

SECTION 2:04. ROUTINE MAINTENANCE PERMITS REQUIRED. All proposed drainage work will require completion of an application prior to commencement, regardless of the type of

permit. Routine Maintenance Permits may be administratively granted by the Davison County Planning and Zoning Administrator. Upon commencement and completion of the drainage project, the Planning and Zoning Administrator shall be notified for an optional inspection of the drainage work. A regular drainage permit in accordance with Section 2:03 is not required, but a routine maintenance permit is required, for:

- 1) Repair, replacement or improvement of any drain if less than 40 feet of drain is to be repaired, replaced, or improved.
- 2) Repairing or replacing, any vested drain under the provisions of SDCL Chapter 46-10A and 46-11.
- 3) Construction, installation, or repair of a surface or closed drain if located within a watershed area of twenty acres or less.
- 4) Routine maintenance of any drain previously permitted or administratively approved by the Davison County Drainage Commission or the Planning and Zoning Administrator.

In the event of routine maintenance, damage to an existing drainage system can be repaired without a permit; to include removal of sediment and debris.

A routine maintenance drainage permit shall be issued under administrative approval for recordation purposes for the following, provided the work is in compliance with the conditions prescribed herein.

- 1) Vested Drainage
 - a. The repair or replacement of a closed or lateral drain that does not increase the size, capacity or length of the existing drain; and the original location of the drain is not altered.
 - b. The removal of sediment or vegetation from a surface drain, if the maintenance does not exceed the original depth and capacity of the channel; and the original location of the drain is not altered.
- 2) Non-Vested Drainage
 - a. The repair or replacement of a closed or lateral drain that does not increase the size, capacity or length of the existing drain; and the original location of the drain is not altered.
 - b. The removal of sediment or vegetation from a surface drain, if the maintenance does not exceed the original depth and capacity of the channel; and the original location of the drain is not altered.
- 3) Natural Drainage Ways
 - a. The removal of sediment or vegetation from a natural drain if the maintenance does not exceed the original depth and capacity of the channel, or a depth of two (2) feet, whichever is less, and the original location of the drain is not altered.
- 4) Intermittent Stream

- a. Routine maintenance of a drainage project which outlets directly into an intermittent stream, provided that the intermittent stream is within 1 mile of a named stream, and that the intermittent stream is directly connected to a named stream as defined by the most recently published USGS 7.5 minute topographic maps or National map.

SECTION 2:05. EVALUATION OF PERMIT APPLICATIONS. At a minimum, the following factors shall be considered in evaluating the impact of a proposed drainage project:

- 1) Flood hazard zones.
- 2) Erosion potential.
- 3) Water quality and supply.
- 4) Agricultural production;
- 5) Environmental quality.
- 6) Aesthetics.
- 7) Fish and wildlife values.
- 8) Considerations of downstream landowners and the potential adverse effect thereon including consideration of the following criteria:
 - a. Uncontrolled 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.
 - b. 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.
 - c. The amount of water proposed to be drained.
 - d. The design and other physical aspects of the drain.
 - e. The impact of sustained flows.

SECTION 2:06. CONDITIONS ATTACHED TO PERMITS. Conditions may be attached to a drainage permit by the Planning and Zoning Administrator or the Drainage Commission to ensure that the proposed drainage is accomplished in accordance with the purposes of this ordinance.

SECTION 2:07. NOTIFICATION OF DRAINAGE COMMISSION HEARING. The degree of notification for a hearing by the Drainage Commission shall be based on the location of the proposed outlet and the type of water body into which the outlet will discharge. Notification shall be made in the following manner:

Prior to the Drainage Commission hearing, the Planning and Zoning Administrator shall provide notice of the hearing by mail to all upstream landowners for at least ½ mile of the inlet and all downstream landowners for at least one mile of the outlet, and ¼ mile buffer on each side of the proposed drainage project. Additional landowners may be notified. The notice shall be mailed at least 14 days prior to the hearing date. The County may recover any notification costs from the applicant.

SECTION 2:08. GLOBAL POSITIONING SYSTEM INFORMATION REQUIRED. The contractor, installer, or landowner shall provide to the Office of Planning & Zoning the GPS data

for installed tile in decimal degrees or degrees-minutes seconds electronic format. Contractors or installers without GPS capabilities shall provide an as-installed map for the tile. This information shall be provided not more than 180 days from final date of installation.

SECTION 2:09. FEES. The fees set forth in this ordinance are non-refundable and shall be paid at the time of application. No action shall be taken upon an application unless all fees have been paid.

- 1) Routine Maintenance Permit-\$25.00
- 2) Administratively Approved Drainage Permit (tile or ditch)-\$100.00
- 3) Permit Requiring Drainage Commission Hearing-\$100.00
- 4) Work commenced without permit-\$500.00. This fee shall be charged in addition to any required permit fees.
- 5) Drainage map with tile lines-\$5.00
- 6) Filing Fee for a Record of Drain document with the Register of Deeds-\$30.00
- 7) Applications within the same section can be combined, with one fee.

SECTION 2:10. ADMINISTRATIVE APPROVAL OF DRAINAGE PERMITS. The Planning and Zoning Administrator shall have the authority to grant or deny a Regular Drainage Permit in accordance with Section 2:03 and the following projects. All other drainage permit applications shall be addressed by the Drainage Commission.

- 1) A proposed drainage project which outlets directly into Firesteel Creek, North and South branches of Twelve Mile Creek, Enemy Creek, James River, Dry Run Creek, North Dry Run or sometimes referred to as Morris Creek (a Tributary of the James River), or any natural water ways as delineated on the most recently published USGS 7.5 – minute topographic maps or National map.
- 2) A proposed drainage project which outlets directly into a permanent or intermittent stream not listed in subsection (1) provided that the intermittent stream is connected to a named stream, as defined by the most recently published USGS 7.5 –minute topographic map or National map. Furthermore, all upstream landowners for at least ½ mile above, downstream landowners for at least one mile below the proposed outlet and within a ¼ mile buffer from the center of the drain have signed Appendix B of the permit application indicating that they do not oppose the proposed drainage project.
- 3) A proposed drainage project which does not outlet into a permanent or intermittent stream provided all upstream landowners for at least ½ mile above, downstream landowners for at least one mile below the proposed outlet and within a ¼ mile buffer from the center of the drain to each side have signed Appendix B stating that they have no objection to the construction of the proposed drainage project.
- 4) A proposed drainage project which outlets directly or indirectly into a public or private road right-of-way, provided the appropriate road authority has granted approval to drain into the right-of-way and provided all upstream landowners for at least ½ mile above, downstream landowners for at least one mile below the proposed outlet and within a ¼ mile buffer from the center of the drain to each side have signed Appendix B stating that they have no objection to the construction of the proposed drainage project.

The Planning and Zoning Administrator shall have the authority to require Appendix B waivers from other landowners if the potential impact of the proposed drainage extends a distance greater than noted in Section 2:10 (1) through Section 2:10 (4).

SECTION 2:11. ADMINISTRATIVE APPROVAL FOR COUNTY COORDINATED DRAINAGE DITCH PERMITS. Certain construction or repair within a Davison County Coordinated Drainage Ditch or Tile may be performed without a permit or permit fee. The purpose is to allow and encourage landowners to perform minor work to maintain the function of County Coordinated Drainage Systems, which minimizes the cost of administration and acknowledges that time may be of the essence for maintenance issues that, although minor for the county Coordinated Drainage Ditch, may significantly impact private property. While a permit or fee is not required, landowners must complete the application and secure Administrative approval in order to provide the Davison County Drainage Commission notice of the work and an opportunity to impose guidelines, conditions, or inspections.

The landowner is required to report the completion of the project to the Davison County Planning and Zoning Administrator, who will in turn notify the Davison County Drainage Commission. The drainage may be inspected during and upon completion. Landowners have the right to perform the following work:

- 1) Repair or maintenance of a lateral inlet to remove debris, silt, or sod that is blocking or restricting the flow of lateral water.
- 2) Removal of spoil banks or trees from Davison County Coordinated Drainage Ditches.

To secure administrative approval for work within a Davison County Drainage Ditch, a landowner must:

- 1) Complete the application, explaining the work to be performed.
- 2) Receive written permit approval from the Planning and Zoning Administrator prior to commencing any drainage work, by having the application signed.
- 3) Comply with any guidelines or conditions required by the Davison County Planning and Zoning Administrator.

SECTION 2:12. EFFECTIVE DATE OF ADMINISTRATIVE DRAINAGE PERMITS.

- 1) Drainage permits for routine maintenance shall become recordable upon completion and approval.
- 2) A drainage permit shall not become effective until after five working days following the approval, in an effort to allow time for appeal in accordance with Section 2:15.

SECTION 2:13. EXPIRATION OF DRAINAGE PERMITS. A drainage permit shall expire and become null and void if the authorized construction is not commenced within 1095 days (3 years) of the effective date of the permit.

SECTION 2:14. APPEALS OF DECISIONS MADE BY THE ADMINISTRATIVE OFFICIAL. Any decision of the Administrative Official may be appealed to the Drainage Commission. The applicant or any person aggrieved by a decision shall file a written appeal with the

Administrative Official within five working days of the official's decision. Upon such filing, the Administrative Official shall forward the appeal to the Drainage Commission and notify the applicant of the complaint. The applicant may not start or continue the drainage work until the matter is resolved.

SECTION 2:15. HEARING BY DRAINAGE COMMISSION. Following notification in accordance with Section 2:07, the Drainage Commission shall conduct a public hearing on a drainage permit application or the appeal of an administrative decision.

Drainage applications administratively approved under Section 2:03, Section 2:10, Section 2:11 and Section 2:12 will be reported to the board, but do not require a public hearing or board action.

ARTICLE 3
STATEWIDE OR INTER-COUNTY SIGNIFICANCE DRAINAGE PERMITS

Section

03:01 Drainage Applications of Statewide or Inter-County Significance.

SECTION 3:01. DRAINAGE APPLICATIONS OF STATEWIDE OR INTER-COUNTY SIGNIFICANCE. The Planning and Zoning Administrator shall not have the authority to grant a drainage permit for a proposed project which would have inter-county or interstate significance. When an application is determined to be of statewide or inter-county significance, the Drainage Commission of each county affected shall make a determination on whether the permit shall be granted. The County Commission will hear proposed projects for any county that does not have a Drainage Commission.

Following notification in accordance with Section 2:07, the Drainage Commission 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 County Commissions or Drainage Commissions 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 Drainage Commission 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 - four percent chance) into permanently contributing areas.

ARTICLE 4
DRAINAGE DISTRICTS AND COORDINATED DRAINAGE AREAS

Section

- 04:01 Application for repair work on a Drainage District.
- 04:02 County action on maintenance petition.
- 04:03 Application when Drainage District extends into more than one County.
- 04:04 Abandonment of Drainage District.
- 04:05 Petition for Coordinated Drainage Area.
- 04:06 Hearing on Coordinated Drainage Area.
- 04:07 Notice of Hearing.
- 04:08 Coordinated Drainage Area Election.
- 04:09 Assessment of costs to Coordinated Drainage District.

SECTION 4:01. APPLICATION FOR REPAIR WORK ON A DRAINAGE DISTRICT. In the event that maintenance is required in a drainage district in which three or more landowners have voluntarily contributed to the cost of previous maintenance, at least sixty percent of the resident landowners served by the drain may file a petition with the County Auditor requesting the Board of Commissioners to take action regarding the necessary repairs. Such petition shall include a map which shows the boundaries of the benefitted area of the district in which assessments will be made to cover the cost of the proposed work, the official name or number of the district, the initial and terminal points and general or exact course of the drain, a description of the proposed maintenance, a site plan showing the location of the maintenance, and a statement that the owners agree to future maintenance and assessment of the drain by the Board of Commissioners. All maintenance work and assessments shall be completed in accordance with SDCL 46A-10A and 46A-11.

SECTION 4:02. COUNTY ACTION ON MAINTENANCE PETITION. Upon receipt of a petition to maintain an existing drainage district, the Board of Commissioners shall set a date for a public hearing upon the request. The hearing shall be held within 30 days of the receipt of the petition. Any interested person may appear at the hearing in regard to the petition.

SECTION 4:03. APPLICATION WHEN DRAINAGE DISTRICT EXTENDS INTO MORE THAN ONE COUNTY. When the drainage district extends into more than one county, the application shall be made to the county which had jurisdiction over the original drainage district. If the original county with jurisdiction is unknown, application for repair work shall be made to all counties affected.

SECTION 4:04. ABANDONMENT OF DRAINAGE DISTRICT. Any drainage district established prior to July 1, 1985 may be abandoned and abolished after a petition has been filed with the County Auditor by not less than 25 percent of the drainage district property owners. The petition shall include the name of the drainage district. The Board of Commissioners shall publish notice and hold a hearing in conformance with SDCL 46A-10A. If less than a majority of drainage district owners petition for the abandonment of a drainage district, the Board of Commissioners shall schedule an election in accordance with 46A-10A-43 at which the property owners within the district shall decide the fate of the district.

SECTION 4:05. PETITION FOR COORDINATED DRAINAGE AREA. When the landowners of an area propose to develop a coordinated network of drainage projects, a petition shall be filed with the County Auditor requesting the formation of a coordinated drainage area. The petition shall be signed by not less than 25 percent of the landowners within the area and shall conform to the requirements set forth in SDCL 46A-10A-49. The petition shall include an accurate survey and map verified by a licensed surveyor which shows the boundaries and area of land included within the limits of the proposed coordinated drainage area. The petition shall also detail the type or types of drainage projects that will be included in the proposed area. The Board of Commissioners shall place the proposed coordinated drainage area map in a convenient public office for at least twenty days for examination by those having an interest in the application, and shall set a date for a hearing on the petition.

SECTION 4:06. HEARING ON COORDINATED DRAINAGE AREA. The Board of Commissioners, after publishing notice of the hearing, shall hold a hearing on the proposed coordinated drainage area at which any interested person may appear. If the Board of Commissioners is satisfied that the proposed drainage area is in the public interest and that all requirements of SDCL 46A-10A have been met, it may approve the creation of the coordinated drainage district pending the assent of a majority of the landowners within the drainage area at an election to be held within one month of the hearing. However, if the landowners signing the petition represented a majority of the resident landowners in the proposed district, no election need be held.

SECTION 4:07. NOTICE OF HEARING. The Board of Commissioners, prior to holding a hearing on a petition to establish a coordinated drainage area, shall publish notice of the hearing in a newspaper of general circulation in the area affected. The notice shall be published at least 14 days in advance of the hearing date.

SECTION 4:08. COORDINATED DRAINAGE AREA ELECTION. Any election regarding a coordinated drainage area shall be held in conformance with SDCL 46A-10A-50 through 46A-10A-54. The Board of Commissioners or the Drainage Commission shall give ten days notice of an election by publication in an official newspaper in the proposed coordinated drainage area. The vote shall be taken by ballot in a form provided by the Board of Commissioners. The ballot shall include the question on whether a coordinated drainage area should be established and a note informing voters that all costs of the drainage area will be paid by the landowners within the area. Establishment of the area shall be effective upon the approval of a majority of landowners within the district. If a majority vote against the establishment of the drainage area, no further proceedings may be taken on a similar request for a period of two years.

SECTION 4:09. ASSESSMENT OF COSTS TO COORDINATED DRAINAGE DISTRICT. All costs associated with the coordinated drainage area shall be paid by the landowners within the district. The County may perform necessary construction and/or maintenance and recover the costs by assessing the benefitted landowners within the coordinated drainage area.

**ARTICLE 5
DRAINAGE COMPLAINTS**

Section

- 05:01 Jurisdiction on drainage disputes.
- 05:02 Filing a complaint.
- 05:03 Resolution of complaints.
- 05:04 Hearing on complaint.
- 05:05 Appeal of Drainage Commission decision.

SECTION 5:01. JURISDICTION ON DRAINAGE DISPUTES. Any landowner may take a drainage dispute directly to circuit court. However, pursuant to SDCL 46A-10A-34, the Drainage Commission may address any drainage disputes in the unincorporated area of Davison County, and those resulting in water entering the county in accordance with Section 2:03 (6). The Drainage Commission may provide that certain types or categories of drainage disputes will not be heard by the Drainage Commission and must be taken directly to circuit court.

SECTION 5:02. FILING A COMPLAINT. Any landowner in the county may file a drainage complaint by setting forth the facts of the drainage dispute in writing and submitting it to the Planning and Zoning Administrator. The complaint shall include:

- 1) The name and address of the complainant.
- 2) The location of the property which has suffered damage or may suffer damage.
- 3) The location of the property against which the complaint is being registered.
- 4) When possible the complaint should detail the type and location of work, and when the work occurred.

The Drainage Commission may require that a drainage dispute include expert reports from a professional engineer or surveyor.

SECTION 5:03. RESOLUTION OF COMPLAINTS. Upon receipt of a drainage complaint the Planning and Zoning Administrator shall make an investigation of the facts, offer a recommendation for resolution to the parties involved and, if requested by any affected party, forward the complaint to the Drainage Commission for a hearing. The Drainage Commission shall make a determination whether they will accept jurisdiction over the particular type or category of drainage which is set forth in the complaint. If the Drainage Commission does not accept jurisdiction the dispute may be taken to circuit court. If the Drainage Commission does accept jurisdiction a date for a public hearing on the drainage complaint shall be set.

SECTION 5:04. HEARING ON COMPLAINT. When a hearing has been scheduled the Drainage Commission shall notify all affected parties of the date and time for the hearing. Any interested individual shall have the opportunity to appear and be heard. The Drainage Commission may make a decision regarding the drainage dispute at the hearing, may defer the item pending additional information from either of the disputing parties, or may hold additional hearings on the dispute.

SECTION 5:05. APPEAL OF DRAINAGE COMMISSION DECISION. Any affected party may appeal the Drainage Commission's decision on a drainage dispute to circuit court.

ARTICLE 6.00
ADMINISTRATION AND ENFORCEMENT

Section

- 06:01 Powers and duties.
- 06:02 Right of entry.
- 06:03 Stop order and injunction.
- 06:04 Violation and Penalty.

SECTION 6:01. POWERS AND DUTIES. The Planning and Zoning Administrator is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration. The Planning and Zoning Administrator may designate technical officers and/or inspectors or other employees that shall be authorized to assist in the administration and enforcement of this ordinance.

SECTION 6:02. RIGHT OF ENTRY. Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Planning and Zoning Administrator or an authorized representative has reasonable cause to believe that there exists upon any premises an ordinance violation, the Planning and Zoning 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 Planning and Zoning Administrator by this ordinance, provided that if such property be occupied, the Planning and Zoning Administrator shall first present proper credentials and request entry; and if such property be unoccupied, the Planning and Zoning 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 Planning and Zoning Administrator or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Planning and Zoning 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 Planning and Zoning Administrator or an authorized representative for the purpose of inspection and examination pursuant to this ordinance.

SECTION 6:03. STOP ORDER AND INJUNCTION. Whenever any work is being done contrary to the provisions of this ordinance, the Planning and Zoning 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 Planning and Zoning Administrator to proceed. In the event of a violation or threatened violation of this ordinance, the Drainage Commission 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 6:04. VIOLATION AND PENALTY. Any person and/or persons including but not limited to landowner, tenant and/or contractor draining or altering the flow of water in any way 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 \$1,000 per day of violation. 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.

**ARTICLE 7
GENERAL PROVISIONS**

Section

- 07:01 Title.
- 07:02 Authority.
- 07:03 Purpose.
- 07:04 Interpretation, abrogation, and severability.
- 07:05 Purpose of catch heads.
- 07:06 Saving clause.
- 07:07 Disclaimer of liability.
- 07:08 Preservation of land owners rights and sovereign immunity.
- 07:09 Compliance with laws or regulations not affected by permit approval.

SECTION 7:01. TITLE. These regulations shall be referred to as the 2013 Revised Drainage Ordinance of Davison County.

SECTION 7:02. AUTHORITY. The authority for this ordinance is promulgated under SDCL 46A-10A and SDCL 46A-11.

SECTION 7:03. PURPOSE. These regulations shall govern the drainage of water into or within the unincorporated area of Davison County and are designed to:

- 1) Enhance and promote the physical, economic and environmental management of the county.
- 2) Protect the tax base.
- 3) Prevent inordinate adverse impacts on servient property.
- 4) Encourage land utilization that will facilitate economical and adequate productivity of all types of land.
- 5) Lessen government expenditure.
- 6) Conserve and develop natural resources.
- 7) Preserve the important benefits provided by wetlands.

SECTION 7:04. INTERPRETATION, 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 7:05. 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 7:06. 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, that may have already accrued or grown out of any regulations repealed.

SECTION 7:07. 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 shall not create liability on the part of Davison County, or any officer or employee thereof.

SECTION 7:08. 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 7:09. 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.