(Document # 8)

YANKTON COUNTY DRAINAGE ORDINANCE # 19

ARTICLE I
GENERAL PROVISIONS

SECTION 1.01.

TITLE

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

SECTION 1.02.

AUTHORITY

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

SECTION 1.03.

PURPOSE

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

SECTION 1.04.

DRAINAGE COMMISSION

The Yankton County Commission shall appoint nine (9) members to the Yankton County Drainage Commission. The YC Drainage Commission members shall serve a three year term and shall not have term limits. The Drainage Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but may not meet less than once every six months.

SECTION 1.05.

DRAINAGE BOARD

The Yankton County Commission shall constitute the Yankton County Drainage Board. The YC Drainage Board shall meet at such times as may be necessary to accomplish the purposes of their duties, but may not meet less than once every six months.

SECTION 1.06.

BOARD OF RESOLUTION

The Yankton County Commission shall constitute the Yankton County Board of Resolution.

SECTION 1.07.

ADMINISTRATIVE OFFICIAL

The provisions of this Ordinance shall be administered and enforced by the Planning & Zoning Administrator, as the Yankton County Drainage Administrator, appointed by the Yankton County Commissioners.

SECTION 1.08.

REPEAL OF CONFLICTING ORDINANCES.

All ordinances or part of ordinances in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are repealed entirely.

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ARTICLE II
DEFINITIONS

SECTION 2.01.

DEFINITIONS

For the purposes of this ordinance, certain terms and words are hereby defined. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

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

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

Blue Line Stream - Any stream shown as a solid or broken blue line on 7.5 Minute Series quadrangle maps prepared by the U.S. Department of the Interior Geological Survey (USGS). A blue line stream may be any creek, stream or other flowing water feature, perennial or ephemeral, indicated on USGS quadrangle maps, with the exception of man-made watercourses. The United States Army Corps of Engineers uses USGS blue line stream markings as a preliminary indicator of "Waters of the United States". Streams identified on USGS maps in such a manner are therefore generally subject to federal environmental regulations.

Board of Resolution – The Yankton County Commission shall serve as the Yankton County Board of Resolution.

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.

Drainage Board – The Yankton County Commission shall serve as the Drainage Board.

Drainage Commission - The Yankton County Drainage Commission, composed of nine members appointed by the Yankton County Commission; or any county drainage commission created under the terms of this ordinance.

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

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

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

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

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

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

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

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

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

Drainage scheme - a plan or system by which water is drained from one or more parcels of real property onto one or more parcels of real property.

Engineer - a professional, registered engineer.

Entity - For the purposes of this ordinance the term "entity" shall include a person, estate, trust, corporation, company, partnership, limited liability company, limited liability partnership, governmental unit or any similar organization.

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.

Governing body - a board of county commissioners, a city council or a city commission.

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

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

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.

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.

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.

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.

Maintenance – see Routine Maintenance

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.

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

Municipality - a city or town, however organized.

Natural drain - a drainage system which operates as part of a natural water course, as defined herein.

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.

Official Control - Any ordinance, order, regulation, map, or procedure adopted by a commission to regulate drainage.

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

Party of record - means any person who submits oral or written testimony and evidence for the record of the state engineer's public hearing.

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

Permitted Drainage - Any drainage project that has been submitted to the Yankton County Drainage Commission and has received an authorized permit to drain.

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.

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.

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.

Rural or rural area - any territory outside a municipality.

Routine maintenance - Any maintenance performed on a 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 are not altered.
(b) The removal of sediment or vegetation from a 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.
(c) The filling in of a drain to repair damage caused by erosion.

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

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

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

Stream, Intermittent - A natural drainage channel indicated by a solid blue line in the recently published USGS 7.5 minute quadrangle map.

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

Sub-watershed - means the area drains into a specified lake or waterway as identified by the Natural Resources Conservation Services and displayed or described on the "Yankton County Hydrology Map."

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

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, as defined by South Dakota Codified Law.

Vested drainage right - A right to drain water from one property to another, which was established on the basis of SDCL 46A-10A or 46A-11A. Any natural right acquired before July 1, 1985, is deemed vested if recorded at the Register of Deeds before July 1, 1991.

Water management board - the state board in SDCL1-40-15.

Watershed - means the area which drains into a slough, pond, or lake.

Wetland - means those areas which have a predominance of hydric soil, are inundated or saturated by water for at least 15 days during a growing season, and under normal circumstances support hydrophitic vegetation. Reference maps may include the U.S. Natural Resources Conservation Services wetland maps and the U.S. Fish & Wildlife Service National Wetlands Inventory.

ARTICLE III
DRAINAGE PERMITS

SECTION 3.01.

PERMITS REQUIRED

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

1. Construction or installation of a surface or closed drain.
2. Any draining, filling, diverting, in whole or in part, of a pond, wetland, or lake or filling of a drain.
3. Construction of any lateral drain.
4. Modification of any permitted or vested drainage with the intent of deepening or widening any drainage channel, increasing the size and/or depth of any drainage tile, or the extending or rerouting any drainage work.
5. Improvements to a drainage district or a coordinated drainage area which were not included in the original plans.
6. Modification of any permitted or vested drainage which has the effect of causing an impediment to existing drainage.

SECTION 3.02.

PERMITS NOT REQUIRED

A drainage permit shall not be required for the routine maintenance of a drain previously permitted by the Yankton County Drainage Board / Drainage Administrator. Landowners intending to perform routine maintenance of vested drainage, permitted drainage, or other drainage as defined herein are not required to obtain a permit, however, landowners shall notify the drainage administrator prior to performing routine maintenance.

SECTION 3.03.

APPLICATION FOR A DRAINAGE PERMIT

Any person required to obtain a drainage permit under this ordinance shall file an application on a form as provided by the County and the required filing fee with the Yankton County Drainage Administrator.

Drainage Permits issued on the basis of plans and applications approved by the *Drainage* Administrator authorize only the drains or impediments set forth in such approved plans and specifications. Any drainage or impediments to drainage at variance without authorization shall be deemed a violation of this ordinance and shall be punishable as provided by this ordinance.

1. An Application for a Drainage Permit, accompanied with the appropriate fee to be established by resolution shall be completed by the landowner requesting the Drainage Permit. Completed applications shall be returned to the Drainage Administrator for review. To be considered complete, the application form shall be accompanied by the following additional items:

a. A detailed, preliminary site plan, including a map with property legal description, showing the location of the proposed construction. The site plan shall include a description of the length, type, depth and size of the drain, and the location of the proposed outlet, supported by latitude / longitude coordinates (GPS). The actual outlet shall be placed within 10% (actual location difference/total distance of project) of the proposed outlet in the preliminary plan. All required maintenance agreement and / or easement shall be provided.

b. Identification of sub-watershed(s) to be affected using best available data which shall be deemed to include the Yankton County Hydrology Map as well as any other data which identifies watershed boundaries, provided the source of such information is noted.

c. A copy of any recorded South Dakota Vested Drainage Records and/or a copy of the U.S. Natural Resources Conservation Service (NRCS) or NRCS-CPA-026, with certified drainage systems and referenced wetland maps (where applicable).

d. All signed waivers for performing drainage work in Yankton County.

e. Any application for any drainage into a road right-of-way must include the written approval of the township board (when applicable) and Yankton County Commission.

f. Any application for a proposed drainage project which would involve any underground construction on a county road right-of-way must include a validated permit from Yankton County for occupancy for underground construction on county roads right-of-way.

g. Any application for a proposed drainage project which is determined to be of statewide or inter-county significance must be provided to the other counties affected by the applicant.

h. Any other information which the Drainage Administrator may deem necessary for consideration in enforcing the provisions of this Ordinance.

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

SECTION 3.04.

NOTIFICATION TO OTHER PARTIES

A good faith effort must be made by the applicant to notify all property owners of land with the following provisions. The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with "Notice of Hearing" forms for this purpose and the notices shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date and supported by affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least seven (7) days prior to the hearing date.

The Applicant's shall, at the applicant's expense, give notice by postage mail with affidavit of mailing, of the application for drainage permit to the following parties:

1. All property owners (as detailed above) one-half (1/2) mile above and one (1) mile below the outlet of the proposed drainage or documented Blue Line.
2. A signed statement from the Applicant and Contractor, if applicable, acknowledging each parties understanding of the proposed project, the drainage ordinance, and zoning regulations applicable to the project as proposed.
3. The Drainage Administrator may also request that the applicant provide a detailed survey prepared by a professional engineer or surveyor.
4. Any county which will be directly affected by the water to be drained.
5. Any municipality which appears to the Drainage Administrator to be adjacent to the property to be drained or its drain outlet as described in the application.
6. The South Dakota Departments of Game, Fish & Parks and Department of Interior US Fish and Wildlife Service if directly affected and provided they have a recorded property interest in the water course into which the water is to be drained adjacent to the property to be drained or its drain outlet as described in the application.
7. The South Dakota Department of Environment & Natural Resources.
8. The applicable street authority (e.g. Township Supervisor(s), Yankton County Highway Superintendent, South Dakota Department of Transportation) for the right-of-way of any highway or roadway within their jurisdiction which will be directly affected by the water to be drained.
9. The local U.S. Natural Resources Conservation Service.

SECTION 3.05.
AUTHORITY OF DRAINAGE ADMINISTRATOR TO GRANT DRAINAGE PERMITS

The Drainage Administrator shall have the authority to grant or deny a drainage permit for the following projects. All other drainage permit applications shall be Yankton County Drainage Commission / Yankton County Drainage Board public hearings.

Administrative Permits:

1. A proposed drainage project which outlets directly from the applicant's property into the legally recognized rivers and streams (blue lines) as defined herein and 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 #1 (above). All landowners having land abutting the proposed drainage project for at least one-half (1/2) mile above and one (1) mile below the proposed outlet (or legally recognized rivers and streams (blue lines) as defined herein) have received a copy of the drainage permit application materials as required in ***Section 3.04 Notification to Other Parties.*** A permit may be issued if no abutting landowner files a written objection within ten (10) days after the mailing date stated on the affidavit of mailing.

Drainage Commission:

1. A proposed drainage project which does not outlet into a permanent or intermittent stream. All landowners having land abutting the proposed drainage project for at least one-half (1/2)

mile above and one (1) mile below the proposed outlet have received a copy of the drainage permit application materials as required in ***Section 3.04 Notification to Other Parties.*** The Yankton County Drainage Commission public hearing will provide "Findings of Fact". The Yankton County Drainage Board shall review the YC Drainage Commission "Finding of Fact" (Section 3.09. or Section 3.10. or Section 3.11. or Section 3.12.); in conformance with Section 3.08.

2. A proposed drainage project which outlets directly or indirectly into a public or private road right of way. All landowners having land abutting the proposed drainage project for at least one-half (1/2) mile above and one (1) mile below the proposed outlet have received a copy of the drainage permit application materials as required in ***Section 3.04 Notification to Other Parties.*** The Yankton County Drainage Commission public hearing will provide "Findings of Fact". The Yankton County Drainage Board shall review the YC Drainage Commission "Finding of Fact" (Section 3.09. or Section 3.10. or Section 3.11. or Section 3.12.); in conformance with Section 3.08.

3. A proposed drainage project which outlets into a permanent or intermittent stream, which does not outlet into a permanent or intermittent stream or which outlets directly or indirectly into a public or private road right of way; but has state and /or inter-county significance. All landowners having land abutting the proposed drainage project for at least one-half (1/2) mile above and one (1) mile below the proposed outlet have received a copy of the drainage permit application materials as required in ***Section 3.04 Notification to Other Parties.*** The Yankton County Drainage Commission public hearing will provide "Findings of Fact". The Yankton County Drainage Board shall review the YC Drainage Commission "Finding of Fact" (Section 3.09. or Section 3.10. or Section 3.11. or Section 3.12.); in conformance with Section 3.08.

4. A proposed drainage project which outlets potentially drain water from one watershed with the intent to discharge the water into a different watershed. All landowners having land abutting the proposed drainage project for at least one-half (1/2) mile above and one (1) mile below the proposed outlet have received a copy of the drainage permit application materials as required in ***Section 3.04 Notification to Other Parties.*** The Yankton County Drainage Commission public hearing will provide "Findings of Fact". The Yankton County Drainage Board shall review the YC Drainage Commission "Finding of Fact" (Section 3.09. or Section 3.10. or Section 3.11. or Section 3.12.); in conformance with Section 3.08.

SECTION 3.06.

AUTHORITY OF THE COUNTY TO WAIVE PERMIT HEARING

The YC Drainage Board is granted authority to issue drainage permits without hearing in the following instances, subject to the conditions as specified below:

1. Construction or installation of a surface or closed drain which meets the following criteria:
   a. Does not outlet directly into creeks or streams identified on the most recently published USGS 7.5-minute topographic maps;
   b. Does not outlet directly into lakes, or ponds as defined herein;
   c. Does not outlet directly into a right-of-way;

d. The drain or impediment does not cross a right-of-way; and
e. The discharged water is contained entirely on the property from which it originated until it is absorbed or evaporated; or

2. Construction or installation of an impediment to drainage, a surface, or closed drain subject to the following conditions:
   a. The Drainage Administrator finds the application to be complete and in order
   b. The applicant delivers with the application written consent from all persons who appear to the officer to own land adjacent to the property to be drained or its drain outlet as described in the application.
   c. The applicant has filed a copy of the application with those parties designated in ***Section 3.04 Notification to Other Parties*** of this Ordinance by certified mail addressed to the addresses provided in the application form; or

3. Modifications that do not qualify as routine maintenance, as defined herein, of a drain or impediment of a drain permitted by the Yankton County Drainage Commission subject to the following conditions:
   a. The Drainage Administrator finds the application to be complete and in order
   b. The applicant delivers with the application written consent from all persons who appear to the officer to own land adjacent to the property to be drained or its drain outlet as described in the application.

Nothing in this section requires the Drainage Board to grant an application without hearing, and the officer may refer any application to the Drainage Commission for hearing as provided in Section 3.05.

SECTION 3.07.

EMERGENCY DRAINAGE

In order to protect the public general welfare, the requirement for a permit, hearing, and notice thereon may be waived by the Yankton County Drainage Board in order to facilitate temporary emergency drainage. Within 14 days of the adoption or renewal of temporary emergency drainage, the Drainage Board will hold at least one public hearing with the time and place of the hearing published at least ten days in advance. An emergency measure is limited to six months from the date it becomes effective and may be renewed for six months by the Drainage Board, but it may not be in effect for more than one year. If the emergency drainage is to be permanent, a permit must be obtained and all hearings must be conducted as outlined throughout this ordinance.

SECTION 3.08.

HEARING BY DRAINAGE BOARD

For all hearings required pursuant to this article, the County shall, publish notice in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. The final published notice shall be published not more than fifteen days, or less than five days, before the date set for the hearing. The Applicant shall give notice to all landowners having land abutting the proposed drainage project for at least one-half (1/2) mile above and one

(1) mile below the proposed outlet have received a copy of the drainage permit application materials as required in ***Section 3.04 Notification to Other Parties.***

1. All persons who appear to the officer to own land adjacent to the property to be drained or its drain outlet as described in the application.
2. Any person who has notified the County in writing of the person's objection to the drainage project proposed,
3. All those parties indicated in ***Section 3.04 Notification to Other Parties*** and this Ordinance.

Following notification, the Drainage Board shall conduct a public hearing on a drainage permit application or the appeal of an administrative decision.

SECTION 3.09.

EVALUATION OF PERMIT APPLICATIONS

The Drainage Board shall grant a Drainage Permit to those applicants which demonstrate the following:

1. The flow or quantity of water to be drained will not overburden the water course into which the water will be drained.
2. The drainage will not flood or adversely affect the land of the lower proprietors, or in the case of an impediment to drainage whether such an impediment will not flood or adversely affect upstream land owners. (See Section 3.10)
3. Easements will be granted where required.
4. The drainage will not negatively affect agricultural productivity.
5. The land affected or the land drained is and will remain rural in character.
6. When the land to be drained is rural land, the presumption and factors set forth in SDCL 46A-10A-20 will be satisfied.
7. Adequate precautions have been taken to ensure that roadways will not be negatively impacted.
8. Recommendations from the Drainage Commission in the "Findings of Fact".
9. Such other factors the Drainage Board determines to be pertinent to the application.

SECTION 3.10.

CRITERIA TO DETERMINE WHETHER DRAINAGE WILL ADVERSELY AFFECT LANDS OF LOWER LANDOWNERS

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

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

4. The design and other physical aspects of the drain.
5. The impact of sustained flows.
6. Recommendations from the Drainage Commission in the "Findings of Fact".

SECTION 3.11.
CRITERIA FOR DETERMINING WHETHER DRAINAGE IS OF STATEWIDE OR INTERCOUNTY SIGNIFICANCE

In determining whether the proposed drainage is of statewide or intercounty significance, the Commission shall be guided by the following criteria:

1. Drainage which would affect property owned by the state or its political subdivisions.
2. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.
3. Drainage or partial drainage of a meandered lake.
4. Drainage which would have a substantial effect on another county.
5. Drainage which would convert previously noncontributing areas (based on twenty-five year event – 4% chance) into permanently contributing areas.
6. Recommendations from the Drainage Commission in the "Findings of Fact".

For good cause, the Drainage Board may classify any proposed drainage as having statewide or intercounty significance, or the Drainage Board may determine that certain proposed drainage is not of statewide or intercounty significance.

SECTION 3.12.
HEARING ON APPLICATIONS OF STATEWIDE OR INTERCOUNTY SIGNIFICANCE

Upon determination of an application of statewide or intercounty significance, the Drainage 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 intercounty significance. However, the Drainage Board may hold hearings on such applications at its discretion.

SECTION 3.13.
APPEALS OF DECISIONS MADE BY THE DRAINAGE ADMINISTRATOR

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

SECTION 3.14.

OFFICIAL MAPS

The official map for recording all permitted and vested projects shall be the 7.5 minute topographic illustrations published by the U.S. Geological Survey. The official maps shall be on record in the county Planning and Zoning office.

SECTION 3.15.

DRAINAGE PERMIT FEES

- General Drainage - $100.00 plus $10 per additional non abutting parcel
- Drainage Permits issued pursuant to Section 3.05. (1),(2) shall be $50.00
- Drainage District or Coordinated Drainage Area - $100 plus $10 per additional parcel

Application materials for drainage permits may be obtained at the office of the Yankton County Planning and Zoning.

SECTION 3.16.

DRAINAGE INSPECTION FEE

Drainage work performed without first obtaining a required permit shall be subject to an inspection fee of $500.00, in addition to any permit fees, and to cover additional expenses incurred by the County.

SECTION 3.17.

CONDITIONS TO PERMITS

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

SECTION 3.18.

EXPIRATION OF DRAINAGE PERMITS

A drainage permit shall expire and become null and void if the authorized construction is not commenced within eighteen (18) months of the effective date of the permit unless written approval of an extension is given unless otherwise stated by the Board as a condition of granting the Drainage Permit.

ARTICLE IV
ADMINISTRATION AND ENFORCEMENT

SECTION 4.01.

POWERS AND DUTIES

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

SECTION 4.02.

DISTURBING PUBLIC RIGHT-OF-WAYS PROHIBITED

No person or contractor shall cut a ditch within a public right-of-way, remove silt or soil, alter, obstruct, or otherwise disturb such right-of-way in any way. Such activity shall be a violation of this ordinance and state statute. Any person may request the County Highway Superintendent or Township Board of Supervisors to authorize the clean out and maintenance of a public right-of-way or ditch in order to restore it to its original condition. Township Board of Supervisors does not need a drainage permit to clean out and maintain the township public right-of-ways or ditches.

SECTION 4.03.

RIGHT OF ENTRY

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

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

pursuant to this ordinance.

SECTION 4.04.

ACTIVITIES WITHOUT NOTICE

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

SECTION 4.05.

STOP ORDER AND INJUNCTION

Whenever any work is being done contrary to the provisions of this ordinance, the ~~Drainage~~ *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 Drainage Administrator to proceed. In the event of a violation or threatened violation of this ordinance, the Drainage Board, may institute injunction or other appropriate action or proceedings, in addition to other remedies, to prevent the unlawful construction or use of any drainage work.

SECTION 4.06.

ASSESSMENT AGAINST PROPERTY

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

SECTION 4.07.

INSPECTION FEES

Any person performing drainage activities without a permit as required under Sections 3.01. and 3.02. shall pay an inspection fee of $500 in addition to the permit fee. These fees are in addition to the remedies set forth in other sections of this ordinance and may be assessed and collected in the same manner set forth in Section 4.06.

SECTION 4.08.

VIOLATION AND PENALTY

Any person draining water without a permit is guilty of a Class 1 misdemeanor and may be subject, in addition to any criminal penalty, a civil penalty not to exceed $1000 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.
Violating the terms and conditions of a permit, or violating the ordinances which constitute the permit system, is punishable by a maximum $1000 fine, thirty (30) days in jail, or both.

SECTION 4.09.

OTHER VIOLATIONS PURSUANT TO STATE STATUTE

In addition to violations and penalties set forth in Section 4.08.; South Dakota statutes provide for the following offenses and penalties:

a.	SDCL 31-32-7	Destruction, etc., of highway grade or ditch – Violation as misdemeanor.
b.	SDCL 31-32-8	Civil liability for violating preceding sections.
c.	SDCL 31-32-9	Duty of governing body to remove obstructions or repair – Recovery of expense from wrongdoer – Temporary obstruction for building purposes.
d.	SDCL 31-32-1	Intentionally damaging highway or bridge – Felony.
e.	SDCL 31-12-44	Repairs for wind and water erosion assessed to private landowner.
f.	SDCL 31-21-13	Obstruction of ditch as misdemeanor.
g.	SDCL 31-21-12	Civil liability for obstruction of ditch.
h.	SDCL 31-21-11	Entry upon land for maintenance of ditch.
i.	SDCL 31-32-3.1	Intentional dumping on highway right-of-way prohibited – Violation as misdemeanor.

ARTICLE V
DRAINAGE COMPLAINTS

SECTION 5.01.
JURISDICTION ON DRAINAGE DISPUTES

Any landowner may take a drainage dispute directly to circuit court. Whereas the Board of Resolution is composed of the same officials as the Drainage Board in accordance with SDCL 46A-10A-34, the Board of Resolution has jurisdiction to address drainage disputes in the unincorporated area of Yankton County under the following circumstances:

1. The drainage or impediment to drainage was performed prior to September 10, 1991.
2. New information or evidence exists which was not available for consideration by the Drainage Board when the permit for the specified drainage project was issued.

SECTION 5.02.
FILING A COMPLAINT

Any aggrieved landowner may file a drainage complaint by setting forth the facts of the drainage dispute in writing and submitting it to the Yankton County Planning and Zoning office. The complaint shall include the name and address of the complainant, the location of the property which has suffered damage or may suffer damage, the name and address of the respondent, the name and address of the landowner (if different than the respondent), and the location of the property against which the complaint is being registered. The complaint shall fully describe the nature of the complaint and include any damages the complainant feels have been incurred, along with documentation in support of those damages. When possible, the complaint should detail the type and location of work, and when the work occurred. The Board of Resolution may require that a drainage complaint include expert reports from a professional engineer or surveyor at the complainant's expense. These expert reports may be requested by the Board of Resolution at the time that it initially reviews and accepts jurisdiction of the drainage complaint, or if after it has been presented with information at a hearing, the Board of Resolution may determine that expert reports are necessary in order to proceed.

Upon acceptance of jurisdiction of a drainage complaint by the Board of Resolution, the Drainage Administrator shall serve the respondent with a notice and a copy of the drainage complaint by certified mail, return receipt requested.

SECTION 5.03.
HEARING ON COMPLAINT

Upon receiving the return receipt or notification that the certified mail was refused by the respondent, the Drainage Administrator shall schedule a hearing. The Drainage Administrator shall notify all affected parties by postage prepaid, certified mail of the date and time for the hearing not less than seven (7) days prior to the public hearing. If after notice, either party cannot attend the scheduled hearing and wants to appear personally, said party shall, not less than five (5) business days prior to the scheduled hearing, request a continuance. The request for continuance must be provided to both the Board of Resolution and all other affected parties. The Board of Resolution may in its sole discretion grant or refuse the request for a continuance.

At the time set for hearing, any interested individual shall have the opportunity to appear and be heard. The parties may submit affidavits and/or oral testimony and other evidence for consideration by the Board of Resolution. In lieu of appearing personally, a party may submit its evidence to the County Auditor prior to the hearing to be submitted to the Board of Resolution for consideration. Failure of a party to appear at such hearing shall result in the hearing being held with whatever party does appear, and the Board of Resolution shall consider all evidence submitted to it.

The Board of Resolution 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. Complaints may be upheld upon an affirmative vote of three-fourths of the full membership of the Board of Resolution. Any decision shall be consistent with the provisions of SDCL 46A-10A-20. Both parties shall be notified by first class mail of the Board of Resolution's decision.

SECTION 5.04.

APPEAL OF BOARD DECISION

Any affected party may appeal the Board of Resolution's decision on a drainage dispute to circuit court. Such appeal shall commence within twenty (20) days from the decision by the Board of Resolution per SDCL 46A-10A-35.