

## NOTICE OF HEARING - APPLICATION FOR DRAINAGE PERMIT

Notice is hereby given that the Marshall County Drainage Board will meet on August 25, 2020 at 9:10 A.M. at the Marshall County Courthouse Commissioners Chambers, concerning the following application for a Drainage Permit from the Marshall County Drainage Board.

Penrhos Farms, Inc. is requesting a drainage permit for construction of a drain on the property described as the SW1/4 of Section 18, T126N, R57W. The water will flow Northwest into a natural drainage ditch on the East side of 424<sup>th</sup> Ave; for the purpose of draining water away from crop land. Construction will start on or before Oct 1, 2020 and will be completed on or before October 15, 2025.

Erin Collins-Miles  
Planning & Zoning Administrator

Published once at the approximate cost of:

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Erin Collins-Miles  
Planning & Zoning  
Administrator

Published once at the approximate cost of \$9.26.

MARSHALL COUNTY DRAINAGE BOARD  
P.O.BOX 9  
BRITTON, SOUTH DAKOTA 57430  
605.448.7540

August 12, 2020

To whom it may concern,

Notice is hereby given that the Marshall County Drainage Board will meet on August 25, 2020 at 9:10 A.M. at the Marshall County Courthouse Commissioners Chambers, concerning the following application for a Drainage Permit from the Marshall County Drainage Board.

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Being as you are an adjacent landowner to the proposed drainage project; you are being notified of the hearing. If you have any questions, please contact my office. Any comments or concerns should be stated in writing and forwarded to my office or expressed at the scheduled hearing.

Sincerely,



Erin Collins-Miles  
Planning and Zoning Administrator

**Sent to the following adjacent landowners on 8/12/2020:**

Jeffrey Miller – 808 Currant Dr Pierre, SD 57501

Gail Eberlein – 411 9<sup>th</sup> St Britton, SD 57430

Freiss Family and Trust – 9667 Rockinham Dr Peyton, CO 80831

Renald & Allison Tank – 11285 426<sup>th</sup> Ave Britton, SD 57430

Tonya Johnson – 629 Crestview Drive Rapid City, SD 57702



**MARSHALL COUNTY DRAINAGE PERMIT APPLICATION**

APPLICANT			DRAINAGE REQUIREMENTS	
Name: <u>Kevin G. Jones</u>			Certified Wetland Determination attached?	
Address(Mailing): <u>42570 115th St</u>			<input checked="" type="checkbox"/> YES [ ] NO [ ] JNA (see below)	
City: <u>Britton</u> State: <u>SD</u> Zip: <u>57430</u>			Explain: _____	
Phone: <u>605 470-0359</u>			Engineer's plans attached?	
			[ ] YES <input checked="" type="checkbox"/> NO [ ] JNA (see below)	
LOCATION OF LAND TO BE DRAINED			Explain: _____	
Legal Owner: <u>Penchos Farms Inc</u>			<b>NOTE: A map showing the location of the proposed drain MUST accompany this application.</b>	
Legal Description: <u>18 126N 57W</u>				
<u>S, 1/4 of 18</u>			Description	
Section: _____	Township: _____	Range: _____	1. Proposed drainage ditch:	
LOCATION OF OUTLET END OF PROPOSED DRAIN			a. Length of drain: _____ feet	
Legal Description: _____			b. Drain Design: 1) Bottom width: _____ feet	
			2) Side Slope: _____ percent	
Section: _____ Township: _____ Range: _____			3) Maximum cut: _____ feet	
LOCATION OF MAJOR EARTH CHANGE WORK OR UNDERGROUND DRAIN INSTALLATION			c. Proposed drainage flow: _____ cu. Ft./sec.	
Legal Description: _____			2. Proposed drainage tile (underground drain pipe):	
			a. Length of drain: _____ feet	
			b. Drain Diameter: _____ inches	
Section: _____ Township: _____ Range: _____			c. Approx. area contributing runoff to the drain where tile is located: _____ acres.	
LOCATION OF COUNTY HWY R.O.W./DITCH INTO WHICH WATER WILL BE DRAINED			Engineer	
Legal Description/Rd: _____			Name: _____	
			Address: _____	
Section: _____ Township: _____ Range: _____			Phone: _____	
PLEASE FILL IN: I <u>Kevin G. Jones</u> propose to start construction of the drain on or before <u>Oct 15, 2020</u> and will be completed on or before <u>Oct 15, 2025</u>				
The proposed drainage is a result of a township, county or other water management plan:				
[ ] YES <input checked="" type="checkbox"/> No [ ] I don't know				
If yes, describe such plan: _____				

# SIGNATURES

The owner of this proposed drain & the undersigned agree to conform to all applicable laws.

Owner's Signature

Date

Kevin Jones 8-5-2020

Applicant's Signature

Date

Kevin Jones 8-5-2020

Drainage Administrator Signature

Date

Tim Williams 8-5-2020





## Certified Wetland Determination

Field Office: Britton FO  
Created By: Jesse Brooks  
Legal Desc: SW 18-126-57

Agency: USDA-NRCS  
Certified Date: 5/26/2020  
Tract: 4607



1:8,826 1 inch = 736 feet

0 550 1,100 2,200 3,300 4,400 Feet







May 26, 2020

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Penrhos Farms Inc.  
42570 115<sup>th</sup> St.  
Britton, SD 57430

Dear Penrhos Farms Inc.:

As a result of your request for an evaluation of proposed wetland activity via form AD-1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification, the Natural Resources Conservation Service (NRCS) is issuing a preliminary certified wetland determination.

The regulations for the Wetland Conservation (WC) Compliance provisions of the 1985 Food Security Act (FSA), as amended, are found at Title 7 Code of Federal Regulations (7 CFR) §12. The purposes of the provisions are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland.

The regulations describe several exemptions (7 CFR §12.5 (b)) from ineligibility and outline the NRCS involvement in implementing the WC Compliance provisions. This determination was conducted in accordance with the current federal wetland delineation procedures as found in the most current versions of the National Food Security Act Manual (NFSAM), the 1987 United States Army Corps of Engineers (USACE) Wetland Delineation Manual, Technical Report Y-87-1, the USACE Regional Supplements, and/or State Offsite Methods/Mapping Conventions.

With this letter the NRCS is issuing a **preliminary technical determination (PTD)**, in accordance with the WC Compliance provisions. This PTD was conducted by the NRCS on 4/16/20. The attached NRCS-CPA-026E, Highly Erodible Land and Wetland Conservation Determination, and map depict the wetland exemptions, referred to as "labels." The area identified other than Non-Wetland is wetland for the following reasons:

Presence of Hydrophytic Vegetation:

Hydrophytic vegetation means plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content (16 U.S.C. §3801(a)(12)).

Presence of Hydric Soils:

Hydric soil means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation (16 U.S.C. §3801(a)(13)).

Presence of Wetland Hydrology:

Wetland hydrology means inundation or saturation of the site by surface or groundwater during the growing season at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation. (7 CFR §12.2).

The wetland area(s) were evaluated for applicable exemptions and labeled accordingly.

You may appeal this preliminary technical determination in accordance with the laws and federal regulations set forth at 7 CFR §614, the NRCS Appeals Procedures, 7 CFR §780, the FSA Appeals Procedures, and 7 CFR §11, the National Appeals Division (NAD) Rules of Procedure, as follows:

- **You may request a field review and reconsideration** by the NRCS in accordance with 7 CFR 614.7(b). Any request for field review and reconsideration will be conducted with you or your authorized representative present, where you will be able to present evidence that the NRCS may not have previously considered. The NRCS will consider all new information.
- To request a field review and reconsideration, you must contact the NRCS, in writing, **no later than 30 days** from the date that you receive this notification at:  
Jesse Brooks  
Natural Resource Conservation Service  
PO Box 8, 505 Vander Horck Ave.  
Britton, SD 57430  
Phone: (605)448-5921 ext. 109  
Fax: 1-855-256-2568
- **If you do not request a field review, you may request mediation** of the PTD in accordance with 7 CFR 614.7(a)(2). Mediation is completed in good faith. Parties mediating a dispute are not free to make their own law or policy and mediation is not a means to obtain a result not otherwise permissible under statute, regulations, or generally applicable agency policy and program procedures. Within these parameters, mediation of disputes can produce benefits when the mediation reveals additional relevant facts and new insights.

To request mediation you must contact Deke Hobbick ASTC for Compliance in writing **no later than 30 days** from the date that you receive this notification at:

Assistant State Conservationist for Compliance  
Natural Resources Conservation Service  
200 Fourth Street SW  
Huron, South Dakota 57350-2475  
Phone: (605) 352-1287  
Fax: (855) 256-2565

- **You may request a waiver of your rights** to this preliminary review and reconsideration or mediation in accordance with 7 CFR §614.7(d) if you want an immediately-final wetland technical determination by writing to the State Conservationist at:

Jeffrey J. Zimprich  
Natural Resources Conservation Service  
200 Fourth Street SW  
Huron, South Dakota 57350-2475  
Phone: (605) 352-1200  
Fax: (855) 256-2565

If you do not select any of your preliminary appeal rights, this PTD will become both a final technical determination (FTD) in accordance with 7 CFR §614.8(a)(1) and a certified wetland



determination in accordance with 7 CFR §12.30(c). A technical determination becomes a final United States Department of Agriculture decision when the time to request appeal expires without appealing the decision. A FTD becomes appealable 30 days after receipt of the PTD.

If the FTD is a result of the expiration of the 30-day period following receipt of this PTD, it may be appealed, **within 30 days**, to either of the following:

- Appeal to the **Marshall County Farm Service Agency County Committee**

OR

- Appeal to the NAD at the following address:

National Appeals Division, Western Regional Office  
755 Parfet Street, Suite 494  
Lakewood, Colorado 80215-5506  
Phone: (800) 541-0483 or (303) 236-2862  
TTY: (800) 497-0253  
Fax: (303) 236-2820

It is your responsibility to ensure that your actions do not impact wetlands protected by a United States Fish and Wildlife Service (USFWS) or any other conservation easement. For any questions regarding USFWS conservation easements on the tract or adjacent land, please contact the wetland management district office located in **Waubay, SD, at (605)-947-4521**. For any other easements, please contact the local NRCS office.

This PTD has been conducted for the purpose of implementing the WC Compliance provisions of the 1985 FSA, as amended. This determination may not be valid for the Clean Water Act. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or Other Waters, you should request a jurisdictional determination by contacting the USACE at **(605) 224-8531**, Pierre, SD, before starting the work.

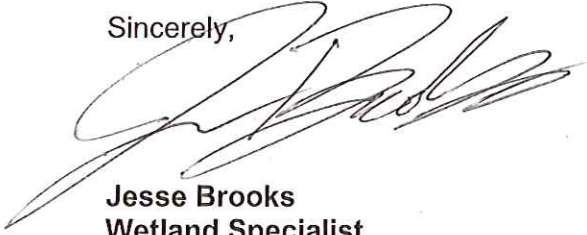
There may be opportunities to utilize mitigation if you have an interest in converting the labeled wetlands (Ws), farmed wetlands (FWs), and farmed wetland pasture (FWP), found in this determination. Mitigation is the compensation of lost wetlands through wetland restoration, enhancement, or the creation of new wetlands. Mitigation cannot occur at the expense of the federal government. Mitigated wetlands must be in the same local watershed as the wetlands you wish to convert. The landowner must grant an easement that remains in effect as long as the original wetland remains converted and the easement will be recorded on public land records for the mitigated wetlands. All of the above activities, as well as, a mitigation plan, must be completed before any wetland conversions could occur.

**If you are the owner of this tract of land and have a tenant, I urge you to discuss this letter and accompanying NRCS-CPA-026E with your tenant. Likewise, if you are the tenant of this tract of land, I urge you to discuss this letter with your landlord.**

The 2014 Farm Bill connected producer eligibility for Federal Crop Insurance premium subsidy to compliance with the wetland conservation provisions. Eligibility for most USDA programs is lost for any wetland conversions that have occurred after December 23, 1985. However, only wetland conversions that occur after February 7, 2014, result in ineligibility for Federal Crop Insurance premium subsidy.



Sincerely,

A handwritten signature in black ink, appearing to read 'J. Brooks', with a long horizontal flourish extending to the left.

**Jesse Brooks**  
**Wetland Specialist**

Attachments **NRCS-CPA-026e w/map**

cc: (without attachments)

**Krecia Leddy, CED, FSA, Marshall County FSA**

**Judi Schultz, DC, NRCS, Britton FO**

## HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION

Name	Penrhos Farms Inc.	Request Date:	5/15/20	County:	Marshall
Address:	42570 115th St. Britton, SD 57430				
Agency or Person Requesting Determination:	Farm Service Agency	Tract No:	4607	FSA Farm No.	4002

### Section I - Highly Erodible Land

(Y/N)

Is a soil survey now available for making a highly erodible land determination?	
Are there highly erodible soil map units on this farm?	
Fields in this section have undergone a determination of whether they are highly erodible land (HEL) or not; fields for which an HEL Determination has not been completed are not listed. In order to be eligible for USDA benefits, a person must be using an approved conservation system on all HEL.	

[illegible]

The Highly Erodible Land determination was completed in the

## Section II - Wetlands


Fields in this section have had wetland determinations completed. See the Definition of Wetland Label Codes for additional information regarding allowable activities under the wetland conservation provisions of the Food Security Act and/or when wetland determinations are necessary to determine USDA program eligibility.

[illegible]

The wetland determination was completed in the	office	It was mailed to the person on	5/26/2020
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Remarks:

I certify that the above determinations are correct and were conducted in accordance with policies and procedures contained in the National Food Security Act Manual.

Signature	Designated Conservationist	Date
		5/26/20

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.



## \*DEFINITIONS OF WETLAND LABEL CODES

AW	<u>Artificial Wetland:</u> An area that was formerly a non-wetland area under natural conditions but now exhibits wetland characteristics because of the influence of human activities. These areas are exempt from the Food Security Act of 1985, as amended. This label includes irrigation induced wetlands.
CC	<u>Commenced Conversion:</u> A wetland, farmed wetland, farmed wetland pasture, or converted wetland on which the conversion began but was not completed before December 23, 1985, was approved by FSA to continue, and the conversion was completed by January 1, 1995.
CPD	<u>COE Permit with Mitigation:</u> A converted wetland authorized by a permit issued under Section 404 of the Clean Water Act. Production of agricultural commodities is allowed subject to conditions of the permit.
CMW	<u>Categorical Minimal Effect:</u> A wetland that meets specific categories of conversion activities that have been determined by NRCS to have minimal effect, individually and cumulatively, on the functions and values of the wetland and the wetlands in the watershed.
CW	<u>Converted Wetland:</u> A wetland converted between December 23, 1985, and November 28, 1990. Production of an agricultural commodity or additional manipulation of these areas will yield USDA benefit ineligibility. Also, these areas are wetlands converted after December 23, 1985, by a county, drainage district, or similar entity. For these instances, production of an agricultural commodity or forage for mechanical harvest or additional manipulation will cause ineligibility for USDA program benefits.
CW+year	<u>Converted Wetland + (year the conversion occurred):</u> A wetland converted after November 28, 1990, where the USDA program participant is ineligible for benefits until the wetland is restored or mitigated unless an exemption applies.
CWNA	<u>Converted Wetland Non-Agricultural Use:</u> A wetland converted after November 28, 1990, to a use other than agricultural commodity production. Label not used for certified wetland determinations completed after 2/2008.
CWTE	<u>Converted Wetland Technical Error:</u> A wetland converted or commenced after December 23, 1985, based on an incorrect NRCS determination. This label does not apply to obvious wetlands as defined in the National Food Security Act Manual.
FW	<u>Farmed Wetland:</u> A wetland that was manipulated and planted before December 23, 1985, but still meets inundation or saturation criteria. These areas may be farmed and maintained as documented before December 23, 1985, as long as they are not abandoned (i.e., management or maintenance for commodity production ceased for 5 consecutive years).
FWP	<u>Farmed Wetland Pasture or Hayland:</u> A wetland that is used for pasture or haying, was manipulated and planted before December 23, 1985, but still meets the inundation or saturation criteria. These areas may be farmed and maintained as documented before December 23, 1985, as long as they are not abandoned (i.e., management or maintenance for commodity production ceased for 5 consecutive years).
MIW	<u>Mitigation Exemption:</u> A converted wetland, farmed wetland or farmed wetland pasture of which the acreage, functions and values lost have been compensated for through an NRCS-approved mitigation plan.
MW	<u>Minimal Effect Exemption:</u> A converted wetland that is exempt from the wetland conservation provisions of the Food Security Act of 1985, as amended, based on NRCS determination that the conversion has or will have a minimal effect, individually and cumulatively, on the functions and values of the wetland and the wetlands in the watershed.
MWM	<u>Mitigation Site:</u> This site of wetland restoration, enhancement, or creation serving as mitigation for the mitigation exemption (MIW) site.
NI	<u>Not Inventoried:</u> An area where no wetland determination has been conducted. Label not used for certified wetland determinations completed after 2/2008.
NW	<u>Non-Wetland:</u> An area that does not contain a wetland. Also, includes wetlands converted before December 23, 1985, but a commodity crop was not produced and the area does not meet wetland criteria (not been abandoned).
PC	<u>Prior Converted Cropland:</u> A wetland converted to cropland before December 23, 1985, and as of December 23, 1985, was capable of being cropped and did not meet farmed wetland hydrology criteria. These areas are not subject to the wetland conservation provisions of the Food Security Act of 1985, as amended, unless further drainage manipulation affects adjacent wetlands.
PC/NW	<u>Prior Converted Cropland/Non-Wetland:</u> An area that contains both PC and NW.
TP	<u>Third-Party Exemption:</u> A wetland converted after December 23, 1985, by a third party who is not associated with the participant, and the conversion is not a result of a scheme or device. A third party does not include predecessors in interest on the tract, drainage districts, or other local government entities.
W	<u>Wetland:</u> An area meeting wetland criteria that was not converted after December 23, 1985. These areas include farmed wetlands and farmed wetland pasture that have been abandoned.
WX	<u>Manipulated Wetlands:</u> A wetland manipulated after December 23, 1985, but the manipulation was not for the purpose of making production possible and production was not made possible. These areas include wetlands manipulated by drainage maintenance agreements.

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