



Pete Ricketts, Governor

March 31, 2021

Dodge County
Attn: Bob Missel
435 N. Park, Room 204
Fremont, NE 68025
via email: sales@sampters.com, zoning@dodgecone.us

Subject: Floodplain Management Ordinance Violation on Properties
270-114-534 (Lone Tree Rd LLC; Duane Muller) - *Dodge County jurisdiction*,
270-117-579 and 270-117-663 (Roger and Carol Vacha) - *City of Scribner jurisdiction*,
270-117-565 (Muller Farms Inc.) - *City of Scribner jurisdiction*, and
270-117-593 (Lone Tree Road LLC; Duane Muller) - *City of Scribner jurisdiction*

Board of Supervisors, County Staff,

On May 20, 2020, the Department of Natural Resources (NeDNR) Floodplain Management Section notified your jurisdiction and the City of Scribner of suspected unpermitted development in the floodway of your respective jurisdictions. Both City of Scribner and Dodge County confirmed that the development had occurred without benefit of permit. Since that time, NeDNR has been in frequent communication with Scribner's floodplain administrator and legal counsel and Dodge County's floodplain administrator to resolve the violations. The following timeline captures key dates and actions since the violations were identified:

May 20, 2020: NeDNR notifies communities of violation and requests permitting documents or a plan for bringing properties into compliance¹. Jurisdictions are made aware of the requirement for no-rise analysis as part of the permitting process.

May 22, 2020: Dodge County notifies Muller Farms Inc. of violation and requests compliance.

May 29, 2020: City of Scribner notifies Muller Farms Inc. and Roger Vacha of violations and requests compliance.

June 8, 2020: Dodge County again notifies Muller Farms Inc. of violation and requests compliance.

June 24, 2020: Dodge County again notifies Muller Farms Inc. of violation, reminds them of no-rise requirement, and requests compliance by December 1, 2020.

¹ Letter from NeDNR to Dodge County, May 20, 2020

July 6, 2020: City of Scribner confirms location and extent of Site 4² dike via site visit.

July 30, 2020: A public hearing is hosted in Scribner. Attendees include: violating property owners and legal counsel, City of Scribner floodplain administrator, City of Scribner legal counsel, Dodge County floodplain administrator, NRCS staff, Lower Elkhorn NRD staff, and NeDNR staff. Locations of 4 violations are presented, LiDAR analysis demonstrating elevation gains is presented, and the no-rise certification process is explained in detail. At this meeting all four violation locations are discussed, and it is specified that they all must be included in the no-rise certification analysis.

November 12, 2020: Dodge County again notifies Muller Farms Inc. of violation and requests compliance.

November 16, 2020: Muller Farms submits incomplete no-rise analysis showing a rise in base flood elevations.

November 16, 2020: City of Scribner informs Muller Farms that the full scope of dikes needs to be included in the no-rise analysis and that the dike on parcel 270-117-593 needs to be included.

December 17, 2020: Lower Elkhorn NRD provides letter to City of Scribner committing to use "a large portion, if not all" of the Vacha dike.

December 28, 2020: City of Scribner authorizes City Attorney McNally to, "contact the offending parties that unless a plan of action to remedy the flood plains violations, along with a timeframe for compliance, is received by the city by January 25, 2021 that legal action would be started to either fine the offenders by filing complaints for violation of the ordinance or by asking the courts to impose a mandatory injunction against the offending parties to force compliance." Minutes, City of Scribner City Council meeting, December 25, 2020.

December 29, 2020: City of Scribner requests time extension to continue to work towards resolution of the violations, citing the LENRD project and cooperation from Dodge County Attorney.

December 30, 2020: City of Scribner directs Muller Farms Inc. to correct the violation before spring planting and to submit no-rise analysis by January 25, 2021.

January 20, 2021: NeDNR informs City of Scribner of ramifications and risks of not resolving the violations.

January 21, 2021: Muller Farms submits incomplete no-rise analysis excluding existence of the dike on parcel 270-117-593.

January 25, 2021: City of Scribner City Council directs Scribner legal counsel to "proceed with enforcement of City of Scribner's Floodplain Ordinance."

February 2, 2021: NeDNR provides comments on the no-rise analysis submitted January 21, 2021, and reiterates deficiencies in the analysis, specifically noting the continued absence of the full scope of unpermitted dikes. Information was provided to engineer and both jurisdictions.

² Map, "Known Unpermitted Dike Locations"

February 17, 2021: Muller Farms re-submits same incomplete no-rise analysis as that submitted on January 20, 2021.

March 1, 2021: Dodge County Attorney resigns.

March 16, 2021: Email from Muller Farms representation considers including only east-westerly portion of dike 4 in no-rise analysis.

March 17, 2021: NeDNR reiterates that the model needs to include the pre and current conditions of dike #4.

March 23, 2021: LENRD confirms that the Section 14 Project repair permit has not been obligated by FEMA and that the alternate project option be utilized. The alternate project option only allows funding to restore to previous conditions. A 404 permit has not been applied for, and the project scope is now in question due to lack of funding obligation. Removal of Vacha dike remains in question. No no-rise analysis has been performed supporting it's potential permitting.

Since August of 2020, NeDNR has been providing technical assistance through regular check in meetings with both the City of Scribner and Dodge County. These check in meetings occurred on:

August 20, 2020	December 4, 2020	February 17, 2021
September 3, 2020	December 9, 2020	March 3, 2021
September 10, 2020	December 18, 2020	March 19, 2021
September 24, 2020	January 7, 2021	March 25, 2021
October 13, 2020	January 22, 2021	
November 17, 2020	February 4, 2021	

The list does not include the numerous emails and informal telephone calls via which technical assistance was also provided.

To summarize the status of the violations:

- There is no indication of cooperation on the part of the violating property owners to submit a no-rise certification analysis that is complete-enough to warrant review.
- There is no evidence that necessary permitting documents (floodplain development permit applications and grading plans) are in development for any of the four locations.
- No legal action has been initiated by either jurisdiction.
- There is no timeline for bringing these violations into compliance.

At this point in time, there is no indication that the violations will be resolved by planting season and every indication that they will continue to threaten the health and safety of downstream community members.

In January, NeDNR provided City of Scribner and Dodge County with an informal extension of three months, and will grant an additional 30 days to come into compliance with the NFIP. The deadline is April 30, 2021. If the properties are not in compliance by that time, the violations will be advanced to FEMA.



If you or any County staff have questions or require technical assistance on this issue, please do not hesitate to contact Adele Phillips at Adele.Phillips@nebraska.gov or (402) 471-9244; or me Katie Ringland at Katie.Ringland@nebraska.gov.

Sincerely,



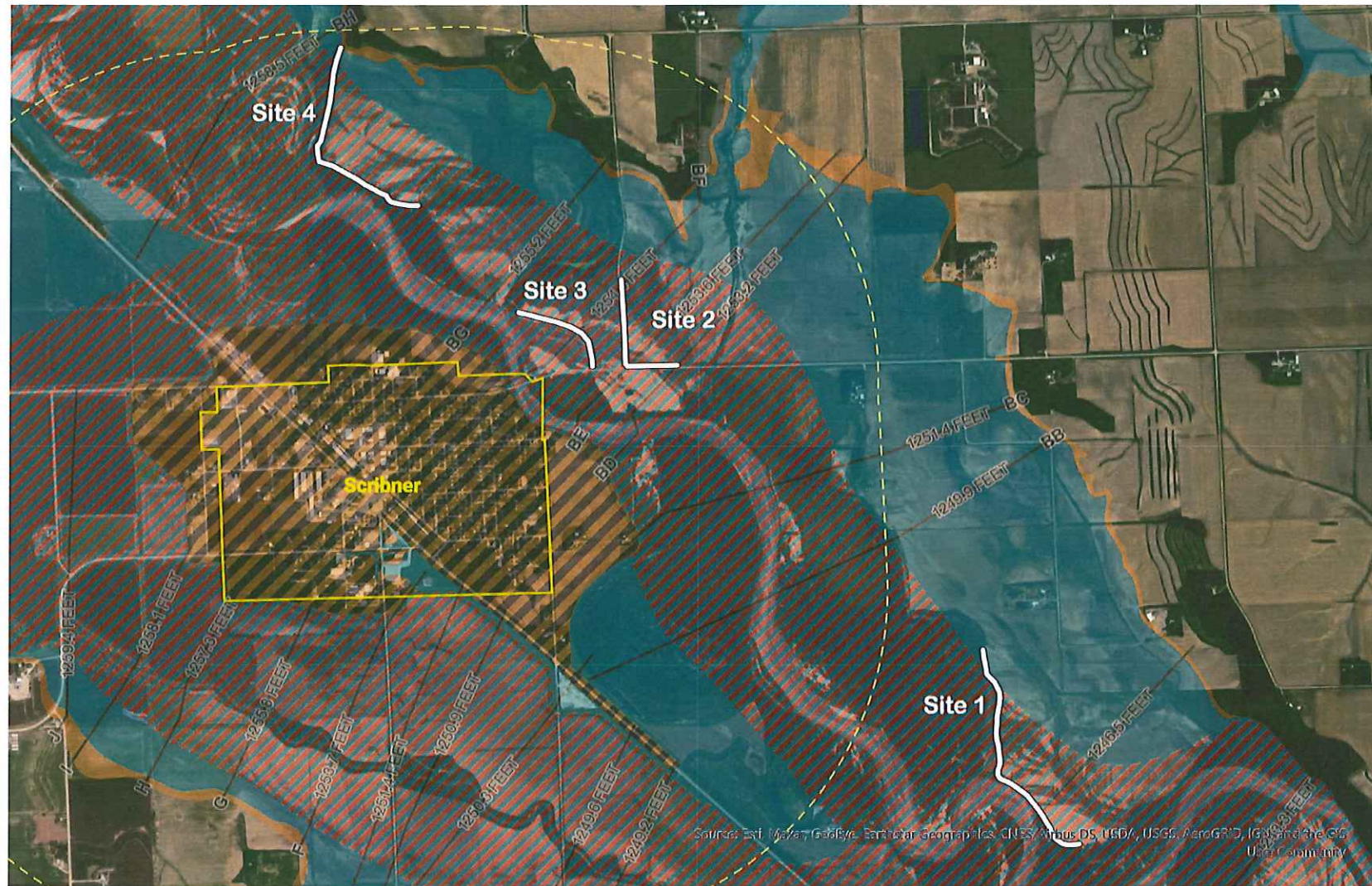
Katie Ringland, PE, CFM
Chief of the Floodplain Management Section
State NFIP Coordinator

CC: Emily Hatcher, CFM; FEMA Region VII
Erin Cobb, CFM; FEMA Region VII
Shandi Teltschik, PE, CFM; FEMA Region VII
Adele Phillips, CFM; NeDNR

Encl: Letter from NeDNR to Dodge County, May 20, 2020
Map, "Known Unpermitted Dike Locations"



Known Unpermitted Dike Locations



- 1% ANNUAL CHANCE FLOOD HAZARD
- REGULATORY FLOODWAY
- SPECIAL FLOODWAY
- AREA OF UNDETERMINED FLOOD HAZARD
- 0.2% ANNUAL CHANCE FLOOD HAZARD
- FUTURE CONDITIONS 1% ANNUAL CHANCE FLOOD HAZARD
- AREA WITH REDUCED RISK DUE TO LEVEE
- COMMUNITY BOUNDARY
- COMMUNITY ETJ
- DIKE LOCATIONS

0 0.25 0.5 Miles

SCALE: 1" = 4000'

Date Map Produced:
July 29, 2020

NEBRASKA
DEPT. OF NATURAL RESOURCES

This map features a variety of data sources including FEMA's National Flood Hazard Layer. Boundaries shown in this map are not considered legal boundaries.

