

New Rules for Agricultural and Accessory Structures in Your SFHA

By NeDNR Staff

Much of the development occurring in Nebraska's NFIP communities is associated with agricultural uses. In February 2020, FEMA issued Agriculture Policy #104-008-03: **"Floodplain Management Requirements for Agricultural Structures and Accessory Structures"** ("Policy"), effective date September 11, 2020. Guidance clarifying the implementation of the policy was then released in June 2020, as FEMA Floodplain Management Bulletin P-2140 ("Bulletin"), also titled, **"Floodplain Management Requirements for Agricultural Structures and Accessory Structures."**

The goal of this article is to introduce these new policies to Nebraska's floodplain administrators. It includes:

- How to identify an agricultural structure for the purpose of floodplain management
- Substantially damaged agricultural structures
- An overview of variances and community-wide exceptions
- How these changes will be implemented in the State Model Ordinances

Be sure to consult the Policy and Bulletin when you review any new development proposals for agricultural or accessory structures in your special flood hazard area (SFHA).

Identifying Agricultural or Accessory Structures

In order to apply the Bulletin's guidance, you first need to identify whether a proposed structure

qualifies as either an agricultural structure or an accessory structure. Agricultural structures are now defined as those that are used exclusively for agricultural purposes or uses in connection with agricultural processes. This may include structures associated with the production, harvesting, storage, raising, or drying of agricultural goods or livestock. These structures do NOT include those used for human habitation, places of employment or entertainment, or those that have multiple or mixed uses. Even if one of the uses is agricultural, a mixed-use structure does not meet the requirement that a structure must be used exclusively for agricultural purposes and therefore needs to conform with requirements for non-agricultural structures.

An appurtenant or accessory structure is now defined as a structure that is walled and roofed, is on the same parcel of land as a principal structure, is incidental to the use of the principal structure, and is primarily used for parking or storage. They must also be small, represent minimal investment, and have low damage potential. FEMA defines an accessory structure to be no larger than 600 square feet.

Structures that are alone on a parcel of land, or that are not used primarily for agricultural purposes, agricultural storage or parking, or agricultural equipment would be considered non-agricultural. Non-agricultural structures must be built in compliance with the local floodplain management ordinance.

- See [New Rules](#) cont. on page 2.

Clerks Institute and Academy Goes Virtual

By Ellen Freeman-Wakefield, MPA

To provide the safest environment for its participants, The Nebraska Clerks Institute and Academy will be offered via Zoom this year, March 14 - 19.

The Institute and Academy will once again provide the high quality speakers that attendees have come to expect. Presentations include:

- Employee Retention and Coaching with Mike Heneke. Mike is passionate about helping organizations build strong teams and works with different groups throughout the Midwest in Leadership Training, Generational Differences, and Recruiting & Retention.
- Brian Newton, the City Administrator for the City of Fremont, NE, will present on The Open Meetings Act and how it pertains to Municipal Government.
- Lanette Doane, from Ansley, and Linda Jensen, from Central City, will share their knowledge about what it takes to be a successful city clerk, providing new clerks insight on how to develop and update an office procedural manual. Details about manual content and the importance this manual has for not only the office, but your community as well.

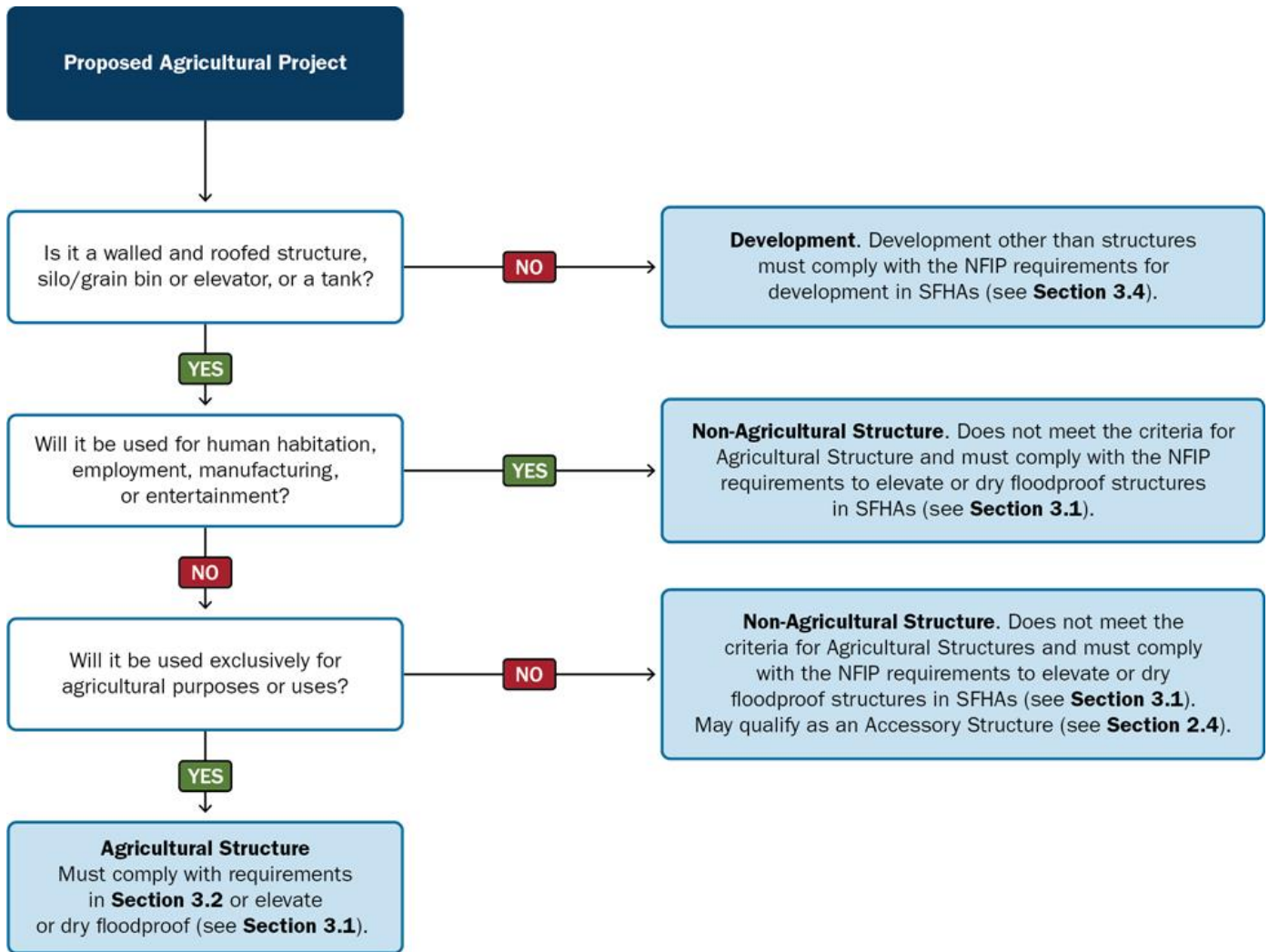
For more information and to register, visit [UNO's Nebraska Municipal Clerks Institute and Academy website](#). ■

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Figure 1: Determining When a Proposed Project Is an Agricultural Structure



The Bulletin provides further guidance on grain bins, greenhouses, and storage tanks, as well as several other common types of agricultural development.

Figure 1: “Determining When a Proposed Project Is an Agricultural Structure,” excerpted from Bulletin P-2140, is a decision chart to help floodplain administrators determine whether a proposed project qualifies as an agricultural structure.

Your local building and zoning regulations may include definitions for “agricultural” and “accessory”

structures that differ from the following guidance. Remember that the guidance in the Policy and Bulletin discussed in this article apply only to proposed development within your jurisdiction’s SFHA. When conflict or overlap of regulations occurs, the most restrictive regulations apply.

The Bulletin recommends implementing the following “best practices” as part of approval of any wet-floodproofing of agricultural and accessory structures:

- Limit what is stored in wet floodproofed areas to items that are low-value.

- Require non-conversion agreements as part of approving wet floodproofed areas and structures. These signed agreements affirm that owners agree not to convert or modify the structure and its use in any manner that is inconsistent with the approved permit. Typically these non-conversion agreements are required to be recorded on property deeds.

- See **New Rules** cont. on page 3.

New Rules continued from page 2.

When Agricultural Structures are Substantially Damaged due to Flooding

“Substantial damage” is damage of any origin whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. Substantially damaged structures must be brought into compliance with requirements for new construction, however, Title 42 U.S. Code Section 4022, “Requirement for Participation in Flood Insurance Program,” allows agricultural structures that are substantially damaged by flooding to be repaired or even replaced without having to bring them into compliance with minimum standards. But, it is important to know that there are several caveats with this provision and further guidance is provided in the Bulletin:

- As with all the provisions mentioned before, the structure must meet the definition of an agricultural structure. This includes the exclusive use and minimal cost provisions. Further note that this provision is for substantially damaged structures, and does not include substantial improvements.
- The damage from the structure must be solely from flooding. If the structure was substantially damaged in a tornado or if it caught fire, this provision does not apply. Furthermore, if some of the damage was by other causes in addition to flooding then this provision does not apply.
- The structure can only be returned to its original condition. That means not only the same size, location, and footprint but also the same layout, use, and equipment. The only exception is that mitigation can be added, such as wet floodproofing flood vents.
- Language must be in your ordinance to allow this repair of substantially damaged agricultural

structures. Appendix C Bulletin P-2140 contains language for your ordinance if you are interested in adopting such.

- An owner using this provision will be denied from future Federal disaster assistance for the structure. Likewise, they may be denied federal flood insurance for the structure unless mitigation (wet floodproofing at a minimum) is utilized in the repair.

Variations and Community-Wide Exceptions

A variance is a granting of relief by a NFIP community from the terms of a floodplain management regulation. FEMA recognizes that due to the low value of many agricultural structures, variances may be granted for them on a case-by-case basis, without jeopardizing the community's position in the NFIP. To grant a variance for agricultural structures must:

- Be exclusively for agricultural use,
- Be wet floodproofed,
- Be anchored to resist flotation, collapse, and lateral movement,
- Utilize flood damage-resistant materials below the base flood elevation,
- Have mechanical, electrical, and utility equipment elevated or floodproofed,
- Have flood openings in compliance the ordinance,
- Have a low damage potential, and
- Not increase risk or pose danger to public health, safety, or welfare.

FEMA also recognizes that applying NFIP requirements for elevation/dry floodproofing for agricultural or accessory structures could cause hardship or inequality in certain communities. Therefore, “community-wide exceptions” may be necessary for certain communities to allow them to deviate from minimum standards without the need to process individual variances. Community-wide exception requests must include the following:

- A description of the nature, extent of, and reasons for the exception

request. A description of the local conditions causing hardship or inequality if elevation or dry-floodproofing is enforced.

- Supporting justification using environmental, topographic, and hydrologic and hydraulic condition data.
- Supporting information regarding how wet floodproofing is an appropriate mitigation option.
- Proposed ordinance language that would allow these certain structures to be wet floodproofed. This must also include enforcement/administrative language.

FEMA must approve a community-wide exception before a community may implement it.

What does this mean for the State Model Ordinance?

Guidance for permitting agricultural and accessory structures will be added as optional language to the State Model Ordinance. Communities will need to adopt the language into their own ordinances using the state model if they choose to permit agricultural structures. The language that will be added will include the definitions for agricultural and accessory structures, the parameters for permitting each, and the limitations for the repairs of substantially damaged agricultural structures. Variance and community-wide exception options will also be included. Anticipated changes include:

- Language will be included that discusses the repair of substantially damaged agricultural structures
- The definition for agricultural structures will be added
- The definition for accessory structures will be added
- The definition for exclusive use will be added
- The parameters for permitting agricultural structures will be added
- The parameters for permitting accessory structures will be added
- Variance and community-wide exception options ■

Meet Your Floodplain Management Team

The Floodplain Management Section is here to serve the Nebraska's floodplain administrators. We are responsible for coordinating a comprehensive program supporting the wise use of land that is subject to flooding. Several new faces joined our ranks in 2020, so we're introducing the whole team.

Management:

The management team, Katie Ringland and Jamie Reinke, develop program goals, priorities, and objectives. They manage grants and ensure that a robust body of mapping and outreach projects are advanced throughout the state as the section's role as a Cooperating Technical Partner with FEMA.



Katie Ringland, PE, CFM
Chief, Mapping Project Manager & State NFIP Coordinator



Jamie Reinke, PE, CFM
Mapping Project Manager & Engineer

Outreach:

The outreach team is here to answer your floodplain management questions. The team assists communities across the state via floodplain ordinance review and adoption, facilitates Community Assistance Visits, Community Assistance Contacts, training sessions, and technical assistance phone calls.



Chuck Chase, CFM
Outreach Coordinator & NFIP Specialist



Adele Phillips, CFM
Floodplain Mitigation Planner



Elijah Kaufman
NFIP & Outreach Specialist



McKenzie Merritt
Outreach Specialist

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Engineering:

The engineering team develops guidelines and procedures for mapping work. They conduct approximate and detailed hydrologic and hydraulic analyses for mapping, review and approved Base Flood Elevation determinations, prepare floodplain reports, and delineate floodplains. Our engineers review engineering work developed during FEMA mapping projects and perform Technical Reviews of analysis submitted by local jurisdictions, to verify accuracy and that FEMA guidelines are followed.



Jared Ashton, PE, CFM
Engineer



Erica Bowman, EI
Engineer



Deanna Ringenberg, PE, CFM
Engineer



Stefan Schaepe, PE, CFM
Engineer



Eric Watermeier
Engineer

Administrative Services:

Michele helps us all stay organized. She assists with outreach event and training preparation, verifies community contacts, reviews documents for accuracy prior to distribution, assists with preparing FEMA reporting documents, and numerous other tasks related to the Floodplain Management Section's responsibilities.



Michele York
Administrative Assistant

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Mapping and Technical Assistance:

The Mapping and Technical Assistance staff conduct approximate hydrologic and hydraulic analyses for Base Flood Elevation Requests and mapping, delineate floodplain boundaries, and create Flood Risk Products. They create Flood Insurance Rate Maps and compile the mapping information into databases for FEMA submittal, ensuring the projects follow FEMA guidelines and standards.



Jacob Bruihler, CFM
Floodplain Mapping Specialist



Jeehoon Kim
Floodplain Mapping Specialist

Floodplain IT Support:

Ryan is responsible for quality control and quality assurance for all floodplain mapping projects submitted to FEMA and shared with our project partners or the general public. He helps maintain our Floodplain Management website and interactive maps and provides general GIS support for the Floodplain Management Section.



Ryan Johnson, CFM
Floodplain GIS Analyst



Isaac Remboldt
Floodplain Mapping Specialist

Mark Your Calendar:

02.18 □ Basic Floodplain Management

10:00 am - 3:00 pm

Join Chuck Chase, CFM, for an informative 4 hour virtual class on the fundamentals of floodplain management. This class is suitable for both novice and seasoned floodplain administrators, as well as any local community members responsible for local floodplain administration. To learn more, visit this [link](#).

02.18 □ STARR: Tools for Determining Base Flood Elevation

12:00 pm - 1:00 pm

Training on methods for determining base flood elevation in AE, A1-30, and V Zones using the FIRM/FIS and other resources, including tips for developing BFEs for A Zones and how to use FEMA resources like the Flood Map Service Center. Registration is free, and required. To learn more and to register, visit this [link](#).

02.23 □ The Value of Public Participation

12:00 pm - 1:00 pm

FEMA Region 6 has developed a suite of monthly trainings to help communities become more flood-resilient by using flood risk data for future development, emergency planning, and risk communications. To learn more and to register, visit this [link](#).

Mark Your Calendar Cont.

03.14 - 03.19 ■ Clerks Institute and Academy

Online Only

The Nebraska Municipal Clerks Institute and Academy is an annual continuing education professional seminar held in Nebraska during March of each year for municipal clerks in Nebraska. To learn more and to register, visit this [link](#).

03.18 □ Substantial Damage Assessment Handbook and SD Estimation

Join Chuck Chase, CFM, and Adele Phillips, CFM, for an informative 1 hour virtual class on the new substantial damage (SD) assessment handbook and the SD estimation process. This class is suitable for both novice and seasoned floodplain administrators, as well as any local community members involved in substantial damage estimation. Watch your email inboxes for more information!

03.23 □ Adding BLE and Other Higher Standards to Your Community's Floodplain Management Ordinance

12:00 pm - 1:00 pm

FEMA Region 6 has developed a suite of monthly trainings to help communities become more flood-resilient by using flood risk data for future development, emergency planning, and risk communications. To learn more and to register, visit this [link](#).

04.15 □ Risk Rating 2.0: Flood Insurance Manual Workshop

Join NeDNR and the Nebraska Department of Insurance on a presentation regarding changes in the flood insurance manual, new information about substantial damage estimation tool 3.0, and National Flood Insurance Day. Watch your email inboxes for more information!

FEMA Elevation Certificate Video Training Series:

The Community Rating System (CRS) Program has just released 8 videos that cover training on the FEMA Elevation Certificate (EC). The videos describe each Section of the EC and explain which fields on the form are required for CRS purposes and why. Each video explains the most common errors we see on the forms and how to avoid them. There are 2 videos covering general issues associated with ECs such as form date rules, page rules, how to handle annexations, how to handle Flood Insurance Rate Map (FIRM) changes after a building is permitted, and how to document different kinds of buildings. And lastly, there is a video on how to correct an EC once you find one with errors.

The videos should be watched beginning with Section A of the form, and ending with "How to Correct an Elevation Certificate." They are intended to serve community officials, but please feel free to share these videos with the surveyors, engineers, and architects in your community who fill out these forms. They will benefit greatly from them as well. [Watch the videos here.](#)

February

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April

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Want More Information?

Visit Our Floodplain Website at: <https://dnr.nebraska.gov/floodplain>

Or, Contact:

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