

# KANSAS

## FLOODPLAIN MANAGEMENT

### TIPS



April 2020

#### Tips for Writing Violation Notices

A community official in Kansas once wrote a violation notice letter that started off in the first line like this, "Please contact our office within 15 days with your plans to demolish your house". It is always good to get a response when you send a letter. That particular letter got more than the desired response. Here are some tips on writing a letter that will get an appropriate amount of the correct response.

A written notification is important in violation situations. You never know when a situation could end up going to court or if a violator will turn in a complaint about the Floodplain Manager's methods of enforcement. Written records become your best defense in those situations. The letters you write are part of the written record.

The 14<sup>th</sup> Amendment to the Constitution of the United States of America guarantees our citizens equal protection under the law and the 5<sup>th</sup> Amendment guarantees that they will be afforded due process. Proper written notices of violations are part of that due process. Well-written records keep the focus on the violation and getting the problem resolved rather than on the people involved and any perceived violation of their rights.

There is no one template letter that fits every situation. There are too many different types of violations. A follow up letter is different from an initial letter. A letter of allegation is slightly different from a violation notice. A stop work order can be in the form of a violation letter but there won't be a stop work order for completed work. A second notice of violation is not as nicely worded as a first notice of violation. Notice for a problem that has existed for a week is treated differently from a problem that has existed for a year. In some cases other staff in the local community may have permitted an item in the floodplain incorrectly. Consider your own violation issue and the situation you are in and then choose what works for you from these tips.

A common situation is that a property owner violates a floodplain rule simply because they did not know or understand the rule. Sheds just seem to pop up in backyards without permits. Property owners buy or lease a shed from a home supply business and the shed is delivered without attention to the floodplain. Many of those people would never knowingly violate a rule. The Floodplain Manager may call them on the phone and the property owner will often immediately agree to move the shed or apply for the proper permits. While you have the person on the phone, tell the property owner that you will be sending them a follow up letter after you end the call. The follow up letter should contain a brief summary of your phone call stating what the property owner agreed to and the time frame in which they agreed to have the work completed. There will be times when a property owner agrees to do something and then changes their mind.

A letter of allegation is slightly different from a violation letter. In this situation the Floodplain Manager may have received a complaint about a potential violation but hasn't investigated it yet. The allegation letter would be mailed to the property owner and it would say that an alleged violation has been reported on his or her property.  
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An advantage to an allegation letter is that some people will clean up the problem before they know you will arrive. The allegation letter can serve double duty as a first notification letter for a violation. In the case that you ever send an allegation letter be sure to show up on the specified date and time. Don't be late.

Then there is the notice of violation letter. This letter is usually sent after visiting a property and verifying that violations do exist. A first notice of violation is usually a little nicer than a second notice of violation. The violation letter will have parts to it. The first part is the greeting.

Send your letter to the owner of record of the property. Start by checking with the Register of Deeds to see whose name is on the deed. Do not send letters to tenants. The tenant may well be the cause of the problem but it is the landlord who should deal with their own renter. A common enforcement technique to use is abatement. Abatement is against the property and the property owner and not against the tenant. Therefore, you should address the letter to the owner.

It is best to address a letter to a person rather than to a corporation or a trust. There may be times that you can only find out the name of a business that owns a property. Visit the website for the Kansas Business Center in that situation. The web address is <https://www.kansas.gov/businesscenter/>. Do a "Business Entity Search" to begin with. Once you find the name of the business you can view the record and find the name of the "Representative Agent". The Representative Agent is what you want. A Representative Agent may not own the business but is the person authorized to act on behalf of the owner and to receive letters.

Another option is to ask the attorney for your community for a limited certificate of title. This is a title certificate issued by a licensed attorney upon examination of public records in order to profile status of the property. It is not title insurance and does not insure the title. The limited certificate of title will provide some history of ownership and information about liens on the property.

Use the name of the person the letter is addressed to in the opening. Do not use phrases such as, "Dear Sir or Madam." An even worse phrase is, "To Whom it May Concern." A property owner once told me that he got a letter addressed to "Whom it May Concern." He didn't feel any "concern" so he ignored it. In the case that a violation has to go to court you can't take "To Whom it May Concern" to court. You can, however, take a specific person or entity to court.

Begin the letter by describing the location and nature of the violation. State what it is and where it is. For example: "There is a shed on the SE Corner of the parcel at 123 Main Street. The shed is located in the Zone AE floodplain. A search of our records could not locate a floodplain development permit on file nor does this shed appear to be anchored, elevated or flood proofed."

That phrase "a search of our records" will give you some wiggle room if another person in your office did approve a permit and then didn't file it correctly. That sort of thing has happened before in several communities and at least one State agency.

Give the citation from your local regulations that is relevant. Don't just give an ordinance citation but an actual reference to the specific section. For example, "City Ordinance #1234 Article 3.a requires permits for all development in the floodplain and Article 4.1.a requires elevation and anchoring of this type of development."

Now that you have identified the problem start talking about solutions and ways forward. Begin by offering to meet with the property owner. Provide a reasonable time line for such a meeting. An example would be, "Please contact this office within 30 days to arrange a meeting to discuss ways to bring this property into compliance." The letter should also spell out desired actions needed such as obtaining the necessary permits, installing methods of anchoring, or obtaining an elevation certificate.

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Explain the consequences of ignoring the letter. For example, “City Ordinance #1234 Article 6 specifies that failing to comply with the requirements of the ordinance is a misdemeanor punishable by a fine of up to \$500.”

Explain to the recipient that if they feel the letter is in error they have the right to provide information to appeal. This is information submitted to clarify that the notice of violation is in error. This is not same thing as requesting a variance. A variance is something that some property owners ask for instead of fixing their violations. Variances are a whole topic by themselves.

Conclude the letter with some very polite language about how you look forward to working with the property owner to resolve the situation. Always be polite. Always thank the violator (even if they are difficult to work with) for their time and attention to address this matter.

A second notice letter is not very different from a first notice letter but there are some key differences. In a second notice of violation letter the time lines are shorter, there is more emphasis on the enforcement requirements in the regulations, and the letter will state that the matter will be turned over to your attorney if it can't be resolved within a specified time frame.

There is another type of letter in the violation process that can also come up. It is sometimes reasonable to give an extension to a violator. Here is an example situation. A property owner has 40 junk vehicles in a floodway. He agrees to have them removed. He signs a contract with a salvage operator. The salvage operator plans to visit the property prior to the deadline for correction in order to load and haul away all of the vehicles, supply weight tickets to the property owner, and write the property owner a check for the total weight of scrap. It seems like a win-win situation because the salvage operator earns income, the property owner gets a check, and the community sees a violation corrected. Then it rains every day for a week right before the vehicles were to be hauled off. It is too wet and muddy for the work to be done and the deadline is approaching. Discuss it with the property owner and then write a new letter stating that you are granting a 30-day extension because of the weather. The letter is a written record of your actions and your reasons in the case you are asked to account for yourself later. Usually when the neighbor who turned in the original violation calls their friend on the governing body.

Few other tips:

- Do not use acronyms in your letters. Acronyms like BFE are common to Floodplain Managers but not to residents.
- Keep it simple and not too technical. Most of the people getting these letters are not engineers...and neither are the judges or attorneys who may read them later.
- Double-check for spelling and formatting errors.
- Copy your State Floodplain Coordinator on your letters. Let the property owner see that. Most property owners would much rather deal with their local person than some person at “The State”.
- Copy your attorney on your letters. Most cases don't go to court but you just never know.

Due process is important so send at least two written notices before taking legal action. Suggest sending two copies of the each notice at same time to the same address. Send one copy by certified mail with a delivery receipt requested. Send a second copy by regular first class mail and have a mailing affidavit witnessed by a notary public showing that it was placed in the mail. There is a notary public in most community offices.

At the end of the day we want compliance with our regulations. It isn't about going to court. It goes down in the books as a bigger win if you can solve a problem without going to court. It isn't about proving who is right or wrong so much as gaining compliance. Try to write violation notice letters in such a way that the focus will go on the problem, the property owner understands what needs to be done and the property will eventually be brought into compliance.

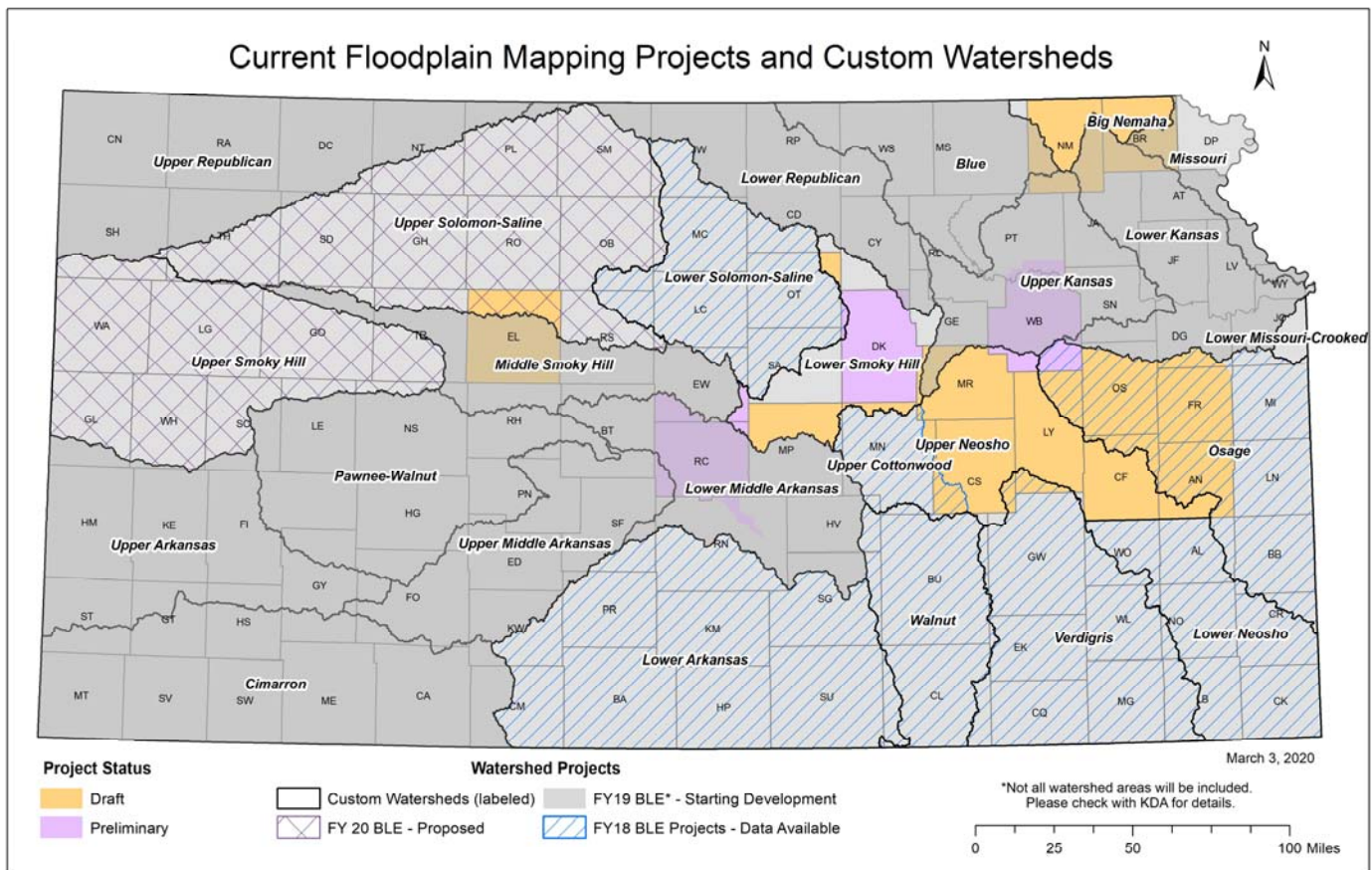
## Floodplain Mapping Program Update

The Kansas Department of Agriculture has been a Cooperating Technical Partner (CTP) with FEMA for more than 20 years, and while many things remain the same, there are new and exciting changes in progress. In 2009, FEMA initiated the Risk MAP (Mapping, Assessment & Planning) program to update flood maps following the Map Modernization program. Many paper maps across Kansas were replaced with a digital products during the Map Modernization program, but there still was and still continues to be many effective paper maps across the state's counties and communities. Under the Risk MAP program, KDA has developed strategies that align with FEMA's goals while accomplishing KDA's goal of providing quality digital flood data where it does not currently exist. Incrementally, we have moved through different parts of the state to implement this program. Progress has been made, and we have maps to prove it. However, better data and updated technology is increasing the speed of that progress to where we have statewide flood hazard data on the horizon. It's no longer a pipe dream. As a result of these more recent changes, the CTP program wanted to share an update with floodplain managers across the state and how this may help you.

### Custom Watersheds

The FEMA RiskMAP program is administered on a watershed basis, which had typically been done at the USGS HUC-8 watershed level. This works well in the hydrologic and hydraulic analysis sense, but it works less well in the administrative sense. Most counties have three or more watersheds covering them so it could take several projects to complete floodplain updates for a county. To make this simpler going forward, HUC-8 watersheds have been combined into larger areas or "custom watersheds". Please see the "Current Floodplain Mapping Projects and Custom Watersheds" map or visit our webpage at: <https://agriculture.ks.gov/divisions-programs/dwr/floodplain/mapping/mapping-projects> to see which Custom Watershed(s) your community is part of.

Kansas Mapping Projects



(Mapping Story Continues Next Page.)

## Base Level Engineering (BLE) & 2D Modeling

During the Discovery phase of a project, KDA's contractors are developing BLE floodplains watershed-wide for an initial look at the flood hazard data at the custom watershed level. This is being developed in a 2-Dimensional modeling environment, using HEC-RAS 5.0 software, which is free and publicly available for download. Models that use 2D technology have been around for awhile and have been utilized in very select cases, typically involving closed stormwater systems. They were not used widespread because they were created in software that was not free and publicly available. Traditional methods using 1-Dimensional technology are what most of the floodplains on FEMA maps have been created from. The advantages of the 2D modeling is that it allows for the water flow to move in multiple directions, as opposed to just one. In flatter areas or streams with multiple flow paths, the resulting floodplain tend to represent reality better.

### What will we do with this data?

Floodplains created during the BLE stage may be the basis of a regulatory floodplain update, but they also may not be. They are produced early in the process, and for some cases they may go no further than this initial development. Since they are being created at the custom watershed level, some areas with recent updates may be included in the modeling, but we will not plan to update those floodplains. In many places, this will be usable as Best Available Data. This will certainly be the case in current Zone As based on less-refined topography (for example USGS 10-foot contours). However, in areas that have enhanced studies on their effective map, Zone AE or zones with Base Flood Elevations (BFEs) displayed on the map, the effective BFE will still be primary source. Where there is Floodway, these may not be the base model though they can be used as a guide or reference.

### Need a BFE in a Zone A or Unmapped Area?

Visit our BFE Portal at: [http://maps.kgs.ku.edu/fpm\\_bfe/home.cfm](http://maps.kgs.ku.edu/fpm_bfe/home.cfm). Data is not yet available statewide, but we're working on it.

### Technical Assistance

In conjunction with a mapping project, there is an opportunity for technical assistance that goes beyond what is typically provided during a mapping project. When we have discussions with communities about mitigation and their flood risk, this is the way that we can help more tangibly in mitigation efforts. Technical assistance projects can be flexible in scope and can provide a variety of assistance. These projects do not include funding for construction of projects, but they can be utilized for modeling mitigation scenarios for possible projects. These funds can be applied for grant-related purposes, ordinance or code support, engineering and analysis, planning, outreach and education. Find out more on our Technical Assistance website at: <https://agriculture.ks.gov/divisions-programs/dwr/floodplain/mapping/technical-assistance>.

### Outreach

Throughout the life of a project, communication and outreach is a key component to a Risk MAP project. At the start of the project, contact lists are put together with emails, phone numbers and addresses, and most communication occurs via email. Mailings occur at certain milestones in the project. Email is used to communicate project updates and meeting information. Phone calls are utilized as needed to verify information, discuss project updates and to do pre- and post-meeting calls. All mapping projects involve in-person meetings, and there are typically five planned throughout the course of a regulatory update, though others may be scheduled as needed. Meetings include Kick Off and Flood Risk Review meetings, and most of them are geared toward community officials and local stakeholders. The Public Open House is a highlight and useful meeting that is held in Kansas projects prior to the Preliminary Issuance. At the Open House, citizens are invited to view and comment on the draft mapping and visit with Flood Mapping, Engineering, Regulatory and Insurance experts. It is a one-stop shop on getting questions answered and gives citizens time to prepare for future impacts of the mapping changes.



Photo from Open House Meeting

## Training Opportunities

The Floodplain Management Program will host the following training sessions throughout Kansas. If you are interested in any of the no-cost training opportunities, please contactor Steve Samuelson at 785-296-4622. A training registration form is in this newsletter.

### **Elevation Certificates and Letters of Map Amendment**

This free class is designed for community officials responsible for administering floodplain management as well as surveyors and engineers who complete Letters Of Map Amendment (LOMA) and Elevation Certificate forms. The course will focus on accurate completion of Federal Emergency Management Agency (FEMA) technical forms, building diagrams and base flood elevation. Approved 3.5 hours toward CFM. Limited to 20 participants.

- Altoona - Tuesday, June 25, 2020 from 8:30 a.m.—12:30 p.m.

### **Letters of Map Revision**

This special course is being offered through the mapping CTP program. This four hour course will provide an overview of the process and go through aspects of the LOMR application. Approved for 4.0 hours toward CFM. Limited to 20 participants. Contact Tara Lanzrath at tara.lanzrath@ks.gov to register for this special course.

- Manhattan - Wednesday, May 19, 2020 from 10:00 a.m.—2:30 p.m.

### **Basics of the National Flood Insurance Program**

This class is for officials responsible for administering their local floodplain management ordinance. The focus is on the National Flood Insurance Program (NFIP) and concepts of floodplain management, maps and studies, ordinance administration, and the relationship between floodplain management and flood insurance. Allowed 3.5 hours Continuing Education Credit (CEC) toward the Certified Floodplain Manager (CFM) credential.

- Manhattan— Wednesday, April 29th, 2020 from 8:30 a.m.—12:30 a.m.

Find more information about floodplain management from Kansas Department of Agriculture  
Division of Water Resources online at:

<http://agriculture.ks.gov/divisions-programs/dwr/floodplain>

Email saves money on postage. The electronic newsletter also has links and the photos are in color. If you are getting this newsletter by postal mail and would prefer email please contact Steve Samuelson at [Steve.Samuelson@ks.gov](mailto:Steve.Samuelson@ks.gov).

Mark your calendar. The Kansas Association for Floodplain Management 2020 conference will be September 1st-4th in Mulvane. More information will be posted at the website: [www.kafm.org](http://www.kafm.org). Registration will be done through a link on the website. If you have questions about registration please contact Jon Bristor, Chairman, at 620-326-2207.

**Kansas Department of Agriculture**  
**Division of Water Resources**  
**Floodplain Program**  
**Training Registration Form**

Name \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

Organization \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

Name, date and location of training you will attend \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*Please share this invitation with anyone else who could benefit from the training.

\*\*Classroom locations will be sent to registered participants one week before the training.

Please scan and email your registration to: [steve.samuelson@ks.gov](mailto:steve.samuelson@ks.gov)

Or mail to:

KANSAS DEPARTMENT OF AGRICULTURE  
FLOODPLAIN MANAGEMENT PROGRAM  
1131 SW Winding Road, Suite 400  
TOPEKA, KS 66615

For questions about training, please contact Steve Samuelson by email at [steve.samuelson@ks.gov](mailto:steve.samuelson@ks.gov) or by phone 785-296-4622.

Please help us keep our records current. If the name that appears on this newsletter is for an individual no longer with your organization, please call 785-296-4622 or email [steve.samuelson@ks.gov](mailto:steve.samuelson@ks.gov) to report the change.

4626  
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Floodplain Management  
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### **ASFPM 2020 National Conference in Fort Worth**

The 2020 Association of State Floodplain Managers National Conference will be June 7-11, 2020 in Fort Worth, TX. This conference is an excellent opportunity for floodplain managers to receive training on mapping technologies, regulations, permitting, outreach and best practices. It is estimated the conference will be attended by more than 1,000 floodplain management professionals. This conference is a great chance to meet people for networking and to learn the latest news in floodplain management. Visit [www.floods.org](http://www.floods.org) for more information.

### **KDA/DWR Water Structures Floodplain Program Staff**

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