

State of Montana

Building Thriving Community Resilience and Sustainability: Floodplain Legal and Sustainable Development Workshop

Current and Future Trends in Floodplain Management and Hazard mitigation

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Edward A. Thomas Esq.
President
Natural Hazard Mitigation Association



This still is not and cannot be legal advice; nor does this presentation necessarily represent the views of anyone other than Ed Thomas

This presentation based on general principles of law, engineering, policy and emergency management.

Fundamental Thought:

**What is the Best Form
of Disaster Relief?**

Key Themes

- We need to think broadly to solve our serious problems- including sea level rise and climate variability, uncertainty and climate change
- **We must stop making things worse**
- We need to work with many persons and groups to solve our serious disaster, water resources, and other related issues
- Right now we have a system which rewards dangerous behavior
- Yet, some places like Tulsa, Oklahoma, the Metropolitan Denver area, and other locations are heroically overcoming obstacles and reducing losses
- NHMA is forming a network of such communities called:

Resilient Neighbors NET (RNN)

More information on RNN on the NHMA website:

www.nhma.info

“Superstorm” Sandy and the 2013 Wildfire Season

- Tremendous learning and teaching opportunity
- NHMA has numerous articles and resources:

<http://nhma.info/>

We all really need to work together to take this window of opportunity to educate policy makers about ways to build a safer, sustainable society.

I would be happy to further discuss with any of you after the presentations: write or call!

Safe Development Is Affordable

- The American Institutes for Research has conducted a detailed study on the cost of floodproofing and elevation
- That study supports the idea that elevation and floodproofing costs add very small sums and have a significant societal payback
- The Multihazard Mitigation Council, a group which includes private industry representatives, reports that hazard mitigation has a proven 4 to 1 payback when retrofitting past mistakes
- NHMA is currently working on a White Paper which indicates that the payback for “Safe Development” from the beginning of a project may be more than 100-1

The Choice of Development or No Development is a False Choice!

The Choice We Have as a Society is Rather Between:

1. Well **planned development** that protects people and property, our environment, and our precious Water Resources while reducing the potential for litigation; or
2. Some **current practices** that are known to harm people, property, and natural floodplain functions-... and may lead to litigation and other challenges

Taking Lawsuit Results

- **Regulations Clearly Based on Hazard Prevention and Fairly Applied to All: Successfully Held to be a Taking – Almost None!**
- **Many, Many Cases where **Communities and Landowners Held Liable for Harming Others****

Three Ways to Support Reconstruction Following Disaster Damage

- 1. Self Help: Loans, Savings, Charity, Neighbors**
- 2. Insurance Disaster Relief: A Combination of Social Insurance and Self Help**
- 3. Litigation**

The preferred alternative is...

To have NO DAMAGE

Due to Land Use and Hazard Mitigation

A Huge Impediment:

Please Understand That Many Folks Have a Fervent Belief Climate Change is Hooey Or A Plot

- Some folks sincerely and most definitely believe that they know exactly what “Climate Change is”
- They think that it is a vast left wing conspiracy, involving the government seizure of private property and an attempt through the United Nations to destroy America’s private enterprise system and eventually destroy the United States
- Many of these folks have the power to make or influence community development decisions
- Post-Sandy these views may be changing

Overcoming Impediments With Facts:

Fact A: Does Nature Cause Disasters?

- Some Folks Say: Global Warming Sea Level Rise- Causes Harm: Mother Nature is at Fault
- Are Natural Disasters “Natural”?
- Dr. Gilbert White Stated What I Believe to be Correct:
 “Floods are Acts of Nature; But Flood Losses Are Largely Acts of Man”

Fact B

Morally, Legally, Ethically Government Has Certain Rights and Duties:

- Government, at its most minimalistic has the right and duty to stop us from harming each other
- Right now development decisions are making future disasters worse-even without regard to climate variability, sea level rise, and Climate Change

Fact C:

Trends in Damages Following Natural Events:

- Wind, Flood, Earthquake, Wildfire losses are increasing quite dramatically
- Demographic trends indicate great future challenges
- More challenges from sea level rise
- Even more challenges likely from climate change, variability, uncertainty

Fact D:

Disaster Damages Will Continue To Increase Due To Past Development Practices

- **Even if climate stopped changing, we will have millions of people at risk**
- **Dr. Roger Pielke superimposed models of storms which actually took place on today's land use and occupancy**
- **The results are downright scary**

All Shareholders Can Also Contribute to Increased Risk!

Initial Risk

No Warning/Evacuation Plan

Upstream Development Increases Flows

Lack of Awareness of Flood Hazard-Lack of Flood, Business Interruption, DIC Insurance

Critical Facilities Not Protected From Flooding

Increased Development

Infrastructure Not Properly Designed/Maintained

RISK

Vastly Increased Residual Risk

RISK Increase Factors

Fact E:

An Event Need Not Be a Disaster

- Preparedness Planning
 - A Community a Business or an Industry
 - Insurance
 - Disaster Continuity Plan
 - Individual Planning
 - Insurance
 - Disaster Kit/Plan
- One's Community
 - Disaster resistant building codes/zoning
 - Pre-Disaster Mitigation Planning
 - Post-Disaster Mitigation Planning
 - Pre-Planned Mutual Assistance compacts
 - Disaster Contingency Planning
 - Planning to Manage Volunteers

Fact F: There Is Hope!

- New and Exciting APA and ABA Awareness and Initiatives
- Improved FEMA Flood Mapping Program-Risk MAP
- The Formation of the National Hazard Mitigation Collaborative Alliance
- Formation of the Natural Hazard Mitigation Association
- Corps of Engineers Silver Jackets Program
- Numerous Organizations in the United States and throughout the world are working on sustainability, climate adaptation & disaster preparedness
- Recent excellent and even inspirational publications and presentations
- Media Catching on to some of the reasons disasters are increasing

American Bar Association

Summary of ABA Resolution 107 E:

“The following recommendations of the Financial Services Round Table Blue Ribbon Commission on Megacatastrophes are highly desirable loss mitigation suggestions:

- > **State of the art building codes**
- > **Cost-effective retrofitting**
- > **Land use policies that discourage construction posing high risk to personal safety or property loss.**
- > **Property tax credits to encourage retrofitting**

These and related elements of loss mitigation are designed to ultimately bring to market affordable insurance policies with broadened coverages.”

Participation in Hazards Reduction by Climate Adaptation Centered Groups: Another Example of Progress!

Steve Winkelman

Dr. Kelly Klima

CCAP's new program and blog:

- <http://ccap.org/programs/weathering-climate-risks/>

Hazard Mitigation and Climate Adaptation

- Essentially identical concepts-yet the two communities have not had much interaction
- In addition Hazard Mitigation relies on many calculations, especially for flooding, which are done through hind casting, through looking at historic events as a total guide to future events

Looking Only at Past Events For Future Guidance Is Like: Driving Down the Highway at 80 Miles an Hour Steering By Looking in the Rear View Mirrors Only

Unlikely to produce safe results!



Climate Change
Adaptation permits,
even requires us to
look forward too!

Fact G:

Disasters Are Killing People, Causing Wretched Misery, Costing Taxpayers Enormous Sums of Money, and Harming the Environment

- Congress and the Administration are acting
- The Flood Insurance Reform Act of 2012 is a game changer
- Commonly called the Biggert-Waters Act or BW12
- Lets discuss some of the impacts

A Few of the Biggest Waters Provisions

- Flood Insurance rates must be set to cover the average historical loss year, including catastrophic loss years- huge increases necessary
- Requires a ten-year repayment plan for the current insurance fund debt
- Levees: Establishes a Flood Protection Structure Accreditation Task Force in cooperation with the Corps of Engineers
- Allows use of Community Development Block Grant funds for increasing staffing and training for local building code enforcement, and to provide flood hazard and flood insurance information to residents

Biggert-Waters and Existing Property

Removes subsidized rates (pre-FIRM rates) for many classes of structures and allows rates to increase by 25% per year until actuarial rates are achieved, for example:

- Any residential property that is not the primary residence of an individual
- Any new policy or lapsed policy, or any policy for a newly purchased property.
- Any business property

There Are Many Pieces of Legislation to Ameliorate the Impacts of BW12

- Many Congresspersons think the Administration can minimize the impact administratively
- Right now there is an uproar
- Long term, though we cannot just ignore the horrible misery and costs of disasters

Key Issues

- We are losing the battle for a safe and sustainable society in the United States and throughout the world
- Looking to the past for a vision of future risks, in an era of climate variability and change is even less likely to work than ever before

Part II

How Can We Proceed?

- Ignoring the confusion surrounding Climate Change or fervently held beliefs about the topic is not going to work
- We need principled negotiation and outreach to others
- We need to deliver our message about Safe & Sustainable Development to other folks, who may not share our beliefs, or even have any sort of affinity with or liking for us in:
 - A) their lingo
 - B) about their concerns, passions, beliefs, fears, and vision

How Can We Proceed?

- **We All Need To Work Together**

Part III

- **Hazard Mitigation Related Resources**

Get Ready to Take Advantage of the Opportunity Presented by any Crisis To Discuss A Safer Future for Our Nation and the World

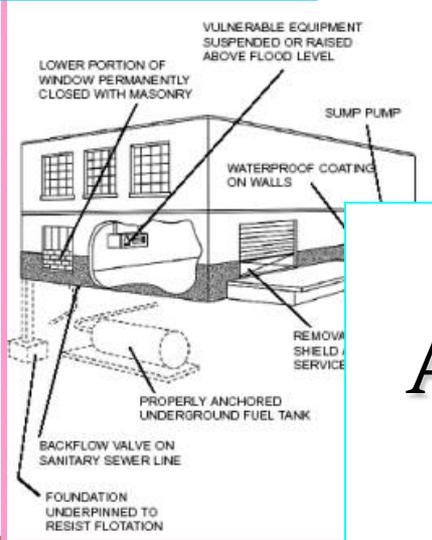
- **NHMA Website:**

<http://nhma.info/>

Some Other Available Tools:

- FEMA Risk MAP Products
- NOAA Digital Coast
- **StormSmart Coasts Products and Web-Based Information**
- **CCAP websites**
- Georgetown Climate Center

Available on Both NHMA & StormSmart



Patchwork Quilt: A Creative Strategy for Safe Post-Disaster Rebuilding



Well Worth Reading Before or After a Presidentially Declared Disaster

- Just a few thoughts
- Leverage
- Plan
- Think about the future

Public Assistance (PA)

- Grant program for debris management and emergency protective measures for presidential emergency and disaster declarations;
- Supports repair and replacement assistance for public infrastructure recovery **after a presidential disaster declaration.**
- FEMA funds not less than 75%; no more than 25% non-federal match is required

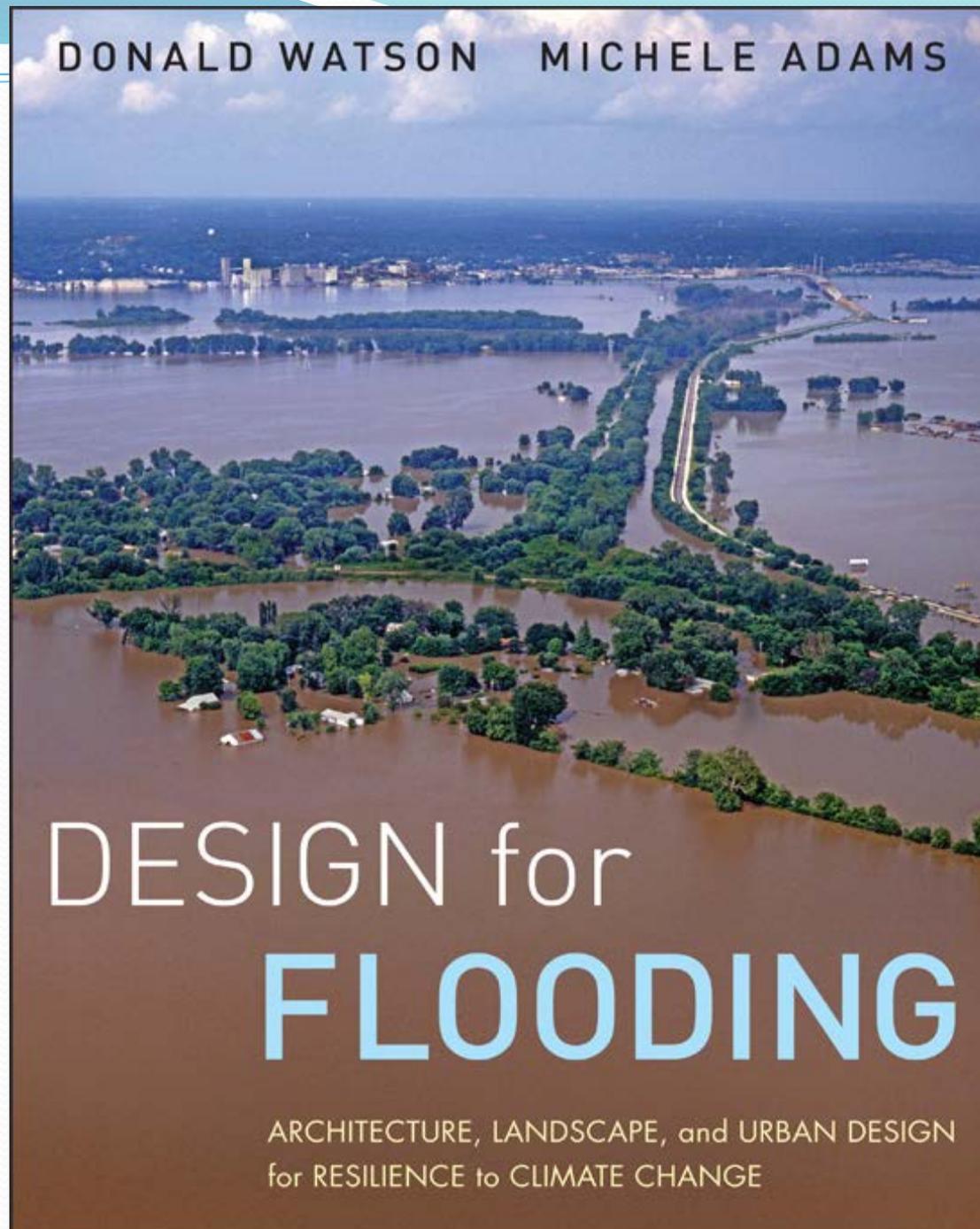


Facilities can be mitigated through Section 406 of the Stafford Act!!³³

Exceptional Book

Available on Amazon

**A must read, must
have for your library, if
you care about floods,
or climate variability**



Summary

- Fundamentally our society must choose either: Better standards to protect resources and people

OR

Standards which inevitably will result in destruction **and litigation**

**We Need To Make Allies and Friends
To Get Our Message Across**

All of us can and should play a key role in planning a safe and sustainable future

Contact Information:

Natural Hazard Mitigation Association

P.O. Box 55352

Metairie, Louisiana 70055

504-914-6648

www.nhma.info

nathazma@gmail.com

Edward A. Thomas Esq., LLC

edwathomas@aol.com



edwathomas@aol.com

617-515-3849