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UNIVERSITY of FLORIDA

Shelter From the Storm(s):

**The Association of State Floodplain
Managers and the ASFPM NAI Legal Guide**

NAI = No Adverse Impacts

A Caveat:

This presentation is neither intended to be, nor may it be taken as legal advice.

Please consult with an attorney licensed to practice in your jurisdiction and demonstrating expertise in applicable subject matter for legal advice.

Statements of fact and opinions expressed are those of the presenters individually and are not the opinions or positions of ASFPM, the University of Florida, or William & Mary University.

Overview

- Past Is Not Prelude Anymore
- The National Flood Insurance Program (NFIP)
- The Association of State Floodplain Managers (ASFPM)
- The Certified Floodplain Manager (CFM[®]) Program
- Big Picture Thinking on Floodplain Stewardship: The No Adverse Impact (NAI) Approach
- Intro to the initial NAI Legal Guide

Billion-Dollar Disasters BY THE NUMBERS (1980–2020)



DROUGHT



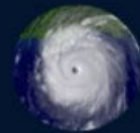
FLOODING



FREEZE



SEVERE STORMS



TROPICAL CYCLONE



WILDFIRE



WINTER STORM

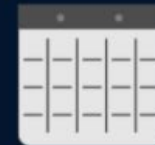
For more info:
www.ncdc.noaa.gov/billions/

1980

The year NOAA started tracking billion-dollar disasters

119

Number of billion-dollar events from 2010-2019



22

Number of U.S. billion-dollar disasters in 2020—the most on record



7.0

Average number of billion-dollar disasters per year since 1980

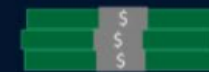
285

Number of billion-dollar disasters in the U.S. since 1980

\$1.875

TRILLION

Total cost of the 285 billion-dollar disasters



7

Number of billion-dollar tropical cyclones that struck the U.S. in 2020



15.1

Average number of billion-dollar disasters per year since 2015

50

Number of states that have had at least one billion-dollar disaster

124

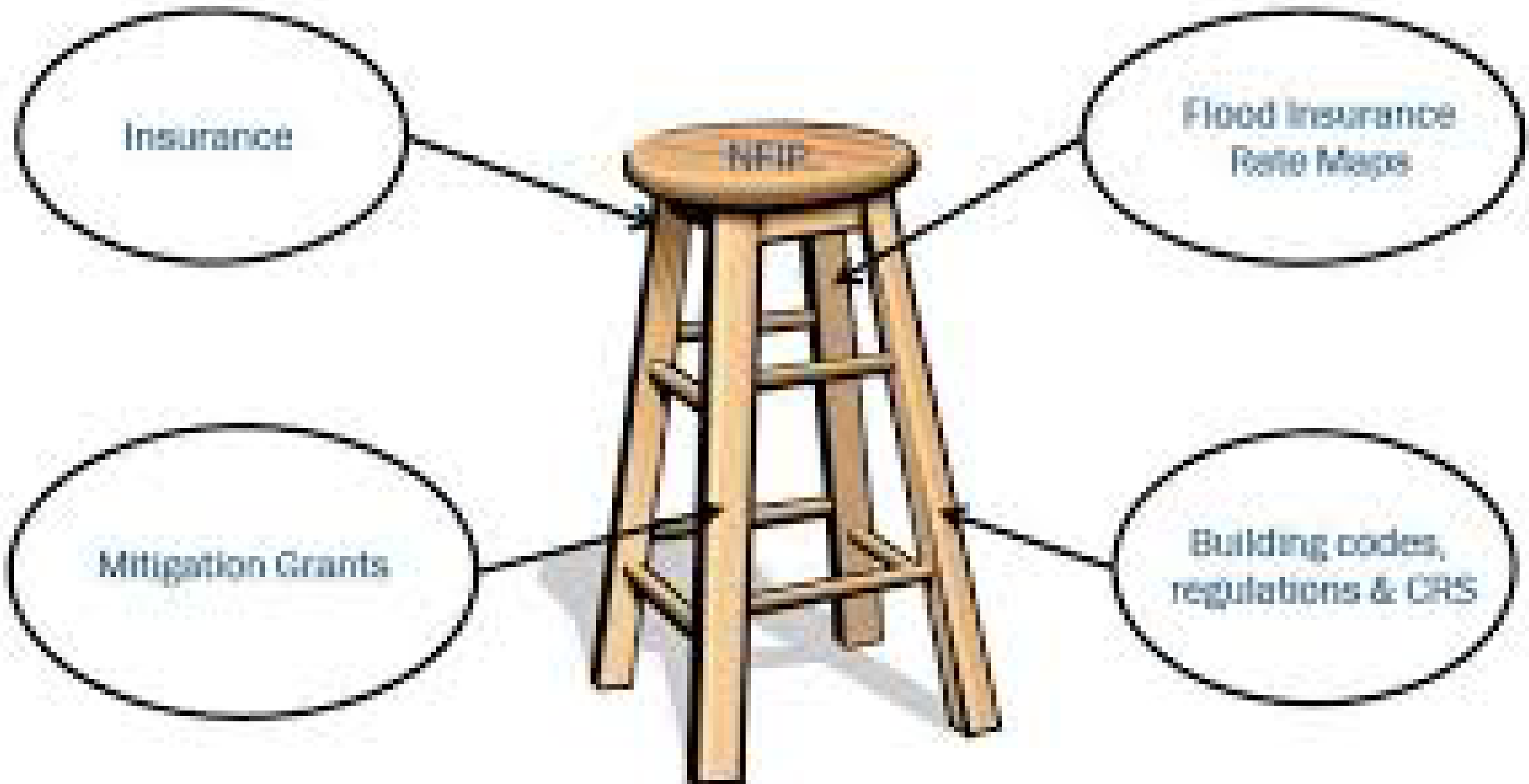
Number of billion-dollar disasters that have impacted Texas since 1980—the most of any state



National Flood Insurance Program (NFIP)

- Established by the National Flood Insurance Act of 1968 (NFIA; 42 U.S.C. §4001 et seq.) and most recently reauthorized to December 20, 2024, through a series of short-term reauthorizations. The
- General purpose two-fold:
 1. offer primary flood insurance to properties with significant flood risk, and
 2. reduce flood risk through the adoption of floodplain management standards.
- Communities participate in the NFIP for access to federal flood insurance, and in return are required to adopt minimum standards to regulate development in the Special Flood Hazard Area (SFHA).
- Managed by the Federal Emergency Management Agency (FEMA)

The Four-legged Stool of the NFIP



National Flood Insurance Program (NFIP)

- Participating communities must adopt a flood map (FIRM) and Flood Insurance Study (FIS).
- FEMA encourages communities to enhance their floodplain standards by offering reduced premium rates through the Community Rating System (CRS).
- FEMA also manages a Flood Mitigation Assistance (FMA) grant program using NFIP revenues to further reduce comprehensive flood risk.
- In communities that do not participate in the NFIP, or have been suspended, individuals cannot purchase NFIP insurance.
- Individuals in these communities also face challenges receiving federal disaster assistance in flood hazard areas.

National Flood Insurance Program (NFIP)



THERE'S THE FLOODPLAIN. NOW WHERE DO WE GO FROM HERE?



ASSOCIATION OF STATE FLOODPLAIN MANAGERS



What is a Floodplain Manager?

A floodplain manager is a person responsible for administering and implementing federal and state laws as well as local ordinances relating to the management of flood-prone areas.

What is a Certified Floodplain Manager (CFM®)?

The Association of State Floodplain Managers has established a national program for professional certification of floodplain managers. The program recognizes continuing education and professional development that enhance the knowledge and performance of local, state, federal and private-sector floodplain managers.

Who Administers the CFM Program?

ASFPM administers the national program for professional certification of floodplain managers and is governed by the Certification Board of Regents. Nationwide, the program was established in 1999 and today there are over 11,000 active CFMs!



CFMs Make a Difference!

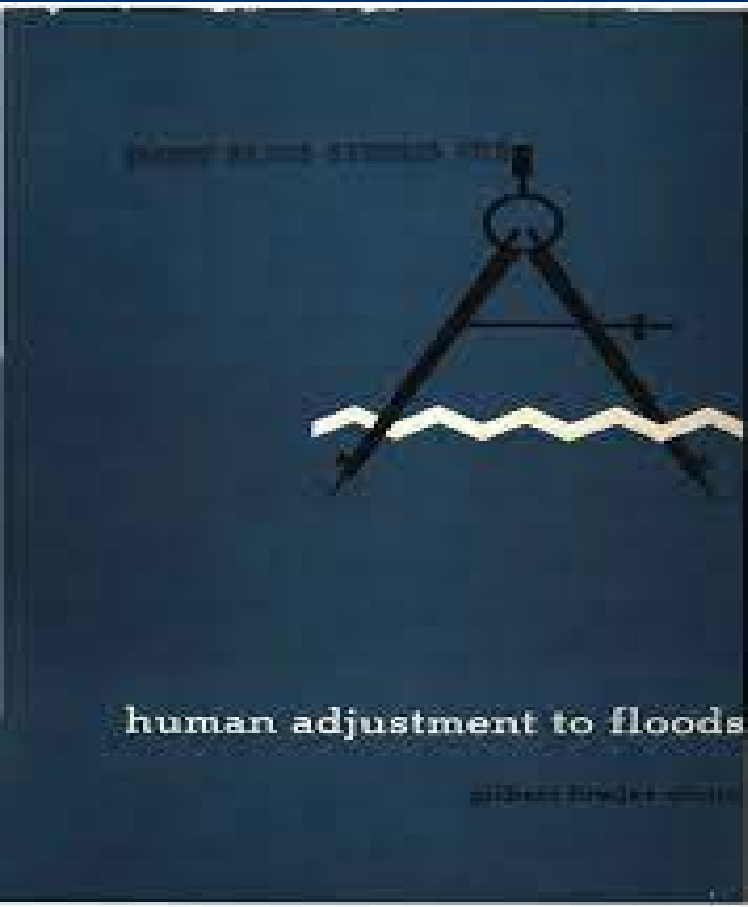
- CFMs reduce community liability
- CFMs promote safer development
- CFMs know how to reduce flood insurance premiums and property damage
- CFMs help improve water quality
- CFMs advise wise land-use
- CFMs are trusted local advisors
- CFMs abide by a Code of Ethics



Association of State Floodplain Managers

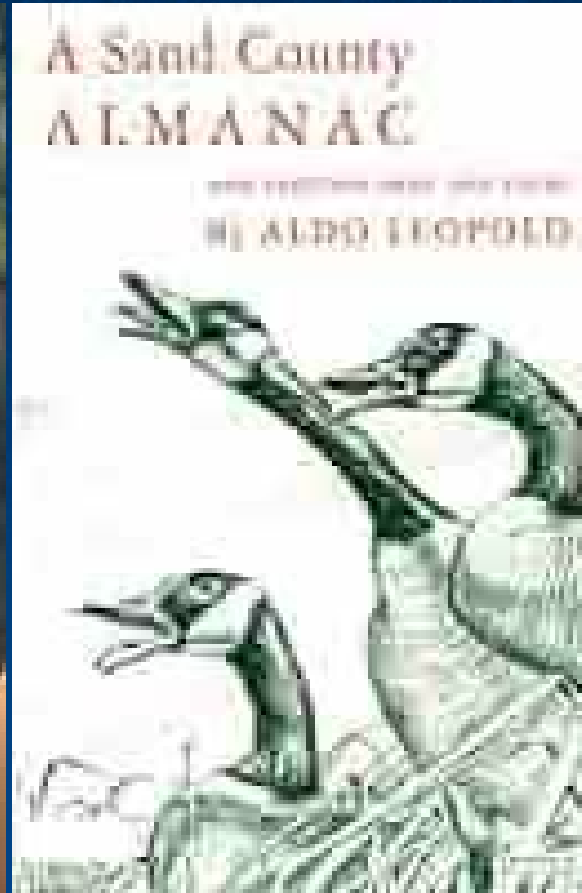
Forebears of the
No Adverse Impact (NAI) Approach
to Floodplain ~~Management~~
Stewardship

Gilbert White, *Human Adjustment to Floods* (1945)



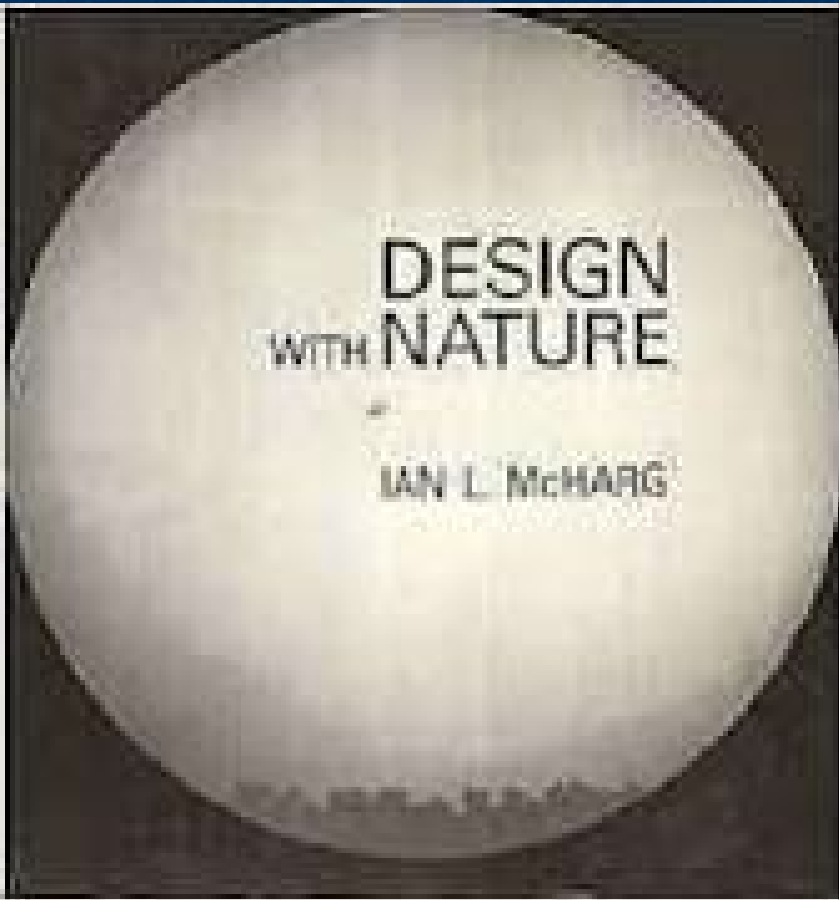
"It has become common in scientific as well as popular literature to consider floods as great natural adversaries which man seeks persistently to overpower. . . . This simple and prevailing view neglects in large measure the possible feasibility of other forms of adjustment."

Aldo Leopold, *A Sand County Almanac* (1949)



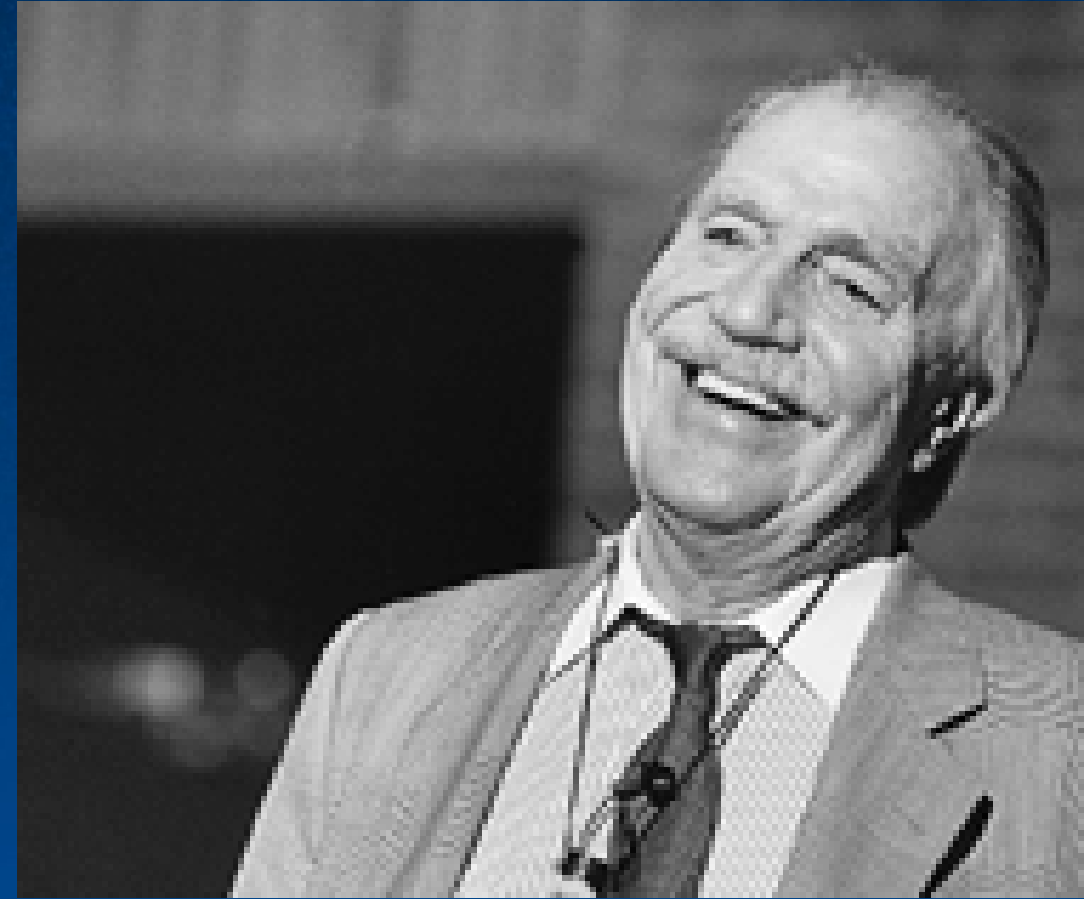
“A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.”

Ian McHarg, *Design with Nature* (1969)



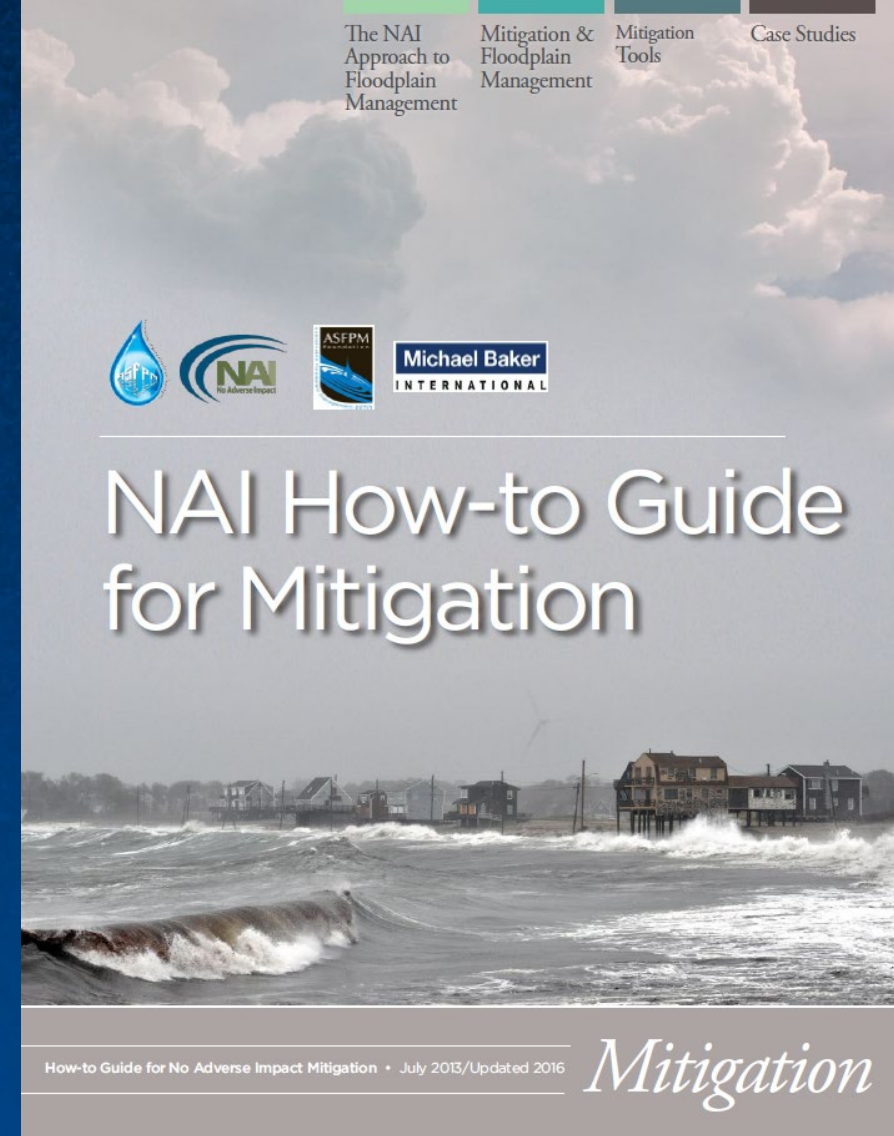
Man is a blind,
witless, low
brow,
anthropocentric
clod who inflicts
lesions upon the
earth.

The most important issue of the
21st century will be the condition
of the global environment.

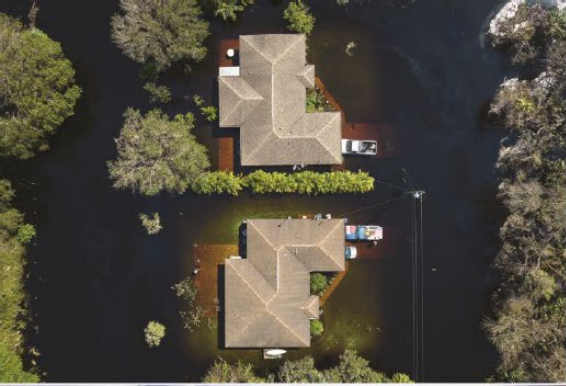


NAI is a philosophy that looks at the impacts of land use decisions, identifies adverse impacts and mitigates them through a variety of actions.

NAI involves more than local floodplain managers — planners, public works officials, zoning officials, development officials, regulatory (review) agencies, stormwater professionals, wetland managers, environmental engineers and environmentalists, emergency responders, disaster preparedness coordinators, hazard mitigation specialists, design professionals and design engineers, architects, landscape professionals, local officials, governing bodies, politicians and the public at large – the “whole community” – all have a role.



Through NAI, flood losses can be reduced, property can be protected and lives can be saved!



No Adverse Impact Legal Guide for Flood Risk Management

May 2023

no.floods.org/LegalGuide

- Detailed resources for legal professionals, and legal essentials for floodplain managers and community officials.
- The NAI Legal Guide supplements other NAI documents that present tools and guidance for integrating NAI principles into local regulations, policies, and programs.
- It will help readers to understand, anticipate, and manage legal issues that may arise when a community implements activities that enhance flood resilience, especially when those activities exceed state and federal requirements for floodplain management.

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AVOIDING TORT LIABILITY

Common Law Liability—CAUSES OF ACTION

- Under common law, no landowner—public or private—has the right to use their land in a manner that substantially increases flood or erosion damages on adjacent lands; if so, liability.
- Liability lawsuits are commonly based upon one (1) or more of four (4) causes of action in Tort:
 - Negligence
 - Nuisance
 - Trespass
 - Law of Surface Water

A Civil Wrong for Which the Law Provides a Remedy

Intentional Torts
Not our focus
(exception: trespass)

Negligence

- Duty of Care
- Breach
- Causation
- Damages



But,
SOVEREIGN
IMMUNITY

Chance

THIS CARD MAY BE KEPT
UNTIL NEEDED OR SOLD

GET OUT OF JAIL
FREE



Common Law Causes of Action: NEGLIGENCE



Illinois Farmers Insurance Co. v. MWRD of Greater Chicago



<http://floodlist.com/wp-content/uploads/2015/09/nuisance-flooding.jpg>

Common Law Causes of Action—NUISANCE

Common Law Causes of Action: TRESPASS



Landowners can succeed in trespass suits for:

- certain types of public and private actions
- that result in physical invasion of private property
- Including increased flooding or drainage.

Association of State Floodplain Managers (ASFPM)

NO ADVERSE IMPACT LEGAL GUIDE FOR FLOOD RISK MANAGEMENT

AKA

NAI LEGAL GUIDE

- Resource for planners, floodplain stewards, other emergency and floodplain professionals, appointed and elected officials and their legal representatives
- **To better navigate the law adjacent to flood risk management and floodplain stewardship**
- Strategies communities can use to craft more robust flood risk management regulatory programs without being subject to increased legal risks

Next Steps

- ❖ **More legal content is already on the way**
 - ❖ What else should be included – coastal law, state law?
- ❖ **Content for floodplain managers and non-lawyers**
 - ❖ Is on the way, but currently written for attorneys
- ❖ **How can the legal guide be improved?**
 - ❖ Let us know – see contact below
- ❖ **Contact for general inquiry and legal content:**
 - ❖ **Jeff Stone, Research Director**
 - ❖ ASFPM Flood Science Center,
jeff@floods.org



no.floods.org/LegalGuide

Questions???

Answers !!!

CENTER FOR LAND USE EFFICIENCY

PROGRAM FOR RESOURCE EFFICIENT
COMMUNITIES

UF | IFAS Research
UNIVERSITY of FLORIDA



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SHENEMAN THE STAR-LEDGER



THE THREE LITTLE PIGS: CLIMATE CHANGE EDITION