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Working Together to Reduce Disaster Losses

There was an exceptionally powerful article in the September 2, 2018 edition of the Sunday New York Times Magazine: *Lost in the Storm: Houston thought it was prepared for a major hurricane like Harvey. But as the flooding overwhelmed the city's emergency systems, families like the Daileys found out too late that they were on their own.* That article did a brilliant job of explaining the very real human impact of disasters like Harvey on our fellow humans who experience the result of failure to safely and properly develop in the face of foreseeable natural events such as floods. That article is well worth reading, and is available at:

<https://www.nytimes.com/interactive/2018/08/30/magazine/hurricane-harvey-houston-floods-texas-emergency.html?action=click&module=Well&pgtype=Homepage§ion=The%20New%20York%20Times%20Magazine>

We simply must do an enormously better job, as a society, in recognizing that:

- a) the single best form of disaster response and relief is no disaster response and relief because we have developed and redeveloped safely and properly;
- b) we are failing to recognize that every day somewhere in the nation, a family, a developer, an agency of government and/or a business is making decisions which will make future natural events even worse disasters than they would otherwise become;
- c) developing a safer more resilient family, community, state or nation need not require expenditure of billions of taxpayer dollars. Rather, requiring that development and redevelopment be done to significantly higher standards can result in a lessening, rather than an increase in future disaster losses.

The controversy swirling around the eulogies for Senator John McCain remind us how far apart we have become in civic discourse. We simply must come together as humans and recognize the enormous

commonality we have, rather than emphasizing differences in thought, ethnicity, religion, gender or race.

I believe that the biggest challenge we face as a society in dealing with the mounting toll of disaster losses is figuring out how to work with both the development community and environmentalists on the enormous changes in our national approach to community development required so that we achieve disaster risk reduction, rather than continuing to develop and redevelop in a manner guaranteeing worse future disasters.

Nicholas Kristof wrote a lovely article published in the New York Times February 17, 2018 conveying an important concept much needed in our national discussions about climate adaptation and disaster risk reduction. The Article, "*You're Wrong; I'm Right*", nicely captures the idea that we must speak to others, outside our echo chamber. It is available at:

https://www.nytimes.com/2018/02/17/opinion/sunday/liberal-conservative-divide.html?rref=collection%2Fcolumn%2Fnicholas-kristof&action=click&contentCollection=opinion@ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=collection

There is also really splendid op-ed piece by Thomas Edsall in the March 1, 2018 NY Times, "*What Motivates Voters More Than Loyalty? Loathing.*"

The article is located at:

<https://www.nytimes.com/2018/03/01/opinion/negative-partisanship-democrats-republicans.html>

The Kristoff and Edsall's pieces are both conceptually incredibly important to those of us who are trying to deal with the battles swirling around "climate change," in such a manner as to achieve reduction in our growing national and world-wide toll of disasters, caused by foreseeable natural processes of the Earth.

Using the insights from both pieces point can show us the direction we need to go: finding common ground, across a growing gulf of politically charged fear and consequent hatred, to find a path forward. That common ground can and should be disaster risk reduction, based on a philosophy of law, equity and fairness.

That idea of finding a common ground is fundamental to all we are trying to do in developing the NHMA Disaster Risk Reduction Curriculum.

More information on the NHMA DRR curriculum at: <http://nhma.info/drr/>

For successful climate adaptation, including disaster risk reduction, all of us who care about reducing the awful and largely unnecessary toll of misery which follows foreseeable natural events must engage the powerful groups of decision makers, who call the shots on where and how we build and develop. This requires crafting and selling a significantly different approach to community development planning and decision-making than the ones generally in use right now in the United States. There is a very nice common ground, based on disaster risk reduction, stewardship of the earth, preservation of the community for future generations, economics, threat of liability, and other ideas which will resonate with what these decision makers really care about.

An example of the results of approaching a solution, which essentially does what is needed for adaptation, without using the highly politically charged term "Climate Change" was reported by Bloomberg News about two weeks ago:

<https://www.bloombergquint.com/onweb/2018/02/07/trump-applies-obama-era-flood-aid-rules-it-axed-six-months-ago>

The Bloomberg News article, "Trump Applies Obama-Era Flood Aid Rules He Axed Six Months Ago", produced bafflement to many of my friends in the disaster risk reduction community. I am not a bit surprised. Disasters are simply getting larger and larger, and economics and also a HUD focus on caring for the housing needs of the whole community, especially low income and other underrepresented groups really forces the sort of move taken by HUD. This very large break with the long-standing tradition of HUD making very few requirements on how local and state governments use CDBG funding is really big news. HUD was barely persuaded to make a few rules requiring some slight degree of state and local regard for disaster risk reduction following Sandy in NY, NJ and CT. HUD had absolutely disregarded calls for such measures following the Midwest Floods of 1993 and Hurricane Katrina, leaving decisions to state and local government.

We need to reach out to those who simply will not accept climate change and/or anthropogenic climate change and get them to change behavior and do

adaptation based on what they care about; not based on what we believe or care about. I think changing behavior is critical, and even more important than changing beliefs.

Therefore, I propose that there be a national effort built around the theme of “How to Craft and Sell a Disaster Risk Reduction Message.” This message should reach across the “Loathing” divide described in the Edsall op-ed, so as to achieve important changes in risk perception and risk reduction action. This proposal, like the NHMA DRR Curriculum, should be fundamentally based on the Dr. Dennis Mileti approach to changing risk perception and risk reduction actions. The Mileti approach is briefly summarized in the preface to the FEMA funded NHMA publication: *Hide from the Wind*. That publication is found at: <http://nhma.info/publications/nhma-safe-room-report/>

More about the path to fair and equitable disaster risk reduction can be found in the publications recommended on the NHMA website, especially:

NAACP's Equity in Resilience Building Climate Adaptation Indicators, by Jacqui Patterson; [funded by the Kresge Foundation Resilience Project]

Bounce Forward by Laurie Mazur; [funded by the Kresge Foundation Resilience Project]

Cassandra's Curse: The Law and Foreseeable Future Disasters by Lisa Sun et al;

Resilience: The Ultimate Sustainability, by Aris Papadopoulos; and

Design for Flooding: Architecture, Landscape, and Urban Design for Resilience to Climate Change by Don Watson and Michele Adams.

Resilience Matters: Transformative Thinking in a Year of Crisis, Edited by Laurie Mazur; [funded by the Kresge Foundation Resilience Project]

These publications are described, and in some cases available for free download, at: <http://nhma.info/resources/recommended-reading/>

There was an excellent article on a similar concept in *Governing Magazine*: *The City Preparing for Climate Change Without Ever Saying the Words*: Tulsa, Oklahoma, a conservative oil town, serves as an example of how places can overcome politics to prevent damage and save lives. By Alan Greenblatt |

November 2017. This article also appeared in the Nov-Dec edition of the NHMA Newsletter available at: www.nhma.info

We also need to get good hazards information to the public. My fundamental thought with respect to flood risk information is that while we sure need to try to inform folks of foreseeable natural risks, especially flooding, FEMA Flood Insurance Rate Maps have not proven to be well suited to such a purpose. They dreadfully underrepresented true and foreseeable flood risk for many reasons. This is particularly the case with respect to levees.

We really need to change the design concept of FIRMs from insurance risk rating to Flood Awareness.

Even in the bluest of blue states, like Massachusetts and New York, many of the folks who drive decisions about what, when, where and how to build are very conservative, at least about maximizing personal profits.

While NHMA recommends building 4 feet above FEMA calculated base flood levels (BFE), NYC has strongly resisted. Prior to Sandy NYC had its own version of the NY State Building Code that required 0 ft. of freeboard above BFE; while the rest of NY required 2 feet of freeboard above BFE. Now, NYC is strongly resisting changes in BFE to reflect Sandy and also climate change. See, e.g.:

<https://www.nytimes.com/2018/01/07/nyregion/new-york-city-flood-maps-fema.html>

The last time I checked, Massachusetts law still prevents local governments from requiring freeboard above FEMA BFE; despite the reality that those BFEs do not reflect climate change.

The very real and pressing conflict between economics & short-term profits and also real concern about affordability of insurance vs. long term stewardship, future quality of life, resilience and climate adaptation is a problem for the whole nation. I believe that the solution to that problem involves seriously and systematically rethinking our national approach to supporting all development including the most poorly designed and dangerously sited development through the federal tax code; and totally and systematically redesigning our system of disaster relief so that it both provides the smoothest, most efficient path to recovery and also does so in a manner designed to reduce future disaster risk & consequence, as well as

reduce greenhouse gases and otherwise provide the best stewardship of our resources.

Such a solution would be legally, morally and ethically correct, be in accord with fundamental principles of equity, fairness and stewardship of the Earth and all her creatures.

In 2009 and 2017 the American Bar Association formally adopted Resolutions and Reports which I believe helps us map out an approach toward this Road to Resilience.

The ABA Board of Governors is on record as strongly supporting the goals and concept of reducing the toll of disasters through hazard mitigation: land use building codes and insurance.

In February, 2017 the American Bar Association House of Delegates, the governing body of ABA, unanimously adopted a Resolution sponsored by the ABA Committee on Disaster Response and Preparedness and the ABA Section of State and Local Government Law. This Resolution states:

“RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to adopt standards, guidance, best practices, programs, and regulatory systems that make communities more resilient to loss and damage from foreseeable hazards and also recognize property rights, affordable risk mitigation, the interests of taxpayers, and protection of the environment.

FURTHER RESOLVED, That the American Bar Association urges lawyers and law firms, federal, state, local, territorial, tribal and specialty bar associations, businesses, and other professional and nonprofit organizations to advocate for and actively participate in community resilience initiatives.”

In addition, in 2009, the ABA Board of governors adopted a multi part Resolution concerning disasters. Particularly on point to this discussion are Resolutions 107E and 107F. We can send copies of these resolutions to anyone who so desires.

Resolution 107 E was summarized as indicating: “This recommendation recognizes that an important step toward motivating insurance companies to

return to higher risk coastal areas is to reduce the amount of exposure by lowering the potential for severe damage to homes and business properties.

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 coverage's."

Resolution 107F is summarized as indicating: "This recommendation focuses on federal activity to mitigate losses from megacatastrophes."

The federal government is asked to accomplish the following:

- Promulgate federal standards requiring damage-resistant building codes for new construction to reduce catastrophic loss exposure, and vigorously enforce those codes. The codes would be tailored to match the risks of a region. For example, a home in Minnesota would not have to withstand hurricane-force winds (although it might have to withstand tornado-force winds).
- Develop land use policies that discourage construction in areas difficult to evacuate or that pose unusually high risk to personal safety or property loss."

I think that the ABA is on the right track with these recommendations. Right now, several folks within the American Bar Association, State and Local Government Section are working on a Resilience Task Force which includes an outreach effort to promote resilience through better local and state standards of zoning and construction.

Other observations:

We need much higher standards of community development and planning so that we avoid disasters in the first place.

The need to reduce disaster losses is even more of a concern in light of changes in the Tax Code. See, e.g., Governing, *"How the New Tax Law Could Slow Disaster Recovery in Small Towns,"* February 16, 2018, available at:

<http://www.governing.com/topics/transportation-infrastructure/gov-tax-overhaul-gop-casualty-loss-deductions-natural-disasters.html>

Our approach must also address the question: "Since most natural events are foreseeable and damages from these events are usually preventable, how can we reduce such losses and avoid litigation?"

This question has been extensively researched by Dr. Jon Kusler, Samantha Medlock and ET among others. Related research by Professors Lisa Sun and John Marshall is also very much on point.

The Kresge Foundation work in Detroit and other areas is making enormous strides in building resilience through development of social capital. We need to look to such examples as we move forward.

We have a significant barrier in that there is a fundamental lack of understanding on the part of hazard mitigators, emergency managers, researchers, and many folks involved in disaster risk reduction of community development principles; economics, especially externality; the law; engineering and architectural standards of care; and negotiations and communication with those who do not agree with our beliefs.

We must put into practice the wise observation of the United States Supreme Court:

"Insisting that landowners internalize the negative externalities of their conduct is a hallmark of responsible land-use policy, and we have long sustained such regulations against constitutional attack.

Koontz v. St Johns River Water Management District, 133 S. Ct. 2586 (2013)

Confucius is reported to have indicated that:

“By three methods we may learn wisdom: first, by reflection, which is noblest; second, by imitation, which is easiest; and third, by experience, which is the most bitter.”

We in the United States seem to have added a fourth method, far more bitter than Confucius’s third method of experience: we experience but do not learn.

I am not sure we have learned much from the 2017-2018 disaster season; although the many recent innovations by FEMA and the HUD action noted above, coupled with the truly heroic measures being taken by so many state and local governments, private foundations, private individuals such as the “Cajun Navy”, NGOs and businesses, do give a glimmer of hope.