



Floodplain Management and Sustainable Development: Looking at Total Water Resources

On Behalf Of:

**The State of New York
Commissioner's Flood Summit
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Kingston, New York**

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Baker

Land Use Regulations Are Local Within A State and Federal Context

**The Views Expressed Are Those of the
Author and Do not Necessarily Reflect
Approval Of Any Organization.**

- **This is Not Legal Advice – It is a Lecture
on General Principles of Law and
Engineering. For Legal Advice see a
Lawyer Licensed in Your Jurisdiction.**

To Set the Stage For Our Brief Discussion on Land Use-Sustainability-Liability and Water Resources

- **Lets Discuss Some Basics of Law**
- **In the Law-Especially Criminal Law Attorneys Often Seeks to Identify Someone Else to Take the Blame**
- **Often Called SODDI-Some Other Dude Did It**
- **On the TV show “The Practice” it Was Called “Plan B”**
- **The SODDI for Increased Flood**

Mother Nature



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 The Facts:**
 - **“Floods are Acts of Nature; But Flood Losses Are Largely Acts of Man”**
- **Excellent Lecture by Dr. Roger Pielke Jr. at Natural Hazards Conference:**

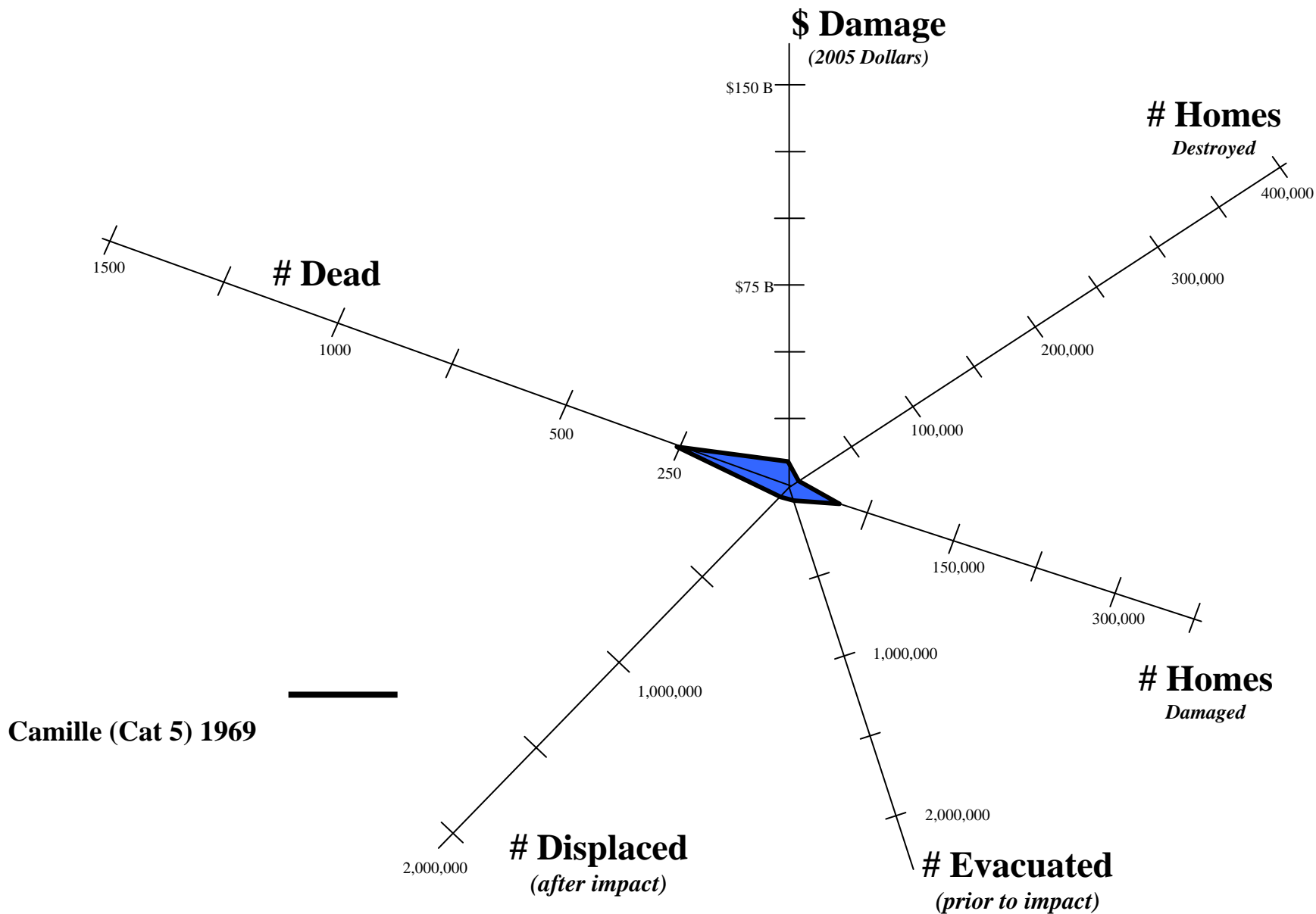
Cause of increased Flood Loss Is Changes in Density and Cost/Type of Buildings in Hazardous Areas

- **Among of the Most Clear Lessons of The Horrific Aftermath of Hurricane Katrina:**
 - **We Need Housing for Employees to Have Businesses and Industry – to Have an Economy**
 - **There Is No Possibility of A Sustainable Economy Without Safe Housing and Safe Locations for Business and Industry to Occupy**

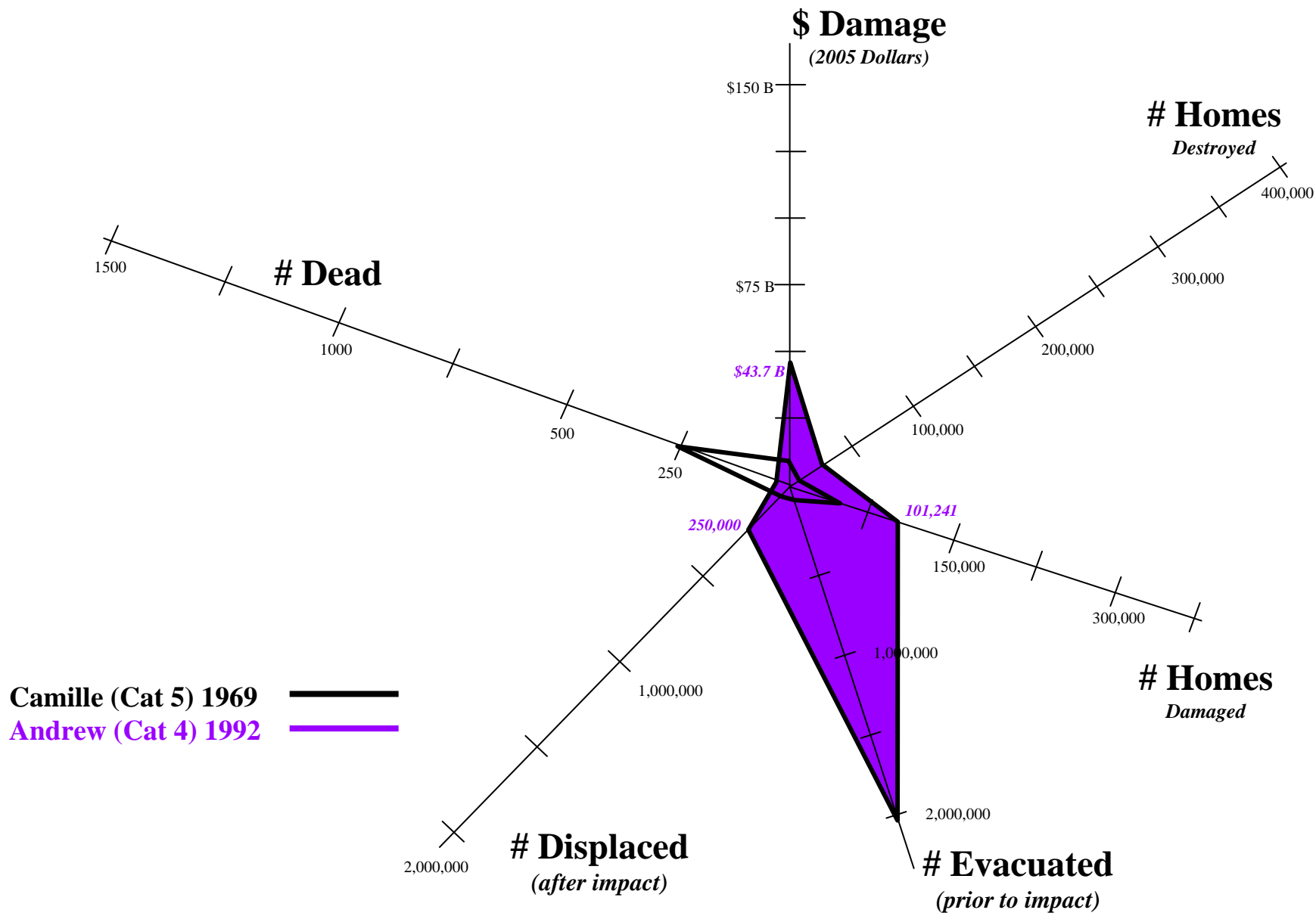
Must Sustainability Or “Smart-Growth” Have A Foundation in Hazard Mitigation?

- **The Spring 2007 Edition of The Urban Lawyer Contains an Article Which Summarizes the Views of 16 of the Leading Gurus of the “Smart Growth” Movement**
- **A Total of 135 Separate Principles**
- **None Refer to Hazards Specifically**
- **A Very Few Refer to Protecting Natural Resources**
- **Gabor Zovanyi is the Author; Article is The Role of Smart Growth Legislation in Advancing the Tenets of Smart Growth**

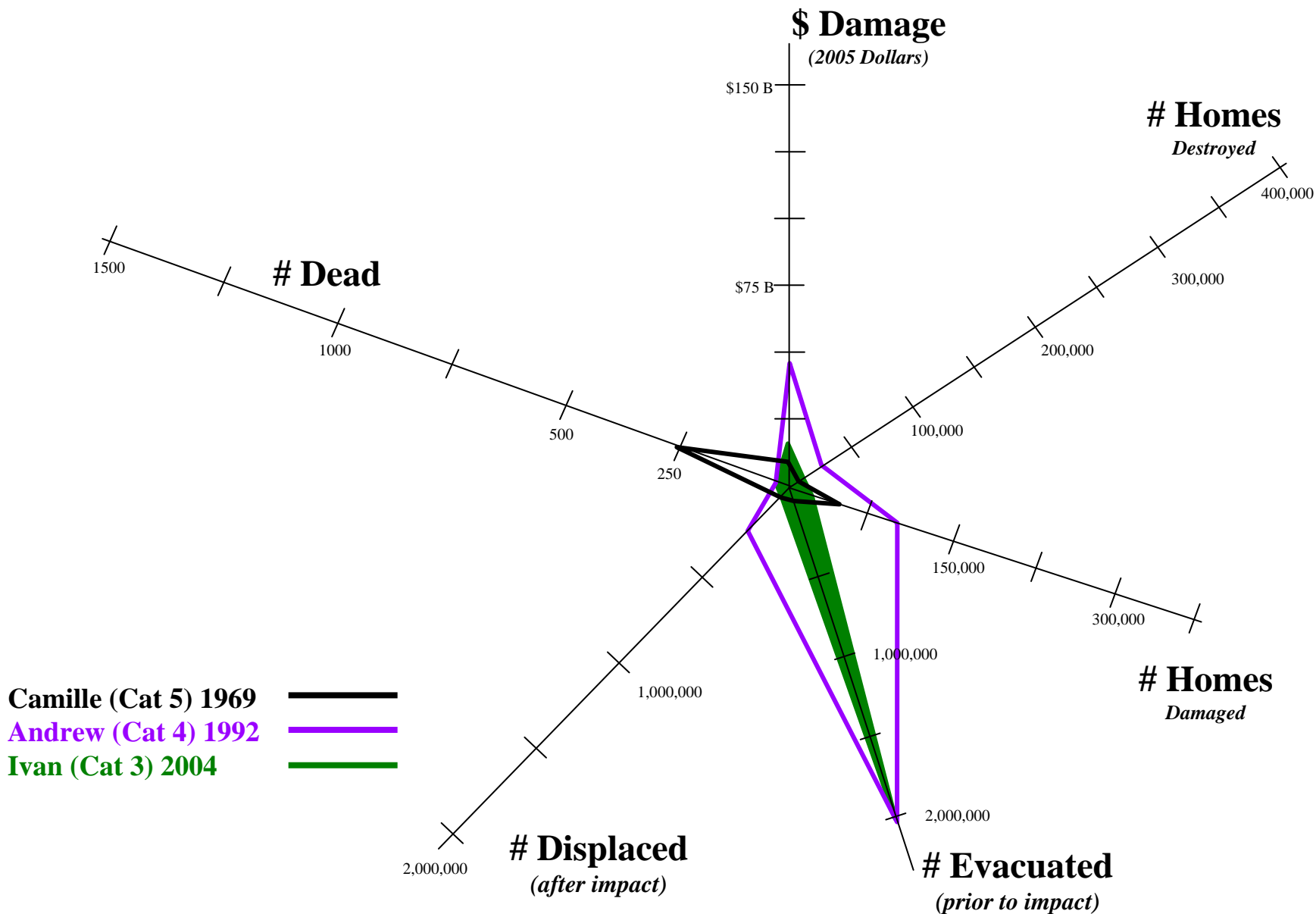
Hurricane Camille



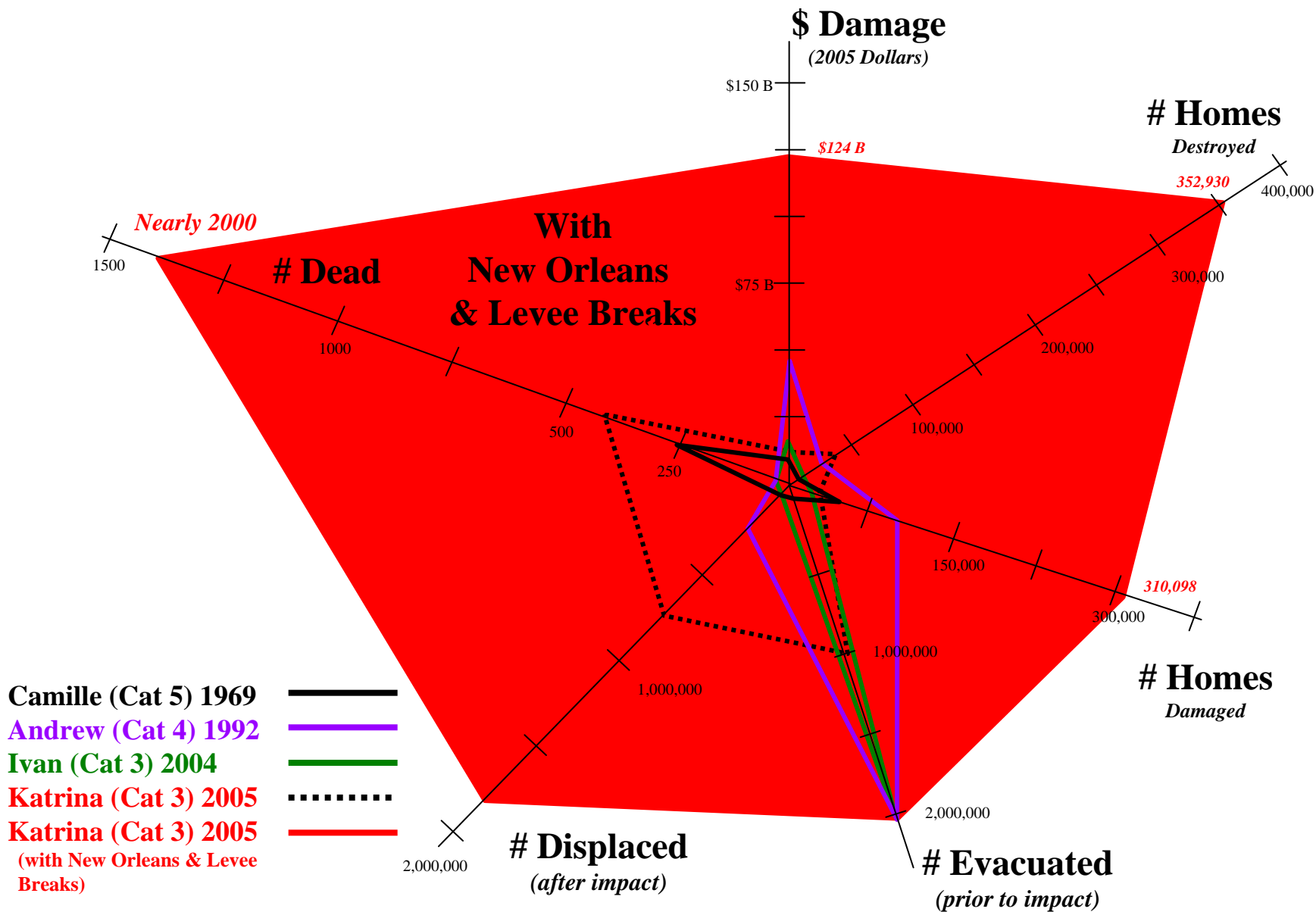
Camille and Andrew

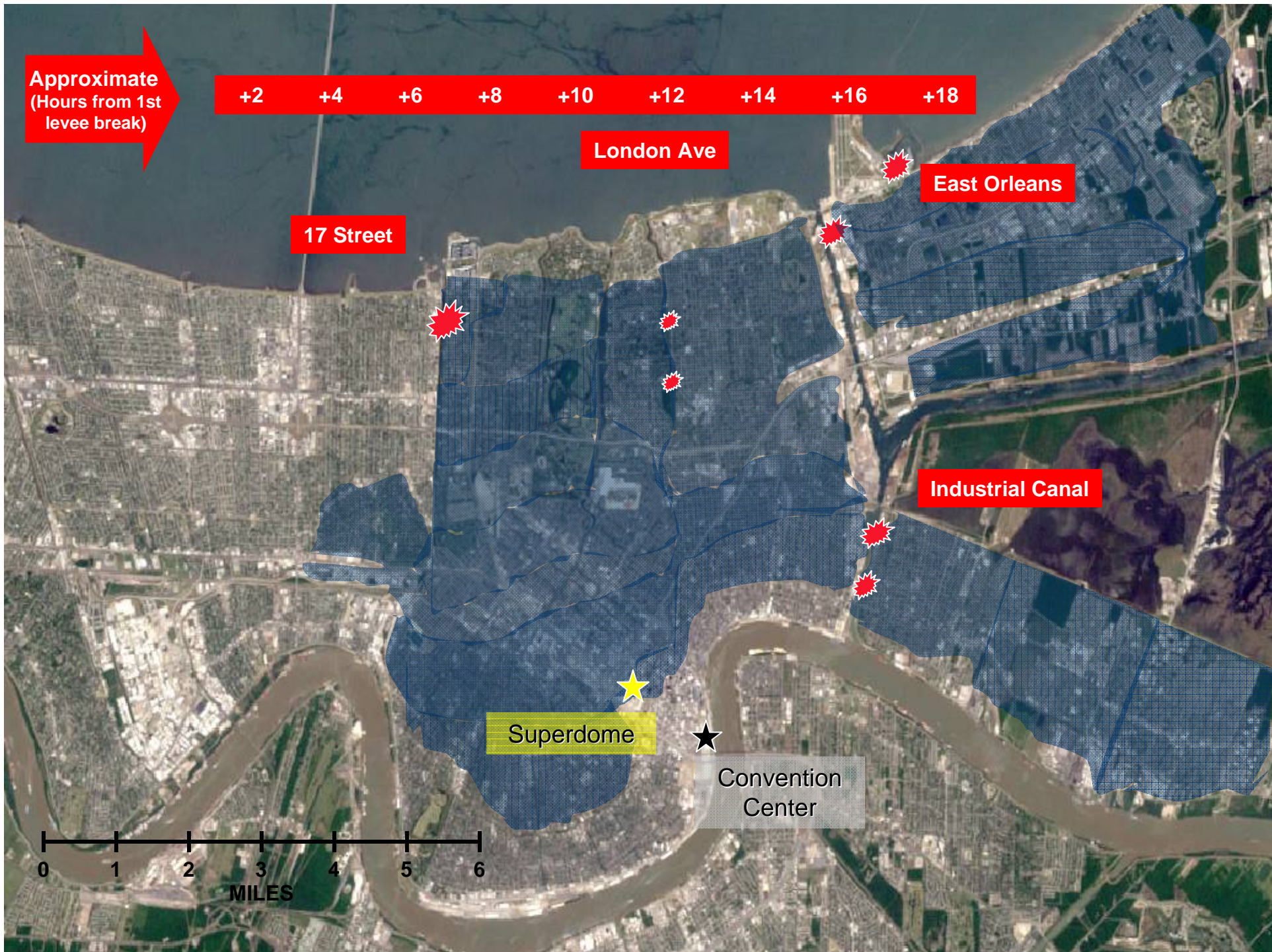


Camille, Andrew and Ivan

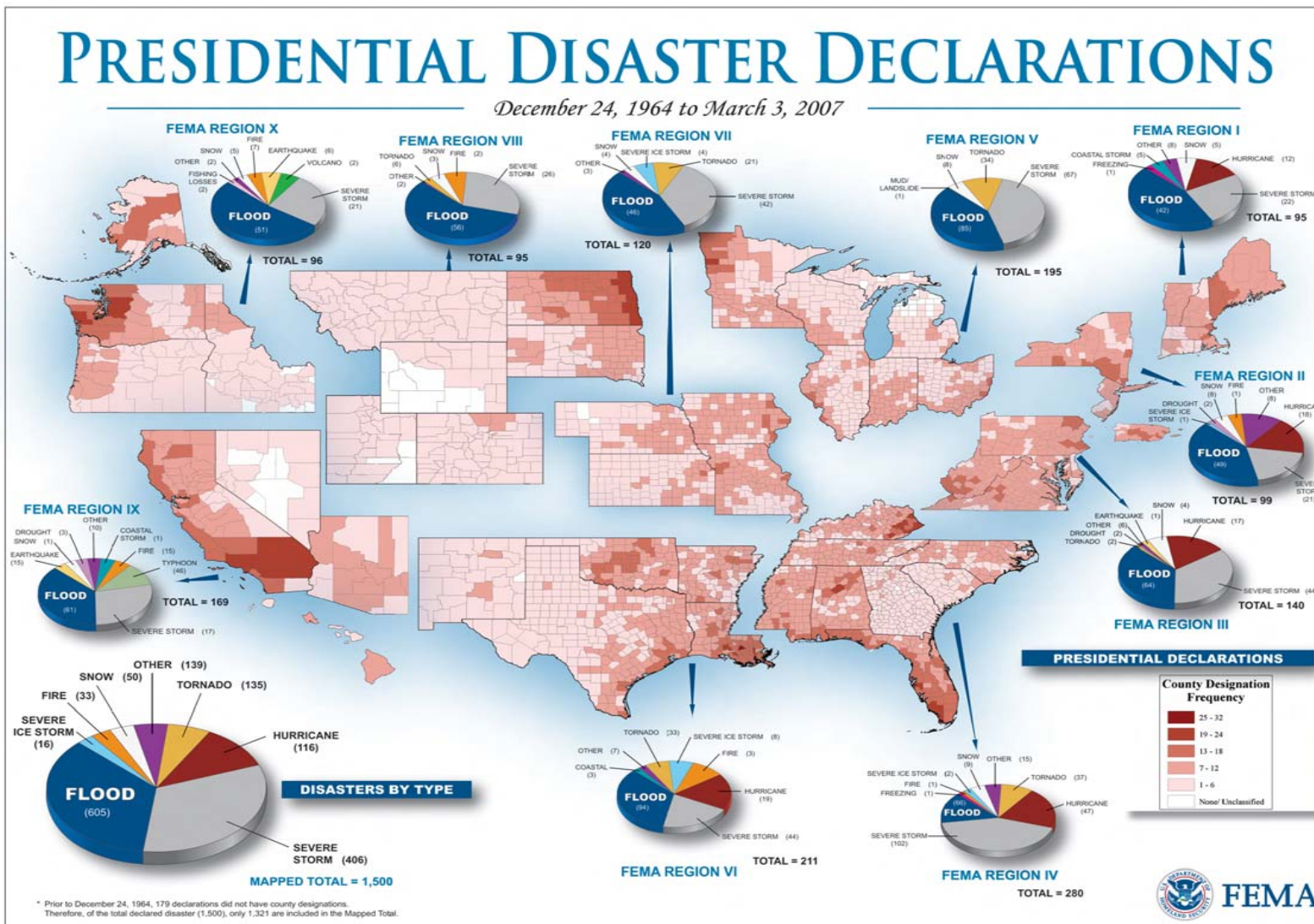


Katrina & Rita w/o New Orleans





However, Things Are Not So Bad In New York, Yet!

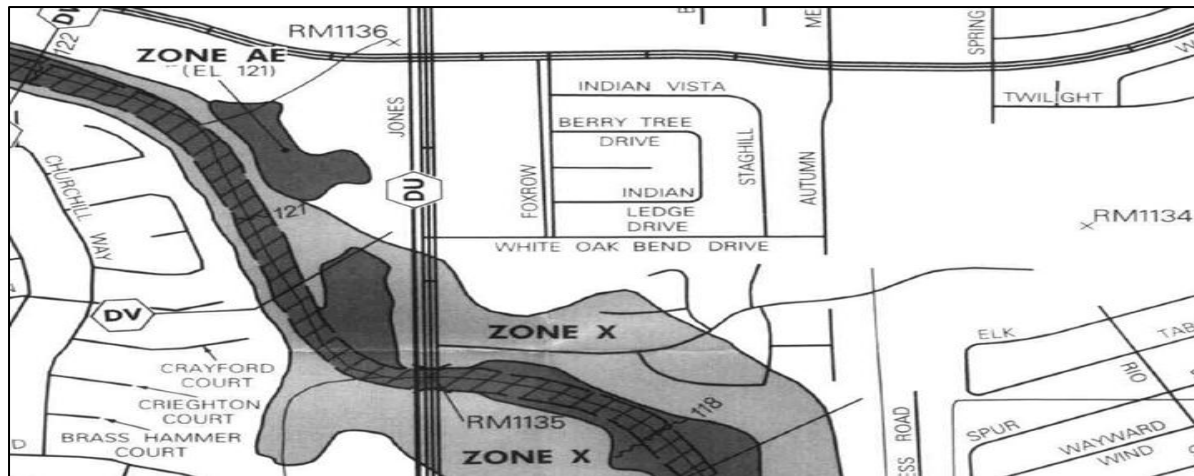


Central Message

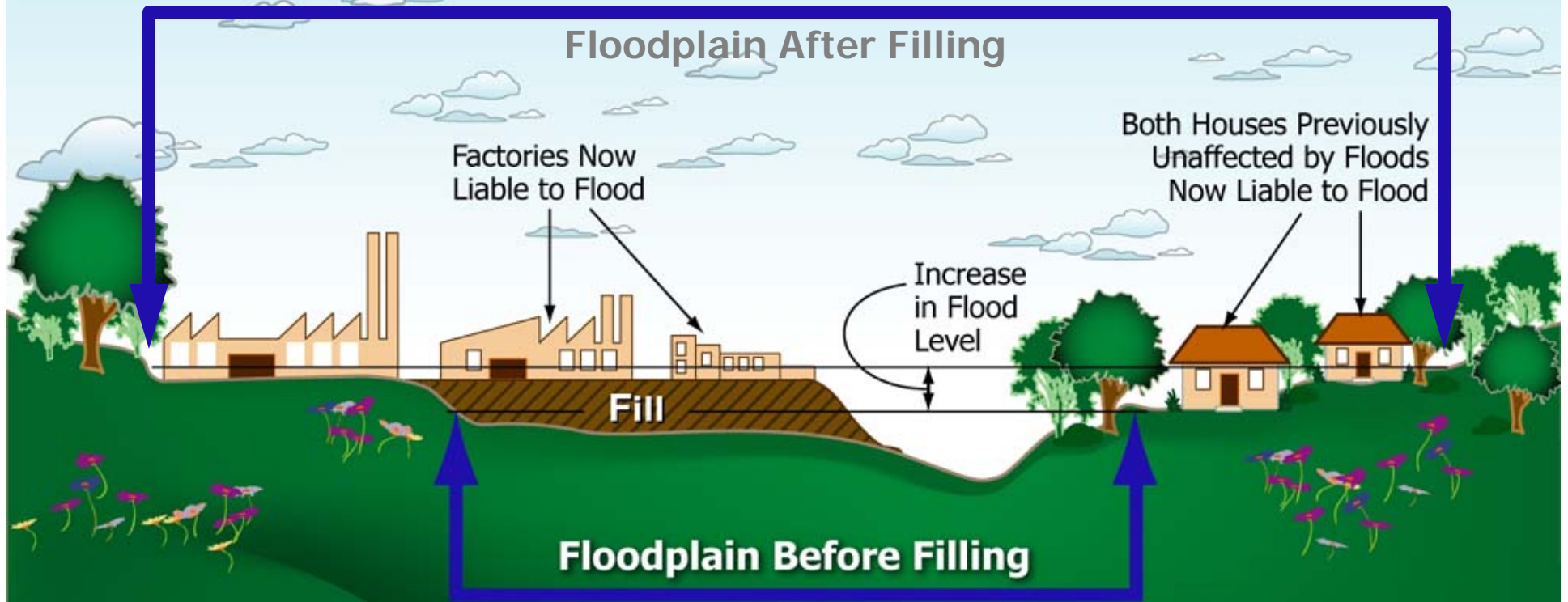
**Even If We Perfectly
Implement Current Minimum
Standards,
Damages Will Increase.**

Remember, we have done a number of positive things,
both non-structural and structural, but...
We'll discuss why that is...

Where is the Floodplain?



Today's Floodplain Is Not Necessarily Tomorrow's Floodplain



**If large areas of the floodplain are filled, then there will be an increase in the land area needed to store flood waters.
This means your home or business may be impacted.**

With Full Build Out Flood Heights May Increase Dramatically

- **No Adverse Impact:**
 - **A New Direction in Floodplain Management Policy**
 - **Larry Larson PE, CFM and Doug Plasencia PE, CFM**
 - **Published in Natural Hazards Review Nov. 2001, IAAN 1527-6988**

What is A Watershed?

A watershed is an area of land that drains into a lake or river. As rainwater and melting snow run downhill, they carry sediment and other materials into our streams, lakes, and groundwater. The image below is a watershed illustration.



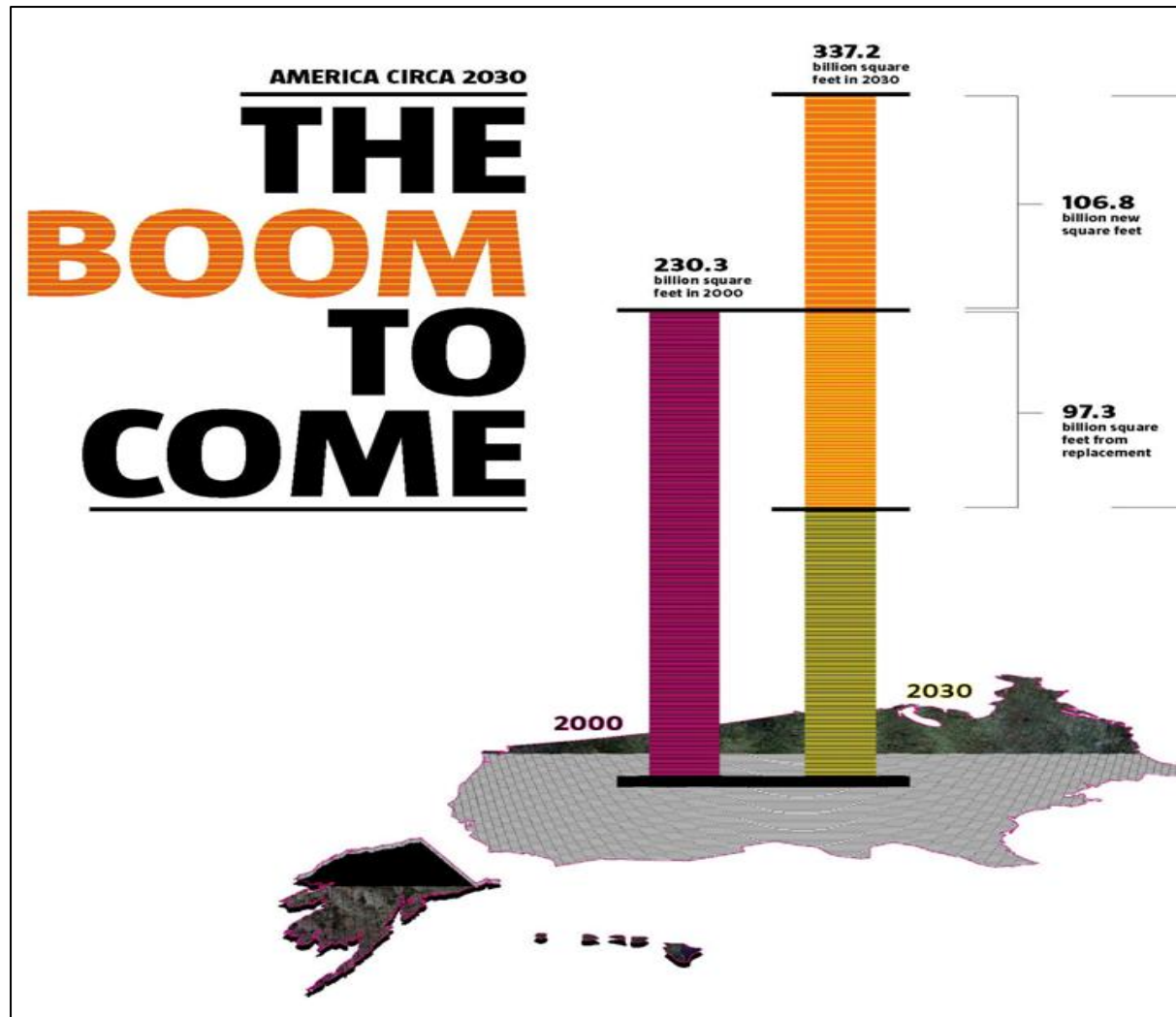
Watersheds provide water for drinking, irrigation, and streams. Many people also enjoy the lakes and streams for their beauty -- and for boating, fishing, and swimming. Healthy watersheds also provide food and shelter for wildlife.

Demographic Trends: The Future

- **As We Move Into the Next Generation Things Will Be Much More Challenging For Floodplain and Stormwater Managers**
- **Dr. Arthur “Chris” Nelson, FAICP**
- **Leadership in a New Era**
- **“More than half of the built environment of the United States we will see in 2025 did not exist in 2000”**

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Vol. 72, No. 4, Autumn 2006.

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As printed in www.architectmagazine.com

- **Chris Nelson Tells APA Convention That:**
- **In the Next One Hundred Years the US Population Will Grow To:**
- **Any Guesses?**
- **Does 100 Years Have Any Special Meaning To Us?**

- **Go Beyond NFIP Minimum Standards**
 - **No Adverse Impact-Community Rating System Rewarded Type Watershed Management:**
 - **Development Decision-making**
 - **Planning**
 - **Emergency Preparedness**

No Adverse Impact Floodplain Management

- **What is No “Adverse Impact Floodplain Management”?**
- **ASFPM Defines it as “...an Approach that ensures the action of any property owner, public or private, does not adversely impact the property and rights of others”**

Why Go Beyond the Current Minimum Standards?

Flood damages are rapidly increasing unnecessarily!

Current approaches deal primarily with how to build in a floodplain vs. how to minimize future damages

What is the Result of Following the No Adverse Impact Principle?

- **With NAI, the Persons Who May be Victimized By Improper Development Are Made Aware and Can Have their Concerns Voiced to Community Officials.**
- **Really Turns the Usual Development Process Around!**

What Is The Result Of Following The No Adverse Impact Principle?

- **PROTECTION OF THE PROPERTY RIGHTS OF ALL**
- **Legally Speaking, Prevention of Harm is Treated Quite Differently Than Making the Community a Better Place.**
- **Prevention of Harm to the Public Is Accorded Enormous Deference by the Courts**

No Adverse Impact Floodplain Regulation

- **Consistent with the Concept of Sustainable Development**
- **Provides a Pragmatic Standard for Regulation**
- **Complements Good Wetland and Stormwater Regulation**
- **Makes Sense on a Local and Regional Basis**
- **May be Rewarded by FEMA's Community Rating System, Especially Under the New CRS Manual**

No Adverse Impact Floodplain Management

- **New Concept?**
- ***“Sic utere tuo ut alienum non laedas”***
- **Detailed Legal Paper by Jon Kusler and Ed Thomas available at: www.floods.org**
- **More Information in ASFPM**
- ***A Toolkit on Common Sense Floodplain Management* at: www.floods.org**



- **NO ADVERSE IMPACT AND THE COURTS: PROTECTING THE PROPERTY RIGHTS OF ALL**
- **Prepared for the Association of State Floodplain Managers**
- **By: Jon A. Kusler, Esq. and**



The Impediments To Proper Floodplain and Watershed Resources Management

- **Externality**

The Problem of Externality

- **When One Group Pays Maintenance or Replacement of Something Yet Different Person or Group Uses That Same Something, We Often Have Problems**
- **Classic Example Is a Park Bench**
- **Disaster Assistance Is Another Classic Example of Externality**
- **Who Pays For Disaster Assistance?**
- **Who Benefits?**

Who Pays For Disaster Assistance?

- **Costs of flooding are usually largely borne by:**
 - a) **The Federal and Sometimes the State Taxpayer Through IRS Casualty Losses, SBA Loans, Disaster CDBG Funds, and the Whole Panoply of Federal and Private Disaster Relief Described in Ed Thomas's Publication "Patchwork Quilt (Located at: http://www.floods.org/PDF/Post_Disaster_Reconstruction_Patchwork_Quilt_ET.pdf)**
 - b) **By Disaster Victims Themselves**

Cui Bono? (Who Benefits?)

- **At Least the Short Term Benefits of Unwise or Improper Floodplain Development Flow to:**
 - a) **Developers (profit on sale and occupancy)**
 - b) **Local Governments (Real Estate and Sales Taxes-Jobs etc.)**
 - c) **State Government (Some Sales Tax-Jobs etc.)**
 - d) **Mortgage Companies (Profits On Loans etc.)**
 - e) **The Occupants of Floodplains Who**

Why Should Government Do Something About This?

- **Fundamental Duty**
- **Protect The Present**
- **Preserve A Community's Future**