COMMON LEGAL QUESTIONS:

LANDOWNER LIABILITY FOR DRAINING OR FILLING WETLANDS

Prepared by:

Jon Kusler
Association of State Wetland Managers, Inc.

In Cooperation With:

The International Institute for Wetland
Science and Public Policy

PREFACE

The following guide addresses frequently asked questions with regard to the liability of public or private landowners for filling or draining wetlands pursuant to various common law legal theories such as nuisance, trespass, and violation of riparian rights. It is designed for lawyers, landowners, local, state, and federal government officials, the staffs of land trusts and other environmental organizations, consultants, and others. This summary represents the general law of the land and not necessarily that of a specific jurisdiction. We suggest that you contact a local lawyer if you want more definitive advice concerning the law of a particular state.

The summary is based upon a series of legal studies including the preparation of a legal report for the Association of State Floodplain Managers: Kusler, J. 2004. No Adverse Impact Floodplain Management in the Courts, Association of State Floodplain Managers, Madison, Wisconsin. http://www.floods.org/NoAdverseImpact/NAI_AND_THE_COURTS.pdf#search='No%20Adverse%20Impact%20Floodplain%20Management. This research included a broad review of wetland and floodplain cases in 2003 carried out by the author and by Todd Mathes, a law student at the Albany Law School. See also Kusler, J. 2004, Wetland Assessment in the Courts, Association of State Wetland Managers, Inc., Berne, N.Y. http://www.aswm.org/propub/courts.pdf

Preparation of this guide was funded by the U.S. Environmental Protection Agency, Region 2, Division of Wetlands. However, the opinions expressed are those of the author and not the sponsoring agency.

Photos in this report are mostly derived from websites. Please let us know if you do not wish your photo to be included in this brochure.

Cover photo by Jon Kusler, Association of State Wetland Managers, Inc., Berne, NY

Photo on page 1 b y Leif Skoogfors, FEMA Photo Library

Photo on page 4 by USDA Natural Resources Conservation Service, Missouri

Photo on page 6 by Town of Estes Park
http://www.estesnet.com/82flood/Lawn%20Lake%20Story%20p5.htm

Photo page 7 by Lynn Betts. 1999. USDA Natural Resources Conservation Service

COMMON QUESTIONS:
LANDOWNER LIABILITY FOR DRAINING OR FILLING WETLANDS

May a private landowner or governmental unit be liable for damages for filling or draining a wetland with resulting flood or erosion damage to other properties?

A. In some instances, yes. Courts have increasingly held governments and private individuals liable for increasing flood and erosion damages on other properties. They may be held liable for increasing flood and erosion damages if they block natural drainage into or through a wetland through fills or structures. They may also be held liable for increasing the location and amount of runoff through channelization or drainage works, or constructing flood control works such as levees and dams.

For cases holding a private or public landowner who drains or fills a wetland and increases flooding or erosion on other lands legally liable to the damaged landowner, see, for example, Hendrickson v. Wagners, Inc. 598 N.W.2d 507 (S.D., 1999) (Injunction granted by the court to require landowner who drained wetlands with resulting flooding of servient estate to fill in drainage ditches.); Boren v. City of Olympia, 112 Wash. App. 359, 53 P.3d 1020 (Wash. 2002) (City was possibly negligent for increasing discharge of water to a wetland which damaged a landowner.); Snohomish County v. Postema, 978 P.2d 1101 (Wash. 1998) (Lower landowner had potential trespass action against upper landowner who cleared and drained wetland.); Lang et al v. Wonnenberg et al, 455 N.W.2d 832 (N.D., 1990) (Court upheld award of damages when one landowner drained a wetland resulting in periodic flooding of neighboring property.); Janice J. Cook &a. v. John D. Sullivan &a, 829 A.2d 1059 (N.H., 2003). (Landowner successfully sued adjacent landowner for filling a wetland and building a house in a jurisdictional wetland without a permit which resulted in flood damages. The court found that the house and fill were a nuisance and ordered removal of the fill and house.). In some instances the government agency permitting an activity which damages other property may also be liable. See discussion below. See, for example, Hurst v. United States, 739 F. Supp. 1377 (D.S.D. 1990) the U.S. Army Corps of Engineers (Corps) and cases cited below.

Is landowner liability for draining or filling wetlands important to the validity of wetland protection regulations?

A. Yes. Landowner legal liability for draining or filling wetlands is important to wetland regulations for several reasons. First, landowner legal liability to other landowners may discourage landowners from violating wetland protection regulations which prohibit fills and other activities which may result in increased flood and erosion damages to other landowners.

Building in a wetland may result in landowner liability

Second, courts consider common law rights and duties in determining the Constitutional validity of wetland regulations. Regulation of activities which would create a common law nuisance, violate private water law rights, or constitute negligence is not a taking of private property since no landowner has a right to violate the rights of other landowners. Regulations do not "take" private property where the "principles" of state property and nuisance limit landowner use of the property. See discussion below.

What are the legal theories or "grounds" for liability for increasing flood or erosion losses on other lands?

A. Courts have held private individuals and government units liable for increasing flood or erosion damage on other lands under a variety of legal theories outlined in Box 1 including riparian rights, nuisance, trespass, negligence, and strict liability. Governmental units have also been held liable for "taking" private property without payment of just compensation if such units increase flood or erosion damages.

Box 1
Legal Theories or Grounds for Liability

- **Nuisance.** At common law, no landowner (public or private) has a right to use his or her land in a manner that substantially interferes, in a physical sense, with the use of adjacent lands. See, e.g., Sandifer Motor, Inc. v. City of Rodland Park, 628 P.2d 239 (Kan., 1981) (Flooding due to city dumping debris into ravine which blocked sewer system was a nuisance.). "Reasonable" conduct is usually no defense against a nuisance suit although reasonableness is relevant to a determination of nuisance in some contexts and the types of relief available.

- **Trespass.** At common law, landowners can also bring trespass actions for certain types of public and private actions which result in physical invasion of private property such as flooding or drainage. See Hadfield v. Oakleim County Drain Com'r, 422 N.W.2d 205 (Mich., 1988). There are several different types of "trespass" (trespass and "trespass on the case"). An extensive discussion of the law of trespass with all of its nuances is beyond the scope of this guide.

- **Violation of Riparian Rights.** At common law, riparian landowners enjoy a variety of special rights incidental to the ownership of riparian lands. These rights or "privileges" include fishing, swimming, and construction of piers. Riparian rights must be exercised "reasonably" in relationship to the reciprocal riparian rights or other riparians. Courts in some instances have held that construction of levees, dams, etc. by one riparian which increase flood damages on other lands are a violation of the riparian rights of other riparians. See Lawden v. Bosler, 163 P.2d 957 (Okla., 1945).

- **Violation of the Law of Surface Water.** Under the rule of "reasonable use" (or some variation of it) in most states landowners cannot, at common law, substantially damage other landowners by blocking the flow of diffused surface waters, increasing that flow, or channeling that flow to a point other than the point of natural discharge. Courts have applied these rules to governmental units as well as private landowners and have, in some instances, applied even more stringent standards to governmental units. See, for example, Wilson v. Ramacher, 352 N.W.2d 389 (Minn., 1984).

♦ **Strict Liability.** Courts, in a fair number of states, have held that landowners and governments are “strictly liable” for the collapse of dams because impoundment of water, following an early English ruling, has often been held an “ultrahazardous” activity. Private and public landowners are liable for damages from ultrahazardous activities even when no negligence is involved.

♦ **Negligence.** At common law, all individuals (including public employees) have a duty to other members of society to act "reasonably" in a manner not to cause damage to other members of society. "Actionable” negligence results from the creation of an unreasonable risk of injury to others. In determining whether a risk is unreasonable, not only the seriousness of the harm that may be caused is relevant, but also the likelihood that harm may be caused." The standard of conduct is that of a “reasonable man” in the circumstances. Negligence is the primary legal basis for public liability for improper design of hazard reduction measures such as flood control structures, improperly prepared and issued warnings, inadequate processing of permits, inadequate inspections, etc. See e.g., Kunz v. Utah Power and Light Company, 526 F.2d 500 (9th Cir., 1975).

♦ **Denial of Lateral Support.** At common law, the owner of land has a duty to provide “lateral support” to adjacent lands and any digging, trenching, grading, or other activity which removes naturally occurring lateral support is done so at one’s peril. Construction of roads, bridges, buildings, and other public works may deny lateral support to adjacent lands causing land failures (floods, landslides, mudslides, erosion, building collapse). See discussion below; Blake Construction Co. v. United States, 585 F.2d 998 (Ct. Cl., 1978) (U.S. government liable for subsidence due to excavation next to existing buildings.)

♦ **Statutory Liability.** Some states have adopted statutes which create separate statutory grounds for action. For example, the Texas Water Code, section 11.086 makes it unlawful for any person to divert the natural flow of waters or to impound surface waters in a manner that damages the property of others. See Miller v. Letzerich, 49 S.W.2d 404 (Tex., 1932).

♦ **Inverse Condemnation or “Taking” Without Payment of Just Compensation.** Courts have quite often held governments liable for direct physical interference with adjacent private lands due to flooding, mudflows, landslides, or other physical interferences based upon a theory of “taking” of property without payment of just compensation. Government landowners but not private landowners may be liable for such a taking. Successful inverse condemnation suits have been particularly common in California. For example, see Ingram v. City of Redondo Beach, 119 Cal. Rptr. 688 (Cal., 1975) in which the court held that collapse of an earthen retaining wall maintained by the city was basis for an inverse condemnation suit. But, inverse condemnation actions have been recognized in many other states as well. See, e.g., Wilson v. Ramacher, 352 N.W.2d 389 (Minn., 1984) (flooding); McClure v. Town of Mesilla, 601 P.2d 80 (N.M., 1979) (operation of drain pipe).

May a landowner be held liable for increasing the amount or changing the location of discharge of diffused "surface" waters (in contrast with waters in a defined watercourse) from a wetland?

A. Yes, in most jurisdictions.

Under English common law, and the law of some states, private and public landowners could block or dispose of "diffused surface water" (i.e., surface water not confined to a defined watercourse, lake, or the ocean) pretty much as they wished under the "common-enemy doctrine." The common enemy doctrine was so named because "at one time surface water was regarded as a common enemy with which each landowner had an unlimited legal privilege to deal as he pleased without regard to the consequences that might be suffered by his neighbor...." Butler v. Bruno, 341 A.2d 735 (R.I., 1975). However the common enemy doctrine has been judicially or legislatively modified in all but a few states so that anyone (public or private) substantially increasing natural drainage flows or the point of discharge does so at his or her peril. See generally, McIntyre v. Guthrie, 596 N.E.2d 979 (Ind, 1992); Knodel v. Kassel Tp., 581 N.W.2d 504 (S.D., 1998); Annot., "Modern Status of Rules Governing Interference with Drainage of Surface Waters," *93 A.L.R.3d 1193* (2003); R. Berk, "The Law of Drainage," in, 5 Waters and Water Rights, #450 et seq. (R. Clark Ed., 1972); Kenworthy, "Urban Drainage--Aspects of Public and Private Liability," 39 Den. L.J. 197 (1962).

Two alternative doctrines to the common enemy doctrine are now applied to surface water in all but a few states. A highly restrictive "civil-law" rule has been adopted in a small number of states. The rule requires that the owner of lower land accept the surface water naturally draining onto his land but the upper owner may do nothing to increase the flow. See, Butler v. Bruno, 341 A.2d 735 (R.I., 1975). The rule is that "A person who interferes with the natural flow of surface water so as to cause an invasion of another's interests in the use and enjoyment of his land is subject to liability to the others." Id. at 737. See also Kinyon & McClure, Interferences with Surface Waters, 24 Minn. L. Rev. 891 (1940). This civil-law rule like the common enemy doctrine has, however, been somewhat modified in most of the states so that landowners may, to some extent, increase flows so long as they do so in good faith and "nonnegligently."

Flood waters are no longer a "common enemy" in most states

A third doctrine -- the rule of "reasonable use" -- has gradually replaced the common enemy and civil rules in most states. Under this rule, the property owner's liability turns on a determination of the reasonableness of his or her actions. Factors relevant to the determination of reasonableness are similar to those considered in determining riparian rights and negligence (listed below). The issue of reasonableness is a question of fact to be determined in each case upon the consideration of all the relevant circumstances. Butler v. Bruno, 341 A.2d 735, 738 (R.I., 1975).

May a governmental unit or private individual be held liable for increases in the amount or change the location of waters in a watercourse (river or stream) due to filling or draining a wetland?

A. Yes. In general courts have held governmental units and private individuals liable for substantially increasing the amount or location of flooding or erosion for waters in a watercourse (river, lake, stream) under the law of "riparian rights" which applies to water in watercourses in most states. However, riparians also have a right to take measures to protect themselves. See generally Annot., "Right of Riparian Owner to Construct Dikes, Embankments, or Other Structures Necessary to Maintain or Restore Bank of Stream or to Prevent Flood," 23 A.L.R.2d 750 (1952 with 2004 updates). The factors considered in determining "reasonableness" are similar to those used in determining whether a landowner has been "negligent" (see discussion below). Riparian rights have been interpreted, in some cases, to include the right to constructive flood and erosion protection measures so long as they do not damage other riparians.

Do courts consider wetlands part of a "watercourse" and, therefore, subject to riparian law concepts?

A. In many situations, yes. Courts have held that wetlands are parts of watercourses even if the flow of water through them is very slow or imperceptible. See, e.g., Snohomish County v. Postema, 978 P.2d 1101 (Wash.App. Div 1 1998) in which the court held that upstream landowners who drained a wetland were potentially liable for damages to a downstream landowner with a pond due to which had been damaged by increased sediment and silt. The court held that that question of whether the water was from a natural watercourse or was merely "surface" water was a jury question. The court held that the landowner could be liable for a greater discharge of water or discharge in a different manner for a natural flow. The court observed that "(t}he fact that a water course spreads out and forms a swamp does not deprive it of its character as a "natural water course" citing Alexander v. Muenscher, 110 P.2d 625 (1041); Rigney v. Tacoma Light & Water Co., 38 P. 147 1984). See also Case v. Hoffman, 54 N.W. 793 (Wis., 1893) in which the court, citing many analogous cases, held that a stream which spread out in a marshy area and flowed both below and above the surface could, nevertheless, be a watercourse.

May a governmental landowner protect itself from liability by arguing "sovereign immunity?

A. In some instances, yes. But, the sovereign immunity defense has been dramatically reduced by the courts and legislatures in most states. In addition, sovereign immunity is not a defense to a "taking" claim.

Are governmental units or private landowners protected by an "act of god" defense to flooding of other properties?

A. Increasingly no. To successfully establish an act of god defense, a government or private landowner must prove that a hazard event is both large and unpredictable. "Act of God" was, at one time a common, successful defense to losses from flooding and erosion. But, at common law, "acts of God" must not only be very large hazard events but must also be "unforeseeable". See, e.g., Barr v. Game, Fish, and Parks Commission, 497 P.2d 340 (Col., 1972). See also, Lang et. al v. Wonneberg et. al, 455 N.W.2d 832 (N.D., 1990); Keystone Electrical Manufacturing, Co., City of Des Moines, 586 N.W.2d 340 (Ia., 1998). Improved predictive capability and the development of hazard maps for many areas have limited the use of this defense.

Can a governmental unit or landowner be held liable for failing to remedy a natural hazard (such as beaver activity) which damages adjacent private lands?

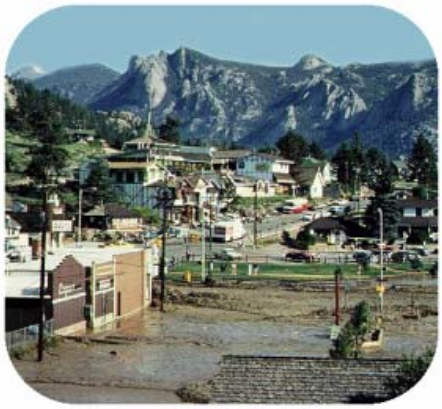
A. In general, no. See Bransford v. International Paper Timberlands Operating Company, Ltd, 750 So. 2d 424 (La. App., 2000); Bracey v. King, 406 S.E.2d 265 (Ga., App., 1991). Courts have, with only a few exceptions, not held governmental units and private individuals responsible for naturally occurring hazards on their lands such as stream flooding or bank erosion which damages adjacent lands (e.g., erosion, flooding). However, they are liable if they increase the hazards.

Might a governmental unit be held liable for issuing permits for private filling or drainage of wetlands which causes flood or erosion damages on other lands?

A. In some instances, yes. Some courts have held that the government agency permitting an activity which damages other property may also be liable. For example, in Hurst v. United States, 739 F. Supp. 1377 (D.S.D. 1990) the Corps was successfully sued by private landowners for flood and erosion damage that resulted from the Corps' issuance of a Section 10 and 404 permit for construction of jettys in a river. The court held that the Corps had negligently supervised the project and failed to issue a prohibitory order to prevent the activities causing the flood and erosion damage. See also Annot., "Liability of Government Entity for Issuance of Permit for Construction Which Caused or Accelerated Flooding", 62 A.L.R.3d 514 (1975) and many cases cited therein. See, for example, Cootey v. Sun Inv., Inc., 690 P.2d 1324 (Haw.App. 1984) in which a Hawaii court held that a county may be liable for approving a subdivision with inadequate drainage: "(I)n controlling the actions of a subdivider of land, a municipality has a duty not to require or approve installation of drainage facilities which create an unreasonable risk of foreseeable harm to a neighboring landowner, and where a breach of that duty is established, a municipality may be held liable for consequential damages". Id. at 1332. See also City of Columbus v. Smith, 316 S.E.2d 761 (Ga.App. 1984) (City may be held liable for approving construction project resulting in flooding); Pickle v. Board of County Comm'rs of Platte, 764 P.2d 262 (Wyo. 1988) (County had duty of exercising reasonable care in reviewing subdivision plan); Hutcheson v. City of Keizer, 8 P.3d 1010 (Ore., 2000) (City liable for approving subdivision plans which led to extensive flooding.); Kite v. City of Westworth Village, 853 S.W.2d 200 (Tex., 1993) (City was liable for approving subdivision plat which diverted water.).

May a governmental unit be held liable for flood damages when developers ditch or drain wetlands or construct stormwater detention facilities and dedicate the drainageways or detention facilities to the unit of government?

A. In an increasing number of cases, courts have held governmental units responsible for approving and accepting storm sewers and other facilities causing flood or erosion damages and dedicated to governmental units by subdividers or other developers. See, for example, City of Keller v. Wilson, 86 S.W.3d 693 (Tex., 2002) (City liable for approving subdivision plat and acquiring easement which increased flood damage on



Governments may be liable for issuing permits

other property.); City of Columbus v. Myszka, 272 S.E.2d 302 (Ga., 1980) (City liable for continuing nuisance for approving and accepting uphill subdivision which caused flooding.); Powell v. Village of Mt. Zion, 410 N.E.2d 525 (Ill., 1980) (Once village approves and adopts sewer system constructed by subdivision developer, village may be held liable for damage caused by it.).

Are other sellers of wetland land liable to buyers for subsequent flood and erosion damages when residences are constructed in the wetlands and the flooding problems are not fully divulged?

A. In some instances, yes. Failure to disclose flood problems has been the basis for rescission and/or damages in many real estate transaction cases. See, e.g., Beaux v. Jack Jacob, 30 P.3d 90 (Alaka, 2001) (Buyer successfully sued a seller of a home for misrepresentation and failure to disclose the necessity of using a deep sump pump to keep the home dry and prevent water infiltration into the basement.); Riley v. Hoisington, 96 S.W.3d 743 (Ark. 2003) (Court sustained a judgment for rescission of a real estate contract and damages where sellers make false statements and intentionally misrepresented prior flooding.); Hogan v. Adams, 775 N.E.2d 217 (Ill., 2002). (Court sustained a common law fraud action where a seller completed a Real Property Disclosure report which had not revealed the extent of flood problems.); Smith v. Miller Builders, Inc. et al, 741 N.E.2d 731 (Ind., 2000) (Court held be builder liable where real estate purchasers sued defendant builder alleging negligent construction of drainage facilities in subdivision and breach of implied warranty of suitability.) See, Rancourt v. Verba, 678 A.2d 886 (Vt., 1996) in which the Vermont Supreme Court held that sellers were entitled to recession of the sale of a ten acre, lakeshore lot intended to be used for lakeshore development when the lot was subject to state and federal wetland regulations. See also Montarino v. Consultant Eng'g Servs., 467 S.E.2d 778 (Va., 1996) in which the Supreme Court of Virginia held that failure to disclose wetland regulations constituted constructive fraud.

Sellers may be liable for subsequent flood problems

Liability may extend, in some circumstances to real estate brokers. See Annot., Real-Estate Broker's Liability to Purchaser for Misrepresentation or Nondisclosure of Physical Defects in Property Sold, 46 ALR4th 546 (1986).

May government units be held liable for uncompensated "takings" if they regulate private activities in wetlands which may otherwise increase flood or erosion damage on other private lands?

A. No. Courts have broadly and consistently upheld wetland, floodplain and other regulations which control activities which will increase flooding and other damages on other lands. Courts have consistently followed the maxim "Sic utere tuo ut alienum non laedas," or "so use your own property that you do not injure another's property." See Keystone Bituminous Coal Association v. DeBenedictis, 107 S. Ct. 1232 (1987) and many cases cited therein. This maxim characterizes overall landowner rights and duties pursuant to common law nuisance, trespass, strict liability, negligence, riparian

rights, surface water law rights and duties (many jurisdictions), and statutory liability. At common law, no landowner (public or private) has a right to use his or her land in a manner that substantially increases flood or erosion damages on adjacent lands except in dwindling number of jurisdictions applying the "common enemy" doctrine to diffused surface or flood waters as discussed above.

Courts have held wetland and other land use regulations not to be a taking even if they deny all economic use of all lands if the proposed activities would damage other lands. See Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886 (1992 in which Supreme Court Justice Scalia observed that no taking would occur even where regulations deny all economic use of private property if "background principals of State law of property and nuisance would prohibit proposed actives. He more specifically observed (emphasis added):

> "On this analysis, the owner of a lake bed, for example, would not be entitled to compensation when he is denied the requisite permit to engage in a landfill operation that would have the effect of flooding others' land. Nor the corporate owner of a nuclear generating plant, when it's directed to remove all improvements for its land upon discovery that the plant sits astride an earthquake fault. Such regulatory action may well have the effect of eliminating the land's only economically productive use, but it does not proscribe a product use that was previously permissible under relevant property and nuisance principles. The use of these properties for what are now expressly prohibited purposes was always unlawful, and (subject to other constitutional limitations) it was open to the State at any point to make the implication of those background principles of nuisance and property law explicit...."

Courts have broadly upheld floodplain, wetland and other regulations preventing landowners from increasing flood or erosion damages on other lands. See, e.g., New City Office Park v. Planning Bd., Town of Clarkstown, 533 N.Y.S.2d 786 (N.Y., 1988) (Court upheld planning boards denial of site plan approval because the developer could not provide compensatory flood storage for 9,500 cubic yards of fill proposed for the property. The court noted that "Indeed, common sense dictates that the development of numerous parcels of land situated with the floodplain, each displacing only a relatively minor amount of floodwater, in the aggregate could lead to disastrous consequences.); Patullo v. Zoning Hearing Bd. of Tp. of Middletown, 701 A.2d 295 (Pa. Cowlth, 1997) (Court held that landowner was not entitled to a special exception or variance for construction of a garage in a 100-year floodplain where construction would have raised flood heights by .1 foot and area of the floodplain along a road by 1 foot.); Reel Enterprises v. City of LaCrosse, 431 N.W.2d 743 (Wis., 1988) (Court held that Wis. DNR had not taken private floodplain property by undertaking floodplain studies, disapproving municipal ordinance, and announcing an intention to adopt floodplain ordinance for city putting all or most properties within floodway designation. Plaintiff had failed to allege or prove the deprivation of "all or substantially all, of the use of their property." However, the court decision was partially overruled on other grounds.); See also State v. City of La Crosse, 120 Wis.2d 263 (Wis., 1984) (Court endorsed the state's hydraulic analysis showing that fill placed in the La Crosse River floodplain would cause an increase greater than 0.1 in the height of the regional flood.)

SUGGESTED READINGS

Annot., "Liability or Indemnity Insurance Carried by Government Unit as Affecting Immunity From Tort Liability", 68 A.L.R.2d l437 (1959)

Annot., "Validity and Construction of Statute Authorizing or Requiring Governmental Unit to Idemnify Public Officer or Employee for Liability Arising Out of Performance of Public Duties", 7l A.L.R.3d 90 (1976)

Annot., "Validity and Construction of Statute Authorizing or Requiring Governmental Unit to Procure Liability Insurance Covering Public Officers or Employees for Liability Arising Out of Performance of Public Duties", 7l A.L.R.3d 6 (1976)

Annot., "Liability of Government for Issuance of Permit Which Caused or Accelerated Flooding." 62 A.L.R.3d 514 (1975)

Annot., "Liability of Municipal Corp. for Negligent Performance of Building Inspector's Duties." 41 A.L.R.3d 567 (1972)

Annot., "Liability of Municipality or Other Governmental Subdivision in Connection with Flood Protection Measures." 5 A.L.R.2d 57 (1949)

Annot., "Municipality's Liability Arising from Negligence or Other Wrongful Act in Carrying Out Construction or Repair of Sewers and Drains." 61 A.L.R.2d 874 (1964)

Annot., "Municipality's Liability for Damage Resulting from Obstruction or Clogging of Drains or Sewers." 59 A.L.R.2d 281 (1958)

Annot., "Architect's Liability for Personal Injury or Death Allegedly Caused by Improper or Defective Plans or Design," 59 A.L.R.2d 1081 (1958)

Annot., "Liability of Municipal Corporation for Damage to Property Resulting from Inadequacy of Drains and Sewers Due to Defects in Plan." 173 A.L.R. 1031 (1948)

Binder, D.B., Legal Liability for Dam Failures, Association of State Dam Safety Officials, Lexington, Kentucky (1989)

Binder, D.B., "Dam Safety: The Critical Imperative," 14 Land and Water Law Review 34l (1979)

Bosselman, F., D. Callies, and J. Banta, The Taking Issue. U.S. Government Printing Office, Washington, D.C. (1973)

Comment, "Navigable Servitude and the Right to Just Compensation", 1980 Det. Coll. L. Rev. 915

Falik & Shimko, "The "Takings" Nexus--The Supreme Court Chooses a New Direction in Land-Use Planning: A View from California", 39 Hasting L.J. 359 (1988)

Huffman, J. L., Government Liability and Disaster Mitigation: A Comparative Study, Lewis and Clark Law School, Portland, Oreg., (1985)

Keeton, W., D. Dobbs, R. Keeton, D. Own, Processor and Keeton on the Law of Torts, 5th Ed., (1984)

Kusler, J., A Perspective on Flood Plain Regulations for Flood Plain Management. U.S. Army Corps of Engineers (EP 1165-2-304), Washington, D.C. (1976)

Kusler, J., "Liability as a Dilemma for Local Managers" 45 Pub. Admin. Rev. 118 (1985)

Kusler, J. "Open Space Zoning: Valid Regulation or Invalid Taking." 57 Minn. L. Rev. 1 (1972)

Kusler, J. and T. Lee, Regulations for Floodplains. American Society of Planning Officials, Chicago, Ill. (1972)

Olshansky, R., and J. Rogers, "Unstable Ground: Landslide Policy in the United States", l3 Ecology L. Rev. 939 (1987)

Rabin, R.L. "Dealing With Disasters: Some Thoughts on the Adequacy of the Legal System," 30 Standford Law Review 28l (1978)

Sax, J. "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention." 68 Mich. L. Rev. 471 (1970)

Stone and Rinber, "Government Liability for Negligent Inspections", 57 Tul.L.Rev. 328 (1962)

U.S. Water Resources Council, Vol. 1, 2, 3 Regulation of Flood Hazard Areas to Reduce Flood Losses. U.S. Government Printing Office, Washington, D.C. (1970, 1971, 1984)

Walker, N., E. Walker and T. Rohdenburg, Legal Pitfalls in Architecture, Engineering and Building Construction, 2nd ed., McGraw-Hill Book Co., New York (1979)

SUGGESTED WEB SITES

http://cnie.org/NLE/CRSreports/Wetlands/wet-6.cfm
Meltz, R. 2000. *Wetlands Regulation and the Law of Property Rights "Takings."* Library of Congress, Congressional Research Service. Washington, D.C.

www.aswm.org
Association of State Wetland Managers, Inc. See publication list.

http://www2.eli.org/index.cfm
Environmental Law Institute on-line

http://www.aswm.org/propub/courts.pdf
Kusler, J. 2004. Wetland Assessment in the Courts. Association of State Wetland Managers, Inc. Berne, N.Y. Quite detailed examination of case law.

http://www.trcp.org/pressroom/iwla_wetlands_swancc_analysis.pdf
Range, James D. 2003. Jurisdiction Under the Clean Water Act: Implications of the SWANCC Decision. Izaak Walton League, Gaithersburg, Maryland.

http://www.usace.army.mil/inet/functions/cw/cecwo/reg/
U.S. Army Corps of Engineers. Regulatory Program. Searchable.

http://www.nrdc.org/
Natural Resources Defense Council.

http://www.hg.org/torts.html
HierosGamos. Tort Law. Comprehensive law and government web portal.

http://www.statelocalgov.net/index.cfm
State and Local Government on the Net. Many, many free sites listed state-by-state.

http://www.findlaw.com/
FindLaw. Many legal fields covered, free site.

http://stu.findlaw.com/journals/general.html
FindLaw for Students. List of law review (hot buttons) with many accessible for free online.

http://www.law.cornell.edu/opinions.html
Legal Information Institute. State Courts - by Jurisdiction.
Links to individual states and courts and full text of decisions.

http://www.usace.army.mil/inet/functions/cw/cecwo/reg/sadmin3.htm
U.S. Army Corps of Engineers. Statutory, Administrative and Judicial Materials. Many links to full text of regulations.

Association of State Wetland Managers, Inc.

1434 Helderberg Trail, Berne, NY 12023
Phone (518) 872-1804; Fax (518) 872-2171; www.aswm.org

An electronic version of this brochure is available in PDF at:
http://www.aswm.org/brochure/liability.pdf