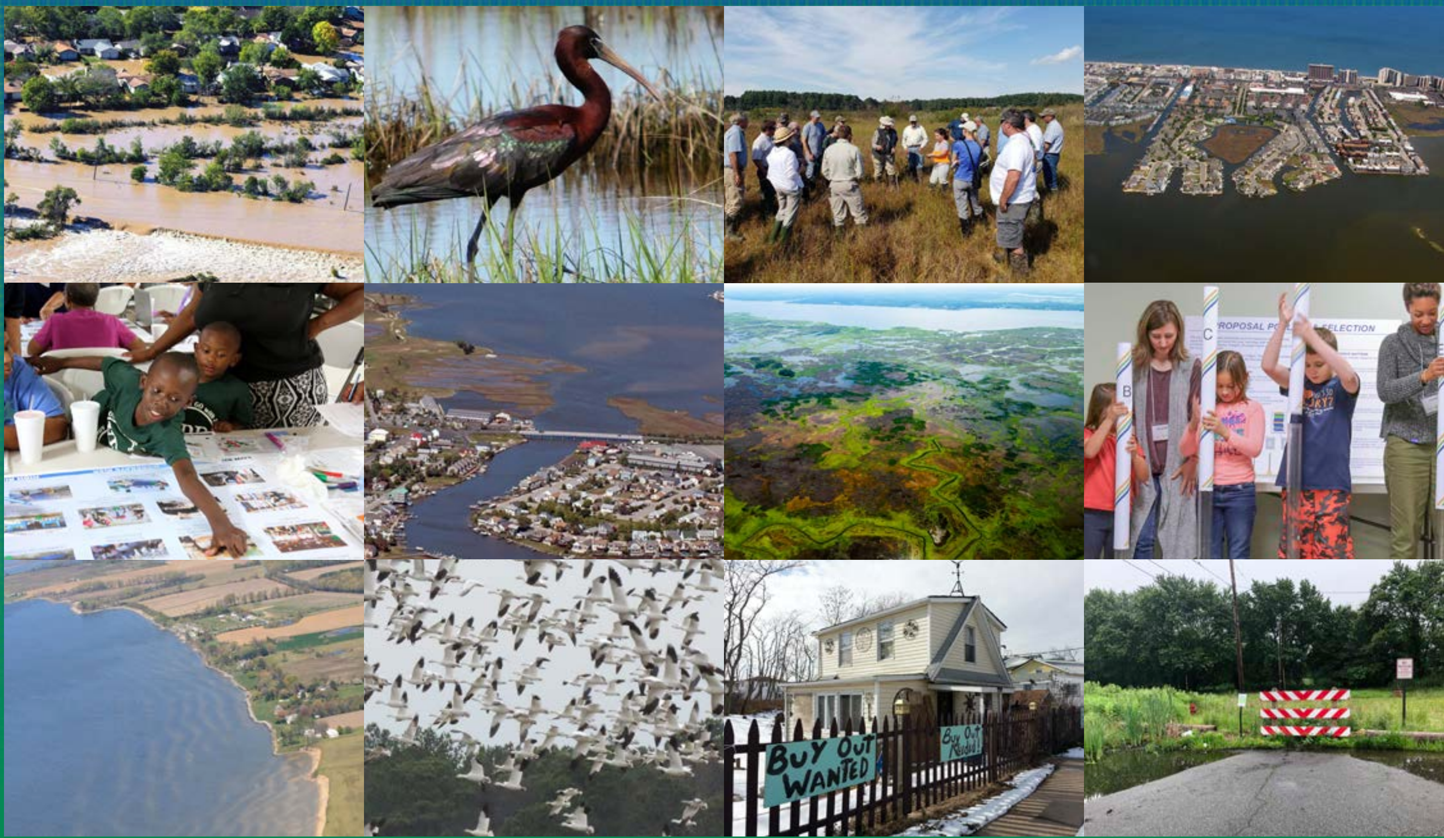
Managing the Retreat from Rising Seas

State of New Jersey: Blue Acres Buyout Program



GEORGETOWN CLIMATE CENTER

Authors

This report was written by Katie Spidalieri, Senior Associate, and Isabelle Smith, Research Assistant, Georgetown Climate Center at Georgetown University Law Center; and Jessica Grannis, Coastal Resilience Director at National Audubon Society. The *Louisiana Strategic Adaptations for Future Environments (LA SAFE)* case study was written by Jennifer Li, Staff Attorney, and Alex Love, student, Harrison Institute for Public Law at Georgetown University Law Center. Editorial and writing support were provided by Vicki Arroyo, Executive Director, and Lisa Anne Hamilton, Adaptation Program Director, Georgetown Climate Center.

Acknowledgments

The authors would like to thank the Doris Duke Charitable Foundation for its generous support and guidance, and without whom the Managed Retreat Toolkit and this case study report would not have been possible.

We are also grateful for the support of the Georgetown Environment Initiative that enabled us to bring together diverse, interdisciplinary stakeholder expertise and Georgetown University faculty to inform the development of the Managed Retreat Toolkit, including Professors Uwe Brandes, J. Peter Byrne, Beth Ferris, and Sheila Foster.

We would also like to specially thank and acknowledge the following individuals for taking the time to speak with us, review drafts, and provide insights that were invaluable in helping to inform the Managed Retreat Toolkit and these case studies: Erik Meyers, The Conservation Fund; Matt Whitbeck, U.S. Fish and Wildlife Service; Justine Nihipali, Hawaii Office of Planning Coastal Zone Management Program; Mitchell Austin, City of Punta Gorda, Florida; Kelsey Moldenke, Quinault Indian Nation; Charles Warsinske, Quinault Indian Nation; Deborah Helaine Morris, formerly New York City Department of Housing Preservation and Development, New York; Lauren E. Wang, New York City Mayor's Office of Resiliency, New York; Matthew D. Viggiano, formerly New York City Mayor's Office of Housing Recovery Operations, New York; Andrew Meyer, San Diego Audubon, California; Tim Trautman, Charlotte-Mecklenburg Storm Water Services, North Carolina; Pam Kearfott, City of Austin Watershed Protection Department, Texas; James Wade, Harris County Flood Control District, Texas; Fawn McGee, New Jersey Department of Environmental Protection; Frances Ianacone, New Jersey Department of Environmental Protection; Thomas Snow, Jr., New York State Department of Environmental Conservation; Dave Tobias, New York City Department of Environmental Protection, New York; Stacy Curry, Office of Emergency Management, Woodbridge Township, New Jersey; Sandy Urgo, The Land Conservancy of New Jersey; Joel Gerwein, California State Coastal Conservancy; Jay Diener, Seabrook-Hamptons Estuary Alliance, Hampton, New Hampshire; Kirsten Howard, New Hampshire Department of Environmental Services Coastal Program; Mathew Sanders, Louisiana Office of Community Development; Liz Williams Russell, Foundation for Louisiana; Joseph (Joe) Tirone, Jr., Oakwood Beach Buyout Committee, Staten Island, New York City, New York; and Megan Webb, King County Department of Natural Resources and Parks, Washington State.

Design:
Brent Futrell, Georgetown University Law Center Office of Communications.

Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001

GeorgetownClimate.org

Managed Retreat Toolkit

AdaptationClearinghouse.org

Cover Photo Credits:

(top row, left to right): Watershed Protection Department, City of Austin, Texas; U.S. Fish and Wildlife Service; U.S. Fish and Wildlife Service; Integration and Application Network, University of Maryland Center for Environmental Science.

(center row, left to right): State of Louisiana Office of Community Development; Integration and Application Network, University of Maryland Center for Environmental Science; Will Parson, Chesapeake Bay Program, U.S. Fish and Wildlife Service; State of Louisiana Office of Community Development.

(bottom row, left to right): Integration and Application Network, University of Maryland Center for Environmental Science; Betty Whetzel (Courtesy of U.S. Fish and Wildlife Service); Matt Green; Katie Spidalieri, Georgetown Climate Center.

Table of Contents for the Full Report

Managing the Retreat from Rising Seas: Lessons and Tools from 17 Case Studies

About This Report

As seas continue to rise and disaster events and extreme weather increase in frequency and intensity, climate change is driving state and local policymakers to evaluate strategies to adapt to various risks affecting many communities. In addition to protection (e.g., hard shoreline armoring) and accommodation (e.g., elevating or flood-proofing structures) measures, coastal governments and communities are increasingly evaluating managed retreat, where appropriate, as a potential component of their comprehensive adaptation strategies. Managed retreat is the coordinated process of voluntarily and equitably relocating people, structures, and infrastructure away from vulnerable coastal areas in response to episodic or chronic threats to facilitate the transition of individual people, communities, and ecosystems (both species and habitats) inland.

The aim of managed retreat is to proactively move people, structures, and infrastructure out of harm's way before disasters occur to maximize benefits and minimize costs for communities and ecosystems. For example, policymakers may maximize opportunities for flood and risk reduction by conserving wetlands and protecting habitat migration corridors and minimize the social, psychological, and economic costs of relocation by making investments in safer, affordable housing within existing communities.

This report is composed of 17 individual case studies. Each one tells a different story about how states, local governments, and communities across the country are approaching questions about managed retreat. Together, the case studies highlight how different types of legal and policy tools are being considered and implemented across a range of jurisdictions — from urban, suburban, and rural to riverine and coastal — to help support new and ongoing discussions on the subject. These case studies are intended to provide transferable lessons and potential management practices for coastal state and local policymakers evaluating managed retreat as one part of a strategy to adapt to climate change on the coast.

Collectively, these case studies present a suite, although not an exhaustive list, of legal and policy tools that can be used to facilitate managed retreat efforts. Legal and policy tools featured include: planning; hazard mitigation buyouts and open space acquisitions, as well as other acquisition tools like land swaps and reversionary interests; land use and zoning; and Transfer of Development Rights programs. The case studies also highlight various policy tradeoffs and procedural considerations necessitated by retreat decisions. Each jurisdiction is confronting different challenges and opportunities and has different, perhaps even competing, objectives for retreat. In addition, stakeholders in each of these cases are attempting to balance multiple considerations, including:

protecting coastal ecosystems and the environment; fostering community engagement and equity; preparing "receiving communities" or areas where people may voluntarily choose to relocate; and assessing public and private funding options and availability. The case studies included in this report were selected to reflect the interdisciplinary and complex nature of retreat decisions and underscore the need for comprehensive solutions and decisionmaking processes to address these challenging considerations.

Where possible, all of the case studies share a consistent organizational format to allow easier cross-comparison of strategies, processes, and takeaways:

- The **Background** section introduces state or local context for each case study, including the risks and hazards facing each jurisdiction and its road to considering or implementing managed retreat strategies.
- The **Managed Retreat Examples** section focuses on the legal and policy tools that have been designed and implemented to support managed retreat strategies on the ground.
- The **Environment** section highlights how floodplains and coastal ecosystems have been restored, conserved, and protected as a part of comprehensive managed retreat strategies to provide ecosystem and community benefits, like reducing flood risk and creating community assets such as parks and trails.
- The **Community Engagement** section summarizes how affected residents have been contributing to planning and decisionmaking processes for climate adaptation and managed retreat.
- The **Funding** section identifies how the programs, plans, and projects discussed have been funded by federal, state, and local government and private sources.
- The **Next Steps** section captures the anticipated future actions that jurisdictions may take in implementing these managed retreat strategies.
- The **Considerations and Lessons Learned** section concludes with the primary takeaways from each example that other coastal state and local policymakers and communities may consider when developing or implementing their own managed retreat strategies using these legal and policy tools.

The case studies in this report were informed by policymakers, practitioners, and community members leading, engaging in, or participating in the work presented in this report. No statements or opinions, however, should be attributed to any individual or organization included in the *Acknowledgements* section of this report. It is also important to note that the programs and planning processes described in each case study are ongoing and the content included in this report is current as of early 2020. Future updates about these case studies will be captured in Georgetown Climate Center's online resources on managed retreat.

These case studies were written to support Georgetown Climate Center's Managed Retreat Toolkit, which also includes additional case study examples and a deeper exploration of specific legal and policy tools for use by state and local decisionmakers, climate adaptation practitioners, and planners. For future updates about these and other case studies and the Managed Retreat Toolkit, please visit the **Managed Retreat Toolkit** and the **Adaptation Clearinghouse**.

State of New Jersey: Blue Acres Buyout Program

Executive Summary

Established in 1995, the New Jersey Blue Acres Buyout Program is a nationally recognized example of a longstanding, state-run buyout program. Blue Acres works closely with municipalities throughout the state to identify privately owned properties that are routinely threatened or flooded due to sea-level rise and more frequent weather events. The program's experience with buyouts positioned the state to respond quickly to purchase properties from willing residents in the wake of Hurricane Sandy. The program works directly with local governments to prioritize comprehensive buyouts of affected neighborhoods, instead of individual properties, and restores and protects the properties to maximize the flood and cost-reduction benefits for communities and the environment. To accomplish effective state-local coordination, the program has a diversified staff that meets local needs including case workers who work directly with participants in each buyout area, and a financial team that negotiates mortgage forgiveness with banks and other financial lenders on behalf of homeowners. Blue Acres was established with $15 million in funding from the Green Acres, Farmland, and Historic Preservation and Blue Acres Bond Act of 1995. Additional funding was provided in two different bond acts in 2007 and 2009. In the wake of Hurricane Sandy, Blue Acres secured nearly $300 million in federal funding from the Federal Emergency Management Agency's Hazard Mitigation Grant Program and Department of Housing and Urban Development's Community Development Block Grant–Disaster Recovery program. In 2019, the New Jersey Legislature passed a constitutional measure to provide a sustainable source of funding for Blue Acres from a portion of the state's Corporate Business Tax. As climate change worsens and makes extreme weather events more common, other states and local governments may increasingly evaluate the potential for buyouts, particularly in coastal jurisdictions. Decisionmakers could consider institutionalizing buyouts as a part of comprehensive climate adaptation and coastal and floodplain management strategies to encourage neighborhoods to relocate to safer, higher ground areas and restore ecosystems to attain flood, natural resources, and other community benefits.

Background

New Jersey Green and Blue Acres Programs

New Jersey is a northeastern state bordering the Atlantic Ocean with more than 1,800 miles of tidally influenced shoreline impacted by environmental threats including sea-level rise, flooding, and erosion.[1] New Jersey is the nation's most densely populated state with a total population of 8.9 million, of which seven million live along the coast. In addition to the coastal population, communities throughout the entire state are being disproportionately affected by climate change and sea-level rise.

Housed under the Department of Environmental Protection's (DEP) Green Acres Program — which was created in 1961 to meet the state's mounting recreation, conservation, and preservation objectives[2] — the Blue Acres Buyout Program was established through the Green Acres, Farmland, and Historic Preservation and Blue Acres Bond Act of 1995. The Green Acres Program acquires and preserves undeveloped land to advance open space and recreation in the state through an interconnected system of land.[3] In contrast, the Blue Acres program buys developed properties that have been or will be damaged by storms or storm-related flooding, or that buffer or protect other lands from flooding.[4] The Blue Acres Program allows the state to purchase privately owned land from willing sellers, demolish those structures, and prohibit future development for the purpose of reducing future flood risks.[5] Combined, New Jersey's Green and Blue Acres programs enable the state to comprehensively acquire lands to preserve open space, expand passive recreation areas, and enhance flood hazard mitigation.

Increased Buyouts After Hurricane Sandy

Blue Acres received renewed attention in October 2012 in the aftermath of Hurricane Sandy, which caused significant damage to the state's residential, commercial, and infrastructure sectors.[6] More than 300,000 housing units were impacted and a preliminary post-storm figure estimated damage repair and recovery costs in New Jersey at $30 billion.[7] In 2018, the National Oceanic and Atmospheric Administration's National Hurricane Center ranked Hurricane Sandy the fourth worst storm in U.S. history in terms of total economic damages (including but not limited to New Jersey) in excess of $65 billion.[8]

Given Blue Acres's deep experience as DEP's conservation real estate arm for the state's Parks and Forests and Fish and Wildlife divisions, the program was well-positioned to quickly mobilize after Sandy and work with local governments and residents interested in voluntary buyouts. While many states focus buyouts on just one area in their state, typically after a disaster declaration, Blue Acres has purchased properties across 16 municipalities throughout New Jersey. Seven years after Hurricane Sandy, Blue Acres has spent approximately $190 million to acquire more than 700 properties and demolish 665 homes. Today, the New Jersey Blue Acres Program is completing post-Sandy buyouts and turning its attention to inland riverine communities that are experiencing more frequent and heavy rain events. As flooding becomes more widespread due to climate change, Blue Acres continues to evolve to meet the state's growing need to increase overall resiliency.

Managed Retreat Examples

Voluntary Buyout Program

The program applies a voluntary, willing-seller approach and, beginning with an informational meeting, works to obtain both residential and municipal support. Each municipality is assigned a Blue Acres Town Liaison who serves as a conduit between the program, the state, municipality, and local community throughout the entire process to keep information flowing and prevent bottlenecks. To make homeowners financially "whole" and enable them to relocate, homes are purchased at their pre-storm fair market value whenever possible, in compliance with federal funding criteria. Following the state's purchase of a property, all remaining structures are demolished and the land is restored to its natural state in perpetuity. In order to improve flood reabsorption, the program focuses on blocks of contiguous homes for buy out and demolition, as opposed to individual "checkerboard" buyouts.

Staffing and Leadership

Notably, the Blue Acres Program has been led since 2004 by one director, Fawn Z. McGee, and this continuity has resulted in the building of long-standing relationships with, and a well-known presence in, municipalities throughout New Jersey. Such continuity has resulted in strong relationships at the local, state, and federal levels. In addition, an extensive track record has enabled the state to create, make the case for, and implement a long-term, comprehensive vision that positions the program to play a leading role in flood mitigation planning in New Jersey.

While the program started with three staff members, it grew considerably in the aftermath of Hurricane Sandy. From the beginning, staff members had to employ a diversity of skills to accommodate the criteria involved in a federal-, as opposed to a state-, funded buyout process. Additional staff capabilities were added as new challenges arose.

In addition to individual case managers, Blue Acres required a financial and project management expert to work side-by-side with the Federal Emergency Management Agency (FEMA) to modify its existing benefit-cost analysis (BCA) formula to fit the realities of New Jersey's housing stock. Because FEMA requires a separate funding application for each individual buyout community, the first BCA would become the foundation for future buyout efforts in every other New Jersey community. In addition, the finance team expanded its duties to work with banks and other financial lenders to secure debt forgiveness for homeowners with "upside-down mortgages."[9] Without such forgiveness, approximately 15 percent of eligible participants would be unable to accept the state's offer. Any financial issue that blocks participation affects the program's goal of creating large-scale land buffers between rivers and homes. The program's experience with short sales, loan forgiveness, and simultaneous closings enhances its ability to move more people out of harm's way and deliver broader floodplain benefits for the greater community.

Another noteworthy aspect of the Blue Acres program is its role in tenant relocation. Under federal funding requirements for the U.S. Department of Housing and Development's Community Development Block Grants–Disaster Recovery (CDBG–DR) program,[10] any tenant displaced by either a disaster event, or by the buyout of their rental property, must be given help in locating and paying for a comparable and livable housing unit. In 2017, in order to serve renters more quickly, Blue Acres added a tenant relocation capability and hired a team to work directly with renters and landlords. Since then, the program has distributed more than $1 million in relocation assistance to 44 households.

Environment

The New Jersey Blue Acres Program is also unique because it works with municipalities and other partners after demolition to restore and conserve bought-out land. The program's commitment to prioritizing larger neighborhood-wide buyouts can help maximize environmental and hazard mitigation benefits. In Woodbridge Township, the state and township are partnering with The Land Conservancy of New Jersey and Rutgers University to design a flood buffer with passive recreational amenities for residents, like trails and a kayak launch, that can also become community assets.[11] The Blue Acres Program believes that Woodbridge can serve as one example of long-term land restoration and management for other municipalities. In addition, the revitalization of empty lots suggests that, through active ecosystem restoration and management, a community can potentially work to minimize the overall tax loss from buyouts by potentially increasing surrounding property values.

Community Engagement

While the buyout program is voluntary, Blue Acres employs several strategies to educate communities about buyouts including by hosting informational meetings in communities that are staffed by the full Blue Acres team and participating in door-to-door outreach campaigns. In addition, the program has witnessed greater success in communities where one resident becomes an advocate for buyouts and moves to engage and educate his or her neighbors. Success is multiplied whenever residents engage with each other and encourage others to participate in the buyout program.

Funding

Blue Acres was established with funding from the Green Acres, Farmland, and Historic Preservation and Blue Acres Bond Act of 1995. A second bond act in 2007 allocated $12 million to acquire land in the Delaware, Passaic, and Raritan River floodplains, while in 2009, a third bond act allocated $24 million to be used statewide for recreation and conservation purposes. State buyouts were 100 percent state-funded before 2010, when the program secured its first competitive FEMA grant. In the wake of Hurricane Sandy, Blue Acres secured nearly $300 million additional funds from FEMA's Hazard Mitigation Grant Program[12] and HUD's CDBG–DR program[13] to fund post-storm buyouts.

Next Steps

In June 2019, the New Jersey Legislature passed a constitutional measure — Senate Bill No. 3920 — setting aside a portion of the state's Corporate Business Tax (CBT) to provide funding for the Blue Acres program and open space, farmland, and historic preservation.[14] Now, under New Jersey's Constitution, six percent of the total money collected through the CBT is reserved for these purposes on an annual basis.[15] Compared to individual bond measures, Senate Bill No. 3920 provides the Green and Blue Acres programs with a more sustainable, consistent source of funding. Moreover, this law will enable the state to design and implement longer-term, multi-phased plans for buyouts not tied to disaster events.

Considerations and Lessons Learned

The New Jersey Blue Acres Program is a rare example of a state-run buyout program that actively advances climate change adaptation and resilience. Moreover, by operating under the Green Acres Program, the state can maximize the benefits of land acquisitions by having programs for both open space and flood mitigation. Based on its longevity and experience, the New Jersey Blue Acres Program can serve as a model for other state and local governments to initiate or update their own programs, even if that means starting small as Blue Acres did back in 1995.

Blue Acres demonstrates the importance of human interaction in a buyout program. Successful buyout programs — whether managed at the state or local level — require people who can build long-standing relationships with communities and adapt to a range of obstacles that arise. For jurisdictions interested in creating a buyout program to respond to sea-level rise, chronic flooding, and long-term land loss, Blue Acres shows that it is key to have the right human infrastructure in place — from effective, visionary leaders to diverse case managers — to facilitate and support residents navigating these complex decisions.

Through state bond measures and the Corporate Business Tax set aside, the New Jersey Blue Acres Program has steady sources of funding that make buyouts more attractive to municipalities and homeowners as a climate adaptation or flood mitigation strategy. When the state acts to ease the financial and procedural burdens on local governments and residents, buyout programs are more likely to be implemented. Local governments could similarly appropriate their own money for buyouts or generate an independent source of revenue like the Corporate Business Tax, for example, through stormwater fees.

Endnotes

1 Dep't of Envtl. Prot., State of N.J., *Background Information: Coastal Resiliency and Building Ecological Solutions*, SEEDS–The State Environmental Education Directory, **https://www.nj.gov/dep/seeds/bescch/2_bkgrdinfo.htm** (last updated Oct. 18, 2017).

2 Press Release, *Armato Bill Providing Funds for Acquisition of Lands for Recreational and Conservational Purposes Clears Assembly to be signed by Governor Murphy Friday August 10th*, Insider N.J. (Aug. 10, 2018), **https://www.insidernj.com/press-release/armato-bill-providing-funds-acquisition-lands-recreational-conservational-purposes-clears-assembly-signed-governor-murphy-friday-august-10th/**.

3 Dep't of Envtl. Prot., State of N.J., *Welcome to Green Acres!*, Green Acres Program, **https://www.nj.gov/dep/greenacres/** (last updated Dec. 13, 2019).

4 *Id.*; Assembly Agriculture and Natural Resources Committee Statement to S. 3920, 218th Leg. p. 2 (N.J. 2019), *available at* **https://www.njleg.state.nj.us/2018/Bills/S3000/2920_S3.PDF** ("The Blue Acres program is administered as a component of the [Department of Environmental Protection's] Green Acres program. 'Blue Acres' is the term used to refer to properties that have been damaged by storms or storm-related flooding, that appear likely to incur such damage, or that may buffer or protect other lands from such damage. Structures on a purchased property are demolished, the debris is removed, and the land is preserved as open space.")

5 *See supra* n.4.

6 Governor's Office of Recovery & Rebuilding, New Jersey Five Years Post-Sandy: Stronger Than the Storm 6 (2017), *available at* **https://www.renewjerseystronger.org/wp-content/uploads/2015/06/Sandy_5_Years_After_10_13_17_v3-2.pdf**.

7 *Id*.

8 Nat'l Hurricane Ctr., Nat'l Oceanic & Atmospheric Admin., Dep't of Commerce, Costliest U.S. Tropical Cyclones Tables Updated 2 (Jan. 26, 2018), *available at* **https://www.nhc.noaa.gov/news/UpdatedCostliest.pdf**.

9 An "upside-down mortgage" is when a homeowner owes more on his/her home than it is worth. While Blue Acres offers people the pre-storm fair market value of their homes, an upside-down mortgage can decrease the value of their homes and therefore the market price they can receive for the buyout, which can act as a financial barrier to their participation.

10 Georgetown Climate Ctr., *HUD Community Development Block Grant–Disaster Recovery,* Adaptation Clearinghouse, **https://www.adaptationclearinghouse.org/resources/hud-community-development-block-grant-disaster-recovery.html** (last visited Feb. 3, 2020).

11 *See* Georgetown Climate Ctr., *Managing the Retreat from Rising Seas — Woodbridge Township, New Jersey: Post-Hurricane Sandy Buyouts,* Adaptation Clearinghouse (2020), *available at* **https://www.adaptationclearinghouse.org/resources/managing-the-retreat-from-rising-seas-eo-woodbridge-township-new-jersey-post-hurricane-sandy-buyouts.html.**

12 Georgetown Climate Ctr., *FEMA Hazard Mitigation Grant Program*, Adaptation Clearinghouse, **https://www.adaptationclearinghouse.org/resources/fema-hazard-mitigation-grant-program.html** (last visited Feb. 3, 2020).

13 Georgetown Climate Ctr., *HUD Community Development Block Grant–Disaster Recovery*, Adaptation Clearinghouse, **https://www.adaptationclearinghouse.org/resources/hud-community-development-block-grant-disaster-recovery.html** (last visited Feb. 3, 2020).

14 Tom Johnson, *New Law Simplifies How State Allocates Funds to Preserve Open Space*, NJSpotlight (June 28, 2019), **https://www.njspotlight.com/2019/06/19-06-27-new-law-simplifies-how-state-allocates-funds-to-preserve-open-space/**.

15 N.J. Const. art. VIII, § II, ¶ 6(a) (2019), *available at* **https://www.njleg.state.nj.us/lawsconstitution/constitution.asp** (“Commencing July 1, 2019, there shall be credited to a special account in the General Fund an amount equivalent to six percent of the revenue annually derived from the tax imposed pursuant to the ‘Corporation Business Tax Act (1945),’ P.L.1945, c.162 (C.54:10A-1 et seq.), as amended and supplemented, or any other State law of similar effect. . . . Commencing July 1, 2019, seventy-eight percent of the amount annually credited pursuant to this subparagraph shall be dedicated, and shall be appropriated from time to time by the Legislature, only for: providing funding, including loans or grants, for the preservation, including acquisition, development, and stewardship, of lands for recreation and conservation purposes, including lands that protect water supplies and lands that have incurred flood or storm damage or are likely to do so, or that may buffer or protect other properties from flood or storm damage; providing funding, including loans or grants, for the preservation and stewardship of land for agricultural or horticultural use and production; providing funding, including loans or grants, for historic preservation; and paying administrative costs associated with each of those efforts.”).

GEORGETOWN CLIMATE CENTER

GeorgetownClimate.org

AdaptationClearinghouse.org