William & Mary Law School

## William & Mary Law School Scholarship Repository

**Popular Media** 

Faculty and Deans

1-20-2023

### The Conundrum of Managed Retreat

**Elizabeth Andrews** 

Follow this and additional works at: https://scholarship.law.wm.edu/popular\_media

Part of the Environmental Law Commons

Copyright c 2023 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

https://scholarship.law.wm.edu/popular\_media

# JANUARY 20, 2023

## THE CONUNDRUM OF MANAGED RETREAT

Posted on January 20, 2023 by Elizabeth Andrews

Should I stay or should I go now? If I go, there will be trouble And if I stay it will be double... (The Clash)

In the climate change resilience space, there is much talk of *Managed Retreat* – the concept that some areas will be so inundated with recurrent flooding from sea level rise, increasingly severe storm events, and outdated stormwater infrastructure, that they will need to be abandoned; so we need to plan ahead for

that. The term has become politically volatile, yet recognizing a community's risk level – whether it's risk of flooding, heat, earthquakes or forest fires – and then deciding how to address it is key to assuring our societal safety. <u>A FEMA mapping</u> <u>app</u> for the <u>National Risk Index for Natural Hazards</u>, which identifies communities most at risk of the occurrence of 18 natural hazards, is helpful for planning for multiple risks.

But is managed retreat really feasible for our communities? Older urban areas are often built out and cannot offer an area to retreat to, without the costly exercise of acquiring and razing existing structures – and that's if there is even an adequate higher elevation area available. In some of our truly low-lying communities, there is limited higher ground, in which case we



Photo credit: Derek Loftis, VIMS

risk pricing people out of safe housing: in Miami, for example, there are fears that <u>wealthy residents will head to older</u> <u>neighborhoods on higher ground</u>, pushing out lower-income residents. And in rural areas, the most valuable properties – and thus a large portion of the local tax base – often are at the waterfront; if they are abandoned, rural communities could face a downward spiral of people moving away, leading to reduced tax revenue, leading to fewer dollars to spend on increasing resilience, so more residents leave, so there is less tax revenue... A vision of the future to be feared.

A glide path must be found for these communities, one that ensures residents' safety and also avoids an economic crashand-burn. One transitional approach is for a locality or state to purchase flood prone properties and convert them to greenspace, as was done at <u>Oakwood Beach on Staten Island, NY</u> and in New Jersey through the <u>Blue Acres</u> voluntary buyout program. The greenspace can act as an important flood buffer for surrounding properties, and provide wildlife habitat and public recreation areas; and the property owners get some funding out of the sale of their home to use for

Privacy - Terms

#### The Conundrum of Managed Retreat - ACOEL

relocation. But that requires a funding source for the government to use to purchase properties (the Blue Acres program received a significant amount of funding after Superstorm Sandy, for example), plus those properties then drop off of the tax rolls and the government must pay to maintain them. An expensive proposition for government.

Another complication is that, if the waterfront homes that are flooding in a community are second homes, then conceivably the owners can afford to leave. But if they are primary residences, inherited from Grandma so there is no mortgage, no flood insurance requirement, and thus most probably no flood insurance policy, then the concept of leaving is out of many people's financial reach. And with FEMA's and <u>other federal agencies'</u> cost/benefit analyses <u>favoring higher valued</u> properties to receive flood mitigation funding, it can be difficult to find federal assistance for these property owners.

So the question becomes, can we really "manage" the retreat from increasing flooding in an equitable fashion that addresses the needs of all parts of a community? The rich, the poor, the elderly, the disabled, the young? That's a very tall order. The first challenge is political: we cannot afford to save everything, so that needs to be recognized and tough decisions will need to be made about what to do and what to save. And that requires *political courage*, something that can be hard to find with short election cycles and a dislike for addressing "future" problems when there are so many pressing issues to deal with today.

The second challenge is funding (as always). A general aversion to raising taxes means state and local funding for planning ahead and reducing risk can be hard to find. **FEMA's Building Resilient Infrastructure and Communities (BRIC)** program can provide funds for disaster mitigation. The 2018 Disaster Recovery Reform Act authorized FEMA to invest six percent of its disaster costs in resilience (a 6% set-aside from post-disaster grant funds). States with major disaster declarations in the last seven years can apply for funds; in 2020, all 50 states and territories and Washington, D.C. had disaster declarations. BRIC funds can be used for mitigation planning, improving building codes, building partnerships, developing future grant applications, brick and mortar projects, technical assistance from FEMA, and *large scale relocation projects* (i.e., managed retreat). And just last fall, **FEMA announced** it is modifying the threshold for mitigation projects to be considered cost-effective in certain circumstances, including when the mitigation activity benefits disadvantaged communities and addresses climate change impacts. That is welcome news, but **BRIC applicants must provide a 25% match**, which can be reduced to 10% for Economically Disadvantaged Rural Communities. Many small or under-resourced communities cannot provide these match dollars, so it is essential that states and private grantors step into the breach and provide needed funding.

The market can and should help with this transition, but it has to catch up to the risk. Right now, banks are still issuing mortgages, insurance companies are still issuing policies, localities are still permitting development, and buyers are still able to purchase and sell homes in many low-lying, flood prone areas. The National Flood Insurance Program's <u>Risk Rating 2.0</u> provides the first update to the risk rating for insured properties in 50 years. The new approach takes into account factors such as historical flood frequency, flood type, distance from the house to the water source, property elevation, soil type, and the cost to rebuild, resulting in premiums that more accurately reflect a property's individual flood risk and enable informed decision making by policy holders. Helping property owners to understand their level of risk and choose whether to pay for their assumption of risk via realistic flood insurance premiums is an important step in the continuum of managed retreat from increasingly flooding areas.

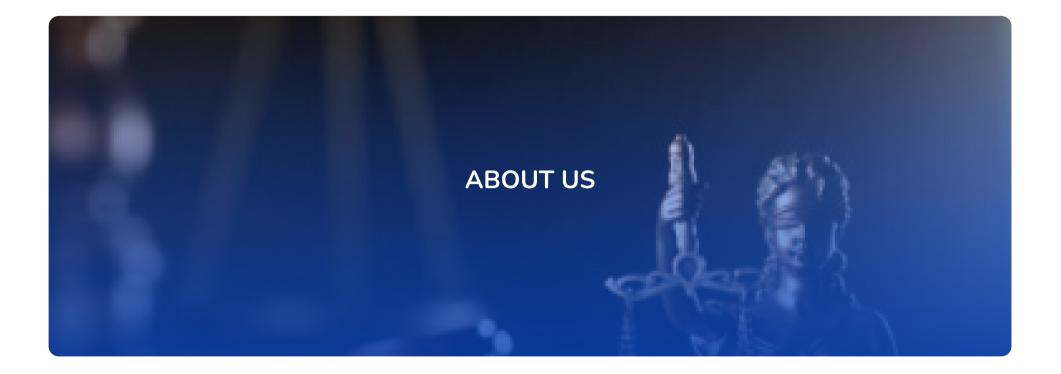
But what of those who cannot afford increased premiums for flood insurance, much less flood insurance at all? How do we build climate change resilience in socially vulnerable communities? A first step is recognizing that resilience is about more than just well-planned emergency response. It's about strengthening connections across the community, so it is better prepared to respond when faced with sudden disasters or chronic flooding; laying a common groundwork of understanding of the risk; and building trust among those who may have little trust in government, by getting down to the grassroots level to obtain input and foster long-term relationships. All of that takes time, resources, and commitment at a level that most local governments are not used to, and perhaps are not resourced to handle.

We need to envision safe, economically sound, socially thriving communities via an intentional process that includes those who may be harder to reach or who may not have as many resources to bring to bear; who cannot pivot and move away without assistance, and may be facing the heart-wrenching choice of leaving their cultural heritage behind as they relocate. None of this is easy, quick or inexpensive. And it won't be led by the federal government. It needs to be a community-led

### The Conundrum of Managed Retreat - ACOEL

process tailored to each community's unique situation. A high bar, for sure. So – is managed retreat feasible? The answer is: in some areas, it has to be. It is not the right answer in all situations, and it cannot happen overnight; but when it is necessary, we must invest the time and resources into making the difficult decisions with full community input. Many of our low-lying communities' future safety and prosperity depend upon it.

So – is managed retreat feasible? The answer is: in some areas, it has to be. It is not the right answer in all situations, and it cannot happen overnight; but when it is necessary, we must invest the time and resources into making the difficult decisions with full community input. Many of our low-lying communities' future safety and prosperity depend upon it.







## **COMMITTEES & PROJECTS**



ACOEL 1730 M Street NW Suite 700 Washington, DC 20036

(202) 939-3851

admin@acoel.org

Privacy Policy

<u>Disclaimer</u>



© 2022 ACOEL. All rights reserved. Nonprofit Web Design by Elevation