

# The Record

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## Opinion: Blue Acres: eminent domain with compassion

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EMINENT DOMAIN, or condemnation, is the process that allows the government — municipal, county, state or federal — to acquire private property for public use. Government entities use eminent domain to facilitate public projects such as the construction or expansion of roads, parks, schools and other public buildings. There is no denying that these projects are an appropriate function of government. But it doesn't mean that the use of eminent domain wins many fans.

We don't like to be forced to part with our personal property. Many view eminent domain as a prime example of government overreach into the lives and rights of individual citizens. After all, if a private buyer were to approach you and ask you to sell your property, you can simply decline if you don't want to sell it.

But what if the government decides to use eminent domain to condemn your property? You are given no say in the matter and are obligated to sell to the government.

Eminent domain is based on the premise that the needs of society are more important than the individual's right to property. Of course, the government cannot simply seize your property using condemnation. Under the Fifth Amendment, it is required to provide just compensation to property owners. Still, who among us wants to be forced to sell our home or property to the government, even if it will benefit our community?

Then again, if you live in an area that is prone to flooding, you may find yourself desperately wanting to sell your home but unable to do so. It can be difficult for individuals in communities that historically flood to sell their properties and move on with their lives. In these cases, New Jersey can use condemnation to give these property owners an exit strategy.

## **For public and individual good**

In 2007, New Jersey enacted legislation, the “Green Acres, Farmland, Blue Acres and Historic Preservation Bond Act,” that uses the principles of eminent domain to serve both the public good and the individual. Under the law, the Blue Acres program allows the state to use condemnation to help individuals whose property has been adversely affected or damaged by flooding. The state works with federal, county and local government to provide substantial funding to purchase properties in flood-prone areas.

Unlike the traditional use of eminent domain, the property owners are willing and active participants in the condemnation and sale of their home. If a property owner is unable to sell his property to a willing private purchaser due to its flood-prone location, he can use the Blue Acres process to allow state government to purchase the property for fair market value. After the sale, the land becomes public property, available for recreational use by all residents of New Jersey.

We’ve seen the use of this program in Bergen County recently, with beneficial outcomes for all parties. Oakland used the Blue Acres provisions of the law to aid some of its flood-prone property owners. Using a \$2 million grant, the borough of Oakland purchased six properties that repeatedly saw flooding along the Ramapo River and will use the underlying land to create a beautiful, environmentally sound public park that will be enjoyed by people living in Oakland and residents from around New Jersey.

The next time the river floods this land, it will simply flood an open park, instead of potentially damaging six homes. Blue Acres allowed these individuals to rid themselves of otherwise unsalable property while increasing the amount of open recreation space for the community at-large.

## **Win-win solution**

This use of public funds is a win-win for the property owner and the affected community. The Blue Acres program represents a judicious use of the condemnation process. It should serve as an example to our elected officials and government agency staff of the best way to use eminent domain to improve our communities without trampling on the rights of individuals.

Whenever possible, governmental agencies should seek to acquire land with the consent of the owner, rather than forcing an unwilling owner into selling a property he would prefer to keep. With many property owners in communities around the state still dealing with the aftermath of Superstorm Sandy, New Jersey should make every effort to prioritize the Blue Acres program before resorting to other uses of eminent domain.