

I. INTRODUCTION

On July 10, 2025, Defendant Dr. Joel Joseph filed a motion for summary judgment in this matter, claiming that Plaintiff Guam Housing and Urban Renewal Authority (“GHURA”) had exceeded its statutory authority in attempting to condemn property belonging to him and Defendant Hong Yi Tian, Inc. (“HYT”), and failed to comply with the procedural requirements of Guam’s eminent domain law. *See* Mem. P & A in Support of Dr. Joel Joseph’s Motion for Summary Judgment (“Joseph Motion”) at 1. GHURA opposes Joseph’s motion.

Joseph has fundamentally misunderstood the scope of GHURA’s eminent domain powers, as well as the procedural requirements thereof. GHURA has acted well within its eminent domain powers related to housing projects, and has met all requirements to assert its powers under statute. Moreover, there is no dispute of material fact regarding the value of the property. For these reasons, the Court should grant summary judgment to GHURA in this matter.

II. RELEVANT FACTS

On November 26, 2024, the GHURA Board of Commissioners adopted Resolution No. FY2025-009, approving the proposed condemnation of the following property:

<u>Lot/Municipality</u>	<u>Area of Lot 24</u>
a. Lot 5327-4-R5, Mangilao	106,747 ± square meters
b. Lot 5327-4-2, Mangilao	2,000 ± square meters
c. Lot 5327-4-3, Mangilao	2,000 ± square meters
d. Lot 5327-4-4, Mangilao	2,000 ± square meters
e. Lot 5327-4-5, Mangilao	2,000 ± square meters
f. Lot 5328-REM-R2, Mangilao	27,699 ± square meters

g. Lot 5328-REM-2, Mangilao 27,349 ± square meters

See Declaration of Elizabeth F. Napoli (“Napoli Decl.”), Ex. 1. At the time the Resolution was adopted, HYT owned Lots 5327-4-R5, 5327-4-2, 5327-4-3, 5327-4-4, and 5327-4-5 (“HYT Lots”), and Joseph owned Lots 5328-REM-R2 and 5328-REM-2 (“Joseph Lots”) (collectively “Condemned Lots”).¹ The Board noted that acquisition of the property was for “the development of healthcare facilities, and related community development projects, within the Municipality of Mangilao.” Napoli Decl., Ex. 1 at 1. The Board acknowledged further GHURA’s unsuccessful efforts to purchase the Condemned Lots, noting in particular that negotiations with Joseph failed after Joseph asked GHURA to pay more than 191% of the appraised value of his lots. *Id.* at 3-4.

Resolution No. FY2005-009 also referenced the Board’s review of the 2022 Guam Medical Campus Master Plan (“GMCMP”), which outlines general information regarding site selection criteria and program components for the construction of a medical campus in Mangilao,² including a new public hospital to replace the Guam Memorial Hospital. *See Id.*, Ex. 2. Having determined that the plans outlined in the 2022 Guam Medical Campus Master Plan “would better serve the community by way of island-wide access to healthcare with future consideration of healthcare access to special populations, including, but not limited to, the elderly and veterans,” and that “the opportunities for new infrastructure, economic development, and future attainable

¹ Pursuant to 21 GCA § 15107, upon filing of the declaration of taking and deposit in the court of the amount of estimated compensation, title in the properties in fee simple absolute vested in GHURA. Both Section 15107 conditions having been fulfilled, GHURA holds title to the Condemned Lots in fee simple absolute.

² The 2022 GMCMP reviewed various possible sites for the location of the proposed medical campus based on properties the government of Guam owned at the time of the plan, as well as the Eagles Field property the federal government had offered to lease to the government of Guam. The plan did not consider properties available for purchase, including the Condemned Lots.

housing developments would further benefit the community,” the Board concluded that acquisition of the Condemned Lots “is necessary to carry out [the Board’s] purposes under 12 GCA Chapter 5.” *Id.*, Ex. 1 at 4.

III. STATEMENT OF ISSUES

Pursuant to Local Rule CVR 56.1, GHURA submits the following statement of issues to be decided:

1. Does the development of healthcare facilities and related community projects including development of affordable housing for elderly and veterans constitute a “housing project” within the meaning of 12 GCA § 5102(a)(11)?
2. Does Guam law require GHURA to fulfill any requirements prior to initiating condemnation proceedings for a housing project, other than obtaining a resolution from the GHURA Board of Commissioners pursuant to 12 GCA § 5104(m)?

III. ARGUMENT

A. Legal Standard.

Rule 56 of the Guam Rules of Civil Procedure provides that the court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Guam R. Civ. P. 56(a). As the Court held in *Govt. of Guam v. Guam, et al v. Core Tech Int’l Corp.*, “the pleadings and the substantive law determine the materiality of particular facts.” CV1198-18 at 16-17 (Super. Ct. Guam Aug. 14, 2023) (citing *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 248 (1986)).

Rule 56(f) further provides that “[a]fter giving notice and a reasonable time to respond, the court may...grant summary judgment for a nonmovant.” Guam R. Civ. P. 56(f); *see also Alfa Leisure, Inc. v. King of the Rd.*, 314 F. Supp. 2d 1010, 1013 (C.D. Cal. 2004) (“Even when there has been no cross-motion for summary judgment, a district court may enter summary judgment

against a moving party if that party has had a full and fair opportunity to ventilate the issues involved in the matter.”) (citations and quotation omitted). A court “may even grant summary judgment *without notice* if the losing party has had a full and fair opportunity to ventilate the issues involved in the motion[.]” *Talavera v. Glob. Payments, Inc.*, 670 F. Supp. 3d 1074, 1111 (S.D. Cal. 2023) (citations omitted).

B. Joseph’s Motion for Summary Judgment should be denied.

1. GHURA’s acquisition of the Condemned Lots by eminent domain is an authorized use of its power to undertake and carry out housing projects.

In his Motion, Joseph argues inconsistent positions regarding GHURA’s authority to condemn property under Guam Law. First, Joseph claims that “[t]he Legislature limited GHURA’s ability to condemn to slum or blighted property.” Mot. at 4. Two paragraphs later, Joseph acknowledges that “the Guam Legislature delegated authority to GHURA to acquire by condemnation real property ‘for or in connection with any project *under this Article.*’” Mot. at 5 (emphasis in original). “GHURA is thus authorized to condemn real property for either a Housing Project or an Urban Renewal Project.” *Id.*³

³ Joseph dedicates a significant portion of his brief to his argument that GHURA has not complied with the statutory requirements to condemn real property under its urban renewal power, including that “[GHURA] shall not acquire real property for, nor otherwise undertake an urban renewal project unless the urban renewal project has been approved in accordance with this Section.” 12 GCA § 5111(a). Section 5111 continues by outlining the painstaking process by which GHURA is required to prepare a plan, and submit it to various entities for review and recommendation or approval, including the Guam Land Use Commission, and, following a public hearing on the proposed project, the Governor and the Legislature. 12 GCA § 5111. This process applies exclusively to urban renewal projects, by which GHURA undertakes to eliminate and prevent the development or spread of slums and blights in Guam, areas in which there is a predominance of dilapidated or deteriorating structures. 12 GCA § 5102(a)(7) and (8). GHURA agrees that the Condemned Lots are not slums or blights within the meaning of Section 5102, and is not seeking to acquire the lots in furtherance of its urban renewal powers. Rather, as discussed herein, GHURA has sought to condemn these properties in furtherance of its housing project power, which does not require fulfillment of such conditions prior to acquisition of real property by eminent domain.

Joseph's latter position is correct.⁴ Title 12 GCA § 5104 defines the scope of GHURA's powers, which include the power to "[u]ndertake and carry out housing and urban renewal projects, and in connection therewith plan, prepare, develop, construct, acquire, lease and dispose of any such projects within the contemplation of this Article." 12 GCA § 5104(y). As Joseph concedes, Section 5104 further authorizes GHURA to acquire by condemnation "any interest in real property, including a fee simple title thereto, *which the Authority may deem necessary for or in connection with any project* under this Article[.]" 12 GCA § 5104(m) (emphasis added).

The law being clear that GHURA *is* in fact authorized to acquire by eminent domain the property related to housing projects, Joseph then pivots sharply to argue that GHURA "has not developed a plan or portion of the project which would constitute living accommodation for families of low income," Mot. at 5, seemingly interpreting the scope of GHURA's power to

⁴ It appears Joseph's initial argument that GHURA's eminent domain power only extended to slum and blight areas may have been based on Attorney General Douglas B. Moylan's ("AG Moylan") Opinion No. 24-0630 re Legal Opinion Hospital Construction & Eminent Domain ("AG Opinion 24-0630"). See AG Opinion 24-0630, available at <https://drive.google.com/file/d/1RJ27pxUsBhWIBUsmbiUWfhTyyWJvbQvG/view?usp=sharing>. In AG Opinion 25-630, AG Moylan opines that GHURA "may take land to build housing or to fulfill an 'Urban Renewal Plan,'" and concludes that because GHURA's articulated purpose for condemning the Condemned Lots was to meet requirements of the 2022 GMCMP, which "does not contemplate the development of housing," GHURA must fulfill the conditions for condemnation in furtherance of an Urban Renewal Plan.

AG Opinion 25-630 is clearly wrong, falling for the same trap Joseph urges here – that the term "housing project" should be narrowly defined to encompass only projects that provide literal shelter to low-income families instead of interpreting the term in the manner expressly provided by 12 GCA § 5102(a)(11), as discussed more fully below. Joseph asks the Court to "accord substantial weight" to AG Moylan's opinion notwithstanding its obvious shortcomings, simply because it was prepared by AG Moylan. The Court is not required to blindly adopt AG Moylan's clearly inadequate review of applicable law. See *Perea v. Bd. of Torrance Cnty. Comm'rs*, 77 N.M. 543, 545, 425 P.2d 308, 309 (1967) ("This court is not bound by opinions of the Attorney General. We need give them only such weight as we deem they merit. If we think they are right we follow and approve, and if we are convinced they are wrong we will reject them.").

undertake housing projects as limited strictly to developments that provide shelter to low-income families. In making this argument, Joseph conveniently neglects to reference the statute that actually defines the expansive scope of projects GHURA is authorized to undertake under the “housing project” umbrella.

As noted in Resolution No. FY2025-009, GHURA intends to utilize the Condemned Properties for the development of healthcare facilities and related community development projects. Napoli Decl., Ex. 1 at 1. GHURA identified and evaluated properties based on information provided in the 2022 Guam Medical Campus Master Plan, and “further qualif[ied] acquisitions based on size, contiguity, acquisition complexity, and budget.” *Id.*, Ex. 1 at 2.

Pursuant to 12 GCA § 5102(a)(11):

(11) Housing project means any work or undertaking or activity to provide decent, safe and sanitary urban or rural dwellings, apartments and other living accommodations for families of low income.

(A) Such work, undertaking or activity may include buildings, land, equipment, facilities, other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers and other sanitary facilities and services, water supply, utilities, parks, site preparation, landscaping and administrative, community, *health*, recreational, welfare and similar *facilities and services*.

(B) The term also extends to the planning of buildings and improvements, the acquisition of property, the demolition of existing structures, the clearance of slum areas, the construction, reconstruction, alteration or repair of the improvements, and all other work in connection therewith, as well as to all other real or personal property and tangible or intangible assets held or used in connection with the housing project.

12 GCA § 5102(a)(11) (emphasis added). The express language of Section 5102(a)(11) provides that housing projects may include health facilities and services.⁵

⁵ In fact, GHURA has a long history of undertaking or assisting with similar community projects, including community health facilities, behavioral health facilities, senior citizen centers, and youth service facilities. *See* Napoli Decl. at ¶ 4.

Further, while GHURA intends to acquire the Condemned Lots for the medical campus, a portion of the property is intended for related community projects. During her deposition, GHURA Executive Manager Elizabeth Napoli testified regarding the nature of projects contemplated:

Mr. Thompson: Okay. All right. Now, going back to Exhibit B, and again referencing the same paragraph 3, in addition to a new hospital and medical complex, it states that the use for the property to be condemned also includes community development projects. What's your understanding of the community development projects that GHURA intends to use Dr. Joseph's property for?

Ms. Napoli: Community development projects were a possibility of housing developments for low to moderate income families, so that they would be in close proximity to --

Mr. Thompson: Okay.

Ms. Napoli: -- the hospital and it would be for either veterans or the elderly.

Mr. Thompson: Okay. Did GHURA develop any plans for this potential low-income housing?

Ms. Napoli: Of course not.

Mr. Thompson: Okay.

Ms. Napoli: Too soon.

Declaration of George Castro ("Castro Decl."), Ex. A at 19:1-20. Both healthcare facilities and development of affordable homes for elderly and veterans constitute housing projects within the meaning of 12 GCA § 5102(a)(11).

2. GHURA has fulfilled the only condition under Guam law for filing condemnation proceedings for housing projects – a duly adopted Board resolution.

In his Motion, Joseph highlights that GHURA has not "developed *a plan* for living accommodations for low-income families," attempting to move the goalpost for GHURA's acquisition of real property by eminent domain for housing projects. As noted, Guam law requires

completed and approved plans prior to condemnation of real property for *urban renewal projects*. See 12 GCA § 5111. There is no analog set of conditions that GHURA must meet prior to condemning real property for *housing projects*.

The only condition GHURA is statutorily required to fulfil prior to bringing condemnation proceedings is 12 GCA § 5104(m)'s requirement conditioning the exercise of eminent domain upon the GHURA Board of Commissioners' prior adoption of a resolution "finding and declaring that the acquisition of such property is necessary for such purposes." GHURA has certainly fulfilled this condition.

Resolution No. FY2005-009 specifically determined that the plans outlined in the 2022 GMCMP "would better serve the community by way of island-wide access to healthcare with future consideration of healthcare access to special populations, including, but not limited to, the elderly and veterans," and that "the opportunities for new infrastructure, economic development, and future attainable housing developments would further benefit the community," ultimately concluding that acquisition of the Condemned Lots "is necessary to carry out [the Board's] purposes under 12 GCA Chapter 5." Napoli Decl., Ex. 1 at 4.

Applicable law simply does not impose the same conditions for condemning real property for housing projects as it does for urban renewal projects. GHURA has acted within its authority in seeking to acquire by condemnation real property necessary for the medical complex project and related community projects, and has fulfilled the condition of prior Board approval via resolution.

IV. CONCLUSION

For the foregoing reasons, GHURA respectfully requests that the Court deny Joseph's Motion for Summary Judgment, and instead grant GHURA summary judgment as to the issues raised herein.

Respectfully submitted this 7th day of August, 2025.

**GUAM HOUSING AND URBAN
RENEWAL AUTHORITY**

/s/

ELISEO M. FLORIG, JR.
In-House Counsel