

Brenda Aguilar-Guerrero

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Brenda Aguilar-Guerrero has represented public entities on complex eminent domain and inverse condemnation matters for more than 28 years. She has assisted clients with large, complex multibillion-dollar infrastructure projects requiring hundreds of acquisitions, as well as smaller scale projects throughout the state for a variety of clients.

Brenda likes to get involved at the initiation of a project to ensure that her clients are following all state and federal regulations and laws. She attends project meetings, obtains rights of entry, drafts and/or reviews acquisition documents, works with consultants/clients to execute acquisition strategies, reviews appraisals for legal compliance, and negotiates with property owners; assists in drafting staff reports, resolutions of necessity and notices to property owners; prepares complaints and all documents required to file the condemnation action(s); obtains orders for prejudgment possession; and handles all litigation through the filing and recording of Final Orders of Condemnation.

Brenda has served as lead counsel on right-to-take and jury trials for a number of clients. She has also defended clients sued for inverse condemnation, dangerous condition of public property, and nuisance claims. She has handled eminent domain and/or inverse condemnation actions for the Santa Clara Valley Transportation Authority, Council of San Benito County Governments, Bay Area Rapid Transit District, San Mateo County Transit District, Transportation Agency for Monterey County, Santa Cruz County Regional Transportation Commission, Central Contra Costa Sanitary District, County of Calaveras, County of El Dorado, County of San Benito, County of Yolo, Town of Los Altos, City of Dublin, City of Inglewood, City of Sacramento, City of San Leandro, City of Morgan Hill, City of Palmdale, City of Rancho Cordova, City of Tracy, City of South San Francisco, East Bay Regional Park District, Santa Clara Valley Water District, Glendale Housing Authority, Fremont Redevelopment Agency, City of Fremont, City of Elk Grove, County of Fresno, County of Napa, Napa County Flood Control and Water Conservation District, City of Brentwood, Hayward Unified School District, City of Antioch, and City

PRACTICES

Eminent Domain

Inverse Condemnation

Litigation

Public Law

Real Estate and Business Law

EDUCATION

J.D., University of California, Los Angeles, 1990

B.A., Social Welfare, University of California, Berkeley, 1987

ADMISSION

State Bar of California

Supreme Court of the United States

United States Court of Appeals for the Ninth Circuit

United States District Court for the Eastern District of California

United States District Court for the Northern District of California

AFFILIATIONS

Board Member, Alameda County Bar Association, 2022

Member, Women Lawyers of Alameda County, Alameda

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County (past President)

Member, Chapter 2 (San Francisco/Santa Rosa) and 42 (San Jose) of the International Right of Way Association

UC Berkeley Alumni Delegate to the California State Legislature

Member, East Bay La Raza Association, 2017

Program Co-Chair, Annual Northern California Eminent Domain Conference, CLE International, 2007-2022

of Saratoga.

RECOGNITIONS

Northern California Super Lawyers list: Eminent Domain, Super Lawyers Magazine, 2020-2023

The Best Lawyers in America, Eminent Domain and Inverse Condemnation Law, 2020-2027

"Top Defense Result," Top Verdicts of 2015 Special Report, Daily Journal, February 2016

Unity Award, Minority Bar Coalition, 2015

Wiley Manuel Pro Bono Award, The State Bar of California

Sloan Fellowship, Carnegie Mellon University, Pittsburgh, Pennsylvania, School of Urban and Public Affairs

REPRESENTATIVE MATTERS

- ***Jane Kappel et. al., v Central Contra Costa Sanitary District*, Contra Costa Superior Court Case No. C19-01012 (2024)**Plaintiffs Jane & Bryan Kappel sued the Central Contra Costa Sanitary District for over $25M asserting two inverse condemnation claims, a dangerous condition of public property, and a nuisance claim. Brenda served as lead counsel and a jury rendered a unanimous defense verdict after an 18 day trial after deliberating for a half day. Subsequently, the trial judge issued a Statement of Decision ruling that plaintiffs failed to show that the public improvements were a substantial cause of plaintiffs' injuries.
- ***Inglewood v. Savine; Danfar/Affif; Quon; Michino & Bhalla, et al.,* LASC Court Case Nos. 21STCV06223, 21STCV06249, 21STCV06195, 21STCV06062, 21STCV06064, and 21STCV06065 (2021)**

For purposes of conducting a right to take trial, The Honorable Elaine Lu consolidated six eminent domain actions filed to acquire properties needed for the Inglewood Basketball and Entertainment Project, the future home of the Clippers NBA team, after defendants in each of those cases asserted right to take challenges including a Public Use Challenge. There were a total of twelve right to take challenges asserted. Brenda served as lead counsel for the City of Inglewood and after a five day bench trial, Inglewood prevailed on all the challenges.

- ***TAMC v. MWM Investments, LLC, et al.,* Monterey Superior Court Case No. 17CV001231 (2019)**

Brenda served as lead trial counsel for TAMC on this case where TAMC needed to acquire a portion of a warehouse building on a 4.7-acre industrial parcel. After a three-week jury trial, the jury found TAMC

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owed nearly $930,000 less than the landowner's final demand. The jury verdict was $730,000 less than the deposit made by TAMC and ordered by the trial judge

- ***Celebron v. City of Palmdale et al.: Simmons v. Palmdale and Faulk v. Palmdale* (2017)**

More than 30 plaintiffs brought separate actions against the City of Palmdale involving inverse condemnation, nuisance, negligence, and trespass claims as a result of a massive 2015 rain storm that caused substantial flash flooding and debris flow. With a "return frequency" at 1000 years, the storm overwhelmed the City's public improvements. Brenda served as lead counsel on the cases and obtained favorable results for Palmdale by: (1) negotiating the dismissal of Palmdale from the *Simmons* action within a few months of the filing of the action, (2) prevailing on a summary judgment motion in the *Faulk* action by establishing that the epic storm was a superseding, intervening cause of plaintiffs' damages, and (3) negotiating a settlement of the remaining *Dunagan/Celebron* plaintiffs, which was paid by the pooling entity with a minimal contribution from the City of Palmdale. After Brenda successfully argued a summary judgment motion that resulted in the dismissal of numerous plaintiffs, the motion served as the catalyst to get the remaining cases settled at substantially less than it would have cost the City to prepare summary judgment motions in those cases.

- ***Gonzalez v. Johnson* (2015)**

Brenda successfully represented the City of Sacramento in defeating the last legal challenge to the $477 million entertainment and sports arena in downtown Sacramento that serves as the home for the Sacramento Kings NBA team. After an 11-day trial with 18 witnesses, more than 150 exhibits and the presentation of an administrative record, Sacramento Superior Court Judge Tim Frawley issued a proposed Statement of Decision finding that "plaintiffs have failed to meet their burden of proof on any of their causes of action" and awarded the recovery of defense costs. Opponents settled their case for dismissal of all claims with prejudice in exchange for a waiver of costs. In an attempt to overturn the City's approval of the arena, opponents had alleged that the public-private partnership supporting the arena engaged in a "secret subsidy," collusion, fraud, concealment, waste and illegal expenditure of public funds, along with alleged illegalities in the City's $325 million in bond financing. The case also addressed unadjudicated law as plaintiffs' reverse validation claim challenged the City's finding that there were "significant public benefits" from issuing bonds under the Marks-Roos Local Bond Pooling Act of 1985. Prior to *Gonzalez v. Johnson*, there was little judicial guidance for cities in their issuance of bonds under the Act. *The Daily Journal* selected the victory in *Gonzalez v. Johnson* as a "Top Defense

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Result" in its special report of the Top Verdicts for 2015.

- ***Bay Area Rapid Transit (BART) v. PPF Industrial, et al.* (2015)**

In a case raising complex questions on valuation of "improvements pertaining to the realty," as well as unique relocation and goodwill issues,

Brenda overcame the bloated appraisals from a business owner, saving the transit district over $4 million. A medical device sterilization business, represented by Norm Matteonni and Peggy O'Laughlin, sought $9.85 million in eminent domain just compensation from BART. As a result of motions in limine, that amount was reduced to $9.4 million. The jury awarded the business only $5.4 million, forcing it to return $400,000 to BART from the agency's pretrial deposit—a rare occurrence in eminent domain disputes.

- ***Santa Clara Valley Transportation Authority (VTA): SVBX BART Project and CELR Project***

Brenda served as counsel on numerous eminent domain matters filed by VTA to acquire property for a 10-mile extension of the BART system to the Silicon Valley. The acquisitions ranged from full takes of multi-acre industrial parks containing numerous multitenant masonry buildings requiring complicated relocations of numerous business tenants, to complex acquisitions involving highest and best use and project influence issues.

Brenda drafted purchase and sale agreements including one for a property valued at $26 million, drafted license agreements, and obtained orders for possession. She also assisted with complicated relocation, valuation and improvements to the realty issues.

Brenda was also successful in having the Business Owner accept her final offer, after the jury was empaneled, that was hundreds of thousands of dollars below the Business Owner's trial testimony. (*VTA v. RK Logistics* (2013)).

Brenda was part of the trial team that prevailed at a trial involving 10 separate right-to-take challenges. The challenges were raised in a condemnation action brought to acquire property owned by a shopping center for the construction of the Capitol Expressway Light Rail Project. In *Santa Clara Valley Transportation Authority v. Eastridge Shopping Center, LLC* (Case No. 1-11-CV- 209524), judgment was entered in favor of VTA on all ten challenges including CEQA objections raised by Eastridge's counsel (Gibson Dunn), Macy's West Stores' counsel (Matteonni O'Laughlin & Hechtman), J.C. Penney's counsel (Turner & Turner Law) and Sears' counsel (SNR Denton).

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- ***Santa Clara Valley Transportation Authority: The U.S. 101 Auxiliary Lanes Project***

After the complaints and motions for prejudgment possession had been filed by in-house counsel to respond to the numerous oppositions filed by several large developers, Google, a water district, and a City, Brenda was successful in getting stipulated orders for possession and reaching early settlements with all the property owners. Five actions were filed to acquire various property interests needed for this project to relieve traffic congestion by constructing auxiliary lanes and extending high occupancy vehicle (HOV) lanes on Highway 101 between State Route 85 in Mountain View and Embarcadero Road in Palo Alto. The settlements required coordination with the various property owners and Caltrans, as well as implementation of creative strategies.

- ***Transportation Agency of Monterey County (TAMC) – Salinas Rail Extension Project***

Brenda assisted TAMC with a 16-mile commuter rail extension project. She filed 10 eminent domain actions, settled nine and tried one of these actions to verdict for Package 1 and for Package 2, she filed three actions. She settled all three actions. She advised TAMC through the pre-condemnation phase, assisting with valuation, relocation, project coordination, and appraisal issues for both packages. She also assisted TAMC with numerous hardship acquisitions.

- ***Council of San Benito County Governments (COG) – Highway 25 Bypass Project***

Brenda assisted COG with all aspects of the right-of-way process, acquisitions and condemnations for the Highway 25 Bypass Project. A total of 44 property acquisitions were required for the Project. Two properties were acquired in their entirety as full fee takes; one business was relocated; one household was relocated; and one rental tenant was relocated. The remaining properties were acquired as partial fee takes, in addition to the acquisition of public utility easements and temporary construction easements. Brenda assisted COG staff and consultants in preparing initial offers, staff reports, resolutions of necessity, and an amendment to their joint powers agreement, as well as in negotiating settlements. Sixteen cases were filed. Most involved complex legal and valuation issues relating to severance damages, highest and best use, development potential, dedication requirements, zones of value, and benefits.

Four cases are described below.

Council of San Benito County Governments v. Hollister Inn, (2012) 209

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Cal.App.4th 473. The hotel owner objected to the taking of its access easement across an adjacent owner's property which provided the hotel direct access to its alleged main entrance. At the right-to-take trial, the court found that COG committed a gross abuse of discretion by failing "to consider the possibility of taking the property of an adjoining landowner to provide Hollister Inn access to Highway 25" pursuant to section 1240.350. The trial court further found that COG "failed to exercise its discretion to determine whether the project was planned or located in the manner that will be most compatible with the greatest public good and the least private injury." COG complied with the conditional dismissal, Hollister Inn accepted COG's final offer, and was awarded attorney's fees and costs.

Brenda successfully appealed, resulting in a complete reversal and a vacation of the award of attorney's fees and costs. The court of appeal found the trial court erred in issuing an order of conditional dismissal against COG and in awarding reasonable litigation expenses to Hollister Inn. It also found that section 1240.350 does not authorize a public entity to condemn land to provide access to other private property when that property is cut off from access to a particular public access but is not landlocked.

Council of San Benito County Governments v. Roberts et al., San Benito Superior Court, Case No. CU-06-00050. This case involved a full take of two adjacent parcels with a total area of 2.76 acres. One of the parcels was partially improved for use as a trailer sales and repair facility. Portions of both parcels were taken as uneconomic remnants. The case was bifurcated after the tenant disclaimed any and all rights to compensation for its leasehold interest in the property. The property owner made an initial demand of $3,606,780, supported by a summary statement of his trial appraiser. COG deposited $1,052,000 as just compensation. The case settled for $1,562,938 on the eve of trial. The court granted judgment for COG as to the tenant's claim for loss of goodwill; the tenant was seeking a six-figure settlement.

Council of San Benito County Governments v. K&S Market, et al., San Benito Superior Court, Case No. CU-06-00047. This case involved a partial take of two adjacent parcels totaling 5.271 acres. The land was improved with a Safeway Food and Drug Store and a Safeway Service Station. As a result of one of the fee takes, Safeway lost 28 parking spaces. It was undisputed that the Safeway parking was barely in conformance with the parking ratio requirements. After negotiations with Caltrans and the owners/tenants, Brenda negotiated a settlement in which Caltrans agreed to allow COG to provide an excess parcel to the defendants for conversion into a parking lot for the store. This creative settlement resulted in great savings for all parties, especially COG.

Council of San Benito County Governments v. McNamee, et. al., San

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Benito Superior Court, Case No. CU -06-00048. This case involved a partial take of 1,494 square feet that eliminated 175.01 feet of the parcel's frontage on the main road. Brenda defeated defendants' claim for substantial severance damages at trial by demonstrating the taking did not substantially impair access to their remainder parcel. Brenda successfully opposed the defendants' appeal, and the Court of Appeals for the Sixth Appellate District affirmed the trial court's decision in an unpublished decision (No. H033989 filed April 27, 2010).

- ***BART's San Francisco Airport Extension Project***

Brenda represented San Mateo County Transit (SamTrans) and BART on various cases related to BART's extension to the San Francisco International Airport.

Two cases are described below.

San Mateo County Transit District v. City and County of San Francisco, et al., San Mateo County Superior Court, Case No. 405695. Brenda represented SamTrans in this action involving 50 separate parcels of property over approximately 8 miles of the former San Francisco Market Street Railway right-of-way. This case presented numerous challenging appraisal issues regarding full and partial takings, temporary construction and subterranean utility easements located on both residential and commercial property, as well as loss of goodwill. Favorable settlements were negotiated with 58 of the 59 named defendants. One defendant business tenant refused to settle and Brenda obtained summary judgment by establishing its lack of entitlement to loss of goodwill. On appeal, the summary judgment was affirmed.

San Mateo County Transit District v. Tanforan Park Shopping Center, et. al., San Mateo County Superior Court, Case No. 407836. Brenda represented SamTrans to acquire land for the construction of the San Bruno BART Station. The subject fee acquisition consisted of 5 acres of land that had been designated as parking for a shopping center. Permanent underground utility and temporary construction easements affecting approximately 8,800 square feet were also condemned. The case presented complex valuation issues related to severance damages, including entitlement, highest and best use, development potential, parking usage, and benefits. Significant goodwill loss claims also were asserted. As part of the eight-week jury trial, Brenda tried the goodwill issues. The jury returned a verdict of $0 for national retailer Sears on its goodwill claim.

- ***North Concord BART Station***

Brenda defended BART in an inverse condemnation action brought by over 100 plaintiffs living near the BART extension from Concord to the

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North Concord Station. The case consisted of three consolidated actions brought by homeowners and residents who claimed physical damage and personal injuries allegedly suffered during the period of construction and operation. Thirteen separate causes of action were alleged. Brenda negotiated a very favorable settlement for BART that included payment on only some of the construction related claims. Judgment was entered in favor of BART on all other claims.

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