

NORTHERN CALIFORNIA

Super Lawyers

2023



BUILT *Different*

Five real estate, land use and construction attorneys
on the Bay Area's past two decades

Family lawyer
Michèle Bissada quietly
handles the biggest cases

Stuart Somach is in water
law for the long haul

A photograph of three people in professional attire standing in front of a modern building with large glass windows. The man on the left is wearing a dark suit and glasses. The woman in the center is wearing a black blazer over a pink top. The man on the right is wearing a blue suit. The word "BUILT" is overlaid in large white letters across the middle of the image.

BUILT

Five real estate, land use and construction

BY ANDREW ENGELSON

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Different

attorneys on the Bay Area's past two decades

PHOTOGRAPHY BY CAROLYN FONG



Over the past 20 years, two issues have remained persistent and contentious in the Bay Area: how land gets used, and how its residential and commercial uses can become more sustainable and affordable. We spoke with five real estate, land use and construction attorneys about the laws, cases, projects and movements that have transformed their practices—and the Bay—since the first issue of *Northern California Super Lawyers* was released in 2004.

“The Rise of the YIMBY Movement”

San Francisco attorney **Mary G. Murphy** is co-chair of Gibson Dunn’s land use group. For the past 35 years, she has represented developers and investors in private-public partnerships and historic renovation projects.

What’s been the biggest challenge facing the Bay Area in the last 20 years?

The great, grave issue facing California and San Francisco is the housing crisis. And the housing crisis in this state does have a connection to CEQA [the California

Environmental Quality Act], which has been used as a tool to stop and delay things for a long time. It’s challenging to get the actual permits to build things—it can be very daunting to spend a lot of money on engineering and plans, and then it takes a long time to actually get the permits. One of the big issues is not just pre-entitlement reform, but also having some certainty of outcomes and limiting the time of lawsuits.

Are there encouraging trends?

One thing in the past 10 years is the rise of the YIMBY movement—this “Yes, in My Backyard” movement—where you see people, especially younger people, becoming active and advocating for more housing. Twenty years ago, you’d go to a hearing and the only people there were generally opposing something. Now, what you see are YIMBY folks taking the big-picture view, saying, “The reason I can’t afford to live in any major city is because there’s not enough housing. And somebody needs to advocate for the person who isn’t here yet.”

What else has helped move developments forward?

In recent years, the state legislature has become a little bit more aggressive trying to find ways to streamline CEQA. For example, when we represented the Golden State Warriors and Chase Center, we got the project qualified under a state statute which provided that, by making certain commitments to be neutral on greenhouse gases and pay prevailing wages, those projects could qualify for expedited judicial review. In that case, we got sued. But that lawsuit, instead of taking 3 1/2 years, took about a year.

What project are you most proud of?

The San Francisco Ferry Building. I received a book the other day of about 250 worldwide destinations you have to see in your lifetime, and it was one of them. I’m proud to have been a part of that; it’s a big part of our local community. There were lots of challenges—mostly regulatory, because it was a tax-credit project, and we had a lot of hoops we had to jump through with the National Park Service.



Janette G. Leonidou
Leonidou & Rosin;
Construction
Litigation;
Mountain View



Anne E. Mudge
Cox Castle &
Nicholson; Land Use/
Zoning; San Francisco



Mary G. Murphy
Gibson, Dunn &
Crutcher; Real Estate;
San Francisco

“The New Reality of Work”

Garret Murai, whose father was an architect, is a founding partner of Nomos LLP, an Oakland-based construction law firm. Concentrating in both commercial and public works, Murai’s clients run the gamut from contractors and subcontractors to owners and developers.

How has the pandemic affected your work?

Working from home had always been a topic that was talked about, but it wasn’t until the pandemic forced people to work from home that we’re now seeing a lot of design changes by clients in terms of how they’re utilizing their commercial or retail space and adjusting to the new reality of work. As a construction lawyer, I’m seeing a decline in commercial real estate contracts from what I’ve worked on in the past.

What else has changed since 2004?

I’m seeing more focus than ever on cost-escalation provisions in construction contracts. Contractors want to protect themselves in the event that there are cost escalations for materials, and are seeking to negotiate provisions that allow them to push those costs over to the owners. And there’s a countervailing push from the owners wanting to either limit cost-escalation provision in their contracts, or not have any in place.

I’m also seeing a lot more projects implementing modular construction, where components of a building are built off-site, and then they’re railroaded or trucked in and craned into place—basically, it’s like Lego blocks. Labor costs are so high in California that people are crunching their numbers and realizing it’s less expensive to actually build units outside the state and bring them in. This creates contractual issues. The fact that units are being built off-site and then brought on-site, there’s always the risk of damage to the building being brought in. Oftentimes, there’s a third-party modular firm that’s actually

building the units off-site, and they’re in contract with the general contractor.

What about in the public sphere?

There’s more openness by state and local entities to build projects using different project delivery methods than have traditionally been used in the past. What’s called design-bid-build is the traditional way of building things. Now, I’m seeing a lot more design-build, in which a contractor is awarded a project and is responsible for both the design and the construction of the project.

What’s been your most memorable project?

I was involved in the Salesforce Tower in San Francisco. It’s one of the tallest buildings on the West Coast. I was counsel for a subcontractor on the project, and I was also involved in some minor payment issues. But, mostly, it was the gloss of working on that project.

“I’ve Witnessed Two Dot-Com Booms”

Tenant-rights attorney Joseph Tobener is the founding partner of Tobener Ravenscroft, which represents tenants in cases involving wrongful evictions, repair issues, landlord harassment, discrimination, sexual harassment and landlord-caused injuries.

What’s happened with Bay Area housing in the previous two decades?

I’ve witnessed two dot-com booms. In the first, in the early aughts, folks got displaced—but they were able to move down the street, downsize a little bit, or move into a more nontraditional housing setting in the Bay Area. The second boom, after about 2012, really displaced people. This is where you saw people having to leave California altogether.

We’ve seen rent control expand all over California. When I first started doing this work, there were only a handful of jurisdictions with rent control. In the last



Selected to Super Lawyers

“I’m Gary Gwilliam. I’m the founder and senior partner of the firm. I’m very proud of the fact that we’ve formed a firm that not only does good work, but that people like to come here. We stand up for the little guy. We have no fear of taking on anybody. Whether it’s the biggest insurance companies, whether it’s the State of California, or it’s the United States Government; it doesn’t matter. As long as I can stand up and walk into this firm, I’ll fight for the things I believe in.”



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Garret Murai
Nomos LLP;
Construction
Litigation; Oakland



Joseph Tobener
Tobener Ravenscroft;
Real Estate;
San Francisco



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—Mary G. Murphy



20 years, we’ve seen probably a tenfold increase in cities and counties passing new rent controls. In addition to that, three years ago, California passed a rent control statute, which caps rents and gives eviction protections all over the state. That was a watershed moment.

Is there a case or project you’re most proud of?

The most rewarding work I’ve done is with mobile homes. These populations tend to be super vulnerable—elderly or on fixed incomes. These folks spend a lot of money to purchase their homes—hundreds of thousands of dollars—yet they don’t own the land. So, even though it’s called a mobile home, no other park will accept an old mobile home; they want new, pre-manufactured homes. As a result, they really are trapped in their circumstances. Arguing those cases has been especially rewarding.

What are you working on now?

I’m working hard to develop legislation that will spread throughout California that will allow us to pursue private rights of action against landlords that are failing to maintain housing where there are vulnerable populations in units. What’s happened is that a lot of our public housing went private, and these private

companies are all based in New York or other states. And you’ve got families living in substandard conditions, and no one is pursuing those landlords in a meaningful way because those laws aren’t set up. You rarely see a city, county or the state pursue a slumlord. It’s exceedingly rare.

“Parties Are Way More Sophisticated”

Janette Leonidou, a founding partner at construction law firm Leonidou & Rosin in Mountain View, represents owners, general contractors, subcontractors and suppliers in a variety of disputes.

What’s a major change you’ve witnessed since 2004?

Parties are way more sophisticated in how they work. We have a number of clients who have an in-house legal team, but even the people who are in charge of the higher level—the executives—are very sophisticated. And the contracts for construction projects grow every year—dozens and dozens, sometimes hundreds, of pages for big projects. The two-pager? That doesn’t exist anymore.

What’s been your most memorable case?

A super-complex multiparty case, probably 30 parties, where I represented the prime

contractor. We had delays, defects and coverage issues. And we were in the middle. Everyone was shooting at us. The delta was like \$90 million between what we were suing for and what we were being sued for. Then we had almost 40 subs suing us, and it took a long time. Our client ended up getting \$14 million, plus enough to resolve all their subcontractor claims—even though they had so many items coming at them.

What legal developments have affected construction litigation?

When I started out 30 years ago, in the subcontractor community there were unfair consequences where general contractors forced really onerous indemnity clauses on subcontractors, basically making them responsible for any of the general contractor’s negligence. And that was a battle. Then, about 10 years ago, the legislature finally changed that law to limit what type of negligence can be passed down to subcontractors, and even contractors, from owners. That was huge.

Another issue is a change in case law requiring contractors, especially in public works, to be more compliant with technical provisions of the contract. There was a string of cases where the courts were denying contractors, who clearly had the right to more money, just because they



didn't comply with, for example, technical notices. The courts became conservative on that, and now we have to contend with it, and many times it's not fair. You can get a ridiculously unfair result because someone didn't comply with some technicality.

“The State Has Been a Leader”

*Cox Castle partner **Annie Mudge** focuses on permitting, land use development and utility-scale renewable energy projects. For more than 30 years in San Francisco she has navigated state and local regulations to build wind, solar, geothermal and battery storage projects—as well as commercial, residential and retail developments.*

What legal shift has had biggest impact on your work?

The most marked progression over the past 20 years has been California's leadership wanting to reduce greenhouse gasses. That has really driven a market for renewable energy projects that might not otherwise have been competitive. The state has been a leader in requiring investor-owned utilities like the PG&E to buy renewable energy.

What are the stumbling blocks?

There's been more NIMBYism; people are not as enthusiastic about having renewable energy projects in their jurisdictions. In order to incentivize solar energy production in California, the legislature excluded property at solar projects from property taxes. Local jurisdictions that would otherwise be getting increases in property

taxes do not get increases in property taxes. So, for many counties, they're like: What's in it for us?

In terms of wind, most of the sites that are suitable for utility-scale wind power in California—well, there's not a lot of land left. On a couple of projects we've tried to get approved, I've been met with quite a moody reaction. You get a lot of people coming out and saying, “We don't like them—they're big, they're ugly, they make noise. They have a bunch of lights at night. We love renewable energy, but don't put them here.”

What about technological changes?

Maybe eight years ago, not only did the legislature mandate that utilities buy electrons from renewable energy, but they also mandated that utilities buy storage for these renewable energy projects. Right now we're at the beginning of real proliferation of battery storage and renewable energy, and this is where the story returns to urban areas. For efficiency's sake, battery storage needs to be near existing substations. So local planning commissions and neighbors are saying, “What is this? Is it going to explode? What are the fire risks?” They really are pretty safe; the technology is getting better and better.

Is there a project from the last 20 years you are most proud of?

The Edwards Sanborn Solar and Energy Storage Project. A good part of it is on Edwards Air Force Base in Kern County,

and it's one of the biggest solar and battery storage projects in the United States. It adds 1,300 megawatts of energy to the California grid, and it's a public-private partnership between Terra-Gen and the Air Force to turn land not being used for operations or training into an enormous solar farm. We did some very comprehensive environmental impact statements, and we had negotiations with just about every permitting agency under the sun.

What are your expectations for the future?

The future is bright for renewable energy in California. The demand is going to continue to grow in all sectors—transportation, housing and industrial—and under California's Senate Bill 100, the goal is 100 percent carbon-neutral energy production by 2045. That means we have a lot of work to do. **SL**

71: The number of times Ruth Bader Ginsburg has been mentioned in *Super Lawyers* articles.

