



From Way Downtown

That's how Oakland attorney Shaye Diveley helped deliver an arena for the Kings—and just before the buzzer

BY CARLOS HARRISON



Shaye Diveley

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“Things don't need to take forever in order to be good. They just need to be good.”

It was a slam dunk.

The fight to build a new arena for the Sacramento Kings brought accusations against the city of violating state regulations, as well as two appellate court battles and a first-ever state-mandated race against the clock to complete all legal challenges.

It resulted in a landmark decision on the constitutionality of a law that revamped the state's sweeping environmental protection statute—and just nine days before the deadline under the new, expedited judicial-review process.

The cases did more than test the law, says Shaye Diveley, the environmental and land use attorney who represented the city of Sacramento through the proceedings. They tested assumptions.

“We've gotten used to things being drawn out so long,” she says. “But things don't need to take forever in order to be good. They just need to be good. An analysis doesn't need to take three years. A lawsuit doesn't need to sit around forever in order for the issues to be analyzed and litigated.”

It all started in 2013 when the Kings threatened to move to Seattle. To keep the team where it was, then-Mayor Kevin Johnson assembled an investor group and promised the NBA the franchise would get a new arena.

The league gave the city until the start of the 2017-18 season to get it done.

The clock was ticking. But the city still had to deal with the California Environmental Quality Act, which requires an environmental review of projects that need approval before they can be built. The law is popular and provides protection, but Diveley says the process had grown cumbersome.

“We have cases that just go on for years. They don't really get a chance to move forward because of either issues with the review process or issues where litigation just delays it. And even though, under CEQA, cases are supposed to move fast, the courts are just so bogged down, we can't always guarantee that.”

To beat the league's deadline, the state Legislature stepped in with a law that expedited the process. It still required the full environmental review, Diveley says, but all the findings, comment letters and related information had to be disclosed immediately to the public, speeding up any legal challenges.

Most significantly, it allowed only 270 days to finish the review *and* handle those challenges.

“People said it couldn't be done,” she says.

The lawsuits began almost immediately. One set of arguments protested the environmental review process on a number of issues, including contending that the city was required to analyze impacts of post-game crowds and potential rioting by rowdy fans.

It was an unusual fight for Diveley to find herself in, especially considering she grew up a baseball fan in St. Louis, rooting for the Cardinals—and found her way to environmental and land use law only after studying journalism and working for a trade association representing gold mines.

She interned for U.S. Rep. Dick Gephardt, then landed a job with the Gold Institute. That meant a lot of trips West to discuss the environmental impact of mining.

“That's really how my interest in environmental law started,” she says. “The more I learned about water quality and environmental issues and endangered species issues, I realized that I really wanted to study that more.”

She went to law school determined to make environmental and land use issues her practice. She'd been at it for more than a decade, and knew CEQA issues well, when the Kings arena case came along. But concerns about the environmental impact of rioting fans were new.

“It made me quite happy to be able to write a brief that the California Environmental Quality Act is not concerned about riots,” she says. “It was completely over the top. But it kind of demonstrated just the numerous types of challenges that were being thrown at the project.”

The court agreed, rejecting the group's arguments. The opponents weren't done, though. Diveley says they also brought “a direct challenge to the constitutionality of the expedited provision, which they said interfered with the court's ability to do its job.”

It put Diveley in the position of having to defend the law and meet its deadline at the same time.

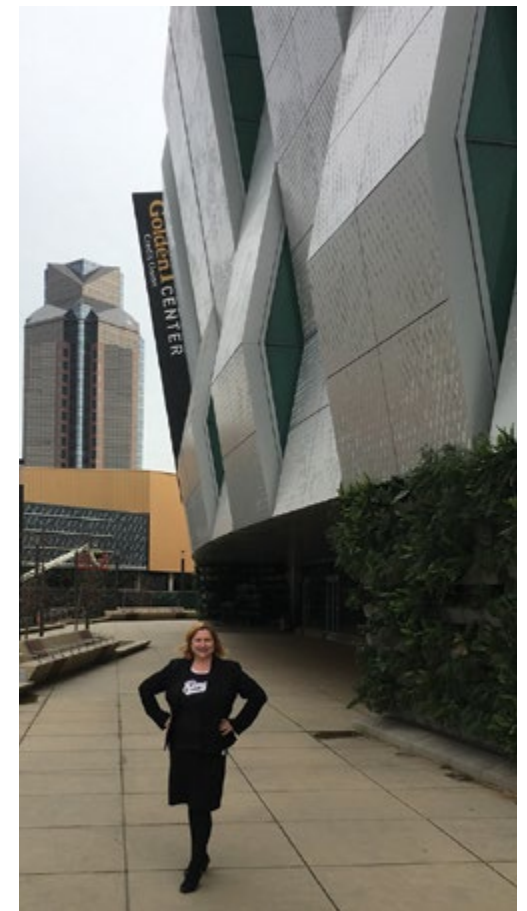
“It demonstrated to other projects that this crazy schedule of 270 days is actually practical and feasible,” she says.

With the legal hurdles cleared, the new arena, the Golden 1 Center, opened a full year ahead of the NBA's deadline.

In upholding the law, Diveley says, the appellate court not only allowed the Sacramento project to proceed, it “provided a level of comfort and certainty to other projects throughout the state ... that they don't have to be worried that somebody is going to come along and challenge the [expedited] process itself as unconstitutional.”

In fact, she's using it again right now in Los Angeles, with a Frank Gehry-designed mixed-use project on Sunset Boulevard.

“I guess I got a reputation,” she says.



Diveley sports her Kings jersey in front of the Golden 1 Center.