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Legal Expertise – Enabling Business Growth and Transformation

Greener route cuts through legal tangle

Firms take a proactive approach to navigating environmental obstacles

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When real estate developer FivePoint hired law firm Latham & Watkins, the future of its multibillion-dollar Newhall Ranch project in Los Angeles County was in trouble. One of the largest master-planned communities – big residential neighbourhoods designed from the outset – ever proposed in California was caught in a tangle of stalled government approvals and environmental lawsuits.

The most pressing problem was a ruling from the California Supreme Court in 2015 that had rejected the analysis the developer had presented to help predict the greenhouse gas emissions generated by the project. The court asked FivePoint to redo it.

“The company then scratched its head, hired us, and we came to the conclusion that the standard as to what was measured is not clear in law, so any path you take is a path fraught with risk,” says George Muhlsten, a Latham partner in Los Angeles. The company’s response was: “Let’s go to zero.”

Emile Haddad, chief executive of FivePoint, recalls the moment he asked his legal team about going for net zero greenhouse gas emissions. “For the first 30 seconds, everyone looked at me to try to see if I was kidding or not,” he says.

He had two reasons for the strategy. First, it was “the right thing to do”. The second was that years of conflict generally between environmental and development concerns have produced “a lose-lose situation”.

“The environmental community is not getting what they’re bargaining for, and meanwhile the development community is suffering,” he says. “We have a housing crisis in the state of California.” Going to net zero emissions – carbon neutrality – “takes away the argument of whether this project has a negative impact on the



Open space: The Newhall Ranch development will protect dedicated areas

environment . . . It was a relationship that needed to be recalibrated.”

Latham set about helping FivePoint find a way to do just that, using complex models to project the emissions from the project and put it on a path to becoming one of the most sustainable in the state.

Lawyers are increasingly being asked to help clients navigate regulations concerning the environment, and to operate in ways that fit with the broader environmental, sustainability and

governance (ESG) agenda.

The project for FivePoint is one of several pieces of recent work by law firms that help clients meet the ESG standards they set themselves. The work, while seemingly uncontroversial, is being undertaken at a time when President Donald Trump’s administration wishes to weaken US environmental regulation and the federal government continues to express scepticism about the validity of the science of climate change, leaving states and businesses at times to set their own environmental standards.

Morrison & Foerster, led by partner Susan Mac Cormac, has been working with Nature Conservancy, the non-profit organisation, and The Carbon Endowment, a new non-profit partnership, on a pro bono basis to acquire and retire coal reserves in an effort to reduce carbon dioxide emissions. They then work to restore lands and waters that have been affected by fossil fuel extraction, and support local communities adversely

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Emile Haddad, FivePoint chief executive, on asking his legal team about net zero carbon emissions



Cutting carbon: A cookstove in Zambia

affected by job losses caused by these closures.

In Canada, Davies, Ward, Phillips & Vineberg partner Alexandria Pike worked with Pattern Development and the Henvey Inlet First Nation of indigenous people to obtain an environmental permit to construct Canada’s largest wind power

project.

The project is intended to create a clean power source for Ontario, while also bringing revenue to the Henvey Inlet First Nation. That required the lawyers to help navigate federal regulations on endangered species, and comply with obligations surrounding industrial activity

on land reserved for indigenous people.

In the Newhall Ranch project for FivePoint, Latham calculated all the emissions associated with the construction of the project, from putting up houses to clearing trees. But it also used modelling to project the emissions that would be emitted by the vehicles of residents, including how traffic patterns would evolve and where residents would be commuting. Based on the projections, FivePoint is seeking to counteract greenhouse gas emissions by putting solar panels on the roof of every house and installing electric car chargers in every home and in public places.

“Our client was really pushing the bar in terms of how people build smart cities for the future,” says Jean-Philippe Brisson, a New York-based partner at Latham. “This is a significant precedent in how companies [will] do major projects in California.”

In addition, the lawyers designed a programme of measures outside the immediate area of development. These included enabling disadvantaged people in LA County to obtain solar panels, helping farmers capture methane gas from cattle, and a “clean cook” project, now operating in Zambia.

The emissions concern was not the only environmental block to navigate, however. Lawsuits were filed by the Center for Biological Diversity, an environmental group, and a local Native American community concerned about how Newhall Ranch would affect the land, including part of a river that runs through the development before it reaches them.

“This has taken a lot of science, and brought it to application,” says Mr Mhlsten. “This is something that had been 17 years in the making, and 18 months on from the Supreme Court decision, it is now under construction.”

Enabling business growth and transformation

Law firms and legal service providers

Highly Commended

Latham & Watkins Resolved more than 17 years of ongoing litigation that had prevented developer FivePoint from commencing construction on a large housing development in California, the Newhall Ranch urbanisation project. The firm worked with Native American and environmental groups to help broker added protections to win licensing approval for the project, which is projected to generate 60,000 permanent jobs and more than \$800m in taxes.

	Originality	Leadership	Impact	Total
	7	8	7	22