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10 and County of Orange Planning and Development
11 Services Department

12 *Exempt From Filing Fees Pursuant to Gov't Code § 6103*

**ELECTRONICALLY
FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
May 13 2008
ALAN SLATER, Clerk of the Court
by M. DEMARIA

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

15 LADERAHOPE, a California nonprofit
16 corporation; DARRYL SERLIN, an individual;
17 SONIA SERLIN, an individual; MICHELE
18 LYNCH, an individual; SCOTT LYNCH, an
19 individual; BARRY LYON, an individual; and
20 STEPHANIE LYON, an individual,

21 **Petitioners and Plaintiffs,**

22 v.

23 COUNTY OF ORANGE, a local government
24 agency, and COUNTY OF ORANGE
25 PLANNING and DEVELOPMENT
26 SERVICES DEPARTMENT, a local
27 government agency and Does 1 through 50,
28 inclusive

Respondents and Defendants.

29 WELLHEAD POWER MARGARITA, LLC, a
30 Delaware limited liability company, SAN
31 DIEGO GAS & ELECTRIC COMPANY, a
32 California corporation; and SEMPRA
33 ENERGY. A California corporation,

Real Parties in Interest.

Case No. 30-2008-00100906

ASSIGNED FOR ALL PURPOSES TO
JUDGE RONALD L. BAUER
DEPARTMENT CX103

**STATUS CONFERENCE STATEMENT
OF RESPONDENTS COUNTY OF
ORANGE, AND COUNTY OF ORANGE
PLANNING AND DEVELOPMENT
SERVICES DEPARTMENT**

DATE: May 19, 2008
TIME: 9:00 a.m.
DEPT. CX103

Action Filed: January 2, 2008
Trial Date: None Set

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CASE MANAGEMENT AND STATUS CONFERENCE STATEMENT

Respondents, County of Orange and County of Orange Planning and Development Services Department (collectively the “County”), hereby provide the following Case Management Conference and Status Conference Statement pursuant to Rule VIII.2 of the Civil Complex Center Litigation Guidelines.

1. BACKGROUND AND SUMMARY OF THE CASE

This is primarily an action under the California Environmental Quality Act (Pub. Res. Code sections 21000 and following, “CEQA”), challenging the approval by the County of Orange Planning Commission of a site development permit and variance for development of a natural gas burning peaker plant proposed to provide supplemental electric service in south Orange County. The Planning Commission approved a Negative Declaration for the project. A Notice of Determination was filed. There was no appeal to the Board of Supervisors, so the action of the Planning Commission is final. Suit was subsequently filed by LaderaHope against the County of Orange and County of Orange Planning and Development Services Department (an administrative division of the County having no separate legal existence) and the real parties in interest. The Petition also contains a cause of action for a civil rights violation pursuant to 42 U.S.C. 1983.

2. STATUS OF THE ACTION, RECENT DEVELOPMENTS AND TIMING ISSUES

Petitioners and the Real Parties in interest, with the encouragement of the County, have been engaging in direct settlement discussions which, if successful, could resolve this matter. The County has not actively participated in the litigation to date, and anticipates that the primary litigants in this matter will be the Petitioners and Real Parties, though, of course, the County reserves the right to address any matter it considers important or appropriate. The County has been advised that settlement discussions have failed and that the matter is now an active litigation matter.

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1 On May 8, 2008, LaderaHope, through its attorneys, provided the County with
2 documents that they had acquired from real parties which raise substantial questions about the
3 accuracy of the information provided by Wellhead which formed the basis for the Negative
4 Declaration approved by the Planning Commission for the project. So far as the County was
5 aware at the time the decision was made concerning this project, the material did not exist and
6 could not have been obtained through due diligence prior to adoption of the Negative
7 Declaration by the Planning Commission. If this information existed at the time the decision
8 was made, it was withheld from the County. This information has led the County to alter its
9 position regarding the adequacy and completeness of the previously approved Negative
10 Declaration and on May 13, 2008, the Board of Supervisors directed that this information be
11 provided to the Court.

12 **The new information is briefly summarized below.**

13 Wellhead, in its various communications with the County, emphasized that the size of
14 the project was an approximately 46 megawatt power plant described as a peaker plant,
15 powered by a single jet turbine, and that the expected level of operation of the plant would be
16 about 200 hours per year. It was also indicated that the operations could exceed 2000 hours in
17 emergency situations. The new information suggests that the actual intention of Wellhead and
18 SDG&E was to operate the plant 2000 or more hours per year. In addition, there are
19 indications that the applicants intend to double the size of the facility over time.

20 The new information indicates that the actual size and scale of the project, and its
21 visibility to the neighboring community, would be much greater than is indicated in the view
22 simulations presented to staff and the Planning Commission.

23 New studies prepared in 2008 indicate that the overall noise level of the plant at the
24 nearest homes may be significantly higher than indicated in the noise study attached to the
25 Negative Declaration and that starting the plant is likely to create individual events that would
26 be distinctly audible at nearby residences. The noise levels described would exceed those
27 allowed by the County Noise Ordinance at least part of the time.

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1 Some of the air quality information and analysis provided by Wellhead appears to have
2 been inaccurate.

3 Section 21166 of the California Environmental Quality Act (CEQA) provides that once
4 an EIR or negative declaration has been adopted, no subsequent or supplemental EIR can be
5 required except in specified circumstances, one of which is that, "New information, which was
6 not known and could not have been known at the time the environmental impact report was
7 certified as complete, becomes available." If new information is found and presented, CEQA
8 Guidelines section 15162(a)(3) provides that further environmental review may be required if
9 the new information shows that: the project will have significant effects that were not
10 evaluated; significant effects will be more severe; or that alternatives or mitigation measures
11 should be reevaluated. Sections 21166 and 15162 apply to both EIRs and Negative
12 Declarations.

13 The County has examined the new information in light of section 21166 and now
14 believes that its Negative Declaration was based on faulty information and that new
15 environmental review, including a potential Environmental Impact Report under CEQA is
16 appropriate.

17 The County will take appropriate further steps to advise the Court and the other Parties
18 of its position as the litigation progresses.

19 DATED: May 13, 2008

Respectfully submitted,

20 BENJAMIN P. de MAYO, COUNTY COUNSEL
21 ROGER P. FREEMAN, DEPUTY
and MARK D. SERVINO, DEPUTY

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23 By: 

Roger P. Freeman, Deputy

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25 Attorneys for Respondents County of Orange,
26 and County of Orange Planning and Development
Services Department

1 PROOF OF SERVICE

2 I do hereby declare that I am a citizen of the United States employed in the County of
3 Orange, over 18 years old and that my business address is 333 West Santa Ana Boulevard, Suite
407, Santa Ana, California 92701. I am not a party to the within action.

4 On May 13, 2008 I served the foregoing **STATUS CONFERENCE STATEMENT OF**
5 **RESPONDENTS COUNTY OF ORANGE, AND COUNTY OF ORANGE PLANNING**
6 **AND DEVELOPMENT SERVICES DEPARTMENT**

on all other parties to this action by placing a true copy of said document in a sealed envelope
in the following manner:

7 (BY U.S. MAIL) I placed such envelope(s) addressed as shown below for
8 collection and mailing at Santa Ana, California, following our ordinary business practices. I
9 am readily familiar with this office's practice for collecting and processing correspondence for
10 mailing. On the same day that correspondence is placed for collection and mailing, it is
11 deposited in the ordinary course of business with the United States Postal Service in a sealed
12 envelope with postage fully prepaid.

13 (BY AIRBORNE EXPRESS) I placed such envelope(s) addressed as shown
14 below for collection and delivery by Airborne Express with delivery fees paid or provided for
15 in accordance with this office's practice. I am readily familiar with this office's practice for
16 processing correspondence for delivery the following day by Airborne Express.

17 (BY FACSIMILE) I caused such document to be telefaxed to the addressee(s)
18 and number(s) shown below, wherein such telefax is transmitted that same day in the ordinary
19 course of business.

20 (BY PERSONAL SERVICE) I caused such envelope(s) to be hand-delivered to
21 the addressee(s) shown below.

22 (STATE) I declare under penalty of perjury under the laws of the State of
23 California that the foregoing is true and correct.

24 (FEDERAL) I declare that I am employed in the office of a member of the Bar of
25 this Court at whose direction the service was made.

26 
27 Eileen Blanton

28 **NAME AND ADDRESS TO WHOM SERVICE WAS MADE**

See attached service list

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