

**MANISTEE CITY PLANNING COMMISSION**  
70 Maple Street, Manistee, Michigan 49660  
Meeting of Thursday, February 5, 2004  
7:00 p.m. - Cafeteria, Manistee Middle School, 550 Maple Street

**AGENDA**

- I Roll Call
- II Public Hearing
  - None
- III Approval of Minutes
  - Planning Commission Meeting (1/8/04)
- IV New Business
  - None
- V Unfinished Business
  - 1. Manistee Saltworks Development Corporation - Application
  - 2. Receipt and Review of Conflict of Interest opinion letter
- VI Other Communications
  - 1.
- VII Citizen Questions, Concerns and Consideration  
(Public Comment Procedures on the Reverse Side)
- VIII Work/Study Session
  - 1.
- IX. Adjournment

## Public Comment Procedures

The City of Manistee Planning Commission welcomes public comment in support of its decision-making process. To assure an orderly, fair and balanced process, the Planning Commission asks that participants at all public hearings observe the following rule of procedure:

1. The Chairperson will recognize each speaker. When a speaker has the floor, he/she is not to be interrupted unless time has expired. Persons speaking without being recognized shall be out of order.
2. Each speaker shall state their name and address for the record and may present written comments for the record.
3. Speakers shall address all comments and questions to the Planning Commission.
4. Unless waived by the Planning Commission for a specific meeting or a specific speaker, public comment shall be limited to five (5) minutes per speaker, one time only. If a group of people wish to be heard on one subject, a spokesperson may be designated who may request that more than five (5) minutes be permitted for the collective comments of the group as presented by that speaker.
5. The Chairperson may request that repetitive comments be limited or abbreviated in the interest of saving time and allowing others to speak.
6. The Chairperson may establish additional rules of procedure for particular hearings as he/she determines appropriate.
7. Normal civil discourse and decorum is expected at all times. Applause, shouting, outbursts, demonstrations, name-calling or other provocative speech or behavior is not helpful to the decision-making process and may result in removal from the hearing or an adjournment.

Thank you for your interest in the work of the City of Manistee Planning Commission and for your cooperation with these rules of procedure.

# MEMORANDUM

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TO: Planning Commission Members

FROM: Denise Blakeslee   
Administrative Assistant - Community Development Department

DATE: January 29, 2004

RE: Planning Commission Meeting February 5, 2004

The February Planning Commission Meeting will be held at 7:00 p.m. in the Middle School, Cafeteria, 550 Maple Street. The following items will be on the agenda.

1. Manistee Saltworks Development Corporation. Enclosed you will find a memo from Jon Rose along with a response to the environmental assessment from Tondu. At this time the Planning Commission could deem the application complete. After the application is deemed complete we will need to schedule a public hearing. We recommend scheduling this Public Hearing for the Worksession on February 19, 2004.
2. Receipt and Review of Conflict of Interest opinion letter. John Gretzinger has been preparing a report for the disclosure of any Potential Conflicts of Interest. This report will be distributed at the meeting. Mr. Gretzinger will not be in attendance at the meeting due to a prior commitment.

Jay Kilpatrick has sent us a copy of By-Laws that he has been drafting for the City of Manistee. I have enclosed this copy for your review.

If you are unable to attend the meeting, please call me at 723-2558.

:djb

# CITY OF MANISTEE

## PLANNING COMMISSION

### BY-LAWS AND RULES OF PROCEDURES

#### 1. AUTHORITY

These By-laws and Rules of Procedures are adopted by the Planning Commission of the City of Manistee, County of Manistee, (hereinafter referred to as the Commission) pursuant to Public Act 207 of 1921, as amended, the City and Village Zoning Act; the City of Manistee Zoning Ordinance, and the Public Act 267 of 1976, as amended, the Open Meetings Act.

#### 2. OFFICERS

2.1 Selection. At the December meeting, the Planning Commission shall elect a chairperson, vice-chairperson and secretary who shall serve for the next twelve (12) months and who shall be eligible for re-election. Vacancies in an office of the Commission shall be filled at the next regular meeting of the Commission. The membership shall elect one of its members to fill the vacancy until the next annual election.

2.2 Duties The chairperson shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein.

The vice-chairperson shall act in the capacity of the chairperson in the absence of the chairperson or in the event of a vacancy in the office of chairperson; in which case, the Commission shall select a successor to the office of vice-chairperson at the earliest practicable time.

The Secretary, or a Recording Secretary appointed by the Commission, shall be responsible for the preparation of minutes, keeping of pertinent public records, delivering communications, pertinent, reports, and related items of business of the Commission, issuing notices of public hearings and performing related administrative duties to assure efficient and informed Commission operations. In the event the Secretary is absent, the Chairperson or acting chairperson shall appoint a temporary secretary for such meeting.

2.3 Tenure The officers shall take office immediately following their election. They shall hold their office for a term of one year, or until their successors are elected and assume office.

### 3. MEETINGS

3.1 Meeting Notice. Notice of all meetings shall be posted at the City Hall on a date established by the Commission. The notice shall include the date, time and place of the meeting. Any changes in the date or time of the regular meetings shall be posted and noticed in the same manner as originally established. When a regular meeting date falls on or near a legal holiday, the Commission shall select suitable alternate dates in the same month, in accordance with the Open Meeting Act.

3.2 Special Meetings. A special meeting may be called by two members of the Planning Commission upon written request to the Secretary or by the Chairperson. The business which the Planning Commission may perform shall be conducted at a public meeting of the Planning Commission held in compliance with the Open Meeting Act. Public Notice of the time, date, and place of the special meeting shall be given in a manner as required by the Open Meeting Act, and the Secretary or Recording Secretary shall send written notice of a special meeting to commission members not less than 48 hours in advance of the meeting.

3.3 Quorum. In order for the Commission to conduct business or take any official actions, a quorum consisting of at least five of the nine members of the Commission shall be present. When a quorum is not present, no official action, except for the closing of the meeting may take place. The members of the Commission may discuss matters of interest, but shall take no action until the next regular or special meeting. All public hearings without a quorum shall be scheduled for the next regular or special meeting and no additional public notice is required provided the date, time and place is announced at the meeting.

3.4 Public Hearings. Hearings shall be scheduled and due notice given in accordance with the provisions of the Acts and Ordinance cited in Section 1. Public hearings conducted by the Planning Commission shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure.

1. The Chairperson of the Planning Commission shall announce that a public hearing will be conducted on a request.
2. The Chairperson shall read the public hearing announcement as published in the newspaper and give a brief description of the hearing subject and the public notice procedure.
3. The Chairperson shall announce the following hearing rules
  - a. The Chairperson will recognize each speaker. When a speaker has the floor, he/she is not to be interrupted unless time has expired. Persons speaking without being recognized shall be out of order.
  - b. Each speaker shall state their name and address for the record and may present written comments for the record.
  - c. Speakers shall address all comments and questions to the Planning Commission and comments will be limited to the subject matter of the Public Hearing.
  - d. Unless waived by the Planning Commission for a specific meeting or a specific speaker, public comment shall be limited to five (5) minutes per speaker, one time only. If a group of people wish to be heard on one subject, a spokesperson may be designated who may request that more than five (5) minutes be permitted for the collective comments of the group as presented by that speaker.
  - e. The Chairperson may require that repetitive comments be limited or abbreviated in the interest of saving time and allowing others to speak. Everyone shall have an opportunity to speak before someone is allowed to speak a second time.
  - f. The Chairperson may establish additional rules of procedure for particular hearings as he/she determines appropriate.
  - g. Normal civil discourse and decorum is expected at all times. Applause, shouting, outbursts, demonstrations, name-calling or other provocative speech or behavior may result in removal from the hearing or an adjournment.
4. Once all public comments have been stated, the Chairperson shall close the hearing. Any voting member of the Planning Commission may initiate a motion to close the hearing.
5. Public Hearings shall be carried out pursuant to the following format:
  - a. The Chairperson shall open the hearing
  - b. The Applicant shall present any comments and explanation of the case.
  - c. The City staff and any consultants serving the City shall present their reports.
  - d. The hearing will be opened for public comment

- e. The public comment period will be closed.
  - f. Deliberation and discussion by the Planning Commission
  - g. Disposition of the case by the Planning Commission.
- 3.5 Motions. Motions shall be restated by the Chairperson before a vote is taken. The name of the maker and supporters of the motions shall be recorded.
- 3.6 Voting. An affirmative vote of the majority of the Commission shall be required for the approval of any requested action or motion placed before the Commission. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if requested by any Commission member or directed by the Chairperson. All members of the Commission including the Chairperson shall vote on all matters, but the Chairperson shall vote last. Any members may be excused from voting only if that person has a bonafide conflict of interest as recognized by the majority of the remaining members of the Commission. Any members abstaining from a vote shall not participate on the discussion of that item.
- 3.7 Order of Business A written agenda for all regular meetings shall be prepared as followed. The order of business shall be:

Call to Order.

Roll Call.

Approval of Agenda.

Approval of Minutes.

Public Hearings.

Old Business.

New Business.

Public Comments and Communications concerning items not on the agenda.

Correspondence.

Staff reports

Members discussion

Adjournment

A written agenda for special meeting shall be prepared and followed, however the form as enumerated above shall not be necessary.

3.8 Rules of Order. All meetings of the Commission shall be conducted in accordance with generally accepted parliamentary procedure, as governed by *Modern Parliamentary Procedures*.

3.9 Agenda Items. For an item to be considered at a regular Planning Commission meeting, it must be submitted to the City Community Development Department no later than the established policy of the City prior to the next scheduled Planning Commission meeting.

## 6. MINUTES

4.1 Preparation. Commission minutes shall be prepared by the Secretary or Recording Secretary of the Commission. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, action and resolutions shall be attached to the minutes.

## 7. OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

5.1 All meetings of the Commission shall be open to the public and held in a place available to the general public.

5.2 All Deliberations and decision of the Commission shall be made at a meeting open to the public.

5.3 A person shall be permitted to address a hearing of the Commission under the rules established in subsection 3.4, and to address the Commission concerning non-hearing matters at the time designated for such comments.

5.4 A person shall not be excluded from a meeting of the Commission except for breach of the peace, committed at the meeting.

5.5 All records, files, publications, correspondences, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act.

8. AMENDMENTS

These rules may be amended by the Commission by a concurring vote to subsection 3.6, during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be conducted.

THESE BY-LAWS AND RULES OF PROCEDURES ARE ADOPTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_

CITY OF MANISTEE PLANNING COMMISSION

**Items forwarded to the  
City of Manistee Planning Commission  
in their packets mailed January 29, 2004 relating to the  
Manistee Saltworks Development Corporation**

Memo dated 1/27/04 from Jon Rose RE: Manistee Saltworks Development Corporation - Application

Letter dated 1/22/04 from R. J. Tondou to Jon Rose RE: Environmental Assessment, Northern Lights Project

Memo dated 1/27/04 with amendment to Item #2 - Environmental Assessment Northern Lights Project

Letter dated 1/26/04 from R. J. Tondou to Jon Rose

Letter dated 1/23/04 from Jon Rose to Matt Somsel, Casman Alternative Academy with attachment

Article - *What is a Megawatt?*

Correspondence:

Bear Lake Township - Resolution

Pat Guzikowski - Onkama, Michigan

Jay Kilpatrick, Williams & Works

MEMO

TO: Planning Commission Members

FROM: Jon Rose   
Community Development Director

DATE: January 27, 2004

RE: Manistee Saltworks Development Corporation - Application

Enclosed in your packet is the Tondu response to the letter from Engineer, Brian Sousa requesting more information on the environmental assessment. Mr. Sousa, Jay Kilpatrick (Planning Consultant), and I have reviewed this response and believe it completes the requested environmental assessment. We are therefore recommending that the application be deemed complete.

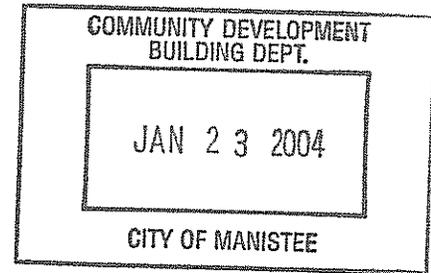
While there are specific items which have not been furnished, in each instance there is a reason why the information is not provided. In many cases the applicant has committed to furnishing the information as soon as it is developed. The Planning Commission can discuss these individual items in their review of the application's completeness.

JRR:djb



January 22, 2003

Mr. Jon Rose  
City of Manistee  
Manistee, Michigan



*RE: Environmental Assessment, Northern Lights Project*

Dear Jon:

We understand that you and the Planning Commissioners have read our Environmental Assessment of the Northern Lights Project and have some remaining questions. We would like to respond to them in the order in which they were listed in your letter dated December 30, 2003.

**Item 1**

As mentioned in the Assessment, all existing site buildings are planned to be demolished. All demolition activities will conform to a building demolition plan that will be approved by applicable authorities prior to demolition. Debris will be removed from the site and disposed of or recycled in accordance with applicable Federal, State, and Local regulations. All oil barrels, brine barrels, toxic materials, or other significant stored contaminants will be removed from the buildings prior to demolition.

**Item 1, last bullet**

Refer to Attachment One, a new drawing issued and sealed by FTC&H.

**Item 2**

All asbestos abatement activities will be conducted by licensed asbestos abatement contractors in accordance with applicable Federal, State and Local regulations, which prevent asbestos materials from becoming airborne. In Michigan, the Michigan Department of Consumer and Industry Services has government jurisdiction over asbestos abatement.

**Item 3**

There are several steps before Manistee Saltworks Development Corporation purchases the General Chemical and other properties and proceeds with the development of the Northern Lights Project. Therefore, Tondou has not developed a complete remediation plan for the site. Tondou will provide the State approved plan to the Planning Commission after it is developed. Also, refer to our response under Item 19, below.

**TONDU CORPORATION**  
44701 ST. MARY'S LANE  
SUITE 625  
HOUSTON, TX 77079  
Ph: 281 775-4422  
Fax: 281 379-4333

**Item 9**

While researching the site, Steve Harold, Museum Director for the Manistee County Historical Museum, "discovered nothing of historical significance either for the buildings or for the land itself." His documented information on the site dates before 1898, and includes ownership, development, and activities on the property since that time. A copy of his letter is included as Attachment Two.

**Item 10**

Since we provided the information under Item 10 two significant events have occurred that will effect emissions from the Northern Lights plant.

First, the EPA issued its proposed MACT standards for controlling mercury emissions from coal-fired power plants. As written, it would require the Plant, as a new source, to limit mercury emissions to approximately 80 pounds per year. This would be an 81% reduction from the amount stated in our air permit application. Even though this would be very costly to implement, we remain committed to meeting whatever standards are ultimately required for our facility.

The proposed MACT rules do contain a possible cap and trade (credit) program for mercury emissions, but the description of the program lacks clarity with regard to both application and implementation. However, it appears that the Plant would not be able to purchase credits to emit more mercury. It might be able to participate to the extent that it achieved a reduction below the MACT standard. It might be able sell what was over-achieved as credits to others.

Second, we have completed the final BACT analysis for the Plant and have determined that two more of the constituents of our emissions can be, and should be, reduced. In a letter of January 6, 2004 to the MDEQ we modified our air permit application as follows:

NOx reduced 33%, from 0.15 to 0.10 lb/mmmbtu. (-889 tons/yr)  
SO2 reduced 40%, from 0.25 to 0.15 lb/mmmbtu. (-1778 tons/yr)

Based on this analysis, which included an extensive review of other permitted power plants, all our emissions now fall in line with the most recently permitted power plants in other states.

Finally, Plant startup was not intended as anything more than our continued commitment to have the Plant in compliance with ALL applicable regulations at the time it goes into operation.

**Item 19**

The property does contain several diverse contamination sites as described in our original Environmental Assessment. This information was taken from the previous owner's baseline environmental assessments and other documents. However, we cannot answer exactly how or when we will clean up the various contaminants, or at what level they will be remediated at this time. Those details can only be shared after several required steps have been taken, and a Due Care Plan filed with the MDEQ.

After Manistee Saltworks Development Corporation purchases the property, it must go through four steps. First, a Phase I Environmental Site Assessment ("ESA") will be performed in accordance with ASTM Standard Practice E 1527-00. The Phase I ESA will seek to identify possible contaminants through records research, site inspection, and interviews.

Second, a Phase II ESA will be performed if the Phase I warrants it. In the case of the General Chemical property, Tondu expects that a Phase II will be required. The Phase II ESA involves soil and water sampling at the site and chemical analysis to determine the specific level of contamination.

Third, a Baseline Environmental Assessment is written based on the information gathered in the Phase I and II ESAs. The MDEQ has a specific framework for the BEA, and requires that the BEA be filed with the MDEQ if contamination levels are high enough.

Finally, a Due Care Plan is required depending on the level of contamination. Again, Tondu believes that a Due Care Plan will be required for the General Chemical Property. The Due Care Plan outlines the current levels of contamination, the methods for remediation, the timeline for implementation, and the required levels of clean up going forward.

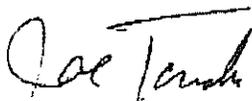
Attachment Two outlines this four step process in more detail. We believe that the Commission's questions regarding Item 19 can only be answered after this process is complete, and a Due Care Plan finalized with the MDEQ.

#### **Additional Items**

The Environmental Assessment was prepared by Tondu employees with input from certified Tondu consultants and government officials. This group effort and the fact that no calculated data is being presented, means that sealing by a professional engineer is neither appropriate nor required.

Thank you for the opportunity to share this information with the Planning Commission. It is our hope that by responding to these questions, the Special Use Permit Application is deemed complete.

Sincerely,



R. J. Tondu  
President  
RJT/mjs

**Attachment One**





**Attachment Two**

**MANISTEE COUNTY  
HISTORICAL MUSEUM**

425 River Street  
Manistee, Michigan 49660  
616-723-5931

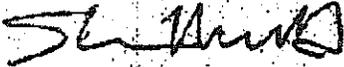
7 January 2004

To Whom It May Concern:

I have looked through Museum files and other records to prepare the attached history of the General Chemical plant site.

In doing so, to the best of my knowledge, I have discovered nothing of historical significance either for the buildings or for the land itself. While parts of the main building are probably 105 years old it has been significantly altered many times by intervening owners to serve a wide variety of needs. It bears little resemblance to the original structure and has almost no architectural significance.

Sincerely,



Steve Harold,  
Museum Director

### History of General Chemical Plant Site

- before 1898 no significant developement  
at north edge was a small shipyard for several years
- 1898 Plant built by American Hide & Leather Company as tannery  
tannery operated sporatically by several owners
- 3 Apr 1931 Hardy Salt Company - Announced construction of plant.  
- reused old tannery building
- 1932 Hardy Salt company - plant commenced operation.
- 1 Apr 1985 operating salt plant purchased by Diamond Crystal  
purchased by Akzo
- 22 Mar 1989 in operation as Akzo  
Nov 1995 intended closing date of Akzo
- 30 Jul 1996 AMBAR plant production started - calcium chloride
- 30 Oct 2000 purchased by General Chemical
- 4 Dec 2002 General Chemical closing announced

### Attachment Three

#### **Phase I Environmental Site Assessment (ESA)**

The Phase I ESA is performed to identify recognized environmental conditions associated with the property. FTC&H conducts Phase I ESAs in conformance with the scope and limitations of American Society for Testing and Materials (ASTM) Standard Practice E 1527-00. The enclosed Work Plan briefly identifies the items typically completed in an ASTM Standard Phase I ESA. The Phase I ESA takes approximately three to four weeks to complete upon receipt of authorization to proceed.

To complete the Phase I Environmental Site Assessment, FTC&H typically conducts the following tasks.

- Based on available information, identify site uses from the present back to the time when the site was first developed. Standard historical sources that may be consulted to research site use include aerial photography, fire insurance maps, property tax files, recorded land title records, and local street directories.
- Contact the local Michigan Department of Environmental Quality (MDEQ) Air Quality Division, Water Division, Waste and Hazardous Materials Division, and Remediation and Redevelopment Division; the local health department; and the Lansing MDEQ Underground Storage Tank Division for records and information indicating previous environmental impairment or violations at the site and adjacent properties.
- Inspect the site to identify recognized environmental conditions (RECs), such as the release of hazardous substances or petroleum products onto the property. Site photographs will be taken during site reconnaissance.
- Interview current and/or former owners/operators to obtain a verbal history of the site and to identify RECs at the site.
- Review the National *Priorities List of CERCLA (Superfund) Sites*; the *RCRA CORRACTS Facilities List*; and the *List of Michigan Sites of Environmental Contamination (MDEQ Act 307 List)* for sites within one mile of the site.
- Review the federal *Comprehensive Environmental Response Compensation and Liability Information System List*; the *RCRA Non-CORRACTS TSD Facilities List*; the *Leaking UST Sites and Locations in Michigan* report; and the MDEQ Reports of Active Solid Waste Facilities and Transfer Stations and Inactive Solid Waste Facilities for sites within one-half mile of the site.
- Review the federal *Emergency Response Notification System List* for the site; and the *Michigan Underground Storage Tank Facility and Tank Data Listing and Michigan List of Hazardous Waste Generators* for the site and adjacent properties.

FTC&H will complete this project with a written report summarizing the work performed, results, and conclusions. This report will be issued three to four weeks following receipt of notice to proceed. All reports are reviewed for accuracy by senior management (team leader and/or project manager) before transmittal to the client.

A Phase I Environmental Site Assessment does not routinely include sampling and analysis. These tasks would be conducted in a separate Phase II investigation if the Phase I study revealed locations of potential or suspected areas of contamination on the property.

#### **Phase II ESA**

A Phase II ESA is conducted if there are recognized environmental conditions identified during the Phase I ESA. The purpose of the Phase II ESA is to collect representative soil and/or groundwater samples and have them analyzed by an analytical laboratory to determine if the subject property is a contaminated site, termed a "facility". The number and type of samples that need to be collected, as well as the analytical parameters, are site specific and based on the information gathered in the Phase I ESA.

### **Baseline Environmental Assessment**

The BEA document verifies the presence of contamination on a parcel of property at the time of property acquisition. The BEA can be prepared only if it has been determined that the property is a facility. The BEA must be conducted within 45 days of purchase or occupancy. Also, the BEA document must be submitted to the Michigan Department of Environmental Quality (MDEQ) within 6 months from the date it was completed.

There are three types of BEAs: Categories N, D, and S. Category N is applicable when the future use of the property does not include the use of hazardous substances in a significant quantity. Category D applies when the future use of the property includes the use of significant quantities of hazardous substances that are different from the contaminants that have been identified on the property. Category S applies when the hazardous substances which will be used in significant amounts are the same as the contaminants previously identified. A *significant amount* is greater than a typical household or office use.

The State of Michigan has developed a specific format for the BEA. Generally, the Phase I and Phase II ESA findings are summarized, and the future use of the property is stated. The completed Phase I and Phase II ESA documents are included as attachments to the BEA. A BEA may be submitted to the MDEQ.

The document can be submitted to the MDEQ for determination or disclosure. When submitting for determination, the MDEQ will review the BEA for adequacy within 14 days of receipt. The MDEQ charges a fee of \$750 to perform the review. When submitting for disclosure, the MDEQ accepts the BEA as a public record. The intent of both options is to provide the purchaser the same type of protection. Questions concerning which submittal option is appropriate should be discussed with legal counsel. A BEA submitted for determination must be filed within 6 months of purchase, occupancy, or foreclosure. If a determination is not requested, the BEA can be filed at any time; however, submittal within the 6-month period is recommended.

### **Due Care Plan**

A Due Care Plan is required by the State of Michigan for every contaminated site (facility). This plan includes the following information, as required by Rule 299.51003 of the Michigan Administrative Code:

- Background information concerning contaminants located on the property.
- Identification of potential exposure pathways and receptors.
- Identification of precautions necessary to prevent reasonably foreseeable exposures.
- Description of any required response activities.
- Property owner's due care obligations.

Other topics evaluated and addressed in the document that are required in Michigan include:

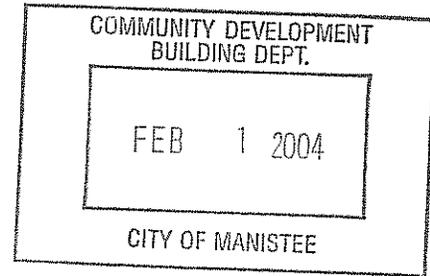
- Offsite migration notice to the Michigan Department of Environmental Quality (MDEQ).
- Abandoned containers notice to the MDEQ.
- Mitigation of fire/explosion hazards.
- Notification of exposures to easement holders.

**TONDU**

**FAXED**  
1/26/04

January 26, 2003

Mr. Jon Rose  
City of Manistee  
Manistee, Michigan



*RE: Environmental Assessment, Northern Lights Project*

Dear Jon:

We understand that you and the Planning Commissioners have read our Environmental Assessment of the Northern Lights Project and have some remaining questions. We would like to respond to them in the order in which they were listed in your letter dated December 30, 2003.

**Item 1**

As mentioned in the Assessment, all existing site buildings are planned to be demolished. All demolition activities will conform to a building demolition plan that will be approved by applicable authorities prior to demolition. Debris will be removed from the site and disposed of or recycled in accordance with applicable Federal, State, and Local regulations. All oil barrels, brine barrels, toxic materials, or other significant stored contaminants will be removed from the buildings prior to demolition.

**Item 1, last bullet**

Refer to Attachment One, a new drawing issued and sealed by FTC&H.

**Item 2**

All asbestos abatement activities will be conducted by licensed asbestos abatement contractors in accordance with applicable Federal, State and Local regulations, which prevent asbestos materials from becoming airborne. In Michigan, the Air Quality Division of the Michigan Department of Environmental Quality and the Michigan Department of Consumer and Industry Services has government jurisdiction over asbestos abatement.

**Item 3**

There are several steps before Manistee Saltworks Development Corporation purchases the General Chemical and other properties and proceeds with the development of the Northern Lights Project. Therefore, Tondur has not developed a complete remediation plan for the site. Tondur will provide the State approved plan to the Planning Commission after it is developed. Also, refer to our response under Item 19, below.

**TONDU CORPORATION**  
14701 ST. MARY'S LANE  
SUITE 625  
HOUSTON, TX 77079  
(832) 379-4222  
fax (832) 379-4333

### **Item 9**

While researching the site, Steve Harold, Museum Director for the Manistee County Historical Museum, "discovered nothing of historical significance either for the buildings or for the land itself." His documented information on the site dates before 1898, and includes ownership, development, and activities on the property since that time. A copy of his letter is included as Attachment Two.

### **Item 10**

Since we provided the information under Item 10 two significant events have occurred that will effect emissions from the Northern Lights plant.

First, the EPA issued its proposed MACT standards for controlling mercury emissions from coal-fired power plants. As written, it would require the Plant, as a new source, to limit mercury emissions to approximately 80 pounds per year. This would be an 81% reduction from the amount stated in our air permit application. Even though this would be very costly to implement, we remain committed to meeting whatever standards are ultimately required for our facility.

The proposed MACT rules do contain a possible cap and trade (credit) program for mercury emissions, but the description of the program lacks clarity with regard to both application and implementation. However, it appears that the Plant would not be able to purchase credits to emit more mercury. It might be able to participate to the extent that it achieved a reduction below the MACT standard. It might be able to sell what was over-achieved as credits to others.

Second, we have completed the final BACT analysis for the Plant and have determined that two more of the constituents of our emissions can be, and should be, reduced. In a letter of January 6, 2004 to the MDEQ we modified our air permit application as follows:

NOx reduced 33%, from 0.15 to 0.10 lb/mmmbtu. (-889 tons/yr)  
SO2 reduced 40%, from 0.25 to 0.15 lb/mmmbtu. (-1778 tons/yr)

Based on this analysis, which included an extensive review of other permitted power plants, all our emissions now fall in line with the most recently permitted power plants in other states.

Finally, Plant startup was not intended as anything more than our continued commitment to have the Plant in compliance with ALL applicable regulations at the time it goes into operation.

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Second, a Phase II ESA will be performed if the Phase I warrants it. In the case of the General Chemical property, Tondu expects that a Phase II will be required. The Phase II ESA involves soil and water sampling at the site and chemical analysis to determine the specific level of contamination.

Third, a Baseline Environmental Assessment is written based on the information gathered in the Phase I and II ESAs. The MDEQ has a specific framework for the BEA, and requires that the BEA be filed with the MDEQ if contamination levels are high enough.

Finally, a Due Care Plan is required depending on the level of contamination. Again, Tondu believes that a Due Care Plan will be required for the General Chemical Property. The Due Care Plan outlines the current levels of contamination, the methods for remediation, the timeline for implementation, and the required levels of clean up going forward.

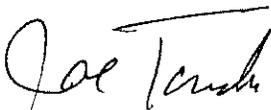
Attachment Two outlines this four step process in more detail. We believe that the Commission's questions regarding Item 19 can only be answered after this process is complete, and a Due Care Plan finalized with the MDEQ.

#### **Additional Items**

The Environmental Assessment was prepared by Tondu employees with input from certified Tondu consultants and government officials. This group effort and the fact that no calculated data is being presented, means that sealing by a professional engineer is neither appropriate nor required.

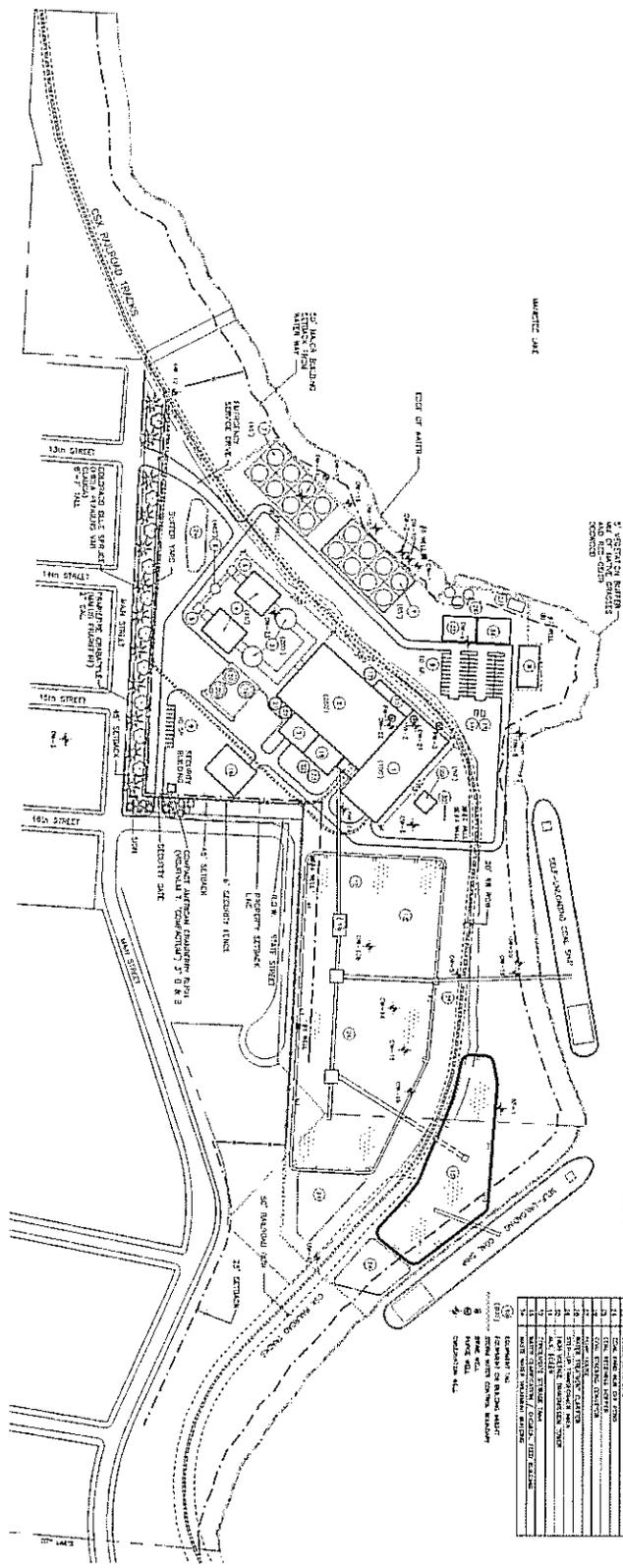
Thank you for the opportunity to share this information with the Planning Commission. It is our hope that by responding to these questions, the Special Use Permit Application is deemed complete.

Sincerely,

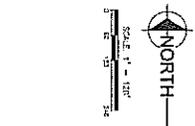


R. J. Tondu  
President  
RJT/mjs

**Attachment One**



- PLAN PROVIDED BY:  
 MANISTEE COUNTY DEVELOPMENT CORP.  
 2010-2011 ANNUAL REPORT
- NOTES:
1. THIS PLAN IS INTENDED TO BE CONSIDERED AS A PRELIMINARY PLAN FOR THE DEVELOPMENT OF THE SALTWORKS DEVELOPMENT. IT IS SUBJECT TO THE FINAL REVIEW AND APPROVAL OF THE MANISTEE COUNTY BOARD OF SUPERVISORS.
  2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE MANISTEE COUNTY BOARD OF SUPERVISORS AND THE STATE OF MICHIGAN.
  3. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE MANISTEE COUNTY BOARD OF SUPERVISORS AND THE STATE OF MICHIGAN.
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  10. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE MANISTEE COUNTY BOARD OF SUPERVISORS AND THE STATE OF MICHIGAN.



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**Attachment Two**

**MANISTEE COUNTY  
HISTORICAL MUSEUM**

426 River Street  
Manistee, Michigan 49860  
616-723-5531

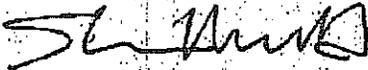
7 January 2004

To Whom It May Concern:

I have looked through Musuem files and other records to prepare the attached history of the General Chemical plant site.

In doing so, to the best of my knowledge, I have discovered nothing of historical significance either for the buildings or for the land itself. While parts of the main building are probably 105 years old it has been significantly altered many times by intervening owners to serve a wide variety of needs; it bears little resemblance to the original structure and has almost no architectural significance.

Sincerely,



Steve Harold,  
Museum Director

### History of General Chemical Plant Site

- before 1898 no significant developement  
at north edge was a small shipyard for several years
- 1898 Plant built by American Hide & Leather Company as tannery  
tannery operated sporatically by several owners
- 3 Apr 1931 Hardy Salt Company - Announced construction of plant.  
- reused old tannery building
- 1932 Hardy Salt company - plant commenced operation.
- 1 Apr 1985 operating salt plant purchased by Diamond Crystal  
purchased by Akzo
- 22 Mar 1989 in operation as Akzo
- Nov 1995 intended closing date of Akzo
- 30 Jul 1996 AMBAR plant production started - calcium chloride
- 30 Oct 2000 purchased by General Chemical
- 4 Dec 2002 General Chemical closing announced

## Attachment Three

### **Phase I Environmental Site Assessment (ESA)**

The Phase I ESA is performed to identify recognized environmental conditions associated with the property. FTC&H conducts Phase I ESAs in conformance with the scope and limitations of American Society for Testing and Materials (ASTM) Standard Practice E 1527-00. The enclosed Work Plan briefly identifies the items typically completed in an ASTM Standard Phase I ESA. The Phase I ESA takes approximately three to four weeks to complete upon receipt of authorization to proceed.

To complete the Phase I Environmental Site Assessment, FTC&H typically conducts the following tasks.

- Based on available information, identify site uses from the present back to the time when the site was first developed. Standard historical sources that may be consulted to research site use include aerial photography, fire insurance maps, property tax files, recorded land title records, and local street directories.
- Contact the local Michigan Department of Environmental Quality (MDEQ) Air Quality Division, Water Division, Waste and Hazardous Materials Division, and Remediation and Redevelopment Division; the local health department; and the Lansing MDEQ Underground Storage Tank Division for records and information indicating previous environmental impairment or violations at the site and adjacent properties.
- Inspect the site to identify recognized environmental conditions (RECs), such as the release of hazardous substances or petroleum products onto the property. Site photographs will be taken during site reconnaissance.
- Interview current and/or former owners/operators to obtain a verbal history of the site and to identify RECs at the site.
- Review the National *Priorities List of CERCLA (Superfund) Sites*; the *RCRA CORRACTS Facilities List*; and the *List of Michigan Sites of Environmental Contamination (MDEQ Act 307 List)* for sites within one mile of the site.
- Review the federal *Comprehensive Environmental Response Compensation and Liability Information System List*; the *RCRA Non-CORRACTS TSD Facilities List*; the *Leaking UST Sites and Locations in Michigan* report; and the MDEQ Reports of Active Solid Waste Facilities and Transfer Stations and Inactive Solid Waste Facilities for sites within one-half mile of the site.
- Review the federal *Emergency Response Notification System List* for the site; and the *Michigan Underground Storage Tank Facility and Tank Data Listing and Michigan List of Hazardous Waste Generators* for the site and adjacent properties.

FTC&H will complete this project with a written report summarizing the work performed, results, and conclusions. This report will be issued three to four weeks following receipt of notice to proceed. All reports are reviewed for accuracy by senior management (team leader and/or project manager) before transmittal to the client.

A Phase I Environmental Site Assessment does not routinely include sampling and analysis. These tasks would be conducted in a separate Phase II investigation if the Phase I study revealed locations of potential or suspected areas of contamination on the property.

### **Phase II ESA**

A Phase II ESA is conducted if there are recognized environmental conditions identified during the Phase I ESA. The purpose of the Phase II ESA is to collect representative soil and/or groundwater samples and have them analyzed by an analytical laboratory to determine if the subject property is a contaminated site, termed a "facility". The number and type of samples that need to be collected, as well as the analytical parameters, are site specific and based on the information gathered in the Phase I ESA.

### **Baseline Environmental Assessment**

The BEA document verifies the presence of contamination on a parcel of property at the time of property acquisition. The BEA can be prepared only if it has been determined that the property is a facility. The BEA must be conducted within 45 days of purchase or occupancy. Also, the BEA document must be submitted to the Michigan Department of Environmental Quality (MDEQ) within 6 months from the date it was completed.

There are three types of BEAs: Categories N, D, and S. Category N is applicable when the future use of the property does not include the use of hazardous substances in a significant quantity. Category D applies when the future use of the property includes the use of significant quantities of hazardous substances that are different from the contaminants that have been identified on the property. Category S applies when the hazardous substances which will be used in significant amounts are the same as the contaminants previously identified. A *significant amount* is greater than a typical household or office use.

The State of Michigan has developed a specific format for the BEA. Generally, the Phase I and Phase II ESA findings are summarized, and the future use of the property is stated. The completed Phase I and Phase II ESA documents are included as attachments to the BEA. A BEA may be submitted to the MDEQ.

The document can be submitted to the MDEQ for determination or disclosure. When submitting for determination, the MDEQ will review the BEA for adequacy within 14 days of receipt. The MDEQ charges a fee of \$750 to perform the review. When submitting for disclosure, the MDEQ accepts the BEA as a public record. The intent of both options is to provide the purchaser the same type of protection. Questions concerning which submittal option is appropriate should be discussed with legal counsel. A BEA submitted for determination must be filed within 6 months of purchase, occupancy, or foreclosure. If a determination is not requested, the BEA can be filed at any time; however, submittal within the 6-month period is recommended.

### **Due Care Plan**

A Due Care Plan is required by the State of Michigan for every contaminated site (facility). This plan includes the following information, as required by Rule 299.51003 of the Michigan Administrative Code:

- Background information concerning contaminants located on the property.
- Identification of potential exposure pathways and receptors.
- Identification of precautions necessary to prevent reasonably foreseeable exposures.
- Description of any required response activities.
- Property owner's due care obligations.

Other topics evaluated and addressed in the document that are required in Michigan include:

- Offsite migration notice to the Michigan Department of Environmental Quality (MDEQ).
- Abandoned containers notice to the MDEQ.
- Mitigation of fire/explosion hazards.
- Notification of exposures to easement holders.

MEMO

TO: Planning Commission Members

FROM: Jon Rose   
Community Development Director

DATE: January 27, 2004

RE: Amendment to Tondu letter dated January 22, 2004

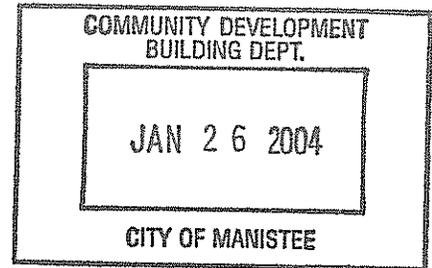
Attached is an amendment to page 1 of the Environmental Assessment, Northern Lights Project dated January 22, 2004. We received a fax on January 26, 2004 that amends Item 2 of the letter regarding the Environmental Assessment, Northern Lights Project.

The amendment is in the language of the last sentence of this section.

JRR:djb



**TONDU**



January 26, 2004

Mr. Jon Rose, Community Development Director  
City of Manistee  
P. O. Box 358  
Manistee, Michigan 49660

Dear Mr. Rose:

At this time, Tondue Corporation ("Tondue") and Manistee Salt Works Development Corporation ("MSWDC") believe that all members of the City of Manistee Planning Commission are unbiased and will act fairly in reviewing the Special Use Permit application submitted by MSWDC for the Northern Lights Project. However, if it is determined that Mr. Wittlief has a conflict because his wife works at the T.E.S. Filer City Station, then we would expect the same standard to apply to Mr. Davis who is a member and former employee of the Little River Band of Ottawa Indians. The Tribe has taken a vocal position against the Northern Lights Project.

Per your request, this letter contains responses from employees and consultants for Tondue and MSWDC on contacts with members of the Planning Commission. The following individuals are employees of Tondue: Ms. Beverly Baker, Mr. Jim Ford, Ms. Cheryl Longuet, Mr. Jim Tondue, Mr. Joe Tondue and Mr. Matt Smith. Ms. Meagan Kempf is a consultant who has worked for Tondue since June 2001 and is now working exclusively for Tondue. MSWDC does not have any employees. Several of the employees of Tondue routinely attended the Planning Commission meetings and other public meetings to explain the proposed project to the public or City officials.

**Response from Beverly Baker:**

*Ms. Baker had no contact with members of the Planning Commission except for Planning Commission meetings and other public meetings to explain the proposed project to the public or City officials.*

**Response from Jim Ford:**

*Ms. Kempf told Mr. Ford that Mr. Greg Ferguson had some questions on plant emissions. Mr. Ford spoke with Mr. Ferguson briefly to help him reconcile the public information MSWDC had released with some of the claims made by speakers at the first public hearing provided by the Commission. Mr. Ford did not log the call and does not remember the exact date.*

*All other communications between Mr. Ford and members of the Planning Commission have been at various Planning Commission meetings or other public meetings to explain the proposed project to the public or City officials.*

**TONDU CORPORATION**  
14701 ST. MARY'S LANE  
SUITE 615  
HOUSTON, TX 77079  
(321) 579-4222  
fax (832) 579-4133

**Response from Cheryl Longuet:**

*Ms. Longuet did not attend any of the public meetings and had no contact with members of the Planning Commission.*

**Response from Matthew Smith:**

*Mr. Smith had no contact with members of the Planning Commission except for Planning Commission meetings and other public meetings to explain the proposed project to the public or City officials.*

**Response from Jim Tonde:**

*In the spring of 2003, Mr. Jim Tonde contacted Ms. Cyndy Fuller about a potential housing development project in the greater Manistee area. They talked about Harbor Village, its process, architect, future, marketing, and the needs for another housing project in the greater Manistee area.*

*Mr. Jim Tonde also saw Ms. Cyndy Fuller at a MECCA meeting shortly after Ms. Fuller was appointed to the Planning Commission. Mr. Jim Tonde and Ms. Meagan Kempf were providing an update on the Northern Lights Project and Mr. Jim Tonde did not have any conversations with Ms. Cyndy Fuller outside of the presentation.*

*During the summer of 2003, Mr. Greg Ferguson contacted Ms. Kempf and wanted to talk about the union construction agreement for the Northern Lights Project. Ms. Kempf and Mr. Jim Tonde visited with Mr. Ferguson at his construction site the next day. Mr. Ferguson was concerned that union concrete contractors would put him out of business. Ms. Kempf and Mr. Jim Tonde informed him commercial construction was very different from residential and they did not think this would affect his business.*

*Mr. Greg Ferguson called Mr. Jim Tonde and suggested there might be an alternative direction in lieu of a Special Use Permit because a power plant is a specified use. Mr. Jim Tonde reviewed this suggestion with our application consultant and they indicated the Special Use Permit was required.*

*All other communications between Mr. Jim Tonde and members of the Planning Commission have been at various Planning Commission meetings or other public meetings to explain the proposed project to the public or City officials.*

**Response from Joe Tonde:**

*Mr. Joe Tonde talked to Mr. Wittlief at the T.E.S. Filer City Station Christmas party in December 2003 in a group of about 30 to 40 people. Mr. Joe Tonde had a brief discussion with Mr. Wittlief about the Planning Commission hearing process but cannot recall any specific discussion of his opinion of the Northern Lights Project. Mr. Wittlief is the husband of Dawn Wittlief who works for CMS Energy at T.E.S. Filer City Station, which Tonde has an ownership interest in.*

Mr. Jon Rose  
January 26, 2004  
Page 3 of 5

*All other communications between Mr. Joe Tondou and members of the Planning Commission have been at various Planning Commission meetings or other public meetings to explain the proposed project to the public or City officials.*

**Response from Meagan Kempf:**

*Ms. Kempf has been a member of the Manistee area for nearly six years and has developed numerous relationships with City officials and some members of the Planning Commission.*

*During the second week of September, prior to MSWDC submitting a Special Use Permit application, Ms. Kempf attempted to contact all Planning Commission members to inform them that MSWDC was preparing a Special Use Permit and she would inform the Planning Commission about the Northern Lights Project in the near future. Ms. Kempf did not reach everyone and does not remember each specific conversation. The following summarizes conversations Ms. Kempf had with members of the Planning Commission outside the Planning Commission meetings or other public meetings to explain the proposed project to the public or City officials.*

Bob Davis

*Ms. Kempf provided consulting services to the Little River Band of Ottawa Indians from March 2000 to April 2003 when Mr. Davis was Director of Operations for the Tribe. She worked primarily for the Housing Department. Ms. Kempf and Mr. Davis worked on some projects together and attended some social events. Ms. Kempf does not recall if she had any conversations at that time with Mr. Davis about her work with Tondou.*

*According to Ms. Kempf's records, she contacted Mr. Davis on September 12, 2003 to inform him that MSWDC had an option on the General Chemical property and would apply for a Special Use Permit shortly. Mr. Davis expressed concerns about the environmental issues surrounding a coal-fired power plant.*

Greg Ferguson

*According to Ms. Kempf's notes, she spoke with Mr. Ferguson on September 10, 2003 and he said he had some questions regarding union labor. She told him Mr. Jim Tondou was handling the union contracts and he would be in town the following day. Mr. Ferguson asked if Mr. Jim Tondou could stop by his job site since he was unreachable by telephone. Mr. Jim Tondou and Ms. Kempf visited with Mr. Ferguson the next day.*

*Mr. Ferguson also called Ms. Kempf about the wastewater generated by the plant. She referred him to Mr. Jim Ford, the Project Director for the Northern Lights Project, for an answer.*

Ray Fortier

*Ms. Kempf met Mr. Fortier approximately four years ago when she was a member of the City Parks Commission and he was serving on the Planning Commission. She has continued a professional relationship with Mr. Fortier since then. Ms. Kempf has not had any in depth*

**TONDU CORPORATION**  
14701 St. Mary's Lane  
SUITE 625  
HOUSTON, TEXAS 77079  
832-379-4222  
FAX 832-379-4333

*conversation with him regarding the Northern Lights Project outside of the Planning Commission meetings.*

*According to Ms. Kempf's records, she spoke with him on September 8, 2003 to let him know MSWDC was preparing a Special Use Permit for the Northern Lights Project on the General Chemical site. He said he had heard we were moving the project to the city and Ms. Kempf said she would attend the next Planning Commission meeting and speak to the commissioners about the project.*

*Cyndy Fuller*

*In mid-November of 2003, Ms. Kempf introduced herself to Ms. Fuller and told her she was a consultant for Tondue. Ms. Fuller indicated she was considering applying for a position on the Planning Commission. Ms. Kempf indicated that if Ms. Fuller were appointed to the Planning Commission, Ms. Kempf would be happy to answer any questions Ms. Fuller could have about the Northern Lights Project at the next meeting.*

*Ms. Kempf also saw Ms. Fuller at a MECCA meeting shortly after Ms. Fuller was appointed to the Planning Commission. Ms. Kempf and Mr. Jim Tondue were providing an update on the Northern Lights Project and Ms. Kempf did not have any conversations with Ms. Fuller outside of the presentation.*

*David Kelley*

*Ms. Kempf did not know Mr. Kelley prior to beginning the process to obtain the Special Use Permit for MSWDC and has no records of contact with Mr. Kelley outside of Planning Commission meetings.*

*Christa Johnson*

*Ms. Kempf has known Ms. Johnson since April 1999 and has done things socially with Ms. Johnson and her husband on occasion. However, she has not spoken with Ms. Johnson or her husband in depth about her job with Tondue or the Northern Lights Project.*

*Ms. Kempf recalls three conversations with Ms. Johnson where they discussed her appointment to the Planning Commission. Ms. Johnson contacted Ms. Kempf to say that she was considering applying for the Planning Commission and/or Harbor Commission. Ms. Kempf told her that she thought it was a great idea and she could make a contribution to either commission.*

*Ms. Kempf had another conversation with Ms. Johnson when Ms. Johnson was not appointed the first round. Ms. Johnson expressed her disappointment and Ms. Kempf encouraged her to apply when another vacancy came up or to apply for the Harbor Commission.*

*Ms. Kempf spoke with Ms. Johnson again after she was appointed to the Planning Commission and congratulated her on her appointment.*

Mr. Jon Rose  
January 26, 2004  
Page 5 of 5

*Ms. Kempf has seen Ms. Johnson in different social situations since she was appointed to the Planning Commission and the Northern Lights Project was not discussed. Ms. Kempf and her husband hired Ms. Johnson's husband to assist with a short-term construction job on their home.*

Tony Slawinski

*Ms. Kempf did not know Mr. Slawinski prior to beginning the process to obtain the Special Use Permit for MSWDC. According to Ms. Kempf's notes, she called him on September 9, 2003 to inform him that the General Chemical site was being evaluated as a location for the Northern Lights Project.*

Mark Wittlief

*Ms. Kempf and Mr. Wittlief met for the first time after a City Council or Planning Commission meeting this fall. Ms. Kempf saw him at the T.E.S. Filer City Station Christmas party in December 2003 and they did not discuss the Northern Lights Project.*

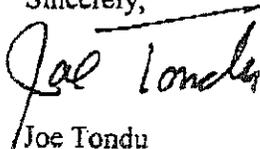
Roger Yoder

*Ms. Kempf did not know Mr. Yoder prior to beginning the process to obtain the Special Use Permit for MSWDC and she has no record of any conversations with him regarding this project outside of Planning Commission meetings.*

Tondu Corporation has instructed all employees to avoid any discussion of the Special Use Permit application with members of the Planning Commission outside of scheduled meetings and has instituted a policy to record any incidental contacts that may occur.

Should you or Mr. Gretzinger have any further questions regarding this issue, please do not hesitate to contact me.

Sincerely,



Joe Tondu  
President

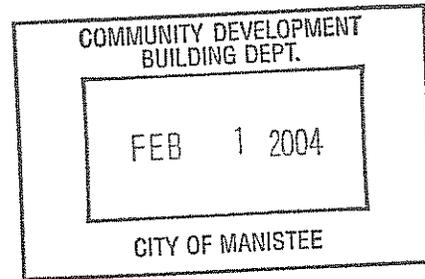
**TONDU CORPORATION**  
14701 St. Mary's Lane  
SUITE 625  
HOUSTON, TEXAS 77079  
832-379-4222  
FAX 832-379-4333

**TONDU**

**FAXED**  
1/26/04

January 26, 2004

Mr. Jon Rose, Community Development Director  
City of Manistee  
P. O. Box 358  
Manistee, Michigan 49660



Dear Mr. Rose:

At this time, Tondue Corporation ("Tondue") and Manistee Salt Works Development Corporation ("MSWDC") believe that all members of the City of Manistee Planning Commission are unbiased and will act fairly in reviewing the Special Use Permit application submitted by MSWDC for the Northern Lights Project. However, if it is determined that Mr. Wittlief has a conflict because his wife works at the T.E.S. Filer City Station, then we would expect the same standard to apply to Mr. Davis who is a member and former employee of the Little River Band of Ottawa Indians. The Tribe has taken a vocal position against the Northern Lights Project.

Per your request, this letter contains responses from employees and consultants for Tondue and MSWDC on contacts with members of the Planning Commission. The following individuals are employees of Tondue: Ms. Beverly Baker, Mr. Jim Ford, Ms. Cheryl Longuet, Mr. Jim Tondue, Mr. Joe Tondue and Mr. Matt Smith. Ms. Meagan Kempf is a consultant who has worked for Tondue since June 2001 and is now working exclusively for Tondue. MSWDC does not have any employees. Several of the employees of Tondue routinely attended the Planning Commission meetings and other public meetings to explain the proposed project to the public or City officials.

**Response from Beverly Baker:**

*Ms. Baker had no contact with members of the Planning Commission except for Planning Commission meetings and other public meetings to explain the proposed project to the public or City officials.*

**Response from Jim Ford:**

*Ms. Kempf told Mr. Ford that Mr. Greg Ferguson had some questions on plant emissions. Mr. Ford spoke with Mr. Ferguson briefly to help him reconcile the public information MSWDC had released with some of the claims made by speakers at the first public hearing provided by the Commission. Mr. Ford did not log the call and does not remember the exact date.*

*All other communications between Mr. Ford and members of the Planning Commission have been at various Planning Commission meetings or other public meetings to explain the proposed project to the public or City officials.*

**TONDU CORPORATION**  
14701 ST. MARY'S LANE  
SUITE 625  
HOUSTON, TX 77079  
(832) 379-4222  
fax (832) 379-4333

**Response from Cheryl Longuet:**

*Ms. Longuet did not attend any of the public meetings and had no contact with members of the Planning Commission.*

**Response from Matthew Smith:**

*Mr. Smith had no contact with members of the Planning Commission except for Planning Commission meetings and other public meetings to explain the proposed project to the public or City officials.*

**Response from Jim Tondu:**

*In the spring of 2003, Mr. Jim Tondu contacted Ms. Cyndy Fuller about a potential housing development project in the greater Manistee area. They talked about Harbor Village, its process, architect, future, marketing, and the needs for another housing project in the greater Manistee area.*

*Mr. Jim Tondu also saw Ms. Cyndy Fuller at a MECCA meeting shortly after Ms. Fuller was appointed to the Planning Commission. Mr. Jim Tondu and Ms. Meagan Kempf were providing an update on the Northern Lights Project and Mr. Jim Tondu did not have any conversations with Ms. Cyndy Fuller outside of the presentation.*

*During the summer of 2003, Mr. Greg Ferguson contacted Ms. Kempf and wanted to talk about the union construction agreement for the Northern Lights Project. Ms. Kempf and Mr. Jim Tondu visited with Mr. Ferguson at his construction site the next day. Mr. Ferguson was concerned that union concrete contractors would put him out of business. Ms. Kempf and Mr. Jim Tondu informed him commercial construction was very different from residential and they did not think this would affect his business.*

*Mr. Greg Ferguson called Mr. Jim Tondu and suggested there might be an alternative direction in lieu of a Special Use Permit because a power plant is a specified use. Mr. Jim Tondu reviewed this suggestion with our application consultant and they indicated the Special Use Permit was required.*

*All other communications between Mr. Jim Tondu and members of the Planning Commission have been at various Planning Commission meetings or other public meetings to explain the proposed project to the public or City officials.*

**Response from Joe Tondu:**

*Mr. Joe Tondu talked to Mr. Wittlief at the T.E.S. Filer City Station Christmas party in December 2003 in a group of about 30 to 40 people. Mr. Joe Tondu had a brief discussion with Mr. Wittlief about the Planning Commission hearing process but cannot recall any specific discussion of his opinion of the Northern Lights Project. Mr. Wittlief is the husband of Dawn Wittlief who works for CMS Energy at T.E.S. Filer City Station, which Tondu has an ownership interest in.*

*All other communications between Mr. Joe Tondu and members of the Planning Commission have been at various Planning Commission meetings or other public meetings to explain the proposed project to the public or City officials.*

**Response from Meagan Kempf:**

*Ms. Kempf has been a member of the Manistee area for nearly six years and has developed numerous relationships with City officials and some members of the Planning Commission.*

*During the second week of September, prior to MSWDC submitting a Special Use Permit application, Ms. Kempf attempted to contact all Planning Commission members to inform them that MSWDC was preparing a Special Use Permit and she would inform the Planning Commission about the Northern Lights Project in the near future. Ms. Kempf did not reach everyone and does not remember each specific conversation. The following summarizes conversations Ms. Kempf had with members of the Planning Commission outside the Planning Commission meetings or other public meetings to explain the proposed project to the public or City officials.*

Bob Davis

*Ms. Kempf provided consulting services to the Little River Band of Ottawa Indians from March 2000 to April 2003 when Mr. Davis was Director of Operations for the Tribe. She worked primarily for the Housing Department. Ms. Kempf and Mr. Davis worked on some projects together and attended some social events. Ms. Kempf does not recall if she had any conversations at that time with Mr. Davis about her work with Tondu.*

*According to Ms. Kempf's records, she contacted Mr. Davis on September 12, 2003 to inform him that MSWDC had an option on the General Chemical property and would apply for a Special Use Permit shortly. Mr. Davis expressed concerns about the environmental issues surrounding a coal-fired power plant.*

Greg Ferguson

*According to Ms. Kempf's notes, she spoke with Mr. Ferguson on September 10, 2003 and he said he had some questions regarding union labor. She told him Mr. Jim Tondu was handling the union contracts and he would be in town the following day. Mr. Ferguson asked if Mr. Jim Tondu could stop by his job site since he was unreachable by telephone. Mr. Jim Tondu and Ms. Kempf visited with Mr. Ferguson the next day.*

*Mr. Ferguson also called Ms. Kempf about the wastewater generated by the plant. She referred him to Mr. Jim Ford, the Project Director for the Northern Lights Project, for an answer.*

Ray Fortier

*Ms. Kempf met Mr. Fortier approximately four years ago when she was a member of the City Parks Commission and he was serving on the Planning Commission. She has continued a professional relationship with Mr. Fortier since then. Ms. Kempf has not had any in depth*

*conversation with him regarding the Northern Lights Project outside of the Planning Commission meetings.*

*According to Ms. Kempf's records, she spoke with him on September 8, 2003 to let him know MSWDC was preparing a Special Use Permit for the Northern Lights Project on the General Chemical site. He said he had heard we were moving the project to the city and Ms. Kempf said she would attend the next Planning Commission meeting and speak to the commissioners about the project.*

Cyndy Fuller

*In mid-November of 2003, Ms. Kempf introduced herself to Ms. Fuller and told her she was a consultant for Tondy. Ms. Fuller indicated she was considering applying for a position on the Planning Commission. Ms. Kempf indicated that if Ms. Fuller were appointed to the Planning Commission, Ms. Kempf would be happy to answer any questions Ms. Fuller could have about the Northern Lights Project at the next meeting.*

*Ms. Kempf also saw Ms. Fuller at a MECCA meeting shortly after Ms. Fuller was appointed to the Planning Commission. Ms. Kempf and Mr. Jim Tondy were providing an update on the Northern Lights Project and Ms. Kempf did not have any conversations with Ms. Fuller outside of the presentation.*

David Kelley

*Ms. Kempf did not know Mr. Kelley prior to beginning the process to obtain the Special Use Permit for MSWDC and has no records of contact with Mr. Kelley outside of Planning Commission meetings.*

Christa Johnson

*Ms. Kempf has known Ms. Johnson since April 1999 and has done things socially with Ms. Johnson and her husband on occasion. However, she has not spoken with Ms. Johnson or her husband in depth about her job with Tondy or the Northern Lights Project.*

*Ms. Kempf recalls three conversations with Ms. Johnson where they discussed her appointment to the Planning Commission. Ms. Johnson contacted Ms. Kempf to say that she was considering applying for the Planning Commission and/or Harbor Commission. Ms. Kempf told her that she thought it was a great idea and she could make a contribution to either commission.*

*Ms. Kempf had another conversation with Ms. Johnson when Ms. Johnson was not appointed the first round. Ms. Johnson expressed her disappointment and Ms. Kempf encouraged her to apply when another vacancy came up or to apply for the Harbor Commission.*

*Ms. Kempf spoke with Ms. Johnson again after she was appointed to the Planning Commission and congratulated her on her appointment.*

*Ms. Kempf has seen Ms. Johnson in different social situations since she was appointed to the Planning Commission and the Northern Lights Project was not discussed. Ms. Kempf and her husband hired Ms. Johnson's husband to assist with a short-term construction job on their home.*

Tony Slawinski

*Ms. Kempf did not know Mr. Slawinski prior to beginning the process to obtain the Special Use Permit for MSWDC. According to Ms. Kempf's notes, she called him on September 9, 2003 to inform him that the General Chemical site was being evaluated as a location for the Northern Lights Project.*

Mark Wittlief

*Ms. Kempf and Mr. Wittlief met for the first time after a City Council or Planning Commission meeting this fall. Ms. Kempf saw him at the T.E.S. Filer City Station Christmas party in December 2003 and they did not discuss the Northern Lights Project.*

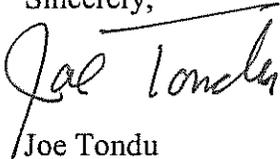
Roger Yoder

*Ms. Kempf did not know Mr. Yoder prior to beginning the process to obtain the Special Use Permit for MSWDC and she has no record of any conversations with him regarding this project outside of Planning Commission meetings.*

Tondu Corporation has instructed all employees to avoid any discussion of the Special Use Permit application with members of the Planning Commission outside of scheduled meetings and has instituted a policy to record any incidental contacts that may occur.

Should you or Mr. Gretzinger have any further questions regarding this issue, please do not hesitate to contact me.

Sincerely,



Joe Tondu  
President



70 Maple Street • P. O. Box 358 • Manistee, Michigan 49660

231-723-2558  
FAX 231-723-1546

January 23, 2004

Matt Somsel  
Casman Alternative Academy  
1710 Merkey Road  
Manistee, MI 49660

Dear Mr. Somsel:

Thank you for your invitation to participate in your panel discussion on the proposed Northern Lights Project. While I am unable to attend, I hope this information will assist your students in understanding the Zoning Ordinance requirements and the role of the Planning Commission in this project.

All Planning Commission Meetings and Worksessions are open to the public and we encourage citizen input on all requests that come before the Planning Commission. Thank you for your interest in this process and if you have any questions, please call me at 723-2558.

Sincerely,

CITY OF MANISTEE  
[www.ci.manistee.mi](http://www.ci.manistee.mi)

Jon R. Rose  
Community Development Director  
[jrose@ci.manistee.mi.us](mailto:jrose@ci.manistee.mi.us)

JRR:djb

Enclosure

## **Information relating to Special Use Permit Process Manistee Saltworks Development Corporation**

The City of Manistee is a Zoned Community. This means that a Zoning Ordinance regulates the uses of property throughout the City. The Zoning Ordinance divides the City into different Zoning Districts and regulates the uses within each district. Uses within a district are either permitted by right, permitted through a Special Use Permit, or not permitted.

*Special Uses* are uses which are deemed to be appropriate in a district provided certain conditions and criteria are met. They are subject to review on a case by case basis and require the Planning Commission to determine whether or not the standards for a Special Use in the district have been met. Staff's role in this process is to provide the Planning Commission information to enable them to make an informed educated decision in the best interest of the Community. Additionally the City has hired a Planning Consultant and the Engineer of Record to assist the Planning Commission in reviewing the application and information that has been submitted in response to the Manistee Saltworks Development Corporation also known as the Northern Lights Project or Tondu.

The proposed Northern Lights Power Plant is located in the I-2 Zoning District. Electrical Generating Power Plants are a permitted use in this district provided that the activities are carried on entirely within an enclosed building, there is no alteration to the lakeshore, and there is no discharge sent to Manistee Lake. Because the proposed Northern Lights project involves activity outside an enclosed building, alterations to the Manistee Lake shoreline and a discharge to Manistee Lake, in the I-2 Zoning District it requires a Special Use Permit.

Manistee Salt works Development Corporation has made application to the Planning Commission for a Special Use Permit to construct a Coal Fired Power Plant in the I-2 Zoning District. To date there has been a public hearing on the proposal and discussion by the Planning Commission as to the completeness of the application. The Planning Commission has not yet found the application to be complete.

Once the Planning Commission finds the application to be complete the Planning Commission will have 60 days (unless a formal extension is mutually agreed to by the applicant and commission) to either grant or deny the application.

The Planning Commission will hold another public hearing and take written comments to aid them in their deliberation regarding the project. The Planning Commission will review the application to determine if it meets the Special Use Permit standards which are:

1. Is the use reasonable and designed to protect the health safety and welfare of the community.

## What is a Megawatt?

24-06-03 Mega-what? The term is tossed around a lot. Megawatts are basic to understanding electricity planning concepts, but what are they?

News stories covering electric generation topics often try to illustrate the worth of a megawatt in terms of how many homes a particular amount of generation could serve. A June 11, 2003 article describing the potential sale of AEP's Texas generation facilities states that AEP is offering to sell "29 generating units with a total net generation capacity of 4,497 MW, or roughly enough electricity to power 4.5 mm average homes." A May 21, 2003 article describes an agreement with Sempra that "involves 1,900 MW, enough to supply 1.9 mm homes."

Such articles give the impression that one MW is enough electricity to supply 1,000 homes. Yet, occasionally, an article will illustrate a different conversion such as an April 17, 2003 article which states "Tucson Electric Power expanded its solar capacity to 2.4 MW, enough to power 420 homes."

So what really is a MW and how many homes can one MW of generation really serve?

The answer starts with understanding the basic definition of energy terms. Watts (W) are the yardstick for measuring power. A one hundred Watt light bulb, for example, is rated to consume one hundred Watts of power when turned on. If such a light bulb were on for four hours it would consume a total of 400 Watt-hours (Wh) of energy. Watts, therefore, measure instantaneous power while Watt-hours measure the total amount of energy consumed over a period of time.

A MW is 1 mm Watts and a kW is one thousand Watts. Both terms are commonly used in the power business when describing generation or load consumption. For instance, a 100 MW rated wind farm is capable of producing 100 MW during peak winds, but will produce much less than its rated amount when winds are light. As a result of these varying wind speeds, over the course of a year a wind farm may only average 30 MW of power production.

Similarly, a 1,000 MW coal plant may average 750 MW of production over the course of a year because the plant will shut down for maintenance from time-to-time and the plant operates at less than its rated capability when other power plants can produce power less expensively.

The ratio of a power plant's average production to its rated capability is known as capacity factor. In the previous example, the wind farm would have a 30 % capacity factor (30 MW average production divided by 100 MW rated capability) and the coal plant would have a 75 % capacity factor (750 MW average divided by 1,000 MW rated capability).

Load factor generally, on the other hand, is calculated by dividing the average load by the peak load over a certain period of time. If the residential load at a utility averaged 5,000 MW over the course of a year and the peak load was 10,000 MW, then the residential customers would be said to have a load factor of 50 % (5,000 MW average divided by 10,000 MW peak).

Knowing the peak and average demand of a power system is critical to proper planning. The power system must be designed to serve the peak load, in this example 10,000 MW. But the actual load will vary. The load might be 10,000 MW at noon, but only 4,000 MW at midnight, when fewer appliances are operating. The capacity or load factor gives utility planners a sense of this variation.

A 40 % load factor would indicate large variations occur in load, while a 90 % load factor would indicate little variation. Residential homes tend to have low load factors because people are home and using appliances only during certain hours of the day, while certain industrial customer will have very high load factors because they operate 24 hours a day, 7 days a week.

### Residential electricity consumption

The amount of electricity consumed by a typical residential household varies dramatically by region of the country. According to 2001 Energy Information Administration (EIA) data, New England residential customers consume the least amount of electricity, averaging 653 kWh of load in a month, while the East South Central region, which includes states such as Georgia and Alabama and Tennessee, consumes nearly double that amount at 1,193 kWh per household.

The large disparity in electric consumption is driven by many factors including the heavier use of air conditioning in the South. So it stands to reason that a one MW generator in the Northeast would be capable of serving about twice as many households as a generator located in the South because households in the Northeast consume half the amount of electricity as those in the South.

Going through the math, a 1,000 MW rated coal generator with a 75 % capacity factor generates about 6.6 bn kWh in a year, equivalent to the amount of power consumed by about 900,000 homes in the Northeast but only 460,000 homes in the South. In other words, each MW of rated capacity for a coal plant in the Northeast generates the equivalent amount of electricity consumed by 900 homes in the Northeast but only about 460 homes in the South.

By comparison, a 30 % capacity factor, 100 MW wind farm would generate the equivalent amount of power consumed by about 35,000 homes in the Northeast and 18,000 homes in the South. In other words, each MW of rated capacity for a wind farm in the Northeast generates the equivalent amount of electricity consumed by 350 homes in the Northeast and 180 homes in the South.

**So what is a Megawatt worth?**

The examples demonstrate that there are two very important aspects to knowing what a MW of generation capacity is worth in terms of how many equivalent homes it represents.

The first factor is how much electricity the power plant itself produces, which can be calculated by knowing the plant's rating and capacity factor.

Second, the location of the plant is very important as the amount of electricity consumed in a typical household can vary dramatically across the country.

The numbers used in the examples were typical representations of coal and wind power plants. A low-cost coal plant typically operates at capacity factors of 60 % or higher. High quality wind sites will generate at about 30 to 40 % of their rated capability on average because of wind speed variations. Solar generators average even less production, typically under 25 % capacity factor, because the generators do not produce electricity during the night time or during cloudy days.

The commonly used "one MW of generation equates to 1,000 homes" is a myth that likely originated years ago when households were smaller and air conditioning wasn't as common.

For conventional generators, such as a coal plant, a MW of capacity will produce electricity that equates to about the same amount of electricity consumed by 400 to 900 homes in a year. For renewable energy such as wind or solar, the equivalent is even less because they typically produce less energy than conventional generators since their "fuel source" is intermittent. Of course, no one generator is normally considered sufficient by itself to supply an individual customer. All generators must be taken out of service for maintenance and some types of generators, such as nuclear, wind, and solar, are not normally able to "follow" changes in load. For these reasons power systems require the use of backup generation sources and occasionally electric energy storage, such as batteries, to ensure the amount of power generated always matches the load demand, every second.

Source: Energy Industry Issues Newsletter

**BEAR LAKE TOWNSHIP, MANISTEE COUNTY, MICHIGAN**  
**RESOLUTION CONCERNING NORTHERN LIGHTS PROJECT**

**WHEREAS**, the primary functions of local government are to serve community by promoting and protecting the health, safety and welfare of its citizens;

**WHEREAS**, the primary functions of corporations are to grow and show a profit to its shareholders;

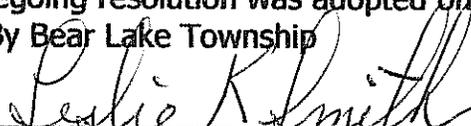
**WHEREAS**, in democracy it is imperative to have unbiased information to enable local officials the opportunity to fully execute their responsibility to separate and prioritize the facts and make a fully informed decision;

**NOW THEREFORE IT IS HEREBY RESOLVED** that a decision to issue a special use permit at this time is premature, and;

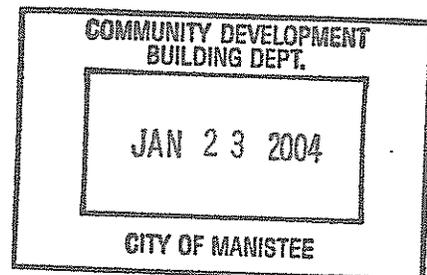
**BE IT FURTHER RESOLVED** that Bear Lake Township is against the issuance of a special use permit to Manistee Saltworks Development Corporation, Northern Lights Project until an independent economic assessment and an environmental impact statement have been completed and analyzed.

The foregoing resolution was adopted on January 20, 2004

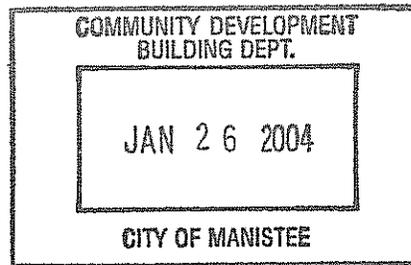
By Bear Lake Township

  
\_\_\_\_\_  
Leslie Smith      Bear Lake Township Supervisor

  
\_\_\_\_\_  
Deanna Pattison      Bear Lake Township Clerk



January 21, 2004



Dear Planning Commission Members:

I seldom feel compelled to write a letter or get involved with issues like the Northern Lights project; however, I feel that this issue and its impact on the city, county and region needs to be addressed.

I have been a farmer since 1970 and an ironworker since 1973. I will retire in a few years, so I will not gain financially at all from the construction of this project. But being a farmer, the environment is very important to me. I trust the officials--who have all the facts, scientific knowledge and many years of experience--to make decisions regarding what is indeed safe. I'm afraid the groups who oppose Northern Lights are only out to pursue their own agenda and are twisting and distorting the facts to try and scare more people into opposing the project.

Here are some facts I know about the Northern Lights project:

1. The developer will spend approximately \$10 million to clean up a contaminated site, which continues to leach brine into the waters of Manistee Lake every day. This is a problem that won't go away on it's own--nor will the state pay to clean it up.
2. There will also be an estimated \$100 million in construction wages paid in a three-year period, much of which will be earned by local laborers, who will in turn spend it in this area.
3. Northern Lights will create around 60 NEW, PERMANENT jobs in Manistee and create an estimated payroll of \$4 million per year.
4. An additional \$11 million in third-party services will be purchased annually, and that money will circulate seven times in the Manistee area.

When we think of coal-burning plants, we have images of smokestacks belching clouds of dirty soot into the atmosphere. But those days are long in the past, and the Northern Lights plant will burn only low-sulfur, low-ash coal. We have the technology available to burn coal safely and cleanly, thereby reducing the emissions we can both see and not see. This plant is **REQUIRED** to use the Best Available Control Technology to limit the emissions everyone is talking about.

Our choices for mass production of baseload power in this area are limited. Cost and space limit the use of solar and wind to small-scale operations only, not baseload power. Supply of hydroelectric sources, such as dams, are exhausted. Nuclear waste prevents us from using nuclear power. Natural gas has some advantages, but a number of factors make it so we cannot rely solely on natural gas to provide us with electricity. For one thing, we import some of it from Canada. It's also expensive, with that cost reflected in sky-high home heating bills. Costly fuel oil is also in short supply, and we're already dependent on the Middle East for most of it. Using coal means energy independence, since coal is a 100% domestic source of fuel.

Our thirst for oil has caused many of the problems which exist today and has, in part, led us to get involved in the war in Iraq. The Arab nations are extremely wealthy thanks partly to our nation's dependence on oil. Given the current political instability in the Middle East, the less we have to rely on Arab oil, the better.

Tondu Corporation has kept their word. You need to look no further than the T.E.S. Filer City plant for proof. They have hired locally. They have complied with all EPA & MDEQ regulations, and they quietly go about the business of supplying us with electricity, all the while pumping money into the local economy. They are truly a good neighbor.

Perhaps 10 or 15 years from now, we'll gather our concerned citizens and plan a candlelight vigil on River Street, when electricity is too expensive for the average person and blackouts have put a damper on the business of our local merchants, production at our industries and the flashing lights of our casino. Every single one of us is a consumer of electricity. The future shortage of power is not someone else's problem--and it's a problem we need to plan for now.

Sincerely,

A handwritten signature in cursive script that reads "Pat Guzikowski". The signature is written in dark ink and is positioned above the typed name.

Pat Guzikowski

PO Box 424

Onkama, Michigan 49675

889-4995

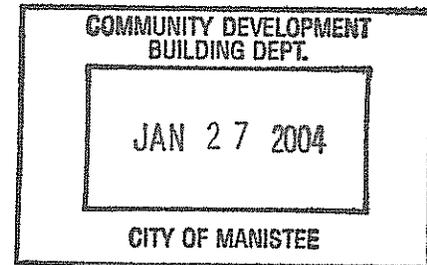
# Williams & Works

• a tradition of service •

- Engineers
- Planners
- Surveyors

January 27, 2004

Mr. Jon R. Rose, Community Development Director  
City of Manistee  
70 Maple Street  
P.O. Box 358  
Manistee, MI 49660



Dear Mr. Rose:

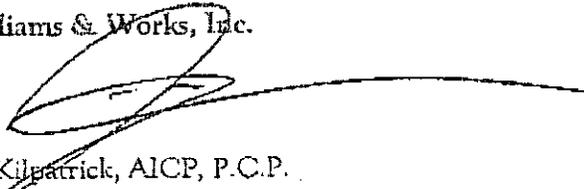
As we discussed, we have learned that the Northern Lights power plant proposed in Manistee will be at least partially owned by some municipal electrical systems. One of the potential partial municipal owners is the City of Lowell Board of Light, Power and Cable, a member of the MPPA.

In the interest of complete disclosure, please be advised that David Austin, P.E. is a member of the Board of Directors of the City of Lowell Board of Light, Power and Cable and he is also an employee and shareholder of Williams & Works, Inc. Mr. Austin's service to the Lowell Board of Light, Power and Cable is voluntary by virtue of his residency in that community. Williams & Works is not providing professional services to that Board, although from time-to-time, we have served the City of Lowell itself with consulting engineering services.

I do not believe that this arrangement constitutes a conflict of interest for Williams & Works or for me in serving the City as Planner. However, as we discussed, I wanted to be clear about the disclosure and allow the City to evaluate the relationship.

Sincerely,

Williams & Works, Inc.



Jay Kilpatrick, AICP, P.C.P.  
Senior Planner and Managing Principal

c: David Austin, P.E.

---

# Williams & Works

---

• a tradition of service •

- Engineers
- Planners
- Surveyors

January 27, 2004

Mr. Jon R. Rose, Community Development Director  
City of Manistee  
70 Maple Street  
P.O. Box 358  
Manistee, MI 49660

Dear Mr. Rose:

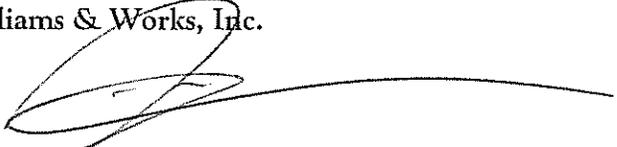
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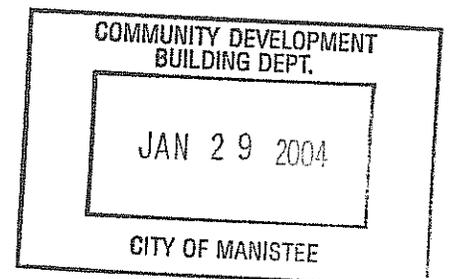
I do not believe that this arrangement constitutes a conflict of interest for Williams & Works or for me in serving the City as Planner. However, as we discussed, I wanted to be clear about the disclosure and allow the City to evaluate the relationship.

Sincerely,

Williams & Works, Inc.

  
Jay Kilpatrick, AICP, P.C.P.  
Senior Planner and Managing Principal

c: David Austin, P.E.



**Items forwarded to the  
City of Manistee Planning Commission  
at the Planning Commission Meeting of  
February 5, 2004 relating to the  
Manistee Saltworks Development Corporation**

Letter *RE: Planning Commission Member Potential Conflict of Interest* dated 2/2/04 from John Gretzinger

Memorandum from Jay Kilpatrick dated 2/5/04 to Jon Rose *RE: Northern Lights Special Use and Site Plan Application Completeness*

Articles submitted by Little River Band of Ottawa Indians:

*Evaluation of the Tondu Corporation Environmental Assessment for the Northern Lights Power Plant Project as Submitted to the City of Manistee Planning Commission on 12/17/2003*

*Alex J. Sagady & Associates, Environmental Consultant to LRBOI RE: Tondu Environmental Assessment, Northern Lights Project*

Correspondence:

Christopher M. Bzdok, Olson, Bzdok & Howard, 420 East Front Street, Traverse City  
Tom Shea, 529 West Ninth Street, Traverse City  
Craig Grigonis, International Assoc. of Heat & Frost Insulators & Asbestos Workers, 300 St.  
Andrews Road, Ste 304 A, Saginaw  
Santee Ware, 9094 Alkire Road, Bear Lake  
Daniel Behring, 3695 Lakeshore Drive, Manistee  
Andrea Dean, 251 E. Tenth Street, Traverse City  
Nancy Behring, 3695 Lakeshore Drive, Manistee  
Pamela F. Smith, 1876 Lake Pointe Drive, Traverse City  
Ed Levandoski, 1175 Merkey Road, Manistee  
Daniel Behring, 3695 Lakeshore Drive, Manistee  
Christopher M. Bzdok, Olson, Bzdok & Howard, 420 East Front Street, Traverse City  
George and Anna Kaminski, Copemish  
Nathan Svoboda, P.O. Box 735, Manistee  
Kathleen Hibbard, P.O. Box 112, Honor  
Asthma Coalition of Northwest Michigan - Resolution  
Francis Johnston, 388 First Street, Manistee

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February 2, 2004

Mr. Roger Yoder, Chairperson  
Manistee Planning Commission  
70 Maple Street, P. O. Box 358  
Manistee, MI 49660

Re: Planning Commission Member Potential Conflict of Interest

Dear Mr. Yoder:

The City of Manistee Planning Commission currently has an application for a Special Use Permit pending for the construction of a coal fueled power plant proposed to be built at the site of the former General Chemical Company. This project is referred to as the "Northern Lights" project, and the applicant for the Special Use Permit is the Manistee Salt Works Development Corporation ("MSWDC"). The MSWDC is a Michigan corporation owned by Mr. Joe Tondu under the corporate umbrella of the Tondu Corporation. It is presently anticipated that the power plant to be constructed if the Special Use Permit is approved would be jointly owned by a consortium of municipal electrical systems and a subsidiary of the Tondu Corporation. Allegations have been received from members of the public that certain members of the Planning Commission have conflicts of interest which make their participation in the decision on this application for a Special Use Permit unlawful. The members of the Planning Commission who were the subject of concerns were Greg Ferguson, Christa Johnson-Ross, and Mark Wittlief. Our opinion has been requested regarding the existence of a disqualifying conflict of interest on the part of these or any other Planning Commission members.

In order to investigate these allegations, I conducted a public question and answer session of Planning Commission members during the January 8, 2004 Planning Commission meeting regarding factual issues that might potentially raise issues of conflict of interest. I have also been provided with copies of the following documents:

1. December 24, 2003 letter to the Manistee Planning Commission from Christopher M. Bzdok
2. January 8, 2004 letter to City Manager Deisch from Planning Commission member Greg Ferguson
3. January 13, 2004 letter to the Manistee Planning Commission from Michael McCann

4. January 15, 2004 letter to the Manistee Planning Commission from David S. Vavra
5. January 15, 2004 letter to the Manistee Planning Commission from Steve Klein
6. January 16, 2004 letter to the Manistee Planning Commission from Pat Didion
7. January 22, 2004 letter to the Manistee Planning Commission from Helen Ann Yunis
8. January 22, 2004 letter to the Manistee Planning Commission from Christopher M. Bzdok
9. January 26, 2004 letter from Joe Tondou to Jon Rose, Manistee Community Development Director

As part of my investigation I had telephone conversations with Greg Ferguson on January 9, 2004 and January 28, 2004; with Meagan Kempf on January 22, 2004; with Bob Davis on January 28, 2004; with Christa Johnson-Ross on January 28, 2004; with Joe Tondou on January 29, 2004; with Jim Tondou on January 29, 2004; and with John Wing on January 29, 2004. In addition, I had conversations with City Manager Mitch Deisch and Community Development Director Jon Rose regarding background information regarding the Northern Lights project.

#### A. REGULATORY PROCESS

In order to place the analysis of the claims of potential conflict of interest in the appropriate context, it is essential to understand the Special Use Permit process. This matter arises out of the decision by the City of Manistee to exercise its authority to regulate land uses within its municipal borders by the adoption of its zoning ordinance. As noted in Article 86 of that ordinance:

This Ordinance divides the *City* into *Land Use* Districts in which specific uses are permitted which are mutually compatible. In addition, there may be certain other uses which may be appropriate to include in a *Land Use* District due to the specific circumstances surrounding the *use*, the impact on neighboring uses and public utilities. Such uses, because of their particular location or the particular nature of the service offered, may be established in a *Land Use* District through a *Special Use* Permit.

As a general rule, landowners have the right to utilize their property in manners that are consistent with the approved zoning ordinance. If a use is listed as a possible special use in

any Land Use District, an entity with an interest in the property may apply to the Manistee Planning Commission for approval to engage in that use.

The standards to be applied to a request for a Special Use Permit are set forth in Sections 8609 and 8610 of the Zoning Ordinance as follows:

8609. Special Use Permit Standards

- A. Within sixty (60) days following receipt of a complete application (unless a formal extension is mutually agreed to between the applicant and the Commission, the commission shall either grant or deny the application. The decision shall be in writing and reflect the reasons for the decision.
- B. The general standards for determining if a Special Use is granted or not are:
  1. Is the use reasonable and designed to protect the health, safety and welfare of the community,
  2. Is the use consistent with the intent and purpose of the Land Use District,
  3. Is the use compatible with adjacent land uses,
  4. Is the use designed to insure that public services and facilities are capable of accommodating increased loads caused by the land use or activity, and
  5. Does the use comply with all applicable regulations of this Ordinance.
  6. Does the use comply with all specific standards found in the respective Land Use District, Section 1601 et seq., and Section 1001 et seq. of this Ordinance.

8910. Special Use Permit Conditions

- A. Special Use Permits can be granted with conditions, limitations, or additional requirements imposed by the Commission. Any conditions, limitations or requirements upon which approval is based shall be:
  1. reasonable and designed to protect natural resources, the health, safety and welfare of the public.
  2. relevant to the social and economic well-being of the owners and occupants of the lot in question, of the area adjacent thereto and the community as a whole;
  3. a valid exercise of police power;
  4. related to the purposes which are affected by the proposed activity;
  5. consistent with the intent and purpose of this Ordinance, generally and specifically, for the respective Land Use District;

6. designed to insure compatibility with adjacent uses of land and the natural environment, or
7. designed to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.

B. The Commission shall have the right to limit the duration of a Special land Use when the same is for mining, or Sweetening Plant operation and may reserve the right of annual review of compliance with the conditions and limitations imposed upon such use.

The Manistee Planning Commission has the authority to approve or disprove the Special Use Permit in accordance with these standards.

In order to insure that all appropriate interests are offered an opportunity to comment on this decision, a public hearing is scheduled to receive input on the Special Use Permit application. The Zoning Administrator is required to specifically notify the applicant, the owner of the property, the owners of all real property within 300 feet of the boundary of the property for which the approval has been requested and the occupants of any structures within 300 feet of the boundary of the property for which the approval has been requested regarding the nature of the Special Use Permit being requested, the identity of the property for which the request has been made, the date, time and location of the public hearing and the address at which written comments should be directed prior to the hearing. The general public is also required to be notified of these same matters by publication in the official newspaper for the City of Manistee.

The Special Use Permit application review process is the method under which the Planning Commission determines whether the applicant will be allowed to use its property in the manner that it is requesting. The Planning Commission acts in a quasi-judicial capacity when reviewing special use permits, and is required to provide the applicant with appropriate due process. As noted by the Michigan Supreme Court in *City of Livonia v Department of Social Services*, 423 Mich 466, 508-509 (1985):

The right to a hearing before an unbiased and impartial decisionmaker is a basic requirement of due process. *Withrow v Larkin*, 412 U.S. 35, 46, 96 S.Ct. 1456, 1464, 43 L.Ed.2d. 712 (1975); *Crampton v Dep't of State*, 395 Mich 347, 350-351, 235 N.W.2d 352 (1975). Moreover, the Administrative Procedures Act requires that administrative hearings be conducted in an impartial manner before an unbiased officer. M.C.L. 24.279; M.S.A. 3.560(179). Actual bias need not be shown. If a situation is one in which "experience teaches that the probability of actual bias on the part of a decisionmaker is too high to be constitutionally tolerable" the decisionmaker

must be disqualified. *Withrow*, 21 U.S. at 47, 95 S.Ct. at 1464; **Crampton**, 385 Mich. At 351, 235 N.W.2d 352.

"Among the situations identified by the [*Withrow*] Court as presenting that risk are where the judge or decisionmaker

"(1) has a pecuniary interest in the outcome;

"(2) 'has been the target of personal abuse or criticism from the party before him';

"(3) is 'enmeshed in [other] matters involving petitioner ...; or

"(4) might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker." *Crampton, supra*.

This due process requirement of an "unbiased" decisionmaker is implemented by creating procedures to allow an applicant<sup>1</sup> to raise and have resolved issues of improper bias such as alleged conflicts of interest.<sup>2</sup>

In order to insure that its procedures are fairly conducted, the Manistee Planning Commission adopted bylaw 3.10 which prohibits a Planning Commission member from acting upon an application for a Special Use Permit in instances where that member would be placed in a conflict of interest situation. This bylaw provides:

3.10. Conflict of Interest: As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:

A. A commission member issuing, deliberating, voting or reviewing a case concerning himself.

B. A commission member issuing, deliberating, voting or reviewing a case concerning work on land owned by himself.

C. A commission member issuing, deliberating, voting or reviewing a case involving a corporation, company, partnership, or other entity in which he is a part owner, or any other relationship where he may stand to have a financial gain or loss.

D. A commission member issuing, deliberating, voting or reviewing a case which is an action which results in a pecuniary benefit to himself.

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<sup>1</sup> The Manistee City Council acts on behalf of the general public by appointing individuals to the Planning Commission that it believes will properly carry out the review function required by the zoning ordinance.

<sup>2</sup> Under Section 79 of the Administrative Procedures Act, a party raises a claim of bias by filing in good faith a timely and sufficient affidavit of personal bias or disqualification of the presiding officer. This claim is decided by the agency, and the determination is subject to judicial review at the conclusion of the hearing.

E. A commission member issuing, deliberating, voting or reviewing a case concerning his spouse, children, step-child, grandchildren, parents, brother, sister, grandparents, parents-in-law, grand-parents in-law, or member of his household.

F. A commission member issuing, deliberating, voting or reviewing a case where he/she is a member of the Manistee Planning Commission and

1. is an applicant, or
2. has a direct interest in the permit, or
3. chooses to intervene in a permit application case and is done in such a manner that the commissioner feels, in his/her judgment, that his/her job, scope of duties and/or position may be at risk, pending the outcome of the permitting process.

Bylaw 3.10 further provides that:

A commission member shall, when he/she has a conflict of interest do the following immediately, upon the first review of the case and determining a conflict exists:

- a) declare a conflict exists at the beginning of the meeting where the case appears on the agenda, or when the topic brought up so such declaration is recorded in the minutes, and
- b) refrain from participating in the discussion, site inspection or review of the case, except where specific information has been requested by the commission , and
- c) refrain from casting a vote on any motion having to do with the case.

This bylaw summarizes the more commonly recognized reasons that it would be inappropriate for a planning commissioner to participate in the review of any special use permit application. As noted by the bylaw, there may also be other matters that would require a planning commissioner to refrain from participating in the review of any special use permit application.

The ability of an applicant to challenge a quasi-judicial decisionmaker on the basis of conflict of interest does not create the opportunity for a non-party to the proceeding to raise such a challenge during the initial stages of the proceeding. The final decision of the Planning Commission regarding the application for a Special Use Permit is however subject to appeal to the Circuit Court by the applicant or by a person having an interest affected by the decision. See, *Brown v East Lansing Zoning Board of Appeals*, 109 Mich App 688 (1981). In such an appeal, the issue of whether the final decision was void or voidable on the basis that there was participation by a municipal official with an unlawful

conflict of interest could be raised. See, e.g., 1981 OAG Opinion No. 6005 (November 2, 1981), where the Attorney General indicated that under the common law participation in municipal action by an official or employee with a personal or financial interest may result in the final decision being held void or voidable. In order to minimize any such post decision challenges, this prehearing review was undertaken.<sup>3</sup>

### C. Michigan Law Regarding Unlawful Conflict of Interest

The common law of Michigan has long addressed the issue of conflict of interest of public official and public employees. In **People v Township Board of Overysl**, 11 Mich 222, 225-226 (1863) the Michigan Supreme Court stated:

All public officers are agents, and their official powers are fiduciary. They are trusted with public functions for the good of the public; to protect, advance and promote its interests, and not their own. And, a greater necessity exists than in private life to remove from them every inducement to abuse the trust reposed in them, as the temptations to which they are sometimes exposed are stronger, and the risk of detection and exposure are less. A judge cannot hear and decide his own case, or one in which he is personally interested. He may decide it conscientiously and in accordance with the law. But that is not enough. The law will not permit him to reap a personal advantage from an official act performed in favor of himself.

This concept is implemented in Const 1963, art 4, Sec 10 which provides:

No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation.

Significantly, the Constitution did not attempt to eliminate all possible conflicts of interest, but focused its efforts on "substantial" conflicts of interest.

1968 PA 318, MCL 15.301 et seq, was subsequently enacted to implement the provisions of Article 4, Section 10 of the Michigan Constitution of 1963 regarding members of the legislature and state officers. Section 2 of that Act, MCL 15.302, prohibits members of the Legislature or state officers from being "interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest." Section 4 of that Act further provides:

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<sup>3</sup> It should be recognized that this initial review does not prevent an individual with standing to appeal the final Special Use Permit decision from raising a claim of unlawful conflict of interest. Such a claim would be required to be supported by accurate factual allegations.

Sec.4. (1) As used in section 2, "interested" means a pecuniary interest.

(2) If there is a conflict of interest on the part of a legislator or state officer in respect to a contract with the state or a political subdivision of the state prohibited by this act his or her personal interest must be of such substance as to induce action on his or her part to promote the contract for his or her own personal benefit.

This Section defines the interest that can cause a conflict of interest as being a "pecuniary interest" that must be "of such substance as to induce action on his or her part to promote the contract for his or her own personal benefit."

The provisions of 1968 PA 317 addressed this same issue regarding "public servants", who are defined in Section 1, MCL 15.321 as "all persons serving any public entity." Section 2 of that Act, MCL 15.322, prohibits public servants from taking the following actions:

Sec.2. (1) Except as provided in sections 3 and 3a, a public servant shall not be a party, directly or indirectly, to any contract between himself or herself and the public entity of which he or she is an officer or employee.

(2) Except as provided in section 3, a public servant shall not directly or indirectly solicit any contract between the public entity of which he or she is an officer or employee and any of the following:

- (a) Him or herself.
- (b) Any firm, meaning a co-partnership or other unincorporated association, of which he or she is a partner, member or employee.
- (c) Any private corporation in which he or she is a stockholder owning 1% of the total outstanding stock of any class if the stock is not listed on a stock exchange, or stock with a present total market value in excess of \$25,000.00 if the stock is listed on a stock exchange or of which he or she is a director, officer or employee.
- (d) Any trust of which he or she is a beneficiary or trustee.

Section 3 of that Act, MCL 15.303, provides:

Sec.3. (1) Section 2 does not apply to either of the following:

- (a) A public servant who is paid for working an average of 25 hours per week or less for a public entity.

(b) A public servant who is an employee of a public community college, junior college, or state college or university.

(2) A contract defined in and limited by section 2 involving a public entity and a public servant described in section (1) shall meet all of the following requirements:

(a) The public servant promptly discloses any pecuniary interest in the contract to the official body that has the power to approve the contract, which disclosure shall be made a matter of record in its official proceedings. Unless the public servant making the disclosure will directly benefit from the contract in an amount less than \$250 and less than 5% of the public cost of the contract and the public servant files a sworn affidavit to that effect with the official body or the contract is for emergency repairs or services, the disclosure shall be in either the following manners:

(i) The public servant promptly discloses in writing to the presiding officer, or if the presiding officer is the public servant who is a party to the contract, to the clerk, the pecuniary interest in the contract at least 7 days prior to the meeting at which a vote will be taken. The disclosure shall be made public in the same manner as a public meeting notice.

(ii) The public servant discloses the pecuniary interest at a public meeting of the official body. The vote shall be taken at a meeting of the official body held at least 7 days after the meeting at which the disclosure is made. If the amount of the direct benefit to the public servant is more than \$5,000.00, disclosure must be made as provided under this subparagraph.

(b) The contract is approved by a vote of not less than 2/3 of the full membership of the approving body in open session without the vote of the public servant making the disclosure.

(c) The official body discloses the following summary information in its official minutes:

(i) The name of each party involved in the contract.

(ii) The terms of the contract, including duration, financial consideration between parties, facilities or services of the public entity included in the contract, and the nature and degree of assignment of employees of the public entity for fulfillment of the contract.

(iii) The nature of any pecuniary interest.

(3) This section and section 2 do not prevent a public servant from making or participating in making a governmental decision to the extent that the public servant's participation is required by law. If 2/3 of the members are not eligible under this act to vote on a contract or to constitute a quorum, a member may be counted for purposes of a quorum and may vote on the contract if the member will directly benefit from the contract in an amount less than \$250.00 and less than 5% of the public cost of the contract and the member files a sworn affidavit to that effect with the official body. The affidavit shall be made a part of the public record of the official proceedings. As used in this subsection, "governmental decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, ordinance, order, or measure on which a vote by members of a local legislative or governing body of a public entity is required and by which a public body effectuates or formulates public policy.

In addition, 1973 PA 196, MCL 15.231, establishes certain standards of Conduct for Public Officers and employees. This statutory provision provides:

Sec 2. \* \* \*

(4) A public officer or employee shall not solicit or accept a gift or loan or money, goods, services, or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs official duties.

\* \* \*

(6) Except as provided in section 2a, a public officer or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in performance of official duties.

(7) Except as provided in section 2a, a public officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, **issuance of permits or certificates**, or other regulation or supervision **relating to a business entity in which the public officer or employee has a personal or financial interest.**

Sec 2a. \* \* \*

(3) Subject to subsection (4), section 2(6) and 2(7) shall not apply and a public officer shall be permitted to vote on, make, or participate in the making of a governmental decision if all of the following occur:

(a) The requisite quorum necessary for official action on the governmental decision by the public entity to which the public officer has been elected or appointed to is not available because the participation of the public officer in the official action would otherwise violate section 2(6) or (7).

(b) The public officer is not paid for working more than 25 hours per week for this state or a political subdivision of this state.

(c) The public officer promptly discloses any **personal, contractual, financial, business, or employment interest he or she may have in the governmental decision** and the disclosure is made part of the public record of the official action on the governmental decision.

(4) If a governmental decision involves the awarding of a contract, section 2(6) and 2(7) shall not apply and a public officer shall be permitted to vote on, make, or participate in making the governmental decision if all of the following occur:

(a) All of the conditions of subsection (3) are fulfilled.

(b) The public officer will directly benefit from the contract in an amount less than \$250.00 or less than 5% of the public cost of the contract, whichever is less.

(c) The public officer files a sworn affidavit containing the information described in subdivision (b) with the legislative or governing body making the governmental decision.

(d) The affidavit required by subdivision (c) is made a part of the public record of the official action on the governmental decision.

(5) As used in this section, "governmental decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, ordinance, order, or measure on which a vote by members of a legislative or governing body of a public entity is required and by which a public entity formulates or effectuates public policy.

The language of these sections focuses primarily upon personal or financial interests as constituting conflicts of interest that would prohibit a public official's participation in the decision making process.<sup>4</sup>

This focus of unlawful conflict of interest as personal or financial considerations was noted in OAG, 1981-1982, No. 5864, where Attorney General Kelly stated "Thus, the public policy of the state, as contained in 1973 PA 196, Sec. 2(6)-(7), supra, declares it to be unethical conduct for a public officer, employee, or member of a state board to take official action on permits or other regulations relating to a business entity in which such **officer has a pecuniary or personal interest.**" Applying this standard, it was the opinion of Attorney General Kelly that members of a site approval body who had a **direct** employment nexus with a permit applicant are in conflict of interest and could not participate in the review of the permit application. In a subsequent opinion, members of a township board were declared ineligible to participate in the approving of a transfer of an industrial facilities tax exemption certificate to an agricultural cooperative of which they are a member because they "may benefit financially, either directly or indirectly, from a property tax exemption to the cooperative." OAG, 1981-1982, No. 5916. In addition, "a city councilperson or other municipal official who is employed by the intended beneficiary of quasi-judicial municipal action is in conflict of interest and may not participate in official action involving the employer of such person," and it does not matter if that individual does not occupy a position with that employer in which that individual would owe the employer a fiduciary obligation to act in its interest. OAG, 1981-1982, No. 6005.

These same considerations are codified in MCR 2.003 regarding the disqualification of judges, which provides:

#### **Rule 2.003 Disqualification of Judge**

- (A) **Who May Raise.** A party may raise the issue of a judge's disqualification by motion, or the judge may raise it.
- (B) **Grounds.** A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which:
- (1) The judge is personally biased or prejudiced for or against a party or attorney.
  - (2) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

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<sup>4</sup> Public officials include public officers and public employees. *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149 (2001)

- (3) The judge has been consulted or employed as an attorney in the matter in controversy.
- (4) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.
- (5) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;
- (6) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
  - (a) is a party to the proceeding, or an officer, director or trustee of a party;
  - (b) is acting as a lawyer in the proceeding;
  - (c) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;
  - (d) is to the judge's knowledge likely to be a material witness in the proceeding.

A judge is not disqualified merely because the judge's former law clerk is an attorney of record for a party in an action that is before the judge or is associated with a law firm representing a party in an action that is before the judge.

Under this standard, disqualification is required if the judge has an economic interest in the subject matter in controversy.

The case law also supports the concept that unlawful conflicts of interest are primarily financial in nature. *In Detroit Area Agency on Aging v Office of Services to the Aging*, 210 Mich App 708 (1995), the Court of Appeals held that a Commissioner who had a financial interest in a company that would receive funds from the Commission precluded her on the basis of conflict of interest from participating in the decision to establish the funding formula. A similar result was reached in the *Elmwood Citizens for Sensible Growth* case cited by Mr. Bzdok, since the basis of the reversal of the conditional use permit was the participation of the Chairperson of the Planning Commission as the pivotal

vote after he had purchased the adjacent property from the applicant at a substantial discount from the fair market value. Judge Rodgers characterized this as being the "appearance of impropriety", but was careful to note that the doctrine of avoidance of the appearance of impropriety had limitations and that "Mere contact with a party or the existence of a remote fact which might suggest the impropriety was not sufficient to call the doctrine into play..." Judge Rogers also indicated that "Other limitations on the doctrine do not allow the alleged appearance of impropriety to be speculative. A zoning commissioner was not disqualified merely because he was a member of an association opposed to an applicant's request for a special permit."<sup>5</sup>

The concept of conflict of interest also does not disqualify an individual simply because they have made statements of preliminary support or opposition to a particular project, since as the Supreme Court noted in *City of Livonia, supra* at 510, that "disqualification is [not] required because a decisionmaker has taken a public position on an issue, unless there is a specific showing of incapability of judging that particular case fairly." With these concepts in mind, the potential disqualification of members of the Manistee Planning Commission can be undertaken.

#### **D. Analysis of Potential Disqualification of Planning Commission Members**

The information received at the January 8, 2004 Manistee Planning Commission meeting and the information contained in the documents subsequently received raise issues of potential disqualification regarding several Planning Commissioners. The following summarizes the facts relating to the issues of a potentially disqualifying conflict of interest.

**1. Ms. Christa Johnson-Ross.** The potential disqualification of Ms. Johnson-Ross was originally raised by Mr. Bzdok in his letter of December 24, 2003 when he indicated that "I understand that a third member, who was appointed very recently, is close to Tondou's local public relations person, and has told people that she is in favor of the project." In addition, Ms. Helen Yunis stated in her letter of January 22, 2004:

After the City Council meeting on the evening that Cindy Fuller and Mark Wittlief were appointed, Krista Ross spoke to me about the appointments. She stated that she was disappointed that she was not appointed and that she did not understand since she was young, a real estate owner and business owner in town. She went on to explain that Meagan Kempf and another

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<sup>5</sup> The doctrine of "appearance of conflict" implements the concept that some relationships so often result in improper bias that proof of actual bias is not required. In the Elwood case, it was not necessary to prove that the chairman was motivated to act because of the below market sale to him of the adjacent parcel, since it was the type of financial consideration that is presumed to result in improper bias. Relationships which ordinarily give rise to presumed bias are those matters set forth in the statutory pronouncements involving conflict of interest. The existence of any other presumed bias should not be lightly inferred.

person (I did not recognize his name at that time but upon reflection it could have been Mark Ferguson – I had not heard his name in the past) had told her that the Planning Commission was not asking the right questions. She also stated that although Megan Kempf would not influence her decision, Ms. Kempf could help her phrase the right questions to ask the Commission. At the time, I thought that these comments were inappropriate, but it did not matter since Ms. Ross was not appointed.

On the day that Ms. Ross was appointed I left a message on her telephone. I wanted to tell her that I was concerned about her comments and that I thought that they were very inappropriate. She did not return my phone call. Later, I learned that she was informed that she should not speak to the public.

The statements in this letter were amplifications of comments that Ms. Yunis made during the January 8, 2004 Planning Commission Meeting.

Ms. Johnson-Ross is a newly appointed member of the Manistee Planning Commission who is self employed as a chiropractor with an office in Manistee. The allegations of conflict of interest arise out of her relationship with Ms. Meagan Kempf. Ms. Kempf is a consultant who has worked for the Tondu Corporation since June 2001 and is its local representative responsible for the Northern Lights Project. Ms. Kempf was also a consultant to the Little River Band of Ottawa Indians from March 2000 through April 2003. Ms. Kempf was an acquaintance of Ms. Johnson-Ross prior to her appointment to the Manistee Planning Commission and also is a chiropractic patient of Ms. Johnson-Ross. The husbands of Ms. Kempf and Ms. Johnson-Ross have known each other for many years and the two couples have a social relationship. Ms. Kempf and her husband have hired the husband of Ms. Johnson-Ross to assist in a short term construction project in their home that is presently ongoing.

Ms. Johnson-Ross advised me that she was aware that Ms. Kempf was working for the Tondu Corporation, but that she has not discussed the nature of that work or the Northern Lights Project in any detail with Ms. Kempf. Ms. Johnson-Ross initiated a phone call to Ms. Kempf when she was considering applying for vacancies on the Manistee Planning Commission and the Harbor Commission. In that conversation, Ms. Kempf advised Ms. Johnson-Ross that she would make a good contribution to either commission. They also discussed Ms. Kempf's belief that the Planning Commission was not necessarily asking the right questions regarding the Northern Lights project, and that if Ms. Johnson-Ross was appointed she would be in a position to review all materials regarding the project and to insure that all of the proper questions regarding the project would be asked. There was no discussion regarding how Ms. Johnson-Ross would vote on the Northern Lights project.

The Manistee City Council met on November 18, 2003 to review applicants for the two vacancies on the Planning Commission. The applicants for the two positions were Mark Wittlief, Christa Johnson-Ross, Cyndy Fuller and Williams Brooks, and Mayor Mack appointed Mr. Wittlief and Ms. Fuller to fill the commission. After the Mayor's action, Ms. Johnson-Ross had a conversation with Ms. Yunis in which she discussed her disappointment at not being appointed to the Planning Commission.<sup>6</sup> Ms. Johnson-Ross does not remember the exact words that she used in that conversation, but recalls that she was unhappy with the result and indicated to Ms. Yunis that she had been told by Ms. Kempf that the Planning Commission was not asking the right questions and that she believed her presence on the Planning Commission would help to insure that the proper questions regarding the Northern Lights project were answered. Subsequent to the evening of November 18, 2003, Ms. Johnson-Ross and Ms. Kempf had another conversation in which Ms. Johnson-Ross expressed her disappointment at not being appointed to the Planning Commission. Ms. Kempf encouraged her to again apply if another vacancy came up or to apply for the Harbor Commission. Another vacancy occurred shortly afterward, and Ms. Johnson-Ross was appointed by Mayor Mack to fill that vacancy on December 2, 2003. After her appointment, she received a call from Ms. Kempf to congratulate her on her appointment. Subsequent to her appointment, Ms. Johnson-Ross attended a dinner where Ms. Kempf and her husband were present. The Northern Lights project was discussed during that dinner by all participants, which included opponents of the project.

The issue of friendships causes difficulty when reviewing claims of conflict of interest because they can sometimes cause stronger bonds than those of family relationships. Ms. Johnson-Ross and the other Planning Commission members have many friends in the Manistee area with diverse opinions both for and against the Northern Lights project who have been or will be offering unsolicited opinions regarding how the application should be handled. As a result, whatever decision the Planning Commission makes will please some of the friends of Planning Commission members and displease other of their friends. The law assumes that the opinions of friends will be considered as part of the general public input into evaluations of a project and does not presume improper bias merely because a decisionmaker discusses the merits of an application under review with a friend.<sup>7</sup> It is only where specific facts can show that a particular friendship has determined how a particular individual will vote that a disqualifying conflict arises. This is therefore different from a situation where a decisionmaker stands to financially benefit if a project is approved, since in that case there is a strong possibility that the decisionmaker will be tempted to act in their own interest.

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<sup>6</sup> It is my understanding that Ms. Yunis is an attorney who previously worked for Michigan Indian Legal Services, Inc. and that she was at the meeting to support the possible appointment of William Brooks to the Planning Commission. Mr. Brooks is legal counsel to the Little River Band.

<sup>7</sup> The decision of the Planning Commission is a group decision, thus negating the influence that one friend of one Planning Commissioner can have on the final decision.

Ms. Johnson-Ross indicated on January 8, 2004 that she believed that she would be able to fairly evaluate the Northern Lights Project. This is consistent with the position attributed to her on November 18, 2003, when Ms. Yunis indicated that Ms. Johnson-Ross stated that Meagan Kempf would not influence her decision. Ms. Johnson-Ross has indicated to me that she has not formed an opinion regarding the Northern Lights project and that her decision on the merits of the application for a Special Use Permit will not be influenced by her relationship with Ms. Kempf or any other individual. The discussions between Ms. Kempf and Ms. Johnson-Ross took place before Ms. Johnson-Ross was appointed to the Planning Commission, and there is no evidence that improper discussions regarding the merits of the Northern Lights project have occurred after Ms. Johnson-Ross' appointment to the Planning Commission.<sup>8</sup> In view of these factors, it is my opinion that Ms. Johnson-Ross does not have a conflict of interest that would prevent her from fairly evaluating the merits of MSWDC's application for a Special Use Permit.

2. **Mr. Mark Wittlief.** The potential disqualification of Mr. Wittlief was originally raised by Mr. Bzdok in his letter of December 24, 2003 when he indicated that "I understand that the wife of one of your members works for Tondu as an administrative assistant." Mr. Bzdok submitted additional information that he contends supports Mr. Wittlief's disqualification in his letter of January 22, 2004. The underlying basis for this disqualification is the claim that Mr. Wittlief's wife has a personal or financial interest in the granting of the Special Use permit to MSWDC as a result of an employment relationship with the Tondu Corporation, and that she will influence Mr. Wittlief to vote to approve the Special Use Permit to further that interest.

This claim arises out of the fact that the Tondu Corporation had previously developed a coal and wood fueled power plant located in Filer Township, and that Dawn Wittlief currently works at that power plant. The Filer Township power plant is owned by the T.E.S. Filer City Station Limited Partnership, which is comprised of Robert C. Pelfrey (5.0% owner), Beverly S. Belmer (1.0% owner), Western Michigan Cogeneration Limited Partnership (44.0% owner) and CMS Generation Filer City, Inc. (50.0% owner). Western Michigan Cogeneration Limited Partnership is 85% owned by the Tondu Corporation and 15% by other investors from Texas. CMS Generation Filer City, Inc. is a corporate subsidiary of CMS Energy. The T.E.S. Filer City Limited Partnership has entered into an agreement with CMS Energy under which that entity is responsible for the operation of the power plant and the employment of all individuals working at the power plant. Mr. John Wing is the Plant Manager assigned by CMS Energy to operate the power plant and reports directly to Mr. Ron Neely of CMS Energy in Jackson, Michigan. Ms. Dawn Wittlief is an administrative assistant working at the power plant who reports to the plant controller, who in turn reports to Mr. Wing. Mr. Wing advised me that Ms. Wittlief is a CMS Energy employee and that the Tondu Corporation has no authority to select, fire or direct Ms.

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<sup>8</sup> Ms. Johnson-Ross has indicated that she will continue to provide chiropractic services to Ms. Kempf, but has instituted a policy that she will have another individual present in the room during any treatment.

Wittlief or any other employee of CMS Energy. Mr. Wing further advised me that Ms. Wittlief's employment will not be impacted in any way regardless of whether the MSWDC's Special Use Permit is granted or denied.

Ms. Wittlief is not an employee of Tondu Corporation and I have not discovered any facts that would support a conclusion that she has any direct or indirect<sup>9</sup> financial interest in the approval of the MSWDC Special Use Permit. Accordingly, there is no conflict of interest that can be imputed to Mark Wittlief as a result of his wife's employment. It should also be noted that in *Forster v Delton School Dist*, 176 Mich App 582 (1989), the Court of Appeals found that the Standards of Conduct for Public Officers and Employees Act, MCL 15.341 *et seq* was not violated when a school district officer negotiated a contract with teachers even though his wife was one of those teachers. See *also*, 1980 OAG No. 5681, April 1, 1980 (A member of the legislature is not in a position of conflict of interest when voting on legislation in which their spouse may have some interest); 1984 OAG No. 6206, February 10, 1984 (A member of a community health board is not prohibited from voting on proposals that directly or indirectly affect the functions of a facility employing the spouse of that boardmember); 1992 OAG No. 6736, October 21, 1992 (No conflict of interest exists if an individual serves as attorney for a school district at the same time their spouse is also employed by that district.) As a result, there is no *per se* rule that requires the disqualification of a decisionmaker based upon the actions or comments attributable to their spouses. In view of these factors, it is my opinion that Mr. Wittlief does not have a conflict of interest that would prevent him from fairly evaluating the merits of MSWDC's application for a Special Use Permit.

**3. Mr. Robert Davis.** The potential disqualification of Planning Commissioner Robert Davis was suggested by Mr. Joe Tondu in his letter of January 26, 2004 based upon his membership in the Little River Band.<sup>10</sup> The Little River Band has voiced its opposition to the Northern Lights project. Mr. Davis is a member of the Little River Band and was employed by the Little River Band as its Executive Director of Tribal Operations from June 2000 through March 2003. As Executive Director of Tribal Operations, Mr. Davis was responsible to the Tribal Council for the non-gaming operations of the Little River Band. In that position, he worked with Ms. Kempf in her position as a consultant to the Little River Band. Mr. Davis resigned his position with the Little River Band under circumstances that entitled him to receive unemployment compensation. Mr. Davis along with all of the other members of the Little River Band received a general assistance grant of \$300 in 2002 and a similar \$500 grant in 2003. As a member of the Little River Band, Mr. Davis is entitled to payment of certain of his medical expenses if he has no other available source of payment.

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<sup>9</sup> Any indirect financial interest that arguably could arise because of the relationship between CMS Energy and the Tondu Corporation is too *de minimis* to rise to the level of a conflict of interest.

<sup>10</sup> Mr. Tondu did not request that Mr. Davis be disqualified, but indicated his belief that if Mr. Wittlief was disqualified based upon his wife's employment then Mr. Davis should also be disqualified.

The sole basis that it is contended that Mr. Davis should be disqualified is his relationship with the Little River Band and Band's opposition to the Northern Lights project. When a governmental entity or an Indian tribe takes an official position on an issue, it is assumed that the leadership supports that position. It cannot however be assumed that all members of the Little River Band share equally in the Band's position regarding the Northern Lights project. On September 12, 2003, Mr. Davis was contacted by Ms. Kempf who informed him that MSWDC had an option on the General Chemical property and would shortly be applying for a Special Use Permit. During that conversation, Mr. Davis expressed concerns about the environmental issues surrounding a coal-fired power plan, but indicated that they would be discussed when the item came up before the Planning Commission. On January 8, 2004, Mr. Davis acknowledged his membership in the Little River Band and the positions that the band has taken on the Northern Lights project. Mr. Davis indicated however that he believes such statements are premature and that his membership in the Band would not bias his opinion in any way. In view of these factors, it is my opinion that Mr. Davis does not have a conflict of interest that would prevent him from fairly evaluating the merits of MSWDC's application for a Special Use Permit.

**4. Mr. Greg Ferguson.** The potential disqualification of Mr. Ferguson was originally raised by Mr. Bzdok in his letter of December 24, 2003 when he indicated that "I understand another Commissioner may have made statements to people in town that he stands to make a lot of money in construction contracts if the project is approved." The source of these allegations appears to be a conversation that Mr. Ferguson had with Mr. Michael McCann on December 1, 2003. This conversation was initiated by Mr. McCann for the purpose of discussing a bid that Mr. Ferguson had placed on work at Mr. McCann's house and to let Mr. Ferguson know that he was opposed to the Northern Lights project. In a letter dated January 13, 2004, Mr. McCann describes the matters they discussed relative to his environmental concerns and then states:

In conclusion of our topic, Mr. Ferguson said he had to look at this wearing different hats. One as A resident of Manistee and one as A business owner, "because" quote "I stand to make hundred's of thousands of dollars if this goes through" I said "no because you need to be union and have 3 years experience building power plants". Mr Ferguson said. "no I am exploring other avenues". At this our conversion ended.

In essence, the claim is made that Mr. Ferguson will be improperly motivated to approve the Northern Lights project out of a belief that he will receive personal financial gain if the project is approved.

Mr. Ferguson is a non-union concrete contractor operating Bison Contractors which performs concrete work for residential and small commercial projects. On September 10, 2003, Ms. Kempf advised him that MSWDC was preparing a Special Use

Permit and that she would inform the Planning Commission about the Northern Lights project in the near future.<sup>11</sup> During that conversation, Mr. Ferguson raised questions regarding union labor on the Northern Lights project that could be answered by Mr. Jim Tondu. Ms. Kempf and Mr. Jim Tondu met with Mr. Ferguson at his job site the next day to answer his questions.<sup>12</sup> Mr. Ferguson's concerns were that the Northern Lights Project would bring in union concrete contractors who might impact his concrete business. Subsequently, Mr. Ferguson contacted Mr. Jim Tondu to suggest that there might be an alternative direction to the Special Use Permit because a power plant is a specified use under the zoning ordinance for the property in question.

Mr. Ferguson recalls having a conversation with Mr. McCann on December 1, 2003. He denies that he ever said that he stood to make thousands of dollars if the project was approved, and recalls indicating that he was concerned that he would lose some of his present work if a significant number of union concrete workers would come to Manistee, since they would be able to do the kind of work that he presently does.

In the event that the Northern Lights project is approved, the construction will be conducted through competitive bidding. Mr. Joe Tondu has advised me that he always utilizes union labor for his projects and that there will be project labor agreements with appropriate building trades unions covering the construction work. Mr. Tondu indicates that he has not had any discussions with Mr. Ferguson regarding any work that would be available for him on the project, and that the actual awarding of project work will be done by the general contractor who successfully bids on the overall project. There is no doubt that a project the size of Northern Lights will bring many construction jobs to Manistee. This will be in the form of subcontracts let by the general contractor and the jobs offered by those subcontractors. There is a possibility that Mr. Ferguson may be the beneficiary of some of that work or other local work made available by current competitors who decline that work in favor of Northern Lights project work. The possibility of receiving such work is however speculative at best, and is not a reason to disqualify Mr. Ferguson on the basis of conflict of interest.

It should also be noted that the December 1, 2003 conversation as related by Mr. McCann indicates that Mr. Ferguson was going to take into consideration the interests of the residents of Manistee. Subsequently, Mr. Ferguson submitted a letter to City Manager Deisch which states in part:

This group whom counsel represents would have been well advise to research their allegation. There is no work inside the fence at Northern lights for non-union companies. In fact the presents of some 200 union concrete

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<sup>11</sup> In September 2003, Ms. Kempf attempted to contact all members of the Manistee Planning Commission to advise them that MSWDC was preparing a Special Use Permit and that she would inform the Planning Commission about the Northern Lights Project in the near future.

<sup>12</sup> Mr. Ferguson had requested that they meet him there since he was hard to contact by telephone.

laborers, concrete finishers and carpenters has the risk of 10 to 20 union members with licenses to work in the residential and commercial arena. It is quite frightening to think that the potential for moonlighting side jobs in my particular field is inevitable.

That letter went on to "applaud Mr. Fred LaPoint for his outstanding efforts to rally a movement in opposition of the northern Lights Project. I would encourage the citizens for responsible development to continue their civic duties." These statements are indicative of an individual who understands that there are many competing interests that will have to be evaluated and weighed before a decision can be made on the application, a position that Mr. Ferguson publicly acknowledged on January 8, 2004 when he stated that he believed that he could fairly evaluate the application. In view of these factors, it is my opinion that Mr. Ferguson does not have a conflict of interest that would prevent him from fairly evaluating the merits of MSWDC's application for a Special Use Permit.

5. **Ray Fortier and Roger Yoder.** The disclosures that I received indicated that Mr. Ray Fortier had a nephew who worked at the T.E.S. Filer Plant and that Mr. Roger Yoder works at PCA which purchases steam from the T.E.S. Filer Plant. Neither Mr. Fortier nor Mr. Yoder have a conflict of interest based upon this relationship for the reasons discussed in regards to Mr. Wittlief. Both individuals indicated at the January 8, 2003 meeting that they could fairly evaluate the application and there is no reason to believe that either have prejudged the issue.

## CONCLUSION

There has been much discussion regarding whether a decisionmaker is disqualified if there is **any** "appearance of a conflict of interest" on their part. While it is best for public officials to attempt to avoid taking actions that can raise claims of conflict of interest, the law has not adopted a strict standard that there can be **no** appearance of a conflict of interest. Adoption of such a strict standard would be totally impractical, since every decision made by any decisionmaker would then be subject to challenge based upon **speculation** that the decision was tainted by improper motivation. It is for this reason that the law requires disqualification only where there is an actual conflict of interest or in circumstances under which "experience teaches that the probability of actual bias on the part of a decisionmaker is too high to be constitutionally tolerable."

This concept is illustrated by the Michigan Supreme Court's opinion in *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149 (2001) which addressed the Incompatible Offices Act, MCL 15.181 et seq. and concluded that the Legislature intended to find a disqualifying conflict of interest in an individual holding two public offices or

positions of public employment only when a actual conflict of interest occurs. As noted by the Court, use of the phrase breach of duty:

“[R]eflects a legislative intent to eshew the common-law focus on potential conflicts in favor of actual breaches of duty. This legislative choice encourages civic-minded individuals to engage in public service in as many capacities as they choose without limiting their involvement through concerns about potential conflict of interest. The Legislature has focused on actual breaches, recognizing the value of enabling public employees to serve in public offices when they are off duty.” *Id* at 164, n13.

The Supreme Court also noted that “If the act reaches potential conflicts of interest, the likelihood of political shenanigans escalates, and that use of such a standard “is an invitation for political mischief.” *Id* at 164, n13. In a similar manner, use of a standard that disqualifies a public official in land use matters based upon any appearance of conflict of interest would invite attempts by groups to discredit otherwise qualified members of a planning commission perceived to be inclined to take a position on that matter adverse to the position of that group.<sup>13</sup>

The Manistee Planning Commission is comprised of individuals who have volunteered to serve their community in its land use regulation function, and were appointed to the Commission by the Manistee City Council after that body determined that they could be trusted to properly perform this governmental function. As appointed public officials, each of these individuals takes their civic responsibility very seriously and has publicly reaffirmed that they do not believe that there is any reason that they will not be able to fairly evaluate the application for the Special Use Permit. As previously indicated, none of the present members of the Manistee Planning Commission have relationships with outside parties sufficient to raise any reasonable belief that they will not be able to fairly evaluate the pending application for a Special Use Permit because of obligations or commitments to any other individual.<sup>14</sup> According, it is my opinion that none of the members of the Manistee Planning Commission are disqualified by reason of conflict of interest from reviewing the application for a Special Use Permit submitted by the Manistee Salt Works Development Corporation.<sup>15</sup>

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<sup>13</sup> Use of an appearance of conflict standard might avoid the possibility of lawsuits, but public entities should be cautious before submitting to implied suggestions that litigation will ensue if any particular group's views on the appropriate composition of the decisionmaking body are not accommodated.

<sup>14</sup> In *Schweihofen v Zackary*, 103 Mich App 792 (1981), the Court of Appeals held that a member of a zoning board of appeals was not disqualified from voting on an application for a special use permit submitted by his nephew, after he concluded on the record that he was able to render an impartial and unbiased decision on the matter.

<sup>15</sup> There were no claims that Planning Commission members Cyndy Fuller, David Kelley, or Anthony Slawinsky had conflicts of interest.

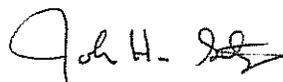
It should also be noted that the Tondu Corporation has committed to take the following action:

Tondu Corporation has instructed all employees to avoid any discussion of the Special Use Permit application with members of the Planning Commission outside of scheduled meeting and has instituted a policy to record any incidental contacts that may occur.

These procedures combined with the knowledge Planning Commission members now have regarding their need to avoid situations that might be misconstrued as improper behavior should help maintain the public's perception of the integrity of the Special Use Permit review process.

Very truly yours,

NANTZ, LITOWICH,  
SMITH & GIRARD



John H. Gretzinger

JHG/Δ

Cc: Mr. Mitch Deisch, Manistee City Manager

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# Williams & Works

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## MEMORANDUM

**TO:** Jon Rose, Community Development Director  
City of Manistee

**FROM:** Jay Kilpatrick, AICP, PCP

**DATE:** February 5, 2004

**RE:** Northern Lights Special Use and Site Plan Application Completeness

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As requested, the purpose of this memo is to summarize the review and approval requirements of the Zoning Ordinance which the Planning Commission may apply in considering the completeness of the special use and site plan application for the proposed Northern Lights Coal Fueled Power Plant.

**SPECIAL USE.** The Zoning Ordinance outlines the requirements for a special use application at Section 8604. The following provides our review of the requirements and the materials submitted:

### A. Required Submissions.

1. A Detailed Site Plan. The applicant has submitted a site plan. Its completeness is discussed below.
2. Supporting Materials Addressing the Section 8609, B, Review Standards. There are three elements of the proposed development that trigger the review of the application as a special use:
  - ◆ Activity outside an enclosed building;
  - ◆ Discharge of treated water to Manistee Lake
  - ◆ Alteration of the Manistee Lake shoreline.

It is appropriate to evaluate the entire project under the six review standards of Section 8609, B, including these three cited elements. My memo of November 13, 2003 included such a detailed review based on the materials available at that time. In that memo, I identified several issues or questions that were not, in my opinion, completely

addressed in the materials submitted. Subsequently, the applicant prepared additional materials which were provided to me at the December 4<sup>th</sup> Planning Commission meeting together with an environmental assessment dated December 17, 2003 and supplemented on January 22, 2004. Based on the materials submitted, I have the following comments on the completeness of the application with regard to its response to the Section 8609 review standards. It should be understood that a judgment about the completeness of the application means that sufficient material and has been provided to enable the Planning Commission to move the process forward.

Section 8609 Standard	Evaluation of Submitted Materials
1. Is the use reasonable and designed to protect the health, safety and welfare of the community?	<p>The application is complete with regard to this standard, except for</p> <ul style="list-style-type: none"> <li>◆ The final Air Quality permit and its emission limits,</li> <li>◆ The NPDES discharge permit and its limits,</li> <li>◆ The Corps of Engineers shoreline alteration permit,</li> <li>◆ In addition, since the proposed facility will be municipally-owned the revenue benefits it will produce are not yet clear.</li> </ul>
2. Is the use consistent with the intent and purpose of the Land Use District?	The application is complete with regard to this standard.
3. Is the use compatible with adjacent land uses?	The application is complete with regard to this standard, except for the Corps of Engineers shoreline alteration permit.
4. Is the use designed to insure that public services and facilities are capable of accommodating increased loads caused by the land use or activity?	The application is complete with regard to this standard.
5. Does the use comply with all applicable regulations of this Ordinance?	The application is complete with regard to this standard, except as outlined under the Site Plan comments below.

Section 8609 Standard	Evaluation of Submitted Materials
6. Does the use comply with all specific standards found in the respective Land Use District, Section 1601 <i>et. seq.</i> , and Section 1001 <i>et. seq.</i> , of the Ordinance?	The application is complete with regard to this standard.

3. The proposed location of open spaces, landscaping and greenbelts. The application is complete with regard to this standard.

**B. Additional Submissions.** The Zoning Ordinance includes four additional standards that may be required of special use applications. The following evaluates the application with regard to those requirements:

1. Elevations on all buildings including accessory buildings.	The materials submitted include conceptual elevations, but final elevations will depend on permitting requirements. This should be adequate for approval of the special use, providing final site plan review and approval as outlined below.
2. An environmental assessment	With the submission of the environmental assessment on December 17 <sup>th</sup> , the City Engineer's review and comment dated December 30 <sup>th</sup> and the applicant's response dated January 22 <sup>nd</sup> , the application is complete with regard to this standard.
3. Evidence of necessary permit approval or agreement for concurrent processing.	The application assumes concurrent processing of the various state and federal permits and therefore the application is complete with regard to this element, but final approval must be conditioned on permit approval.
4. Measures to mitigate off-site impacts.	Subject to final site plan approval, the application is complete with regard to this element.

**C. Applicant Certification.** The signed application includes the required certification.

**SITE PLAN.** The requirements for a site plan are found at Sections 9404 through 9406. The site plan, as submitted is not complete insofar as it does not provide the level of engineering detail needed for a final plan. However, the applicant has explained that the site plan and all its supporting materials may be adjusted by the final MDEQ and Corps of Engineers permitting requirements. Those requirements may impact the floor elevations of structures, their height, their placement on the site, the overall site dimensions, the location of utilities and other features. Thus, the conceptual site plan was prepared to provide as much detail as possible with the understanding that the final permits may affect some of the details of the plan. In my memo of November 13<sup>th</sup>, I recommended a preliminary site plan review process based on the concept site plan, with the final plan approval to be deferred until the permit approvals are in place and the final plan is submitted. If the Planning Commission accepts this approach, the site plan may be considered complete but any approval must be conditioned on the submission of a final plan that is consistent with the concept site plan and it must meet the engineering requirements of the City's engineer.



# **Evaluation of the Tondu Corporation Environmental Assessment for the Northern Lights Power Plant Project as Submitted to the City of Manistee Planning Commission on 12/17/2003**

**29 January 2004**

**by**

**Robert M. Powell**

On 17 December 2003 Tondu Corporation submitted a required Environmental Assessment (EA) to the City of Manistee Planning Commission (PC) for the proposed Northern Lights Power Plant (NLPP). This EA was evidently based on a series of questions/topics provided to Tondu by the PC. The following evaluation does not attempt to address every topic in the Environmental Assessment because some of them require no particular comment or will be addressed by others. The EA is broken up into numbered topics and bulleted subtopics. This evaluation will follow the EA document format for the topics that are addressed.

My overall comment about this EA is that it is very incomplete with regard to answering the posed questions and displays an extremely limited understanding of the environmental milieu relative to what should be required before embarking upon such a large and controversial project. The inadequacies evident therein sufficiently indicate that a full-scale Environmental Assessment should be obtained from an independent third party consulting company.

1. Give an overall description of the site as it exists now. If the site is currently occupied, please indicate any buildings to be removed and what will be done with the demolition debris. Also include information on the following as it relates to the site:
  - Flora and fauna (be sure to list any endangered species on-site)
  - General topography and drainage pattern
  - Adjacent waterways
  - Existing wells, approximate depth and use

Topic 1 deals with a number of pertinent issues but the Tondu responses in the EA are lacking in several respects. These include:

Demolition of the existing structures is addressed but there is no discussion of whether the existing structures contain any hazardous materials (other than asbestos) that might require storage, transport and disposal during the building removal. This should be disclosed and, if applicable, removal and disposal procedures detailed.



The PC seems to be requesting an assessment of the impacts to area plant and animal species and the Tondu response simply does not address this issue. From my brief observations the General Chemical site appears to be fairly defoliated, as Tondu indicates, but this extremely limited response by Tondu does not address the potential for detrimental impacts to flora and fauna in the areas surrounding the proposed NLPP should it be constructed and operating. This assessment should be required and should include impacts to the lake organisms during the shoreline restructuring and during NLPP operation due to the discharge water temperature, etc.

Regarding the general topography and the drainage pattern at the site, Tondu states, "The following map was taken from the USGS 7.5 minute Manistee quadrangle. Current surface drainage patterns are shown with red arrows." The drainage pattern is shown as being radially outward from the site. The possible implication by Tondu is that the USGS map provides the surface area drainage arrows, however this is not the case. The drainage patterns are not displayed on the original map (Figure 1, <http://terraserver-usa.com/image.aspx?t=2&s=11&x=1388&y=12244&z=16&w=2>) and whether the map isocontours are sufficient to result in this drainage pattern is unclear. The data source and the means of deriving this drainage pattern should be revealed, as should more information regarding how surrounding runoff onto the site can be managed during heavy rainfall events during and following construction.

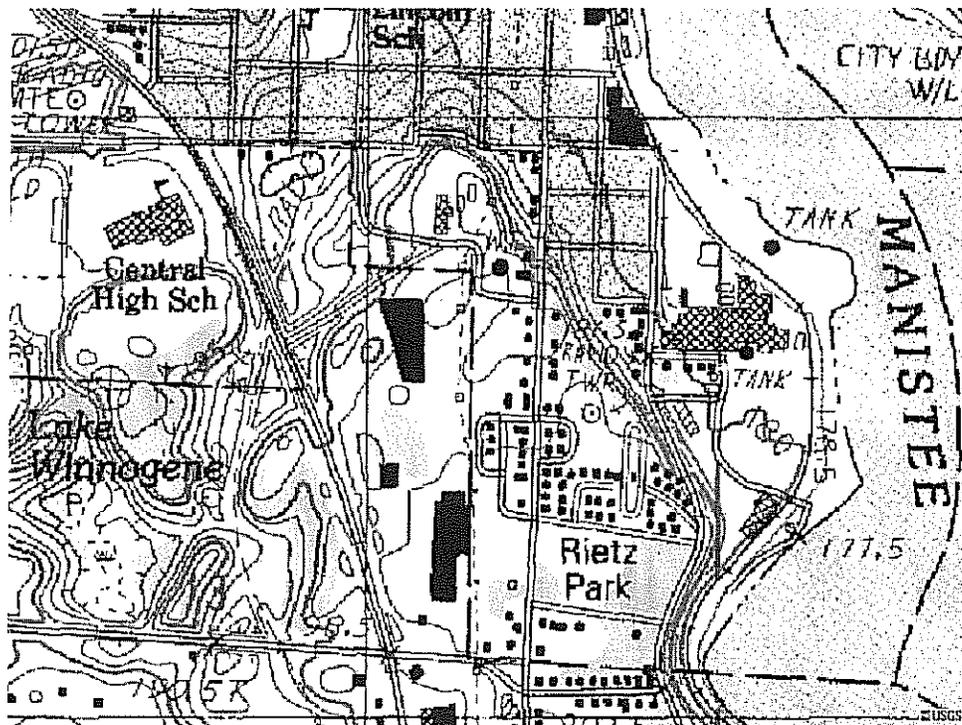


Figure 1 USGS Topographic Map of the Proposed Location of the NLPP (downloaded from <http://terraserver-usa.com>)



The request of the PC to Tondu for information on “Existing wells, approximate depth and use” is inadequately addressed in every respect. This indicates a lack of sufficient information about the site on the part of Tondu or a disregard for the intention of the PC via the EA process. If the former then Tondu should be charged with acquiring the additional information. If the latter then Tondu should be required to supply the information requested by the PC.

The Tondu EA mentions a variety of well types on the site but provide few specifics. The first paragraph of the Tondu response refers to brine wells (injection and extraction), process water wells and monitoring/observation wells. They then refer to the depiction on a map of brine, purge, observation, and fresh water wells. The types of wells listed are not even consistent between paragraphs in this document. They do not indicate anywhere the purpose of the purge wells or what was being purged. The request for depth information is ignored and just referred to as varying with the purpose of the well. Although the well locations are depicted on the map, the copy of the map that I have is not clear and the numbering is illegible. An additional sheet, “CC Recover Well Data,” is provided that is supposed to depict “additional, more recent wells” but there is no explanation of this graphic and it is not self-explanatory; CC is not even defined. The purpose of this graphic and the location and value of these wells should be clarified. Regardless of the map and graphics (all of which need improvement and explanation), the wells should be tabulated and (to the extent possible) provide the well number, well type, date of construction, method of construction, surveyed locations, surveyed depth, surveyed screen locations (at depth), screen lengths and whether the wells are currently in use, plugged, or need to be plugged. If core and stratigraphic information is available this should also be provided.

Beyond the issue of listing the wells, it is obvious that monitoring of the groundwater both on and in the vicinity of the proposed NLPP site has been performed at some time. Information should be provided on the results of these groundwater investigations and the reasons that they were instigated. The information should include the dates/frequency of monitoring, monitoring organization, depths of the samples acquired, analytes being monitored, measured analyte concentrations, and whether regulatory compliance limits or guidelines were exceeded for any of the monitored parameters. These data should correlate and correspond with the tabulated wells previously discussed. Information should also be provided as to what monitoring is currently being done by Akzo (Tondu refers to monitoring by Akzo in section 3 of the EA), whether routine monitoring will be continued after the construction of the NLPP, and the ultimate disposition of the data from these efforts. Tondu should also be queried about how these wells will be managed/protected/secured/retired during the construction of the NLPP.



3. Is there any existing contamination on-site? If so, please briefly describe the contamination onsite and what will be done on this project to mitigate or contain this contamination. If it is proposed to clean-up the contamination, please indicate the anticipated method as well.

This section of the Tondu EA is totally lacking in the information that should have been provided to answer this question unless all the needed information is provided in the BEA and Phase 1 EA documents that are stated by Tondu as having been submitted as part of this EA to the PC but were not available for my review. The site is clearly contaminated, by Tondu's admission, on the surface, in the vadose zone and in the groundwater. The restructuring of the land surface, shoreline, the installation of steel and concrete support piers, etc., could profoundly impact the fate and transport of these contaminants. A full Environmental Impact Statement (EIS) should be required.

4. Does the project expect to disturb the existing contamination? If so, what will be done to contain and/or dispose of the generated waste?

This question is simply ignored by the Tondu EA via their statement "if and when we disturb existing contamination..." It is clear that a major construction effort to build a coal-fired power plant will profoundly disrupt surface and subsurface contamination, as will restructuring of the land surface and the shoreline. Tondu should indicate how they will know if they are working in a contaminated area, i.e., are maps currently available showing the extents of contamination at the surface and at various depths? Will construction personnel be apprised of these "hot spots" and defer to environmental experts prior to entering/impacting these zones? Will surface sampling and soil cores be collected and analyzed during construction? Tondu acknowledges that contaminants exist in these locations yet fail to address the protection of workers from these materials during the construction. They also do not address the protection of the community from potentially contaminated dusts that may become airborne from the surface of the site during the construction. A health and safety plan is needed that is specific for the General Chemical/NLPP site.

5. Will the project impact any coastal area, or will there be riparian work along adjacent waterways? If so, please describe the work and how it is to be completed.

The Tondu EA acknowledges riparian work along the edge of Manistee Lake. If the soils and sediments are contaminated along the edge and below the surface where dredging, etc., will occur there is some risk that these materials will escape into Lake Manistee. This could result in a significant change in the geochemical equilibria that have maintained the contaminants on the soil surfaces and in the soil/aquifer material pore spaces, potentially releasing them via dissolution and desorption into the lake water. Once again, a full Environmental Impact Statement that addresses these types of issues should be provided.

9. Does the existing site have historical significance? If so, what areas are of concern?



Tondu responds, "The site has no historical significance." This may be true for Tondu Corporation but this is far from the truth for many of the residents of the Manistee area, especially when the historical and cultural beneficial usage of the lake and its shorelines for fishing and hunting by residents, tourists, the indigenous peoples and their cultures (extremely historical) is considered.

11. Will any hazardous waste be stored on-site? If so, what?

Tondu is legally correct in their response that "...the project will not involve the generation, on-site treatment, storage, or disposal of hazardous waste..." if they are referring specifically to coal combustion by-products (fly ash, bottom ash, etc.), but they are not exactly forthcoming about the materials that will be stored on-site and their use (to potentially become waste). Regarding the ash, RCRA exempts coal combustion wastes from its "hazardous waste" designation as per the following from USEPA (<http://www.epa.gov/epaoswer/other/fossil/index.htm>):

**"Regulatory Determination - May 22, 2000**

EPA has concluded that fossil fuel combustion wastes do not warrant regulation as hazardous under Subtitle C of RCRA and is retaining the hazardous waste exemption for these wastes. However, the Agency has determined that national non-hazardous waste regulations under RCRA Subtitle D are needed for coal combustion wastes disposed in surface impoundments and landfills and used as minefilling. EPA also concluded beneficial uses of these wastes, other than for minefilling, pose no significant risk and no additional national regulations are needed. This determination affects more than 110 million tons of fossil fuel combustion wastes that are generated each year, virtually all from burning coal."

However, there are going to be hazardous materials stored on the site and OSHA health and safety plans will be required. I tabulated some of these materials in the "NLPP Special Use Permit Fact Sheet" that I prepared previously; Table 1 from that document is provided below:

**Table 1 Selected Hazardous/Dangerous Substances Stored On-Site**

<b>Substance</b>	<b>Total Volume On-Site</b>	<b>Description</b>
15% Sodium Hypochlorite	15,800 gallons	Concentrated bleach, poisonous vapor, oxidizer, corrosive.
Sulfuric Acid	10,800 gallons	Strong Diprotic Acid
19% Ammonia, aqueous	17,000 gallons	Poisonous, corrosive alkaline solution, inhalation danger
Hydrogen Gas	25,000 standard cubic feet (scf)	Flammable, explosive mixed with air/other oxidizers.
Various "proprietary" chemicals	Various quantities	Unstated

Using many of these chemicals will likely result in at least temporary storage of on-site hazardous wastes. Tondou has failed to address these issues in response to the query of the Planning Commission.

12. Will there be any discharges from the site either of storm water, process water or otherwise? If so, please specify what will be discharged and the possible effects this discharge may have on the receiving waters. If cooling water is to be discharged, please specify the approximate discharge temperature.

Tondou might not know the final selected temperature of the discharge but, from their previous experience, they should have and disclose the range of possible values into which this final value will fall; modeling estimates of the temperature impact on the lake at various distances from the outfall under normal flow conditions should be made. Regarding the environmental impacts of the temperature increases in this region of the lake it should be remembered that, based on the Arrhenius equation, for every 10 degrees centigrade increase in temperature chemical reaction rates will, in general, approximately double. Therefore any reactions involving contaminants (e.g., sorption, desorption, volatilization, dissolution, degradation, recombination, etc.) can be expected to significantly increase in the warmed vicinity of the outfall. The toxicity impact on aquatic and benthic organisms due to these reactions is difficult or impossible to predict given our current state of knowledge.

13. Has a Federal, State, or local regulatory authority ever conducted an Environmental Assessment, Environmental Impact Statement, or a preliminary assessment/site inspection or environmental survey of the site? If yes, give a brief description of the findings and provide a copy of the report or results.

Tondou states that no governmental regulatory agency has ever conducted any of these processes at the General Chemical/NLPP site. Previously, however, they stated in the response to item 3 that the BEA performed by Westshore Consulting was "conducted



under the authority of the Michigan Department of Environmental Quality.” These statements seem contradictory and some explanation is warranted. They do state that the MDEQ has performed numerous “site inspections” during the past 50 years (MDEQ was founded in 1995 so perhaps they were referring to the MDNR) but do not state the reason for these inspections or what aspects of the site operations were being evaluated by MDEQ. Tondu then proceeds to leave the work of obtaining this information to the Planning Commission by telling them how to obtain these documents. Even if the documents are “lengthy” as stated, it is incumbent upon Tondu to summarize the information contained therein and include this summary in the EA. The Tondu response blatantly disregards the request of the Planning Commission for a “brief description” of the findings.

18. How will potable water be provided to the site? Are there any wells or lake-draw systems proposed for this project?

The means and approach for extracting 4200 gallons/minute of water from the lake should be addressed with regard to protecting the native species, including mobile species such as fish, from the intake.

19. Discuss any additional items as needed to relay the potential environmental impacts of the proposed project.

Tondu provides a list of current environmental issues at the proposed site but provides no information whatsoever about how these issues will be managed prior to and during construction of the NLPP. Specifics should be required about the remedial approaches to be used for the various problems that are known to exist.

# *Alex J. Sagady & Associates*

P.O. Box 39, East Lansing, MI 48826-0039 - 657 Spartan Ave., East Lansing, MI 48823 (FEDEX/UPS)  
(517) 332-6971 (517) 332-8987 (fax) [ajs@sagady.com](mailto:ajs@sagady.com) <http://www.sagady.com>

January 30, 2004

TO: Attorney William Brooks; Mark Dougher  
Little River Band of Ottawa Indians (LRBOI)

FROM: Alexander J. Sagady, Environmental Consultant to LRBOI

RE: Tondu Environmental Assessment, Northern Lights Project

You asked for brief comments concerning the Tondu Energy Northern Lights Project Environmental Assessment, submitted on December 17, 2003.

The comments below will not reflect detailed review of the Tondu air permit application which I just received yesterday. I have not had any chance yet to review that document in any detail.

Point #1 - Page 2 of 13 contains a statement subject to challenge, alleging that "there are no endangered or special concern animals or plants *in the township and section* of the General Chemical Site." (Emphasis added). This statement appears to deny without any basis concern about the presence of Bald Eagles (*Haliaeetus leucocephalus*) that may occur in the area. In addition, there is the presence of Michigan sturgeon in the Manistee Lake and river system.

Point #1 - Page 4 of 13 contains mention of several wells on the site. However, there is no detailed narrative describing engineering standards for the closure of these wells that will ensure no intrusion of brine water into surface water aquifers. The presence of brines in the wells and from previous surface and groundwater contamination creates increased potential for corrosion and subsequent breakdown of well casings and means of isolation between contaminated site wastewater and less contaminated/uncontaminated site groundwater.

Point #2 - Page 4 of 13 discusses the matter of building demolition activities. The only matter addressed deals with asbestos abatement activities. There is no discussion of the level of cleanup and/or engineering standards for asbestos removal.

A brownfields site containing boilers and thermal equipment may contain toxic forms of refractory (including chrome brick with high concentrations of hexavalent chromium). Heat transfer and electrical equipment may contain polychlorinated biphenyls, heat transfer/instrumentation equipment may contain mercury; boiler and piping insulation may contain refractory ceramic fibers of known significant pulmonary toxicity and product bins/silos may contain radionuclide sources. In the absence of a specifically stated pre-demolition work plan to assess and test onsite materials, there is a high risk that such materials, which are required to be treated in most cases as designated hazardous and/or regulated wastes, will merely be incorporated into comingled demolition waste.

Sites involving brines and brine wastes should be evaluated for arsenic and naturally occurring radionuclides.

There is no discussion of underground petroleum storage tanks in this section. No standards are presented as to removal vs. in place management of salt wastes and waste ponds. Any such contamination left onsite presents a risk of failure to future buried water supply and other lines. An assurance of removal is not the same as and is not guaranteed by an agreement to "...properly characterize[d] and disposed in accordance with all applicable Federal, State and Local regulations."

This section contains no discussion of the potential or existence of halogenated organic compounds on this brownfields site. Given the process presence of elemental chlorine and bromine, inadvertent formation of halogenated organic substances could have occurred at this site as a byproduct reaction. Site survey protocols for groundwater contamination and waste assays should include halogenated organic compounds such as chlorophenols, chloromethanes, chloroform, etc.

Point #5 - Page 5 of 13 statements at the bottom that the project will not impact any coastal areas seems disingenuous given stated plans for delivery of coal by freighter and subsequent needed dredging and docking and shoreline coal transfer activities.

Point #10 - Page 7 of 13 discusses air emissions from the proposed facility. No quantitative information is provided in this section. This section fails to acknowledge that the Tondu Northern Lights Project [a.k.a. Manistee Salt Works Development Corporation] Permit to Install Application contains no Air Quality

Impact Analysis section. As of the date of submittal, September 10, 2003, the sole content of the application reads:

“This Section of the application is near completion and discussions with the DEQ modeling staff continue. Upon completion of the modeling results, the entire analysis will be submitted as a supplement to this application.”

Although a Michigan Freedom of Information Act request satisfied as of January 25, 2004 yielded a CD-ROM purportedly to be air quality modeling runs, no narrative information has been provided describing the modeling results, existing air quality and the ultimate effect of the plant on area air quality. No air quality impact section has been provided. Accordingly, all statements in this section alleging that there will be no significant deterioration of air quality and no interference with attainment and maintenance of National Ambient Air Quality Standards are wholly unsupported as of this writing and are premature. Moreover, the Tondu air permit to install application must be considered both administratively and technically incomplete at this writing because the air quality impact analysis has not been submitted.

In fact, serious issues of Clean Air Act compliance may potentially affect this plant as existing air quality in this location cannot be considered to be compliance with National Ambient Air Quality Standards (NAAQS) for Ozone. The presumption that existing air quality does not meet the Ozone NAAQS must be held from patterns of regional transport of air pollution and interpolation of existing monitored sites of certain Lake Michigan counties above and below Manistee County.

The air quality section under question 10 does not mention that the plant will emit hydrochloric acid aerosol, sulfuric acid aerosol, ammonia and hazardous air pollutants. The Environmental Assessment does not quantify mercury emissions and does not provide an engineering review of the process and environmental fate of mercury that is collected by the process air pollution control system.

There is no disclosure of emissions of greenhouse gases from this proposed facility.

The air quality section does not indicate any information about emissions of pollutants associated with controlling slimes in cooling tower systems. There is

no information evaluating whether emissions of water vapor from cooling towers will cause nuisance, traffic visibility or icing conditions.

The Air Permit to Install application appears to countenance the possibility of using a “low BTU, high ash, high sulfur” fuel that may be coal waste, but does not identify whether this non-PRB coal would be delivered by another transportation system, such as rail delivery. Any potential for rail delivery of fuels to the site must be identified to determine the potential emissions associated with rail car unloading and the potential of coal train deliveries to disrupt area road transportation from the movement or or staging of large coal trains.

Neither the Environmental Assessment nor the Air Permit to Install Application contain any health or environmental/ecological risk analysis for any of the pollutants emitted. In particular, there is no analysis of the health and environmental consequences for human populations or ecological risk analysis for fisheries, birds and other animals on the consequences of potential mercury emissions from the facility. The applicant essentially admits mercury emissions could range from as little as 80 pounds/year to as much as 420 lbs per year, depending on the final level of mercury emission control technology and emission limitations imposed. Applicant has not proposed any enforceable limitations on the maximum mercury content of fuels to be used or any continuous emission monitoring systems for mercury emissions.

An air pollution permit for this plant may not be issued under the Environmental Protection Act provisions of the Michigan Natural Resources and Environmental Protection Act unless all expected or likely “...pollution, impairment and destruction...” is determined in advance and potential alternatives to such actions are considered. There can be no compliance with these requirements in the absence of a multi-pathway environmental, human health and ecological risk assessment of the consequences of the mercury emissions from this facility.

Given the location of the facility adjacent to Manistee Lake and the presumptive dry and wet deposition into this watercourse, and given the presumptive public health warnings about mercury contamination of fish known to occur in lower Michigan inland lakes, allowing the operation of the proposed facility has the potential to exacerbate existing public health hazards from the consumption of such fish. In such a situation, the precise impact of the new facility must be determined at a minimum. The severity of existing fish contamination problems might mitigate for requiring a concomitant mercury emission reduction or

reduction of other mercury input through sediment cleanup. Given that extensive dredging may occur in the Manistee Lake system and channel, potential entrainment effects of mercury from such operations may also enter into the evaluation of mercury impacts on human, fish and wildlife populations.

Point #11 - Page 7 or 13 on "hazardous waste" This discussion should be broadened to discuss "hazardous substances" rather than "hazardous waste" which has a specific regulatory meaning.

Point #12 - Page 7 of 13 on wastewater. There is reference to a 14.5 MGD discharge "which is currently permitted on the site." I was of the impression that this site has been closed. If the facility did not timely renew its National Pollution Discharge Elimination Permit at the end of the most recent 5 year effectiveness period, then there is nothing "currently permitted" and this language leaves a misleading impression. I have not verified this matter one way or another, but the discussion in the EA on this matter does not appear complete.

There is no discussion of site efforts to control stormwater effluents during construction and environmental remediation activities.

Discharges from cooling tower blowdown and coal pile runoff can be expected to contain significant amounts of total suspended and dissolved solids. The only effluent control issue identified is on the discharge of heated water. The EA does not identify any potential for discharge of toxicants in both cooling tower blowdown and coal pile runoff and how these will be monitored and controlled.

Point #15 - Page 8 of 13. Given the potential for mercury to be adsorbed on carbon collected in the air pollution control equipment and the collection of ionic mercury to be collected as a particulate oxide or chloride by the air pollution control equipment, then collected flyash must be evaluated for its potential to desorb and emit from landfilled flyash.

Point #18 - Page 8 of 13. The EA indicates that the facility will be drawing 4200 gallons per minute of process water from Manistee Lake. There is no information provided on how this intake will take place, the technology used and the ultimate effect on fisheries resources and the destruction of fish and other aquatic creatures.

The Environmental Assessment does not identify the amount of net consumptive water use provided by this facility and the consequences as to Great Lakes watershed consumptive use policies.

LAW OFFICES OF  
**OLSON, BZDOK & HOWARD**

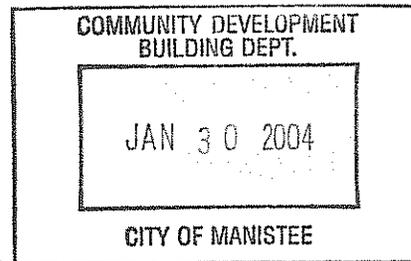
A Professional Corporation

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January 29, 2004

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‡ Admitted in Hawaii  
† Admitted in Louisiana  
◦ Admitted in Indiana



Manistee City Planning Commission  
City Hall  
70 Maple Street  
Manistee, MI 49660

Re: Special Use Permit - Northern Lights Project  
Municipal Planning Act Issue  
Our File N<sup>o</sup>: 5311.00

Dear Members of the Planning Commission:

I am writing to you again on behalf of the Citizens for Responsible Development to address an issue related to the Municipal Planning Act. Specifically, the point I want to make is that under the Municipal Planning Act, the Northern Lights Project will require an amendment to the City's Master Plan, in addition to a Special Use Permit. This amendment process includes consulting with the City's neighbors, which is vital for a large, regional project like this one.

It is my understanding that Tondu representatives have indicated that 50 to 100 percent of the power plant could be municipally owned. I assume this means owned by the Michigan Public Power Agency, although this is not especially important for my purposes. What is important is that under the Municipal Planning Act, no new public utility may be built, or even approved by this Commission, without first amending the Master Plan.

Section 6 of the Municipal Planning Act states that the general locations of certain kinds of buildings and infrastructure, including public utilities, must be shown on the Master Plan:

The municipal plan, with the accompanying maps, plats, charts, and descriptive matter shall show the planning commission's recommendations for the development of the territory, including, but not limited to, all of the following:

\* \* \*

(c) The general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes. MCL 125.36(3).

Section 9 of the same statute requires that the Master Plan be amended before certain of these items are built in locations not indicated on the Master Plan under Section 6.

Whenever the commission shall have adopted the master plan of the municipality or of 1 or more major sections or districts thereof no street, square, park, or other public way, ground, or open space, or public building or structure, shall be constructed *or authorized* in the municipality or in such planned section and district until the location, character, and extent thereof shall have been submitted to and approved by the commission. MCL 125.39. (emphasis added)

Section 9 goes on to indicate that public utilities are included within the scope of this requirement:

Provided, that is the public way, ground, space, building, structure, *or utility* be one the authorization or financing of which does not under the law or charter provisions governing same, fall within the province of the municipal council, then the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by said board, commission, or body by a vote of not less than 2/3 of its membership. *Id.* (emphasis added)

Based on these provisions, if the Northern Lights Project is going to be a municipally-owned, tax-exempt public utility, it cannot be approved until the Planning Commission amends the Master Plan to show the general location and extent of the power plant. The current Master Plan does not describe such a power plant or utility at the location now being considered.

Amendment of the Master Plan is governed by Section 8a, which says:

An extension, addition, revision, or other amendment to a municipal plan shall be adopted under the same procedure as a plan or a successive part of a plan under sections 7a, 7b, and 8. MCL 125.38a(1).

Sections 7a, 7b, and 8 are relatively new parts of the Municipal Planning Act, added by the Legislature in 2001. They require a notice of adoption of the amendment to the Master Plan and a public hearing, followed by submission to the City Council. After that, the amended Master Plan must go to the County and each adjacent Township that requests a copy of it. MCL 125.37a, 37b & 38. These local governmental units then have time to submit comments to the City on the amendment. MCL 125.37b(4). The time periods for this to happen are shortened somewhat in an amendment situation by Section 8a.

What does all of this mean? It means that approving a municipal power plant requires the City to amend its Master Plan, and amending the Master Plan requires the City to consult with its neighbors. This makes sense. Given the large scale of this project, it is bound to have impacts on the whole region. The law says these impacts must be planned for through a Master Plan process that takes into account the views of the City's neighbors.

Manistee City Planning Commission  
January 29, 2004  
Page 3

As before, thank you for your consideration of this letter. Please contact me if I can provide any more information.

Sincerely,



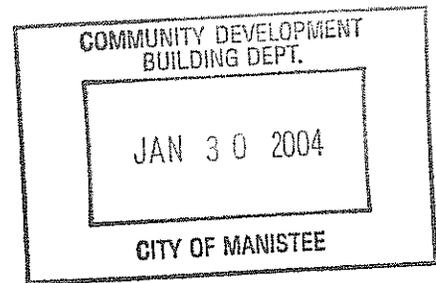
Christopher M. Bzdok

CMB:sks

xc: Bruce Gockerman, City Attorney  
Clients

G:\WPFILES\Sks\In-box\5311.00 01-29-04 DRAFT ltr to City re Mun. Planning Act.wpd

Tom Shea



City of Manistee Planning Commission  
20 Maple Street  
Manistee MI 49660

1/30/04

Dear Commissioners,

In the interests of clean air in Northwestern Michigan as well as the continued growth of Manistee as a wonderful place to bring our guests, I urge you to reject any plans for Houston based Tondur to build a 400 foot smoke stack and 20 plus story facility in Manistee County.

Living in the area since 1951, I observe that our summer haze looks like Los Angeles. It looks unhealthy and you know from the research that it is unhealthy. Benzie County to your north is one of the dirtiest places in the state. We get that drift also.

The City of Traverse City is dismantling its coal and wood chip burning plant. Our family invested in our City Light and Power wind generator. We are glad to pay a little extra each month for this privilege. Your community could do the same.

Besides the pollution, disruption of your horizon, load on your own infrastructure, it looks embarrassingly absurd for your commission to grant a variance to a company that will not provide power to your own citizens.

Manistee County has been hit particularly hard by job loss. However the Tondur developer appears to be exaggerating tremendously predicting 50 jobs created. Check with Lansing Power that supplies much of the state. I've heard they can run their plant with three people on a shift.

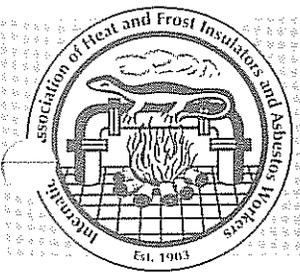
I will be writing our Senators, and talking to other people about the threat to our air and your economy (when you figure out the additional infrastructure you'll need to support this projected facility).

With respect for the task you face when out-of-town developers with political friends in high places move with big promises, I urge you to vote no on this plan.

Thank you for your attention to this request.

Tom Shea

529 West Ninth Street, Traverse City, MI., 49684  
Phone /Fax 231-946-3693 e-mail: shea@traverse.com



INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS  
 47 Saginaw MI 48603-5977  
 Local No. City (989)799-6780  
 300 St. Andrews Rd, Ste 304A Fax (989)799-5266  
 Address

January 30, 2004

Mr. Roger Yoder, Chair  
 City of Manistee Planning Commission  
 P.O. Box 358  
 Manistee, MI 49660

Fax: 231/723-1546

Dear Mr. Yoder:

I have been asked by the Members of International Association of Heat and Frost Insulators & Asbestos Workers Local Union 47 that live in Manistee and the surrounding areas to write to you. You being the Chairperson of the Manistee Planning Commission, this is a letter of support for the Northern Light Powerhouse.

What a great chance this Board has to bring in a great number of jobs to the area of Manistee and to clean up an old chemical site at the same time. It is my hope that the Planning Commission will vote "yes" on this project to bring those jobs to Manistee, where my Members live and would like to work.

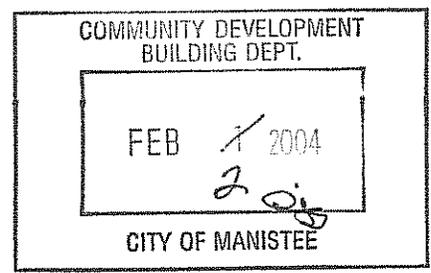
I thank you in advance to read this letter on the floor.

Sincerely,

*Craig Grigonis*

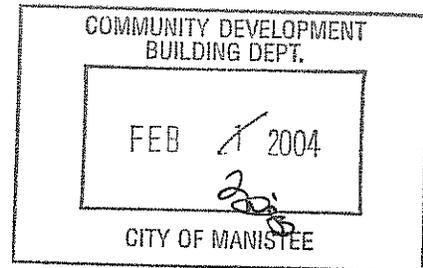
Craig "Skip" Grigonis  
 Business Manager

cc: Tondy Corporation  
 Jim Tondy  
 Fax: 616/866-5321



January 27, 2004

TO: Members of the Manistee Planning Committee



At this time, using the standard of protecting the health, safety and welfare of the community, I as a resident of Manistee ask that the Planning Committee judge that the application for the special use permit to construct the Northern Lights Power Plant is not complete.

Given the recent revelations of the lack of expected tax revenue, it discredits the recommendation for approval of the special use permit made by your planning consultant Mr. Jay Kilpatrick when he argued for approval in a November 13, 2003 memo to Mr. Jon Rose because "...of the substantial economic benefit and added tax base the project represents to the community."

There is no solid evidence that there will be a substantial economic benefit and we now know that there will not be an added tax base as was represented.

Over the last several months, the community has become educated about the serious health threats to current and future residents that this project poses. The community has also learned about the deterioration that this plant will bring to our lakes and rivers through the huge amount of mercury that will fall on our location each year. The community has also learned about the tons of particulates that will be emitted into our air annually changing forever the quality of the air we breathe.

Given the revelations regarding revenue and given the increased knowledge about the serious health and environmental issues that have emerged over the last several months, it would not be responsible to move forward until an independent economic and an independent environmental impact study is done.

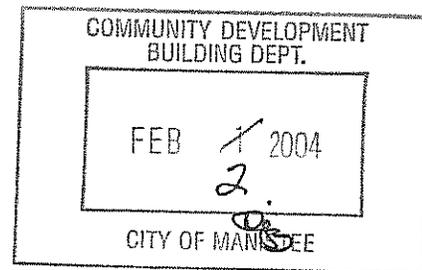
The serious impact of the proposed project on this community requires you to take reasonable measures, that have precedent in cases such as this elsewhere to assure that the community's health, safety and welfare are protected. A minimal reasonable response would be to order independent economic and environmental impact studies be submitted before you regard the application as complete. At this point it is my considered judgement that you have not adequately measured the proposed project against the standard, which you are required to meet before moving forward.

Given the above, I ask that you reject the application as not being complete and that you postpone any vote until you have obtained independent economic and environmental impact statements.

Thank you -

SANDEE WARE  
9094 Alkire Rd  
Bear Lake MI 49614

3695 Lakeshore Drive  
Manistee, MI 49660



January 27, 2004

TO: Members of the Manistee Planning Committee

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There is no solid evidence that there will be a substantial economic benefit and we now know that there will not be an added tax base as was represented.

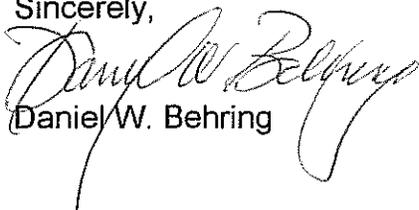
Over the last several months, the community has become educated about the serious health threats to current and future residents that this project poses. The community has also learned about the deterioration that this plant will bring to our lakes and rivers through the huge amount of mercury that will fall on our location each year. The community has also learned about the tons of particulates that will be emitted into our air annually changing forever the quality of the air we breathe.

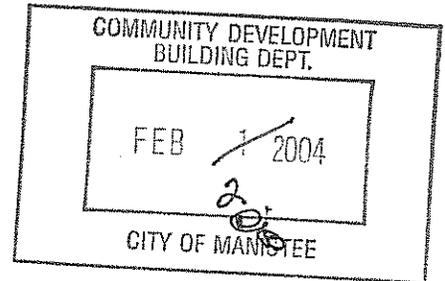
Given the revelations regarding revenue and given the increased knowledge about the serious health and environmental issues that have emerged over the last several months, it would not be responsible to move forward until an independent economic and an independent environmental impact study is done.

The serious impact of the proposed project on this community requires you to take reasonable measures, as have precedent in cases such as this elsewhere, to assure that the community's health, safety and welfare are protected. A minimal reasonable response would be to order independent economic and environmental impact studies be submitted before you regard the application as complete. At this point it is my considered judgement that you have not adequately measured the proposed project against the standard, which you are required to meet before moving forward.

Given the above, I ask that you reject the application as not being complete and that you postpone any vote until you have obtained independent economic and environmental impact statements.

Sincerely,

  
Daniel W. Behring



January 27, 2004

TO: Members of the Manistee Planning Committee

At this time, using the standard of protecting the health, safety and welfare of the region, I, as a resident of Northern Michigan, ask that the Planning Committee judge that the application for the special use permit to construct the Northern Lights Power Plant is not complete.

The recent revelations of the lack of expected tax revenue discredit the recommendation for approval of the special use permit made by your planning consultant Mr. Jay Kilpatrick when he argued for approval in a November 13, 2003 memo to Mr. Jon Rose because "...of the substantial economic benefit and added tax base the project represents to the community."

There is no solid evidence that there will be a substantial economic benefit and we now know that there will not be an added tax base as was represented. Given the revelations regarding revenue and given the increased knowledge about the serious health and environmental issues that have emerged over the last several months, it would not be responsible to move forward until an independent economic and an independent environmental impact study is done.

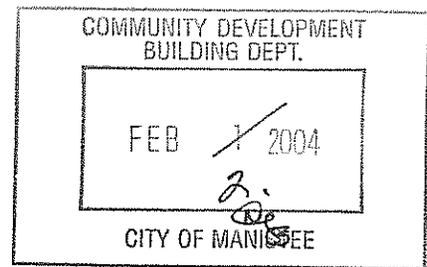
The serious impact of the proposed project requires you to take reasonable measures that have precedents in cases such as this elsewhere to assure that not only the Manistee community's health, safety and welfare are protected, but the health, safety and welfare of all of Northern Michigan as well.

A minimal reasonable response would be to order independent economic and environmental impact studies and submit them before you regard the application as complete. At this point it is my considered judgement that you have not adequately measured the proposed project against the standard which you are required to meet before moving forward.

Given the above, I ask that you reject the application as not being complete and that you postpone any vote until you have obtained independent economic and environmental impact statements.

*Andrea Dean*  
251 E. 10th St.  
Traverse City, MI 49684

3695 Lakeshore Drive  
Manistee, MI 49660



January 27, 2004

TO: Members of the Manistee Planning Committee

At this time, using the standard of protecting the health, safety and welfare of the community, I as a resident of Manistee ask that the Planning Committee judge that the application for the special use permit to construct the Northern Lights Power Plant is not complete.

Given the recent revelations of the lack of expected tax revenue, it discredits the recommendation for approval of the special use permit made by your planning consultant Mr. Jay Kilpatrick when he argued for approval in a November 13, 2003 memo to Mr. Jon Rose because "...of the substantial economic benefit and added tax base the project represents to the community."

There is no solid evidence that there will be a substantial economic benefit and we now know that there will not be an added tax base as was represented.

Over the last several months, the community has become educated about the serious health threats to current and future residents that this project poses. The community has also learned about the deterioration that this plant will bring to our lakes and rivers through the huge amount of mercury that will fall on our location each year. The community has also learned about the tons of particulates that will be emitted into our air annually changing forever the quality of the air we breathe.

Given the revelations regarding revenue and given the increased knowledge about the serious health and environmental issues that have emerged over the last several months, it would not be responsible to move forward until an independent economic and an independent environmental impact study is done.

The serious impact of the proposed project on this community requires you to take reasonable measures, as have precedent in cases such as this elsewhere, to assure that the community's health, safety and welfare are protected. A minimal reasonable response would be to order independent economic and environmental impact studies be submitted before you regard the application as complete. At this point it is my considered judgement that you have not adequately measured the proposed project against the standard, which you are required to meet before moving forward.

Given the above, I ask that you reject the application as not being complete and that you postpone any vote until you have obtained independent economic and environmental impact statements.

Sincerely,

*Nancy Behring*  
Nancy J. Behring

January 29, 2004

TO: Members of the Manistee Planning Committee

I, as a resident of Northern Michigan, ask that the Planning Committee closely review and reconsider the application for a special use permit to construct the Northern Lights Power Plant.

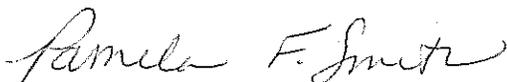
The recommendation for approval of the special use permit made by your planning consultant Mr. Jay Kilpatrick, was based on the idea there would be substantial economic benefit and added tax base for the community. This information has been shown that it is likely not the case. Since, there is no solid evidence that there will be a substantial economic benefit and we now know that there will not be an added tax base as was represented, I urge you consider carefully.

Given the revelations regarding revenue and given the increased knowledge about the serious health and environmental issues that have emerged over the last several months, it would be prudent not to move forward with the project until an independent economic and an independent environmental impact study (not assessment) is completed.

As a resident who will be affected by the pollution from this plant, I feel it is the commissioners duty to assure that the health, safety and welfare of Manistee and northern Michigan residents are being taken seriously. I request you consider including independent economic and environmental impact studies be submitted before you regard the application as complete.

I ask that you reject the application as not being complete and that you postpone any vote until you have obtained independent economic and environmental impact statements.

Sincerely,

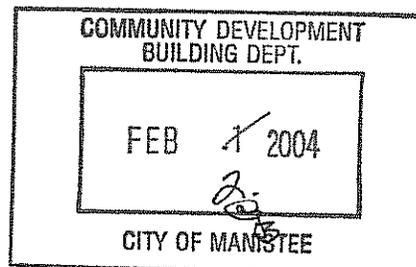


Pamela F. Smith

1876 Lake Pointe Drive

Traverse City, MI 49686

(231)342-2635



January 29, 2004

Dear Planning Commission Members:

Today we are hearing more and more about how much it costs each of us to heat our homes. Why is this?

As the temperature drops, demand for power rises for a limited amount of expensive natural gas. According to Consumers Energy, wholesale natural gas prices charged by producers have increased by 40-50% since last year. The Michigan Public Service Commission estimates that the average consumer will pay a monthly power bill \$30 higher than last year. Ouch!

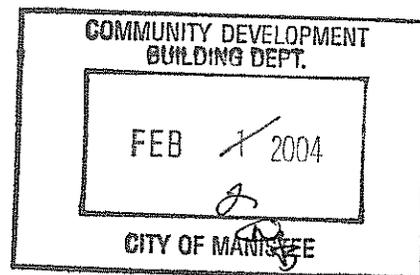
While natural gas is an important contributor to our energy needs, the time has come to where we can no longer rely on natural gas alone. We need other sources of power that are less expensive, but just as reliable and not at the expense of our environment.

One option is power from coal, such as the proposed Northern Lights project. Compared to natural gas, coal is inexpensive and abundant. Thanks to new technology and environmental regulations, it's also cleaner to burn than ever before.

If that's not enough to make coal sound like the sensible alternative, the Northern Lights project will also benefit our area economically. Sounds like a win-win situation to me.

Sincerely,

*Ed Levandoski*  
1175 Merkey Rd  
Manistee



January 28, 2004

TO: Members of the Manistee City Planning Commission

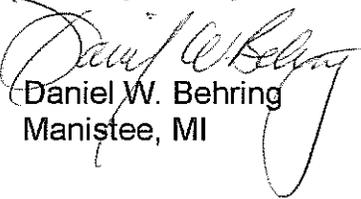
I have just finished reading the environmental assessment statement provided to you by Mr. Joe Tondou dated December 17, 2003.

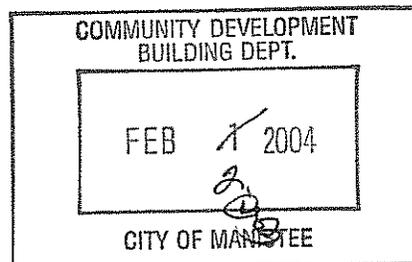
I have attached those items with which I believe you should be deeply concerned.

In no way, based on this submission, do you have the information that you need to make a reasonable evaluation of whether the health, safety and welfare of the citizens is being protected by this project or placed under great risk.

I urge that you read my comments. Once again, I urge that you order and receive an independent environmental impact statement, paid for by the applicant, before you make a determination that this application for special use permit is complete.

Thank you for your continuing consideration of my observations.

  
Daniel W. Behring  
Manistee, MI



REFLECTIONS AND COMMENTS UPON READING THE PROJECT ENVIRONMENTAL ASSESSMENT FOR THE NORTHERN LIGHTS PROJECT SUBMITTED BY MR. JOE TONDU TO THE CITY OF MANISTEE PLANNING COMMISSION DATED DECEMBER 17, 2003.

My first reaction in cursory review of the document was that there were no details and that this was not in any way a close proximity to a full environmental assessment that is usually required for a project of this size. Moreover, it is blatantly evident in reading the document that this is not an objective assessment, but is rather an additional promotional piece for the approval of the plant. This is particularly demonstrated in what is almost written as a threat when it is stated in response to item 19, "What is less known about the site is when and how it would be cleaned up if the Northern Lights Project does not move forward. **This comment has no place in any type of environmental assessment about the impact that the proposed project would have. This is a thinly veiled and almost patronizing attempt to threaten the citizens of Manistee as represented by the members of the planning commission.**

I would now like to comment on several items.

Item 3.

The item requests what the applicant will do to mitigate or contain contamination and asks what contaminants are on the site. Their response is general to the chemical contaminants. An environmental assessment would detail amounts, location and steps to remove and the impact such removal would have on the site. The response Tondou offered in response to this question is to provide an assessment done by Akzo in 1995 and a Baseline Environmental Assessment from 2000. **What is a strikingly blatant disregard for the planning commission's request for an environmental assessment was to have the applicant (Tondou Corporation) state in response to this item, "Should Manistee Saltworks Development Corporation purchase the property, we will conduct our own BEA and work plan as approved by MDEQ."** The planning commission requested an assessment as part of the process of completion of the application, not later.

Item 4

Item 4 asks if contamination is disturbed, what will be done to contain or dispose of the generated waste. Again, a reasonable response would be to identify the chemicals and other contaminants that would be of concern and detail by contaminant the process that would be used for containment and/or disposal. The Tondou Corporation response is to say "If and when we disturb existing contamination, it will be properly characterized and disposed in accordance with all applicable Federal, State and Local regulations. There is no way to evaluate by this statement the risk involved in any plans and once again, applying the standard of protecting the health, welfare and safety of the citizens, this response falls short.

#### Item 10

This item asks for a description of each emission material and the impact it will have on air quality. It asks for a brief description of each contaminant and the effects of each contaminant to nature and human life.

The applicant's response is to list the emission contaminants and refer to the Air Permit Application if the planning committee wants more information. This is not an environmental impact assessment. A reasonable impact assessment would look at data that already exists for this area, add the emissions that will probably be released from the proposed plant, and then assess the impact that the proposed plant would have on the environment and the health, welfare and safety of the citizens in the area. **How without this data can the response be "We believe that these emissions will result in no significant deterioration of the air quality in Manistee County as defined by state and federal regulations. As such there would be no harmful effects from each pollutant on human health or welfare."** This response to the planning commission's request appears to be what a reasonable person might call refusal to comply with a request and most charitably obfuscation by the Corporation.

#### Item 11

This item deals with what to do with storm water, process water or other water. There are two troubling responses to this item. The first is that because "...calculation of this discharge temperature is very complex and will be affected by several final water balance design decisions and the incorporation of any State limitations on the allowable differential between the discharge temperature and the lake temperature." Again, at this point a reasonable person would expect that there is a design in place and their exist current State guidelines. One could then calculate the impact regarding discharge at this point thereby providing a reasonable target for the plant. That was not done. A more startling statement is that the **waste water from these sources will "...either be sent to the City of Manistee or treated to the required level for a permitted discharge into Lake Manistee."** **Is this a concern regarding costs and capacity at the waste water treatment plant? Is this relevant to the current controversy surrounding the expansion of the waste water treatment plant?**

#### Item 19

This asks for any additional items that might relay the potential environmental impact of the proposed project.

The intention of this item is to allow the applicant to disclose any other possible problems that the project might pose that have not been addressed in the other 18 questions. Instead of addressing the question, the applicant offers a list of what won't be done if their project is not approved. I find this again very arrogant and disrespectful of the planning commission's wishes. The statement borders on intimidation by suggesting that nothing will be cleaned up on the site if the Northern Lights Project does not go forward. This has no place in an objective assessment of environmental impact.

Further into the response to this item, the applicant talks about emissions that will be reduced from current operations because of the construction of the Northern Lights Project. The applicant does admit that "...the emission reductions are minimal compared to (*emissions of*) the Northern Lights Plant..." They then go on to discuss an Ambar risk management plan for the storage of chlorine not at all relevant to the project. No where has the applicant reviewed the potential risk for the storage of the large amounts of ammonia needed for keeping the cooling towers clean, nor for the large amounts of oil that will be stored on site for the lubrication of the turbines.

Another statement that is extremely self-serving and again irrelevant to the question, is to end the report stating, "Without this development, this blighted site is and will continue to be an unused and undeveloped toxic property that will put the residents of Manistee at risk."

This is patronizing in the most fundamental way. The Planning Commission wanted data to help them make up their own minds and come to their own judgements about the environmental risk of the proposed project. There are numerous examples throughout the submitted report in which the applicant is positioning itself to manage the conclusion and emotion of the planning commission. This has no place in an environmental assessment.

**The Tondu Corporation plan is not the only way that the very capable citizens of Manistee can take control of their own living conditions and future development.**

A review of the responses to this request by the Planning Commission of Manistee, which comes on the heels of the opinion and comments about the Tondu corporation voiced by Judge Southern in the Tax Tribunal recently settled, would certainly raise a lot of red flags about even considering putting the health, safety and welfare of our citizens at risk with this project.

Once again I ask that a formal independent environmental impact statement be commissioned by the planning commission and paid for by the applicant.

Daniel W. Behring  
3695 Lakeshore Drive  
Manistee, MI 49660

LAW OFFICES OF

**OLSON, BZDOK & HOWARD**

A Professional Corporation

James M. Olson \*  
Christopher M. Bzdok  
Scott W. Howard  
Karen L. Ferguson ‡  
Kristyn J. Houle †  
William Rastetter, Of Counsel ◊

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February 2, 2004

◊ Admitted in Colorado  
‡ Admitted in Hawaii  
† Admitted in Louisiana  
◊ Admitted in Indiana

Manistee City Planning Commission  
City Hall  
70 Maple Street  
Manistee, MI 49660

Via 1<sup>st</sup> Class Mail &  
Fax No. 231-723-1546

Re: Special Use Permit - Manistee Saltworks Development Corporation  
Northern Lights Project  
Request for Public Hearing  
Our File No. 5311.00

Dear Members of the Planning Commission:

I am writing to you again on behalf of the Citizens for Responsible Development. We request that the Planning Commission hold another public hearing on the Northern Lights Special Use Permit application after you have determined that the application is complete.

We believe another public hearing is required under the ordinance. As each of you is probably aware, Section 8605 of the zoning ordinance says that on receipt of a Special Use Permit application the zoning administrator (or the Planning Commission) will review it to determine if it is complete. If it is not complete, the application is sent back to the applicant to provide the additional information.

Then the ordinance says:

If the application is complete, the [zoning] Administrator and chairman of the [planning] commission shall establish a date to hold a public hearing on the Special Use Permit application.

This language says the date for the public hearing is set only *after* the Planning Commission determines the application is complete. The language of the ordinance does not provide any discretion to hold the public hearing before the application is determined to be complete. If a public hearing is held at that incomplete stage, as was the case here, the way to fix the problem is to have another public hearing.

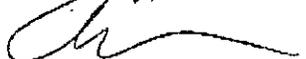
This interpretation is also consistent with my reading of the minutes from the Planning Commission's October 23, 2003 meeting. While I have only seen an excerpt, those minutes appear to say that City staff and consultants would be reviewing the application, and if a completed application was received in time, the Planning Commission Chairman could call a special meeting for November 20<sup>th</sup>.

Even if another public hearing was not required by the ordinance, we still think it would be the right thing to do. The public's right to comment on a project of this magnitude should not be limited to an incomplete application, but should be based upon the same complete information from the applicant that you, as members of the Planning Commission, will base your decision. I suspect this is the rationale for the ordinance's requiring the public hearing to be set after the application is complete in the first place.

Manistee City Planning Commission  
February 2, 2004  
Page 2

Because of the high public profile of this project, I ask that you address my request for another public hearing on the record at your next meeting. If you still do not intend to hold another public hearing, I ask that you inform the public of the reasons why not. Thank you for considering these comments.

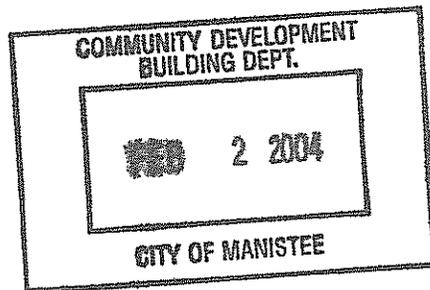
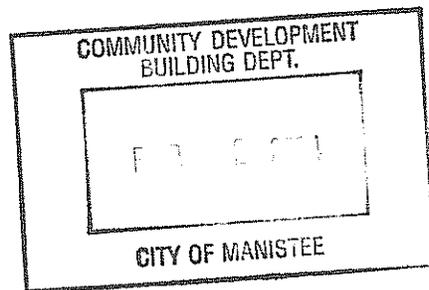
Sincerely,

  
Christopher M. Bzdok

CMB:sks

xc: Bruce Gockerman (via fax and 1<sup>st</sup> class mail)  
Jon Rose (via fax and 1<sup>st</sup> class mail)  
Clients

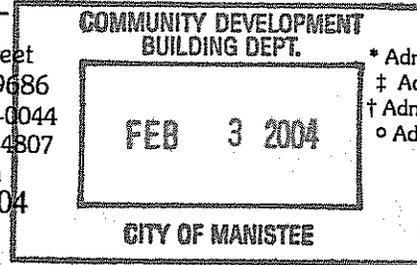
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LAW OFFICES OF  
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george kaminski

From: "george kaminski" <gjkaminski@coslink.net>  
 To: "David L. Barber" <dibarber@pioneergroup.net>  
 Sent: 02/01/2004 4:25 PM  
 Subject: Letter to the Editor

21125 Valencourt Rd,  
 Copemish, MI 49625  
 Feb. 1, 2004

To the Editor:

Manistee has done a fabulous job of promoting itself as the Victorian Port City. Historic buildings have never looked better; new businesses and homes have sprung up, attracted by the opportunity to live in a community surrounded by so many recreational treasures. There is now a huge issue before the residents of the city. Should the Northern Lights coal-fired power plant be issued a special use permit by the Manistee Planning Commission? The magnitude of the development and its consequences to the city, county, and region suggests that no decision be reached before all the data is in.

For example, is Manistee County an attainment or non-attainment region according to federal guidelines on air pollution? Both Mason and Benzie counties are non-attainment, meaning air pollution exceeds a safe level. Manistee County has never been monitored by the EPA, unlike the other two counties, but it is reasonable to assume that given our position between them, we breathe the same air.

What will the level of emissions be for pollutants generated by such a facility? One of the most harmful of these is mercury, a contaminant already present in so many of our fish that health advisories have been issued on the number of fish safe to eat. No federal or state limits exist on the amount of mercury that can be emitted by a coal-fired power plant.

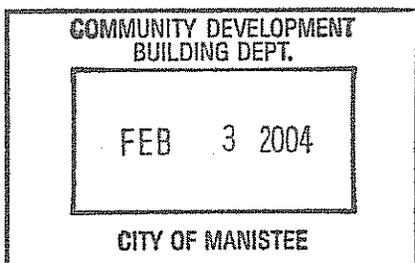
What impact will this project have on Manistee Lake, the Manistee River watershed, and Lake Michigan? Will dredging be required to allow coal-laden freighters access to the plant? Where will the spoils be deposited? Will this activity stir up pollutants long buried at the bottom of the lake? Could these move out into Lake Michigan? Will lake water used by the plant cause thermal pollution, threatening the cold-water fishery that much of our economy depends on?

Who will be the actual owners of the facility and will they be paying taxes to the city? Will specialized companies be required to build the plant and are there any in our area? What employment opportunities will be offered to people in our area?

There are many more important questions to be asked. It would be a shame to rush such a critical decision when it could put at risk the image of Manistee its citizens have so carefully nurtured.

Sincerely, George and Anne Kaminski Copemish

*Does this development comply with the Master Plans of the city and county and meet the standards necessary to protect the health + welfare of the citizens of our county?*



Anne Kaminski  
 George Kaminski

george kaminski

From: "george kaminski" <gjkaminski@coslink.net>  
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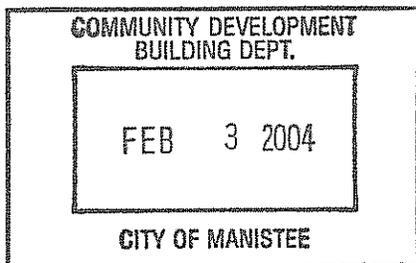
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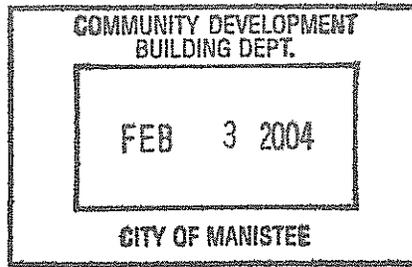
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Anne Kaminski  
 George Kaminski

Planning Commission  
City of Manistee  
550 Maple Street  
Manistee, MI 49660



1/29/04

To: Members of the City Planning Commission,

I, as a current resident of Manistee, would ask that the City Planning Commission deny the application for a special use permit to construct the Northern Lights Project. In order to protect the health, safety and welfare of the community the application must be deemed incomplete until independent agencies (NOT Tondu) complete both environmental and economic impact studies.

Given the recent revelations of the lack of expected tax revenue, it discredits the recommendation for approval of the permit by your consultant Mr. Jay Kilpatrick when he argued for approval in a November 13, 2003 memo to Jon Rose because "...of the substantial economic benefit and added tax base the project represents to the community."

I have yet to see any solid evidence that there will be any economic benefit to the community and I know now that there will not be an added tax base as was represented.

In the past several months, I, as well as many others in the community, have become informed of the serious health threats to the residents of the Manistee and surrounding communities that this project poses. I, as a wildlife biologist, am also fully aware of the detrimental effects this plant will have on our environment, specifically the lakes and rivers, the lifeblood of both our fisheries and wildlife. The mercury, heavy metals and tons of particulates that will be emitted into our air annually will change the quality of air we breathe and water we drink forever.

Given the increased knowledge of the serious health and environmental effects that have emerged, it would not be responsible (or fair to the citizens of Manistee) to move forward until an independent economic and independent environmental impact study is done. Independent in this case means not Tondu or anyone affiliated with Tondu or the Manistee Saltworks Development Corporation.

The serious impact the proposed project will have on the community requires you (as employees of the citizens of Manistee) to take reasonable measures, that have precedent in cases such as this elsewhere, to assure that the community's health, safety and welfare are protected. At the very least the City Planning Commission should order that independent economic and environmental impact studies be submitted before you regard the application as complete. It is my belief that you have not adequately measured the proposed project against the standard, which you are required to meet before moving forward.

Given the above, I ask that you reject the application as not being complete and that you postpone any vote until you have obtained independent economic and environmental impact statements. Thank you.

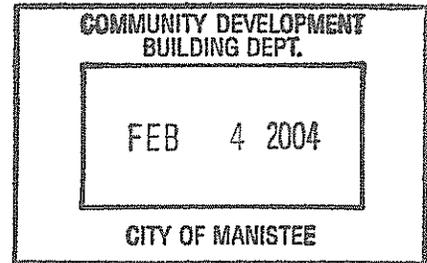
A handwritten signature in black ink, appearing to read 'Nathan Svoboda', with a long horizontal flourish extending to the right.

Nathan Svoboda  
Manistee Resident  
P.O. Box 735  
Manistee, MI 49660

Kathleen Hibbard  
P.O. Box 112  
Honor, MI 49640

February 2, 2004

City of Manistee Planning Commission  
c/o Jon Rose  
70 Maple Street  
Manistee, MI 49660



RE: Proposed Northern Lights power plant

I grew up with a smokestack and a coal pile right downtown, a few blocks from our house in Traverse City. In the winter, the snow we played in was never white, it was grey. Traverse City citizens argued for years about where to put that coal pile, the dock for the ships that brought it and the tons of waste fly ash the TC power plant generated. They argued for years about improvements to the plant to make it "cleaner." Eventually, Traverse City citizens supported dismantling that soot and smoke belching power plant. It is scheduled to come down this year.

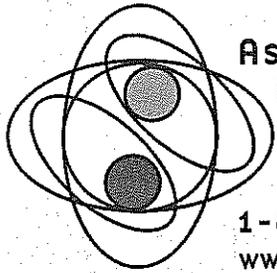
The proposed Northern Lights power plant will be an environmental disaster for Northern Michigan. The "Chicago Plume" carried by prevailing winds already contaminates the west coast of Michigan with as much air pollution as Gary, IN. Every lake and river in the state is contaminated with mercury pollution caused by coal burning power plants elsewhere. The Bush administration has been busy the last three years looking for loopholes to allow existing coal-fired power plants to evade upgrading their plants with technology to reduce pollution, so emissions controls won't be installed or enforced in Manistee either. Construction of the proposed plant will require dredging of Manistee Lake stirring up sediments known to be contaminated with numerous heavy metals, sending them down the Manistee River into Lake Michigan. Construction and operation of the plant will use highly skilled workers already employed by out of state contractors, not new hires from the area. Since Manistee doesn't have a power shortage, all the power generated will be sold off for the sole benefit of the private owner(s) of the project, not the city of Manistee.

The proposed power plant shouldn't be built. We should be exploring alternative energy sources including more wind and solar power generation. After spending years cleaning up Manistee, a town ravaged by more than a century of unregulated industry and pollution, why would you want to allow the construction of a monster, many times the size of the Traverse City power plant, on the shores of your beautiful lake?

Sincerely,

*Kathleen Hibbard*

Kathleen Hibbard

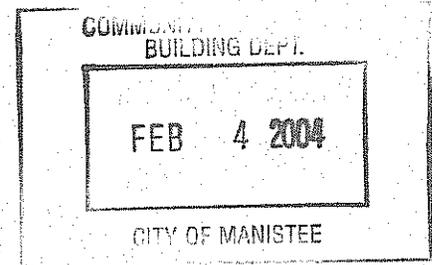


## Asthma Coalition of Northwest Michigan

Care of  
Munson Medical Center  
Respiratory Care Department  
1105 Sixth Street, Traverse City, MI 49684

1-800-Lung-USA

www.asthmacoalitionnm.org



### Resolution of Opposition

#### Manistee Saltworks Coal Plant in the City of Manistee

Whereas, the mission of the Asthma Coalition of Northwest Michigan is to serve to improve the quality of life for adults and children affected by asthma through education, awareness, and advocacy; and

Whereas, being deeply concerned with the unavoidable emissions of nitrogen oxides, carbon dioxide, airborne lead, particulate matter, sulfur dioxides, and their direct link to ground level ozone or smog and their proven hazardous health effects and relationship to chronic lung diseases such as asthma and emphysema;

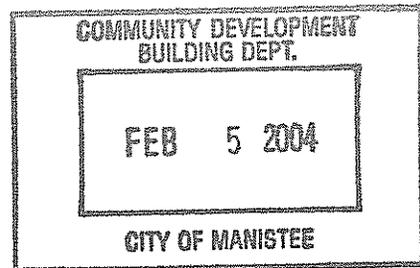
THEREBY BE IT RESOLVED, that the Asthma Coalition of Northwest Michigan hereby opposes the construction of the proposed coal burning plant by the Tondu Corporation and hereby urges the City of Manistee to reject this project until it can be assured that air quality standards have been met in the county and a thorough review of alternative energy sources has occurred.

Respectfully,

*Karen P. Kain MS, RRT 2/3/04*

Karen P. Kain, MS, RRT  
President-Elect  
Asthma Coalition of Northwest Michigan

January 27, 2004



TO: Members of the Manistee Planning Committee

At this time, using the standard of protecting the health, safety and welfare of the community, I as a resident of Manistee ask that the Planning Committee judge that the application for the special use permit to construct the Northern Lights Power Plant is not complete.

Given the recent revelations of the lack of expected tax revenue, it discredits the recommendation for approval of the special use permit made by your planning consultant Mr. Jay Kilpatrick when he argued for approval in a November 13, 2003 memo to Mr. Jon Rose because "...of the substantial economic benefit and added tax base the project represents to the community."

There is no solid evidence that there will be a substantial economic benefit and we now know that there will not be an added tax base as was represented.

Over the last several months, the community has become educated about the serious health threats to current and future residents that this project poses. The community has also learned about the deterioration that this plant will bring to our lakes and rivers through the huge amount of mercury that will fall on our location each year. The community has also learned about the tons of particulates that will be emitted into our air annually changing forever the quality of the air we breathe.

Given the revelations regarding revenue and given the increased knowledge about the serious health and environmental issues that have emerged over the last several months, it would not be responsible to move forward until an independent economic and an independent environmental impact study is done.

The serious impact of the proposed project on this community requires you to take reasonable measures, that have precedent in cases such as this elsewhere to assure that the community's health, safety and welfare are protected. A minimal reasonable response would be to order independent economic and environmental impact studies be submitted before you regard the application as complete. At this point it is my considered judgement that you have not adequately measured the proposed project against the standard, which you are required to meet before moving forward.

Given the above, I ask that you reject the application as not being complete and that you postpone any vote until you have obtained independent economic and environmental impact statements.

*Francis W. Johnston*  
388 First Street  
Manistee, MI