COMPLAINANTS' AMENDED PETITION FOR RECONSIDERATION

EXHIBITS

EXHIBIT A

APPLICATION FOR AMENDMENT

Great Northern Project Development, hereby apply for an amendment to the provisions of the Stark County Zoning Ordinance and Map.

1. Please state the amendment requested: (Zoning Request & Legal)

To rezone the following property from agricultural to industrial (see attached legal descriptions)
With the following conditional uses as defined by section 5.08-B of the Stark County Zoning ordinance. (See attached addendum)

Applicant requests an initial review by the Stark County Zoning Administrator, a public hearing before the County Zoning Board, and the approval of the amendment requested herein.

Neal Messer For GNPD 2-22-2010
(Applicant) (Date)

$200 Application fee
Application accepted
And initially reviewed

Diane Brines 2-23-2010
(Zoning Administrator) (Date)

Any questions please call Diane Brines, Tax Director at 456-7672, PO Box 130, Dickinson,ND 58601.

ATTACHMENT 1

LEGAL DESCRIPTION OF PROPOSED INDUSTRIAL DISTRICT

BY THE QUARTER/QUARTER SECTION

Township 139 North, Range 98 West

Section 9:	All south of the railroad
Section 10:	All south of the railroad
Section 11:	SW1/4 south of the railroad
Section 14:	W1/2, SE1/4
Section 15:	All
Section 16:	All
Section 17:	All
Section 20:	N1/2, SE1/4
Section 21:	All
Section 22:	All
Section 23:	All
Section 27:	All
Section 28:	N1/2, SE1/4
Section 29:	NE1/4
Section 33:	S1/2, NE1/4
Section 34:	All

Township 138 North, Range 98 West

Section 3:	N1/2

This legal description was not produced by a Professional Land Surveyor.

With the following conditional uses as defined by section 5.08-B of the Stark County Zoning ordinance. (See attached addendum)

4. Chemical fertilizer plant
5. Coal gasification or conversion plant
6. Coal Mine
8. Electric power generating plant
10. Liquid, gas bulk, explosive, highly compressed or other hazardous material storage.
11. Mineral and other substance exploration or excavation and mining accordance with provisions of Sec. 6.10.
21. Solid waste landfill.
22. Manufacture of hazardous products
23. Manufacture of odorous products

EXHIBIT B

APPLICATION (NOTICE OF INTENT) TO OBTAIN COVERAGE UNDER NDPDES GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY (NDR10-0000)

NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
SFN 19145 (2/05)

RECEIVED
FOR DEPT USE ONLY
Date Received
SEP 08 2008
Application No.
DIV. OF WATER QUALITY
NDR 10 2450

GENERAL INFORMATION

Name of Owner of Construction Project	Contact Person Name	Contact Phone No.	
GTLE Dakota Plant 1 LLC	John Shultz	701-597-3006	
Mailing Address	**City**	**State**	**Zip Code**
6215 Cottonwood Shores	Wellington	CO	80549

Type of Owner or Operator: ☒ Developer/Builder ☐ General Contractor ☐ Municipality ☐ State of ND ☐ Federal ☐ Other (Specify):

This NOI is to obtain coverage under Small Construction Activity (see Part I.D of permit): ☒ YES ☐ NO

Small Construction Activity requires the submittal of an Annual Location Record as per Part III.B of the permit

Name of Construction Project (Large Construction Activity Only)

Brief Description of Construction Activity (Please fill out for both Large and Small Construction Activity)

Construct buildings and road access for a coal drying plant located west of Southheart, ND in the SW1/4NW1/4Section 20, T139NR98W with a total disturbance area of less than 5 acres. Construction activitiy will include site grading, road construction, and construction of 3 buildings including foundations.

LARGE CONSTRUCTION ACTIVITY INFORMATION (Skip for small construction activity)

Name of Operator Working at Site (i.e. general contractor, if known)	Contact Person Name	Contact Phone No.	
Mailing Address	**City**	**State**	**Zip Code**

Project Start Date:	Estimated Completion Date:	Estimated Area of Total Disturbance in Acres:

Project Location	Street		City		
	OR	¼ ¼	Section	Township	Range	County
Receiving Waters	☐ Natural Surface Drainage		Name or Description of Receiving Waters		
	OR	☐ Municipal Storm Sewer	Name of City		

Signature Information

RETURN COMPLETED APPLICATION TO:

North Dakota Department of Health
Division of Water Quality, 4th Floor
918 East Divide Avenue
Bismarck, ND 58501-1947

Telephone: (701) 328-5210
Fax: (701) 328-5200

I certify that I am familiar with NDR10-0000 and NDCC 61-28-08, and with the possibility of fines and imprisonment for submitting false information. To the best of my knowledge and belief, the information in this application is true, complete, and accurate.

Printed name of Owner(s)	Title
Robert R. French	CEO, GTL Energy Ltd.
Signature of Owner(s)	**Date**
Robert R. French	9/3/08
Printed name of Operator(s)	**Title**
Robert R. French	CEO, GTL Energy Ltd.
Signature of Operator(s)	**Date**
Robert R French	9/3/08

(Attach additional pages if needed)

EXHIBIT C

Filed 9/8/08

Alice Schulz
Stark County Auditor:

RaeDeen Weinberger

STARK COUNTY RECORDER
OFFICIAL SEAL
STATE OF NORTH DAKOTA

3058184
09/08/2008 10:20:36 AM Page: 1 of 1
County Zoning Resolution $0.00 Stark County Auditor
Stark County, ND, Recorder RaeDeen Weinberger

AMENDMENT TO STARK COUNTY ZONING RESOLUTION

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, STARK COUNTY, NORTH DAKOTA, THAT THE ZONING RESOLUTION FOR STARK COUNTY ADOPTED APRIL 5, 1983, IS HEREBY AMENDED AS FOLLOWS:

A zoning change for GTLE Dakota Plant 1, LLC from Agricultural to Industrial with a special use permit for the processing and beneficiation of coal located in the SW4 of the NW4 of Section 20, Township 139, Range 98, with the following conditions placed on the special use permit. The company must obtain all the required approvals and permits from the State agencies responsible. The States Attorney is to review the application and make sure it complies with all county ordinances, that the county commission request the company hold public information meetings in South Heart, and also agree in writing to complete the roads as recommended by the road superintendant and county engineer.

I, Alice Schulz, County Auditor of Stark County, North Dakota, do hereby certify that the foregoing is a true and correct and complete copy of the resolution adopted the Board of County Commissioners of said County at its meeting held on the 2nd day of September, 2008 which resolution amends the Zoning Resolution and is part of the minutes of said Board. Said resolution is available for public inspection and copying at the office of the County Recorder during regular office hours.

Witnessed by my hand and official seal of Stark County, this 2nd day of September, 2008.

Signed: Alice Schulz
Alice Schulz, Stark County Auditor

STARK COUNTY

EXHIBIT D

STATE OF NORTH DAKOTA

COUNTY OF STARK

IN DISTRICT COURT

SOUTHWEST JUDICIAL DISTRICT

RECEIVED
JUL 23 2009
BY:.....

Dakota Resource Council, Gordon Krance, Neil and Laura Tangen, and Frank and Lucy Hurt,

Appellants,

vs.

Stark County Board of County Commissioners,

Appellee.

MEMORANDUM OPINION

Case Nos. 08C-282 and 08C-668

The above cases involve identical parties and both involve appeals from the decision of Stark County Commission approving requests for zoning amendments. The first case (Case No. 08C-282), concerns the request of Great Northen Power Development LP ("Great Northern"), submitted on November 14, 2007, to amend the zoning ordinance and change the zoning from agricultural to industrial for the purpose of operating a coal mine. The second case (Case No. 08C-668), concerns the request of GTLE Dakota Plant 1, LLC ("GTLE"), submitted on July 14, 2008, to amend the zoning ordinance and also change the zoning from agricultural to industrial with a special use permit for the processing and beneficiation of coal. Great Northern's request was approved and finalized by a resolution

adopted by the Stark County Commission ("county commission") on April 1, 2008. GTLE's request was approved and finalized by a resolution adopted and finalized by the county commission on September 2, 2008. The above listed Appellants ("Appellants"), include a non-profit corporation concerned with landowner's rights (Dakota Resource Council) and individual landowners who believe they are aggrieved by the decisions made by the county commission. Although there are some differences between the cases, the parties, attorneys, and major issues are the same, and the appeals will be decided collectively in this memorandum. For the reasons discussed below, the decisions of the county commission, in both cases, are reversed and vacated.

DISCUSSION

This Court does not minimize the power of the Stark County Zoning Board or the Stark County Commission. This Court is very mindful of the well established deferential standard of review applicable when considering an appeal from the decision of a local governing body. It has repeatedly been stated that review of decisions of local legislative bodies is very limited under the doctrine of separation of powers. City of Fargo v. Ness, 529 N.W.2d 572, 576 (N.D. 1995); Gullickson v. Stark County Board of County Commission, 474 N.W.2d 890, 892 (N.D. 1991); Lindteigen v. City of Bismarck, 1997 N.D., ¶ 6, 565 N.W.2d 47. A reviewing

court must determine only whether the commission acted arbitrarily, capriciously, or unreasonably in reaching its decision and the court does not substitute its judgment for that of the commission. Id. The county commission's decision must be affirmed unless the local body acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Tibert v. City of Minto, 2006 ND 189 ¶ 8, 720 N.W.2d 921. Leaving the manner and means of exercising municipal powers to the discretion of municipal authorities implies a range of reasonableness within which the municipality's exercise of discretion will not be interfered with by the judiciary. Lindteigen at ¶ 6. Accordingly, a decision of a local governing body is arbitrary, capricious, or unreasonable only if it is not the product of a rational mental process. Id.

In these cases, this Court is not substituting its judgment for that of the zoning board or county commission and certainly is not implying that their ultimate decisions were not the product of a rational decision making process. Rather, the difficulty was in the record on appeal not adequately showing how the facts and law were relied upon and considered. It is well established that a county commission's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Gowan v. Ward County Commission, 2009 ND 72 ¶ 5, 764

N.W.2d 425; City of Fargo v. Ness, 551 N.W.2d 790, 792 (N.D. 1996).

The issue here is the failure of both boards, in both cases, to follow the law and state the grounds upon which the zoning amendments were approved. More particularly, neither board prepared and included, as part of the record, written findings upon which their decisions were based. N.D.C.C. § 11-33-01.[1] It is true that the particular provisions of the law in question are relatively new. They became effective as of August 1, 2007. Prior to the enactment of the new provisions, the Court was left with the task of trying to discern from the entire record, the governing body's rationale for its decision. In many cases this may have been a difficult task. The new law may have, at least in part, been intended to help avoid this difficulty. But, whether or not it would be difficult here, is not relevant. Procedural

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[1] N.D.C.C. § 11-33-01 as amended on August 1, 2007 provides:

County power to regulate property. For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

requirements in state zoning enabling statutes "are regarded as mandatory and a substantial failure to comply will render an ordinance invalid." Homer Township v. Zimney, 490 N.W.2d 256, 258 (N.D. 1992), quoting C. Rhyme, "The Law of Government Operations" § 26.22 (1980). This court declines the invitation to disregard the law and embark on its own expedition in an attempt to weigh the evidence or judge the credibility of witnesses. These tasks must be done by the zoning board members or county commissioners. They must collectively make appropriate written findings and state the rationale for their decisions.

The county commission suggested in its brief that it may be judicious for the Court to stay the matter at hand. They suggest the county commission be allowed to reform its resolution[2], and prepare, and file the written findings required by N.D.C.C. § 11-33-01. Such a procedure was employed in Gowan v. Ward County

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[2] The county commission concedes that through inadvertence or oversight, the Resolution approved by the county commission on April 1, 2008, and the amendment to the Resolution filed on April 16, 2008, excluded the following provisions:

1. That Great Northern Power Development obtain all necessary state approval, licenses and permits relative to the operation of the coal mine.

2. That Great Northern Power Development agree in writing to replace all water lost as a result of damage to water wells caused by their mining operations.

3. That Great Northern Power Development build and maintain necessary access roads to mine and plant, such roads to be built to the satisfaction of the Stark County Commissioners.

4. That Great Northern Power Development will work in concert with law enforcement and emergency responders to facilitate public safety.

Commission, 2009 ND 72, ¶ 10, 764 N.W.2d 425 and was found acceptable. The problem in these cases is, that unlike Gowan, an appropriate and timely request to supplement the record was not made.

The county commission has made several motions to supplement the record pursuant to N.D.C.C. § 28-34-01, but has never done so in regard to these issues in question here. Further, to allow Appellants to prepare written findings after briefs have been filed and so much time has elapsed, would be unfair and prejudicial to Appellants. This Court declines to order such a procedure at this stage of proceedings.

The requirement of written findings upon which the decision is based, is no doubt, not intended to be an idle exercise.[3] The preparation of written findings will help focus board members on the issues to be considered and aid them in making the correct analysis. The record on appeal, in both these cases, contains several examples.

The first example is the issue that has been raised in both cases concerning neighbor approval. The question is whether the owners of all properties within 200 feet of the property that is the subject of the request for a zoning change must approve before

---

[3] The law neither does, nor requires, idle acts. Sections 33-11-05, Subsection 23 N.D.C.C.

any amendment to the zoning ordinance can be granted.[4] The county commission argues that if necessary consents were not obtained, that such an omission does not prevent approval of a zoning amendment. The county commission suggests that the requirement is intended to insure that adequate notice is given and provide a straw poll of how affected landowners view the proposal. The county commission suggests that this Court determine that the requirement is not intended to provide landowners within 200 feet

---

[4] Section 9.05 of the Stark County Zoning Ordinance provides as follows:

Sec. 9.05 Amendment to the Zoning Ordinance and Map. Any change in the ordinance or map requires one public hearing and action by the Stark County planning and zoning board and the county commissioners. The application procedures are as follows:

1. Acquire application from zoning administrator or county auditor, complete application and re-submit to the zoning administrator.

2. The zoning administrator shall forward said application to the county planning and zoning commission at their next regularly scheduled meeting.

3. The planning and zoning commission shall review and discuss the request with the applicant and shall set a date for the public hearing.

4. Notice of the amendment hearing shall be made in the following ways:

   (a) Once a week for two successive weeks, notice of the time and place of the hearing shall be published in the official paper of the county.

   (b) The zoning administrator shall notify the applicant of the time and place of said hearing.

   (c) The applicant shall acquire the signatures of the owners of all properties within 200 feet of the property in question indicating their approval of the proposed changes.

5. The planning and zoning commission shall conduct the public hearing and shall forward a recommendation to the county commission regarding the amendment. (Emphasis added.)

with a "veto" of any intended change, and that so long as adequate notice has been given to affected landowners, the failure of an applicant to obtain and provide the necessary consent is not fatal. The county commission suggests that to avoid an absurd result, the Court should interpret and add the words "or disapproval" after "approval" to Section 9.05 (4)(c) of the zoning ordinance in order to accurately implement the intent of the provision.

Appellants argue that there is no ambiguity and the language means what it says. Appellants argue that if the planning and zoning commission members or county commissioners believe that this provision creates a problem, that their solution is to amend the ordinance. Appellants argue that the Court should not interfere or ignore the plain language of the ordinance under the pretext of interpretation of its true meaning.

While the interpretation of a statute or ordinance is a question of law, fully reviewable on appeal, it is a well established principle of law that Courts give deference to the reasonable interpretation of a statute, administrative code, or ordinance by the agency or entity responsible for enforcing it. Consolidated Telephone v. Western Wireless Cooperative, 2001 ND 209 ¶ 7, 637 N.W.2d 699. Hecker v. Stark County Social Services Board, 527 N.W.2d 226, 234 (N.D. 1994). Americana Healthcare Center v. Dept. of Human Services, 540 N.W.2d 151, 153 (N.D. 1995). It must

be noted, however; that this principle is most applicable when the subject matter is complex or technical or the agency or entity has special expertise. American Healthcare Center at 153. See Medical Arts Clinic, P.C. v. Franciscan Initiatives, Inc., 531 N.W.2d 289 (N.D. 1995). No deference is called for when the language is clear. Matter of Stone Creek Channel Improvements, 424 N.W.2d 894, 900 (N.D. 1988).

The point is that by preparing the appropriate findings, the requirements of Section 9.05 of the zoning ordinance, will have to be considered by the planning and zoning board and county commission. Board members will decide whether the provision needs to be changed or whether board members believe they can proceed so long as all landowners within 200 feet have been notified and expressed their opinion. The county commission's interpretation of its own ordinance may be entitled to some consideration and deference by a reviewing court.

Because this Court has reversed and vacated the county commission's decisions on other grounds, the issue of neighbor approval need not to be decided at this time and this Court deems it inappropriate to do so. Needless to say, however; the planning and zoning board and county commission should evaluate what is required under Section 9.05 (4)(c) of the zoning ordinance.

A second example concerns consideration of the Stark County

Comprehensive Plan. Appellants argue that the amendments are not in accordance with the Comprehensive Plan. The county commission argues that the amendments do not contravene the Comprehensive Plan. By preparing written findings, the planning and zoning board and the county commission will have to focus on the Comprehensive Plan, and explain their rationale, and why the proposed changes are appropriate.

Other examples of why written findings are required, include the other issues raised by the Appellants. The written findings may explain what evidence members find credible and why the evidence supports the proposed changes. The findings will also show whether the planning and zoning board has considered all of the relevant uses the granted amendments would allow in the newly designated area. The findings may also explain why or how any changes are consistent with the policies and goals of the Stark County Comprehensive Plan. The planning and zoning board and county commission will have the opportunity, should they deem it appropriate, to address or consider in their written findings, any or all of the issues raised by Appellants in this appeal.

Finally, because the decisions are being reversed and vacated by this Court, it is not necessary for the Court to allow reformation of the amended resolution filed April 16, 2008, authorizing the zoning change in Case No. 08C-282. Because of the

decision of the Court and the passage of time since the original applications, as well as the changes in board memberships, the entire process will have to be followed again. Great Northern and GTLE will have to resubmit their applications should they desire to pursue the zoning changes in question.

In summary, for the reasons set forth above, the decisions of the county commission approving requests for zoning amendments, in both of the above cases, are reversed and vacated. Appellants shall prepare and submit appropriate papers for entry of judgment accordingly in both cases.

Dated this 22nd day of July, 2009.

BY THE COURT:

Zane Anderson
District Judge

CERTIFICATE OF SERVICE

A copy of this document was on July 22nd, 2009, mailed or hand- delivered to:

Derrick Braaten
Attorney at Law
222 N. 4th St.
Bismarck, ND 58501-4004

Tom Henning
Stark County State's Atty
P.O. Box 130
Dickinson, ND 58602-0130

Gina R. Wariner

EXHIBIT E

The Dickinson Press

Published February 01 2010

GNPD to reschedule hearing

A public hearing regarding Great Northern Power Development's request to rezone a 7,700-acre property to accommodate a coal mine and gasification plant has been postponed, a GNPD spokesperson said Monday.

By: **Beth Wischmeyer**, The Dickinson Press

A public hearing regarding Great Northern Power Development's request to rezone a 7,700-acre property to accommodate a coal mine and gasification plant has been postponed, a GNPD spokesperson said Monday.

Neal Messer, GNPD spokesperson, said the hearing, slated for Monday, was postponed because it was uncertain whether or not a "voting quorum" of the Stark County Zoning Board could be achieved.

Messer said the application is for a coal mine, and operation of a gasification plant. Between the mine and the plant, he estimates more than 200 jobs will be created. Cost for the plant is estimated at $1.5 billion.

Re-zoning is a two-stage process, Messer said, with the Zoning Board giving a recommendation to the Stark County Commission, which must approve the re-zoning. If it is approved, the company will be seeking the applicable state and federal permits, which include a mining permit from the North Dakota Public Service Commission and an air quality permit from the North Dakota Department of Health.

The requested rezoning for the 7,700-acre property will not include the total amount of the mine, he added.

If all goes as planned, Messer estimates construction to begin in 2011. He is unsure when the hearing will be rescheduled.

Share your comments

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Terms & Conditions

http://74.125.47.132/search?q=cache:-oYnV-vbufMJ:www.thedickinsonpress.com/event/article/id/32014/+%22gnpd+to+reschedule+hearing%22&cd=3&hl=en&ct=clnk&gl=us

EXHIBIT F

Great Northern Power Development L.P.

601 Jefferson Street, Suite 3600
Houston, Texas 77002

Phone (713) 751-7590 Fax (713) 751-7563

August 18, 2005

RECEIVED
AUG 18
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard, Dept.408
Bismarck, ND 58505-0480

Re: Letter of Intent – South Heart Power Project

Dear Ms. Jeffcoat-Sacco:

On behalf of South Heart Coal LLC (SHC), Great Northern Power Development LP (GNPD) is pleased to notify the North Dakota Public Service Commission (PSC) of its intent to construct and operate an energy conversion facility (facility) in southwest North Dakota near the community of South Heart in Stark County. That facility is part of the South Heart Power Project (SHPP) which includes a power plant (facility) and an adjacent lignite mine that would provide fuel to the proposed facility.

SHC is a wholly owned subsidiary of GNPD, a privately held natural resource development company affiliated with Great Northern Properties – the nation's largest private coal reserve holder. GNPD, headquartered in Houston, TX, maintains offices in Bismarck, ND and in Townsend and Miles City, MT.

This letter and its attachments are intended to fulfill our obligations under Chapter 69-06-03 of Title 69 of the North Dakota Administrative Code to file a Letter of Intent at least one year prior to filing an application for the required certificate.

Size and Type of Facility

The planned facility is a 500 MW (nominal) lignite-fired power plant. It will be configured as two 250 MW (nominal) subcritical, circulating fluidized bed (CFB) boilers, designed to fire lignite fuel from the adjacent mine and drive a single steam turbine generator. The facility has been designed for an average net generating capacity of 545 MW, a corresponding gross generating capacity of 612 MW, and an annual capacity factor of greater than 90%. Attachment 1 to this letter is a diagram of the major process system.

The facility is intended to serve the electric power needs of North Dakota, North Dakota industries, and the people and industries of the Upper Midwest.

1 **PU-05-527** Pages: 5

Letter to Intent

by South Heart Coal LLC by

08/18/2005 CC: Comm Legal PUD (4) Mike .

Map of Study Area

Attachment 2 to this letter is a map of the study area showing the proposed facility location in North Dakota (inset), the proposed site for the SHPP facility, and the location of the proposed facility's fuel source (lignite mine).

Anticipated Construction and Operation Schedule

Attachment 3 to this letter is a Gantt chart presenting the planned South Heart Power Project construction schedule from preliminary engineering and design to commencement of commercial operation. As shown in Attachment 3, SHC currently plans to begin construction of the facility in September 2008 and commence commercial operation in June 2013.

Estimated Cost of Construction

The estimated cost for the construction of the facility is $800 million.

We look forward to working with the PSC and its staff to obtain the required certificate for the SHPP facility and the required approvals for the associated lignite mine. Please do not hesitate to contact Rich Voss, V.P. Power Development at 701-223-8783 (rvoss@gr-northern.com), Rich Southwick, Permitting Manager at 406-266-4360 (rsouthwick@gr-northern.com), or myself at 713-751-7590 with any questions pertaining to SHC, GNPD, or the SHPP facility.

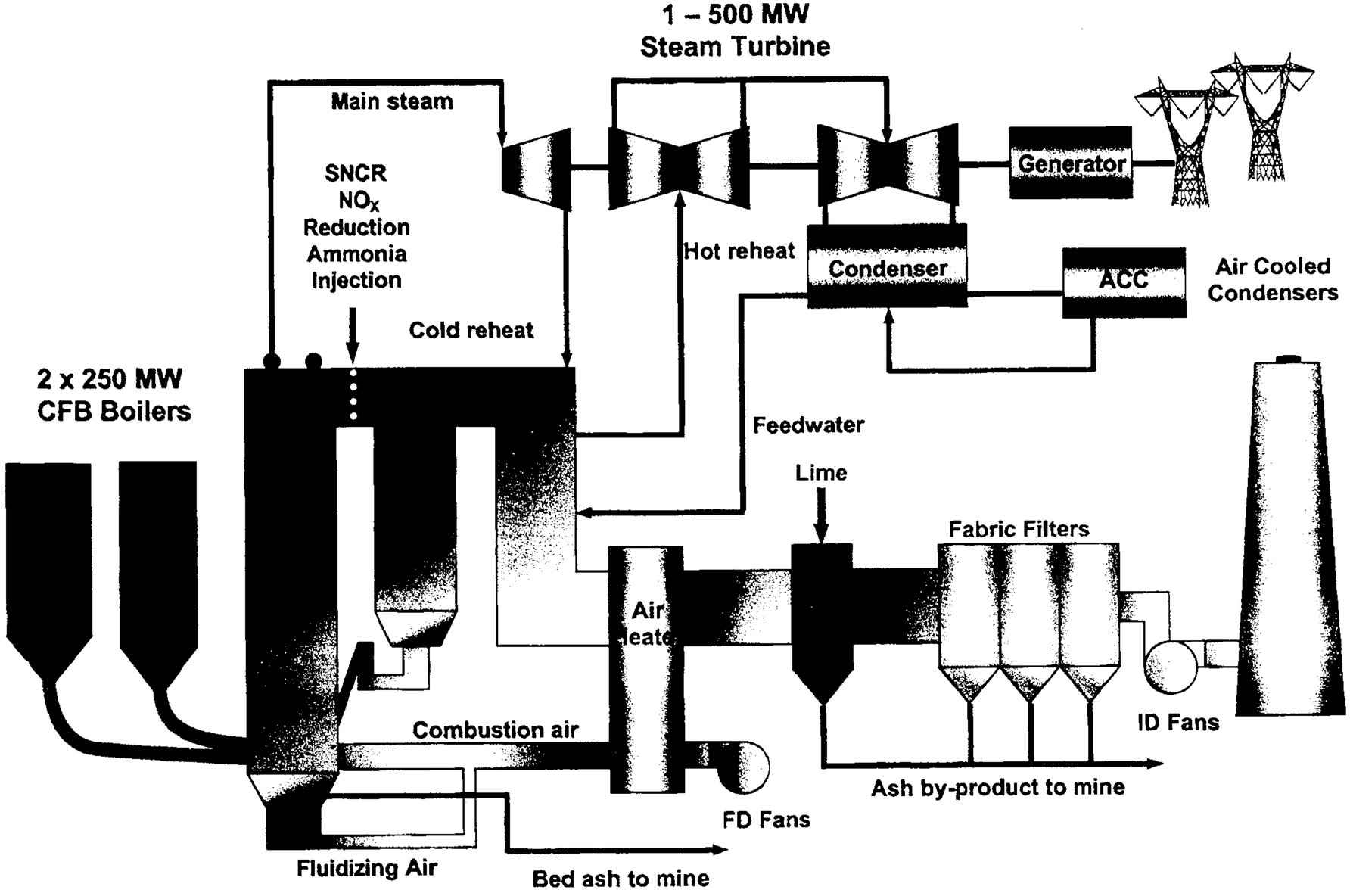
Sincerely,

Charles H. Kerr
President

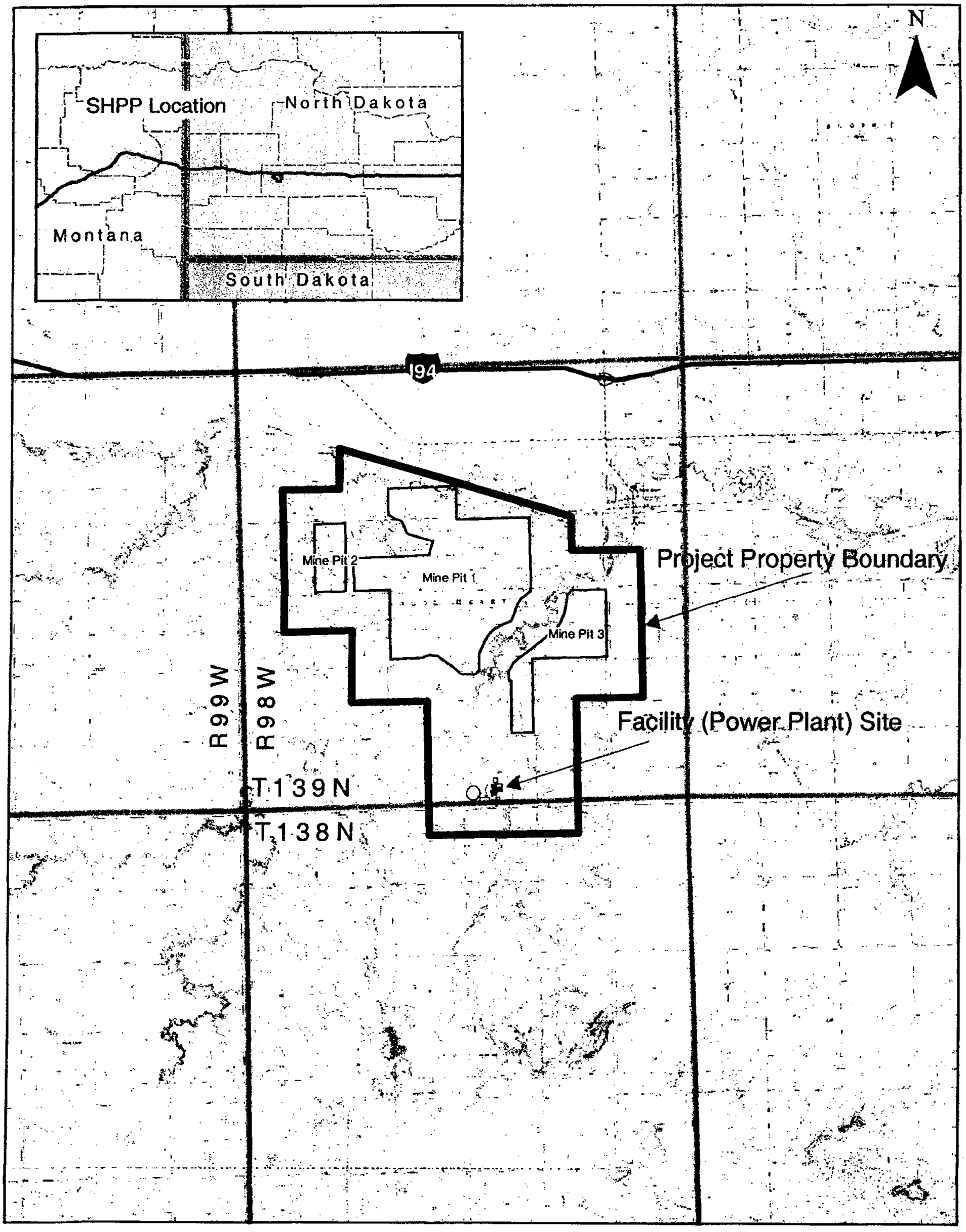
Attachments

cc: Rich Voss, GNPD
Rich Southwick, GNPD
Jeff Burgess, Lignite Energy Council

Attachment 1
South Heart Power Project
Diagram of Major Process System



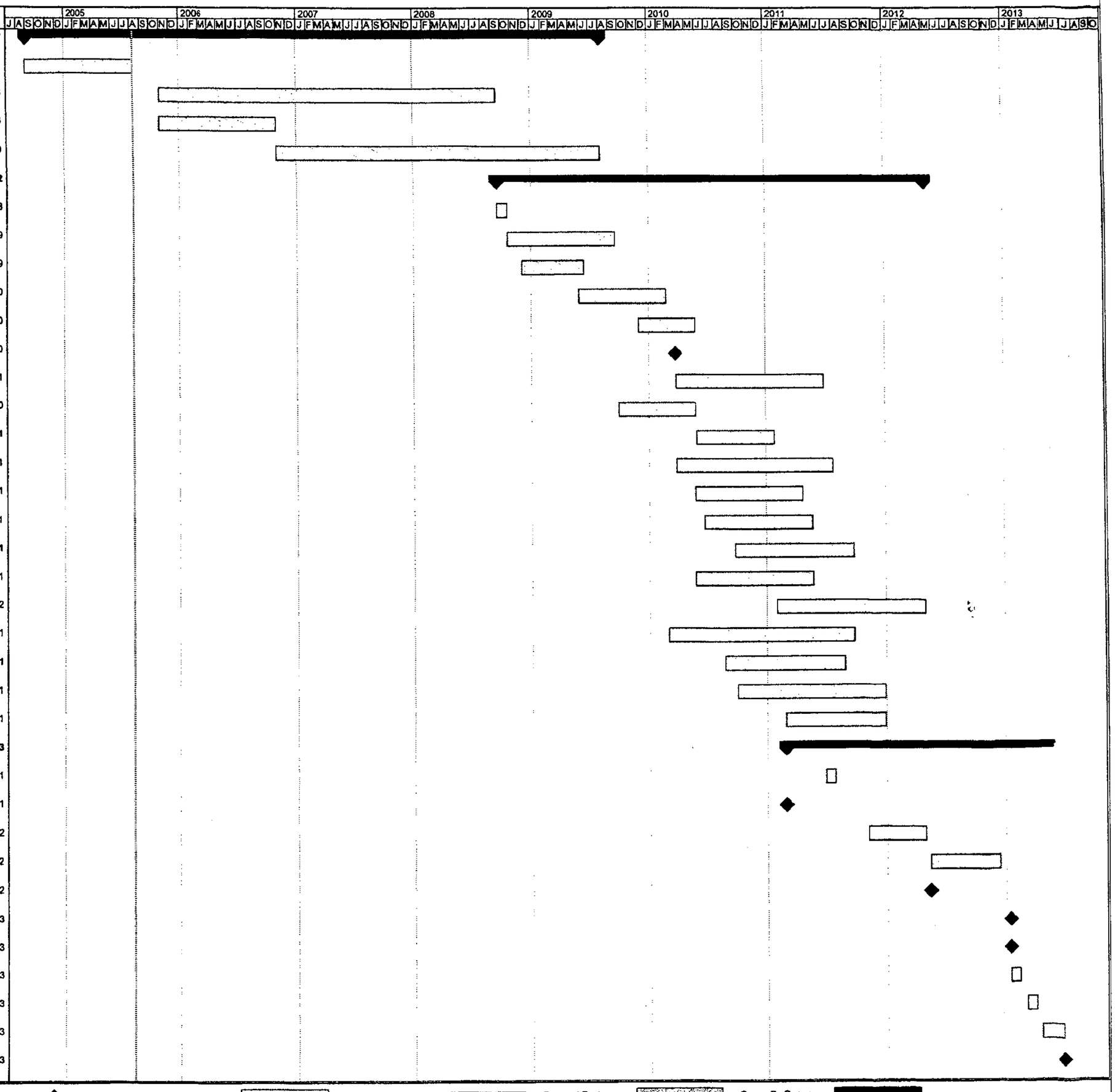
Attachment 2
South Heart Power Project
Facility Location Map



1/2 Inch equals 1.00 Mile

PROJECT SCHEDULE
SOUTH HEART POWER PROJECT

ID	Task Name	Duration	Start	Finish
1	**ENGR / DESIGN / PROCURE**	**1285 days**	**Thu 9/2/04**	**Wed 8/5/09**
2	Prelimin Engr & Design	49 wks	Thu 9/2/04	Wed 8/10/05
3	Detailed Engr & Design	150 wks	Thu 11/3/05	Wed 9/17/08
4	Equipment Specifications	52 wks	Thu 11/3/05	Wed 11/1/06
5	Maj Equip - Fab & Deliver	36 mons	Thu 11/2/06	Wed 8/5/09
6	**CONSTRUCTION**	**948 days**	**Thu 9/18/08**	**Fri 5/4/12**
7	Mobilize Site	23 days	Thu 9/18/08	Mon 10/20/08
8	Sitework / Facilities	239 days	Tue 10/21/08	Fri 9/18/09
9	Piling	136 days	Fri 12/5/08	Fri 6/12/09
10	Powerblock Substructure	195 days	Fri 5/29/09	Thu 2/25/10
11	Steel - Erect Boiler Room	130 days	Mon 11/30/09	Fri 5/28/10
12	Compl S.Drum/Boiler	0 days	Fri 3/26/10	Fri 3/26/10
13	Steam Generator Erection	330 days	Mon 3/29/10	Thu 6/30/11
14	Chimney Shell	174 days	Tue 9/29/09	Fri 5/28/10
15	Chimney Liner	175 days	Mon 5/31/10	Thu 1/27/11
16	Superstructure	348 days	Tue 3/30/10	Wed 7/27/11
17	AQCS	240 days	Thu 5/27/10	Tue 4/26/11
18	Mech Equip / Ducts	240 days	Fri 6/25/10	Wed 5/25/11
19	Turbine Generator	262 days	Tue 9/28/10	Tue 9/27/11
20	Piping	263 days	Thu 5/27/10	Fri 5/27/11
21	Air Cooled Condenser	328 days	Wed 2/2/11	Fri 5/4/12
22	Electrical Installation	412 days	Tue 3/2/10	Tue 9/27/11
23	I & C Installation	263 days	Fri 8/27/10	Mon 8/29/11
24	Material Handling Sytem	325 days	Mon 10/4/10	Thu 12/29/11
25	Ash Handling System	217 days	Wed 3/2/11	Thu 12/29/11
26	**STARTUP**	**606 days**	**Mon 2/28/11**	**Tue 6/25/13**
27	Hydro - Boiler	21 days	Fri 7/1/11	Fri 7/29/11
28	BF Pwr/Enrgz MV Sw.gear	0 days	Mon 2/28/11	Mon 2/28/11
29	Equipment Checkout	130 days	Mon 11/7/11	Fri 5/4/12
30	1st Coal Operation	30 wks	Fri 5/18/12	Thu 12/13/12
31	Chemical Cleaning - Boiler	0 days	Fri 5/18/12	Fri 5/18/12
32	Mechanical Completion	0 days	Mon 1/14/13	Mon 1/14/13
33	Steam Blows	0 days	Mon 1/14/13	Mon 1/14/13
34	1st Fire	4 wks	Tue 1/15/13	Mon 2/11/13
35	Initial Synchronization	4 wks	Tue 3/5/13	Mon 4/1/13
36	Performance Testing	10 wks	Tue 4/16/13	Mon 6/24/13
37	Commercial Operation	0 days	Tue 6/25/13	Tue 6/25/13



Project: South Heart ConstrMilstns080
Date: Wed 8/10/05

Task | Progress | Milestone | Summary | Rolled Up Task | Rolled Up Milestone | Rolled Up Progress | Split | External Tasks | Project Summary | Group By Summary | Deadline

EXHIBIT G

Great Northern Power Development L.P.

173 Cottonwood Road
Townsend, MT 59644
(406) 266-4360 • Fax (406) 266-4577

January 23, 2008

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard, Dept.408
Bismarck, ND 58505-0480

Re: Letter of Intent – South Heart Project

Dear Ms. Jeffcoat-Sacco:

On behalf of South Heart Coal LLC (SHC), Great Northern Power Development LP (GNPD) is pleased to notify the North Dakota Public Service Commission (PSC) of its intent to construct and operate a coal-to-synthetic natural gas production facility (facility) in southwest North Dakota near the community of South Heart in Stark County. That planned facility is a component of the South Heart Project (SHP), which would also include an adjacent surface lignite mine that would provide raw material to the planned facility.

SHC is a wholly owned subsidiary of GNPD, a privately held natural resource development company affiliated with Great Northern Properties – the nation's largest private coal reserve holder. GNPD, headquartered in Houston, TX, maintains offices in Bismarck, ND and in Townsend and Miles City, MT.

In a previous letter to you dated August 18, 2005, GNPD notified the PSC that it intended to construct and operate a 500 MW lignite-fired steam-electric generating station on the same site. This letter updates and revises that August 18, 2005 notification to reflect changes to the facility design. GNPD no longer plans a lignite-fired steam-electric generating station as a component of the SHP.

This letter and its attachments are intended to fulfill SHC's obligations under Chapter 69-06-03 of Title 69 of the North Dakota Administrative Code to file a Letter of Intent at least one year prior to filing an application for a certificate of site compatibility.

Size and Type of Facility

The planned facility would be a nominal 100 million standard cubic feet per day (MMSCFD) synthetic natural gas (SNG) production facility. The final design production capacity has not yet been determined as process design refinements are ongoing at this writing. However, as currently configured, it would use seven British Gas Lurgi gasifiers and associated downstream process units to convert lignite from the adjacent mine into pipeline quality natural gas.

The facility is intended to serve the natural gas needs of North Dakota. North Dakota industries. and the people and industries of the Upper Midwest.

Map of Study Area

Figure 1 attached to this letter is a map of the study area showing the planned SHP location in North Dakota (inset). the planned site for the SHP production facility and the location of the planned lignite mine.

Anticipated Construction and Operation Schedule

SHC currently plans to begin construction of the facility in December 2009 and commence commercial operation in December 2012.

Estimated Cost of Construction

The estimated cost for the construction of the facility is $1.4 billion.

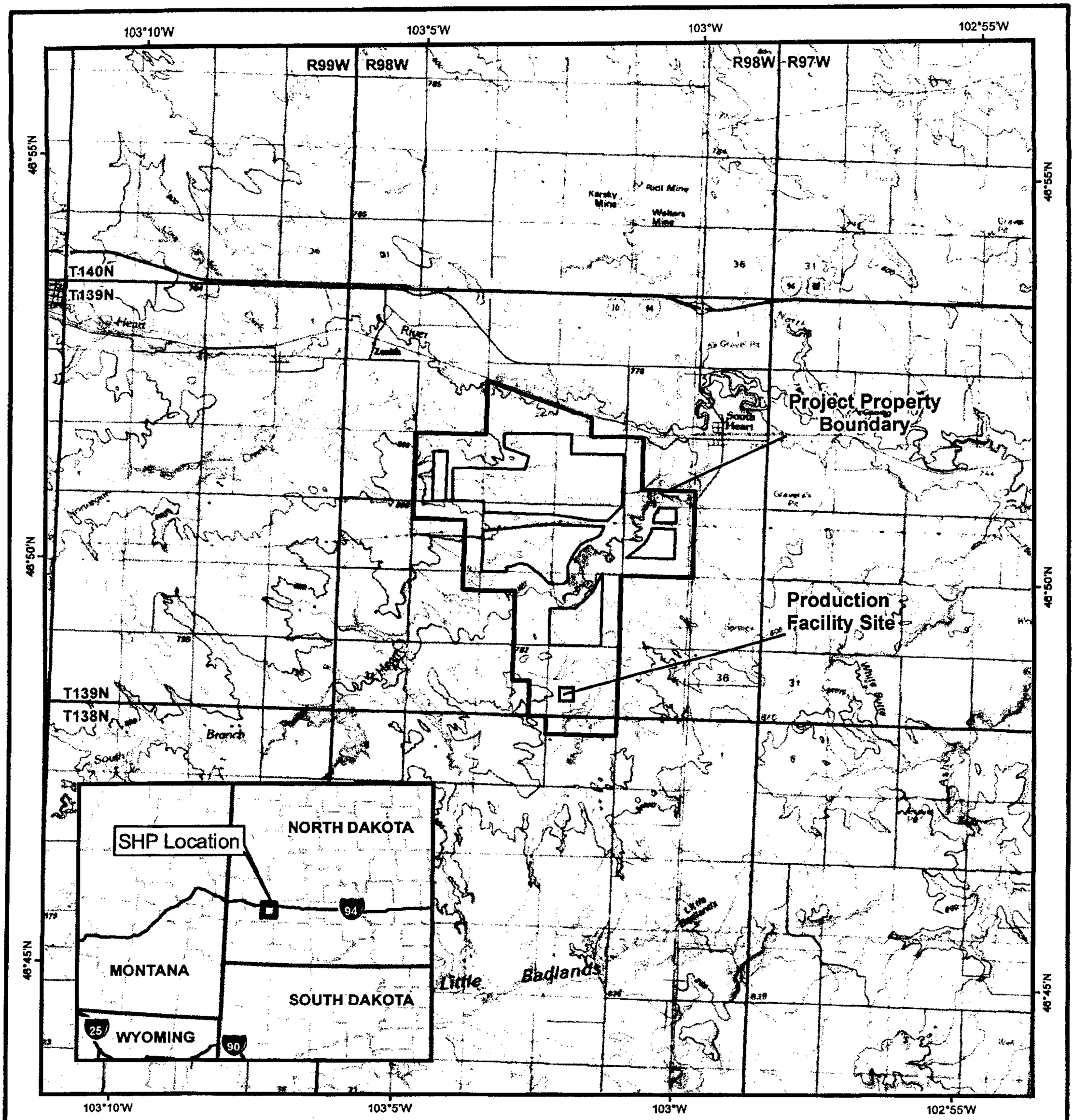
GNPD looks forward to working with the PSC and its staff to obtain all required approvals for the SHP production facility and those for the associated lignite mine. Please do not hesitate to contact Rich Voss. V.P. Power Development at 701-223-8783 (rvoss@gnplp.com) or me at 406-266-4360 (rsouthwick@gnplp.com) with any questions pertaining to SHC. GNPD. or the SHP.

Sincerely.

Richard A. Southwick
Manager – Permitting & Environmental

Attachments

cc: Chuck Kerr. President GNPD
Rich Voss, VP GNPD
Jeff Burgess. Lignite Energy Council



LEGEND

- Production Facility Site
- Project Property Boundary
- Mine Pit

1 0.5 0 1 MILE

SCALE 1/2 INCH EQUALS 1.00 MILE

N

REFERENCE

PLSS: ND HUB.
USGS 1:100,000 Scale Topographic Quadrangles drawn from TOPO!: Belfield and Dickinson.
Projection: StatePlane, North Dakota South, NAD27, Feet.

PROJECT

SOUTH HEART COAL LLC
SOUTH HEART PROJECT
SOUTH HEART, NORTH DAKOTA

TITLE

SOUTH HEART PROJECT LOCATION MAP

Great Northern

Golder Associates
Denver, Colorado

FILE SH_Facility_Public.mxd
DATE AJR 01/23/2008

FIGURE 1

EXHIBIT H

A change in plant plans

Jennifer McBride and Beth Wischmeyer, The Dickinson Press
Published: August 1, 2009 12:00:00 AM CDT

What was slated to be a coal gasification plant near South Heart will now produce electricity, a company spokesman said Friday.

Members of the Industrial Commission of North Dakota continue to support Great Northern Project Development/Allied Syngas Corp.'s ongoing development of the South Heart project. The commissioners prepared a letter of support to Chairman Charles Kerr of GNPD, after discussing the project at their Friday meeting in Bismarck. Commissioners have supported the project and $10 million has been committed to it, along with legislative and technical support, according to the letter.

"The site is ideally located to take advantage of the existing transmission infrastructure and GNPD's unique access to extensive, low-cost coal reserves," according to the letter.

The plant will be located four miles south and two miles west of South Heart and will be a

coal-to-hydrogen electrical generation plant.

Rich Voss, Great Northern vice president, said the company asked the commission for support because it is applying for U.S. Department of Energy funding for its plant. Voss said this plant will be more marketable and is a very clean project carbon-wise. He hopes plant construction will begin in 2011 and said permits for the 2 million ton-per-year coal mine are likely to be filed late this year or early next year.

"They originally were going to be a power plant, then a gasification plant then a coal-drying plant, so the next logical attempt will be electricity," said Mary Hodell, a member of Neighbors United, a citizen-awareness group based out of South Heart. "I don't know what is left."

Voss said Great Northern and GTL Energy, a company seeking to operate a coal beneficiation plant also near South Heart, are independent companies.

"We are not working together," Voss said. "We will use their technology in our plant when they build it and prove that it works, but we won't use their equipment."

The cost to build Great Northern's plant is estimated at $1 billion.

"The county does have a comprehensive plan that is in place to protect the livelihood of the people and it would be nice if that was followed," Hodell said.

Tags: news, South, heart, local, coal, Gasification, Mary, hodell, great, Northern, Rich, voss

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EXHIBIT I

Great Northern Power Development L.P.

173 Cottonwood Road
Townsend, MT 59644
(406) 266-4360 • Fax (406) 266-4577

RECEIVED
OCT 15 2008
31102
PUBLIC SERVICE COMMISSION

FROM DIRECTOR - RECLAMATION DIV.

Date: 10-15-08

Action:

Info. Only:

Info & File:

October 15, 2008

Mr. James Deutsch
Director – Reclamation Division
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: Permit Application
South Heart Lignite Mine

Dear Mr. Deutsch:

On behalf of South Heart Coal LLC (SHC), Great Northern Power Development LP (GNPD) is pleased to submit SHC's application to North Dakota Public Service Commission (PSC) for a permit to open and operate the South Heart Lignite Mine. As requested, 4 copies of the permit application are provided on DVD. Also enclosed are the corresponding signed and notarized PSC application form and GNPD's Certificate of Authenticity. Finally, we have enclosed a check in the amount of $3,245.00 in payment of the application fee.

GNPD looks forward to working with the PSC and its staff during its review of the SHLM permit application. Please do not hesitate to contact Rich Voss, V.P. Power Development at 701-223-8783 (rvoss@gnplp.com) or me at 406-266-4360 (rsouthwick@gnplp.com) with any questions pertaining to our application.

Sincerely,

Richard A. Southwick
Vice President – Permitting & Environmental

Enclosures

cc: Chuck Kerr, President GNPD
Rich Voss, Vice President – Power Development GNPD

SCANNED
Date 10.15.08 (31102)
File SH-App-Submittal ltr_1015.08

1 RC-08-828 Filed: 10/15/2008 Pages: 4
Permit Application for 274.5 Acres Filed

South Heart Coal LLC

Richard Southwick

SCANNED
Date 10.15.08
File SH-0801_application(31102)

APPLICATION FOR PERMIT TO ENGAGE IN SURFACE COAL MINING AND RECLAMATION OPERATIONS

PUBLIC SERVICE COMMISSION
RECLAMATION DIVISION
SFN 10552 (1-2004)

Date
October 15, 2008

Name of Company, Corporation, Partnership, or Individual		Permit Number	
South Heart Coal LLC		SHSH-0801	
Address	**City**	**State**	**Zip Code**
601 Jefferson Street, Suite 3600	Houston	TX	77002

The above named hereby makes application for the above listed permit number to engage in surface coal mining and reclamation operations in the State of North Dakota during the period from _____July 2009_____ (date) to _____July 2014_____ (date) on the following area (attach a copy of metes and bounds description):

NAME OF MINE	ACRES	LOCATION			
		SEC.	TWP.	RANGE	COUNTY
South Heart Lignite Mine	274.5	22	T139N	R98W	Stark
ADDRESS					
TOTAL ACRES	274.5				

A bond, or its equivalent, duly executed in accordance with Section 38-14.1-16 of the North Dakota Century Code and Chapter 69-05.2-12 of the North Dakota Administrative Code will be delivered to the Public Service Commission prior to issuance of the surface coal mining and reclamation operations permit herein requested. A check for filing fees, pursuant to Section 38-14.1-13 of the North Dakota Century Code, in the amount of $ _____3,245.0_____, is included with the permit application.

Name of Official Authorized to Represent the Applicant
Charles H. Kerr

I, the above named, certify that:

1. All information and documents required by Sections 38-14.1-13, 38-14.1-14, and 38-14.1-15 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code, are submitted as part of this permit application;

2. Information and documentation contained in the permit application affirmatively demonstrate that:

a. The permit application is accurate and complete and all the requirements of Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code have been complied with;

b. Reclamation as required by Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code can be accomplished under the reclamation plan contained in this permit application;

c. An assessment of the probable cumulative impact of all anticipated mining in the general area on the hydrologic balance as specified in subdivision o of subsection 1 of Section 38-14.1-14 of the North Dakota Century Code has been made and the proposed operation has been designed to prevent material damage to the hydrologic balance both on and off the mine site;

d. The area proposed to be affected is not included within an area designated unsuitable for all or certain types of surface coal mining and is not within an area under study for such designation in an administrative proceeding;

e. The proposed surface coal mining operation will not interrupt, discontinue or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated and will not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors; and

f. The permit applicant has the legal right to surface mine the land for which this permit application is made and all of the requirements of Chapter 38-18 of the North Dakota Century Code have been complied with.

3. The area proposed to be affected is not included within an area where mining is prohibited pursuant to Section 38-14.1-07 of the North Dakota Century Code, unless specifically allowed in accordance with the provisions of Section 69-05.2-04-01 of the North Dakota Administrative Code; and

4. The proposed method of surface coal mining and reclamation operations contained in this permit application will be carried out at all times in a manner which ensures that all of the requirements of Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, and any permit conditions attached thereto are complied with.

Signature of Official	Title
	President, South Heart Coal LLC

VERIFICATION

I, Richard A. Southwick, being first and duly sworn, verify that the information contained in this Permit Application is true and correct to the best of my knowledge and belief.

Signature of Official	Title
	Vice President - Permitting & Environmental

STATE OF Montana)
)ss.
COUNTY OF Broadwater)

Subscribed and Sworn before me, this 9th day of October, _____.

(SEAL)

CHRIS NEWMAN
NOTARY PUBLIC for the
State of Montana
Residing at Townsend, Montana
My Commission Expires
June 23, 2012

Chris Newman
Notary Public

My Commission Expires: June 23, 2012

Date 10-15-08
File SH-cert authenticity (3102)

Great Northern Power Development L.P.
1022 East Divide Avenue, Suite E
Bismarck, ND 58501
701-223-8783

CERTIFICATE OF AUTHENTICITY

STATE OF NORTH DAKOTA
STARK COUNTY

I hereby certify that the copies of the instruments submitted in Sections 1.3.5 and 1.3.6 of the South Heart Coal LLC South Heart Lignite Mine permit application (Permit No. SHSH-0801) are true and correct duplications of the original instruments that are on file in the Houston Office of South Heart Coal LLC located at 601 Jefferson Street, Suite 3600, Houston, TX 77002.

Dated the 13th day of October, 2008.

Charles H. Kerr
President
South Heart Coal LLC
Great Northern Power Development LP

STATE OF NORTH DAKOTA
STARK COUNTY

On this 13th day of October, 2008, before me personally appeared Charles H. Kerr, known to me to be the person described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same.

(SEAL)

Notary Public

MARY ELLEN ARBUCKLE
MY COMMISSION EXPIRES
JULY 28, 2012

My Commission Expires:

EXHIBIT J

Great Northern Project Development LP

173 Cottonwood Road
Townsend, MT 59644
(406) 266-4360 • Fax (406) 266-4577

RECEIVED
MAR 2[illegible] 2009
31358
PUBLIC SERVICE COMMISSION
FROM DIRECTOR - RECLAMATION DIV

Date:_____

Action:_____

Info. Only:_____

Info & File:_____

March 25, 2009

Mr. James Deutsch
Director – Reclamation Division
North Dakota Public Service Commission
600 East Boulevard, Dept.408
Bismarck, ND 58505-0480

Re: Withdrawal of Mine Permit Application No. SHSH-0801 - South Heart Lignite Mine

Dear Mr. Deutsch:

On behalf of South Heart Coal LLC (SHC), Great Northern Project Development LP (GNPD) is writing to notify the North Dakota Public Service Commission (PSC) of SHC's decision to withdraw Surface Coal Mining Permit Application No. SHSH-0801 for the South Heart (SH) lignite mine.

SHC is aware of a complaint (Case No. RC-09-32) filed with the PSC alleging that the GTLE demonstration plant currently under construction near the site of the planned SH lignite mine is "in connection with" the SH lignite mine. SHC is also aware that the complainants have made additional allegations, including that GTL Energy is in violation of North Dakota statute and regulation for "conducting surface coal mining operations without a permit," all apparently based upon the "in connection with" allegation.

These allegations are incorrect. The SH lignite mine and the GTLE demonstration plant are separate and independent projects. They have different purposes and are owned and controlled by different entities. Contrary to the recent allegations, there is no "connection" between the GTLE demonstration plant and the SH lignite mine such that they should be treated as a single project entity under the PSC regulations. In order to make clear that there is no such "connection" between the planned SH lignite mine and the GTLE demonstration plant, SHC is hereby formally withdrawing its application for a permit to construct and operate the SH lignite mine.

Development work is continuing on GNPD's planned commercial-scale coal gasification facility and associated surface lignite mine to be located near South Heart. Applications for required approvals for those facilities are planned for later this year. GNPD and SHC look forward to continuing their work with the PSC and its staff to obtain those approvals.

Sincerely,

Richard A. Southwick
Vice President – Environmental

cc: Todd Joyner, President GNPD
Rich Voss, VP GNPD