



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401



IN REPLY REFER TO:
DESCRM
MC-208

SEP 11 2009

MEMORANDUM

TO: Superintendent, Ft. Berthold Agency

FROM: Regional Director, Great Plains Regional Office

SUBJECT: Addendum to Environmental Assessment and Finding of No Significant Impact

In compliance with the regulations of the National Environmental Policy Act (NEPA) of 1969, as amended, for the Addendum issued for the *Nathan Hale #4-25H Environmental Assessment* on the Fort Berthold Reservation, an Environmental Assessment (EA) has been completed and a Finding of No Significant Impact (FONSI) has been issued.

All the necessary requirements of the National Environmental Policy Act have been completed. Attached for your files is a copy of the EA, FONSI and Notice of Availability. The Council on Environmental Quality (CEQ) regulations require that there be a public notice of availability of the FONSI (1506.6(b)). Please post the attached notice of availability at the agency and tribal buildings for 30 days.

If you have any questions, please call Marilyn Bercier, Regional Environmental Scientist, Division of Environment, Safety and Cultural Resources Management, at (605) 226-7656.

Alice A. Harwood

Attachment

cc: Marcus Levings, Chairman, Three Affiliated Tribes (with attachment)

**ENVIRONMENTAL ASSESSMENT
Addendum**

United States Bureau of Indian Affairs

**Great Plains Regional Office
Aberdeen, South Dakota**



Zenergy Operating Company, LLC

**Addendum to
One Bakken Formation Exploratory Well at One Location:**

Nathan Hale #4-25H

Fort Berthold Indian Reservation

September 2009

For information contact:
Bureau of Indian Affairs, Great Plains Regional Office
Division of Environment, Safety and Cultural Resources
115 4th Avenue SE
Aberdeen, South Dakota 57401
605-226-7656

Finding of No Significant Impact

Zenergy Operating Company, LLC (Zenergy)

Addendum to Nathan Hale #4-25H

Fort Berthold Indian Reservation McKenzie County North Dakota

The U.S. Bureau of Indian Affairs (BIA) has received a proposal for an addendum to one exploratory oil/gas well, access road and related infrastructure on the Fort Berthold Indian Reservation to be located in Section 25, Township 150N, Range 94W. The purpose of the proposed action is to authorize the land use by Zenergy for rerouting of the access road to the Nathan Hale #4-25H well pad. Associated federal actions by BIA include determination of effect regarding cultural resources, approvals of leases, rights-of-way and easements, and a positive recommendation to the Bureau of Land Management regarding the Application for Permit to Drill.

Potential of the proposed actions to impact the human environment is analyzed in the attached addendum to an existing Environmental Assessment (EA), as required by the National Environmental Policy Act. Based on the recently completed addendum to the EA, I have determined that the proposed project will not significantly affect the quality of the human environment. No Environmental Impact Statement is required for any portion of the proposed activities.

This determination is based on the following factors:

1. Agency and public involvement was solicited and environmental issues related to the proposal were identified.
2. Protective and prudent measures were designed to minimize impacts to air, water, soil, vegetation, wetlands, wildlife, public safety, water resources, and cultural resources. The remaining potential for impacts was disclosed for both the proposed action and the No Action alternative.
3. Guidance from the U.S. Fish and Wildlife Service has been fully considered regarding wildlife impacts, particularly in regard to threatened or endangered species.
4. The proposed actions are designed to avoid adverse effects to historic, archaeological, cultural and traditional properties, sites and practices. Compliance with the procedures of the National Historic Preservation Act is complete.
5. Environmental justice was fully considered.
6. Cumulative effects to the environment are either mitigated or minimal.
7. No regulatory requirements have been waived or require compensatory mitigation measures.
8. The proposed projects will improve the socio-economic condition of the affected Indian community.

ACTING

Alice A. Harwood
Regional Director

Date

9/10/09

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1. Purpose and Need for the Proposed Action

Zenergy is proposing to drill an exploratory oil and gas well on the Fort Berthold Indian Reservation to evaluate and possibly develop the commercial potential of natural resources. The development has been proposed on land held in trust by the United States in McKenzie County, North Dakota. The BIA is the surface management agency for potentially affected tribal lands and individual allotments. The BIA also holds title to subsurface mineral rights. The economic development of available resources and associated BIA actions are consistent with BIA's general mission. Leasing and development of mineral resources offers substantial economic benefits to the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation and to individual tribal members.

The purpose of the proposed action is to authorize the land use by Zenergy for rerouting of the access road to the Nathan Hale #4-25H well pad.

2. Authorities

Oil and gas exploration and development activities are conducted under authority of the Indian Mineral Leasing Act of 1938 (25 United States Code [USC] 396a, et seq.), the Indian Mineral Development Act of 1982 (25 USC 2101, et seq.), and the Energy Policy Act of 2005 (42 USC 15801, et seq.).

3. Legal Land Descriptions of Proposed Action:

The proposed reroute is in the N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, the N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33, Township 150 North, Range 94 West, links the permitted Nathan Hale #4-25H access road, located to the northeast (Ferris 2009), to north/south-trending State Highway 22 to the west (Figure 1).

4. Scope of Work for Proposed Action

Zenergy Operating Company, LLC proposes to reroute the access road. Of the proposed reroute, only the northeast/southwest-trending portion will require access road construction through mechanical excavation, grading, and gravelling (Figures 1 and 2); the western portion along the existing scoria road will not be upgraded (Figure 3).

5. Applicable National Environmental Policy Act (NEPA) Document(s)

Environmental Assessment: Zenergy Operating Company, Nathan Hale #4-25H.

6. Other Relevant Documentation

Cooper, Judith R.

(2009) Addendum to the Class I and Class III Cultural Resource Inventory of the Nathan Hale #4-25H Well Pad and Access Road on the Fort Berthold Indian Reservation, McKenzie County, North Dakota, Due to Access Road Reroute. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

Ferris, Kade M.

(2009) A Cultural Resource Inventory of the Nathan Hale #4-25H Well Pad and Access Road on the Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy, Inc., Tulsa, OK.

7. NEPA Adequacy Criteria

This document has identified a previously prepared NEPA document, *Environmental Assessment: Zenergy Dakota-3 Cross #2-13H (January 2008)*, which adequately describes the environmental consequences of the newly proposed action described herein, and meets the following NEPA Adequacy Criteria.

1. The proposed action is substantially the same action and at the site specifically analyzed in the existing NEPA document.
2. The range of alternatives is reasonable with respect to the current proposed action in the existing NEPA document, which appropriately considers and analyzes current environmental concerns, interests, and resource values.
3. The existing analysis and conclusions are adequate in the existing NEPA document. The analysis is still valid in light of new studies or resource assessment information.
4. The methodology and analytical approach used in the existing NEPA document continues to be appropriate for the proposed action.
5. The direct and indirect impacts of the proposed action are unchanged from those identified in the existing NEPA document.
6. The cumulative impacts that would result from implementation of the proposed action are unchanged from those analyzed in the existing NEPA document.
7. A 30-day comment period involving public input and interagency review was used in the development of the existing NEPA document.

8. Cultural Resources

A cultural resource inventory of this well pad and access road was conducted by personnel of SWCA Environmental Consultants, using an intensive pedestrian methodology. Approximately 16.43 acres were intensively inventoried on September 21, 2008 (Ferris 2009). No historic properties were located within the project area that appear to possess the quality of integrity and meet at least one of the criteria (36 CFR 60.6) for inclusion on the National Register. As the lead federal agency, and as provided for in 36 CFR 800.5, on the basis of the information provided, BIA reached a determination of **no historic properties affected** for this undertaking. This determination was communicated to the THPO on February 4, 2009; however, the THPO did not respond within the allotted 30-day comment period. The project addition covered in this EA Addendum is adjacent to the area covered by this cultural resource inventory. A cultural resource inventory of this proposed access road reroute was conducted by personnel of SWCA Environmental Consultants. Approximately 10.55 acres were intensively inventoried on July 31, 2009 (Cooper 2009). No historic properties were located within the project area that appear to possess the quality of integrity and meet at least one of the criteria (36 CFR 60.6) for inclusion on the National Register. As the lead federal agency, and as provided for in 36 CFR 800.5, on the basis of the information provided, BIA reached a determination of **no historic properties affected** for this undertaking. This determination was communicated to the THPO on August 25, 2009 and the THPO concurred on September 9, 2009.

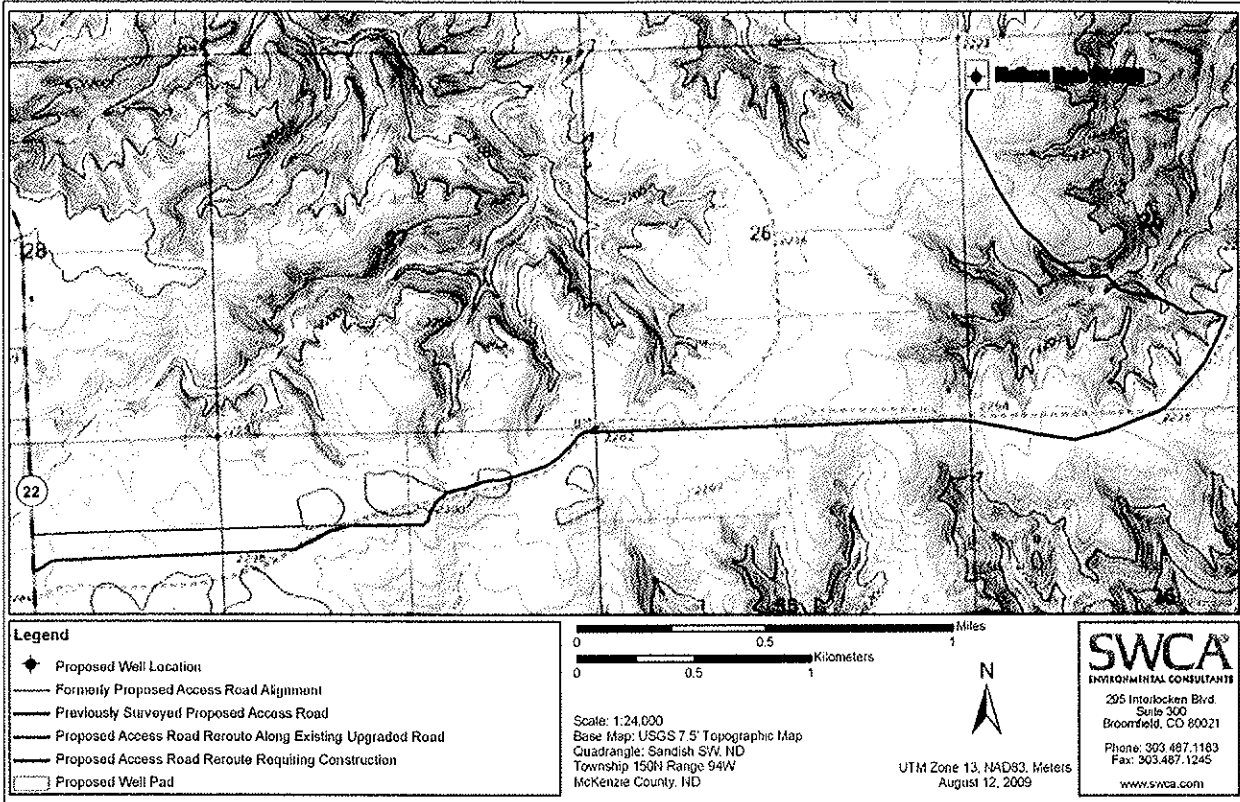


Figure 1. Project location map at 1:24,000 showing the previously inventoried Nathan Hale #4-25H well pad and access road and the newly inventoried proposed access road reroute (Sandish SW, ND [1970], USGS 7.5' Quadrangle).



Figure 2. Portion of proposed access road reroute requiring access road construction, facing northeast, showing existing two-track road.

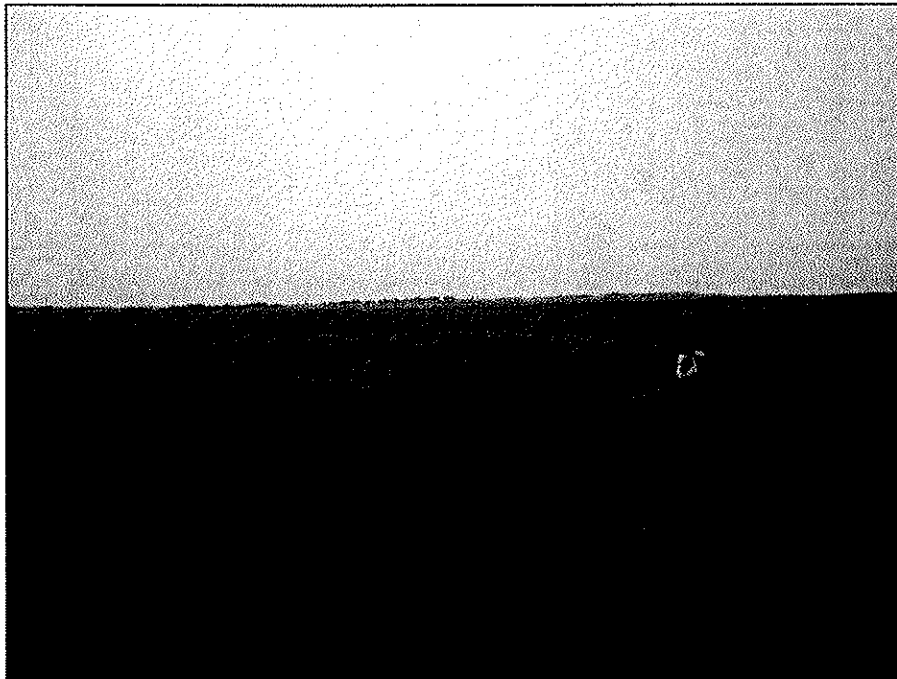


Figure 3. Portion of proposed access road reroute along existing upgraded scoria road, facing east from State Highway 22.



TRIBAL HISTORIC PRESERVATION

Mandan Hidatsa Arikara
Perry 'No Tears' Brady, Director.
404 Frontage Road,
New Town, North Dakota 58763
Ph/701-862-2474 fax/701-862-2490
pbrady@mhnation.com

September 9, 2009

Carson Murdy
Regional Archeologist
Bureau of Indian Affairs
Great Plains Regional Office
115 Fourth Avenue SE
Aberdeen, SD, 57401

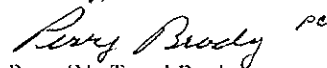
RE: Project # AAO-1602/FB/09
Zenergy Nathan Hale 04-25H well pad and access road reroute

Dr. Murdy:

After review of the documentation provided, the Mandan Hidatsa Arikara Nations Tribal Historic Preservation Office concurs with the determination of 'No Adverse Affect'/No Historic Properties Affected' to any pre and post-historic relics, artifacts or sacred and cultural resources in the revised access reroute Project area.

We respectfully request to be notified should any NAGPRA issue or others arise as the Project progresses.

Sincerely,


Perry 'No Tears' Brady,
Tribal Historic Preservation Officer,
Mandan Hidatsa Arikara Nations.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401



IN REPLY REFER TO:
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MC-208

AUG 25 2009

Perry 'No Tears' Brady, THPO
Mandan, Hidatsa and Arikara Nation
404 Frontage Road
New Town, North Dakota 58763

Dear Mr. Brady:

We have considered the potential effects on cultural resources of an oil well pad access road reroute in McKenzie County, North Dakota. Approximately 10.55 acres were intensively inventoried using a pedestrian methodology. Potential surface disturbances are not expected to exceed the area depicted in the enclosed report. No historic properties were located that appear to possess the quality of integrity and meet at least one of the criteria (36 CFR 60.4) for inclusion on the National Register of Historic Places. No properties were located that appear to qualify for protection under the American Indian Religious Freedom Act (16 USC 1996).

As the surface management agency, and as provided for in 36 CFR 800.5, we have therefore reached a determination of **no historic properties affected** for this undertaking. Catalogued as **BIA Case Number AAO-1602/FB/09**, the proposed undertaking, location, and project dimensions are described in the following report:

Cooper, Judith R.
(2009) Addendum to the Class I and Class III Cultural Resource Inventory of the Nathan Hale #4-25H Well Pad and Access Road on the Fort Berthold Indian Reservation, McKenzie County, North Dakota, Due to Access Road Reroute. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

If your office concurs with this determination, consultation will be completed under the National Historic Preservation Act and its implementing regulations. The Standard Conditions of Compliance will be adhered to.

If you have any questions, please contact Dr. Carson N. Murdy, Regional Archaeologist, at (605) 226-7656.

Sincerely,

ACTING Regional Director

Enclosure

cc: Chairman, Three Affiliated Tribes
Superintendent, Fort Berthold Agency
Chief, Division of Energy and Environment

NOTICE OF AVAILABILITY

THE BUREAU OF INDIAN AFFAIRS (BIA) AND THE THREE AFFILIATED TRIBES HAVE ISSUED AN ADDENDUM TO THE *Nathan Hale #4-25H Environmental Assessment* THE FORT BERTHOLD RESERVATION. CONSTRUCTION IS SCHEDULED TO BEGIN IN THE FALL OF 2009.

BASED ON THE ENVIRONMENTAL ASSESSMENT (EA), IT HAS BEEN DETERMINED THAT THE ACTION WILL NOT RESULT IN SIGNIFICANT IMPACTS TO THE QUALITY OF THE HUMAN ENVIRONMENT; THEREFORE, AN ENVIRONMENTAL IMPACT STATEMENT IS NOT REQUIRED.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE FINDING OF NO SIGNIFICANT IMPACT (FONSI) AND EA, CONTACT HOWARD BEMER, SUPERINTENDENT AT THE FORT BERTHOLD AGENCY AT 701-627-4707.

THE FONSI IS A FINDING ON ENVIRONMENTAL EFFECTS, NOT A DECISION TO PROCEED WITH AN ACTION, THEREFORE CANNOT BE APPEALED.