



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

DEC 21 2010

MEMORANDUM

TO: Superintendent, Fort Berthold Agency

FROM: Acting Regional Director, Great Plains Region

SUBJECT: Environmental Assessment Addendum and Finding of No Significant Impact

In compliance with the regulations of the National Environmental Policy Act (NEPA) of 1969, as amended, for an Addendum to Environmental Assessment to Authorize Land Use for the Expansion of Dakota-3 Nathan Hale #4-25H Well Pad to Accommodate the Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 Dual Well Pad on the Fort Berthold Reservation, an Environmental Assessment (EA) Addendum 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.

Attachment

cc: Tex Hall, Chairman, Three Affiliated Tribes (with attachment)
Elgin Crows Breast, THPO (with attachment)
Derek Enderud, BLM, Dickenson, ND (with attachment)
John Shelman, US Army Corps of Engineers
Jeffrey Hunt, Virtual One Stop Shop

Finding of No Significant Impact

Zenergy Operating Company, LLC

Addendum to Environmental Assessment to Authorize Land Use for the Expansion of Dakota-3 Nathan Hale #4-25H Well Pad to Accommodate the Dakota-3 Kate Soldier #23- 14H / Dakota-3 Bear Den #24-13H2 Dual Well Pad

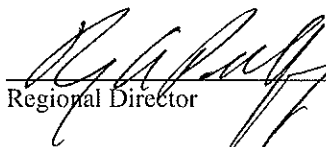
Fort Berthold Indian Reservation McKenzie County, North Dakota

The U.S. Bureau of Indian Affairs (BIA) has received a proposal for an addendum to authorize the land use by Zenergy to increase the size of the Dakota-3 Nathan Hale #4-25H well pad to a size which would accommodate two additional oil wells (i.e., Dakota-3 Kate Soldier #23-14H and Bear Den #24-13H2). Associated federal actions by BIA include determinations 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 Applications 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. This guidance includes the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) (MBTA), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) (NEPA), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250) (BGEPA), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", and the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA)
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 
Regional Director

12/21/10
Date

**ENVIRONMENTAL ASSESSMENT
Addendum**

United States Bureau of Indian Affairs

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



Zenergy Operating Company, LLC

**Addendum to Environmental Assessment to Authorize Land Use for the Expansion of
Dakota-3 Nathan Hale #4-25H Well Pad to Accommodate the Dakota-3 Kate Soldier
#23-14H / Dakota-3 Bear Den #24-13H2 Dual Well Pad**

Fort Berthold Indian Reservation

December 2010

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

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1. Purpose and Need for the Proposed Action

Zenergy Operating Company, LLC (Zenergy) is drilling an exploratory oil and gas well on the Fort Berthold Indian Reservation to evaluate and possibly develop the commercial potential of natural resources. Developments have been proposed on land held in trust by the United States in McKenzie County, North Dakota. The Bureau of Indian Affairs (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 Nations and to individual tribal members.

The purpose of the proposed action is to authorize land use by Zenergy for the construction and installation associated with the expansion of the previously authorized Dakota-3 Nathan Hale #4-25H well pad, to include two additional wells from a previously approved location. This action would also constitute a name change of the current Dakota-3 Nathan Hale #4-25H well pad to Dakota-3 Nathan Hale #4-25H / Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 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 Description for Proposed Action

The Dakota-3 Nathan Hale #4-25H / Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 triple well pad would be located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, Township (T) 150 North (N), Range (R) 94 West (W), McKenzie County, North Dakota (Figure 1).

4. Scope of Work for Proposed Action

Zenergy proposes to increase the size of the Dakota-3 Nathan Hale #4-25H well pad to a size which would accommodate two additional oil wells (i.e., Dakota-3 Kate Soldier #23-14H and Bear Den #24-13H2). Appendix A and Figures 1 and 2 provide detailed schematics of the proposed well pad cut and fill. Construction of the proposed Dakota-3 Nathan Hale #4-25H / Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 pad would disturb approximately 9.4 acres of surface area. This amount represents approximately 4.85 acres of new surface disturbance relative to the original 3.3 acres proposed for the Dakota-3 Nathan Hale #4-25H well pad. The Dakota-3 Kate Soldier #23-14H oil well would utilize a 1,280-acre spacing unit with the bottom hole located approximately 10,203 feet north and 2,313 feet west of the surface location in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T150N, R94W, McKenzie County, North Dakota. The Dakota-3 Bear Den #24-13H2 oil well would utilize a 1,280-acre spacing unit with the bottom hole located approximately 10,705 feet north and 582 feet east of

the surface location in the NW¼ NW¼ of Section 13, T150N, R94W, McKenzie County, North Dakota. Technical drilling specifications would be similar to those of Dakota-3 Nathan Hale #4-25H, which is covered in a previous Environmental Assessment (see Applicable NEPA Documents below).

5. Surveys for Proposed Action

SWCA conducted natural resource surveys for threatened and endangered species, migratory birds, bald and golden eagles, and wetlands at Bear Den #24-13H2 on July 7, 2010, and at Kate Soldier #23-14H on May 13, 2010. BIA Environmental Specialist Jeff DeJarlais approved the location of the well pad. No primary or secondary indication of protected species occurrences were observed during the field surveys.

A cultural resource inventory of this well pad expansion was conducted by personnel of SWCA Environmental Consultants, using an intensive pedestrian methodology. Approximately 11.2 acres were inventoried between May 13 and July 7, 2010 (Hutchinson and Lechert 2010). No historic properties were located 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 November 18, 2010; however the THPO did not respond within the allotted 30 day comment period.

Hutchinson, Alan, and Stephanie Lechert

(2010) A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Kate Soldier #23- 14H/Bear Den #24-13H2 Dual Well Pad Expansion Project on the Fort Berthold Indian Reservation, McKenzie County, North Dakota. SWCA Environmental Consultants for Zenergy Operating Company, LLC, Tulsa, OK.

6. Potential Effects

Potential effects of the proposal could include the disturbance and loss of any cultural resource sites eligible for the National Register of Historic Places within the proposed ROW, or short-term disturbance of native vegetation and wildlife habitats, soil removal and mixing, and erosion during construction. Initial construction disturbance would affect 6.1 acres, compared with the original 3.3 acres analyzed. Potential indirect effects of the proposal could include potential release of sediment or fluids from the well pads, construction noise or traffic disturbance of general wildlife, and possible introduction of noxious weeds. Potential cumulative impacts of the proposal plus other foreseeable future oil and gas development on Fort Berthold could include habitat fragmentation from construction of other well pads and roads. The proposal would use a single disturbance for three production wells with only one access road rather than three separate well pad and roadway disturbances. Therefore, the cumulative effect of the changed action is anticipated to be negligible. Any potential direct

effects would be mitigated by surveying for and avoiding any eligible cultural resource sites; implementing an approved stormwater pollution prevention plan and erosion control devices; avoiding any wetlands and any federally-listed threatened or endangered species or their designated critical habitats; avoiding nesting migratory birds; and completing reclamation using appropriate native vegetation.

Any potential indirect effects would be mitigated by locating access roads and reserve pits on the upslope (cut) side of well pads, as shown in Appendix A; stockpiling and re-using topsoil for reclamation; implementing best management practices for controlling introduction of noxious weeds; and minimizing the length of time between drilling and reclamation.

Based on the resource surveys, evaluation of potential effects and mitigation measures, and consistency with the applicable NEPA documents, no significant new direct, indirect, or cumulative impacts to natural and cultural resources are anticipated as a result of the changes proposed in this addendum.

7. Applicable NEPA Document(s)

Environmental Assessment: Zenergy Operating Company, LLC, Dakota-3 Nathan Hale #4-25H, Dakota-3 TAT (751A) #14-19H, Dakota-3 Cross #2-13H, and Dakota-3 Ethan Hall #2-14H (January 2009).

8. NEPA Adequacy Criteria

This document has identified one previously prepared NEPA document, *Zenergy Operating Company, LLC, Dakota-3 Nathan Hale #4-25H, Dakota-3 TAT (751A) #14-19H, Dakota-3 Cross #2-13H, and Dakota-3 Ethan Hall #2-14H (January 2009)*, 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.

Notice of Availability and Appeal Rights

Zenergy: Addendum to Environmental Assessment to Authorize Land Use for the Expansion of Dakota-3 Nathan Hale #4-25H Well Pad to Accommodate the Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 Dual Well Pad

The Bureau of Indian Affairs (BIA) is planning to issue administrative approvals related to an Addendum to Environmental Assessment to Authorize Land Use for the Expansion of Dakota-3 Nathan Hale #4-25H Well Pad to Accommodate the Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 Dual Well Pad as shown on the attached map. Construction by Peak is expected to begin in the Winter 2010.

An environmental assessment (EA) determined that proposed activities will not cause significant impacts to the human environment. An environmental impact statement is not required. Contact Howard Bemer, Superintendent at 701-627-4707 for more information and/or copies of the EA and the Finding of No Significant Impact (FONSI).

The FONSI is only a finding on environmental impacts – it is not a decision to proceed with an action and *cannot* be appealed. BIA’s decision to proceed with administrative actions *can* be appealed until January 20, 2010, by contacting:

**United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Indian Appeals
801 N. Quincy Street, Suite 300, Arlington, Va 22203.**

Procedural details are available from the BIA Fort Berthold Agency at 701-627-4707.

Addendum to Environmental Assessment to Authorize Land Use for the Expansion of Dakota-3 Nathan Hale #4-25H Well Pad to Accommodate the Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 Dual Well Pad (December 2010)

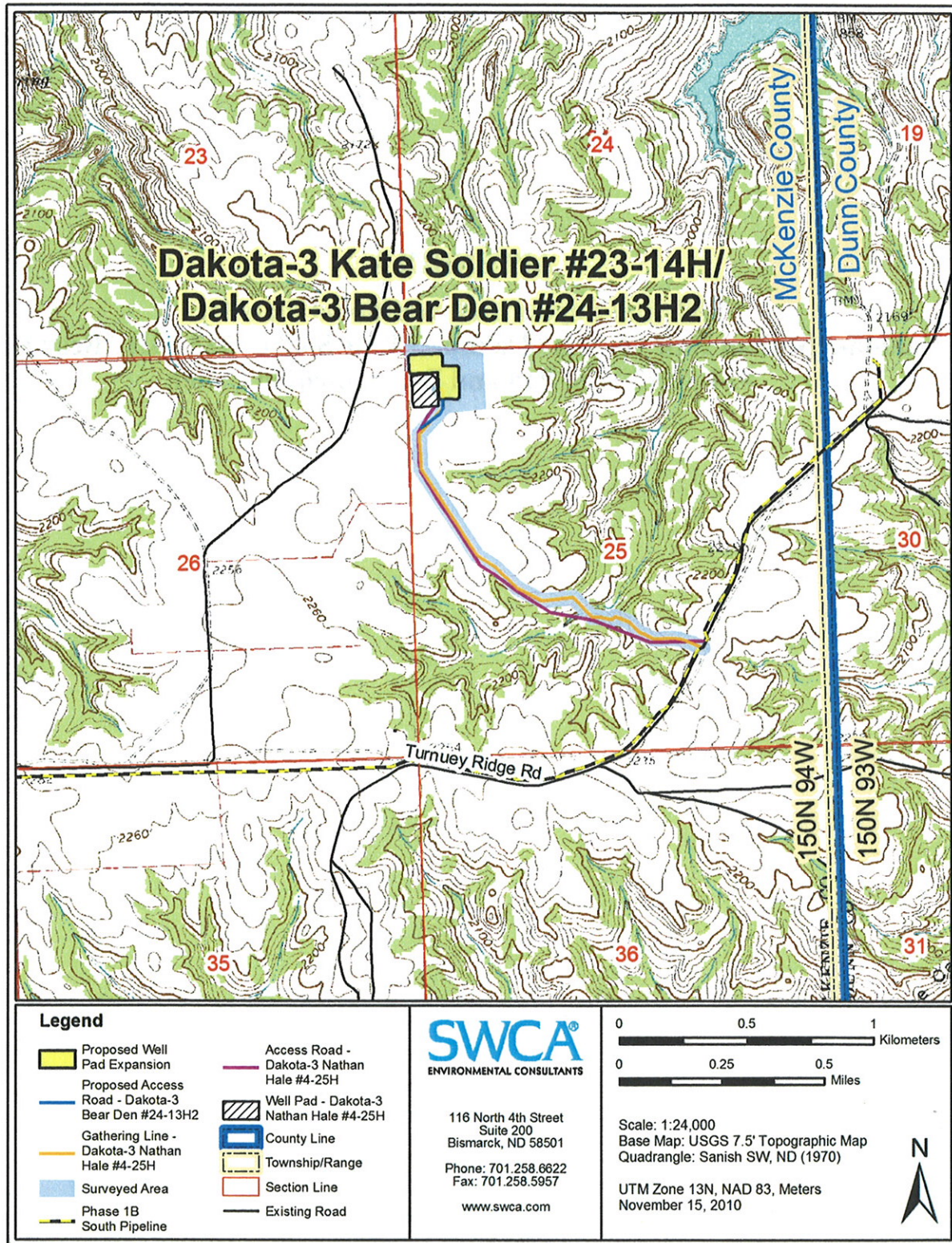
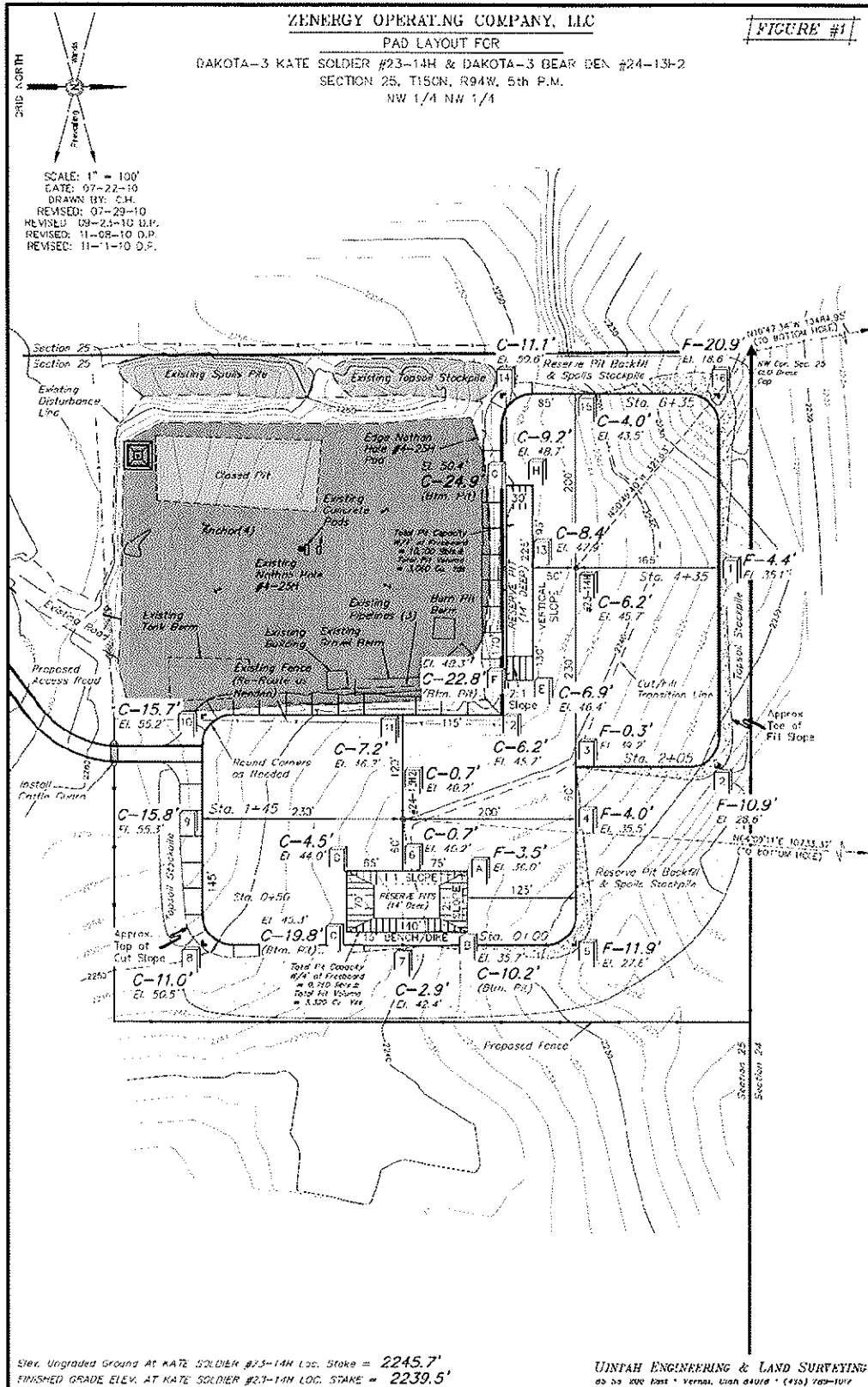


Figure 1. Proposed Location of Expansion of Dakota-3 Nathan Hale #4-25H / Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 well pad.

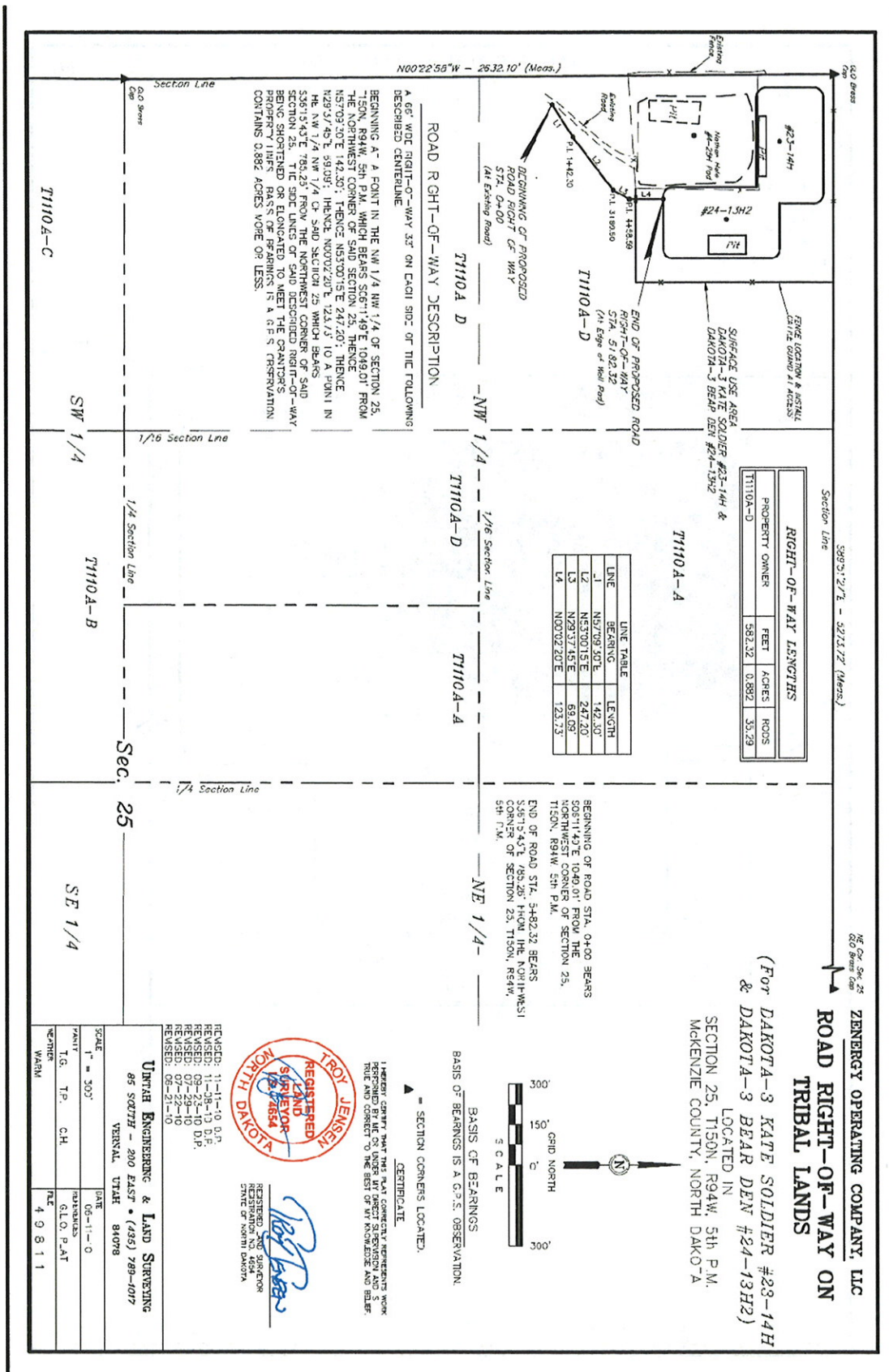
APPENDIX A

**Well Pad Layout and Additional Plats for
Dakota-3 Nathan Hale #4-25H / Dakota-3 Kate Soldier #23-14H / Bear Den
#24-13H2 Well Pad and Determination Letter**

Addendum to Environmental Assessment to Authorize Land Use for the Expansion of Dakota-3 Nathan Hale #4-25H Well Pad to Accommodate the Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 Dual Well Pad (December 2010)



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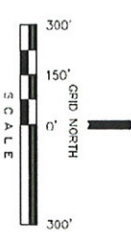
ZENERGY OPERATING COMPANY, LLC
ROAD RIGHT-OF-WAY ON
TRIBAL LANDS

(FOR DAKOTA-3 KATE SOLDIER #23-14H
 & DAKOTA-3 BEAR DEN #24-13H2)

LOCATED IN
 SECTION 25, T150N, R94W, 5TH P.M.
 MCKENZIE COUNTY, NORTH DAKOTA

END OF ROAD STA. 5482.32 BEARS
 S48°15'43"E 785.25' FROM THE NORTHWEST
 CORNER OF SECTION 25, T150N, R94W,
 5TH P.M.

BEGINNING OF ROAD STA. 0+00 BEARS
 S05°11'42"E 1040.01' FROM THE
 NORTHWEST CORNER OF SECTION 25,
 T150N, R94W 5TH P.M.



Troy Jensen
 REGISTERED PROFESSIONAL ENGINEER
 LICENSE NO. 4854
 STATE OF NORTH DAKOTA

UPTAH ENGINEERING & LAND SURVEYING
 85 SOUTH - 200 EAST • (701) 799-1017
 VERMILION, NORTH DAKOTA 58103

REVISIONS:
 REVISION: 11-11-10 D.P.
 REVISION: 11-11-10 D.P.
 REVISION: 03-23-10 D.P.
 REVISION: 07-29-10 D.P.
 REVISION: 07-22-10 D.P.
 REVISION: 06-21-10 D.P.

SCALE	DATE
1" = 300'	06-11-10
PAINT	REVISIONS
T.G.	G.L.O. P.A.T
TP.	CH.
REVISION	DATE
WASH	4 9 8 1 1

Addendum to Environmental Assessment to Authorize Land Use for the Expansion of Dakota-3 Nathan Hale #4-25H Well Pad to Accommodate the Dakota-3 Kate Soldier #23-14H / Dakota-3 Bear Den #24-13H2 Dual Well Pad (December 2010)



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Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401



IN REPLY REFER TO:
DESCRM
MC-208

NOV 18 2010

Elgin Crows Breast, THPO
Mandan, Hidatsa and Arikara Nation
404 Frontage Road
New Town, North Dakota 58763

Dear Mr. Crows Breast:

We have considered the potential effects on cultural resources of a dual oil well pad expansion project in McKenzie County, North Dakota. Approximately 11.2 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 (42 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-1823/FB/10**, the proposed undertaking, location, and project dimensions are described in the following report:

Hutchinson, Alan, and Stephanie Lechert
(2010) A Class I and Class III Cultural Resource Inventory of the Zenergy Dakota-3 Kate Soldier #23-14H/Bear Den #24-13H2 Dual Well Pad Expansion Project on the Fort Berthold Indian Reservation, McKenzie County, North Dakota. 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