



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

MAR 02 2011

MEMORANDUM

TO: Superintendent, Fort Berthold Agency

FROM: Regional Director, Great Plains Region 

SUBJECT: Supplemental to Environmental Assessment

In compliance with the regulations of the National Environmental Policy Act (NEPA) of 1969, as amended, for the proposed Supplemental for information tiering off of an existing Environmental Assessment for Peak North Dakota, LLC, to increase the right-of-way width for the Hall#5-11H access road and utility corridor on the Fort Berthold Reservation, a Categorical Exclusion has been completed.

All the necessary requirements of the National Environmental Policy Act have been completed. Attached for your files is a copy of the Categorical Exclusion.

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



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EXCEPTION CHECKLIST FOR BIA CATEGORICAL EXCLUSIONS

Project: Hall #5-11H Access Road and Utility Corridor Date: February 25, 2011

Nature of Proposed Action: Is to authorize the land use by Peak to increase the approved Hall #5-11H access road right-of-way (ROW) width from 40 feet to 100 feet. Located in the SE ¼ NE ¼ of Section 32, Township (T) 121 North (N), Range (R) 94 West (W), 5th PM McKenzie County, North Dakota. This document is tiered to an existing Environmental Assessment for Five Horizontal Bakken Exploratory Wells: Hall#5-11H, Grassy Knoll #2-11H, Woman Creek #4-11, Voigt #32-24H, Fredericks #6-31H (October 2008)

Exclusion category and number: 516 DM 10.5 F (1)

Evaluation of Exceptions to use of Categorical Exclusion:

1. This action would have significant adverse effects on public health or safety. No X Yes _____
2. This action would have an adverse effect on unique geographical features, such as wetlands, wild or scenic rivers, refuges, floodplains, rivers placed on nationwide river inventory, or prime or unique farmlands. No X Yes _____
3. The action will have highly controversial environmental effects. No X Yes _____
4. The action will have highly uncertain environmental effects or involve unique or unknown environmental risks. No X Yes _____
5. This action will establish a precedent for future actions. No X Yes _____
6. This action is related to other actions with individually insignificant, but cumulatively significant environmental effects. No X Yes _____
7. This action will affect properties listed or eligible for listing in the National Register of Historic Places. No X Yes _____

8. This action will affect a species listed, or proposed to be listed as endangered or threatened. No X Yes _____

9. This action threatens to violate federal, state, local or tribal law or requirements imposed for protection of the environment. No X Yes _____

10. This action will have a disproportionately high and adverse effect on low income or minority populations. No X Yes _____

11. This action will limit access to, and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites. No X Yes _____

12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species. No X Yes _____

A "yes" to any of the above exceptions will require that an EA be prepared.

NEPA Action - - - CE X EA _____

Preparer's Name and Title: Jeffrey Davis, Environmental Protection Specialist

Regional Archeologist Concurrence with Item 7 Carson M. M... [Signature]

Concur: [Signature] Date: 2/25/2011
Regional Office/Agency Environmental Coordinator

Concur: [Signature] Date: 3/2/11
Regional Director/Superintendent

[Large handwritten signature]

**ENVIRONMENTAL ASSESSMENT
Supplement**

United States Bureau of Indian Affairs

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



Peak North Dakota, LLC

**Supplement to Environmental Assessment to Authorize Land Use for a
Right-of-Way Width Increase for the
Hall #5-11H Access Road and Utility Corridor**

Fort Berthold Indian Reservation

February 2011

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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- A Additional Information for the Hall #5-11H Well Pad

1. Purpose and Need for the Proposed Action

Peak North Dakota, LLC (Peak) is drilling one 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 the land use by Peak to increase the approved Hall #5-11H access road right-of-way (ROW) width from 40 feet to 100 feet to allow for construction of the road and utility corridor.

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 Hall #5-11H access road would be located on tribal land originating from Highway 22, approximately 9 miles northwest of Mandaree, North Dakota, in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, Township (T) 151 North (N), Range (R) 94 West (W), 5th Prime Meridian (P.M.), McKenzie County, North Dakota. The proposed access road would terminate at the well pad in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T150N, R93W, 5th P.M., McKenzie County, North Dakota.

4. Scope of Work for Proposed Action

Approximately 6,459 feet of new access road and utility corridor would be constructed with a maximum disturbed ROW width of 100 feet. The additional disturbance as a result of the ROW width increase would be no greater than 14.8 acres. The utility corridor would contain oil, gas, and water pipelines as well as fiber optic communications and electric lines, all this infrastructure will be installed underground. Signed agreements are in place allowing road construction across affected private and allotted land surfaces, and any applicable approach permits and/or easements would be obtained prior to any construction activity.

Construction would follow road design standards outlined in the Bureau of Land Management Gold Book (Bureau of Land Management and U.S. Forest Service 2007¹). At a minimum, 6

¹ Bureau of Land Management and U.S. Forest Service. 2007. Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development. BLM/WO/ST-06/021+3071/REV 07. Bureau of Land Management. Denver, Colorado. 84 pp.

inches of topsoil would be removed from the access road and utility corridor. This stockpiled topsoil would then be placed on the outside slopes of the ditches following road construction. The ditches would be reseeded as quickly as possible using a seed mixture determined by the BIA. Care would be taken during road construction to avoid disturbing or disrupting any buried utilities that may exist near Highway 22. The access road would be surfaced with a minimum of 4 inches of aggregate if the site were to be established as a commercial production site. The roadway is proposed to remain in use for the life of the wells. The access road and corridor plat is shown in Figure 1.

5. Surveys

Kadmas, Lee & Jackson (KLJ) conducted natural resource surveys for threatened and endangered species, migratory birds, bald and golden eagles, and wetlands on August 27, 2008. KLJ did not observe protected species, including bald or golden eagle individuals and nests.

A cultural resource inventory of this well pad and access road was conducted by personnel of Earthworks, Inc. (now Kadmas, Lee & Jackson, Inc.), using an intensive pedestrian methodology. Approximately 44 acres were inventoried between June 5 and July 1, 2008 (Harty 2008). One archaeological site was located that may 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, as the project was redesigned to avoid the archaeological site. This determination was communicated to the THPO on October 9, 2008, and the THPO concurred on October 13, 2008.

Harty, Jennifer L.

(2008) Hall 5-11H Well Pad and Access Road: A Class III Cultural Resource Inventory, McKenzie County, North Dakota. Earthworks for Peak North Dakota, LLC, Durango, CO.

6. Potential Effects

Potential impacts to cultural resource sites could occur as a result of direct disturbance and/or the loss of sites eligible for the National Register of Historic Places. Further, potential impacts to natural resources may include the loss of native vegetation and wildlife habitats; soil removal and mixing; and erosion during construction. However, potential impacts as a result of the proposed action were mitigated via field survey and subsequent avoidance of any eligible cultural resource sites within the proposed ROW; implementing a stormwater pollution prevention plan and best management practices; completing reclamation of the pipeline corridors with native grasses and other appropriate native vegetation; and stockpiling and re-using topsoil for reclamation.

Potential indirect impacts include noise and other disturbances to wildlife during construction and the introduction of noxious weeds. Impacts would be mitigated through avoidance of any

federally listed threatened or endangered species or wetlands; avoidance of nesting migratory birds; implementing best management practices to control the introduction of noxious weeds; and minimizing the length of time between trenching, pipeline burial, and reclamation. These mitigation measures are consistent with the approved National Environmental Policy Act (NEPA) document, which received a finding of no significant impact (FONSI) (October 2008). Based on the surveys and the mitigation measures committed to by Peak, no significant impacts to natural and cultural resources are anticipated.

7. Applicable NEPA Document(s)

Environmental Assessment for Five Horizontal Bakken Exploratory Wells: Hall #5-11H, Grassy Knoll #2-11H, Woman Creek #4-11, Voigt #32-24H, Fredericks #6-31H (October 2008).

8. NEPA Adequacy Criteria

This document has identified a previously prepared NEPA document, *Five Horizontal Bakken Exploratory Wells: Hall #5-11H, Grassy Knoll #2-11H, Woman Creek #4-11, Voigt #32-24H, Fredericks #6-31H* (October 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.

Supplement to Environmental Assessment to Authorize Land Use for a Right-of-Way Width Increase for the Hall #5-11H Access Road and Utility Corridor (February 2011)

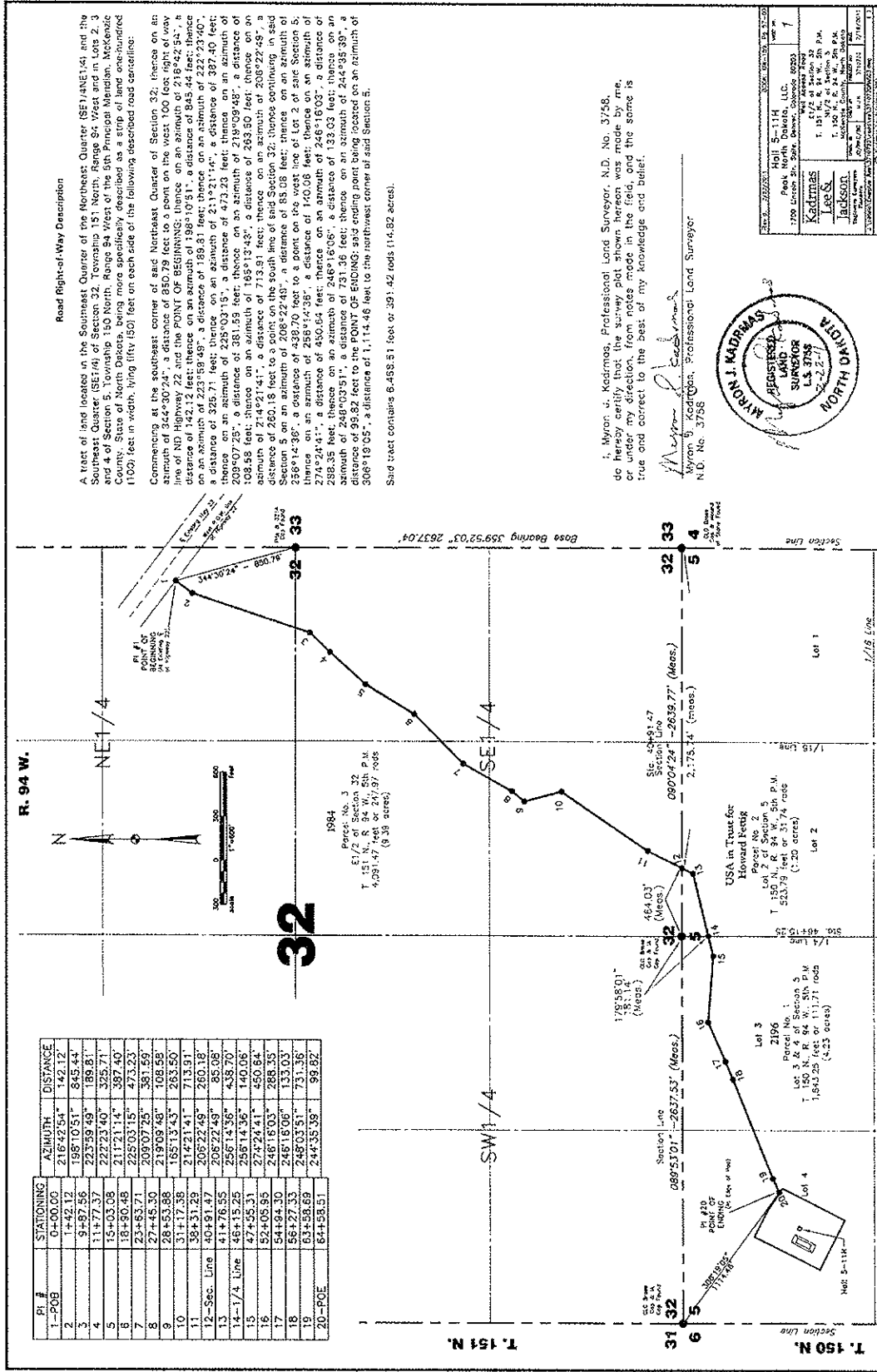
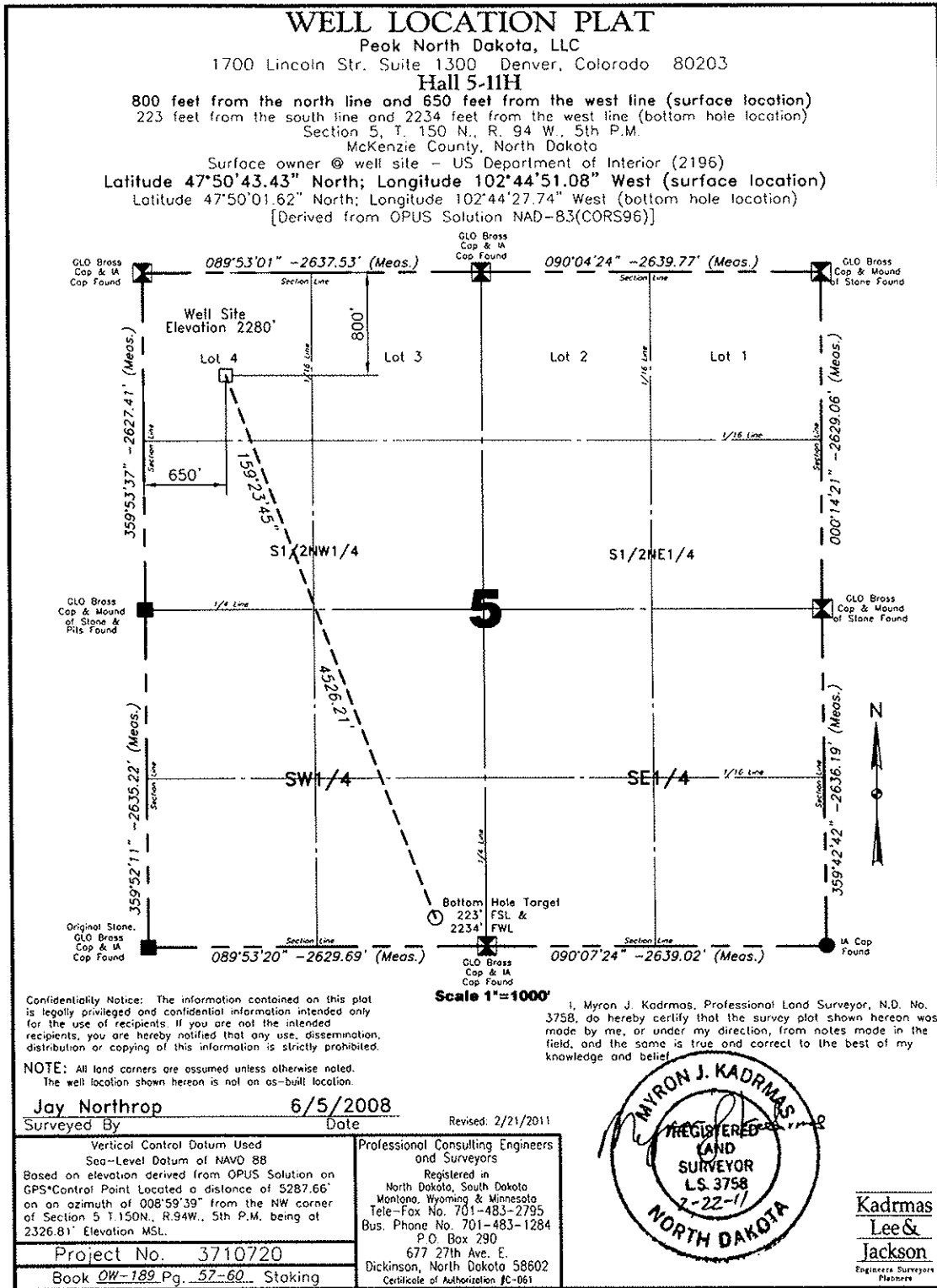


Figure 1. Hall #5-11H Access Road Right-of-Way.

APPENDIX A
Additional Information for the Hall #5-11H Well Pad

Supplement to Environmental Assessment to Authorize Land Use for a Right-of-Way Width Increase for the Hall #5-11H Access Road and Utility Corridor (February 2011)



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