

## **A. APPENDIX A - LEASE DECISION ISSUING PROCESS**

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## **A. LEASE DECISION ISSUING PROCESS**

In many places in the United States, National Forests lie over geological formations, which contain, or may contain, oil or natural gas. Private firms purchase "leases" on many of these lands to search for oil or gas, to drill exploratory wells, and to extract any oil or gas discovered.

### **A.1 LEASE**

Individuals, associations of citizens, and corporations organized under the laws of the United States or any state, are entitled to lease federal lands for these purposes under authority of the Mineral Leasing Act of 1920, as amended, and by the Mineral Leasing Act for Acquired Lands of 1947 unless the lands have been specifically withdrawn by the Department of the Interior. Leases also may be issued to a legal guardian or trustee on behalf of a minor. Aliens, whose country of origin does not deny similar privileges to United States citizens, may hold interest in leases, but only through stock ownership of United States corporations that hold leases. Aliens may not hold interest in federal oil and gas leases through units in publicly traded limited partnerships.

#### **A.1.1 Competitive and Noncompetitive Leases**

Both competitive and noncompetitive leases may be obtained for oil and gas exploration and development on lands owned or controlled by the federal government. The Leasing Reform Act of 1987 requires all public lands available for oil and gas leasing to be offered first by competitive leasing at an oral auction. Noncompetitive leases may be issued only if the competitive process results in no bids. Competitive and noncompetitive leases are issued for a 10-year period. Both are extended for the duration that they are producing oil and gas in paying quantities. The maximum competitive lease size is 2,560 acres in the "lower" 48 states and 5,760 in Alaska. The maximum noncompetitive lease size is 10,240 acres in all states.

#### **Competitive Leases**

The Bureau of Land Management (BLM) conducts oral auctions for oil and gas leases on a regular basis, when there are parcels of land available for lease. A Notice of Competitive Lease Sale lists lease parcels to be offered at auction. The Sale Notice is published at least 45 days before the date of the auction. The Sale Notice identifies any lease stipulations to uses or restrictions on surface occupancy. There are three sources for federal lands available for lease:

- Existing leases that have expired, and leases that have been terminated, canceled, or relinquished
- Parcels identified by expressions of interest from either the public or BLM for management reasons
- Lands included in offers filed for noncompetitive leases (effective January 3, 1989).

On the day of the auction, successful bidders must submit a properly executed lease bid form and make a payment consisting of an administrative fee (\$75 per parcel), one-year advance rental (\$1.50 per acre), and not less than the \$2.00 per acre minimum bonus. The balance of the bonus

bid must be received within 10 working days of the auction. The bid form constitutes the legally binding lease offer.

### **Noncompetitive Leases**

Noncompetitive leases may be issued only for parcels that have been offered competitively and failed to receive a bid. Lands in expired, terminated, canceled, or relinquished leases are not available for noncompetitive leasing until they have been offered competitively. After an auction, all lands that were offered competitively without receiving a bid are available for filing of noncompetitive offers for a period of two years.

Noncompetitive offers must be submitted on a BLM-approved form, and they must include a \$75 filing fee and one-year advance rental (\$1.50 per acre).

Noncompetitive lease offers filed on the first business day following the auction are considered as having been filed simultaneously. The priority among multiple offers received on the first business day for the same parcel is determined by a drawing that is open to the public.

#### **A.1.2 Lease Restrictions**

While a lease does grant the right to develop oil and gas resources, it does not convey an unlimited right to explore or an unlimited right to develop any oil or gas resources found under the land. Leases are subject to terms and conditions. These restrictions are derived from legal statutes and measures identified to minimize adverse impacts to other resources. These are characterized in a lease as “term” or “stipulations.” Stipulations modify the rights the government grants to a lessee. The terms and stipulations are known by potential lessees prior to any sale and must be followed at the time that operations are proposed in an Application for Permit to Drill (APD).

#### **Standard Lease Terms**

The Standard Lease Terms are contained in Form 3100-11, Offer to Lease and Lease for Oil and Gas, United States Department of the Interior, BLM, June 1988 or later addition (see Appendix B). The Standard Lease Terms provide the lessee the right to use the leased land as needed to explore for, drill for, extract, remove, and dispose of oil and gas deposits located under the leased lands. Operations must be conducted in a manner that minimizes adverse impacts to the land, air, water, cultural, biological, and visual elements of the environment, as well as other land uses or users. Federal environmental protection laws such as the Clean Water Act, Endangered Species Act, and Historic Preservation Act, will be applied to all lands and operations and are included in the standard lease terms. If threatened or endangered species; objects of historic, cultural, or scientific value; or substantial unanticipated environmental effects are encountered during construction, all work affecting the resource will stop and the land management agency will be contacted.

Standard Lease Terms provide for reasonable measures to minimize adverse impacts to surface resources. These include, but are not limited to, modifications to the siting or design of facilities, timing of operations, and specifications of interim and final reclamation measures. Standard Lease Terms may *not* require the lessee to relocate drilling rigs or supporting facilities by more

than 200 meters, require that operations be sited off the leasehold, or prohibit new surface-disturbing operations for more than 60 days each year (43 CFR part 3101.I-2).

All leases on National Forest System (NFS) lands contain the "Stipulation for Lands of the National Forest System Under Jurisdiction of Department of Agriculture," requiring the lessee to comply with the rules and regulations of the Department of Agriculture. All leases are subject to regulations and formal orders of the Secretaries of the Interior and Agriculture in effect at the time of issuance.

### **Supplemental Stipulations**

The Standard Lease Terms can be modified by special or supplemental stipulations attached to the lease (43 CFR 3101.I-2 through 3101.I-4). Additional special stipulations can be developed specifically to meet resource concerns that cannot be mitigated by existing stipulations.

### **A.1.3 Federal Oil and Gas Leasing Process**

#### **Prior to the 1987 Leasing Reform Act**

The Secretary of the Interior, through the BLM, was responsible for authorizing the sale of leases for all available federal lands, including the lands of the National Forest System. The Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of August 7, 1947 (USC 351-359), provided for oil and gas leases on mineral deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur that are owned or may be acquired by the United States and that are within the lands acquired by the United States.

The Mineral Leasing Act for Acquired Lands amended the 1920 Act to provide authority for leasing minerals with "acquired" status, in contrast to public domain minerals. The 1947 Act differed from the 1920 Act in that *"no mineral deposit covered by this Section shall be leased except with the consent of the head of the Executive Department having jurisdiction over the lands ..."* In other words, the 1947 Act gave authority to the Forest Service to consent to leasing acquired lands under Forest Service jurisdiction. Until the passage of a later amendment to the Mineral Leasing Act (Federal Onshore Oil and Gas Leasing Reform Act, 1987, discussed below), this "consent" for leasing acquired lands was the only decision point the Forest Service had relative to leasing or subsequent operations.

Individuals and firms wishing to lease parcels of the National Forests would make a "Request For Lease" for a specific parcel of land to the BLM. The BLM would then ask the Forest Service to make a recommendation regarding sale of the lease subject to provisions of the 1920 Mineral Leasing Act or the 1947 Act for Acquired Lands. Officers of the Forest Service would recommend stipulations necessary to protect the resources. However, only the Secretary of the Interior possessed the authority to determine which stipulations to place on the lease for minerals reserved from public domain. The final decision was appealable to the BLM.

### **After the Reform Act**

In 1987, Congress passed the Federal Onshore Oil and Gas Leasing Reform Act (P.L. 100-203), referred to as the "Leasing Reform Act" throughout this document. The Leasing Reform Act gives the Forest Service consent authority on public domain lands as well as on acquired lands. The Act made two significant changes in the way leasing decisions are reached. First, the role of the Secretary of Agriculture in the leasing decision process was expanded. The Secretary was authorized to identify the National Forest System lands for which leases could be sold. Also, the Secretary, or designated representative, was authorized to identify the appropriate stipulations to apply to a lease to protect the surface resources. The Act states, "*The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture.*" (Emphasis added.) [30 U.S.C. 226 Section 5102(h).]

The Leasing Reform Act also established a statutory requirement for processing the Surface Use Plan of Operation (SUPO) prior to ground-disturbing activities. This established a staged decision process for approval of lease issuance and approval of a permit to drill and operate. That is, before a company can drill an exploratory well or extract oil or gas from NFS lands, the Forest Service must first authorize issuance of a lease, and then must approve or disapprove a detailed SUPO at the time an APD is filed. The lease decision is based on, among other things, an environmental analysis in accord with the requirements of the National Environmental Policy Act (NEPA) (40 CFR part 1502). The approval of drilling also is based on an environmental analysis in accord with NEPA, which is specific to the proposed plan of operation.

### **The Regulations Implementing the Reform Act**

The Leasing Reform Act modified the authorities of the Secretaries of the Interior and Agriculture and established the foundation for staged decision making, but the procedures to be used were defined in implementing regulations. The Forest Service developed those regulations over a two-year period and published the "Final Rule" in the Federal Register on March 21, 1990 (36 Code of Federal Regulations, Part 228, 100 *et. seq.*; 55 FR 10423).

In the implementing regulations, the Secretary of Agriculture directed that the leasing decision be made based on a level of information appropriate to the speculative nature of oil and gas exploration. The regulations describe this decision process as follows:

*36 Code Of Federal Regulations, part 228.102 Leasing Analysis and Decisions.*

*(c) Leasing Analyses: ... the authorized Forest officer shall:*

*(1) Identify on maps those areas that will be:*

- (i) Open to development subject to the terms and conditions of the standard oil and gas lease form (including an explanation of the typical standards and objectives to be enforced under the Standard Lease Terms);*
- (ii) Open to development but subject to constraints that will require the use of lease stipulations such as those prohibiting surface use on areas larger than 40 acres or such other standards as may be developed in the plan for stipulation use (with discussion as to why the constraints are necessary and justifiable) and;*



After purchase, a lessee may propose to develop the lease and will request approval for drilling in an APD. That proposal will be analyzed through the federal environmental NEPA process and documented in the appropriate NEPA document prior to approval, modification, or denial. If the proposal is approved, ground-disturbing activities will occur; if not approved, the lessee may make another proposal.

### ***Split Estate Lands***

Through a 1991 Interagency Agreement between the Forest Service and the BLM for oil and gas leasing, the agencies agreed to include split estate lands in leasing analyses completed for National Forest System (NFS) Lands. The agreement states: “Within the external boundaries of NFS unit, split estate lands (private surface/Federal minerals) are to be included in the leasing analysis done for NFS lands. Responsibility for conducting that portion of an analysis is to be decided at the local level.”

The leasing analysis completed for the NFS unit provides BLM’s National Environmental Policy Act analysis for oil and gas leasing decisions on split estate lands within the Forest Service external boundaries.

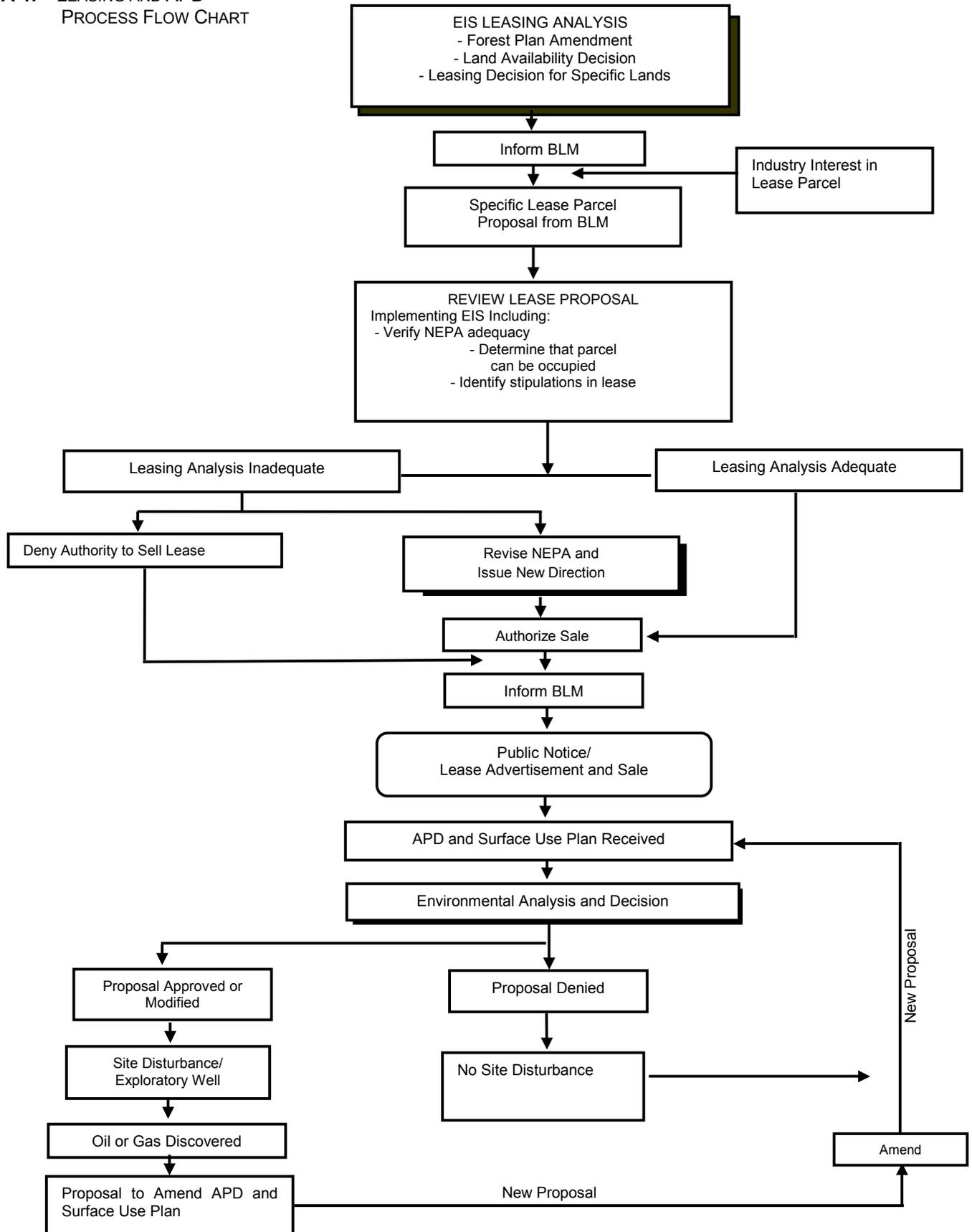
Table A-1 further displays the roles of the BLM and Forest Service in the process and identifies the rights granted to the lessee at the decision points. The BLM and Forest Service are joint lead agencies in the Leasing Analysis. At the time that a Record of Decision is signed for the availability and specific lands decision, there is no specific approval given to the BLM to authorize a lease. That authority is granted after the proposal to lease specific parcels has been received and reviewed by the Forest Service.

#### **A.1.4 The Staged Decision Process**

The staged decision process is designed to accommodate the tentative nature of oil and gas exploration and development. Exploration for oil and gas resources is costly and speculative. Firms must commit costly equipment, purchase a variety of land rights, and use expensive environmental protection technologies to begin exploration for oil or gas. Driven by pressures to be efficient and minimize risk, the nature of the enterprise has evolved over decades into a form in which exploration and development requires long-term planning by many loosely associated, mutually dependent industries. There is no guarantee that the expensive commitment of exploratory resources will result in a discovery of oil or gas, as only a small percentage of exploratory wells drilled in the United States result in a paying discovery of oil or gas.

Consequently, companies or individuals pursuing oil and gas must be able to plan in advance to most efficiently use their exploratory resources. One tactic they rely on to stage commitments of their own resources is the purchase of public land leases. Developers want to know what lands are available for exploration and development and they want to be assured of continued future opportunities. Leasing of public lands is one way to do this.

**FIGURE A-1. LEASING AND APD  
PROCESS FLOW CHART**



**TABLE A-1. LESSEE RIGHTS GRANTED/MANAGEMENT ROLES AND RESPONSIBILITIES FOR SIOUX OIL AND GAS LEASING DECISIONS**

<b>Forest Service</b>	<b>Bureau of Land Management (BLM)</b>	<b>Actions</b>	<b>Rights Conferred</b>
Cooperating agency	Joint-Lead Agency		None
Environmental analysis	Provides input and review through the analysis.	Leasing Analysis	None
Decides which lands can be leased and with what stipulations	Decides which split-estate lands to lease and with what stipulations and if FS lands will be leased after receiving FS authorization.	Availability Decision 36 CFR 228.102(d)(e) Specific Lands Authorized for Lease Decision 36 CFR 228.102(e) Federal Lands Administered by an Agency Outside of the Department of the Interior 43 CFR 3101.7	None
Reviews adequacy of previous decision, applies stipulations to parcel, describes amount of occupancy allowed.	Proposes lease parcel.	Implementation of leasing decisions.	None
	Advertises parcel. Conducts lease sale.	Firm purchases lease.	Exclusive right to drill, extract oil and gas, and build and maintain support facilities subject to lease terms, identified stipulations, and subsequent approval of the APD.
Analyzes SUPO in a site-specific environmental analysis	Performs on-site review and prepares permit conditions with Forest Service and operator.  Geologic and Engineering review and analysis of SUPO and Drilling Plan.	Operator submits APD. FS Review of Proposed Surface Use. Plan of Operations (SUPO).  36 CFR 228.107. 43 CFR 3162.3-1	None
SUPO decision	APD decision	Approval granted	Right to construct based on APD and SUPO.

However, companies purchasing leases do not automatically or immediately drill exploratory wells on these leaseholds. In any given time period, exploration firms must match geologic characteristics with the commitment of technology, capital, available equipment, and market conditions in a decision to risk a drilling operation. As a result, federal land leases are bought, relinquished, expire, and may be bought and sold again many times without ever being drilled upon. This demonstrates a major distinction between oil and gas leasing and other activities that are authorized by the Forest Service. Most other activities are reasonably certain to proceed to development after the permit or contract is issued. Even though there is uncertainty at the time of lease authorization as to whether a well will be drilled, the effects of a typical well in a given location can be estimated reliably on the basis of past experience.

The federal government wants to respond to industry concerns, but must ensure that future activities will neither unduly harm the environment nor unduly interfere with other uses of these public lands. A regulatory framework has been created to meet industry's needs while protecting resources. The regulations include staged permitting of oil and gas exploration and development. Those stages include public disclosure at the following decision points:

- Determination of lands available for leasing
- Leasing specific lands decision
- Application for Permit to Drill
- Analysis of field development (if production is established). Optional decision point for BLM.

This EIS combines the analysis for the first two stages. The staged process is designed to minimize the risk of making a decision that could lead to undisclosed irreversible or irrevocable environmental impacts. Each decision is based on environmental analysis and disclosure of the probable effects in accord with NEPA. Each decision is appealable to the responsible federal agency.

### **Stage One - Lands Available for Leasing, and Stage Two - Leasing Decisions for Specific Lands**

The decision regarding lands available for leasing is based on disclosure and analysis provided in a "Leasing Analysis." No rights are granted by the government to other parties when the Leasing Analysis is completed and the decision described in 36 CFR 228.102(d) is made. This EIS was prepared to satisfy the requirements of NEPA for the Leasing Availability Analysis.

The decision will identify which, if any, lands will be available for leasing. The Forest Plan will be amended, if necessary, at the same time so that the decisions made on the basis of this EIS will be consistent with the Forest Plan.

The Leasing Reform Act also provides for consent by the Forest Service for the issuance of oil and gas leases for specific lands. The Forest Service makes the consent/authorizations decision (36 CFR 22.8102(e)). This EIS was also prepared to satisfy the requirements of NEPA for the Leasing Authorization Analysis.

The decisions to lease are implemented at the time a parcel is processed by:

- Verifying that oil and gas leasing on the specific lands has been adequately addressed in a NEPA document, and is consistent with the Forest Plan
- Ensuring that conditions of surface occupancy identified in section 228.102(c)(1) are properly included as stipulations in resulting leases
- Determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations would prohibit all surface occupancy

### **Stage Three - Application for Permit to Drill (APD)**

Leases issued according to this leasing analysis EIS and its Record of Decision grant development rights but do not authorize the ground-disturbing activities. Subsequent to lease award, activities may be proposed through an APD and SUPO. The Forest Service will analyze the site-specific environmental effects of the proposed operations and issue a decision document. The Forest Service decision to approve or not approve the SUPO is forwarded to the BLM for incorporation into their decision of whether or not to approve the APD. If the APD is not approved, the company may modify the APD and resubmit it.

After the APD is approved and work has started, if modifications or changes in the APD are needed, based on drilling conditions encountered or some other unforeseen circumstance, the operator submits a Sundry Notice to the BLM for review and approval. If the change involves surface disturbance or potential affects on surface resources, a copy is forwarded to the Forest Service for approval or comment. Depending on the extent and nature of the change, additional NEPA analysis may be necessary.

### **Stage Four - Field Development Plan**

If economically recoverable quantities of oil and gas resources are found through exploratory drilling, industry may submit a field development plan after evaluation of the discovery well and available geologic information. The BLM may analyze the predicted environmental effects associated with the proposed field development and identify reasonable and necessary mitigation measures. Specific well sites and access routes may not be known at the time the field development plan is analyzed, in which case additional NEPA analysis tiered to the field development plan may be necessary once specific wells are proposed.