

Attachment 1: Processing and Administering Restoration and Mitigation Leases

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A. Qualified Entities

Restoration or mitigation leases may be granted to individuals, businesses (including Alaska Native Corporations), non-governmental organizations, Tribal governments, conservation districts, or State agencies with management authority, jurisdiction, or oversight of fish and wildlife populations. Mitigation leases for establishment of an in-lieu fee program are limited to non-governmental organizations, State fish and wildlife agencies, and Tribal government organizations (Section 6102.4(a)(2)). Restoration and mitigation leases may not be held by a foreign person as that term is defined in 31 C.F.R. § 802.221.¹

The BLM will also evaluate the technical and financial capacity of lease applicants to implement the proposed restoration or mitigation work. Evaluation of an applicant’s capacity will occur during review of their restoration or mitigation lease development plan. The BLM may conclude that an applicant has demonstrated technical capacity based on:

1. Prior experience implementing similar projects that were successful; or
2. Demonstration of the technical capacity to develop, operate, and maintain the proposed restoration or mitigation project for the required duration of the lease.

If an applicant cannot demonstrate technical capacity through prior experience, consider the below factors when determining whether an applicant has the capability to perform the restoration or mitigation work:

¹ <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-VIII/part-802/subpart-B/section-802.221>

- Who are the key personnel that will be doing the work? What are their qualifications and prior experience managing projects of this scope?
- Will the applicant work with contractors or subcontractors, and if so, what are the qualifications of those entities?
- Is the applicant's lease development plan for the restoration or mitigation work detailed enough to determine whether it is likely to be successful, and is their proposal reasonable?

In addition to technical capacity, the BLM will also evaluate whether lease applicants can demonstrate financial capacity in the form of sufficient financial assurances for the restoration or mitigation work and, if required, funding for multi-year management of the restoration or mitigation site, including whether the proposed funding source is adequate to complete the entirety of the proposed restoration or mitigation work and any applicable on-going monitoring and management of the site.

B. Land Use Plan Conformance and NEPA Compliance

Leases may be issued when doing so conforms with the BLM's approved land use plan. For most land use plans, restoration or mitigation leases may be issued without a specific land use allocation for such leases.

The term "conformance," (43 CFR 1601.0-5) means that:

1. The land use plan identifies restoration and/or mitigation actions as allowable uses in an area and restoration and mitigation leases are not precluded; or
2. The actions proposed in a restoration or mitigation lease are not specifically precluded, and restoration and mitigation leasing is consistent with the goals, objectives, terms, conditions, and decisions of the approved land use plan.

Key considerations in making and documenting conformance determinations include the following:

1. Does the land use plan allow, conditionally allow, or preclude the area from restoration or mitigation leasing?
2. Does the land use plan specifically require a new decision (i.e., a land use plan amendment) to accommodate restoration or mitigation leasing in the area? At this time, it is unlikely that any land use plans have a blanket prohibition that would preclude all types of restoration or mitigation leases.
3. If the land use plan does not specifically mention restoration or mitigation leasing, are the actions proposed in the lease consistent with land use plan goals, objectives, terms, conditions, and decisions? (BLM Land Use Planning Handbook H-1601-1(rel. 1-1693), section VI.F., 03/11/2005)
4. Is the proposed lease area allocated to a specific use to the exclusion of other uses?

Some land use plans may specify that other uses in an area designated for a specific extractive use or energy-production are not permitted. For example, solar energy zones, unitized oil and gas

leases with rights to surface occupancy, or designated energy corridors may not be suitable areas for restoration or mitigation leases. Right of way exclusion areas are generally compatible with restoration and mitigation leases depending on the surface disturbing activities proposed in the lease development plan and the specific language in the land use plan, and authorized officers should consider leases proposed in these areas on a case-by-case basis and in consultation with subject matter experts.

Issuance of a restoration or mitigation lease is a federal action that must comply with the National Environmental Policy Act (NEPA). The BLM or its contractor must prepare an appropriate NEPA analysis document or document that the decision is categorically excluded from NEPA review. When preparing a NEPA analysis for a project proposal that includes a mitigation lease for compensatory mitigation, the BLM must consider the environmental effects of both the development project and the mitigation lease in a single NEPA process that would support all relevant agency decisions.

C. Review of and Decision on a Lease Application

The BLM may only issue restoration leases to passively² or actively assist the recovery of an ecosystem that has been degraded, damaged, or destroyed to a more natural, resilient ecological state; it may only issue mitigation leases to offset impacts resulting from other land use authorizations (43 CFR 6102.4(a)(1)). The BLM authorized officer has discretion to approve or deny a proposed restoration or mitigation lease, and any restoration or mitigation lease must conform to the BLM's approved land use plan. Applicants may apply for a restoration or mitigation lease on any BLM-managed lands; however, restoration and mitigation leasing is not an appropriate use in all areas. Leases shall not be issued where an existing, authorized, and incompatible use is occurring. Receipt of a lease application package shall initiate the review and decision process (see Attachment 2, Lease Application Worksheet and Instructions to Applicants). The BLM will serialize the application and create a casefile in compliance with MS-1274 (rel.1-1339) once an application is received and shall notify the applicant once the BLM considers the application to be complete.

Restoration leases must be consistent with the restoration principles outlined in 43 CFR 6102.3(d):

- Ensure that restoration actions address causes of degradation, focus on process-based solutions, and where possible maintain attributes and resource values associated with the potential or capability of the ecosystem;
- Ensure that actions are designed, implemented, and monitored at appropriate spatial and temporal scales using suitable treatments and tools to achieve desired outcomes;
- Coordinate and implement actions across BLM programs, with partners, and in consideration of existing uses to develop holistic restoration actions;
- Ensure incorporation of locally appropriate best management practices, high-quality information, and adaptive management that supports restoration;

² An example of a passive restoration project could be fencing an area that experienced wildfire to limit disturbance and allow the native seed bank to regrow.

- Identify opportunities to implement nature-based or low-tech³ restoration activities and use native seeds; and
- Consult with Tribes to identify opportunities for co-stewardship or collaboration (refer to 43 CFR § 6102.5(b)(4)-(6)).

Mitigation leases must be consistent with the mitigation principles outlined in 43 CFR 6102.5.1(c)(5):

- The proposed mitigation must be commensurate with the adverse impacts it is offsetting;
- The proposed mitigation must last for the duration of the impacts it is offsetting;
- The proposed mitigation must be additional,⁴ which means that the benefit of the proposed mitigation is demonstrably new and would not occur without the proposed mitigation action occurring; and
- The proposed mitigation must be timely, which means the outcome of the mitigation is achieved on roughly the same timeline as the adverse impacts it is offsetting.

A proposed mitigation lease must offset impacts to resources resulting from a land use authorization (43 CFR 6102.4(a)(1)(ii)). Any questions as to whether a specific proposal would “offset impacts resulting from other land use authorizations” may be directed to the Directorate of Resources and Planning (HQ200).

An authorization for restoration activities that are accomplished for the purpose of offsetting impacts of development projects or selling mitigation credits must be issued as a mitigation lease and is not eligible for a rent or fee waiver. Mitigation leases shall be required for proposals to establish a mitigation bank, conservation bank, or in-lieu fee program (43 CFR 6102.5.1(f)).

Mitigation leases may be required for other compensatory mitigation projects at the discretion of the authorized officer (43 CFR 6102.5.1(f)), and authorized officers should consider requiring a mitigation lease for compensatory mitigation projects that are large, complex, or of long duration. The size and complexity of a compensatory mitigation project should be determined in the context of the adverse impacts to a resource for which the mitigation project is compensating. Authorized officers should consider requiring a lease for compensatory mitigation projects that require monitoring and management for 5 years or more after completion of the mitigation actions. If the authorized officer will want to monitor performance of the mitigation actions with a monitoring plan and annual activity reports, or if financial assurances are required because the consequences of unsuccessful performance would be costly to correct, the authorized officer should consider requiring a lease. State mitigation leads and HQ210 can provide technical

³ A low-tech restoration project is one that uses simple, low unit-cost, structural additions or other actions to mimic functions and initiate specific processes. An example from stream restoration is the use of beaver dam analogs (BDAs) or post-assisted log structures (PALs) to mimic the activities of beavers and impact the transport of sediment and water in efforts to reconnect floodplains, increase the structural complexity of streams, and promote the growth of mesic vegetation.

⁴ Refer to BLM Mitigation Manual (MS-1794) and BLM Mitigation Handbook (H-1794-1) for more guidance on determining additionality, durability, and whether a mitigation action is commensurate with the impact it is offsetting.

guidance to authorized officers in determining which compensatory mitigation projects should require a mitigation lease.

Certain factors make approval of a restoration or mitigation lease more likely. These factors include those set out in 43 CFR 6102.4(d):

- The proposed lease objectives are consistent with the restoration principles in section 6102.3(d) or the mitigation principles in section 6102.5.1(c);
- The desired future conditions in the lease area are consistent with restoration or mitigation objectives for the area (restoration or mitigation objectives can be identified in resource management plans as well as other documents, such as a mitigation strategy or a restoration plan);
- Collaboration with existing permittees, leaseholders, and adjacent land managers or owners indicating support for the proposed lease activities;
- Outreach to or support from local communities; and
- The ability of the proposed lease activities to promote environmental justice objectives.

In addition to the factors listed in section 6102.4(d), authorized officers should consider siting restoration and mitigation leases where existing management helps ensure they will be most effective, such as in existing or proposed Areas of Critical Environmental Concern or National Landscape Conservation System units. Authorized officers should consider avoiding issuance of restoration and mitigation leases in areas where future development is likely that could negate the restoration or mitigation work performed by the lessee, such as areas of high mineral potential or areas allocated in a land use plan for extractive use (refer to Section B, *Land Use Plan Conformance and NEPA Compliance* and Section E, *Location and Size of Restoration and Mitigation Leases*).

In many cases, it will make sense to approach the review and authorization of restoration and mitigation leases as the BLM would the review and approval of leases issued under 43 CFR part 2920, and authorized officers should rely on those existing processes informed by existing guidance as appropriate; however, sections 6102.4, 6102.4.1, and 6102.5.1 include features not present in part 2920, which may recommend departing from that approach in some cases. State Offices are encouraged to begin coordinating early with the Directorate of Resources and Planning (HQ200) and the Division of Lands, Realty, and Cadastral Survey (HQ350) upon receipt of a lease application. Approval authority for restoration and mitigation leases for the first year of the program is with the State Director, and written concurrence from the Assistant Director of Resources and Planning (HQ200) is required. HQ200 will coordinate with other directorates as necessary and appropriate. After the first year of the program, approval authority shall follow Rel 1-364, *Delegation of Authority Manual*. Note that the applicant and any other affected party will have the usual rights to administrative appeal and, ultimately, judicial review that attach to a decision to grant or deny a proposed land use authorization.

D. Stakeholder Outreach and Consideration of Environmental Justice

When feasible, the authorized officer will notify existing permittees, lease holders, and other interested parties once they receive a complete lease application and should engage with

stakeholders in accordance with existing BLM practice. The BLM may also assist the lease applicant with stakeholder outreach and engagement, as feasible. The BLM's most up-to-date resources for conducting or assessing effective community outreach are available on the BLM Collaborative Action and Dispute Resolution SharePoint site. To evaluate community support as required by 43 CFR 6102.4(d), authorized officers should consider:

1. The presence of community support. Community support may be documented in one or more of the following ways: letters of support from governments or their representatives, individuals, businesses, or other organizations; editorials or articles in local news media or government or organizational websites; verbal support from elected officials; verbal public comment at public meetings.
2. Documentation of planned support from the community, whether monetary or in-kind support.
3. Formalized relationships between applicants and the community. Is the application from an individual or entity based in the local area? Do they have project collaborators from the local area?
4. The presence of opposition to the project. Is there opposition? If so, does that opposition come from the local area? What is the content and form of the opposition?
5. If environmental justice (EJ) populations are present or affected by the project, consider opposition or support from those populations and their representatives.

Respecting Tribal sovereignty and EJ are both whole-of-government responsibilities. Definitions and information on how to identify EJ populations and impacts or benefits to those populations is provided in the most recent BLM guidance. This can be found on the BLM Socioeconomics SharePoint site along with information on best practices. To evaluate project effect on EJ populations, authorized officials must consider both Tribes and EJ organizations:

1. Are applicants Tribes or EJ organizations; are Tribes or EJ organizations project collaborators; are Tribes or EJ organizations formally in support of the project?
2. Is there is an EJ population that may be affected? Is the proposed lease near EJ populations or of particular interest to Tribes or EJ populations? Would Tribes or EJ populations travel to the area? For example, are difficult to find resources available in the area that Tribes or EJ populations travel to for subsistence or traditional purposes?
3. Is there a tangible benefit or impact to that population? Will the project tangibly alter access to lands or resources, and if so, will it increase or decrease:
 - a. Access to lands by members of the Tribes or EJ populations in question,
 - b. Quantity or quality of or access to resources used by the Tribes or EJ populations in question,
4. Will these changes occur in an area where access to public lands or to specific resources on those lands is limited?

All restoration and mitigation lease proposals should be designed to avoid harming underserved communities, and authorized officers may consider modifications of the lease proposal to achieve objectives tied to Tribal sovereignty and EJ.

E. Location and Size of Restoration and Mitigation Leases

A qualified entity may apply for a restoration or mitigation lease on almost all BLM-managed lands, and the authorized officer will evaluate individual proposals to determine whether a lease is appropriate in a given area. Leases may not be issued where an existing, authorized, and incompatible use is occurring. Additionally, a restoration or mitigation lease may not preclude access to or across leased areas for casual use,⁵ traditional or cultural use, federal subsistence use, or other use taken pursuant to a land use authorization if the authorized officer determines such other use is compatible with the approved restoration or mitigation lease (43 CFR 6102.4(g)). Proposed lease areas may cross field office or district office boundaries, and coordination amongst field offices should follow existing processes for other leases issued under title III of FLPMA and 43 CFR part 2920.

Authorized officers should give greater weight to restoration and mitigation leases proposed within areas identified as restoration priority landscapes or areas identified in a mitigation strategy; however, other locations may also be suitable. Considerations in determining whether an area is appropriate for a restoration or mitigation lease include, but are not limited to:

1. Is the lease proposed in an area for which site-specific designations, statutes, regulations, Executive Orders or Secretarial Orders provide management requirements? Examples include National Conservation Lands, Oregon and California Railroad Revested lands, and others. If so, the Authorized Officer must ensure that the lease would be consistent with such law or guidance.
2. Has the area been identified as a priority restoration landscape (refer to IM2024-035, Restoration Prioritization and Planning)?
3. If the proposed lease area is not in a priority restoration landscape:
 - a. Does an analysis of high-quality information indicate that this area is degraded, damaged, or destroyed?
 - b. Is the applicant's proposed restoration work in this area likely to be successful in restoring the area to a more natural, resilient ecological state?
 - c. Is it likely that the proposed restoration work will be durable over time in light of existing and potential future uses and other stressors?
 - d. Does the lease proposal address impacts to environmental justice populations?
4. For mitigation leases:
 - a. Is the lease proposed in an area identified in a mitigation strategy?
 - b. Will the lease proposal minimize or offset impacts of other land uses?
 - c. Are the resources in the geographic area of the proposed mitigation lease commensurate with the impacts it is offsetting?

Some examples of determining whether an area is appropriate for a restoration or mitigation lease are below:

⁵ As defined in 43 CFR 6101.4(a), "casual use" means any short-term, noncommercial activity that does not cause appreciable damage or disturbance to the public lands or their resources or improvements and that is not prohibited by closure of the lands to any such activity. As used in this IM, casual use includes, but is not limited to, activities such as research use and non-commercial recreation use.

- A restoration lease is proposed to passively restore rangeland by fencing an area that experienced wildfire to limit disturbance and allow the native seed bank to regrow. The applicant is proposing a seven-year lease term. The proposed lease area is not withdrawn from operation of the mining laws and there are no existing or pending surface use authorizations under 43 CFR subparts 3715, 3802, or 3809 for occupancy, exploration or mining operations within the proposed lease area. This area could be appropriate for a restoration lease, particularly if the potential for mineral development in the area is low.
- The same lease application in the above example (passive restoration, 7-year term, in an area that is not withdrawn from operation of the mining laws), and a potential mine operator has notified the BLM that it is considering proposing a plan of operations under 43 CFR subpart 3809 on lands adjacent to the proposed lease area. Given that restoration leases will not withdraw the leased lands or adjacent lands, in addition to the considerations described above, the authorized officer should carefully consider whether the restoration work proposed in the restoration lease could be successful if the BLM approves a plan of operations on the adjacent lands. The authorized officer could take into account, for example, the likelihood that the mining would be approved as described by the potential mine operator; where the mining facilities might be constructed; how much of the proposed lease area might be affected by the development of the mine; and whether adjustments to any future proposed plan of operations might be possible, both practically and in compliance with applicable law, to avoid or minimize impacts to the proposed restoration lease. Depending on the authorized officer's review of these considerations, this may or may not be an appropriate area for a restoration lease.
- An oil and gas unit operator proposes a mitigation lease within its oil and gas unit to meet compensatory mitigation requirements resulting from the development of the unit. Although the mitigation lease is proposed in an active oil and gas unit, the mitigation lease is not inconsistent with the development of the oil and gas resource, and this could be an appropriate place for a mitigation lease.

The size of a restoration or mitigation lease shall be tied directly to the goals and objectives outlined in the proposed lease development plan, and a justification for the size of the leased area is a required component of the lease development plan submitted by the applicant (refer to Attachment 2, *Lease Application Package*). The authorized officer should consider the following factors in determining size of the lease area in light of the goals and objectives of the lease:

- For restoration leases, the authorized officer should consider the scale of the degraded landscape that the lessee is proposing to restore. If degradation and the disrupted ecosystem processes are site-specific in scale (e.g., small-scale invasive species infestation, stream channel modification, fencing or other connectivity barrier), then corresponding restoration actions should be localized and targeted to those sites. In contrast, if degradation and disrupted processes are at larger scales (e.g., watershed), then larger-scale actions or an aggregation of many site-specific restoration actions may be required.
- For mitigation leases proposing a mitigation bank or in-lieu fee program, the size of the leased area(s) should be tied to the anticipated market demand for mitigation credits over a period of 10 years or less, which may be documented by a market analysis of the

anticipated demand for mitigation credits. States requiring assistance to review a draft market analysis should reach out to the Directorate of Resources and Planning (HQ200).

- For mitigation leases tied to a specific development proposal, the size of the lease should be tied directly to the size of the impacts the lease would offset.

F. Compatibility Determination

Compatibility of Proposed Leases in Areas with Existing Authorized Land Uses

The authorized officer must determine if a proposed restoration or mitigation lease is compatible with previously authorized uses, valid existing rights, casual use, and any other applicable law. If a proposed lease is determined to be incompatible with an existing authorized use or a valid existing right, the authorized officer will not approve the lease.⁶ Restoration and mitigation leases may not restrict statutorily authorized uses under the Alaska National Interest Lands Conservation Act or American Indigenous Religious Freedom Act under any circumstances. If a proposed lease is determined to be incompatible with existing or reasonably foreseeable casual use, the lease may be approved or denied, depending on the nature of the incompatibility and the potential impact to the casual use. Collaboration with existing authorized users and relevant land managers is key during the planning of restoration or mitigations leases and essential during implementation.

Generally, a restoration or mitigation lease should not preclude access to or across leased areas for casual use. When making a compatibility determination for a proposed lease, the authorized officer should consider the following questions.

Would implementing the lease's development plan cause an impact on the operation of an existing authorized use?

- If such an impact exists, what is the nature and magnitude of the impact?
- Can the impact be mitigated by a change in the restoration or mitigation lease's proposed development plan?
- Is the existing authorized use modifiable (either under the terms of an authorized use, or via voluntary modification) to avoid the impact?

The BLM may consider any outreach the applicant has conducted to date with existing permittees, lease holders, adjacent land managers or owners, and other interested parties (43 CFR 6102.4(c)(2)(viii)). The description of outreach should detail any discussions with existing permittees about the compatibility of the proposed lease with existing permitted activity and other uses, including casual use.

In some cases, an applicant may have engaged in preliminary discussions with an existing permittee (e.g., a grazing permittee) to modify the permittee's use of the proposed lease area in order to ensure compatibility and meet the goals and objectives of the restoration or mitigation lease application. Consensus between the applicant and existing permittees and users (including

⁶ Among other potential instances of incompatibility, a restoration or mitigation lease may not be approved in an area subject to a mining claim located before July 23, 1955, if that claim includes exclusive surface rights (30 U.S.C. § 612).

casual use) about the compatibility of the proposed lease activities with existing uses will make the lease application more likely to be approved. If the applicant has not conducted such outreach prior to submitting a lease proposal, the authorized officer may require them to do so before accepting the application for processing. The authorized officer shall notify existing permittees, lease holders, and other interested parties when it makes a compatibility determination and shall engage with stakeholders in accordance with existing BLM guidance. The authorized officer may consider modifications to the proposed lease activities to allow other uses if such modifications will still meet the goals and objectives of the proposed lease.

Will casual use negatively impact the implementation of the lease's proposed development plan?

- If such an impact is possible, what is the nature and magnitude of the impact?
- What is the relative importance of the casual use of the area?
- Can the impact be mitigated by a change in the lease's proposed development plan?
- Could the impact be mitigated by a restriction on casual use? If a restriction is necessary, what is the minimum scope necessary for the restriction?

Restoration and mitigation leases will generally be compatible with casual use, and restrictions of casual use will only be necessary in rare circumstances. If a restriction of casual use is necessary, it should be for the smallest area and shortest duration necessary to achieve the goals and objectives of the lease. Restrictions on casual use may be necessary to protect persons, property, and public lands and resources, and temporary restrictions of use within a proposed lease area must comply with the regulations at 43 CFR 8360. Special consideration should be given to ensure access is not restricted for extended periods of time if such access provides critical connectivity to communities and opportunities provided on public lands. Existing access that accommodates accessibility under section 504 of the Rehabilitation Act shall not be restricted by a restoration or mitigation lease (43 CFR 6102.4(h)).

Some examples of compatibility determinations follow:

1. A restoration lease is proposed to perform riparian restoration within a permitted grazing allotment. The restoration lease would fence off a segment of the riparian area traditionally used as a drinking source for livestock. The fencing would be in place for three years, consistent with the estimated amount of time for the treatment effectiveness and durability. There is still a portion of the riparian area available, and the restoration lessee proposes to provide supplemental water sources away from the riparian area in compliance with BLM policy and state water law. In this example, a restoration lease may be compatible with the existing authorized grazing permit because access to water is maintained, and fencing is only in place long enough for treatment success.
2. An operator proposes a mitigation lease in a sagebrush area with conifer encroachment. The area is a popular recreation area with several OHV trails and fall hunting access, but it is not a designated recreation management area in the current land use plan. As part of the mitigation lease, a term of the lease states that the operator will complete conifer removal treatments prior to the start of hunting season. Due to the treatment type proposed in the mitigation lease, there is no need for

changes to existing authorized routes. Recreation access would not be impacted, and seasons of use important to user groups would be included as terms and conditions on the lease. In this example, a mitigation lease may be compatible with the existing recreational use.

3. A restoration lease is proposed to re-vegetate a riparian area within an existing right of way for a power transmission line. The proposed lease area includes six stream miles, and the existing right of way covers ½ stream mile within the proposed lease area. The transmission line operator's right of way authorization requires them to clear vegetation a certain distance from the powerlines to prevent wildfires. If the restoration lease is authorized, the lessee would not be able to re-vegetate the right of way. In considering the goals and objectives of the restoration lease, the authorized officer determines that it is possible for the lessee to achieve them even if the lease development plan is modified to exclude re-vegetation of the existing right of way. The proposed restoration lease may be compatible with the existing right-of-way.
4. A mitigation lease is proposed for a mitigation bank to generate credits to offset impacts of oil and gas development projects. The proposed lease area overlies part of a Recreation and Public Purposes (R&PP) Act lease for an existing sports complex, and the mitigation lease's development plan proposes generating mitigation credits from an area that the sports complex operator will use for future recreational facilities. In order to generate mitigation credits commensurate with the impacts of the oil and gas developments it is offsetting, the mitigation bank must use the public lands covered by the R&PP lease. This proposal may not be compatible with the existing authorized use because it is not possible to achieve the goals and objectives of the lease if the lease development plan is modified. This lease proposal should be denied.

Compatibility of Proposed Land Uses in Areas with Approved Restoration or Mitigation Leases

The authorized officer must determine if a proposed use in an area with an approved restoration or mitigation lease is compatible with that lease. Subject to valid existing rights and applicable law, once a restoration or mitigation lease has been issued, the BLM shall not issue new authorizations to use the leased lands if the use would be incompatible with the authorized restoration or mitigation use (43 CFR 6102.4(a)(4)). As part of their compatibility determination, the authorized officer should consider the following factors:

- Will the proposed land use negatively impact the restoration or mitigation lease holder's ability to achieve the goals and objectives of the lease?
- Can the proposed land use be modified to make it compatible with the existing restoration or mitigation lease?
- Are there examples from other locations where the proposed land use has been shown, based on high quality information, to be compatible, with the types of actions in the approved restoration or mitigation lease.

The restoration or mitigation lease holder may have proposed restrictions on future land uses in the lease area in their lease development plan; however, the BLM authorized officer will make the determination as to whether a proposed use is compatible with an approved lease at the time it is proposed. When considering whether a proposed use is compatible with an existing

restoration or mitigation lease, the authorized officer may rely on a lease conflict analysis to show that the proposed use is compatible with the existing restoration or mitigation lease.

If the proposed land use is not compatible with the approved restoration or mitigation lease, the authorized officer should seek to identify collaborative solutions between the proposed land use applicant, the restoration or mitigation lease holder, and the BLM, to determine if the proposed land use could be modified to make it compatible with the approved restoration or mitigation lease.

Compatibility determinations should be documented in the decision record and case file associated with the restoration or mitigation lease (when determining compatibility of a proposed lease with existing uses) or in the decision record and case file for a proposed land use (when determining compatibility of a proposed use with an existing restoration/mitigation lease).

G. Term Length, Renewals, and Amendments

The term of a restoration lease is tied to the goals and objectives of the restoration actions. A restoration lease may be issued for a maximum term of 10 years. Leases may be reviewed by the authorized officer at any time and shall be reviewed no later than at mid-term of the lease for consistency with the lease provisions (43 CFR 6102.4(a)(3)(i)). Mitigation leases shall be issued for a term commensurate with the impacts for which the mitigation project will provide compensatory mitigation (43 CR 6102.4(a)(3)(ii)). For example, if an oil and gas development is expected to have a 30-year project life with impacts to sage grouse habitat for the life of the project, the compensatory mitigation lease should also have a lease term of 30 years. The term of a lease will commence on the date the lease is signed by the authorized officer.

Applicants for a mitigation lease for an in-lieu fee program or a mitigation or conservation bank or other mitigation projects expected to provide compensatory mitigation in advance for multiple other land use authorizations may provide a market analysis demonstrating the need for the type and amount of compensatory mitigation the applicant plans to undertake and the expected duration of the compensation needed to offset the anticipated future land use authorizations it would serve. The term length for such a lease will be based on the anticipated duration of the compensation needed.

Authorized officers may renew a restoration or mitigation lease if necessary to meet the goals and objectives for which the lease was first issued, provided that the lease holder remains in compliance with the terms and conditions of the original lease. Renewing a lease requires the lessee to submit a new lease application, and such renewal is a discretionary action on the part of the authorized officer and can be for a period no longer than the original term of the lease (43 CFR 6102.4(a)(3)(iii)). A lease may be renewed more than once if necessary to achieve the original goals and objectives of the lease.

A restoration or mitigation lease may only be amended with the written approval of the authorized officer and consistent with other relevant sections of this policy.

H. Rents, Fees and Waivers

Restoration and mitigation leases will be subject to rent and administrative cost recovery fees for processing and compliance monitoring as governed by the provisions of 43 CFR 2920.6 and 2920.8 (Section 6102.4(j)). The BLM plans to establish a rent schedule for restoration and mitigation leases. Unless or until a rent schedule is established, rent for restoration and mitigation leases will be determined on a case-by-case basis and assessed based on the fair market value of the actions authorized in the lease. Restoration and mitigation leases do not convey exclusive rights to use the public lands to the lease holder (43 CFR 6102.4(f)), and the assessed rent should reflect this constraint. Rent will be determined using a process similar to that used for other land use authorizations that do not provide exclusive use of the public lands (e.g., recreation special use permits and commercial filming or photography) and may consider factors like the acreage of the leased area, restrictions to other uses on the public lands under lease, and the amount of revenue that a lessee will generate using the lease. For technical guidance on determining the appropriate amount of rent for a proposed lease, contact HQ350.

The BLM should collect cost recovery in accordance with 43 CFR 2920.8 (and to the extent provided in that regulation, 43 CFR 2804.14 and 2805.16), including current fee schedules used for other types of applications (43 CFR 6102.4(j)).

Cost recovery and rent for restoration leases can be reduced or waived if the restoration lease is not used to generate revenue or satisfy the requirements of a mitigation program, and the restoration lease will enhance ecological or cultural resources or provide a benefit to the general public (43 CFR 6102.4(j)). Authorized officers should generally consider the following criteria that may support a finding that a proposed restoration lease would enhance ecological or cultural resources or provide a benefit to the general public:

1. The magnitude of any benefit to the public from the project;
2. Whether the lease area is inside BLM priority restoration landscapes and/or will contribute to the BLM's restoration strategy or plan;
3. The cost to the BLM to accomplish the proposed restoration work itself, and
4. The administrative cost to the BLM to accomplish similar work through contracts or grants.

I. Monitoring Plan and Annual Lease Activity Reports

43 CFR 6102.4(e) requires applicants to provide a monitoring plan. For mitigation leases that have long-term management plans, the authorized officer should encourage applicants to include a proposed monitoring plan as part of the long-term management plan, and to provide monitoring plans for leases without a long-term management plan, for BLM review as part of the lease application package. Monitoring plans should address both implementation monitoring and effectiveness monitoring. Implementation monitoring assesses whether activities were carried out as designed and typically focuses on treatment types and areas. Effectiveness monitoring evaluates progress towards meeting restoration objectives and typically focuses on ecological resource condition and trend. A monitoring plan may be used to (1) verify whether required and desired outcomes of the mitigation or restoration efforts are being achieved, and (2) inform adaptive management adjustments.

Authorized officers should review monitoring plans to ensure that they appropriately include or address:

1. mitigation or restoration goals and planned activities including adaptive management;
2. specific, measurable monitoring objectives or performance criteria for evaluating whether each goal is achieved and making management adjustments;
3. monitoring indicators and methodologies;
4. reporting areas;⁷
5. a description of the process for selecting monitoring locations including planned timeframes;
6. documentation of data quality assurance and quality control procedures; and
7. any applicable monitoring requirements for adaptive management for mitigation leases (see section 6102.5.1 and the DOI Adaptive Management Guidance).

The authorized officer may consider establishing and including benchmarks for minimum success criteria in the monitoring plan. These benchmarks should be tied to the lease goals and objectives and coordinated with the applicant. The monitoring plan should employ BLM nationally standardized methodologies and indicators where available and relevant to the mitigation or restoration goals (e.g., [BLM Assessment, Inventory and Monitoring](#)). Other peer-reviewed protocols, qualitative assessment approaches, and remote sensing information are additional sources of monitoring information. All monitoring data must meet standards for objectivity, utility, and integrity set forth in the DOI and BLM Information Quality Guidelines. The BLM AIM program provides a [workflow and useful examples](#) for developing a monitoring plan. The authorized officer may require information on the qualifications of the key personnel conducting the monitoring work if necessary to ensure the success of the monitoring plan.

43 CFR 6102.4(e)(1) requires applicants to complete an annual Lease Activity Report. All relevant monitoring data should be provided with the Lease Activity Report and must conform with the data standards outlined in the monitoring plan (Section 6102.4(e)(1)(iv)). Authorized officers should review Lease Activity Reports to ensure that they appropriately include or address:

1. a summary of the restoration or mitigation activities taken as of the time of the report;
2. an assessment of achievement of restoration or mitigation goals based on a synthesis of monitoring data collected;
3. any barriers to meeting the stated goals and objectives of the lease;
4. proposed steps to resolve any identified barriers;
5. other information required by the authorized officer to evaluate a lessee's progress towards achieving the goals and objectives of the lease; and
6. photographs showing baseline condition of the lease area and post-treatment photos.

⁷ A reporting area is the geographic area that indicator estimates are to be calculated and reported for. It could be a single location, a treatment area, or the entire lease area.

J. Termination and Suspension of Leases

Processes for termination and suspension of leases are outlined in 43 CFR 6102.4.1. As provided in that section, leases may be terminated by mutual agreement of the lessee and the BLM (43 CFR 6102.4.1(b)). The BLM may, at its discretion, terminate or suspend a lease for improper issuance of the lease, failure of the holder to use the lease for its intended purpose, non-compliance with applicable law, regulations, or the terms and conditions of the lease, or impossibility of fulfilling the goals and objectives of the lease (43 CFR 6102.4.1(c)). A standard provision to include in all restoration and mitigation leases should be termination upon achievement of the goals and objectives of the original lease (43 CFR 6102.4.1(a)).

The authorized officer shall monitor the performance of the lease holder through the monitoring plan and annual Lease Activity Reports (see 43 CFR 6102.4(e); Part I, *Monitoring Plan and Annual Lease Activity Reports*). During the mid-term evaluation of the lease and any other similar review, the authorized officer shall consider whether it is possible for the leaseholder to achieve the goals and objectives of the lease.