

Solar Regional Mitigation Strategy Frequently Asked Questions (FAQs)

1. What is a Regional Mitigation Strategy?

A Regional Mitigation Strategy is a recommendation for mitigating the unavoidable adverse impacts associated with developing and operating utility-scale solar power generation facilities on public lands within solar energy zones (SEZs) identified through the Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Solar PEIS).

2. What is regional mitigation?

Regional mitigation is covered under current BLM policy and consists of compensating for unavoidable resource impacts by replacing or providing substitute resources or habitat at a different location than the project area. Regional mitigation is supplemental to on-site mitigation and is used to enhance the BLM's ability to fulfill its mission of providing multiple uses on the public lands, while ensuring its resource management objectives are met.

A Regional Mitigation Strategy for a SEZ recommends off-site mitigation actions and locations based on landscape-level or other ecological, recreation, or socioeconomic objectives. Any off-site mitigation and compensation is triggered only for unavoidable impacts that could not be measurably avoided or minimized to an acceptably low significance level.

3. Why is the BLM looking to change the way mitigation is handled for solar development?

Comments on the Solar PEIS revealed discontent with the current process from both the development and conservation perspectives and requested that opportunities be sought for a new way of addressing mitigation. Some commenters pointed out that the current process of having solar project developers propose specific off-site mitigation actions for BLM consideration is inefficient and frustrating. Other commenters contended that the current process of selecting off-site mitigation actions and where these actions will occur lacks a larger context which, if considered, could focus mitigation actions on activities and in places that would magnify the positive outcomes of the mitigation actions.

4. Under what authority is the BLM authorized to carry out regional mitigation?

The BLM's authority to address the mitigation of impacts on public lands associated with a use authorization issued by the BLM derives from the Federal Land Policy and Management Act (FLPMA). The congressional declaration of policy for FLPMA states

that "the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values...." FLPMA §102(a)(8). In addition, the use, occupancy and development of public lands must be regulated by the Secretary of the Interior, subject to other applicable law, through easements, permits, leases, licenses, or other instruments. FLPMA §302(b), 43 U.S.C. § 1732(b).

The BLM initially issued an Interim Off-site Mitigation policy, WO-IM-2005-069 on February 1, 2005, and a revised policy, WO-IM-2008-204, on September 30, 2008. The initial scope of the 2005 policy was limited to oil, gas, geothermal, and energy rights-of-way programs while excluding all other resource programs. The BLM issued the 2008 policy to broaden the scope of off-site mitigation by including other BLM program areas and further defining appropriate use of the policy.

5. What are the goals of Solar Regional Mitigation?

The goals of Solar Regional Mitigation are to:

- Reduce uncertainty about mitigation requirements and streamline the process for mitigating unavoidable adverse impacts.
- Apply science-based or other objective criteria to identify unavoidable impacts that warrant mitigation and effective mitigation actions.
- Establish on-site avoidance and minimization requirements that support build-out plans for the SEZ.
- Obtain concurrence from the various regulatory agencies regarding the need for mitigation and the appropriate off-site mitigation strategy.
- Potentially reduce the costs, complexity, and timeline associated with off-site mitigation activities and obtaining project approvals.
- Create an opportunity to pool funds collected from multiple developers and apply the pooled funds to mitigation projects that will produce the most significant results for the dollar.
- Support the BLM's implementation of an adaptive management approach to solar energy development.
- Achieve a greater degree of stakeholder collaboration throughout the mitigation planning process.

6. What will a Solar Regional Mitigation Strategy contain?

A Solar Regional Mitigation Strategy will be developed for each of the 17 SEZs established through the Solar PEIS. The Solar PEIS describes the affected area and the potential impacts associated with the development of each SEZ for utility-scale solar power generation. The Solar PEIS also establishes required design features that are meant to minimize impacts.

The Solar Regional Mitigation Strategy for each SEZ will incorporate by reference the description of the affected area, the description of the impacts, and the design features found in the Solar PEIS. The Solar Regional Mitigation Strategy will contain sections addressing the following questions:

1. What are the unavoidable impacts associated with the development of the SEZ?
2. Which unavoidable impacts warrant off-site mitigation? (Which impacts represent significant threats in the region? Are there ways to avoid and/or minimize these unavoidable impacts?)
3. What are the mitigation objectives?
4. What mitigation projects/actions will be undertaken to off-set the selected impacts, and where will they occur?

5. How will the mitigation actions be implemented? (e.g., What are expected costs of mitigation actions and how will these costs be equitably allocated to streamline and incentivize SEZ solar right-of-way permitting?)
6. How will the outcomes of the mitigation actions be monitored, and what will happen if they are not achieving the desired results?

7. Will the regional mitigation planning approach eliminate the need to develop a mitigation plan specific to each proposed project in a SEZ?

No. Since each proposed development will be unique in terms of the project design and the associated impacts, each will require a site-specific mitigation plan. However, it is expected that these site-specific plans will be consistent with and make use of (to the extent practicable) the regional mitigation strategy for the SEZ. This will result in a reduced level of effort as compared to the BLM's current process for individual projects.

8. Under what authority is the BLM authorized to collect fees to fund off-site mitigation?

The BLM may accept an offer of monies from individual applicants for the purpose of pooling funds towards completion of larger off-site mitigation efforts. This is especially efficient for mitigating the impact of multiple actions when it is not feasible to require individual applicants to manage their own off-site mitigation efforts. Such monies are only to be used for on-the-ground projects, purchases of land and conservation easements, and associated monitoring and administrative costs. In order to qualify as off-site mitigation, the funds collected must be identified for specific types of mitigation projects, and either the BLM or other parties should be identified as responsible for implementation of the project(s), depending on its location, whether on or off BLM lands. Before accepting money intended for expenditure off of the BLM-managed lands, the authorized officer must confirm that he/she has sufficient authority to expend funds in the proposed manner, such as grant or cooperative agreement authority. Often this authority may be found in FLPMA section 307(c), 43 U.S.C. § 1737(c), or in the Wyden Amendment, 16 U.S.C. § 1011. The BLM, however, will not waive or forgo on-site mitigation of impacts through payment of monies. The NEPA analysis and decision document must be specific regarding what types of projects will be funded and how the projects will contribute to the BLM's long-term resource management goals.

9. How will the BLM decide how and where to implement mitigation actions, including the allocation of mitigation fees?

One of the most important parts of Regional Mitigation is a strategy for how and where the unavoidable impacts of solar development can be most efficiently and effectively mitigated off-site.

In developing such a strategy, the BLM will take into consideration:

- The condition and trend of appurtenant ecological, social, and/or economic values and systems, and where these systems are most at risk;

- The relative risks posed by the development of the SEZ on these systems;
- The BLM's resource management goals, as articulated in the applicable Resource Management Plan(s)
- The degree to which lands and resources, if protected and/or restored, would most efficiently and effectively mitigate the unavoidable adverse impacts of solar development in the SEZ.

In order to implement this strategy, the BLM, in collaboration with stakeholders, will develop and implement a process for soliciting, screening, selecting, and monitoring mitigation projects designed to implement the SRMP. This process is similar to the way mitigation funds are allocated under a habitat management plan.

10. Will the payment of a mitigation fee relieve applicants of the need to carry-out on-site mitigation activities?

No. BLM Policy states clearly that fees may not be used for on-site mitigation and that every effort should be made to mitigation impacts on-site before any off-site mitigation is considered.

11. How does a Regional Mitigation Strategy relate to BLM Resource Management Planning?

BLM policy for off-site mitigation requires that, for an unavoidable impact to 'qualify' for off-site mitigation, it must pose a threat to BLM resource management goals and objectives articulated in a Resource Management Plan (RMP). In identifying unavoidable impacts associated with SEZs the BLM will review existing RMPs. The BLM will also use existing RMPs to establish mitigation objectives and potential mitigation opportunities.

12. How does Regional Mitigation relate to land-use plans developed and managed by other agencies in the region?

In identifying unavoidable impacts associated with SEZs the BLM will review land-use and other plans developed and managed by other agencies in the region (e.g. county-level documents). The BLM will also use these existing plans to aid in establishing mitigation objectives and identifying potential mitigation opportunities.

13. How will the requirements of the National Environmental Policy Act (NEPA) be addressed in the Regional Mitigation Strategy development process?

The development of a Regional Mitigation Strategy in and of itself does not trigger NEPA. These plans will guide how future project authorizations will occur but do not authorize or force any action. Through the Solar PEIS and associated Regional Mitigation Strategies, the BLM is not authorizing any solar energy development projects or eliminating the need for site-specific environmental reviews for any future utility-scale solar energy development project. The BLM will complete a site-specific environmental review of all solar energy ROW applications in accordance with NEPA prior to issuing a ROW authorization. All project specific mitigation would be analyzed under NEPA as part of the required site-specific NEPA for projects.