

Frequently Asked Questions (FAQs): Solar Regional Mitigation Strategy for the Afton Solar Energy Zone in New Mexico

1. What is Mitigation?

Under the National Environmental Policy Act (NEPA) mitigation is defined as measures taken to: 1) avoid an impact altogether; 2) minimize the degree or magnitude of the impact; 3) reduce the impact over time; 4) rectify the impact; or 5) compensate for the impact (40 CFR 1508.20). Federal agencies are required to account for and disclose the impacts of their actions on the human and natural environment. In an EIS, all “relevant, reasonable mitigation measures that could improve the project are to be identified” (CEQ 1981).

2. What is a Bureau of Land Management Regional Mitigation Strategy?

The Bureau of Land Management (BLM) recognizes that some major ground disturbing activities (such as construction and operation of transmission lines, utility scale renewable energy, etc.) may result in *residual* impacts that cannot be avoided or minimized on the project site. Residual impacts can include impacts on wildlife and their habitat, recreational settings, surface water and groundwater, air quality, and other resources, as well as impacts to values of lands managed by the National Park Service, the U.S. Fish and Wildlife Service, and State Wildlife Agencies.

NEPA requires consideration of whether residual impacts to the environment should receive regional compensatory mitigation. The BLM’s interim policy on regional mitigation (BLM Instruction Memorandum 2013-142; available at http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction.html) considers mitigation on a regional (or landscape), scale taking account of existing resource conditions and trends. This regional approach can be used to determine which residual impacts warrant regional compensatory mitigation and to identify potential mitigation actions and locations.

3. What is a Solar Regional Mitigation Strategy?

Solar Regional Mitigation Strategies recommend regional compensatory mitigation actions and locations for residual impacts associated with developing and operating utility-scale solar energy facilities on solar energy zones (SEZs). In addition to the general and site-specific design features (also called required mitigation measures) identified for any solar project, in the 2012 Record of Decision for the Solar Programmatic Environmental Impact Statement (Solar PEIS), the BLM committed to developing *Solar Regional Mitigation Strategies* for solar energy zones to ensure environmentally responsible energy development (the Solar PEIS is available at <http://solareis.anl.gov/>). A Solar Regional Mitigation Strategy evaluates and recommends the need for compensatory mitigation, and appropriate actions and locations for regional mitigation at the landscape scale.

Many of the impacts associated with developing solar facilities on public lands can be avoided by bounding the area where development can occur so as to avoid conflicts with other resource values. Impacts can also be minimized by requiring developers to implement design features (which are

standard operating procedures and/or best management practices). Despite these onsite mitigation measures, the construction and operation of many types of utility-scale solar energy facilities do result in residual adverse impacts. The BLM particularly considers regional compensatory mitigation where residual impacts are found to harm the BLM's ability to achieve resource and value objectives for the lands it manages.

4. What landscape-scale information will be used to inform the Solar Regional Mitigation Strategy for the Afton SEZ?

Solar Regional Mitigation Strategies are conducted at large, regional scales and are designed to implement BLM's [Landscape Approach](#). The Landscape Approach is a process by which the BLM and other federal agencies can better understand large-scale land management decisions such as utility-scale solar development on public lands. It responds to several DOI Secretarial Orders (e.g., [Order 3289](#)) and addresses the challenges of incorporating large-scale environmental stressors such as climate change and cumulative impacts into land management decisions by shifting focus from project-by-project decisions to landscape-based decisions. Broad-scale spatial datasets and assessments on the distribution of resources that might be affected by potential energy development and other environmental stressors assist in SRMS development by informing BLM on which anticipated resource effects may warrant compensatory mitigation and where future mitigation actions might be located. Several datasets and assessments are used in SRMSs, such as BLM's Rapid Ecoregional Assessments (REAs), BLM Resource Management Plans, Landscape Assessments, State Wildlife Action Plans, and others. The BLM is currently developing a [REA for the Chihuahua Desert Ecoregion](#) where the Afton SEZ is located. Because information from the draft Chihuahua REA is not yet available for use in the Afton SRMS, landscape modeling methodology applied in other BLM REAs will be used in this SRMS to assist BLM in the evaluation of resource condition and trends in the region.

5. Why is the BLM doing a Solar Regional Mitigation Strategy for the Afton SEZ?

The BLM is conducting this project to identify ways to address potential residual impacts of utility-scale solar energy development within the SEZ and to advance landscape-scale, ecosystem-based approaches to resource management and multiple use issues. It believes that the Solar Regional Mitigation Strategy for each SEZ will facilitate solar development on public lands while supporting national, state, and local-area conservation objectives.

6. What are the goals and outcomes of this Project?

The goals of the project are to: 1) understand the landscape-level trends of the region surrounding the Afton SEZ (e.g., BLM Las Cruces District Office); 2) develop a Regional Mitigation Strategy for the Afton SEZ; and 3) advance conservation strategies for BLM lands.

7. What is regional compensatory mitigation?

Regional compensatory mitigation is covered under current BLM policy and consists of offsetting resource impacts by compensating for, replacing, or providing substitute resources or habitat at a different location than the project area¹. Regional compensatory mitigation is supplemental to onsite

¹ In the past this has also been called "offsite mitigation" or just "compensatory mitigation".

mitigation and is used to enhance the BLM's ability to fulfill its mission of providing multiple uses on the public lands while ensuring resource management objectives are met.

8. How is a Regional Mitigation Strategy different from the way mitigation has been handled in the past?

In the past, compensatory mitigation action recommendations or requirements were developed on a project-by-project basis. The environmental assessments for each project applied and tailored 'avoid and minimize' considerations to the specific site and the proposed facility. Where offsite mitigation was required, the BLM generally provided solar developers with offsite mitigation objectives. The developers then proposed mitigation actions and locations for the BLM to consider. If the BLM found a proposal sufficient, it was approved. If not, the developer went 'back to the drawing board' to try again. Under the Solar Regional Mitigation Strategy approach, the BLM will undertake a collaborative process to:

- Identify the residual adverse impacts that warrant compensatory mitigation;
- Establish regional mitigation objectives;
- Identify recommended mitigation obligations or fees;
- Identify actions and locations to mitigate residual impacts; and
- Monitor the outcomes of compensatory mitigation and adapt as necessary to achieve the compensatory mitigation objectives.

9. Why is the BLM changing the way compensatory mitigation is handled for solar development?

Comments on the Solar PEIS revealed dissatisfaction with the current compensatory mitigation process from both the development and conservation perspectives and requested that BLM adopt a new way of addressing it. Some commenters considered the current process of having solar project developers propose specific compensatory mitigation inefficient. Furthermore, commenters recognized that compensatory mitigation was not being considered on a landscape scale and was missing potential mitigation opportunities on lands not administered by the BLM.

10. What are the goals of a Solar Regional Mitigation Strategy?

The goals of a Solar Regional Mitigation Strategy are to:

- Develop a consistent, regional approach to mitigating residual impacts that warrant mitigation;
- Reduce uncertainty about compensatory mitigation requirements and streamline the process for compensatory mitigation of residual impacts;
- Establish science-based or other objective criteria to identify residual impacts that warrant compensatory mitigation;
- Identify/establish onsite avoidance and minimization requirements that support build-out plans for the SEZ (some requirements may already have been identified in existing BLM decision records);

- Where possible, obtain agreement from other regulating agencies regarding the need for compensatory mitigation and the appropriate regional mitigation strategy;
- Potentially reduce the costs, complexity and timeline associated with compensatory mitigation activities and project approvals;
- Establish a simple compensatory mitigation fee structure with opportunity to pool funds collected from multiple developers and apply 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;
- Provide relevant information for determining compensatory mitigation requirements for projects on variance lands; and
- Achieve a greater degree of stakeholder collaboration throughout the regional mitigation strategy process.

11. Will the Regional Mitigation Strategy eliminate the need to develop a mitigation plan specific to each proposed project in a SEZ?

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

12. How will the BLM decide how and where to implement mitigation?

One of the most important parts of a Solar Regional Mitigation Strategy is determining how and where the residual impacts of solar development can be most efficiently and effectively mitigated. In developing such a strategy, the BLM will take into consideration:

- The condition and trend of relevant 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); and
- The degree to which lands and resources, if preserved and/or restored, would most efficiently and effectively mitigate the residual 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 identifying, screening, recommending, and monitoring mitigation actions and locations.

13. Will the payment of a mitigation fee relieve applicants of the need to carry-out onsite mitigation activities?

No. BLM Policy states clearly that compensatory mitigation fees may not be used for onsite mitigation and that every effort should be made to mitigate impacts onsite before any compensatory mitigation is considered.

14. Will the Solar Regional Mitigation Strategy encourage development within the SEZ as described in the Solar PEIS?

The Solar Regional Mitigation Strategy has been designed as an incentive for development within the Afton SEZ. Meeting the goals for a Solar Regional Mitigation Strategy outlined in the response to Question 10 above will serve to encourage development within the SEZ.

15. How does the Solar Regional Mitigation Strategy apply to applications received for lands identified as ‘variance areas’ in the Solar PEIS?

Variance areas are locations outside of SEZs where the BLM will consider solar facility applications on a case-by-case basis. Regional Mitigation Strategies are designed as an incentive for development within SEZs, not for variance areas, and will be specific to the development expected within SEZs. Projects developed in proximity to SEZs would be considered as part of the cumulative impacts assessment for SEZs. While projects in variance areas will not be offered the same incentives as projects in SEZs, projects in the vicinity of SEZs may be able to benefit from an existing Regional Mitigation Strategy in identifying baseline conditions and trends and regional mitigation objectives and opportunities.

16. How do Solar Regional Mitigation Strategies relate to BLM Resource Management Planning?

BLM policy for regional compensatory mitigation requires that, for a residual impact to warrant regional compensatory mitigation, it must pose a threat to BLM resource management goals and objectives articulated in a Resource Management Plan (RMP). In identifying which residual impacts associated with SEZs warrant mitigation, the BLM will review existing RMPs and other sources of regional resource data. The BLM will also use existing RMPs to establish mitigation objectives and identify potential mitigation actions and locations.

17. How do Solar Regional Mitigation Strategies relate to land-use plans developed and managed by other agencies in the region?

In identifying which residual impacts associated with SEZs warrant mitigation, 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.

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

The development of a Solar Regional Mitigation Strategy in and of itself does not trigger a NEPA action but can inform it. These strategies will guide how future project authorizations will occur, but they do not authorize any action. The BLM will complete a site-specific environmental review of all solar energy right-of-way applications in accordance with NEPA prior to issuing a right-of-way

authorization. All project-specific mitigation will be analyzed under NEPA as part of the required site-specific NEPA for projects.

19. What is the schedule for the Solar Regional Mitigation Strategy Project for the BLM's Afton Solar Energy Zone?

The project was initiated in April 2016, with an estimated completion date of February 2017.

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

The Federal Land Policy Management Act (FLPMA) authorizes the BLM to address mitigation of impacts on public lands. 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. For further information see FLPMA §302(b), 43 U.S.C. § 1732(b).

21. Under what authority is the BLM authorized to collect fees to fund regional compensatory mitigation actions?

FLPMA section 307(c), 43 U.S.C. § 1737(c), or the Wyden Amendment, 16 U.S.C. § 1011 authorize the BLM to collect fees to fund mitigation. The BLM may accept an offer of monies from individual applicants for the purpose of pooling funds towards completion of larger regional compensatory mitigation efforts.

22. How will stakeholders be involved in the project?

The BLM invites the public to engage and participate in the project. The public may keep abreast of project topics, workshop planning, agendas, and activities via the Afton SEZ Solar Regional Mitigation Strategy web-site at:

http://www.blm.gov/nm/st/en/prog/energy/alternatives/afton_sez.html. The BLM will be posting workshop documents, data, and other information on this site.

The BLM will primarily be communicating with the interested public via news releases and emails to stakeholders, to notify and inform the public of project activities. Interested public can sign up to receive email notifications by sending an email to lfox@anl.gov.