

Information Required for Plans Submitted within the Range of the Northern Spotted Owl Relative to Process for Determining Take Avoidance

1. Indicate the plan is located within the range of the northern spotted owl (NSO) under timber harvesting plan Item 32(a), program timber harvesting plan Item 13(a), or non-industrial timber management plan Item 32(a). (14 CCR § 1034(w)¹)
2. Indicate how the plan submitter will avoid take by one of the following:
 - Design the proposed timber operations to avoid incidental take of the NSO and provide a designated biologist's written opinion substantiating this claim. (14 CCR § 919.9(a)² and (f)³ [939.9(a) and (f)])
 - Design the proposed timber operations to avoid incidental take of the NSO and provide the information contained in the rules demonstrating this. (14 CCR § 919.9(b)⁴ [939.9(b)])
 - Demonstrate there are no owls on the plan area or within 1.3 miles of the plan boundary and provide the information contained in the rules. (14 CCR § 919.9(c)⁵ [939.9(c)])
 - Proceed under an existing incidental take permit. (14 CCR § 919.9(d)⁶ [939.9(d)])
 - Proceed with technical assistance from U.S. Fish and Wildlife Service (USFWS), which will involve providing the California Department of Forestry and Fire Protection (CAL FIRE) with USFWS-specified information. (14 CCR § 919.9(e)⁷ [939.9(e)])
 - Design the proposed timber operations to avoid incidental take of the NSO and provide sufficient information⁸ to allow CAL FIRE to determine no take of the NSO will occur due to the proposed timber operations, including the information contained in the rules. (14 CCR § 919.9(g)⁹ [939.9(g)])
3. If the plan submitter will proceed according to 14 CCR § 919.9(a) and (f) [939.9(a) and (f)], then he or she will need to design the proposed timber operations to avoid incidental take of the NSO and provide in the plan a designated biologist's written opinion substantiating this claim. This will include any changes to the proposed operations requested per 14 CCR §

- 919.9(f)(2) [939.9(f)(2)], provision of a copy of the recommendations made by the designated biologist, and the submitter's explanation of how the proposed operations comply with those recommendations.
4. If the plan submitter will proceed according to 14 CCR § 919.9(b) [939.9(b)], then he or she will need to design the proposed timber operations to avoid incidental take of the NSO and provide in the plan the information required by 14 CCR § 919.9(b)(1)-(7) [919.9(b)(1)-(7)].
 5. If the plan submitter will proceed according to 14 CCR § 919.9(c) [939.9(c)], then he or she will need to provide in the plan the information required by 14 CCR § 919.9(c)(1)-(4) [919.9(c)(1)-(4)].
 6. If the plan submitter will proceed according to 14 CCR § 919.9(d) [939.9(d)], then he or she may be required to provide a copy of the incidental take permit if requested.
 7. If CAL FIRE will proceed according to 14 CCR § 919.9(e) [939.9(e)], then CAL FIRE will initiate technical assistance with the USFWS and require the plan submitter to supply the information USFWS needs to determine take of the NSO¹⁰. **Note:** CAL FIRE's Northern Spotted Owl (NSO) Review Guidelines for Timber Harvesting Plans, Modified Timber Harvesting Plans, Program Timber Harvesting Plans, and Nonindustrial Timber Management Plans (3/25/2005) (http://www.fire.ca.gov/rsrc-mgt_content/downloads/NSOReviewGuidelines03_25_05.pdf) will no longer apply in this case.
 8. If the plan submitter will proceed according to 14 CCR § 919.9(g) [939.9(g)], then he or she will need to design the proposed timber operations to avoid incidental take of the NSO, provide the information required by 14 CCR § 919.9(g)(1)-(5) [919.9(g)(1)-(5)], and provide sufficient additional information to allow CAL FIRE to determine take avoidance of the NSO.
 9. Justification for CAL FIRE request for sufficient information to demonstrate no take of, and no significant adverse impacts to, the NSO:
 - a. CAL FIRE must determine whether plan will result in take of state and federally listed species and NSO before approval. (14 CCR § 898.2(d) and (f)¹¹)
 - b. RPF must provide CAL FIRE with information about the plan and resource areas and the nature and purpose of the operations

proposed that is sufficiently clear and detailed to permit CAL FIRE to exercise the discretion and make the determinations required by the Act and rules. (14 CCR § 897(b)(3)¹²)

- c. Every plan located in the range of the northern spotted owl must follow one of the procedures required in 14 CCR §919.9(a)-(g)¹³ [939.9(a)-(g)].
- d. CAL FIRE must apply the criteria described in 14 CCR §§ 919.10(a)-(b) [939.10(a)-(b)] to the information provided by the plan submitter and obtained during the review period to make a finding as to whether the proposed timber operations will take an NSO.
- e. RPF must provide information on the presence and protection of known NSO habitat or individuals. (14 CCR § 1034(w))
- f. CAL FIRE must determine if the plan has the potential to substantially reduce the habitat of the NSO, to cause the NSO population to drop below self-sustaining levels, to threaten to eliminate the NSO community, or to substantially reduce the number or restrict the range of the NSO, all of which constitute a significant adverse impact on the environment. If any of these actions will occur as a result of the proposed project, then CAL FIRE must ensure that adequate mitigation has been included in the plan. In order to make this determination, CAL FIRE must evaluate the effects of the proposed plan on the NSO and its habitat and whether the proposed protection measures will likely mitigate any significant adverse impacts to a level less than significant. This requires a description of the project, the environmental setting, consideration of significant environmental impacts, and consideration of mitigation measures proposed to minimize any significant effects. (14 CCR §§ 15065(a)(1)¹⁴, 15124¹⁵, 15125(a)¹⁶, 15126.2¹⁷, and 15126.4¹⁸)

¹ 14 CCR § 1034(w): Information on the presence and protection of known habitat or individuals of any listed species and information on the presence and protection of non-listed species which may be significantly impacted by the timber operation.

² 14 CCR § 919.9(a) [939.9(a)]: If the project proponent requests preliminary review of the proposed operation or Spotted Owl Resource Plan prior to filing, a designated biologist (either state-employed or an independent consultant) shall be assigned to evaluate whether the proposed operation would result in the taking of an individual northern spotted owl. This evaluation is preliminary to and separate from the final "take" determination to be made under Section 919.10 (939.10). In making that evaluation:

(1) The designated biologist shall apply the criteria set forth in Section 919.10 [939.10].

(2) The designated biologist may request that the submitter provide additional information which the designated biologist finds necessary to evaluate if a "take" would occur, provided that the designated

biologist states the type of information needed, the purpose of the information, and the level of accuracy necessary to meet the stated purpose.

(3) If the designated biologist concludes that no prohibited taking would occur, the biologist shall inform the submitter as soon as practicable and shall document the decision and the information which was relied upon by the biologist in the above evaluation. Reference data shall be readily available for the Director's review upon request;

(4) If the designated biologist concludes that the proposed timber operation or Spotted Owl Resource Plan would result in a taking, he or she shall inform the submitter as soon as practicable and shall comply with Section 919.10(c) [939.10(c)] within 10 working days of making this determination.

(5) Requests for pre-filing consultation shall be handled in the order in which received.

³ 14 CCR § 919.9(f) [939.9(f)]: If:

(1) The submitter's proposed operations were reviewed by a designated biologist under Section 919.9(a) [939.9(a)]; and

(2) The designated biologist recommended minimum modifications to the proposed operations which would be necessary to bring the impacts to a level at which no "take" would occur and the submitter has adopted those recommendations; and

(3) The proposed operations remain substantially the same as the operations which the designated biologist reviewed, the submitter shall provide a copy of the recommendations made by the designated biologist and the submitter shall explain how the proposed operations comply with those recommendations.

⁴ 14 CCR § 919.9(b) [939.9(b)]: The RPF shall include the following information:

(1) On a planimetric or topographic map of a minimum scale of 1:24,000, provide the following:

(A) The location and acreage of owl habitat. This information shall be shown for the area within the boundary both as it exists before and after timber operations. The Director shall determine if timber typing maps may qualify as showing owl habitat.

(B) Identify any adjoining owl habitat by type within .7 miles of the boundary.

(C) When mapping functional owl nesting, roosting, and foraging habitat, include additional information which helps define those areas such as: location of topography features, riparian vegetation, hardwood component, water, potential nest and roost sites, and potential suitable forage areas.

(D) All known owl observations, identified by location and visual or nonvisual confirmation within 1.3 miles of the boundary. This information shall be derived from the landowners and RPF's personal knowledge, and from existing spotted owl data bases available from the Department.

(2) Discussion on how functional characteristics of owl habitat will be protected in terms of the criteria stated within Section 919.10(a) and (b) [939.10(a) and (b)].

(3) As adjacent landowners permit and from other available information, a discussion of adjacent owl habitat up to .7 mile from the proposed boundary and its importance relative to the owl habitat within the boundary.

(4) Describe any proposals for monitoring owls or owl habitat which are necessary to insure their protection. Monitoring is not required for approval.

(5) Discussion of any known owl surveys that have been conducted within 1.3 miles of the boundary. Include the dates, results and methodologies used if known.

(6) A proposed route that will acquaint the designated biologist and other reviewers with the important owl habitat.

(7) Attach aerial photos of the area, if available. (Aerial photos are not required.)

⁵ 14 CCR § 919.9(c) [939.9(c)]: Where certification is made by the RPF and adequate records are kept showing that owl surveys were conducted sufficient to demonstrate the absence of owls from an area, there will be a high priority review. There shall be verification that:

(1) The surveys have been conducted throughout the area within .7 miles of the boundary in accordance with the USFWS approved protocol ("Guidelines for Surveying Proposed Management Activities Which May Impact Northern Spotted Owls"; USFWS; March 7, 1991).

(2) The surveys were conducted during the current or immediately preceding survey period as prescribed by the protocol cited in (c) (1) above.

(3) The surveys reveal no nest sites, activity centers or owl observations in the area surveyed; and

(4) The surveys reveal no activity centers, active nest sites or repeated observations indicating the presence of mates and/or young are within 1.3 miles of the boundary based on a review of the landowner and RPF's personal knowledge and the Department's spotted owl data base.

⁶ 14 CCR § 919.9(d) [939.9(d): If the plan submitter proposes to proceed under an "incidental taking" permit or any other permit covering the Northern spotted owl issued by the U.S. Fish and Wildlife Service, the submitter shall supply a copy of the permit upon the Department's request.

⁷ 14 CCR § 919.9(e) [939.9(e): If the submitter proposes to proceed pursuant to the outcome of a discussion with the U.S. Fish and Wildlife Service, the submitter shall submit a letter prepared by the RPF that the described or proposed management prescription is acceptable to the USFWS.

⁸ Information Needed for CAL FIRE to determine take avoidance of NSO in addition to that required by 14 CCR § 919.9(g) [919.9(g)] may include:

1. General information relevant to the potential effect of the proposed timber operations on the NSO, including a description of the effect of the proposed silvicultural prescriptions on existing suitable habitat in the plan area, information on the presence or absence of NSOs on, and within 1.3 miles of, the plan, timing of planned operations, etc.
2. A topographic map of a minimum scale of 1:24,000, showing the area within 1.3 miles of the plan boundary, the plan boundary, appurtenant facilities (e.g., helicopter landings, new road construction, etc.), and the location of all known NSO activity centers within the area within 1.3 miles of the plan boundary.
3. Topographic maps of a minimum scale of 1:24,000, showing the location of owl habitat. Areas of suitable pre-harvest nesting-roosting and foraging habitat shall be shown for:
 - a. The area extending 0.7 mile from the plan boundary.
 - b. The area extending 0.25 mile from the plan boundary for plans that propose timber operations in unsuitable habitat.Areas of suitable pre- and post-harvest nesting-roosting and foraging habitat shall be shown for:
 - a. The areas encompassing the 0.7- and 1.3-mile radius circles around all known NSO activity centers. The map shall depict the 0.7-mile and 1.3-mile radius circles around all known activity centers.
4. Tables indicating both the acres of suitable pre- and post-harvest nesting-roosting and foraging habitat within the areas encompassing the 0.7- and 1.3-mile radius circles around all known NSO activity centers.
5. All known owl observations within 1.3 miles of the plan boundary. This information should be derived from the landowner's and RPF's personal knowledge, from California Department of Fish and Game NSO database reports, from landowner databases, and other applicable sources. This information should include:
 - a. DFG NSO Reports 1, 2, and 3 for the area within 1.3 miles of the plan boundary.
 - b. DFG NSO Report 1, if the reports show no NSO activity centers within the area within 1.3 miles of the plan boundary.
6. Discussion of owl surveys that have been conducted within the area within 0.7 mile of the plan boundary. This should include:
 - a. Verification that the surveys have been conducted throughout the area within 0.7 mile of the plan boundary in accordance with the USFWS approved protocol ("Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls"; USFWS; March 7, 1991, REVISED March 17, 1992).
 - b. Results of NSO surveys, including:
 - A. A map showing the call route and suitable pre-harvest habitat within 0.7 miles of the plan boundary.
 - B. Survey forms or survey summaries that indicate the date, start time, positive or negative NSO detections, station locations, etc.
 - C. A map showing detection and response locations, including any positive or negative follow-up stations and routes.

⁹ 14 CCR § 919.9(g) [939.9(g)]: Where a nest site or activity center has been located within the THP boundary or within 1.3 miles of that boundary, the RPF shall determine and document that the habitat described in (1)-(5) below will be retained after the proposed operations are completed:

(1) Within 500 ft. of the active nest site or pair activity center the characteristics of functional nesting habitat must be maintained. No timber operations shall be conducted in this area during the breeding season unless reviewed by the Department of Fish and Game and approved by the Director as not constituting a take. Timber operations may be conducted in this area outside the breeding season if appropriate measures are adopted to protect nesting habitat.

(2) Within 500-1000 ft. of the active nest site or pair activity center, retain sufficient functional characteristics to support roosting and provide protection from predation and storms.

(3) 500 acres of owl habitat must be provided within a .7 mile radius of the active nest site or pair activity center, unless an alternative is reviewed by the Department of Fish and Game and approved by the Director as not constituting a take. The 500 acres includes the habitat retained in subsections (1) and (2) above and should be as contiguous as possible. Less than 50% of the retained habitat should be under operation in any one year, unless reviewed by the Department of Fish and Game and approved by the Director.

(4) 1336 total acres of owl habitat must be provided 1.3 miles of each nest site or pair activity center, unless an alternative is reviewed by the Department of Fish and Game and approved by the Director as not constituting a take. The 1336 acres includes the habitat retained within subsections (1) - (3) above.

(5) The shape of the areas established pursuant to subsections (1) and (2) shall be adjusted to conform to natural landscape attributes such as draws and streamcourses while retaining the total area required within subsections (1) and (2) above.

¹⁰ Information Needed for USFWS NSO Technical Assistance Analysis may include:

1. General information relevant to the potential effect of the proposed timber operations on the NSO, including a description of the effect of the proposed silvicultural prescriptions on existing suitable habitat in the plan area, information on the presence or absence of NSOs on, and within 1.3 miles of, the plan, timing of planned operations, etc.
2. A topographic map of a minimum scale of 1:24,000, showing the area within 1.3 miles of the plan boundary, the plan boundary, appurtenant facilities (e.g., helicopter landings, new road construction, etc.), and the location of all known NSO activity centers within the area within 1.3 miles of the plan boundary.
3. Topographic maps of a minimum scale of 1:24,000, showing the location of owl habitat. Areas of suitable pre-harvest nesting-roosting and foraging habitat shall be shown for:
 - a. The area extending 0.7 mile from the plan boundary.
 - b. The area extending 0.25 mile from the plan boundary for plans that propose timber operations in unsuitable habitat.
 Areas of suitable pre- and post-harvest nesting-roosting and foraging habitat shall be shown for:
 - a. The areas encompassing the 0.7- and 1.3-mile radius circles around all known NSO activity centers. The map shall depict the 0.7-mile and 1.3-mile radius circles around all known activity centers.
4. Tables indicating both the acres of suitable pre- and post-harvest nesting-roosting and foraging habitat within the areas encompassing the 0.7- and 1.3-mile radius circles around all known NSO activity centers.
5. All known owl observations within 1.3 miles of the plan boundary. This information shall be derived from the landowner's and RPF's personal knowledge, from California Department of Fish and Game NSO database reports, from landowner databases, and other applicable sources. This information shall include:
 - a. DFG NSO Reports 1, 2, and 3 for the area within 1.3 miles of the plan boundary.
 - b. DFG NSO Report 1, if the reports show no NSO activity centers within the area within 1.3 miles of the plan boundary.
6. Discussion of owl surveys that have been conducted within the area within 0.7 mile of the plan boundary. This shall include:
 - a. Verification that the surveys have been conducted throughout the area within 0.7 mile of the plan boundary in accordance with the USFWS approved protocol ("Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls"; USFWS; March 7, 1991, REVISED March 17, 1992).
 - b. Results of NSO surveys, including:
 - A. A map showing the call route and suitable pre-harvest habitat within 0.7 miles of the plan boundary.
 - B. Survey forms or survey summaries that indicate the date, start time, positive or negative NSO detections, station locations, etc.
 - C. A map showing detection and response locations, including any positive or negative follow-up stations and routes
7. Where a nest site or NSO activity center has been located within the area within 1.3 miles of the plan boundary:

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- a. Provide documentation that the habitat described in (A)-(C) below will be retained after the proposed operations are completed:
 - A. The habitat qualities of functional nesting habitat shall be maintained within the area between the 500-foot radius and 1000-foot radius of a tree, or trees, containing a nest or supporting an NSO activity center.
 - B. A minimum of 500 acres of suitable NSO habitat shall be retained within an area out to 0.7 mile, surrounding a tree, or trees, containing a nest or supporting an NSO activity center.
 - C. A minimum of 1,336 acres of suitable NSO habitat shall remain post harvest within the area out to 1.3 miles surrounding a tree, or trees, containing a nest or supporting an NSO activity center.
 - b. Provide the following protection measures in the plan:
 - A. The critical breeding period for the NSO is between February 1st and August 31st.
 - B. No timber operations shall occur within a 500-foot radius of a tree, or trees, containing a nest or supporting an NSO activity center.
 - C. No timber operations shall occur within 0.25 mile of a tree, or trees, containing a nest or supporting an NSO activity center during the NSO critical breeding period.
 - D. No helicopter yarding shall occur within 0.5 miles of a tree, or trees, containing a nest or supporting an NSO activity center during the NSO critical breeding period.

¹¹ 14 CCR §§ 898.2(d) and (f): (d) Implementation of the plan as proposed would result in either a "taking" or finding of jeopardy of wildlife species listed as rare, threatened or endangered by the Fish and Game Commission, the National Marine Fisheries Service, or Fish and Wildlife Service, or would cause significant, long-term damage to listed species. The Director is not required to disapprove a plan which would result in a "taking" if the "taking" is incidental and is authorized by a wildlife agency acting within its authority under state or federal endangered species acts.

(f) Implementation of the plan as proposed would result in the taking of an individual Northern Spotted Owl prohibited by the Federal Endangered Species Act.

¹² 14 CCR § 897(b)(3): While the responsibility for implementation of the Act and rules belongs to the Director and the Department, RPFs who prepare plans have the responsibility to provide the Director with information about the plan and resource areas and the nature and purpose of the operations proposed which is sufficiently clear and detailed to permit the Director to exercise the discretion and make the determinations required by the Act and rules. The information in proposed plans shall also be sufficiently clear and detailed to permit adequate and effective review by responsible agencies and input by the public to assure that significant adverse individual and cumulative impacts are avoided or reduced to insignificance.

¹³ 14 CCR § 919.9 [939.9]: Every proposed timber harvesting plan, NTMP, conversion permit, Spotted Owl Resource Plan, or major amendment located in the range of the northern spotted owl shall follow one of the procedures required in subsections (a)-(g) below for the area within the boundary as shown on the map and also for adjacent areas as specified within this section. The submitter may choose any alternative (a)-(g) that meets the on-the-ground circumstances. The required information shall be used by the Director to evaluate whether or not the proposed activity would result in the "take" of an individual northern spotted owl. When subparagraphs (a), (b), or (c) are used, the Director, prior to approval, shall consult with a state employed biologist designated by the Department who is accepted by the Department of Fish and Game or the Fish and Wildlife Service as having sufficient knowledge and education to determine harm or harassment of the Northern Spotted Owl. The biologist shall make written recommendations regarding whether the retained habitat configuration and protection measures proposed in the THP will prevent a take of the owl.

The Department may designate independent biological consultants who can fulfill the requirements within subparagraph (a) of these rules. The plan submitter has the discretion whether to utilize a designated independent consultant under subparagraph (a). All other requirements under the northern spotted owl rules specifying a designated biologist are to be fulfilled by a state-employed biologist. To be designated by the Department, the independent consultant must be accepted by either the Department of Fish and Game or the Fish and Wildlife Service. This acceptance requires the independent consultant to demonstrate, in the field, sufficient knowledge and education to recognize and analyze data from field conditions and present

information which helps determine harm or harassment of the northern spotted owl. The same educational and experience criteria utilized to designate state-employed biologists will be applied. When a designated independent consultant is used to fulfill the requirements of subparagraph (a), the independent consultant shall make written observations and recommendations regarding whether the retained habitat configuration and protection measures proposed in the THP will prevent a take of the owl.

In consultation with the state-employed designated biologist, the Director may adjust standards established by this section based on site specific circumstances in a manner which is consistent with information collected on owl behavior in California, and the prohibitions of the Federal Endangered Species Act.

¹⁴ 14 CCR § 15065(a)(1): A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

(1) The project has the potential to: substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.

¹⁵ 14 CCR § 15124(b): The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(b) A statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

¹⁶ 14 CCR § 15125(a): An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

¹⁷ 14 CCR 15126.2(a): The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

¹⁸ 14 CCR § 15126.4(a): Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.