

Proposed Regulatory Language

Section 749.15, Title 14, California Code of Regulations, is hereby added as follows:

§ 749.15. Conditional Take of Western Spadefoot (*Spea hammondi*).

This regulation authorizes take, as defined by Fish and Game Code Section 86, of western spadefoot during the species' candidacy under the California Endangered Species Act (Fish and Game Code, Section 2050 et seq.) for the activities described in this section, subject to the terms and conditions specified for each activity and accompanying mitigation actions.

(a) Definitions.

The definitions in this subsection (a) shall apply to this section.

- (1) "Aquatic resource" means all "waters of the state" as defined in California Water Code Section 13050, subdivision (e), and all vernal pools, seasonal depressions, and other seasonal or perennial surface aquatic features, including constructed features, that retain water for at least 30 consecutive days during the western spadefoot breeding and dispersal season, including but not limited to agricultural sumps, tailwater ponds, irrigation ditches, and culverts.
- (2) "Begin construction" means to begin construction within the meaning of the Code of Federal Regulations, Title 26, sections 45Y and 48E (Internal Revenue Code), and as defined pursuant to applicable U.S. Internal Revenue Service (IRS) notices as of [effective date].
- (3) "Breeding and dispersal season" means the first day after October 1 with measurable rain (0.01 inches or greater) but no later than January 31, through April 30.
- (4) "Conserve" means to record a perpetual conservation easement on real property in a form approved in writing by the department based on the department's determination that such form shall provide durable protection of such real property, with a grantee approved in writing by the department based on the department's determination that such grantee is able to competently manage and preserve such real property, and with a long-term management endowment established for the property in a form and an amount, and with a long-term endowment holder approved in writing by the department consistent with the requirements of California Government Code Section 65965 et seq.
- (5) "Constructed ponds" means ponds that retain water for between 60 and 200 days per year during the breeding and dispersal season and are constructed by the project proponent.
- (6) "Eligible project" means a project that the department has determined satisfies all of the requirements of subsection (b) of this section and has been placed on the registry of eligible projects pursuant to subsection (c)(1).

- (7) “Impermeable features” means battery energy storage system pads, substation pads, inverter pads, roads made of concrete or impermeable asphalt, and operations and management (O&M) facilities.
- (8) “Managed or cultivated agricultural land” means:
 - (A) land that has been used for the production of food or fiber for humans or livestock, and
 - (B) disced, plowed, and/or planted within the previous five years, or managed orchards or other lands with trees, shrubs, or vineyards for the previous ten or more consecutive years.
- (9) “Off-site ponds” means ponds that retain water for between 60 and 200 days per year during the breeding and dispersal season.
- (10) “Open space, undeveloped, or other land substantially in its natural condition” means land that is almost entirely in its natural, scenic, forested, grassland, or other open-space condition, and that is not subject to any substantial residential, commercial, or industrial use, but excluding managed or cultivated agricultural land.
- (11) “Occupied spadefoot habitat” and “occupied habitat” means aquatic resources or land, within 1,000 feet of where an individual western spadefoot has been documented by visual, environmental DNA (eDNA), or acoustic surveys or recorded in the California Natural Diversity Database, within the prior five calendar years. Documentation or recordation shall establish a presumption of occupancy for any aquatic resource or land within 1,000 feet of a documentation or recordation.
- (12) “Project proponent” means the person(s), company, organization, or other entity listed on the registry of eligible projects, and includes any contractor or agent of the person(s), company, organization, or other entity. The project proponent shall be responsible for compliance with this section.
- (13) “Qualified biologist” means a person who meets the following minimum qualifications:
 - (A) Possesses a degree in biological science or natural resources, or a closely related scientific discipline, from an accredited university, and
 - (B) is familiar with herpetology, including spadefoot ecology and life history, and
 - (C) is experienced in construction monitoring.
- (14) “San Joaquin Valley floor” means lands within the San Joaquin Valley as defined by the U.S. Geological Survey (Feature Number 1655000) at an altitude of no greater than 1,000 feet above sea level.
- (15) “Suitable spadefoot habitat” and “suitable habitat” means any aquatic resource, and lands within 1,000 feet of that aquatic resource, within the range of the western spadefoot, excluding occupied spadefoot habitat.

- (16) “Western spadefoot” and “spadefoot” means western spadefoot, an amphibian currently bearing the scientific name *Spea hammondi*, and shall include any subsequently described taxa split from *Spea hammondi*.

(b) Take Authorization Eligibility.

Projects that are eligible to apply for authorization to take western spadefoot during the species’ candidacy period shall be:

- (1) Managed or cultivated agricultural land, except that no more than 10 percent of the disturbed area of the project site may be open space, undeveloped, or other land substantially in its natural condition, and
- (2) A project that is located substantially on managed or cultivated agricultural land on the San Joaquin Valley floor within the counties of Madera, Fresno, Kern, Kings, Tulare, Merced, Stanislaus, or San Joaquin, and
- (3) A project included in the California Independent System Operator’s interconnection Cluster 15 or a lower-numbered cluster, that could reasonably be expected to qualify for the Clean Energy Investment Tax Credit under Section 48E of the U.S. Internal Revenue Code, including transferability under Section 6418, as implemented through applicable U.S. Department of the Treasury regulations (Code of Federal Regulations, Title 26, Part 1) and U.S. Internal Revenue Service guidance, based on a valid beginning of construction on or before July 4, 2026 and satisfaction of continuity requirements pursuant to applicable IRS notices, and
- (4) A project where take of western spadefoot is incidental to the development, construction, and operation of utility-scale solar photovoltaic projects and utility-scale combined solar photovoltaic and battery energy storage projects, that interconnect or will interconnect at a voltage of 115 or more kilovolts (kV). Such projects include any appurtenant infrastructure improvement, and any associated electric generation-tie line carrying electric power from a facility that is located in the state to a point of junction with any California-based balancing authority.

(c) Take Authorization Process.

- (1) The department shall establish and make publicly available a registry of eligible projects. To be considered for inclusion on the registry, the project proponent must submit a written request for registration to the regional manager of the department region within which the project is located within 60 days after the effective date of this section. The department shall, within 30 days of such submission, include on the registry of eligible projects any project that satisfies the criteria set forth in subsections (b)(1) through (4).
- (2) The project proponent for an eligible project shall perform focused survey(s) to identify and map all aquatic resources (dry or wet at the time of survey) located on or within 1,000 feet of the project site (when legally accessible).

- (A) The department shall not accept the results of a survey method that it has not approved in writing for use in aquatic resource identification, prior to the survey having taken place.
 - (B) The project proponent may also perform focused surveys for western spadefoot at the project site to categorize habitat as either occupied or suitable. The department will accept the results of a focused survey for western spadefoot only if the department determines it to be biologically adequate based on existing scientific information (such as the likelihood of spadefoot detection, repeatability of the method, data quality, standardized techniques, practicability, and adequate protection of natural resources).
 - (C) Habitat within 1,000 feet of aquatic resources shall be treated as occupied for purposes of this section unless a western spadefoot survey that shows the area is unoccupied has been accepted by the department.
- (3) All project areas within 1,000 feet of an aquatic resource not known or presumed as occupied shall be mapped by the project proponent as suitable spadefoot habitat, and a total project acreage of suitable and occupied spadefoot habitat shall be identified. Authorization for the take of western spadefoot incidental to surveying for projects that have been included on the registry is effective upon submission of a written request for registration.
- (4) The project proponent for an eligible project shall submit to the regional manager of the department region within which the project is located, for review and approval, all of the following:
- (A) (i) a focused aquatic resource survey of the project site required by subsection (c)(2), (ii) a vegetation communities map of the project site, (iii) an overhead satellite image of the project site taken within the last ten years, and (iv) if the project proponent prepares one, a delineation of any waters of the State within the meaning of California Water Code Section 13050, subdivision (e), and any river, stream, or lake within the meaning of Fish and Game Code Section 1602, subdivision (a), on the project site;
 - (B) A written proposal explaining how many acres the project proponent proposes to avoid, protect temporarily, or conserve, of aquatic resources and any lands surrounding them; and
 - (C) A detailed work plan for construction of any constructed ponds or off-site ponds required to satisfy the requirements of subsection (e).
 - (D) A list of qualified biologists authorized by the project proponent to conduct activities outlined under this section, and a description of how each meets the qualifications under subsection (a)(13).
 - (E) A certification that the project has received all necessary land use approvals, licenses, and entitlements from the relevant public agency.

- (F) A copy of the final environmental impact report (or other relevant document(s) which serve(s) to effect California Environmental Quality Act (CEQA) compliance) pursuant to CEQA for the project.
 - (G) A copy of the project's mitigation and monitoring plan, if the project proponent prepares one.
- (5) Authorization for the incidental take of western spadefoot pursuant to this section shall be effective upon the department's written determination that:
- (A) Based on the department's scientific expertise and management experience with threatened and endangered species, the submitted proposal is biologically sufficient for purposes of this section, including, but not limited to:
 - 1. the proposed avoidance and minimization of impacts to western spadefoot individuals and populations and their habitat, consistent with subsection (d);
 - 2. the proposed mitigation of unavoidable impacts to western spadefoot and its habitat, consistent with subsection (e);
 - 3. the proposed plan for handling of spadefoot individuals during construction activities, consistent with subsection (d);
 - 4. adherence to the provisions of this section.
 - (B) The project proponent has completed the approved mitigation pursuant to subsection (e) or provided the department with performance security pursuant to subsection (f);
 - (C) The lead agency has certified the final environmental impact report (or other relevant document(s) which serve(s) to effect CEQA compliance) pursuant to CEQA for the project;
 - (D) When providing authorization for take pursuant to this section, the department shall provide an email address that the project proponent shall use for all reporting and other communications regarding this regulation; and
 - (E) The department may, with authorization from the project proponent and any relevant landowner (or other person), access the project site or any off-site mitigation lands if it determines that such a site visit is necessary to: verify the appropriateness of survey results; validate aquatic feature delineation; inspect mitigation; examine any land or water feature or construction; investigate and substantiate compliance with any provision of this section or the Fish and Game Code; or aid in any determination made under authority of this section. Project proponents shall work in good faith to provide the department with authorization(s) necessary to effectuate site visits.
- (6) No project shall be included on the registry of eligible projects or receive take authorization under this section if any of the following applies:

- (A) The project proponent adversely alters suitable spadefoot habitat on the project site after April 17, 2026, other than as authorized by this section or in compliance with sections 2081 and 2835 of the Fish and Game Code.
- (B) The project proponent has not completed a conditional use permit or special use permit application, filed with a CEQA lead agency, on or before the date that western spadefoot is listed by the commission as threatened or endangered, if the western spadefoot is listed.
- (C) The project proponent did not begin construction, on- or off-site, per the requirements identified in applicable IRS notices, on or before July 4, 2026.
- (7) Take authorization pursuant to this section shall extend to the whole geographic area of the project site, meaning the applicable project footprint identified in the project description prepared under the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, Section 15124, or pursuant to any equivalent process provided by the California Energy Commission, including any electric generation-tie lines and all project impact areas, for any project receiving take authorization.
- (8) The department shall within 30 days remove from the registry any project for which the project proponent submits a written request for de-registration.

(d) Avoidance and Minimization.

To obtain and maintain take authorization pursuant to this section, each eligible project shall satisfy the following avoidance and minimization requirements:

- (1) Avoid ground-disturbing activities and placement of impermeable features in or immediately adjacent to aquatic resources in occupied spadefoot habitat to the maximum extent practicable, for the duration of the project.
- (2) Avoid permanent loss or adverse hydraulic alteration of aquatic resources (other than alterations designed to improve habitat functionality for western spadefoot), to the maximum extent practicable.
- (3) Conduct all ground-disturbing project activities within occupied or suitable spadefoot habitat outside the breeding and dispersal season to the maximum extent practicable, for the purpose of minimizing impacts to above-ground western spadefoot breeding adults, metamorphs, eggs, and/or tadpoles.
 - (A) If ground-disturbing activities must be implemented within occupied or suitable western spadefoot habitat during the breeding and dispersal season, a qualified biologist shall monitor all such ground-disturbing activities, and fencing shall be temporarily installed around aquatic resources within the project site before the first day of the breeding and dispersal season or as soon thereafter as feasible to the satisfaction of the qualified biologist.

1. Such fencing shall be installed to enclose and protect spadefoot and spadefoot habitat while construction is ongoing during the breeding and dispersal season, in and around aquatic resources.
 2. Such fencing shall be removed at the conclusion of ground-disturbing activities within occupied or suitable habitat during the breeding and dispersal season. No aquatic resource may be destroyed or adversely altered when western spadefoot are present within the aquatic resource.
- (4) To protect estivating western spadefoot, minimize grading or other necessary land disturbance in occupied spadefoot habitat to less than 20 centimeters depth, to the maximum extent practicable.
 - (5) To prevent western spadefoot from becoming entangled, trapped, or injured, erosion control materials that use plastic or synthetic monofilament netting will not be used. Acceptable materials include natural fibers such as jute, coconut, twine, or other similar non-entangling fibers.
 - (6) If a project activity must be undertaken within occupied or suitable western spadefoot habitat, all excavated steep-walled holes and trenches more than six inches deep will be covered with plywood or similar material or provided with one or more escape ramps at the end of each workday or 30 minutes prior to sunset, whichever occurs first. A qualified biologist shall search all such excavations each morning for trapped adults or metamorphs. Any detected western spadefoot shall be captured and relocated as described in subsection (d)(7).
 - (7) If a juvenile or adult western spadefoot is encountered during construction activities, the project proponent or qualified biologist will notify the department immediately.
 - (A) Construction activities will be suspended in the immediate vicinity of the animal under supervision of the qualified biologist.
 - (B) Sections of fencing shall be temporarily removed or altered to allow the animal to leave the construction area of its own volition.
 - (C) If the animal does not leave the area within 12 hours, a qualified biologist may relocate the animal to a suitable location away from the construction footprint. The animal shall not be held for longer than 18 hours, and shall be released after sunset to a site in suitable spadefoot habitat or occupied spadefoot habitat with burrows or other refugia no more than 1,000 feet from the site of capture unless an alternative location is approved in writing by the department.
 1. While held, the individual(s) should be kept in a suitable container in appropriate environmental conditions (e.g. shade, moderate temperature, humid or with water) as determined by the qualified biologist and age classes separated in the event of multiple individuals being captured simultaneously.
 2. If the animal is handled, within two business days a written report will be submitted by the project proponent to the email address provided by the

department, including the name of the project proponent; name(s) of the qualified biologist(s) involved; date(s) and location(s) of capture, confinement, and release; habitat descriptions of capture and release sites; a summary of why and how the animal was handled and of any corrective measures taken to protect the western spadefoot; and any detected signs of spadefoot disease or deformity.

3. All containers used to hold western spadefoot as described in subsection (d)(7) shall be cleaned between each use with 6% bleach solution prepared with household bleach with water at a 1:20 ratio. The container shall be soaked or saturated with the bleach solution for at least five minutes, rinsed with clean water, and thoroughly air-dried before subsequent use.
- (8) If any worker inadvertently injures or kills a western spadefoot or finds dead, injured, or entrapped western spadefoot(s), the project proponent must report the incident to the qualified biologist and the email address provided by the department within 24 hours of the incident or discovery. The report must include including the name of the project proponent; name(s) of the qualified biologist(s) involved, date(s); location of the incident, release location where applicable; and final disposition of the animal.
- (9) Nighttime construction activity shall be avoided when feasible during the breeding and dispersal season.
 - (A) When night-time driving is necessary for project activities, vehicle speed shall be limited to 15 miles per hour during the breeding and dispersal season to the maximum extent practicable, except in emergency situations.
 - (B) If nighttime construction is necessary during the breeding and dispersal season, in all areas of occupied spadefoot habitat and suitable spadefoot habitat, a qualified biologist shall proceed on foot before the equipment with a high-powered flashlight or spotlight and relocate any observed western spadefoot as described in subsection (d)(7).
 - (C) For all western spadefoot handled, a report will be submitted to the email address provided by the department within two business days, including the name of the project proponent; name(s) of the qualified biologist(s) involved, date(s), location(s), habitat description, and any corrective measures taken to protect the western spadefoot.
- (10) The use of any second-generation anticoagulant rodenticide (brodifacoum, bromadiolone, difethialone, and difenacoum) and any first-generation anticoagulant rodenticide (diphacinone, chlorophacinone, and warfarin), and of atrazine, carbaryl, and chlorpyrifos is prohibited on the project area.
 - (A) The project proponent shall ensure that all herbicide use (mixing, application, and clean-up) is done by a licensed applicator in accordance with all applicable state, federal, and local regulations.

- (B) The project proponent and its contractor or any agent, shall only apply herbicide sprays via ground application when wind speed measures less than 3 miles per hour.
- (C) The project proponent shall avoid herbicide contact with any native vegetation, as feasible, and all herbicide sprays utilized within 20 feet of identified habitat features suitable for western spadefoot shall contain a dye (registered for aquatic use by the California Department of Pesticide Regulation, if warranted) to aid in the prevention of overspray.
- (11) To the maximum extent practicable, avoid the loss of mammals that create burrows that may be suitable for western spadefoot (e.g., California ground squirrel and kangaroo rat species) unless such removal is necessary to avoid damage to project facilities and/or for construction activities.
- (12) Provide the department with an annual status report no later than January 31 of every year beginning with the project proponent's registration under this section. Each annual status report shall include:
 - (A) a general description of the status of the project area and development, construction, and/or operations activities, including actual or projected completion dates if known;
 - (B) a description of the current implementation status of all measures required pursuant to this subsection (c);
 - (C) all available information about project-related incidental take of western spadefoot;
 - (D) information about other project-related impacts on western spadefoot;
 - (E) information regarding any observed signs of herptile disease, such as chytrid fungus, on the project site; and
 - (F) other information the project proponent feels may be notable, if any.

(e) Mitigation.

To obtain and maintain take authorization pursuant to this section, each eligible project shall provide mitigation pursuant to this subsection. A project proponent shall mitigate onsite to the maximum extent practicable. Onsite mitigation shall be located on the project site or within 1,000 feet of the project site. Where the size, design, or some other feature of the project or project site does not reasonably allow for some or all mitigation to be located onsite, the project proponent shall mitigate off-site for any impacts that cannot be mitigated onsite.

(1) Occupied Habitat, Onsite.

- (A) To the maximum extent practicable, the project proponent shall create, maintain, and conserve, on site at a 2:1 ratio to the number and acreage of the aquatic resources in occupied spadefoot habitat that are destroyed or adversely altered,

constructed ponds, except that for each aquatic resource destroyed and replaced with impermeable features, a 3:1 ratio of constructed ponds to such aquatic resources shall be required.

(B) Such ponds may include stormwater retention basins with headgates operated to mimic seasonal pools, and/or artificial vernal pools with substantially the same total liquid volume (or more) as the aquatic resources destroyed or adversely altered by project activities.

(C) No more than 10 acres within 1,000 feet of any such ponds shall contain or be covered by impermeable features (as defined in subsection (a)(7)). If constructed ponds are required, such ponds and the lands around them shall be conserved to prohibit any ground-disturbing activities within 500 feet of such ponds and to allow only project activities on the remaining lands extending to 1,000 feet from such ponds.

1. Ground-disturbing activities may be permitted in the area between 300 and 500 feet from such ponds if the project proponent submits, and the department approves, a plan to enhance western spadefoot habitat within that area, based on the department's determination that such plan is biologically supported and will improve the quality of western spadefoot habitat.

(2) Suitable Habitat, Onsite.

(A) To the maximum extent practicable, the project proponent shall create, maintain, and conserve, on site at a 1:1 ratio to the number and acreage of the aquatic resources in suitable spadefoot habitat that are destroyed or adversely altered, constructed ponds, except that for each aquatic resource destroyed and replaced with impermeable features, a 1.5:1 ratio of constructed ponds to such aquatic resources shall be required.

(B) Such ponds may include stormwater retention basins with headgates operated to mimic seasonal pools, and/or artificial vernal pools with substantially the same total liquid volume (or more) as the aquatic resources destroyed or adversely altered by project activities.

(C) No more than 10 acres within 1,000 feet of any such ponds shall contain or be covered by impermeable features. If constructed ponds are required, such ponds and the lands around them shall be conserved to prohibit any ground-disturbing activities within 300 feet of such ponds and to allow only project activities on the remaining lands extending to 1,000 feet from such ponds.

1. Ground-disturbing activities may be permitted in the area between 300 and 500 feet from such ponds if the project proponent submits, and the department approves, a plan to enhance western spadefoot habitat within that area.

(3) For any project where the project proponent does not own the project site lands in fee, and instead has possession or control of the project site lands pursuant to a lease,

contract, or other instrument or agreement, the project proponent may elect to reduce its offsite mitigation obligation pursuant to paragraphs (6) and (7) of this subsection by creating and maintaining constructed ponds onsite for the life of the project. For every acre of onsite constructed ponds maintained for the life of the project pursuant to this paragraph, such acreage shall count as a 0.5:1 mitigation ratio of the acreage of the aquatic resources in occupied or suitable spadefoot habitat that are destroyed or adversely altered on the project site.

- (4) The department may authorize onsite mitigation pursuant to paragraphs (1) or (2) of this subsection at a lower ratio to the number of aquatic resources that are destroyed or adversely altered on the project site, provided that the project proponent submits a written request for such authorization and the department determines both that the same acreage ratio is provided as mitigation and that the mitigation will provide equivalent or greater biological value to western spadefoot.
- (5) All onsite constructed ponds required by paragraphs (1) or (2) of this subsection shall be designed and managed where practicable to avoid the establishment of predators (e.g., bullfrogs), including by causing such ponds to dry out to prevent more than 200 days of water retention during the breeding and dispersal season.
- (6) Occupied habitat, off-site.
 - (A) To the extent that the mitigation obligation in paragraph (1) cannot be satisfied on site, the project proponent shall provide off site at a 3:1 ratio to the number and acreage of the aquatic resources in occupied spadefoot habitat that are destroyed or adversely altered on the project site, off-site ponds, except that for each aquatic resource destroyed and replaced with impermeable features, a 3.5:1 ratio of off-site ponds to such aquatic resources shall be required.
 - (B) Such ponds may include natural aquatic breeding habitat, stormwater retention basins with headgates operated to mimic seasonal pools, and/or artificial vernal pools with substantially the same total liquid volume (or more) as the aquatic resources destroyed or adversely altered by project activities.
 - (C) Such ponds and the lands around them shall be conserved to prohibit any ground-disturbing activities within 1,000 feet from such ponds.
- (7) Suitable habitat, off-site.
 - (A) To the extent that the mitigation obligation in paragraph (2) cannot be satisfied on site, the project proponent shall provide off site at a 1.5:1 ratio to the number and acreage of the aquatic resources in suitable spadefoot habitat that are destroyed or adversely altered on the project site, off-site ponds, except that for each aquatic resource destroyed and replaced with impermeable features, a 2:1 ratio of off-site ponds to such aquatic resources shall be required.
 - (B) Such ponds may include natural aquatic breeding habitat, stormwater retention basins with headgates operated to mimic seasonal pools, and/or artificial vernal

pools with substantially the same total liquid volume (or more) as the aquatic resources destroyed or adversely altered by project activities.

(C) Such ponds and the lands around them shall be conserved to prohibit any ground-disturbing activities within 1,000 feet from such ponds.

- (8) The project proponent shall provide any off-site ponds required by paragraphs (6) or (7) of this subsection by either constructing, maintaining, and conserving such ponds or by conserving existing ponds, except that the project proponent shall not create new ponds on lands with existing ponds if doing so would destroy or degrade those existing ponds or otherwise diminish the habitat value of those ponds or the lands surrounding them for western spadefoot.
- (9) The department may approve a lower mitigation ratio for the offsite mitigation lands provided pursuant to paragraphs (6) or (7) of this subsection as appropriate based on the adjacency of mitigation lands to existing conservation reserves known to benefit western spadefoot.
- (10) All off-site ponds required by paragraphs (6) or (7) of this subsection shall be designed and managed where practicable to avoid the establishment of predators (e.g., bullfrogs), including by causing such ponds to dry out to prevent more than 200 days of water retention during the breeding and dispersal season.
- (11) For any off-site ponds required by paragraphs (6) or (7) of this subsection, the project proponent shall ensure a supply of sufficient water for such ponds to retain water for between 60 and 200 days per year during the breeding and dispersal season.

(f) Security.

Except for take associated with focused surveys pursuant to subsection (c)(2), a project proponent may not proceed with development, construction, or operations activities that have the potential to take western spadefoot until the project proponent has completed the required mitigation or has provided performance security to ensure adequate funding to complete the mitigation required by subsection (e). If performance security is provided by the project proponent, all mitigation pursuant to this section must be completed within eighteen (18) months of the department's determination pursuant to subsection (c)(3).

- (1) The performance security shall be in an amount to be calculated as follows:
 - (A) Land acquisition costs in the amount of \$10,000 for each acre of mitigation lands to be acquired pursuant to subsection (e);
 - (B) \$10,000 for all other costs necessary to review and acquire the mitigation lands in fee title and record a conservation easement, if necessary;
 - (C) Start-up costs for mitigation lands, including initial site protection and enhancement costs, in the amount of \$100,000;
 - (D) Interim management period funding, in the amount of \$100,000;

- (E) Long-term management funding in the amount of \$4,000 for each acre of mitigation lands to be acquired pursuant to subsection (e);
- (F) Related transaction fees, in the amount of \$4,000 including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead.

- (2) The performance security shall be in the form of an irrevocable letter of credit or another form approved in advance in writing by the department's Office of the General Counsel, based on its determination that the form of security provides adequate assurances for the performance of mitigation required by subsection (e).
- (3) The performance security shall be held by the department.
- (4) The performance security shall allow the department to draw on the principal sum if the department determines in its sole discretion that the project proponent has failed to comply with the requirements of subsection (e).
- (5) The performance security (or any portion then remaining) shall be released to the project proponent after the department has conducted an onsite inspection of the mitigation lands and confirmed that all secured requirements have been satisfied.
- (6) Even if performance security is provided, the project proponent shall submit a habitat mitigation lands package that meets the criteria provided in subsection (e) prior to the start of covered activities and will work in good faith with the department to advance the package through the department's Habitat Mitigation Land Acquisition (HMLA) process. The department may require the project proponent to provide additional reasonable mitigation and/or additional reasonable funding to ensure the impacts of the authorized take of western spadefoot are minimized and mitigated pursuant to this section, if the project proponent does not complete these requirements within the specified time frame.

(g) Expiration of Take Authorization.

- (1) Notwithstanding the expiration of the take authorization, and subject to paragraph (2) of subsection (g), the project proponent shall remain liable for completion of all mitigation required for the project.
- (2) If an eligible project has received take authorization pursuant to this section but has not completed the project activities that could result in take of western spadefoot, the project proponent may apply to the department for an incidental take permit for the project pursuant to California Fish and Game Code Section 2081, subdivision (b). To the extent the project proponent has mitigated or provided performance security for mitigation for impacts contemplated by this section but not yet incurred at the time the take authorization expires, the department shall credit the project proponent for that mitigation in determining the amount of mitigation necessary under the incidental take permit. The department shall make all reasonable efforts to incorporate the terms and

conditions of this section into any incidental take permits it issues for eligible projects receiving take authorization pursuant to this section.

- (3) If take authorization is needed for the ongoing management of seasonal ponds created, maintained, and conserved pursuant to subsection (e), the project proponent may apply to the department for a management permit pursuant to California Fish and Game Code Section 2081, subdivision (a).

(h) Ongoing Research and Monitoring.

- (1) Take of western spadefoot in the course of ongoing research and monitoring for this species by public agencies other than the department and by private parties holding a scientific collecting permit issued by the department under California Fish and Game Code sections 1002 or 1002.5 for the take of western spadefoot, California tiger salamander, or California red-legged frog, is authorized provided that a written, detailed project progress report describing objectives, methods (gear, sampling schedules and locations), efforts to minimize adverse effects to the species, and estimated level of take of the species shall be provided to the department's branch chief for the Habitat Conservation Planning Branch.
- (2) All research and monitoring activities not addressed by the procedures in subsection (f)(1) may receive separate authorization for take of western spadefoot pursuant to California Fish and Game Code Section 2081.

(i) Limitations.

- (1) Nothing in this section is intended to be or shall be construed to be a general project approval. It shall be the responsibility of each project proponent receiving take authorization pursuant to this section to obtain all necessary permits and approvals and to comply with all applicable federal, state, and local laws.
- (2) Nothing in this section is intended to be or shall be construed to prohibit any project qualifying for take authorization pursuant to this section from electing to obtain incidental take coverage for western spadefoot through California Fish and Game Code Section 2081 or other procedures authorized by law.