

Staff Summary for August 12-13, 2026

16. Conditional Take of Western Spadefoot**Today's Item****Information** ☐**Action** ☒

If the Commission determines that listing the northern and/or southern populations of western spadefoot (*Spea hammondi*) under the California Endangered Species Act (CESA) may be warranted, consider regulatory action to allow take of western spadefoot under certain circumstances by authorizing a notice of intent to adopt a regulation at a future meeting, or by adopting an emergency regulation at this meeting and taking final action under the California Environmental Quality Act.

Summary of Previous/Future Actions

- | | |
|--|---------------------------|
| • Received Regulation Change Petition 2026-12 | June 17-18, 2026 |
| • Potential western spadefoot listing decision pursuant to CESA | August 12-13, 2026 |
| • Potential action on Petition 2026-12 (request to allow incidental take of western spadefoot for certain qualifying solar projects) | August 12-13, 2026 |
| • Today, discuss and consider adopting emergency regulations | August 12-13, 2026 |

Background

On September 24, 2025, the Commission received from the Center for Biological Diversity(CBD) a petition to list northern and southern populations of western spadefoot as threatened and endangered, respectively, under CESA. More background on the petition can be found in the staff summary under Agenda Item 14, Western Spadefoot (this meeting).

If the Commission determines that listing the northern and southern populations of western spadefoot may be warranted under Agenda Item 14, western spadefoot will become a candidate species and the Department will undertake a one-year status review before the Commission makes a final decision on whether listing the species is warranted. Candidate species are protected from unauthorized take under CESA pursuant to Section 2085 during the remainder of the CESA listing process. California Fish and Game Code Section 2084 permits the Commission to authorize, subject to terms and conditions it prescribes, and based on the best available scientific information, the taking of any candidate species.

Governor Newsom's Executive Order N-33-25 directs state agencies to take all steps necessary to streamline and prioritize any renewable energy projects that may be eligible for expiring federal tax credits. Streamlined approval processes for new clean energy resources are intended to help reduce electricity costs for Californians and keep California on track to achieve its deadline for a carbon neutral economy. If the Commission finds that listing western spadefoot may be warranted, protections awarded to western spadefoot as a candidate under CESA would likely impact near-term investment tax credit projects by impacting financing decisions critical to the completion of the projects.

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On June 5, 2026, the Commission received a petition (Exhibit 1) from the Large-scale Solar Association (LSA) and CBD requesting the Commission adopt a new regulation authorizing incidental take of western spadefoot during candidacy. Incidental take is a form of conditional take authorized under Section 2084. LSA members have multiple projects underway that may be affected by the protections provided to candidate species. LSA and CBD collaborated on a draft regulation under Section 2084 of the Fish and Game Code intended to address the needs of both renewable energy projects and western spadefoot conservation; the draft regulation was submitted for consideration along with their petition.

The draft regulation developed for Commission consideration today contains modifications to the version submitted by the petitioners. Commission staff consulted with the Department on the draft regulation's technical feasibility, level of protection to western spadefoot, and the Department's capacity to implement the regulation when identifying and incorporating the modifications.

The draft proposed emergency regulation would allow qualifying renewable energy projects to proceed with groundbreaking activities during western spadefoot candidacy. The limited authorization of incidental take of western spadefoot specific to qualifying renewable energy projects, paired with avoidance, minimization, and mitigation measures, is sufficiently protective of western spadefoot during candidacy, and could contribute to the species' recovery in the long-term. The conservation measures required by the proposed regulation have the potential to provide a net conservation benefit for western spadefoot as compared to current agricultural practices on managed and cultivated agricultural lands. The regulation contains provisions to ensure that mitigation measures will be completed, and that mitigation lands will be conserved.

If the Commission, under Agenda Item 14, finds that listing northern and southern populations of western spadefoot under CESA may be warranted, the Commission may then consider the emergency regulation under this item (Agenda Item 16).

Draft Proposed Section 749.15 (New)

The draft proposed new Section 749.15, Title 14, California Code of Regulations includes:

- Definitions of key terms such as aquatic resources, suitable habitat, and occupied habitat for western spadefoot.
- Eligibility criteria for renewable energy projects to receive take authorization.
- Establishing a registration and authorization process for incidental take.
- Requirements for avoidance and minimization measures.
- Mitigation requirements, based on the type and condition of affected aquatic resources.
- Required performance security from the project proponent, if mitigation measures have not been completed prior to development activity.
- Expiration and transition procedures for take authorization.
- Authorized take for certain research and monitoring activities under defined reporting requirements and existing permitting pathways.

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- Clarification that project proponents remain responsible for complying with all applicable laws beyond the emergency regulation.

For additional background, supporting information, and draft proposed regulatory language, see exhibits 2 and 3.

Significant Public Comments (N/A)**Recommendation**

Commission staff: Adopt the proposed regulation for incidental take of western spadefoot as described in exhibits 2 and 3.

Exhibits

1. [Petition 2026-12](#), received June 5, 2026
2. [Draft emergency statement and informative digest](#), dated August 10, 2026
3. [Draft proposed regulatory language](#)
4. [Draft economic and fiscal impact statement \(STD 399\)](#)

Motion

Moved by _____ and seconded by _____ that the Commission finds, pursuant to Section 399 of the California Fish and Game Code, that adopting the proposed emergency regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

The Commission further determines, pursuant to Section 11346.1 of the Government Code, that an emergency situation exists and finds the proposed regulation is necessary to address the emergency.

Therefore, the Commission adopts the emergency regulation to add section 749.15, as discussed today.



Tracking Number: (_____)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. Person or organization requesting the change (Required)

Name of primary contact person: [Shannon Eddy, Executive Director, Large-scale Solar Association / Brendan Cummings, Conservation Director, Center for Biological Diversity]
Address: [2501 Portola Way, Sacramento, CA 95818 / 2100 Franklin St Ste 375, Oakland, CA 94612-3030]
Telephone number: [(415) 819-4285 / (510) 844-7141]
Email address: [shannon@largescalesolar.org / bcummings@biologicaldiversity.org]

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: [Fish and Game Code sections 399, 2084.]

3. Overview (Required) - Summarize the proposed changes to regulations [The Large-scale Solar Association (LSA) and Center for Biological Diversity (CBD) together ask that the Commission approve a temporary pathway for certain Investment Tax Credit (ITC)-eligible clean energy projects to receive authorization for the incidental project-related take of western spadefoot, subject to avoidance, minimization and mitigation requirements, during the candidacy period for western spadefoot. CBD is the Petitioner to list the western spadefoot under CESA, and CBD and LSA have worked cooperatively to develop a mutually agreeable 2084 Rule informed by the best available science on western spadefoot in California.]

4. Rationale (Required) - Describe the problem and the reason for the proposed change: [If the Commission determines that listing the western spadefoot as threatened or endangered under CESA "may be warranted," western spadefoot will become a "candidate" species. As a candidate species, the take prohibition of Fish and Game Code section 2080 will prohibit "take" of western spadefoot absent specific authorization. LSA member companies developing solar and solar/battery energy storage system projects on the San Joaquin Valley Floor wish to obtain incidental take authorization for the species during its candidacy in order to minimize risk and facilitate investment and financing for certain ITC-eligible projects. In order to take



advantage of the ITC, which was recently pared back by the federal “One Big Beautiful Bill” Act, utility-scale clean energy developers in California must promptly “begin construction” of their projects. It is essential that solar and solar/BESS projects in California be able to take advantage of the ITC for the State of California to meet its ambitious clean energy generation targets. Because solar and solar/BESS uses can be less impactful on western spadefoot than current active agricultural uses in the San Joaquin Valley, and because western spadefoot can utilize certain modified habitats, responsible solar and solar/BESS development can improve the habitat conditions for western spadefoot on lands currently under active agriculture. LSA and CBD have jointly developed this 2084 Rule to enable certain utility-scale clean energy projects to receive authorization for the incidental take of the species upon satisfaction of the requirements of the Rule, including but not limited to the conservation or creation and conservation of aquatic resources for the species on-site and/or, if necessary, off-site. Adoption of this Rule and its implementation by eligible projects and CDFW would result in a net conservation benefit for western spadefoot relative to the status quo on managed agricultural lands.]

SECTION II: Optional Information

5. **Date of Petition:** [June 5, 2026]
6. **Category of Proposed Change**
☐ Sport Fishing
☐ Commercial Fishing
☐ Hunting
☒ Other, please specify: [Emergency rule to authorize incidental take of western spadefoot pursuant to Fish and Game Code section 2084]
7. **The proposal is to:** *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*
☐ Amend Title 14 Section(s): []
☒ Add New Title 14 Section(s): [Section 749.15]
☐ Repeal Title 14 Section(s): []
8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition []**
Or ☒ Not applicable.
9. **Effective date:** If applicable, identify the desired effective date of the regulation.
If the proposed change requires immediate implementation, explain the nature of the emergency: [Immediately. Qualifying clean energy projects are on a strict schedule to “begin construction” within the meaning of the ITC, and climate change is a recognized threat both to public health in the State of California and to the future viability of western spadefoot.]
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: [Attached hereto is LSA and CBD’s proposed regulatory text.]



- 11. Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: [The proposed regulation will enable utility-scale solar projects and combined solar and BESS projects to make the financial commitments necessary to “begin construction” within the meaning of the federal ITC tax credit and applicable IRS Notices. The Department of Fish and Wildlife is expected to incur costs covered by existing appropriations associated with reviewing project proponents’ requests to register under the proposed regulation and determining whether the projects requesting registration qualify for take authorization pursuant to the proposed regulation.]
- 12. Forms:** If applicable, list any forms to be created, amended or repealed:
[N/A]

SECTION 3: FGC Staff Only

Date received: [Click here to enter text.]

FGC staff action:

- ☐ Accept - complete
☐ Reject - incomplete
☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: [_____]

Meeting date for FGC consideration: [_____]

FGC action:

- ☐ Denied by FGC
☐ Denied - same as petition [_____]
Tracking Number
- ☐ Granted for consideration of regulation change

Special Order Relating to Take of Western Spadefoot (*Spea hammondi*) During Candidacy Period¹

(a) Definitions.

The following definitions shall apply to this section.

- (1) “Aquatic resource” means all “waters of the state” as defined in 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, and irrigation ditches.
- (2) “Begin construction” means to begin construction within the meaning of Sections 45Y and 48E of the federal Internal Revenue Code, and as defined pursuant to applicable Internal Revenue Service (IRS) Notices.
- (3) “Breeding and dispersal season” means the first day after October 1 with measurable rain but no later than January 31, until May 1.
- (4) “Conserve” means to record a perpetual conservation easement on real property in a form approved in writing by the department, with a grantee approved in writing by the department, 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.
- (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 placed on the registry of eligible projects pursuant to subsection (c)(1).
- (7) “Impermeable features” means Battery Energy Storage System pads, substation pads, roads which are made of concrete or asphalt, and Operations and Management (O&M) facilities.
- (8) “Managed or cultivated agricultural land” means land which has been both predominantly used for the production of food or fiber for humans or livestock and disced, plowed, and/or planted within the previous 5 years, or orchards or other lands with long-established trees, shrubs, or vineyards.
- (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 which is predominantly in its natural, scenic, forested, open-space

¹ Proposed to be chaptered at 14 C.C.R. § 749.15.

condition, and which is not predominantly subject to any residential, commercial, or industrial use, but excluding managed or cultivated agricultural land.

- (11) “Occupied spadefoot habitat” means aquatic resources or land, within 1,000 feet of where an individual western spadefoot has been documented by visual, eDNA, or acoustic surveys or recorded in the CNDDB, within the prior five (5) calendar years. Such 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) “San Joaquin Valley floor” means lands within the San Joaquin Valley at an altitude of no greater than 1,000 feet above sea level.
- (13) “Suitable spadefoot 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.
- (14) “Western 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 satisfy all of the following criteria are eligible to apply for authorization to take, as defined by Fish and Game Code Section 86, western spadefoot during the species’ candidacy period:

- (1) No more than 10 percent of the disturbed area of the project site shall be open space, undeveloped, or other land substantially in its natural condition.
- (2) This section shall only apply to a project which is located substantially on managed or cultivated agricultural land on the San Joaquin Valley floor within the County of Madera, County of Fresno, County of Kern, County of Kings, County of Tulare, County of Merced, County of Stanislaus, or County of San Joaquin.
- (3) This section shall only apply to a project included in the California Independent System Operator’s interconnection Cluster 15 or a lower-numbered cluster, and which could reasonably be expected to qualify for the Clean Energy Investment Tax Credit under Section 48E of the Internal Revenue Code, including transferability under Section 6418, as implemented through applicable Treasury regulations (26 CFR Part 1) and Internal Revenue Service guidance, based on a valid beginning of construction on or before July 4th, 2026 and satisfaction of continuity requirements pursuant to applicable IRS Notices.
- (4) This section shall only apply to incidental take associated with the development, construction, and operation of the following types of utility-scale projects:
 - (A) A solar photovoltaic project, including 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, and which interconnects or will interconnect at a voltage of 115 or more kilovolts (kv).

- (B) A combined solar photovoltaic and battery energy storage project, including 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, and which interconnects or will interconnect at a voltage of 115 or more kilovolts (kv).

(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 subsection (b)(1)-(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). The project proponent shall perform focused surveys consistent with established protocols to document the presence of western spadefoot on the project site, unless the project proponent elects to presume the project site or portions thereof within 1,000 feet of an aquatic resource are occupied by western spadefoot. All project areas within 1,000 feet of an aquatic resource not known or presumed as occupied shall be mapped 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.
- (3) The project proponent for an eligible project shall submit to the department for its review and approval all of the following:
 - (A) The results of the focused aquatic resource survey(s) required by subsection (c)(2);
 - (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 workplan for construction of any seasonal ponds required to satisfy the requirements of subsection (e).
- (4) Authorization for the incidental take of western spadefoot pursuant to this section shall be effective upon the department's written determination that:
 - (A) The project proponent has received department approval for its focused survey(s) and its proposal for how the project will mitigate for the take;
 - (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 pursuant to the California Environmental Quality Act (CEQA) for the project or the California Energy Commission has completed its certified regulatory program process for the project; and
 - (D) The project has received all necessary land use approvals, licenses, and entitlements from the relevant public agency.
- (5) 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 materially adversely modifies 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 does not begin construction, on- or off-site, per the requirements identified in applicable IRS Notices, before July 4, 2026.
- (6) 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 Cal. Code Regs., tit. 14, § 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.
- (7) 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 materially 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. 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. Such fencing shall be intended to retain and protect spadefoot during the breeding and dispersal season in and around aquatic resources. 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 materially adversely modified 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 20cm 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 6 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. Construction activities will be suspended in the immediate vicinity of the animal under supervision of the qualified biologist. Sections of fencing shall be temporarily removed or altered to allow the animal to leave the construction area of its own volition. If the animal does not leave the area within 48 business 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 business 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. 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. If the animal is handled, a report will be submitted to the appropriate department Regional Manager within 2 business days, including date(s), location(s), habitat description, and any corrective measures taken to protect the western spadefoot.
- (8) 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 5 minutes, rinsed with clean water, and thoroughly air-dried before subsequent use.

- (9) 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 appropriate department Regional Manager within 24 hours of the incident or discovery.
- (10) Nighttime construction activity shall be avoided when feasible during the breeding and dispersal season. When night-time driving is necessary for project activities, limit vehicle speed to 15 miles per hour during the breeding and dispersal season to the maximum extent practicable except in emergency situations. 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). For all western spadefoot handled, a report will be submitted to the appropriate department Regional Manager within 2 business days, including date(s), location(s), habitat description, and any corrective measures taken to protect the western spadefoot.
- (11) 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. 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. The project proponent shall only apply herbicide sprays via ground application when wind speed measures less than 3 mph. The project proponent shall ensure that great care is taken to avoid herbicide contact with any native vegetation, as feasible, and all herbicide sprays utilized within and adjacent to identified habitat features suitable for western spadefoot contain a dye (registered for aquatic use by the California Department of Pesticide Regulation, if warranted) to prevent overspray.
- (12) 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.
- (13) Provide the department with an Annual Status Report (ASR) no later than January 31 of every year beginning with the project proponent's registration under this section. Each ASR shall include, at a minimum: (1) 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; (2) a description of the current implementation status of all measures required pursuant to this subsection (c); (3) all available information about project-related incidental take of western spadefoot; and (4) information about other project-related impacts on western spadefoot.

(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 on-site, the project proponent shall mitigate off-site for any impacts that cannot be mitigated onsite.

- (1) 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 materially 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. 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 materially adversely altered by project activities. No more than 10 acres within 1,000 feet of any such ponds shall contain or be covered by impermeable features (as defined in section (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. 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.
- (2) 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 materially 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. 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 materially adversely altered by project activities. 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. 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 constructed ponds required by paragraphs (1) and (2) of this subsection shall be created and maintained for the life of the project. For every acre of onsite constructed ponds maintained pursuant to this paragraph, the project proponent will be credited at a 0.5:1 ratio to the number and acreage of the aquatic resources in occupied or suitable spadefoot habitat that are destroyed or materially 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 materially adversely altered on the project site, provided that the same acreage ratio is provided as mitigation and that the department determines 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) 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 materially 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. 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 materially adversely altered by project activities. Such ponds and the lands around them shall be conserved to prohibit any ground-disturbing activities within 1,000 feet from such ponds.
- (7) 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 materially 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. 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 materially adversely altered by project activities. 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 factors including, but not limited to, 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) and the relevant department regional office has given written approval of the provided form and amount of security. If security is provided, all mitigation pursuant to this section must be completed within eighteen (18) months of the department's determination pursuant to subsection (c)(3). The project proponent shall provide performance security as follows:

- (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, estimated at \$100,000;
 - (D) Interim management period funding, estimated at \$100,000;
 - (E) Long-term management funding estimated at \$4,000 for each acre of mitigation lands to be acquired pursuant to subsection (e);
 - (F) Related transaction fees, estimated at \$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.
- (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 taking 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) The take authorization provided by this section shall expire upon the effective date of the commission's decision pursuant to Fish and Game Code section 2075.5, subsection (e). Notwithstanding the expiration of the take authorization, and subject to paragraph (2) of this subsection (g), the project proponent shall remain liable for completion of all of the 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 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 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 Fish and Game Code section 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 Habitat Conservation Planning Branch chief.

June 5, 2026

- (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 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 Fish and Game Code section 2081 or other procedures authorized by law.

State of California
Fish and Game Commission
Finding of Emergency and Statement of Proposed Emergency Regulatory Action

Emergency Action to Add Section 749.15
Title 14, California Code of Regulations
Re: Conditional Take of Western Spadefoot

Date of Statement: August 10, 2026

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Background

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

On September 24, 2025, the California Fish and Game Commission (Commission) received a petition (the Petition) from the Center for Biological Diversity to list the northern and southern populations of western spadefoot (*Spea hammondi*), as threatened and endangered under the California Endangered Species Act (CESA), respectively.

The western spadefoot was petitioned to be listed under the Endangered Species Act (ESA, 16 U.S.C. § 1531 et seq.) in 2012 (USFWS 2015). The U.S. Fish and Wildlife Service (USFWS) proposed to list the northern and southern distinct population segments (DPS) as threatened in 2023 (USFWS 2023). The USFWS has not published a final determination regarding the federal petition. Furthermore, critical habitats for the northern and southern DPSs were not determined due to lack of sufficient data.

On October 6, 2025, the Commission referred the Petition to the Department of Fish and Wildlife (Department) for evaluation. At its meeting on October 8, 2025, the Commission officially acknowledged receipt of the petition. At its meeting on December 10, 2025, the Commission granted the Department's request for a 30-day extension of the period to review the petition and prepare this petition evaluation. In January 2026, the Department submitted to the Commission its evaluation of the Petition.

On April 16, 2026, the Commission closed the public hearing and continued the deliberation and decision on whether listing western spadefoot as threatened or endangered under CESA may be warranted to the Commission's June 17-18, 2026, meeting. Continuing the deliberation and decision allowed the Commission to consider a potential Fish and Game Code Section 2084 regulation in the same Commission meeting in which the Commission might make a may-be-warranted finding that would make western spadefoot a candidate species under CESA. At its June meeting, the Commission further continued the hearing on the petition for listing to its August 12-13, 2026, regularly scheduled meeting.

The Commission received a petition for regulation change associated with the proposed regulation and confirmed its completeness on June 9, 2026. The petition was scheduled for consideration at the Commission's August 12-13, 2026, meeting.

Statutory Authority

Candidate-species are protected from take under CESA pursuant to Fish and Game Code sections 2080 and 2085. Fish and Game Code Section 86 states that “[t]ake means hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill.” Under Fish and Game Code Section 2084, CESA provides that the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise consistent with CESA. As with all regulations, the Commission may adopt a regulation under Section 2084 on an emergency basis when it determines that a situation exists that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Consistency Determinations (CD) pursuant to Fish and Game Code Section 2080.1 or Incidental Take Permits (ITP) pursuant to Fish and Game Code Section 2081, subdivision (b), may also authorize the take of CESA candidate species. CESA take may only be authorized through a CD after the Department has determined that a project’s federal take authorization under the federal Endangered Species Act meets certain CESA criteria; some federal take authorizations will likely not entirely meet those criteria. Moreover, and in any event, because the species is not federally listed, a CD cannot be made. The Department may authorize CESA take through an ITP on a project-specific basis, which would be a substantially more lengthy and costly process for getting CESA take authorization than through this proposed emergency regulation.

II. Proposed Emergency Regulations

Incidental take of western spadefoot during the candidacy period that may result from activities relating to qualifying renewable energy projects.

The Commission will authorize the incidental take of western spadefoot during the candidacy period that may result from activities incidental to certain solar energy and solar/Battery Energy Storage System (BESS) projects. This authorization will only apply to the projects qualifying for, and registered under, the regulation.

Section 749.15 (New)

- (a) This subsection defines key terms for the proposed regulation, including an “aquatic resource” with the potential to serve biological needs of western spadefoot, “suitable spadefoot habitat,” and “occupied spadefoot habitat.”
- (b) This subsection defines the criteria for certain categories of renewable energy projects to be eligible for take authorization pursuant to the proposed regulation. A qualifying project must be a solar photovoltaic or combined solar photovoltaic and battery energy storage project, including 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, and which interconnects or will interconnect at a voltage of 115 or more kilovolts (kv). Further, to qualify a project must be substantially located on managed or cultivated agricultural land on the San Joaquin Valley floor within the Counties of Madera, Fresno, Kern, King, Tulare, Merced, Stanislaus, or San Joaquin, and no more than 10 percent of the disturbed area shall be open space, undeveloped, or other land substantially in its natural condition.

The project must also be included in the California Independent System Operator's interconnection Cluster 15 or a lower-numbered cluster, and reasonably be expected to qualify for the Clean Energy Investment Tax Credit under Section 48E of the Internal Revenue Code, including transferability under Section 6418, as implemented through applicable Treasury regulations (26 CFR Part 1) and Internal Revenue Service (IRS) guidance, based on a valid beginning of construction on or before July 4th, 2026 and satisfaction of continuity requirements pursuant to applicable IRS Notices.

- (c) This subsection describes the process by which take may be authorized pursuant to the proposed regulation. Within 60 days of the effective date of the regulation, a project proponent must submit a written request for registration pursuant to the regulation, and the department shall include any qualifying project on a public registry within 30 days of such submission. However, authorization for the incidental take of western spadefoot shall only be effective upon the department's determination that the project has completed focused surveys for aquatic resources, complies with the minimization and mitigation requirements of the proposed regulation, after California Environmental Quality Act (CEQA) review for the project is complete, and after the project has received all necessary land use approvals, licenses, and entitlements from the relevant public agency, among other requirements.
- (d) This subsection describes avoidance and minimization measures for western spadefoot required for each project to obtain and maintain take authorization pursuant to the regulation. These include avoidance of occupied spadefoot habitat and aquatic resources, and limitations on work during the western spadefoot breeding and dispersal season, and annual status reports, among other avoidance and minimization measures.
- (e) This subsection describes required mitigation for western spadefoot, in the form of mitigation ponds created and conserved on-site, or conserved off-site ("constructed ponds" and "off-site" ponds, respectively), at ratios to the number and acreage of the aquatic resources that are destroyed or materially adversely altered on the project site. The required ratios of mitigation ponds to aquatic resources destroyed or materially adversely altered increases if those aquatic resources are replaced with impermeable features, and if the aquatic resources are in occupied spadefoot habitat rather than in suitable spadefoot habitat. Mitigation shall be on-site (on the project site or within 1,000 feet of the project site) unless 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 on-site.
- (f) This subsection describes the required performance security which the project proponent must provide to the department before proceeding with development, construction, or operations activities that have the potential to take western spadefoot, unless the project proponent has completed the required mitigation.
- (g) This subsection describes the expiration of take authorization. The project proponent shall remain liable for the completion of all mitigation required for the project. If the project proponent has not completed the project activities that could result in take of western spadefoot, the project proponent may apply for a F&G Code Section 2081 incidental take permit. The department shall credit the project proponent for existing mitigation as well as make all reasonable efforts to incorporate the terms and conditions of the proposed regulation into the incidental take permit. The project proponent may also apply for a F&G Code Section 2081, subdivision (a) management permit if take authorization is needed for the ongoing management of mitigation ponds.

- (h) This subsection authorizes take of western spadefoot in the course of ongoing research and monitoring by public agencies other than the Department and by private parties holding a Scientific Collecting Permit for western spadefoot, California tiger salamander, or California red-legged frog, 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 Habitat Conservation Planning Branch chief. Pursuant to F&G Code Section 2081, the Department may also authorize take of western spadefoot for research and monitoring activities not addressed above.
- (i) This subsection describing responsibility of project proponent to ensure consistency with all applicable laws is necessary to clarify the limitations of the intended effect of this emergency regulation.

III. Findings for the Existence of an Emergency

The Commission considered the following factors in determining whether an emergency exists: public health, safety, and general welfare, as well as the magnitude of potential harm; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation and has determined that an emergency regulation authorized under Fish and Game Code Section 2084 is needed.

In this case, an emergency exists because of the immediate, serious harm to the public health, safety, or general welfare that would be caused by work delays or stoppages for qualifying solar and solar/BESS projects, which must "begin construction" within the meaning of the federal Investment Tax Credit according to deadlines established by the "One Big Beautiful Bill Act" in order to avail themselves of the Investment Tax Credit.

Governor Newsom's Executive Order N-33-25, responding to the federal "One Big Beautiful Bill Act" which pared back the Investment Tax Credit (ITC), directs state agencies that work on the permitting and interconnection of renewable energy projects to "accelerate and prioritize all permitting, approval, and other agency actions that would enable and expedite [their] development." Developing solar and solar/BESS projects requires substantial coordination, financing must be secured to fund engineering and construction contracts, and major equipment must be procured and developed to enable development to occur on schedule. The potential listing of the western spadefoot under CESA, absent a streamlined process for take authorization, could put near-term ITC projects in jeopardy and could stall the development (and consequently impact the cost) of renewable energy projects without which the State cannot meet its multi-sector decarbonization targets.

Climate change impacts in California pose a clear threat to public health and are identified in the petition for listing as a primary threat to the western spadefoot. The proposed emergency regulation is necessary to allow qualifying renewable energy projects to proceed with groundbreaking activities during western spadefoot candidacy under CESA. The projects are integral components in California's strategy to achieve greenhouse gas reduction goals and mitigate the State's contribution to global climate change. The limited authorization of incidental take of western spadefoot specific incidental to qualifying renewable energy projects, paired with minimization and mitigation measures, will contribute to the species' recovery in the long-term. The conservation measures required by the proposed regulation have the potential to provide a

net conservation benefit for western spadefoot as compared to current agricultural practices on managed and cultivated agricultural lands.

The Magnitude of Potential Harm

The Legislature has found that “[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.” (Health & Safety Code Section 38501(a)(1))

As stated above, any delay in the ability of ITC-eligible solar and solar/BESS projects threatens their ability to “begin construction” within the meaning of the ITC, and therefore to qualify for the ITC at all. Absent the federal tax credit, certain renewable energy projects may not be able to timely proceed with development, or they may lose financing and therefore fail altogether. The consequence of either outcome would be that the State’s renewable energy targets may not be reached. Given the escalating impacts of global climate change, including increased severity of drought, wildfire, and extreme weather conditions, the State’s failure to reduce its contribution to global greenhouse gas emissions would have a deleterious effect on the State’s economy, public health, and environment. The western spadefoot itself is threatened by the impacts of climate change, which may reduce the viability and availability of breeding ponds and otherwise change western spadefoot habitat in unpredictable ways.

Therefore, the Commission determines that the prompt adoption of the proposed regulation is necessary to mitigate the anticipated impacts of climate change on the State and on the western spadefoot.

The Existence of a Crisis Situation

As above, the Legislature has determined that global warming is a “serious threat” to the State’s economy, public health, and environment. Among other recent legislation, in 2025, the Legislature passed and the Governor signed Assembly Bill 1207 to expand the State Air Resources Board’s regulation of greenhouse gas emissions through the Cap-and-Invest-Program.

Based on its evaluation of the petition to list the western spadefoot as threatened or endangered under CESA, the Commission has determined that climate change likely poses a major threat to the species, and that efforts to reduce the State’s contribution to global climate change and therefore reduce future warming of western spadefoot habitat are necessary to limit harm to the species in future decades.

In the absence of a legal avenue for eligible solar projects to take western spadefoot, those projects run the risk of not being able to take advantage of the ITC. This could result in costly delays or even failure for those projects.

The Immediacy of the Need

As described above, ITC-eligible solar and solar/BESS projects are under a statutory deadline to qualify for the federal ITC, and must promptly “begin construction” for the tax credit to remain available. Consequently, these renewable energy projects need prompt authorization for the incidental take of western spadefoot because they must receive the ITC in order to remain economically viable and for their development to proceed as planned.

Legislation signed by President Trump (HR 1), and IRS implementing guidance issued in 2025, curtailed the availability of the 30% federal ITC for solar facilities in the midst of California’s efforts to reach carbon neutrality and at the time California has identified the need to add significant new resources – primarily from utility-scale solar – to the electricity system to ensure grid reliability. The State needs to take steps to ensure California meets its stated reliability targets and progresses on its climate goals, while doing so more affordably by securing the ITC’s 30% or more project cost savings. The permitting pathway and mitigation cost predictability for solar projects that adoption of this regulation will provide is critical for the successful development of the affected solar projects.

Governor Newsom’s Executive Order N-33-25 (Aug. 29, 2025) recognized the need for emergency action to accelerate efforts to bring solar facilities on line, stating (in part):

WHEREAS in 2025, Congress enacted and President Trump signed HR 1, which aims to reverse the IRA’s technological and economic progress and to impair clean energy projects, including projects already under development in California, by accelerating the expiration of the federal production and investment tax credits for clean energy projects; and

WHEREAS the Trump Administration, through IRS Notice 2025-42, has imposed accelerated deadlines requiring most projects above 1.5 MW to demonstrate “physical work of a significant nature” before July 4, 2026, and to be placed in service by December 31, 2027, placing billions of dollars in tax credit value at risk if California projects cannot meet these artificially and unjustifiably rushed deadlines, with consequences for ratepayers, grid reliability, project developers, and the state’s climate commitments; and

WHEREAS streamlining new clean energy resources, and securing the benefit of federal tax credits for such resources, helps reduce the cost of electricity for Californians; and

WHEREAS immediate action is needed to maximize the expiring federal production and incentive tax credits for clean energy projects able to begin construction by July 2026 or come online by December 2027.

HR 1 required projects to have begun construction on or before July 4, 2026, and specified that such projects must be placed into service by the end of 2030 to qualify for the ITC. Projects that do not meet the July 4, 2026 begin-construction safe harbor deadline must be placed in service by December 31, 2027 to qualify for the ITC. IRS guidance provides that projects can meet the begin construction stipulation by satisfying the “physical work test” - physical work of a significant nature at the project site and/or off-site at a factory. Such off-site work may include the manufacture of components, mounting equipment, support structures such as racks and rails, inverters,

transformers, and other power conditioning equipment. On-site work may include the installation of racks or other structures to affix PV panels, collectors, or solar cells to a site.

Utility-scale solar projects require hundreds of millions of dollars for solar panels and other equipment and for construction costs. Developers are increasingly having to make those commitments and payments earlier in the project development timelines in order to minimize supply-chain risks that have bedeviled renewables development over much of the last decade due to COVID disruptions and, more recently, tariffs. While payments and contractual commitments of some amounts will have been made by projects in order to meet the July 4, 2026, deadline, most such projects will have to spend much more to be completed. To provide the financing to complete these projects on the required timelines (including off taker power purchase agreement (PPA) milestones and commercial operation dates (deadlines for delivering electricity)), lenders and investors (including tax equity) require the clear line-of-sight on a permitting mechanism for incidental take authorization and associated mitigation fees that the regulation will provide. It is imperative that the regulation be adopted through emergency rulemaking because the permitting and mitigation cost uncertainties during the approximately 8-month period (at the very least) from candidacy to the effective date of the regulation under the standard rulemaking process would impede that necessary financing, delay project development and risk the projects missing the project placed-into-service dates the State is depending on to meet electricity demands, and may even result in the cancellation of some projects altogether.

At the same time, the California Independent System Operator is requiring developers to demonstrate they have executed PPAs earlier in the interconnection process and, therefore, earlier in the project permitting process. The advancement of species to candidacy exacerbates uncertainties about development timelines and mitigation costs, in turn making marketing projects to off takers more difficult, while at the same time impairing financing. This could delay some projects and result in the cancellation of others.

The Commission's authority to adopt emergency regulations is set out in Fish and Game Code Section 240 and Government Code Section 11346.1(b), which permit emergency rulemaking upon a finding that immediate action is necessary to avoid serious harm to the public peace, health, safety, or general welfare. That serious harm and the need to avoid it by immediate action are present here. Under the standard rulemaking process, the regulation would not become effective for approximately 8 months at the very earliest, a timeline that does not align with the financing decisions and/or PPA milestones developers face between now and April 2027. Absent the clear permitting mechanism and mitigation fee certainty that the rule would provide, developers may be unable to secure financing commitments or successfully market projects to power purchasers as planned and scheduled. As a result, some projects will be delayed and others may never be built, setting back progress on the State's reliability and climate commitments, increasing project costs that would be passed through to ratepayers, and delaying upgrades in grid reliability. Emergency rulemaking is necessary to avoid these harms to the general welfare.

Whether the Anticipation of Harm Has a Basis Firmer than Simple Speculation:

For the reasons discussed above, the harm to renewable energy projects that cannot qualify for the ITC, and therefore will be unable to proceed with development, is clear.

Additionally, a robust corpus of scientific evidence is clear that global climate change is an ongoing and increasingly severe meteorological phenomenon affecting the State of California and the habitat of the State's wildlife species. The petition to list the western spadefoot identifies scientific literature that discusses the impact of climate change on amphibian species including the western spadefoot, and concludes that climate change represents a major stressor to the species and its habitat. Consequently, the anticipated harms of climate change to the State and to the western spadefoot are clear and nonspeculative.

IV. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

The proposed emergency action is expected to create fiscal impacts for the Department. The review and approval process to vet applications for take authorization will require several positions to complete, including those of regional program managers. Staff time is required to review intake documents, including assessing whether the provided habitat mitigation plan is acceptable. The costs for regional staff and certain Habitat Conservation Planning Branch (HCPB) staff under the emergency timeframe of 180 days are detailed below in Table 1. The provided hours are for the estimated 10 projects that are situated in the San Joaquin valley floor as defined in the regulations.

Table 1. Estimated Department Implementation Costs for Making Determinations as Required Under this Emergency Regulation Relating to Take of Western Spadefoot

Department Classification	Activity/Task	Hourly Rate*	Hours Projected	Projected Cost
Regional Manager	Document review and approval	\$ 218.04	100	\$ 21,804.00
Environmental Program Manager Supervisory	Document and permit review (includes both regional and HCPB staff time)	\$ 159.19	650	\$ 103,473.50
Senior Environmental Scientist Supervisor	Document and permit review (regional staff)	\$ 137.67	400	\$ 55,068.00
Senior Environmental Scientist Specialist	Document and permit review (includes both regional and HCPB staff time)	\$ 109.50	1250	\$ 136,875.00
Environmental Scientist	Document and permit review	\$ 95.10	500	\$ 47,550.00
Analyst II	Administrative Support	\$ 77.00	100	\$ 7,700.00
Attorney III	Review time for habitat conservation easements, subordination agreements	\$ 156.36	200	\$ 31,272.00

Department Classification	Activity/Task	Hourly Rate*	Hours Projected	Projected Cost
Supervisor I	Processing of securities	\$ 90.91	60	\$ 5,454.60
Cons. Engineering (Engineering Geologist)	Reviews of pond construction design plans	\$ 124.63	200	\$ 24,926.00
Supervising Right of Way Agent	Conservation easement language review, encumbrance, and other easement on title reviews	\$ 122.24	800	\$ 97,792.00
Senior Land Surveyor	Plat map, title, and boundary reviews	\$ 146.06	3040	\$ 444,022.40
Senior Right of Way Agent	Conservation easement language review, encumbrance, and other easement on title reviews	\$ 110.02	6400	\$ 704,128.00
			Total	\$1,680,065.50

*Rates include Department 56.17% standard benefit rate, and 20.68% overhead rates.

(b) Nondiscretionary Costs/Savings to Local Agencies

This emergency regulation will not introduce nondiscretionary costs or savings to local agencies.

(c) Programs Mandated on Local Agencies or School Districts

None

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None

(e) Effect on Housing Costs

None

V. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents Relied Upon:

A summary of general scientific information on the life history of western spadefoot is presented in the Department's January 2026 Petition Evaluation for Western Spadefoot (*Spea hammondi*), <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=239898>.

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VI. Authority and Reference

The Commission adopts this emergency action pursuant to the authority vested by Sections 399 and 2084 of the Fish and Game Code to implement, interpret, or make specific Sections 399 and 2084 of the Fish and Game Code.

VII. Fish and Game Code Section 399 Finding

Climate change impacts in California pose a clear threat to public health and are identified in the petition for listing as a primary threat to the western spadefoot. The proposed emergency regulation is necessary to allow qualifying renewable energy projects to proceed with groundbreaking activities during western spadefoot candidacy under CESA. The projects are integral components in California's strategy to achieve greenhouse gas reduction goals and mitigate the State's contribution to global climate change. The allowance of incidental take of western spadefoot specific to qualifying renewable energy projects will contribute to the species' recovery in the long-term.

Pursuant to Section 399, subdivision (b), of the Fish and Game Code, the Commission finds, based on the information above, that adopting this regulation is necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Informative Digest/Policy Statement Overview

Background

On September 24, 2025, the California Fish and Game Commission (Commission) received a petition (the Petition) from the Center for Biological Diversity to list the northern and southern populations of western spadefoot (*Spea hammondi*), as threatened and endangered under the California Endangered Species Act (CESA), respectively.

The western spadefoot was petitioned to be listed under the Endangered Species Act (ESA, 16 U.S.C. § 1531 et seq.) in 2012 (USFWS 2015). The U.S. Fish and Wildlife Service (USFWS) proposed to list the northern and southern distinct population segments (DPS) as threatened in 2023 (USFWS 2023). The USFWS has not published a final determination regarding the federal petition. Furthermore, critical habitats for the northern and southern DPSs were not determined due to lack of sufficient data.

On October 6, 2025, the Commission referred the Petition to the Department of Fish and Wildlife (Department) for evaluation. At its meeting on October 8, 2025, the Commission officially acknowledged receipt of the petition. At its meeting on December 10, 2025, the Commission granted the Department's request for a 30-day extension of the period to review the petition and prepare this petition evaluation. In January 2026, the Department submitted to the Commission its evaluation of the Petition.

On April 16, 2026, the Commission closed the public hearing and continued the deliberation and decision on whether listing western spadefoot as threatened or endangered under CESA may be warranted to the Commission's June 17-18, 2026, meeting. Continuing the deliberation and decision allowed the Commission to consider a potential Fish and Game Code Section (FGC) 2084 regulation in the same Commission meeting in which the Commission might make a may-be-warranted finding that would make western spadefoot a candidate species under CESA. At its June meeting, the Commission further continued the hearing on the petition for listing to its August 12-13, 2026, regularly scheduled meeting.

The Commission received a petition for regulation change associated with the proposed regulation and confirmed its completeness on June 9, 2026. The petition was scheduled for consideration at the Commission's August 12-13, 2026, meeting.

Candidate-species are protected from take under CESA pursuant to FGC sections 2080 and 2085. FGC Section 86 states that "[t]ake means hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill." Under FGC Section 2084, CESA provides that the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise consistent with CESA. As with all regulations, the Commission may adopt a regulation under Section 2084 on an emergency basis when it determines that a situation exists that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Proposed Emergency Regulations

The proposed addition of subsection 749.15, Title 14, California Code of Regulations creates a special order allowing incidental take of western spadefoot during CESA candidacy for certain

renewable energy projects that will provide renewable energy sources needed to meet California's goals in reducing fossil fuels use and the State's contribution to climate change impacts.

Benefits of the Regulation

Because climate change is a principal threat to western spadefoot identified in the listing petition, the solar and solar/BESS projects that will receive take authorization pursuant to the proposed regulation will contribute to the species' recovery in the long-term. However, mitigation must occur for any unavoidable impacts. The conservation measures required by the proposed regulation have the potential to provide a net conservation benefit for western spadefoot as compared to current agricultural practices on managed and cultivated agricultural lands.

Consistency and Compatibility with Existing Regulations

Commission staff have searched the California Code of Regulations and have found no other state regulation relating to the Commission's ability to allow for incidental take of the candidate species under CESA, and therefore conclude that the proposed regulation is neither inconsistent nor incompatible with existing state regulation.

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*).¹

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.

¹ Proposed to be chaptered at Section 749.15 of Title 14, California Code of Regulations.

- (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.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME California Fish and Game Commission	CONTACT PERSON Gabe Lopez	EMAIL ADDRESS fgc@fgc.ca.gov	TELEPHONE NUMBER 916-737-4862
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Emerg. Action Add Sec. 749.15, T14, CCR Re: Conditional Take of Western Spadefoot			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| ☐ a. Impacts business and/or employees | ☐ e. Imposes reporting requirements |
| ☐ b. Impacts small businesses | ☐ f. Imposes prescriptive instead of performance |
| ☐ c. Impacts jobs or occupations | ☐ g. Impacts individuals |
| ☐ d. Impacts California competitiveness | ☒ h. None of the above (Explain below): |

Emergency action: no economic assessment; only fiscal impact assessment.***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.******If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- ☐ Below \$10 million
- ☐ Between \$10 and \$25 million
- ☐ Between \$25 and \$50 million
- ☐ Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total
businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide
☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with
other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements.
Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted. \$ _____4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? ☐ YES ☐ NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____
_____4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ YES ☐ NOExplain: _____
_____**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.****California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.***1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? ☐ YES ☐ NO***If YES, complete E2. and E3******If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO*If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: _____
_____The incentive for innovation in products, materials or processes: _____
_____The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- ☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____
- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

- ☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- ☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☐ 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT (CONTINUED)**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☒ 1. Additional expenditures in the current State Fiscal Year. (Approximate)\$ \$1,680,065.50, see addendum*It is anticipated that State agencies will:*☒ a. Absorb these additional costs within their existing budgets and resources.☐ b. Increase the currently authorized budget level for the _____ Fiscal Year☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☐ 3. No fiscal impact exists. This regulation does not affect any State agency or program.☐ 4. Other. Explain _____
_____**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE



DATE

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

STD. 399 Addendum
Emergency Action to Add Section 749.15
Title 14, California Code of Regulations
Re: Conditional Take of Western Spadefoot

Background

On September 24, 2025, the California Fish and Game Commission (Commission) received a petition (the Petition) from the Center for Biological Diversity (CBD) to list the northern and southern populations of western spadefoot toad (*Spea hammondi*), as threatened and endangered under the California Endangered Species Act (CESA), respectively.

The Commission discussed candidacy of western spadefoot at its April 15-16, 2026 meeting. At that meeting, the Commission closed the public hearing and continued the deliberation and decision on whether listing western spadefoot as threatened or endangered under CESA may be warranted to the Commission's June 17-18, 2026, meeting.

Prior to the June meeting, the Large-scale Solar Association (LSA) and CBD jointly submitted a regulation change petition, including draft language proposing limited take of the species under Fish and Game Code Section 2084 (Petition 2026-12). At the June 2026 meeting, the Commission again continued the meeting on the CESA petition, for the purpose of deliberation, to the August 2026 meeting to allow LSA and CBD to further refine and prepare materials for a potential emergency rulemaking to allow limited, conditional take of western spadefoot during candidacy.

Proposed Emergency Regulations

The proposed addition of subsection 749.15, Title 14, California Code of Regulations creates a special order allowing incidental take of western spadefoot during CESA candidacy for certain renewable energy projects that will provide renewable energy sources needed to meet California's goals in reducing fossil fuels use and the State's contribution to climate change impacts.

Economic Impact Statement

Section A. Estimated Private Sector Cost Impacts

Question 1. Answer: h. None of the above. (Explain below):

Emergency regulations do not require an economic impact statement; only fiscal impacts must be evaluated (California Government Code Section 11346.1).

Fiscal Impact Statement

Section A. Fiscal Effect on Local Government

Answer: None

Section B. Fiscal Effect on State Government

Answer: The proposed emergency action is expected to create fiscal impacts for the California Department of Fish and Wildlife (Department). The review and approval process to vet applications for take authorization will require several positions to complete, including those of

regional program managers. Staff time is required to review intake documents, including assessing whether the provided habitat mitigation plan is acceptable. The costs for regional staff and certain Habitat Conservation Planning Branch (HCPB) staff under the emergency timeframe of 180 days are detailed below in Table 1. The provided hours are for the estimated 10 projects that are situated in the San Joaquin valley floor as defined in the regulations.

Table 1. Estimated Department Implementation Costs for Making Determinations as Required Under this Emergency Regulation Relating to Take of Western Spadefoot

Department Classification	Activity/Task	Hourly Rate*	Hours Projected	Projected Cost
Regional Manager	Document review and approval	\$ 218.04	100	\$ 21,804.00
Environmental Program Manager Supervisory	Document and permit review (includes both regional and HCPB staff time)	\$ 159.19	650	\$ 103,473.50
Senior Environmental Scientist Supervisor	Document and permit review (regional staff)	\$ 137.67	400	\$ 55,068.00
Senior Environmental Scientist Specialist	Document and permit review (includes both regional and HCPB staff time)	\$ 109.50	1250	\$ 136,875.00
Environmental Scientist	Document and permit review	\$ 95.10	500	\$ 47,550.00
Analyst II	Administrative Support	\$ 77.00	100	\$ 7,700.00
Attorney III	Review time for habitat conservation easements, subordination agreements	\$ 156.36	200	\$ 31,272.00
Supervisor I	Processing of securities	\$ 90.91	60	\$ 5,454.60
Cons. Engineering (Engineering Geologist)	Reviews of pond construction design plans	\$ 124.63	200	\$ 24,926.00
Supervising Right of Way Agent	Conservation easement language review, encumbrance, and other easement on title reviews	\$ 122.24	800	\$ 97,792.00
Senior Land Surveyor	Plat map, title, and boundary reviews	\$ 146.06	3040	\$ 444,022.40
Senior Right of Way Agent	Conservation easement language review, encumbrance, and other easement on title reviews	\$ 110.02	6400	\$ 704,128.00
			Total	\$1,680,065.50

*Rates include Department 56.17% standard benefit rate, and 20.68% overhead rates.

Section C. Fiscal Effect on Federal Funding of State Programs

Answer: None