Tracking Number: (2026-12)

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: [6/5/2026]

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

June 5, 2026

Special Order Relating to Take of Western Spadefoot (*Spea hammondii*) During Candidacy Period[1]

(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 hammondii*, and shall include any subsequently described taxa split from *Spea hammondii*.

(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.

(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.