

# THE NEW GOPHER TORTOISE PERMITTING GUIDELINES

By Arthur "Art" D. Wade III, PWS



The Florida Fish and Wildlife Conservation Commission (FWC) classifies the gopher tortoise (*Gopherus polyphemus*) as a threatened species under Chapter 68A-27.004 F.A.C. In general, the rule states that no person shall take, pursue, harass, or capture a gopher tortoise, its eggs, or damage the burrows unless authorized by the FWC. To help provide additional protection for the gopher tortoise, the FWC approved the *Gopher Tortoise Permitting Guidelines* (Guidelines) on April 9, 2008. The Guidelines address numerous topics such as determining if an activity requires a permit, the types of permits available and how to obtain them, burrow survey requirements, and the capture and relocation of tortoises. A thorough review of the Guidelines is beyond the scope of this article; therefore, discussion will be limited to a few of the items which are believed to affect most landowners and developers. At the time this article was written, the date of implementation of the Guidelines was unknown. However, based on a review of the FWC website and discussion with FWC staff, it appears many of the changes will be implemented in the spring of 2009.

## What Are Gopher Tortoises?

Gopher tortoises are docile, land-dwelling turtles that eat a variety of grasses and flowering plants. They live in underground burrows which they construct by digging with their front feet, and often share their homes with many different animal species (also known as commensal species), such as the eastern indigo and Florida pine snakes, Florida mouse, and the Florida gopher frog.

Gopher tortoises are found throughout almost all of Florida's counties, the southern portions of Georgia, Alabama, and Mississippi, and a few counties in southern South Carolina. While gopher tortoises generally prefer to construct their burrows in dry, sandier areas, they are not limited to these locations, and burrows have even been observed in the wetter soils of pine flatwoods. Dry, sandy areas are not only valuable to gopher tortoises, but also to humans...and for many of the same reasons: good soils, good drainage, and good location. The competition for such prime real estate has led to the loss of tortoise habitat and a significant decrease in the tortoise population, as well as the decline of commensal species.



Author's granddaughter, Sarah, observing a gopher tortoise.

## What Activities Require A Permit?

Permits are required for any activity that causes harm or destruction to tortoises and their burrows. Examples of these activities include:

- Collapsing, blocking, or covering tortoise burrows, or filling the burrows with harmful substances
- Excluding tortoises from their burrows
- Altering tortoise habitat to an extent that tortoises can not survive
- Site preparation for development activities that results in tortoises or their burrows being impacted

## What Activities Do Not Require A Permit?

Some activities are authorized even if they do impact tortoises or their burrows. However, these cases are specific and must be conducted in accordance with the Guidelines. The activities are as follows:

- Agriculture
- Silviculture
- Wildlife management

- Linear utility and highway rights-of-way vegetation maintenance

Permits are not required for the following activities as long as they do not cause harm to tortoises or their burrows:

- Routine yard and vegetation maintenance
- Landscaping activities
- Designing a project that allows existing burrows to remain in place as long as the activities are conducted at least 25 feet away from the burrow entrance. However, if the activity results in a significant loss of tortoise habitat and tortoises are unable to survive as a result, a permit will be required.

### **Permit Types & Duration, Mitigation Contributions, And Burrow Survey Requirements**

The Guidelines establish a new set of permit types, mitigation contributions, and burrow survey requirements for all projects with potential gopher tortoise habitat. The permitting structure is essentially divided into three main categories, with two additional permit types to be issued only under extreme situations. The three main types are:

1. Authorized Agents
2. Site-specific relocation (on-site and off-site relocation)
3. Recipient sites

Each permit has a specified duration and requires a Mitigation Contribution. The Mitigation Contributions will be used by the FWC to support tortoise conservation measures. These fees do not cover the costs of consultants (surveys, relocation, etc.) or owners of recipient sites.

In addition, entombment of tortoises is no longer authorized under current or future permits, with the exception of Emergency Permits. Any permits issued on or before July 30, 2007 that contained provisions for entombment are grandfathered in and will not expire. However, landowners are encouraged by the FWC to voluntarily relocate all tortoises, and the FWC is committed to expediting the necessary permit amendments and assisting the landowner in locating suitable recipient sites.

**Authorized Agent Permits** – Authorized Agents (Agent) are individuals authorized by the FWC to conduct specific tasks relating to gopher tortoises or oversee the work of authorized assistants conducting those tasks. These permits do not grant authorization for individual projects. An Agent or landowner must still obtain project specific permits as described below. To receive an Authorized Agent Permit, the applicant must meet experience and/or education requirements to conduct the tasks for which they are applying. Activities include:

- Tortoise surveys
- Capture of tortoises using bucket or live traps, or hand shovel excavations
- Capture of tortoises using modified pulling rod
- Transport, marking, and release of tortoises
- Collection of blood samples
- Supervision of tortoise burrow excavations using mechanical equipment (for example, backhoe excavations)

An Agent may not wish to conduct all of the tasks listed above due to experience, education, or preference. Agents and their authorized assistants can only perform the activities for which they are approved.

Authorized Agent Permits are good for 2 years and require a one-time mitigation contribution of \$500. Permits may be extended in 2-year increments without additional payment.

**Site-Specific Relocation Permits** – There are two main categories of site-specific relocation permits: 10 or Fewer Burrows Permits and Conservation Permits.

#### 10 or Fewer Burrows Permits

For sites that have 10 or fewer burrows impacted by the proposed development, the landowner has two permit options: on-site relocation or off-site relocation. Phased projects can only utilize this permit once per project. Future phases that require the relocation of additional tortoises will be permitted using a Conservation Permit.

An On-Site Relocation Permit allows the landowner or other trained individuals to capture tortoises and relocate them to an on-site location as specified within the permit. The landowner may also utilize the services of an Authorized Agent to conduct these activities.

Off-Site Relocation Permits grant permission to relocate tortoises off the development site to a certified recipient site. Off-site relocation requires the use of an Authorized Agent.

On-site and off-site relocation permits are good for 6 months and require a mitigation contribution of \$200.

### Conservation Permits

Projects that require relocation of 10 or more tortoises or have previously used a 10 or Fewer Burrows permit will be issued a Conservation Permit. Conservation Permits allow on-site or off-site relocation, and all relocation tasks must be conducted by an Authorized Agent.

Conservation permits are good for 12 months and require a mitigation contribution of \$200 for the first 10 burrows. Each additional tortoise requires a \$300 fee if being relocated to a protected site or \$3,000 per tortoise if the recipient site is unprotected.

Temporary Exclusion Permits for Major Linear Utility Corridors are special Conservation Permits, which allow projects, such as natural gas or electric transmission lines, to be constructed through tortoise habitat. Tortoises are captured, temporarily relocated outside of the construction area, and excluded from the corridor during the construction process using silt fence or other suitable material. Upon completion of the project, tortoises are allowed to return to site within the utility corridor.

Exclusion permits are good for 12 months and require a mitigation contribution of \$100 - \$300 dollars per tortoise. The actual mitigation contribution will be determined during the permitting process.

**Recipient Site Permits** – Recipient sites are lands set aside for the purpose providing habitat for relocated tortoises. These lands have stringent requirements to ensure long-term security for the tortoises and their habitat. There are two types of recipient sites: Those providing long-term protection and those providing short-term or no protection.

Lands being considered as recipient sites must meet specific suitability criteria. Minimum (Acceptable) and highly desirable features (Desirable) are set forth in the Guidelines. The following is a brief description of a few of the criteria considered for sites providing long-term protection (criteria for short-term and unprotected sites not discussed in this article):

- Land size – Minimum of 40 contiguous acres of upland with Acceptable soil and vegetation conditions.
- Soils – Soils must meet texture and depth to water table (DWT) criteria. Acceptable soils are moderately-well to excessively drained and have a DWT of 1.5 feet or more. Desirable soils have a DWT of 4.3 feet or more and are excessively drained.
- Vegetation – Sites with at least 30% cover by herbaceous vegetation and average canopy cover of 60% or less meet the Acceptable criteria. Whereas, sites with greater than 50% herbaceous vegetation and average canopy cover of 40% or less are considered Desirable.

Recipient site permits require a mitigation contribution of \$500 and those sites providing long-term protection measures do not expire. Recipient sites offering short-term or no protection for tortoises require renewal every 2 years, but no additional mitigation contribution.

**Extreme Case Permits** – Emergency Take Without Relocation Permits and Settlement Permits are issued by the FWC only under extreme situations.

Emergency Take Permits are issued only when there is an immediate danger to public health or safety or in response to an official state of emergency issued by the Governor or local government.

Settlement Permits are the second form of an extreme case permit and are only issued after law enforcement investigations are completed.

Emergency Take and Settlement Permits are handled on a case-by-case basis and both require a mitigation contribution of \$4,000 per tortoise.

**Burrow Surveys** – Burrow surveys are required on potential gopher tortoise habitat slated for development. The purpose of the surveys is to determine the location of all *Potentially Occupied Burrows* within the gopher tortoise habitat, so that all of the tortoises within the developed property can be captured and relocated. All surveys must be conducted by an Authorized Agent.

Potentially Occupied Burrows is a new classification, combining the active and inactive burrows classifications. A burrow is considered potentially occupied even if it shows no obvious signs of use. Burrows that have collapsed entrances or are filled with leaves, soil, and vegetation can be considered Abandoned. Abandoned burrows are not considered a Potentially Occupied Burrow.

A pre-application survey is required of at least 15% of the potential gopher tortoise habitat. The estimate will allow the landowner and FWC to determine the approximate number of tortoises that will require relocation. This “baseline” number is calculated using the following formula:

Total Potentially Occupied Burrows/Total Acres Within Survey Area X 0.50 = Tortoises/Acre

Prior to capturing and relocating tortoises, a 100% survey of all tortoise habitat to be impacted within the project area is required to ensure that all no tortoises are left behind.

### **Conclusion**

The forthcoming Guidelines will have a noticeable effect on development of lands containing gopher tortoise habitat. Future projects will require greater planning to make sure that tortoises and their habitat are protected within the project area or that tortoises are relocated to acceptable recipient sites. If you have any questions or concerns regarding the new Guidelines or how they may affect your project, please contact Chastain-Skillman, Inc. for more information.

### **References**

Gopher Tortoise Permitting Guidelines - [http://myfwc.com/permits/Protected-Wildlife/apps/GopherTortoise\\_PermitGuidelines.pdf](http://myfwc.com/permits/Protected-Wildlife/apps/GopherTortoise_PermitGuidelines.pdf)

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