Florida Department of Transportation

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MEMORANDUM

DATE: APRIL 7, 2010

TO: DISTRICT FIVE CONSULTANTS

FROM: STEVE TONJES, ENVIRONMENTAL SCIENTIST, E.M.O.
HANNAH HERNANDEZ, DISTRICT PERMIT COORDINATOR, D5

COPIES: PATRICK MUENCH, MARIO BIZZIO, BRIAN STANGER, BILL WALSH

SUBJECT: GOPHER TORTOISE PERMITTING IN DISTRICT FIVE

As many consultants are aware, the Florida Fish and Wildlife Conservation Commission (FWC) has revised permitting policies for the gopher tortoise (*Gopherus polyphemus*). Under prior regulations, the FWC allowed for incidental take (IT) permits. Relocation of tortoises to a recipient site under old regulations was not necessary with an IT permit, due to the fact that a one-time mitigation fee was paid to the agency, and no further action was required. However, under new regulations, all tortoises within a project site must be relocated to an FWC approved site, prior to construction in the project area. IT permits are no longer issued (with the exception of an official declared federal or state "state of emergency").

Due to new state requirements, FDOT proposes the following approach for projects that involve gopher tortoise permitting:

For Design/Build Projects:

1. FDOT will require all shortlisted Design/Build Firms to identify tortoise habitat prior to bid due dates, to estimate the cost of tortoise relocations. The D/B firm and contractor will include all tortoise permitting and relocation costs within the bid proposal package.
2. The chosen D/B firm will conduct appropriate species-specific surveys for tortoise burrows, obtain the necessary permit documents from FWC, and relocate all tortoises off site prior to construction activities within tortoise habitat.
3. The contractor will make all efforts (through the use of properly buried silt fence and/or hay bales) to prevent tortoises from re-entering the construction site. Any new tortoises which enter the project site

after relocation has occurred will be the sole responsibility of the D/B firm and contractor, and FWC should be notified immediately as to a plan to relocate additional tortoises.

4. All permitting applications should be copied to FDOT District Five at the time of application submittal. All relocation permits and associated required field documents during relocation efforts should also be copied to FDOT.

For Design/Bid/Build Projects:

1. During the design phase, the consultant will identify any habitat that is suitable for gopher tortoises (GT), and any other upland protected wildlife that may be disturbed by the project. These surveys should require little or no effort additional to the surveys for wetland-dependent wildlife and habitat that are required for permitting, and the information should be included in the environmental report prepared in conjunction with the Environmental Resource Permit (ERP) application. Most times (but not all – we still have to look), the wildlife habitat will have been identified in the PD&E study, and it is only necessary to confirm if it is still present.

2. If gopher tortoises or their habitat have been noted or are discovered, and impacts cannot be avoided, the design consultant firm will prepare and submit a FWC relocation permit application for the project not less than 90 days prior to the FDOT production date for all projects which are funded for immediate construction.

3. For projects which are shelved, the plans-update consultant will submit the permit application not less than 120 days prior to the proposed Request for Proposal (RFP) package release date.

4. Because tortoises can re-burrow or relocate, it is necessary for surveys and permitting to be conducted as close to the construction phase as possible. Therefore, timeframes discussed above may be slightly shifted accordingly.

5. FDOT will provide the relocation permit within the Request for Proposal (RFP) package for each construction project, just like the stormwater permit. A plan note or special provision with instructions to the construction contractor for compliance with the gopher tortoise permit must be included (the FDOT permit coordinator or EMO will have the latest version). All bids from contractors for the RFP should include the total cost associated with excavation and relocation of tortoises to the approved tortoise recipient site listed in the FWC permit.