

## FHBA Gopher Tortoise Background Paper and Present Situation – 5-23-07

The Florida Fish and Wildlife Conservation Commission (“FWC”) has determined that the reclassification of the gopher tortoise from “a species of special concern” to a “threatened species” is warranted, based on the science. The reclassification will be effective upon FWC approval of a gopher tortoise management plan (“GTMP”). The GTMP will identify species conservation goals and objectives and specify management actions, regulations, and incentives. The initial draft GTMP (February 16, 2007, draft) was substantially revised and recently released. The revised GTMP will be considered by the FWC Commissioners at its meeting on June 13-14, 2007 in Melbourne, Florida.

In addition to the gopher tortoise (“GT”) being reclassified under state law, two petitions are pending before the U.S. Fish and Wildlife Service (“FWS”) to list the Florida GT as a threatened species under the federal Endangered Species Act (“ESA”). The best interests of the state and the species, as well as the regulated community, are served by retaining state control over the management of the state’s GT population. The GTMP is an opportunity to establish a statewide program to appropriately manage this species that would likely preclude a federal listing action and also serve as a model for other states to manage their own populations. The GTMP goals, objectives, and implementing actions must be scientifically based and legally justified.

Attached are (1) a combined education & issues identification piece and (2) an abbreviated talking points/advocacy piece. They are self-explanatory and in response to the final draft of the interim policy and the first draft of the GTMP. Either piece can be left behind with Commissioners. It is what FHBA members should advocate to the FWC for their upcoming meeting on June 13 & 14 in Melbourne, where they will consider the Gopher Tortoise Management Plan (GTMP) and an interim policy.

In summary, there is an interim policy on the table for consideration by the FWC at the June 13, 14 meeting which will likely be implemented or go into effect on July 31, 2007 (even though the FWC will not actually up-list the GT from “a species of special concern” to “threatened” status until their September 30, 2007 meeting.) The interim policy will likely be in existence until final revisions are made to the GTMP (probably 18 months or so). The draft interim policy prohibits burial of the GT and replaces it with a relocation policy. The interim relocation policy will allow FHBA members to relocate the GT to an area with suitable habitat or that is a permitted site. There will be costs associated with finding a suitable or permitted site to relocate to. However, the real problem in the interim is that there are no sites anywhere in the state that have been formally identified as suitable habitat for the GT and probably none that are permitted. So, even getting a permit to relocate to a suitable area might be very timely, costly and near impossible, thus greatly delaying or even stopping development. Alternatively, the draft interim policy allows staff the “discretion” to deal with permits as they see fit to allow for relocation to other unidentified areas if suitable sites are not found. But, total staff discretion means complete uncertainty for FHBA members in the permitting process.

The bottom line on June 13 & 14 for the “interim policy” is that it needs to be clarified to provide that if a landowner/developer can find no suitable habitat sites or permitted sites to relocate to, then a landowner/developer (at no permitting fee cost or other cost) can simply dig up the GTs and relocate them out of harms way to somewhere else (anywhere else) – even if it means moving them onsite to another area of the development that is not yet actually being physically developed. In other words, “staff discretion” to determine other “appropriate” sites should be discouraged.

As far as revisions to the final GTMP, it is important that the FWC on June 13 & 14 direct their staff to make certain revisions, which are specified in the attached documents. If the Commission fails to follow through, this will likely become a legislative issue. At the end of the day, FHBA members will be immediately impacted by the interim policy and also decisions made on June 13 & 14 by the Commission with respect to the direction that the FWC gives to staff to revise the GTMP.