

PART II - CODE OF ORDINANCES  
Chapter 72 - LAND PLANNING  
ARTICLE III. - LAND DEVELOPMENT REGULATIONS  
DIVISION 17. - GOPHER TORTOISE PROTECTION

**DIVISION 17. - GOPHER TORTOISE PROTECTION**

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**Sec. 72-1136. - Purpose and jurisdiction.**

(a) *[Purpose.]* The purpose of this division is to protect the threatened gopher tortoise (*Gopherus polyphemus*) and gopher tortoise burrows, while recognizing the rights of property owners to use their lands in a manner consistent with the rules, policies and guidelines of the Florida Fish and Wildlife Conservation Commission (FWC) and the county.

(b) *Jurisdiction.* This division shall apply to the unincorporated areas of Volusia County, Florida.

(Ord. No. 2010-02, § I, 3-4-10)

**Sec. 72-1137. - Penalty.**

Violations of this division are punishable as provided in F.S. ch. 162, as enforced by the code enforcement board. FWC rules, policies or guidelines and other state laws including F.S. ch. 379, apply.

(Ord. No. 2010-02, § II, 3-4-10)

**Sec. 72-1138. - General prohibitions.**

Unless otherwise authorized by this division, no person shall cause, suffer, permit or allow:

(1) The take, attempt to take, pursuit, hunt, harassment, capture, possession, sale or transport of any gopher tortoise or parts thereof or their eggs, or the molestation, damage or destruction of a gopher tortoise burrow, except as authorized by a permit from the FWC or when complying with FWC approved guidelines for specific actions which may impact gopher tortoises and their burrows.

(2) As required by FWC, construction activity or other disturbance within 25 feet from the opening of any potentially occupied gopher tortoise burrow without first obtaining a valid permit from the FWC or an affirmation that no such permit is necessary.

(Ord. No. 2010-02, § III, 3-4-10)

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**Sec. 72-1139. - General exemptions.**

(a) Agricultural, silvicultural, wildlife management and linear utility right-of-way vegetation maintenance activities which impact gopher tortoises or their burrows are exempt from this division if they are conducted in accordance with Appendix 1 of the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised April 2009, and subsequent amendments) and with other applicable FWC rules and policies found at <http://myfwc.com/GopherTortoise>.

(b) Routine yard and vegetation maintenance and landscaping activities that do not take gopher tortoises or collapse their burrows are exempt from this division.

(Ord. No. 2010-02, § IV, 3-4-10)

**Sec. 72-1140. - Standards for review.**

(a) The environmental permitting activity shall provide a gopher tortoise habitat map to designate and geographically delineate the areas of Volusia County which are typical habitat for gopher tortoises. Said map shall be on file with, and made available to the public by environmental permitting.

(b) Applicants for commercial site developments or residential subdivisions whose sites are designated as gopher tortoise habitat on the map described in subsection (a) of this section and who have not obtained a FWC permit must provide a burrow survey, conducted by an authorized gopher tortoise agent permitted by FWC, of 100 percent of the gopher tortoise habitat on-site to identify any burrows. If a gopher tortoise burrow is located on-site during the burrow survey the applicant must either protect the burrow consistent with FWC rules, the FWC Gopher Tortoise Management Plan (September 2007 and subsequent amendments) and the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised April 2009 and subsequent amendments) and section 72-1141 of this division or obtain a permit from FWC if avoidance is not possible.

(c) Applicants for residential building permits or tree removal permits on properties identified on the Volusia County Gopher Tortoise Habitat Map will be required to pay a review fee as established by the county council, unless the applicant has a valid development order or an environmental review fee already applies. Environmental permitting will conduct a field inspection to determine whether any gopher tortoise burrows exist on-site. If a gopher tortoise burrow is located on-site during the field inspection, the applicant must either: (a) protect the burrow consistent with FWC rules, the FWC Gopher Tortoise Management Plan (September 2007 and subsequent amendments) and the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised April 2009 and subsequent amendments) and section 72-1141 of this division; or (b) obtain a permit from FWC. The Volusia County residential building permit or tree removal permit will be issued only after an FWC permit has been issued.

(Ord. No. 2010-02, § V, 3-4-10)

**Sec. 72-1141. - Standards for gopher tortoise protection during development activities.**

The following are minimum standards necessary to protect gopher tortoise burrows that have been designated for preservation from damage during development activities:

- (1) *Protection of gopher tortoises and their burrows.* Prior to the commencement of construction of a development, the applicant shall clearly mark such gopher tortoise burrows designated for preservation that are in proximity of any area where land clearing equipment is to be operated. In addition, prior to any clearing of improved, vacant or unimproved land, the developer shall

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construct a temporary barrier at the edge of construction, but not less than 25 feet from the entrance of a gopher tortoise burrow designated for preservation, to prevent physical damage from heavy equipment and other activities incidental to development and to prevent the resident gopher tortoise from entering the construction site. Required barriers should not confine the gopher tortoise and shall be subject to inspection by the county as a condition of the permit approval and prior to any permitted clearing. The temporary barriers shall be consistent with the FWC guidelines and shall exclude gopher tortoises from the construction area, and:

- a. Constructed to be a height so that the barrier can be seen by operators of trucks and other equipment;
- b. Constructed as a condition of the issuance of tree removal permit, building permit, or any other development permit and prior to any construction or other development activities;
- c. Maintained in place throughout the construction; and
- d. Removed from the site at the end of the construction, unless otherwise stipulated in the approved FWC or county permit.

(2) *Gopher tortoises and burrows damaged during construction.* If construction activity results in the take of a gopher tortoise, or if construction activity for which a FWC permit was not otherwise required results in the take of a gopher tortoise burrow designated for preservation, as described in FWC Rule 68A-27.004, Florida Administrative Code and Appendix 1 of the FWC Gopher Tortoise Permitting Guidelines (April 2008 - Revised September 2008 and subsequent amendments):

- a. The applicant shall immediately notify FWC.
- b. If construction activity for which a FWC permit was not otherwise required results in the take of a gopher tortoise burrow designated for preservation or a gopher tortoise from such burrow the applicant also shall immediately notify Volusia County Environmental Permitting. The county will issue a stop work order for the site until FWC law enforcement has completed its investigation.
- c. If required or authorized by FWC, the applicant will be required to excavate the damaged burrow per FWC guidelines to determine if a gopher tortoise or any commensal species have been entombed. If required or authorized by FWC, any protected commensals found in the burrow must be relocated consistent with the requirements of the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised April 2009 and subsequent amendments).

(Ord. No. 2010-02, § VI, 3-4-10)

**Sec. 72-1142. - Appeals to development review committee (DRC).**

A determination by environmental permitting may be appealed in writing within 30 days of said determination to the DRC by the applicant. The DRC may uphold, modify or reverse the determination of environmental permitting. Appeals of the decision of the DRC shall be as provided in article III, Land Development Regulations, division 1, subsection 72-502(g), as amended.

(Ord. No. 2010-02, § VII, 3-4-10)

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**Sec. 72-1143. - Relation to Florida Administrative Code.**

(a) It is the intent of the county that this division be consistent with, and in furtherance of, the provisions of Chapter 68A-27 of the Florida Administrative Code (F.A.C.), the FWC Gopher Tortoise Management Plan (September 2007 and subsequent amendments) and the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised April 2009 and subsequent amendments) and that it satisfy any obligation the county may have under these provisions to prevent harm to gopher tortoises by its election to adopt this regulation.

(b) Nothing in this division shall be construed to authorize or license any act prohibited by the Florida Administrative Code or to impose requirements or conditions that are inconsistent with those in the FWC rules, the FWC Gopher Tortoise Management Plan (September 2007 and subsequent amendments) and the FWC Gopher Tortoise Permitting Guidelines (April 2008 - revised September 2008 and subsequent amendments), or a FWC permit.

(Ord. No. 2010-02, § VIII, 3-4-10)

**Secs. 72-1144—72-1165. - Reserved.**