

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DREW KAISER,

Petitioner,

vs.

Case No. 21-2139

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondent.

_____/

JOHN WILSON,

Petitioner,

vs.

Case No. 21-2141

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondent.

_____/

RECOMMENDED ORDER

A duly-noticed final hearing was held in this case via Zoom conference on October 12 through 14, 2021, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Kenneth G. Oertel, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioners' gopher tortoise agent permits should be revoked (or non-renewed) for the violations alleged in the Agency Action letters dated June 4, 2021.

PRELIMINARY STATEMENT

On June 4, 2021, the Florida Fish and Wildlife Conservation Commission ("Commission") issued Agency Action letters against Petitioners, Drew Kaiser and John Wilson, seeking to revoke Petitioners' gopher tortoise agent permits. Petitioners timely filed Petitions for Formal Administrative Hearing to contest facts alleged in the Agency Action letters, which were referred to the Division of Administrative Hearings ("Division") on July 7, 2021, for assignment of an administrative law judge to conduct a disputed fact-finding hearing.

The two cases were consolidated for final hearing, which was scheduled for October 12 through 14, 2021, via Zoom conference. As the docket reflects, the undersigned heard and ruled on numerous pre-hearing motions, including Petitioners' Motion to Stay and Motion to Dismiss, which were denied.

At the final hearing, Respondent introduced the testimony of Eric Seckinger, Kyle Brown, Nicole Savona, Samantha Cobble, Claire Sunquist

Blunden, and Joshua Horst.¹ Respondent's Exhibits 1.4 through 1.9, 1.11, 1.12, 2.4 through 2.6, 2.16, 2.17, 2.19, 3.1 through 3.6, 4.1, 4.3, 4.6 through 4.13, and 8.1 through 8.9 were admitted into evidence. The parties' Joint Exhibits J-1 through J-10 were admitted into evidence.

Petitioner Wilson testified on his own behalf and Petitioners' Exhibits 2, 8, 9, 12, 13, and 29 were admitted into evidence. Petitioner Kaiser did not testify.

The proceedings were recorded and the five-volume Transcript of the final hearing was filed with the Division on November 15, 2021. The parties requested and received a ten-day extension to file their proposed recommended orders.² The parties timely filed Proposed Recommended Orders on December 6, 2021, which have been carefully considered by the undersigned in preparing this Recommended Order.

Unless otherwise noted, citations to the Florida Statutes are to the 2021 version, which was in effect when the Agency Action letters were filed.

FINDINGS OF FACT

1. The Commission is the state agency with the authority to exercise regulatory and executive powers of the state with respect to wild animal life. *See* Art. IV, § 9, Fla. Const.; § 379.1025, Fla. Stat.

2. The Commission has designated the gopher tortoise as a State Threatened Species, subject to protective provisions adopted by Commission

¹ Despite Mr. Kaiser and Mr. Wilson's position as Petitioners in these consolidated cases, Respondent has the burden of proof and the burden of going forward with the evidence. *See Associated Home Health Ag., Inc. v. Dep't of HRS*, 453 So. 2d 104, 106 (Fla. 1st DCA 1984). Thus, Respondent's case was presented first.

² The parties agreed to a deadline for filing their proposed recommended orders which was more than ten days after the filing of the Transcript; therefore, the parties waived the requirement that this Recommended Order be filed within 30 days after receipt of the Transcript. *See* Fla. Admin. Code R. 28-106.216(2) (2021).

rule. *See* Fla. Admin. Code R. 68A-27.003(2)(f)5. “No person shall take, attempt to take ... capture, possess, sell, or transport any gopher tortoise ... except as authorized by Commission permit or when complying with the Gopher Tortoise Management Plan[.]” *Id.*

3. Both the tortoise and its burrow are protected under state law, and gopher tortoises must be relocated before any land clearing or development takes place on property where gopher tortoises are located. The Commission’s Gopher Tortoise Program governs the capture and removal of gopher tortoises from a development site and relocation of those tortoises to a Commission-permitted recipient site, as well as monitoring and maintenance of recipient sites.

4. The Commission has adopted extensive Gopher Tortoise Permitting Guidelines (“the Guidelines”) governing the requirements to survey a potential development site for gopher tortoises and burrows, regulating the capture and trapping of gopher tortoises, as well as the transport of tortoises to a recipient site, and the release of the tortoises to the recipient site. *See* Fla. Admin. Code R. 68A-27.003(2)(f)5.

5. Drew Kaiser holds Authorized Gopher Tortoise Agent permit number GTA-09-00005E, issued by the Commission and effective March 18, 2019 through March 31, 2021. The permit is issued to Drew Kaiser, Kaiser Consulting Group, LLC, 931 South Ridgewood Avenue, Suite B3, Edgewater, Florida.

6. The permit authorizes Mr. Kaiser to undertake the following activities:

1. conduct gopher tortoise surveys;
2. capture gopher tortoises using bucket traps and hand shovel excavation of gopher tortoise burrows;
3. mark, transport, and release captured gopher tortoises at recipient sites; and
4. supervise backhoe excavation of gopher tortoise burrows to capture gopher tortoises.

7. John Wilson holds Authorized Gopher Tortoise Agent permit number GTA-19-00123, issued by the Commission and effective November 4, 2019 through November 4, 2021. The permit is issued to John Wilson, Kaiser Consulting Group, 4323 Kezar Court, Orlando, Florida.

8. Mr. Wilson's permit authorizes him to undertake the following activities:

1. conduct gopher tortoise surveys, and
2. mark, transport, and release captured gopher tortoises at recipient sites.

9. Both permits contain conditions and provisions governing the authorized activities, including the requirement to comply with the Guidelines.

10. Mr. Kaiser's permit also provides that the "activities authorized under this Permit must be carried out by the Permittee or the Assistants" designated by the permittee, and that the "[p]ermittee shall be as fully responsible for activities conducted by Assistants ... to the same extent as if they had themselves carried out those activities."

11. Mr. Kaiser listed Mr. Wilson as one of his Assistants on his 2019 application for renewal of his Authorized Gopher Tortoise Agent permit.

12. Mr. Kaiser owns Kaiser Consulting Group ("KCG") and Mr. Wilson is employed by KCG as a project manager.

13. Recipient sites are privately or publicly-owned lands of 25 acres or more subject to permitting by the Commission to accept gopher tortoises needing relocation out of harm's way from development.

14. The allegations in the Agency Action letters relate to activities that occurred at one of the following recipient sites permitted by the Commission:

1. Padgett Creek, Long-Term Gopher Tortoise Recipient Site permit number GTLR-18-00001;

2. C. Herman Beville Ranch, Long-Term Gopher Tortoise Recipient Site permit number GTLR-10-00003D;
3. Highlands Ranch, Long-Term Gopher Tortoise Recipient Site permit number GTLR-17-00001;
4. Triple S Ranch, Long-Term Gopher Tortoise Recipient Site permit number GTLR-20-00001;
5. Russakis Investments, Long-Term Gopher Tortoise Recipient Site permit number GTLR-13-00005;
6. Russakis Ranch, Long-Term Gopher Tortoise Recipient Site permit number GTLR-11-00003C; and
7. Williamson Cattle Company, Long-Term Gopher Tortoise Recipient Site permit number GTLR-19-00003A.

15. Applicants for a recipient site permit must identify an Authorized Gopher Tortoise Agent associated with the permit.

16. The Guidelines do not address the scope of the Authorized Gopher Tortoise Agent's responsibility for activities on the recipient site, except with regard to Transport, Marking, and Release of Gopher Tortoises (Guidelines, p. 22), as follows:

For relocation permit applications where gopher tortoises will be relocated off-site and the Authorized Agent for the donor site is not authorized to transport, mark and release gopher tortoises, the permit application must include documentation that the *Authorized Agent representing the gopher tortoise recipient site or one of the assistants to that agent will transport, mark, and release tortoises captured under that relocation permit.*

(emphasis added).

17. Each of the subject recipient site permits is issued to the landowner. Each permit names Drew Kaiser as the authorized agent, with an address of Kaiser Consulting Group, LLC, 931 South Ridgewood Avenue, Suite B3, Edgewater, Florida. However, the landowner, not Mr. Kaiser, is the permittee.

18. Each recipient site permit contains the following statement in the permit conditions:

The activities authorized under this Permit may be carried out by the authorized personnel or contractors of the Permittee or the designated Authorized Gopher Tortoise Agent (Agent)/Consultant, provided all such activities are under the direct supervision and responsibility of the Permittee or Agent/Consultant. The Permittee and Agent/Consultant shall be as fully responsible for any such activities to the same extent as if they had themselves carried out those activities under the Permit.

(emphasis added).

19. In each case, KCG prepared the application for the recipient site permit. KCG also prepared the Gopher Tortoise Habitat Management Plan for each of the recipient sites.

20. The management plan for the C. Herman Beville Ranch (“Beville Ranch”) states that “[KCG] has been retained by [its managing principal] as the sole managers” of the recipient site. Further it provides that the “land will be maintained and monitored by [KCG] to comply, provide suitable habitat” and to ensure that “there will be no activities or improvements that will impede or interfere with” the gopher tortoise habitat.

21. The remaining recipient site management plans require that maintenance and monitoring occur to comply with Commission rules and the Guidelines, but do not directly state that KCG has been retained as sole manager.

Recipient Site Requirements

22. The Guidelines (Section IV, “Types of Permits”) contain the following relevant requirements for *recipient sites*:

To receive a [Commission] recipient site permit, candidate properties must meet the site suitability criteria for size, soil, and habitat. Site suitability criteria vary according to the level of conservation value provided by the recipient site.

Landowners who meet the basic criteria in these guidelines are encouraged to contact the [Commission] Gopher Tortoise Permit Office to schedule a pre-application site visit. A preliminary site visit allows [Commission] staff to evaluate the suitability of the habitat on the proposed site.

* * *

All tortoises relocated to any recipient site (including unprotected recipient sites) shall be released into a temporary enclosure as described below and retained within the enclosure for a period of not less than six months and no more than twelve months.

* * *

Tortoises shall be released into temporary fenced enclosures such that the maximum number of gopher tortoises approved by FWC for release into the entire recipient site parcel shall not be exceeded. Enclosures within recipient sites with varying approved stocking rates may be stocked at 1.5 times the approved density for the area in which the enclosure is located. If an enclosure encompasses an area with varying approved stocking rates, then the enclosure’s approved gopher tortoise density will be proportional to the number of acres in each approved stocking rate area. For example, if a 40-acre recipient site initially containing no gopher tortoises includes a 15-acre enclosure encompassing five acres that are approved for a final density of two gopher tortoises

per acre and ten acres that are approved for a final density of three gopher tortoises per acre, then the enclosure can receive up to 60 gopher tortoises $1.5 [(5 \times 2) + (10 \times 3)]$.

Temporary enclosures may be of any material that prevents the passage of tortoises of all sizes released to the site. ... [t]emporary fencing must be buried at least eight inches into the ground to prevent tortoises pushing beneath the enclosure and must be at least two feet high and of sufficient robustness to prevent tortoises pushing or climbing over.

* * *

Temporary fencing must be regularly monitored and maintained to repair damage and retain the integrity of the temporary enclosure.

* * *

Tortoises observed above ground within the temporary enclosures shall be monitored weekly for the first month and monthly thereafter to document any problems (e.g. illness, mortality, evidence of human poaching, emigration). The [Commission] permitting office must be contacted if decreases in tortoise numbers are documented.

23. Appendix 3 of the Guidelines (“Information Needed for ... Recipient Site Permits”) provides the following relevant to the required habitat management plans for recipient sites:

Tortoise mortality/contingency plan: The habitat management plan must include a landowner commitment to notify the [Commission] within 48 hours of any observed mortality, injury or sign of disease and if needed, coordinate with them to develop a contingency and/or adaptive management plan to address mortality on the recipient site should evidence of multiple adult tortoise shells and carcasses be observed beyond infrequent

mortality (i.e., >3% of the adult tortoise population in any one year, or if more than a few adults are found dead in any small area) seen under natural circumstances (i.e., wildlife predation or disease).

Alleged Violations

24. The Commission cites Petitioners with multiple violations of the Guidelines in management of the recipient sites.³ The violations include the following:

Failing to regularly monitor and maintain temporary fencing at several of the recipient sites to repair damage and maintain the integrity of the temporary enclosures;

Overstocking gopher tortoises at the Padgett Creek and Triple S Ranch recipient sites;

Failing to report observed tortoise mortalities to the Commission, which would trigger development of a contingency or adaptive management plan;

Failing to monitor the Padgett Creek Ranch and Beville Ranch sites for feral pig activity and take steps to curb feral pig damage to tortoise burrows; and,

Allowing use of rollerchopping at the Triple S Ranch recipient site, when that land management technique is not included in the management plan.

25. As discussed in the Conclusions of Law, the Commission failed to prove that either Petitioner's gopher tortoise agent permit is subject to discipline for alleged violations of the recipient site permits.

³ For unknown reasons, the Commission did not cite the recipient site permit holders for violations of the recipient site permits.

Triple S Ranch

26. In addition to alleged violations of the Guidelines on the recipient sites, the Commission charged Mr. Kaiser with submitting false information in connection with the Triple S Ranch recipient site permit application.

27. Mr. Kaiser's assistant, Mr. Wilson, assisted in preparation of the permit application for Triple S Ranch as a recipient site.

28. Mr. Wilson conducted the required tortoise survey between February and April 2019.

29. A gopher tortoise survey is required on at least 15 percent of the site to get a baseline for the number of tortoises already living on the proposed recipient site. During a gopher tortoise survey, an agent, or agents, walks a series of transect lines on the property, and marks the location of existing gopher tortoise burrows on a corresponding map of the potential recipient site. The agent also submits survey information in electronic form.

30. Mr. Wilson also assisted in preparation of the required land cover map, vegetation survey, soils map, and gopher tortoise habitat map, as well as with information for title searches and the required conservation easement.

31. On or about May 15, 2019, Erik Seckinger, senior gopher tortoise biologist for the Commission; and another Commission staffperson, Momoka Meada,⁴ conducted the required pre-application site visit to the Triple S Ranch. Mr. Seckinger met with Mr. Kaiser and Mr. Wilson at the property with maps of the property, soil maps, and the vegetation survey that was in process by Mr. Wilson. Mr. Wilson drove the Commission staff to various portions of the property as requested by them, and staff got out of the truck and walked certain areas of the property. Altogether, the pre-application site visit took about six hours and covered approximately 70 percent of the property.

⁴ The record does not document Ms. Meada's professional title.

32. During the pre-application site visit, Mr. Seckinger determined that some of the habitat on the property was “improved pasture” not suitable for gopher tortoises. Mr. Wilson removed that acreage (approximately 17 acres) from the maps to be used for the application. Another area was removed at the direction of Commission staff on the basis that it needed maintenance. That area was noted for future use, but not for approval, in the initial application.

33. The Commission approved Triple S Ranch as a recipient site effective February 20, 2020.

34. Kyle Brown, gopher tortoise conservation biologist for the Commission, and Nicole Savona, conservation easement and monitoring compliance biologist, conducted an inspection at Triple S Ranch on May 2, 2021.⁵ Mr. Brown and Ms. Savona were met at the ranch by Mr. Kaiser and Mr. Wilson, who guided them around the property. Mr. Brown brought with him the habitat map from the recipient site application, which is a Florida Land Use Classification System (“FLUCS”) map overlaid with the property boundary, red hatching over areas which are not usable for gopher tortoise habitat, and blue hatching over areas reserved for future use as gopher tortoise habitat. The map is also overlaid with the habitat land use classification code corresponding to each area, such as 2110 – improved pasture; 3210 – palmetto prairies; and 4110 – pine flatwoods.

35. During his inspection, Mr. Brown noted that “[a]reas classified as ‘palmetto prairies’ in FLUCS and application are more in line with ‘improved pasture’. These habitat [sic] have very little shrubs other than the sporadic stand of palmettos.” Finally, Mr. Brown noted that “these areas could benefit from some supplemental plantings of palmettos and other variety of foraging plants to improved [sic] suitability for tortoises.”

⁵ Section 5.1 of the Guidelines requires the Commission to conduct annual monitoring inspections of recipient sites. The subject inspection occurred slightly more than a year after issuance of Triple S Ranch’s recipient site permit.

36. In his report summary, Mr. Brown concluded as follows:

The portions of the property permitted as acceptable “Palmetto Prairies,” around 1568.20 acres are more in line with descriptions of “Improved Pasture.” There is very little in the way of fetter bush in these areas and palmetto is not the dominant vegetation type. Palmetto was found sporadically throughout these areas but the dominant vegetation is various grasses. Cows are found throughout these portions of the property.

37. Based on Mr. Brown’s observations of the habitat on the ground at Triple S Ranch, the Commission charged Petitioner Kaiser with submitting false information in the Triple S Ranch recipient site permit application in 2019.

38. The evidence was insufficient to establish that either the habitat land use map or the vegetation survey submitted by KCG as part of the application for Triple S Ranch recipient site permit was falsified.⁶ It was also insufficient to establish that the areas Mr. Brown identified as “more in line with descriptions of improved pasture,” actually met the Guidelines’ definition of improved pasture.

39. The Guidelines define “improved pasture” as “land which has been cleared, tilled, and is dominated by planted non-native or domesticated native foraging species and evidence of current or recent cultural treatments (mowing, grazing, burning, fertilizing), with less than 10% canopy cover.” Mr. Brown testified that he was unaware if the areas he described as improved pasture had ever been cleared or tilled. Moreover, although he

⁶ The Commission introduced in evidence the initial vegetation survey tables submitted by KCG with the application in 2019, which lists the herbaceous ground cover type associated with each vegetation survey station. The undersigned assumes the purpose was to compare the tabular information with the vegetation survey maps (which are based on aerial photography), to demonstrate that the vegetation described in 2019 did not match the vegetation pictured at that time. However, the vegetation survey maps do not contain information to cross-reference to any particular survey station number in the table, and the Commission did not introduce testimony from any witness to make that connection for the undersigned.

testified that non-native grasses existed in those areas, he did not know whether they had been planted.

40. At most, the evidence demonstrated that some areas noted as “shrub and brushland” and “palmetto prairie” in the permit application in May 2019, were dominated by grasses, rather than either palmetto or other shrubs, on March 2, 2021.⁷ The approved management plan for Triple S Ranch provides for cattle rotation and prescribed burns as methods to keep vegetation cover low in both the shrub and brushland communities and the palmetto prairies.

CONCLUSIONS OF LAW

41. The Division has jurisdiction over the subject matter of, and the parties to, this proceeding. *See* §§ 120.569 and 120.57(1), Fla. Stat. (2021).

42. Petitioners hold gopher tortoise agent permits to conduct specific activities related to the removal and transport of gopher tortoises from development sites to recipient sites.

43. In this case, the Commission seeks revocation of Petitioners’ licenses, and as such, this proceeding is penal in nature. The Commission has the burden to prove the allegations in the Agency Action letters by clear and convincing evidence. *See Dep’t of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987); *Coke v. Dep’t of Child. & Fam. Servs.*, 704 So. 2d 726 (Fla. 5th DCA 1998).

44. In *Evans Packing Company v. Department of Agriculture and Consumer Services*, 550 So. 2d 112, 116 n.5 (Fla 1st DCA 1989), the First District Court of Appeal defined clear and convincing evidence as follows:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and

⁷ Furthermore, it is difficult to conclude that Mr. Kaiser, or one of his assistants, falsified the application due to physical conditions on the property when the Commission engaged in a substantial pre-application physical inspection of the property and, thereafter, issued the recipient site permit.

explicit and the witnesses must be lacking in confusion as the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact that firm belief of conviction, without hesitancy, as to the truth of the allegations sought to be established. *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

Falsifying Information

45. Florida Administrative Code Rule 68-1.010(2)(c) provides:

The Commission shall revoke or deny the renewal of any license, permit or other authorization based on any one or more of the following grounds:

* * *

(c) The licensee, permittee or other holder of authorization has submitted materially false information in any previously submitted or pending application or supporting documentation relating to the application, or documentation or reports required by the license, permit or authorization.

46. The Commission did not present clear and convincing evidence that either the habitat coverage map or vegetation survey submitted with the Triple S Ranch recipient site application was falsified.

47. The Commission did not carry its burden to prove that Mr. Kaiser is subject to discipline pursuant to rule 68-1.010(2)(c).

Alleged Recipient Site Permit Violations

48. Rule 68-1.010(2)(d) provides:

(2) The Commission shall revoke or deny the renewal of any license, permit or other authorization based on any one or more of the following grounds:

* * *

(d) The licensee, permittee or other holder of authorization is *conducting activities under the*

license, permit or authorization in a manner that endangers the health, safety or welfare of the public, wild animal life, fresh water aquatic life or marine life.

(emphasis added).

49. The Commission's Agency Action letters do not allege violations related to activities undertaken by Petitioners pursuant to their individual gopher tortoise agent permits—conducting gopher tortoise surveys on donor sites or capture and transport of gopher tortoises.

50. The activities authorized under each Petitioner's gopher tortoise agent permit are specific and narrow. Mr. Kaiser's permit authorizes him to conduct gopher tortoise surveys; capture gopher tortoises using bucket traps and hand shovel excavation; mark, transport, and release captured gopher tortoises at recipient sites; and supervise backhoe excavation of gopher tortoise burrows. Mr. Wilson's permit authorizes him to conduct gopher tortoise surveys; and to mark, transport, and release captured gopher tortoises at recipient sites.

51. None of the activities Petitioners were undertaking in managing the recipient sites were conducted under the authority of their individual gopher tortoise agent permits.

52. The Guidelines provide for suspension, revocation, or non-renewal of authorized gopher tortoise agent permits for "just cause" as determined by the Commission.

53. Appendix 15 of the Guidelines contains the specific criteria for suspension, revocation or non-renewal of authorized agent permits. The appendix provides that authorized agents "are responsible for their actions associated with [Commission]-permitted activities and other activities that impact gopher tortoises and gopher tortoise burrows."

54. "Any act or omission that does not comply with the statutes or rules related to gopher tortoises [Commission]-approved guidelines, or permit

conditions is cause for an infraction to be issued.” Appendix 15, Guidelines.

Infractions are categorized by:

- (1) whether the *permit violation* risks and/or causes injury or mortality of gopher tortoises, and
- (2) whether or not the *permit violation* was self-reported to [the Commission].

(emphasis added).

55. Appendix 15 provides examples of violations falling into both categories. In both cases, the examples (although not comprehensive) are activities relating exclusively to trapping, transporting, and releasing gopher tortoises from a development site to a recipient site (including filing after-action reports following the release of gopher tortoises to a recipient site).

56. The violations which the Commission alleges occurred on the various recipient sites are outside the scope of Petitioners’ Gopher Tortoise Agent permits. While the recipient site permits do list Mr. Kaiser as the agent, the Commission has no authority to discipline Mr. Kaiser’s, or his Assistant, Mr. Wilson’s, individual agent permit for activities undertaken pursuant to wholly separate recipient site permits. Both rule 68-1.010(2)(d) and Appendix 15 of the Guidelines are clear that discipline of a licensed gopher tortoise agent must be tied to a *permit violation*, or violation of other agency rule (e.g., submitting false information in an application). It is axiomatic that an agency must follow its own rules. *See Collier Cty. v. Fish & Wildlife Conser. Comm’n*, 993 So. 2d 69, 74 (Fla. 2d DCA 2008)(agency cannot simply accept representations in local government ordinance to establish restricted boating areas when the agency rule requires it to find that specific factual criteria are met)(citing *Vantage Healthcare Corp. v. Ag. for Health Care Admin.*, 687 So. 2d 306, 308 (Fla. 1st DCA 1997)). In this case, the Commission has cited violations of the recipient site permits without citing the holders of those permits and seeks to discipline Petitioners’ gopher tortoise agent permits without citing any violations of those permits.

57. The Commission issued the recipient site permits, alleges that violations of those permits have occurred, and has authority to discipline the permittee for the alleged violations. While the recipient site permits state that the designated recipient site agent may undertake the activities permitted therein, and may be as liable for those activities as the permittee, that statement does not authorize the Commission to revoke or non-renew the agent's *individual gopher tortoise agent permit*, for said alleged violations.

Conclusion

58. The Commission has not established grounds for revocation or non-renewal of Petitioners' Authorized Gopher Tortoise Agent permits.

ATTORNEY'S FEES

59. On September 3, 2021, Petitioners filed a Motion for Attorney's Fees, Expenses and Costs ("Motion") against the Commission pursuant to sections 120.569 and 120.595, Florida Statutes (2021).

60. The Commission filed its Response to the Motion on September 8, 2021.

61. Pursuant to section 120.595(1), fees may be awarded if the undersigned determines that the non-prevailing adverse party participated in the proceedings for an improper purpose. Such determination may be made only after issuance of a final order in this case.

62. Petitioners' plea for fees pursuant to section 120.569 does not require a determination of which party is the prevailing party; but, in the interest of judicial economy, the Motion will be disposed of as a whole, rather than in bifurcated proceedings.

63. The undersigned reserves ruling on the Motion following entry of the final order in this case, provided that a renewed motion is filed within 30 days of the entry of the final order.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commission dismiss the Agency Action letters against Petitioners.

DONE AND ENTERED this 14th day of February, 2022, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of February, 2022.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.