

Memorandum of Agreement Regarding Gopher Tortoises on Mosaic Land

This MEMORANDUM OF AGREEMENT (“MOA” or “Agreement”) is entered into this ____ day of _____, 201__, between MOSAIC FERTILIZER, LLC (“Mosaic”) and the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION (“FWC”) (collectively, the “Parties”) to facilitate the conservation of gopher tortoises and to set forth a long-term structure for gopher tortoise relocations and associated state permitting on Mosaic Land.

WHEREAS, the gopher tortoise (*Gopherus polyphemus*), hereinafter referred to as the “gopher tortoise”, is a Florida-threatened species;

WHEREAS, on July 27, 2011, the U.S. Fish and Wildlife Service issued its 12-month finding on a petition to list the gopher tortoise in the eastern portion of its range and therein found that the species’ status warrants its listing as a federally-protected species but such listing is precluded by higher priorities at the current time;

WHEREAS, a summary of background information regarding the gopher tortoise is attached hereto as Exhibit A;

WHEREAS, this MOA was prepared as a cooperative effort by the Parties to help facilitate the conservation of the gopher tortoise;

WHEREAS, the Parties anticipate that this Agreement and others of a similar nature will assist in the efforts to preclude federal listing of the gopher tortoise in its eastern range;

WHEREAS, with this MOA, the Parties strive to provide a comprehensive approach to gopher tortoise management and conservation on Mosaic Land, as defined herein;

WHEREAS, the Parties are voluntarily entering into this MOA to take advantage of the unique opportunities created by Mosaic’s extensive land holdings and operations;

WHEREAS, nothing in this MOA is intended to limit the authority of the FWC to fulfill its responsibilities under state or federal laws;

WHEREAS, all activities undertaken pursuant to this MOA must be in compliance with all applicable state and federal laws and regulations;

WHEREAS, Mosaic anticipates relocating approximately 18,000 gopher tortoises over the course of the next 30 years;

WHEREAS, Mosaic Land encompasses approximately 300,000 acres in Florida as detailed in Exhibit B hereto;

WHEREAS, given its resources and operations, Mosaic can undertake unique activities for the benefit of gopher tortoises;

WHEREAS, the Commissioners of the FWC have approved the form of this MOA at its December 2012 meeting;

NOW, THEREFORE, in order to assist in the conservation of the gopher tortoise, further the goals and objectives set forth in the FWC's *Gopher Tortoise Management Plan*, manage sufficient habitats to sustain gopher tortoises on Mosaic Land and other protected lands, and set forth a long-term structure for gopher tortoise relocations and associated state permitting on Mosaic Land, the Parties agree as follows:

GENERAL

1. **"WHEREAS" CLAUSES.** The "WHEREAS" clauses stated above are true and correct, and the same are hereby incorporated into this MOA.

2. **AUTHORITY.** The Parties enter into this MOA under authority provided under state law. Nothing in this MOA is intended to limit the authority of the FWC to fulfill its responsibilities. Nothing in this MOA is intended to imply that any Party is in any way abrogating or ceding either Party's responsibilities or authorities inherent in its ownership of, jurisdiction over, or control of its property interests or wildlife.

Article IV, Section 9 of the Constitution of the State of Florida and section 379.2291, Florida Statutes, provide the FWC with the authority to manage and conserve Florida wildlife. The FWC has adopted a *Gopher Tortoise Management Plan* and *Gopher Tortoise Permitting Guidelines*, as defined herein.

3. **DEFINITIONS.** Unless defined below or otherwise provided in this MOA, terms used herein shall have the meaning given to them under the relevant rules, regulations, and supporting guidance documents promulgated by the FWC in effect on the effective date of this MOA.

- a. "5-year Permit" means a permit issued by the FWC under this MOA that authorizes Mosaic to relocate gopher tortoises from Mosaic Land to FWC-permitted Recipient Sites for a 5-year period.
- b. "15-year Mine Plan" means an estimated long-range mine plan, created by Mosaic for its planning purposes, which is updated by Mosaic and submitted to the FWC during each 5-year Permit renewal cycle. The 15-year Mine Plan delineates the geographic area from which Mosaic can relocate gopher tortoises pursuant to its 5-year Permit, with the exception of Unanticipated Relocations. The purpose of the 15-year Mine Plan is to assist Mosaic in identifying areas of future mining, which enables Mosaic to estimate gopher tortoise populations on Donor Sites.

- c. “Donor Site” means the property from which gopher tortoises are relocated.
- d. “Donor Site 100% Survey” means within 90 days prior to commencing any capture or relocation activities on a Donor Site, Authorized Gopher Tortoise Agents and their assistants will perform a 100% gopher tortoise burrow survey to properly mark with flagging tape, and record GPS coordinates for all gopher tortoise burrows to ensure all gopher tortoises are captured and relocated before any land clearing occurs.
- e. “Donor Site Planning Survey” means an optional gopher tortoise burrow survey of a Donor Site that Mosaic may elect to undertake between 3 months and 1 year before an area is to be disturbed to improve Recipient Site planning in estimating the number of gopher tortoises to be moved from each Donor Site.
- f. “Donor Site Population Estimate” means the result of the process undertaken by Mosaic, using FWC-approved or agreed upon methods, to estimate the number of gopher tortoises to be relocated during each 5-year Permit. This estimate will be submitted to FWC with each 5-year Permit application. Approved or agreed upon methods may include a combination of transect or other surveys, current land use and site condition analyses, and calibrated GIS/land use-based techniques currently used by Mosaic. Population estimation methods may change from time to time in an effort to utilize best predictive measures.
- g. “FLUCFCS” means the Florida Land Use Cover and Forms Classification System, which is a handbook issued by the Florida Department of Transportation that includes codes for various native and non-native habitats in Florida (dated January 1999).
- h. “*Gopher Tortoise Management Plan*” means the management plan adopted by the FWC in September 2007 and updated in September 2012. Unless otherwise indicated, any reference to the *Gopher Tortoise Management Plan* made herein shall mean that version amended and adopted in September 2012.
- i. “*Gopher Tortoise Permitting Guidelines*” means guidelines established by the FWC setting forth requirements for obtaining gopher tortoise relocation permits. Unless otherwise indicated, any reference to the *Gopher Tortoise Permitting Guidelines* made herein shall mean that version amended and adopted in September 2012, attached hereto as Exhibit C.
- j. “Integrated Habitat Network” or “IHN” is a planning tool developed by Florida’s Department of Environmental Protection that recognizes regional wildlife corridors.

- k. “Midpoint Review” means a review by the Parties to be undertaken fifteen (15) years after this MOA is executed. If the MOA is extended beyond 30 years, a similar review shall be undertaken at a minimum of every 15 years thereafter.
- l. “Mosaic Land” means land in Southwest Florida, largely located in DeSoto, Hardee, Hillsborough, Manatee and Polk counties, in which Mosaic currently has an ownership interest or other rights, or acquires an ownership interest or rights in the future and is then incorporated into Mosaic’s 15-year Mine Plan.
- m. “Mosaic Recipient Site” means Recipient Sites established on Mosaic Land over which Mosaic conveys and FWC accepts perpetual conservation easements in substantially the same form and manner required by the FWC *Gopher Tortoise Permitting Guidelines*.
- n. “Off-Site Recipient Site” means a Long-Term Protected Recipient Site, as set forth in the FWC *Gopher Tortoise Permitting Guidelines*, which has been permitted by FWC after the date this MOA is executed, representing new permitted gopher tortoise Recipient Site acres, and is documented to be established primarily for the purpose of receiving gopher tortoises from Mosaic Land.
- o. “Protected Historic Recipient Sites” means gopher tortoise Recipient Sites on Mosaic Land that were authorized before the execution of this MOA and over which Mosaic conveys and FWC accepts perpetual conservation easements in substantially the same form and manner required by the FWC *Gopher Tortoise Permitting Guidelines*.
- p. “Recipient Site” as used in this MOA includes the definitions of “Mosaic Recipient Site” and/or “Off-Site Recipient Site” as defined above.
- q. “Unanticipated Relocation” means events where Mosaic needs to relocate gopher tortoises from land in which Mosaic has an ownership interest or other rights outside the 15-year Mine Plan boundary in order to protect gopher tortoises or human health, welfare, and safety; and/or the structural integrity of an area.

4. DURATION OF THE AGREEMENT. The initial term of this MOA shall be 30 years from the date of execution. This MOA may be extended upon written agreement by the Parties. Each extension may be for up to an additional 15 years.

PERMITTING

5. INTENT. During the course of this MOA, the Parties intend for Mosaic to apply for and FWC to issue permits in 5-year increments to Mosaic authorizing gopher tortoise relocations with no more than one 5-year Permit being in effect at one time. These 5-year Permits shall

follow the FWC's *Gopher Tortoise Permitting Guidelines*, with the modifications herein. Where the two are in conflict, the terms of this MOA shall control.

6. PERMIT DURATION. Each permit issued pursuant to this MOA shall be for the duration of 5 years from the date of issuance, or for 5 years from the expiration date of the previously issued 5-year Permit, or whichever is longer.

7. GOPHER TORTOISE SURVEYS.

- a. Donor Site Population Estimate - As part of each 5-year Permit application, Mosaic shall provide to FWC a Donor Site Population Estimate. Approved or agreed upon methods may include a combination of transect or other surveys, current land use and site condition analyses, and calibrated GIS/land use-based techniques currently used by Mosaic.

To provide reasonable assurances to the FWC that adequate capacity at permitted Recipient Sites is available, the estimated number of gopher tortoises to be relocated under each 5-year Permit shall be increased by a contingency factor the Parties believe to be reasonable based on the data or the expected population density variations within the 15-year Mine Plan, and such contingency factor will be at least 10% to account for variances from estimations, mine plan changes, or Unanticipated Relocations.

- b. Donor Site Planning Survey - Between 3 months and 1 year before each Donor Site area is to be disturbed, Mosaic may elect to conduct a Donor Site Planning Survey. If elected, Mosaic will notify FWC if there is a significant difference (>15%) in the Donor Site Population Estimate and the Donor Site Planning Survey for the Donor Site area.
- c. Donor Site 100% Survey - Within 90 days prior to commencing capture and relocation activities, Authorized Gopher Tortoise Agents and their assistants will undertake a 100% gopher tortoise burrow survey and mark with flagging tape and record GPS coordinates for all potentially occupied burrows. This will consist of an on-the-ground transect survey of all areas to be disturbed. Mosaic shall notify FWC at least 3 business days before the Donor Site 100% Survey is undertaken to provide the opportunity for FWC to be present during the survey. Mosaic shall also create a map that depicts the locations of all gopher tortoise burrows documented during the Donor Site 100% Survey and the GPS coordinates for each burrow, and provide the same to FWC at least 3 business days prior to commencement of any capture or relocation activities on the Donor Site.
- d. Recipient Site Survey. Mosaic will conduct a gopher tortoise burrow survey of each Recipient Site in accordance with the *Gopher Tortoise Permitting Guidelines*.

8. DONOR SITES. As part of its normal operations, Mosaic creates various short-term and long-term plans for mining. Due to unforeseen circumstances, market changes, the acquisition of new adjacent land or outparcels incorporated into its mines, as well as a variety of other reasons, short-term mine plans are subject to frequent changes. To prevent numerous permit amendments or additional permits with respect to Donor Sites:

- a. Mosaic will submit a 15-year Mine Plan with each 5-year Permit application that reflects Mosaic's best estimate of the mine sequence for the next 15 year period. The data, with respect to the first 5-year Permit, will be used to estimate the number of tortoises to be relocated under that permit. The remaining 10 years of data will be used to estimate the contingency factor to be applied to ensure there will be adequate Recipient Site capacity in the event of mine plan changes. This will allow for flexibility as to the specific area(s) from which gopher tortoises may be removed.
- b. The current 15-year Mine Plan shall be submitted to FWC as part of each 5-year Permit application. The 15-year Mine Plan shall include maps showing FLUCFCS codes, soils, recent aerial imagery, and may include a combination of transect or other surveys, current land use and site condition analyses, and calibrated GIS/land use-based techniques currently used by Mosaic.
- c. If Mosaic's plans change and an area outside the 15-year Mine Plan is to be impacted, or a new parcel is acquired, Mosaic shall be authorized by the permit to relocate gopher tortoises from such parcels under its current permit provided that Mosaic submits written notification to the FWC at least 5 months in advance of the planned disturbance to the parcel. This notification will include a description of the added parcel, a revised map to incorporate the parcel into the 15-year Mine Plan, and a brief analysis demonstrating that the Recipient Sites identified in the 5-year Permit have sufficient capacity to accommodate gopher tortoises to be relocated from those Donor Sites not previously included in the 15-year Mine Plan. If the FWC deems the information provided by Mosaic to be insufficient, the FWC will request in writing additional information for sites ≤ 100 acres within 30 days, and for sites > 100 acres, within 90 days of FWC-receipt of the submitted information. In the event that the FWC requests additional information regarding any parcel being incorporated into the 15-year Mine Plan, Mosaic will provide it to the FWC within 30 days of receipt of the request. If the FWC does not request additional information within these timeframes, or notifies Mosaic in writing that the information provided is sufficient, then the parcel shall be deemed to be included in the 15-year Mine Plan and the FWC shall update its current Mosaic permit file with the updated map. If Recipient Site capacity for those Recipient Sites identified in the current 5-year Permit is not sufficient to receive all gopher tortoises from the added parcel, a permit amendment will be required to add new Recipient Sites that provide adequate capacity.

- d. To provide reasonable assurances to the FWC, 100% burrow surveys shall be undertaken in accordance with the survey requirements in 7.c. above for all areas to be disturbed. Estimation methods to approximate the number of gopher tortoises to be relocated shall be increased by a contingency factor not less than 10% applied to account for variances from estimations, mine plan changes, and Unanticipated Relocations. The objective is to always have adequate Recipient Site capacity approved while providing flexibility for Mosaic's operations.
- e. Gopher tortoise relocations pursuant to the Unanticipated Relocations provision contained herein may be moved from any place on Mosaic Land to any approved Recipient Site with capacity in the then-current 5-year Permit.

9. RECIPIENT SITES. In coordination with each 5-year Permit application, Mosaic shall submit to the FWC separate permit applications for Recipient Sites with sufficient capacity for the number of gopher tortoises to be relocated under the 5-year Permit application, taking into account any remaining capacity from already-permitted Recipient Sites from the previous 5-year Permit(s). Mosaic may also propose Recipient Sites for inclusion in its Recipient Site Permit that have capacity above what is required by the 5-year Permit. The FWC shall review the proposed Recipient Sites during the application process, as necessary. Each FWC-approved Recipient Site shall meet minimum gopher tortoise habitat suitability criteria before the permit for that Recipient Site is issued, as required by the *Gopher Tortoise Permitting Guidelines*.

- a. Mosaic will use different types of Recipient Sites, as further outlined in the Conservation Commitments section below.
- b. Remaining capacity of a permitted Recipient Site can be used in a later 5-year Permit. This provision applies for all Recipient Sites contained within Recipient Site Permits issued to Mosaic and Recipient Sites in Permit No. WR07393c (if those sites are subsequently permitted as Recipient Sites).
- c. Mosaic shall create FWC-approved management plans for each Recipient Site on Mosaic Land (Mosaic Recipient Site). Individual management plans shall set forth the details of gopher tortoise habitat management, including the entity responsible for implementing the plan, if different than Mosaic.

10. CONSERVATION COMMITMENTS. Mosaic shall undertake the following commitments pursuant to this MOA.

- a. RECIPIENT SITES. Mosaic may use Mosaic Recipient Sites (on-site) and Off-Site Recipient Site(s) (off-site areas) as Recipient Sites.
 - i. The Parties recognize percentages will vary with each 5-year Permit but over the 30-year life of the MOA, it is expected that gopher tortoises will be relocated to both types of Recipient Sites.
 - ii. Over the 30-year life of this Agreement, Mosaic has estimated it will relocate approximately 50% of the gopher tortoises to Off-Site Recipient

Site(s) in accordance with 5-year Permits issued pursuant to this Agreement; Mosaic shall not relocate more than 60% of gopher tortoises to Off-Site Recipient Site(s).

iii. There shall be no limit as to the percentage of gopher tortoises Mosaic can relocate to Mosaic Recipient Sites in accordance with 5-year Permits issued pursuant to this Agreement.

- b. MOSAIC RECIPIENT SITES. To the extent practicable, possible, or available, each Mosaic Recipient Site will include a minimum of 200 acres of gopher tortoise habitat that is connected to the IHN or another protected wildlife corridor, or if smaller sites are included, within 600 feet of additional gopher tortoise habitat, to allow dispersal and connectivity of gopher tortoise populations.
- i. Mosaic Recipient Sites will be perpetually managed, in accordance with an FWC-approved management plan, by Mosaic or another specifically-named public or private entity to maintain or increase the gopher tortoise population on the Recipient Sites. Management may include such activities as burning, control of nuisance species, tree thinning, and supplemental planting of ground cover species for food or shrub cover for hatchlings or juveniles.
 - ii. Mosaic will create an endowment to provide financial assurance for management of the sites. The amount of the endowment for each area will be determined based on the FWC *Gopher Tortoise Permitting Guidelines*. Endowment funds for permits issued under this Agreement may be deposited into one account. The total amount of the endowment will be calculated at the time the conservation easement is executed and will be funded in equal, annual payments for each of the 5 years the corresponding 5-year Permit is in effect, regardless of whether the full capacity is used. The annual payments will be prior to the issuance of the permit or anniversary date of the permit. Then, if a Recipient Site has remaining capacity to be used in a future 5-year Permit, no additional endowment payment is needed. Endowments for Protected Historic Recipient Sites will be calculated at the time the conservation easement is executed and will be fully funded within 60 days of the conservation easement execution.
 - iii. The Recipient Sites will be monitored as set forth in Appendix 7 to the FWC *Gopher Tortoise Permitting Guidelines*.
 - iv. Mosaic conveys and FWC accepts conservation easements in substantially the same form and manner required by the FWC *Gopher Tortoise Permitting Guidelines* over each Mosaic Recipient Site.
- c. FUNDING. Mosaic shall promote the management of gopher tortoise habitats and conservation benefits to gopher tortoises through payments to state agencies and non-governmental organizations as set forth below.

- i. MITIGATION CONTRIBUTIONS. The Parties agree to a mitigation contribution of \$300 per relocated gopher tortoise by Mosaic to FWC, which shall be paid up-front and on an annual basis in coordination with each 5-year Permit, to relocate gopher tortoises from Donor Sites to Recipient Sites. If FWC increases its \$300 gopher tortoise mitigation contribution in accordance with the *Gopher Tortoise Permitting Guidelines*, the increased amount shall be incorporated into future 5-year Permits to be paid by Mosaic, up to a maximum increase of 10% per 5-year Permit period.

For the first year of the permit and for subsequent years, Mosaic will provide FWC the estimate of the number of gopher tortoises to be relocated in the upcoming year and pay the estimated mitigation contribution for the next year for the number of gopher tortoises to be relocated pursuant to the annual estimates prior to the permit being issued, and for subsequent years no later than 60 days prior the anniversary date of the permit issuance, or prior to the initiation of relocation, whichever occurs first. When Mosaic submits its annual monitoring reports, the mitigation contribution for each year will be reconciled with the estimated payment. Any overage, less the 3% administrative service charge assessed by the Wildlife Foundation of Florida, will be refunded to Mosaic within a reasonable time from the submitted annual report. If any annual estimation is underestimated, Mosaic will submit an additional payment to FWC before tortoises that would cause the annual payment to be exceeded are relocated. The FWC will request that the Wildlife Foundation of Florida establish a sub-account solely for the purposes of this Agreement in order to effectively track mitigation contributions and refunds.

- ii. RESOURCE MANAGEMENT SUPPORT. In addition to the mitigation contributions otherwise required herein, Mosaic shall provide non-charitable payments directly to The Nature Conservancy (“TNC”) and/or any other agreed-upon organization, consistent with the organization’s policies and procedures, for its use in carrying out controlled burns or other gopher tortoise habitat management activities on public and/or private lands in Florida. Such funding shall total at least \$1.8 million for the 30-year life of this MOA, provided as \$60,000 annually; provided, however, in the event the mitigation contribution paid by Mosaic is increased in accordance with the *Gopher Tortoise Permitting Guidelines* as described in the subsection above, the annual payments of funding in this section shall also be increased by the same percentage. Such funding shall not be used to carry out controlled burns or other gopher tortoise habitat management activities on Mosaic Land; however, this provision shall not limit the ability of Mosaic to contract separately with TNC or other qualified entity for management of Mosaic Land.

- d. PROTECTED HISTORIC RECIPIENT SITES. Within 6 months of issuance of the first 5-year Permit, Mosaic conveys and FWC accepts conservation easements in substantially the same form and manner required by the FWC *Gopher Tortoise Permitting Guidelines* over at least 500 acres of areas formerly utilized by Mosaic as gopher tortoise Recipient Sites. Mosaic will select sites supporting regionally significant populations and based on factors such as gopher tortoise population size, habitat size, connectivity to IHN/protected corridors and habitat types. This protection will restrict future modification and preclude destruction of habitat and will protect existing gopher tortoise populations that are currently unprotected.

Protected Historic Recipient Sites will be subject to the same requirements for Mosaic Recipient Sites as set forth in Section 10.b.i., 10.b.ii., and 10.b.iv. above. Management plans for Protected Historic Recipient Sites will include a baseline documentation report of each site with population estimates.

- e. COMMENSALS. Where appropriate, and in accordance with the *Gopher Tortoise Permitting Guidelines*, Mosaic may relocate captured commensal species concurrently with the relocation of gopher tortoises if appropriate habitat exists. The Parties recognize that the commensal species may not all be relocated to the same site as other commensals and may not be relocated to the same sites as the gopher tortoises. Mosaic recognizes that this MOA does not eliminate the need for any additional authorizations that may be required for the take of certain commensal species; if the relocation requirements for commensal species change, the Parties will discuss the changes and any appropriate modifications to this MOA.

11. UNANTICIPATED RELOCATIONS. If Mosaic determines an Unanticipated Relocation is necessary, prior notice to the FWC shall not be required; however, Mosaic shall notify the FWC in writing of the relocation within 1 business day of completion. In Unanticipated Relocations, gopher tortoises from anywhere on Mosaic Land can be relocated to any currently permitted Recipient Site, as authorized for use by Mosaic, with capacity available at that time. Unanticipated Relocations shall be limited to no more than 15 gopher tortoises per calendar year in each 5-year Permit. If this limit is reached or appears likely to be reached in any given year, Mosaic will notify the FWC to review the number of Unanticipated Relocations and determine if there is a need to modify the number authorized and/or evaluate solutions for addressing the need for future relocations as part of the 5-year Permit renewal process, if both Parties agree.

12. DISTURBED SITES. If, during the course of this Agreement, a Donor Site is impacted prematurely, prior to the capture and relocation of all gopher tortoises, Mosaic shall apply for and obtain a Disturbed Site permit for the area disturbed, and submit the mitigation contributions required for this type of permit, as outlined in the *Gopher Tortoise Permitting Guidelines*.

13. TIME FOR ISSUANCE OF PERMITS. The FWC will process Mosaic's permit applications and requests for amendments within a reasonable timeframe. The parties agree that

given the complexity of the 5-year Permits, Mosaic shall provide a waiver to FWC to allow 90 days to conduct its initial completeness review of the application per section 120.60(1), Florida Statutes. This waiver helps ensure FWC has sufficient resources and time available to process the permit applications in a timely manner. The Parties may agree to additional waivers of the timeframes in section 120.60(1), Florida Statutes, if needed.

14. PERMIT MODIFICATIONS. Mosaic shall strive to plan for and submit permit applications such that each 5-year Permit fully addresses the number of gopher tortoises to be relocated and the sites to which the gopher tortoises will be relocated. In the event, however, unexpected circumstances arise, Mosaic and FWC shall work together to amend the 5-year Permit(s), as needed. Only one 5-year Permit will be in effect at a time.

15. DOCUMENT SUBMITTALS. In anticipation of technological advances, Mosaic may submit permit application documents and/or other materials and reports to FWC electronically or in any other format as may be mutually agreed upon by the Parties.

16. ANNUAL REPORTS. Mosaic will provide a report of compliance monitoring efforts to the FWC annually. The first annual report shall cover the one-year period starting from the date the first 5-year Permit is issued. The reports shall be provided to the FWC no later than 60 days after the anniversary date of the permit. The annual report shall provide, and include, the following information:

- a. A list of all relocation activities conducted by Mosaic, including the number of individual gopher tortoises and commensal species relocated and the data that are required on an FWC After Action Report as referenced in the *Gopher Tortoise Permitting Guidelines*, as well as their respective Donor and Recipient Sites. This will include a map showing the Donor Site area(s) with respect to the 15-year Mine Plan submitted with the permit application.
- b. A summary of monitoring activities undertaken by Mosaic or authorized by Mosaic on its land, which shall include the dates the monitoring activities were undertaken, the person(s) involved, the results of the monitoring, and copies of data and/or reports that were prepared.
- c. A summary of payments to third parties by Mosaic for activities to benefit gopher tortoises, such as payments to support ecosystem services (e.g., The Nature Conservancy).
- d. A summary of the mitigation contribution paid for that year and an accounting of the gopher tortoises relocated.
- e. A summary of the endowment funding paid for that year.

MISCELLANEOUS

17. FWC ASSURANCES PROVIDED TO MOSAIC. Upon approval of this MOA, the FWC provides Mosaic assurances that it will work with Mosaic in processing the permit applications and issuing the 5-year Permits as contemplated in this MOA.

18. MODIFICATIONS TO MOA. This MOA may only be modified by the written agreement of the Parties.

- a. MODIFICATIONS TO MOA BASED UPON MIDPOINT REVIEW. The Parties agree to review this MOA 15 years after its execution; this review shall be known as the Midpoint Review and will include a discussion of modifications that the Parties agree need to be made based on any knowledge of how well the MOA has worked for FWC, Mosaic, and the affected gopher tortoises.
- b. MODIFICATIONS TO THIS MOA BASED UPON PARTY REQUEST. While interim modifications are discouraged, other than at the Midpoint Review, any party may propose modifications or amendments to this MOA at any time by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Party's written concurrence, which shall be in the form of an amendment to this MOA.
- c. MODIFICATIONS TO THIS MOA BASED UPON ADAPTIVE MANAGEMENT. This MOA is intended to employ adaptive management strategies as part of the conservation measures to be responsive to changing conditions or new information.
 - i. If the *Gopher Tortoise Permitting Guidelines* change during the life of this MOA, any more restrictive requirements may be, but shall not be required to be, incorporated into this MOA and future 5-year Permits as agreed to by both Parties.
 - ii. If the *Gopher Tortoise Permitting Guidelines* change during the life of this MOA, any less restrictive requirements shall be incorporated into this MOA and future 5-year Permits.
 - iii. In the event one requirement becomes less restrictive because another requirement becomes more restrictive, for either requirement to be incorporated into this MOA and future 5-year Permits, it must be upon agreement of both Parties.
 - iv. If there is a significant mortality event (*e.g.*, mortality of 20% or more gopher tortoises evidenced by tortoise shells or carcasses) on any Mosaic

Recipient Site, the Parties will undertake a review of this MOA and discuss any changes that may be needed to address the event.

In recognition that new mitigation options may be developed by FWC subsequent to the establishment of this MOA, Mosaic is authorized to use any new mitigation options provided the new mitigation options do not compromise the conservation measures herein.

19. ALTERNATIVE DISPUTE RESOLUTION. In the event of any dispute, claim, question, or disagreement arising from or relating to this MOA or the breach of the MOA, the parties will use their best efforts to settle the dispute, claim, question, or disagreement.

- a. The Parties must consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties.
- b. If despite this, either of the Parties believes mediation or litigation is likely necessary, the Party must first give written notice to the other Party. The notice must summarize the basis of the dispute and a proposed solution. The Party receiving this notice must respond within 60 days of the notice. Any notice or response on behalf of FWC must be signed by the Executive Director. Any notice or response on behalf of Mosaic must be signed by Mosaic's Authorized Corporate Representative.
- c. If after receiving such response, the Party providing notice still believes mediation or litigation is likely necessary, the Parties must submit to confidential mediation under the Florida Rules for Certified and Court Appointed Mediators and the relevant Rules of Civil Procedure, before resorting to arbitration or litigation. Unless otherwise agreed, the Parties will randomly select a Certified Circuit Court Mediator from the Twentieth Judicial Circuit listed by the Florida Academy of Professional Mediators. The Parties shall each pay a fifty percent (50%) share of any mediation fees.

20. NO THIRD PARTY BENEFICIARIES. This MOA does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not party to this MOA to maintain a suit for personal injuries or damages pursuant to the provision of this Agreement. The duties, obligations, and responsibilities of the Parties to this MOA with respect to third parties shall remain as imposed under existing law.

21. NO FEDERAL ASSURANCES. This MOA provides no assurances under federal law.

22. TERMINATION. The following provisions will govern termination of the MOA:

- a. The Parties may jointly terminate the MOA at any time by written agreement.

- b. Mosaic may terminate the MOA for any reason by giving written notice to FWC specifying a proposed termination date, by certified mail, return receipt requested, at least 60 days prior to the termination date specified in the notice.
- c. The FWC may terminate this MOA for cause by giving written notice to Mosaic specifying a proposed termination date, by certified mail, return receipt requested, at least 60 days prior to the termination date specified in the notice. The notice must specify the basis of the termination. Any of the following constitute adequate cause for FWC to terminate: fraud, willful misconduct, breach of the MOA by Mosaic, the suspension or revocation of Mosaic's then-current 5-year Permit, or the federal listing of the gopher tortoise (without the express consent of the U.S. Fish and Wildlife Service to continue to issue the permits contemplated in this MOA). The FWC's notice of termination must state the cause for its termination.
- d. If the cause for FWC's termination is breach of the MOA, or the suspension or revocation of Mosaic's then-current 5-year Permit, and Mosaic proposes to cure the breach, Mosaic must respond to FWC's notice within 45 days providing a detailed plan for curing the breach and a schedule to implement that plan. Upon the FWC's receipt of such response, the notice of termination is rescinded. If FWC does not believe the response is adequate, and FWC still desires to terminate, FWC may terminate this MOA with an additional notice to Mosaic specifying a proposed termination date, by certified mail, return receipt requested, at least 60 days prior to the termination date specified in the notice.
- e. In the event of termination, the validity of Mosaic's then-current 5 year Permit will not be affected by the termination, but no further state permits shall be issued pursuant to the MOA. Any funding and reporting obligations of the MOA shall remain in effect until the then-current 5-year Permit expires.

23. SEVERABILITY, CHOICE OF LAW, AND CHOICE OF VENUE. This MOA has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this MOA shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this MOA shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this MOA. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida, to the exclusion of all other lawful venues.

24. JURY TRIAL WAIVER. As part of the consideration for this MOA, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this MOA including but not limited to any claim of quantum meruit.

25. SUCCESSORS. Mosaic may assign this MOA in whole without the approval of FWC; such assignment shall be effective only upon written notice to FWC. However, this MOA may not be assigned in part without the written approval of the Parties. If the MOA is assigned, the terms and conditions of this MOA shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors and assigns and shall run with Mosaic Land. Any assignment of this MOA will not serve as a transfer of a 5-year Permit or Recipient Site permit.

26. NOTICES AND REPORTS. Any notices and reports, including monitoring and annual reports required by this MOA shall be delivered to the persons listed below, as appropriate:

Mosaic: Mosaic Fertilizer, LLC
Attn: Mine Permitting Director
13830 Circa Crossing Drive
Lithia, Florida 33547

FWC: Florida Fish and Wildlife Conservation Commission
Attn: Gopher Tortoise Permit Coordinator
620 South Meridian Street
Mail Station 2A
Tallahassee, Florida 32399-1600

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AUTHORIZING SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have, as of the last signature below, executed this Memorandum of Agreement to be in effect as of the date executed.

NAME, Vice President
Mosaic Fertilizer, LLC

Date

Nick Wiley, Executive Director
Florida Fish and Wildlife Conservation Commission

Date

DRAFT

EXHIBIT A

Background of Gopher Tortoises

About the Gopher Tortoise

Numerous studies have been conducted to learn more about the gopher tortoise. The information below is a brief summary of the information known about this species.

Description

The gopher tortoise is a member of the Class Reptilia, Order Testudines, and Family Testudinidae. Of the four North American tortoise species (genus *Gopherus*), the gopher tortoise is the only one that occurs east of the Mississippi River. The gopher tortoise is a moderately-sized terrestrial turtle, averaging 23-28 centimeters in carapace length. The species is identified by its stumpy, elephantine hind feet and flattened, shovel-like forelimbs adapted for digging. The shell is oblong and generally tan, brown, or gray in coloration.

Life History

The gopher tortoise is slow to reach sexual maturity, has low fecundity, and has a long life span. Females reach sexual maturity at 9-21 years of age, depending on local resource abundance and latitude; males mature at a slightly younger age. The breeding season is generally from April to November. Nests are constructed (often in burrow mounds) from mid-May to mid-June and only one clutch is produced annually. Clutch size is usually five to nine eggs, with an average of six. Predation on nests and hatchlings is heavy.

Gopher tortoises feed primarily on broadleaf grasses, wiregrass, grass-like asters, legumes, and fruits, but they are known to eat more than 300 species of plants. Tortoise densities and movements are affected by the amount of herbaceous ground cover. Generally, feeding activity is confined to within 50 meters of the burrow, but a tortoise may travel up to 100 meters from its burrow for specific forage requirements. Home range size varies with habitat type, season, and sex of the tortoise; moreover, considerable individual variation has been found. Reported annual average home ranges for males have varied from 0.5 to 1.9 hectares. Females generally have smaller home ranges, with reported averages ranging from 0.1 to 0.6 hectares. Multiple burrows are typically used, which complicates estimates of population density.

Habitat

Gopher tortoises typically inhabit relatively well-drained, sandy soils. Gopher tortoises are generally associated with longleaf pine, xeric oak sandhills but also occur in scrub, xeric hammock, pine flatwoods, dry prairie, coastal grasslands and dunes, mixed hardwood-pine communities, and a variety of disturbed habitats. Gopher tortoises excavate burrows that average 4.5 m in length and 2 m in depth. Gopher tortoise burrows provide protections from temperature extremes, desiccation, and predators, serve as refuges for approximately 360 other

species, including federally listed species such as the Eastern indigo snake (*Drymarchon couperi*).

Distribution

Gopher tortoises occur in the southeastern Coastal Plain from southeastern South Carolina to extreme southeastern Louisiana. They are endemic to the United States and Florida represents the largest portion of the total range of the species.

Problems Facing the Gopher Tortoise

The success of any conservation or recovery effort depends on reducing or eliminating threats to the continued existence of the species. The following summarizes threats identified in the FWC (2006) *Biological Status Report* (BSR) for the gopher tortoise and includes updated scientific information from the USFWS (2011) 12-month finding (Federal Register 76: 45130-45161) for the species, where appropriate. Each of the criteria (Chapter 69A-27.001 and .0012, *Florida Administrative Code*) used to evaluate and to determine that the gopher tortoise warrants Threatened status in Florida is described below.

Criterion A: Population Size Reduction

Criterion A is designed to identify species that have undergone a significant decline in the recent past, or are projected to decline in the near future. A species needs to meet only one of the four of subcriteria to warrant listing.

Subcriterion 1: This criterion requires an observed, estimated, inferred, or suspected population size reduction of $\geq 50\%$ over the last ten years or three generations, whichever is longer, where the reduction or its causes may not have ceased. The BSR determined that gopher tortoises in Florida have undergone an inferred population size reduction of between 50%-60% in the past three generations (60-93 years) based on a decline in area of occupancy, a decline in habitat quality, accidental mortality, human exploitation, and possibly the effects of pathogens. The decline in area of occupancy was inferred from the increase in human population and the conversion of gopher tortoise habitat to other, incompatible land uses over this time period. During this same period, fire suppression, the conversion of natural pine stands to pine plantations, increased mortality and habitat fragmentation from road construction all degraded the remaining habitat. The past, unsustainable harvest of tortoises for food decreased their estimated populations in the Panhandle of Florida by 80%, and upper respiratory tract disease may also be a contributing factor.

Subcriterion 2: The BSR projected a $\geq 50\%$ population size reduction in the next three generations because of potential declines in the area of occupancy or the quality of habitat. Thus, the listing of the gopher tortoise as Threatened was met under Subcriterion 2.

Subcriterion 3: The gopher tortoise also warranted listing as Threatened based on Subcriterion 3, which required an observed, estimated, inferred, projected, or suspected population size reduction of $\geq 50\%$ over any three-generation period.

Subcriterion 4: To qualify as a threatened species, Subcriterion 4 requires an observed, estimated, inferred, or suspected population size reduction of $\geq 70\%$ over the next 10 years or three generations, whichever is longer, where the causes of reduction are clearly reversible, are understood, and have ceased. This criterion does not apply to the gopher tortoise because the causes of population size reduction are not clearly reversible and have not ceased.

Criterion B: Extent of Occurrence and/or Area of Occupancy

Criterion B is designed to identify species with a restricted distribution that also is fragmented, undergoing decline, and/or exhibiting extreme fluctuations. To meet this criterion for listing, the extent of occurrence must be estimated at $< 2,000$ square miles for Threatened or < 770 square miles for Species of Special Concern. Based on GIS analysis of 2003 imagery, about 5,192 square miles of potential gopher tortoise habitat remain in Florida. Thus, Criterion B was not met for the gopher tortoise.

Criterion C: Population Size and Trend

Criterion C is designed to identify species with a small population size that is currently declining or may decline in the near future. To meet this criterion for listing the number of mature individuals must be $< 2,500$ for Threatened status or $< 10,000$ for Species of Special Concern status. The BSR estimated that about 785,000 adult gopher tortoises occur in Florida; thus, Criterion C was not met.

Criterion D: Number of Mature Individuals

Criterion D identifies species with very small or restricted population size. To meet this criterion for listing, the Florida population estimate for the species must be no > 250 adults for Threatened status or no $> 1,000$ adults for Species of Special Concern status. As discussed under Criterion C, the estimated number of mature gopher tortoises exceeded the listing thresholds for Criterion D.

Criterion E: Quantitative Analyses

Criterion E identifies species that have been modeled to have a high probability of extinction, which includes a 20% probability within the next five generations (up to a maximum of 100 years) to qualify as Threatened, or 10% within the next 100 years to qualify as a Species of Special Concern. The BSR cited the population viability analysis of Miller (2001), which concluded that neither of these listing criteria was met for the gopher tortoise. More recently, Tuberville et al. (2009) conducted a new population viability analysis as part of the federal Candidate Conservation Agreement for the gopher tortoise. Their models also suggested that

range-wide, the gopher tortoise did not meet this criterion for listing as Threatened or as a Species of Special Concern.

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EXHIBIT B

Gopher Tortoises on Mosaic Land/Description of Existing Conditions

Mosaic owns or has rights on approximately 300,000 acres of land in Florida on portions of which it conducts phosphate mining and reclamation. *See Map 1.* Mosaic Land includes large, contiguous blocks of habitat or potential habitat that can be managed to maintain or increase a viable gopher tortoise population, the stated goal of the *Gopher Tortoise Management Plan*. This MOA is made due to Mosaic's unique ability to mine, reclaim, create and/or enhance lands to support gopher tortoises that might not otherwise.

Mosaic is engaged in the phosphate mining business, but only actively mines less than 1% of its Florida land holdings in any given year. The majority of Mosaic Land is in agricultural, silvicultural, or conservation uses, or various stages of reclamation. The land is a variety of forested, shrub, and herbaceous wetlands intermixed with upland communities and areas of open water.

Prior to mining disturbances, Mosaic relocates gopher tortoises and when mining is complete, reclaims the land to both upland and wetland habitats. Due to the size and location of its landholdings and the nature of its operations, Mosaic is in a unique position to provide gopher tortoise habitat that connects with other habitat, to restock or augment public lands with gopher tortoises, to manage gopher tortoise habitat on its land and certain public lands, and to undertake certain other activities to the benefit of gopher tortoises and their commensals.

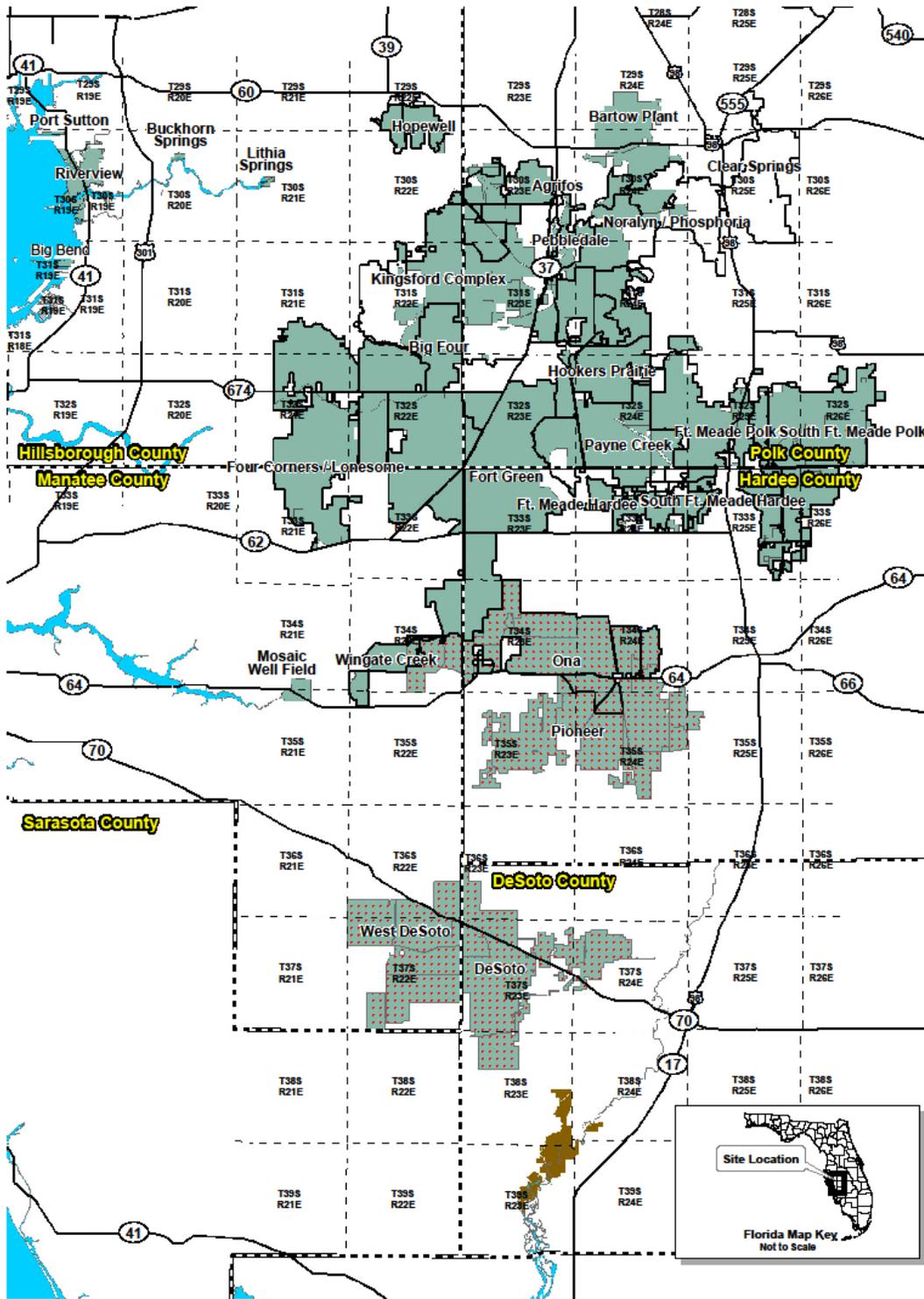
Because Mosaic's landholdings are extensive and mining may not occur for many years, it is hard to estimate how many gopher tortoises or how many acres of gopher tortoise habitat exist on Mosaic Land. However, in the early 2000s, Mosaic's predecessor, IMC, evaluated its lands that were proposed to be mined in the next 30 years. These lands comprised only a portion of IMC's holdings. Over 51,000 acres were proposed to be mined and over 45,000 of those acres were uplands potentially occupied by gopher tortoises. Due to the large acreage, Mosaic (formerly IMC) created a method to estimate gopher tortoise populations. The method is a GIS/land use-based habitat suitability and gopher tortoise occupancy estimation with some field verifications and site-specific surveys used for further refinement. Data gathered during gopher tortoise relocation activities is also incorporated into the assessment method. The initial results of this predictive population assessment are included in Mosaic's 2003 Mine-wide Gopher Tortoise and Burrow Commensal Management Plan. Since that time, Mosaic has incorporated an additional 77,000+ acres of its holdings into the future mining boundary, most of which has not been assessed for gopher tortoises.

Before mining, Mosaic relocates all gopher tortoises from the mine site to a Recipient Site. Mosaic also traps and relocates commensal species with the gopher tortoises, where appropriate. Recipient Sites are native or reclaimed sites with FWC-approved gopher tortoise habitat. Many of the sites under review by Mosaic as potential Recipient Sites are contained within a community of native upland and wetland habitats, created as an ecosystem approach to reclamation. For example, the proposed Mosaic Wellfield site of 1,000 protected acres has 869

acres of gopher tortoise habitat and Mosaic's proposed northern Four Corners site in Hillsborough County of 3,412 protected acres has 1,205 acres of gopher tortoise habitat. The remainder of the protected acres is non-gopher tortoise uplands and wetland habitats. While details for proposed sites will be detailed in each individual 5-year Permit, the overall protected acreage is generally expected to be greater than just the limits of gopher tortoise habitat. These Recipient Sites are strategically located in the landscape and are a part of Integrated Habitat Networks or other interconnected wildlife corridors. *See Map 2.* The inclusion of non-gopher tortoise uplands and wetlands habitat into protected areas results in benefits to commensal species, the biodiversity of ecosystems in general, and to gopher tortoises as well by providing buffers, travel corridors, and other benefits. Once mining is complete, Mosaic reclaims the land following strict requirements imposed by the Florida Department of Environmental Protection which mandate the pre-mining hydrology be similar in the post-reclamation condition with both upland and wetland habitats created.

Mosaic, or its predecessors, has relocated gopher tortoises and/or their commensals since the late 1980s. For the past few years, Mosaic has relocated between 800 and 1,000 gopher tortoises per year. This length and quantity of experience, combined with Mosaic's extensive landholdings, places Mosaic in a unique position to enter into this type of Agreement, which will have numerous benefits to the gopher tortoise.

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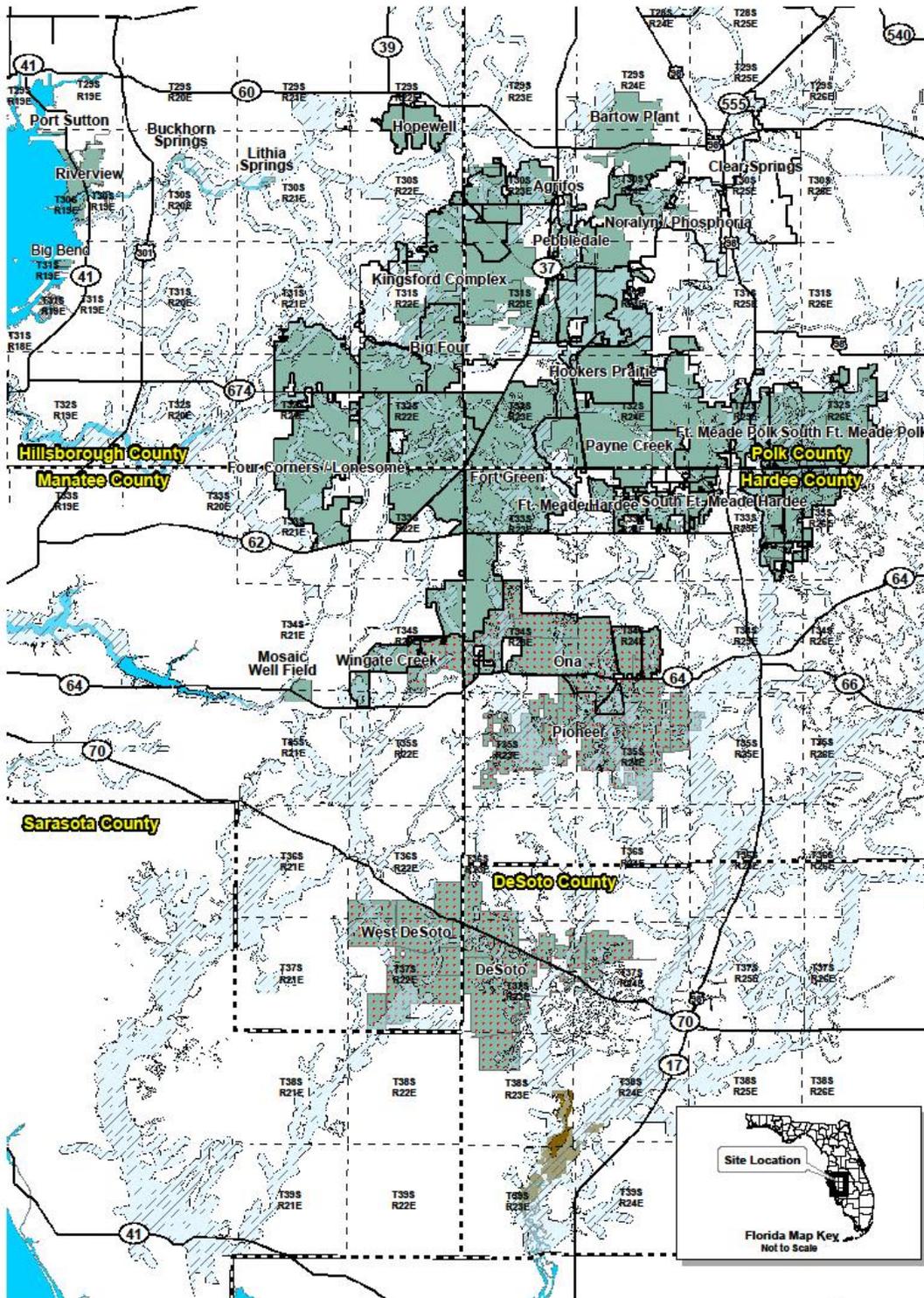


- Legend**
- County Lines
 - Township / Range Lines
 - Mine Boundaries
 - Future Mines
 - Mosaic Controlled Property
 - Peaceful Horse Ranch (FNAI)



Map 1
Mosaic Controlled Property

2011_0380/maps/Mosaic_Property_GT MOA.mxd
10/15/12 djr



Legend

	County Lines
	Township / Range Lines
	Mine Boundaries
	Future Mines
	Mosaic Controlled Property
	Peaceful Horse Ranch (FNAI)
	BOMR IHN

Not to Scale



Map 2
Mosaic Controlled Property
BOMR IHN

2011_0380/maps/Mosaic_Property_GT MOA.mxd
10/15/12 djf

EXHIBIT C

GOPHER TORTOISE PERMITTING GUIDELINES

Gopherus polyphemus

April 2008
(Revised September 2012)



FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
620 South Meridian Street
Tallahassee, Florida 32399-1600