

# Florida Burrowing Owl Permitting: Frequently Asked Questions

*(Athene cunicularia floridana)*

Florida Fish and Wildlife Conservation Commission

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## Are burrowing owls protected?

The Florida burrowing owl is a state Threatened species, which means that taking, possessing, or selling burrowing owls, their nests (i.e., burrows), or eggs is prohibited without a permit (Rule 68A-27 F.A.C.). Burrowing owls, eggs, young, and active nests (i.e., burrows with eggs and young) also are protected under the Federal Migratory Bird Treaty Act.



Nancy Douglass

## How do I know if burrowing owls are on my property?

For project areas on one acre or less, walk all potential burrowing owl habitat and record observations of burrows or burrowing owls. For projects areas greater than one acre, parallel transects spaced no more than 50 feet apart and covering all potential habitat should be sufficient to detect and record the location of burrows, provided surveys are conducted on days with good visibility. More on survey methodology is found on pages 4-6 in the [Species Conservation Measures and Permitting Guidelines](#).

## I have burrowing owls or their burrows on my property, and I want to avoid a wildlife violation. What should I do?

The first step is to determine if you can avoid “take” (see below). Take of burrowing owls is prohibited without a permit or other authorization.

## What does it mean to “take” a burrowing owl?

To “take” a burrowing owl means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a burrowing owl, or its eggs (or to attempt to do any of the above). “Harm” means an act which actually kills or injures a burrowing owl. This can include significant habitat modification that kills or injures burrowing owls by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. “Harass” means an intentional or negligent act or omission which creates the likelihood of injury to a burrowing owl by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering (Rule 68A-27 F.A.C.). For example, burrowing owls use burrows for sheltering year-round, and collapse of burrows is expected to result in take, even when the burrow is not being used for raising young. Pages 3 and 4 in the Florida Burrowing Owl [Species Conservation Measures and Permitting Guidelines](#) provide information on what constitutes take for burrowing owls.

## Are there things I can do to avoid the need for a permit?

Pages 7 through 9 in the Florida Burrowing Owl [Species Conservation Measures and Permitting Guidelines](#) provide information on how to avoid take, including:

- Avoiding acts that can kill or injure burrowing owls or eggs, and
- Maintaining at least a 10-foot buffer during the non-breeding season (July 11-February 14) and at least a 33-foot buffer during the breeding season (February 15-July 10) around the entrance of burrowing owl burrows (Please note: for projects started during the non-breeding season that unexpectedly extend into the breeding season, contact the FWC regarding permitting options), and
- Ensuring that the project does not cause significant habitat modification through the loss of greater than 50% of the total foraging habitat within a 1,970-foot radius circle around a burrowing owl burrow. Activities that may

cause significant habitat modification include, but are not limited to, clearing, grading, paving, bulldozing, digging, building construction, and site preparation for development. Foraging habitat includes a variety of open habitats with low vegetation (e.g., prairies, pastures, fields, depression marshes, vacant lots, etc.).

Page 10 of the Guidelines describes other circumstances under which take is authorized without a permit. **Please be aware that take can occur even if the burrow is on an adjacent property.**

### What do I do if I'm not sure if my activity will cause take?

Please refer to pages 3-4 of the [Species Conservation Measures and Permitting Guidelines](#) for examples of activities that are expected to cause take of burrowing owls. Also, pages 7 through 9 provide information on how to avoid take, and page 10 describes other circumstances under which take is authorized without a permit. If you are still unsure if your activity is likely to cause take, please contact the FWC's Protected Species Permitting Office with questions or for further assistance ([WildlifePermits@myFWC.com](mailto:WildlifePermits@myFWC.com), (850) 921-5990).

### If I can't avoid take, how do I apply for a permit?

Permit applications are available on the FWC's online [permitting site](#). Permit applications can be submitted at any time; it is not necessary to wait until the nesting season has ended to submit an application. **Incidental take permits** authorize take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (e.g., building a house). Incidental take permits are issued when there is a scientific or conservation benefit and the applicant shows that the permitted activity will not have a negative impact on the survival of the species. Please note that incidental take permits currently are called Migratory Bird Nest Removal Permits on the online permitting site. **Scientific collecting permits** authorize activities purposely carried out to cause take (e.g., capture or collection of animals for scientific research). Please refer to pages 11 through 22 in the Florida Burrowing Owl [Species Conservation Measures and Permitting Guidelines](#) for more information on types of permits and how to put together a complete permit application. In addition to state permits, **federal permits** may be required from the U.S. Fish and Wildlife Service to comply with the Migratory Bird Treaty Act. Please note that the FWC typically issues permits only for excavating and filling of burrows that do not contain eggs or flightless young, except in situations involving health and human safety.

### How do I make sure that my Incidental Take Permit application is complete to avoid delays?

The applicant must be the landowner or an agent designated in writing by the landowner. If the applicant is in the process of purchasing the property, the application would need to include documentation that the site is under contract for sale. Applicants should include the [Burrowing Owl Supplemental Application](#) with their online application materials. In the supplemental application, applicants will need to specify the amount of take for which they are seeking authorization, a site plan with burrow locations, a justification for why take is unavoidable, and specific measures that will be taken to achieve scientific or conservation benefit (see below). If the applicant is seeking authorization to excavate and fill burrows, the applicant or their designated agent will need to demonstrate that they have met the minimum qualifications for these activities (see below).

### How can I demonstrate a scientific or conservation benefit in my permit application?

Incidental take permit applications can demonstrate scientific or conservation benefit by showing a combination of measures that minimize impacts to burrowing owls and their burrows and measures that mitigate for unavoidable take that may occur. Please refer to pages 13-19 in the [Species Conservation Measures and Permitting Guidelines](#) for information on minimization measures and mitigation measures for commonly-encountered scenarios.



Amy Clifton

## How do I meet the minimum qualifications necessary to scope and excavate a burrowing owl burrow under an Incidental Take Permit?

Unlike for gopher tortoises, there is not an Authorized Agent program for burrowing owls. Instead, FWC staff developed a set of [minimum qualifications](#) that Permittees or their agents must meet to scope or excavate a burrow as part of an incidental take permit. The minimum qualifications are described in detail on pages 12 and 13 of the [Species Conservation Measures and Permitting Guidelines](#). Training videos necessary to complete minimum qualifications are available on our [Online Training](#) site. The videos are designed both to provide a refresher for experienced applicants and to provide training for those with less experience.

For those likely to submit multiple applications over time, the FWC strongly encourages landowners and consultants to upload minimum qualifications as part of an application for a self-issuing Registered Agent permit in the [online permitting site](#). This approach will allow applicants to upload minimum qualifications only once rather than repeatedly uploading them in each application. If you do not meet the minimum criteria you should contract with an experienced applicant or consultant that meets the criteria. Contact Permitting Staff at (850) 921-5990 for information on these individuals.

## If I have obtained an Incidental Take Permit to excavate and fill a burrow on my property, when is it appropriate to execute my permit?

FWC typically issues permits only for excavating and filling of burrows that are inactive (i.e., do not contain eggs or flightless young), except in situations involving health and human safety. Excavation and filling of burrows **must occur within the 48 hours** before initiating activities in the active part of the project site (e.g., the area scheduled for clearing/grading), unless otherwise specified in the permit. If this is not possible, the Permittee may be required to conduct daily monitoring as a provision in the permit to ensure that burrowing owls do not attempt to return to the site, and additional mitigation may be necessary. As part of executing the permit, a qualified individual will video-scope the burrow to confirm that the burrow is inactive. If the burrow is inactive, the qualified individual will excavate and fill the burrow. If the burrow is active (i.e., eggs or flightless young are present), the permittee must wait until all young are capable of flying before executing the permit. Please see Appendix B in the [Species Conservation Measures and Permitting Guidelines](#) for more details. During the entire project activity, **be sure to prominently post the original permit or complete copy at the affected site at all times** when engaged in the permitted activities (e.g., during burrow excavation and subsequent construction of a house) until construction activities are complete, per condition of the permit. The posted permit must be clearly visible for inspection by all authorized officials (including but not restricted to FWC, the U.S. Fish and Wildlife Service, local government staff, and law enforcement).

## I executed an Incidental Take Permit (excavated and filled burrows) but the owls returned to the property to dig new burrows. What shall I do?

Appendix B of the Guidelines stipulates the following: “If burrowing owls return to the site during the 48 hours before initiation of activities [destruction of the original burrow and initiation/continuation of construction activities], the permittee may excavate and fill the burrows, provided they are inactive.” If the new burrow was constructed within 48 hours of destruction of the original burrow and is inactive, it may be inspected, excavated, and filled under the current permit. We recommend rendering the area inaccessible to returning owls as provided in the Guidelines, Appendix B paragraph 7, lines 9-14. If the new burrow was established more than 48 hours after excavation and filling of the previous burrow(s), please submit a permit amendment (with updated nest information on the online application species tab, revised supplemental application, new site plan depicting location of new burrow and additional mitigation) in the [online permitting site](#).

I excavated and filled an inactive burrow according to my permit, but an unforeseen delay means that project activities will not take place within 48 hours. What should I do?

If there is not a provision in the permit for a delay, you will need to submit a permit amendment. You may be required to conduct daily monitoring to ensure that burrowing owls do not attempt to return to the site, and additional mitigation may be necessary if burrowing owls must be harassed to keep them from returning. You can find more information in the [Species Conservation Measures and Permitting Guidelines](#) in Appendix B: Guidance for executing a permit to excavate and fill inactive burrows.

Do mitigation contributions have to go to the Fish and Wildlife Foundation of Florida, or can I propose mitigation contributions to another organization?

As noted in the Species Conservation Measures and Permitting Guidelines, mitigation contributions should be made to the Fish and Wildlife Foundation of Florida. Placement of donations in the Fish and Wildlife Foundation of Florida's Imperiled Species Conservation Fund earmarks the funds for burrowing owl conservation actions, ensures that the FWC can track the funds and how they are used, and is consistent with Florida Statute XVIII Chapter 259.105.

How long does starter or artificial burrows have to remain on a site post construction?

Starter burrows shall be maintained for a minimum of 3 years. Permittees must keep vegetation low around the burrow, as described in Appendix C of the Guidelines, and will keep the entrance of starter burrows and artificial burrows free of debris or eroded soil until burrowing owls occupy the site or for the duration of the permit, whichever occurs first.

Who is responsible for completing and submitting permitting reports for starter/artificial burrow use by owls?

The Permittee (the name listed on the permit, typically the landowner) is ultimately responsible for completing and submitting reports required by the permit, though the Permittee can choose to designate an agent to complete the reports.

A lot owner/agent has executed the FWC permit and excavated burrows but does not have a city building permit yet. Is this a permit violation?

Permit provisions typically state that excavation and filling of a burrow must occur within 48 hours before initiating project activities. Therefore, excavating and filling a burrow prior to receiving local authorization for project activities is likely to violate conditions of the FWC permit.

Can I apply for a permit to trap and relocate the owls to keep them from returning to my construction site?

No, translocation (i.e., the movement of burrowing owls from one place to another by people) is considered experimental and is therefore not considered a mitigation option at this time, except in rare circumstances. Once a Permittee has executed a permit to excavate and fill burrows, FWC staff encourage Permittees to render the area unsuitable for burrowing owl nesting to discourage the owls from returning (see Appendix B in the Guidelines).