

Water Quality Enhancement Area Rulemaking - Additional Lee County Department of Natural Resources comments

Kreiger, Lisa <LKreiger@leegov.com>

Thu 12/7/2023 3:06 PM

To:WQEA_2023 <WQEA_2023@floridadep.gov>

Cc:Ottolini, Roland <ROttolini@leegov.com>; Riordan, Ryan <RRiordan@leegov.com>

EXTERNAL MESSAGE

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Good afternoon,

Please accept these additional comments from Lee County regarding the draft rule language for Chapter 62-332 Water Quality Enhancement Area Credit Trading Transactions.

- Line 48 A natural landscape or ecosystem is one that developed by natural processes and that is self-organizing and self-maintaining (Society for Ecological Restoration). A man-made system, by definition, is not a "natural system." The intent of a WQEA may be to mimic natural processes, but it would be an example of ecological engineering: a created or fabricated management feature. Recommend existing definition in 62-332.200 be re-defined or a different term be used/defined when describing the man-made creation of a mitigation area for credits.
- Line 53 With stakeholders across the state falling short of existing required BMAP credits, the establishment of a sort of water quality mitigation bank for future use without first addressing the existing situation seems undermining.
- Line 58 The definition of "Water quality enhancement area permit" authorizes "the construction, operation, management, and maintenance of a water quality enhancement area **and** the generation and sale of enhancement credits from the permitted WQEA..." For clarification, does this definition preclude a governmental entity from permitting and operating a WQEA for its own use with no intention of selling enhancement credits?
- Line 62 The definition of "Water quality enhancement service area" seems geographically limiting. Line 95 assumes additional uses, as credits may not solely be used to meet design and construction requirements for onsite stormwater management.
- Line 113 See Line 58 comment. Seeking clarification: does this mean a governmental entity can permit, construct and operate a WQEA for its own water quality needs without selling credits? If that is the intent, we suggest allowing a governmental entity to create and utilize a WQEA for its own use and sell (not for profit) enhancement credits to other governmental entities. Governmental entities partner regularly to co-fund projects for water quality improvement. This scenario would encourage and enable the construction of larger treatment facilities by governmental entities, thereby increasing water quality treatment ability, and afford the facility owner the ability to recoup costs on excess credits over time.
- Line 140 An enhancement area such as a treatment wetland may increase in credit value over time as the vegetation matures. Will the Department allow for re-evaluation of an enhanced area to utilize additional credits?

- Line 148 If a WQEA is located within a BMAP or ARP area, governmental entities should be able to purchase credits to satisfy existing regulatory burdens. Such a feature might compete for land needed by BMAP stakeholders to satisfy required nutrient reductions within the watershed. In addition, private entities are not shackled by state statute regarding purchase price. A governmental BMAP stakeholder cannot be competitive against a private entity that would have no price ceiling re: land acquisition. Governmental BMAP stakeholders and those subject to ARPs will potentially be priced out of the market on certain desirable parcels with water quality treatment potential.
- Line 185 The requirement that the purchaser's project be "hydrologically connected and downstream of the WQEA," seems to mean that WQEAs will not reduce pollutants from the project for which enhancement credits are purchased.
- Line 220 Enhancement credits may be used only to satisfy the environmental resource permit net improvement or performance standard under Section 373.4131(3)(a), F.S., or BMAP, or adopted reasonable assurance plan allocations within the water quality enhancement service area. We wonder, under what circumstances would an entity purchase "enhancement credits," defined as "greater than required," for an ARP or BMAP?
- Line 253 See Line 113 comment. *If* governmental entities cannot obtain permits for WQEAs, they are guaranteed as a strictly for-profit activity; this will result in higher costs for governmental entities. Will non-profit NGOs be able construct, operate, etc. WQEAs?
- Line 278 Minimum monitoring requirement of flow and concentration into and out of WQEA every two weeks: is there an exception with natural events that would prevent sampling?
- Line 337 What are the long-term repercussions if the WQEA owner is unable to bring the facility into compliance?

Sincerely,



Lisa Kreiger | Operations Manager

Natural Resources

1500 Monroe Street, Fort Myers, FL 33901

office: (239) 533-8706

cell: (239) 391-4417

email: lkreiger@leegov.com

web: www.leegov.com

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