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Timothy Rach
Program Administrator
Submerged Lands and Environmental Resource Coordination
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Via Email: Timothy.Rach@FloridaDEP.gov; WQEA_2023@FloridaDEP.gov

Re: Comments on the August 2026 Proposed Rules for Water Quality Enhancement Areas (Chapters 62-4, 62-330, and 62-332, F.A.C.)

Dear Mr. Rach:

Audubon Florida appreciates the opportunity to comment on the proposed rules for Water Quality Enhancement Areas (WQEAs) published in the August 3, 2026 Florida Administrative Register, including new Chapter 62-332, F.A.C., and related amendments to Chapters 62-330 and 62-4, F.A.C. This rule package reflects substantial work by Department staff, and we appreciate DEP's continued engagement with stakeholders across several years of drafts.

Since our initial comments in December 2023, DEP has meaningfully strengthened this rule, and the August proposal continues that trend. We are particularly pleased to see continued movement toward mandatory, rather than discretionary, water quality safeguards; clearer and more internally consistent use of key terminology; a closer link between credit release and demonstrated, real-world performance; and strengthened Departmental oversight of ongoing WQEA compliance. We appreciate DEP's continued attention to these issues and encourage the Department to maintain this trajectory as the rule moves toward adoption.

While Audubon supports these improvements, several important concerns remain that we urge the Department to address before this rule is finalized. We list them below in order of priority.

- HUC 8 minimum service area (§62-332.500(2)): The proposed rule now requires every WQEA service area to include, at a minimum, an entire USGS Hydrologic Unit Code 8 (HUC 8) sub-basin. Audubon has previously supported DEP's modeling-based approach to defining service areas, unique to each WQEA and grounded in hydrologic connection and attenuation, rather than a predefined geographic unit similar to mitigation banking. We ask DEP to clarify in the final rule that inclusion within a HUC 8 does not create a presumption that credit use is appropriate, and that the hydrologic-connection, locational valuation factor, and mandatory reasonableassurance review requirements continue to govern whether any specific credit transaction may proceed within that area.

- Ten-year interval for updating Locational Valuation Factor (LVF) models (§62-332.500(5)(c)3.c): The numerical models used to calculate LVFs need only be updated at least once every ten years. Audubon raised this concern in our comments on the April 2024 draft and again in May 2026. Land use, hydrology, and pollutant loading within a watershed can change significantly within a decade, which can render an LVF inaccurate long before it is next updated. We again ask DEP to shorten this interval or require updates whenever significant land use, hydrologic, or pollutant-loading changes occur within the service area.

- Ambiguous and incorrectly cited restriction on construction over surface waters (§62-332.300(8)): This provision bars a WQEA from being constructed "wholly" over "surface waters of the State, as defined in Section 403.031(23), F.S." However, Section 403.031(23), F.S., defines "waters," a broad term that expressly includes underground waters, not "surface water" specifically – "surface water" is separately defined in Section 373.019(21), F.S. We ask DEP to correct or clarify which definition applies. Separately, and independent of that citation problem, prohibiting construction only when a WQEA is "wholly" over surface waters would still permit a WQEA to use nearly the entire surface of a water body. We ask DEP to (1) cite the correct statutory definition of "surface water", and (2) replace the "wholly over" standard with a clear prohibition on constructing any portion of a WQEA on or over sovereign submerged lands, regardless of the percentage of the water body affected.

- Conservation-land exclusion is too narrow (§62-332.300(7)): WQEAs may not be established on lands purchased for conservation under the Florida Forever Act or the Florida Preservation 2000 Act, but no other conservation designation is protected. Audubon asked DEP to broaden this exclusion in our December 2023 and March 2024 comments. We renew that request and ask DEP to extend this protection to lands purchased or encumbered for conservation through other federal, state, regional, or local programs, including lands owned or managed by a water management district and sovereign lands.

- Undefined "provisional permit credits" (§62-332.700(5)(a)): The ledger provisions newly reference "provisional permit credits," but this term does not appear in the definitions section or elsewhere in the rule. We ask DEP to either define this term clearly or remove it to avoid ambiguity in how credits are tracked and reported.

- WQEA Conceptual Approval permit may not provide adequate assurance (§62-332.350(2)): The level of detail required for a WQEA Conceptual Approval application "will depend on the level of detail submitted with the application," with no minimum standard set by DEP. The rule also does not state that the credit estimate produced at the conceptual approval stage is preliminary and non-binding on the subsequent WQEA Permit review. We ask DEP to establish minimum content requirements for WQEA conceptual approval applications tied to the criteria in §62-

332.350(4), and to clarify that credit estimates produced at this stage create no presumption or entitlement in the subsequent WQEA Permit determination.

- Perpetual Management financial assurance may be underfunded during the funding ramp-up period (§62-332.550(12)(c)-(d)): Unlike the Operation and Maintenance Phase, which must be fully funded before any credits are released (§62-332.550(4)(c)), the financial responsibility mechanism for the Perpetual Management Phase may be phased in over up to five years from the first credit withdrawal, starting at only 50 percent of the required amount and reaching a 135 percent funded ratio only by the time the WQEA transfers to the Perpetual Management Phase. Because Perpetual Management funding may only be satisfied through an escrow account, trust fund, or endowment, not a surety bond or irrevocable letter of credit, which are available only for the Operation and Maintenance Phase, there is no separate surety bond or irrevocable letter-of-credit backstop for the unfunded portion during the ramp-up period. We ask DEP to shorten the funding period, raise the initial funding percentage, or otherwise ensure the perpetual management obligation is adequately secured throughout the ramp-up period.

- Potential overlap with mitigation banks: The rule does not address whether a property that is, or has been, used as a mitigation bank may also become a WQEA, beyond a general prohibition on using the same pollutant reduction to satisfy both programs (§62-332.300(5)-(6)). We ask DEP to clarify whether such dual use should be permitted at all, and if so, what showing would be required to demonstrate that WQEA-credited activities are legally and factually distinct from any existing mitigation bank credits on overlapping property, or whether mitigation bank lands should instead be disallowed from also serving as WQEAs.

Audubon Florida appreciates DEP's continued effort to build a rigorous, science-based framework for water quality enhancement areas. Please contact us if you have any questions regarding these comments.

Sincerely,

Beth Alvi
Senior Director of Policy