Orlando [Headquarters]
3025 East South Street
Orlando, FL 32803

Cocoa
400 High Point Drive
Suite 400
Cocoa, FL 32926

Jacksonville
11235 St. Johns Industrial Pkwy N
Suite 2
Jacksonville, FL 32246

Key West
1107 Key Plaza
Suite 259
Key West, FL 33040

Lantana
445 West Lantana Road
Suite 5
Lantana, FL 33462

Tallahassee
2560-1 Barrington Circle
Tallahassee, FL 32308

Tampa
6011 Benjamin Road
Suite 101-B
Tampa, FL 33634

Denver
10701 Melody Drive
Suite 304
Northglenn, CO 80234

Raleigh
4338 Bland Road
Raleigh, NC 27609

Charlotte
5105 Monroe Road
Suite A
Charlotte, NC 28205

East Syracuse
6700 Old Collamer Road
Suite 112
East Syracuse, NY 13057

Bismarck
4501 Coleman Street
Suite 103
Bismarck, ND 58503

Austin
3801 N Capital of TX Highway
Suite E-240
Austin, TX 78746

Midland
5114 West County Road 12
Midland, TX 79706

San Antonio
7700 Broadway Street
Suite 104
San Antonio, TX 78209

Orlando [Aquatic & Land Management Operations]
3825 Rouse Road
Orlando, FL 32817

Bio-Tech Consulting
An EnviroTrac Company
EnviroTrac

August 6, 2026

Mr. Timothy Rach
Environmental Administrator
Office of Submerged Lands & Environmental Resources
Department of Environmental Protection
2600 Blair Stone Road
MS 2500
Tallahassee, FL 32399-2400

Re: Comments on 62-342 Draft Rule 2026 (Proposed amendments to Chapter 62-342 F.A.C., Mitigation Banks)

Dear Mr. Rach:

Bio-Tech Consulting (BTC) provides the following comments regarding the 62-342 Draft Rule 2026, which proposes amendments to the Mitigation Banking Rule (Chapter 62-342 F.A.C.). BTC is an environmental consulting firm that works with mitigation banks throughout Florida. BTC is concerned that several of the proposed revisions could adversely affect the mitigation banking industry reducing the number of mitigation banks, increasing costs, and creating additional compliance challenges.

1. **Definition of "Preservation" - Page 3, Paragraph 2**

   The proposed definition states that "Preservation does not result in the gain of aquatic resource area or functions."

   a. This language appears inconsistent with the Uniform Mitigation Assessment Method rule in Chapter 62-345, F.A.C. Under UMAM, preservation may contribute functional gain and support the award of mitigation credits. As written, the proposed definition could create the unintended implication that preservation is creditable when used as permittee-responsible mitigation (PRM), but not when incorporated into a mitigation bank.

   b. Preservation is already defined in the Statewide Environmental Resource Permitting Applicant's Handbook, Volume I, which may make an additional definition in 62-342 unnecessary. If the Department determines that a separate definition is needed in Chapter 62-342, F.A.C., the following language would more closely align with UMAM:

"Preservation" means the permanent protection of wetlands, other surface waters, or uplands from reasonably foreseeable adverse impacts through a conservation easement that complies with applicable mitigation bank requirements or through conveyance of fee-simple title to a qualified conservation entity. Consistent with Chapter 62-345, F.A.C., Preservation may provide functional gain by avoiding the reasonably anticipated loss or degradation of ecological functions and values.

2. **Definition of "Restoration" - Pages 8 and 9**

The final sentence states that "Restoration results in a gain in aquatic resource functions but does not result in a gain in aquatic resource area." This language raises several concerns.

a. The wording appears to draw from the federal 2008 Mitigation Rule, but it does not fully reflect the federal framework. Under that rule, restoration includes both "re-establishment" and "rehabilitation." Re-establishment results in an increase in both aquatic resource area and functions. The proposed definition therefore differs from the federal definition and may lead to uncertainty or inconsistent interpretation.

b. The proposed definition of *Restoration* also appears substantially similar to the proposed definition of *Enhancement*. As drafted, the distinction between the two activities is not readily apparent. At the same time, any revision should avoid defining restoration so broadly that it becomes indistinguishable from creation. The rule should provide clearly differentiated definitions of restoration, enhancement, and creation so that each term has a distinct meaning and can be applied consistently.

3. **Mitigation Service Area – Page 10**

The second sentence in 62-342.600(1) states:

Except as provided herein, Mitigation Credits may only be withdrawn to offset adverse impacts in the Mitigation Service Area.

The above sentence may conflict with the changes to 373.4136 pursuant to SB 492. We suggest replacing this sentence with: "Except as otherwise authorized by section 373.4136(6), F.S., or this rule, Mitigation Credits may be withdrawn only to offset adverse impacts located within the Mitigation Service Area."

4. **Perpetual Protection of Mitigation Banks – Pages 10 and 11**

The proposed revisions would delete the following provisions:

(a) Cause a fee interest to be conveyed to the Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees");

and

(2) If the Mitigation Bank is located within an area identified in an Agency acquisition plan, and the Agency determines that the ecological value of the bank can be increased by incorporating the bank into the Agency's land management programs, the Agency may award additional Mitigation Credits if the fee interest in the bank is conveyed to the Agency as opposed to a conservation easement.

Is this deletion intended merely to remove outdated or unnecessary language, or is the Department proposing a substantive policy change? Please clarify the purpose and intended effect of removing these provisions.

5. **Discount Percentage Rate - Page 17**

The proposed formula for calculating the Discount Percentage Rate appears mathematically inconsistent because it subtracts "Administrative Costs," which are defined as a dollar amount, from percentage-based figures. The Department may intend for administrative costs to be expressed as a percentage of the invested funds, but that will not necessarily be the case for all administrative expenses. The rule should clarify whether administrative costs are to be stated as a percentage, converted to a percentage, or included elsewhere in the funding calculation.

6. **Perpetual Management Financial Assurance Mechanism - Page 17 (62-342.700)**

a) The third sentence of proposed subsection 62-342.700(13)(c) includes the phrase "as credits are withdrawn." This language appears inconsistent with the funding schedule set forth in the following sentence, which ties the required funding installments to specified time intervals -for example, 30 percent at the beginning of year three - rather than to the withdrawal of mitigation credits. Please clarify whether funding is intended to be based on credit withdrawals, elapsed time, or whichever milestone occurs first.

b) Subsection 62-342.700(13)(b) calculates the initial funding requirement as 110 percent of the annual cost of perpetual management divided by the Discount Percentage Rate. Subsection 62-342.700(13)(d) then requires the fund to achieve a 135-percent funded ratio before the bank may transition to the perpetual phase. Because the "total funding requirement" already incorporates the 110-percent factor, applying the 135-percent funded ratio appears to produce an effective funding requirement of 148.5 percent (1.10 × 1.35). Is this result intentional, or does it reflect an error in the proposed calculation? Please clarify the purpose and intended interaction of these two funding factors.

c) Subsection 62-342.700(14)(a) refers to the "total cost" of perpetual management. Because perpetual management has no finite endpoint, this phrase would be more accurately stated as the estimated annual cost of perpetual management. The resulting "total" amount should be the capitalized funding requirement calculated under subsection 62-342.700(13)(b), rather than the sum of all anticipated future perpetual-management expenditures.

Should you have any questions or require any additional information, please contact our office at (407) 894-5969. Thank you for your consideration.

Regards,

John Lesman
Vice President of Mitigation Banking

Cc: John Miklos (via email)