Florida Association of Mitigation Bankers

FAMB

www.floridamitigationbanking.org

Mr. Tim 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 Proposed Chapter 62-332, F.A.C. – Water Quality Enhancement Areas

Dear Mr. Rach,

On behalf of Florida's mitigation banking industry, the Florida Association of Mitigation Bankers (FAMB) appreciates the opportunity to provide comments on the Department's August 3, 2026 draft of Chapter 62-332, Florida Administrative Code, governing Water Quality Enhancement Areas ("WQEAs"). FAMB appreciates the substantial work undertaken by DEP in developing this new program and DEP's continued willingness to receive input from FAMB as the representative of the regulated banking community.

FAMB's members have extensive experience developing, permitting, financing, constructing, monitoring, and managing environmental restoration and mitigation projects throughout Florida. They understand the substantial upfront investment, technical work, regulatory coordination, financial assurances, and long-term obligations necessary to successfully establish and operate a credit-based environmental restoration program. This experience places FAMB members in a unique position to help develop WQEAs and bring the Legislature's water-quality enhancement areas into the marketplace.

For that potential to be realized, however, the rules must be workable. Entities cannot make the substantial investments necessary to develop WQEAs unless they can reasonably determine the requirements for obtaining a permit, how credits will be calculated, where those credits may be used, the financial obligations associated with the project, and whether released credits will be accepted for use in future permitting decisions.

The ultimate success of this program will depend in significant part upon whether experienced environmental restoration companies are willing to invest the capital and resources necessary to develop WQEAs. Unnecessary restrictions, undefined regulatory standards, unpredictable credit adjustments, uncertainty regarding where and when released credits may be used, or financial requirements that are not reasonably related to the obligations being secured will increase the cost, risk and complexity of developing WQEAs. Those uncertainties may discourage investment and impede development of the very projects the legislation was intended to encourage.

FAMB therefore offers these comments with the goal of helping DEP establish a regulatory framework that protects water quality while allowing experienced providers to bring this valuable concept to market. A successful rule should provide strong environmental protections, objective standards, reasonable financial safeguards, and sufficient regulatory certainty to support the substantial private investment necessary to establish a functioning WQEA program.

COMMENTS

LOCATIONAL VALUATION FACTOR ("LVF")

1. The LVF Is Inconsistent with the Statutory Definition and Valuation of Enhancement Credits

FAMB recommends deletion of the LVF provisions in proposed Rule 62-332.500. Section 373.4134, Florida Statutes, establishes the Legislature's framework for the creation, valuation, geographic use, and regulatory acceptance of enhancement credits. The statute does not authorize DEP to impose a multiplier increasing the number of enhancement credits that must be acquired based upon the relative location of the WQEA and the credit purchaser, pollutant transport, or variability within the receiving waterbody.

An "enhancement credit" is statutorily defined as a standard unit of measure representing a quantity of pollutant removed. The 2026 legislation retained this fundamental concept and placed the definition in section 373.403(24), Florida Statutes. Section 373.4134 likewise requires WQEA permits to provide for the assessment, valuation, and award of credits based upon units of pollutants removed, not location.

The proposed LVF departs from that statutory structure. Proposed Rule 62-332.500(5) would adjust the number of credits required by multiplying a Transport Factor by a Variability Factor. The resulting adjustment can substantially increase the number of credits a purchaser must acquire without any corresponding change in the amount of pollutant requiring treatment.

For example, the proposed rule establishes a Transport Factor of at least 2 when the WQEA is downstream of the purchaser. That figure is then multiplied by a Variability Factor. This is not simply a technical methodology for determining the quantity of pollutants removed by the WQEA. It changes the number of statutorily defined credits necessary to satisfy the purchaser's regulatory obligation.

From the standpoint of developing a functioning market, the LVF also creates substantial uncertainty. A WQEA developer must be able to reasonably assess the value and marketability of the credits a project will generate before investing significant capital in land acquisition, engineering, permitting, construction, monitoring, and long-term management. Likewise, a purchaser must be able to reasonably determine the number of credits necessary to satisfy a regulatory obligation. A multiplier that can substantially change the number of credits required undermines that predictability.

2. Specific Statutory Authority for the LVF Is Lacking

The LVF also creates a substantial rulemaking-authority issue under section 120.52(8), Florida Statutes. Under Florida's Administrative Procedure Act, general rulemaking authority does not independently authorize an agency to impose substantive requirements. A rule must implement or interpret specific powers and duties granted by the Legislature. It is not sufficient that a requirement may be generally consistent with the purpose of the legislation or fall within the agency's broader regulatory mission.

Section 373.4134 specifically addresses the circumstances in which location matters to the use of WQEA credits. The statute directs DEP to establish an enhancement service area and limits the use of credits to adverse impacts occurring within that service area. The 2026 legislation further provides that the service area must consist, at a minimum, of a HUC-8 sub-basin.

The Legislature therefore directly addressed the geographic relationship between a WQEA and the location at which its credits may be used. It did not authorize an additional geographic multiplier that increases the number of credits required. The statute separately addresses DEP's concern regarding whether the use of credits at a particular location could adversely affect water quality. Section 373.4134(7)(j) authorizes DEP to deny the use of enhancement credits when reasonable assurance has not been provided that the proposed use will not cause or contribute to a violation of water-quality standards. Proposed Rule 62-332.300(9) already implements this protection.

Accordingly, DEP has a specific statutory mechanism for addressing location-specific water-quality concerns without imposing an additional credit multiplier.

3. The Legislature Expressly Authorized a Geographic Multiplier Elsewhere

The absence of comparable authority in section 373.4134 is particularly significant when considered with the amendments to the mitigation-bank statute enacted in the same 2026 legislation. As you know, in section 373.4136, the Legislature expressly required DEP and the water management districts to apply a "proximity factor" when mitigation credits are used outside a mitigation bank's service area. The Legislature specified the applicable adjustments, including a 1.0 factor in specified circumstances, 1.2 for certain adjacent-watershed credits, an additional 0.25 for additional watershed boundaries crossed, and an additional 0.50 for out-of-kind replacement.

The Legislature therefore demonstrated that when it intends geographic considerations to change the number of regulatory credits required, it knows how to expressly authorize and establish that adjustment. No comparable authority appears in section 373.4134.

FAMB recommends that geographic concerns under the WQEA program be addressed through the mechanisms the Legislature actually provided: the enhancement service area and the statutory reasonable-assurance standard.

4. The LVF Provisions Are Internally Inconsistent

The proposed rules also contain internal inconsistencies concerning the LVF. Proposed Rule 62-332.400 provides that enhancement credits are assessed, valued, and awarded according to units of pollutant removed and establishes a standard unit of measure based upon the specific pollutant removed on an average annual basis. Proposed Rule 62-332.500 then changes the practical value of those credits through a multiplier that is not based upon the quantity of pollutant actually removed.

The proposed rules also appear to account for pollutant attenuation twice. Attenuation is considered when establishing the geographic area in which the WQEA can reasonably address adverse impacts and thereby determining the service area. The LVF then considers pollutant attenuation again when determining the number of credits a purchaser must acquire.

The Variability Factor presents a separate concern because it is not necessarily locational. It measures variability in pollutant concentrations within a target waterbody rather than the geographic relationship between the WQEA and the purchaser.

Finally, the proposed definition indicates that the LVF accounts for attenuation regardless of which entity is hydrologically upstream, while Rule 62-332.500 expressly distinguishes between upstream and downstream conditions by imposing a minimum Transport Factor of 2 when the WQEA is downstream.

For these statutory, technical, and practical reasons, FAMB recommends deletion of the LVF provisions.

PROHIBITION ON CONSTRUCTION IN SURFACE WATERS OF THE STATE

FAMB recommends deletion of the proposed provision prohibiting a WQEA from being constructed wholly over surface waters of the State or in a manner that "severs" a portion of surface waters. Section 373.4134 does not establish a categorical prohibition against locating a WQEA over surface waters. Creating such a restriction by rule imposes a substantive siting limitation that does not appear in the governing statute.

The restriction also could eliminate potentially valuable water-quality projects. Depending upon their design and location, WQEAs could potentially be used in connection with stream restoration, treatment of impaired waters, hydrologic restoration, nutrient removal, or other water-based restoration activities. The WQEA program is new, and FAMB does not believe the rules should prematurely exclude potentially effective technologies or restoration approaches where those projects can demonstrate measurable water-quality benefits and satisfy otherwise applicable permitting requirements.

To the extent a project affects sovereignty submerged lands, the Board of Trustees of the Internal Improvement Trust Fund already possesses authority to determine whether use of those lands should be authorized and under what conditions. Other environmental impacts can likewise be addressed through existing permitting criteria.

If the surface water is privately owned, there is even less reason to include this prohibition. If the surface water is privately owned, the applicant will have to demonstrate that it has the legal interest required in section 4.2.3.7, Applicant's Handbook I.

The term "severs" creates additional uncertainty because it is undefined. If DEP intends to protect hydrologic connectivity, the rule should identify an objective environmental standard rather than prohibit an undefined activity.

POLLUTANT REMOVAL SHOULD BE DETERMINED ON AN AVERAGE ANNUAL BASIS

The proposed rules should consistently evaluate pollutant loading and removal on an **average annual basis**, rather than requiring a WQEA to demonstrate the specified pollutant removal during each individual year. Water-quality treatment systems operate under naturally variable hydrologic conditions. Rainfall, runoff, pollutant loading, and flows can differ substantially from one year to another. During a drought year, substantially less water may enter a WQEA. The total mass of pollutants available for removal will consequently be lower. A properly designed and functioning WQEA could therefore fail to achieve a fixed annual mass-removal requirement simply because the pollutant mass entering the system was insufficient to permit that quantity of removal. The same conditions will generally reduce pollutant loading from the credit purchaser. During a dry year, less stormwater runoff and discharge will ordinarily result in less pollutant loading requiring offset.

An average annual standard accounts for these normal variations while continuing to require the WQEA to demonstrate the pollutant-removal benefit represented by its credits over time. FAMB therefore recommends that references to annual pollutant loading, treatment, and removal consistently provide for determination on an **average annual basis**.

FINANCIAL RESPONSIBILITY

FAMB suggests that financial assurances be addressed solely in section 62-342.700, F.A.C. and suggest that Chapter 62-332, F.A.C. refer back to section 62-342.700, F.A.C. for financial assurance requirements. There should be consistency in the requirements between mitigation banks and WQEA, and consistency can be assured if the rule is in only one chapter. The comments below on "Increased Financial Responsibility Requirements" and Endowments are detailed in the event DEP elects to maintain financial assurance requirement details in Chapter 62-332, F.A.C.

INCREASED FINANCIAL RESPONSIBILITY REQUIREMENTS

Section 62-332.550(12), F.A.C. requires an owner to establish

> (b) The amount of financial responsibility provided shall be calculated and adjusted in accordance with subsection 62-332.550(14), F.A.C. The fund shall be established in an amount equal to 110 percent of the annual cost of perpetual management, established under subsection 62-332.550(13), F.A.C., divided by a discount percentage rate calculated by the following rates as (long-term expected annual return) less (expected annual inflation) less (administrative costs).
>
> Fund Establishment Amount = 110% Annual Cost of Perpetual Management / Discount Percentage Rate.
>
> Discount Percentage Rate = (Long-Term Expected Annual Return) – (Expected Annual Inflation) – (Administrative costs).
>
> A Discount Percentage Rate calculation tool is included in the "References and Design Aids" for the Applicant's Handbook Volume I,

The proposed rule then requires a WQEA Owner, immediately before transfer to the Perpetual Management Phase, to maintain funding equal to 135% of the amount calculated under Rule 62-332.550(13)(c).

Because the "total funding requirement" already includes the 110-percent factor, the 135% funded-ratio requirement effectively produces a higher percentage rate: 1.10 × 1.35 = 148.5%. This rate raises concerns about being overly conservative.

No apparent statutory basis is identified for requiring financial assurance equal to 135% of the amount DEP has determined is necessary to fund the perpetual management obligation.

If the amount calculated under paragraph (13)(c) represents the reasonably anticipated cost of perpetual management, requiring an additional 35% creates an additional financial obligation without identifying the cost or risk the additional amount is intended to secure. This issue directly affects the feasibility of developing WQEAs. These projects require substantial capital before credits can be sold. Requiring additional capital to remain tied up in financial assurances increases development costs and ultimately increases the price of credits.

The proposed 160% threshold compounds that concern. After requiring funding at 135%, the rule prevents an Owner from obtaining the return of excess funds until the portfolio exceeds 160%. If DEP determines that 135% is sufficient to assure perpetual management, it is unclear why funds between 135% and 160% must remain unavailable.

Financial-assurance requirements should fully protect perpetual management while avoiding unnecessary capital requirements that increase the cost of bringing WQEA credits to market.

ENDOWMENT HOLDERS

Proposed Rule 62-332.200(5) limits an Endowment Holder to a charitable nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code. FAMB recommends removal of this restriction.

The proposed rules already establish substantial financial and fiduciary safeguards for entities entrusted with perpetual management funds. Among other requirements, an Endowment Holder must demonstrate appropriate fiduciary qualifications and experience, maintain a diversified investment portfolio governed by an investment policy statement, and maintain an investment portfolio exceeding $125 million. These safeguards directly address the legitimate regulatory concerns associated with the long-term security and administration of perpetual management funds.

The relevant inquiry should be whether an entity possesses the financial capacity, fiduciary expertise, institutional stability, and legal authority necessary to administer an endowment in perpetuity—not whether it has a particular federal tax classification. Trust companies, financial institutions, foundations, and other established entities may possess financial resources and fiduciary capabilities equal to or greater than those of a 501(c)(3) organization.

This distinction is important from a practical WQEA-development perspective. There are relatively few entities willing and qualified to accept perpetual regulatory endowments. Requiring an entity to satisfy DEP's substantial financial and fiduciary requirements while also limiting eligibility to 501(c)(3) organizations will further narrow that pool. Reduced competition will increase costs to WQEA owners, and those increased costs will ultimately be reflected in the cost of enhancement credits.

FAMB requests that DEP broaden the definition of "Investment Manager" to include the professional trustees managing $45 trillion of assets in U.S. retirement accounts. These accounts are often managed more cost-efficiently than other types of investments because of constant fee pressure from the Department of Labor. Retirement accounts are regulated by the Department of Labor and the Internal Revenue Service. Limiting the pool of investment managers to Registered Investment Advisors (RIAs) severely limits the market. Expanding it to include trustees of retirement accounts would open the market to lower fees. In the end, the Banker is responsible for achieving the investment expectations. Therefore, it makes sense to allow Bankers access to a broader market with lower fees. The following is the new proposed definition of Investment Manager that satisfactorily applies this concept:

> *"Investment Manager" means an entity or individual that is a Registered Investment Adviser (RIA) with the U.S. Securities and Exchange Commission (SEC) unless the entity is exempt from RAI registration requirements pursuant to applicable federal law, or state securities regulatory agency or a trustee of retirement accounts under the Employee Retirement Income Security Act of 1974 (ERISA) and whose operations are regulated and examined by a federal agency or an agency of the State of Florida. The Banker shall provide documentation evidencing proof of such regulation and examination to the Agency."*

CONSERVATION EASEMENTS

The rule should clarify that a conservation easement may be created through any of the methods authorized by section 704.06(2), Florida Statutes. That statute provides that conservation easements may be created or stated in the form of a restriction, easement, covenant, or condition contained in a deed, will, other instrument executed by or on behalf of the property owner, or an order of taking.

Without clarification, the proposed rule could be interpreted more narrowly than the statute and create uncertainty regarding acceptable instruments for establishing the required conservation interest. FAMB recommends that the rule expressly recognize the alternatives authorized by section 704.06(2).

UNDEFINED STANDARDS AND UNAUTHORIZED AGENCY DISCRETION

FAMB is concerned that numerous provisions of the proposed rules rely upon undefined terms such as "appropriate," "necessary," and "sufficient," or authorize DEP to require additional information or actions without establishing objective standards governing those determinations.

Such language provides DEP with unbridled discretion. Any language that does not create clear standards must be amended to specify the standards.

This concern is especially important for an industry expected to make substantial investments in reliance upon these rules. Before committing capital to a WQEA, a developer should be able to determine with reasonable certainty what information must be submitted, what technical standards apply, how credits will be calculated, what financial assurances will be required, and what conditions must be satisfied for credit release. Open-ended regulatory standards increase the risk associated with project development and may result in inconsistent requirements among DEP reviewers, offices, and other permitting agencies. FAMB identifies the following language as language provided unbridled agency discretion. The language below must be deleted or amended to include specification in order to avoid agency discretion and inconsistent permitting.

Information Required With an Application

Proposed Rule 62-332.300(4) requires information "as appropriate for the proposed project." The rule should identify what is "appropriate."

Consideration of "Uncertainty"

If "uncertainty" may result in an adjustment or reduction in credits, the rule should define the circumstances constituting uncertainty, identify the information DEP will consider, and establish the methodology for determining any adjustment.

Models and Analytical Tools

Where the statute directs use of an adopted model or analytical tool when available, the rule should implement that requirement. Any process for approving alternative models should contain objective criteria governing approval and must be within the authority granted by the Legislature.

Data DEP "Deems Sufficient"

The rule should identify criteria for determining whether monitoring data are sufficient, including relevant considerations such as proximity, watershed location, period of record, data quality, and representativeness.

Additional Information Requirements

Any authority to require "other information," "additional documentation," or similar material should be tied to an identified deficiency under a specific permitting criterion and limited to information reasonably necessary to resolve that deficiency.

Conservation Easement – Additional Documentation or "Actions"

Proposed Rule 62-332.530(4) authorizes DEP to require unspecified additional "documentation or actions." The rule should identify the circumstances triggering additional documentation, and the open-ended authority to require unspecified "actions" should be deleted.

Additional Environmental Site Assessments

The rule should identify what findings in a Phase I environmental site assessment trigger additional investigation and establish reasonable parameters for the scope of that investigation.

"If Necessary" Escrow Requirement

Proposed Rule 62-332.530(6) should identify the circumstances under which escrow is required. If those circumstances are governed by section 196.295, Florida Statutes, the rule should expressly tie the requirement to that statute.

Professional Certification of Cost Estimates

Proposed Rule 62-332.550(13)(a) should identify when professional certification is required rather than leaving the requirement to DEP's determination of when certification is "appropriate."

Financial Assurance and Determinations of "Sufficiency"

DEP should determine the sufficiency of perpetual-management funding by applying objective requirements established in the rule. If circumstances outside those requirements may justify an increase, the rule should identify the circumstances and the methodology for calculating the increase.

"Appropriate" Enhancement Credits and Credit Purchaser Permits

The permitting agency should apply objective standards established by statute and rule when determining whether credits may be used. Once the established criteria are satisfied, the permitting agency should not possess separate undefined discretion to determine whether otherwise valid WQEA credits are "appropriate."

FAMB recommends that these provisions be reviewed collectively. The issue is not simply the presence of particular words, but whether the rule provides **ascertainable standards** governing agency decisions.

PROHIBITION AGAINST USING WQEA PROPERTY FOR OTHER REGULATORY PURPOSES

Proposed Rule 62-332.300(5) provides that "[n]o portion of a WQEA" may be used to meet mitigation, water-quality treatment, or compensatory requirements under another regulatory program, subject to limited exceptions.

FAMB believes this provision should distinguish between double counting the same environmental benefit and allowing a property to generate separate, independently documented environmental benefits. FAMB agrees that a particular environmental benefit should not be used more than once. Once applied to satisfy a regulatory requirement or other approved environmental obligation, that benefit should be accounted for and extinguished. However, the rules should not prohibit the generation or use of distinct environmental benefits from the same property, provided those benefits are independently quantified, documented, and tracked to prevent double counting.Section 373.4134 prohibits pollutant reductions already required under another state regulatory program from generating enhancement credits. That appropriately prevents double counting.

The statute does not appear to categorically prohibit the property underlying a WQEA from satisfying another compatible regulatory obligation where distinct environmental benefits are provided and separately accounted for.

A broader prohibition could unnecessarily eliminate otherwise viable projects and discourage larger, multifunctional restoration projects. The rule should prohibit double counting without imposing unnecessary restrictions on the underlying property.

ADDITIONAL RESTRICTION ON GOVERNMENTAL ENTITIES

Proposed Rule 62-332.300(4) provides that a governmental entity may not "sponsor, fund, or otherwise construct, operate, manage, or maintain" a WQEA for purposes of selling credits to third parties.

The statute does not include the word "fund." It provides that a governmental entity may use a WQEA for its own water-quality needs but may not act as a sponsor to construct, operate, manage, or maintain a WQEA or market enhancement credits to third parties.

The addition of "fund" could unnecessarily prevent beneficial public-private partnerships. A governmental entity could provide grants, cost sharing, land, or other financial participation in a privately sponsored regional project without becoming the sponsor, operator, or marketer of the WQEA.

FAMB recommends that DEP follow the statutory language and delete the additional prohibition on governmental funding.

DUPLICATIVE DEMONSTRATION BY CREDIT PURCHASERS

Proposed Rule 62-332.300(9) requires a credit purchaser to provide modeling, other evaluations, or both to demonstrate that use of enhancement credits will not cause or contribute to a violation of water-quality standards.

FAMB recognizes DEP's statutory responsibility to ensure that the use of credits will protect water quality. The concern is requiring every purchaser to undertake what may become a second modeling exercise as a routine condition of using credits that DEP has already approved.

Before credits become available, DEP will have evaluated the WQEA, its pollutant-removal methodology, and its enhancement service area. The WQEA Owner will have undertaken substantial technical analysis to establish the credits and the geographic area within which they may appropriately be used.

The rules should provide reasonable certainty that released credits may be used within the approved service area when the established regulatory criteria are satisfied. Where project-specific circumstances create a legitimate water-quality concern, the permitting agency could require additional information reasonably related to that concern.

Routine duplicative modeling increases costs for purchasers and review burdens for the agencies and diminishes the value of having DEP establish an approved service area in the first instance.

LAW IMPLEMENTED – SECTION 403.067, FLORIDA STATUTES

FAMB recommends deleting section 403.067, Florida Statutes, from the provisions identified as "Law Implemented" throughout Chapter 62-332.

Section 403.067 governs the establishment and implementation of total maximum daily loads, including identification and assessment of impaired waters, calculation and allocation of TMDLs, development of basin management action plans, and implementation of those requirements.

Although WQEA credits may be used in circumstances associated with BMAP implementation, that does not mean Chapter 62-332 implements section 403.067. The WQEA rules implement the statutory program established principally through section 373.4134 and related provisions of Chapter 373.

The fact that WQEA credits may subsequently be used to satisfy an obligation arising under a BMAP does not convert Chapter 62-332 into a rule implementing the TMDL and BMAP statute.

FAMB therefore recommends that DEP remove section 403.067 from the "Law Implemented" citations unless the Department can identify a specific provision of Chapter 62-332 that directly implements a specific duty or authority contained in section 403.067.

OVERALL STATUTORY AND PROGRAMMATIC CONCERN

Several of the provisions discussed above raise the same underlying issue: whether the proposed rule implements the requirements enacted by the Legislature or creates additional substantive restrictions and financial obligations that are not contained in section 373.4134.

That distinction is important under section 120.52(8), Florida Statutes. General rulemaking authority does not authorize an agency to add substantive requirements simply because the agency believes they would further the overall purpose of the legislation. The rule must implement or interpret specific powers and duties conferred by the Legislature and may not enlarge, modify, or contravene the statute.

The issue is also important from a practical standpoint. The Legislature has created the framework for a new environmental market, but the existence of statutory authority alone will not create functioning WQEAs. Private entities must be willing to invest the capital, technical resources, personnel, and long-term management necessary to develop the projects that will generate enhancement credits.

FAMB members have the experience and resources necessary to do that work. They have developed and operated mitigation banks and other environmental restoration projects under regulatory programs that similarly require significant upfront investment in exchange for the future sale of regulatory credits.

That experience also demonstrates that a credit market depends upon several basic elements: clear permitting criteria, predictable credit calculations, reasonable financial obligations, confidence in the geographic market for credits, and finality once credits have been released and sold.

Requirements that substantially increase project costs without a demonstrated environmental benefit, materially change the value of credits after they are generated, or allow significant requirements to be determined through undefined case-by-case discretion will discourage investment and make WQEA credits more expensive.

The interests of DEP, the regulated community, and potential WQEA providers are aligned on this point. A WQEA program that does not attract sufficient investment will not generate the supply of credits necessary to provide a meaningful water-quality compliance option.

FAMB therefore encourages DEP to view workability as an important component of environmental effectiveness. The objective should be a regulatory program that provides strong and measurable water-quality benefits while creating sufficient certainty for experienced environmental restoration companies to invest in developing WQEAs.

CONCLUSION

FAMB encourages DEP to revise the proposed rules to eliminate requirements that lack clear statutory authority, establish objective standards where the current draft provides open-ended discretion, avoid unnecessary financial and transactional costs, and provide certainty concerning the calculation, use, and continued validity of enhancement credits.

With these changes, FAMB believes the WQEA program can attract the private investment and expertise necessary to bring this valuable concept to market and provide a meaningful new tool for achieving Florida's water-quality objectives.

FAMB appreciates the Department's consideration of these comments and looks forward to continuing to work with DEP as the WQEA rules are finalized

Kind Regards,

Ryan Deibler
Florida Association of Mitigation Bankers

FAMB
Comments 8/20/2026

August 3, 2026 Notice of Proposed Rule

DEPARTMENT OF ENVIRONMENTAL PROTECTION
RULE NOS.:RULE TITLES:
62-332.100 Scope and Intent
62-332.200 Definitions
62-332.300 General Requirements
62-332.350 WQEA Permit and WQEA Conceptual Approval Permit Applications
62-332.400 Establishment of Enhancement Credits
62-332.500 Service Area and Enhancement Credit Locational Valuation Factor Adjustments
62-332.530 Perpetual Protection of Water Quality Enhancement Areas
62-332.550 Financial Responsibility
62-332.600 Enhancement Credit Transactions and Credit Use
62-332.700 Enhancement Credit Tracking
62-332.800 Enhancement Credit Monitoring and Continuing Credit Verification
62-332.900 Compliance and Enforcement
62-332.920 Surrender or Transfer of Water Quality Enhancement Area Permits
PURPOSE AND EFFECT: to establish an Environmental Resource Permit for Water Quality Enhancement Areas and authorize the creation and use of enhancement credits for specified regulatory purposes. This notice supplements corresponding notices of proposed rule to implement s. 373.4134, F.S., for rules in Chapters 62-330 and 62-4, F.A.C.
SUMMARY: The rules will create a voluntary water quality enhancement area (WQEA) permit regulated under the Environmental Resource Permitting Program as an individual permit or a conceptual approval permit. Existing rules will be amended to add a processing fee and add WQEAs as a permit category with associated application forms and requirements and make necessary related corrections. New rules will be created to specify application and permit requirements, monitoring requirements, land use protections, and assurances for perpetual operation of the WQEA.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:
The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.
The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Based on the Department's economic review, the adoption of the proposed rules do not increase regulatory costs directly or indirectly to the public.
Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.
RULEMAKING AUTHORITY: 403.067(9), 403.805, F.S.
LAW IMPLEMENTED: 403.067, F.S.
A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:
DATE AND TIME: August 25, 2026, 1:00 p.m. EDT
PLACE: The Department is holding the Hearing at 3900 Commonwealth Boulevard, Tallahassee, FL 32399, Douglas Conference Room 137, as well as virtually. For those participating virtually, please register using this link: https://events.gcc.teams.microsoft.com/event/ccf1f543-9161-4bf1-b237-4c373207ebd7@679d4c83-aea2-4635-b4f1-9f5012551b6a
Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 10 days before the workshop/meeting by contacting: Public participation is solicited without regard to race, color, religion, sex, pregnancy, national origin,

age, handicap, or marital status. Persons who require special accommodations under the American with Disabilities Act (ADA) or persons who require translation services (free of charge) are asked to contact DEP's Limited English Proficiency Coordinator at (850)245-2118 or LEP@FloridaDEP.gov at least ten (10) days before the hearing. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Timothy Rach, Division of Water Resource Management, MS #2500, 2600 Blair Stone Road, Tallahassee, FL 32399, by email at Timothy.Rach@FloridaDEP.gov or by phone at (850)245-8015.

THE FULL TEXT OF THE PROPOSED RULE IS:

62-332.100 Scope and Intent.

(1) The Department finds that, in certain instances, the improvement of water quality and adverse water quality impacts of activities regulated under Part IV of Chapter 373, Florida Statutes (F.S.), may be addressed by the construction, operation, maintenance, and long-term management of water quality enhancement areas ("WQEAs") that provide offsite compensatory treatment. This chapter establishes the requirements of an environmental resource permit ("ERP") for water quality enhancement areas that would be permitted under Chapter 62-330, F.A.C., and the generation, valuation, award, release, and use of water quality enhancement credits providing offsite compensatory treatment under Section 373.4134, F.S. This chapter establishes applicable requirements for a water quality enhancement area permit under Chapter 62-330, F.A.C., Environmental Resource Permitting.

(2) The Department is responsible for reviewing the applications for the construction, operation, maintenance, and long-term management of WQEAs. Any agency authorized to issue an ERP in accordance with Part IV of Chapter 373, F.S., excluding WQEA applications, can authorize the use of enhancement credits in accordance with this Chapter.

(3) The water quality enhancement credit transactions authorized in this chapter are intended to provide flexibility to ERP applicants for the purpose of achieving net improvement under Section 373.414(1)(b)3., F.S., or satisfying ERP performance standards under Section 373.4131, F.S.

(4) This chapter is supplemental to the rules promulgated under Part IV of Chapter 373, F.S., Chapter 62-306, F.A.C., and Chapter 62-330, F.A.C., and does not supersede any requirements therein nor prohibit or limit any activities allowed therefrom. Rule 62-330.010, F.A.C., incorporating the Applicant's Handbook Volume I and Volume II for each Water Management District is incorporated by reference herein.

Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New .

62-332.200 Definitions.

(1) "Agency" means the Department of Environmental Protection, the water management districts, and local governments delegated authority to implement the environmental resource permit program under Part IV of Chapter 373, F.S., in accordance with Section 373.441, F.S.

(2) "Conservation Easement" means a perpetual, undivided interests in property that may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the owner of the property, or in any order of taking.

"Credit Purchaser" means an entity that seeks to purchase water quality enhancement credits for the purpose of achieving net improvement under Section 373.414(1)(b)3., F.S., or satisfying ERP performance standards, or a governmental entity that seeks to purchase water quality enhancement credits to meet an assigned BMAP allocation or RAP.

(3) "Department" means the Florida Department of Environmental Protection.

(4) "District" means a water management district as established in Chapter 373, F.S.

(5) "Endowment Holder" means an entity authorized to hold endowments whose operations are regulated and examined by federal agency or agency of state of Florida.

(6)"Enhancement credit" or "credit" means the standard unit of measure that represents a quantity of pollutant removed from a water quality enhancement area.

(7) "Investment Manager" means an entity or individual that is a Registered Investment Adviser (RIA) with the

U.S. Securities and Exchange Commission (SEC) or state securities regulatory agency and whose operations are regulated and examined by a federal agency or an agency of the State of Florida. The Water Quality Enhancement Area Owner shall provide documentation evidencing proof of such regulation and examination to the Department.

(9) "Natural system" means an ecological system supporting aquatic and wetland-dependent natural resources, including fish, and aquatic and wetland-dependent wildlife habitats.

(10) "Release" means a permit modification by the Department wherein enhancement credits are awarded to the Water Quality Enhancement Area ledger and are made available for withdrawal.

(11) "Reservation Letter" means a letter from a WQEA Owner to a credit purchaser wherein the WQEA Owner commits to reserve a specified amount and type of Enhancement Credits for a specified time. A Reservation Letter may only be issued for Enhancement Credits which have been released to the WQEA Ledger and are available for withdrawal. A proof of purchase or e-Permit submittal may be an acceptable form of a Reservation Letter provided that the above information is included.

(12) "Target Waterbody" means the Hydrologic Unit Code ("HUC") 12 subwatershed that contains the credit purchaser's project and is within the WQEA service area.

(13) "Water quality enhancement area" or ("WQEA") means a natural system constructed, operated, managed, and maintained for the purpose of providing offsite regional treatment for which enhancement credits may be provided pursuant to a water quality enhancement area permit.

(14) "Water quality enhancement area permit" or "WQEA permit" means an Environmental Resource Permit issued for a water quality enhancement area which authorizes the construction, operation, management, and maintenance of a water quality enhancement area and the purchase and sale of enhancement credits.

(15) "Withdrawal" means a permit modification approved by the Department wherein released enhancement credits are deducted from the WQEA ledger.

(16) "WQEA Construction Phase" or "Construction Phase" means the period necessary to implement the permitted work including, but not limited to, implementing site security measures; construction and installation of water quality treatment systems; installation of hydrologic control devices, technologies, and best management practices; and conducting initial earth moving and land management activities. This phase begins with implementation of any permit required activities and ends with the Department's acceptance of the As-Built Certification, if required.

(17) "WQEA Operation and Maintenance Phase" or "Operation and Maintenance Phase" means the phase following the WQEA Construction Phase when permitted activities are conducted to achieve water quality improvement conditions and enhancement credit generation described in the WQEA Permit performance and success criteria monitoring and verification plan in accordance with Rule 62-332.800, F.A.C. This phase ends with a Department determination that the defined success criteria and targets set forth in the WQEA Permit have been met and all enhancement credits have been released.

(18) "WQEA Owner" or "Owner" means an entity that has a real property interest as described in section 4.2.3(d) of Applicant's Handbook Volume I, to construct, operate, maintain, and be responsible for the perpetual management of a water quality enhancement area.

(19) "WQEA Perpetual Management Phase" or "Perpetual Phase" means the phase following full implementation of the construction phase and operation and maintenance phase – where the WQEA has achieved success and all enhancement credits have been released as prescribed in the WQEA permit. Perpetual water quality improvements and land management activities shall be implemented and maintained in accordance with the WQEA permit and this rule.

Rulemaking Authority 373.4134 FS. Law Implemented 373.4134 FS. History–New .

62-332.300 General Requirements.

(1) A WQEA Owner shall generate and maintain enhancement credits in perpetuity by constructing and operating water quality improvement projects utilizing natural systems including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving waterbody or water segment.

(2)The construction, operation, management, and maintenance of a WQEA shall be permitted by the Department through the ERP process pursuant to Chapter 62-330, F.A.C., and this chapter.

(3)Enhancement credits must be generated and sold by a WQEA Owner in accordance with this chapter and the conditions of the WQEA permit.

(4) A governmental entity may be a WQEA Owner and use the credits generated by the WQEA permit for its own water quality needs, such as, but not limited to, providing offsite water quality compensation for that government's own development projects. However, a governmental entity may not sponsor, fund, or otherwise construct, operate, manage, or maintain a WQEA for the purpose of selling enhancement credits to third parties.

(6) Reductions in pollutant loading required under any state regulatory program are not eligible to generate enhancement credits.

(7) WQEAs may not be established on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.

(8) WQEAs shall not be constructed wholly over surface waters of the State, as defined in Section 403.031(23), F.S., or be constructed in such a manner that the system severs a portion of a surface waters of the State.

(9) As provided by s. 373.4134(7)(j), F.S., the agency shall deny the use of enhancement credits when the agency is not reasonably assured that the use of the credits will not cause or contribute to a violation of water quality standards, even if the project being implemented by the credit purchaser is within the WQEA service area. The agency will approve the use of enhancement credits if the agency receives a request for the use of enhancement credits and the credit purchaser reasonably assures the agency through modeling, or other evaluations, or a combination thereof, that such use will not cause or contribute to a violation of water quality standards.

(10) The issuance of a WQEA permit does not eliminate the Owner's obligation to comply with all requirements of Chapter 62-330, F.A.C., pertaining to adverse impacts to water quantity, water quality, and adjacent lands or wetlands.

(11) The issuance of a WQEA permit does not preclude the responsibility of the Owner to obtain other applicable federal, state, and local permits for construction activities associated with the WQEA.

Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New .

62-332.350 WQEA Permit and WQEA Conceptual Approval Permit Applications.

(1) Any person or entity proposing to establish a WQEA must apply for a WQEA Permit. An application for a WQEA Permit shall also constitute an application for an ERP under Chapter 62-330, F.A.C. WQEA Permit applications shall be processed according to Chapter 62-330, F.A.C. The Department will process and take action on all permit applications under Part IV of Chapter 373, F.S., necessary for the implementation of any WQEA.

(2) A person or entity may apply for a WQEA Conceptual Approval permit to obtain estimates of the legal and financial requirements necessary for the WQEA, information necessary for evaluation of the WQEA Permit application, and potential enhancement credits to be awarded pursuant to the WQEA Permit. The WQEA Conceptual Approval permit does not authorize the use or withdrawal of enhancement credits or any construction within the proposed WQEA. The level of detail provided in the WQEA Conceptual Approval permit will depend on the level of detail submitted with the application.

(3) A WQEA Permit shall automatically expire five years from the date of issuance if the Owner has not recorded a conservation easement over the real property within the WQEA in accordance with the WQEA Permit or if construction has not been completed pursuant thereto. Except as provided above, a WQEA Permit shall be perpetual unless revoked or modified in accordance with Rule 62-332.920, F.A.C.

(4) To provide the Department with reasonable assurances that the proposed WQEA will meet the criteria in Section 373.4134, F.S., and in this chapter, and that any proposed system will meet conditions of issuance and applicable criteria of Chapter 62-330, F.A.C., each WQEA Permit application submitted to the Department shall include the information required under Chapter 62-330, F.A.C., as applicable, and the information specified below as appropriate for the proposed project:

(a) Description of the location of the proposed WQEA which shall include :

1. Map at regional scale showing the project area in relation to the regional watershed and proposed WQEA service area;

2. Vicinity map showing the project area in relation to adjacent lands and offsite areas of ecologic or hydrologic significance which could affect the perpetual viability or ecological and hydrological value of the WQEA;

3. Aerial photograph identifying boundaries of the project area;

4. Map or survey showing legal access to the WQEA for site inspection; and

5. Legal description of the proposed WQEA.

(b) Description and assessment of Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons, which shall include:

1. Soils map of the project area;

2. Topographic map including hydrologic features of the project area and adjacent hydrologic contributing and receiving areas;

4. Geotechnical report of the project area within or adjacent to sensitive karst areas;

5. Vegetation description and map of the project area;

6. Existing ecological and hydrological conditions of the regional watershed that includes the project area;

7. Adjacent lands, including existing land uses and conditions, projected land uses according to comprehensive plans adopted pursuant to Chapter 163, F.S., by local governments having jurisdiction, and any special designations or classifications associated with adjacent lands or waters;

8. Hydrologic/Hydraulic conditions of the site, including runoff, water storage, and any existing water quality treatment occurring on-site; and

9. Disclosure by the Owner of any material fact that would affect the contemplated use of the property.

(c) Description of the ecological and hydrological benefits of the proposed WQEA to the regional watershed in which it is located.

(d) Identify and document the numerical model or analytical tool, inputs, and results, used to establish the efficacy of the WQEA as described in Rules 62-332.400, F.A.C., and 62-332.500, F.A.C.

(e) Assessment of anticipated pollutant load reductions or other nutrients to be removed on average annual basis from the WQEA.

(f) A design plan describing the actions proposed to establish and construct the WQEA which shall include, as applicable:

1. Construction drawings detailing proposed topographic alterations, and all structural components associated with proposed activities;

2. Proposed construction activities, including a detailed schedule for implementation;

3. The proposed vegetation planting scheme, if applicable, and detailed schedule for implementation; and

4. Measures to be implemented during and after construction to avoid adverse impacts related to proposed activities.

(g) Proposed performance and success criteria monitoring and verification plan in accordance with Rule 62-332.800, F.A.C.

(h) Detailed perpetual management plan comprising all aspects of continued water quality improvements, water quality monitoring, and land management activities such as, but not limited to, maintenance and replacement of hydrologic control devices, structures, vegetation establishment, exotic and nuisance species control, fire management, and control of access to ensure long-term pollutant reduction.

(i) Evidence of sufficient legal or equitable interest in the property which is to become the WQEA meeting the requirements of Rule 62-330.060, F.A.C..

(j) Draft documentation of financial responsibility meeting the requirements of Rule 62-332.550, F.A.C.

(k) Draft documentation of the conservation easement which shall, at a minimum, meet the requirements and restrictions of Section 704.06, F.S., and Rule 62-332.530, F.A.C.

(l)

Rulemaking Authority 373.4134, 403.067(9), FS. Law Implemented 373.4134, 403.067 FS. History—New ____.

62-332.400 Establishment of Enhancement Credits.

(1) The Department will award enhancement credits to the WQEA, or phases thereof, based upon standard numerical models or analytical tools that establish the ability of the water quality enhancement area to remove pollutants or constituents, which satisfy the requirements of subsection 373,4134(c) and the information submitted in the WQEA permit application and the following:

(a) The WQEA applicant must provide for the assessment, valuation and award of credits based on units of pollutant removed.

(b) The award of enhancement credits generated by a WQEA shall be based on standard numerical models or analytical tools that establish the ability of the WQEA to remove pollutants or their constituents

(c) Credits must be based on a standard unit of measure of the specific pollutants removed on an average annual basis,

(2) The WQEA permit application must include a proposed credit release schedule based on the expected removal of pollutants, and the actual pollutant removal from the proposed WQEA.

(3) The number of credits and schedule for release shall be based upon the performance criteria for the WQEA and the success criteria for each activity. No credits shall be released until the Sponsor records the required conservation easement and provides the required financial assurances to the Department. The final release of all enhancement credits awarded will only occur after the WQEA meets all of the success criteria specified in the permit for the WQEA Operation and Maintenance Phase.

(4) If the WQEA is located within a BMAP or adopted RAP, the Owner must use the most recent numerical models or analytical tools used for that BMAP or adopted RAP in the WQEA permit application, except as provided in subsection (5) below.

(5) If the WQEA is not located within a BMAP or adopted RAP, or the Department determines that the numerical model, the Owner must either:

(a) use another standard numerical model or analytical tool that has been approved by the Department or

(b) propose and submit a numerical model or analytical tool for Department review and approval for the proposed WQEA.

(6)

b. Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record that most closely matches the rainfall data collected under this paragraph.

c. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

d. Data provided pursuant to sub-subparagraphs a. and b. must be from monitoring stations the department deems sufficient to determine flows and local water quality conditions.

(d) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for construction activities associated with the water quality enhancement area.

A WQEA Permit application must identify and document the numerical model or analytical tool, inputs, and results used to establish the efficacy of the WQEA, including all information to support the permit application required by Rule 62-330.054, F.A.C., and any other information required by this chapter relevant to substantiate the level of pollutant load reduction generated. At a minimum, the application must contain:

(a) Rainfall data over the longest period of record available, either from an authoritative source such as the Global Historical Climatology Network or Florida Automated Weather Network, or collected from the closest site to the proposed WQEA, preferably within the same drainage basin.

(b) Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record that most closely matches the rainfall data collected under this paragraph.

(c) Site-specific conditions affecting the anticipated performance of the proposed WQEA, including the proposed treatment type for stormwater treatment and the anticipated associated reduction rates as demonstrated by the performance of other areas where the same treatment type has been established and has operated over a minimum of two consecutive wet and dry seasons.

(d) Data provided under this subsection must be from monitoring stations the Department deems sufficient to determine flows and local water quality conditions.

(e)

(7) The Owner shall provide reasonable assurance that the WQEA's credited pollutant load reduction will be achieved on an average annual basis.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New ____.

62-332.500 Service Area and Enhancement Credit Locational Valuation Factor Adjustments.

(1) The WQEA service area shall depend upon the geographic area in which the water quality enhancement area could reasonably be expected to address adverse impacts... Service areas may overlap, and more than one service area may be approved within a regional watershed.

(2) The geographical boundaries of the water quality enhancement service area will be determined by modeling provided by the WQEA Owner outlining the area within which the WQEA could reasonably be expected to reduce impacts given the attenuation of the applicable pollutant downstream of the WQEA, and must at a minimum consist of a Hydrologic Unit Code 8 (HUC 8) sub-basin as set forth by the United States Geological Survey.

(3) The credit purchaser's project must be located within the water quality enhancement service area from which credits are purchased.

(4)

~~(5) The agency will adjust the number of credits required for the credit purchaser's project using the applicable location valuation factor (LVF) below or an equivalent valuation model as proposed by the WQEA Owner in the application.~~

~~(a) The LVF will be based on numerical models or other analytical tools provided by the WQEA permit application that account for uptake of the pollutants over a distance and shall account for the attenuation between the closest hydrologically connected points between the WQEA and the credit purchaser's project that is within the WQEA's service area.~~

~~(b) The LVF is calculated and applied independently for each pollutant subject to a credit purchase.~~

~~(c) The LVF shall be calculated as the Transport Factor (TF) multiplied by the Variability Factor (VF) for the target waterbody, as shown below:~~

~~LVF = TF * VF.~~

~~1. The TF shall be calculated as TF = 1/(1-Atten~~$_s$~~), where Atten~~$_s$~~ is the attenuation between the WQEA's point of discharge and the credit purchaser's point of discharge.~~

~~a. The modeled attenuation factor represents the proportion of pollutant reduction during downstream transport in water between the discharge points of the WQEA and credit purchaser regardless of which discharge is hydrologically upstream of the other. For purposes of this chapter, the attenuation factor shall be expressed as a continuous linear range that is greater than or equal to 0.00 and less than 1.00, where 0.00 indicates no attenuation, 0.50 indicates 50% reduction, and 1.00 indicates complete removal.~~

~~b. The TF shall be set to a value of no lower than 2 if the WQEA's point of discharge is downstream of the credit purchaser's project.~~

~~2. The VF shall be calculated as the 95~~th~~ percentile concentration divided by the geometric mean concentration within the Target Waterbody for the pollutant to be offset through a credit purchase, as shown below.~~

~~VF = 95~~th~~ percentile concentration/geometric mean concentration.~~

~~a. The period of record used to calculate the VF will be reviewed and approved by the Department; however, at a minimum it must consist of at least five years of measured or modeled data reflecting current conditions within the Target Waterbody.~~

~~b. The 95~~th~~ percentile shall be set to the maximum result if there are fewer than 20 values in the available period of record.~~

~~c. For nutrients, the values used to calculate the geometric mean and 95~~th~~ percentile shall be annual geometric means (AGMs) concentrations following the data sufficiency requirements specified in subsection 62-302.531(6), F.A.C.~~

~~3. The LVF shall be set to 1.0 if the calculated LVF is less than 1.0.~~

~~a. The number of credits required by a credit purchaser must be calculated as follows: Number of Credits Required = (Number of standard units of measure for pollutant removed annually required for treatment) x LVF.~~

~~b. The LVF formula shall not be used to reduce the number of credits required for treatment below the quantity of pollutant removed annually.~~

~~c. The numerical models used to determine the LVF described in (a) shall be updated at least every 10 years by the WQEA Owner as a minor modification until all credits have been withdrawn from the ledger and the WQEA is operating under perpetual management.~~

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New ____.

62-332.530 Perpetual Protection of Water Quality Enhancement Areas.

(1) Before enhancement credits may be released to a WQEA or any phase of a WQEA, the WQEA Owner shall cause a conservation easement to be conveyed to the Department. The grantor of a conservation easement may convey a conservation easement to additional grantees, but such conveyance shall be subordinate to the conservation easement granted to the Department.

(2) All conservation easements shall be granted in perpetuity without encumbrances, unless such encumbrances do not adversely affect the hydrology and water quality improvement effectiveness of the WQEA. All conservation easements shall be of a form and content sufficient to ensure protection of the WQEA according to the permit, and shall, at a minimum, meet the requirements and restrictions of Section 704.06, F.S., except as provided in subsection 62-332.530(7), F.A.C. Forms for recording a conservation easement are incorporated by reference in Rule 62-330.301, F.A.C. The conservation easement shall also provide that the WQEA Owner shall have access to the property and the authority to perform all acts necessary to ensure compliance with the WQEA Permit (unless the WQEA Owner is the fee owner of the property), and that the Department shall have access and the authority to perform these acts if the WQEA Owner fails to do so.

(3) As part of providing reasonable assurance that the WQEA site will be protected in perpetuity, the grantor of the conservation easement shall provide the following unless the Department determines during the permit review process such items are not necessary to ensure protection of the WQEA according to the permit:

(a) A boundary survey of the real property interest being conveyed. The survey must be certified, by a land surveyor and mapper, registered in the State of Florida, to meet the requirements of the Department and the minimum technical standards set forth by the Florida Board of Professional Surveyors and Mappers in Rules 5J-17.050 through 5J-17.052, F.A.C., under Section 472.027, F.S.

(b) A certified appraisal, documentation from the county property appraiser or other equivalent documentation demonstrating the market value of the interest to be conveyed to determine the appropriate amount of title insurance.

(c) A marketable title commitment issued to the Department as beneficiary in an amount at least equal to the fair market value, as established in paragraph 62-332.530(3)(b), F.A.C., of the interest being conveyed. An owner's title insurance policy (ALTA Form B) naming the Department as beneficiary shall be issued to the Department within the time frames specified by the permit. The coverage, form and exceptions of the title insurance policy shall ensure that the WQEA will be protected according to the WQEA Permit.

(d) A current Phase I environmental site assessment identifying any environmental problems which may affect the liability of the Department and any additional site assessments as are necessary to ensure that the Department is not subject to liability under federal or state laws relating to the treatment or disposal of hazardous substances or ownership of land upon which hazardous substances are located, or to ensure that there are no hazardous substances present on the property which would adversely affect construction, operation, and perpetual management of the WQEA.

(4) The Department shall require additional documentation or actions from the grantor of the conservation easement if necessary to ensure that the WQEA will be protected in accordance with the WQEA Permit.

(5) The WQEA Owner shall pay the documentary revenue stamp tax and all other taxes or costs associated with the conveyance, including the cost of recording the conservation easement and any other recordable instruments required by the Department, unless prohibited or exempt by law, as a condition of the receipt of the conveyance.

(6) All real estate taxes and assessments which are or which may become a lien against the property recorded prior to recording the conservation easement shall be satisfied of record by the WQEA Owner before recording the conservation easement. If necessary, the WQEA Owner shall, in accordance with Section 196.295, F.S., place funds in escrow with the county tax collector. The WQEA Owner shall also provide the Department with annual documentation demonstrating that such taxes and assessments have been paid.

(7) As a condition of receipt of the conveyance, the WQEA Owner shall remove all abandoned personal property, solid waste, or hazardous substances from the property that the Department determines: will reduce the proposed hydrology and water quality improvement efficiency of the property; will adversely affect the construction, operation, or management of the WQEA; or will adversely affect the construction, alteration, operation, maintenance, abandonment or removal of any surface water management system to be constructed in the WQEA.

(8) The WQEA Owner shall record the conservation easement required in the WQEA Permit. The WQEA Owner shall submit to the Department the original recorded conservation easement within 14 days of such recordation for the associated real property.

Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134 FS. History–New ________.

62-332.550 Financial Responsibility.

(1) To provide reasonable assurances that the proposed WQEA will meet the requirements of Section 373.4134, F.S., this Rule, and the associated permit conditions, Owners shall provide proof of financial responsibility for: (a) the WQEA Operation and Maintenance Phase and (b) the WQEA Perpetual Management Phase, as required in this Rule. Governmental entities shall provide proof of financial responsibility under subsection 62-332.550(15), F.A.C. The amount of financial responsibility provided in the mechanisms required in this Rule shall be based on the cost estimates determined under subsection 62-332.550(13), F.A.C.

(2) Submitting Financial Responsibility Documentation. The Owner shall provide draft documentation of the cost estimate and required financial responsibility mechanisms described in subsections 62-332.550(5) through (11), F.A.C., with the permit application, and shall submit to the Department the executed or finalized documentation within the time frames specified in the permit. The provisions of this subsection shall also apply to any modifications to the WQEA Permit.

(3) General Terms for Financial Responsibility Mechanisms. In addition to the specific provisions regarding financial responsibility mechanisms for the operation and maintenance phase in subsection 62-332.550(4), F.A.C., and perpetual management phase in subsection 62-332.550(12), F.A.C., the Owner shall comply with the following terms:

(a) The financial responsibility mechanisms shall be payable at the direction of the Department to its designee or to a standby trust or standby escrow. The financial responsibility mechanism shall be retained by the Department if it is of a type which is retained by the beneficiary according to industry best practices.

(b) Demonstration of financial responsibility shall be continuous until complete satisfaction of the applicable permit conditions and approved release of financial responsibility by the Department.

(c) Collectively, the financial responsibility mechanisms must guarantee that the Owner will perform all of its obligations under the permit. Within 90 days after receipt by both the Owner and the Department of a notice of cancellation or termination of a financial responsibility mechanism, the Owner shall establish a financial responsibility mechanism that meets the criteria of this Rule, subject to the Department's written approval. Failure to establish a replacement financial responsibility mechanism within the 90-day period will itself be grounds for the Department to draw on the existing financial responsibility mechanism prior to its cancellation or termination.

(d) An Owner may satisfy the requirements of this subsection by establishing more than one acceptable financial responsibility mechanism per WQEA. Whenever more than one mechanism is used, the Owner shall identify the specific financial responsibility mechanism for each individual activity on the cost estimate as required under subsection 62-332.550(13), F.A.C.

(e) An Owner shall not use a financial responsibility mechanism for more than one WQEA.

(f) An Owner must notify the Department by certified mail within 10 days after the commencement of a voluntary or involuntary proceeding:

1. To dissolve the Owner;

2. To place the Owner in receivership;

3. For entry of an order for relief against the Owner under Title 11 of the United States Code; or

4. A general assignment of its assets for the benefit of creditors under Chapter 727, F.S.

(g) An Owner will be without the required financial assurance in the event of the suspension or revocation of the authority of any trustee to act as trustee, or in the event of a bankruptcy or receivership of the issuing institution of a financial responsibility mechanism, or the revocation of the authority of such institution to issue such instruments. The Owner must notify the Department within 10 days and establish other financial assurance within 60 days after such an event.

(h) The financial responsibility mechanism shall include the cost to repair, re-construct, or re-establish the WQEA in accordance with its Permit in the event the WQEA is partially or completely destroyed due to a catastrophic event outside of the Owner's control. If the Owner fails to restore the WQEA in accordance with the Permit within a reasonable period of time to its functioning condition prior to the catastrophic event, the Owner shall be in material noncompliance with the WQEA Permit.

(4) Financial Responsibility for the WQEA Operation and Maintenance Phase.

(a) Financial responsibility for the operation and maintenance activities of the WQEA, or each phase thereof, may be established by surety bonds, irrevocable letters of credit, escrow accounts, or trust funds, as described below.

(b) The amount of financial responsibility established shall equal the cost of operation and maintenance of the WQEA, or each phase thereof, in accordance with subsection 62-332.550(13), F.A.C., and as adjusted in accordance with subsection 62-332.550(14), F.A.C., during the course of the project.

(c) The financial responsibility mechanism shall be effective, executed, and funded based on the full cost estimate amount in accordance with paragraph 62-332.550(4)(b), F.A.C., prior to the release of any enhancement credits.

(5) Surety Bond.

(a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for operation and maintenance activities by obtaining a surety bond that conforms to the requirements of this subsection. The company issuing the bond must be authorized to do business in Florida. The company must also be among those listed as acceptable sureties in the latest Circular 570 of the U.S. Department of the Treasury, or a Florida-domiciled surety or insurance company with at least an A- rating from the A.M. Best and authorized to write individual bonds up to 10 percent of the policyholder's surplus. The Owner shall provide documentation evidencing that the bond company meets these requirements.

(b) The surety bond shall be worded in substantial conformance with Form 62-332.550(5), "WQEA Surety Bond to Demonstrate Operational Financial Assurance" (October 2026), which is incorporated by reference herein and available at (https://flrules.org/Gateway/reference.asp?No=Ref-19780). This form and all the forms incorporated in Rule 62-332.550, F.A.C., also are available from the Department of Environmental Protection's Internet site, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/forms-environmental-resource; or by contacting the Division of Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, MS #2500, Tallahassee, Florida 32399-2400, (850) 245-8336. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(c) Under the terms of the bond, the surety shall become liable on the bond obligation when the Owner fails to perform under the terms of the WQEA Permit. In all cases, the surety's liability shall be limited to the sum stated in the bond.

(d) An Owner who uses a surety bond to satisfy the requirements of subsection 62-332.550(4), F.A.C., must establish a standby escrow or standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby escrow or standby trust fund for distribution by the agent or trustee in accordance with the Department's instructions. The standby escrow agreement and standby trust fund agreement must meet the requirements specified in subsections 62-332.550(8) and 62-332.550(9), F.A.C., respectively.

(e) The bonding company shall provide notice of cancellation of a bond by certified mail to the Owner and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the Owner and the Department, as evidenced by the return receipt.

(f) A bond may be cancelled by the Owner if the Department has given prior written consent. The Department shall provide such consent when either the Owner substitutes alternative financial assurance allowed under this Rule and such alternate financial assurance is approved by the Department and is effective, or the Department approves release of financial assurance in accordance with paragraph 62-332.550(3)(b), F.A.C.

(6) Irrevocable Letter of Credit.

(a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for operation and maintenance activities by obtaining an irrevocable letter of credit that conforms to the requirements of this subsection. The irrevocable letter of credit shall be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" as defined in Section 38 of the Federal Deposit Insurance Act [12 USC 1831o(b)]. The Owner shall submit documentation evidencing that the federally insured depository is appropriately capitalized.

(b) The irrevocable letter of credit shall be worded in substantial conformance with Form 62-332.550(6), "WQEA Irrevocable Letter of Credit to Demonstrate Operational Financial Assurance" (October 2026), incorporated by reference herein and available at (https://flrules.org/Gateway/reference.asp?No=Ref-19781) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(c) An Owner who uses an irrevocable letter of credit to satisfy the requirements of subsection 62-332.550(4), F.A.C., must also establish, with the Department as sole beneficiary, either a standby escrow agreement or standby trust fund agreement when the irrevocable letter of credit is acquired. Under the terms of the irrevocable letter of credit, all amounts paid pursuant to a sight draft by the Department will be deposited by the issuing institution directly into the standby escrow or standby trust fund to be distributed by the agent or trustee in accordance with instructions from the Department. This standby escrow agreement or standby trust fund agreement must meet the requirements specified in subsections 62-332.550(8) and 62-332.550(9), F.A.C., respectively.

(d) Letters of credit must be irrevocable and issued for a period of at least one year, and the expiration date must be automatically extended for a period of at least one year unless, at least 120 days prior to the expiration date, the issuing institution notifies both the Owner and the Department by certified mail of a decision not to extend the expiration date. The terms of the irrevocable letter of credit must provide that the 120 days begins on the date when both the Owner and the Department have received the notice, as evidenced by the return receipts.

(7) Escrow.

(a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for operation and maintenance activities or perpetual management activities by a deposit of cash into an interest-bearing escrow account with the Florida Department of Financial Services.

(b) The escrow agreement must be worded in substantial conformance with Form 62-332.550(7), "Escrow (Standby Escrow) Agreement" (October 2026), incorporated by reference herein and available at (https://flrules.org/Gateway/reference.asp?No=Ref-19782) and as described in paragraph (5)(b) above. Deviations from the form must be identified to, submitted to, and approved by the Department.

(c) The escrow agreement must be irrevocable until the Department determines that it is no longer required.

(8) Standby Escrow.

(a) An Owner using a surety bond or irrevocable letter of credit shall contemporaneously establish either a standby escrow with the Florida Department of Financial Services meeting the requirements of this subsection or a standby trust fund under subsection 62-332.550(9), F.A.C.

(b) The standby escrow agreement shall be worded in substantial conformance with Form 62-332.550(7), incorporated by reference in paragraph 62-332.550(7)(b), F.A.C., except that the agreement will identify that it is establishing a standby escrow account. Deviations from the form must be identified to, submitted to, and approved by the Department.

(c) The standby escrow agreement must be irrevocable until the Department determines that it is no longer required.

(9) Standby Trust Fund.

(a) An Owner using a surety bond or irrevocable letter of credit shall contemporaneously establish either a standby trust fund meeting the requirements of this subsection or a standby escrow under subsection 62-332.550(8), F.A.C. The trustee of the standby trust shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the State of Florida. The Owner shall provide documentation evidencing such regulation and examination to the Department.

(b) The standby trust agreement shall be worded in substantial conformance with Form 62-332.550(9), "WQEA Standby Trust Fund Agreement to Demonstrate Operational Financial Assurance" (October 2026), incorporated by reference herein and available at (https://flrules.org/Gateway/reference.asp?No=Ref-19783) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department. This form and Forms 62-332.550(10)(a) and (10)(b) incorporated in subsection 62-332.550(10), F.A.C., reference the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. (July 18, 2025), which is incorporated by reference herein and available at (https://flrules.org/Gateway/reference.asp?No=Ref-19779) and as described in paragraph (5)(b) above. A copy of the Act may also be obtained by contacting the Division of Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, MS #2500, Tallahassee, Florida 32399-2400, (850)245-8336.

(c) The standby trust fund agreement must be irrevocable until the Department determines that it is no longer required.

(10) Trust Fund.

(a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for operation and maintenance or perpetual management activities by establishing a trust fund that conforms to the requirements of this subsection. The trustee of the trust fund shall be an entity that has the authority to act as a trustee and whose trust operations meet the definition of the Investment Manager as defined in subsection 62-332.200(6), F.A.C.

(b) The trust fund agreement must be worded in substantial conformance with Form 62-332.550(10)(a), "WQEA Trust Fund Agreement to Demonstrate Operational Financial Assurance" (October 2026) or 62-332.550(10)(b), "WQEA Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance" (October 2026) [available at (a) (https://flrules.org/Gateway/reference.asp?No=Ref-19784) and (b) (https://flrules.org/Gateway/reference.asp?No=Ref-19785), respectively, and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(11) Endowment.

(a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for perpetual management activities by establishing an endowment account that conforms to the requirements of this subsection. The Endowment Holder, or the Investment Manager retained by the Endowment Holder to manage the endowment, shall be an entity that meets the definitions of subsections 62-332.200(4) or 62-332.200(6), F.A.C., respectively.

(b) The endowment agreement must be worded in substantial conformance with Form 62-332.550(11), "WQEA Endowment Agreement to Demonstrate Perpetual Management Financial Assurance" (October 2026), incorporated by reference herein and available at (https://flrules.org/Gateway/reference.asp?No=Ref-19786) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(12) Financial Responsibility for Perpetual Management Phase.

(a) An Owner shall establish financial assurance for the perpetual management of the WQEA, or phase thereof, using the financial responsibility mechanisms described in subsection 62-332.550(7), 62-332.550(10), or 62-332.550(11), F.A.C. When an escrow agreement, trust fund, or endowment is used, the requirements of subsections 62-332.550(7), 62-332.550(10), and 62-332.550(11), F.A.C., respectively, must be met.

(b) The amount of financial responsibility provided shall be calculated and adjusted in accordance with subsection 62-332.550(14), F.A.C. The fund shall be established in an amount equal to 110 percent of the annual cost of perpetual management, established under subsection 62-332.550(13), F.A.C., divided by a discount percentage rate calculated by the following rates as (long-term expected annual return) less (expected annual inflation) less (administrative costs).

Fund Establishment Amount = 110% Annual Cost of Perpetual Management / Discount Percentage Rate.

Discount Percentage Rate = (Long-Term Expected Annual Return) – (Expected Annual Inflation) – (Administrative costs).

A Discount Percentage Rate calculation tool is included in the "References and Design Aids" for the Applicant's Handbook Volume I, available at: https://floridadep.gov/water/water/content/water-resource-management-rules#erp.

(c) The financial responsibility mechanism must be in effect and executed prior to the first release of credits to the WQEA, or applicable phase thereof. The funding amount is determined in paragraph 62-332.550(12)(b), F.A.C. The financial responsibility mechanism for perpetual management may be funded over time as credits are withdrawn for a period not to exceed five years, or as specified by the WQEA Permit, from the first credit withdrawal. When funding over time, the initial investment amount shall be sufficient to satisfy fifty percent of the amount determined in paragraph 62-332.550(13)(c), F.A.C.

(d) Prior to the transfer to Perpetual Management Phase, the funded ratio shall be 135% of the amount determined in paragraph 62-332.550(13)(c) F.A.C. If the funded ratio is below 135%, a reconciliation payment shall be made to the fund in a final payment.

(e) Five years after transfer to the Perpetual Management Phase, and every five years thereafter, the Owner may request an assessment of the financial responsibility mechanism for perpetual management portfolio market value to determine if the value has exceeded a funded ratio of 160%. If the value exceeds this amount, funds will be returned to the Owner to restore the funded ratio to 135%.

(13) Cost estimates.

(a) For the purposes of determining the amount of financial responsibility that is required in this subsection, the Owner shall submit a detailed written estimate, in current dollars, of the total cost of the operation and maintenance and perpetual management phases of the WQEA. When the Department determines it is appropriate, the written cost estimate shall be certified by a licensed professional whose license authority in the State of Florida includes the ability to provide such estimates.

(b) The cost estimate for operation and maintenance phase of the WQEA shall be based on costs associated with implementing the Department approved performance and success criteria monitoring and verification plan as set forth in the WQEA permit. Operation and maintenance activities may include replacement of any structures or hydrologic control devices as necessary, exotic/nuisance vegetation control, plantings, sediment removal, prescribed fire, site security, administrative fees, consultant fees, monitoring activities and reports, taxes, and any other costs associated with the operation and maintenance phase.

(c) The cost estimate for the perpetual phase of the WQEA shall be based on the costs of the operation and maintenance phase, replacement of any structures or hydrologic control devices as necessary, exotic/nuisance vegetation control, prescribed fire, site security, consultant fees, administrative fees if applicable, monitoring activities and reports, taxes, and any other costs associated with continued implementation of the perpetual management phase. The cost estimate shall also include estimated annual advisory fees and other costs related to managing the financial responsibility mechanism, if such fees and costs are not otherwise included in the Discount Percentage Rate calculation.

(d) The Owner shall submit written cost estimates with verifiable documentation for the estimates to the Department along with the financial responsibility mechanism. If more than one financial responsibility mechanism is proposed for the operation and maintenance or for perpetual management, the cost estimate shall specify the appropriate mechanism for each itemized cost.

(e) The costs shall be estimated based on a third party performing the work at the fair market value of services. The source of any cost estimates shall be indicated and dated.

(14) Cost adjustments.

(a) Every two years, or as specified in the permit, the Owner shall undertake an estimate of the costs of the remaining operation and maintenance and perpetual management activities. In accordance with subsection 62-332.550(13), F.A.C., the Owner shall submit the estimate to the Department in writing, accompanied by supporting documentation. Operation and maintenance and perpetual management costs shall be listed separately. The Department shall review the cost adjustment statement and supporting documentation to determine if sufficient documentation has been provided to reflect all costs. If the cost adjustment statement and supporting documentation accurately reflect a good faith estimate of all costs, the Department shall approve the cost adjustment statement.

(b) At each cost adjustment, the Owner shall revise the operation and maintenance and perpetual management cost estimates for inflation and changes in the costs to complete or undertake the current phase of the WQEA or appropriate phase thereof in accordance with subsection 62-332.550(13), F.A.C.

(c) Revised cost estimates shall be used as the basis for modifying the financial responsibility mechanisms for the WQEA Operation and Maintenance Phase. If the value of any financial responsibility mechanism is less than the total amount of the current operation and maintenance cost estimates, the Owner shall, upon Department approval of the cost adjustment statement, increase the value of the financial mechanism to reflect the new estimate within 60 days. If the value of the operation and maintenance funding mechanism is greater than the total amount of the current cost estimate, the Owner may reduce the value of the funding mechanism to reflect the new estimate upon receiving written Department approval of the cost adjustment statement.

(d) Revised cost estimates and the performance of financial investments shall be used as the basis for modifying the financial responsibility mechanisms for the WQEA Perpetual Management Phase. The Department may assess the sufficiency of the Perpetual Management Phase funding and may require the financial mechanism to be revised through a permit modification. If the value of any financial responsibility mechanism is less than the total dollar amount necessary to implement the perpetual management requirements of paragraph 62-332.550(12)(c), F.A.C., the Owner shall, upon Department approval of the cost adjustment statement, increase the value of the financial mechanism within 60 days. The sufficiency of the Perpetual Management Phase funding may be revised by the Department with any modification, or credit release, and before transfer to the WQEA Perpetual Management Phase.

(e) The Department shall require adjustment of the amount of financial responsibility provided for operation and maintenance and perpetual management at times other than the cost adjustment period when the estimated costs associated with compliance with the permit conditions exceed the current amount of financial responsibility.

(f) The Owner may provide revised cost estimates more frequently than every two years. If at any time the actual costs exceed estimated costs by more than 15 percent, the Owner shall provide a revised cost estimate and adjust the corresponding amount of financial responsibility under this Rule.

(15) Financial Responsibility for Governmental Entities.

(a) A governmental entity as defined in s. 373.4134(2)(c), F.S., shall demonstrate reasonable assurances that it can meet the operation and maintenance requirements in the WQEA Permit by any of the mechanisms in subsection 62-332.550(4), F.A.C., above, or by other financial mechanisms which are sufficient to meet the requirements of this subsection.

(b) Governmental entities shall meet the requirements of subsection 62-332.550(12), F.A.C., to fund the WQEA Perpetual Management Phase. Governmental entities shall comply with the cost adjustment provisions in subsection 62-332.550(14), F.A.C.

Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134 FS. History—New ____.

62-332.600 Enhancement Credit Transactions and Credit Use.

(1) The agency that is reviewing the credit purchaser's ERP application will verify the number of enhancement credits necessary to meet the permitting criteria under Chapter 62-330, F.A.C., and will confirm that the appropriate enhancement credits are available for use at the selected WQEA. The required number of enhancement credits shall be calculated based on appropriate location valuation factors (LVFs) as described in Rule 62-332.500, F.A.C.

(2) Enhancement credits that have been released may only be used to address adverse water quality impacts of activities regulated under ss. 373.403-373.443 (or meeting the allocations of an adopted BMAP or adopted RAP under Section 403.067, F.S.

(3) To use enhancement credits, the credit purchaser must submit to the agency permitting the impact a Reservation Letter from the WQEA Owner demonstrating that enhancement credits have been reserved, sold, or transferred to the credit purchaser. If the agency permitting the credit purchaser's ERP determines that the credit purchaser is withing the WQEA service area and offsets the adverse impacts, the agency permitting the impact shall require the sufficient number and type of enhancement credits be withdrawn prior to the issuance of the credit purchaser's permit or as a condition of the credit purchaser's permit.

(4) An enhancement credit included in a previously authorized credit transaction is not available for another transaction, unless that credit has been surrendered by the purchaser to the WQEA

(5) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an ERP for construction and operation of a surface water management system.

(6) Purchase of enhancement credits is voluntary.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New ____.

62-332.700 Enhancement Credit Tracking.

(1) The Department shall maintain a ledger of the enhancement credits available at each WQEA.

(2) The ledger shall include all WQEA credit transactions involving enhancement credits under this Chapter

(3) WQEA credit transactions shall be processed as a no-fee minor modification of the WQEA Permit.

(4) Within 60 days of receiving the full payment for the credits and a request from the credit purchaser, or as required by the WQEA permit, the Owner shall submit a minor modification application requesting the enhancement credits be withdrawn from the official ledger.

(5) The ledger shall include the following information:
(a) The amount and type of credits generated in the WQEA, including provisional permit credits, if applicable.
(b) A brief description of actions or activities that generated the release of credits.
(c) The date credits become available for purchase.
(d) The date of the most recent inspection of the WQEA.
(e) The credit purchaser's name.
(f) Credit purchaser's permit number and date of issuance.
(g) Credit purchaser's BMAP or RAP allocation issuance and expiration date.
(h) The credit purchaser's permitting agency.
(i) The amount and type of credits sold in each purchase.
(j) The balance of the amount and type of credits available after purchase or credit generation in the WQEA.
(k) The date the WQEA ledger is updated.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New ______.

62-332.800 Enhancement Credit Monitoring and Continuing Credit Verification.

(1) Annually, the Owner must demonstrate the achievement of pollutant reductions of no less than the number of credits sold on an average annual basis.

(2) The WQEA Owner must implement a performance and success criteria monitoring and verification plan approved by the Department, including protocols and monitoring frequency, to be implemented once the WQEA is constructed and transferred to the Operation and Maintenance Phase.

(a) Enhancement credits shall be directly measured by the Owner in accordance with the Department-approved monitoring and verification plan in accordance with the WQEA permit.

(b) The plan must be sufficient to demonstrate that the WQEA meets defined performance criteria for pollutant reductions on which enhancement credits are based and the success criteria for each activity.

(c) The Owner must implement the approved perpetual management plan after transferring to the Perpetual Management Phase in perpetuity.

(3) The monitoring and verification protocols must be able to measure the difference in water quality and flows before water enters the WQEA and is discharged from the WQEA in order to accurately demonstrate the WQEA's pollutant reductions and ensure that all released enhancement credits have been achieved. At a minimum, monitoring must include flow and concentration data into and out of the WQEA.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New ____.

62-332.900 Compliance and Enforcement.

(1) The Owner must certify and submit annually to the Department that the control devices and systems, technologies, best management practices, or other activities on which the enhancement credits are based continue to be fully implemented and properly operated and maintained, and that pollutant load reductions continue to be achieved. The Department shall at a minimum perform annual inspections to verify that the conditions of the WQEA permit are met.

(2) The Owner must report annually to the Department the pollutant loads of their targeted pollutant at the discharge point(s) of the WQEA, in the standard units of measure for the WQEA at a frequency required by the permit to demonstrate pollutant load reduction resulting in credits.

(3) The Owner must maintain records demonstrating that the control devices and systems, technologies, best management practices, or other management actions upon which credits are based continue to be fully implemented and properly operated and maintained in perpetuity. The Owner must notify the Department in writing within 30 calendar days of any changes to the size, nature, function, or treatment capabilities of the WQEA. Any such changes may result in a WQEA permit modification to ensure credit transactions maintain at least their approved level of pollutant load reduction. The Owner must allow the Department, or Department's agent, to inspect the records and the control devices and systems, technologies, best management practices, or other management actions during regular business hours.

(4) The Owner is responsible for achieving the pollutant load reductions on which the credits are based and complying with the terms of its permit, including any associated financial assurance instruments and monitoring and

verification plan, in perpetuity. In the event the Department determines the purchased released credits are invalid because the Owner has failed to comply with its monitoring and verification plan, has failed to demonstrate that the WQEA is meeting defined performance and success criteria for the reduction of pollutants on which credits are based, or otherwise has failed to meet the conditions of its permit, including financial assurances, the Department may suspend the authorization to withdraw enhancement credits until such time as the Owner returns to compliance.

(5) The Owner shall annually submit a report of the Enhancement Credits sold or used to the Department.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New ___.

62-332.920 Surrender or Transfer of Water Quality Enhancement Area Permits.

(1) If no credits have been released or sold, an Owner may apply to surrender a WQEA Permit, or permitted phase thereof, by submitting a written request to the Department. The written request must identify which phase of the WQEA permit will be surrendered, indicate the extent of actions and activities performed in that phase, and describe the conservation property interest encumbering that phase. The Department shall authorize release from a WQEA permit when no credits have been withdrawn. The Department shall authorize the relinquishment of a permitted phase, where no credits associated with that phase have been withdrawn, and the release would not compromise the hydrology and water quality improvement efficiency of the remaining portions of the WQEA. A surrender of a WQEA permit or release of a phase of a WQEA shall be made by permit modification.

(2) If a property interest has been conveyed as provided in Rule 62-332.530, F.A.C., for a WQEA Permit which is surrendered as provided above, the Department shall release the conservation easement.

(3) If a surface water management system has been constructed or altered within the WQEA, the Owner shall obtain any permits required under Part IV of Chapter 373, F.S., and Chapter 62-330, F.A.C., to operate or abandon the surface water management system.

(4) To transfer a WQEA Permit, the Owner shall meet the requirements of Chapter 62-330.340, F.A.C., and the entity to whom the permit will be transferred must provide reasonable assurances that it can meet the requirements of the permit.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History– New ___.

NAME OF PERSON ORIGINATING PROPOSED RULE: Timothy Rach
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alexis A. Lambert
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 24, 2026
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