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August 21 2026

VIA EMAIL ***Timothy.Rach@FloridaDEP.gov***

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: Water Quality Enhancement Areas, Comments on Proposed Chapter 62-332, F.A.C.

Dear Tim,

Below are comments on behalf of the Wetlandsbank Group, LLC pertaining to the August 3, 2026 version of Chapter 62-332, Fla. Admin. Code on Water Quality Enhancement Areas (WQEA).
First, we wish to thank you and DEP for providing us with the opportunity to comment on the rule. We appreciate the hard work by you and your staff. The new version of the rule language is improved, but continues to contain some problematic language. The comments below are arranged based on rule language location within the rule, rather than importance.

CONSERVATION EASEMENTS

Please clarify the rule language to make it clear that a conservation easement may be created under the methods set forth in 704.06(2), Fla. Stat. This section states:

> (2) Conservation easements …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.
> …

As currently written, a reviewer may not understand that conservation easement is broadly defined by statute.

ENDOWMENT HOLDER

Rule 62-332.200(5) proposes to limit endowment holders to corporations defined by 501(c), Internal Revenue Code. This limitation should be removed.

The proposed rule already contains substantial safeguards to ensure that an Endowment Holder is financially capable and qualified to administer funds for perpetual management, maintenance, and monitoring. Specifically, the proposed rule requires the Endowment Holder to demonstrate the necessary fiduciary experience and qualifications, maintain a diversified investment portfolio governed by an investment policy statement, and have an investment portfolio in excess of $125 million. Given these requirements, limiting an otherwise qualified Endowment Holder to a 501(c)(3) charitable nonprofit corporation appears unnecessary and may substantially restrict the number of entities available to serve in this capacity.

The consideration should instead be whether the Endowment Holder has the financial strength, fiduciary experience, institutional stability, and legal authority necessary to protect and administer the endowment in perpetuity. Trust companies, financial institutions, foundations, and other established entities may possess equal or greater financial resources, fiduciary expertise, investment controls, and institutional stability than a 501(c)(3) organization.

This is particularly important because there are a limited number of entities willing and able to accept and administer endowments pursuant to regulatory obligations and perpetual management requirements. Requiring an Endowment Holder to satisfy all proposed financial and fiduciary criteria **and** be a 501(c)(3) organization unnecessarily reduces competition and increases costs.

We therefore recommend revising the definition to allow a legally established entity that satisfies the Department's financial, fiduciary, investment, and institutional requirements to qualify as an Endowment Holder. If the Department believes additional safeguards are necessary, those safeguards should be stated as objective financial and fiduciary qualification criteria rather than imposed through a restriction on tax status or organizational form.

We also recommend that the Department reconsider the $125 million portfolio requirement. While a minimum financial-capacity requirement may be warranted, the Department should identify the basis for selecting $125 million and determine whether that threshold is reasonably related to the amount and duration of the particular endowment obligation. A fixed $125 million threshold, combined with the 501(c)(3) requirement and the other qualifications in the proposed rule, could further reduce the already limited pool of entities capable of serving as Endowment Holders.

LOCATIONAL VALUATION FACTOR ("LVF")

a. LVF Conflicts with the Definition of Enhancement Credit

LVF provisions in proposed Rule 62-332.500 should be deleted because Section 373.4134, Florida Statutes, does not authorize the Department to impose a locational multiplier that increases the number of enhancement credits a purchaser must acquire. The statute establishes the Legislature's framework for the generation, valuation, geographic use, and regulatory acceptance of enhancement credits, but nowhere directs or authorizes the Department to discount or multiply those credits based upon location, pollutant transport, or waterbody variability.

The Legislature expressly defines an "enhancement credit" as a standard unit of measure representing a quantity of pollutant removed. Chapter 2026-60 retained that concept and also placed the definition of "enhancement credit" in Section 373.403(24). The statute further requires a WQEA permit to provide for the "assessment, valuation, and award of credits based on units of pollutants removed." Thus, the statutory unit of value is the quantity of pollutant removed, not a location-adjusted quantity.

The proposed rule changes that statutory framework. Proposed Rule 62-332.500(5) provides that the agency "will adjust the number of credits required" through an LVF consisting of a Transport Factor multiplied by a Variability Factor. The resulting multiplier can substantially increase the number of credits that must be purchased even though the amount of pollutant requiring treatment has not changed. For example, the rule expressly establishes a Transport Factor of no less than 2 when the WQEA is downstream of the purchaser. It then further multiplies that amount by a Variability Factor. This is more than a methodology for measuring pollutant removal; it establishes an additional substantive regulatory requirement affecting how many statutorily defined credits must be purchased.

b. Lack of specific statutory authority

This raises a significant issue under Section 120.52(8), Florida Statutes. Under the Administrative Procedure Act, a grant of general rulemaking authority is necessary but is not sufficient. An agency may adopt only rules that implement or interpret the specific powers and duties conferred by the enabling statute. An agency does not obtain rulemaking authority merely because a proposed requirement is reasonably related to the purposes of the legislation or falls generally within the agency's regulatory responsibilities.

Section 373.4134 gives DEP specific authority over the matters for which location is relevant. The Legislature directed DEP to establish an enhancement service area and expressly provided that credits may be used only for adverse impacts occurring within that service area. In 2026, the Legislature went further and specifically required the service area to consist, at a minimum, of a HUC-8 sub-basin. The Legislature therefore directly addressed the geographic relationship between the WQEA and the purchaser but did not authorize DEP to impose an additional location-based credit multiplier.

The statute also expressly addresses the Department's concern about whether credits from one location will adequately protect water quality at another location. Section 373.4134(7)(j) authorizes DEP to deny use of enhancement credits when it lacks reasonable assurance that their use will not cause or contribute to a violation of water quality standards. DEP's proposed Rule 62-332.300(9) already implements that statutory protection by requiring the purchaser to provide reasonable assurance through modeling or other evaluations. Thus, the statute provides DEP with a specific mechanism to address legitimate location-specific water-quality concerns without creating an additional credit multiplier.

c. The Legislature demonstrated that it knows how to authorize a location multiplier

In the same 2026 legislation, the Legislature addressed geographic adjustments to credits under the mitigation-bank statute, Section 373.4136. There, it expressly directed 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 prescribed the multipliers itself: 1.0 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.

That is important because the Legislature demonstrated in the very same act that when it intends geographic location to change the number of regulatory credits required, it knows how to say so and how to prescribe the multiplier. It did **not** include comparable authority in Section 373.4134.

The contrast supports the conclusion that DEP cannot administratively create an LVF for WQEA credits where the Legislature chose instead to regulate geography through the statutory enhancement service area and the water-quality reasonable-assurance requirement. The Department should be particularly cautious about implying authority to establish a potentially substantial multiplier when the Legislature expressly provided such authority elsewhere in Chapter 373 but omitted it from Section 373.4134.

d. Internal inconsistencies pertaining to LVF in the proposed rule

There are also several significant internal inconsistencies.

First, proposed Rule 62-332.400 states that the assessment, valuation, and award of enhancement credits are based on units of pollutant removed, and further states that credits must be based on a standard unit of measure of the specific pollutant removed on an average annual basis. That tracks the statute. Proposed Rule 62-332.500 then changes the practical value of those same credits through a multiplier unrelated to the actual quantity of pollutant removed. The two provisions therefore employ different concepts of "valuation."

Second, the rule already uses service areas to determine whether credits are geographically appropriate. The proposed service-area provision requires modeling of the area within which the WQEA can reasonably reduce impacts, taking pollutant attenuation into consideration. The LVF then considers pollutant attenuation again when determining how many credits must be purchased. Thus, attenuation is used once to establish whether a purchaser is within the service area and again to increase the number of credits required. DEP should explain why this does not constitute duplicative adjustment for the same geographic consideration.

Third, the Variability Factor is not necessarily a locational factor at all. It is calculated by dividing the 95th-percentile pollutant concentration by the geometric mean concentration within the target waterbody. That calculation measures variability within a waterbody; it does not measure the geographic relationship between the purchaser and the WQEA. Consequently, two projects at essentially the same location could potentially be subject to an LVF greater than 1 solely because the target waterbody has variable pollutant concentrations. Calling that adjustment a "Locational Valuation Factor" does not resolve the underlying question of statutory authority for imposing it.

Fourth, the proposed definition says the LVF reflects pollutant attenuation "regardless of which entity is hydrologically upstream of the other," yet Rule 62-332.500 expressly treats the two circumstances differently by imposing a minimum Transport Factor of 2 when the WQEA is downstream of the purchaser. The rule therefore describes the methodology as direction-neutral while subsequently imposing an expressly direction-dependent minimum multiplier

e. DEP Must Not Disregard the Legislature's Chosen Method for Addressing Enhancement Credits

The LVF provisions should be deleted. Section 373.4134 establishes the Legislature's chosen mechanisms for addressing the geographic relationship between a WQEA and the use of its enhancement credits: the enhancement service area, the requirement that the WQEA reasonably address adverse impacts within that service area, and DEP's express authority to deny a proposed use of credits when reasonable assurance cannot be provided that the use will not cause or contribute to a violation of water quality standards. The statute does not authorize an additional location-based multiplier that increases the number of enhancement credits required for a project.

This omission is particularly significant because, in the same 2026 legislation, the Legislature expressly required application of a "proximity factor" to mitigation-bank credits under Section 373.4136 and prescribed the applicable multipliers. The Legislature did not provide comparable authority in Section 373.4134. DEP therefore should not create by rule a substantive credit multiplier that the Legislature elected not to impose by statute.

Moreover, the proposed LVF is inconsistent with other provisions of the proposed rule defining and valuing enhancement credits based upon the actual quantity of pollutant removed, duplicates the consideration of attenuation already used in establishing the enhancement service area, and incorporates a Variability Factor that is not inherently locational. The existing statutory service-area and reasonable-assurance provisions provide the appropriate mechanisms for addressing legitimate geographic and water-quality concerns without imposing an additional multiplier of questionable statutory authority.

ASSESSMENT ON AN ANNUAL BASIS, RATHER THAN AVERAGE ANNUAL

The rule should evaluate pollutant loading and removal on an average annual basis, rather than requiring the specified pollutant removal to be demonstrated in each individual year. An annual requirement does not adequately account for normal year-to-year variations in rainfall, runoff, and hydrologic conditions.

During drought or other unusually dry years, substantially less water may enter and pass through a WQEA. As a result, the total mass of pollutants available for treatment and removal will also be lower. A WQEA therefore could fail to achieve the required annual mass removal through no deficiency in its design, operation, or treatment efficiency, but simply because there was insufficient flow and pollutant loading during that particular year.

Importantly, the same hydrologic conditions affect the credit purchaser of WQEA credits. During a drought year, the credit purchaser will generally have less stormwater runoff, discharge, and associated pollutant loading. It is therefore unnecessary and inequitable to require the WQEA to demonstrate the same absolute level of pollutant removal during a year in which both the WQEA and the credit purchaser experience substantially reduced hydrologic loading.

Using an average annual basis would account for normal hydrologic variability while still requiring the WQEA to demonstrate that it provides the pollutant reduction represented by the credits over time. This approach more accurately measures the long-term water-quality benefit of the WQEA and avoids creating a compliance standard under which an otherwise properly functioning WQEA could be deemed deficient solely because of drought or other atypical hydrologic conditions.

For these reasons, references to annual pollutant loading and removal should be revised to provide that compliance and credit generation are determined on an average annual basis.

INCREASED FINANCIAL RESPONSIBILITY REQUIREMENTS

The proposed 135% funded-ratio requirement should be deleted. There does not appear to be statutory authority for requiring a WQEA Owner, immediately before transfer to the Perpetual Management Phase, to increase the financial assurance to 135% of the amount that DEP has already determined is necessary to fund perpetual management. If the amount calculated under paragraph 62-332.550(13)(c), F.A.C., represents the reasonably anticipated cost of perpetual management, requiring 135% of that amount effectively imposes an additional 35% financial obligation without identifying the additional management obligation that the excess funds are intended to secure. A financial assurance requirement should bear a reasonable relationship to the actual obligation being assured and should not be used to create an unexplained reserve or contingency fund.

The requirement is particularly burdensome because it is imposed at the point when the WQEA has satisfied the requirements necessary to transition into perpetual management. Rather than recognizing the reduced financial risk associated with completion of the establishment and operational phases, the proposed rule requires the Owner to make a potentially substantial additional payment. For a large WQEA, the additional 35% could represent a significant amount of capital that must be deposited and thereafter becomes unavailable for other purposes. DEP should identify both the statutory authority and the factual or actuarial basis for concluding that 100% funding of the calculated perpetual management obligation is inadequate and that precisely 135% is necessary.

The 160% threshold in paragraph (e) compounds this problem. Even after the Owner has been required to fund the perpetual management obligation at 135%, the Owner cannot request the return of excess funds unless the portfolio increases to more than 160% of the calculated obligation. Thus, the rule deliberately requires a substantial amount of the Owner's funds to remain in the financial assurance mechanism even though those funds exceed the amount DEP has determined is necessary for perpetual management.

There is no statutory or financial basis for the 25-percentage-point spread between the required 135% funded ratio and the 160% threshold for requesting a return of excess funds. If DEP has determined that 135% provides an adequate margin to assure perpetual management, funds exceeding 135% are, by definition, beyond the amount DEP has determined necessary to provide that protection. Requiring the Owner to wait until the fund reaches 160% before any excess may be returned results in an unnecessary retention of the Owner's capital without a corresponding environmental or financial-assurance benefit.

The five-year limitation on requesting an assessment further increases the inequity. Even if investment performance causes the fund to become substantially overfunded shortly after an assessment, the Owner may be required to wait years before obtaining the return of funds that exceed the amount necessary to assure perpetual management. The combination of the 135% initial funding requirement, the 160% threshold, and the five-year assessment limitation creates a substantial financial burden that should be supported by specific statutory authority and a demonstrated financial need.

In the absence of statutory support, the rule should require funding at the amount calculated under paragraph (13)(c). If DEP nevertheless retains a funding cushion above 100%, the Owner should be permitted to request an assessment periodically and receive funds exceeding the funded ratio that DEP has determined is sufficient to assure perpetual management, rather than being required to allow the fund to accumulate to 160%.

UNDEFINED REQUIREMENTS RESULTING IN UNBRIDLED DISCRETION

Several provisions of the proposed rules should be revised because they provide DEP, or the agency reviewing the credit purchaser's permit, discretion without establishing objective standards governing the exercise of that discretion. A rule should tell an applicant what is required to obtain a permit and should establish ascertainable standards that can be applied consistently from one applicant and project to another. Language allowing DEP to determine what is "appropriate," "necessary," "sufficient," or otherwise required, without identifying the criteria governing that determination, creates uncertainty for applicants and permits materially different requirements to be imposed on similarly situated WQEAs.

This concern is particularly significant for WQEAs because the rules establish a program intended to generate transferable enhancement credits having economic value. A WQEA Owner must make substantial investments in land, design, permitting, construction, monitoring, financial assurances, and perpetual management in reliance upon the regulatory criteria governing the establishment and release of those credits. The rules should therefore establish objective standards that allow an Owner to determine in advance what must be demonstrated to obtain a permit and credits. Requirements that depend upon DEP's case-by-case determination of what it considers "appropriate," "sufficient," or "necessary" make the regulatory requirements unpredictable and increase both permitting risk and cost.

a. Selection and approval of models and analytical tools.

The rule also should not give DEP discretion to disregard or substitute for a model or analytical tool where the statute directs use of an adopted model or analytical tool when one is available. The statute establishes the applicable standard; the rule should implement that standard rather than create additional agency discretion over whether the prescribed model will be used. Likewise, any process for DEP approval of an alternative model or analytical tool should contain objective criteria governing approval.

b. Data DEP "deems sufficient."

The proposed rule provides that data must come from monitoring stations that DEP "deems sufficient to determine flows and local water quality conditions." Although DEP necessarily must evaluate technical information submitted with an application, the rule provides no criteria for determining when a monitoring station is "sufficient." The rule should specify the relevant factors, such as proximity to the WQEA, location within the same watershed or drainage basin, period of record, data quality, representativeness of hydrologic conditions, or other identified technical criteria. Without those standards, an applicant cannot know in advance whether otherwise reliable published data will be accepted, and different reviewers could reach different conclusions concerning identical data.

c. Additional information requirements.

Any provision allowing DEP to require "other information," "additional documentation," or similar information necessary to substantiate an application should be limited by objective criteria. An agency cannot cure an incomplete rule by reserving authority to require whatever additional information staff determines may be useful during permit review. The rule itself should identify the information necessary to demonstrate entitlement to a WQEA permit. If supplemental information may be required, the rule should specify the circumstances triggering that requirement and limit the additional information to information reasonably necessary to resolve an identified deficiency under a specific permitting criterion.

d. Conservation easement—additional documentation or actions.

Proposed Rule 62-332.530(4) is particularly broad because it provides that DEP "shall require additional documentation or actions" from the grantor "if necessary to ensure that the WQEA will be protected." This language identifies the desired result but provides no limitation on the documentation or, more importantly, the "actions" DEP may require. The term "actions" potentially encompasses substantive obligations well beyond documentation necessary to establish the sufficiency of a conservation easement. The rule should identify the specific additional documentation that may be required and the circumstances under which it may be required. The open-ended authority to require unspecified "actions" should be deleted.

e. Additional environmental site assessments.

Similarly, the conservation-easement provisions require a Phase I environmental site assessment and allow "any additional site assessments as are necessary." The rule should state what finding in the Phase I assessment triggers additional investigation and what type or scope of investigation may then be required. Without a triggering standard, DEP has discretion to require potentially expensive additional environmental investigations without an objective rule criterion establishing when those expenditures are necessary.

f. "If necessary" escrow requirement.

Proposed Rule 62-332.530(6) provides that, "[i]f necessary," the Owner must place funds in escrow with the county tax collector. The rule does not state what makes escrow "necessary." If Section 196.295, Florida Statutes, establishes the circumstances requiring escrow, the rule should expressly tie the requirement to those statutory circumstances. If DEP intends some different standard, that standard must be stated in the rule. An applicant should not be required to determine during permit review whether DEP considers an additional financial obligation "necessary."

g. Financial assurance—DEP's determination of "sufficiency."

The cost-adjustment provisions similarly provide that DEP may "assess the sufficiency" of perpetual-management funding and "may require" revision of the financial mechanism through a permit modification. The rule already establishes cost estimates, adjustment procedures, and funding requirements. DEP should determine sufficiency by applying those objective requirements, not through an additional undefined assessment. If circumstances other than those specified in the rule justify an increase in financial assurances, those circumstances and the method for calculating the increase should be expressly stated.

The same concern applies to language allowing the "sufficiency" of perpetual-management funding to be revisited by DEP "with any modification, or credit release." A modification or credit release does not necessarily have any relationship to the adequacy of perpetual-management funding. The rule should identify an objective nexus between the event and the financial obligation before allowing DEP to reopen the amount of financial assurance. Otherwise, virtually any interaction with DEP can become an occasion to impose an increased financial obligation.

h. "Appropriate" enhancement credits and LVFs.

Proposed Rule 62-332.600(1) provides that the permitting agency will determine whether the "appropriate enhancement credits" are available and calculates the number of credits using "appropriate" LVFs. The permitting agency's function should be to apply the standards established by statute and rule, not independently determine what credits or valuation factors it considers "appropriate." If particular types of credits may be used for particular impacts, the rule should state those criteria objectively. The use of "appropriate" adds discretion where a defined regulatory standard should govern. This concern is separate from, and in addition to, the objection that LVFs themselves lack statutory authority.

i. Credit purchaser's permit.

Proposed Rule 62-332.600(3) likewise conditions credit use on the permitting agency determining that the purchaser is within the WQEA service area and that the credits offset the adverse impacts, followed by a requirement for a "sufficient number and type" of credits. Whether a purchaser is within an approved service area should be an objective geographic determination, and the number and type of credits necessary should be determined under standards established by rule. The permitting agency should not be given independent discretion to determine whether use of otherwise valid WQEA credits is appropriate once the objective criteria established by statute and rule have been satisfied.

Duplicative Demonstration by the Credit Purchaser

Proposed Rule 62-332.300(9) requires the credit purchaser to provide modeling, other evaluations, or both to demonstrate that use of the credits will not cause or contribute to a violation of water-quality standards. DEP unquestionably retains statutory authority to deny use of credits if it is not reasonably assured that their use will not cause or contribute to a water-quality violation. However, the statute does not require every credit purchaser to conduct a second modeling exercise as a prerequisite to using credits. Rather, it authorizes DEP to determine whether the proposed use satisfies the statutory standard.

The proposed requirement is particularly questionable because DEP already establishes a service area for the WQEA based upon the geographic area within which the WQEA can reasonably be expected to address adverse impacts. The WQEA Owner also must perform the technical analysis and modeling necessary to establish the WQEA's credits and service area. Requiring every purchaser to repeat a modeling or evaluation exercise substantially reduces the value and efficiency of the WQEA program.

The rules should create certainty that a released credit can be used within its approved service area unless project-specific circumstances provide a reasonable basis to conclude that the proposed use may cause or contribute to a violation of water-quality standards. In those circumstances, DEP could require additional information reasonably related to the identified concern. Requiring additional modeling as a routine prerequisite to every credit transaction imposes unnecessary cost and largely defeats the benefit of DEP having already evaluated and approved the WQEA, its credits, and its service area.

Reevaluation of Previously Sold Credits After Compliance Is Restored

Finally, the compliance provisions should make clear that a temporary compliance issue does not result in retroactive reevaluation of enhancement credits that were validly generated, released, and sold. The proposed rule authorizes DEP to suspend further withdrawals while the WQEA is out of compliance. That approach is consistent with section 373.4134(6)(b), which directs DEP to revoke the permittee's ability to sell enhancement credits until the WQEA complies with the permit conditions.

The statutory remedy is prospective and temporary: sales cease during noncompliance and may resume when compliance is restored. The rule should follow that framework. Previously released and purchased credits should not be reopened or devalued merely because the WQEA later experienced a temporary compliance issue, particularly where that issue has been corrected. Allowing retroactive reevaluation would create substantial uncertainty not only for WQEA Owners but also for third-party purchasers who relied upon DEP's prior release of the credits. Such uncertainty would significantly impair the marketability of WQEA credits and undermine the Legislature's objective of creating a viable mechanism for offsite compensatory treatment.

Thank you for the opportunity to comment on the rule. We hope that DEP will modify the proposed language to address these concerns.

Sincerely,

Susan Roeder Martin
Susan Roeder Martin, Esq.

cc: Robert Miller
Jim Easton

SRM/mnr

August 21, 2026
Comments from Wetlands Bank, LLC

Wetlandsbank 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.

(5) No portion of a WQEA shall be authorized to meet the mitigation, water quality treatment, or compensatory requirements of any other permit or regulatory program, except for BMAPs and RAPs and as otherwise authorized in this chapter.

(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 95th 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 95th 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
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