

June 10, 2026

Mr. Borja Crane-Amores
Division of Water Resource Management
Stormwater & Technical Services Program
Florida Department of Environmental Protection

RE: Comments of Mitigation Services, Inc. on Draft Rule Chapter 62-332, F.A.C. — Water Quality Enhancement Areas

Dear Mr. Crane-Amores,

Mitigation Services, Inc. (MSI) respectfully submits the following comments on the Florida Department of Environmental Protection's (FDEP) Draft Rule Chapter 62-332, F.A.C., governing Water Quality Enhancement Areas (WQEAs). MSI is a Virginia-based developer and long-term manager of environmental credit assets, with an established portfolio of wetland mitigation banks, stream mitigation banks, and nutrient credit banks operating across the mid-Atlantic region. Our experience spans the full lifecycle of bank development — from site identification, ecological assessment, and regulatory approval through banking instrument execution, credit release, and perpetual stewardship. We write to offer comments informed by that experience, and by our interest in expanding our credit asset development activities into Florida's emerging WQEA marketplace.

Environmental credit markets function when three conditions are met: the regulatory framework is clear and enforceable, the credits produced are credible and verifiable, and the market structure provides a reasonable pathway to return on investment. MSI has operated successfully within Virginia's mitigation banking program — one of the most rigorous and mature state-level credit frameworks in the country — and we understand firsthand what separates programs that attract sustained private investment from those that do not. Florida has a genuine opportunity to build a WQEA program that meets all three conditions. The comments below are offered in that spirit.

Service Areas Drive a Thriving Market and Watershed Benefits

Service area definition is among the most consequential design decisions in any environmental credit program. Much like the HUC 8 service areas proposed by Florida's SB848 (2026), Virginia's banking service areas are tied to hydrologic boundaries — watershed units that reflect the geographic scope within which a bank's ecological or water quality benefits are reasonably attributable. This approach aligns regulatory geography with ecological reality and provides bank sponsors and credit buyers with predictable, defensible boundaries.

Senate Bill 848 (2026) establishes the HUC-8 watershed as the WQEA service area, consistent with this well-established principle. MSI strongly supports implementation of the full HUC-8 service area as authorized by the Legislature. Narrowing the service area through rule — whether by imposing sub-watershed restrictions, or other administrative limitation — reduces the addressable credit demand for any given WQEA project, undermines the financial viability of a WQEA's development, and conflicts with the statutory framework the Legislature deliberately chose. While it may appear as though administrative limitations create greater protections, they reduce the ability for WQEAs to successfully exist and perform to the benefit of the watershed in

which they are located. Financial and reasonable assurances are provided as securities that the FDEP can rely on for these protections, as they have successfully in the wetland mitigation banking marketplace.

Credit Quantification — Simplicity and Consistency Are Prerequisites for Market Function

The value of an environmental credit rests entirely on its credibility — and credibility requires a quantification methodology that is transparent, consistently applicable, and grounded in available data. MSI's experience developing nutrient credit banks in Virginia, where credits are generated often through land conversion and stream restoration and must satisfy Chesapeake Bay TMDL accounting requirements, has reinforced a basic truth: complexity that cannot be consistently supported by real-world data does not produce more rigorous outcomes. It produces variable ones.

The proposed Location Factor and Variability Factor raise this concern directly. The watershed-specific inputs these calculations require are not uniformly available across Florida, and a quantification methodology that produces materially different results based on data availability will generate inconsistency that erodes market confidence. Further it appears as though the standard for the variability factor (concentration and AGM) is inconsistent with the load reduction approach that is used by Environmental Resource Permit applicants (Credit purchasers and primary buyers in the marketplace) as well as how TMDLs are evaluated in other parts of the state. From an investor standpoint, unpredictable credit yields make project underwriting uncertain. From a regulatory standpoint, inconsistent outcomes across similar projects invite challenge.

MSI recommends that FDEP adopt a simpler, more transparent geographic adjustment approach — analogous to the Proximity Factor used in Florida's wetland mitigation framework — that applies consistently across watersheds without requiring inputs that are not yet available at the necessary resolution. A methodology that can be applied uniformly and understood by all parties will do more to protect the integrity of the WQEA credit and its intrinsic water quality values than one that introduces variability at the point of quantification.

Equitable Treatment of Water Quality Enhancement Areas and Regional Stormwater Management Systems

A well-functioning environmental credit market depends on regulatory equivalence — the assurance that credits representing the same environmental outcome are produced, evaluated, and approved under equivalent standards. Where that equivalence breaks down, the market distorts: investment flows toward the path of least regulatory resistance rather than toward the projects that deliver the greatest environmental benefit and regulatory assurances.

MSI is concerned that the current draft rule does not apply equivalent standards to WQEAs and Regional Stormwater Management Systems (RSMS) providing comparable water quality benefits for compensatory stormwater treatment purposes. The pre-approval and performance demonstration burdens imposed on WQEAs appear materially greater than those applied to RSMS projects achieving similar outcomes. This asymmetry has no basis in the relative

environmental value of the two approaches, and it will predictably shape market behavior in ways that disadvantage WQEA investment and the regions in which they are intended to serve.

In Virginia's credit markets, regulatory parity across credit-generating mechanisms is treated as a foundational principle — one that the Interagency Review Team actively enforces to maintain market integrity. We urge FDEP to apply that same principle here and ensure that WQEA approval pathways are calibrated to the environmental outcomes being delivered, not to the type of project delivering them.

MSI has watched Florida's WQEA program develop over the past several years with considerable interest, and its principles were engaged in the development of HB965, the bill that promulgated s.343.4134 FS. The statutory framework established by SB 848 and the earlier passage of HB 965 reflects a sophisticated policy choice: that private investment, properly structured and regulated, can deliver water quality outcomes at a scale and pace that public funding alone cannot. We believe that is correct, and we have brought our experience, capital relationships, and bank development expertise to Florida in support of that goal.

Realizing the potential WQEAs bring to Florida both economically and environmentally requires a rule that gives investors and bank sponsors the clarity and consistency they need to commit. Preserving the full HUC-8 service area, adopting a workable credit quantification methodology, and ensuring regulatory parity between WQEAs and RSMS are not peripheral concerns — they are the structural conditions on which a functioning marketplace depends. We respectfully urge FDEP to address each of them in the next draft.

We welcome further dialogue with the Department and are available at your convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald Seaborn Jr.", written in a cursive style.

Donald Seaborn Jr
Mitigation Services, Inc.

CHAPTER 62-332

WATER QUALITY ENHANCEMENT AREAS

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

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 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 water quality enhancement credit transactions authorized in this chapter are intended to provide flexibility to ERP applicants for the purpose of achieving performance standards or net improvement under Section 373.414(1)(b)3., F.S., or satisfying ERP performance standards under Section 373.4131, F.S., or to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s. 403.067.

SB848 provided clarity that performance standards may be satisfied by purchasing an enhancement credits. [New 373.4134(3)(b)]
Author
(no date)

This authority is granted in 373.4134 FS. It established a separate, independent mechanism from 62-306FAC, to allow BMAP/RAP entities to purchase Enhancement Credits from a permitted WQEA. The method by which a BMAP/RAP entity may use Enhancement Credits is explicitly governed by s. 373.4134 — not s. 403.067 or ch. 62-306, F.A.C.
Author
(no date)

(3) The responsibilities for implementing this chapter are described in Operating and Delegation Agreements between the Department of Environmental Protection ("Department") and the water management districts ("Districts"). The Agreements are incorporated by reference in subsection 62-113.100(3), F.A.C.

(4) The requirements for the trading and use of water quality enhancement credits to meet the allocations of an adopted Basin Management Action Plan (BMAP) or adopted Reasonable Assurance Plan (RAP) are set forth in Chapter 62-306, F.A.C.

(5) 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) "Credit Purchaser" means an entity that seeks to purchase water quality enhancement credits for the purpose of ~~achieving performance standards or 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.

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

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

(4) "Endowment Holder" means a charitable nonprofit corporation that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, under the Florida Not For Profit Corporation Act, Chapter 617, Florida Statutes, and under the Florida Uniform Prudent Management of Institutional Funds Act, Chapter 617, Florida Statutes, and that has accepted funds from the Water Quality Enhancement Area Owner to be held in trust for the benefit of the Water Quality Enhancement Area property and its perpetual management, maintenance, and monitoring. The Endowment Holder must demonstrate to the Department that the organization has the necessary fiduciary experience and qualifications to manage the endowment funds for perpetual management activities. The Endowment Holder must have a diversified investment portfolio governed by an investment policy statement for such purposes in excess of \$125 million.

(5) "Enhancement credit" or "credit" means the standard unit of measure that represents a quantity of pollutant removed from a permitted water quality enhancement area and which is greater than any reductions otherwise required under Chapter 62-330, F.A.C.

(6) "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

See previous comment above regarding the authority granted in 373.4134 FS.

Author
(no date)

This section does not provide the authority for use of or creation of WQEAs for BMAPs or RAPs. That authority is in s373.4134 FS.

Author
(no date)

SB848 provided clarity that performance standards may be satisfied by purchasing an enhancement credits.

Author
(no date)

This is very limiting and far exceeds the financial assurances required by an RSMS as specified in SB848(2026). WQEA should not be burdened beyond that required for a comparable off -site compensating stormwater treatment system.

Please identify Endowment Holders/non-profits used as a basis for this standard. There are only a very small few who may meet this standard. Large public institutions will have endowments held using trusts (typical of Wetland banks universities, and museums), private foundations - sometimes 501c3s, AND public non-profits.

Author
(no date)

67 Enhancement Area Owner shall provide documentation evidencing proof of such regulation and examination to
68 the Department.

69 (7) "Locational Valuation Factor" ("LVF") means a numeric adjustment applied to enhancement credits to account for
70 differences in pollutant transport and variability between the Water Quality Enhancement Area and the Credit
71 Purchaser's discharge location. The LVF reflects the relative impact of pollutant attenuation between one location
72 compared to another regardless of which entity is hydrologically upstream of the other and is calculated for each
73 pollutant using approved numerical models or analytical tools. The LVF incorporates: (a) a Transport Factor, which
74 accounts for attenuation of pollutants between hydrologically connected points, and (b) a Variability Factor, which
75 accounts for concentration variability within the target waterbody.

76 (8) "Natural system" for the purpose of this Chapter means a designed, constructed, or altered ecological
77 system supporting aquatic and wetland-dependent natural resources, including fish, and aquatic and wetland-
78 dependent wildlife habitats.

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

81 (10) "Target Waterbody" means the Hydrologic Unit Code ("HUC") 12 subwatershed that contains the Credit
82 Purchaser's project.

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

86 (12) "Water quality enhancement area permit" or "WQEA permit" means an ERP issued under Part IV of
87 Chapter 373, F.S., and this chapter for a water quality enhancement area which authorizes the construction,
88 operation, management, and maintenance of a water quality enhancement area and the generation and sale of
89 enhancement credits from the permitted WQEA in accordance with this chapter.

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

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

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

104 (16) "WQEA Owner" or "Owner" means an entity that has a real property interest as described in section
105 4.2.3(d) of Applicant's Handbook Volume I, to construct, operate, maintain, and be responsible for the
106 perpetual management of a water quality enhancement area.

107 (17) "WQEA Perpetual Management Phase" or "Perpetual Phase" means the phase following full
108 implementation of the construction phase and operation and maintenance phase – where the WQEA has
109 achieved success and all enhancement credits have been released as prescribed in the WQEA permit. Perpetual

LVF as developed in this current rule draft is inconsistent with s.373.4134 and SB848 and eliminates the parity between existing off-site compensation (RSMS) for which no LVF is applied.

Author
(no date)

The methodology identified for Variability Factor is overly prescriptive as it restricts credit sales by requiring both WQEA and Credit purchaser to address the same targeted water body. This is not in statute and creates a highly constrained service area inconsistent with

Author
(no date)

This definition is irrelevant to this rule based on the Service Area minimum of HUC 8 where both WQEA and Credit Purchaser must be located pursuant to SB848.

Author
(no date)

Please be consistent with language. "WQEA Applicant" has been used extensively until this draft.

Author
(no date)

110 | water quality improvements and land management activities shall be implemented and maintained in
111 | accordance with the WQEA permit and this rule.

112 | *Rulemaking Authority 373.4134 FS. Law Implemented 373.4134 FS. History--New .*

113 | 62-332.300 General Requirements.

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

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

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

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

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

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

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

133 | ~~(8) WQEAs shall not be constructed wholly over surface waters of the State, as defined in Rule 62-340.600, F.A.C., or~~
134 | ~~be constructed in such a manner that the system severs a portion of a surface water.~~

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

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

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

146 | *Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, ~~403.067~~ FS. History--New .*

147 | 62-332.350 WQEA Permit and WQEA Conceptual Approval Permit Applications.

148 | (1) Any person or entity proposing to establish a WQEA must apply for a WQEA Permit. An application for a
149 | WQEA Permit shall also constitute an application for an ERP under Chapter 62-330, F.A.C. WQEA Permit

Depending on the project, this could be beneficial to the state for a private entity to create a WQEA in this way. There is nothing in statute creating this limitation.

Author
(no date)

Clarifying that this should be the Credit Purchaser's responsibility, not the WQEA Sponsor's.

Author
(no date)

For consistency and parity with RSMS which was intended through SB848, please revise language to that which is used by RSMS when allocations are to be sold from an RSMS.

Author
(no date)

Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use thereof.

Author
(no date)

150 applications shall be processed according to Chapter 62-330, F.A.C. The Department will process and take
151 action on all permit applications under Part IV of Chapter 373, F.S., necessary for the implementation of any
152 WQEA for which it has responsibility for pursuant to the Operating Agreements between the Department and
153 the Districts incorporated by reference in subsection 62-113.100(3), F.A.C.

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

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

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

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

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

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

174 3. Aerial photograph identifying boundaries of the project area;

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

176 5. Legal description of the proposed WQEA.

177 (b) Description and assessment of current site conditions which shall include:

178 1. Soils map of the project area;

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

180 3. Hydrologic features map of the project area and adjacent hydrologic contributing and receiving areas;

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

182 5. Vegetation description and map of the project area;

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

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

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

188 9. Hydrologic/Hydraulic conditions of the site—runoff, water storage, and water quality treatment performance of the
189 existing condition.

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

Land uses change over time, but the WQEA's ecological benefits, flow improvement, and water quality functions are permanent. The WQEA should not be held responsible — or penalized — for land use changes authorized by a Locality, FDEP or WMD that affect its performance; those approvals rest with the state and local gov.

Author
(no date) ...

This is not relevant. Comp plans change at the discretion of each community. The only conditions that should matter are whether the ERP for the WQEA is satisfied and the Credit purchaser has been able to demonstrate no harm to adjacent landowners, which is reviewed in every ERP.

Author
(no date)

This is important to understand the existing performance of the site for ERP to compare to projected performance in the "With Project" condition.

Author
(no date)

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

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

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

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

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

201 3. The proposed vegetation planting scheme when applicable and detailed schedule for implementation; and

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

204 (g) Proposed performance and success criteria monitoring and verification plan in accordance with Rule 62-
205 332.800, F.A.C.

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

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

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

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

215 (l) Any additional information that the Department requests in order to evaluate whether the proposed WQEA meets
216 the criteria of Chapter 62-330, F.A.C., and this chapter.

217 *Rulemaking Authority 373.4134, 403.067(9), 403.805, F.S. Law Implemented 373.4134, 403.067, F.S. History—New*
218 *.*

219 62-332.400 Establishment of Enhancement Credits.

220 (1) The Department will award enhancement credits to the WQEA, or phases thereof, based upon the
221 information submitted in the WQEA permit application and the following:

222 (a) The assessment of anticipated pollutant load reductions or other nutrients to be removed annually from the
223 WQEA.

224 (b) The initial valuation of enhancement credits generated by a WQEA shall be based on standard numerical
225 models or analytical tools that establish the WQEA's capacity to remove pollutants or their constituents on an
226 average annual basis. Any variance between modeled pollutant removal estimates and actual, measured pollutant
227 removal shall be evaluated against pre-established thresholds tied to the WQEA's expected average annual
228 performance of the project, as derived from modeled pollutant load estimates that inherently account for antecedent
229 and climactic conditions in establishing that average annual performance baseline.

230 ability of the WQEA to remove pollutants or their constituents and shall consider the uncertainty between the
231 numerical models or other analytical tools used to estimate the expected removal of pollutants and the actual pollutant
232 removal from the proposed WQEA.

Not all projects require
planting.

Author
(no date)

"After construction"
would be the "designed
condition" and operations
plans that are provided in
this draft rule.

Author
(no date)

It is the responsibility of
the WQEA permit
applicant/sponsor to
provide reasonable
assurances that the
proposed WQEA will
perform. DEP has
methods in the rule for
compliance and
enforcement should
those data/information
used to demonstrate
reasonable assurance
exceed actual
performance of the
WQEA..

Author
(no date)

Section 403.067, Florida
Statutes, does not
provide rulemaking
authority governing
WQEAs or the use
thereof

Author
(no date)

Section 403.067, Florida
Statutes, does not
provide rulemaking
authority governing
WQEAs or the use
thereof.

Author
(no date)

Above added language
provides clarity on how
"uncertainty" is evaluated
and considered.

Author
(no date)

233 (c) Credits shall be released in accordance with the scheduled based upon the anticipated water quality benefits
234 generated by the WQEA for the HUC 8 watershed it serves.

235 (i) Upon the placement of a conservation easement on the WQEA, and prior to full operations, the Department
236 shall release a percentage of the total credits awarded for the fully operational WQEA. The percentage of credits
237 released shall be equivalent to the percentage of total pollutant removal achieved by the WQEA at the time the
238 conservation easement is recorded.

239 (ii) The percentage of credits released pursuant to (i) shall be determined by the activities completed on the WQEA
240 at the time the conservation easement is recorded. As additional pollutant removal is achieved, additional credits shall
241 be released in accordance with this section.

242 The proposed credit release schedule based on conservative estimates including, but not limited to, expected
243 hydrologic variations. The release schedule shall consider the uncertainty between the numerical models or other
244 analytical tools used to estimate the expected removal of pollutants, and the actual pollutant removal from the
245 proposed WQEA.

246 (d) Credits must be based on a standard unit of measure of the specific pollutants removed on an average annual
247 basis annually, which must be greater than any reductions needed to satisfy the requirements in Chapter 62-330
248 F.A.C., and, if applicable, required by a BMAP or adopted RAP.

249 (2) The initial valuation of enhancement credits will be stated in the WQEA permit. The number of credits and
250 schedule for release shall be based upon the performance criteria for the WQEA and the success criteria for
251 each activity. The final release of all enhancement credits awarded will only occur after the WQEA meets all of
252 the success criteria specified in the permit, once the conservation easement and financial assurances are recorded,
253 and in accordance with the for the WQEA Operation and Maintenance Phase. No credits shall be released until the
254 requirements of subsections 62-332.900(1) and (2), F.A.C., are met.

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

258 (4) If the WQEA is not located within a BMAP or adopted RAP, or the Department determines that the
259 numerical model or analytical tool used for the applicable BMAP or adopted RAP is not appropriate for
260 determining the pollutant loading reductions for the proposed WQEA, the Owner must either:

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

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

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

268 (a) Rainfall data over the longest period of record available, either from the National Centers for
269 Environmental Information or collected from the closest site to the proposed WQEA, preferably within the
270 same drainage basin.

271 (b) Anticipated water quality and quantity inflows inputs over a wide range of climatic conditions that captures
272 interannual variation to the proposed WQEA, based on published local data collected over a period of record
273 that most closely matches the rainfall data collected under paragraph (a) above.

274 (c) Site-specific conditions affecting the anticipated performance of the proposed WQEA, including the
275 proposed best management practices (BMP) for stormwater treatment and the anticipated associated reduction rates as-

Revised credit release
schedule language to
account for benefits
achieved by the WQEA
in the watershed prior to
it possibly being fully
operational.

Author
(no date)

62-330 does not require
annual reductions. It only
address reductions
connected to discharges
tied to specific storm
event frequencies. As a
result, the WQEA
Sponsor/Applicant
should be able to show
that the WQEA
stores/treats the storm
events required by 62-
330, AND it will
demonstrate pollutant
reductions that are
evaluated on a
continuous/daily rainfall
basis. The average
annul or annual basis is
not translatable directly
to the storm event basis
making the statement
"must be greater than
any reductions need to
satisfy the requirements
of Ch. 62-330 FAC"
unreasonable and
irrelevant.

Author
(no date)

To require Credits
removed "annually" or on
an "Average annual
basis" to be greater than
"required BMAP or RAP"
indicates that the BMAP
or RAP of the local entity
with a BMAP or RAP
must be satisfied. The
WQEA will not have a
BMAP/RAP allocation.

Author
(no date)

Not all WQEAs will have
"inflows". Suggest
replacing with "inputs".

Author
(no date)

276 | demonstrated by the performance of other areas where the same BMP treatment type has been established and has
277 | operated over a minimum of two consecutive wet and dry seasons.

278 | (d) Data provided under this subsection must be from monitoring stations the Department deems sufficient to
279 | determine flows and local water quality conditions located closest to the proposed WQEA.

280 | (e) Any other supporting information deemed necessary by the Department.

281 | *Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History—New.*

282 | **62-332.500 Service Area and Enhancement Credit Locational Valuation Factor Adjustments.**

283 | (1) The WQEA service area shall depend upon the geographic area in which includes the geographic area of
284 | hydrologically connected waters within which the WQEA could reasonably be expected to address adverse
285 | impacts, offset pollutant contributions that cause or contribute to the failure of the waterbody or water segment to meet
286 | applicable water quality criteria. Service areas may overlap, and more than one service area may be approved
287 | within a regional watershed.

288 | (2) The geographical boundaries of the water quality enhancement service area are the HUC 8 in which the
289 | WQEA is located. Applicants seeking a service area larger than the HUC 8 may submit a model for review
290 | by the FDEP that demonstrates the WQEAs ability to reduce impacts within the HUC 8 and the proposed
291 | expanded service area. will be determined by modeling provided by the WQEA Owner outlining the area within
292 | which the WQEA could reasonably be expected to reduce impacts given the attenuation of the applicable pollutant
293 | downstream of the WQEA.

294 | (3) Numerical models or other analytical tools must be capable of evaluating the fate and transport of the
295 | pollutant(s) of concern within hydrologically connected watersheds and shall be reviewed and approved by the
296 | Department at the time of application demonstrating the proposed WQEA's pollutant reductions benefit the HUC 8 in
297 | which it serves.

298 | (4) The Credit Purchaser's project must be located within the water quality enhancement service area of the and
299 | be hydrologically connected to the WQEA from which credits are purchased.

300 | (5) The Owner shall provide reasonable assurance that the WQEA's credited pollutant load reduction will be
301 | achieved on an average annually basis.

302 | (6) The Agency will adjust the number of credits required for the Credit Purchaser's project using the applicable
303 | location valuation factor (LVF).

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

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

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

311 | **$LVF = TF * VF$**

312 | 1. The TF shall be calculated as $TF = 1/(1 - Attens)$, where Attens is the attenuation between the WQEA's point of
313 | discharge and the Credit Purchaser's point of discharge.

314 | a. The modeled attenuation factor represents the proportion of pollutant reduction during downstream transport in
315 | 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 Rule Chapter, the attenuation factor shall be expressed as a continuous

Ideally we are using publicly available data.

Author
(no date)

Section 403.067, Florida Statutes, does not provide rulemaking authority governing

Author
(no date)

Section 403.067, Florida Statutes, does not provide rulemaking authority governing

Author
(no date)

FDEP's proposed LVF methodology requires that a waterbody be on the same conveyance

Author
(no date)

This revised language accounts for language in existing 373.4134 and SB848, where

Author
(no date)

This language is consistent with SB848 Service Area.

Author
(no date)

By placing emphasis on downstream the benefits to the watershed are not

Author
(no date)

This is not a requirement of statute and is inconsistent with the how other off-

Author
(no date)

(1) Performance-Based Compliance. Performance targets for WQEAs should be

Author
(no date)

This is not required in statute and creates inequity between the existing off-site

Author
(no date)

317 | 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
318 | 50% reduction, and 1.00 indicates complete removal.

319 | 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
320 | Purchaser's project.

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

323 | **$VF = \text{95th percentile concentration} / \text{geometric mean concentration}$**

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

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

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

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

332 | a. The number of credits required by a Credit Purchaser must be calculated as follows: Number of Credits Required =
333 | (Number of standard units of measure for pollutant removed annually required for treatment) x LVF.

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

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

339 | *Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History—New .*

340 | **62-332.530 Perpetual Protection of Water Quality Enhancement Areas.**

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

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

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

Section 403.067, Florida
Statutes, does not
provide rulemaking
authority governing
WQEAs or the use
thereof

Author
(no date)

Section 403.067, Florida
Statutes, does not
provide rulemaking
authority governing
WQEAs or the use
thereof.

Author
(no date)

(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 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 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 as soon as such document is returned from the public records office.

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. 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(4) through (13), 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, reconstruct, 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" (effective date), which is incorporated by reference herein and available at (insert link). 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" (effective date), incorporated by reference herein and available at (insert link) 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" (effective date), incorporated by reference herein and available at (insert link) 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), F.A.C., 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" (effective date), incorporated by reference herein and available at (insert link) 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 Form 62-332.550(10) 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 (insert link) 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.

(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), "WQEA Trust Fund Agreement to Demonstrate Operational or Perpetual Management Financial Assurance" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. 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" (effective date), incorporated by reference herein and available at (insert link) 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 subsections 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 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)(d), 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)(b) 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 construction, 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 construction phase shall include all costs associated with completing construction of the WQEA, or phase thereof including, as applicable, earthmoving; planting; exotic/nuisance vegetation removal; prescribed fire; land surveying; installation of water quality treatment systems, hydrologic control devices, technologies, and BMPs; site security; administrative fees; consultant fees; taxes; monitoring activities and reports; and any other costs associated with the construction phase.

(c) 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.

(d) The cost estimate for the perpetual management 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.

(e) 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.

(f) 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 construction, 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. Construction, 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 construction, 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 operational 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.

666 | *Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134 FS. History—New .*

667 | **62-332.600 Enhancement Credit Transactions and Credit Use.**

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

See earlier comments on LVF.

Author
(no date)

673 | (2) Enhancement credits that have been released may only be used for the purpose of: ~~to~~ (a) achieving net-
674 | improvement under Section 373.414(1)(b)3., F.S., or (b) satisfying performance standards under Section 373.4134(3)
675 | ~~(a), F.S., address adverse water quality impacts of activities regulated under ss.373.403-373.443~~ or (eb) meeting the
676 | allocations of an adopted BMAP or adopted RAP under Section 403.067, F.S.

677 | (3) To use enhancement credits, the Credit Purchaser must submit to the Agency permitting the impact a
678 | Reservation Letter from the WQEA Owner demonstrating that enhancement credits have been reserved, sold,
679 | or transferred to the Credit Purchaser. If the Agency permitting the Credit Purchaser's ERP determines that
680 | use of the enhancement credits proposed by the Credit Purchaser is appropriate to offset the adverse impacts,
681 | the Agency permitting the impact shall require the sufficient number and type of enhancement credits be
682 | withdrawn prior to the issuance of the Credit Purchaser's permit or as a condition of the Credit Purchaser's
683 | permit.

684 | (4) An enhancement credit included in a previously authorized credit transaction is not available for another
685 | transaction.

Point source dischargers should not be excluded from using Enhancement credits for the purposes identified in s.373.4134.

Author
(no date)

686 | (5) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than
687 | those necessary to obtain an ERP for construction and operation of a surface water management system unless they are
688 | seeking to (a) address adverse water quality impacts of activities regulated under ss.373.403-373.443 and/or (b) meet
689 | the allocations of an adopted BMAP or adopted RAP under Section 403.067, F.S.

Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use thereof.

Author
(no date)

690 | (6) Purchase of enhancement credits is voluntary.

691 | *Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, ~~403.067 FS.~~ History—New .*

692 | **62-332.700 Enhancement Credit Tracking.**

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

694 | (2) The ledger shall include all WQEA credit transactions involving enhancement credits under this Chapter, or
695 | ~~trades under Chapter 62-306, F.A.C.~~

This is not applicable. It is a separate system and framework with separate authorities.

Author
(no date)

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

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

700 | (5) The ledger shall include the following information:

701 | (a) The amount and type of credits generated in the WQEA.

702 | (b) A brief description of actions or activities that generated the release of credits.

703 | (c) The date credits become available for purchase.

704 | (d) The date of the most recent inspection of the WQEA.

705 | (e) The Credit Purchaser's name.

706	(f) Credit Purchaser's permit number and date of issuance.	This is irrelevant to WQEA credits or 373.4134. WQCT trades are under a separate authority and
707	(g) Credit Purchaser's BMAP or RAP allocation issuance and expiration date for trades.	Author (no date) ...
708	(h) The Credit Purchaser's permitting Agency.	Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use
709	(i) The amount and type of credits sold in each purchase.	Author (no date) ...
710	(j) The balance of the amount and type of credits available after purchase or credit generation in the WQEA.	
711	(k) The date the WQEA ledger is updated.	
712	Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History—New .	
713	62-332.800 Enhancement Credit Monitoring and Continuing Credit Verification.	See earlier comments on variations of project types and their ability to monitored and provide proof, as well
714	(1) Annually, the Owner must demonstrate the achievement of pollutant reductions of no less than the number of	Author (no date) ...
715	credits sold, consist with conditions of the permit for the WQEA.	
716	(2) The WQEA Owner must implement a performance and success criteria monitoring and verification plan	The proposed requirements are inconsistent with the standards governing other compensatory
717	approved by the Department, including protocols and monitoring frequency, to be implemented once the	Author (no date) ...
718	WQEA is permitted and operational. These shall be consistent with the monitoring and verification protocols	
719	already authorized and permitted for other off-site compensation systems.	
720	(a) Enhancement credits shall be directly measured by the Owner in accordance with the Department-approved	Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use
721	monitoring and verification plan in accordance with the WQEA permit.	Author (no date) ...
722	(b) The plan must be sufficient to demonstrate that the WQEA meets defined performance criteria for pollutant	
723	reductions on which enhancement credits are based and the success criteria for each activity.	
724	(c) The Owner must implement the approved monitoring and verification plan in perpetuity in accordance with	
725	the permit and ch.62-330 FAC requirements for Operation and Maintenance for Compensating Stormwater Treatment.	
726	(3) The monitoring and verification protocols must be able to measure the difference in water quality and flows before	Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use
727	water enters the WQEA and is discharged from the WQEA in order to accurately demonstrate the WQEA's pollutant	Author (no date) ...
728	reductions and ensure that all released enhancement credits have been achieved. At a minimum, monitoring must	
729	include flow and concentration data into and out of the WQEA.	
730	Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History—New .	
731	62-332.900 Compliance and Enforcement.	The standard for BMPs inspections is already provided for in 62-330FAC section 12 ERP Applicant's
732	(1) The Owner must certify and submit annually to the Department that the control devices and systems, technologies,	Author (no date) ...
733	best management practices, or other activities on which the enhancement credits are based continue to be fully	
734	implemented and properly operated and maintained, and that pollutant load reductions continue to be achieved, shall	
735	comply with the inspection and reporting requirements set forth in ch. 62-330 FAC related to Operations and	
736	Maintenance.	
737	(2) The Owner must report annually to the Department the pollutant loads of their targeted pollutant at the	Not all WQEAs may have a discharge point.
738	discharge point(s) of the WQEA, in the standard units of measure for the WQEA at a frequency required by the	Author (no date) ...
739	permit to demonstrate pollutant load reduction resulting in credits.	
740	(3) The Owner must maintain records demonstrating that the control devices and systems, technologies, best	Revise to use the same language as existing permitted compensating stormwater treatment
741	management practices, or other management actions upon which credits are based continue to be fully	Author (no date) ...
742	implemented and properly operated and maintained in perpetuity. The Owner must notify the Department in	
743	writing within 30 calendar days of any changes to the size, nature, function, or treatment capabilities of the	
744	WQEA. Any such changes may result in a WQEA permit modification to ensure credit transactions maintain at	
745	least their approved level of pollutant load reduction. The Owner must allow the Department, or Department's	

746 | agent, to inspect the records and the control devices and systems, technologies, best management practices, or
747 | other management actions during regular business hours.▲

Should we just reference
existing rule for
Operations and
maintenance?

Author
(no date)

748 | (4) The Owner is responsible for achieving the pollutant load reductions on which the credits are based and
749 | complying with the terms of its permit, including any associated financial assurance instruments and
750 | monitoring and verification plan, in perpetuity. In the event the Department determines the purchased released
751 | credits are invalid because the Owner has failed to comply with its monitoring and verification plan, has failed
752 | to demonstrate that the WQEA is meeting defined performance and success criteria for the reduction of
753 | pollutants on which credits are based, or otherwise has failed to meet the conditions of its permit, including
754 | financial assurances, the Department may suspend the authorization to withdraw enhancement credits until
755 | such time as the Owner returns to compliance and credits have been reevaluated.

Section 403.067, Florida
Statutes, does not
provide rulemaking
authority governing
WQEAs or the use
thereof

Author
(no date)

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

757 | Rulemaking Authority 373.4134, ~~403.067(9)~~, 403.805 FS. Law Implemented 373.4134, 403.067 FS, History—New .

Section 403.067, Florida
Statutes, does not
provide rulemaking
authority governing
WQEAs or the use
thereof

Author
(no date)

758 | 62-332.920 Surrender or Transfer of Water Quality Enhancement Area Permits.

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

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

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

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

776 | Rulemaking Authority 373.4134, ~~403.067(9)~~, 403.805 FS. Law Implemented 373.4134, ~~403.067 FS~~, History—New .

Section 403.067, Florida
Statutes, does not
provide rulemaking
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WQEAs or the use
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Author
(no date)

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