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

Transmitted via e-mail: Borja.CraneAmores@FloridaDEP.gov

RE: Resource Environmental Solutions, LLC Comments Regarding Draft Rule Chapter 62-332, F.A.C., Water Quality Enhancement Areas

Dear Mr. Crane-Amores,

Resource Environmental Solutions (RES) is pleased to provide comments to the Florida Department of Environmental Protection (FDEP) regarding the Draft Rule Chapter 62-332, F.A.C., Water Quality Enhancement Areas, and Section J WQEA Supplemental Form. RES supports the permitting of WQEAs to develop water quality enhancement credits to provide offsite compensatory treatment under Section 373.4134, F.S., and as permitted under Chapter 62-330, F.A.C., Environmental Resource Permitting, and to provide alternatives to stakeholders to meet BMAP and RAP allocations.

From an operational and programmatic perspective, RES believes the long-term success of Chapter 62-332, F.A.C., depends on ensuring that WQEAs function as a predictable, transparent, and implementable credit program that can be deployed consistently across watersheds while maintaining environmental protection and regulatory confidence. In particular:

- WQEAs need to be clearly positioned as the primary vehicle for generating enhancement credits, supported by permit-level accountability, equitable enforceable performance standards, long-term financial responsibility, and transparent credit tracking.
- Location value factor (LVF) provisions are not authorized by statute for environmental resource permitting. These provisions are not imposed on any other forms of offsite compensation, and WQEAs should not be held to a higher standard. If DEP continues to include those factors, then service area and locational valuation factor (LVF) provisions should be refined to avoid categorical restrictions that are not required by statute and that could unnecessarily constrain scientifically defensible, modeled treatment scenarios. LVF provisions should only apply to WQEA credits for basin management action plan (BMAP) and regional assurance plan (RAP) allocations consistent with models and tools already used for crediting projects in existing BMAPs and RAPs.
- Monitoring and verification requirements should align with the realities of natural and nature-based treatment systems, rather than presuming point-source style inflow/outflow accounting in all cases. These requirements must recognize climatic factors, such as drought and flood conditions, which may require a multi-year average for compliance. This is already recognized for compliance in many total maximum daily loads, BMAPs and RAPs.
- Financial assurance requirements should be calibrated to ensure long-term stewardship without unnecessary overcapitalization, supporting both environmental protection and program viability and addressed separately in DEP's mitigation bank financial assurance rulemaking. That rulemaking was initiated in 2022. The Legislature required rulemaking to be completed by June 2023. Despite DEP's best efforts, a final rule has not been developed. This rule should not be used to circumvent the mitigation bank financial rulemaking. Maintaining new financial assurances provisions in this rule will likely prevent DEP's efforts to complete rulemaking by October 2026 and could result in inconsistent provisions in the mitigation bank rule and the WQEA rule. Because of this, RES is recommending an interim approach, which is explained below in the Financial Responsibility section.
- Provisional permits authorized under SB 848 (Ch. 2026-60, Laws of Florida) need to be recognized throughout the rule to ensure redundant or additional burdensome permitting requirements are not applied when provisional permits exist.

The specific comments below and redlined in the draft rule and Section J supplemental form are offered to help strengthen the WQEA program, improve clarity for applicants and regulators, and support fair and consistent implementation across compensating stormwater treatment projects.

62-322.100 Scope and Intent

- **Lines 30-32.** Because the rule references operating agreements with WMDs, but never clearly states that FDEP is the permitting authority for WQEAs, clarification is needed that FDEP is the permitting authority responsible for issuing WQEA permits statewide, including authorization for construction, operation, credit generation and credit release. The division of permitting responsibility in the operating agreements pertains only to credit purchasers, and not the permitting of WQEA.

  Proposed Language:

  (3) The Department is the responsible authority for issuing environmental resource permits for the construction, operation, maintenance, and long-term management of water quality enhancement areas. The responsibilities for authorizing the use of enhancement credits by the credit purchaser ~~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.

62-332.200 Definitions

- **Line 44**. RES recommends adding a definition for "Conservation Easement"

  Proposed Language

  (1) "Conservation Easement" is defined in section 704.06, F.S. The requirements for a conservation easement are set forth in this section.

- **Lines 59-61**. (5) "Enhancement credit" or "credit". RES recommends revising this language to reflect the provisions of Ch. 2026-60, Laws of Florida.

  Proposed Language

  (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~~.

- **Lines 66-72.** (7) "Locational Valuation Factor" ("LVF"). There is no statutory authority for LVF. Pursuant to section 4 of Ch. 2026-60, Laws of Florida, WQEAs are a form of compensating stormwater treatment under the ERP program just like the other forms of compensating stormwater treatment set forth in section 9.7 of the ERP Applicant's Handbook Volume I (A.H. I), which does not specify or require the use of LVF or similar location adjustment methodology for any other form of compensating stormwater treatment. As such, when any of the other forms of compensating stormwater treatment listed in that section 9.7 are used to meet the ERP stormwater performance criteria, no LVF or similar are applied to such use. For example, several regional stormwater management systems (RSMS) have been permitted and transfers of allocations from those permitted RSMS's have been authorized. In the ERPs authorizing the use of pollutant load reduction allocations from a RSMS, no LVF or similar was applied or used. The allocations were simply authorized for use on a one-to-one basis. See for example, permit numbers 43031128.008 and 43031128.010 issued by the Southwest Florida Water Management District and permit number 41-0168124-EI issued by the Department transferring pollutant load reduction allocations from the RSMS known as the SR 43 Pond 29 CMAC Improvements. Therefore, to ensure parity among all forms of compensating stormwater treatment, RES recommends deleting the LVF language when enhancement credits are used to satisfy the ERP criteria and obtain an ERP.

  In contrast to RSMS and other forms of compensating stormwater treatment, enhancement credits from a permitted WQEA are authorized to be used to meet an assigned basin management action plan (BMAP) or reasonable assurance plan (RAP) allocations. When enhancement credits are used to meet BMAP or RAP requirements, it is appropriate to use any location adjustment contained within the numerical model or analytical tool used for the specific BMAP or RAP. This term needs to recognize the service area. RES recommends clarifying that the LVF is a credit adjustment mechanism applied within an approved WQEA service area for a BMAP or RAP, not a threshold determination of eligibility.

Proposed Language:

<u>(7) "Locational Valuation Factor" ("LVF") means a numeric adjustment applied to enhancement credits used for a BMAP or RAP allocation to account for differences in pollutant transport, attenuation, and variability between the Water Quality Enhancement Area ("WQEA") and Credit Purchaser's discharge location within the WQEA service area based on models or other analytical tools.</u>

- **Lines 78-79**. RES recommends deleting (10) "Target Waterbody" definition. This term is not needed and incorporates two different subjects that creates confusion.

- Line 83. RES recommends adding language to the WQEA definition to allow land conversion strategies, such as restoring agricultural or other disturbed or managed landscapes to the natural state, where such conversion results in quantifiable and additional pollutant load reductions.
- ***Proposed Language:***

  <u>(11)</u> "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 ~~generated~~ <u>provided pursuant to a WQEA permit. This may include conversion of disturbed lands back to a natural state.</u>

- ***Lines 109.*** RES recommends inserting a definition for the WQEA Service Area that aligns with the statute.

  Proposed Language:

  <u>(17) "WQEA Service Area" means the geographic area in which the WQEA could reasonably be expected to address adverse impacts 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.</u>

- **Lines 101-103.** The proposed rule uses the term "WQEA Owner" to refer to the person or entity controlling or operating the WQEA. The use of the word "Owner" here creates confusion because section 373.4134(4)(a)5., F.S., and the proposed rule language section 62-332.350(4)(i) only require a WQEA permit applicant to provide evidence of sufficient legal or equitable interest in the property which is to become the WQEA. This legal or equitable interest does not have to consist of fee title to be sufficient. For example, a lease or an easement over the land to become the WQEA could be sufficient if such lease, easement or other land use agreement provides sufficient authority for the WQEA operator to meet the requirements of the WQEA permit. To avoid confusion, RES recommends changing this term to "WQEA Sponsor."

  Proposed language:

  <u>(16) "WQEA Sponsor" 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.</u>

62-332.300 General Requirements

- **Lines 120.** RES recommends that governmental entities may participate in WQEAs directly or in partnership with private entities, including through public-private partnerships, joint development agreements, or lease structures, provided that all requirements of this chapter are met.
- ***Proposed Language:***

  (4) A governmental entity may be a WQEA ~~owner~~ <u>sponsor</u> and use the credits generated by the WQEA permit for its own water quality needs <u>to meet BMAP allocation or RAP or to meet environmental resource permit stormwater treatment performance standards or to achieve net improvement.</u> However, a governmental entity may not act as a sponsor to construct, operate, manage, or maintain a water quality enhancement area to market enhancement credits to third parties <u>but government entities may partner with private entities to develop WQEAs.</u>

- **Lines 133-138**. RES supports FDEP's authority to ensure that credit use does not cause or contribute to violations of water quality standards. To improve predictability and consistency, RES recommends clarifying that any limitation on credit use within an approved service area be supported by documented, site-specific analyses demonstrating a material risk of localized adverse impacts. In addition, this proposed rule language incorporates the use of the term "may" creates a conflict with other water quality statutes.
  Proposed Language:
  (9) As provided by s. 373.4134(7)(j), F.S., the agency <u>shall</u> ~~may~~ 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 <u>based on documented, site-specific analyses demonstrating a material risk of localized adverse risks</u>, even if the project being implemented by the applicant 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 applicant 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.

- **Lines 139-143.** Provisional permits. In case provisional permits are issued before the rule is finalized as authorized under SB 848, they need to be recognized throughout the rule to ensure redundant or additional burdensome permitting requirements are not applied when provisional permits exist. RES recommends that provisional permits be automatically transferred to a standard/individual permit after rulemaking is complete, including recognition of credits.
  Proposed Language
  (10) The issuance of a WQEA permit <u>or provisional WQEA permit</u> does not eliminate the WQEA sponsor'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 <u>or provisional WQEA permit</u> does not preclude the responsibility of the WQEA sponsor to obtain other applicable federal, state, and local permits for construction activities associated with the WQEA.

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

- **Lines 148-153.** RES recommends stating that FDEP is the lead agency for permitting of WQEAs, including credit determination and release schedules, to ensure consistent statewide administration.
  Proposed Language:
  (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~~ <u>a</u> WQEA ~~for which it has responsibility for pursuant to the Operating Agreements between the Department and the Districts incorporated by reference in subsection 62-113.100(3), F.A.C~~.

- **Lines 160-163.** RES recommends referencing provisional permits.
  Proposed Language
  (3) A WQEA Permit <u>or provisional WQEA permit</u> shall automatically expire five years from the date of issuance if the <u>WQEA sponsor</u> 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.

62-332.350 Information needed for permit application

- **Lines 164-214**. Overall, RES finds that the required information is generally reasonable and appropriate to support FDEP review of WQEA feasibility, performance, and long-term viability.
- **Lines 190-193**. Clarification is needed regarding expectations for numerical models and analytical tools outside of those available for BMAPs and RAPs. The rule would benefit from clearer guidance on approach for acceptable models and analytical tools when a BMAP or RAP model does not exist to demonstrate pollutant load reduction

and fate and transport. Early clarity on approvable models will improve application quality, reduce iterative review cycles, and support consistent implementation across projects.

62-332.400 Establishment of Enhancement Credits.

- **Line 219**. RES recommends acknowledging WQEA provisional permits in the rule.

- **Line 230.** This provision generally looks reasonable. An entity will be able to submit a release schedule which coincides with the percentage of endowment funding. RES would like to confirm that the intent in this section parallels mitigation banking requirement.

- **Lines 234 - 236.** RES recommends adding language to the proposed rule that acknowledges enhancement credits awarded under a provisional permit approval and allowing those credits to be recognized and managed under the WQEA ledger, subject to compliance with final permit conditions.

  Proposed Language:

  (2) The ~~initial~~ valuation of enhancement credits will be stated in the WQEA permit <u>or provisional WQEA permit.</u> 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 <u>as specified in the WQEA permit or provisional WQEA permit.</u>

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

- **Line 269 - 272**. The purpose of allowing WQEAs is to improve water quality while balancing economic development interests of state and local governments and allow developers flexibility and assurances to develop projects in a timely and efficient manner. Equally important for the program to be successful is that the sponsors of WQEAs be successful in establishing and providing credits for a healthy WQEA marketplace. This is difficult if not impossible to achieve if there are not defined service areas that have a reasonable expectation that WQEA credits can be developed and sold. RES recommends the following language changes to align with SB 848 (Ch. 2026-60, Laws of Florida):

  Proposed Language:

- *(1) The WQEA service area <u>shall depend upon the</u> ~~includes the~~ geographic area <u>in which the water quality enhancement area could reasonably be expected to address adverse impacts that cause or contribute to the failure of the regional watershed to meet applicable water quality criteria and must, at a minimum, consist of a Hydrologic Unit Code (HUC 8) sub-basin as set forth by the United States Geological Survey</u> ~~of hydrologically connected waters within which the WQEA could reasonably be expected to offset pollutant contributions that cause or contribute to the failure of the waterbody or water segment to meet applicable water quality criteria~~. Service areas may overlap, and more than one service area may be approved within a regional watershed."*

- **Lines 283-313.** As stated above, WQEAs are a form of compensating stormwater treatment under the ERP program just like the other forms of compensating stormwater treatment set forth in section 9.7 of the ERP Applicant's Handbook Volume I (A.H. I). A.H. I does not specify or require the use of LVF or similar location adjustment methodology for any other form of compensating stormwater treatment. As such, when any of the other forms of compensating stormwater treatment listed in that section 9.7 are used to meet the ERP stormwater performance criteria, no LVF or similar are applied to such use. For example, RSMS permitted to date have not been required to use LVF or similar when using pollution reduction allocations. The Department has identified no reason why a LVF should be applied to the use of WQEA enhancement credits when LVFs are not applied to the use of other forms of compensating stormwater treatment. To ensure enhancement credits from a WQEA are used in parity with other forms of compensating stormwater treatment, and to ensure the proposed use does not irrationally impose additional requirements on the use of WQEA enhancement credits, RES recommends deleting the LVF language for ERP. For BMAPs and RAPs, the LVF should function the same as it does for other BMAP and RAP projects as it relates to the location of the WQEA to the waterbody being restored.

  ***Proposed Language*:**

  <u>Delete all LVF language in (6) and insert:</u>

<u>(6) When a WQEA is used to satisfy BMAP or RAP allocations, the department</u> will adjust the number of credits required for the Credit Purchaser's project <u>based on location within the WQEA service area using the applicable numerical models and analytical tools used for determining project credits for the identified BMAP or RAP.</u>

62-332.530 Perpetual Protection of Water Quality Enhancement Areas

- **Line 352**. RES recommends conditioning the requirement for a Phase I Environmental Site Assessment based on ownership structure and risk. Requiring a Phase I ESA in all circumstances may be unnecessarily burdensome where fee simple ownership and site history present minimal risk.

  Proposed Language:

  (d) <u>If the property is deemed high risk</u>, 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.

62-332.550 Financial Responsibility

- RES is concerned that the proposed financial responsibility provisions in this proposed rule will be seen as precedent for revising the financial responsibility provisions of Chapter 62-342, F.A.C., relating to wetland mitigation banks without the Department addressing and resolving the comments and issues raised by the regulated community, including RES, on the Chapter 62-342, F.A.C., revisions proposed by the Department that were discussed at the Department's December 8, 2025, public workshop. By proceeding with rulemaking in this manner, RES is concerned that the financial responsibility provisions of these rules will become the point of opposition to this needed rulemaking by the mitigation banking regulatory community who is concerned about the precedent being set.

  To avoid this outcome, RES recommends that, as an interim approach, the Department incorporate by reference with appropriate name and structure revisions, the existing financial responsibility mechanisms in Chapter 62-342, F.A.C. Then, when the rulemaking on Chapter 62-342, F.A.C., financial responsibility mechanisms is completed, the Department can initiate rulemaking to amend this proposed Chapter 62-332 to incorporate similar financial responsibility mechanisms.

  Proposed Language:

  (Strike all existing language and insert the following.)

  62-332.550 Financial Responsibility.

  <u>(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~~ WQEA Sponsors 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.</u>

  <u>(2) Submitting Financial Responsibility Documentation. The WQEA Sponsor 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</u>

  <u>(3) 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.</u>

  <u>(4) Demonstration of financial responsibility shall be continuous until complete satisfaction of the applicable permit conditions and approved release of financial responsibility by the Department.</u>

  <u>(5) A WQEA Sponsor shall not use a financial responsibility mechanism for more than one WQEA.</u>

(6) A WQEA Sponsor must notify the Department by certified mail within 10 days after the commencement of a voluntary or involuntary proceeding:
1. To dissolve the WQEA Sponsor;
2. To place the WQEA Sponsor in receivership;
3. For entry of an order for relief against the WQEA Sponsor 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.
(7) A WQEA Sponsor 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 WQEA Sponsor must notify the Department within 10 days and establish other financial assurance within 60 days after such an event.
(8) The WQEA Sponsor may use any of the following financial responsibility mechanisms:
(a) Surety or Performance Bond as set forth in rule 62-342.700(5), F.A.C., which is incorporated by reference.

1. If a WQEA Sponsor elects to use a surety or performance bond, the wording on Form 62-342.700(5) shall be revised to replace the phase "mitigation bank" with "Water Quality Enhancement Area" and the phrase "Construction and Implementation" shall be replaced with the phrase "Operation and Maintenance."

2. Whenever the phase "mitigation banker" occurs in rule 62-342.700(5), F.A.C., it shall be replaced with "WQEA Sponsor" for the purposes of this rule.

3. Whenever the phase "Agency" occurs in rule 62-342.700(5), F.A.C., it shall be replaced with the phase "Department."

4. The use of surety or performance bond must comply with all other provisions of rule 62-342.700(5). F.A.C.,

(b) Irrevocable Letter of Credit as set forth in rule 62-342,700(6) which is incorporated by reference.

1. If a WQEA Sponsor elects to use an irrevocable letter of credit, the wording on Form 62-342.700(6) shall be revised to replace all of the phases "Mitigation Bank" with the phase "Water Quality Enhancement Area," and all occurrences of the phrase "Construction and Implementation" with the phase "Operation and Maintenance." 2. Whenever the phase "mitigation banker" occurs in rule 62-342.700(6), F.A.C., it shall be replaced with the phrase "WQEA Sponsor."

3. Whenever the phase "Agency" occurs in rule 62-342.700(6), F.A.C., it shall be replaced with the phase "Department."

4. The use of an irrevocable letter of credit must comply with all other provisions of rule 62-342.700(6), F.A.C.

(c) Insurance Policy as set forth in rule 62-342.700(7), F.A.C., which is incorporated by reference.

1. If a WQEA Sponsor elects to use an insurance policy, the wording on Form 62-342.700(7) shall be revised to replace all of the phrases "Mitigation Bank" with the phrase "Water Quality Enhancement Area" and all occurrences of the phrase "Construction and Implementation" shall be replaced with the phrase "Operation and Maintenance."

2. Whenever the phrase "mitigation banker" occurs in rule 62-342.700(7), F.A.C., it shall be replaced with the phrase "WQEA Sponsor."

3. Whenever the phrase "Agency" occurs in rule 62-342.700(7), F.A.C., it shall be replaced with the phrase "Department."

4. Whenever the phase "construction and implementation" occurs in rule 62-342.700(7), F.A.C., it shall be replaced with the phrase "operation and maintenance."

5. The use of an insurance policy must comply with all other provisions of rule 62-342.700(7), F.A.C.

(d) Escrow as set forth in rule 62-342.700(8), F.A.C., which is incorporated by reference.

1. If a WQEA Sponsor elects to use an escrow, the wording in form 62-342.700(8) shall be revised to replace all of the phrases "mitigation bank" with the phrase "Water Quality Enhancement Area" and all occurrences of the phrase "Construction and Implementation" with the phrase "Operation and Maintenance."

2. Wherever the phrase "mitigation banker" occurs in rule 62-342.700(8), F.A.C., it shall be replaced with the phrase "WQEA Sponsor."

3. Wherever the phrase "Agency" occurs in rule 62-342.700(8), F.A.C. it shall be replaced with the phrase "Department."

(d) Trust fund as set forth in rule 62-342.700(11), F.A.C., which is incorporated by reference.

1. If the WQEA Sponsor elects to use a trust fund, the wording on Form 62-342.700(11) shall be revised to replace all of the phrases "Mitigation Bank" with the phrase "Water Quality Enhancement Area" and all occurrences of the phrase "Construction and Implementation" shall be replaced with the phrase "Operation and Maintenance."

2. Wherever the phrase "mitigation banker" occurs in rule 62-342.700(11), F.A.C., it shall be replaced with the phrase "WQEA Sponsor"

3. Wherever the phrase "Agency" appears in rule 62-342.700(11), F.A.C, it shall be replaced with the phrase "Department."

(9) A WQEA Sponsor using a surety or performance bond, irrevocable letter of credit, or insurance policy shall contemporaneously establish either a standby escrow with the Florida Department of Financial Services or a standby trust fund.

(a) The standby escrow shall comply with rule 62-342.700(9), F.A.C., which is incorporated by reference. Wherever the phrase "Agency" occurs in rule 62-342.700(9), F.A.C, it shall be replaced with the phrase "Department."

(b) The standby trust fund shall comply with rule 62-342.700(10), F.A.C., which is incorporated by reference. Wherever the word "Agency" appears in rule 62-342.700(10), F.A.C, it shall be replaced with the word "Department."

(10) Endowment

(a) A WQEA Sponsor 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.

(11) 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 above.

(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(14), 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 prior to the release of any enhancement credits.

(12) Financial Responsibility for Perpetual Management Phase.

(a) A WQEA Sponsor shall establish financial assurance for the perpetual management of the WQEA, or phase thereof by complying with the provisions of rule 62-342.700(12), F.A.C. Wherever the phrase "banker" or "mitigation banker" occurs in that rule, it shall be replaced with the phrase "WQEA Sponsor."

(13) Cost Estimates

(a) For the purposes of determining the amount of financial responsibility that is required in this subsection, the WQEA Sponsor 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 necessary, under professional licensing laws or regulations, 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 587 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.
(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.
(g) Upon the WQEA Sponsor's written request, the Department shall release the financial responsibility mechanism(s) provided for the WQEA operation and maintenance phase when the defined success criteria and targets set forth in the WQEA Permit are met and all enhancement credits are released. In addition, as the WQEA Sponsor successfully completes one or more activities in the WQEA operation and maintenance phase, the WQEA Sponsor may request and, if requested, the Department shall approve, a reduction in the amount of financial responsibility provided for the operation and maintenance phase in the amount of the costs of successfully completed activities upon the Department's determination that such activities have been successfully completed as determined by the WQEA permit
(14) Cost adjustments.
(a) Every five years, or upon longer time intervals as specified in the permit, the WQEA Sponsor 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 WQEA Sponsor 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 WQEA Sponsor 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 WQEA Sponsor 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 WQEA Sponsor 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.

- **Line 383.** RES recommends having the ability to reduce the financial assurances provided for the Operation and Maintenance Phase once all activities for that phase have been satisfactorily completed. For Perpetual Management Phase, RES recommends having the ability to reduce every 5-years as the endowment is being trued up with cash.
  Proposed Language:
  Insert between lines 435 and 436: *(d) Upon the WQEA sponsor's written request, the Department shall release the financial responsibility mechanism(s) provided for the WQEA operation and maintenance phase when the defined success criteria and targets set forth in the WQEA Permit are met and all enhancement credits are released. In addition, as the WQEA Sponsor successfully completes one or more activities in the WQEA operation and maintenance phase, the WQEA Sponsor may request and, if requested, the Department shall approve a reduction in the amount of financial responsibility provided for the operation and maintenance phase upon determining that the identified items have been successfully completed as determined by the WQEA permit*

- **Lines 401 – 405**. RES recommends that this language be clarified to reflect that the notice is of an intent to cancel or terminate the financial responsibility mechanism.
  Proposed Language:
  (c) Collectively, the financial responsibility mechanisms must guarantee that the WQEA sponsor will perform all of its obligations under the permit. Within 90 days after receipt by both the Sponsor and the Department of a notice of intent to cancel or terminate a financial responsibility mechanism, the S shall establish a replacement financial responsibility mechanism that meets the criteria of this Rule and submit a draft of such replacement financial responsibility mechanism to the Department for approval. Upon receipt of the Department's approval, the WQEA sponsor shall fund and have the replacement financial responsibility mechanism fully activated. 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.

- **Lines 422-426**. The proposed rule requires that the financial responsibility mechanism must cover the cost to repair, reconstruct, or re-establish the WQEA if the WQEA is partially or completely destroyed due to a catastrophic event outside of the WQEA sponsor's control. However, the proposed rule contains no language specifying how this amount of catastrophic coverage financial assurance is to be determined. As such, WQEA permit applicants have no guidance on how to comply with this provision. Similarly, the proposed rule provides no guidance to the Department to determine when this requirement is satisfied, giving the Department unbridled discretion to determine when this requirement is met.

- **Line 548.** Please clarify if the 110% includes 10% contingency. Is 10% contingency being added in the annual cost estimate and then double counting it by trying to get to the 110%?

- **Line 564.** This proposed rule language allows the financial responsibility mechanism for the perpetual management phase to be funded over time as credits are withdrawn for a period not exceeding five years "or as specified by the WQEA permit." As currently proposed, the rule would allow the Department to shorten the time period for funding to less than five years but provides no criteria or guidance as to when or how the Department would decide to shorten that funding time period. As such, this proposed rule language gives the Department unbridled agency discretion contrary to the rulemaking requirements of Chapter 120, F.S. RES recommends revising this proposed rule language to provide the criteria the Department will use to decide when to shorten the funding period to less than 5 years with an individual WQEA permit.

- RES recommends that FDEP clarify the funding schedule, the timing of the final true up, and access to funds where a WQEA continues to sell credits after ecological success. Aon's presentation contemplated a funding schedule aligned to credit releases, with a true up at final success targeting a 135 percent funded ratio. RES recommends clarifying that funding in proportion to credit releases remains the governing principle, that the final true up occurs at the determination of final success, and that where a WQEA remains operational and is continuing to sell credits after final success, the rule will specify when the perpetual account becomes available for eligible draws and how any remaining funding obligations synchronize with ongoing sales. These clarifications will reduce ambiguity in the transition from construction/implementation to perpetual management.

- **Lines 580 – 584.** This proposed rule language requires a WQEA permit applicant to provide a cost estimate for the construction phase of a WQEA. However, the overall structure of the proposed rule does not require financial responsibility for the construction phase of a WQEA. Therefore, the information required by this proposed rule language is unnecessary. RES recommends deleting lines 580 – 584.
  Proposed Language:
  ~~(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.~~

- **Line 605:** Section 3 of Chapter 2026-60, Laws of Florida, amended section 373.413, Florida Statutes, to require that regional stormwater management systems update cost estimates for financial responsibility once every 5 years. Regional stormwater management systems are one form of compensating stormwater treatment, and WQEAs are another form. There is no rational basis to require that WQEAs update their cost estimates once every 2 years while regional stormwater management systems update their cost estimates every 5 years. To provide consistency among the various compensating stormwater treatment options, RES recommends that the proposed rule language be consistent with the provisions of Chapter 2026-60, Laws of Florida.
  Proposed Language:
  Every ~~two~~ <u>five</u> years, or <u>upon longer time intervals</u> as ~~specificed~~ <u>specified</u> in the permit, the WQEA sponsor shall undertake an estimate of the costs of the remaining construction, operation and maintenance, and perpetual management activities.

62-332.700 Enhancement Credit Tracking

- RES recommends that FDEP maintain a centralized, publicly accessible WQEA credit ledger to support transparency and consistent administration. WQEA Sponsors should continue to provide internal ledgers and annual financial documentation to FDEP.
- **Line 687.** Recommend adding language to recognize ERP permittees.
  Proposed Language:
  (g) Credit Purchaser's BMAP or RAP allocation issuance and expiration date for trades<u>, or Credit Purchaser's ERP requirement</u>.

62-332.800 Enhancement Credit Monitoring and Continuing Credit Verification

- RES recommends revising monitoring, verification and compliance provisions to recognize that WQEAs are natural, nature-based systems whose performance is appropriately demonstrated through a variety of mechanisms depending on the system, such as FDEP-approved ecological performance standards, monitoring and verification plans, representative field monitoring, and approved numerical models. Requiring continuous direct quantification methodologies may not always align with the hydrologic and ecological function of the permitted WQEA, especially if it is a naturally distributed system.
- RES recommends flexibility to reduce monitoring frequency over time where data demonstrate stable and reliable performance. RES recommends mirroring the 404 process where a sponsor could petition for reduced monitoring based on success as opposed to attempting to spell out all possible scenarios in the regulation.
- Additionally, RES recommends that monitoring be reasonable and on par with regional stormwater management systems and other offsite compensatory treatment, especially in a HUC 12 watershed. Once the WQEA has received final credit release, the WQEA project has achieved final success criteria, and the WQEA has entered the perpetual phase, then the level of "monitoring" that is required into perpetuity needs to be determined.
  Proposed Language:
  (1) ~~Annually,~~ <u>The WQEA sponsor</u> must demonstrate the achievement of pollutant reductions <u>on a multi-year average annual basis based on the permit requirement</u> of no less than the number of credits sold.
  (2) The WQEA ~~owner~~ <u>sponsor</u> 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 permitted and operational.
  (a) Enhancement credits shall be directly measured by the ~~Owner~~ <u>WQEA sponsor</u> 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.
  <u>(c) When the WQEA enters the perpetual phase, the WQEA sponsor may submit an amended plan to reduce monitoring frequency over time. The Department shall approve the amended plan if the WQEA Sponsor provides data demonstrating stable and reliable performance.</u>
  (~~c~~<u>d</u>) The ~~Owner~~ <u>WQEA sponsor</u> must implement the approved monitoring and verification plan in perpetuity<u>, with a reduced monitoring effort upon meeting success criteria as demonstrated in 2(c)</u>.

(3) The monitoring and verification protocols must be able to measure the difference in water quality and, if appropriate, flows before water enters the WQEA and ~~is discharged~~ downstream from the WQEA ~~in order to accurately~~ to 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~~ ~~out~~ downstream of the WQEA, and if appropriate, flow data upstream and downstream of the WQEA.

62-332.900 Compliance and Enforcement

- **Lines 718–720**. Rule 62-332.300(1), F.A.C., establishes that WQEAs are natural systems designed to provide regional water quality treatment through ecological and hydrologic function. Accordingly, many WQEAs may not contain discrete discharge points analogous to engineered treatment facilities. The rule should recognize that annual compliance demonstrations for WQEAs are appropriately based on FDEP-approved monitoring and verification plans under Rule 62-332.350(4)(g), F.A.C., ecological performance standards, representative monitoring approaches, and approved numerical models, rather than presuming that all WQEAs operate as point-source treatment systems capable of continuous discharge-point pollutant accounting.

  Proposed Language:

  (1) The ~~Owner~~ WQEA sponsor 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 average multi-year average annual pollutant load reductions continue to be achieved.

  (2) The ~~Owner~~ WQEA sponsor must report annually to the Department the pollutant load reductions of their targeted pollutant resulting from monitoring at representative monitoring ~~the discharge~~ point(s) upstream and downstream of the WQEA, in the standard units of measure for the WQEA at a frequency required by ~~the permit~~ performance and success criteria monitoring and verification plan approved by the Department described in 62-332.800 to demonstrate pollutant load reduction resulting in credits.

- **Lines 729-737.** RES recommends a process if the WQEA fails to meet the performance and success criteria or other permit conditions.

  Proposed Language

  (4) The ~~Owner~~ WQEA sponsor 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~~ WQEA sponsor 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 will conduct a compliance review and place the WQEA under a temporary compliance period. If the WQEA fails to meet the needed improvements or adaptations to meet the required criteria, then the Department may suspend the authorization to withdraw enhancement credits until such time as the ~~Owner~~ WQEA sponsor returns to compliance and credits have been reevaluated.

Thank you for your consideration of RES's comments and recommendations. We look forward to continuing to serve as an industry resource with FDEP in the future.

Kind Regards,

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CHAPTER 62-332

WATER QUALITY ENHANCEMENT AREAS

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 a purchase applicant or a governmental entity to address impacts regulated under ss. 373.403-373.443.

(3) The Department is the responsible authority for issuing environmental resource permits statewide for the construction, operation, maintenance, and long-term management of water quality enhancement areas. The responsibilities for authorizing the use of enhancement credits by the credit purchaser 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 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, FS. History–New ________.

62-332.200 Definitions.

(1) "Conservation Easement" is defined in section 704.06, F.S. The requirements for a conservation easement are set forth in this section.

(2) "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 charitable nonprofit corporation that (a) 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 (b) 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.

(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 sponsor shall provide documentation evidencing proof of such regulation and examination to the Department.

(8) "Locational Valuation Factor" ("LVF") means a numeric adjustment applied to enhancement credits used for a BMAP or RAP allocation to account for differences in pollutant transport, attenuation, and variability between the Water Quality Enhancement Area ("WQEA") and a Credit Purchaser's discharge location within the WQEA service area based on models or other analytical tools. a

(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.

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(11) “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. This may include conversion of disturbed lands back to a natural state.

(12) "Water quality enhancement area permit" or “WQEA permit” means an ERP issued under Part IV of Chapter 373, F.S., and this chapter 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 from the permitted WQEA in accordance with this chapter.

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

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(14) “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.

(15) “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.

(16) “WQEA Sponsor” means an entity that has a real property interest in accordance with Section 4.2.3 of the Environmental Resource Permit Applicant’s Handbook Volume I that is responsible for establishing the WQEA, and has received a permit to construct, operate, maintain, and be responsible for the perpetual management of a water quality enhancement area.

(17) “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.

(18) “WQEA Service Area” means the geographic area in which the WQEA could reasonably be expected to address adverse impacts 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.

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

62-332.300 General Requirements.

(1) A WQEA sponsor 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 sponsor in accordance with this chapter and the conditions of the WQEA permit.

(4) A governmental entity may be a WQEA sponsor and use the credits generated by the WQEA permit for its own water quality needs to meet BMAP allocation or RAP or to meet environmental resource permit stormwater treatment performance standards or to achieve net improvement. However, a governmental entity may not act as a sponsor to construct, operate, manage, or maintain a water quality enhancement area to market enhancement credits to third parties but government entities may partner with private entities to develop WQEAs.

(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 in such a manner that the system severs a portion of a surface water.

(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 based on documented, site-specific analyses demonstrating a material risk of localized adverse risks, even if the project being implemented by the applicant 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 applicant 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 or provisional WQEA permit does not eliminate the WQEA sponsor’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 or provisional WQEA permit does not preclude the responsibility of the WQEA sponsor 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, 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 a 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 or provisional WQEA permit shall automatically expire five years from the date of issuance if the WQEA sponsor 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.

(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 current site 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, as appropriate:

1. Soils map of the project area;

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

3. Hydrologic features map 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; and

8. Disclosure by the WQEA sponsor 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 an multi-year average basis from the WQEA.

(f) A 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 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 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. and 62-342.700, F.A.C.; and

(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.

Rulemaking Authority 373.4134, 403.067(9), 403.805, FS. Law Implemented 373.4134, , 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 the 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

information submitted in the WQEA permit application and the following as set forth in 373.4134(c)

1. If a basin management action plan exists for the watershed in which the water quality enhancement area is located, the applicant must use the same numerical models or analytical tools used for that basin management action plan in the water quality enhancement area permit application.

2. If a basin management action plan does not exist for the watershed in which the water quality enhancement area is located, the applicant, with the approval of the department, may submit as part of the water quality enhancement area permit application model parameters and results used in a numerical model or an analytical tool used by the department to develop a basin management action plan for a watershed with similar physical characteristics and pollutants as the watershed in which the proposed water quality enhancement area is to be located.

3. If the department determines that its numerical model or analytical tool used for a basin management action plan is not appropriate for the proposed water quality enhancement area, the applicant must use a standard numerical model or analytical tool for the proposed water quality enhancement area.

(a) The initial determination of 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)

(d) Credits must be based on a standard unit of measure of the specific pollutants removed on a multi-year average annual basis.

(2) The valuation of enhancement credits will be stated in the WQEA permit or provisional WQEA permit. 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 as specified in the WQEA permit or provisional WQEA permit. 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. No credits shall be released until the WQEA sponsor records the required conservation easement and provides the required financial assurances to the Department.

(3) If the WQEA is located within a BMAP or adopted RAP, the WQEA sponsor 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 (4) below.

(4) If the WQEA is not located within a BMAP or adopted RAP, or the Department determines that the numerical model or analytical tool used for the applicable BMAP or adopted RAP is not appropriate for determining the pollutant loading reductions for the proposed WQEA, the WQEA sponsor 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.

(5) 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 the National Centers for Environmental Information 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 and the anticipated associated reduction rates as demonstrated by the performance of other areas where the 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)

Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 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 that cause or contribute to the failure of the regional watershed or HUC 8the to meet applicable water quality criteria and must, at a minimum, consist of a Hydrologic Unit Code 8 (HUC 8) sub-basin as set forth by United State Geological Survey. 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 sponsor outlining the area within which the WQEA could reasonably be expected to reduce impacts given the attenuation of the applicable pollutants. .

(3) Numerical models or other analytical tools must be capable of evaluating the fate and transport of the pollutant(s) of concern within the WQEA service area and shall be reviewed and approved by the Department at the time of application.

(4) The Credit Purchaser's project must be located within the water quality enhancement service area..

(5) The applicant shall provide reasonable assurance that the WQEA's credited pollutant load reduction will be achieved on a multi-year average basis.

(6) When a WQEA is used to satisfy BMAP or RAP allocations, the department will adjust the number of credits required for the Credit Purchaser's project based on location within the WQEA service area using the applicable numerical models and analytical tools used for determining project credits for the identified BMAP or RAP.

c.

Rulemaking Authority 373.4134,, 403.805 FS. Law Implemented 373.4134, 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 Sponsor 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 a conservation easement are incorporated by reference in Rule 62-330.301, F.A.C., which is incorporated by reference herein. The conservation easement shall also provide that the WQEA sponsor shall have access to the property and the authority to perform all acts necessary to ensure compliance with the WQEA Permit (unless the WQEA sponsor is the fee owner of the property), and that the Department shall have access and the authority to perform these acts if the WQEA sponsor 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) If the property is deemed high risk, 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 sponsor 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 Owner of the property where the WQEA is located before recording the conservation easement. If necessary, the Owner of the property where the WQEA is located shall, in accordance with Section 196.295, F.S., place funds in escrow with the county tax collector. The WQEA sponsor or Owner of the property where the WQEA is located 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 sponsor 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 Owner of the property where the WQEA is located shall record the conservation easement required in the WQEA Permit. The WQEA Owner of the property where the WQEA is located 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) WQEA may provide financial assurances through the use of endowments.

(2) The provisions of Rule 62-342.700 shall apply to WQEA.

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, WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor will perform all of its obligations under the permit. Within 90 days after receipt by both the WQEA sponsor and the Department of a notice of intent to cancel or terminate a financial responsibility mechanism, the WQEA sponsor 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 mechansim 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 WQEA sponsor 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 WQEA sponsor 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) A WQEA sponsor shall not use a financial responsibility mechanism for more than one WQEA.

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

1. To dissolve the WQEA ;

2. To place the WQEA in receivership;

3. For entry of an order for relief against the WQEA sponsor 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) A WQEA sponsor 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 WQEA sponsor must notify the Department within 10 days and establish other financial assurance within 60 days after such an event.

(h) The financial responsibility mechanism for construction and implementation 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 WQEA sponsor's control. If the WQEA sponsor 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 WQEA sponsor shall be in material noncompliance with the WQEA Permit. To establish the amount of financial responsibility needed to cover the cost to repair, reconstruct, or re-establish the WQEA in the event of a catastrophe, the WQEA sponsor shall provide the following:

(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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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) A WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor and the Department, as evidenced by the return receipt.

(f) A bond may be cancelled by the WQEA sponsor if the Department has given prior written consent. The Department shall provide such consent when either the WQEA sponsor 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) A WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor and the Department have received the notice, as evidenced by the return receipts.

(7) Escrow.

(a) A WQEA sponsor 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 WQEA sponsor 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) A WQEA sponsor 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 WQEA sponsor 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) A WQEA sponsor 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) A WQEA sponsor 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) AWQEA sponsor 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)

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

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

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)

(e) Five years after transfer to the Perpetual Management Phase, and every five years thereafter, the WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor shall submit a detailed written estimate, in current dollars, of the total cost of 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.

(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 WQEA sponsor 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 five years, or upon longer periods of time as specified in the permit, the WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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.

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, F.S, or ~~(b)~~ 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 sponsor 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 use of the enhancement credits proposed by the Credit Purchaser is appropriate to offset 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.

(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, 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 or trades under Chapter 62-306, F.A.C.

(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 WQEA sponsor 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.

(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 for trades, or Credit Purchaser's ERP requirement.

(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, 403.805 FS. Law Implemented 373.4134, FS. History–New .

62-332.800 Enhancement Credit Monitoring and Continuing Credit Verification.

(1) The WQEA sponsor must demonstrate the achievement of pollutant reductions on a multi-year average annual basis based on the permit requirement of no less than the number of credits sold.

(2) The WQEA sponsor 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 permitted and operational.

(a) Enhancement credits shall be directly measured by the WQEA sponsor 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) When the WQEA enters the perpetual phase, the WQEA sponsor may submit an amended plan to reduce monitoring frequency over time. The Department shall approve the amended plan if the WQEA sponsor provides data demonstrating stable and reliable performance.

(d) The WQEA sponsor must implement the approved monitoring and verification plan in perpetuity, with a reduced monitoring effort upon meeting success criteria as demonstrated in 2(c).

(3) The monitoring and verification protocols must be able to measure the difference in water quality and if appropriate, flows before water enters the WQEA and downstream from the WQEA to demonstrate the WQEA's pollutant load reductions and ensure that all released enhancement credits have been achieved. At a minimum, monitoring must include concentration data ~~and~~ downstream of the WQEA, and if appropriate, flow data upstream and downstream of the WQEA.

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

62-332.900 Compliance and Enforcement.

(1) The WQEA sponsor 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 average multi-year annual pollutant load reductions continue to be achieved.

(2) The WQEA sponsor must report annually to the Department the pollutant load reductions of their targeted pollutant resulting from monitoring at representative monitoring point(s) upstream and downstream of the WQEA, in the standard units of measure for the WQEA at a frequency required by the performance and success criteria monitoring and verification plan approved by the Department as described in rule 62-332.800 to demonstrate pollutant load reduction resulting in credits.

(3) The WQEA sponsor must maintain records demonstrating that any 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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 will conduct a compliance review and place the WQEA under a temporary compliance period. If the WQEA fails to meet the needed improvements or adaptations to meet the required criteria, then the Department may suspend the authorization to withdraw enhancement credits until such time as the WQEA sponsor returns to compliance and credits have been reevaluated.

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

Rulemaking Authority 373.4134, 03.805 FS. Law Implemented 373.4134, FS. History–New .

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

(1) If no credits have been released or sold, a WQEA sponsor 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 WQEA sponsor 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 WQEA sponsor 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, , 403.805 FS. Law Implemented 373.4134, FS. History– New .

Section J: Supplemental Information Required for Water Quality Enhancement Areas

Instructions: Please provide the information requested below if you are applying for a Water Quality Enhancement Area (WQEA) permit in accordance with Chapter 62-332, F.A.C., and Section 373.4134, F.S. To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will be used to:

a) Meet the requirements for issuance of an environmental resource permit;
b) Benefit water quality in the watershed in which the WQEA is located;
c) Meet defined performance or success criteria for the reduction of one or more pollutants or other constituents that prevent receiving waters from meeting applicable water quality criteria;
d) Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by a long-term financial assurance mechanism sufficient to ensure perpetual operation and maintenance;
e) Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of the land and water within the WQEA; and
f) Provide for permanent preservation of the WQEA that meets the requirements of Section 704.06, F.S.

In addition, a phased WQEA must demonstrate that each phase independently meets the WQEA reasonable assurances above (Section 373.4134, F.S.).

Part 1: Perpetual Protection of Water Quality Enhancement Areas (62-332.530, F.A.C.)

Please provide the following information:

1. The WQEA Owner shall cause a conservation easement to be conveyed to the Department to provide for permanent preservation of the WQEA. All conservation easements shall be of a form and content sufficient to ensure preservation of the WQEA, and shall, at a minimum, meet requirements and restrictions of section 704.06, F.S., except as provided in subsection 62-332.530(7), F.A.C.
    a. Title search
    b. 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;

2. A certified appraisal or other documentation demonstrating the market value of the property or interest to be conveyed to determine the appropriate amount of title insurance;

3. A marketable title commitment issued to the Department as beneficiary in an amount at least equal to the fair market value; and

4. A current Phase I environmental assessment;

Part 2: Location of the Proposed WQEA (62-332.350(4)(a), F.A.C.)

Please provide 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.

Part 3: Current Site Conditions (62-332.350(4)(b) and (c), F.A.C.)

Please provide a description and assessment of the current site conditions which shall include:

1. Soils map of the project area;
2. Topographic map of the project area and adjacent hydrologic contributing and receiving areas;
3. Hydrologic features map 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; and,
8. Disclosure by the Owner of any material fact that would affect the contemplated use of the property.
9. Description of the ecological and hydrological significance of the proposed WQEA to the regional watershed in which it is located.

Part 4: Enhancement Credit Generation, Valuation and Modeling (62-332.400, F.A.C.)

Please provide the following information:

1. Is the WQEA located within a BMAP or adopted RAP and has the numerical models or analytical tools used for that BMAP or adopted RAP received updates within the last 10 years?
    a. Yes ☐ (If yes, skip to #2)
    b. No ☐ (If no, skip to #3)
    c. Unknown ☐ (Please schedule a pre-application meeting with the Department.)

2. Are the numerical models or analytical tools used for that BMAP or adopted RAP determined appropriate by the Department for determining the pollutant loading reductions for the proposed WQEA?
    a. Yes ☐ (If yes, skip to #4)
    b. No ☐ (If no, skip to #3)
    c. Unknown ☐ (Please schedule a pre-application meeting with the Department.)

3. ***If the WQEA is not located within a BMAP or adopted RAP, or the Department determines that the numerical model or analytical tool used for the applicable BMAP or adopted RAP is not appropriate for determining the pollutant loading reductions for the proposed WQEA, the Owner must use another standard numerical model or analytical tool that has been approved by the Department for the proposed WQEA.***

Please provide the following information.

4. 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 the National Centers for Environmental Information or collected from the closest site to the proposed WQEA, preferably within the same drainage basin;
    b. Anticipated water quality and quantity inflows over a wide range of climatic conditions that captures interannual variation to the proposed WQEA, based on published local data collected over a period of record that most closely matches the rainfall data collected under (a) above;
    c. Site-specific conditions affecting the anticipated performance of the proposed WQEA, including the proposed BMP ~~for~~ stormwater treatment and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the same BMP treatment type has been established and operating over a minimum of two consecutive wet and dry seasons;
    d. Engineering calculations and/or computer modeling (such as hydrograph or staging) needed to assess the effects of the project on the hydrologic characteristics of the water quality enhancement area site and upstream and downstream areas; and
    e. Any other supporting information deemed necessary by the Department.

5. Assessment of anticipated pollutant load reductions or other nutrients to be removed annually from the WQEA. Provide an initial valuation of enhancement credits and propose a release schedule based on conservative estimates including but not limited to expected hydrologic variations. The initial valuation of credits and release schedule shall consider the uncertainty between the numerical models or other analytical tools used to estimate the expected removal of pollutants, and the actual pollutant removal from the proposed WQEA.

Part 5: Service Area and Enhancement Credit Locational Valuation Factors (62-332.500, F.A.C.)

Please provide the following information (in addition to the requirements of Rule 62-332.500, F.A.C.):

1. Extent of the water quality enhancement service area, determined by modeling, 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.

2. Documentation of the Location Valuation Factor (LVF) calculations used for each pollutant subject to a credit purchase.

Part 6: Financial Responsibility (62-332.550, F.A.C.)

Please provide the following information:

1. Sufficient legal or equitable interest in property to ensure access and perpetual protection and management of the land within or associated with the WQEA including, as necessary, permanent preservation of the WQEA pursuant to the requirements of Section 704.06, F.S.

2. ~~Cost estimates and~~ draft documentation of financial responsibility for the construction, operation and maintenance, and the perpetual management phases of the WQEA meeting the requirements of 62-332.550, F.A.C. The amount of financial assurance shall be based on the cost ~~estimates~~ determined under subsection 62-332.550(13), F.A.C.

3. Identify a responsible long-term maintenance entity supported by the perpetual financial assurance mechanism.

Part 7: Construction Plans (62-332.350(4)(f), F.A.C)

Please provide the following:

1. A plan describing the actions proposed to establish and construct the WQEA which shall include, as applicable:
   a. Construction-level drawings detailing proposed topographic alterations, and all structural components associated with proposed activities;
   b. Proposed construction activities, including a detailed schedule for implementation;
   c. The proposed vegetation planting scheme and detailed schedule for implementation; and
   d. Measures to be implemented during and after construction to avoid adverse impacts related to proposed activities.

Part 8: Perpetual Management Plan (62-332.350(4)(g), F.A.C.)

Please provide the following:

Detailed perpetual management plan comprising all aspects of operation and maintenance, including water management practices, vegetation establishment, exotic and nuisance species control, fire management, and control of access to ensure long-term pollutant reduction.

Part 9: Monitoring and Verification Plan (62-332.800, F.A.C.)

Please provide the following information:

1. A proposed performance and success criteria monitoring and verification plan meeting the requirements of Rule 62-332.800, F.A.C.
    a. Sampling location and coordinates identifying the inflow and outflow sampling points.
    b. Protocols and monitoring frequency. At a minimum, provide monitoring for flow and concentration data into and out of the WQEA. Monitoring data shall contain the following:
        1) Permit number;
        2) Dates of sampling and analysis;
        3) A statement describing the methods used in collection and analysis of the samples;
        4) A map showing the sampling locations, along with indicating the latitude and longitude;
        5) Copies of the Quality Assurance/Quality Control log; and
        6) A statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision and accuracy of the data;

Part 10: Additional Information (62-332.400(e), F.A.C.)

Please provide the following information:

1. Any additional information which the Agency requests or would need in order to evaluate whether the proposed Water Quality Enhancement Area meets the criteria of Section 373.4134, F.S., and Chapter 62-332, F.A.C.