DATE June 10, 2026

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

RE **Revive Ecosystems, LLC — Draft Rule Chapter 62-332, F.A.C., Water Quality Enhancement Areas Comments**

Dear Mr. Crane-Amores:

WHO WE ARE

Revive Ecosystems, LLC submits these comments on FDEP's Draft Rule Chapter 62-332, F.A.C., governing Water Quality Enhancement Areas (WQEAs). We are a Florida-based, full-delivery ecological restoration company that actively manages mitigation banks and conservation banks across the state. We work with landowners and investors to match investable dollars to assets that yield high returns not only financially but through ecological lift. The two returns are not mutually exclusive. Our work spans every phase of credit asset development: site feasibility, permitting, ecological design, construction, long-term monitoring, and credit sales — across wetlands, habitats, and soon we look forward to adding water quality enhancement credits to our portfolio.

Florida's water quality challenges are not abstract to us. Our team works in these landscapes. We have watched nutrient loading from all sources degrade water bodies, seen public funding fall short of what restoration demands, and spent our careers building the tools and relationships to close that gap through private investment and ecological expertise. The WQEA program offers a meaningful new pathway we are excited to see flourish. We are conservationists and scientists solving problems using private capital-Doing More Now! These comments are offered to help make it work.

HUC 8 SERVICE AREA

The HUC-8 watershed service area established in SB 848 (2026) is the financial foundation on which any WQEA project is built. Site selection, landowner negotiations, infrastructure investment, and credit pricing all depend on a defined and reliable service area geography. When we develop a mitigation bank, the service area boundary is among the first things a potential investor or landowner partner asks about — because it directly determines whether the project is viable.

The May 2026 draft rule did not fully carry forward the HUC-8 service area as enacted under SB848. Any rule-imposed restriction that narrows the statutory boundary — through sub-watershed carve-outs, or conditions the Legislature did not authorize or intend— will reduce credit demand, undermine project feasibility, and discourage private investment which this program and the state of Florida needs to see real improvement in our watersheds. The Legislature made a deliberate choice when it tied WQEA service areas to HUC-8 boundaries. The rule should give that choice full effect.

CREDIT QUANTIFICATION

Revive's work is grounded in Florida's regulatory realities. We have navigated the permitting and credit quantification requirements of wetland mitigation banking and conservation banking, and we understand how quickly a technically defensible methodology becomes an implementation obstacle when the underlying data are unavailable or inconsistent across regions and inconsistency in interpretations by reviewers exists.

The proposed Location Factor and Variability Factor leave too many threads unsewn. The watershed-specific datasets these calculations require are not uniformly available across Florida's diverse hydrologic regions. A methodology that performs reliably in data-rich watersheds but breaks down in data-sparse ones does not produce rigor, predictability or consistency— it produces uneven outcomes that frustrate regulators and sponsors alike and make meaningful credit comparison across projects impossible.

FDEP should adopt a simpler, consistently applicable geographic adjustment — modeled on the Proximity Factor in Florida's wetland mitigation framework — that recognizes locational differences without requiring inputs the field and public data cannot reliably supply. Projects that cannot be confidently quantified will not be built, which is a detriment to the watershed that could see a WQEA producing benefits long before a credit is ever purchased- benefits before impacts. A workable methodology serves Florida's water quality far better than a technically elaborate one that unnecessarily stalls at permitting.

REGULATORY PARITY

A core lesson from Florida's wetland mitigation banking program is that regulatory consistency across credit mechanisms builds the market confidence on which private investment depends. When functionally equivalent approaches are evaluated under materially different standards, the preferable outcome for buyers will always be regulatory ease and price over environmental performance.

The current draft rule imposes substantially greater pre-approval and performance demonstration burdens on WQEAs than on Regional Stormwater Management Systems (RSMS), which under SB848 was provided authority to sell allocations- providing comparable water quality benefits for compensatory stormwater treatment, with less regional benefit. This disparity has no basis in difference of environmental outcome, and it will predictably redirect buyers toward RSMS projects regardless of relative water quality or ecological benefit.

FDEP should calibrate approval standards to the environmental function being delivered, not to the project type delivering it. Regulated parties that can meet stormwater treatment obligations under lighter requirements will do so. The consequence is not just reduced WQEA investment — it is a foregone opportunity to direct private capital toward the landscape-scale water quality improvements the WQEA program was designed to produce.

CONCLU-SION

Revive Ecosystems is a Florida company. Our staff are Florida ecologists, scientists, and land professionals who have watched this state's water quality challenges accumulate over the course of their careers. We have the site relationships, the technical staff, the permitting experience, and the long-term management infrastructure to develop Water Quality Enhancement Areas — and we are ready to do so.

What this rule needs to provide is clear: a service area that reflects what the Legislature enacted, a credit quantification framework practitioners can actually implement, and equivalent regulatory standards for projects delivering equivalent water quality outcomes. Our attached language recommendations are designed to address each of these.

We appreciate FDEP's continued stakeholder engagement and welcome the opportunity to discuss these comments further.

Respectfully submitted,

Kasey Okolichany, PMP
President
Revive Ecosystems, LLC
www.reviveecosystems.com

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 achieving performance standards or net improvement under Section 373.414(1)(b)3., F.S., or satisfying ERP performance standards under Section 373.4131, F.S., or to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s. 403.067.

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

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Commented [A2]: This authority is granted in 373.4134 FS. It established a separate, independent mechanism from 62-306FAC, to allow BMAP/RAP entities to purchase Enhancement Credits from a permitted WQEA. The method by which a BMAP/RAP entity may use Enhancement Credits is explicitly governed by s. 373.4134 — not s. 403.067 or ch. 62-306, F.A.C.

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(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, History–New .

62-332.200 Definitions.

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

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

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

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

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

(6) "Investment Manager" means an entity or individual that is a Registered Investment Adviser (RIA) with the U.S. Securities and Exchange Commission (SEC) or state securities regulatory agency and whose operations are regulated and examined by a federal agency or an agency of the State of Florida. The Water Quality Enhancement Area Owner shall provide documentation evidencing proof of such regulation and examination to the Department.

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

(9) "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.

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

Commented [A4]: This section does not provide the authority for use of or creation of WQEAs for BMAPs or RAPs. That authority is in s373.4134 FS.

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Commented [A5]: SB848 provided clarity that performance standards may be satisfied by purchasing an enhancement credits.

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Commented [A6]: This is very limiting and far exceeds the financial assurances required by an RSMS as specified in SB848(2026). WQEA should not be burdened beyond that required for a comparable off -site compensating stormwater treatment system.

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

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

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

(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 generated pursuant to a water quality enhancement area permit.

(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 generation 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.

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

Commented [A10]: Please be consistent with language. "WQEA Applicant" has been used extensively until this draft.

(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.

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

62-332.300 General Requirements.

(1) A WQEA Owner shall generate and maintain enhancement credits in perpetuity by constructing and operating water quality improvement projects utilizing natural systems.

Deleted: including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving waterbody or water segment

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

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

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

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(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.

(9) As provided by s. 373.4134(7)(j), F.S., the agency 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, 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 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.

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

Commented [A12]: Clarifying that this should be the Credit Purchaser's responsibility, not the WQEA Sponsor's.

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Commented [A13]: For consistency and parity with RSMS which was intended through SB848, please revise language to that which is used by RSMS when allocations are to be sold from an RSMS.

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

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

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

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

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

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

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

(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.

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 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.

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

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

(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 average annual 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 when applicable and detailed schedule for implementation; and

4. Measures to be implemented during 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.

(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.

Deleted: and offsite areas of ecologic or hydrologic significance which could affect the perpetual viability or ecological and hydrological value of the WQEA;

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Commented [A17]: This is important to understand the existing performance of the site for ERP to compare to projected performance in the “With Project” condition.

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Rulemaking Authority 373.4134, 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 information submitted in the WQEA permit application and the following:

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

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

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

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

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

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

(2) The initial valuation of enhancement credits will be stated in the 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. The final release of all enhancement credits awarded will only occur after the WQEA meets the success criteria specified in the permit, once the conservation easement and financial assurances are recorded, and in accordance with the WQEA Operation and Maintenance Phase.

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

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

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

(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:

Commented [A21]: Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use thereof

Commented [A22]: Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use thereof.

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

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Commented [A23]: Above added language provides clarity on how "uncertainty" is evaluated and considered.

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Commented [A24]: Revised credit release schedule language to account for benefits achieved by the WQEA in the watershed prior to it possibly being fully operational.

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Commented [A26]: To require Credits removed "annually" or on an "Average annual basis" to be greater than "required BMAP or RAP" indicates that the BMAP or RAP of the local entity with a BMAP or RAP must be satisfied. The WQEA will not have a BMAP/RAP allocation.

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(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 inputs 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 paragraph (a) above.

(c) Site-specific conditions affecting the anticipated performance of the proposed WQEA, including 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 located closest to the proposed WQEA.

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

Rulemaking Authority 373.4134,), 403.805 FS. Law Implemented 373.4134, 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 WQEA could reasonably be expected to address adverse impacts. Service areas may overlap, and more than one service area may be approved within a regional watershed.

(2) The geographical boundaries of the water quality enhancement service area are the HUC 8 in which the WQEA is located. Applicants seeking a service area larger than the HUC 8 may submit a model for review by the FDEP that demonstrates the WQEAs ability to reduce impacts within the HUC 8 and the proposed expanded service area. (3) Numerical models or other analytical tools must be capable of demonstrating the proposed WQEA's pollutant reductions benefit the HUC 8 in which it serves.

(4) The Credit Purchaser's project must be located within the service area of the WQEA from which credits are purchased.

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

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

62-332.530 Perpetual Protection of Water Quality Enhancement Areas.

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

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

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

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

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

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

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

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

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

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

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

(8) The WQEA Owner shall record the conservation easement required in the WQEA Permit. The WQEA Owner shall submit to the Department the original recorded conservation easement as soon as such document is returned from the public records office.

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

62-332.550 Financial Responsibility.

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

(2) Submitting Financial Responsibility Documentation. The Owner shall provide draft documentation of the cost estimate and required financial responsibility mechanisms described in subsections 62-332.550(4) through (13), F.A.C., with the permit application, and shall submit to the Department the executed or finalized documentation within the time frames specified in the permit. The provisions of this subsection shall also apply to any modifications to the WQEA Permit.

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

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

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

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

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

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

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

1. To dissolve the Owner;

2. To place the Owner in receivership;

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

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

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

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

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

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

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

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

(5) Surety Bond.

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

(b) The surety bond shall be worded in substantial conformance with Form 62-332.550(5), "WQEA Surety Bond to Demonstrate Operational Financial Assurance" (effective date), which is incorporated by reference herein and available at (insert link). This form and all the forms incorporated in Rule 62-332.550, F.A.C., also are available from the Department of Environmental Protection's Internet site, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/forms-environmental-resource; or by contacting the Division of Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, MS #2500, Tallahassee, Florida 32399-2400, (850) 245-8336. Deviations from the form shall be identified to, submitted to, and approved by the Department.

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

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

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

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

(6) Irrevocable Letter of Credit.

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

(b) The irrevocable letter of credit shall be worded in substantial conformance with Form 62-332.550(6), "WQEA Irrevocable Letter of Credit to Demonstrate Operational Financial Assurance" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department.

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

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

(7) Escrow.

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

(b) The escrow agreement must be worded in substantial conformance with Form 62-332.550(7), "Escrow (Standby Escrow) Agreement" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form must be identified to, submitted to, and approved by the Department.

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

(8) Standby Escrow.

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

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

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

(9) Standby Trust Fund.

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

(b) The standby trust agreement shall be worded in substantial conformance with Form 62-332.550(9), "WQEA Standby Trust Fund Agreement to Demonstrate Operational Financial Assurance" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department. This form and Form 62-332.550(10) incorporated in subsection 62-332.550(10), F.A.C., reference the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. (July 18, 2025), which is incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. A copy of the Act may also be obtained by contacting the Division of Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, MS #2500, Tallahassee, Florida 32399-2400, (850)245-8336.

(10) Trust Fund.

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

(b) The trust fund agreement must be worded in substantial conformance with Form 62-332.550(10), "WQEA Trust Fund Agreement to Demonstrate Operational or Perpetual Management Financial Assurance" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(11) Endowment.

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

(b) The endowment agreement must be worded in substantial conformance with Form 62-332.550(11), "WQEA Endowment Agreement to Demonstrate Perpetual Management Financial Assurance" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(12) Financial Responsibility for Perpetual Management Phase.

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

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

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

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

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

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

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

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

(13) Cost estimates.

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

(b) The cost estimate for construction phase shall include all costs associated with completing construction of the WQEA, or phase thereof including, as applicable, earthmoving; planting; exotic/nuisance vegetation removal; prescribed fire; land surveying; installation of water quality treatment systems, hydrologic control devices, technologies, and BMPs; site security; administrative fees; consultant fees; taxes; monitoring activities and reports; and any other costs associated with the construction phase.

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

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

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

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

(14) Cost adjustments.

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

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

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

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

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

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

(15) Financial Responsibility for Governmental Entities.

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

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

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 (a) address adverse water quality impacts of activities regulated under ss.373.403-373.443 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 Owner demonstrating that enhancement credits have been reserved, sold, or transferred to the Credit Purchaser. If the Agency permitting the Credit Purchaser's ERP determines that 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.

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(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 unless they are seeking to (a) address adverse water quality impacts of activities regulated under ss.373.403-373.443 and/or (b) meet the allocations of an adopted BMAP or adopted RAP under Section 403.067, F.S(6) Purchase of enhancement credits is voluntary.

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

62-332.700 Enhancement Credit Tracking.

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

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

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

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

(5) The ledger shall include the following information:

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

(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.

(h) The Credit Purchaser's permitting Agency.

(i) The amount and type of credits sold in each purchase.

(j) The balance of the amount and type of credits available after purchase or credit generation in the WQEA.

(k) The date the WQEA ledger is updated.

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

62-332.800 Enhancement Credit Monitoring and Continuing Credit Verification.

(1) Annually, the Owner must demonstrate the achievement of pollutant reductions consist with conditions of the permit for the WQEA.

(2) The WQEA Owner must implement a performance and success criteria monitoring and verification plan approved by the Department, including protocols and monitoring frequency, to be implemented once the WQEA is permitted and operational. These shall be consistent with the monitoring and verification protocols already authorized and permitted for other off-site compensation systems.

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

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

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Commented [A41]: Point source dischargers should not be excluded from using Enhancement credits for the purposes identified in s.373.4134.

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Commented [A45]: Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use thereof.

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Commented [A46]: See earlier comments on variations of project types and their ability to monitored and provide proof, as well as the variability associated with climactic and antecedent conditions.

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(c) The Owner must implement the approved monitoring and verification plan in accordance with the permit and ch.62-330 FAC requirements for Operation and Maintenance for Compensating Stormwater Treatment.

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

62-332.900 Compliance and Enforcement.

(1) The Owner shall comply with the inspection and reporting requirements set forth in ch. 62-330 FAC related to Operations and Maintenance.

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

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

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

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

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

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

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

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

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

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

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Deleted: 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, an that pollutant load reductions continue to be achieved.

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Commented [A51]: Revise to use the same language as existing permitted compensating stormwater treatment systems authorized to sell allocations. This requirement should be the same as other compensating stormwater treatment systems already authorized and permitted by FDEP and WMD. It is unreasonable to create additional burden for a WQEA.

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

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

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Commented [A56]: Section 403.067, Florida Statutes, does not provide rulemaking authority governing WQEAs or the use thereof

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FDEP's proposed LVF methodology requires that a waterbody be on the same conveyance or stream network with access to annual geometric mean concentrations — a standard applied only selectively to springs and some lakes — and presupposes a discharge point for the WQEA. These requirements create unnecessary barriers because: (1) they are inconsistent with how TMDLs are established across Florida, where models and tools vary and are governed by Ch. 62-304, F.A.C.; and (2) certain project types do not fit this framework, unnecessarily constraining service area. A one-size-fits-all LVF standard is impractical given that TMDL and BMAP methodologies differ statewide and evolve over time. SB 848 also intended parity between WQEAs and existing permitted off-site compensation systems (RSMS).

Recommendation: Revise this section to either:
• Option 1 — Apply the same LVF standard used for RSMS, achieving the market parity SB 848 intended; or
•Option 2 - A location factor shall not be applied to credit purchases where the credit purchaser's site is located within the same or immediately adjacent HUC 12 watershed as the WQEA, provided the credit purchaser's site remains within the same HUC 8 watershed as the WQEA.
A location factor of 1.25 shall be applied to credit purchases where the impacted site is located within the same HUC 8 watershed as the WQEA, but outside of the HUC 12 watershed in which the WQEA is located and outside of any immediately adjacent HUC 12 watershed. For each credit required, 1.25 credits shall be purchased.

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This revised language accounts for language in existing 373.4134 and SB848, where geographic area and HUC 8 are the hydrologic connection.

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This language is consistent with SB848 Service Area.

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This is not a requirement of statute and is inconsistent with the how other off-site compensation systems already permitted across the state are modeled and analyzed. To ensure parity and equality between the off-site compensation programs, use language that is consistent with how the RSMS is modeled/analyzed.

Page 7: [9] Commented [A36] Author

(1) Performance-Based Compliance.
Performance targets for WQEAs should be evaluated against average annual conditions, consistent with the approach currently employed by the South Florida Water Management District's Dispersed Water Management program. Annual performance is inherently variable and should be assessed in the context of the climatic and antecedent conditions present during the period of record used to model anticipated performance. Where project performance is consistent with variability attributable to climatic conditions reflected in the applicable period of record, the project shall be deemed compliant.
Requiring a fixed annual numeric performance target is neither reasonable nor consistent with current practice, as such targets are rarely, if ever, achieved by state or federal projects operating in Florida.

(2) Parity Among Off-Site Compensation Options.
SB 848 (2026) provided parity among off-site mitigation and compensation options. The proposed performance standards, as currently structured, impose a disproportionate burden on the WQEA market relative to other authorized compensation mechanisms, including the RSMS. This disparity is inconsistent with legislative intent and undermines the viability of the WQEA market.

WQEAs can offer significant regional water quality and ecosystem benefits that other off-site compensation mechanisms cannot replicate at the same scale. Notably, WQEAs are placed into service prior to any associated impacts and must demonstrate pollutant reductions exceeding their Environmental Resource Permit allocations before any credits may be sold. These requirements already impose a higher standard of accountability than those applicable to comparable off-site compensation mechanisms.

3) Recommended Success Criteria.
Because water quality benefits are generated by the WQEA prior to the purchase of any credits, success criteria for WQEAs should be no more burdensome than those applicable to Regional Surface Water Management Systems. Consistent with Section 12 of the Environmental Resource Permit Applicant's Handbook, sufficient success criteria shall include:
(a) Periodic inspections conducted in accordance with Section 12 of the ERP Applicant's Handbook; and
(b) Submission of an annual report identifying the number of allocations sold during the reporting year.
No independent measurement or verification of pollutant reductions shall be required as a condition of compliance, consistent with the standards applicable to RSMS.

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