

## CHAPTER 62-342 MITIGATION BANKS

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### **62-342.100 Intent.**

(1) The Department recognizes that, in certain instances, adverse impacts of activities regulated under part IV of Cchapter 373, F.S., can be offset through the utilization of Mitigation Credits from a permitted Mitigation Bank. This rule provides criteria for this mitigation alternative to complement existing mitigation criteria and requirements. This Cchapter is supplemental to and does not supersede any other criteria and requirements in rules promulgated under part IV of Cchapter 373, F.S.

(2) The responsibilities for implementing this Cchapter 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. The term “Agency” applies to the Department or a District, as applicable, throughout this Cchapter.

(3) The Agency intends that Mitigation Banks be used to minimize mitigation uncertainty associated with traditional mitigation practices and provide greater assurance of mitigation success. It is anticipated that the consolidation of multiple mitigation projects into larger contiguous areas will provide greater assurance that the mitigation will yield long-term, sustainable, regional ecological benefits. Mitigation Banks shall be consistent with Agency endorsed watershed management objectives and emphasize Restoration and Enhancement of degraded ecosystems and the Preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through Restoration of ecological communities that were historically present. The establishment and use of Mitigation Banks in or adjacent to areas of national, state, or regional ecological significance is encouraged, provided the area in which the Mitigation Bank is proposed to be located is determined appropriate for a Mitigation Bank and the Mitigation Bank meets all applicable permitting criteria.

(4) Nothing in this Cchapter shall affect the mitigation requirements set forth in any Mitigation Bank agreement or any permit issued under Cchapter 84-79, Laws of Florida, or part IV of Cchapter 373, F.S., prior to (eff. date) ~~February 2, 1994~~. If a permittee wishes to substantially modify a Mitigation Bank permit that was issued less than 10 years prior to the effective date of this Chapter, or which involves the addition of new land that was not previously established by agreement or permit, the permittee must comply with this Cchapter, unless the permittee elects to be subject to the rules governing mitigation banks adopted after that date. Additionally, some Mitigation Banks may be subject to the version of this section existing prior to July 1, 1996, under Sections 373.4136(9) and (10), F.S., and will not be affected by amendments adopted after that date. This Cchapter does not prohibit an applicant from proposing project-specific, pre-construction on-site or off-site mitigation, without establishing a Mitigation Bank.

*Rulemaking Authority 373.4131, 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136 FS. History—New 2-2-94, Formerly 17-342.100, Amended 5-21-01, 2-19-15, Amended.*

### **62-342.200 Definitions.**

Terms used in this chapter shall have the meanings specified below.

(1) “Banker” means an entity that financially funds, creates, operates, manages, or maintains a Mitigation Bank pursuant to a Mitigation Bank Permit.

(2) “Bank Construction Phase” means the period necessary to implement the permitted work including, but not limited to, implementing site security measures, restoring or enhancing hydrology, restoring or enhancing land surface or drainage, installing plants, and conducting initial earth moving and land management activities (such as well/ditch plugging, restoration burning, chopping, thinning, or initial treatment or removal of invasive exotic or nuisance species). This phase begins with implementation of any permit required activities and ends with Agency’s acceptance of the As-Built Certification submitted by the Qualified Mitigation

Supervisor.

(3) “Bank Operation Phase” or “Bank Operational Phase” means the phase following the Bank Construction Phase when permitted activities are conducted to achieve the ecological conditions described by the Mitigation Bank Permit success criteria, and monitoring is performed and reported. This phase ends with an Agency determination that the defined success criteria and targets set forth in the Mitigation Bank Permit have been met and all Mitigation Credits have been released.

(4) “Bank Perpetual Phase” means the phase following full implementation of construction and operation activities prescribed in the Mitigation Bank Permit, the Mitigation Bank has achieved Success, and all Mitigation Credits have been released. Perpetual land management activities, as outlined in the permitted mitigation plan, shall be implemented in accordance with the Mitigation Bank Permit. The entity responsible for this phase may be the Banker or the permit may be transferred to a Perpetual Management Steward.

(5) “Creation” means, for purposes of this Chapter, the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Creation results in a gain in aquatic resource area and functions. Mitigation Banks should emphasize the Restoration and Enhancement of degraded ecosystems that were historically present, rather than alteration of landscapes to create wetlands.

(6)(2) “Department” means the Department of Environmental Protection.

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

(8)(4) “Ecological Value” means the value of functions performed by uplands, wetlands and other surface waters to the abundance, diversity, and habitats of fish, wildlife, and listed species. These functions include, but are not limited to: providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhance fish, wildlife and listed species utilization.

(9) “Endowment Holder” means a national charitable nonprofit corporation, that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, that has accepted responsibility from the Banker for the investment performance of the endowment. The Endowment Holder must demonstrate to the Agency that the organization has the necessary fiduciary experience and qualifications to manage the endowment for perpetual management activities. The Endowment Holder must oversee a fully diversified endowment portfolio in excess of \$200 million consisting of public and private securities.

(10) “Enhancement” means, for purposes of this Chapter, a type of mitigation that involves the manipulation of the physical, chemical, or biological characteristics of a site with the goal of improving natural or historic functions of a degraded resource. Enhancement results in a gain in aquatic resource functions, but does not result in a gain in aquatic resource area.

(11) “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 Banker shall provide documentation evidencing proof of such regulation and examination to the Agency.

(12)(8) “Mitigation Bank” or “Bank” means a project permitted under Section 373.4136, F.S., undertaken to provide for the withdrawal of Mitigation Credits to offset adverse impacts authorized by a permit under part IV of Chapter 373, F.S.

(13)(7) “Mitigation Bank Permit” means a permit issued to a Banker to construct, operate, manage, and maintain a Mitigation Bank.

(14)(5) “Mitigation Credit” means a standard unit of measure which represents the increase in Ecological Value resulting from Restoration, Enhancement, Preservation, or Creation activities authorized by a Mitigation Bank Permit.

(15)(6) “Mitigation Service Area” means the geographic area within which Mitigation Credits from a Mitigation Bank may be used to offset adverse impacts of activities regulated under part IV of Chapter 373, F.S.

(16) “Perpetual Management Steward” means a charitable non-profit corporation, that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and has accepted responsibility from the Banker to manage the Mitigation Bank property to ensure the continued ecological success throughout the Bank Perpetual Phase, but is not responsible for the investment performance of the financial assurance mechanism. This entity must demonstrate to the Agency that they have the experience and qualifications necessary to successfully manage the type of mitigation project(s) completed within the Mitigation Bank Permit.

(17) “Preservation” means, for purposes of this Chapter, a type of mitigation that does not involve the manipulation of the physical, chemical, or biological characteristics of the site, but which retains the current functions and continued maturation of a site in a protected condition. Preservation does not result in the gain of aquatic resource area or functions.

(18) “Qualified Mitigation Supervisor” or “QMS” means the person or persons with the obligation and authority to implement

the Mitigation Bank Permit conditions and serve as the principal contact. This person(s) must demonstrate to the Agency that they have the experience and qualifications necessary to successfully complete the type of mitigation project(s) proposed within the Mitigation Bank Permit. This person(s) represents the Mitigation Bank and oversees all aspects of the ecological Restoration, Enhancement, Preservation, or Creation activities, including, but not limited to: project construction and operation, adaptive management, and monitoring of all permit conditions and requirements; until such time as the bank is transferred to the Perpetual Management Steward.

~~(19)(9)~~ “Regional Watershed” means a watershed as delineated in the following maps. (Figures 1, 2, 3, 4, and 5.)

Figure 1: Northwest Florida Water Management District – “Regional Watersheds of the NFWFMD for Mitigation Banks, 7 Watersheds” (February 19, 2015), which is incorporated by reference herein.

Figure 2: Suwannee River Water Management District – “Watersheds of the SRWMD Mitigation Banks, 7 Watersheds” (February 19, 2015), which is incorporated by reference herein.

Figure 3: St. Johns River Water Management District – “Regional Watersheds for Mitigation Banking” (October 1, 2013), Appendix A, Figure 10.2.8-2, Applicants Handbook Volume II, which is incorporated by reference in subparagraph 62-330.010(4)(b)3., F.A.C., [October 1, 2013] (<http://www.flrules.org/Gateway/reference.asp?No=Ref-03181>), and in subsections 40C-4.091(1) [October 1, 2013] (<https://www.flrules.org/Gateway/reference.asp?No=Ref-02524>), 40C-42.091(1) [October 1, 2013] (<https://www.flrules.org/Gateway/reference.asp?No=Ref-02525>), and 40C-44.091(1), F.A.C., [October 1, 2013] (<https://www.flrules.org/Gateway/reference.asp?No=Ref-02526>).

Figure 4: Southwest Florida Water Management District – “Drainage Basins and Watersheds within the Southwest Florida Water Management District” (October 1, 2013), Figure 2.6, Applicants Handbook Volume II, is incorporated by reference in subparagraph 62-330.010(4)(b)4., F.A.C., [October 1, 2013] (<http://www.flrules.org/Gateway/reference.asp?No=Ref-03176>), and in rule 40D-4.091, F.A.C., [October 1, 2013] (<https://www.flrules.org/Gateway/reference.asp?No=Ref-02527>).

Figure 5: South Florida Water Management District – Appendix D: “SFWMD Basins for Cumulative Impact Assessments & Mitigation Bank Service Areas” (October 1, 2013), Applicants Handbook Volume II, including Appendices A through D, is incorporated by reference in subparagraph 62-330.010(4)(b)5., F.A.C., [October 1, 2013] (<https://www.flrules.org/Gateway/reference.asp?No=Ref-02528>), and in paragraph 40E-4.091(1)(a), F.A.C., [October 1, 2013] (<https://www.flrules.org/Gateway/reference.asp?No=Ref-02529>).

A copy of the incorporated material identified above also may be obtained from the Agency Internet site or by contacting staff in an Agency office identified in the “References and Design Aids, Volume I,” available at <http://www.dep.state.fl.us/water/rulesprog.htm#erp>.

Figure 1: Northwest Florida Water Management District – “Regional Watersheds of the NFWFMD for Mitigation Banks, 7 Watersheds” (February 19, 2015)

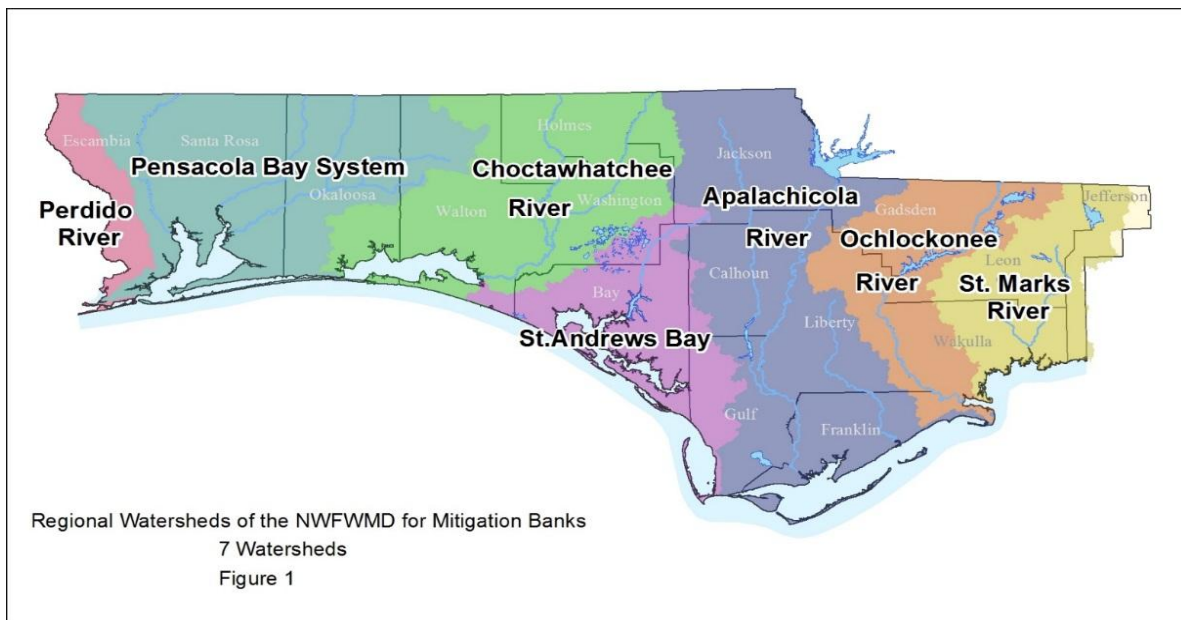


Figure 2: Suwannee River Water Management District – “Watersheds of the SRWMD Mitigation Banks, 7 Watersheds” (February 19, 2015)

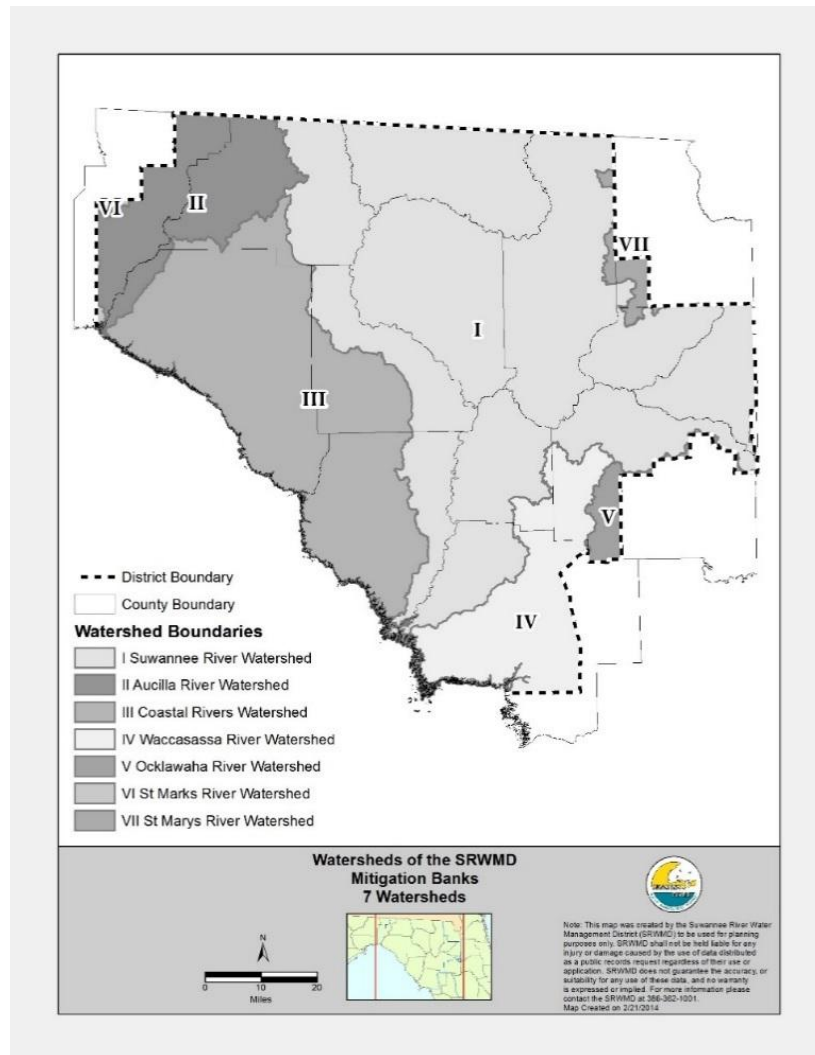


Figure 3: St. Johns River Water Management District – “Regional Watersheds for Mitigation Banking” (October 1, 2013)

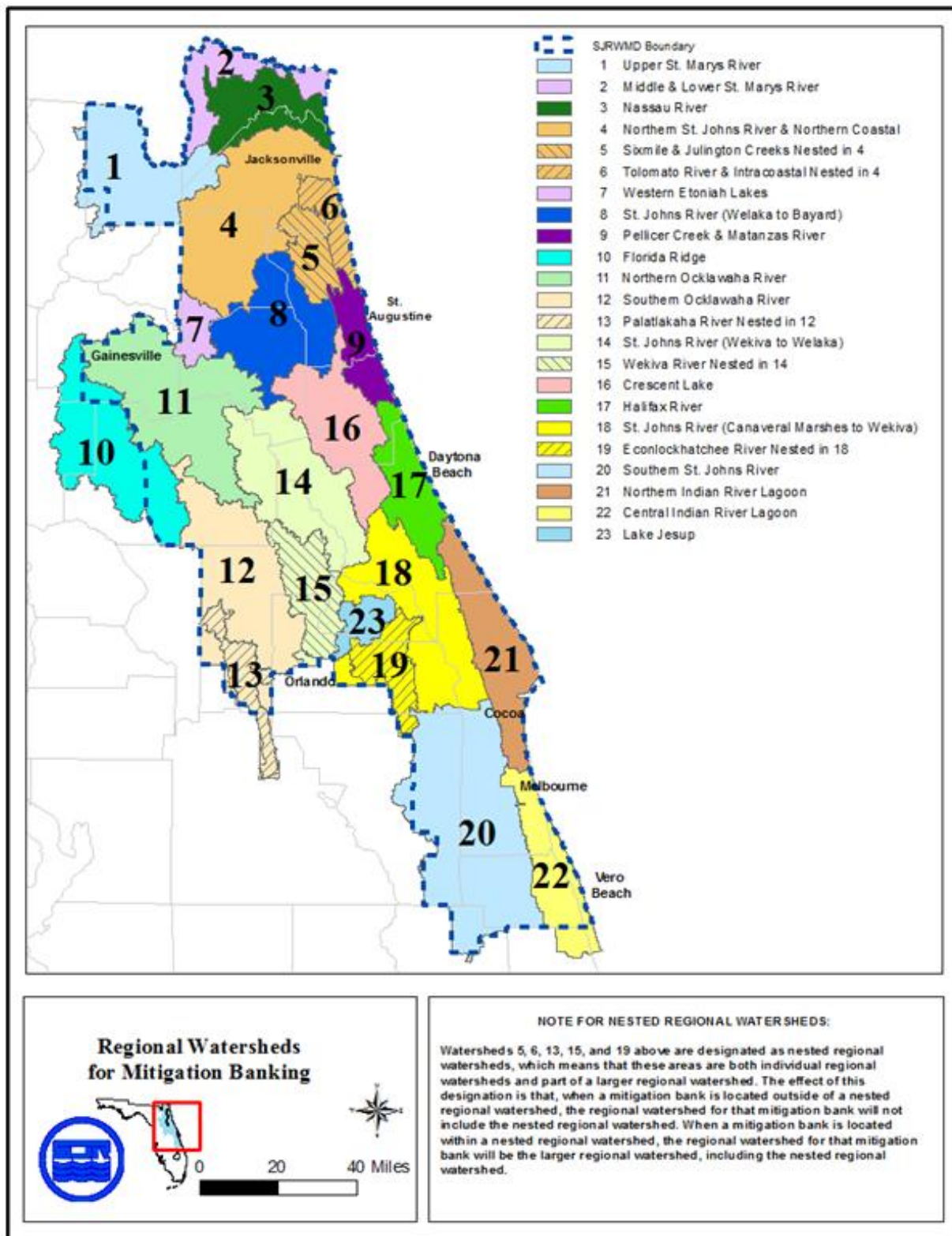


Figure 4: Southwest Florida Water Management District – “Drainage Basins and Watersheds within the Southwest Florida Water Management District” (October 1, 2013)

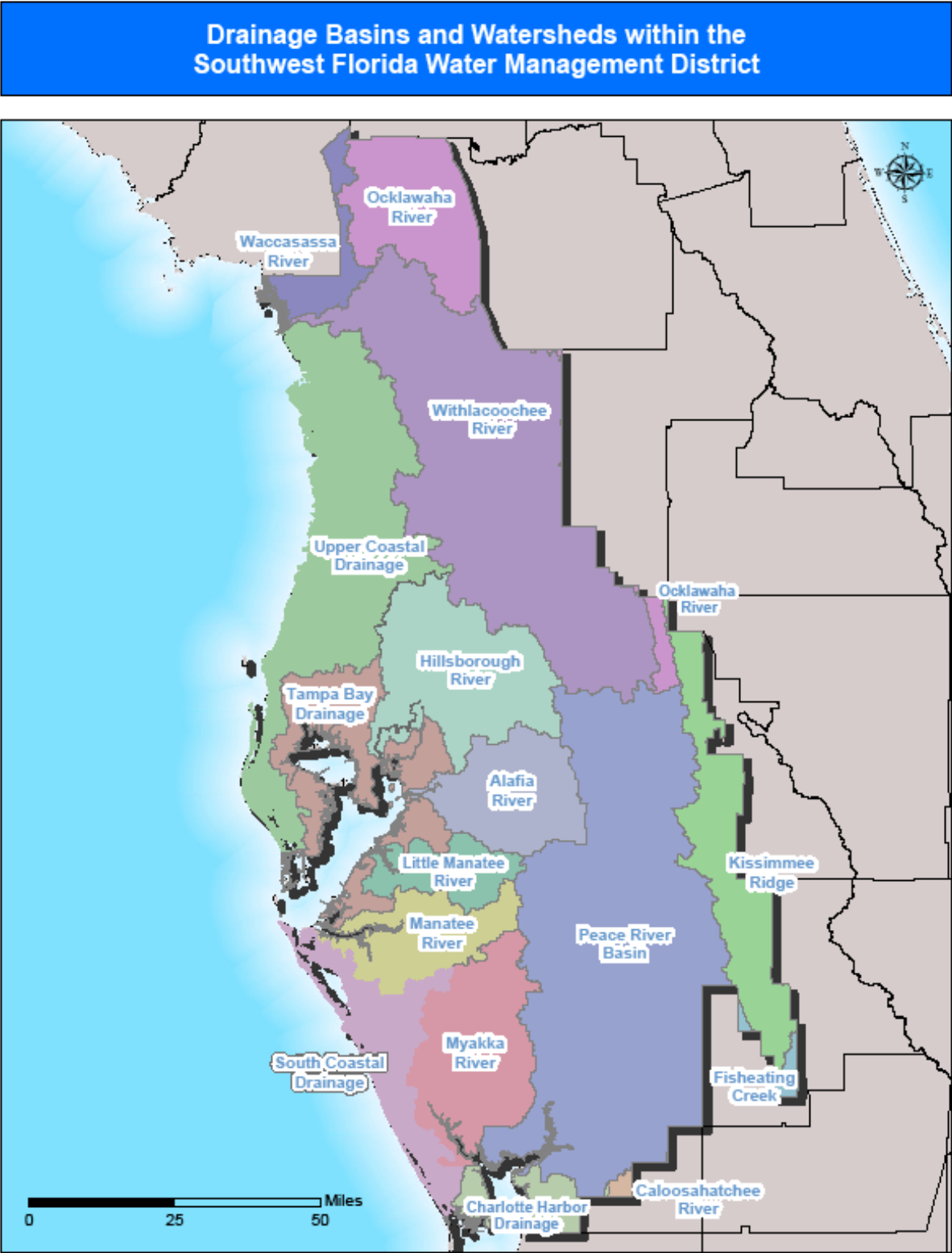
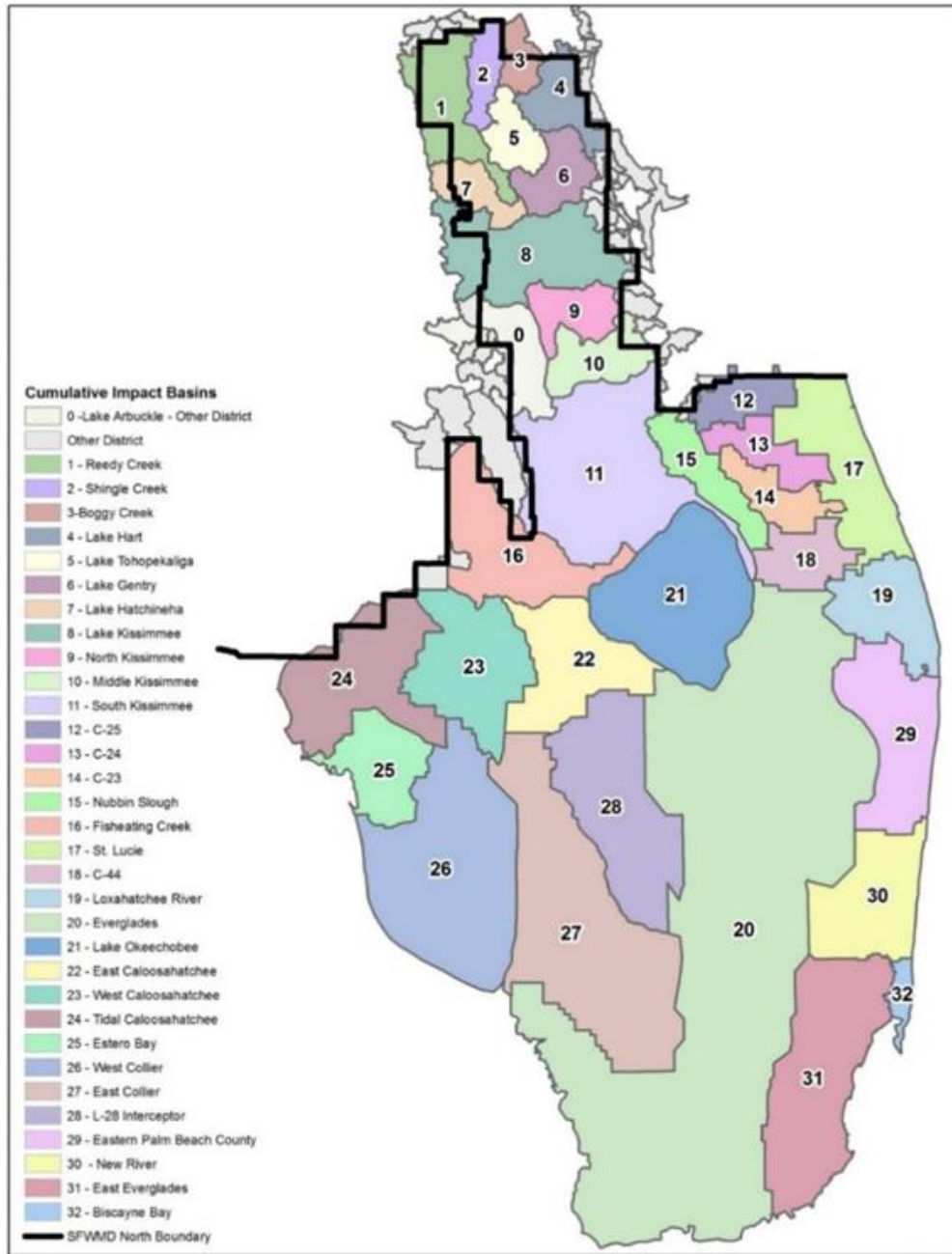




Figure 5: South Florida Water Management District – Appendix D: “SFWMD Basins for Cumulative Impact Assessments & Mitigation Bank Service Areas” (October 1, 2013)



(20) “Release” means a permit modification by the Agency wherein Mitigation Credits are awarded to the Mitigation Bank ledger and are made available for withdrawal.

(21) “Reservation Letter” means a letter from a Banker to the applicant of a pending environmental resource permit, consent order, or similar, wherein the Banker commits to reserve a specified amount and type of Mitigation Credits for a specified time. A Reservation Letter may only be issued for Mitigation Credits which have been released to the Mitigation Bank ledger and are available for withdrawal. A proof of purchase or e-Permit submittal may be an acceptable form of a Reservation Letter provided that the above information is included.

(22) “Restoration” means, for purposes of this Chapter, a type of mitigation that involves the manipulation of the physical,



chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded aquatic resource.

~~(23)~~(40) “Success” means when a Mitigation Bank achieves the parameters of ~~meets~~ the success criteria provided in the Mitigation Bank Permit and in Section 10.3.6 of Applicant’s Handbook, Volume I, incorporated by reference in Rule 62-330.010, F.A.C.

(24) “Withdrawal” means a permit modification approved by the Agency wherein released Mitigation Credits are deducted from the Agency ledger to offset adverse impacts.

*Rulemaking Authority 373.4131, 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136 FS. History—New 2-2-94, Formerly 17-342.200, Amended 12-12-94, 8-21-00, 5-21-01, 2-19-15, Amended \_\_\_\_\_.*

#### **62-342.470 Establishment of Mitigation Credits.**

(1) Based upon the information submitted by the applicant, and an assessment of the proposed Mitigation Bank under the criteria of Section 373.4136, F.S., the Agency will assign a number of potential Mitigation Credits to the proposed Mitigation Bank, or phases thereof.

(2) Mitigation Credits assigned for Eenhancement, Restoration or Preservation of wetlands or uplands will be based on the extent of improvement in Eecological Value resulting from these activities as determined by Chapter 62-345, F.A.C. using a functional assessment method relative to that obtained by successfully creating one acre of wetland. In determining the degree of improvement in Eecological Value, the following factors will be considered. However, no credits shall be released until the requirements of Rules 62-342.650 and 62-342.700, F.A.C., are met.

(a) The extent to which target hydrologic regimes can be achieved and maintained.

(b) The extent to which management activities promote natural ecological conditions, such as natural fire patterns.

(c) The proximity of the Mitigation Bank to areas with regionally significant ecological resources or habitats, such as national or state parks, Outstanding National Resource Waters and associated watersheds, Outstanding Florida Waters and associated watersheds, and lands acquired or to be acquired through governmental or non-profit land acquisition programs for environmental conservation; and the extent to which the Mitigation Bank establishes corridors for fish, wildlife, or listed species to those resources or habitats.

(d) The quality and quantity of wetland or upland Restoration, Eenhancement, Preservation, or Creation.

(e) The ecological and hydrological relationship between wetlands and uplands in the Mitigation Bank.

(f) The extent to which the Mitigation Bank provides habitat for fish and wildlife, especially habitat for species listed as threatened, endangered, or of special concern, or provides habitats which are unique for that Mitigation Service Area.

(g) The extent to which the lands that are to be preserved are already protected by existing state, local, or federal regulations or land use restrictions.

(h) The extent that lands to be preserved would be adversely affected if they were not preserved.

(i) Any special designation or classification of the affected waters and lands.

(3) Some Mitigation Credits may be released for use prior to meeting all of the performance success criteria specified in the Mitigation Bank Permit. The initial withdrawal of a credit, or any portion thereof, begins the timeframe to reach final success as assessed using Chapter 62-345, F.A.C. The complete release of all Mitigation Credits awarded will only occur after the Bank meets all of the success criteria specified in the permit. The number of credits and schedule for release shall be determined based upon the performance criteria for the Mitigation Bank; and the success criteria for each mitigation activity; The schedule for release shall adhere to and a consideration of the factors as listed in Section 373.4136(5), F.S. However, no credits shall be released until the requirements of Rules 62-342.650 and 62.342.700, F.A.C., are met. Additionally, no credits awarded for freshwater Creation shall be released until the success criteria established for initial construction activities included in the Mitigation Bank Permit are met.

(4) If at any time the Banker is not in material compliance with the terms of the Mitigation Bank Permit, no Mitigation Credits shall be released to the ledger, and no previously released Mitigation Credits may be withdrawn from the ledger. Mitigation Credits shall again be available for withdrawal if the Banker comes back into compliance.

(5) The Mitigation Bank Permit shall contain a ledger listing the number and type of Mitigation Credits in the Mitigation Bank. The ledger will provide the potential maximum number and type of Mitigation Credits which would be available for withdrawal when the Mitigation Bank meets all of the performance and success criteria in the permit.

(6) Mitigation Credits that have been released may be used to offset adverse impacts from an activity regulated under part IV, Chapter 373, F.S. Mitigation Credits may be used in whole or in part. However, Mitigation Credits in increments of less than a hundredth of one credit shall not be used.

(7) The Agency shall maintain a ledger of the Mitigation Credits available in each Mitigation Bank. Mitigation Credits shall be withdrawn as a minor modification of the Mitigation Bank Permit. To use Mitigation Credits, the impact permit applicant must submit to the agency permitting the impact, a Reservation Letter ~~documentation~~ from the ~~B~~banker demonstrating that Mitigation Credits have been reserved, sold, or transferred to the impact permit applicant, ~~and that the banker has requested that the Mitigation Credits be withdrawn from the Mitigation Bank.~~ If the agency permitting the impact determines that use of the Mitigation Credits proposed by the impact permit applicant is appropriate to offset the adverse impacts, the agency permitting the impact shall require the notify the Agency. Upon receipt of this notice, the Agency shall determine if a sufficient number and type of Mitigation Credits are available, withdraw the Mitigation Credits as a minor modification of the Mitigation Bank Permit, and notify the agency permitting the impact and the banker by letter of the withdrawal of the Mitigation Credits and the remaining balance of Mitigation Credits. be withdrawn prior to the issuance of the impact permit or as a condition of the impact permit. Within 60 days of receiving full payment for the credits and a request from the impact permittee, or as required by the Mitigation Bank Permit, the Banker shall submit a minor modification request to have the Mitigation Credits withdrawn from the official Agency Bank ledger.

(8) When the Department or a District is the ~~B~~banker, each Agency shall maintain its own ledger. The District or Department shall annually submit a report of the Mitigation Credits sold, transferred, or used from its Mitigation Bank to the permitting Agency.

*Rulemaking Authority 373.4131, 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136, 373.414, FS. History—New 2-2-94, Formerly 17-342.470, Amended 5-21-01, 2-19-15, Amended.*

#### **62-342.600 Mitigation Service Area.**

(1) A Mitigation Service Area will be established for each Mitigation Bank in the Mitigation Bank Permit under the criteria of Section 373.4136(6), F.S. Except as provided herein, Mitigation Credits may only be withdrawn to offset adverse impacts in the Mitigation Service Area. The boundaries of the Mitigation Service Area shall depend upon the geographic area where the Mitigation Bank could reasonably be expected to offset adverse impacts.

(2) A Mitigation Service Area may be larger than the ~~R~~regional ~~W~~watershed if the Mitigation Bank provides exceptional ecological value such that adverse impacts to wetlands outside the ~~R~~regional ~~W~~watershed could reasonably be expected to be adequately offset by the Mitigation Bank because of local ecological or hydrological conditions. A Mitigation Service Area may be smaller than a ~~R~~regional ~~W~~watershed, if adverse impacts throughout the ~~R~~regional ~~W~~watershed cannot reasonably be expected to be offset by the Mitigation Bank because of local ecological or hydrological conditions.

(3) Mitigation Service Areas may overlap and Mitigation Service Areas for two or more Mitigation Banks may be approved for a ~~R~~regional ~~W~~watershed.

~~(4) If the requirements in rule 62-342.300, F.A.C., are met, the following projects or activities shall be eligible to use a Mitigation Bank, notwithstanding the fact that they are not completely located within the Mitigation Service Area:~~

~~(a) Projects with adverse impacts partially located within the Mitigation Service Area.~~

~~(b) Linear projects, such as roadways, transmission lines, distribution lines, pipelines, or railways.~~

~~(c) Projects with total adverse impacts of less than one half acre in size.~~

~~(4)(5) When Mitigation Credits are applied to offset adverse impacts within the same ~~R~~regional ~~W~~watershed as the Mitigation Bank, the Mitigation Credit requirement shall be the same as that specified for mitigation on the project site.~~

~~(5)(6) When Mitigation Credits are applied to offset adverse impacts outside the ~~R~~regional ~~W~~watershed, the Mitigation Credit requirement shall be assessed in accordance with Section 373.4136(6) F.S. higher than that specified for mitigation on the project site if necessary to adequately offset the adverse impacts of the project, except for linear projects, as referenced in paragraph (4)(b), above, when the impact being offset is within the Mitigation Service Area of the Mitigation Bank to be used. The Mitigation Bank providing the greatest benefit to the impacted watershed shall be the preferred option.~~

*Rulemaking Authority 373.4136(11) FS. Law Implemented 373.4135, 373.4136 FS. History—New 2-2-94, Formerly 17-342.600, Amended 12-12-94, 5-21-01, Amended.*

#### **62-342.650 Perpetual Protection of Land Use Restrictions on Mitigation Banks.**

(1) Before Mitigation Credits may be released to ~~used from~~ a Mitigation Bank Ledger ~~or any phase of a Mitigation Bank~~, the ~~Bb~~anker shall ~~either:~~

(a) ~~Cause a fee interest to be conveyed to the Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees");~~  
~~or~~

(b) ~~c~~Cause a conservation easement to be conveyed to both the Department and the District. 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 and the District. Mitigation Banks on federal, state, or water management district owned land shall be encumbered in perpetuity by conservation easements, or other mechanisms shall be employed to ensure protection ~~preservation~~ according to the Mitigation Bank Permit.

(2) ~~If the Mitigation Bank is located within an area identified in an Agency acquisition plan, and the Agency determines that the ecological value of the bank can be increased by incorporating the bank into the Agency's land management programs, the Agency may award additional Mitigation Credits if the fee interest in the bank is conveyed to the Agency as opposed to a conservation easement.~~

(2)(3) All conservation easements shall be granted in perpetuity without encumbrances, unless such encumbrances do not adversely affect the ecological viability of the Mitigation Bank. All conservation easements shall be of a form and content sufficient to ensure protection ~~preservation~~ of the Mitigation Bank according to the permit, and shall, at a minimum, meet requirements and restrictions of Section 704.06, F.S., except as provided in subsection 62-342.650(7) ~~62-342.650(9)~~, F.A.C. The conservation easement shall also provide that the ~~Bb~~anker shall have access to the property and the authority to perform all acts necessary to ensure compliance with the Mitigation Bank Permit (unless the ~~Bb~~anker is the fee owner of the property), and that the Agency shall have access and the authority to perform these acts if the ~~Bb~~anker fails to do so.

(4) ~~All real property conveyances of the fee interest shall be in fee simple and by statutory warranty deed, without encumbrances that adversely affect the integrity of the Bbank, and are acceptable to the Board of Trustees. The Board of Trustees will accept a quit claim deed to aid in clearing minor title defects or otherwise resolve a boundary question in the Mitigation Bank.~~

(3)(5) As part of providing reasonable assurance that the Mitigation Bank site will be protected ~~preserved~~ in perpetuity, the grantor of the ~~property or~~ conservation easement shall provide the following unless the Agency determines during the permit review process such items are not necessary to ensure protection ~~preservation~~ of the Mitigation Bank 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 Agency 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 documentation demonstrating the market value of the property or interest to be conveyed to determine the appropriate amount of title insurance.

(c) A marketable title commitment issued to the Agency as beneficiary in an amount at least equal to the fair market value, as established in paragraph 62-342.650(3)(b) ~~62-342.650(5)(b)~~, F.A.C., of the interest being conveyed. An owner's title insurance policy (ALTA Form B) naming the Agency as beneficiary shall be issued to the Agency within the time frames specified by the permit. The coverage, form, and exceptions of the title insurance policy shall ensure that the Mitigation Bank will be protected ~~preserved~~ according to the Mitigation Bank Permit.

(d) A current Phase I environmental site assessment ~~audit~~ identifying any environmental problems which may affect the liability of the Agency ~~or Board of Trustees~~ and any additional site assessments ~~audits~~ as are necessary to ensure that the Agency ~~or the Board of Trustees~~ 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 ~~not~~ hazardous substances present on the property which would adversely affect construction, operation ~~implementation~~, and perpetual management of the Mitigation Bank.

(4)(6) The Agency shall require additional documentation or actions from the grantor of the conservation easement ~~or fee interest~~ if such additional documentation or actions are necessary to ensure that the Mitigation Bank will be protected in accordance with ~~preserved according to~~ the Mitigation Bank Permit.

(5)(7) The ~~Bb~~anker shall pay the documentary revenue stamp tax and all other taxes or costs associated with the conveyance, including the cost of recording the ~~deed or~~ conservation easement and any other recordable instruments required by the Agency ~~or Board of Trustees~~, unless prohibited or exempt by law, as a condition of the receipt of the conveyance.

~~(6)(8)~~ All real estate taxes and assessments which are or which may become a lien against the property shall be satisfied of record by the Banker before recording the conservation easement. If necessary, the Banker shall, in accordance with Section 196.295, F.S., place funds in escrow with the county tax collector. The ~~mitigation~~ Banker shall also provide the Agency with annual documentation demonstrating that such taxes and assessments have been paid.

~~(7)(9)~~ As a condition of receipt of the conveyance, the Banker shall remove all abandoned personal property, solid waste, or hazardous substances from the property that: reduces the proposed Ecological Value of the property; will adversely affect the construction, operation implementation, or management of the Bank; or will adversely affect the construction, alteration, operation, maintenance, abandonment, or removal of any surface water management system to be constructed in the Bank; ~~or poses a risk of liability to the Board of Trustees or the Agency.~~

~~(8)(10)~~ The Banker shall record the conservation easement ~~or property deed~~ required in the Mitigation Bank Permit. The Banker shall submit to the Agency the original recorded conservation easement ~~or property deed~~ as soon as such document is returned from the public records office.

*Rulemaking Authority 373.4131, 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136, 373.41365, 373.414, 403.0877, FS. History-- New 2-2-94, Formerly 17-342.650, Amended 12-12-94, 5-21-01, 2-19-15, Amended \_\_\_\_\_.*

### **62-342.700 Financial Responsibility.**

(1) To provide reasonable assurances that the proposed Mitigation Bank will meet the requirements of Section 373.4136, F.S., this Rule, and the associated permit conditions, non-governmental Bankers shall provide proof of financial responsibility for: (a) the Bank Construction Phase and Bank Operational Phase ~~implementation of the bank~~, and (b) the Bank Perpetual Management Phase ~~of the bank~~, as required in this Section. Governmental entities shall provide proof of financial responsibility under subsection ~~62-342.700(16)~~ 62-342.700(15), F.A.C. The amount of financial responsibility provided in the mechanisms required in this Rule shall be based on the cost estimates determined under subsection ~~62-342.700(14)~~ 62-342.700(13), F.A.C.

(2) Submitting Financial Responsibility Documentation. The applicant shall provide draft documentation of the cost estimate and required financial responsibility mechanisms described in subsections 62-342.700(5) through ~~(13)~~ (11) and ~~62-342.700(13)~~, F.A.C., with the permit application, and shall submit to the Agency the executed or finalized documentation within the time frames specified in the permit. The provisions of this subsection ~~section~~ shall also apply to any modifications to the Mitigation Bank Permit.

(3) General Terms for Financial Responsibility Mechanisms. In addition to the specific provisions regarding financial responsibility mechanisms for construction and operation implementation in subsection 62-342.700(4), F.A.C., and perpetual management in subsection ~~62-342.700(13)~~ 62-342.700(12), F.A.C., the applicant shall comply with the following terms ~~shall be complied with~~:

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

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

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

(d) A Banker may satisfy the requirements of this subsection ~~section~~ by establishing more than one acceptable financial responsibility mechanism per Mitigation Bank. Whenever more than one mechanism is used, the Banker shall identify the specific financial responsibility mechanism for each individual activity on the cost estimate as required under subsection ~~62-342.700(14)~~ 62-342.700(13), F.A.C.

(e) A Banker shall not may use a financial responsibility mechanism ~~allowed under this section~~ for more than one Mitigation Bank. ~~The amount of funds available through the mechanism must be no less than the sum of funds that would be required for separate mechanisms for each Mitigation Bank.~~

(f) A Banker must notify the Agency by certified mail within 10 days after the commencement of a voluntary or involuntary

proceeding:

1. To dissolve the Banker;
2. To place the Banker in receivership;
3. For entry of an order for relief against the Banker 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.

A Banker 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 Banker must notify the Agency within 10 days, and establish other financial assurance within 60 days after such an event.

(4) Financial Responsibility for Bank Construction Phase and Operation Phase Implementation.

(a) No financial responsibility shall be required where the construction and operation implementation of the Mitigation Bank, or a phase thereof, is completed and successful, as determined by the Agency pursuant to the final success criteria in the Permit, prior to the release withdrawal of any Mitigation Credits.

(b) Financial responsibility for the construction and operation implementation activities of the Mitigation Bank, or each phase thereof, may be established by surety bonds, performance bonds, irrevocable letters of credit, insurance policies, escrow accounts, or trust funds, as described below.

(c) The amount of financial responsibility established shall equal 110 percent of the cost of construction and operation implementation of the Mitigation Bank, or each phase thereof, in accordance with subsection 62-342.700(14) 62-342.700(13), F.A.C., and as adjusted in accordance with subsection 62-342.700(15) 62-342.700(14), F.A.C., during the course of the project. When the Bank has been completely constructed, implemented, and is trending toward success in compliance with the permit, the respective amount of financial responsibility shall be released.

(d) The financial responsibility mechanism shall be become effective, executed, and funded based on the full cost estimate amount in accordance with paragraph 62-342.700(4)(c), F.A.C., prior to the release of any Mitigation Credits.

(5) Surety or Performance Bond.

(a) A Banker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation activities by obtaining a surety or performance 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 (August 1, 2025) (July 1, 2017), which is incorporated by reference herein and available at (insert link) <http://www.flrules.org/Gateway/reference.asp?No=Ref-09504>, 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 Banker shall provide documentation evidencing that the bond company meets these requirements.

(b) The surety or performance bond shall be worded in substantial conformance with Form 62-342.700(5) Form 62-342.700(5)(a) or Form 62-342.700(5)(b), "Mitigation Bank Surety Performance Bond to Demonstrate Construction and Operation (Construction and Implementation or Perpetual Management) Financial Assurance" (effective date) (June 12, 2018), which are is incorporated by reference herein and available at (a) (insert link) and (b) (insert link), respectively <http://www.flrules.org/Gateway/reference.asp?No=Ref-09498>. These forms This form and all the forms incorporated in Rule 62-342.700, 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, and submitted to, and approved by to the Agency.

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

(d) The mitigation Banker who uses a surety or performance bond to satisfy the requirements of subsection 62-342.700(4), F.A.C., must establish a standby escrow or standby trust fund when the surety or performance 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 Agency's instructions. The standby escrow agreement and standby trust fund agreement must meet the requirements specified in subsections 62-342.700(9) and 62-342.700(10), F.A.C., respectively.

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

(f) A bond may be canceled by the Banker if the Agency has given prior written consent. The Agency shall provide such consent when either the Banker substitutes alternative financial assurance allowed under this Rule and such alternate financial assurance is approved by the Agency and is effective, or the Agency approves release of financial assurance in accordance with paragraph 62-342.700(4)(c), F.A.C.

(6) Irrevocable Letter of Credit.

(a) A ~~mitigation~~ Banker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation 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)], incorporated by reference herein and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-09505>. The Banker 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 62-342.700(6)~~ Form 62-342.700(6)(a) or Form 62-342.700(6)(b), “Mitigation Bank Irrevocable Letter of Credit to Demonstrate Construction and Operation (Construction and Implementation or Perpetual Management) Financial Assurance” (effective date) (June 12, 2018) [available at (a) (insert link) and (b) (insert link), respectively <http://www.flrules.org/Gateway/reference.asp?No=Ref-09499>, and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the ~~form~~ forms shall be identified to, and submitted to, and approved by ~~to~~ the Agency.

(c) A ~~mitigation~~ Banker who uses an irrevocable letter of credit to satisfy the requirements of subsection 62-342.700(4), F.A.C., must also establish 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 Agency 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 Agency. This standby escrow agreement or standby trust fund agreement must meet the requirements specified in subsections 62-342.700(9) and 62-342.700(10), 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 Banker and the Agency 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 Banker and the Agency have received the notice, as evidenced by the return receipts.

(7) Insurance Policy.

(a) A ~~mitigation~~ Banker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation ~~implementation~~ activities by obtaining an insurance policy that conforms to the requirements of this subsection. The insurance policy shall be provided by an insurance company that is authorized to transact insurance in the State of Florida and has at least an A- rating from the A.M. Best. The Banker shall provide documentation to the Agency evidencing that the insurance company meets these requirements.

(b) The insurance policy must be worded in substantial conformance to ~~Form 62-342.700(7)~~ Form 62-342.700(7)(a) or Form 62-342.700(7)(b), “Mitigation Bank Insurance Coverage Form” (effective date) (June 12, 2018), incorporated by reference herein [available at (a) (insert link) and (b) (insert link), respectively, <http://www.flrules.org/Gateway/reference.asp?No=Ref-09500> and as described in paragraph (5)(b), above]. Deviations from the ~~form~~ forms to meet insurance company documentary requirements must satisfy all criteria listed on the “Mitigation Bank Insurance Coverage Form” and be identified to, and submitted to, and approved by ~~to~~ the Agency.

(c) The insurance policy must be issued for a period of no less than one year beyond the anticipated completion and success of the Mitigation Bank, or the last success criterion insured, which ever occurs first based on the construction and operation ~~implementation~~ schedule in the Mitigation Bank Permit.

(d) The insurance policy must be non-cancellable for the term of the policy. The insurance policy shall include a provision to notify the Agency and Banker by certified mail at least 120 days prior to the termination of the policy, nonrenewal of the policy, or a change to the terms and conditions of the policy. The insurance policy must automatically renew for the same terms and conditions



of the policy unless the insurance company provides notice of nonrenewal to the ~~B~~banker and the Agency as required in this subsection.

(e) Under the terms of the insurance policy, the Agency must have the authority to file claims when the ~~B~~banker either fails to perform under the terms of the ~~M~~mitigation ~~B~~bank ~~P~~permit, as determined solely by the Agency, or fails to replace the insurance policy with an alternative financial responsibility mechanism prior to the termination of the insurance policy. The insurance policy must afford the Agency with the sole authority to determine whether the action taken or proposed to be taken by the insurance company is sufficient to satisfy a claim made by the Agency. A claim is satisfied when the amount received by the Agency is greater than or equal to the most recent approved cost estimate or adjustment in accordance with subsections 62-342.700(14) and 62-342.700(15) ~~62-342.700(13) and 62-342.700(14)~~, F.A.C., respectively, and the ~~B~~bank is in compliance with the terms of the permit.

(f) The ~~mitigation B~~banker who uses an insurance policy to satisfy the requirements of subsection 62-342.700(4), F.A.C., must establish a standby escrow or standby trust fund when the insurance policy is acquired. The standby escrow agreement or standby trust fund agreement must meet the requirements specified in subsections 62-342.700(9) and 62-342.700(10), F.A.C., respectively. Under the terms of the insurance policy, all amounts paid by the insurance company in satisfaction of a claim will be deposited directly into the standby escrow or standby trust fund for distribution by the agent or trustee in accordance with the Agency's instructions.

(g) The ~~declarations~~ ~~declaration's~~ page of the insurance policy shall include all of the following items:

1. Insured location – the ~~B~~bank address;
2. Mitigation ~~B~~bank ~~P~~permit number;
3. Insurer's claim's notice address;
4. Regulatory entities and addresses, to include the U.S. Army Corps of Engineers;
5. Surplus line agent – name, address, license number;
6. Producing agent's name, address, and other contact information;
7. Insured's name, address, and other contact information;
8. Policy premium;
9. Limit of liability;
10. Policy inception and expiration dates;
11. Service fee;
12. Premium receipts tax; and
13. Deductible amount.

(8) Escrow.

(a) A ~~mitigation B~~banker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation 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~~ to Form 62-342.700(8), "Escrow (Standby Escrow) Agreement" (June 12, 2018), incorporated by reference herein [available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-09503> and as described in paragraph (5)(b), above]. Deviations from the form must be identified to, and submitted to, and approved by ~~to~~ the Agency.

(c) The escrow agreement must be irrevocable until the Agency approves release of financial security in accordance with paragraph 62-342.700(4)(c), F.A.C., and authorizes a final payout.

(9) Standby Escrow.

(a) A ~~mitigation B~~banker 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 meeting the requirements of this subsection or a standby trust fund under subsection 62-342.700(10), F.A.C.

(b) The standby escrow agreement shall be worded in substantial conformance with Form 62-342.700(8), F.A.C., incorporated by reference in paragraph 62-342.700(8)(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, and submitted to, and approved by ~~to~~ the Agency.

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

(10) Standby Trust Fund.

(a) A ~~mitigation B~~banker using a surety ~~or performance~~ bond, irrevocable letter of credit, or insurance policy shall contemporaneously establish either a standby trust fund meeting the requirements of this subsection or a standby escrow under

subsection 62-342.700(9), 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 Banker shall provide documentation evidencing such regulation and examination to the Agency.

(b) The standby trust agreement shall be worded in substantial conformance with ~~Form 62-342.700(10)~~ Form 62-342.700(10)(a) or Form 62-342.700(10)(b), “Mitigation Bank Standby Trust Fund Agreement to Demonstrate Construction and Operation (Construction and Implementation or Perpetual Management) Financial Assurance” (effective date) (June 12, 2018) [available at (a) (insert link) and (b) (insert link), respectively, <http://www.flrules.org/Gateway/reference.asp?No=Ref 09502> and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the ~~form~~ forms shall be identified to, and submitted to, and approved by ~~to~~ the Agency. These forms This form and Forms 62-342.700(11)(a) and 62-342.700(11)(b) Form 62-342.700(11), incorporated in subsection 62-342.700(11), F.A.C., reference references the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. (July 18, 2025) (February 19, 2015), which is incorporated by reference herein and available at (insert link) <http://www.flrules.org/Gateway/reference.asp?No=Ref 05064> 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.

(11) Trust Fund.

(a) A ~~mitigation~~ Banker may satisfy the requirements of subsection 62-342.700(1), F.A.C., for construction and operation or perpetual management activities by establishing a trust fund that conforms to the requirements of this subsection ~~section~~. 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 62-342.200(11), F.A.C. are regulated and examined by a federal agency or an agency of the State of Florida. The Banker shall provide documentation evidencing proof of such regulation and examination to the Agency.

(b) The trust fund agreement must be worded in substantial conformance with ~~to~~ Form 62-342.700(11)(a), 62-342.700(11)(b), 62-342.700(11)(c), or 62-342.700(11)(d) 62-342.700(11), “Mitigation Bank Trust Fund Agreement to Demonstrate Construction and Operation or Perpetual Management (Construction and Implementation or Perpetual Management) Financial Assurance” (effective date) (June 12, 2018) [available at (a) (insert link), (b) (insert link), (c) (insert link), and (d) (insert link), respectively, <http://www.flrules.org/Gateway/reference.asp?No=Ref 09501> and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the ~~form~~ forms shall be identified to, and submitted to, and approved by ~~to~~ the Agency.

(12) Endowment

(a) A Banker may satisfy the requirements of subsection 62-342.700(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 62-342.200(9) or 62-342.200(11), F.A.C., respectively.

(b) The endowment agreement must be worded in substantial conformance with Form 62-342.700(12)(a) or 62-342.700(12)(b), “Mitigation Bank Endowment Agreement to Demonstrate Perpetual Management Financial Assurance” (effective date) [available at (a) (insert link) and (b) (insert link) respectively, and as described in paragraph (5)(b), above], incorporated by reference herein. Deviations from the forms shall be identified to, submitted to, and approved by the Agency.

~~(13)~~(12) Financial Responsibility for Perpetual Management.

(a) A Banker shall establish financial assurance for the perpetual management of the Mitigation Bank, or phase thereof, using the financial responsibility mechanisms described in subsections 62-342.700(8), 62-342.700(11), or 62-342.700(12) 62-342.700(5), through 62-342.700(11), F.A.C., except that an insurance policy under subsection 62-342.700(7), F.A.C., may not be used. When an escrow agreement, or trust fund, or endowment is used, the requirements of subsections 62-342.700(8), and 62-342.700(11), and 62-342.700(12), F.A.C., respectively, must be met and all references to perpetual management in Forms 62-342.700(8) and 62-342.700(11) shall be selected. When a surety bond, performance bond, guarantee bond, or irrevocable letter of credit is used, a standby trust und agreement must be established by the banker, and the requirements of subsections 62-342.700(5), 62-342.700(6), 62-342.700(9) and 62-342.700(10), F.A.C., respectively, must be met, and all references to perpetual management in Forms 62-342.700(8) and 62-342.700(11) shall be selected.

(b) The amount of financial responsibility provided shall be calculated, and adjusted in accordance with subsection 62-342.700(15), F.A.C. sufficient to be reasonably expected to generate annual revenue The fund shall be established in an amount equal to 100 percent of the annual cost of perpetual management, established under subsection 62-342.700(14) 62-342.700(13),

F.A.C., divided by a discount percentage rate calculated as (long-term expected annual return) less (long-term expected annual inflation) less (buffer calculation based on expected volatility and duration of proposed soak period). For purposes of this calculation, soak period is the amount of time from fund initiation to proposed transition to Perpetual Phase. at an assumed average rate of return of six percent per annum, for the Bbank, or for Bbanks constructed in phases, for all phases for which Mitigation Credits have been released.

Fund Establishment Amount = 100% Annual Cost of Perpetual Management / Discount Percentage Rate

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

(c) The financial responsibility mechanism must be in effect and executed prior to the ~~withdrawal~~ first release of credits ~~from to~~ the Mitigation Bank, or applicable phase thereof. The financial responsibility mechanism for perpetual management may be funded over time as credits are sold for a period not to exceed five years, or as specified by the Mitigation Banking 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 62-342.700(13)(b), F.A.C.

~~(14)(13)~~ Cost estimates.

(a) For the purposes of determining the amount of financial responsibility that is required in this ~~subsection~~ section, the ~~Bbanker~~ shall submit a detailed written estimate, in current dollars, of the total cost of construction and operation implementation and of the cost of perpetual management of the Mitigation Bank. When the Agency determines it is appropriate, t~~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 and operation implementation shall include all costs associated with completing construction and operation implementation of the Mitigation Bank, or phase thereof, including, as applicable, earthmoving, planting, exotic/nuisance vegetation removal, prescribed fire, land surveying, structure installation, site security, administrative fees, consultant fees, taxes, monitoring activities and reports, and any other costs associated with construction and operation.

(c) The cost estimate for the perpetual management of the Mitigation Bank shall be based on the costs of maintenance, maintaining, and management operating, replacement of any structures as necessary, exotic/nuisance vegetation control controlling nuisance or exotic species, prescribed fire management, site security, administrative fees, consultant fees, monitoring activities and reports, taxes, and any other costs associated with perpetual management. The cost estimate shall also include estimated annual advisory fees and/or other costs related to managing the financial responsibility mechanism. The amount of financial responsibility shall equal the cost of perpetual management for the bank, or, for banks constructed in phases for all phases for which credits have been released.

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

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

~~(15)(14)~~ Cost adjustments.

(a) Every two years, or as specified in the permit, the Bbanker shall undertake an estimate of the costs of the remaining construction and operation implementation, and perpetual management. In accordance with subsection 62-342.700(14), F.A.C., t~~The~~ ~~Bbanker~~ shall submit the estimate to the Agency in writing certified by a person licensed in the State of Florida to provide such estimates, accompanied by supporting documentation. Construction, operational implementation activity costs, and perpetual management costs shall be listed separately. The Agency shall review the cost adjustment statement and supporting documentation to determine if sufficient documentation has been provided to they reflect all construction costs, operational implementation costs, and perpetual management costs. If the cost adjustment statement and supporting documentation accurately reflect a good faith estimate of all construction costs, operation implementation costs, and perpetual management costs, the Agency shall approve the cost adjustment statement.

(b) At each cost adjustment, the ~~Bbanker~~ shall revise the construction, operation implementation, and perpetual management cost ~~estimate~~ estimates for inflation and changes in the costs to complete or undertake the current phase of the Mitigation Bank or

appropriate phase thereof in accordance with subsection ~~62-342.700(14)~~ 62-342.700(13), F.A.C.

(c) Revised cost estimates shall be used as the basis for modifying the financial responsibility mechanisms for Bank Construction Phase and Bank Operational Phase. If the value of any financial responsibility mechanism is less than the total amount of the current construction and implementation ~~and perpetual management~~ cost estimates, the Banker shall, upon Agency 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 construction and operation ~~any~~ funding mechanism is greater than the total amount of the current cost estimate, the Banker may reduce the value of the funding mechanism to reflect the new estimate upon receiving written Agency 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 Bank Perpetual Phase. The Agency may assess the sufficiency of the perpetual management funding and may require the financial responsibility 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 as calculated in paragraph 62-342.700(13)(b), F.A.C., the Banker shall, upon Agency approval of the cost adjustment statement, increase the value of the financial mechanism within 60 days. The sufficiency of the perpetual management funding may be revised by the Agency with any modification or credit release, and before transfer to the Bank Perpetual Phase.

~~(e)(d)~~ The Agency shall require adjustment of the amount of financial responsibility provided for construction, operation, implementation 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 and such financial assurances are deemed necessary to ensure compliance with the permit conditions.

~~(f)(e)~~ The Banker may provide revised cost estimates more frequently than every two years. If at any time the ~~banker learns that~~ actual costs exceed estimated costs by more than 25 percent, the Banker shall provide a revised cost estimate and adjust the corresponding amount of financial responsibility under this Rule.

~~(16)(15)~~ Financial Responsibility for Governmental, Non-Department and Non-Water Management District, Mitigation Banks.

(a) A governmental entity other than the Department or Districts shall demonstrate reasonable assurances that it can meet the construction and operational implementation requirements in the Mitigation Bank Permit by any of the mechanisms in subsection 62-342.700(4), F.A.C., above, or by other financial mechanisms which are sufficient to meet the requirements of this subsection ~~section~~.

(b) Governmental entities other than the Department or Districts shall ~~establish a trust fund~~ meet the requirements of subsection 62-342.700(13), F.A.C., to fund for the perpetual management of the Mitigation Bank which meets the requirements of subsection 62-342.700(11), F.A.C., above. The ~~trust fund~~ financial responsibility mechanism for perpetual management may be funded as Mitigation Credits are withdrawn, provided that the ~~trust fund~~ financial responsibility mechanism is fully funded when all Mitigation Credits are withdrawn. Governmental entities shall comply with the cost adjustment provisions in subsection ~~62-342.700(15)~~ 62-342.700(14), F.A.C.

*Rulemaking Authority 373.4131, 373.4135(1), 373.4136(11) FS. Law Implemented 373.4131, 373.4135, 373.4136, 373.41365, 373.414, 403.0877 FS. History—New 2-2-94, Formerly 17-342.700, Amended 12-12-94, 9-12-95, 5-21-01, 2-19-15, 6-12-18, Amended.*