

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: BANANA RIVER LAGOON
BASIN MANAGEMENT ACTION PLAN

OGC Case No. 21-0080

FINAL ORDER ESTABLISHING THE BANANA RIVER LAGOON
BASIN MANAGEMENT ACTION PLAN

Pursuant to Sections 403.067(7), Florida Statutes, this Final Order adopts the attached Basin Management Action Plan ("BMAP") for certain surface waterbodies within the Banana River Lagoon subbasin. The adopted BMAP, entitled "Banana River Lagoon Basin Management Action Plan" (hereafter referred to as the "Banana River Lagoon BMAP") and dated February 2021, is attached hereto and incorporated herein as Exhibit 1.

The Banana River Lagoon BMAP has been developed as part of the Florida Department of Environmental Protection's ("department") Total Maximum Daily Load ("TMDL") Program, as authorized under the Florida Watershed Restoration Act (Section 403.067, Florida Statutes). Surface waters in the Banana River Lagoon subbasin are designated as a Class II and III waters in accordance with Chapter 62-302, Florida Administrative Code ("F.A.C."). Water quality for Class II waters are intended to have suitable water quality for shellfish propagation or harvesting. Class III waters are meant to be suitable for

recreational use and for the propagation and maintenance of a healthy, well-balanced population of fish and wildlife.

The Banana River Lagoon subbasin is located in Brevard County. The department established TMDLs for certain waters in the Banana River Lagoon subbasin within Rule 62-304.520, F.A.C. Excessive nutrients are the primary pollutants contributing to the impairments. Tables 3 and 4 in the attached Exhibit 1 identifies the applicable TMDLs addressed in this BMAP.

In 2013, the department first adopted a BMAP for the Banana River Lagoon. This updated BMAP (Exhibit 1) supersedes and replaces the 2013 BMAP in its entirety.

The department worked closely with the affected stakeholders, including local and state agencies, in developing the Banana River Lagoon BMAP to achieve the associated TMDLs. Beyond direct work with the affected stakeholders, the department encouraged public participation to the greatest practicable extent by providing routine updates in technical meetings and requests for comment at technical meetings on the Banana River Lagoon BMAP. The department held a noticed public meeting in the subbasin on December 16, 2020, to discuss the BMAP and receive comments.

The Banana River Lagoon BMAP represents the collaborative effort of stakeholders to identify current and planned management actions to achieve pollutant load reductions required by the TMDL. The adopted BMAP documents the projects and management actions that have been, or will be, undertaken by stakeholders to reduce the contribution of pollutants in the watershed. The projects and management actions (completed, ongoing, and planned) identified in the BMAP address known sources of pollutants, facilitate investigation of unknown sources, prevent new sources, and address future loads associated with growth and land use changes in the subbasin.

The specific pollutant reduction allocations, projects and management actions required of individual entities are set forth in Chapters 2 and 3 and Appendices A and B of the BMAP. Unless otherwise noted in the BMAP, all requirements of this BMAP are enforceable upon the effective date of this Order.

This Final Order and incorporated BMAP are enforceable pursuant to Sections 403.067, 403.121, 403.141, 403.161, 373.119 and 373.129, Florida Statutes.

THEREFORE, IT IS ORDERED that the attached Exhibit 1 is hereby adopted as the Banana River Lagoon Basin Management Action Plan.

NOTICE OF RIGHTS

The Banana River Lagoon Basin Management Action Plan shall become final unless a timely petition for an administrative proceeding is filed pursuant to the provisions of Sections 120.569 and 120.57 of the Florida Statutes, before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the department's proposed agency action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the department's Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions must be filed within 21 days of publication of the public notice or within 21 days of receipt of this order, whichever occurs first. Under Section 120.60(3), Florida Statutes, however, any person who asked the department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure of any person to file a petition within the appropriate time period shall

constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the department's action is based must contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the department's final action may be different from the position taken by it in this order. Persons whose substantial interests will be affected by any such final decision of the department on the petition have the right to

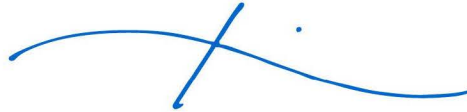
petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available for this proceeding.

A party who is adversely affected by this order has the right to seek judicial review under Section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the department in the Office of the General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the department.

DONE AND ORDERED this 17th day of February 2021, in
Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Noah Valenstein
Secretary

Marjorie Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Lea Crandall Digitally signed by Lea Crandall
Date: 2021.02.17 12:50:47 -05'00'

CLERK

DATE