

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Caloosahatchee Estuary,
BASIN MANAGEMENT ACTION PLAN

OGC Case No. 12-1685

FINAL ORDER ESTABLISHING CALOOSAHATCHEE ESTUARY
BASIN MANAGEMENT ACTION PLAN

Pursuant to Section 403.067(7), Florida Statutes, this Final Order adopts the attached Basin Management Action Plan ("BMAP") for Class III surface waterbody sections in the Caloosahatchee Estuary Basin. The adopted BMAP, including background and detailed management actions, is attached hereto and incorporated herein as Exhibit 1.

The Caloosahatchee Estuary BMAP has been developed as part of the Department's Total Maximum Daily Load ("TMDL") Program, as authorized under the Florida Watershed Restoration Act (Section 403.067, Florida Statutes). Surface waters in the Caloosahatchee Estuary are designated as Class III waters in accordance with Rule 62-302, Florida Administrative Code ("F.A.C."). Class III waters must have suitable water quality for recreational use and for the propagation and maintenance of a healthy, well-balanced population of fish and wildlife.

The Caloosahatchee Estuary is located in Charlotte and Lee Counties, and includes Cape Coral, Fort Myers, Lucaya Community Development District, and East County Water Control District. In August 2009, the Department adopted Rule 62-304.800, F.A.C.,

establishing a TMDL for the Caloosahatchee Estuary. Excessive nutrients are the primary pollutants contributing to the impairment. The table in the executive summary of the BMAP identifies the applicable TMDL.

The Department worked closely with the affected stakeholders, including local and state agencies, in developing the BMAP to achieve the Caloosahatchee Estuary TMDL. 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 Caloosahatchee Estuary BMAP. The Department held noticed public meetings in the basin on August 30 and October 24, 2012, to discuss the BMAP and receive comments.

The Caloosahatchee Estuary BMAP represents the collaborative effort of local stakeholders to identify current and planned management actions to achieve pollutant load reductions required by the TMDL. The adopted BMAP documents the management actions that have been, or will be, undertaken by stakeholders to reduce discharge of pollutants in the watershed. The 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 population growth and land use changes in the basin.

THEREFORE, IT IS ORDERED that the attached Exhibit 1 is hereby adopted as the Caloosahatchee Estuary Basin Management Action Plan.

NOTICE OF RIGHTS

The Caloosahatchee Estuary BMAP 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 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, MS 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, addresses, and telephone number of each petitioner; the Department case identification number and the county in which the subject matter or activity is located;

(b) A statement of how and when each petitioner received notice of the Department action;

(c) A statement of how each petitioner's substantial interests are affected by the Department action;

(d) A statement of the material facts disputed by the petitioner, if any;

(e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;

(f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

A petition that does not disputes 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 27th day of November, 2012, in Tallahassee, Florida.

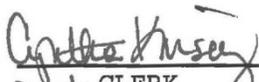
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Herschel T. Vinyard Jr.
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.


Deputy CLERK

11/28/12

DATE