



# Florida Department of Environmental Protection

SOUTHEAST DISTRICT OFFICE  
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WEST PALM BEACH, FL 33406  
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Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Jonathan P. Steverson  
Secretary

In the matter of an Application for an Environmental Resource Permit/Water Quality Certification  
by:

**APPLICANT:**

Kanter Real Estate, LLC  
c/o John Kanter, President  
2601 S. Bayshore Dr.  
Miami, FL 33133  
Email: [jekmia@bellsouth.net](mailto:jekmia@bellsouth.net)

**FILE No.:** 06-0336409-001

**COUNTY:** Broward

**PROJECT NAME:** Kanter 23-2

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## NOTICE OF DENIAL OF AN ENVIRONMENTAL RESOURCE PERMIT

The Department of Environmental Protection (Department) gives notice of denial of an Environmental Resource Permit (ERP) in accordance with Part IV of Chapter 373, Florida Statutes (F.S.), and Chapter 62-330, Florida Administrative Code (F.A.C.), which also constitutes denial of certification of compliance with state water quality standards pursuant to section 401 of the Clean Water Act, 33 U.S.C. 1341.

This denial of the Environmental Resource Permit also constitutes a finding of inconsistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

This notice of denial is based on the reasons stated below.

### I. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicant, Kanter Real Estate, LLC, applied on July 9, 2015, to the Department of Environmental Protection for an environmental resource permit/water quality certification to impact five acres of herbaceous wetlands to construct an oil drilling well pad and associated stormwater management system. The applicant anticipated that the pad will be used for exploratory oil drilling, with the potential to turn into a production well should the exploratory drilling be successful.

The activity is located in wetlands within an area known as the South Florida Water Management District's Water Conservation Area 3B, and within the Francis S. Taylor Wildlife Management Area, Class III Waters, on the southeast side of the L-67A canal, south of the intersection with the

Miami Canal (Section 23, Township 51 South, Range 38 East), in Broward County (Latitude N 26° 7' 25.212", Longitude W 80° 8' 36.798").

## **II. AUTHORITY FOR REVIEW**

The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapter 62-330, F.A.C. The activity is not exempt from the requirement to obtain an Environmental Resource Permit. Pursuant to an Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing this application and taking final action of this activity.

## **III. REASONS FOR DENIAL**

The applicant has not provided reasonable assurance that the construction and operation of the project will comply with the provisions of Chapter 373.414, F.S., and the rules adopted thereunder, because the applicant has not demonstrated that the project is not contrary to the public interest. Furthermore, reasonable assurance has not been provided to demonstrate that the proposed mitigation will sufficiently offset the proposed adverse impacts to wetlands and other surface waters.

The applicant has not provided assurance that the Department will have the necessary ingress and egress rights to access and inspect the proposed site. As such, the applicant has not (1) demonstrated that it has a sufficient real property interest over the land upon which the activities subject to the application will be conducted as required by Florida Administrative Code Rule 62-330.060(2)-(3) and Applicant's Handbook, Volume I, Section 4.2.3(d) or (2) provided reasonable assurance that the Department will have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications of the project as required by Florida Administrative Code Rules 62-4.160(7), 62-330.350(m), and Applicant's Handbook, Volume I, Section 1.5.1.

## **IV. RIGHTS OF AFFECTED PARTIES**

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

### Petition for Administrative Hearing

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, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing 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 email address, any facsimile number, and telephone number of the petitioner; 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 are or 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 that the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that 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 that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

#### Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has 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 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, F.S., 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.

#### Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

### Mediation

Mediation is not available in this proceeding.

### FLAWAC Review

The applicant, or any party within the meaning of sections 373.114(1)(a) or 373.4275, Florida Statutes, may also seek appellate review of this order before the Land and Water Adjudicatory Commission under section 373.114(1) or 373.4275, Florida Statutes. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

Any Party to this Order has the right to seek judicial review of the Order Pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of the Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, 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 30 days from the date this Order is filed with the clerk of the Department.

### Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, 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 30 days from the date this action is filed with the Clerk of the Department.

Executed in West Palm Beach, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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Jennifer K. Smith  
District Director  
Southeast District

### **Copies furnished to:**

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Russell Muñiz, Clerk, Town of Southwest Ranches, [rmuniz@southwestranches.org](mailto:rmuniz@southwestranches.org)

#### FILING AND ACKNOWLEDGMENT

FILED, on this date with the designated Department Clerk,  
pursuant to section 120.52(7), Florida Statutes, receipt of which  
is hereby acknowledged.

  
Clerk

11/16/16

Date