# 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


August 7, 2015

Kanter Real Estate, LLC
c/o John Kanter
2601 South Bayshore Drive, Suite 1450
Miami, Florida 33133
Sent via Email: jemia@bellsouth.net

File No.: 06-0336409-001
Applicant: Kanter Real Estate, LLC

Dear Mr. Kanter:

This is to acknowledge receipt of your application on July 9, 2015, for an Individual Permit, pursuant to Part IV, Chapter 373, Florida Statutes, to construct a 5.8 acre stormwater management system to serve a 5.0 acre oil well facility and associated works, including wetland fill of 6.83 acres.

In order to review your application, we need the items listed in the enclosed request for additional information (RAI) by **November 7, 2015**. If the information is not received by **November 7, 2015**, your application may be denied without prejudice. If you revise your project after submitting the initial joint application, please contact us as soon as possible.

For planning purposes, please note that the questions posed are not necessarily exhaustive and additional questions may arise once the requested information is received.

We appreciate your cooperation. If you have any questions, please contact me at 772-467-5557 or by email at Irene.Arpayoglou@dep.state.fl.us.

Sincerely,

8/7/15

Irene Arpayoglou, M.S.
Environmental Specialist II
Submerged Lands & Environmental Resources Program

**Enclosures:**
RAI, 6 Pages
Attachment I; SFWMD Comments
Attachment II; FFWCC Comments

**Copies furnished to:**
Joseph Barber, The Carol Group, Inc.; jbarber@thecarolgroupinc.com
Carol Howard, The Carol Group, Inc.; choward@thecarolgroupinc.com
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Marissa Krueger, FFWCC; Marissa.Kreuger@MyFWC.com

**REQUEST FOR ADDITIONAL INFORMATION**
(Chapter 62-330, Florida Administrative Code)

**ELIMINATION & REDUCTION OF IMPACTS**

1. Pursuant to Section 10.2.1 of the Applicant's Handbook - Volume I ("Vol. I"), please discuss how the proposed design demonstrates Elimination or Reduction of Impacts to wetland functions, surface water functions, and environmental resources. Consider additional project modifications to further reduce or eliminate environmental impacts as described in Section 10.2.1.1 of Vol. I.

**PUBLIC INTEREST**

2. In determining whether a regulated activity located in, on, or over wetlands or other surface waters is not contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the regulated activity is clearly in the public interest, the Agency shall consider and balance, and an applicant must address, the following criteria:

   (a) Whether the regulated activity will adversely affect the public health, safety, or welfare or the property of others (subparagraph 62-330.302(1)(a)1, F.A.C.);

   Pursuant to Section 10.2.3.1 of Vol. I, the Agency will evaluate whether a regulated activity located in, on, or over wetlands or other surface waters will cause an environmental hazard to public health or safety or improvement to public health or safety with respect to environmental issues. Please identify potential environmental public health or safety issues resulting from the proposed project. Examples of these issues include: proper disposal of solid or hazardous waste and wastewater, hurricane preparedness or cleanup, environmental remediation, contingency plans in the event of a hazardous spill, and similar environmentally related issues.

   (b) Whether the regulated activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats (subparagraph 62-330.302(1)(a)2, F.A.C.);

   Please provide a current (conducted within the last year) wildlife survey of the contiguous wetland area, including but not limited to documentation of all wetland dependent birds, invertebrates, crustaceans, and mammals. Survey methodologies employed to inventory the site must provide reasonable assurances regarding the presence or absence of the subject listed species. Species-specific wildlife surveys are dependent on seasonality and day/night patterns of animals.

   Your project has been sent to the Florida Fish and Wildlife Conservation Commission (FFWCC), Bureau of Protected Species Division, for evaluation of potential effects from this project on endangered or threatened species. Please address all comments provided by that agency, included herein as Attachment II, specifically the six bulleted items in the summary on the last page.

   (c) Whether the regulated activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling (subparagraph 62-330.302(1)(a)3, F.A.C.);

   Pursuant to Section 10.2.3.3(c) of Vol. I, applicants must address significant obstructions to sheet flow by evaluating options available to minimize the obstruction such as culverts or spreader swales in fill areas. Explain how the fill pad will not affect sheet flow within the project area.

(d) Whether the regulated activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity (subparagraph 62-330.302(1)(a)4, F.A.C.);

The application addresses potential adverse effects to marine productivity. Please address potential adverse effects to recreational uses pursuant to Section 10.2.3.4 of Vol. I.

(e) Whether the regulated activity will be of a temporary or permanent nature (subparagraph 62-330.302(1)(a)5, F.A.C.);

Please provide the operational timeframes and frequency of installation/removal of the proposed activity. If the Applicant intends to remove the fill pad upon completion of the proposed activities, please provide a restoration plan.

(g) The current condition and relative value of functions being performed by areas affected by the proposed regulated activity (subparagraph 62-330.302(1)(a)7, F.A.C.).

Please contact the processor of this application, Irene Arpayoglou, to schedule a site inspection. The purpose of the site inspection will be to evaluate the current condition and relative value of functions of the proposed impact area.

**WATER QUALITY AND CONSTRUCTION METHODS & DETAILS**

3. Pursuant to Section 10.2.4.1 of Vol. I, please provide the following:

Provide in detail the methods and equipment which are proposed to be employed in accomplishing the proposed project. Include all anticipated methods and materials which will be utilized to stabilize slopes and protect adjacent waters from erosion of sediments and other harmful materials from the work site.

Provide the method of installation and construction of the structure, including methods for moving equipment to the work site. Describe how erosion, siltation, scouring and/or dewatering resulting from the proposed activities will be contained.

Methods for controlling erosion and turbidity may include, but are not limited to the use of staked hay bales; staked filter cloth; sodding, seeding, and mulching; staged construction; and the development of silt fences around the immediate project site.

4. Provide in detail the methods and equipment which are proposed to be employed in accomplishing the proposed project. On a project drawing, indicate the location of all proposed staging areas. Include all anticipated methods and materials which will be employed to stabilize slopes and protect adjacent waters from erosion of sediments and other harmful materials from the work site, and provide representative cross-sections.

5. Please confirm if dewatering is proposed for the project. If dewatering is proposed, provide complete details of temporary dikes, discharge locations, time periods, and methods for preventing turbid discharges.

6. Pursuant to Section 11.2 of Vol. I, an erosion and sediment control plan must be submitted as part of the application as a way of providing reasonable assurance that water quality standards will not be violated during the construction phase of a project. Please provide a more detailed erosion and sediment control plan, identifying the location, relative timing, and specifications for all erosion and sediment control and stabilization measures that will be implemented as part of the project's construction. The plan must provide for compliance with the terms and schedule of implementing the proposed project, beginning with the initiation of construction activities. The plan may be submitted as a separate document, or may be contained as part of the plans and specifications of the construction documents.

**SECONDARY IMPACTS**

7. Pursuant to Section 10.2.7 of Vol. I, please discuss in detail how the proposed project will not result in unacceptable secondary impacts to water resources, as described in applicable portions of subsections (a), (b), and (d).

   Subsection (a). The application states that there are no secondary impacts as a result of the project. Please address impacts to the quality of habitat beyond the limits of proposed fill.

   Subsection (b). The Agency awaits updated wildlife surveys and may request additional information at that time.

   Subsection (d). The Agency will consider those future projects or activities that would not occur but for the proposed activity, including where the proposed activity would be considered a waste of resources should the future project or activities not be permitted.

   The application indicates that "No future phases are expected within this proposed project site," however it also indicates that "This project is one component of a larger plan to develop water storage and water quality treatment on the Kanter ownership." Please clarify the applicant's intended future uses of the property and address the potential secondary impacts of these additional activities.

   **Note:** One way for applicants to establish that future phases or system expansions do not have adverse secondary impacts is for the applicant to obtain a conceptual approval permit for the entire project.

**MITIGATION**

8. Please list which mitigation bank the Applicant proposes to purchase credits from and if the appropriate type of credits are available. Proof of reservation of credits must be provided prior to issuance of a permit, and proof that credits have been purchased and deducted from the proposed bank's ledger must be provided prior to commencing any construction activities.

**CUMULATIVE IMPACTS**

9. The submitted mitigation proposal indicates that a mitigation bank will be utilized to offset the project's wetlands and/or other surface water impacts. If the mitigation bank is located outside of the basin in which the project is located (as shown on figure 10.2.8-5 of Vol. I) a cumulative impacts assessment will be required in accordance with Section 10.2.8 of Vol. I. The assessment should include past, present and reasonably expected future activities with like impacts throughout the drainage basin. The applicant should evaluate the remaining wetlands and surface waters within this drainage basin to determine whether an unacceptable cumulative impact would occur if similar impacts and out of basin mitigation were proposed for all remaining wetlands and surface waters. One way to demonstrate that an adverse cumulative impact will not occur is to provide appropriate mitigation within the same drainage basin as the proposed project.

**STORMWATER**

10. Pursuant to Section 5.1 of the Applicant's Handbook, Volume II ("Vol. II"), please provide documentation on how water and wastewater services will be provided. If wastewater disposal is accomplished on-site, provide information regarding separation of waste and stormwater management systems.

11. Pursuant to Section 5.2 of Vol. II, gravity control devices shall incorporate dimensions no smaller than 6 square inches of cross sectional area, two inches minimum dimension, and 20 degrees for "V" notches. Systems which are limited by a discharge structure with an orifice no larger than the minimum dimensions described herein shall be presumed to meet the discharge quantity criteria. The proposed bleeder size exceeds the minimum criteria. Please adjust bleeder to meet this criteria.

12. Pursuant to Section 5.1 of Vol. II, discharge structures from areas with greater than 50 percent impervious area or from systems with inlets in paved areas shall include a baffle, skimmer, or other mechanism suitable for preventing oil and grease from discharging to or from retention/detention areas. Please incorporate a baffle system with the discharge structure.

13. Pursuant to Section 4.9 of Vol. II, water quality monitoring is generally required when the potential of high pollutant generation is located in sensitive areas of industrial sites. Please propose a water quality monitoring plan to provide assurance on the ability of the system to prevent degradation of adjacent wetlands and receiving surface waters.

14. Pursuant to Section 5.1 of Vol. II, please indicate what structural measures are implemented to produce non-erosional velocities at the discharge location point.

15. The application indicates that the secondary containment areas will collect rainwater, oils, grease, and other fluids and direct them to a sump. Please indicate how the containment area is hydraulically separated from the proposed site's stormwater management system. Please provide the containment area storage volume and explain if it is part of the overall site's stormwater system volume.

16. Please identify potential hazardous waste sites, contaminated areas, petroleum storage tanks, etc. that are within the footprint of the construction areas and staging areas for this project. Submit Material Safety Data Sheets (MSDS) for proposed additives, lubricants, polymers, etc. that may be used in this project.

17. Please provide reasonable assurance that adjacent surface waters and wetlands will not be adversely effected in the event of a spill or release of well bore fluids. Describe in detail what contingencies are in place to handle such an occurrence and the measures to be undertaken to restore affected areas.

18. Does the dry retention volume percolate into the underlying soil layer and is this volume available for the subsequent rain event?

19. The referenced regulation schedule high stage in WCA 3A is for actions to be taken by the USACE Water Managers and does not provide any guarantee the water will not reach a higher stage. The stage in the L-67A canal of WCA-3A often exceeds the top of the WCA-3A regulation schedule (10.5 feet NGVD) and it is not uncommon to rise to 13.0 feet NGVD. Regarding the water levels in the step down areas between WCA-3A and WCA-3B (between the L-67A and L-67C levees) the only site with long term data is 3-69 (GA3B69). The stage at 3-69 is frequently near 10.0 feet NGVD and has been in the 23 year period of record (1992 to 2015) near 10.5 feet NGVD. Natural variation in rainfall and direct rain from tropical events along with potential changes, due to the restoration project, will likely result in stages that are higher than those that have occurred in the historical data. Potential restoration projects are likely to increase the release of water through the step down area into WCA-3B. Correspondingly, it is recommended that the applicant use the historical water stage in WCA-3A in determining the pad elevations (e.g. S-151 HW DBHYDRO KEYS 15552, P0863, 04502, 05755).

20. The control structure top should be high enough to disallow backflow from WCA into the control structure and pad. How will the structure be operated to avoid such backflow?

21. What is the operation of the structure gate? What is the protocol for opening it?

22. What is the outfall sump and energy dissipation for the 12" RCP to outfall? Please demonstrate how the 12" RPC transitions into the WCA.

23. Provide the plan for primary and secondary containment for both the 5-acre site and spoil area, including calculations. The plans/profile do not show the depth/configuration of the plastic liner underlayment. Will the edge of the berm be lined? Berms/levees still allow seepage and the site should be completely contained.

24. The pad is listed as 100% impervious. What is the material being used for the pad? Will it be sufficient to prevent seepage of all wastewater, oils, grease, chemicals, etc.? What is the failure rate of the geotextile?

25. What is the capacity of the spoil area? Will the spoil/waste area be lined? If so, what kind of rain or wind event is the spoil area designed to contain? This area is very porous and has interactions with groundwater and surface water.

26. What is the plan to prevent material erosion from the well pad and spoil areas during hurricanes or tropical storms?

27. How is the 1:1 slope of the berm stabilized?

28. If the pad is at 11.4' NAVO, how does it properly drain if the bleeder is at 11.62' NAVO and a plastic liner underlays the entire site?

29. The application indicates that discharge shall be to WCA3 through a culvert with a bleeder elevation from the pad of 11.62' NAVO." It is unclear whether the applicant is proposing to discharge into WCA-3A or the step down area (pocket between the L-67A and L-67C levee). It would seem more practical to discharge into the step down area (pocket between the L-67 A and L-67C levee) than have to route water to the higher L-67A area. Also, water discharged into the L-67A is directly connected to the ENP discharge points (8333, 812A, 8128, 812C, and 8120).

30. The driveway transition from the levee to the pad is not shown. Also, how is runoff from the levee, down the driveway contained and incorporated into the treatment volume?

31. What are the plans to maintain normal surface water flows during and after the project?

ATTACHMENT I -

# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

August 5, 2015

Ms. Irene Arpayoglou
Florida Department of Environmental Protection
337 N US1 – Suite 307
Ft. Pierce, Florida 34950-4255
irene.arpayoglou@dep.state.fl.us

**Subject:** **Kanter Real Estate, LLC – Kanter Sunniland 23-1**
**ERP Application No. 336409**
**Broward County**

Dear Mr. Sciara:

Thank you for providing the South Florida Water Management District (District) with the opportunity to review the application for an Enviromental Resource Permit (Application 336409) submitted by Kanter Real Estate, LLC for well Kanter 23-1. The application requests to construct an oil well pad and spoil placement area. The site is located within Water Conservation Area 3B, adjacent to the L-67A levee.

The District offers the following comments for your consideration:

**Permits required:**

A. The Right of Way Occupancy Permit is required to allow temporary access on the L-67A access road necessary for vehicular access to the proposed site and for the facility (pad) within WCA-3. Such access my interfere with ongoing and planned CERP project activities and goals. Facilities related to "Petroleum, Petroleum Products & Pipeline Crossings" are identified as a Standard Permit (See page 39, Criteria Manual, adopted by Rule 40E-6.091(1), which requires Governing Board approval. Because we do not have any documentation or an application, we have not been able to conduct a review of the scope of work.

B. A USACE 408 approval is required for incorporation of the WCA 3 levee in the project.

**Access to site:**

- Please note that the SFWMD will be replacing S-151 starting as soon as January 2016 and extending for a least a year (longer if the start date is delayed) so your construction plans will be constrained by the SFWMD construction activities.

- If access to the site is from the north, the vehicle load-bearing capacity of S-151H, located upstream from Kanter 23-1, as well as the impacts of increased traffic on the accessibility of the structure will need to be considered.

- If access to the site is from the south, increased traffic and accessibility to the proposed S-12 Tower Site, located downstream from Kanter 23-1, will need to be considered.

**Drill Pad:**

1. How does the project propose to meet cumulative impact (Section 10.2.8 SWERP Volume 1)?
2. Please provide demonstration of reduction and elimination of wetland impacts (Section 10.2.1 SWERP Volume 1)?
3. What proof of wetland mitigation availability from the mitigation banks can be provided (Section 10.3.3.1 SWERP Volume 1)?
4. How will the project meet the criteria in Section 10.1.1 SWERP Volume 1 (environmental conditions for issuance)?
5. How will the project meet the public interest test in Section 10.2.3 SWERP Volume 1)?
6. Please provide a quantitative assessed of the secondary impacts of the proposed actions (No evaluation was included)

Section C

7. Page 10/18, 5C: If this is a short pilot project, why is the duration listed at 30 years? What other activities are anticipated over this 30 year period under this proposed project?
8. Page 11/18, 9e: Are there no future phases if this pilot well is successful?
9. Page 11/18, 11ai. Please provide the name of mitigation bank(s) proposed or identify N/A.
10. Pages 16&17 of 18. Table 2 shows there is no onsite mitigation, and Table 3 shows no offsite mitigation. Where, then, is the mitigation for this project? How does it relate directly to Everglades restoration?

Sheets C-2.03&4

11. The referenced regulation schedule high stage in WCA 3A is for actions to be taken by the USACE Water Managers and does not provide any guarantee the water will not reach a higher stage. The stage in the L-67A canal of WCA-3A often exceeds the top of the WCA-3A regulation schedule (10.5 feet NGVD) and it is not uncommon to rise to 13.0 feet NGVD. Regarding the water levels in the step down areas between WCA-3A and WCA-3B (between the L-67A and L-67C levees) the only site with long term data is 3-69 (GA3B69). The stage at 3-69 is frequently near 10.0 feet NGVD and has been in the 23 year period of record (1992 to 2015) been near 10.5 feet NGVD. Natural variation in rainfall and direct rain from tropical event(s) along with potential changes, due to the restoration project, will likely result in stages that are higher than those that occurred in the historical data. Potential restoration project are likely to increase the release of water through the step down area into WCA-3B. Correspondingly it is recommended that the applicant use the historical water stage in WCA-3A in determining the pad elevations (e.g. S-151 HW DBHYDRO KEYS 15552, P0863, 04502, 05755).
12. The Control structure top should be high enough to disallow backflow from WCA into the control structure and pad. How will the structure be operated to avoid such backflow?
13. What is the operation of the structure gate? What is the protocol for opening it?
14. What is the outfall sump and energy dissipation for the 12" RCP to outfall? Show how the 12" RPC transitions into the WCA?

15. Provide the plan for primary and secondary containment for both 5-acre site and spoil area, including calculations. The plans/profile do not show the depth/configuration of the plastic liner underlayment. Will the edge of the berm be lined? Berms/levees still allow seepage and the site should be completely contained.
16. The pad is listed as 100% impervious. What is the material being used for the pad? Will it be sufficient to prevent seepage of all wastewater, oils, grease, chemicals, etc.? What is the failure rate of the geotextile?
17. What is the capacity of the spoil area? Will the spoil/waste area be lined? If so, what kind of rain or wind event is the spoil area designed to contain? This area is very porous and has interactions with groundwater and surface water.
18. What is the plan to prevent material erosion from the well pad and spoil areas during hurricanes or tropical storms?
19. How is the 1:1 slope of the berm stabilized?
20. If the pad is at 11.4' NAVD, how does it properly drain if the bleeder is at 11.62' NAVD and a plastic liner underlays the entire site?
21. The application indicates that discharge is to WCA3 through a culvert with a bleeder elevation from the pad of 11.62' NAVD." It is unclear whether the applicant is proposing to discharge into WCA-3A or the step down area (pocket between the L-67A and L-67C levee). It would seem more practical to discharge into the step down area (pocket between the L-67A and L-67C levee) than have to route water to the higher L-67A area. Also water discharged into the L-67A is directly connected to the ENP discharge points (S333, S12A, S12B, S12C, and S12D).
22. The driveway transition from the levee to the pad is not shown. Also, how is runoff from the levee, down the driveway contained and incorporated into the treatment volume?
23. Consider restricting the timing of the pad construction in view of the scheduling of sampling for restoration projects like the Decomp Physical Model, which has major sampling events from November through January.
24. Provide a detailed materials management plan
    a. identifying all imported materials, chemical properties, quantities, concentrations, and their toxicity thresholds for species in the area
    b. type and amount of waste generation from process
    c. temporary and final placement, handling, and/or disposal plan of said generated wastes
25. Provide a detailed water quality protection plan
26. Provide a pre, during, and post monitoring and mitigation/clean-up plan for:
    a. surface water
    b. groundwater
    c. levee stability
27. What are the plans to maintain normal surface water flows during and after the project?
28. Include SFWMD as an additional insured for appropriate amounts of general & special liability and environmental cleanup, and possibly require performance bonding to cover the high end of mitigation costs

**Off-site impact**:

29. The Decomp Physical Model (DPM) project will require information regarding the extent to which construction, and maintenance activities will alter direct and resuspension-driven sources of P in marsh and canal waters. Activities could interfere during months when DPM

TP triggers are evaluated (September) and the months when the S-152 is in use (November–January) and compliance TP is monitored.

30. Ongoing efforts of the DPM project are being made to expand the window of operations to allow sheetflow during more typical wet season months (e.g., July-Feb). This also will require developing TP triggers for months earlier than September, nominally June and July in order to allow for flows during typical wet season months. Assurances are needed that construction and traffic will not negatively impact L67A TP during this expanded range of months both for evaluating triggers and operating the S-152.
31. Foreign materials of the 'pad' and 'berm' will cause changes to the downstream chemistry. DPM found that silt barriers cannot prevent these changes from occurring. What is the plan to prevent chemical changes to the downstream soil and water?
32. Typical Everglades marsh has low pH values, generally in the 4-6 range. The crushed limestone/sand pad that is going to be installed will have a pH over 7.5. Please provide the plan to address the changing water quality associated with the pad in the surface water, groundwater and shallow pore water. What long term ecological effect will this have on the downstream plant communities?
33. Please provide reasonable assurances that the project will not interfere with development at the following SFWMD project sites:
    a. WCA 3 Decompartmentalization & Sheetflow Enhancement
    b. L-30 Canal Upgrade
    c. Dade – Broward Levee & Canal
34. What will remain on the site after test well completion, and how will ecological functioning/flow regimes of the area be restored to pre-project conditions?
35. If the pad remains, what is the plan to manage invasive exotic organisms on the site, such as Brazilian Pepper and Lygodium, and their downstream effects after operation? How will the site be managed to discourage terrestrial animals (such as vultures) that may interfere with the aquatic food-webs of WCA-3A and WCA-3B? What measures will be taken to prevent the leaching of phosphorus, calcium, drilling fluids, and organic compounds into adjacent wetlands?
36. The project information indicates this project is one component of a larger plan to develop water storage and water quality treatment on the Kanter ownership. Please describe the overall project plan.

Please let me know if the District can be of any additional assistance in the Florida Department of Environmental Protection's review of this ERP application.

Sincerely,

Lennart J. Lindahl, P.E.
Assistant Executive Director
South Florida Water Management District

LL/kas

Florida Fish and Wildlife Conservation Commission

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MyFWC.com

August 4, 2015

Levi Sciara
Engineering Specialist
Florida Department of Environmental Protection
2600 Blair Stone Road, M.S. 3588
Tallahassee, FL 32399
Levi.Sciara@dep.state.fl.us

Re: Kanter 23-1 Exploratory Oil Well, Oil and Gas Permitting Application File No. 1366 and Associated Environmental Resource Permit (ERP) Application Number 06-0336409-001, Broward County

Dear Mr. Sciara:

Florida Fish and Wildlife Conservation Commission (FWC) staff has reviewed the above-referenced application and provides the following comments for your consideration. We provide these comments as technical assistance during your review of the oil and gas application under Chapter 62C-30, Florida Administrative Code (F.A.C.), during your review of the ERP application under Chapter 373, Florida Statutes (F.S.), and in accordance with FWC's authorities under Chapter 379, F.S.

**Project Description**

The applicant (Kanter) proposes to drill a well to be known as Kanter 23-1 to a depth of approximately 11,800 feet for the purposes of oil exploration. Kanter owns in fee simple approximately 20,000 acres in Water Conservation Area 3 (WCA 3) in Broward County. In 1950 an easement was granted to the Central and Southern Flood Control District for the purposes of construction, maintenance and operation of any project in the interest of flood control, reclamation, conservation and allied purposes. Kanter retained the right of ingress and egress to and from the property in order to exercise its reserved rights to develop, extract, and remove oil, gas, and minerals in accordance with sound engineering principals. Kanter, based on geologic information, proposes to construct an oil well for the purposes of exploring oil reserves on 5 acres of the 20,000-acre parcel. Drilling operations will consist of exploratory drilling and testing taking place 24 hours a day for approximately 60 to 80 days to explore the viability of the well. The applicant has also submitted an Environmental Resource Permit application which details the plans for the construction of a 5.8-acre stormwater management system to serve the proposed 5-acre oil well facility and associated works. The project also includes a 0.92-acre de-mucking spoil area with a total of 6.83 acres of wetland impacts.

The proposed well pad is located within Water Conservation Area 3B (WCA 3B), directly adjacent to the L-67A levee, approximately 1.15 miles southwest of Structure 151 within Broward County. The site currently contains freshwater marsh habitat and the applicant is proposing to purchase credits at an offsite mitigation bank to offset the proposed wetland impacts. The proposed project is expected to remain for approximately 30 years if the well is capable of producing oil. In accordance with Rule 62C-26.008, F.A.C., Operating Applications, an applicant must obtain a separate permit to operate the well. The FWC may provide additional comments if the applicant decides to apply for an operating permit. Additionally, the applicant is proposing to fully restore the pad site to its original condition at the end of the use of the pad site. The proposed project is being designed as a retention system in order to not significantly impact WCA

3 and best management practices such as construction precautions and sediment curtains will be implemented.

**Potentially Affected Resources**

The application states that the proposed project is similar to the location, wetland types, and wildlife impacts of the Decompartmentalization and Sheetflow Enhancement Physical Model (DECOMP) project, which was completed by the U.S. Army Corps of Engineers (USACE). The application provided a list of threatened and endangered species and state species of concern within the project study area including: wood stork (*Mycteria Americana*, Federally Threatened (FT), Everglade snail kite (*Rostrhamus sociabilis plumbeus*, Federally Endangered [FE]), Florida panther (*Puma concolor coryi*, FE), Eastern indigo snake (*Drymarchon corais couperi*, FT), West Indian manatee (*Trichechus manatus*, FE), American alligator (*Alligator mississippiensis*, FT because of similarity of appearance), bald eagle (*Haliaeetus leucocephalus*), Everglades mink (*Neovison vison evergladensis*, State Threatened [ST]), Southeastern American kestrel (*Falco sparverius paulus*, ST), Florida sandhill crane (*Grus canadensis pratensis*, ST), Florida black bear (*Ursus americanus floridanus*), roseate spoonbill (*Ajaja ajaja*, State Species of Special Concern [SSC]), limpkin (*Aramus guarauna*, SSC), little blue heron (*Egretta caerulea*, SSC), white ibis (*Eudocimus albus*, SSC), snowy egret (*Egretta thula*, SSC), and tricolored heron (*Egretta tricolor*, SSC).

FWC's geographic information system (GIS) analysis of the project site confirms that the project site contains the above-mentioned listed species with the exception of the following:

- West Indian manatee (*Trichechus manatus*, FE)
- Southeastern American kestrel (*Falco sparverius paulus*, ST)
- Florida sandhill crane (*Grus canadensis pratensis*, ST)

In addition, the GIS analysis of the project site found that the project site contains, is adjacent to, or occurs near:

- U.S. Fish and Wildlife Service (USFWS) consultation areas for:
  - Audubon's crested caracara (*Polyborus plancus audubonii*, Federally Threatened [FT])
  - Everglade snail kite, critical habitat (*Rostrhamus sociabilis plumbeus*, Federally Endangered [FE])
  - Florida bonneted bat (*Eumops floridanus*, FE)

- Four wood stork (*Mycteria americana*, FT) nesting colony core foraging areas (CFA). The CFA constitutes an 18.6-mile radius around the nesting colony.

- Potential habitat for state-listed species:
  - Least tern (*Sterna antillarum*, ST)

**Comments and Recommendations**

FWC staff met with the applicant on July 27, 2015, to discuss the proposed project and current planning efforts regarding fish and wildlife resources. We provide the following comments and recommendations to the Florida Department of Environmental Protection (FDEP) regarding fish and wildlife resources to be considered during project permitting. The FWC has fish, wildlife,

and land management responsibilities for Water Conservation Areas (WCA) 2 and 3, which are managed as the Everglades and Francis S. Taylor Wildlife Management Area (EWMA). The EWMA contains approximately two-thirds of the remaining freshwater Everglades, and its plant communities provide important habitat for snail kites, wading birds, marsh fishes, and a variety of other wildlife species. The Everglades is a unique resource and the focus of large-scale restoration efforts. FWC staff recommends that the applicant coordinate with the South Florida Water Management District (SFWMD) and the USACE to verify that the proposed project does not impact any proposed Everglades restoration projects or planning efforts.

Federal Species

Wildlife surveys have not been conducted onsite, however the application provides a commitment to follow the U.S. Fish and Wildlife Service (USFWS) Eastern Indigo Snake Protection Plan, USFWS Habitat Management Guidelines for the Wood Stork in the Southeast Region Plan, and the USFWS Snail Kite Survey Protocol. Because species surveys have not yet been conducted onsite and because the location of the proposed activities may impact the listed species mentioned above, we recommend wildlife surveys for the above-listed species be conducted prior to any site development activities. We recommend that wildlife surveys follow survey protocols established by the USFWS and the FWC and surveys should be conducted by qualified individuals with recent documented experience. Basic guidance for conducting wildlife surveys may be found in the Florida Wildlife Conservation Guide (http://myfwc.com/conservation/value/fwcg/). Additionally, we recommend the applicant coordinate with the USFWS South Florida Ecological Services Office (ESO) at (772) 562-3909 for any necessary federal requirements.

Snail kites frequently nest in WCA 3B downstream of the project site and surveys for snail kites should be conducted before and during construction activities. We recommend the applicant coordinate with the USFWS for information regarding potential impacts to this species. Additionally, if snail kites are documented near the project site, we recommend the applicant coordinate with Tyler Beck, FWC's Snail Kite Conservation Coordinator, at either Tyler.Beck@MyFWC.com or (561) 459-7072.

The project is located within the USFWS Consultation Area for the federally endangered Florida bonneted bat and potential habitat for this species may exist onsite. The University of Florida conducted acoustic surveys for bonneted bats and they have been detected around this area in 2014 and 2015. While specific guidance has not yet been approved by the USFWS for the Florida bonneted bat, we recommend the applicant take steps to determine if and how bonneted bats may be using the project area. This could include conducting acoustic surveys to determine presence of bonneted bats and searching for potential roost sites that could be used by any bat species, such as tree cavities or under dead palm fronds, within the project area. For any potential roost site that is located, FWC staff recommends the site be examined by a trained wildlife professional and the area around it should be searched for signs of bats (guano, staining around the cavity entrance, chirping sounds). If bats are found roosting within or near the project site, they should be identified to species to determine if they are Florida bonneted bats. If Florida bonneted bats are identified, the applicant should immediately contact the USFWS and also provide that occurrence information to the FWC.

State-listed Wading Birds

Several species of wading birds are known to nest within WCA 3 including both state-listed Species of Special Concern (little blue and tricolored herons, white ibis, snowy egret, roseate spoonbill), federally listed species (wood stork), and other species protected under the Migratory Bird Treaty Act (e.g., great egret, great blue heron). Many of these species breed from March to August, but wood storks and great egrets typically initiate nesting from January through March. Although suitable nesting substrates were not readily identifiable from satellite imagery on or

immediately adjacent to the project site, it is possible that wading birds could nest in the project area.

Wading birds often are sensitive to human disturbance. In response to disturbance, nesting birds may leave eggs and young unattended, thereby exposing eggs and young to predators, sun, and cold. Moreover, wading birds may abandon nests or even whole colonies in response to human disturbance. Typically, FWC staff recommends a 328-foot buffer around the wading bird colonies to avoid disturbance from vehicles, boats, and pedestrian traffic. However, Mueller and Glass (1988) and the Texas Land Office have suggested maintaining a 1,000-foot buffer around wading bird colonies for drilling and construction activities.

FWC staff recommends that the applicant conduct surveys for wading birds immediately prior to construction that occurs during the breeding season (January-August). Surveys should occur within 1,000 feet of the project area because wading birds in the WCAs are unaccustomed to the level of disturbance caused by construction. If active wading bird nesting colonies are discovered within 1,000 feet of the project area, FWC staff recommends that the applicant conduct construction activities outside of the breeding season. If this is not feasible, FWC staff recommends that the applicant contact FWC staff identified below for technical assistance on avoidance, minimization, and potential permitting alternatives.

Least Tern

Clearing associated with construction may create conditions conducive for beach-nesting bird activity. Cleared sites such as areas that have undergone surface scraping may attract ground nesting species such as least terns or other imperiled beach-nesting birds (IBNB) during nesting season. IBNB nests have been documented on a variety of disturbed sites, including construction sites (FWC 2013). Least terns deposit their eggs in shallow depressions or scrapes in the substrate, possibly lined with pebbles, grasses, or coquina shells (FWC 2013). Egg laying usually begins in late April or early May and colonies may range in size from a few breeding pairs to many hundreds (FWC 2013). FWC staff recommends the following measures to reduce nesting potential during construction:

- Conduct construction activities outside of the breeding season (generally April through August),
- Clear the site only when ready to build, and
- Avoid leaving cleared areas with little to no activity for an extended amount of time.

If nesting is observed, we recommend contacting FWC staff to discuss necessary nest buffers and potential permitting alternatives. For additional information, please refer to FWC's Breeding Bird Protocol for Florida's Seabirds and Shorebirds located at the following web address: https://public.myfwc.com/crossdoi/shorebirds/PDF-files/BreedingBirdProtocolForFloridasSeabirdsAndShorebirds.pdf.

Recreation and Access

The L-67A levee not only provides vital access to the public for recreational use, but also provides access for management and monitoring of invasive exotic wildlife. We recommend that project construction and operation activities are coordinated with FWC to ensure activities neither impede current and existing management activities nor interrupt existing public access to the WCAs. Additionally, we recommend that the boat ramps located on both ends of the L-67A levee (Everglades Holiday Park and S-333 structure) remain accessible during all aspects of planning, construction, and operation. The L-67A Canal is an important, popular, and valuable fishery. While the application states that there are no intended impacts to the L-67A Canal at this

time, please contact FWC staff identified below for technical assistance on impact avoidance and minimization measures should impacts be anticipated.

Wildfires

The proposed project may increase the potential for a wildfire to occur within WCA 3B and may cause adverse effects to the surrounding wetlands. We recommend the applicant include response measures should the project inadvertently cause a wildfire. Additionally, prescribed fire is a management tool used within the surrounding area. The applicant should anticipate necessary measures to be taken in the instance a prescribed fire occurs near the site and should consider how this may affect project operations. FWC staff is available to discuss safety measures and coordinate with the applicant on prescribed burning in the area should this become necessary.

Restoration Plan

The oil and gas application states that exploratory drilling operations will take place 24 hours a day for approximately 60 to 80 days to explore the viability of the well. If the well is capable of producing oil, the ERP application states that the project is expected to remain for approximately 30 years. If the applicant decides to apply for an operating permit for the well, the FWC may have additional comments and recommendations based on the permit application. At this time, the applicant proposes to fully restore the pad site to its original condition at the end of the project. The restoration plan will be developed in consultation with the FDEP and the SFWMD. Due to the potential life cycle of the project, aggregate material may slough from the pad into the surrounding marsh over time, degrading the water quality of the marsh and harming foraging and nesting habitat for wading birds and their prey. FWC staff recommends the applicant provide a commitment to develop and implement a restoration plan following completion of the project which would include review and approval by FWC, FDEP, and SFWMD to ensure restoration goals include habitat conditions which support the wildlife management goals of WCA 3B.

High Water Conditions

The WCAs have previously experienced high water conditions and may experience such conditions again in the future due to operational constraints within the system. The application did not include a contingency plan for potential high water events. We recommend that a contingency plan with assurances be developed for high water conditions in which the oil pad could become inundated, thereby increasing the risk of contamination of onsite hazardous materials into the adjacent marsh habitat. Such contamination may cause impacts to state- and federally listed species within the WCA that are dependent on water quality for essential behaviors such as foraging. Similarly, the application states that the site and equipment are designed to ensure no offsite spills can occur. In order to protect the marsh habitats consistent with the wildlife management goals of this area, we recommend the applicant develop a spill contingency plan or a pollution prevention plan with measures for cleanup of accidental spills and a list of agencies to notify should a spill occur.

Invasive Nonnative Vegetation

In order to minimize the risk of spreading nonnative, invasive plants into adjacent or nearby natural areas including those managed by FWC, we recommend that all equipment and vehicles used for project activities be inspected and cleaned of any seeds, vegetation, or spores prior to entering the project area. FWC staff also recommends that the well pad site and the spoil area be managed to keep invasive vegetation species from growing and spreading into the WCA.

Summary

While the application provides general information regarding the issues identified above, it did not provide enough information for FWC staff to fully assess the potential project impacts. Inclusion of additional information as identified below would assist in our review of the application:

- Listed species surveys, location information, and avoidance measures
- Assurances that existing access to the L-67A levee will not be impacted
- Measures to address the wildfire risk proposed by the project
- Measures within the restoration plan for habitat conditions that support the wildlife management goals of the WCAs
- Measures to ensure spill prevention and a contingency plan for high water conditions
- Measures to address the risk of spreading nonnative, invasive plant species

We appreciate the opportunity to review the proposed project. FWC staff is prepared to assist FDEP staff during application review and provide technical assistance to the applicant as needed. If you need any further assistance, please do not hesitate to contact Jane Chabre either by phone at (850) 410-5367 or by email at FWCConservationPlanningServices@MyFWC.com. If you have specific technical questions regarding the content of this letter, please contact Marissa Krueger by phone at (561) 882-5711 or by email at Marissa.Krueger@MyFWC.com.

Sincerely,

Jennifer D. Goff

Jennifer D. Goff
Land Use Planning Program Administrator
Office of Conservation Planning Services

jdg/mk
ENV 1-2-2
Kanter 23-1 Exploratory Oil Well_21466_080415

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**Citation:**

Mueller, A.J., and P.O. Glass. 1988. Disturbance tolerance in a Texas waterbird colony. Colonial Waterbirds 11:119-122.