

TABLE OF CONTENTS

RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

February 9, 2012

| | PAGES |
|---|--------------|
| I RIGHT OF WAY OCCUPANCY NEW PERMITS: | |
| Governing Board action is required for routine requests for permits which conform to applicable rules for utilization of Works and Lands of the District. Items are placed on this Consent Agenda when the staff's recommendation is for approval. | 2 |
| II RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA: | |
| Governing Board action is required on petitions received requesting a waiver of District criteria. Section 120.542, F.S. and Rule 28-104.002, F.A.C., requires agencies to grant variances and waivers to their own rules when a person subject to the rules files a petition and demonstrates that he or she can achieve, or has achieved, the purpose of the underlying statute by other means and when application of rule would create a substantial hardship or would violate principles of fairness. A "substantial hardship" is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. A "waiver" is defined as an agency decision not to apply all or part of a rule to the person subject to the rule. | 3 |

RIGHT OF WAY OCCUPANCY NEW PERMITS

1. W.E. BALL (LIFE ESTATE)
COUNTY OKEECHOBEE

Permit Number 13964
Appl No. 11-1129-1
Fee

AUTHORIZING:

EXISTING LANDSCAPING CONSISTING OF ONE ORANGE, TWO BOTTLEBRUSH AND TWO CABBAGE PALM TREES ENCROACHING 2' (5' FROM TOP OF BANK) AND THE PROPOSED REPAIR/MAINTENANCE OF EXISTING 106 LINEAR FEET OF SEAWALL WITHIN THE NORTH RIGHT OF WAY OF LD-4 AT THE REAR OF 832 HWY 441 S.E. (BLOCK 226815, SLEEPY SHORES SUBDIVISION). (*LOCATED WITHIN AREA PREVIOUSLY RELAXED BY GOVERNING BOARD*).

LAST DATE FOR BOARD ACTION: February, 2012

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

1. Consideration of a request by **Florida Department of Transportation** (Application Number 11-1102-1, Permit Number 13968), for issuance of a Right of Way Occupancy Permit for the proposed placement of guardrail within the south right of way of C-100C at SR 5/US 1/South Dixie Highway southeast bridge quadrant. Location: Miami-Dade County, Section 21, Township 55 South, Range 40 East.

The applicant's request for waiver of the District's criteria, which governs the placement of above-ground permanent and/or semi-permanent facilities within 40 feet of the top of the canal bank and within the District's designated 100 foot long equipment staging area located at all bridge and pile-supported utility crossings within Works and Lands of the District is based on "substantial hardship." The applicant asserts that physical limitation (i.e., lack of sufficient space) between the existing roadway (State Road 5/US 1/South Dixie Highway) and the adjacent C-100C canal and a need to comply with the Florida Department of Transportation's roadway safety criteria require the Florida Department of Transportation to place the guardrail structure within 40 feet of the top of the canal bank landward of the canal waterway.

The District's Operations, Maintenance and Construction staff has determined that the proposed guardrail will not interfere with the flow of water and the District's ability to perform necessary construction, alteration, operation and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's Petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6), F.S. notice of the Petition was provided to the Department of State and was published in *Volume 37, Number 47* of the *Florida Administrative Weekly* on *November 23, 2011*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13968 and **approval** of the petition of waiver of the District criteria which governs the placement of above-ground permanent and/or semi-permanent structures within 40 feet of the top of the canal bank within the Works or Lands of the District.

Prescriptive Rights