

## TABLE OF CONTENTS

### RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

November 10, 2011

	PAGES
<b>I RIGHT OF WAY OCCUPANCY NEW PERMITS:</b>	
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
<b>II RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS:</b>	
Governing Board action is required for routine requests which involve a change, addition or deletion to a use of the right of way which was previously permitted. Items are placed on this Consent Agenda when the staff's recommendation is for approval.	3
<b>III RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA:</b>	
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.	4 - 6
<b>IV RELAXATION OF STANDARDS AS ALLOWED UNDER DISTRICT RULE 40E-6.011(9) F.A.C.:</b>	
Governing Board reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities and relaxation of the restrictions in Zones 2, 3, 4 and 5 may be allowed, such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area.	7 - 8

**RIGHT OF WAY OCCUPANCY NEW PERMITS**

1. FP&L FIBERNET  
COUNTY:COLLIER

Permit Number 13915  
Appl. Number 11-0701-1  
Easement

**AUTHORIZING:**

EXISTING BURIED COMMUNICATIONS CABLE, PARALLEL RUN, WITHIN THE EAST RIGHT OF WAY OF THE I-75 CANAL ENTERING 140' SOUTH OF VANDERBILT BEACH ROAD (C.R. 862) AND RUNNING SOUTH APPROXIMATELY 500' WHERE IT EXITS THE RIGHT OF WAY.

LAST DATE FOR BOARD ACTION: **Nov., 2011**

---

2. TASHIMA HEATH  
COUNTY:BROWARD

Permit Number 13937  
Appl. Number 11-0927-1  
Easement

**AUTHORIZING:**

REMOVAL OF PARALLEL PORTION OF EXISTING CHAIN LINK FENCE ENCLOSURE AND REPLACE WITH PRIVACY FENCE ENCROACHING 35' (40' FROM TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-14 AT THE REAR OF 7914 N.W. 1ST STREET (LOT 11, BLOCK NN, ORIOLE-MARGATE SEC 4).

LAST DATE FOR BOARD ACTION: **Nov., 2011**

---

3. BOLA BAYOU CONDOMINIUM ASSOCIATION  
COUNTY:PALM BEACH

Permit Number 13929  
Appl. Number 11-0824-2  
Fee and Easement

**AUTHORIZING:**

EIGHT (8) CONCRETE BATTER PILES AND THE REPAIR OF 74 LINEAR FEET OF EXISTING BULKHEAD AT THE REAR OF BOLA BAYOU CONDOMINIUM ASSOCIATION (BUILDINGS 18 AND 19) WITHIN THE NORTHWEST RIGHT OF WAY OF THE HILLSBORO CANAL.

LAST DATE FOR BOARD ACTION: **Nov., 2011**

---

4. FIBERLIGHT  
COUNTY:MIAMI-DADE

Permit Number 13934  
Appl. Number 11-0525-2  
Easement

**AUTHORIZING:**

EXISTING AERIAL FIBER OPTIC CABLE CROSSING C-4 AT S.W. 123RD AVENUE LOCATED APPROXIMATELY 661 FEET WEST OF THE S.W. 122ND AVENUE BRIDGE.

LAST DATE FOR BOARD ACTION: **Nov., 2011**

---

**RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS**

1. AT&T FLORIDA  
COUNTY:MIAMI-DADE

Permit Number 12333  
Appl. Number 11-0627-1M  
Easement

**AUTHORIZING:**

EXISTING 4" BURIED PVC CONDUIT ENCROACHING 24' (6' FROM THE TOP OF BANK) WITHIN THE SOUTH RIGHT OF WAY OF C-7 EXT. BEGINNING APPROXIMATELY 1,180' WEST OF WEST 16TH AVENUE BRIDGE AND RUNNING EASTERLY TO A POINT 493' EAST OF WEST 16TH AVENUE BRIDGE.

LAST DATE FOR BOARD ACTION: **Dec., 2011**

---

2. JAMES R. AND LEAH L. PISARSKI  
COUNTY:PALM BEACH

Permit Number 12833  
Appl. Number 11-0826-1M  
Fee

**AUTHORIZING:**

REPLACE EXISTING AND EXTEND WOODEN RETAINER WALL AND PLACE RIP-RAP FOR BANK STABILIZATION WITHIN THE SOUTH RIGHT OF WAY OF C-16 AT THE REAR OF 1229 N.W. 13TH AVENUE (LOT 25, SKY LAKE PLAT 2).

LAST DATE FOR BOARD ACTION: **Dec., 2011**

---

3. CHETRAM SINGH  
COUNTY:ST. LUCIE

Permit Number 13048  
Appl. Number 11-0518-1M  
Fee

**AUTHORIZING:**

EXISTING LIFT, ADDITIONAL PILINGS AND MODIFICATION OF DOCK WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 331 S.W. SOUTH QUICK CIRCLE (LOT 46, BLOCK 2368, PORT ST. LUCIE SECTION 34).

LAST DATE FOR BOARD ACTION: **Nov., 2011**

---

4. STEVE ROCKER  
COUNTY:BROWARD

Permit Number 13900  
Appl. Number 11-0928-2  
Easement

**AUTHORIZING:**

EXISTING BOAT DOCK, CONCRETE PATIO AND LANDSCAPING CONSISTING OF PALM TREES, SHRUBS AND PLANTS WITHIN THE NORTHERLY RIGHT OF WAY OF C-14 LOCATED AT THE REAR OF 400 SW 18TH COURT (LOT 15, BOULEVARD PARK ISLES). *(Within area previously-relaxed by Governing Board-Order 2001-26)*

LAST DATE FOR BOARD ACTION: **Dec. 2011**

---

**RIGHT OF WAY APPLICATIONS WITH REQUEST FOR WAIVER OF DISTRICT CRITERIA**

1. Consideration of a request by **Miami-Dade County Public Schools** (Application Number 11-0427-2, Permit Number 13932), for issuance of a Right of Way Occupancy Permit for the proposed installation of a 24" RCP culvert with headwall, a 6" water main connection and 5 - 2" water meter connections to an existing, previously-authorized buried 12" water main for firefighting purposes and Waiver of the District's criteria for the proposed installation of a 50' long section of guardrail at the top of the canal bank at the south end of N.W. 17<sup>th</sup> Avenue extended within the north right of way of C-8 adjacent to and serving the North Dade Middle and North Dade CML Elementary Schools. Location: Miami-Dade County, Section 15, Township 52 South, Range 41 East.

The applicant's request for waiver of the District's 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 Works and Lands of the District is based on "substantial hardship". The applicant states that installation of the guardrail section to be located where N.W. 17<sup>th</sup> Avenue dead-ends is requested and required by the Miami-Dade County Fire Department as a traffic control device to facilitate access by emergency response vehicles to the schools during emergency situations. The District's Operations, Maintenance and Construction Division staff has determined that the proposed facilities will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operations and routine 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 10.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 37, Number 39* of the *Florida Administrative Weekly* on September 30, 2011. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13932 and **approval** of the petition for waiver of the District's 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 and Lands of the District.  
(Easement)

## RIGHT OF WAY APPLICATIONS WITH REQUEST FOR WAIVER OF DISTRICT CRITERIA

2. Consideration of a request by **Miami Dade Aviation Department**, (Application Number 11-0510-1, Permit Number 13882) for issuance of a Right of Way Occupancy Permit for the installation of a 24" culvert connection and directional bore conduit and Waiver of the District's criteria for the proposed construction of NW 42<sup>nd</sup> Court bridge crossing C-4. Location: Miami-Dade County, Section 32, Township 53 South, Range 41E.

The applicant requests waiver of the District's criteria which governs the minimum low member elevation of pile-supported and free-span facilities located within Works or Lands of the District. In this section of the C-4 canal, the minimum vertical clearance for crossings should be set 13.0' MSL. However, in areas where existing conditions limit the vertical clearance, or it is not feasible for economic reasons to obtain these clearances, the District may give consideration to a reduction. In this regard, the District previously authorized the Florida Department of Transportation authority to construct a crossing with a lower low member elevation than met criteria for one of the ramps connecting to the LeJeune Road Bridge, which is located just east of the proposed crossing at NW 42<sup>nd</sup> Court.

The applicant's request for waiver of the District's criteria is based on "Principle of Fairness". The applicant's proposal for the construction of NW 42<sup>nd</sup> Court bridge incorporates a low member elevation which will be equal to the lowest ramp of LeJeune Road, that was constructed at an elevation 10.43' NGVD/MSL. Also, the applicant asserts that a higher bridge elevation is not possible due to constraints imposed by the proximity of the existing railroad crossing, maximum allowable roadway profile grade and other geographical surroundings.

The District's Operations, Maintenance and Construction staff has determined that the proposed bridge will not significantly interfere with the District's ability to perform necessary construction, alteration, operation and maintenance activities as the applicant has provided significant staging areas for District operation and maintenance needs. Therefore, 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 37, *Number 23* on *June 10, 2010*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13882 and **approval** of the petition for Waiver of the District's criteria which governs the minimum low member elevation of pile-supported and free-span facilities within Works or Lands of the District.

(Easement)

**RIGHT OF WAY APPLICATIONS WITH REQUEST FOR WAIVER OF DISTRICT CRITERIA**

1. Consideration of a request by the **Town of Davie** (Application Number 11-0802-1, Permit Number 13927), for issuance of a Right of Way Occupancy Permit to allow an existing conduit with buried pull boxes attached to the US 441/SR 7 bridge to remain; and Waiver of the District's criteria to allow an existing pole with camera at the southeast quadrant with and an above-ground meter with pedestal at the northwest quadrant to remain within the north right of way of C-11 at the intersection of Orange Drive/ SW 45<sup>th</sup> Street and SR 7/US 441 Highway Bridge. Location: Broward County, Section 25, Township 50 South, Range 41 East.

The applicant's request for waiver of the District 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 areas located at all bridge and pile-supported utility crossings within Works and Lands of the District is based on "substantial hardship" and "principles of fairness." The applicant asserts that without a waiver, the project could not be constructed within applicable standards. In addition, strict application of the rules would create a violation of "principals of fairness" as other similar permitted facilities exist along this reach of the canal. The District's Operations, Maintenance and Construction Division staff has determined that the existing facilities do not significantly interfere with the District's access and ability to perform necessary construction, alteration, operations and routine maintenance activities, so the purpose of the underlying statue 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 10.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 37, Number 33* of the *Florida Administrative Weekly* on August 19, 2011. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13927 and **approval** of the petition 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 equipment staging areas located at all bridges and pile-supported utility crossings within the Works or Lands of the District.  
(Easement)

**RELAXATION OF DISTRICT RULE 40E-6.011(9), F.A.C.**

1. It is the recommendation of the staff of the Land Resources Bureau and the Operations, Maintenance and Construction Division that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in District Rules which specifies that an unencumbered 40 foot wide strip of right of way as measured from the top of bank landward, is required in order for the District to perform the routine operations and maintenance activities along the following reach of C-10, located in Broward County:

The south side of C-10 from a point located 280' west of the CSX Railroad bridge continuing westerly along the rear of adjacent properties located at 1325, 1326 and 1327 North 30<sup>th</sup> Court, Dania Beach.

Staff's recommendation is based on the fact that this reach of the District's C-10 Canal right of way has very limited overbank, has been encumbered with above-ground encroachments for many years and is inaccessible for routine land-based maintenance activities. The District has no access from cross roads to the canal berm. Chemical spray crews using small boats currently perform routine canal maintenance in the area.

Due to the existence of an open channel connection at the southwest quadrant of the CSX Railroad bridge there is no accessible staging area and therefore this relaxation also includes this 100'.

District Rule 40E-6.011(9), F.A.C., (Policy and Purpose), asserts that "the District reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further, the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area."

Further, the establishment of the areas as an area covered by Rule 40E-6.011(9), F.A.C. will be applied to all future applicants in the geographical areas specified above.

(Fee)

**RELAXATION OF DISTRICT RULE 40E-6.011(9), F.A.C.**

2. It is the recommendation of the staff of the Land Resources Bureau and Operations, Maintenance and Construction Division that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in the District Rules which specifies that an unencumbered 40 foot wide strip of right of way, as measured from the top of bank landward is required in order for the District to perform the routine operations and maintenance activities along the following reach of C-4, located in Miami-Dade County:

The south side of way of C-4 beginning at the east boundary of Robert King High Park east to the west face of NW 7<sup>th</sup> Street Bridge, excluding the 100' staging area for the NW 7<sup>th</sup> Street Bridge.

Staffs' recommendation is based on the fact that the 40 foot wide southerly overbank right of way throughout this reach of C-4 has been encumbered with encroachments for many years, consisting of cross-fencing, existing vegetation and above-ground encroachments which block the District's access; and, there is presently no access to the site from public road right of way.

District Rule 40E-6.011(9), F.A.C., (Policy and Purpose), states that "the District reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities such determination shall be at the sole discretion of the District, would only allow permissibility of existing encroachments and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further, in relaxing the 40 foot standard, should the existing facilities be damaged, the permittee would not be allowed to replace the facility or in the case of trees or other plantings when the existing trees die, or are blow down, etc., they would not be allowed to be replaced. The District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area."

(Easement)