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

MARCH 12, 2009

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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 <u>grant variances and waivers</u> 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 <u>and</u> 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.	

**RIGHT OF WAY OCCUPANCY NEW PERMITS**

1. PATRICK KEANE Permit Number 13374  
Palm Beach County Appl. No. 08-1103-1  
(Fee)

AUTHORIZING: EXISTING TREES, PLANTINGS, SEAWALL, DOCK WITH STAIRS, GAZEBO, AND ELECTRICAL SERVICE WITH LIGHTS WITHIN THE NORTH RIGHT OF WAY OF HILLSBORO CANAL AT THE REAR OF 1360 SW 21 LANE (LOTS 24 AND 25, HILLSBORO PARK ADDITION).

*WITHIN PREVIOUSLY-APPROVED RELAXATION AREA*

LAST DATE FOR BOARD ACTION: APRIL 9, 2009

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2. MICHEL & GINETTE LAMBIN-TURPIN Permit Number 13395  
Broward County Appl. No. 08-1229-4  
(Easement)

AUTHORIZING: EXISTING, NATIVE, NATURAL MANGROVES AND A PROPOSED DOCK WITH WALKWAY WITHIN THE SOUTH RIGHT OF WAY OF THE HILLSBORO CANAL AT THE REAR OF 1313 ORCHID COURT (UNIT 1313, PINE TREE CO-OP).

LAST DATE FOR BOARD ACTION: APRIL 9, 2009

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3. LEO F. & AURORA C. GALANTI Permit Number 13400  
Martin County Appl. No. 09-0112-1  
(Fee)

AUTHORIZING: EXISTING DOCK AND LANDSCAPING CONSISTING OF ONE PALM TREE ENCROACHING 5' (80' FROM THE TOP OF THE CANAL BANK) WITHIN THE SOUTH RIGHT OF WAY OF C-23 LOCATED AT THE REAR OF 3561 SW BIMINI CIRCLE NORTH (LOT 163, MID-RIVERS YACHT AND COUNTRY CLUB I).

LAST DATE FOR BOARD ACTION: APRIL 9, 2009

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**RIGHT OF WAY OCCUPANCY NEW PERMITS**

4. MANUEL & ELIZABETH MARTINEZ Permit Number 13401  
Martin County Appl. No. 08-1231-1  
(Fee)

AUTHORIZING: EXISTING DOCK WITHIN THE SOUTH RIGHT OF WAY OF C-23 LOCATED AT THE REAR OF 4191 SW BIMINI CIRCLE NORTH (LOT 181, MID-RIVERS YACHT AND COUNTRY CLUB I).

LAST DATE FOR BOARD ACTION: APRIL 9, 2009

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5. PAULA MEYERSON TRUST Permit Number 13402  
Martin County Appl. No. 09-0112-2  
(Fee)

AUTHORIZING: EXISTING FENCE ENCLOSURE ENCROACHING 10' (110' FROM THE TOP OF THE CANAL BANK) WITH LANDSCAPING INSIDE THE FENCING WITHIN THE SOUTH RIGHT OF WAY OF C-23 LOCATED AT THE REAR OF 4311 SW BIMINI CIRCLE NORTH (LOT 185, MID-RIVERS YACHT AND COUNTRY CLUB I).

LAST DATE FOR BOARD ACTION: APRIL 9, 2009

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6. DONALD H. & CAROLYN D. ZYSK Permit Number 13403  
Martin County Appl. No. 09-0108-1  
(Fee)

AUTHORIZING: EXISTING STEPS TO CANAL FROM THE TOP OF THE CANAL BANK AND LANDSCAPING CONSISTING OF 2 PALM TREES ENCROACHING 6' (104' FROM THE TOP OF THE CANAL BANK) WITHIN THE SOUTH RIGHT OF WAY OF C-23 LOCATED AT THE REAR OF 4881 SW BIMINI CIRCLE NORTH (LOT 204, MID-RIVERS YACHT AND COUNTRY CLUB I).

LAST DATE FOR BOARD ACTION: APRIL 9, 2009

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**RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS**

1. GREG & KATHLEEN MCGINN Permit Number 12851  
Martin County Appl. No. 07-0125-2M  
(Fee)

AUTHORIZING: EXISTING BURIED ELECTRICAL TO EXISTING, PREVIOUSLY-AUTHORIZED DOCK WITHIN THE SOUTH RIGHT OF WAY OF C-23 LOCATED AT THE REAR OF 4641 SW BIMINI CIRCLE NORTH (LOT 196, MID-RIVERS YACHT AND COUNTRY CLUB I).

LAST DATE FOR BOARD ACTION: APRIL 9, 2009

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2. HAROLD A. & JACQUELINE H. JONES Permit Number 10871  
St. Lucie County Appl. No. 09-0122-1M  
(Easement)

AUTHORIZING: EXISTING ADDITIONAL LIFT ON EXISTING PREVIOUSLY-AUTHORIZED DOCK WITHIN THE NORTH RIGHT OF WAY OF C-24 AT THE REAR OF 2610 SOUTH RIVER SHORE DRIVE (LOT 9, SOUTH RIVER SHORES).

LAST DATE FOR BOARD ACTION: APRIL 9, 2009

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3. MARCEL & KIMBERLY RAPPOLD Permit Number 12718  
Martin County Appl. No. 08-1229-2M  
(Fee)

AUTHORIZING: EXISTING NATIVE LANDSCAPING CONSISTING OF OAKS, SCRUB OAKS, CABBAGE PALM, PINE, MAPLE, PALM TREES AND LARGE FERN ENCROACHING 46' (46' FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-24 AT THE REAR OF 234 SW CASSINE COURT (LOT 4, WINDSTONE).

LAST DATE FOR BOARD ACTION: MARCH 12, 2009

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## RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

4. MIAMI-DADE COUNTY DEPARTMENT OF                      Permit Number 12723  
      PARK & RECREATION                                      Appl. No. 07-1011-1  
      Miami-Dade County                                         (Easement)

AUTHORIZING: BANK STABILIZATION CONSISTING OF LIMEROCK RIP-RAP, NATIVE GROUNDCOVERS AND CULVERT REPLACEMENT WITHIN THE NORTH RIGHT OF WAY OF C-2 BEGINNING APPROXIMATELY 700' EAST OF OLD CUTLER ROAD AND EXTENDING TO BISCAYNE BAY APPROXIMATELY 4900'.

LAST DATE FOR BOARD ACTION: 90 DAYS WAIVED

**RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH  
WAIVER OF DISTRICT CRITERIA**

1. Consideration of a request by **Canal Investments, Inc.**, (Application Number 09-0213-1, Permit Number 13407) for Waiver of the District's criteria and issuance of a Right of Way Occupancy Permit for the proposed installation of a cross-fence with vehicular access gate at the east property line extended and to allow an asphalt parking area accommodating 6 parking spaces with bollards, buried electrical service with lighting and portion of an exfiltration trench to remain within the north right of way of C-4 adjacent to 10690 S.W. 7<sup>th</sup> Terrace. Location: Miami-Dade County, Section 5, Township 55 South, Range 40 East.

The applicant's request for waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground encroachments within 40 feet of the top of the canal bank and within the District's designated equipment staging areas at all bridges and pile-supported utility crossings as well as the placement of retention/detention facilities and use of motor vehicles (parking) within Works or Lands of the District is based on "principles of fairness" and "substantial hardship". The applicant has had the existing facilities at their current location since 2002 when he acquired the property and loss of the parking area would result in the inability of the applicant to continue with ongoing business activity. The District has been negotiating with the applicant for the acquisition of a permanent access easement through the applicant's property for ingress and egress to its canal right of way as well as improving its easement lying adjacent to the canal, which currently grants access only and does not include use of the easement for the purpose of the District constructing and maintaining the C-4 Gravity (Flood) Wall. This Settlement Agreement, which includes the granting of the improved construction/access easement to the District, also appears on the Consent Agenda. The proposed flood wall is one of several of the District's projects providing increased flood protection in the Sweetwater/Belen area. The District's issuance of a permit for the existing and proposed encroachments as described above is a condition of the Settlement Agreement. The applicant has agreed to remove the portion of an existing concrete wall from within the District's right of way and replace it with a cross-fence with 16-foot wide gate for the passage of the District's vehicles and equipment.

The staff of the Operations and Maintenance Resource Department has no objection to the proposed cross-fence or the existing encroachments as the District will gain the ability to access its right of way for construction and maintenance as well as routine and emergency operations via the improved easement interest included in the Settlement Agreement.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13407 and **approval** of the petition for waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground encroachments within 40 feet of the top of the canal bank and within the District's designated equipment staging areas at all bridges and pile-supported utility crossings as well as the placement of retention/detention facilities and use of motor vehicles (parking) within Works or Lands of the District. *(Subject to receipt of no objection upon publication in the Florida Administrative Weekly pursuant to section 120.542(6), F.S.*