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RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

DECEMBER 14, 2006

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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 <u>approval</u> .	
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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. OKEE RIM, INC. Permit Number 12799
Okeechobee County Appl. No. 06-0221-1
(Easement)

AUTHORIZING: EXISTING COVERED DOCK, MARGINAL BOARDWALK WITH 2 PIERS, WOOD POST, 2 CROSS-FENCES WITH PEDESTRIAN PASS-THROUGHS, CYPRESS TREES AND A PORTION OF A 10' x 10' CONCRETE SLAB WITHIN THE NORTHEAST RIGHT OF WAY OF LD-4 AT THE REAR OF 928 HIGHWAY 441 SOUTHEAST.

(LOCATED WITHIN A GOVERNING BOARD PREVIOUSLY-APPROVED RELAXATION AREA OF THE 40' RULE).

LAST DATE FOR BOARD ACTION: 90 DAYS WAIVED

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2. MICHAEL AND KELLY COHEN Permit Number 12973
St. Lucie County Appl. No. 06-0427-1
(Easement)

AUTHORIZING: EXISTING DOCK WITH RIP-RAP WITHIN THE SOUTH RIGHT OF WAY OF C-24 AT THE REAR OF 174 S.W. DALTON CIRCLE (LOT 25, BLOCK 2896, PORT ST. LUCIE SECTION 41).

LAST DATE FOR BOARD ACTION: DECEMBER 14, 2006

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3. MICHAEL G. AND NICOLLE MAHADY Permit Number 12963
Palm Beach County Appl. No. 05-0107-4
(Fee)

AUTHORIZING: REFURBISH DOCK, INSTALL RIP-RAP REVETMENT AND PLACE FILL WITHIN THE NORTH RIGHT OF WAY OF C-15 AT THE REAR OF 1153 AVOCET ROAD (LOT 556, TROPIC PALMS PLAT NUMBER 2).

LAST DATE FOR BOARD ACTION: JANUARY 11, 2007

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. ERIC H. WALLACE
Palm Beach County
- Permit Number 10765
Appl. No. 06-0920-1M
(Easement)

AUTHORIZING: 10' ADDITION TO WEST END OF EXISTING DOCK; ALSO, A PROPOSED BOAT LIFT WITH TEMPORARY ELECTRIC FROM GENERATOR FOR BOAT LIFT WITHIN THE NORTH RIGHT OF WAY OF THE HILLSBORO CANAL AT THE REAR OF 1140 SOUTHWEST 21ST LANE (LOTS 23, 24, 25, AND 26, BLOCK 78, P.B. FARMS. CO., PLAT NO. 10).

LAST DATE FOR BOARD ACTION: DECEMBER 14, 2006

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2. FRANK MICELLI
Palm Beach County
- Permit Number 11881
Appl. No. 06-0131-2M
(Easement)

AUTHORIZING: REMOVE PORTION OF EXISTING DOCK, INSTALL SHEET PILE BULKHEAD, DREDGING, AND RIP-RAP WITHIN THE SOUTH RIGHT OF WAY OF C-16 LOCATED ADJACENT TO THE EAST 45' OF LOT 41 OF HARBOR ESTATES (APPROXIMATELY 228' EAST OF STRUCTURE S-41).

LAST DATE FOR BOARD ACTION: JANUARY 11, 2007

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3. ROYAL PALM BUILDERS I, INC.
Collier County
- Permit Number 11553
Appl. No. 02-0122-7M
(Easement)

AUTHORIZING: EXISTING LANDSCAPE CONSISTING OF HEDGES, LOW LYING SHRUBBERY WITH ADDITIONAL LANDSCAPE IN BRIDGE MEDIAN; ALSO WALKWAY AND STONES ALL LOCATED WITHIN THE EAST RIGHT OF WAY OF THE AIRPORT ROAD CANAL ADJACENT TO BANYAN WOODS SUBDIVISION.

LAST DATE FOR BOARD ACTION: DECEMBER 14, 2006

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

1. Consideration of a request by **Miami-Dade County Public Works Department**, (Application Number 06-0828-3M, Permit (MOD) Number 10629) for issuance of a Modification to Right of Way Occupancy Permit Number 10629 for the installation of 2 outfall culverts and, waiver of the District's criteria for the proposed replacement of the NE 2nd Avenue Bridge crossing C-7. Location: Miami-Dade County, Section 12, Township 53 South, Range 41 East.

The applicant requests waiver of the District's criteria which governs the minimum low member elevation of pile-supported facilities within Works or Lands of the District. The District's criteria requires that on canals with one water control structure, the vertical clearance of the structure shall provide a minimum of 2 feet above the design water surface elevation or a minimum of 6 feet above the seasonal high optimum water control elevation, whichever produces the higher low member elevation. 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. However, in no case will an elevation be allowed that is less than 2 feet above the design water surface elevation.

The applicant's request for waiver of the District's criteria is based on "substantial hardship". The proposed low member elevation of the N.E. 2nd Avenue bridge will be set at 7.224' NGVD meeting the vertical clearance criteria of 2'.0" above the design water surface elevation (3.59' NGVD) or 5.39' NGVD. However, the low member elevation will be lower than 6 feet above the optimum water surface elevation (1.7' NGVD) or 7.7' NGVD. The applicant asserts that the bridge profile as presented will mitigate the impact to the adjacent property by raising the profile any further would create an elevation difference at the entry to the adjacent commercial properties at the southeast corner of the bridge. The commercial properties in the southeast side of the bridge are situated just along the road right of way and the distance from the end of the sidewalk to the building edge is almost zero, so there is no room for transition elevation at these specific areas. The District's Operations and Maintenance Resource staff has determined that the proposed facilities will not significantly interfere with the District's access and 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 32, number 37* of the *Florida Administrative Weekly* on *September 15, 2006*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit Number 10629 and **approval** of the petition for Waiver of the District's criteria which governs the minimum low member elevation of pile-supported facilities within Works or Lands of the District.
(Fee)

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2. Consideration of a request by **Florida Department of Transportation** (Application Number 06-0922-2, Permit Number 12972) for the issuance of a Right of Way Occupancy Permit and waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground structures within forty feet of the top of

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

the canal bank to allow minor encroachments of existing and proposed guardrail sections and portions of a proposed sidewalk with aluminum pedestrian handrailing, portions of a concrete barrier wall, bank reshaping with installation of erosion control matting and the minor shifting of existing light poles in conjunction with the FDOT Sidewalk Project along Sunrise Boulevard, beginning easterly of SR 7 to NW 34th Avenue within the northerly right of way C-12. Location: Broward County, Sections 31 & 6, Township 49, 50 South, Range 42E.

The applicant's request for waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of top of bank is based on both "substantial hardship" and "principals of fairness". The applicant asserts that the installation of aluminum pedestrian handrail along the southerly side of the sidewalk will protect pedestrians from potential drop-off hazards and the guardrailing and concrete barrier walls have been in existence for approximately 6 years and are necessary for the protection and safety of passing motorists. The District's Operations Resource Management staff has determined that the neither the existing or proposed facilities along the northerly right of way will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities. The District has very limited overbank along the north right of way and operations and maintenance of the canal is currently performed from the south berm, 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 32, Number 43* of the *Florida Administrative Weekly* on *October 27, 2006*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 12972 and **approval** of petition for Waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of the canal bank within Works or Lands of the District.

(Fee)