

## TABLE OF CONTENTS

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

DECEMBER 2, 2008

	<u>PAGES</u>
<b>I. RIGHT OF WAY OCCUPANCY NEW PERMITS:</b>	<b>1 - 2</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 <u>approval</u> .	
<b>II. RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS:</b>	<b>3</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 <u>approval</u> .	
<b>III. RIGHT OF WAY OCCUPANCY PERMIT APPLICATIONS FOR DENIAL:</b>	<b>4</b>
Governing Board action is required for routine requests for permits which do not conform to applicable rules and criteria of Works and Lands of the District. Items are placed on this Consent Agenda when the staff's recommendation is for denial.	
<b>IV. REQUESTS WITH WAIVER OF DISTRICT CRITERIA:</b>	<b>5</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.	
<b>V. CONSENT AGREEMENTS:</b>	<b>6</b>
A voluntary contractual agreement between the District and a party in dispute which legally binds the parties to the terms and conditions contained in the agreement. Normally used as a vehicle to outline the terms and conditions regarding settlement of an enforcement action.	

**RIGHT OF WAY OCCUPANCY NEW PERMITS**

1. COLLIER COUNTY BOARD OF COUNTY COMMISSIONERS  
Collier County Permit Number 13368  
Appl. No. 08-0603-1  
(Easement)

AUTHORIZING: WIDENING OF A PORTION OF THE MILLER CANAL TO ACCOMMODATE THE REPLACEMENT OF THE GOLDEN GATE BOULEVARD BRIDGE WITH SIDEWALKS, RIP-RAP, A DISTRICT BOAT RAMP AND 2-42" AND 2-60" REINFORCED CONCRETE PIPES; ALSO, THE ATTACHMENT OF A 36" FORCE MAIN TO THE NEW BRIDGE ALL WITHIN THE RIGHTS OF WAY OF THE MILLER CANAL IN CONJUNCTION WITH THE COUNTY'S GOLDEN GATE BOULEVARD IMPROVEMENT PROJECT.

LAST DATE FOR BOARD ACTION: 90 DAY WAIVED

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2. COLLIER COUNTY BOARD OF COUNTY COMMISSIONERS  
Collier County Permit Number 13369  
Appl. No. 08-0603-2  
(Easement)

AUTHORIZING: WIDENING OF A PORTION OF THE GOLDEN GATE MAIN CANAL TO ACCOMMODATE THE REPLACEMENT OF THE GOLDEN GATE BOULEVARD BRIDGE WITH SIDEWALKS, RIP-RAP, A DISTRICT BOAT RAMP AND 2-42", 1-54" AND 1-48" REINFORCED CONCRETE PIPES; ALSO, THE ATTACHMENT OF A 36" FORCE MAIN TO THE NEW BRIDGE ALL WITHIN THE RIGHTS OF WAY OF THE MILLER CANAL IN CONJUNCTION WITH THE COUNTY'S GOLDEN GATE BOULEVARD IMPROVEMENT PROJECT.

LAST DATE FOR BOARD ACTION: 90 DAY WAIVED

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3. COLLIER COUNTY BOARD OF COUNTY COMMISSIONERS  
Collier County Permit Number 13370  
Appl. No. 08-0603-3  
(Easement)

AUTHORIZING: WIDENING OF A PORTION OF THE FAKA UNION CANAL TO ACCOMMODATE THE REPLACEMENT OF THE GOLDEN GATE BOULEVARD BRIDGE WITH SIDEWALKS, RIP-RAP, A DISTRICT BOAT RAMP AND 2-60" AND 2-42" REINFORCED CONCRETE PIPES WITHIN THE RIGHTS OF WAY OF THE FAKA UNION CANAL IN CONJUNCTION WITH THE COUNTY'S GOLDEN GATE BOULEVARD IMPROVEMENT PROJECT.

LAST DATE FOR BOARD ACTION: 90 DAY WAIVED

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**RIGHT OF WAY OCCUPANCY NEW PERMITS**

4. ANTHONY B. MEREDITH  
Palm Beach County

Permit Number 13373  
Appl. No. 08-1007-1  
(Easement)

AUTHORIZING: EXISTING WALKWAY WITH PROPOSED DOCK WITH LIFT WITH BURIED ELECTRICAL SERVICE WITHIN THE NORTH RIGHT OF WAY OF THE HILLSBORO CANAL AT THE REAR OF 734 CAMINO LAKES CIRCLE (LOT 4 AND 4A, CAMINO LAKES UNIT 2).

LAST DATE FOR BOARD ACTION: JANUARY 15, 2009

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## RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. FLORIDA DEPARTMENT OF  
TRANSPORTATION  
Miami-Dade County

Permit Number 12979  
Appl. No. 08-0608-3M  
(Easement)

AUTHORIZING: EXISTING FIBER OPTIC CABLE WITH BURIED PULL BOXES WITHIN EXISTING CONDUIT ATTACHED TO THE SOUTH FACE OF THE EASTBOUND TAMiami TRAIL (S.W. 8<sup>TH</sup> STREET) BRIDGE CROSSING C-2 IN LIEU OF PREVIOUSLY-AUTHORIZED SUBAQUEOUS INSTALLATION.

LAST DATE FOR BOARD ACTION: JANUARY 15, 2009

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## RIGHT OF WAY OCCUPANCY PERMIT APPLICATIONS FOR DENIAL

1. Consideration of a request by **Gilberto Suarez** (Application Number 02-0417-2M) for issuance of a Modification to Right of Way Occupancy Permit Number 11408 for the proposed installation of a retaining wall within the west right of way of C-51 at the rear of 828 Patrick Drive in West Palm Beach. Location: Palm Beach County, Section 5, Township 44 South, Range 43 East.

Staff recommends **denial** of the application due to the applicant's lack of response and failure to provide information sufficient to demonstrate that the proposed use meets the criteria established in the document referred to in Rule 40E-6.091, F.A.C.

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

1. Consideration of a request by **William and Sandra Schmitt** (Application Number 08-0818-1, Permit (MOD) Number 9624) for the issuance of a Modification to Right of Way Occupancy Permit Number 9624 to allow 2 additional mooring piles and Waiver of the District's criteria to allow eight existing palm trees within the north right of way of C-51 at the rear of 184 Arlington Road to remain. Location: Palm Beach County, Section 15, Township 44 South, Range 43 South.

The applicant's request for Waiver of the District's criteria which governs the placement of semi-permanent and/or permanent above-ground encroachments within forty feet of the top of the canal bank within Works or Lands of the District is based on a "substantial hardship". The applicant asserts that the trees have been in existence for over 10 years and the cost of removal would be a financial hardship; also other permitted trees are located throughout this reach of the District's right of way. The District's Operations Resource Management staff has determined that the existing trees do not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation and maintenance activities, as the District has very limited overbank in this area, which is only accessible by water; also, the applicant's property is located downstream of the District's Water Control Structure S-155.

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 *34, Number 42* of the *Florida Administrative Weekly* on *October 17, 2008*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit Number 9624 and **approval** of the petition for Waiver of the District criteria which governs the placement of permanent and/or semi-permanent above-ground encroachments within forty feet of the top of the canal bank with Works and Lands of the District.  
(Fee)

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## **CONSENT AGREEMENTS**

1. Execute a Consent Agreement entered into between SFWMD and Super Six Farms involving settlement of enforcement actions regarding unauthorized farming operations within the District's L-31N Right of Way, Miami-Dade County.