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September 8, 2011

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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 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. MIAMI DADE WATER AND SEWER DEPARTMENT  
COUNTY:MIAMI-DADE

Permit Number 13905  
Appl. Number 10-0907-1  
Easement

**AUTHORIZING:**

THREE TEMPORARY CULVERTS THROUGH THE SOUTH RIGHT OF WAY OF C-1W LOCATED .20 MILE WEST OF THE WEST FACE OF THE SOUTH MIAMI-DADE BUSWAY BRIDGE TO ACCOMMODATE DE-WATERING FOR THE SOUTH MIAMI HEIGHTS WATER TREATMENT PLANT CONSTRUCTION.

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

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2. ROBERT COLLINS  
COUNTY:BROWARD

Permit Number 13907  
Appl. Number 11-0202-1  
Fee

**AUTHORIZING:**

183 LINEAR FEET OF EXISTING CONCRETE BULKHEAD, TWO DOCKS WITH WATER AND ELECTRIC, FOUR BOATLIFTS, AND ONE FINGER PIER WITHIN THE SOUTHEASTERLY RIGHT OF WAY OF C-14 AT THE REAR OF 980 SE 6TH TERRACE (KINGS CROWN, LOT 17).

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

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

Consideration of a request by **Florida Power and Light Co.**, (Application Number 11-0630-1, Permit Number 13904), for issuance of a Right of Way Occupancy Permit and waiver of District criteria for the proposed installation of a vehicular access gate crossing the north right of way of L-12 located approximately 2.5 miles southeast of the intersection of C.R. 700 (State Road 80) and U.S. Highway 441. Location: Palm Beach County, Section 26, Township 43 South, Range 39 East.

The applicant's request for waiver of the District's criteria, which governs the placement of permanent and semi-permanent above-ground facilities within 40' of the top of the canal bank within Works or Lands of the District is based on "substantial hardship". The applicant asserts that the gate is required in order to prevent the public from gaining access to (and shooting) of the sensitive utility structures. These vital structures, which are part of the critical transmission line facilities serving a large segment of South Florida. The existing steel poles have been used at target practice and are littered with bullet holes making them structurally unstable. Without this gate, the transmission lines and poles will suffer further damage from vandalism which has already required FPL to engineer a replacement for these structures. Replacement costs were over \$220 thousand dollars for labor, \$175 thousand dollars for materials and \$80 thousand dollars for engineering. These costs totaled more than \$480 thousand to replace the vandalized structures. Without these transmission poles, providing reliable power to customers in South Florida would be compromised. FPL requires this gate to restrict access to unauthorized personnel and keep them from damaging our critical infrastructure .

The Operations Maintenance and Construction Division has stated that the proposed facility will not interfere with their ability to perform necessary construction, alteration, operation 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 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 37, Number 28* of the *Florida Administrative Weekly* on July 15, 2011. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13904 and **approval** of the petition for waiver of the District's criteria which governs the placement of permanent and semi-permanent above-ground structures within 40' of the top of the canal bank within Works or Lands of the District.

(Easement)