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RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

JULY 9, 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. WALTER & TANYA TALANCZUK Permit Number 13446
Martin County Appl. No. 09-0430-1
(Fee)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 1 OAK TREE, 4 CITRUS TREES, 8 SEA GRAPES, 2 PINES, 1 CABBAGE PALM, PAMPAS GRASSES AND AQUATIC GARDEN ENCROACHING 20' (105' FROM THE TOP OF THE BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 4631 SW RIVERS END WAY (LOT 36, WINDSTONE).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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2. KEITH C. WILLMAN Permit Number 13467
Broward County Appl. No. 09-0502-1
(Easement)

AUTHORIZING: REMOVAL OF EXISTING CARROTWOOD TREE, PROPOSED FENCE ENCROACHING 40' (47' FROM TOP OF BANK) AND ONE EXISTING GUMBO LIMBO TREE WITHIN THE FENCED AREA WITHIN THE WEST RIGHT OF WAY OF C-42 AT THE REAR OF 4770 NW 113TH AVENUE (LOT 13, BLOCK 3, SUNRISE GOLF VILLAGE SECTION TWENTY-SIX).

LAST DATE FOR BOARD ACTION: AUGUST 13, 2009

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3. JOSE R. JIMENEZ Permit Number 13434
Broward County Appl. No. 09-0401-2
(Easement)

AUTHORIZING: 5 EXISTING TREES, PROPOSED FENCE ENCROACHING 40' (48' FROM TOP OF BANK), FIREBUSH HEDGE, 3 DAHOON HOLLY TREES, VEGETABLE GARDEN AND A GAZEBO ALL WITHIN THE FENCED AREA WITHIN THE WEST RIGHT OF WAY OF C-42 AT THE REAR OF 4730 NW 113TH AVENUE (LOT 11, BLOCK 3, SUNRISE GOLF VILLAGE SECTION TWENTY-SIX).

LAST DATE FOR BOARD ACTION: AUGUST 13, 2009

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4. SIMEON GEORGE MOULTON Permit Number 13453
Broward County Appl. No. 09-0422-2
(Fee)

AUTHORIZING: PROPOSED SHED, EXISTING FENCE ENCLOSURE WITH 4' WIDE GATE AND 3 EXISTING TREES WITHIN THE FENCED ENCLOSURE ENCROACHING 50' WITHIN NORTH RIGHT OF WAY OF C-13 AT THE REAR OF 3620 NW 39TH STREET.

LAST DATE FOR BOARD ACTION: JULY 9, 2009

RIGHT OF WAY OCCUPANCY NEW PERMITS

5. COMCAST Permit Number 13466
Okeechobee County Appl. No. 09-0427-1
(Fee)

AUTHORIZING: AERIAL CABLE CROSSING C-59 LOCATED IMMEDIATELY NORTHEAST OF SR 15 (CONNER'S HIGHWAY) AND PROPOSED ADDITIONAL CABLE ATTACHED TO EXISTING POLES.

LAST DATE FOR BOARD ACTION: AUGUST 13, 2009

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6. ROBERT & MARY MELBER Permit Number 13452
St. Lucie County Appl. No. 09-0505-2
(Easement)

AUTHORIZING: EXISTING LANDSCAPING ENCROACHING 40' (45' FROM TOP OF BANK) ALL WITHIN THE SOUTH RIGHT OF WAY OF C-24 AT THE REAR OF 1033 SW ABINGDON AVENUE (LOT 12, BLOCK 1592, PORT ST. LUCIE SECTION TWENTY-THREE).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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7. N. DEAN KOHL, JR. Permit Number 13447
Martin County Appl. No. 09-0410-1
(Fee)

AUTHORIZING: EXISTING DOCK WITH LIGHT POLE AND ELECTRIC SERVICE ENCROACHING WITHIN THE SOUTH RIGHT OF WAY OF C-23 AT THE REAR OF 3771 SW BIMINI CIRCLE NORTH (LOT 170, EVERGREEN).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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8. ROSE WILKINS Permit Number 13468
Broward County Appl. No. 09-0402-4
(Easement)

AUTHORIZING: EXISTING CONCRETE SLAB, BLOCK WALL AND STEPS, PROPOSED DOCK AND TWO MOORING PILES ALL WITHIN THE SOUTH RIGHT OF WAY OF THE DANIA CUT-OFF CANAL AT THE REAR OF 685 GULFSTREAM ROAD.

LAST DATE FOR BOARD ACTION: JULY 9, 2009

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. WILLIAM & ELIZABETH MAHONEY Permit Number 12085
Martin County Appl. No. 09-0512-1M
(Easement)

AUTHORIZING: PREVIOUSLY-AUTHORIZED DOCK, LIFT AND ELECTRIC SERVICE TO INCLUDE ADDITIONAL LIFT WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 3272 SOUTHWEST RIVERS END WAY (LOT 5, WINDSTONE).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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- 2 RAUL & WALKIRIA DIEGUEZ Permit Number 13121
St. Lucie County Appl. No. 09-0505-1M
(Easement)

AUTHORIZING: EXISTING LANDSCAPING ENCROACHING 17' (56' FROM TOP OF BANK) WITHIN THE SOUTH RIGHT OF WAY OF C-24 AT THE REAR OF 825 SW ABINGDON AVENUE (LOT 38, BLOCK 1592, PORT ST. LUCIE SECTION TWENTY-THREE).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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- 3 BROWARD COUNTY Permit Number 4011
Broward County Appl. No. 09-0305-1M
(Easement)

AUTHORIZING: EXISTING AND PROPOSED LANDSCAPING ENCROACHING 40' FROM TOP OF BANK WITHIN THE EAST RIGHT OF WAY OF L-35A BEGINNING AT THE CONFLUENCE OF THE NORTH NEW RIVER AND EXTENDING APPROXIMATELY 1500' NORTHEASTERLY.

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 **Lisa Strader** (Application Number 09-0422-1, Permit No. 13464) for issuance of a Right of Way Occupancy Permit for a proposed sheet pile retaining wall with rip-rap; and Waiver of criteria to allow existing landscaping, fence, buried electrical service and lights within the north right of way of C-10 Spur at the rear of 3126 North 34th Street, Hollywood, to remain. Location: Broward County, Section 5, Township 51 South, Range 42 East.

The applicant's request for waiver of the District's criteria, which governs the placement of semi-permanent/permanent above-ground facilities within 40 feet of the top of canal bank within Works or Lands of the District, is based on "principles of fairness". The applicant asserts that there are numerous properties along North 34th Street with landscaping, fences, lights and other above-ground items within 40' of top of canal bank. The applicant proposes to install a retaining wall/bulkhead with rip-rap for bank stabilization, which will help preserve existing shoreline and mangroves. The District has no land-based access along this reach of canal for operation and maintenance activities. Further, no routine canal maintenance (spraying for aquatic control) is performed because C-10 Spur is a saltwater canal. The existing landscaping and facilities within the District's right of way do not significantly interfere with the District's current ability to perform 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 35, Number 24* of the *Florida Administrative Weekly* on June 19, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit No. 13464 and **approval** of the Petition for waiver of the District's criteria which governs the placement of semi-permanent/permanent above-ground facilities within 40 feet of the top of canal bank within Works or Lands of the District.
(Easement)

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2. Consideration of a request by the **City of Miramar** (Application Number 09-0310-1, Permit Number 13445) for issuance of a Right of Way Occupancy Permit and waiver of the District's criteria for the proposed installation of guardrail running 40' from the top of the canal bank and use of approximately 3200' of the District's northerly right of way of C-9, beginning at SW 148th Avenue easterly to the Florida Turnpike for roadway purposes. Location: Broward County, Section 40, Township 34 South, Range 51 East.

The applicant's request for waiver of the District's criteria, which governs the use of the District's right of way for roadway purposes is based on "substantial hardship". The City asserts that the District's right of way has been used for more than 10 years by a select few city residents to access their properties. This is an unpaved, dead-end access road that serves about 9 residents. If the City had to construct a new road, it would cost the City and taxpayers approximately \$950,000.00 on design and construction. The City accepts full responsibility for

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

maintaining the limerock road and guardrail improvements and is required to meet applicable safety and industry standards.

In addition, the City has agreed to construct canal staging areas and will install guardrailing with gates along the entire length of the proposed use area. The proposed use of the District's right of way for roadway purposes will be temporary in nature as an unpaved road, with the City to develop its road right of way or alternative access outside of the District's right of way. The District has reserved its right to terminate of the permit at such time the canal needs to be widened or for emergency situations or exigencies as the District deems necessary.

The District's Operations Resource Management staff has determined that the proposed use 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 35, Number 12* of the *Florida Administrative Weekly* on *March 27, 2009*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit 13445 and **approval** of the petition for Waiver of the District's criteria which governs the use of the District's right of way for roadway purposes. (Easement)