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AUGUST 13, 2009

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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> .	1
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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. JACALYN KENNEDY Permit Number 13479
Martin County Appl. No. 09-0519-1
(Fee and Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 27 TREES ENCROACHING APPROXIMATELY 26 FEET (74 FEET FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 302 SW CASSINE COURT (LOT 2, WINDSTONE)

LAST DATE FOR BOARD ACTION: AUGUST 13, 2009

2. TED AND DAWN MURRAY Permit Number 13477
Okeechobee County Appl. No. 08-1215-1
(Fee)

AUTHORIZING: APPROXIMATELY 98 LINEAR FEET OF SEAWALL AND EXISTING DOCK WITHIN THE EAST RIGHT OF WAY OF C-38 AT THE REAR OF 13578 SW 144TH PARKWAY (LOT 30, RIVER OAK ACRES).

LAST DATE FOR BOARD ACTION: AUGUST 13, 2009

3. CARL LIEDERMAN Permit Number 13507
Miami-Dade County Appl. No. 09-0511-1
(Fee)

AUTHORIZING: APPROXIMATELY 280 LINEAR FEET OF SEAWALL WITHIN THE SOUTHERLY RIGHT OF WAY OF C-7 AT THE REAR OF 8501 NW 7TH AVENUE.

LAST DATE FOR BOARD ACTION: AUGUST 13, 2009

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

1. Consideration of a request by **Collier County Transportation Services** (Application Number 09-0227-1, Permit Number 13488), for issuance of a Right of Way Occupancy Permit and Waiver of the District's criteria for a proposed bus shelter, concrete pad, rip-rap and pathway located within the west right of way of Airport Road Canal. Location: Collier County, Section 11, Township 49 South, Range 25 East.

The applicant's request for waiver of the District's criteria, which governs the placement of above-ground permanent and/or semi-permanent encroachments within forty feet of the top of canal bank and within the west right of way of Airport Road canal located approximately 157 feet north of the centerline of Ardisia Lane within Works or Lands of the District, is based on "substantial hardship." The applicant asserts that the uneven path surface would create an extremely unsafe pedestrian condition. The proposed bus shelter and concrete pad would clearly provide a benefit to the public as well as minimize the exposure to risk. The staff of the Big Cypress Basin has no objection to the proposed installation of the bus shelter and concrete pad as it will not interfere with the Basin's current 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 10.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 35, Number 22, of the Florida Administrative Weekly* on June 5, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Right of Way Occupancy Permit Number 13488 and **approval** of the petition for waiver of the District's which governs the placement of above-ground permanent and/or semi-permanent structures within 40 feet of the top of the canal bank within the Works or Lands of the District.

(Easement)

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2. Consideration of a request by **Collier County Board of County Commissioners** (Application Number 09-0309-2, Permit Number 13489), for issuance of a Right of Way Occupancy Permit and Waiver of the District's criteria for an existing bus shelter and concrete sidewalk located within the west right of way of Airport Road Canal. Location: Collier County, Section 2, Township 49 South, Range 25 East.

The applicant's request for waiver of the District's criteria, which governs the placement of above-ground permanent and/or semi-permanent encroachments within forty feet of the top of canal bank and within the

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

west right of way of Airport Road canal located approximately 950 feet south of the centerline of Vanderbilt Beach Road bridge within Works or Lands of the District, is based on “substantial hardship” and “principles of fairness.” The applicant asserts that the rough path creates a very unsafe pedestrian condition for pedestrians and transportation; and that similar structures exist along this reach of the Airport Road canal. The existing bus shelter and concrete sidewalk would clearly provide a benefit to the public as well as minimize the exposure to risk. The staff of the Big Cypress Basin has no objection to the existing bus shelter and concrete pad as it does not interfere with the Basin’s current 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 10.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 35, Number 15, of the Florida Administrative Weekly* on April 17, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Right of Way Occupancy Permit Number 13489 and **approval** of the petition for waiver of the District’s which governs the placement of above-ground permanent and/or semi-permanent structures within 40 feet of the top of the canal bank within the Works or Lands of the District.
Easement