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JUNE 11, 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.	
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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. PALM BEACH COUNTY ENVIRONMENTAL RESOURCES MANAGEMENT DEPT.
Palm Beach County Permit Number 13443
Appl. No. 09-0122-1
(Easement & Fee)

AUTHORIZING: LINEAR PARK (AKA BLUEGILL CONNECTOR TRAIL) CONSISTING OF AN ALL PURPOSE TRAIL, SHARED-USE BRIDGE AND SIGNS WITHIN THE EASTERLY RIGHT OF WAY OF C-18E BEGINNING AT SANDHILL CRANE PARK AT PGA BLVD., AND RUNNING NORTHERLY TO RIVERBEND PARK ADJACENT TO THE REESE/LOW BRIDGE.

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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2. SHARON A. STONE St. Lucie County Permit Number 13444
Appl. No. 09-0127-2
(Easement)

AUTHORIZING: EXISTING DOCK, RESTORATION AND STABILIZATION OF BANK WITHIN THE NORTH RIGHT OF WAY OF THE C-24 CANAL AT THE REAF OF 1006 S.W. SULTAN DRIVE (LOT 2, BLOCK 1292, PORT ST. LUCIE, SECTION 12).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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3. RICHARD AND AUDREY STONE Miami Dade County Permit Number 13441
Appl. No. 09-0316-8
(Easement)

AUTHORIZING: FENCE ENCLOSURE ENCROACHING 18' (12' FROM TOP OF BANK) AND EXISTING PORTION OF POOL DECK LOCATED WITHIN THE WEST RIGHT OF WAY OF C-100A AT THE REAR OF 12301 SW 71ST COURT (LOT 2, CHAPMAN PARK).

WITHIN PREVIOUSLY-AUTHORIZED RELAXATION AREA

LAST DATE FOR BOARD ACTION: JUNE 11, 2009

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4. KEN AND MICHELLE DUKE Martin County Permit Number 13442
Appl. No. 09-0408-1
(Fee and Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 5 PALM TREES AND 4 OAK TREES ENCROACHING APPROXIMATELY 12' (106' FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF THE C-23 CANAL AT THE REAR OF 3612 SW RIVERS END WAY (LOT 15, BLOCK 401050, WINDSTONE SUBDIVISION).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. DENNIS BARNETT Permit Number 12034
St. Lucie County Appl. No. 09-0414-1M
(Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 1 AVOCADO TREE, 1 CITRUS TREE, 1 LEMON TREE AND 1 MANGO TREE ENCROACHING 34' (66 FEET FROM TOP OF BANK), AND EXISTING ELECTRIC SERVICE TO DOCK WITHIN THE NORTH RIGHT OF WAY OF THE C-24 CANAL AT THE REAR OF 998 SW SULTAN DRIVE (LOT 1, PORT ST. LUCIE SECTION 12).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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2. GERALD AND ANZONELLA MCNAUGHTON Permit Number 12801
Martin County Appl. No. 09-0116-1M
(Fee)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 5 COCONUT PALM TREES, 1 OAK TREE AND 3 PALMETTO TREES ENCROACHING APPROXIMATELY 13' (APPROXIMATELY 105' FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 CANAL AT THE REAR OF 4088 S.W. RIVERS END WAY (LOT 29, RIVERS END SUBDIVISION).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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3. CHARLES W. AND JEAN A. WENDT Permit Number 2293
Palm Beach County Appl. No. 09-0402-1M
(Fee)

AUTHORIZING: FLOATING BOAT DOCK WITH BOATLIFT, WALKWAY AND TREES LOCATED WITHIN THE NORTH RIGHT OF WAY OF C-17 AT THE REAR OF 613 LAUREL COURT (VILLAGE OF NORTH PALM BEACH PLAT 4, LOT 16, BLOCK E).

LAST DATE FOR BOARD ACTION: JUNE 11, 2009

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

4. DEREK AND MARK PALANCHIAN Permit Number 13350
St. Lucie County Appl. No. 09-0424-1M
(Fee and Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 8 ARECA PALM TREES, 3 FAN PALM TREES AND PAVERS ENCROACHING APPROXIMATELY 33' (APPROXIMATELY 52' FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF THE C-23 CANAL AT THE REAR OF 301 SW CASSINE COURT (LOT 1, BLOCK 401050. WINDSTONE SUBDIVISION).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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5. ALEXANDER AND KRISTIN VENNOS Permit Number 12962
Martin County Appl. No. 09-0423-1M
(Fee)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 5 COCONUT PALM TREES, 5 OAK TREES, 1 FIR TREE, 1 KEY LIME TREE, 1 TANGELO TREE, 1 LEMON TREE, 1 GRAPEFRUIT TREE AND 1 CACTUS TREE ENCROACHING APPROXIMATELY 26' (APPROXIMATELY 90' FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF THE C-23 CANAL AT THE REAR OF 4054 SW RIVERS END WAY (LOT 28, BLOCK 401050, RIVERS END SUBDIVISION).

LAST DATE FOR BOARD ACTION: JULY 9, 2009

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3. ALBERTA BILLIE Permit Number 12884
Broward County Appl. No. 09-0312-2M
(Easement)

AUTHORIZING: CONCESSION BUILDING, ADVERTISING SIGN, 3 CONCRETE PADS TO ACCOMMODATE DUMPSTER, AIR-CONDITIONING UNIT AND PORT-O-LET LOCATED 40' FROM THE TOP OF THE CANAL BANK WITHIN THE NORTH RIGHT OF WAY OF L-29 LOCATED APPROXIMATELY 980' EAST OF THE DISTRICT WATER CONTROL STRUCTURE S-12A.

ORIGINAL PERMIT CANCELLED/REISSUED BY THIS MODIFICATION

LAST DATE FOR BOARD ACTION: JUNE 11, 2009

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

1. Consideration of a request by the **Town of Miami Lakes** (Application Number 09-0316-7 for issuance of a Right of Way Occupancy Permit No. 13451 and waiver of the District Criteria for the installation of a chain link fence within the North Right of Way of C-8 Miami-Dade County, Section 14, Township 52 South, Range 40 East.

The applicant's request for Waiver of District 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 "substantial hardship". The Applicant asserts that the proposed fence is needed for safety purposes to protect the children at the park immediately north of the C-8 Right of Way. The District's Operations Maintenance Resource staff has reviewed the project and has determined that the proposed improvements will not significantly interfere with the District's current 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 35, Number 14* of the *Florida Administrative Weekly* on *April 10, 2009*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13451 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 **J.W. McDaniel Sr., Inc.** (Application Number 09-0326-1), for issuance of Permit Number 13450 and waiver of District's criteria for an existing water control structure and appurtenances (known as W-D1AB) within the right of way of L-28I North Feeder Canal. Location Hendry County, Sections 25, 36 & 30, Township 47 South, Range 33& 34 East.

The applicant's request for waiver of the District's criteria which governs: the placement of above-ground and permanent and/or semi-permanent encroachments within forty feet of the top of canal bank; prohibits water control structures within Works or Lands of the District; and requires crown elevation of discharge culverts to be set at least ½ foot below water control elevation of the canal, is based on substantial hardship.

The McDaniel Ranch granted to the District acreage for the construction of the North Feeder Canal/ G-108 in 1964. The beginning of the North Feeder Canal and G-108 were constructed 300 feet downstream from the north end the land deeded to the District. The applicant has farmed the adjacent property for the last 40 years. Further, the location of the Right of Way (L-28I) is in a remote location, and routine maintenance activities have not been performed on the Right of Way for the past 40 years.

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

The culvert-riser W-D1AB and associated berm engineering design and function (including culvert invert and crown elevations) were permitted by District Regulation Department under ERP 26-00623-P (Application No.: 051127-20). W-D1AB was installed in May 2007 and was certified on December 15, 2008 by the District Regulation Department's Engineer Supervisor as designed and constructed in accordance with District review and authorized permit design criteria.

McDaniel Ranch proceeded in good-faith with the installation location of the District design authorized and permitted (Regulation Department) emergency overflow culvert-riser upstream from the District North Feeder Canal/G-108 Structure. The culvert-riser and associated berm are part of a massive stormwater management system that has been permitted by the District with the goal of reducing phosphorus that ultimately discharges downstream to the Everglades. The culvert-riser and berm was installed approximately 100 feet upstream of the North Feeder Canal and was believed to be on McDaniel Ranch property. Months after installation, McDaniel Ranch became aware that the District property (formerly gifted to the District in 1964 for the construction of the North Feeder Canal), although upstream from the beginning point of the North Feeder Canal, extended approximately 300 feet. Like many large agricultural lands, this portion of McDaniel Ranch had never had a metes and bounds property line survey up to this point.

The applicant asserts that the impact to McDaniel Ranch will include costly expenses of removal and likely replacement of this structure (aluminum materials), SFWMD Environmental Resource Permit modification (subject to review and approval), post-installation engineering re-certification, and final SFWMD post-permit compliance in-situ engineering inspection and acceptance.

The District's Operation and Maintenance Resource staff has stated that the existing water control structure and appurtenances (known as W-D1AB) does not interfere with the District's 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 10.542(6), 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 6, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13450 and **approval** of the petition of waiver(s) of the District criteria which governs the placement of above-ground permanent and/or semi-permanent structures within forty feet of top of the canal bank; and prohibits water control structures within Works or Lands of the District.
(Fee)

CONSENT AGREEMENTS

1. Execute a Consent Agreement entered into between SFWMD and **McDaniel Ranch, Inc.** involving the settlement of enforcement actions regarding unauthorized encroachments within the District's L-281 canal right of way, Hendry County.