

TABLE OF CONTENTS

RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

OCTOBER 15, 2009

	<u>PAGES</u>
I. RIGHT OF WAY OCCUPANCY NEW PERMITS:	1, 2
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> .	
II RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS:	3, 4
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> .	
III. RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA:	5, 6
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.	
IV. CONCURRENCE WITH EXECUTIVE DIRECTOR'S EMERGENCY AUTHORIZATIONS:	7
Governing Board action is required to concur with the emergency authorization issued by the Executive director, in accordance with 373.119(2), F.S., as the Executive Director deems necessary to meet the emergency. Items are place on this consent Agenda for <u>concurrence</u> .	

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. HUGUETTE SUSIE MELOCHE Permit Number 5197
Palm Beach County Appl. No. 09-0504-2M
(Easement)

AUTHORIZING: EXISTING BURIED WATER AND ELECTRIC SERVICE, LIGHTS, MOORING PILES, AND ACCESS RAMP TO PREVIOUSLY-AUTHORIZED DOCK ON C-17 SOUTHWEST RIGHT OF WAY 3,150' NORTHEAST OF US 1.

LAST DATE FOR BOARD ACTION: NOVEMBER 13, 2009

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2. JOHN L. & LOREN M. CHANT Permit Number 13517
Broward County Appl. No. 09-0813-1A
(Easement)

AUTHORIZING: 100 LINEAR FEET OF EXISTING CONCRETE SEAWALL WITHIN THE SOUTH RIGHT OF WAY OF THE OLD POMPANO CANAL AT THE REAR OF 410 SE 8TH AVENUE (LOT 15, BLOCK 29, GARDEN ISLES SECTION 8).

LAST DATE FOR BOARD ACTION: NOVEMBER 13, 2009

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3. WILLIAM & KIMBERLY KURTZ Permit Number 6466
Palm Beach County Appl. No. 09-0804-01M
(Fee)

AUTHORIZING: EXISTING FLOATING DOCK AND WATER SERVICE WITHIN THE SOUTH RIGHT OF WAY OF C-17 AT THE REAR OF 2857 HINDA ROAD (LOT 16, BLOCK 9, KELSEY ACRES).

LAST DATE FOR BOARD ACTION: OCTOBER 15, 2009

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4. HERBERT J. ELKINS Permit Number 10223
Broward County Appl. No. 09-0728-04M
(Easement)

AUTHORIZING: APPROXIMATELY 200 LINEAR FEET OF ALUMINIUM BULKHEAD WITHIN THE NORTHERLY RIGHT OF WAY OF THE C-10 SPUR AT THE REAR OF 4400 CASPER COURT (LOT 6, BLOCK 37, HOLLYWOOD HILLS NORTH).

LAST DATE FOR BOARD ACTION: OCTOBER 15, 2009

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

5. RICK BURN Permit Modification No. 12627
Broward County Emergency Order No. 2009-242-DAO
Appl. No. 09-0902-1M
(Fee)

AUTHORIZING: REPLACE EXISTING DOCK, BOAT LIFT, WATER AND ELECTRICAL SERVICE AND APPROXIMATELY 95 LINEAR FEET OF EXISTING SEAWALL WITHIN THE NORTHWESTERLY RIGHT OF WAY OF C-14 AT THE REAR OF 1280 S.E. 3RD TERRACE.

LAST DATE FOR BOARD ACTION: OCTOBER 15, 2009

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

1. Consideration of a request by **Florida Department of Transportation** (Application Number 09-0806-2M, Permit (MOD) Number 12821) for the issuance of a modification to Right of Way Occupancy Permit Number 12821 for the proposed installation of one multi-post street sign within the C-11 right of way. Location: Section 26, Township 50 South, Range 40 East, Broward County.

The applicant's request for Waiver of the District's criteria which governs the placement of semi-permanent/permanent above ground encroachments within 40 feet of the top of the canal bank within Works or Lands of the District is based on substantial hardship. The applicant asserts that the sign is needed to inform the traveling public with directions to Griffin Road. FDOT roadway design standards require signs to be placed outside of the roadway clear zone. The roadway clear zone is a safety criteria that keeps obstacles a safe distance from the edge of pavement and reduces potential for vehicle crashes. The District's Operations Resource Management staff has determined that the proposed encroachment will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operation, 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 37* of the *Florida Administrative Weekly* on September 18, 2009. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit (MOD) Number 12821 and **approval** of the petition for Waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of the canal bank within Works or Lands of the District.
(Easement)

2. Consideration of a request by **Mariela Sanchez** (Application Number 07-0817-1, Permit Number 13194) for issuance of a Right of Way Occupancy Permit for a proposed cross fence with 2-16' vehicular gates located within the west right of way of the Faka Union Canal on the east side of 3884 16th Avenue Southeast. Location: Collier County, Section 17, Township 49 South, Range 28 East.

The applicant's request for waiver of the District's criteria, which governs the placement of permanent and/or semi-permanent above-ground encroachments (cross-fence within 40 feet of top of bank) within Works or Lands of the District, is based on substantial hardship. The applicant asserts that, in the interest of safety and due to the fact that their property is located adjacent to a public road, the encroachments (cross fence and gates) are necessary in order to prevent unauthorized access. The District will benefit as well by the prohibition of unauthorized vehicular access to the right of way. The staff of the Big Cypress Basin has reviewed the proposal and site conditions and has determined that the

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

proposed facilities will not 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 33, Number 39* of the *Florida Administrative Weekly* on September 28, 2007. No public comments were received.

Therefore, staff recommends **approval** of the issuance Right of Way Occupancy Permit Number 13194 and **approval** of the Petition for Waiver of the District's criteria which governs the placement of semi-permanent/permanent above-ground encroachments within 40' top of canal bank within Works or Lands of the District.
(Easement)

**EMERGENCY AUTHORIZATIONS WITH
RIGHT OF WAY OCCUPANCY PERMIT**

1. Enter a final Order concurring with the Executive Director's emergency authorization issued to **Madelyn Burrows** for immediate repair and/or replacement of a failing seawall on Works or Lands of the District known as the C-14 Canal, Broward County, FL, subject to Chapter 40E-6, F.A.C. (Order No. 2009-241-DAO).

The Right of Way Occupancy Permit authorizing this use of the Works or Lands of the District is contained in the Right of Way Occupancy New Permits section as well.

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2. Enter a final Order concurring with the Executive Director's emergency authorization issued to **Rick Brown** for immediate repair and/or replacement of a failing seawall on Works or Lands of the District known as the C-14 Canal, Broward County, FL, subject to Chapter 40E-6, F.A.C. (Order No. 2009-242-DAO).

The Right of Way Occupancy Permit authorizing this use of the Works or Lands of the District is contained in the Right of Way Occupancy Permit Modification section as well.

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3. Enter a final Order concurring with the Executive Director's emergency authorization issued to **Dominick and Dawn Mecca** for immediate repair and/or replacement of a failing seawall on Works or Lands of the District known as the Hillsboro Canal, Broward County, FL, subject to Chapter 40E-6, F.A.C. (Order No. 2009-244-DAO).

The Right of Way Occupancy Permit authorizing this use of the Works or Lands of the District is contained in the Right of Way Occupancy New Permit section as well.
