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JULY 11, 2007

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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. MICHAEL AND TAMI NEWETT Permit Number 13078
Broward County Appl. No. 07-0420-1
(Easement)

AUTHORIZING: EXISTING HEDGE LOCATED 40 FEET FROM THE TOP OF CANAL BANK WITHIN THE NORTH RIGHT OF WAY OF THE NORTH NEW RIVER CANAL AT THE REAR OF 6100 SW 21ST STREET (LOT 24, ISA DEL SOL).

LAST DATE FOR BOARD ACTION: JULY 12, 2007

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2. ROBERT W. AND REBECCA F. JAKOBY Permit Number 13081
Miami-Dade County Appl. No. 07-0427-2
(Fee)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 11 PALM TREES AND 9 HIBISCUS TREES LOCATED 40 FEET FROM THE TOP OF THE CANAL BANK WITHIN THE EAST RIGHT OF WAY OF C-1W AT THE REAR OF 11480 SW 156TH AVENUE (LOT 26, BLOCK 8, HAMMOCKS SHORES 3RD ADDITION).

LOCATED WITHIN PREVIOUSLY-APPROVED RELAXATION AREA

LAST DATE FOR BOARD ACTION: JULY 12, 2007

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. DANIEL AND LEONOR BARWACZ
St. Lucie County

Permit Number 13036
Appl. No. 07-0525-1
(Fee)

AUTHORIZING: 8 EXISTING CABBAGE PALM AND 7 COCONUT PALM TREES ENCROACHING 39' (58' FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 600 WEST ADOBE AVENUE (LOT 12, BLOCK 2326, PORT ST. LUCIE SECTION 33).

LAST DATE FOR BOARD ACTION: AUGUST 9, 2007

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. Consideration of a request by **Ernest Lee Prather** (Application Number 07-0608-3, Permit Number 13090), for Waiver of the District's criteria and issuance of a Right of Way Occupancy Permit for the proposed temporary vehicular use of L-28 right of way from U.S. 41 to the northerly terminus of L-28 to gain access to the applicant's camp/cabin which is located approximately 3 miles from L-28 in Collier County. L-28 is located in Broward and Miami-Dade County.

The applicant's request for waiver of the District's criteria, which governs the requirement that, except for utilities, an applicant must own or lease the land lying adjacent to the District Work within Works or Lands of the District is based on "substantial hardship". The applicant asserts that the only other available access to his camp when water levels drop periodically and access is unavailable with an airboat from Tamiami Trail via a "buggy road" through woods which crosses the Jetport Property.

Utilization of the District's right of way for vehicular access would only be at those times when water levels are low and the use of airboats to reach the camp is not possible. The applicant has obtained a permit from the Miccosukee Tribe of Indians of Florida for access through their Leased Lands; from the National Park Services for access from L-28 to his camp/cabin, the Florida Fish and Wildlife Conservation Commission has also granted a permit for access to cross the Water Conservation Area via airboat leaving from Holiday Park at times of high water. The applicant states that the inability to have access to his camp/cabin to maintain the property as required by the Park Service would cause violations and possible loss of property.

The District's Operations and Maintenance Resource staff have reviewed the proposal and have determined that the proposed temporary vehicular use of the L-28 right of way 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 33, Number 25*, of the *Florida Administratively Weekly* on *June 22, 2007*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13090 and **approval** of the petition for waiver of the District's criteria which governs the requirement that, except for public and private utilities, an applicant must own or lease the land lying adjacent to the District Work within Works or Lands of the District.
(Easement)
