

RIGHT OF WAY OCCUPANCY PERMITS AGENDA
June 10, 2010 Governing Board

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<p>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>.</p>	
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<p>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>.</p>	
III. RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA:	6 - 9
<p>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.</p>	
IV. RELAXATION OF STANDARDS AS ALLOWED UNDER DISTRICT RULE 40E-6.011(9), F.A.C.:	10 - 11
<p>Governing Board reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities and relaxation of the restrictions in Zones 2, 3, 4 and 5 may be allowed, such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area.</p>	

RIGHT OF WAY OCCUPANCY NEW PERMITS

1. JAMES M. SHERMAN
Palm Beach County

Permit No. 13662
Appl. No. 10-0324-1
(Easement)

AUTHORIZING: 70 LINEAR FEET OF EXISTING CONCRETE BULKHEAD, 1-8' WIDE FINGER PIER AND 1-4' WIDE FINGER PIER, 3 BOATLIFTS, 1 MOORING PILE, ELECTRICAL AND WATER SERVICE LOCATED WITHIN THE SOUTH RIGHT OF WAY OF C-16 ADJACENT TO THE EAST 70' OF LOT 47 IN FRONT OF 830 NORTH ROAD APPROXIMATELY 1,224' EAST OF WATER CONTROL STRUCTURE S-41 (HARBOR ESTATES).

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

2. HELEN YAZEK
St. Lucie County

Permit Number 13653
Appl. No. 10-0312-1
(Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF 3 DATE PALM TREES ENCROACHING 3' (APPROXIMATELY 87' FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF C-24 AT THE REAR OF 1070 SOUTHWEST SULTAN DRIVE (LOT 18, BLOCK 1292, PORT ST. LUCIE SECTION 12).

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

3. LEONARD MINACAPELLI
St. Lucie County

Permit Number 13654
Appl. No. 10-0312-2
(Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF VARIOUS TREES ENCROACHING 7' (APPROXIMATELY 80' FROM TOP OF BANK) WITHIN THE SOUTH RIGHT OF WAY OF C-24 AT THE REAR OF 965 SOUTHWEST ABINGDON AVENUE (LOT 21, BLOCK 1592, PORT ST. LUCIE SECTION 23).

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

4. THOMAS & CATHERINE BRINO
Palm Beach County

Permit Number 13676
Appl. No. 10-0316-3
(Fee)

AUTHORIZING: EXISTING DOCK WITH WALKWAY, MOORING PILES AND RIP-RAP WITHIN THE SOUTH RIGHT OF WAY OF C-15 AT THE REAR OF 777 BAILEY STREET (OKEY ESTATES).

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

RIGHT OF WAY OCCUPANCY NEW PERMITS

5. MINERVO SARSOLA & NANCY HERNANDEZ Permit No. 13679
Miami-Dade County Appl. No. 09-1028-1
(Easement)

AUTHORIZING: EXISTING FENCE ENCLOSURE ENCROACHING 15' (25' FROM TOP OF BANK) WITH AN EXISTING 10' X 10' SHED INSIDE THE FENCING WITHIN THE SOUTH RIGHT OF WAY OF C-7 AT THE REAR OF 311 EAST 52ND STREET (LOT 9, ,MURRAY HOMESITES).

LAST DATE FOR BOARD ACTION: MAY 13, 2010

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6. FLORIDA TURNPIKE ENTERPRISE Permit No. 13677
Miami-Dade County Appl. No. 08-0116-3
(Fee)

AUTHORIZING: RELOCATION OF A PORTION OF THE C-1N CANAL BETWEEN S.W. 152ND AND S.W. 117TH AVENUES; INSTALLATION OF AN 18" CULVERT CONNECTION AND EXTENSION OF AN EXISTING 36" CULVERT IN CONJUNCTION WITH "THE WIDEN FLORIDA TURNPIKE" PROJECT.

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. FPL FIBERNET, LLC Permit Number 13445
Broward County Appl. No. 10-0414-1M
(Easement)

AUTHORIZING: EXISTING SUBAQUEOUS FIBER OPTIC CABLE CROSSING C-42 LOCATED IMMEDIATELY NORTH OF THE OAKLAND PARK BOULEVARD BRIDGE.

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

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2. MICHAEL AND LAURA BAIRD Permit Number 9185
Martin County Appl. No.10-0423-2M
(Fee)

AUTHORIZING: EXISTING ELECTRIC SERVICE TO PREVIOUSLY-AUTHORIZED DOCK, EXISTING PAVERS AND LANDSCAPING ENCROACHING 40' (APPROXIMATELY 40' FROM TOP OF BANK) AND REMOVAL OF TREE WITHIN THE NORTH RIGHT OF WAY OF C-23 LOCATED AT THE REAR OF 3340 SOUTHWEST RIVERS END WAY (LOT 7, BLOCK 401050, WINDSTONE).

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

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3. KELLY A. & RONALD SALVATO Permit Number 12608
St. Lucie County Appl. No. 10-0202-3M
(Fee)

AUTHORIZING: EXISTING FENCE ENCLOSURE ENCROACHING 30' (70' FROM TOP OF BANK) AND EXISTING LANDSCAPING INSIDE AND OUTSIDE OF FENCING CONSISTING OF VARIOUS TREES ENCROACHING 35' (65' FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 856 S.W. ABBOT AVENUE (LOT 35, BLOCK 2272, PORT ST. LUCIE SECTION 33).

LAST DATE FOR BOARD ACTION: JULY 15, 2010

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4. GEORGE ERALDO BRYANT Permit Number 11821
St. Lucie County Appl. No. 10-0311-4
(Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF VARIOUS TREES ENCROACHING 35' (APPROXIMATELY 45 FEET FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF C-24 AT THE REAR OF 566 SOUTHWEST ASTER ROAD (LOT 21, BLOCK 1657, PORT ST. LUCIE SECTION 05).

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

5. MARK & CATHERINE SAVAGE Permit Number 11894
St. Lucie County Appl. No. 10-0112-1M
(Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF VARIOUS TREES ENCROACHING 13' (APPROXIMATELY 70' FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF C-24 AT THE REAR OF 1002 SOUTHWEST SULTAN DRIVE (LOT 1, BLOCK 1292, PORT ST. LUCIE SECTION 12).

LAST DATE FOR BOARD ACTION: JUNE 10, 2010

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6. DAVID L. & MINDY J. COX Permit Number 12913
Palm Beach County Appl. No. 10-0202-1M
(Fee)

AUTHORIZING: RELOCATE EXISTING FENCING SO AS TO ENCROACH NO MORE THAN 14' AT ITS SOUTHERN-MOST POINT WITHIN THE NORTH RIGHT OF WAY OF C-18E AT THE REAR OF 5824 SENEGAL DRIVE (LOT 22, LOXAHATCHEE LANDING).

LAST DATE FOR BOARD ACTION: JULY 15, 2010

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

Consideration of a request by **Lykes Brothers, Inc.** (Application No. 10-0323-1, Permit Number 13367) for issuance of a Right of Way Occupancy Permit and Waiver of the District's criteria to allow 4 existing reservoir levee connections to remain and 4 proposed reservoir levee connections to be constructed connecting to the applicant's and the District's C-41A spoil areas located within the C41A rights of way. The existing and proposed connections are part of the Applicant's surface water management system as authorized by District Environmental Resource Permit Number 28-00146-S from 1982 and 1993. Location: Highlands County, Sections 17, 18, 22 and 23, Township 37 South, Range 32 East.

The Applicant's request for waiver of the District's criteria which governs the use of District Works and Lands for impoundment purposes is based on "substantial hardship". History on this project is:

- During construction of the C-41A Project there was a greater volume of spoil excavated than expected. The excess spoil was placed outside of the existing C-41A right of way on adjacent property owned by the Applicant, requiring an agreement to be executed in 1962 between the Applicant and the District. The agreement allowed for use of the Applicant's property for stockpiling of the District's spoil material and described ownership of the resulting spoil. The agreement expanded in to an easement later in 1962 to allow the District to construct a fence line at the edge of the agreement area.
- In 1982, the Applicant received a Surface Water Management Permit from the District authorizing the conceptual approval for the construction of a stormwater management system for the Ft. Basinger Grove. The design included the construction of a series of reservoirs, some of which were designed to connect to the Applicant's spoil adjacent to the C-41A in multiple locations. The use of the Applicant's excess spoil as part of the reservoirs was determined to meet the reservoir design criteria. The reservoirs included both upland areas and wetlands and were designed to provide water quality improvements and to preserve wildlife habitat.
- In 1993, the Applicant constructed 4 of the stormwater management system reservoir connections for the grove that connected to the Applicant's excess spoil, as authorized by a Letter Modification to their Surface Water Management Permit.

The Applicant's current proposal is to now complete construction of the remaining 4 levee connections as authorized by the Surface Water Management Permit; however, the proposal is now contrary to the District's current right of way permitting rules and criteria, which as of 1990, prohibits utilization of the District's rights of way for impoundment areas, retention/detention facilities or borrow pits.

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

The Applicant asserts that no portion of the original C-41A right of way or design levee will be utilized or affected by the proposed connections. Further, that the removal and relocation of the Applicant's spoil material in the reservoir connection areas and subsequent release of the easement to meet the District's current rules and criteria would cause an economic hardship for both the applicant and the District, as the District would also need to remove and relocate their excess spoil material, re-configure the C-41A levee and relocate the fence line along the affected reach at the same time as the Applicant. The District's Operations Resource Management staff has determined that as the levee connections have been/will be constructed on the easement portion of the District's C-41A right of way in the areas where the C-41A levee is larger than the design levee and connecting to the Applicant's owned spoil material that there is more than sufficient area for the and that the existing or proposed construction do 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 36, Number 13* of the *Florida Administrative Weekly* on *April 2, 2010*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit No. 13367 and **approval** of the petition for Waiver of the District's criteria which governs the utilization of the District's Works or Lands for impoundment purposes.
(Fee and Easement)

Consideration of a request by **Marcos & Heather Beaton**, (Application Number 09-0908-1, Permit Number 13678), for issuance of a Right of Way Occupancy Permit and waiver of criteria to allow a proposed fence encroaching 18" within the southwest right of way of C-100A at the rear of 14460 SW 75th Avenue. Location: Miami-Dade County, Section 23, Township 55 South, Range 40 East.

The applicant's request for waiver of the District's criteria, which governs the placement of permanent and semi-permanent above-ground facilities within 40' of the top of the canal bank within Works or Lands of the District is based on substantial hardship and principles of fairness. The applicants assert that the the fence is vital to protect the life and safety of their children. The Operations Maintenance Resources Department has stated that the proposed facilities will not interfere with their ability to perform necessary construction, alteration,

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

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 36, Number 19 of the Florida Administrative Weekly on May 14, 2010. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Right of Way Occupancy Permit Number 13678 and **approval** of the petition for waiver of the District's criteria which governs the placement of permanent and semi-permanent above-ground structures within 40' of the top of the canal bank within Works or Lands of the District.
(Easement)

Consideration of a request by the **Florida Department of Transportation** (Application Number 10-0415-2M, Permit Number 13397) for a Modification of Right of Way Occupancy Permit No. 13397 and Waiver of District criteria to allow for existing fencing and guardrail to remain and for the proposed installation of pedestrian signs and guardrail located within the north right of way of the North New River Canal associated with a previously-permitted linear park located between SW 136 Avenue and University Drive. Location: Broward County, Sections 2, 3 & 7, Township 50 South, Range 40 & 41 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 and within the District's 100 foot long designated equipment staging areas located at all bridges and all pile supported crossings within Works or Lands of the District, is based on substantial hardship. The Applicant asserts that the proposed guardrailing and signage is needed for safety purposes to protect pedestrians from roadway intersections and the canal. The District's Operations Maintenance Resource staff has reviewed the project and has determined that the proposed improvements do 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 36, Number 19* of the *Florida Administrative Weekly* on *May 14, 2010*. No public comments were received.

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

Therefore, staff recommends **approval** of the issuance of a Modification of Right of Way Occupancy Permit Number 13397 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 and within the District's 100 foot long designated equipment staging areas located within Works or Lands of the District.
(Easement)

**RELAXATION OF STANDARDS ALLOWED UNDER DISTRICT RULE 40E-6.011(9),
F.A.C.**

It is the recommendation of the staff of the Operations Resource Management staff that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in District Rules which specifies that an unencumbered 40 foot wide strip of right of way as measured from the top of bank landward, is required in order for the District to perform the routine operations and maintenance activities along the north and south sides of C-17 from a point located 140 east of the District's Water Control Structure S-44 easterly approximately 2,335' feet to the west road right of way line of Prosperity Farms Road bridge.

Staff's recommendation is based on the fact that this reach of the District's C-17 has been encumbered with encroachments for many years and is inaccessible for routing land-based maintenance activities. In addition, the District has no access from the cross roads to the canal berm. Chemical spray crews using small boats currently perform routine canal maintenance in the area.

This waiver specifically excludes the adjacent owners who's properties lie adjacent to the District's required 100 foot long staging area located upstream and downstream of all four quadrants of pile-supported bridge and utility crossings. Applications for encroachments within these specified staging areas when submitted, shall be handled on an individual basis.

District Rule 40E-6.011(9), F.A.C., (Policy and Purpose), asserts that "the District reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities...such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further, the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area."

Further, the establishment of this area as an area covered by Rule 40E-6.011(9), F.A.C. will be applied to all future applicants in the geographical areas specified above, excluding staging areas.

(Fee)

**RELAXATION OF STANDARDS ALLOWED UNDER DISTRICT RULE 40E-6.011(9),
F.A.C.**

It is the recommendation of the staff of the Operations Resource Management Department that the Governing Board waive, for future Right of Way Occupancy Permit Applications for existing, unauthorized encroachments, the requirement contained in the District Rules which specifies that an unencumbered 40 foot wide strip of right of way, as measured from the top of bank landward, is required in order for the District to perform the routine operations and maintenance activities. Staff requests that the 15' of land on the southernmost portion of the south right of way of C-7 beginning 100' east of East 2nd Avenue bridge running easterly 1300' to East 4th Avenue be relaxed.

Staffs' recommendation is based on the fact that the 15 foot southernmost portion of the District's 40 foot wide southerly overbank right of way throughout this reach of C-7 has been encumbered with encroachments for many years and is inaccessible for routing land-based maintenance activities. In addition, the District has no access from the cross roads to the canal berm. Chemical spray crews using small boats currently perform routine canal maintenance in the area.

This waiver specifically excludes the adjacent owner whose properties lie adjacent to the District's required 100 foot long staging area located downstream (east) of the East 2nd Avenue bridge. An Application for encroachments within this specified staging area when submitted, shall be handled on an individual basis.

District Rule 40E-6.011(9), F.A.C., (Policy and Purpose), states that "the District reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities such determination shall be at the sole discretion of the District, would only allow permissibility of existing encroachments and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further, in relaxing the 40 foot standard, should the existing facilities be damaged, the permittee would not be allowed to replace the facility or in the case of trees or other plantings when the existing trees die, or are blown down, etc., they would not be allowed to be replaced. The District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area."
(Easement)

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.
