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OCTOBER 12, 2006

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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. NEAL & KATHY WILKINS Permit Number 12930
St. Lucie County Appl. No. 06-0801-1
(Fee)

AUTHORIZING: BULKHEAD AND EXISTING DOCK WITHIN THE SOUTH RIGHT OF WAY OF C-24 AT THE REAR OF 1573 S.W. ABINGDON AVENUE (LOT 13, PORT ST. LUCIE SECTION 31).

LAST DATE FOR BOARD ACTION: OCTOBER 12, 2006

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2. CHERYL M. PORTER Permit Number 12938
Broward County Appl. No. 06-0814-2
(Easement)

AUTHORIZING: EXISTING FENCE ENCLOSURE ENCROACHING 32' (80' FROM THE TOP OF THE CANAL BANK) WITH AN EXISTING MAHOGANY TREE INSIDE THE FENCING WITHIN THE WEST RIGHT OF WAY OF C-42 AT THE REAR OF 3030 N.W. 113TH AVENUE (LOT 1, BLOCK 13, SUNRISE GOLF VILLAGE SECTION 24).

LAST DATE FOR BOARD ACTION: NOVEMBER 9, 2006

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3. KENNY S. & SHAHEEDA ALI Permit Number 12945
Broward County Appl. No. 06-0823-1
(Fee)

AUTHORIZING: EXISTING TREES AND A PROPOSED DOCK WITH EXISTING PILINGS WITHIN THE NORTH RIGHT OF WAY OF THE NORTH NEW RIVER CANAL AT THE REAR OF 5190 S.W. 21ST COURT (LOT 21, BLOCK 8, PLANTATION HARBOR THIRD ADDITION).

LAST DATE FOR BOARD ACTION: NOVEMBER 9, 2006

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. RONALD AND BARBARA CARUSO Permit Number 12595
St. Lucie County Appl. No. 06-0822-3M
(Fee)

AUTHORIZING: EXISTING JET SKI LIFT ATTACHED TO EXISTING, PREVIOUSLY-AUTHORIZED DOCK WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 974 S.W. ABBOT AVENUE, (LOT 22, BLOCK 2272, PORT ST. LUCIE SECTION 33).

LAST DATE FOR BOARD ACTION: NOVEMBER 9, 2006

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2. DAVID A. MOORE, MYRNA MOORE & Permit Number 12366
NANCY CARSTEN Appl. No. 06-0516-1M
Okeechobee County (Fee)

AUTHORIZING: BULKHEAD WITHIN THE EAST RIGHT OF WAY OF C-38 AT THE REAR OF 13230 SOUTHWEST 144TH PARKWAY (LOT 43, RIVER OAK ACRES SUBDIVISION).

LAST DATE FOR BOARD ACTION: OCTOBER 12, 2006

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3. W. STEVEN & DOROTHY DEE CATES Permit Number 12175
Okeechobee County Appl. No. 06-0718-2M
(Easement)

AUTHORIZING: SEAWALL, BOAT RAMP AND ELECTRICAL SERVICE AND AN EXISTING, PREVIOUSLY-AUTHORIZED DOCK WITHIN THE NORTH RIGHT OF WAY OF L-47 AT THE REAR OF LOT 2, BLOCK 16, GREAT LAKES SUBDIVISION).

LAST DATE FOR BOARD ACTION: OCTOBER 12, 2006

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4. ARLENE MUCKLE Permit Number 9837
St. Lucie County Appl. No. 06-0725-2M
(Fee)

AUTHORIZING: SEAWALL WITHIN THE NORTH RIGHT OF WAY OF C-24 AT THE REAR OF 548 S.W. ASTER ROAD (LOT 24, BLOCK 1657, PORT ST. LUCIE SECTION 5).

LAST DATE FOR BOARD ACTION: NOVEMBER 9, 2006

RIGHT OF WAY OCCUPANCY PERMIT APPLICATIONS FOR DENIAL

1. Consideration of a request by **TwinEagles Development Co., Ltd.** (Application Number 02-0122-5) for issuance of a Right of Way Occupancy Permit for the proposed construction of a land bridge within the rights of way of the District's Cocohatchee Canal for use as a wildlife crossing. The proposed crossing, at the time, was to be part of the north to south regional flow way/wildlife corridor located between TwinEagles and Bonita Bay East Golf Course. Location: Collier County, Section 20, Township 48 South, Range 27 East.

Staff recommends **denial** of the application as the applicant has failed to provide information sufficient to demonstrate that the proposed use meets the criteria established in the document referred to in Rule 40E-6.091, F.A.C.
(Easement)

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2. Consideration of a request by **Time Warner Cable** (Application Number 03-1010-2) for issuance of a Right of Way Occupancy Permit for the proposed installation of an aerial cable crossing the Corkscrew Canal south of Shady Hallow Boulevard West bridge to be hung on Lee County Electric Company's existing poles. Location: Collier County, Section 32, Township 48 South, Range 27 East.

Staff recommends **denial** of the application as the applicant has failed to provide information sufficient to demonstrate that the proposed use meets the criteria established in the document referred to in Rule 40E-6.091, F.A.C.

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

1. Consideration of a request by **Palm Beach County Water Utilities Department**, (Application Number 06-0627-1, Permit Number 12940), for waiver of District criteria and issuance of a Right of Way Occupancy Permit for the proposed installation of a subaqueous force main and water main transmission crossings C-18W at the Mecca Farms property, then becoming buried, parallel run installations within the north right of way of C-18W running northeasterly and exiting the District's right of way at the Beeline Highway (S.R. 710). Location: Palm Beach County, Sections 28, 32 and 33, Township 43 South, Range 42 East.

The applicant's request for waiver of the District's criteria which governs the use of the District's rights of way for transmission lines and requires applicants to acquire their own right of way for such installations is based on "substantial hardship". The applicant asserts that there is no other feasible, cost-effective alternative route in which to place the utility transmission lines due to existing, adjacent wetlands. The applicant has designed the project so they utility lines will be installed as close to the canal right of way line as possible and includes restoration of the canal levee. The District's Operations and Maintenance Resource Department has reviewed the applicant's proposal and site conditions and as determined that the proposed facilities will not interfere with the District'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 120.542(6), F.S., notice of the petition was provided to the Department of State and published in *Volume 32, Number 33* of the Florida Administrative Weekly on *August 18, 2006*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 12940 and **approval** of the petition for waiver which governs the placement of transmission lines within Works or Land of the District.
(Easement)

2. Consideration of a request by **Gregory S. Sembler, General Partner of Sembler Family Partnership #42, Ltd.**, (Application Number 06-0720-1, Permit Number 12931) for issuance of a Right of Way Occupancy Permit to allow an existing temporary culvert bridge Rattlesnake Hammock Road crossing the Henderson Creek Canal to remain; and waiver of the District's rule which requires payment of an Application Processing Fee associated with the review and consideration of the issuance of a Right of Way Occupancy Permit. Location: Collier County, Section 23, Township 50 South, Range 26 East.

The applicant's request for waiver of District Rule 40E-6.601(3)(h), F.A.C., which governs the payment of Application Processing Fees associated with the review of Applications for issuance of Right of Way Occupancy Permits, is based on "substantial hardship". The applicant asserts that the Application Processing Fee, in the amount of \$1750.00, will be paid in full at the time the existing temporary culvert bridge is replaced by the applicant with a permanent structure in approximately three (3) years.

The existing, temporary culvert bridge which was installed under emergency circumstances in October/November of 2005 was at the direction of the staff of the Big Cypress Basin. Immediate replacement of the culvert bridge was required when the

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

culvert failed due to activities of others utilizing the structure with dump trucks for access; additionally, a new culvert bridge was considered necessary in order to accommodate the approximately 5000 people who would utilize the bridge for access to the 2-3 day race event being held the upcoming weekend. The applicant has posted financial assurance and insurance coverage with the District. The staff of the District's Big Cypress Basin recommends that the waiver be approved.

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 32, Number 34* of the *Florida Administrative Weekly* on *August 25, 2006*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 12931 and **approval** of the Petition for Waiver of the District's rule which governs payment of Application Processing Fees associated with Right of Way Occupancy Permits.
(Easement)