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### RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

SEPTEMBER 11, 2008

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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. JULIE ANN ZIPSIR Permit Number 13327  
St. Lucie County Appl. No. 08-0716-1  
(Fee)

AUTHORIZING: EXISTING FENCE ENCLOSURE ENCROACHING 35' (80' FROM THE TOP OF THE CANAL BANK) WITH EXISTING LANDSCAPING INSIDE THE FENCE WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 487 S.W. SOUTH QUICK CIRCLE (LOT 20, BLOCK 2368, PORT ST. LUCIE 34).

LAST DATE FOR BOARD ACTION: OCTOBER 9, 2008

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2. MARTHA S. NEWTON Permit Number 13326  
Palm Beach County Appl. No. 08-0717-1  
(Fee)

AUTHORIZING: 95 LINEAR FEET OF EXISTING ALUMINIUM BULKHEAD WITH RUBBLE RIP-RAP AND CONCRETE CAP WITHIN THE NORTH RIGHT OF WAY OF C-15 AT THE REAR OF 702 AVOCET ROAD (LOT 15, TROPIC PALMS PLAT NUMBER 1).

LAST DATE FOR BOARD ACTION: SEPTEMBER 11, 2008

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3. DONALD HEARD & JANETTE CONNELL Permit Number 13325  
St. Lucie County Appl. No. 08-0625-1  
(Easement)

AUTHORIZING: EXISTING MULTI-LEVEL DOCK WITH TIKI ROOF, BURIED ELECTRICAL SERVICE AND BULKHEAD WITHIN THE NORTH RIGHT OF WAY OF C-24 AT THE REAR OF 1472 S.W. SULTAN DRIVE (LOT 36, BLOCK 1312, PORT ST. LUCIE SECTION 12).

LAST DATE FOR BOARD ACTION: SEPTEMBER 11, 2008

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4. MIAMI-DADE CO. PUBLIC WORKS DEPT. Permit Number 13331  
Miami-Dade County Appl. No. 08-0609-1  
(Fee)

AUTHORIZING: 85 LINEAR FEET AND 240 LINEAR FEET OF EXISTING GUARDRAIL WITHIN THE EAST RIGHT OF WAY OF L-31E RUNNING PARALLEL TO S.W. 87<sup>TH</sup> AVENUE LOCATED AT S.W. 232<sup>ND</sup> STREET AND IMMEDIATELY SOUTH OF S.W. 212<sup>TH</sup> STREET, RESPECTIVELY.

LAST DATE FOR BOARD ACTION: OCTOBER 9, 2008

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**RIGHT OF WAY OCCUPANCY NEW PERMITS**

5. HARBOUR TOWNE ASSOCIATES, INC. Permit Number 13335  
Broward County Appl. No. 08-0201-2  
(Easement)

AUTHORIZING: EXISTING MARINA CONSISTING OF OPEN CHANNEL CONNECTIONS, BULKHEADING WITH MARGINAL "RESTAURANT" AND "FUEL" DOCKS; ALSO, PROPOSED DREDGING WITHIN THE SOUTH RIGHT OF WAY OF THE DANIA CUT-OFF CANAL LOCATED APPROXIMATELY 1 MILE EAST OF U.S. HIGHWAY NUMBER 1.

LAST DATE FOR BOARD ACTION: SEPTEMBER 11, 2008

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

1. Consideration of a request by **Collier County Board of County Commissioners** (Application Number 08-0407-2, Permit Number 13171), for Waiver of District criteria and issuance of a Modification to Right of Way Occupancy Permit Number 13171 for a proposed pedestrian bridge crossing the Henderson Creek Canal to be located immediately north of the District's Henderson Creek Weir #2 Structure. The pedestrian bridge is part of the previously-authorized multi-use pathway designed to allow pedestrians movement over the canal from the east bank to the west bank and ultimately connect to the west side of the C.R 951 roadway. Location: Collier County, Section 2, Township 50 South, Range 26 East.

The applicant's request for Waiver of the District's criteria, which governs the minimum low member elevation of pile-supported crossings (pedestrian bridge) within Works or Lands of the District, is based on "substantial hardship." The applicant was informed that the proposed pedestrian bridge did not meet the District's minimum low member elevation requirement of 8 foot above the canal design water surface elevation, therefore necessitating the need for a waiver. The low member elevation of the proposed pedestrian bridge is 4 foot above the canal design water surface elevation. The applicant asserts the structure was designed following the criteria for vehicular bridges given that it will not impede or interfere with the hydraulics or maintenance of the canal; and at the same time, this design reduces the cost of the project making it financially viable. The staff of the Big Cypress Basin has no objection to the proposed pedestrian bridge as it will not interfere with the Basin'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 10.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 34, Number 18, of the Florida Administrative Weekly* on May 2, 2008. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit Number 13171 and **approval** of the petition for waiver of the District's criteria which governs the minimum low member elevation of pile-supported crossings (pedestrian bridge) within the Works or Lands of the District. (Easement)

2. Consideration of a request by **Reef Associates, Ltd.** (Application No. 08-0522-1, Permit Number 13332) for issuance of a Right of Way Occupancy Permit and Waiver of the District's criteria to allow 540 linear feet of existing guardrail encroaching 0-2 feet, 38 feet from the top of the canal bank and a light pole with electrical box and service encroaching 0.85', within the south right of way of C-1N beginning 220 feet easterly of S.W. 122<sup>nd</sup> Avenue at the rear of the Deerwood Center to remain. Location: Miami-Dade County, Section 24, Township 55S, Range 39E.

The applicant's request 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 and Lands of the District is based

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

on a “substantial hardship.” The guardrail is protecting the general public from straying into the canal area and causing possible injury or harm. The Deerwood Center has a great deal of vehicle traffic and parking. Allowing the guardrail to remain will prevent any of these vehicles from driving on the right of way and potentially ending up in the C-1N Canal. The District’s Operations Maintenance Resource Department has determined that the existing above-ground facilities 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 34, Number 30* of the *Florida Administrative Weekly* on *July 25, 2008*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit No. 13332 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.  
(Fee)

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3. Consideration of a request by the **Greene Dadeland Station, LTD.** (Application Number 08-0213-1, Permit Number 11920) for Modification of Right of Way Occupancy Permit Number 11920 for the proposed construction of bulkheading with associated backfilling, dredging and bicycle/pedestrian paths, and Waiver of District criteria for proposed pedestrian railing, landscaping, light poles, park benches and trash receptacles within the north and south rights of way of C-2 between SW 70<sup>th</sup> Avenue and the Dadeland North Metrorail Station located immediately west of South Dixie Highway, Miami-Dade County, Section 35, Township 54 South, Range 40 East.

The applicant’s request for Waiver of the District’s criteria, which governs the placement of semi-permanent and/or 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 pile supported crossings within Works or Lands of the District, is based on substantial hardship. The Applicant asserts that due to the narrow overbank area it would not be possible to construct the project with a strict application of the District’s setback criteria. The project has been coordinated with the District’s Miami Field Station and designed to minimize impacts and reduce maintenance needs along 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

**RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH  
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and was published in *Volume 34, Number 31* of the *Florida Administrative Weekly* on *August 1, 2008*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit Number 11920 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)

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4. Consideration of a request by **Miami-Dade County Public Works Department** (Application Number 08-0528-1, Permit (MOD) Number 3271) for issuance of a modification to Right of Way Occupancy Permit Number 3271 and a Waiver of the District's criteria to allow the placement of approximately 675 linear feet of guardrail beginning at SW 272 (Epmore Drive) running northerly along the top of the canal bank within the westerly right of way of C-103. Location: Miami-Dade County, Section 7, Township 54 South, Range 40 East.

The applicant's request for waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above facilities within 40 feet of the top of the canal bank within Works and Lands of the District is based on a "substantial hardship". The applicant asserts that due to the limited amount of area between the edge of the roadway and the top of bank (20') does not offer any alternate location without compromising traffic safety. Additionally, the District's Homestead Field Station has requested the placement of the guardrail along the top of the bank to ensure the District's vehicular access to the canal right of way will not be blocked or severed. The District's Operations Maintenance Resource Department has determined that the proposed facilities will 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 34, Number 29* of the *Florida Administrative Weekly* on *July 18, 2008*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit Number 3217 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.  
(Fee)