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OCTOBER 9, 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. COMCAST ABB MANAGEMENT CORP. Permit Number 13337  
Broward County Appl. No. 08-0729-2  
(Easement)

AUTHORIZING: EXISTING BURIED FIBER OPTIC CABLE, PARALLEL RUN, LOCATED 2' INSIDE THE NORTH RIGHT OF WAY OF THE NORTH NEW RIVER CANAL ENTERING THE RIGHT OF WAY 186 FEET EAST OF THE EDGE OF PAVEMENT OF SOUTH PINE ISLAND ROAD AND RUNNING EASTERLY 1000 FEET.

LAST DATE FOR BOARD ACTION: OCTOBER 9, 2008

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2. MATTHEW & JENNIFER GENT Permit Number 13336  
St. Lucie County Appl. No. 08-0523-2  
(Fee)

AUTHORIZING: 6 EXISTING TREES, PROPOSED STEPS ON THE SIDE SLOPE AND INSTALLATION OF A FENCE ENCLOSURE WITH PEDESTRIAN GATE ENCROACHING 18' (107' FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 365 SOUTHWEST KESTOR DRIVE (LOT 13, BLOCK 2379, PORT ST. LUCIE SECTION 34).

LAST DATE FOR BOARD ACTION: OCTOBER 9, 2008

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3. JOHN A. & NORMA M. RICHARDS Permit Number 13165  
Broward County Appl. No. 07-0502-1  
(Fee)

AUTHORIZING: EXISTING FENCE AT WEST PROPERTY LINE EXTENDED ENCROACHING APPROXIMATELY 50' AND EXISTING TREES; ALSO, THE PROPOSED ENCROACHMENT OF A PORTION OF A SHED AND AT-GRADE SLAB WITHIN THE NORTH RIGHT OF WAY OF C-13 AT THE REAR OF 2890 NW 39<sup>TH</sup> STREET (LOT 29, BLOCK 27, ORIOLE ESTATES, SECTION 3).

LAST DATE FOR BOARD ACTION: OCTOBER 9, 2008

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

1. Consideration of a request by **Miami-Dade County Public Works Department** (Application Number 08-0707-1, Permit Number 13347), for issuance of a Right of Way Occupancy Permit and Waiver of the District's criteria for the proposed installation of approximately 245 linear feet of guardrail within the south right of way of C-6 at the intersection of Quail Avenue and North Royal Poinciana Boulevard. Location: Miami-Dade County, Section 13, Township 53 South, Range 40 East.

The applicant's request for waiver of the District's criteria, which governs the placement of above-ground permanent and/or semi-permanent encroachments within forty feet of the top of canal bank and within the District's equipment staging areas within Works or Lands of the District is based on "substantial hardship". The County asserts that the guardrail is needed as the layout of the roadways at this area of the canal has the potential of a hazardous condition to vehicles traveling along either Quail Avenue or North Royal Poinciana Boulevard; the County believes that placement of the guardrail will prohibit an accident where could motorists enter the canal.

In addition, the County is providing the District with ingress/egress openings within the County's guardrail along North Royal Poinciana Boulevard (located on the County's property) to provide the District vehicular access to its emergency staging areas.

The District's Operations and Maintenance Resource staff has stated that the proposed guardrail does not interfere with the District's ability to perform necessary construction, alteration, operations 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 10.542(6), 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 Number 13347 and **approval** of the petition of waiver of the District's criteria which governs the placement of above-ground permanent and/or semi-permanent structures within 40' of the top of the canal bank and within the District's equipment staging area within the Works or Lands of the District.  
(Prescriptive Rights)

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2. Consideration of a request by the **City of Lauderdale Lakes** (Application Number 07-1217-2, Permit Number 13352) for issuance of a Right of Way Occupancy Permit for construction of a linear park consisting of a paved pathway, hardscape/paver areas, buried electrical service and fencing, and Waiver of District criteria for landscaping and light poles within the south right of way of C-13 located from NW 52<sup>nd</sup> Avenue to SR/US 441 and from NW 33<sup>rd</sup> Avenue to NW 31<sup>st</sup> Avenue, Sections 16 and 24, Township 49 South, Range 41, 42 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

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

top of canal bank within Works or Lands of the District, is based on substantial hardship. The Applicant asserts that the overbank width is less than 40 feet along some segments of the canal and it would not be possible to construct the entire park project within strict application of the District's setback criteria and therefore this Project, which is in the public interest, could not be safely implemented even though it has no material impact on District operations. The project has been coordinated with the District's Ft. Lauderdale Field Station and designed to minimize impacts and eliminate invasive exotic vegetation 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 and was published in *Volume 34, Number 16* of the *Florida Administrative Weekly* on *April 1, 2008*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13352 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 within Works or Lands of the District.

(Fee)

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3. Consideration of a request by the **City of Lauderdale Lakes** (Application Number 07-1217-1, Permit Number 13351) for issuance of a Right of Way Occupancy Permit for construction of a pedestrian bridge with associated landscaping, hardscaping/pavers, fencing, lighting and buried electrical service, and Waiver of District criteria for landscaping, lights and American Disability Act (ADA) ramps and handrails within the north and south rights of way of C-13 located adjacent to NW 35<sup>th</sup> Avenue, Sections 19, 24, Township 49 South, Range 42 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' long designated equipment staging areas (located at all bridges) within Works or Lands of the District, is based on substantial hardship. The Applicant asserts that the ramps and handrails are needed for ADA accessibility. In addition, the lighting and landscaping are needed for safety and to screen the ramp walls from adjacent residential properties. The project has been coordinated with the District's Ft. Lauderdale Field Station and designed to eliminate obstacles including nuisance trees, fences and invasive exotic vegetation 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

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

of the petition was provided to the Department of State and was published in *Volume 34, Number 39* of the *Florida Administrative Weekly* on *September 26, 2008*.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13351 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 the District's 100' long designated equipment staging areas within Works or Lands of the District.  
(Fee)

**APPROVAL SUBJECT TO NO OBJECTIONS by October 10, 2008**

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