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JULY 10, 2008

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**RIGHT OF WAY OCCUPANCY NEW PERMITS**

1. LARRY & TRACEY A. LEMON Permit Number 13290  
St. Lucie County Appl. No. 08-0509-2  
(Fee)

AUTHORIZING: EXISTING PALM TREES ENCROACHING 20' (100' FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 373 S.W. KESTOR DRIVE (LOT 9, BLOCK 2379, PORT ST. LUCIE SECTION 34).

LAST DATE FOR BOARD ACTION: JULY 10, 2008

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2. BETTY & WILLIAM BRISTOL Permit Number 13289  
St. Lucie County Appl. No. 08-0509-1  
(Fee)

AUTHORIZING: EXISTING CABBAGE PALMS ENCROACHING 20' (105' FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 307 S.W. QUICK CIRCLE (LOT 49, 50 AND 5, BLOCK 2368, PORT ST. LUCIE SECTION 34).

LAST DATE FOR BOARD ACTION: JULY 10, 2008

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3. LARRY S. & D. CHARLINE BURGESS Permit Number 13294  
St. Lucie County Appl. No. 08-0515-1  
(Fee)

AUTHORIZING: 3 EXISTING CABBAGE PALMS, 1 OAK TREE AND A PARTIAL FENCE ENCLOSURE ENCROACHING 49' (66' FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 469 S.W. QUICK CIRCLE (LOT 23, BLOCK 2368, PORT ST. LUCIE SECTION 34).

LAST DATE FOR BOARD ACTION: JULY 10, 2008

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4. SAUL & JOANN GURDUS Permit Number 13301  
Broward County Appl. No. 08-0515-3  
(Fee)

AUTHORIZING: 160 LINEAR FEET OF EXISTING BULKHEAD, 2 LAMP POSTS AND BURIED ELECTRICAL SERVICE AND THE PROPOSED INSTALLATION OF A DOCK WITH LIFT WITHIN THE EAST RIGHT OF WAY OF C-14 AT THE REAR OF 560 S.E. 11<sup>TH</sup> STREET (LOT 10, BLOCK 2, HIGH RIDGE ESTATES).

LAST DATE FOR BOARD ACTION: AUGUST 14, 2008

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**RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS**

1. ANTHONY, JR & LINDA LOSCHIAVO Permit Number 12948  
St. Lucie County Appl. No. 08-0507-1M  
(Fee)

AUTHORIZING: 3 EXISTING TREES ENCROACHING 44' TO 47' (78' TO 81' FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 435 S.W. KESTOR DRIVE (LOT 35, BLOCK 2378, PORT ST. LUCIE SECTION 34).

LAST DATE FOR BOARD ACTION: JULY 10, 2008

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2. THOMAS N. & BRENDA H. JOHNSON Permit Number 12227  
St. Lucie County Appl. No. 08-0512-1M  
(Fee)

AUTHORIZING: 2 EXISTING COCONUT PALM TREES AND TEMPORARY CHILDREN'S SWING ENCROACHING 1' TO 2' (65' TO 66' FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF C-23 AT THE REAR OF 427 S.W. KESTOR DRIVE (LOT 39, BLOCK 2378, PORT ST. LUCIE SECTION 34).

LAST DATE FOR BOARD ACTION: JULY 10, 2008

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3. DANIEL DAVILA & CLAUDIA SOLANO Permit Number 12935  
Broward County Appl. No. 08-0508-3M  
(Easement )

AUTHORIZING: EXISTING LANDSCAPING AND SHED AND THE PROPOSED PLACEMENT OF A CHILD PLAYSET INSIDE THE EXISTING PREVIOUSLY-AUTHORIZED FENCE ENCLOSURE ENCROACHING 32' (48' FROM THE TOP OF THE CANAL BANK) LOCATED WITHIN THE WEST RIGHT OF WAY OF C-42 AT THE REAR OF 4650 N.W. 113<sup>TH</sup> AVENUE (LOT 7, BLOCK 3, SUNRISE GOLF VILLAGE SECTION 26).

LAST DATE FOR BOARD ACTION: JULY 10, 2008

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

1. It is the recommendation of the staff of Land Management and Operations Maintenance Departments 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 following reach of the District's C-13 Canal; located in Sections 23 and 24, Township 49 South, Range 41 East, Broward County:
  - A. The north right of way of C-13 along N.W. 39<sup>th</sup> Avenue from the east face of N.W. 52<sup>nd</sup> Avenue (Old Rock Island Road) Bridge easterly 4,010' to the Frances Waterway.

Staff's recommendation is based on the fact that the above reach of the District's C-13 Canal right of way has very limited over bank and has been encumbered with encroachments for many years and is inaccessible for routing land-based maintenance activities. The District has no access from 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 the 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 the areas 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)

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2. It is the recommendation of the staff of the Land Management and Operations Maintenance 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 along the following reach of C-17 (Earman River Canal), located in Section 16, Township 42 South, Range 43 East, Palm Beach County:
    - A. The north right of way of C-17 along Anchorage Drive beginning at the west line of Lot 35 easterly 1,250', to the east line of Lot 21, inclusive, Village of North Palm Beach, Plat No. 1. (Station 62+50 through 50+00)

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

Staffs' recommendation is based on the fact that the 40 foot wide northerly overbank right of way throughout this reach of C-17 has been encumbered with encroachments for many years, consisting of existing vegetation and above-ground encroachments which block the District's access; and, there is presently no access to the site from public road right of way.

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 permitability 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 blow 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)

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

1. Consideration of a request by **Adam and Lila Smith**, (Application Number 07-0110-2, Permit Number 13279), for issuance of a Right of Way Occupancy Permit and waiver of criteria to allow 4 existing palm trees 13-14 feet from the top of canal bank to remain within the west right of way of C-100A at the rear of 14701 SW 76<sup>th</sup> Terrace. 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 principles of fairness. The applicant's state the trees have existed on the property for over 15 years, the District has conducted its business along the easement without incident, and without any issues with regard to said trees being a few feet into the easement. It would violated the principles of fairness to require such removal, at the property owner's expense, when the encroachment onto the District's easement is minimal, non-obstructing, has been present for close to two decades without the District raising the issue, and only came to light as a result of a property owner's good faith effort to permit a fence. The Operations Maintenance Resources Department has stated that the existing facilities do not interfere with their ability to perform necessary construction, alteration, operation and routine maintenance activities, so the purpose of the underlying statue 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 20 of the Florida Administrative Weekly on May 16, 2008*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Right of Way Occupancy Permit Number 13279 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)

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2. Consideration of a request by **Michael J. Meives**, (Application Number 08-0219-5, Permit Number 13300), for issuance of a Right of Way Occupancy Permit to allow existing and proposed mooring piles, 2 existing lifts, existing buried water and electrical service with lights; and waiver of District criteria to allow an existing dock with walkway and associated facilities including the proposed addition to the existing dock; also various landscaping features, consisting of steps, walkway, decorative posts, boulders, trees and plantings within the north right of way of C-17 at the rear of 572 Anchorage Drive. Location: Palm Beach County, Section 16, Township 42 South, Range 43 East.

The applicant's request for waiver of the District's criteria, which governs the minimum low member elevation of pile-supported docking facilities and the placement of permanent and/or semi-permanent above-ground facilities within 40' of the top of the canal bank within Works or Lands of the District, is based on both substantial hardship and principles of fairness. The applicant states a cost of over \$30,000 to remove all landscaping features and an additional \$12,000 to raise the existing dock. The applicant also states his neighbors all along the reach of the C-17 have similar landscaping and docking facilities. The Operations Maintenance Resources Department has stated that

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

neither the existing or proposed facilities interfere with their 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 19* of the *Florida Administrative Weekly* on May 9, 2008. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13300 and **approval** of the petition for waiver of the District's criteria which governs the minimum low member elevation of pile-supported docking facilities and the placement of permanent and/or semi-permanent above-ground structures within 40' of the top of the canal bank within Works or Lands of the District.  
(Easement)