

TABLE OF CONTENTS

RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

DECEMBER 10, 2009

	<u>PAGES</u>
I. RIGHT OF WAY OCCUPANCY NEW PERMITS:	1
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> .	
II RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS:	2
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> .	
III. RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA:	3
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. SNAPPER VILLAGE CONDOMINIUM Permit Number 13553
Miami-Dade County Appl. No. 09-0720-1
(Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF TREES ENCROACHING APPROXIMATELY 34' (41' FROM THE TOP OF BANK), EXISTING CROSS FENCE ON WEST RIGHT OF WAY AND BURIED ELECTRIC WITHIN THE SOUTH RIGHT OF WAY OF C-2 AT THE REAR OF SNAPPER VILLAGE CONDOMINIUM.

LAST DATE FOR BOARD ACTION: JANUARY 14, 2010

-
2. COMCAST CABLE Permit Number 13557
Osceola County Appl. No. 09-1012-2
(Easement)

AUTHORIZING: REPLACE AERIAL CATV CABLE ON EXISTING POLES CROSSING C-29B LOCATED EAST OF THE NARCOOSSEE ROAD BRIDGE.

LAST DATE FOR BOARD ACTION: JANUARY 14, 2010

-
3. DAVID AND JILL SIMON Permit Number 13556
Palm Beach County Appl. No. 09-0623-1
(Easement)

AUTHORIZING: EXISTING DOCK WITH LIFT AND STAIRS, ELECTRICAL SERVICE, LIGHT POLE, FENCE ENCLOSURE WITH LANDSCAPING AND BASKETBALL COURT ALL LOCATED WITHIN THE NORTH RIGHT OF WAY OF THE HILLSBORO CANAL AT THE REAR OF 1380 SOUTHWEST 21ST LANE (LOT 21, BLOCK 75, PALM BEACH FARMS COMPANY, PLAT 10).

LAST DATE FOR BOARD ACTION: 90 DAYS WAIVED

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. HAYDEE SALDANA Permit Number 13545
Broward County Appl. No. 09-0901-3M
(Easement)

AUTHORIZING: EXISTING LANDSCAPING AND PORTION OF METAL SHED LOCATED LANDWARD OF PREVIOUSLY-PERMITTED PARALLEL FENCE WITHIN THE NORTH RIGHT OF WAY OF THE NORTH NEW RIVER AT THE REAR OF 11880 TARA DRIVE.

LAST DATE FOR BOARD ACTION: JANUARY 14, 2010

-
2. CITY OF BOYNTON BEACH Permit Number 10160
Palm Beach County Appl. No. 09-0617-1M
(Easement)

AUTHORIZING: ASPHALT PEDESTRIAN PATH, LANDSCAPING AND APPURTENANCES ASSOCIATED WITH THE PALMETTO GREENWAY EXPANSION, LOCATED WITHIN THE SOUTH RIGHT OF WAY OF C-16 BEGINNING AT SEACREST BOULEVARD AND EXTENDING WESTERLY APPROXIMATELY 1800' TO NORTHWEST 4TH STREET.

LAST DATE FOR BOARD ACTION: JANUARY 14, 2010

-
3. MICHAEL IACOBELLI Permit Number 13302
Palm Beach County Appl. No. 08-0707-2M
(Fee)

AUTHORIZING: EXISTING DOCK WITH ASSOCIATED APPURTENANCES INCLUDING WATER AND ELECTRICAL SERVICE AND A LATTICE ARCH; THE REMOVAL OF EXOTIC VEGETATION AND THREE CITRUS TREES WITHIN THE NORTH RIGHT OF WAY OF THE HILLSBORO CANAL LOCATED AT THE REAR OF 23436 MIRABELLA CIRCLE (LOT 17, VALENCIA).

LAST DATE FOR BOARD ACTION: 90 DAYS WAIVED

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

1. Consideration of a request by **Canal Investments, Inc.**, (Application Number 09-0213-1, Permit Number 13407) for Waiver of the District's criteria and issuance of a Right of Way Occupancy Permit for the proposed installation of a cross-fence with vehicular access gate at the east property line extended and to allow an asphalt parking area accommodating 6 parking spaces with bollards, buried electrical service with lighting and portion of an exfiltration trench to remain within the north right of way of C-4 adjacent to 10690 S.W. 7th Terrace. Location: Miami-Dade County, Section 5, Township 55 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-ground encroachments within 40 feet of the top of the canal bank and within the District's designated equipment staging areas at all bridges and pile-supported utility crossings as well as the placement of retention/detention facilities and use of motor vehicles (parking) within Works or Lands of the District is based on "principles of fairness" and "substantial hardship". The applicant has had the existing facilities at their current location since 2002 when he acquired the property and loss of the parking area would result in the inability of the applicant to continue with ongoing business activity. The District has been negotiating with the applicant for the acquisition of a permanent access easement through the applicant's property for ingress and egress to its canal right of way as well as improving its easement lying adjacent to the canal, which currently grants access only and does not include use of the easement for the purpose of the District constructing and maintaining the C-4 Gravity (Flood) Wall. This Settlement Agreement, which includes the granting of the improved construction/access easement to the District, also appears on the Consent Agenda. The proposed flood wall is one of several of the District's projects providing increased flood protection in the Sweetwater/Belen area. The District's issuance of a permit for the existing and proposed encroachments as described above is a condition of the Settlement Agreement. The applicant has agreed to remove the portion of an existing concrete wall from within the District's right of way and replace it with a cross-fence with 16-foot wide gate for the passage of the District's vehicles and equipment.

The staff of the Operations and Maintenance Resource Department has no objection to the proposed cross-fence or the existing encroachments as the District will gain the ability to access its right of way for construction and maintenance as well as routine and emergency operations via the improved easement interest included in the Settlement Agreement.

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 35, Number 13* of the *Florida Administrative Weekly* on *April 3, 2009*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13407 and **approval** of the petition for waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above-ground encroachments within 40 feet of the top of the canal bank and within the District's designated equipment staging areas at all bridges and pile-supported utility crossings as well as the placement of retention/detention facilities and use of motor vehicles (parking) within Works or Lands of the District.