

TABLE OF CONTENTS

RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL

May 10, 2012

PAGES

- I RIGHT OF WAY OCCUPANCY NEW PERMITS:**
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 approval. **2**
- II RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS:**
Governing Board action is required for routine requests which involve a change, addition or deletion to a use of the right of way which was previously permitted. Items are placed on this Consent Agenda when the staff's recommendation is for approval. **3**
- III RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA:**
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 grant variances and waivers 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 and 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. **4 - 7**

RIGHT OF WAY OCCUPANCY NEW PERMITS

1. VIKING SEA TERMINAL
COUNTY: MIAMI-DADE

Permit Number 13996
Appl. No. 12-0214-2
Flowage

AUTHORIZING:

EXISTING SEAWALL WITHIN THE NORTH RIGHT OF WAY OF LOCATED C-6 ADJACENT TO
3618 NORTHWEST SOUTH RIVER DRIVE (LOTS 27-2, MELROSE HEIGHTS).

LAST DATE FOR GOVERNING BOARD ACTION: **June, 2012**

2. CHABAD OF PARKLAND, INC.
COUNTY: BROWARD

Permit Number 14001
Appl. No. 12-0321-2
Easement

AUTHORIZING:

EXISTING 36" CMP CULVERT THROUGH THE SOUTH RIGHT OF WAY OF THE HILLSBORO
CANAL LOCATED APPROXIMATELY ONE MILE WEST OF U.S. 441 (S.R. 7) BRIDGE.

LAST DATE FOR GOVERNING BOARD ACTION: **June, 2012**

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. LINDA M. WARD-JULIA
COUNTY: BROWARD

Permit Number 8240
Appl. No. 10-0603-1M
Easement & Fee

AUTHORIZING:

EXISTING DECK, LANDSCAPE TIMBERS AND PAVERS LOCATED INSIDE THE EXISTING PREVIOUSLY-AUTHORIZED HEDGE AND FENCE ENCLOSURE WITH PEDESTRIAN GATE WITHIN THE NORTH RIGHT OF WAY OF C-13 LOCATED AT THE REAR OF 9820 NORTHWEST 31ST PLACE (LOT 410, WELLEBY UNIT 8).

LAST DATE FOR GOVERNING BOARD ACTION: **May, 2012**

2. DAVID SWICK
COUNTY: BROWARD

Permit Number 13854
Appl. No. 12-0330-3M
Fee

AUTHORIZING:

EXISTING BOAT LIFT WITH ELECTRICAL SERVICE AND LIGHTS WITHIN THE SOUTH RIGHT OF WAY OF THE HILLSBORO CANAL AT THE REAR OF 365 7TH COURT (LOT 9, BLOCK 7, COMMONWEALTH GARDENS TRACT A).

LAST DATE FOR GOVERNING BOARD ACTION: **June, 2012**

3. LES VENTURES, L.C.
COUNTY: MIAMI-DADE

Permit Number 12400
Appl. No. 12-0216-1M
Easement

AUTHORIZING:

REPAIR OF EXISTING SEAWALL AND REMOVAL OF TREE FROM THE TOP OF CANAL BANK WITHIN THE SOUTH RIGHT OF WAY OF C-6 AT THE REAR OF 9355 NORTHWEST SOUTH RIVER DRIVE.

LAST DATE FOR GOVERNING BOARD ACTION: **May, 2012**

RIGHT OF WAY OCCUPANCY REQUESTS WITH WAIVER OF DISTRICT CRITERIA

1. Consideration of a request by **Stewart Lee Mosher** (Application Number 12-0123-3, Permit Number 13980) for issuance of Right of Way Occupancy Permit to allow existing land retaining walls to remain and the proposed installation of additional land retaining walls and the installation of rip-rap revetment and the removal of exotic vegetation; and, Waiver of District criteria to allow an existing cross-fence with vehicular access gate and post with solar light to remain within the south right of way of C-15 adjacent to 201 Oregon Lane to remain. Location: Palm Beach County, Section 32, Township 46 South, Range 43 East.

The applicant's request for Waiver of District criteria, which governs the placement of semi-permanent and/or permanent above-ground facilities within 40 feet of the top of canal bank within Works or Lands of the District, is based on "principles of fairness". The Applicant asserts that other properties along the canal have similar encroachments. The applicant will also be performing exotic vegetation removal and bank stabilization that will improve upon current conditions of the right of way by preventing further erosion. In addition, the existing cross-fence with locked vehicular access gate serves the District as it prevents unauthorized vehicles from entering the District's right of way. The District's Operations, Maintenance & Construction Division has reviewed the project and determined that the existing and proposed improvements will 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 38, Number 7* of the *Florida Administrative Weekly* on *February 17, 2012*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13980 and **approval** of the Petition 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 within Works or Lands of the District.
(Fee)

-
2. Consideration of a request by **Donna Wells Joannides**, (Application Number 12-0229-1, Permit Number 14002), for issuance of a Right of Way Occupancy Permit and waiver of District criteria to allow an existing dock with lift, electric and water service within the south right of way of C-17 at the rear of 2778 Hinda Road to remain. Location: Palm Beach County, Section 17, 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 is based on "substantial hardship". The applicant asserts that the entire dock structure would have to be raised to comply with the District's criteria. The existing dock is located downstream of the District's S-44 Water Control Structure and as such, will not interfere with the District's operations and maintenance activities. The adjacent overbank is not accessible for

RIGHT OF WAY OCCUPANCY REQUESTS WITH WAIVER OF DISTRICT CRITERIA

land-based equipment and no overbank maintenance is performed. The District's Operations Maintenance and Construction Division has reviewed the project and determined that the existing facilities will not 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 38, Number 11* of the *Florida Administrative Weekly* on *March 16, 2012*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 14002 and **approval** of the petition for waiver of the District's criteria which governs the minimum low member elevation of pile-supported docking facilities within Works or Lands of the District.
(Easement)

-
3. Consideration of a request by **Curtis Krauel and Carmela Polise Krauel Living Trust U/A Gerald Oliverie Trustee**, (Application Number 11-0506-1, Permit Number 13888), for issuance of a Right of Way Occupancy Permit and Waiver of District criteria to allow an existing dock within the north right of way of C-16 at the rear of 718 Shore Drive to remain. Location: Palm Beach County, Section 22, Township 45 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 is based on "substantial hardship" and "principles of fairness". The applicant asserts that the entire dock structure would have to be demolished and replaced to comply with the District's criteria. The applicant also asserts nearby docks with Low Member Elevation deficiencies have been permitted. The existing dock is located downstream of the District's S-41 Water Control Structure and as such, will not interfere with the District's operations and maintenance activities. The adjacent overbank is not accessible for land-based equipment and no overbank maintenance is performed. The District's Operations Maintenance and Construction Division has reviewed the project and determined that the existing facilities will not 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 38, Number 12* of the *Florida Administrative Weekly* on *March 23, 2012*. No public comments were received.

RIGHT OF WAY OCCUPANCY REQUESTS WITH WAIVER OF DISTRICT CRITERIA

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13888 and **approval** of the petition for waiver of the District's criteria which governs the minimum low member elevation of pile-supported docking facilities within Works or Lands of the District.
(Easement)

-
4. Consideration of a request by **Centurylink**, (Application Number 12-0307-1, Permit Number 13994), for issuance of a Right of Way Occupancy Permit and Waiver of District criteria for the proposed installation of a an aerial communications cable crossing the Miller Canal located approximately 40 feet north of the centerline of 28th Avenue S.E. bridge attached to existing Florida Power and Light Company poles. Location: Collier County, Section 30, Township 49 South, Range 28 East.

The applicant's request for waiver of the District's criteria, which governs the minimum vertical clearance requirement for non-voltage aerial crossings within Works or Lands of the District is based on "substantial hardship". The applicant asserts that due to the congested nature of existing buried utilities in the vicinity of the proposed project area, the installation of a subaqueous cable crossing will increase the chances of damaging the existing buried utilities; and, due to the number of poles and associated utilities already existing and the narrow width of the road and canal right of way there is no room to place additional poles. The existing Florida Power and Light Company poles to which the proposed communications cable will be attached are not tall enough to accommodate the District's required minimum vertical clearance for non-voltage installations of 40' above the highest elevation of the canal berm; the proposed crossing will provide a vertical clearance of 21.90'. The staff of the Big Cypress Basin has stated that the proposed facility will 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 38, Number 14* of the *Florida Administrative Weekly* on *April 6, 2012*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13994 and **approval** of the petition for Waiver of the District's criteria which governs the minimum vertical clearance requirement for non-voltage aerial crossings within Works or Lands of the District.
(Agreement)

-
5. Consideration of a request by **Centurylink**, (Application Number 11-1007-1, Permit Number 13944), for issuance of a Right of Way Occupancy Permit and Waiver of District criteria for the proposed installation of a an aerial communications cable crossing the Cocohatchee Canal located approximately 290 feet west of the centerline of the Old Cypress Bridge (Logan Boulevard) attached to existing Florida Power and Light Company poles. Location: Collier County, Section 20, Township 48 South, Range 26 East.

RIGHT OF WAY OCCUPANCY REQUESTS WITH WAIVER OF DISTRICT CRITERIA

The applicant's request for waiver of the District's criteria, which governs the minimum vertical clearance requirement for non-voltage aerial crossings within Works or Lands of the District, is based on "substantial hardship". The applicant asserts that due to the congested nature of existing buried utilities in the vicinity of the proposed project area, the installation of a subaqueous cable crossing will increase the chances of damaging the existing buried utilities (including a water main); and, due to the number of poles and

associated utilities already existing and the narrow width of the road and canal right of way there is no room to place additional poles. The existing Florida Power and Light Company poles to which the proposed communications cable will be attached are not tall enough to accommodate the District's required minimum vertical clearance for non-voltage installations of 40' above the highest elevation of the canal berm; the proposed crossing will provide a vertical clearance of 35.66'. The staff of the Big Cypress Basin has stated that the proposed facility will not 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 38, Number 15* of the *Florida Administrative Weekly* on April 13, 2012. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13944 and **approval** of the petition for Waiver of the District's criteria which governs the minimum vertical clearance requirement for non-voltage aerial crossings within Works or Lands of the District.
(Agreement)