

**TABLE OF CONTENTS**  
**RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING**  
**BOARD APPROVAL**

**September 9, 2010**

<b>I. RIGHT OF WAY OCCUPANCY NEW PERMITS:</b>	<b><u>PAGES</u></b>
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> .	<b>2</b>
<b>II RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA:</b>	<b>3 - 4</b>
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. BEVAN BEHN WILSON  
Palm Beach County

Permit No. 13709  
Appl. No. 10-0702-3  
(Easement)

AUTHORIZING: EXISTING SEAWALL, DOCK AND PIER WITH ELECTRIC, JET SKI LIFT AND PILINGS WITHIN THE NORTH RIGHT OF WAY OF C-16 AT THE REAR OF 712 SHORE DRIVE (LOT 57, COQUINA COVE).

LAST DATE FOR BOARD ACTION: SEPTEMBER 9, 2010

---

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

1. Consideration of a request by **Collier County Board of Commissioners** (Application Number 10-0216-1, Permit Number 13616), for issuance of a Right of Way Occupancy Permit and Waiver of the District's criteria to allow an existing pole-mounted safety camera, including foundation and buried conduits to remain within the west right of way of the C.R. 951 Canal. Location: Collier County, Section 26, Township 49 South, Range 26 East.

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 of the District is based on "substantial hardship" and "principles of fairness." The applicant asserts that a substantial hardship would occur because without a waiver, the project could not have been constructed safely and within applicable standards. In addition, strict application of the rules without a waiver would create a violation of principles of fairness since other poles, underground conduits and cables, already exists along the west side of the canal.

The staff of the Big Cypress Basin has no objection to the existing safety camera, which includes a pole with foundation and conduits as it does 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 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 36, Number 25* of the *Florida Administrative Weekly* on *June 25, 2010*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13616 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 Land of the District.  
(Cooperative Agreement)

---

2. Consideration of a request by **Collier County Board of Commissioners** (Application Number 10-0216-2, Permit Number 13617), for issuance of a Right of Way Occupancy Permit and Waiver of the District's criteria to allow an existing pole-mounted safety camera, including with foundation

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

and buried conduits to remain within the west right of way of the Airport Road Canal. Location: Collier County, Section 13, Township 49 South, Range 25 East.

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 of Lands of the District is based on "substantial hardship" and "principles of fairness." The applicant asserts that a substantial hardship would occur because without a waiver, the project could not have been constructed safely and within applicable standards. In addition, strict application of the rules without a waiver would create a violation of principles of fairness since other poles, underground conduits and cables, already exists along the west side of the canal.

The staff of the Big Cypress Basin has no objection to the existing safety camera, which includes a pole with foundation and conduits as it does 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 120.542(6), F.S., notice of the petition was provided to the Department of State and was published in *Volume 36, Number 25* of the *Florida Administrative Weekly* on *June 25, 2010*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 13617 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 Land of the District.  
(Cooperative Agreement)

