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AUGUST 9, 2006

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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. MESSANA, CHARLES A. & MARTA Permit Number 12905
Broward County Appl. No. 06-0313-1
(Easement)

AUTHORIZING: EXISTING LANDSCAPE BERM AND LANDSCAPING ENCROACHING 17' – 27' (48' – 58" FROM THE TOP OF THE CANAL BANK) WITHIN THE NORTH RIGHT OF WAY OF THE NORTH NEW RIVER CANAL AT THE REAR OF 12240 TARA DRIVE (LOT 4, PLANTATION ACRES PLAZA).

LAST DATE FOR BOARD ACTION: AUGUST 9, 2006

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2. NUZZELLO, JEANNE PARKER & EDWARD A. Permit Number 12906
Martin County Appl. No. 06-0605-2
(Easement)

AUTHORIZING: DOCK WITH COVERED BOAT SLIP WITH EXISTING BURIED WATER AND ELECTRICAL SERVICE AND PROPOSED IMPROVEMENTS TO EXISTING SEAWALL WITHIN THE NORTHWESTERLY RIGHT OF WAY OF L-47 AT THE REAR OF 9638 SOUTHWEST KEEN AVENUE (LOT 12, 13, AND 14, J & S PARK ESTATES).

LAST DATE FOR BOARD ACTION: AUGUST 9, 2006

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3. DOUGLAS, TERRY D. & BARBARA J. Permit Number 12908
Glades County Appl. No. 06-0612-2
(Easement)

AUTHORIZING: SEAWALL WITHIN THE NORTHWESTERLY RIGHT OF WAY OF L-48 AT THE REAR OF 65 OAK STREET (LOT 65, BUCKHEAD RIDGE PARK).

LAST DATE FOR BOARD ACTION: AUGUST 9, 2006

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4. SANDERSON, PATRICIA; FARRINGTON, REBECCA; Permit Number 12910
MUSSER, RACHEL AND JERRELL, BEULAH Appl. No. 06-0608-1
Palm Beach County (Fee)

AUTHORIZING: EXISTING DOCK WITH STEPS WITHIN THE SOUTH RIGHT OF WAY OF C-15 AT THE REAR OF 8301 TEXAS TRAIL (LOT 28, BLOCK 12, HIDDEN VALLEY SECTION 3).

LAST DATE FOR BOARD ACTION: AUGUST 9, 2006

RIGHT OF WAY OCCUPANCY NEW PERMITS

5. WESTLAKE, CHARLES L. & DELORES A. Permit Number 12911
Okeechobee County Appl. No. 06-0612-1
(Fee)

AUTHORIZING: REPAIR TO EXISTING SEAWALL WITHIN THE NORTH RIGHT OF WAY OF LD-4 LOCATED AT THE REAR OF 1696 U.S. 441 S.E.

LAST DATE FOR BOARD ACTION: AUGUST 9, 2006

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6. GUILLERMO, PANIZA Permit Number 12847
Broward County Appl. No. 06-0124-2
(Easement)

AUTHORIZING: EXISTING SEAWALL AND PROPOSED DOCK WITHIN THE NORTH RIGHT OF WAY OF THE OLD POMPANO CANAL LOCATED AT THE REAR OF 151 S.E. 6TH AVENUE SERVING PARK PLACE AT POMPANO, LCC. CONDOMINIUMS.

LAST DATE FOR BOARD ACTION: SEPTEMBER 13, 2006

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7. ALVAREZ, REYNALDO L. Permit Number 12914
Miami-Dade County Appl. No. 06-0630-1A
(Easement)

AUTHORIZING: RECONSTRUCTION OF EXISTING BULKHEAD WITHIN THE SOUTHEAST RIGHT OF WAY OF C-6 AT THE REAR OF 8357 N.W. SOUTH RIVER DRIVE.

LAST DATE FOR BOARD ACTION: AUGUST 9, 2006

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8. MARTELL, RAFAEL Permit Number 12915
Miami-Dade County Appl. No. 06-0630-1B
(Easement)

AUTHORIZING: RECONSTRUCTION OF EXISTING BULKHEAD WITHIN THE SOUTHEAST RIGHT OF WAY OF C-6 AT THE REAR OF 8359 N.W. SOUTH RIVER DRIVE.

LAST DATE FOR BOARD ACTION: AUGUST 9, 2006

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. MARTTER, JAY & SUSAN
St. Lucie County

Permit Number 12567
Appl. No. 06-0619-1M
(Fee & Easement)

AUTHORIZING: EXISTING ELECTRICAL SERVICE WITH LIGHTS TO EXISTING, PREVIOUSLY-AUTHORIZED DOCK WITHIN THE SOUTH RIGHT OF WAY OF C-24 AT THE REAR OF 2313 S.W. SALMON DRIVE (LOT 31, BLOCK 1758, PORT ST. LUCIE SECTION 35).

LAST DATE FOR BOARD ACTION: SEPTEMBER 13, 2006

RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH WAIVER OF DISTRICT CRITERIA

1. Consideration of a request by **David L. & Mindy J. Cox** (Application Number 05-1116-5, Permit Number 12913) for issuance of a Right of Way Occupancy Permit for proposed dredging, placement of rip-rap and native plantings and to allow an existing dock with slip, palm trees and landscape boulders to remain; and, waiver of the District's criteria for the maximum encroachment of a moored vessel and a proposed treatment swale within the north right of way of C-18E at the rear of 5824 Senegal Drive, Jupiter. Location: Palm Beach County, Section 35, Township 40 South, Range 42 East.

The applicant's request for waiver of the District's criteria, which governs the maximum allowable encroachment of vessels moored within District canals and the placement of treatment swales within Works or Lands of the District, is based on substantial hardship. The applicant asserts that relocation of the existing dock and slip landward to reduce the maximum encroachment into Limestone Creek would require shoreline excavation and impacts to mangroves. (Limestone Creek is a remnant stream located within the C-18E right of way but outside of the C-18E channel). The proposed mooring of a small vessel at the existing dock will not encroach more than 33% of the total width of the creek. The opposite side of the creek, which is a restoration area owned by the District will never have a dock or other encroachment into Limestone Creek and, therefore, sufficient area will be maintained for recreational navigation. In addition, locating the proposed treatment swale outside of the District's right of way would reduce its effectiveness in reducing runoff and erosion into Limestone Creek. The existing dock, slip, proposed mooring and treatment swale will not 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 32, Number 27*, of the *Florida Administrative Weekly* on July 7, 2006. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Number 12847 and **approval** of the petition for waiver of the District's criteria which governs the maximum encroachment of vessels within District canals and placement of treatment swales within Works or Lands of the District.
(Fee)