



# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

## RIGHT OF WAY

## FREQUENTLY ASKED QUESTIONS

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### **What is District Right of Way?**

For purposes of the South Florida Water Management District (the "District"), "right of way" is the collective term used to describe those properties or facilities that have been designated as "[Works of the District](#)" by the District's Governing Board. The most common rights of way are those lands associated with canals and levees and in which the District has a fee (outright ownership) or easement (subject to someone else owning the property) interest. For homeowners, right of way typically exists as the publicly-owned land between the rear property line and the canal or as an easement over the homeowners' property lying adjacent to a canal.

Use of the right of way (whether it is fee or easement) is subject to the Right of Way Occupancy Permitting Program pursuant to [Chapter 40E-6, Florida Administrative Code](#).

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### **What is a Right of Way Occupancy Permit (“ROW Permit”)?**

A ROW permit is a *revocable license* granted to a [permittee](#) to occupy or utilize a District right of way (regardless of whether the right of way is fee-owned or an easement). With exception of ROW Permits issued to governmental agencies and utility providers, the District can revoke a ROW Permit at any time, for any reason. So it is important for applicants to understand that any investment made in the right of way may be lost if the ROW Permit is revoked. The types of improvements installed or constructed in the right of way that require a ROW Permit include, but are not limited to, fences, docks, landscaping, sheds, gazebos, marinas, bridges, overhead and underground utility lines (i.e., water, sewer, electric, telephone, cable, gas, etc.).

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### **Who is the “Permittee”?**

The permittee is the person or entity to whom the Right of Way Occupancy Permit (“ROW Permit”) is issued. Only the person(s) or entities named on the face of the ROW Permit are authorized to use the facilities or improvements that were constructed or installed in the right of way. For example, if you purchase a home with a dock in the canal, you cannot use the dock until you transfer the ROW Permit into your own name. The rights of the ROW Permit are personal and are not automatically transferred when a property is sold or transferred.

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### **Why is a Right of Way Occupancy Permit (“ROW Permit”) needed?**

The District has a public duty to ensure that the canals and levees that make up the flood control system perform in an optimal manner. In particular, this means that the District needs to ensure that improvements constructed within the canal do not block the flow of water or create opportunities for storm debris to collect, causing the creation of a dam in the canal. For example, bridges or docks must be constructed at a certain elevation above the water so that water can run under them without obstruction, and so that District boat and maintenance equipment can travel safely under them. In the rights of way consisting of upland areas that run along the canals, the District requires permits to ensure that fences, sheds, landscaping and other improvements are installed in locations that do not interfere with or obstruct access for District vehicles. In addition, a ROW Permit ensures that such improvements are constructed or installed in a safe and secure manner (i.e., trees, sheds or fences can break free in a storm event and be blown into a canal where they can cause damming of the canal and, ultimately, flooding upstream). In short, the ROW Permit helps to ensure that a use or activity in the right of way does not impair the District’s ability to access, operate and maintain the flood control system to the best of its ability.

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### **How do I know if a Right of Way Occupancy Permit (“ROW Permit”) is needed?**

If your property is adjacent to a District canal and you propose to install improvements near the canal, there is a likelihood that you may need to obtain a ROW Permit before doing any such work. A recent survey is helpful to determining if there is a District easement over any portion of your property or if the area proposed for use is located outside of your property.

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### **Which waterways or canals require a Right of Way Occupancy Permit from the District?**

A Right of Way Occupancy Permit is required to perform work along canals, levees, lakes, structures and water conservation areas designated as “[Works of the District](#)”. While the District maintains and operates over 2,200 miles of canals and levees, many water bodies are not “Works of the District”, such as local drainage district canals, the Intracoastal Waterway (ICW) and associated tidal finger canals. Your recent property survey should identify if the District has a right of way (easement or fee-owned) within or adjacent to your property.

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### **What is the application fee?**

Application fees vary depending on the type of work proposed. In most cases, there is no fee for improvements proposed by single-family homeowners. Application processing fees can be found [here](#).

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### **Are local governments exempt from paying a permit application fee?**

No. Certain local governments may qualify for a fee waiver if they provide a [Certification of Waiver of Permit Application Processing Fees \(Form 889\)](#).

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### **Are application fees refundable?**

No. Once the application is received and processing has been initiated, the application fee becomes a non-refundable payment.

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### **Can I draw the plans myself? When are engineered drawings required?**

Yes, but they must be drawn to scale, include measurements and dimensions, and contain adequate information to demonstrate that permitting criteria are being met. Certain kinds of projects, such as bridges, bulkheads, major utility installations and culverts require drawings that are signed and sealed by a professional engineer and/or surveyor registered in the State of Florida.

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### **What is the difference between a Notice General Permit and a Standard Permit?**

Notice General Permits (NGPs) are issued administratively for projects that meet all criteria for a given project type. Standard Permits (SPs) require approval from the District's Governing Board, and are for projects that are of a more complex nature, or projects that may require a waiver of criteria. Since Standard Permits require Board approval and must be scheduled for Board action well in advance, they take considerably longer to process than a Notice General Permit.

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### **How long does it take to obtain a Right of Way Occupancy Permit?**

From the time an application is received, staff has up to 30 days to review the request for completeness, and 90 days to issue a permit once the application has been deemed complete. This "30-90 day clock" is based on statutory requirements. If additional information is needed, staff will contact the applicant in writing within the first 30 days with a request for additional information. Upon receipt of additional information that completes an application, staff has 90 days to issue (or, in some cases, to recommend that the Governing Board deny) a permit.

Some permits can be issued within relatively short time frames. Certain uses (such as those typically associated with a single-family home – i.e., dock, fence, landscaping, shed, etc.) may be issued in as little as two weeks once a complete application is received. Other permits, like those that require Governing Board approval (Standard Permits) or for complex projects and uses, the time to issue will be longer (2-3 months or greater). To ensure an efficient and timely application review and permit issuance, applicants are encouraged to review the [Right of Way Criteria Manual](#) and to make certain that their proposed project complies with District regulations.

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### **Is a building permit also required?**

Yes. If the jurisdiction within which your property lies requires a building permit, then a building permit is required for you to perform work in a District right of way. Typically, building permits are required for fences, sheds, gazebos, docks, electric and water service, lighting, walls and other types of improvements. Before filing an application, you are encouraged to contact your local building department to determine if a building permit can be issued for the proposed work. The District does not require that a building permit be submitted with the application for a Right of Way Occupancy Permit; however, you will be required to present the building permit to District staff following issuance of the Right of Way Occupancy Permit and prior to start of any work in the right of way. Utility companies and governmental entities are not subject to this requirement.

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### **Are any activities exempt from a Right of Way Occupancy Permit?**

Yes. Certain activities are exempt and do not require a Right of Way Occupancy Permit. You can find a list of exempt activities [here](#).

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**What is a Section 408 review, and how do I know if one is needed?**

A large portion of the District’s flood control system was constructed by the U.S. Army Corps of Engineers (“USACE”), and the South Florida Water Management District is the local sponsor charged with safeguarding this federal project. If the canal or levee adjacent to your property was part of the system constructed by the USACE (the project known as the “Central and South Florida Flood Control Project”), it is highly likely that a Section 408 review by the USACE will be required for your proposed work. Section 408 review is an engineering review conducted by the USACE to confirm that a proposed work will not adversely affect the canals, levees and structures that constitute the Central and South Florida Flood Control Project. When an application is received by the District, it is reviewed to determine if a Section 408 review will be required. If a Section 408 review is required, the applicant will be advised of the information that will be required by the USACE to perform the review.

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**How long does it take to obtain a Section 408 approval?**

Once an application for a Right of Way Occupancy Permit has been deemed complete, including submission of any information required for the U.S. Army Corps of Engineers (“USACE”) to perform the Section 408 review, the District will submit a copy of the application and supporting documents to the USACE. The Section 408 review typically requires 2-3 months to complete, but in some cases, can take a year or longer, depending on the location, the proposed scope of work and federal funding of Section 408 reviews. When the approval is granted or if additional information is required, the applicant will be contacted by the District in writing. Work within the District’s right of way may not begin until the Section 408 approval has been obtained and provided to the applicant, regardless of whether the actual Right of Way Occupancy Permit has been issued by the District.

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**Is a pre-application or site meeting necessary? How should I request such a meeting?**

No. In certain cases, an applicant may wish to contact the District’s permitting section to schedule a pre-application or site meeting. Pre-application meetings are useful for complex or controversial projects when guidance from Right of Way permitting staff is desired. These may be scheduled in the form of a teleconference, formal meeting at the District’s headquarters in West Palm Beach, or at a project site. To inquire about a pre-application or site meeting, please contact the Right of Way Section.

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**Is there a fee for a pre-application or a site meeting?**

No.

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