

Section

2

Chapter 2 RIGHT-OF-WAY POLICY

2.1 OBJECTIVES

1. The purpose of this manual is to set forth the policies, procedures, and technical requirements associated with the enforcement of the removal of non-permitted encroachments located on the lands and/or drainage/water management facilities of the East County Water Control District (the "District"). Encroachments that existed prior to the Feb/2005 aerials may be "grandfathered" depending on their location in the District right-of-way and the type of encroachments as authorized in accordance with District policy. Grandfathered encroachments shall comply with the District's permitting requirements. Encroachments determined to have come into existence after Feb/2005 will be considered on a case by case basis by the Board, except during emergency conditions as determined by the District Manager and/or the District Engineer.
2. This "Right-of-Way Policy" expresses the intent of the District relating to the public's interest and protection under the General Drainage Law, Chapter 298, Florida Statutes relating to the District's right-of-way.
3. Definition of Right-of-Way: "Right-of-way" shall mean a right-of-way, deed, plat dedication easement, or reservation owned by the District, dedicated to the District or to the public, or for which the District holds a property interest and/or exercises rights of management or control.
4. Any and all work involving the lands, or drainage works/water management facilities of the District shall not commence until prior approval of the District Board of Commissioners in the form of a permit is received. The approval process consists of submitting an Application for Permit, in triplicate, to the District, review of the application by the District Manager and Engineer for conformance with the established policies and technical requirements contained in this manual, and issuance of a permit document with appropriate limiting conditions. This process is presented in more detail in **Section 4** (Permitting Policy) of this manual.

1. Copies of all laws relating to the operations of ECWCD are available for public inspection at the District's office.
2. The Board of Commissioners of the East County Water Control District is authorized by Chapter 298, Florida Statutes, and by Chapter 2000-423, Laws of Florida, as amended, to authorize the drainage, reclamation and irrigation of the lands in said District.

2.3 POLICY STATEMENT CONCERNING THE DISTRICT'S RIGHTS-OF-WAY CRITERIA

- 1) It is the policy of the District to consider the use of the works and lands of the District for adjacent owners, private corporations and governmental entities.
- 2) The use shall not adversely impact or interfere with the District's ability to utilize these lands in any manner it sees fit in furtherance of the District's missions.
- 3) In order for the District to determine that a use of the right-of-way will not interfere with their objectives, individuals or entities wishing to use the District's right-of-way are required to obtain approval before any activity commences.
- 4) Construction on or use of the right-of-way without obtaining prior District approval is unauthorized and violates Section 298.66, Florida Statutes:
 - (i) Such activity is an act of bad faith, which will be taken into consideration in the
 - (ii) Review of any request the user may subsequently make or in such enforcement
 - (iii) Action as the District may elect to initiate.
- 5) No permit will be granted for any use of the District's lands or drainage works when granting such would be inconsistent with the Water Control Plan, water management facilities or operations of the District.
- 6) The District reserves the right to change any of its policies, practices, procedures, or regulations.
- 7) Such action shall not constitute any claim for damages nor become the basis for legal suit by any permittee.
- 8) The District will follow the procedures outlined in this section to re-secure its lands on a non-permitted encroachment

2.4 OBLIGATIONS OF LANDOWNERS ADJACENT TO DISTRICT LANDS

1. Adjacent landowners to District lands without a permit may:
 - a) Plant and maintain grass. District lands can be irrigated from an irrigation system that is not located on District lands.
 - b) Use the land for temporary low-impact activities, such as: fishing and hiking.
2. There will be no permitted or grandfathered encroachments of any kind within the first 25 feet (maintenance area) of the District's right-of-way. The 25-foot maintenance area will be measured from the top edge of the canal slope or "top of bank". This area is necessary for ECWCD staff to maintain the canal. The District understands that it may have ownership of less than twenty-five (25') feet.
3. **Grandfathered encroachments**
 - a) Encroachments may be grandfathered if they existed prior to the February 2005 aerials, if they are located outside of the 25' maintenance area and they are items permitted by the ECWCD "Permitting Policy". Trees located outside of the twenty-five foot maintenance area which appear on the Florida Exotic Pest Plant Council's List of Invasive Species, Category I list are subject to removal by District staff.
4. Adjacent landowners to District lands or other individuals, without a permit, may not encroach on District lands other than listed in **Policy 2.3.a Grandfathered Encroachments**. A permit may be issued for these activities if all requirements of the District's "Permitting Policy" are met. All permitted encroachments will include the caveat that the encroachment will be removed by the current landowner should the District require the right-of-way for maintenance or future works. The permitted encroachments are included in the "**Section 4 Permitting Policy**".
5. Adjacent landowners to District lands or other individuals may not encroach on District lands. The encroachments that will not be permitted include, but are not limited to:
 - a) Building swimming pools
 - b) Installing water systems intake pipes from District facilities
 - c) Storing equipment, material, automobiles or boats
 - d) Storing trash, rubbish or compost piles
 - e) Burying pool overflow pipes, softener brine lines of any other point source of pollution as defined by the EPA's National Pollutant Discharge Elimination System
 - f) Storing gasoline or other liquid fuels, paints, thinners, solvents or other petroleum distillates
 - g) Storing hazardous substances or petroleum by-products which are regulated under Federal, State or Local law

- h) Building underground or above ground fuel storage tanks
- i) Storing lead batteries, or other articles containing heavy metals
- j) Operating vehicles, trucks, ATV's or outboard engines
- k) Performing vehicle or engine maintenance activities
- l) Operating "burn pits" or the use of the rights-of-way for the incineration or burning of refuse
- m) Planting invasive non-native plants as established by the Florida Exotic Pest Plant Council.

2.5 POLICY STATEMENT CONCERNING DISTRICT ENFORCEMENT POLICY

1. The District will make every effort to actively pursue all violations of the District's Rules as contained in this Manual.
2. The District will employ the help of local, state and/or federal agencies as well as private partnerships in the enforcement of this policy.
3. The District will allow for reasonable notice prior to the start of an enforcement action.

2.6 ACTION PLAN FOR RIGHT-OF-WAY ENCROACHMENTS REMOVAL

1. The District's Right-of-Way Technician is notified of, or discovers an encroachment that is not permitted.
2. The District's Right-of-Way Technician notifies property owners with encroachments to remove them. A notice with a 30-day deadline date is given via hand delivery, or placed on resident's door.
3. After the deadline date has passed, the Right-of-Way Technician conducts a field inspection to verify if the encroachment was removed.
4. The District Manager is notified that the Final Warning has not been complied with.
5. Property owners that have not removed encroachments are sent a certified notification of "**WARNING**" with a 30-day deadline date.
6. After the deadline date has passed, the Right-of-Way technician conducts a field inspection to verify if the encroachment was removed
7. Property owners that have not removed encroachments are sent a certified notification of "**FINAL WARNING**" with a 10-day deadline date.
8. When the "Final" deadline date passes, the Right-of-Way technician conducts a field inspection to verify if the encroachment was removed. If not, the Heavy Equipment Superintendent visits the site to determine a plan of action.

Action would be commenced against the property owner which may include removal of the encroachment by the District staff and/or legal action. Reimbursement from the property owner for expenses incurred will be sought through judicial or other legal methods.