

RESOLUTION NO. 2022- 03

RESOLUTION ADOPTING POLICY ON RIGHT OF WAY MAINTENANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR LIBERAL CONSTRUCTION AND FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 298 Florida Statutes, the Judicial Decree by the Circuit Court of the Twelfth Judicial Circuit in and for Lee County, Florida, Case No. 69-105, dated April 3, 1969, and other applicable provisions of law, the San Carlos Estates Water Control District ("District") is responsible for operating a system of perimeter canals, dikes, roadside swales, roadbeds, basins and outfall canals to provide drainage and stormwater flow control and other reclamation of the lands located within the District's geographical boundary; and,

WHEREAS, the District is desirous of adopting a written policy on the maintenance, repair, removal, and replacement of improvements in the District's right of ways.

NOW THEREFORE, be it resolved by the Board of Supervisors of the San Carlos Estates Water Control District that:

SECTION 1 - AUTHORITY

This Resolution is adopted pursuant to the provisions of Florida law, especially Chapter 298, Florida Statutes, and the District's enabling judicial decree entered by the Circuit Court of the Twelfth Judicial Circuit in and for Lee County, Florida, Case No. 69-105, dated April 3, 1969, and other applicable provisions of law.

SECTION 2 - INCORPORATION OF RECITALS

The recitals set forth above are true and correct and form a part of this Resolution.

SECTION THREE – ADOPTION OF POLICY ON RIGHT OF WAY MAINTENANCE

The Board of Supervisors, by this Resolution, hereby adopts and approves the Policy on Right of Way Maintenance attached hereto and made a part hereof as Exhibit A.

SECTION FOUR - SCRIVENER'S ERRORS

Sections of this Resolution may be renumbered or re-lettered and corrections of typographical errors which do not affect the intent may be authorized by the President/Chair of the Board of Supervisors without need of a public meeting or Board decision making action, by the

President/Chair of the Board of Supervisors filing a corrected or re-codified copy of same with the District's records custodian.

SECTION FIVE - SEVERABILITY

If any section, subsection, sentence, clause or other provision of this Resolution is held unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall be deemed a separate provision and eliminated from this Resolution and shall not affect the remainder of this Resolution.

SECTION SIX - RESCISSION

The Board of Supervisors hereby rescinds all prior resolutions and other official action of the Board of Supervisors to the extent of any conflict with any part of this Resolution.

SECTION SEVEN - CONSTRUCTION AND EFFECTIVE DATE

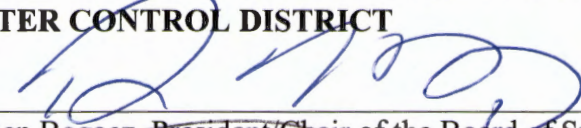
This Resolution shall be liberally construed to effect the purposes hereof and shall take effect immediately upon its adoption.

THE FOREGOING RESOLUTION WAS OFFERED BY SUPERVISOR Ben Bogacz WHO MOVED THE RESOLUTION'S ADOPTION. THE MOTION WAS SECONDED BY SUPERVISOR Jim Bradford AND, UPON BEING PUT TO A VOTE, THE VOTE WAS AS FOLLOWS:

<u>NAME</u>	<u>YES</u>	<u>NO</u>
Ben Bogacz	<u>✓</u>	<u> </u>
Jim Bradford	<u>✓</u>	<u> </u>
Jennifer Finazzo	<u>✓</u>	<u> </u>

Duly passed and adopted on this 15th day of March, 2022.

**BOARD OF SUPERVISORS OF THE SAN CARLOS ESTATES
WATER CONTROL DISTRICT**

By: 
Ben Bogacz, President/Chair of the Board of Supervisors

ATTEST:
By: 
Chris Lawson, Secretary-Treasurer for the District

EXHIBIT A

SAN CARLOS ESTATES WATER CONTROL DISTRICT
POLICY ON RIGHT OF WAY MAINTENANCE

The San Carlos Estates Water Control District (“District”) has the final authority and control over the use of the District’s right of ways and over the construction, maintenance, removal, and replacement of all improvements, including water control improvements and roadway improvements, within the District’s right of ways throughout the District.

This policy is to describe the exercise of the District’s authority with regard to improvements within the District’s right of ways, including but not limited to the construction, maintenance, removal, and replacement of improvements within the District’s right of ways.

The District shall make the final decision on the construction, maintenance, removal, and replacement of all improvements within the District’s right of ways, including the construction, maintenance, removal, and replacement of improvements in the District’s right of ways by lot owners and all others (third parties).

The District shall require any lot owner and any third party who adversely impacts, through excessive use or damage or other means, any improvements within the District’s right of way to pay for the repair and restoration of any improvements in the District’s right of ways that are adversely impacted by a lot owner or by a third party, up to and including the full cost of the replacement of damaged improvements in the District’s right of way with new improvements, as determined by the District in the sole discretion of the District’s Board of Supervisors, or its designee. In the sole discretion of the District’s Board of Supervisors, or their designee, the District will perform all maintenance and repairs of improvements in the District’s right of ways, up to and including the removal and replacement of improvements, when it is necessary and in the best interest of the District for the maintenance and repairs of the improvements in the District’s right of ways to be made. If a lot owner is responsible for any adverse impacts to improvements within the District’s right of ways that necessitates the repair or replacement of improvements in the District’s right of ways, the lot owner shall pay the District the total costs the District incurs, including the professional services fees of the District’s engineers and attorneys, that are required for the completion of the repair or replacement of the improvements within the District’s right of ways. If a third party is responsible for any adverse impacts to improvements within the District’s right of ways that necessitates the repair or replacement of improvements in the District’s right of

ways, the third party shall pay the District the total costs the District incurs, including the professional services fees of the District's engineers and attorneys, that are required for the completion of the repair or replacement of the improvements within the District's right of ways.

If the District, in the sole discretion of the District's Board of Supervisors, or its designee, determines that the driveway improvements that serve a specific lot in the District, including but not limited to the driveway culvert, must be repaired or replaced, the lot owner whose lot uses the driveway improvements shall use the driveway construction permit procedure of the District to acquire the District's approval to make the repair, or replacement, of the driveway improvements, at the lot owner's sole expense and at no expense to the District. The repair or replacement of driveway improvements by a lot owner shall comply with all of the standards and requirements of the District, including the Driveway Construction Procedure Manual of the District, as said Driveway Construction Procedure Manual may be amended from time to time by the District. In the event the District has to perform any maintenance of driveway improvements that serve a specific lot in the District, up to and including the replacement of driveway improvements, the lot owner whose lot benefits (uses) the driveway improvements that are being repaired/replaced shall be solely responsible for the cost of the repair/replacement of the driveway improvements by the District and the said lot owner shall pay the District all of the District's costs the District incurs, including the professional services fees of the District's engineers and attorneys, that are required for the completion of the repair or replacement of the driveway improvements within the District's right of way. In the event a lot owner has installed a finished driveway surface on the driveway improvements that serve a specific lot in the District, the lot owner shall be solely responsible to replace the finished driveway surface at the lot owner's sole expense and pursuant to the District's Driveway Construction Procedure Manual in addition to any other obligation the lot owner has to pay for any repairs or replacement of any improvements in the District's right of ways.