



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

November 24, 2009

Highpoint Tower Technology, Inc.
800 South Osprey Avenue
Sarasota, FL 34236

Subject: Application No. 091013-10, **Bokeelia Harbor Resort**
Lee County, S25/T43S/R21E

Enclosed is a copy of the South Florida Water Management District's staff report covering the permit application referenced therein. It is requested that you read this staff report thoroughly and understand its contents. The recommendations as stated in the staff report will be presented to our Governing Board for consideration on **Thursday, December 10, 2009**.

Should you wish to object to the staff recommendation or file a petition, please provide written objections, petitions and/or waivers (refer to the attached "Notice of Rights") to:

Elizabeth Veguilla, Deputy Clerk
South Florida Water Management District
Post Office Box 24680
West Palm Beach, Florida 33416-4680

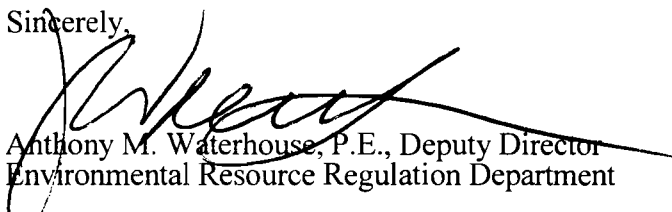
The "Notice of Rights" addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. You are advised, however, to be prepared to defend your position regarding the permit application when it is considered by the Governing Board for final agency action, even if you agree with the staff recommendation, as the Governing Board may take final agency action which differs materially from the proposed agency action.

Please contact the District if you have any questions concerning this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the addressee this 24th day of November, 2009 in accordance with Section 120.60 (3), Florida Statutes.

Sincerely,



Anthony M. Waterhouse, P.E., Deputy Director
Environmental Resource Regulation Department

AMW/ja

CERTIFIED #7003 2260 0007 1913 8957
RETURN RECEIPT REQUESTED

NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: 1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

Filing Instructions

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.

Initiation of an Administrative Hearing

Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

Mediation

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

Last Date For Agency Action: December 12, 2009

DENIAL OF REQUEST FOR EXTENSION OF PERMIT DURATION

Project Name: Bokeelia Harbor Resort

Permit No.: 36-05727-P

Application No.: 091013-10

Application Type: Environmental Resource General Permit (SB 360 Extension Request)

Location: Lee County, S25/T43S/R21E

Permittee: Highpoint Tower Technology, Inc.

Operating Entity: Bokeelia Harbor Master Owners Association, Inc

Project Area: 8.04 acres

Project Land Use: Residential
Commercial

Drainage Basin: Gulf of Mexico

Sub Basin: Tidal

Receiving Body: Charlotte Harbor and the Back Bay of Jug Creek

Class: CLASS III
OFW

Special Drainage District: NA

Conservation Easement To District : No

Sovereign Submerged Lands: No

PROJECT PURPOSE:

This application is a request for a two-year permit extension pursuant to Section 14, Chapter 2009-96, Laws of Florida,(Senate Bill 360), for Permit No. 36-05727-P/Application No. 040917-6. The current permit expiration date is May 5, 2011 and the applicant has requested an extension of the permit through May 5, 2013.

Staff recommends denial of this application because the applicant does not meet the provisions of the statute. The District sent the permittee a warning letter, which is attached, informing them that the permit should be modified to address the lack of wastewater service for the proposed development. The permit has not been modified.

DRAFT
**Subject to Governing
Board Approval**

PROJECT EVALUATION:

PROJECT SITE DESCRIPTION:

The site is located north of Jug Creek and south of Charlotte Harbor on Bokeelia Island in Lee County. A location map is attached as Exhibit 1.0.

The project site was historically used as a mobile home park with a commercial marina and no permitted surface water management facilities. The mobile home park has been removed. The site currently drains to the north and south to Charlotte Harbor and the Back Bay of Jug Creek which are tidal water bodies.

PROJECT BACKGROUND:

The original Environmental Resource Permit (Permit No. 36-05727-P/Application No. 040917-6) issued on May 5, 2006 authorized construction and operation of a surface water management system to serve 8.04 acres of mixed-use residential and commercial development known as Bokeelia Harbor Resort with discharge into tidal Charlotte Harbor and the Back Bay of Jug Creek. The permit authorized construction of a multi-family residential development, clubhouse, restaurant, hotel, continued operation of the existing marina, internal roads and surface water management facilities.

A letter was sent by the District's Office of Counsel to the applicant's counsel, Kenneth G. Oertel, Esq. on April 15, 2008 (Exhibit 2.0) outlining some of the District's concerns regarding the permitted 8.04 acre upland development (Application No. 040917-6). Specifically, the concerns outlined in this letter regarding the timing of the construction of a required sewer line or other alternative wastewater facility have not been adequately addressed by the applicant to date. On October 13, 2009, the applicant submitted a request (Exhibit 2.1) to extend Permit No. 36-05727-P/Application No. 040917-6 in accordance with Senate Bill 360, Part IV of Chapter 373, F.S.

DRAFT
Subject to Governing Board Approval

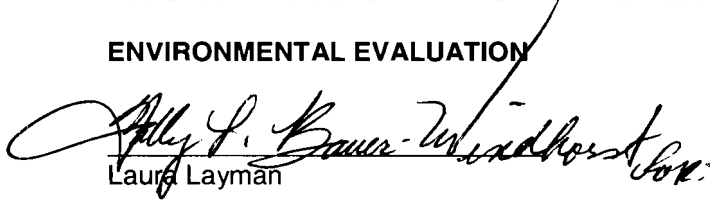
STAFF RECOMMENDATION TO GOVERNING BOARD:

Permit No. 36-05727-P/Application No. 040917-6 does not qualify for a two-year extension under Section 14, Chapter 2009-96, Laws of Florida,(Senate Bill 360), Florida Statutes for the permit expiration date from May 5, 2011 to May 5 of 2013. Based on the concerns outlined in Exhibit 2.0 which have not been adequately addressed by the applicant, it is staff's determination that this extension should not be granted pursuant to the criteria established in Senate Bill 360.

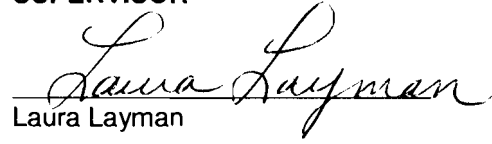
STAFF REVIEW:

NATURAL RESOURCE MANAGEMENT APPROVAL

ENVIRONMENTAL EVALUATION


Laura Layman

SUPERVISOR

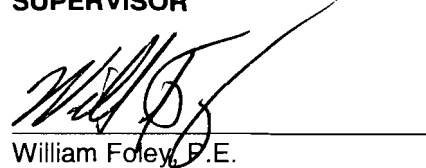

Laura Layman

SURFACE WATER MANAGEMENT APPROVAL

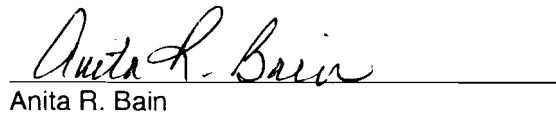
ENGINEERING EVALUATION


William Foley, P.E.

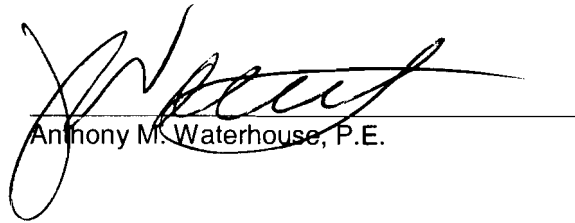
SUPERVISOR

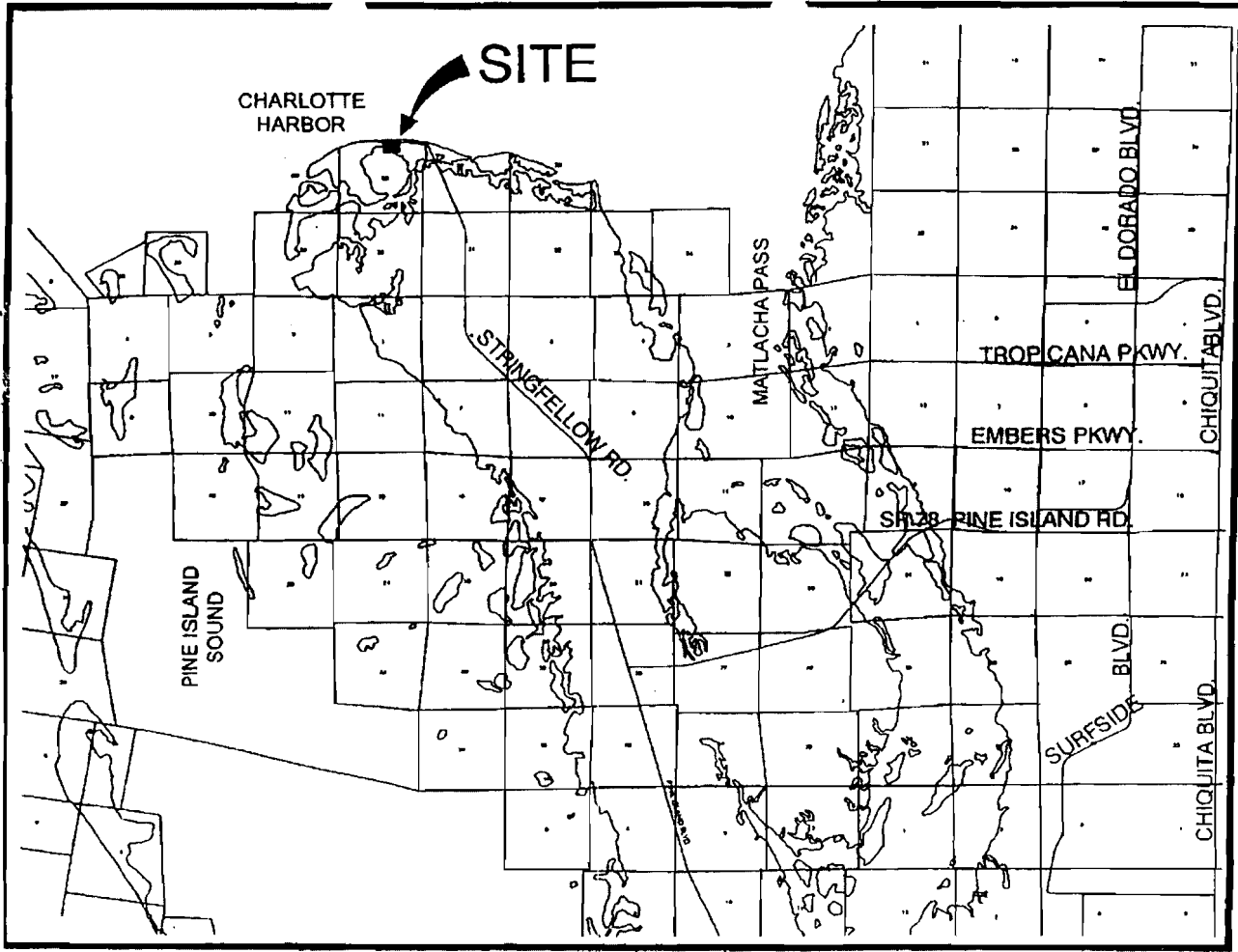

William Foley, P.E.

ENVIRONMENTAL RESOURCE PERMITTING DIVISION DIRECTOR :

 DATE: 11/18/09
Anita R. Bain

ENVIRONMENTAL RESOURCE REGULATION DEPUTY DEPARTMENT DIRECTOR :

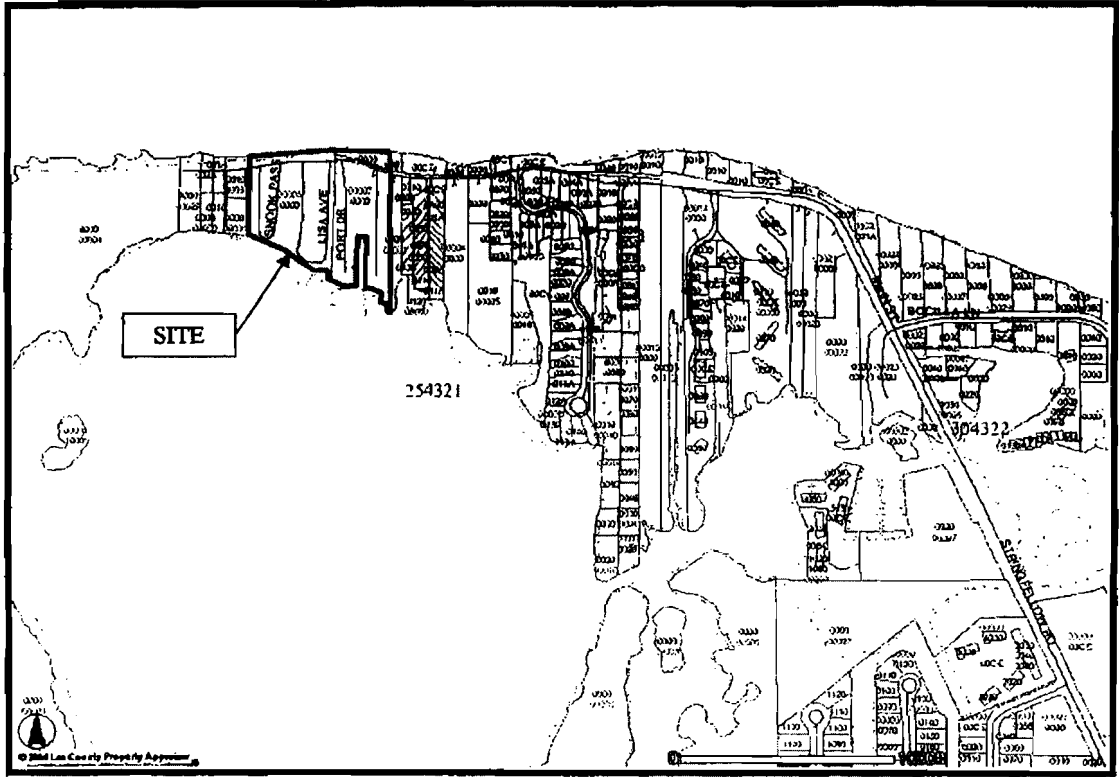
 DATE: 11/19/09
Anthony M. Waterhouse, P.E.



LOCATION MAP



MORRIS-DEPEW ASSOCIATES, INC.
ENGINEERS • PLANNERS • SURVEYORS & MAPPERS
3216 Alhambra Avenue • Fort Myers, Florida 33601 • (813) 337-8888 • FAX (813) 337-3899



Location Map



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

April 15, 2008

Kenneth G. Oertel, Esq.
Oertel, Fernandez, Cole and Bryant
P.O. Box 1110
Tallahassee, Florida 32302-1110

**RE: Highpoint Tower Technology, Inc., Permit No. 36-05727-P
and ERP Application 061023-1**

Dear Ken:

This letter is to clarify the District's concerns related to the Highpoint Tower Technology, Inc., (Highpoint Tower) development in Lee County, including both the permitted upland development (District Permit No. 36-05727-P) and the recently proposed modification to that development for docking facilities (District ERP Application 061023-1).

As you are aware, the modification for the docking facilities is presently under administrative challenge. The District has identified certain water resource concerns in its proposed agency action denying the modification for the proposed docking facilities. One basis for the concern is that the proposal includes a central sewage pump-out facility for boats, which is to connect to either a future on-site package treatment plant or a central sewer system.

If the second option were chosen, the central sewer system would be connected to an existing Lee County lift station located approximately 8 miles to the south by extending a wastewater line to the site. At this time the extension of the 8 mile sewer line is unfunded and will likely not occur for another 5 to 10 years, if at all. The other option for sewage treatment, an on-site sewage treatment plant, also appears unlikely as there are no provisions in the permit for the upland development for such an on-site package plant.

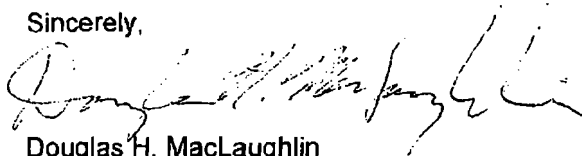
Consequently, in the decision on the modification to add the docking facilities, the District denied the permit application for, among other reasons, failure to comply with Section 3.2 of the District's Environmental Resource Permitting Basis of Review (BOR), which requires identification of wastewater facilities for a project. Additionally, the District took into account secondary impacts to water resources from construction and operation of the sewage pump-out facility (See Section 4.2.7 of the BOR). The modification for the docking facilities cannot be approved when there is no clear indication that sewage treatment will be available to prevent water resource problems coming from the proposed sewage pump-out facility.

Letter to Kenneth G. Oertel, Esq.
RE: Highpoint Tower Technology, Inc., Permit No. 36-05727-P
and ERP Application 061023-1
April 15, 2008
Page 2

Likewise, the permit for the upland development (Permit No. 36-05727-P) must be modified to also address water resource concerns regarding sewage treatment. Presently, the District does not have reasonable assurance that sewage treatment will be available for the population that will reside at the upland development. Therefore, the permittee must modify its permit to address this water resource concern. A potential way to satisfy this requirement would be to provide on-site sewage treatment, approved by the appropriate governmental agencies. The District's permit for upland development would have to be modified permit to reflect the location for the treatment facilities and a condition that construction of the development could not begin until the appropriate approvals were obtained for the treatment system.

Please contact me at 561-682-2153 or Tony Waterhouse, Deputy Director of Environmental Resource Regulation Department at 561-682-6867 within 15 days regarding how Highpoint Tower intends to address this modification of Permit No. 36-05727-P for the upland development. Failure of the permittee to seek an appropriate modification to the permit will result in the District taking action to address this concern, which may include the District imposing additional conditions on the permit or seeking revocation of the permit.

Sincerely,



Douglas H. MacLaughlin
Senior Specialist Attorney
Office of Counsel

DHM/kmn

c: Tony Waterhouse

MORRIS

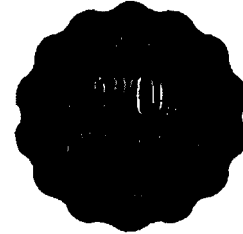
DEPEW

ENGINEERS • PLANNERS • SURVEYORS
LANDSCAPE ARCHITECTS

Fort Myers | Gainesville | Tallahassee

September 29, 2009

Mr. William Foley
South Florida Water Management District
2301 McGregor Blvd.
Fort Myers, Florida 33901



**RE: Senate Bill 360 Extension Request
Bokeelia Harbor Resort (MDA# 02027.P6)
ERP No: 36-05727-P, Application No: 040917-6**

Dear Mr. Foley,

On behalf of our client, in accordance with Senate Bill 360, Part IV of Chapter 373, F.S., we hereby request a 2- year extension of the above referenced Environmental Resource Permit from May 5, 2011 to May 5, 2013. Due to economic considerations we do not expect the applicant to act on this permit until May 5, 2012.

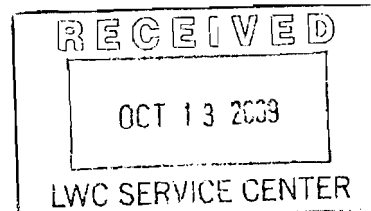
Should you have any questions or require any additional information, please contact me at your earliest convenience.

APPLICATION NUMBER

091013-10#

Sincerely,
Morris-Depew Associates, Inc.

Julie A. Allison
Engineering Technician



Attachment: Warranty Deeds
Letter of Authorization

Cc: Mr. Robert Gunther
Charles Basinait, Esquire

STAFF REPORT DISTRIBUTION LIST

BOKEELIA HARBOR RESORT

Application No: 091013-10

Permit No: 36-05727-P

INTERNAL DISTRIBUTION

- X Laura Layman - 4270
- X William Foley, P.E. - 4270
- X A. Bain - 2410
- X A. Waterhouse - 2410
- X ERC Engineering - 6861
- X ERC Environmental - 6861
- X Fort Myers Backup File - 6861
- X Fort Myers Service Center Director - 2350
- X J. Golden - 2380
- X P. McGary - 2450
- X Permit File
- X R. Valera - 2450

EXTERNAL DISTRIBUTION

- X Permittee - High Point Tower Technology Inc
- X Agent - Morris Depew Associates Inc

GOVERNMENT AGENCIES

- X Lee County - Development Services Director

OTHER INTERESTED PARTIES

- X Audubon of Florida - Charles Lee