



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
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July 14, 2004

Commercial Wharf East Property LLC  
Wharf Condominium Units LLC  
c/o Mr. Jamie Fay  
Fort Point Associates, Inc.  
286 Congress Street,  
6<sup>th</sup> FL  
Boston, MA 02210

**Re: Request for Minor Project Modification pursuant to 310 CMR 9.22  
Commercial Wharf East Property LLC and Wharf Condominium Units LLC  
(CWEPCU); Commercial Wharf  
Filled Tidelands of Boston Harbor, Boston, Suffolk County  
UAO-BO-03-6001 and UAO-BO-03-6002**

Dear Mr. Fay:

The Waterways Regulation Program (WRP) has reviewed your requests for minor modifications dated November 19 and December 12, 2003 at the Commercial Wharf East Condominium Association (CWECA) premises, in response to the Department's Unilateral Administrative Orders UAO-BO-03-6001 and UAO-BO-03-6002.

**Background:** The Commercial Wharf building, within which the subject units (# 33A, 33-1, 33-36 and 39-2, 34, 36, 38, 40, 41, 44, 45-46, and 48) (the "Subject Units") are located, is sited on lawfully filled, private tidelands as defined in 310 CMR 9.02. The historic high water mark is landward of the building and the historic low water mark is seaward of the building. The location of the historic low water mark is shown on the Boston Yacht Haven DEP license #5775. The tidelands have been lawfully filled under two legislative authorizations, Chapter 51 of the Acts of 1832, and Chapter 25 of the Acts of 1839. Under 310 CMR 9.05(3)(b), no license is required for existing structures located on lawfully filled private tidelands for which there has been no structural alteration or change in use since January 1, 1984.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-1207.

DEP on the World Wide Web: <http://www.mass.gov/dep>



**Findings:** The proposed renovations to the Subject Units do not constitute a structural alteration within the meaning of Chapter 91 as the structure will not be enlarged or expanded beyond the current height and footprint, nor will the work create any new overhangs or balconies. The proposed work involves only interior renovations, and replacement of windows.

The Department has determined that in this specific instance, the proposed change in use of the Subject Units from one form of "Facility of Private Tenancy" (i.e. office use) to another form of private tenancy (i.e. residential) does constitute a change in use requiring Departmental authorization in the form of a minor project modification.

Under 310 CMR 9.22(3)(b), the Department may approve minor project modifications which consist of "changes of use which maintain or enhance public benefits provided by the project and which represent an insignificant deviation from the original use statement of the license, in terms of function, character, duration, patronage, or other relevant parameters."

The existing use of the Commercial Wharf East Condominium Association premises is for a mix of uses, including, but not limited to, residential, office, general business, public access, and parking. As referenced above, the Department has determined that, based on the specific facts of this case, the proposed change of use of the Subject Units (12 out of 94 total units) at the CWECA premises from one Facility of Private Tenancy to another Facility of Private Tenancy represents an insignificant deviation from the use of these units which existed as of January 1, 1984. Furthermore, the Department finds that the public benefits from this proposed project will be enhanced through the petitioner's implementation of the following measures:

1. The limitation on one ground floor unit (Unit # 34) to a use that qualifies as a "Facility of Public Accommodation" as defined in 310 CMR 9.02.
2. The construction of a 260 foot long Harborwalk by CWEPWCU along the south side of Commercial Wharf in accordance with the plan entitled "Site Plan with Proposed Harborwalk Extensions", prepared by Mark Armstrong, dated March 18, 2004, revised June 21, 2004 (the "Plan") and opened to the public in accordance with the terms and conditions set forth as follows and in Paragraph #3 below;
  - a) said walkway shall be completed and open for public use no later than June 1, 2005.
  - b) the petitioner may submit in writing a request of the Department to extend said deadline, so long as the request has been submitted no later than thirty (30) days prior to the date referenced in (a) above. The Department may grant such an extension, but only upon a clear showing that the petitioner has acted diligently and has made all reasonable efforts to obtain permits and construct said facility. Unfavorable financial conditions shall not constitute good cause for delay.
3. The entry by the petitioner into a written agreement with the Commercial Wharf East Condominium Association (CWECA) which must provide for the following elements;
  - a) CWECA will agree to maintain in good repair the South Side Harborwalk in accordance with the provisions of 310 CMR 9.22 (1) as if it were part of the common areas owned by CWECA;
  - b) An Interim Connection shall be provided from the easterly end of the South Side Harborwalk to the Boston Yacht Haven marina Harborwalk at the end of Commercial Wharf. Said Interim Connection shall be marked with Department approved signage.
  - c) The existing pedestrian access provisions relating to the common areas owned by CWECA as set forth in the Rehabilitation Agreement between the Boston Redevelopment Authority (BRA) and the Trustees of Blue Water Trust, dated May 10, 1974, providing pedestrian access between 9:00 AM and sunset, will be extended for



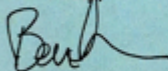
- a period of 65 years, subject to certain conditions and modifications which will be set forth in an Agreement by and between CWECA and the BRA; and,
- d) CWECA shall give conceptual approval of the Proposed North Side Harborwalk as proposed in the Plan and will not oppose nor appeal the issuance of any permits or approvals required to construct same, provided that CWECA shall not be responsible for design, construction, operation or maintenance of said Harborwalk.

The Department finds that the proposed project, which includes the required implementation of the measures identified above, will enhance public benefits at this location and, therefore, meets the criteria for the issuance of a minor project modification. The Department hereby approves the request, subject to the petitioner's implementation of all of the public benefit measures referenced herein. No filing of a license or license amendment application is required, provided the petitioner complies with all of the conditions of this minor project modification, as determined by the Department. The Department further finds that the above measures satisfy the public access requirements of the Department with respect to the use of the Subject Units.

This approval letter will be placed along with all related submissions, into the Commercial Wharf files at the Department. The proposed project modifications and all required public benefit measures and improvements must conform to and be consistent with the plans and documentation submitted to the Department, which are incorporated by reference herein as conditions of this approval.

Please be advised that this Departmental action does not relieve or exempt you from the requirement to obtain all other applicable local, state and federal authorizations necessary to perform said activities. Please contact me at (617)292-5615 if you require further assistance.

Sincerely,



Ben Lynch  
Program Chief  
Waterways Regulation Program

cc: Robert W. Gollidge, Jr, Commissioner, DEP  
Lealdon Langley, Director of Wetlands and Waterways, DEP  
Richard Lehan, Office of General Counsel, DEP  
R. McGuinness, Boston Redevelopment Authority  
T. Famulare, Boston Environment Department  
The Trustees of Commercial Wharf East Condominium Association (CWECA)  
J. Fay, Fort Point Associates  
WRP files