



Department of Environmental Protection

DEVAL L. PATRICK
Governor

RICHARD K. SULLIVAN JR.
Secretary

TIMOTHY P. MURRAY
Lieutenant Governor

KENNETH L. KIMMELL
Commissioner

Boston Boat Basin LLC
c/o Jamie Fay
Fort Point Assoc.
33 Union St., 3rd floor
Boston, MA 02108

RE: File No. JD11-3492
Commercial Wharf East Condominium Association
84 Atlantic Avenue
Boston, MA 02110
Boston Harbor,
City of Boston, Suffolk County

Dear Mr. Fay:

Enclosed is the Determination of Applicability for the referenced application issued pursuant to Waterways Regulations 310 CMR 9.06. This Determination may be recorded at the Suffolk County Registry of Deeds and a copy will be maintained in the Department files. If you have questions, please contact my office in the Waterways Regulation Program at (617)292-5615.

Sincerely,

Ben Lynch
Program Chief
Waterways Regulation Program

cc: Commercial Wharf East Condominium Association Board of Trustees
Danielle DeBenedictus
Office of Coastal Zone Management
City of Boston Environment Dep't.
R. McGuinness, Senior Waterfront Planner, Boston Redevelopment Authority
Sgt. Joe Cheever, City of Boston Harbormaster's Office
WRP/DEP files



Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

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WRP File No. JD11-3492

Municipality: Boston

Determination of Applicability- 310 CMR 9.00

From: Waterways Regulation Program, Issuing Authority

To:

Boston Boat Basin LLC
c/o Jamie Fay
Fort Point Assoc.
33 Union St., 3rd floor
Boston, MA 02108

Location of site and Property Owners:

Commercial Wharf East Condominium Association
84 Atlantic Avenue
Boston, MA 02110

Pursuant to 310 CMR 9.06, the Waterways Regulation Program (WRP) has considered the request for a Determination of Applicability and its supporting documentation, and has made the following determination:

[X] The Determination is positive: The Request for Determination of Applicability (RDA) describes changes in use from a commercial use to a residential use in thirty-six (36) units during the time period of January 1, 1984 until 2010.

310 CMR 9.05(1)(b) (Activities Requiring a License Application), states that "any existing or proposed use of any fill or structures not previously authorized, or for which a previous grant or license is not presently valid;" requires Departmental authorization in the form of a license.

310 CMR 9.05(3)(b) (Activities Not Requiring a License or Permit) states that the "no license or permit is required for the continuation of any existing, unauthorized use or structure located on private tidelands lawfully filled in accordance with a license or grant, provided that no unauthorized structural alteration or change in use has occurred on such tidelands subsequent to January 1, 1984 or in violation of an express condition of said license or grant."

Relying upon the information as submitted by the Applicant, the Department finds that pursuant to 310 CMR 9.05(1)(b), the changes of use of thirty-six (36) units from commercial to residential subsequent to January 1, 1984 described in the Request for Determination of Applicability require authorization.

[] The Determination is negative:

Issued by the Waterways Regulation Program.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this 5th day of June in the year two thousand and thirteen.



Ben Lynch
Program Chief
Department of Environmental Protection

This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, by-laws or regulations.

NOTICE OF APPEAL RIGHTS:

A) Appeal Rights and Time Limits

This determination is an action of the Department. If you aggrieved by this action, you may request an adjudicatory hearing. A request for a hearing must be made in writing and postmarked within twenty-one (21) days of the date this determination was issued.

B) Contents of Hearing Request

Under 310 CMR 1.01(6)(b), the request must state clearly and concisely state the facts which are the grounds for the request, and relief sought. Additionally, the request must state why the determination is not consistent with applicable laws and regulations.

In addition, pursuant to 310 CMR 9.17(3), any notice of claim for an adjudicatory hearing must include the following information: the WRP File Number; name of the applicant and address of the project; the complete name, address, and telephone number of the party filing the request and, if represented by counsel, the name, address and telephone number of the attorney and, if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in section 9.02; a clear statement that a formal adjudicatory hearing is being requested; a clear and concise statement of the specific objections to the Department's determination, and the relief sought through the adjudicatory hearing; and a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located. The original request and a copy of the check must be sent to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor

Boston, MA 02108

C) Filing Fee and Address

The hearing request along with a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
PO Box 4062
Boston, MA 02211

At the same time, pursuant to 310 CMR 9.17, a copy of this appeal shall be sent by certified mail or hand delivery to the applicant, and other parties to this proceeding, if any, and to the municipal official of the city or town where the project is located.

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver as described below.

D) Exceptions

The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.

E) Waiver

The Department may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.