



CELEBRATING  
55 YEARS

# nerej

## **Proposed DEP stormwater regulations impact condos**

December 01, 2009 - Owners Developers & Managers

The Mass. Department of Environmental Protection (DEP) has proposed new stormwater management regulations that could have a drastic impact on condominiums. The idea behind this new program is to reduce stormwater runoff from impervious surfaces, such as parking lots and roofs, which eventually pollute rivers and streams. The new regulations would require that private property owners take certain steps to mitigate and control pollutants from stormwater runoff.

Whether a condominium would be subject to these proposed regulations and the overall effect depends on several factors. Generally speaking, the new regulations would affect private property owners with impervious surfaces of five acres or more. However, within the Charles River watershed area, private property owners with impervious surfaces of only two acres or more would be subject to the regulations. The proposed regulations define an impervious surface as essentially any paved parking area or other surface, along with a roof. The total area of all impervious surfaces on the property is aggregated to determine whether the property has five acres or more (or two acres if within certain watershed areas).

For an existing condominium with five acres or more of impervious surface, the condominium would be required to implement baseline performance standards (regular parking lot sweeping, establishing a written plan, and training employees). However, if an existing condominium were to undergo a redevelopment the requirements are more stringent. The definition of redevelopment includes the paving of more than 5,000 s/f or 5% of the paved surface, whichever is less. Thus, if a condominium were to repave more than 5,000 s/f or 5% of its parking lot, it would be subject to stricter stormwater management regulations. The stricter regulations include the installation of rain gardens and infiltration basins; thus imposing a large expense on the association.

For an existing condominium with two or more acres of impervious surface within the Charles River watershed area, in addition to the above requirements, the condominium would also have to install stormwater control systems, regardless of whether redevelopment occurs, within 10 years. These are just some of the requirements included in the proposed regulations.

Recognizing the potential impact of these proposed regulations, members of the real estate community, including the CAI Massachusetts Legislative Action Committee (MALAC), have expressed their concerns to DEP, resulting in the delayed implementation of these regulations. Members of the DEP stakeholders group, including the MALAC, continue to work with DEP to further revise the proposed regulations prior to implementation.

This month's article was contributed by Matthew Gaines, Esq. an attorney with the law firm of Marcus, Errico, Emmer & Brooks, PC in Braintree, Mass. Gaines is also a member of the Massachusetts Legislative Action Committee (MALAC).

Jared McNabb, CMCA, PCAM, is the 2009 president of CAI N.E. and director of acquisitions at Crowninshield Management, Peabody, Mass.

