



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

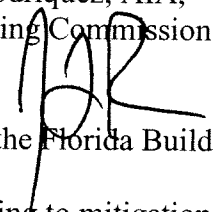
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Secretary

MEMORANDUM

TO: Chairman Raul L. Rodriguez, AIA,
Florida Building Commission

FROM: James L. Richmond, 
Attorney for the Florida Building Commission

RE: Status of rule pertaining to mitigation requirements upon roof replacement

DATE: October 15, 2007

This memorandum is prepared at your request and forwarded to the Codes and Standards Unit for dissemination as directed in the Commission's telephonic meeting earlier today. I will try to explain, as plainly as possible, the status of the rule developed by the Commission regarding required mitigation elements to be incorporated upon replacing the roof of a site-built, single-family residential structure. Hopefully, this memorandum will provide a framework from which local authorities may determine the appropriate course of action.

The Commission's activities in this regard have been in response to newly enacted Section 553.844, Florida Statutes (2007). On August 21, 2007, the Commission gave its final approval of the text of the manual defining the mitigation techniques and requirements. Codes and Standards staff sent an informational bulletin to building departments throughout the State on September 9, 2007, summarizing the requirements and emphasizing the statutorily prescribed effective date of the rule, October 1, 2007. On September 12, 2007, the Department received a copy of a rule challenge filed by an individual contractor with the Division of Administrative Hearings that was not anticipated by the September 9 memorandum. Although the challenge was procedurally inappropriate, it prevented the Commission from filing the rule with the Department of State. The challenge was dismissed by the Division of Administrative Hearings on October 11, 2007.

The subject rule has not been adopted as that term is defined in the Administrative Procedures Act, because it has not been filed with the Department of State. Barring legislative intervention, I anticipate filing the rule as approved by the Commission no later than October 25, 2007, based upon the Commission's action on the rule on August 21, 2007. On the conference call this morning, the Commission voted to hold additional proceedings in the event that the legislature addresses the issue of mitigation requirements during Special Session D. In that event, I anticipate that the rule will not be filed with the Department of State until after January 1, 2008 because the Commission would have to hold an additional hearing at its December meeting to

2555 SHUMARD OAK BOULEVARD TALLAHASSEE, FLORIDA 32399-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
2796 Overseas Highway, Suite 212
Marathon, FL 33050-2227
(305) 289-2402

COMMUNITY PLANNING
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-2356

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-7956

address any new legislative direction and publish a Notice of Change as a result of that hearing. Commissioners and other affected parties have reported substantial deviation among authorities having jurisdiction to enforce these construction regulations. Those who focus on the Commission's responsibility to adopt the mitigation requirements by rule are delaying enforcement of the requirements until the rule is filed with the Department of State. Those who focus on the October 1, 2007 deadline and the announced legislative perception of the need for these provisions have been reported to be implementing the requirements effective October 1, 2007. Still others have imposed moratoria on roofing permits until the matter is resolved. I believe that arguments can be made in favor of all of these actions, and strongly advise all building departments to consult with their local government's attorney to determine the appropriate schedule to implement these requirements.

cc: Codes & Standards