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## MEMO

**TO: All Building Officials in Miami-Dade County**

**FROM: Herminio F. González, P.E., Director**  
**Building Code Compliance Office** 

**DATE: October 17, 2007**

**SUBJECT: Hurricane Mitigation Rule Not Filed**

This information is provided to supplement the September 25<sup>th</sup>, 2007 Memorandum on Hurricane Mitigation issued by this Office.

On September 9, 2007 a directive from the State of Florida Department of Community Affairs (DCA) was distributed. The order appeared under the name of the Governor and the Secretary of the DCA and addressed the implementation date for the legislatively established hurricane mitigation retrofit requirements for buildings undergoing alteration. The directive from the DCA provided notice that the requirements would take effect as required by law, on October 1, 2007. This information was previously conveyed to all Building Officials in Miami-Dade County in the memorandum of September 25, 2007.

On October 15, 2007 a special meeting of the Florida Building Commission was conducted via telephone conference. At this meeting, the Counsel for the Commission admitted he has not filed the rule implementing the hurricane mitigation requirements as mandated by Florida Statute 553.844. In part, this was due to an unsuccessful challenge to the rule. At this time, the path is clear to file the rule; however, the Commission's Counsel has elected to delay the filing of the rule until after the close of the special session of the Legislature now taking place.

This special session ends October 22, 2007. The Commission Counsel's decision for his continued delay in filing the rule relates to the potential that the Legislature could take up the issue of the hurricane mitigation requirements and may, in part or in its entirety, delay implementation of the law. In the event this does not occur by the close of the session on October 22, 2007, the Commission's Counsel has indicated he will then file the rule with the Florida Department of State, compelling

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enforcement of the hurricane mitigation requirements, making the rule retroactive to October 1, 2007. Under the applicable statutory language there is a possible statutory interpretation that the finally adopted Florida Administrative Rule will have an effective retroactive date of October 1, 2007.

Based on the revelations that the Commission's Counsel has failed to file the rule as ordered by the Legislature, the Miami-Dade County Attorney's Office issued an opinion on October 17, 2007. **The County Attorney's Office has determined that the Florida Building Commission has not finally adopted the administrative rule and that until such rule is adopted, the Building Officials within Miami-Dade County are not required to comply with the requirements set forth in the administrative rule.**

Nevertheless, once the Commission's Counsel has filed the rule, enforcement must be resumed. Legal questions relating to the retroactive nature of the filing must be analyzed by the County Attorney's Office; if in fact the rule's implementation date is adopted retroactively.

If you have any questions, please contact Mr. Michael Goolsby, Code Compliance Division Chief at (305) 375-4496.