

Practice Update

# Can Florida's Construction Sites Be Hurricane-Proofed?

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One of the biggest threats during a hurricane is windborne debris, and its potential to cause severe property damage and personal injury. Trees, fences, patio furniture, roof tiles, and the like can all become deadly projectiles in a hurricane. Construction sites, which are typically laden with loose materials and equipment, are especially at risk for contributing windborne debris during a hurricane. In the last 30 years, local counties and cities, including Miami-Dade County, Bradenton, Venice, St. Pete Beach, and West Palm Beach, have enacted legislation punishing contractors (and project owners) for failing to secure their sites during the threat of a tropical storm or hurricane.

For instance, the City of Bradenton makes it *illegal* for any person (which on its face, would apply to project owners and contractors equally) to allow construction related materials to remain loose or unsecured at a construction site from 24 hours after a hurricane watch has been issued, until the hurricane watch or warning has been lifted. Violating this ordinance is classified as a second-degree misdemeanor, subjecting the violator to a fine of up to \$500 or imprisonment of up to 60 days. Similarly, the Miami-Dade ordinance has strict rules in place with respect to cranes and other hoisting equipment, requiring, for example, that tower crane turntables be lubricated prior to the

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event, that mobile cranes with fixed booms be laid down wherever feasible, that hydraulic cranes have booms retracted and stored, that any counterweighted hoist have the counterweight locked below the top tie-in, that any tower crane be set in weathervane position, that all rigging be removed from the hoist block, and that all power at the base of the tower be disconnected by the general contractor. Failure to comply can subject the owner and its general contractor to civil fines, as well as an action by the county in the event of damage to the public health or safety caused by such non-compliance, and who may otherwise halt any expected recommencement following the storm.

In order to ensure compliance with these laws and to avoid civil and criminal punishment for the failure to comply, it is incumbent on owners to include storm preparation requirements in construction contracts with builders. At a time when owners may be predominantly concerned with a hurricane's financial impacts and schedule delays on a project, these types of laws are meant to force owners to focus on properly preparing their sites in the event of a hurricane. With this in mind, owners need to review their construction contracts to ensure that they contain the following types of provisions (including any others required in their particular jurisdiction):

- Contractors should be required to be familiar with and comply with all federal, state and local rules, regulations, codes and other laws applicable to storm preparation for the project at issue.
- During the course of the project, contractors should be required to consistently monitor the National Weather Service and the National Hurricane Center for weather emergencies in the area.
- In addition to any specific local legal requirements, contractors should be required to fully secure the project site at least 24-48 hours prior to any predicted landfall of a tropical storm

or hurricane in the area. Such measures can include the requirement that: construction materials stockpiled at the site (such as boards, bricks, etc.) be banded together and fastened to a secure structure; construction materials (such as loose roofing tiles) be removed from the tops of structures and secured to the ground; construction materials either be stored inside of the structures (if the structures are secure from wind loads), or removed entirely from the site and stored elsewhere so that materials do not become safety hazards; construction site dumpsters be removed in advance of the storm, or otherwise weighed down, secured to a structure, and covered with mesh or other durable, wind resistant materials; and portable toilets be secured to the structure, or properly emptied, laid horizontally, and secured to the ground.

- Contractors should be required to conduct pre-storm inspections of the site to ensure that all loose materials, debris and other possible windborne items are properly secured, and should be required to take video and other photographic evidence of the condition of the site prior to the storm.
- Contractors and their subcontractors and other lower tiers should be required to implement and comply with a fully integrated written “hurricane plan,” a copy of which should be attached to all applicable construction contracts for the project.

Naturally, these measures implicate demobilization, mobilization, and overhead costs that the contractor will ultimately try to seek from the owner. Anti-escalation clauses that specifically reference the potential threats a tropical storm or hurricane might pose should further be incorporated into these “hurricane proof” contracts to address this issue. Contractors, as a result, will be more cognizant of the risks inherent in hurricane-region construction and will, hopefully, hold their subcontractors to higher standards and require that storm proofing obligations be imposed to all lower tiers.

Contractors, similarly, should lean on their subcontractors and material suppliers to adequately assess and respond to hurricane threats. For example, in addition to traditional “responsive and responsible” considerations, contractors should look to their subcontractors to create and enforce written hurricane protocols, and should make those policies express parts of their subcontracts. Subcontractors should be required to participate in preparations immediately preceding a tropical storm or hurricane, such as assisting with the shoring of their work, and the removal of materials incidental to their specific trade.

Finally, for both owners and contractors alike, enacting and enforcing a comprehensive written hurricane protocol can prove invaluable when a hurricane threatens. Hurricane preparedness protocols, written into or made express parts of the contract for construction, should cover all aspects of a hurricane threat or strike, such as: communication and coordination of the hurricane plan among lower tiers; protection of the site; securing and removal equipment and materials; emergency contacts for before, during, and after the storm; and restoration of work and cleanup after the storm has passed. Although every construction project is different, a properly implemented hurricane preparedness protocol is likely to improve responsiveness to the uncertainty of tropical storm and hurricane threats on almost any size and type of project.

This update has been revised and was originally published in the *Daily Business Review* in 2007.

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