

Formal Technical Critique of Proposed Rule

Chapter 61G15-38: Responsibility Rules of Professional Engineers Concerning the Evaluation of Damaged Structures

Prepared for the Florida Board of Professional Engineers

March 2026

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1.0 EXECUTIVE SUMMARY

This document provides a formal technical critique of proposed Rule Chapter 61G15-38 and its subparts. While the objective of promoting quality and consistency in engineering evaluations is appreciated and consistent with the mission of the Board, the rule as currently drafted contains structural, definitional, and drafting deficiencies that create substantial ambiguity, impractical compliance burdens, and unintended regulatory consequences. Administrative rules must provide clear notice of regulated conduct and be capable of consistent and practical application in real-world professional practice; several provisions of the proposed rule raise questions regarding whether those standards are satisfied. Specifically, the proposed rule contains provisions that:

- ▶ Are legally ambiguous and subject to inconsistent interpretation;
- ▶ Regulate key operative terms that are not defined;
- ▶ Impose prescriptive documentation and analysis requirements that may be impractical or impossible to apply uniformly in real-world engineering practice;
- ▶ Create enforcement exposure based on procedural technicalities rather than substantive engineering misconduct; and
- ▶ Unduly constrain professional engineering judgment as contemplated by Chapter 471, Florida Statutes.

The prescriptive reporting, documentation, and analysis requirements contemplated by the rule would also produce unintended consequences for the public. Compliance with the rule would significantly increase the time, cost, and professional liability exposure associated with preparing a compliant report. These burdens would likely translate into higher expert retention costs, longer claim investigation timelines following disaster events, increased claim transaction costs for insurers, and ultimately higher property insurance costs borne by policyholders.

Several key operative terms in the proposed rule are not defined, including “damage,” “damage evaluation,” and “Damage Evaluation Report.” The absence of these definitions creates legal ambiguity and increases the likelihood of inconsistent interpretation and enforcement.

In addition, the proposed rule fails to address several routine and essential aspects of forensic engineering practice, including investigative scope limitations, practical constraints on testing and inspection, and situations in which damage is alleged but no damage can be identified through accepted engineering methods.

The sections that follow identify specific structural and drafting deficiencies within the proposed rule and offer recommendations intended to improve clarity, enforceability, and alignment with the practical realities of professional engineering practice.

2.0 GLOBAL DEFICIENCIES

2.1 Failure to Define “Damage”

The proposed rule repeatedly refers to “damage” without defining the term. This omission creates regulatory ambiguity because the term “damage” may reasonably encompass any of the following examples of real-world scenarios:

- ▶ Structural damage affecting load-bearing capacity
- ▶ Cosmetic or aesthetic conditions
- ▶ Conditions that do not impair performance or serviceability
- ▶ Manufacturing defects
- ▶ Installation deficiencies
- ▶ Age-related deterioration
- ▶ Malfunction or inoperability of components
- ▶ Maintenance-related deficiencies
- ▶ Mechanical, electrical, or plumbing-related failures
- ▶ Conditions affecting the indoor environment such as biological contaminants, airborne particles, or the presence of specific construction materials
- ▶ Hazards of a geological nature that pose an impending threat of collapse but have not yet caused physical harm to a building
- ▶ Pre-existing conditions unrelated to any claimed event
- ▶ Unobservable, undetectable, or unverifiable issues purported to be damage by a claimant

Without a definition, engineers cannot determine with certainty whether the rule applies to a given condition. Similarly, the Board cannot enforce compliance consistently, as engineers may reasonably disagree regarding whether a given condition constitutes “damage.” This ambiguity increases the likelihood of inconsistent enforcement and arbitrary regulatory outcomes.

2.2 Failure to Define “Damage Evaluation” or “Damage Evaluation Report”

The proposed rule does not define “Damage Evaluation” or “Damage Evaluation Report.” This omission is highly problematic because it gives an engineer an immediate compliance loophole by simply defining their work product as something other than a “Damage Evaluation Report,” thus creating a massive enforceability defect because the applicability of the rule becomes dependent upon subjective characterization of engineering services rather than objective conduct.

In the absence of a clear definition, engineers could reasonably characterize their services using alternative terminology such as “engineering opinion,” “limited scope inspection,” or “condition assessment,” and conclude that the rule does not apply.

Conversely, the Board may attempt to enforce the rule based on its own interpretation of whether an activity constitutes a “Damage Evaluation,” creating inconsistent enforcement and lack of fair notice.

Administrative rules should clearly define regulated conduct to ensure predictable and consistent enforcement. As simple as it may seem, the absence of a clear definition for “Damage Evaluation” creates ambiguity that undermines enforceability and increases the likelihood of inconsistent regulatory outcomes.

To be clear, engineering services offered in the same category as “Damage Evaluation” may still vary widely in scope, including but not limited to:

- ▶ Limited visual inspections
- ▶ Targeted component evaluations
- ▶ Full structural condition assessments
- ▶ Cause and origin determinations
- ▶ Repair design investigations
- ▶ Litigation consulting

Each of these activities may involve different methodologies, levels of analysis, and documentation. And without a clear definition, engineers cannot readily determine when the rule applies or what level of investigation is required to achieve compliance. This creates operational and regulatory uncertainty, in addition to the above-described subjectivity of enforcement.

2.3 Failure to Address Situations in which no Damage is Identified

The proposed rule assumes that damage exists and requires documentation of “observed and recorded damage.” However, in many cases, engineers are retained when there are claims of damage that:

- ▶ Does not exist;
- ▶ Cannot be observed, detected, measured, or otherwise verified using accepted engineering methods;
- ▶ Is alleged, perceived, or reported by building occupants or third-party representatives but are not demonstrable upon inspection; or
- ▶ May involve observable conditions, but for which no causal relationship to the claimed event can be reliably established.

The proposed rule provides no guidance regarding compliance in such circumstances. This omission creates logical and regulatory inconsistency, as engineers cannot document damage that does not exist, and cannot rely upon evidence or information that is not able to be verified.

As written, the rule fails to clarify whether a report concluding that no damage exists constitutes a compliant “Damage Evaluation Report,” or whether the engineer is required to document or analyze conditions that are not present or cannot be substantiated. This lack of clarity creates regulatory

ambiguity and exposes engineers to potential enforcement action despite having performed appropriate and competent investigations consistent with accepted engineering practice.

Additionally, this omission may discourage engineers from issuing conclusions that no damage exists, due to concern that such reports could be deemed noncompliant solely because they do not include documentation of “observed and recorded damage.” This outcome would undermine the integrity of engineering evaluations and is contrary to the Board’s public protection mission.

2.4 Failure to Address Scope Limitations and Investigative Constraints

Engineering investigations are frequently subject to limitations, including:

- ▶ Lack of access to items or information not reasonably obtainable;
- ▶ Lack of destructive access;
- ▶ Lack of access to concealed components;
- ▶ Lack of original construction documentation;
- ▶ Information withheld by interested parties;
- ▶ Access restrictions imposed by interested parties;
- ▶ Time constraints imposed by interested parties;
- ▶ Safety constraints;
- ▶ Budget limitations.

The proposed rule does not recognize these limitations or provide guidance regarding compliance when investigations cannot be performed to the extent contemplated by the rule.

This omission creates regulatory exposure for engineers operating within reasonable investigative constraints.

3.0 SECTION-BY-SECTION CRITIQUE

3.1 61G15-38.001 General Responsibility of Engineers Conducting Damage Evaluations

This section mandates compliance with ASCE/SEI 30-14 and ASCE/SEI 11-99. While following the general approaches described in these standards is considered good practices, the standards themselves are intended for comprehensive condition assessments and may not be applicable to limited-scope assessments of damage or alleged damage to buildings. Mandating compliance in all cases creates impractical requirements and increases cost without corresponding public benefit.

3.1.1 Subsection (1): Applicability Ambiguity

In saying “buildings, structures and sites that *have been* damaged,” (emphasis added) this subsection assumes damage exists and creates ambiguity in situations when no damage is present.

3.1.2 Subsection (3): Mandatory ASCE/SEI 30-14 Compliance

As stated above, mandatory compliance with this standard may create an impractical investigative burden and exceed the scope of a limited forensic investigation.

3.1.3 Subsection (4): Mandatory ASCE/SEI 11-99 Compliance

As stated above, mandatory compliance with this standard may create an impractical investigative burden and exceed the scope of a limited forensic investigation.

3.2 61G15-38.002 Specific Responsibility of Engineers Providing Damage Evaluations

Numerous ambiguities exist in this section. Each subsection is addressed separately below.

3.2.1 Subsection (1): Education, Expertise, Experience, and Specific Knowledge

The following ambiguities and issues exist in this subsection:

- ▶ “Damage assessment” is not defined within the rule. This is also a different term than was previously utilized (“damage evaluation”).
- ▶ “Relevant” education, expertise, and experience are undefined and can be subjectively interpreted. No objective criteria establish what constitutes sufficiency in any of these aspects, and this creates a risk of hindsight enforcement, where the term “relevant” is judged only after an unfavorable outcome.

3.2.2 Subsection (2): Technical Qualifications and Professional Judgment

The following ambiguities and issues exist in this subsection:

- ▶ This subsection is subjective as there is no measurable threshold for compliance or enforcement.
- ▶ “Technical qualifications” is undefined, although this would seem to be largely duplicative of the issues discussed in subsection (1).
- ▶ “Professional judgment” is inherently subjective and variable among competent engineers.
- ▶ It is ambiguous whether this provision creates a higher standard than general licensure requirements.

3.2.3 Subsection (3): Mechanism of Failure, Causation, and Condition

The following ambiguities and issues exist in this subsection:

- ▶ “Identify the mechanism of failure” presumes that a failure has occurred. This does not address situations where:
 - No damage is present
 - Observed conditions do not constitute failure
 - Distress exists without an identifiable mechanism
- ▶ In identifying a “Causation” the subsection does not define a standard of proof, such as a ‘reasonable engineering probability.’
- ▶ The subsection does not address scenarios of:
 - Multi-factor causation
 - Indeterminate causation
 - Insufficient or unreliable data to determine causation
 - Determination of causation not possible due to the actions of others beyond the engineer’s control, such as evasion, concealment, withholding, or spoliation of evidence
- ▶ “Document the actual condition” does not define the level of documentation required, and does not indicate the extent to which concealed or inaccessible conditions must be addressed.
- ▶ A conflict is created where damage is alleged but “damaged components” are not observed or cannot be documented.

3.2.4 Subsection (4): Responsibility for All Aspects of Damage Report

The following ambiguities and issues exist in or are created by this subsection:

- ▶ “All aspects” is broad and undefined.
- ▶ There is potential overlap or conflict with “responsible charge” as defined in 61G15-18.011 and delegation rules.
- ▶ There is no specificity as to the scope of responsibility the engineer would have for items collected or prepared by third-party providers, such as laboratory/testing reports. As written, this subsection would make the engineer strictly liable for all underlying data, regardless of delegation structure.

3.2.5 Subsection (5): Referred or Assigned to a Delegated Engineer

The following ambiguities and issues exist in this subsection:

- ▶ Neither “referred” nor “assigned,” nor the distinct differences between these actions, are defined.
- ▶ There is no clear threshold for what constitutes delegation or what would trigger an obligation to report collaboration with another engineer. For instance:
 - It is unclear whether an action such as informal consultation would be considered delegation, and if so, whether it would be necessary to indicate the name of the collaborator and the topic(s) discussed.

- It is unclear whether routine internal collaboration would trigger this obligation to report assignment or delegation.
- ▶ There is also no prescribed method for how parts of a report that were referred or assigned are to be identified, or what amount of information is to be provided.

3.2.6 Subsection (6): Review Documents of the Delegated Engineer for Conformance

The following ambiguities and issues exist in this subsection:

- ▶ This subsection requires cross-reference to another rule without summarizing applicable standards.
- ▶ There is no indication as to the depth of the required review: procedural, technical, or both.
- ▶ There is no indication as to the requirement for documentation of the review process or for the standard for the adequacy of the review.

3.2.7 Subsection (7): Verify Accuracy of Information

The following ambiguities and issues exist in this subsection:

- ▶ “Verify accuracy” is undefined, and the extent to which any information can be practicably verified as accurate is subjective.
- ▶ There is no defined standard of care in this proposed rule for how the accuracy of information recorded by others is to be verified by the engineer.
- ▶ This subsection potentially exposes engineers to disciplinary action for minor transcription or measurement errors that do not materially affect a valid conclusion or outcome of a project.

3.3 61G15-38.003 General Requirements for Damage Evaluation Reports

This section imposes prescriptive reporting requirements regardless of scope, complexity, or relevance to the engineer’s conclusions.

No distinction is made between comprehensive structural investigations and limited-scope evaluations, thereby creating compliance burdens that may exceed what is necessary to reach reliable engineering conclusions.

Each subsection is addressed separately below.

3.3.1 Subsection (1): Mandatory Compliance with Chapter 5 of ASCE/SEI 30-14

The following ambiguities and issues exist:

- ▶ Chapter 5 of ASCE/SEI 30-14 is part of a comprehensive condition assessment guideline for building envelope evaluation. It is not drafted specifically for limited forensic investigations of alleged damage. Mandatory compliance in all cases fails to distinguish between comprehensive building condition assessments and focused damage evaluations.
- ▶ Many damage evaluations involve limited components or discrete conditions. Requiring full compliance with Chapter 5 may impose reporting structure and documentation requirements that are disproportionate to the scope of the assignment.

- ▶ The rule does not clarify whether “comply” requires strict adherence to every reporting element of Chapter 5, or whether substantial compliance suffices. This creates uncertainty regarding enforcement thresholds.
- ▶ Engineering reports should reflect the scope and objective of the assignment. Mandating uniform compliance with an external reporting standard constrains professional judgment regarding appropriate report structure.
- ▶ While incorporation by reference is permitted, mandatory compliance with copyrighted material not freely accessible to the public may raise practical concerns regarding accessibility and clarity of enforceable standards.

3.3.2 Subsection (2): Signed and Sealed by the Engineer Who Prepared the Report

The following ambiguities and issues exist:

- ▶ Existing rules already govern signing and sealing obligations. This subsection may be duplicative, create unintended overlap, or create unnecessary conflict between rules.
- ▶ The language states “prepared the Report,” which may be interpreted more narrowly than “in responsible charge.” Under current rules, engineers may sign and seal documents prepared under their supervision per the definition of responsible charge in 61G15-18.011. The subsection does not clarify whether “prepared” is intended to mirror the concept of responsible charge or impose a stricter standard.
- ▶ The rule does not address situations where multiple engineers contribute to a report. It is unclear whether co-sealing is required or how responsibility is allocated.

Clarification is necessary to avoid inconsistency with established responsible charge and delegation provisions.

3.3.3 Subsection (3): Inclusion of Resume or C.V.

Mandating inclusion of a resume in every report is a procedural preference rather than a substantive necessity, and may not be reasonably related to public protection.

The following ambiguities and issues exist in this subsection:

- ▶ The rule does not explain the regulatory objective of this requirement. Engineer qualifications are already regulated through licensure.
- ▶ The rule requires inclusion of a resume in every Damage Evaluation Report, regardless of context. It is unclear how omission of a resume would materially affect public safety or engineering competence.
- ▶ Resumes may contain personal information or project history that may not be appropriate for disclosure in all contexts.
- ▶ This requirement increases report length and preparation time with no clear public benefit.

3.3.4 Subsection (4): Required Report Contents “If Applicable”

The inclusion of “If applicable” is appropriate in concept; however, the subsection presents several ambiguities and practical concerns. Comments for each item (a) through (f) are as follows:

- (a) “Name and date of weather or damage event”
- ▶ The rule presumes that a discrete event exists. It does not address situations where damage is alleged to have occurred gradually, over time, or without a clearly identifiable event.
 - ▶ It is unclear how engineers are to comply when no reliable date or event can be established.
- (b) “Date(s) of on-site inspection(s)”
- ▶ This requirement is generally reasonable; however, the rule does not address circumstances in which physical inspection was not permissible/feasible, or cases in which a document review or peer review was being performed.
 - ▶ It is unclear whether absence of an on-site inspection precludes issuance of a compliant report.
- (c) “Identification of individual(s) performing inspections”
- ▶ The rule does not define whether all participants, including assistants or technicians, must be identified.
 - ▶ It is unclear whether informal participation, limited field assistance, or photography by others triggers disclosure obligations.
- (d) “Identification of references, tests, publications, applicable building codes, industry standards, and specific chapter(s) or sections relied upon”
- ▶ This requirement is overbroad, and may impose an obligation to list all potentially applicable codes or standards, even if not central to the conclusions.
 - ▶ The rule does not distinguish between primary reliance and background reference.
 - ▶ It is unclear whether failure to cite a specific chapter or section could constitute noncompliance even if conclusions are technically sound.
 - ▶ Absent clarification, enforcement may become focused on citation completeness rather than substantive engineering adequacy.
 - ▶ This requirement increases report length and preparation time with no clear public benefit.
- (e) “Documentation of all observed and recorded damage”
- ▶ The phrase “all observed and recorded damage” is absolute and does not distinguish between material and immaterial conditions.
 - ▶ The rule does not address situations in which no damage is observed.
 - ▶ The level of documentation required is undefined.
 - ▶ This provision risks creating procedural exposure unrelated to engineering competence.
- (f) “Documentation of any destructive or selective demolition performed”
- ▶ This requirement is generally reasonable; however, it is unclear what level of detail is required to document such activities.

3.3.5 Subsection (5): Mandatory Meteorologist Documentation

Without a relevance-based limitation, this provision imposes a uniform requirement that may not be reasonably related to public protection in all cases.

The following ambiguities and issues exist:

- ▶ The rule assumes the relevance of weather data and requires meteorologist involvement regardless of the specifics of the event(s) under investigation.
- ▶ The rule removes engineering judgment by requiring the inclusion of a meteorologist's report regardless of its applicability or reasonableness in an engineering analysis.
- ▶ The rule does not define what constitutes a "qualified meteorologist."
- ▶ Mandatory involvement of a meteorologist in all applicable cases materially increases investigation cost and may reduce public access to engineering services.
- ▶ Requiring consultation with another licensed profession in all cases may exceed the Board's authority to regulate engineering practice.
- ▶ This requirement will materially increase costs and reduce public access to engineering services.

3.4 61G15-38.004 Roof Covering Systems

This section imposes extensive prescriptive content requirements for roof-related Damage Evaluation Reports. While some listed items may be appropriate in certain investigations, the rule uses mandatory language and absolute documentation requirements without providing materiality thresholds, feasibility limitations, or guidance on evidentiary standards.

The section also creates internal inconsistency by requiring certain information "if available" in some clauses while requiring absolute inclusion in others, even where such information may be unobtainable without destructive testing, unavailable historic records, or third-party cooperation. In many existing structures, original construction documentation, fastening details, or concealed structural elements are unavailable or inaccessible without destructive testing. The rule does not address these practical limitations.

3.4.1 Subsection (1): General Requirements for All Roofing Covering System Reports

The same core issues discussed in 3.3.4 (lack of materiality standards, undefined documentation thresholds, and presumption that damage exists) and 3.3.5 (meteorologist documentation mandate) recur throughout the items in this subsection.

Items (a)–(h) concern the roof type, age, applicable codes/standards, attachment method, geometry/configuration, NOA, permits, and historic code standards.

- ▶ These requirements collectively raise the same feasibility and ambiguity issues addressed in 3.3.4(d) (undefined scope of "codes/standards relied upon") and Section 2.4 (scope/access limitations).

- ▶ Several items also require information commonly unavailable without destructive access or historic records.

Items (i) and (j) concern “damage... as a result of the specific event” and “mechanism of failure or causation.”

- ▶ These requirements repeat the presumptive and outcome-assumptive causation issues addressed in 3.2.3 (mechanism of failure and causation, undefined standard of proof, indeterminate or multi-factor causation, and data limitations).

Items (k) and (l) concern roof plan and photographs.

- ▶ These repeat the documentation threshold issues in 3.3.4(e) (absolute documentation, undefined level of detail, “all” type requirements, and practical limitations).

Item (m) concerns a weather event description with meteorologist documentation.

- ▶ See 3.3.5 which addresses the issues regarding the meteorology report requirements.

Item (n) concerns interview information from owners/contractors/others.

- ▶ This repeats the access/control limitation problem discussed in 2.4.
- ▶ The rule does not establish whether lack of interviews constitutes noncompliance.
- ▶ The rule does not establish what qualifies as an “interview.”
- ▶ Engineers cannot compel participation by others in an interview; therefore, should not be compelled to provide information from interviews in a report.

3.4.2 Subsection (2): Steep Slope Tile Roofing Systems

This subsection is an expanded checklist version of Subsection 1 (3.4.1) and repeats the same core issues: feasibility, access, materiality, undefined documentation thresholds, and presumption of causation. See 2.4, 3.3.4, and 3.2.3. Notable additional issues include:

- ▶ There is an unreasonable expectation that laboratory or proprietary data be acquired. Items such as tile strength, density, and weight, as required in Item (a), raise the same “not reasonably obtainable” issue discussed in 2.4.
- ▶ There are strong implications that certain testing and calculations are requirements of a Damage Evaluation, regardless of their relevance. For instance, the test called out in Item (m) (Testing Application Standard 102) would not be an applicable or relevant test to determine the extent of damage to a tile roof, given that it is a product approval test for use in controlled, laboratory conditions; it does not:
 - Evaluate existing field conditions;
 - Provide criteria for determining whether a tile is damaged;
 - Establish a threshold for when replacement is required;
 - Quantify how many tiles are compromised;

- ▶ The rule compels the engineer to make an after-the-fact assertion regarding installation compliance. Item (p) specifically states that the report should address “how the roofing system has been installed in accordance with” RAS 118, RAS 119, and RAS 120. This requirement:
 - Raises the same “not reasonably obtainable” issue discussed in 2.4;
 - Unduly expands the scope of a Damage Evaluation, encompassing aspects other than assessing damage;
 - Unduly exposes the engineer to an expanded liability risk if a subsequent failure or leak occurs, wherein their opinion could be construed as a broad certification of installation quality.
- ▶ The “additional recommended standards” list in (w) further illustrates the same “incorporation-by-reference sprawl” concern addressed in 3.3.1 (mandatory reliance on extensive external material without clear applicability thresholds).

3.4.3 Subsection (3): Asphaltic/Fiberglass Shingle Roofing Systems

This subsection repeats the same categories of requirements and the same critiques addressed in 3.4.2 and 3.4.1, especially regarding concealed information (fasteners, underlayment, headlap/exposure), undefined documentation thresholds, and checklist enforcement risk. See 2.4, 3.3.4, and 3.2.3. However, it is worth highlighting the following concern in particular:

- ▶ There are strong implications that certain testing and calculations are requirements of a Damage Evaluation, regardless of their relevance. For instance, the tests called out in Item (l) would not be an applicable or relevant tests to determine the extent of damage to asphaltic/fiberglass shingle roof systems, given that they are assembly qualification tests for brand new roofing products in controlled, laboratory conditions, intended for the purpose of assigning performance ratings; the tests do not:
 - Evaluate existing field conditions on in-service roofs;
 - Provide criteria for determining functional impairment;
 - Establish a threshold for when replacement is required;
 - Quantify damage;

3.4.4 Subsection (4): Low Slope Roof Covering Systems

This subsection again repeats the same checklist issues addressed above. See 2.4 and 3.3.4. Notable additional issues include:

- ▶ There are implied mandates for specialized testing. Items (l), (o), and (t) reference specialized ASTM testing/methods and independent laboratory moisture surveys. The rule is ambiguous as to whether these are required or merely examples. This mirrors the “mandatory vs optional ambiguity” concern discussed in 3.3.4 and 2.4.

3.4.5 Subsection (5): Metal Roof Covering Systems

This subsection repeats the same structure and recurring issues from 3.4.2–3.4.4. See 2.4, 3.3.4, and 3.2.3, with the following additional notable issue:

- ▶ Version control and incorporation by reference via link. Item (r)(viii) references an externally hosted MBMA document. The rule does not clarify whether the incorporated content is frozen as of adoption, creating uncertainty and potential retroactive compliance changes.

3.5 61G15-38.005 Wall Opening Systems and Fenestration Products

This section imposes mandatory content requirements that, in places, resemble design-level documentation obligations rather than forensic evaluation requirements. Several provisions repeat the same issues already discussed in Sections 2.1–2.4, 3.2, and 3.3.

3.5.1 Global Drafting and Clarity Issues

The introductory paragraph contains grammatical and structural defects that create interpretive ambiguity regarding whether the rule regulates “evaluations” or “reports.” This increases enforcement uncertainty and invites inconsistent application.

3.5.2 Subsections (1)–(7): Characteristics, Damage List,

These provisions are largely descriptive but repeat earlier problems:

- ▶ Several items may be indeterminable without markings, documentation, or destructive verification. See 2.4.
- ▶ “Type of damage” lists presume damage exists. See 2.3 and 3.3.4 (e).

3.5.3 Subsection (8): “Complete Structural Configuration and Loading Requirements...”

- ▶ This is the most significant concern in 38.005. It mandates “complete” structural configuration, imposed forces, assumptions, and reinforcing steel details for the original installation, which are often inaccessible without destructive investigation or unavailable records. This repeats and amplifies the ‘impractical/impossible compliance’ problem in 2.4, and creates an enforcement standard based on unavailable information rather than engineering competence.

3.5.4 Subsection (9): Delegation and “Installation Observations”

- ▶ This creates ambiguity and potential overlap with existing delegation and responsible charge rules.
- ▶ The rule does not define what constitutes “installation observations,” what documentation is required, or how this differs from existing supervisory obligations. See 3.2.4–3.2.7.

3.5.5 Subsection (10): “When Relevant... If Available” List

- ▶ The “when relevant” and “if available” qualifiers are appropriate, but “relevant” remains undefined and subject to hindsight enforcement.
- ▶ This repeats the ‘undefined relevance standard’ concern in 3.2.1–3.2.2 and the ‘citation completeness vs substance’ concern in 3.3.4 (d).
- ▶ The testing references also raise the concerns expressed earlier in 3.4.2, 3.4.3, and 3.4.4 regarding an ‘implied testing mandate.’

3.6 61G15-38.006 Exterior Wall Cladding

This section contains multiple terminology inconsistencies (“Damage Evaluation” vs “Damage Assessment”), repeated checklist mandates without materiality thresholds, and at least one subsection that appears incomplete, creating a fundamental clarity defect. Many of the feasibility, access, and undefined documentation threshold concerns repeat those already addressed in 2.4, 3.3.1, and 3.3.4.

3.6.1 Subsection (1): General Requirements

This subsection contains vague phrasing (“state, provide and/or furnish”) and mandates detailing of supports, adhesion, anchors, and connections, many of which are concealed. This repeats the access and scope limitations addressed in 2.4.

3.6.2 Subsection (2): Stucco

The language requiring “Description of any evaluation performed pursuant to” ASTM standards is ambiguous as to whether such evaluations are expected or merely to be described if performed. This repeats the ‘mandatory vs optional ambiguity’ concern discussed in 3.4.4 and the ‘incorporation-by-reference’ clarity concerns in 3.3.1.

3.6.3 Subsections (3)–(7): Fiber Cement, Wood, EIFS, Vinyl Plank, Aluminum

These subsections repeatedly use “Damage Assessment Reports” instead of “Damage Evaluation Reports,” creating interpretive inconsistency and enforcement vulnerability. The repeated terminology inconsistency also creates a potential applicability loophole similar to the ‘labeling problem’ discussed under definitions/applicability in Section 2.2.

Several items also require identification of building wrap or hidden components, repeating the feasibility issues in 2.4.

3.6.4 Subsection (8): Curtain Wall Cladding

This subsection appears incomplete and ends mid-list, which is an inherent defect that will affect clarity and enforceability.

4.0 CONCLUSION AND RECOMMENDATIONS

The undersigned engineer respectfully submits that, while the objective of promoting quality and consistency in engineering evaluations is genuinely appreciated, the proposed Rule 61G15-38 in its current form contains structural, definitional, and drafting deficiencies that create substantial ambiguity, impractical compliance burdens, and unintended regulatory consequences.

As drafted, the rule:

- ▶ Regulates undefined terms;
- ▶ Presumes factual conditions that may not exist;
- ▶ Imposes design-level documentation obligations in forensic contexts;
- ▶ Fails to accommodate reasonable investigative limitations;
- ▶ Incorporates extensive external standards without clear applicability thresholds; and
- ▶ Creates enforcement exposure based on procedural technicalities rather than substantive engineering competence.

Administrative rules must provide clear notice of regulated conduct, be reasonably related to public protection, and be capable of uniform and practical application in real-world practice. The proposed rule, as written, risks undermining those principles.

Respectfully, the Board may wish to consider the following options:

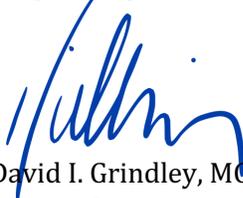
- ▶ The existing rules governing responsible charge, professional conduct, and engineering documentation already provide an adequate regulatory framework; therefore, consider discarding the proposed new rule and focus on stricter enforcement of the existing provisions.
- ▶ If a new rule is to proceed, make the following improvements, at a minimum, to improve clarity, enforceability, and alignment with established principles of professional engineering practice under Chapter 471, Florida Statutes:
 - In lieu of using undefined key operative terms such as “damage,” “damage evaluation,” and “Damage Evaluation Report,” the rule should utilize less specific and more inclusive terminology, such as “**Engineering Assessment Report**,” “**Engineering Investigation Report**,” or “**Engineering Findings Report**.” These terms more accurately reflect the range of professional services performed in these situations and avoid subjective or outcome-dependent words such as “damage” and “evaluation.” Alternatively, the rule could regulate the *activity* rather than the title of the document by applying to *any written report issued by a professional engineer summarizing observations, testing, analysis, or professional opinions regarding the condition, performance, or cause of conditions affecting, or alleged to be affecting, a building, structure, or component thereof*. This approach would reduce ambiguity while avoiding the outcome bias inherent in the phrase “Damage Evaluation.”
 - Establish baseline expectations for report contents while preserving professional engineering judgment regarding the means, methods, and extent of investigation and testing based on the scope of the assignment. Where standardized testing procedures such

as ASTM standards are utilized, adherence to those procedures is appropriate; however, engineers should retain discretion to determine which tests are appropriate in each situation and to deviate from strict protocols where justified, provided all testing is completed in accordance with the scientific method and sound engineering principles are applied.

- Correct the drafting inconsistencies and incomplete subsections.
- Clearly distinguish between mandatory requirements and illustrative examples.

The undersigned engineer respectfully requests that the Board reconsider the rule in its current form and undertake revisions consistent with the concerns outlined above. Furthermore, the undersigned stands ready to serve the Board in developing a rule that is clear, enforceable, has practical alignment with real-world engineering practice, and achieves the intended public protection objectives.

Respectfully submitted,



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Date: March 6, 2026

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