

Promotions and Awards

Mr. Theodore A. “Tab” Brown was recently promoted to Chief of Planning and Policy/ Community of Practice in the Senior Executive Service (SES), Headquarters, U.S. Army Corps of Engineers. Mr. Brown has served the Corps in engineering planning roles since 1991 and in leadership since 1995. During his 6-year tenure as Chief of the Planning and Policy in the Great Lakes and Ohio River Division, he oversaw a number of key and complex planning studies, including the Great Lakes-St. Lawrence Seaway Study, a bi-national effort among seven Canadian and U.S. agencies. He brings a wealth of valuable Corps and engineering experience along with his professionalism, passion, and talent.

Mr. Mark Mauriello was recently appointed as the new Commissioner of the New Jersey DEP. Mark has served as Assistant Commissioner for Land Use Management since 2006 and prior to that as Director of the Land Use Regulation Division. Mark is also very active in the field of floodplain management on the national level, having served as Regional Director of the Association of State Floodplain Managers and also on the Coastal Policy Committee since 1988.

In addition to his considerable experience in the DEP regulatory programs, Mark has developed a outstanding relationship with members of our legislature as he worked with them over the years to implement far-reaching environmental protection programs throughout the state. Most recently, Mark is leading the effort to implement the recommendations of the Permit Efficiency Review Task Force to streamline and facilitate the Department's permit review processes.

This combination of experience, and his excellent reputation within DEP and with New Jersey's many constituents and partners makes him especially well suited to lead DEP during these exciting and challenging times.

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Submit your own items or suggestions for future topics to column editor Rebecca Quinn, CFM, at rcquinn@earthlink.net. Comments welcomed!

Here's Something You Might Find Interesting . . .

If you've been through a Community Assistance Visit (CAV) more than likely you've had to play catch-up because your records don't have all of the documentation and certifications that you're expected to keep. Among other commitments communities make to participate in the NFIP are three related to keeping records: (1) maintain certain elevation data and design certificates for buildings in Special Flood Hazard Areas, (2) maintain documentation if variances are granted, and (3) submit biennial reports to FEMA.

Let's talk about three aspects: first, collecting Elevation Certificates; second, keeping records accessible; and third, length of time to keep those records.

Collecting Elevation Certificates

If you work for a state or FEMA and have conducted CAVs, more than likely you've had to tell communities that the NFIP assumes that a building is in violation of the requirements if evidence of compliance is missing. The definition of "violation" clearly states that lack of elevation certificates and

other certifications is sufficient for a presumption of a violation until such time as the documentation is provided. I'll bet hundreds of communities each year have to get in touch with owners, builders and surveyors – not an easy task if a couple of years have gone by.

These days, there are no good reasons for a community's records to be inadequate. Every floodplain management ordinance I've seen in the past 30 years contains a clear statement that it is the local administrator's responsibility to obtain and retain certain elevation information and, depending on the building and zone, certain design certificates. Why do we keep finding community officials who don't know this is in their ordinances?

If you work for a community, when was the last time you read through your ordinance from front to back? Check your intake procedures – are applicants given a copy of the Elevation Certificate and told that it must be completed before the final inspection? Some communities require applicants/owners to sign a statement acknowledging that the EC is required before the Certificate of Occupancy is issued. Check your inspection procedures – do inspectors make sure a completed EC is submitted? Check your record retention – are copies of EC retained in a permanent file?

Most states and communities administer building codes that are based on the *International Building Code* and the *International Residential Code*. Both codes require retention of applications received, permits issued, and reports of inspections. Both codes also call for specific inspections, including a "lowest floor elevation" inspection, which specifies that documentation or certification of elevations is to be submitted upon placement of the lowest floor and prior to further vertical construction.

The I-Codes also require that certain documentation, signed and sealed by registered design professions (see sidebar), be submitted to the building official. The documentation includes: elevations (lowest floor or bottom of lowest horizontal structural member, depending on flood zone); engineered openings; foundation design (in V Zones); and breakaway walls. The IRC also clearly requires submission of "as-built" certifications of lowest floor elevations. And for dry floodproofed nonresidential buildings, the IBC requires submission of a statement that designs are in accordance with ASCE 24.

Registered Design Professional is defined in the I-Codes as "an individual who is registered or licensed to practice their respective design profession as defined by the statutory requirements of the professional registration laws of the state or jurisdiction in which the project is to be constructed."

OK, the requirement is spelled out clearly, so that's not the problem. Everybody is busy and building inspectors have hundreds of things to check as construction of a building nears completion. So what's the solution?

I'm told it's becoming common in many states for surveyors to charge a single fee upfront to cover establishing the ground elevation, setting a temporary bench mark, and preparing the final as-built Elevation Certificate. Because insurance agents are supposed to have an EC to write flood insurance policies on post-FIRM buildings, I'll bet that most builders and owners call the surveyor to get the as-built EC. Why isn't the paperwork getting submitted to communities?

Here's another thought. A few years ago I became aware of software programs that are designed to help building departments review and track permits. These programs are now used by many communities, both large and small. I'd like to see the vendors modify their programs to include flood-specific content. In particular, because a final inspection is required before a Certificate of Occupancy is issued, doesn't it make sense that the final inspection checklist includes a reminder to collect the Elevation Certificate?

Keeping Records Accessible

The NFIP requires communities to "maintain for public inspection and furnish upon request" information on elevations and certificates of floodproofing. The records must be accessible for inspection during

Community Assistance Visits. In addition, communities themselves must be able to access records in order to complete the NFIP's biennial report (which requests the number of permits and variances issued in the preceding two years). And because many Post-FIRM buildings are now 20 to 30 years old – and as so many maps have been revised and BFEs and zones are changing – it's becoming more important than ever to have documentation of compliance at the time buildings were constructed.

Some communities keep a log of SFHA permits (or can sort their electronic permit tracking data), which helps when digging through boxes of old permit files. Some keep paper copies of Elevation Certificates in a separate file, and some keep electronic copies. All CRS communities are required to maintain records and use FEMA's Elevation Certificate and Floodproofing Certificate, and they must make copies of the certificates available to any inquirer (Activity 310).

Length of Time to Keep Records

The NFIP regulations do not specify how long the records should be kept, suggesting there is no limit. Similarly, local ordinances specify that records must be maintained but are silent about how long they should be kept. On the other hand, the I-Codes indicate that "records shall be retained in the official records for the period required for retention of public records." I'm told that many states mandate that records be retained only for three or four years.

The question then is what are communities supposed to do? Keep in mind that some communities may issue only a handful of permits in a year, but the numbers run into the thousands for many large jurisdictions. Records retention is not a trivial matter.

In my opinion, the answer is that Elevation Certificates, Floodproofing Certificates, and V Zone certificates (foundation design and breakaway walls), should be kept permanently. Yes, that's a lot of work for larger jurisdictions, but they're the ones most likely to already use electronic storage. These days anyone can save scanned copies of documents. Indeed, the EC itself is now available (and can be sealed) electronically. It doesn't matter whether it is a dedicated file for hardcopies or an electronic file, keeping permanent records is the easy part once it truly becomes routine for communities to collect the certificates.

Remember how I opened this article – noting that hundreds of communities each year probably expend a great deal of time and energy to get in touch with owners, builders and surveyors to obtain Elevation Certificates. That's a lot of headache that will be avoided if they pay more attention to the requirements of their own ordinances and codes. [RCQ]

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Washington Legislative Report

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Lights, Camera, Action!

All of a sudden, they're back! The Capitol was buzzing with activity on January 6th as the Representatives and Senators of the 111th Congress were sworn in, initial votes to elect leadership were taken and receptions were held. During this first week, the House and Senate will also adopt their operating rules for the session. Preliminary lists of committee assignments are being released, to be confirmed at party caucuses very soon. In short, the Congress is consumed with organizing itself and to turning to the business at hand as quickly as possible.

