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Webinar
January 5, 2012
1:30 – 3:00 pm

Americans with Disabilities Act and Context Sensitive Solutions

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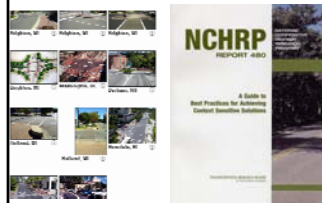
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2012 Events Calendar

Month	Day	Event
January	5	Webinar: Americans with Disabilities Act and Context Sensitive Solutions
February	15	State Profile: Michigan
March	1	Case Study: [Location]
April	15	Publication: [Title]
May	1	Discussion Forum: [Topic]
June	15	News Item: [Title]
July	1	Case Study: [Location]
August	15	Publication: [Title]
September	1	Discussion Forum: [Topic]
October	15	News Item: [Title]
November	1	Case Study: [Location]
December	15	Publication: [Title]

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Moderator

Lisa MacPhee
Attorney
FHWA

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Presenter: Part 1

Candace Groudine
Team Leader
FHWA Office of Civil Rights

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**Context Sensitive Solutions and the ADA: What You
Need to Know About The Legal Foundations of
Accessibility in the Public Rights-of-Way**

January 5, 2012

Candace Groudine, Team Leader
External Civil Rights Programs
Federal Highway Administration (FHWA)
Office of Civil Rights

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Why Do You Need To Care About Accessibility?

Too often, most of us who do not have a disability assume that users of transportation systems:

- are able-bodied
- have good vision and good hearing
- can understand traffic control devices

Why Accessibility is Needed

However, out of approx. 300 million people in the U.S....

- 13 million need assistance walking (wheelchair, walker, cane, etc.)
- 2 million cannot see printed words
- 16 million have limited cognitive functions
- 17 million have limited hearing

In your lifetime you have a 70% chance of losing the ability to climb stairs!

Background/History

- **The Civil Rights Act of 1964:** Outlaws discrimination based on race, color, and national origin in federally funded programs and in public accommodations and employment. Does not specifically apply to persons with disabilities, but was a framework for future legislation.
- **The ADA of 1990:** The most comprehensive, but other civil rights laws enacted between 1964 and 1986; one passed in 1998, and another one enacted in 2009, provide protection for people with disabilities.

Background/History, cont'd.

- **Architectural Barriers Act of 1968:** First federal law addressing civil rights for persons with disabilities. Requires buildings constructed by federal gov't or with federal funding be accessible to people with disabilities. Resulted in first set of standards for removal of architectural barriers: The Uniform Federal Accessibility Standards (UFAS)

Background/History, cont'd.

- **Rehabilitation Act of 1973:** First federal law to prohibit discrimination against persons with disabilities. Requires federally funded programs be accessible to people with disabilities and that federal employers provide reasonable accommodations for their employees with disabilities. Much of the terminology in this Act was later used in the ADA.

Background/History, cont'd.

- **The Americans with Disabilities Act (ADA) of 1990:** a civil rights statute that prohibits discrimination against people with disabilities.
- **Five separate Titles (i.e., sections).** Title II of ADA addresses public services and public transportation accessible to people with disabilities.
- **After ADA became effective, designing and constructing facilities for public use that are not accessible by people with disabilities constitutes discrimination prohibited by law.**

Statutory Language

Section 504: 29 USC § 794

“No otherwise qualified individual with a disability in the United States . . . Shall solely by reason of her or his disability, be **excluded from participation** in, be denied the benefits of, or be **subjected to discrimination** under any program or activity receiving Federal financial Assistance or under any program or activity conducted by any Executive agency . . .”

29 USC § 794 (a)

Statutory Language, cont'd.

ADA: 42 USC 12111 et seq: Title II, Part A:

“ . . . no qualified individual with a disability shall , by reason of such disability, be **excluded from participation** in or be denied the benefits of the services, programs, or activities of a public entity, or be **subjected to discrimination** by any such entity.”

42 USC § 12132

FHWA’s and STAs’ Responsibilities

- Both FHWA and STAs have a responsibility to ensure that STA programs, services, activities and construction projects comply fully with the provisions of Title II of the ADA and Section 504.
- Core Mission of FHWA and its State and local recipients of Federal aid: To provide safe and efficient transportation facilities.

FHWA and STA Nondiscrimination Responsibilities, cont'd.

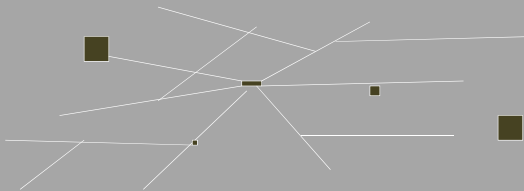
- Ensure that recipients and subrecipients of Federal aid and State and local entities responsible for roadways and pedestrian facilities do not discriminate on basis of disability in any highway transportation program, activity, service or benefit provided to general public.
- FHWA does not have ADA oversight responsibilities for projects outside PROW that do not use Federal surface transportation program funds.

Application and Requirements

- Title II of the ADA applies to:
 - Facilities built after 1990
 - Pre-existing facilities
 - Any organization with 50 or more employees
- State and Local Governments required to:
 - Perform self-evaluations of current facilities (28 CFR 35.150 (d))
 - Develop a transition plan/program access plan to address deficiencies
 - Through new and alteration projects

Definition: Public Rights-of-Way (PROW)

- The PROW is the network of streets and sidewalks creating public pedestrian access within a public entity's jurisdictional limits.



Pedestrian Facilities Located Within the PROW

- More attention to this area now.
- Recognized as positive quality-of-life enhancers: greater health benefits of exercise; reduced vehicle emissions; connectivity of neighborhoods to businesses, STAs, and other vital facilities.
- Many roadway projects—new construction or alteration of facilities—often involve construction of new or altered existing pedestrian facilities.
- When construction occurs, STAs must ensure those facilities are made accessible to individuals with disabilities.

ADA & Section 504:
Jurisdiction Basics

- The public entity with jurisdiction over a section of PROW decides:
 - How to implement accessibility standards and policy.
 - How to enforce accessibility standards and policy when other entities work in the PROW, including utilities.
- Standards and policies can be above the minimum required by federal statutes and regulations.
- Public entities can be subject to complaints and lawsuits if coordination on PROW work fails to provide accessibility.

ADA & Section 504:
Public Entities' Obligations:

- Ensure new and alterations projects provide minimum required accessibility under DOJ's 2010 Standards and USDOT's modifications to the 2004 ADAAG and jurisdiction's interpretation of standards and policy.
- State and local jurisdiction standards and policy may exceed federal minimum standards.
- Minimum federal access standards on PROW:
 - Curb ramps (Section 406) with detectable warnings (49 C.F.R. 27.3 citing 49 CFR Part 37, Appendix A)
 - Sidewalks (Section 403)

ADA & Section 504: Legal Context:

“Nondiscrimination” General Rules

- In PROW, each public entity must ensure that pedestrian facilities meet standards consistent with both ADA and Section 504 standards.
- In PROW, consistent standard for both ADA and Section 504: 2004 ADAAG (Sections 406 for curb ramps, 403 for sidewalks) with USDOT modifications for detectable warnings.
- FHWA encourages use of 2004 ADAAG with USDOT modifications over UFAS as more up-to-date standard. 28 CFR 35.151(c); see also USDOJ Technical Assistance II-6.2100.

Legal Context: Nondiscrimination **Standards:**

Section 504

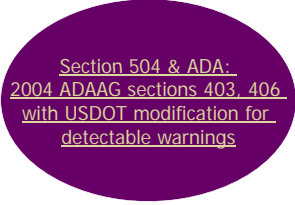
Section 504: 2004 ADAAG
(Sections 403, 406) with USDOT modification
for detectable warnings.
 OR
Uniform Federal Accessibility Standards (UFAS)
(49 C.F.R. 27.3)

Legal Context: Nondiscrimination Standards:

ADA

ADA:
After March 15, 2012, use
USDOJ 2010 Standards =
2004 ADAAG with USDOJ
building modifications
(28 C.F.R. 35.151(c)(3))

Legal Context: Nondiscrimination Standards:
ADA consistent with Section 504

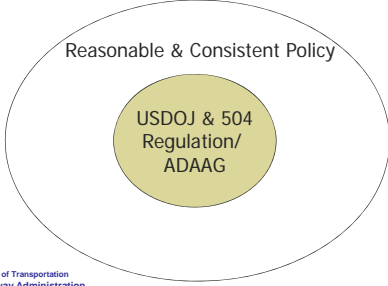


Section 504 & ADA:
 2004 ADAAG sections 403, 406,
 with USDOT modification for
 detectable warnings

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Legal Context: ADA & Section 504:
Sources for Nondiscrimination Standards



Reasonable & Consistent Policy

USDOJ & 504
 Regulation/
 ADAAG

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Legal Context: ADA & Section 504:
“Nondiscrimination” Corollaries

- Compliance requires that where public agencies provide pedestrian facilities, those facilities are to be accessible to persons with disabilities. 28 CFR 35.149 – 35.151
- Pedestrian curb ramps required in intersections with sidewalks. 28 C.F.R. 35.151(i); see also USDOJ Toolkit, Chapter 6, §3, ¶4
- Compliance does not require sidewalks everywhere.

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ADA & Section 504: Legal Context:

“Nondiscrimination” General Principles

- Where sidewalks and curb ramps exist, access should not be reduced by removing sidewalks and curb ramps.
- When safety requires removing access facilities, alternative access should be provided nearby.

ADA & Section 504:

Alteration Projects

Alteration Definition:

- A change to a facility in the public right-of-way that affects, or could affect, access or use of the facility, including changes to structure, grade, or use of the facility.
- Examples: reconstruction, major rehabilitation, widening, resurfacing (such as structural overlays and mill and fill), signal installation and upgrades.

ADA & Section 504:

Alteration Projects

- In an alteration project, a public entity must make accessible, any pedestrian facilities changed within the scope of the project to the maximum extent feasible. 28 C.F.R. 35.151(b).
 - Maximum extent feasible = technical feasibility, not cost. USDOJ Technical Assistance II-6.3100(4).
 - Scope of the project: Each altered element or space within the limits of the project shall meet ADAAG standards to the maximum extent feasible. PROW Guidelines (2005 Draft) Section 202.3.

ADA & Section 504:
Alteration Projects

- When resurfacing of a street alters the usability of a street, curb ramps within scope of the alteration project must be improved to the maximum extent feasible to meet ADAAG standards (including detectable warnings) at the same time that the project occurs. *Kinney v. Yerusalim*, 9 F.3d 1067, 1070, 1072 (3d Cir. 1993), *cert. denied*, 511 U.S. 1033 (1994); 28 C.F.R. § 35.151(b); ADAAG § 3.5 (alteration definition).

ADA & Section 504:
New Projects

- Design and construct all new facilities to be readily accessible to and useable by individuals with disabilities, if structurally practicable. 28 C.F.R. 35.151(a).
 - For minimum PROW standard, meet 2004 ADAAG standards, including:
 - Curb ramps with detectable warnings. (Section 406, 49 CFR 27.3 citing Part 37 Appendix A)
 - Unobstructed sidewalks with accessible slope, width. (Section 403)
 - Follow public entity's reasonable and consistent plan for all other access issues – EX: Accessible Pedestrian Signals, placement of detectable warnings

ADA & Section 504:
Access Board Draft Guidance

- Recommended source for reasonable policies on issues not governed by standards.
- Notice of Availability (Nov. 23, 2005):
 - <http://www.access-board.gov/provac/noa.htm>
- PROW Draft Guidelines:
 - <http://www.access-board.gov/provac/draft.htm#304>

Legal Context: ADA & Section 504:

Enforcement / Ultimate Remedies

- Where noncompliance exists:
 - For Federal-aid recipient: FHWA can withhold federal money, after enforcement process required at 49 C.F.R. §§ 27.121 – 27.129. (Section 504)
 - For State or local government, regardless of federal funds: FHWA shall seek voluntary compliance agreement with public agency, and if voluntary negotiations are unsuccessful, shall send case to the Attorney General for appropriate action. 28 C.F.R. §§ 35.173 – 35.174. (ADA)

ADA Enforcement: Lawsuits

- ADA allows individuals to enforce ADA obligations, including curb ramp obligations, through private action in federal district court against a public entity.
- Damages can be awarded because of a city's or other jurisdiction's lack of curb ramp access harmed plaintiff's dignity and ability to become self-reliant member of society. (See *Lonberg v. City of Riverside*—10 years of litigation!)

Q+A

If you have a question:

- Press * 1 your phone
- Record your name (you will be placed into the queue)
- Ask your question after you are announced



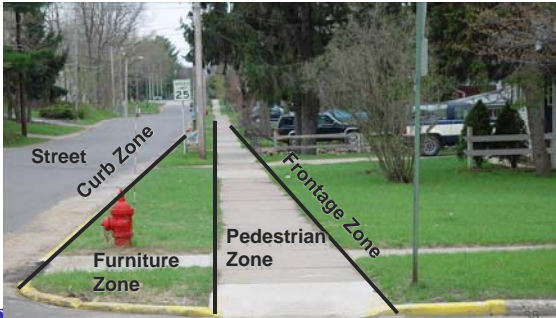
Presenter: Part 2

Mary Finch
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The Zone System



Street
Curb Zone
Furniture Zone
Pedestrian Zone
Frontage Zone

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The Zone System - Summary



Street
Parking
Curb Zone
Furniture Zone
Pedestrian Zone
Frontage Zone

The Zone System

All these things go here!

Best solution: separate sidewalk with planter strip (aka buffer, parkway...)

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The diagram illustrates the 'Zone System' for street design. It shows a cross-section of a street with a car in the travel lane, a cyclist in the bike lane, and a pedestrian on the sidewalk. A planter strip, also referred to as a buffer or parkway, is placed between the bike lane and the sidewalk. A green arrow points to this planter strip with the text 'All these things go here!', indicating that it serves as a designated zone for various street elements like trees, planters, and streetlights. Below the diagram, the text states 'Best solution: separate sidewalk with planter strip (aka buffer, parkway...)'.

The Zone System

Randomly arranged street furniture clutters sidewalk

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The photograph shows a sidewalk in an urban setting. In the foreground, a blue bicycle rack is positioned at an angle, partially obstructing the path. Further down the sidewalk, there are various other pieces of street furniture, including a blue utility pole and a planter box, which appear to be placed without a clear, organized plan, creating a cluttered and potentially hazardous environment for pedestrians.

The Zone System

Randomly arranged landscaping creates a tripping hazard

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The photograph shows a sidewalk made of cobblestones. The landscaping is arranged in a way that creates a tripping hazard. There are several raised planters of different heights and materials (wood, concrete) placed along the edge of the sidewalk. Some of these planters contain small trees and plants, but their placement is irregular and they protrude into the walking path, posing a risk to pedestrians.

Sidewalk Obstacles



Utilities & poles clutter sidewalk

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Sidewalk Obstacles



Narrow curbside sidewalk needs mitigation around every obstacle

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Sidewalk Obstacles



Sidewalk can wrap around pole

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Sidewalk Needs



At a certain point, sidewalks are needed

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Sidewalk Needs



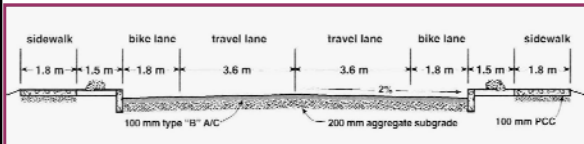
“Goat path” indicates sidewalks are needed

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Sidewalk Needs

The AASHTO “Green Book” states: “Sidewalks are integral parts of city streets”



Sidewalks are not added to streets, they are part of the street

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Sidewalk Needs

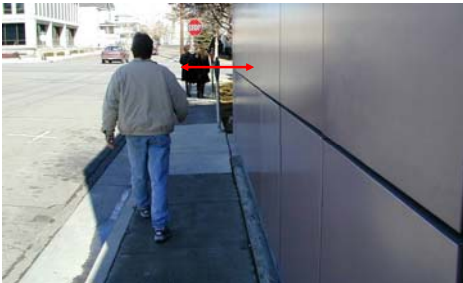


Sidewalks should not end midblock

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Sidewalk Needs



Shy distance concept applies to pedestrians, who will shy away from a vertical face; extra width is needed

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Cross Slope

Elevation change occurs in the furniture zone

Good Design: Concrete in the pedestrian zone, textured surface in the furniture zone

This provides a visual contrast of surfaces

Watch for bus stops if you use this design so assure ADA standards are still met



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Cross Slope



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Zone System Gone Wrong



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Historic Districts

- SHPO
- Compliance
- Historic District



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Presenter: Part 3

James Evensen, P.E.
District Traffic Engineer
Wyoming DOT

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**Implementing
ADA and CSS: Pedestrian
Accessible Signals for the
Visually Impaired**

Wyoming Department of Transportation Case
Study – Sheridan, WY

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Sheridan Wyoming





What is an Accessible Pedestrian Signal

- A device that communicates information about pedestrian timing in nonvisual format such as audible tones, verbal messages, and/or vibrating surfaces
(MUTCD, Section 4a.02)

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Are APS Required by the MUTCD?

- APS are not required by the MUTCD at every pedestrian crossing
- Current practice is to install APS upon request along a specific route of travel for a particular individual or group of individuals who are visually impaired

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Proposed Guidelines for Public Rights-of-Way: An Overview

- ADA and the Rehabilitation Act may require access improvements to existing pedestrian networks where requested
- Guidelines also address access for people who are blind
 - These include provisions that cover tactile warnings at transitions to streets, Accessible Pedestrian Signals, signalization at traffic roundabouts and objects that protrude into circulation paths

Visually Impaired Support Group Meeting Location at Senior Center



What the Group Asked For

Audible Sound to help them know when to cross the intersection

What Discussion with the Group Identified

- They need help to know when to cross the intersection
- They need greater walking-time to cross the intersection
- They need help in locating exactly where the APS is (locating the Signal Pole and Actuator Button)

Accessible Pedestrian Signals

- APS integrate discreet locator tones and vibro-tactile indicators of walk/don't walk with:
 - Dynamic Proportional Volume Compensation (adjusts for ambient noise)
 - Button Actuated Timer (audible features activated after depressing the button for 3 seconds)
 - "Cuckoo" sound for north/south direction and "Peep" sound for east/west direction
 - Option for "Talking Voice" as the audible feature





8 Accessible Pedestrian Signals Scheduled for Installation

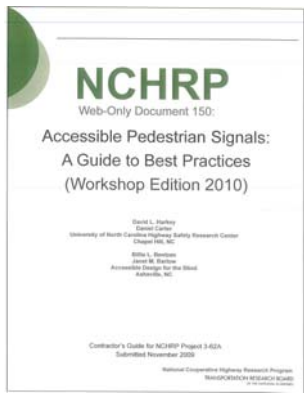
- 4 Intersections identified as immediate need
- 4 Intersections scheduled for installation next year
- Individual Audible APS Equipment Unit Cost @ \$700/ea
 - 4 Intersection equipment cost estimated at \$11,200 sans labor & installation costs

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Where to go for Design Guidance?



Whenever possible, two poles should be installed for APS systems to be located close to the pedestrian departure location and crosswalk, as described in detail below. Recommendations about location and WALK indicators have been updated as a result of recent research (see Appendix C for research results).

Optimal APS Location

The optimal location for pedestrian-integrated APS is between the edge of the crosswalk line (retroreflect) furthest from the center of the intersection and the side of the curb ramp. APS should be between 1.5 feet and 4 feet from the edge of the curb, shoulder, or pavement but no further than 30 feet from the edge of the path, shoulder or pavement. These distances are the same as those recommended for all pedestrian publications in the Proposed 2009 MUTCD, Section 4E.08. The control box and handle cover should be centrally aligned with the direction of travel for the associated crosswalk. In order to provide wheelchair users with access to the publication, publications need to be located adjacent to a level all-weather surface.

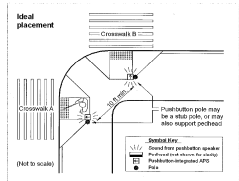


Figure 6-1. Optimal location of pedestrian-integrated APS (two publications on one corner, oriented on two separated poles - rapid 100 WALK indicator)

Publications and systems for the APS need to be less than 5 feet from the edge of the crosswalk line (retroreflect) furthest from the center of the intersection. At corners of equalized locations where two pedestrian publications and APS are provided, the publications should be separated by a distance of at least 70 feet (see Figure 6-2). A rapid tick WALK indicator is recommended for installations following these guidelines for locations.

For more information, visit
ContextSensitiveSolutions.org

Thank you for Joining Us!



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