

# **AMERICANS WITH DISABILITIES ACT ACCESS AUDIT AND TRANSITION PLAN**

## **REPORT TO LOS ALAMOS COUNTY COMMUNITY SERVICES DEPARTMENT**

### **FINAL REPORT: SUMMARY AND RECOMMENDATIONS**

**JULY 8, 2022**

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## INTRODUCTION AND THE ADA MANDATES

The accessibility of Los Alamos County Community Services Department sites is mandated by federal requirements. This report is a summary of our findings and recommendations to make the Community Services Department more accessible to people with disabilities. The detail, and recommendations, are in the site reports. This report also recommends actions to enable the Department to meet the federal and state requirements and incorporate smart practices.

For efficiency, the Community Services Department (CSD) cannot implement all the Transition Plan recommendations at once; no local government can do so. We suggest a phased approach to retrofits. It is important that CSD staff gain a good understanding of the findings and recommendations. We suggest a step-by-step approach, as described in this report.

We start though by reviewing the requirements of the Americans with Disabilities Act (ADA), and how those apply to facilities and parks. This portion also identifies some tasks that remain to be completed by the Department.

### What are the Americans with Disabilities Act (ADA) General Mandates?

The [Americans with Disabilities Act](#) (ADA) is a comprehensive federal civil rights law. It prohibits discrimination on the basis of disability. It became effective on January 26, 1992, and has been amended by Congress only once, by a statute adopted in 2008. The ADA has three principal chapters or titles. Title II applies to Los Alamos County and the approximately 89,000 other units of state and local government across the country, and it requires CSD to make parks, facilities, policies, communications, and programs, accessible to and usable by people with disabilities. Other portions of the ADA prohibit discrimination by employers (title I), as well as businesses and nonprofits (title III).

The subject of this report is CSD parks and facilities. As with any statute, there is some overlap. A space used principally by Department employees that might be visited by a member of the public is not solely an employee space, and must have a level of accessibility for that visitor if he or she has a disability. CSD may also have relationships with nonprofits or other entities, and when an entity uses or benefits from the use of CSD property or resources, the entity is strictly prohibited from discrimination on the basis of disability.

The ADA is to be broadly interpreted. In this section of the final report, we will define terms as they are defined by the ADA. In the remainder of this section, we will review:

- the ADA administrative requirements for CSD
- the ways in which the ADA applies to new design and construction
- the ADA requirements for existing facilities
- the ADA Transition Plan requirement
- the ADA requirements for CSD public facing policies
- the ADA requirements for CSD programs, and
- the ADA requirements for CSD communications.

Finally, this section concludes with a review of the limitations on the accessibility requirements, including technical infeasibility and the concepts of undue burden.



## What Are the ADA Administrative Requirements?

The US Department of Justice (DOJ) published the title II implementing regulation in 1991, and it became effective on January 26, 1992. It has been amended once, and those changes became effective March 15, 2011. The DOJ title II regulation is [here](#).

The Community Services Department faces many administrative requirements under title II of the ADA. In this section of the report, we will describe and review five key administrative requirements.

**35.106 Notice Requirement:** The Department must make its citizens aware of the "...protections against discrimination assured them..." by the ADA. In doing so, CSD must provide information about how parks, facilities, programs, policies, and communications are affected by the ADA. ***We recommend CSD do so in a way that is inviting and appealing, and consistent with the way in which the Department communicates with members of other protected classes.***

**35.107(a) Designation of Responsible Employee:** The Department must appoint at least one employee "...to coordinate its efforts to comply with and carry out..." its obligations under the ADA. Known as the ADA Coordinator, this employee is responsible for investigating complaints regarding noncompliance, and coordination of overall ADA implementation. There is a Los Alamos County ADA Coordinator in Human Resources, ***and we urge CSD to assign this responsibility to a Department employee.***

**35.107(b) Complaint Procedure:** The Department must have a process by which disputes regarding accessibility at sites, effective communications, and inclusion in programs and services can result in "...prompt and effective resolution...". DOJ refers to this as a "grievance procedure". We do recommend that the Department change the way it refers to this process. Naming the process a complaint process or grievance process gives it the appearance of an adversarial process. It need not be, and in fact, many believe that a more positive approach yields "prompt and effective resolution" in a much more customer-friendly way. ***We suggest the Department consider renaming the process to Access and Inclusion Solutions Process, or some other appropriate name that is inviting, not adversarial.***

**35.130(b)(7) Make Reasonable Modifications:** The Department must make reasonable modifications that enable access to programs and facilities, when so requested by a person with a disability, unless doing so creates an undue burden. The statute and the DOJ regulation identify many actions or devices that are a reasonable modification. In addition, court decisions and DOJ settlement agreements help further define the term and the limits on the concept of reasonable modification. The DOJ ADA website is a good source of information on this subject at [www.ada.gov](http://www.ada.gov).

**35.150(a)(3) Writing Requirement:** The Department, whenever it denies a request for a reasonable modification, must create a writing. This is a mandate once it is determined by Department staff that a request would create an undue burden (see page 11 of this report). Importantly, the writing is to be signed by "...the head of the entity or his or her designee...". In making this decision, the entity is to consider "...all resources available for use in the funding and operation of the service, program, or activity...". We recommend that the

County Council delegate this authority to the County Manager, to be delegated to department heads as felt to be in the best interests of the County. We also recommend that these writings produced by CSD and other departments be kept together for ease of access and analysis. These will have great risk management value and will help greatly in forecasting the types of requests the Department will receive.

### **What Are the ADA Requirements for New Design and Construction?**

Many of the ADA requirements are open to some interpretation regarding compliance. There is, however, one clear requirement: all CSD new design and construction must comply with the federal [2010 Standards for Accessible Design](#) and any State of New Mexico requirements that are more stringent from an access perspective. The DOJ regulation at section 35.151 establishes this requirement, and permits a variance only when it is “structurally impracticable” to fully comply with the Standards.

Experts estimate that design and construction for ADA compliance adds not more than 1% to the facility cost. For the County, it is critical that all designers and contractors understand this mandate and comply with this mandate. Plan review and effective project management by County staff assure that plans and ongoing construction are compliant. The investment of human resources towards this goal is much less costly than removing barriers after the construction of a park or facility.

New design and construction includes alterations and additions, therefore alterations and additions must adhere to the 2010 Standards. The DOJ title II regulation, at 35.151(b)(4), establishes a requirement that when alterations or additions occur at an existing CSD facility, that a “path of travel” is required to connect the accessible elements of the existing facility with accessible elements in the altered area or addition. In preparing the regulation, DOJ recognized the inequity of a result whereby the accessibility portion of an alteration or addition, the path of travel, could require more fiscal resources than the alteration or addition. The regulation therefore introduces the concept of disproportionality, which permits CSD to limit path of travel costs to 20% of the cost of a project.

Three clarifications are necessary regarding the concept of disproportionality.

First, CSD may elect to apply the concept of disproportionality; it is not required to do so. If CSD wishes to make the cap 30% of the cost of the alteration or addition, it may do so. The ADA sets the floor, not the ceiling.

Second, County must apply the path of travel concept when the alteration or addition is to a primary function area. A primary function area is “...a major activity for which the facility is intended.” Examples in the title II regulation include “...the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out.” We would add other examples, pertinent to CSD facilities. These include:

- Playground surfaces and playground components at CSD playgrounds; and
- Spectator seating and player seating at CSD softball and baseball fields.

Third, some work at an alteration or addition is simply maintenance and the cost of that work may be deducted from the determination of the cost of the alteration or addition, thereby affecting the amount necessary to meet the 20% disproportionality test. At some sites, these non-alteration costs are very small. In a world where every CSD penny counts, it is appropriate to properly apply the concept of disproportionality.

Access requirements for new design and construction are important in the context of the Los Alamos Capital Improvement Plan (CIP). It is critical that CIP project designers and contractors meet or exceed federal and state requirements.

### **What Are the ADA Requirements for Existing Facilities?**

The title II requirements for existing facilities begin with a requirement that the **programs** within those facilities and sites are what is to be made accessible. DOJ title II at 35.149 clearly states that "...no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, 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 public entity."

The term "program" is to be broadly interpreted. For CSD, a program is the opportunity made available to the public. Golf is a program. Making public comment at a County Council meeting is a program. Sports fields are a program. Playgrounds are a program. Parking is a program. Having picnic tables in a park is a program. Staffing and conducting recreation activities during the summer or afterschool is a program.

Think broadly here, and understand that a program is not just an organized activity for which one registers and participates. In applying 35.149, it is a violation of the ADA if a Department program cannot be accessed by a person with a disability because the facility in which the program is located is inaccessible.

Title II at 35.150 discusses the parameters for making existing facilities accessible. It requires CSD to view that program "...in its entirety..." at 35.150(a). This means that all of the locations of a program, e.g., every CSD playground, must be viewed before determining which will be made accessible and which will be left as is until next altered or replaced. This latter statement is made clear at 35.150(a)(1), where the Department is told by DOJ that these requirements do not "...necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities...".

Making a program accessible does not always require making a facility accessible. DOJ explains this concept at title II 35.150(b), where it reviews some of the methods to make a program accessible. The non-structural methods, include, but are not limited to, the following:

- Relocating a program from an inaccessible site to a site that is accessible;
- Providing a program at two or more sites, one of which is not accessible and at least one of which is accessible;
- Redesign or acquisition of equipment to make program participation possible;



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- Bringing the program to the person with a disability by making home visits;
- Construction of new accessible facilities to house the program; and
- Providing extra staff to facilitate interaction by program beneficiaries.

Elsewhere in title II, CSD is required to make changes to rules and policies as well. These nonstructural alternatives may be effective in making a program accessible. However, when nonstructural alternatives are not effective in making the program accessible, 35.150(b) requires CSD to make alterations to existing parks, facilities, and assets, and when doing so, to treat the alteration as new work and comply with title II 35.151.

The Department must also give the highest priority “...to those methods that offer services, programs, and activities...in the most integrated setting appropriate”. This mandate is discussed elsewhere in this report. Additionally, CSD must disperse the accessible programs that are to be retrofit. For example, not all accessible playgrounds can be located in one quadrant of the Department.

The 2011 title II regulation amendments introduced the concept of safe harbor for CSD and other states and local governments at 35.150(b)(2). In essence, if CSD in designing and constructing an asset, prior to March 15, 2012, complied with the 1991 Standards for Accessible Design, it cannot be penalized if the Standards change at a later date. An example of safe harbor is the reach range requirement. In the 1991 Standards, reach range could be as high as 54” above the finished floor (aff) if a side approach was used, and only 48” aff if a forward approach was used. In the 2010 Standards, because of confusion about forward reach and side reach, the maximum reach range was simply reduced to 48” aff. The safe harbor concept applies here, and at CSD facilities designed and constructed before March 15, 2012, where a proper side reach can be used, an operating mechanism can be as high as 54” aff. However, if that hypothetical operating mechanism is at 55” aff, it failed to meet the 1991 Standards and must be retrofit to meet the 2010 Standards maximum of 48” aff.

It is important to note that many CSD assets were not addressed by the 1991 Standards, and were only addressed later in the 2010 Standards. That includes CSD playgrounds, sports fields, sports courts, and golf, to name a few. As such, the concept of safe harbor cannot apply to these assets, and the program access test reviewed earlier in this section applies. As an example, playgrounds, but not necessarily all playgrounds, must be accessible. See our discussion regarding the transition plan for more detail.

### **What is the ADA Transition Plan Requirement?**

The title II regulation, at 35.150(c) and 35.150(d), make clear the Transition Plan requirements. A transition plan is a phased order of retrofit for all existing parks and facilities. At 35.150(d), the requirements are:

- Describe the deficits at every Department asset;
- Describe a solution for each deficit, or if it is to be left as is, describe why (see page 8 of this report);

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- Specify the year or by what date in which the retrofit will occur; and
- Name the Department official responsible for assuring compliance.

No CSD plan can be effective, however, without cost references or estimates. In developing the Transition Plan, the Department has received cost references for planning purposes to enable effective planning for the retrofits that will occur.

A key issue for CSD is understanding guidance as to by what date all retrofits must be completed. The title II regulation, at 35.150(c), discussing the time period for compliance, offers this guidance:

“Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.”

To suggest that this is not helpful guidance to the Department is an understatement, for several reasons. First, it would be impossible for CSD to have, in 1992, made all of the necessary retrofits by January 26, 1995. In fact, it would be impossible for CSD to make all retrofits that are necessary during any three-year period. Second, when the title II regulation was amended by DOJ and made effective March 15, 2011, new compliance dates were not added. Third, when the 2010 Standards were published and included for the first time certain types of recreation assets, there was no change to the completion date of 1995.

The Department can draw guidance from the statement above by acknowledging that retrofits will occur as soon as is possible. This requires a balancing of CSD resources, integration of Transition Plan retrofits with CIP activity, and making Transition Plan work a higher priority than discretionary development and acquisition.

Regarding parks and facilities, there is other guidance by DOJ. If there is only one of a type of asset it must be made accessible. If there are numerous assets of the same or similar type, such as playgrounds and sports fields, the County need not necessarily make all accessible. When the issue of recurring assets arises, DOJ does not specify a ratio or percentage that must be accessible. Our work in preparing transition plan recommendations relies on making a minimum of one of every three recurring assets accessible, and dispersing accessible assets throughout CSD. This assures that no matter where a resident is, some CSD assets are near that person and are accessible.

Lastly, title II at 35.150(d)(a) requires the Department to provide an opportunity for the public to participate in the development of the transition plan. The Department conducted two public feedback sessions on June 15, 2022. This is discussed in more detail later in this report.

### **What Are the ADA Requirements for Community Services Department Communications?**

The title II regulation, at 35.160, requires that Community Services Department communications to the public with disabilities must be “as effective” as communications to those without disabilities. People with certain health conditions such as deafness or impaired vision may not be able to ascertain the message within the communication. People with a cognitive impairment

may not understand the message. People with physical disabilities that limit their ability to use a mouse may not be able to get the cursor to the content on the website.

More and more local governments were using their websites for communication with the public as well as with employees. Certainly today, in a Covid-19 era, that reliance has only grown.

The broad requirements apply to the CSD website, letters, contracts, aural communication that might occur at a County Council meeting, emails, phone calls, and more.

### **What Are the ADA Limitations? Technical Infeasibility and Undue Burden...**

Title II does impose some restraint on the making of reasonable modifications, removal of architectural barriers, and making communications accessible. DOJ expects that these restraints will be implemented as an exception, rather than the rule.

In the 2010 Standards, technical infeasibility is defined within section 106.5 regarding Defined Terms. The Department need not make retrofits when doing so is technically infeasible. Again, recognizing that the ADA sets a floor and not the ceiling, the Department can choose to make the retrofit. A retrofit to an existing facility may be deemed as technically infeasible when it meets the condition described below:

“With respect to an alteration of a building or a facility, something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.”

Title II also defines undue burden. The concept of undue burden typically includes three elements: undue administrative burden, undue economic burden, and fundamental alteration. DOJ requires at 35.130(a)(3) that the Department bear the burden of demonstrating that denial of a request by a person with a disability rises to the level of one of these three conditions. Each is cited and discussed below.

**35.150(a)(3) Undue Administrative Burden:** DOJ and the US Congress recognized that there may be circumstances in which a small local government, will find it difficult to administratively obtain the personnel, devices, and processes by which it can make reasonable modifications, or remove barriers. This circumstance will be hard to show in the Department. In an area like Los Alamos, some jurisdiction, nonprofit, or business may have addressed and resolved the request related to disability CSD faces.

**35.150(a)(3) Undue Financial Burden:** DOJ and the US Congress recognized that there may be circumstances in which a local government will find it difficult to provide the fiscal resources to make a modification or to remove barriers. This circumstance will be hard to show for CSD. DOJ guidance requires that the entire Department and County budget be considered before the County claims Undue Financial Burden. For example, if a support for a child with a physical disability will require the creation of a firm and stable accessible route to sports fields, the Department must consider operating and capital budget unexpended

resources in determining whether it can grant this request for modification. It will be difficult to show Undue Financial Burden for an agency as large as Los Alamos County.

As an important note, CSD staff must understand this approach. Often, staff will consider only the budget they control, in making decisions about Undue Financial Burden. That is not the correct approach. If a Department employee takes a job at another agency, and there are \$10,000 in salary savings due to that departure, it is the burden of the Department to show why that \$10,000 could not be allocated to the accessible route example above.

**35.130(b)(7) Fundamental Alteration in Nature of the Service, Program, or Activity:**

DOJ and the Congress recognized that a circumstance may arise where a local government will find it difficult to provide the requested modification based on disability because in doing so the fundamental nature of the service, program, or activity will be changed. As an example, beach volleyball is very popular. However, a person using a wheelchair will be unable to negotiate the sand surface in a beach volleyball court. If that person requests a modification such as replacing the sand with a hard surface court (wood, asphalt, concrete, etc.), CSD could do so, as the engineering is not complex. Were that to happen however, the very nature of sand volleyball would be changed.

These same three concepts apply to CSD communications. These must be as effective for people with communication impairments as the Department communications for people without disabilities are effective. Language identical to 35.150(a)(3) and 35.130(b)(7) is found at title II 35.164.

## A GUIDE TO THIS REPORT

There are approximately 2,820 access deficits identified in the 60 site reports. The ADA requires that the access audit identify every access deficit at every site. For each deficit, a solution must be identified.

As discussed later in more detail, CSD does **not necessarily have to make every site accessible**. It **does** have to make every program it conducts within its sites accessible.

In this report, we identify some broad solutions, such as refreshing all accessible parking, as a way to address issues identified in the site reports, and as a way for CSD manage compliance more effectively. This gives CSD some flexibility within its compliance efforts to move resources and apply them with optimal impact. We offer these systemic changes as a complement to a site-by-site approach. The Department will determine how to proceed, and many local governments apply a hybrid of a systemic and site-by-site approach.

The scope of our work does not include the design of a solution. Our recommendations are performance based. For example, if a parking stall at the Mesa Public Library needs to be made accessible by having the proper striping and signage, we will make that recommendation, and will note the dimensions and sign type. The design of a solution is a task for County staff or contractors.

We recommend the following to facilitate review:

**First, read this Report.** It provides a “big picture” review of the issues and solutions.

**Second, read the 60 site reports.** View all reports digitally for instant access to the report for that site and the photos.

**Third, use your knowledge of the sites and the expertise of Department staff.** Department staff know CSD sites better than we do, and CSD staff know the staff better than we do. Blend in what you know with what we recommend in the report. There are many ways to solve access problems, and the successful alternative may well be one you define.

## COMMON ISSUES

In our work, some common big picture issues arose that complement the recommendations in the specific site reports. One of these is that ways in which maintenance affects accessibility to playground surfaces and other assets.

### Maintenance

The Department uses a conscientious staff to maintain its parks and facilities. However, over time, every site yields to wear and tear. The recommendations below describe ways in which attention to maintenance can specifically address some access deficits.

1. **Provide training** to maintenance staffs regarding the features of an accessible route and how to ensure that it remains unobstructed so that staff locate park amenities, e.g., garbage cans or signs, are placed adjacent to the accessible route.
2. **Add door closer checks** to park maintenance staff checklists, and record observations on a regular basis. When too much force is required to open a door, adjust the closer.
3. **Purchase some new tools.** The Department needs battery-powered 2' digital levels, and tools to measure pounds of force that are designed for this purpose. Do not use 4' digital levels. These tools can be assigned to staff for scheduled spot-checks at doors.

### Changes in Level and Gaps

The routes and sidewalks that make up the Department's network of accessible routes are in fair condition. Wear and tear, settling, weather, and other factors combine to cause changes in level, and gaps along portions of those accessible routes, making that portion noncompliant and a barrier to many visitors with physical and sensory disabilities.

Removing changes in level and gaps has a significant universal design benefit too, as more people with all types of conditions can more easily use Department routes, such as staff pushing carts of supplies, parents with kids in strollers, and people using an assistive device such as a wheelchair, Segway, or walker.

4. **Add change in level of more than .25" to park maintenance safety checklists** in 2023. This will help identify and correct these problems before they expand. Make or buy pre-measured shims and distribute to employees for their use and ease of measurement.

5. **Add inspections for gaps of greater than .5" to park maintenance safety checklists in 2023.** Identify and fill these gaps before they expand. **In the alternative, consider resurfacing segments of deteriorated asphalt routes.**
6. **Eliminate changes in level** by the end of 2026. Using the rationale that the most severe changes in level are the greatest barriers to access, make changes in level of greater than .75" the highest priority. Make changes in level of between .5" and .75" the second priority. Make beveling of changes in level of .25" to .5" the third priority. **Consider acquiring or contracting for a grinder.**
7. **Adopt** a policy about the use of Other Power-Driven Mobility Devices (OPDMD) at Department sites, and make staff and the public aware of the policy. Every day, people with limited physical mobility start to use a Segway or similar machines.

**Per the new ADA title II regulation published September 14, 2010, Department policies or processes permitting the use of OPDMDs were required as of March 15, 2011.**

These assistive devices provide great benefits to people with disabilities and the sooner the Department has a policy in regard to their use the better. The policy could, at a minimum, address times of allowed use (dawn to dusk), speed limits, off-limits areas, status of the user as a person with a disability, and minimum age.

It is important to note that a power driven mobility device is not a wheelchair. That device has a separate definition and is already allowed in facilities and parks.

The Department of Justice has a good advisory on this topic. It is [here](#).

### **Obstructed Accessible Routes**

Employees **may** see an accessible route as an empty 36" wide space in which a potted plant or garbage can is a perfect fit. However, that blocks or obstructs the accessible route.

8. **Provide training to park maintenance, recreation, and administration staffs** regarding maintenance of accessible routes in parks and in recreation facilities.

### **Employee Work Areas**

The Department employs many qualified and skilled full time staff, making parks and recreation services available to residents. The Department employs many more on a part-time or seasonal basis. The Department likely has employees with disabilities and in the future, will have **more** employees with disabilities, in all categories of employment.

It is important to address access to work areas, and both the title II regulation and the work of the Access Board do so. In section 203.9 of the 2010 Standards for Accessible Design, the treatment of employee areas is made clear.



Generally, a person with a disability should be able to **approach**, **enter**, and **exit** the work area. This is addressed by requirements for accessible routes and accessible means of egress. Other factors are door width, and threshold changes in level.

Excluded from this exception are several types of common spaces in employee areas. Spaces such as the ones below must meet the access guidelines as they are excluded from the definition of employee-only areas:

- corridors;
- toilet rooms;
- kitchenettes for employee dining use, and
- break rooms.

In short, the key issues are the accessible route, changes in level, doors and entries, and maneuvering space once within the work area. This approach is effective so long as when the Department hires an employee with a disability, or a current employee acquires a disability, it will remove architectural barriers in work areas or make other accommodations. The two recommendations below are important for all employees at all CSD sites.

9. **Address accessibility in the Department personnel policies**, and note that, upon request by an employee, the Department will make reasonable accommodations, which **may** include the removal of architectural barriers in work spaces.
10. **Require new construction, and alterations or additions** that include employee work areas to be designed and constructed so they are compliant with the 2010 Standards for Accessible Design and the New Mexico accessibility requirements.

### **Accessible Parking**

The Department maintains many public parking spaces. The test for the ratio of accessible stalls to all stalls is per parking lot. See our site reports for details.

11. **Create a parking stall template.** A suggested template is below.

### **Parking Stall Dimensions**

Stalls are a minimum of 8' wide. An adjacent access aisle must also be a minimum of 5' wide. The access aisle must be diagonally striped with **high quality blue paint**. At the rear of striped access aisle state "NO PARKING"; lettering shall be 1 foot high min. and 2 inches wide min. The access aisle can be shared by two accessible stalls. In addition, the stall shall be identified by the International Symbol of Accessibility (ISA). A clearly visible depiction of the symbol shall be painted in blue on the pavement surface at the rear of the space

The collection of signs must include one with the International Symbol of Accessibility, such as the US Department of Transportation R7-8 standard sign (the blue icon in a wheelchair), and constructed according to the Manual for Uniform Traffic Control Devices (MUTCD). Below that must be the statewide fine sign. Unless Los Alamos County has adopted a higher fine by ordinance, the sign must note the statewide fine.

Federal settlement agreements require a third sign, on at least one stall, that says VAN ACCESSIBLE. This stall must be 11' wide with a 5' access aisle. An acceptable alternate is 8' and 8'.

Finally, the bottom edge of the lowest parking sign is a minimum of 60" above the finished grade. The signpost shall be centered at the head of the accessible stall and we suggest that the curb cut and detectable warning run the distance of the access aisle.

**The most common deficit** in accessible parking stalls and access aisles is the slope. The 2010 Standards limit the slope to **not more than 2.08% in any direction**. **This is a challenging requirement that can take considerable effort to meet.**

### **Connection to the Accessible Route**

The access aisles should connect to an accessible route. The maximum running slope for the accessible route is 5%, and to account for heaving and settling, we recommend 4%. The maximum cross slope is 2%.

### **Passenger Loading Zone**

The loading zone must have an access aisle adjacent and parallel to vehicle pull-up space. The loading zone access aisle must be a minimum of 60" wide and 20' long.

12. In 2025, **implement a plan to correct or refresh every accessible stall** at every Department facility. Incorporate this task into other plans that require parking lot repair, restriping, or resurfacing.

### **Running Slope and Cross Slope**

There are many sites with running slopes steeper than permitted. At some sites this was a minimal issue, but at other sites it was a significant variance. This condition naturally occurs when concrete settles, or when connections between new and old routes are off by fractions of an inch. Cross slope is equally important, as it serves drainage as well as access purposes.

13. **Revise standard specifications and details** so that in new construction and alterations the slope of the AR shall not exceed 1:21, or 4.7%, as opposed to 1:20, or 5%. This allows room for field error.
14. **Revise standard specifications and details** so that in new construction and alterations the ramp slope shall not exceed 1:13, or 7.7%, as opposed to 1:12, or 8.33%. This allows room for field error. It also makes ramps easier to use for everyone, not just people with disabilities. This universal design approach is also a risk management tool.
15. **Revise standard specifications and details** so that in new construction or alterations the cross slope shall be an integral part of the project and shall not exceed 2% or 1:50.

### Detectable Warnings

The US Access Board suspended the detectable warning requirement in the late 1990's, for several years. It was restored in 2002. However, it is not required in the 2010 Standards. **As a smart practice, WT Group recommends the use of detectable warnings.**

The detectable warnings at curbs **that are not compliant** are often a concrete crosscut, or a grid laid on wet concrete to create a diamond indentation. Over time, these should be replaced.

16. As with parking, **develop a template for detectable warnings.**
17. In the same year that parking is refreshed, **implement a plan to correct or refresh every detectable warning** at every curb or crossing at Department facilities. If necessary, phase this out over a two or three-year period.
18. Weather greatly affects the life of detectable warnings. We recommend the use of durable, metal plates as opposed to plastic plates.

### Door Opening Force Requirements

Buildings within parks have many doors. Many have closer mechanisms. Some of these need adjustment to bring the pounds of force (lbf) necessary into compliance (5 lbf for interior doors and a suggested 8.5 lbf for exterior doors). However, some of the closers are just old. The wear and tear of 20 or more years erodes the closer effectiveness.

19. **Evaluate and determine the age of door closers.**
20. **Add door closer maintenance checks** to safety checklists in 2023 and for closers with 10 years of service or less, aggressively maintain them for effectiveness.
21. **Purchase and install new door closers** for all exterior doors (with closers 20 years old or more) and 50% of interior doors in 2025 or as soon as is possible.
22. **Purchase and install** new door closers for all remaining interior doors (with closers 20 years old or more) in 2027 or as soon as is possible.
23. **Consider acquiring, installing, and maintaining** power assisted door openers for Department facilities with heavy consumer traffic.

### Signage

Department signs serve several purposes. First, signs assist wayfinding in large sites. Second, signs identify important permanent elements of facilities, such as restrooms. Third, signs facilitate access by people with vision and physical limitations.

The 2010 Standards treats two types of signs differently. Signs for permanent spaces, such as a bathroom, must be in both Grade 2 Braille and raised lettering. Signs that are directional or informational only require visual lettering of a certain size. Be certain to incorporate these approaches into signs in buildings and sites operated by the Department.

24. **Create a sign template for use by the Department** in 2023, and describe where and in what facilities signs will be used. The template could include size of sign, mounting height, mounting location, size of characters, space between characters, contrast between characters and background, icons or symbols used in the signs, Department information (name of facility? phone number? main office number?), and more.
25. **Implement signage template and refresh** Department signs in 2024.

### Bathrooms

Bathrooms are an essential part of a visit to a CSD site. Exercise, food and beverage, social activities, and more all rely on one of the oldest designs known to us. Making those facilities accessible is tremendously important.

26. **Develop a bathroom template in 2023.** Confirm it with the State of New Mexico. This is a list of criterion for restrooms, not a design template. Be sure to include temporary facilities such as portable toilets in the template. The template should address the toilet, grab bars, items in the stall such as toilet paper and hooks, the stall, mirrors, sinks, hand towels, operating mechanisms, and more.
27. **Include bathroom renovations** at facilities in the Los Alamos County Capital Improvement Plan.
28. **Consider the use of automatic flush controls.** These have environmental benefits and are a great way to eliminate some accessibility problems.
29. **In the interim, implement non-structural modifications recommended in each section of this report,** such as lowering mirrors, remounting grab bars, changing the height of toilets and urinals, installing compliant stall hardware, and so forth. These less costly changes on a site-by-site basis will serve your customers well until resources are available to renovate restrooms on a comprehensive scale.
30. **Make at least one portable toilet,** where provided at a site, accessible. This includes a portable toilet placed at a picnic shelter or adjacent to sports fields. These must be accessible and served by **an accessible route.**

**The Department has sites with portable toilets; this must be addressed. Use our single-user toilet checklist, and require compliance by Department vendors.**

### Alarms

In existing facilities where the County provides an aural or audible fire alarm system, a visual alarm is not required unless the building was constructed after January 26, 1992 or has been upgraded since that same date.

If an alarm in an existing facility is audible only, it need not be modified to include a visual alarm unless it is replaced or upgraded in the future.

31. **Determine in 2023** if systems have been upgraded or replaced since 1992.

32. **Develop a plan in 2024** for the installation of aural and visual alarms in renovations.
33. **Retrofit construction that has occurred since 1992** to include aural and visual alarms by the end of 2027.

### Publications and Online Information

The use of a site grid in the Community Services Department print materials is an important tool for residents. The Department can now use that tool to communicate about access. CSD should incorporate the access work the Department staff completes and indicate in the grid the location of accessible picnic areas and accessible playgrounds.

34. **Update print material parks and facilities** information to reflect Department plans regarding access, and to note which sites CSD will make accessible.

The same concepts apply to the Department website. The website is an important tool for residents and the County should use the website to communicate about accessibility projects planned by the Department.

35. **Update website** information to reflect Department plans regarding access, and to note which sites are accessible or the sites the County will make accessible.

### Maintenance Buildings

The specific site reports address maintenance areas, and we describe the approach to employee areas earlier in this report. We note earlier that CSD can apply a different standard to employee work areas, but employee work areas are not exempted from access requirements. CSD maintenance staff should receive training in regard to applying the **approach, enter, and exit** strategy so that they understand the reason for the various requirements.

36. **Train maintenance staff supervisors** in accessibility concepts that are applicable to the maintenance building.
37. **Implement recommendations regarding parking, accessible route, changes in level, gaps, doors, and alarm systems** at the maintenance areas.

### Unique Sites

The Department has several unique sites, such as the Walkup Aquatic Center, the North Mesa Arena, and the Ice Rink. This raises the bar on the expectation of access at these sites, as there is no “alternate” site to which CSD can direct patrons with disabilities to so they can enjoy the “programs” at these sites.

For these sites, efforts must be made annually towards the correction of access deficiencies. This can be done through existing capital plans, or by following our recommendations in the site reports for specific retrofit work.

## PROGRAM ACCESS TEST

The US DOJ test for existing facilities is known as the “program access test”. A “program” is an opportunity made available by the Department. It can be as diverse as eating a sandwich at a picnic table in a park, enjoying a playground at a park, enjoying a walk at Canyon Rim Trail, and attending a County Council meeting and making public comment. A program is not just an activity for which a person registers and pays a fee.

We note early in this section that the program access test does not apply to new construction or alterations and additions. New construction and alterations and additions must be designed and constructed to comply with the 2010 Standards for Accessible Design.

In the title II regulation, section 35.150(b) describes the methods an entity can use to make programs accessible. They include:

- Redesign or acquisition of equipment;
- Reassignment of services to accessible buildings;
- Assignment of aides to program beneficiaries;
- Delivery of services at alternate accessible sites;
- Alteration of existing facilities and construction of new facilities;
- Use of accessible rolling stock or other conveyances; and
- Any other methods that result in making its services, programs, and activities readily accessible to and usable by individuals with disabilities.

Importantly, this section notes that a “...public entity is not required to make structural changes in existing facilities...” when any other method, such as those noted above, are effective. An element of the program access test is dispersion. For example, the Department has 23 playgrounds. Those to be made accessible shall be dispersed throughout the Department.

What is the right number, or ratio of accessible to inaccessible, for recurring assets? That is an unknown today. US DOJ has not, and likely never will, established a ratio or percentage. We do know that DOJ guidance indicates that unique or infrequently occurring assets are more likely to require alteration than frequently occurring assets.

We recommend CSD adopt an approach requiring that a minimum of one of three recurring sites be made accessible. Additionally, unique sites shall be made accessible.

The program access test for the County and other units of state and local government is much more complex than the approach to existing facilities that a business or nonprofit may take. US DOJ, Federal District Courts, the Department of Interior, state courts, and state enforcement agencies have accepted our minimum of one-of-three approach. We know it is an effective approach that allows CSD to optimize resources and make sites accessible to residents.



The concept of technical infeasibility is an important exception. The US DOJ 2010 Standards for Accessible Design note that when meeting the technical requirements, if the movement of a load bearing wall or element is required, technical infeasibility may arise. The Department need not make alterations at a site when it is technically infeasible to do so.

In the subsequent discussions regarding playgrounds, trails, and other park assets, we apply our interpretation of the program access test. We note that this is a summary; for the detailed retrofit recommendations, see the individual site reports. For each category of asset, we will note whether we believe the asset is accessible; whether the asset should be retrofit for access; or whether the asset should be left as is and inaccessible, because the asset category satisfies the program access test.

We take no position as to whether the Department has a number of assets in a category, such as tennis courts, that is adequate to the demand for tennis in the Department. That is not within our scope.

### Playgrounds

The **minimum required** of the Department by title II of the ADA is that the “program” of playgrounds be accessible to residents. This is measured by the “program access test” described in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing playgrounds must be accessible. Treat this as a planning exercise and aim for one of three playgrounds being made accessible.

Our evaluation included 23 playgrounds. Of these, five are accessible. We recommend changes to three more playgrounds. Any playgrounds to be replaced or altered in the future, or designed and built where one did not exist, must comply with the 2010 Standards and will therefore be accessible.

The Program Access Park Grid illustrates the areas where work is recommended so that every resident of the Department is close to an accessible playground.

38. **Continue to maintain surfaces and components**, per the site reports, so that the playgrounds at the sites below **remain** accessible:

- **Rover Park (1 of 2)**
- **North Mesa Park**
- **Jeffrey Play Lot (1 of 2)**
- **37<sup>th</sup> Street Tot Lot (2)**

39. **Make corrections** cited in the reports so the playgrounds below **become** accessible:

- **Loma Linda**
- **Pinon Park**
- **Rover Park**

40. **Leave as is** the playgrounds at the parks named below, and if future alterations or renovations occur at those sites, make them accessible.

- **Barranca Mesa Park**
- **Community Soccer Field**
- **East Park**
- **Fire Fighter Park Tot Lot**
- **Grand Canyon Park Play Lot**
- **North Mesa Picnic Grounds**
- **Orange Street Tot Lot**
- **Overlook Sports Complex**
- **Ridgeway Tot Lot**
- **San Ildefonso Play Lot**
- **Urban Park**
- **Walnut Street Tot Lot**
- **Western Area Park**

41. **Advertise the accessible playgrounds** in the CSD website and publications. This is an important way to make the public aware of opportunities, and complies with the section 35.106 notice requirement in the title II regulation.
42. **Gradually eliminate the use of engineered wood fiber as an impact attenuating playground surface.** For this surface to remain accessible, Department staffs must more frequently inspect and maintain the surface. Unitary surfaces such as poured-in-place rubber or interlocking rubber tiles, and the artificial turf surface, are much easier to use for persons with mobility impairments and also meet the required standard for impact attenuation.

### Lake or Water Access

The **minimum required** of the Department by title II of the ADA is that the “program” of lake or water access be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing access points should be accessible.

We recommend that a minimum of one access point of every three be accessible. We saw one water access points and one is accessible. **We recommend no new access.**

The Program Access Park Grid illustrates the areas where work is recommended so that every resident is close to an accessible water access point.

43. **Make corrections** cited in the reports so the water access below **remain** accessible:
- **Ashley Pond**
44. **Advertise the accessible water access** in the CSD website and publications.

### Trails

The **minimum required** of the Department by title II of the ADA is that the “program” of trails be accessible to residents. This is measured by the “program access test” found in section 35.150

of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing trails should be accessible.

We recommend that a minimum of one trail of every three be accessible. We saw 25 trails and found eight to be accessible. **We recommend access to one more.**

**Trail access guidance is not yet in the form of a final and enforceable standard.** The US Access Board does offer significant guidance, and we have applied it here to Department trails. However, the US Access Board does not have the authority to establish a Standard, which is the step above the **final guideline** that exists today. That said, we recommend Department continue as a smart practice to adhere to the Access Board guidance on this matter.

The Program Access Park Grid illustrates the areas where work is recommended so that every resident is close to an accessible trail.

45. **Make corrections** cited in the reports so the trails below **remain** accessible:

- **Barranca Mesa Park**
- **Canyon Rim Trail**
- **Ancestral Ruins/Museum Pathways (5)**
- **North Mesa Park (1 of 2)**
- **Overlook Sports Complex (1 of 2)**
- **Pinon Park**
- **Urban Park**
- **Western Area Park (1)**

46. **Make corrections** cited in the reports so the trail below **become** accessible:

- **Nature Center** (to Kinnikinnick trailhead at the Aquatic Center)

47. **Leave as is** the trails at the following sites, until next altered:

- **Bayo Canyon Trailhead**
- **Camp May**
- **Deer Trap Trailhead**
- **East Park**
- **Mitchell Trailhead**
- **Nina Marsh Tennis Court**
- **North Mesa Park (1)**
- **Overlook Sports Complex (1)**
- **Quemazon Trailhead**
- **Red Dot Trailhead/Grand Canyon Trails**
- **West Jemez Road Trailheads (3)**
- **Kinnikinnick Park**
- **Western Area Park (5)**

48. **Advertise the accessible trails** in the CSD website and publications.

### Camping

The **minimum required** of the Department by title II of the ADA is that the “program” of camping be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing campsites should be accessible. We recommend that at least one of every three be accessible.

There are 26 campsites and none are accessible. **We recommend four be made accessible.**

The Program Access Park Grid illustrates the areas where work is recommended so that every resident is close to an accessible campsite.

49. **Make corrections** cited in report so the camp sites at the site below **become** accessible:
  - **Camp May (2)**
  - **White Rock RV park (2)**
50. **Leave as is** the camping at the parks named below, and if future alterations or renovations occur at those sites, make them accessible.
  - **Camp May (8)**
  - **White Rock RV Park (14)**
51. **Advertise the accessible campsites** in the CSD website and publications.

### Tennis

The **minimum required** of the Department by title II of the ADA is that the “program” of tennis be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing tennis courts should be accessible. We recommend that at least one of every three be accessible.

There are nine courts and four are accessible. **We recommend no new access.** The Program Access Park Grid illustrates the areas where work is recommended so that every resident is close to an accessible court.

52. **Make corrections** cited in report so the tennis courts at the site below **remain** accessible:
  - **Canyon Road Tennis Courts**
  - **North Mesa Park (2)**
  - **Urban Park**
53. **Leave as is** the tennis courts at the parks named below, and if future alterations or renovations occur at those sites, make them accessible.

- **Barranca Mesa**
- **Myrtle Street Tennis and Pickleball Courts**
- **Nina Marsh Tennis Courts**
- **Pinon Park**
- **Rover Park**

54. **Advertise the accessible tennis courts** in the CSD website and publications.

### **Basketball**

The **minimum required** of the Department by title II of the ADA is that the “program” of basketball be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35).

For similar multiple sites, no guidance is given as to how many existing basketball courts should be accessible. We recommend that a minimum of one court of every three be accessible. We saw six basketball courts and three are accessible. **We recommend no new access.**

The Program Access Park Grid illustrates areas where work is recommended so every resident is close to an accessible court.

55. **Make corrections** cited in the reports so the courts below **remain** accessible:

- **East Park**
- **Pinon Park**
- **Urban Park**

56. **Leave as is** the courts at the following sites until next resurfaced or altered:

- **Western Area Park**
- **Rover Park**
- **Jeffrey Play Lot**

57. **Advertise the accessible basketball courts** in the CSD website and publications.

### **Ball Fields**

The **minimum required** of the Department by title II of the ADA is that the “program” of ball fields be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35).

For similar multiple sites, no guidance is given as to how many existing fields should be accessible. We recommend that a minimum of one field of every three be accessible. We saw 17 ball fields and none are accessible. **We recommend access to six more for dispersion.**

The Program Access Park Grid illustrates the areas where work is recommended so that every resident is close to an accessible field.

58. **Make corrections** cited in the reports so the fields below **become** accessible:

- North Mesa Sports Complex (2 of 6)
- Overlook Sports Complex (2 of 9)
- Urban Park
- Community Soccer Field

59. **Leave as is** the fields at the following sites:

- North Mesa Sports Complex (4)
- Overlook Sports Complex (7)

60. **Advertise the accessible ball fields** in the CSD website and publications.

### Athletic Fields

The **minimum required** of the Department by title II of the ADA is that the “program” of rectangular athletic fields be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35).

We recommend that a minimum of one athletic field of every three be accessible. We saw 12 athletic fields and none are accessible. **We recommend access to four more.**

The Program Access Park Grid illustrates the areas where work is recommended so that every resident is close to an accessible field.

61. **Make corrections** cited in the reports so the fields below **become** accessible:

- Overlook Sports Complex (1 of 4)
- North Mesa Park
- Community Soccer Field
- Urban Park

62. **Leave as is** the fields at the following sites:

- Barranca Mesa Park
- East Park
- Los Pueblos Park
- Overlook Sports Complex (3)
- Rover Park
- Western Area Park

63. **Advertise the accessible fields** in the CSD website and publications.

### Picnic Areas and Picnic Shelters

The **minimum required** of the Department by title II of the ADA is that the “program” of picnicking be accessible to residents. This is measured by the “program access test” described in section 35.150 of the title II regulation (see 28 CFR Part 35).



For similar multiple sites, no guidance is given as to how many existing shelters or picnic areas should be accessible. There are more than 36 picnic areas and picnic shelters, and eight are accessible. **We recommend access to four more.**

**Picnic area technical requirements are not yet in the form of a final and enforceable standard.** The US Access Board offers significant guidance, and we apply it here to Department shelters.

However, the US Access Board does not have the authority to establish a Standard, which is the step above the **final guideline** that exists today. That said, we recommend the Department continue as a smart practice to adhere to the Access Board guidance on this matter. The Program Access Park Grid illustrates the areas where work is recommended so that every resident of the Department is close to an accessible picnic area/shelter.

64. **Make corrections** needed to **maintain access**, including adding tables, to shelters or picnic areas at:

- **White Rock Senior Center (1 picnic area, 1 shelter)**
- **Ashley Pond (1 shelter)**
- **East Park (1 picnic area)**
- **Fuller Lodge Historic Grounds (2 picnic area)**
- **North Mesa Picnic Grounds (1 shelter)**
- **Pinon Park (1 picnic area)**

65. **Make corrections** needed to **create access**, including adding tables, to shelters or picnic areas at:

- **Barranca Mesa Park (1 shelter)**
- **Fire Fighter Park Tot Lot (1 picnic area)**
- **Main Gate Park (1 shelter, 1 picnic area)**

66. **Leave as is** the shelters or picnic areas at the following sites, until next altered:

- **Nature Center (2 picnic areas)**
- **Ashley Pond (1 picnic area)**
- **Camp May (1 shelter, 1 picnic area)**
- **Fire Fighter Park Tot Lot (1 picnic area)**
- **Fuller Lodge Historic Grounds (1 picnic area)**
- **Grand Canyon Park Play Lot (1 shelter)**
- **Ice Rink (1 picnic area)**
- **Jeffrey Play Lot (1 picnic area)**
- **Loma Linda Park (1 picnic area)**
- **Los Alamos Skate Park and Library Playlot (1 picnic area)**
- **North Mesa Park (1 picnic area)**
- **Overlook Sports Complex (3 picnic areas)**
- **Pinon Park (1 shelter)**
- **Ridgeway Tot Lot (1 picnic area)**
- **Rover Park (1 picnic area, 1 shelter)**

- San Ildefonso (1 picnic area)
- Urban Park (2 picnic area, 1 shelter)
- Western Area Park (1 picnic area)
- Xeriscape Demo Garden (1 picnic area)

67. **Advertise accessible shelters and picnic areas** in the CSD website and publications.

### Sand Volleyball

The **minimum required** of the Department by title II of the ADA is that the “program” of sand volleyball be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing sand volleyball courts should be accessible.

We recommend that a minimum of one sand volleyball course of every three be accessible. We saw three sand volleyball courts and none are accessible. **We recommend access to one.**

The Program Access Chart at the end of this section illustrates the areas where work is recommended so that every resident is close to an accessible sand volleyball court.

68. **Make corrections** cited in the reports so the sand volleyball court below **becomes** accessible:

- **North Mesa Picnic Grounds**

69. **Leave as is** the courts at the following sites:

- **Rover Park**
- **Urban Park**

70. **Advertise the accessible sand volleyball courts** in the CSD website and publications.

### Dog Parks

The **minimum required** of the Department by title II of the ADA is that the “program” of dog parks be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35).

For similar multiple sites, no guidance is given as to how many existing dog parks should be accessible. We recommend that a minimum of one dog park of every three be accessible. We saw three dog parks and none are accessible. **We recommend access to one.**

The Program Access Chart at the end of this section illustrates the areas where work is recommended so that every resident is close to an accessible dog park.

71. **Make corrections** cited in the reports so the dog park below **become** accessible:

- **East Park**

72. **Leave as is** the courts at the following sites:

- **North Mesa Park (2)**
- **Overlook Sports Complex (2)**

73. **Advertise the accessible dog parks** in the CSD website and publications.

## TRANSITION PLAN

The County must have a transition plan per 35.150(d) of the DOJ title II regulation. Here, we have developed a Transition Plan for the Department. A transition plan should identify the barrier, the corrective work, the date by which the work will occur (in our reports, the Phase), and the person responsible for barrier removal.

The County should remove barriers as soon as is possible. Phasing the work allows access to occur and makes the best use of the resources of the Community Services Department. We recognize that each phase requires a different number of years for implementation. The Department should determine the annual activity within its fiscal years.

In the view of DOJ, the recreation design requirements were available to the Department since 2004, if not earlier. Enforcement staff has said at meetings and in conversations that work should have already been underway to identify and remedy access deficits.

We recommend work in three phases. We also note work we believe need *not* occur in a category titled Department Option. Should Department plans change, or should other resources become available, the corrective work needed at these sites is known. Finally, we recommend that some work occur as a smart practice.

We have made cost **references for planning purposes** for the corrective work recommended. We note that these are not estimates and should be used only for planning purposes. The final design, the year in which the work will occur, the relationship with the contractor, and many other factors must be considered before a cost estimate is made.

Our total of all cost references is \$10,021,169.86. The work in Phase One, Two, and Three totals \$4,701,611.86. We recommend the County complete the work in the first three phases in twelve years.

We have balanced work through all three phases, and the Department can certainly choose to reorder those recommendations. Our phasing is described below.

- In Phase One, we recommend work in two categories: easy to do with existing staff and fiscal resources (low-hanging fruit), and work at recently built sites that is not compliant (such as parking). We suggest that completion of this phase requires seven fiscal years. Cost references for Phase One are \$3,414,192.75.
- In Phase Two, we recommend work in areas that are new to the 2010 Standards. This typically includes sports fields and courts, playgrounds surfaces, playground components, and other park assets. We suggest that completion of this phase requires two fiscal years. Cost references for Phase Two are \$556,943.10.

- In Phase Three, we recommend work in areas in two categories: elements not yet addressed by a final Standard, such as trails, and elements where correction is complex or costly. We suggest that completion of this phase requires three fiscal years. Cost references for Phase Three are \$730,476.01.
- We identify corrections that are not currently subject to standards, but we refer to as “smart practices in the column labeled “SP”. These corrections, we believe, make your services and assets more accessible and usable by individuals with disabilities. Cost references for smart practices are \$793,828.25.
- We do phase some work as Department Option. This is work at a site or element with access deficits where we believe the Department already meets the program access test and need not make these sites accessible, until later altered for another purpose. Cost references for Department Option are \$4,525,729.75.

## **COMMUNITY ENGAGEMENT**

The ADA requires the Department to provide an opportunity for public feedback in the shaping of transition plan priorities. Four public feedback sessions were held: two on November 30, 2021, one at 3:00 pm and one at 6:00 pm and two sessions on June 15, 2022, one at 8:30 am one at 5:30 pm.

On November 30, three members of the public attended. Representing Los Alamos County Community Services Department was Cory Styron, and John McGovern represented the WT Group Accessibility Practice.

On June 15, two members of the public attended. Again, Styron represented Los Alamos County Community Services Department, and McGovern represented the WT Group Accessibility Practice.

At both meetings, Styron welcomed the attendees and noted that the Community Services Department was committed to compliance with the Americans with Disabilities Act (ADA), and had retained the WT Group to assist in doing so. McGovern then reviewed ADA title II requirements that apply to the Department, reviewed the ADA requirements as they apply to existing facilities and parks, and reviewed the required elements of a transition plan. He then reviewed some of the factors used by other counties in shaping their transition plan priorities, such as making more heavily used sites a higher retrofit priority than lesser-used sites.

McGovern then shared a PowerPoint with images of some of the observations made by WT Group staff when auditing Department sites. These were examples, and not a comprehensive review of the audits. Examples included parking slopes that were too steep or lacked proper signage, restrooms with grab bars at noncompliant heights, playground surfaces that were noncompliant, or ramp slopes that were too steep.

In both meetings, the audience discussed common issues of concern. The consensus in both the November and June meetings was to emphasize the basics at sites as a higher priority. This includes parking, signage, exterior accessible routes, facility entries, restrooms, and other common assets. Other consensus items were dispersion, making heavier used sites a priority,

greater use of power door openers, and addressing issues that can be resolved with current human and fiscal resources. Those factors are present in the recommended transition plan.

## **FUNDING ACCESS RETROFITS**

We have developed this section to discuss some of the potential funding sources other departments, counties, cities, and governmental entities have used for accessibility compliance. This is a complex subject and each community has developed successful strategies. The overall effort is complicated by the lack of a dedicated federal funding source. This will not likely change in the future. Even if a change were to occur, federal funding is unpredictable, as we have seen from other federal programs. This portion of the report is intended as primer on this topic and is not intended as a comprehensive list.

### **Earmarks**

Some of our clients have pursued Congressional earmarks for access work. Earmarks are unpopular, and difficult to obtain. While Congressional earmarks were not used for a decade or more, both political parties have voiced support for the use of earmarks. This is an opportunity for the Community Services Department.

### **Community Development Block Grant Funds**

Several of our clients have acquired federal Community Development Block Grant (CDBG) funds for accessibility renovations at existing sites. CDBG funds often have a scale of priority. It is important to establish accessibility as a priority for CDBG applications.

### **State Grants Programs**

Several states, and several of our clients, have successfully pursued state legislation to set aside dedicated state funds that can be used for specific purposes, including access retrofits. To name a few, Illinois, New Jersey, Colorado, Ohio, Florida, and Texas all have sources of revenue funded in various ways, such as a real estate transfer tax.

While the various states have all at times not fully funded these grant programs, they remain an effective tool for cities regarding site acquisition and development.

### **State Discretionary Funds**

Most state legislatures provide some type of discretionary funding for members of the legislature. In some states, these are relatively small grants of under \$50,000. These can be a viable option for a Department with good relationships with state legislators.

### **Special Accessibility Legislation**

At least one state (Illinois) created, in 1974, legislation that allows municipalities and special purpose park districts to levy a tax to fund recreation for people with disabilities. Entities also apply the funds to access retrofits at existing sites and facilities. Statewide, Illinois park districts and municipalities levy an estimated \$50,000,000 annually for this purpose. No other state has adopted this model.

### **Private Giving**

Some of our clients have successfully sought private gifts for accessibility purposes. The private giving area is subject to fluctuations depending on the economy, political issues, and related fiscal impacts. In our experience, private giving works best when an agency has an employee dedicated to this purpose.

### **Corporate Giving**

Some of our clients have successfully sought grants from corporations. These may, for corporate purposes, come from marketing (such as naming rights to a facility) or from community giving. Many corporations have a related foundation that manages corporate giving. In our experience, corporate giving works best when one employee is dedicated to this purpose.

### **Community Foundations and Other Foundations**

Community foundations, which operate on a regional basis, have also been involved in accessibility giving. Perhaps the greatest example here is the multi-million dollar Kellogg Foundation project that improved accessibility in Michigan, Ohio, Indiana, Illinois, and other states that bordered the Kellogg headquarters in Michigan.

### **Other Methods**

There are many other methods, some of which are crafted by a community to meet a unique set of circumstances. These include:

- A New Jersey community, an Oregon community, and an Illinois community applies 100% of accessible parking fines towards recreation for people with disabilities.
- Many agencies have added a \$1 to \$10 surcharge to every registration, earmarking the fees generated for access and inclusion expenses.
- Several communities have successfully sought budget increases to address accessibility backlogs, just as they have with maintenance backlogs. Those increases may be general fund allocations, proceeds from successful referenda, or reallocations of under expended funds originally budgeted for other local government purposes.

### **Risk Management**

Investing in safety saves money by avoiding legal expenses related to injuries on Department properties. The same concept applies here. Investing in retrofits saves CSD the cost of staff time and attorneys to defend against ADA lawsuits or administrative complaints.

While we do not believe a decision about access should hinge solely on risk management factors, we do recommend that CSD be aware of this factor going forward. ADA enforcement continues to grow and touch more and more communities. Relief under the ADA is intended to be injunctive in nature, but the time consumed and cost of litigation can be a great drain on the human and fiscal resources of any unit of local government.



## The General Fund

Another method is to fund retrofits through the General Fund, Corporate Fund, or CIP. Some of the methods discussed earlier in this section help to reduce General Fund reliance. However, these complementary methods typically are not a substitute for General Fund support.

### IMPLEMENTATION STRATEGIES

Title II of the ADA is relatively straightforward. That said, we offer some suggestions below regarding implementation of the several mandates in the regulation.

1. **Maintain a strong relationship with disability advisory groups.** Make it a point to seek out and work with local advocacy groups, and seek their feedback on future initiatives. Having a good relationship between the Department and the advocacy groups will help greatly in meeting the ADA mandates and improving the quality of life for all, including those with disabilities.
2. **Acquire and maintain the Certified ADA Coordinator credential.** There is no nationwide credential required for ADA implementation. However, a Certified ADA Coordinator will benefit the Department, keeping it current on implementation strategies and smart practices from other local entities in the United States.
3. **Identify available sign language interpreters and enter into agreements** before situations arise where the Department needs such services. Negotiate rates, availability, environments where the work will occur, and so forth.
4. One of the title II requirements for communications produced by the Department **requires the Department to respond to inquiries in the form by which the person inquired.** We also believe that this is the courteous way to respond. Here, if an inquiry to CSD comes in the form of a Braille document, the response from CSD should also be in Braille. **We recommend the Department either locate the nearest Braille printer and enter into an arrangement for use, or simply acquire one and have employees learn how to use it.**
5. **Acquire assistive listening systems.** There are three principal types: inductive loop systems, infrared systems, and FM systems. These devices are helpful for persons with some residual hearing. These devices separate speech from ambient noise and amplify speech. People who are deaf or hard of hearing may prefer, for various reasons, one type of device. The National Association of the Deaf has a brief review of the topic [here](#).
6. **Monitor the development of the website accessibility requirements.** The Department of Justice suspended the developing website accessibility guideline in 2016 because technology had advanced so much that the old guideline, developed in 2011, was obsolete. The plan was that US DOJ would reevaluate the guidance and issue a final and enforceable Standard in 2018. DOJ did not execute that plan. A 2017 Presidential directive required that for every new regulation, the issuing agency must rescind two. This caused significant turmoil in the world of accessibility, where there are only three regulations (title II, title III, and the 2010 Standards). To rescind one of the three would have disastrous consequences for County residents with disabilities. The

present Administration will not require such a rescission. It is therefore likely US DOJ will issue some new ADA regulations, but it is impossible to predict when. However, the Department website must be usable by people with disabilities.

7. **Develop an ongoing series of disability training for employees.** Every day, new products appear on the market, agencies issue new enforcement decisions, and local entities develop and refine strategies for inclusion and access. Keep current on these developments and share this news with Department staffs.
8. **Require employees to add access and inclusion subject matter to their “diet” of continuing education.** It is important to seek out and attend training events that relate to the work of the employee, and focus on access and inclusion.
9. **Invest in accessibility** so that Los Alamos County becomes an access destination and a model for other communities.

#### UNFINISHED BUSINESS

The County must still audit, and include in a Transition Plan, the County facilities that were not a part of this project scope of work. There are opportunities to provide community businesses with guidance and advice regarding compliance with ADA title III. The County should realize that other rulemaking will occur, regarding outdoor recreation assets, single rider golf cars, exercise machines, websites, and final and enforceable public rights-of-way. The County can influence these rules through active involvement by elected officials, staff, and residents.

#### CONCLUSION

The Los Alamos County Community Services Department has a variety of facilities and sites. The skilled staff operates facilities and sites the community wants and enjoys. This report identifies some issues that are typical in the infrastructure of local government recreation facilities and parks, and some that are unique to Los Alamos. The Community Services Department takes steps towards accessibility every year and that undoubtedly helps. That said, access work should occur every year during the transition plan.

While no one can say with certainty how long the Department can stretch these projects, the Department should make access retrofits an ongoing part of its annual plans and budgets. US Department of Justice officials have said work must be completed as soon as is possible. **Be certain to understand that the Department could be forced to accelerate its pace. Making access work a high priority is critical.**



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