

# 'Need to Know' ADA Regulations relative to public right of ways and sidewalks

Theresa Savoy  
Director, Civil Rights Office  
Tel 207-624-3042  
[Theresa.savoy@maine.gov](mailto:Theresa.savoy@maine.gov)

Victoria Morales  
Legal Counsel



# Legal Background

## Architectural Barriers Act (1965)

- Required buildings and facilities designed, constructed, altered or leased with Federal funds must comply with Accessible Design Standards (ANSI A 117.1)

## Rehabilitation Act (1973)

- Section 504 – Prohibits discrimination with federal funds in any program services or activity to Federal Aid recipients.
- Required curb cuts on Federally assisted construction.



# Legal Background

## American with Disabilities Act (1990)

- Civil Rights Law that prohibits discrimination against people with disabilities in all aspects of life (***regardless of funding source.***)
- Equal Participation and opportunity into mainstream society is the goal.



# Quick Maine Facts

- There are approximately 206,400 persons with one or more disabilities residing in Maine
- 6 percent of the population of 1.3 million. This proportion was higher than the US average, where an estimated 12 percent of residents had a disability.
- Among the six types of disabilities identified the highest prevalence rate was for "Ambulatory Disability," 7.9 percent.

Source: U.S. Census Bureau, 2008–2010 American Community Survey, American FactFinder, Table S1810, Maine; <<http://factfinder2.census.gov>>, accessed 2/1/2012.



# Why is accessible infrastructure important?

- Many individuals are reliant on our pedestrian infrastructure to get to work, shop, access health care and connect with friends and family.
- Individuals with disabilities rely on safe and accessible infrastructure to provide consistent access to jobs and people.
- If there is no access or limited access, people with disabilities are prevented from fully participating in society.



# Five Titles of ADA

- I. Employment
- II. State and Local Government Services**
- III. Private Accommodations Commercial Facilities  
(privately owned facilities used by the public)
- IV. Telecommunications
- V. Miscellaneous, includes requirements for  
the US Access Board to develop design  
standards**



# Title II – State and Local Government Services

Applies to:

- Facilities built after 1990;
- Pre-existing facilities;
- All public entities, such as State and local governments, **even if they are not recipients of federal funding.**



# Title II – State and Local Government Services

- New construction and alteration of facilities must be free of architectural and communication barriers
- Existing facilities, policies and programs must be evaluated for discrimination and a plan for modification put in place





# New Construction/Alterations

## New Construction 28 CFR 35.151

- Any facility altered or constructed after January 26, 1992 must comply with ADA Accessibility Guidelines (ADAAG) or Uniform Standards of Accessibility (UFAS) (UFAS eliminated in 2012)
- New construction expected to provide the highest level of accessibility
  - Free from communication barriers
  - Free from architectural barriers



# 2013 Joint DOJ/DOT (FHWA) Definitions of Alteration

## Alterations vs. Maintenance

- DOJ Regulation (28 CFR 35.151(b)): Alteration is a change that affects or could affect the usability of all or part of a facility (such as a road)
- DOJ Regulation (28 CFR 35.151(i)): Altered streets, roads, and highways must contain curb ramps where there are curbs or other barriers to a pedestrian walkway (i.e., sidewalk)
- Until 2013 DOJ Regulation did not identify specific road treatments that qualify as alterations versus treatments that qualify as maintenance



# Alterations vs. Maintenance

- Prior DOJ guidance stated:
  - Filling a pothole was not considered to be an alteration
- Prior DOJ guidance did not provide more specific examples of maintenance activities
- Because of this, maintenance treatments were considered by FHWA and STAs to be Maintenance.



# Alterations vs. Maintenance

- DOJ and DOT (FHWA) met in 2012 to 2013
  - Desire to provide clarity and consistency
  - Based on feedback (comments/questions) from States, local governments, disability rights advocates, citizens
  - Educated by public perception of scale of road work (i.e., heavy equipment, truck numbers, crew sizes, time)



# DOJ/DOT 2013 Definitions

Joint Technical Assistance

> Distinguishes all

## MAINTENANCE

**Chip Seals**

**Crack Filling and Sealing**

**Diamond Grinding**

**Dowel Bar Retrofit**

**Fog Seals**

**Joint Crack Seals**

**Joint repairs**

**Pavement Patching**

**Scrub Sealing**

**Slurry Seals**

**Spot High-Friction Treatments**

**Surface Sealing**

## ALTERATION

**Addition of New Layer of Asphalt**

**Cape Seals**

**Hot In-Place Recycling**

**Microsurfacing / Thin-Lift Overlay**

**Mill & Fill / Mill & Overlay**

**New Construction**

**Open-graded Surface Course**

**Rehabilitation and Reconstruction**



**New Project**  
(not yet advertised)

**Maintenance**

**Alteration**

Proceed w/ Work

Existing Sidewalks /  
Prepared Surfaces w/ Barriers

No

Yes

Proceed w/Work

Meets 1991 or 2010 Standards

Yes\*

No

Proceed w/Work

**Install/Update  
Curb Ramps**

**\*If sidewalk work is performed, then curb ramps must be updated to 2010 standards**

# 2013 -14 MaineDOT ADA Policy

- Redefined Alterations to include Mill and Fill, Cape Seals, Microsurfacing and Light Capital Paving
- Require review of pedestrian facilities for compliance.
- If not compliant, upgrade curb ramp to meet current ADA (Including curb ramp slope 8% and detectable warnings.)



# Food for Thought



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# Technical Feasibility

- Alterations must meet the minimum design standards:
  - Document, document, document when not able to meet specific design standards
  - Technical infeasibility refers only to structural conditions, not cost.
  - Even if you cannot meet *all* design standards you must meet the standards to the *maximum extent feasible*. Document.



# Existing Facilities

- Requires public entities to make programs accessible in all cases unless:
  - Improvement fundamentally alters the nature of the program (i.e. a historic building or a rugged hiking trail)
  - Improvement creates an undue financial burden



# Undue Burden

- Based on *all* resources available for a program
- Claims must be proven and accompanied by a written statement of reasons and signed by the head of the public entity
- What constitutes undue burden will often be decided in courts.



# Undue Burden

- Exceptions should be rare
- Entities must make good faith effort to provide accessibility
- If full accessibility is not feasible, document what steps were taken
- Undue burden applies only to existing facilities, not new construction.



# Maintaining Accessibility

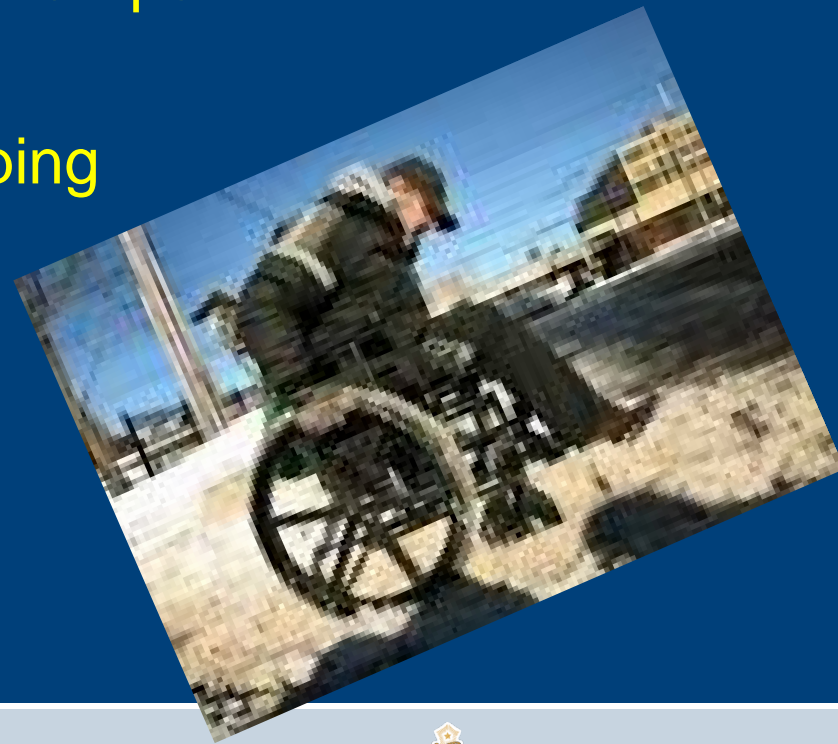
## Maintaining Accessibility 28 CFR § 35.133

- State and local governments must maintain the accessible feature of facilities in operable working condition (i.e. curb ramps, sidewalk breaks, buckled bricks)
- Poorly maintained facilities are not accessible or safe



# Maintaining Accessibility

- Examples:
  - Sidewalks blocked by street furniture
  - Snow on sidewalks and curb ramps
  - Drainage systems clean
  - Trimming trees and landscaping



# Pictures worth a 1000 words



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# Resources

- **FHWA Questions and Answers About ADA/Section 504**  
[http://www.fhwa.dot.gov/civilrights/programs/ada\\_sect504qa.cfm#q30](http://www.fhwa.dot.gov/civilrights/programs/ada_sect504qa.cfm#q30)
- **DOJ/DOT Joint Technical Assistance<sup>1</sup> on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing** <http://www.ada.gov/doj-fhwa-ta.htm>
- **Glossary or Terms DOJ/DOT Guidance:** <http://www.ada.gov/doj-fhwa-ta-glossary.htm>
- **ADA 2010 Standards for Accessible Design:** [http://www.ada.gov/2010ADAstandards\\_index.htm](http://www.ada.gov/2010ADAstandards_index.htm)



# Questions?



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