Opening Nature to Everyone
Improving Access to Persons with Disabilities

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Land Trust Alliance Rally
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Topics

• Legal Overview:
  • Applicability of the ADA to Land Trusts
  • Wheelchairs and Other Power Driven Mobility Devices (OPDMDs)
  • Service Animals
  • Auxiliary Aids and Services
  • Websites
  • Legal Remedies

• Implementation: What if we don’t meet accessibility guidelines?
  • Raven Ridge Natural Area Example
    Planning
      • Permitting
      • $$
      • Contracting
      • Communications
      • Management
ADA Definition of Disability

(A) a physical or mental impairment that substantially limits one or more major life activities;
(B) a record of such an impairment; or
(C) being regarded as having such an impairment.
ADA
Title III

“Public Accommodations” Privately owned “parks... and other places of recreation” open to the public and containing human-made improvements.

Applies to conservation easements, to the extent the easement lands are open to the public.

“Commercial Facilities” Non-residential commercial facilities operated by private entity (open or closed to public).
2010 ADA Standards for Accessible Design

ADA Design Standards apply to:

✓ Construction and Additions (after 1/26/93)
✓ Alterations (after 1/26/92)
✓ Barrier Removal (when readily achievable) (PA only)
Barrier Removal

Priorities:
1. Access to facility from site arrival points (sidewalks/parking)
2. Access to goods/services
3. Access to public restrooms
4. Removal of any remaining barriers

Examples:
Installing ramps, widening doors, installing accessible door hardware, installing grab bars in toilet stalls, creating designated accessible parking spaces
2010 ADA Standards for Accessible Design

- Parking areas
- Accessible Routes/stairs/elevators
- Entrances / doors
- Signage
- Bathrooms/drinking fountains/public phones
- Assembly areas (e.g. conference rooms)
- Places of lodging (short term lodging)
- Recreational boating facilities
- Fishing piers/platforms
- Dining facilities
- Swimming Pools
- Play Areas
ABA Outdoor Developed Areas Accessibility Guidelines (“ODAAG”)

- Added to ABA in 2013
- Only binding on facilities constructed or altered by federal agencies or on federal land.
- BUT serve as BMPs for Title III entities, like Land Trusts.
ODAAG Accessibility

Design standards for:

- Trails
- Camping Facilities
- Picnic Facilities
- Viewing Areas
- Beach Access Routes
- Outdoor Constructed Features
ODAAG - Trails

ODAAG only applies if trail directly connects to trailhead or another trail that substantially meets the ODAAG requirements.

New **Trailhead Information Signs** must contain:

- Length of the trail or trail segment
- Surface type
- Typical and minimum trail width
- Typical and maximum running slope
- Typical and maximum cross-slope

Also ADA sign requirements if sign contains name of trail or preserve.
ODAAG Exceptions

• ODAAG allows for exceptions to its requirements if:

1. Not practicable due to terrain.
2. Cannot be accomplished with prevailing construction practices.
3. Compliance would fundamentally alter the function or purpose of the facility or the setting.
4. Compliance is limited or precluded because the cultural, historic, or significant natural features are eligible for protection under Federal, State, or local law (ex. ESA, state wetland laws)
Wheelchairs and Other Power Driven Mobility Devices (OPDMDs)

• Allow **wheelchairs** in *all* areas open to pedestrian use.

• *Make reasonable modifications* in LT’s policies, practices and procedures to permit the use of **OPDMDs** by individuals with mobility disabilities *unless* they cannot be operated in accordance with legitimate safety requirements.
OPDMDs

LT Must Complete 5-Factor Assessment:

1. Type, size, speed of device
2. Volume of pedestrian traffic
3. Preserve design & operational characteristics
4. Whether safety requirements can permit safe operation
5. Substantial risk of serious harm to environment or natural or cultural resources, or poses conflict with Federal land management laws/regs.
OPDMDs

Result of Assessment:
Circumstances under which OPDMDs are permitted at Preserve and rules governing their use.

• E.g. limitations on type, size, weight of OPDMD; speed limits; limited to certain areas of preserve.

Public Notice
Land Trust should endeavour to provide public notice of OPDMDs rules for specific preserves (e.g. via websites, signs).
OPDMDs

Inquiry Regarding Disability

• Cannot inquire into “nature and extent” of a person’s disability.

• For OPDMDs, can ask for “credible assurance” that mobility device required for disability.
  ✓ Valid, State-issued disability parking placard or proof of disability.
  ✓ Verbal statement by person that they are disabled which is “not contradicted by observable fact.”
Service Animals

• **Only** dogs and miniature horses

• Trained to work or perform tasks for individual with disability

• Tasks performed directly related to disability

• Harnessed or leashed unless devices interfere with the animal’s work or disability (but handler still in control)
Service Animals

Service animals are allowed to accompany persons with disabilities in all areas where the public is normally allowed to go.

EXCEPTIONS:

• Presence of the animal could “fundamentally alter” the nature of service or program provided
• Animal is out of control of handler
• Animal is not housebroken
• Animal would pose a direct threat to health or safety of others
Service Animals

Only 2 questions can be asked:

1. Is the dog required because of a disability?

2. What work or task has the dog been trained to perform?
Auxiliary Aids and Services

• Vision, hearing or speech impairments

• Exception if would “fundamentally alter” the nature of the services, facilities or accommodations, or would result in an “undue burden.”

• LT decides what to provide, as long as it is “effective communication.”

• Cannot charge.

• Examples: Qualified sign language interpreter, written materials, audio recordings, brailed materials, staff available to read materials/signs
Websites and Social Media

• No ADA regulations for websites/social media.
• DOJ and Courts are expecting Title III entitles to follow voluntary standards:
  • The World Wide Web Consortium Web Content Accessibility Guidelines 2.0 (WCAG 2.0) (updated June 2018 to WCAG 2.1)
Legal Remedies

- **Private party** can sue for discrimination under ADA.
  - Remedies limited to injunctive relief, order to fix deficiencies, and attorney’s fees.

- **Dept. of Justice** can join private action or bring own action under ADA, if pattern of discrimination, or of general public importance.
  - Same remedies as private suit, plus monetary damages.
QUESTIONS?
What if we don’t meet accessibility guidelines?

Raven Ridge Example
2015

- To avoid conflict with ToDo Institute we decided to move trailhead.
- Constructed a small parking area on the south side of the road.
- Trail connector to be completed in 2016.
2016
• Beaver baffle installed
• Instead of connector trail we constructed a simple, elevated boardwalk and raised puncheon trail.
• Total cost: $24,000
Timber & Stone, LLC constructed the boardwalk

VYCC installed the puncheon

Boardwalk completed 2016
2016

- Lots of pushback from the community
- Many discussions with our attorneys
- Result: upgrade or remove
Permits Required

- Vermont development permit Act 250 ($150)
- Wetlands Permit ($1,200)
- Curb cut permit ($50)
- Town Conditional Use Permit ($200)

Unforeseen Requirements

- Archeological review ($3,200)
- Architectural plans ($3,000)
Ongoing Management Issues

Vandalism
Beavers
Bees

Erosion
Dogs
Additional Benefits

“I haven’t been able to get out in the woods in years! Thank you for this wonderful trail.” Andy H.
Key Take-aways

• Plan ahead!
• Assess all existing and any new lands as soon as possible.
• Check with your attorney when constructing any new trail.
• Don’t be afraid. The benefits far outweigh the costs.
Questions?