

**Consulting with  
Private and  
Public Entities**

James L.E. Terry, AIA, CASp  
Evan Terry Associates

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## CAUTION

- I am not a lawyer. I am presenting information for your consideration from my personal perspective as an ADA and access specialist that I have found helpful in my practice. I hope that some of them will be helpful for you.
- The content provided in this presentation is for informational purposes only. Neither the content nor the delivery of the content is or shall be deemed to be legal advice or a legal opinion. The audience cannot rely on the content delivered as complete, thorough, or applicable to any circumstance or fact pattern. The information provided is not a substitute for professional legal advice.

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## Which Access Requirements Apply to Which Projects

### Navigating Through the Regulatory Matrix

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## Access Standards Applicability Flowcharts

- **Owned by a Religious Organization or Private Club**
- **Owned or Leased by a Private Entity**
- **Owned or Leased by a State or Local Government**
- **Owned or Leased by the Executive Branch of the Federal Government**

Flowcharts © 2009 & Courtesy of Mark J. Mazz, AIA  
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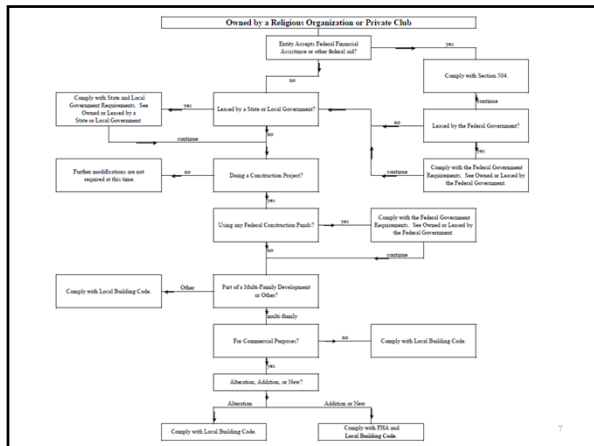
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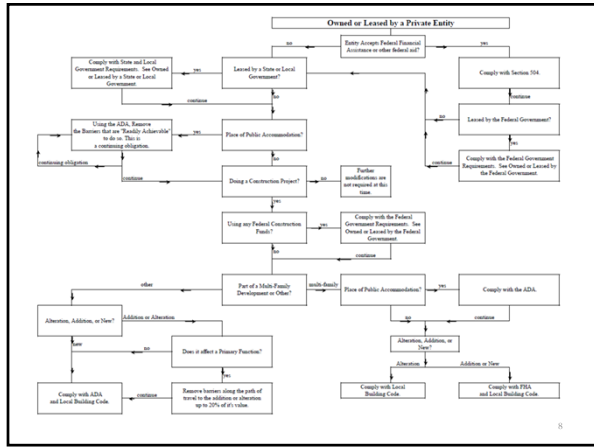
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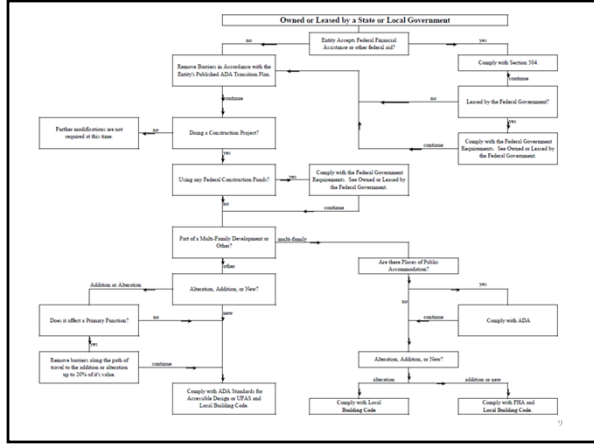
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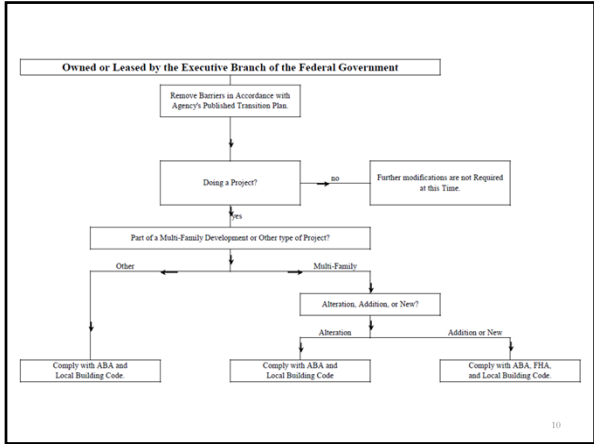
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### Housing and Transient Lodging – Standards Coverage Analysis

Draft Analysis Compiled by Janis Kent, Ida Clair, and Paul Bishop

	ICC 11A	ICC 11B	2010 ADA	FHA # of units for public or home with 4 or more units	IFIA/IFUA/ IFUA # of units Federal Funding	Scoring
<b>HOUSING &amp; TRANSIENT LODGING based on new construction 5/9/12</b>						
<b>GENERAL NOTES</b>						
Not all information has been verified in this document.						
This is not meant to be a definitive covering of all items on residential and transient lodging but more of a starting point of where to look for requirements, jurisdictions, and exceptions.						
The coverage of standards units & home is a simplified version from various sources.						
This report may appear conflicting due to the fact that each agency may address jurisdiction or coverage.						
The definition of exceptions units, home is a simplified version from various sources.						
The definition of exceptions as a percentage of covered multi-family units & ADA's & IFIA's address it as a percentage of total units.						
The definition of exceptions at places of education and whether it is Residential or Transient differs from ADA's to IFIA's, & ICC does not specifically define it, covering it in both 11A & 11B.						
<b>Transient Lodging</b>						
Dormitories - at places of education	X	X	X	3.4	X	11193.4 Derritories; 28 CFR 35.130(f); 28 CFR 35.130(f)
Dormitories - at other than places of education	X	X	X	3.4	X	ICC 11A.7.101.2 & 408.1.1, 11019.26-1, 11019.1111.1 (Derritories); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f)
Lodging with more than 3 guest rooms	X	X	X	3.4	X	ICC 11A.7.101.2 & 408.1.1, 11019.26-1, 11019.1111.1 (Derritories); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f)
Lodging with 4 or 3 guest rooms	3.11	X	X	3.4	X	28 CFR 35.130(f); ICC 302 definition of Public Accommodations - except for Public Accommodations; 11193.1 Housing accessibility; Application: 11193.1
Lodging with 3 guest rooms and owner occupied	3.11	X	X	3.4	X	28 CFR 35.130(f); ICC 302 definition of Public Accommodations - except for Public Accommodations; 11193.1 Housing accessibility; Application: 11193.1
Hotels, Motels, Inns	X	X	X	X	X	ICC 11A.7.101.2 & 408.1.1, 11019.26-1, 11019.1111.1 (Derritories); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f)
<b>Residential Facilities</b>						
Apartment or Transient facilities at places of education leased year-round for faculty or graduate students with no common space	X	3.2	3.3	3.4	X	28 CFR 35.130(f); 28 CFR 35.130(f)
Housing operated by organizations for members only	X	X	X	X	X	ICC 11A.7.101.2 & 408.1.1, 11019.26-1, 11019.1111.1 (Derritories); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f)
Social Service Center Establishments (homeless shelter, group homes, halfway houses, etc.)	X	3.1	3.3	3.4	X	11019.1
Dormitories with 3 or more guest rooms such as congregate residences with the exception of detention and correctional facilities	X	3.2	3.3	3.4	X	11019.1, 11019.1, 28-1, 11193.4 Derritories; Chapter 119, 11193.4.8 Dormitory Rooms refer to Chapter 119.
Continuing Care Facilities or retirement communities with dwelling units	X	X	X	X	X	IFIA Examples of Covered Multi-Family Dwellings units
<b>Structures with Multi-Family Dwellings</b>						
Condo units	X	3.2	3.3	3.4	X	11019.1, 11019.1
4 or more units	3.2	3.2	3.3	3.4	X	11019.1, 11019.1, 11019.1, 11019.1
Multi-storied dwelling units	3.2	3.2	3.3	3.4	X	11019.1, 11019.1, 11019.1, 11019.1
Detached Single Family Homes	X	3.1	3.3	3.4	X	28 CFR 35.130(f)
Residential units (publicly funded) rentals	X	3.1	3.3	3.4	X	28 CFR 35.130(f)

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Housing operated by organizations for members only	X	X	X	X	X	ICC 11A.7.101.2 & 408.1.1, 11019.26-1, 11019.1111.1 (Derritories); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f); 28 CFR 35.130(f)
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### Housing and Transient Lodging – Standards Coverage Analysis

Residential units built by or on behalf of public entities for sale to individuals	3.6	3.3	3.12

**KEY NOTES**

2 - ADDES

3.1 - Covered located under Transient Lodging - recommended relocating to Residential Dwelling Units under 118 Residential - 3rd Edition

3.2 - If funded by State & Local Programs applies to one or more

3.3 - If funded by State & Local Programs 75% of total units with 3 min

3.4 - All ground floor single entry units OR all units if building is elevated (an elevator to the ground floor only is not considered an elevated building)

3.5 - 1% of total units with 1 unit if building is elevated OR 1% of total with 1 unit if 10 or more units and Federal assisted; HUD Section 504 with 5 unit buildings including SH for site housing § 36.207

3.6 - Entrances that are places of public accommodation including paths of travel

3.7 - 2 or more units for apartments, time shares, or units built for more units for condos

3.8 - Covered only in elevated buildings for the unit's primary entry level or the ground floor for non-elevated buildings

3.9 - If more occupied path is only then - exempt from 504

3.10 - If actually funded there is no minimum

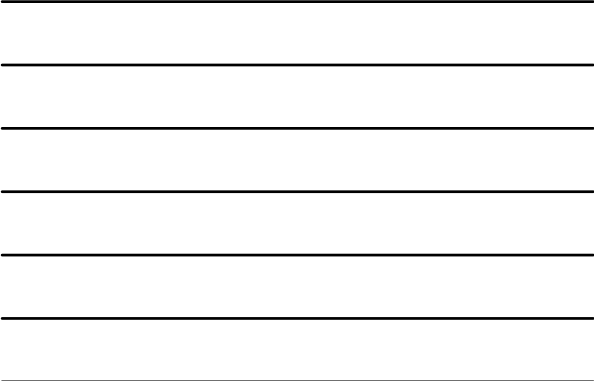
3.11 - ADA Title II states by definition for low income is not considered Transient Lodging but rather Residential and calls it Lodging Homes

3.12 - Upon request of purchaser

This document was compiled by Paul Bishop, Ida Clair, and Janis Kent and is to be used at your own risk

Draft Analysis Compiled by Janis Kent, Ida Clair, and Paul Bishop

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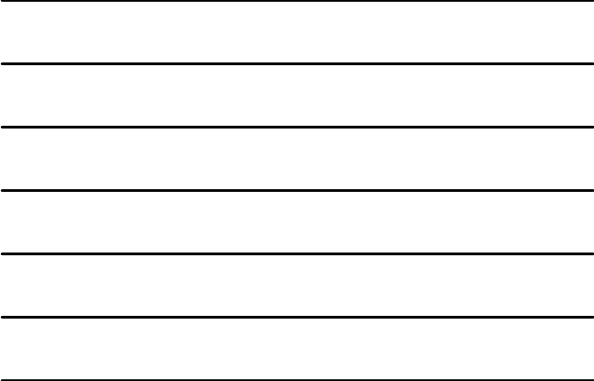


### Multi-Family Residential – Dwelling Units Requirements Comparison

Multi-Family Residential - Dwelling Units	118 Residential - 3rd Edition	118 Residential - 2008 Edition	118 Residential - 2003 Edition	118 Residential - 2001 Edition	118 Residential - 2000 Edition	118 Residential - 1998 Edition	118 Residential - 1997 Edition	118 Residential - 1996 Edition	118 Residential - 1995 Edition	118 Residential - 1994 Edition	118 Residential - 1993 Edition	118 Residential - 1992 Edition	118 Residential - 1991 Edition	118 Residential - 1990 Edition

Comparison Courtesy of Janis Kent, AIA, CASp

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## Stricter Access Requirements in Other States

James L.E. Terry, AIA, CASp



## State-Specific Laws & Standards

- Be aware that state laws vary about when and how their standards apply.
  - They may apply only to limited types of facilities based on full or partial state funding such as school, university, state administrative, and/ or legislative projects
  - They may apply only to certain types of public use facilities such as large assembly facilities
  - They may or may not apply retroactively
  - They may or may not grant any private right of action (such as the Unruh Act in CA)
- At least a half dozen states allow private lawsuits and damages for violations of their state civil rights laws related to physical barriers in existing facilities

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## State-Specific Laws & Standards

- A few states have agencies who develop state-specific interpretations and technical assistance documents like:
  - TDLR's Technical Memoranda
  - CA DSA's IRs & OSHPD's CANs



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## State & Local Laws & Standards

- When working in a new state, verify which access laws and standards apply to your project(s) at the state and local level.
- Check the local jurisdictions to see if they have adopted their own access laws and standards. A number of cities have different-from-anybody-else standards for certain issues like parking, exits, signage, etc.
- Before starting work, determine if state-specific interpretation documents have been issued and if any of them apply to your project(s).
- To our knowledge, none of the states have their own barrier removal laws that apply to the stricter provisions of their state standards but when barriers are removed, they must typically meet the stricter local requirements.

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## State Civil Rights Laws and Damages

Not Ready for Publication - (verify links, finish searching for states, identify civil code references, etc.)

States with Civil Rights Laws Related to Disabilities

# State	Civil Rights Laws	Damages	Website	Civil Code Reference (From Kinart Settlement)
1 Arizona	Y	?		
2 California	Y	Y		California – Cal. Civil Code §§ 52, 54.3
3 Colorado	?	Y		Colorado – C.R.S. § 24-34-602
4 Connecticut	Y	Y	<a href="http://www.jud.ct.gov/civil/civilrights/36-5.htm">http://www.jud.ct.gov/civil/civilrights/36-5.htm</a>	
5 Hawaii	Y	Y		Hawaii – Hawaii Statutes § 489-7.5
6 Illinois	Y	?	<a href="http://www.hhs.gov/regulation/pubs/notifications/2014/09/24/2014-09-24-reg-093-0638">http://www.hhs.gov/regulation/pubs/notifications/2014/09/24/2014-09-24-reg-093-0638</a>	
7 Maryland	Y	Y	<a href="http://www.law.org/llc-ibgroup/law-emp/emp/ada.htm">http://www.law.org/llc-ibgroup/law-emp/emp/ada.htm</a> <a href="http://www.maryland-disability-rights.com/maryland-disability-rights-laws.php">http://www.maryland-disability-rights.com/maryland-disability-rights-laws.php</a>	
8 Massachusetts	Y	Y	<a href="http://www.mass.gov/info/consumer-resources/your-rights/civil-rights/disability-rights/employment-rights.html">http://www.mass.gov/info/consumer-resources/your-rights/civil-rights/disability-rights/employment-rights.html</a>	Massachusetts – M.G.L.A. ch. 272 § 9B
9 Minnesota	Y	?	<a href="http://www.govtjobs.com/your-rights/ada.htm">http://www.govtjobs.com/your-rights/ada.htm</a>	
10 New Jersey	Y	Y	<a href="http://www.nj.gov/office-of-disability-rights">http://www.nj.gov/office-of-disability-rights</a>	
11 New York	Y	Y	<a href="http://www.dhr.ny.gov/faq">http://www.dhr.ny.gov/faq</a>	New York – N.Y. Ch. R. §§ 40-C, 40-D, N.Y. Exec. § 296(2)(g)
12 Ohio	Y	Y	<a href="http://doths.ohio.gov/orv/4117">http://doths.ohio.gov/orv/4117</a>	
13 Oregon	Y	Y		Oregon – O.R.S. § 659A.885
14 Texas	Y	Y		Texas – Tex. Hum. Res. Code § 121.003, 121.004
15 Vermont	Y	N	<a href="http://humansources.vermont.gov/office/equal-employment/individuals_with_disabilities">http://humansources.vermont.gov/office/equal-employment/individuals_with_disabilities</a>	

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## ETA State Standards Chart

- ETA maintains a current list of access standards in use by each state along with contact information for the people responsible at the state level for updating and maintaining them. That list is one of your handouts.
- Hopefully this list will help you to efficiently chase down the current standards when you begin working in another state.



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## Equivalency Determinations

- Certifications of Equivalency made by the Department of Justice Disability Rights Section in years past no longer apply under the new standards.
- Because so many states and municipalities have adopted them, there has been talk of looking at the IBC/ICC/ANSI A117.1 combination and making a determination about whether it provides equivalency to the ADA Standards.
- There have also been proposals to determine if the newer versions of the referenced standards in the front of the ADA Standards could be reviewed for equivalency. That's not likely to happen. It's also reported to be unlikely that the newer versions will be adopted as amendments to the regulations.
- The last time I asked the question, DOJ had little or no resources to devote to making future equivalency determinations.

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## Defining the Scope of Consulting Services

### ETA's Top 16 Questions

James L.E. Terry, AIA, CASp

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#### ETA's Top 16 ADA Survey Scope Questions

- **ADA facility surveys** come in a lot of different variations depending on the parties' understandings of the range of ADA requirements for their facilities and their desired results. Here is a short list of broad questions we use to help define client expectations and preferences before starting surveys.

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#### ETA's Top 16 ADA Survey Scope Questions

- 1) **Is this project related to a complaint, investigation, or lawsuit?**  
If so, we need to see a copy of the relevant documents or discuss why we can't see them.

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## ETA's Top 16 ADA Survey Scope Questions

### 2) Which access laws and regulations cover you?

Are you an ADA Public Entity subject to the program access requirements, a Place of Public Accommodation subject to the readily achievable barrier removal obligations, a Commercial Facility, a hybrid, or one of the other entity types covered directly or indirectly by the ADA? Are you covered by any of the other access laws like the Rehab Act, the Architectural Barriers Act, IDEA, the Air Carrier Access Act, state or local requirements, or any others that you want to have addressed by this project?

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## ETA's Top 16 ADA Survey Scope Questions

### 3) Do you want us to look at any Title I, employee-only areas where the "readily achievable barrier removal" requirements do not apply and where program access requirements may not apply?

Employee areas break down into three types of spaces. First are employee common use areas like corridors, break rooms, the employee cafeteria, toilet rooms, training rooms, and possibly conference rooms. Second are the employee work areas where far fewer ADA requirements apply. Third are maintenance and storage areas where very few requirements apply, even in new construction. Some of our clients want us to look at physical facility barriers in common use areas and employee work areas where those barriers might affect people with disabilities who A) are applying for jobs, B) are being considered for employment and they want to assess the reasonable accommodations the candidate(s) or their EEO staff have made, or C) who are currently employed and have made requests for reasonable accommodations that are structural in nature.

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## ETA's Top 16 ADA Survey Scope Questions

### 4) Which standards do you want us to use as the basis for the surveys of your facilities?

Do you want us to point out barriers that don't meet stricter state or local accessibility requirements? None of them have a readily achievable barrier removal requirement for those elements that meet the ADA but don't meet their stricter requirements. Most require barriers that are removed to be done to comply with their stricter requirements. Alterations projects usually trigger the application of their stricter requirements for both the altered elements and for the path of travel. Other guidelines and standards to consider include the proposed Public Rights of Way and Shared Use Paths Guidelines. There is also guidance from DOJ and the Access Board about how to meet general ADA obligations (like access to healthcare, electronic communications, and emergency evacuation planning) that is not yet specified in particular Standards. In any case, we would plan to consider all conditions that meet the 1991 ADA Standards as safe-harbored under the 2010 Standards. Do you want us to document conditions that meet the 1991 ADA Standards for future safe harbor reference?

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### ETA's Top 16 ADA Survey Scope Questions

**5) Do you want us to survey any facilities or portions of facilities built or altered after the ADA Standards went into effect in January of 1992 and 1993?**

Many facility owners want to assume that their newer facilities are compliant and never look at them until they're sued. From a schedule-setting viewpoint, it may make sense to look at newer facilities after the older ones, but unless you have had a robust process in place for at least two decades to check compliance during every design and construction project, it's likely that even the newer facilities have a significant number of barriers in them. Some of those will be design or construction errors, some will have been created by maintenance or operational staff or changes to furniture and equipment layouts. Some will be the result of the development of the additional and stricter requirements in the 2010 ADA Standards.

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### ETA's Top 16 ADA Survey Scope Questions

**6) Do you have any areas that are about to undergo significant alterations work where you might want us to survey the path of travel serving the future altered areas?**

Even elements in employee-only areas that are undergoing alterations work must meet the full Standards when completed. They must also be served by a fully compliant path of travel unless the cost of providing it is disproportionate to the cost of the alterations. Where the path of travel is coincident with areas subject to the barrier removal requirements, be careful about relying on the 20% disproportionate limit this many years after the barrier removal requirements went into effect.

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### ETA's Top 16 ADA Survey Scope Questions

**7) Do you want to do a pilot survey to start the process?**

When you have a lot of facilities or a lot of people who need to review and approve the process, a pilot survey makes a lot of sense. This allows everyone to get a better sense of how the project will progress, how compliant the facilities actually are, and how the database and reports will look for your facilities. Finally, it allows the approach to be modified to consistently meet everyone's expectations with minimal backtracking.

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## ETA's Top 16 ADA Survey Scope Questions

### 8) How thorough do you want the surveys and reports to be?

- a) "High Speed Walk-Through Survey" to document the "significant" barriers using a digital recorder and a "cheat sheet" reminder list
- b) "Modified Standard Barrier Survey" uses a full checklist of all applicable requirements to verify compliance with each one of them, everywhere they are applicable, that exceed what we consider the "de minimis" threshold. For future use in barrier removal, maintenance work, alterations projects, or analysis of reasonable accommodations for perspective employees with disabilities
- c) "Standard Barrier Survey" which documents even the de minimis barriers for the same uses as the MSBS results.
- d) Standard report or CASp certificate: "*inspected by a CASp*" or "*meets applicable standards.*"

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## ETA's Top 16 ADA Survey Scope Questions

### 9) What type of information do you want to see in the "reports"?

- The official Title II transition plans must include:
  - the barriers to program access that will be altered or removed,
  - the methods that will be used to remove them,
  - the person responsible for removing them, and
  - the schedule for removing each barrier.

Beyond those requirements, the contents are up to each client. You'll want to be able to locate, identify, explain, analyze, and correctly fix every barrier that you intend to remove. You'll need to collect enough information to facilitate that. A little more time up front during the surveys can save a LOT of time later during the rest of the process.

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## ETA's Top 16 ADA Survey Scope Questions

### 9) What type of information do you want to see in the "reports"?

- If you have more than a few facilities or they're distributed over a wide geographical area, you'll probably want to use an approach that produces a live database of barriers with extensive viewing options and barrier removal management capabilities over the Internet.
- A system that includes standard solutions to each of the barrier types, along with the text and figures from each of the selected Standards will help to make sure that there's little chance for misinterpretation by those who are charged with analyzing and removing the barriers later.

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## ETA's Top 16 ADA Survey Scope Questions

**10) Do you want us to include barrier analysis factors to allow you to consistently evaluate and prioritize them in case you won't be removing all of them soon after the surveys?**

We typically rank barriers based on three factors:

- A) How severe the barrier is,
- B) Where it is located within the facility (how many people it will affect), and
- C) Where it falls in the generic priority-setting guidelines listed in the Title III regulations.

Barrier removal can be prioritized and the level of program access can be rated by a combination of these factors.

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## ETA's Top 16 ADA Survey Scope Questions

**11) How extensively do you want us to photograph the barriers we find?**

- Our normal practice is to thoroughly document the barrier conditions photographically
  - In context,
  - Showing how we took the measurements,
  - Showing each exact measurement.
- We also include any additional photographs needed to help explain the Possible Solution(s) we suggest.
- When facilities are spread across the country, this approach makes the most sense to facilitate clear communications among all of the parties to the discussions you'll be having as you move forward with future work.

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## ETA's Top 16 ADA Survey Scope Questions

**12) Do you want to assign responsibilities for removing selected barrier types before the surveys begin, after the Pilot, or after the surveys are completed?**

- Usually the first approach is used when our client is in a big hurry to get started on barrier removal.
- The second approach is most common when they have more time to study the initial findings.
- The third approach is usually selected when they are trying to save money and don't even want to think about "non-essential" tasks. That usually changes when they see that this capability will save them a LOT of time and headaches in managing the responsibility assignment task later.

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### ETA's Top 16 ADA Survey Scope Questions

**13) Do you have any landlord-controlled or tenant-controlled areas within the facilities?**

If so, do you want us to survey them, ignore them, or just provide general comments about what we see in those areas?

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### ETA's Top 16 ADA Survey Scope Questions

**14) Do you have any IT-specific requirements that we need to know about?**

Typically these are either security-related issues like firewall policies, hardware limitations, or software compatibility preferences.

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### ETA's Top 16 ADA Survey Scope Questions

**15) While we're in your facilities, do you want us to look for anything else?**

Sometimes these are maintenance items you might want us to check to save your facilities management people a trip. Sometimes clients want us to check the status of a prior project like a signage program. Sometimes they'll want us to document existing conditions for some other program they're about to start.

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## ETA's Top 16 ADA Survey Scope Questions

16) Finally, do you want to plan for any pre or post-Pilot Survey teleconferences, consulting, presentations, or training sessions to get the project started?

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## Options for Defense Counsel When Working with a CASp

James L.E. Terry, AIA, CASp

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## Defense Counsel Options For Working with a CASp

- This sheet of Service Options is usually given to ADA-novice attorneys who are faced with a simple ADA/accessibility facilities request, complaint, or lawsuit on a single property.
- The intent is to quickly open up a discussion about how accessibility complaints often progress, help determine how they want to pursue their matter, and determine the scope of services they will need to do it.

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## Defense Counsel Options For Working with a CASp

### Scope A – No Site Visit - Optional Services by CASp:

- Review Complaint and/or proposed Settlement Agreement without site visit for:
  - Obvious requests/demands not covered by the applicable standards or regulations
  - Alternate interpretation(s) of the relevant standards and regulations
  - Alternate possible solutions to those offered/requested by advocate
  - Rough accuracy of cost estimates proposed by plaintiff's expert, if any
  - Other issues, as needed
- Discuss possible applicability of technical infeasibility or other exceptions to each barrier
- Discuss applicability of the "readily achievable" requirement for barriers
- Discuss possible alternative methods when physical barrier removal is not readily achievable
- Discuss impact of particular barriers on people with disabilities
- Discuss disability demographics and business opportunities related to particular barriers

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## Defense Counsel Options For Working with a CASp

### Scope B – With Site Visit – Optional Services by CASp:

- Any options from Scope A above, plus
- Review Complaint and/or proposed Settlement Agreement before and/or during site visit
- Review/discuss only items identified by plaintiff's expert on site, in complaint, or in expert report, against existing site conditions, and:
  - Discuss requirements, barriers, and interpretations with plaintiff's expert
  - Discuss possible solutions to barriers with plaintiff's expert
- Quietly discuss other barriers with defense counsel that are not mentioned by plaintiff's expert while on-site

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## Defense Counsel Options For Working with a CASp

### Scope C – Detailed Accessibility Survey of Facility - Optional Services by CASp:

- Any options from Scopes A & B above, plus
- Before plaintiff's expert site visit to eliminate some barriers before listing by plaintiff, or
- After plaintiff's site visit to identify other barriers not mentioned
- Optional approaches
  - High-speed walk-through survey (with all notes by defense counsel or by Consultant)
  - High-speed barrier survey with database of findings and possible solutions
  - Thorough, detailed survey with database of findings and possible solutions
  - CASp Certificate – "inspected by a CASp" (old "CASp Determination Pending")
  - CASp Certificate – "meets applicable standards" (old "CASp Inspected")

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## Defense Counsel Options For Working with a CASp

### Scope D – Assist with Barrier Removal Program - Optional Services by CASp

- Any options from Scopes A, B, & C above, plus
- Assist with the development of barrier removal action plans
- Develop barrier removal design and/or construction documents (where CASp holds a license to practice architecture)
- CASp review of barrier removal plans provided by others
- Consulting during barrier removal
- Post-barrier removal verification reviews by CASp

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## Defense Counsel Options For Working with a CASp

### Scope E – Combinations

Options (See Detailed Scoping Document)

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## Consulting Liability and Indemnification Considerations

James L.E. Terry, AIA, CASp

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## Liability and Indemnification

- Many clients want their access specialists to assume liability for all ADA and other accessibility compliance problems in their projects. Many want the specialist to indemnify and defend them against anything “related to” access. ADA survey and plan review services are not design services. Instead, access specialists are asked to help their clients identify problems in existing facilities and upcoming new construction and alteration projects. Liability for that service should be very different from that for design or construction services.

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## Liability and Indemnification

- **Limitations Inherent in the Scope of Services**
  - **Plan Reviews**
    - Limited exposure to the project criteria
    - Limited exposure to the design documents (who selects drawings to review?)
    - Not the final decision maker in the design
    - No ability to change the documents
    - Limited or no ability to discuss design details with AHJs
    - Limited or no exposure to and little or no ability to influence shop drawings, product selections, construction change orders, or installation errors
    - Inability to catch every barrier created by the design and construction team
    - Often little or no exposure to the actual construction work
    - No ability to change any constructed elements
    - Little or no ability to influence operational barriers

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## Liability and Indemnification

- **Limitations Inherent in the Scope of Services**
  - **Existing Facility Surveys**
    - Inability to find every barrier
      - Typically fee-limited time on site
      - Alarm testing
      - Elevator and other equipment testing
      - Braille proofreading
      - Operational changes
      - Weather changes
      - HVAC system pressures
    - Limited or no ability to discuss with AHJs (e.g. exiting requirements)
    - No ability to change anything
    - Little or no ability to influence operational barriers

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## Liability and Indemnification

- **Limitations Inherent in the Scope of Services**
  - **Consulting**
    - Limited information provided by client and others
    - Quick responses requested
    - Little control over how your interpretations will be promulgated

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## Liability and Indemnification

- Access specialists are like bird dogs. We try to find all of the barriers that are hiding in the weeds and the woods of the drawings and on the construction site that were created by others, and to point them out to those who've hired us... but we can't ever pull the trigger to actually eliminate any of them. We should not be liable for letting any of them get away.

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## Liability and Indemnification

- Fortunately, some of the courts seem to agree with us and, in some recent cases, have decided that building developers cannot assign all of their own liability for ADA civil rights violations to anyone else, regardless of what their contracts say.

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## Liability and Indemnification

- With those insights in mind, we as access specialists may be willing to take responsibility for our own oversights and negligence and for any errors that we specifically create but should not be required to take responsibility for any errors created by others, without our knowledge, and over whom we have no control. Indemnification language should reflect a fair and reasonable assignment of liability based on the various parties' actual responsibility and control over the work. Otherwise, the language would turn access specialists into insurance companies to defend or help defend all of the other parties who actually created and/or operate and maintain the non-compliant conditions. Most of us are not qualified or licensed to become insurance companies and don't charge the fees to cover those responsibilities either.

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## Tools and Techniques for Consistent, Efficient, and Effective Physical Access Surveys

James L.E. Terry, AIA, CASp

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## Context of This Session

- I'll be sharing a lot of new ideas in this session about how to do a better job surveying and consulting with your clients. We are hoping that this information will help all of you to deliver better advice to your clients and miss fewer barriers when looking at plans and built facilities.
- As I've mentioned before, it is our desire to help all of us to better educate our clients, design, and construction professionals, and facility managers and operators to understand how to meet the needs of people with disabilities and how to comply with their civil rights obligations. We'd like to work together to reduce the confusion created by the abundance of standards and regulations and eliminate as many barriers as possible to people with disabilities during our lifetimes.
- So... What I'll be sharing is for you to use however you can. We are already using some of the techniques at ETA. Others we are studying. A few more we are developing for everyone to use. More on that later.

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# What the Future Looks Like (to me)

## Trends in Expectations and Enforcement

- Higher levels of understanding of the needs of people with disabilities and all of the various compliance requirements
- More integrated compliance efforts between our clients' facilities, communications, and services
- More thorough attention to accessibility by everyone
- Computer and Internet-linked systems will continue to increase our options and capabilities
- The need for our services will be going up as medical technology improves and the population ages
- Recognition of accessible features and universal design as good investments by our clients, facility owners and operators

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# Surveying Tools

## Tools

- "iPads" with wide angle lens attachments
- Bluetooth cameras with automatic numbering and uploads to sync with barriers data
- Measurement tools
  - Threshold tool
  - Changes in level tool
  - Gap tool
  - Door closer speed tool
  - Drinking fountain stream angle tool

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# Surveying Tools Door Thresholds and Level Changes

The image contains technical diagrams and photographs of surveying tools. On the left, there are two diagrams: the top one is for 'DOOR THRESHOLDS' and the bottom one is for 'CHANGES IN LEVEL - Accessible Route'. Both diagrams show cross-sections of a door threshold and a level change with various dimensions and labels. On the right, there are two photographs of surveying tools. The top photo shows a 'LEVEL CHANGE - Accessible Route' tool, which is a rectangular device with a textured surface and a ruler. The bottom photo shows a 'DOOR THRESHOLD' tool, which is a similar device with a different texture and a ruler. The diagrams and photos are labeled with 'LEVEL CHANGE - Accessible Route' and 'DOOR THRESHOLDS'.

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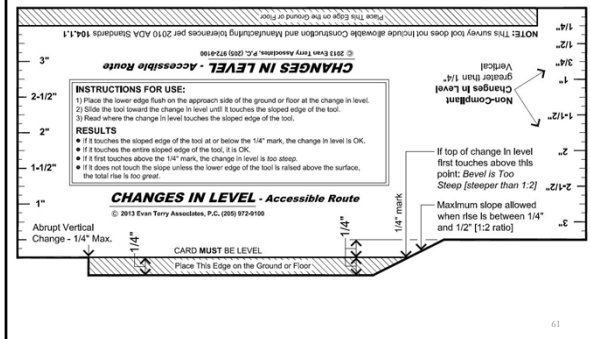
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## Surveying Tools Changes in Level Tool




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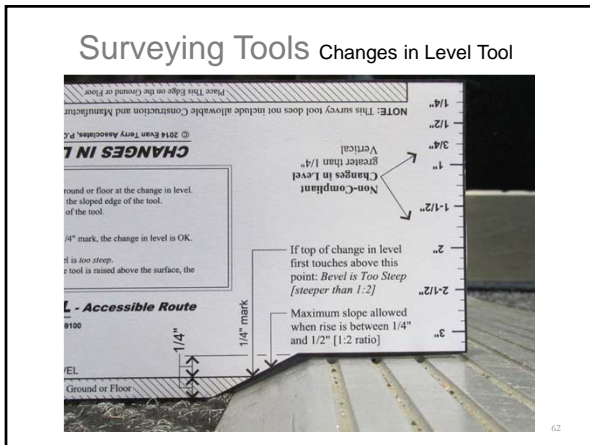
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## Surveying Tools Changes in Level Tool




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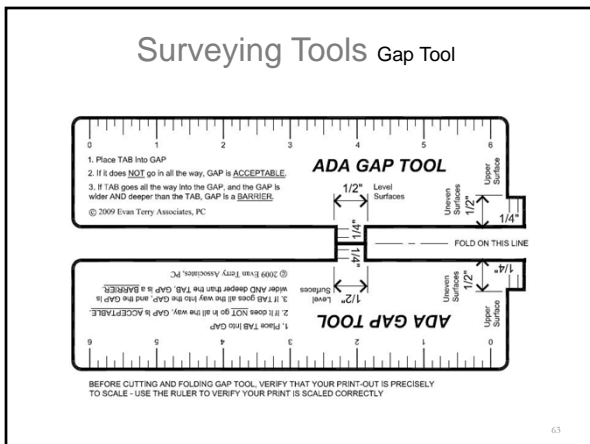
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## Surveying Tools Gap Tool




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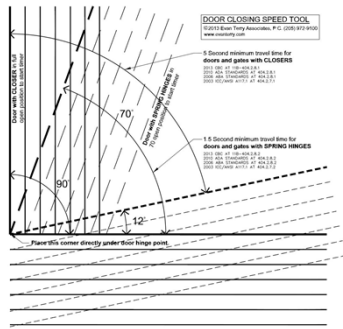
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## Surveying Tools Door Closer Speed Tool



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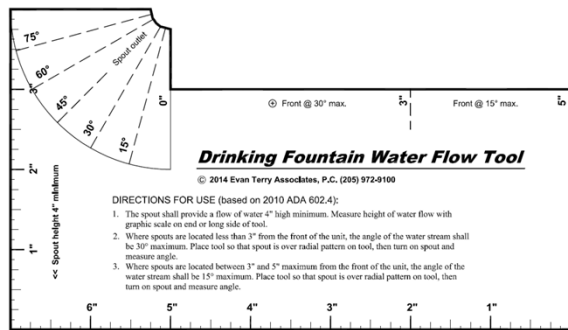
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## Surveying Tools Drinking Fountain Spout Angle Tool



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## Surveying Techniques

### Increasing Consistency with multiple surveyors

- Surveyor training programs (pre-start and on-the job mentorship)
- Just-in-time training and instructions
  - Consistent methods of measurement and photography
  - Consistent client-preferred solutions
  - Cost estimates
  - “Barrier threshold” analysis factors (when not every non-compliant condition will be recorded)
- Quality control reviews (easier if you have good photos)
- Performance metrics

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## Surveying Techniques

### Training programs

- Methods of measurement
  - Videos
  - Photos in PowerPoints
  - Let's look at some measurement techniques



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## Surveying Techniques Methods of measurement



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## Surveying Techniques Methods of measurement



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Surveying Techniques **Methods of measurement**



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Surveying Techniques **Methods of measurement**



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Surveying Techniques **Methods of measurement**



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Surveying Techniques **Methods of measurement**



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## Surveying Techniques Methods of measurement




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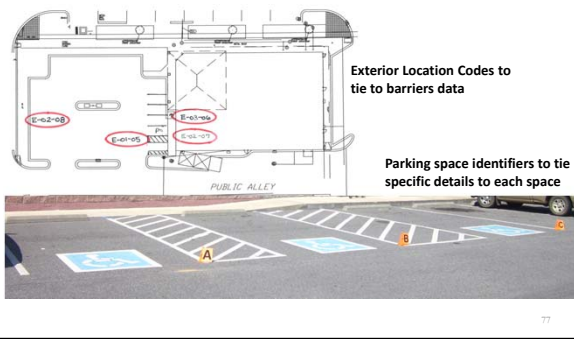
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## Surveying Techniques Location Coding




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## Surveying Techniques Detailed Measurements

Notes:

03 Curb Ramp Form  
2010 ADA Standards

DATE SURVEYED: 12/20/10  
FACILITY #: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
JOB #: \_\_\_\_\_ USE CODE: EXT  
LOCATION CODE: E-101-010  
DESCRIPTION: TR. ACCESSIBLE PARKING.  
DRAWING NAME: E-101-010 CURB RAMP LEFT

100" WIDTH OF CURB RAMP

TRANSITION

LEFT FLARE

RIGHT FLARE

LEFT FLARE

RIGHT FLARE

OTHER SECTIONS

Curb Ramp Configuration  
Types - select one

Check List

PROJECT AND TRAFFIC OBSTRUCTED BY VEHICLES

RAISED ISLAND CROSSING

RAISED ISLAND

SURFACE

TRANSITION

VERTICAL PROJECTIONS

LANDING OBSTRUCTED BY FURNITURE

WATER ACCUMULATION

SIDE CURB WIDTH

Rise

Sides

Landing

LANDING LENGTH 36" MINIMUM AT TOP

LANDING OBSTRUCTED BY

OVERALL PHOTO NUMBERS: 275-277

© 2013 Evan Terry Associates, P.C. (2012) 10-100 78

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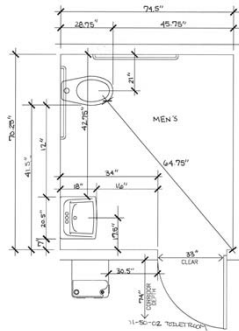
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## Surveying Techniques Detailed Measurements




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## Surveying Systems

**Facility Surveys** (usually for barrier removal & program access projects)

- High Speed Walk Through Surveys
  - Voice recognition software (like Dragon Naturally Speaking)
- Paper and/or Computer-based survey systems
  - Simplified, abbreviated questionnaires
  - Thorough checklists/forms (LOTS of trees if paper)
  - Automatic answer/analysis/solution software (avoid)
  - Fully integrated barrier identification, documentation, analysis, solution, and removal management systems




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## Surveying Systems

### Simplified Questionnaires example: Medi-CAL

Provider Facility Site Review Accessibility Survey Tool for Seniors and Persons with Disabilities (Part D)  
(Revised 12/1/10)

PCP Name:	Date of Review:
Address:	Name of Reviewer:
City:	Health Plan Name:
Phone: FAX:	Contact Person Name:
<b>Level of Access:</b>	
<b>Basic Access:</b> Demonstrates facility site access for the members with disabilities to parking, building, elevator, doctor's office, exam room and restroom. To meet Basic Access requirements, all (2) Critical Elements (CE) must be met.	<input type="checkbox"/> Basic Access
<b>Limited Access:</b> Demonstrates facility site access for the member with a disability are missing or incomplete in one or more formats for parking, building, elevator, doctor's office, exam room, and restroom. Deficiencies in 1 or more of the Critical Elements (CE) are encountered.	<input type="checkbox"/> Limited Access
<b>Medical Equipment Access:</b> PCP site has height adjustable exam table and patient accessible weight scales per guidelines (for wheelchair/reecher plus patient). This is noted in addition to level of Basic or Limited Access as appropriate.	<input type="checkbox"/> Medical Equipment is available

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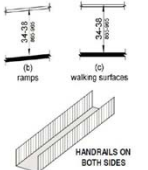
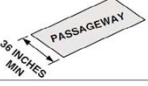
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Question #	Criteria (CE = Critical Elements)	Explanation/Guidelines	Yes	No	N/A	Comments
22	Are handrails provided on both sides of the ramp that are mounted between 34 and 38 inches above the ramp surface, if it is longer than 6 feet?	If the ramp is not longer than 6 feet, check NA. 				
23 (CE)	Are all ramps at least 36 inches wide?					

Page 10 of 35

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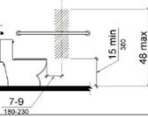
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Question #	Criteria (CE = Critical Elements)	Explanation/Guidelines	Yes	No	N/A	Comments
65 (CE)	For all toilet rooms with and without stalls: Are grab bars provided, one on the wall behind the toilet and one on the wall next to the toilet?	weight of the door after the door is unlatched; attach the hook end of the scale to the door handle and pull until the door opens and read the weight of the force. Grab bars should be installed in a horizontal position between 33 and 36 inches above the floor measured to the top of the gripping surface. 				
66	Are all objects mounted at least 12 inches above and 1 1/2 inches below the grab bars?	This includes seat cover dispensers, toilet paper dispensers, sanitizers, trash containers, etc.				
67 (CE)	Is the toilet paper dispenser mounted below the side grab bar with the centerline of the toilet paper dispenser between 7 inches and 9 inches in front of the toilet, and at least 15 inches high?					

Page 27 of 35

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## Consulting Services

- Internal access to information
- How to think about questions that are posed to you
- Professional skepticism
- How to think about your answers:
  - Verbal
  - Email
  - Written interpretations
  - Expert reports
  - Expert testimony
- Speed vs. Accuracy
- References to the relevant standards and TA documents

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## Consulting Services

- Plan Review Services (this afternoon's session)
- New and upcoming technologies and services
  - Point cloud generators
    - IMAGINIT – Scan to BIM
    - Structure Sensor – small scale sensor works with iPad, iPhone, etc.
  - High speed sidewalk and walkway survey systems
    - PROWAP
    - ULIP
- Demo of ETA Barrier Management System

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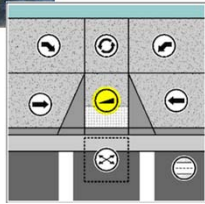
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## Surveying Techniques High Speed Sidewalk Surveys

- PROWAP – Beneficial Designs



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## Surveying Techniques High Speed Sidewalk Surveys

- ULIP – Cole Engineering



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## ULIP Technology



Sensor box includes:

1. a displacement laser (texture/profile/height),
2. three accelerometers (inertial profiling),
3. a gyroscope (pitch, roll, yaw),
4. optical trigger (reference),
5. GPS (general location), and
6. a DMI (travel distance system).

Computer and data acquisition card are used for data capture.

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## Data Collection-Sidewalk Inventory

On January 22, 2004, in the case of *Barden v. Sacramento*, the 9th Circuit Court ruled that sidewalks were a "program" under ADA and must be made accessible to persons with disabilities.



**FHWA guidance on grade and cross-slope:**  
 "should be measured over 2 ft intervals, the approximate length of a wheelchair wheelbase, or a single walking pace."

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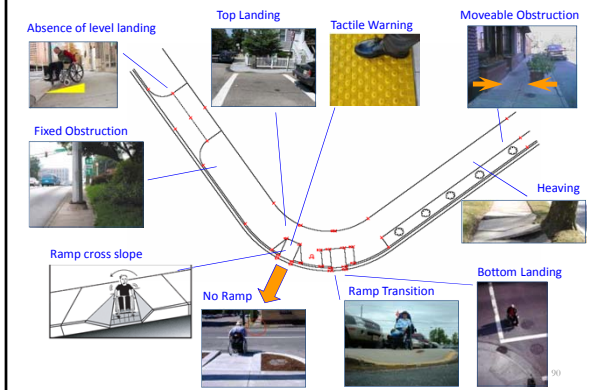
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## Sidewalk & Curb Ramp Inventory



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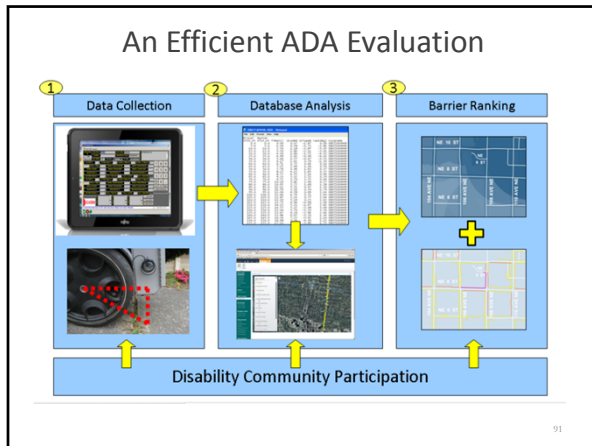
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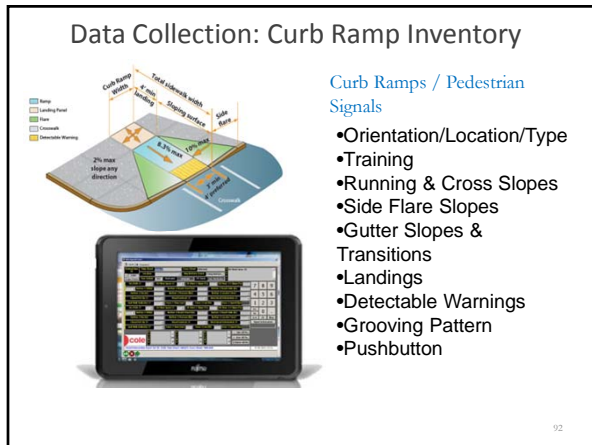
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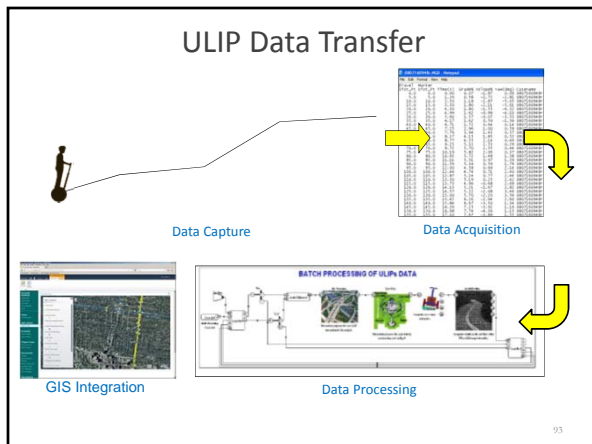
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### ADA Web Portal – Project Tracking

The screenshot displays the ADA Project Portal interface. At the top, there are navigation tabs: Home, ADA Viewer, ADA Project Portal, Schedule, Project Team, Documents, and Instant Assist. The main content area is divided into several sections:
 

- Announcements/News:** A notice regarding project meeting scheduling.
- Schedule:** A Gantt chart showing project timelines.
- Project Milestones:** A list of key dates, including 'Kick-off Meeting' on August 1, 2013, 'Rough Program Review' on September 1, 2013, and 'Public Meetings' in March 2014.
- Project Team:** A table listing team members with columns for Project Title, Name, Email Address, Office Address, Phone Number, and Company.
- Documents:** A list of documents with columns for File Name, Size, Date, and Description.

 The 'cole' logo is visible in the bottom left corner of the screenshot.

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### ADA GIS Viewer Interface

The screenshot shows the ADA GIS Viewer interface. It features a central map view displaying a residential area with a grid of streets. Overlaid on the map are various colored markers (yellow, red, green, blue) indicating project locations. The 'cole' logo is located in the bottom left corner.

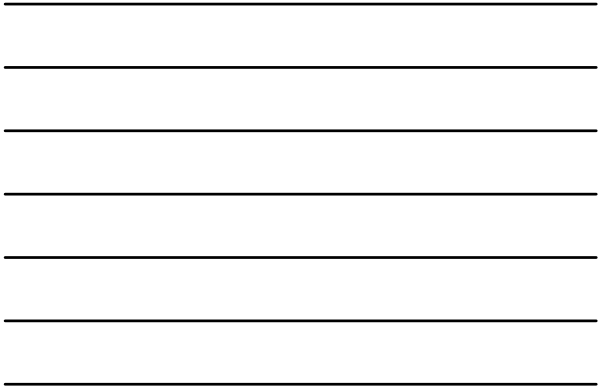
95



### ADA GIS Viewer Interface

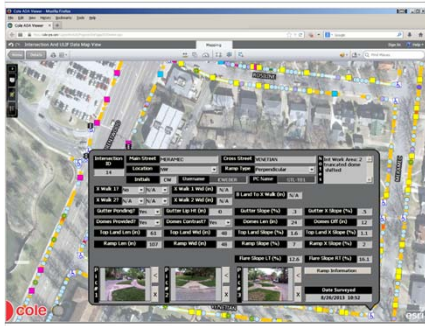
This screenshot shows the ADA GIS Viewer interface with a legend panel open on the left side. The legend is titled 'Information Data' and includes categories such as 'Introduction Data', 'Current Data', and 'Changes to Level 1/2/3/4'. Below these, there are sections for 'Sidewalk Grade' and 'Sidewalk Slope', each with a corresponding color-coded legend. The map in the background shows the same residential area with project markers as the previous screenshot. The 'cole' logo is in the bottom left corner.

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## ADA GIS Viewer Interface



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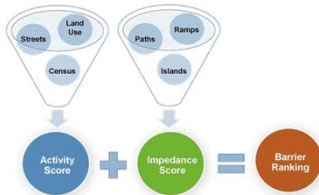
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## Barrier Ranking

### Develop Basis for Mitigation Schedule

- Factors
  - Demographics
  - Land Use
  - Transportation Conditions
  - Severity Levels of Barriers



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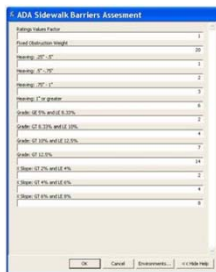
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## Prioritization

### Develop Basis for Mitigation Schedule

- Cole Uses a GIS-Based Prioritization Tool:
  - Infinitely Sortable by Combination of Fields
  - Various Access Levels; Secure Password



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## Preliminary Cost Estimates

### Develop Basis for Mitigation Schedule

- Annual Budget Integration:
  - Synchronize with Pavement Management Plan
  - Minimize Duplication of Mobilization Efforts
  - Project Planning/Scoping Tool

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## Transition Plan Implementation



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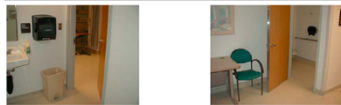
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## Surveying Systems ETA Barrier Management System

654 Sample Medical Hospital ADA ARCHITECTURAL REPORT SAMPLE CAMPUS

Survey #	Survey Name	Location	Reference & Description	Barrier Type	Exclusion Conditions	Priority	Resolution Time	Schedule Code	Surveyor	# Units	Unit Type	Total Cost
ES-143	BLC	6A-6P-333	CA 11308.2.A.2	FLOOR	Floor surface within required area for door maneuvering clearance is not level and/or clear.	1	15	15	15	1	15	\$1500
Eric McQueen	B	2ND FLOOR TOILET	CA 11308.2.A.5	TOILET	Recessed toilet management electronics.	1	15	15	15	1	15	\$1500
ER	CLINIC	CA 11308.2.A.5	CA 11308.2.A.5	TOILET	Recessed toilet management electronics.	1	15	15	15	1	15	\$1500
ES100405-040101ES100405-0401			CA 11308.2.A.5	TOILET	Recessed toilet management electronics.	1	15	15	15	1	15	\$1500



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# Discussions about What Is Readily Achievable for Places of Public Accommodation

James L.E. Terry, AIA, CASp

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## Readily Achievable

- Short Definition
  - Easily accomplishable
  - Without much effort or expense
- Expertise
  - Availability of solution options
  - Constructability of options
  - And...

– [What makes removal of a barrier "Readily Achievable"?](#)

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## Readily Achievable Considerations

- Nature and cost of the action
- Overall financial resources of the local site
- Number of persons employed
- Effect on expenses and resources
- Legitimate safety requirements that are necessary for safe operation
- Impact otherwise on the operation of the site
- Fundamental alteration of the programs, services, benefits, activities, goods, etc.
- Other barriers being removed\*

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## Readily Achievable Considerations

- Relationship to the parent company
  - Geographic separateness
  - Administrative or fiscal relationship of site to parent company
  - If applicable:
    - Overall financial resources and assets
    - Parent company's budget
    - Size of parent company in number of employees
    - Number, type and location of other facilities
    - Type of operations of parent company
    - Composition, structure and functions of workforce
- Significant loss of selling or serving space\*
- Never exceeds the new construction requirements

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## Additional Resources

- DOJ's ADA Website
  - [www.ADA.gov](http://www.ADA.gov)
- DOJ's Website of 2010 Standards & Guidance
  - [www.ada.gov/2010ADASTandards\\_index.htm](http://www.ada.gov/2010ADASTandards_index.htm)
- Access Board's ADA Website
  - [www.Access-Board.gov](http://www.Access-Board.gov)
- Access Board & DBTAC's Online Webinars and Audio Seminars
  - [www.accessibilityonline.org](http://www.accessibilityonline.org)
  - [www.ada-audio.org/Schedule/](http://www.ada-audio.org/Schedule/)
- ETA's Free Email Updates Service and Free Downloadable Tools
  - [www.AccessUpdates.com](http://www.AccessUpdates.com)
  - [www.ADASurveyTools.com](http://www.ADASurveyTools.com)

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