

# **ADA Accessibility Rules for Alterations and Program Access in Existing Public Entity Facilities**

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# Program Description

There are many different laws, regulations, standards, building codes and other regulations that all have the objective of providing access to facilities for people with disabilities. Those rules are not only numerous, but they are often confusing for ADA coordinators, program managers, and design professionals. This session will identify and explain how to approach the most important accessibility requirements that apply to existing facilities and how to meet them to serve people with disabilities.

# Learning Objectives

1. Participants will know which significant accessibility requirements from various rules apply in Public Entity Facilities.
2. Participants will be aware of additional obligations that apply more broadly in their Facilities.
3. Participants will understand the differences between Program Access, Alterations, Maintenance, and operations requirements.
4. Participants will understand how to apply major parallel obligations under the various regulations and standards in their Existing Facilities.

# What is an “Existing Facility”?

Under the 1991 ADA Standards, and UFAS before it, existing facilities and existing elements were those that predated the effective date of the applicable standard. They were subject to its alterations and additions requirements.

However, in DOJ’s definition in the 2010 Regulations at 35.104, they added an interesting twist:

*“Existing facility means a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.”*

- Therefore, one facility can be both new construction and “existing.” Older facilities are also “existing.”
- The significance of the change: ALL buildings & facilities are evaluated for Program Access
- Under the 2010 ADA Standards and regulations, all elements, spaces, and common areas that are altered after 1/26/1992 must comply with the alteration requirements

# Parallel Obligations for Public Entities

1

## I) Multiple Laws, Ordinances, Regulations, Standards, and Building Codes

- ADA – Title II
  - 2010 ADA Standards and regulations
- Rehabilitation Act – Adopting regulations & standards (usually UFAS or the ADA Standards with modifications) may vary based on the program funding source (there are well over 100 agencies that provide federal funding)
- State and Local laws, ordinances, and building codes (watch the applicable versions, too)
  - State stricter accessibility standard?
  - IBC ?
  - A117.1 ?
  - IEBC ?
  - NFPA ?

# Parallel Obligations for Public Entities

2

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# Parallel Obligations for Public Entities

3

## II) Common requirements between the applicable regs. & stds.

### 1) Alterations

- Compliant with the new construction requirements (w/some exceptions)
- Path of travel obligations
  - When an alteration to a Primary Function Area affects Usability
- Prohibited reduction in access below the effective standards
- Limited Exceptions
  - Technical Infeasibility
  - Safe Harbor (element by element)
  - Exit exceptions
  - Historic Property exceptions (different from historic preservation programs)

# Parallel Obligations for Public Entities

4

## II) Common requirements between the applicable regs. & stds.

### • 2) Maintenance of Accessible Features

- Short-term and infrequent interruptions are not prohibited
- Includes operational requirements such as maintaining required clearances free of obstructions



# Parallel Obligations for Public Entities

5

## II) Common requirements between the applicable regs. & stds.

### 3) Program Access

- Programs, Activities, Services, Aids, Benefits
- Defining “Programs”
- When viewed in their entirety
- Fundamental Alteration
- Undue Financial and Administrative Burdens
- Equivalent Facilitation
- Alternative Methods

### 4) Transition Plan (for Public entity facilities)

- A listing of barriers that limit access to your programs (covered last year)

# Facility Obligations Not Discussed Today - 35.130

- **ADA General Prohibition Against Discrimination**

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

(More details in 35.130)

- **Site Selection**

- **Modification of Policies, Practices and Procedures, including procurement**

- **Self-Evaluations and Transition Plans**

- **Reasonable Accommodations for employees and potential employees**

# Alterations

ADAS “106.5 Alteration A change to a *building* or *facility* that affects or could affect the usability of the *building* or *facility* or portion thereof. *Alterations* include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of *circulation paths* or *vehicular ways*, changes or rearrangement of the structural parts or *elements*, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, {asbestos removal, [36.402(b)(1)]} or changes to mechanical and electrical systems are not *alterations* unless they affect the usability of the *building* or *facility*.”

# Alterations

35.151

“Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.”

- The phrase, “readily accessible to and usable by individuals with disabilities,” means in compliance with the applicable ADA Standards.

# The Most Common Alterations **Error**

**Not including  
Path of Travel work  
in every  
Alteration project.**

Budget for the Path of Travel work with every alteration project.

# Path of Travel

35.151(b)(4)

*“Path of travel. An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate\* to the cost of the overall alteration.”*

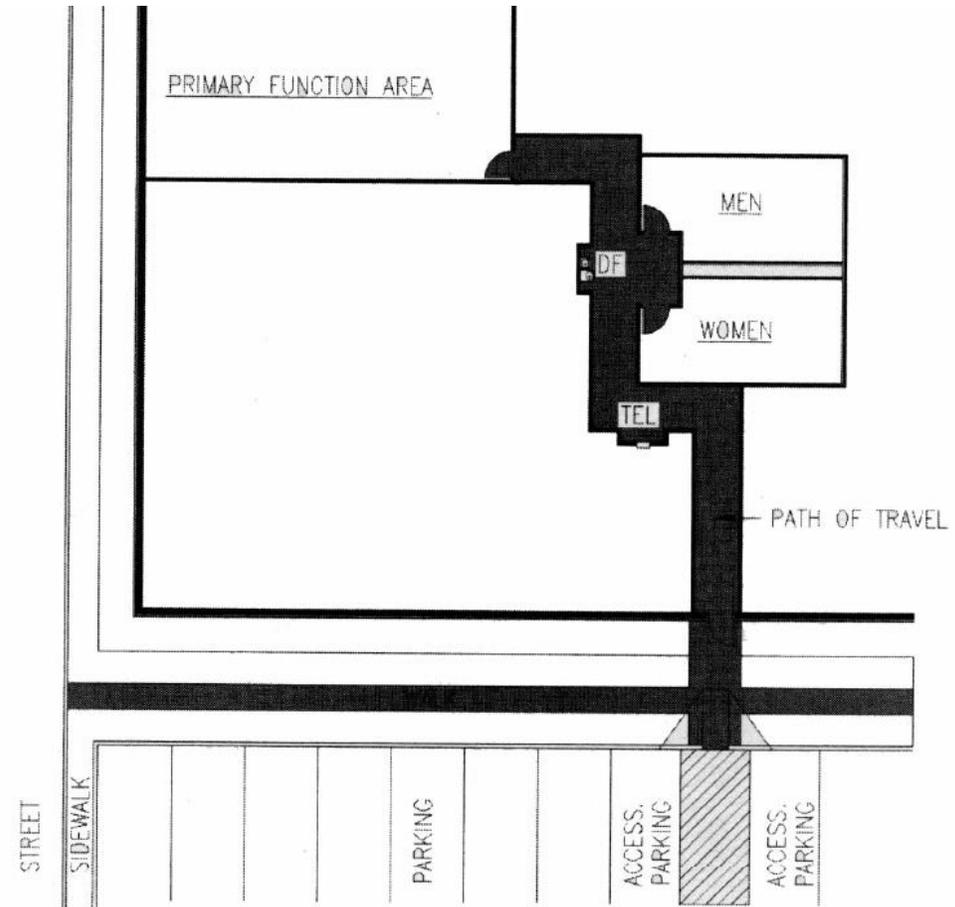
Path of Travel obligations do not apply to work done to only achieve program access 35.151(b)(2)

\*More than 20% of the cost of the alteration is disproportionate 35.151(B)(4)(iii)(A)

# Path of Travel Components

A continuous, unobstructed way of pedestrian passage connecting the

- 1) Altered Primary Function Area(s) with
- 2) Site arrival points - sidewalks, streets, and parking areas
- 3) An entrance
- 4) Toilets
- 5) Telephones
- 6) Drinking fountains



# Primary Function Areas

35.151(b)(4)

- “(i) *Primary function*. A “primary function” is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, 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.
- “(A) Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not areas containing a primary function. Restrooms are not areas containing a primary function unless the provision of restrooms is a primary purpose of the area, *e.g.*, in highway rest stops”

# Path of Travel

From 2010 Title II Regulations section 35.151(b)(4)(ii):

- (1) “A ‘path of travel’ includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.
- (2) “An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.
- (3) “For the purposes of this part, the term ‘path of travel’ also includes the restrooms, telephones, and drinking fountains serving the altered area.”

# Prohibited Reduction in Access

## “202.3.1 Prohibited Reduction in Access.

- An *alteration* that decreases or has the effect of decreasing the *accessibility* of a *building* or *facility* below the requirements for new construction at the time of the *alteration* is prohibited.”

# Limited Exceptions for Alterations Work

- Technical Infeasibility
- Safe Harbor
- Exit exceptions
- Historic Property

# Technical Infeasibility

**“Technically Infeasible:** 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.”

“To the Maximum Extent Feasible” is like the flip side of Technical Infeasibility, but with the rest of the obligation...

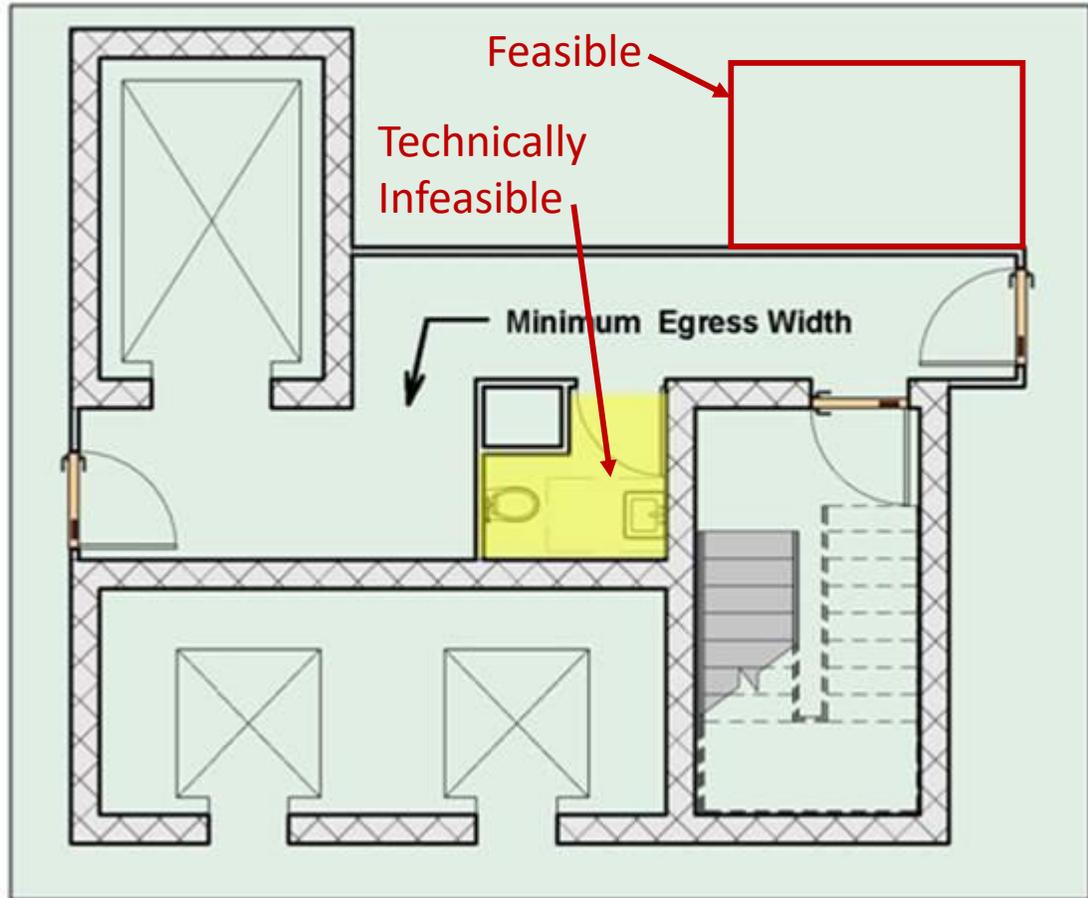
# To the Maximum Extent Feasible

The rest of the obligation...

## “202.3 Alterations

**Exception 2.** In *alterations*, where compliance with applicable requirements is *technically infeasible*, the *alteration* shall comply with the requirements to the maximum extent feasible.”

# Technically Infeasible



## To the Maximum Extent Feasible

“If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (*e.g.*, those who use crutches, those who have impaired vision or hearing, or those who have other impairments)”

# Safe Harbor (ADA Term)

[“35.150\(b\)\(2\)\(i\)](#)

## **For Program Access**

*“Safe harbor.* Elements that have not been altered in existing facilities on or after March 15, 2012 and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), ... are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.”

# Safe Harbor (ADA Term)

[35.151\(b\)\(4\)\(ii\)\(C\)](#)

## For Alterations:

*“Safe harbor.* If a public entity has constructed or altered required elements of a path of travel in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standards before March 15, 2012, the public entity is not required to retrofit such elements to reflect incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.”

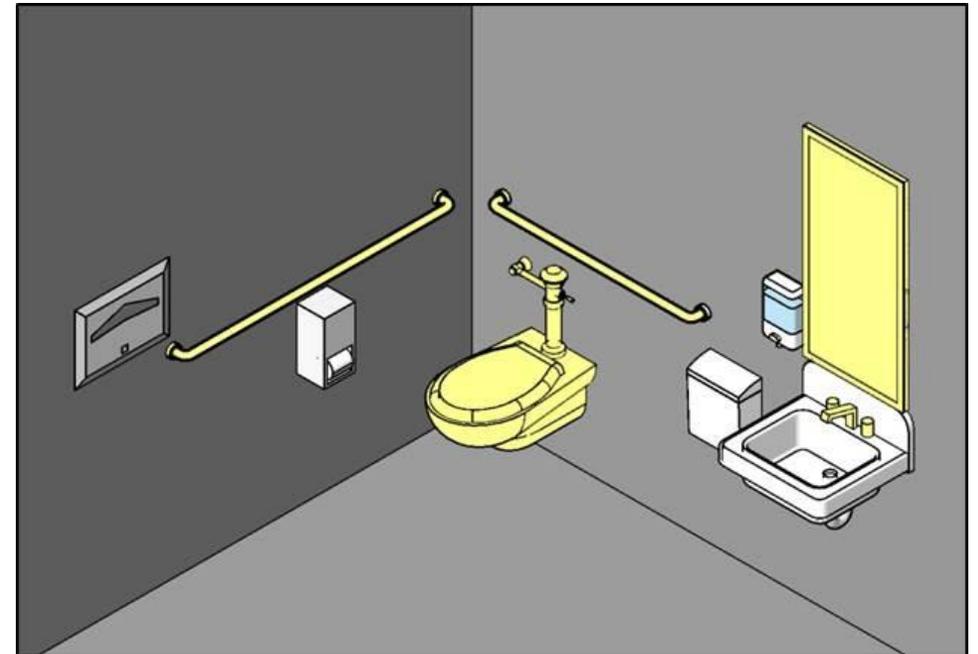
# Safe Harbor

## Incremental vs. Supplemental:

The Safe harbor provision applies to elements that were subject to incrementally stricter requirements in the ADA Standards such as the additional space allowing side transfers onto toilets that was added in 2010.

## Element-by-Element

In a restroom project involving alterations to the toilet, grab bars, faucet controls, and mirror, the standards apply to these elements but not to those that remain unaltered. In more extensive projects where additional elements are altered, application of the standards is greater, commensurate with the scope of work.



# Safe Harbor Does **NOT** Apply to:

“(ii) The safe harbor provided in §[35.150\(b\)\(2\)\(I\)](#) does not apply to those elements in existing facilities that are subject to **supplemental requirements** (*i.e.*, elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor are identified as follows—

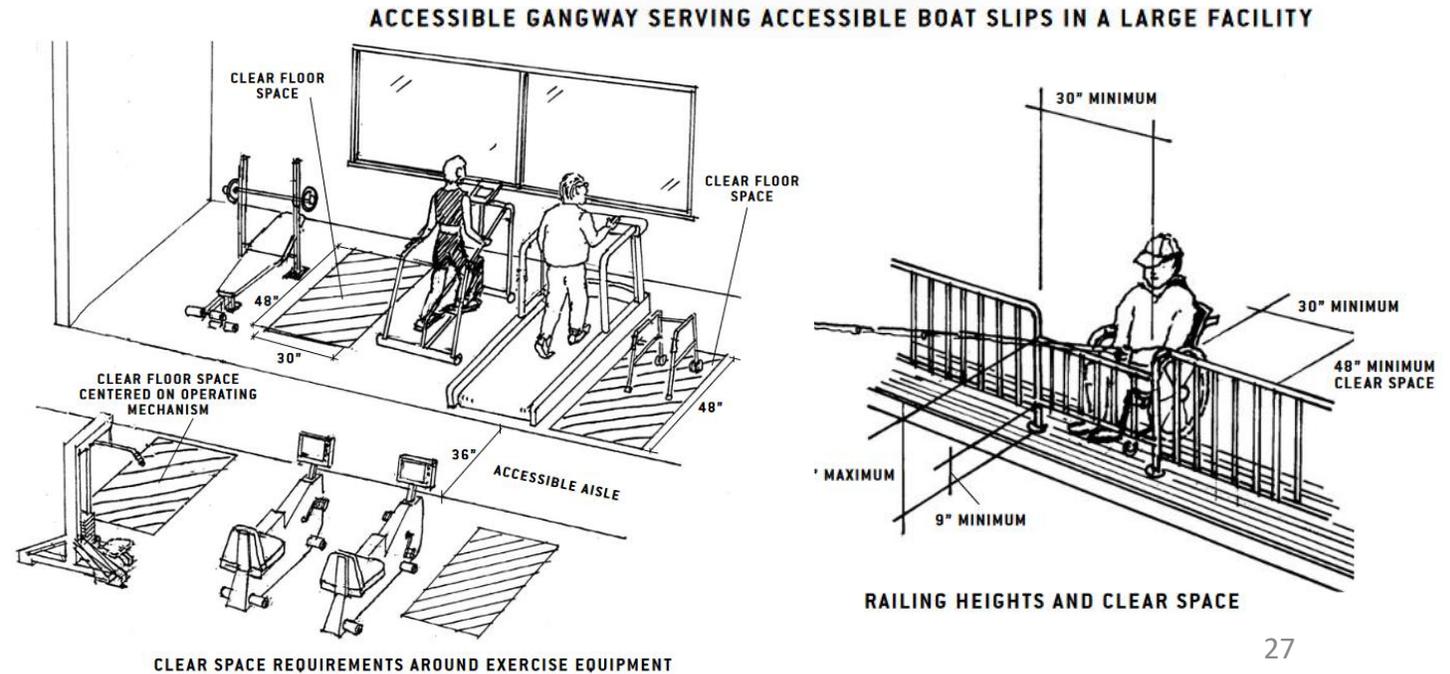
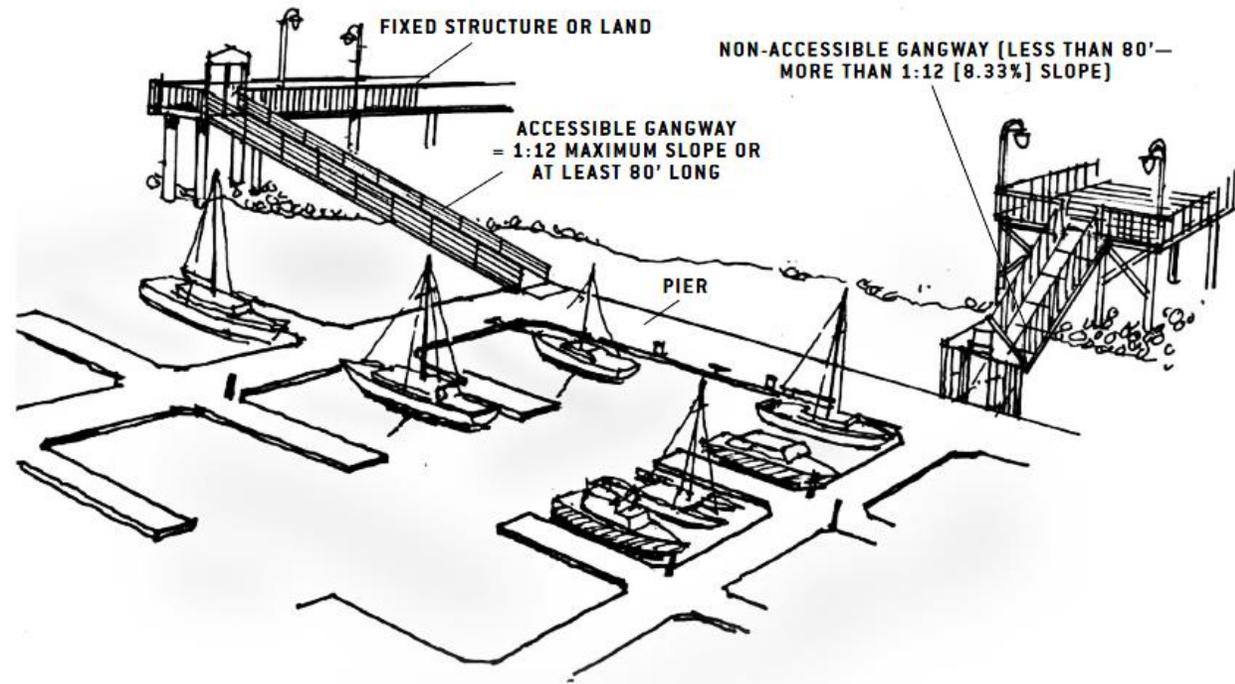
- (A) ***Residential facilities dwelling units***, sections [233](#) and [809](#).
- (B) ***Amusement rides***, sections [234](#) and [1002](#); [206.2.9](#); [216.12](#).”



# Safe Harbor **NOT** 2

Continued...

- (C) *Recreational boating facilities*, sections [235](#) and [1003](#); [206.2.10](#).
- (D) *Exercise machines and equipment*, sections [236](#) and [1004](#); [206.2.13](#).
- (E) *Fishing piers and platforms*, sections [237](#) and [1005](#); [206.2.14](#).

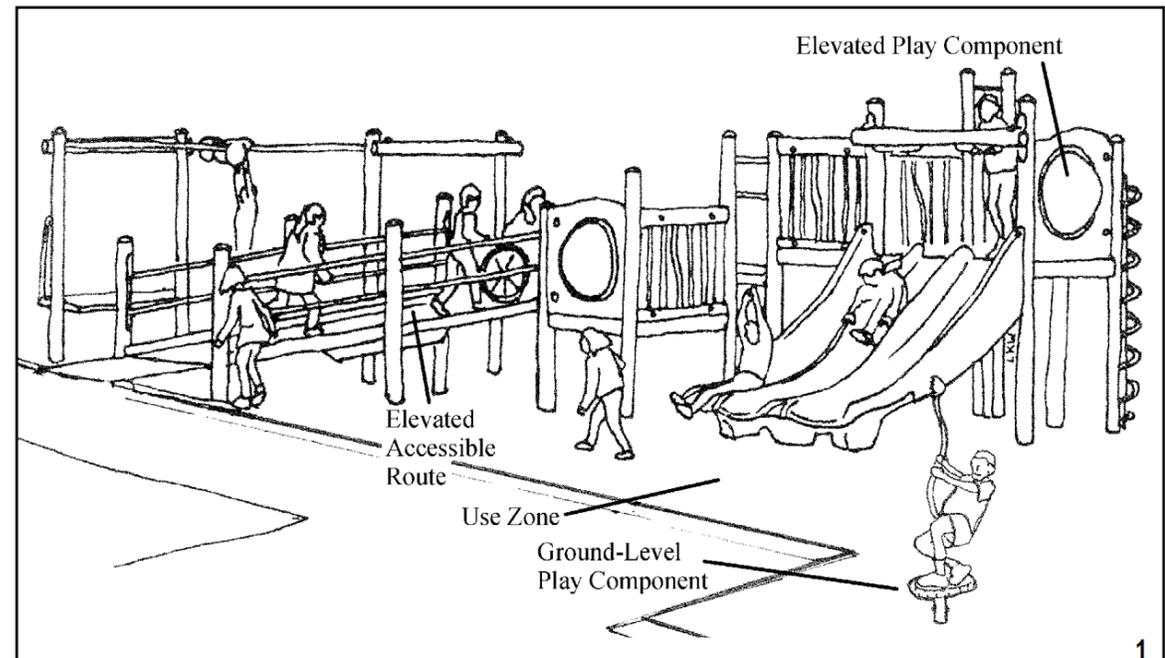
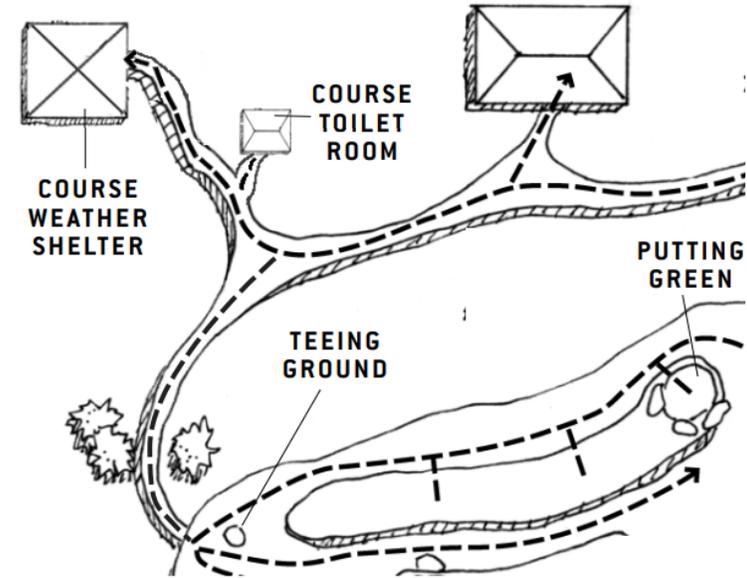


# Safe Harbor **NOT**

Continued...

- (F) **Golf facilities**, sections [238](#) and [1006](#); [206.2.15](#).
- (G) **Miniature golf facilities**, sections [239](#) and [1007](#); [206.2.16](#).
- (H) **Play areas**, sections [240](#) and [1008](#); [206.2.17](#).
- (I) **Saunas and steam rooms**, sections [241](#) and [612](#).

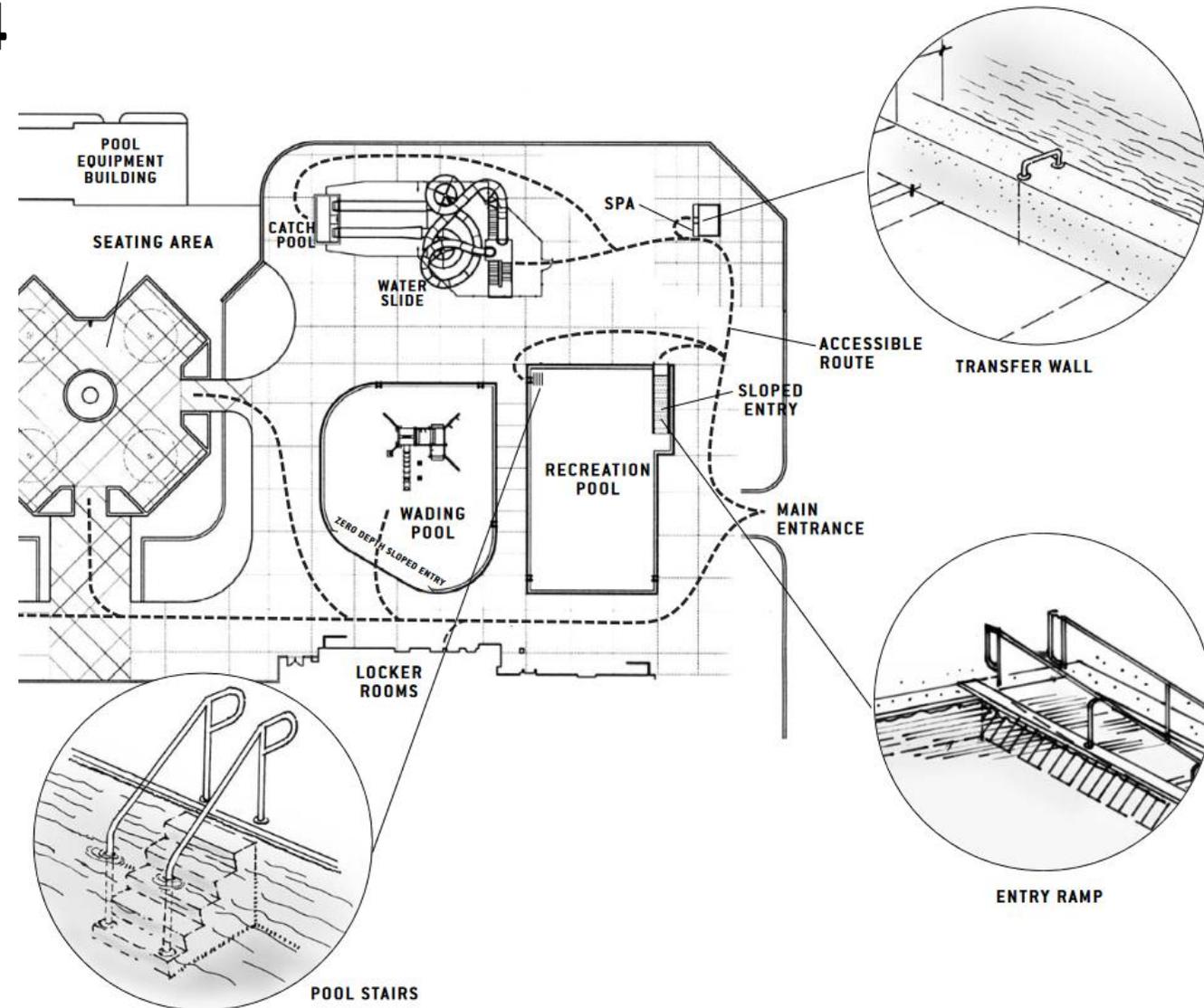
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# Safe Harbor **NOT** 4

Continued...

- (J) **Swimming pools, wading pools, and spas**, sections [242](#) and [1009](#).
- (K) **Shooting facilities with firing positions**, sections [243](#) and [1010](#).
- (L) **Miscellaneous**.
  - (1) Team or player seating, section [221.2.1.4](#).
  - (2) Accessible route to bowling lanes, section. [206.2.11](#).
  - (3) Accessible route in court sports facilities, section [206.2.12](#).



# Exit Exceptions

## 2010 ADA Standards

### “207 Accessible Means of Egress

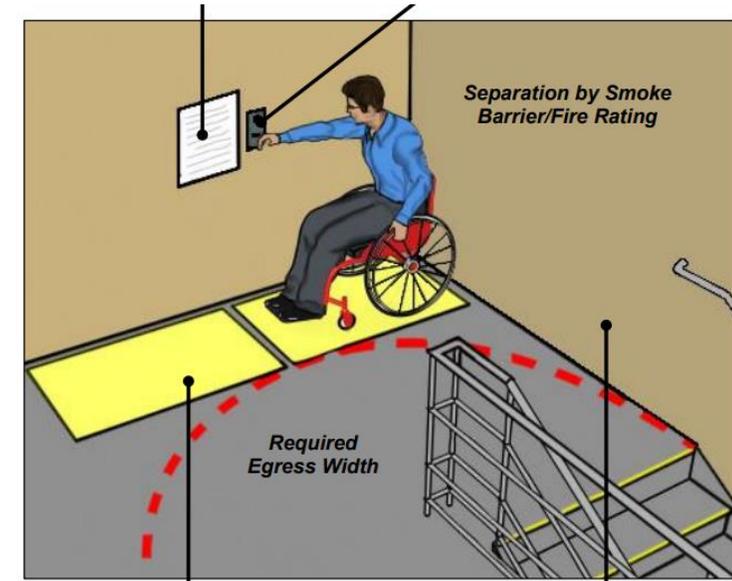
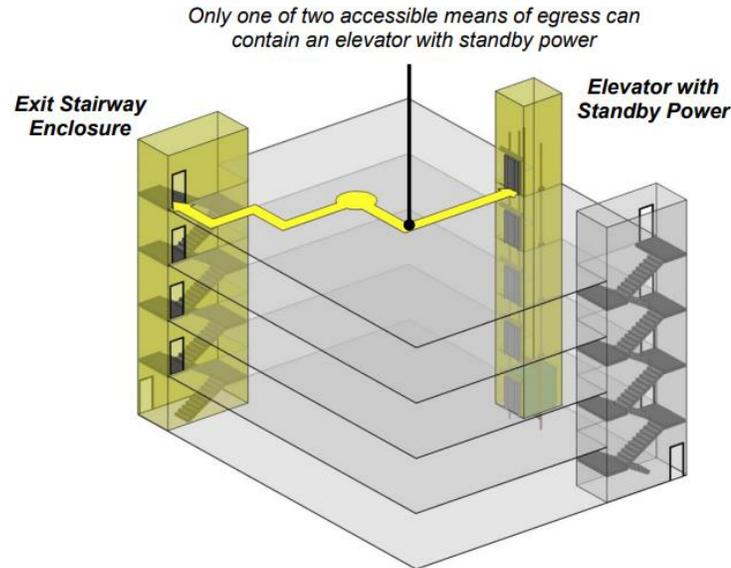
- **207.1 General.**

- Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see “Referenced Standards” in Chapter 1).”

**IEBC 2021** – (Most accessibility specialists accept references to the latest ICC codes, when viewed in their entirety, to provide equivalent facilitation to the 20 year-old ADA references.)

### “IEBC 306.7.2 Accessible Means of Egress

- “Accessible means of egress required by Chapter 10 of the International Building Code are not required to be added in existing facilities.”



# Historic Preservation

- “An Historic Property is a property that is listed or eligible for listing in the National Register of Historic Places or a property designated as historic under State or local law.
  - Alterations to Historic Properties do not, under the alterations requirements, require any work that would threaten or destroy the historic significance of the property or facility as determined by the appropriate State Historic Preservation Official or Advisory Council on Historic Preservation.” However, programs must still be accessible.

Note that this is different from:

- Historic Preservation Programs - programs conducted by a public entity that have preservation of historic properties as a primary purpose.” (Hold that thought.)

# Maintenance of Accessible Features

35.133

35.133(a) “A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.”

“The regulations recognize that it is not sufficient to provide features such as elevators, toilet rooms and assistive listening systems if those features are not maintained in a manner that enables people with disabilities to use them. Inoperable elevators, locked accessible doors, routes that are obstructed by furniture are neither "accessible to" nor "usable by" people with disabilities. Assistive listening systems with failed batteries or that no one can find do not provide effective communication. Accessible features that are required by the Title II regulations must be maintained to ensure ongoing accessibility.”

# **Maintenance of Accessible Features**

35.133

35.133(b) “This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.”

“Temporary access interruptions are permitted, but must be remedied as soon as possible and may not extend beyond a reasonable period of time. If an accessible feature such as a wheelchair lift breaks down the public entity must ensure that improper or inadequate maintenance does not cause repeated failures.”

# What is a Program?

Broadly defined, a “Program” is a service or activity with a single purpose. It is an activity undertaken by a public entity that affords services, benefits, aids, information, or opportunities to one or more members of the public.

# Examples of Programs in Parks & Recreation

- Senior center exercise classes
- Dances for seniors
- Swimming lessons
- Swim team
- Swimming competitions
- Free swim opportunities
- Day care
- Concession stands and their offerings
- Summer camp
- Fishing
- Hiking
- Little league teams
- Lectures
- Etc...



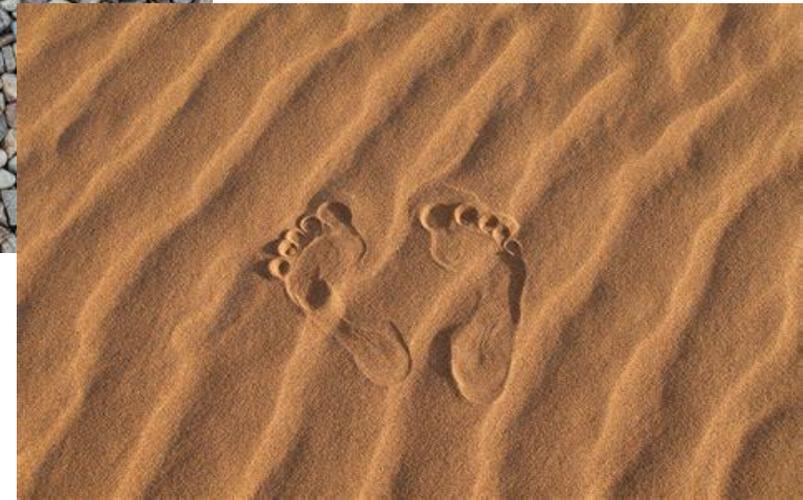
**Boulders**  
**Ex: Parks & Rec.**



**Rocks**  
**Ex: Swimming**



**Gravel**  
**Ex: Swim Lessons**



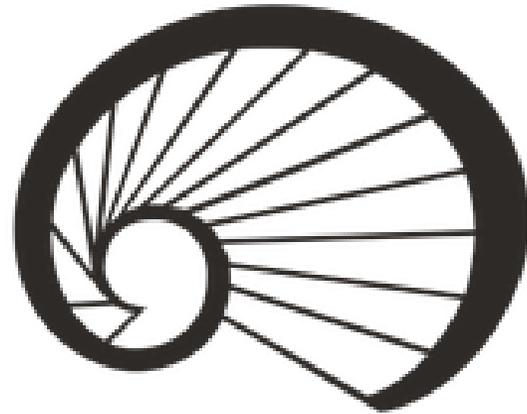
**Sand**  
**Ex: Infant Swim**

**How big is a program, and how many do you have?  
It depends on how you count...**

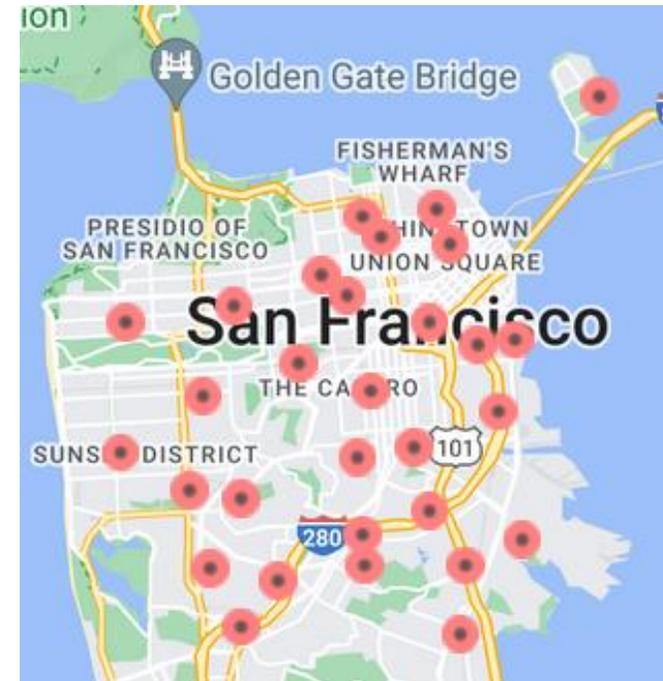
# Program Access Requirements

35.150

35.150(a) “**General.** A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.”



*San Francisco  
Public Library*



# Program Access Priorities & Exceptions 35.150

- Selected compliance methods should give priority to methods that offer the most integrated setting appropriate 35.150(b)(1)
- Alterations to existing buildings must meet requirements for alterations in 35.151
- There is no requirement to make structural changes where other methods are effective in achieving compliance 35.150(b)(1)
- There is no requirement for every existing facility to become accessible 35.150(a)(1)
- There is no requirement for a public entity to take any action that it can demonstrate would result in a Fundamental Alteration in the nature of a service, program, or activity, or in Undue Financial and Administrative Burdens 35.150(a)(3)
- There is no requirement to take any action that would threaten or destroy the Historic Significance of any Historic Property 35.150(a)(2), 35.150(b)(3)

# Fundamental Alteration

35.150(a)(3)

“In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity..., a public entity has the burden of proving that compliance with [§35.150\(a\)](#) of this part would result in such alteration... The decision that compliance would result in such alteration... must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration..., a public entity shall take any other action that would not result in such an alteration... but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.”



# Fundamental Alteration

35.150(a)(3)

Would it be a Fundamental Alteration to require this activity to be accessible?  
Accessible to whom?





# Undue Financial and Administrative Burdens

35.150(a)(3)

“In those circumstances where personnel of the public entity believe that the proposed action would ... result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with [§35.150\(a\)](#) of this part would result in such... burdens. The decision that compliance would result in such... burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such... burdens, a public entity shall take any other action that would not result in... such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.”

# Undue Financial and Administrative Burdens

## ASL Interpreters

35.150(a)(3)

- An American Sign Language interpreter in Smalltown, GA costs \$125/hour
- You need two interpreters to handle the three-hour City Council meetings
- It is extremely rare for anyone who needs an interpreter to attend a meeting
- Would it be an Undue Financial Burden for the town to have interpreters on duty for every meeting, just in case someone showed up needing them?



# Historic Preservation Programs

“Does the special limitation apply to programs that are not historic preservation programs, but just happen to be located in historic properties? No. In these cases, nonstructural methods of providing program accessibility, such as relocating all or part of a program or making home visits, are available to ensure accessibility, and no special limitation protecting the historic structure is provided.”



# Historic Preservation Programs

35.150(b)(3)

- “Priority shall be given to methods that provide physical access to individuals with disabilities”
- “When alterations would threaten or destroy the historic significance of a facility whose purpose is to preserve history, alternative methods of achieving program accessibility might include:”
  - “Using audio-visual materials and devices to depict inaccessible portions of historic property” (such as videos, 360 degree images, Virtual Reality tours, etc.)
  - “Assigning persons to guide individuals with disabilities through otherwise inaccessible areas”
  - “Adopting other innovative methods” (such as 3D printed elements for inaccessible elements or spaces)

# Equivalent Facilitation

## “103 Equivalent Facilitation.

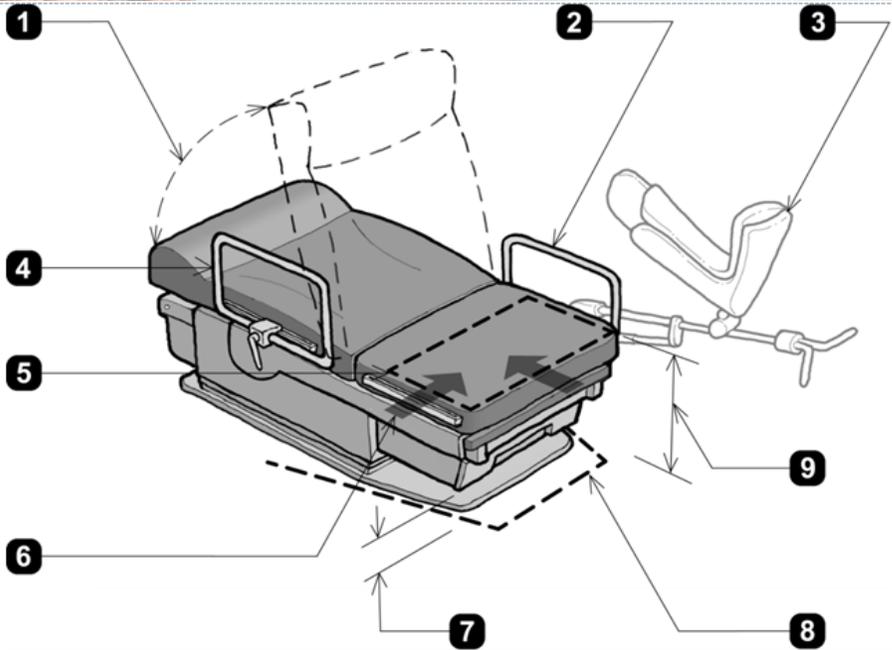
- Nothing in these requirements prevents the use of designs, products, or technologies as alternatives to those prescribed, provided they result in substantially equivalent or greater *accessibility* and usability.”

“**Advisory** - The responsibility for demonstrating equivalent facilitation in the event of a challenge rests with the covered entity. With the exception of transit facilities, which are covered by regulations issued by the Department of Transportation, there is no process for certifying that an alternative design provides equivalent facilitation.”

# Methods of Compliance in Existing Facilities

35.150

- Redesign equipment
- Reassign services to accessible buildings
- Assign aides to beneficiaries or home visits
- Delivery of services at alternate, accessible sites
- Alteration of existing facilities
- Construction of new, accessible facilities
- Use accessible rolling stock or other conveyances
- Other methods to achieve “readily accessible”



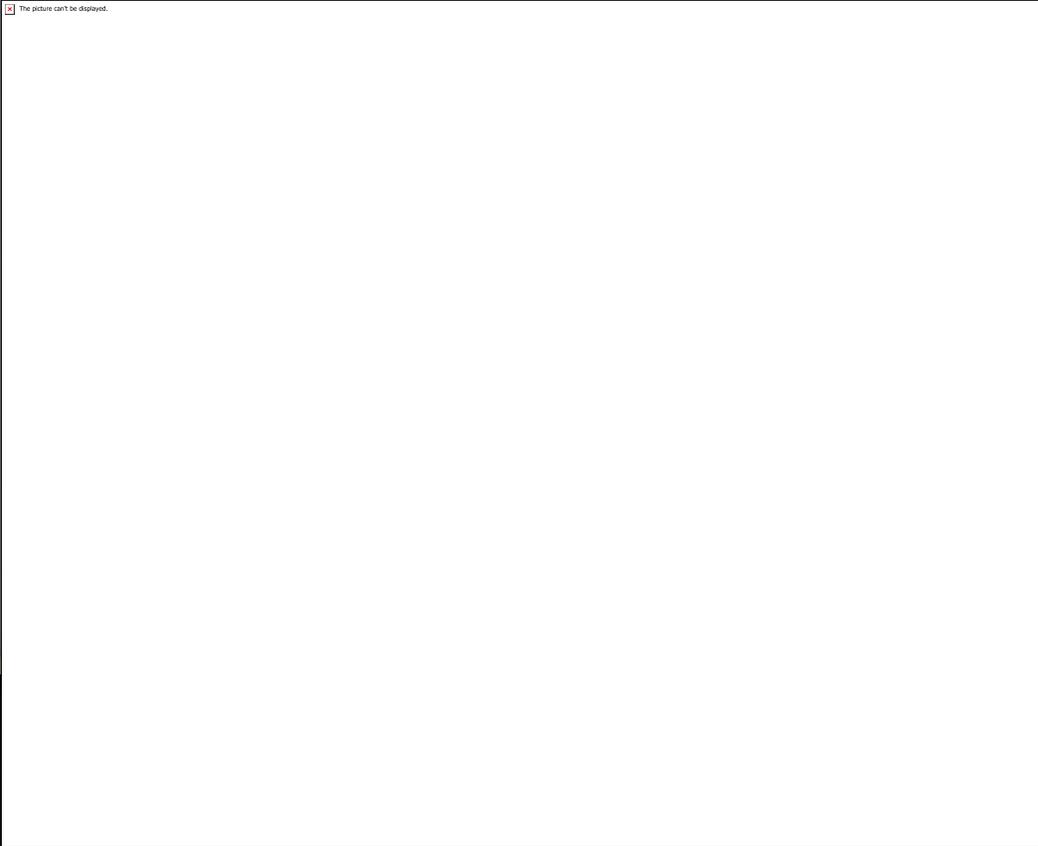
**Transfer to short side  
(depth) of transfer  
surface**



# Touch Exhibits



# Audio Tours



Questions?

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