



November 30, 2015

Elroy Golemon  
ADA Coordinator  
City of Helena  
316 North Park Avenue, Room 445  
Helena, MT 59623

Dear Elroy:

Please accept this letter as the introduction to our final report to the City of Helena, in regard to our access audit of City buildings and sites.

### **Authority**

Title II of the Americans with Disabilities Act (42 USC 12131) prohibits more than 89,000 units of state and local government, such as the City of Helena from discrimination on the basis of disability in the delivery of programs and services. The definition of programs and services is broad and includes public parks, recreation programs, and the many opportunities made available for the enjoyment of your residents by the City.

The Department of Justice (DOJ) issued an amended implementing regulation for title II, which became effective on March 15, 2011. This supplemented the regulation issued January 26, 1992.

The DOJ regulation is integral to this audit and can be found at 28 CFR Part 35. The amended regulations were anticipated for quite a few years.

Title II requirements that come into play in our work for the City include:

- section 35.105 self evaluation;
- the section 35.133 maintenance requirement;
- the section 35.150 program access test regarding existing sites;
- the section 35.151 requirements for new facilities and alterations to old facilities, and
- the section 35.163 requirements regarding building signage.

### **Final and Enforceable Regulations...and Final Guidelines**

Regarding the design of parks and recreation site and other municipal facility designs, two sets of federal guidelines were applied to the access audit. One is the Americans with Disabilities Act Accessibility Guidelines, also known as ADAAG. Published by the US Department of Justice (DOJ) on July 26, 1991 as Appendix A to 28 CFR Part 36, this final and enforceable regulation is now known as the 1991 Standards. This older Standard addresses entries, showers, curb cuts, doors, counters, ramps, decks, and other typical facility elements.

On September 14, 2010 the DOJ published the 2010 Standards for Accessible Design. As these Standards were already available as a final guideline, we have long used this as our guide for an access audit. It addresses many recreation environments.

The US Access Board developed the 2010 Standards, which include requirements for playgrounds, fishing areas, boating areas, and more. This process started in 1993 and lasted for almost 20 years.

It is important to know that there is ***not yet a final standard*** for some City of Helena assets. Still pending are standards for trails, picnic areas, campsites, viewing areas, and outdoor constructed elements such as grills. Where we encountered those assets we used the most recent work of the US Access Board to guide our evaluation. The Access Board, a federal agency, develops ***all*** access guidelines.

***We cite to the 2010 Standards in our work.*** Where Montana access standards are more stringent, we cite to those. Additionally, as a smart practice we cite to the work of the US Access Board.

### **Approach and Analysis**

Section 35.150 of the DOJ regulation implementing the ADA makes it clear that not necessarily every facility or site of the same type must be made accessible. We interpret this requirement to mean that with similar sites, such as play areas, the City has some flexibility in determining which site it will make accessible.

However, for unique sites, such as the City-County Administration building, the City has no choice with regard to which site it will make accessible, as there is only one such site. Where we know the City plans work at certain sites, we have tried to incorporate that in our phased retrofit recommendations.

In an access audit, it is critical to measure each feature of each element of each site, as we have done here. Where we found a variance from access requirements or a smart practice variance, we have digital images so that the City will better understand the variance.

An additional issue is whether a building has been altered since 1992. If so, there is little flexibility in how access requirements are applied to that site. That site or building should have fully complied with the 1991 Standards.

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Settlement agreements by federal agencies (Justice, Interior, and Education) adhere to what are now the 2010 Standards. While these were effective for new construction on March 15, 2012, ***the 2010 Standards are to be used in evaluating recreation sites now in existence.***

**Our Process**

Our work included an access audit of 49 specific City sites and facilities. Our two person teams used checklists in the evaluation process. Additionally, our staff trained two City facilities staff and two Parks staffs, and they conducted audits of an additional 26 sites and facilities.

As we did, the City staff wrote site reports. We did review these for consistency and the appropriate application of the checklists. However, we did not see the sites that were audited by City staffs.

**Report Format**

Our audit included an examination of 49 facilities or parks. Each facility or park has its own section in our final report. In addition, City of Helena staff audited smaller parks and employee only sites, those each have a report written by Helena staff.

Our Conclusion section is found at the end of the site reports.

Here is an order of the reports:

1. This cover letter;
2. 75 site reports from Barney Park to Women's Park;
3. Conclusion report with summarized recommendations and transition plan; and
4. Program access grid and maps for playgrounds, ball fields, sports fields and picnic areas.

The City is receiving one hard copy in 6 binders. The first 2 binders will have all the final site reports, the program access grid and maps, and the transition plan grid.

The third through sixth binders have all of the checklists.

Finally, you'll receive a user name and password to our FTP site, where all reports, checklists, and images are available for City employees and contractors as you wish. Once downloaded; on your screen, the text in the reports section includes a hyperlink to the checklist and the photo being referenced.

The checklists also have a hyperlink to the same access deficit images

## Title II Program Access

As mentioned above, the title II program access test in 35.150(b) gives the City great flexibility in making existing facilities and sites **that have similar features** accessible. For example, we counted 20 play areas. Not all of those sites must be accessible.

The program access test requires the City to make the “program of play areas” accessible to all City residents. Our goal was then to have at least 1 of every 3 five to twelve play areas accessible, or able to be made accessible. Here is a summary of the results.

There are 20 5 to 12 play areas. Two are currently accessible. The City could create access to four more without much difficulty and leave the remaining 12 sites “as is” and inaccessible, until those are renovated due to age or for other purposes.

This meets the ratio we recommend of 1 of every 3 recurring sites.

Where we believe a site should be made accessible to comply with the program access test, leading into the recommended corrective work our reports will use language like that below:

***“Recommendations (Mountain View Park is designated with an accessible play area so 1.4.1 through 1.4.6 is integral to compliance with title II program access test):”***

Conversely, where we believe a site need not be made accessible, leading into the recommended corrective work our reports will use language like that below:

***“Recommendations (in the alternative to 1.3.1, leave as is and designate other City play areas as accessible):”***

We applied this concept to the duplicated elements of volleyball, tennis, basketball, baseball, athletic fields and picnic areas. We believe our recommendations to you make these “programs” accessible to City residents.

## How to Use this Information

***First, read this final report cover letter to Elroy Goleman.*** It describes the concepts and requirements invoked throughout the reports.

***Second, read the Conclusion section.*** This is a big picture review of the issues and solutions we recommend.

***Third, read the 75 site reports.*** Use your computer and you’ll have instant access to the report for that site, the images of access deficits, and the checklists. Resist the urge to visit these first...do so at the risk of being buried in detail.

***Fourth, use your knowledge of the sites and of your staffs' expertise.*** You know City of Helena sites better than we do, and you certainly know the staff better than we do. Blend in what you know with what we recommend in the report. There is always another way to solve an access problem...perhaps you'll be the one to see that solution.

### **Conclusion**

The final reports identify, we believe, every access deficit at the sites, as required by section 35.105 of title II. We have, in our approach to program access, made recommendations so that not every access deficit needs to be corrected.

Our recommendations are flexible enough that later modifications, should your own plans change, can occur. We worked well with all City of Helena staff, but owe a special thanks to you, Elroy, for your assistance.

The City of Helena has shown its commitment to making parks and recreation, and other City services, available for all in the community, including people with disabilities. Addressing our recommendations will assure that those services are available to City of Helena residents, including those with disabilities.

If there are any questions, please call me at 224/293-6451 or on my cell at 847/363-9384.

Sincerely,

John N. McGovern, J.D.  
President

JNM/COH COVER LETTER 201501