
**CITY OF COSTA MESA
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: William J. Morris, Public Services Director

FROM: Kimberly Hall Barlow, City Attorney

By: Yolanda M. Summerhill, Deputy City Attorney

DATE: March 25, 2006

SUBJECT: ADA Compliance at Fairview Park

I. Introduction

It was recently requested that this office investigate whether the Riparian Habitat Project (hereinafter "Wetlands") at Fairview Park that is located on the north east portion of the Wetlands complies with the Americans with Disabilities Act (ADA). Specifically, the question is whether the distance from the existing and planned upper parking lots is too far away from the Project area such that it precludes access by the disabled. Further, we have been asked whether the difference in elevation between the upper and lower mesa preclude access by the disabled in violation of the ADA. The abbreviated response is that there are no specific distance requirements from the parking lot to the Wetlands such that the proposed parking lot complies with ADA Accessibility Guidelines (ADAAG). Further, the five percent (5%) grade on the switchback trail is similarly within ADAAG requirements.

II. Facts

Based on the documents that have been provided in preparation for this memo and discussions with staff the facts are as follows: The Fairview Park Master Plan was adopted by the Costa Mesa City Council in March 1998 and revised in November 2002. The plan for the northeast portion of the park is the creation of a Seasonal Creek Community. This will be accomplished by designing a water delivery system that will pump dry weather flow from the Greenville-Banning Channel through a system of designed Wetlands and Riparian Habitat (hereinafter "Wetlands"). The Wetlands area is approximately thirty to forty feet (30'-40') lower in elevation than the main parking lot area of Fairview Park. The parking lot will be constructed to the north of the park entrance. In order to arrive at the Wetlands, visitors will use the bike trail for approximately eight hundred feet (800') which will connect with a "switchback" trail leading from the upper mesa to the lower wetlands area. The total approximate distance from the parking lot to the lower Wetlands area is sixteen hundred feet (1600'). The switchback trail which descends to the lower Wetlands area will be constructed with a grade not greater than five percent (5%). The project will also include trails, signage, picnic tables, benches, and an interpretive center for the public's enjoyment.

III. Discussion

A. A Public Entity's Duties under the ADA Generally.

The ADA provides that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, 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. 28 C.F.R. Sec. 35.149. A public entity must make its service, program, or activity "when viewed in its entirety," "readily accessible to and usable by individuals with disabilities" id., section 35.150(a), except where compliance would result in a "fundamental alteration" or an "undue burden." Id., § 35.150(a)(3). A public entity must "give priority to those methods that offer services, programs, and activities ... in the most integrated setting appropriate." Id., § 34.150(b)(1). All together, the program access requirement of Title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases.

1. Distance Requirements

Public agencies may utilize either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for the alteration or construction consistent with the ADA. Section 35.151(c). In consulting with staff, it is my understanding that the City utilizes ADAAG for this project. In reviewing the standards set forth in ADAAG, there are no specific provisions requiring particular distances from the parking lot to a particular location. Rather, it requires a broader standard defined as accessibility. Specifically, Section 4.3.2 provides that at least one accessible route within the boundary of the site shall be provided from, among other things, accessible parking.

Further, Section 4.6.2 provides that accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from the adjacent parking to an accessible entrance, but has been held not to require that this access be from the nearest parking lot. Although Section 4.6.2 would appear to require a short distance, the case discussed below suggests otherwise.

In Kornblau v. Dade County, 86 F.3d 193 (11th Cir. 1996) the court held that a disabled person was not entitled to a parking space that was located within a closer lot which was reserved for senior officials. In Kornblau, plaintiff Barbara Kornblau suffered from arthritis. Metropolitan Dade County's Government Center Building provided several public parking lots where plaintiff was entitled to park and which met the requirements for the number and location of disabled parking spaces. The parking lot closest to the entrance to the building, however, was reserved with marked spaces for county commissioners and certain senior management officials of the County. Plaintiff, who was not a County employee, wanted the County to provide a disabled parking space in that employees' private lot, basing that claim upon the ADA. She argued that she was entitled to parking in the closer/adjacent lot pursuant to Sec. 4.3.2. The court, however, reasoned that the Plaintiff failed to show that there was a denial of benefits or discrimination by reason of her disability. In reviewing Section 4.6.2 in conjunction with Section 4.1.2(5)(a), the court reasoned that the regulations did not prohibit having separate lots for employees and visitors and further that the City complied with Sec. 4.6.2 in providing accessible parking. Rather, the plaintiff sought to gain an advantage over non-disabled parkers that was not available under ADAAG.

This case is relevant to the present circumstances in demonstrating that a public agency is not required to maintain parking immediately adjacent to the facility in order to be in compliance with the ADA standards. In Kornblau, although the City maintained a parking lot closer to the building that was not handicap accessible, the court held that it was not necessary to provide accessibility within the nearer lot in order to comply with Section 4.6.2. When applying Kornblau to the present circumstances, if it were not necessary to provide disabled accessible parking in an *existing* yet nearer lot, then certainly the City of Costa Mesa has a strong argument that it is not required to construct an additional parking lot adjacent to the project in order to comply with the ADA. Rather, what is necessary under Section 4.6.2 is that the City provide parking on the shortest accessible route of travel.

2. Switchback Trail Slope

In reviewing the City's proposed plan for the switchback trail, it appears that it is also in compliance with ADAAG. The switchback trail is governed by Section 4.8 of ADAAG. Section 4.8.2 provides that the least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12 (8.33%). Consistent with Section 4.8.2 the switchback trail is proposed to be constructed with a maximum five percent (5%) slope. The five percent (5%) grade will be attained by utilizing the switchback. That is, extra length will be added to the pathway by utilizing flatter areas along the natural terrain in order to minimize the slope. There are no provisions governing the maximum allowable length of the switchback trail. Rather, the provisions govern slope, rise, width, and circumstances where handrails are necessary. Thus, the slope of the switchback trail which will wind around in order to maintain a five percent (5%) grade does not violate ADAAG.

B. Other Cases

In the cases that were brought to the City's attention by Mr. Graham, it should be noted that there are distinct differences from the present circumstances which led to the finding in those cases that the practices violated the ADA. For instance, the lawsuit against California's state parks involved more than 270 separate park units, which included state beaches, historic monuments and parks, state reserves, and state recreational areas. Park units often consisted of undeveloped property, beaches, reservoirs, wilderness areas, reserves, off-highway vehicle areas, lighthouses, historic structures and museums. Further, the parks department offered a wide range of programs including hiking, camping, picnicking, swimming, boating, historic and educational programs, biking, fishing and other activities. However, many of the parks provided no accessibility to disabled individuals. One example involves state beaches wherein there was no accessible route with which disabled individuals in a wheelchair could access the beach. The same could be said for many of the state parks.

Further, in the case against the movie theatres, the second tier stadium seating available to non-disabled movie goers was not available to disabled individuals. That is, there was no ramp or elevator with which disabled individuals could access the second tier of seating. Courts in many jurisdictions have found this to be a violation of the ADA because disabled individuals were denied the same line of sight that non-disabled person were able to appreciate.

These two (2) situations, however, are distinct from the present circumstances in that in the California State Parks and movie theatre cases, there was an outright denial of access to disabled persons. In State Parks, there were no routes short of plowing through the sand to reach the

ocean. In the case against the movie theatres, there was outright denial of access to the second tier stadium seats. However, in the present circumstances, that is not the case. The proposed parking lot and switchback trail will allow access to the disabled to the same facilities which are available to non-disabled members of the community.

IV. Conclusion

In conclusion, the ADAAG does not contain specific distance requirements but rather a much broader accessibility standard such that the pathway from the parking lot to the Riparian Habitat Project complies with ADAAG. Further, the five percent (5%) grade on the switchback trail is similarly within ADAAG requirements.

Please do not hesitate to contact our office if you have any questions.