

# **BALDWIN COUNTY, ALABAMA**

## **Americans with Disabilities Act of 1990 and Section 504**

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# **Public Right of Way Barrier Analysis and Transition Plan**

July 19, 2016

Amended September 18, 2018



## **I. Introduction**

Baldwin County is dedicated to ensuring that its programs, activities and services do not discriminate against people with disabilities. Baldwin County has developed this document, including all attachments, to establish a written policy setting forth its commitment to nondiscrimination based on disability and to comply with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. The document was also developed through guidance and direction issued by the Federal Highway Administration, the Alabama Department of Transportation, and the Governor's Office on Disability.

This document and attachments are made public to those interested and serves as the Public Right of Way (ROW) Barrier Analysis and Transition Plan for Baldwin County as defined by Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act. A copy of this Transition Plan is available for viewing at the Baldwin County Commission offices located in Bay Minette and Robertsedale, Alabama, and at the Baldwin County Satellite Courthouses located in Fairhope and Foley, Alabama.

For compliance questions, or complaint procedures, please contact the ADA Compliance Officer:

- Ron Cink, County Administrator  
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Bay Minette, Alabama 36507  
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(251) 580-2550

## **II. Barrier Analysis Performed**

Baldwin County has attempted, and will continue, to review its facilities in public ROW, as required by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. A Barrier Analysis was completed on the facilities described below located in Commission District 1 and which are owned or maintained by the Baldwin County Commission. This Baldwin County ADA ROW Barrier Analysis and Transition Plan was prepared by staff of the Baldwin County Highway Department and Eastern Shore Metropolitan Planning Organization (ESMPO). The BCC hired a Consultant and utilized in-house forces to complete the Barrier Analysis and Transition Plan for Commission Districts 2, 3, and 4 during FY18.

- **Public Transit**

The Baldwin Regional Area Transit System (BRATS) is the public transit provider for the Baldwin County Commission. BRATS operates Demand-Response and Deviated Fixed Routes. Access to the County's existing public transit facilities was evaluated in the County's 2013 Barrier Analysis and Transition Plan which is available through the County Administrator's office.

- **Curb Ramps & Pedestrian Crossings**

Curb Ramps are required by law when a sidewalk crosses a curb and thereby creates a pedestrian crossing. The BCC does not own or maintain curb ramps in District 1.

Highway Department staff conducted a survey to evaluate the accessibility of pedestrian curb ramps and crossings maintained by the BCC in Districts 2, 3, and 4. Following the initial eye test, facilities marked as questionable were surveyed by a consultant or Highway Department staff. See summary of evaluations and data in Attachment A.

- **Sidewalks**

Federal Courts have ruled differently on the issue of whether sidewalks within the public rights-of-way constitute a program, activity, and/or services of the local government contemplated by the Americans with Disabilities Act. While it is the desire of the Baldwin County Commission to ensure that all sidewalks are accessible to all of its citizens, a large portion of the County's sidewalks are within subdivisions and do not serve the general public in the same manner as sidewalks along standard county roads. Bringing every linear foot of county-maintained sidewalk, including applicable subdivision sidewalks, up to ADA standards is cost prohibitive.

Staff evaluated accessibility of sidewalks maintained by the BCC in District 1. Following the initial eye test, facilities marked as questionable were surveyed by staff of the Baldwin County Highway Department. The following characteristics were measured and evaluated to determine the level of accessibility: width, running slope, cross slope, cracks, and general obstructions. See summary of evaluations and data in Attachment A.

Highway Department staff conducted a survey to evaluate the accessibility of sidewalks maintained by the BCC in Districts 2, 3, and 4. Following the initial eye test, facilities marked as questionable were surveyed by a consultant or Highway Department staff. The following characteristics were measured and evaluated to determine the level of accessibility: width, running slope, cross slope, cracks, and general obstructions. See summary of evaluations and data in Attachment A.

- **Leisure Boating and Public Park Facilities**

The Baldwin County Commission owns and maintains four (4) leisure boating facilities and public parks in Commission District 1. Staff evaluated the following facilities at each boating launch and public park in District 1: Piers, Parking, Ramps, Crossings, Overall Access to facilities. See summary of evaluations and

data in Attachment A.

The Baldwin County Commission owns and maintains thirty-seven (37) leisure boating facilities and public parks in Commission Districts 2, 3, and 4. Staff evaluated the following facilities at each boating and public park facility in Districts 2, 3, and 4: Piers, Parking, Ramps, Crossings, Overall Access to facilities. See summary of evaluations and data in Attachment A.

- **Parking Lots**

The County's public parking facilities (excluding those facilities at public parks) were evaluated in the County's 2013 Barrier Analysis and Transition Plan which is available through the County Administrator's office.

### **III. Summary of Barrier Analysis**

The conclusion of the Barrier Analysis completed county wide found that all Baldwin County Commission programs or services are offered at facilities that are accessible. The majority of programs, activities, and services, are offered in multiple locations. The Commission is committed to providing its citizens accessible programs and services and has worked diligently to implement ADA construction and maintenance requirements. The Commission also has an extensive system in place to make reasonable accommodations for persons with disabilities. A summary of the Barrier Removal and Modification Schedule prepared by staff is attached as Attachment B.

### **IV. Compliance**

When there are structural modifications necessary to facilities in order to make a program, service, or activity accessible to people with disabilities, public entities which employ 50 or more employees are required to develop a facility transition plan pursuant to 28 CFR § 35.150(d)(1). The transition plan must include 1) the physical barriers which limit access to and use of the programs, services, and activities for people with disabilities, including communications features which are structural in nature; 2) a detailed description of how the public entity plans to make the facilities accessible; 3) the schedule for barrier removal; 4) a yearly schedule if the transition plan is more than one year long; and 5) the name of the individual who is responsible for implementing the transition plan pursuant to 28 CFR § 35.150(d)(3).

In accordance with applicable laws, all new construction of facilities in County maintained ROW will be accessible by persons with disabilities. As existing structures are "improved" or "modified", as defined by Federal Highway Administration (FHWA), the facility will be brought into compliance as deemed necessary and in accordance with all applicable laws.

The Baldwin County Commission has implemented a policy that all new construction

will be accessible by persons with disabilities in accordance with all applicable laws, and during renovations or improvements to existing structures, renovations or improvements are made to increase accessibility as deemed necessary and in accordance with all applicable laws.

Both Title II of the ADA and Section 504 prohibit public entities from denying an equal opportunity to participate because existing facilities are inaccessible or not usable by people with disabilities, see 28 CFR § 35.149 and 34 CFR § 104.21. Each program, when viewed in its entirety, is to be readily accessible to and usable by individuals with disabilities, see 29 CFR § 35.150(a) and 34 CFR § 104.22(a).

An existing facility is one that was already generally constructed prior to January 26, 1993, in accordance with Title II of the ADA. Access to programs, services, and activities in existing facilities is to be viewed programmatically and access to the actual physical structures is defined from a functionality standpoint. As long as each identified program, service, and activity, when viewed in its entirety, is accessible, it is not required that all existing facilities be made completely barrier free of physical access barriers.

It should be noted that new or altered facilities must comply with the Standards for Accessible Design also known as the ADA Accessibility Guidelines and be fully accessible to and usable by persons with disabilities pursuant to 28 CFR § 35.151 and 34 CFR § 104.23, rather than applying the program accessibility standard.

The ADA Accessibility Guidelines (ADAAG) and Public Rights Of Ways Accessibility Guidelines (PROWAG), are the design standards to be applied in facility compliance. Not all scoping and technical criteria must be strictly adhered to in existing facilities. However, it is useful to identify all structural barriers and communications barriers that are structural in nature in existing facilities.

Both structural and nonstructural methods can be utilized when removing architectural barriers. However, when using nonstructural methods, the public entity must be certain the result is not the segregation of individuals with disabilities. It must also ensure that it does not compromise the dignity and independence of individuals with disabilities. Programs, services, and activities are to be offered in the most integrated setting possible pursuant to 28 CFR § 35.150(b)(1) and 34 CFR § 104.22(b). If there are no nonstructural alternatives that meet these criteria to achieve accessibility, then the entity must make the necessary structural changes according to 28 CFR § 35.150(b)(1) and 34 CFR § 104.22(b). All structural changes must conform fully with the new construction and alteration requirements of the ADA Accessibility Guidelines or the Uniform Federal Accessibility Standards for new construction and alterations. Structural changes must address the needs of a variety of disabilities, not just mobility impairments. The full range of disabilities is to be considered when planning for compliance under Title II of the ADA.

Title II of the ADA does not require any public entity to undertake any action that would result in a "fundamental alteration in the nature of the service, program, or activity" or in an "undue financial and administrative burden." However, any public entity attempting to

justify non-compliance by utilizing these exceptions assumes the burden of proof pursuant to 28 CFR § 35.150(a)(3). All of the public entity's available resources must be considered for use in the funding and operation of the program, service, or activity and will be considered in any decision relevant to undue burdens (28 CFR § 35.150(a)(3)). The undue burden/fundamental alteration defense does not relieve public entities of their obligation to ensure that people with disabilities receive the programs, services and activities offered by the organization pursuant to 28 CFR § 35.150(a)(3)(Preamble).

## **V. The Transition Plan**

"In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection." 28 CFR § 35.150(d)(1).

Public entities must develop an ADA Transition Plan that itemizes identified structural barriers to programs, services and activities and identifies how they will be removed. Title II requires that the transition plan include 1) a list of the physical barriers that limit facility accessibility to programs, services, and activities; 2) a description of how the barriers will be removed; 3) a schedule of steps for achieving compliance; and 4) the name of the responsible official. (28 CFR § 35.150(d)(2) and (3)).

In addition to other requirements, Title II mandates that public entities must 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 pursuant to 28 CFR § 35.133(a). This includes such things as accessible routes which are obstructed by parked cars, and compliant signage obscured from vision and touch.

## **VI. Statement Regarding Inclusion of General Public and Persons with Disabilities or Disability Groups**

Baldwin County staff held a Public Meeting on July 7, 2016, to allow the public to review and comment on this proposed plan. Staff published the meeting information on social media, through internal Public Notice, and posted on the Baldwin County website. Staff also attempted to consult with persons with disabilities and/or representatives for agencies who assist persons with disabilities for the purpose of conducting the self-evaluation and this barrier analysis in accordance with Section 504.

- David Cox is a mechanical engineer, a citizen of Baldwin County, and a

recently elected Baldwin County Board of Education member. He and his wife both have physical disabilities.

- Kathy Fleet is the Executive Director of ARC of Baldwin County which assists and serves persons that are intellectually or physically challenged.
- Chris Riley is a photographer in Baldwin County, a member of the Fairhope Pedestrian-Bicycle Advisory Committee, and a disability rights advocate in Baldwin County. Mr. Riley was injured in a bicycle accident and now uses a wheelchair with assistance from his service dog, Tonya.

Prior to the adoption of the September 18, 2018, amendment, Baldwin County held a public meeting regarding the proposed additions to the plan. The meeting was held at the Baldwin County Satellite Courthouse in Fairhope, Alabama, from 5 PM to 7 PM on August 16, 2018. Comments from the public were accepted at the meeting and through August 31, 2018. Four individuals attended the meeting, two of which provided comments. No additional comments were received.

The public comments received, and the County's responses, are included in Attachment C to this plan. Both comments revolved around access to Mobile Bay in the Point Clear area. The County is going to work with the Eastern Shore MPO to identify possible projects to enhance the access to individuals with disabilities in this area.

## **VII. Modifications**

At this time, while not necessarily required by law, the Commission has identified infrastructure modifications that will further enhance the accessibility of the Baldwin County Commission's programs and services.

Set forth in Attachment B is a list of facilities, barrier types and suggested or required modifications. Modifications will be made based on priority and will be subject to availability of funds and in accordance with Baldwin County Highway Department maintenance and grant application schedule.

