



Office of Technical and Information Services  
Architectural and Transportation Barriers Compliance Board  
1331 F Street, N.W., Suite 1000  
Washington, D.C. 20004-1111

December 10, 2009

Dear Members of the Access Board:

I am writing in behalf of the Appalachian Trail Conservancy (ATC) in response to the request for public comments on the *Draft Final Accessibility Guidelines for Outdoor Developed Areas* designed, constructed, or altered by Federal agencies subject to the Architectural Barriers Act of 1968. The draft final guidelines were published on October 19, 2009, subsequent to a notice of proposed rule making in 2007 and public hearings in 2007 and 2008.

The Appalachian Trail Conservancy (formerly known as the Appalachian Trail Conference) is a private, nonprofit, educational organization founded in 1925 to coordinate private-citizen as well as public-agency efforts to design, construct, and maintain the Appalachian Trail and to conserve and manage adjacent lands and resources. ATC has a membership base of 36,000 individuals and also is a federation of 30 affiliated hiking and outing clubs throughout the eastern United States, each of which maintains an assigned segment of the Appalachian Trail. The trail is a 2,178-mile primitive footpath extending from Maine to Georgia through 14 states generally following the ridgelines and major valleys of the Appalachian Mountains range. The A.T., as it is known, received Federal recognition in 1968 through the National Trails System Act as the nation's first national scenic trail and today is administered as a unit of the National Park System. Notwithstanding its Federal status, from its earliest beginnings, the Appalachian Trail and its associated facilities (e.g., bridges, shelters, privies, signs) has been maintained largely by a corps of dedicated volunteers that today numbers more than 6,800 individuals who devoted more than 220,000 hours of labor on a wide range of trail-, resource-, and visitor-management issues in 2009.

ATC is a nonprofit organization that enters into partnerships with Federal agencies (primarily the USDA Forest Service and the National Park Service) to construct or alter trails (the Appalachian National Scenic Trail and associated side trails) on Federal lands. With respect to the draft final guidelines, it should be noted that the Appalachian Trail Conservancy is no stranger to this issue. Indeed, two representatives of ATC—a member of its board and a member of its staff—served as a representative and alternate, respectively, on the Regulatory Negotiation Committee that was established by the Access Board in 1997 to explore the issue. More recently, representatives of ATC also actively participated in the formulation of the USDA Forest Service's accessibility guidelines including the Forest Service Trail Accessibility Guidelines (FSTAG) and the Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG) that were adopted by that agency in 2004. Since that time, ATC and its affiliated clubs have applied the USFS guidelines in many areas along the Appalachian Trail, including a number of significant trail-reconstruction projects where accessible segments and/or facilities have been successfully incorporated into the design at appropriate locations. This is noteworthy because, as a general rule, the Appalachian Trail, as a primitive footpath, typically is designed and constructed in many areas with only a 12- to 24-inch-wide tread, primarily with hand tools wielded by our affiliated volunteers, with drainage and other footway improvements utilizing on-site, native materials. Tread surface often is uneven, with frequent irregularities stemming from roots, loose and embedded rocks, and even bedrock ledges. Running slopes also can range from gentle to occasional near-vertical segments, while cross slopes also can be

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A volunteer-based nonprofit organization responsible for the conservation and protection of the Appalachian Trail since 1925

significant. ATC also has produced its own design guide: *Increasing Opportunities for Access on the Appalachian Trail*. We also routinely inventory trail and trail-facility conditions throughout the length of the trail with an eye toward identifying opportunities for improving accessibility where trail-reconstruction projects are contemplated as well as with facilities provided at our many backcountry campsites.

In the comments that follow we will discuss provisions of the draft final guidelines more or less in the order of discussion in the preamble and as further prescribed in the actual guidelines.

Conditional Exceptions. As noted above, ATC was actively engaged in the earlier regulatory-negotiation process and, as a result of that participation, we fully appreciate the challenges faced by the committee and later the Access Board in developing an overarching framework for the application of accessibility guidelines for newly constructed trails and altered trails. While we initially favored the application of different standards based on physical characteristics or setting (e.g. front country/backcountry, Recreation Opportunity Spectrum or ROS classifications), ultimately we joined the majority of our colleagues on the committee in embracing the exceptions-based approach reflected in the committee report and now in the draft final guidelines. The experiences we have gained in the intervening years since the regulatory-negotiation process in applying an exceptions-based approach have supported our earlier conclusions. For these reasons, we support the four conditional exceptions described in the preamble and in F1019.2.

However, in the explanatory note following the table included in the discussion of conditional exceptions in the preamble, we do question the use of the term “to the maximum extent feasible.” That reference also appears in the preamble in the discussion of how the exceptions should be applied, and again in the guidelines at 1017.1. The above-referenced explanatory note states: “*The phrase ‘to the maximum extent feasible’ means that the portion of the trail can depart from the technical provision...to the extent necessary to address the condition.*” We believe this phrase is subject to broad interpretation. For example, there may be many instances in outdoor environments—particularly in “backcountry” environments—where it might be *technically* feasible to meet a particular provision but where such an accommodation might require an engineering solution (e.g., frequent switchbacks, ramps, importation of non-native surfacing materials) that is completely out of character with the prevailing condition of the trail or with prevailing construction practices. For this reason, we suggest that another term, such as *reasonably feasible* or *practicable* might provide clearer guidance. Alternatively, it at least should be clarified that the notion of “to the maximum extent feasible” is still governed by the conditional exceptions relating to terrain, prevailing construction practices, and/or the function or purpose of the facility or the setting.

Exceptions for Trails and Beach Access Routes. It also is noted in the preamble under this subheading that the Regulatory Negotiation Committee Report as well as the Notice of Proposed Rulemaking (NPRM) contained two general exceptions. The first general exception addressed a number of circumstances (e.g., significant obstacles, excessive cross slopes or running slopes, unstable surface, or narrow tread for a certain prescribed distance) that would represent such a significant impediment to passage that there would be little point to attempt to meet the technical provisions elsewhere along the trail segment. The second general exception addressed situations where compliance with the technical provisions could not be achieved for a significant portion (15 percent or more) of the affected trail segment. Under the draft final guidelines, these exceptions have been eliminated. In their place, the guidelines at 1017.1 now address two situations. The first of those pertains to situations where compliance with the various technical provisions is determined to be infeasible. That exception is discussed above.

The second exception states: “*Where an entity determines that it is impracticable for an entire trail to comply with 1017, the trail shall not be required to comply with 1017.*” At first blush, the new language in this exception appears to grant the trail designer or “entity” greater discretion in arriving at an exception determination, rather than confining such a determination solely to a limited number of major-impediment circumstances or to trail segments where a certain percentage of the trail can not meet certain technical provisions. Such flexibility appears to be desirable given the broad assortment of conditions that exist in an outdoor environment. On the other hand, some entities might prefer the “bright line” provided by the earlier exception language. We suggest a possible compromise: Retain the currently proposed language contained in 1017.1 Exception 2, but add an advisory note that cites some of the circumstances described in the earlier NPRM exception language related to major impediments or percentages as *examples* of circumstances where an entity might reasonably make a determination that it is impracticable to apply the technical provisions to the entire affected trail segment.

The language contained in 1017.1 Exception 2 goes on to state: “*The entity shall document the basis for the determination, and shall maintain the documentation with the records of construction or alteration project.*” However, as noted in the preamble, “*The draft final accessibility guidelines do not prescribe any particular format for the documentation.*”

Elsewhere in the guidelines, at F201.4.1, it also is noted that: “*Federal agencies shall notify the Access Board when an entire trail is exempted based on Exception 2 in 1017.1....*” It is further noted in the preamble that “*this (notification) provision does not require approval or any other action on the part of the Access Board or the federal agency. The Access Board will develop a sample form with assistance from the accessibility program managers...that can be used to notify the Access Board....*”

Both the documentation requirement and the notification requirement noted above are new—that is, neither requirement was included in the earlier NPRM. While we do not believe that either of those requirements is unreasonable, we suggest that it might be preferable to develop an example form that could be used for both purposes—documentation and notification.

Outdoor Constructed Features. The next issue addressed in the preamble, and in 1011 through 1017 of the guidelines, is outdoor constructed features. Those most relevant to the Appalachian Trail and to similar long-distance or “primitive” trails apply to tent pads and tent platforms (1013.3), camp shelters (also known as “lean-tos” or, more commonly, shelters) (1014.4), and trails (1017). In the case of tent pads, tent platforms, and camp shelters, such features typically are provided at backcountry campsites which, in the case of the Appalachian Trail, often are accessed via side trails. Typically, these features are constructed on a natural, earth surface as opposed to concrete or asphalt surfaces. In the case of “other surfaces,” as noted in the table provided in the preamble and in 1013.3 and 1014.4 of the guidelines, a maximum slope of 1:48 is prescribed for clear ground spaces surrounding these features, with an exception permitting a slope of 1:33 where necessary for drainage. We believe the 1:33 (3%) maximum slope permitted even under the exception is unreasonably restrictive. Particularly in the case of shelters, where entry to the shelter often is situated beneath the drip line of the roof, and where the soil is compacted due to concentrations of foot traffic, the application of such a minimal slope will not permit sufficient drainage of rain-water run-off and likely will result in quagmires at these sites. We recommend a 5-percent slope at entry points to these features for “other surfaces.”

Other constructed features that could have application to “primitive” trails might include benches, picnic tables, and fire rings. Our understanding is that the technical provisions in the guidelines related to these features, as well as the other features noted above, could be applicable at campsites even if the trail that provides access to the campsite does not meet the prescribed accessibility guidelines. However, in most

campsites associated with the Appalachian Trail, benches and picnic tables where provided are rarely “fixed,” and fire rings, where provided, often consist of little more than loosely piled stones. In those instances, our interpretation of the guidelines is that the technical provisions related to those features would not apply. However, in those rare instances where such features are provided and where picnic tables or benches are fixed to the ground in some fashion, the technical provisions would apply. In the case of fire rings, our understanding is that the technical provisions would apply only to prefabricated grills or fire boxes or to fire rings constructed of concrete or mortared stone.

Outdoor Recreation Access Routes: We are pleased to note that the current draft final guidelines retain the earlier caveat related to outdoor recreation access routes. That is: “*Outdoor recreation access routes are not required where camping facilities, picnic facilities, viewing areas, or outdoor constructed features are provided on trails.*”

Trailheads. In the discussion of trailheads in the preamble and in the definition provided at F106.5, trailheads are defined as: “*an outdoor space developed to serve as an access point to a trail. The junction of two or more trails, where no other access point is provided to the trails, is not a trailhead.*” While this definition does describe a “space” that is “developed,” we believe this definition could be construed to apply too broadly. For example, in the case of the Appalachian Trail and many other long-distance trails, there are numerous instances in which the trail intersects roads or highways. While such intersections can and do provide a point of access to the trail, oftentimes there is no developed parking area associated with these intersections other than perhaps some user-created pull-off areas. In those instances, ATC trail-management publications do not consider such A.T./road intersections to be “trailheads” and we believe such intersections should not be considered “trailheads” within the meaning of the guidelines. We believe it should be clarified that the term “trailhead,” and related provisions affecting signage, parking, etc., should only apply to areas where a developed parking area has been constructed specifically for the purpose of providing access to the trail. An alternative approach might be to expand the definition to state: “*The junction of two or more trails, where no access is provided to the trails, or the undeveloped junction of a trail and a road, is not a trailhead.*” It should be noted that our concern with the definition of “trailhead” represents more than mere “hair-splitting”—that definition is quite relevant to the scoping requirements affecting trails and also carries with it other requirements such as those related to signage, outdoor constructed features, and outdoor recreation access routes.

As noted in the preamble, with respect to signage, a new requirement is included under F247.4.1: “*Where new signs are provided at trailheads on newly constructed or altered trails, the signs shall comply with 1017.11.*” This provision is followed by an advisory note that states that: “*New trailhead signs are required to comply with F247.5 regardless of whether the newly constructed or altered trails comply with 1017.*” We find this language to be rather expansive. While the language references only newly constructed or altered trails, which is consistent with the scoping provisions affecting trails (see below), it appears that trailhead signage, where provided, now must include the content described in F247.5 even if the trail that is served by the trailhead does not meet accessibility requirements. We fear this new requirement simply will serve as a disincentive for trail managers or “entities” to provide any form of informational signage.

Trails. We find it rather odd that the definition of a trail and the scoping provisions affecting trails are one of the last issues discussed in the preamble. It would make far more sense to us if this discussion appeared early in the preamble. In any case, our principal concern with this discussion, and with the scoping provisions for trails contained under F247, pertains to the definition of “alteration” as well as the absence of any definition of “maintenance.”

The language contained in F247.3, Existing Trails, provides: “*Alterations to existing trails that change the original design, function, or purpose of the trail shall comply with 1017.*” This provision is followed by an advisory note that states: “*Changing the overall grade, width, or surface of an existing trail, or rerouting an existing trail are examples of alternations that are required to comply with 1017. Routine or periodic maintenance activities that are performed to return an existing trail to the condition to which the trail was originally designed are not required to comply with 1017.*” However, the language in F247.3 and the language in the advisory note are not necessarily consistent. For example, there can be many instances in which the grade, width, or surface of a segment of an existing trail is altered—for example to address a badly eroded or poorly drained segment, which could range in length from a few feet to hundreds of feet—but where such modifications do not alter “*the original design, function, or purpose of the trail.*” The confusion this inconsistency potentially could create is further exacerbated by the lack of a definition of the term “maintenance.” We suggest that a clear definition, such as that provided in the USDA Forest Service FSTAG guidelines, for both “alteration” and “maintenance” should be provided and that the scoping provisions affecting “alterations” apply only to those instances in which modifications truly alter the original design, function, or purpose of the trail. It should be understood and perhaps clarified in the language that the definitions of newly constructed or altered trails are still subject to the general scoping limitations contained in F247.1—that is, where the trail is directly connected to a trailhead or another trail complying with 1017.

While not discussed in the preamble, there also may be some confusion stemming from the advisory note for F247.1 General. That note provides: “*On trails that contain trail segments, only the trail segments that directly connect to a trailhead or another trail segment complying with 1017 are required to comply with F247.*” When a new trail-construction or a trail-alteration project is contemplated, it is not uncommon to divide the project into various segments, for example where the work involved in each segment requires different construction practices. In those instances, the above-referenced advisory note could be read to suggest that only the segment, of whatever length, that connects to a trailhead or to another segment that complies with 1017 would be required to comply with F247, whereas others might interpret the language to suggest that if any portion of the trail connects to a trailhead or to another accessible trail segment, the entire new-construction or alteration project should be assessed from the standpoint of compliance with the guidelines. It would be helpful to provide some greater clarity regarding the intent of the above-referenced language and to provide a definition of “trail segment.”

Pit Toilets. One of the final discussions in the preamble states that “*The draft final accessibility guidelines do not include provisions for pit toilets or warming huts. The technical assistance document that accompanies the final accessibility guidelines will include examples of pit toilets and discuss how provisions in 603 and 604 of the ADA-ABA Accessibility Guidelines can be applied to pit toilets.*” This statement may be highly misleading since it could be interpreted to mean that pit privies or similar structures (e.g. composting privies or other toilet structures) simply are not addressed by the guidelines. However, our understanding is that the existing provisions contained in the ADA-ABA Accessibility Guidelines do prescribe dimensional and other requirements associated with all forms of toilet facilities regardless of location. If, in fact, that is the case, then the existence of such requirements should be disclosed in the guidelines affecting outdoor developed areas and consideration should be given to permitting a limited degree of flexibility with certain dimensional and access requirements, such as those provided in the USDA Forest Service guidelines in connection with inside dimensions of such facilities.

Other Disabilities. Finally, while not discussed in the preamble, there is an advisory note included under F202.3, Alterations, that states: “*If providing accessibility in compliance with these requirements for people with one type of disability (e.g., people who use wheelchairs) is not feasible, accessibility must still be provided in compliance with the requirements for people with other types of disabilities (e.g., people who have hearing impairments or who have vision impairments) to the extent that such accessibility is feasible.*” This language also is confusing. Since only a very limited number of technical provisions

directly relate to the special needs of persons with vision impairments and none of the technical provisions appear to have any application to the special needs of persons with hearing impairments, what does this language really mean? Are there other provisions contained in the ADA-ABA Accessibility Guidelines related to disabilities involving hearing or vision impairments that might apply to outdoor developed areas? If so, those requirements should be disclosed.

Thank you for the opportunity to comment on the *Draft Final Accessibility Guidelines for Outdoor Developed Areas*.

Sincerely,

A handwritten signature in black ink, appearing to read "David N. Startzell", written in a cursive style.

David N. Startzell  
Executive Director