



Vermont Agency of Natural Resources Language Access Plan

[date]

Approval:

Secretary
Vermont Agency of Natural Resources

Date

Vermont Agency of Natural Resources Language Access Plan

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A. Introduction

The Vermont Agency of Natural Resources Language Access Plan (LAP or the Plan) contains the policy and implementation elements on how the Agency of Natural Resources (ANR) will provide information and services to persons with limited English proficiency (LEP) and persons with varying levels of hearing, sight, or speech and need accommodations to support communication.¹ While the State's population of roughly 650,000 is predominantly English-speaking, Vermont is home to people of different races, nationalities, tribes, linguistics, cultures, abilities, and backgrounds. Everyone in Vermont deserves accommodations for effective communication and meaningful access to ANR's programs, services.

The LAP contains five implementation elements to aid in identifying and supporting persons with LEP and persons with communication needs to ensure that they are provided with meaningful access to ANR's programs, services, and activities. These elements are: (1) identify persons in need of language or communication services, (2) provide language and communication access, (3) train staff and subrecipients (grant and contract recipients or awardees), (4) provide public notice of language access, and (5) monitor, evaluate and update the Language Access Plan.

Individuals with LEP may not use English as their primary language or have a limited ability to speak, understand, read, or write in English. The Procedure will include a list of the non-English languages most spoken in Vermont. According to the 2016-2019 U.S. Census Bureau American Community Survey, Vermont has over 8,300 people ages 5 years old or older that speak English less than very well.²

People who have varying abilities of vision, hearing, or speech use different ways to communicate. For example, people who are blind may give and receive information audibly rather than in writing, and people who are Deaf, Hard of Hearing or Deaf-Blind may give and receive information through writing or sign language rather than through speech. There are approximately 70,000 people³ in Vermont with hearing loss and between 13,000-16,000 people who are blind or have low vision.⁴ The most common non-spoken languages in Vermont are American Sign Language and Nepali Sign Language.

¹ In this Plan, the term "communication needs" has the same meaning as "communication disabilities," the terminology used in federal law and guidance.

² U.S. Census Bureau, American Community Survey, Data 2020 ACS 5-Year Estimates, Table B16001, Population 5 Years or over.

³ Vermont Deaf, Hard of Hearing, and Deaf/Blind Advisory Council, https://dail.vermont.gov/sites/dail/files/documents/Final_2022_D-HH-DB_Council_Report.pdf?msclkid=edc1a005c27311ec8204a3e2c4ea0a28

⁴ Vermont Disabilities, Aging and Independent Living Division for the Blind and Visually Impaired, <https://dbvi.vermont.gov/>,

This Plan was developed in compliance with state and federal law and consistent with federal guidance, including:

- ANR's charge of oversight and management of Vermont's natural environment on behalf of the people of Vermont. ANR endeavors to draw from and build upon Vermonters' shared ethic of responsibility for our natural environment, an ethic that encompasses a sense of place, community and quality of life, and an understanding that we are an integral part of the environment, and that we must all be responsible stewards for this and future generations.
- Title VI of the Civil Rights Act of 1964 (Title VI), implementing regulations, and guidance which prohibit discrimination—disparate treatment and disparate impact—on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance.⁵
- The Civil Rights Restoration Act of 1987, which clarifies that recipients of federal funds and assistance, such as ANR, must comply with the civil rights laws across the institution or agency. Civil rights compliance applies to all programs and activities of that institution or agency, regardless of whether the program receives federal funds.⁶
- Section 504 of the Rehabilitation Act⁷ and the Americans with Disabilities Act (ADA), implementing regulations, and guidance which protects qualified persons with disabilities from discrimination related to the programs, services, and activities and requires recipients of federal funds to ensure effective communication for persons with disabilities.⁸
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, which affirms Title VI's language access requirement and outlines additional requirements.⁹
- The U.S. Environmental Protection Agency (EPA) guidance entitled, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (EPA LEP Guidance).¹⁰

⁵ 42 U.S.C. § 2000d et seq. Retrieved from: <https://www.govinfo.gov/content/pkg/USCODE-2008-title42/html/USCODE-2008-title42-chap21-subchapV.htm>; 40 CFR §7: <https://www.epa.gov/sites/production/files/2013-09/documents/40p0007.pdf>.

⁶ The Civil Rights Restoration Act of 1987 (Pub. L. 100-259) applies this universal application to: (a) Title VI of the Civil Rights Act of 1964, (b) Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318, 86 Stat. 373-75), (c) the Age Discrimination Act of 1975 (Section 4 of 29 U.S.C. § 623 (1975)), and (d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 (1985 & Sup. 1988)).

⁷ 29 U.S.C. § 794.

⁸ *Id.*; 40 C.F.R. Part 7, Subpart C; 28 C.F.R. Pt. 35, Subpart E.

⁹ Exec. Order No. 13166, 65 Fed Reg. 50,121 (Aug. 11, 2000), <https://www.vabvi.org/the-vermont-association-for-the-blind-and-visually-impaired-vabvi/#:~:text=There%20are%20an%20estimated%2013%2C000,currentl%20blind%20or%20visually%20impaired.&text=People%20are%20living%20longer%20and,continue%20well%20into%20the%20future.>

¹⁰ 69 Fed. Reg. 35602 (June 25, 2004) (hereinafter "EPA LEP Guidance"). Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>.

For questions about this Language Access Plan, contact ANR's Civil Rights Compliance Officer and Environmental Justice Coordinator at ANR.civilrights@vermont.gov.

B. Definitions

This section contains definitions to aid in understanding how ANR will provide meaningful access to programs, services, and activities for persons with limited English proficiency or communication support needs. These definitions apply only to this Language Access Plan and the Procedure.

Aids and Services: Also known as “auxiliary aids and services,” refers to the ways to communicate with people who have communication needs. Aids and services can include readers, notetakers, qualified sign language interpreters, assistive listening systems and devices, CART, open and closed captioning, teletypewriter or text telephones (TTYs), captioned phones, videophones, information provided in large print, Braille, audible, or electronic formats, and other tools and assistive technologies for people who have communication needs.

Communication Needs: Describes language access requirements for people who have varying vision, hearing, or speech abilities.

Communication Condition: A reduced ability to receive, send, process, and comprehend concepts or verbal, nonverbal and graphic symbol systems.

Compliance: The satisfactory condition existing when a recipient has effectively implemented all the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

Discrimination: Discrimination is the act (or inaction), whether intentional or unintentional, through which a person in the United States, solely because of race, color, national origin (including limited English proficiency), age, sex, or range of ability or disability has been subjected to unequal treatment under any program or activity receiving financial assistance.¹¹

Disparate Treatment: This type of illegal discrimination refers to treating similarly situated persons differently on the basis of their race, color, national origin (including limited English proficiency), sex, range of ability or disability, or age.

Disparate Impact: This type of illegal discrimination refers to policies or practices that have a discriminatory effect.

Effective Communication: Communication that ensures that the person with communication needs can receive information and convey information in the language or manner they prefer to and allows an equal opportunity to participate in ANR programs, services, and activities.

¹¹ In addition to Title VI of the 1964 Civil Rights Act of 1964 that bars discrimination based on race, color and national origin, there are other federal nondiscrimination laws and regulations created to uphold the civil and constitutional rights of all persons in the United States.

Federal Financial Assistance: Federal financial assistance includes, but is not limited to, grants and loans of federal funds; grants or donations of federal property; training; details of federal personnel; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

Four-Factor Test: An assessment contained in EPA guidance to determine language access needs and reasonable steps to take to ensure effective communication and meaningful access for persons with LEP.¹² The Four-Factor Test, as described in Section D.2a. below, involves the balancing of the number of persons with LEP, the frequency of interactions with persons of LEP, environmental health and safety considerations, and cost.

Interpretation: For the purposes of the LAP, the act of converting spoken words or words conveyed in sign language from one language to a different language while retaining the same meaning.

Language access: Steps taken by ANR to provide meaningful access to its programs, services, and activities to persons with LEP and people with varying levels of hearing, sight, or speech loss and other communications needs.

Language Assistance Services: Language assistance includes interpretation and translation of documents into non-English languages. This applies to both spoken and sign languages.

Meaningful Access: Language assistance to provide accurate, timely, and effective communication to the individual with LEP and persons with communications needs that is free of charge.

Noncompliance: The condition that exists when a recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing the Title VI requirements, Section 504 of the Rehabilitation Act, the ADA, and other state and federal civil rights laws and regulations.

Persons with Limited English Proficiency (LEP): Persons who do not speak English as their primary language and who have a limited ability to read, speak, write, sign, or understand English.

Primary Language: The language an individual uses to most effectively communicate.

Programs, Services, and Activities: Refers to all ANR operations.

Language Service Provider: Someone who provides interpretation or translation.

Recipient: Any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal funds and assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.¹³ ANR is a recipient of Federal funds and assistance.

¹² 69 Fed. Reg. 35602 (June 25, 2004). Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>.

¹³ 40 C.F.R. § 7.25.

Safe Harbor: This is a phrase used in regulations as a legal standard to provide protection from a penalty or liability. In this context, “safe harbor” is used by the federal government to mean that if a recipient, such as ANR, provides written translation information under certain circumstances, described in EPA LEP Guidance and Department of Justice (DOJ) Guidance,¹⁴ such action will be considered strong evidence of compliance with the recipient’s written-translation obligations.¹⁵

Subrecipient: An entity that receives Federal funds and assistance through a recipient, such as an entity that receives a grant or a contract.

Translation: For the purposes of the LAP, the process of converting written text from one language into an equivalent text in another language. Text may be in electronic format.

Vital Document: Paper or electronic material that contains information that is critical for enabling meaningful access to ANR’s programs, activities, and services, or contains information about procedures or processes required by law. Classification of a document as “vital” may depend upon, the importance of the program, information, encounter, or service involved, and the consequence to the person with LEP if the information is not provided accurately or in a timely manner.

C. ANR Language Access Policy

It is the policy of ANR to provide persons with LEP meaningful access to its programs, services, and activities. Ensuring meaningful access means providing accurate, timely, and effective language services that are free of charge.

It is also the policy of ANR to provide effective communication to persons who are deaf, hard of hearing, blind, deaf-blind, or have other communications needs. ANR will provide effective communication at no cost and in a timely manner to allow an equal opportunity to participate in ANR programs, services, and activities. ANR will provide effective communication in such a way as to protect the privacy and independence of the individual. Provisions for effective communication could include appropriate auxiliary aids and services.

Furthermore, it is ANR’s policy to ensure that office facilities and other facilities used for public meetings are physically accessible for persons with disabilities.

¹⁴ Safe Harbor provisions in the United States Department of Justice 2002 LEP Guidance 67 Fed. Reg. 41455 (June 18, 2002), p. 41464. Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2002-06-18/pdf/02-15207.pdf>.

¹⁵ EPA LEP Guidance, *supra* note 10.

D. Five Implementation Elements

ANR will use five key elements to implement this Language Access Policy. These elements aid in identifying and supporting persons with LEP and/or communications needs to ensure effective communication and meaningful access to ANR's programs, services, and activities, They are: (1) identify persons in need of language or communication services ; (2) provide language and communication access; (3) train ANR staff and subrecipients; (4) provide public notice of language access; and (5) monitor, evaluate, and update the Language Access Plan. The ANR LAP Implementation Procedure will provide greater detail on how ANR will implement this Plan.

Implementation Element #1: Identify Persons in Need of Language or Communication Services

ANR will employ a number of methods that will be described in the Procedure, to identify persons with LEP and/or communication needs who may be in need of language access. This includes a variety of federal, state, and local demographic data sources and coordination with other agencies. ANR staff will bring "[I Speak Language Identification Cards](#)" to public meetings to help identify language assistance service needs. ANR will also maintain records of encounters with persons with LEP and communication needs and language services provided to support future public engagement activities. ANR will maintain records in such a way as to protect the privacy and independence of the individual.

Implementation Element #2: Provide Language and Communication Access

Once ANR has completed Implementation Element #1, the next step is to determine whether and how to provide language access services. Section 2.A describes the process for providing language access to persons with LEP and Section 2.B describes the process for providing language access to persons with communication needs. These processes will be described in detail in the Procedure.

2.A. Language Access for Persons with LEP

ANR will use a Four Factor Test as a starting point to determine language access needs and reasonable steps ANR will take to ensure effective communication and meaningful access for persons with LEP that is free of charge.¹⁶ ANR will balance these four factors to ensure meaningful access without imposing undue burden on small businesses, local governments, and civic organizations.¹⁷ The Four Factor Test assesses:

¹⁶ *Id.*

¹⁷ *Id.*

- Factor 1: The number or proportion of persons with LEP estimated to be served or likely to be encountered by an ANR program, activity or service.
- Factor 2: The frequency with which persons with LEP come in contact with the ANR program, activity or service.
- Factor 3: The nature and importance of the program, activity or service being provided. This factor will help determine whether the lack of access to language services or information could cause immediate or severe impacts to public health and safety, environmental hazards, or other detrimental consequences to persons with LEP.
- Factor 4: The resources available and associated costs. ANR will evaluate options that cost-effectively deliver adequate and accurate language services before steps are taken to limit services due to financial constraints.

The balancing of these four factors will help ANR to identify and translate vital documents, in whole or in part, into languages of the affected persons with LEP within a reasonable timeframe. The classification of a document as “vital” depends upon several considerations, such as the importance of the information, the program, activity, or service involved, and the consequences of not providing information accurately or in a timely manner.

ANR will conduct an initial review to identify vital documents for translation, in whole or in part. ANR will then rely on this Plan and the Procedure to provide written translations of vital documents on an as needed basis. ANR will use the State of Vermont language services contractors to provide translation, interpretation, telephonic interpretation.¹⁸ ANR will take reasonable steps to ensure language and communication access is conducted using qualified language service provider (i.e., interpreter, translator) and keep records of its activities.

ANR will also employ a “Safe Harbor” standard for written translation of vital documents. The standard is to ensure that ANR is meeting a minimum level of compliance consistent with EPA LEP Guidance.¹⁹ This standard contains two requirements:

- Provide written translation of vital documents for each eligible LEP language group that constitutes three percent or 500 people, whichever is less, of the population of persons eligible for or to be affected by ANR’s programs, services and activities.²⁰ Translation of other, non-vital documents, if needed, can be provided orally.
- For a language group that reaches the three percent trigger above, provide written notice, translated into the primary language of the LEP language group, stating that

¹⁸ Current Statewide Contracts, <https://bgs.vermont.gov/purchasing-contracting/contract-info/current#Translation%20Services>.

¹⁹ EPA LEP Guidance, *supra* note 10.

²⁰ Federal Guidelines use 5 percent or 1,000 people. EPA. 2004. LEP Access Guidance, *supra* note at 35610; DOJ. 2002. EPA LEP Guidance *supra* note 10, at 41464. The recommended minimum threshold is to reflect Vermont’s current demographics, which still assure a balanced approach to provide LEP persons meaningful access to ANR programs, activities, and services.

persons with LEP have the right to receive competent oral interpretation of written vital materials at no cost.

2.B. Language Access for Persons with Communication Needs

ANR will ensure timely and effective response to persons who need language and communications access, information, or other related services. ANR will provide access services for persons with communication needs that are specific to their ability and methods of communication at no cost and in a timely manner, consistent with DOJ Guidance. ANR will use the State of Vermont language services contractors to provide language services.²¹ ANR will take reasonable steps to ensure language and communication access is conducted using language service providers (i.e., interpreter, translator), and keep records of its activities. ANR will also ensure the use of facilities for public meetings are physically accessible for persons with disabilities.

Implementation Element #3: Train ANR Staff and Subrecipients

ANR will provide mandatory training for staff and ANR subrecipients who are involved in public outreach and engagement and are likely to encounter persons with LEP or communication needs. The purpose of the training is to ensure that staff and ANR subrecipients know of ANR staff's responsibility to provide language access services, how to use state resources, and how to maintain cultural competence and sensitivity when interacting with the public, among other relevant topics. ANR will also train subrecipients and conduct training when there are substantive changes to this Plan, as part of new employee orientation, and at a minimum of every four years.

Implementation Element #4: Provide Public Notice of Language Access

ANR will provide notice and information about available language assistance services to ensure that persons with LEP and communication needs have effective communication of and meaningful access to ANR's programs, activities and services. ANR will publish the Language Access Plan on its website and social media, and distribute the Plan within ANR, to subcontractors, grant recipients and community-based organizations that support persons with LEP and communication needs, and other relevant entities. GoogleTranslate (with disclaimer) is already readily available to translate on-line notices on ANR webpages.

²¹ Current Statewide Contracts, <https://bgs.vermont.gov/purchasing-contracting/contract-info/current#Translation%20Services>.

Implementation Element #5: Monitor, Evaluate, and Update the Language Access Plan

ANR will periodically monitor, evaluate, and update the Plan, policies, and the Procedure. ANR will keep records of use of language assistance services and any complaints, feedback, or suggestions regarding the services provided; survey staff on how often they use language assistance services in their work; observe and evaluate agency interactions with persons with LEP and communication needs; and keep current on community demographics and needs. ANR will update the Plan periodically and at a minimum of every four years.

E. Compliance

ANR will offer staff and subrecipients feedback on a periodic basis to ensure that the staff and subrecipients have the information and resources they need to implement and comply with this Plan. ANR will offer staff and subrecipients opportunities to provide feedback to identify sections in the Plan, timeframes, and training materials in need of further clarification or updating. ANR will help staff and subrecipients comply with the terms and provisions of this Plan and the Procedure. Failure to comply in good faith with the terms and provisions of this Plan could result in disciplinary consequences.

ANR will utilize the *Civil Rights and Nondiscrimination Grievance Procedure* policy for providing prompt and equitable resolution of complaints alleging any action that would violate this Plan or federal civil rights law.²²

²² ANR, *Civil Rights and Nondiscrimination Grievance Procedure*, <https://anr.vermont.gov/sites/anr/files/2021.12.08%20Final%20Title%206%20Grievance%20Procedure.pdf>.

Appendix A: Abbreviations

ACS: American Community Survey (of the U.S. Census)

ANR: Agency of Natural Resources

CFR: Code of Federal Regulations

Census: United States Census Bureau

DEC: Department of Environmental Conservation (Vermont); part of ANR

DOI: United States Department of Interior

DOJ: United States Department of Justice

EPA: United States Environmental Protection Agency

FPR: Department of Forests, Parks, and Recreation Department (Vermont); part of ANR

FWD: Department of Fish and Wildlife (Vermont); part of ANR

LEP: Limited English Proficiency

USDA: United States Department of Agriculture

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Appendix B: References

- Attorney General Holder Memorandum to All Federal Agencies Regarding the Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13166 (February 17, 2011), https://www.lep.gov/sites/lep/files/resources/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf.
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- DOJ, Limited English Proficiency, <https://www.lep.gov/>.
- DOJ, *ADA Requirements: Effective Communication*, <https://www.ada.gov/effective-comm.htm>
- DOJ, *ADA Update: Primer for State and Local Governments*, https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html.
- Digital.Gov, *Information on Best Practices for Web Content Managers*, <https://digital.gov/2012/10/01/automated-translation-good-solution-or-not/>

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