

Section 504/ADA – FHWA Oversight Specific to Public Rights-of-Way

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FHWA Authority

- Section 504 of the Rehabilitation Act of 1973, as amended
 - Recipients/Subrecipients
- Americans with Disabilities Act of 1990
 - FHWA delegated responsibility by DOJ for monitoring/enforcement of highway-related ADA matters



FHWA Role/Responsibilities

- Issue guidance/provide technical assistance/conduct training
 - WSDOT Design Manual
 - LAG Manual (coordination with WSDOT Local Programs)
 - DOJ-DOT Joint Technical Assistance on ADA and Resurfacing Projects
 - Training – 2008 to date (FHWA & WSDOT)



FHWA Role/Responsibilities

- Oversight of State/Local Agency compliance with Section 504 & ADA
 - Reviews/assessments
 - Complaint Investigation
- Enforcement
 - Withhold FHWA funds if noncompliance found (i.e., no self-evaluation/transition plan)

Chapter 29 – LAG Manual (April 2016)

- Assurances by recipients/subrecipients
- Designation of ADA Coordinator
- Public Notice of Policy
- Grievance/Complaint Procedures
- Self-Evaluation
- Policy for APS
- Transition Plan

Chapter 29 *Section 504 and the Americans with Disabilities Act*

29.1 General Discussion

This chapter summarizes the regulations and implementing requirements that local agencies must follow.

Section 504 of the Rehabilitation Act of 1973 states that no person with a disability shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity that receives Federal funding. This law extends to the entire operations of a recipient or subrecipient regardless of the specific funding source of a particular operation.

The Americans with Disabilities Act of 1990 is mirrored after Section 504 (nondiscrimination based on disability), but extends the reach of Federal accessibility laws to include those agencies that are not recipients or subrecipients of Federal funding. Title II (28 CFR Part 35) of the ADA specifically pertains to State and Local Governments.

Local agencies are always subject to the requirements of the ADA, and are typically subject to the requirements of Section 504 as well since they usually fall under the legal classification of being either a recipient or subrecipient of Federal funding. By legal definition, a recipient includes any public entity that receives Federal financial assistance from the United States Department of Transportation (USDOT), either directly or through another recipient (49 CFR Part 27.5). Note that recipient classification is not based on the funding source of a particular project, but rather on whether the public entity accepts any Federal funding for any purpose at any time.

29.2 Assurances

Local agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the public works director and addressed to WSDOT, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA). This policy statement is required as part of the local agency's agreement with WSDOT.



Self-Evaluation

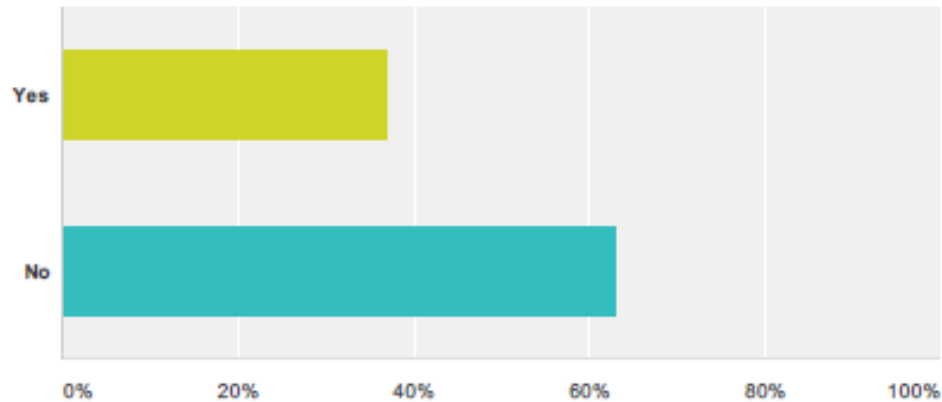
- Required of all public entities
 - Rehabilitation Act of 1973
 - USDOT Implementing Regulations (49 CFR 27)
 - Americans w/Disabilities Act of 1990
 - DOJ Implementing Regulations (28 CFR 35)



WSDOT Poll Results

Q2 Has your city, county, or other local agency completed the self assessment portion of its ADA transition Plan?

Answered: 38 Skipped: 2

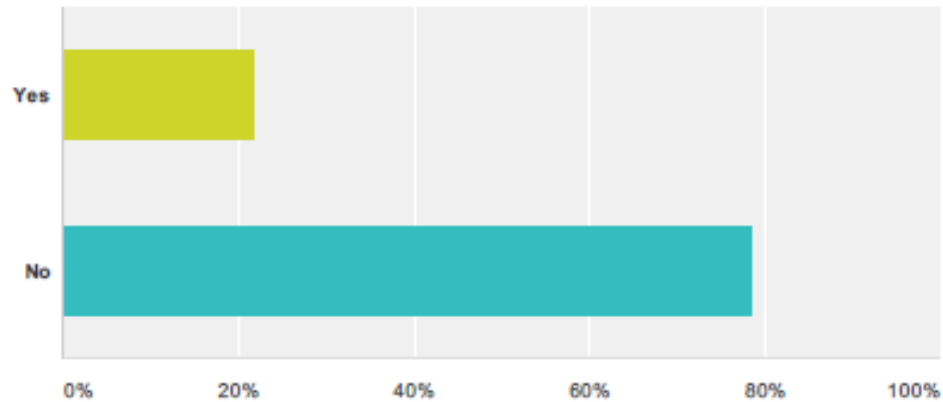


Answer Choices	Responses	
Yes	36.84%	14
No	63.16%	24
Total		38

WSDOT Poll Results

Q3 Has your city, county, or other local agency completed a schedule of removing barriers in its ADA transition Plan?

Answered: 37 Skipped: 3

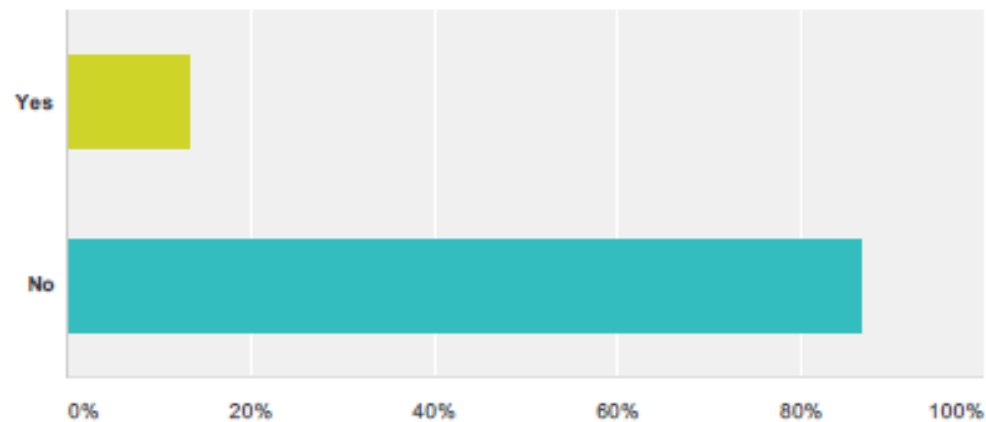


Answer Choices	Responses
Yes	21.62% 8
No	78.38% 29
Total	37

WSDOT Poll Results

Q5 Has your city, county, or other local agency Completed its ADA transition Plan?

Answered: 38 Skipped: 2



Answer Choices	Responses	
Yes	13.16%	5
No	86.84%	33
Total		38



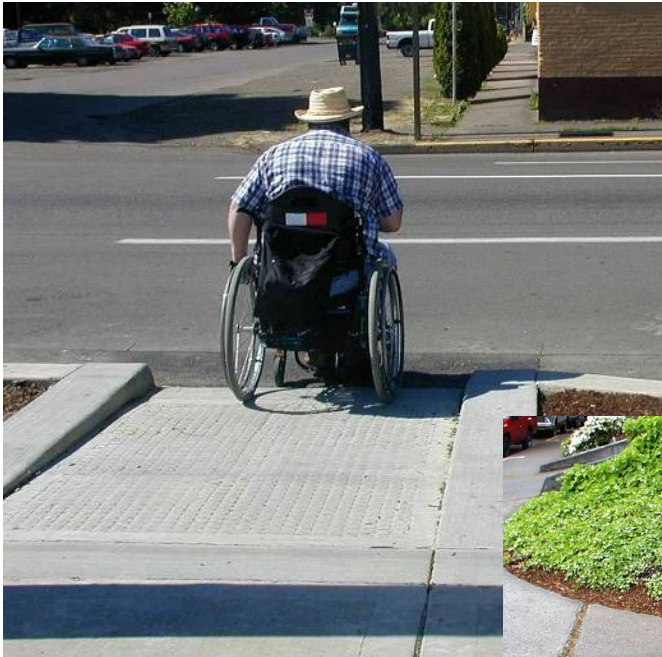
Self-Evaluation

- If agency completed a self-evaluation in early 1990s (as a result of the ADA), only include those policies, practices, programs not included in previous self-evaluation (i.e., public ROW)



What are the Barriers?

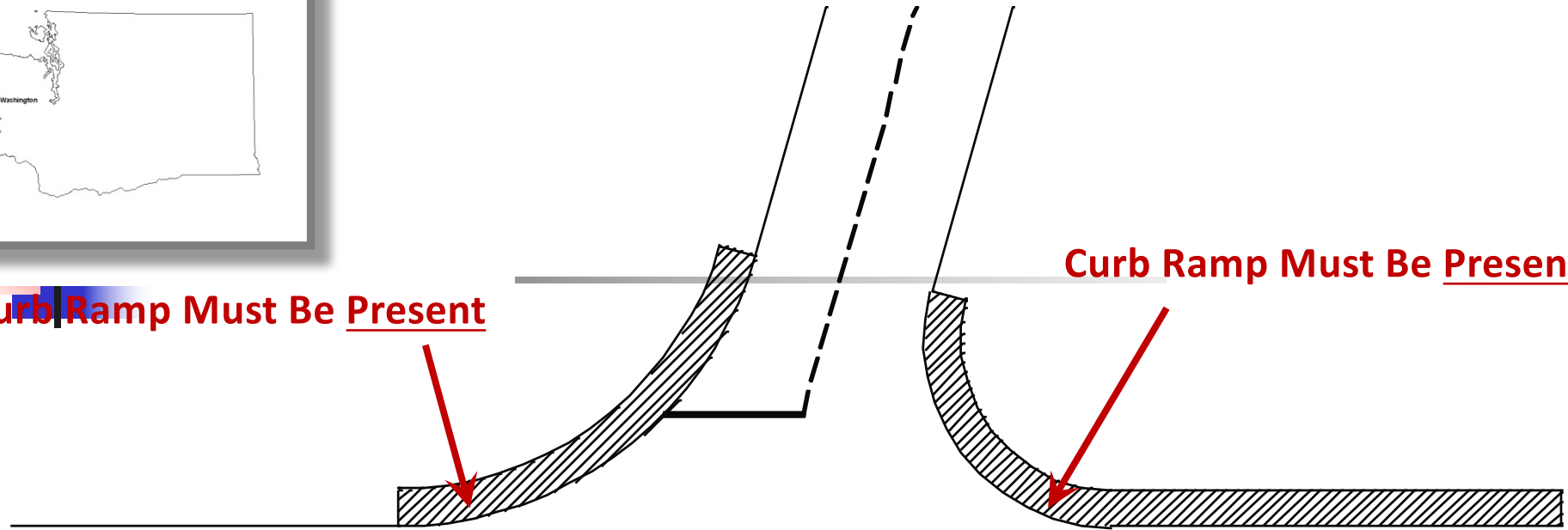
- Curbs/Slopes





Curb Ramp Must Be Present

Curb Ramp Must Be Present

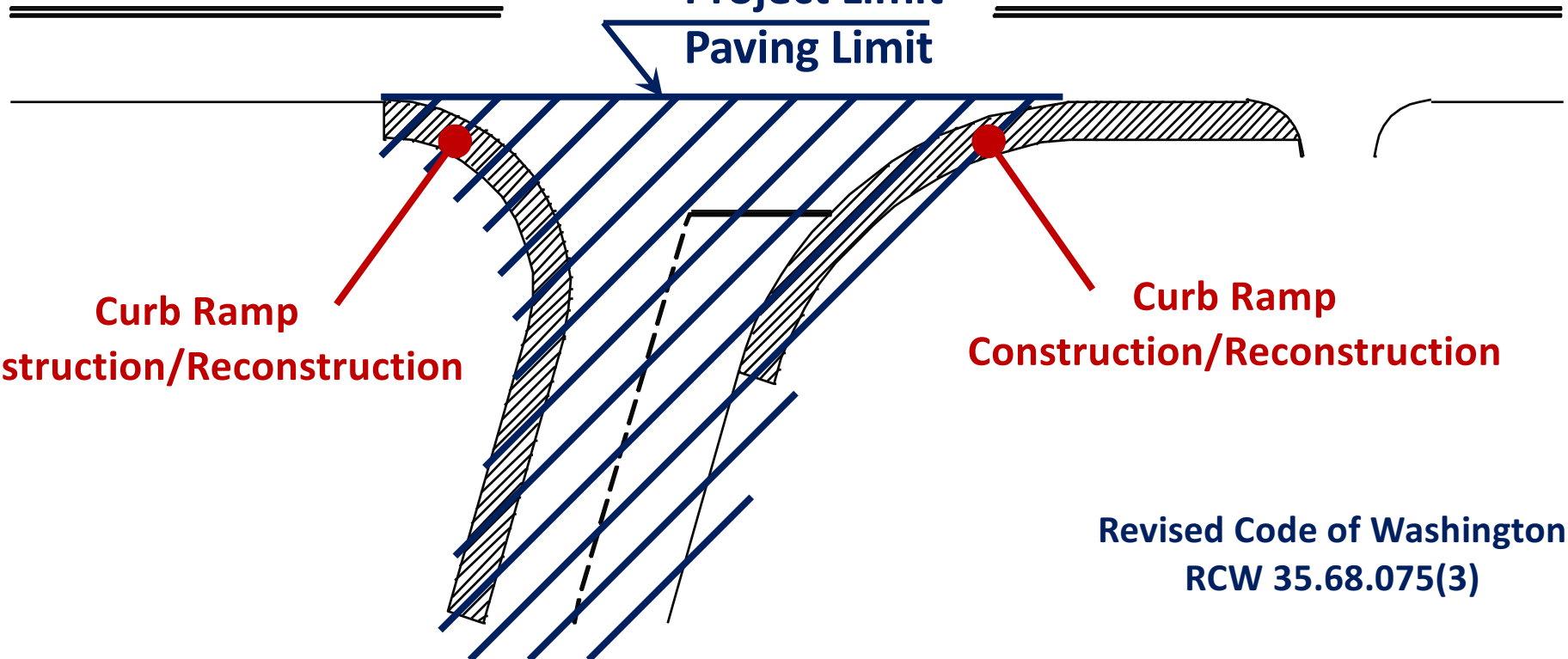


**Project Limit
Paving Limit**

**Curb Ramp
Construction/Reconstruction**

**Curb Ramp
Construction/Reconstruction**

**Revised Code of Washington
RCW 35.68.075(3)**



What are the Barriers?



What are the Barriers?

- Communication Devices



What are the Barriers?

- Construction Work Zones (policy/spec)





Self-Evaluation

- Developing the Evaluation
 - Agency commitment (including City Council/County Commission)
 - Funding
 - Staff resources (i.e., survey/maintenance staff, interns) or contract with knowledgeable consultants
 - In conjunction with Pedestrian Master Plans (other planning/budget documents)



Self-Evaluation – What to Include

- Identifying Barriers within public right-of-way
 - Curbs
 - Sidewalks
 - Pedestrian Crossings
 - Pedestrian Signals
 - Shared Use Trails
 - Parking Lots
 - Bus Stops



Self-Evaluation

- End Result
 - Inventory (and details) of facilities where structural modifications are needed to make facilities accessible to persons with disabilities
 - Foundation for Transition Plan
 - Available for public inspection (website, et al)



Reasonable & Consistent Policy for APS

- Program Access Requirement (general prohibition against discrimination)
 - Title II – “No qualified individual with a disability shall, on the basis of disability, 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.”



Reasonable & Consistent Policy for APS

- Policy should consist of:
 - APS in new construction/alterations
 - APS in existing locations (program access - transition plan)
 - APS as individual accommodation upon request



Reasonable & Consistent Policy for APS – Maryland DOT

- New construction/alterations
 - APS to be installed at all signals with pedestrian indications
 - Signals without pedestrian indications will be designed for future installation of APS
- Existing signals with pedestrian indications where no work is planned
 - Consider and address individuals requests for APS
 - Install APS on priority ranking basis (transition plan)
 - APS committee to establish ranking



Reasonable & Consistent Policy for APS – Local Example

- City of Kirkland
- City of Seattle
- City of Tacoma
- Any others?

Transition Plan



- Required by Section 504 of the Rehabilitation Act and the Americans With Disabilities Act (ADA)
 - Public input





Transition Plan

- Purpose & Scope - 28 CFR 35.150(d)
 - Set forth steps necessary to complete structural modifications to existing facilities identified through self-evaluation (those areas not covered in a previously developed plan)
 - Becomes a short-range planning tool (“action” plan) for completing modifications

Transition Plan



- Content (at a minimum)
 - Identify physical obstacles
 - Describe the methods to make facilities accessible
 - Specify the schedule for achieving completion (ASAP; if longer than 1 year, identify steps to be taken each year)



Transition Plan

- Content (cont.)
 - Identify official responsible for implementation of plan
 - Provide an opportunity for public input
 - Copy of Plan made available to public

Transition Plan

- Content (beneficial additions)
 - Estimated Cost of each modification
 - Status column to record completion date



Transition Plan



- Important things to remember
 - Prioritize modifications (using same criteria as self-evaluation)
 - Coordinate/integrate schedule of modifications with planned alterations (paving, building, utility work)
 - Inform/educate persons with authority over budget/prioritizing projects



Transition Plan

- Important things to remember
 - Transition Plan is a living document; an evolving planning & monitoring tool
 - As boundaries grow, so does the need to incorporate acquired facilities into Self-Evaluation/Transition Plan process
 - Special Requests/Complaints & Transition Plan schedule



Application of DOJ-FHWA Joint Technical Assistance

- Distinguishes alterations from maintenance based on type of road treatment
 - Alterations require the installation of curb ramps
 - Maintenance does not require curb ramps, but barriers to accessibility must be corrected at a time specified in public agency's Transition Plan.



Safe Harbor

- Section 504 (FHWA/FTA recipients/subrecipients) – 2004 Stds.
 - Curb ramps built/alterred prior to Nov. 29, 2006 that comply with 1991 ADAAG (Stds.) – no need to modify as part of roadway resurfacing project (alteration)
 - If they do not comply with 1991 Standards, must bring them into compliance at time of alteration



Safe Harbor

- ADA (all others – i.e., not Federal recipient/subrecipient) – 2010 Stds.
 - Curb ramps built/alterd prior to March 15, 2012 that comply with 1991 ADAAG (Stds.) – no need to modify as part of roadway resurfacing project (alteration)
 - If they do not comply with 1991 Standards, must bring them into compliance at time of alteration



Enforcement Actions

- FHWA – Withholding of Federal financial assistance
 - Through acceptance of FHWA funds, agencies agree that they will comply with all Federal laws and regulations associated with FHWA programs
 - Noncompliance – Discrimination found to exist; not developing a Section 504 Program Access Plan/ADA Transition Plan, et al



Enforcement Actions

- U.S. Dept. of Justice
 - Project Civil Access Reviews/Complaints
 - Settlement Agreements
 - Consent Decrees
 - Humboldt County, CA
 - Bring all county facilities, programs, services, and activities into compliance within 3.5 years
 - Pay \$275,000 in compensation to individuals with disabilities who faced barriers due to county's lack of compliance

Resources



Bicycle & Pedestrian Funding Opportunities (FTA/FHWA Funds)

http://www.fhwa.dot.gov/environment/bicycle_pedestrian/funding/funding_opportunities.pdf

Key: \$ = Funds may be used for this activity (restrictions may apply). \$* = See program-specific notes for restrictions. ~\$ = Eligible, but not competitive unless part of a larger project.

Activity or Project Type	Pedestrian and Bicycle Funding Opportunities U.S. Department of Transportation Transit, Highway, and Safety Funds														
	TIGER	TIFIA	FTA	ATI	CMAQ	HSIP	NHPP	STBG	TA	RTP	SRTS	PLAN	NHTSA 402	NHTSA 405	FLTP
Access enhancements to public transportation (includes benches, bus pads)	\$	\$	\$	\$	\$		\$	\$	\$						\$
ADA/504 Self Evaluation / Transition Plan								\$	\$	\$		\$			\$
Bicycle plans			\$					\$	\$		\$	\$			\$
Bicycle helmets (project or training related)								\$	\$SRTS		\$		\$*		
Bicycle helmets (safety promotion)								\$	\$SRTS		\$				
Bicycle lanes on road	\$	\$	\$	\$	\$	\$	\$	\$	\$		\$				\$
Bicycle parking	~\$	~\$	\$	\$	\$		\$	\$	\$	\$	\$				\$
Bike racks on transit	\$	\$	\$	\$	\$			\$	\$						\$
Bicycle share (capital and equipment; not operations)	\$	\$	\$	\$	\$		\$	\$	\$						\$
Bicycle storage or service centers at transit hubs	~\$	~\$	\$	\$	\$			\$	\$						\$
Bridges / overcrossings for pedestrians and/or bicyclists	\$	\$	\$	\$	\$*	\$	\$	\$	\$	\$	\$				\$
Bus shelters and benches	\$	\$	\$	\$	\$		\$	\$	\$						\$

Note: Sidewalk, crosswalk and/or curb cut/ramp projects are eligible for all of the categories of funding shown above.



Resources

- 28 CFR Part 35 <http://www.law.cornell.edu/cfr/text/28/part-35>
- 49 CFR Part 27 <http://www.law.cornell.edu/cfr/text/49/part-27>
- NCHRP Report 20-7 (232)
<http://www.wsdot.wa.gov/NR/rdonlyres/D4DD8837-ADC4-486E-AB93-BCA9719E15EB/0/ADATransitionPlansReportMay2009.pdf>
- Federal-aid Essentials for Local Public Agencies (Video Library)
<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?category=civilrig>
- FHWA Companion Guide to Self-Evaluation Video
<http://www.fhwa.dot.gov/federal-aidessentials/companionresources/33self%20evaluation.pdf>



Resources (cont.)

- FHWA Companion Guide to Transition Plan Video
<http://www.fhwa.dot.gov/federal-aidessentials/companionresources/32transitionplans.pdf>
- LAG Manual Chapter 29
<http://www.wsdot.wa.gov/publications/manuals/fulltext/M36-63/Lag29.pdf>
- Planning & Design Resources for LPAs
<http://www.wsdot.wa.gov/LocalPrograms/Planning/ada.htm>
- DOJ-FHWA Joint Technical Assistance on Alterations
http://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm



Resources (cont.)

- Q&As on ADA and Resurfacing Projects
https://www.fhwa.dot.gov/civilrights/programs/ada_resurfacing_qa.cfm
- Jodi Petersen, WA Division Civil Rights Program Manager
(360)534-9325 or Jodi.Petersen@dot.gov

The End – Questions

