

Americans with Disabilities Act Getting it Right in the Public Right of Way

Part I: Title II - A Work in Progress



WE KEEP PORTLAND MOVING.



PBOT
PORTLAND BUREAU OF TRANSPORTATION



Americans with Disabilities Act Getting it Right in the Public Right of Way

Part I: Title II - A Work in Progress



WE KEEP PORTLAND MOVING.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

Americans with Disabilities Act signed into law on July 25, 1990

Rev. Harold
Wilke

Evan Kemp



Sandra Swift
Perrino

Justin Dart
(in the cowboy
hat)

*To Justin Dart. Without your drive, your
'believing' and your leadership this day would not have
been possible. With respect & friendship Cap Bush*

Themes

On signing the measure, [George H. W. Bush](#) said:

I know there may have been concerns that the ADA may be too **vague or too costly**, or may lead endlessly to **litigation**. But I want to reassure you right now that my administration and the United States Congress have carefully crafted this Act. We've all been determined to ensure that it gives **flexibility, particularly in terms of the timetable of implementation**; and we've been committed to containing the costs that may be incurred....

Let the shameful wall of exclusion finally come tumbling down.

Our success with this act proves that we are keeping faith with the spirit of our courageous forefathers who wrote in the Declaration of Independence: **"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights."**

Standards

- ❑ ADA and Section 504 of the Rehabilitation Act of 1973 require a public entity to conduct and implement a **comprehensive plan** to ensure its system of pedestrian rights of way, **when viewed in its entirety**, is readily accessible to and useable by persons with mobility disabilities. **Reasonable Access/Undue Burden. Program Access Requirement**
- ❑ A public entity shall install and/or upgrade curb ramps as part of a street construction or alteration project. **New Construction and Alterations Requirement**
- ❑ Accessible pedestrian facilities must be provide at the same time that a new or altered facility is constructed, **within the Scope of the Construction Project, to the Maximum Extent Feasible/Physical Terrain or Site Condition Restrictions.** 28 CFR 35.151.

Standards

In situations where strict compliance with the Standards is **technically infeasible**, the entity must **comply to the maximum extent feasible**.

- Technically infeasible is something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modifications or additions that comply fully with the Standards.

Also, there is an exemption for certain alterations that would threaten or destroy the historic significance of a historic property.

If a public agency claims that a facility cannot be brought into full compliance, **the public entity bears the burden of proving technical infeasibility**.

The Problem

- Early DOJ guidance did not provide more specific examples of maintenance activities

DOJ Regulations: Alterations

- Alteration is a change that affects or could affect the usability of all or part of a facility (such as a road) [28 CFR 35.151(b)]
- Altered streets, roads, and highways must contain curb ramps where there are curbs or other barriers to a pedestrian walkway (i.e., sidewalk) [28 CFR 35.151(i)]
- DOJ Regulation does not identify specific road treatments that qualify as alterations versus treatments that qualify as maintenance

So, we ask for clarification...

July 8, 2013

Joint TA distinguishes alterations from maintenance based on the type of road treatment

MAINTENANCE

Chip Seals

Crack Filling and Sealing

Diamond Grinding

Dowel Bar Retrofit

Fog Seals

Joint Crack Seals

Joint repairs

Pavement Patching

Scrub Sealing

Slurry Seals

Spot High-Friction Treatments

Surface Sealing

ALTERATION

Addition of New Layer of Asphalt

Cape Seals

Hot In-Place Recycling

Microsurfacing / Thin-Lift Overlay

Mill & Fill / Mill & Overlay

New Construction

Open-graded Surface Course

Rehabilitation and Reconstruction

An Ongoing Obligation

Home / Programs / Civil Rights / Programs / ADA Resurfacing Q&A

Overview

Programs

Memorandums

Policy Statements

QUESTIONS & ANSWERS

Supplement to the 2013 DOJ/DOT Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements To Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Q5: *The Joint Technical Assistance is silent on when it becomes effective. Is there an effective date for when States and local public entities must comply with the requirements discussed in the technical assistance?*

A5: The Joint Technical Assistance, as well as this Supplement to it, does not create any new obligations. The obligation to provide curb ramps when roads are altered has been an ongoing obligation under the regulations implementing title II of the ADA (28 CFR 35.151) since the regulation was initially adopted in 1991. This technical assistance was provided to respond to questions that arose largely due to the development of a variety of road surface treatments, other than traditional road resurfacing, which generally involved the addition of a new layer of asphalt. Although the Joint Technical Assistance was issued on July 8, 2013, public entities have had an ongoing obligation to comply with the alterations requirements of title II and should plan to bring curb ramps that are or were part of an alteration into compliance as soon as possible.

Resurfacing Crosswalks

[Home](#) / [Programs](#) / [Civil Rights](#) / [Programs](#) / [ADA Resurfacing Q&A](#)

[Overview](#)

[Programs](#)

[Memorandums](#)

[Policy Statements](#)

[Questions & Answers](#)

QUESTIONS & ANSWERS

Supplement to the 2013 DOJ/DOT Joint Technical Assistance on the
Title II of the Americans with Disabilities Act Requirements
To Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

What if a locality is not resurfacing an entire block, but is resurfacing a crosswalk by itself?

Crosswalks constitute distinct elements of the right-of-way intended to facilitate pedestrian traffic. Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, **resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.**

July 8, 2013

Utility Trench Work

[Home](#) / [Programs](#) / [Civil Rights](#) / [Programs](#) / [ADA Resurfacing Q&A](#)

[Overview](#)

[Programs](#)

[Memorandums](#)

[Policy Statements](#)

QUESTIONS & ANSWERS

Supplement to the 2013 DOJ/DOT Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements To Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Q11: *When will utility trench work require compliance with ADA curb ramp requirements?*

A11: The answer to this question depends on the scope and location of the utility trench work being done. If the utility trench work is limited to a portion of the pavement, even including a portion of the crosswalk, repaving necessary to cover the trench would typically be considered maintenance and would not require simultaneous installation or upgrading of curb ramps. Public entities should note that the ADA requires maintenance of accessible features, and as such, they must ensure that when the trench is repaved or other road maintenance is performed, the work does not result in a lesser level of accessibility. See 28 CFR 35.133(a). If the utility work impacts the curb at a pedestrian street crossing where no curb ramp exists, the work affecting the curb falls within the definition of "alteration," and a curb ramp must be constructed rather than simply replacing the curb. See 28 CFR 35.151(b) and 35.151(i).

If a public entity is unsure whether the scope of specific trench work and repair/repaving constitutes an alteration, the best practice is for the public entity to work together with the State transportation agency and the FHWA Division to come to an agreement on how to consistently handle these situations and document their decisions.

Full Depth Pavement Patching

Home / Programs / Civil Rights / Programs / ADA Resurfacing Q&A

Overview

Programs

Memorandums

Policy Statements

QUESTIONS & ANSWERS

Supplement to the 2013 DOJ/DOT Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements To Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Q12: *Is full-depth pavement patching considered maintenance?*

A12: The answer to this question depends on the scope and location of the pavement patch. If the pavement patch work is limited to a portion of the pavement, even including a portion of the crosswalk, patching the pavement would typically be considered maintenance and would not require simultaneous installation or upgrading of curb ramps. Public entities should note that the ADA requires maintenance of accessible features, and as such, they should ensure that when the pavement is patched or other road maintenance is performed, the work does not result in a lesser level of accessibility. See 28 CFR 35.133(a). If the pavement patching impacts the curb at a pedestrian street crossing where no curb ramp exists, the work affecting the curb falls within the definition of "alteration," and a curb ramp must be constructed rather than simply replacing the curb. See 28 CFR 35.151(b) and 35.151(i).

If a public entity is unsure whether the scope of specific full-depth pavement patching constitutes an alteration, the best practice is for the public entity to work together with the State transportation agency and the FHWA Division to come to an agreement on how to consistently handle these situations and document their decisions.

Meanwhile....

Recent class actions for failing to install and maintain curb ramps within the pedestrian right of way include:

- *Willis v. City of Los Angeles* (2006 – Present), City and County of LA, **\$1.4B** class action settlement pending.
- *Reynoldson v. City of Seattle* (2015 – Present), City of Seattle, in Federal Court, Western District of Washington. Undetermined value at present.
- *Denny v. City and County of Denver* (Class action). **\$10M, 1,500 ramps per year**, settlement pending.
- *King v. City and County of San Francisco* (2007-2009). Class action settlement. San Francisco to spend a **minimum of \$4M annually** to install and upgrade curb ramps.
- *AOCIL, et al. v. ODOT, et al.* (2016). Declaratory Action, Injunctive Relief, Attorney Fees.

Getting The ADA House in Order

1. Training – Planning and Scoping, through Design, Construction and Maintenance
2. Comply with New Construction and Alteration Requirements
3. Engage the Disability Community
4. Include Construction Tolerances in Design and Strict Conformance in Specifications
5. ADA Coordinator for the Pedestrian Right-of-Way
 - Prepare and Implement a Self Evaluation
 - Update and Implement Transition Plan
6. Identify Funding Sources to Address ADA Deficiencies
7. Ramp By Request Program with Periodization and Tracking
8. Recording of Curb Ramp Installations, By Year (CIP, Permits, Crews)
9. Investment Strategy – Understand the Risks and Liability for Non-conformance
10. Leadership and Agility are Essential in this Moving Target Environment
- 11. Collaborate to Address the Vagueness of ADA Title II Regulations**

Title

Subhead





Part II: ADA Assessment - Pre-design, Design, Post Construction

Title

Subhead

Title

Subhead

Title

Subhead

Title

Subhead

Title

Subhead

Title

Subhead

Title

Title

Subhead

Title

Subhead

Title

Title

Subhead

Title

Subhead

Title

Subhead

Title

Subhead

Title

Subhead

Title

Subhead

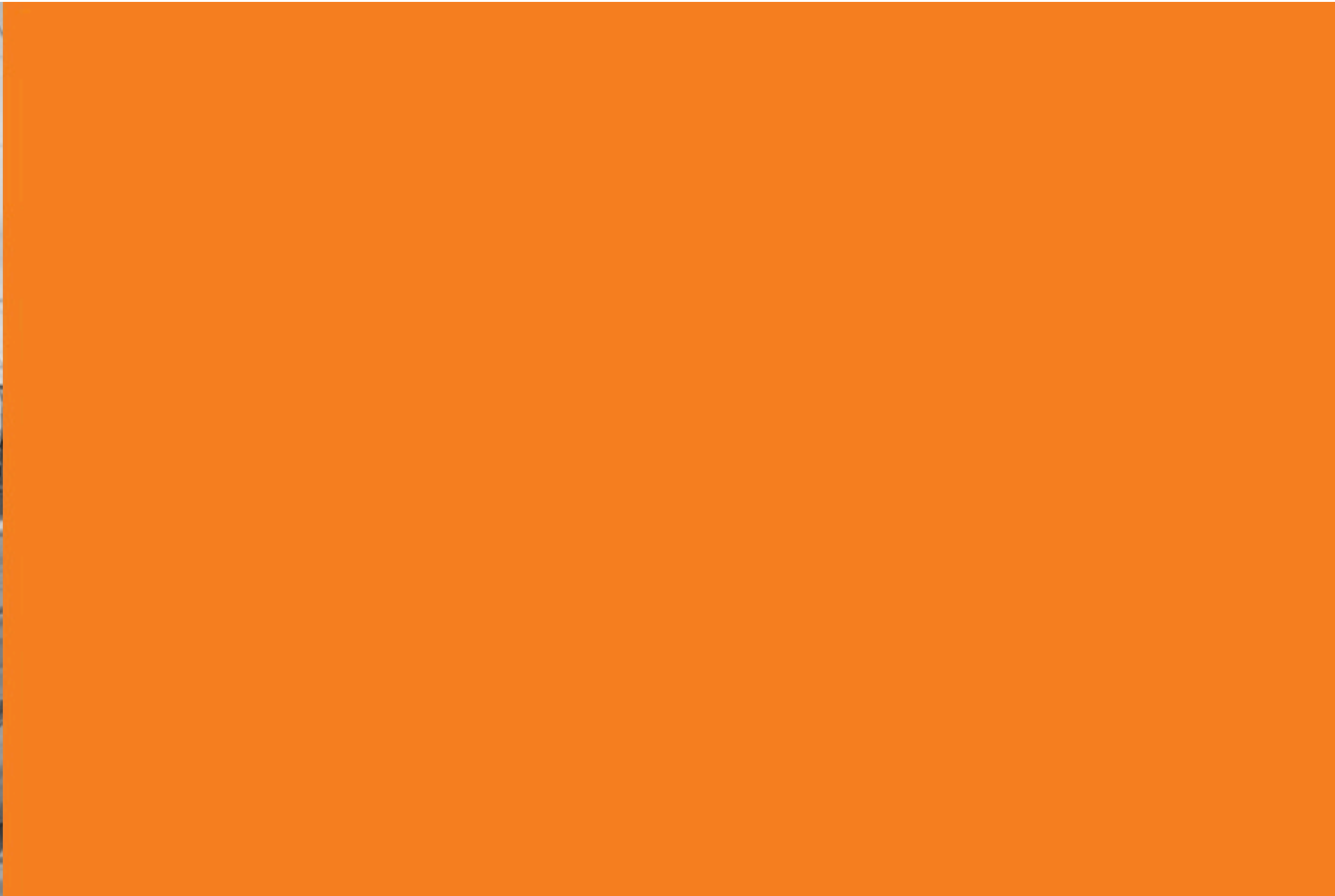
TITLE



TITLE



TITLE



TITLE



TITLE



TITLE



TITLE



TITLE



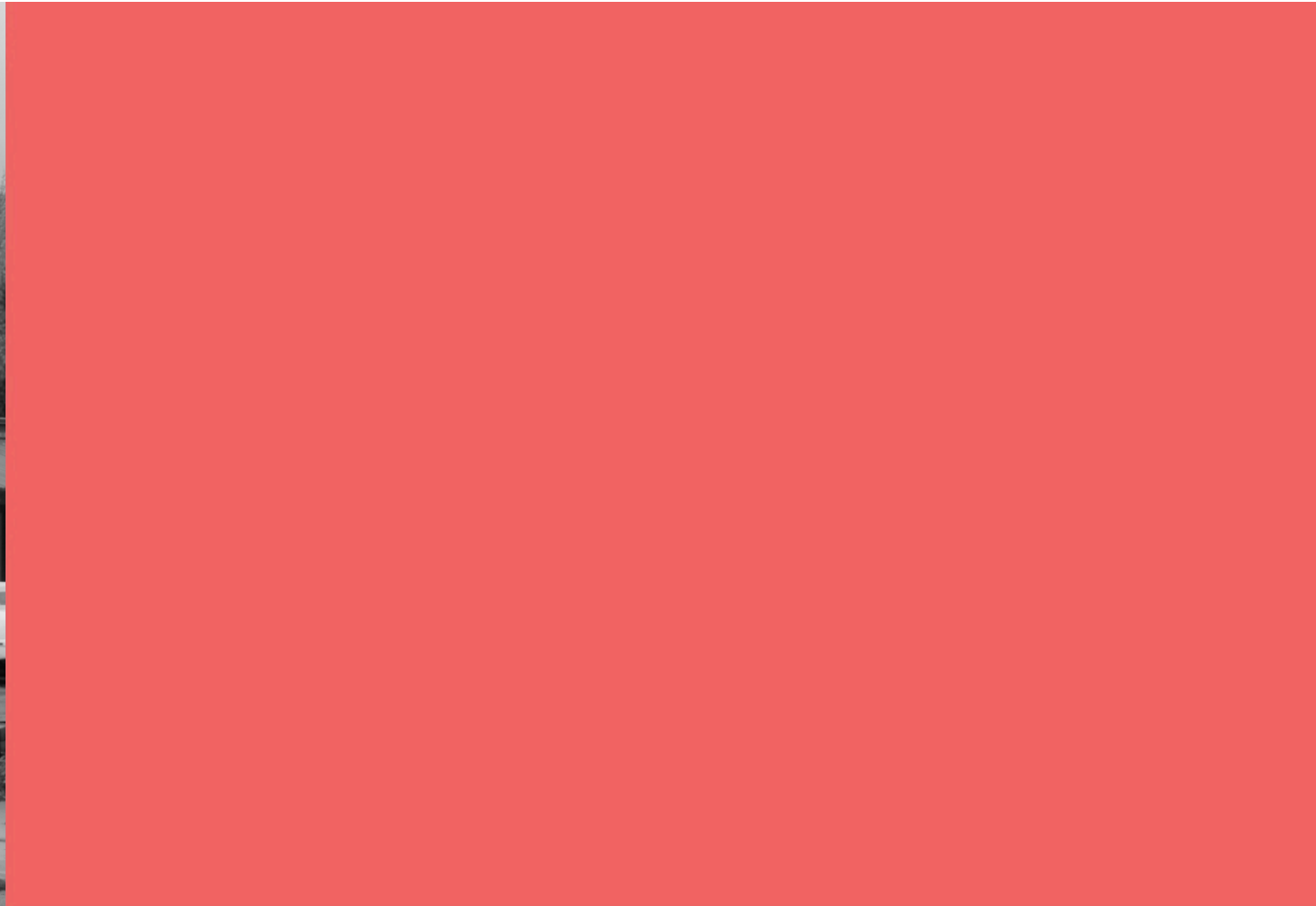
TITLE



TITLE



TITLE



TITLE



TITLE



TITLE



TITLE



TITLE



TITLE

