

# Roadway Paving - Section 504 & ADA Requirements?

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# Questions for Participants

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- How many of you represent a local agency public works/ transportation department?
- How many of you represent industry?
- Consultants?





# Questions for Participants

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- Who has heard of Section 504?
- Who is familiar with Title II of the Americans with Disabilities Act?





# Section 504 (1973)

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No qualified person with a disability shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance administered by the Department of Transportation.



# Section 504

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- Applies to Federal recipients and subrecipients
- Pertains to “all” programs, services and activities of a recipient/subrecipient regardless of funding source (Civil Rights Restoration Act of 1987)



# ADA (1990) – Title II (State & Local Governments)

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- 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.



# ADA – Title II

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- Modeled after Section 504
- Applies to all State and local governments (regardless of funding source)





# Section 504 & ADA Requirements And Paving Projects

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- New Construction
  - When planning projects
    - Pedestrian access (connectivity – what pedestrian generators are in the area: housing, transit stops/centers, schools, shopping/business, medical et al)
  - When designing projects
    - Standard plans/designs that factor in the access needs of persons of all abilities (e.g., barrier-free movement)





# Section 504 & ADA Requirements And Paving Projects

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- New Construction (cont.)
  - When constructing projects
    - Close attention to sidewalk/curb ramp details – are forms set such that they will result in compliant facilities?
    - Determine compliance prior to accepting project – if non-compliant, require contractor to redo

# Section 504 & ADA Requirements And Paving Projects

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- Alterations (to existing facilities)
  - What is an alteration?





# ADA Title II Definition – 28 CFR 35.151

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- 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)]



# Section 504 & ADA Requirements And Paving Projects (49 CFR 27)

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- Requires nondiscrimination (on the basis of disability) in any highway transportation program activity, service or benefit provided to the public, by recipients & subrecipients having responsibility for roadways and pedestrian facilities
  - FHWA responsible for monitoring and enforcing Section 504/ADA compliance by its recipients/subrecipients

# Alterations vs. Maintenance

- Joint USDOJ-USDOT (FHWA) technical assistance (June 28, 2013)
  - Distinguishes alterations from maintenance based on the type of road treatment





# USDOJ-USDOT (FHWA) Joint Technical Assistance

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- Certain roadway 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 a public agency's ADA Transition Plan

# MAINTENANCE

Chip Seals

Fog Seals

Scrub Sealing

Crack Filling and Sealing

Joint Crack Seals

Slurry Seals

Diamond Grinding

Joint repairs

Spot High-Friction Treatments

Dowel Bar Retrofit

Pavement Patching

Surface Sealing

# ALTERATION

Addition of New Layer of Asphalt

Mill & Fill / Mill & Overlay

Cape Seals

New Construction

Hot In-Place Recycling

Open-graded Surface Course

Microsurfacing / Thin-Lift Overlay

Rehabilitation and Reconstruction



# Alterations & ADA Compliance

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- Safe Harbor - Elements in facilities built or altered before March 15, 2012 that comply with the 1991 ADA Standards for Accessible Design (1991 Standards) are not required to be modified to specifications in the 2010 Standards until such time as they are altered.
  - Note: The 2020 technical standards for curb ramps are the same as they were in the 1991 technical standards for curb ramps (and the Access Board's Draft Public Right-of-Way Accessibility Guidelines) – e.g., running slope NTE 8.3% and cross-slope NTE 2%.



# Resurfacing Project

Maintenance

Alteration

Proceed w/ Work

Does resurfacing alter any crosswalks (marked or unmarked)?

No

Yes

Proceed w/Work

Are curb ramps that meet the standard in place at time of construction present?

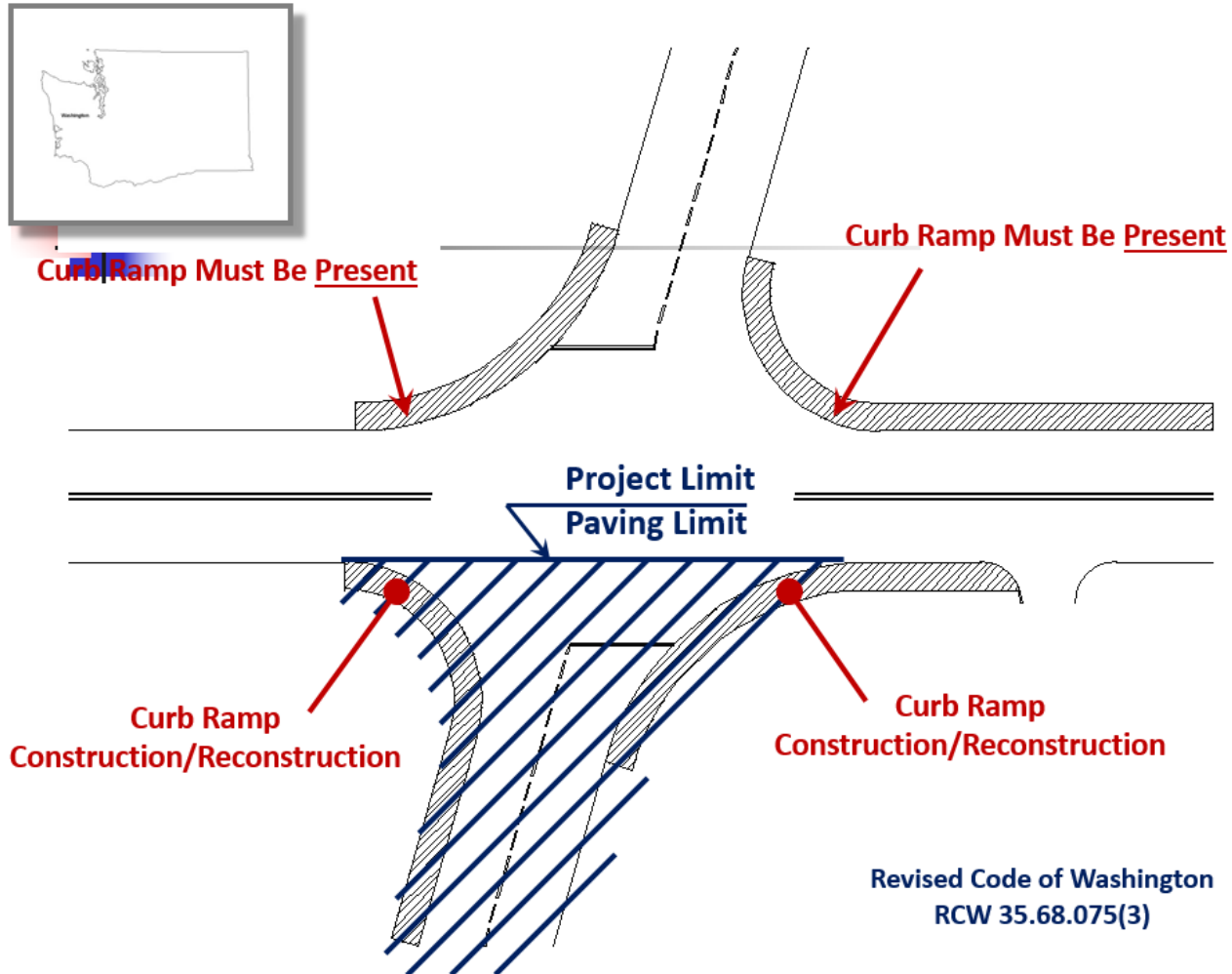
Yes

No

Proceed w/Work

Install/Update Curb Ramps

# Keep in Mind...WA State Law



Revised Code of Washington  
RCW 35.68.075(3)



# Alterations & ADA Compliance

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- Key things to remember:
  - Timing of ADA modifications (removal of barriers)
    - When altering the roadway (e.g., certain surface treatments), or the pedestrian access route (sidewalks, curb ramps)
    - In response to a complaint
    - As scheduled in the entity's ADA transition plan (section specific to public right-of-way facilities)



# USDOJ-USDOT (FHWA) Joint Technical Assistance Info

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- Joint USDOJ-USDOT Technical Assistance on Title II Requirements associated with Roadway Resurfacing
  - [https://www.fhwa.dot.gov/civilrights/programs/doj\\_fhwa\\_ta.cfm](https://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm)
- Q&As –
  - [https://www.fhwa.dot.gov/civilrights/programs/ada\\_resurfacing\\_qa.cfm](https://www.fhwa.dot.gov/civilrights/programs/ada_resurfacing_qa.cfm)



# Self-Evaluation

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- Required of all entities
  - Section 504 of Rehabilitation Act (1973)
    - USDOT Implementing Regulations (49 CFR 27)
  - Americans w/Disabilities Act of 1990
    - DOJ Implementing Regulations (28 CFR 35)





# Self-Evaluation

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- Purpose & Scope
  - Identify barriers in programs & activities that prevents persons with disabilities from access (includes evaluation of policies/practices)
  - Key – provide equivalent access to the maximum extent feasible



# Self-Evaluation

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- End Result
  - Inventory (and details) of facilities where structural modifications are needed to make facilities accessible to persons with disabilities
  - Is useful when planning roadway treatments; foundation for developing Transition Plan that covers PROW facilities
  - Maintain in file/available for public inspection for 3 yrs from date of completion



# Transition Plan

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- Living document – key planning tool
- Helps agency plan, budget for and schedule necessary modifications
- Required for compliance
  - Helpful during audit by funding agency and/or USDOJ





# Self-Evaluation/Transition Plan Technical Assistance

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- FHWA Federal-aid Essentials Videos
  - Self-Evaluation Basics
    - <https://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=33>
  - Transition Plan
    - <https://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=32>



# Things to Consider (based on complaints received by FHWA)

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- Removal of crosswalk markings
- Intersection closures – removal of ADA access (median/curb placement used to restrict vehicles)
- Vegetation control along pedestrian access routes (maintenance requirement)



# Questions

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Thank You!

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