



**ADA Settlement Agreement  
Accessibility Consultant  
Annual Report  
2020**

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*Prepared by:*

**cole<sup>®</sup>**

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## Introduction

In May of 2017, Cole was selected to provide third party accessibility consulting services to the Oregon Department of Transportation (ODOT) in accordance with their Settlement Agreement. The Settlement Agreement is the result of a complaint to the Oregon Department of Justice and negotiations with the Association of Oregon Centers for Independent Living (AOCIL) and several individuals. As per the Settlement Agreement and Cole's joint appointment as Accessibility Consultant, by ODOT and AOCIL, this Annual Report is being provided as a review of ODOT's activities.

**This document reports various actions taken by ODOT and provides an update relative to activities in 2020, which are outlined relative to each section of the Settlement Agreement.**

## Section 1. Update Statewide Curb Ramp Inventory

Under the Settlement Agreement, ODOT was required to update the existing curb ramp inventory from 2011 and provide the results to Disability Rights Oregon (DRO) and Cole by December 31, 2017. Digital video was collected, but due to its size, is not available in this document but can be viewed on request from ODOT. The initial inventory was collected at more than 26,000 curb ramp locations.

Curb ramps were rated good, fair, and poor. Curb ramps that were constructed after the previous inventory in 2011 and those that were "good" or "fair" were required to be included in the inventory. Locations that were previously rated "poor" were not required to be reevaluated. The inspection form used to collect the inventory included dimensions and slopes used to determine compliance with Americans with Disabilities Act Standards.

During 2018, ODOT completed a quality review of the collected data and identified elements requiring correction. The revised inventory was delivered to Cole and DRO on January 7, 2019. The data was delivered in both pdf documents and in a Microsoft Excel spreadsheet to make it easier to sort and manage. The spreadsheet resulted from a request by DRO. The updated curb ramp data is also available on ODOT's TransGIS system and viewable by the public in a mapping format. The final count of curb ramps to be included under the Settlement Agreement after this review is 27,327.

As ODOT has described in ODOT's Annual Report, ODOT continues to update its inventory as necessary to track new curb ramps and upgrades to existing curb ramps, and reflects updates completed for the reporting year. On page 2-3 of ODOT's Annual Report, 2,449 cumulative curb ramps are reported as remediated, with the prediction that ODOT will achieve its 30% milestone of 7770 remediated ramps by 2022.

## Section 2. Update of Pedestrian Crossing Signals

ODOT was required to complete an inventory of all pedestrian signals at locations included in the curb ramp inventory. The inventory includes over 8,000 signal locations. The physical attributes of push button height, reach range, and the landing adjacent to the push button were collected to determine compliance with accessibility requirements. These attributes and compliance status were included on the inventory delivered on December 29, 2017. Information on whether the signals provide audible queues was also included. A summary of the inventory, by region, is included in ODOT's Annual Report for 2020, pages 4-5. 46.8% of the pedestrian push button signals are reflected as compliant. They have also included audible signal capability. ODOT continues to track jurisdictional transfers that include pedestrian signals, according to its Annual Report.

## Section 3. Initial Commitment for Prioritized Projects

ODOT committed to an initial \$5 million investment to immediately address prioritized locations submitted by AOCIL. In an attempt to expedite and improve as many curb ramps as possible, locations were selected within already planned projects. These included general construction projects, and infrastructure being built with other funds. Curb ramps were identified in collaboration with AOCIL and removed from the prioritized list. ODOT worked with another consulting firm to fully develop scope and cost estimates. A final location list and schedule was submitted and approved by the Plaintiffs for remediation.

The cost of building curb ramps includes, not only the cost of construction, but the scoping, design, estimates, and right of way considerations. The \$5 million is used to fund every stage of the project.

ODOT's 2020 Annual Report lists priority projects by region, including the status and schedule for each project planned in Regions 1, 2, and 4. ODOT adjusted methods to track this priority work by corner instead of by individual curb ramp. ODOT reports having \$5 million allocated to remediate the prioritized locations, 20 corners were reported constructed in 2020, with the remaining corners in the Design Stage to be constructed in 2022 & 2023. Other locations, beyond the priority list, are under construction or in the planning or design phase.

## Section 4. Remediation of Curb Ramp Inventory

All curb ramp locations identified in the inventory as "fair" or "poor" must be remediated by December 2032 in accordance with the Settlement Agreement. Through 2019, ODOT had reported an adjusted total of 1,523 remediated curb ramps. ODOT remediated 926 curb ramps in 2020 which results in a cumulative total of 2,449 remediated curb ramps. ODOT has made significant investments in updating standards for design, construction, and inspection of new curb ramps. Cole recognizes the number of remediated curb ramps per year must increase

significantly to meet the Settlement Agreement milestone of 7,770 remediated ramps through 2022.

Remediation includes a variety of categories. The categories are primarily broken into two groups. The first group of categories involve constructing missing curb ramps and upgrading non-compliant curb ramps. The second group includes curb ramps that have been remediated, but still may not fully comply with the Standards. Those situations include curb ramps that cannot be fully remediated because of technical infeasibilities, closure of a street crossing for all pedestrians, and exceptions allowed by the Americans with Disabilities Act. Examples include: 1) when it is not possible to establish a design without destroying the historical significance of a State regulated site, or 2) when right of way availability affects the design.

There are instances where it is technically infeasible to make a reconstructed curb ramp fully compliant due to physical or regulatory constraints. Locations must be reviewed through ODOT's Design Exception Process and approved by senior ODOT staff. ODOT ensures that the design results in a facility that is accessible to the maximum extent feasible within the scope of the current project. If additional construction resulting in an "alteration," as defined by the U.S. Department of Justice, occurs at the same location in a future project, all non-compliant curb ramps will be reevaluated to determine if accessibility can be improved within the new project scope. The Design Exception Process must be repeated for each project if the design does not meet accessibility requirements.

In 2020, the curb ramps listed as "remediated" were divided into categories required by the Settlement Agreement. The details are reported in accordance with Section 8 of the Agreement on pages 15-16 of ODOT's Annual Report.

## **Section 5. Remediation of Pedestrian Signals**

Pedestrian signal remediation has not been as significant as the curb ramp locations. ODOT is still working with DRO on a remediation schedule. When a project scope includes the opportunity to improve the height, reach range, and landing at a signal location, it has been recommended that the signals be included in the project. ODOT has developed new guidance through a technical directive.

ODOT has committed to addressing requests for Audible Pedestrian Signals (APS) according to their policy, which includes an engineering study and communication with the requestor to address their specific accommodation needs. ODOT Received 4 CQCR's requesting a total of 36 Audible Pedestrian Signal pushbuttons in 2020. These requests were logged and are in various stages of the remediation process. Twelve APS will be installed as part of a current construction project. The remaining 24 locations have been, or will be installed by ODOT Maintenance Crews.

Cole encourages ODOT to begin discussions on the development of a pushbutton remediation schedule. Many construction projects that remediate curb ramps should also include the remediation of new pushbuttons. Cole performed a Quality Control review of 24 pedestrian

pushbuttons during the 2020 construction and expects to continue to review Pedestrian Signals in 2021. See Section 7, pages 7-8 for the results of this Quality Control review.

ODOT states that they have remediated pedestrian signals using ODOT Maintenance Crews. Cole recommends that ODOT provide additional information on how the pedestrian signals were brought into compliance similar to the information that ODOT provides on curb ramp remediation.

## **Section 6. Schedule for Curb Ramp Remediation Compliance**

The Settlement Agreement includes mandatory schedule milestones for the percent of curb ramp remediations that must be completed. At least 30% of the non-compliant locations must be remediated by December 31, 2022. State DOTs must scope, budget and design projects before they can be completed. While ODOT will benefit from projects that are already scheduled, they are just beginning to emphasize curb ramp specific projects. Getting these projects in the queue and ready to bid has taken some time, however, ODOT expects these projects to significantly increase the number of annually remediated curb ramps.

Cole is aware that ODOT is working to identify curb ramp efficiencies in design and construction and looking for methods to control costs through pilot projects. Some of the pilot projects have addressed curb ramps on the Priority List. We are also aware of ODOT's focus on curb ramp remediation and the time it takes to incorporate new Design Standards and policies into a State transportation agency. ODOT has reached out to other State Transportation agencies in a collaborative effort to ascertain new strategies for remediating curb ramps. However, we recognize ODOT must expedite construction in order to meet the milestone of remediating 7,700+ curb ramps by the end of 2022.

Section 6 of the Settlement Agreement also indicates that subject to ODOT's good faith discretion as necessary to comply with the percentages indicated in the schedule, and to the extent feasible, ODOT will attempt to remediate high priority locations first. These high priority locations were identified in collaboration with the Plaintiffs. There is further discussion on this requirement in Section 3 of this report.

## **Section 7. Accessibility Consultant**

ODOT and AOCIL jointly selected Cole to provide services as the Accessibility Consultant. Responsibilities of the Consultant include working with ODOT to review and make recommendations on policies, standards, practices, training, forms, and guidance pertaining to curb ramps and pedestrian signals.

Cole also reviewed and provided comments on the following documents:

- RD700's Standard Drawings

- RD900’s Standard Drawings
- 2020 Curb Ramp & Pedestrian Signal Inspection, Cole Quality Assurance - Review & Summary of Findings
- ADA Curb Ramp Process- Review and comment
- 2018 Specifications- Review & comment
- Curb Ramp Inspection Form- Review and comment
- Pedestrian Signal Pushbutton Inspection Form- Review and comment
- Interim Directive of ADA Curb Ramp Design

ODOT and Cole continue to have progress calls and meetings on an as-needed basis. Due to COVID-19, meetings in 2020 were held in a virtual environment as much as possible.

The work plan was updated in 2020 in coordination with ODOT to identify and loosely schedule policy updates and Quality Assurance curb ramp inspections.

Cole routinely provides technical assistance as needed while policies are being reviewed and developed. A concurrence process has been developed to document the agreements reached in policy development. In 2020, Cole provided concurrence on the following:

- RD700’s Standard Drawings
- RD900’s Standard Drawings
- Curb Ramp Inspection Forms 734-5020 (A thru G)
- Push Button Inspection Forms 734-5245 (A thru B)

In 2018 and 2019, Cole reviewed ODOT’s Maintenance Operation Notice MG-Activities-2, which provides guidance to designers and those who implement Temporary Pedestrian Accessible Routes (TPARs) in construction work zones. In 2019, Cole reviewed and provided concurrence on ODOT’s Curb Ramp Scoping & Right of Way Guidance policy. The policy provides guidance to designers on procedures for determining the need for public right of way acquisition in order to accommodate the construction of curb ramps.

Cole has reviewed ODOT’S complaint process. Extensive time was spent reviewing select design exceptions to ensure the process is robust and encourages designers to consider alternative designs that might improve access. These activities are ongoing.

In addition, as part of the Settlement Agreement, Cole conducted a Quality Assurance field check of pedestrian curb ramps. During September of 2020, Cole staff inspected 124 curb ramps. Cole selected a representative sample of curb ramps from a list provided by ODOT. Cole chose curb ramps from all five regions and different curb ramp types for the quality assurance check. As part of the quality assurance check, Cole staff also inspected 24 recently constructed pedestrian pushbuttons. Cole completed the inspection and provide a summary report to ODOT in November of 2020. The results of Cole’s findings stated that seventy-eight curb ramps that were documented as “Good” from ODOT’s list, were found to be compliant. The remaining forty-six

curb ramps with a “Good” rating were identified as non-compliant with ADA guidance. Cole’s results also included fifteen pedestrian signals to be compliant. The remaining 9 pedestrian signals were identified as non-compliant with ADA guidance.

During 2020, in conjunction with the Quality Assurance field checks, ODOT staff observed Cole staff perform curb ramp inspections, and discussed curb ramp inspection procedures and design considerations. Due to travel restrictions, no other in person meetings were conducted, however Cole staff and ODOT staff collaborated via electronic means.

The goal is to continue to help ODOT be successful in meeting the terms of the Settlement and to take steps toward making accessibility a primary consideration during the scoping, design, and construction of pedestrian facilities. ODOT has been responsive to recommendations and guidance provided by the Cole team.

## **Section 8. Reporting**

Both ODOT and Cole, as the Accessibility Consultant, must provide annual reports to DRO to be distributed to the Plaintiffs and made publicly available on ODOT’s website. Cole’s reports are also provided to the ADA Program Manager, Dick Upton. ODOT provided the required report March 31, 2021, meeting the terms of the Agreement. This document serves as the annual reporting required by Cole, as the Accessibility Consultant.

ODOT has included the required Section 8 elements in their Annual Report. It details their activities to improve operations, design, planning and maintenance. Additional work performed beyond the requirements of the Agreement is also included in the report cover letter.

Expenditures are included on page 12 of ODOT’s report. The \$5 million committed to priority projects has been partially expended or allocated/encumbered in the amount of \$4,341,000. The remaining funds are to be held in reserve to ensure projects underway can be successfully completed.

Curb ramp remediation is required to be reported under specific categories. The account of the number and categories in which curb ramps have been remediated can be found on pages 2-3 of ODOT’s report. Categories (4a) and (4b) represent noncompliant or missing curb ramps that have been remediated. There is a total of 926 locations, of which 42 were installed where curb ramps were missing. Because they are not included in those needing design exception (4c), it is expected these are compliant with accessibility Standards and Guidelines. Curb ramps in (4d) have been “remediated” as crosswalks were reviewed and closed.

Of the total 926 curb ramps that were remediated, only 11 required a design exception, implying that they are not fully accessible due to recognized limitations in feasibility, right of way or other constraints. As future projects take place at these locations, reevaluation will be needed to determine if improvement is possible.



## **Section 9. Alternate Routes During Construction**

Due to travel restrictions with COVID-19 and unprecedented wildfires, Cole staff was not able to inspect Temporary Pedestrian Accessible Routes (TPAR) during 2020. Inspections of Temporary Pedestrian Accessible Routes (TPAR) will resume in 2021.

An important aspect of all work zones is public notification. The plaintiffs have provided ODOT with Independent Living Center contacts around the state to improve the likelihood that information will be distributed to people with disabilities who may be impacted when pedestrian facilities are affected. This information is available to all ODOT's regional staff.

## **Section 10. Monitoring**

As required in the Agreement, ODOT's report includes a schedule for the curb ramps included on AOCIL's priority list. Section 3 of their Report provides information on prioritized curb ramps that were constructed in 2020 and current project status. Cole will provide a third-party review to a portion of the locations.

## **Section 11. Attorney Fees for Past Work**

No comments.

## **Section 12. Dispute Resolution and Enforcement Process**

No disputes were raised during 2020.

## **Section 13. Termination**

No comments.

## **Section 14. ODOT Oversight**

Mike Kimlinger has been identified as the individual responsible for the implementation of ODOT's remediation obligations.

Dick Upton has been identified as the ADA Program Manager and has been responsive to Cole's requests for meetings and information. Mr. Upton appears to have a good overview of the activities and processes needed to make changes in a large organization.

David Morrissey has been identified as the ADA Coordinator and is responsible for addressing Comments, Questions, Concerns or Requests (CQCR) and Complaints.

**Section 15. Public Complaint and Request Process**

Pedestrians who encounter issues or have questions about the accessibility of ODOT’s facilities can find a Comments Questions Concerns and Requests (CQCR) form on ODOT’s website to provide information about specific locations. They can also contact regional or headquarter staff for assistance in completing a request form or filing a complaint. ODOT has provided links to the form in their annual report and in multiple locations on their website.

The ADA CQCR Communications Team addresses CQCR policy and a detailed process has been developed to track and hold staff accountable for follow up. Multiple methods are available for contacting the civil rights staff. Separate links are provided on the civil rights website to file official complaints with either ODOT or the US Department of Justice.

In 2020, ODOT received 60 requests for assistance. ODOT accounts for this activity starting on pages 8-9 of their report. Cole has reviewed the process and found it to be thorough. Cole did not review any of the specific requests for 2020. The CQCR process allows the public direct access to those who can provide needed accommodations.

**Section 16. Self-evaluation and Transition Plan**

ODOT’s 2017 Transition Plan is available on their Civil Rights webpage.

**Section 17. Joint Press Release**

No comments.

**Section 18. Enforceable Agreement, Class Certification and Fairness Hearing**

No comments.

**Section 19. No Admission of Fault**

No comments.

**Section 20. Force Majeure**

No comments.

**Section 21. Funding**

No comments.

**Section 22. Authorized Signatures**

No comments.

**Section 23. Integrated Agreements**

No comments.

**Section 24. Counterparts**

No comments.

**Section 25. Notices**

No comments.

**Section 26. Transportation Remediation**

ODOT is working with the Public Transportation Advisory Committee to improve overall access to transportation options. They have received updates on ODOT's progress with the Settlement Agreement and have selected a member of AOCIL to participate as the Seniors and People with Disabilities representative member. They have also formed a disability workgroup to work with the Committee. The workgroup continued to meet virtually in 2020 to review access statements and discuss impacts of the pandemic on transit and paratransit services. The workgroup also identified that there is not a standard message about access and accessibility across ODOT. The workgroup advised PTAC recognize and address this gap in ODOT's services for Oregon's population with disabilities.

**Section 27. Education and Outreach**

ODOT and their consultants have worked to train ODOT staff on accessible design and making decisions that maximize accessibility. Staff, consultants, and contractors have been trained on curb ramp and signal inspection.

ODOT staff provided numerous presentations to internal staff and outside groups, as noted in their report. From ODOT's conversations with Cole, it appears the meetings have been successful in helping to develop a working dialogue to improve communication with transportation related groups and groups representing people with disabilities.

In conclusion, ODOT is making progress on improving and prioritizing accessibility within their organization and along their roadways. Cole is committed to continued assistance and oversight of their progress for education and outreach.