



**ADA Settlement Agreement  
Accessibility Consultant  
Annual Report  
2021**

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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 2021, 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, 3,744 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. Through additional analysis by ODOT, the pedestrian signal pushbutton inventory was updated to include 8,128 pedestrian 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 is included in ODOT's Annual Report for 2021 on page 4 reporting 45.6% of the pedestrian push button signals are reflected as compliant. Although not a requirement of the Annual Report, 12.8% of the pedestrian signal pushbutton inventory is reported as having audible capabilities. 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 2021 Annual Report lists priority projects by region, including the status and schedule for each project planned in Regions 1, 2, and 4. In their 2020 Annual Report, 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. A total of 48 corners are reported remediated through 2021 utilizing \$4.3 million of the allocated funds. Any prioritized projects remaining after exhaustion of the \$5 million will be remediated within the 15 year term of the Settlement Agreement.

## **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 2021, ODOT had reported an adjusted total of 2,449 remediated curb ramps. ODOT remediated 1,295 curb ramps in 2021 which results in a cumulative total of 3,744 remediated curb ramps. ODOT continues to

make significant investments in updating standards for design, construction, and inspection of new curb ramps. Cole recognizes the number of remediated curb ramps in 2022 must be 4,026 in order to comply with the required 30% total of 7,770 for the 5-year milestone per the Settlement Agreement. This will require ODOT to remediate more curb ramps in fiscal year 2022 than has been remediate within the first four years of the agreement.

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 2021, 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 13-15 of ODOT's Annual Report.

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

As indicated in the report, ODOT is implementing statewide pedestrian signal scoping in 2022 and this work will provide necessary information to establish a remediation schedule with DRO. Currently, ODOT remediates pedestrian signals that do not meet accessibility when they are part of an ODOT construction project.

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 109 CQCR's in 2021 with 8% relating to Audible Signals and 1% relating to Pedestrian Push Buttons. These requests were logged and are in various stages of the remediation process.

Cole performed a Quality Control review of 13 pedestrian pushbuttons during the 2021 field inspections and expects to continue to review Pedestrian Signals in 2022. See Section 7, pages 7-8 for the results of this Quality Control review.

## 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 requiring 4,026 curb ramps to be remediated within the next year. ODOT's commitment to improving the policies, procedures, and standards for remediating curb ramps throughout the Settlement Agreement has led to efficiencies in curb ramp remediation, however, it seems unlikely that ODOT will be able to complete the 30% remediation milestone on as scheduled.

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 and procedures:

- Oregon Standard Drawings RD700 Series (Sidewalk and Driveway)
- Oregon Standard Drawings RD900 Series (Curb Ramps)
- Technical Bulletin RD19-02(B) 2022
- ODOT Highway Design Manual
- 2021 Curb Ramp & Pedestrian Signal Inspection, Cole Quality Assurance - Review & Summary of Findings
- Iron Plate Detectable Warning Surfaces
- Detectable Warning Surfaces on Radii
- Stamped Cobblestone Non-traversable Surfaces
- Pedestrian & Bike Path Separation

ODOT and Cole continue to have scheduled monthly progress calls and meetings on an as-needed basis. Meetings in 2022 continued to be held in a virtual environment as much as possible.

The work plan was updated in 2021 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 2021, Cole provided concurrence on the following:

- RD700's Standard Drawings
- RD900's Standard Drawings
- RD19-02(B)
- RD21-03(B)\_2021

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 continues to review ODOT'S complaint process and Design Exceptions to ensure the process is robust and encourages designers to consider alternative designs that might improve access.

In addition, as part of the Settlement Agreement, Cole conducted a Quality Assurance field check of pedestrian curb ramps. During October of 2021, Cole staff inspected 61 curb ramps throughout the state. Cole selected a representative sample of curb ramps from a list provided by ODOT. Cole chose curb ramps from four out of the five regions and different curb ramp types for the quality assurance check. As part of the quality assurance check, Cole staff also inspected 13 recently constructed pedestrian pushbuttons. Cole completed the inspection and provided a summary report to ODOT in January of 2022. The results of Cole's findings stated that fifty-three curb ramps that were documented as "Good" from ODOT's list, were found to be compliant. The remaining eight curb ramps with a "Good" rating were identified as non-compliant with ADA guidance, however. Cole's results also included five pedestrian signals to be compliant. The remaining thirteen pedestrian signals were identified as non-compliant with ADA guidance. Many of the non-compliant curb ramps and pedestrian signals fell within construction tolerances and are de minimis barriers to accessibility.

During 2021, in conjunction with the Quality Assurance field checks, ODOT staff observed Cole staff performing curb ramp inspections, and discussed curb ramp inspection procedures and design considerations. Cole staff and ODOT staff continue to collaborate 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, Michael Kilinger. ODOT provided the required report March 31, 2022, 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 are a total of 1,295 locations, of which 107 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 1,295 curb ramps that were remediated, only 20 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**

Cole staff provided in-person Temporary Pedestrian Accessible Routes (TPAR) inspections. The findings from this review were presented to ODOT in January 2022.

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 2021 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 2021.

## **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.

Billie O'Connor has been identified as the ADA Program Delivery Manager and is responsive to Cole's requests for meetings and information. Mrs. O'Connor has a good overview of the activities and processes needed to make changes within ODOT.

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 2021, ODOT received 109 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 2021. 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 (PTAC) 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 2021 to review access statements and discuss impacts of the pandemic on transit and paratransit services.

In 2020, the workgroup identified that there is not a standard message about access and accessibility across ODOT. Progress was made in 2021 to address this gap when PTAC endorsed a new draft access statement and delivered this statement to ODOT leadership for consideration.

Additional transportation remediation progress in 2021 included ODOT developing a scope of work for a priority multimodal network project. The project looks to include an inventory of transit stops with attention to compliance with accessibility standards.

## **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.