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## 2017 Accessibility Consultant Annual Report

In May 2017, Cole & Associates 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 contract, this Annual Report is being provided as a review of ODOT's activities under the Settlement Agreement for 2017.

This report steps through the sections of the Agreement and also discusses ODOT's Annual Report.

### Section 1. Update statewide curb ramp inventory

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. Cole received digital copies of the inventory and DRO was provided with both hard copies and digital copies on December 29, 2017. While the digital video was collected, due to the quantity of the information, it was not sent but is available through the ODOT. A summary of the inventory by region and condition, which includes over 26,000 curb ramp locations, is included in ODOT's Annual Report.

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 in order to determine compliance with the Americans with Disabilities Act Standards. The inventory was substantially underway when Cole was selected to provide accessibility consulting services. The inspection form has been reviewed and updates have been recommended for inspection of curb ramps built in the future to comply with the Settlement Agreement.

### 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 was collected to determine compliance with accessibility requirements. The compliance status is included on the inventory delivered on December 29, 2017. Information on whether the signals provide audible queues is also included. A summary of the inventory, by region, are included in ODOT's 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 improve as many curb ramps as possible, locations were selected that included already planned projects, those included in other construction projects and those 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 dedicated to fund every stage of the project. Pedestrian signal locations have not yet been identified and prioritized by the Plaintiffs.

#### 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. No curb ramps were “remediated” under the Settlement Agreement as of December 2017. Remediation includes a variety of categories. Remediation is primarily broken into two groups – the constructing of missing curb ramps and the upgrading non-compliant curb ramps. Those that cannot be fully remediated because of technical infeasibilities are allowed by the Americans with Disabilities Act (ADA). Examples include when it is not possible to establish a design which does not destroy the historical significance of a State regulated site, another example is when right of way availability effects the design.

There are instances where it is technically infeasible to make a reconstructed curb ramp fully compliant due to physical or regulatory constraints. Those locations will be reviewed through the ODOT’s Design Exception Process. The Design Exception Process is approved by senior ODOT staff. ODOT staff ensure the design results in a facility is accessible to the maximum extent feasible within the scope of the current project. If construction that results in an “alteration,” as defined by the US Department of Justice, occurs at the same location of a future project, all non-compliant curb ramps will be reevaluated. The reevaluation is done to determine if accessibility can be improved upon, even if a design exception was approved in the past. The Design Exception Process must be repeated for each project.

These categories are broken down specifically in the Agreement and when remediation of the inventory begins each category will be tracked. ODOT is working on the mechanics of tracking the various categories for reporting to ensure future projects consider past actions, like design exceptions.

#### Section 5. Remediation of pedestrian signals

Pedestrian signal remediation has not been as fully addressed as the curb ramp locations. 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.

Cole has reviewed and concurs with ODOT’s Maintenance Operation Notice MG144-03. The notice identifies when different maintenance activities “trigger” upgrading pedestrian pushbuttons to the degree possible within the maintenance project. This policy will likely result in incremental remediation at many locations. It is relatively simple in some situations to adjust the height of a pedestrian pushbutton, or install a pushbutton extender to improve reach. However a signal maintenance project may not include a scope that addresses the clear space and landing at the button. The additional work will still be required to fully remediate the location and will likely be complete with the remediation of the curb ramps.

ODOT has committed to addressing requests for Audible Pedestrian Signals (APS) according to their policy. ODOT’s policy includes an engineering study and communication with the requestor to address their specific accommodation needs. Seven requests were received in 2017 and have been, or, are being considered according to the policy.

#### Section 6. Schedule for curb ramp remediation compliance

The Settlement Agreement includes mandatory schedule milestones for the percent of curb ramp remediation’s 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. ODOT will benefit from projects that are already scheduled, they have not routinely emphasized curb ramp specific projects. Getting these projects in the queue and ready to bid will initially take some time.

Priority locations identified by the Plaintiffs are included in the locations to be completed first. ODOT's report, Section 10, includes a relatively small percentage of the 26,000+ required ramps to be remediated. ODOT is working to identify methods to expedite design and construction and control budget in order to complete projects as quickly as possible in the future. It is anticipated that these activities will benefit the process and the first milestone will be met.

## 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. Between June and the end of December 2017, Cole has worked jointly with ODOT to begin the reviews and make recommendations to the following, as noted in the Agreement:

- Curb ramp and pedestrian signal inspection forms
- The evaluation processes and data management for curb ramps and pedestrian signals
- Design standards and details for curb ramps
- Design exception forms and process to address technical infeasibilities in projects
- Identify routine paving and signal maintenance activities that provide opportunities to improve access and required remediation of inaccessible curb ramps and signals
- Design training review, as design training is being provided to ODOT by another consultant team
- Identify types of work that qualify as "alterations" that change the usability of a facility for pedestrians
- Reviewed and made recommendations to the Temporary Pedestrian Accessible Route Plans

A flexible work plan was developed in coordination with ODOT to identify and loosely schedule policy updates and field inspections. Progress calls were initially scheduled, but both parties have agreed to initiate progress calls as needed.

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 addition, Cole has reviewed the complaint process and spent extensive time reviewing select design exceptions to ensure the process is robust and encourages designers to consider alternative designs that might improve access. These activities are on-going.

Field inspection processes have been verified by Cole as third-party inspectors and multiple locations were visited to confirm data collected provides the information needed to determine compliance.

From June to December 2017 Cole made three weeklong trips for meetings in ODOT's offices in Salem, OR. These face-to-face discussions provided opportunities for in-depth discussions with a variety of divisions within the Department. The meetings have been collaborative with the environment of working together to find solutions and improvements. The goal is to help ODOT be successful in meeting the terms of the Settlement and taking steps towards 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 publically available on ODOT's website. Reports are also provided to the ADA Program Manager, Lisa Strader, and the ADA Coordinator, Becky Williams. ODOT provided the required report March 30, 2018, meeting the terms of the Agreement. This document serves as the report required by Cole.

## Section 9. Alternate routes during construction

Temporary pedestrian routes during construction were discussed at several meetings. The Manual on Uniform Traffic Control is the resource used around the country and ODOT is using this document as policies are updated. Multiple work zone staff resources are available internally for differing levels of pedestrian access route disruption and ODOT has provided regional and headquarters experts to assist staff with any questions they may have. A vast amount of work zone information is also available on ODOT's website for easy access by outside designers, contractors, and the public.

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 of ODOT's regional staff.

## Section 10. Monitoring

As required in the Agreement, ODOT's report includes an initial schedule of upcoming remediation activities. In 2018 remediation is planned at an estimated 822 curb ramps, including 17 from AOCIL's priority list. Cole will provide a third-party review to a portion of the locations, but the Plaintiffs have the right to request additional inspections.

## Section 11. Attorney fees for past work

No comments

## Section 12. Dispute resolution and enforcement process

No disputes were raised between June and December 2017.

## Section 13. Termination

No comments

## Section 14. ODOT oversight

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

Becky Williams has been identified as the ADA Coordinator and was integral in explaining the processes used to address 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 CQCR form on the website to provide information about locations. They can also contact regional offices

or headquarters' staff for assistance in completing a request form or filing a complaint. ODOT has provided a link to the form in their annual report.

The ADA CQCR Communications Team addresses CQCR policy and a very 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.

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

As projects are scoped under different categories, funding is being included to address pedestrian accessibility. In addition to routine projects that include curb ramps and pedestrian signals, ODOT has dedicated funds for curb ramp only projects.

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 Agreement and have selected a member of AOCIL to participate as the Senior and People with Disabilities committee member. ODOT has recommended a permanent working group to address the broader questions of transit accessibility. Those include funding and access and they are receptive to recommendations made by the working group and committee.

## 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 multiple 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.