



**ADA Settlement Agreement
Accessibility Consultant
Annual Report
2019**

Prepared by:

cole[®]

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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 2019, 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, 2330 cumulative curb ramps are reported as remediated, with the prediction that ODOT will achieve its 30% milestone 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 2019, pages 4-5. 44.7% 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 2019 Annual Report lists priority projects by region, including the status and schedule for each project planned in Regions 1, 2, and 4. ODOT reports having \$4.27 million allocated to remediate the prioritized locations; three priority list curb ramps were made compliant in 2019, a limited number of the priority curb ramps are under construction and others are planned for remediation this year. ODOT is planning curb ramp projects for the current construction season. 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 2018, ODOT had reported a total of 1,327 remediated curb ramps. ODOT remediated 1,003 curb ramps in 2019 which results in a cumulative total of 2,330 remediated curb ramps. 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 2019, 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. Requests for 10 APS were received in 2019 and have been reviewed, or, are being considered according to the policy.

Cole would encourage ODOT to begin discussions on the development of a pushbutton remediation schedule. Many construction projects that remediate curb ramps could also include the remediation of new pushbuttons. Cole did perform a Quality Control review of Curb Ramps in 2019, but no pedestrian pushbuttons were included with these inspections. Cole has encouraged ODOT to include a remediation schedule of pedestrian pushbuttons and anticipates that a Quality Control review of pushbuttons will be performed during the 2020 construction season.

ODOT states that they have remediated pedestrian signals as part of construction projects. 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 will initially take some time.

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 are encouraging ODOT to expedite construction as much as possible 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:

- Design Exception Training- Review and comment
- Emigrant Avenue Inspection Presentation Exhibit- Review & comment
- 2018 Curb Ramp Inspection, Cole Quality Assurance - Review & Summary of Findings
- ADA Curb Ramp Process- Review and comment
- 2018 Specifications- Review & comment
- Bridge Design Manual-ADA Compliance - Review and comment
- Standard Details, dated Jan. 16, 2019- Review and comment

- Curb Ramp Inspection Form- Review and comment
- Pedestrian Signal Pushbutton Inspection Form- Review and comment
- TPAR Field Review-Comments from field inspection of Temp. Pedestrian Access Routes
- Signal Design Manual- Review and comment
- Design Exceptions, 2018- Review and comment
- Design Exception Form- Review and comment
- Update ODOT Work Plan, March 2019
- Curb Ramp Scoping & Right-of-Way Policy-Concurrence Letter
- Situation Solutions, General Q &A
- Field Design Guide- Review and comment

ODOT and Cole continue to have progress calls and meetings on an as-needed basis.

The work plan was updated in March of 2019 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 2019, Cole provided concurrence on the following:

- Maintenance Operations Notice MG-Activities 2
- Curb Ramp Scoring & Right of Way Guidance TS18-03(D)

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 July of 2019, Cole staff inspected 135 recently constructed 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. No pedestrian pushbuttons (Audible Pedestrian Signals) were included as part of this quality assurance check. Cole completed the inspection and provide a summary report to ODOT in November of 2019. The results of Cole’s findings stated that seventy-five curb ramps that were documented as “Good” from ODOT’s list, were found to be compliant. The remaining sixty curb ramps with a “Good” rating were identified as non-compliant with ADA guidance.

During 2019, Cole made three trips for meetings in ODOT's offices. Two meetings occurred in Salem at ODOT headquarters and one meeting occurred in Bend, OR. The first meeting was held in February 2019. Cole discussed TPAR's and held a question and answer session which addressed general ADA questions and miscellaneous ADA design questions. The second meeting was held July, in Bend, Oregon with ODOT Construction Project Managers. Cole discussed the requirements for ADA in the public right-of-way, rulemaking, and the curb ramp standards utilized for inspection. A presentation was made by Cole to discuss these topics and was followed by question and answer session. Cole recommended that ODOT could benefit from a conversation with the Minnesota Department of Transportation. The Minnesota Department of Transportation could provide some insight into implementing an ADA Curb Ramp construction and inspection program. The third trip was held in the Salem offices and discussions included upcoming training, both technical and diversity awareness, a review of construction standards and an update of ongoing policy development.

The meetings have been collaborative environments to find solutions and improvements. The goal is 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 June 5, 2019, 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 5 of ODOT's report. The \$5 million committed to priority projects has been partially expended and the explanation includes multiple activities needed to remediate the locations along with a schedule.

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 15-16 of ODOT's report. Categories (4a) and (4b) represent noncompliant or missing curb ramps that have been remediated. There is a total of 495 locations, of which 22 were installed where curb ramps were missing. Because they are not included in those needing a design exceptions (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 1003 curb ramps that were remediated, only 45 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 reviewed active Temporary Pedestrian Accessible Routes (TPAR) during a week-long inspection of TPARs during July 2019. Cole was accompanied by ODOT staff. Cole staff provided feedback to ODOT where good practices were implemented along with comments and recommendations where improvements in accessibility were warranted. Cole also reviewed and commented on ODOT's Specifications and Special Provisions as it relates to Work Zones.

Multiple TPAR staff resources are available internally for differing levels of pedestrian accessible route interruption. ODOT has provided regional and headquarters experts to assist staff with any questions they may have. A vast amount of 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 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 2019 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 2019.

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 2019, ODOT received 54 requests for assistance. ODOT accounts for this activity starting on page 8 of their report. Cole has reviewed the process and found it to be thorough. Cole did not review any of the specific requests for 2019. 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

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.

The budgeted amount in the 2018-21 STIP was increased to \$37 million after the Settlement Agreement was finalized. This money funds Comments, Questions, Concerns, or Requests (CQCR) responses, plaintiff priority improvements, maintenance triggered curb ramps, pilot projects, and program scoping in addition to curb ramp construction projects. It has also funded the inventory collection and training of ODOT staff, consultants, local agency staff, and contractors.

No update to funding has been provided by ODOT in 2019, outside of what is reported herein.

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. ODOT has been receptive to recommendations made by the working group and committee. The Work Group Chair participated with ODOT staff to present and discuss the Settlement Agreement at a conference, demonstrating that they have a good relationship and common goals.

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.