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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 5 1997

at A o'clock and — min. P M
WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JIM McCONNELL and MARK)
EDWARDS,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY AND COUNTY OF HONOLULU,)
)
 Defendant.)
)

CIVIL NO. 96-01111 DAE
(CIVIL RIGHTS)
CONSENT DECREE AND ORDER

CONSENT DECREE AND ORDER

WHEREAS, Plaintiffs filed this lawsuit in November 1996 alleging that Defendant City and County of Honolulu ("City") violated Title II of the Americans with Disabilities Act, 42 U.S.C. Section 12132 et seq. ("ADA Title II") and 28 C.F.R. Sections 35.105(a) [Self-Evaluation] and 35.150(d) [Transition Plan], by failing to adopt and implement a Self-Evaluation and Transition Plan that adequately addressed the installation of curb cuts on streets and sidewalks under the jurisdiction of the City and otherwise making such streets and sidewalks accessible as required by law; and

EXHIBIT 1

WHEREAS, Plaintiffs and Defendant recognize the importance of accessible streets and sidewalks, particularly curb cuts, in enabling individuals with ambulatory disabilities to move freely and independently throughout the City;

NOW, THEREFORE, the parties hereby agree and the Court hereby orders as follows:

1. The Court shall appoint a magistrate to assume control of the case.

2. (a) The City shall appoint and execute a contract with a consultant to prepare a Self-Evaluation and Transition Plan addressing the installation of curb cuts as required by 28 C.F.R. Section 35.150(d)(2), within 45 days after the filing of this Consent Decree and Order. The consultant shall also provide continuous advice during implementation of the Transition Plan. The consultant shall be a recognized expert in ADA compliance and accessibility standards. The City shall hire one or more engineering firms and such other professionals as are necessary to accomplish the Self-Evaluation and Transition Plan, particularly for the purposes of analyzing the feasibility of installing curb cuts covered by the Transition Plan. The Transition Plan shall incorporate as appropriate any concerns raised by the engineering firm(s) or other professionals.

(b) The City shall pay all fees and costs incurred with respect to the services performed by or at the direction of the consultant. It is understood and agreed that the consultant will be appointed in accordance with the City's customary procurement

practices and that the consultant's fees and costs will be subject to the provisions of the contract executed between the City and the consultant; provided, however, that nothing contained in this contract shall be inconsistent with this Consent Decree and Order.

(c) The Self-Evaluation and Transition Plan shall be prepared in accordance with the requirements of ADA Title II and the Department of Justice implementing regulations at 28 C.F.R. Sections 35.105 and 35.150(d), including the requirements regarding public input. In accordance with the provisions of ADA Title II and the Department of Justice implementing regulations at 28 C.F.R. Section 35.150(d)(2), the Transition Plan shall state that the City shall first install curb cuts at priority locations as set by federal law.

(d) It is understood and agreed that the Self-Evaluation shall include an evaluation of all the City's policies and practices with respect to accessible streets and sidewalks, particularly with respect to the installation of curb cuts in connection with the reconstruction and resurfacing of streets to ascertain and/or ensure the compliance of these policies and practices with federal law.

(e) It is understood and agreed that the City intends to extend the Self-Evaluation and Transition Plan effort to address the needs of all individuals with disabilities with respect to accessible streets and sidewalks, including access to bus stops. Nothing contained herein shall be construed as prohibiting the

City from so extending the Self-Evaluation and Transition Plan effort to cover such matters.

3. The Self-Evaluation and Transition Plan shall be completed and adopted by the City as soon as practicable, with a goal of completing and adopting the Self-Evaluation and Transition Plan within one year after the date of filing of this Consent Decree and Order, but in no event later than 21 months after the date of filing of this Consent Decree and Order.

4. (a) The City shall appoint an ADA Coordinator, as required under 28 C.F.R. Section 35.107(a), within one month after the date of filing of this Consent Decree and Order.

(b) The City shall establish grievance procedures in accordance with 28 C.F.R. Section 35.107(b) as soon as possible, but no later than one year after the date of filing of this Consent Decree and Order. Any grievance or complaint regarding curb cuts or accessible streets or sidewalks received by the City during the preparation of the Self-Evaluation and Transition Plan shall be forwarded to the consultant for review.

(c) The City shall proceed expeditiously with arranging funding to accomplish the work set forth in the Transition Plan so that the work may be completed within the time specified in the Transition Plan. The goal shall be to complete the work at priority locations as set by federal law, to the extent required by 28 C.F.R. Section 35.150(d)(1), within three years of the completion and adoption of the Transition Plan and at other locations, to the extent required by 28 C.F.R. Section

35.150(d) (1), within three years after completion of the work at priority locations, but in no event shall the work under the Transition Plan be completed later than six years after the completion and adoption of the Transition Plan. The City shall provide funding both to accomplish work covered by the Transition Plan, and work on curb cuts which are requested on a priority basis by or on behalf of individuals with ambulatory disabilities; provided that the City shall continue its on-going program for installation of curb cuts, including individual requests, during the period of preparation of the Transition Plan.

5. (a) The City shall submit to the magistrate appointed by the Court and counsel for Plaintiffs quarterly status reports concerning its preparation and implementation of the Self-Evaluation and Transition Plan and the parties shall confer face-to-face at least quarterly on the status.

(b) During the preparation of the Self-Evaluation and Transition Plan, the consultant may identify one or more intersections at which it is infeasible to install curb cuts, in whole or in part, for a variety of reasons. These cases will be identified and described in the next quarterly status report and in the Transition Plan.

6. (a) The City shall comply with the terms of the Transition Plan.

(b) Curb cuts shall be installed by and through the City in accordance with the Transition Plan, and shall meet

applicable design guidelines, as specified in the Transition Plan, except as otherwise allowed pursuant to the design guidelines.

(c) Contracts with private contractors for the installation of curb cuts will specify that the work shall be done in accordance with such design guidelines.

7. This Consent Decree and Order is not an adjudication upon the merits of the litigation nor shall it constitute evidence in any proceeding. Neither the execution of this Consent Decree and Order by the City nor anything contained in this Consent Decree and Order nor any actions taken or to be taken by the City hereunder shall be construed or considered as admissions of liability or any issues of law or fact on the part of the City, but are undertaken in the spirit of compromise.

8. (a) In the event that Plaintiffs in good faith believe that the City has violated this Consent Decree and Order or the ADA with respect to matters covered by this Consent Decree and Order during the term of this Consent Decree and Order, whether by variance in the number of curb cuts to be installed or the timetable for installation as described in the Transition Plan, or by material amendments to the Transition Plan, Plaintiffs shall give written notice of such alleged violation to counsel for the City, specifying the grounds that demonstrate such violation. The City shall respond in writing to counsel for Plaintiffs within fifteen (15) days. If Plaintiffs believe that the City's written response does not demonstrate that the alleged

violation has been cured or will be cured within a reasonable time not exceeding 45 days from the receipt of the written notice from Plaintiffs, counsel for Plaintiffs and the City shall meet within fifteen (15) days of the City's written response to attempt to resolve the issues in a mutually acceptable manner. Plaintiffs shall not file any motion or motions to enforce this Consent Decree and Order pursuant to the following subparagraph until they have exhausted this dispute resolution process.

(b) If Plaintiffs believe that the City has violated this Consent Decree and Order or the ADA with respect to matters covered by this Consent Decree and Order, Plaintiffs may, subject to the foregoing dispute resolution process, file a motion or motions to enforce this Consent Decree and Order seeking the remedy of specific performance. It is agreed, however, that Plaintiffs will not seek contempt of court and that contempt of court will not be imposed upon any officer or employee of the City for any alleged violation of this Consent Decree and Order, except with respect to any court order directing specific performance.

(c) In the event the City proposes to amend the Transition Plan after its adoption for any reason, the City shall give written notice of such proposed amendment to counsel for Plaintiffs prior to making such amendment. If the proposed amendment makes a material change in the number of curb cuts to be installed or the timetable for installation as described in the Transition Plan and Plaintiffs object to the proposed

amendment or if Plaintiffs believe that the proposed amendment violates the ADA or this Consent Decree and Order, Plaintiffs may, subject to the dispute resolution process described above, file a motion or motions seeking to enjoin the City from adopting the proposed amendment.

9. The City agrees to pay Plaintiffs' attorney's fees and costs, up to a maximum amount of \$37,000, incurred up to the date of approval of this Consent Decree and Order by the Court. The parties agree that Plaintiffs shall be entitled to file an application for any attorney's fees and costs incurred by Plaintiffs in connection with (1) a motion or motions seeking to enforce this Consent Decree and Order or enjoin the City from amending the Transition Plan; (2) reasonable consultations with Plaintiffs on matters covered by this Stipulation; (3) review of the quarterly status reports; and (4) any dispute resolution process under Paragraph 8 of this Consent Decree and Order. The City reserves the right to object to Plaintiffs' applications.

10. The Court shall have continuing jurisdiction for the purpose of enabling either of the parties to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the modification, construction or carrying out of this Consent Decree and Order and for the enforcement of compliance therewith. Upon execution and approval by the Court of the Consent Decree and Order, the action herein shall be dismissed without prejudice, with leave to reinstate the

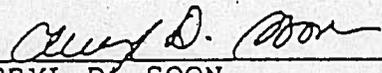
action, upon application to either party, in accordance with the court's continuing jurisdiction as specified herein.

DATED: Honolulu, Hawaii, MAY 2 1997

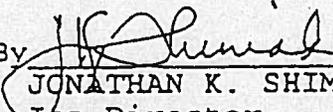
DAVID Z. ARAKAWA
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DEPARTMENT OF TRANSPORTATION
SERVICES, CITY AND COUNTY
OF HONOLULU

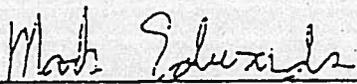
By 
CHERYL D. SOON
Its Director

DEPARTMENT OF PUBLIC WORKS,
CITY AND COUNTY OF HONOLULU

By 
JONATHAN K. SHIMADA
Its Director


STANLEY E. LEVIN
Attorney for Plaintiffs


JIM McCONNELL
Plaintiff


MARK EDWARDS
Plaintiff

APPROVED AND SO ORDERED:

DAVID A. EZRA

Judge of the above-entitled Court

CD-FIN

Civil No. 96-01111 DAE, Jim McConnell and Mark Edwards v. City and County of Honolulu - Consent Decree and Order