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OF COUNSEL:
DAVIS LEVIN LIVINGSTON GRANDE

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 19 2003

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at 4 o'clock and 55 min. 9 M.
WALTER A. Y. H. CHINN, CLERK

MAR 13 2003

CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

2:55

MAR 19 P2:09

CLERK
CORPORATION COUNSEL
AND C. OF HONOLULU

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JIM McCONNELL and MARK
EDWARDS,

Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,

Defendant.

) CIVIL NO. 96-01111 DAE/KSC
) (Other Civil Action)
)
)

) THIRD STIPULATION REGARDING
) CONSENT DECREE AND ORDER
) FILED MAY 5, 1997 AND ORDER;
) EXHIBIT A
)
)
)
)

THIRD STIPULATION REGARDING CONSENT DECREE
AND ORDER FILED MAY 5, 1997 AND ORDER

IT IS HEREBY STIPULATED AND AGREED TO, by and between the parties
herein, through their respective counsel, that:

1. The Court Monitor's Interim Report dated October 3, 2002 is approved, except that, with respect to Paragraph 9, the frequency of Bill Hecker's visits shall be every two to three months. See Exhibit A attached.

2. The City shall provide for the publication of the process by which ADA-qualified mobility-impaired persons can request the installation and/or modification of a curb ramp. The City's Customer Services Department, the Neighborhood Boards, and the Satellite City Halls will be informed of the availability of the process and request forms on the City's website at: www.co.honolulu.hi.us/ddc/index.htm. The City shall also issue a press release regarding the availability of the process and request forms on the City's website. The website will provide information on the process of initiating requests and will clarify that this request process also applies to accessibility repairs/modifications to existing accessible paths in public rights-of-way leading to curb ramps. The request process shall be administered by the Department of Design and Construction. Information on the request process will be included in reports filed with the Court under the provisions of the Consent Decree and Order.

3. Pursuant to Section 9 of the Consent Decree and Order, the City agrees to pay Plaintiffs \$90,966.41 in attorney's fees and costs through August, 2002 as well as attorney's fees and costs in the amount of \$3,293.73 (which will be reduced to \$3,000.00) from September, 2002 to the date of this stipulation. Plaintiffs' Motion for a Determination of Attorney's Fees and Costs filed on August 30, 2002 is hereby dismissed with prejudice. The parties agree that prior to Plaintiffs' incurring fees and costs for experts or other consultants in the future, the parties shall schedule a status conference with the Magistrate Judge to discuss the propriety of incurring such fees and costs. Otherwise, the parties agree that plaintiffs' counsel will bill the City and County twice

per year (i.e. once every six months) for the routine, reasonable fees and costs incurred.

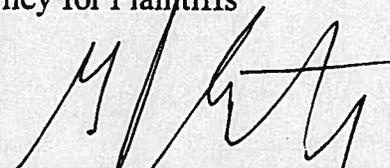
Disputes regarding the routine matters can also be brought to the court.

4. Except as otherwise provided for herein or in prior stipulations, all the provisions of the Consent Decree and Order filed May 5, 1997 shall remain in full force and effect.

DATED: Honolulu, Hawaii, MAR 12 2003



STANLEY E. LEVIN
Attorney for Plaintiffs



GREGORY J. SWARTZ
Deputy Corporation Counsel
Attorney for Defendant

APPROVED AND SO ORDERED:

KEVIN S.C. CHANG

JUDGE OF THE ABOVE-ENTITLED COURT

McConnell, et al. v. City and County of Honolulu, Civil No. 96-01111 DAE/KSC;
THIRD STIPULATION REGARDING CONSENT DECREE AND ORDER FILED
MAY 5, 1997 AND ORDER

MCCONNELL VS. CITY & COUNTY

**SPECIAL COURT MONITOR'S INTERIM
REPORT**

**FEDERAL MAGISTRATE
JUDGE KEVIN S.C. CHANG PRESIDING**

PREPARED BY: PAUL STANLEY SHERIFF

DATE: OCTOBER 3, 2002

EXHIBIT A

**MCCONNELL VS CITY & COUNTY TRANSITION PLAN
COURT MONITOR'S INTERIM REPORT**

1. **Trenching** is not considered an alteration under the definition; therefore, it will not trigger mandatory implementation of curb ramps. (Exhibit A).
2. **P2 ramps** – non-implementation of 2,800 P2 Transition Plan ramps can be addressed by 3 methods: 1) request basis, programmatic access, 2) “you touch it you fix it” and 3) alterations – Exhibit B.
3. **Sidewalk Compliance Plan** – access to sidewalks to be addressed as follows (Exhibit C):
 - (a-1) Programmatic access in all areas will be provided – priority 1 and 2 upon a request basis.
 - (a-2) The alteration requirements will apply. The “you touch it you fix it” will apply.
 - (b) Self-Evaluation surveys of sidewalks for the Sidewalk Compliance Plan will not be conducted.
 - (c) PROWAAC recommendations for Public Rights-of-Way are not yet final. Until such time, the only criteria for an accessible route currently applicable are: width (36” or 32” around an obstacle), cross slope (2% maximum) and change in elevation (½” maximum).
 - (d) Alterations will continue to be reviewed by the State of Hawaii Disability and Communication Access Board under state law, H.R.S. 103-50. However, sidewalk alterations are not ‘pre-screened’ by Wilson Okamoto Associates.
4. **Integration** -- The curb ramp transition plan should be integrated with the bus stop transition plan. The same triggers must apply – programmatic access request basis, “you touch it you fix it” and alterations. Alteration projects must be reviewed by HRS 103-50. (Exhibit D).
5. **Current Requirements** – The Court Monitor’s position is that there are no final design guidelines for public rights-of-way. There are currently draft guidelines by the U.S. Access Board but they are neither final, nor enforceable by the Department of Justice under the ADA. However, applicable final design guidelines for the built environment that are transferable to the public right-of-way should be used until such time as final design guidelines are issued.

With respect to the existing (pre-ADA) curb ramps, it is the Court Monitor’s position that the Department of Justice places an emphasis on corrective action in areas where there are (a) vertical curbs with no curb ramps and/or (b) slopes that are not usable or safe. Factored

into the equation is the location of the intersection/curb ramp (e.g. proximity to government buildings or public transit stops) or the residence/place of employment of a specific person with a disability. Other curb ramps/intersections, The City's approach to prioritize the identified Transition Plan curb ramps with the above considerations is appropriate. (Also see Exhibit D).

6. **Coordination** -- Curb ramps by different agencies -- there are a number of curb ramps being installed through projects other than those funded solely as Transition Plan Projects (e.g. in an intersection re-alignment project). If those curb ramps are identified in the Transition Plan, they should be corrected accordingly at that time (and not deferred to the Transition Plan) and then removed from the Transition Plan timetable. If those curb ramps are not identified in the Transition Plan, they should be designed in accordance with the Alteration design guidelines. The Court Monitor recommends a comprehensive approach and coordination City wide.
7. **Re-evaluation** requested by Stan Levin is being modified to be termed a Usability Assessment, regarding ramps or other sloped areas that are usable or not usable to/by the disabled.

The City will contract directly with Accessible Planning and Consulting under a DF 71 contract for a specified amount not to exceed \$24,999 to perform the usability assessment.

The Usability Assessment is ready to commence and proceed. (Exhibit E).

8. **Policies** -- The Court monitor has directed the City to finish the policies and procedures for the City and County. The policies and procedures should include not only curb ramps, but all modifications in the public right-of-way. The policies and procedures should include not only Transition Plan modifications, but also Alterations and New Construction. Upon completion these should be reviewed and entered as a court document.
9. **Consultant** -- The Court monitor has recommended that Bill Hecker, AIA, the City's consultant, be in Hawaii for a site visit for compliance of ramps and application of correct implementation of ramp design in the Transition Plan Projects, once every 4-6 weeks at a minimum. The Court Monitor also has recommends continued "pre-screening and review" by Wilson Okamoto Associates, the engineering firm performing duties as required by the Consent Decree and Order. (Exhibit F)
10. **Smart levels** - a 4' smart level will be required for the running slope and a 2' smart level shall be required for the cross slope to evaluate the running and cross slopes of all ramps which are under dispute and the measuring procedure must be uniform (e.g. where flared side slope measurement are taken from).