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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 04 2005

at 4 o'clock and 2 min. PM.
WALTER A.Y.H. CHINN, CLERK

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CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

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/KSC
) (Other Civil Action)
)
) FOURTH STIPULATION
) REGARDING CONSENT DECREE
) AND ORDER FILED MAY 5, 1997
) AND ORDER; EXHIBIT A
)
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FOURTH 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 January 11, 2005 is approved. See Exhibit A attached.

2. 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, FEB 3 2005.



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

Civil No. 96-01111 DAE/KSC, McConnell, et al. v. City and County of Honolulu,
Fourth Stipulation Regarding Consent Decree and Order Filed May 5, 1997 and
Order

PS

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

1. **Current Requirements**

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 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 A).

2. **Construction Tolerances**

Construction tolerances to be adopted as in **Exhibit B**. Until such time that the United States Architectural Transportation and Barrier Compliance Board or the Department of Justice issues a recommendation or guidelines for construction tolerances, the construction tolerances listed will be utilized and implemented.

3. **Alteration Projects and Definition of What Constitutes an Alteration**

Mandatory curb ramp removal and replacement be triggered only when a major alteration project which directly affects the curb ramp as in the "you touch it, you fix it" policy, be the mandating driving force of the definition of an alteration project and 28 CFR 35.151. (**EXHIBIT C & D**)

4. **Trenching** is not considered an alteration under the definition; therefore, it will not trigger mandatory implementation of curb ramps. (**EXHIBIT E**).

5. **Re-surfacing and Re-Paving**

Re-surfacing and re-paving shall be defined as maintenance and not as an alteration project. Re-emphasis shall be provided on this subject and shall be entered into perpetuity. **EXHIBIT F**

6. **Sidewalk Compliance Plan**

Maintenance to sidewalks is considered a program of a Title 2 entity.

Access to sidewalks to be addressed as follows (**EXHIBIT G**):

- (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.

7. **Existing Ramp Deferment Criteria**

Upon analysis of the transition plan and actual application of ramp implementation, it was discovered that ramps are being triggered to be implemented and changed that were technically compliant in other aspects except for the triggering element. Most notably, the flared sides on ramps that all other elements within the sloped requirements were triggering ramps to be re-done and/or implemented. In many cases, these ramps had level landings, which thus rendered the ramp compliant. Several trigger elements were analyzed in the transition plan and further deterrent of implementation of ramps were noted and categorized. All of the ramps have been documented and will be placed in deferment from implementation due to the changing criteria triggers in the transition plan.
(See **EXHIBIT H**)

8. **P2 ramps**

Deferment and 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 I**

9. **Court Ordered Deferment of Implementation of Usable Ramps**

All ramps that have been found to be usable as a result of the usability assessment and the change in triggers criteria will be stipulated to and entered into the court stipulation. This will also contain a series of ramps that are included as a result of a change in the assessment criteria checklist due to the fact that some ramps have landings (see Part B of the existing transition plan curb ramp usability criteria below and Exhibit J).

10. **Transition Plan Ramps and Design**

There are approximately 500 ramp plans transition plan ramps currently in design to be implemented in the year 2005. These ramp contain all of the existing ramps, which are not in a current capital improvement project or proposed BRT (Bus Rapid Transit Project). The remainder of the curb ramps that have not been implemented and are addressed in the transition plan, numbers approximately 1,000, ramps contained in capital improvement projects and BRT projects. **EXHIBIT K**

11. **Newly Constructed Ramps**

Newly constructed ramps, by other entities, which serve the public in the C&C Public Rights-of-Way, shall be deemed as ramps that may be counted as they affect the public good. Also, these ramps, unless they are "non-usable", shall remain intact as is.

12. **Existing and New Ramps Which Meet the New Construction Tolerances**

Approximately 600 to 700 curb ramps, meet in one form or another, new construction tolerances (**EXHIBIT L**) – all parties have agreed that ramps, which meet this criteria, can be deferred from being required to be removed and replaced.

13. **Learning Curve**

Grandfather clause –The learning curve grandfather clause allows the City to not be required to remove and replace any curb cuts and/or ramps that were built from January 26, 1992 to December 31, 2001. These ramps are exempt from re-implementation as due to a learning curve process for purposes of good will between all parties and accessibility for the disabled.

14. **Disabled and Plaintiff's Activity**

The qualified persons with disabilities, under the programmatic access portion of the Title II guidelines of the Americans with Disabilities Act, may at any time request a ramp be assessed to see if greater accessibility can be provided. **EXHIBIT M**

15. **Design Guidelines**

The City has created a flexible working directional and design guidelines for the City and County. Design guidelines should include not only curb ramps, but all modifications in the public right-of-way. The design guidelines should include not only Transition Plan modifications, but also Alterations and New Construction. The current evolution of the design guidelines shall be reviewed and entered as a court document.

16. **Programmatic Access**

There is a re-emphasis on the programmatic access, personal request basis; you touch it you fix it and in alterations policies for the transition plan. These shall be re-addressed and entered into perpetuity. **EXHIBIT M**

17. **Consultant**

Bill Hecker, AIA, the City's consultant, shall 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 6 months at a minimum, as requested by the City or by order of the Court Monitor, upon request, and at the conclusion of the implementation of the transition plan. A review by Wilson Okamoto Associates, shall continue the engineering firm performing duties as required by the Consent Decree and Order. **(EXHIBIT N)**

18. **Current Designs**

The current designs for the City and County must be reviewed under HRS 103.50. Current designs must be made accessible to the maximum extent feasible and if the current designs do not meet the requirements for accessibility laid out in the recommendations to the engineers and architects as set forth by the C&C, a technical infeasibility document shall be provided per ramp.

19. **Design Criteria**

The design criteria being used in the design of transition plan ramps has remained as a high standard of accessibility and the implementation of the type B truncated ramps is suggested over a type B flat ramp. **EXHIBIT O**

20. **Warping vs. Blending**

The definition of blending is a form of "blending" the landing and the ramp slopes to make the ramp be usable without being fully compliant. The blending is generally triggered and dictated by the slope of the roadway grade. The recommendation is that warping of ramps will not be used unless it is in extreme situations or circumstances.

21. **Detectable Warnings**

- a. The new ADAAG will eliminate the requirement for detectable warnings.
- b. Federal Highways Administration may still require the use of detectable warnings.
- c. NOTE: if Federal Highways requires the use of detectable warnings, any curb ramps installed with Federal Highway funds, shall include the detectable warnings (truncated domes) any other projects may delete the use of detectable warnings until such time that formal promulgated guidelines and requirements are implemented and enacted that require detectable warnings.

22. **Cross Walk Controls**

The crosswalk controls in the newly constructed Honolulu projects have two (2) control buttons in each direction. In accordance with ADAAG, a pedestrian signal control button for each direction of crossing be placed within 10" of the approach. The court monitor recommends this configuration and/or any equivalent facilitation be implemented until a final design conclusion by the PROWAAC committee is recommended due to the fact that the current design criteria is more accessible than the PROWAAC committee's current direction and heading.

23. **Field Conditions T.I.'s**

It is the Court Monitor's recommendation that the City's authorized representative shall have the authority to approve post construction "technical infeasibility" in the event that differing site conditions from the design plans require refinement of the curb ramp designs to ensure accessibility to the maximum extent possible.

24. **Re-evaluation**

As requested by Stan Levin, is termed a Usability Assessment, regarding ramps or other sloped areas that are usable or not usable to/by the disabled.

The City contracted 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 complete. (EXHIBIT P).

25. **Results of the Usability Assessment**

Results of the usability assessment were analyzed after over 100 ramps had been assessed by wheelchair users. The disabled wheelchair using assessors concluded that ramps are usable with up to a 14.0% – 14.2% slope. The average usable slope criterion was determined to be 13.5%. The Plaintiff's consultant, Bruce Clark, who spearheaded the

project and was contracted to implement the usability assessment has agreed that the implementation triggers criteria for slopes to reconstruct ramps in specific areas under the transition plan may be increased to 13.5%; however, any requests for a change of a ramp that exceeds the City & County of Honolulu's adopted slope requirement will be addressed by the programmatic access policy, when a personal request is made this program will implement ramp reconstruction. Ramps will be addressed on a personal request basis to provide newly constructed ramp accessibility to the lowest slope possibly designed, constructed and provided. **EXHIBIT Q**

26. 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).

27. Capital Improvement and Privately Funded Projects

Capital improvement projects from the C&C and other large and privately funded project, such as the "Outrigger" Lewers Street project, shall be deferred until such time as knowledge of the project can be gained as to whether or not the project itself will be implemented or will be cancelled. At such time the project is cancelled, the ramps shall be folded into the next round of projects.

28. 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. It is recommended that a comprehensive approach and coordination City wide be implemented.

29. Capital Improvement Projects Regarding Ramps

There are approximately 1000 ramps that were proposed in the transition plan to be modified but have not been included in the transition plan implementation. These are designated as deferred ramps, due to the fact these specific ramps are included in a proposed Capital Improvement Project or the Bus Rapid Transit Project (BRT). The theory is that the City will implement these ramps at the time of the alteration project, capital improvement project, or the BRT project. These ramps will remain deferred until such time as the alteration project occurs or until it is known that the project itself is not going to

be implemented. At that time, the ramps and sidewalk corners contained in these specific projects that are also required to be modified by the transition plan will be designed and implemented in the next available curb ramp transition plan design and implementation plan package. **EXHIBIT R**

30. Construction

The contractors, which have been selected, have been providing excellent workmanship and extremely well built curb ramps. Their work quality is acceptable.

- a. Design – the quality of the construction is a direct result of excellent design by the architects, engineers and the review process of Wilson Okamoto
- b. Comparative quality – the comparative quality of the curb ramps being built in Honolulu exceed those of any other municipality which the court monitor has visited in the Country. There are several reasons for this and some of the reasons are a direct result of the cost of the ramps themselves, such as:
 - i) The process for Barrier identification is thorough;
 - ii) The ramps which are involved in the transition plan have topographical survey's performed on each and every ramp;
 - iii) Each and every ramp is then designed to be compliant to the maximum extent feasible under the new construction guidelines;
 - iv) This would account for the significant design cost; however, this process enables the ramps to be designed individually and therefore the result is that the ramps are of excellent design quality and of excellent accessibility levels; and
 - v) Furthermore, each one of these ramps is designed to include the removal of the gutter, which provides for a much greater, higher quality, design and construction, of compliant, usable ramps. This methodology of individual designs is creating a greater level of accessibility than any other municipality due to the fact that most of the municipalities provide "cookie cutter" designs that don't take slopes, grades, warpage, etc. into consideration. Most municipalities do not replace the gutter line, which creates a degree of lesser accessibility when the gutter line is removed and replaced. **(EXHIBIT O)**

31. Annual Report

Upon the conclusion of the transition plan, the City shall further monitor the number of ramps implemented by request basis and alterations, you touch it, you fix it and new construction.

32. **Semi-Annual Reporting**

It is the Court Monitor's recommendation that the City provide **annual** reporting in lieu of quarterly reporting of the curb ramp transition plan statistical data until the end of the execution period for implementation of the transition plan or on an informal verbal update upon request.

33. **Ramp Status**

All transition plan ramps exclusive of capital improvement projects or bus rapid transit projects are under implementation.

34. **Jurisdictional Transferability**

When the City & County receives jurisdictions that include ramps, the City will address included ramps under the transition plan criteria.