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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)
)

) FIFTH STIPULATION REGARDING
) CONSENT DECREE AND ORDER
) FILED MAY 5, 1997 AND ORDER;
) EXHIBIT 1
)

FIFTH 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 July 17, 2009, is approved. See Exhibit 1, 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, July 30, 2009.

/s/ Stanley E. Levin
STANLEY E. LEVIN
Attorney for Plaintiffs

/s/ Reid M. Yamashiro
REID M. YAMASHIRO
Deputy Corporation Counsel
Attorney for Defendant

APPROVED AND SO ORDERED:




Kevin S.C. Chang
United States Magistrate Judge

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

96-06545/83502

**MCCONNELL V. CITY AND COUNTY OF HONOLULU CURB RAMP
TRANSITION PLAN
COURT MONITOR'S INTERIM REPORT & STIPULATION**

1. Request Program

The ADA Title II regulations require that the city give priority to reasonable requests for accessibility modifications, i.e., request made by a qualified individual with a disability to provide access in areas that are not sloped or ramped, or ramped or sloped areas which are not usable by the qualified individual with a disability. The city, through the implementation of the Transition Plan has created a program by which qualified individuals with disabilities may request the alteration to, modification of existing ramps, or installation of a new ramp or ramps. The program is flawed in two respects: 1) the individual may request a ramp or series of ramps where the installation of the ramp is delayed by factors such as proximity to major alteration projects or capital improvement projects; and, 2) the request ramp may be delayed due to contract issues or other issues imposed by other city requirements. During the implementation and development of the evolving curb ramp transition plan the court monitor and project manager have discovered that the design and construction of personal request (program access required ramps) execution of construction have been delayed due to the procurement process. Due to this impediment to persons with disabilities, including those individuals who use wheelchairs civil rights, the court monitor recommends that the parties stipulate to language contained in the enclosed exhibit.

The court monitor recommends that these personal requests be put on an expedited timeline and taken out of any planned alteration projects or capital improvement projects. The request program and the installation of these personal requests ramps should not be subject to and should be exempt from procurement laws, ordinances and rules that would impede compliance with the ADA. All other non personal request based ramps and projects shall still be subject to the procurement laws, ordinances, and rules. See Exhibit A.

2. Bus Stop Status

The court monitor believes that the ADA Self Evaluation and Transition Plan requirements of the Consent Decree and Order in this case have been satisfied regarding access to bus stops. In paragraph 2(e) of the Consent Decree and Order in this case, it simply states "... that the Self-Evaluation and Transition Plan effort to address the needs of all individuals with disabilities with respect to accessible street and sidewalks, including access to bus stops." See Consent Decree and Order in Exhibit B and Document regarding elimination of bus stop issues relating to curb ramp transition plan Exhibit C.

Curb Ramp Deferments

Further curb ramp deferments are included in this stipulation due to the results of the usability assessment and reassessment process, and recent analysis of the implementation database and

field conditions for ramps which have been included in the Transition Plan as revised. Ramps which fall into this category will be addressed on a personal request basis. See **Exhibit D**.

3. 2008 Annual Report

The attached annual report describes the activities of the City & County related to the ADA Curb Ramp Transition Plan implementation. See **Exhibit E**.

Exhibit A:

**QUALIFIED PERSON WITH A DISABILITY PERSONAL
REQUEST FOR RAMPED OR SLOPE AREAS IN THE PUBLIC
RIGHTS-OF-WAY UNDER THE JURISDICTION OF THE
CITY & COUNTY OF HONOLULU**

The process of installing/modifying curb ramps or modifying existing accessible paths leading to curb ramps by request of a qualified individual with a disability shall be exempt from any procurements laws, ordinances, or rules including, but not limited to, Chapter 103D of the Hawaii Revised Statutes and Chapters 3-122 and 3-126 of the Hawaii Administrative Rules, based on Section 103D-102(b)(2)(C) of the Hawaii Revised Statutes. The city's decision to contract out the design, construction, or inspection of curb ramps that are requested by qualified individuals with disabilities shall not be subject to protest under Chapter 103D of the Hawaii Revised Statutes of Chapter 3-126 of the Hawaii Administrative Rules.