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DISTRICT OF HAWAII

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UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
JAN 04 2019  
at 11 o'clock and 14 min. AM  
SUE BEITIA, 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 JMS/KSC  
(Other Civil Action)

SIXTH STIPULATION  
TERMINATING CONSENT DECREE  
AND ORDER FILED MAY 5, 1997  
AND ORDER; EXHIBITS "A" - "E"

SIXTH STIPULATION TERMINATING CONSENT  
DECREE AND ORDER FILED MAY 5, 1997 AND ORDER

WHEREAS, Plaintiffs JIM MCCONNELL and MARK EDWARDS (hereinafter "Plaintiffs") filed this action against the CITY AND COUNTY OF HONOLULU (hereinafter the "City") in November 1996 alleging violations of Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. Section 12132 et seq. 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;

WHEREAS, the parties, in recognizing the importance of accessible streets and sidewalks, particularly curb cuts, in enabling individuals with ambulatory disabilities to move freely and independently throughout the City, entered into a Consent Decree and Order filed herein on May 5, 1997 and five separate stipulated agreements and orders between 1997 and 2009 (hereinafter "Consent Decree") to address the City's preparation and implementation of the Self-Evaluation and Transition Plan;

WHEREAS, the City completed the Self Evaluation on December 31, 1998 and implemented the Transition Plan on January 7, 1999.

WHEREAS, the parties have held regular status conferences with the Magistrate Judge and Court Monitor to ensure and maintain the City's progress in implementing its Transition Plan and its compliance with the Consent Decree;

WHEREAS, Court Monitor Paul Sheriff passed away unexpectedly in October 2017, and the parties do and hereby express their heartfelt sympathy to his family and relatives, as well as sincere appreciation for Mr. Sheriff's 16-year commitment to improving street and sidewalk accessibility under the Consent Decree;

WHEREAS, Ms. Kathryn Mendez from Paul Sheriff Incorporated has assumed the role of Court Monitor since Mr. Sheriff's passing;

WHEREAS, Mr. Bill Hecker, the City's consultant and a recognized expert in ADA compliance and accessibility standards, confirms that the City has substantially complied with the provisions of the Consent Decree, as detailed in his letter to the City dated June 28, 2018, attached hereto as Exhibit "A";

WHEREAS, the parties and the Court Monitor agree that the City has demonstrated substantial completion of the City's obligations under the Consent Decree;

WHEREAS, the City has developed a program that will appropriately address future curb ramp installation, as reflected in the City's (1) Accessibility Design Guidelines and General Policies and Procedures: Curb Ramps Within

Public Rights-Of-Way (“Curb Ramp Policy”), attached hereto as Exhibit “B”, (2) a timetable for award of construction contracts of the remaining Transition Plan curb ramps (“Construction Contract Timetable”), attached hereto as Exhibit “C”, and (3) a final report from the Court Monitor and Mr. Hecker summarizing the City’s achievements to date, attached hereto as Exhibit “D”; and

WHEREAS, the parties reaffirm and agree that re-surfacing and re-paving shall continue to be defined as “maintenance” activities, and not as “alterations” under 28 CFR 35.151. See Fourth Stipulation Regarding Consent Decree and Order Filed May 5, 1997 and Order, filed February 4, 2005.

WHEREAS, there are 238 unconstructed curb ramps remaining, of the original 6,342 intersections identified by the Transition Plan. Advertisement for bids for these remaining curb ramps will be held by July 2018. The City anticipates complete construction of these curb ramps by December 2020; and

WHEREAS, requests for the installation of new curb ramps within the City and County of Honolulu rights-of-way will be made through the City’s ADA Coordinator. These requests will be made by qualified persons with disabilities or a designated representative. Requests for new curb ramps will be reviewed and processed by the appropriate City department as determined by the City’s ADA Coordinator. Requests may be submitted using the City’s Curb Ramp Request Form, attached hereto as Exhibit “E”. The requestor must provide a written

description or sketch of the location(s) where curb ramps are needed for programmatic access to City services and/or facilities, including locations within public rights-of-way between an individual's home and bus stops, parks, or schools. Thereafter, the City will contact the requestor, and arrange to meet with the requestor either at the location(s) noted or at an alternate site, if the location(s) are not accessible.

WHEREAS, the City and County of Honolulu Department of Design and Construction (“DDC”) secured \$3,600,000 in Curb Ramps at Various Locations construction funding for Fiscal Year 2017 (\$2,000,000) and Fiscal Year 2018 (\$1,600,000) in the City’s Capital Improvement Program (CIP) budget for the construction of the 238 unconstructed curb ramps remaining. The City will use Rehabilitation of Streets construction funds from the City’s CIP budget to address any shortfalls in annual curb ramp construction funding. DDC will continue to seek \$2,000,000 annually for future curb ramp design and construction, subject to City Council approval; and

WHEREAS, the City will maintain on the DDC homepage a hyperlink to a City curb ramp webpage consisting of: (1) the Consent Decree and Order filed herein on May 5, 1997 and its accompanying stipulated agreements and orders, including this Sixth Stipulation; (2) the foregoing exhibits; (3) site inspection

reports, photos and videos; and (4) other archival documentation relating to curb ramp construction and Transition Plan compliance;

WHEREAS, the City shall provide training on the ADA and the City's Curb Ramp Policy ("ADA Training") to its employees who participate in the project planning, permitting, design, construction or inspection of City streets and sidewalks. The ADA Training shall be conducted by the City's ADA consultant, Wilson Okamoto Corporation, with the assistance of Mr. Hecker. The ADA Training shall cover the City's responsibilities under the ADA and include instruction on the appropriate use of the Curb Ramp Policy. Ramp design review by the engineering firm Wilson Okamoto Corporation shall continue for a period of 3 years as previously required by the Consent Decree and Order filed May 5, 1997.

WHEREAS, pursuant to *Kirola v. City and County of San Francisco*, 860 F.3d 1164 (9th Cir. 2017), the parties recognize that the "feature-specific" requirements of the ADA Accessibility Guidelines ("ADAAG") apply to public rights-of-way and, for the purposes of the Honolulu Design Guidelines, will apply to curb ramp and operable control design requirements, to the maximum extent feasible.

THEREFORE, IT IS HEREBY STIPULATED AND AGREED TO, by and between the parties herein, through their respective counsel, that this matter be

reinstated as provided in Paragraph 10 of the Consent Decree, for the purpose of applying this Court for an Order amending the Consent Decree to: (1) terminate the Consent Decree based on the substantial compliance by the CITY AND COUNTY OF HONOLULU (“City”) of all work and other requirements of the Consent Decree; and (2) dismiss the above-entitled action with prejudice based on the substantial compliance with all requirements of the Consent Decree by the City.

Based on the pleadings herein and this stipulation, the Court hereby makes the following findings:

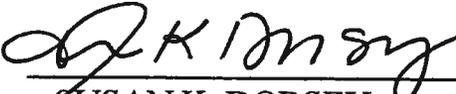
1. The parties hereto have agreed that the City has substantially complied with all required work and other requirements of the Consent Decree.
2. The parties hereto have agreed to the dismissal of the above-entitled action with prejudice.
3. Pursuant to Section 9 of the Consent Decree and Order, the City agrees to pay Plaintiffs \$6,000.00 in attorney's fees and costs from September 14, 2018 to the date of this stipulation.

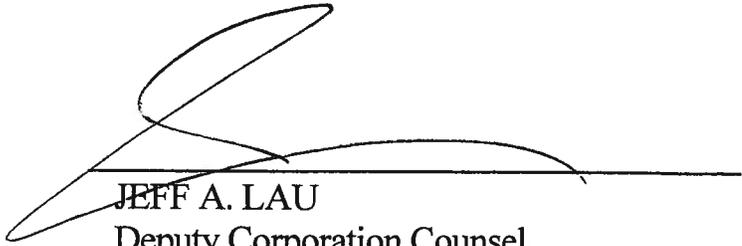
Based upon these stipulations by the parties and the findings of this Court, the Court hereby orders as follows:

1. That the terms and requirements of the Consent Decree having been substantially complied with, the Consent Decree herein is terminated; and

2. That the above-entitled action is dismissed with prejudice.

DATED: Honolulu, Hawaii, JAN - 3 2019.

  
\_\_\_\_\_  
SUSAN K. DORSEY  
Attorney for Plaintiffs

  
JEFF A. LAU  
Deputy Corporation Counsel  
Attorney for Defendant

APPROVED AND SO ORDERED:

**J. MICHAEL SEABRIGHT**  
\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT



CIVIL NO. 96-01111 JMS/KSC, MCCONNELL, ET AL. V. CITY AND COUNTY OF HONOLULU - SIXTH STIPULATION TERMINATING CONSENT DECREE AND ORDER FILED MAY 5, 1997 AND ORDER; EXHIBITS "A" – "E"

96-06545/677307

# Hecker Design

Limited Liability Company



## Bill Hecker, AIA Accessibility Consultant

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AV-S Alchemy

June 28, 2018

Jeff A. Lau, Deputy Corporation Counsel  
**City and County of Honolulu**  
530 South King Street - Room 110  
Honolulu, HI 96813

re: Completion of ADA Consent Decree Requirements  
**Jim McConnell, et al. v. City & County of Honolulu**  
Civil Case No. 96-01111 DAE USDC District of Hawaii

Greetings Mr. Lau,

Pursuant to the fourth paragraph on page 2 of Judge David Ezra's Consent Decree and Order filed on May 5, 1997, I am the "recognized expert in ADA compliance" retained by Honolulu and acceptable to Plaintiff's Counsel. I prepared, with the assistance of Wilson Okamoto Corporation, Honolulu's ADA Curb Ramp Transition Plan (dated 1/13/99) and Self Evaluation Report (dated 12/31/98) required by the Consent Decree and the various Stipulated Agreements in this matter. I also provided continuous technical assistance to the City and its contracted engineering firms during the implementation of the ADA Curb Ramp Transition Plan.

Working closely with the City's Department of Design and Construction and Wilson Okamoto Corporation, I have personally visited and observed hundreds of Honolulu's curb ramp installations and/or modifications, trained City staff on ADA design and construction "best practices" within the public right-of-way, helped develop the City's current accessible design guidelines for pedestrian facilities in the public right-of-way, and have offered technical assistance throughout the City's ADA curb ramp implementation efforts.

Based on my direct observations and the information provided me by the City on its implementation efforts, I can attest to the best of my knowledge, information and belief, that the City and County of Honolulu has met the provisions of the Consent Decree and its various Stipulated Agreements. Specifically, the City and County of Honolulu has:

1. ...hired a "recognized expert in ADA compliance" to be the consultant that along with Wilson Okamoto Corporation, developed the ADA Self Evaluation and Transition Plan "...addressing the installation of curb cuts as required by 28 CFR Sec. 35.150(d)(2)..." and these proposed plans were offered for public review and comment. The City's Self Evaluation report included "...an evaluation of all the City's policies and practices

EXHIBIT A

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...". This ADA analysis also addressed the needs of "...all individuals with disabilities with respect to accessible streets and sidewalks, including access to bus stops."

2. ...appointed an ADA Coordinator as required by 28 CFR 35.107(a).
3. ...established a grievance procedure in accordance with 28 CFR 35.107(b) and specifically addresses complaints and requests related to the installation or modification of curb cuts in the City's rights-of-way.
4. ...addressed, as required by the Consent Decree and the various Stipulated Agreements, each of the curb ramp installation or modification recommendations cited in the ADA Curb Ramp Transition Plan.
5. ...appropriately used the ADA exception where it was "technically infeasible" to make curb cuts fully accessible due to existing physical or site constraints.

The City and County of Honolulu, as one of the first major cities in the United States to be called on by the Court to systematically address ADA curb cut installations, has done a very good job with its curb ramps. I believe Honolulu to have installed through its ADA Curb Ramp Transition Plan or via responses to individual curb cut requests, some of the most accessible curb ramps in the nation, often in locations with very challenging existing site constraints. It has been a pleasure and an honor to assist Honolulu in this exemplary effort to make curb ramps more accessible.

Warmest Regards...



**Bill Hecker, AIA**  
Accessibility Consultant

Based on my continued involvement during the entire implementation of the Consent Decree requirements, I can attest to the best of my knowledge, information and belief, that the City and County of Honolulu has met the provisions of the Consent Decree and its various Stipulated Agreements.



**Pete Pascua, PE**  
VP & Director of Traffic Engineering - Wilson Okamoto Corp.

***CITY & COUNTY OF HONOLULU***

***General Accessibility Design Guidelines  
and  
Policies and Procedures***

***Curb Ramps within  
Public Rights-of-Way***



September 2018

EXHIBIT B

## **PREFACE**

This Accessibility Design Guidelines and General Policies and Procedures document was developed by the City & County of Honolulu, to assist engineers in the design and construction of accessibility elements for curb ramps and the abutting sidewalk facilities within the public rights-of-way for projects under the purview of the City & County of Honolulu. The recommendations of this publication are intended for the use of engineers and others who design pedestrian facilities to provide accessibility for individuals who are physically impaired. Engineers who use the document should employ the fundamental principles of engineering and good engineering judgment in the development of the construction plans and specifications.

This document consists of two parts –

Part 1, **GENERAL REQUIREMENTS**, contains general accessibility and scoping requirements for curb ramp and sidewalk projects.

Part 2, **DESIGN PROCEDURES AND TECHNICAL CONSIDERATIONS**, contains design procedures to be used by the engineer to design the accessibility elements.

The Appendices provide a Curb Ramp Request Form and sample Site Assessment Checklist.

These design guidelines and policies are not intended to be an all-encompassing document to consider the various situations unique to all agencies, and therefore, other agencies may deem it appropriate to modify the principles set forth in this document to suit their individual agency requirements for their particular facility improvements. The engineers should coordinate with their respective client agencies to confirm the applicable guidelines and policies to follow for their respective projects.

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## **1. GENERAL REQUIREMENTS**

The Americans with Disabilities Act (ADA) is a broad and inclusive civil rights law protecting those with physical, sensory or mental impairments. It requires all newly constructed improvements in the City's public right-of-way to be "readily accessible to and usable by" persons with disabilities, but there are no public rights-of-way standards published at this time to define exactly what that means in terms of ADA compliance.

The United States Architectural and Transportation Barriers Compliance Board (the Access Board) is an independent Federal agency responsible for developing accessibility guidelines under the ADA. The Access Board convened a Public Rights-of-Way Access Advisory Committee (PROWAAC) to address access to public rights-of-way for people with disabilities. PROWAAC has issued proposed guidelines and closed the comment period but has not yet issued final guidelines. The Proposed Guidelines for Public Rights-of-Way (PROWAG) were issued in the *Federal Register* July 26, 2011 (36 CFR Part 1190) for public comment.

This document is consistent with the Court Orders in *McConnell v. City & County of Honolulu* ADA settlement, design provisions of the Americans with Disabilities Act Standards for Accessible Design (2010 ADA Standards-28 CFR Part 36, Appendix A revised Sept. 15, 2010), PROWAG, and ADA technical assistance documents published by the DOJ and FHWA. The Stipulated Agreements associated with the aforementioned Court Orders are provided in the Appendix.

In addition, for purposes of these Honolulu Design Guidelines, the ADA accessibility requirements contained in 28 CFR 35.151, 28 CFR part 36 subpart D, and 36 CFR Parts 1190 and 1191 will be applied to curb ramp and operable control design requirements to the maximum extent feasible. *See Kirola v. City and County of San Francisco*, 830 F.3d 1164 (9th Cir. 2017).

### **1.1 CURB RAMP IMPROVEMENTS WITHIN THE PUBLIC RIGHT-OF-WAY**

This document is a guide for determining when sidewalk or roadway projects trigger the need to modify existing curb ramps or to construct curb ramps where none currently exist. Such curb ramps shall be designed to provide ADA compliance to the maximum extent feasible. The appropriate Technical Infeasibility or Structural Impracticability statements, if necessary, should be filed with DCAB.

#### **1.1.1 "You Touch It/You Fix It" Trigger**

If a project/work touches an existing curb ramp or the area in which an accessible curb ramp is required but does not currently exist, then appropriate curb ramp modification or construction must be addressed. (See Figures 1 and 2).

Projects/work shall not gap or avoid the curb ramp area for the purpose of avoiding this trigger.

**EXCEPTION:**

Maintenance and repair work performed by the Department of Facilities Maintenance (DFM) to correct a safety hazard for pedestrians DO NOT TRIGGER a requirement to install a new or to modify an existing curb ramp based on Court Ordered provisions.

**1.1.2 Alterations Trigger**

If a roadway or sidewalk undergoes an alteration that affects usability for pedestrians, then appropriate curb ramp modifications or construction must be addressed at the applicable intersection(s). Alterations to roadways and sidewalks are defined as follows:

- Sidewalk Improvements – reconstruction, widening or alterations (other than maintenance) of concrete or asphalt concrete sidewalks which exceed 50% of the City block between the nearest curb returns of the intersecting streets.
- Roadway Widening Projects – construction of road improvements which alter the pavement width and provide for concrete and/or asphalt concrete sidewalk improvements.
- Major improvement projects – projects which modify the sidewalk at pedestrian crossing locations (e.g. intersection reconstruction, traffic signal installation/relocation).
- Installation of new crosswalk marking where crosswalk did not currently exist.

**EXCEPTIONS:**

The following are NOT considered alterations and DO NOT TRIGGER a requirement to install a new or to modify an existing curb ramp based on Court Ordered provisions.

- (1) Installation and alteration of street lights poles/fixtures or traffic cameras
- (2) Maintenance re-striping or modification of existing pavement markings, including new bikeways/bike lanes, but excluding crosswalk modifications
- (3) Installation of fixed street furnishings

- (4) Installation of water main connection laterals
- (5) Curb ramp modifications/installations under the transition plan or as part of the “needs based” request process
- (6) Installation of new pedestrian signal controls
- (7) Installation of new signage
- (8) Installation of parking meters or marked stalls
- (9) Installation of newspaper and tourist brochure dispensers
- (10) Installation of landscaping within the right-of-way
- (11) Resurfacing and rehabilitation of streets which is maintenance required to extend the useful life of the roadway and do not alter the basic configuration of the existing roadway width
- (12) Patching potholes and other minor maintenance within the road or sidewalk
- (13) Micro-tunneling or other "trenchless" construction method
- (14) Trenching in Roadway
- (15) Maintenance and repair work performed by DFM

Projects exempt from the **curb ramp** requirements must still ensure that the other elements worked on are made accessible to the maximum extent feasible. Any otherwise exempt project which encroaches into the curb ramp area falls under the “You Touch It/You Fix It” Trigger and triggers the curb ramp requirement (i.e. “You Touch It/You Fix It” takes precedence).

### **1.1.3 Relationship to Transition Plan**

The City and County of Honolulu is responsible for the implementation of curb ramps to provide program accessibility in accordance with the Americans with Disabilities Act, Final Transition Plan Related to Curb Ramps, January 7, 1999. This document is used as a basis for the design of the Curb Ramp Transition Plan. The Department of Design and Construction (DDC) took the lead for such implementation. The Transition Plan curb ramps are maintained in a database and the City anticipates incorporating these ramps into the City’s GIS.

### **1.1.4 Orphan Curb Ramps**

Where an alteration project triggers the requirement to install a new curb ramp or to modify an existing curb ramp based on Court Ordered provisions, the project shall also provide for compliant curb ramps at the other street crossing(s), including crossings to unimproved streets to provide a safe haven for people in wheelchairs.

#### **1.1.5 Private Developers and Utilities**

The Department of Planning and Permitting shall be responsible for enforcing these policies on private developers, utilities and property owners requesting permits to build, construct, alter, or modify a curb ramp area within the City rights-of-way.

### **1.2 SIDEWALKS WITHIN THE PUBLIC RIGHT-OF-WAY**

#### **1.2.1 “You Touch It/You Fix It” Trigger**

Any **sidewalk** within the public right-of-way that affects pedestrian usability which is being altered shall, to the maximum extent feasible, meet the new construction requirements of the 2010 ADA Standards, PROWAG recommendations, and this document.

The trigger for Curb Ramps is addressed in Section 1.1.

#### ***EXCEPTIONS:***

Where elements are altered or added to existing facilities, but the sidewalk is not altered, the sidewalk is not required to be modified. However, features that are added shall be made accessible to the maximum extent feasible.

Sidewalk maintenance and repair work performed DFM are not considered alterations under these guidelines and do not trigger any additional work in the surrounding vicinity.

#### **1.2.2 Private Developers and Utilities**

The Department of Planning and Permitting shall be responsible for enforcing these policies on private developers, utilities and property owners requesting permits to build, construct, alter, or modify a sidewalk within the City rights-of-way.

### **1.3 DETECTABLE WARNINGS**

#### **1.3.1 Projects Funded with Only City & County of Honolulu Funds**

City funded projects within the public rights-of-way will be deferring the incorporation of the detectable warning elements until an acceptable design of the detectable warnings has been finalized in future public rights-of-way sections of the ADA Standards for Accessible Design.

### **1.3.2 Projects Funded with Federal Funds**

New federally funded projects which provide improvements to the roadway/sidewalk facilities will incorporate detectable warning elements into the curb ramp designs as required by that federal agency.

## **1.4 PEDESTRIAN SIGNALS**

Installation of pedestrian signals is primarily the responsibility of the Department of Transportation Services (DTS). Individual requests for accessible (i.e., audible) pedestrian signals are handled through the DTS.

## **1.5 BUS STOPS AND SHELTERS**

Installation of bus stops and shelters is primarily the responsibility of the Department of Transportation Services. New and altered bus stops and shelters are required to comply with the US Department of Transportation's 2006 ADA Standards for Accessible Design and ADA regulations at 49 CFR Part 37.

## **1.6 DISABILITY COMMUNICATION ACCESS BOARD (DCAB)**

All plans and specifications for the construction of state and county buildings, facilities, and sites must be reviewed by State of Hawaii - Disability and Communication Access Board (DCAB), under §103 Hawaii Revised Statutes. A document review is required for all projects with plans and specifications as noted in 1.1 through 1.3.

Several forms are relevant to alteration projects in the public right of way:

- Technical Infeasibility Form – DCAB review needed for alteration projects claiming technical infeasibility when the 2010 ADA Standards are not being met.
- Structural Impracticability Form - DCAB review needed for new construction projects claiming structural impracticability when the 2010 ADA Standards are not being met.
- Historic Preservation – DCAB review needed for alteration to a qualified historic facility when the 2010 ADA Standards are not being met.

DCAB forms can be found on their website at:  
<http://health.hawaii.gov/dcab/facility-access/forms/>

Deviation from the guidelines will be documented on the appropriate DCAB forms. For City & County of Honolulu projects, the Director of the respective Department or his/her designee is authorized to approve deviations of curb ramp standards on the Technical Infeasibility (TI) statement forms. Supporting documentation will include plan drawings of location, drawing of curb ramp detail, elevations and existing conditions (e.g. slope of adjacent roadway), and color photo of the existing condition.

For new construction of pedestrian facilities, a Structural Impracticability (SI) statement form will be prepared with the appropriate supporting documentation as necessary. Signature and necessary approvals of the SI statement shall be determined by the respective agencies. Supporting documentation will include plan drawings of location, drawing of curb ramp detail, elevations and existing conditions (e.g. slope of adjacent roadway), and color photo of the existing condition.

### **1.7 ADA COORDINATOR'S ROLE**

Title II of the ADA requires all state or local government entities with 50 or more employees to appoint a responsible person to coordinate the administrative requirements of ADA compliance and to respond to complaints filed by the public. The name and contact information for the responsible person is required to be publicly advertised.

The current City and County of Honolulu ADA Coordinator is:

Denise Tsukayama  
Equal Opportunity Officer  
City & County of Honolulu  
925 Dillingham Blvd., Suite 180  
Honolulu, HI 96817  
dtsukayama@honolulu.gov  
(808) 768-8505 (v)  
(808) 768-8490 (fax)

The City and County of Honolulu ADA Coordinator is responsible for overseeing the development and maintenance of these guidelines, coordinating efforts to ensure that the policies are integrated into the daily operation of the City, and receiving, assigning, resolving, where appropriate, and investigating complaints related to discrimination on the basis of disability, as applicable.

### **1.8 REQUEST PROCEDURES**

Requests for the installation of new curb ramps within the City and County of Honolulu rights-of-way shall be made through the City and County of Honolulu ADA Coordinator. These requests shall be made by qualified persons with disabilities or a designated representative. Requests for new curb ramps shall be reviewed and processed by the appropriate City and County of Honolulu department as determined by the City's ADA Coordinator.

Requests may be submitted through the City and County of Honolulu's Curb Ramp Request Form (See Appendix).

## **2. DESIGN PROCEDURES AND TECHNICAL CONSIDERATIONS**

The purpose of this section is to provide appropriate guidance necessary to address common and unique conditions in the public rights-of-way. Various constraints posed by space limitations at sidewalks, roadway design, slope, and terrain require unique designs of curb ramps and pedestrian facilities.

### **2.1 SITE INVESTIGATION**

A site assessment will be conducted by all design consultants. The site assessment should include an overall plan identifying each location assessed, a color photo, site assessment checklist (see Appendix), and conceptual plan of the proposed curb ramp location, applicable walkways leading to and from the proposed curb ramp location, and corridor accessibility, as applicable.

#### **2.1.1 Locations Without Existing Curb Ramps**

The following additional detailed information shall be provided for locations without existing curb ramps:

- (1) Verify if there are existing concrete or asphalt concrete sidewalk facilities adjoining the proposed curb ramp; note if there is special surface texture/pattern of the sidewalk facility.
- (2) Identify major physical infrastructure elements within the proposed curb ramp area that may significantly impact the curb ramp design (pullboxes, drain inlets, traffic signal standards, pedestrian pushbuttons, traffic signal controller cabinet, HECO vaults, street light standards, etc.).
- (3) Identify the presence of existing trees (by species, if possible) within vicinity (15 feet min.) of the proposed curb ramp area; note approximate caliper and canopy dimensions; protruding surface roots; photo; any noted root damage to sidewalks, curbs, etc.
- (4) Note physical obstructions or barriers (utility pole, tree, narrow sidewalk, etc.) along the improved paths leading to the proposed curb ramp area.
- (5) Identify orphan curb ramp conditions (i.e., a curb ramp on only one side of a pedestrian crossing).
- (6) Note presence of relatively level area (1:50 max. slopes) behind sidewalk at intersection corner that appears to be used as an access to the adjacent property such as doorway, gate, walkway, etc.
- (7) Identify the presence of an existing concrete gutter at the intersection corner. Determine the thickness of asphalt concrete overlay, if applicable, over the

existing concrete gutter at the gutter invert and at the gutter lip where the gutter meets the roadway. Note the dimension of the curb reveal.

### **2.1.2 Locations with Existing Curb Ramps**

The following additional detailed information shall be provided for locations with existing curb ramps:

- (1) See items in Section 2.1.1.
- (2) Develop sketch of existing curb ramp(s) and provide measurements of the existing curb ramp slopes and critical widths.

### **2.1.3 Locations with Existing Traffic Signal Systems or Other Utilities**

The following additional detailed information shall be provided for locations with existing traffic signal systems:

- (1) See items in Section 2.1.1 and 2.1.2.
- (2) Note location of existing traffic signal standards, pullboxes, traffic signal controller cabinets (identify mounting of controller cabinet if on pedestal or flush on concrete foundation). Note location and type of existing pedestrian pushbuttons.
- (3) Identify any fiber optic facilities.

## **2.2 CURB RAMP TECHNICAL REQUIREMENTS**

### **2.2.1 General Design Principles**

- (1) **Best Design Practice.** The simplest way to avoid problems with construction tolerances related to surface accessibility and other accessible elements is to design for slopes and dimensions that are slightly less than maximums and slightly more than minimums. If possible, design curb ramps with a running slope of 7.1% (1:14) and a cross slope of 1.5% (1:67). Design landing areas and sidewalks with a slope of 1.5% (1:67). Planning for these lower slopes allows for construction inaccuracies while still not exceeding the maximums.
- (2) **Orphan Curb Ramps.** Avoid and/or eliminate orphan conditions. Orphan conditions occur when there is only one curb ramp serving a given pedestrian crossing, and a person with a disability enters the roadway without noticing the lack of an accessible curb ramp on the opposite side. This can place the disabled user in the unsafe position of having to “back track” across active lanes after the walk light for the individual has changed or having to traverse additional crossing distances at unsignalized crossings. Curb ramps and island cuts should be designed as though the pedestrian crossing were a single

element, only accessible if all the pieces that make up the island cuts are accessible. In areas where there are curbs but no accessible sidewalks on the opposite side, designers shall consider providing a curb ramp and adjacent landing to serve as a safe haven on the opposite side for disabled users to move out of the way of oncoming traffic.

- (3) **Tripping Hazards.** Overall safety shall be a consideration in designing curb ramps; avoid tripping hazards such as raised curbs within pedestrian routes. Abrupt level changes greater than 1/4" constitute tripping hazards and may cause wheelchairs to stop abruptly and unexpectedly, throwing the user out of the chair.
- (4) **Crossings and Sidewalks to Nowhere.** Curb ramps should be constructed at locations where adjoining sidewalks service places or public accommodations at adjacent properties and are part of an overall public pedestrian facility. These conditions will be evaluated with the City on a case-by-case basis. Alteration projects must include curb ramps if there is an existing sidewalk or a new sidewalk is proposed. A curb ramp or sloped transition must be provided at the end of a stretch of newly constructed or altered sidewalk for which there is no opposite sidewalk to allow wheelchair users access to the roadway.
- (5) **Curb Ramp Details.** Curb Ramp Details shall be included in project plans to indicate curb ramp compliant slopes and linear dimensions. Site-specific plan sheet designs shall reflect calculated slopes. The Typical Details shall comply with the 2010 ADA Standards, PROWAG, and technical assistance documents from the DOJ and FHWA.
- (6) **Ponding Issues.** Positive drainage flow of the roadway runoff will be provided in the curb ramp design; surface water ponding in the curb ramp area will be avoided. If the roadway slope is relatively flat (less than 1:50), a Type B curb ramp is not recommended; consideration will be given to the design of a Type A or Type B (Truncated) curb ramp that limits the potential for ponding.
- (7) **No Step at Adjoining Property Accesses.** Avoid Type "B" curb ramps adjacent to pedestrian walkways/pathways to private property. Accessible paths should be maintained, and potential hazards should be avoided.
- (8) **Roadway Transitions at Bottom of Curb Ramps.** A typical 2-foot asphalt concrete pavement transition shall be identified in the required Curb Ramp Details. The pavement transition shall also be drawn on the plans and will be limited to not more than one travel lane.
- (9) **Technical Infeasibility and Structural Impracticability Forms.** In cases where maximum slopes and minimum linear dimensions are exceeded, submit a signed Technical Infeasibility (TI) Statement or Structural Impracticability Form (SI) as described in Section 1.6.

- (10) **Warping Not Permitted.** Transition warps in the gutters, ramps, and landings are not permitted; ramps and/or landings shall conform to the adjacent roadway slope (road grade) if the existing roadway slope exceeds 1:50.
- (11) **Counter Slope Limitation.** The algebraic sum of intersecting plane slopes at plane breaks is limited to 13% with each plane slope not to exceed 1:12 unless conditions apply to “technical infeasibility” limitations.
- (12) **Apex or Perpendicular Curb Ramp Designs.** A 4-foot minimum bottom landing shall be provided within striped crosswalk markings or within the tangent curb line extensions for unmarked crosswalks of Type A and Type B Truncated curb ramps placed at the apex of the corner to serve two crossing directions. Ensure that a minimum 24" section of curbing is included within the marked crosswalk for Type A curb ramps serving two crossing directions to accommodate blind pedestrians using a cane. (See Appendix T-1).
- (13) **Crosswalk Markings.** Re-stripe entire crosswalks with international markings if a significant portion of the existing crosswalk markings is required to be re-striped in construction.
- (14) **Arborist Required.** If a tree is located within the vicinity of a curb ramp
  - i. (15 feet min.), consult with the appropriate City agencies/Departments after preparation of the site assessment or consult with an arborist authorized by the City to determine if special considerations need to be taken in the design or identified in the project plans for the contractor.
- (15) **Private Property Encroachments.** Curb ramp design shall be within the City’s right-of-way, to the extent possible. The project may seek an easement to ensure that any curb ramp in private property remains fully accessible.
- (16) **Matching Adjoining Paving Finishes.** Special texture or finish of existing sidewalks will be matched with the curb ramp design, to the extent possible.
- (17) **Pull Boxes, Catch Basins, Vaults, Etc.** Special attention should be given to avoid relocation of existing traffic signal poles, pull boxes, and traffic signal controller boxes, drainage catch basins, and HECO vaults within the curb ramp areas. Relocate traffic signal and street lighting pull boxes outside of the curb ramp; approval by DTS/DDC-MEDE is necessary to leave the pull box in the curb ramp area.
- (18) **Pedestrian Signal Pedestals at Parallel Curb Ramps.** Traffic signal push button poles, located at the back of the landing, will require the modification to the width of the grade adjustment curb to 12”; the height of the pushbutton will be as shown on Figure 4.

- (19) **Relocation of Signal Poles.** If the relocation of a traffic signal pole will impact the orientation of the traffic signal head, the designer will provide for replacement heads and brackets unless an assessment has been done/concurred by DTS allowing existing traffic signal head and brackets to remain.
  
- (20) **Existing Gutter with A.C. Overlay.** Coordination should be made with DDC to determine if special considerations need to be taken in the design of the curb ramp which may include designing the new curb ramp and concrete gutter to match the grade of the A.C. overlay.
  
- (21) **Rolled Curbs.** Type A or Type B (Truncated)” curb ramps at sidewalks with existing rolled curbs shall extend to the gutter invert of the rolled curb. For Type B curb ramps, rolled curb transitions conforming to the City and County of Honolulu’s Standard Detail R-6 “Rolled Curb Transition to Curbs and Catch Basins”, as amended; shall be constructed.
  
- (22) **Horizontal Control Points.** Curb ramp designs will have a minimum of two horizontal control points (azimuth and distance).

### **2.2.2 Fundamental Curb Ramp Requirements**

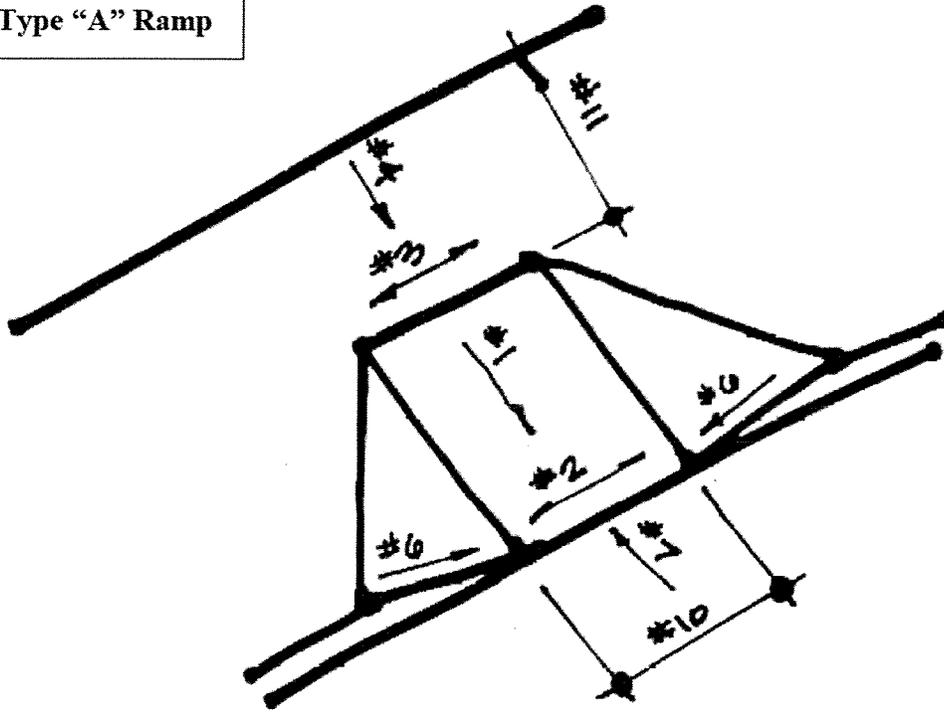
**The following applicable items are identified in the corresponding diagrams of the various curb ramp types:**

1. 1:12 maximum curb ramp slope.
2. 1:50 maximum curb ramp cross-slope (match street grade when roadway slopes exceed 1:50).
3. 1:50 maximum landing running slope.
4. 1:50 maximum landing cross-slope.
5. 1:12 maximum flare slopes (Type A) when full 48" deep top landing area (Item #11) is not provided, as in TI situations where no other curb ramp design is possible.
6. 1:10 maximum desired flare slope (Type A) when top landing is provided. (Use 1:10 relative flare slope regardless of existing sidewalk slope)
7. 1:20 maximum gutter counter-slopes fronting Type A curb ramp.
8. 1:12 maximum gutter counter-slope fronting Type B curb ramp.
9. 36" minimum pedestrian path (48" minimum desirable. 32" minimum is adequate if horizontal constriction is equal to or less than 24" and constriction is technically infeasible to modify).
10. 48" minimum ramp width.
11. 48" minimum top landing depth for Type A curb ramps with no obstruction at rear.
12. 48" minimum bottom landing within striped markings or within the tangent curb line extensions for unmarked crossings (landing slope requirements are not applicable for bottom landings for Type A curb ramps since landing is within road pavement area).
13. Landing areas for Type B curb ramps shall be large enough to fit an imaginary 5-foot diameter circle (4-foot for ramps without a back curb greater than 3 inches in height or other constraint at the back of the sidewalk).
14. Ramp lengths for Type B curb ramps shall be limited to a maximum of 15 feet to accommodate slope of roadways and TI form is required.
15. Design of transitional warps in the gutter and/or curb ramps shall not be permitted in the design of curb ramps.
16. 36" long minimum transition when matching curb ramp to existing sidewalks/walkways with cross slopes exceeding 1:50 (additional transition length may be required when matching curb ramp to existing sidewalks/walkways with severe cross-slopes).
17. A single curb ramp designed at the apex of the curb return is acceptable for transition plan ramps, new construction and alteration projects shall have a ramp for each crossing direction provided, unless infeasible.
18. Align curb ramp with sidewalk and crosswalk if possible to aid visually impaired users.

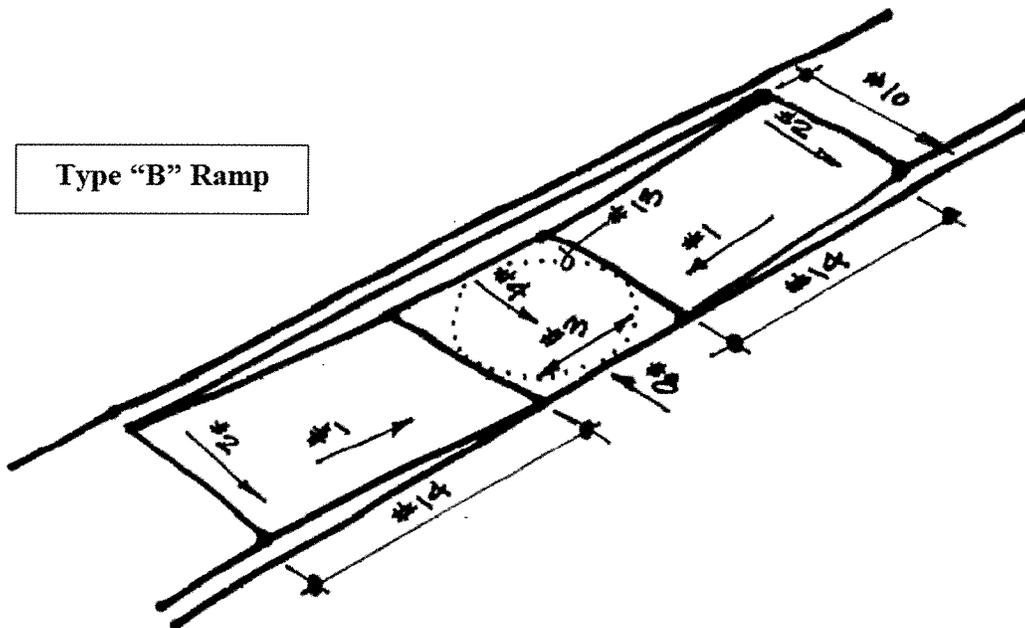
19. 60" minimum wide median opening (72" minimum desirable) for two-way pedestrian traffic aligned with crossing.
20. 1:20 maximum running slope for median cuts. For running slopes greater than 1:30, provided 4-foot top level landing. In cases with pedestrian pushbuttons in the median, provide a minimum level area (maximum 1:50 slope) of 30" x 48" adjacent to the pushbutton regardless of median cut running slope.
21. 1:50 maximum cross slope for median cuts. (Match the street grade when roadway slopes exceed 1:50).
22. Locate pedestrian signal pushbuttons adjacent to clear level area of 30" x 48" if no maneuvering is required to activate pushbuttons. If maneuvering is required, locate pushbuttons adjacent to clear level area of 60" x 60". Provide ADA-compliant pushbutton.
23. Place control face of pushbutton parallel to direction of marked crosswalk and no more than 10" outside of the long side of the adjacent 30" x 48" clear level area.
24. Provide 10 feet minimum separation between pushbuttons for different crossing signals, if feasible.
25. If two curb ramps are provided on a corner, provide 4-foot level (1:50 maximum slope in all directions) separation between curb ramps.

Numbering applies to Section 2.2.2 Fundamental Curb Ramp Requirements

Type "A" Ramp

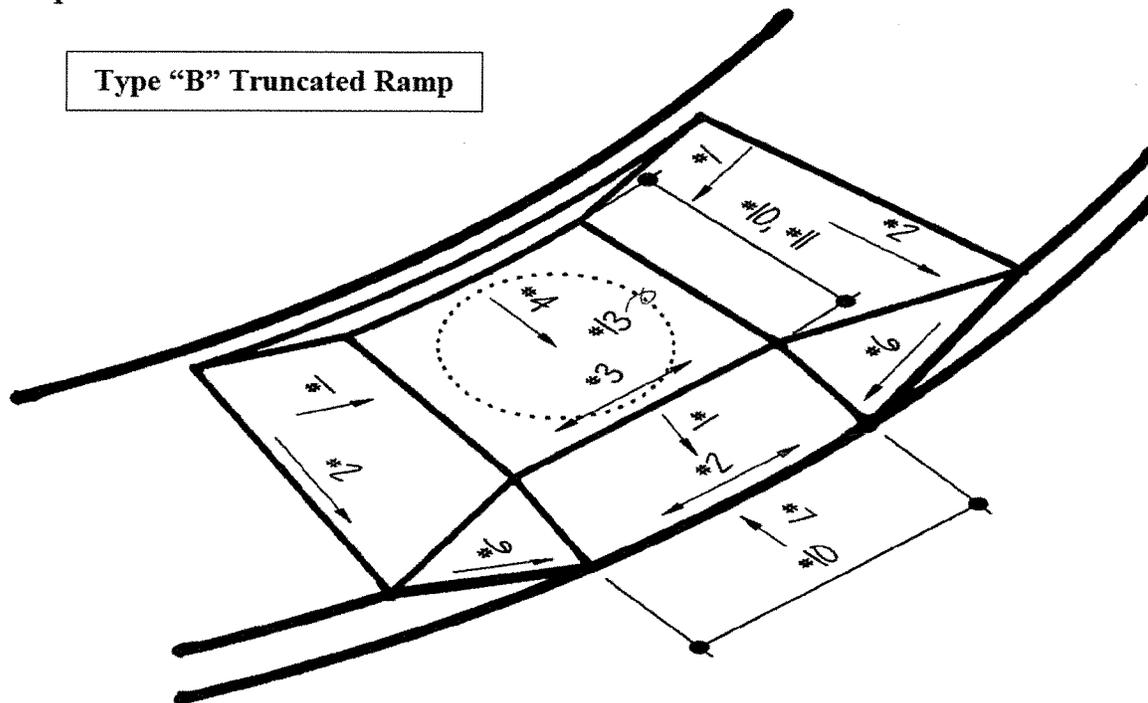


Type "B" Ramp

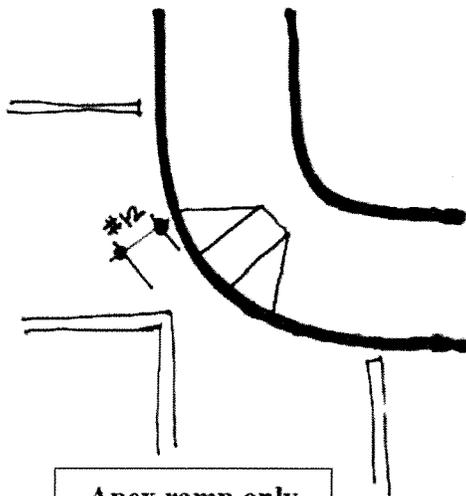


**Numbering applies to Section 2.2.2 Fundamental Curb Ramp Requirements**

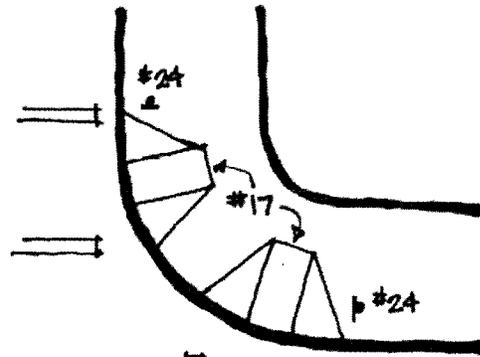
Type "B" Truncated Ramp



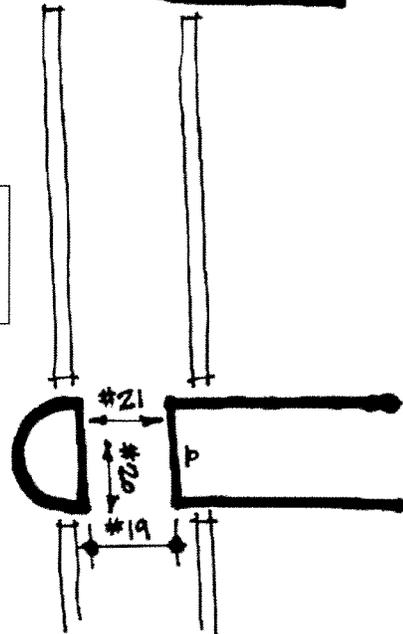
Numbering applies to Section 2.2.2 Fundamental Curb Ramp Requirements



Apex ramp only  
for transition  
plan projects!



Island cut and  
two ramps per  
corner design



## **2.3 SIDEWALK TECHNICAL REQUIREMENTS**

### **2.3.1 Fundamental Sidewalk Requirements**

- (1) New sidewalks shall, in general, conform to the requirements for an accessible route, 2010 ADA Standards 403, as amended, with the following exceptions based on Court Ordered provisions.

#### ***EXCEPTIONS:***

Exception #1: **Cross Slopes.** The cross slope requirements shall not apply where the connection of a curb ramp, curb ramp landing, or other portion of the accessible pedestrian route intersects a roadway and/or gutter having a longitudinal slope greater than 1:50. In these cases the bottom portion of the curb ramp, the curb ramp landing or a portion of the gutter at the bottom of these elements shall be constructed parallel to the adjacent road grade.

Exception #2: **No Ramp Features in Right-of-Way.** The maximum 1:20 running slope allowance for walkways in 2010 ADA Standards will be disregarded when the adjacent road grade exceeds 1:20 and these steep portions of sidewalks shall not be considered ramps, nor will the 2010 ADA Standards requirements for ramp landings, edge protection, handrails, etc. be mandated.

Exception #3: **Sidewalks on Short Radius Corners.** The slope and cross slope requirements shall not apply where the roadway ascends or descends at a tight turn – the sidewalk on the inner radius of the turn may have a steeper slope and/or cross slope than 1:50, but must be the least feasible slope and/or cross slope consistent with the slopes established for the adjacent roadway.

- (2) **Accessible Pedestrian Path.** Provide preferred 48-inch (minimum 36-inch) width of accessible pedestrian path; width may be reduced to 32 inches if the constricted area is no longer than 24 inches. Maximum 1:50 cross slope preferred (See Figure 5)
- (3) **Turning Area.** If the pedestrian is required to make a 180-degree turn around an object within the accessible route that is less than 48 inches wide, the minimum clear width of the pedestrian path is 42 inches on the approach and departure, and 48 inches at the turn maneuvering area. (See Figure 5)
- (4) **Minimum Clear Area.** A minimum clear area of 60 inches by 60 inches must be provided at a maximum of 200-foot intervals along the pedestrian route. (See Figure 6)
- (5) **Driveway Design.** New and/or modified existing driveways along existing sidewalk or new sidewalk alignments will conform to the City and County of Honolulu's Standard Detail R-29A, as amended; design of the driveway apron

will consider the potential for vehicles “bottoming-out” due to the slope differentials of the driveway. (See Figure 7)

- (6) **Protruding Objects.** Vertical and horizontal clearances along the pedestrian path will conform to Figure 8.
- (7) **Sidewalk Additions.** New sidewalk additions must be constructed to comply with new construction requirements, except for the transition segment between new and existing sidewalks. (See Figure 9)

## **2.4 PEDESTRIAN SIGNALS – TECHNICAL REQUIREMENTS**

When altered as part of a City and County of Honolulu project, pedestrian signals will conform to Figure 4 to the extent feasible. Coordination should be made with DTS as to the location of the traffic signals at the specific site.

## **2.5 MEASUREMENTS**

The slope and cross slope tolerances should be measured with a 24” long digital level set on the surface of the ramp or landing in the following way:

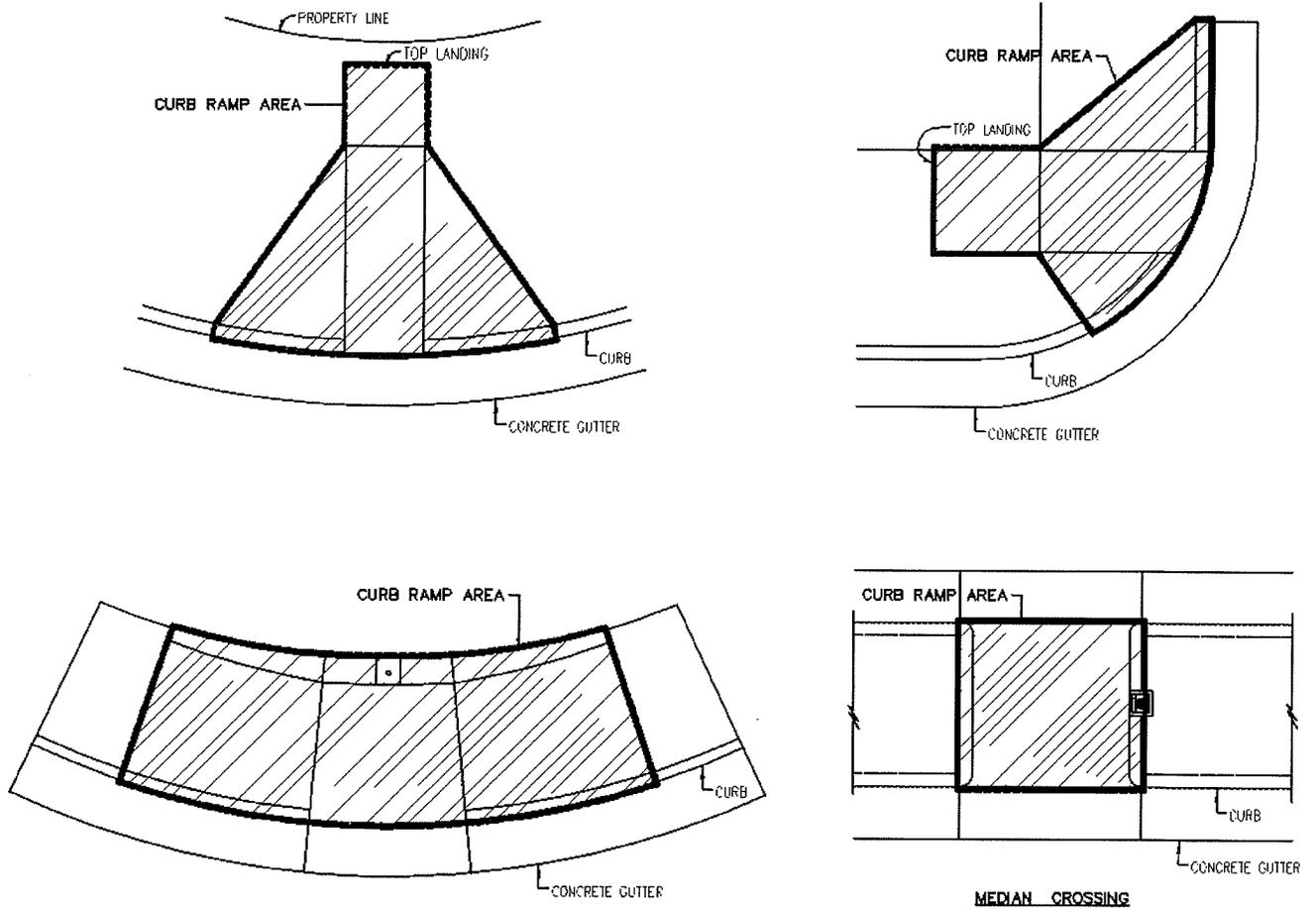
- A. For ramps, check cross slope every 24” along the ramp run at the top, middle and bottom then check running slope every 24” along the ramp at the top, middle and bottom – this basically provides a 24” grid survey of slopes and cross slopes on the ramp;
- B. Since ramp landings have to be level (1:50 maximum slope, unless infeasible) in all directions, check the slope every 24” with the level parallel to each edge of the landing, then place the level at the center of the landing and measure every 24” in both directions of traffic – this basically provides a 24” grid survey of slopes and cross slopes on the landing.

If the finish of the concrete ramp or landing appears to have visible troughs or ridges, be sure to measure the slope by placing the level so it reads the steepest slopes on the surface. To measure whether the surface plane meets tolerance, place the level so it is centered over a trough to measure the maximum gap, or balanced on a ridge with an equal gap at both ends of the level.

## CURB RAMP AREA (FOR MARKED AND UNMARKED CROSSINGS)

FIGURE 1

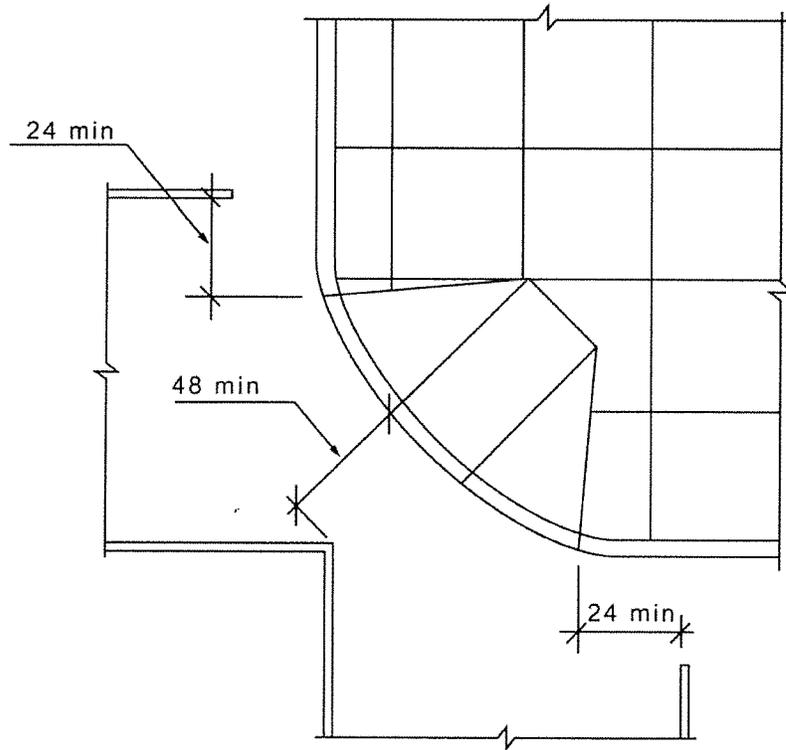
"YOU TOUCH IT/YOU FIX IT" TRIGGER





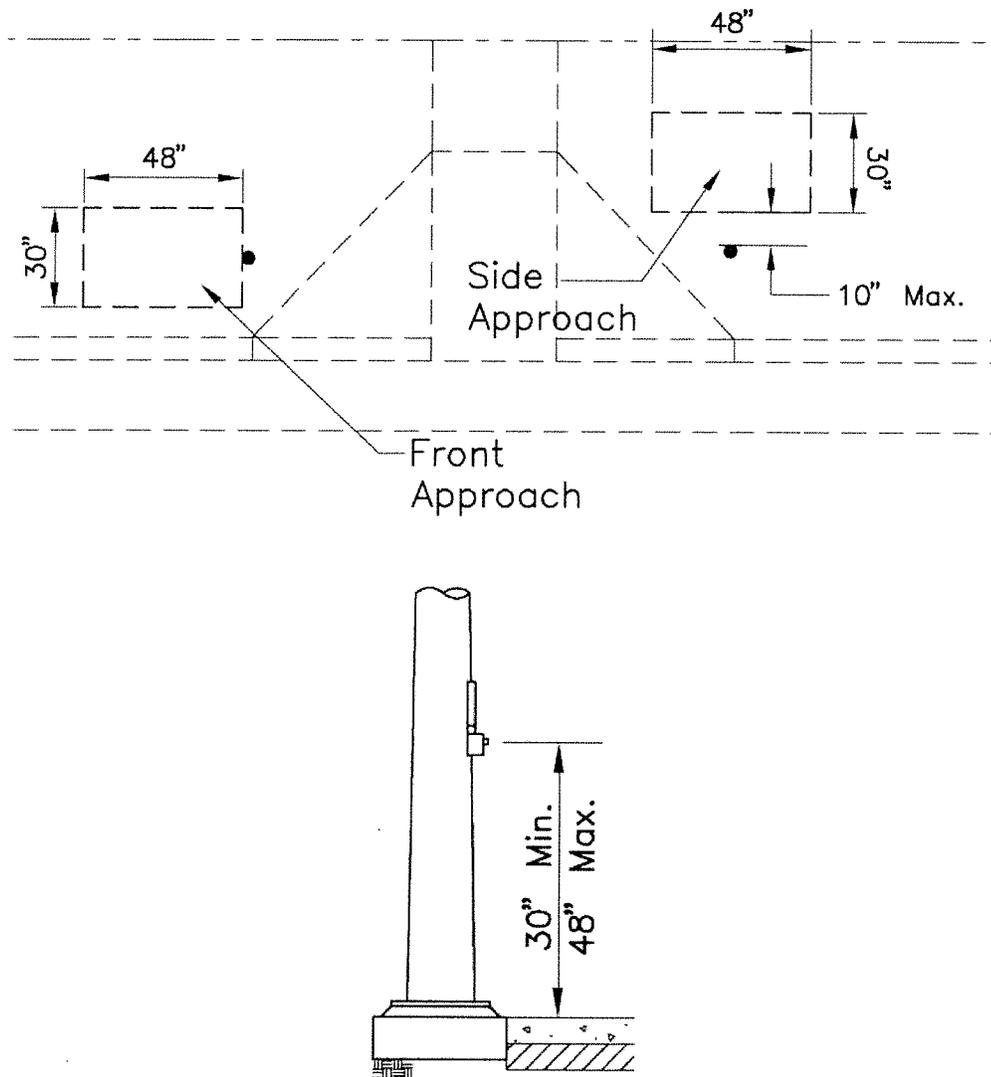
## APEX OR PERPENDICULAR CURB RAMP

FIGURE 3



## PEDESTRIAN SIGNALS

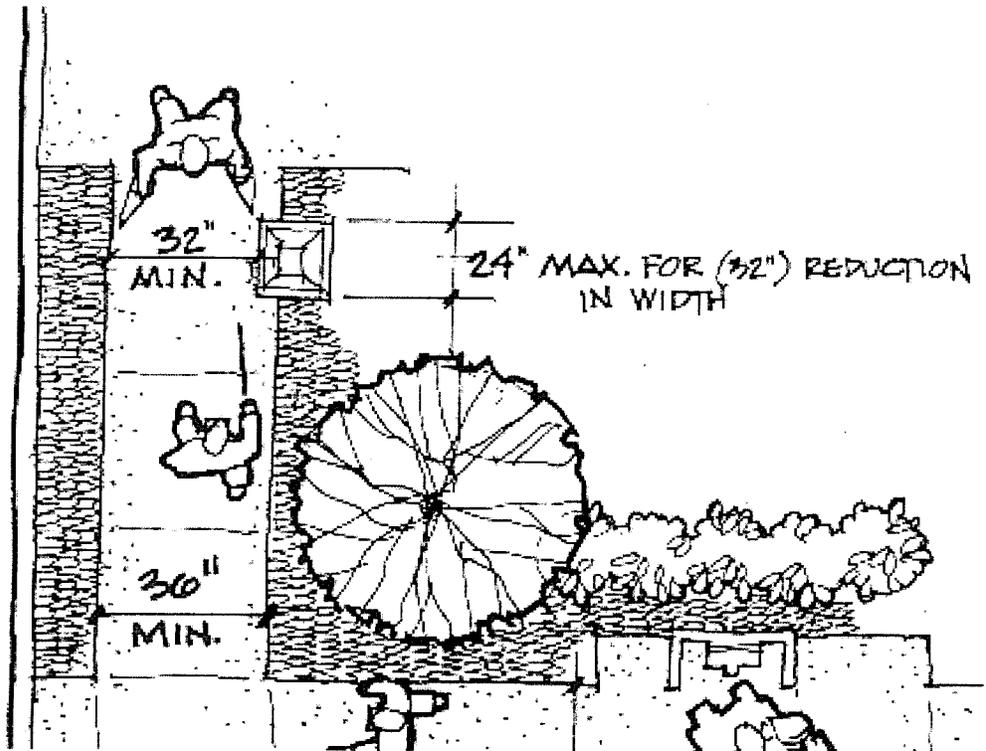
FIGURE 4



Note: 48" maximum dimension measured to top of pedestrian pushbutton control or other similar acceptable pedestrian activation device.

## WIDTH OF SIDEWALK

FIGURE 5

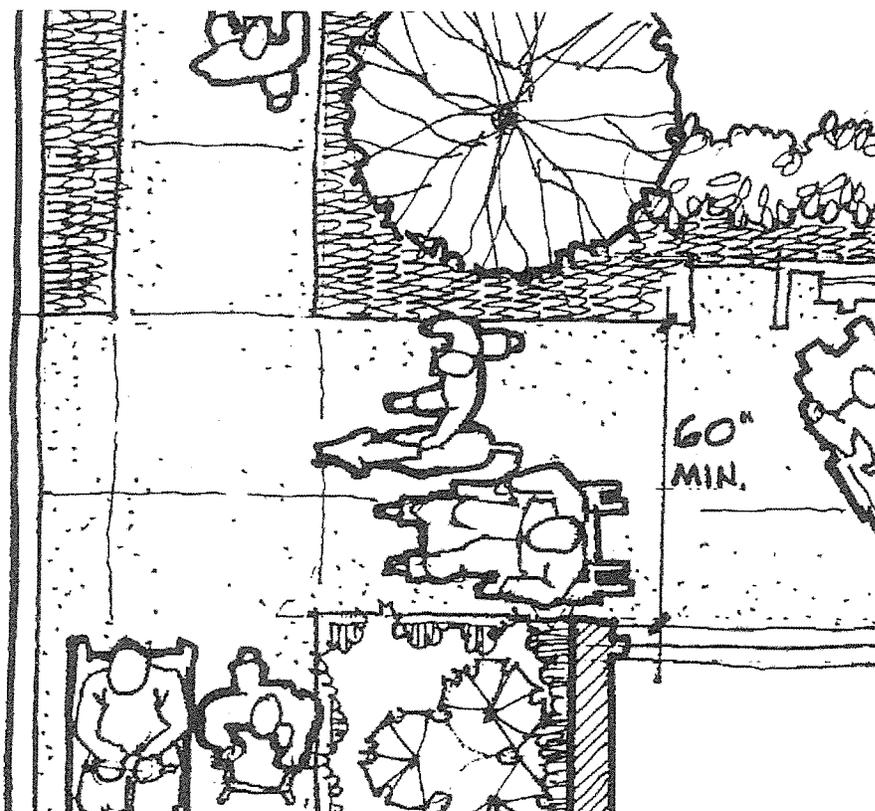


Notes:

1. The preferred minimum route width is 48 inches.
2. The route may be reduced to 32" if the constricted space is no longer than 24".
3. If the pedestrian route makes a 180-degree turn around an object which is less than 48" wide, clear width of the pedestrian route shall be 42" on the approach and exit of the turn and 48" at the turn.
4. The preferred cross slope is 1:50.

## SIDEWALK PASSING SPACE

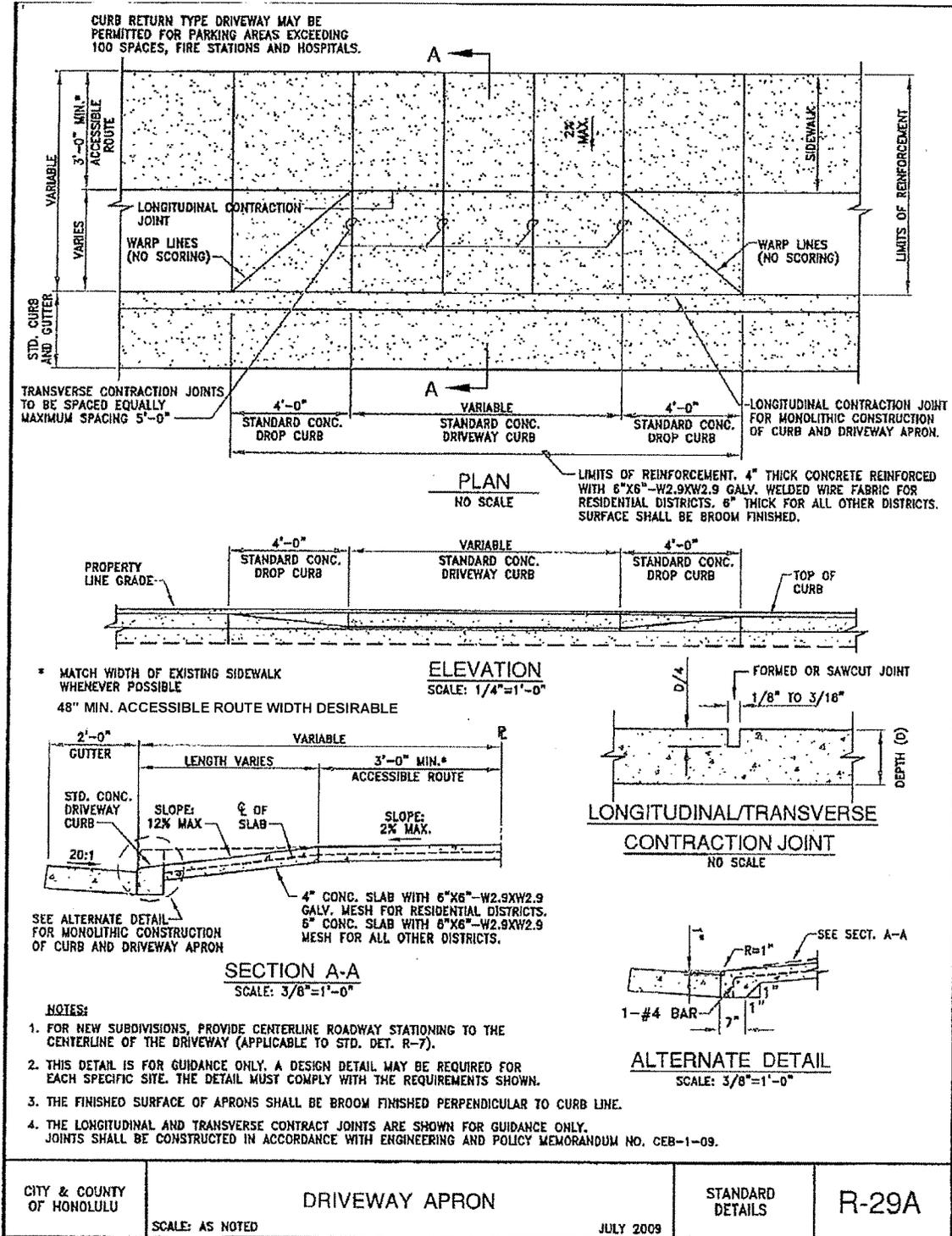
FIGURE 6



Notes:

1. A minimum 60"x 60" clear space must be provided at intervals along an accessible pedestrian route not to exceed 200 feet.

## DRIVEWAY APRON FIGURE 7

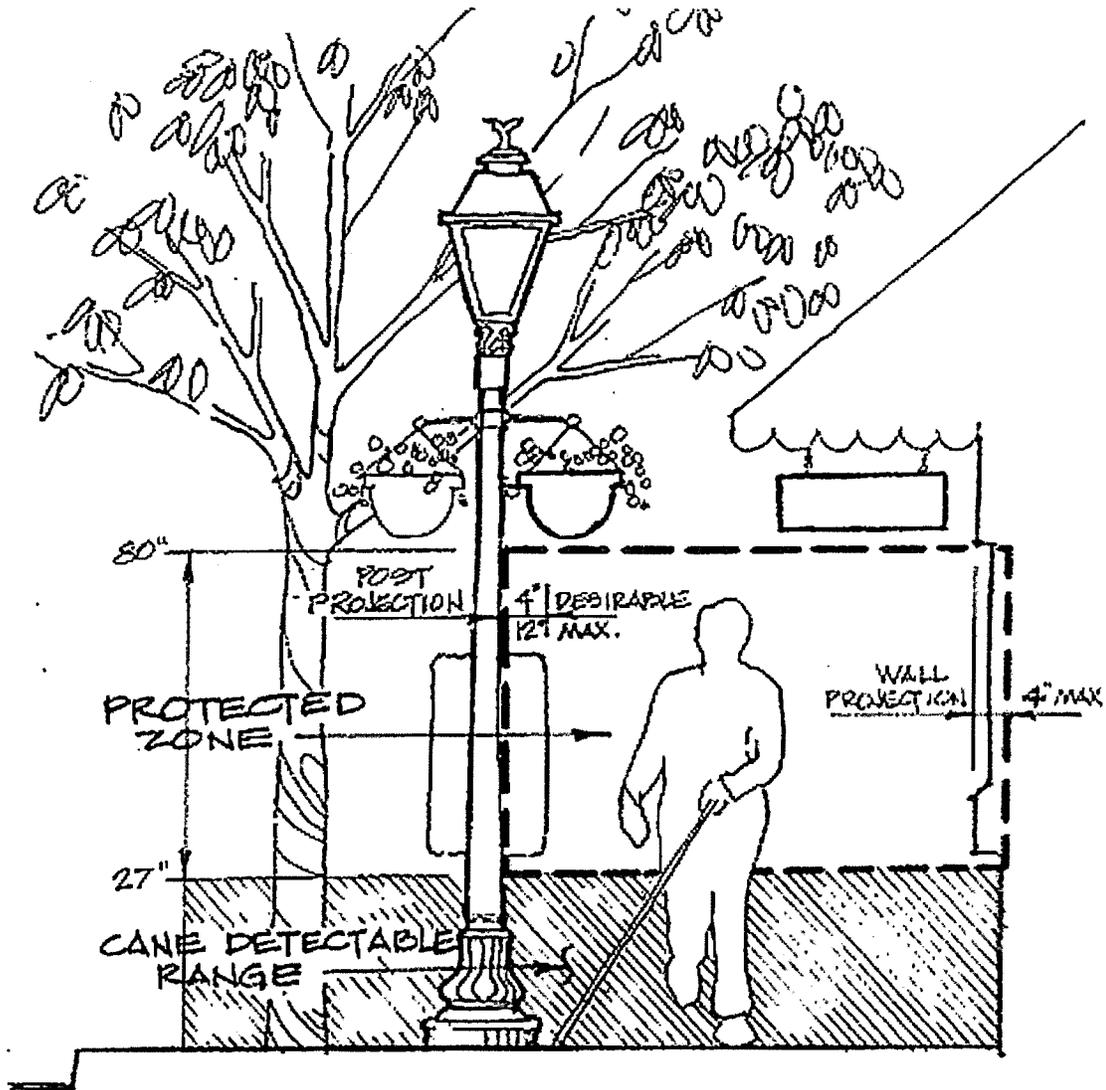


**Notes:**

1. The desired accessible route width is 48 inches.
2. Design of the apron will consider the potential for vehicles "bottoming out."

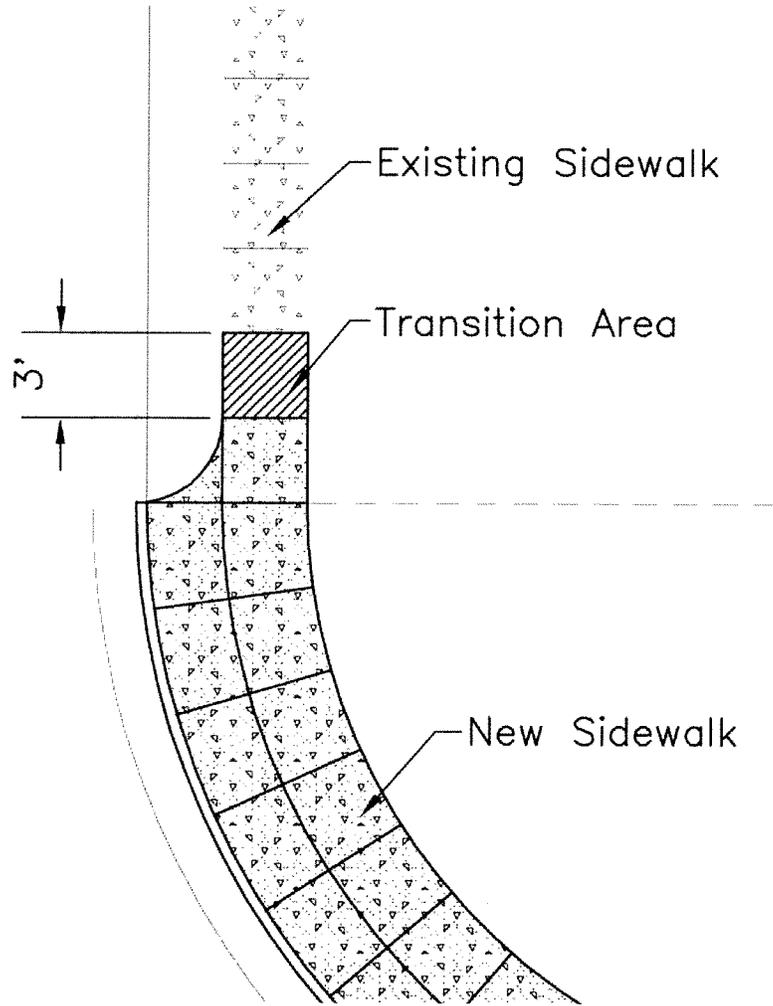
## VERTICAL AND HORIZONTAL CLEARANCE

FIGURE 8



## TRANSITION FROM EXISTING TO NEW SIDEWALK

FIGURE 9



Note: If existing sidewalk is replaced with new, transition area should be replaced to match cross-slope of previous sidewalk retrofit.

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**APPENDIX**

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# CURB RAMP REQUEST FORM

## CITY AND COUNTY OF HONOLULU

### DEPARTMENT OF DESIGN AND CONSTRUCTION

This form is to be filled out by or on behalf of a person with a disability who requires the installation/ modification of curb ramps or the modification of existing accessible paths leading to curb ramps within public rights-of-way.

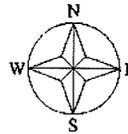
Fill out this form as completely as possible or call 768-8801 (Voice) for assistance. Provide a written description or sketch of the location(s) where curb ramps are needed for programmatic access to City services and/or facilities.

Within two (2) weeks of receiving a request, a representative of the City's Department of Design and Construction will contact the person making the request. A staff person will arrange to meet with the person making the request and the person needing the modification either at the location(s) noted or at an alternate site, if the location(s) are not accessible. Meetings will be held during the hours of 8:30 a.m. to 3:30 p.m., Monday to Friday.

LOCATION: NE NW SE SW ALL  
 (Please circle appropriate location(s))

STREETS:  
 \_\_\_\_\_  
 \_\_\_\_\_

COMMENTS OR SUGGESTIONS:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



Address \_\_\_\_\_

Address \_\_\_\_\_

Street Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Street Name

Please mark intersection corner with an "X".

Please provide a brief statement of why the ramp is needed:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Name of Person Needing Curb Ramp Modification: \_\_\_\_\_

Contact (if different than above): \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_ Date: \_\_\_\_\_

Return to: Civil Division  
 Department of Design and Construction  
 City and County of Honolulu  
 650 South King Street, 15th Floor  
 Honolulu, HI 96813

or FAX to: 768-6103

## SITE ASSESSMENT CHECKLIST

INT NO. \_\_\_\_\_ ELEMENT \_\_\_\_\_ LOCATION \_\_\_\_\_

		Yes	No	Completed by/Date	Remarks	
<b>1.</b>	<b>P h o t o s</b>	All corners of intersection				
	Approaches to corners					
<b>2. Verify approaches:</b>						
<b>2.</b>	Existing finish/ texture	a. Concrete				
		b. Asphalt				
	Physical obstructions along path leading to curb ramp	a. Utility pole				
		b. Tree				
		c. Narrow sidewalk				
d. Other						
e. Uneven sidewalks						
<b>3. Existing features:</b>						
<b>3.</b>	Any walkway or doorway access at corner					
	Any paved lot adjacent to corner					
	Existing abutting feature	Wall (type)				
		Landscaping				
	Any tree at corner within 15' of curb return at corner Species, caliper, canopy					
	Existing gutter Type					
	Exposed					
	Covered with a.c. Depth of a.c. at invert Depth of a.c. at gutter lip					
	Roadway Slope					
	Major utilities that may impact design of curb ramp					
	Pull boxes					
	Traffic control box					
	Street lights					
	Catch basin/drain inlets					
HECO vaults						
<b>4. Existing ramp(s):</b>						

INT NO. \_\_\_\_\_ ELEMENT \_\_\_\_\_ LOCATION \_\_\_\_\_

		Yes	No	Completed by/Date	Remarks
	29" Bypass space				
	48" Bottom Landing within curb line extensions				
	36" Crosswalk width fronting ramp in direction of travel				
	Measure slopes (%):				
	Ramp (running)				
	Ramp (cross)				
	Landing (running)				
	Landing (cross)				
	Flare (at curb face)				
	Flare (29" from back of sidewalk)				
	Gutter (running)				
	Gutter (cross)				
	Measure critical width dimensions				
	Vertical Change ramp to gutter (in.)				
	Vertical Change gutter to pavement (in.)				
	Traffic Islands:				
	36" min. opening in curb				
	48" between top of ramps				
<b>5.</b>	<b>Existing traffic signals</b>				
	Note approximate location of traffic signal poles				
	Note pushbutton locations				
	Type of pushbuttons				
	Traffic controller box At grade Pedestal				
	Traffic signal pull box locations				
<b>6.</b>	<b>Sketch</b>				
	Intersection				
	Ramp				

# **Consent Decree Stipulated Agreements**

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GREGORY J. SWARTZ, 4856  
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Honolulu, Hawaii 96813  
Telephone: 523-4629

Attorneys for Defendant

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAY 5 1997

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JIM McCONNELL and MARK	)	CIVIL NO. 96-01111 DAE
EDWARDS,	)	(CIVIL RIGHTS)
	)	
Plaintiffs,	)	CONSENT DECREE AND ORDER
	)	
vs.	)	
	)	
CITY AND COUNTY OF HONOLULU,	)	
	)	
Defendant.	)	

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

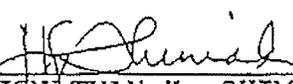
DAVID Z. ARAKAWA  
Corporation Counsel

By   
GREGORY J. SWARTZ  
Deputy Corporation Counsel  
Attorneys for Defendant

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-FW

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

DAVID Z. ARAKAWA, 2908  
Corporation Counsel  
GREGORY J. SWARTZ, 4856  
Deputy Corporation Counsel  
City and County of Honolulu  
Honolulu, Hawaii 96813.  
Telephone: 523-4629

Attorneys for Defendant

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

NOV 02 2001

at 11 o'clock and 15 min. AM  
WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JIM McCONNELL AND MARK EDWARDS,	)	CIVIL NO. 96-01111 DAE/KSC
	)	(CIVIL RIGHTS)
Plaintiffs,	)	
	)	STIPULATION REGARDING COURT
vs.	)	APPOINTED MONITOR AND ORDER;
	)	EXHIBIT "A"
CITY AND COUNTY OF HONOLULU,	)	
	)	
Defendant.	)	
_____	)	

STIPULATION REGARDING COURT APPOINTED MONITOR AND ORDER

WHEREAS, the parties having conferred on the issue of this Court appointing a monitor as to the Defendant's compliance and implementation of the Consent Decree and Order filed herein on May 5, 1997 and the revised Transition Plan of September 17, 2001 attached hereto as Exhibit "A";

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

1. The court appointed monitor shall be Paul Sheriff of Honolulu, Hawaii (hereinafter referred to as "Monitor"). The City shall enter into a contract with Paul Sheriff at \$100 per

hour (all inclusive) to pay for his services as Monitor consistent with this Stipulation. Any procurement laws, ordinances, or rules inconsistent with this Stipulation are hereby waived.

2. The Monitor shall:

a. Be responsible for reporting on, evaluating and monitoring the Defendant's compliance with and efforts toward implementing the Consent Decree and Order filed herein on May 5, 1997 and the revised Transition Plan of September 17, 2001;

b. Have access to all necessary information and documentation in the possession of or available to Defendant in fulfilling its responsibilities under this Stipulation;

c. Have the ability to meet and confer freely with any and all parties herein; however, in doing so the Monitor shall disclose all communications conducted to all parties;

d. Be responsible for creating and issuing quarterly reports to the Court and parties;

e. Respond as appropriate to written inquiries received from either of the parties hereto in writing and disclose the same to the other party;

f. Make recommendations concerning any modifications, changes and improvements to the process of constructing the curb ramps and the enforcement of compliance; and

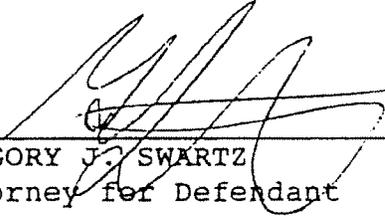
g. Submit invoices to the Magistrate Judge for review and approval prior to their submittal to the City.

3. Any party who disagrees with any action or recommendation made by the Monitor may appeal the same to the United States District Court, for the District of Hawaii, pursuant to 28 U.S.C. § 626.

4. The Monitor may be dismissed or replaced as it may become necessary, by either (a) stipulated agreement by the parties hereto with approval of the Court, or (2) by order of the Court upon the petition of any party hereto, when exceptional circumstances are shown.

DATED: Honolulu, Hawaii, OCT 3 | 2001

  
STANLEY E. LEVIN  
Attorney for Plaintiffs

  
GREGORY J. SWARTZ  
Attorney for Defendant

APPROVED AND SO ORDERED:

KEVIN S.C. CHANG

JUDGE OF THE ABOVE-ENTITLED COURT

STIP-MONITOR.DOC

McConnell, et al. v. City and County of Honolulu; Civil No. 96-01111 DAE/KSC; STIPULATION REGARDING COURT APPOINTED MONITOR AND ORDER.

DAVID Z. ARAKAWA, 2908  
 Corporation Counsel  
 GREGORY J. SWARTZ, 4856  
 Deputy Corporation Counsel  
 City and County of Honolulu  
 Honolulu, Hawaii 96813  
 Telephone: 523-4629

Attorneys for Defendant

FILED IN THE  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

NOV 02 2001  
 at 11 o'clock and 16 min. AM  
 WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF HAWAII

JIM McCONNELL AND MARK EDWARDS,	)	CIVIL NO. 96-01111 DAE/KSC
	)	(CIVIL RIGHTS)
Plaintiffs,	)	
	)	STIPULATION REGARDING CONSENT
vs.	)	DECREE AND ORDER FILED MAY 5,
	)	1997; ORDER; EXHIBITS "A" AND
CITY AND COUNTY OF HONOLULU,	)	"B"
	)	
Defendant.	)	
	)	

STIPULATION REGARDING CONSENT  
DECREE AND ORDER FILED MAY 5, 1997

WHEREAS, the parties having conferred on the issue of Defendant's compliance and implementation of the Consent Decree and Order filed herein on May 5, 1997 and the revised Transition Plan of September 17, 2001 attached hereto as Exhibit "A";

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

1. The revised Transition Plan of September 17, 2001 is hereby approved. A comprehensive review of the City's progress in implementing the revised Transition Plan shall be conducted after receipt of the Court Monitor's 2002 Annual Report. If,

after reviewing the Court Monitor's 2002 Annual Report, Plaintiffs believe that the City has violated the terms of the revised Transition Plan, Plaintiffs may choose to apply the remedies contained in Section 8 of the Consent Decree and Order to enforce the City's compliance with the revised Transition Plan.

2. The quarterly status reports required by Section 5(a) of the Consent Decree and Order shall be submitted to the Magistrate Judge, the Court Monitor, and the counsel for Plaintiffs in the form attached hereto as Exhibit "B." The Court Monitor will review all quarterly status reports submitted by the City pursuant to this paragraph. The Court Monitor will provide a summary of his review of each quarterly status report to the Court and to counsel for Plaintiffs and Defendant prior to the quarterly conferences required by Section 5(a) of the Consent Decree and Order. In the quarterly reports, the City will identify curb ramp work in the revised Transition Plan that it has since determined to be unnecessary. "Unnecessary" for the purposes of this Stipulation and Order shall mean curb ramps or elements thereof that are either (1) in compliance with ADA requirements, or (2) not technically in compliance with ADA requirements but can still be used by disabled citizens. Corrections to the ramps identified in Item (2) above shall be made pursuant to the new construction/alteration provisions of the ADA. Subject to Section 8(c) of the consent Decree and Order and approval by the Court Monitor and the Court, such curb

ramp work shall be deemed deleted from the revised Transition Plan.

3. The quarterly conferences required by Section 5(a) of the Consent Decree and Order shall include the Magistrate Judge, the Court Monitor, and the parties.

4. The City shall not be required to comply with any procurement laws, ordinances, or rules in order to contract out the construction of the approximately 115 sketch-built curb ramps identified in the City's letter to Magistrate Judge Kevin Chang dated September 17, 2001.

5. (a) The City, in issuing an invitation for bids or request for proposals for the construction of the curb ramps in the revised Transition Plan, may prepare a list of qualified bidders pursuant to Section 103D-310 of the Hawaii Revised Statutes. The City's decision shall be final and conclusive, and prospective bidders who are not included on the list shall not be entitled to protest such decision under Sections 103D-701 or 103D-709 of the Hawaii Revised Statutes.

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract to implement the revised Transition Plan shall not be entitled to protest under Sections 103D-701 or 103D-709 of the Hawaii Revised Statutes.

6. The City shall retain for the duration of the Consent Decree and Order a full-time project manager for purposes of coordinating the City's implementation of the revised Transition Plan.

7. (a) The City and County of Honolulu will complete the curb ramp work for the 7,603 curb ramps identified in the revised Transition Plan, of which 4,591 ramps are identified as Priority I and 3,012 ramps are identified as Priority II, by the end of calendar year 2007.

(b) If the City and County of Honolulu does not complete the curb ramp work identified in the revised Transition Plan on an annual basis or the 7,603 total curb ramps by the end of calendar year 2007, or otherwise fails to make adequate progress as determined by the Court Monitor, and such failure is not due to circumstances beyond the control of the City, the Court Monitor may recommend that the Court in its discretion impose appropriate sanctions and penalties.

8. In the event of the City's failure to accomplish the curb ramp work identified in the revised Transition Plan as described in paragraph 7 above, Plaintiffs reserve all their rights granted under Section 8 of the Consent Decree and Order to enforce City compliance with the revised Transition Plan.

9. The parties agree that Plaintiffs are entitled to an award of reasonable attorney's fees and costs under Section 9 of the Consent Decree and Order. If the parties are unable to agree to the amount, Plaintiffs may file a motion with the Court seeking a ruling on this matter.

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

DATED: Honolulu, Hawaii, OCT 31 2001.

  
\_\_\_\_\_  
STANLEY E. LEVIN  
Attorney for Plaintiffs

  
\_\_\_\_\_  
GREGORY J. SWARTZ  
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; STIPULATION REGARDING CONSENT DECREE AND ORDER  
FILED MAY 5, 1997; ORDER

TABLE 1  
ADA TRANSITION PLAN SCHEDULE

6-YEAR TRANSITION PLAN SCHEDULE

FY	No. of Int.	No. of Elements*	Est. Cost
	362		\$ 8,766,500
2001	405	1165	\$ 8,792,000
2002	597	1496	\$ 8,765,000
2003	621	1401	\$ 8,760,000
2004	443	1113	\$ 8,795,500
2005	461	1167	\$ 6,707,000
Totals	2889	6342	\$ 50,586,000

\*No. of elements (curb ramps) associated with the intersections identified in the Transition Plan.

PROPOSED REVISED TRANSITION PLAN SCHEDULE

PI

FY	No. of Elements (Curb Ramps)						Total
	A	B	C	D	E	F	
2002	660	254	59	237	8	5	1223
2003	457	182	-	817	-	-	1456
2004	24	400	-	193	461	-	1078
2005	-	-	174	-	205	455	834
2006	-	-	-	-	-	-	0
2007	-	-	-	-	-	-	0
Totals	1141	836	233	1247	674	460	4591

PII

FY	No. of Elements (Curb Ramps)						Total
	A	B	C	D	E	F	
2002	62	30	-	21	3	1	117
2003	-	-	-	-	-	-	0
2004	-	-	-	-	-	-	0
2005	8	-	-	-	-	-	8
2006	851	-	-	936	-	-	1787
2007	8	518	63	249	192	70	1100
Totals	929	548	63	1206	195	71	3012

Notes:

1

In conjunction with previously implemented or on-going rehabilitation and resurfacing of streets alteration projects, about 797 curb ramps from FY 2003 to FY 2007 are expected to be implemented by the end of 2002. Another 269 curb ramps from FY 2003 to FY 2007 are expected to be implemented by the City's BRT project.

2

58 additional request curb ramps will be implemented as part of the FY 2002 program and are not reflected in the above schedule.

TABLE 2  
PROPOSED REVISED ADA TRANSITION PLAN COST

	1999	2000	2001	2002	2003*	2004*	2005*	2006*	2007*	Total
Des		202	1065	1456	1078	842	1787	1100		7530
Con		95	202	1196	1456	1078	842	1787	1100	7756
\$Des	\$2.4M	\$2.7M	\$3.7M	\$3.9M	\$3.5M	\$2.7M	\$4.7M	\$3.7M		\$27.3M
\$Con/Insp			\$1.1M	\$11.5M	\$10.3M	\$11.7M	\$10.7M	\$11.0M	\$10.7M	\$67.0M
	\$2.4M	\$2.7M	\$4.8M	\$15.4M	\$13.8M	\$14.4M	\$15.4M	\$14.7M	\$10.7M	\$94.3M

\*In conjunction with previously implemented or on-going rehabilitation and resurfacing of streets alteration projects, about 797 curb ramps from FY 2003 to FY 2007 are expected to be implemented by the end of 2002. Another 267 curb ramps from FY 2003 to FY 2007 are expected to be implemented by the City's BRT project.

ADA CURB RAMP TRANSITION PLAN IMPLEMENTATION, FY 2002  
 QUARTERLY STATUS REPORT

Period July 1 to September 30, 2001

Priority	Modification Category	No. of Ramps	Under Alteration Project	Design Status		Construction Status	
				Under Design	Completed	Under Construction	Completed
PI	A						
	B						
	C						
	D						
	E						
	F						
PII	A						
	B						
	C						
	D						
	E						
	F						

Appendix will include T1's.

ADA CURB RAMP TRANSITION PLAN  
IMPLEMENTATION PROGRAM  
CITY AND COUNTY OF HONOLULU

September 2001

DAVID Z. ARAKAWA, 2908  
Corporation Counsel  
GREGORY J. SWARTZ, 4856  
Deputy Corporation Counsel  
City and County of Honolulu  
Honolulu, Hawaii 96813  
Telephone: 523-4629

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

LOGGED

MAY 28 2002

at 3 o'clock and 0 min. M.  
WALTER A.Y.H. CHINN, CLERK

MAY 16 2002

CLERK, U. S. DISTRICT COURT  
DISTRICT OF HAWAII

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JIM McCONNELL and MARK EDWARDS,	)	CIVIL NO. 96-01111 DAE/KSC
	)	
Plaintiffs,	)	SECOND STIPULATION REGARDING
	)	CONSENT DECREE AND ORDER FILED
vs.	)	MAY 5, 1997 AND ORDER;
	)	ATTACHMENT "1"
CITY AND COUNTY OF HONOLULU,	)	
	)	
Defendant.	)	
	)	

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

WHEREAS, on April 10, 2002, the Court Monitor issued an Interim Report; and

WHEREAS, on May 6, 2002, the Court Monitor made certain revisions to the Interim Report, which Interim Report as revised (hereinafter "Interim Report") is attached hereto and incorporated herein as Attachment "1"; and

WHEREAS, the parties have agreed to accept the recommendations set forth in the Court Monitor's revised Interim Report; now, therefore,

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

1. The construction tolerances set forth in Exhibit "A" to the Interim Report are hereby adopted for purposes of determining whether existing or new curb ramps and sidewalks are in compliance with applicable design guidelines.

2. For purposes of 28 C.F.R. Section 35.151(b) and (e), the City and County of Honolulu (hereinafter "City") shall be required to modify or replace an existing curb ramp which does not meet new construction design guidelines (after taking into account the adopted construction tolerances) or install a new curb ramp where none existed, when the alteration project directly affects the existing curb ramp or the area of the sidewalk where a new curb ramp would be required under the "you touch it, you fix it" policy set forth in Exhibit "B" to the Interim Report. Resurfacing and rehabilitation of roadways shall not per se trigger the requirements to modify or replace existing curb ramps or install new curb ramps.

3. Consistent with Paragraph 3 of the Interim Report, blending, where feasible, shall be the preferred method for

making an existing curb ramp usable without being fully compliant.

4. For purposes of federally funded highway improvements, the City will design for detectable warnings on curb ramps that are modified, replaced, or newly constructed. For non-federally funded projects, the City will defer detectable warnings until final design guidelines are adopted.

5. Curb ramps that were modified or constructed between January 26, 1992 and December 31, 2001, but which do not meet the applicable design guidelines (after taking into account the adopted construction guidelines), do not have to be remodified or reconstructed unless the curb ramps are not usable by individuals with mobility disabilities.

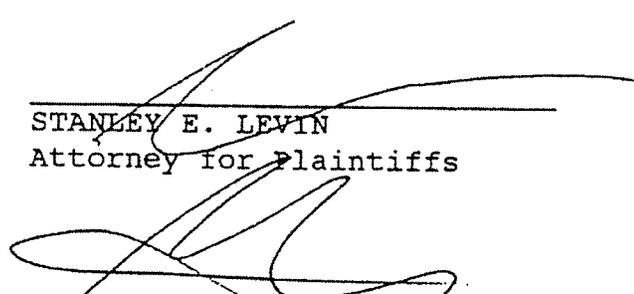
8. The Court Monitor's recommendations set forth in Paragraphs 5, 7, 9, 10, and 11 of the Interim Report are adopted in toto.

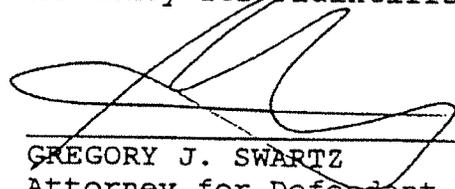
9. Quarterly status reports on the City's Self-Evaluation Plan, as previously required by Section 5(a) of the Consent Decree and Order filed May 5, 1997, shall no longer be required.

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

DATED: Honolulu, Hawaii, \_\_\_\_\_

MAY 16 2002

  
\_\_\_\_\_  
STANLEY E. LEVIN  
Attorney for Plaintiffs

  
\_\_\_\_\_  
GREGORY J. SWARTZ  
Attorney for Defendant

APPROVED AND SO ORDER:

DAVID ALAN EZRA

\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

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

**ATTACHMENT 1**

April 10, 2002  
(Revised May 6, 2002)

Court Monitor's Interim Report

1. Construction Tolerances

Upon meeting with David Capozzi, the Executive Director of the United States Architectural Transportation Compliance Board, in Portland, Oregon, in informal discussions, David Capozzi has stated that the Board would issue recommendations for construction tolerances taken from the Construction Specifications Institute. I recommend that due to the fact the Board is going to use construction tolerances, we use the tolerances provided in the table below and incorporate them into the stipulation. These tolerances are identical to the conclusions of independent studies performed by Peter Axelson for agencies of the federal government. Engineers, contractors and designers feel that, yes, you usually can provide a perfectly compliant ramp design on paper, but when you get into the actual field, you must allow for some construction tolerances. (EXHIBIT A)

2. Alteration Projects and Definition of What Constitutes an Alteration

In an informal conversation the C&C of Honolulu's consultant, Mr. Bill Hecker, was told by a Representative of the Department of Justice (DOJ), who was also an attendee at the PROWAAC committee meeting in Portland, that the DOJ would not create any regulations and rule making regarding the definition of, or what constitutes an alteration project. In other words, the DOJ is not going to directly address in rule making or provide in any regulations the definition of an alteration project or the magnitude of such projects, which would trigger mandatory curb ramp implementation in relationship to alteration projects.

The court monitor recommends that we enter into the stipulation that 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 B & C)

3. Warping vs. Blending

At the PROWAAC committee meeting, there has been much discussion including case studies to determine the recommendations for blending vs. warping. The definition of blending is a form of "blending" the landing and the ramp slopes to make a ramp be usable without being fully compliant. The blending is generally triggered and dictated by the slope of the roadway grade. Warping is a procedure, which is done in the runoff gutter and also in the landing area. The gutter and/or ramp contain(s) a "cricket" to provide for a more level landing in the ramp area. General policies and thinking are leaning towards accepting the blending procedure, which would be more easily created in the curb ramp due to the existing slope of the roadway surface.

- a. Blending the ramp is a safer procedure for wheelchair users than warping

- b. Warping can cause the wheelchair to "tweak" which can cause one of the four wheels to come out of contact with the surface of the ramp.
- c. Warping also creates problems in the runoff gutter for other issues such as runoff, snow removal, etc.
- d. Warping is more difficult to design and construct and may result in higher costs (EXHIBIT D).

4. Existing and New Ramps Which Meet the New Construction Tolerances (see case studies)

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

NOTE: there is an issue, which has been omitted or neglected to be addressed concerning this subject, which is an element included in the current consent decree.

- a. The current consent decree requires that any curb ramp which is not currently compliant that are affected by an alteration project must be removed and replaced to be fully compliant; however, the plaintiff's party has expressed an opinion which would fall in line with the policy for alteration projects and that is, if those ramps along an alteration project fall within the new construction tolerances (EXHIBIT A), they would not be required to be removed and replaced. Three (3) items must be addressed pertaining to this issue before a decision can be made:
  - 1) what the final definition of an alteration project will be;
  - 2) if all parties agree that those ramps that meet those percentages do not have to be removed and replaced; and
  - 3) what these percentages will be.

NOTE: it is the court monitor's opinion that any ramp, which is not fully compliant, that is affected by an alteration project should be removed and replaced (this is why it is extremely important that the parties address the definition of an alteration project) (EXHIBIT E)

5. Newly Constructed Ramps

There are a number of ramps in the C&C Public Rights-of-Way that were constructed by others that were/were not reflected in the Transition Plan. The ramps could have been constructed by:

- a. Private Enterprise
- b. Public Works
- c. State Projects
- d. Other miscellaneous projects which the consultants do not track and record

There are a number of newly constructed curb ramps, which have not been counted and entered into the total count of curb ramps. It is the monitor's recommendation that all curb ramps be counted which serve the public in the C&C's Public Rights-of-Way. Previous discussions have concluded that it is not only ramps that are constructed by the C&C be counted, but all ramps that affect the public good be counted.

NOTE: the court monitor recommends two (2) additional actions:

- 1) that the C&C address these ramps constructed by others and provide a report summarizing which of these ramps are included in the transition plan and ramps not included in the transition plan. All ramps should be counted; and
- 2) that since all curb ramps that affect the C&C must be processed for a building permit, the C&C will track and document all ramps identified in the approved building permits. (EXHIBIT F).

6. Detectable Warnings

Detectable warnings will be required, however, the concise figuration and actual implementation has not been determined. Lois Thiboult of the Access Board has expressed concern regarding the impact detectable warnings have on wheelchair users. Lois also stated that she had problems getting technical data and statistics and numbers from wheelchair manufacturers to create a matrix and graph, which would allow the PROWAAC committee to determine average widths of wheelchairs. So in regards to this dilemma, the court monitor pulled volumes of information and made telephone calls as to the average wheelchair widths sold and the highest percentage and numbers of wheelchairs and widths sold. The court monitor then proceeded to forward information to the City's consultant, Bill Hecker, and created a drawing and configuration of curb ramps with detectable warnings and wheelchair runways in which those runways were minus the detectable warnings. The wheelchair runways and widths were based upon the averages and highest percentage of all

wheelchairs sold to help solve the issue. Mr. Hecker then forwarded the concept to members representing the blind community on the PROWAAC committee and will send the documentation to Francine Wai for a preliminary determination of equivalent facilitation.  
**(EXHIBIT G)**

7. **Cross Walk Controls**

From discussion at the PROWAAC committee the proposed location of the pedestrian crossing signal button has made much progress. In relationship to the C&C, the C&C is exceeding the PROWAAC recommendations at this time for location and numbers. The cross walk controls in the newly constructed resurfacing and maintenance programs on King Street and downtown, Honolulu 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 until a final design conclusion by the PROWAAC committee due to the fact that it will be more accessible than the PROWAAC committee's direction and heading.

8. **Learning Curve**

Grandfather clause – the court monitor had drafted some preliminary language for the learning curve grandfather clause, which would allow the City to not remove any curb cuts that were built from the time of ADAAG guidelines to December 31, 2001. These ramps would be exempt as a learning curve process for purposes of good will between all parties and accessibility for the disabled. The learning curve grandfather clause is in the hands of the City's Corporation Counsel at this moment.

9. **Lewers Street Project – Outrigger**

The entire Lewers Street/Outrigger project is still on-line according to David Carey of Outrigger Hotels and Resorts. There are several curb ramps that are scheduled to be removed and replaced in this area including a "problem child" ramp at the corner of Helumoa Road and Lewers. I've recommended to the City that we extract these specific curb ramps that will be subject and involved in the Lewers Street super block renovation from this year's time frame to the last year of the transition plan. If the Lewers Street project is not complete at the time of the end of the seven (7) year transition plan than the C&C shall remove and replace those curb ramps at that time.

#### 10. Quarterly Report

The quarterly report was late. The plaintiff's parties were not pleased about not having the quarterly report delivered on time. The court monitor will do some investigation to see what the course of action is in developing the quarterly report to see how we can stream-line the quarterly report so that it is entered on time in each quarter.

If there is a continuing problem to produce a quarterly report on time, the plaintiffs have suggested the creation of a sanctioning mechanism with a daily penalty to help urge the defendants to produce a quarterly report on a timely basis. Many factors have created the quarterly report to be late, such as: 1) that the quarterly report that was originally submitted did not include all the activities, ramp designs, and construction that it could have contained.

One thought the court monitor has is that a summary of ramps existing and those constructed by others be provided to the Court Monitor in a separate report.

#### 11. Current Designs

Warping vs blending – there is a significant additional cost to warping the gutter and/or ramp as opposed to blending the ramp. The C&C has entered into gleaning the data base for those ramps, which are warped in the gutter to alleviate it and to reconstitute the designs into blending only. This will create a significant savings to the City as far as construction costs are concerned. It is the court monitors recommendation that the City “glean” out those ramps that involve gutter warping (this includes approximately 40 ramps) and re-design for the blending. (EXHIBIT D)

#### 12. Disabled and Plaintiff's Activity

Bruce Clark expressed his concern on the Tamarind Park ramps that were removed in that he felt it was a waste of money and that Mark Yaboi had complained to Mr. Clark that those ramps were usable and that the ramps at Bishop and Beretania were not. Mark Yaboi asked the question on why the ramps were removed at Tamarind Park when they were usable and the ramps at Beretania were not removed and replaced since they were not usable. The court monitor subsequently expressed to Mr. Clark the fact that the Tamarind Park ramps were not 100% compliant so their removal was automatically triggered by the original consent decree and the current definition of an alteration project.

**13. Lunsford Dole Phillips**

Lunsford Dole Phillips expressed the same concern on the issue of "tearing up perfectly usable ramps and replacing them when other ramps are not usable". The court monitor again stated to Mr. Phillips that the issue was not of transition plan ramps, but the fact that this was an alteration project on King Street had triggered this activity. Lunsford Dole Phillips has also expressed concern about "detectable warnings". He is inquiring why new ramps have been installed with out the "required" detectable warnings. The court monitor subsequently gave him a complete history of the issue and what the PROWAAC recommendations are concerning detectable warnings and the fact that we are trying to create wheelchair "runways" in the ramps, which have no detectable warnings included inside the "runway". Lunsford Dole Phillips is concerned about blind individuals filing a separate and individual suit for new ramps, which are not constructed with detectable warnings for non-compliance to the new construction guidelines. However, there is a question of law in this matter.

**14. General Public**

Since becoming the court monitor, the court monitor has been required to provide a continuous program of community awareness and community education on the issue of curb ramps, transition plan, costs, needs, and requirements, etc.

The court monitor is not sure that this type of "social education" is within the scope of his work; however, it is a good educational tool to alleviate "hysteria" and misconceptions within the general and tax paying public.

**15. Construction**

The contractors, which have been selected, and specifically Royal Contracting, have been providing excellent workmanship and extremely well built curb ramps. Their work quality is acceptable. The monitor is pleased to see the quality of the ramps, which are being produced.

- 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:

- 1) the process for Barrier identification is thorough;
- 2) the ramps which are involved in the transition plan have topographical survey's performed on each and every ramp;
- 3) each and every ramp is then designed to be compliant to the maximum extent feasible under the new construction guidelines;
- 4) 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
- 5) 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 H)**

**16. Construction of Ramp Cost**

Due to the fact that each one of these designs is individual and the ramps themselves are not the only element being altered (e.g. the gutter line is also being reconstructed) is one of the major reasons why each one of these curb ramps in the alteration projects and transition plan is more expensive than the averages across the Country. It is the court monitor's opinion that this procedure, process and approach is the most prudent and responsible approach that any municipality could take and that the present methodology not be altered.

**EXHIBIT A**

In response to your request for my recommendation for curb ramp construction tolerances, I propose the following – slope and cross slope tolerances should be measured with a 24” long digital level set on the surface of the ramp or landing in the following way:

i. For ramps, check cross slope every 24” along the ramp run at the top, middle and bottom then check running slope every 24” along the ramp at the top, middle and bottom – this basically provides a 24” grid survey of slope and cross slopes on the ramp;

ii. Since ramp landings have to be level (i.e., 1:48 max) in all directions, check the slope every 24” with the level parallel to each edge of the landing, then place the level at the center of the landing and measure every 24” in both directions of traffic – this basically provides a 24” grid survey of slopes and cross slopes on the landings.

If the finish of the concrete ramp or landing appears to have visible troughs or ridges, be sure to measure the slope by placing the level so it reads the steepest slopes on the surface. To measure whether the surface plane meets tolerance, place the level so it is centered over a trough to measure the maximum gap, or balanced on a ridge with an equal gap at both ends of the level. These gaps and the surface slope measurements must fall within the tolerances listed in the following table:

Surface Slope Requirements	Allowable Slope Tolerance	Allowable Flatness Tolerance
Less than 5%	+0.9% max.	¼” max. gap
5% - 8.3%	+1.2% max.	3/8” max. gap
Greater than 8.3% - 10.0%	+1.5% max.	½” max. gap
Greater than 10.0%	Engineer’s Discretion	½” max. gap

**EXHIBIT B**

### 1.2.2 - "You Touch/You Fix"

Rule. Any elements or features within the public right-of-way that affect pedestrian usability and are being altered in such a way to allow them to be made accessible shall, to the maximum extent feasible, meet the new construction requirements.

**EXHIBIT C**

28 CFR 35.151 New Construction and Alterations

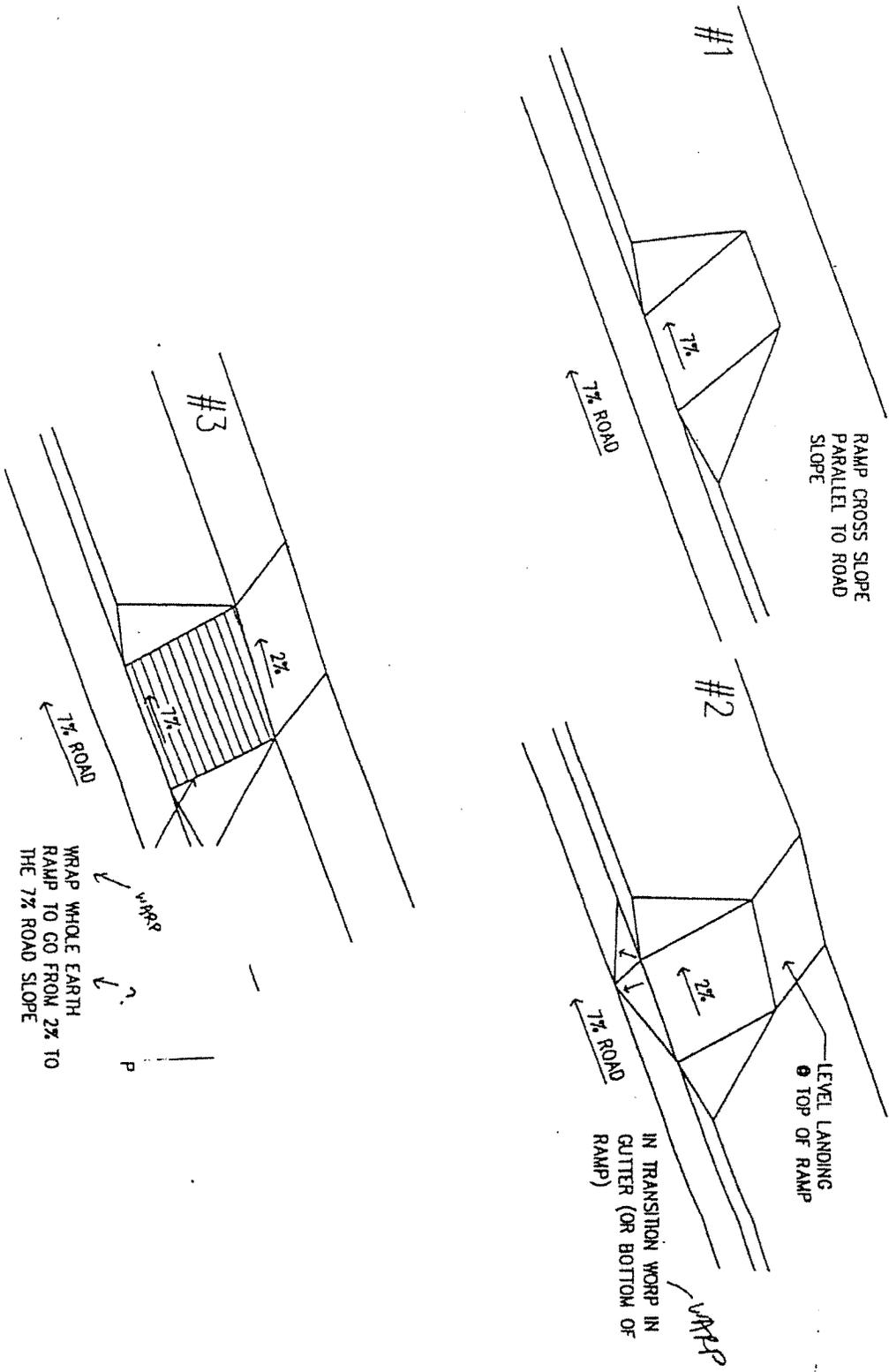
- (a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.
- (b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.
- (c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to the Department of Justice's final rule implementing title III of the ADA, \_\_\_\_\_ F.R. \_\_\_\_\_) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at {4.1.3(5) and {4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.
- (d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with {4.1.7 of UFAS or {4.1.7 of ADAAG. (2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of {35.150.
- (e) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway. (2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

Alteration projects within the public rights of way are defined as improvement projects falling into 3 general categories:

1. Sidewalk improvements (excluding maintenance repairs) – construction of concrete or asphalt concrete sidewalks
2. Roadway widening projects – construction of road improvements which alter the pavement width and provide for concrete and/or asphalt concrete sidewalk improvements
3. Major improvement projects which touch the sidewalk at pedestrian crossing locations (e.g. traffic signal installation/relocation of traffic signals)

Maintenance resurfacing and rehabilitation of streets to extend the useful life of the roadway and do not alter the basic configuration of the existing roadway width are not considered alteration projects.

**EXHIBIT D**



CURB RAMP WARP OPTIONS

CURB RAMP WARP OPTIONS

NO.	DATE	BY

PROJECT NAME:

Project Location: \_\_\_\_\_

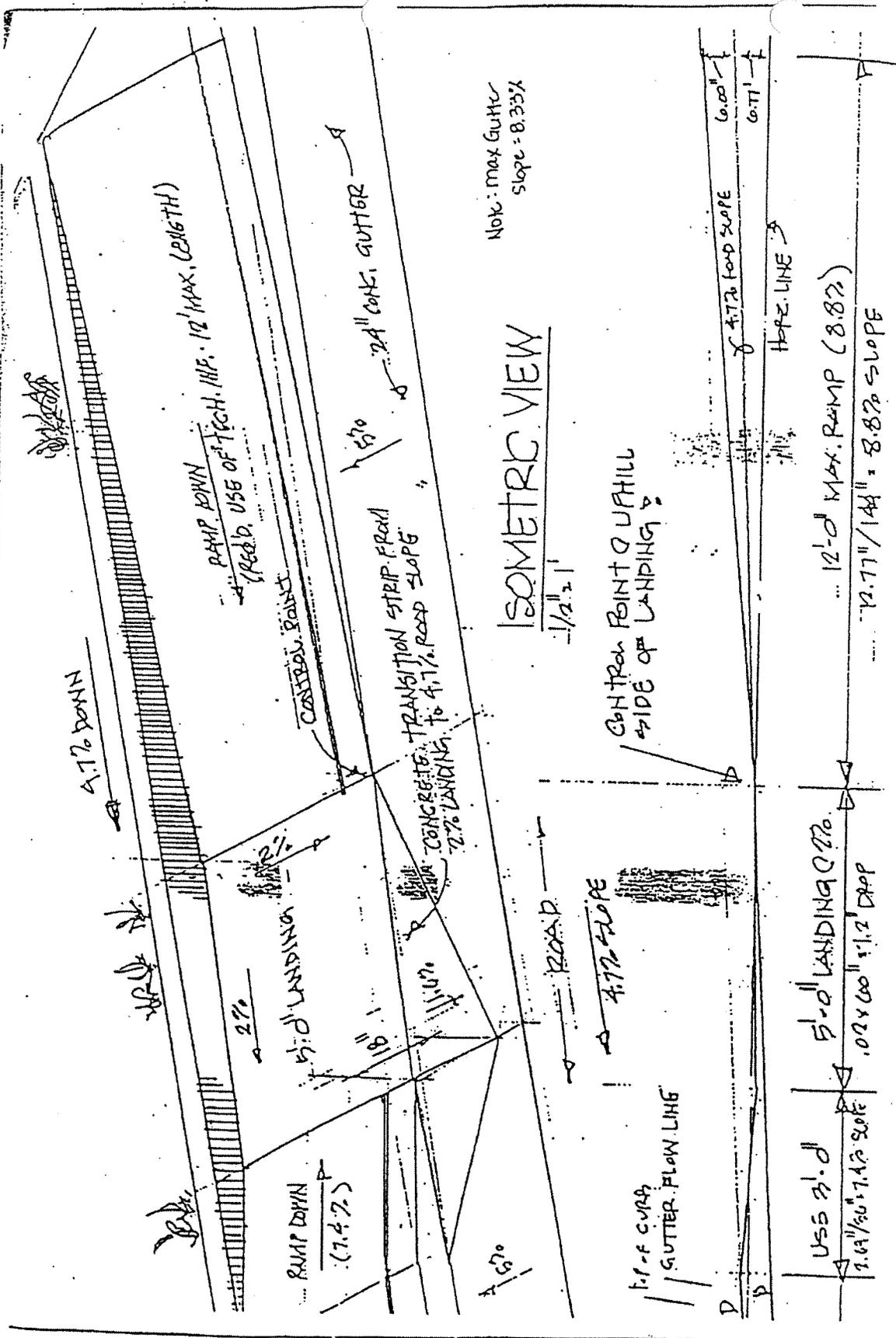
Date: \_\_\_\_\_

Drawn By: \_\_\_\_\_

Scale: \_\_\_\_\_

Sheet Number: \_\_\_\_\_





Note: Max Gutter slope = 8.35%

ISOMETRIC VIEW  
1/2" = 1'

CONTROL POINT ON HILL SIDE OF LANDING

12'-0" MAX. RAMP (8.8%)  
12.77"/144" = 8.8% SLOPE

HOW TO INSERT A PARALLEL CURB RAMP INTO ROAD SLOPE

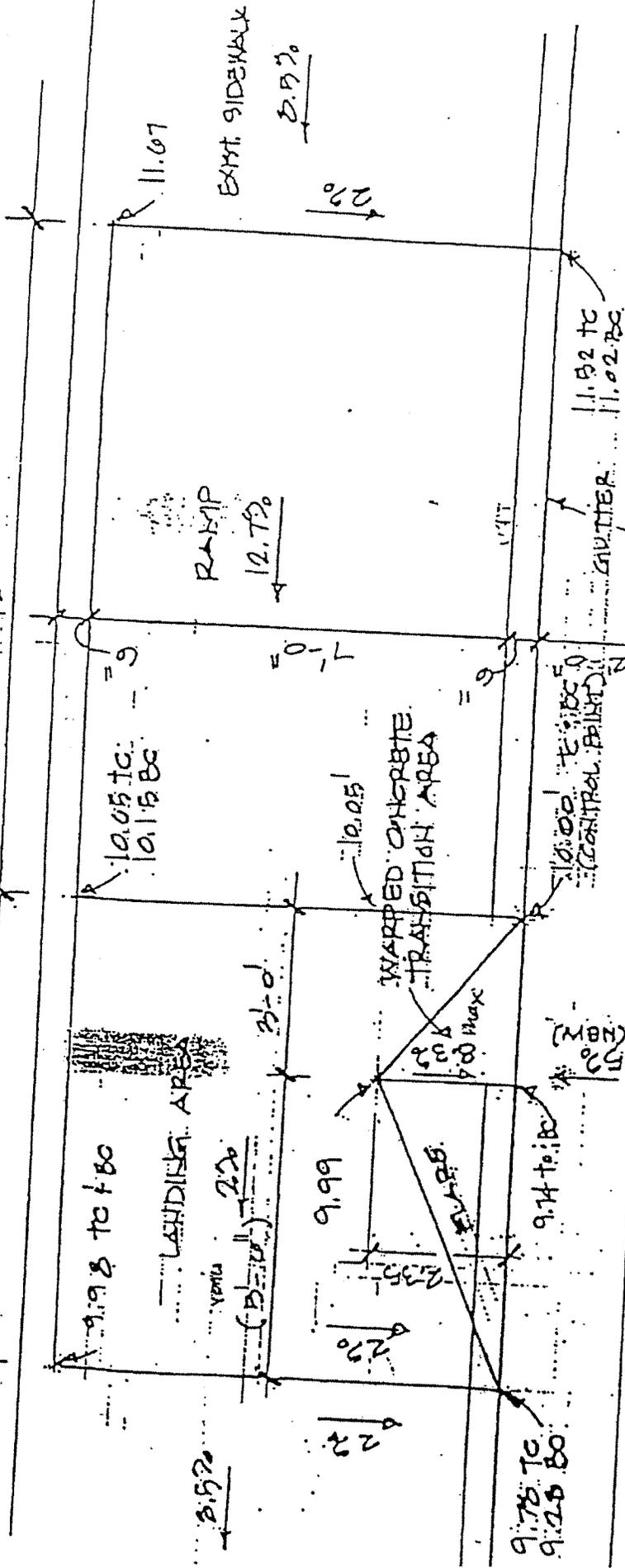
GUTTER WARP  
(Type B Ramp)

SECTION OF GUTTER FLOW

1/2" = 1'      HEADER      9.11.94

vanes, to meet exist. sidewalk

(2' 10" t.)



### PLANK CURB RAMP

HECKER DESIGN 10.11.99

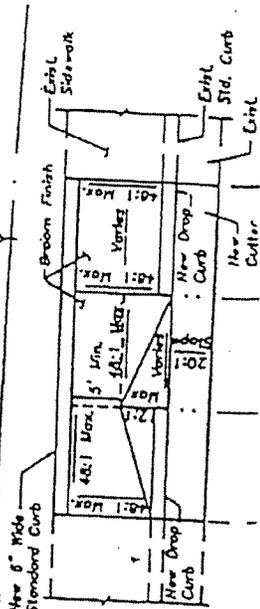
0.5%

EXIST. STREET

TOP OF EXIST. CURB

### SECTION C CURB RAMP

HECKER DESIGN 10.11.99



R GRADES 28.5%

RAMP WARP

(TYPE R Ramp)

**EXHIBIT E**

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.

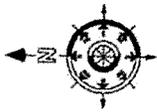
(c) The Self-Evaluation and Transition Plan shall be prepared in accordance with the requirements of ADA Title II and the Department of Justice implementing regulations at 28 C.F.R. Sections 35.105 and 35.150(d), including the requirements regarding public input. In accordance with the provisions of 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

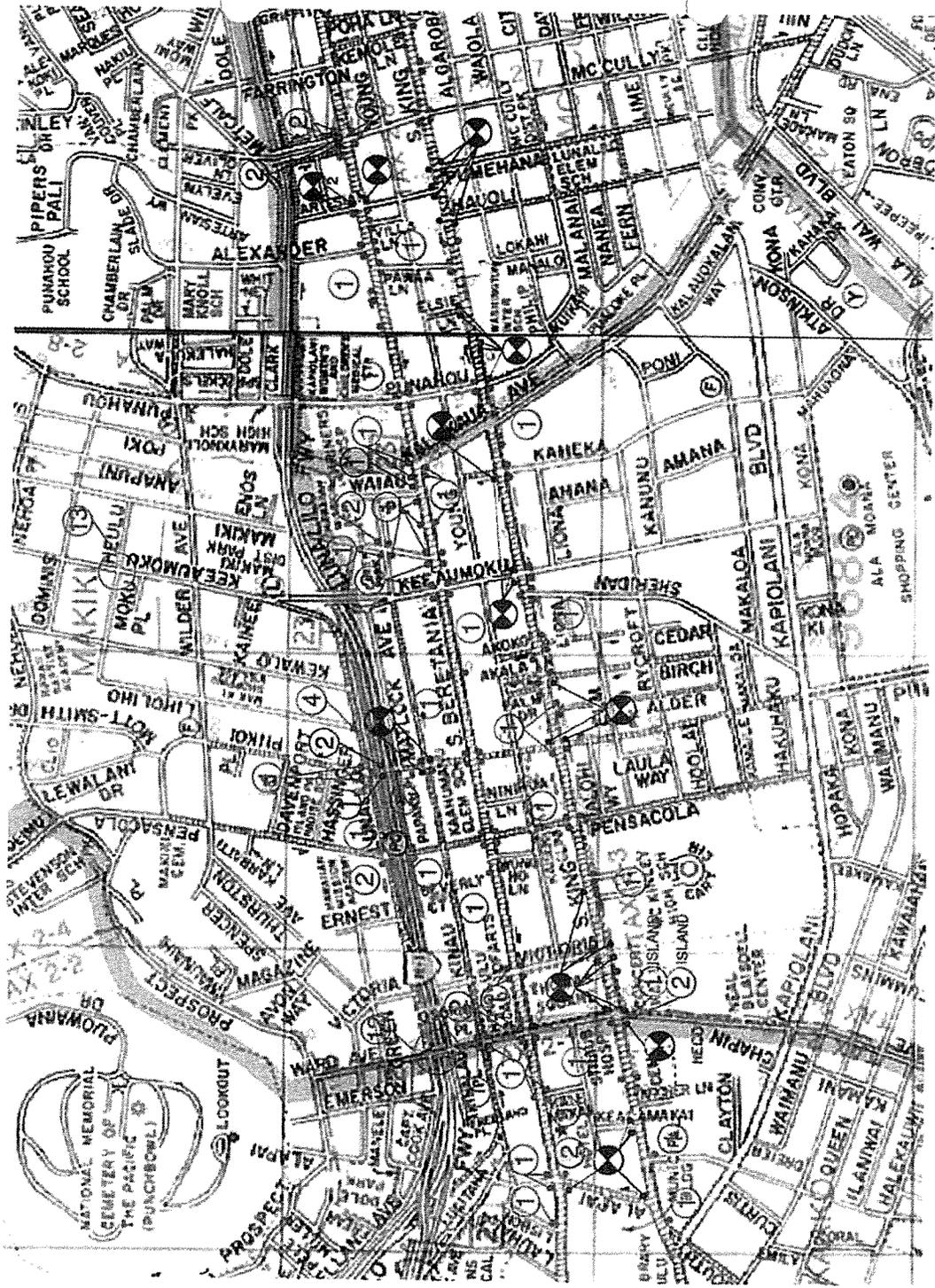
**EXHIBIT F**

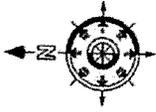
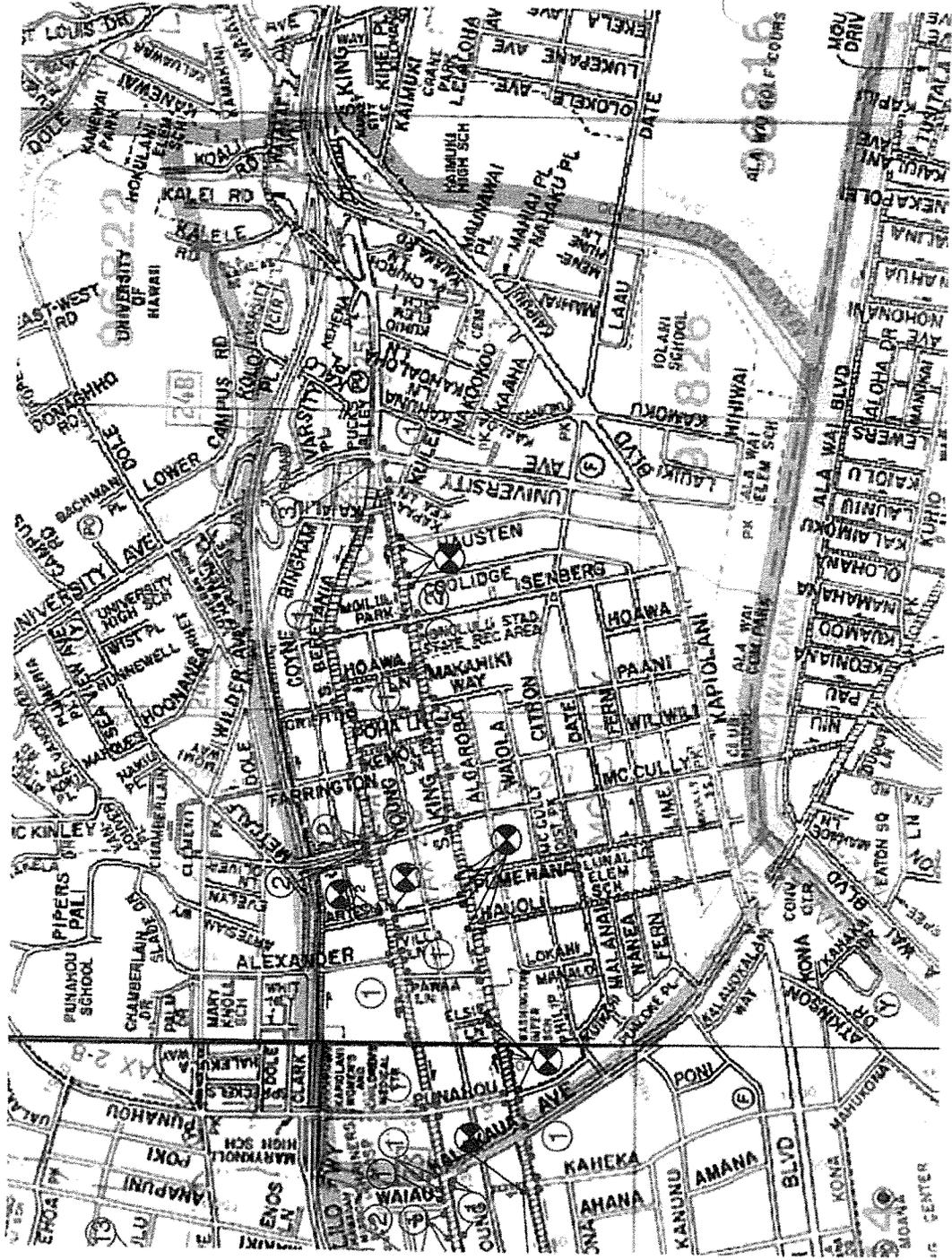
**EXHIBIT G**



**LEGEND**

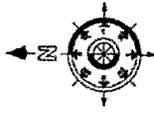
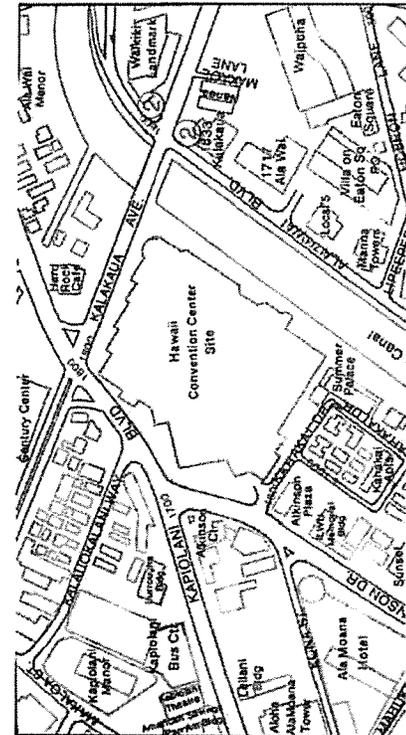
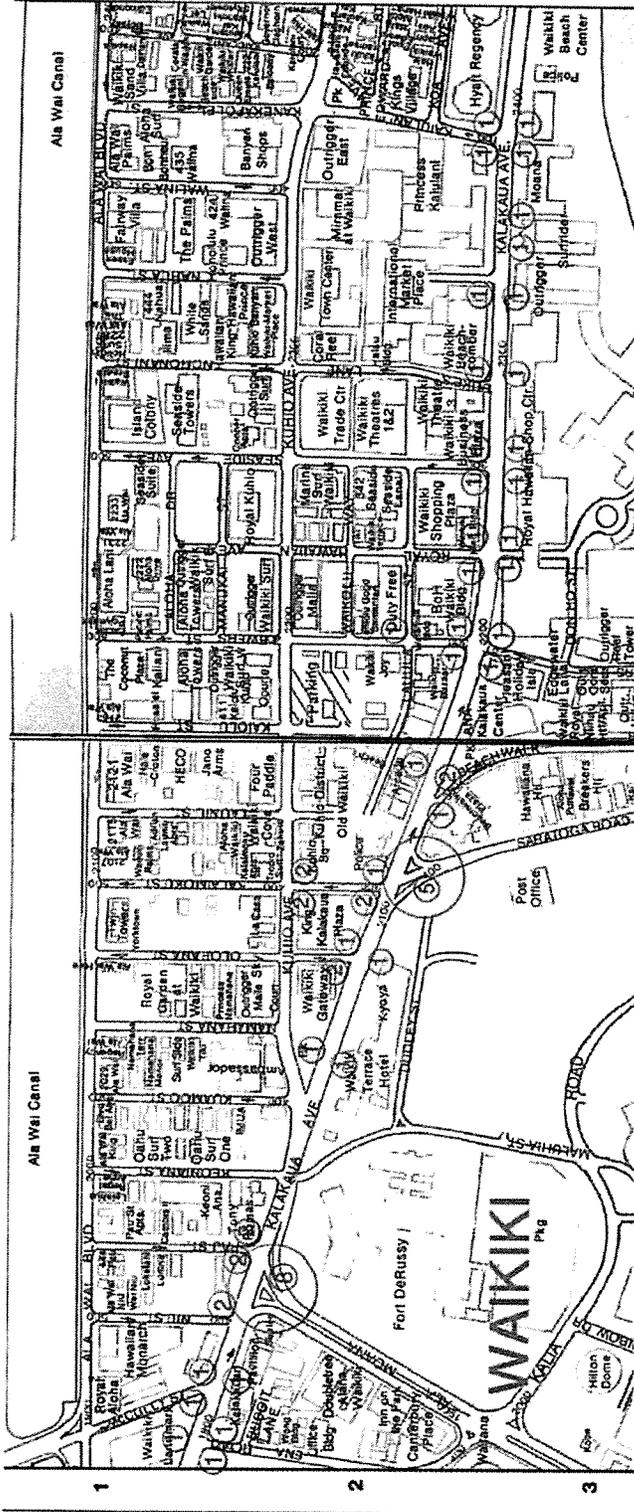
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- ① NUMBER OF NEW CURB CUTS
- ① NUMBER OF EXISTING (Useable) CURB CUTS
- ① NUMBER OF CURB CUTS TO CONSTRUCT (Indicates 1 curb cut unless otherwise noted)
- ⊗ NUMBER OF CURB CUTS TO BE VERIFIED USEABLE





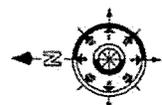
**LEGEND**

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- ① NUMBER OF NEW CURB CUTS
- ① NUMBER OF EXISTING (Useable) CURB CUTS
- ① NUMBER OF CURB CUTS TO CONSTRUCT (Indicates 1 curb cut unless otherwise noted)
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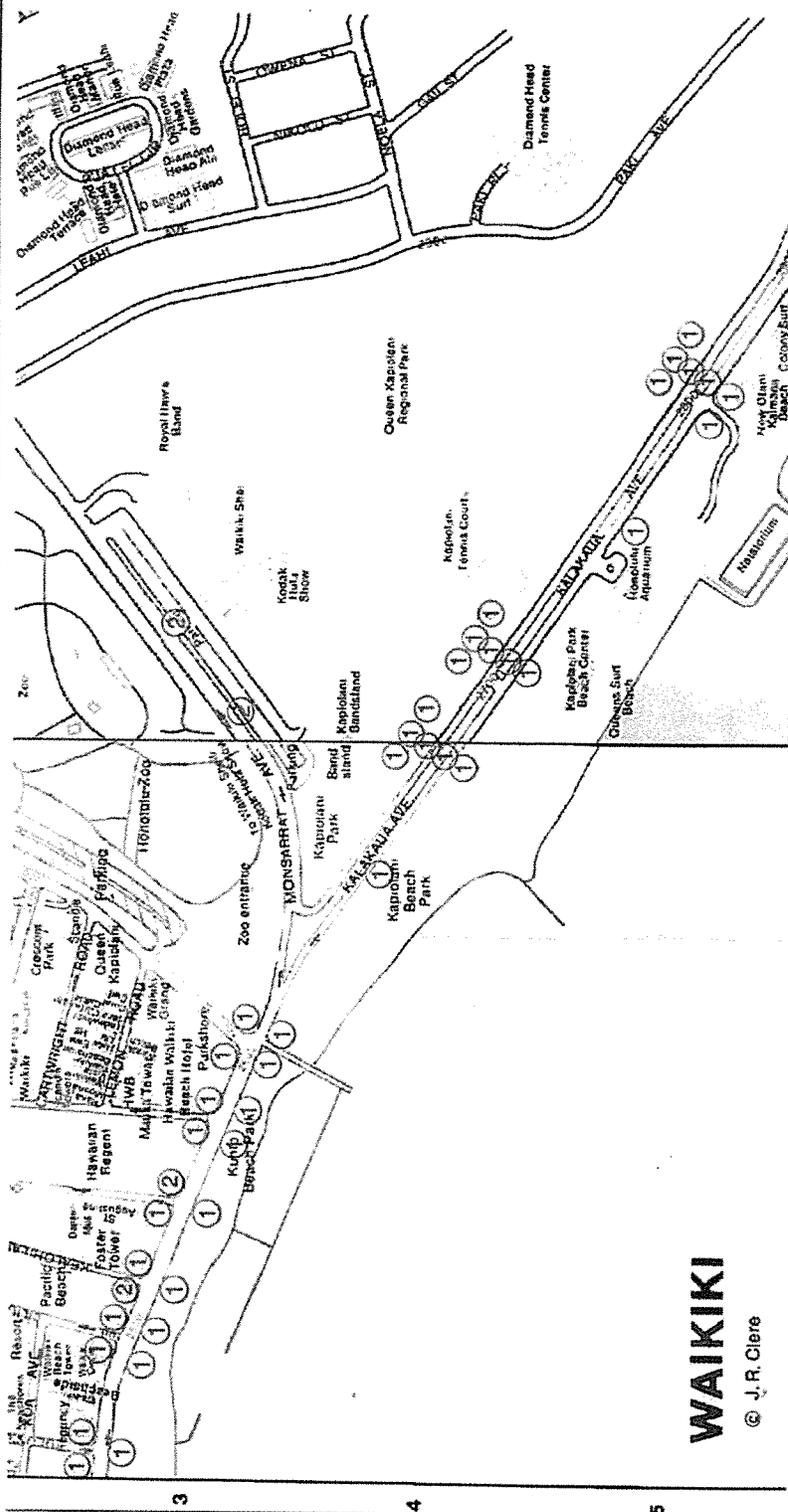
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- ① NUMBER OF EXISTING (Useable) CURB CUTS

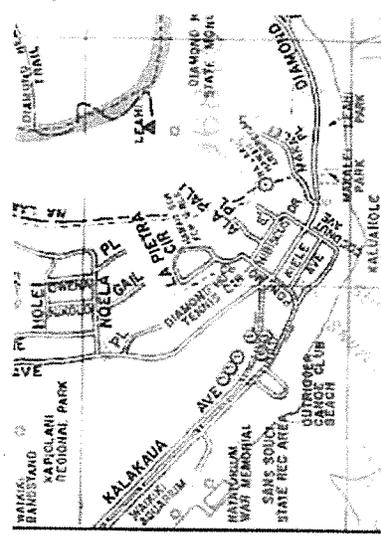


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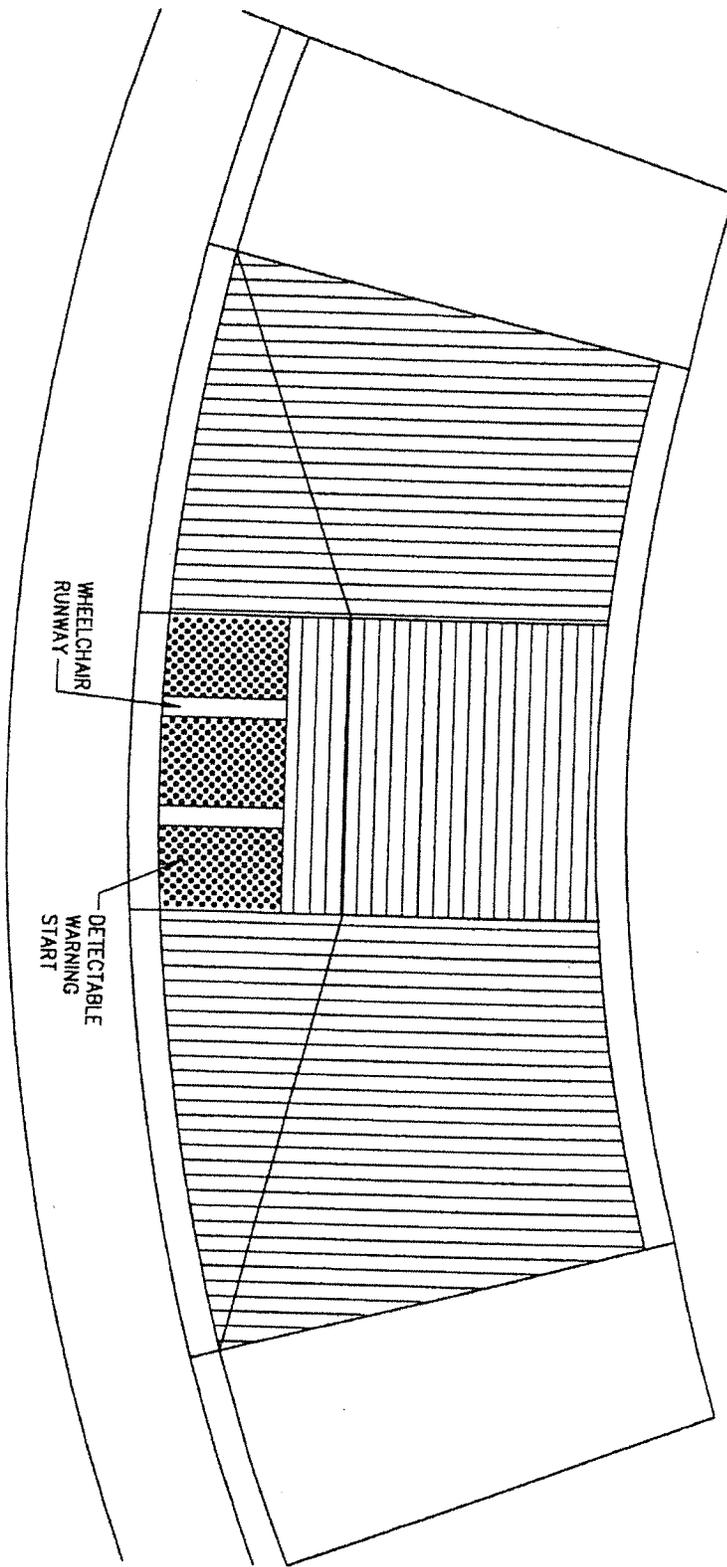
- ① NUMBER OF NEWLY EXISTING CURB CUTS
- ① NUMBER OF NEW CURB CUTS
- ① NUMBER OF EXISTING (Useable) CURB CUTS



**WAIKIKI**  
© J. R. Clere



E



WHEELCHAIR  
RUNWAY

DETECTABLE  
WARNING  
START

TYPICAL CURB RAMP WITH  
WHEELCHAIR  
RUNWAY

PROJECT NAME:

WHEELCHAIR RUNWAY

1	
2	
3	
4	
5	

Project Location:

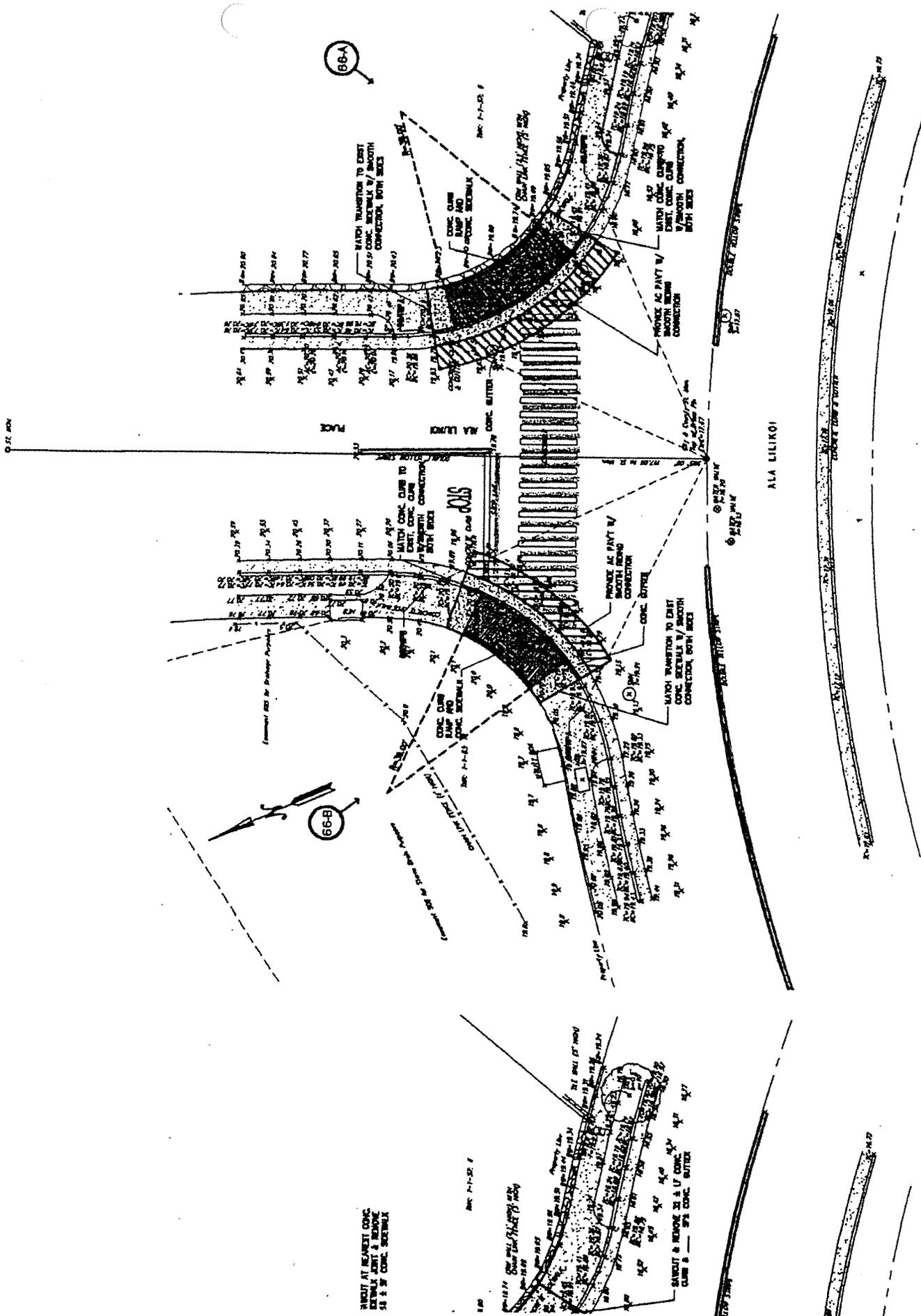
Date: 2/1/82

Drawn By: TCS

Scale: NOT TO SCALE

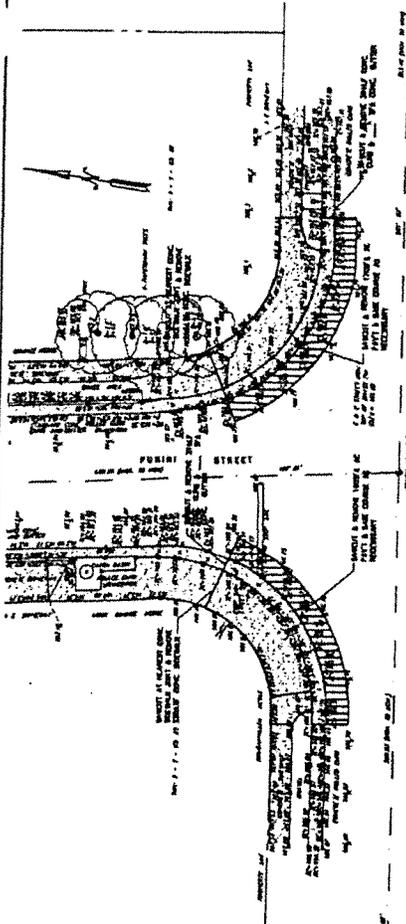
Sheet Number:

**EXHIBIT H**



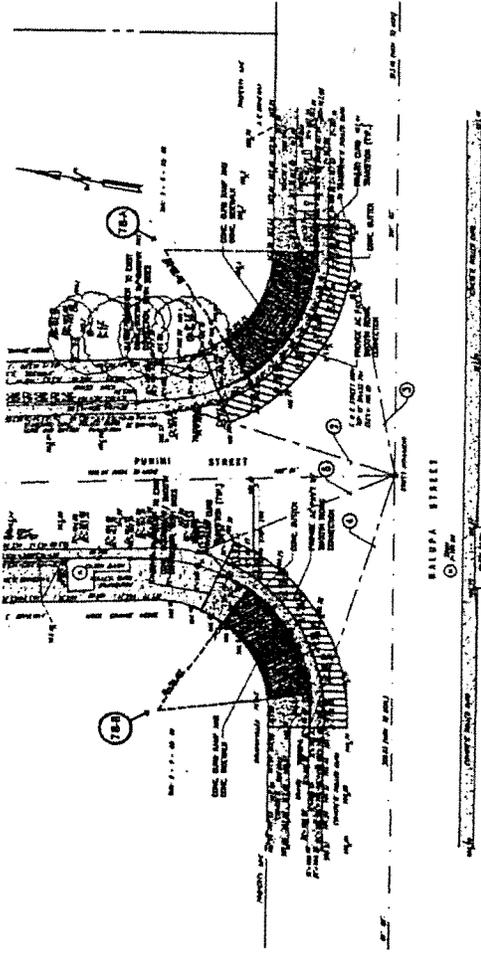
SITF 66 - RAMP PI AN 1





KALUAPA STREET

SITE 78 - DEMOLITION PLAN  
SCALE: 1" = 30'



KALUAPA STREET

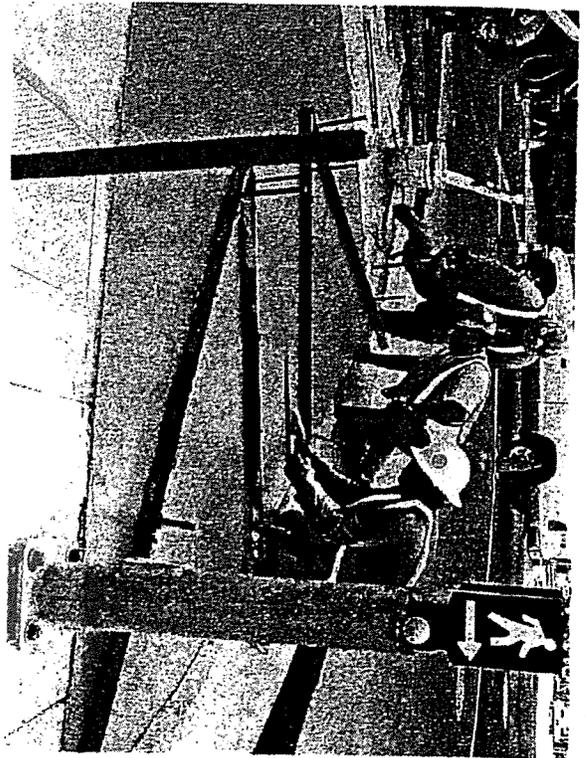
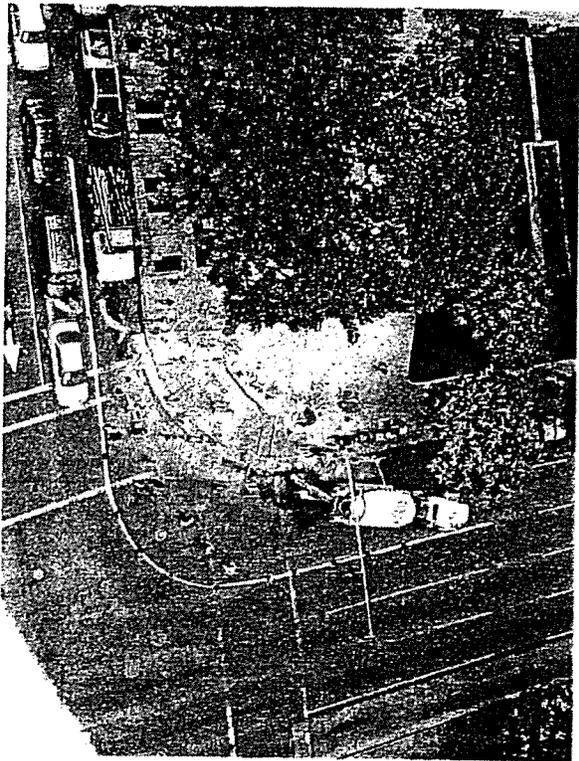
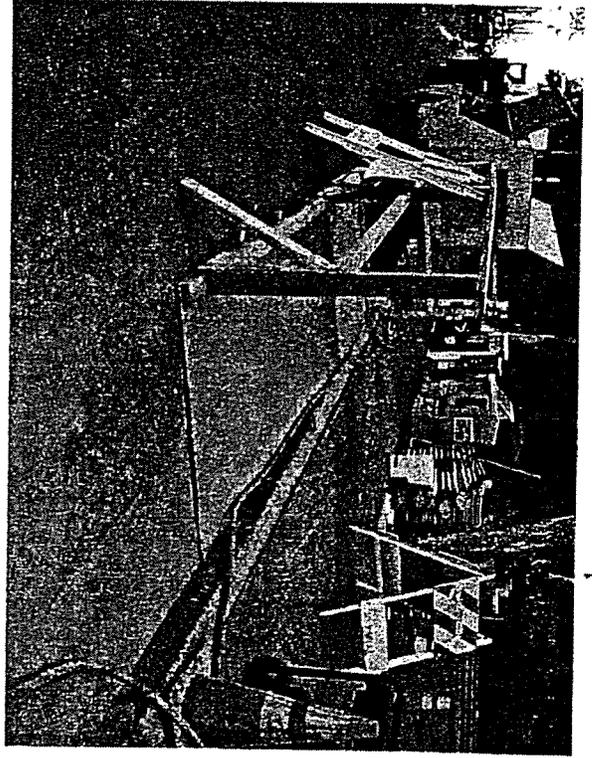
SITE 78 - RAMP PLAN 1  
SCALE: 1" = 30'

NO.	FROM	TO	AZ	DIST
1	CP1	CP2	100.00°	100.00'
2	CP2	CP3	100.00°	100.00'
3	CP3	CP4	100.00°	100.00'
4	CP4	CP5	100.00°	100.00'
5	CP5	CP6	100.00°	100.00'



DEPARTMENT OF DESIGN AND CONSTRUCTION CIVIL DESIGN AND ENGINEERING DIVISION <b>CURB RAMPS AT VARIOUS LOCATIONS</b> FY 2001 (2) HONOLULU, OAHU, HAWAII	
SHEET NO. _____ OF _____ SHEETS	PROJECT NO. _____ DATE _____
DRAWN BY _____ CHECKED BY _____ DATE _____	PROJECT NO. _____ DATE _____

DATE OF THIS PLAN: \_\_\_\_\_



smart3/ll

OF COUNSEL:  
DAVIS LEVIN LIVINGSTON GRANDE

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAR 19 2003

STANLEY E. LEVIN 1152-0  
400 Davis Levin Livingston Grande Place  
851 Fort Street  
Honolulu, Hawaii 96813  
Telephone: (808) 524-7500  
Fax: (808) 545-7802  
E-mail: slevin@davislevin.com

**LODGED**

MAR 13 2003

CLERK, U. S. DISTRICT COURT  
DISTRICT OF HAWAII

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

MAR 19 12:09  
CLERK OF DISTRICT COURT  
HONOLULU

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JIM McCONNELL and MARK EDWARDS,	)	CIVIL NO. 96-01111 DAE/KSC
	)	(Other Civil Action)
	)	
Plaintiff,	)	THIRD STIPULATION REGARDING
	)	CONSENT DECREE AND ORDER
vs.	)	FILED MAY 5, 1997 AND ORDER;
	)	EXHIBIT A
CITY AND COUNTY OF HONOLULU,	)	
	)	
Defendant.	)	

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](http://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.

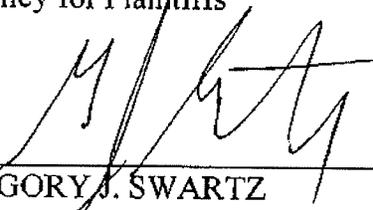
3. Pursuant to Section 9 of the Consent Decree and Order, the City agrees to pay Plaintiffs \$90,966.41 in attorney's fees and costs through August, 2002 as well as attorney's fees and costs in the amount of \$3,293.73 (which will be reduced to \$3,000.00) from September, 2002 to the date of this stipulation. 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).

**Paul Sheriff**

---

**From:** Tina Sasada [tina@paulsheriff.com]  
**Sent:** Friday, January 04, 2002 3:21 PM  
**To:** ADA14U@aol.com  
**Subject:** Lack of Federal Regulations, Trenching



DSC00007.JPG

Per our telephone conversation, please see enclosed image of a typical trenching project, we are both in agreement and concurrence that this type of trenching project would not fall under the definition of an alteration project and therefore would not trigger the reconstruction of curb cuts at this cross walk.

Sincerely,

Paul Sheriff

Agreed and concurred

Bill Hecker, AIA

Please acknowledge our mutual agreement and confirmation.

**EXHIBIT A**

**Paul Sheriff**

---

**From:** Tina Sasada [tina@paulsheriff.com]  
**Sent:** Friday, January 04, 2002 3:17 PM  
**To:** Bruce Clark (E-mail)  
**Subject:** Lack of Federal Regulations, Trenching



DSC00007.JPG

Per our telephone conversation and our drive by field trip, we are both in agreement and concurrence that this type of trenching project would not fall under the definition of an alteration project and therefore would not trigger the reconstruction of curb cuts at this cross walk.

Sincerely,

Paul Sheriff

Agreed and concurred

Bruce Clark

Please acknowledge our mutual agreement and confirmation.

**EXHIBIT A**

---

# Americans with Disabilities Act

## City of Sacramento

### TRANSITION PLAN

#### For Curb Ramps



*Department of*  
**PUBLICWORKS**  
CITY OF  
SACRAMENTO



January 9, 2001

EXHIBIT C

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## DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814  
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

September 27, 2002

Mr. Paul Sheriff  
Paul Sheriff Incorporated  
1000 Bishop Street  
Suite 888  
Honolulu, HI 96813

Dear Mr. Sheriff,

In response to your inquiry regarding public rights-of-way and the role of our office, the Disability and Communication Access Board (DCAB) relative to state law, I am providing you with the following information.

- Hawaii Revised Statutes, §103-50, requires that all plans and specifications for the construction of public buildings, facilities, and sites by the State or any county, or on behalf of the State or any county, be prepared so that they are accessible to and usable by persons with disabilities. The current standards are the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Federal Fair Housing Amendments Act, as amended and any other guidelines adopted by DCAB. Currently, the only additional guidelines are the Residential Housing Accessibility Guidelines.
- Hawaii Revised Statutes, §103-50, also requires that all agencies seek 'advice and recommendation' from DCAB on all construction plans. Our 'advice and recommendation' is in the form of a written document review on the final plans for construction. Our review is required regardless of whether or not an agency or a design firm hires an independent accessibility consultant.
- With respect to the public right-of-way (curb ramps, sidewalks, etc.) we consider those locations to be sites, rather than buildings or facilities, and also subject to §103-50, Hawaii Revised Statutes.
- Hawaii Revised Statutes §103-50 does not require plans to be generated. Therefore, if a 'fix' is handled through a maintenance crew without plans being generated, then a review by our office would not occur, nor would it be required.

**EXHIBIT D**

Mr. Paul Sheriff  
September 27, 2002  
Page 2

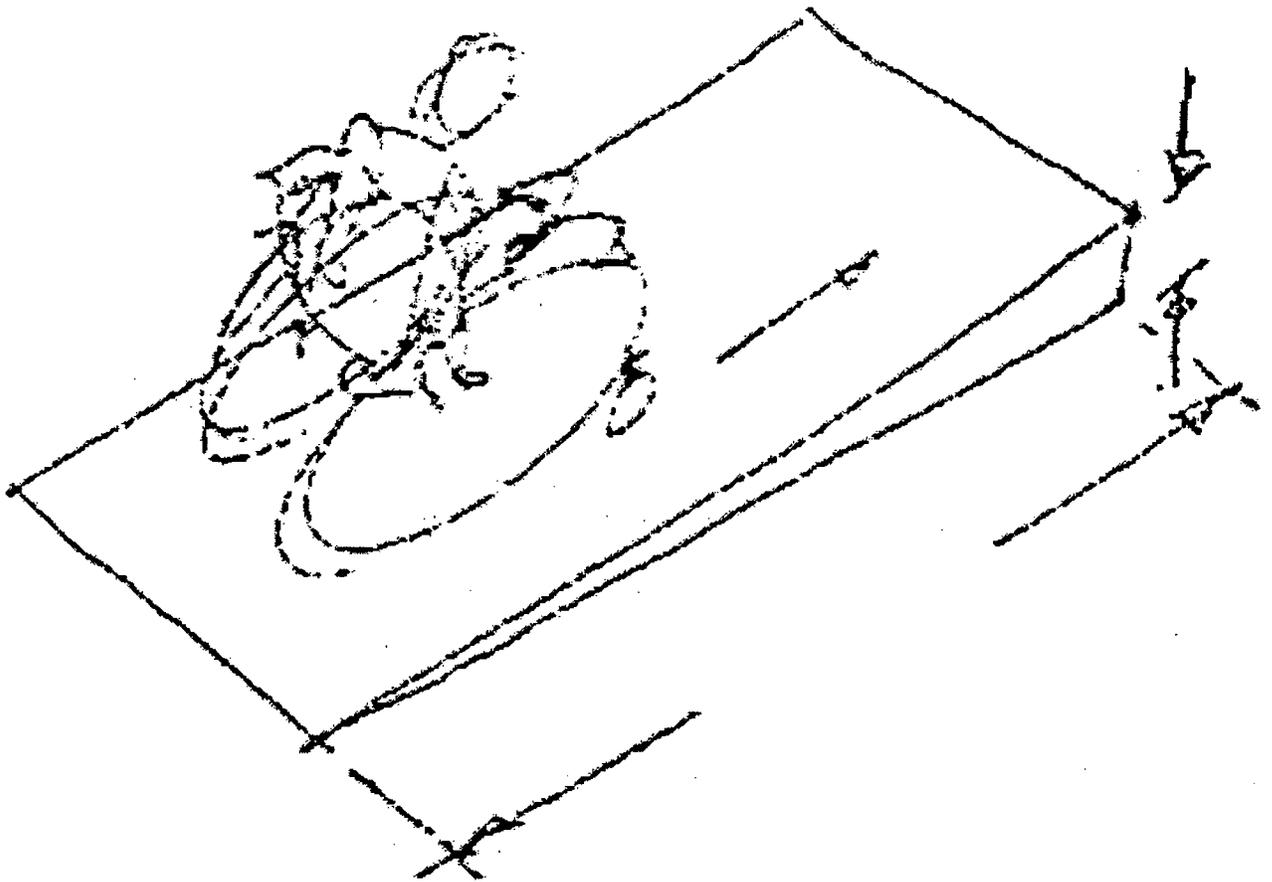
- The applicable current design guidelines are the Americans with Disabilities Act Accessibility Guidelines (ADAAG) developed by the U.S. Access Board. These guidelines were primarily developed for buildings and facilities "on-site." No specific public right-of-way guidelines are included.
- The U.S. Access Board convened a Public Rights-of-Way Advisory Committee (PROWAAC) to make recommendations on guidelines for the public right-of-way. The DCAB served on the Committee. The recommendations from the Committee to the full U.S. Access Board were published January 10, 2001. The U.S. Access Board published a Notice of Availability of Draft Guidelines on June 17, 2002. At the present time, the guidelines are still neither final, nor enforceable.
- The absence of guidelines in the public right-of-way has led to some ambiguity on the requirements, most notably in the area of detectable warnings, accessible pedestrian signals, etc. However, even in the absence of specific public right-of-way guidelines, applicable current ADAAG technical requirements can be transferred. The most applicable technical requirements are from the provisions for an accessible route: width, cross slope, change in elevation, protruding objects, and surface. The DCAB takes those factors into consideration in our review.

I hope the above information is of assistance to you. Should you have any questions, please feel free to contact me at 586-8121.

Sincerely,



FRANCINE WAI  
Executive Director



**EXHIBIT E**

**USABILITY ASSESSMENT FOR CURB RAMPS OR SLOPED AREAS**

For the

City & County of Honolulu's

Curb Ramp

Self-Evaluation and Transition Plan

by

Accessibility Planning & Consulting, Inc.  
1164 Bishop Street, Suite 1202  
Honolulu, Hawaii 96813

Bruce M. Clark, President / Principal

Phone: 545-1141 / Fax: 531-7737  
Toll free 1-800-556-1141  
e-mail: [adaexpert@hawaii.rr.com](mailto:adaexpert@hawaii.rr.com)

*copy only*

CARRIE K. S. OKINAGA, 5958  
Corporation Counsel  
GREGORY J. SWARTZ, 4856  
Deputy Corporation Counsel  
City and County of Honolulu  
Honolulu, Hawaii 96813  
Telephone No.: (808) 523-4629  
Fax No.: (808) 523-4583  
E-mail address: gswartz@honolulu.gov

Attorneys for Defendant

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

**LODGED**

FEB 04 2005

*10:32k  
26*

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  
)

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

**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.

In response to your request for my recommendation for curb ramp construction tolerances, I propose the following – slope and cross slope tolerances should be measured with a 24" long digital level set on the surface of the ramp or landing in the following way:

- i. For ramps, check cross slope every 24" along the ramp run at the top, middle and bottom then check running slope every 24" along the ramp at the top, middle and bottom- this basically provides a 24" grid survey of slope and cross slopes on the ramp;
- ii. Since ramp landings have to be level (i.e., 1:48 max.) in all directions, check the slope every 24" with the level parallel to each edge of the landing, then place the level at the center of the landing and measure every 24" in both directions of traffic – this basically provides a 24" grid survey of slopes and cross slopes on the landings.

If the finish of the concrete ramp or landing appears to have visible troughs or ridges, be sure to measure the slope by placing the level so it reads the steepest slopes on the surface. To measure whether the surface plane meets tolerance, place the level so it is centered over a trough to measure the maximum gap, or balanced on a ridge with an equal gap at both ends of the level. These gaps and the surface slope measurements must fall within the tolerances listed in the following table:

Surface Slope per Plans	Allowable Slope Tolerance	Allowable Flatness Tolerance
Less than 5%	+0.9% max.	¼" max. gap
5% - 8.3%	+1.2% max.	3/8" max. gap
> 8.3% - 10.0%	+1.5% max.	½" max. gap
Greater than 10.0%	Consultant's Discretion	½" max. gap

**EXHIBIT B**

1.2.2 - "You Touch/You Fix"  
Rule. Any elements or features within the public right-of-way that affect pedestrian usability and are being altered in such a way to allow them to be made accessible shall, to the maximum extent feasible, meet the new construction requirements.

28 CFR 35.151 New construction and alterations.

- (a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.
- (b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.
- (c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to the Department of Justice's final rule implementing title III of the ADA, \_\_\_\_\_ F.R. \_\_\_\_\_) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at {4.1.3(5) and {4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.
- (d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with {4.1.7 of UFAS or {4.1.7 of ADAAG. (2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of {35.150.
- (e) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway. (2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

EXHIBIT D

Alteration projects within the public rights of way are defined as improvement projects falling into 3 general categories:

1. Sidewalk improvements – construction of concrete or asphalt concrete sidewalks
2. Roadway widening projects – construction of road improvements which alter the pavement width and provide for concrete and/or asphalt concrete sidewalk improvements
3. Major improvement projects which touch the sidewalk at pedestrian crossing locations (e.g. traffic signal installation/relocation of traffic signals)

Maintenance resurfacing and rehabilitation of streets to extend the useful life of the roadway and do not alter the basic configuration of the existing roadway width are not considered alteration projects.

**EXHIBIT F**

## 2.1.4 Existing Curb Ramp Assessment Criteria Checklist

### (A) ADA "Program Access" for Existing Curb Ramps

1. "Touch It/Fix It" Provision applies for alterations to existing curb ramps that are not conducted as part of the implementation of the curb ramp transition plan.
2. In the evaluation of all the existing curb ramps during the pre-design assessment, it is critical that the analysis be conducted with the end goal of providing curb ramps and sidewalks that are accessible "...to the maximum extent feasible..." and if a new curb ramp would not provide an improvement to accessibility due to existing TI (technically infeasible) conditions at the pedestrian crossing, then the existing curb ramp should be deferred until it is included in a future alteration project or until a citizen request is made for its improvement.
3. Any existing curb ramp listed in the transition plan may be deferred until it is included in a future alteration project or until a citizen request is made for its improvement, if the existing ramp meets the following basic usability criteria established for program accessibility in the existing sidewalk network.

### (B) Existing Transition Plan Curb Ramp Usability Criteria

While each of these limits may be exceeded where site constraints prohibit a more accessible alternative to the existing curb ramp design under technical infeasibility, if the existing curb ramp in question complies with the following minimum usability criteria it may remain until future alterations or citizen requests dictate its replacement.

1. Ramp slope parallel to roadway, will not be greater than 13.5% over adjacent roadway slope.
2. 12.0% maximum slope of flared sides of existing Type A\* ramps measured parallel to, and 29" from the back of the sidewalk. If there is a 29" wide or wider top landing/by-pass space, then the slope of the flared sides may be any slope since they will not be considered part of the accessible route required under the "program access" mandate.
3. The algebraic difference between the existing curb ramp run and the gutter counter slope must not exceed 20.3%.
4. 48" minimum bottom landing within curb line extensions when an existing corner type curb ramp is provided so wheelchair users don't have to proceed into the active traffic flow to cross the street.
5. 36" minimum width median opening and 48" between the tops of curb ramps aligned in a traffic island.

### (C) General Pre-Design Assessment Evaluation Principles

1. A 24" long SmartLevel will be used for the evaluation of running slopes and cross slopes in the pre-design assessment.
2. Identify and eliminate orphan curb ramp conditions and those curb ramps placed in "sidewalks to nowhere" – verify that the proposed curb ramp is not required to allow wheelchair users to use the corner with the "sidewalks to nowhere" as an intermediate point along an accessible route to other pedestrian crossings that do lead to bus stops or buildings.
3. Ramp runs on certain curb ramps (Type B, Truncated and Type D) may be limited to 15 feet, regardless of the ultimate curb ramp slope.
4. Identify and eliminate tripping hazards such as raised curbs or other abrupt level changes at approach routes (entrance stoops, stairs, access aisles, sidewalks, etc.) to adjoining property. Maintain continuity with existing approach walks and building entrances on private property (i.e., ensure flush transitions with no steps).
5. Lips or abrupt vertical level changes in pedestrian areas should be no higher than 1/2" (1/4" for design purposes) maximum.
6. Always consider the feasibility of alternate curb ramp designs before determining that the existing curb ramp is allowed to stay and it is the best that can be provided given the site specific field conditions.
7. When considering the feasibility of a new curb ramp design at an existing location where there is no curb ramp, consider the simplest and least expensive curb ramp alternatives (Type A) first, then move on to other more complicated and expensive design alternatives. Keep in mind that it is not acceptable to settle for an inexpensive ramp design that does not provide the basic accessibility offered by a more costly and/or complicated ramp that is compliant.
8. In cases where allowable slopes and dimensions are exceeded and the existing curb ramp is determined in the pre-design assessment to be "as accessible as can reasonably be provided and accessibility can not be substantially improved" for the given site conditions, file "Technical Infeasibility Statements" supplemented with supporting documentation and state that it should be deferred until a future citizen request. Technical Infeasibility Statements shall include explanations on why each non-compliant component of a curb ramp or accessible element could not be made compliant. File individual Technical Infeasibility Statements for each non-compliant curb ramp or required accessible element proposed or allowed to be deferred.

These evaluation criteria are not to be used for alteration or new construction projects!

\*Type A refers to the standard perpendicular curb ramp design – see City & County of Honolulu Dept. of Design and Construction, Civil Division standard design guidelines for each type referenced.

# EXHIBIT H

rev. 7/29/03

# 12

II-5.3000

May 6, 1992

Mr. Kenneth M. Lesser  
First Vice-President  
Association of City Employees  
with Disabilities  
706 North Vendome Street  
Los Angeles, California 90026

Dear Mr. Lesser:

This is in response to your letter about the provision of curb cuts under title II of the Americans with Disabilities Act (ADA). Your letter also asked about available remedies under title II and section 504 of the Rehabilitation Act of 1973, as amended.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to public entities. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

**EXHIBIT I**

disabilities. A public entity, however, is not necessarily required to make each of its existing facilities accessible. Nor does a public entity have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens ({35.150(a)}).

Section 35.150(d)(2) of the title II rule states that public entities with responsibility for or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps where pedestrian walks cross curbs. Priority must be given to walkways serving State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. This schedule must be included as part of a transition plan ({35.150(d)(2)}).

However, section 35.150 does not necessarily require a curb ramp at every intersection. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility, even if an individual with disabilities may need to travel a longer route to reach a particular building than would a nondisabled individual.

In residential areas, as opposed to commercial areas, it may be appropriate to establish a procedure for installing curb ramps upon request when an individual with disabilities moves into a neighborhood. Moreover, the fundamental alteration and undue burdens defenses will limit the number of curb ramps required in many cases. In developing a transition plan to provide curb ramps, a public entity should consider all of these factors.

In the case of new construction and alterations (as opposed to existing facilities), the rule requires that curb ramps be provided at any intersection having curbs or other barriers to entry from a street level pedestrian walkway ({35.151(e)}).

In response to your question about remedies, title II incorporates the remedies of section 505 of the Rehabilitation Act, which include court orders to stop discrimination, termination of Federal funds when there are Federal funds to terminate, and damages in some circumstances. Penalties are not available. Nor is reimbursement of Federal funds an available remedy under title II or section 504.

I hope this information has been helpful to you.

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

Enclosure

## 2.1.4 Existing Curb Ramp Assessment Criteria Checklist

### (A) ADA "Program Access" for Existing Curb Ramps

- "Touch It/Fix It" Provision applies for alterations to existing curb ramps that are not conducted as part of the implementation of the curb ramp transition plan.
1. In the evaluation of all the existing curb ramps during the pre-design assessment, it is critical that the analysis be conducted with the end goal of providing curb ramps and sidewalks that are accessible "...to the maximum extent feasible..." and if a new curb ramp would not provide an improvement to accessibility due to existing TI (technically infeasible) conditions at the pedestrian crossing, then the existing curb ramp should be deferred until it is included in a future alteration project or until a citizen request is made for its improvement.
  2. Any existing curb ramp listed in the transition plan may be deferred until it is included in a future alteration project or until a citizen request is made for its improvement, if the existing ramp meets the following basic usability criteria established for program accessibility in the existing sidewalk network.

### (B) Existing Transition Plan Curb Ramp Usability Criteria

While each of these limits may be exceeded where site constraints prohibit a more accessible alternative to the existing curb ramp design under technical infeasibility, if the existing curb ramp in question complies with the following minimum usability criteria it may remain until future alterations or citizen requests dictate its replacement.

1. Ramp slope parallel to roadway, will not be greater than 13.5% over adjacent roadway slope.
2. 12.0% maximum slope of flared sides of existing Type A\* ramps measured parallel to, and 29" from the back of the sidewalk. If there is a 29" wide or wider top landing/by-pass space, then the slope of the flared sides may be any slope since they will not be considered part of the accessible route required under the "program access" mandate.
3. The algebraic difference between the existing curb ramp run and the gutter counter slope must not exceed 20.3%.
4. 48" minimum bottom landing within curb line extensions when an existing corner type curb ramp is provided so wheelchair users don't have to proceed into the active traffic flow to cross the street.
5. 36" minimum width median opening and 48" between the tops of curb ramps aligned in a traffic island.

### (C) General Pre-Design Assessment Evaluation Principles

1. A 24" long SmartLevel will be used for the evaluation of running slopes and cross slopes in the pre-design assessment.
  2. Identify and eliminate orphan curb ramp conditions and those curb ramps placed in "sidewalks to nowhere" - verify that the proposed curb ramp is not required to allow wheelchair users to use the corner with the "sidewalks to nowhere" as an intermediate point along an accessible route to other pedestrian crossings that do lead to bus stops or buildings.
  3. Ramp runs on certain curb ramps (Type B, Truncated and Type D) may be limited to 15 feet, regardless of the ultimate curb ramp slope.
  4. Identify and eliminate tripping hazards such as raised curbs or other abrupt level changes at approach routes (entrance stoops, stairs, access aisles, sidewalks, etc.) to adjoining property. Maintain continuity with existing approach walks and building entrances on private property (i.e., ensure flush transitions with no steps).
  5. Lips or abrupt vertical level changes in pedestrian areas should be no higher than 1/2" (1/4" for design purposes) maximum.
  6. Always consider the feasibility of alternate curb ramp designs before determining that the existing curb ramp is allowed to stay and it is the best that can be provided given the site specific field conditions.
  7. When considering the feasibility of a new curb ramp design at an existing location where there is no curb ramp, consider the simplest and least expensive curb ramp alternatives (Type A) first, then move on to other more complicated and expensive design alternatives. Keep in mind that it is not acceptable to settle for an inexpensive ramp design that does not provide the basic accessibility offered by a more costly and/or complicated ramp that is compliant.
  8. In cases where allowable slopes and dimensions are exceeded and the existing curb ramp is determined in the pre-design assessment to be "as accessible as can reasonably be provided and accessibility can not be substantially improved" for the given site conditions, file "Technical Infeasibility Statements" supplemented with supporting documentation and state that it should be deferred until a future citizen request. Technical Infeasibility Statements shall include explanations on why each non-compliant component of a curb ramp or accessible element could not be made compliant. File individual Technical Infeasibility Statements for each non-compliant curb ramp or required accessible element proposed or allowed to be deferred.
- These evaluation criteria are not to be used for alteration or new construction projects!

\*Type A refers to the standard perpendicular curb ramp design - see City & County of Honolulu Dept. of Design and Construction, Civil-Division standard design guidelines for each type referenced.

In response to your request for my recommendation for curb ramp construction tolerances, I propose the following – slope and cross slope tolerances should be measured with a 24" long digital level set on the surface of the ramp or landing in the following way:

- i. For ramps, check cross slope every 24" along the ramp run at the top, middle and bottom then check running slope every 24" along the ramp at the top, middle and bottom- this basically provides a 24" grid survey of slope and cross slopes on the ramp;
- ii. Since ramp landings have to be level (i.e., 1:48 max.) in all directions, check the slope every 24" with the level parallel to each edge of the landing, then place the level at the center of the landing and measure every 24" in both directions of traffic – this basically provides a 24" grid survey of slopes and cross slopes on the landings.

If the finish of the concrete ramp or landing appears to have visible troughs or ridges, be sure to measure the slope by placing the level so it reads the steepest slopes on the surface. To measure whether the surface plane meets tolerance, place the level so it is centered over a trough to measure the maximum gap, or balanced on a ridge with an equal gap at both ends of the level. These gaps and the surface slope measurements must fall within the tolerances listed in the following table:

Surface Slope per Plans	Allowable Slope Tolerance	Allowable Flatness Tolerance
Less than 5%	+0.9% max.	¼" max. gap
5% - 8.3%	+1.2% max.	3/8" max. gap
> 8.3% - 10.0%	+1.5% max.	½" max. gap
Greater than 10.0%	Consultant's Discretion	½" max. gap

EXHIBIT L

# Curb Ramp Usability Report

for the

## City & County of Honolulu



by



Accessibility Planning & Consulting, Inc.  
1164 Bishop Street, Suite 1202  
Honolulu, Hawaii 96813

June 2003

**EXHIBIT**

Q



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.

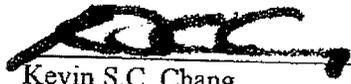
DATED: Honolulu, Hawaii, July 30, 2009.

/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 VS. CITY & COUNTY OF  
HONOLULU**

**SPECIAL COURT MONITOR'S  
INTERIM REPORT  
FOR 5<sup>TH</sup> STIPULATION**

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

**PREPARED BY: PAUL STANLEY  
SHERIFF**

**DATE: JUNE 7, 2007**

**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**.

**3. 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**.

4. **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 person 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 individuals with mobility impairments shall not be subject to protest under Chapter 103D of the Hawaii Revised Statutes of Chapter 3-126 of the Hawaii Administrative Rules.

**Exhibit C: Bus Stop Requirement Clarification**

City and County of Honolulu

1. Regarding the issue of Bus Stops mentioned below in the noted excerpt from the original Consent Decree, the City has included specific prioritization factors related to the proximity of bus stops into the analysis of which curb ramps would be built or modified in the early or later phases of the scheduled curb ramp bid projects:

(c) 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

- 3 -

This inclusion of the bus stop proximity factor in the curb ramp transition plan satisfies the Court ordered requirement that the City include "access to bus stops" in their Transition Plan for curb ramps. The language of the consent decree clearly states that the requirement is to assess within the transition plan curb ramps that serve the bus stops. Furthermore, the consent decree does not require a separate bus stop transition plan. However, a transition plan for bus stops has been prepared for the City by DTS through an outside consultant. It should not be construed that this bus stop transition plan was conducted in order to comply with this curb ramp transition plan consent decree. We have subsequently learned from telephone and email correspondence with a representative of the US Department of Transportation, Federal Transit Administration Office of Civil Rights that they had not seen any City or County or municipality develop a bus stop transition plan for ADA compliance, given the flexibility associated with ADA Title II paratransit provisions. Nor were they of the opinion that an ADA bus stop transition plan was required. The primary focus of enforcement related to ADA fixed route bus systems is on paratransit accommodations, not facility compliance as in the case of other City programs housed in facilities.

**CONSTRUCTION CONTRACT TIMETABLE****Curb Ramps at Various Locations, FY 2016(A)**

Bid Solicitation: May 24, 2018

Bids Opened: June 14, 2018

Low Bidder: Pacific Isles Equipment Rental, Inc.

Intersection List:

Intersection ID	Street	Street	Street
7C2233	Kilani Ave.	Westervelt St.	
7C2234	Kilani Ave.	Lehua St.	
	Kilani Ave.	Lehua St	Palm St.
7C2228	Kilani Ave.	Palm St.	
7C2227	Kilani Ave.	N. Cane St.	
7C2231	Mango St.	Mango Pl.	
7C2224	Center St.	Lehua St.	
7C2226	Center St.	N. Cane St.	
7C2154	California Ave.	Makani Ave.	
7C2220	California Ave.	Westervelt St.	
7C2219	California Ave.	Lehua St.	Muliwai Ave.
7C2223	California Ave.	N. Cane St.	
9C0932	Ukuwai St.	Ainamakua Dr.	
9C1255	Meheula Pkwy.	Kuahelani Ave.	
9C1315	Hookelewaa St.	Kipapa Dr.	
9C1728	Meheula Pkwy.	Anania Dr.	
9C1655	Meheula Pkwy.	Keaolani St.	
9C1870	Kamaio St.	Meheula Pkwy.	
9C1832	Holanialii St.	Meheula Pkwy.	
9C1789	Makapipi St.	Makohilani St.	
9C0646	Waikele Rd.	Waipahu St.	
9B0104	Pahika St.	Renton Rd.	

**CONSTRUCTION CONTRACT TIMETABLE****Curb Ramps at Various Locations, FY 2016(E)**

Bid Solicitation: May 24, 2018

Bids Opened: June 14, 2018

Low Bidder: Haron Construction Inc

Intersection List:

IntersectionID	Street	Street	Street
9C0228	Hale Momi Pl.	Moanalua Rd.	
9C1119	Ala Oli St.	Laakea St.	
2T0007	Alohi Wy.	Pensacola St.	
2T0420	Alohi Wy.	Piikoi St.	
2T0005	Elm St.	Piikoi St.	
2T0004	Hoolai St.	Piikoi St.	
2C2738	Amana St.	Makaloa St.	
	Kona St.	Atkinson Dr.	
2R0020	Artersian St.	South Beretania St.	
2R0015	Griffths St.	South Beretania St.	
2R0014	Hoawa Ln.	South Beretania St.	
3J0050	Pueo St.	Amau St.	
3J0053	Amau St.	Koae St.	
3J0054	Hunakai St	Amau St.	
3J1629	Hunakai St	Puulani Pl.	
3J0052	Hunakai St	Koae St.	
3M0688	Aipo St.	Kalalea St.	
4R0434	Luluku St.	Luluku Pl.	

**CONSTRUCTION CONTRACT TIMETABLE****Curb Ramps at Various Locations, FY 2016(B)**

Bid Solicitation: June 29, 2018

Bid Opened: August 16, 2018

Low Bidder: Haron Construction Inc

## Intersection List:

IntersectionID	Street	Street	Street
9C0394	Kaahahele St.	Moanalua Rd.	
9C0225	Kaamilo St.	Moanalua Rd.	
9C0220	Aiea Heights Dr.	Moanalua Rd.	
1C0325	Ala Liliko'i St.	Salt Lake Blvd.	
1C0337	Peltier Ave.	Salt Lake Blvd.	
1J0471	Middle St.	Notely St.	Haumana Pl.
1R0468	Hauiki St.	North School St.	
1R0324	Lanakila Ave.	North School St.	
2R0072	Kapiolani Blvd.	South St.	
2T0026	Cooke St.	Queen St.	
2C0081	Kapiolani Blvd.	Piikoi St.	
2C0241	Keeaumoku St.	South King St.	
2T0088	Kaheka St.	Makaloa St.	
2R0242	Keheka St.	South King St.	
	Atkinson Dr.	Kahakai Dr.	
2C2708	Makiki St.	Wilder Ave.	
2T0403	Dole St.	University Ave.	
2T0367	Dole St.	Lower Campus Rd.	
2R0099	Campbell Ave.	Kapahulu Ave.	
3C0004	3rd Ave.	Waialai Ave.	
3J0046	Kilauea Ave.	Pahoa Ave.	
4R0344	Kuulei Rd.	Maluniu Ave.	

**CONSTRUCTION CONTRACT TIMETABLE****Curb Ramps at Various Locations, FY 2016(C)**

Bid Solicitation: June 29, 2018

Bid Opening: November 1, 2018

Intersection List:

IntersectionID	Street	Street	Street
9C0222	Heleconia Pl.	Moanalua Rd.	
9C0297	Ala Oli St.	Salt Lake Blvd.	
1R0531	Pua Ln.	North King St.	
2J0918	Coral St.	Emily St.	Queen St.
2R0041	Young St.	Pensacola St.	
2R0008	Young St.	Piikoi St.	
2R0024	Keeaumoku St.	South Beretania St.	
2R0429	Punahou St.	Young St.	
3J0775	Varsity Pl.	University Ave.	
2R0147	South King St.	University Ave.	
3J0056	Kilauea Ave.	Pueo St.	
4R0391	Hahani St.	Hamakua Dr.	

**CONSTRUCTION CONTRACT TIMETABLE****Curb Ramps at Various Locations, FY 2017(F)**

Bid Solicitation: June 29, 2018

Bid Opened: August 16, 2018

Low Bidder: Haron Construction Inc

Intersection List:

IntersectionID	Street	Street	Street
	Middle St.	Rose St.	Haumana Pl.
2C0096	Mililani St.	Halekuawila St.	
2T0018	Keawe St.	Queen St.	
2T0017	Keawe St.	Halekuawila St.	
	Young St.	Victoria St.	Pensacola St.
2T0010	Hoolai St.	Pensacola St.	
2T0011	Kamaile St.	Pensacola St.	
2T0002	Kamaile St.	Piikoi St.	
2R0237	Birch St.	Palm Dr.	South King St.
2R0240	Sheridan St.	South King St.	
2C2750	Makaloa St.	Kalauokalani Wy.	
2T0365	Dole St.	Donaghho Rd.	
2R0089	Hunter St	Kamuela Ave.	Kapahulu Ave.
2R0092	Williams St.	Kapahulu Ave.	
3J0220	Leahi Ave.	Pualei Cir.	
3C0036	8th Ave.	Harding Ave.	
	Oneawa St.	Kihapai St.	Kuulei St.
4R0340	Aulike St.	Uluniu St.	
	Aalapapa Dr.	Aalapapa Pl.	

**CONSTRUCTION CONTRACT TIMETABLE****Curb Ramps at Various Locations, FY 2017(D)**

Bid Solicitation: July 30, 2018

Bids Opened: September 13, 2018

Low Bidder: Haron Construction Inc

## Intersection List:

IntersectionID	Street	Street	Street
9C1194	Pono St.	Moanalua Rd.	
9C0242	Koauka St.	Pali Momi St.	Moanalua Rd.
9C0227	Honomanu St.	Moanalua Rd.	
2T0027	Kawaihau Rd.	Cooke St.	
2T0006	Rycroft St.	Piikoi St.	
2C0141	Kinau St.	Piikoi St.	
2C2751	Makaloa St.	Poni St.	
2R0021	Alexander St.	South Beretania St.	
2C2711	Wilder St.	Punahou St.	
2M1187	Manoa Rd.	Lanihuli Rd.	
2R0091	Mooheau Ave.	Kapahulu Ave.	Date St.
3C0010	6th Ave.	Waialae Ave.	
3R0305	Ahukini St.	Lunalilo Home Rd.	
3M0689	Hawaii Kai Dr.	Kalalea St.	
4R0336 / 4R0337	Onewa St.	Kihapai St.	Uluniu St.

# Final Report of Court Monitor

*In the matter of...*

***Jim McConnell and Mark Edwards v. City & County of Honolulu***

*Civil Case No. 96-01111 JMS/KSC      USDC District of Hawaii*

Prepared by: Kathryn Mendez, Paul Sheriff, Inc. – Court Monitor

*(with assistance of Bill Hecker, AIA – ADA Consultant for City & County of Honolulu)*

December 27, 2018

## **Introduction**

In November 1996, Jim McConnell and Mark Edwards filed an ADA complaint (Civil No. 96-01111 DAE US District Court, District of Hawaii) against the City and County of Honolulu ("City") alleging that the City had failed to adopt and implement an Americans with Disabilities Act (ADA) "...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..." (ADA (Title II); see Page 1 of May 5, 1997 Consent Decree & Order ("Consent Decree and Order")). After successful negotiations between the parties, this Court issued the Consent Decree and Order which outlined the first such ADA curb ramp settlement by a major US city since the passage of ADA in 1990. It set forth certain requirements and specific tasks for the City to comply with the ADA curb ramp requirements. The City retained an ADA consultant and a consulting engineering firm to prepare and oversee the implementation of the ADA self-evaluation and transition plan for curb cuts.

Recognizing that this process has taken longer than originally expected and cost more than originally estimated, the City and County of Honolulu has done an outstanding job evaluating its ADA curb cut responsibilities and installing thousands of new curb cuts in the network of public sidewalks under its jurisdiction. The City also reviewed its policies and procedures related to accessibility in the public rights-of-way and amended them as needed to ensure people with disabilities have full access to programs, services and activities as required by the Consent Decree and ADA Title II regulations.

## **Key Consent Decree Terms and Conditions**

The Consent Decree specified that the City must retain 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).” In the Summer of 1997, the City retained Bill Hecker, AIA who is a nationally recognized ADA expert as a consultant from Birmingham, Alabama to prepare the self-evaluation and transition plan for curb cuts, as well as, to oversee the implementation of the modifications required by those evaluations. The engineering firm of Wilson Okamoto & Associates, Inc. (known now as Wilson Okamoto Corporation) was retained by the City 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.” (see Page 2 of Consent Decree & Order)

The Consent Decree specified that within 21 months of the filing of the Decree, the self-evaluation and transition plan must 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 for public input.” (see Page 3 of Consent Decree & Order) The Consent Decree and Order required 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.” (see Page 3 of Consent Decree & Order) An initial goal in the Consent Decree required completion of work on the “priority” curb cut locations based

on applicable design guidelines within three years of the completion of the ADA transition plan, 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." (see Page 5 of Consent Decree & Order) The self-evaluation report and curb ramp transition plan reports were completed (December 31, 1998 and January 7, 1999 respectively) as required by the Consent Decree and ADA Title II regulations within the 21 month deadline, but the implementation schedule for curb cut installations did exceed six years, as allowed by later stipulated agreements.

Additionally, there was a provision in the Consent Decree that required that during the ADA curb ramp transition plan program the City must continue, and it has, its "on-going program for installation of curb cuts..." on an ongoing basis as requested by individuals with ambulatory disabilities.

The Consent Decree specified and the City did appoint an ADA Coordinator, as required by ADA Title II regulations, to coordinate the City's efforts to carry-out ADA compliance responsibilities and that within a year of the filing of the Decree the City would "establish grievance procedures in accordance with 28 C.F.R. Section 35.107(a)..." to allow individuals with disabilities to file grievances or complaints regarding curb cuts or accessible streets or sidewalks.

## **ADA Curb Ramp Transition Plan Process**

The ADA Transition Plan is a schedule for the planned installation of new curb cuts and ramps and the modification of existing curb ramps to ensure that "program accessibility" is provided for disabled users of the sidewalks within City and County of Honolulu public rights-of-

way. An earlier ADA Transition Plan was prepared by the City in 1993, but it was a request-based process for determining the number and location of curb ramps to be installed. While ADA requires the City to address requests, the regulations also require a more “proactive” or strategic approach to curb ramp installation, which this plan provides. With regard to the existing curb ramps along sidewalks, many do not comply with the ADA Accessibility Guidelines (“ADAAG”) – a newer design standard than those used during the 1970’s – 1980’s. Of these non-compliant curb ramps, many will need to be modified or even replaced.

A total of 6,780 intersections were surveyed by the ADA consultants (Wilson Okamoto & Associates, Inc. and Hecker Design), and those requiring new curb ramps or modification of existing ramps were ranked in priority based upon a range of factors relating to their use by individuals with disabilities. According to this priority ranking and cost estimate for individual improvements, 2,889 intersections were modified over the fiscal years 2000 – 2005 at a total projected cost of \$50,586,000.00 (1998 dollars), as shown in the table below.

<b>Fiscal Year</b>	<b>No. of Intersections</b>	<b>Estimated Cost</b>
2000	362	\$8,766,500.00
2001	405	\$8,792,000.00
2002	597	\$8,765,000.00
2003	621	\$8,760,000.00
2004	443	\$8,795,500.00
2005	461	\$6,707,000.00
<b>TOTALS</b>	<b>2,889</b>	<b>\$50,586,000.00</b>
Note: Estimated costs are expressed in 1998 dollars		

The concept of program accessibility originated with the requirements of Section 504 of the Rehabilitation Act of 1973 and, along with the Civil Rights Act of 1964, is at the core of the non-discrimination provisions of ADA.

Program accessibility is also the primary consideration for curb ramp modifications addressed in this Transition Plan. The intent of program accessibility is stated in the following excerpt from the implementing regulations of the ADA:

*“Except as otherwise provided in 35.150, no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any public entity.” 28 CFR 35.149 Program Accessibility*

Curb ramps and sidewalks fall under the very broad definition of “facilities” mentioned in the excerpt above and, therefore, are covered as part of the program accessibility requirement of ADA. The reference to section 35.150 ties this requirement to additional compliance concepts that are critical to the planning and implementation of curb ramp modifications.

*“A public entity shall operate each service, program or activity so that the service, program or activity, **when viewed in its entirety**, is readily accessible to and usable by individuals with disabilities. This paragraph **does not:***

1. *Necessarily require a public entity to make **each of its existing facilities accessible to and usable by individuals with disabilities;***

2. *Require a public entity to take an action that would **threaten or destroy the historic significance** of an historic property; or,*
3. *Require a public entity to take any action that it can demonstrate would result in a **fundamental alteration in the nature** of a service, program, or activity or in **undue financial and administrative burdens**...If an action would result in an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity."*

*Section 35.150 Existing Facilities [emphasis added]*

The concept of "viewed in its entirety" provides the context for evaluating the need for modifications of the purposes of program accessibility. Section 35.150 of the ADA regulations requires that the City's services, programs, and activities be accessible to individuals with disabilities "when viewed in its entirety". With respect to the City's streets and sidewalks, the program is the network of "improved pedestrian circulation routes". Item 1 of the regulations excerpt below indicates that not every street corner with a sidewalk requires a curb ramp as long as program accessibility is provided "when viewed in its entirety" or when the entire network of sidewalks is considered.

Additionally, the limitations pertaining to historic facilities, fundamental alterations and undue financial and administrative burdens offer some flexibility in determining which intersections need to be modified. The limitation related to "technical infeasibility" will be presented later in this report, since it relates to how a new accessible feature can be installed

into an existing sidewalk with specific site characteristics that prevent full compliance with the ADAAG.

The ADA Title II regulations require that the Transition Plan report include at least the following elements:

1. A list of physical barriers in the public entity's facilities (improved pedestrian circulation route system) that limit the accessibility of its programs or activities to individuals with disabilities;
2. A description of the methods that will be used to make the facilities accessible;
3. A specific schedule identifying steps that will be taken each year of the transition plan period (6 years as stipulated in the Consent Decree); and,
4. Which official will be responsible for the implementation of the plan.

Toward meeting these requirements (particularly for Item 1) it was necessary to collect supporting data. Among these were: Physical characteristics of existing curb ramps and sidewalks; Location of the intersection relative to key governmental or commercial facilities; Bus route information; Pedestrian use patterns; Density of population around the intersection; and, Potential safety concerns to disabled users.

The project methodology for the ADA Curb Ramp Transition Plan was organized into four phases including:

1. Orientation Phase;
2. Survey Phase;
3. Implementation Analysis Phase; and,
4. Report Preparation Phase.

The orientation phase of the transition plan determined the scope of the survey, the ADA standard to be used, the range of information to be collected, the protocols and instruments needed to collect that information, the computerized database used to process the information and the needs of the disability community based on an independent survey.

The first task was to determine the scope of the survey. Since pedestrian access on streets and sidewalks under the City's jurisdiction has been defined as an ADA program by the Department of Justice, those streets and sidewalks needed to be identified. A comprehensive review of all streets on Oahu was conducted to identify those under City jurisdiction, as opposed to private, State and Federal jurisdiction. Streets under City jurisdiction were identified on a map that served as the basis for conducting the field survey. Intersections where the City streets intersected State highways were excluded from the survey, in most cases, because such intersections were typically within the State right-of-way. Federal roads are not covered by the ADA program access mandate.

The second task was to select the ADA design standards to be used for the survey from either the ADAAG or the Uniform Federal Accessibility Standards (UFAS). While both are acceptable for compliance with the ADA, and they are similar in most respects, the ADAAG was selected since these proposed modifications would be subject to review by the State Commission on Persons with Disabilities. The Commission's Architectural Access Committee has patterned their design standard after the ADAAG.

The third task was to determine the range of information to be collected in the field surveys. In general, information was collected at all potential pedestrian crossing,

predominantly at intersections with marked and unmarked crosswalks, as well as at mid-block crossings. Three classifications of pedestrian conditions at street crossings were identified as requiring different levels of information:

1. Crossing locations with no sidewalks – Labeled “Blue” for surveying purposes, these are intersections not served by sidewalks. The absence of sidewalks is interpreted as an absence of a program for pedestrians and, therefore, would not be subject to the ADA requirements for program accessibility. No information would be required except to note their locations for future reference.
2. Crossing locations with no curb ramps – Labeled “Red” for surveying purposes, these crossings are served by sidewalks but have no curb ramps. These crossings are subject to the requirements of ADA program accessibility and could require the installation of curb ramps. Information required from these crossing locations include their location, conditions that could affect the installation of a curb ramp, the relative priority for installing a curb ramp at the location and an order-of-magnitude cost estimate for installing the curb ramps.
3. Crossing locations with curb ramps – Labeled “Green” for surveying purposes, these crossings are served by existing curb ramps that may or may not be compliant. These curb ramps are subject to the ADA program accessibility duty. Hence, detailed information regarding compliance with ADAAG standards is needed, as well as information on conditions that could affect proposed

solutions. Also, as in the case of the “Red” crossings, information on its location, relative priority for implementation, potential safety issues and order-of-magnitude cost estimates would be required.

A reconnaissance survey of every potential street crossing under the jurisdiction of the City and County of Honolulu was conducted to classify them into one of the three classifications. Over 6700 intersections, many of which included several street crossings at corners or mid-block, were surveyed and classified.

The fourth task was to develop survey protocols and instruments for systematically recording the information collected for the respective classifications. Except for the “Blue” intersections with no sidewalks, protocols for the “Red” and “Green” crossings were developed for collecting information on their relative priority, site conditions that could affect implementation, recommendations and cost estimates.

Two general priority categories were established, including one pertaining to the demand for program accessibility at all “Red and “Green” crossings, and the other pertaining to the severity of conditions posing obstacles or safety hazards at existing curb ramps at “Green” crossings.

With respect to the demand for program accessibility at both “Red” and “Green” crossings, several categories of information were included in the field survey forms. The broadest of these concerned destinations and included two priority categories:

- P1 Areas – High Priority Areas (governmental, schools, hospitals/health services, retail services, commercial services, recreation, religious institutions, visitor attractions, museums, and high density residential); and,

- P2 Areas – Secondary Priority Areas (low-density residential/single family residential, parks, rural areas and agricultural areas).

Within these categories, additional information was collected in the field as to the specific type of destinations were located in the block served by these crossings.

Related to the destination categories is information characterizing the general location of a particular crossing, with respect to the magnitude of the population being served. For example, a retail area within Waikiki would be a higher priority destination than one in Kaimuki, based upon the volume of customers served. Five categories of location information were collected in the field, including: Central Business District (i.e.: downtown Honolulu), Metropolitan Areas (i.e.: urban areas outside the CBD, such as Kaimuki, Kalihi, Pearl City, etc.), Small Town Areas (i.e.: Wahiawa, Ewa Beach, Kailua, etc.) and Other Areas (i.e.: Laie, Waimanalo, Haleiwa, etc.).

To account for the level of pedestrian activity at a particular location that may not be reflected by the type of destination or general location, a final characterization based on the observed level of pedestrian activity was included. Four descriptors ranging from “light” to “very heavy” were provided.

Another category of priorities was access to public transit. In the field survey forms, the presence of nearby bus stops were noted. Subsequent to the field surveys, additional bus route information from the City’s Department of Transportation Services was added, including the level of service provided along the various routes.

For the “Green” street crossings that have existing curb ramps, an additional priority category was developed relating to the degree of inconvenience, impediment or potential safety hazard a disabled user might encounter. Referred to as the “severity code” this priority allows for flexibility in the program accessibility concept of the ADA by dividing the barriers into minor, significant and potentially hazardous categories. The conditions at existing curb ramps were thus characterized in the field reports as one of the following:

- **MI** – Major Inconvenience to disabled users of this element;
- **BA** – Blocks Access for disabled users of this element; or,
- **PSH** – Potential Safety Hazard for disabled users of this element.

With regard to information collected on existing conditions at a crossing, the difference between the “Red” crossings where there were no curb ramps and the “Green” crossings with existing curb ramps was significant. At “Red” crossings, the basic recommendation would be to install a new curb ramp. To identify potential limitations on installing the new ramp, conditions such as utility poles, utility “pull boxes”, drainage facilities, and fire hydrants were noted in a sketch. For future reference, digital photographs were taken according to a protocol assuring the pertinent conditions were recorded. At “Green” crossings, an extensive checklist of 74 attributes was used to identify specific deficiencies, including those that determine the “severity rating” discussed earlier.

Recommendations for modifications at “Red” crossings were fairly straightforward in that a new curb ramp was typically recommended. In some cases, however, existing conditions indicated that the installation of a curb ramp may be “technically infeasible” as defined by the ADA. For field survey purposes, potentially infeasible conditions were noted for further

investigation. For the “Green” crossings, modifications to existing curb ramps were recommended based upon correcting specific non-complying elements, where appropriate. If potentially infeasible issues were identified, a notation was made for further investigation.

Order-of-magnitude cost estimates were developed for categories of modifications ranging from the installation of a new curb ramp to making corrections to non-complying features, as determined from the field recommendations. These cost estimates were derived primarily from the most recent City curb ramp projects.

The fifth task was to develop a computerized database in which to store, process and recall the various information collected. The computer program selected for this task was Microsoft’s ACCESS database. This program offered the flexibility to sort the extensive data in a variety of ways to facilitate development of alternative implementation strategies, to call up information on specific crossings during the implementation phase and to adapt the program to track the progress of required modifications. This program is also compatible with the City’s Geographic Information System (GIS) computer database allowing map based searching to facilitate project management. Further data input would be required to link the ADA curb ramp information and digital photographs to the GIS system.

The sixth and final task was to obtain information from the disabled community regarding their view on critical destinations, including information on current sidewalk use patterns and issues important to this affected community. The information was needed to help determine priorities for implementation. The assistance of the Hawaii Centers for Independent Living (HCIL) was enlisted in the development of a polling tool or survey, which was distributed

by the HCIL through their extensive mailing list. The survey was also distributed at the "Tools for Life Expo" held in March 1998. The findings of the survey were presented at the January 24, 1998 public information meeting held to describe the curb ramp survey methodology.

The survey phase involved the allocation of manpower to collect the required information as determined in the orientation phase. To maximize the efficiency of the available survey crews, manpower was allocated based on the technical skill level of the surveyors. The crews without formal engineering training conducted the reconnaissance survey which identified "Blue" intersections with no sidewalks and classified the other crossings as either "Red", without existing curb ramps or "Green", with existing curb ramps. The same surveyors were then assigned to conduct the surveys of many of the "Red" crossings for which the basic recommendation was to provide a new curb ramp and to identify site conditions that may affect the installation of those ramps. The crews with engineering training were assigned to the "Green" intersections which required the technical skills necessary to determine compliance, make recommendations for modifications and to identify physical constraints that may limit those modifications. In addition, when an apparent "technically infeasible" feature was identified, these were reserved for further review by the lead ADA consultant. Most of these elements will require special design attention during the implementation phase.

It should be noted that while conditions indicating potential technical infeasibility were identified in the field, final determination of infeasibility will need to be made during a more thorough engineering analysis when far more specific site data are available. This means that some of the recommendations made in this report may be deemed technically infeasible; regardless of such determinations, accessibility modifications should be made to extent that

they are feasible. Hence, it is recommended that a design protocol be developed by the consultants for use during the implementation phase when more specific site data are available. This design protocol would be developed with the participation of the Commission of Persons with Disabilities, since they will have design review responsibilities during the construction. The goal of the design protocol would be to confirm and expand upon the surveyors' field observations and to determine which factors may be cited when site feasibility is in question. Numerous examples of various acceptable design alternatives should be documented to ensure consistency among the many engineering firms that will be responsible for curb ramp designs.

At the peak of the survey process, which lasted from November 1997 to October 1998, there were nine surveyors in the field. They surveyed:

- A. 6,780 Intersections with sidewalks;
- B. 18,961 Individual elements (i.e.: curb ramps, island cuts, etc.);
- C. 8,984 Corners with sidewalks but no curb ramps;
- D. 1,937 Intersections noted as P1 on the coding sheets;
- E. 4,843 Intersections noted as P2 on the coding sheets;
- F. 1,831 Individual elements with infeasible approach slopes >5%;
- G. 798 Individual elements with infeasible approach slopes >12%;
- H. 347 Very unique P1 intersections with special design considerations;
- I. 227 Very unique P2 intersections with special design considerations;

In addition, the surveyors:

- J. Took over 25,000 digital photographs;
- K. Made over 225,000 individual measurements;
- L. Covered 594 square miles of Oahu to survey all these intersections.

Following the collection and inputting of field data into the computer database, the data was analyzed. This included sorting the data by established criteria to determine the schedule for implementation. Criteria used in sorting included those shown in Table 2 below, which were weighted to reflect the most critical factors for pedestrians with disabilities:

<b>Table 2 WEIGHTED RANKING BY PRIORITY FACTOR</b>		
<b>Category</b>	<b>Description</b>	<b>Weighted Value</b>
Pedestrian Traffic	Very Heavy	6
	Heavy	5
	Moderate	2
	Light	1
Bus Route Traffic	Heavy	5
	Moderate	3
	Light	1
	No Bus Service	0
Destination Priority	Governmental	6
	Retail/Hospital/Health	5
	Recreation/Churches/Museums	4
	/Tourist	4
	Condos/Multi-family Residential	3
	Commercial Services/Industrial One & Two Family Residential	2
Severity Priority	Potential Safety Hazard	7
	Blocks Access	0
	Major Inconvenience	0
Location	Central Business District	6
	Metropolitan Area	5
	Small Town	3
	Other Areas	1

The determination of these weighted priority elements was made by evaluating the HCIL poll results, the criteria in the Title II regulations (28 CFR 35.150(d)(2)), and the Consent Decree. Based on this weighted scale, a single score between 3–30 was derived for each intersection.

This score was then used to sort the data and rank the intersections for the installation of curb ramps. The higher the score, the higher the priority for implementation within the 6-year schedule.

After the total priority list for all intersections was made, two additional sorts were conducted to arrive at the final list of projects for the Transition Plan. The first of these two sorts was made to cull certain elements that could not feasibly be constructed to comply with the ADAAG requirements for slopes. Basically, it is “technically infeasible” to install a 1:12 ramp into an existing sidewalk that has an approach slope of 5% or greater. To do so would require an overly long (greater than 12 feet) ramp run. As guidance for this determination, the published Interim Final Rule – ADAAG Chapter 14 (38 C.F.R. 1191) stipulates at 14.2.4(5) that curb ramps running in the direction of the existing sidewalk should be designed to slope no more than 1:12, but need not exceed eight feet in length regardless of the slope of the ramp. To provide a more conservative interpretation of “technical infeasibility”, the maximum ramp length to 12 feet was used and given existing limitations, designers will be allowed up to a 1:10 slope for ramps that rise only 6 inches in height or 1:8 for ramps rising only 3 inches in height per ADAAG 4.1.6(3). This interpretation does not preclude individuals with disabilities from making requests to the City for curb ramps at these “technically infeasible” locations if reasonable need can be demonstrated.

The second sort was made to minimize the exceedingly high cost of installing curb ramps at every intersection in residential areas, regardless of whether a person with disabilities lives in these areas. This position is based on the technical assistance letters of the US Department of Justice (DOJ) that are available for review on the web site

<http://www.usdoj.gov/crt/foia/ta1049.txt> . In the Technical Assistance letter #0149, the DOJ states the following in response to an inquiry of the Association of City Employees with Disabilities – Los Angeles:

“In residential areas, as opposed to commercial areas, it may be appropriate to establish a procedure for installing curb ramps upon request when an individual with disabilities moves into a neighborhood. Moreover, the fundamental alteration and undue burden defenses will limit the number of curb ramps required in many cases. In developing a transition plan to provide curb ramps, a public entity should consider all of these factors.”

This DOJ position statement does not mean, however, that none of the intersections in residential areas will be modified to have curb ramps. If an intersection in a residential area is on a bus route, has a feature that was cited as a potential safety hazard, or serves a school or park it was identified as needing new curb ramps in the Transition Plan. Additionally, according to DOJ, there are two other ways that an individual intersection may be modified through the ADA compliance process:

1. Needs based requests by an individual with disabilities who would benefit from program accessibility accommodations; and,
2. When residential streets are resurfaced or otherwise altered as defined by ADA, curb ramps will be installed along with other accessibility modifications as required, up to the apparent regulatory maximum of 20% of the value of the alteration costs.

It is important to note that the alteration provisions of ADA have no regard for the prioritization of existing barrier removal under the program access concept. In fact, this is where the shift in ADA takes place from the flexible “program accessibility” model to the rigid alteration requirements. It is interesting to note that as regularly scheduled street resurfacing projects are completed, some curb ramps scheduled for modification under the Transition Plan

will actually be enveloped into the scope of work of those resurfacing projects. Reductions in cost for these curb ramps has not been deducted from the Transition Plan estimate since there is no way of knowing how much money will be spent on resurfacing each year and where that money will be spent. Any surplus might wisely be considered as contingency funding for modifications requested by individuals with disabilities as needed.

Public participation is also required because interested parties, including individuals with disabilities and/or organizations that represent individuals with disabilities, must be given an opportunity to participate in the development of the plan by offering comments. A **Public Information Meeting** was conducted on **January 24, 1998** at the **Ala Wai Community Park** to present to the public the survey methodology and scope of the Transition Plan. No objections were otherwise received regarding the methodology. In addition, the methodology was also presented at the **"Tools for Life Expo"** held at the Neal Blaisdell Center in March 1998. The expo was sponsored by the State Commission on Persons with Disabilities (currently known as DCAB) and featured many workshops on disability issues. One of the workshops was conducted by the consultants and presented design issues related to sidewalk accessibility. Two public information sessions about the curb ramp survey process were also presented by the consultants. Further, a public information meeting was held on December 14, 1998 at the Honolulu Municipal Building to allow interested parties, including those with disabilities, an opportunity to comment on this Draft Transition Plan.

On September 17, 2001, the City proposed to amend the ADA Curb Ramp Transition Plan to more definitively divide the implementation schedule to reflect a focus on installing PI

(Priority 1) curb ramps between 2002-2005 and to focus on installing PII (Priority 2) curb ramps between 2006-2007. A new schedule was proposed as shown below by PI and PII locations:

PI

FY	No. of Elements (Curb Ramps)						Total
	A	B	C	D	E	F	
2002	660	254	59	237	8	5	1223
2003	457	182	-	817	-	-	1456
2004	24	400	-	193	461	-	1078
2005	-	-	174	-	205	455	834
2006	-	-	-	-	-	-	0
2007	-	-	-	-	-	-	0
Totals	1141	836	233	1247	674	460	4591

PII

FY	No. of Elements (Curb Ramps)						Total
	A	B	C	D	E	F	
2002	62	30	-	21	3	1	117
2003	-	-	-	-	-	-	0
2004	-	-	-	-	-	-	0
2005	8	-	-	-	-	-	8
2006	851	-	-	936	-	-	1787
2007	8	518	63	249	192	70	1100
Totals	929	548	63	1206	195	71	3012

Notes

- 1 In conjunction with previously implemented or on-going rehabilitation and resurfacing of streets alteration projects, about 797 curb ramps from FY 2003 to FY 2007 are expected to be implemented by the end of 2002. Another 269 curb ramps from FY 2003 to FY 2007 are expected to be implemented by the City's BRT project
- 2 58 additional request curb ramps will be implemented as part of the FY 2002 program and are not reflected in the above schedule

The revised curb ramp transition plan schedule (now at 7,603 curb ramps) was accompanied by a revised cost estimate for the implementation of the ADA curb ramp modifications. The costs were adjusted from the original estimate of \$50,586,000.00 to \$94,300,000.00 with the annual breakdown of costs based on design services fees and

construction costs, along with specific numbers of curb ramps specified to be included in the annual project packages:

TABLE 2  
PROPOSED REVISED ADA TRANSITION PLAN COST

	1999	2000	2001	2002	2003*	2004*	2005*	2006*	2007*	Total
Des		202	1065	1456	1078	842	1787	1100		7530
Con		95	202	1196	1456	1078	842	1787	1100	7756
\$Des	\$2.4M	\$2.7M	\$3.7M	\$3.9M	\$3.5M	\$2.7M	\$4.7M	\$3.7M		\$27.3M
\$Con/Insp			\$1.1M	\$11.6M	\$10.3M	\$11.7M	\$10.7M	\$11.0M	\$10.7M	\$67.0M
	\$2.4M	\$2.7M	\$4.8M	\$15.4M	\$13.8M	\$14.4M	\$15.4M	\$14.7M	\$10.7M	\$94.3M

These proposed revisions to the schedule and cost estimates reflected the expenditures associated with the installation of approximately 797 curb ramps that were originally scheduled later in the timeline but were expedited and included in on-going roadway rehabilitation and/or resurfacing projects completed by the end of 2002. An additional 267 curb ramps were omitted from the ADA Transition Plan because they were scheduled to be included in the City's Bus Rapid Transit (BRT) capital improvement project that was pending at the time of this amendment to the transition plan.

The City provided the following final statistics on December 15, 2017 of the 20-year-old ADA Curb Ramp Transition Plan project and the final accounting of curb ramps modified. The total number curb ramps addressed in the Transition Plan and total budgeted costs:

**Final ADA Transition Plan Curb Ramps and Costs**

**4,849 - PI Curb Ramps** (Priority 1 – Commercial Areas)

**3,018 - PII Curb Ramps** (Priority 2 – Residential Areas)

**836 – Request/Alteration Curb Ramps** (+45 Ramp Requests for FY 2018)

**8,703 Total Curb Ramps Addressed in Transition Plan Project**

**Total Project Costs... \$86,248,044.00**

Based on changes approved by the Court in the various stipulated agreements associated with this matter, the following curb ramp reductions must be subtracted from the curb ramp totals noted by the City in the 2017 final curb ramp accounting above: 817 (*e.g.*, 604 PI & 213 PII) curb ramps were removed from the transition plan modification list because they were found to be outside City jurisdiction or were included in unassociated alteration projects<sup>1</sup>; 935 (*e.g.*, 896 PI & 39 PII) curb ramps were deemed usable by the approved “usability study” overseen by the Court Monitor<sup>2</sup>; and, 2318 PII curb ramp locations were deferred based on Court Monitor approval<sup>3</sup>.

## **ADA Self Evaluation Process**

The Self Evaluation process was limited to those *service, policy and practice* issues relating to the City's **streets and sidewalks** (i.e., fully improved pedestrian circulation routes within the jurisdiction of the City, including access to bus stops). Architectural modification (i.e., physical change) recommendations relating to streets and sidewalks are addressed in the *City's Transition Plan Related to Curb Ramps*. The following process was developed to help ensure that the City's programs, services and activities that relate to streets and sidewalks will allow the full participation of people with disabilities:

1. Develop the Self Evaluation Questionnaire by the Consultants;
2. Coordinate with the City's ADA Team to determine who would be questioned;

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<sup>1</sup> Ramps constructed by others (e.g. Traffic Calming, utility companies, etc.) or are at locations outside the City jurisdiction.

<sup>2</sup> Existing ramps determined usable by Usability Assessment (Bruce Clark's study), Court Monitor and/or Existing Curb Ramp Protocol.

<sup>3</sup> Ramps in residential areas not implemented unless requested, "you touch it you fix it", or alteration project. Ramps deferred by Court Stipulation (March 19, 2003).

3. Distribute the Questionnaire to Departmental ADA Liaisons for completion;
4. Interview the Departmental ADA Liaisons for clarification;
5. Analysis of the Questionnaires and Meeting Notes by the Consultants;
6. Document Findings in the Draft Self Evaluation Report;
7. City Review and Revisions;
8. Receive Public Comment and conduct a public information meeting;
9. Present Self Evaluation Report *with revisions per public comment* to City for approval;
10. Modify City Policies and Practices found to limit program access.

This self-evaluation report presented all City's programs, services and activities relating to **streets and sidewalks**, and identified those policies and practices that may not allow people with disabilities to fully participate in their use. In addition, the report presented recommendations for policy and/or practice modifications to be implemented after public comment and final City approval.

On February 13, 1998, the City and County of Honolulu ADA Coordinator distributed the following non-discrimination policy statement that would be applicable to programs, services and activities that relate to streets and sidewalks:

*The City and County of Honolulu does not discriminate on the basis of disability in admission, access to, or operation of its programs, services, or activities. The City and County of Honolulu does not discriminate on the basis of disability in its hiring or employment practices.*

A thorough review of the policies and procedures in 13 different City Departments or Division Offices was conducted by Mr. Hecker and compared to the ADA Title II regulatory requirements

as summarized in the questionnaires found in the technical assistance guidance provided in the federal Department of Justice (DOJ) funded book titled “**ADA Title II Action Guide**”.

The findings and recommendations included, among other things: the need for the ADA Coordinator to hold ADA training workshops for staff; the need to redevelop the process associated with receiving and addressing requests for new accessible curb cuts or sidewalk modifications for accessibility; the need to complete the ADA Curb Ramp Transition Plan; the need to rely on the “Handi-Van” paratransit services to reflect inaccessible bus stops until accessible sidewalk approaches are constructed or modified; the need to incorporate training and contract language intended to minimize sidewalk constrictions when utility poles are placed within the public right-of-way; the need to modify City standard details for curb ramps, driveways and sidewalk improvements; the need to formalize the installation of curb ramps during resurfacing and/or renovation projects; and, the need to address constrictions along the public sidewalks by garbage cans and/or newspaper distribution boxes.

These findings and recommendations were presented at a public information meeting and comments were received in person and via correspondence for consideration by the analysis team. The implementation of these self-evaluation findings and recommendations was made by the City through modifications of policies and procedures, including many that were documented via stipulated agreements orchestrated by the Court Monitor and approved by the Court.

## **Appointment of Paul Sheriff as Court Monitor**

On November 2, 2001 both parties entered into the first stipulated agreement (a.k.a., Stip) approving the appointment of local accessibility expert, Paul Sheriff, by Judge Chang as the Court Monitor in this case. As a paraplegic who used a wheelchair and as a consultant on ADA compliance issues, he was an excellent choice as Court Monitor.

When Mr. Sheriff was appointed, his responsibilities were to report on, evaluate and monitor the City's efforts to implement the curb ramp transition plan, as well as, report quarterly to the Court on those efforts. Additionally, Mr. Sheriff was to respond to written inquiries from either party related to the ADA compliance efforts and to make "...recommendations related to modifications, changes and improvements to the process of constructing the curb ramps and the enforcement of compliance..." related to this matter. (See Stip #1)

There are six stipulated agreements related to this case and Mr. Sheriff was personally instrumental in the development of the first five stipulated agreements. The success of the implementation of the City's ADA curb ramp transition plan efforts is in large part due to the sixteen-year commitment on Mr. Sheriff's part. His judgment (informed by his life experiences during decades as a wheelchair user), his understanding of the ADA regulations/standards and his creative ability to listen to both sides of an issue and broker a compromise that was acceptable to everyone were the hallmarks of his contribution to accessibility improvements of the sidewalks in Honolulu for all people, not just those with disabilities.

Mr. Sheriff passed away unexpectedly in October 2017 and the role of Court Monitor was assigned by the Court to the Chief Operating Officer of Paul Sheriff, Inc. - Kathryn Mendez.

## **Summary of the Stipulated Agreements**

**Stipulation #1** – This stipulation agreement was dated November 2, 2001 and was the mechanism used to appoint Paul Sheriff as Court Monitor. It also documented the acceptance of the September 17, 2001 revisions to the ADA Curb Ramp Transition Plan which would extend the schedule to the end of 2007 and amend the number of curb ramps included to 7,603.

**Stipulation #2** – This stipulation agreement was dated May 28, 2002 and documented numerous interpretations and recommendations regarding the implementation of the curb ramp transition plan by the Court Monitor. Issues included: construction tolerances applicable to work in the public right-of-way; how ADA curb ramp projects will be triggered (no ramp locations, non-conforming ramps, “you touch it, you fix it” alteration policy, no new curb ramps with resurfacing policy); warping vs. blending the bottom of curb ramps; policies related to “usability” of existing curb ramps; omission of quarterly status reports; policies related to the new curb ramps constructed by others in City ROW; deferring truncated dome detectable warnings until final ADA Standards for ROW are published; pedestrian controls at crosswalks; specific design recommendations related to the deferment of pedestrian crossings at Lewers Street near the Outrigger Hotel; a review of current curb ramp design projects; discussion of disabled pedestrian and Plaintiffs’ issues including those of Lunsford Dole Phillips; ADA project awareness by the general public; recognition of certain excellent design/construction examples;

**Stipulation #3** – This stipulation agreement was dated March 12, 2003. It addressed the need for Mr. Hecker, the City’s expert consultant, to ensure his visits were quarterly. There were many interpretations from the Court Monitor on issues such as: trenching; deferment of P2 curb ramps; a sidewalk compliance plan; integration of bus stop transition plan with curb ramp placement; interim design guidance issues; coordination of curb ramp installation by different agencies; usability assessment by Accessibility Planning & Consulting; proposed policies and procedures for ROW work; and protocol for use of 2 foot long and 4 foot long Smart Levels. There was a mandate for the City to publicize the curb ramp request process and put the request forms on the City website. It also included new procedures for addressing fees and costs for the Plaintiffs’ lawyers, experts and consultants.

**Stipulation #4** – This stipulation agreement was dated January 11, 2005 and included the following issues: revised design guidelines for work in the City ROW; revisited construction tolerances; revisited trenching alteration protocols; defined resurfacing as maintenance, not alterations triggering new curb ramp installations; revisions to the sidewalk compliance plan; review of the existing curb ramp deferment criteria; discussion of P2 curb ramp issues; deferment of “usable” ramps from previous study; notation of 500 curb ramps in design phase for 2005; confirmation that curb ramps constructed by others will be counted as addressed in the ADA Curb Ramp Transition Plan; reaffirmation that curb ramps meeting agreed upon construction tolerances may be deferred until future planned replacement; deferment of “learning curve” curb ramps constructed between 1/26/92 – 12/31/01; review of curb ramp request forms; further discussion of a proposed Design Guide for work in the City ROW; discussion of program accessibility under ADA; agreement that Wilson Okamoto Corp.

engineers will continue to review projects and Bill Hecker will schedule visits semi-annually; review of HRS 103-50 review issues and TI (technical infeasibility) issues; recommendation to rely on a truncated Type B parallel curb ramp design for most corners where there isn't adequate space for a compliant Type A flared style perpendicular curb ramp; revisit warping vs. blending of ramp landings; revisit of detectable warnings on curb ramps; revisit of pedestrian crossing signal controls; TI issues related to field conditions; re-evaluation of "usability" study findings including 13.5% maximum curb ramp running slope; discussion of digital level lengths; discussion of CIP (Capital Improvement Projects) vs. Privately Funded sidewalk modifications; discussion of the Annual Report from the City; need for Semi-Annual reports; jurisdictional transferability issues.

**Stipulation #5** – This stipulation agreement was dated July 17, 2009 and included the following issues: Court's exemption of funding for request based curb ramps from State procurement laws to ensure expedient installation; mutual agreement that the self-evaluation and transition plan requirements of the Consent Decree were met with regard to access to bus stops; reassessment of the "usability" criteria for curb ramp access; and, 2008 Annual Report.

**Stipulation #6** – It is anticipated that the pending 6th stipulated agreement will be filled at the same time that this Court Monitor's Report is accepted by the Court. Based on discussions between the parties, this last stipulated agreement will include: recognition of the appreciation by all parties to Paul Sheriff for his 16 years of service to the community as Court Monitor in this matter; recognition that Kathryn Mendez of Paul Sheriff, Incorporated has been appointed by the Court to assume the role of Court Monitor in this final phase of the case; recognition that all parties agree that the City has demonstrated substantial compliance of the

obligations under the Consent Decree and stipulated agreements; recognition that the City has developed a program that will appropriately address future curb ramp installations as described in the City's Accessibility Guidelines and General Policies and Procedures: Curb Ramps within Public Rights-of-Way ("Curb Ramp Policy") documents; recognition that the remaining Transition Plan curb ramps will be constructed per an attached award timetable; recognition that the City will maintain a curb ramp webpage including: the Consent Decree & Order; stipulated agreements and associated exhibits; site inspection reports, photos and videos; and, other archival documentation related to the curb ramp Transition Plan and projects; recognition of the agreement to terminate the Consent Decree based on substantial compliance by the City of all work and other requirements of the Consent Decree and to dismiss the case with prejudice based on total completion of all requirements of the Consent Decree by the City.

## **Conclusions**

Late in the process of the Honolulu curb ramp transition plan implementation, a three-judge panel of the 9<sup>th</sup> Circuit Court of Appeals issued an opinion that affects how ADA applies in the public rights-of-way in *Kirola v. City and County of San Francisco*, 860 F.3d 1164 (9th Cir. 2017) and the work in Honolulu will comply with that ruling. In general, the 9<sup>th</sup> Circuit Decision found that given the fact that there are no specific standards yet for ADA facility compliance in the public rights-of-way, the appropriate way to look at ADA compliance in that arena is to divide the issues into "facility-specific" and "feature-specific" requirements. The Court recognized that the 1991 ADA Standards included "facility-specific" requirements such as:

restaurants and cafeterias; medical care facilities; and libraries, but also noted that the US Access Board had set aside a section of the ADA Accessibility Guidelines (ADAAG) for “Public Rights-of-Way” without publishing any requirements for those “facility-specific” requirements.

The Court stated that while the ADAAG has yet to include ADA “facility-specific” requirements for public rights-of-way, the “feature-specific” requirements of the ADAAG do apply. The Court noted that these requirements include specific “...detailed design guidelines for particular features of facilities...” that apply in the public rights-of-way. For the purposes of the Honolulu design guidelines and policies, the ADAAG will be applied to curb ramp and operable control design requirements, to the maximum extent feasible and those guidelines and policies are consistent with the Court Orders in *McConnell v. City & County of Honolulu* ADA settlement, design provisions of the Americans with Disabilities Act Standards for Accessible Design (2010 ADA Standards – 28 C.F.R. Part 36, Appendix A revised September 15, 2010), PROWAG, and ADA technical assistance documents published by the DOJ and the Federal Highway Administration. The Stipulated Agreements associated with the aforementioned Court Orders are provided in the Appendix of the City’s Design Guidelines document.

Before his passing, Mr. Sheriff let it be known that - based on his extensive travels with Mr. Hecker to “benchmark” or compare the work done by the City and County of Honolulu against the curb ramp work done by dozens of other cities across the United States – “Honolulu has the best and most accessible curb ramps in the whole country.” The Plaintiffs and the City can be proud of the outstanding efforts over the last 20 years by all involved in this case to improve the accessibility of pedestrian facilities in the public right-of-way. Honolulu is a shining

example of a great American city that is “pedestrian friendly” for everyone, including those with disabilities.

**--- End of Report ---**

# CURB RAMP REQUEST FORM

CITY AND COUNTY OF HONOLULU  
DEPARTMENT OF DESIGN AND CONSTRUCTION

This form is to be filled out by or on behalf of a person with a disability who requires the installation/ modification of curb ramps or the modification of existing accessible paths leading to curb ramps within public rights-of-way.

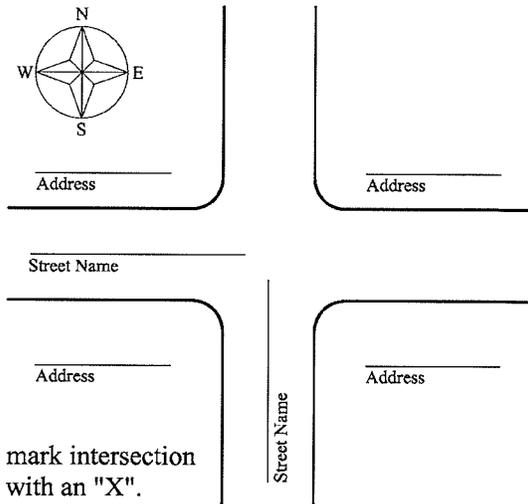
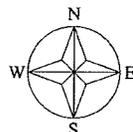
Fill out this form as completely as possible or call 768-8801 (Voice) for assistance. Provide a written description or sketch of the location(s) where curb ramps are needed for programmatic access to City services and/or facilities.

Within two (2) weeks of receiving a request, a representative of the City's Department of Design and Construction will contact the person making the request. A staff person will arrange to meet with the person making the request and the person needing the modification either at the location(s) noted or at an alternate site, if the location(s) are not accessible. Meetings will be held during the hours of 8:30 a.m. to 3:30 p.m., Monday to Friday.

LOCATION: NE NW SE SW ALL  
(Please circle appropriate location(s))

STREETS:  
\_\_\_\_\_  
\_\_\_\_\_

COMMENTS OR SUGGESTIONS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Please provide a brief statement of why the ramp is needed:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Person Needing Curb Ramp Modification: \_\_\_\_\_  
Contact (if different than above): \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_ Date: \_\_\_\_\_

Return to: Civil Division  
Department of Design and Construction  
City and County of Honolulu  
650 South King Street, 15th Floor  
Honolulu, HI 96813

or FAX to: 768-6103

07-24-08