

**FEDERAL HIGHWAY ADMINISTRATION'S
TECHNICAL ASSISTANCE
ON THE
AMERICANS WITH DISABILITIES ACT
REQUIREMENTS TO PROVIDE CURB RAMPS
THROUGH RESURFACING**

August 20 & 21, 2013

PRESENTERS:

Candace Groudine, Director-External Civil Rights, FHWA

James Esselman, Special Counsel, FHWA

Robert Mooney, Pre-Construction Team Leader, FHWA

FEDERAL HIGHWAY ADMINISTRATION (FHWA)

FHWA provides stewardship over the construction, maintenance and preservation of the Nation's highways, bridges and tunnels.

FHWA also provides technical assistance to state and local agencies in an effort to improve safety, mobility, and livability, and to encourage innovation.

FHWA's Americans with Disabilities Act Program / Section 504 of the Rehabilitation Act of 1973

The primary purpose of FHWA's Americans with Disabilities Act (ADA) / Section 504 program is to ensure that **pedestrians with disabilities have the opportunity to use the transportation system in an accessible and safe manner.**

Accessibility Requirements Section 504 and the ADA

Section 504 of the Rehabilitation Act of 1973 requires.....

Recipients and sub-recipients of Federal aid, that are responsible for roadways and pedestrian facilities, do not discriminate on the basis of disability in any highway transportation program, activity, service or benefit provided to the general public.

FHWA's Responsibility:

The implementation of pedestrian access requirements from Section 504.

Americans with Disabilities Act (ADA) of 1990

- **A civil rights statute**
- **Prohibits discrimination** against people with disabilities in all aspects of life, including transportation.
- **USDOJ** has designated USDOT as the federal agency responsible for overseeing and implementing ADA compliance
- **FHWA's Responsibility:** The implementation of ADA pedestrian access requirements.

Title II of the ADA

Applies to:

- Facilities built after 1990;
- Pre-existing facilities;
- All public entities, such as State and local governments, **even if they are not recipients of federal funding.**

How Did This Joint DOJ/DOT (FHWA) Technical Assistance Come About?

Joint DOJ/DOT authority to enforce Title II

- ADA Directs DOJ to effectuate Title II of ADA through regulations (28 CFR Part 35)
- DOJ delegated responsibility for implementing DOJ's ADA Title II regulations to DOT for all programs, services, and regulatory activities related to transportation
- Both DOJ and DOT have enforcement authority

How Did This Joint DOJ/DOT (FHWA) Technical Assistance Come About?

Alterations vs. Maintenance

- DOJ Regulation (28 CFR 35.151(b)): Alteration is a change that affects or could affect the usability of all or part of a facility (such as a road)
- DOJ Regulation (28 CFR 35.151(i)): Altered streets, roads, and highways must contain curb ramps where there are curbs or other barriers to a pedestrian walkway (i.e., sidewalk)
- DOJ Regulation does not identify specific road treatments that qualify as alterations versus treatments that qualify as maintenance

How Did This Joint DOJ/DOT (FHWA) Technical Assistance Come About?

Alterations vs. Maintenance

- Prior DOJ guidance stated:
 - Paving, repaving, or resurfacing were generally considered alterations
 - Filling a pothole was not considered to be an alteration
- Prior DOJ guidance did not provide more specific examples of maintenance activities

How Did This Joint DOJ/DOT (FHWA) Technical Assistance Come About?

Alterations vs. Maintenance

- Prior DOT guidance from September 2006 stated
 - More specific examples of alterations and maintenance
 - Including distinction between structural resurfacing (alteration) and non-structural resurfacing (maintenance)
- Different levels of specificity defining alterations between DOJ and DOT created:
 - Confusion in application
 - Inconsistency in enforcement
 - Questions from stakeholders

How Did This Joint DOJ/DOT (FHWA) Technical Assistance Come About?

Alterations vs. Maintenance

- DOJ and DOT (FHWA) met in 2012 to 2013
 - Desire to provide clarity and consistency
 - Based on feedback (comments/questions) from States, local governments, disability rights advocates, citizens
 - Educated by public perception of scale of road work (i.e., heavy equipment, truck numbers, crew sizes, time)

How Did This Joint DOJ/DOT (FHWA) Technical Assistance Come About?

Joint Technical Assistance

- Distinguishes alterations from maintenance based on the type of road treatment:

MAINTENANCE

Chip Seals

Fog Seals

Scrub Sealing

Crack Filling and Sealing

Joint Crack Seals

Slurry Seals

Diamond Grinding

Joint repairs

Spot High-Friction Treatments

Dowel Bar Retrofit

Pavement Patching

Surface Sealing

ALTERATION

Addition of New Layer of Asphalt

Mill & Fill / Mill & Overlay

Cape Seals

New Construction

Hot In-Place Recycling

Open-graded Surface Course

Microsurfacing / Thin-Lift Overlay

Rehabilitation and Reconstruction

Application of Technical Assistance

This is a single Federal policy that identifies specific pavement treatments that are alterations:

- Alterations require the installation of curb ramps
- Maintenance applications do not require curb ramps **at the time of the improvement**

Pavement Treatment Types (Maintenance vs. Alteration)

MAINTENANCE

Chip Seals

Crack Filling and Sealing

Diamond Grinding

Dowel Bar Retrofit

Fog Seals

Joint Crack Seals

Joint repairs

Pavement Patching

Scrub Sealing

Slurry Seals

Spot High-Friction Treatments

Surface Sealing

ALTERATION

Addition of New Layer of Asphalt

Cape Seals

Hot In-Place Recycling

Microsurfacing / Thin-Lift Overlay

Mill & Fill / Mill & Overlay

New Construction

Open-graded Surface Course

Rehabilitation and Reconstruction

Pavement Treatment Types (Maintenance vs. Alteration)

MAINTENANCE

plus

Chip Seals

Crack Filling and Sealing

Diamond Grinding

Dowel Bar Retrofit

Fog Seals

Joint Crack Seals

Joint repairs

Pavement Patching

Scrub Sealing

Slurry Seals

Spot High-Friction Treatments

Surface Sealing

ALTERATION

Addition of New Layer of Asphalt

Cape Seals

Hot In-Place Recycling

Microsurfacing / Thin-Lift Overlay

Mill & Fill / Mill & Overlay

New Construction

Open-graded Surface Course

Rehabilitation and Reconstruction

Pavement Treatment Types (Maintenance vs. Alteration)

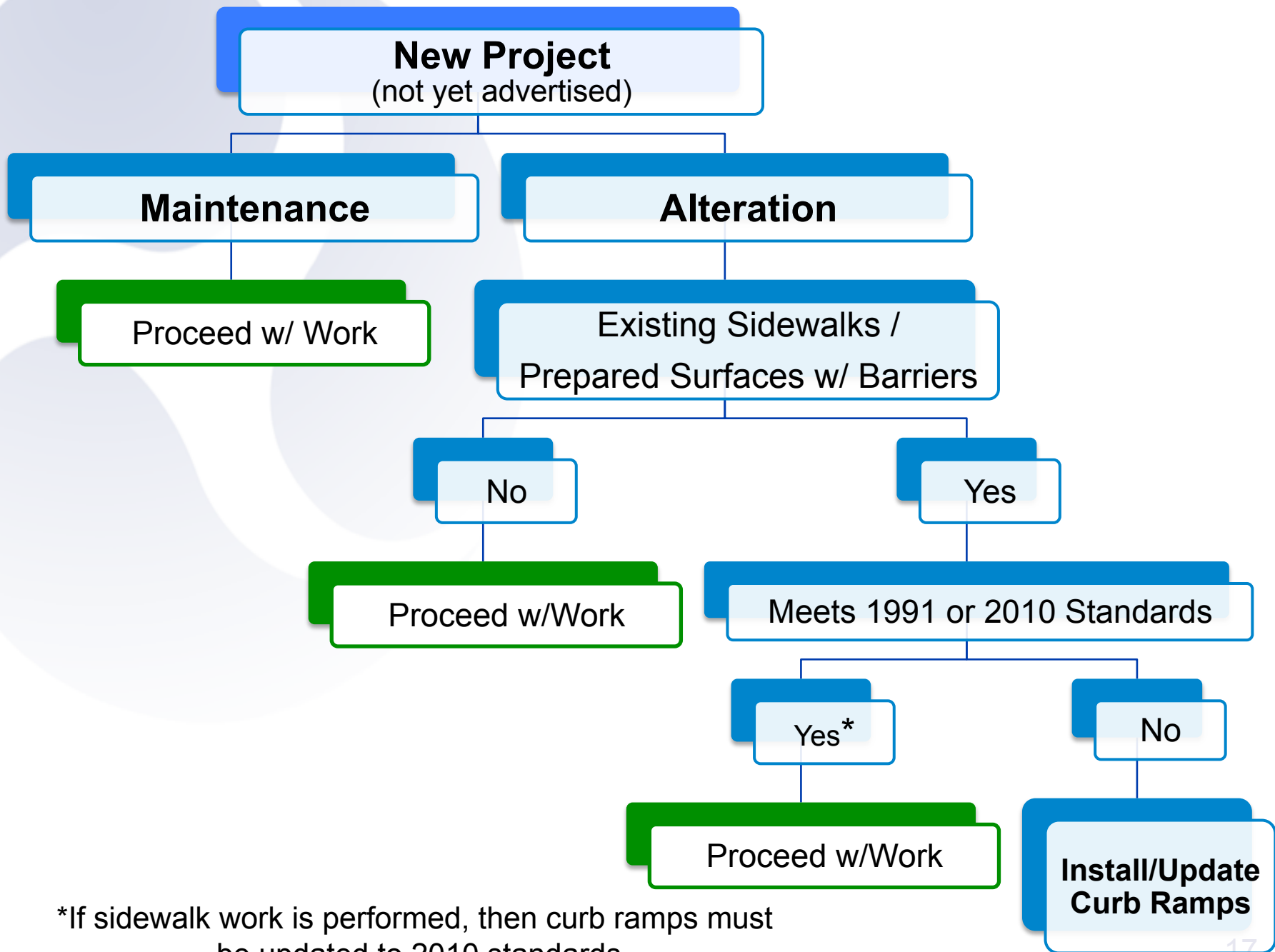
MAINTENANCE

Potholes

ALTERATION

**Everything Else
(besides potholes)**

**Prior to DOT
Agreement**



*If sidewalk work is performed, then curb ramps must be updated to 2010 standards

Example of Implementation

Current Fiscal Year 2014 Plan

Project A = Slurry Seal

Project B = Mill & Fill

Project C = Microsurfacing

Project D = Reconstruction

Example of Implementation

Current Fiscal Year 2014 Plan

Project A = Slurry Seal

Project B = Mill & Fill

Project C = Microsurfacing

Project D = Reconstruction

Updated Fiscal Year 2014 Plan

Project A = Slurry Seal

Project B = Mill & Fill

Project B1 = Install Curb Ramp

**Project C = Microsurfacing
(project does not have sidewalks)**

**Project D = Reconstruction
(including curb ramp work)**

Application of Technical Assistance

- Consistent approach among States
- Projects ready for Construction Advertisement or are under contract may proceed
- Update Pavement Preservation/Resurfacing Program
- Update any existing resurfacing ADA policies

Implementing the Joint Technical Assistance: FHWA's Expectations


FHWA Divisions and States Provide Program Oversight by:

- 1) Informing recipients/sub-recipients of their accessibility responsibilities
- 2) Reviewing and monitoring pedestrian access compliance
- 3) Reviewing the ADA transition plan
...and States updating the plan as necessary

Implementing the Joint Technical Assistance: FHWA's Expectations

FHWA Divisions and States ensure:

- 1) Compliance of any project for construction or alteration of a facility that provides access to pedestrians
- 2) Incorporation of access improvements within the scope of the project that alters the use of the public rights-of-way
- 3) Recipients and sub-recipients apply appropriate accessibility standards to all transportation facilities.



QUESTIONS?

Pavement Treatment Types (Maintenance vs. Alteration)

MAINTENANCE

Chip Seals

Crack Filling and Sealing

Diamond Grinding

Dowel Bar Retrofit

Fog Seals

Joint Crack Seals

Joint repairs

Pavement Patching

Scrub Sealing

Slurry Seals

Spot High-Friction Treatments

Surface Sealing

ALTERATION

Addition of New Layer of Asphalt

Cape Seals

Hot In-Place Recycling

Microsurfacing / Thin-Lift Overlay

Mill & Fill / Mill & Overlay

New Construction

Open-graded Surface Course

Rehabilitation and Reconstruction

CONTACTS FOR QUESTIONS

Brooke Struve, RC Safety & Design Team, FHWA,
720-963-3270, Brooke.Struve@dot.gov

Candace Groudine, Director-External Civil Rights, FHWA,
202-366-4634, Candace.Groudine@dot.gov

Patrick Gomez, Civil Rights Specialist, FHWA,
720-963-3269, Patrick.Gomez@dot.gov

James Esselman, Special Counsel, FHWA,
202-366-6181, James.Esselman@dot.gov

Robert Mooney, Pre-Construction Team, FHWA,
202-366-2221, Robert.Mooney@dot.gov