

*PROGRAM ACCESS in the  
PUBLIC RIGHT OF WAY*

**ADA Transition Plans**



**PALM BEACH**  
Transportation  
Planning Agency

*H. Dean Perkins, RA, ADA Coordinator  
Florida Department of Transportation*



# Outline

- Background of the ADA and other Civil Rights Laws
- ADA Title II Responsibilities for State and Local Agencies
  - Including role of MPOs, TPOs & TPAs
- Requirements for ADA Self-Evaluations and Transition Plans
- Transition plan elements
- Steps for conducting transition plan projects
  - Plan, gather, analyze, implement, maintain
  - Include public input
- Things to look (out) for

# Background of the ADA

- ADA - Civil Rights Law
  - 1964 - 1990 Federal Laws
    - 1964 Civil Rights Act
    - 1968 Architectural Barriers Act (federal buildings)
    - **1973 Rehabilitation Act (s. 504 - federal programs)**
    - 1987 Civil Rights Reauthorization Act

# Background of the ADA

- 1990 Americans with Disabilities Act
  - July 26, 1990 – signed
  - **July 26, 1991 – ADA Regulations (28 CFR 35 (DOJ) & 49 CFR 37 (DOT))**
  - January 26, 1992 – effective date
  - July 1, 1994 – Revised ADA Standards.
  - July 26, 2004 – new ADA guidelines (ADA/ABA)
  - Nov 23, 2005 – new PROW guidelines (PROWAG)
  - Nov 26, 2006 – FHWA adopts ADA Standards for Transportation Facilities (ADASTF)
  - July 23, 2011 – Access Board proposes issues NPRM for PROWAG (public comments)
    - *Comment period closed 2/2/2012*

# Statutory language

## Section 504:

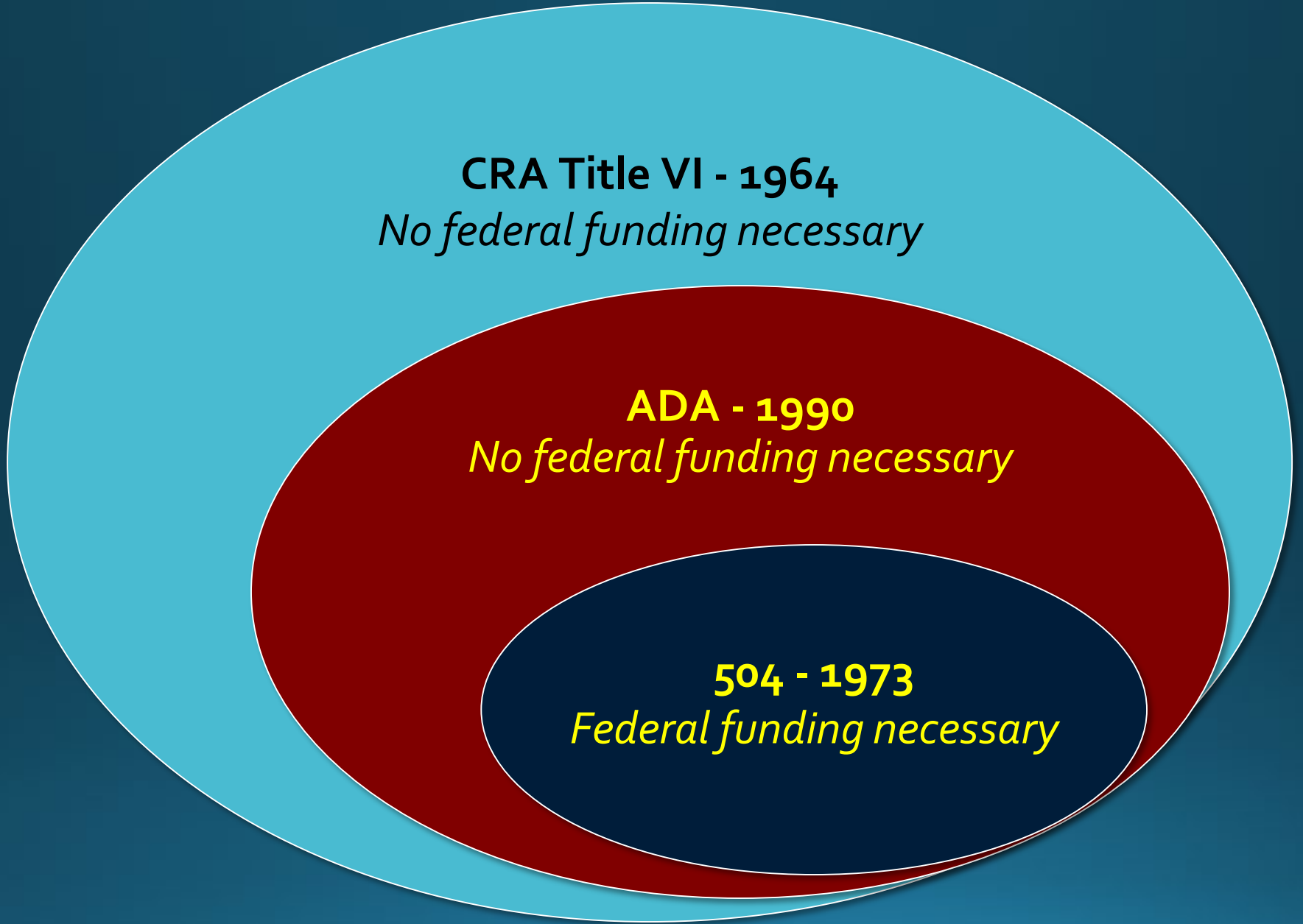
“No otherwise qualified individual with a disability in the United States . . . shall solely by reason of her or his disability, **be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial Assistance.”**

29 USC § 794 (a) (1973)

## ADA:

“ . . . no qualified individual with a disability shall, by reason of such disability, **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 such entity.”**

42 USC § 12132 (1990)



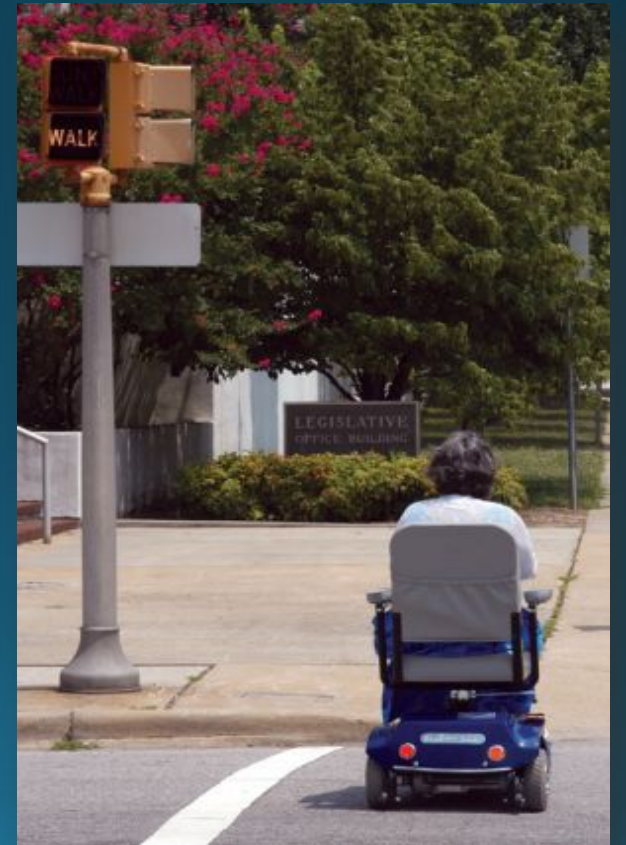
**CRA Title VI - 1964**  
*No federal funding necessary*

**ADA - 1990**  
*No federal funding necessary*

**504 - 1973**  
*Federal funding necessary*

# Under ADA Sidewalks and curb ramps are a “program, service, or activity”

- Federal government says so
- Most courts agree
- Examples
  - 9<sup>th</sup> Circuit, Barden v. City of Sacramento, 2002
  - 6<sup>th</sup> Circuit, Johnson v. City of Saline, 1998



# Examples: Litigation



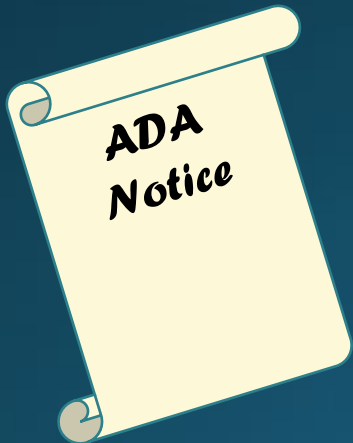
## Examples of settlements

- Chicago: \$50,000,000 in curb ramp improvements
- CALTRANS: \$1.1 billion (30 years)
- Los Angeles: \$4 million a year for 25 years
- Sacramento: 20% of transportation funds for 30 years (sidewalks, crosswalks, curb ramps)



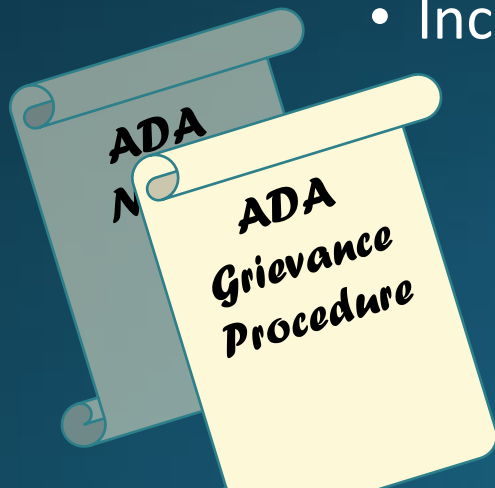
# Under ADA - Title II (28 CFR 35)

- **All State and local government agencies must . . .**
  - Publish an ADA Notice (35.106)
    - A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.
  - Basically: *“We will not discriminate against people based on their disability”*

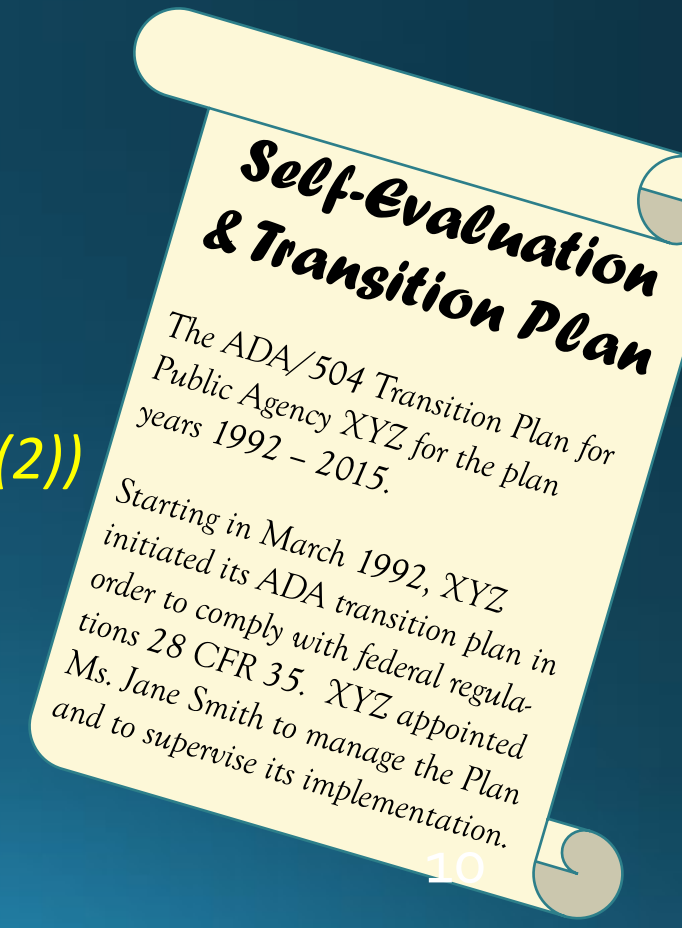


# Under ADA - Title II (28 CFR 35)

- In Addition: State and local government agencies, with 50 or more employees, must also...
  - Designate a Responsible Employee (35.107)
  - Adopt an ADA Grievance Procedure (35.107)
  - Conduct a Self-Evaluation (35.105)
  - Develop a Transition Plan (35.150(d)(1))
    - Include schedule for providing curb ramps (35.150(d)(2))



ADA Coordinator



# Under ADA - Title II (28 CFR 35)

- **ADA and Transportation Planning Agencies**
  - Under 28 CFR 35.105 all public entities, including MPOs, TPOs and TPAs, are required to conduct a self-evaluation of programs and services for accessibility and, where deficiencies are discovered, make necessary modifications for compliance.
  - 28 CFR 35.150 imposes higher responsibilities on public entities having more than 50 employees, including developing a transition plan for the prioritized remediation of noncompliant features.
  - *No distinction is made between planning organizations and organizations that do more than planning.*

# Under ADA - Title II (28 CFR 35)

- **ADA and Transportation Planning Agencies (cont.)**
  - MPOs/TPOs/TPAs that are county agencies (not independent) are precluded from certifying compliance with nondiscrimination laws if the county does not have an ADA Transition Plan.
  - Rather, these TPAs should first ensure that the County either has or is developing a self-evaluation/transition plan within the meaning of the regulations.

## Under ADA - Title II (28 CFR 35)

- **ADA and Transportation Planning Agencies (cont.)**
  - TPAs that are independent from county governments must still be able to demonstrate that facilities and programs are accessible or otherwise advise how they will be made accessible.
  - Generally, however, these will be smaller agencies that lack any jurisdiction over road and bridges. Therefore they are not expected to have PROW transition plans.

# Under ADA - Title II (28 CFR 35)

- **ADA and Transportation Planning Agencies (*cont.*)**
  - All TPAs should serve as resource agencies for their counties and municipalities, to include:
    - Sharing data and pedestrian facility information;
    - Identifying partners in need of training or assistance; and
    - Reporting to FDOT or FHWA innovative programs or cost effective tools that might assist public agencies with meeting accessibility requirements.

# Under ADA - Title II (28 CFR 35)

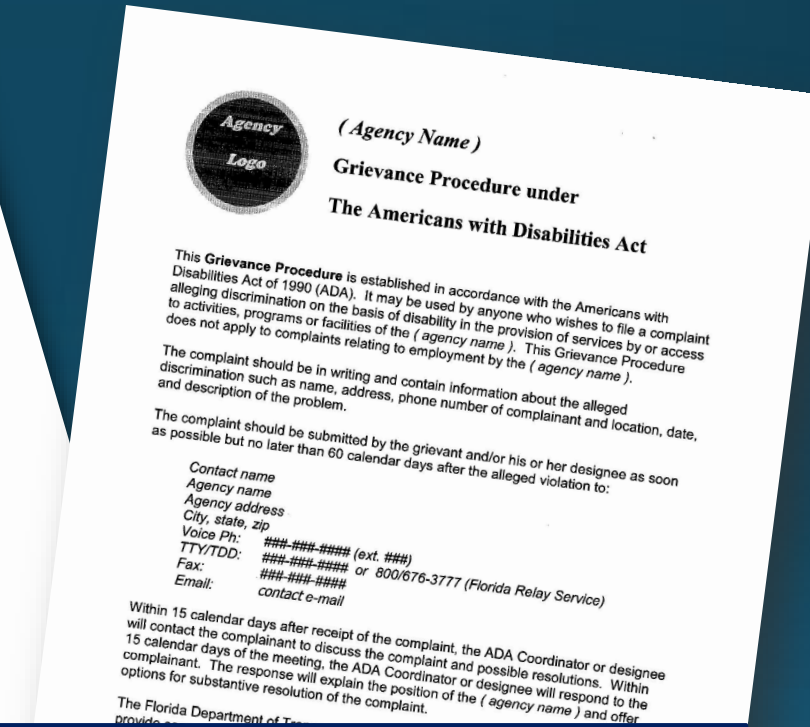
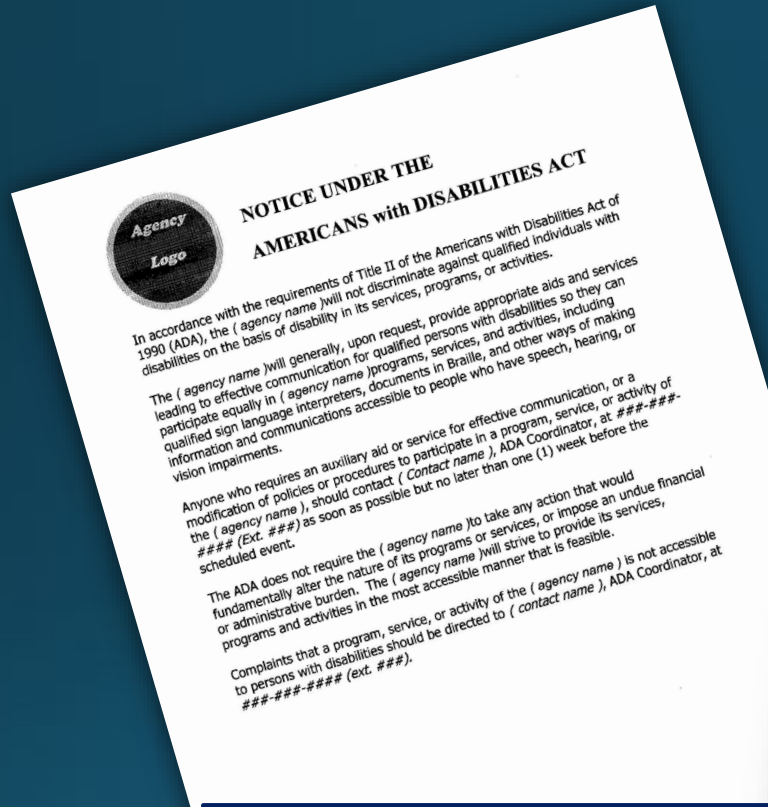
- Designate a Responsible Employee
  - Generally, known as 'ADA Coordinator'
- Adopt an ADA Grievance Procedure
  - Post in public locations and on Website
- Conduct a Self-Evaluation
  - Programs and Services
- Develop a Transition Plan
  - Facilities
  - Include curb ramps

# ADA Coordinator

- **The duties of an District ADA Coordinator include:**
  - Ensure that staff and the general public know how to contact the department's ADA Coordinator. Contact information should be included on the department's web site and in agency directories.
  - Serve as the district primary resource for ADA information.
  - Coordinate the ADA grievance process in accordance with the grievance procedure. This involves receiving and processing complaints from the public and other business partners.
  - Attend and schedule appropriate staff for attendance at ADA Coordinator meetings and training sessions.
  - Coordinate the training for personnel within the agency.
  - Promote the inclusion of people with disabilities in all programs and services.



# ADA Policy & Grievance Procedure



[www.ada.gov/pcatoolkit/toolkitmain.htm](http://www.ada.gov/pcatoolkit/toolkitmain.htm)



# Self-Evaluations & Transition Plans

- **The Self-Evaluation shall:**
  - Evaluate the agencies current services, policies, and practices, that potentially limit access for persons with disabilities to public services and make the necessary modifications.
  - Provide an opportunity to include individuals with disabilities or organizations to participate in the self-evaluation process by submitting comments.
  - Make self-evaluations available for public inspection.

# Self-Evaluations & Transition Plans

- **The Transition Plan shall:**
  - Identify existing obstacles that limit access for persons with disabilities to public services: policies, procedures, *facilities*, etc.
  - Describe methods, in detail, to be used to correct deficiencies.
  - Specify schedule for improving existing facilities by prioritizing needs of persons with disabilities.
  - Indicate official responsible for implementation of the Plan.

# Self-Evaluations & Transition Plans

- **You must also:**
  - Provide opportunity for interested persons and groups to participate in the process.
  - Make transition plans available for public inspection.

# Transition plan: Curb Ramps

- DOJ regulation: Transition plan (*required if more than 50 employees*) shall include schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs
- Priority to walkways serving --
  - Government offices and facilities
  - Transportation facilities
  - Places of public accommodations
  - Employers

*Title II regulations (28 CFR 35.150(d)(2))*



# FHWA and states are increasing compliance efforts

- FHWA is required to monitor compliance of recipients with self-evaluation and transition plan requirements
  - *(49 CFR 27.11 & 23 CFR 450.218(a)(6),(10))*
- Under 'stewardship agreements' with FHWA, state DOTs are beginning to direct sub-recipients to submit transition plans as part of the local agency program certification processes, sometimes on fairly short notice
  - I.E., 90 days, 6 months, 1 year, 3 years, etc.



# Transition Planning – Step by step

1. Plan the Work
2. Conduct the surveys/inventories
3. Develop report(s) & recommendations
4. Include public input
5. Publish the transition plan
6. Implement the transition plan





# Step One:

## *Plan the Work*





# Plan the Work

- Select the team(s)
- Train the teams
- Schedule the work



# Plan the Work

- Select the team(s)
  - In-house staff?
    - Professional, technical, administrative
  - Consultants?
    - Architectural, engineering, surveying
  - Interns?
    - College, high school, trade school
  - Combination of above



# Plan the Work

- Train the teams
  - Scope of project(s)
    - Project limits, duration, timing
    - Range of elements to review
  - Division of responsibilities
    - Field staff
    - Office staff
  - Available tools & resources
    - Cameras, digital levels, measuring tapes, software



# Plan the Work

- Schedule the work
  - Milestones
    - Project phase length/area
    - Project phase elements
  - Reporting dates
    - Weekly?
    - Monthly?
    - Quarterly?



# Set curb ramp priorities: per DOJ

In descending order --

1. Those serving state & local government facilities
2. Those serving bus stops and other transportation services
3. Those serving public accommodations
4. Those serving business districts

*Title II regulations (28 CFR 35.150(d)(2))*



# Curb ramp priorities

## 1. Those serving state & local government facilities:

- County/City Hall
- Courthouses
- Libraries
- Schools
- Law enforcement offices
- Hospitals(?)
- Etc.

*Title II regulations (28 CFR 35.150(d)(2))*



# Curb ramp priorities

2. Those serving bus stops and other transportation services:

- Bus stations
- Train stations
- Airports
- Benches
- Shelters
- Etc.

*Title II regulations (28 CFR 35.150(d)(2))*



# Curb ramp priorities

## 3. Those serving public accommodations:

- Shopping centers, stores, bakeries
- Restaurants & bars
- Hotels, motels, inns
- Theaters, arenas, convention centers
- Banks, gas stations, pharmacies
- Museums, parks, zoos
- Etc.

*Title II regulations (28 CFR 35.150(d)(2))*





# Curb ramp priorities

4. Those serving business districts
  - Urban center, 'downtown', 'uptown'
  - Professional offices
  - Cafes, boutiques, shops
  - Etc.

*Title II regulations (28 CFR 35.150(d)(2))*



# Other considerations

- Those constructed or altered post-ADA, but not ADA-compliant
- Highest use by people with disabilities
  - E.g., centers for independent living, senior citizen centers, recreation
- Closest to critical program facilities
  - E.g., emergency shelters and health care institutions
- Areas where no curb cuts currently exist
- Areas where curb cuts have been requested
- Residential areas
- **ADA Toolkit:** <http://www.ada.gov/pcatoolkit/toolkitmain.htm>

# Coordination

- Know who is responsible where jurisdictions overlap
  - I.e., state roads within county/city
  - Transit stops
  - Utilities
- Work with your business partners to coordinate overlapping responsibilities
  - I.e., whose ROW is it?
  - Who maintains roadside facilities?
- Establish '*reasonable and consistent*' policies
  - Take the subjectivity out of, "What do we do here?" questions
  - Should apply across all programs

# DOJ suggests...

- Make a preliminary assessment of compliance
  - Check out on-line maps and satellite views (*Google, MapQuest, Bing, etc.*)
- Use Title II checklist in chapter 6 of **ADA Tool Kit**
  - Appendix 1, Survey Instructions: Curb Ramps  
<http://www.ada.gov/pcatoolkit/app1curbramps.htm>
  - Appendix 2, Survey Forms: Curb Ramps  
<http://www.ada.gov/pcatoolkit/app2curbramps.htm>
- Will alert you to red flags suggesting non-compliance, including:
  - Review of standardized designs and specifications
  - Survey of representative samples of pedestrian crossings and curb ramps

# Step Two:

## *Conduct the Surveys/Inventories*



# Checklist areas: examples (1)

- Sidewalks and curb ramps
  - Clear width
  - Cross slope
  - Landings
  - Grades, Counter-slopes
  - Discontinuities
  - Heaving, Cracks
  - Detectable warnings
  - Etc.





# Checklist areas: examples (2)

- Sidewalks and pathways
  - Materials and finishes
    - Markings, types of materials (e.g. cobblestones)
  - Gratings
    - Locations, opening sizes
  - Obstructions
    - Vegetation, street furniture, etc.



# Checklist areas: examples (3)

- Traffic/pedestrian signals
  - Accessible approach
  - Within reach:
    - Horizontal
    - Vertical
  - Maneuvering space
    - Size
    - Level





# Step Three:

*Develop the report and recommendations*

Block	Factor (C)	Factor (D)	Height (ground level)	Height (10m)
I	1	1	...	...
	1	2	...	...
	2	1	...	...
	2	2	...	...
II	3	1	...	...
	3	2	...	...
	4	1	...	...
	4	2	...	...
IV	1	1	...	...
	1	2	...	...
	2	1	...	...
	2	2	...	...
IV	.	1	...	...
	.	.	...	...
	.	.	...	...
	.	.	...	...
IV	4	.	...	...
	4	2	...	...

# Once you've found your 'issues'...

Prioritize the work. For curb ramps, this means...

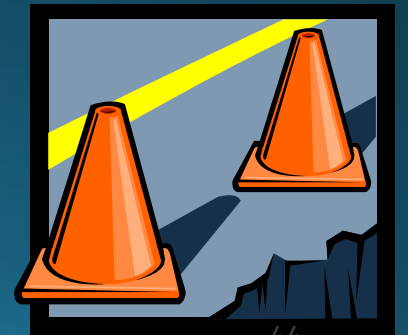
1. Those constructed or altered post-ADA, but not ADA-compliant
2. Those serving state & local government facilities
3. Those serving bus stops and other transportation services
4. Those serving public accommodations
5. Those serving business districts
6. Residential areas

# Set priorities

- Also consider –
  - Financial and administrative resources
    - Capital Improvement Plan, Work Program
  - Hazardous conditions
    - Adjacent land uses, environmental concerns
  - Requests from individuals
    - Comments, requests, complaints, lawsuits
  - Other planned construction/alterations
    - Can 'ADA' work be included?
    - How soon???

# Set out detailed methods to achieve compliance

- Descriptions of proposed corrections
- Cost estimates or resources required for proposed work
- Schedule of corrections by month, quarter, year, etc.
- Other Standards that may also apply (state, local)
- Possible alternative methods
- Person responsible for implementing/overseeing



# Consider separate schedule for curb ramp issues

- Issue: How to rectify long-term problem in logical manner
- Be specific as to location, issue, priority
- Include detectable warnings
- Designate person responsible for implementing, overseeing

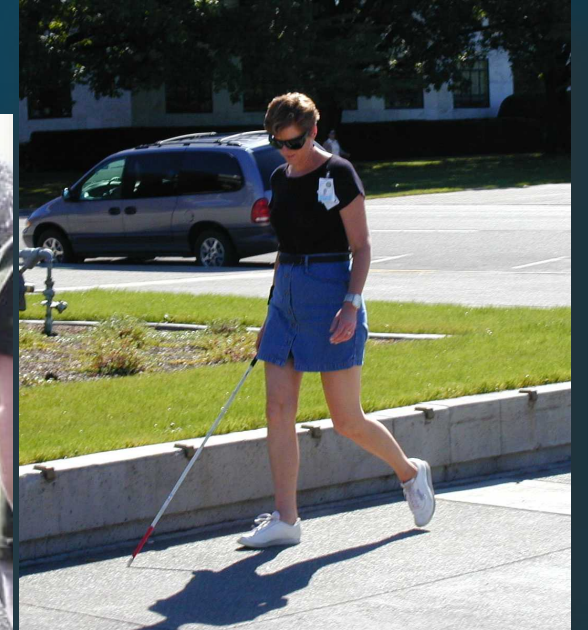
# Step Four:

*Include public input*



# Public input

- **When – possibilities**
  - At beginning
  - As to tentative findings
  - As to recommendations
- **How**
  - Public hearings
  - Meetings with constituencies
  - Online surveys/comments
- **Who**
  - Advisory committees
  - Advocacy groups
  - Individuals





# Use GIS information (i.e., *Google Maps*®)

- Can show –
  - Locations of issues (maps, aerials, Streetview®, etc.)
    - Can 'visit' sites before actually walking them
  - Locations of government and public facilities, transit stops, etc.
- Can assign each element a value and then rank corrections according to value/rank/priorities
  - Green: Compliant – no work needed
  - Yellow: Work needed, on priority list – fix in middle/distant future
  - Red: Non-compliant! High priority – fix very soon!



# STEP FIVE:

*Finalize the Transition Plan*



# Plan for Annual/On-going Remediation

- Include a schedule of improvements to upgrade each year.
- Can be:
  - An independent “ADA” remediation program
  - An integral part of scheduled construction/reconstruction projects
    - Resurfacing projects
    - Roadway Rehabilitation and Reconstruction Projects
    - Signal System Installation Projects.
  - A part of routinely scheduled maintenance

*See National Academy of Sciences, ADA Transition Plans: A Guide to Best Management Practices, NCHRP Project Number 20-7 (232), May 2009*

# Length and Level of Detail

This can vary

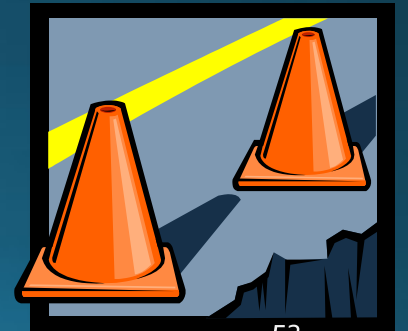
- Short narrative and prioritization criteria in plan
  - I.e., 'executive summary'
  - Incorporate inventory by reference (make available)

OR

- Actual inventory, priorities and proposals for each location

# STEP SIX:

*Implement the Transition Plan*



# Ensure Future Compliance (1)

- Make sure designers, contractors and others know what standards to follow and how to “design in” and “build in” tolerances
- Hold them to it!
- Provide training for designers, contractors and inspectors
- Conduct plans reviews of projects and alterations

# Ensure Future Compliance (2)

- Hold people accountable
- Verify construction in the field
- Check completed projects
  
- *Inspect, inspect, inspect!*
  - *Before, during and after*





# Ensure Future Compliance (3)

- Monitor for maintenance of accessible features
- Train maintenance staff and those who keep streets, roads, sidewalks, and parking spaces cleared of debris and obstructions



*Don't let this happen to you*



11/8/2000

# Things to look (out) for . . .

- Some can be fixed quickly – maintenance items
  - Some can be included in other projects – i.e., RRR projects
  - Some may require separate ‘planned’ projects
  - Some can wait a while
  - Some CANNOT!
- 
- Examples are next:





A little trimming, please

11/8/2000





This can be fixed



Missing curb ramp





See the bus stop?





Fix soon, please





Sidewalk in motion





Double-whammy!





We're not done, right?





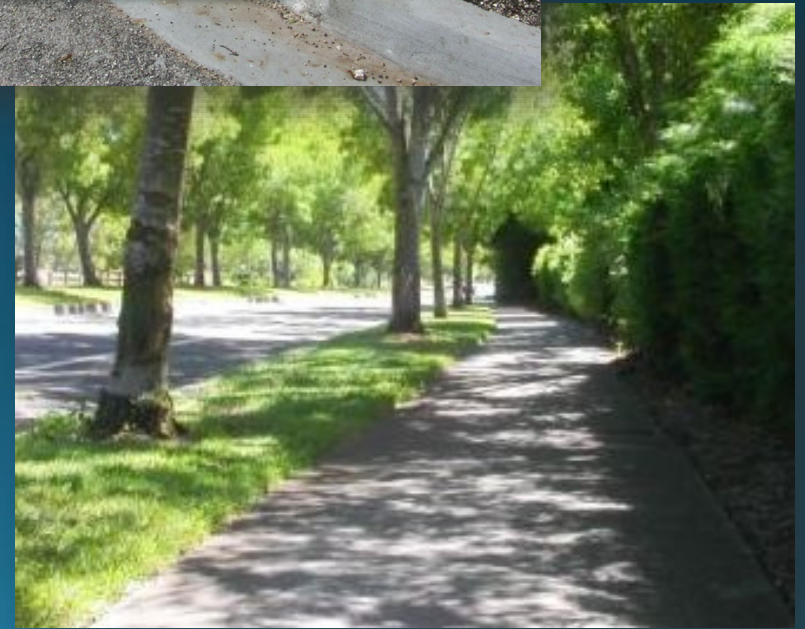
Huh?

# And finally...

- Publish the Transition Plan
- Implement the Plan
- Seek/allow public review & comment on the Plan
- Monitor the Work
- Keep the Plan updated/current

Remember: The plan can be changed if circumstances change





A good Transition Plan can help us get here

# ADA Transition Plans:

USDOT – FHWA's Position

# Why Do We Care So Much About ADA Transition Plans?

- Regulatory Requirements—not only civil rights, but planning regulations as well.
- Good Policy
- Pragmatic reasons (like not getting sued!)
- It's the right thing to do



# Enforcement

- Regarding the prohibition of discrimination in general:
  - “Methods of Administration” and the Absence of an ADA Transition Plan
- USDOT’s delegation of responsibility to FHWA
- Recipients (State DOTs): FHWA’s delegation to Division Offices
- Sub-recipients (Local Agencies): FHWA’s reliance on State DOTs



# Enforcement

- Compliance Reviews of Public Entities: FHWA as the “designated agency”
- Noncompliance: FHWA and State DOTs can withhold or suspend funding to recipients and sub-recipients, respectively, or a portion thereof
- However, FHWA’s objective is to achieve voluntary compliance



# Common Challenges

- Resources: Cost, Staff, Time
- Understanding the Regulations
- Maintaining the ADA Transition Plan as a “Living Document” and the Self-Evaluation/Inventory as a “Living Process.”
- How old is “too old” for an ADA transition plan?
- New Challenges, e.g.: when the agency doesn’t own any or most of the public rights-of-way. And, is it only about curb ramps?





# Moving Forward

- ADA/Section 504 Workgroup deliverables
- Revisions to the 2006 ADA/Section 504 Q&A
- New Q&A on Resurfacing and Curb Ramp installation requirements of Title II/ADA – supplement to 2013 joint DOT/DOJ technical assistance
- Workshop on ADA transition plans for DAs; in preparation for the FHWA Fall business meeting



# Questions - Discussion



*PROGRAM ACCESS in the  
PUBLIC RIGHT OF WAY*

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