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presents



Americans with Disabilities Act for Public Works

Presented by:

Laura S. Flynn, Dirk D. Larsen & Larry E. Wood





The ADA “Nightmare”

- George v. BART
 - 7 years of litigation
 - State and federal civil rights claims
 - Over \$1 million in fees/costs



History

- Congress enacted the Americans with Disabilities Act in 1990
- Title II applies to public entities: “Subject to the provisions of this subchapter, 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.”
- Title II took effect on January 26, 1992



Services, Programs, and Activities - What Is Required?

- Under Title II, a public entity must operate its services, programs and activities, when viewed in their entirety, so that they are readily accessible to and usable by individuals with disabilities (28 C.F.R. § 35.150(a))



Services, Programs, and Activities - What Is Required?

- Under the Federal Regulations:
 - 1) A public entity is not necessarily required to make each of its existing facilities accessible to and usable by individuals with disabilities
(28 C.F.R. § 35.150(a)(1))
 - 2) A public entity is not required to take any action that it can demonstrate would result in fundamental alteration of a service, program or activity or cause undue financial burdens
(28 C.F.R. § 35.1250(a)(3))



Barden v. City of Sacramento

292 F.3d 1073 (9th Cir. 2002)

In a unanimous ruling, the Court held:

- “Services, programs or activities” brings within its scope “anything a public entity does”
- “The focus of the inquiry... is not so much on whether a particular public function can technically be characterized as a service, program, or activity, but whether it is a normal function of a governmental entity.”
- Title II thus applies to the **maintenance** of public sidewalks, which is the normal function of a municipal entity



The City of Sacramento's post-*Barden* Settlement

- Agreed to install 1,500 curb ramps annually at a cost of \$11.5 million over three years
- Paid \$795,000 in attorney's fees
- Paid \$10,000 to each of eight named plaintiffs in class action suit
- Agreed to dedicate 20% of designated transportation funds to improve sidewalks, crosswalks and curb ramps for 30 years



New vs. Existing Construction

- All public facilities designed, constructed or materially altered after January 26, 1992 must be readily accessible
- Public entities may currently choose among the Uniform Federal Accessibility Standards (UFAS) or the 1991 or 2010 ADA Accessibility Guidelines (ADAAG) for buildings and facilities
- Starting March 15, 2012, compliance with the 2010 ADAAG will be required



New vs. Existing Construction

- A public entity is not required to make structural changes in existing facilities, where other methods are effective and achieve compliance (28 C.F.R. § 35.150(b)(1))
- If structural changes are made, there must be compliance with UFAS or ADAAG (and only the 2010 ADAAG starting March 15, 2012)



Elements To Prove ADA Violation

- 1) Plaintiff is a qualified individual with a disability
- 2) Plaintiff is discriminated against with regard to public entity's services, programs or activities
- 3) Discrimination is by reason of Plaintiff's disability



Typical Causes of Action

- 1) Title II of the ADA (42 U.S.C. § 12131)
- 2) Section 504 of the Rehabilitation Act of 1973
- 3) Cal. Unruh Act – Civil Code § § 51 and 52
- 4) Cal. Disabled Persons Act - Civil Code § § 54 and 54.1
- 5) Cal. Government Code § 4450
- 6) Cal. Government Code § 11135



Enforcement and Remedies

- 1) Injunctive Relief
- 2) Economic and Non-Economic Damages
- 3) Attorneys Fees and Costs



Defenses

- 1) Is Plaintiff Qualified Individual?
- 2) Standing
- 3) Causation
- 4) Equivalent Facilitation
- 5) Fundamental Alteration/Undue Burden



Damages

- Attorney's Fees and Costs:
Will consider written offers made and rejected.
- Statutory Damages:
Recoverable only if plaintiff denied access on a particular occasion, or was deterred.
- Damages based on number of occasions, not number of violations.



Damages

- *Munson v. Del Taco*, 46 Cal.4th 661 (2009)
- A plaintiff who establishes a violation of the ADA need not prove intentional discrimination in order to obtain damages under the Unruh Act
- Contrast to suits under the ADA itself, which requires proof of intentional discrimination for monetary damages



Attorney's Fees

- *McCown v. City of Fontana*, 565 F.3d 1097 (9th Cir. 2009)
- Award of attorney's fees rejected in civil rights action. Amount awarded must have some connection to amount received in damage.



Notice Pleading Requirement

- *Oliver v. Ralphs Grocery Co.*, 2011 U.S. App. LEXIS 17022 (9th Cir. 2011)
- Summary judgment granted after corporation remedied all barriers set forth in plaintiff's complaint. Plaintiff's attempt to add a additional barriers by way of his expert's report was denied. The plaintiff fell short of the notice pleading requirements of Fed. R. Civ. P. 8(a)(2). Allowing the plaintiff to proceed would have unfairly prejudiced the corporation because it did not have the opportunity to investigate the barrier and determine whether it could have removed it as it did with other barriers the plaintiff alleged.



Transition Plan Requirement

- *Lonberg v. City of Riverside*, 571 F.3d 846 (9th Cir. 2009)
- The regulation requiring the development of a transition plan (28 C.F.R. 35.150(d)) is not enforceable through a private cause of action. The existence or non-existence of a transition plan does not, by itself, deny a disabled person access to a public entity's services, nor does it remedy the denial of access.



Indispensable Parties

- *Procurador De Personas Con Impedimentos v. Municipality of San Juan*, 541 F.Supp.2d 468 (D.P.R. 2008)
- Property owners and businesses adjoining sidewalks claimed to be inaccessible not considered to be necessary or indispensable parties.



CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS COMPLIANCE ACT





Construction-Related Accessibility Standards Compliance Act ("CASCA") set forth at California Code of Civil Procedure sections 55.51 through 55.57 (SB 1608).



Certified Access Specialist (“CASp”)

- Specialists certified pursuant to Government Code section 4459.5 to inspect property to determine if the site meets all applicable construction-related accessibility standards
- Information regarding certification process and list of CASps: www.dsa.dgs.ca.gov/Access/casp.htm



Written Inspection Report

- CASp-inspection site – site meets all applicable construction-related accessibility standards.
- CASp determination pending site – corrections needed in order to meet all applicable standards.



Mandatory Retention of CASps

- As of July 1, 2010, local agencies required to employ at least one Building Inspector who is a CASp to provide consultation to agency, permit applicants and members of public.
- As of January 1, 2014, local agencies to employ sufficient number of CASps to conduct permitting and plan check services.
- Able to charge for services and costs of compliance.



Disability Access Inspection Certificate

- Certificate to be signed and dated and contain the inspector's name and license number
- State Architect to provide for purchase of Certificates for use by local building departments and/or CASps



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*These premises have been inspected
by a Certified Access Specialist*



ACCESS

Inspection Date: _____ *Inspector License#:* _____

Name of CASp Inspector: _____

<http://www.dsa.dgs.ca.gov/casp>



Effect of Certification

- Stay of litigation
- Early Evaluation Conference



Accessibility Overview

Larry Wood, AIA



Larry Wood, AIA

- Architect specialized in accessibility projects. Licensed CA architect over twenty-five years
- Firm has surveyed over 2500 buildings, personally surveyed 800
- Has consulted on many accessibility lawsuits, including mediations and trials, as expert witness
- Wood Architects has 4 CAsp staff
- Masters degree in Architecture, UC Berkeley
- Larry Wood is previous accessibility plan check consultants for the California Division of State Architect and state approved to survey CA state buildings for lease renewals. CAsp certified
- Project architect experience includes multi million dollar new buildings, renovations, and accessibility improvement projects
- City of San Francisco ADA defense expert, Kirola vs. SF citywide class action.



All public facilities covered

- Civic centers
- courts
- Fire and police station public areas
- Parks
- Streets
- Bus stops
- City public parking
- Medical facilities
- Meeting places
- Recreation facilities including pools and golf
(New 2010 ADA)

No Current ADA standards in force : PROW, Parks



Recent ADA lawsuit activity

- Recent Department of Justice settlements
- Advocate groups
- Slip and fall lawsuits
- Disabled individuals



Overview

- Title II Program access – ADAAG
- California Building Code (CBC)
- New vs. Existing Buildings
- 2010 ADAAG: Compliance required starting March 15, 2012



Sources of Discrepancies

- Older facilities are not updated
While CBC is grandfathered in, ADA has an ongoing responsibility for providing program accessibility.
- Conflicts from ADA and CBC requirements
Curb ramp design
Clearance requirements: doors, bathroom fixtures, eating area, Missing accessible front counter.
- Design Deficiencies
Items overlooked, wrong dimensions, lack of required clearances.
- Construction Deviations
Required slopes or dimensions not obtained.



Dimensional Tolerances

- Dimension tolerances apply only to field conditions not design documents. Field conditions would be topographical or unique circumstances preventing compliance.
- When a range is indicated it must be within that range. Example, accessible lobby counter height shall be between 28" and 34" above the floor.
- When a maximum or minimum is indicated, it must comply with the requirement. Example, doorways that are required to be 32" clear width at a minimum can not be less than that dimension.
- Lawsuits are typically include items exceeding dimensional constraints.



Major Building Issues

EXTERIOR

- Curb ramps, detectible domes
- Exterior Route
- Accessible Parking
- Stairs and ramps
- Signage

INTERIOR

- Entrance doorways and landings
- Public counters
- Public toilets
- Protruding objects in hallways, drinking fountains, elevators, doors and hardware
- Signage



New 2010 ADAAG Issues: More Stringent Requirements

- ⊙ Accessible counters full depth
- ⊙ Transfer area required next to toilet
- ⊙ Number of accessible van spaces 1:6
- ⊙ Valet parking counted in parking count
- ⊙ Passenger loading zones
- ⊙ Operable windows now covered
- ⊙ ATMs, washers, dryers, vending
- ⊙ Reach range now 48" maximum
- ⊙ Communications features for hearing impaired



New 2010 ADAAG Issues: Less Stringent Requirements

- ⊙ Detectible domes not required on curb ramps except at public streets
- ⊙ Transfer shower threshold can be higher at existing building
- ⊙ Fire strobes can be added when area is remodeled and can conform to state regulations
- ⊙ Character height of overhead signs 2" min.
- ⊙ Toilet door can swing into fixture clear space in single use toilet room



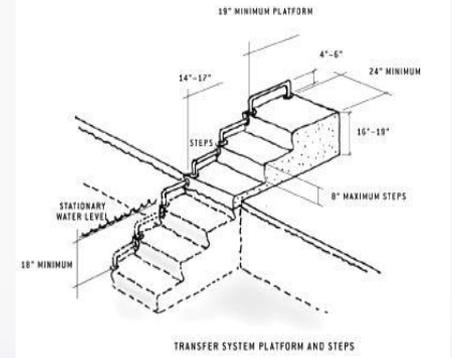
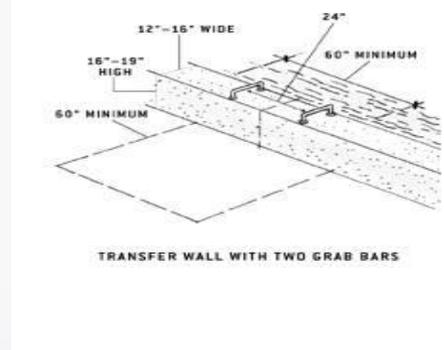
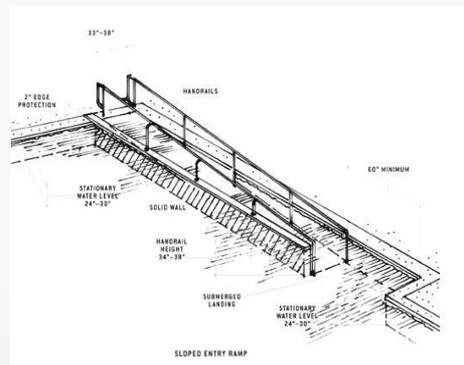
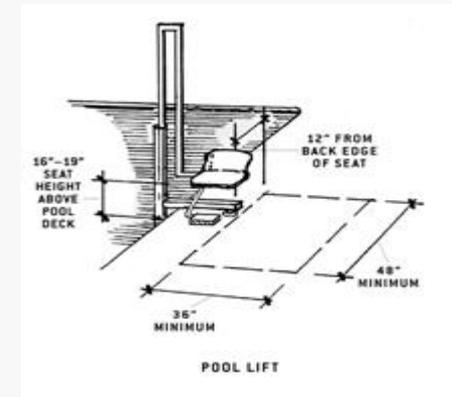
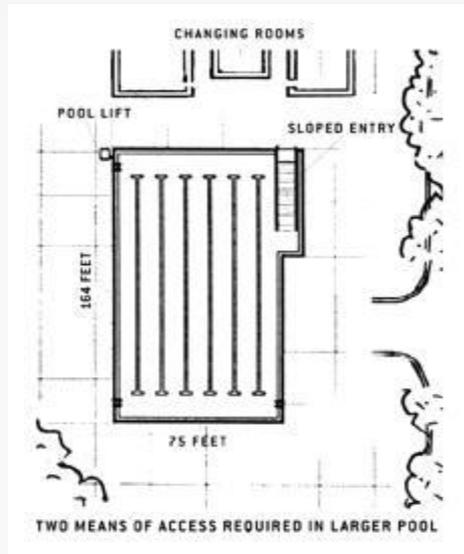
SWIMMING POOLS & SPAS

- ⊙ After 3/15/2012, existing pools and spas must be made compliant with 2010 ADA when readily achievable
- ⊙ Swimming pools with less than 300 lf of wall
 - ⊙ Must have at least one accessible means of entry
 - ⊙ Can be a pool lift or sloped entry
 - ⊙ Pool lifts have specific requirements
- ⊙ Swimming pools with more than 300 lf of wall
 - ⊙ Must have two means of accessible entry
 - ⊙ One shall be a pool lift or sloped entry
- ⊙ Spas
 - ⊙ Must have an accessible means of entry
 - ⊙ Spas in a cluster may share a portable lift



SWIMMING POOLS

ACCESSIBLE ENTRY OPTIONS





GOLF COURSES

- ⊙ What is required by 1991 ADA
 - ⊙ Accessible parking, locker areas, toilets, pro shop counter, seating at dining areas and accessible routes and entrances to public areas
- ⊙ What is required by 2010 ADA
 - ⊙ Accessible route or cart path to all guest facilities and holes within course
 - ⊙ Accessible practice areas for putting and practice range
 - ⊙ Access to one or more tee boxes at each hole
- ⊙ What is not required
 - ⊙ Providing single use car
 - ⊙ Access to bunkers



Overview of the Proposed Guidelines for Public Rights-of-Way

What the Guidelines Cover, 7/26/2011

- Pedestrian Access Routes (including sidewalks, street crossings, curb ramps/ blended transitions)
- Detectable Warning Surfaces
- Pedestrian Signals
- Roundabouts
- On-Street Parking and Passenger Loading Zones
- Transit Stops and Shelters
- Street Furniture and Other Elements



Alterations

- In alterations, it may not be possible to meet all of the accessibility requirements
- Follow new construction provisions to the extent possible





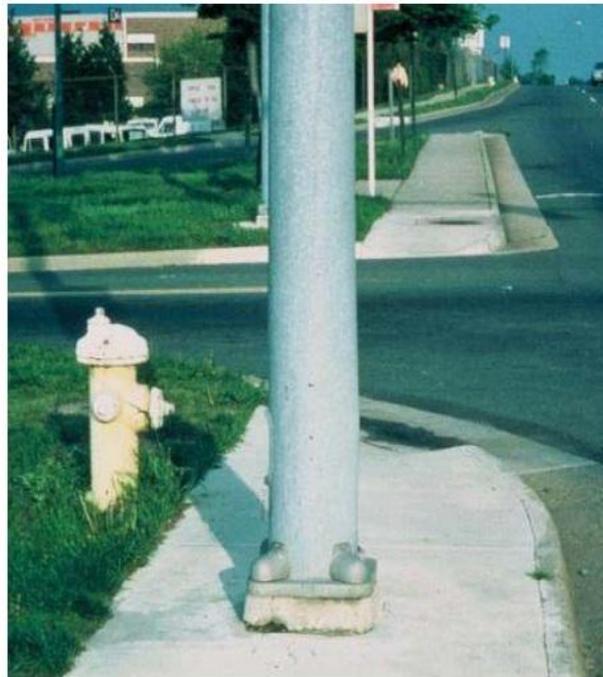
Pedestrian Access Route (PAR)



4 feet minimum exclusive of the curb



Pedestrian Access Route (PAR)





Pedestrian Access Route (PAR)



Continues around all obstructions



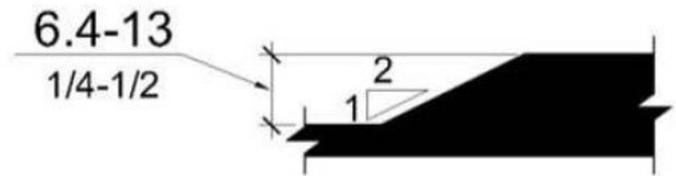
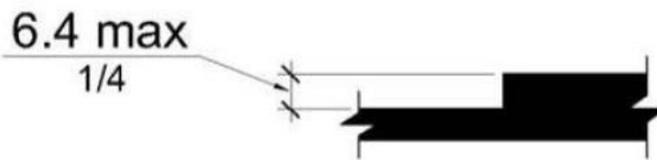
Pedestrian Access Route (PAR)



Running slope can follow adjacent roadway grade



Pedestrian Access Route (PAR)



Changes in level provisions same as the building guidelines



Pedestrian Access Route (PAR)



Horizontal openings no more than ½ inch in the direction of travel



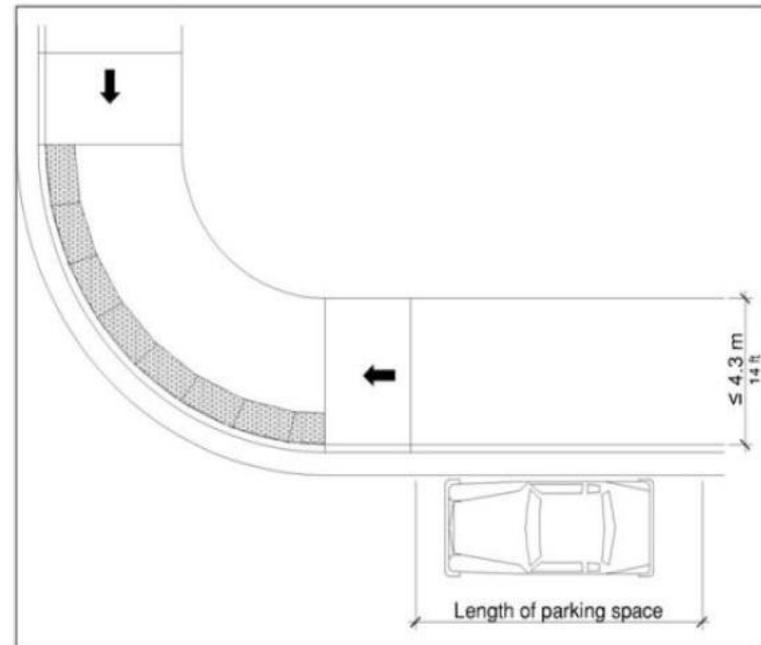
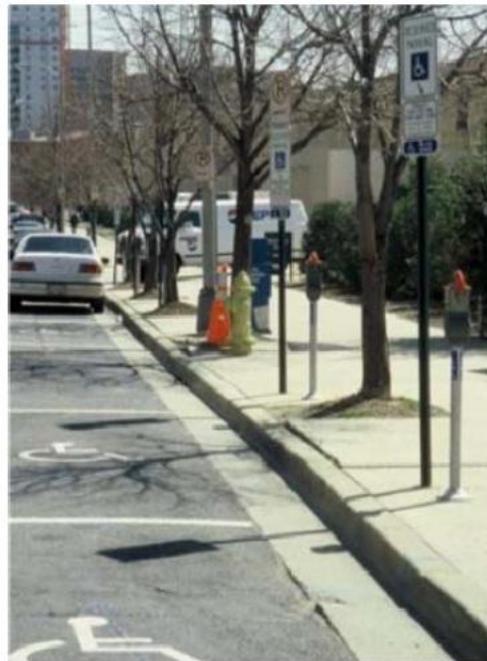
Transit Stops & Shelters



**Rule covers areas for lift or ramp deployment
as well as shelters**



On-Street Parking

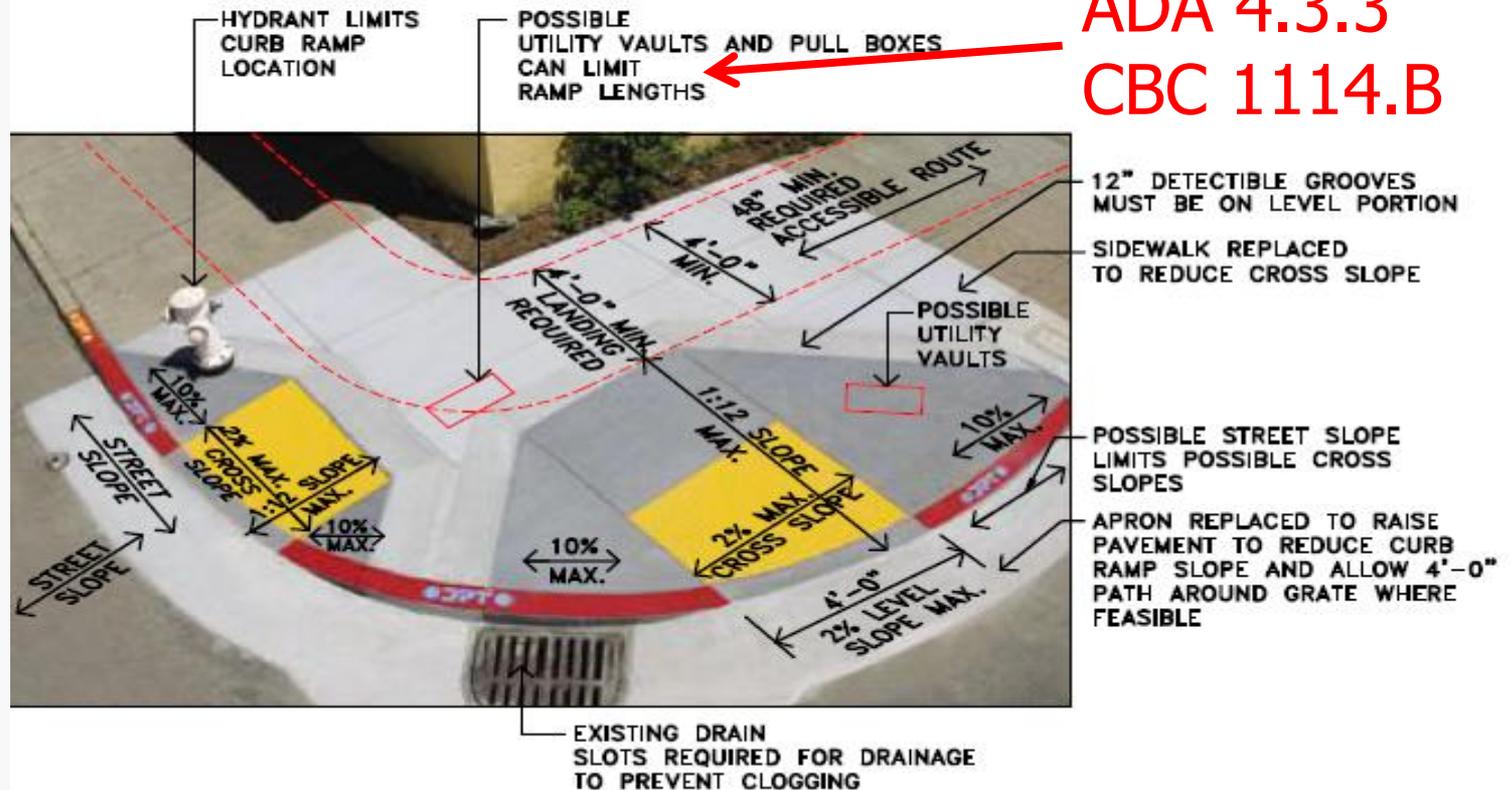


Narrow sidewalks



OBSTACLES RESTRICTING INSTALLATION OF CURB RAMPS

ADA 4.3.3
CBC 1114.B





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EXISTING SIDEWALK WIDTHS LIMITS CURB RAMP SLOPE POSSIBLE

Height of Curb Face	1:10 max. Flare Width at Curb	Ramp Run Length (Plan)	Total Needed Sidewalk Width (incl. 4' Landing)
6" (15.2 cm)	60" (1.52m)	95" (2.41 m)	143" (3.63 m)

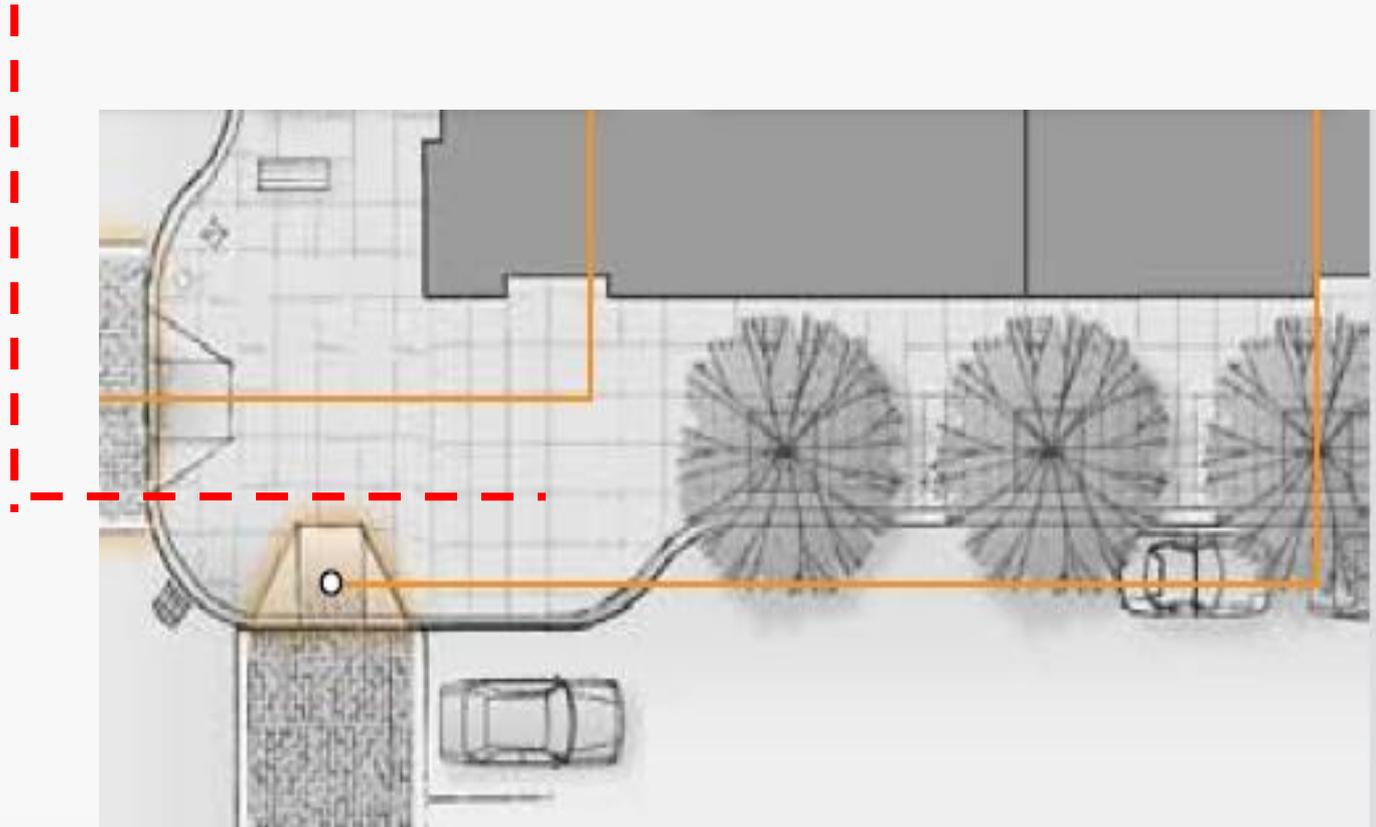
Ramp slope of 8.33% on a sidewalk with 2% cross slope DSA-AC Checklist 7/1/10 page 5-7

- STANDARD CURB RAMPS NEED A NEARLY 12 FOOT SIDEWALK WIDTH TO FIT A 1:12 SLOPE WITH A 4 FOOT LEVEL LANDING.
- THIS IS MUCH WIDER THAN MOST CITY SIDEWALKS
- CURB RAMP DESIGNS ARE THEREFORE CONSTRAINED BY REAL-WORLD SIDEWALK WIDTH



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“BULB OUTS”





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SITE CONSTRAINTS



Storm Drain



View of Broadway



Corner of Broadway at Pacific



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Fire hydrant in wrong location



Non-compliant steep walkway to lobby

Curb Ramps



No landing, blocked by parked car



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Electrical pole in the middle of the sidewalk



2% maximum cross slope

Exterior Route





Accessible Parking





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Signage





- There is no required 3' long, 34" maximum height accessible portion of the main counter



Public Counters



ACTION ITEMS

- ◎ Identify newly covered items and bring into compliance
- ◎ Identify existing non-compliant items and determine whether to make compliant with new or old regulations
- ◎ Review ADA Best Practices toolkits and Proposed ADA PROW Guidelines in development.



Documents Available Online

- www.access-board.gov
- Proposed Guidelines for Public Rights-of-Way
- Accessible Public Rights-of-Way: Planning and Designing for Alterations
- Accessible Rights-of-Way: A Design Guide
- Accessible Sidewalks (DVD)
- Detectable Warnings Update
- Manufacturers of Detectable Warning Products
- As well as many research reports



LOW, BALL & LYNCH

505 Montgomery Street, 7th Floor

San Francisco, CA 94111-2584

Tel: (415) 981-6630

Fax: (415) 982-1634

Two Lower Ragsdale Drive, Suite 120

Monterey, CA 93940

Tel: (831) 655-8822

Fax: (831) 655-8881

www.lowball.com

