

CALIFORNIA DEPARTMENT OF TRANSPORTATION



**AMERICANS WITH DISABILITIES ACT
COMPLIANCE REPORT**

June 2011



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REQUIREMENTS OF THE LEGISLATIVE ANALYST'S OFFICE SUPPLEMENTAL REPORT OF THE 2010–11 BUDGET PACKAGE

The Legislative Analyst's Office *Supplemental Report of the 2010–11 Budget Package*, Business, Transportation & Housing, Item 2660–001–0042—California Department of Transportation (see <http://www.lao.ca.gov/reports/2010/supp_report/supp_report_2010.pdf>), requires the following:

ADA Compliance. Caltrans shall report annually for three years to the fiscal and policy committees of the Legislature and the Legislative Analyst's Office information about Caltrans' ADA compliance program and efforts related to the settlement of lawsuits regarding violations of the ADA. The first report shall be provided no later than 12 months after the final settlement has been approved by the presiding court. Two subsequent reports shall be provided annually thereafter. The reports shall provide the following:

- 1. Overview of the ADA Program.** An overview of Caltrans' ADA compliance program and how the program fulfills each of the requirements of the lawsuit settlement agreement.
- 2. Recent Changes to the ADA Program.** A description of recent changes made to Caltrans' ADA program that have been implemented as a result of requirements or recommendations from the ongoing implementation of the lawsuit settlement agreement.
- 3. Total Resources Allocated.** The first report shall include the total level of resources Caltrans has allocated to its ADA program for the preceding three fiscal years and the current year, including (a) staff resources, (b) contract resources, and (c) capital outlay or other funds. The two subsequent reports shall include the current year estimated and past-year actual level of these resources. All three reports shall include the total level of resources Caltrans plans to allocate to the program in the budget year. Information should be broken down into major categories of work performed (such as program management, transition plan, complaints, and capital outlay). Approved and proposed budget changes should be referenced as applicable.
- 4. ADA-Related Complaints.** The first report shall include the number of ADA complaints received and investigated during the preceding three fiscal years, and the estimated number of complaints in the current year. The two subsequent reports shall include the current-year estimated and past-year actual numbers of complaints.
- 5. Summary of Capital Outlay Projects.** A summary of the capital outlay projects that have been awarded to address noncompliant facilities.

REQUIREMENTS OF THE 2010 LAWSUIT SETTLEMENT AGREEMENT

In August 2006, Californians for Disability Rights, Inc., and the California Council of the Blind filed a class action lawsuit against Caltrans in the United States District Court for the Northern District of California, claiming violations of both federal and State laws caused by Caltrans' alleged failure to install and/or maintain curbs and sidewalks that allow reasonable access for mobility and visually impaired persons. In June 2010, Caltrans reached settlement terms regarding the lawsuit.

According to the terms of the 2010 ADA lawsuit settlement agreement, Caltrans shall:

1. Allocate \$1.1 billion from the SHOPP in annual commitments over a compliance period of thirty years to improve access on sidewalks and other pedestrian facilities (ADA compliance projects only). Annual commitment levels are:
 - \$25 million a year for fiscal years 2010–2014.
 - \$35 million a year for fiscal years 2015–2024.
 - \$40 million a year for fiscal years 2025–2034.
 - \$45 million a year for fiscal years 2035–2039.
2. Ensure that each new construction or rehabilitation project improves pedestrian facilities as part of that project. (ADA-required work accomplished as part of these projects is a departmental responsibility under federal and State ADA laws and regulations and does not count toward fulfillment of the annual commitment.)
3. Revise ADA design guidance, contained in Design Information Bulletin 82, to provide that Capital Maintenance (CapM) projects adjacent to pedestrian facilities must include installation or upgrade of curb ramps at the time the CapM work is performed, and where vehicular lanes and shoulders are intended by Caltrans for pedestrian use, those lanes and shoulders must comply with accessibility requirements.
4. Develop and implement Temporary Routes Through Work Zones guidance, ensuring that construction activities requiring temporary pedestrian routes are accessible by persons with disabilities, including training of department personnel involved in designing and inspecting such work.
5. Accept access requests and grievances from the persons with disabilities and others and respond within specific timeframes in accordance with U.S. Department of Justice regulations and terms of the lawsuit settlement agreement.

6. Complete an annual report, at the end of the first full fiscal year and every year after, with sufficient detail to allow plaintiffs' attorneys to evaluate whether Caltrans is complying with the terms of the lawsuit settlement agreement.
7. For the first seven years of the compliance period, retain an outside accessibility consultant with substantial experience in evaluating and/or assisting public entities in evaluating the accessibility of programs, services, activities, and facilities under title II of the ADA (28 CFR § 35 and 42 U.S.C. § 12101 et seq.). The consultant shall review Caltrans' ADA-required access improvements and the annual report and provide an evaluation to the plaintiffs and members of the settlement class concerning Caltrans' compliance with the lawsuit settlement agreement.

1. OVERVIEW OF THE ADA PROGRAM

Caltrans owns and maintains an estimated 4,000 miles of sidewalks along 15,000 miles of freeways and highways, bridge structures, park-and-ride lots, vista points, safety roadside rest areas, and pedestrian tunnels and overcrossings in the State Highway System. The majority of these sidewalks are located on routes that pass through urban centers. Regular maintenance and upgrades to this extensive pedestrian infrastructure are required to keep the system functioning and compliant with federal and State laws.

In compliance with the Americans With Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101 et seq. and 47 U.S.C. § 225, Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended by the ADA Amendments Act of 2008, Pub. L. 110–325, September 25, 2008), Caltrans has been improving the pedestrian infrastructure through highway construction, bridge replacement, and safety roadside rest rehabilitation projects. The number and location of ADA improvements installed or modified as part of these larger projects was not systematically collected. ADA-only projects to improve or rehabilitate Caltrans' pedestrian infrastructure have been developed and constructed since the early 1990s, but they had to compete for limited funds in the State Highway Operation and Protection Program (SHOPP) against safety, roadway and bridge rehabilitation, and mobility projects.

Following the ADA lawsuit settlement agreement in June 2010, Caltrans has made specific changes to comply with the terms of the agreement.

1. Allocate \$1.1 billion from the SHOPP in annual commitments over a compliance period of thirty years to improve access on sidewalks and other pedestrian facilities.

Specific information related to programming and delivery of FY 2010–2011 ADA compliance projects and program costs to fulfill the annual commitment are contained in Section 3, Total Resources Allocated (Table 1), and Section 5, Summary of Capital Outlay Projects (Table 3).

2. Ensure that each new construction or rehabilitation project improves pedestrian facilities as part of that project.

The ADA Infrastructure Program and the Division of Design Coordinators and Geometric Reviewers review each project during the project development process to ensure compliance with Caltrans' ADA policies and guidance

3. Revise ADA design guidance, contained in Design Information Bulletin 82.

Design Information Bulletin 82 was revised on December 1, 2010, to provide that Capital Maintenance (CapM) projects adjacent to pedestrian facilities must include installation or upgrade of curb ramps at the time the CapM work is performed, and where vehicular lanes and shoulders are intended by Caltrans for pedestrian use, those lanes and shoulders must comply with accessibility requirements.

4. Develop and implement Temporary Routes Through Work Zones guidance.

In March 2011, Caltrans' Division of Construction developed guidance for Caltrans construction inspectors to provide safe, accessible temporary routes through construction zones. Changes also are in process to strengthen contract specifications and guidance to the contractor for installing and maintaining accessible routes when a pedestrian facility is affected as part of a construction project.

5. Accept grievances and access requests from persons with disabilities and others and respond within specific timeframes.

Revisions to Caltrans' grievance and access request process are discussed in Section 4, ADA-Related Complaints.

6. Complete an annual report at the end of the first full fiscal year and every year after.

The first annual report to the plaintiffs is due within 180 days of the end of the first full fiscal year (June 2011) and is scheduled to be ready for review by the access consultant in October 2011, with a final report due to the plaintiffs prior to December 31, 2011.

7. Retain an outside accessibility consultant.

In April 2011, Caltrans retained an outside accessibility consultant to review Caltrans' ADA-required access improvements and the annual report and provide an evaluation to the plaintiffs and members of the settlement class concerning Caltrans' compliance with the lawsuit settlement agreement. The consultant contract extends through the end of FY 2012–2013.

2. RECENT CHANGES TO THE ADA PROGRAM

As a result of a five-year internal assessment of Caltrans' ADA compliance program, initiated in 2006, the terms of the 2010 ADA lawsuit settlement agreement, and a current, ongoing evaluation, Caltrans has taken substantial steps to improve its ADA Infrastructure Program.

Statewide Pedestrian Infrastructure Assessment. In 2009, Caltrans contracted services of an ADA consulting firm to assess Caltrans' pedestrian infrastructure along the State Highway System and develop an updated ADA compliance transition plan. The original estimate of 2,500 miles of pedestrian infrastructure estimated by Caltrans was nearly surpassed in Phase 1 of the statewide assessment, which included Northern California (not including the greater Bay Area) and San Diego and Orange Counties.

A Phase 2 contract was initiated in July 2010 to complete the assessment of the remainder of the State and provide Caltrans with an evaluation of its ADA compliance program, policies, and procedures. Currently, the consultant has assessed a total of approximately 4,000 miles of pedestrian infrastructure within the highway right-of-way. Assessment data will be provided to Caltrans as an ADA compliance transition plan and in database form for use as a project development tool and for regular updating of the plan as projects are completed.

A third phase of the pedestrian infrastructure assessment is needed to inventory pedestrian infrastructure accessibility barriers on bridge structures, highway ramps, park-and-ride lots, vista points, safety roadside rest areas, and pedestrian tunnels and overcrossings.

ADA Infrastructure Program Staff. The primary objective of Caltrans' ADA Infrastructure Program is to provide a single statewide departmental focal point for ADA compliance infrastructure issues. The ADA Infrastructure Program provides liaison and improved coordination between functional areas related to accessibility, directs the initiation, design, and construction of ADA-required access improvement projects in line with statewide priorities, and provides a more effective resolution of ADA-related complaints. In addition, the ADA Infrastructure Program develops and coordinates guideline and policy improvements, monitors and updates the compliance transition plan, and manages the two ADA programs in the SHOPP, ADA Curb Ramps Program (201.361) and the Pedestrian Infrastructure Program (201.378). These programs represent a major element in addressing infrastructure improvements required by the lawsuit settlement agreement.

In February 2010, Caltrans requested and was granted a two-year limited-term increase of three positions (\$391,000 in personal services) in State Highway Account funds to establish the ADA Infrastructure Program. These positions include the ADA Infrastructure Program Manager (CEA II), Accessibility Program Advisor (Senior Transportation Engineer), and the Accessibility Coordinator (Staff Services Manager I).

In addition to Caltrans staff, a \$3 million ADA consultant contract is currently out to bid to augment Caltrans staff by developing an improved grievance initiation and tracking process and for field investigations of grievances and complaints during the next two years.

Revised Grievance and Access Request Process. As the owner-operator of the State's transportation infrastructure, including pedestrian infrastructure, Caltrans has a legal obligation to respond to complaints regarding accessibility barriers brought to its attention by persons with disabilities and others. The complaints are primarily provided in two forms: (1) a formal grievance by a person with a disability or that person's designee, or (2) a less formal access request by a person with a disability or designee or the public. As part of the terms of the lawsuit settlement agreement, Caltrans has revised its procedures for responding to grievances and access complaints.

A formal grievance requires that Caltrans respond within certain timeframes in accordance with U.S. Department of Justice regulations and the terms of the lawsuit settlement agreement.

The grievance guidelines were revised in 2010 as follows:

- Within 15 working days, Caltrans will respond to receipt of the grievance in writing or in a manner appropriate for the particular disability.
- If the grievance involves a facility not owned and controlled by Caltrans, Caltrans will facilitate notification of the grievance to the appropriate entity as expeditiously as possible but in any event within 120 working days.
- Within 180 working days following the date Caltrans acknowledges receipt of the grievance, Caltrans will provide a response to the grievant that explains Caltrans' position and offers a resolution responsive to the grievance. The response will include information about the right to appeal.
- Caltrans will proceed with implementation of its proposed resolution unless the grievant files a written appeal of Caltrans' decision within 15 working days.

As part of Caltrans' stewardship responsibilities with the Federal Highway Administration, Caltrans is required to ensure that all grievances are resolved in accordance with federal guidelines and to the satisfaction of the grievant.

Access requests may be conveyed, without filing a grievance, to the designated departmental contact for ADA- or section 504-related grievances. The contact information for submitting nongrievance access requests has been added to Caltrans' Web site under the "Contact Us" link (see <<http://www.dot.ca.gov/tty.htm>>). Caltrans also is developing an online process for submitting access requests.

Pedestrian Infrastructure Improvement Projects in the SHOPP. The main funding source for ADA-required accessibility compliance projects is the SHOPP. The SHOPP is a four-year funding program, updated every two years, and is the vehicle by which the majority of Caltrans' maintenance, rehabilitation, and operational improvements, including ADA-required access improvements, are managed and programmed for delivery. In 2009, Caltrans established the Pedestrian Infrastructure Program (201.378), as a complement to the existing Curb Ramp Program (201.361), to accommodate ADA-compliant access improvement projects that focus on aspects of barrier removal other than curb ramps (sidewalks, pedestrian structures, pedestrian signals, and park-and-ride lots). Major projects (projects greater than \$1 million) contained in the two ADA programs will make up the majority of ADA-required barrier removal work needed to meet the \$25 million annual commitment. In order to deliver smaller and less complicated ADA-compliant improvements more quickly, Caltrans has elected to create a \$10 million ADA reservation in the SHOPP Minor program (projects less than \$1 million) for FY 2011–2012. Minor projects typically are scoped, designed, and put out to bid within a single fiscal year, allowing for expedited response to safety or urgent access barrier issues and to grievances.

Monitoring and Tracking ADA-Compliant Improvements and Resources. One of the top priorities for the ADA Infrastructure Program has been to develop better tools to track the initiation, development, and construction of ADA-required accessibility compliance projects and all resources being utilized in ADA compliance work. Specific project codes (expenditure authorizations) and reporting codes (special designations) have been initiated to capture non-capital-related expenditures. The expenditures will be rolled up at the end of the reporting period to track future resource needs with eligible costs applied toward the annual commitment. The ADA Infrastructure Program, as part of the program's management responsibilities, is tracking the number of curb ramps, lineal feet of sidewalks, and pedestrian signals installed or repaired within each project from project initiation through the completion of construction. This information, along with the statewide pedestrian infrastructure assessment data collected by the consultant, is being transferred into a department-based global information system that will provide for real-time, location-specific asset management of pedestrian infrastructure assets and ADA-noncompliant locations.

3. TOTAL RESOURCES ALLOCATED

Caltrans reserved \$25 million total resources for FY 2010–2011 and expects to expend or allocate more than \$15 million for ADA-required projects and program support (see Table 1).

In addition to the funding that goes into constructing ADA-required access improvements, significant resources are required to manage Caltrans' ADA compliance program, develop guidelines and procedures, respond to complaints, and identify, scope, design, and inspect project installations. In 2008, as part of a larger effort to implement Complete Streets, Caltrans began the process of developing an ADA Infrastructure Program to focus on the needs of persons with disabilities. In 2010, the ADA Infrastructure Program was officially initiated with the Department of Finance's approval of three limited-term positions. In addition to the ADA Infrastructure Program, the Office of Business and Economic Opportunity (Civil Rights), the district ADA liaisons, and the Division of Traffic Operations track resources spent on ADA



complaints and investigations (see Table 1, non-capital support data). Many others with intermittent work on ADA program-related or ADA-required project-related work have not historically captured those costs attributable to Caltrans' ADA compliance effort. Beginning in 2011, Caltrans will capture the resources expended by non-capital support units involved in the ADA compliance effort, such as Human Resources, Budgets, Planning, and Maintenance, and apply those expenditures against the annual commitment.

Table 1 lists the total Caltrans ADA resources that have been allocated and expended for FY 2010–2011 and the previous three fiscal years.

| Table 1. CALTRANS ADA RESOURCE ALLOCATIONS AND EXPENDITURES | | | | |
|--|--------------------|-------------------------|------------------------|---|
| Resource Unit/Fiscal Year | 2007–2008 | 2008–2009 | 2009–2010 | 2010–2011 |
| ADA Infrastructure Program Staff (Program Management) | NA | \$ 276,000 ^a | \$ 276,000 | \$ 391,000 ^b |
| Non-Capital Support ^c (Grievance/Complaint Investigations) | NA | 1,092,457 | 679,043 | 1,057,837 |
| Capital Outlay Support | \$4,990,000 | 7,526,000 | 6,996,000 | 4,509,000 ^d |
| Consultant Contracts ^e (Transition Plan/Infrastructure Assessment) | NA | NA | 4,886,410 ^a | 4,706,000 ^f 75,000 ^g 3,000,000 ^h |
| Capital Project Costs (Construction and Right-of-Way) | 537,000 | 3,505,000 | 4,195,000 | 5,595,000 ^d |
| Total | \$5,527,000 | \$12,123,457 | \$12,146,043 | \$15,867,837 |
| <p>^aResources included in Finance Letter #2 of FY 2008–2009.</p> <p>^bResources included for three limited-term positions in Finance Letter #9 of FY 2010–2011.</p> <p>^cEstimated non-capital support includes resources for grievance investigations by the Office of Business and Employment Opportunity (Civil Rights), district ADA liaisons, and traffic safety investigations.</p> <p>^dAllocated and programmed capital outlay capital and supports costs for FY 2010–2011.</p> <p>^eIncludes consultant contracts for Phases 1 and 2 of the statewide pedestrian infrastructure assessment.</p> <p>^fOriginal \$4,491,000 contract amended with \$215,000 in funding (of \$3,215,000) from Finance Letter #9 of FY 2010–2011.</p> <p>^gAccess consultant contract initiated in April 2011. Actual expenditures for FY 2010–2011 are undetermined.</p> <p>^hOne-time allocation of \$3,215,000 for operating expenses in Finance Letter #9 of FY 2010–2011. \$3,000,000 for consultant services to provide a grievance process and assist in investigations and staff training. No expenditures in FY 2010–2011. \$215,000 to amend the current contract for infrastructure assessments and database development.</p> | | | | |



In order to comply with the terms of the 2010 ADA lawsuit settlement agreement, Caltrans is investigating the need to complete the statewide pedestrian infrastructure assessment (bridge structures, highway ramps, park-and-ride lots, vista points, safety roadside rest areas, and pedestrian tunnels and overcrossings) and provide ADA awareness and technical training.

4. ADA-RELATED COMPLAINTS

The grievance procedure is a formal, legal process established to meet the requirements of title 28 Code of Federal Regulations section 35.107(b) and title 49 Code of Federal Regulations section 27.13(b). The grievance procedure may be used by anyone who wishes to file a grievance alleging discrimination, based on a disability, in the provision of services, activities, programs, or benefits by Caltrans or the State with regard to the transportation system. The grievance procedure is intended and designed to provide prompt and equitable resolution of grievances alleging noncompliance with, or any action prohibited by, the ADA and section 504 of the Rehabilitation Act of 1973. This procedure applies to all grievances related to ADA title II that concern facilities owned and controlled by Caltrans, including pedestrian facilities and park-and-ride lots. Caltrans’ Director’s Policy 01–R7, “Equal Employment Opportunity,” and ADA title I govern employment-related complaints of disability discrimination.

Access requests are informal and do not follow the same procedures as grievances. Caltrans may address nongrievance access requests without the subsequent input or participation of the individual, organization, or agency making the request.

Both grievances and access requests are investigated by Caltrans and documented with a Traffic Investigation Report that lists the specifics of the field conditions included in the complaint. Information from the report is used along with engineering judgment and ADA design standards in developing an appropriate response to the complaint and resolution of the access barrier issue. Total complaints and investigations are listed in Table 2 below.

| Table 2. CALTRANS ADA GRIEVANCES AND ACCESS REQUESTS | | | | |
|---|------------------|------------------|------------------|--------------------------------|
| Fiscal Year | 2007–2008 | 2008–2009 | 2009–2010 | 2010–2011 (To Date) |
| Grievances | 14 | 20 | 26 | 10 |
| Access Requests ^a | NA | 216 | 106 | 64 |
| Investigations | NA | 236 | 126 | 74 |
| ^a Includes internal and external identification of barriers within the highway infrastructure and paths of travel on off-highway facilities. | | | | |



Local System ADA Complaints. In addition to grievances and access requests concerning the State Highway System, Caltrans has been tasked by the Federal Highway Administration, as part of its stewardship responsibilities, to oversee the resolution of ADA complaints concerning local transportation systems. Failure by a local agency to respond in a timely manner with a proposed resolution to a grievance could result in the loss of federal funding for that agency. Four grievances were received since June 2010 concerning locations on local transportation systems.

5. SUMMARY OF CAPITAL OUTLAY PROJECTS

Since 1991, Caltrans has had an active ADA compliance program to improve the accessibility of its pedestrian infrastructure. The primary method of accomplishing upgrades was to include ADA-compliant elements in new construction and major rehabilitation projects for roadways, bridges, and safety roadside rest areas.

Following a statewide survey of curb ramps in 2006, Caltrans set a \$10 million a year target to install missing curb ramps throughout the State Highway System. ADA compliance projects completed since 2006 and those currently programmed in the 2010 SHOPP are primarily curb ramp installations and upgrades in the ADA Curb Ramps Program (201.361) project list. Curb ramps have been installed at the majority of locations previously without them, and the focus is now shifting to making those curb ramps completely compliant with current standards. Pedestrian Infrastructure Program (201.378) improvement projects will bring the remainder of the pedestrian infrastructure into ADA compliance, infrastructure including but not limited to sidewalks, pedestrian over- and undercrossings, pedestrian signals, and park-and-ride lots.

ADA compliance projects programmed for delivery in FY 2010–2011 in the SHOPP total \$10.1 million (see Table 3 below).

| Table 3. CALTRANS ADA PROGRAM CAPITAL PROJECTS SUMMARY | | | | |
|---|------------------|------------------|----------------|--------------------------|
| Fiscal Year | 2007–2008 | 2008–2009 | 2009–10 | 2010–2011 |
| Number of ADA Compliance Projects | 3 | 9 | 8 | 6 |
| Capital Outlay Support ^a | \$4,990,000 | \$7,526,000 | \$6,996,000 | \$4,509,000 ^b |
| Capital Project Costs (Construction and Right-of-Way) | \$537,000 | \$3,505,000 | \$4,195,000 | \$5,595,000 |
| ^a Includes capital construction and right-of-way estimates, utility relocation, environmental mitigation, and capital support costs including environmental review, preliminary engineering, surveys, right-of-way acquisition, project design, and construction inspection. ^b Includes projects delivered and programmed in FY 2010–2011. | | | | |

CONCLUSION

The Caltrans ADA Compliance Report fulfills the requirements of the 2010–2011 Budget language and provides a comprehensive overview of Caltrans’ efforts to establish an ADA compliance program and fulfill the requirements of the ADA lawsuit settlement agreement.

In the first full year under the terms of the lawsuit settlement agreement, Caltrans has made significant progress toward substantial compliance with all settlement terms. Completion of the statewide pedestrian infrastructure assessment and mandated SHOPP funding levels for ADA programs have generated a substantial number of new ADA compliance projects that are currently moving through the project development process. The schedule for completion of those projects programmed for FY 2011–2012, the annual report to the plaintiffs, the access consultant contract, and additional improvements to the grievance and access request process will be included in the FY 2011–2012 compliance report.