

***CALIFORNIANS FOR
DISABILITY RIGHTS, INC.***

v.

***CALIFORNIA
DEPARTMENT OF TRANSPORTATION
CASE No.: C 06 5125
SETTLEMENT AGREEMENT RE CLASS
ACTION SETTLEMENT***

(Including Exhibits 1–9)

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CALIFORNIANS FOR DISABILITY
RIGHTS, INC. ("CDR"), CALIFORNIA
COUNCIL OF THE BLIND ("CCB"), BEN
ROCKWELL and DMITRI BELSER, on
behalf of themselves, and on behalf of all
others similarly situated

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION ("Caltrans") and WILL
KEMPTON, in his official capacity.

Defendants.

Case No. C-06-5125 SBA

**SETTLEMENT AGREEMENT
RE: CLASS ACTION SETTLEMENT**

Judge: Hon. Sandra Brown Armstrong

1 This Settlement Agreement is made and entered by and among Plaintiffs Californians for
2 Disability Rights, Inc. ("CDR"), California Council of the Blind ("CCB"), Ben Rockwell and
3 Dmitri Belser, on behalf of themselves and each of the Plaintiff Settlement Class Members, and
4 Defendants California Department of Transportation and the Department's Director in his
5 official capacity.

6 **1. DEFINITIONS.**

7 Except to the extent expressly stated to the contrary, any term not expressly defined in
8 this Section or elsewhere in this Settlement Agreement shall have the meaning ascribed to it, if
9 any, by Pedestrian Accessibility Guidelines for Highway Projects (DIB 82), Federal Access
10 Laws or California Access Laws, in that order of preference. All other terms shall be interpreted
11 according to their plain and ordinary meaning. The following terms have the stated meanings
12 when used in this Settlement Agreement:

13 **1.1.** "Access Consultant" means and refers to the consultant hired pursuant to **Exhibit**
14 **2** of this Settlement Agreement.

15 **1.2.** "Access Request(s)" means and refers to requests, comments, inquiries, as well as
16 formal accessibility grievances (as reflected in **Exhibit 5**) from individuals, organizations, public
17 agencies, cities, and/or local government entities conveyed to Caltrans (as set forth in **Exhibits 1**
18 **and 5**) that relate to access for pedestrians with Mobility and/or Vision Disabilities to Pedestrian
19 Facilities and Park and Ride Facilities.

20 **1.3.** "Accessibility Guidelines" means and refers in the broadest sense to federal and
21 California state standards and guidelines relevant to Pedestrian Facilities and/or Park and Ride
22 Facilities (including but not limited to ADAAG, PROWAG and Title 24). However, for the
23 purposes of this Settlement Agreement, Accessibility Guidelines means and refers to DIB 82
24 (See **Exhibit 3A**).

25 **1.4.** "ADAAG" means and refers to federal guidelines used to enforce design
26 requirements of the ADA, that were developed by the U.S. Access Board, and that were adopted
27 pursuant to regulations of the United States Department of Justice ("DOJ"). ADAAG guidelines
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1 currently are found in Appendix A of the DOJ Title III Regulations for the ADA and are
2 referenced in the DOJ's Title II Regulations, Section 35.151(c) of Title 28 of the Code of Federal
3 Regulations.

4 **1.5.** "ADA" means and refers to the statutory provisions contained in the Americans
5 with Disabilities Act (42 U.S.C. § 12101, et seq.).

6 **1.6.** "Alterations" means and refers to that term as used in DIB 82 Section 4.1.2 (See
7 Exhibit 3A).

8 **1.7.** "Altered Facility" means and refers to any Pedestrian Facility and/or any Park and
9 Ride Facility that will have or has had Alterations.

10 **1.8.** "Annual Commitment," "Annual Commitment for Program Access
11 Improvements" or "ACPAI" means and refers to the Defendants' commitment to allocate
12 funding annually for the duration of the Compliance Period. "Annual Commitment for Program
13 Access Improvements" is defined in greater detail in **Exhibit 1** to this Settlement Agreement.

14 **1.9.** "Annual Report" shall have the meaning set forth in **Exhibit 2** to this Settlement
15 Agreement.

16 **1.10.** "APS" means and refers to accessible pedestrian signals.

17 **1.11.** "Caltrans" and "the Department" mean and refer to the State of California
18 Department of Transportation, including all district level offices, all of its officers, directors,
19 employees, and agents, and any state-wide agency or department that may hereafter assume the
20 authorities and responsibilities currently held by Caltrans, and any of them.

21 **1.12.** "CAPM Work" or "CAPM Projects" means and refers to projects performed
22 through Caltrans' Capital Preventive Maintenance (CAPM) Program, as part of the State
23 Highway Operation and Protection Program (SHOPP). CAPM projects are performed to
24 preserve the existing pavement structure utilizing strategies that preserve or extend pavement
25 life. These terms also shall mean and refer to any successor program with a substantially similar
26 purpose.

1 **1.13.** “California Access Laws” means and refers to the Unruh Act (Cal. Civ. Code § 51
2 et seq.), the Disabled Persons Act (Cal. Civ. Code § 54 et seq.), California Government Code
3 Sections 4450 et seq. and 11135 et seq., California Health and Safety Code Section 19953,
4 California Civil Code Section 526a, and California Code of Regulations Title 24.

5 **1.14.** “Caltrans’ Jurisdiction” means and refers to Pedestrian Facilities and/or Park and
6 Ride Facilities owned and controlled by Caltrans, either in part or in full.

7 **1.15.** “Complaint(s)” mean and refer to the complaint(s) filed by Plaintiffs in the
8 Federal Action, the amended complaint filed by Plaintiffs in the Federal Action, the complaint
9 filed by Plaintiffs in the State Action, and/or the amended complaint filed by Plaintiffs in the
10 State Action.

11 **1.16.** “Compliance Period” means and refers to the period of time for which this
12 Settlement Agreement will be in effect. The Parties agree that the Settlement Agreement shall
13 become effective upon Final Approval, and remain in effect for the duration of the thirty (30)
14 year Annual Commitment.

15 **1.17.** “Compliance Evaluation Period” means and refers to the seven year period
16 following Final Approval in which compliance by the Defendants will be evaluated by the
17 Access Consultant. (See **Exhibit 2**).

18 **1.18.** “Curb Ramp” means and refers to the sloped transition where a Pedestrian
19 Facility crosses a curb.

20 **1.19.** “Defendant(s)” shall mean and refer to Caltrans, and the Department’s Director
21 (formerly Will Kempton, succeeded by Randell Iwasaki) in his capacity as Director of Caltrans,
22 or his successor(s), or either of them.

23 **1.20.** “Detectable Warnings” means and refers to a standardized walking surface to
24 warn pedestrians with Vision Disabilities of hazards in the path of travel including but not
25 limited to Vehicular Ways. Compliant designs include those referenced in DIB 82.

26 **1.21.** “DIB 82” means and refers to the Caltrans’ Design Information Bulletin attached
27 hereto as **Exhibit 3A** which synthesizes and reflects the most stringent federal and state
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1 standards and guidelines and best practices, and which is currently entitled “Pedestrian
2 Accessibility Guidelines for Highway Projects” (current version designated 82-03) and
3 subsequent revisions thereto. As such federal and state standards, guidelines and best practices
4 evolve, DIB 82 will be revised to synthesize and reflect the design standards current at the time
5 of publication.

6 **1.22.** “Dispute” means and refers to each and every dispute that arises out of this
7 Settlement Agreement, any interpretation thereof, any asserted breach thereof, and/or the claims
8 released in this Settlement Agreement.

9 **1.23.** “Effective Date” means and refers to the date on which the Court grants Final
10 Approval of this Settlement Agreement.

11 **1.24.** “Existing Pedestrian Facilities” and/or “Existing Park and Ride Facilities,” mean
12 and refer to Pedestrian Facilities and/or Park and Ride Facilities in existence on the Effective
13 Date.

14 **1.25.** “Fairness Hearing” means and refers to the hearing to be held by the Court,
15 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the
16 settlement set forth in this Settlement Agreement is fair, reasonable and adequate.

17 **1.26.** “Federal Access Laws” means and refers to Section 504 of the Rehabilitation Act
18 of 1973 and its implementing regulations and Title II of the ADA and its implementing
19 regulations.

20 **1.27.** “Federal Action” means and refers to the action between Plaintiffs and
21 Defendants filed in the United States District Court, Northern District of California entitled
22 *Californians for Disabilities Rights, Inc. et al. v. California Department of Transportation, et al.*,
23 Case No. C-06-5125 SBA (Armstrong, J.).

24 **1.28.** “Federal Court” or “Court” means and refers to the United States District Court in
25 which Plaintiffs filed their class action Complaint against Defendants in the Federal Action.

26 **1.29.** “Final Approval” means and refers to the Order by the Federal Court, after notice
27 and the holding of a Fairness Hearing, granting final approval of this Settlement Agreement.

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1 **1.30.** “Litigation” means and refers to the Federal Action and the State Action.

2 **1.31.** “Mobility Disability” or “Mobility Disabilities” means and refers to any
3 impairment or condition that limits a person’s ability to move his or her body or portion of his or
4 her body including, but not limited to, a person’s ability to walk, ambulate, maneuver around
5 objects, and ascend or descend steps or slopes. A person with a Mobility Disability may or may
6 not use a wheelchair, scooter, Electric Personal Assisted Mobility Device, crutches, walker, cane,
7 brace, orthopedic device, Functional Electrical Stimulation, or similar equipment or device to
8 assist his or her navigation along sidewalks, or may be semi-ambulatory.

9 **1.32.** “New Construction” or “Newly Constructed” means and refers to any Pedestrian
10 Facility and/or any Park and Ride Facility newly constructed after the Effective Date.

11 **1.33.** “Order” means and refers to the Federal Court’s Order issuing Final Approval of
12 this Settlement Agreement.

13 **1.34.** “Parties” or “Party” means and refers to Plaintiffs, members of the Plaintiff
14 Settlement Class, and Defendants or either of them.

15 **1.35.** “Park and Ride Facility” or “Park and Ride Facilities” means and refers to those
16 portions of buildings, structures, improvements, elements and routes intended for use by
17 members of the public contained in Park and Rides under Caltrans’ Jurisdiction.

18 **1.36.** “Pedestrian Facility” or “Pedestrian Facilities” means and refers to any paved
19 walkways under Caltrans’ Jurisdiction that Caltrans intends for use by members of the public,
20 including but not limited to outdoor pedestrian walkways, sidewalks, crosswalks, pedestrian
21 undercrossings and/or pedestrian overcrossings.

22 **1.37.** “Plaintiff(s)” means and refers to CDR, CCB, Ben Rockwell, and/or Dmitri
23 Belser, and/or any or all of their agent(s).

24 **1.38.** “Plaintiff Settlement Class” or “Plaintiff Settlement Class Member(s)” means and
25 refers to all persons with Mobility and/or Vision Disabilities who currently or in the future will
26 use or attempt to use any Pedestrian Facility or Park and Ride Facility under Caltrans’
27 Jurisdiction.

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1 **1.39.** “Plaintiffs’ Attorneys” means and refers to the law firms of: Disability Rights
2 Advocates, including Laurence W. Paradis, Esq., Mary-Lee E. Kimber, Esq, and all other
3 members, partners, employees and associates thereof; AARP Foundation Litigation, including
4 Daniel B. Kohrman, Esq., Julie Nepveu, Esq., and all other employees and associates thereof;
5 and Jose Allen, Esq. Plaintiffs’ Attorneys represent Plaintiffs and the Plaintiff Settlement Class
6 in both the Federal Action and in the State Action.

7 **1.40.** “Preliminary Approval” means and refers to the preliminary approval,
8 substantially in the form attached hereto as **Exhibit 7**, by the Federal Court of the terms of this
9 Settlement Agreement.

10 **1.41.** “Program Access” means and refers to applicable Federal Access Laws and
11 California Access Laws directing a public entity and/or a state agency to operate each service,
12 program, or activity so that the service, program, or activity, when viewed in its entirety, is
13 readily accessible to and usable by individuals with disabilities except, for the purposes of this
14 Settlement Agreement, as related to APS.

15 **1.42.** “Program Access Improvements” means and refers to Program Access work
16 performed by or on behalf of Defendants necessary to bring Pedestrian Facilities and/or Park and
17 Ride Facilities into compliance with Accessibility Guidelines including but not limited to (i)
18 installation of Curb Ramps where such ramps are missing; (ii) upgrades to existing Curb Ramps;
19 (iii) repair of broken and/or uneven pavement on a Pedestrian Facility; (iv) correction of
20 noncompliant cross-slopes along Pedestrian Facilities; (v) removal of protruding and
21 overhanging objects and/or obstructions that narrow the Pedestrian Facility; and/or (vi) widening
22 of Pedestrian Facilities.

23 **1.43.** “Public Rights of Way Accessibility Guidelines” or “PROWAG” means and
24 refers to guidelines which are in the process of being developed by the U.S. Access Board to
25 provide accessibility guidance specific to facilities within pedestrian rights of way. The
26 guidelines, currently in draft form, can be found on the World Wide Web at: [http://www.access-](http://www.access-board.gov/rowdraft.htm)
27 [board.gov/rowdraft.htm](http://www.access-board.gov/rowdraft.htm).

1 **1.44.** “Released Claims” means and refers to those claims released pursuant to this
2 Settlement Agreement as set forth herein.

3 **1.45.** “Settlement Agreement” means and refers to this Settlement Agreement re: Class
4 Action Settlement and all Exhibits hereto.

5 **1.46.** “State Action” means and refers to the action between Plaintiffs and Defendants
6 filed in the Superior Court of California, County of Alameda, entitled *Californians for Disability*
7 *Rights, Inc., et al. v. California Department of Transportation, et al.*, Case No. RG08376549
8 (Superior Court, Alameda County) (Dept. 20, Freedman, J.).

9 **1.47.** “State Court” means and refers to the State of California Court in which Plaintiffs
10 filed their class action complaint against Defendants in the State Action.

11 **1.48.** “Temporary Routes” means and refers to pedestrian walkways provided around or
12 through areas known as “Work Zones” when the permanent route is obstructed for any period of
13 time.

14 **1.49.** “Title 24” means and refers to California Code of Regulations Title 24 (California
15 Building Standards Code).

16 **1.50.** “Vision Disability” or “Vision Disabilities” means and refers to any impairment
17 or condition that limits a person’s ability to see. A person with a Vision Disability may be blind,
18 legally blind, or may have low vision. A person with a Vision Disability may or may not use a
19 cane, a service animal, or other assistive device to aid in navigation along sidewalks.

20 **1.51.** “Work Zones” means and refers to areas of work that obstruct or close a
21 Pedestrian Facility.

22 **2. FACTS AND PROCEDURAL HISTORY.**

23 On August 23, 2006, Plaintiffs brought the Federal Action in the United States Court for
24 the Northern District of California entitled *Californians for Disabilities Rights, Inc. et al. v.*
25 *California Department of Transportation, et al.*, Case No. C-06-5125 SBA, on behalf of
26 themselves and all others similarly situated. The Complaint alleges that Plaintiffs and all others
27 similarly situated have been discriminated against and denied full and equal access to Pedestrian
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1 Facilities and Park and Ride Facilities due to access impediments throughout the State of
2 California in violation of the ADA (42 U.S.C. § 12101, et seq.), the Rehabilitation Act of 1973
3 (29 U.S.C. § 793), the California Disabled Persons Act (California Civil Code §§ 54, et seq.), the
4 Unruh Act (California Civil Code §§ 51, et seq.), and California Government Code §§ 4450, et
5 seq. and 11135, et seq. On September 20, 2007, Defendants asserted sovereign immunity,
6 thereby precluding the state law claims from being resolved in the Federal Court.

7 On March 13, 2008, the Federal Court dismissed without prejudice Plaintiffs' claims
8 arising under state law and granted Plaintiffs' motion for class certification, thereby certifying
9 the Federal Action as a class action. The class certified consists of "all persons with mobility
10 and/or vision disabilities who are allegedly being denied access under Title II of the Americans
11 with Disabilities Act and the Rehabilitation Act of 1973 due to barriers along sidewalks,
12 crosswalks, pedestrian underpasses, pedestrian overpasses and any other outdoor designated
13 pedestrian walkways throughout the State of California which are owned and/or maintained by
14 the California Department of Transportation." On the same day, Plaintiffs filed the State Action
15 against the same Defendants in the Superior Court of California, County of Alameda, entitled
16 *Californians for Disability Rights, Inc., et al. v. California Department of Transportation, et al.*,
17 Case No. RG08376549, reasserting their claims arising under state law.

18 On March 24, 2009, in the Federal Action, the Parties cross-moved for judgment on the
19 pleadings and for partial summary judgment concerning Defendants' obligations relating to
20 Temporary Routes when Pedestrian Facilities are blocked by construction. The Federal Court
21 held that Defendants are not required to provide Temporary Routes, but when they elect to do so,
22 they are obligated to make such Temporary Routes accessible. The Federal Court also held that
23 Defendants are not required to strictly follow ADAAG in the design and/or construction of
24 Temporary Routes.

25 Trial of the Federal Action began on September 16, 2009, before the Honorable Sandra
26 Brown Armstrong, United States District Court Judge. Before the start of trial and during the
27 pendency of the trial the Parties engaged in multiple mediation sessions before the Honorable
28

1 (Ret.) Edward Panelli, the Honorable John M. True of the Superior Court of California for the
2 County of Alameda, and Magistrate Judge Elizabeth Laporte of the United States District Court
3 for the Northern District of California. The terms set forth in the Settlement Agreement is the
4 product of arm's length negotiations between the Parties supervised by Magistrate Judge
5 Elizabeth Laporte.

6 **3. NATURE AND EFFECT OF SETTLEMENT.**

7 **3.1. No Admission.**

8 In entering into this Settlement Agreement, Defendants do not admit any
9 wrongdoing or liability to Plaintiffs, or any entitlement by Plaintiffs to any relief under any claim
10 upon which relief is sought in any of their Complaints or any other matter. Nor do Defendants
11 admit that Plaintiffs have met or can meet the legal standards for a preliminary or permanent
12 injunction or a declaratory judgment to issue. Moreover, inclusion of obligations or
13 requirements in this Settlement Agreement shall not be construed as a concession or admission
14 by Defendants, nor shall it be construed as a finding or determination by the Court that, absent
15 this Settlement Agreement, Defendants would otherwise have such obligations or requirements.
16 Any references in this Settlement Agreement to policies and/or procedures to be enforced by
17 Defendants shall not be construed as implying any admission that Defendants have failed to
18 abide by any of these policies or procedures in the past. To the contrary, Defendants assert that
19 they are, and have been, in full compliance with both Federal Access Laws and California
20 Access Laws.

21 **3.2. Settlement Purpose and Scope.**

22 To avoid the cost, expense, and uncertainty of protracted litigation, Plaintiffs and
23 Defendants agree to enter into this Settlement Agreement; that it shall be binding upon
24 Defendants and upon Plaintiffs and all Plaintiff Settlement Class Members. This Settlement
25 Agreement shall extinguish all Released Claims and constitutes the final and complete resolution
26 of all issues addressed herein. The purpose of this Section is to prevent relitigation of any issues
27
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1 settled herein. The res judicata and collateral estoppel doctrines apply to all named Plaintiffs and
2 all Plaintiff Settlement Class Members.

3 **4. PROCEDURE.**

4 **4.1. Court Approval.**

5 This Settlement Agreement shall be subject to Court approval. However, nothing
6 in this Settlement Agreement shall be deemed to authorize the Court to change or vary any of its
7 terms.

8 **4.2. Preliminary Approval by the Court of the Settlement Agreement.**

9 Within 30 days of the execution of this Settlement Agreement by all Parties, the
10 Parties will jointly move for Preliminary Approval of this Settlement Agreement in the Federal
11 Action, along with a request for an order preliminarily approving this Settlement Agreement,
12 conditionally approving a Plaintiff Settlement Class as defined above, directing notice to the
13 Plaintiff Settlement Class Members and setting forth procedures and deadlines for comments and
14 objections, including scheduling a Fairness Hearing. (See **Exhibit 7**, Preliminary Approval by
15 Federal Court of Settlement Agreement.)

16 **4.3. Class Action Fairness Act ("CAFA").**

17 Within ten days of the date that this Settlement Agreement is filed in the Court for
18 Preliminary Approval, Defendants will provide the notice of this Settlement Agreement as
19 required by the CAFA (28 U.S.C.A. § 1715(b)) to the U.S. Attorney General, the California
20 Governor's Office, the California Attorney General's Office, and the California Division of State
21 Architect.

22 **4.4. Notice to Plaintiff Settlement Class Members.**

23 The Parties jointly recommend to the Court that the notice to the Plaintiff
24 Settlement Class be provided as follows: within 30 days after Preliminary Approval, the Parties
25 shall distribute notice of the proposed Settlement Agreement as set forth in the Court's
26 "Preliminary Approval by Federal Court of Settlement Agreement" advising the Plaintiff
27
28

1 Settlement Class of the terms of the proposed Settlement Agreement and their right to object to
2 the proposed Settlement Agreement. This notice shall be published as follows:

3 4.4.1. Defendants shall pay for publication in newspapers listed herein of
4 a notice of class settlement. This notice will include: A brief statement of the claims released by
5 the class; the date of the hearing on the final approval of the proposed class Settlement
6 Agreement; the deadline for submitting objections to the proposed Settlement Agreement; the
7 web page, address, and phone and fax numbers that may be used to obtain a copy of the NOTICE
8 OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT (attached as **Exhibit 8**) in the
9 format and language requested. Publication in these newspapers will be every other day for a
10 period of thirty (30) days, no larger than one eighth page, in the legal notice section of the
11 following papers of general circulation: The Los Angeles Times, The San Diego Union Tribune,
12 The San Francisco Chronicle, The Sacramento Bee, The Riverside Press, and The Oakland
13 Tribune. The notice published in the newspapers will contain a statement in Spanish of the web
14 page, e mail address, and phone numbers that may be used to obtain a copy of the NOTICE OF
15 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT in Spanish and alternative
16 accessible formats.

17 4.4.2. Plaintiffs' Attorneys and Defendants' attorneys shall provide the
18 NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT in the manner,
19 format and language requested by any class member, advocacy group, government, or their
20 counsel. Copies of the NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
21 LAWSUIT shall be provided without charge for copying or mailing.

22 4.4.3. Defendants shall establish a web site where a copy of the NOTICE
23 OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT will be available in English
24 and Spanish and in a format that can be recognized and read by software commonly used by the
25 individuals with visual impairments to read web pages. Defendants shall post on the Caltrans
26 website a link to the web site where a copy of the NOTICE OF PROPOSED SETTLEMENT OF
27 CLASS ACTION LAWSUIT will be available.

1 4.4.4. A copy of the NOTICE OF PROPOSED SETTLEMENT OF
2 CLASS ACTION LAWSUIT shall be mailed to the U.S. Attorney General, to the Assistant
3 Attorney General for Civil Rights, U.S. Department of Justice, and to the Attorney General for
4 the State of California with a request that each office include a description of the settlement in
5 their publications and post a description of the same on their web pages.

6 **Plaintiff Settlement Class Members shall have an opportunity to object to the**
7 **proposed Settlement Agreement but may not opt-out.**

8 **4.5. Additional Steps.**

9 The Parties shall take all procedural steps regarding the Fairness Hearing that may be
10 requested by the Court and shall otherwise use their respective best efforts to consummate this
11 settlement and to obtain approval of this Settlement Agreement and Entry of the Judgment, Final
12 Order and Decree attached hereto as **Exhibit 9**, and dismissal with prejudice of the Complaints
13 subject to the retention of jurisdiction set forth in Section 4.7.

14 **4.6. Fairness Hearing.**

15 The Parties shall jointly request that the Court schedule and conduct a Fairness Hearing
16 to address the fairness of this final settlement of the claims of the Plaintiff Settlement Class
17 against Defendants and to decide whether there shall be Final Approval of the settlement
18 embodied in this Settlement Agreement. At the Fairness Hearing, the Parties shall jointly move
19 for and recommend certification of the Plaintiff Settlement Class and Final Approval of this
20 Settlement Agreement and entry of an Order in substantially the form as attached hereto as
21 **Exhibit 9**. The Fairness Hearing shall take place at dates allowing for such period of notice to
22 the Plaintiff Settlement Class as the Court may direct.

23 **4.7. Dismissal of the State Action and of the Federal Action.**

24 4.7.1. Upon the Federal Court's Preliminary Approval of this Settlement
25 Agreement and the setting of a date for the Fairness Hearing, Plaintiffs' Attorneys shall request
26 that the State Action be dismissed with prejudice conditional upon the Federal Court's Final
27 Approval of the settlement embodied in this Settlement Agreement at the Fairness Hearing.

1 Defendants cannot proceed with the Fairness Hearing in Federal Court until the State Court has
2 granted conditional approval of the dismissal with prejudice of all claims in the State Court
3 Action.

4 4.7.2. Upon Final Approval of the Settlement Agreement, the Court shall enter
5 final judgment under Rule 54(b) of the Federal Rules of Civil Procedure dismissing the Federal
6 Action with prejudice subject to the Court retaining jurisdiction to resolve any Dispute regarding
7 compliance with this Agreement that cannot be resolved through the meet and confer process
8 detailed herein and to resolve any motion for attorneys fees and costs, as described in detail in
9 **Exhibit 6** hereto. The proposed Judgment, Final Order and Decree is attached hereto as **Exhibit**
10 **9**.

11 **4.8. Duration of the Settlement Agreement.**

12 The Settlement Agreement shall be in effect for the duration of the Compliance Period.

13 **5. SETTLEMENT RELIEF.**

14 The Parties to this Settlement Agreement will request, as part of the settlement approval
15 process, that the Federal Court issue the proposed Judgment, Final Order and Decree attached as
16 **Exhibit 9** adopting the substantive terms of the Settlement Agreement as an order of the Court.

17 **5.1. Substantive Settlement Terms.**

18 5.1.1. **Exhibit 1** hereto constitutes the final resolution of all issues relating to
19 Defendants' Annual Commitment for Program Access Improvements. The Parties shall
20 implement and comply with the terms set forth in **Exhibit 1**.

21 5.1.2. **Exhibit 2** hereto constitutes the final resolution of all issues relating to
22 Defendants' reporting obligations on compliance with this Settlement Agreement and the terms
23 relating to the Access Consultant to be engaged by Defendants. The Parties shall implement and
24 comply with the terms set forth in **Exhibit 2**.

25 5.1.3. **Exhibits 3 and 3A** hereto constitute the final and complete resolution of
26 issues pertaining to New Construction and Alterations, including Pedestrian Accessibility
27
28

1 Guidelines for Highway Projects. The Parties shall implement and comply with the terms set
2 forth in **Exhibit 3**.

3 5.1.4. **Exhibit 4** hereto constitutes the final resolution of all issues relating to
4 access through and around Work Zones. The Parties shall implement and comply with the terms
5 set forth in **Exhibit 4**.

6 5.1.5. **Exhibit 5** hereto constitutes the final and complete resolution of all issues
7 relating to grievance procedures. The Parties shall implement and comply with the terms set
8 forth in **Exhibit 5**.

9 5.1.6. **Exhibit 6** hereto and Section 5.5 below constitute the final resolution of
10 all issues relating to Plaintiffs' Attorneys fees and costs and the payment thereof by Defendants.
11 The Parties shall implement and comply with the terms set forth in **Exhibit 6**.

12 **5.2. Other Matters.**

13 **5.2.1. State Court Claims**

14 Conditioned upon the Federal Court granting Final Approval of this Settlement
15 Agreement, and the State Court's conditional dismissal of all claims, the Parties hereby stipulate
16 and agree that Defendants consent to the Federal Court exercising jurisdiction over Plaintiffs'
17 state law claims for purposes of the Parties' Settlement Agreement. Defendants will not, after
18 Final Approval, assert that the Federal Court lacks jurisdiction to enforce the terms of the
19 Settlement Agreement or raise any jurisdictional defense to any such enforcement proceedings.
20

21 **5.2.2. Dispute Resolution**

22 **5.2.2.1. Meet and Confer Obligation**

23 The Parties shall negotiate in good faith to resolve any Dispute and agree
24 to strict compliance with the following procedures for dispute resolution. In the event that a
25 Dispute arises between any of the Defendants and any named Plaintiff or Plaintiff Settlement
26 Class Member, the person(s), Party or Parties asserting the Dispute or the person(s), Party's or
27 Parties' designee(s), shall notify counsel for the other person(s), Party or Parties to the Dispute,
28

1 as set forth below in Section 5.2.2.2 before seeking judicial resolution of the Dispute.

2 Notification shall be in writing as set forth below in Section 5.2.3.2 and shall be accomplished by
3 mail, facsimile or hand delivery.

4 5.2.2.2. Mandatory Dispute Resolution Procedures

5 The Party or Parties asserting the Dispute shall provide the other Party or
6 Parties with a detailed statement of the Dispute (hereafter "Statement of Non-compliance") to
7 allow the Parties to attempt to resolve the Dispute. That statement will at a minimum include:

8 a) A description of the term(s) of this Settlement Agreement in dispute and
9 the corresponding section number(s) of this Settlement Agreement;

10 b) Where applicable to the claim, a description of all locations, features,
11 policies, practices and/or conditions at issue in the Dispute, the dates on which any particular
12 locations, features, policies, practices and/or conditions allegedly were in violation of the term(s)
13 of this Settlement Agreement, and the dates that the Party or Parties encountered and/or learned
14 of such locations, features, policies, practices and/or conditions, along with any photos, videos,
15 and diagrams relevant to such locations, features, policies, practices and/or conditions available
16 to the Party or Parties.

17 c) Where applicable to the claim, a detailed statement of how each
18 location, feature, policy, practice and/or condition is in violation of the term(s) of this Settlement
19 Agreement.

20 d) Where applicable to the claim, the specific relief sought by the Party or
21 Parties. For each location or feature, a statement of the change(s) that the Party or Parties
22 demand, or if change to policy, practice or condition is sought the specific policy, practice or
23 condition that the Party or Parties seek to be modified or rectified.

24 e) Within 30 days of receipt of a Statement of Non-compliance with the
25 terms of the Settlement Agreement, the Parties shall meet and confer in an attempt to resolve the
26 Dispute. If the parties agree that the disputed matter requires action to bring the responding
27 party into compliance with the terms of the Settlement Agreement, the responding party shall be
28

1 given a reasonable opportunity and sufficient time to cure the defect in its performance of the
2 Settlement Agreement obligations.

3 5.2.2.3. Enforcement Proceedings

4 If the Parties cannot resolve the Dispute within 90 days of the date of the service
5 of the Statement of Non-compliance as described above, then the Party or Parties asserting the
6 Dispute may bring a motion in the Federal Court seeking to enforce the terms of the Settlement
7 Agreement. The Parties agree that any and all such enforcement proceedings will be limited to
8 the location(s), feature(s), polic(y/ies), practice(s), and/or conditions detailed in the required
9 Statement of Non-compliance which led to the enforcement proceeding and the relief sought will
10 be limited to the relief detailed in that statement. A copy of the Statement of Non-compliance
11 will be submitted with any motion to enforce the Settlement Agreement.

12 5.2.3. Construction of Settlement Agreement

13 5.2.3.1. Entire Agreement

14 This Settlement Agreement, when granted Final Approval, expresses and
15 constitutes the sole and entire agreement between the Parties and supersedes all prior agreements,
16 negotiations and discussions between the Parties and/or their respective counsel with respect to
17 the subject matter of the Federal Action, the State Action, and/or this Settlement Agreement.
18 The Settlement Agreement, when granted Final Approval, supersedes any prior or
19 contemporaneous oral or written agreement or understanding between and among the Parties
20 and/or counsel for the Parties regarding the subject matter of the Federal Action, the State
21 Action, and/or this Settlement Agreement.

22 5.2.3.2. Notice to Parties

23 Wherever in this Settlement Agreement, Defendants are required to
24 provide notice, copies, or other documents or materials to Plaintiffs' Attorneys, it shall be
25 sufficient for Defendants to provide such solely to: Laurence W. Paradis, Disability Rights
26 Advocates (or to a successor designated by either Laurence W. Paradis or the Executive Director
27 of Disability Rights Advocates in a writing delivered to Defendants), at 2001 Center Street,
28

1 Fourth Floor, Berkeley, California 94704-1204, Fax: (510) 665-8511. A copy in accessible
2 format, such as Microsoft Word, shall also be delivered to: California Council of the Blind, 1510
3 J. Street, Suite 125, Sacramento, CA 95814, Attn: CCB President.

4 Wherever in this Settlement Agreement, Plaintiffs' Attorneys are required
5 to provide notice, copies, or other documents or materials to Defendants, it shall be sufficient for
6 Plaintiffs' Attorneys to deliver such items to: Randell Iwasaki, Director of Transportation, 1120
7 N Street, Sacramento, California, 94274 (or to a successor or designee identified by the Director
8 of Transportation in a writing delivered to Plaintiffs' Counsel). A copy shall also be delivered
9 to: Ronald Beals, Chief Counsel, Department of Transportation Legal Division, 1120 N Street,
10 Sacramento, California, 94274; Fax: (916) 654-6128, (or to a successor designated by
11 Defendants, in a writing delivered to Plaintiffs' Attorneys).

12 **5.3. Effect of Final Approval Order.**

13 This Settlement Agreement, when granted Final Approval, shall be binding upon
14 Defendants and upon Plaintiffs, including the named Plaintiffs, the Plaintiff Settlement Class and
15 all Plaintiff Settlement Class Members and, to the extent specifically set forth in this Order, upon
16 Plaintiffs' Attorneys; it shall extinguish all Released Claims and it shall constitute the final and
17 complete resolution of all issues addressed herein. This Settlement Agreement is the complete
18 and final disposition and settlement of any and all Released Claims, as detailed in Section 5.4
19 below.

20 **5.4. Released and Unreleased Claims.**

21 5.4.1. Released Claims

22 Conditioned upon and subject to (a) the Court granting Final Approval of this
23 Settlement Agreement, (b) Section 5.4.2 below, and (c) Defendants' compliance with the terms
24 of this Settlement Agreement, Plaintiffs and the Plaintiff Settlement Class release Defendants
25 during the Compliance Period from any and all injunctive and/or declaratory relief claims,
26 known or unknown, relating to the subject matter of the Litigation that are alleged or that could
27
28

1 have been alleged in the Litigation that any Plaintiff Settlement Class Member had, has, or will
2 have against Defendants, except as set forth in Section 5.4.2 below.

3 Accordingly, Plaintiffs and the Plaintiff Settlement Class and agree that, except as
4 set forth in Section 5.4.2 below, by complying with the terms of this Settlement Agreement,
5 Defendants shall have no obligation to do more to comply with Federal Access Laws and/or
6 California Access Laws relating to the subject matter of the Litigation and that Defendants'
7 compliance with the terms of this Settlement Agreement shall constitute a full and complete
8 defense to any claim for injunctive or declaratory relief asserting that Defendants have failed to
9 comply with any and all federal and state laws, statutes, rules, regulations (including without
10 limitation the self-evaluation and transition plan regulations [28 C.F.R. §§ 35.105 & 35.150(d)]
11 and the access coordinator and grievance procedure regulation [28 C.F.R. § 35.107]), standards
12 and guidelines raised in any or all of the Complaints relating to the subject matter of the
13 Litigation.

14 Except as set forth in Section 5.4.2 below, the Released Claims include all claims
15 for injunctive or declaratory relief relating to Existing, Newly Constructed and Altered
16 Pedestrian Facilities and Park and Ride Facilities, including access to Work Zones, brought
17 under the ADA, the Rehabilitation Act of 1973 (29 U.S.C. § 793), any regulations promulgated
18 under the ADA or the Rehabilitation Act, the Disabled Persons Act (Cal. Civ. Code § 54 et seq.),
19 the Unruh Act (Cal. Civ. Code § 51 et seq.), California Government Code Sections 4450 et seq.
20 and 11135 et seq., California Health and Safety Code Section 19953, California Civil Code
21 Section 526a, and the regulations codified in Title 24 of the California Code of Regulations, the
22 self-evaluation and the transition plan regulations (28 C.F.R. §§ 35.105 & 150(d) and claims
23 related to Program Access.

24 This release applies to declaratory and injunctive relief claims brought either
25 separately (as a claim for just injunctive and/or declaratory relief) or in conjunction with a claim
26 for damages. No further injunctive and declaratory requirements concerning the Released
27 Claims may be imposed on the Department beyond the terms of the Settlement Agreement

1 through any later actions brought by any class member. The purpose of this section is to prevent
2 relitigation of the injunctive and declaratory relief issues settled herein.

3 The res judicata and collateral estoppel doctrines apply to all named Plaintiffs and
4 all Plaintiff Settlement Class Members. The final entry of the Court's Order approving this
5 Settlement Agreement is a fully binding judgment for purposes of res judicata and collateral
6 estoppel upon all Plaintiff Class Members.

7 5.4.2. Unreleased Claims

8 Nothing in this Settlement Agreement shall be interpreted as a release of any
9 claims for damages or of any claims of any type concerning APS. Defendants represent that they
10 are not aware of any access lawsuits filed seeking injunctive or declaratory relief for any
11 particular Pedestrian Facilities or Park and Ride Facilities.

12 **5.5. Plaintiffs' Attorneys Fees and Costs.**

13 As noted above in Section 5.1.6, the final resolution of the issue of Plaintiffs' Attorneys
14 fees and costs in this Litigation and the payment thereof by Defendants is contained in **Exhibit 6**
15 hereto. Plaintiffs and/or Plaintiffs' Attorneys will not seek or recover additional attorneys fees or
16 costs from Defendants in the Federal Action and/or the State Action for work undertaken
17 pursuant to Sections 5.2.2.1 and 5.2.2.2 of this Settlement Agreement. Except as specifically
18 provided therein, no other Plaintiffs' Attorneys fees, expenses, or costs may be recovered in the
19 Federal Action and/or in the State Action and/or for evaluating, monitoring, or enforcing
20 Defendants' compliance with this Settlement Agreement.

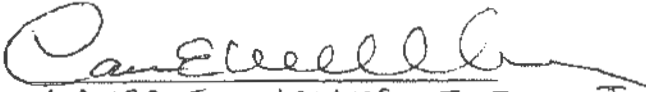
21 **5.6. Execution by Facsimile and in Counterparts.**

22 This Agreement may be executed by the Parties hereto by facsimile and in separate
23 counterparts, and all such counterparts taken together shall be deemed to constitute one and the
24 same agreement.

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PLAINTIFFS

Plaintiff CALIFORNIANS FOR DISABILITY RIGHTS, INC. ("CDR")

By: 
Name and Title: Laura E. Williams, President

Plaintiff CALIFORNIA COUNCIL OF THE BLIND ("CCB")

By: _____
Name and Title: _____

Plaintiff BEN ROCKWELL

Plaintiff DMITRI BELSER

Approved as to form and content by Plaintiffs' Attorneys
on behalf of Plaintiffs and Plaintiffs Settlement Class

Laurence W. Paradis, Esq.
DISABILITY RIGHTS ADVOCATES

Daniel Kohrman, Esq.
Julie Nepveu, Esq.
AARP FOUNDATION LITIGATION

Jose R. Allen, Esq.

1 PLAINTIFFS

2 Plaintiff CALIFORNIANS FOR DISABILITY RIGHTS, INC. ("CDR")

3
4 By: _____
5 Name and Title: _____

6 Plaintiff CALIFORNIA COUNCIL OF THE BLIND ("CCB")

7
8 By: Jeff Thom
9 Name and Title: Jeff Thom, President

10 Plaintiff BEN ROCKWELL

11 _____
12 Plaintiff DMITRI BELSER

13
14 _____
15 Approved as to form and content by Plaintiffs' Attorneys
16 on behalf of Plaintiffs and Plaintiffs Settlement Class

17
18 _____
19 Laurence W. Paradis, Esq.
DISABILITY RIGHTS ADVOCATES

20
21 _____
22 Daniel Kohrman, Esq.
Julie Nepveu, Esq.
AARP FOUNDATION LITIGATION

23
24 _____
25 Jose R. Allen, Esq.

1 PLAINTIFFS

2 Plaintiff CALIFORNIANS FOR DISABILITY RIGHTS, INC. ("CDR")
3

4 By: _____
5 Name and Title: _____

6 Plaintiff CALIFORNIA COUNCIL OF THE BLIND ("CCB")
7

8 By: _____
9 Name and Title: _____

10 Plaintiff BEN ROCKWELL

11 Ben Rockwell

12 Plaintiff DMITRI BELSER
13

14 _____

15 Approved as to form and content by Plaintiffs' Attorneys
16 on behalf of Plaintiffs and Plaintiffs Settlement Class

17
18 Laurence W. Paradis, Esq.
19 DISABILITY RIGHTS ADVOCATES

20 Daniel Kohrman, Esq.
21 Julie Nepveu, Esq.
22 AARP FOUNDATION LITIGATION

23 Jose R. Allen, Esq.
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PLAINTIFFS

Plaintiff CALIFORNIANS FOR DISABILITY RIGHTS, INC. ("CDR")


By: _____
Name and Title: _____

Plaintiff CALIFORNIA COUNCIL OF THE BLIND ("CCB")

By: _____
Name and Title: _____

Plaintiff BEN ROCKWELL

Plaintiff DMITRI BELSER



Approved as to form and content by Plaintiffs' Attorneys
on behalf of Plaintiffs and Plaintiffs Settlement Class

Laurence W. Paradis, Esq.
DISABILITY RIGHTS ADVOCATES

Daniel Kohrman, Esq.
Julie Neyeu, Esq.
AARP FOUNDATION LITIGATION

Jose R. Allen, Esq.

1 **PLAINTIFFS**

2 Plaintiff CALIFORNIANS FOR DISABILITY RIGHTS, INC. ("CDR")
3

4 By: _____
5 Name and Title: _____

6 Plaintiff CALIFORNIA COUNCIL OF THE BLIND ("CCB")

7 By: _____
8 Name and Title: _____

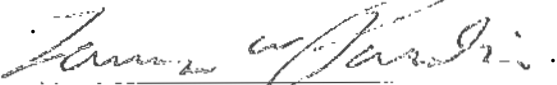
9 Plaintiff BEN ROCKWELL
10

11 _____

12 Plaintiff DMITRI BELSER
13

14 _____

15 Approved as to form and content by Plaintiffs' Attorneys
16 on behalf of Plaintiffs and Plaintiffs Settlement Class

17 
18 Laurence W. Paradis, Esq.
19 DISABILITY RIGHTS ADVOCATES

20 Daniel Kohrman, Esq.
21 Julie Nepveu, Esq.
22 AARP FOUNDATION LITIGATION

23 Jose R. Allen, Esq.
24

25

26

27

28

1 PLAINTIFFS

2 Plaintiff CALIFORNIANS FOR DISABILITY RIGHTS, INC. ("CDR")

3
4 By: _____
Name and Title: _____

5
6 Plaintiff CALIFORNIA COUNCIL OF THE BLIND ("CCB")

7
8 By: _____
Name and Title: _____

9 Plaintiff BEN ROCKWELL

10
11 _____

12 Plaintiff DMITRI BELSER

13
14 _____

15 Approved as to form and content by Plaintiffs' Attorneys
16 on behalf of Plaintiffs and Plaintiffs Settlement Class

17
18 _____
Laurence W. Paradis, Esq.
DISABILITY RIGHTS ADVOCATES

19
20 _____
Daniel Kohnman, Esq.
Julie Nepveu, Esq.
AARP FOUNDATION LITIGATION

21
22
23 _____
Jose R. Allen, Esq.

1 PLAINTIFFS

2 Plaintiff CALIFORNIANS FOR DISABILITY RIGHTS, INC. ("CDR")

3
4 By: _____
5 Name and Title: _____

6 Plaintiff CALIFORNIA COUNCIL OF THE BLIND ("CCB")

7
8 By: _____
9 Name and Title: _____

10 Plaintiff BEN ROCKWELL

11 _____

12 Plaintiff DMITRI BELSER

13
14 _____

15 Approved as to form and content by Plaintiffs' Attorneys
16 on behalf of Plaintiffs and Plaintiffs Settlement Class

17
18 _____
19 Laurence W. Paradis, Esq.
20 DISABILITY RIGHTS ADVOCATES

21 _____
22 Daniel Kohrman, Esq.
23 Julie Nepveu, Esq.
24 AARP FOUNDATION LITIGATION

25
26 _____
27 Jose R. Allen, Esq.
28

1 **DEFENDANTS**

2 Defendants CALIFORNIA DEPARTMENT OF TRANSPORTATION and WILL KEMPTON

3
4 /s/
5 By: Randell Iwasaki,
6 Individually as successor to WILL KEMPTON and
7 acting in his capacity as Director of Transportation

8 Approved as to form and content by Defendants' Attorneys on behalf of Defendants

9 /s/
10 Gregory F. Hurley, Esq.
11 GREENBERG TRAUIG, LLP

12 /s/
13 Ronald W. Beals, Chief Counsel
14 CALIFORNIA DEPARTMENT OF TRANSPORTATION LEGAL DIVISION

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EXHIBIT 1

EXHIBIT 1

ANNUAL COMMITMENT FOR PROGRAM ACCESS IMPROVEMENTS

The Parties agree to the following terms as a final and complete resolution of issues pertaining to the Department's funding for Program Access Improvements during the Compliance Period. The Department shall allocate a total of \$1.1 billion during the Compliance Period for Program Access Improvements.

1. Amount of the Annual Commitment. For the five fiscal years beginning the fiscal year following the fiscal year in which the Final Approval is granted, the Department shall allocate \$25 million per year. Thereafter, the Department shall allocate \$35 million per year for a period of ten years. Thereafter, the Department shall allocate \$40 million per year for a period of ten years. Thereafter, the Department shall allocate \$45 million per year for a period of five years.

2. Use of the Annual Commitment. The Department's Annual Commitment shall be used for the following types of expenses: (1) total project development and construction costs for the covered Program Access Improvements, including support costs, (2) costs associated with any newly created staff positions needed, if any, to implement the covered Program Access Improvements; (3) costs of establishing and maintaining the new Accessibility Grievance Procedure as well as a system for processing other Access Requests; (4) costs of further surveying work as described below; and (5) the cost of retaining the Access Consultant. The costs of meeting Accessibility Guidelines in connection with New Construction or Alteration projects relating to Pedestrian Facilities and Park and Ride Facilities will be funded separately

when such projects are undertaken for purposes other than Program Access Improvements.

3. Allocation of Annual Commitment. For the duration of the Compliance Period, the Annual Commitment shall be allocated for Program Access Improvements. New Construction and work done pursuant to Section 4.1.3 of DIB 82 (attached as **Exhibit 3A** to the Settlement Agreement) shall not count towards the Annual Commitment, except as follows: For each year of the Compliance Period, no more than 25% of the Annual Commitment shall be allocated to installation of missing Curb Ramps and upgrading Curb Ramps to the extent necessary for the Curb Ramps to comply with the applicable provisions of the Accessibility Guidelines when CAPM work is performed on a Vehicular Way with adjacent Pedestrian Facilities. Annual costs in excess of the 25% commitment cap (related to installation and/or upgrade of curb ramps for CAPM projects in order to comply with DIB 82 Section 4.1.3) shall be paid from other funds.

4. Third Party Funding. To the extent that additional funding for Program Access Improvements is provided through other non-Federal sources such as third parties, alternate funding streams or other outside sources, such funding will supplement the Department's commitment of resources. The Department will cooperate with other public entities that wish to undertake Program Access Improvements along Caltrans' Pedestrian Facilities.

5. Pour-Over Provision. The amounts set forth are the targeted commitment of funds of the Department. If the total commitment is not met each year, the uncommitted portion of that year's target will be utilized in subsequent years as soon as

practical. Excess commitments in any given year will be credited toward the target commitment in future years.

6. Project Prioritization (“Priorities”). The selection of projects for Program Access Improvements will be based on needed Program Access Improvements that have been identified by the Department through Access Requests and other means. These projects will be prioritized as follows:

A. The highest priority will go to Program Access Improvements needed to address the most severe access barriers and most significant safety hazards for class members.

B. The next level of priority will go to Program Access Improvements needed to address Pedestrian Facilities and / or Park and Ride Facilities serving:

- 1) State and local government offices and facilities;
- 2) important transportation corridors;
- 3) places of public accommodation such as commercial and business zones;
- 4) facilities containing employers; and
- 5) other areas such as residential neighborhoods and undeveloped areas of the State.

7. Access Requests. The Department will consider, in the development of its project Priorities, Access Requests as well as needs identified by the Department. Access requests may be submitted as a grievance pursuant to **Exhibit 5**. Alternatively, Access Requests may be conveyed, without filing a grievance, to the Department’s Statewide ADA Coordinator, the Department’s District ADA Liaisons, or the Department’s ADA Compliance Office:

- Charles Wahnnon
Caltrans Statewide ADA Coordinator
1823 14th Street

Sacramento, California 95811
Phone (916) 324-1353 or Toll Free (866) 810-6346
FAX (916) 324-1869, TTY 711

- Department District ADA Liaisons, contact information is provided on the Department's website: <http://www.dot.ca.gov/contactus.htm>
- Email: ADA_Compliance_Office@dot.ca.gov

This contact information for submitting non-grievance Access Requests will be posted to the Department's website under the "Contact Us" link. Such non-grievance Access Requests do not follow the procedures set forth in **Exhibit 5** and may be addressed by the Department without the subsequent input or participation of the individual, organization or agency making the non-grievance Access Request. The Department will explore and, if feasible, implement an online process for submitting Access Requests.

8. Remaining Funds. To the extent there is funding left over from the Annual Commitment after addressing projects for Program Access Improvements discussed above (hereafter "Remaining Funds"), the Department will use the Remaining Funds (if any) to survey Pedestrian Facilities and Park and Ride Facilities to assist in the effort of identifying future projects for Program Access Improvements. Program Access Improvements using the Remaining Funds will be prioritized according to the criteria above.

9. Other Considerations. During the development of projects, consideration will be given to the severity of the Program Access Improvements needed and efficient methods for delivering such projects. (For example, project scope may be expanded to address additional severe Program Access Improvements needed nearby, even if such improvements are not identified as a higher priority, if the Department determines that this would be an efficient use of funds from the Annual Commitment.) The Department may also take advantage of partnering opportunities with other public entities or other

third parties to maximize the used of the committed funds. The Department will make good faith efforts to follow the priority guidance set forth above. However, the Department retains ultimate discretion in the selection and timing of the projects on which the Annual Commitment funds for Program Access Improvements will be spent. This may result in the use of funds from the Annual Commitment to address lower priority Program Access Improvements before higher priority Program Access Improvements.

EXHIBIT 2

EXHIBIT 2

REPORTING REGARDING COMPLIANCE BY THE DEPARTMENT AND ENGAGEMENT OF ACCESS CONSULTANT

The Parties agree to the following as a final and complete resolution of issues pertaining to reporting by the Department of its compliance with this Settlement Agreement.

1. Annual Reporting By The Department

A. Each year until the end of the Compliance Period, the Department shall complete an Annual Report as described below. The reporting period will be based on the Federal Fiscal Year (“FFY”), October 1 through September 30, of each year. The first Annual Report will cover the first full FFY following the fiscal year in which the Final Approval was granted.

B. The Annual Report shall provide sufficient information to allow Plaintiffs’ Attorneys to evaluate whether the Department is in compliance with the terms of the Settlement Agreement by including the following information:

1) A detailed summary of the Program Access Improvements funded by the Annual Commitment completed by the Department during the reporting FFY. The projects listed will include, but not be limited to:

- (a) Projects pursuant to **Exhibit 1**, including a summary of projects selected pursuant to paragraph 6 of **Exhibit 1**;
- (b) Projects derived from grievances received from the Accessibility Grievance Procedure described in **Exhibit 5**;

(c) CapM projects funded by the Annual Commitment.

2) A detailed summary of the allocation of Annual Commitment of funds for Program Access Improvements for the reporting FFY, including the amount of any funds that will pour over or be credited against the Annual Allocation for the subsequent FFY, if any. The Annual Commitment is described in **Exhibit 1.**

3) A summary of other access improvements (see Settlement Agreement, Section 1.42 for examples) relating to Pedestrian Facilities and Park and Ride Facilities not funded by the Annual Commitment completed by the Department during the reporting FFY. The projects listed will include a summary of:

(a) access improvements undertaken in conjunction with New Construction or Alterations, including 2R and 3R projects during the reporting FFY.

(b) access improvements undertaken in conjunction with CapM Projects funded by sources other than the Annual Commitment during the reporting FFY.

4) A summary of any other Pedestrian Facilities and Park and Ride Facilities Newly Constructed or Altered during the reporting FFY.

5) A summary of training and monitoring efforts undertaken during the reporting FFY to ensure that Temporary Routes, when provided through and around Work Zones, are accessible to pedestrians with disabilities.

6) Revisions to Pedestrian Accessibility Guidelines for Highway Projects (DIB 82) including copies of updated versions of written guidelines that apply statewide.

- 7) Identification of the Program Access Improvements planned for the next FFY.
- 8) The estimated dollar amount of funding to be allocated to Program Access Improvements planned for the future FFYs.
- 9) A summary of grievances received from the Accessibility Grievance Procedure described in **Exhibit 5**, during the reporting FFY.
- 10) A description of the status of the resolution of grievances received during the reporting FFY.

C. It is the intent of Paragraphs B.7 and 8 that the Department make a good faith effort to provide Plaintiffs and Plaintiff Settlement Class with advance notice of its prospective project planning and funding decisions for Program Access Improvements. Plaintiffs' Attorneys acknowledge that prospective plans can change.

D. The Annual Report shall be provided to Plaintiffs and Plaintiffs' Settlement Class in a manner consistent with Settlement Agreement Section 5.2.3.2 within 180 days after the end of the FFY.

2. Access Consultant

A. Term. For the first seven (7) years of the Compliance Period following Final Approval of the Settlement Agreement, the Department shall retain an Access Consultant.

B. Compensation. The Department shall pay the reasonable fees and expenses of the Access Consultant up to a maximum of \$75,000 per year, paid out of the Annual Commitment set forth in **Exhibit 1**.

C. Selection Process and Hiring Authority

1) The Department will hire, pursuant to this Settlement Agreement and consistent with State contracting requirements, an Access 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 Americans with Disabilities Act. The selected consultant shall be knowledgeable in current Federal and State accessibility standards and shall have a minimum of five (5) years experience in providing ADA consulting services related to highway pedestrian facilities. Candidates must be licensed in California either as an Architect and/or as a Registered Civil Engineer.

2) In consultation with Plaintiffs' Attorneys, the Access Consultant shall be selected by the Department, consistent with State contracting requirements. The statement of duties for the Access Consultant will be based, in part, on the terms of this Settlement Agreement.

3) The Access Consultant contract will be consistent with State contracting requirements and the Access Consultant shall be directed by the Department to produce the deliverables described in Paragraph 2.D. below.

D. General Scope of Duties. The Access Consultant will report to the parties concerning the Department's compliance with this Settlement Agreement. The activities performed by the Access Consultant shall include, and be limited to, the following:

1) Reviewing Program Access Improvements annually for compliance with this Settlement Agreement.

2) Consulting, as needed, with appropriate Department employees such as the contract manager and the author of the Department's Annual Report to obtain any information concerning compliance with the terms of the Settlement Agreement.

3) Conducting field spot checks of Pedestrian Facilities and Park and Ride Facilities, as needed, to verify that (i) completed Program Access Improvements; (ii) completed New Construction or Alterations; (iii) completed CapM projects; and/or (iv) the provision of accessible Temporary Routes, when provided through and around Work Zones, are in compliance with this Settlement Agreement.

4) Reviewing a random sample of grievances and the Department's response.

5) Providing an annual written report. The written report shall be delivered to the contract manager and to the parties in a manner consistent with the Settlement Agreement Section 5.2.3.2, within sixty (60) working days of receipt of the Department's Annual Report. The written report shall document and analyze:

- (a) The Department's compliance with the terms of this Settlement Agreement; and
- (b) The Department's Annual Report.

EXHIBIT 3

EXHIBIT 3

PEDESTRIAN ACCESSIBILITY GUIDELINES FOR HIGHWAY PROJECTS

The Parties agree to the following as a final and complete resolution of issues pertaining to New Construction and Alterations, including Pedestrian Accessibility Guidelines for Highway Projects.

1. The Department shall revise DIB 82 to provide that CapM projects adjacent to Pedestrian Facilities must include installation of Curb Ramps where they do not exist and upgrades to Curb Ramps existing at the time the CapM work is performed to comply with Accessibility Guidelines.

2. The Department shall revise DIB 82 by adding the following sentence to the end of Section 4.2 of DIB 82: “Where vehicular lanes and shoulders are intended by the Department for pedestrian use, thus rendering them walkways, they shall be made accessible.”

3. A copy of the DIB 82 that the Parties have revised to incorporate the revisions described in the Paragraphs above, with certain additional agreed upon changes, is attached to this Settlement Agreement as **Exhibit 3A**.

4. The Department shall adopt and implement the revised DIB 82, and shall notify all relevant Caltrans employees that DIB 82 is superseded.

5. The Department will ensure that the Pedestrian Accessibility Guidelines for Highway Projects are followed. The Department shall comply with the Accessibility Guidelines, as defined in Section 1.3 of the Settlement Agreement, for all New Construction or Alterations relating to Pedestrian Facilities and Park and Ride Facilities under the Department’s jurisdiction. To the extent DIB 82 does not address design

features that are otherwise covered by legally enforceable State or Federal access standards, the Department will comply with those standards with regard to New Construction and Alterations for Pedestrian Facilities and Park and Ride Facilities.

6. The parties recognize that FHWA, USDOJ and DSA and possibly others may require further modifications and refinements to the revised DIB 82 during a review and comment process. In addition, as federal and state standards, guidelines and best practices evolve, DIB 82 will be revised to synthesize and reflect the design standards current at the time of publication. The Department shall promptly notify plaintiffs, pursuant to Settlement Agreement Section 5.2.3.2, when changes have been made to the Pedestrian Accessibility Guidelines for Highway Projects (currently designated as DIB 82).

EXHIBIT 3A

DESIGN INFORMATION BULLETIN NUMBER 82-04

**Department of Transportation
Division of Design
Office of Geometric Design Standards**

**PEDESTRIAN ACCESSIBILITY GUIDELINES
FOR
HIGHWAY PROJECTS**

APPROVED BY:

Original to be Signed By

**TERRY L. ABBOTT
DIVISION CHIEF
DIVISION OF DESIGN**

Date To Be Determined

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1.0 BACKGROUND

The Americans with Disabilities Act (ADA) of 1990, along with its implementing regulations, and the California Government Code Sections 4450 et seq. prescribe that facilities shall be made accessible to persons with disabilities. To comply with the ADA, the Federal Highway Administration (FHWA) has recommended that the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) shall apply to the design of the California Department of Transportation (Department) facilities. Although the current ADAAG is not specifically written for public rights-of-way projects, some of the ADAAG provisions can apply to the highway environment and are included in this Design Information Bulletin (DIB).

In addition to ADAAG, other Federal documents on designing accessible pedestrian facilities in public rights-of-way were used to develop this DIB. For example, the publication *Designing Sidewalks and Trails for Access* is referred to several times and is available on the Internet at: www.fhwa.dot.gov/environment/bikeped/tranmemo.htm. Also, certain portions of the Draft Guidelines for Public Rights-of-Way (DGPROW) released by the US Access Board are used in this DIB.

Title 24 of the California Code of Regulations (Title 24) is similar to the ADAAG in that it prescribes accessibility design standards for the State of California; in Part 2, the California Building Code. The Department of General Services - Division of the State Architect (DSA) oversees California Building Code compliance; however, for transportation facilities on the State highway system, the Department (in addition to DSA) is authorized to certify, on a project-by-project basis, that a project complies with State pedestrian accessibility design standards. Rail and transit stations are the exception. Rail and transit stations are to be reviewed and require an approval from DSA that they comply with the State pedestrian accessibility code.

Please note, this DIB has been written to provide general design guidance on how to comply with the various Federal laws and State codes on pedestrian accessibility. The accessibility “requirements” typically associated with projects constructed in public rights-of-way have been presented in this DIB as “accessibility design standards” only to facilitate the creation of Departmental processes and procedures. It is not the intent of this DIB to discuss all of the various Federal laws and State codes that apply to making buildings and public facilities accessible; nor is it the intent of this DIB to diminish the importance of and the requirement to comply with those accessibility standards not specifically mentioned in this DIB and as may be required on a project-by-project basis. See Section 3.1 of this DIB for further guidance on the review process for projects.

2.0 DEFINITIONS

The following words and phrases that are shown in bold text are used in this DIB and are defined as shown. As appropriate, reference documents are mentioned within the brackets to indicate the source of the definition.

Accessible Route: A continuous, unobstructed path connecting all accessible elements and spaces of a building or facility [ADAAG].

Element: An architectural or mechanical component of a building, facility, space, site, or public right-of-way [DGPROW].

Facility: All or any portion of buildings, structures, improvements, elements, and pedestrian or vehicular routes located in a public right-of-way [DGPROW].

Historic Property/Historical Resources: Under Federal law [36 CFR 800.16(l)] the term used is “Historic Property” and includes any building, structure, site, object or district that is listed in or eligible for listing in the National Register of Historic Places.

Under State law [CEQA Guidelines 15064.5 and California Public Resources Code 5020] the term used is “Historical Resources” and includes any building, structure, site, object or district that meets one of the following:

- Listed in or eligible for listing in the National Register of Historic Places,
- Listed in or eligible for listing in the California Register of Historical Resources,
- Has been identified as significant for purposes of the California Environmental Quality Act (CEQA) by the lead agency because it meets the eligibility criteria of the California Register,
- Is listed in a local register of historical resources or has been identified as significant in an historical resource survey meeting the California Office of Historic Preservation’s standards.

Path or Pathway: A track or route along which people are intended to travel [*Designing Sidewalks and Trails for Access*].

Pedestrian: A person who travels on foot or who uses assistive devices, such as a wheelchair, for mobility [*Designing Sidewalks and Trails for Access*]. This includes a person with a disability.

Person with Disability: An individual who has a physical impairment, including impaired sensory, manual or speaking abilities, that results in a functional limitation in gaining access to and using a building or facility [California Code of Regulations Title 24].

Public Right-of-Way: Public land or property, usually in interconnected corridors, that is acquired for or devoted to transportation purposes [DGPROW].

Sidewalk: A surfaced pedestrian way contiguous to a street used by the public [California Code of Regulations Title 24]. Also, see the discussion in Section 4.3.1, “Surface” of this DIB.

State Highway: A traversable highway adopted as or designated in the Streets and Highways Code as a state highway.

Structurally Impracticable: Rare circumstances when the unique characteristics of terrain or the potential of removing or altering a load-bearing structure prevent the incorporation of accessibility features [ADAAG].

Technically Infeasible: An alteration that has little likelihood of being accomplished because existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility [ADAAG].

Transition Plan: The Department’s written commitment to accomplish ADA compliance in its services, programs, and activities. Modifications to the State highway infrastructure is part of the commitment.

Vehicular Way: A route intended for vehicular traffic, such as a street, driveway, or parking lot [ADAAG].

Walk or Walkway: An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts [ADAAG].

3.0 PROCEDURES

3.1 Applicability and Review Process

Every highway project (Capital and Maintenance; including all Encroachment Permit projects) within the State highway right-of-way, regardless of the project sponsor, that proposes to construct pedestrian facilities [See Section 4.1], must be designed in accordance with the policies and standards of this DIB. Documentation of project compliance with this DIB will be at Ready-to-List (RTL) Certification (by checking the appropriate box on Section 4c of the RTL Certification Form), or at encroachment permit issuance, whichever is applicable. If it is found that an accessibility design standard cannot be fully incorporated in a design, an accessibility design exception will be required. For an accessibility design exception to be approved, it will be necessary to document that, in the case of alterations to existing facilities, it is technically infeasible to do so because existing physical structural conditions would require removing or altering a load-bearing member which is an essential part of an existing structure; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility. For new construction, the accessibility design standard must be structurally impracticable and only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of the accessibility standard. Approval of accessibility design exceptions shall occur prior to approval of the project initiation document or as soon as the recommended alternative is identified. Accessibility design exceptions shall be submitted, using the Exception to Accessibility Design Standards document format [See Attachment], to the Design Reviewer for comments and are ultimately approved by the Design Coordinator. The Division of Engineering Services – Office of Transportation Architecture (OTA) will determine the compliance with accessibility design standards related to building projects. Please note, the related site work not part of the building will be subject to the procedures in this DIB. OTA will provide ADA site design assistance for the Districts on building projects that they are responsible for designing.

3.2 Rail and Transit Stations

Approval authority for accessibility design of rail and transit stations rests with DSA and must occur by RTL or encroachment permit issuance. The appropriate filing fees [See Section 3.2.1] and a completed application form [See www.documents.dgs.ca.gov/dsa/forms/DSA-1_08-23-04.pdf] need to be transmitted to DSA along with the title sheet and pertinent project plans that show the details of the rail or transit station facilities being altered or newly constructed. DSA's office locations are listed on their website at www.dsa.dgs.ca.gov/ContactDSA/default.htm. An Exception to Accessibility Design Standards document [See Attachment] must also be submitted as supplemental information when an exception is being requested to the accessibility design standards listed in Section 4.3 of this DIB. The DSA Regional Office will need to be contacted to discuss these details and confirm their specific requirements. Early submittal to DSA is recommended once enough design information, such as layouts, cross sections, profiles, construction details, etc. are developed and it is certain that the pedestrian facility design will not change. In the event of disagreement with the DSA Regional Office, DSA has an appeal process, which may invoke the involvement with their Headquarters DSA Office; the Headquarters Division of Design ADA Technical Specialist should be contacted immediately to assist with the negotiations and to contact the FHWA California Division Office for their assistance in resolving the issue(s). The DSA Regional Office review process is expected to take between 30 and 60 days from application submittal until receipt of their approval letter. Approval letters will be sent by DSA to the Project Engineer for incorporation into the

project history files. DSA will stamp copies of the plan sheets that have been sent to them for their use during the project review and will retain them for their records.

3.2.1 Filing Fees for Rail and Transit Station Projects

Filing fees are to be calculated according to the fee schedule as prescribed in Part 1, Title 24, Chapter 5, Article 1, Section 5-104 of the *California Building Code* - -

“The filing fee for project applications is 0.2 percent of the first \$500,000 of estimated construction cost, plus 0.1 percent of the estimated cost between \$500,000 to \$2,000,000, plus 0.01 percent of the estimated cost over \$2,000,000. The minimum fee in any case is \$200.00.”

The DSA website provides a fee calculator to determine the filing fee. The Internet site address for the DSA fee calculator is: www.applications.dgs.ca.gov/dsa/eTrackerWeb/Calinput.asp. The fees to be paid by the Department can be authorized by completing the “Request for Revolving Fund Check” form (FA-0017). This form should indicate that the “Vendor” is DSA and that the expenditure is to be charged against the Project EA and the appropriate Agency Object Code. The check can be mailed directly to the DSA Regional Office, if requested on the form. On the form, under “Purpose,” indicate that this payment is for the DSA filing fee and reference the District and EA. The District and EA will then be referenced on the check for identification purposes. The completed form FA-0017 should then be mailed to Mail Station 25 (MS 25) or faxed (916-227-8766) to the Division of Accounting, Service Payables Branch, Alpha G. The completed DSA application form for the project must be sent with this form to substantiate payment. It is anticipated that it should not take more than 5 working days to obtain this check.

4.0 DESIGN GUIDANCE AND BEST PRACTICES FOR PEDESTRIAN FACILITIES

4.1 Pedestrian Accessibility

All pedestrian facilities on all projects are to be accessible in accordance with State and Federal laws. The following guidance and best practices are an attempt to capture the lessons learned through the years since the passage of the ADA and to document the Federal and State regulatory standards that apply. Early consultation with the Design Reviewer or Design Coordinator is recommended to discuss pedestrian accessibility issues and their resolution.

4.1.1 New Construction

Federal regulations require that each facility or part of a facility constructed on State right-of-way shall be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities.

4.1.2 Alterations

Federal regulations require that each facility or part of a facility altered in the State right-of-way 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.

Where existing elements or spaces are altered, each altered element or space within the limits or scope of the project shall comply with the applicable requirements for new construction to the maximum extent feasible. The limits of the project refers to the work that will physically impact a pedestrian feature and the

scope of the project refers to the work on a pedestrian feature identified in the project initiation document or the project report.

The following types of highway work are considered to be alterations of existing facilities:

1. Pavement focused (2R) and resurfacing, restoration, and rehabilitation (3R) work needs to be evaluated for pedestrian accessibility and comply with the guidance in Section 4.1.3 of this DIB. When determining the scope of a 2R and 3R project, the curb ramps immediately adjacent to the 2R and 3R pavement work are assumed to be within the scope of the project. For additional guidance see DIB 79 – “Design Guidance and Standards for Roadway Rehabilitation Projects [Pavement Focused (2R) and Reurfacing, Restoration, and Rehabilitation (3R) Projects] . . .”.
2. Traffic signalization work that will physically impact or is scoped to address sidewalks, curb ramps and crosswalks are to comply with the pedestrian accessibility guidance in this DIB.
3. Any other work that will physically impact or is scoped to address a pedestrian facility requires that the pedestrian facilities comply with the pedestrian accessibility guidance in this DIB.

Preventive maintenance and routine maintenance work are not considered alterations. Preventive maintenance and routine maintenance projects may be designed following the guidance in this DIB, but they are not required to unless the work physically affects a pedestrian facility. However, Capital Preventive Maintenance (CAPM) projects [see DIB 81 – “Capital Preventive Maintenance (CAPM) Guidelines”] must be evaluated for pedestrian accessibility and comply with the guidance in Section 4.1.3 of this DIB.

4.1.3 Accessibility Requirements on 2R, 3R, and CAPM Projects

The accessibility needs of the communities and highway users, in particular the needs of users with disabilities, need to be considered on each 2R, 3R, and CAPM project. Early stakeholder participation, as appropriate, to identify accessibility deficiencies is recommended.

2R and 3R projects require reconstructing the affected existing pedestrian facilities to the accessibility design standards discussed in this DIB (see Section 4.3) to the maximum extent feasible, unless doing so is shown to be “technically infeasible” (see Section 2.0 “Definitions”). The Design Coordinator must agree with the finding that the work is technically infeasible and then approve a supporting Exception to Accessibility Design Standards document. Cost cannot be a consideration in justifying technically infeasible. On CAPM projects that are adjacent to existing sidewalks within the State highway right-of-way where curb ramps do not currently exist (at any intersection having curbs from a street level pedestrian walkway) new curb ramps shall be installed. On CAPM projects that are adjacent to existing sidewalks within the State highway right-of-way with existing curb ramps, the curb ramps must be evaluated and upgraded where necessary to meet the accessibility design standards discussed in this DIB (see Section 4.3).

Any pedestrian facility work that needs to be completed outside of the scope of a 2R, 3R, or CAPM project should be added to the Transition Plan through the following process. The pedestrian facility needing accessibility improvements must be specifically identified and documented by memorandum to the project history file. The District ADA Coordinator needs to be contacted and involved in submitting this information to the Headquarters Division of Civil Rights. The District ADA Coordinators (Liaisons) are identified on the Department’s Intranet site at: http://onramp.dot.ca.gov/eo/eo_ada.htm. Externally

sponsored work that is not being designed by the Department is not exempt from this requirement. The Department representative that is working with the external sponsor for the work is required to contact the District ADA Coordinator and assist them in submitting any work to the Headquarters Division of Civil Rights for inclusion in the Department's Transition Plan.

4.1.4 Minimum Accessibility

Newly constructed or altered (see Section 4.1.2) 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.

To the maximum extent feasible, at least one accessible route must be provided from one facility to another. If a more direct route exists that is not an accessible route, the accessible route must be in the same vicinity as the other route.

Whether the project is for new construction, for an alteration of an existing facility, or a CAPM project, full compliance with the design standards contained herein are not required where it can be demonstrated that it is structurally impracticable (for new construction) or technically infeasible (for alterations and CAPM projects) to meet the requirements. Any portion of the new facility that can be made accessible to persons with disabilities shall comply to the extent that it is not structurally impracticable. Also, any elements or features of the facility that are being altered and can be made accessible shall be made accessible within the scope of the alteration.

4.1.5 Historic Preservation

In meeting the aforementioned requirements of "Minimum Accessibility," a design that would alter or destroy the historic significance of a historic property/historical resource should not be constructed. Historic property/historical resource is any property listed or eligible for listing in the National Register of Historic Places, or properties designated as historic under State or local law. In order to comply with Public Resources Code 5024 and CEQA, the District Heritage Resources Coordinator should be contacted as early as possible in the planning process in order to initiate the required consultation. Non-construction strategies may be an option. See Section 4.1.6, "Program Accessibility" of this DIB.

The fourth item under Section 4.3.7 in this DIB may be used to maintain historic preservation of a historic property/historical resource based on the California State Historic Building Code, which is the mandatory code for State-owned historical resources. An approved accessibility design exception must be obtained to use this standard. Additionally, consultation with the State Historical Building Safety Board is required

4.1.6 Program Accessibility

In some situations, an operational solution may achieve accessibility without the need for construction. Existing facilities do not have to be made accessible if other methods of providing access are effective. Non-construction approaches may include alternate accessible routings, relocating services or activities to accessible locations, or taking the service or benefit directly to the individual. Coordination with local agencies, transit agencies, or other affected entities may be required to achieve these strategies.

4.2 Placement of Pedestrian Facilities

Vehicular lanes and shoulders are not required to be designed as accessible pedestrian routes just because it is legal for a pedestrian to traverse along a highway. Where vehicular lanes and shoulders are intended by the Department for pedestrian use, thus rendering them walkways, they shall be made accessible.

Deciding to construct pedestrian facilities and elements where none exist is an important consideration. In built-up urban areas with pedestrians present, pedestrian facilities should be constructed. In rural areas where few or no pedestrians exist, it would not be reasonable or cost effective to construct pedestrian facilities. For situations between these two extremes the designer should consult with the affected local agency, and special interest groups. Any decision made should be clearly documented in the project files.

All pedestrian facilities proposed within the State highway right of way shall follow the guidance in Chapter 31 “Non-motorized Transportation Facilities” in the *Project Development Procedures Manual*. Pedestrian facilities proposed by non-Departmental entities within State highway access controlled right-of-way shall also comply with Chapter 17 “Encroachments in Caltrans’ Right of Way,” also in the *Project Development Procedures Manual*.

4.3 Accessibility Design Standards

The most current version of the *Standard Plans* for Curbs and Driveways A87A, Curb Ramp Details A88A, Curb Ramp and Island Passageway Details A88B, Accessible Parking Off-Street A90A, and Accessible Parking On-Street A90B should be used for designing accessible facilities. Modifying the features shown on the *Standard Plans* or designing pedestrian facilities not covered by the *Standard Plans* shall be in accordance with the following standards and best practices. Following each accessibility design standard is a reference to the applicable Federal and/or State regulation.

4.3.1 Surface

- (1) All surfaces on an accessible route shall be stable, firm, and slip resistant.
[ADAAG 4.5.1 and Title 24 1124B.1]
- (2) Changes in level up to ¼ inch may be vertical and without edge treatment.
[ADAAG 4.5.2 and Title 24 1124B.2]
- (3) Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2 (50%).
[ADAAG 4.5.2 and Title 24 1124B.2]
- (4) Changes in level greater than ½ inch shall be accomplished by means of a ramp.
[ADAAG 4.5.2]

Surface types on State right of way can vary due to the type of facility served. Normally, sidewalks are made of Portland cement concrete, or in some situations asphalt concrete. Surface type selection is a decision made by the designer. Design factors to consider for surface materials are discussed in *Designing Sidewalks and Trails for Access* published by the United States Department of Transportation.

The use of paving units, stamped concrete, or stamped asphalt concrete, although within the surface uniformity requirements of an accessible route, could lead to a vibration effect causing repeated jarring to a wheelchair user. No roughness index exists for walkways, as it does for roadway surfaces. Until such guidance becomes available, engineering judgment must be used; the Design Reviewer or Traffic Operations Liaison can be consulted for further assistance. As a general rule, cobblestone or similar treatments should not be used.

If paving units are used, they must meet the specification requirements of the American Society for Testing and Materials (ASTM) C936.

All walkway surfaces shall have a broom finish texture or an equivalent. A broom finish surface is described in Section 73 of the current *Standard Specifications*. Regardless of surface type, if the walkway encroaches onto a roadway, as in the case of a crosswalk, the surface must have a coefficient of friction not less than 0.35 as determined by using California Test Method 342.

At present, no particular color requirement is prescribed in Federal guidelines. However, material used to provide contrast on detectable warnings on walkway surfaces should have a contrast by at least 70%. This is intended to assist the visually impaired pedestrian. This contrast is calculated by $[(B1-B2)/B1] \times 100$, where B1=light reflectance value (LRV) of the lighter area, and B2=light reflectance value (LRV) of the darker area. Visual contrast can be quantified with a luminance meter that measures the amount of light reflected by each subject (where zero is total darkness and 100 is theoretical complete light reflection). This contrast may be used to distinguish elements of a walkway, such as to differentiate a curb ramp from the sidewalk, or the crosswalk from the rest of the pavement. Also, crosswalk or sidewalk surfacing shall not cause glare to the user. Colored pavement or paving units are not to be used in lieu of striping for marked crosswalks.

4.3.2 Vertical Clearance

- (1) Walks shall have 80 inches minimum clear headroom.
[ADAAG 4.4.2 and Title 24 1133B.8.6.2]

It should be noted that the *Manual on Uniform Traffic Control Devices (MUTCD)* requires a vertical clearance at pedestrian pathways to the bottom of signs to be at least 7 feet. This will cover most pedestrian vertical clearance needs. Pedestrian pathways that are part of a shared facility, i.e., bicyclists and equestrians, shall follow the appropriate guidance in the *Highway Design Manual*. See Section 4.4, “Shared Facilities” of this DIB for further information.

4.3.3 Clear Width

Highway Design Manual (HDM) Index 105.1 states, as an Advisory Design Standard, that “the minimum width of a sidewalk should be 5 feet.” In many locations, local agency sidewalk standards will require greater widths; which can provide even greater accessibility than the minimum standard stated in the *HDM*. If for a specific project this is the case, the local agency standard should be used. Street furniture, signs, above ground utilities and poles, business frontage needs, street landscaping, etc. should all be placed outside of the “clear width zone” of a sidewalk.

In addition to the standards referenced above, the following Accessibility Design Standards are to be followed:

- (1) If an accessible route has less than 60 inches clear width, then passing spaces at least 60 inches by 60 inches shall be located at reasonable intervals not to exceed 200 feet.
[ADAAG 4.3.4]
- (2) The typical walkway minimum width of an accessible route shall be at least 48 inches.
[Title 24 1133B.7.1]
- (3) When, because of right-of-way restrictions, natural barriers or other existing conditions, the enforcing agency determines that compliance with the 48-inch clear sidewalk width would create an unreasonable hardship, the clear width may be reduced to 36 inches.
[Title 24 1133B.7.1 Exception Statement]

Regarding (3) above, an unreasonable hardship must be concurred with by the Design Coordinator and documented using the Exception to Accessibility Design Standards format (see attached). In the exception

document under Reason for Exception, the following factors for an unreasonable hardship are to be discussed for each location: 1) the cost of providing access, 2) the impact of proposed improvements on financial feasibility of the project, 3) the nature of the accessibility which be gained or lost, and 4) the nature of the use of the facility under construction and its availability to persons with disabilities.

4.3.4 Grade

- (1) All walks with continuous gradients shall have level areas at least 5 feet in length at intervals of at least every 400 feet.
[Title 24 1133B.7.6]
- (2) Where the walkway of a pedestrian access route is contained within a street or highway border, its grade shall not exceed the general grade established for the adjacent street or highway.
[DGPROW R301.4.2]

The accessibility standard in (1) above does not apply to sidewalks, but (2) does. The grade or slope of an accessible route should be as flat as possible. Since exterior facilities must drain, a walkway can be at 2% and still be considered level. The practical use of the accessibility standard in (1) above is thus applied for grades exceeding 2%. Any part of an accessible route with a slope greater than 1:20 (5%) shall be considered a ramp, and must comply with the standards of a ramp. See Section 4.3.7 of this DIB, "Ramps," for further information.

A profile of the pedestrian pathway should be developed to ensure compliance with grade and other design parameters.

4.3.5 Cross Slope

- (1) No more than a 1:50 (2%) cross slope shall be constructed on a walkway that is an accessible route.
[ADAAG 4.3.7 and Title 24 1133B.7.1.3]

Drainage is always a design consideration for exterior facilities. Walkways shall be designed so that water will not accumulate on the surface.

4.3.6 Grates and Railroad Tracks

- (1) If gratings are located in walks, then they shall have spaces no greater than ½ inch in one direction. If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel.
[ADAAG 4.5.4 and Title 24 1133B.7.2]
- (2) Where a path crosses tracks, the opening for wheel flanges shall be permitted to be 2-½ inches maximum.
[ADAAG 10.3.1(13)]

Walks shall be free of grating whenever possible.

4.3.7 Ramps

- (1) Slopes that are greater than 1:20 will be considered ramps and must not exceed a 30 inch rise without landings.
[ADAAG 4.8.2 and Title 24 1133B.5.1, 1133B.5.4.1]
- (2) The maximum slope of a ramp shall not exceed 1:12 (8.33%).
[ADAAG 4.8.2 and Title 24 1133B.5.3]

- (3) The cross slope of ramp surfaces shall be no greater than 1:50 (2%).
[ADAAG 4.8.6 and Title 24 1133B.5.3.1]
- (4) In the case of a historic property/historical resource, ramps greater than 1:12 (8.33%), but no greater than 1:10, cannot exceed a horizontal distance of 12 feet. Or, ramps of 1:6 slope cannot exceed a horizontal distance of 13 inches. Signs shall be posted at upper and lower levels to indicate steepness of the slope.
[Title 24 8-603.5]

This standard should only be used with an approved exception.

It should be noted that a sidewalk is not bound by the requirements of a ramp. Curved (or helical) ramps shall be subject to the same design standards as straight ramps. However, because of the complexity, curved ramps should not be constructed if a straight ramp can accomplish the same accessibility. If a curved ramp is sloped at the maximum 1:12 (8.33%), then the minimum radius needed is 50 feet; otherwise, a smaller radius will provide a path that exceeds the maximum 2% cross slope. Table 4.3.7 shows the minimum radius required for a given ramp slope:

TABLE 4.3.7 – HELICAL RADIUS REQUIREMENTS

Slope	Minimum Radius Required to Inner Side of Ramp
5%	30 feet
8.33%	50 feet

4.3.8 Curb Ramps

- (1) Curb ramps shall be a minimum of 4 feet in width and shall lie, generally, in a single sloped plane, with a minimum of surface warping and cross slope.
[Title 24 1127B.5.2]
- (2) Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes. Maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20 (5%) within 4 feet of the top and bottom of the curb ramp.
[ADAAG 4.7.2 and Title 24 1127B.5.3]
- (3) In general, for the flare, a maximum slope of 1:10 (10%) parallel to curb is used. However, if the level landing at the top of the curb ramp is less than 4 feet, the slope of the flares shall not exceed 1:12 (8.33%).
[ADAAG 4.7.5 and Title 24 1127B.5.3, 1127B.5.4]
- (4) In the case of a single (diagonal) curb ramp with flared sides, it shall have at least a 24 inch long segment of straight curb located on each side of the curb ramp and within the marked crossing, if the crosswalk is marked.
[ADAAG 4.7.10 and Title 24 1127B.5.10]
- (5) In the case of a marked crosswalk, the bottom of diagonal curb ramps shall have a clearance to the crosswalk marking of 48 inches minimum.
[ADAAG 4.7.10 and Title 24 1127B.5.10]

Regarding (4) above, this standard applies only on flared sides; the Caltrans Case C curb ramp and others without flares are not subject to this standard. Curb ramps are the most common type of ramp. Different types of curb ramps have been approved and are contained in the *Standard Plans*. Standard Plan A88A shows the illustration of curb ramps that may apply to curved alignments on a corner or on a tangent. The ramp width shall be consistent with the width of an accessible route. Flares are needed if the curb ramp is located where pedestrians may traverse across the ramp.

Curb ramps placed within crosswalk markings do not have to be aligned in the direction of the crosswalk marking. The Federal recommendation found in Part II of *Designing Sidewalks and Trails for Access* is for curb ramps to be aligned perpendicular to curb face.

In addition to the curb ramp slope, the cross slope of a sidewalk will determine the horizontal length of the curb ramp run, since anything more than a flat surface (no slope) will require more length to intercept the sidewalk surface. Table 4.3.8 can be used as a design aide when the sidewalk has a 2% cross slope.

TABLE 4.3.8 – Curb Ramp Runs for Sidewalks with 2% Cross Slopes

Height of Curb Face	Curb Ramp Run (Horizontal Length)
4 inches	63 inches
5 inches	78 inches
6 inches	95 inches
7 inches	111 inches
7-½ inches	118-½ inches
8 inches	126 inches

4.3.9 Medians and Islands

- (1) Raised medians or islands in street crossing paths shall be either cut through level with the street or have curb ramps and a level area at least 48 inches long between curb ramps. [ADAAG 4.7.11]

The width of the cut through raised medians or islands should be consistent with the widths required in Section 4.3.3 in this DIB. Since the cut for the path through the raised median or island is adjacent to traffic and without a “barrier,” it must have a detectable warning surface as described in Section 4.3.14 in this DIB. The detectable warning surface width and placement shall follow the details in Standard Plan A88B.

4.3.10 Handrails

Handrails are not required on curb ramps or along sidewalks. In all other situations, the following applies:

- (1) If a ramp run has a rise greater than 6 inches or a horizontal projection greater than 72 inches, then it shall have handrails on both sides.
[ADAAG 4.8.5 and Title 24 1133B.5.5.1]
- (2) Handrails shall be provided along both sides of ramp segments. Handrails shall be continuous within the full length of each stair flight or ramp run.
[ADAAG 4.8.5(1) and Title 24 1133B.5.5.1]
- (3) The clear space between the handrail and the wall (if any) shall be 1-½ inches.
[ADAAG 4.8.5(3) and Title 24 1133B.5.5.1]
- (4) Gripping surfaces shall be continuous.
[ADAAG 4.8.5(4)]
- (5) Top of handrail gripping surfaces shall be mounted between 34 inches and 38 inches above ramp surface.
[ADAAG 4.8.5(5) and Title 24 1133B.5.5.1]
- (6) Handrails shall not rotate within their fittings.
[ADAAG 4.8.5(7)]
- (7) The grip portion shall not be less than 1-¼ inches nor more than 1-½ inches, or the shape shall provide an equivalent gripping surface and all surfaces shall be smooth with no sharp corners.
[Title 24 1133B.5.5.1]

4.3.11 Warning Curb and Guardrail

Guardrail as used in this section is defined from the *California Building Code* [Title 24 208-G] as a vertical barrier erected along the open edges of a floor opening, wall opening, ramp, platform, runway or other elevated area to prevent persons from falling off the open edge.

- (1) Abrupt changes in level, except between a walk or sidewalk and an adjacent street or driveway, exceeding 4 inches in a vertical dimension, such as at planters or fountains located in or adjacent to walks, sidewalks or other pedestrian ways, shall be identified by curbs projecting at least 6 inches in height above the walk or sidewalk surface to warn the blind of a potential drop off.
[Title 24 1133B.8.1]
- (2) When a guardrail or handrail is provided, no curb is required when a guide rail is provided centered 3 inches plus or minus 1 inch above the surface of the walk or sidewalk, the walk is 5 percent or less gradient or no adjacent hazard exists.
[Title 24 1133B.8.1]
- (3) Where the edge of a pedestrian path, including ramps, has a drop off of more than 30 inches, the path shall be protected by a guardrail.
[Title 24 509.1, 1133B.5.7]
- (4) The top of guardrails shall not be less than 42 inches in height.
[Title 24 1133B.5.7.3]

- (5) Open guardrails shall have intermediate rails or an ornamental pattern such that a sphere 4 inches in diameter cannot pass through.
[Title 24 1133B.5.7.4]

Chain link fence Type CL-1.2 satisfies the requirements of a guardrail, see the *Standard Plans* for details. As a good practice, if the above-mentioned 4 inches and 30 inches drop off occurs within a horizontal distance of 24 inches from the edge of the pedestrian path, this path should still require the warning curb/guardrail.

4.3.12 Wheel Guides

Where the ramp surface is not bounded by a wall or fence and the ramp exceeds 10 feet in length, the ramp shall comply with one of the following requirements:

- (1) A guide curb a minimum of 2 inches in height shall be provided at each side of the ramp [Title 24 1133B.5.6.1]; or,
- (2) A wheel guide rail shall be provided, centered 3 inches plus or minus 1 inch above the surface of the ramp.
[Title 24 1133B.5.6.2]

These requirements are not applicable to sidewalks or on curb ramps.

4.3.13 Landings

A level landing is allowed to be sloped up to 2% to accommodate drainage. For curb ramp landing guidance, see Section 4.3.8 of this DIB. This DIB does not discuss the situation where a door opens onto a landing at a building entrance. For this situation, as well as with any building egress design, refer to *California Building Code* Section 1003.3.4.4 and confer with the Office of Transportation Architecture in the Division of Engineering Services.

Landings shall be designed as following:

- (1) Ramps shall have level landings at bottom and top of each ramp and each ramp run.
[ADAAG 4.8.4 and Title 24 1133B.5.4.1]
- (2) The landing shall be at least as wide as the ramp run leading to it.
[ADAAG 4.8.4(1) and Title 24 1133B.5.4.5]
- (3) The landing length shall be at least 60 inches.
[ADAAG 4.8.4(2) and Title 24 1133B.5.4.2, 1133B.5.4.7]
- (4) Top landings shall be not less than 60 inches wide and shall have a length of not less than 60 inches in the direction of the ramp run.
[Title 24 1133B.5.4.2]
- (5) If ramps change direction at a landing, the landing shall be at least 60 inches by 60 inches. [ADAAG 4.8.4(3)]
- (6) Intermediate and bottom landings at a change of direction in excess of 30 degrees shall have a dimension in the direction of the ramp run of not less than 72 inches to accommodate the handrail extension.
[Title 24 1133B.5.4.6]

4.3.14 Detectable Warning Surface

- (1) If a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings or other elements between the pedestrian areas and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is 36 inches wide.

[ADAAG 4.29.5 and Title 24 1133B.8.5]

Detectable warnings shall consist of raised truncated domes as shown on Standard Plans A88A, A88B, A90A, and A90B. Curb ramps shall contain detectable warning surfaces according to these *Standard Plans*.

4.3.15 Grooves

- (1) Grooves shall consist of indentations at the top of a curb ramp as shown on Standard Plan A88A. The grooves shall form a 12 inch border at the level surface of the sidewalk.

[Title 24 1127B.5.7]

4.3.16 Bus Stops

- (1) Where new bus stop pads are constructed at bus stops, bays or other areas where a lift or ramp is to be deployed, they shall have a firm, stable surface; a minimum clear length of 96 inches (measured from the curb or vehicle roadway edge) and a minimum clear width of 60 inches (measured parallel to the vehicle roadway) to the maximum extent allowed by legal or site constraints.

[ADAAG 10.2.1(1)]

- (2) Where provided, new or replaced bus shelters shall be installed or positioned so as to permit a wheelchair or mobility aid user to enter from the public way and to reach a location, having a minimum clear floor area of 30 inches by 48 inches, entirely within the perimeter of the shelter.

[(ADAAG 10.2.1(2) and Title 24 1131B.4)]

- (3) Newly constructed bus stop pads must provide a square curb surface between the pad and road or other detectable warning [Title 24 1131B.4].

Caltrans Type A or B curb, will satisfy the square curb requirement.

- (4) Bus stop pads shall be at same slope as the roadway in direction parallel to roadway profile grade, and maximum of 2 percent slope perpendicular to roadway.

[ADAAG 10.2.1(1) and Title 24 1131B.4]

4.3.17 Parking

- (1) For off street parking, Table 4.3.17 establishes the number of accessible parking spaces required.

[ADAAG 4.1.2(5)(a) and Title 24 1129B.1]

- (2) Where single spaces are provided, they shall consist of a 9 foot wide parking area and a 5 foot loading and unloading access aisle on the passenger side of the vehicle. When more than one space is provided, a 9 foot wide parking area on each side of a 5 foot loading and unloading access aisle in the center may be allowed. The minimum length of each parking space shall be 18 feet.

[Title 24 1129B.4.1]

(3) One in every eight accessible spaces, but not less than one, shall be served by an access aisle that is, at a minimum, 96 inches wide and placed on the side opposite the driver’s side of the vehicle when the vehicle is driven forward into the parking space; the space shall be designated van accessible.

[ADAAG 4.1.2(5)(b) and Title 24 1129B.4.2]

(4) Surface slopes of accessible parking spaces shall be the minimum possible and shall not exceed 1 unit vertical to 50 units horizontal (2% slope) in any direction. This applies to parking spaces and access aisles.

[ADAAG 4.6.3 and Title 24 1129B.4.4]

Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.

In each parking area, a bumper or curb shall be provided and located to prevent encroachment of cars over the required width of walkways. Also, the space shall be so located that persons with disabilities are not compelled to wheel or walk behind parked cars other than their own. Pedestrian ways which are accessible to persons with disabilities shall be provided from each such parking space to related facilities, including curb cuts or ramps as needed. Ramps shall not encroach into any accessible parking space or the adjacent access aisle.

TABLE 4.3.17 – OFF STREET ACCESSIBLE PARKING SPACE REQUIREMENTS

Total Number of Parking Spaces in Lot or Garage	Minimum Number of Spaces Required
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	See Note 1
1,000 and over	See Note 2

Notes:

1. Two percent of total.
2. Twenty plus one for each 100, or fraction over 1,001.

Signing and striping for on and off street parking shall conform to the design details shown on Standard Plans A90A and A90B. Consult with the Headquarters Traffic Liaison regarding proposed signing and striping changes.

4.3.18 Trails

Trails within the State Highway right of way are considered to be pedestrian facilities if pedestrians may traverse the path, either for their exclusive use or shared with other users. Trails that are intended for nonpedestrian use only, e.g., equestrian or for mountain bikes, are not subject to the guidance in this section.

- (1) This DIB adopts the trail guidance provided in Section 16 and in Sections 16.1 through 16.4.10 of the Federal Guide on “Outdoor Developed Areas” as found on the US Access Board website: www.access-board.gov/outdoor/outdoor-rec-rpt.htm. The provisions found on this website shall be regarded as enforceable design standards.

[Draft ADAAG 16]

Any proposed exception to the design standards in the “Outdoor Developed Areas Guide” must make reference to those applicable sections in the exception request. The conditions described in Section 16.1.1 “Extent of Application” may be used, as specified in the provisions, to support an exception.

The sign referenced in Section 16.2.10, “Signs,” of the “Outdoor Developed Areas Guide” shall be the disabled persons sign, MUTCD Code RM-080.

4.3.19 Protruding Objects

- (1) Objects protruding from walls (for example, telephones) with their leading edges between 27 inches and 80 inches above the finished floor shall protrude no more than 4 inches into the walk.
[ADAAG 4.4.1 and Title 24 1133B.8.6.1]
- (2) Objects mounted with their leading edges at or below 27 inches above the finished floor may protrude any amount.
[ADAAG 4.4.1 and Title 24 1133B.8.6.1]
- (3) Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor.
[ADAAG 4.4.1 and Title 24 1133B.8.6.1]
- (4) Protruding objects shall not reduce the clear width of an accessible route or maneuvering space.
[ADAAG 4.4.1 and Title 24 1133B.8.6.1]

In general, street furniture or any item placed within the pedestrian environment must be cane detectable. Objects that protrude over a pedestrian pathway above a height of 27 inches are not considered detectable by cane. A critical zone, which is not considered detectable, is between 27 inches and 80 inches above the pedestrian pathway surface. Many transportation elements within the pedestrian pathway are cane detectable, such as electrical systems hardware, and these are specified in the Caltrans *Standard Plans*.

Where it is decided to prohibit pedestrian crossings at an intersection or ramp crossing, a pedestrian barricade per Standard Plan ES-7P should be used. Consult with your Traffic Operations Liaison for further guidance.

4.4 Shared Facilities

Pedestrian facilities that are part of nonmotorized transportation facilities must be designed in accordance with the *Highway Design Manual* for the appropriate bikeway classification, and the *Designing Sidewalks and Trails for Access* for best practice equestrian design.

Designers of pedestrian-shared facilities must consider the geometric requirements that are most critical for the intended users. In some cases designing for pedestrians may govern the geometric features. For example, a designated Class 1 bikeway may legally be used by pedestrians and bicycles. But, it may not be practical to design for both users at certain segments of the path. In such cases, a design exception will either be needed for a bicycle standard in Chapter 1000 of the *Highway Design Manual* or for a pedestrian accessibility standard in this DIB.

4.5 Alternate Standards

Federal regulations allow the use of other accessibility standards, if they provide substantially equivalent or greater access to the facility system, as the minimum Federal accessibility standards. Similarly, the *California Building Code* allows the enforcing agency to make design judgments as to equivalent designs. Local Agency standards that provide equivalent or greater accessibility than the Federal ADAAG and the *California Building Code* may be used in lieu of the minimum standards in this DIB. Those standards not in this DIB should be discussed with the Design Coordinator and the justification documented in the project files. In the case of a historic property/historical resource, use of the California State Historical Building Code is mandatory for State-owned facilities as well as consultation with the State Historical Building Safety Board.

4.6 Temporary Traffic Control

Temporary traffic control zones can impact a wide range of State highway users, including persons with disabilities. On a project-by-project basis, a decision must be made to either include the provisions of the California Manual of Uniform Traffic Control Devices (CA MUTCD) as part of the construction contract documents or that they must be discussed with the Contractor prior to the beginning of work during the preconstruction meeting. In either case, if it is elected to close any sidewalk(s) due to construction and it is elected to provide a temporary route for use by the public, the various provisions for pedestrian safety as set forth in the CA MUTCD Part 6, Chapter 6D “Pedestrian and Worker Safety” shall apply.

Dist – Co – Rte
KP(PM)
Project EA or Encroachment Permit Number

EXCEPTION TO ACCESSIBILITY DESIGN STANDARDS



Prepared by:

(Name), Registered Civil Engineer ³

Submitted by: _____
(Name), Design Engineer

Date: _____

Recommended by: _____
(Name), Project Manager

Date: _____

Concurrence ¹ by: _____
(Name), Office Chief
Or District/Region Division Chief of Design

Date: _____

Approved ² by: _____
(Name), Design Coordinator

Date: _____

Notes:

1. Must be a Supervising Transportation Engineer or higher Civil Service Engineering Classification.
2. Delete this signature line for Rail or Transit Station projects (DSA is the approving entity).
3. A Licensed Architect or Licensed Landscape Architect may prepare this document and sign and seal it in lieu of a Registered Civil Engineer, provided the same Licensed Architect or Licensed Landscape Architect designed the on-site improvements. Use the seal of the appropriate licensed person in responsible charge.

Dist – Co – Rte
KP(PM)
Project EA or Encroachment Permit Number

This documentation shall be filed in the district project history files. A copy shall be sent to Headquarters Division of Design, attention Design Report Routing. Attach, as necessary, the information discussed in Item Number 3. At a minimum, the Exception to Accessibility Design Standards should contain the following sections:

1. Project Description

Describe the overall project scope and the proposed pedestrian facility design portion. Provide geographic project limits and lengths. Also, describe the existing highway facility as well as the existing pedestrian facilities.

If using an accessibility standard not listed in DIB 82-04, describe the accessibility standard and its reference of origin.

2. Project Costs

Provide the total capital cost estimate of the project. Also, provide an estimate of the capital cost of the proposed pedestrian features.

3. Nonstandard Features

Describe the nonstandard accessibility feature(s) to be constructed or to be maintained in an alteration. Provide sufficient information in written and graphic (layouts, cross sections, profiles, details, etc.) format to convey the extent of noncompliance with accessibility standards.

4. Standards From Which an Exception is Requested

State the accessibility standard from DIB 82-04.

5. Reason for Exception

The request for exception to accessibility design standards must state the reason why the facility or element is in whole or in part structurally impracticable (for new construction) or technically infeasible (for alterations) to comply with DIB 82-04 standards. Exceptions must be based on factors which may include historical significance, existing terrain, environmental issues, right of way constraints, conflicts with other design standards, and/or other significant considerations. Excessive cost may be supplemental information but cannot be used to support an exception related to a structural impracticability or technical infeasibility.

The four (4) factors for unreasonable hardships related to Clear Width, discussed in Section 4.3.3 of DIB 82-04, are to be documented in this section.

6. Work Required to Make Standard

Provide a description of the additional work in excess of the proposed project work required to meet the subject accessibility standard.

7. Reviews and Concurrence

As appropriate, provide the names of the Headquarters Design and District personnel who have discussed and concurred with this document; plus, the date of their concurrence.

EXHIBIT 4

EXHIBIT 4

WORK ZONES

The Parties agree to the following as a final and complete resolution of issues pertaining to Work Zones. The Department agrees to make its best efforts to ensure that Temporary Routes, when provided through and around Work Zones, are accessible to pedestrians with disabilities. In meeting this obligation, the Department will do the following:

1. Guidance for Pedestrian Accommodation. The Department shall develop a summarized informational document for workers in the field for the accommodation of pedestrians with disabilities through and around Work Zones within one hundred eighty (180) working days following Final Approval. To develop this document, the Department will investigate procedural models utilized by other entities, including but not limited to Pacific Gas & Electric Company's work procedure entitled "Path of Travel Encroachments and Pedestrian Safety" and/or the Federal Highway Administration / American Traffic Safety Services Association's Guidance Sheet entitled "Temporary Traffic Control Zone Pedestrian Access Considerations." The content of this document developed by the Department will reference and be consistent with Part 6 of the California Manual on Uniform Traffic Control Devices ("CA MUTCD"). A copy of this informational document shall be promptly delivered to Plaintiffs Attorneys and to the Access Consultant when it is ready for dissemination to employees, contractors, and individuals/companies/entities requesting temporary encroachment permits.

2. Revisions to DIB 82. In addition to the changes made to DIB 82 pursuant to **Exhibit 3** of this Settlement Agreement, DIB 82 has been revised (See **Exhibit 3A**,

Section 4.6) to reference that the CA MUTCD Part 6, Chapter 6D (PEDESTRIAN AND WORKER SAFETY) procedures should be followed in the event the Department elects to close any sidewalk(s) due to construction, including those instances, if any, when the Department elects to provide Temporary Routes for use by the public.

3. Training of Caltrans Personnel. The Department shall provide training to personnel responsible for the development, approval and implementation of Work Zones, including Temporary Routes for use by the public. Within 180 one hundred eighty (180) working days following Final Approval, the Department will provide to Plaintiffs Attorneys and to the Access Consultant training documents to be used for the development, approval and implementation of Work Zones, consistent with the informational document prepared and the existing training conducted on Part 6 of the CA MUTCD.

5. Revised Design and Construction Procedures. The Department shall revise its current procedures for construction contract development and enforcement as follows:

A. Caltrans' Construction Manual and specifications shall be revised to require that pre-construction meetings with the contractor include a discussion regarding Work Zones, including Temporary Routes for use by the public, if any, and how the contractor will meet their contractual obligations and applicable guidance in the CA MUTCD. Contractors' participation in these pre-construction meetings shall constitute certification that they have reviewed and understand said contractual obligations and CA MUTCD guidelines.

B. The Department shall require the review of all contract plans and specifications as part of the normal project development review process to ensure that when Temporary Routes for use by the public are provided, they are accessible to pedestrians with disabilities.

C. As part of routine construction safety inspections performed on every project, inspections of any Temporary Routes that are provided for use by the public will be performed to ensure compliance with contract plans and specifications. Safety inspection checklists, to the extent they are used, will be revised to include a category regarding accessible Temporary Routes.

EXHIBIT 5

EXHIBIT 5

ACCESSIBILITY GRIEVANCE PROCEDURE

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990. It may be used by anyone who wishes to file a grievance alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the Department. It is intended and designed to provide prompt and equitable resolution of grievances alleging noncompliance with, or any action prohibited by, the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794). This procedure applies to all Title II ADA-related grievances regarding facilities owned and controlled by the Department, including Pedestrian Facilities and Park and Ride Facilities. The Department's Personnel Policy governs employment-related complaints of disability discrimination.

Information about the Accessibility Grievance Procedure shall be posted to the Department's website under the "Contact Us" link.

The grievance should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to any of the following Departmental contacts, who have been designated to coordinate Section 504/ADA compliance efforts:

- Charles Wahnou
Caltrans Statewide ADA Coordinator
1823 14th Street
Sacramento, California 95811
Phone (916) 324-1353 or Toll Free (866) 810-6346
FAX (916) 324-1869, TTY 711

- Department District ADA Liaisons, contact information is provided on the Department's website: <http://www.dot.ca.gov/contactus.htm>
- Email: ADA_Compliance_Office@dot.ca.gov

The grievance should be submitted to the Department in writing (by mail, e-mail, or fax) and contain information about the alleged discrimination, condition, policy or practice at issue, such as name, address, phone number of the grievant and location, date, and description of the problem. Alternative methods of filing such as personal interviews or a tape recording of the grievance will be made available for persons with disabilities upon request.

Within 15 working days the Department will respond to the receipt of the grievance in writing or where appropriate, in a format accessible to the grievant (such as large print, Braille, or audio tape). The response will acknowledge receipt of the grievance, provide documentation of the grievance, as understood by the Department, and will include an offer to meet with the grievant to clarify the circumstances of the alleged discrimination, condition, policy or practice at issue.

In the event it is determined that the grievance involves a facility not owned and controlled by the Department, the Department will facilitate the notification of the grievance to the appropriate entity, as expeditiously as possible but in any event within 120 working days.

The time it will take the Department to respond to a grievance will depend on the scope and complexity of the request. However, no later than 180 working days following the date the Department acknowledges receipt of the grievance, the Department will provide a response to the grievant in writing, and, where appropriate, in a format accessible to the grievant. This response will explain the position of the Department and

offer a resolution responsive to the grievance. The response will also inform the grievant/complainant of their right to appeal.

The Department will proceed with the implementation of its proposed resolution unless the grievant files (i.e., by sending an e-mail or fax, or by depositing with a delivery service, or by postmarking a submission via regular mail) a written appeal of the Department's decision within 15 working days.

Within 15 working days following receipt of an appeal, the Department will meet with the grievant to discuss the grievance and the Department's response. Within 15 working days following the meeting between the appellant and the Department, the Department will respond in writing, and where appropriate, in a format accessible to the grievant, with a final resolution of the grievance.

After the recommended resolution is implemented and completed, the Departmental ADA designee will provide notification to the grievant, in writing, and, where appropriate, in a format accessible to the grievant, of completed resolution.

All grievances received by the Department, including any appeals, will be retained by the Statewide ADA Program until the subject matter of the grievance has been fully resolved or for at least three years, whichever is later.

EXHIBIT 6

EXHIBIT 6

ATTORNEY FEES AND COSTS

With respect to the issue of Plaintiffs' Attorneys' fees and costs and the payment thereof by Defendants, the following is agreed to as a complete resolution of the issue.

1. No fees or costs incurred by the Plaintiff Class in connection with the Federal Action and/or the State Action may be claimed except as expressly set forth herein.
2. The Parties agree that conditioned on the Federal Court granting Final Approval of the Parties' Settlement Agreement, Defendants shall pay Plaintiffs' Attorneys reasonable attorneys fees and costs for work pursuing the claims pleaded in the Federal Action and the State Action ("Fees" and "Costs"), subject to the limits set forth herein.
3. The Parties agree that they will attempt in good faith to reach an agreement as to the amount of Fees and Costs and a schedule for payment. If agreement is reached, Plaintiffs' Attorneys will submit a motion in the Federal Action requesting that the Federal Court approve the agreed amount of Fees and Costs, and Defendants will stipulate to that amount as fair and reasonable.
4. If the Parties are unable to reach an agreement as to the amount of Fees, Plaintiffs' Attorneys will file a motion for Fees in the Federal Action requesting that the Federal Court determine the amount of Fees to be awarded, subject to the following agreement: Defendants agree to pay Fees of no less than \$3.75 million and no more than \$8.75 million for all work related to claims pleaded in the Litigation, settlement, and future monitoring of all claims in the Litigation, including any Fees for time spent preparing a fee motion. Plaintiffs agree not to seek more than \$8.75 million for all Fees related to the Litigation, settlement, and future monitoring of these claims including any Fees for time spent preparing a fee motion. Plaintiffs' Attorneys expressly waive any claim for Fees in excess of \$8.75 million. The only additional Fees available for any work by Plaintiffs' Attorneys related to these claims would be any Fees ordered by the Court in future enforcement proceedings as provided for in Section 5.2.2.3 of the Settlement Agreement.

5. If the Parties are unable to reach an agreement as to the amount of Plaintiffs' Costs, Plaintiffs' Attorneys may seek to recover Costs by filing a motion in the Federal Court. Plaintiffs' Attorneys shall not seek more than \$391,477 in total for all Costs related to the Litigation, settlement, and future monitoring of claims. Plaintiffs' Attorneys expressly waive any claim for Costs in excess of \$391,477, and agree that their recovery shall not exceed that amount. The only additional Costs available for any work by Plaintiffs' Attorneys related to claims pleaded in the Litigation would be Costs ordered by the Court in future enforcement proceedings as provided for in Section 5.2.2.3 of the Settlement Agreement.

6. Upon dismissals of both the Federal Action and the State Action with prejudice, the Federal Court's Final Approval of the Settlement Agreement, and the Parties reaching agreement(s) and/or the Federal Court determining the amounts of Plaintiffs' Attorneys Fees and/or Costs, Defendants shall pay Plaintiffs' Attorneys Fees and Costs in the amount(s) agreed upon by the Parties, or if the Parties were unable to reach agreement(s), in the amount(s) determined by the Federal Court (the "Payment"). In the event the Federal Court is asked to determine the amount of Fees and/or Costs, the time for Payment shall be as ordered by the Court. Plaintiffs understand that Defendants intend to ask the Court that the Fees be paid over several years. Defendants understand that the Plaintiffs intend to ask the Court to order Payment of the total amount of Fees and Costs within sixty (60) days and/or to order interest on any delayed Payments.

7. The Payment is in full and complete satisfaction of any and all claims for Fees and Costs incurred in the Federal Action and/or in the State Action against Defendants, and for all claims released in this Settlement Agreement. The Plaintiff Settlement Class Members expressly waive any right to recover any additional Fees that they may incur in monitoring or evaluating Defendants' compliance with this Settlement Agreement, except for Fees and/or Costs ordered by the Court in future enforcement proceedings as provided for in Section 5.2.2.3 of the Settlement Agreement.

EXHIBIT 7

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CALIFORNIANS FOR DISABILITY RIGHTS,)
INC. ("CDR"), CALIFORNIA COUNCIL OF)
THE BLIND ("CCB"), BEN ROCKWELL and)
DMITRI BELSER, on behalf of themselves, and)
on behalf of all others similarly situated,)

Plaintiffs,)

v.)

CALIFORNIA DEPARTMENT OF)
TRANSPORTATION ("Caltrans") and WILL)
KEMPTON, in his official capacity.)

Defendants.)

Case No.: C06-5125 SBA

**ORDER RE: PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Sandra Brown Armstrong

Date Action Filed: August 23, 2006

1 WHEREAS, trial of the above-captioned case began before this Court on September 16,
2 2009;

3 WHEREAS, the Parties have advised the Court that they have settled the Litigation, the
4 terms of which have been memorialized in a Settlement Agreement;

5 WHEREAS, this Court has reviewed and considered the Settlement Agreement entered into
6 among the Parties in this Litigation, together with all exhibits thereto, the record in this case, and
7 the arguments of counsel;

8 NOW THEREFORE, for good cause appearing, it is hereby ordered as follows:

9 1. All capitalized terms and definitions used herein have the same meanings as set forth
10 in the Settlement Agreement.

11 2. The proposed settlement set forth in the Settlement Agreement is hereby
12 preliminarily approved as being within the range of reasonableness such that notice thereof should
13 be given to Plaintiff Settlement Class Members.

14 3. The contents of the class notice, which are attached to the Settlement Agreement as
15 **Exhibit 8**, are hereby approved as to form.

16 4. The proposed Plaintiff Settlement Class is hereby conditionally certified subject to
17 Final Approval of the Settlement Agreement.

18 5. The Parties are hereby authorized to issue the class notice as follows:

19 Within 30 days after Preliminary Approval, the Parties shall distribute notice of the proposed
20 Settlement Agreement advising the Plaintiff Settlement Class of the terms of the proposed Settlement
21 Agreement and their right to object to the proposed Settlement Agreement. This notice shall be
22 published as follows:

23 (a) Defendants shall pay for publication in newspapers of a notice of class
24 settlement. This notice will include: A brief statement of the claims released by the class; the date of
25 the hearing on the final approval of the class settlement; the deadline for submitting objections to the
26 settlement; the web page, address, and phone and fax numbers that may be used to obtain a copy of the
27 NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT (attached as **Exhibit 8** to
28 the Parties' Settlement Agreement) in the format and language requested. Publication in these

1 newspapers will be every other day for a period of thirty (30) days, no larger than one eighth page, in
2 the legal notice section of the following papers of general circulation: The Los Angeles Times, The San
3 Diego Union Tribune, The San Francisco Chronicle, The Sacramento Bee, The Riverside Press, and
4 The Oakland Tribune. The notice published in the newspapers will contain a statement in Spanish of
5 the web page, e-mail address, and phone numbers that may be used to obtain a copy of the NOTICE OF
6 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT in English, Spanish and alternative
7 accessible formats.

8 (b) Plaintiffs' Attorneys and Defendants' attorneys shall provide the NOTICE OF
9 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT in the manner, format and language
10 requested by any class member, advocacy group, government, or their counsel. Copies of the NOTICE
11 OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT shall be provided without charge
12 for copying or mailing.

13 (c) Defendants shall establish a web site where a copy of the NOTICE OF
14 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT will be available in English and
15 Spanish, and in a format that can be recognized and read by software commonly used by the individuals
16 with visual impairments to read web pages. Defendants shall post on the Caltrans website a link to the
17 web site where a copy of the NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
18 LAWSUIT will be available.

19 (d) A copy of the NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
20 LAWSUIT shall be mailed to the U.S. Attorney General, the U.S. Department of Justice, Civil Rights
21 Division, and the Attorney General for the State of California with a request to each office that they
22 consider publishing a description of the settlement in their newsletters and web pages.

23 (e) Plaintiffs' Attorneys shall post NOTICE OF PROPOSED SETTLEMENT OF
24 CLASS ACTION LAWSUIT on the website of Disability Rights Advocates and shall make good faith
25 efforts to distribute it through disability-related listservs and other internet postings.

26 (f) Counsel for the Parties shall send by first class mail the NOTICE OF
27 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT to the last known address for each
28 member of the proposed Plaintiff Settlement Class whose declaration Counsel submitted in this action.

1 6. The Court finds that the forms of notice to Plaintiff Settlement Class Members
2 regarding the pendency of the Litigation and of this settlement, including the methods of
3 dissemination to the proposed Plaintiff Settlement Class Members in accordance with the terms of
4 this order, constitute the best notice practicable under the circumstances.

5 7. Any Plaintiff Settlement Class Member may enter an appearance in the Litigation
6 and/or may seek to intervene in the Litigation, individually or through the counsel of their choice at
7 his or her expense. Plaintiff Settlement Class Members who do not enter an appearance will be
8 represented by Class Counsel.

9 8. Objections by any Plaintiff Settlement Class Member to: (a) the proposed settlement
10 contained in the Settlement Agreement and described in the class notice; (b) the payment of feesY
11 and reimbursement of expenses to Plaintiffs' Counsel up to the negotiated maximum amounts set
12 forth in the Settlement Agreement; and/or (c) entry of the Judgment shall be heard, and any papersY
13 submitted in support of said objection shall be considered by the Court at the Fairness Hearing onlyY
14 if, on or before ----- ----- 2010, such objector files with the Clerk of the United States
15 District Court for the Northern District of California: (1) a notice of his, her or its objection and aY
16 statement of the basis for such objection; (2) if applicable, a statement of his, her or its intention to
17 appear at the Fairness Hearing. Copies of the foregoing must also be mailed or delivered to counsel
18 for the Parties identified in the class notice. In order to be considered for hearing, all objections
19 must be submitted to the Court and actually received by the counsel identified in the class notice on
20 or before ----- ---, 2010. A Plaintiff Settlement Class Member need not appear at the
21 Settlement Hearing in order for his, her or its objection to be considered.

22 9. No later than seven days before the Fairness Hearing, the Parties shall file all papersY
23 in support of the Application for Final Approval of the Settlement and/or any papers in response to
24 any valid and timely objection with the Court, and shall serve copies of such papers upon each otherY
25 and upon any objector who has complied with the provisions of Paragraph 8 of this Order.

26 10. A hearing (the "Fairness Hearing") shall be held by the Court on April 27, 2010 at
27 ---- .m., in United States District Court for the Northern District of California, 1301 Clay street,
28 Oakland, California 94612-5212, to consider and determine whether the proposed settlement of the

1 Litigation on the terms set forth in the Settlement Agreement should be approved as fair, just,
2 reasonable, adequate and in the best interests of the Plaintiff Settlement Class; whether Plaintiffs'
3 Counsels' attorneys' fees and reimbursement of expenses should be approved; and whether the
4 Order approving the settlement and dismissing the Litigation on the merits and with prejudice
5 against the Plaintiffs and all Settlement Plaintiff Class Members, subject to the Court retaining
6 jurisdiction to administer and enforce the Settlement Agreement, should be entered.

7 11. The Fairness Hearing may, from time to time and without further notice to the
8 Plaintiff Settlement Class Members (except those who have filed timely and valid objections or
9 entered an appearance), be continued or adjourned by order of the Court.

10 12. Reasonable costs incurred in identifying and notifying Plaintiff Settlement Class
11 Members shall be paid by Defendants. In the event that the Settlement Agreement is not approved
12 by the Court, or otherwise fails to become effective, neither the Plaintiffs nor any of Plaintiffs'
13 Counsel shall have any obligation to repay the amounts actually and properly disbursed to
14 accomplish such notice and administration.

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16 **IT IS SO ORDERED.**

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18 DATED: _____

19 HONORABLE SAUNDRA BROWN ARMSTRONG
20 UNITED STATES DISTRICT JUDGEY
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EXHIBIT 8

EXHIBIT 8

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

ATTENTION: All persons with a mobility and/or vision disability who currently or in the future will use or attempt to use (1) Caltrans sidewalks, cross-walks, pedestrian overcrossings, pedestrian undercrossings, other outdoor pedestrian walkways; (2) Caltrans Park and Ride facilities; and/or (3) other Caltrans's facilities in the public right of way, such as certain highway shoulders or temporary routes through and around work zones, owned and/or maintained by the California Department of Transportation ("Caltrans"). You may be a member of the proposed settlement class affected by this lawsuit."

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.

NOTICE OF CLASS ACTION

The purpose of this notice is to inform you of the proposed settlement in two pending class action lawsuits brought on behalf of people with mobility and/or vision disabilities. The class action settlement (the "Settlement Agreement"), which must be approved by the Court, was reached in connection with two lawsuits, *Californians for Disability Rights, et al. v. California Department of Transportation, et al.*, N.D. Cal. Case No. C 06-5125 SBA and *Californians for Disability Rights, et al. v. California Department of Transportation, et al.*, Alameda County Superior Court No. RG08376549. The lawsuits, filed in 2006 and 2008 respectively, allege that the California Department of Transportation ("Caltrans") has discriminated against persons with mobility and/or vision disabilities by denying them access to sidewalks, cross-walks, pedestrian overcrossings, pedestrian undercrossings, other outdoor pedestrian walkways ("pedestrian facilities") and Park and Ride facilities owned or maintained by Caltrans. The Defendants deny any liability or wrongdoing.

THE SETTLEMENT CLASS

If you are a person with a mobility and/or vision disability, and you currently or in the future will use or attempt to use (1) Caltrans sidewalks, cross-walks, pedestrian overcrossings, pedestrian undercrossings, other outdoor pedestrian walkways; (2) Caltrans Park and Ride facilities; and/or (3) other Caltrans's facilities in the public right of way, such as certain highway shoulders or temporary routes through and around work zones, owned and/or maintained by the California Department of Transportation ("Caltrans"). You may be a member of the proposed settlement class affected by this lawsuit. Please read this notice carefully because your rights may be affected.

SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT

Access Barrier Removal in Existing Facilities

The settlement agreement provides that Caltrans will spend \$1.1 billion over the next 30 years to remove access barriers along existing pedestrian facilities and within existing Park and Ride facilities. Caltrans will allocate funding to access barrier removal work according to the following schedule: \$25 million per year for the first five years; \$35 million per year for the following ten years; \$40 million per year for the following 10 years; and \$45 million per year for the last five years. The annual allocations will come from dedicated federal and state transportation funding.

Access Requests and Priority Guidelines For Removal of Access Barriers

The \$1.1 billion fund for removal of existing access barriers along pedestrian facilities and within Park and Ride facilities will be distributed as follows:

First, Caltrans will consider, in the distribution of the funds, access requests as well as needs identified by the Department. Individuals, organizations, public agencies, cities, and/or local government entities may submit access requests relating to Caltrans pedestrian facilities and Park and Ride facilities by: (1) filing a grievance or (2) submitting a non-grievance access request. Filing a grievance triggers a formal process which requires the grievant to submit a written grievance and which sets deadlines for Caltrans to act. Alternatively, access requests may be submitted to Caltrans, without filing a grievance, in order to report an access barrier. Access barriers identified through access requests and access barriers already identified by Caltrans will be removed according to the following general order of priorities: (i) access barriers that are the most severe and most significant safety hazard for class members; (ii) access barriers along pedestrian facilities and/or within Park and Ride facilities serving State and local government offices and facilities, (iii) access barriers along pedestrian facilities and/or within Park and Ride facilities serving important transportation corridors; (iv) access barriers along pedestrian facilities and/or within Park and Ride facilities serving places of public accommodation such as commercial and business zones; (v) access barriers along pedestrian facilities and/or within Park and Ride facilities serving facilities containing employers; and (vi) access barriers along pedestrian facilities and/or within Park and Ride facilities serving other areas such as residential neighborhoods and undeveloped areas.

Second, to the extent additional funds are available after removing access barriers identified through access requests and access barriers already identified by Caltrans, Caltrans will then survey its existing facilities to identify other existing access barriers. Caltrans will use the same prioritization listed above for the removal of access barriers identified through Caltrans' surveys.

Access to Newly Constructed and Altered Facilities

In addition to the \$1.1 billion fund for removal of access barriers in existing facilities, Caltrans has agreed that when it resurfaces its roadways, it will upgrade existing but non-compliant curb ramps and/or install new curb ramps where they are lacking along the sidewalks adjacent to the resurfacing project. Caltrans will also ensure that it follows

federal and state accessibility guidelines when undertaking new construction or alterations of pedestrian facilities and/or Park and Ride facilities.

Access to Temporary Routes Through and Around Construction

Caltrans will provide access at Temporary Routes and access at Work Zones as specified in the Settlement Agreement. Caltrans will make its best efforts to ensure that Temporary Routes, when provided through and around Work Zones, are accessible to pedestrians with disabilities

Resolution of Claims

This Settlement Agreement resolves all claims for injunctive relief. The Settlement Agreement does not provide for any monetary relief to be paid to any plaintiffs or members of the class or release any damage claims such class members may have.

Attorneys Fees

The class was represented by Disability Rights Advocates, AARP Foundation Litigation and Jose R. Allen, Esq. (“Class Counsel”). The settlement agreement provides that the Court will decide the amount of fees and costs that should be awarded to Class Counsel. The parties have agreed that the award may range between \$3.75 million and \$8.75 million for reasonable attorneys fees and costs for time expended and costs incurred during the course of the two lawsuits. The parties may agree upon an amount within this range through further negotiations or alternative dispute resolution, but any such agreement will be subject to Court approval.

Fairness of Agreement

The class representatives and Class Counsel have concluded that the terms and conditions of the proposed Settlement Agreement are fair, reasonable, and in the best interests of the class. In reaching this conclusion, the class representatives and Class Counsel have considered the benefits of the settlement, the possible outcomes of continued litigation of these issues, and the expense and length of continued litigation and possible appeals.

OBJECTIONS TO THE SETTLEMENT

The Court has given preliminary approval of the Settlement Agreement, and has scheduled a hearing for April 27, 2010 in the Courtroom of the Honorable Sandra Brown Armstrong, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, to determine whether the proposed settlement is fair and reasonable and should be finally approved. Although you are not required to attend, as a Class Member, you have the right to attend and be heard at this hearing. This hearing date may be changed by the Court without further notice to the entire class. If you wish to be on the service list to be informed of any changes to the schedule, please file a notice of appearance or objection with the Court.

Any Class Member may object to the terms of the proposed Settlement Agreement described above by filing a written, signed objection with the Court. If you wish to

object, you must send a written statement, **postmarked on or before [DATE]**, specifying the reason(s) for your objection to the settlement and, stating whether you intend to appear at the above-referenced hearing to object to the settlement. Your written objection must be sent to each of the following:

The Court:

Clerk of the United States District Court
Northern District of California
1301 Clay Street
Oakland, CA 94612
Reference: *Californians for Disability Rights, et al. v. California Department of Transportation, et al.*, Case No. C 06-5125 SBA

Class Counsel Representing Plaintiffs and the Plaintiff Settlement Class:

Mary-Lee Kimber, Esq.
DISABILITY RIGHTS ADVOCATES
2001 Center St., Fourth Floor
Berkeley, CA 94704

Counsel representing the California Department of Transportation:

Gregory F. Hurley
GREENBERG TRAURIG, LLP
3161 Michelson Drive, Suite 1000
Irvine, CA 92612

IF YOU DO NOT TIMELY SUBMIT AN OBJECTION AS DESCRIBED HEREIN, YOU WILL BE DEEMED TO HAVE WAIVED YOUR OBJECTION AND SHALL BE FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT.

IF YOU DO NOT OPPOSE THIS SETTLEMENT, YOU NEED NOT APPEAR OR FILE ANYTHING IN WRITING.

BINDING EFFECT

The proposed Settlement Agreement, if given final approval by the Court, will bind all members of the Settlement Class. This will bar any person who is a member of the Settlement Class from seeking different or additional relief regarding all issues resolved in the Settlement Agreement for the term of the settlement.

FURTHER INFORMATION

The federal and state lawsuits and the terms of the settlement are only summarized in this Notice. More detailed information concerning the settlement or a copy of the Settlement Agreement may be obtained from Class Counsel at the following address:

Disability Rights Advocates
Attn: Mary-Lee Kimber
2001 Center St., Fourth Floor
Berkeley, CA 94704
510-665-8644 (Voice)
510-665-8716 (TTY)
E-mail: mkimber@dralegal.org

Or by consulting the public file on the case at the Office of the Clerk at the following address:

For the federal case:
Clerk of the United States District Court
Northern District of California
1301 Clay Street
Oakland, CA 94612
Reference: *Californians for Disability Rights, et al. v. California Department of Transportation, et al.*, Case No. C 06-5125 SBA

For the state case:
Clerk of Alameda County Superior Court
Rene C. Davidson Alameda County Courthouse
1225 Fallon St.
Oakland, CA 94612
Reference: *Californians for Disability Rights, et al. v. California Department of Transportation, et al.*, No. RG08376549

Please do not direct questions to the Court.

To obtain copies of this Notice in alternative accessible formats, please contact Class Counsel listed above.

EXHIBIT 9

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**UNITED STATES DISTRICT COURTSG
NORTHERN DISTRICT OF CALIFORNIASG**

CALIFORNIANS FOR DISABILITY RIGHTS, Y)Y **Case No. : C06-5125 SBAG**
INC. ("CDR"), CALIFORNIA COUNCIL OF Y)Y
THE BLIND ("CCB"), BEN ROCKWELL and)Y **JUDGMENT, FINAL ORDER AND G**
DMITRI BELSER, on behalf of themselves, and)Y **ECREEG**
on behalf of all others similarly situated, Y)Y
Plaintiffs, Y)Y
v. Y)Y Judge: Hon. Sandra Brown Armstrong
CALIFORNIA DEPARTMENT OF Y)Y
TRANSPORTATION ("Caltrans") and WILL)Y
KEMPTON, in his official capacity. Y)Y
Defendants. Y)Y

1Y This matter came on for hearing on _____, 2010. The Court has considered the Y
2Y Settlement Agreement, objections and comments received regarding the proposed settlement, the Y
3Y record in the Litigation, the evidence presented, and the arguments and authorities presented by Y
4Y counsel. Good cause appearing, Y

5Y IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS: Y

6Y 1.Y The Court, for purposes of this Judgment, Final Order and Decree ("Judgment") Y
7Y adopts the terms and definitions set forth in the Settlement Agreement. Y

8Y 2.Y This Court has jurisdiction over the subject matter of this Litigation and over all Y
9Y Parties to the Litigation and the Plaintiff Settlement Class Members. Y

10Y 3.Y Defendants consent to the Federal Court exercising jurisdiction over Plaintiffs' state Y
11Y law claims for purposes of the Parties' Settlement Agreement. Y

12Y 4.Y The Court finds that the notice to the Plaintiff Settlement Class of the pendency of Y
13Y the Litigation and of this settlement pursuant to the Order Re: Preliminary Approval of Class Action Y
14Y Settlement ("Preliminary Approval Order) constitute the best notice practicable under the Y
15Y circumstances to all persons within the definition of the Plaintiff Settlement Class and fully Y
16Y complied with the requirements of due process of all applicable statutes and laws. Y

17Y 5.Y The Court hereby adopts and approves the Settlement Agreement, and finds that it is Y
18Y in all respects fair, reasonable, adequate, just, and in the best interests of the Parties and the Plaintiff Y
19Y Settlement Class. The objections have been considered and are overruled. Accordingly, the Court Y
20Y directs the Parties and their counsel to implement and consummate this settlement in accordance Y
21Y with the terms and conditions of the Settlement Agreement. Y

22Y 6.Y The Court certifies a Plaintiff Settlement Class as defined in the Settlement Y
23Y Agreement. Y

24Y 7.Y Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court hereby Y
25Y dismisses on the merits and with prejudice and without costs (except as otherwise provided in the Y
26Y Settlement Agreement) the Litigation, subject to Paragraph 9 below. The terms of the Settlement Y
27Y Agreement re: Class Action Settlement are hereby incorporated into this Final Judgment. Y

28Y

**~~{PROPOSED}~~ ORDER RE:
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Signed 01/25/10

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CALIFORNIANS FOR DISABILITY RIGHTS,)
INC. (“CDR”), CALIFORNIA COUNCIL OF)
THE BLIND (“CCB”), BEN ROCKWELL and)
DMITRI BELSER, on behalf of themselves, and)
on behalf of all others similarly situated,)

Plaintiffs,)

v.)

CALIFORNIA DEPARTMENT OF)
TRANSPORTATION (“Caltrans”) and WILL)
KEMPTON, in his official capacity.)

Defendants.)

Case No.: C06-5125 SBA

~~PROPOSED~~ ORDER RE:
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Judge: Hon. Sandra Brown Armstrong

Date Action Filed: August 23, 2006

1 WHEREAS, trial of the above-captioned case began before this Court on September 16,
2 2009;

3 WHEREAS, the Parties have advised the Court that they have settled the Litigation, the
4 terms of which have been memorialized in a Settlement Agreement;

5 WHEREAS, this Court has reviewed and considered the Settlement Agreement entered into
6 among the Parties in this Litigation, together with all exhibits thereto, the record in this case, and
7 the arguments of counsel;

8 NOW THEREFORE, for good cause appearing, it is hereby ordered as follows:

9 1. All capitalized terms and definitions used herein have the same meanings as set forth
10 in the Settlement Agreement.

11 2. The proposed settlement set forth in the Settlement Agreement is hereby
12 preliminarily approved as being within the range of reasonableness such that notice thereof should
13 be given to Plaintiff Settlement Class Members.

14 3. The contents of the class notice, which are attached to the Settlement Agreement as
15 **Exhibit 8**, are hereby approved as to form.

16 4. The proposed Plaintiff Settlement Class is hereby conditionally certified subject to
17 Final Approval of the Settlement Agreement.

18 5. The Parties are hereby authorized to issue the class notice as follows:

19 Within 30 days after Preliminary Approval, the Parties shall distribute notice of the proposed
20 Settlement Agreement advising the Plaintiff Settlement Class of the terms of the proposed Settlement
21 Agreement and their right to object to the proposed Settlement Agreement. This notice shall be
22 published as follows:

23 (a) Defendants shall pay for publication in newspapers of a notice of class
24 settlement. This notice will include: A brief statement of the claims released by the class; the date of
25 the hearing on the final approval of the class settlement; the deadline for submitting objections to the
26 settlement; the web page, address, and phone and fax numbers that may be used to obtain a copy of the
27 NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT (attached as **Exhibit 8** to
28 the Parties' Settlement Agreement) in the format and language requested. Publication in these

1 newspapers will be every other day for a period of thirty (30) days, no larger than one eighth page, in
2 the legal notice section of the following papers of general circulation: The Los Angeles Times, The San
3 Diego Union Tribune, The San Francisco Chronicle, The Sacramento Bee, The Riverside Press, and
4 The Oakland Tribune. The notice published in the newspapers will contain a statement in Spanish of
5 the web page, e-mail address, and phone numbers that may be used to obtain a copy of the NOTICE OF
6 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT in English, Spanish and alternative
7 accessible formats.

8 (b) Plaintiffs' Attorneys and Defendants' attorneys shall provide the NOTICE OF
9 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT in the manner, format and language
10 requested by any class member, advocacy group, government, or their counsel. Copies of the NOTICE
11 OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT shall be provided without charge
12 for copying or mailing.

13 (c) Defendants shall establish a web site where a copy of the NOTICE OF
14 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT will be available in English and
15 Spanish, and in a format that can be recognized and read by software commonly used by the individuals
16 with visual impairments to read web pages. Defendants shall post on the Caltrans website a link to the
17 web site where a copy of the NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
18 LAWSUIT will be available.

19 (d) A copy of the NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
20 LAWSUIT shall be mailed to the U.S. Attorney General, the U.S. Department of Justice, Civil Rights
21 Division, and the Attorney General for the State of California with a request to each office that they
22 consider publishing a description of the settlement in their newsletters and web pages.

23 (e) Plaintiffs' Attorneys shall post NOTICE OF PROPOSED SETTLEMENT OF
24 CLASS ACTION LAWSUIT on the website of Disability Rights Advocates and shall make good faith
25 efforts to distribute it through disability-related listservs and other internet postings.

26 (f) Counsel for the Parties shall send by first class mail the NOTICE OF
27 PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT to the last known address for each
28 member of the proposed Plaintiff Settlement Class whose declaration Counsel submitted in this action.

1 6. The Court finds that the forms of notice to Plaintiff Settlement Class Members
2 regarding the pendency of the Litigation and of this settlement, including the methods of
3 dissemination to the proposed Plaintiff Settlement Class Members in accordance with the terms of
4 this order, constitute the best notice practicable under the circumstances.

5 7. Any Plaintiff Settlement Class Member may enter an appearance in the Litigation
6 and/or may seek to intervene in the Litigation, individually or through the counsel of their choice at
7 his or her expense. Plaintiff Settlement Class Members who do not enter an appearance will be
8 represented by Class Counsel.

9 8. Objections by any Plaintiff Settlement Class Member to: (a) the proposed settlement
10 contained in the Settlement Agreement and described in the class notice; (b) the payment of fees
11 and reimbursement of expenses to Plaintiffs' Counsel up to the negotiated maximum amounts set
12 forth in the Settlement Agreement; and/or (c) entry of the Judgment shall be heard, and any papers
13 submitted in support of said objection shall be considered by the Court at the Fairness Hearing only
14 if, on or before March 30, 2010, such objector files with the Clerk of the United States District
15 Court for the Northern District of California: (1) a notice of his, her or its objection and a statement
16 of the basis for such objection; (2) if applicable, a statement of his, her or its intention to appear at
17 the Fairness Hearing. Copies of the foregoing must also be mailed or delivered to counsel for the
18 Parties identified in the class notice. In order to be considered for hearing, all objections must be
19 submitted to the Court and actually received by the counsel identified in the class notice on or
20 before March 30, 2010. A Plaintiff Settlement Class Member need not appear at the Settlement
21 Hearing in order for his, her or its objection to be considered.

22 9. No later than fourteen days before the Fairness Hearing, the Parties shall file all
23 papers in support of the Application for Final Approval of the Settlement and/or any papers in
24 response to any valid and timely objection with the Court, and shall serve copies of such papers
25 upon each other and upon any objector who has complied with the provisions of Paragraph 8 of this
26 Order.

27 10. A hearing (the "Fairness Hearing") shall be held by the Court on April 27, 2010 at
28 1:00 p.m., in United States District Court for the Northern District of California, 1301 Clay street,

1 Oakland, California 94612-5212, to consider and determine whether the proposed settlement of the
2 Litigation on the terms set forth in the Settlement Agreement should be approved as fair, just,
3 reasonable, adequate and in the best interests of the Plaintiff Settlement Class; whether Plaintiffs'
4 Counsels' attorneys' fees and reimbursement of expenses should be approved; and whether the
5 Order approving the settlement and dismissing the Litigation on the merits and with prejudice
6 against the Plaintiffs and all Settlement Plaintiff Class Members, subject to the Court retaining
7 jurisdiction to administer and enforce the Settlement Agreement, should be entered.

8 11. The Fairness Hearing may, from time to time and without further notice to the
9 Plaintiff Settlement Class Members (except those who have filed timely and valid objections or
10 entered an appearance), be continued or adjourned by order of the Court.

11 12. Reasonable costs incurred in identifying and notifying Plaintiff Settlement Class
12 Members shall be paid by Defendants. In the event that the Settlement Agreement is not approved
13 by the Court, or otherwise fails to become effective, neither the Plaintiffs nor any of Plaintiffs'
14 Counsel shall have any obligation to repay the amounts actually and properly disbursed to
15 accomplish such notice and administration.

16
17 **IT IS SO ORDERED.**

18
19 DATED: 1/25/10


HONORABLE SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

**ORDER GRANTING PLAINTIFFS'
APPLICATION FOR FINAL
APPROVAL OF PROPOSED
SETTLEMENT AGREEMENT AND
OVERRULING OBJECTIONS TO
SETTLEMENT AGREEMENT**

Signed 06/02/10

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 CALIFORNIANS FOR DISABILITY
7 RIGHTS, INC. (“CDR”), CALIFORNIA
8 COUNCIL OF THE BLIND (“CCB”), BEN
9 ROCKWELL, AND DMITRI BELSER, on
10 behalf of all others similarly situated,

11 Plaintiffs,

12 vs.

13 CALIFORNIA DEPARTMENT OF
14 TRANSPORTATION (“CALTRANS”) and
15 WILL KEMPTON, in his official capacity,

16 Defendants.
17

Case No: C 06-5125 SBA

**ORDER GRANTING PLAINTIFFS’
APPLICATION FOR FINAL
APPROVAL OF PROPOSED
SETTLEMENT AGREEMENT AND
OVERRULING OBJECTIONS TO
SETTLEMENT AGREEMENT**

18 This is a class action brought by Plaintiffs, Californians for Disability Rights (“CDR”),
19 California Council for the Blind (“Council for the Blind”), Ben Rockwell (“Rockwell”) and
20 Dmitri Belser (“Belser”), on behalf of a class of mobility and vision impaired individuals
21 against the California Department of Transportation and its director (collectively “Caltrans” or
22 “Defendants”). Plaintiffs allege that Caltrans has failed to remove barriers and ensure
23 accessibility at existing pedestrian facilities and Park and Ride facilities throughout California
24 in violation of Title II of the Americans with Disabilities Act (“ADA”) and section 504 of the
25 Rehabilitation Act of 1973.

26 Pursuant to Federal Rule of Civil Procedure 23(e)(2), this matter came before the Court
27 on April 27, 2010, for the fairness hearing for final approval of the parties’ settlement in the
28 above-captioned class action. Having reviewed the papers submitted and considered the
statements made at the hearing, the Court GRANTS Plaintiffs’ application for final approval of
the settlement and overrules all objections thereto.

1 **I. BACKGROUND**

2 On August 23, 2006, Plaintiffs filed the instant class action on behalf of persons with
3 mobility and/or vision impairments. The Complaint alleges that as a result of Caltrans' failure
4 to comply with federal disability laws, Plaintiffs and Class members have been denied access
5 to sidewalks, cross-walks, pedestrian underpasses and other public rights of way. Plaintiffs
6 seek injunctive relief only; no damages are sought.

7 On March 13, 2008, the Court certified the Class, pursuant to Federal Rule of Civil
8 Procedure 23(b)(2), as follows: "All persons with mobility and/or vision disabilities who are
9 allegedly being denied access under Title II of the Americans with Disabilities Act and the
10 Rehabilitation Act of 1973 due to barriers along sidewalks, cross-walks, pedestrian
11 underpasses, pedestrian overpasses and any other outdoor designated pedestrian walkways
12 throughout the state of California which are owned and/or maintained by the California
13 Department of Transportation." Californians for Disability Rights, Inc. v. California Dept. of
14 Transp., 249 F.R.D. 334, 351 (N.D. Cal. 2008).

15 A court trial in this action commenced on September 16, 2009. Within a few days of
16 the start of trial, Plaintiffs completed the direct testimony of their expert, Peter Margen, and
17 Defendants commenced their cross-examination. During the proceedings, however, the parties
18 proposed temporarily suspending the trial to enable them to engage in settlement discussions
19 before Magistrate Judge Elizabeth LaPorte. The Court agreed and recessed the proceedings.
20 Over the course of the next several months, the parties engaged in several settlement
21 conferences with Magistrate Judge LaPorte and ultimately reached a global settlement that
22 resolves all claims in this case, as well as those being litigated in a parallel state court action.¹
23 The parties then filed a Joint Motion for Preliminary Approval of Settlement, which the Court
24

25 ¹ The state court action is pending in Alameda County Superior Court, and is styled as
26 Californians for Disability Rights v. California Dept. of Transp., Case No. RG08376549
27 ("State Action"). The State Action is being held in abeyance pending final approval of the
28 settlement, after which it will be dismissed. The instant case is denoted in this Order as the
"Federal Action."

1 granted on January 25, 2010. (Docket 457.) The Preliminary Approval Order set the fairness
2 hearing for April 27, 2010, and ordered the parties to disseminate notice to the Class.

3 The salient features of the Settlement Agreement include, among other things: (1) a
4 funding commitment of \$1.1 billion over the next thirty years to eliminate barriers and improve
5 access for Class members; (2) a monitoring procedure, which will include the hiring of an
6 access consultant to oversee compliance for the first seven years, and mandatory annual
7 reporting by Caltrans for the next thirty years; (3) a grievance procedure for public complaints
8 relating to access issues and Caltrans responses thereto; and (4) payment of attorneys' fees (a
9 minimum of \$3.75 million to a maximum of \$8.75 million) for past work and future
10 compliance services. (Docket 454).

11 Several objections to the proposed settlement have been filed. On March 31, 2010, after
12 the expiration of the objection period, attorney Patricia Barbosa of Barbosa Group filed an
13 objection on behalf of thirty-four CDR and Class members ("Barbosa Objectors"), alleging that
14 the settlement was not approved consistent with CDR's by-laws; that the thirty-year
15 compliance period is too long; that Caltrans should increase the amount of the settlement fund;
16 and that the monitoring provisions are insufficient. (Docket 473.) In addition, the Court
17 received three individually-submitted objections. Specifically, Marilyn Pike and Arnie T.
18 Pike filed separate letter objections on February 1, 2010, and Branlett Kimmons filed a letter
19 objection on April 16, 2010.²

20 **II. LEGAL STANDARD**

21 The Court may finally approve of a class settlement "only after a hearing and on finding
22 that it is fair, reasonable, and adequate." Fed.R.Civ.P. 23(e)(2); Officers for Justice v. Civil
23 Serv. Comm'n of the City and County of San Francisco, 688 F.2d 615, 625 (9th Cir. 1982).
24 The primary concern of Rule 23(e) is "the protection of those class members, including the
25 named plaintiffs, whose rights may not have been given due regard by the negotiating parties."

26 _____
27 ² Plaintiffs' brief in response to the objections filed also makes reference to a letter,
28 dated January 27, 2010, from California Walks, a public advocacy group. This letter was not
filed and therefore is not properly before the Court. However, the Court has obtained a copy of
the letter from Class counsel and reviewed its contents.

1 Officers for Justice, 688 F.2d at 624. Factors that the Court may in deciding whether or not to
2 approve the settlement include:

3 the strength of the plaintiffs' case; the risk, expense, complexity,
4 and likely duration of further litigation; the risk of maintaining
5 class action status throughout the trial; the amount offered in
6 settlement; the extent of discovery completed and the stage of the
7 proceedings; the experience and views of counsel; the presence of
8 a governmental participant; and the reaction of the class members
9 to the proposed settlement.

7 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998); accord Molski v. Gleich, 318
8 F.3d 937, 953 (9th Cir. 2003).

9 The district court's role at a fairness hearing is limited. The Court may approve or
10 reject the settlement. Hanlon, 150 F.3d at 1026. The district court does not have the authority
11 to "delete, modify or substitute certain provisions." Id. (internal quotations omitted). "The
12 proposed settlement is not to be judged against a hypothetical or speculative measure of what
13 might have been achieved by the negotiators." Officers for Justice, 688 F.2d at 625. Rather,
14 "the court's intrusion upon what is otherwise a private consensual agreement negotiated
15 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned
16 judgment that the agreement is not the product of fraud or overreaching by, or collusion
17 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
18 and adequate to all concerned." Id. To that end, the Court should consider whether there are
19 any objections to the proposed settlement and, if so, the nature of those objections. In re
20 General Motors Corp., 594 F.2d 1106. If objections are filed, the district court is to evaluate
21 whether they suggest serious reasons why the settlement proposal might be unfair. Bennett v.
22 Behring Corp., 737 F.2d 982 (11th Cir. 1984).

23 **III. DISCUSSION**

24 **A. APPROVAL OF THE SETTLEMENT**

25 The record supports the conclusion that that the proposed settlement is fair, reasonable
26 and adequate. First, the burdens, expenses and risks associated with further litigation in this
27 action are tremendous. This case involves numerous, complex and novel issues of law, and
28 seeks statewide relief on an unprecedented scale. The complexity of the case is exemplified by

1 the extensive motion practice, which, in many instances delved into uncharted legal territory.
2 Though Plaintiffs prevailed on *some* of those rulings, Caltrans undoubtedly would have
3 appealed them in the event of an adverse judgment. The risk of proceeding further also is
4 underscored by questions regarding the strength of Plaintiffs' case. Though Plaintiffs certainly
5 were able to present evidence to support their claim that Caltrans' facilities are not entirely
6 compliant with disability laws, Caltrans had viable grounds for mounting an undue burden
7 defense. Thus, by resolving this *and* the state court action, Plaintiffs are able to avoid
8 protracted litigation and appeals and ensure the provision of immediate and tangible benefits to
9 the Class that might never have been realized absent a settlement.

10 The Court further finds that the settlement is the product of good faith negotiations at
11 arm's length, and is not the product of fraud or collusion. See *Officers for Justice*, 688 F.2d at
12 625. By the time of the settlement, the parties were well informed regarding the available
13 evidence both in support of and in opposition to their respective positions. Not only had the
14 parties, who were represented by well-qualified counsel,³ conducted extensive fact and expert
15 discovery, the parties had the benefit of having participated in several days of trial
16 proceedings—thus affording them a unique and fully informed opportunity to objectively
17 assess the case. In addition, the settlement was the direct result of multiple arms-length court-
18 supervised settlement conferences before Magistrate Judge LaPorte, whose persistence no
19 doubt was instrumental in facilitating the resolution.

20 In sum, the relevant considerations militate in favor of approving the settlement.
21 Plaintiffs balanced concerns such as the risks inherent in further litigation and the State's fiscal
22 constraints against maximizing the benefit to the Class. The settlement affords significant and
23 immediate relief that may never have materialized had the trial concluded. Moreover, the
24

25 _____
26 ³ The experience of counsel representing Plaintiffs and Defendants also favors final
27 approval of the proposed settlement. See *Hanlon*, 150 F.3d at 1026. The Class has been
28 represented by Disability Rights Advocates ("DRA"), which has extensive experience litigation
ADA class action claims. Likewise, Defendants were represented by Green Taurig, a reputable
private firm. The experience of the parties' counsel further supports the conclusion that the
negotiated settlement is fair, adequate and reasonable.

1 settlement guarantees increased funding for removal of access barriers and avoids years of
2 delay attributable to the ensuing appeals in the absence of a settlement.

3 **B. CERTIFICATION OF THE SETTLEMENT CLASS**

4 Plaintiffs seek final certification of the Plaintiff Settlement Class, which is defined as:
5 “all persons with Mobility and/or Vision Disabilities who currently or in the future will use or
6 attempt to use any Pedestrian Facility or Park and Ride Facility under Caltrans’ Jurisdiction.”
7 (Settlement § 1.38.) The certification of a class is governed by Federal Rule of Civil Procedure
8 23. In order to be certified, (1) the class must be sufficiently numerous that joinder of all the
9 members is impracticable, (2) there must be questions of law or fact common to the class,
10 (3) the claims or defenses of the representative must be typical of those of the class, and (4) the
11 representative must be able to fairly and adequately protect the class’ interests. Fed. R. Civ. P.
12 23(a).

13 Because this Court has already certified the class as to the federal claims, the inquiry at
14 this juncture is limited to the question of whether the addition of the state law claims provides
15 any basis for changing the Court’s prior determinations regarding the propriety of class
16 certification. It does not.⁴ The claims in the state case allege that the Caltrans is obligated to
17 “develop and implement a transition plan which sets milestones and benchmarks for fixing the
18 existing barriers.” Californians for Disability Rights, Inc. v. California Dept. of Transp., 249
19 F.R.D. 334, 343 (N.D. Cal. 2008). The “program access” claim concerns pre-1993 facilities
20 and whether there is any obligation to render them accessible under the ADA. The other two
21 state claims are premised upon California Civil Code § 54 (Unruh Civil Rights Act),
22 Government Code § 4450 (ensuring accessibility of sidewalks, etc., to the disabled), and
23 Government Code § 11135 (prohibiting disability discrimination). These state claims seek the
24 same relief as the federal claims, though in some instances are based on more stringent
25 California regulations. (Mot. for Prelim. Approval (“Mot.”) at 10.)

26
27 _____
28 ⁴ No party or objector has raised any concern regarding certification of the Settlement
Class.

1 The inclusion of the state law claims does not alter the Court’s analysis of the
2 numerosity, commonality, typicality, and adequacy of representation components of class
3 certification under Rule 23. The state statutes essentially are the state counterparts to the ADA
4 and Rehabilitation Act. As they did in seeking federal class certification, Plaintiffs proffered
5 the declarations of thirty-one class members in support of their motion for class certification of
6 the state law claims. (Mot. at 11.) As in the instant case, the fundamental premise of the
7 motion for class certification is that Defendants have acted or refused to act on grounds that
8 affect class members similarly, i.e., they are denied access. In short, the same rationale for
9 certifying the federal claims exists for certifying the state claims. Therefore, the Court certifies
10 the Plaintiff Settlement Class as set forth in Section 1.38 of the Settlement Agreement.

11 C. OBJECTIONS

12 1. Barbosa Objectors

13 a) *Authority to Enter Into Settlement*

14 Three of the Barbosa Objectors, Susan Barnhill (“Barnhill”), Terrelle Terry (“Terry”) and
15 Linda Hinchey (“Hinchey”), are affiliated with CDR. They allege that CDR President
16 Laura Williams negotiated and agreed to the settlement without obtaining the approval of the
17 Executive Committee, ostensibly in violation of CDR’s by laws. They further claim that “they
18 were never provided with any information regarding the negotiations of the settlement class”
19 and were not allowed to participate in any settlement negotiations before Williams agreed to
20 the proposed settlement. (Barbosa Objections at 3.) Barbosa Objectors request that the Court
21 reject the settlement and require the parties to return to the bargaining table. (Id.)

22 Despite Barbosa Objectors suggestions to the contrary, CDR’s by-laws are silent with
23 regard to the organization’s management and disposition of litigation. (Williams Decl. ¶ 11;
24 Terry Decl. ¶ 10, Ex. 1.) In practice, authority over litigation and related decisions is vested in
25 CDR’s Litigation Committee of which Williams is the chair. (Williams Decl. ¶ 12.)⁵ Though
26 the Litigation Committee generally obtains approval from the Executive Committee before

27 _____
28 ⁵ During the course of the litigation, Williams invited two objectors, Richard Skaff (“Skaff”) and Hollyn D’Lil (“D’Lil”) to join the committee, but they declined to do so. (Id.)

1 commencing litigation, it does not obtain their approval to settle matters. (Id.) In this
2 instance, Williams first learned on March 23, 2010, that a few CDR members were objecting to
3 the settlement, even though the settlement had been public since December 2009. (Id.) Out of
4 an abundance of caution, Williams submitted the settlement to the Executive Committee,
5 which approved the settlement and Williams' actions on behalf of CDR, by a majority vote.
6 (Id. ¶ 37.) Notably, only 8 of 544 CDR members have objected to the settlement. (Id.) Thus,
7 the Court rejects the Barbosa Objectors' assertions that Williams was not authorized to approve
8 the settlement.

9 The above notwithstanding, whether Williams acted beyond her authority is inapposite
10 to the question before the Court; to wit, whether the settlement is fair, reasonable and adequate.
11 As set forth above, the settlement was reached through Court-supervised, arms-length
12 negotiations which ultimately yielded a beneficial outcome for the Class that they might not
13 have otherwise received had the case proceeded to verdict. Moreover, Barbosa Objectors
14 ignore that there are other Plaintiffs (Ben Rockwell, Dmitri Belser and California Council for
15 the Blind), who independently approved the settlement. Thus, irrespective of CDR, the Court
16 may properly consider the fairness of the settlement based on Rockwell and Belser's request
17 that the Court do so.

18 ***b) "Censorship" of Dissenting Members***

19 Next, Barbosa Objectors D'Lil and Skaff claim that Williams prevented them from
20 posting comments regarding the settlement on the CDR list-serv (i.e., an electronic bulletin
21 board) regarding their objections to the settlement. (Barbosa Objections at 6.) Without citation
22 to any legal authority, these objectors assert that William's censorship should invalidate the
23 Executive Board's after-the-fact ratification of the settlement.

24 Williams acknowledges that she prevented the postings at issue as a matter of internal
25 CDR policy, as she believed that they would be inconsistent with CDR's good faith acceptance
26 of the settlement. (Williams Decl. ¶ 32.) Nonetheless, as CDR correctly points out, whether or
27 not these two CDR members' postings were allowed is a matter of internal CDR policy and is
28 irrelevant to the issue of whether the settlement should be approved by the Court. In addition,

1 as set forth above, the Court has the authority to approve the settlement, even without CDR's
2 approval.

3 *c) Fairness to the Class*

4 **i. Thirty-Year Compliance Period**

5 Barbosa Objectors complain that the thirty-year compliance period is too long, and that
6 some of the Class Members may not live to see the improvements. (Barbosa Objections at 7.)⁶
7 Such concerns, while perhaps understandable, ignore the real world financial constraints that
8 undeniably exist. More importantly, this objection must be placed in context with the overall
9 agreement and immediate benefits that will be conferred. See Hanlon, 150 F.3d at 1026 (“It is
10 the settlement taken as a whole, rather than the individual component parts, that must be
11 examined for overall fairness.”). First, the settlement *guarantees* an immediate, annual \$25
12 million level of funding for barrier removal, which is a significant increase from the existing \$1
13 million allocation. (Rockwell Decl. ¶ 13.) Second, the settlement will result in access
14 upgrades beginning almost immediately in July 2010. Finally, a shorter compliance period will
15 not result in the elimination of access barriers more quickly unless there is a corresponding
16 increase in funding, which is not available.

17 While purporting to recognize Caltrans' financial constraints, Barbosa Objectors argue
18 that “[t]he Agreement should allow for modifications due to the changing economy.” (Barbosa
19 Objections at 7.) However, it is not within the purview of the Court to second guess the details
20 of the settlement. See Officers for Justice, 688 F.2d at 625. Moreover, Barbosa Objectors
21 ignore that if the settlement is not approved, there will be no obligation imposed on Caltrans to
22 increase its funding for barrier removal, curb ramp upgrades or any other access improvements.
23 Perhaps more fundamentally, such a modification cuts both ways. If Caltrans' budget
24 continues to decline, a provision that allows funding to be adjusted due to economic changes
25 would actually result in *less* funds for access improvements. While perhaps a shorter
26

27 ⁶ At the same time, they offer varying views as to how long the compliance period
28 should be; some want 15 years, while others want 10 years. (D'Lil Decl. ¶ 7; Skaff Decl. ¶ 7;
Chandler Decl. ¶ 9; Hinchey Decl. ¶ 6.)

1 compliance period would be preferable in a vacuum, the length of the compliance period as set
2 forth in the settlement does not detract from its overall fairness, adequacy and reasonableness.

3 **ii. Seven-Year Monitoring Period**

4 Next, Barbosa Objectors contend that the Agreement only provides funding for
5 compliance monitoring for the first seven years of the compliance period, and that there is no
6 assurance that proper monitoring will continue for the subsequent twenty-three years. (Barbosa
7 Objections at 8.) This argument, however, glosses over the monitoring provisions of the
8 Agreement. (Settlement Agt. ¶ 2.) For the first seven years of the compliance period, the
9 settlement calls for funding to hire an access consultant with specialized knowledge and
10 training to ensure Caltrans' compliance with state and federal accessibility requirements. The
11 access consultant will ensure that Caltrans establishes an institutional framework (including
12 staffing, prioritization planning, etc.) in order to comply with the agreement. The seven-year
13 period was selected based on Class counsel's experiences in other class settlements; namely,
14 that the first several years following a settlement is the most critical time period because that is
15 when the majority of implementation issues are likely to arise. (Paradis Decl. ¶ 27.) In
16 counsel's opinion, which is based on their extensive experience in such matters, a seven-year
17 period for the access consultant is sufficient in this case. (Id.)

18 Compliance with the settlement agreement will also be monitored through detailed,
19 annual reports which Caltrans must submit to Class counsel for each of the next thirty years.
20 (Settlement Agt. Ex. 2.) Among other things, the report will include:

- 21 • a summary of barrier removal projects completed the preceding
22 year, including projects requested by the public;
- 23 • a detailed summary of the funding allocation for that year;
- 24 • a summary of pedestrian facilities and/or Park and Ride facilities
25 newly constructed that year;
- 26 • a summary of training and monitoring efforts;
- 27 • any revisions made to Design Information Bulletin (DIB) 82,
28 which sets forth accessibility guidelines for California pedestrian
facilities;

- 1 • the identification of barrier removal projects and requisite funding
2 for the following year; and
- 3 • a summary of grievance and a status report on the Caltrans’
4 resolution of those grievances.

5 In short, there will be ample oversight of Caltrans’ compliance with the Agreement both during
6 and after the time period that the access consultant is retained.

7 Barbosa Objectors question DRA’s ability to monitor compliance without the access
8 consultant, and propose that the Court (1) specify the amount of funds DRA must spend on
9 monitoring and (2) establish a procedure through which class members can be assured of
10 DRA’s compliance with its monitoring obligations. (Barbosa Objections at 8.) Tellingly,
11 Barbosa Objectors fail to provide any authority or evidentiary support for the proposition that
12 the Court can and/or should require that the compliance monitor itself be monitored. Indeed,
13 such a system would be duplicative and unwieldy, and would inevitably lead to infighting over
14 how this second level of monitoring should be implemented.

15 Equally unpersuasive is the Barbosa Objectors’ claim that \$75,000 per year for an
16 access consultant is “inadequate” to ensure compliance. (Barbosa Objections at 8.) No proof
17 is offered in support of this speculative assertion. In addition, as discussed above, the Court is
18 persuaded that seven years is sufficient time for the access consultant to identify any serious
19 violations of the Agreement. In that event, Plaintiffs may order the appointment of a special
20 master to increase or extend the monitoring of Caltrans’ compliance. (Paradis Decl. ¶¶ 29, 32.)

21 **iii. Opt-Out**

22 Next, Barbosa Objectors complain that there is no opt-out provision for Class members
23 who disagree with the terms of the agreement. (Barbosa Objections at 9.) However, the Class
24 was certified under Rule 23(b)(2), which is applicable where “the party opposing the class has
25 acted or refused to act on grounds that apply generally to the class, so that final injunctive relief
26 or corresponding declaratory relief is appropriate respecting the class as a whole.”
27 Fed.R.Civ.P. 23(b)(2). Opting out generally is not permitted in Rule 23(b)(2) class actions.
28 Molski, 318 F.3d at 947 (“members of a Rule 23(b)(2) class do not have the right to opt-out.”).
Opt-out provisions usually are applicable where damages are sought. Id. at 948. Here,

1 Plaintiffs seek injunctive relief only; no damages are being sought. As such, the lack of an opt-
2 out provision is of no consequence.⁷

3 **d) Adequacy of Funding**

4 Finally, Barbosa Objectors criticize the \$1.1 billion settlement as amounting to less than
5 1% of Caltrans overall budget and argue that there is no assurance that \$1.1 billion is sufficient
6 to rectify all of the access barriers. (Barbosa Objections at 10.) This argument erroneously
7 assumes that the entirety of Caltrans budget is available to fund access improvements. The
8 vast majority of the Caltrans budget is allocated to operations, maintenance and local assistance
9 projects that cannot be applied to barrier removal. (Paradis Decl. ¶ 9.) According to
10 Defendants' expert, the only budget specifically available to fund access projects is the SHOPP
11 (State Highway Operation and Protection Program), which amounts to only \$1.5 billion of the
12 total Caltrans budget of \$13 billion. (*Id.*) In addition, SHOPP funds are not dedicated to
13 barrier removal, but are used to rehabilitate and maintain 50,000 miles of highway and 12,559
14 bridges. (*Id.* ¶ 11.) SHOPP is already underfunded and its budget is shrinking. (*Id.* ¶ 13.)
15 Thus, Barbosa Objectors' claim that the settlement fund should be a greater percentage of
16 Caltrans' overall budget is inaccurate and ignores the evidence, the reality of the state's
17 financial constraints and the myriad of issues that the parties were required to balance in
18 reaching this agreement.

19 As an ancillary matter, Barbosa Objectors assert that the settlement does not take into
20 account that future Caltrans budgets may increase, as shown by the budget increase in the
21 2008/2009 fiscal year. Again, this contention ignores the converse; namely, that future budgets
22 could dwindle. Indeed, given the State's budget crisis, Caltrans budget for the 2009/2010 year
23 is \$1.3 billion less than the prior year. (*Id.*) The settlement takes into account the risk of
24 shrinking financial resources and guarantees a minimum level of funding will be allocated to
25 access improvements. No such guarantees presently exist. The Court finds that the Barbosa

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27 ⁷ Some of the objectors complain that Plaintiffs should have sought damages. The
28 settlement does not bar individual damage claims. In addition, it has been public knowledge
since 2006 that Plaintiffs were seeking only injunctive relief. Thus, any complaints that
Plaintiffs should have sought damages are untimely.

1 Objectors' concerns regarding the adequacy of the amount allocated to barrier removal to be
2 unpersuasive.

3 2. California Walks

4 This letter is, ostensibly, from an advocacy group that promotes walking. The letter,
5 dated January 27, 2010, is addressed to the Court, but was never filed. California Walks does
6 not object to the settlement. Rather, they request that the settlement include a provision to
7 allocate some of the barrier removal funds to construct "sidewalk gap closures," i.e., to
8 construct new sidewalks to fill in the gap where there are two existing walkways that do not
9 connect.

10 California Walks' letter was not filed and is not properly before the Court. But even if
11 it were, the Court finds that the concerns expressed therein do not undermine the fairness,
12 adequacy and reasonableness of the settlement. As an initial matter, California Walks does not
13 profess to represent any class members and thus lacks standing to object. See Tarlecki v. bebe
14 Stores, Inc., 2009 WL 3720872 at *1 n.1 (N.D. Cal. Nov. 3, 2009) (Patel, J.). In addition, they
15 fail to cite to any federal or state provision imposing a legal obligation to close sidewalk gaps.
16 (Paradis Decl. ¶ 40.) To the extent that any gaps pose accessibility issues for Class members,
17 they will be rectified under the terms of the settlement. (Settlement Agreement, Ex. 3 ¶ 2.)

18 3. Arnie & Marilyn Pike

19 The Pikes submitted separate letters to the Court on February 1, 2010, wherein they
20 complain that the thirty-year compliance period is too long. These objections are identical to
21 those presented by the Barbosa Objectors, and thus, for the same reasons, are overruled.

22 4. Walter Park

23 The Court's preliminary approval order expressly alerted the public that to be
24 considered, objections were to be submitted to the Court and Class counsel by no later than
25 March 30, 2010. (Docket 457 ¶ 8.) Park's objection, filed on March 31, 2001, is untimely and
26 need not be considered.

27 Even if considered on the merits, Park's objections are without merit. First, he argues
28 that a 30-year compliance period is too long. This argument fails for the reasons stated above.

1 Second, Park contends that Caltrans' information regarding its expenditures are
2 "murky." Again, as set forth above, Plaintiffs and their counsel considered the actual amount
3 of monies available to fund access improvements. Park has presented no evidence to the
4 contrary.

5 Third, Park claims that future budget projections are "biased" because they are based on
6 the current fiscal crisis. Aside from being unsupported, this assertion fails to take into account
7 the inherent instability of the budget, and the fact that the settlement is intended to account for
8 that uncertainty.

9 Fourth, Park alleges that the settlement does not require a written transition plan.
10 However, both the Ninth Circuit and this Court have concluded that there is no private right of
11 action to compel a public entity to adopt a transition plan. See Lonberg v. City of Riverside,
12 571 F.3d 846, 852 (9th Cir. 2009) ("a public entity may be fully compliant with [Section II of
13 the ADA] without ever having drafted a transition plan, in which case, a lawsuit forcing the
14 public entity to draft such a plan would afford the plaintiff no meaningful remedy."); Docket
15 207 at 12.

16 Finally, Park claims that the grievance procedure "is not well formed." However,
17 Park's quibbling with navigation features and links on the State's website does not undermine
18 the overall fairness, adequacy and reasonableness of the settlement.

19 5. Branlett Kimmons

20 Kimmons' objection was filed on April 16, 2010, and therefore, is untimely. That aside,
21 his objection merely states that he "objects" to all aspects of the settlement without any
22 explanation. He also does not appear to be a Class member, and therefore, has no standing to
23 object. For these reasons, Kimmons' objections, whatever they may be, are overruled.

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1 **IV. CONCLUSION**

2 For the reasons stated above,

3 IT IS HEREBY ORDERED THAT:

4 1. The Court, for purposes of this Judgment of Dismissal, Final Order and Decree
5 incorporates by reference the Court's order approving the Settlement Agreement (Docket No.
6 457).

7 2. The Court, for purposes of this Order, adopts the terms and definitions set forth
8 in the Settlement Agreement re: Class Action Settlement ("Settlement Agreement").

9 3. This Court has jurisdiction over the subject matter of this Litigation and over all
10 parties to the litigation and the Plaintiff Settlement Class Members.

11 4. Defendants consent to the federal court exercising supplemental jurisdiction over
12 Plaintiffs' state law claims for purposes of the Settlement Agreement.

13 5. The Court hereby dismisses this action, with prejudice and without costs, subject
14 to Paragraphs 6 and 7 below. The terms of the Settlement Agreement are hereby incorporated
15 into this Order.

16 6. Without affecting the finality of this Order in any way, the Court hereby retains
17 jurisdiction to resolve any dispute regarding compliance with the Settlement Agreement that
18 cannot be resolved through the meet and confer process set forth therein. Any disputes
19 regarding the Settlement Agreement shall be referred to Magistrate Judge Elizabeth LaPorte for
20 Report and Recommendation.

21 7. Per the parties' agreement, the attorney fee award for past work and future
22 compliance services will be no less than \$3.75 million and no more than \$8.75 million, and
23 costs are not to exceed \$391,477. Plaintiffs' application for an award of attorneys' fees and
24 expenses has been submitted to the Court and referred to Magistrate Judge Maria Elena James
25 for determination, subject to review by this Court upon timely request by either party.

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8. The Clerk shall terminate any pending docket matters and close the file.

IT IS SO ORDERED.

Dated: June 2, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge