



U.S. Department of Justice
Civil Rights Division
Disability Rights Section



U.S. Department of Transportation
Federal Highway Administration

ADA Requirements when Roads are Resurfaced

March 01, 2016

Agenda

- Welcome – Candace Groudine
- Introductory Remarks – Nichole McWhorter
- Legal Framework – Jim Esselman
- Overview of Joint Technical Assistance – Patrick Gomez
- Highlights of Q&As – Elizabeth Hilton
- Assisting with questions - Brooke Struve

Background

- DOJ and DOT issued joint technical assistance in June 2013
- FHWA held webinars on Aug. 20 and 21, 2013 that provided an overview of the joint technical assistance and how it was developed
- FHWA staff can access the recorded webinar at <https://connectdot.connectsolutions.com/p2lzou6bt16/>

Joint DOJ/DOT Authority to Enforce Title II of the ADA

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

DOJ Regulations: Alterations

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

So Which Treatments are Alterations?

- Early DOJ guidance based on court decisions stated:
 - Paving, repaving, or resurfacing were generally considered alterations
 - Filling a pothole was not considered to be an alteration
- Early DOJ guidance did not provide more specific examples of maintenance activities
- Interpretations varied, introducing agency risk

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

Alterations vs. Maintenance

- DOJ and DOT (FHWA) met in 2012 to 2013
 - Desire to provide clarity and consistency
 - Based on feedback (comments/questions) from States, local governments, disability rights advocates, citizens

Joint TA distinguishes alterations from maintenance based on the type of road treatment

MAINTENANCE

Chip Seals

Crack Filling and Sealing

Diamond Grinding

Dowel Bar Retrofit

Fog Seals

Joint Crack Seals

Joint repairs

Pavement Patching

Scrub Sealing

Slurry Seals

Spot High-Friction Treatments

Surface Sealing

ALTERATION

Addition of New Layer of Asphalt

Cape Seals

Hot In-Place Recycling

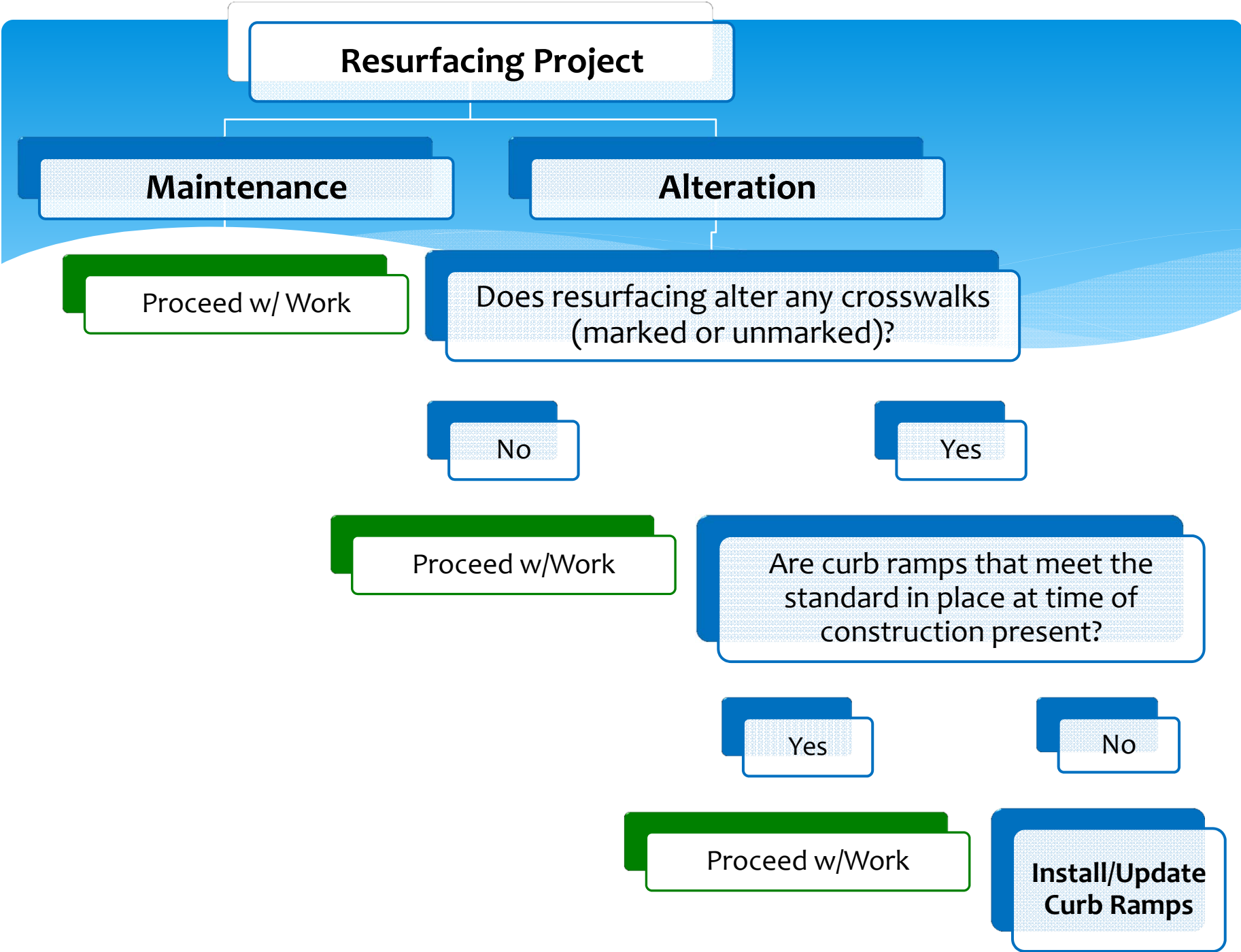
Microsurfacing / Thin-Lift Overlay

Mill & Fill / Mill & Overlay

New Construction

Open-graded Surface Course

Rehabilitation and Reconstruction



Resurfacing Project

Maintenance

Alteration

Proceed w/ Work

Does resurfacing alter any crosswalks (marked or unmarked)?

No

Yes

Proceed w/Work

Are curb ramps that meet the standard in place at time of construction present?

Yes

No

Proceed w/Work

Install/Update Curb Ramps

Application of Technical Assistance

- This is a single Federal policy that identifies specific pavement treatments that are alterations:
 - Alterations require the installation of curb ramps at the time of the resurfacing improvement
 - Maintenance applications do not require curb ramps **at the time of the improvement**
- Consistent approach among States
- Refer to the companion Glossary of Terms, on the web
- Update Pavement Preservation/Resurfacing Programs
- Update any existing resurfacing ADA policies

Qs & As on Resurfacing TA released in December 2015

- Responds to frequently asked questions
- Applicable requirements of Section 504 of the Rehabilitation Act of 1973 that apply to public entities receiving Federal funding from DOT, either directly or indirectly, are also discussed.
- Not a standalone document and should be read in conjunction with the 2013 Joint Technical Assistance.
- Was coordinated with DOJ
- <https://www.fhwa.dot.gov/civilrights/programs/ada.cfm>

Q&A Highlights

Q1: *Do existing curb ramps have to be upgraded to meet current standards when the roadway is altered?*

A: It depends on whether the existing curb ramp meets the appropriate accessibility standard that was in place at the time it was newly constructed or last altered.

Q&A Highlights, cont'd.

Q2: *Is a “mill and fill” project that results in a final pavement that is the same thickness as the original pavement considered an Alteration?*

A: Mill and fill projects are considered Alterations because they are a change to the road surface that affects or could affect the usability of the pedestrian route (crosswalk). Affected crosswalks must be made accessible.

Q&A Highlights, cont'd.

Q3: *If a roadway resurfacing alteration project does not span the full width of the road, do I have to put in curb ramps?*

A: It depends on whether the resurfacing work affects a pedestrian crosswalk. If the resurfacing affects the crosswalk, then curb ramps must be provided at both ends of the crosswalk.

Q&A Highlights, cont'd.

Q4: *What if the public entity doesn't own the right-of-way needed to install the required curb ramps?*

A: Plan ahead when scoping the project! If the public entity does not control sufficient right-of-way, it should seek to acquire the necessary right-of-way.

Q&A Highlights, cont'd.

Q11: *When will utility trench work require compliance with ADA curb ramp requirements?*

A: Repaving to cover utility trench work limited to a portion of the pavement, even including a portion of the crosswalk, is typically be considered maintenance and would not require simultaneous installation or upgrading of curb ramps. Repaving must not reduce accessibility.

Q&A Highlights, cont'd.

Q13: *Are there any additional requirements for entities that receive Federal financial assistance from DOT?*

A: Yes, DOT's Section 504 requirements apply even if the road alteration project at issue does not use Federal funds.

Q&A Highlights, cont'd.

Q15: Other than road resurfacing, are there other requirements that trigger the obligation to provide curb ramps?

A: Yes. Curb ramps must be provided:

- * at newly constructed or altered roads or sidewalks to eliminate barriers between the two;
- * as a means of providing program accessibility; and
- * as a reasonable modification under title II or a reasonable accommodation under Section 504.

Discussion

Go to

<https://www.fhwa.dot.gov/civilrights/programs/ada.cfm>

to find the following documents:

- 2013 Joint Technical Assistance
- Glossary of Terms
- Questions/Answers