

## HERE WE GO AGAIN

### AMERICANS WITH DISABILITIES ACT CONSENT DECREE

#### SUMMARY

In 2008 Humboldt County (County) entered into a settlement agreement with the U.S. Department of Justice (DOJ). The agreement required the County to bring specified County facilities, programs, and services into compliance with Title II of the Americans with Disabilities Act (ADA) within three years. This settlement agreement followed a DOJ finding that numerous County facilities were noncompliant with the ADA:

[O]ver 50 facilities owned by the County or housing County programs, services and activities contain architectural barriers rendering the programs, services and activities provided at these facilities inaccessible to and unusable by individuals with disabilities in violation of the ADA.

When the County failed to meet the terms of the 2008 settlement agreement within the three years specified, the DOJ filed a complaint in the U.S. District Court in San Francisco. This complaint resulted in an agreement (Consent Decree) entered on September 7, 2016. The Consent Decree requires the County to remediate over 50 barriers for people with disabilities, including facilities and curb ramps. A curb ramp is the tapered portion of a sidewalk at an intersection that allows wheelchairs, baby strollers, and pedestrians with walkers or canes to move onto or off a sidewalk with less difficulty.

To date, the County has failed to meet a number of deadlines in the Consent Decree. As the County approaches the specified completion dates for the remaining facilities and curb ramps, it seems unlikely that all of these projects will be completed on time. Many of these projects are still out for bid. In public meetings, staff for the County Administrative Officer (CAO) updated the Board of Supervisors of the completed facilities. However, the CAO's staff failed to mention the required dates that were missed and the future required dates that are likely to be missed.

#### BACKGROUND

According to the U.S. Census Bureau, as of July 1, 2018, the population of Humboldt County was 136,373. That includes 12.8% or 17,494 who have disabilities. Based on Title II of the ADA,

[N]o qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The DOJ first reviewed the County's compliance with Title II of the ADA in 2005. County facilities were divided into two categories: (1) new construction and alterations of county-owned

facilities and (2) existing facilities and facilities leased by the county. In the first category, the DOJ reviewed 11 facilities and identified over 200 ADA violations. In the second category, the DOJ reviewed over 40 facilities and identified over 900 ADA violations.

The DOJ alleged in 2008 over 51 facilities owned or leased by the County did not meet the requirements of Title II of the ADA. The County entered into the Project Civic Access (PCA) settlement agreement with the DOJ on July 23, 2008. In this PCA settlement agreement, the County committed to taking remedial action to bring the identified County facilities, programs, and services into compliance with the ADA. The County agreed to complete the work within three years.

In 2016, the DOJ filed another complaint with the U.S. District Court after determining the County had failed to take the required remedial actions in the PCA agreement. This new DOJ complaint stated “[i]n the eleven years since the ADA violations were specifically identified to the County, including and following the three-year term of the settlement agreement, Humboldt County has failed to take remedial actions required for it to comply with the ADA.” The DOJ requested the Court:

Grant judgment in favor of the United States on its Complaint and declare that Humboldt County has violated Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.

Enjoin Humboldt County from failing to comply with the ADA.

Order Humboldt County to train employees on the requirements of the ADA and appropriate ways of serving people with disabilities, and to submit to monitoring by the United States, including by submitting written reports to the United States summarizing the actions taken by Humboldt County to comply with the ADA.

Award compensatory damages to aggrieved persons in an appropriate amount for injuries suffered as the result of Humboldt County’s failure to comply with the requirements of Title II of the ADA.

The litigation was resolved by the establishment of the Consent Decree detailing the various barriers to ADA compliance and specifying the completion dates.

The Consent Decree further states the County continues to have access barriers that violate the ADA, preventing individuals with disabilities from fully participating in County programs, services, and activities.

The Consent Decree was entered on September 13, 2016. The press release by the DOJ stated in part:

The United States has over 220 agreements with localities across the country under PCA, the department’s wide-ranging initiative to ensure that cities, towns, and counties throughout the nation comply with the ADA. *Humboldt County is one of the rare public*

*entities that did not take the remedial actions required by a PCA agreement to comply with the ADA.* [emphasis added]

The *Eureka Times-Standard* reported “[c]ounty officials cited the economic downturn during the Great Recession [2008] as being a major factor in being unable to fund the ADA upgrades and projects.”

As a result of the County’s failure to comply with the 2008 PCA agreement, the Humboldt County Civil Grand Jury (Grand Jury) decided to evaluate the County’s compliance to date with the Consent Decree.

The Consent Decree contains requirements in 16 major areas; the Grand Jury decided to focus on two: facilities and curb ramps. The Grand Jury selected these two areas because they constitute a large portion of the required ADA remediation work and costs. Further, facilities were the DOJ’s primary concerns in the 2008 PCA agreement. The focus on facilities and curb ramps enabled the Grand Jury to investigate remediation efforts in greater depth. In both of these areas, there are specific tasks to be accomplished and specified completion dates. The Grand Jury assessed whether the remediations were completed on time.

## **METHODOLOGY**

- Researched court documents
- Reviewed press releases from the Department of Justice
- Reviewed the Department of Justice website
- Reviewed local newspaper articles
- Reviewed Board of Supervisors agenda packets and video recordings of the meetings
- Reviewed documents from County consultants
- Interviewed elected County officials and County staff

## **DISCUSSION**

Pursuant to Paragraph 61 of the Consent Decree, the County must provide, among other items, written reports to the DOJ every six months detailing the status of the facility modifications. These reports include the Independent Licensed Architect’s (ILA) certifications of the barrier removals in the identified facilities. The most recent status report submitted to the DOJ on March 7, 2019, was provided to the Grand Jury.

The County Administrative Officer’s (CAO) staff has provided semi-annual budget reports to the Board of Supervisors (BOS) that include ADA information.

- The report on May 2, 2017, provided ADA information but failed to mention the status of the remediation work for the facilities and curb ramps.
- The “First Quarter Fiscal Year 2017-18 Budget Update” presented to the BOS on November 7, 2017, provided ADA information but failed to mention that 17 facilities had not been remediated by the deadline set forth in the Consent Decree.

- The “Mid-Year Budget” presented to the BOS on February 8, 2018, provided ADA information but failed to mention that of the 38 facilities which required remediation by January 2018, only six had been remediated.
- The ADA Coordinator updated the BOS on the status of remediation work at the November 13, 2018 meeting. This update was the first with details about the remediation status of the facilities and curb ramps. This update occurred 25 months after the Consent Decree was entered and just eight months prior to the remediation deadlines for the facilities identified in the Consent Decree. This report was presented only 11 months prior to the Consent Decree deadline to remediate all curb ramps.

**Facilities — Schedule**

The CAO Update Report to the BOS on November 13, 2018, stated 15 facilities had been verified by the ILA to be in compliance. Another five facilities had been determined not to require modifications. The report failed to mention 38 facilities had yet to be remediated and the deadline had passed for 23 of those.

The Summary of the ADA 30 Month Compliance Report dated March 7, 2019, reported that 18 facilities had been verified by the ILA to be in compliance. Another five facilities had been determined not to require modifications (Table 1). Most of the facilities behind schedule are owned by the County.

**Table 1. Remediation Deadlines and Status of Owned and Leased Facilities**  
(as of March 2019)

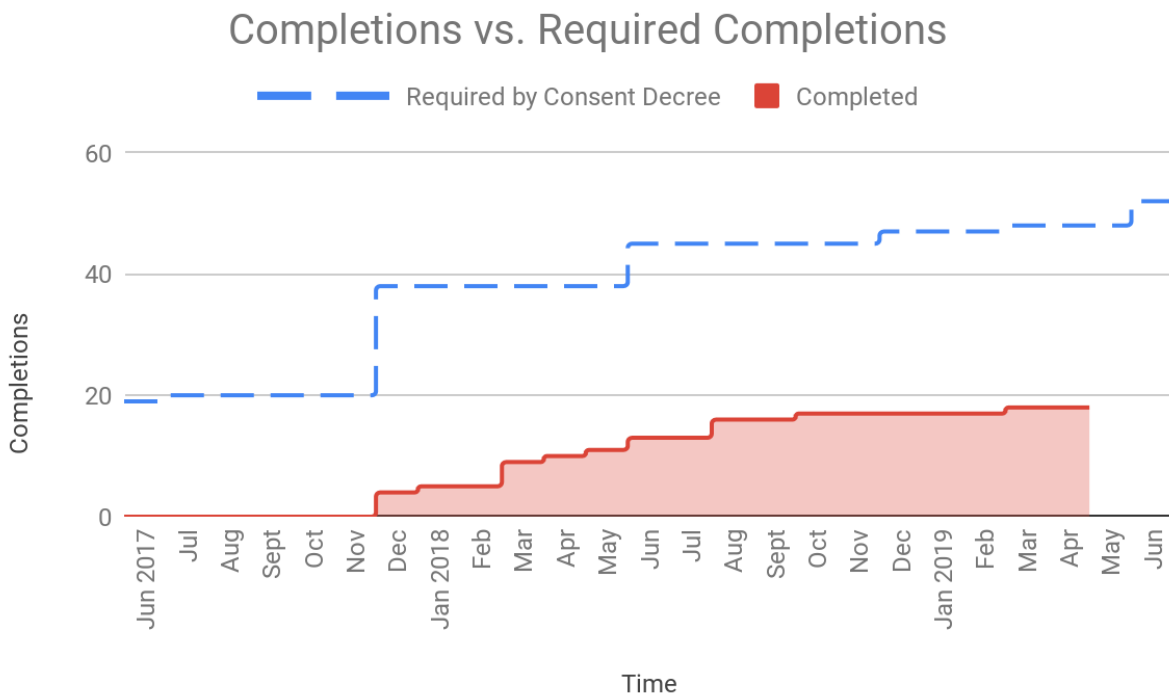
<b>Deadline</b>	<b>Complete</b>	<b>N/A</b>	<b>Incomplete Owned</b>	<b>Incomplete Leased</b>	<b>Total</b>
6/13/2017	10	2	4	3	19
7/13/2017	0	1	0	0	1
12/13/2017	7	2	5	4	18
6/13/2018	0	0	7	0	7
12/13/2018	1	0	1	0	2
3/13/2019	0	0	1	0	1
6/13/2019	0	0	4	0	4
<b>Total</b>	<b>18</b>	<b>5</b>	<b>22</b>	<b>7</b>	<b>52</b>

- **Complete** — Facilities for which the County received Certificates of Compliance from the ILA

- **Not Applicable (N/A)** — Facilities for which the County is no longer responsible for ADA modifications
- **Incomplete Owned** — Facilities owned by the County for which remediation has not been completed
- **Incomplete Leased** — Facilities leased by the County for which remediation has not been completed
- **Total** — Total number of facilities identified in the Consent Decree

The remediations completed first occurred at least six months after the specified deadlines (Figure 1). At the current rate of progress, it is highly unlikely the County will meet the Consent Decree deadlines.

**Figure 1. Status of Facilities Requiring Remediation (as of March 2019)**



Though all facilities are required to be completed by June 2019, as of May 2019 the County was still issuing Requests for Proposals for facility remediation.

**Curb Ramps — Required Completion Schedule**

The County must remediate all 1,695 curb ramps by September 7, 2019, three years after the Consent Decree was entered. Only six curb ramps had been remediated by November 2018, over two years since the Consent Decree was issued. Though all curb ramps are required to be completed by September 2019, as of May 2019 the County was still issuing requests for

Proposals for curb ramp remediation. Several County employees mentioned it is highly unlikely the County will complete the remaining 1,689 curb ramps by September 2019.

### **Remediation — Cost**

The remediation of the ADA barriers was delayed eight years from the start date of the Project Civic Access (PCA) in 2008 to the start date of the Consent Decree in 2016. The cost of this delay is unknown although the California Construction Cost Index for this same period increased by 22%.

In early 2018, the total projected cost for ADA remediation required by the Consent Decree was approximately \$25 million. Within a few months it had risen to \$27 million, an eight percent increase. The stated costs will be significantly higher than the above projection, according to a County department head and a member of the BOS.

The 2016 ADA Consent Decree required the County to retain an Independent Licensed Architect (ILA) to review, approve, and certify ADA compliance for each of the facilities. In addition, a Website Accessibility Consultant was required to be retained by the County to evaluate the ADA accessibility of the County's website. The CAO's staff presentation to the BOS in October 2018 estimated the final fees for the ILA would be \$2.26 million. In addition to the currently estimated \$27 million, the totals for staff costs, design firm fees, and ILA costs, are anticipated to be more than \$4.7 million.

### **FINDINGS**

- F1. Humboldt County is again not on course to meet its contractual obligations to make identified public facilities accessible to people with disabilities.
- F2. Humboldt County is not on course to remediate all public facilities identified in the Consent Decree by the deadline of June 7, 2019.
- F3. Humboldt County is not on course to remediate all curb ramps by the Consent Decree deadline of September 7, 2019.
- F4. Information that the progress of the remediation was behind Department of Justice contractual deadlines was never provided by the County Administrative Office staff in a transparent and timely manner in any open Board of Supervisors meeting.

### **RECOMMENDATIONS**

- R1. The Humboldt County Civil Grand Jury recommends the Board of Supervisors direct County Administrative Office staff to present transparent and complete quarterly status reports on all Americans with Disabilities Act projects in open meetings of the Board of Supervisors. This action should be completed by October 15, 2019. (F4)

R2. The Humboldt County Civil Grand Jury recommends these reports in R1 be prepared by a certified Project Management Professional. This action should be completed by October 15, 2019. (F4)

R3. The Humboldt County Civil Grand Jury recommends the Board of Supervisors direct staff to conduct a review of the County's compliance with the Americans with Disabilities Act Decree to better understand the problems encountered so they may be avoided in the future. This review and report should be completed by December 1, 2019. (F1, F2, F3)

## REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

Board of Supervisors (**F1, F2, F3, F4, R1, R2, R3**)

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

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