



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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February 7, 2014

Mr. Shailen Bhatt, Cabinet Secretary
Delaware Department of Transportation
800 Bay Road
Dover, DE 19901

RE: Complete Streets Policy and USDOJ Agreement

Dear Secretary Bhatt:

I write on behalf of the State Council for Persons with Disabilities (SCPD) regarding the Delaware Department of Transportation's (DelDOT's) Complete Streets Policy and the Department's "Agreement" with the United States Department of Justice (USDOJ) and Community Legal Aid Society, Inc. (CLASI) executed on July 16, 2004.

First, Executive Order 6, signed by Governor Markell on April 24, 2009, requires DelDOT to create a Complete Streets Policy that will promote safe access for all users along and across the streets of Delaware. Consistent with the attached *Request for Policy Implement* effective January 6, 2010, Section IV requires the following:

"Planning, in coordination, with each applicable division, will be responsible for developing a Complete Streets Implementation Plan for DelDOT programs and projects. The implementation plan will have specific actions for each division, and be designed in a consistent and compatible format. The implementation plan should be adopted within twelve months of the effective date of this policy and include an annual review process."

SCPD respectfully requests the Complete Streets Implementation Plan which complies with Section IV of the *Request for Policy Implement* and Executive Order 6.

Second, DelDOT, CLASI and the USDOJ voluntarily entered into a letter of Agreement regarding the installation of curb ramps at intersections on state-maintained roads throughout Delaware on July 16, 2004 (see attached Agreement). Section 12 of the Agreement states the following:

"In addition, annually, and not later than March 1 each year, DelDOT agrees to issue a report to the Project Director of the Disabilities Law Program, of CLASI, one copy to Chairman of the State Council for Persons with Disabilities....."

SCPD has never received a copy of such a report and respectfully requests any past reports that comply with the Agreement. In addition, SCPD requests DeIDOT's plan regarding how the Department intends to comply with the Agreement in the future.

Please provide the requested information by February 28, 2014. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Daniese McMullin-Powell". The signature is written in a cursive style with a large initial "D".

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: Mr. John McNeal, DeIDOT ADA/Title II Coordinator
Ms. Laura Waterland, Disabilities Law Program
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

dtc/delidot complete streets usdoj policies 2-14

**REQUEST FOR
POLICY IMPLEMENT**
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
P.I. NUMBER: O-6
Complete Streets Policy

References:	Executive Order Number 6	Issued:	12/07/2009
	Proposed Complete Street Act of 2009	Revised:	N/A
		Effective:	01/06/2010
		Primary Responsibility:	Director: Transportation Solution

Table of Contents

Title of Policy

- I. Purpose**
- II. Objectives**
- III. Applicability**
- IV. Responsibility and Implementation**
- V. Exemptions**
- VI. Waivers**
- VII. Justification**
- VIII. Effective Date**

I. Purpose

To ensure that the Delaware Department of Transportation (DelDOT) system modifications are routinely planned, designed, constructed, operated and maintained in a way that enables safe and efficient access for all users. The result should be a system for all users that is comprehensive, integrated, connected, safe, and efficient allowing users to choose among different transportation modes, both motorized and non-motorized.

II. Objectives

1. To define and implement changes to the project development process that will value all transportation modes during the project scoping phase and enhance currently used design practices through updates to DelDOT subdivision and design manuals, design memoranda, and policies.
2. To define roles and responsibilities through all phases of a project and implement strategies that will improve safety and convenience for all transit riders, pedestrians, bicyclists and motorists using the Delaware transportation system.
3. To define an Exemption Process.
4. To define a Waiver Process.

III. Applicability

1. All projects in the state right-of-way that are considered road reconstruction, widens the pavement width, or allows for the inclusion of facilities for all users, shall consider all transportation modes and accommodate accordingly; facility type shall be based on the project location and the needs of the community.
2. System maintenance projects are designed to keep what the State already owns in a good state of repair and are usually maintenance/pavement rehabilitation projects and require limited design and no right-of-way acquisition. While it is not the specific intent of these projects to expand existing facilities, opportunities to provide and improve safety for other modes shall be explored during the project development stage.

IV. Responsibility and Implementation

1. Planning, Maintenance & Operations, Transportation Solutions and Delaware Transit Corporation (DTC), as well as any professional services (consultants) working for DelDOT will have the responsibility for implementation of this policy.
2. Planning, in coordination with each applicable division, will be responsible for developing a Complete Streets Implementation Plan for DelDOT programs and projects. The implementation plan will have specific actions for each division, and be designed in a consistent and compatible format. The implementation plan should be adopted within twelve months of the effective date of this policy and include an annual review process.
3. Effectiveness of this policy may be reviewed from time to time at the request of the Secretary, the affected divisions within DelDOT, or the traveling public.

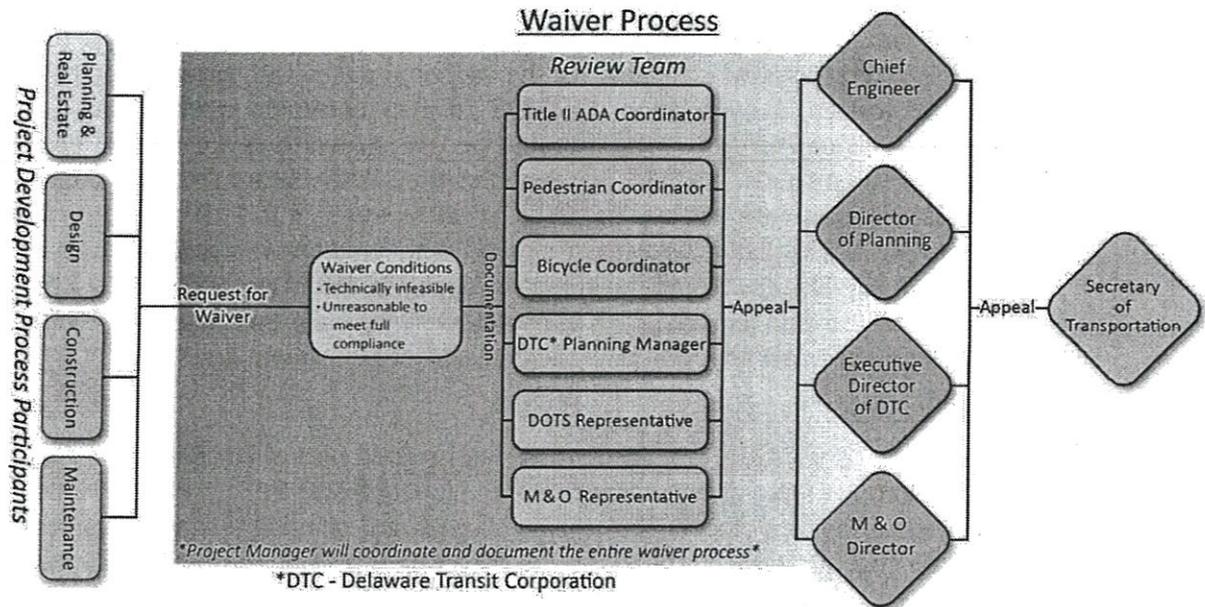
V. Exemptions

Justification and documentation exists for a roadway project to be exempt from the requirements of this policy based upon one of the following circumstances:

1. Alteration and maintenance projects on an affected roadway that prohibits by law use of the roadway by specific users. (Example I-95). New construction would be exempt for facilities within the right-of-way.
2. If it is determined that a reasonable and equivalent alternative already exists for certain users or is programmed in the CTP/TIP as a separate project as determined by representatives of appropriate modes. (Example: transit planner representing bus service identifies project for new bus stop already programmed).
3. Ordinary maintenance activities designed to keep transportation facilities in serviceable condition that does not interfere with existing facilities for longer than the time needed to perform maintenance.
4. As of the effective date of this policy, projects that have been submitted by the applicant as Semi-Final or more advanced plans are exempt.

VI. Waivers

It is recognized, in a built environment, that complexities and challenges exists and there is a need to avoid or mitigate impacts to natural and cultural resources. There may also be right-of-way and financial constraints associated with individual projects. In an effort to reconcile these constraints, DelDOT will include a waiver process, with appropriate time constraints, in each division implementation plan. The general waiver process concept is shown in the diagram below:



Every effort should be made to identify constraints early in the project scoping phase. Therefore, Complete Street Waivers shall be initiated no later than the Semi-Final design phase of all projects.

VII. Justification

Complete Streets Defined

The term ‘Complete Street’ means a roadway that accommodates all travelers, particularly public transit users, bicyclists, pedestrians (including individuals of all ages and individuals with mobility, sensory, neurological, or hidden disabilities), and motorists, to enable all travelers to use the roadway safely and efficiently. (HR 1443 IH)

Creating complete streets means planning, designing, constructing, maintaining and operating streets and all directly related components for motorized and non-motorized modes of travel, as appropriate for the area. The most basic element of a complete streets policy is that it ensures that roads are planned and built to serve all users.

National Movement

The proposed Federal Complete Streets Act of 2009 defines effective complete streets policies that are flexible enough to use in daily transportation planning practice. It directs state Departments of Transportation (DOTs) and Metropolitan Planning Organizations (MPOs) to adopt such policies within two years of enactment and applies the policies to upcoming federally funded transportation projects.

Delaware Accomplishments

DelDOT has been working towards a transportation system that allows users to choose between various modes. In fact, even though the term “Complete Streets” is relatively new, many DelDOT projects have been planned, designed, and built as such.

DelDOT has adopted a Statewide Bicycle Plan that authorizes DelDOT to plan and establish bikeways across the state for the use, enjoyment and participation of the public in non-motorized transportation. DelDOT is also currently working on a Statewide Pedestrian Action Plan that will ensure all pedestrian facilities are built to current ADA standards. The plan also includes a statewide sidewalk inventory that will identify gaps in the pedestrian network and enable DelDOT to create a prioritization plan for sidewalk installation. Additionally, pedestrian signals with countdowns modules and accessible pedestrian signals are being installed throughout the state. DTC has completed a statewide bus stop inventory and is currently working on a bus stop policy with the goal of enhancing accessibility, reliability, and customer convenience.

Executive Order Number 6

On April 24, 2009, Governor Jack A. Markell signed into effect Executive Order No. 6. This Executive Order directed that a Statewide Complete Streets Policy be delivered to the Governor by September, 2009. This step toward creating a transportation system in Delaware that provides facilities for biking, walking, and transit, can increase safety, reduce traffic congestion and improve air quality.

VIII. Effective Date

This policy shall become effective 30 day(s) after signature by the Secretary, or, if applicable, upon compliance with the regulatory process required by the Administrative Procedures Act (29 Del.C. Ch. 101).

AGREEMENT

1. The undersigned acknowledge that the following Agreement is entered into voluntarily, and sets out the terms and conditions to bring certain roads under the jurisdiction of the State of Delaware into further compliance with the Americans With Disabilities Act of 1990.

2. In accordance with the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101 – 12134 (“ADA”), as implemented by regulations at 28 C.F.R. Part 35, the Delaware Department of Transportation (“DelDOT”), the Community Legal Aid Society, Inc. (“CLASI”), and the United States Department of Justice, by and through the United States Attorney’s Office for the District of Delaware (“USDOJ”) voluntarily enter into this letter Agreement (“Agreement”) regarding installation of curb ramps at intersections on state-maintained roads throughout the State of Delaware. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) likewise prohibits discrimination against people with disabilities by recipients of federal financial assistance in providing transportation and related services, and its implementing regulations expressly direct recipients of federal transportation assistance to comply with all aspects of the ADA. See 29 C.F.R. §§ 27.7 and 29.19. The following procedures for retrofitting curb ramps at intersections, which have not previously been accessible, take into account DelDOT’s resources, the seasonal constraints of curb ramp construction, and establish a schedule for bringing all applicable state roads into compliance with the ADA and Section 504.

3. The parties agree that under the ADA, pavement rehabilitation projects, including suburban residential streets, must include the construction of accessible curb ramps. 28 C.F.R. § 35.151(e)(1-2); Barden v. City of Sacramento, 292 F.3d 1073 (9th Cir. 2002), cert. denied, ____

U.S. ___, 123 S. Ct. 2639 (2003); Kinney v. Yerusalim, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994).

4. CLASI and USDOJ accept the assurances of DelDOT that DelDOT included, and continues to include, the installation of required accessible curb ramps in all new pavement resurfacing and Community Transportation Needs (CTN) (formerly known as Suburban Street Fund) projects prospectively beginning in 2001 and thereafter. The parties also agree that DelDOT retrofitted all previous projects commenced in the years 1998-2000 with curb ramps, in order to make them accessible where required.

5. In addition, CLASI and USDOJ accept the assurances of DelDOT that since 1992 DelDOT has installed curb ramps as required under the ADA for all Paving and Rehabilitation Projects with 3" or more of top material removed, and for all large re-paving projects funded with a combination of state and federal dollars. Except under limited circumstances, in addition to the retrofitting described in the paragraph 4 of this Agreement, however, DelDOT did not install curb ramps for resurfacing projects where less than 3" top material was removed, or on suburban residential streets projects, as called for under ADA regulation, 28 C.F.R. 35.151(e)(1-2)¹, at the locations where such curb ramps should have been so installed. The number of curb ramps in Delaware that remain to be retrofitted to comply with the ADA, based on the repaving work done

¹ Section 35.151 of the Code of Federal Regulations, Title 28 states the following:

"...(e) Curb ramps

(1) Newly constructed or altered 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.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways." 28 C.F.R. § 35.151(e)(1 and 2).

between the 1992 and the 1997 construction seasons, is estimated at approximately 1500.

Delaware's approximate construction cost per ramp varies by contract issued pursuant to the state procurement laws, but has ranged from \$800 to \$1,500 in recent years.

6. To bring its remaining roads into ADA-compliance with respect to curb ramps where required, DelDOT hereby agrees to undertake to identify and retrofit one hundred (100) additional curb ramps each year, over and above any curb ramps installed pursuant to its normal construction practices, until the estimated 1500 ADA non-conforming sites for the years 1992-1997 or their equivalent have been retrofitted, subject to the funding limitations noted in paragraph 10 of this Agreement.

7. The parties recognize that some of these ramp locations will be conformed to the ADA as the result of the ongoing and regular resurfacing cycles applicable to all state roads and streets. The parties expect that by completion of the retrofitting schedule described below, all intersections on State of Delaware roads will eventually conform to the ADA's curb ramp requirements through either routine resurfacing cycles or this retrofitting agreement.

8. DelDOT hereby agrees to use its best efforts to review its records concerning resurfacing projects from years 1997 to 1992, to identify, to the extent feasible and practical, those intersections in which accessible curb ramps have not yet been installed. Starting with June 2004 and in subsequent years as applicable, DelDOT will identify the additional curb ramp locations that will be retrofitted during the following year's upcoming construction season. To the extent feasible and practical, DelDOT will set the construction priorities for such ramps based on the following scheme:

<u>Original Construction Season Compliance Year</u>	<u>Retrofit Schedule Year</u>
1997	2005
1996	2006
1995	2007
1994	2008
1993	2009
1992	2010

If any remaining curb ramps have not been retrofitted by the year 2010, upon completion of the above schedule, DeIDOT will begin this review cycle again, starting with Compliance Year 1997, until all non-conforming sites have been retrofitted.²

9. In addition, in June of each Review Year, DeIDOT will post non-conforming ramp locations proposed to be retrofitted for the upcoming construction season on the DeIDOT website, <http://www.deldot.net>, over and above the ramp locations to be retrofitted under the regular resurfacing and reconstruction programs. DeIDOT will collaborate with the State Council for Persons with Disabilities and its own advisory council, EDTAC, in order to publicize this process and to facilitate public input into the prioritization of sites. In determining which sites have a higher priority, DeIDOT agrees to review the public comments, and consider those comments when scheduling sites for retrofitting for that year. CLASI and USDOJ agree that DeIDOT shall have the ability to adjust the above schedule to include sites they deem appropriate due to public comment in any particular year, as long as adjustments do not alter the overall pace of remedial retrofitting outlined in paragraph 8.

² As further discussed in this Agreement, this formula may be amended dependent upon the public comment period, at the discretion of the State of Delaware, when public comments require retrofitting out of sequence for a particular intersection(s), as long as adjustments do not alter the overall pace of remedial retrofitting outlined in paragraph 8.

10. Under either procedure outlined in paragraphs 8 and 9 of this Agreement, \$150,000 in construction costs will be dedicated each year to the construction of the accessible curb ramps to be built pursuant to this Agreement. These funds are expected to provide sufficient wherewithal for the construction of a minimum of 100 curb ramps each year under this Agreement. If bid prices permit a higher number than 100 curb ramps to be reconstructed within this \$150,000 limit, DelDOT will proportionately increase the number of curb ramps to be installed in construction cycle year immediately following the nomination process. The parties also agree that DelDOT's actual total costs under this program will exceed \$150,000 per year, but that the funding limitation relates only to the bid prices for ramp construction.

11. In return for DelDOT's agreement to conform intersections on the schedule and under the procedure above, CLASI agrees to forebear suit on ADA and § 504 violations related specifically to the installation of curb cuts subject to this agreement, absent a specific new complaint related to installation of curb ramps in state roads that are subject to this agreement. If a specific new complaint does arise, CLASI agrees to attempt to informally resolve the matter with the State of Delaware prior to the filing of any lawsuit. CLASI does not waive or otherwise agree to forebear suit on any other potential ADA, § 504, or other claim related to any other aspect of DelDOT or state activity, including without limitation, any obligation the state may have to maintain sidewalks. It is agreed that any material violation of this Agreement may result in a lawsuit by CLASI and/or a Letter of Finding issued by the USDOJ, subject to any defenses the State of Delaware may have to such litigation.

12. The State of Delaware agrees to waive any statute of limitations defenses as to the intersections covered under this Agreement. In addition, annually, and not later than March 1 each year, DelDOT agrees to issue a report to the Project Director of the Disabilities Law

Program, of CLASI, one copy to Chairman of the State Council for Persons with Disabilities, in care of the Delaware Division of Administrative Services, Delaware Department of State. The report would provide the following information: (1) The number and location of curbs retrofitted for the prior year; and (2) a synopsis of the public comments received.

13. In entering into this Agreement, the State of Delaware does not admit that the Delaware Department of Transportation, its employees, or any entity on its behalf has violated any legal requirement of the Americans with Disabilities Act, including but not limited to any alleged violations of the curb ramp regulation, 28 C.F.R. 35.151(e)(1-2), but that this Agreement is entered into voluntarily in settlement of disputed claims. Except as provided in paragraph 12 of the Agreement, the Department of Transportation expressly reserves any and all defenses it may be entitled to assert in any subsequent litigation relating the Americans with Disabilities Act, notwithstanding the representations and commitments outlined in this Agreement, none of which may be used against the State of Delaware, its agencies and/or employees in any such proceeding.

Executed on this 16th day of July 2004.

COLM F. CONNOLLY
United States Attorney

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