

2. During the years 2007 through 2010, PennDOT admittedly violated the Settlement Agreements by failing to install approximately 1,000 such ramps during its resurfacing work. When PennDOT's multiple violations were uncovered in 2011, the parties discussed the most efficient and prompt means to rectify PennDOT's breaches of its obligations. The parties then negotiated and entered into another settlement agreement (Fourth Settlement Agreement) requiring that PennDOT identify the location of each of these so-called "omitted ramps" so that the parties could then work on a time table to cure all of these violations. The Fourth Settlement Agreement, filed January 30, 2012, states as follows:

C. Installing ramps omitted during work performed since 2007

(1) In a written report, PennDOT shall identify all State street, road and highway intersections newly constructed or altered by PennDOT in the Cities of Erie and Meadville during the years 2007 through 2010, where curb ramps were not installed at each such intersection. The report shall specify at those intersections each location still containing curbs or other barriers to entry from a street level pedestrian walkway. PennDOT shall file with the Court and Plaintiffs' Counsel a report comprehensively listing each such location no later than thirty days from today.

Fourth Settlement Agreement, Section II(C)(1) [Doc. 56].

3. PennDOT then breached this settlement agreement by failing to file the required report. As a result, on May 23, 2012, the Plaintiffs filed a motion to enforce the settlement agreement. See Doc. 59. This motion also addressed PennDOT's announcement that

it would no longer abide by the construction standards that were the basis of all of the settlement agreements (the ADAAG Standards).

4. Almost a month later, on June 20, 2012, PennDOT filed a document that purported to provide the information required under the Fourth Settlement Agreement. *See Doc. 62 and its attachments*. This listing identified a total of 686 omitted ramps within the City of Erie that PennDOT had planned to now install. However, this listing also identified some 26 intersections where PennDOT indicated it would not install any of the omitted ramps. The listing does not identify the number of ramps that will not be installed. Likewise, this document identified 262 ramps to be installed in the City of Meadville that were previously omitted and it identified 5 intersections where PennDOT indicated that it would not install the missing ramps.

5. Subsequently, on July 11, 2012, PennDOT produced another document entitled “Barriers to Remain, City of Erie” which identified some 49 locations where barriers to access existed but where PennDOT refuses to install required ramps. *A copy of this listing is attached hereto as Exhibit 1*. The *Barriers to Remain* listing also contained some 11 new locations where ramps had been omitted but were not included in the report filed by PennDOT on June 20, 2012. PennDOT’s failure to include these intersections in its report was yet another violation of the Fourth Settlement Agreement.

TIME TABLE FOR RAMPS NOT IN DISPUTE

6. PennDOT's June 20, 2012 filing identifies a combined total of 948 ramps in the Cities of Erie and Meadville that should have been, but were not, installed during road work performed in 2007-2010. These omissions were violations of the Settlement Agreements. In recognition of this fact, PennDOT agrees to now install these ramps.

7. In discussions with PennDOT, Plaintiffs are informed that PennDOT will *promise* that the vast majority of all of these omitted ramps will be installed by the end of the 2013 construction season.

8. Plaintiffs hereby request that the court issue an order requiring that PennDOT cure its prior violations of the Settlement Agreements by installing all of these omitted ramps without delay and as soon as possible, but no later than the fall of 2013.

9. To permit Plaintiffs to monitor PennDOT's progress in curing these violations, Plaintiffs request that the Court also direct PennDOT to file monthly progress reports that (a) lists the number and location of each ramp constructed that month and (b) provide the relevant measurements of each ramp and (c) state the estimate of ramps to be completed in each of the remaining months.

CONSTRUCTION STANDARDS FOR OMITTED RAMPS

10. Based upon the authorities cited in Plaintiffs' Motion To Enforce Settlement Agreement with PennDOT [Doc. 59] and Plaintiffs' brief filed in support of that motion [Doc. 67], Plaintiffs also request that the Court issue an order requiring that PennDOT construct all such omitted ramps to be in compliance with the relevant provisions of the ADAAG, as identified and set forth in the Settlement Agreements entered in this matter.

11. Furthermore, there is an unresolved dispute between the parties as to whether PennDOT must install a total of six compliant ramps at unsignalized "T" intersections involving city-owned roadways. *See Fourth Settlement Agreement ¶II(B)(2)*. At these intersections, the city streets terminate at the state road or highway and there is no traffic-control device for vehicles traveling on the state road. A total of four ramps could be installed to permit the crossing of the two legs of the state road and a total of two ramps to cross the city street. PennDOT has rejected any obligation to install all six ramps when it resurfaces a state highway at such "T" intersections. PennDOT has argued that it is "good enough" to provide only partial accessibility at such intersections.

12. The omitted ramp listings (June 20, 2012 list and *Barriers to Remain* list) do not reveal whether PennDOT is leaving barriers in place at "T" intersections based upon its position that ADA accessibility does not require full access and does not mandate that all six ramps be constructed.

13. It is the Plaintiffs' position that the resurfacing of the intersecting state highway is an alteration that affects the usability of the entire intersection, requiring that all six ramps be installed. Therefore, Plaintiffs request that the Court issue an order requiring PennDOT to install 6 curb ramps at such "T" intersections.

PENNDOT MUST INSTALL ALL OF THE DISPUTED RAMPS

14. As stated above, PennDOT's recent list of omitted ramps and *its Barriers to Remain* list reflect PennDOT's decision to leave barriers in place and to refuse to install ramps at various locations in the Cities of Erie and Meadville. The Settlement Agreements provide a detailed process that must be followed when PennDOT seeks to deviate from its construction obligations under those agreements. This process, known by the parties by the acronym TIF ("Technically Infeasible Form"), is described as follows:

At any time during the term of this Settlement Agreement that . . . PennDOT believes that site conditions at any particular intersection scheduled for improvement prohibits or makes unnecessary construction or alteration in full compliance with each of the standards set forth above . . . [PennDOT], within 15 days of discovery of the matter, shall inform Plaintiffs' counsel in writing. This writing shall list which engineer(s) have reviewed the intersection, the location of the intersection, and a statement of which standard(s) cannot be met, why not, and how much of a deviation from the standard(s) is contemplated. Unless due to factors beyond PennDOT's control, this writing should also include a sketch of any

proposed deviant curb ramp, with the proposed final measurements for each slope, cross slope, and lip. If Plaintiffs do not object in writing to the notice within 15 days from the postmark of the written notification, . . . PennDOT may presume that the deviation is acceptable to the Plaintiffs and may begin construction of that particular curb ramp.

Settlement Agreement December 22, 2006, ¶12 [Doc. 22]. See also Settlement Agreement April 19, 2007, ¶13 [Doc. 33].

15. The Settlement Agreements incorporate the ADAAG's "technically infeasible" standard as the test for any claim that a curb ramp cannot be constructed.

Potential Exceptions Pursuant to 28 C.F.R. Part 36, App. A §4.1.6(j). The parties agree that the ADAAG at 28 C.F.R. Part 36, App. A §4.1.6 and 4.1.1.5(a); 4.1.6(3); and 28 C.F.R. 35.151(c), to the extent applicable, shall be the standard to judge the validity of any defendant assertions that construction or alterations cannot or are not required to meet in full the construction and design standards set out in the paragraphs above.

Settlement Agreement December 22, 2006, ¶11 [Doc. 22]. See also Settlement Agreement April 19, 2007, ¶12 [Doc. 33].

16. This technically infeasible exemption is very narrow and it applies only when site conditions make it virtually impossible to comply with the ADAAG construction standards.

Technically infeasible. With respect to an alteration of a building or a facility, something that has the little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing or physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.

28 C.F.R. Part 36, App. A §4.1.6(j) Definitions.

17. With regard to PennDOT's obligations to cure its past violations relating to the 2007-10 omitted ramps, the Fourth Settlement Agreement provides a similar process that must be followed if PennDOT contends that a barrier should not be removed.

In the rare circumstance that PennDOT believes that on a State street, road or highway it should leave in place a curb or other barrier to entry to a pedestrian level walkway, or that it should replace an existing ramp with a curb or other barrier, it must first adhere to the following procedure:

a. **Written Notice.** PennDOT shall within ten days of discovering the alleged site conditions which it believes supports such action, inform Plaintiffs' counsel in writing via e-mail and hard copy. This writing shall identify the engineer(s) who have reviewed the intersection(s), shall identify the location of the intersection(s), and shall provide a statement of the circumstances which PennDOT believes supports its proposed action. The Parties shall allow 15 days from the postmark or e-mail notification to resolve the matter.

b. Unresolved Disputes. In the event that the Parties cannot resolve a dispute concerning removing barriers at any such intersection(s), the Parties expressly agree that the Court expressly retains jurisdiction to resolve any disputes under the terms of this Order, as well as the Court's earlier Settlement Agreement Orders. Either party may file a motion with the Court to address any unresolved issues. Any final resolution under this paragraph shall be treated as a decision by the Court.

Settlement Agreement January 30, 2012, ¶4 [Doc. 56].

18. PennDOT has failed to comply with the foregoing processes and thus PennDOT has once more breached its obligations under the Fourth Settlement Agreement.

19. As a result of PennDOT's repeated violations of the settlement agreements, the Plaintiffs respectfully request that this Honorable Court issue an order compelling PennDOT to install all of these disputed ramps immediately, and certainly by the end of 2013. At this late date, and considering the additional delays that it would cause Plaintiffs to suffer, PennDOT should not be given the opportunity to submit this dispute to the TIF processes.

Respectfully submitted,

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BARRIERS TO REMAIN
City of Erie

7/9/2012

	SEGMENT/OFFSET	LOCATION	Resolution	INTERSECTION TYPE	SIGNAL PERMIT
1	0530/0721	SR 5 & RASPBERRY ST	Equal access provided on 3 of the 4 legs of each signalized intersection. Barrier to remain on SR 5 at one leg of each intersection in accordance with the signal permit. Existing non-compliant pedestrian push buttons will be upgraded to the maximum extent feasible without impacting the existing ramps placed in 2007 with the 5-11M project. Missing pedestrian pole at southwest quadrant to be replaced at Raspberry. Based on prior correspondence between VFI and the Department regarding diagonal ramps, the existing diagonal ramps can remain but pedestrian push buttons needed upgraded to the maximum extent feasible. Also since PennDOT's policy regarding diagonals has evolved since this project was constructed, upgrading diagonal ramps will be considered with future projects that trigger the ramps and/or with projects that impact pedestrian access routes/movements. (Chestnut and Myrtle intersections not field viewed on June 6, 2012.)	Plus, Signalized	4/12/2007
2	0530/1443	SR 5 & CASCADE ST		Plus, Signalized	4/12/2007
3	0530/2166	SR 5 & PLUM ST		Plus, Signalized	4/12/2007
4	0540/0000	SR 5 & LIBERTY		Plus, Signalized	4/12/2007
5	0550/0720	SR 5 & CHERRY ST		Plus, Signalized	4/12/2007
6	0560/0000	SR 5 & CHESTNUT ST*		Plus, Signalized	4/12/2007
7	0560/0721	SR 5 & MYRTLE ST*	Locations not reviewed on June 6, 2012 with VFI since all members were familiar with this route. No Pedestrian Access Route exists (other than the shoulder/roadway), therefore no barriers exist.	Plus, Signalized	4/12/2007
8	0631/0706	SR 5 & BRANDES AVE		Tee	N/A
9	0631/1015	SR 5 & HESS AVE*		Tee	N/A
10	0631/1718	SR 5 & PAYNE AVE*		Tee	N/A
11	0651/0000	SR 5 & BACON ST*	Location not reviewed on June 6, 2012 with VFI since all members were familiar with this route. Pedestrian Access Route exists only on the north side of SR 5. No pedestrian access route on the south side of SR 5, therefore no connectivity issues.	Tee	N/A
12	0651/0964	SR 5 & SENECA ST	Location not reviewed on June 6, 2012 with VFI. Equal access to be provided on 2 of the 3 legs of the signalized intersection. Barrier to remain on the north leg of SR 5 in accordance with signal permit. Adding a crossing for 1 leg will require partial signal upgrade (lacking junction boxes and access to poles through existing foundations) to accommodate additional pedestrian heads and push buttons. Existing ramps for SR 5 (west leg) are accessible. Proposed local crossing for Franklin Avenue. Existing non-compliant pedestrian push buttons will be upgraded to the maximum extent feasible.	Tee	N/A
13	0660/0000	SR 5 & FRANKLIN AVE	Location not reviewed on June 6, 2012 with VFI since all members were familiar with this route. Pedestrian Access Route exists only on the west side of SR 5. No pedestrian access route on the east side of SR 5, therefore no connectivity issues.	Tee	1/23/2006
14	0661/1874	SR 5 & SEVENTH ST*	Existing driveway on the north side is a barrier for crossing SR 8. Crossing exists on the south side of SR 8. Local crossing exists for 35th Street.	Tee	N/A
15	0660/1341	SR 8 & 35TH ST		Tee	N/A

* Location not previously inventoried

EXHIBIT

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BARRIERS TO REMAIN
City of Erie

7/9/2012

	SEGMENT/OFFSET	LOCATION	Resolution	INTERSECTION TYPE	SIGNAL PERMIT
16	0411/0861	SR 19 & GOODRICH ST	Existing driveway on the north side is a barrier for crossing SR 19. Proposed crossing on the south side of SR 19. Proposed local crossing for Goodrich Street.	Tee	N/A
17	0531/2258	SR 20 & CHARLOTTE ST	Existing driveway on the west side is a barrier for crossing SR 20. Proposed crossing on the east side of SR 20. Local crossing exists for Charlotte Street.	Tee	N/A
18	0560/1040	SR 20 & HAZEL ST	Existing driveway on the west side is a barrier for crossing SR 20. Proposed crossing on the east side of SR 20. Proposed local crossing for Hazel Street.	Tee	N/A
19	0610/1583	SR 20 & JACKSON AVE	Existing driveway on the east side is a barrier for crossing SR 20. Crossing exists on the west side of SR 20. Local crossing exists for Jackson Street.	Tee	N/A
20	0610/1816	SR 20 & VAN BUREN	Existing driveway on the west side is a barrier for crossing SR 20. Crossing exists on the east side of SR 20. Local crossing exists for Van Buren Street.	Tee	N/A
21	0640/0320	SR 20 & KILPATRICK AVE	Existing driveway on the east side is a barrier for crossing SR 20. Proposed crossing on the west side of SR 20. Proposed local crossing for Kilpatrick Ave.	Tee	N/A
22	0650/0339	SR 20 & BROOKLYN AVE	Existing driveway on the eastside is a barrier for crossing SR 20. Proposed crossing on the west side of SR 20. Proposed local crossing for Brooklyn Ave.	Tee	N/A
23	0650/1948	SR 20 & FRANKLIN AVE*	Location not reviewed on June 6, 2012 with VFI. Equal access to be provided on 2 of the 3 legs of the signalized intersection. Barrier to remain on the east leg of SR 20 in accordance with signal permit. Adding a crossing for 1 leg will require a signal upgrade to accommodate additional pedestrian heads and push buttons. Existing ramps for SR 20 (west leg) are accessible. Proposed local ramp for Franklin Avenue (northeast quadrant). Existing non-compliant pedestrian push buttons will be upgraded to the maximum extent feasible.	Tee	3/22/1988
24	0420/1040	SR 97 & 42ND ST	Existing driveway on the northside is a barrier for crossing SR 97. Crossing exists on the southside of SR 97. Local crossing exists for 42nd Street. Since all members were familiar with this route and the recently constructed SR 97 (197)-01M project constructed in 2011, these locations were not reviewed on June 6, 2012 with VFI.	Tee	N/A
25	0420/1215	SR 97 & CYPRESS ST	Existing driveway on the northside is a barrier for crossing SR 97. Crossing exists on the southside of SR 97. Local crossing exists for Cypress Street. Since all members were familiar with this route and the recently constructed SR 97 (197)-01M project constructed in 2011, these locations were not reviewed on June 6, 2012 with VFI.	Tee	N/A

* Location not previously inventoried

BARRIERS TO REMAIN
City of Erie

7/9/2012

	SEGMENT/OFFSET	LOCATION	Resolution	INTERSECTION TYPE	SIGNAL PERMIT
26	0440/0130	SR 97 & 33RD ST	Existing driveway on the southside is a barrier for crossing SR 97. Crossing exists on the northside of SR 97. Local crossing exists for 33rd Street. Since all members were familiar with this route and the recently constructed SR 97 (197)-01M project constructed in 2011, these locations were not reviewed on June 6, 2012 with VFI.	Tee	N/A
27	0440/0295	SR 97 & 33RD ST	Existing driveway on the southside is a barrier for crossing SR 97. Crossing exists on the northside of SR 97. Local crossing exists for 33rd Street. Since all members were familiar with this route and the recently constructed SR 97 (197)-01M project constructed in 2011, these locations were not reviewed on June 6, 2012 with VFI.	Tee	N/A
28	0440/1003	SR 97 & 31ST ST	Existing driveway on the northside is a barrier for crossing SR 97. Crossing exists on the southside of SR 97. Local crossing exists for 31st Street. Since all members were familiar with this route and the recently constructed SR 97 (197)-01M project constructed in 2011, these locations were not reviewed on June 6, 2012 with VFI.	Tee	N/A
29	0440/1354	SR 97 & 30TH ST	Existing driveway on the southside is a barrier for crossing SR 97. Crossing exists on the northside of SR 97. Local crossing exists for 30th Street. Since all members were familiar with this route and the recently constructed SR 97 (197)-01M project constructed in 2011, these locations were not reviewed on June 6, 2012 with VFI.	Tee	N/A
30	0430/1738	SR 97 & 29th ST	Barrier to remain on the Northside due to inadequate sight distance (existing sight distance is 135', required sight distance is 140'). Existing crossing on the south side. Existing local crossing for 29th St.. Location not reviewed on June 6th, 2012 with VFI.	Tee	N/A
31	0060/0427	SR 505 & MARSH ST	Location not reviewed on June 6, 2012 with VFI since all members were familiar with this route. Pedestrian Access Route exists only on the west side of SR 505. No pedestrian access route on the east side of SR 505 (guiderail), therefore no connectivity issues.	Tee	N/A
32	0060/0913	SR 505 & CRAIG ST	Location not reviewed on June 6, 2012 with VFI since all members were familiar with this route. Pedestrian Access Route exists only on the west side of SR 505. No pedestrian access route on the east side of SR 505 (guiderail), therefore no connectivity issues.	Tee	N/A
33	0060/1213	SR 505 & METZ AVE	Location not reviewed on June 6, 2012 with VFI since all members were familiar with this route. Pedestrian Access Route exists only on the west side of SR 505. No pedestrian access route on the east side of SR 505 (guiderail), therefore no connectivity issues.	Tee	N/A
34	0270/1469	SR 1001 & E GRANDVIEW**	Locations not reviewed on June 6, 2012 with VFI since all members were familiar with this route. No Pedestrian Access Route exists (other than the shoulder/roadway), therefore no barriers exist.	Plus	N/A
35	0270/2134	SR 1001 & E 43RD ST*		Tee	N/A
36	0270/2446	SR 1001 & E 42ND ST*		Tee	N/A

* Location not previously inventoried

BARRIERS TO REMAIN
City of Erie

7/9/2012

	SEGMENT/OFFSET	LOCATION	Resolution	INTERSECTION TYPE	SIGNAL PERMIT
37	0270/2738	SR 1001 & E 41ST ST*		Tee	N/A
38	0170/0900	SR 4016 & AVERLON AVE	Due to the skew angle and proximity of Averlon Avenue with Cascade Street, propose crossing SR 4016 on the west side of Cascade Street. Barrier to remain on the East side of Averlon Avenue.	Tee (skewed)	N/A
39	0171/1447	SR 4016 & PLUM ST	Existing Driveway on the west side is a barrier for crossing SR 4016. Proposed crossing on the east side of SR 4016. Proposed local crossing for Plum Street.	Tee	N/A
40	0200/0405	SR 4016 & FRENCH ST	Existing Driveway on the east side is a barrier for crossing SR 4016. Crossing exists on the west side of SR 4016. Local crossing exists for French Street. Remove existing sidewalk at the Northeast corner of SR 4016 and French to eliminate potential crossing of SR 4016, add curb, grade and seed (to be addressed with the Erie Group Job SR 4016-211).	Tee	N/A
41	0231/0125	SR 4016 & WAYNE ST	A signalized intersection (Pine and SR 4016) is located just west of Wayne street. Vehicles stopping at the light for Pine street will stack up to and through the any potential crossing of SR 4106 at Wayne Street causing an unsafe condition. Due to the proximity of Pine Street, no crossings of SR 4016 at Wayne Street are proposed.	Tee	N/A
42	0230/1581	SR 4016 & EAST AVE	Equal access provided on 3 of the 4 legs of the signalized intersection. Barrier to remain on the west side of SR 4016 in accordance with signal permit. Adding crossing for 1 leg will require complete signal upgrade to accommodate additional pedestrian heads and push buttons. Existing ramps constructed with SR 5-ADA project let in 2009. Since these are new ramps, existing non-compliant pedestrian push buttons will be upgraded to the maximum extent feasible.	Plus, Signalized	4/26/1976
43	0240/0000	SR 4016 & ESSEX AVE	Existing Driveway on the east side is a barrier for crossing SR 4016. Proposed crossing on the west side of SR 4016. Proposed local crossings for Essex Avenue.	Tee	N/A
44	0250/0316	SR 4016 & DAVISON AVE	Equal access provided on 3 of the 4 legs of the signalized intersection. Barrier to remain on the west side of SR 4016 in accordance with signal permit. Adding crossing for 1 leg will require complete signal upgrade to accommodate additional pedestrian heads and push buttons. Existing ramps constructed with SR 5-ADA project let in 2009. Since these are new ramps, existing non-compliant pedestrian push buttons will be upgraded to the maximum extent feasible.	Plus, Signalized	3/10/1981

* Location not previously inventoried

BARRIERS TO REMAIN
City of Erie

7/9/2012

	SEGMENT/OFFSET	LOCATION	Resolution	INTERSECTION TYPE	SIGNAL PERMIT
45	0260/0000	SR 4016 & PAGE ST	Existing Driveway on the east side is a barrier for crossing SR 4016. Proposed crossing on the west side of SR 4016. Proposed local crossings for Page Street.	Tee	N/A
46	0261/0490	SR 4016 & ZIMMERMAN RD	Equal access provided on 3 of the 4 legs of the signalized intersection. Barrier to remain on the east side of SR 4016 in accordance with signal permit. Adding crossing for 1 leg will require complete signal upgrade to accommodate additional pedestrian heads and push buttons. Existing ramps constructed with SR 5-ADA project let in 2009. Since these are new ramps, existing non-compliant pedestrian push buttons will be upgraded to the maximum extent feasible.	Plus, Signalized	1/30/1978
47	0040/0015	SR 4034 & CRANBERRY ST	Existing crossing provided on the south side of SR 4034. No pedestrian access route exists on the northeast quadrant.	Tee	
48	0070/1140	SR 4034 & HOLLAND ST	Equal access provided on 2 of the 4 legs of the signalized intersection. Barrier to remain on the west side of SR 4034 and for Holland Street in accordance with the signal permit. No pedestrian access route exists on the southwest quadrant. Existing railroad crossing of Holland Street at this intersection.	Plus, Signalized	5/9/2007
49	0085/0000	SR 4034 & PORT ACCESS	Equal access provided on 2 of the 4 legs of the signalized intersection. Barrier to remain on the west and south side of SR 4034 in accordance with the signal permit. Guiderail and no pedestrian access route exists on the southwest quadrant. Location previously reviewed with VFI May 2010.	Plus, Signalized	8/20/2004

* Location not previously inventoried

2. PennDOT shall file a report by the seventh (7th) day of each month regarding the work that it completed in the previous month on these ramps. These monthly reports shall provide the following information:

- a. The locations and the number of ramps constructed in the prior month;
- b. The measurements of each ramp, in the format and providing the data provided in PennDOT's annual ramp reports;
- c. A good-faith estimate of the number of ramps planned to be constructed in each of the months to follow.

3. With regard to these ramps, at all "T" intersections that involve an intersection between a state road or highway and a city road or highway, where the city road terminates at the intersection and where there is no traffic control device for vehicular traffic on the state road, PennDOT shall ensure that there are a total of six (6) ramps at all such intersections that comply with the ADAAG (four ramps crossing the state road and two ramps crossing the city road).

BY THE COURT
