

Local Project Administration Manual & Resource Guide

Civil Rights & the ADA



MaineDOT

Integrity - Competence - Service

Revised 2019

Civil Rights & the ADA

Municipalities and non-profit organizations administering federally funded transportation projects must comply with a variety of federal civil rights laws, rules, regulations and presidential executive orders designed to prevent and eliminate discrimination.

Chapter 10 of this Manual provides an overview of the Americans with Disabilities Act (ADA) and a variety of other civil rights requirements and programs that local agencies are likely to encounter as they develop federal-aid projects. The topics listed below will be covered.

- Title VI of the Civil Rights Act of 1964 (page 10-1);
- Americans with Disabilities Act (page 10-2);
- Limited English Proficiency (page 10-3);
- Disadvantaged Business Enterprises (page 10-4);
- Equal Employment Opportunity (page 10-4);
- Appendix 10A: ADA Guidance for Local Agencies (page 10-5):
 - Minimum ADA Requirements for Pedestrian Facilities (page 10-6); and
 - MaineDOT ADA Compliance Policy (page 10-9).



MaineDOT's Civil Rights Office oversees Civil Rights programs:
www.maine.gov/mdot/civilrights/

10.1 Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin in any program or activity receiving federal assistance. Subsequent amendments have expanded Title VI to afford federal legal protections based on sex, age and disability, as well.

Programs and activities funded through the U.S. Department of Transportation must comply with Title VI requirements. This applies to local agencies that receive money through MaineDOT from the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), which must have policies and procedures in place that address Title VI requirements.

Organizations comply with Title VI in transportation programs primarily by:

- Avoiding, minimizing or mitigating disproportionately high health and environmental impacts to minority and low-income populations; and
- Ensuring the full and fair participation in the transportation decision-making process by all potentially affected groups, including those with limited English proficiency.

Local agencies undertaking locally administered projects with federal funds must have a designated Title VI coordinator who is responsible for Title VI compliance. Additionally, the top administrative official in these organizations must sign a set of Title VI Assurances that must be inserted into all contracts with outside consultants and contractors, along with the following:

- Appendix A and Appendix E to the Title VI Assurances; and
- Form FHWA-1273, “Required Contract Provisions for Federal-aid Contracts.”

➡ A template for the Title VI Assurances is available online:
<http://www.maine.gov/mdot/lpa/docs/lpadocs/2018/TitleVIAssurancesOct2018.docx>

10.2 Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) of 1990 and the Rehabilitation Act of 1973 prohibit public entities and organizations that receive public funds from discriminating against people with disabilities in all aspects of life, including transportation, public services and public programs. In transportation, this applies to the planning, design, construction, maintenance, and operation of transportation systems.

In the context of locally administered transportation projects, the law requires new, reconstructed or otherwise “altered” transportation facilities to be made ADA compliant to the maximum extent feasible, regardless of the cost or type of funding. An “alteration” is a change to a public right-of-way that affects or could affect access, circulation, or use.

These definitions may change how local agencies upgrade accessibility to pedestrian facilities. They apply to ALL government agencies regardless of funding. Any of the following activities could be an alternation:

- New construction;
- Road rehabilitation;
- Road reconstruction;
- Mill-and-fill / mill and overlay;
- Addition of new layer of asphalt (light capital paving);
- Cape seals
- Hot-in-place recycling; and
- Microsurfacing / thin-lift overlay.

ADA rules require projects that alter the usability of a roadway to improve pedestrian access to existing facilities to the **maximum extent feasible**. Where pedestrian facilities are present, ADA compliance of curb ramp width, slope and detectable warnings will be necessary for certain treatments; this may also require pedestrian signal upgrades.

➡ ADA guidance – including minimum requirements for pedestrian facilities and MaineDOT’s ADA Compliance Policy – is found in Appendix 10A, starting on page 10-5 of this chapter.

10.3 Limited English Proficiency

Organizations administering federally funded projects must take reasonable steps to make sure that people with Limited English Proficiency (LEP) have meaningful access to the programs, services and information they provide.

People whose primary language is not English and who have limited ability to read, speak, write or understand English can be LEP. Organizations may need to provide materials in other languages or to translate at meetings to assist LEP individuals.



LEP requirements originate from Presidential Executive Order (EO) 13166, “Improving Access to Services for Persons with Limited English Proficiency,” containing two major initiatives:

- The first initiative is designed to improve enforcement and implementation of Title VI, which prohibits discriminating based on national origin by, among other things, failing to provide meaningful access to LEP individuals.
- The second requires the Federal Government and agencies receiving federal funds – including MaineDOT and local projects sponsors – to provide materials in other languages or to translate at meetings when LEP individuals are present.

Local agencies must provide meeting announcements and outreach materials in languages understood by an affected LEP population, if applicable. Such announcements should state that accommodations, to the extent possible, will be provided for individuals with disabilities and populations with LEP. If so requested, local agencies must provide spoken and sign-language interpreters and alternately formatted materials at no cost.

More information is available on the website of MaineDOT Civil Rights Office:
<https://www.maine.gov/mdot/civilrights/title-vi/>

10.4 Disadvantaged Business Enterprises (DBE)

Disadvantaged Business Enterprise (DBE) is a federal program to help women and minority small-business owners promote their businesses and services within the contracting community. MaineDOT sets an annual goal, approved on a three-year basis, for DBE participation in federally funded projects. The current goal – through September 30, 2021 – is **2.4 percent**.

DBE encourages use of businesses owned by women and minorities on federally funded projects. Maine seeks to meet DBE goal requirements through *race-neutral* means; DBE participation typically is not required on specific projects.

Maine calculates the attainable DBE usage on specific projects and encourages contractors and sub-recipients of federal funds to do their best to ensure that DBE firms are sought out and hired. MaineDOT continually reviews DBE usage. If it becomes apparent that Maine’s DBE goal will not be met, MaineDOT may enforce DBE goals on certain projects.

❑ 10.4.1: DBE Use on Federal-aid Contracts

A request for proposals (RFP) for consultant services on a federal-aid contract must state that certified DBE firms are encouraged to submit proposals. The RFP also must require non-DBE consultants to ensure that DBEs have opportunity to participate in any contract.

On federal-aid construction projects, MaineDOT encourages non-DBE contractors to use DBE firms as sub-contractors as much as possible.

- The prime consultant and construction contractor on a federal-aid project must complete a DBE Utilization Form, available online: <https://www.maine.gov/mdot/civilrights/dbe/>

Completed DBE Utilization Forms must be kept in the project files, along with subcontracts with DBE firms, for review during site visits by state and federal personnel.

❑ 10.4.2: Commercially Useful Function

During construction on a federal-aid project, the construction resident must verify that a DBE firm named to work on a project is performing the services listed in its subcontract with its own equipment and workers. Such services are known as the “Commercially Useful Function” (CUF) of the firm. The construction resident must verify that the employees of the firm are listed on the DBE company’s payrolls and not on another firm’s payroll.

During a project, the construction resident must perform an on-site CUF review when a DBE firm initially shows up and during the peak period of the DBE’s work. A review also must be performed when a recognized DBE firm is working on the project but not listed on the contractor’s DBE Utilization Form.

- Commercially Useful Function form is available from the MaineDOT Civil Rights Office: <https://www.maine.gov/mdot/civilrights/dbe/>

10.5 Equal Employment Opportunity (EEO)

Equal Employment Opportunity (EEO) is an effort to ensure that sub-recipients of federal funds, contractors and sub-contractors comply with federal laws and regulations that prohibit government contractors from discriminating in employment. EEO also requires that the recipients of federal funds and their contracted agents understand their contractual obligations and undertake affirmative action to ensure equal employment opportunity in their workforces.

Local agencies are required to include EEO provisions in their federal-aid construction contracts. These provisions are contained in Form FHWA-1273, “Required Contract Provisions for Federal-aid Construction Contracts,” which must be incorporated into the bid documents for every federal-aid project. (*For more information, see Chapter 7, “Final PS&E Package.”*)

- Form FHWA-1273 can be found at the link below under the category of Bid Documents: www.maine.gov/mdot/lpa/lpadocuments/

Appendix 10A:

ADA Guidance for Local Agencies

- ➔ ADA Resources for local agencies are found on the website of the MaineDOT Civil Rights Office: www.maine.gov/mdot/civilrights/ada/resources-engineers/



Maine Department of Transportation

Highway Program

Design Guidance

Title: Minimum ADA Requirements for Pedestrian Facilities	Issue Date: November 1, 2017
Discipline: General Engineering	Revised Date: May 21, 2019
Originator: Highway Program	
Approved By: Bradford Foley, P.E.	

Background:

The MaineDOT updated ADA Title II Transition Plan specifies what ADA standards MaineDOT has adopted. The MaineDOT ADA Compliance Policy specifies what improvements will be required, based on project scope. This document is intended to provide guidance on what makes each individual element of a pedestrian facility ADA compliant. It should be the basis for determining if an existing pedestrian facility is ADA compliant and for designing and constructing new or improved pedestrian facilities.

Guidance:

Existing Pedestrian Facilities

If an existing pedestrian facility meets the requirements listed in [Table 1](#), it is considered an ADA compliant facility. Such facilities do not need to be improved if it is beyond the planned scope of work to do so. Consideration should be given to the overall system of pedestrian facilities on the project to make sure there are no non-ADA safety issues that need to be addressed. Examples of such non-ADA safety issues include cross walk locations, refuge areas, and visibility.

New or Reconstructed Pedestrian Facilities

New pedestrian facilities, or existing facilities that must be reconstructed, shall be designed and built to meet the minimum requirements listed in [Table 1](#).

More detailed guidance for the design of pedestrian curb ramps can be found in the [Standard Details](#).

Exceptions

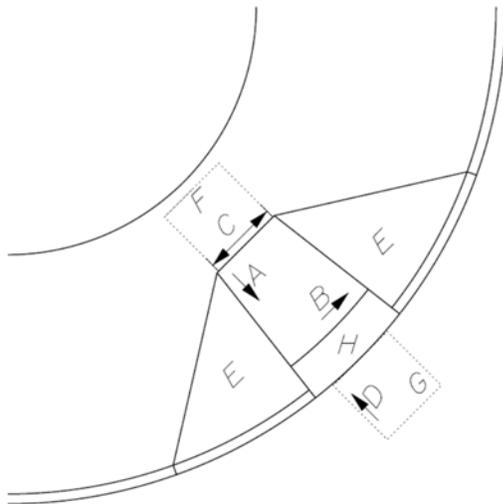
The ADA Compliance Policy allows exceptions to be made when it is “technically infeasible” or “physically impractical” to meet all current ADA requirements. In some cases, there may be physical constraints that are beyond project scope to modify or remove that make it infeasible to meet ADA requirements. Examples of these constraints include, but are not limited to, underground and overhead utility structures, bridge structures, building entrances at back of sidewalk, retaining walls, and established landscaping such as large trees. In such cases, the facility must be upgraded to the maximum extent possible. Technical infeasibility or physical impracticality may not be determined solely based on cost.

The ADA Compliance Policy requires that locations where full compliance with current ADA standards is not feasible be documented according to the following established procedure:

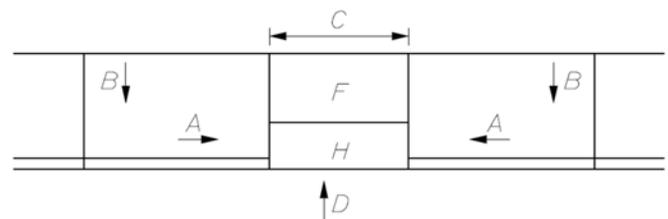
- If an element does not meet the minimum requirements for pedestrian facilities listed in [Table 1](#), include discussion in the ADA compliance section of the Preliminary Design Report and submit an [ADA Technical Infeasibility Form](#) for review to the appropriate Program Manager or Region Manager and the Title II ADA Coordinator. Approval may be granted at the Program or Region level or forwarded to the Engineering Council for further review.

Minimum Requirements for Pedestrian Facilities		
SIDEWALKS		
Cross Slope		Max. 2% (1:50)
Clear Width		5 feet, excluding curb (standard) 4 feet, excluding curb (minimum) 3 feet allowable at a single point <i>Widths less than 5 feet require a 5 foot by 5 foot passing space every 200 feet.</i>
CURB RAMPS		
Running Slope	A	Max. 8.33% (1:12)
Cross Slope	B	Max. 2% (1:50) <i>Ramp cross slope at street crossings without stop or signal control may match roadway profile.</i>
Clear Width	C	Min. 5 feet <i>For existing ramps only, ramp width may remain 4 feet.</i>
Counter Slope	D	Max. 5% (1:20) <i>Adjacent surface must be flush with the ramp.</i>
Flared Sides	E	Max. 10% (1:10)
Turning Space	F	4 feet by 4 feet <i>Maximum slope of 2% in any direction. May include Detectable Warnings.</i>
Clear Space	G	4 feet by 4 feet <i>Located at the bottom of the ramp outside active travel lanes.</i>
Detectable Warnings	H	<i>Required at traffic controlled intersections and mid-block crossings, full ramp width.</i>

Table 1. Minimum Requirements for Pedestrian Facilities



Perpendicular Ramp



Parallel Ramp

MaineDOT ADA Compliance Policy for Construction and Maintenance

- Revised August 11, 2016 -

□ Overview

MaineDOT is responsible for implementing the requirements of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA), and all applicable enforcement regulations, on its transportation facilities. This policy identifies actions necessary to comply with ADA requirements as work is performed on the highway and bridge system.

***NOTE:** This policy applies to locally administered projects with federal or state funding. MaineDOT will expect municipalities and their design consultants to abide by the requirements.*

□ General

Newly constructed, reconstructed, or rehabilitated pedestrian facilities will fully meet current ADA accessibility standards. MaineDOT will maintain its design guides and Standard Details to ensure that all elements of current ADA compliance are incorporated into roadway improvements as required by this policy.

□ Alterations and Maintenance

When walkways or other right-of-way elements intended to assist pedestrians are altered as part of a roadway improvement, those walkways and elements must be upgraded to meet current ADA standards. While many maintenance activities are not considered alterations and do not trigger requirements to perform ADA upgrades, most other work, including surface paving treatments and traffic signal replacements, do cause ADA improvements to be made. Table 1 below provides the minimum ADA upgrades required for a variety of work scopes.

□ Consideration beyond minimum requirements

In determining the extent to which ADA improvements must be performed within the limits of work, designers should consider the accessibility of existing pedestrian facilities in context with local pedestrian use and needs.

- Areas of heavy pedestrian use or the presence of hospitals, retirement centers, veterans facilities, schools, libraries and government buildings would give compelling reason to consider more extensive upgrades, particularly if there are barriers along the adjacent sidewalk. In these areas, municipalities and other local agencies should seek guidance about the extent of ADA improvements from MaineDOT project managers, in consultation with the Multimodal Program Manager and Office of Civil Rights.
- If multiple ADA modifications are being made to meet the minimum requirements, designers should consider upgrading all pedestrian facilities within the project limits rather than leaving a patchwork of compliant and non-compliant ADA elements.
- The extent of work for traditional improvement scopes should not be altered solely to avoid the requirements of this policy.

❑ Crosswalks and curb ramps

Any paving work affecting an existing crosswalk is considered an alteration that requires accessibility review and upgrades.

- When a crosswalk is altered, curb ramps must be installed or brought to current ADA standards where the crosswalk connects to a sidewalk or other pedestrian walkway.
- When a crosswalk is altered at an intersection, upgrades will be made at all corners, even if outside the project limits.
- Curb ramp upgrades will be made as required at driveway/crosswalk crossings when paving activities impact crossings.
- Current standards will be met for all required and applicable curb ramp elements including slopes, width, cross slope, landing area and detectable warnings.

❑ Pedestrian signal systems

When the accessibility of an existing pedestrian signal system is impacted by an alteration, such as improper button height or slopes at pedestrian poles, the pedestrian signal system must be upgraded to meet current ADA standards. The replacement of traffic signals and the relocation of pedestrian poles are also actions that require upgrade of the entire pedestrian signal system.

❑ Exceptions

Technically infeasible situations

If it is technically infeasible or physically impractical to meet all current ADA standards, the standards will be met to the maximum extent possible. Locations where full compliance is not feasible must be documented. If the non-compliant element cannot be improved enough to remove barriers, the municipality managing a locally administered project must consult with the MaineDOT Multimodal Program, which may contact the MaineDOT Civil Rights Office to determine the appropriate course of action.

Federal “Safe Harbor” provision

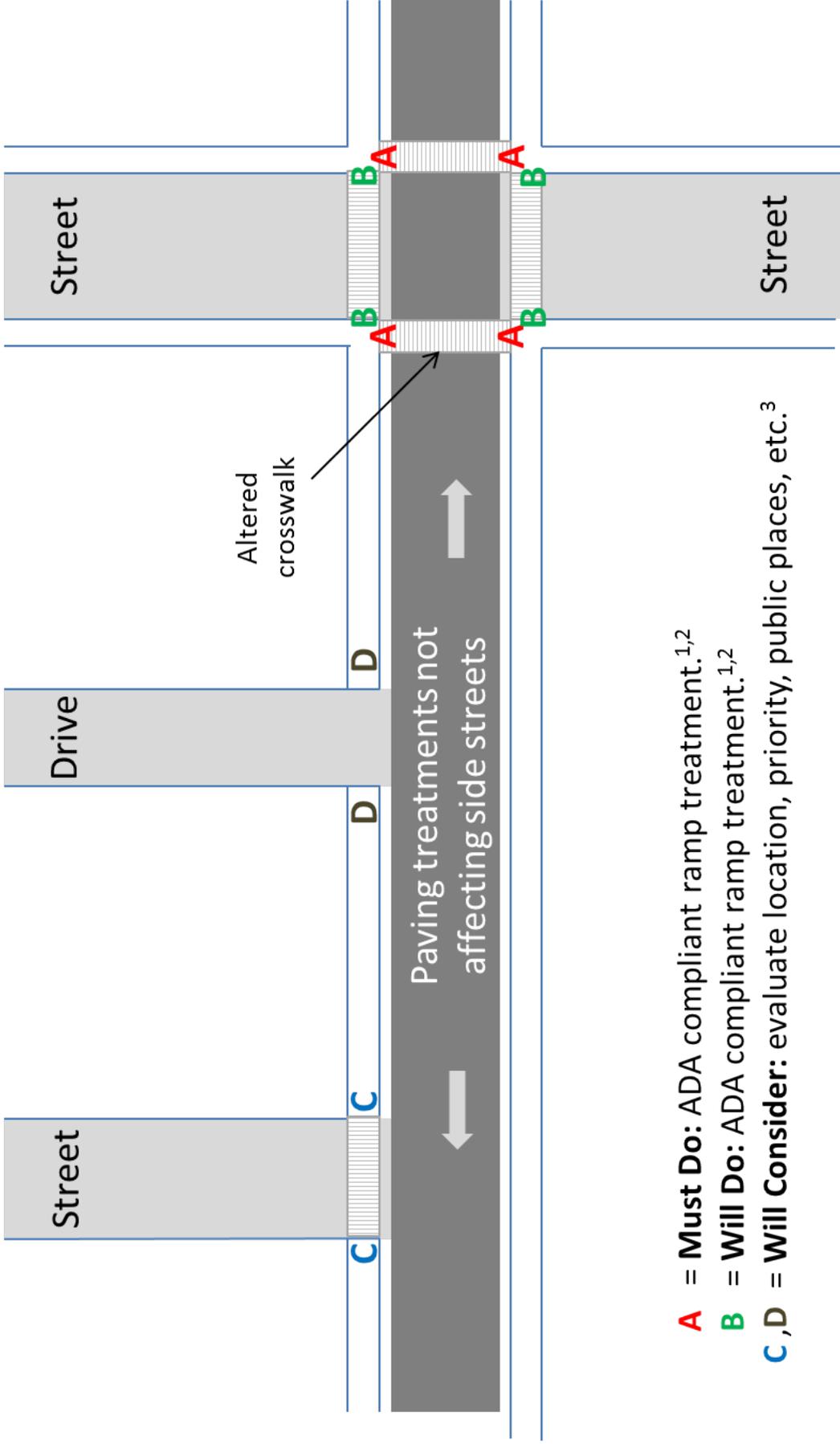
By federal regulation, existing accessibility elements constructed or altered before March 15, 2012 that comply with 1991 ADA Accessibility Guidelines do not have to be modified to comply with the 2010 standards. If this exception is utilized and detectable warnings are not present, detectable warnings will be added at locations determined appropriate as described in the Alterations and Maintenance section above.

❑ Responsibilities

For locally administered capital improvements, the municipality managing a project, in consultation with its contracted design consultant if applicable, is responsible for reviewing existing pedestrian and accessibility elements within the limits of a project and determining what ADA improvements must be made in accordance with this policy.

TABLE 1: REQUIRED ADA ELEMENTS BY SCOPE OF WORK

TYPE OF WORK	ADA IMPROVEMENTS NEEDED?	MINIMUM IMPROVEMENTS
<ul style="list-style-type: none"> ▪ New Construction ▪ Reconstruction ▪ Rehabilitation 	YES	Pedestrian facilities must be constructed or upgraded to meet current ADA requirements within the project limits.
<p>Paving Treatments:</p> <ul style="list-style-type: none"> ▪ Mill and fill / Overlay ▪ Micro-surfacing ▪ Hot or Cold In-Place Recycling ▪ PMRAP ▪ Ultra-Thin Bonded Wearing Course ▪ Light Capital Paving 	YES	<ul style="list-style-type: none"> - Upgrade curb ramps where treatment crosses or impacts existing pedestrian elements or routes within project limits. - If a crosswalk is altered at an intersection, all corners must be upgraded even if outside project limits. - Upgrade pedestrian signals to current ADA standard if the improvement affects the accessibility of the system.
<p>Signal: New location that warrants pedestrian facilities</p>	YES	Install or upgrade intersection pedestrian facilities to meet current ADA standards, including curb ramps and pedestrian signal systems.
<p>Signal Replace in Kind</p>	YES	Upgrade intersection pedestrian facilities to meet current ADA standards, including curb ramps and pedestrian signal systems.
<p>Signal: Modification involving excavation or right-of-way that warrants pedestrian facilities.</p>	YES	Upgrade intersection pedestrian facilities to meet current ADA standards, including curb ramps and pedestrian signal systems.
<p>Lighting</p>	NO	
<p>Striping</p>	NO	
<p>Maintenance Activities: Chip Seals, Crack Filling and Sealing, Dowel Bar Retrofit, Fog Seals, Joint Crack Seals, Joint Repair, Pavement Patching, Scrub Sealing, Slurry Seals, Spot High-Friction Treatments, Surface Sealing.</p>	NO	Note: Some combinations of these may require ADA upgrades.

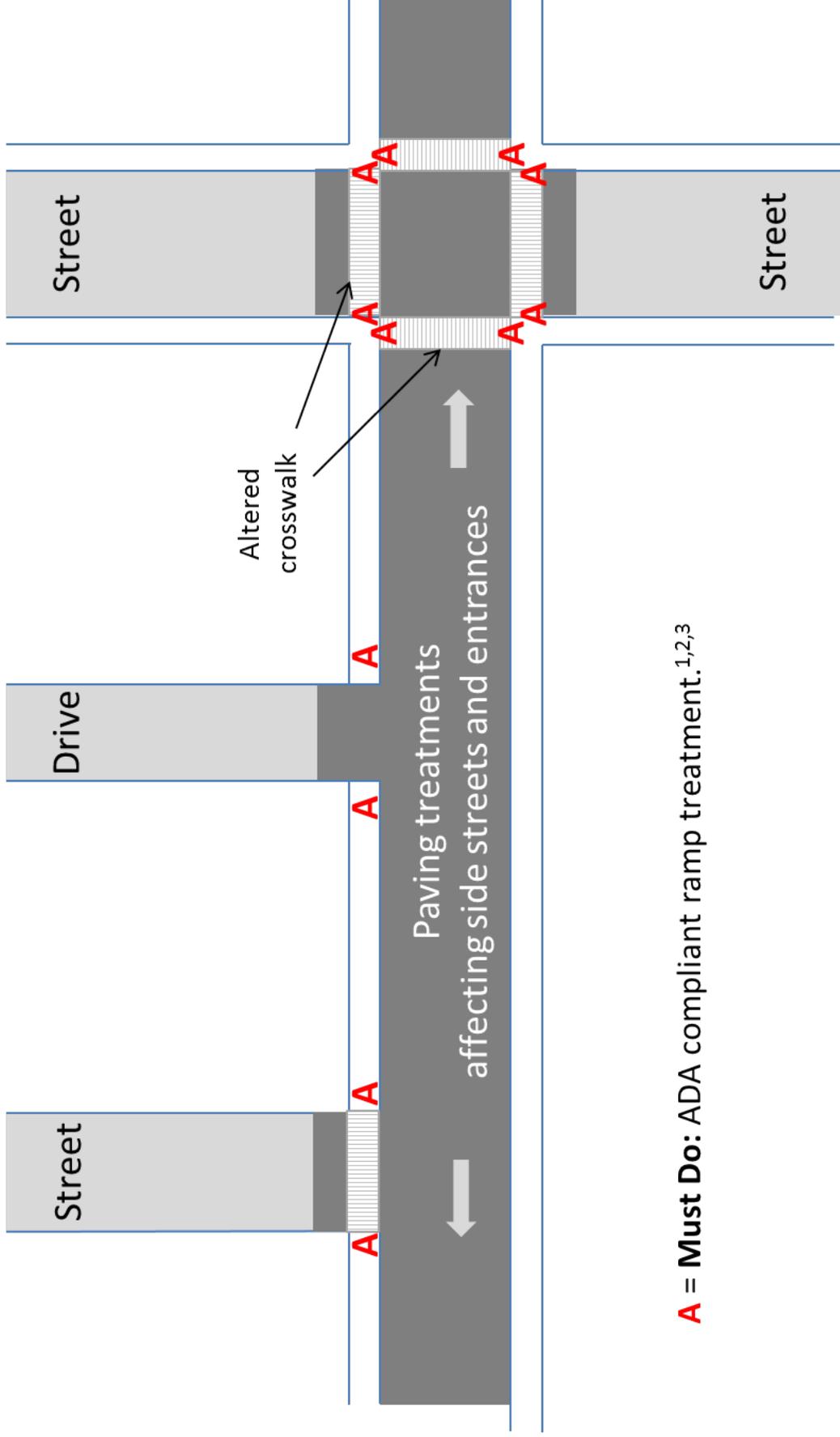


A = **Must Do**: ADA compliant ramp treatment.^{1,2}

B = **Will Do**: ADA compliant ramp treatment.^{1,2}

C, D = **Will Consider**: evaluate location, priority, public places, etc.³

1. Current ADA standards must be met unless existing ramps meet 1991 ADA Standards or 1991 UFAS.
2. Truncated domes will be installed at all modified ramps at roadway intersections, but not at drive crossings.
3. Consideration should be given to remove all physical barriers within the project limits along the roadway being improved and the adjacent sidewalks. Project guidance is available through the Highway Program Manager and the Director of the Civil Rights Office.



A = Must Do: ADA compliant ramp treatment.^{1,2,3}

1. Current ADA standards must be met unless existing ramps meet 1991 ADA Standards or 1991 UFAS.
2. Truncated domes will be installed at all modified ramps at roadway intersections, but not at drive crossings.
3. Consideration should be given to remove all physical barriers within the project limits along the roadway being improved and the adjacent sidewalks. Project guidance available through the Highway Program Manager or the Director of the Civil Rights Office.

END OF CHAPTER 10