

AOCIL, et al v. ODOT, et al.
Civil Action No. 3:16-cv-00322-HZ

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

I. Purpose

The plaintiffs, in a class action case, *Association of Oregon Centers for Independent Living, et al. v. Oregon Dept. of Transportation, et al* , Civ. No. 3:16-cv-003220HZ, have reached a Proposed Class Action Settlement Agreement (the “Proposed Agreement”). As a plaintiff class member, you are entitled to notice and an opportunity to object to or comment upon the Proposed Agreement. The Court has preliminarily approved the Proposed Agreement and scheduled a **hearing for Monday, March 27, 2017, at 9:00 a.m. in Courtroom 14B of the U.S. District Courthouse before Judge Marco A. Hernandez** to determine whether it is fair, reasonable, and in the best interests of the class.

II. Background

On February 22, 2016, the Association of Oregon Centers for Independent Living (AOCIL), along with eight individuals with mobility or visual impairments , filed a complaint against the Oregon Department of Transportation (ODOT) and its Director, Matthew Garrett. The lawsuit was filed in the United States District Court for the District of Oregon. The lawsuit alleged that ODOT had engaged in a systemic and continuing pattern and practice of discrimination against people with physical disabilities, particularly mobility impairments, by failing to provide compliant curb ramps on state highways wherever streets, roadways or highways where street level pedestrian walkways cross curbs, and to provide accessible pedestrian signals at curb ramps with traffic signals. Under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, ODOT was required, beginning in 1993, to provide compliant curb ramps whenever it constructed, paved, resurfaced or otherwise altered state highways. At the time the lawsuit was filed, Plaintiffs alleged that there were approximately 15,000 locations on state highways where curb ramps were either missing or non-compliant with current ADA standards. ODOT denied these allegations.

After extensive negotiations overseen by United States District Court Judge Michael Simon, the Parties reached the comprehensive Proposed Agreement. The Proposed Agreement will resolve the litigation and provide relief to individuals with physical disabilities, including the plaintiff class. The Proposed Agreement also called for the lawsuit to be converted to a class action.

On November 3, 2016, plaintiffs filed a second amended complaint, seeking to have the case become a class action. On November 17, 2016, the Court certified a class comprised of “people with physical disabilities, namely those with mobility or visual impairments, who have been adversely affected by inaccessible curb ramps or inaccessible pedestrian signals on pedestrian rights-of-way under the jurisdiction of the Oregon Department of Transportation.”

III. Provisions of the Proposed Class Action Settlement Agreement

Under the Proposed Agreement, ODOT will make major improvements to pedestrian accessibility along the state highway system, including installing missing curb ramps and upgrading substandard existing curb ramps to improve mobility and safety along state highways for all users. Specifically, the central components of the Proposed Agreement include the following:

(i) Subject to the terms and conditions set forth in the Proposed Agreement, ODOT will complete an updated inventory of the curb ramps on the state highway system by December 31, 2017, and will bring at least 30 percent of the curb ramp locations identified by the inventory by December 31, 2022, at least 75 percent of those curb ramp locations by December 31, 2027, and all curb ramp locations identified by the inventory by December 31, 2032 into compliance with the ADA and other technical guidances;

(ii) ODOT will complete an inventory of pedestrian crossing signals at all curb ramp locations to determine whether they comply with the reach, height and landing requirements of the ADA and other technical guidances, which are the ADA requirements that allow a person with a disability to approach and reach the signal button;

(iii) ODOT will address pedestrian signals identified in the inventory as required by the ADA and other technical guidances for accessibility (as to reach, height and landing) according to a schedule to be negotiated between the parties after the inventory is complete;

(iv) ODOT shall continue its policy of providing audible pedestrian signals upon request by an individual or the community, subject to an engineering study and objections from others in the community;

(v) ODOT shall retain the services of a mutually acceptable Accessibility Consultant (“AC”) with substantial experience in evaluating or assisting public entities coming into compliance with Applicable Standards. His or her responsibilities shall include reviewing, assessing and making recommendations in consultation with ODOT as to ODOT’s policies, practices, training, forms, and guidance pertain to curb ramps and pedestrian crossing signals, conducting quality assurance field checks of remediated curb ramps and pedestrian crossing signals, reviewing all grievances and complaints concerning ADA Accessibility relating to curb ramps and pedestrian crossing signals, and submitting reports, which will be provided to plaintiffs and made available on ODOT’s website, regarding ODOT’s compliance with the Proposed Agreement;

(vi) ODOT has also committed \$5 million in initial money to address priority curb ramps and associated pedestrian signals identified by plaintiffs;

(vii) The Proposed Agreement establishes a dispute resolution and enforcement process whereby the Parties may bring issues to the AC, then to a Special Master to be appointed by the Court, and finally if not resolved, to Judge Simon for resolution, subject to appeal to the Ninth Circuit.

The Proposed Agreement provides that ODOT will pay plaintiffs' reasonable attorney fees, expert witness fees and costs through the Effective Date of the Agreement with the amounts to be determined by the Court; and further provides for awards of attorney fees, expert witness fees and costs to the prevailing party in resolving disputes under the Agreement; for time spent on class certification; and for some monitoring of compliance with the Agreement.

IV. Effect of Court Approval of Agreement

If approved, the Agreement will be entered as an order of the court. The court will retain jurisdiction to enforce the Agreement.

If the Agreement is approved, Class Members will be precluded from filing claims for declaratory and injunctive relief for violations of the ADA and Section 504 of the Rehabilitation Act with respect to curb ramps and associated pedestrian facilities, including pedestrian signals associated with curb ramps. Class members will not be precluded from filing claims for damages for violations of the ADA and Section 504 of the Rehabilitation Act with respect to curb ramps and associated pedestrian facilities. Class members also will not be precluded from filing claims arising from pedestrian facilities which are not related to curb ramps and associated pedestrian signals.

V. Approval Process

This notice is only a summary. The terms of the Proposed Agreement control over any description in this notice. You can obtain a copy of the full Proposed Agreement from Tom Stenson at Disability Rights Oregon at tstenson@droregon.org or (503) 243-2081 or (800) 452-1694. Mr. Stenson or Kathleen Wilde can also answer any questions you might have about the Proposed Agreement. The Proposed Agreement is also available on DRO's website at <https://droregon.org>, on ODOT's website <https://www.oregon.gov/ODOT>, and on the website of the Association of Oregon Centers for Independent Living at <http://www.aocil.org/>

The parties will also hold five regional meetings around the state in January and February of 2017, in Portland, Salem, Roseburg or Medford, Bend and LaGrande. Notice of these public meetings, at which ODOT and DRO/AOCIL will be available to explain the proposed agreement and answer questions, will be posted on the ODOT, DRO and AOCIL websites as soon as they are finalized.

The Court will hold a full hearing to determine whether the Proposed Agreement is fair, reasonable and in the best interests of the class (Fairness Hearing). Any class member who wants to object to or comment on this Proposed Agreement must file a written objection or comments on or before **February 22, 2017** with Tom Stenson at Disability Rights Oregon, 610 SW Broadway, Suite 200, Portland OR 97205 or tstenson@droregon.org.

The Court has scheduled the fairness hearing for March 27, 2017 at 9 a.m., before Judge Marco A. Hernandez. This hearing will be held at the United States District Court for the District of Oregon at Room 14B, 1000 Southwest Third Avenue, Portland, Oregon 97204-2944.