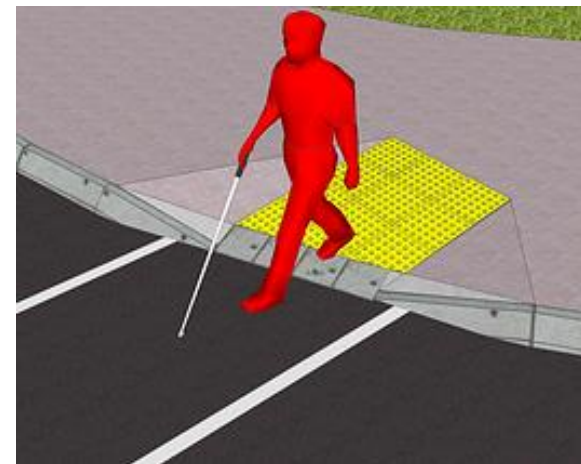


# The Americans with Disabilities Act (ADA) of 1990 as it Currently Applies to State & Local Agencies

by  
Gary Hicks, Jim Moulthrop, Steve Healow,  
and Ding Cheng



# Today's Agenda

- ADA  
intro/background/timeline
- Responsibilities pursuant to  
ADA
- DOJ/DOT Joint Technical  
Assistance on Title II of ADA
- Survey of Users
- Cost impacts
- Summary and Conclusions
- What is next?



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# Timeline

- **Americans with Disabilities Act of 1990**  
prohibits discrimination, ensures equal opportunity for persons with disabilities in employment (Title I) , **state and local gov't services (Title II)**, public accommodations, commercial facilities and transportation (Title III).
  - **ADA Amendments Act of 2008** (P.L. 110-325)
  - **July 2010 final regulations** revising DOJ ADA regulations includes ADA standards for acceptable design (a.k.a. the **2010 ADA Standards for Accessible Design**)
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# Timeline

- March **2011** 28 CFR 35.151 DOJ **Title II regulations**:  
“New construction and alterations by public entities...residential units...correctional facilities...”  
28 CFR 36 DOJ **Title III regulations** : “...places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by this part...”
  - June 28, **2013** Guidance: “Department of Justice/DOT **Joint Technical Assistance** on the Title II of the ADA Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing”
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# What Does the Department of Justice do pursuant to ADA?

- The Department of Justice (DOJ) has **rulemaking authority and enforcement responsibility** for Title II, i.e. State and local government services, activities on public rights-of-way (i.e. highways, roads and streets).
- “...The Attorney General may obtain the assistance of other Federal agencies in carrying out...this section...”
- Provide **clear, consistent, enforceable standards** to eliminate discrimination of disabled persons

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# DOJ Responsibilities

- U.S. Dept. of Justice, Civil Rights Division responsibilities pursuant to ADA:
    - Technical Assistance
    - Enforcement
    - Mediation
    - Regulations
    - Certification of State and Local Building Codes
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# What is the role of FHWA Pursuant to ADA?

- FHWA has oversight responsibility to ensure that:
  - Federal-aid projects ..... are planned, designed and constructed to provide safe access for pedestrians and disabled persons;
  - Recipients of Federal funds and State and local entities that are responsible for roadways and pedestrian facilities do not **discriminate on the basis of disability**.....;
  - All **complaints** filed under Section 504 or the ADA are processed in accordance with established procedures

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# What is Required of State and Local Agencies Pursuant to ADA Title II?

- Ensure any project for construction or alteration of a facility with public access **is also accessible to disabled persons.** (e.g. widening aisles and doorways, installing ramps and railings, install signs in alternative formats such as Braille.)
  - Prepare and maintain **a transition plan** in accordance with 28 CFR §35.150(d)
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# Transition Plan

- The **transition** plan should accomplish the following **four tasks**:
    - **identify** physical obstacles in the public agency's facilities that limit the accessibility .... to individuals with disabilities;
    - **describe** in detail the methods that will be used to make the facilities accessible;
    - **specify the schedule** for taking the steps necessary to upgrade pedestrian access to meet ADA and Section 504 requirements and
    - **indicate** the official responsible for implementation of the plan
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# Define Terms for the Joint Technical Assistance Document

- **Disability:** Physical or mental impairment that substantially limits one or more activities of an individual.
  - **Alteration:** “...a change that affects the...**structure, grade or use** of all or part of a facility...and **must include pedestrian access improvements...**” e.g. reconstruction, rehabilitation, resurfacing, widening
  - **Maintenance:** “...**do not significantly affect public access or usability...**and **do not require improvements to pedestrian accessibility...**” e.g. crack sealing, surface seals, joint repairs, patching potholes
-

# Maintenance vs. Alterations\*

Crack Filling and Sealing  
Surface Sealing  
Chip Seals  
Slurry Seals  
Fog Seals  
Scrub Sealing  
Joint Crack Seals  
Joint Repairs  
Dowel Bar Retrofit  
Spot High-Friction Treatments  
Diamond Grinding  
Pavement Patching

Addition of a new layer of asphalt  
Reconstruction  
Rehabilitation  
Resurfacing\*\*  
Widening  
Open-graded Surface Course  
Micro Surfacing  
Thin Lift Overlay  
Cape Seals  
In-Place Recycling



**ADA Maintenance**

**ADA Alterations**

\* Alterations trigger wheelchair ramps in most circumstances;



**By Michael Buckingham**  
President, FP<sup>2</sup> Inc.

# When Preservation Becomes 'Alteration'

Did you ever think that micro surfacing, or cape sealing, or cold milling and thin-lift asphalt overlays constituted an alteration to a pavement, demanding installation of curb ramps—and maybe a lot more—for use by those with mobility issues?

I didn't, and neither do other stakeholders in the pavement preservation community. That's why we were so puzzled, despite FP<sup>2</sup>'s best efforts, when the U.S. Departments of Justice and Transportation announced this summer that a variety of thin, non-structural pavement preservation

surfacing, thin lift overlays, open graded surface courses, cape seals, mill-and-overlays, and hot in-place recycling.

Projects deemed to be *maintenance*, not requiring curb ramps, include **crack and joint filling and sealing, chip seals, slurry seals, scrub and fog seals, concrete joint repairs and dowel bar retrofits, spot high-friction treatments, undersealing, diamond grinding, and pavement patching.**

## POTENTIAL DAMAGE TO PROGRAMS

This new unfunded federal mandate on state and local governments has the ability to severely damage road network life spans by undermining our rule that preservation be *The Right Treatment for the Right Pavement at*

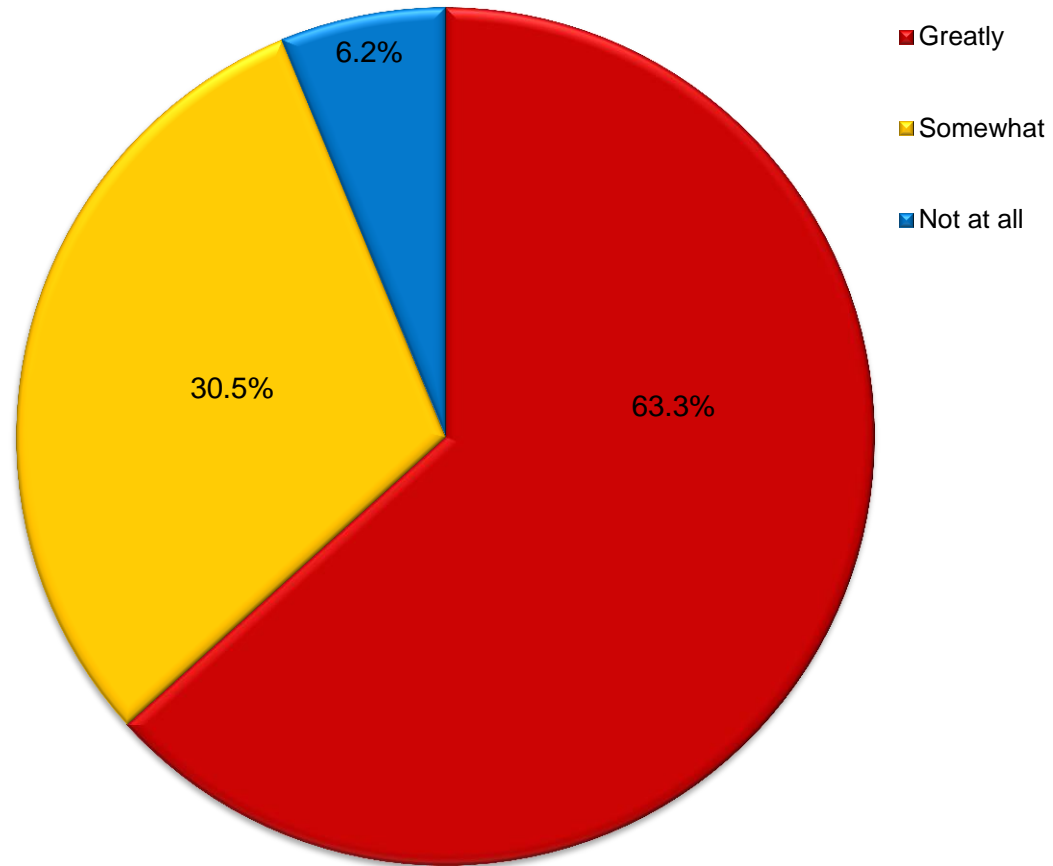
- “...The net result...will be to decrease the overall road miles that can be maintained by an estimated 20% and decrease local and state...decision-making authority with regard to how they should maintain their roads...”

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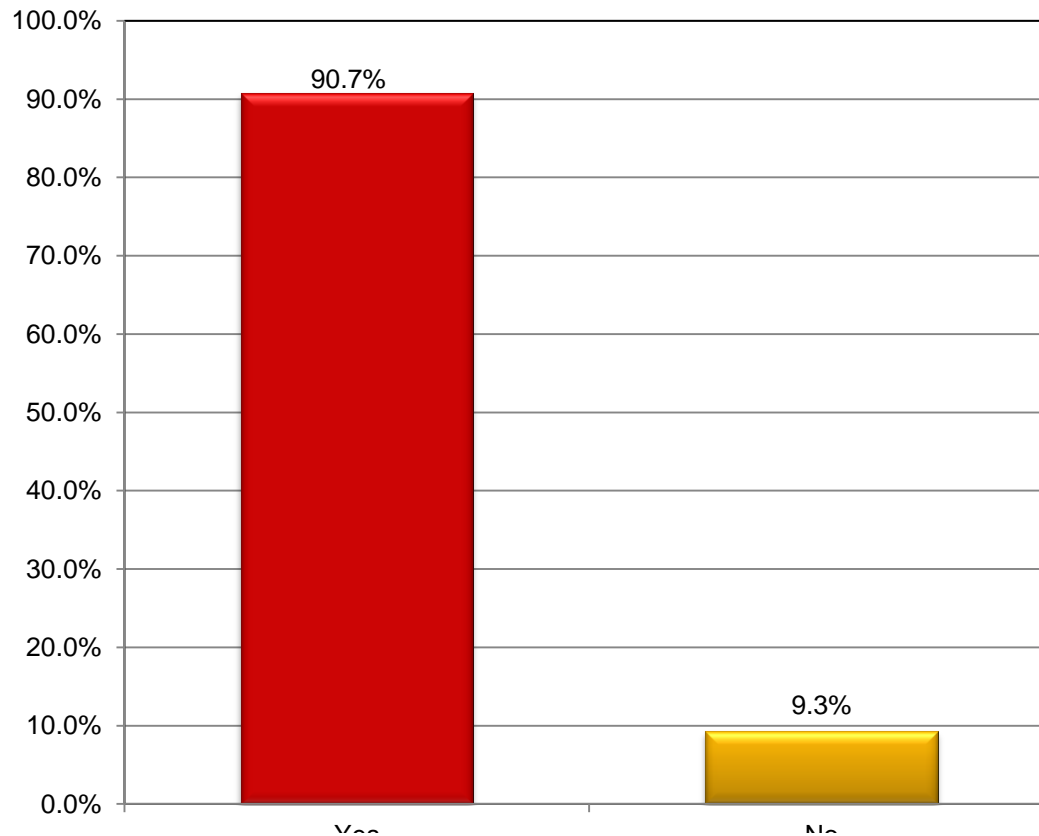
# Survey of Users

- Conducted in spring 2014
  - Survey developed by FP2, CCSA, and CP2 Center
  - Total of 9 questions
  - Sent out to mailing list of the CP2 Center
  - Results presented in the CP2 Center June Newsletter
  - Follow-up stories by CalAPA (Better Roads) and in FP2 Journal
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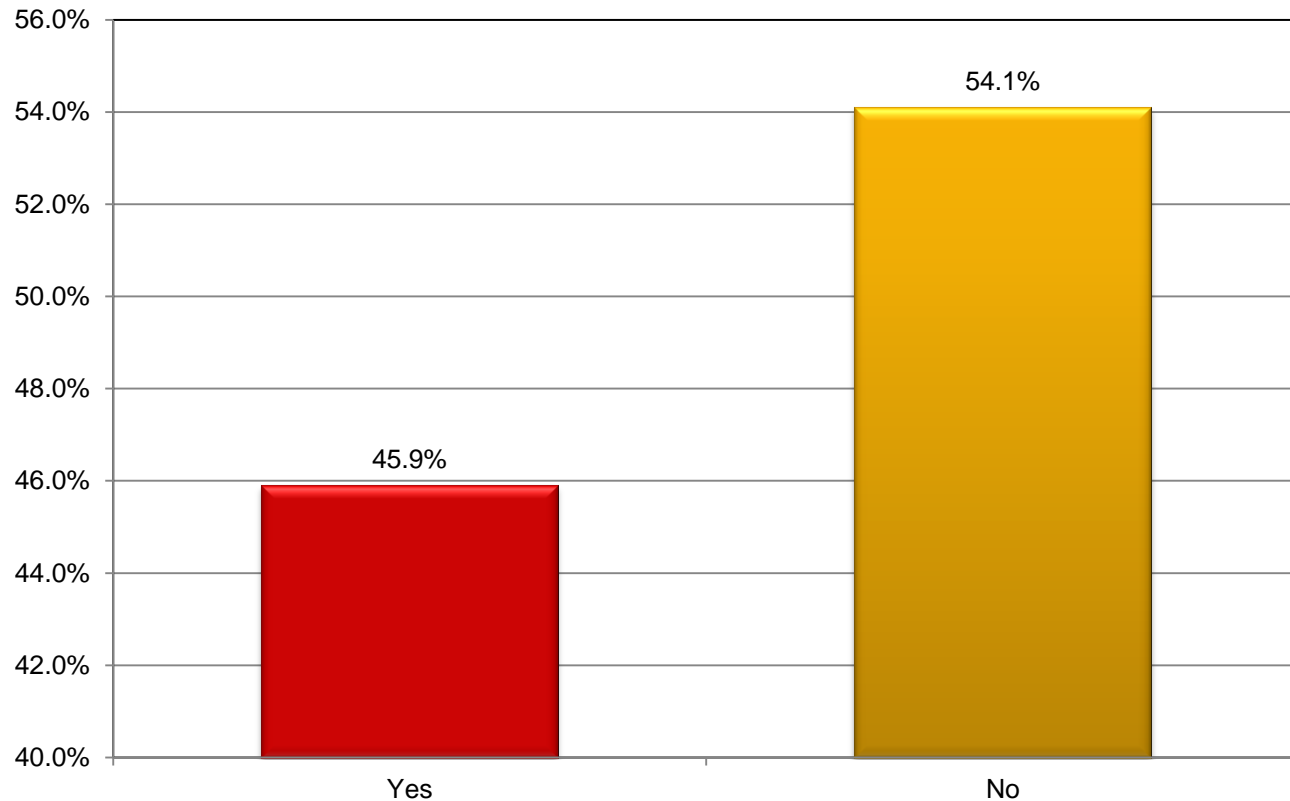
# How will this new interpretation affect your ability to maintain your roads?



# Do you use micro surfacing, cape seals, thin and ultrathin HMA, and in-place recycling to maintain your roads?

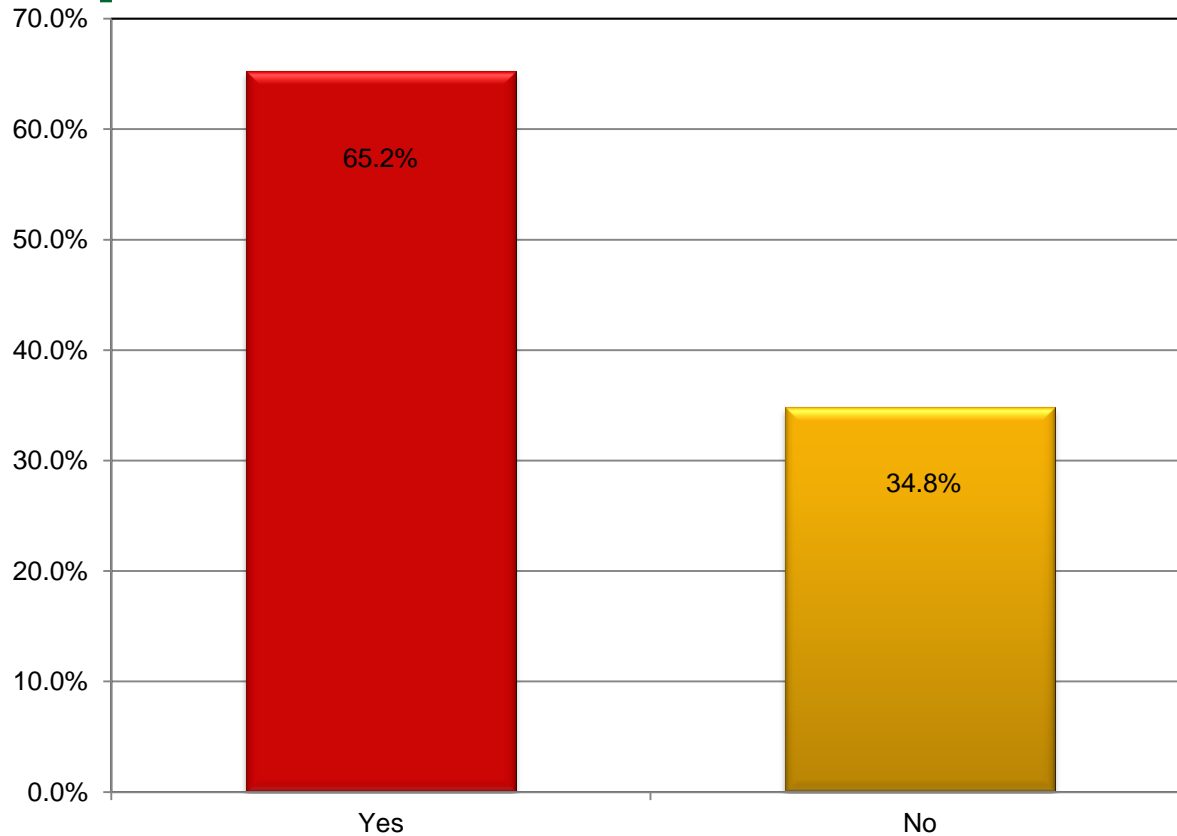


**If YES to the prior question, will you no longer choose these treatments that now require the installation of curb ramps where sidewalks are present?**

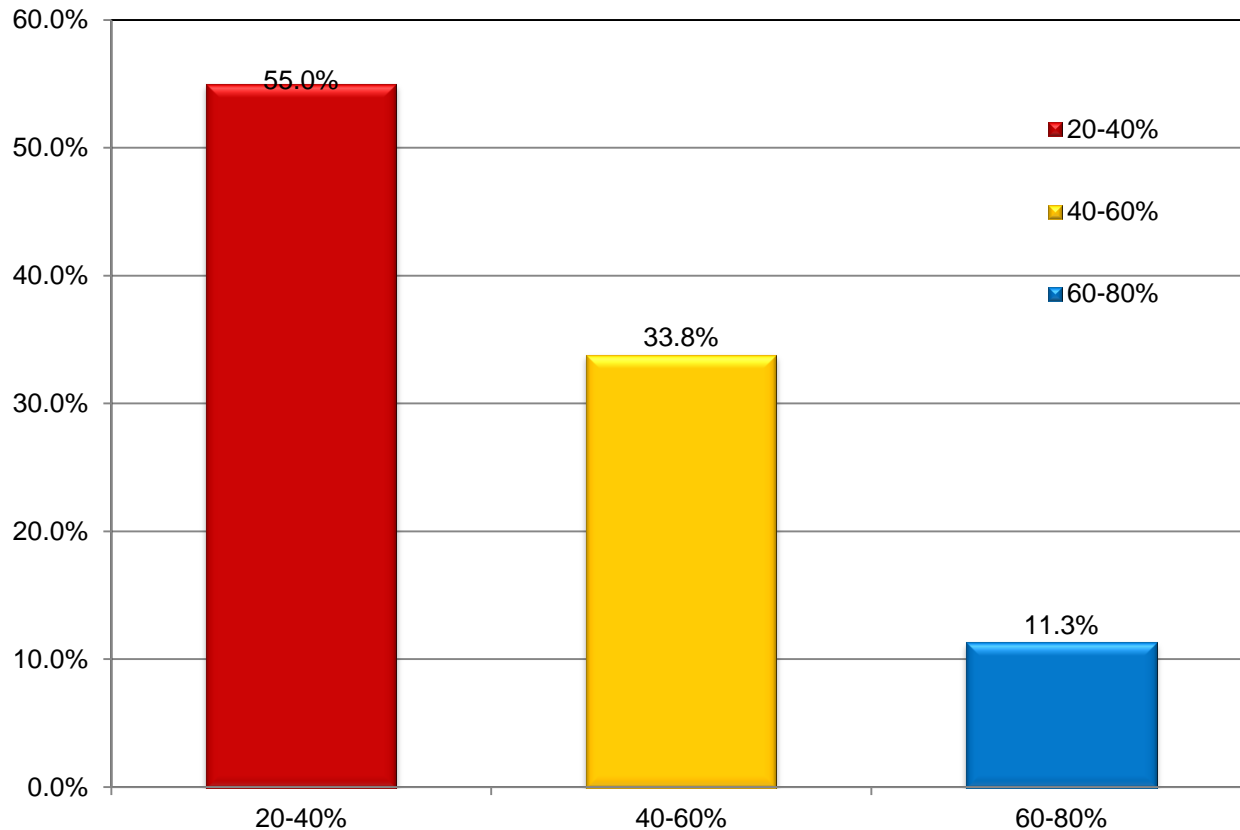




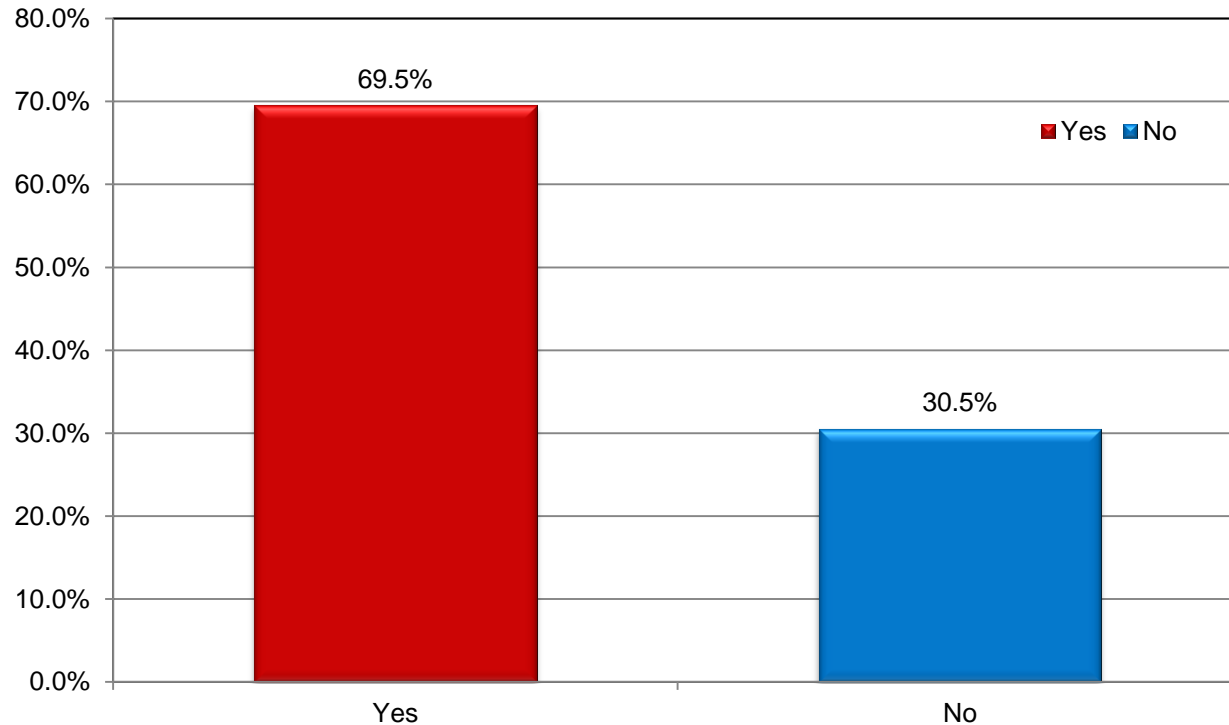
# Will this technical assistance document cause you to defer projects on your current plan?



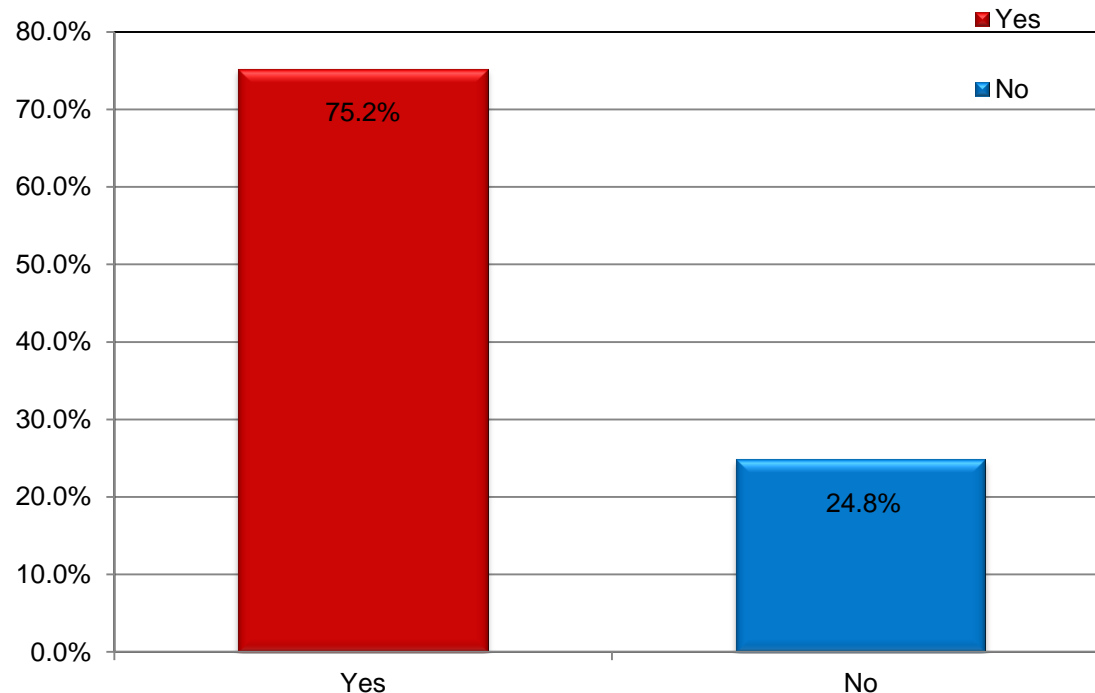
# Will these changes increase the cost of your roads? Please indicate how much it will increase your costs.



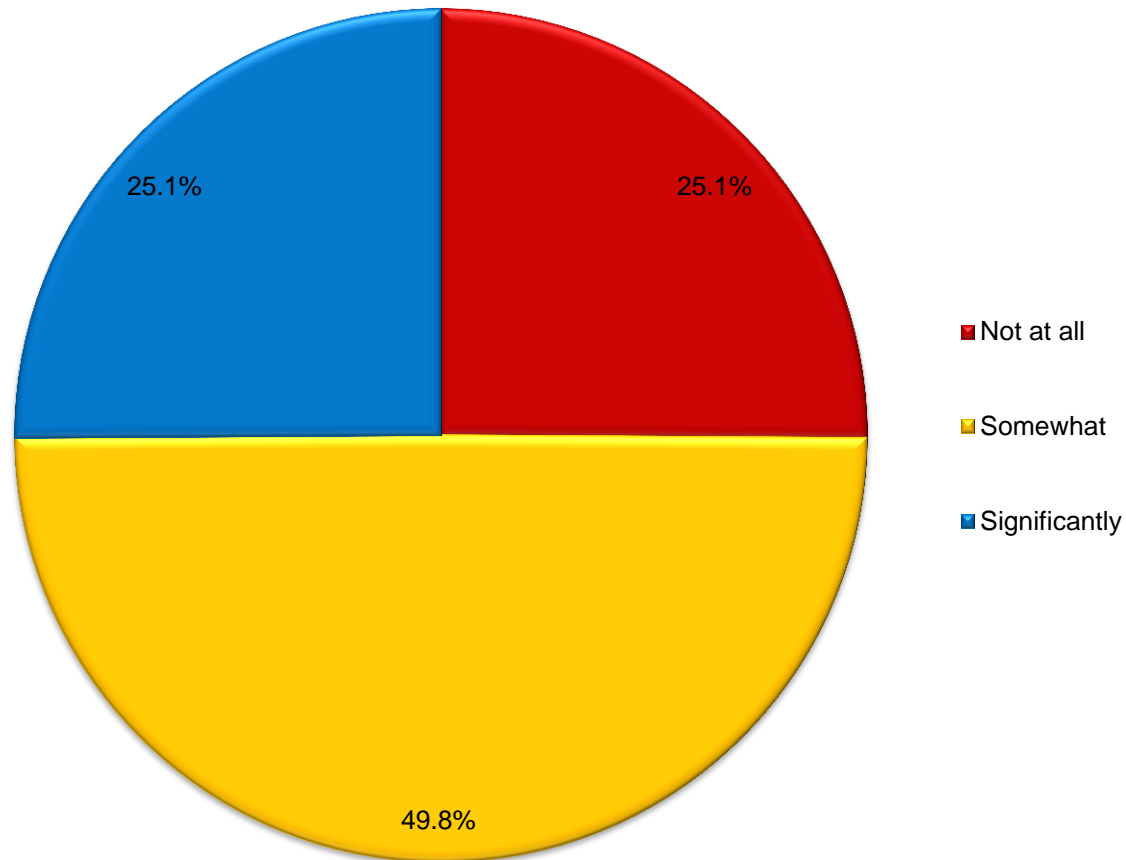
**If no increase is expected, do you believe it will cause you to shift away from treatments that have worked well for you in the past?**



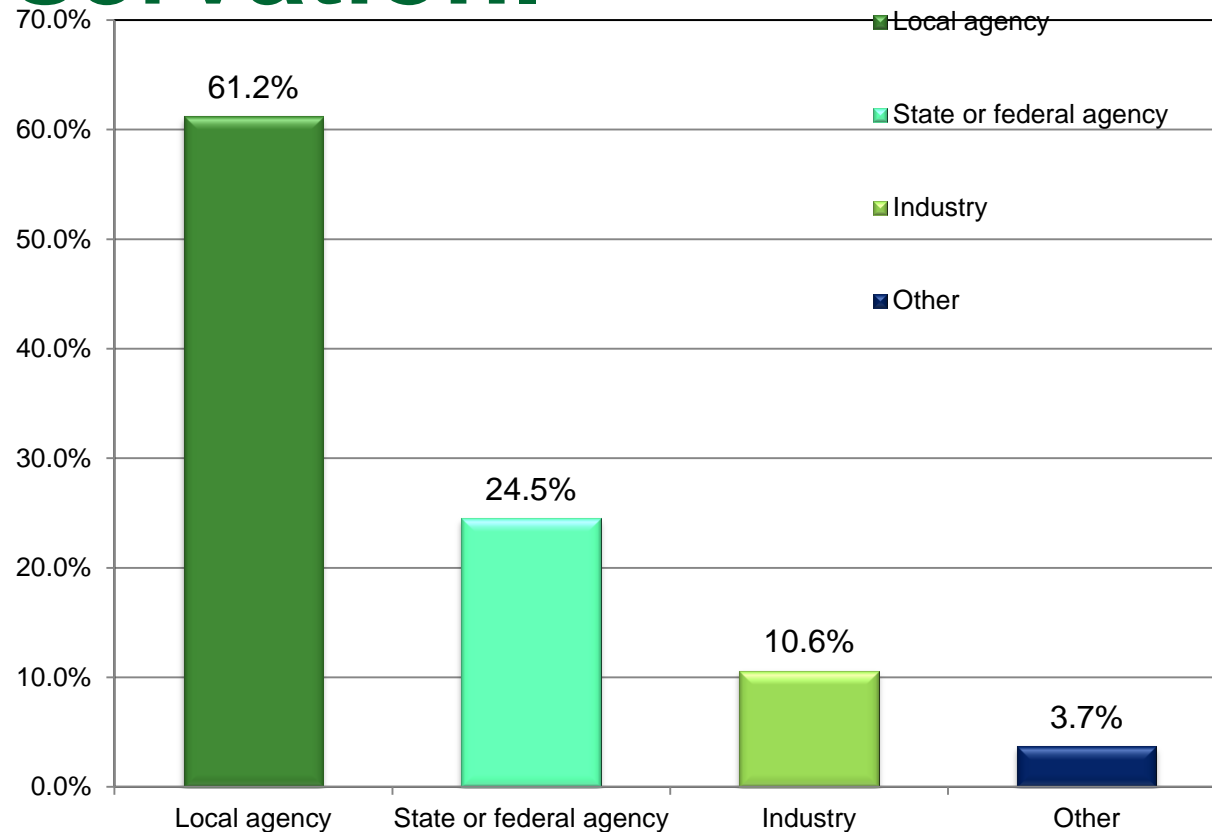
# Will this new ruling mean you will have to defer maintenance?



# How will this new TA change the way you will contract out work?



# Please identify your affiliation related to pavement preservation.



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# Conclusions from the Survey

- Agencies may no longer use surface treatments such as micro surfacing, cape seal, or in-place recycling if they require the installation of curb ramps.
  - The TA will cause agencies to defer projects.
  - The TA will increase the project costs by 20-40% or more.
  - The TA will result in deferred maintenance.
  - The TA will impact the way agencies contract out work.
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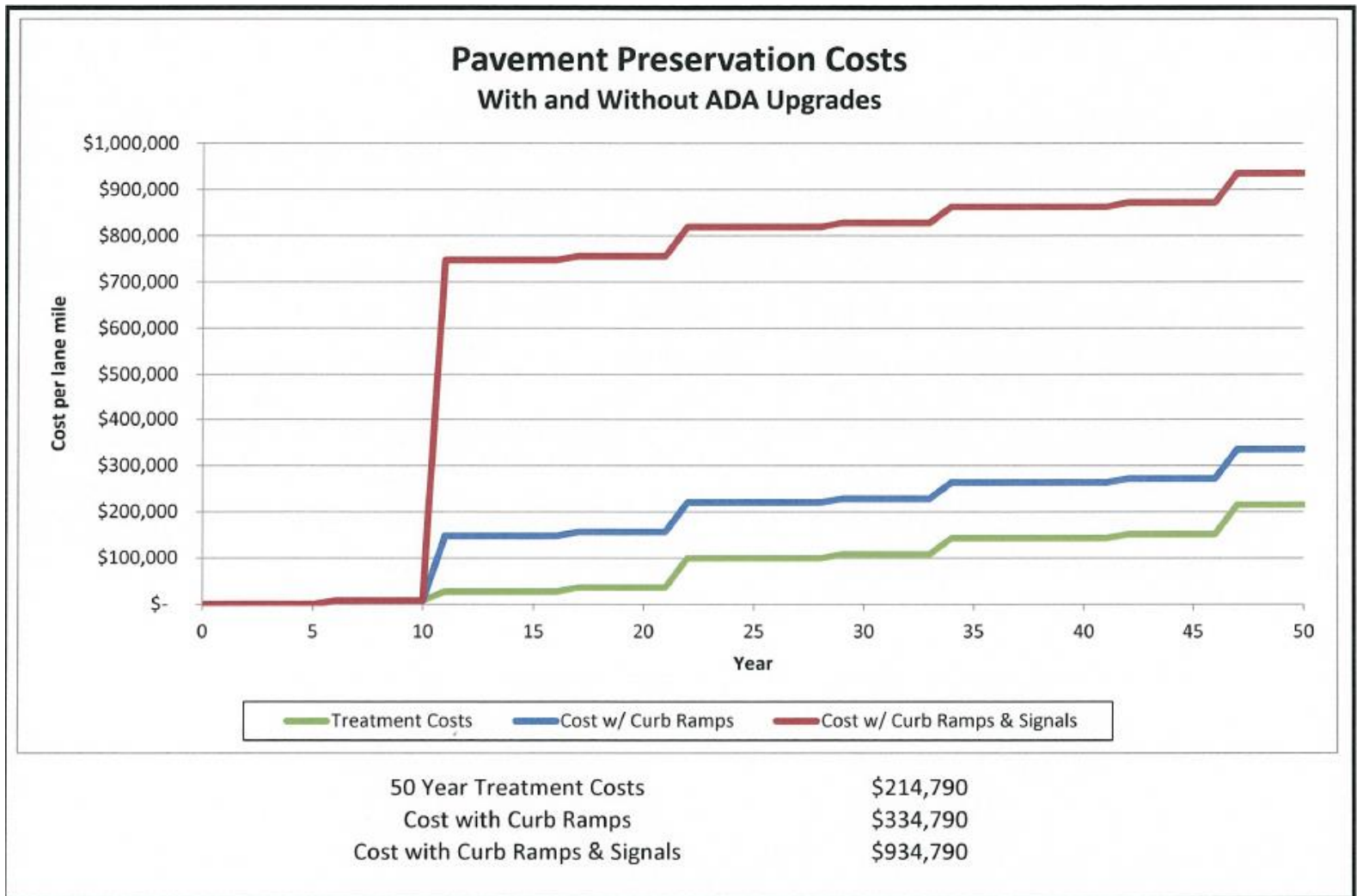
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# Cost to Implement ADA

- Example City with population >300k , area 150 sq.mi.
  - Step #1 Database with GIS links
    - How many intersections? (10,000)
    - Are they standard with 4 ramps or non-standard?
    - Are the existing ramps ADA compliant?
    - Will non-compliant ramps be replaced?
    - Are there mid-block ramps?
  - Step #2 Analyze Data
    - Number and cost of new ramps, replacement ramps
  - Step #3 Prioritize with stakeholders
  - Conclusion: \$45M to bring all ramps up to standard
  - Concrete Repair Budget: \$1M/year
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# ADA Cost Comparison Chart



*\*NOTE: All values based on 12 foot lanes and 5 intersections per mile of road.*

Suburban area, Eastern U.S. A., Cold weather location

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# What are the Top 10 ADA Access Violations

- **? Signs:** Outdated or incorrect signage
  - **Parking:** Slope too steep or wrong dimensions
  - **Access Routes:** Wrong signs, steep slopes or other hazards
  - **Curb Ramps:** Steep Slopes
  - **Pedestrian Ramps:** No handrails, landings not level or no ramp
  - **Bathrooms:** Too small or fixtures out of reach
  - **Stairs:** No hazard striping or handrails, rails at wrong height and uneven steps
  - **Seating:** No access for people with disabilities
  - **Doorways:** Clearance issues or improper door handles
  - **Exits:** No exit or no signs showing exits
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# Next Steps

- Get informed, stay informed
    - Caltrans guidance [[www.dot.ca.gov/hq/oppd/access/access.htm](http://www.dot.ca.gov/hq/oppd/access/access.htm) ]
    - FHWA guidance [[www.fhwa.dot.gov/programadmin/pedestrians.cfm](http://www.fhwa.dot.gov/programadmin/pedestrians.cfm)]
    - DOJ guidance [ [www.ada.gov](http://www.ada.gov) ]
  - Training
    - NHI#142045 “Pedestrian Facilities Design”
  - Need support from
    - FP2,
    - Agencies, and
    - Industry
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# Conclusions

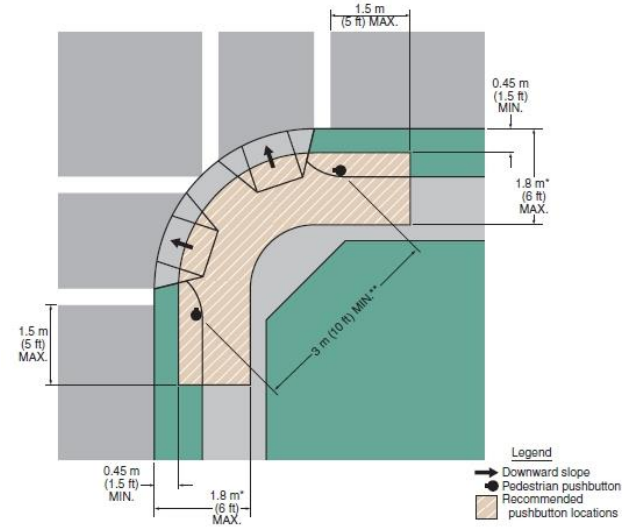
- **The 1990 Americans with Disabilities Act (ADA) is a broad statute intended to provide clear, consistent, enforceable standards to eliminate discrimination against disabled persons in all areas of public life.**
    - **Title I employment;**
    - **Title II state and local gov'ts ensure that public rights-of-way and facilities are accessible to disabled persons;**
    - **Title III requires public accommodations, commercial facilities e.g. restaurants, banks, parks, theaters, stores and so on to provide access to disabled persons.**
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# More Conclusions

- **Annually in Calif. there are**
    - ≤1,000 ADA civil lawsuits;**
    - ≤20 ADA complaints filed/year against state and local agencies;**
    - Caltrans responds to 200+ ADA grievances and access requests.**
  - **DOJ has enforcement responsibilities. DOT/FHWA has oversight responsibilities; State and local agencies and commercial enterprises are responsible for providing safe, accessible facilities with due regard for handicapped persons.**
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# The end



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# References

- [http://www.ada.gov/2010\\_regs.htm](http://www.ada.gov/2010_regs.htm)
  - <http://www.ada.gov/q%26aeng02.htm>
  - <http://www.ada.gov/pubs/adastatute08.pdf>
  - <http://www.fhwa.dot.gov/civilrights/programs/ada.cfm>
  - [http://www.fhwa.dot.gov/civilrights/programs/ada\\_sect504qa.cfm](http://www.fhwa.dot.gov/civilrights/programs/ada_sect504qa.cfm)
  - [http://witness2013.acec.org/userfiles/file/20130730\\_BRIEF\\_ADA\\_Resurfacing\\_Technical\\_Assistance.pdf](http://witness2013.acec.org/userfiles/file/20130730_BRIEF_ADA_Resurfacing_Technical_Assistance.pdf)
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# More References

- <http://www.news10.net/news/article/264475/2/News10-Investigates-ADA-Lawsuits>
- <http://www.ada.gov/pubs/adastatute08.htm>
- <http://www.nxtbook.com/naylor/FPPQ/FPPQ0413/index.php#/6>
- [http://www.dot.ca.gov/hq/bep/documents/fy2012-2013\\_annual\\_report.pdf](http://www.dot.ca.gov/hq/bep/documents/fy2012-2013_annual_report.pdf)
- [http://www.nhi.fhwa.dot.gov/training/course\\_search.aspx?tab=0&key=ada&res=1#course\\_search.aspx?tab=0&key=ada&sf=0&course\\_no=142045](http://www.nhi.fhwa.dot.gov/training/course_search.aspx?tab=0&key=ada&res=1#course_search.aspx?tab=0&key=ada&sf=0&course_no=142045)