

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VOICES FOR INDEPENDENCE AND, : Civil Action No.: 04-328 Erie
PAUL PECUNAS; ON BEHALF OF :
THEMSELVES AND ALL OTHERS :
SIMILARLY SITUATED, : HON: SEAN J. MCLAUGHLIN
Plaintiffs :

vs. :

CITY OF MEADVILLE, : **Electronically filed**
PENNSYLVANIA, :
Defendant :

CONSENT DECREE

VOICES FOR INDEPENDENCE (VFI), : Civil Action No.: 06-78 Erie
MICHAEL L. EAKIN; JAY :
SHUFFSTALL; CAROLYN A CREHAN; :
KATHY A. HERTZOG; PAUL : HON: SEAN J. MCLAUGHLIN
PECUNAS; SANDRA FULLER; MARY :
ANN PARSNIK; PAT WEAVER; :
FELICIA BONGIORNO; MELVIN :
BORREO; STEPHEN CLARK; JILL :
HRINDA-PATTEN; MARY D. KRUG; :
and B. LYNNE VESTAL; on behalf of :
themselves and all others similarly situated, :
Plaintiffs :

vs. :

COMMONWEALTH OF :
PENNSYLVANIA DEPARTMENT OF :
TRANSPORTATION; ALLEN D. :
BIEHLER, P.E., in his official capacity as :
Secretary of Transportation of the :
Commonwealth of Pennsylvania, CITY OF :
ERIE, PENNSYLVANIA and CITY OF :
MEADVILLE, PENNSYLVANIA, :
Defendants :

CONSENT DECREE

Plaintiffs and the Defendant City of Meadville, by and through their respective counsel of record, do hereby consent and agree to be bound by the following terms:

Background

Plaintiffs filed the second above captioned matter at CA 06- 78 Erie against the Commonwealth of Pennsylvania (PennDOT, the "PennDOT Case"), seeking to impose responsibility upon PennDOT for creating and maintaining curb cuts along state highways that pass through the cities of Erie and Meadville. Plaintiffs joined the Cities of Erie and Meadville as defendants in the PennDOT suit by a pleading filed on September 7, 2006. A related action, the first captioned above, had been filed at CA 04- 328 by Voices for Independence and others against the City of Meadville only on November 10, 2004.

The subject matter of these lawsuits, with respect to the City of Meadville, is the design of certain curb ramps within the city Meadville that are adjacent to city streets, intersections, or sidewalks that have been altered, installed, repaired, or replaced (the phrase "altered, installed, repaired, or replaced" shall hereinafter be referred to as "Altered").

On September 2, 2005 the City of Meadville, by and through a court approved settlement order entered in the action at CD 04- 328 (the "2005 Settlement Order"), committed to comply with controlling regulations concerning construction and retrofitting of curb ramps adjacent to its streets which were and are resurfaced beginning for 2006.

On December 22, 2006 the City of Meadville and PennDOT, by and through a court approved settlement order entered in the action at CD 06-78 (the "2006 Settlement Order"), agreed to share responsibility for the future design of curb ramps which are adjacent to city streets, intersections, or sidewalks that have been Altered, together with the retrofitting of those curb ramps found to have been designed improperly for the immediate two year period prior to the filing of this lawsuit. The 2006 Settlement Order sets forth guidelines from which to determine, at the intersection of a State Highway with a City Street, which ramps shall be the responsibility of the City of Meadville and which shall be the responsibility of PennDOT.

The parties to the Settlement Order disputed whether the City and Commonwealth owed a duty to construct or retrofit certain curb ramps adjacent to those city streets, intersections, or sidewalks that were altered between January 26, 1992 and December 31, 2005, as and to the extent required to achieve compliance with ADAAG regulations. This Honorable Court denied, in an Opinion and Memorandum of Court, a pretrial motion for Summary Judgment on behalf of the City and Commonwealth, seeking an order that their duties with respect to these curb ramps were subject to a two year statute of limitations.

All the intersections in the City of Meadville are reflected in the Ramp Retrofit Map which is incorporated into this order, labeled Exhibit 1. Each corner of each intersection has been color-coded, as follows:

- Green-- Curb ramp construction or retrofitting completed by the City of Meadville;
- Purple-- Curb ramp to be constructed or retrofitted by the City of Meadville;
- Blue-- Curb ramp compliance at this intersection is the responsibility of PennDOT.
- Orange-- Intersection is the shared responsibility of the City of Meadville and PennDOT.
- Red-- Curb ramps for which no action is proposed

The corners marked in purple, and those corners of intersections marked in orange which are designated to be the responsibility of the City of Meadville under the 2006 Settlement Order are hereby designated to be the "Subject Meadville Curb Ramps." The City proposes complete retrofitting of all Subject Meadville Curb Ramps for which retrofitting is required to attain compliance as hereinafter set forth in paragraph 3 of this Order by December 31, 2013.

Subsequent to preparation of Exhibit 1, Plaintiffs have presented a schedule enumerating their objections to remediation which has been performed by the City of Meadville, principally as to curb ramps for which construction or retrofitting has been completed (code color green), which schedule, referred to herein as Plaintiff's October 30, 2008 schedule. Among the issues highlighted by Plaintiffs' 10/30/08 schedule is "counter slope", being the slope of the surface of the street immediately adjacent to a curb ramp. On the basis of Plaintiffs' October 30, 2008 schedule and the response of The City of Meadville, the parties have identified certain

remediation work previously performed requiring correction or further remediation, and which has been identified and addressed in this Consent Decree.

The Plaintiffs in the above captioned matters, after conferring with the City of Meadville, by and through its elected officials, have agreed that resolution of this Action is in the best interests of both Plaintiffs and the City alike. To that end the Plaintiffs and the City hereby enter into this Consent Decree and submit themselves to the following:

Specific Terms of Decree

1. **Identification of the Subject Meadville Curb Ramps.** The Plaintiffs hereby acknowledge that the corners labeled in purple on the document designated Exhibit 1 to this consent decree, and those corners shown in orange which are designated to be the responsibility of the City of Meadville under the 2006 Settlement Order constitute all of the Subject Meadville Curb Ramps.

Schedule 5 attached hereto designates a change to Exhibit 1 as previously filed with the Court. The City shall, within 45 days, have Exhibit 1 revised by the notation thereon of the matters enumerated in Exhibit 5, and shall file the same with the Court; the exhibit to be labeled "Revised, Substituted Exhibit 1, Dated _____."

2. **Resurfacing and Alteration.** Commencing on January 1, 2009 , the City shall ensure that all the Subject Meadville Curb Ramps (expressly excluding, however, any curb ramps which are designated to be the responsibility of PennDOT under the 2006 Settlement Order) are retrofitted as and to the extent necessary to comply with the applicable requirements of the Americans with Disability Act, including, but not limited to, 28 C.F.R. § 35.151(b),(c), (e)(1) and (e)(2), as amended from time to time, except as otherwise proved herein.

Plaintiffs, their agents and representatives, shall first calibrate any smart level or similar device at a calibration site, to be created and maintained by Meadville, before performing slope measurements.

3. **Specific Resurfacing Obligations.** The City shall retrofit the Subject Meadville Curb ramps by December 31, 2013. The City is concerned that it has agreed to additional remediation to the certain curb ramps identified upon the Plaintiffs October 30, 2008 schedule and to incorporate certain previously unanticipated remediation steps into its ongoing remediation program (*e.g.* adjusting street crowns at certain intersections) the costs of which are substantially in addition to the previously anticipated remediation costs undertaken by the City. Until specific design of individual curb ramp renovations is accomplished, it is impossible to evaluate the true economic impact of the items giving concern to the City. If and to the extent that the City finds its concerns to be sustained by actual experience in remediating the curb ramps identified upon the Plaintiffs' October 20, 2008 schedule and in retrofitting the remaining Subject Meadville Curb ramps the parties agree that the City may seek reasonable extensions of the time in which to complete the renovations of the Subject Meadville Curb Ramps either by agreement of the Plaintiffs or by application to the Court in the absence of any such agreement.

The City reserves the right in certain areas (*e.g.* Benson Avenue neighborhoods) to review the need for sidewalks and to remove sidewalks when determined to be appropriate and any and all of the Subject Meadville Curb Ramps marked upon Exhibit 1 shall no longer be remediated from and after the removal of the sidewalks formerly serviced thereby. Plaintiffs reserve the right to assert and to litigate any legal objections they may have to any sidewalk removals conducted by the City pursuant to this paragraph.

In addition, the City further reserves the right to not remediate any Subject Meadville Curb Ramps that are technically infeasible to remediate in accord with applicable law. In this regard, the City shall comply with the provisions of paragraphs 8 and 9 of this Consent Decree.

4. **Limitation of Liability for Curb Ramps triggered by repaving before January 1, 2006.** The Parties acknowledge that the commitment set forth in paragraphs 1-3 hereof incorporates all obligations of the City of Meadville as to curb ramps, the responsibility for constructing or remediating which was triggered by activities of the City of Meadville

performed between January 26, 1991 and January 1, 2006, and also obligations triggered by actions during 2006 and 2007, as to which curb ramps have not yet been constructed or remediated.

5. **Bidding Requirements.** The City shall ensure that all bids and contracts for the work of retrofitting the Subject Curb Ramps shall reference the applicable requirements of the Americans with Disability Act, including, but not limited to, 28 C.F.R. § 35.151(b),(c),(e)(1) and (e)(2).
6. **Annual Reports of Proposed Work.** On or before March 31, 2009, and on each March 31 thereafter until all remediation work required hereby is completed, the City shall send a written report to Plaintiffs' Counsel, listing those specific curb ramps from the Subject Meadville Curb Ramps that the City proposes to retrofit in the year following.
7. **Annual Reports of Compliance.** On or before January 31 of each year during which this settlement is in effect, ending with January 31 of the year following the year in which all remediation work required by this Order is completed, Meadville shall send a written report which shall include detailed measurements to Plaintiffs' Counsel, identifying all those specific curb ramps from Exhibit 1 which were remediated during the prior year. The measurements of slopes shall be taken at the points indicated in the template labeled exhibit 2, which is attached hereto and made a part hereof.
8. **Dispute Resolution: Potential Exceptions Pursuant to 28 C.F.R. Part 36, App. A § 4.1.6(i).** 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, and Chapter 4 generally, as amended from time to time, shall be the standard to judge the validity of any City 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. On all curb ramps, any otherwise applicable detectable warning requirements shall be modified to only require full width warning for two feet of running ramp length. Any time during the term of this Consent Decree that the City believes that site conditions at any particular intersection prohibits or makes unnecessary the full compliance with each of the standards set out above the retrofitting of any particular ramp from among the Subject

Curb Ramps, the City of Meadville shall inform Plaintiffs' Counsel in writing. This writing shall list which City representatives have reviewed the intersection, the location of the intersection, and a statement of which standard(s) can not be met, why not, and how much of a deviation from the standard(s) is contemplated. The City shall include a detailed drawing(s) of each such proposed deviant ramp, with the proposed final measurements for each direct slope, cross- slope, lip and level landing. If Plaintiffs, by their authorized representative, consent to the deviation, or if Plaintiffs do not object in writing to the deviation within 15 days from the postmark of the written notification, the City of Meadville may presume that the deviation is acceptable to the plaintiffs and may begin construction of that particular ramp.

9. **Unresolved Disputes.** In the event that the plaintiffs object to the proposed deviation, the parties expressly agree that this Court shall have jurisdiction to resolve any disputes under the terms of this paragraph. If the dispute cannot be resolved during the 15 day period from the plaintiffs objection, the parties may submit written letter briefs to this Court with requests for such factual hearing opportunities as the submitting party(ies) may believe to be required for a proper resolution to the dispute. When one side submits such a brief, the other side may, if it desires, submit an opposing brief within 10 days.
10. **Performance of Further Retrofitting as to Ramps Previously Remediated by the City of Meadville.** Exhibit 3 incorporated herein is a schedule of ramps previously reconstructed or remediated by the City of Meadville (Exhibit 1, green code) and which have been identified as requiring additional remediation. The City of Meadville shall perform the corrective work designated on Exhibit 3 on or before January 1, 2010.

As to retrofitting involving remediation of truncated domes (benefitting the sight impaired) which were cast in the concrete surface of curb ramps, and which domes have been determined to be unsatisfactory, the City of Meadville will be deemed to have performed satisfactory correction if shall have ground down the domes in a 2' x 4' area only of the ramp and shall have affixed a mat, made of plastic or other appropriate material, displaying truncated domes at least .2" in height; and the City of Meadville shall

not be required to grind down or remove truncated domes occurring beyond the designated 2' x 4' area or to take other corrective action with respect to such domes.

As to the City's identification of green color coded intersections, the parties currently disagree as to whether the green-coded intersections listed below require remediation by the City of Meadville and whether these intersections, therefore, should be listed on Exhibit 3 or Exhibit 4 attached hereto. It is anticipated that the parties will attempt to resolve their differences as to these intersections. However, notwithstanding anything stated to the contrary herein, it is agreed that the Plaintiffs preserve and do not waive or release any rights to litigate the issue of whether these green-coded intersections are compliant with the ADA and/or its implementing regulations. The green-coded intersections in dispute are as follows:

- a. Water & Chestnut
- b. Market & Chestnut
- c. Allegheny & Main
- d. Park & Ravine
- e. Park & BenAvon
- f. Market & Arch

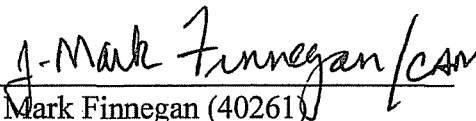
11. **Expedited Performance of Remediation of Certain Counter-Slope Problems.** Exhibit 4 incorporated herein is a schedule of counter-slope and/or slope conditions, which do not or may not appear in Exhibit 3, and which have been identified for expedited further remediation. The City of Meadville shall perform the corrective work indicated on Exhibit 4 on or before January 1, 2010.
12. **Prior Decrees.** Except as otherwise provided herein, this Decree shall not affect any obligations, duties or rights created by or under any of the previously entered consent decrees in the referenced matters.
13. **Use of Third Party.** Nothing in this Agreement shall preclude any party from making a timely request for resolution of a dispute by a mutually agreed upon third party.

- a. If such a resolution is sought, the requesting party must notify the other parties within the 15-day period from the communication of any objection.
 - b. The parties will then have 15 days to agree upon the third party; if an agreement cannot be reached, then the underlying dispute shall be resolved by the procedures set forth in Paragraphs 8 and 9 without any further delay.
 - c. If resolution of a dispute is sought under this paragraph, the parties agree to be bound by the decision made by the mutually agreed upon third party.
14. **Retention of Jurisdiction.** This Court shall retain jurisdiction to enforce all terms of this Consent Decree.
15. **Procedure Required for City Action.** The parties acknowledge that the City of Meadville can only be bound by a legislative act of the City Council of the City of Meadville taken at a properly called public meeting. The parties further acknowledge that the negotiation of this agreement by any elected or appointed official of the City of Meadville has been done solely for the convenience of all parties in developing a document for review and possible action by the City Council. The City shall not be bound or in any way prejudiced by the action of any elected or appointed official in the negotiation, review, commenting upon or preparation of a draft of this Agreement for review and possible action by the City Council.

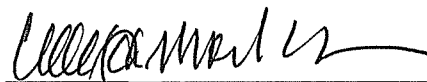
Read and Approved as to Form on this 11th day of MARCH, 2009, by:



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EXHIBIT 1

**Color-coded map of ramps to be repaired
within the City of Meadville**

EXHIBIT 2

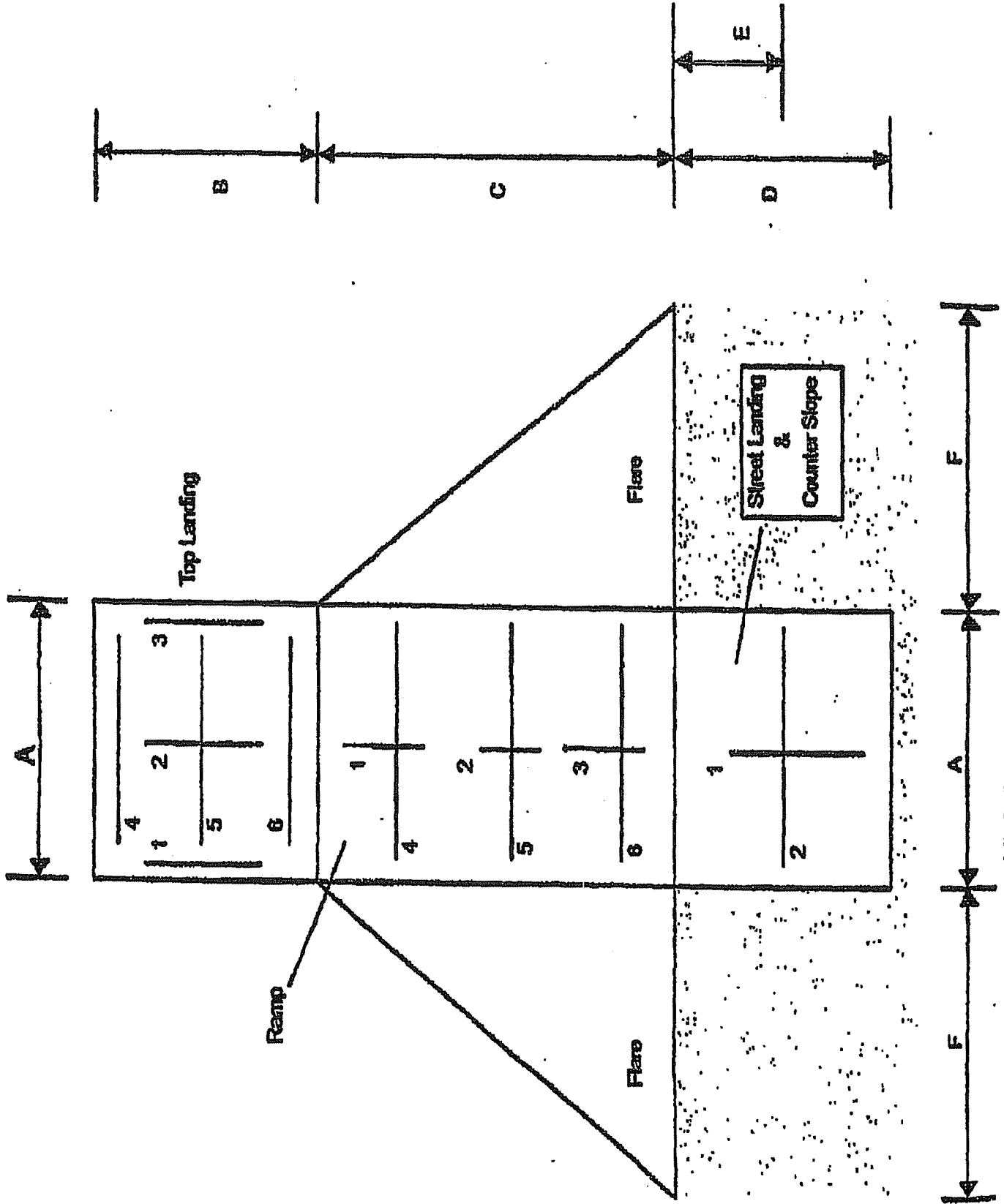


EXHIBIT 3

LOCATION	ORIENTATION	DOMES #
Willow St. & Cottage St.	SE, SW	2
Water St. & South St.	NE, SE	2
Park Ave. & South St.	NE, SE	2
Chestnut St. & Cottage St.	SE, SW	2
Center St. & Cottage St.	SE, SW	2
Walnut St. & East St.	NE, NW, SE, SW	4
Walnut St. & Cottage St.	NE, NW	2
Randolph St., Water St. & Market St.	NE, NW, SE, SW	8
Water St. & Center St.	NE, NW, SE, SW	3
Morgan St. & Whitter Ave.	NE, SE	2
Morgan St. & Winfield Ct.	SE, SW	2
Lincoln Ave. & Sport Complex	SE, SW	2
Market St. & South St.	NW, SE, SW	3
Walnut St. & Grove St.	NE, NW, SE, SW	4
Market St. & Arch St.	NE, SW	2
North St. & Grove St.	NE, NW, SE, SW	4
Market St. & Center St.	NE, NW, SE, SW	8
Lincoln Ave. & Spring St.	NE, NW	3
Reynolds St. & Terrace St.	NE, NW	2
South Main St. & South St.	NW, SW	2
Willow St. & Market St.	NE, NW, SE, SW	4
Lincoln Ave. & Lyon St.	NE, NW, SE, SW	8
Lincoln Ave. & Kearney St.	NE, NW, SE, SW	8
Lincoln Ave. & Race St.	NE, NW, SE, SW	8
Randolph St. & Cottage St.	NE, NW, SE, SW	4
Willow St. & Main St.	SW	1
Chula Ct. & Davis St.	NE	1
Water St. & Cherry St.	NE	1
North St. & Grove St.	NE, SE	4
Reynolds St. & Terrace St.	NE, SE	2

EXHIBIT 4

LOCATION	ORIENTATION
Arch St. & Grove St.	SE street slope on Arch St. & Grove St.
	NE street slope on Grove St.
	NW street slope on Arch St.
	SW street slope on Arch St.
Chestnut St. & Morgan St.	SE street drop off
North St. & Grant St.	NE, NW street slope on Grant St.
North St. & Grove St.	NW street slope on North St.
North St. & Penn St.	NE, NW street slope on Penn St.
Randolph St. & Cutler St.	NE, NW street slope on Cutler St. - brick
Randolph St. & Grant St.	SE, SW street slope on Grant St.
Randolph St. & Jefferson St.	NW street slope on Randolph St.
Randolph St. & Madison Ave.	NE, NW street slope on Madison Ave.
Randolph St. & Water St.	SE street slope on Water St.
Reynolds St. & Terrace St.	SE street slope on Reynolds St.
Terrace St. & Boileau Pl.	SE street slope on Boileau Pl.
Walnut St. & Grove St.	All street & Ramp slopes on Walnut & Grove
Willow St. & Main St.	SE street slope on Main St. & Willow St.
Willow St. & Water St.	SE street slope on Water St.
Pine St. & Morgan St.	NW, SW street slope on Pine St.
Arch St. & Water St.	SE street slope on Arch St. and Water St.
Lincoln Ave. & Lyons St.	NW street slope on Lyon St.
Lincoln Ave. & Kearney St.	NW street slope on Kearney St.
	NE cross slope of ramp
Lincoln Ave. & Sports Complex	Cross slope
Lincoln Ave. & Race St.	SE street slope on Race St.
North St. & Grove St.	SW street slope on Grove St.
Reynolds St. & Terrace St.	Ramp slope
Willow St. & Main St.	Street slope
Washington St. & Graff Ave.	Ramp slope

SCHEDULE 5

MARCH 2009 CONSENT DECREE

CA 04-328

CA 06- 78

The markings appearing on Exhibit 1 at the intersection of Sherman and Clover Streets (4 corners) shall be changed from Red (Curb ramps for which no action is proposed) to Purple (Curb ramps to be constructed or retrofitted by City of Meadville) on the revised, final Exhibit 1 to be filed with the Court by the City of Meadville.

