
Department of Justice ADA Rule on Mobility Devices and How it Applies

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Department of Justice Acronyms

- Department of Justice = DOJ
- Other Power Driven Mobility Devices = OPDMD



During this session:

- Applying the DOJ rule to state, local and private lands (including land trust fee-owned and conservation easements).
 - Where and When
- Understanding potential use of ATVs and other motorized devices/vehicles.
 - What is a wheelchair? Where can it be used?
 - What are other power driven devices (OPDMDs)? Where can they be used?
- Applying the DOJ assessments to specific areas/trails.
 - What does the rule Require? Allow?
- Informing land users and providing public notice.
 - What information? Where?



Please ask questions any time....

Applying the DOJ rule:

4 Parts:

- Updates ADA Accessibility Guidelines for new or altered buildings. It does not deal with outdoor area or trail construction.
 - Effective date of ADA Guidelines part is 3/15/2012

Effective date of rest of rule = 3/15/2011

- Use of Mobility Devices
- Service Animals
- Ticket Sales(accessible seating, etc.)



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Applying the DOJ rule:

The rule applies to:

- All State and local government lands
 - under ADA Title II
- Privately or commercially managed lands that are open to the public
 - under ADA Title III
- OPDMD requirements are the SAME for both
- Does not apply directly to Federally managed lands
 - Fed. agencies are not under ADA – under similar 1968 (ABA) and 1973 (Section 504) laws.
 - However, federal agencies are reviewing....



Applying the Department of Justice (DOJ) Rule

- **1990 Americans with Disabilities Act (ADA).**
 - A person is not to be denied the opportunity to participate in an activity just because they have a disability...
 - Unless their participation would require changes / impacts to be made that would “fundamentally alter” that program.
- **DOJ rule asks:** Can a person who has a mobility disability, use certain types of devices in specific places without resulting in a fundamental change to safety, the natural resource, etc. at that location?
- **Land /Trail Manager or Land Owner Responsibility:**
 - to proactively encourage the use of appropriate mobility devices,
 - while protecting all area users and the natural resource from inappropriate use of motorized devices/vehicles.



Who has a “Disability”?

- Disability = “a substantial limitation to one or more of a person’s major life activities”,
 - such as “seeing, hearing, walking, breathing, thinking...,etc.”
 - 29 U.S.C. 794.
 - No person is to be asked about their disability.
 - 29 U.S.C 794 and 28 CFR part 35
 - Person with a disability – not “handicapped”
- 57 million people in the US have a disability.
 - 85% of disabilities are unseen such as breathing, heart, arthritis, etc.
 - Only 8 million people use wheelchair, crutches, canes, walkers, etc.



What the Rule Requires –Wheelchairs?

- **(a) Use of wheelchairs and manually-powered mobility aids.**

An entity shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

- No ID required



§ 35.137 (Title II) and 36.331 (Title III) Mobility devices.

What is a Wheelchair?

- **A wheelchair** “means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion”.



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- This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2)”.







AXESS Outdoors website:

“helps disabled people see that they can still enjoy the outdoors independently”



EZ Hiker website:



“EZ Hiker Chair makes the wilderness accessible for the disabled.”

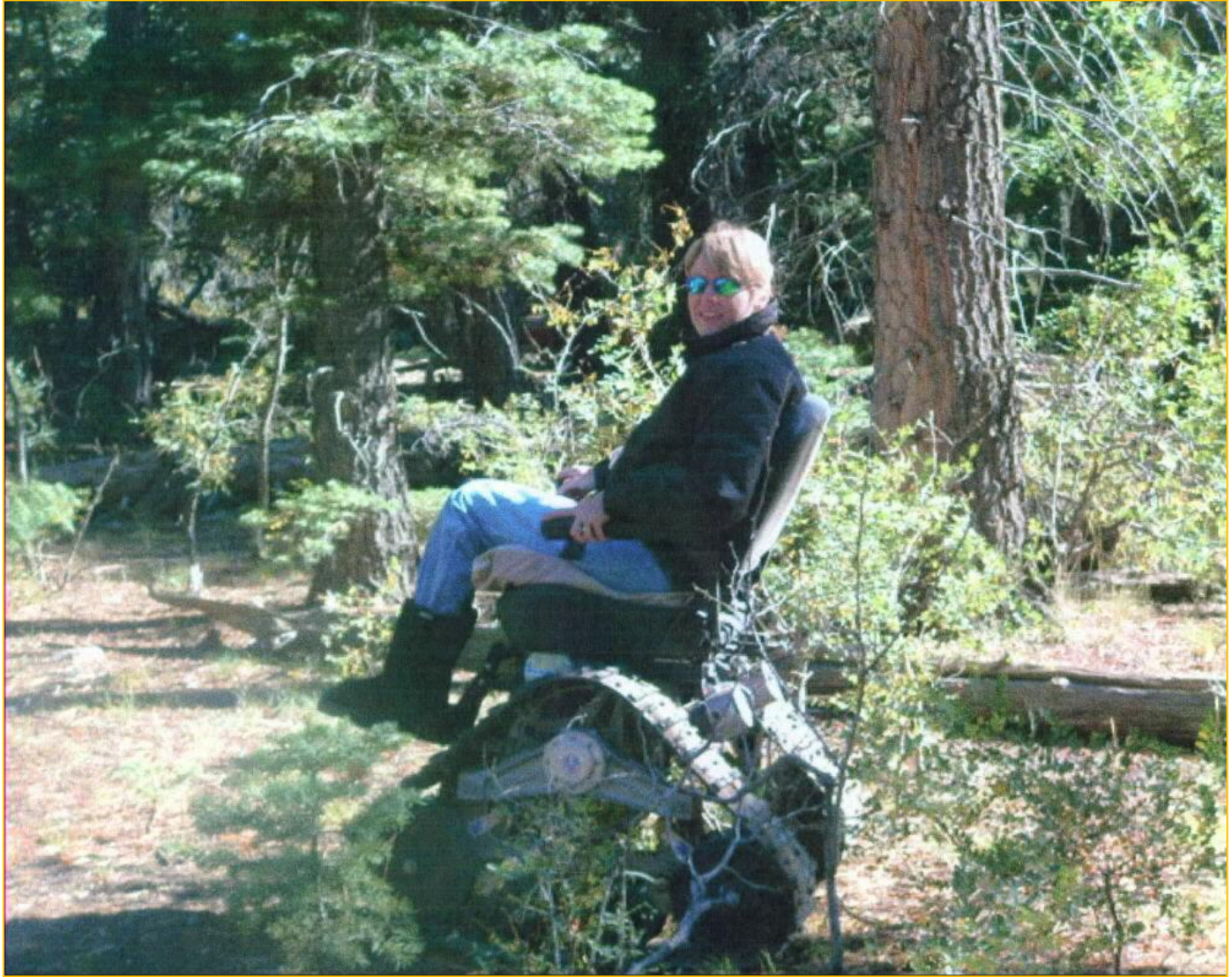








Not a “wheelchair”



DOJ says it's an OPDMD

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What is an Other Power Driven Mobility Device (OPDMD)?

- **Other power-driven mobility device** means any mobility device powered by batteries, fuel, or other engines--whether or not designed primarily for use by individuals with mobility disabilities--that is used by individuals with mobility disabilities for the purpose of locomotion, including golf carts, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.



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= Other Power-Driven Mobility Devices (OPDMD)



Where are OPDMDs to be Allowed?

- **b)(1) Use of other power-driven mobility devices.** “An entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities,
- **unless** the entity can demonstrate that the **class** of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements



DOJ Assessment Factors:

- **(2) Assessment factors.** In determining whether a particular other power-driven mobility device can be allowed in a specific “facility” (*land or trail area that is open to the public*) as a reasonable modification under paragraph (b)(1) of this section, an entity shall consider--



DOJ Assessment Factor (i)

(i) The type, size, weight, dimensions, and speed of the device;



§ 35. 137 and 36.311.

DOJ Assessment Factor (ii)

(ii) The land area or trail's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);



§ 35. 137 and 36.311.

DOJ Assessment Factor (iii)

(iii) The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user)



DOJ Assessment Factor (iv)

(iv) Whether legitimate safety requirements can be established to permit the safe operation of the OPDMD in the specific land area or trail location:



§ 35. 137 and 36.311.

DOJ Assessment Factor (v)

(v) Whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.



§ 35. 137 and 36.311.

Designated Uses on the land...

- What means of accessing the land is currently allowed?
- How was it decided that other classes/types devices were not to be allowed?
- Are those the same reasons as one or more of the DOJ Assessment Factors?
- Any safety based determinations “must be based on actual risks and not mere speculation regarding the device or how it will be operated”.



An OPDMD does not have to be allowed:

- Even if the person has identified that they are using the device due to a mobility disability....
- If, due to one or more of the assessment factors, the device in question is not allowed to be used on-site under any circumstances by anyone (....because its use would create a substantial risk of serious harm to the immediate environment or natural or cultural resources or one of the other assessment factors).



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The DOJ Rule: “Provide advance information”

- Provide information about the classes or types of devices that are allowed where a person can get that information before they arrive on-site.*
 - Trail signs with this information are NOT required by the DOJ rule
- Remember a device that meets the definition of a wheelchair must be allowed wherever foot travel is allowed.
 - *Example of notice:*

Wheelchairs and devices that meet the following definition are allowed wherever foot travel is allowed:

Definition: A wheelchair means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion. (ADA Title II Part 35.104) or (ADA Title III Part 36.104)



Upper Valley Land Trust Policy and FAQs





PUBLIC USE OF CONSERVED LANDS AND TRAILS BY INDIVIDUALS WITH MOBILITY DISABILITIES & COMPLIANCE WITH FEDERAL REGULATIONS

Adopted February 27, 2013

- **Policy:** *Clear statement of issue and UVLT's overall position on that issue.*
- **Practice:** *How that position is implemented.*

Three Categories of Pedestrian Access on UVLT-conserved Lands

- **Category 1:** Lands that are owned in fee by UVLT which are open to public access. UVLT properties may or may not have constructed trails;
- **Category 2:** Privately owned UVLT-conserved lands where there is a right for the public to use *constructed trails* or *trail easements* which may cross protected or non-protected lands. Trails may be managed or have been constructed by UVLT or another entity; however, UVLT holds the legal right to permit the public use of the trail; and



Three categories continued:

- **Category 3:** Privately owned UVLT-conserved lands where there is a guaranteed right for *dispersed public access* throughout (or across) the whole property (or within a large area of the property) for pedestrian type uses such as hiking, walking, skiing, etc., regardless of the presence of trails or trail corridors. The public may access these lands by following trails or woods roads if those exist, or generally through the woods, fields, etc. These properties are typically managed by private landowners and UVLT's role regarding public pedestrian access granted by the easement ensures that these lands are not posted improperly by the landowner. Public pedestrian access to these lands is not advertised by UVLT.





USE OF CONSERVED LANDS AND TRAILS BY INDIVIDUALS WITH MOBILITY DISABILITIES AND FREQUENTLY ASKED QUESTIONS

- Disclaimer
- Brief statement of the issue
- Qs and As about the content of the DOJ rule
- Qs and As specific to conserved lands in Conservation Easements that require public pedestrian access.
- A phone number and email addresses for further information.
peter.helm@uvlt.org and sara.cavin@uvlt.org



FAQs are posted at: <http://www.uvlt.org/public-access/mobility-disabilities>

Additional Resources:

- Dept. of Justice ADA website: www.ada.gov
- ADA Information Line: **800 -514-0301** (voice) 800-514-0383 (TTY)
- American Trails website www.americantrails.org
 - Under “Resources” – click “Accessibility”
 - Also check the home page for alerts and new resources
- U.S. Forest Service Accessibility website:
 - www.fs.fed.us/recreation/programs/accessibility

