

New York State Office of Parks, Recreation  
and Historic Preservation

**INTERIM GUIDANCE DOCUMENT REGARDING  
USE OF OTHER POWER-DRIVEN MOBILITY DEVICES  
IN NEW YORK STATE PARKS & HISTORIC SITES**

**October 14, 2011**

**INTRODUCTION**

On September 15, 2010 the United States Department of Justice (DOJ) revised rules to the Americans with Disabilities Act (ADA) effective March 15, 2011. The new provisions allow devices defined by DOJ rules as *wheelchairs* to be used in any areas open to pedestrian use. The new rules also provide that a public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other types of power-driven mobility devices (“OPDMD”) by individuals with mobility disabilities, unless the public entity can demonstrate that the class of OPDMD cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to the rule.

The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) is committed to enabling and enhancing the use and enjoyment of the State park system by visitors with mobility limitations who seek to use OPDMD on State recreation facilities and trails. As required by the new rules, OPRHP is updating and expanding the assessment of its facilities to implement the new accessibility regulation. However the enormous breadth and scope of the New York State park system means that it will take time to evaluate all facilities and trails and to determine the types of OPDMD that may be restricted from use in specific areas and/or under certain conditions due to legitimate safety concerns. The information provided herein will describe the OPRHP Interim Guidance and provide direction on the use of OPDMD, its justification and implementation.

OPRHP anticipates that as technology advances and new OPDMD are developed, used by individuals with mobility disabilities, use patterns evolve, and the impacts to natural and cultural resources become apparent, so to will the need to reevaluate and reassess OPDMD use in certain facilities. In addition, as public park agencies across the nation adopt and implement policies under the new rules, OPRHP anticipates that the DOJ, other agencies and stakeholders will provide guidance and best practices that will help to inform and optimize OPRHP’s policy. Accordingly, the types of OPDMD allowed within specific facilities as well as our assessments, processes and conditions on use may change. Parties may participate in the further development of this *Interim Guidance on OPDMD* by providing comments, suggestions and other feedback to OPRHP via the agency’s website <http://nysparks.com/accessibility/>. Please check this site regularly for updates.

**DEFINITIONS**

**OPDMD:** Under the DOJ rules, an OPDMD is defined as any mobility device (that is not a wheelchair) powered by batteries, fuel, or other engines (whether or not designed primarily for use by individuals with mobility limitations) that is used by individuals with mobility limitations for the purpose of locomotion. This definition includes, but is not limited to, golf carts, electronic personal assistance mobility devices such as the Segway PT, or any mobility device designed to operate in areas without defined pedestrian routes.

As used in this Interim Guidance document:

**Gas-powered** devices include: any mobility device powered by a gas-fueled engine using natural gas, gasoline, diesel, synthetic or bio fuel or combination thereof, including all-terrain vehicles (ATV), carts, off-road bikes, motor scooters, motorcycles, tractors and vehicles (whether two, three or four wheeled).

**Electric-powered** devices include: any mobility device powered by batteries, including multiple passenger carts, electronic personal assistance mobility devices (such as the Segway PT) and battery-powered bikes.

**Tandem wheel** devices include: a two, three or four-wheeled mobility device where the wheel alignment is parallel along one or more axles.

**Inline wheel** devices include: two-wheeled mobility device where the wheel direction of travel are aligned in the same plane.

#### **ASSESSMENT FACTORS- DOJ RULE § 35.137(b)**

In determining whether a particular OPDMD can be used in a specific part of an OPRHP facility by a person with a mobility disability, consistent with OPRHP's statutory mandate to provide for the health, safety and welfare of the public using its facilities OPRHP shall consider the following factors:

- i. The type, size, weight, dimensions, and speed of the device;
- ii. The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- 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);
- iv. Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- v. Whether the use of the other power-driven mobility device 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.

Assessments will be conducted at the facility level and shall be based on the actual on-site conditions observed by the assessor, in addition to the varying seasonal conditions known to OPRHP staff (e.g. flooding, rock slides, wild fires, crowds, etc.). Consideration should be given

not only to established ways for public use but also to places where pedestrians are allowed including, but not limited to beaches, pool decks, lawn areas and roadways open to public motorized vehicles (e.g. campground roads).

## **OPDMD INTERIM ASSESSMENTS & LIMITATIONS**

**Gas-powered OPDMD:** OPRHP has determined that the use of all gas-powered mobility devices (for all trail categories) will be allowed pursuant to a Special Use Permit issued by the facility manager. The permit will identify the individual responsible for the OPDMD. It will also gather contact information, describe the stated use, define the time frame for access, confirm the motorized device is for use because of a disability, require proof of vehicular insurance, and set guidelines for safety precautions including for fire as it pertains to devices with fuel powered engines. Such permits shall be issued with reasonable facility-based terms and conditions to ensure, to the greatest extent practicable, the health, safety and welfare of the operator, other park users and staff, and to protect the environmental and cultural resources of the facility in accordance with the DOJ assessment factors.

Interim Justification: §35.137 Assessment Factors (i.-v.): OPRHP facilities possess significant natural topographical features and ecological resources that are managed to support a wide range of plant and animal communities in harmony with public recreation. Many existing federal management laws, rules and regulations prohibit or broadly restrict the use of motorized vehicles for recreational purposes on park land. In general, gas-powered mobility devices (as compared to electric-powered devices) present a more substantial risk of serious harm to operators, park visitors and the immediate environment, due to their internal combustion engines and relatively large dimensions, weight, driving range and/or horsepower.

- Volatile fuels present a risk of fire created by ignition systems and the heat of engine combustion. Fuel tanks may leak and fuel may spill during refueling causing damage to the environment or a risk of setting fire to vegetation.
- Engine noise can produce a significant zone of disturbance to native wildlife and can negatively impact visitor experience if appropriate conditions (such as those relating to decibel level, time, manner and place) are not observed. Noise from gas-powered OPDMD may present a health risk to park users when it exceeds 70dB, which the World Health Organization has set as a maximum safe noise level in the work place. Many gas-powered devices, such as ATV and motor bikes, have the capacity to routinely exceed this threshold level under otherwise normal operating conditions.
- Under certain conditions, the exhaust of small internal combustion engines may pose an air quality risk for park visitors and employees.

Park facility rules and regulations confine users to established trails and ways. The safety of OPRHP's trails and pathways, particularly those with rugged terrain or drop offs can vary drastically from time to time depending upon weather and other conditions. Certain gas-powered OPDMD, particularly ATVs, are specifically designed for and engineered with capacity to traverse off-trail and cover large areas of hazardous terrain that is otherwise off-limits to park visitors. The risk of proceeding off-trail extends to remote park areas that have not been assessed (and may never be assessed if closed to the public) and therefore may not be safe or

appropriate for OPDMD. Consequently, there is a legitimate interim need for facility managers to register and monitor use of these devices through a permit system.

These risks warrant an individualized assessment of the operating condition of the particular gas-powered device, the orientation of the operator to existing conditions and restrictions and the intended itinerary. This will reduce the risk of safety hazards arising from conflicting use of facilities and variable environmental and trail conditions. Obtaining a permit should not present an unreasonable burden to users as virtually all state park facilities are staffed and have the capacity to issue a permit on-site without undue delay.

Factors to be considered as permit conditions should include the weight, speed and condition of the device (including fuel tanks, backfire/ flame arrestors, mufflers, and mirrors and other safety equipment), the volume and type of patrons using the trail, as well as the nature and condition of the trail to be accessed and variations in the suitability of terrain due to weather, erosion, and wildlife activity. The permit process will also serve as a log book or intended itinerary (“flight plan”) for patrons and will facilitate response to calls for assistance and/or search and rescue efforts.

**Electric-powered OPDMD:** Preliminary assessments of a range of OPDMD have led OPRHP to conclude that use of most electric-powered mobility devices should be allowed subject to the category (type and physical characteristics) of the trail or facility as assessed to be appropriate by the facility manager. Typically, a Special Use Permit is not required unless the use of a particular electric-powered OPDMD in a particular facility on a specific trail presents risks or concerns that involve one or more assessment factors.

Interim Justification: §35.137 Assessment Factors (i.-v.) In general, electric-powered mobility devices (as compared to gas-powered devices) present a lesser risk of serious harm to operators, park visitors and the immediate environment, due to the absence of volatile fuels, ignition and internal combustion engines, and generally reduced horsepower, range and speed capacity of these devices. Moreover, these devices present virtually no noise or air quality issues. Accordingly, these devices generally will be allowed on trails and bikeways under the specific trail type categories as established herein. Users of these devices are required to observe the applicable speed limit and to accommodate other trail users; and stay within the authorized trail footprint to avoid serious harm to natural or cultural resources. All OPDMD may be restricted from narrow or single track trails that do not provide appropriate terrain or lack adequate space for safe passage of other-users traveling in opposing directions or for OPDMD to overtake (pass) pedestrians.

## **PRELIMINARY OUTDOOR DEVELOPED AREAS AND TRAIL ASSESSMENTS BY CATEGORY**

OPRHP facility managers are undertaking preliminary assessments for outdoor developed areas and trails based on the DOJ guidelines. Outdoor developed areas include sidewalks, pathways, plaza areas, maintained lawn areas, picnic areas and any other maintained open area. For the purposes of these preliminary assessments, trails have been categorized into four different types.

For purposes of this Interim Guidance Document, specific limitations on OPDMD use and the justifications are listed below.

### **I Paved Trails:**

Typical examples of this type of trail are Bicycle Class I (Greenway Trails) and developed or interpretive hiking trails. Paved trails are typically multi-use trails but in some high-use areas may be designated for foot traffic only. Tread width can vary from 5 to 14 feet with additional shoulder width. In-line and tandem wheel OPDMD should not exceed 36” inches in maximum width. Justification: §35.137 Assessment Factors (i., ii. and iii.). Characteristics of OPDMD could affect other trail users based on the volume of pedestrian traffic and operational characteristics of the trail. These trails are typically high capacity, high volume, two-way traffic areas, where a width restriction allows for safe passing of other OPDMD, bicycles and pedestrians.

### **II Wide Unpaved Trails:**

Typical examples of this type of trail are natural surface (unpaved) fire and park roads, carriage roads and mowed trails, usually greater than 8 feet in width. In-line and tandem devices should not exceed 36” inches in maximum width. Justification: §35.137 Assessment Factors (i., ii., iv. and v.). Characteristics of these devices create a substantial risk of harm to the environment or natural resources. These trails are typically wide enough for one-way vehicle traffic, and this width restriction allows for safe passing of other OPDMD, bicycles and pedestrians on unpaved roads.

### **III. Multi-use Single Track Trails:**

These trails include natural surface (unpaved), narrow gauge trails (generally 18-36” tread width and maximum 6’ corridor width), suitable for multiple trail-use activities, including hiking, mountain biking and/or horseback riding. In-line devices should not exceed 26” inches in maximum width and have a maximum wheel width of 6” inches. Justification: §35.137 Assessment Factors (i., ii., iv. and v.): Characteristics of these devices create a risk of substantial harm to other users and the environment or natural resources. These are typically narrow trails where two-way traffic would require pedestrians (and other users) and OPDMD to venture off-trail at risk of personal injury and potentially causing harm to natural resources when overtaking or allowing passage of OPDMD larger than 26” inches wide.

### **IV. Pedestrian Single Track Trail:**

These trails include unpaved and unimproved narrow gauge trails (generally 18-30” tread width and 4-6’ corridor width) for hiking only. This type of trail is typically found in natural or remote areas with steep or uneven terrain subject to varying conditions or where environmental or topographic constraints mandate caution and minimal user impacts to natural resources. OPDMD will typically not be permitted on these trails or will be subject to seasonal or other restrictions. Justification: §35.137 Assessment Factors (i-v): Trail users are required to stay within the authorized trail to avoid risk of personal injury and serious harm to natural or cultural resources.

## **OTHER NOTES**

- OPRHP facilities will post speed limits which will depend upon the particular conditions of that facility or area of the facility.
- OPDMD must yield to other non-powered users.
- OPDMD must stay on designated trails or bikeways at all times. Exceptions can be made when crossing turf areas to leave or as necessary rejoin a trail.
- Unless designated otherwise, OPDMD are not permitted in historic structures, ruins or other sensitive historic or cultural areas.
- When required by New York State Law, OPDMD users shall wear an appropriate helmet while operating.
- OPRHP employees will not ask an individual using a wheelchair or OPDMD questions about the nature and extent of the individual's disability, but rather may ask such person to provide a credible assurance that the mobility device is required because of the person's disability. OPRHP will accept the presentation of a valid, state-issued, disability parking placard or card, or other state-issued proof that the OPDMD is needed for the individual's mobility disability. In lieu of valid, state-issued proof of disability, OPRHP will accept as a credible assurance a verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability.