

**NEW HAMPSHIRE DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT  
DIVISION OF FORESTS AND LANDS AND DIVISION OF PARKS AND RECREATION  
POLICY ON THE USE OF  
OTHER POWER DRIVEN MOBILITY DEVICES (OPDMD)**

Effective on March 15, 2011, the U.S. Department of Justice (DOJ) revised the rules governing the Americans with Disabilities Act (ADA) as it pertains to the use, in public places that are open to pedestrian use, of “other power-driven mobility devices” (OPDMD) by individuals who provide a credible assurance that the mobility device is required because of the person’s mobility disability.

The State of New Hampshire Department of Resources and Economic Development (DRED) and its land management Divisions of Forests and Lands and Parks and Recreation is committed to making all reasonable efforts to ensure that its facilities<sup>i</sup>, programs and services are accessible to, and usable by, all people including those with disabilities. DRED’s goal is to provide equal access to all facilities within the agency and to treat everyone with dignity and respect.

The use of wheelchairs and manually powered mobility aids are allowed anywhere foot traffic is allowed if the device meets the ADA definition of a wheelchair which is: a 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<sup>ii</sup>. These devices are not OPDMDs or motor vehicles.

As required by the new ruling, DRED has made modifications to policies concerning access by persons with disabilities, incorporating guidelines and management practices without changing the characteristic of habitat and natural resource.

### **DRED Program<sup>iii</sup> and Management**

The Divisions of Forest and Lands and Parks and Recreation cooperatively manage the State Reservations to conserve, manage and protect forest resources and provide the public with opportunities to use and appreciate these resources.

### **Assessments of DRED lands:**

The State Reservations are in the process of being assessed to determine where reasonable modifications can be made for the use of OPDMDs, as defined herein, without creating a substantial risk of serious harm to the immediate environment or natural or cultural resources, or posing a conflict with Federal or State land management laws and regulations. OPDMDs, as defined herein, are allowed on State Reservations until an assessment is completed, that demonstrates that a class (or type) of OPDMD cannot be operated. DRED may restrict certain types of OPDMDs only if those restrictions are based on one or more of assessment factors listed by the US Department of Justice, and if appropriate notice to the public has been provided about what class of OPDMD, if any, may be used.

### **Impacts of OPDMDs on DRED Lands**

Pedestrian use by the public must be done in a way that does not conflict with DRED’s management or the purpose for which the land was acquired or developed.

The use of an OPDMD also needs to comply with the recent DOJ ruling. In considering whether a particular OPDMD can be allowed, assessment factors<sup>iv</sup> established by the DOJ are considered and particularly, if the use of an OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources<sup>v</sup>. These assessment factors include DRED’s determination of type, size, weight, dimension and speed of an OPDMD and whether it can be used in a manner that does not jeopardize others accessing DRED lands or the natural resource.

## Definitions and Use

Devices that meet the definition of OPDMD<sup>vi</sup>, must be safely used on DRED lands in areas that are not otherwise paved. It is recommended that users who need to employ such devices for mobility and are otherwise unfamiliar with the trail first contact the agencies for local trail conditions.

Only persons with a mobility disability are permitted to use OPDMDs on DRED properties. DRED personnel may inquire as to the use of an OPDMD by an individual, to provide credible assurance that the mobility devise is required because of the person's disability.

OPDMDs, as defined below, are permitted on non-motorized recreation trails and forest roads and at developed facilities such as campgrounds, picnic areas, visitor centers, and regional offices.

OPDMDs that are powered by a gas-powered internal combustion engine are prohibited on all State Reservations. All are to move at the speed of the pedestrians on similar terrain.

Type, Dimension & Weight Criteria	Terrain Description	Examples	Permitted Areas
Device does not exceed 36" wide, 48" in length and weighs less than 500lbs.	Designed for use on soft, uneven, steeply graded or rocky surfaces.	<ul style="list-style-type: none"><li>• Segway PT</li><li>• Electric scooter</li><li>• Electric bicycle</li></ul>	<ul style="list-style-type: none"><li>• Non-motorized Trails</li><li>• Dispersed recreational use</li><li>• Forest Road</li></ul>
Device does not exceed 48" in width or greater than 95" in length and weighs less than 1500 lbs.	Designed for use on exterior walkways or routes.	<ul style="list-style-type: none"><li>• Segway PT</li><li>• Electric scooter</li><li>• Electric bicycle</li><li>• Electric golf cart</li></ul>	<ul style="list-style-type: none"><li>• Rail trail</li><li>• Campgrounds</li><li>• Picnic Areas</li><li>• Exterior pedestrian routes at facilities</li></ul>

As technology advances and new devices are developed, public use patterns change, and impacts to natural and cultural resources are reevaluated, DRED may modify the definition of OPDMD permissible within specific facilities or on specific trails as necessary.

Users of OPDMD which do not meet the criteria of devices allowed may request an evaluation of their device by submitting a written request to the Commissioner of the Department of Resources and Economic Development.

## State Reservations<sup>i</sup>

### *Non-Motorized Recreation Trails/Forest Roads*

The natural surface of existing trails or logging roads can be unimproved, have natural barriers such as a fallen tree and large erratics/rocks. Such trails and roads almost always have uneven surfaces, roots and other vegetation and debris, can be narrow and have steep grades, soft fine soils that can be wet and mucky, and in some areas standing water and may not be suitable for all OPDMDs that fit within the criteria of use.

<sup>i</sup> RSA 227-G:2 XVI. "Reservation" means public land under the jurisdiction of the department including, but not limited to: state forest, state park, natural area, historic site, geological site, recreation trail, memorial area, fire tower, wayside area, heritage park, resource center, agricultural area, state forest nursery, fish pier, administrative facility, information center, demonstration forest, certain islands, and lands under lease to the department.

*Developed Facilities*

Individuals may use an OPDMD at developed facilities such as campgrounds, picnic areas and beaches. The surface of these walkways or routes can be improved by pavement, gravel or remain as dirt. Barriers and uneven surfaces have been minimized.

Additional Use and Safety Requirements

The person operating the OPDMD may not carry another person.

The OPDMD must not be operated in a dangerous or reckless manner that jeopardizes the safety of the operator or other persons.

DRED does not accept responsibility for the storage of any OPDMD.

All other DRED administrative rules are in full effect.

DRED does not accept any liability from damage caused by the operator of the OPDMD or injury to others caused by the operator of the OPDMD.


Complaints and appeals may be submitted in writing to:

Commissioner  
Department of Resources and Economic Development  
PO Box 1856  
Concord, NH 03302-1856  
603-271-2411

Additional Information

Director  
Governor's Commission on Disability  
57 Regional Dr.  
Concord, NH 03301  
603-271-2773

Adopted on this day 30 August 2013

  
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Jeffrey Rose, Commissioner, Department of Resources and Economic Development

<sup>i</sup> 28 CFR 35.104 - *Facility* means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other area or personal property, including the site where the building, property, structure, or equipment is located.

<sup>ii</sup> 28 CFR 35.104 - *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. 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).

<sup>iii</sup> 28CFR 35.150 - Existing Facilities: General. A public entity shall operate each service, program or activity so that the service, program or activity when viewed in its entirety is readily accessible to and usable by the individuals with disabilities. This paragraph does not - (3) require a public entity to take any action that it can demonstrate

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would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens...*[burden of proof lies with the public entity]*.

<sup>iv</sup> 28CFR 35.137(b)(2) i. The type, size, weight, dimensions, and speed of the device; ii. The facility's volume of pedestrian traffic; iii. The facility's design and operational characteristics; 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.

<sup>v</sup> The use of an OPDMD cannot fundamentally alter the program of the facility.

<sup>vi</sup> 28CFR 35.104 - *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, electric 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.