

Public Trails and New Rules for Access

Presented at:

Mass Land Trust Steering Committee

September 9, 2011

Session Overview

- Introduction to the US Department of Justice (DOJ) rule regarding access to recreation facilities by people with mobility disabilities.
- Overview of access requirements for wheelchairs and Other Power Driven Mobility Devices (OPDMDs)
- Introduction to trail or facility assessment procedures
- DCR, Mass Audubon and The Trustees of Reservation's plans for compliance with the rule

The US Department of Justice Rule

- **1990 Americans with Disabilities Act (ADA)**
 - A person isn't to be denied participation just because they have a disability...
 - Unless their participation would require changes / impacts to be made that would fundamentally alter that program.
- **DOJ rule:** The rule adopts a two-tiered approach to mobility devices, drawing distinctions between wheelchairs and "other power-driven mobility devices."

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Where Does the DOJ Rule Apply?

The rule applies to:

- ❑ Trails and facilities on State and local government lands
- ❑ Trails and facilities open to the public on privately or commercially-managed lands



What is Required by the New DOJ Rule?

“Wheelchairs (and other devices designed for use by people with mobility impairments) must be permitted in all areas open to pedestrian use.”



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.”



Wheelchair Requirements

Gate openings 32" or greater?



What is Required by the New DOJ rule?

“Other power-driven mobility devices” must be permitted to be used unless the covered entity can demonstrate that such use would fundamentally alter its programs, services, or activities, create a direct threat, or create a safety hazard.”



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What are Other-Power Driven Mobility Devices?

- **Other power-driven mobility device** (OPDMDs) 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...**

What are Other-Power Driven Mobility Devices?



Who may use OPDMDs?

Q. What evidence of a mobility disability is necessary to allow OPDMDs?

1. A valid, State-issued, disability plate or placard or other State-issued proof of disability,
2. Or, the person may simply state that they are using that OPDMD due to mobility disability.



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What is Required by the New DOJ Rule?

- The entity should complete an assessment to determine if any class of OPDMD can be operated in accordance with legitimate safety requirement or one or more of the assessment factors in the rule.
- The burden of proof is on the trail manager.
- A visitor with a mobility disability has the right to expect to be able to use an OPDMD unless the trail entity has completed an assessment.

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DOJ Assessment Factors

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



DOJ Assessment Factors

- Assessment Factor (ii)
The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);



DOJ Assessment Factors



- Assessment Factor (iii)
The facility's design and operational characteristics

DOJ Assessment Factors

- Assessment Factor (iv)
Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device;



DOJ Assessment Factors

- Assessment Factor (v) Whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources...



Applying the Assessment Factors

1. The type, size, weight of the vehicle
2. Volume of pedestrian traffic
3. Design or operational characteristics
4. Legitimate safety requirements
5. Risk of harm to natural or cultural resources

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Two Approaches to Compliance



Massachusetts Audubon



The Trustees of Reservations

Informing the Public

- Provide information about the classes or types of devices that are allowed where a person can get that information before they arrive on-site.
- Locate information on website, at kiosks, park headquarters ...



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Additional Resources

American Trails website:
www.americantrails.org



US Dept. of
Justice website
www.ada.gov

Questions



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DCR's Approach to Assessment

- What access or use policies, procedures or regulations are in place for your trail or facility?
 - What means of access are currently allowed on your trail(s) or facilities?
 - How was it decided that other classes/types devices were not to be allowed?
 - Were any of the DOJ Assessment Factors used in making that determination?

DCR's Approach to Assessment

- What trail / facility information or data is available to complete your assessment?
- Important information might include:
 - Minimum width, condition, steep slopes, trail restrictions such as obstacles, steps, bridges, drainage structures or other structures ...
- Are GIS data layers available showing sensitive resources?
 - Habitat and species sensitive to motorized use
 - Wetlands, river and stream crossings
 - Cultural / historic resources