



UPPER VALLEY
LAND TRUST

Use of Conserved Lands and Trails by Individuals With Mobility Disabilities Frequently Asked Questions

New Department of Justice (DOJ) regulations under the Americans with Disabilities Act (ADA) clarify where individuals with mobility disabilities may operate various types of mobility devices on lands where pedestrian access for the general public is provided. See: 28 C.F.R § 36 (2011). The Upper Valley Land Trust (UVLT) has adopted policies in accordance with the federal rules. The following information has been compiled to address questions that landowners may have about how the new rules affect conserved trails and conserved land where rights for public access exist.

Disclaimer: The questions and answers below summarize UVLT's understanding of a new ruling from the Department of Justice. This document should NOT be construed as legal advice or agency policy. UVLT encourages landowners and land managers to contact UVLT staff with any additional questions and also to consult with your private attorney for legal opinions about this ruling as it applies to your property. You may obtain further information by contacting the Department of Justice's toll-free ADA Information Line at (800) 514-0301 or visiting http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm.

Why were the ADA rules updated?

The Americans with Disabilities Act (ADA) prevents discrimination of individuals on the basis of disability. The new rules make it more likely that all individuals can gain the same experiences, and enjoy the same places, regardless of disability, by:

- expanding the definition of allowable mobility devices that a disabled person may use to access areas where public pedestrian use is permitted; and
- requiring entities that manage such areas to make reasonable efforts to adapt their practices to permit such use with mobility devices.

What are mobility devices?

The new rules identify two types of mobility devices: wheelchairs and other power driven mobility devices (OPDMD's).

What is the definition of a wheelchair under the ruling, and where are they allowed?

A wheelchair is defined as 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 both indoor and outdoor locomotion. A person with a mobility disability may use a device that meets this definition anywhere that any member of the public is permitted to walk; therefore, wheelchairs must be permitted anywhere public pedestrian access is allowed.

What is the definition of an OPDMD under the ruling?

An "other power-driven mobility device" (OPDMD) is defined as any mobility device, other than a wheelchair (defined above), which is powered by batteries, fuel, or other engines and which is not necessarily designed

primarily for use by an individual with a mobility disability but is used by individuals with mobility disabilities for the purpose of locomotion, such as a Segway®, ATV, golf cart, or any mobility device designed to operate in areas other than on sidewalks.

Who qualifies to use a mobility device, including an OPDMD?

Any person who presents a valid, state-issued parking placard or card, or state-issued proof of a mobility disability, or represents that he/she is using the OPDMD because of a mobility disability, which is not contradicted by observable fact, may use an OPDMD.

How does this law impact public access on conserved land and trails?

These regulations do not require that trails, existing or new, be constructed in any specific way to make them more accessible. However, landowners and trail managers must make reasonable modifications to policies, practices or procedures to permit the use of wheelchairs and other power-driven mobility devices by individuals with mobility disabilities in areas where there is public access unless and until it is demonstrated that a class (or type) of OPDMD cannot be operated in accordance with a completed assessment based on ADA assessment factors.

What are the Department of Justice's "assessment factor" categories?

These assessment factors, listed below, are written for "facilities" across the nation. When reading them, substitute "land or trail area that is open to the public" to get a better sense of how to apply the assessment factors to your land or trail. You will see that some factors may be less applicable to your land than they may be for others.

The ruling requires that when determining whether a particular OPDMD can be allowed in a specific facility as a reasonable modification, the landowner/manager shall consider—

1. The type, size, weight, dimensions, and speed of the device;
2. The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
3. 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);
4. Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
5. 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.

If the Conservation Easement for my land requires public access, do I need to change, rebuild, redesign, or adjust trails on my property so they are accessible?

No.

Must I allow OPDMDs if my Conservation Easement includes dispersed public access or public trail provisions?

Yes, unless and until UVLT or the landowner completes an assessment, that demonstrates that a class (or type) of OPDMD cannot be operated. A landowner (or manager) 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.

If I operate motorized equipment on conserved trails for land management purposes, must OPDMD's be permitted there?

If you use motorized vehicles on trails or woods roads on a regular basis for management or maintenance purposes, it is likely that the use of some classes of OPDMDs could reasonably be used on your property. Even if a class of OPDMD can be used, the ruling does not permit any individuals using your land to abuse or degrade natural resources.

What if the Conservation Easement for my land prohibits motorized vehicles, or if I have posted signs prohibiting motorized vehicle access... do I have to allow OPDMDs?

The federal ruling supersedes the Conservation Easement as well as your signs prohibiting motorized vehicles. If a certain class of OPDMD has not been restricted on your conserved land or trail (which may only be done after an assessment of the area or trail has been completed based on the Department of Justice assessment factors), then any person with a mobility disability must be permitted to use an OPDMD of that class to access the areas which are open to the public for pedestrian uses. UVLT is aware that this could present challenges, but we feel confident that working in partnership with you and your land managers, we can ensure the protection of the natural resources of your land and preserve your own enjoyment of your property in a way that respects the rights of members of the public who have mobility disabilities.

So, if I have not done an assessment of my land using the DOJ assessment factors, what can I ask someone who may be on my land using a motorized vehicle to determine if they have a mobility disability?

If the operator indicates that he or she is using the device because they have a disability, or a mobility limitation, the ADA

and DOJ regulations prohibit you from asking anything else about the nature of the disability. It may help to keep in mind that 85% of disabilities are not easily seen, and these rules aim to prevent discrimination based on disability for anyone – whether their disability is visible or not. For example, a person may have limited ability to walk due to heart disease, a breathing limitation, arthritis, use of a prosthetic limb, and so forth. You may carry on a conversation as you would with anyone else, letting them know of areas that are sensitive, or providing guidance to improve their enjoyment of the experience.

What if the Conservation Easement for my land includes a public trail on my property that is too steep, has narrow bridges or other conditions that make it unsafe or impossible for any type of OPDMD to navigate?

For UVLT-managed trails (or those with an assigned management entity), we will work with landowners (and the managing entity, as needed) to assess safety and specific trail characteristics required by the rule to determine if OPDMD use should be restricted. If the trail is found to be unsuitable for OPDMD use based on the DOJ assessment factors, we will provide appropriate notice, so that all members of the public will know the reasoning for access restrictions.

What if the Conservation Easement for my land requires dispersed public access, but I do not have any formal trails?

It is our current understanding that the rule requires the allowance of OPDMDs in any area where public pedestrian use is allowed –assuming the area has not been restricted in some manner through the assessment process referred to above. Based on this understanding, it may be necessary to permit the use of OPDMDs in any areas where the public is allowed to walk, regardless of whether there are formal trails.

What if the Conservation Easement for my land requires dispersed public access and there are woods roads (or trails) that I use for managing my forest or fields... can OPDMDs be used on these roads?

The ruling provides opportunities to restrict use of OPDMDs by referring to specific DOJ assessment factors. If you or your land manager use roads or trails regularly with motorized vehicles during land management activities, those areas might be appropriate for use by certain classes of OPDMDs (such as the types of vehicles you use for land management). Even if a class of OPDMD can be used, remember that the ruling does not permit any individuals using your land to abuse or degrade natural resources.

What if the Conservation Easement for my land requires only dispersed public access and there are areas or trails that are steep or narrow, and/or have sensitive areas with wet soils and rare plants... can OPDMDs be used on these trails or in these areas?

If you are concerned about sensitive areas, rough trails, etc., on your property, and you wish to consider restricting OPDMDs from sensitive areas or limiting certain classes of OPDMDs, UVLT will share its procedure for reviewing its fee-owned lands and trails based on the DOJ assessment factors. Any restrictions you put in place must be consistent

with the DOJ ruling. UVLT's goal is to ensure that sensitive natural resources are protected if there is potential or likelihood of damage by OPDMD use.

How does this rule influence my liability protection afforded by NH RSA Sec. 508:14 and Sec. 212:34 or 12 VSA Sec. 5791-5795?

To our knowledge, existing state liability protections remain in effect and will apply to liability for disabled users who employ mobility devices to access conserved land. Should you have concerns about this, you should speak to your legal counsel.

What is the likelihood that someone with a mobility disability will try to access my land that is open to dispersed access, or a public trail on my land?

There is no easy way to predict how often someone might access your property or a trail on your property. If you have land or trails that would be safe and reasonable for wheelchair use or access with an OPDMD, you may perhaps have more visitors. Still, the ruling does not permit anyone to abuse or misuse your land, or to damage timber resources, crops, or other natural resources. Like other trail users, users with disabilities should appreciate your generosity and stewardship of the land, and care for it and enjoy it in a similar manner.

If you have additional questions about how the rules affect your land or UVLT's conservation responsibilities you may contact Pete Helm (peter.helm@uvlt.org) or call (603) 643-6626 ext 104.



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