

THE TOWN OF BRECKENRIDGE GUIDELINES FOR USE OF "OTHER POWER DRIVEN MOBILITY DEVICES" ON OPEN SPACE & TRAIL PROPERTIES AND PROPERTY INTERESTS

April 26, 2011

INTRODUCTION

On September 15, 2010 the United States Department of Justice (DOJ) revised the Americans with Disabilities Act (ADA), adding Section (35) titled *Nondiscrimination on the Basis of Disability in State and Local Government Services*, effective March 15, 2011. This ruling requires State and Local Governments to make reasonable modifications to policies to allow "other power-driven mobility devices (OPDMD)" to be used by "individuals with mobility disabilities" in areas open to pedestrian use.

The Town of Breckenridge is committed to providing amenities for individuals with mobility disabilities, while promoting the safe use and enjoyment of the Town's recreational routes by a broad spectrum of the public. Based on the criteria set forth in Section 35 of the ADA, Town staff completed an individual assessment of each trail managed by the Open Space and Trails Division and determined which types of OPDMDs are authorized for use on each route. Information provided herein describes the types of OPDMDs that are authorized for use on The Town of Breckenridge trail facilities.

As technology advances and new devices are developed, public use patterns change, additional property and property interests are acquired, and impacts to natural and cultural resources are reevaluated, the Town of Breckenridge may modify the types of OPDMD permissible on specific trails as necessary. It is the user's responsibility to ensure that they are in conformance with these policies.

DEFINITIONS

Wheelchair

A wheelchair is 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 (§ 35.137). 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).

Electrical Assisted Bicycles (EAB)

An EAB device is a vehicle with two wheels, operable pedals, an electric motor not exceeding 750 watts, with a top speed of 20 miles per hour (CRS 42-1-102 (28.5)).

Electric Personal Assistive Mobility Devices (EPAMD)

An EPAMD device is a self-balancing vehicle, that is powered solely by an electric motor not exceeding 750 watts, designed to transport one person (CRS 42-1-102 (28.7)). A common example of an EPAMD is a Segway scooter.

Motorcycle

A motorcycle is a motor vehicle that uses handlebars to steer and that is designed to travel on not more than two wheels in contact with the ground (CRS 42-1-102 (55)).

Other Power Driven Mobility Devices (OPDMD)

An OPDMD device is 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. This includes, but is not limited to, electric assisted bikes (EABs), motorcycles, 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. 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).

ADA Rules (§ 35.137 Mobility Devices)

(1). Use of wheelchairs and manually-powered mobility aids. A public 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.

(2). Use of other power-driven mobility devices. A public 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 public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to § 35.130(h).

(3). Assessment factors. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (2) of this section, a public entity shall consider:

- (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.

(4) Inquiry about disability. A public entity shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

(5) Inquiry into use of other power-driven mobility device. A public entity may ask a person

using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. A public entity that permits the use of an other power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability, as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a public entity shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability. A "valid" disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance's requirements for disability placards or cards.

OPEN SPACE LAND AND FACILITY ASSESSMENT AND LIMITATIONS

The Town of Breckenridge Open Space and Trails Division conducted a comprehensive review and assessment of lands and facilities to determine permissible or non-permissible OPDMD uses. **All power driven mobility devices are limited to specific roads and trails outlined below and not permitted in parks, historic sites and The Town of Breckenridge open spaces outside of these routes.**

Recreational Routes

Based upon this assessment, recreational routes can be categorized into four different types, with specific limitations and justifications as listed below:

1) Paved Recreational Pathways (Recpath) or crusher fine trails: Multi-use improved surface trails with shoulders.

Persons with a mobility disability may use any EAB or EPAMD that has maximum power driven speed equal or less than 20 mph, is no wider than 36 inches, and has brakes that enable the operator to make the wheels skid on dry, level and clean pavement. No other OPDMD may be used, including but not limited to any gas or combustible fuel powered devices, ATV's, golf carts, or motorcycles. Wheelchairs and manually-powered mobility aids are allowed.

Justification: § 35.137 Assessment Factors (i, ii, iii and iv). Characteristics of the device could affect other trail users, based on the volume of pedestrian traffic and operational characteristics of the trail. These trails are high capacity two-way traffic areas, where width and speed restrictions must allow for safe passing of OPDMDs, bicycles and pedestrians.

2) Non-motorized Single-Track Trails: Unpaved, narrow gauge trails suitable for multiple activities, including hiking, mountain biking and equestrian riding, the majority of which lie predominantly on Federal Lands.

Use of any OPDMD is not allowed. Wheelchairs and manually-powered mobility aids are allowed.

Justification: § 35.137 Assessment Factors (i, ii, iii, iv and v). Characteristics of motor powered devices create a substantial risk of substantial harm to the trail facility, surrounding environment and/or natural resources. These are narrow trails where one or two-way traffic would harm natural resources when allowing passage of an OPDMD. Use of an OPDMD would conflict with

Federal land management laws and regulations, land use regulations, and/or conservation easements provisions prohibiting motorized vehicles or equipment on these routes.

3) Multi-use Single-Track Trails: Unpaved, narrow gauge trails, suitable for multiple activities, including motorcycles, hiking, mountain biking and equestrian riding.

Persons with a mobility disability may use any electric or gas propulsion motorcycle or OPDMD that does not exceed 30 inches total width, has 12 inch or less tire tread width (total width of ground contact), and has brakes that enable the operator to make the wheels skid on dry, level and clean pavement. Other OPDMD's or non-qualifying devices are prohibited. Wheelchairs and manually-powered mobility aids are allowed.

Justification: § 35.137 Assessment Factors (i, iii, iv and v) Characteristics of the device create a substantial risk of substantial harm to the environment or natural resources. These are narrow trails where one or two-way traffic would harm natural resources when allowing passage of an OPDMD larger than 30 inches wide.

4) Multi-use Forest or County Roads: Unpaved and unimproved logging, fire and ranch roads, typically greater than 8 feet in width.

Persons with a mobility disability may use OPDMD that has brakes that enable the operator to make the wheels skid on dry, level and clean pavement.

Justification: § 35.137 Assessment Factors (i, iii, and iv) These roads are typically wide enough for two-way vehicle traffic, allowing for safe passing of OPDMD devices, motor vehicles, bicycles and pedestrians.

The Town of Breckenridge, Summit County Government and the USFS- Dillon Ranger District work cooperatively to provide recreational experiences to a wide-ranging diversity of users on routes throughout Summit County, while protecting the public health, safety and welfare. Based upon this assessment, persons with mobility disabilities are permitted to utilize OPDMDs on recreational roads and double-track trails in Summit County (approximately 550 miles), EABs and EPAMDs as defined by current Colorado Statute on all County administered recreational pathways (approximately 27 miles), and OPDMDs less than 30 inches on multi-use single track trails. In making these policy modifications, The Town of Breckenridge has determined that it is in compliance with the requirements of Section 35 of the American's with Disabilities Act.

OTHER NOTES

- All The Town of Breckenridge facilities have a posted speed limit of 20 mph.
- All OPDMDs must stay on designated trails and routes at all times.
- No OPDMDs are permitted in or on historical structures, or sensitive natural, historic or cultural areas
- The Town of Breckenridge is not representing that facilities are safe for use by an OPDMD and assumes no liability for these uses. Certain risks are inherent in the use of The Town of Breckenridge properties and all users must exercise reasonable care.

*****IMPORTANT NOTE*****

“Know before you go”: It is the user's responsibility to remain in compliance with Federal, State, and Local rules, regulations and policies. If you have any questions, please contact The Town of Breckenridge Open Space & Trails in advance to ensure that your particular OPDMD is approved for use on particular routes.