

# **Insert Policy #/Use of Other Power-Driven Mobility Devices on Lands Under the Jurisdiction of DEC**

## **New York State Department of Environmental Conservation DEC Policy**

**Issuing Authority:** Insert Name

**Date Issued:** Insert Date

**Latest Date Revised:** New Policy

### **I. Summary:**

The Department of Environmental Conservation (DEC) is committed to increasing access to recreational opportunities on lands under the jurisdiction of DEC for individuals with disabilities. The purpose of this policy is to establish the process for determining where Other Power-Driven Mobility Devices (OPDMDs) may be used by individuals with mobility disabilities to access outdoor recreational programs offered by the State of New York on lands under the jurisdiction of DEC. This policy is consistent with the Americans with Disabilities Act of 1990 (ADA), the Title II Regulations on Mobility Devices (28 CFR § 35.137), Article XIV of the New York State Constitution, Environmental Conservation Law (ECL), the Adirondack Park State Land Master Plan (APSLMP), the Catskill Park State Land Master Plan (CPSLMP), and Department Rules, Regulations, and Policies. This policy supersedes Commissioner Policy 3, Motorized Access Program for People with Disabilities (adopted June 4, 1997), and CP-3 is rescinded.

### **II. Policy:**

In compliance with state and federal laws and regulations, including the ADA, and as specified in Commissioner Policy 53 (CP-53), DEC does not discriminate on the basis of disability in policies, practices, and procedures, or the provision of its programs, services, and activities. This policy is intended to supplement the provisions of CP-53 as they relate to the use of OPDMDs to access outdoor recreational programs.

In accordance with these laws, regulations, and policies, DEC makes reasonable modifications to its general policies, practices, and procedures to ensure that people with disabilities are afforded equitable access to its programs, services, and activities, without taking any action that would fundamentally alter the nature of its programs, services, or activities.<sup>1</sup>

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<sup>1</sup> 28 CFR § 35.130 (b)(7)(i). A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. *See also 28 CFR 35.150*

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DEC manages nearly 4 million acres of state-owned land, including but not limited to the Forest Preserve, State Forests, and Wildlife Management Areas. Additionally, DEC manages public recreation rights on hundreds of thousands of acres of private land through conservation easements. Together, these lands provide diverse outdoor recreational opportunities, from hiking and fishing, to camping and wildlife viewing, and are managed to protect New York's ecosystems and natural resources.

The intent of this policy is to provide clear information about access to public recreation opportunities that may be enhanced by the use of OPDMDs. To provide a greater level of accessibility to a broad spectrum of outdoor recreation programs, and consistent with federal requirements, this policy provides for the use of OPDMDs by people with mobility disabilities on lands managed by DEC by identifying the following:

1. Approved OPDMD Uses - Where certain classes of OPDMDs are now allowed without further review by DEC;
2. Future OPDMD Review - Where certain classes of OPDMDs may be allowed pending review through DEC's established land management planning processes;
3. Individual OPDMD Accommodations - Where certain classes of OPDMDs may be allowed pending consideration on a case-by-case basis; and
4. Incompatible OPDMD Uses - Where DEC's review of the Federal Assessment Factors determined that certain locations on DEC-managed land cannot reasonably accommodate certain categories of OPDMDs.

### **III. Definitions Applicable to This Policy:**

- **Accessibility Coordinator**: DEC staff designated for coordinating compliance with ADA Title II including Regional, Division, and Statewide Accessibility Coordinator.
- **Administrative Road in Wildlife Management Area**: an improved way maintained by DEC for the principal purpose of facilitating administration of a Wildlife Management Area or of allowing access for firefighting equipment and not normally open for public use of motorized vehicles. The physical characteristics and maintenance standards of administrative roads support regular, sustainable motor vehicle use by DEC.
- **Credible Assurance of a Mobility Disability**: with respect to an individual using an OPDMD, a valid, State-issued, disability parking placard or card, or other State-issued proof of disability 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, or a verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability.
- **Disability**: shall have the same meaning as in 28 CFR § 35.108.
- **Facility**: all or any portion of buildings, structures, sites, complexes, equipment, rolling stock

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or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. 28 CFR § 35.104

- **Manually-Powered Mobility Aid**: a mobility device such as a walker, crutches, cane, brace, or other similar device designed for use by individuals with mobility disabilities. See 28 CFR § 35.137(a)
- **Mobility Device**: a wheelchair, manually-powered mobility aid, or an OPDMD.
- **Other Power-Driven Mobility Device (OPDMD)**: 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 cars, 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. 28 CFR § 35.104
- **Outdoor Recreational Programs**: programs on DEC-managed lands which provide outdoor recreational opportunities to the public including but not limited to hiking, bicycling, camping, boating, hunting, fishing, trapping, birdwatching, and wildlife viewing. DEC does not offer off-roading or four wheeling as programs.
- **Program Manager**: the person who manages a Division Program either in a DEC Regional Office (i.e. Regional Forester, Regional Wildlife Manager, Regional Operations Supervisor) or in DEC's Central Office (i.e. Section Chief, Bureau Chief, or Statewide Program Coordinator).
- **Regional Land or Facility Manager**: the person assigned as manager of a facility or land unit.
- **Recreation Trail**: a trail that is designated as “open” for certain recreational uses. Recreational trails do not include designated public motor vehicle roads or administrative roads.
- **Wheelchair**: 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. 28 CFR §35.104

## **IV. Purpose and Background:**

### **A. Outdoor Recreation Programs on DEC-Managed Land**

DEC manages land for a variety of purposes, including but not limited to, natural resource preservation, watershed protection, sustainable forestry, environmental education, and wildlife management. Additionally, DEC's conservation easement program has acquired public recreation rights on hundreds of thousands of acres of private land.

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DEC plays a vital role in protecting State lands and providing opportunities for people to enjoy them. Lands managed by DEC include recreational opportunities such as 51 developed campgrounds and nearly 5,000 miles of trails and roads open for activities including hiking, picnicking, wildlife viewing, bicycling, skiing and snowmobiling. Additional recreational opportunities include back country camping, paddling, hunting, fishing, and trapping opportunities.

Spending time in forests and other natural areas has quantifiable health benefits, both mental and physical.<sup>2</sup> Given the proximity of DEC-managed lands to major Northeast cities, these public spaces—and the outdoor recreation opportunities they provide—have the potential to benefit tens of millions of people. Ensuring these benefits are available to people of all abilities and backgrounds is a priority for DEC.

DEC-managed lands are classified based on a myriad of factors, including their intended purpose, geographic location, acquisition funding source, natural and cultural resource inventories, and recreational opportunities. Each of the diverse land classifications are managed by DEC pursuant to specific statutory and regulatory frameworks. As a result, it is necessary to review such specifications and apply a fact-specific analysis to determine whether or not the use of OPDMDs in a given location would be a reasonable accommodation such that it would not fundamentally alter the nature of the programs associated with each parcel's classification and permissible recreational activities.

While DEC considers the use of OPDMDs on all lands under its jurisdiction, the following classifications contain the most DEC-managed acreage:

### **1. Forest Preserve**

Comprised of over 2.6 million acres within the Adirondack Park and 288,000 acres within the Catskill Park, New York's Forest Preserve is protected by Article XIV of the New York State Constitution, providing a wild setting that protects wildlife and biodiversity while promoting a range of outdoor recreational opportunities.

Forest Preserve lands are further classified based on their characteristics and capacity to withstand different levels of public use. These classifications are defined in the Adirondack Park State Land Master Plan (APSLMP) and the Catskill Park State Land Master Plan (CPSLMP). Forest Preserve classifications include Wilderness, Primitive (Adirondacks only), Canoe (Adirondacks only), Primitive Bicycle Corridor (Catskills only), Wild Forest, Historic (Adirondacks only), Travel Corridor

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<sup>2</sup> Berman, M. G., Jonides, J., Kaplan, Stephen. (2008). The Cognitive Benefits of Interacting With Nature. *Psychological Science*. 19: 1207-1212; Donovan, G. Butry, D. Michael, Y., Prestemon, J., Liebhold, A., Gatzolis, D., Mao, M. (2013). The Relationship Between Trees and Human Health: Evidence from the Spread of the EAB. *American Journal of Preventive Medicine*. 44(2):139-45

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(Adirondacks only) and Intensive Use. DEC's developed campgrounds and day use areas, located in the Adirondack and Catskill Parks, are Forest Preserve lands classified as Intensive Use.

### **2. State Forests**

State Forest is a generic term encompassing several legally defined classifications of land outside the Adirondack and Catskill Parks. State Forests were originally confined to mean "reforestation areas" and were set aside to offset widespread trends of agricultural abandonment and deforestation and to restore the land's ability to support vegetation. The term has been expanded to include land acquired for a diversity of purposes, including sustainable forestry, watershed protection, wildlife management, and outdoor recreation. Today, there are over 800,000 acres of State Forest lands throughout New York State. The four basic State Forest classifications include Reforestation Areas, Multiple Use Areas, Unique Areas, and State Nature and Historic Preserves.

### **3. Wildlife Management Areas**

With over 210,000 acres of land across New York State, Wildlife Management Areas (WMAs) have been acquired and are managed primarily for the purposes of wildlife conservation, including providing suitable habitats for rare, at-risk, and game species alike, and to provide high-quality opportunities for wildlife-related recreation.

### **4. Environmental Education Centers**

DEC and its partners operate multiple Environmental Education Centers that offer classes and programs on environmental education and awareness. Each center has interpretive trails, exhibit areas, and meeting rooms that are open to the public. They also offer family events and classes for students, as well as other public programs including guided, topic-based on-site walks and off-site field trips through diverse habitats.

### **5. Conservation Easements**

Conservation easements are voluntary, legal agreements that protect the natural resources of a parcel of land by permanently restricting future land use and/or development on the property. DEC holds conservation easements throughout the state, and they range in size from smaller, forested neighborhood parcels in New York City to industrial forest tracts in the Adirondacks that are tens of thousands of acres. These agreements are held between a private landowner and DEC, with the landowner maintaining ownership. DEC's conservation easements prioritize environmental protection, with many allowing public recreational opportunities. The amount and type of public access will depend upon the terms of the conservation easement.

## **B. Americans with Disabilities Act and Title II Regulations<sup>3</sup>**

The ADA prohibits discrimination on the basis of disability in all services, programs, and activities of state and local governments. Specific to mobility disabilities, Title II requires public entities, including state and local governments, to permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids designed for use by individuals with mobility disabilities in any areas open to pedestrian use. As a result of rapidly changing technology and a desire to expand the types of devices individuals might use to access programs, Title II was amended in 2011 to include a new category of mobility devices **other** than wheelchairs and manually-power mobility aids, called “Other Power-Driven Mobility Devices” (OPDMDs).<sup>4</sup> Recognizing that technology will continue to develop, the federal regulations do not describe specific devices which may be used to access programs and services. Instead, the regulations set forth a structure and analysis whereby public entities must review specific devices and whether or not their use is appropriate for access to a specific program in a specific facility.

Distinct from OPDMD’s, Title II requires that an individual with a mobility disability may use a wheelchair or manually-powered mobility aid on any lands under the jurisdiction of DEC where pedestrian use is permitted.<sup>5</sup> Wheelchairs are 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 of both indoor and outdoor locomotion.”<sup>6</sup>

The federal OPDMD regulations require public entities to “make reasonable modifications in their 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).”<sup>7</sup> The use of OPDMDs on DEC lands is restricted to people with mobility disabilities consistent with the federal regulations cited above.

Consistent with these OPDMD regulations, DEC staff and representatives will not ask an individual using a wheelchair or OPDMD questions about the nature and extent of the individual’s disability.<sup>8</sup> However, an individual may be asked to provide credible assurance that the OPDMD is required due to their disability. A government-issued pass showing evidence of a qualified mobility disability or any state’s valid disabled parking placard or card assigned to the person who will be using the OPDMD constitutes credible assurance that a mobility device is required by the person’s disability. A verbal

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<sup>3</sup> 28 CFR Part 35: Nondiscrimination on the Basis of Disability in State and Local Government Services

<sup>4</sup> 28 CFR § 35.137

<sup>5</sup> 28 CFR § 35.137(a)

<sup>6</sup> 28 CFR § 35.104.

<sup>7</sup> 28 CFR § 35.137(b)(1).

<sup>8</sup> 28 CFR § 35.137 (c) (1). *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.

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representation is also acceptable, if the statement is not contradicted by observable fact.<sup>9</sup> The federal regulations specify that public entities must consider the following assessment factors (“Federal Assessment Factors”), when determining whether a particular OPDMD can be allowed in a specific facility as a reasonable modification.<sup>10</sup>

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<sup>11</sup> 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 OPDMD 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.

After considering these factors, the federal regulations allow the public entity to deny the accommodation if it can demonstrate that the use of the device would fundamentally alter the nature of the program, service, or activity.<sup>12</sup>

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<sup>9</sup> 28 CFR § 35.137 (c) (2). Inquiry into use of other power-driven mobility device. A public entity may ask a person using another 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.

<sup>10</sup> 28 CFR § 35.137(b).

<sup>11</sup> 28 CFR § 35.130(h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

<sup>12</sup> 28 CFR § 35.130(b)(7)(i).

## **1. Application of Federal Assessment Factors**

DEC staff responsible for reviewing the potential use of OPDMDs on land under DEC jurisdiction apply the Federal Assessment Factors by asking the questions below as applicable to the specific facility, route, recreational program, and OPDMD:

1. What are the specifications of the device (i.e., size, weight, dimensions, speed, power source)? 28 CFR § 35.137 (b)(2)(i)
2. What is the volume of pedestrian traffic in the specific area? Are there times of day/year where the volume of visitors would impact the use of the device and/or other visitors would be impacted by the use of the device? 28 CFR § 35.137 (b)(2)(ii)
3. What are the specific characteristics of the area? What recreational program is the area intended/designed to provide? 28 CFR § 35.137 (b)(2)(iii)
4. Can legitimate safety requirements be established to permit the safe operation of the device in the specific area? 28 CFR § 35.137 (b)(1) and (b)(2)(iv). *Note, if the accommodation is denied, the public entity has the burden to explain why the device cannot be operated in accordance with adopted legitimate safety requirements.*
5. Does the use of the device create a substantial risk of serious harm to the immediate environment (i.e., physical integrity of the facility)? 28 CFR § 35.137 (b)(2)(v). Identify the specific aspects of the immediate environment that could be impacted by the use of the device.
6. Does the use of the device create a substantial risk of serious harm to natural resources? 28 CFR § 35.137 (b)(2)(v). Identify the specific natural resources that could be impacted by the use of the device.
7. Does the use of the device create a substantial risk of serious harm to cultural resources? 28 CFR § 35.137 (b)(2)(v). Identify the specific cultural resources that could be impacted by the use of the device.
8. Does the use of the device pose a conflict with Federal land management laws and regulations [i.e. The Clean Air Act (CAA), Clean Water Act (CWA), Endangered Species Act (ESA), National Environmental Policy Act (NEPA)]? 28 CFR § 35.137 (b)(2)(v)
9. Even if the answer to every question above is “no” – would the accommodation to use the device in the area fundamentally alter the nature of the program? 28 CFR § 35.130 (7)(i). *Note, if the accommodation is denied as a fundamental alteration, the public entity has the burden to explain such denial.*

## **C. OPDMD Categories**

The federal regulations related to OPDMDs provide flexibility to consider the rapid speed with which technology is changing. Such advancements in technology offer opportunities for the development of devices designed to accommodate outdoor recreation for individuals with mobility disabilities. As



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such, it is not possible to create a static list of devices, and any omission of a device will not preclude future consideration under this policy. Consistent with the federal regulations, and in consideration of the range of outdoor recreation programs offered on DEC-managed lands, DEC has organized OPDMDs into categories according to relevant characteristics including size, weight, speed, and noise emissions. These identifying characteristics may be further limited as appropriate through the procedures described in Section VI.

See Attachment A for a full description of each OPDMD category.

### **Category 1**

A battery-operated power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of outdoor locomotion. Maximum width, 40 inches; Maximum weight, 400lbs; Maximum speed, 4 mph; Decibel limits, Soft: 30 (rustling leaves/whisper conversation).

### **Category 2**

A device powered solely by electric motor that has tandem wheels, handlebars, and a floorboard or a seat that can be stood or sat upon by the operator. Maximum width, 30 inches; Maximum weight, 300lbs; Maximum speed, 20 mph; Decibel limits, Soft: 40 (quiet library).

### **Category 3**

A Class 1 Bicycle with Electric Assist in which requires that it is “no more than thirty-six inches wide... equipped with operable pedals... having an electric motor that provides assistance only when the person operating such bicycle is pedaling, and that ceases to provide assistance when such bicycle reaches a speed of twenty miles per hour.” See *VTL §102-C(a)*. Maximum width, 36 inches; Decibel limits, Soft: 40 (quiet library) (Class 1 e-bike as defined in *VTL §102-C(a)*).

### **Category 3-A**

A Class 1 Bicycle with Electric Assist, except that the device may be wider than 36 inches. Width: wider than 36 inches; Decibel limits, Soft: 40 (quiet library)

### **Category 4**

A Class 2 Bicycle with Electric Assist which is “no more than thirty-six inches wide... equipped with operable pedals... having an electric motor that may be used exclusively to propel such bicycle, and that is not capable of providing assistance when such bicycle reaches a speed of twenty miles per hour.” See *VTL §102-C(b)*. Decibel limits, Soft: 40 (quiet library).

### **Category 4-A**

A Class 2 Bicycle with Electric Assist, except that the device may be wider than 36 inches. Decibel limits, Soft: 40 (quiet library).

### **Category 5**

A battery- or gas-powered device. Maximum width, 52 inches; Maximum speed, 20 mph; Decibel limits, Moderate: 60 dB (normal conversation/dishwashers).

### **Category 6**

A device designed for use off road including an All-Terrain Vehicle (ATV), Utility Terrain Vehicle (UTV), Side by Side, Class 3 e-bike (VTL §102-C(c)), and other gas or battery-powered devices which meet the limits as described: Maximum speed, 20 mph; Decibel Limits, Loud: 70 dB (traffic/vacuums).

### **Category 7**

Motor Vehicle. Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power as defined by VTL § 125. Decibel Limits, Loud 70: dB (traffic/vacuums).

## **V. Responsibility:**

It is the responsibility of all relevant DEC divisions and staff to implement the guidelines and procedures of this Policy.

It is the responsibility of the Statewide Accessibility Coordinator to coordinate the review of applications for the use of OPDMDs on DEC-managed lands. They are responsible for distributing case-by-case applications to the appropriate Program Managers for review and determination, as well as compiling and summarizing data relating to such determinations. The Statewide Accessibility Coordinator also reviews opportunities for OPDMD use on DEC-managed lands proposed by Regional Program Managers, and provide guidance and training related to all state and federal requirements and best management practices relating to the use of OPDMDs on public lands.

It is the responsibility of the Regional Program Manager, in consultation with the Regional ADA Coordinator, to consider forms of access to outdoor recreation programs utilizing OPDMDs on lands managed by staff within their programs, whether on a case-by-case basis or through standard land management planning procedures. Such consideration shall include an evaluation of the physical and ecological characteristics of the land or facility, and of the experiential and safety needs of the public. It shall be the responsibility of the Regional Program Manager, assisted by the Regional Land or Facility Manager, to review the Federal Assessment Factors for each request or consideration of OPDMD use on DEC-managed lands.

Responsibility for the interpretation of this policy resides with the Deputy Commissioner of Natural Resources and DEC's Chief Disability Officer who will coordinate with other Divisions and Regions having management responsibility over land which is subject to this policy. It shall also be their responsibility to periodically review the provisions of this Policy and recommend amendments, where necessary.

## **VI. Procedure:**

### **A. Review of OPDMD Use on DEC-Managed Lands**

Recognizing the breadth of recreation opportunities and types of lands managed by DEC, it is not feasible for this Policy to provide site-specific clarity. However, DEC conducted a preliminary analysis of the Federal Assessment Factors to consider the use of each OPDMD category for access to a broad suite of outdoor recreation programs on each of the classifications of DEC-managed land. As a result of this assessment, and to meet the commitment to providing equitable access and clear public information about access to recreation programs, DEC identified different levels of review that will be required for the use of OPDMDs as a reasonable accommodation, described in sections VI.A.1 through VI.A.3 below. Through this analysis DEC also identified several locations on DEC-managed lands where certain classes of OPDMDs cannot be reasonably accommodated, as described in section VI.A.4.

DEC's Commissioner Policy 3 (CP-3), Motorized Access Program for People with Disabilities, was established in 1997 prior to the promulgation of the federal OPDMD regulations and was limited to cars, trucks, and ATVs. While this Policy supersedes CP-3, each of the routes approved for use pursuant to CP-3 remain authorized for use by Categories 6 and 7 in this Policy. Descriptions of these routes are included in Attachment B. The procedure for obtaining a permit for use of such routes is outlined in section VI.B. below. Additionally, through the different levels of review described below, DEC has expanded its consideration to include all categories of OPDMDs and programmatic access.

#### **1. Approved OPDMD Uses**

DEC's review of the Federal Assessment Factors resulted in the following locations being determined suitable for the use of certain categories of OPDMDs without further review by DEC. While not subject to further review and analysis, individuals seeking to use OPDMDs in these locations must obtain a permit as described in section VI.B.

Please note, the following chart reflects a preliminary determination of approved OPDMD uses. Any exclusions in the list below shall not preclude future consideration. Section VI.A.2. identifies the process whereby additional opportunities may be identified.

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**Table 1 – Approved OPDMD Uses**

<b>OPDMD Category</b>	<b>Outdoor Recreational Program</b>	<b>Allowed Location(s)</b>
1-4A	Hiking/walking, bicycling	Recreational trails with a maintained trail tread of 36" or greater within Campgrounds.
1-4	Hiking/walking, bicycling	Administrative roads in Wildlife Management Areas
2, 3, 3-A	Access to Historic Great Camp Santanoni	Newcomb Lake Road
2, 4, 4-A	Hiking/walking, bicycling	Adirondack Rail Trail* ( <i>aka Remsen-Lake Placid Travel Corridor between Tupper Lake and Lake Placid</i> )
3, 4	Bicycling	Designated bicycle trails** on all lands managed by DEC except Conservation Easements.
1-6 or 1-7	Hiking/walking, bicycling, hunting, fishing, wildlife viewing	Routes on Wildlife Management Areas identified in Attachment B***
6 or 7	Hiking/walking, hunting, fishing, wildlife viewing	Routes on the Forest Preserve and State Forests identified in Attachment B****

\* Category 3 and 3-A OPDMDs (Class 1 E-Bikes) are allowed for use by the public in this location and do not require an accommodation.

\*\* Trails for which bicycling is the designed or primary use as identified in an adopted unit management plan.

\*\*\* The routes approved for Wildlife Management Areas pursuant to Attachment B remain available for use by all categories of OPDMDs, consistent with the provision of this policy, except for Category 7 OPDMDs which are only allowed as identified in Attachment B.

\*\*\*\* The routes AND devices approved for State Forests and Forest Preserve lands pursuant to Attachment B remain available for use consistent with the provision of this policy. Use of any other categories of OPDMDs on these routes is subject to the provisions of sections V.A.2 and V.A.3.

DEC staff may periodically review the Federal Assessment Factors related to each of the permitted uses above and retain the right to restrict such uses on either a location- or season-specific or state-wide basis should their review of the assessment factors result in a determination that such use is no longer appropriate.

## **2. Future OPDMD Review**

Because of the complex relationship between the OPDMD categories, the broad spectrum of outdoor recreation opportunities that exist on DEC-managed lands, and the various regulatory and policy considerations for each of the DEC land classifications, it is not feasible within this Policy to conduct a full assessment for every possible OPDMD use scenario.

Land or Facility Managers will consider where OPDMD use is appropriate when considering new facility implementation or forms of public access. The evaluation and designation of new routes for

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use by OPDMDs will rely on a review of the Federal Assessment Factors and be consistent with all applicable land management planning procedures. This includes review and approval through the relevant management planning process for each category of state land, including but not limited to State Forest and Forest Preserve Unit Management Plans (UMPs), Wildlife Management Area Management Plans, and Conservation Easement Recreation Management Plans (RMPs).

Consistent with Federal regulations, this policy requires DEC to consider additional forms of access to outdoor recreation programs which may be available in particular land units. Such review will consider all classes of OPDMDs and is not constrained to access opportunities on public or administrative roads.

Any authorized uses determined pursuant to the review identified in this section do not require further review of the regulatory factors. However, the use of both pre-existing routes authorized pursuant to Appendix C as well as new authorized uses identified through the land management planning procedures as prescribed by this section will be subject to the permitting requirements described in section VI.B. DEC will periodically update the tables of approved OPDMD routes on its public website.

### **3. Individual OPDMD Accommodations**

Where the use of OPDMDs have not been authorized pursuant to the provisions of sections VI.A.1 or VI.A.2., and consistent with federal regulations, individuals with mobility disabilities may apply for the use of a specific class of OPDMD in a specific location on a case-by-case basis. Case-by-case application review will be conducted by a DEC review team and will utilize the Federal Assessment Factors as the basis for its decision. Approval of a case-by-case application will not constitute approval of said route(s) for use by anyone other than the applicant. Application and review of case-by-case permits will be subject to the requirements described in section VI.B.

### **4. Incompatible OPDMD Uses**

Through the review of the Federal Assessment Factors DEC determined that certain locations on DEC-managed land cannot reasonably accommodate certain categories of OPDMDs. **Any exclusions from the list below does not constitute automatic authorization.** However, individual accommodation requests will still be reviewed by DEC consistent with the Federal Assessment Factors. Refer to section VI.A.3 for the process for applying for case-by-case consideration of any OPDMD classes.

**Table 2 – Incompatible OPDMD Uses**

<b>OPDMD Category</b>	<b>Outdoor Recreational Program</b>	<b>Incompatible Location(s)</b>
1-7	Equestrian	Equestrian trails* on all lands under DEC jurisdiction
3-7	All	Environmental Educational Centers**
3-7	All	Recreational trails on Forest Preserve lands within 500 feet of a public highway, and classified as: <ul style="list-style-type: none"> <li>• Wilderness</li> <li>• Canoe</li> <li>• Primitive, and with no provisions for bicycling or snowmobiling</li> </ul>
2-7	All	Recreational trails on Forest Preserve lands beyond 500 feet of a public highway, and classified as: <ul style="list-style-type: none"> <li>• Wilderness</li> <li>• Canoe</li> <li>• Primitive, and with no provisions for bicycling, snowmobiling, or private rights-of-way</li> </ul>
6, 7	All	Recreational trails on Forest Preserve lands classified as Wilderness, Canoe, and Primitive
7	All	Recreational trails on all lands under DEC jurisdiction
6, 7	All	Recreational trails within Campgrounds and Day Use Areas
6,7	All	Areas with utility/administrative infrastructure such as but not limited to leach fields, utility line corridors, administrative and storage areas.

\* Trails for which equestrian use is the designed or primary use as identified in an adopted unit management plan.

\*\* Environmental Education Center are designed to accessible standards and include accessible trails. This chart refers solely to the use of OPDMDs.

## **B. Application and Permitting**

A qualified person with a disability seeking a reasonable accommodation to use an OPDMD on DEC-managed lands must obtain a permit. Individuals seeking an OPDMD permit shall submit an application for a permit in a form and format as required by DEC. Such permit will be time-limited, not to exceed five years. The process and timelines to obtain permit approval will vary based upon how the accommodation was identified pursuant to this Policy. It is the intent of DEC to make the application and receipt of such permits efficient.

## **1. Applying For a Permit for Pre-Approved or an Individual Accommodation for the Use of OPDMDs**

For pre-approved use of OPDMD's identified by Table 1, qualified individuals with a disability must still apply for and obtain a permit; upon submission of a complete application, a permit will automatically be approved.

For individuals seeking access to a recreational program in a specific facility not identified by Table 1, qualified individuals with a disability must submit a complete application. Upon receipt of a complete application, DEC will initiate the review process outlined below.

## **2. Individual Accommodation Application Review Process**

Applications must be submitted in a form and format as provided by DEC and will be reviewed for completeness and understanding. If an application is deemed complete, it will be sent to the appropriate Regions and programs. In consultation with the Program Manager and Land/Facility Manager, the Accessibility Coordinator will apply the Federal Assessment Factors to the request to use a specific OPDMD for access to a specific recreational activity in a specific location(s).

If, after a review of the Federal Assessment Factors, DEC determines that the use of the OPDMD is a reasonable accommodation, the individual will be notified, and a permit will be issued by the Program Manager.

## **3. Denial of Permit**

When a Program Manager believes request should be denied, they will draft a justification to be reviewed and approved by the Regional Program Manager, Regional Director, Statewide Accessibility Coordinator, and appropriate Division Accessibility Coordinator. The Regional or Division Director will send the notice of denial. Should an applicant wish to appeal a decision, such appeal may be commenced pursuant to the ADA grievance procedure outlined in DEC's Commissioner Policy 53.

## **4. Suspension and/or revocation of Permit**

If the permittee fails to comply with the terms and conditions of a permit, DEC may take necessary action against the permittee to enforce such terms and conditions, including but not limited to requiring corrective action and/or site restoration. Upon determining that a permittee has failed to comply with the terms and conditions of a permit, DEC may revoke or suspend the permit on notice to the permittee. Violations may include but are not limited to use of a device other than that which is permitted, use of a device in a location other than that which is permitted, unauthorized transfer of a permit to another individual.

## **C. Reporting**

DEC shall generate a summary of all approved permits on an annual basis, both for pre-approved OPDMD routes and individual accommodation applications. This report will be published on the DEC website.

## **VII. Related References:**

- [28 CFR Part 35: Nondiscrimination on the Basis of Disability in State and Local Government Services](#)
- [Article XIV, New York State Constitution](#)
- Title 6, New York Codes, Rules, and Regulations (NYCRR)
  - [Chapter 1: Fish and Wildlife](#)
  - [Chapter 2: Lands and Forests](#)
- Environmental Conservation Law §§ [3-0301\(1\)\(d\)](#) and [9-0105\(1\)](#)
- [Executive Law §816](#)
- [Adirondack Park State Land Master Plan](#)
- [Catskill Park State Land Master Plan](#)
- New York State Department of Environmental Conservation (DEC) [Commissioner Policy 53](#) (CP-53) Americans with Disabilities Act (ADA) Grievance Procedure
- [DEC Commissioner Policy 76 \(CP-76\)](#) Federal Civil Rights Nondiscrimination Program
- [Memorandum of Understanding Between APA and DEC Concerning Implementation of the State Land Master Plan for the Adirondack Park](#)

## **VIII. Attachments:**

- Attachment A – Mobility Device Categories
- Attachment B – Approved Routes for Motorized Access Program for People with Disabilities
- Attachment C – Federal Assessment Factor Worksheet
- Attachment D – Incompatible OPDMD Use Considerations