

Attachment C – Federal Assessment Factor Worksheet

DEC staff responsible for reviewing the potential use of OPDMDs on land under DEC jurisdiction apply the Federal Assessment Factors by answering the questions below (“assessment questions”) as applicable to the specific facility, route, recreational program, and OPDMD.

Recreational Program:

Location:

OPDMD Device Category:

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.*