



Mason Conservation Commission Minutes – D R A F T

July 11, 2012
7:00 pm to 10:30 pm

In Attendance

- Barbara Devore
- Bob Dillberger
- Anna Faiello
- Liz Fletcher
- Rob Doyle
- Bob Larochelle

Voted unanimously to accept May minutes with corrections.

Barbara Currier attended as an observer.

Discussed knotweed infestation on RR trail. The spot at Black Brook bridge is growing vigorously. Rob D. volunteered himself and Bob L. to visit the spot, estimate the amount of black plastic sheeting needed to cover the plants, and acquire same at County Stores in preparation for a mediation event to be held later in the year when it's cooler outside. Barbara and Liz will donate screening (hardware cloth) to put on top of the plastic to (we hope) help keep it in place.

Met with George Schwenk about the quarry land gift. Brought him up-to-speed with Ian McSweeney's recommendations. George agrees with Ian's recommended course of action: George to strike easement deal with Forest Society (SPNHF) prior to gifting land to town.

Liz suggested striking "agriculture" as an allowed use in the easement and George agreed. Liz also expressed concern about leaving the notion of a forest management plan unspecified and thus open to interpretation. Liz suggested that some specific recommendations and restrictions might be appropriate. George was concerned about restricting future management efforts unnecessarily. Agreed to ask Ian for his recommendations on this matter. Barbara will send an e-mail to Ian reminding him to contact George so the easement deal can proceed.

Discussed a recent intent-to-cut form for lot K 10-2. The cutting has started and several issues remain: (1) no permit or tax certificate appears to be posted at the site, (2) the form lists Townsend road for access but the property has no frontage on that road, (3) one of the landowners who signed the form (Gary Schaffer) is deceased, and (4) the Selectmen signed the form after Gary's death. Bob D. will identify the state agency responsible for managing timber tax issues and follow-up with them regarding these items.

Other powered driven mobility devices discussion:

Passed 2 years ago and blindsided everyone.

Wheelchair is a very specific device not designed for recreation. Must be permitted if pedestrians are allowed. See Americantrails.org. ADA says access has to be 32" wide. Since the railroad gate gap is 48" we are compliant. If you allow any vehicle, for any purpose whatsoever, you must allow OPDMD's. If the device creates a risk to the environment then we can disallow it's use. Bob D. recommended we need to look at each parcel individually and come up with a policy. Since vehicle classes are not stipulated Bob D. will research if he can find a Gov. classification. He will also look at ATV websites to find out if they are taking advantage of this new law in any way. Also investigate if easements can trump the law or not, which could discourage land owners from giving easements on their lands. Enforcing is difficult because no penalties are stated. See policy notes on Page 2-7.

Per email from Jenny Snyder the proposed PSNH Easement appraisal on lot A-11 is valued at 25% of overall value or \$5500. Liz Liz will call Dick Rockwood for a recommendation.

Voted unanimously to send a check for \$25 to Bill Downs for DES wetlands permit for potential logging operation of Bronson Potter viewscape.

Discussed List of town parcels with potential for conservation:

A-13 (adjacent to Potter-High priority), B-3 (Lombardi swamp-high priority), D-14 (peat bog), F-41 (Gould Mill Brook but low priority), G-61 (talus slope-prime timber rattlesnake habitat-medium priority), J-46 (low priority), K-45/K-52 (south facing slope-High priority), L-27/58 (abuts Townsend State Forest-Peat Bog, wildlife corridor-High priority).

Check \$162 to be deposited in the Stewardship fund. This money is a reward from LCHIP for our monitoring efforts at the Fifield Tree Farm.

Rent check for \$1350 has been received from Dennis Graham to be deposited in the Old Ashby Road account.

Dave Baker has offered to make repairs on the south end of the RR trail (north of Morse Road). The commission would be agreeable if Dave can be very careful not to spread Japanese Knotweed!

OPDMD-ADA POLICY NOTES

What must we do?

1. Allow access for wheelchairs (motorized or otherwise) in all areas open to pedestrian traffic.
2. Define an explicit written and publicly posted policy for OPDMD use. OPDMD = **other power-driven mobility device**, “other” distinguishing this type of vehicle from a wheelchair.

A wheelchair is a specific well-defined type of mobility device.

- The key distinction between wheelchairs and OPDMDs is that the former are “not designed to have a recreational component.” (DOJ, from American Trails Web site)
- “The devices that fall within the definition of a ‘wheelchair’ are those that are used for locomotion on only indoor or on indoor and outdoor pedestrian paths or routes and not those devices that are intended exclusively for traversing undefined, unprepared, or unimproved paths or routes”. (DOJ, from American Trails Web site)
- A Segway is NOT a wheelchair.
- Access points must provide ADA-compliant openings: a minimum of 32 inches wide. *We are not required to provide wider access even if we allow vehicles that exceed this dimension.*

For OPDMD use, the key phrase in the legislation is “reasonable modifications” to policies regarding motor vehicle use; we are not required to allow unrestricted OPDMD access.

From American Trails Web site: *The DOJ rule requires a public entity to make reasonable modifications in its policies, practices, or procedures to permit the use of OPDMDs by individuals with mobility disabilities, unless the public entity can demonstrate (1) that the class of OPDMD cannot be operated in accordance with legitimate safety requirements, based on actual risks and not mere speculation regarding the device or how it will be operated..., or (2) based on any of the other assessment factors DOJ has provided....*

When determining OPDMD restrictions at a particular “facility”, we can consider only safety requirements and these factors (from ADA Part 35 Title II):

- The type, size, weight, dimensions and speed of the device;
- The facility’s volume of pedestrian traffic (which may vary at different times of the day, week, month or year).
- The design and operational characteristics of the facility (e.g. whether the 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);
- Whether legitimate safety requirements can be established to permit the safe operation of the OPDMD in the specific facility; and
- 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* (emphasis mine), or poses a conflict with Federal land management laws and regulations.

What we (and the police) cannot do

Ask for proof that an OPDMD is required. The legislation stipulates that we can ask only for “credible assurance” that the device is required. “Credible assurance” is defined as a state-issued handicapped placard, license plate, or similar official document, or (incredibly IMO) the person’s say-so, as long as it doesn’t contradict observable fact. (As a ludicrous example to explain what this means, if the person says “I have no legs” but they’re wearing shorts and we can see their legs, the assurance is not credible.)

How do we create our policy?

To choose whether or not to allow OPDMDs or to place restrictions on the type of vehicles allowed, consider why we banned wheeled motorized vehicles in the first place (the ban was not capricious):

1. Noise problems for nearby residents.
2. Erosion and associated maintenance cost, destruction of habitat, destruction of property (e.g., gates), public safety (must cite specific incidents; the assumed likelihood of such things is not sufficient).
3. Noise and fumes are incompatible with the service being provided: enjoyment of nature, quiet reflection, public education and awareness.
4. Safety (esp. foot trails): slope, trail width (Is there room to turn around? Room to pass?), trail surface (e.g., rock vs. dirt), water crossings, bridges. (Be sure to consider horses and motorized vehicles when establishing guidelines. We cannot reasonably prohibit motorized use and allow horses if the effect of the former is less than or equal to that of the latter.)
5. Protection of historic resources (weight for bridges, which is relevant for truck/jeep/car access). Ability to remove historic artifacts (quarry). **The last is questionable: involves assumption.**
6. Private landowners might withdraw consent for public access. Must confirm with specific landowners where relevant. Otherwise, **questionable.**
7. Remote access to medical help, limited cell phone service, both of which raise safety concerns (perhaps speak with Mason PD and Souhegan Valley EMTs about this and get their perspective).

These concerns and issues still apply and are relevant for OPDMD use. Ignoring them for OPDMDs while considering them for other vehicles would be unreasonable IMO.

Things we can do:

1. Restrict OPDMDs to non-internal-combustion (i.e., electric only) to address noise, fumes.
2. Set speed, weight, size limits.
3. Define “classes” of OPDMDs and regulate by class. Here’s a general example from a Sacramento County Regional Parks Web page:

Allowed



Prohibited



4. Define unique policies for each “facility”. For example, the RR trail policy is likely to be more liberal than policies for single-track trails or unimproved areas. (Should also probably consider implications of federal funding for RR trail.)

Why are snowmobiles OK? Because it’s a seasonal activity and winter’s the season: noise is much less of an issue (wildlife scarce, no horses, fewer pedestrians, resident’s windows & doors closed) and erosion/habitat destruction is a non-issue.

One Issue Remains

Trucks are allowed on RR trail for maintenance. Legislation seems to require that trucks therefore be allowed for disabled access (if a particular type of vehicle is allowed for any reason whatsoever then it must be allowed as a mobility aide). How to get around this? Is periodic use the same as anytime use? Erosion control, safety seems the best basis. Hwy. dept. trucks are allowed for the purpose of *mitigating* erosion and public safety problems; other use will *create* those conditions. If ADA requires truck access for mobility, only recourse is to disallow all truck access, yielding unsafe conditions and eventual destruction of resource (which FWIW meets my definition of “unreasonable”).

Still to do

Review existing policies. Here’s a list of some policies from the American Trails Web site:

▶ STATE POLICIES

- AR: Arkansas State Parks ADA Regulation on Mobility Devices ([download pdf 76 kb](#))
- CA: California State Parks policy on Permissible Uses of Other Power Driven Mobility Devices ([download pdf 1.2 mb](#))
- FL: [Florida's State Parks policy on Wheelchairs, Manually-Powered Mobility Aids and Other Power-Driven Mobility Devices \(OPDMD\)](#)
- IN: [MOBILITY DEVICES ON INDIANA DEPARTMENT OF NATURAL RESOURCES PROPERTIES](#)
- MN: [Rules regarding the use of other power driven mobility devices in DNR facilities and lands](#)

▶ LOCAL POLICIES

- [Jefferson County Open Space \(CO\) Guidelines for use of "Other Power Driven Mobility Devices" on JCOS properties](#) (adopted March 15, 2011)
- [Fort Collins \(CO\) Use of Electronic Personal Assistance Mobility Devices Policy](#)
- [Summit County \(CO\) Guidelines for "other power-driven mobility devices" on open space and trails](#)

- [Roaring Fork Transportation Authority Rio Grande Rail Trail Corridor Rules on the Use of Other Power Driven Mobility Devices](#)
- [Lancaster County Parks Department \(PA\) ADA Trail Accessibility Policy](#)
- [West Penn Trail \(PA\) Accessibility Policy on power-driven mobility devices](#)
- [Nashville Metro Parks \(TN\) "Power-driven Mobility Device ADA Access Policy for Trails, Bike Paths, Greenway Trails and Pedestrian Use Areas"](#)
- [Puente Hills Landfill Native Habitat Preservation Authority \(CA\) interim ADA policies](#)
- [Orange County Parks \(CA\) assessments of permissible or non-permissible OPDMD](#)
- [Conejo Open Space Conservation Agency \(CA\) policy on Power Driven Mobility Devices](#)
- [Santa Monica Mountains Conservancy \(CA\) interim policy on use of power-driven mobility devices](#)
- [Three Rivers Park District \(MN\) Interim Policy on Use of Power Driven Mobility Devices](#)

Here's a synopsis of what they say (from the same source):

Use of motor vehicles

Since the DOJ does not rule out any vehicle types, policies need to specify which kinds of OPDMD could be operated safely.

- Internal combustion engines prohibited (Santa Monica Mountains)
- If powered by an internal combustion engine, the engine shall have a four-stroke cycle, be equipped with an approved spark arrestor muffler, and meet Clean Air standards in effect at the time of its manufacture. Two-stroke cycle engines are not allowed. (Illinois)

Use of electric vehicles

The most common power-driven mobility device allowed by land managers is the class of "Electronic Personal Assistance Mobility Devices" (EPAMD) such as the Segway.

- OPDMD must be electric powered (Jefferson County)
- Any electric propulsion device that does not exceed 750 watts or 1-HP in power (West Penn)
- All-electric mobility devices that can access the trails from the trailheads (Puente Hills)
- EPAMD (e.g., Segways®), electric-assisted bicycles and the following electric-powered devices: foot scooters, tracked mobility chairs or tricycles that are designed to transport a single individual with a disability as a substitute for walking may be used by a person with a mobility disability on all paved and aggregate surfaced trails (MN)

Speed limits

Most policies specify a maximum speed for accessibility devices:

- EPAMD must not exceed a speed of 5 miles per hour (Fort Collins)
- 5 mph when other users are present; 10 mph when other users are not present (Jefferson County)
- 5 miles per hour (Santa Monica Mountains)
- Typical walking speed, based on the particular soil type and existing environmental conditions, not to exceed 5 miles per hour (Florida)
- 10 mph for fuel-driven devices or devices over 36" wide (COSCA)
- 10 mph for fuel-driven devices or devices over 36" wide; EPAMD 12 mph (Conejo Open Space)
- 15 miles per hour for electric personal assistive mobility devices • 20 mph for all devices operated on the trail (West Penn)

Size and weight limits

Specifying dimensions is one way to determine the kinds of devices, such as ATVs, that would be excluded.

- OPDMD may be up to 32 inches wide, up to 6 feet long, and weigh up to 150 pounds (Jefferson County)
- No wider than 36 inches (West Penn)
- On Single Track Trail, devices not to exceed 26" width and a maximum wheel width of 6" (Orange County)
- OPDMD "shall not typically exceed" 34" width, 62" length, and 550 pounds in weight (Florida)

- Combined width of the OPDMD, operator, and additional load does not exceed 45% of the surface width of the circulation path (Illinois)

Trail limitations

Some policies refer to specific measurements or characteristics of the trail.

- OPDMD may only be operated on trails with grades (slopes) of 12% or less (Jefferson County)
- List of specific trails where “mobility devices over 36” wide may be used” (Conejo Open Space)
- Trails designated for hiking, interpretation, horseback-riding, cross-country skiing, biking, and mountain biking are open to individuals with mobility disabilities using wheelchairs, but not open to OPDMDs due to assessment factors (i), (ii), (iv) and (v). OPDMDs pose a legitimate safety threat to other individuals using the trails and they pose a substantial risk to the natural and cultural resources associated with the trails, and by their nature they disturb the intended trail experience. (Illinois)
- ATVs, golf carts, or other power-driven mobility devices, except as described above, are not recognized an appropriate devices for park trails, bike paths and greenway trails for the following reasons:
 - o The slope of the natural terrain, which may exceed 5%.
 - o The congestion of foot traffic on the shared paths of the facility.
 - o Manufacturers recommendation for helmet and protective equipment for riders.
 - o The unrealistic administrative burden of identifying FDA-approval or speed, weight and safety features of each device upon entry, including any form of assessment of rider abilities; or managing pedestrian traffic throughout the facility for separated movement. (Nashville Metro Parks)

Other restrictions

- May only be used during regular operating hours on Mondays through Thursdays (no weekends or holidays) (Conejo Open Space)

Permits and permission

DOJ does not address the issue, but some agencies see permits as a way to ensure both safety and legality of vehicle use.

- For safety purposes, individuals seeking to use fuel-driven mobility devices or mobility devices over 36” must obtain a permit from the COSCA Rangers...
- “The permit identifies the individual responsible for the [OPDMD]. It also gathers contact information, describes the stated use, defines time frame for access, confirms the motorized device is for use because of a disability, requires proof of vehicular insurance, and sets guidelines for safety precautions including for fire as it pertains to devices with fuel powered engines” (Puente Hills)
- Upon arriving at the site, individuals with mobility disabilities using OPDMDs must check in at the site office prior to use of the OPDMD on a trail or roadway to ensure its use is acceptable at that site. (Illinois)

Interim policies

Some agencies have recognized that they may need to modify policies as they gain experience with visitors’ needs as well as the new uses on the trails.

- “Special access requests will be processed on a case-by-case basis until the time in which an assessment of all public trails managed by the Authority has been conducted in accordance with federal guidelines” (Puente Hills)
- “While these evaluations are in progress, we invite persons with mobility disabilities to contact us about use of devices that are currently prohibited to other park users (i.e., motorized OPDMDs) but may provide you with better access in a safe manner, considerate of natural resources. ... We are also in communication with state agencies and community park and recreation systems to develop a plan that may be consistently applied throughout the state.” (Three Rivers Park District)
- “As technology advances and new devices are developed, public use patterns change, and impacts to natural and cultural resources are reevaluated. OC Parks may modify the type of OPDMD permissible within specific facilities on specific trails as necessary. Please check this site regularly for updates to these guidelines.” (Orange County)
- County may issue a permit to use an OPDMD in areas prohibited if it determines that a unique situation applies and special conditions can be placed on the use that would make it safe to operate the OPDMD or prevent serious harm to the environment or natural or cultural resources. In these situations, special circumstances permission should be requested 7 days in advance of arrival date (Anoka County)

Some Resources

Sacramento Co. park service: <http://www.msa2.saccounty.net/parks/Pages/ADAPart35TitleIIInformation.aspx>

American Trails: <http://www.americantrails.org/resources/accessible/DOJ-power-mobility-July2010.html>

US Forest Service Travel Management Plan: <http://www.fs.fed.us/recreation/programs/ohv/>. Includes (some place) an OHRV classification scheme. (ADA refers to vehicle class but does not define it.)

From Motor Vehicle Use Map, White Mountains, US Forest Service (we might consider including similar wording in our policy; replace “White Mountain National Forest” with “Mason”):

OPERATOR RESPONSIBILITIES

Operating a motor vehicle on National Forest System roads, National Forest System trails, and in areas on National Forest System lands carries a greater responsibility than operating that vehicle in a city or other developed setting. Not only must the motor vehicle operators know and follow all applicable traffic laws, but they need to show concern for the environment as well as other forest users. The misuse of motor vehicles can lead to the temporary or permanent closure of any designated road, trail, or area. Operators of motor vehicles are subject to State traffic law, including State requirements for licensing, registration, and operation of the vehicle in question.

Motor vehicle use, especially off-highway vehicle use, involves inherent risks that may cause property damage, serious injury, and possibly death to participants. Riders should drive cautiously and anticipate rough surfaces and features, such as snow, mud, vegetation, and water crossings common to remote driving conditions. Participants voluntarily assume full responsibility for these damages, risks, and dangers. Motor vehicle operators should take care at all times to protect themselves and those under their responsibility.

Much of the WHITE MOUNTAIN NATIONAL FOREST is remote, and medical assistance may not be readily available. Cellular telephones do not work in many areas of the WHITE MOUNTAIN NATIONAL FOREST. Operators should take adequate food, water, first aid supplies, and other equipment appropriate for the conditions and expected weather.

ALWAYS REMEMBER TO RESPECT PRIVATE LAND! PROTECT YOUR PRIVILEGE. STAY ON DESIGNATED ROADS, TRAILS, AND IN DESIGNATED AREAS.

You should read and understand this map in its entirety. If you have questions please contact the WHITE MOUNTAIN NATIONAL FOREST for clarification.

Road, trail, and area users must comply with this map, as well as all Federal, State, and local laws and regulations. Compliance with these rules is the responsibility of the user.