

Grand Traverse Regional Land Conservancy Mobility Device Use Policy (May 25, 2017)

I. Introduction

The Grand Traverse Regional Land Conservancy (the "Conservancy") owns and manages various properties that it characterizes as preserves, farms, sanctuaries, forests or restoration areas. The Conservancy's preserves and farms have trails and other areas that are open to pedestrian use by the public. Although the Conservancy's trails vary widely, each has natural features that would make it difficult if not impossible for a person with a mobility disability using a mobility device to traverse its length, *e.g.*, grade changes, uneven terrain, narrow passages of 30" or less, blind turns, sandy or rocky soils, and exposed roots, downed trees and other obstructions.

In the spring of 2017, after years of planning and months of construction, the Conservancy will open its first designated "universally accessible" trail ("UA trail") on its preserve at Arcadia Dunes. The UA trail will be composed of compacted crushed stone with a binder that will give it a uniform hard surface. It will be six feet wide. It will run for approximately one-half mile and climb approximately 100 feet from a parking lot west of M-22 through the wooded dunes to a viewing platform about 300 feet above Lake Michigan. The UA trail will employ a series of switchbacks (i) to maintain a manageable grade throughout its length, thereby facilitating safe ascent and descent, and (ii) to avoid unnecessarily disturbing adjacent trees and other vegetation. The Conservancy expects that persons of all abilities--including those with mobility disabilities and slow-moving pedestrian traffic, *e.g.*, the elderly, the young and families with infants using strollers--will be able to traverse the entirety of the UA trail and thus experience first-hand the flora, fauna and views at Arcadia Dunes. The Conservancy anticipates that the UA trail will be heavily used during the summer months.

The Americans with Disabilities Act of 1990 ("ADA") prohibits discrimination and ensures equal opportunity for persons with disabilities in, among other areas, public accommodations and commercial facilities. The Attorney General has responsibility for publishing regulations implementing the requirements of Title III (public accommodations and commercial facilities) of the ADA. The Department originally published the ADA Title III regulations on July 26, 1991, including the Accessibility Guidelines. The Accessibility Guidelines do not address trail construction. Effective March 15, 2011, however, the Department revised the Accessibility Guidelines to address the use of mobility devices on such privately or commercially managed areas as trails.

Consistent with the ADA and the Accessibility Guidelines, this policy sets forth the Conservancy's rules and regulations regarding the use of mobility devices by persons with disabilities on its trails, including its UA trail, and in other areas open to pedestrian use.

II. Definitions

For purposes of this policy:

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As defined in relevant part in 28 CFR 36.104, "wheelchair" shall mean 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.

As defined in relevant part in 28 CFR 36.104, "other power-driven mobility device" ("OPDMD") shall mean any mobility device powered by batteries, fuel or other engines--whether or not designed primarily for use by persons with mobility disabilities--that is used by individuals with mobility disabilities for the purpose of locomotion, including 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 28 CFR 36.104.

As used herein, "mobility devices" shall mean wheelchairs and other power-driven mobility devices.

III. Mobility Device Use

A. Wheelchair Use

Consistent with 28 CFR 36.331, the Conservancy 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, on its trails, including the UA trail, and in other areas of the Conservancy's properties that are open to pedestrian use.

B. Other Power-Driven Mobility Device Use

Pursuant to 28 CFR 36.311(b)(1), the Conservancy must make reasonable modifications to its policies, practices or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities unless it can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements. In determining whether a particular other power-driven mobility device should be permitted in an area that is open to the public is a reasonable modification, the Conservancy is required to consider: (1) the type, size, weight dimensions and speed of the device; (2) the area's volume of pedestrian traffic, which may vary at different times of the day, week, month or year; (3) the area's operational characteristics; (4) whether legitimate safety requirements can be established to permit of the other power-driven mobility device in the specific area or trail; 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.

In view of the foregoing factors, the Conservancy shall permit the use of other power-driven mobility devices meeting and operating in accordance with the following requirements on its trails, including the UA trail, and in other areas of Conservancy properties that are open to public use:

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1. The OPDMD shall not exceed 30" in width. Additionally, no OPDMD shall be operated on the portion of any trail where the device cannot safely within the trail tread width (i) turn around, and (ii) pass and engage in two-way traffic with an identical device.
2. The electric motors on OPDMDs shall not exceed 500 watts in power.
3. The OPDMD shall not exceed 300 pounds in weight.
4. The OPDMD shall be capable of safely negotiating trail features and any obstructions in the area.
5. The OPDMD shall not be operated (i) at a speed in excess of 5 mph in the presence of other mobility devices or pedestrians, and (ii) at a speed in excess of 10 mph in all other circumstances. Anything herein to the contrary notwithstanding, the OPDMD shall not be operated at a speed greater than what is reasonable and prudent in view of traffic, trail sight-lines, trail tread width and surface, weather conditions, due respect for the natural surroundings, and all other relevant circumstances.
6. The OPDMD shall not exceed zero emissions during use. The use of mobility devices utilizing internal combustion engines on the Conservancy's properties is strictly prohibited.

These requirements will permit persons with mobility disabilities to use a variety of other power-driven mobility devices, including electric bikes and scooters, on at least portions of the Conservancy's trails, including the entirety of the UA trail, and in certain other areas open to pedestrian use. At the same time, the foregoing limits on the width, power, weight, speed and emissions of OPDMDs will protect other persons, property and the environment from mobility devices that cannot be operated in accordance with legitimate safety requirements in view of the physical characteristics and nature of use of the Conservancy's properties.

C. No Assurance of Safety

By adopting this policy, the Conservancy is not representing or assuring anyone that its trails and other areas open to pedestrian use are safe for persons with mobility disabilities using any particular mobility device. To the contrary, the Conservancy's trails (other than the UA trail) were not designed or constructed and are not maintained to accommodate persons with mobility disabilities using mobility devices. There are risks inherent in the use of mobility devices on the Conservancy's properties, and all persons with mobility disabilities using such devices must exercise good judgment and reasonable care for their own safety.

D. Public Notice

The Conservancy shall post a summary of this policy at the trailhead of each of its trails and in such other locations as it deems advisable.