

**Policy for  
OPDMD, Other Power Driven Mobility Devices for the Use on  
The Pumpkinvine Nature Trail**

In accordance with the revised regulations of the U.S. Department of Justice (DOJ) for Titles II and III of the Americans with Disabilities Act (ADA), individuals with mobility disabilities are allowed to use Other Power Driven Mobility Devices (OPDMD) in areas where they can be operated:

- Safely without posing a risk of serious harm to trail users or natural and cultural resources;
- Without substantial adverse effect upon Park Department services, programs and activities; and
- In conformity with the municipal park ordinances and policies of the City of Goshen, Elkhart County Park & Recreation Board, Town of Middlebury and the Town of Shippshewana.

Individuals with mobility disabilities may use wheelchairs and manually powered mobility aids wherever foot traffic is permitted on The Pumpkinvine Nature Trail. Individuals with mobility disabilities (and only such individuals) may use Other Power Driven Mobility Devices (OPDMD's) on The Pumpkinvine Nature Trail that conform to the following specifications:

**A. Size and Weight:**

- OPDMD's shall be no wider than 36" or longer than 62".
- OPDMD's may weigh up to 200 lbs.

**B. Type:**

- Electric driven OPDMD's is with motors of 250 watts or less.

**C. Equipment:**

- A bell or other audible device by which other trail users may be warned of a user's approach.

OPDMD's exceeding these size and weight limitations and OPDMD's having internal combustion engines using gasoline, diesel or propane for fuel are not permitted on The Pumpkinvine Nature Trail.

The following rules govern the use of qualifying OPDMD's:

1. Only individuals with mobility disabilities, solely or with the necessary assistance of another person, may use OPDMD's on The Pumpkinvine Nature Trail;

2. A user of an OPDMD must drive on the right side of the trail, follow all posted trail use instructions, and not exceed a speed of 6 miles per hour. Driving in a reckless or dangerous manner is prohibited;
3. A user of an OPDMD must drive on the right side of the trail, follow all posted trail use instructions, and not exceed a speed of 6 miles per hour. Driving in a reckless or dangerous manner is prohibited:
4. When oncoming traffic approaches or traffic behind signals intent to pass, a user of an OPDMD shall stay to the right of the center line of the trail, so as to allow safe passage for other parties, in accordance with existing rules and regulations governing trail usage.
5. A user of an OPDMD approaching trail users from the rear shall give an audible signal of his or her approach and shall not pass unless and until a pass may be made without impeding oncoming traffic or otherwise endangering other trail users.
6. Users of OPDMD's shall comply with the municipal park ordinances and policies of the City of Goshen, Elkhart County Park & Recreation Board, Town of Middlebury and the Town of Shipshewana.

Anyone who uses an OPDMD on The Pumpkinvine Nature Trail assumes all risks related thereto, including the risks of personal injury to the user or others and the risks of property damage to the OPDMD or other property, including the public trail property.

A free ADA pennant is available for the Pumpkinvine Nature Trail at Middlebury and Shipshewana Town offices and the Goshen and Elkhart County Park Department Administration offices. There is a bracket to attach the rod and pennant in a visible location on a mobility device so all trail users may see.

## Rationale for the Above Policies

On September 15, 2010, the United States Department of Justice (DOJ) revised the regulations implementing the Americans with Disabilities Act (ADA), Part 35 of Title 28 of the Code of Federal Regulations titled *Nondiscrimination on the Basis of Disability in State and Local Government Services*, effective March 15, 2011. The revisions require state and local governments to make reasonable modifications to policies to allow "individuals with mobility disabilities" to use "other power-driven mobility devices" (OPDMD's) in areas open to pedestrian use. The applicable regulation reads as follows:

### §35.137 Mobility devices.

- (a) *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.
  
- (b)(1) *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).
  
- (2) *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 (b)(1) 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.

- (c)(1) *Inquiry about disability.* A public entity shall not ask an individual using a wheelchair or other power-driven mobility device about the nature and extent of the individual's disability.
- (2) *Inquiry into the use of other power-driven mobility device.* A public entity may ask a person using any 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 any 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.

The Pumpkinvine Nature Trail was designed and constructed as a multi-purpose trail for walking, skating, and bicycling. The trail provides a low key, relaxed travel experience in a scenic, comfortable atmosphere giving users the opportunity to enjoy the serenity and beauty of nature. The trail that has many miles of forested canopy that affords excellent wildlife viewing.

The trail width is 10' and most areas have a gravel berm of 2' on each side. A trail width of 10' is very tight for two-way trail traffic. Because approximately a foot on each side of the trail is a "shy-zone" and because passing requires at least a foot of clearance on each side, there is a maximum of only three feet per side remaining for occupancy when individuals pass each other on the trail. In areas such as trestle bridges, curves, along protective fences and at the U.S. 20 tunnel, berms are minimal or nonexistent making the trail narrower and more dangerous. In some of these areas, trail user speed is a critical factor for the safety of trail users.

The Pumpkinvine Nature Trail was constructed to avoid roadways that are overcrowded with internal combustion vehicles that pose a threat to the safety of recreationalists and members of the Amish community who depend on bicycle transportation for their commutes to and from work, running errands and visiting neighbors. Pumpkinvine Nature Trail users have come to expect a safe, relaxed, quiet environment without concerns related to roadway traffic. The use of internal

combustion engines on the trail would be detrimental to the culture and environment of the Pumpkinvine Nature Trail. The noise and fumes of such engines would minimize the natural experience that the trail was designed for.

The trail is extremely popular, used by a heavy volume of local and regional visitors. Trail users are of all ages and travel in all sizes of groups. Many times trail travel is slow due to this heavy volume. Special events that utilize the trail can also slow up travel, particularly on weekends. High volumes of trail traffic adversely affect trail safety. Park Department Staff have done a trail user count survey that confirms the heavy use of the Pumpkinvine Nature Trail.

The City of Goshen, Elkhart County Park & Recreation Board, Town of Middlebury and the Town of Shipshewana believe that affording persons with mobility disabilities an opportunity to experience the pleasures of the Pumpkinvine Nature Trail, as others do, would be consistent with our local community culture. These entities also believe that limiting the sound, potential emissions, size, weight, and speed of OPDMD's is necessary to maintain the environment and culture of the trail and to protect the safety of trail users. In order to permit many different users to share the same limited and linear space, the rules can be adjusted, but must be structured to allow visitors to pass each other safely in the limited space.

These entities believe that the foregoing policy and this rationale are consistent with the intent of the ADA regulations by allowing other power-driven mobility devices on the trail, but at the same time maintaining the existing trail culture and protecting the safety of all visitors.