I. CALL TO ORDER

II. ATTENDANCE

   A. Roll Call 4:00 p.m.

III. NEW BUSINESS

   A. Minutes – October 3, 2019 4:00 p.m.
   B. Ridge to Rivers – Wildlife Management in the Boise Foothills 4:05 p.m.
   C. Other Power-Driven Mobility Devices – E-Bike Update 4:20 p.m.
   D. Committee Updates 4:30 p.m.

   * E. Executive Session: 1) Pursuant to Idaho Code §74-206(c) to acquire an interest in real property which is not owned by a public agency, and Idaho Code §74-206(f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. 4:40 p.m.

IV. ADJOURNMENT

Pursuant to Idaho Code Section 74-204(4), all items on the Agenda marked with an asterisk * are action items that require a vote. Identifying an item as an action item on the Agenda does not require that a vote be taken. All Consent Agenda items will be enacted by one motion, unless a Committee Member or citizen requests the item be removed from the Consent Agenda and considered in the normal sequence of business.
OPEN SPACE AND CLEAN WATER ADVISORY COMMITTEE (COMMITTEE) SUMMARY REPORT

Please find enclosed the descriptive information supporting your agenda topics for this meeting. The meeting is anticipated to last one hour.

NEW BUSINESS AGENDA ITEMS

A. MINUTES – OCTOBER 3, 2019 – Requested by Doug Holloway, Director (See Item III. A. on the agenda)

RECOMMENDATION: The Department requests that the Committee recommend approval of the October 3, 2019 Open Space and Clean Water Advisory Committee Minutes, Exhibit A, to Boise City Council.

B. RIDGE TO RIVERS – WILDLIFE MANAGEMENT IN THE BOISE FOOTHILLS – Requested by Sara Arkle, Foothills and Open Space Superintendent (See Item III. B. on the agenda)

The Ridge to Rivers trail system has grown substantially in the last 20 years, with over 200-miles of trails to enjoy across public and private land. The five agencies that make up the Ridge to Rivers Partnership include Ada County, Idaho Fish & Game, US Forest Service, the Bureau of Land Management and the City of Boise. The city is the lead partner and contributes 80% of funding and all staff resources to this regional gem.

Each partner manages property in the foothills for both recreational and wildlife habitat. As the Boise community grows and use of the trail system increases, these public land management agencies are renewing their focus on wildlife habitat and needs.

Department staff will update the Committee on ways the city is partnering with these agencies to achieve complex goals of balancing recreational use with wildlife needs and native habitat restoration.

RECOMMENDATION: No motion necessary. This is an information item only.
C. OTHER POWER-DRIVEN MOBILITY DEVICES – E-BIKE UPDATE – Requested by Sara Arkle, Foothills and Open Space Superintendent (See Item III. C. on the agenda)

The City of Boise provides an accommodation under the Americans with Disabilities Act (ADA) to individuals with a mobility disability to ride an e-bike as defined by the City of Boise on certain city-owned property within Ridge to Rivers trails, Exhibit B.

E-bike use on the Ridge to Rivers trail network is currently allowed at the Ada/Eagle Bike Park, and trails on Boise City property that are open to bikes and provide loop opportunities. Until recently, federal agency partners prohibited e-bikes and other motorized devices on all trails that cross BLM and US Forest Service land. Given that 70% of the Ridge to Rivers trail miles are on BLM land, this prohibition was impactful on the city’s trail system.

In August, the Department of the Interior issued a Secretarial Order about Increasing Recreational Opportunities through the use of Electric Bikes, Exhibit C. The Order requires the BLM to create a plan of action for implementing changes to allow e-bike usage on federal lands managed by BLM. The US Department of Agriculture has not yet provided guidance to the US Forest Service on how to address e-bikes on lands managed by its agency.

Department staff will update the Committee on how the city will work to make sure its policies are complimentary to the Secretarial Order.

RECOMMENDATION: No motion necessary. This is an information item only.

D. COMMITTEE UPDATES – Requested by Sara Arkle, Foothills and Open Space Superintendent (See Item III. C. on the agenda)

Department leadership will update the Committee on necessary topics.

RECOMMENDATION: No motion necessary. This is an information item only.
I. CALL TO ORDER:

Committee Member Brooke Green called the meeting to order at 4:02 p.m.

II. ATTENDANCE:

A. Roll Call

Present: Peter Pengilly, Michelle Meyers, Jeremy Maxand, Matt Cryer and Brooke Green

Absent: Scott Raeber, Kathryn Elliott, Katy Jibben and Stacey Donohue

III. IN THE MATTER OF NEW BUSINESS

A. Minutes - September 5, 2019

MOTION: Committee moved to recommend approval of the September 5, 2019 Open Space and Clean Water Advisory Committee Minutes to Boise City Council.

RESULT: APPROVED

MOVER: M. Meyers
SECONder: P. Pengilly
AYES: Unanimous
ABSENT: S. Raeber, K. Elliott, K. Jibben and S. Donohue

S. Raeber joined the meeting at 4:04 p.m.

B. Ecological Assessment and Habitat Restoration Priorities

Summary: S. Arkle presented on open space restoration efforts in the Boise Foothills. Restoration efforts had been focused in Hyatt Hidden Lakes and Table Rock areas. Nearly 6,000 volunteer hours were completed during restoration events at Table Rock following the 2016 wildfire, and 18,000 plants were installed throughout the reserve.

Restoration efforts were planned for Hulls Gulch Reserve, which had a high wildlife value. Russian olive trees would be removed, noxious weed populations would be managed, interpretive signage would be installed, and community engagement would include all ages and demographics.
The Department discussed the conservation fund that came from Zoo Boise admission fees; this fund largely subsidized said restoration efforts.

No motion necessary as the item was informational.

C. Committee Updates

Summary: S. Arkle provided the Committee with an update on the 2017 Open Space and Clean Water Improvement Projects: The Cottonwood Creek Daylighting project was in its preliminary design phase and funding was being discussed, and the Intermountain Bird Observatory Boise River Property Enhancement project continued to gather the necessary permits and agreements.

The 2018 Open Space and Clean Water Improvement Project (the Idaho Transportation Department wildlife overpass) had an agreement in place. Construction of the overpass was expected to begin in 2022.

The Committee and Department discussed how to improve the application process and ensure funds were appropriately allocated for contingency situations.

No motion necessary as the item was informational.

D. Executive Session

MOTION: Pursuant to Idaho Code §74-206(c) to acquire an interest in real property which is not owned by a public agency, and Idaho Code §74-206(f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.

RESULT: ENTER EXECUTIVE SESSION
MOVER: S. Raeber
SECONDER: J. Maxand
ROLL CALL: Peter Pengilly, Michelle Meyers, Brooke Green, Jeremy Maxand, Scott Raeber and Matt Cryer
ABSENT: Kathryn Elliott, Stacey Donohue and Katy Jibben

RESULT: EXIT EXECUTIVE SESSION
MOVER: J. Maxand
SECONDER: S. Raeber
ROLL CALL: Peter Pengilly, Michelle Meyers, Brooke Green, Jeremy Maxand, Scott Raeber and Matt Cryer
ABSENT: Kathryn Elliott, Stacey Donohue and Katy Jibben

V. IN THE MATTER OF ADJOURNMENT:

There being no further business before the committee, the meeting adjourned at 5:05 p.m.

RESULT: APPROVED
MOVER:  S. Raeber
SECOND:  M. Meyers
AYES: Unanimous
ABSENT: K. Elliott, K. Jibben and S. Donohue

__________________________________________
Katy Jibben, Chair
City of Boise
Other Power-Driven Mobility Devices (OPDMD) Policy

Exhibit B
INTRODUCTION AND PURPOSE

The City of Boise ("City") owns approximately 4,200 acres of open space reserve land in the Boise foothills. These land holdings are surrounded by over 84,000 acres of land owned by private individuals and other public agencies. The agencies and some private landowners have paths and trails, open to the public, that cross their respective properties. In the early 1990’s individuals and agencies (the City, Ada County, the Bureau of Land Management, the US Forest Service and the Idaho Department of Fish and Game) came together to cooperatively and cohesively manage a seamless trail system, commonly known as the Ridge to Rivers Trail Network ("R to R Network"). Although the trail system threads across a patchwork of ownership, the Ridge to Rivers partners and other supportive entities seek to provide exceptional access to public lands and natural environments in the Boise foothills.

Of the 192 miles that make up the R to R Network, approximately 160-miles lie on property not owned or managed by the City. Trail management is guided by the Ridge to Rivers MOU and individual easements with private landowners. The Ridge to Rivers MOU and individual easements maintain each partner’s ability to promulgate individual rules and regulations in accordance with applicable laws and regulations. Given this patchwork of ownership, it is not possible for the City to adopt or enforce one set of uniform rules applicable to the entire 192 miles of trails. As such, this revised policy establishes policies and rules for the use of other power driven mobility devices ("OPDMDs") on Ridge to Rivers trails that are located entirely and solely on property owned by the City.

This Revised Policy is in response to the Department of Justice ("DOJ"), Civil Rights Division, 28 Code of Federal Regulations ("CFR") Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services Final Rule, which requires state and local public entities to make reasonable modifications in their policies, practices, and procedures to permit the use of OPDMDs by individuals with disabilities, unless the public entity can demonstrate that the use of the device is not reasonable or that its use will result in a fundamental alteration in the public entity’s services, programs, or activities.

The DOJ’s final rule established a two-tiered definitional approach to mobility devices by separating wheelchairs from OPDMDs. This two-tiered approach provides balance between ensuring access for individuals with mobility disabilities and addressing the fundamental concerns of the City with altering amenities, negatively impacting resources, and providing a safe environment. It also allows the City to preserve and protect traditional use of wheelchairs and other manually powered mobility aides, while recognizing the use of other devices that may be more beneficial for individuals with certain mobility disabilities.
In accordance with the criteria set forth in Section 35 of the ADA, City staff completed an individual assessment of each City owned path and trail located on Ridge to Rivers trails to determine which types of OPDMDs are authorized for use by persons with a mobility disability. The focus of the analysis was on the appropriateness of the use of OPDMDs at and upon City owned paths and trails, rather than on whether it is necessary for an individual with mobility disabilities to use a particular OPDMD. As such, the City continues to be committed to providing amenities, while promoting the safe use and enjoyment of the City’s recreational paths and trails by a broad spectrum of the public.

The City owned paths and trails located in the Boise foothills were designed and constructed for passive recreational users such as hikers, dog walkers, runners, bicyclists, and horseback riders. Indeed, trail user surveys and trail counts indicated that approximately 66% of all users of the R to R Network are on foot. Each trail varies greatly in surface material, terrain, width, elevation, user type, and user volume. Trail users have come to expect a safe, relaxed, quiet experience, free of motorized vehicles, except for those being driven by City staff and emergency personnel. While the use of OPDMDs on certain trails may at first be disturbing to traditional trail users, we believe that trail use by persons with mobility disabilities will provide an opportunity for a segment of the population that previously was unable to experience the trails to now enjoy these exceptional amenities.

As technology advances and new devices are developed, public use patterns change, additional property and property interests are acquired, and impacts to natural and cultural resources are reevaluated, the City may modify the types of OPDMDs that are permissible on any given City owned path or trail in the R to R Network. It is the operator’s responsibility to ensure that they are in conformance with this Revised Policy.

Finally, the adoption of this Revised Policy does not represent an endorsement that the City’s paths and trails in the R to R Network are safe for the use of an OPDMD or wheelchair. Users must exercise reasonable caution and care in deciding to use any particular trail or path while operating such devices.

**LEGAL AUTHORITY**

Boise City Code 13-01-04
28 CFR Part 35 - Americans with Disabilities Act

**DEFINITIONS**

**Electric Power-Assisted Bicycle (“E-bike”).** A vehicle having two tandem wheels or two parallel wheels and one forward wheel, any two of which, are not less than twelve (12) inches in diameter that is designed to be operated by human power with the assistance of an electric motor that has a power output of not more than seven hundred fifty (750) watts that: (i) is
incapable of propelling the vehicle at a speed of more than twenty (20) miles per hour; and (ii) disengages or ceases to function when the vehicle's brakes are applied.

**Manually Powered Mobility Aides.** Walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities.

**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.

**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 both indoor and outdoor locomotion.

**ASSESSMENT FACTORS**

There are a number of factors to consider in determining the type of OPDMD that individuals with mobility disabilities may use on City owned paths and trails located in the R to R Network. These factors include safety of the user, safety of other guests, protection of natural resources, and ensuring the peace and quiet of the outdoor experience. In making that determination the City considered the following factors:

1. The type, size, weight, dimensions and speed of the device;
2. The volume of traffic and type of traffic;
3. The facility's design and operational characteristics (ie: width and surface);
4. Whether legitimate safety requirements can be established to permit the safe operation of OPDMDs;
5. Whether the use of OPDMDs creates a substantial risk of serious harm to the immediate environment or natural or cultural resources.

**INQUIRY ABOUT A DISABILITY**

The last element of the new regulations clarifies the acceptable way to address an OPDMD when asking for credible assurance the user requires the device.

In accordance with the DOJ regulations, representatives of City, including staff and volunteers, will not ask an individual using a wheelchair or OPDMD questions about the
nature and extent of the individual’s mobility disability. The City may, however, ask a person who wishes to use an OPDMD on City owned paths and trails located in the R to R Network to provide credible assurance that the OPDMD is required because of the person's mobility disability. The City will 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 OPDMDs for the individual's 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.

In lieu of a valid, state-issued disability placard or card, or state-issued proof of disability, the City will accept as a credible assurance a verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability.

POLICY ON THE USE OF WHEELCHAIRS AND OPDMDs

Using the framework set forth above, the City has evaluated paths and the trails in the R to R Network that are located entirely and solely on property owned by the City. In striking a balance and with the highest concern for the safety of all users, the City has adopted the following policy:

1. Use of Wheelchairs and Manually-Powered Mobility Aides. The use of wheelchairs and manually-powered mobility aides by individuals with mobility disabilities is permitted on paths and trails in the R to R Network that are located entirely and solely on property owned by the City and are open to pedestrian use.

2. Use of OPDMDs. The use of OPDMDs by individuals with mobility disabilities is permitted on paths and trails in the R to R Network that are located entirely and solely on property owned by the City and are open to pedestrian use, unless the class of OPDMD cannot be operated in accordance with legitimate safety requirements based upon the assessment factors set forth above.

3. Some Trails are Closed, Off-limits, or Restricted - Check Before You Go. Some paths and trails are designated as “Closed” for mobility device use. A trail with a “Closed” designation indicates that OPDMD use is prohibited. A trail with an “Open” designation indicates any type of OPDMD is permitted for use by individuals with a mobility disability. A trail with a “Restricted” designation indicates that an E-bike is the only class of OPDMD allowed.

4. Qualified Individuals. The use of OPDMDs is limited to individuals with a mobility disability. Qualified individuals may apply for and be issued a permit by the Department of Parks & Recreation for use of an OPDMD on designated City owned paths and trails in the R to R Network.

5. Gas-Powered OPDMS are Prohibited. OPDMDs with internal combustion engines are not allowed on trails and paths that are designated as “Closed” or “Restricted.”
6. **Stay on the Trail and within the Established Footprint.** Cross-country mobility device travel is not permitted. OPDMD use is limited to existing trails and paths and the wheel bed of the OPDMD must be confined within the footprint of the trail or path established and maintained by the City.

7. **Be Safe and Courteous.** Mobility devices must be operated in a responsible and prudent fashion, giving due consideration to other trail user density and speeds and must be operated at a safe speed for existing conditions and circumstances. When other trail users are present, a safe speed for an OPDMD is deemed to be the average speed at which the other users are travelling on the trail.

**PATH AND TRAIL CLASSIFICATION**

A detailed and current list of trails available for authorized uses can be provided upon request by the Boise Parks and Recreation administration office (208-608-7600, 1104 Royal Blvd) or found by visiting the accessible trails page on the Ridge to Rivers website.

10/1/2017
Department of the Interior Order - Electric Bikes

Exhibit C

BOISE
CITY OF TREES

PARKS AND RECREATION
ORDER NO. 3376

Subject: Increasing Recreational Opportunities through the use of Electric Bikes

Sec. 1 Purpose. This Order is intended to increase recreational opportunities for all Americans, especially those with physical limitations, and to encourage the enjoyment of lands and waters managed by the Department of the Interior (Department). This Order simplifies and unifies regulation of electric bicycles (e-bikes) on Federal lands managed by the Department and also decreases regulatory burden.

Sec. 2 Authorities. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, as well as other relevant statutes.

Sec. 3 Background. Bicycling is an excellent way for visitors to Federal lands to experience America’s rich natural heritage. Bicycling has been popular in America since the early nineteenth century. Since then, innovation in the design and production of bicycles has dramatically increased mechanical efficiency, opening bicycling to a greater number of people in a larger number of environmental and geographical conditions.

A relatively recent addition to the design of some bicycles is a small electric motor which can provide an electric power assist to the operation of the bicycle. Reducing the physical demand to operate a bicycle has expanded access to recreational opportunities, particularly to those with limitations stemming from age, illness, disability or fitness, especially in more challenging environments, such as high altitudes or hilly terrain.

While e-bikes are operable in the same manner as other types of bicycles and in many cases they appear virtually indistinguishable from other types of bicycles, the addition of a small motor has caused regulatory uncertainty regarding whether e-bikes should be treated in the same manner as other types of bicycles or, alternatively, considered to be motor vehicles. This uncertainty must be clarified. To resolve this uncertainty the Consumer Product Safety Act (Act) provides useful guidance. That Act defines a “low-speed electric bicycle” to include a “two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph”, subjecting these low-speed e-bikes to the same consumer product regulations as other types of bicycles (15 U.S.C. § 2085). A majority of States have essentially followed this definition in some form.

Uncertainty about the regulatory status of e-bikes has led the Federal land management agencies to impose restrictive access policies treating e-bikes as motor vehicles, often inconsistent with State and local regulations for adjacent areas. The possibility that in some cases e-bikes can be propelled solely through power provided by the electric motor, a function often used in short duration by older
or disabled riders as an assist, has contributed to confusion about e-bike classification. Further, Federal regulation has not been consistent across the Department and has served to decrease access to Federally owned lands by e-bike riders.

Sec. 4 Policy. Consistent with governing laws and regulations:

a) For the purpose of this Order, “e-bikes” shall mean “low-speed electric bicycle” as defined by 15 U.S.C. § 2085 and falling within one of the following classifications:

i) “Class 1 electric bicycle” shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour;

ii) “Class 2 electric bicycle” shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour; and

iii) “Class 3 electric bicycle” shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

b) E-bikes shall be allowed where other types of bicycles are allowed; and

c) E-bikes shall not be allowed where other types of bicycles are prohibited.

Sec. 5 Implementation. I direct the Assistant Secretaries for Fish and Wildlife and Parks, Land and Minerals Management, and Water and Science, as appropriate, to do the following:

a) Within 14 days of the date of this Order, unless otherwise prohibited by law or regulation:

i) To the extent existing regulations allow, adopt a Bureau/Service-wide policy that conforms to the policy set forth in Sec. 4 of this Order;

ii) Amend or rescind any prior written policies as appropriate;

iii) Instruct the Director, Fish and Wildlife Service (FWS) to develop a proposed rule to revise 50 CFR § 25.12 and any associated regulations to be consistent with this Order, add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from falling under the definition of off-road vehicle;

iv) Instruct the Director, National Park Service (NPS) to develop a proposed rule to revise 36 CFR § 1.4 and any associated regulations to be consistent with this Order, add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from the definition of motor vehicles;
v) Instruct the Director, Bureau of Land Management (BLM) to develop a proposed rule to revise 43 CFR § 8340.0-5 and any associated regulations to be consistent with this Order, add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from the definition of off-road vehicles or motorized vehicles; and

vi) Instruct the Commissioner, Bureau of Reclamation (BOR) to develop a proposed rule to revise 43 CFR § 420.5 and any associated regulations to be consistent with this Order, add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from the definition of off-road vehicles.

b) Within 30 days of the date of this Order, submit a report to the Secretary including:

i) A summary of the policy changes enacted in response to this Order;

ii) A summary of any laws or regulations that prohibit the full adoption of the policy described by this Order; and

iii) A timeline to seek public comment on changing any regulation described above.

c) Within 30 days of the date of this Order, provide appropriate public guidance regarding the use of e-bikes on public lands within units of the National Park System, National Wildlife Refuge System, lands managed by BLM, and lands managed by BOR.

Sec. 6 Effect of the Order. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are implemented and completed, or until it is amended, superseded, or revoked.

Date: AUG 29 2019

[Signature]
Secretary of the Interior