JEFFERSON COUNTY OPEN SPACE GUIDELINES FOR USE OF "OTHER POWER-DRIVEN MOBILITY DEVICES" ON JCOS PROPERTIES

ADOPTED MARCH 15, 2011

A. INTRODUCTION

- 1. These Guidelines ("Guidelines") address the use of other power-driven mobility devices ("OPDMDs") by individuals with mobility disabilities on (1) properties owned by Jefferson County (the "County") and managed by the Jefferson County Open Space Division ("JCOS") and (2) properties managed by JCOS under a lease, easement or use agreement. These properties are collectively referred to in these Guidelines as "JCOS Properties." For (1) properties acquired with JCOS funds that have been conveyed to a city with the Open Space Reverter and (2) properties owned by the County and leased or licensed to a special district or other entity for park and recreation purposes, the applicable city, lessee or licensee shall be responsible for regulating the appropriate use of OPDMDs.
- 2. The use of OPDMDs on JCOS Properties is governed by 42 U.S.C. 126, Subchapter II, Part A of the Americans with Disabilities Act of 1990, as amended (the "Act"), and 28 C.F.R. Part 35, as amended by the final rule published on September 15, 2010. These Guidelines specifically pertain to the provisions of Sections 35.101 through 35.150 of 28 C.F.R. Part 35 (the "Regulations"). The relevant provisions of the Act and the Regulations are included in the Appendix to these Guidelines.
- 3. An OPDMD is defined in Regulation §35.150 as "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 within the meaning of this section." This Regulation also defines a "wheelchair" as "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."
- 4. JCOS is required to "make reasonable modifications in its policies, practices, or procedures to permit the use of [OPDMDs] by individuals with mobility disabilities, unless [JCOS] can demonstrate that the class of [OPDMDs] cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to § 35.130(h)." Regulation §35.137(b)(1). JCOS is not required to make modifications that "would fundamentally alter the nature of [its] service, program, or activity" (Regulation §35.130(b)(7)); and the Regulations do not require JCOS "to permit an individual to participate in or benefit from the services, programs, or activities of [JCOS] when that individual poses a direct threat to the health or safety of others." Regulation §35.139(a).

- 5. Regulation §35.137(b)(2) provides that the following assessment factors shall also be considered in determining whether a particular OPDMD can be allowed in a specific facility as a reasonable accommodation:
 - (i) The type, size, weight, dimensions, and speed of the [OPDMD];
 - (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 [OPDMD], if requested by the user);
 - (iv) Whether legitimate safety requirements can be established to permit the safe operation of the [OPDMD] in the specific facility; and
 - (v) Whether the use of the [OPDMD] 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.

B. APPLICATION OF THE REGULATIONS TO JCOS PROPERTIES

- 1. JCOS manages over 38,000 acres of land and approximately 200 miles of trails in unincorporated Jefferson County. The Mission of the JCOS Program is to "preserve open space lands, and natural and cultural resources; to provide for quality park and recreational experiences." This purpose is also expressed in the Land Management Goal of the JCOS Master Plan: "Manage Open Space lands to preserve and enhance natural and cultural resources." Except to the extent necessary to allow for appropriate recreational use, the JCOS Properties remain in a natural condition to foster the Mission of the JCOS Program. The unregulated use of OPDMDs on JCOS Properties would create a substantial risk of serious harm to the environment and natural resources of JCOS Properties and would fundamentally alter the nature of the JCOS Program.
- 2. Another fundamental component of the JCOS Program is to provide an outdoor, natural, and safe recreation experience for its users while protecting the natural environment. This aspect of the Program is expressed in the Recreation Goal of the JCOS Master Plan: "Provide for quality visitor experience in a manner that protects natural and cultural resources." Trails have been located and developed to optimize user safety and outdoor experience and to limit natural resource damage. The types of mountainous terrain, habitats, and natural resources vary considerably throughout the JCOS Properties. Users face a multitude of risks on JCOS Properties, such as those resulting from (1) rough, steep, and weather-impacted trails, (2) unimproved topographic hazards like cliffs, ravines, loose or falling rocks, and (3) user conflict due to, for example, high traffic, user speed differentials, narrow trail widths, and limited sight distances. The unregulated use of OPDMDs on JCOS Properties would substantially increase these safety risks to all users and fundamentally alter the nature of the JCOS Program.

- 3. To fulfill the JCOS Program Mission and to ensure the safety of the Program's users, the JCOS Rules and Regulations (Jefferson County Policies Part 6, Chapter 4, Section 1.; "JCOS Rules & Regulations") do not permit motorized vehicles on Open Space lands. §C.18 (Use of Motorized Vehicles) of the JCOS Rules & Regulations provides that "It shall be unlawful to operate any motorized vehicles on Open Space lands except on designated public roadways." §C.18 was adopted to, for example, protect natural habitats and wildlife, provide an outdoor experience for users, and protect their safety. As such, its adoption is consistent with the Regulation factors set forth in Section A.5. above.
- 4. The purpose of these Guidelines is to provide a reasonable modification to §C18 by setting forth the safety requirements and criteria for the use of OPDMDs on JCOS Properties by persons with mobility disabilities. These Guidelines are adopted by JCOS pursuant to Jefferson County Policy Part 6, Chapter 4, Section 1.B.2., which states that "The Open Space Division shall be and hereby is authorized and empowered to designate those portions of park lands upon which specified and designated uses will be permitted . . ."

C. SAFETY REQUIREMENTS AND CRITERIA FOR USE OF OPDMDs ON JCOS PROPERTIES

Individuals with mobility disabilities may use OPDMDs on JCOS Properties subject to the following safety requirements and criteria, which have been established pursuant to the Regulations and adopted by JCOS.

- 1. Except for §C.18 of the JCOS Rules & Regulations as modified by these Guidelines, the JCOS Rules & Regulations apply to the use of OPDMDs. For example, OPDMDs may not be used in closed areas (See §C.20) and areas subject to natural resource protection closures (See §C.5); and the use of OPDMDs may not damage natural and/or cultural resources (See §C.6) or wildlife habitat (See §C.9).
- 2. An OPDMD is categorized as an "other wheeled user" under §C.25a. of the JCOS Rules & Regulations; OPDMD users must comply with the yielding order set forth in §C.25a.
- 3. An OPDMD must remain on trails except to the extent necessary to comply with the yielding requirements set forth in §C.25a. An OPDMD must be capable of being turned around within the trail tread in a safe manner.
- 4. An OPDMD may only be operated on trails with grades (slopes) of 12% or less.
- 5. An OPDMD may be up to 32 inches wide.
- 6. An OPDMD may be up to 6 feet long.
- 7. An OPDMD may weigh up to 150 pounds (excluding the user's weight).
- 8. An OPDMD must be electric powered.

- 9. An OPDMD must be operated at a safe speed. When other users are present on a trail, a safe speed for an OPDMD is deemed to be the average speed at which the other users are travelling on the trail. The maximum speed for an OPDMD when other users are present is 5 mph. When other users are not present the maximum speed for an OPDMD is 10 mph.
- 10. An OPDMD must have the capacity to safely negotiate trail features and obstructions such as steps and other vertical displacements, water dams, loose gravel, and rocks.
- 11. JCOS recommends that an OPDMD not be operated on trails at times of heavy traffic. An OPDMD user may be informed by JCOS that specific trails at specific times are not available for OPDMD use due to heavy traffic.
- 12. Due to varying conditions on JCOS Properties and to ensure safety and/or natural resource protection, JCOS recommends that an OPDMD user contact JCOS at 303-271-5925 to confirm that an OPDMD is permitted on a particular trail.
- 13. OPDMDs are not permitted in JCOS indoor facilities except Park restrooms.
- 14. By adopting these Guidelines JCOS is not representing that the JCOS Properties are safe for use by an OPDMD and it is not assuming any liability. Certain risks are inherent in the use of JCOS Properties and all users must exercise reasonable care.

D. INQUIRY INTO DISABILITY

- 1. A JCOS employee or volunteer inquiring as to a mobility disability or use of an OPDMD on JCOS Properties shall comply with the following:
 - a. The JCOS employee or volunteer shall not ask a person using an OPDMD questions about the nature and extent of the person's disability.
 - b. The JCOS employee or volunteer may ask a person using an OPDMD to provide a credible assurance that the OPDMD is required because of the person's disability. The JCOS employee or volunteer 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 OPDMD is for the person's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, the JCOS employee or volunteer shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability. A "valid" disability placard or card is one that is presented by the person to whom it was issued and is otherwise in compliance with the State of issuance's requirements for disability placards or cards.

E. USE OF GUIDELINES

- 1. These Guidelines and the Appendix are available to the public on the JCOS website (Jeffco.us/openspace). A person may also request a copy by phone (303-271-5925) or by mail (Jefferson County Open Space, 700 Jefferson County Parkway, Golden, CO 80401).
- 2. If a member of the public has a question concerning these guidelines he or she may contact JCOS at 303-271-5925 or cgadd@jeffco.us.
- 3. JCOS may supplement or amend these Guidelines and in that event JCOS shall post on its website the proposed Guidelines in advance of their adoption.