



## OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

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April 1, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

**Board Order on a Request for Use of Either a Utility Vehicle or All-Terrain Vehicle on Public Roads as an Accommodation Pursuant to the Americans with Disabilities Act and Safety Concerns**

<b>Purpose/Outcomes</b>	<i>Adopt a board order to formally deny an ADA accommodation request.</i>
<b>Dollar Amount and Fiscal Impact</b>	<i>N/A</i>
<b>Funding Source</b>	<i>N/A</i>
<b>Duration</b>	<i>Indefinitely</i>
<b>Previous Board Action</b>	<i>Board of County Commissioners (Board) held public hearings on February 3, 2021 and March 3, 2021. The Board voted 5-0 to deny each of the individual's requests.</i>
<b>Strategic Plan Alignment</b>	<i>1. Build public trust through good government.</i>
<b>Contact Person</b>	<i>Nate Boderman, 503-655-8364</i>
<b>Contract No.</b>	<i>N/A</i>

**BACKGROUND:**

On February 3, 2021, the Clackamas County Board of County Commissioners conducted a public hearing to consider two requests by John Andersson requesting an accommodation under the Americans with Disabilities Act (ADA) for use of either a utility vehicle (John Deere Gator) or an all-terrain vehicle (Yamaha Banshee ATV) as an "other powered mobility device" on roads managed and maintained by Clackamas County. At that hearing, the Board accepted public testimony and the recommendation of County staff. At the conclusion of the hearing, the Board voted to continue the hearing until March 3, 2021 for deliberation and decision only. The Board left the record open for additional written testimony to be submitted by February 25, 2021.

On March 3, 2021, the Clackamas County Board of County Commissioners reconvened for a public hearing for purposes of deliberation and decision. At the hearing, the Board voted 5-0 to deny the request for accommodation presented by Mr. Andersson.

A copy of a board order, with findings and conclusions, have been provided with this report. Adoption by the Board of the attached Board Order and findings would formally implement the Board's oral vote on March 5, 2021.

**RECOMMENDATION:**

Staff recommends the Board adopt the attached Board Order, which incorporates finding.

Respectfully submitted,

Nate Boderman  
Assistant County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

Regarding a request by John Andersson to evaluate the use of a John Deere Gator, Yamaha all-terrain vehicle, or other similar “powered mobility device” on County roads as an ADA accommodation



Order No. \_\_\_\_\_  
Page 1 of 2

**Whereas**, this matter coming regularly before the Board of County Commissioners, and it appearing that on June 1, 2020, John Andersson filed a request with the Clackamas County Department of Transportation and Development (DTD) to request an accommodation under the Americans with Disabilities Act (ADA) for use of a utility vehicle (John Deere Gator) as an “other powered mobility device” on roads managed and maintained by Clackamas County.

**Whereas**, it further appearing that Mr. Andersson lives outside of Oregon City and Canby in rural Clackamas County, near the intersection of South Carus Road and Oregon Highway 213 and that Mr. Andersson requests accommodation to use his John Deere Gator on any road within Clackamas County at any hour.

**Whereas**, it further appearing that by letter dated August 19, 2020, DTD staff issued an opinion finding that the proposed accommodation was not necessary because Mr. Andersson already has meaningful access to the County’s road system by virtue of having a valid driver’s license and access to a standard automobile, and that the accommodation request, as proposed, was unreasonable as it would jeopardize the safety of both Mr. Andersson and the travelling public using the roads.

**Whereas**, it further appearing that on August 20, 2020, Mr. Andersson filed another request with DTD to request an accommodation under the ADA for use of an all-terrain vehicle (Yamaha Banshee ATV) as an “other powered mobility device” on roads managed and maintained by Clackamas County.

**Whereas**, it further appearing that by letter dated October 6, 2020, DTD staff issued an opinion finding that the proposed accommodation was not necessary because Mr. Andersson already has meaningful access to the County’s road system by virtue of having a valid driver’s license and access to a standard automobile, and that the accommodation request, as proposed, was unreasonable as it would jeopardize the safety of both Mr. Andersson and the travelling public using the roads.

**Whereas**, it further appearing that on December 10, 2020, Mr. Andersson filed a grievance with the County, requesting a review of the determinations made by DTD staff in their letters dated August 19, 2020, and October 6, 2020. Pursuant to County policy, the matter was scheduled for public hearing in front of the Board of County Commissioners (the Board).

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

Regarding a request by John Andersson to evaluate the use of a John Deere Gator, Yamaha all-terrain vehicle, or other similar “powered mobility device” on County roads as an ADA accommodation



Order No. \_\_\_\_\_  
Page 2 of 2

**Whereas**, it further appearing that on February 3, 2021, the Board held a public hearing to accept testimony and evidence in this matter. The Board voted to continue the hearing until March 3, 2021 for deliberation and decision only. The Board left the record open for additional written testimony to be submitted by February 25, 2021.

**Whereas**, it further appearing that on March 3, 2021, the Board reconvened for a public hearing for purposes of deliberation and decision only. The Board voted 5-0 to deny the request for accommodation presented by Mr. Andersson.

Based on the evidence and testimony presented this Board makes the following findings and conclusions:

1. John Andersson filed requests with Clackamas County for an accommodation under the ADA for use of a utility vehicle (John Deere Gator) and an all-terrain vehicle (Yamaha Banshee ATV) as “other powered mobility devices” on roads managed and maintained by Clackamas County.
2. This Board adopts as its findings and conclusions the *Findings* document attached hereto and incorporated herein as Order Exhibit A, which finds grounds to deny Mr. Andersson’s requests.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the requests described herein are hereby DENIED, as identified in Order Exhibit A.

**DATED** this 1<sup>st</sup> day of April, 2021.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Tootie Smith, Chair

\_\_\_\_\_  
Christina Terwilliger, Clerk to the Board

**BEFORE THE CLACKAMAS COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Regarding a request by John Andersson to evaluate	)	<b><u>FINDINGS</u></b>
the use of a John Deere Gator, Yamaha all-terrain	)	
vehicle, or other similar “powered mobility device”	)	Order Exhibit “A”
on public roads as an ADA accommodation	)	

**A. GRIEVANCE SUMMARY**

1. On June 1, 2020, John Andersson filed a request with the Clackamas County Department of Transportation and Development (DTD) to request an accommodation under the Americans with Disabilities Act (ADA) for use of a utility vehicle (John Deere Gator) as an “other powered mobility device” on roads managed and maintained by Clackamas County. Mr. Andersson lives outside of Oregon City and Canby in rural Clackamas County, near the intersection of South Carus Road and Oregon Highway 213. Mr. Andersson requests accommodation to use his John Deere Gator on any road within Clackamas County at any hour.

2. By letter dated August 19, 2020, DTD staff issued an opinion finding that the proposed accommodation was not necessary because Mr. Andersson already has meaningful access to the County’s road system by virtue of having a valid driver’s license and access to a standard automobile, and that the accommodation request, as proposed, was unreasonable as it would jeopardize the safety of both Mr. Andersson and the travelling public using the roads.

3. On August 20, 2020, Mr. Andersson filed another request with DTD to request an accommodation under the ADA for use of an all-terrain vehicle (Yamaha Banshee ATV) as an “other powered mobility device” on roads managed and maintained by Clackamas County.

4. By letter dated October 6, 2020, DTD staff issued an opinion finding that the proposed accommodation was not necessary because Mr. Andersson already has meaningful access to the County’s road system by virtue of having a valid driver’s license and access to a standard automobile, and that the accommodation request, as proposed, was unreasonable as it would jeopardize the safety of both Mr. Andersson and the travelling public using the roads.

5. On December 10, 2020, Mr. Andersson filed a grievance with the County, requesting a review of the determinations made by DTD staff in their letters dated August 19, 2020, and October 6, 2020. Pursuant to County policy, the matter was scheduled for public hearing in front of the Board of County Commissioners (the Board).

6. On February 3, 2021, the Board held a public hearing to accept testimony and evidence in this matter. The Board voted to continue the hearing until March 3, 2021 for

deliberation and decision only. The Board left the record open for additional written testimony to be submitted by February 25, 2021.

7. On March 3, 2021, the Board reconvened for a public hearing for purposes of deliberation and decision only. The Board voted 5-0 to deny the request for accommodation presented by Mr. Andersson.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The Board received testimony at a public hearing about this remanded application, on February 3, 2021. All exhibits and records of testimony are filed with the Clackamas County Equity and Inclusion Office. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. Martine Coblenz, Clackamas County's Title II Compliance Officer, Nate Boderman, Assistant County Counsel, and Joe Marek, Clackamas County's Transportation Safety Program Manager, presented the staffs' report and recommendation.

3. John Andersson, the individual making the accommodation requests and filing the grievance, appeared on his own behalf.

- a. Mr. Andersson testified that Federal law authorizes him to these vehicles as mobility devices and that Clackamas County is obligated to modify their regulations and enforcement to allow him to use these vehicles on roads in the County.
- b. Mr. Andersson testified that he did have a valid Oregon driver's license and access to a conventional vehicle.
- c. Mr. Andersson testified that he believes the accommodation should allow him to travel on any road in the County at any hour and that he would not accept a condition or limitation on the routes he may travel or the hours of operation.
- d. Mr. Andersson testified that he does use the vehicles in question for farm use, but that he also uses the vehicles for personal use that have no relation to his farming activities.
- e. Mr. Andersson testified that the County was not entitled to use the "direct threat" defense and that County staff were generally misinterpreting and misapplying the applicable law.
- f. Mr. Andersson testified that he believes modifications, such as a reflective warning triangle or safety lights, could mitigate some of the

issues related to safety that have been raised. In support, Mr. Andersson noted that farm implements, such as tractors, are allowed to travel on roads and use the reflective warning triangle for safety.

- g. Mr. Andersson provided pictures of similar vehicles using public roads, although virtually all of those vehicles were outside the jurisdiction of Clackamas County.

4. At the conclusion of the hearing the Board held the record open until February 25, 2021, to allow Mr. Andersson and County staff the opportunity to submit additional written testimony. The additional written testimony was added to the record and provided to the Board on February 25, 2021.

5. The Board held a public hearing on March 3, 2021. At the beginning of the hearing, the Board explained any *ex parte* contacts they had in connection with this matter, and disclaimed any bias or conflicts of interest. At the request of a Commissioner, the Chair of the Board allowed a limited opportunity for Mr. Andersson to volunteer the nature of his disability and to put that information in the record if he wished to do so. At the conclusion of the testimony, the Board proceeded to deliberation and voted 5-0 to deny the request for accommodation presented by Mr. Andersson.

### **C. RULES**

#### **42 USCS § 12132: ADA Title II**

*“Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”*

#### **28 § 35.104 Definitions.**

*Other power-driven mobility device means 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 definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).*

#### **8 § 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.*

#### **28 § 35.139: Defining Direct Threat**

*(a) “This part does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others.*

*(b) In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.”*

### **D. FINDINGS**



The Board finds that the request for accommodation under the ADA for use of the utility vehicle (hereafter the John Deere Gator) and an all-terrain vehicle (hereafter the Yamaha Banshee ATV or Yamaha ATV) on roads in the County should be denied for the following reasons:

- 1) That Mr. Andersson already has meaningful access to the County's road system by virtue of having a valid driver's license and access to a standard automobile;
- 2) That the accommodation to allow a utility vehicle or all-terrain vehicle to access all roads in the County at all hours, effectively acting as a blanket exception for operation on any roads under the County's jurisdiction at any time, is not a reasonable modification of the generally applicable rules and regulations, or the enforcement thereof; and
- 3) That operation of the type of utility and all-terrain vehicles in question would jeopardize the safety of the operator and the travelling public, and allowing their use on any public roads in the County at any time is not a reasonable modification.

Each of the bases for denial will be discussed more fully below.

### **No Denial of the Benefit of Services**

Mr. Andersson testified that he did possess a valid Oregon driver's license, and had access to a street-legal vehicle. The Board did not understand any of the other evidence presented to demonstrate that Mr. Andersson is physically incapable or otherwise precluded from using a standard vehicle. Accordingly, the Board finds that Mr. Andersson already has meaningful access to the County's road system and, while a conventional vehicle might not be his preferred method of transport in light of his disability, for the specific reasons that follow, use of a conventional vehicle is the transport mode that is the safest for all users under the circumstances. Since Mr. Andersson is able to access the County's road system with a conventional vehicle, the Board finds that continuing to prohibit the use of a John Deere Gator or Yamaha ATV on public roads as an ADA mobility device does not function to deny Mr. Andersson the benefit of the use of the public road system in Clackamas County, and no modification to those standards or related enforcement is warranted under the circumstances.

### **An Accommodation to Access All Roads in the County at All Hours is Not Reasonable**

The Board understands Mr. Andersson's accommodation request to broadly encompass the use of either the John Deere Gator or the Yamaha ATV in a manner that is unrestricted. More specifically, the Board does not understand Mr. Andersson to be amenable to any condition which might limit the operation of either the John Deere Gator or the Yamaha ATV to particular routes or to hours of the day in which there is daylight.

As discussed in detail in the section below, staff from DTD's transportation safety program have evaluated the safety impacts of Mr. Andersson's proposals, and in particular the roadways in the immediate vicinity of Mr. Andersson's residence, and have found that the John Deere Gator and ATV cannot be operated in accordance with legitimate safety requirements. The Board agrees with staff's assessment. The Board has no reason to

believe that the specific roads evaluated as part of staff's safety analysis are necessarily unique or present any risks that are atypical of those one might encounter on other roads in the County. Put another way, the specific roads that are evaluated below are fairly representative of the types of roads found throughout Clackamas County. There are, of course, roads in the County that are more hazardous to the travelling public than those roads evaluated below, due to such things as deficient design, traffic volumes, or prevailing speeds and it follows that if safety cannot be achieved on the roads evaluated below, it cannot be achieved on roads that are inherently more dangerous in the County either. If Mr. Andersson were amenable to certain mitigation measures, such as travel restrictions on particularly dangerous roadways, designation of specific routes so that warning signage could be posted on those roadways, or operation during daylight hours when it is objectively safer to be operating a vehicle, the question of whether Mr. Andersson's request for accommodation is reasonable might be a closer call. As presented, however, the Board finds that the proposal to access all roads in the County at all hours would not be a reasonable accommodation.

**Safety Considerations Associated with the Use of the John Deere Gator and Yamaha ATV Vehicles at Issue on Public Roads Demonstrate that the Accommodation Requested is Not Reasonable Under the Circumstances**

Even assuming that Mr. Andersson can demonstrate that he is being denied the benefit of the use of the public road system in Clackamas County in light of the fact that he possesses a valid Oregon driver's license and has access to a street-legal vehicle, and assuming that using the types of vehicles at issue on any road in the County at any hour without restriction can be characterized as a reasonable accommodation, for the reasons that follow, the Board finds that the proposed use of the John Deere Gator or Yamaha ATV cannot be operated in accordance with legitimate safety requirements, further demonstrating that the particular request is not reasonable under the circumstances.

State Laws Related to All-Terrain Vehicles

Oregon Revised Statutes (ORS) Section 821.190 prohibits the use of all-terrain vehicles on a highway. There are exceptions for farm use under ORS 30.930. While Mr. Andersson is apparently using the John Deer Gator and Yamaha ATV in conjunction with farm activities, the exception in state law does not extend the exemption to personal use of those vehicles beyond that which is directly related to farm use.

Manufacturer Warnings for a John Deer Gator

Off-highway vehicles such as John Deere Gator have very specific warnings about highway use, for example, for a Gator Model XUV825M: "*For off-road use only. Do not use on public roads.*" Given the fact that the vehicle is designed for off-road use, it meets none of the standards of the Federal Motor Vehicle Safety Standards of the United States. The term "warning" as used within the operators manual means "WARNING; The signal word WARNING indicates a hazardous situation which, if not avoided, could result in death or serious injury."

A machine safety label warning indicates “*The utility vehicle’s tires are designed for off-road use only. Paved surfaces may seriously affect handling and control of the vehicle. If you must operate on a paved surface, travel slowly and do not make sudden turns or stops.*”

Manufacturer Warnings for a Yamaha ATV

Vehicles such as a Yamaha ATV have similar specific warnings about highway use. Based on the vehicle identification number (VIN) Mr. Andersson provided to DTD staff for his Yamaha ATV, JY43GG0361C027858, it is a 2001 Yamaha Banshee. A warning in the owner’s manual introduction states: “AN IMPORTANT SAFETY MESSAGE – THIS ATV IS A HIGH PERFORMANCE ATV FOR OFF-ROAD USE ONLY, FOR SPORT TYPE RECREATIONAL AND COMPETITIVE USE BY EXPERIENCED OPERATORS.” A further warning label states: “NEVER operate on public roads – a collision can occur with another vehicle” and “avoid paved surfaces – pavement may seriously affect handling and control.” Similar to the John Deere Gator, the Yamaha ATV is designed for off-road use and meets none of the standards of the Federal Motor Vehicle Safety Standards of the United States. Under the Safety warnings, the owner’s manual states “Always avoid operating an ATV on any paved surfaces, including sidewalk, driveway, parking lots and streets” and “Never operate an ATV on any public street, road or highway, even a dirt or gravel one.”

Roadway Information and Risk Evaluation

As alluded to above, Mr. Andersson did not specify certain routes that he would be using this off-highway vehicle on, and indicated in his testimony to the Board that any such route restriction would be unacceptable in his view. DTD staff examined several different roads in the vicinity of Mr. Andersson’s residence to assist in the evaluation of Mr. Andersson’s request. The Board concurs with DTD staff’s analysis and adopts it as its own. This evaluation used those risks described in 28 CFR 35.137. The table below shows a list of various roads with their name, posted speeds, functional class, and shoulder width (the Study Area).

<b>ROAD NAME</b>	<b>SEGMENT</b>	<b>FUNCTIONAL CLASSIFICATION</b>	<b>POSTED SPEED LIMIT (MPH)</b>	<b>Average Daily Traffic (2018) (veh/day)</b>	<b>SHOULDER WIDTH (feet)</b>	<b>CRASH RATE (crashes/million vehicle miles traveled)</b>	<b>CRASH RATE STATE AVG. (crashes /million veh. miles traveled )</b>
<b>Beaver Creek Road</b>	Leland - Spangler	Major Arterial	35/45/55	9,500	0-6’	0.58	0.79

<b>Carus Road</b>	Beavercreek Rd – Hwy 213	Collector	55	500	0-3	4.63	1.59
<b>Spangler Road</b>	Beavercreek Road-Hwy 213	Minor Arterial	55	1,000	0-4	1.13	1.17
<b>Kamrath Road</b>	Spangler Rd – Beavercreek Rd	Collector	45/55	1,500	0-4	3.36	1.59

All of the roadways in the Study Area are either high volume, high speed or both. Additionally, all of these roads have very limited shoulder area with the exception of a small portion of Beavercreek Road between Steiner and the main part of Beavercreek which has a 5-6 foot shoulder on one side.

***Risk Evaluation-Conflicts with Conventional Vehicles***

Factors that DTD staff considered for assessing the risk for the operator and other users of the roads in the Study Area included:

- Posted Speed of Roadway
- Average Daily Traffic Volume
- Horizontal and vertical road geometry
- Shoulder width
- Speed differentials between the John Deere Gator/Yamaha ATV and conventional vehicles
- Weight difference between the John Deere Gator/Yamaha ATV and conventional vehicles
- Crash Rate

Roadways in the Study Area are mostly posted at 55 miles per hour (MPH) with a few segments posted at 35 or 45 MPH. Typical travel speeds are slightly higher than the posted speeds, so for example, on a road posted at 55 MPH, it is not unusual to have motorists traveling at 60 MPH.

When the John Deere Gator is used on the roads in the Study Area, it would occupy the full travel lane due to its width of approximately 60 inches and lack of wide shoulders to drive on. When the Yamaha ATV is used in that same area, it would occupy approximately one-half of a travel lane due to its width of approximately 43 inches and lack of wide shoulders to drive on. As either the John Deere Gator or the Yamaha ATV travels down the road, it is likely traveling at speeds around 20-25 MPH, much slower

than prevailing traffic along a roadway, resulting in speed differentials in excess of 30 miles per hour creating significant risk to the operator of the John Deere Gator or the Yamaha ATV and the person(s) in the conventional vehicles. A common example includes a roadway with undulating vertical alignment where the John Deere Gator or the Yamaha ATV may be out of sight at the bottom of a hill and a conventional vehicle may come over a rise and not see it. Since the traveling public is not expecting to see an off-highway vehicle traveling on a paved roadway at a slow speed, the drivers of the street-legal vehicles will be unprepared for the hazard created by the off-highway vehicles. In this situation, the conventional vehicle operator might hit the off-highway vehicle, swerve into oncoming traffic or possibly go off the road to the right in an attempt to avoid a collision.

There are also considerable weight differentials between off-highway vehicles such as the John Deere Gator or the Yamaha ATV, and a conventional street legal vehicle. For example, a John Deere Gator XUV825M weighs approximately 1,8000 pounds and a Yamaha Banshee weighs approximately 412 pounds. Conventional vehicle weights vary from around 3,000 pounds for a small sedan to over 7,000 pounds for a pickup. A collision between a street legal vehicle and a John Deere Gator or an ATV would very likely result in a fatality given the weight difference and lack of occupant protection.

Examination of crash rates in terms of million-vehicle-miles-traveled is another indicator of the level of safety and risk. The Oregon Department of Transportation produces crash rate tables. This data is extracted from the “*2018 State Highway Crash Rate Tables*,” dated July, 2020. This data shows that the roads in the Study Area are close to the average or above the average. Of course the crash rate changes depending on the traffic volumes and number of crashes, but is generally representative of a relative average. Particularly, on Carus Road and Kamrath Road, the crash rates are higher than the average. This is likely attributed to the horizontal and vertical alignment of the roads, which is a factor that can make seeing large slow moving vehicles, such as a John Deere Gator or Yamaha ATV more difficult.

Mr. Andersson testified that the County was speculating as to the safety risks that were presented by his use of the John Deere Gator and Yamaha ATV. The Board finds, however, that it is not speculative for staff to assert that, due to the significant size, weight, and speed differences between the vehicles at issue here, and conventional vehicles, that the use of the vehicles in Mr. Andersson’s proposal on public roads poses significant safety risks. Based on the analysis presented, the possible effects of the requested modification are known and are not based on speculation.

Further, the Board finds that these risks relate to safety issues directly related to the operation of these types of vehicles on these types of roads, and are not in any way biased based on disability. The Board finds evidence in the record compelling to show that the requested modification will result in a “direct threat” to the safety of others and in this case, concerns for public safety should override the requested accommodation. Beyond the safety risks associated with the specific roads that has been summarized above, because Mr. Andersson in this case requests access to all roads in the County without

limitation, it is impossible for Defendant to take steps to mitigate or eliminate the safety risks posed in a manner that might make the requested accommodation reasonably safe.

Mr. Andersson testified at length in writing and at the hearing that he was not a direct threat, that the County was not entitled to the “direct threat” defense and was misinterpreting the law. For the reasons stated above, the County is entitled to characterize the use of these types of vehicles on public roads as a “direct threat” to the safety of others, and therefore conclude that the concerns for public safety should override the requested accommodation. As County staff made clear at the hearing and as the record and these findings demonstrate, the County has never taken the position or asserted in any way that Mr. Andersson is personally a direct threat to anybody. More to the point, the County has never alleged that Mr. Andersson is incapable of operating the John Deere Gator or Yamaha ATV as a result of his disability. The County has been consistent in its analysis that the “direct threat” characterization would apply to any individual that operated a similar vehicle on these types of roads. Any individual, regardless of ability or disability, would qualify as a direct threat in staff’s opinion given the circumstances.

Mr. Andersson testified that farm implements, such as tractors, are permitted under state law to drive on public roads and that he should be allowed to do the same. The Board notes that Mr. Andersson is free to use the vehicles at issue to the full extent under the law in connection with farm use. The state legislature has created an exception that is specific to farm use which the County recognizes. On the other hand, Mr. Andersson’s personal use of the John Deere Gator and Yamaha ATV are prohibited by state law. The Board finds that the farm use authorized by state law, and the personal use desired by Mr. Andersson are not equivalent in the sense that the farm use exemption likely results in farmers moving specific equipment from contiguous farming units, or farming units that are located in close proximity to each other, that are separated by public roads, whereas Mr. Andersson has testified that he would like the ability to drive his John Deere Gator and Yamaha ATV potentially anywhere in the County and use it as a substitute for a conventional vehicle. The legislature’s authorization of the use of these vehicles on public roads is less an indication that they are safe to operate on public roads (they are not and their use unrelated to farming activities is prohibited), and more of a recognition that vehicles used for farming purposes will rarely need to use public roads, and when they do it will almost exclusively be for very short trips. The Board finds that the state legislature’s exemption for farm use does not support the personal use proposed by Mr. Andersson in this case.

Mr. Andersson provided pictures of similar vehicles operating on public roads, presumably to demonstrate that these are either allowed outright in other jurisdictions, or that their use is not enforced. Nearly all, if not all, of the pictures appear to be from other jurisdictions. The County is not aware of any condition under which these types of vehicles would be allowed to operate on roads under its jurisdiction. Further, many of the pictures appear to be taken in urban areas where the roads and conditions are much different than what one would experience on the types of rural, higher speed roads that were evaluated above. It is entirely plausible that an accommodation of the type sought by Mr. Andersson could be found to be reasonable if limited to roads sharing the types of

characteristics that were represented in the pictures. As noted, Mr. Andersson seeks an accommodation on all roads in the County.

### Mitigation

In this particular case, the proposed mobility devices, a John Deere Gator and a Yamaha ATV, were not designed by the manufacturers for on-road use and have been determined by the manufactures to not be safe for operation on public roads per the operator's manual. Under the circumstances, DTD staff believes the approach that would provide the most reasonable degree of safety for the user and the travelling public with regards to the safe operation of either the John Deere Gator or the Yamaha ATV on the county roads would be the addition and construction of a dirt shoulder area adjacent to each road permitted for use. While providing a dirt shoulder would cost less than a gravel shoulder, which averages approximately \$700,000 per mile and would require the acquisition of property from adjacent landowners, providing this dirt shoulder would still be cost prohibitive, even if the accommodation were limited to the Study Area. Again, Mr. Andersson is not amenable to a limitation on his proposed accommodation based on previously authorized routes. The Board endorses DTD staff's evaluation, and specifically finds that there is not a feasible way for the County to provide a modified accommodation for the use of the John Deere Gator or the Yamaha ATV because of cost to the County and the impacts to adjacent properties.

Mr. Andersson testified that certain mitigation could address the safety issues raised by DTD staff. Notably, a reflective safety triangle could be installed on the vehicles and is of the type commonly used by farm equipment travelling on the roads. One Commissioner raised the question of safety modifications that could be made to the vehicles to help address safety considerations. Staff responded that it is possible that modifications could be made to help make the vehicles safer, and perhaps even reach a point where the vehicles could be deemed street-legal by federal standards. That said, staff does not believe the state would license the vehicles, which would still prohibit their operation on public roads for personal use. Further, the safety modifications proposed by Mr. Andersson and evaluated by staff would not address some of the more problematic safety issues around weight and speed differentials (compared to conventional automobiles), and would do nothing to mitigate any issues associated with the design or nature of the roadways themselves. Limiting the use of the John Deere Gator or the Yamaha ATV to certain routes and during certain hours of the day would contribute to a safer solution, but at this point, without any indication as to which routes or hours might be acceptable, it is hard for staff theorize whether this approach might produce effective mitigation or result in a reasonable accommodation.

## **D. CONCLUSION AND DECISION**

Based on the findings and discussion provided or incorporated herein, the Board hereby denies Mr. Andersson's request for accommodation under the ADA for use of the utility vehicle (John Deere Gator) and an all-terrain vehicle (Yamaha Banshee ATV) on roads in the County.