



American's with Disabilities Act (ADA) Hearing
Staff Report to the Board of County Commissioners

Case name: John Andersson

Staff Contact: Martine Coblentz, County Title II Compliance Officer

Board of County Commissioners Hearing Date: February 3, 2021

ADA REQUEST:

Request for the Department of Transportation and Development (DTD) to evaluate the use of a John Deere Gator, Yamaha All Terrain-Vehicle ATV or similar "other power-driven mobility device" ¹, for use on County-owned roadways as an ADA accommodation.²

Summary:

"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." (Title II ADA 42 USCS § 12132)

The Clackamas County ADA Transition Plan exists to ensure that all individuals are provided reasonable access to all County facilities, programs, services and activities and to address any barriers to the above for people with disabilities. County departments create plans to mitigate obstacles and make available for residents a grievance process if one believes the County is not providing the reasonable access and/or the person is experiencing discrimination.

The question presented is whether there is a way for Mr. Andersson to utilize his other power-driven mobility devices on county roads safely as an ADA accommodation. With Mr. Andersson's request, the County's DTD ADA coordinator explored whether there are reasonable accommodations to ensure safe access on those roads. In consideration of Mr. Andersson's request, DTD analyzed the ADA law requirements and the federal and state laws regarding road safety.

¹ Mobility devices 28 CFR 35.137

² Mr. Andersson's formal written requests and appeal are attached hereto as Exhibits A-C.

DTD Decision:

DTD has denied the request of use of “other power-driven mobility devices” for the following reasons:

1. Access and benefit of the use of the public road system is available to Mr. Andersson because he possesses a valid Oregon driver’s license and access to a street-legal vehicle.
2. The “other power-driven mobility devices” cannot be operated in accordance with legitimate safety requirements and would result in a “direct threat”³ to the safety of others.

Appeal:

Mr. Andersson is appealing the DTD decisions (8/19/20 and 10/6/20 letters)⁴ claiming that DTD used the “direct threat” 28 CFR 35.139 as a reason for denial instead of applying the ADA requirements in assessing use of the mobility devices on County roads. He states that the County should assess the ADA accommodation based on 28 CFR 35.130 and 28 CFR 35.137. He further argues that there are measures to reduce risk and address safety concerns regarding use of other mobility devices by applying safety measures on those devices to allow for their use on County roads such as safety triangles and a flashing light.

Considerations:

Under 28 CFR 35.130(7)(i)

A [public entity](#) shall make [reasonable modifications](#) in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of [disability](#), *unless the [public entity](#) can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.*

Under 28 CFR 35.130(h)

A [public entity](#) may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the [public entity](#) must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Under 28 CFR 35.137(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\(h\)](#).*

³ Direct threat 28 CFR 35.139

⁴ DTD’s denial letters are attached hereto as Exhibits D and E.

STAFF RECOMMENDATION:

The County must provide reasonable accommodations for people with disabilities to allow for access with safety impacts to the individuals and/or others in mind. There is language in the law about use of mobility devices on pedestrian right of way and/or within enclosed public spaces. Given that this accommodation request is for use on County roads, it is critical that safety requirements are taken into consideration. The other power-driven mobility devices as they are (without modifications) given the type of vehicle, size, dimension and weight do pose a safety concern for use on roads with heavier vehicles travelling at higher speeds.

The question is whether the proposed safety additions to mobility devices (as suggested by Mr. Andersson) is sufficient to mitigate the safety risks of operating such vehicles on County roads.

The Title II Compliance Officer recommends that DTD offer whether the safety measures proposed are sufficient to mitigate the safety risks and if not, that the Board uphold DTD's decision denying the use of the "other power-driven mobility devices," in consideration of the ADA law clause regarding safety requirements.

June 1-2020

I John Andersson am requesting a assessment of a mobility devices under Civil Right ADA Law 28 CFR-35.137 other Power & mobility devices ADA Law Directed me to have the device to be reviewed and assess by the Public entity where the device will be used Public Road access state Parks -

I am asking Transportation safety manager ADA checkmas ^{county oregon} to proceed with my request for assessment of the device serial number IM0825MACJMO12203 John Derre Gator.

This device was purchased as a mobility device with a prescription from a medical doctor for locomotion of activities of ~~the~~ Daily Living

Please advise me of any and all paper work to be filed with any and all state-county-or federal entity.

Thank you for the assessment of the device
My email is stellabridge1967@gmail.com
My phone # is 503-621-2183 My address is
15178 South Corus Rd Oregon City Oregon

Thank you John Andersson

n Andersson
785 Corus Rd
in city Oregon

CERTIFIED MAIL



7019 1640 0000 9999 2749



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ATT: ADA
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county

2051 Kaen Road
Oregon city Oregon
97045

LN
6-3
not Tax
Tax

Aug 20th 2020

Joseph Marek PE PTOE Transportation manager
Clackamas County I John Anderson EM Submitting
Request for a assessment on a other Power mobility device
Under federal ADA Law 28 CFR 35.137 under Federal Law
I must ask the Public entity for a assessment of the
device. I believe you are working with ODOT on these
Assessments I am Reviewing the denial of my first
Request for assessment on a John deer motor.

28 35.137 Direct threat health and safety of others
if Clackamas county would follow The Federal Law
a simple slow moving ~~vehicle~~ safety Triangle will be a
adjustment to the Law which 35-130 clearly States
is the direction to be followed when 28 35.137 is used to
assess other Power mobility devices. State Law requires
every one on a Public Road way to yield to a slow moving
vehicle as a State wide Law this would and will
be respected by all Oregon Drivers This is a State excepted
State wide Law. When I'm told i have no right to use Public
Road Rightaway and 5 other State Laws provide access to Public
Roads to other entities i feel violated

- ORS 814.670 Pedestrian on hi way Legal
- ORS 821.191 utv on hi way Legal (a)(c)
- ORS 814.150(2) horses Swine and sheep Legal
- ORS 811.305 bicycle on hi way Legal
- ORS 811-512 farm tractors on hi way Legal

I now have a flashing
Light and a safety triangle
on my other Power
mobility device I thought
That would be best
To follow the slow moving
law so Oregon

Then I was told mobility device for disabled persons illegal a violation
Because i am a direct threat to others makes other are the direct threat to Me

Page 2

AUGUST 13th 2025

I John Andersson am Requesting a Power mobility device assessment of a other Powerd mobility devise To be assesst by the Public entity where the devise Will be used on Public Oregon state and County Roads. I am asking the DEPARTMENT of OREGON DMV / transportation ODOT of OREGON to Access my Other Powerd mobility device under Federal/ADA Law 28CFR 35.137 other Powerd mobility devices which I use in my activities of Daily Living Device Serial number is JY43GGD361CD27858 Yamaha ATV Please email me at (Stella@bridge1967@gmail.com) My address mailing is 15178 Scarus Rd Oregon city Oregon 97045 Phone# 503 621-2183 if you need any information Feel Free to Email me My phone number has been added as a last Resort of contact.

Thank You have a Good day

John Andersson

APPENDIX

John Andersson ADA Grievance
Clackamas County Commissioners ~~Marin B~~
Complaint Form ADA Grievance (1A)(1B) (2)(3)(4)

28 CFR 35.130 (5)(6)(7)(8)

What constitutes a direct threat page (9)

ORS 410.710

Page (10)

Clackamas County's denial

(11)(12)(13)

Rural Road Safety

(14)(15)

ADA Other Power of Mobility Evidence (16)(17) (18)(19)

29 CFR 1910.145

(20)(21)(22)

ORS 815.110

(23)

Direct Threat Defense

(24)(25)(26)(27)(28)

ORS Laws

28A 28B 28C

Please Leave Complete for Clackamas County
Commissioners

Total ~~27~~ Pages including this Page
31

Appendix I – Formal Written Complaint Form

Clackamas County ADA Coordinator
County Administration
2051 Kaen Road PSB Suite 450
Oregon City, Oregon 97045
(503) 655-8291 Office (503) 655-8757
TTY/TDD
Email: civilrights@clackamas.us

ADA Formal Written Complaint Form

Please print legibly.

Reporting Individual: John A Andersson Date of Request: July 1 - 2020

Address: 15178 S Conus Rd

City, State and Zip: Oregon City Oregon 97045

Telephone Number: 503-621-2183 Business Phone: SAME

Other Contact Information: stell@bridge1967@a1-mail.com

If person needing accommodation is not the individual completing this form, please complete below:

Name: [initials] Telephone Number: [initials]

Other Contact Information: [initials]

Program/Facility to be Inaccessible: Public Right away Clackamas county.

When did the situation occur (date)? AUGUST-19-2020

Describe the situation or way in which the program is not accessible, providing the name(s) where possible of the individuals who were involved in the situation, and any documentation or photographs supporting the incident:

Denial of Public Access of Clackamas count
Public Right away under federal law 28 CFR-35.137
Denial to use other powered mobility Device for locomotion.

Have efforts been made to resolve this complaint through the Request for Accommodation with the ADA Coordinator?

Yes No

If yes, what were the results? Denial of ADA Rights under 28 CFR 35-137
and extreme abuse of 28 CFR-35.130 General/Prohibitions of
against discrimination of ADA RIGHTS.

How do you suggest this issue be remedied? Access to Public Right away

In Clackamas County Right away as requested.

Signature: John Andersson

Date: Dec 10 - 2020

Attached Pages for Review. Total (29 pages) IA
Exhibit C - Page 100

Clackamas County DOT Denial of ADA civil rights under 28 CFR 35.13
Joseph F. Marek, PE, PTOE and staff as quoted in AMG 19 20E
Letter from Clackamas County denial Letter.

Clackamas County DOT Created a direct threat situation
by not applying Federal ADA Law 28 CFR 35.130 Correctly to the
mobility device Assessment under 28 CFR 35.131³¹⁰¹ which allows
Safety devices to be applied to the other Power & mobility
devices. Under 28 CFR 35.130 section (h) as the Law 28 CFR
~~35.131~~ 35.137 section requires by not applying the Required
Procedure under the Law Clackamas County DOT Chose
To ignore this part of the Law so they could establish a direct
Threat Defense to use as a denial of my Request of assessment
of my other Power & mobility device. The procedure for assessment
under 28 CFR 35.131 is so clear that the Federal Government did not
include 28 CFR 35.139 as part of the assessment.
Even if they could actually ~~pro~~ prove a direct threat defense
that I was incapable to operate a mobility device physically
or mentally I don't believe the Law allows Clackamas County
Staff to Judge anyones ability. IF Clackamas County
Department of transportation believes this they are surely
Overreaching there professional and legal ability of professional

PAGE (10) of (27)

Clackamas County DOT Disregard for my rights under 28CFR 35.130 leaves me believing my Civil Right under ADA Laws Have been violated.

Clackamas County Dept of Transportation acknowledges that my mobility device is appropriate under CFR 28-35.137 and reasonable as their Denial Letter Aug-19-2020 states and then uses a direct threat defence against me for denial of my Request Page 2 of the Denial letter under 28 35.139 section (b) auxiliary aids that will mitigate the risk. This could have been done with a safety triangle and a flashing light would reduced risk clackamas county chose not to follow the Law to obtain the objectives of all federal and laws.

I operated this device on public rightaway for the last 12 yrs legally under ORS traffic laws never have I been called a direct threat from law enforcement or any other entity the abuse that Clackamas County DOT and county council is appalling to me

John Anderson

Clackamas County DOT abuse of 28 CFR 35.130
and there Denial of Public Rightaway use -

The Denial letter of August 19-2020 Violations according
to 28 CFR-35.130. They did not use section (b)(1)
of ~~28~~ 35.130 TO establish usage of mobility Device
according to 28 CFR 35.137 ADA Law - They used the direct threat
defence 28 CFR 35.139 which was explicitly not part of
The assessment under 28 CFR 35.137 Because the Law is
so clear to the common man according to ADA Laws
It was not needed or allowed.

Clackamas County Staff Believes that people who
have access to a vehicle do not need to have the
Right to use mobility devices for mobility under
28 CFR 35.137 - They believe I can't operate the device
under 28 CFR 35.137 according to their letter
of denial their own words are legitimate safety

requirements that they did not apply to create their
Direct threat Defence. They Quote safety warnings
and Road hazards which apply to every one using
Public Right away but they are allowed to use the Right
away. There speculative views are just that. There statistics
prove no direct threat at all one personal views of
ours will be disregarded by me and let Judges decide
what is Real.

There Roadway Risk evaluation is clearly a violation under 28 CFR 35.130 section (4)(1)(11) section (b) (11)(14) 28 CFR 35.130 section (3)(1)(1)(11)

under there Conclusion August ^{19th - 20²⁰} Denial Lette They state How the Public has a shared responsibility To use Public access unless ~~you~~ you are Disabled. I have been ~~denied~~ denied My Rights from August 19th 2020 to today. I hope ~~our~~ county commissions can see the mockery that has occurred under my assessment of a mobility device.

There is no Direct threat to others as Clackamas County DOT and Clackamas County Council accuse me of there never has never will be as they notified the Clackamas County Law enforcement that i am is a defamation of Character Clackamas county should notify Clackamas Law enforcement immediately send a Letter of retraction about there unfounded Remarks That i am a direct threat to others. The Burden of Proof that i am a direct threat is on clackamas county not me they have not established this defence because it isint capable to be achieved in this case.

John Andersson Dec 10-2020

28 CFR § 35.130 - General prohibitions against discrimination.

CFR

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of 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 public entity.

(b)

(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability -

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7)

(i) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(ii) A public entity is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of "disability" at § 35.108(a)(1)(iii).

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)

(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(i) Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability.

[Order No. 1512-91, 56 FR 35716, July 26, 1991, as amended by AG Order No. 3180-2010, 75 FR 56178, Sept. 15, 2010; AG Order 3702-2016, 81 FR 53225, Aug. 11, 2016]

CFR Toolbox

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(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections -

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

Fair Housing Information Sheet #8

Reasonable Accommodations for Tenant Posing a "Direct Threat" to Others

The FHAA has an important caveat to its general requirement that landlords provide tenants with necessary and reasonable accommodations for their disabilities. The Act excludes from coverage individuals with disabilities "whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 U.S.C. § 3604(f)(9). In light of this exclusion, landlords may refuse to grant tenants reasonable accommodations in certain situations. This information sheet explores what constitutes a "direct threat" for purposes of the Act, what kinds of behavior have triggered the exclusion in the past, and finally what circumstances will require a reasonable accommodation despite a tenant's admittedly threatening behavior.

I. What constitutes a "direct threat?"

When evaluating whether an individual with a mental disability poses a direct threat to other tenants, courts should not accept "[g]eneralized assumption," "subjective fears," or "speculation" as conclusive evidence of dangerous behavior. H.R. REP. NO. 711, 100th Cong., 2d Sess. 18, 29, *reprinted* in 1988 U.S. CODE CONG. ADMIN. NEWS 2173. Rather, courts will require *particularized* proof of dangerous behavior based on *objective* evidence before the protections of the FHAA will be denied individuals with disabilities. For example, in *Township of West Orange v. Whitman*, 8 F.Supp.2d 408 (D.N.J. 1998), a municipality and homeowners brought a claim against state officials in an attempt to prevent two group homes for individuals with mental illness from locating in residential areas. Based on the profile of the residents that were to live in the group homes,¹ the plaintiffs asserted that these individuals posed a heightened risk of danger to the community. *Id.* at 428. The court, however, held that even had the plaintiffs proven the existence of a correlation between the profile factors and heightened risk of danger, they would have still not met the burden of proving *individualized* dangerousness. *Id.* Thus the residents could not be excluded from the protections of the FHAA based on this evidence alone.

Additionally, in *Wirtz Realty Corporation v. Freund*, 721 N.E.2d 589, 597 (Ill.App. 1999), the court held that the legislative history of the FHAA requires that there be objective evidence either of acts causing harm or of direct threats of harm before a tenant will be excluded from the protections of the Act. Residents' belief that they were in danger, even if that belief proved to be "reasonable," did not satisfy the requirement for objective evidence. *Id.* Therefore, courts should not look to the subjective fears of residents in evaluating the behavior of the allegedly dangerous tenant. Considerations should include only medical testimony and/or an objective analysis of the tenant's behavior. *Id.*

In addition to objectivity, the timing of the allegedly dangerous behavior may be important to some courts. For instance, courts may not consider evidence of inappropriate behavior if the instances cited occurred too far in the past. In *Wirtz Realty Corporation*, 721 N.E.2d at 600, the court refused to consider examples of inappropriate behavior that occurred before a subsequent renewal of the tenant's lease. The court concluded that since the landlord had renewed his lease despite the reports of these actions, the behavior could not have been a part of the landlord's later eviction decision, and thus should not be maintained as evidence that the tenant posed a direct threat to others. *Id.* Thus a landlord's willingness to extend a lease may serve as evidence that previous inappropriate actions did not constitute a direct threat to other tenants.

II. Examples of actions that have triggered the "direct threat" exception

There is no clear-cut way to determine what kinds of behavior will ultimately constitute a direct threat. It is certainly not difficult to see that, when a tenant has struck another resident resulting in emergency treatment, that tenant's behavior likely constitutes a direct threat. See, e.g., *Roe v. Housing Authority of the City of Boulder*, 909 F.Supp. 814, 817 (D.Colo. 1995) (assuming that the trial court was correct in its conclusion that the tenant who struck and injured another resident posed a direct threat). However, a landlord need not wait until a tenant has caused actual physical harm before he may evict a tenant based on the direct threat exception of the FHAA. *Wirtz Realty Corporation*, 721 N.E.2d at 599. For instance, when a tenant's behavior escalates in intensity, ranging from merely inappropriate behavior to increasingly unpredictable and intimidating actions, a court may be satisfied that the tenant poses a direct threat to his fellow residents. *Id.* at 602, 604.

ORS 410.710¹

State policy on persons with disabilities

The Legislative Assembly finds and declares that it is a policy of this state that:

- (1) All persons regardless of any disability have the right to live their lives with dignity and to participate in society and all state programs to the fullest extent possible.
- (2) There is a need for education of state employees and the public generally about the capacity of persons with disabilities to participate and compete in the mainstream of society.
- (3) Stereotypes and negative labels have no place in state laws and words such as "victim," "afflicted," "crippled" and "handicapped" that have connotations of unclean, unworthy, unproductive and begging are judgmental. Wherever possible, words such as these shall be avoided.
- (4) The language of state laws shall reflect a positive outlook about persons with disabilities. The worth and uniqueness of each individual citizen is to be emphasized by using words and phrases that emphasize the person first and then identify any disability when relevant. [1989 c.224 §1; 2005 c.411 §3]

¹ Legislative Counsel Committee, *CHAPTER 410—Senior and Disability Services*, https://www.oregonlegislature.gov/bills_laws/ors/ors410.html (2019) (last accessed May 16, 2020).



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

August 19, 2020

John Anderson
15178 S Carus Road
Beavercreek, OR 97004

Dear Mr. Anderson,

You submitted a registered letter dated June 1, 2020 requesting an ADA evaluation for using a John Deere Gator as a mobility device on roads in Clackamas County. Clackamas County has completed the requested review. Clackamas County Department of Transportation and Development has a goal under our ADA Transition Plan to provide equal and safe accommodation for all transportation system users. Our ADA Coordinator and County Counsel have been assisting me with this response.

Your request pertains to use of a John Deere Gator, Serial Number 1M0825MACJM012203 on public roads as an ADA mobility device. As you have pointed out, there are a few sections within the Code of Federal Regulations (CFR's) that pertain to this question and they are listed below:

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).

- Horizontal and vertical road geometry
- Shoulder width
- Speed differentials between the Off-Highway vehicle and street-legal vehicles
- Weight difference between the off-highway vehicle and street legal vehicles
- Crash Rate

Roadways in your 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 your area of residence, it will occupy the full travel lane due to its width of approximately 60 inches and lack of wide shoulders to drive on. As this off-highway vehicle 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 off-highway vehicle and the person(s) in the street-legal vehicles. A common example includes a roadway with undulating vertical alignment where the off-highway vehicle may be out of sight at the bottom of a hill and a street-legal 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 street-legal 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 the off-highway vehicle and a street legal vehicle. For example, a John Deere Gator XUV825M weighs approximately 1,800 pounds. Street legal 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 an off-highway vehicle such as a John Deere Gator would very likely result in a fatality given the weight difference and lack of occupant protection on the Gator.

In this particular case, the mobility device, a John Deere Gator was not designed by the manufacturer for on-road use and is deemed not safe for operation on public roads per the operator's manual. As a result, the County does not see any options to provide for the safe operation of the off-road vehicle on the county roads except to add a special unpaved area adjacent to each roadway where this device could traverse. Adding an 8 foot-wide gravel shoulder area adjacent to each road permitted for use would be prohibitively expensive, costing well over \$700,000 per mile and also require purchase of a significant amount of right-of-way impacting adjacent properties owners. Based on the County's evaluation, we do not see a feasible way to provide accommodation for the use of the off-highway vehicle because of cost to the County and impacts to adjacent properties.

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 examined 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, also factor that can make seeing large slow moving vehicles, such as a John Deere Gator more difficult.

Conclusions

Clackamas County is committed to provide reasonable access under our ADA Transition Plan. The public roadway network is open to all with a shared responsibility for all. As part of the County's role in operating a roadway system, safety is of paramount importance as everyone deserves to get home safely to their family every night. Based on the County's review of your request and subsequent evaluation, we cannot approve your request for use of a John Deere Gator or similar off-highway vehicle for use on County-owned roadways for the reasons summarized above.

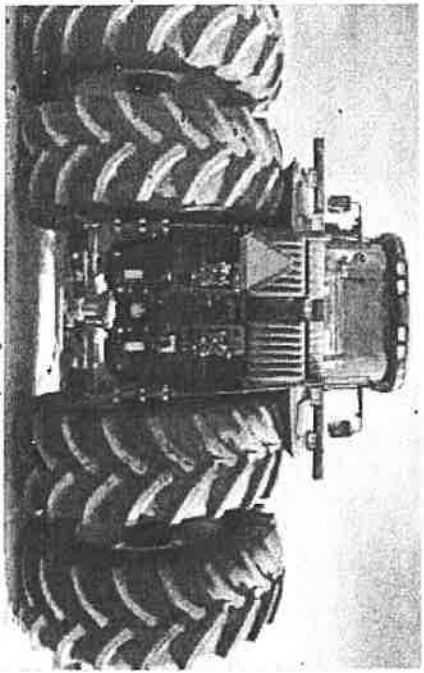
Please let me know if you have any questions.



Be safe.

Joseph F. Marek, PE, PTOE
Transportation Safety Program Manager
Clackamas County Department of Transportation and Development

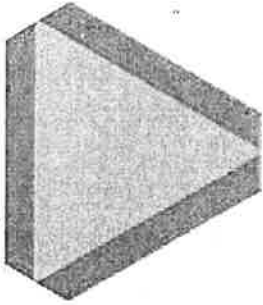
C: County Counsel, Dave Morrissey – ODOT, Capt. Shane Strangfield – CCSO, Steve Williams – Clackamas County ADA Coordinator



Do you recognize this symbol?

Paying attention to this sign is a matter of life and death for drivers of cars and farm equipment on rural roads.

A slow-moving vehicle sign must be displayed on farm equipment and other vehicles designed to travel at speeds of 25 miles or less.



The sign is not simply a reflector — it is a warning to slow down.

At night, the reflective red border of the SMV emblem is visible. When you see this sign in your headlights, slow down immediately. In low light, it is difficult to judge how fast you are closing in on a slow-moving vehicle, or what its dimensions are.

For more information on road safety, visit the Oregon Dept. of Transportation website at www.oregon.gov/ODOT/TS.

Tips for farmers

Farmers have a role in rural road safety, too. Here are tips to alleviate some hazards when taking wide equipment onto the road:

▲ **Oregon law** requires you to place a slow-moving vehicle reflector on any machine that travels the road slower than 25 mph. Always point the triangle up, keep the SMV emblem clean to maximize reflectivity, and replace the emblem when it fades, normally every 2 to 3 years.

▲ **Mark the edges of tractors and machines with reflective tape and reflectors.** Consider installing retrofit lighting on older machinery to increase visibility.

▲ **Turn on your lights**, but turn off rear spotlights when going onto the road. From a distance spotlights can be mistaken for headlights.

▲ **Be aware of heavy traffic patterns.**

▲ **Use pilot cars**, one in front and one in back, if you are going a considerable distance. Hang a brightly colored flag out the window of these pilot vehicles.

▲ **Consider installing mirrors** on equipment so you can see motorists around you. Be careful where the mirrors are placed.

▲ **When moving multiple farm implements down the highway, leave enough space between each vehicle for cars to pass.**

ATTENTION!

It is illegal for any Oregon resident to display the slow-moving vehicle sign on permanent, stationary objects like mail box posts, driveway entrances, and fences.

To use an SMV sign on anything other than slow-moving equipment is a Class C offense.



Share the road safely

Slow-Moving Vehicle signs

Oregon revised Statute 815.115 effective January 1, 2014

OREGON
FARM
BUREAU

Oregon Farm Bureau
Health & Safety Committee

1320 Capital St. NE, Suite 200

Salem, Oregon 97301

503.399.1701

www.oregonfb.org

Farm equipment shares the roads

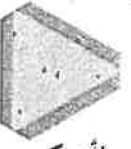
While driving on a rural road, particularly during the summer and fall when many farmers harvest their crops, you may encounter farm equipment. It may be a single vehicle, like a combine, or a tractor with an implement in tow. Farm equipment is often wider than a typical car and can even be wider than the lane. Large equipment is designed to travel at speeds of only 15 to 25 miles per hour.

Sometimes farm equipment must drive on highways to move between fields. Just as motorists can use public roadways, farmers can legally operate farm equipment on these same roads.

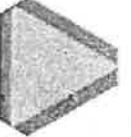
Caution, courtesy, and special attention to the following tips will help ensure the safety of motorists, passengers, and operators of slow-moving equipment.

If you are driving 55 mph and come upon a tractor that is moving 25 mph, it only takes 8 seconds to close a gap the length of a football field between you and the tractor.

Red and orange slow-moving vehicle (SMV) emblems must be visible on large equipment from at least 500 feet away. Because it can be difficult to judge the speed at which you are closing in on a vehicle ahead, you should slow down immediately.

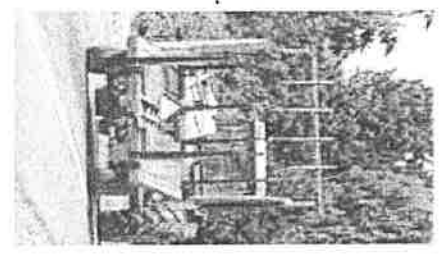


Think of the slow-moving vehicle sign as a warning to slow down.



Be patient

Farmers understand that your trip is being delayed, so they will usually pull off to the side of the road at a safe location to allow you to pass. However, don't assume that the farmer can immediately move aside. Roadway shoulders may be soft, wet, or steep, and this can cause equipment to tip.



Even if you have to slow down to 20 mph and follow a tractor for two miles, it takes only six minutes of your time, which is like waiting for two stoplights.

Yield to wide vehicles

Some farm equipment may be wider than the lane of travel. If you approach a piece of wide equipment traveling in the opposite direction and you cannot pass safely, please stop. Then pull off the road to a location that will allow the vehicle to pass you.

Don't assume the farmer knows you're there

Most farm equipment operators will regularly check to see if there is traffic behind them. However, the driver must spend most of the time looking ahead to keep the equipment safely on the road and watch for oncoming traffic. Also, most farm equipment is very loud. Don't assume that the driver knows where your vehicle is. Before you attempt to pass, use your car's horn to signal you are there.

In Oregon every year there are 25 to 35 serious auto accidents involving farm equipment, particularly during summer and fall harvest months.

25

Pass with caution

If you decide to pass farm equipment on the road, please do so with caution.

▲ Be watchful of vehicles behind you that may also try to pass.

▲ If you must enter the oncoming lane of traffic, do not proceed unless you can see clearly ahead of both you and the vehicle you will pass.

▲ If there are any curves or hills ahead that may block your view or the view of oncoming vehicles, do not pass.

▲ Do not pass if you are in a designated "No Passing Zone" or within 100 feet of any intersection, railroad grade crossing, bridge, elevation structure, or tunnel.

▲ Do not assume that a farm vehicle that pulls to the right side of the road is going to turn right or is letting you pass. Due to the size of some farm implements, the farmer must make wide left-hand turns. If you are unsure, check the operator's hand signals and look at the left side of the road for gates, driveways, or any place a farm vehicle might turn.

By being aware of farm equipment during your travels on rural roads, you can help make the trip safe for both you and Oregon farmers.

U.S. Department of Justice
Civil Rights Division
Disability Rights Section



Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

People with mobility, circulatory, respiratory, or neurological disabilities use many kinds of devices for mobility. Some use walkers, canes, crutches, or braces. Some use manual or power wheelchairs or electric scooters. In addition, advances in technology have given rise to new devices, such as Segways[®], that some people with disabilities use as mobility devices, including many veterans injured while serving in the military. And more advanced devices will inevitably be invented, providing more mobility options for people with disabilities.

This publication is designed to help title II entities (State and local governments) and title III entities (businesses and non-profit organizations that serve the public) (together, "covered entities") understand how the new rules for mobility devices apply to them. These rules went into effect on March 15, 2011.

- Covered entities must allow people with disabilities who use manual or power wheelchairs or scooters, and manually-powered mobility aids such as walkers, crutches, and canes, into all areas where members of the public are allowed to go.
- Covered entities must also allow people with disabilities who use other types of power-driven mobility devices into their facilities, unless a particular type of device cannot be accommodated because of legitimate safety requirements. Where legitimate safety requirements bar accommodation for a particular type of device, the covered entity must provide the service it offers in alternate ways if possible.
- The rules set out five specific factors to consider in deciding whether or not a particular type of device can be accommodated.

Wheelchairs

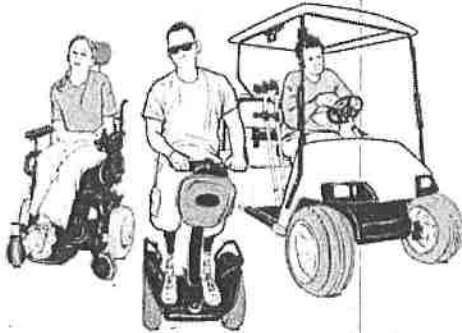
Most people are familiar with the manual and power wheelchairs and electric scooters used by people with mobility disabilities. The term "wheelchair" is defined in the new rules as "a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion."

Other Power-Driven Mobility Devices

In recent years, some people with mobility disabilities have begun using less traditional mobility devices such as golf cars or Segways[®]. These devices are called "other power-driven mobility device" (OPDMD) in the rule. OPDMD is defined in the new rules as "any mobility device powered by batteries, fuel, or other engines... that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices, such as the Segway[®] PT,

or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair". When an OPDMD is being used by a person with a mobility disability, different rules apply under the ADA than when it is being used by a person without a disability

Choice of Device



People with disabilities have the right to choose whatever mobility device best suits their needs. For example, someone may choose to use a manual wheelchair rather than a power wheelchair because it enables her to maintain her upper body strength. Similarly, someone who is able to stand may choose to use a Segway® rather than a manual wheelchair because of the health benefits gained by standing. A facility may be required to allow a type of device that is generally prohibited when being used by someone without a disability when it is being used by a person who needs it because of a mobility disability. For example, if golf cars are generally prohibited in a park, the park may be required to allow a golf car when it is being used because of a person's mobility disability, unless there is a legitimate safety reason that it cannot be accommodated.

Requirements Regarding Mobility Devices and Aids

Under the new rules, covered entities must allow people with disabilities who use wheelchairs (including manual wheelchairs, power wheelchairs, and electric scooters) and manually-powered mobility aids such as walkers, crutches, canes, braces, and other similar devices into all areas of a facility where members of the public are allowed to go.



In addition, covered entities must allow people with disabilities who use any OPDMD to enter the premises unless a particular type of device cannot be accommodated because of legitimate safety requirements. Such safety requirements must be based on actual risks, not on speculation or stereotypes about a particular type of device or how it might be operated by people with disabilities using them.

- For some facilities -- such as a hospital, a shopping mall, a large home improvement store with wide aisles, a public park, or an outdoor amusement park -- covered entities will likely determine that certain classes of OPDMDs being used by people with disabilities can be accommodated. These entities must allow people with disabilities using these types of OPDMDs into all areas where members of the public are allowed to go.
- In some cases, even in facilities such as those described above, an OPDMD can be accommodated in some areas of a facility, but not in others because of legitimate safety concerns. For example, a cruise ship may decide that people with disabilities using Segways® can generally be accommodated, except in constricted areas, such as passageways to cabins that are very narrow and have low ceilings.
- For other facilities -- such as a small convenience store, or a small town manager's office -- covered entities may determine that certain classes of OPDMDs cannot be accommodated. In that case, they are still required to serve a person with a disability using one of these devices in an alternate manner if possible, such as providing curbside service or meeting the person at an alternate location.

Covered entities are encouraged to develop written policies specifying which kinds of OPDMDs will be permitted and where and when they will be permitted, based on the following assessment factors.

Assessment Factors

In deciding whether a particular type of OPDMD can be accommodated in a particular facility, the following factors must be considered:

- the type, size, weight, dimensions, and speed of the device;



- the facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- the facility's design and operational characteristics (e.g., whether its business is conducted indoors or outdoors, its square footage, the density and placement of furniture and other stationary devices, and the availability of storage for the OPDMD if needed and requested by the user);
- whether legitimate safety requirements (such as limiting speed to the pace of pedestrian traffic or prohibiting use on escalators) can be established to permit the safe operation of the OPDMD in the specific facility; and
- 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.

It is important to understand that these assessment factors relate to an entire class of device type, **not** to how a person with a disability might operate the device. (See next topic for operational issues.) All types of devices powered by fuel or combustion engines, for example, may be excluded from indoor settings for health or environmental reasons, but may be deemed acceptable in some outdoor settings. Also, for safety reasons, larger electric devices such as golf cars may be excluded from narrow or crowded settings where there is no valid reason to exclude smaller electric devices like Segways®.

Based on these assessment factors, the Department of Justice expects that devices such as Segways® can be accommodated in most circumstances. The Department also expects that, in most circumstances, people with disabilities using ATVs and other combustion engine-driven devices may be prohibited indoors and in outdoor areas with heavy pedestrian traffic.

Policies on the Use of OPDMDs

In deciding whether a type of OPDMD can be accommodated, covered entities must consider all assessment factors and, where appropriate, should develop and publicize rules for people with disabilities using these devices. Such rules may include

- requiring the user to operate the device at the speed of pedestrian traffic;
- identifying specific locations, terms, or circumstances (if any) where the devices cannot be accommodated;
- setting out instructions for going through security screening machines if the device contains technology that could be harmed by the machine; and
- specifying whether or not storage is available for the device when it is not being used.



Credible Assurance

An entity that determines it can accommodate one or more types of OPDMDs in its facility is allowed to ask the person using the device to provide credible assurance that the device is used because of a disability. If the person presents a valid, State-issued disability parking placard or card or a State-issued proof of disability, that must be accepted as credible assurance on its face. If the person does not have this documentation, but states verbally that the OPDMD is being used because of a mobility disability, that also must be accepted as credible assurance, unless the person is observed doing something that contradicts the assurance. For example, if a person is observed running and jumping, that may be evidence that contradicts the person's assertion of a mobility disability. However, it is very important for covered entities and their staff to understand that the fact that a person with a disability is able to walk for a short distance does not necessarily contradict a verbal assurance -- many people with mobility disabilities can walk, but need their mobility device for longer distances or uneven terrain. This is particularly true for people who lack stamina, have poor balance, or use mobility devices because of respiratory, cardiac, or neurological disabilities. A covered entity cannot ask people about their disabilities.

Staff Training

Ongoing staff training is essential to ensure that people with disabilities who use OPDMDs for mobility are not turned away or treated inappropriately. Training should include instruction on the types of OPDMDs that can be accommodated, the rules for obtaining credible assurance that the device is being used because of a disability, and the rules for operation of the devices within the facility.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Website

www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the [link](#) near the top of the middle column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m. , Th 12:30 p.m. – 5:30 p.m. (Eastern Time) to speak with an ADA Specialist.

All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. January 2014

The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.

PDF Version of this Document

January 31, 2014

29 CFR § 1910.145 - Specifications for accident prevention signs and tags.

CFR

§ 1910.145 Specifications for accident prevention signs and tags.

(a) *Scope.*

(1) These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) intended to indicate and, insofar as possible, to define specific hazards of a nature such that failure to designate them may lead to accidental injury to workers or the public, or both, or to property damage. These specifications are intended to cover all safety signs except those designed for streets, highways, and railroads. These specifications do not apply to plant bulletin boards or to safety posters.

(2) All new signs and replacements of old signs shall be in accordance with these specifications.

(b) **Definitions.** As used in this section, the word *sign* refers to a surface on prepared for the warning of, or safety instructions of, industrial workers or members of the public who may be exposed to hazards. Excluded from this definition, however, are news releases, displays commonly known as safety posters, and bulletins used for employee education.

(c) **Classification of signs according to use -**

(1) **Danger signs.**

(i) There shall be no variation in the type of design of signs posted to warn of specific dangers and radiation hazards.

(ii) All employees shall be instructed that danger signs indicate immediate danger and that special precautions are necessary.

(2) Caution signs.

(i) Caution signs shall be used only to warn against potential hazards or to caution against unsafe practices.

(ii) All employees shall be instructed that caution signs indicate a possible hazard against which proper precaution should be taken.

(3) Safety instruction signs. Safety instruction signs shall be used where there is a need for general instructions and suggestions relative to safety measures.

(d) Sign design -

(1) Design features. All signs shall be furnished with rounded or blunt corners and shall be free from sharp edges, burrs, splinters, or other sharp projections. The ends or heads of bolts or other fastening devices shall be located in such a way that they do not constitute a hazard.

(2) Danger signs. The colors red, black, and white shall be those of opaque glossy samples as specified in Table 1, "Fundamental Specification of Safety Colors for CIE Standard Source 'C,' " of ANSI Z53.1-1967 or in Table 1, "Specification of the Safety Colors for CIE Illuminate C and the CIE 1931, 2 Standard Observer," of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

(3) [Reserved]

(4) Caution signs. The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1-1967 or Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

(5) [Reserved]

(6) Safety instruction signs. The standard color of the background shall be white; and the panel, green with white letters. Any letters used against the white background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1, of ANSI Z53.1-1967 or in Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

(7)-(9) [Reserved]

(10) Slow-moving vehicle emblem. This emblem (see fig. J-7) consists of a fluorescent yellow-orange triangle with a dark red reflective border. The yellow-orange fluorescent triangle is a highly visible color for daylight exposure. The reflective border defines the shape of the fluorescent color in daylight and creates a hollow red triangle in the path of motor vehicle headlights at night. The emblem is intended as a unique identification for, and it shall be used only on, vehicles which by design move slowly (25 m.p.h. or less) on the public roads. The emblem is not a clearance marker for wide machinery nor is it intended to replace required lighting or marking of slow-moving vehicles. Neither the color film pattern and its dimensions nor the backing shall be altered to permit use of advertising or other markings. The material, location, mounting, etc., of the emblem shall be in accordance with the American Society of Agricultural Engineers Emblem for Identifying Slow-Moving Vehicles, ASAE R276, 1967, or ASAE S276.2 (ANSI B114.1-1971), which are incorporated by reference as specified in § 1910.6.

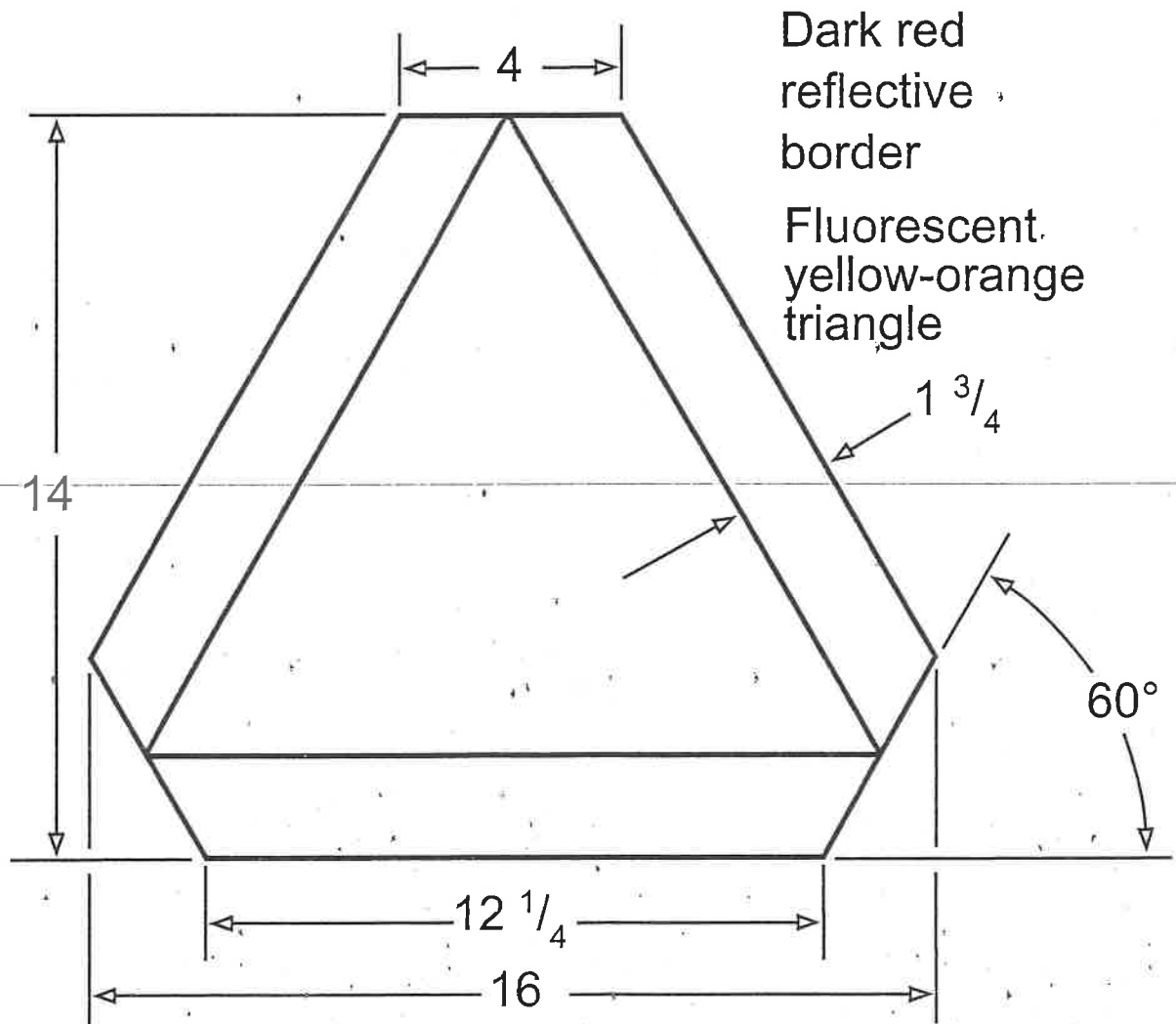


Figure J-7 - Slow-Moving Vehicle Emblem

ORS 815.110¹

Requirements for and use of slow-moving vehicle emblem

This section establishes requirements for ORS 815.115 (Violation of emblem requirements). The requirements under this section are in addition to any other requirements for lighting equipment provided by law. Except as specifically provided by an exemption under ORS 815.120 (Exemptions from emblem requirements), a person violates ORS 815.115 (Violation of emblem requirements) if the person does not comply with any of the following requirements:

- (1) The following types of vehicles must display slow-moving vehicle emblems described under ORS 815.060 (Rules establishing standards for slow-moving vehicle emblems):
 - (a) Vehicles or combinations of vehicles designed for customary use at speeds of less than 25 miles per hour.
 - (b) Golf carts or similar vehicles when operated by a person with a disability.
 - (c) Class I, Class II and Class IV all-terrain vehicles operated on a highway under ORS 821.191 (Operation of Class I, Class II or Class IV all-terrain vehicle on highway) (1).
- (2) Slow-moving vehicle emblems must meet the requirements for such emblems established by the Department of Transportation by rule under ORS 815.060 (Rules establishing standards for slow-moving vehicle emblems).
- (3) Slow-moving vehicle emblems shall be displayed on the rear of the power unit. When a combination of vehicles is being operated in a manner that obscures the emblem mounted on the power unit, an additional emblem shall be displayed on the rear of the rearmost vehicle in the combination. [1983 c.338 §469; 2001 c.529 §5; 2007 c.70 §347; 2007 c.207 §3; 2011 c.360 §19]

¹ Legislative Counsel Committee, *CHAPTER 815—Vehicle Equipment Generally*, https://www.oregonlegislature.gov/bills_laws/ors/ors815.html (2019) (last accessed May 16, 2020).



Newsletter

Make Sure You're On Target When Using Direct Threat Defense

10.2.17

An employer's personnel decisions do not always have to be "correct" in order to avoid liability under most federal and state anti-discrimination laws. If you decide to terminate an employee for engaging in workplace misconduct, the fact the employee was actually innocent of the alleged misconduct should be deemed irrelevant in a subsequent discrimination lawsuit.

For example, in the 2009 case of *Cervantez v. KMGP Servs.*, the 5th Circuit Court of Appeals said "a fired employee's actual innocence of his employer's proffered accusation is irrelevant as long as the employer reasonably believed it and acted on it in good faith." This is because, as the 5th Circuit said in the 2010 *Moss v. BMC Software, Inc.* case, anti-discrimination laws do not protect employees "from erroneous or even arbitrary personnel decisions, but only from decisions which are unlawfully motivated." As long as you genuinely believed the employee was guilty of misconduct and relied on that belief as the basis for the termination, you should not be held liable even if the decision was flat-out unreasonable.

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Direct Threat is Different

ATTORNEYS

> William Brian London

SERVICES

- > Employment
Discrimination and
Harassment
- > Litigation of Employment
Disputes
- > Retail Industry

The same is not true, however, when an employer invokes the "direct threat" defense under the Americans with Disabilities Act (ADA). Generally speaking, the ADA prohibits employers from terminating someone simply because they have a disability. The direct threat defense affords you with a limited defense to liability, permitting you to legally terminate an employee (or at least deem them unqualified) where their disability poses "a direct threat to the health or safety of other individuals in the workplace." The phrase "direct threat" is defined as "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."

To determine whether an employee poses such a threat, you are required to conduct an individualized assessment of their present ability to safely perform the essential functions of the job when you take into consideration the duration of the risk and the nature, severity, likelihood, and imminence of any potential harm. Most importantly, the determination that a disabled employee poses a direct threat must be objectively reasonable and supported by medical evidence. Thus, your honest, good faith belief that an employee poses a safety threat is generally not enough to avoid liability for terminating that worker.

Employer Learns Direct Threat Lesson The Hard Way

A recent decision by the 7th Circuit Court of Appeals provides a good example of the risks employers face when attempting to invoke the direct threat defense to justify a termination. In *Stragapede v. City of Evanston*, Biagio Stragapede, an employee who worked in the City of Evanston's water services department, suffered a traumatic brain injury during a non-work-related accident involving a nail gun. The employer placed Stragapede on medical leave for about nine months until he eventually recovered and felt able to begin working

again. Before returning to work in the water services

department, however, the city required that he undergo a fitness-for-duty exam. The neurologist who conducted the exam found that Stragapede had "mild residual cognitive

deficits,” but ultimately concluded he was able to return to work.

Less than a month later, the city placed Stragapede on administrative leave as a result of issues with his job performance. In particular, the city cited concern over a series of incidents in which Stragapede seemed to be having trouble completing relatively simple tasks, such as changing a water meter and logging into his work computer. He also reported to the wrong locations for two work assignments after misreading street signs and other directional mishaps, and was observed by another city employee allegedly driving through an intersection while looking down at his lap.

The city reported these events to the neurologist, who indicated that they were most likely caused by Stragapede’s brain injury. The neurologist did not re-examine him, but drafted a letter stating that Stragapede was a direct threat and could not perform the essential functions of his job based solely on the city’s account of his performance issues. The city terminated him shortly thereafter, and Stragapede sued for disability discrimination.

After a weeklong trial, the jury found the city liable and awarded Stragapede over \$575,000 on his ADA claims. On appeal, the city argued that it should not matter whether Stragapede *actually* posed a direct threat, but that it should be afforded a valid ADA defense because it honestly believed he did.

The 7th Circuit disagreed. In an opinion released July 31, 2017, the court found the city’s subjective belief that the employee would harm himself or others was insufficient to escape liability because the direct threat defense required “medical or other objective evidence.” The court explained that the jury could have reasonably determined the neurologist’s opinion to be unreliable since it was based entirely on information supplied by the city. The court also noted that just a few months earlier, the same neurologist had evaluated the employee and concluded he was capable of returning to work.

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The other evidence the city offered to establish a safety threat – the two times Stragapede reported to the wrong location for work assignments and the incident in which he reportedly drove through an intersection without his eyes on the road – was either adequately explained in the employee’s testimony regarding those events or was not a safety issue in the first place. Thus, in the court’s view, it was reasonable for the jury to conclude that the employee did not pose a safety threat.

What Should Retailers Take From This Case?

As the *Stragapede* case demonstrates, determining whether an employee poses a direct threat is a process fraught with risk, and, without proper precautions, even well-meaning employers can find themselves on the wrong side of a jury verdict. Below are some tips to help ensure your company will withstand scrutiny the next time you face the difficult decision of whether to remove an employee because of safety concerns:

1. **Seek Out The Experts.** When choosing a medical provider to evaluate an employee’s ability to safely perform the essential functions of their job, seek out someone with specific expertise. Courts are more likely to allow a jury to second-guess the opinion of a primary care doctor or a company physician than the judgment of a doctor who specializes in the exact condition at issue in the case. For example, in the 2003 case of *Echazabal v. Chevron USA, Inc.*, the 9th Circuit discounted the opinions of company doctors who had no expertise and limited experience with chronic liver diseases, which was the basis of the plaintiff’s disability. Also, the Equal Employment Opportunity Commission (EEOC) has published Interpretive Guidance suggesting employers should specifically seek out the “opinions of medical doctors, rehabilitation counselors, or physical

therapists who have expertise in the disability involved

and/or direct knowledge of the individual with the disability.”
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2. **No Cherry Picking.** Always allow the doctor to conduct a complete, in-person examination of the employee, rather than requesting a medical opinion based solely on documents or cherry-picked information you provide to the doctor. One of the defendant's biggest mistakes in the *Stragapede* case was not sending the employee back to the neurologist for a second evaluation. The court was obviously troubled by the fact that the neurologist was never given an opportunity to conduct a follow-up exam before rendering his last opinion. In fact, the neurologist himself seemed uncomfortable with this arrangement, given the caveat in his letter stating he was relying entirely on information from the city.

3. **Look To What *Did* Happen, Not What *Could* Happen.**

The EEOC's Interpretive Guidance states that you should "identify the specific risk posed by the individual," or in the case of individuals with emotional or mental disabilities, "the specific behavior on the part of the individual that would pose the direct threat." Therefore, you should document specific examples of the conduct creating the safety risk, avoiding speculation as to what *could* happen in the worst-case scenario. In *Stragapede*, the city's assessment was based largely on a series of minor incidents, most of which were unlikely to create any kind of safety issue. Instead, the EEOC makes clear that there should be a "high probability of substantial harm" for an employer to establish the defense.

Because *Stragapede* was able to offer a reasonable explanation for at least some of those incidents, there was enough to support the jury's determination that he was not a direct threat.

4. **Provide Solid Information To The Doctor.** Be sure to provide the doctor with a current job description and any relevant information about your workplace and the employee's work history. A physician cannot provide a

meaningful "individualized assessment" of the employee's ability to safely perform their job without access to accurate and up-to-date information about

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work duties and the environment. If an individual has worked with the same disability their entire career without causing any incidents or injuries, it will be difficult for you to show that the employee posed a serious safety threat. For example, in the *Echazabal* case cited above, the 9th Circuit ruled in favor of the employee in part because the company ignored his 20-year, injury-free work history.

5. **Consider Possible Reasonable Accommodations.**

Don't forget that determining whether an employee's disability creates a safety risk is only step one in the direct threat analysis. You must also consider whether there are any reasonable accommodations that could eliminate or reduce the risk to an acceptable level without creating an undue hardship, so you should ask the examining physician to identify any such accommodations.

6. **When In Doubt, Call Your Employment Lawyer.** While this is applicable advice in just about any employment situation, it is especially true when dealing with the direct threat defense. Every direct threat case is different, so the safest approach is to consult with an employment attorney before making any decisions.

*For more information, contact the author at
BLondon@fisherphillips.com or 504:592.3888.*

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ORS 821.191¹

Operation of Class I, Class II or Class IV all-terrain vehicle on highway

- **unlawful operation of Class I, Class II or Class IV all-terrain vehicle used for agricultural purposes**
- **penalty**

- (1) Notwithstanding any other provision of law, a person may operate a Class I, Class II or Class IV all-terrain vehicle that is not otherwise properly equipped for operation on a highway on the highways of this state if:
- (a) The person is using the all-terrain vehicle for transportation between ranching or farming headquarters, agricultural fields or pastures;
 - (b) The person holds a valid driver license;
 - (c) The person complies with posted speed limits, but in no event exceeds a speed of 20 miles per hour;
 - (d) The person operates the all-terrain vehicle as closely as is practicable to the right-hand edge of the highway, including shoulders, if any;
 - (e) The all-terrain vehicle is equipped with a lighted headlight and taillight; and
 - (f) The all-terrain vehicle displays a slow-moving vehicle emblem described under ORS 815.060 (Rules establishing standards for slow-moving vehicle emblems).
- (2) A person commits the offense of unlawful operation of a Class I, Class II or Class IV all-terrain vehicle used for agricultural purposes if the person operates a Class I, Class II or Class IV all-terrain vehicle on a highway in violation of subsection (1) of this section.
- (3) The offense described in subsection (2) of this section, unlawful operation of a Class I, Class II or Class IV all-terrain vehicle used for agricultural purposes, is a Class D traffic violation.
[2001 c.529 §§2,3; 2007 c.207 §2; 2011 c.360 §25]

Note: 821.191 (Operation of Class I, Class II or Class IV all-terrain vehicle on highway) was added to and made a part of ORS chapter 821 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

¹ Legislative Counsel Committee, *CHAPTER 821—Terrain Vehicles*, https://www.oregonlegislature.gov/bills_laws/ors/ors821.html (2019) (last accessed May 16, 2020).

ORS 811.512¹

Unlawfully operating low-speed vehicle on highway

- **penalty**

- (1) A person commits the offense of unlawfully operating a low-speed vehicle on a highway if the person operates a low-speed vehicle on a highway that has a speed limit or posted speed of more than 35 miles per hour.
- (2) Notwithstanding subsection (1) of this section, a city or county may adopt an ordinance allowing operation of low-speed vehicles on city streets or county roads that have speed limits or posted speeds of more than 35 miles per hour.
- (3) Notwithstanding subsection (1) of this section, a person does not commit the offense of unlawfully operating a low-speed vehicle on a highway if the person operates a farm tractor on a state highway that has a speed limit or posted speed of more than 35 miles per hour.
- (4) The offense described in this section, unlawfully operating a low-speed vehicle on a highway, is a Class B traffic violation. [2001 c.293 §8; 2019 c.59 §1]

¹ Legislative Counsel Committee, *CHAPTER 811—Rules of the Road for Drivers*, https://www.oregonlegislature.gov/bills_laws/ors/ors811.html (2019) (last accessed May 16, 2020).

ORS 815.060¹

Rules establishing standards for slow-moving vehicle emblems

The Department of Transportation shall adopt rules for slow-moving vehicle emblems for purposes of ORS 815.110 (Requirements for and use of slow-moving vehicle emblem) and 815.115 (Violation of emblem requirements). The rules adopted under this section shall:

- (1) Require a slow-moving vehicle emblem that is reflectorized or fluorescent and that is of a standard type.
- (2) Establish design and mounting requirements that the emblem must meet.
- (3) Conform to the nationally accepted standards for slow-moving vehicle emblems. [1983 c.338 §444]

¹ Legislative Counsel Committee, *CHAPTER 815—Vehicle Equipment Generally*, https://www.oregonlegislature.gov/bills_laws/ors/ors815.html (2019) (last accessed May 16, 2020).

August 19, 2020

John Anderson
15178 S Carus Road
Beavercreek, OR 97004

Dear Mr. Anderson,

You submitted a registered letter dated June 1, 2020 requesting an ADA evaluation for using a John Deere Gator as a mobility device on roads in Clackamas County. Clackamas County has completed the requested review. Clackamas County Department of Transportation and Development has a goal under our ADA Transition Plan to provide equal and safe accommodation for all transportation system users. Our ADA Coordinator and County Counsel have been assisting me with this response.

Your request pertains to use of a John Deere Gator, Serial Number 1M0825MACJM012203 on public roads as an ADA mobility device. As you have pointed out, there are a few sections within the Code of Federal Regulations (CFR's) that pertain to this question and they are listed below:

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.”

Below, you will find a summary of our analysis related to the statements above.

Denial of the Benefit of Services

As an initial matter, County staff generally agree with you that access to roads in Clackamas County is covered under the regulations and you may not be denied access to such roads as a result of a disability. That being said, County staff understand that that you do possess a valid Oregon driver’s license and access to a street-legal vehicle. Accordingly, you already have meaningful access to the County’s road system, and for the specific reasons that follow, your street-legal vehicle is the transport mode that is the safest for all users under the circumstances. Since you are able to access the County’s road system with a street-legal vehicle, County staff find that continuing to prohibit the use of a John Deere Gator on public roads as an ADA mobility device does not deny you the benefit of the use of the public road system in Clackamas County, and no modification to those standards is warranted under the circumstances. If we have misunderstood or mischaracterized your situation, please let us know.

Even if the use of the John Deere Gator on public roads as an ADA mobility device is your preferred means of accessing the public road system in Clackamas County, or even if a more compelling case can be made that this proposed modification is reasonable under the circumstances, for the reasons that follow, County staff believe that your proposed use of the John Deere Gator cannot be operated in accordance with legitimate safety requirements and would result in a “direct threat” to the safety of others.

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, however, they are intended for crossing highways, primarily as related to farming operations.

Manufacturer Warnings for a John Deere Gator

Additionally, 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 states: *“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.”*

Roadway Information and Risk Evaluation

While you did not specify certain roads that you were using this off-highway vehicle on, I did mention to you during a telephone conversation that I would examine several different roads in your area of residence and examine these based on risk as described in 28 CFR 35.139. Table 1 shows a list of a few different roads with their name, posted speeds, functional class, and shoulder width.

ROAD NAME	SEGMENT	FUNCTIONAL CLASSIFICATION	POSTED SPEED LIMIT (MPH)	Average Daily Traffic (2018) (veh/day)	SHOULDER WIDTH (feet)	CRASH RATE (crashes/million vehicle miles traveled)	CRASH RATE STATE AVG. (crashes/million veh. miles traveled)
Beavercreek Road	Leland - Spangler	Major Arterial	35/45/55	9,500	0-6'	0.58	0.79
Carus Road	Beavercreek Rd – Hwy 213	Collector	55	500	0-3	4.63	1.59
Spangler Road	Beavercreek Road-Hwy 213	Minor Arterial	55	1,000	0-4	1.13	1.17
Kamrath Road	Spangler Rd – Beavercrk Rd	Collector	45/55	1,500	0-4	3.36	1.59

All of these roadways 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 Street Legal Vehicles

Factors that the County considered for assessing the risk for you and other users in this case included:

- Posted Speed of Roadway
- Average Daily Traffic Volume

- Horizontal and vertical road geometry
- Shoulder width
- Speed differentials between the Off-Highway vehicle and street-legal vehicles
- Weight difference between the off-highway vehicle and street legal vehicles
- Crash Rate

Roadways in your 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 your area of residence, it will occupy the full travel lane due to its width of approximately 60 inches and lack of wide shoulders to drive on. As this off-highway vehicle 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 off-highway vehicle and the person(s) in the street-legal vehicles. A common example includes a roadway with undulating vertical alignment where the off-highway vehicle may be out of sight at the bottom of a hill and a street-legal 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 street-legal 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 the off-highway vehicle and a street legal vehicle. For example, a John Deere Gator XUV825M weighs approximately 1,800 pounds. Street legal 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 an off-highway vehicle such as a John Deere Gator would very likely result in a fatality given the weight difference and lack of occupant protection on the Gator.

In this particular case, the mobility device, a John Deere Gator was not designed by the manufacturer for on-road use and is deemed not safe for operation on public roads per the operator's manual. As a result, the County does not see any options to provide for the safe operation of the off-road vehicle on the county roads except to add a special unpaved area adjacent to each roadway where this device could traverse. Adding an 8 foot-wide gravel shoulder area adjacent to each road permitted for use would be prohibitively expensive, costing well over \$700,000 per mile and also require purchase of a significant amount of right-of-way impacting adjacent properties owners. Based on the County's evaluation, we do not see a feasible way to provide accommodation for the use of the off-highway vehicle because of cost to the County and impacts to adjacent properties.

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 examined 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, also factor that can make seeing large slow moving vehicles, such as a John Deere Gator more difficult.

Conclusions

Clackamas County is committed to provide reasonable access under our ADA Transition Plan. The public roadway network is open to all with a shared responsibility for all. As part of the County's role in operating a roadway system, safety is of paramount importance as everyone deserves to get home safely to their family every night. Based on the County's review of your request and subsequent evaluation, we cannot approve your request for use of a John Deere Gator or similar off-highway vehicle for use on County-owned roadways for the reasons summarized above.

Please let me know if you have any questions.

A handwritten signature in black ink that reads "Joseph F. Marek". The signature is written in a cursive style with a large, stylized 'J' and 'M'.

Be safe.

Joseph F. Marek, PE, PTOE
Transportation Safety Program Manager
Clackamas County Department of Transportation and Development

C: County Counsel, Dave Morrissey – ODOT, Capt. Shane Strangfield – CCSO, Steve Williams –
Clackamas County ADA Coordinator

October 6, 2020

John Andersson
15178 S Carus Road
Beavercreek, OR 97004

Dear Mr. Andersson,

You submitted a letter dated August 20, 2020 requesting an ADA evaluation for using a Yamaha All-Terrain-Vehicle (ATV) as a mobility device on roads in Clackamas County. Clackamas County has completed the requested review. Clackamas County Department of Transportation and Development has a goal under our ADA Transition Plan to provide equal and safe accommodation for all transportation system users. Our ADA Coordinator and County Counsel have been assisting me with this response.

Your request pertains to use of a Yamaha ATV, Serial Number JY43GG0361C027858, on public roads as an ADA mobility device. As you have pointed out, there are a few sections within the Code of Federal Regulations (CFR's) that pertain to this question and they are listed below:

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.”*

Below, you will find a summary of our analysis related to the statements above.

Denial of the Benefit of Services

As an initial matter, County staff generally agree with you that access to roads in Clackamas County is covered under the regulations and you may not be denied access to such roads as a result of a disability. That being said, County staff understand that that you do possess a valid Oregon driver’s license and access to a street-legal vehicle. Accordingly, you already have meaningful access to the County’s road system, and for the specific reasons that follow, your street-legal vehicle is the transport mode that is the safest for all users under the circumstances. Since you are able to access the County’s road system with a street-legal vehicle, County staff find that continuing to prohibit the use of a Yamaha ATV on public roads as an ADA mobility device does not deny you the benefit of the use of the public road system in Clackamas County, and no modification to those standards is warranted under the circumstances. If we have misunderstood or mischaracterized your situation, please let us know.

Even if the use of the Yamaha ATV on public roads as an ADA mobility device is your preferred means of accessing the public road system in Clackamas County, or even if a more compelling case can be made that this proposed modification is reasonable under the circumstances, for the reasons that follow,

County staff believe that your proposed use of the Yamaha ATV cannot be operated in accordance with legitimate safety requirements and would result in a “direct threat” to the safety of others.

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, however, they are intended for crossing highways, primarily as related to farming operations.

Manufacturer Warnings for a Yamaha ATV

Additionally, off-highway vehicles such as a Yamaha ATV have very specific warnings about highway use, for example, based on the VIN for your 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.” 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. 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

While you did not specify certain roads that you were using this off-highway vehicle on, I have examined several different roads in your area of residence based on risks as described in 28 CFR 35.139. Table 1 shows a list of a few different roads with their name, posted speeds, functional class, and shoulder width.

ROAD NAME	SEGMENT	FUNCTIONAL CLASSIFICATION	POSTED SPEED LIMIT (MPH)	Average Daily Traffic (2018) (veh/day)	SHOULDER WIDTH (feet)	CRASH RATE (crashes/million vehicle miles traveled)	CRASH RATE STATE AVG. (crashes/million veh. miles traveled)
Beavercreek Road	Leland - Spangler	Major Arterial	35/45/55	9,500	0-6'	0.58	0.79
Carus Road	Beavercreek Rd – Hwy 213	Collector	55	500	0-3	4.63	1.59
Spangler Road	Beavercreek Road-Hwy 213	Minor Arterial	55	1,000	0-4	1.13	1.17
Kamrath Road	Spangler Rd – Beavercrk Rd	Collector	45/55	1,500	0-4	3.36	1.59

All of these roadways 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 Street Legal Vehicles

Factors that the County considered for assessing the risk for you and other users in this case included:

- Posted Speed of Roadway
- Average Daily Traffic Volume
- Horizontal and vertical road geometry
- Shoulder width
- Speed differentials between the Off-Highway vehicle and street-legal vehicles
- Weight difference between the off-highway vehicle and street legal vehicles
- Crash Rate

Roadways in your 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 Yamaha ATV is used on the roads in your area of residence, it will 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 this off-highway vehicle 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 off-highway vehicle and the person(s) in the street-legal vehicles. A common example includes a roadway with undulating vertical alignment where the off-highway vehicle may be out of sight at the bottom of a hill and a street-legal 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 street-legal 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 the off-highway vehicle and a street legal vehicle. For example, a Yamaha Banshee weighs approximately 412 pounds. Street legal 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 an ATV would very likely result in a fatality given the weight difference and lack of occupant protection.

In this particular case, the mobility device, a Yamaha Banshee, was not designed by the manufacturer for on-road use and is deemed not safe for operation on public roads per the operator's manual, not even on a graveled surface. As a result, the County does not see any options to provide for the safe operation of this off-road vehicle on the county roads unless a dirt shoulder area adjacent to each road permitted for use was constructed. While less than a gravel shoulder at \$700,000 per mile minus right-of-way purchase, providing this would be very expensive. Based on the County's evaluation, we do not see a feasible way to provide accommodation for the use of the off-highway vehicle because of cost to the County and impacts to adjacent properties.

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 examined 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, also factor that can make seeing large slow moving vehicles, such as a John Deere Gator more difficult.

Conclusions

Clackamas County is committed to provide reasonable access under our ADA Transition Plan. The public roadway network is open to all with a shared responsibility for all. As part of the County's role in operating a roadway system, safety is of paramount importance as everyone deserves to get home safely to their family every night. Based on the County's review of your request and subsequent evaluation, we cannot approve your request for use of a Yamaha ATV or similar off-highway vehicle for use on County-owned roadways for the reasons summarized above.

Please let me know if you have any questions.

A handwritten signature in black ink that reads "Joseph F. Marek". The signature is written in a cursive style with a large initial "J" and "M".

Be safe.

Joseph F. Marek, PE, PTOE
Transportation Safety Program Manager
Clackamas County Department of Transportation and Development

C: County Counsel, Dave Morrissey – ODOT, Capt. Shane Strangfield – CCSO, Steve Williams – Clackamas County ADA Coordinator

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS
ADA GRIEVANCE HEARING**

February 3, 2021 10:00 AM
Board Hearing Room – 4th Floor, Public Services Building
2051 Kaen Rd., Oregon City, OR 97045

Clackamas County is abiding by social distancing requirements during the coronavirus pandemic. In addition to an in-person hearing at the location indicated above, this public hearing will also be conducted virtually using the Zoom platform. The Zoom link to the public hearing and details on how to observe and testify online or by telephone are available on our website: www.clackamas.us/bcc. This item is specifically listed under the “Weekly Schedule” section of that site.

All interested parties are invited to “attend” the hearing in-person, online or by telephone and will be provided with an opportunity to testify orally, if they so choose. Materials associated with this hearing may be viewed online at www.clackamas.us/bcc (under “Weekly Schedule”).

Please direct all questions and correspondence to the staff member listed below.

AMERICANS WITH DISABILITIES ACT GRIEVANCE HEARING

Complainant: John Andersson

Proposal: The complainant requests that the County allow him to operate a John Deere Gator Utility Vehicle and a Yamaha Banshee All-Terrain Vehicle as mobility devices on public roads under the County’s jurisdiction.

HOW TO OBTAIN ADDITIONAL INFORMATION

Staff Contact:

Martine Coblenz, Clackamas County ADA Title II Compliance Officer
503-655-8579, MCoblenz@clackamas.us

A copy of the initial decision of the Clackamas County Department of Transportation and Development, the request, and all documents and evidence submitted by or on behalf of the complainant. Hard copies of documents will be provided at a reasonable cost. You may view or obtain these materials:

1. By emailing or calling the staff contact, or
2. By going online at www.clackamas.us/bcc. This item is specifically listed under the “Weekly Schedule” section of that site.

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at least three (3) business days before the meeting at 503-655-8579 or email MCoblenz@clackamas.us.

¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?

HOW TO SUBMIT TESTIMONY ON THIS APPLICATION

- All interested parties are invited to attend the hearing in-person, remotely online or by telephone through the Zoom platform and will be provided with an opportunity to testify orally, if they so choose.
- One week prior to the hearing, specific instructions on how to attend the meeting through Zoom will be available online at www.clackamas.us/bcc (under “Weekly Schedule”).
- Written testimony received prior to the close of the record on this matter will be provided to the Board of County Commissioners for consideration. Please note that the record may close as soon as the conclusion of the public hearing or later, as determined by the Board.
- Written testimony may be submitted by email, fax or regular mail. Please indicate on all correspondence that the testimony relates to the ADA Grievance Hearing and address written testimony to the staff contact who is handling this matter.
- Written notice of the Board’s decision will be mailed to you if you submit oral or written testimony or send the staff contact a written request, with a valid mailing address, to be sent a notice of the decision.

PROCEDURE FOR THE CONDUCT OF THE HEARING

The hearing will be conducted by the Board of County Commissioners. To allow an orderly hearing, you should expect the following:

1. The length of time given to individuals speaking for or against an item will be determined by the Chair of the Board of County Commissioners prior to the item being considered.
2. The hearing will begin with a presentation from County staff. The complainant will then have an opportunity to address the Board. Finally, others in attendance that wish to testify will have an opportunity to do so.
3. Prior to the conclusion of the hearing, any participant may request an opportunity to present additional evidence, argument or testimony regarding the application. The Board will then decide whether to continue the hearing or leave the record open for additional written evidence, argument or testimony.
4. The Board will either render an oral decision at the hearing or make a decision at a later date in the event the hearing is continued or the record is left open. Once a decision is made, the Board may direct staff to draft an order and findings implementing its decision, to be adopted at a later date.

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at least three (3) business days before the meeting at 503-655-8579 or email MCoblentz@clackamas.us.

¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?

RECORD

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Claimant: *John Andersson*

Responding Department: DTD – Joseph Marek
Equity and Inclusion Office – Martine Coblenz

Re: Record for Appeal to Board of Commissioners

Issue: Whether an ATV can be used on county roads for ADA purposes

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20	May 28, 2020	Email chain: From Marek to Andersson Email: From Andersson to Marek re: assessment of John Deere gator under ADA	Joseph Marek
21	May 29, 2020	Email chain: From Marek to Andersson – starting to work on assessment. Andersson does not need to fill out additional paperwork	Joseph Marek
22	June 1, 2020	Ltr: From Andersson – Request assessment of a mobility device under civil rights ADA law: Forwarded message from ODOT’s David Morrissey	John Andersson
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25	June 17, 2020 June 16, 2020	Email chain: Marek to Andersson re: Update on DTD assessment Email: From Andersson to Marek – Asking for update	Joseph Marek
26	June 22, 2020	Email: From Marek to Andersson – update on ADA Assessment request	Joseph Marek
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Use of Other Power-Driven Mobility Devices (OPDMD) Under the Americans with Disabilities Act (ADA) in Clackamas County

Summary of Inquiry

On November 15, 2019, a customer living in rural Clackamas County and who is engaged in farming contacted ODOT's Office of Civil Rights ADA Program. He uses a gas powered John Deere Gator XUV (a type of ATV under Oregon statute) as his mobility device to work on his farm and to access neighboring farms and other county locations. A local sheriff's deputy had told him that the ATV is not a street legal vehicle and to stop using it on the county highway where the speed limit is 55 mph. Customer also sought guidance from Oregon State Police by telephone and was given information he believes is inconsistent with what he was told by the local sheriff's deputy. Customer requests statewide policy clarity to be developed and communicated to local jurisdictions. Customer references federal disability access guidance as well as Oregon statutes addressing use of disability golf carts and slow agricultural vehicles as potentially relevant for analyzing this situation. Customer is a licensed driver and does use standard on-highway permitted vehicles in addition to the ATV.

Summary of Resolution

ODOT's Office of Civil Rights ADA Program has assembled an **Alternative Mobility Devices working group** to explore the potential for developing statewide uniform guidance on the application of Other Power-Driven Mobility Devices (OPDMD) on Oregon roadways. Developing statewide guidance will require time and the involvement of multiple technical units within ODOT, such as the Traffic/Roadway Division, Motor Vehicle Division, and the Safety Division, as well as external liaisons to other Oregon departments such as law enforcement agencies and other road authorities. This effort is anticipated to be ongoing through 2020.

On the specific case of the use of the ATV on Clackamas County roads and highways, ODOT cites federal guidance for an assessment of the situation based on five key factors, as described below under regulation **35.137**, to be conducted by the agency of jurisdiction (Clackamas County Transportation and Development Department). As the roads described by the customer are NOT within the state highway system, **jurisdictional authority is with Clackamas County**. Below, ODOT provides referral information to the county's Transportation and Development Department to analyze their specific situation. Customer has not consented to allow ODOT to reveal their personal identifiable information to agencies external to ODOT.

Regulatory Analysis

Disability Golf Cart Permit Statutes – Not applicable. Golf cart (ORS 801.295) and Class IV all-terrain vehicle (ORS 801.194) are defined separately in Oregon Revised Statutes, with specific laws and exemptions related to each vehicle, transportation facility, and use. Maintained roads in Clackamas County's system, with a posted speed being above 25 miles per hour, do not qualify for golf cart use under the disability golf cart permit statutes. Additionally, the customer is qualified for a driver license and has access to vehicles legally permitted to operate on Oregon highways which meet the State

vehicle safety equipment requirements and do not create safety hazards including but not limited to speed differential safety issues, Federal Motor Vehicle Safety Standard equipment requirements, and Federal Environmental Protection Agency/ Oregon Department of Environmental Quality pollution standard requirements for on-highway vehicles.

Farm Use Statutes – Not applicable. Customers stated use does not fall within farm use exemption parameters related to accepted farming or forest practices (ORS 30.930). “Farming Practices” is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money or may become a generally accepted, reasonable and prudent method in conjunction with farm use. Permitted “Forest Practices” include, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, pre-commercial thinning, release, fertilization, animal damage control and insect and disease control. Typically, ATV use in farming entails travel within the farm property (field to field), herbicide applications, and pulling implements such as seeders or compactors. The farm use exemption is intended to facilitate farm or forest operations. Operation of an ATV on a public highway not directly related to a farming or forest activity, such as travelling to the store, is not subject to the farm use exemption. Non-exempt use of an ATV on public roadways may be subject to unlawful operation citation, as described in the follow section.

Unlawful Operation Statute – Applicable under ORS 821.190. As understood by information shared by the customer regarding their use of the ATV on Clackamas County roads, the customer may be subject to being cited and convicted under the following Oregon Revised Statute (relevant sections cited here; full statutory language appears in the annex to this report (page 9):

ORS 821.190 Unlawful operation of snowmobile or all-terrain vehicle on highway or railroad:

(1) A person commits the offense of unlawful operation of an off-road vehicle on a highway or railroad if the person operates a vehicle described in subsection (2) of this section in any of the following described areas:

- a. **On or across the paved portion, the shoulder, inside bank or slope of any highway, on or across the median of any divided highway or on or across any portion of a highway right of way under construction.**

(5) The offense described in this section, unlawful operation of an off-road vehicle on a highway or railroad, is a Class B traffic violation.

Federal ADA Guidance for Local Governments – Applicable under *Americans with Disabilities Act Title II Regulations Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services*.

§ 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).

§ 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.

In summary, **assessment of the exact facility (roadway) for use with a non-compliant on-highway vehicle must be performed by the public agency of jurisdiction** (Clackamas County Transportation and Development Department; contact information below). **Customer must contact Clackamas County directly or through submission of ADA Grievance Form (link below) for review and consideration for determination if use of non-compliant vehicle will be accommodated based on individual circumstances/conditions and highway/facility specific assessment.**

Customer should contact Clackamas County Transportation and Development Department and request assessment as described above in federal regulation 35.137 if they seek to continue to use the ATV on Clackamas County roads to avoid receiving a citation and possible conviction for illegal use of ATV on a highway.

Additional Comment

Customer may want to contact his attorney and/or insurance agent to determine personal liability assumed in the event of a crash while using ATV on a public highway without having completed the Clackamas County ADA Grievance process and securing permission to use his ATV on a Clackamas county road(s) in lieu of use of an on-highway compliant vehicle when involved in non-farm/forest activities on a public highway.

Referral to Local Jurisdiction

1. Clackamas County Road Authority contact with knowledge/awareness of ADA Transportation Access Evaluation/Compliance:

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
JoeMar@clackamas.us
Clackamas County Department of Transportation and Development
Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
503.742.4705 | 503.742.4659
<https://www.clackamas.us/transportation>

2. Clackamas County Transportation ADA Program:

ADA Coordinator Mr. Steve Williams
swilliams@clackamas.us
Department of Transportation & Development ADA Coordinator
Development Services Building
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4696
ADA Program - <https://www.clackamas.us/transportation/ada.html>
ADA Grievance webpage - <https://www.clackamas.us/transportation/adagrievance.html>

3. Clackamas County Sheriff's Office:

Contact: Captain Shane Strangfield – Patrol Division
Directory Non-emergency phone number- 503-785-5000
Traffic Unit - <https://www.clackamas.us/sheriff/traffic.html>
Patrol Unit - <https://www.clackamas.us/sheriff/patrol.html>

ODOT Contact Information

David Morrissey
Title VI, ADA, and Environmental Justice Program Manager
ODOT Office of Civil Rights
3930 Fairview Industrial Drive SE
Salem, OR 97302
(503) 986-3870 (desk line)
(503) 979-5827 (mobile)
(503) 986-4350 (Office of Civil Rights mainline)

ANNEX

FOR REFERENCE: Oregon Revised Statutes/Oregon Administrative Rules

https://www.oregonlegislature.gov/bills_laws/ors/ors801.html

801.190 “Class I all-terrain vehicle.” “Class I all-terrain vehicle” means a motorized, off-highway recreational vehicle that:

- (1) Is 50 inches or less in width;
- (2) Has a dry weight of 1,200 pounds or less;
- (3) Travels on three or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less;
- (4) Uses handlebars for steering;
- (5) Has a seat designed to be straddled for the operator; and
- (6) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain. [1985 c.459 §2; 1995 c.775 §9; 1997 c.228 §1; 2011 c.360 §1]

801.193 “Class II all-terrain vehicle.” “Class II all-terrain vehicle” means any motor vehicle that:

- (1) Weighs more than or is wider than a Class I all-terrain vehicle;
- (2) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain;
- (3) Is actually being operated off a highway or is being operated on a highway for agricultural purposes under ORS 821.191; and
- (4) Is not a Class IV all-terrain vehicle. [1987 c.587 §2; 2005 c.227 §1; 2007 c.207 §1; 2011 c.360 §2]

801.194 “Class III all-terrain vehicle” and “Class IV all-terrain vehicle.” (1) “Class III all-terrain vehicle” means a motorcycle that travels on two tires and that is actually being operated off highway.

- (2) “Class IV all-terrain vehicle” means any motorized vehicle that:
 - (a) Travels on four or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less;
 - (b) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain;
 - (c) Has nonstraddle seating;
 - (d) Has a steering wheel for steering control;
 - (e) Has a dry weight of 2,500 pounds or less; and
 - (f) Is 80 inches wide or less at its widest point. [1989 c.991 §2; 2011 c.360 §3; subsection (2) of 2011 Edition enacted as 2011 c.360 §5; 2019 c.491 §4]

801.295 “Golf cart.” “Golf cart” means a motor vehicle that:

- (1) Has not less than three wheels in contact with the ground;

- (2) Has an unloaded weight less than 1,300 pounds;
 - (3) Is designed to be and is operated at not more than 15 miles per hour; and
 - (4) Is designed to carry golf equipment and not more than two persons, including the driver.
- [1983 c.338 §49]

https://www.oregonlegislature.gov/bills_laws/ors/ors030.html

FARMING AND FOREST PRACTICES

30.930 Definitions for ORS 30.930 to 30.947. As used in ORS 30.930 to 30.947:

(1) “Farm” means any facility, including the land, buildings, watercourses and appurtenances thereto, used in the commercial production of crops, nursery stock, livestock, poultry, livestock products, poultry products, vermiculture products or the propagation and raising of nursery stock.

(2) “Farming practice” means a mode of operation on a farm that:

(a) Is or may be used on a farm of a similar nature;

(b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;

(c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;

(d) Complies with applicable laws; and

(e) Is done in a reasonable and prudent manner.

(3) “Forestland” means land that is used for the growing and harvesting of forest tree species.

(4) “Forest practice” means a mode of operation on forestland that:

(a) Is or may be used on forestland of similar nature;

(b) Is a generally accepted, reasonable and prudent method of complying with ORS 527.610 to 527.770 and the rules adopted pursuant thereto;

(c) Is or may become a generally accepted, reasonable and prudent method in conjunction with forestland;

(d) Complies with applicable laws;

(e) Is done in a reasonable and prudent manner; and

(f) May include, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control.

(5) “Pesticide” has the meaning given that term in ORS 634.006. [1981 c.716 §1; 1983 c.730 §1; 1993 c.792 §32; 1995 c.703 §1; 2005 c.657 §2]

30.931 Transport or movement of equipment, device, vehicle or livestock as farming or forest practice. Notwithstanding ORS 30.930, if the activities are conducted in a reasonable and prudent manner, the transport or movement of any equipment, device or vehicle used in conjunction with a farming practice or a forest practice on a public road or movement of livestock on a public road is a farming or forest practice under ORS 30.930 to 30.947. [1995 c.703 §9]

821.055 Operation of all-terrain vehicles on certain highways. Notwithstanding ORS 821.020, or any law requiring that vehicles be equipped in specified ways in order to operate on highways, a person may operate Class I, Class II, Class III and Class IV all-terrain vehicles on any highway in this state that is open to the public if:

(1) The highway is not maintained for passenger car traffic.

(2) The person is on or crossing a portion of highway right of way as permitted under ORS 821.200.

(3) The person is on an all-terrain vehicle highway access route that is designated by the Oregon Transportation Commission as open to all-terrain vehicles. [1995 c.775 §8; 2011 c.360 §21; 2017 c.453 §4]

821.170 Operation of Class I all-terrain vehicle without driving privileges; exemptions; penalty. (1) A person 16 years of age or older commits the offense of operation of a Class I all-terrain vehicle without driving privileges if the person operates a Class I all-terrain vehicle on public lands and the person does not hold a valid Class I all-terrain vehicle operator permit issued under ORS 390.570.

(2) A child under 16 years of age commits the offense of operation of a Class I all-terrain vehicle without driving privileges if the child operates a Class I all-terrain vehicle on public lands and the child does not meet all the following conditions:

(a) The child must be accompanied by a person who is at least 18 years of age, holds a valid all-terrain vehicle operator permit issued under ORS 390.570, 390.575 or 390.577 and is able to provide immediate assistance and direction to the child.

(b) The child must hold a valid Class I all-terrain vehicle operator permit issued under ORS 390.570.

(c) The child must meet rider fit guidelines established by the State Parks and Recreation Department under ORS 390.585.

(3) This section does not apply if the all-terrain vehicle is:

(a) Used exclusively in farming, agricultural or forestry operations or used by persons licensed under ORS chapter 571 exclusively for nursery or Christmas tree growing operations; and

(b) Being used on land owned or leased by the owner of the vehicle.

(4) The offense described in this section, operation of Class I all-terrain vehicle without driving privileges, is a Class C traffic violation. [1985 c.459 §17; 1987 c.158 §175; 1995 c.383 §110; 1999 c.977 §24; 2007 c.887 §1; 2011 c.360 §22a]

821.172 Operation of Class III all-terrain vehicle without driving privileges; exemptions; penalty. (1) A person 16 years of age or older commits the offense of operation of a Class III all-terrain vehicle without driving privileges if the person operates a Class III all-terrain vehicle on public lands and the person does not hold a valid Class III all-terrain vehicle operator permit issued under ORS 390.575.

(2) A child under 16 years of age commits the offense of operation of a Class III all-terrain vehicle without driving privileges if the child operates a Class III all-terrain vehicle on public lands and the child does not meet all the following conditions:

(a) The child must be accompanied by a person who is at least 18 years of age, holds a valid all-terrain vehicle operator permit issued under ORS 390.570, 390.575 or 390.577 and is able to provide immediate assistance and direction to the child.

(b) The child must hold a valid Class III all-terrain vehicle operator permit issued under ORS 390.575.

(3) A child under seven years of age may not operate a Class III all-terrain vehicle on public lands.

(4) This section does not apply if the all-terrain vehicle is:

(a) Used exclusively in farming, agricultural or forestry operations or used by persons licensed under ORS chapter 571 exclusively for nursery or Christmas tree growing operations; and

(b) Being used on land owned or leased by the owner of the vehicle.

(5) The offense described in this section, operation of a Class III all-terrain vehicle without driving privileges, is a Class C traffic violation. [1995 c.774 §2; 1999 c.977 §25; 2007 c.887 §2; 2011 c.360 §22b]

821.174 Prohibition on operating Class I, Class III or Class IV all-terrain vehicle while driving privileges suspended. Notwithstanding any other provision of law, a person may not operate a Class I, Class III or Class IV all-terrain vehicle while the person's driving privileges are suspended or revoked. A person who violates this section is in violation of ORS 811.175 or 811.182, as appropriate. [1995 c.775 §7; 2011 c.360 §23]

Note: 821.174 was added to and made a part of ORS chapter 821 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

821.175 [1987 c.587 §6; 1989 c.661 §3; 1989 c.991 §11a; 1995 c.774 §4; renumbered 821.195 in 1995]

821.176 Operation of Class IV all-terrain vehicle without driving privileges; exemptions; penalty. (1) A person commits the offense of operation of a Class IV all-terrain vehicle without driving privileges if the person operates a Class IV all-terrain vehicle on public lands and the person does not hold a valid driver license issued under ORS 807.040.

(2) This section does not apply to a child under the age of 16 if:

(a) The child's age complies with the manufacturer's minimum age recommendation as evidenced by the manufacturer's warning label affixed to the vehicle;

(b) The child is accompanied by a person who is at least 18 years of age, who holds a valid all-terrain vehicle operator permit issued under ORS 390.570, 390.575 or 390.577 and who is able to provide immediate assistance and direction to the child; and

(c) The child holds a Class IV all-terrain vehicle operator permit issued under ORS 390.577.

(3) This section does not apply if:

(a) The vehicle is used exclusively in farming, agricultural or forestry operations or used by persons licensed under ORS chapter 571 exclusively for nursery or Christmas tree growing operations; or

(b) The vehicle is being used on land owned or leased by the owner of the vehicle.

(4) The offense described in this section, operation of a Class IV all-terrain vehicle without driving privileges, is a Class C traffic violation. [2011 c.360 §6]

Note: 821.176 was added to and made a part of the Oregon Vehicle Code by legislative action but was not added to ORS chapter 821 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

821.180 [1985 c.459 §18; repealed by 1999 c.977 §38]

821.182 [1995 c.774 §3; repealed by 1999 c.977 §38]

821.185 [1987 c.587 §§4,5; 1989 c.661 §1; 1993 c.751 §105; 1995 c.774 §5; renumbered 821.145 in 1995]

(Offenses)

821.190 Unlawful operation of snowmobile or all-terrain vehicle on highway or railroad; civil liability; penalty.

(1) A person commits the offense of unlawful operation of an off-road vehicle on a highway or railroad if the person operates a vehicle described in subsection (2) of this section in any of the following described areas:

(a) On or across the paved portion, the shoulder, inside bank or slope of any highway, on or across the median of any divided highway or on or across any portion of a highway right of way under construction.

(b) On or across a railroad right of way.

(2) This section applies to:

(a) Snowmobiles.

(b) Class I all-terrain vehicles.

(c) Class II all-terrain vehicles that are not properly equipped for operation on a highway.

(d) Class III all-terrain vehicles.

(e) Class IV all-terrain vehicles.

(3) Exemptions from this section are established under ORS 821.055 and 821.200.

(4) In addition to penalties provided by this section, the operator or owner of a snowmobile or Class I, Class II, Class III or Class IV all-terrain vehicle may be liable as provided under ORS 821.310.

(5) The offense described in this section, unlawful operation of an off-road vehicle on a highway or railroad, is a Class B traffic violation. [1985 c.72 §2; 1985 c.459 §28 (enacted in lieu of 1983 c.338 §§724,725,726); 1989 c.991 §12; 1995 c.383 §111; 1999 c.372 §1; 2011 c.360 §24; 2017 c.453 §1]

821.191 Operation of Class I, Class II or Class IV all-terrain vehicle on highway; unlawful operation of Class I, Class II or Class IV all-terrain vehicle used for agricultural

purposes; penalty. (1) Notwithstanding any other provision of law, a person may operate a Class I, Class II or Class IV all-terrain vehicle that is not otherwise properly equipped for operation on a highway on the highways of this state if:

(a) The person is using the all-terrain vehicle for transportation between ranching or farming headquarters, agricultural fields or pastures;

(b) The person holds a valid driver license;

(c) The person complies with posted speed limits, but in no event exceeds a speed of 20 miles per hour;

(d) The person operates the all-terrain vehicle as closely as is practicable to the right-hand edge of the highway, including shoulders, if any;

(e) The all-terrain vehicle is equipped with a lighted headlight and taillight; and

(f) The all-terrain vehicle displays a slow-moving vehicle emblem described under ORS 815.060.

(2) A person commits the offense of unlawful operation of a Class I, Class II or Class IV all-terrain vehicle used for agricultural purposes if the person operates a Class I, Class II or Class IV all-terrain vehicle on a highway in violation of subsection (1) of this section.

(3) The offense described in subsection (2) of this section, unlawful operation of a Class I, Class II or Class IV all-terrain vehicle used for agricultural purposes, is a Class D traffic violation. [2001 c.529 §§2,3; 2007 c.207 §2; 2011 c.360 §25]

Note: 821.191 was added to and made a part of ORS chapter 821 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

821.192 Operating all-terrain vehicle in violation of posted restrictions. (1) A person commits the offense of operating an all-terrain vehicle in violation of posted restrictions if the person operates an all-terrain vehicle on public lands at a time when the lands are closed to all-terrain vehicles or operation of the vehicles is otherwise restricted, and notice of the restrictions has been posted by an agency with jurisdiction to impose the restrictions.

(2) The offense described in this section, operating an all-terrain vehicle in violation of posted restrictions, is a Class B traffic violation. [1999 c.565 §2]

821.195 Operation of all-terrain vehicle without permit and decal; exemptions; penalty. (1) A person commits the offense of operating an all-terrain vehicle without a permit and a decal if the person operates an all-terrain vehicle without a permit and a decal in an area or on a trail designated by the appropriate authority as open to all-terrain vehicles only if they have permits and decals.

(2) This section does not apply to:

(a) An all-terrain vehicle owned and operated by a resident of another state if the other state grants a similar exemption for all-terrain vehicles owned and operated by residents of Oregon and if the vehicle has not been operated in this state for more than 60 consecutive days; or

(b) An all-terrain vehicle owned and operated by the United States, this state or any other state or any political subdivision of the United States or of a state.

(3) The offense described in this section, operating an all-terrain vehicle without a permit and a decal, is a Class C traffic violation. [Formerly 821.175; 1999 c.977 §35]

Note: 821.195 was added to and made a part of ORS chapter 821 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

821.200 Exemptions from general prohibition on operating on highway or railroad. This section establishes exemptions from the limitations placed on the use of snowmobiles and all-terrain vehicles under ORS 821.190. The prohibitions and penalties under ORS 821.190 do not apply when a snowmobile or all-terrain vehicle that qualifies for the exemption from equipment requirements under ORS 821.010 is being operated as described under any of the following:

(1) A person may lawfully cross a highway or railroad right of way while operating a snowmobile or all-terrain vehicle if the person complies with all of the following:

(a) The crossing must be made at an angle of approximately 90 degrees to the direction of the highway or railroad right of way.

(b) The crossing must be made at a place where no obstruction prevents a quick and safe crossing.

(c) The vehicle must be brought to a complete stop before entering the highway or railroad right of way.

(d) The operator of the vehicle must yield the right of way to vehicles using the highway or equipment using the railroad tracks.

(e) The crossing of a railroad right of way must be made at an established public railroad crossing.

(f) The crossing of a highway must be made at a highway intersection or at a place that is more than 100 feet from any highway intersection.

(g) If the operator of a snowmobile is under 12 years of age, a person who is 18 years of age or older must accompany the operator either as a passenger or as the operator of another snowmobile that is in proximity to the younger operator.

(2) A snowmobile or all-terrain vehicle may be lawfully operated upon a highway under any of the following circumstances:

(a) Where the highway is completely covered with snow or ice and has been closed to motor vehicle traffic during winter months.

(b) For purposes of loading or unloading when such operation is performed with safety and without causing a hazard to vehicular traffic approaching from either direction on the highway.

(c) Where the highway is posted to permit snowmobiles or all-terrain vehicles.

(d) In an emergency during the period of time when and at locations where snow upon the highway renders travel by automobile impractical.

(e) When traveling along a designated snowmobile or all-terrain vehicle trail.

(3) It shall be lawful to operate a snowmobile or all-terrain vehicle upon a railroad right of way under any of the following circumstances:

(a) Where the right of way is posted to permit the operation.

(b) In an emergency.

(c) When the snowmobile or all-terrain vehicle is operated by an officer or employee or authorized contractor or agent of a railroad. [1983 c.338 §727; 1985 c.72 §3; 1985 c.459 §29; 1989 c.991 §13; 1999 c.372 §2; 1999 c.565 §5; 2007 c.887 §3; 2017 c.453 §2]

821.202 Failure of all-terrain vehicle rider to wear motorcycle helmet; penalty. (1) A person commits the offense of failure of an all-terrain vehicle operator or passenger to wear a motorcycle helmet if:

(a) The person is under 18 years of age, operates or rides on a Class I, Class II, Class III or Class IV all-terrain vehicle on premises open to the public or on a highway and is not wearing a motorcycle helmet with a fastened chin strap; or

(b) The person is 18 years of age or older, operates or rides on a Class I or Class III all-terrain vehicle on an all-terrain vehicle highway access route that is designated by the Oregon Transportation Commission as open to all-terrain vehicles and is not wearing a motorcycle helmet with a fastened chin strap.

(2) The requirement to wear a motorcycle helmet with a fastened chin strap does not apply if the all-terrain vehicle is:

(a) Used exclusively in farming, agricultural or forestry operations or used by persons licensed under ORS chapter 571 exclusively for nursery or Christmas tree growing operations.

(b) Being used on land owned or leased by the owner of the vehicle.

(c) A Class II all-terrain vehicle registered under ORS 803.420 and has a roof or roll bar.

(3) The offense described in this section, failure of an all-terrain vehicle operator or passenger to wear a motorcycle helmet, is a Class D traffic violation. [1995 c.775 §§2,10; 2007 c.887 §3a; 2009 c.452 §1; 2011 c.360 §26; 2017 c.453 §10]

821.203 Endangering all-terrain vehicle operator or passenger; penalty. (1) A person commits the offense of endangering an all-terrain vehicle operator or passenger if:

(a) The person is operating a Class I, Class II, Class III or Class IV all-terrain vehicle on premises open to the public or on a highway and the person carries another person on the Class I, Class II, Class III or Class IV all-terrain vehicle who is under 18 years of age and is not wearing a motorcycle helmet with a fastened chin strap; or

(b) The person is the parent, legal guardian or person with legal responsibility for the safety and welfare of a child under 18 years of age and the child operates or rides on a Class I, Class II, Class III or Class IV all-terrain vehicle on premises open to the public or on a highway without wearing a motorcycle helmet with a fastened chin strap.

(2) The requirement to wear a motorcycle helmet with a fastened chin strap does not apply if the all-terrain vehicle is:

(a) Used exclusively in farming, agricultural or forestry operations or used by persons licensed under ORS chapter 571 exclusively for nursery or Christmas tree growing operations.

(b) Being used on land owned or leased by the owner of the vehicle.

(c) A Class II all-terrain vehicle registered under ORS 803.420 and has a roof or roll bar.

(3) The offense described in this section, endangering an all-terrain vehicle operator or passenger, is a Class D traffic violation. [1995 c.775 §§3,11; 2007 c.887 §3b; 2009 c.452 §2; 2011 c.360 §27; 2017 c.453 §11]

821.204 Issuance of citation for violation of ORS 821.202 or 821.203. (1) If a child who is in violation of ORS 821.202 is 11 years of age or younger, any citation issued shall be issued to the parent, legal guardian or person with legal responsibility for the safety and welfare of the child for violation of ORS 821.203, rather than to the child for violation of ORS 821.202.

(2) If a child who is in violation of ORS 821.202 is at least 12 years of age and is under 18 years of age, a citation may be issued to the child for violation of ORS 821.202 or to the parent,

legal guardian or person with legal responsibility for the safety and welfare of the child for violation of ORS 821.203, but not to both. [1995 c.775 §4]

Disability Parking Permit application - <https://www.oregon.gov/odot/Forms/DMV/265fill.pdf>

807.210 Disability golf cart permit; fees. The Department of Transportation shall provide for issuance of disability golf cart driver permits in a manner consistent with this section. A disability golf cart driver permit grants the driving privileges provided in this section or under the permit. Except as otherwise provided in this section, a disability golf cart driver permit is subject to the fees, provisions, conditions, prohibitions and penalties applicable to a Class C license. The following apply to a disability golf cart driver permit:

(1) The department shall issue a disability golf cart driver permit only to persons with ambulatory disabilities.

(2) The department shall issue a disability golf cart driver permit to an applicant who would not qualify for a license because of the person's disability if the department determines that the person's disability does not prevent the person from reasonable and ordinary control of vehicles operated under the permit when operated as allowed under the permit.

(3) In addition to any other restrictions placed on the permit by the department, the permit only grants driving privileges for the operation of golf carts or substantially similar vehicles on roads or streets in an area with a speed designation not greater than 25 miles per hour.

(4) The department may require an applicant for the permit to demonstrate that the applicant is qualified to safely exercise the driving privileges granted under a disability golf cart driver permit notwithstanding the disability of the person.

(5) The fees for issuance or renewal of a disability golf cart driver permit are the disability golf cart driver permit issuance or renewal fees established under ORS 807.370. This subsection only affects the fees payable for issuance and renewal and is not an exemption from payment of other fees payable at the time of issuance and renewal of a license.

(6) A person with a disability golf cart driver permit who commits the offense of violation of license restrictions under ORS 807.010 by driving on a road or street in an area with a speed designation greater than 25 miles per hour commits a Class D traffic violation. [1983 c.338 §321; 1985 c.16 §139; 1985 c.608 §25; 1989 c.636 §26]

From: [Marek, Joe](#)
To: [John Andersson](#)
Subject: RE: Analysis and referral information on using Gator in Clackamas County
Date: Thursday, May 28, 2020 1:13:00 PM
Attachments: [ADA mobility device.pdf](#)
[image003.png](#)

Hi John,

I was good to meet you yesterday via telephone and discuss the question you have regarding the use of mobility devices on rural County roads. I attached a document from the US Department of Justice regarding mobility aids. I highlighted that section that I believe you were referring to in our conversation yesterday. We'll use this document as a starting point and, as I mentioned yesterday, will have our ADA Coordinator work on this. I'll keep you posted on our progress and may reach out to you if the County has any questions.

Thanks again for bringing this to our attention and let me know if you have any questions.

Be safe.

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
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TZDProud_Partner_Logo



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Thursday, May 28, 2020 10:46 AM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: Fwd: Analysis and referral information on using Gator in Clackamas County

Warning: External email. Be cautious opening attachments and links.

----- Forwarded message -----

From: "MORRISSEY David N" <David.N.MORRISSEY@odot.state.or.us>
Date: May 22, 2020 2:11 PM
Subject: Analysis and referral information on using Gator in Clackamas County
To: "John Andersson" <stellabridge1967@gmail.com>
Cc:

Hello Mr. Anderson,

Good to speak with you earlier today. Please find attached a report summarizing my analysis of the situation you contacted me about in November 2019 concerning your use of a John Deere Gator XUV (a type of ATV under Oregon statute) in Clackamas County under the ADA. I am happy to discuss the report by phone with you any time. In summary, as presented in the report:

1. ODOT's Office of Civil Rights ADA Program has assembled an Alternative Mobility Devices working group to explore the potential for developing statewide uniform guidance on the application of Other Power-Driven Mobility Devices (OPDMD) on Oregon roadways. Developing statewide guidance will require time and the involvement of multiple technical units within ODOT, such as the Traffic/Roadway Division, Motor Vehicle Division, and the Safety Division, as well as external liaisons to other Oregon departments such as law enforcement agencies and other road authorities. This effort is anticipated to be ongoing through 2020. I will be happy to keep you informed of the working group's outputs and status as the work proceeds.

2. On your specific case of the use of an OPDMD on Clackamas County roads and highways, ODOT cites federal guidance for an assessment of the situation based on five key factors, as described in the attached report, under **federal regulation 35.137**, to be conducted by the agency of jurisdiction (Clackamas County Transportation and Development Department). As I shared with you on our phone call, the roads you inquired about are not within the state highway system, and jurisdictional authority is with Clackamas County. Because you have not consented to allow ODOT to reveal your personal identifiable information to agencies external to ODOT, I will not be contacting Clackamas County with your personal contact information. Initiating contact with Clackamas County is your responsibility and I have provided referral information to the county on Page 4 of the attached report. As the report guides, you should contact Clackamas County Transportation and Development Department and request assessment as described in federal regulation 35.137 if you seek to continue to use the device on Clackamas County roads, to avoid receiving a citation and possible conviction for illegal use of an ATV on a highway.

I am happy to remain a resource to you on this matter.

Sincerely,

David Morrissey
Title VI/EJ/ADA Program Manager
(503) 986-3870 (desk)
(503) 979-5827 (mobile)

ODOT Office of Civil Rights – MS 23
[3930 Fairview Industrial Drive SE](#)
[Salem, OR 97302](#)



ADA Requirements **Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices**

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

People with mobility, circulatory, respiratory, or neurological disabilities use many kinds of devices for mobility. Some use walkers, canes, crutches, or braces. Some use manual or power wheelchairs or electric scooters. In addition, advances in technology have given rise to new devices, such as Segways[®], that some people with disabilities use as mobility devices, including many veterans injured while serving in the military. And more advanced devices will inevitably be invented, providing more mobility options for people with disabilities.

This publication is designed to help title II entities (State and local governments) and title III entities (businesses and non-profit organizations that serve the public) (together, "covered entities") understand how the new rules for mobility devices apply to them. These rules went into effect on March 15, 2011.

- Covered entities must allow people with disabilities who use manual or power wheelchairs or scooters, and manually-powered mobility aids such as walkers, crutches, and canes, into all areas where members of the public are allowed to go.
- Covered entities must also allow people with disabilities who use other types of power-driven mobility devices into their facilities, unless a particular type of device cannot be accommodated because of legitimate safety requirements. Where legitimate safety requirements bar accommodation for a particular type of device, the covered entity must provide the service it offers in alternate ways if possible.
- The rules set out five specific factors to consider in deciding whether or not a particular type of device can be accommodated.

Wheelchairs

Most people are familiar with the manual and power wheelchairs and electric scooters used by people with mobility disabilities. The term "wheelchair" is defined in the new rules 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."

Other Power-Driven Mobility Devices

In recent years, some people with mobility disabilities have begun using less traditional mobility devices such as golf cars or Segways[®]. These devices are called "other power-driven mobility device" (OPDMD) in the rule. OPDMD is defined in the new rules as "any mobility device powered by batteries, fuel, or other engines... that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices... such as the Segway[®] PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair". When an

OPDMD is being used by a person with a mobility disability, different rules apply under the ADA than when it is being used by a person without a disability

Choice of Device



People with disabilities have the right to choose whatever mobility device best suits their needs. For example, someone may choose to use a manual wheelchair rather than a power wheelchair because it enables her to maintain her upper body strength. Similarly, someone who is able to stand may choose to use a Segway® rather than a manual wheelchair because of the health benefits gained by standing. A facility may be required to allow a type of device that is generally prohibited when being used by someone without a disability when it is being used by a person who needs it because of a mobility disability. For example, if golf cars are generally prohibited in a park, the park may be required to allow a golf car when it is being used because of a person's mobility disability, unless there is a legitimate safety reason that it cannot be accommodated.

Requirements Regarding Mobility Devices and Aids

Under the new rules, covered entities must allow people with disabilities who use wheelchairs (including manual wheelchairs, power wheelchairs, and electric scooters) and manually-powered mobility aids such as walkers, crutches, canes, braces, and other similar devices into all areas of a facility where members of the public are allowed to go.



In addition, covered entities must allow people with disabilities who use any OPDMD to enter the premises unless a particular type of device cannot be accommodated because of legitimate safety requirements. Such safety requirements must be based on actual risks, not on speculation or stereotypes about a particular type of device or how it might be operated by people with disabilities using them.

For some facilities -- such as a hospital, a shopping mall, a large home improvement store with wide aisles, a public park, or an outdoor amusement park -- covered entities will likely determine that certain classes of OPDMDs being used by people with disabilities can be accommodated. These entities must allow people with disabilities using these types of OPDMDs into all areas where members of the public are allowed to go.

In some cases, even in facilities such as those described above, an OPDMD can be accommodated in some areas of a facility, but not in others because of legitimate safety concerns. For example, a cruise ship may decide that people with disabilities using Segways® can generally be accommodated, except in constricted areas, such as passageways to cabins that are very narrow and have low ceilings.

- For other facilities -- such as a small convenience store, or a small town manager's office -- covered entities may determine that certain classes of OPDMDs cannot be accommodated. In that case, they are still required to serve a person with a disability using one of these devices in an alternate manner if possible, such as providing curbside service or meeting the person at an alternate location.

Covered entities are encouraged to develop written policies specifying which kinds of OPDMDs will be permitted and where and when they will be permitted, based on the following assessment factors.

Assessment Factors

In deciding whether a particular type of OPDMD can be accommodated in a particular facility, the following factors must be considered:

- the type, size, weight, dimensions, and speed of the device;
- the facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

- the facility's design and operational characteristics (e.g., whether its business is conducted indoors or outdoors, its square footage, the density and placement of furniture and other stationary devices, and the availability of storage for the OPDMD if needed and requested by the user);
- whether legitimate safety requirements (such as limiting speed to the pace of pedestrian traffic or prohibiting use on escalators) can be established to permit the safe operation of the OPDMD in the specific facility; and
- 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.

It is important to understand that these assessment factors relate to an entire class of device type, **not** to how a person with a disability might operate the device. (See next topic for operational issues.) All types of devices powered by fuel or combustion engines, for example, may be excluded from indoor settings for health or environmental reasons, but may be deemed acceptable in some outdoor settings. Also, for safety reasons, larger electric devices such as golf cars may be excluded from narrow or crowded settings where there is no valid reason to exclude smaller electric devices like Segways®.

Based on these assessment factors, the Department of Justice expects that devices such as Segways® can be accommodated in most circumstances. The Department also expects that, in most circumstances, people with disabilities using ATVs and other combustion engine-driven devices may be prohibited indoors and in outdoor areas with heavy pedestrian traffic.

Policies on the Use of OPDMDs

In deciding whether a type of OPDMD can be accommodated, covered entities must consider all assessment factors and, where appropriate, should develop and publicize rules for people with disabilities using these devices. Such rules may include



- requiring the user to operate the device at the speed of pedestrian traffic;
- identifying specific locations, terms, or circumstances (if any) where the devices cannot be accommodated;
- setting out instructions for going through security screening machines if the device contains technology that could be harmed by the machine; and
- specifying whether or not storage is available for the device when it is not being used.

Credible Assurance



An entity that determines it can accommodate one or more types of OPDMDs in its facility is allowed to ask the person using the device to provide credible assurance that the device is used because of a disability. If the person presents a valid, State-issued disability parking placard or card or a State-issued proof of disability, that must be accepted as credible assurance on its face. If the person does not have this documentation, but states verbally that the OPDMD is being used because of a mobility disability, that also must be accepted as credible assurance, unless the person is observed doing something that contradicts the assurance. For example, if a person is observed running and jumping, that may be evidence that contradicts the person's assertion of a mobility disability. However, it is very important for covered entities and their staff to understand that the fact that a person with a disability is able to walk for a short distance does not necessarily contradict a verbal assurance -- many people with mobility disabilities can walk, but need their mobility device for longer distances or uneven terrain.



This is particularly true for people who lack stamina, have poor balance, or use mobility devices because of respiratory, cardiac, or neurological disabilities. A covered entity cannot ask people about their disabilities.

Staff Training

Ongoing staff training is essential to ensure that people with disabilities who use OPDMDs for mobility are not turned away or treated inappropriately. Training should include instruction on the types of OPDMDs that can be accommodated, the rules for obtaining credible assurance that the device is being used because of a disability, and the rules for operation of the devices within the facility.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Website

www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the [link](#) near the top of the middle column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m. , Th 12:30 p.m. – 5:30 p.m. (Eastern Time) to speak with an ADA Specialist.

All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. January 2014

The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.

[PDF Version of this Document](#)

Foreman, Sarah

From: Marek, Joe
Sent: Thursday, May 28, 2020 2:13 PM
To: John Andersson
Subject: RE: Other powerd mobility devices assessment request

Thanks John
I'll let you know if we have any questions.
Have a good day.
Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
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Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Thursday, May 28, 2020 1:56 PM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: Re: Other powerd mobility devices assessment request

Warning: External email. Be cautious opening attachments and links.

Mobility device

Thanks you for the phone call yesterday concerning my request for a assessment on my john Deere gator , under the federal ADA of the civil rights criteria 28 cfr-36-311 mobility device .This device I use in my activities of daily living it is purchased as a mobility device prescribed by prescription by a medical doctor as mobility device. This device aids in my ability of locomotion through out the day and is considered durable medical equipment under oregon state law. Im asking that the device is approved for rural Clackamas county roads as a other powerd mobility device described under the federal ADA laws I ask the country of Clackamas in the state oregon to review and provide a assessment on the device thank you have a good day .if you have any questions please email .

From: [Marek, Joe](#)
To: [John Andersson](#)
Subject: RE: Assessment other power mobility device
Date: Friday, May 29, 2020 1:18:00 PM
Attachments: [image003.png](#)




Hi John,

You don't need to fill anything out. I'm starting to work on the assessment. I will take several weeks because I'm splitting my time between my regular job and helping out in our Emergency Operations Center.

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
 503.742.4705 |  503.742.4659 |  JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org

TZDProud_Partner_Logo



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, May 29, 2020 12:22 PM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: Fwd: Assessment other power mobility device

Warning: External email. Be cautious opening attachments and links.

----- Forwarded message -----

From: "John Andersson" <stellabridge1967@gmail.com>
Date: May 29, 2020 12:17 PM
Subject: Assessment other power mobility device
To: <helena.kesch@oregon.gov>
Cc:

Please notify me of any paper work I may have to file with government agencies to get a assessment of the device please notify of the assessment process.

June 1-2020

I John Andersson am requesting a assessment of a mobility devices under Civil Right ADA Law 28 CFR-35.137 other Power & mobility devices ADA Law Directed me to have the device to be reviewed and assess by the Public entity where the device will be used Public Road access state Parks -

I am asking Transportation safety manager ADA checkmas ^{county oregon} to proceed with my request for assessment of the device serial number IM0825MACJMO12203 John Derre Gator.

This device was purchased as a mobility device with a prescription from a medical doctor for locomotion of activities of ~~the~~ Daily Living

Please advise me of any and all paper work to be filed with any and all state-county or federal entity.

Thank you for the assessment of the device
My email is stellabridge1967@gmail.com
My phone # is 503-621-2183 My address is
15178 South Corus Rd Oregon City Oregon

Thank you John Andersson

n Andersson
785 Corus Rd
in city Oregon

CERTIFIED MAIL



7019 1640 0000 9999 2749



1021



97045

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2051 Kaen Road
Oregon city Oregon
97045

not
LN
6-3
Tax
Page 22

Foreman, Sarah

From: Marek, Joe
Sent: Wednesday, June 17, 2020 12:43 PM
To: John Andersson
Subject: RE: RE: John andersson

Thanks John,

I sent you a message today about where we're at with the assessment that you requested. Please let me know if you have any questions about that email.

Thanks
Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

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www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, June 17, 2020 11:40 AM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: Fwd: RE: John andersson

Warning: External email. Be cautious opening attachments and links.

After my conversation with Helena ada state parks division of oregon has sent me an e-mail the entity of the state parks division does not do assessment of any other power mobility devices . Please tell me if this is the same findings of Clackamas county not doing assessment on other power mobility devices at this point in my research with ada coordinators it seem the law is telling them that even if Oregon state had s law about other power mobility devices the federal ADA laws would override the state ot county law a because they are telling me in the federal law says which ever law benefits the disabled person more that law will be inforced please email me if Clackamas county doesn't need to do an assessment on the device thank you. I contacted Clackamas county sheriff's office about an assessment I received no reply .

----- Forwarded message -----

From: "KESCH Helena * OPRD" <Helena.Kesch@oregon.gov>

Date: Jun 4, 2020 2:23 PM

Subject: RE: John andersson

To: "John Andersson" <stellabridge1967@gmail.com>

Cc:

Hello Mr. Anderson,

This is my second email to you. My first response was on May 29th. I've attached it for you to review. We are with the Oregon State Parks and we do not certify or assess other power driven mobility devices. If you want to use your device on the beach, you can unless it's a protected area. Then you'd need to request a special beach access pass. Let me know if this is what you are seeking help with.

Otherwise, are you looking to contact the Oregon DMV, Department of Motor Vehicles?

Who did you mail your certified letter to?

Thank you,

Helena

Helena Kesch | ADA Coordinator



Policy Analyst

Desk: 503-947-8619

Cell: 503-881-4637

Helena.Kesch@Oregon.gov

Foreman, Sarah

From: Marek, Joe
Sent: Wednesday, June 17, 2020 10:20 AM
To: John Andersson
Subject: RE: John andersson other powerd mobility device

Hi John,

I'm still working on the scope of work for our assessment. I've been working in our Emergency Operations Center which is taking me away from my regular work. My goal is to get our scope of work done and start working on the assessment in the next few weeks. We should be able to get back to you around the middle of July. Our schedules are still getting interrupted by COVID related issues that take away from our regular work.

I appreciate your patience.

Thanks and be safe.

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
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www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Tuesday, June 16, 2020 8:18 AM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

Touching base to see how my request is coming for getting an assessment on my other power mobility device. Do I need to file a grievance paper work with Clackamas county transportation to proceed with my assessment on my other powerd mobility devices and where the county would provide this paper work and where I can pick it up in person thank you have a good day.

From: [Marek, Joe](#)
To: [John Andersson](#)
Cc: [Snuffin, Christian](#)
Subject: ADA Assessment for using John Deere Gator as mobility device on rural County roads
Date: Monday, June 22, 2020 10:56:00 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

Hi John,

I wanted to update you on your ADA assessment request. We did receive your certified letter last week. I have send the CFR's shown below to our ADA Coordinator and our County Counsel to get some guidance related to the two CFR's summarized below, to better shape what type of data and analysis that the ADA assessment will include in this context. I will be out of the office for a week and then will be working in our Emergency Operations Center through July 8th, so will continue working on your request after I return to my regular job duties.

[35.137 Mobility devices.\(link is external\)](#)

"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)."

(h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Please let me know if you have any questions.

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
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www.DrivetoZero.org

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Safe and Healthy Communities Start With You!

Foreman, Sarah

From: Marek, Joe
Sent: Wednesday, August 19, 2020 8:35 AM
To: John Andersson
Cc: Boderman, Nathan; Williams, Stephen; Strangfield, Shane; Bezner, Mike
Subject: Response to certified mail letter dated Jun 1, 2020 requesting ADA evaluation for us of John Deere Gator on Clackamas County rural roads
Attachments: 2020-8-Anderson-ADA-Evaluation-Final.pdf

Tracking:	Recipient	Delivery	Read
	John Andersson		
	Boderman, Nathan	Delivered: 8/19/2020 8:35 AM	Read: 8/24/2020 7:21 AM
	Williams, Stephen	Delivered: 8/19/2020 8:35 AM	Read: 8/19/2020 8:38 AM
	Strangfield, Shane	Delivered: 8/19/2020 8:35 AM	Read: 8/19/2020 8:37 AM
	Bezner, Mike	Delivered: 8/19/2020 8:35 AM	Read: 8/19/2020 8:35 AM

Hi John,

I hope you and your family are doing well. Pursuant to your June 1, 2020 certified mail letter requesting and ADA evaluation for use of a John Deere Gator for use on Clackamas County rural roads, the County has completed its evaluation and the summary of our analysis and findings are contained in the attached PDF file "2020-8-Anderson-ADA-Evaluation-Final.pdf. Please let me know if you would like me to mail you a copy of this letter or if the PDF file will suffice. I appreciate your patience while the County has completed an evaluation of your request.

Please let me know if you have any questions. I will be out of the office next week and won't be in a location with cell service.

Again, thank you for your patience.

Be safe.

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
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www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

August 19, 2020

John Anderson
15178 S Carus Road
Beavercreek, OR 97004

Dear Mr. Anderson,

You submitted a registered letter dated June 1, 2020 requesting an ADA evaluation for using a John Deere Gator as a mobility device on roads in Clackamas County. Clackamas County has completed the requested review. Clackamas County Department of Transportation and Development has a goal under our ADA Transition Plan to provide equal and safe accommodation for all transportation system users. Our ADA Coordinator and County Counsel have been assisting me with this response.

Your request pertains to use of a John Deere Gator, Serial Number 1M0825MACJM012203 on public roads as an ADA mobility device. As you have pointed out, there are a few sections within the Code of Federal Regulations (CFR's) that pertain to this question and they are listed below:

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.”

Below, you will find a summary of our analysis related to the statements above.

Denial of the Benefit of Services

As an initial matter, County staff generally agree with you that access to roads in Clackamas County is covered under the regulations and you may not be denied access to such roads as a result of a disability. That being said, County staff understand that that you do possess a valid Oregon driver’s license and access to a street-legal vehicle. Accordingly, you already have meaningful access to the County’s road system, and for the specific reasons that follow, your street-legal vehicle is the transport mode that is the safest for all users under the circumstances. Since you are able to access the County’s road system with a street-legal vehicle, County staff find that continuing to prohibit the use of a John Deere Gator on public roads as an ADA mobility device does not deny you the benefit of the use of the public road system in Clackamas County, and no modification to those standards is warranted under the circumstances. If we have misunderstood or mischaracterized your situation, please let us know.

Even if the use of the John Deere Gator on public roads as an ADA mobility device is your preferred means of accessing the public road system in Clackamas County, or even if a more compelling case can be made that this proposed modification is reasonable under the circumstances, for the reasons that follow, County staff believe that your proposed use of the John Deere Gator cannot be operated in accordance with legitimate safety requirements and would result in a “direct threat” to the safety of others.

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, however, they are intended for crossing highways, primarily as related to farming operations.

Manufacturer Warnings for a John Deere Gator

Additionally, 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 states: *“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.”*

Roadway Information and Risk Evaluation

While you did not specify certain roads that you were using this off-highway vehicle on, I did mention to you during a telephone conversation that I would examine several different roads in your area of residence and examine these based on risk as described in 28 CFR 35.139. Table 1 shows a list of a few different roads with their name, posted speeds, functional class, and shoulder width.

ROAD NAME	SEGMENT	FUNCTIONAL CLASSIFICATION	POSTED SPEED LIMIT (MPH)	Average Daily Traffic (2018) (veh/day)	SHOULDER WIDTH (feet)	CRASH RATE (crashes/million vehicle miles traveled)	CRASH RATE STATE AVG. (crashes/million veh. miles traveled)
Beavercreek Road	Leland - Spangler	Major Arterial	35/45/55	9,500	0-6'	0.58	0.79
Carus Road	Beavercreek Rd – Hwy 213	Collector	55	500	0-3	4.63	1.59
Spangler Road	Beavercreek Road-Hwy 213	Minor Arterial	55	1,000	0-4	1.13	1.17
Kamrath Road	Spangler Rd – Beavercrk Rd	Collector	45/55	1,500	0-4	3.36	1.59

All of these roadways 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 Street Legal Vehicles

Factors that the County considered for assessing the risk for you and other users in this case included:

- Posted Speed of Roadway
- Average Daily Traffic Volume

- Horizontal and vertical road geometry
- Shoulder width
- Speed differentials between the Off-Highway vehicle and street-legal vehicles
- Weight difference between the off-highway vehicle and street legal vehicles
- Crash Rate

Roadways in your 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 your area of residence, it will occupy the full travel lane due to its width of approximately 60 inches and lack of wide shoulders to drive on. As this off-highway vehicle 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 off-highway vehicle and the person(s) in the street-legal vehicles. A common example includes a roadway with undulating vertical alignment where the off-highway vehicle may be out of sight at the bottom of a hill and a street-legal 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 street-legal 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 the off-highway vehicle and a street legal vehicle. For example, a John Deere Gator XUV825M weighs approximately 1,800 pounds. Street legal 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 an off-highway vehicle such as a John Deere Gator would very likely result in a fatality given the weight difference and lack of occupant protection on the Gator.

In this particular case, the mobility device, a John Deere Gator was not designed by the manufacturer for on-road use and is deemed not safe for operation on public roads per the operator's manual. As a result, the County does not see any options to provide for the safe operation of the off-road vehicle on the county roads except to add a special unpaved area adjacent to each roadway where this device could traverse. Adding an 8 foot-wide gravel shoulder area adjacent to each road permitted for use would be prohibitively expensive, costing well over \$700,000 per mile and also require purchase of a significant amount of right-of-way impacting adjacent properties owners. Based on the County's evaluation, we do not see a feasible way to provide accommodation for the use of the off-highway vehicle because of cost to the County and impacts to adjacent properties.

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 examined 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, also factor that can make seeing large slow moving vehicles, such as a John Deere Gator more difficult.

Conclusions

Clackamas County is committed to provide reasonable access under our ADA Transition Plan. The public roadway network is open to all with a shared responsibility for all. As part of the County's role in operating a roadway system, safety is of paramount importance as everyone deserves to get home safely to their family every night. Based on the County's review of your request and subsequent evaluation, we cannot approve your request for use of a John Deere Gator or similar off-highway vehicle for use on County-owned roadways for the reasons summarized above.

Please let me know if you have any questions.



Be safe.

Joseph F. Marek, PE, PTOE
Transportation Safety Program Manager
Clackamas County Department of Transportation and Development

C: County Counsel, Dave Morrissey – ODOT, Capt. Shane Strangfield – CCSO, Steve Williams –
Clackamas County ADA Coordinator

Foreman, Sarah

From: Marek, Joe
Sent: Wednesday, August 19, 2020 1:13 PM
To: John Andersson
Subject: RE: John andersson other powerd mobility device

Hi John

Thanks for your feedback. Me or someone else from our office will get back to you on what your next steps would be to appeal the County's decision.

Thanks
Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, August 19, 2020 1:10 PM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

After you review my last e-mail and if would like to reevaluate your decision about civil equal rights that is spoken oh so clear in federal ada law 35.130 i would under stand I dont believe I can let myself be desciminat by Clackamas county with out voicing my agrivation of five ors state laws allowing accesse to public roads including The use of utv on public roads which in your letter of denial is a complete erroneus statement that a Clackamas county staff worker added to the denial why I don't know and the statement of I have vehicle drive it bizarre statement that would be like some one saying ride a bike to the corner its safer I can't ride a bike either way who am I to tell anyone anything we call that equal rights but Clackamas county can't grasp the United States government of America designed a law so states and county can't get away with the behavior I've experienced in the denial letter of my other powerd mobility device once again this is the biggest violation of equal rights I've experienced in my life .if Clackamas county would like to reavluate there decision I would

under stand .if they dont I understand that desision are made and hard to admit but the desision that Clackamas county has made I can't respect there for I will disagree with and challenge in the legal system of ada violations and the legal system of federal and state civil rights law thank you have a great day

[Spam Email](#)

[Phishing Email](#)

Foreman, Sarah

From: Marek, Joe
Sent: Thursday, August 20, 2020 7:49 AM
To: John Andersson
Cc: Boderman, Nathan; Snuffin, Christian
Subject: RE: John andersson other powerd mobility devices

Thanks John,

I've forwarded this email to our Counsel to review along with the other questions that you have asked in your previous emails. As I mentioned to you yesterday, the attorney is out of the office the rest of this week, but have asked him to respond to you next week and I asked someone from my team to check in with him on the response.

Please let me know if you have any questions.

Have a good day.

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beavercreek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, August 19, 2020 4:16 PM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John andersson other powerd mobility devices

Warning: External email. Be cautious opening attachments and links.

Im asking a question in the letter sent to me today is the county saying if I drive a car I forfeit my civil rights to the ADA mobility device law 28cfr 35.137 mobility device. and under 28cfr 35.139 would not a slow moving triangle and a flashing Amber light that all slow moving vehicles possess tracktor, utv, backhoe, mail truck, bicycles use a red flashing lite wouldn't these be practical modifications to the mobility device to be brought up to the same standards as the above mentioned the more I read the Clackamas county assessment zero attention to the law 28cfr 35.139 was apply or even discuss t there is no imminent threat to others as the report alleges the pms is the county didn't want to use the same safety standards they apply to other slow moving devices on

the road .iam reviewing the the vehicle portion of road safety not once is utv mentioned that is strange sense this is a review if utv safety the only thing not safe about my other powerd mobility device is that Clackamas county doesn't want to put safety requirements on it like they have on all slow moving tracktor, utv, .Even the first part of the letter agrees I have every right to use my other powerd mobility device on the county road I meet all requirements under federal ADA laws I meet all requirements under the slow moving vehicles in Oregon there id absolutely no reason for a denial of my other powerd mobility device besides Clackamas county wanting to control disabled persons on a county road the county itself has conspired to violate my civil rights because that is what they want to do with no regard of all the other slow moving vehicles on a road I hope you can see the unjust violation of my civil rights t o be treated equal to the next slo.w moving vehicles.Thank you have a great day.

[Spam Email](#)
[Phishing Email](#)

Foreman, Sarah

From: Marek, Joe
Sent: Friday, August 21, 2020 12:20 PM
To: John Andersson
Subject: FW: John andersson other powerd mobility device

Hi John

I'm reforwarding the email that I sent to you yesterday with Captain Strangfield's contact information.

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



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Safe and Healthy Communities Start With You!

From: Marek, Joe
Sent: Thursday, August 20, 2020 7:41 AM
To: 'John Andersson' <stellabridge1967@gmail.com>
Cc: Strangfield, Shane <shanestr@clackamas.us>
Subject: RE: John andersson other powerd mobility device

Hi John

Here is the CCSO contact:
Captain Shane Strangfield
Email: ShaneStr@clackamas.us

He has a copy of our response to you.

Please let me know if you have any questions.

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager

he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
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☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, August 19, 2020 4:50 PM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

Please send contact information that you contacted at the Clackamas county sheriff's office so I can send them the information of the law 28cfr35.137 I must inform them of my civil rights under that above quoted law and the facts about the denial was not because it wasn't not a other powerd mobility device but because under 28cfr 35.139 Clackamas county would not make reasonable modification to the mobility device ad in a flashing Amber light and a slow moving triangle please reply today so I can address Clackamas county sheriff's office tomorrow so I can inform them of the truth of law .Thank you have a great day.

[Spam Email](#)
[Phishing Email](#)

Foreman, Sarah

From: Marek, Joe
Sent: Friday, August 21, 2020 12:21 PM
To: John Andersson
Subject: RE: John Andersson other powerd mobility device

Hi John,

Here is the CCSO contact:
Captain Shane Strangfield
Email: ShaneStr@clackamas.us

Thanks
Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver creek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, August 21, 2020 12:01 PM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John Andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

Plases e-mail me contact information that you sent Clackamas county sheriff's or any other law enforcement .im contacting them this afternoon Thanks you im sorry about getting upset on the phone but when I see the unjust violations that have been done to me by Clackamas county its hard not to feel belittled at this time.And when me and my other powerd mobility device are called direct threat and there is no truth to that at all Clackamas county is creating a (direct threat) by not following the law when it says reasonable modification it means you can require certain safety equipment on a device to make it as safe as any other entities using the

public road under already existing ors laws And Clackamas county chooses not to follow the law then expect me to carry the burden of denial of my civil rights I can only feel belittled and I feel the discriminated against me .Then I review 28cfr 35.130 and see various disabledility violation 28cfr 35.130 section (8) clearly states that Clackamas county should not impose or apply eligibility or apply criteria that screens out or teds to screen out this is clearly what has happened when im told because I have a driver's license and access to vehicle that I will not need or be allowed use of any powerd mobility device that sounds like Clackamas county has mislead the report and the the disabled persons that will read it im going to add 28cfr 35. 130 (a) (4) (I) (ii) and 28cfr 35. 130 section (7) make modification to safety of the device was ignored which 28cfr 35. 137 is built on why Clackamas county couldn't apply the law correctly I will never no and the eminent threat is the (designed) by Clackamas county for the denial but as I have already Clackamas thought they could(create eminent threat) buy not considering existing oregon state laws and buy abusing 28cfr 35. 119 to create the idea of eminent threat which absolutely does not exist according to existing oregon state traffic laws which at the least is coverd by the slow moving vehicles laws that every driver in Oregon must abide by. And iam sure Clackamas county is aware of please have Clackamas county council contact me on Monday so I can start the grievance process I will need hard copie paper work for a denial that I believe has been full of misleading statements and manipulation of my civil rights and the statement that if I have a vehicle I dont get to apply my civil rights under federal ADA law28-cfr-35. 137 to the use of Clackamas county road right away for locomotion and activity of daily living have a great day thank you.

[Spam Email](#)
[Phishing Email](#)

Foreman, Sarah

From: Boderman, Nathan
Sent: Monday, August 24, 2020 3:24 PM
To: stellabridge1967@gmail.com
Cc: Marek, Joe; Bezner, Mike
Subject: FW: John andersson other powerd mobility device

Mr. Andersson- Thank you for your time this afternoon. As we discussed, I will be mailing you a copy of our grievance form. If you decide to pursue the appeal with the County, please complete the form and return via email or regular mail to the address provided. The County appeal process requires a hearing with our Board of County Commissioners. Once we receive your materials, we will work to schedule a date that works for both you and our Board to hear your appeal.

In the meantime, if you have any questions about the form or the process in general, please do not hesitate to call or email me anytime. My contact information is provided below.

~Nate

Nathan Boderman
Assistant County Counsel
2051 Kaen Road, 2nd Floor
Oregon City, Oregon 97045
(503) 655-8364
nboderman@co.clackamas.or.us

Office hours: 7:00 AM - 6:00 PM, Monday – Thursday

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The Office of the County Counsel is interested in receiving feedback on its performance. Please take a minute to fill out a brief survey by clicking <http://bit.ly/ClackCoCounselSurvey>.

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From: Marek, Joe <JoeMar@clackamas.us>
Sent: Wednesday, August 19, 2020 12:47 PM
To: Boderman, Nathan <NBoderman@clackamas.us>; Williams, Stephen <SWilliams@clackamas.us>
Cc: Bezner, Mike <MikeBez@clackamas.us>
Subject: FW: John andersson other powerd mobility device

Hi Nate and Steve,

What is the appeal process?

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, August 19, 2020 12:33 PM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

I have received your denial of my other powerd mobility device thank you for your evaluation of the device under 28cfr 35. 137 im granted by federal law to use a other powerd mobility device on roads in Oregon where this no designate pedestrian routes.Under federal law 35.130 that is used to assess the mobility device im guaranty equal rights to use public roads and right away in Oregon under federal ADA laws I have the same rights as any other entitie using public roads or right away Oregon.a
At this point I will have to request Ada grievance paper work to appeal Clackamas county's denial of my civil rights .Please send grievance paper work to john andersson 15178 south Carus rd Oregon city oregon thank you. Now I will tell you what I have learned about equal rights for disabled person .my request was valid and complete for my assessment of my other powerd mobility device #1ors 814.070 pedestrian have right away to all roads in Oregon. legal
#2 ors 821.191 (a) (d) utv on public roads legal
#3 ors 814.150 (2) horse swine cattle sheep on all roads legal.
#4 ors 801.305 bicycles on all public roads legal.
#5 ors 811.512 farm tracktor utv combined , b ackhoes on all public roads in Oregon are legal.
Then I review the denial letter telling me I can't use my device because the roads aren't wide enough but thete there wide enough for a 15,000 pound tracktor or a 10,000 pounds backhoe or that the steep road is dangerous with we no they are designed for farm machinery construction machinery at that is dangerous that my mobility device goes 20 mph and there are cars traveling at a high rate of speed and the child on the bicycles is traveling at 10mph or the man moving life stock at 5 mph or the utv traveling at 20 more which is perfectly legal under ors821.191 but because im im disabled and federal law 28cfr 35. 137 granted me the right to use all public roads I am denied . This is the biggest violation of equal rights I've seen in my life time .five ors laws allowing

the use of public roads that are ok by Clackamas county but im not one of them there is no federal law that allows any of the five entitys to use the public road but all five entitys have the right but im denied because it is dangerous the roads aren't wide enough that I can't get home safe and you can't get home safe and then im told you have a car use it which has nothing to do with my request for assessment of a other power mobility devices dont know if I wood consider this five violations of my civil rights because five different ors laws allow use of public roads to five different entitys or one the desision not to grant me righaway to access the public road im sure all the reasons Clackamas county stated in there denial all the extremes that are mentioned must apply to all the othet ors laws I have stated but Clackamas county is all right with them using the county road and if they are all those entitys by law are discomfort towards me and so is the d

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[Phishing Email](#)



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

August 25, 2020

John Andersson
15178 S. Carus Rd.
Oregon City, OR 97045

RE: Powered Mobility Device

Dear Mr. Andersson:

Enclosed with this letter, please find a copy of the Clackamas County Grievance form. If you decide to pursue the appeal with the County, please complete the form and return it via email or regular mail to the address provided in the form. The County appeal process requires a hearing with our Board of County Commissioners. Once we receive your materials, we will work to schedule a date that works for both you and the Board to hear your appeal.

Please do not hesitate to contact our office if you have any questions about the enclosed form or the process in general.

Sincerely,

Silke Brunning
Paralegal
Clackamas County
Office of County Counsel

Encl.

Appendix I – Formal Written Complaint Form

**Clackamas County ADA Coordinator
County Administration
2051 Kaen Road PSB Suite 450
Oregon City, Oregon 97045
(503) 655-8291 Office (503) 655-8757
TTY/TDD
Email: civilrights@clackamas.us**

ADA Formal Written Complaint Form

Please print legibly.

Reporting Individual: _____ Date of Request: _____

Address: _____

City, State and Zip: _____

Telephone Number: _____ Business Phone: _____

Other Contact Information: _____

If person needing accommodation is not the individual completing this form, please complete below:

Name: _____ Telephone Number: _____

Other Contact Information: _____

Program/Facility to be Inaccessible: _____

When did the situation occur (date)? _____

Describe the situation or way in which the program is not accessible, providing the name(s) where possible of the individuals who were involved in the situation, and any documentation or photographs supporting the incident:

Have efforts been made to resolve this complaint through the Request for Accommodation with the ADA Coordinator?

Yes No

If yes, what were the results? _____

How do you suggest this issue be remedied? _____

Signature: _____

Date: _____

ADA Coordinator Representative: _____

Date: _____

Foreman, Sarah

From: Marek, Joe
Sent: Monday, August 31, 2020 1:49 PM
To: John Andersson
Cc: Bezner, Mike; Boderman, Nathan
Subject: ADA Evaluation request for Yamaha ATV, VIN JY43GG0361C027858
Attachments: 20200825140649.pdf

Good Afternoon Mr. Andersson,

I am in receipt of your ADA Evaluation request dated August 20, 2020 for use of a Yamaha ATV, VIN JY43GG0361C027858 on County roads. I will review your request and provide you a letter back, similar to what I did for you previous request. My goal is to get a letter back to you by September 15th.

Please let me know if you have any questions.

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beavercreek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
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Safe and Healthy Communities Start With You!

Aug 20th 2020

Joseph Marek PE PTOE Transportation manager
Clackamas County I John Anderson EM Submitting
Request for a assessment on a other Power mobility device
Under federal ADA Law 28 CFR 35.137 under Federal Law
I must ask the Public entity for a assessment of the
device. I believe you are working with ODOT on these
Assessments I am Reviewing the denial of my first
Request for assessment on a John deer motor.

28 35.137 Direct threat health and safety of others
if Clackamas county would follow The Federal Law
a simple slow moving ~~vehicle~~ safety Triangle will be a
adjustment to the Law which 35-130 clearly States
is the direction to be followed when 28 35.137 is used to
assess other Power mobility devices. State Law requires
every one on a Public Road way to yield to a slow moving
vehicle as a State wide Law this would and will
be respected by all Oregon Drivers This is a State excepted
State wide Law. When I'm told i have no right to use Public
Road Rightaway and 5 other State Laws provide access to Public
Roads to other entities i feel violated

- ORS 814.670 Pedestrian on hi way Legal
- ORS 821.191 utv on hi way Legal (a)(c)
- ORS 814.150(2) horses Swine and sheep Legal
- ORS 811.305 bicycle on hi way Legal
- ORS 811-512 farm tractors on hi way Legal

I now have a flashing
Light and a safety triangle
on my other Power
mobility device I thought
That would be best
To follow the slow moving
Law so Oregon

Then I was told mobility device for disabled persons illegal
Because i am a direct threat to others makes other are the direct threat to Me

Page 2

AUGUST 13th 2025

I John Andersson am Requesting a Power mobility device assessment of a other Powerd mobility devise To be assessst by the Public entity where the devise Will be used on Public Oregon state and County Roads. I am asking the DEPARTMENT of OREGON DMV / transportation ODOT of OREGON to Access my Other Powerd mobility device under Federal/ADA Law 28CFR 35.137 other Powerd mobility devices which I use in my activities of Daily Living Device Serial number is JY43GGD361CD27858 Yamaha ATV Please email me at (Stella@bridge1967@gmail.com) My address mailing is 15178 Scovus Rd Oregon city Oregon 97045 Phone# 503 621-2183 if you need any information Feel Free to Email me My phone number has been added as a last Resort of contact.

Thank You have a Good day

John Andersson

Foreman, Sarah

From: Marek, Joe
Sent: Wednesday, September 2, 2020 11:09 AM
To: John Andersson
Subject: RE: John andersson

Hi John,

I emailed a copy to our office since I'm working from home and they will print it out and mail it to you. You should receive it in a few days.

Please let me know if you have any questions.

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



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From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, September 2, 2020 10:33 AM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John andersson

Warning: External email. Be cautious opening attachments and links.

Other powered mobility devices please send assessment hard copy paper work on the denial of the mobility device we need it for reviewing the assessment on the John Deere gator please send to 15178 South Carus Road Oregon City Oregon 97045 thank you have a great day

[Spam Email](#)
[Phishing Email](#)

Foreman, Sarah

From: Boderman, Nathan
Sent: Wednesday, September 2, 2020 4:53 PM
To: John Andersson
Subject: RE: John andersson other powerd mobility device

Will do. It's on the way.

~Nate

Nathan Boderman
Assistant County Counsel
2051 Kaen Road, 2nd Floor
Oregon City, Oregon 97045
(503) 655-8364
nboderman@co.clackamas.or.us

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, September 2, 2020 3:14 PM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

Please send hard copy to me of the denial decision on the john Deere gator we neef it for review thank you have a great day 15178 south Carus road Oregon city oregon 97045

From: [Marek, Joe](#)
To: [John Andersson](#)
Subject: RE: John andersson other powerd mobility device
Date: Friday, September 11, 2020 7:58:00 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

John

I am working at our emergency operations center responding to the fires so will not be getting back to you until this crisis is over.

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beavercreek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, September 11, 2020 7:53 AM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: Fwd: John andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

----- Forwarded message -----
From: "John Andersson" <stellabridge1967@gmail.com>
Date: Sep 11, 2020 2:41 AM
Subject: John andersson other powerd mobility device
To: <Carroll.J.COTTINGHAM@odot.state.or.us>
Cc:

This is the other part of my e-mail I sent 5 minutes ago after talking to Mike Hoffman about the Orange utv kabotas that are on public roads around Salem capital odot/dmv . Im am

understanding that odot/dmv oversees all laws on public roads they are not treating me with equal rights and sense odot and Clackamas county are in constant communication about my request for assessment of my power mobility device. Then Clackamas county counsel and staff inform me that if I have a vehicle they have given me access to county roads but were going to violate your rights under 28cfr 35. 137 to use your other powerd mobility device and that im a direct threat to others if I use it to access any county road where there is not designated pedestrian areas. Then send me a denial letter that our staff at Clackamas county have decided this for me quoting sastistics of roads and the danger of there design's mabey Clackamas county and odot should address and redesign these intersections so they are safe for vehicles ,pedestrian tracktor , other powerd mobility devices at there on admission they know there are very dangerous intersections and roads all over oregon and do nothing to correct these problems.well here is the reality of direct threat as my area is under a level 3 evacuation from forest fires in Oregon i have decided after incountering 5 Clackamas county sheriff's on county road on my other powerd mobility device not one of them mentioned I was a direct threat they all said be safe and I responded the same I did not see odot/dmv Clackamas county staff out in the area to help me or my naibors I must exercise my civil rights to ada law 28cfr 35. 137 not one Clackamas county sheriff's officer called me a direct threat to others the word was be safe good night .

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[Phishing Email](#)

Foreman, Sarah

From: Marek, Joe
Sent: Friday, September 25, 2020 7:45 AM
To: John Andersson
Cc: Boderman, Nathan
Subject: RE: John Andersson other powerd mobility device
Attachments: 20200825075855.pdf

Hi John

Attached is the appeals material to be completed by you. As, I stated, I am working on a response for your second request.

Thanks

Joseph Marek

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beavercreek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, September 25, 2020 7:06 AM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John Andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

Please provide me with Clackamas county transportation depts legal ADA law assessment procedures of other power mobility devices if not please reply we don't or can't provide that or if I need to file special paper to obtain this paper work or information if the ada coordinator cant provide please director me to the proper department this information is crucial for my hearing in front of the county commissioners or council thank you John Andersson September 24 2020 thank you have a great day.



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

August 25, 2020

John Andersson
15178 S. Carus Rd.
Oregon City, OR 97045

RE: Powered Mobility Device

Dear Mr. Andersson:

Enclosed with this letter, please find a copy of the Clackamas County Grievance form. If you decide to pursue the appeal with the County, please complete the form and return it via email or regular mail to the address provided in the form. The County appeal process requires a hearing with our Board of County Commissioners. Once we receive your materials, we will work to schedule a date that works for both you and the Board to hear your appeal.

Please do not hesitate to contact our office if you have any questions about the enclosed form or the process in general.

Sincerely,

Silke Brunning
Paralegal
Clackamas County
Office of County Counsel

Encl.

Appendix I – Formal Written Complaint Form

**Clackamas County ADA Coordinator
County Administration
2051 Kaen Road PSB Suite 450
Oregon City, Oregon 97045
(503) 655-8291 Office (503) 655-8757
TTY/TDD
Email: civilrights@clackamas.us**

ADA Formal Written Complaint Form

Please print legibly.

Reporting Individual: _____ Date of Request: _____

Address: _____

City, State and Zip: _____

Telephone Number: _____ Business Phone: _____

Other Contact Information: _____

If person needing accommodation is not the individual completing this form, please complete below:

Name: _____ Telephone Number: _____

Other Contact Information: _____

Program/Facility to be Inaccessible: _____

When did the situation occur (date)? _____

Describe the situation or way in which the program is not accessible, providing the name(s) where possible of the individuals who were involved in the situation, and any documentation or photographs supporting the incident:

Have efforts been made to resolve this complaint through the Request for Accommodation with the ADA Coordinator?

Yes No

If yes, what were the results? _____

How do you suggest this issue be remedied? _____

Signature: _____

Date: _____

ADA Coordinator Representative: _____

Date: _____

From: Marek, Joe
Sent: Friday, September 25, 2020 12:14 PM
To: John Andersson
Cc: Bezner, Mike; Boderman, Nathan
Subject: RE: John Andersson other powerd mobility devices

Hi John

Thank you for your comments regarding the ADA evaluation letter that was sent by the County. The “direct threat” statement in the County’s letter is there as part of address the CFR section below, titled “Defining Direct Threat.” As I’ve noted numerous times, this is the first step of a process regarding your request. The second step is for you to complete the Grievance documents that I attached in my email to you yesterday. I apologize that the assessment of your second request is taking longer than you would like, but the wildfires that we recently experienced took priority over all other work. The County remains committed to working with you through this ADA evaluation process. I will have the ADA assessment letter request response to you by October 7th, barring no other emergencies arise between now and then.

Thanks and take care.
Joseph Marek

28 § 35.139: Defining Direct Threat

(a) “This part does not require a public entity to permit an individual to receive the goods, services, programs, or activities of that public entity if the 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 current medical knowledge or on the best available objective data, of the nature, duration, and severity of the risk; the probability that the risk will occur; and whether reasonable modifications of policies, practices, or procedures, or the provision of auxiliary aids or services will mitigate the risk.”

150 Beaver Creek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, September 25, 2020 11:50 AM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John Andersson other powerd mobility devices

Warning: External email. Be cautious opening attachments and links.

Maybe you dont understand my concern over 28cfr35 .139 direct threat Maybe your not concernd about my wellbeing but im here to tell you I am I will be sending a certified letter soon explaining it to all county sheriff's, commissioners, and you I dont think you ignoring is the proper thing to do with a statement direct threat to others is if Clackamas county council believes im wrong just have them send me an email stating this fact that the Clackamas county department of transportation can send letter about what ever they think about people have a great day.

[Spam Email](#)
[Phishing Email](#)

Foreman, Sarah

From: Marek, Joe
Sent: Friday, October 2, 2020 7:50 AM
To: John Andersson
Cc: Boderman, Nathan
Subject: RE: John Andersson others powerd mobility devices

Hi John,

My goal is to get the second assessment completed and out to you next week so you can complete the grievance process. Thank you for your patience as we work through this important matter.

Thanks

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, October 2, 2020 2:17 AM
To: Marek, Joe <JoeMar@clackamas.us>
Subject: John Andersson others powerd mobility devices

Warning: External email. Be cautious opening attachments and links.

I just now found time to review this email about your decision to use the direct threat defense im seeing it is a troublesom thought that Clackamas county department of transportation is believing all 28cfr laws pertain to others powerd mobility devices 28cfr 35.137 . Please complete my assessment of my other powerd mobility device atv so I can proceed with my greivans process and when you say well this is only the beginning of the long process I have under taken I don't believe for a second either assessment should have or been denied I never will believe they should have been or be denied my requested under 28cfr35 .137 was complete and legal. ADA civil rights assessments were not designed for entity s to apply or instill the words like direct threat with out any medical proof or we have notified the law enforcement to maybe interfere or intimidate any disabled persons with ones ability to use a ADA laws the way the government intended it to be used .When

county's, state or any public entity ads there visions to a law that is clearly given guide lines how to be processed under the federal ADA laws i dont believe the attached document is part of a other power mobility device assessments but it does carry a 28cfr 35 .136 and direct threat 28cfr35 .139 dose to but I dont believe either one is a assessment factor that is clearly explained in 28cfr 35 .137 and 28cfr 35 1.30.

[Spam Email](#)

[Phishing Email](#)

Foreman, Sarah

From: Boderman, Nathan
Sent: Monday, October 5, 2020 4:39 PM
To: John Andersson
Subject: RE: John Andersson other powerd mobility device
Attachments: 2020-8-Anderson-ADA-Evaluation-Final.pdf

Good afternoon, Mr. Andersson- I understand that Joe Marek's evaluation of your request for an accommodation to use a Yamaha ATV on County roads will be issued shortly. As you and I have discussed previously, you are able to file an appeal to any decision the Department of Transportation and Development makes related to your ADA accommodation requests. These appeals are to the Board of County Commissioners. Alternatively, you are free to file an action in court at any time.

The language related to "direct threat" is based on the definition from the federal regulations cited in the attached determination. While an individual's disability could contribute to a determination that the individual poses a "direct threat" to the health or safety of others, the determination here was based more on the nature of your accommodation request. In other words, your disability had little to no influence over the ultimate determination reached on this point and it appears the same conclusion would have been reached regardless of the person requesting the accommodation. The circumstances around the nature of the accommodation request, in this case the specific vehicle and the roads on which it would be used, primarily led to the determination that the nature of your specific request, not necessarily you as an individual, posed a direct threat to the health or safety of others. As noted above, this determination is precisely what may be appealed to the Board of County Commissioners for further review if you wish. Until that time, I do not believe a retraction or anything similar is warranted to clarify the record.

I understand that you contacted Joe Marek for information related to the County's ADA coordinator. Martine Coblentz is the County's Equity and Inclusion Officer and oversees county wide ADA matters. Martine can be reached by phone (503-655-8579), or by email (MCoblentz@clackamas.us). County staff is working remotely at this time, so please be patient if you do reach out to discuss. Of course, if you have specific questions about the appeal process or this message, please do not hesitate to contact me directly. Our office will be working with Martine and her team if you do decide to initiate an appeal of the County's determination.

~Nate

Nathan Boderman
Assistant County Counsel

2051 Kaen Road, 2nd Floor
Oregon City, Oregon 97045
(503) 655-8364
nboderman@co.clackamas.or.us

Office hours: 7:00 AM - 6:00 PM, Monday – Thursday

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Thursday, October 1, 2020 1:24 PM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

Please send a retraction letter to all out side agency's that Clackamas county has branded me as a direct threat to others this is not part of the assessment factors to be applied in implementing federal law 28cfr 35. 137 and as the Clackamas county ADA coordinator said to me this is just the beginning of this awful process that Clackamas county department of transportation has started branded a direct threat to others when ors laws 821.191 state otherwise and in this law there is clearly no direct threat to others but if your disabled you become a direct threat to others please send letter of apology as soon as possible please expedite my assessment of my atv as a other powerd mobility device lets get this over it is amazing the first denial was so easy then told that Clackamas county department of transportation would be sending out the same structured denial a month ago and now that im going to receive the information on the Orange kabota utv driving around salem public roads according to Mr Cunningham ADA coordinator odot state transportation office and that there department of oregon department of transportation can not do a assessment of a other power mobility devices I am curious about the assessment being done by Clackamas county transportation dept is it legal I dont know but as joe at the Clackamas county department of transportation said to me this is just the beginning of this long process thank you have a great day.

[Spam Email](#)
[Phishing Email](#)

August 19, 2020

John Anderson
15178 S Carus Road
Beavercreek, OR 97004

Dear Mr. Anderson,

You submitted a registered letter dated June 1, 2020 requesting an ADA evaluation for using a John Deere Gator as a mobility device on roads in Clackamas County. Clackamas County has completed the requested review. Clackamas County Department of Transportation and Development has a goal under our ADA Transition Plan to provide equal and safe accommodation for all transportation system users. Our ADA Coordinator and County Counsel have been assisting me with this response.

Your request pertains to use of a John Deere Gator, Serial Number 1M0825MACJM012203 on public roads as an ADA mobility device. As you have pointed out, there are a few sections within the Code of Federal Regulations (CFR's) that pertain to this question and they are listed below:

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.”*

Below, you will find a summary of our analysis related to the statements above.

Denial of the Benefit of Services

As an initial matter, County staff generally agree with you that access to roads in Clackamas County is covered under the regulations and you may not be denied access to such roads as a result of a disability. That being said, County staff understand that that you do possess a valid Oregon driver’s license and access to a street-legal vehicle. Accordingly, you already have meaningful access to the County’s road system, and for the specific reasons that follow, your street-legal vehicle is the transport mode that is the safest for all users under the circumstances. Since you are able to access the County’s road system with a street-legal vehicle, County staff find that continuing to prohibit the use of a John Deere Gator on public roads as an ADA mobility device does not deny you the benefit of the use of the public road system in Clackamas County, and no modification to those standards is warranted under the circumstances. If we have misunderstood or mischaracterized your situation, please let us know.

Even if the use of the John Deere Gator on public roads as an ADA mobility device is your preferred means of accessing the public road system in Clackamas County, or even if a more compelling case can be made that this proposed modification is reasonable under the circumstances, for the reasons that follow, County staff believe that your proposed use of the John Deere Gator cannot be operated in accordance with legitimate safety requirements and would result in a “direct threat” to the safety of others.

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, however, they are intended for crossing highways, primarily as related to farming operations.

Manufacturer Warnings for a John Deere Gator

Additionally, 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 states: *“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.”*

Roadway Information and Risk Evaluation

While you did not specify certain roads that you were using this off-highway vehicle on, I did mention to you during a telephone conversation that I would examine several different roads in your area of residence and examine these based on risk as described in 28 CFR 35.139. Table 1 shows a list of a few different roads with their name, posted speeds, functional class, and shoulder width.

ROAD NAME	SEGMENT	FUNCTIONAL CLASSIFICATION	POSTED SPEED LIMIT (MPH)	Average Daily Traffic (2018) (veh/day)	SHOULDER WIDTH (feet)	CRASH RATE (crashes/million vehicle miles traveled)	CRASH RATE STATE AVG. (crashes/million veh. miles traveled)
Beavercreek Road	Leland - Spangler	Major Arterial	35/45/55	9,500	0-6'	0.58	0.79
Carus Road	Beavercreek Rd – Hwy 213	Collector	55	500	0-3	4.63	1.59
Spangler Road	Beavercreek Road-Hwy 213	Minor Arterial	55	1,000	0-4	1.13	1.17
Kamrath Road	Spangler Rd – Beavercrk Rd	Collector	45/55	1,500	0-4	3.36	1.59

All of these roadways 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 Street Legal Vehicles

Factors that the County considered for assessing the risk for you and other users in this case included:

- Posted Speed of Roadway
- Average Daily Traffic Volume

- Horizontal and vertical road geometry
- Shoulder width
- Speed differentials between the Off-Highway vehicle and street-legal vehicles
- Weight difference between the off-highway vehicle and street legal vehicles
- Crash Rate

Roadways in your 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 your area of residence, it will occupy the full travel lane due to its width of approximately 60 inches and lack of wide shoulders to drive on. As this off-highway vehicle 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 off-highway vehicle and the person(s) in the street-legal vehicles. A common example includes a roadway with undulating vertical alignment where the off-highway vehicle may be out of sight at the bottom of a hill and a street-legal 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 street-legal 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 the off-highway vehicle and a street legal vehicle. For example, a John Deere Gator XUV825M weighs approximately 1,800 pounds. Street legal 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 an off-highway vehicle such as a John Deere Gator would very likely result in a fatality given the weight difference and lack of occupant protection on the Gator.

In this particular case, the mobility device, a John Deere Gator was not designed by the manufacturer for on-road use and is deemed not safe for operation on public roads per the operator's manual. As a result, the County does not see any options to provide for the safe operation of the off-road vehicle on the county roads except to add a special unpaved area adjacent to each roadway where this device could traverse. Adding an 8 foot-wide gravel shoulder area adjacent to each road permitted for use would be prohibitively expensive, costing well over \$700,000 per mile and also require purchase of a significant amount of right-of-way impacting adjacent properties owners. Based on the County's evaluation, we do not see a feasible way to provide accommodation for the use of the off-highway vehicle because of cost to the County and impacts to adjacent properties.

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 examined 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, also factor that can make seeing large slow moving vehicles, such as a John Deere Gator more difficult.

Conclusions

Clackamas County is committed to provide reasonable access under our ADA Transition Plan. The public roadway network is open to all with a shared responsibility for all. As part of the County's role in operating a roadway system, safety is of paramount importance as everyone deserves to get home safely to their family every night. Based on the County's review of your request and subsequent evaluation, we cannot approve your request for use of a John Deere Gator or similar off-highway vehicle for use on County-owned roadways for the reasons summarized above.

Please let me know if you have any questions.



Be safe.

Joseph F. Marek, PE, PTOE
Transportation Safety Program Manager
Clackamas County Department of Transportation and Development

C: County Counsel, Dave Morrissey – ODOT, Capt. Shane Strangfield – CCSO, Steve Williams –
Clackamas County ADA Coordinator

Foreman, Sarah

From: Marek, Joe
Sent: Tuesday, October 6, 2020 3:44 PM
To: John Andersson
Cc: Boderman, Nathan
Subject: ADA Assessment for Yamaha ATV
Attachments: 2020-10-Anderson-ADA-Evaluation-BansheeFinal.pdf

Hi John,

I hope you and your family are well. Per our recent email exchanges, I have completed the ADA assessment for the Yamaha ATV that you requested and attached is the County's evaluation. I will also mail you a hardcopy for your reference. Mr. Boderman has emailed you the appeal materials.

Please let Mr. Boderman or myself know if you have any questions.

Take care.

Joe

Joseph F. Marek, PE, PTOE | Transportation Safety Program Manager
he/him/his
Clackamas County Department of Transportation and Development

Transportation Safety Program Manager
150 Beaver Creek Road | Oregon City, Oregon 97045
☎ 503.970.8987 | 📠 503.742.4659 | ✉ JoeMar@clackamas.us
www.Clackamas.us
www.DrivetoZero.org



Safe and Healthy Communities Start With You!

October 6, 2020

John Andersson
15178 S Carus Road
Beavercreek, OR 97004

Dear Mr. Andersson,

You submitted a letter dated August 20, 2020 requesting an ADA evaluation for using a Yamaha All-Terrain-Vehicle (ATV) as a mobility device on roads in Clackamas County. Clackamas County has completed the requested review. Clackamas County Department of Transportation and Development has a goal under our ADA Transition Plan to provide equal and safe accommodation for all transportation system users. Our ADA Coordinator and County Counsel have been assisting me with this response.

Your request pertains to use of a Yamaha ATV, Serial Number JY43GG0361C027858, on public roads as an ADA mobility device. As you have pointed out, there are a few sections within the Code of Federal Regulations (CFR's) that pertain to this question and they are listed below:

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.”*

Below, you will find a summary of our analysis related to the statements above.

Denial of the Benefit of Services

As an initial matter, County staff generally agree with you that access to roads in Clackamas County is covered under the regulations and you may not be denied access to such roads as a result of a disability. That being said, County staff understand that that you do possess a valid Oregon driver’s license and access to a street-legal vehicle. Accordingly, you already have meaningful access to the County’s road system, and for the specific reasons that follow, your street-legal vehicle is the transport mode that is the safest for all users under the circumstances. Since you are able to access the County’s road system with a street-legal vehicle, County staff find that continuing to prohibit the use of a Yamaha ATV on public roads as an ADA mobility device does not deny you the benefit of the use of the public road system in Clackamas County, and no modification to those standards is warranted under the circumstances. If we have misunderstood or mischaracterized your situation, please let us know.

Even if the use of the Yamaha ATV on public roads as an ADA mobility device is your preferred means of accessing the public road system in Clackamas County, or even if a more compelling case can be made that this proposed modification is reasonable under the circumstances, for the reasons that follow,

County staff believe that your proposed use of the Yamaha ATV cannot be operated in accordance with legitimate safety requirements and would result in a “direct threat” to the safety of others.

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, however, they are intended for crossing highways, primarily as related to farming operations.

Manufacturer Warnings for a Yamaha ATV

Additionally, off-highway vehicles such as a Yamaha ATV have very specific warnings about highway use, for example, based on the VIN for your 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.” 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. 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

While you did not specify certain roads that you were using this off-highway vehicle on, I have examined several different roads in your area of residence based on risks as described in 28 CFR 35.139. Table 1 shows a list of a few different roads with their name, posted speeds, functional class, and shoulder width.

ROAD NAME	SEGMENT	FUNCTIONAL CLASSIFICATION	POSTED SPEED LIMIT (MPH)	Average Daily Traffic (2018) (veh/day)	SHOULDER WIDTH (feet)	CRASH RATE (crashes/million vehicle miles traveled)	CRASH RATE STATE AVG. (crashes/million veh. miles traveled)
Beavercreek Road	Leland - Spangler	Major Arterial	35/45/55	9,500	0-6'	0.58	0.79
Carus Road	Beavercreek Rd – Hwy 213	Collector	55	500	0-3	4.63	1.59
Spangler Road	Beavercreek Road-Hwy 213	Minor Arterial	55	1,000	0-4	1.13	1.17
Kamrath Road	Spangler Rd – Beavercrk Rd	Collector	45/55	1,500	0-4	3.36	1.59

All of these roadways 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 Street Legal Vehicles

Factors that the County considered for assessing the risk for you and other users in this case included:

- Posted Speed of Roadway
- Average Daily Traffic Volume
- Horizontal and vertical road geometry
- Shoulder width
- Speed differentials between the Off-Highway vehicle and street-legal vehicles
- Weight difference between the off-highway vehicle and street legal vehicles
- Crash Rate

Roadways in your 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 Yamaha ATV is used on the roads in your area of residence, it will 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 this off-highway vehicle 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 off-highway vehicle and the person(s) in the street-legal vehicles. A common example includes a roadway with undulating vertical alignment where the off-highway vehicle may be out of sight at the bottom of a hill and a street-legal 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 street-legal 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 the off-highway vehicle and a street legal vehicle. For example, a Yamaha Banshee weighs approximately 412 pounds. Street legal 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 an ATV would very likely result in a fatality given the weight difference and lack of occupant protection.

In this particular case, the mobility device, a Yamaha Banshee, was not designed by the manufacturer for on-road use and is deemed not safe for operation on public roads per the operator's manual, not even on a graveled surface. As a result, the County does not see any options to provide for the safe operation of this off-road vehicle on the county roads unless a dirt shoulder area adjacent to each road permitted for use was constructed. While less than a gravel shoulder at \$700,000 per mile minus right-of-way purchase, providing this would be very expensive. Based on the County's evaluation, we do not see a feasible way to provide accommodation for the use of the off-highway vehicle because of cost to the County and impacts to adjacent properties.

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 examined 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, also factor that can make seeing large slow moving vehicles, such as a John Deere Gator more difficult.

Conclusions

Clackamas County is committed to provide reasonable access under our ADA Transition Plan. The public roadway network is open to all with a shared responsibility for all. As part of the County’s role in operating a roadway system, safety is of paramount importance as everyone deserves to get home safely to their family every night. Based on the County’s review of your request and subsequent evaluation, we cannot approve your request for use of a Yamaha ATV or similar off-highway vehicle for use on County-owned roadways for the reasons summarized above.

Please let me know if you have any questions.



Be safe.

Joseph F. Marek, PE, PTOE
Transportation Safety Program Manager
Clackamas County Department of Transportation and Development

C: County Counsel, Dave Morrissey – ODOT, Capt. Shane Strangfield – CCSO, Steve Williams – Clackamas County ADA Coordinator

From: [COTTINGHAM Carroll J](#)
To: [Boderman, Nathan](#)
Cc: [Marek, Joe](#)
Subject: RE: John andersson other powerd mobility devices
Date: Friday, October 9, 2020 2:46:23 PM
Attachments: [Andersson UTV letter.pdf](#)

Hi Nate,

Attached is a copy of the letter I sent Mr Andersson to address his reoccurring questions. It also references a report that was sent to him in May, which I believe David Morrissey (from ODOT) shared with the County at the time. This letter does not disagree with anything that was previously shared with Mr. Andersson.

Thanks,
Carroll

From: Boderman, Nathan <NBoderman@clackamas.us>
Sent: Thursday, October 8, 2020 9:46 AM
To: COTTINGHAM Carroll J <Carroll.J.COTTINGHAM@odot.state.or.us>
Cc: Marek, Joe <JoeMar@clackamas.us>
Subject: RE: John andersson other powerd mobility devices

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

That would be great- thanks again.

~Nate

Nathan Boderman
Assistant County Counsel
2051 Kaen Road, 2nd Floor
Oregon City, Oregon 97045
(503) 655-8364
nboderman@co.clackamas.or.us

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are hereby notified that the sender has not waived any privilege, and that you may not read, disclose, copy, distribute, use or take action based upon this transmission or any accompanying documents. If you have received this transmission in error, please immediately notify this office, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: COTTINGHAM Carroll J <Carroll.J.COTTINGHAM@odot.state.or.us>
Sent: Thursday, October 8, 2020 9:26 AM
To: Boderman, Nathan <NBoderman@clackamas.us>
Cc: Marek, Joe <JoeMar@clackamas.us>
Subject: RE: John andersson other powerd mobility devices

I can share the text of the letter with you if needed.

From: Boderman, Nathan <NBoderman@clackamas.us>
Sent: Thursday, October 8, 2020 9:05 AM
To: COTTINGHAM Carroll J <Carroll.J.COTTINGHAM@odot.state.or.us>
Cc: Marek, Joe <JoeMar@clackamas.us>
Subject: RE: John andersson other powerd mobility devices

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Thanks Carroll- I appreciate the clarification.

~Nate

Nathan Boderman
Assistant County Counsel
2051 Kaen Road, 2nd Floor
Oregon City, Oregon 97045
(503) 655-8364
nboderman@co.clackamas.or.us

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From: COTTINGHAM Carroll J <Carroll.J.COTTINGHAM@odot.state.or.us>
Sent: Thursday, October 8, 2020 8:28 AM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: RE: John andersson other powerd mobility devices

Hi Nathan,

The letter I sent to Mr. Andersson did not change answers provided by ODOT in the past. We did acknowledge that a UTV may be used as a ADA device, but ODOT DMV does not provide assessments of devices for ADA. (We did assess the use of that UTV on the highway near his home and responded with a report in May). My letter also reiterated that any device must be used in accordance with state and local laws.

-Carroll

From: Boderman, Nathan <NBoderman@clackamas.us>
Sent: Wednesday, October 7, 2020 3:29 PM
To: COTTINGHAM Carroll J <Carroll.J.COTTINGHAM@odot.state.or.us>
Subject: FW: John andersson other powerd mobility devices

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Carroll- I am working with Joe Marek on the County's evaluation of Mr. Andersson's ADA accommodation request. Below, Mr. Andersson references a letter from "dmv/odot" and that "Mr. Cunningham states that I can use my other powered mobility device on public roads." Joe thought that he might be referring to you. At any rate, just wanted to check in and see if ODOT had made any further determinations on Mr. Andersson's requests (one for a John Deere Gator and the other for a Yamaha Banshee ATV). The County has denied both requests, principally on the fact that our traffic safety group does not believe that they can be operated safely on pavement surfaces and on these roads in particular given the speed differential and the curves and topography. Ideally, we would like to be as consistent as possible in our analysis to the extent ODOT is undertaking similar evaluations.

Thanks in advance for any help you can offer on this.

~Nate

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Tuesday, October 6, 2020 9:16 AM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John andersson other powerd mobility devices

Warning: External email. Be cautious opening attachments and links.

Mr boderman Im sure that you sent the Clackamas county sheriff's office you explanation about your decision to use the direct threat defense and that county council decision to use it against on all other powerd mobility device assessment requests and that it has nothing to do with anything to do with my mental or physical condition. Would it be included to install fear in the disabled person making the assessment request of the other powerd mobility device or to instill the same fear in the assessment to alarm the county commissioners. I've been using farm equipment on county and state roads for a long time and never been called a direct threat

by anyone but Clackamas county council and Clackamas county department of transportation if you're on a county road on a piece of farm equipment you are not a direct threat to others to be treated different than a farmer as a disabled person that would be a violation of me equal rights. I will be filling for the greivans hearing and I will deal with any other legal requirements that come up in the appropriate time lines according to the legal times allowed buy law.I have received a letter from dmv/odot Mr Cunningham states I can use my other powerd mobility devices on public roads. I really don't know how Clackamas county continues with this awful use of government power of denial of helping disabled people with problems of activity of daily living. I know that ADA laws need to be respected as they are civil rights laws and I know there's a correct way they are to be respected i know that 28cfr35.137 gives me the right to use my devices to be used as I have requested and that 28cfr35.130 (h) is the only part of law to be used that says I can be required to use safety devices on the other powerd mobility device if Clackamas county's council and the Clackamas county department of transportation chooses to not use the law as it is designed buy the federal government to protect disabled persons but to endangere the disabled persons in Clackamas county department of transportation has creating a direct threat to others by not following 28cfr 35.130 (h) and requiring safety triangle and flashing Amber light to be required . Americans must address the abuse of power by county and state governments. I choose to uses my rights under 28cfr 35 .137, 28cfr35.130 (h) and I will continue to use and exercise my rights under the to Federal ada laws im sorry that Clackamas county department of transportation doesn't want to protect the rights of disabled persons or abide by ada laws. So I will protect my rights and all disabled persons rights that Clackamas county will try to condemn with itimenation statements of your a direct threat to others and we have notified law enforcement. Americans by exercising there rights that protect them from county or state or any entity that try to deny or intimate disabled persons from using there civil rights under federal ADA laws. I see that council and Clackamas county department of transportation keeps relaying the Idea that if I dont like the way these two department have interpreted law 28cfr 35.137 I could file a action against Clackamas county transportation there is plenty of time for that if that is what the Clackamas county department of transportation needs to have a judge in a court to explain the usage and how to interpret the correct way to protect disabled persons from e ntitys that deprive them and abuse the county government power over the less fortunate persons in America the sooner you complete my assessment the sooner we can start the legal response of the assessment. The department of justice of oregon sent me a letter thay assessments should be able to be done over the phone being so simple according to the Oregon department of justice and now that odot has given me a letter of approval to use my other powerd mobility device on public roads. I dont believe Clackamas county transportation dept has more insights about assessments of other powerd mobility device than odot and the DOJ of oregon. I will always believe thay Clackamas county transportation dept by design created direct threat by not following the law under 28cfr 35.137 and 28cfr35.130 .I cant file any action on the decisions or any desisions of Clackamas county council or Clackamas county department of transportation untell I receive them please stop stalling the process .



Oregon

Kate Brown, Governor

Department of Transportation

Office of Civil Rights, MS 23
3930 Fairview Industrial Dr. SE
Salem, OR 97302
Phone: (503) 986-4350
Fax: (503) 986-6382

September 25, 2020

Dear Mr. Andersson,

I'm writing to confirm previous communications regarding your requests for an assessment of your John Deere XUV for use as a personal mobility device. ODOT DMV does not perform assessments of personal mobility devices for use in the public right-of-way, including the state highway system.

In alignment with federal ADA guidance, ODOT recognizes that other power-driven mobility devices may be permitted for use in areas designed for pedestrian travel. Devices as described in CFR § 35.137(b) *Other Power-Driven Mobility Devices* would include combustion-powered devices such as ATVs.

The federal CFR, § 35.137 Mobility devices, states in part: "A public entity shall make reasonable modifications..., unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements..." ODOT addressed this in previous communication, including the analysis that was sent to you on May 22, 2020. This analysis included guidance that mobility devices must be used in accordance with state and local laws.

You have continued to request an assessment of your John Deere XUV and similar ATV devices for use as ADA personal mobility device. This is not a service ODOT DMV provides. This letter closes your request for such an assessment.

Sincerely,

Carroll Cottingham
Intermodal Civil Rights Program Manger

Foreman, Sarah

From: Boderman, Nathan
Sent: Thursday, November 5, 2020 1:00 PM
To: John Andersson
Subject: RE: John Andersson other powerd mobility device

Good afternoon, Mr. Andersson- Once you file the grievance paperwork that we have provided, we will find a time to schedule a hearing. This hearing is a public meeting of the Board of County Commissioners and video of our hearings are already recorded, so no need to make a special request that we do so. I'll note that with the pandemic, our hearings are happening virtually right now, and the County uses the Zoom platform. Zoom allows the County to record the hearing. Zoom also allows individuals to record the meetings themselves. If you do not record the meeting on your end, we should be able to find a way to provide you with a copy.

~Nate

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Thursday, November 5, 2020 11:53 AM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: Fwd: John Andersson other powerd mobility device

Warning: External email. Be cautious opening attachments and links.

I emailed this to the Clackamas county commissioners but now im thinking Clackamas county council would have more information on procedure and permits needed to film the ada greivans hearings I am looking for a permanent record of thr hearing thank you have a great day.

----- Forwarded message -----

From: "John Andersson" <stellabridge1967@gmail.com>

Date: Nov 5, 2020 8:50 AM

Subject: John Andersson other powerd mobility device

To: <dcc@clackamas.us>

Cc:

I am inquiring about a hearing in front of the Clackamas county commissioners about a ADA request to exercise my civil rights under 28cfr 35. 137. I have been denied to use my ADA disability rights under the the ada law by Clackamas county transportation dept and Clackamas county council. when my greivans hearing date is set I will be wanting to video tape the procedure will I need a permit to do this and does Clackamas county video all ADA greivans hearing and if so will I be able to request a copy of the hearing video or CD. I had this same request to exorcise my rights under 28cfr 35 .137 at oregon department of transportation and it was granted as they told me we honor all ADA laws Clackamas county transportation dept disagrees with there desision and now we will have a hearing I don't understand Clackamas county denying me to use my ADA rights but I believe Clackamas county transportation dept has violated my civil rights under there decision and endangered my life by notifying Clackamas county law enforcement that I am a direct threat to others as they stated in the denial letter they sent to outside agencies I have repeatedly ask them to send a letter of retraction to the agencies they refuse to Clackamas county transportation dept created a direct threat by not following the ada procedure for the use of the law and then to reinforce called me a direct threat to others with no proof of any such thing that find there ability to manipulate the law 28cfr 35.137 and to brad me a direct threat to others to the Clackamas county sheriff's department repulsive Thank you John Andersson nov-4-2020

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From: [Boderman, Nathan](#)
To: [John Andersson](#)
Subject: RE: John Andersson other powerd mobility devices
Date: Monday, November 9, 2020 8:41:00 AM
Attachments: [RE John Andersson other powerd mobility device.msg](#)

Hi Mr. Andersson- You do not need a permit to record any hearing and if we know in advance that you would like access to the County's recording, we can make a copy available to you. Please review the message I sent to you last Thursday (attached). All of our meetings are happening online right now due to COVID. If you need an accommodation or do not have the ability to appear for an online hearing, let me know and we can figure out an alternative approach for this hearing. The Commissioners would still be appearing virtually, so it may be that we make a room available for you and have a computer and camera set up to allow you to present your case. We can discuss the specifics if, in fact, you need to request an alternative approach to the hearing.

~Nate

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, November 6, 2020 11:53 AM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson other powerd mobility devices

Warning: External email. Be cautious opening attachments and links.

Please respond to my previous email will I need a permit to video record the greivans hearing in front of the Clackamas county commissioners and will I be able to request a copy of Clackamas county commissioners video of the hearing thank you have a great day.

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Foreman, Sarah

From: Boderman, Nathan
Sent: Monday, November 9, 2020 8:42 AM
To: John Andersson
Subject: RE: John Andersson other powerd mobility devices
Attachments: RE: John Andersson other powerd mobility device

Hi Mr. Andersson- You do not need a permit to record any hearing and if we know in advance that you would like access to the County's recording, we can make a copy available to you. Please review the message I sent to you last Thursday (attached). All of our meetings are happening online right now due to COVID. If you need an accommodation or do not have the ability to appear for an online hearing, let me know and we can figure out an alternative approach for this hearing. The Commissioners would still be appearing virtually, so it may be that we make a room available for you and have a computer and camera set up to allow you to present your case. We can discuss the specifics if, in fact, you need to request an alternative approach to the hearing.

~Nate

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, November 6, 2020 11:53 AM

To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson other powerd mobility devices

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Please respond to my previous email will I need a permit to video record the greivans hearing in front of the Clackamas county commissioners and will I be able to request a copy of Clackamas county commissioners video of the hearing thank you have a great day.

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From: [Boderman, Nathan](#)
To: [John Andersson](#)
Subject: RE: John Andersson other powerd mobility devices
Date: Monday, November 9, 2020 12:30:36 PM
Attachments: [RE John Andersson other powerd mobility devices.msg](#)

Mr. Andersson- I have now responded twice to your requests (see attached). Please confirm receipt of this message so I know you are receiving my messages. If you have specific questions about your request or the process, please let me know.

~Nate

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Monday, November 9, 2020 12:24 PM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson other powerd mobility devices

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Please respond to my request to video recording hearing with Clackamas county commissioners hearing over ada greivans about denial of ada benefits under 28cfr 35. 137 will I need a permit to video record hearing thank you have a great day.

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From: [Boderman, Nathan](#)
To: [John Andersson](#)
Subject: RE: John Andersson other powerd mobility devices
Date: Monday, November 9, 2020 8:41:00 AM
Attachments: [RE John Andersson other powerd mobility device.msg](#)

Hi Mr. Andersson- You do not need a permit to record any hearing and if we know in advance that you would like access to the County's recording, we can make a copy available to you. Please review the message I sent to you last Thursday (attached). All of our meetings are happening online right now due to COVID. If you need an accommodation or do not have the ability to appear for an online hearing, let me know and we can figure out an alternative approach for this hearing. The Commissioners would still be appearing virtually, so it may be that we make a room available for you and have a computer and camera set up to allow you to present your case. We can discuss the specifics if, in fact, you need to request an alternative approach to the hearing.

~Nate

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Friday, November 6, 2020 11:53 AM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson other powerd mobility devices

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From: [Boderman, Nathan](#)
To: [John Andersson](#)
Subject: RE: John Andersson other powerd mobility device
Date: Thursday, November 5, 2020 12:58:00 PM

Good afternoon, Mr. Andersson- Once you file the grievance paperwork that we have provided, we will find a time to schedule a hearing. This hearing is a public meeting of the Board of County Commissioners and video of our hearings are already recorded, so no need to make a special request that we do so. I'll note that with the pandemic, our hearings are happening virtually right now, and the County uses the Zoom platform. Zoom allows the County to record the hearing. Zoom also allows individuals to record the meetings themselves. If you do not record the meeting on your end, we should be able to find a way to provide you with a copy.

~Nate

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Thursday, November 5, 2020 11:53 AM

To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: Fwd: John Andersson other powerd mobility device

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I emailed this to the Clackamas county commissioners but now im thinking Clackamas county council would have more information on procedure and permits needed to film the ada greivans hearings I am looking for a permanent record of thr hearing thank you have a great day.

----- Forwarded message -----

From: "John Andersson" <stellabridge1967@gmail.com>
Date: Nov 5, 2020 8:50 AM
Subject: John Andersson other powerd mobility device
To: <dcc@clackamas.us>
Cc:

I am inquiring about a hearing in front of the Clackamas county commissioners about a ADA request to exercise my civil rights under 28cfr 35. 137. I have been denied to use my ADA disability rights under the the ada law by Clackamas county transportation dept and Clackamas county council. when my greivans hearing date is set I will be wanting to video tape the procedure will I need a permit to do this and does Clackamas county video all ADA greivans hearing and if so will I be able to request a copy of the hearing video or CD. I had this same request to exorcise my rights under 28cfr 35 .137 at oregon department of transportation and it was granted as they told me we honor all ADA laws Clackamas county transportation dept disagrees with there desision and now we will have a hearing I don't understand Clackamas county denying me to use my ADA rights but I believe Clackamas county transportation dept has violated my civil rights under there decision and endangered my life by notifying Clackamas county law enforcement that I am a direct threat to others as they stated in the denial letter they sent to outside agencies I have repeatedly ask them to send a letter of retraction to the agencies they refuse to Clackamas county transportation dept created a direct threat by not following the ada procedure for the use of the law and then to reinforce called me a direct threat to others with no proof of any such thing that find there ability to manipulate the law 28cfr 35.137 and to brad me a direct threat to others to the Clackamas county sheriff's department repulsive Thank you John Andersson nov-4-2020

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Foreman, Sarah

From: Boderman, Nathan
Sent: Tuesday, November 10, 2020 9:11 PM
To: John Andersson
Subject: RE: John Andersson

I cannot comment on the use of these types of devices in other jurisdictions. The analysis you received from the County was specific to the devices you specified on specific roads in Clackamas County.

Please submit your grievance form if you wish to move forward with your appeal.

~Nate

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nboderman@co.clackamas.or.us

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Tuesday, November 10, 2020 2:43 PM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson

Warning: External email. Be cautious opening attachments and links.

Now that we know were receiving each others e-mails and said contact you if I have questions about my denial of my ADA rights could you please tell me and Clackamas county commissioners if these pictures I have taken in Gladstone Oregon Clackamas county oregon, salem oregon are normal operation of utvs in Clackamas county or are these all illegal activity on Clackamas county roads and Marian county roads oregon im thinking im just like them but im the only direct threat to others please explain how they not me do not get notify by Clackamas county transportation dept as a direct threat to others and why Clackamas county transportation dept dose not notify Clackamas county sheriff's department of there direct threat to others please feel free to reply thank you have a great day.

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Foreman, Sarah

From: Boderman, Nathan
Sent: Wednesday, November 18, 2020 3:43 PM
To: John Andersson
Subject: RE: John Andersson other powerd mobility devices

Hi Mr. Andersson- Are you asking for the grievance form to request an appeal to the determinations that has already been made, or are you asking for an application to request a new accommodation?

We have already mailed you the grievance form, but I am happy to resend if you would like. If you are hoping to make a new accommodation request, let me know and I will provide you instruction on how to initiate a new request.

~Nate

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nboderman@co.clackamas.or.us

Office hours: 7:00 AM - 6:00 PM, Monday – Thursday

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, November 18, 2020 9:21 AM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson other powerd mobility devices

Warning: External email. Be cautious opening attachments and links.

Please send me applications for a reasonable accommodation from Clackamas county council or Clackamas county department transportation ADA request so I can make a reasonable accommodation request regarding my ada greivans procedures if they cant be photo copyd please send (3) separate ones thank you. Please send to John Andersson at 15178 south Carus road Oregon city oregon 97045

[Spam Email](#)

[Phishing Email](#)

Foreman, Sarah

From: Boderman, Nathan
Sent: Tuesday, December 15, 2020 2:41 PM
To: John Andersson
Cc: Coblantz, Martine; Foreman, Sarah
Subject: ADA Grievance
Attachments: 20201214111339.pdf

Good afternoon, Mr. Andersson –

This is to confirm that the County has received your appeal paperwork. The next step will be for staff to review your materials and to schedule a hearing before the Board of County Commissioners. The Commissioners are on a scheduled recess starting Monday, December 21, and will return on January 4. At that time, two new Commissioners will be sworn in. I bring this up because there may be some delay in scheduling this hearing. We will be in contact with options for hearing dates once those are available to us.

In the meantime, if you have any questions, please do not hesitate to call or email me anytime.

~Nate

Nathan Boderman
Assistant County Counsel
2051 Kaen Road, 2nd Floor
Oregon City, Oregon 97045
(503) 655-8364
nboderman@co.clackamas.or.us

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Clackamas

DEC 14 2020

County Counsel

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

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Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

August 25, 2020

John Andersson
15178 S. Carus Rd.
Oregon City, OR 97045

RE: Powered Mobility Device

Dear Mr. Andersson:

Enclosed with this letter, please find a copy of the Clackamas County Grievance form. If you decide to pursue the appeal with the County, please complete the form and return it via email or regular mail to the address provided in the form. The County appeal process requires a hearing with our Board of County Commissioners. Once we receive your materials, we will work to schedule a date that works for both you and the Board to hear your appeal.

Please do not hesitate to contact our office if you have any questions about the enclosed form or the process in general.

Sincerely,

Silke Brunning
Paralegal
Clackamas County
Office of County Counsel

Encl.

APPENDIX

John Andersson ADA Grievance
Clackamas County Commissioners ~~Marin B~~
Complaint Form ADA Grievance (1A)(1B) (2)(3)(4)

28 CFR 35.130 (5)(6)(7)(8)

What constitutes a direct threat page (9)

ORS 410.710

Page (10)

Clackamas County's denial

(11)(12)(13)

Rural Road Safety

(14)(15)

ADA Other Power of Mobility Evidence (16)(17) (18)(19)

29 CFR 1910.145

(20)(21)(22)

ORS 815.110

(23)

Direct Threat Defense

(24)(25)(26)(27)(28)

ORS Laws

(28A) (28B) (28C)

Please Leave Complete for Clackamas County
Commissioners

Total ~~27~~ Pages including this Page
31

Appendix I – Formal Written Complaint Form

Clackamas County ADA Coordinator
County Administration
2051 Kaen Road PSB Suite 450
Oregon City, Oregon 97045
(503) 655-8291 Office (503) 655-8757
TTY/TDD
Email: civilrights@clackamas.us

ADA Formal Written Complaint Form

Please print legibly.

Reporting Individual: John A Andersson Date of Request: July 1 - 2020

Address: 15178 S Conus Rd

City, State and Zip: Oregon City Oregon 97045

Telephone Number: 503-621-2183 Business Phone: SAME

Other Contact Information: stell@bridge1967@a1-mail.com

If person needing accommodation is not the individual completing this form, please complete below:

Name: [Signature] Telephone Number: [Signature]

Other Contact Information: [Signature]

Program/Facility to be Inaccessible: Public Right away Clackamas county.

When did the situation occur (date)? AUGUST-19-2020

Describe the situation or way in which the program is not accessible, providing the name(s) where possible of the individuals who were involved in the situation, and any documentation or photographs supporting the incident:

Denial of Public Access of Clackamas count
Public Right away under federal law 28 CFR-35.137
Denial to use other powered mobility Device for locomotion.

Have efforts been made to resolve this complaint through the Request for Accommodation with the ADA Coordinator?

Yes No

If yes, what were the results? Denial of ADA Rights under 28 CFR 35-137
and extreme abuse of 28 CFR-35.130 General Prohibitions of
against discrimination of ADA RIGHTS.

How do you suggest this issue be remedied? Access to Public Right away
In Clackamas County Right away as requested.

Signature: John Andersson Date: Dec 10 - 2020

Attached Pages for Review. Total (29 pages) IA
Page 100

Clackamas County DOT Denial of ADA Civil Rights under 28 CFR 35.13 Joseph F. Marek, PE, PTOE and STAFF as Quoted in AMG 19 202 Letter from Clackamas County Denial Letter.

Clackamas County DOT Created a direct threat situation by not applying Federal ADA Law 28 CFR 35.130 Correctly to the mobility device Assessment under 28 CFR 35.131³¹⁰¹ which allows safety devices to be applied to the other Power & mobility devices. Under 28 CFR 35.130 section (h) as the Law 28 CFR ~~35.131~~ 35.137 section requires by not applying the Required Procedure under the Law Clackamas County DOT Chose to ignore this part of the Law so they could establish a direct threat defense to use as a denial of my Request of assessment of my other Power & mobility device. The procedure for assessment under 28 CFR 35.131 is so clear that the Federal Government did not include 28 CFR 35.139 as part of the assessment. Even if they could actually ~~pro~~ prove a direct threat defense that I was incapable to operate a mobility device physically or mentally I don't believe the Law allows Clackamas County Staff to Judge anyones ability. IF Clackamas County Department of transportation believes this they are surely overreaching there professional and legal ability of professional

PAGE (18) of (27)

Clackamas County DOT Disregard for my rights under 28CFR 35.130 leaves me believing my Civil Right under ADA Laws Have been violated.

Clackamas County Dept of Transportation acknowledges that my mobility device is appropriate under CFR 28-35.137 and reasonable as their Denial Letter Aug-19-2020 states and then uses a direct threat defence against me for denial of my Request Page 2 of the Denial letter under 28 35.139 section (b) auxiliary aids that will mitigate the risk. This could have been done with a safety triangle and a flashing light would reduced risk clackamas county chose not to follow the Law to obtain the objectives of all federal and laws.

I operated this device on public rightaway for the last 12 yrs legally under ORS traffic laws never have I been called a direct threat from law enforcement or any other entity the abuse that Clackamas County DOT and county council is appalling to me

John Anderson

Clackamas County DOT abuse of 28 CFR 35.130
and there Denial of Public Rightaway use -

The Denial letter of August 19-2020 Violations according
to 28 CFR-35.130. They did not use section (b)(1)
of ~~28~~ 35.130 TO establish usage of mobility Device
according to 28 CFR 35.137 ADA Law - They used the direct threat
defence 28 CFR 35.139 which was explicitly not part of
The assessment under 28 CFR 35.137 Because the Law is
so clear to the common man according to ADA Laws
It was not needed or allowed.

Clackamas County Staff Believes that people who
have access to a vehicle do not need to have the
Right to use mobility devices for mobility under
28 CFR 35.137 - They believe I can't operate the device
under 28 CFR 35.137 according to their letter
of denial their own words are legitimate safety

requirements that they did not apply to create their
Direct threat Defence. They Quote safety warnings
and Road hazards which apply to every one using
Public Right away but they are allowed to use the Right
away. There speculative views are just that. There statistics
prove no direct threat at all one persons views of
ours will be disregarded by me and let Judges decide
what is Real.

There Roadway Risk evaluation is clearly a violation under 28 CFR 35.130 section (4)(1)(11) section (b) (11)(14) 28 CFR 35.130 section (3)(1)(1)(11)

under there Conclusion August ^{19th - 20²⁰} Denial Lette They state How the Public has a shared responsibility To use Public access unless ~~you~~ you are Disabled. I have been ~~denied~~ denied My Rights from August 19th 2020 to today. I hope ~~our~~ county commissions can see the mockery that has occurred under my assessment of a mobility device.

There is no Direct threat to others as Clackamas County DOT and Clackamas County Council accuse me of there never has never will be as they notified the Clackamas County Law enforcement that i am is a defamation of Character Clackamas county should notify Clackamas Law enforcement immediately send a Letter of retraction about there unfounded Remarks That i am a direct threat to others. The Burden of Proof that i am a direct threat is on clackamas county not me they have not established this defence because it isint capable to be achieved in this case.

John Andersson Dec 10-2020

28 CFR § 35.130 - General prohibitions against discrimination.

CFR

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of 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 public entity.

(b)

(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability -

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7)

(i) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(ii) A public entity is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of "disability" at § 35.108(a)(1)(iii).

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)

(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(i) Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability.

[Order No. 1512-91, 56 FR 35716, July 26, 1991, as amended by AG Order No. 3180-2010, 75 FR 56178, Sept. 15, 2010; AG Order 3702-2016, 81 FR 53225, Aug. 11, 2016]

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(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections -

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

Fair Housing Information Sheet #8

Reasonable Accommodations for Tenant Posing a "Direct Threat" to Others

The FHAA has an important caveat to its general requirement that landlords provide tenants with necessary and reasonable accommodations for their disabilities. The Act excludes from coverage individuals with disabilities "whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 U.S.C. § 3604(f)(9). In light of this exclusion, landlords may refuse to grant tenants reasonable accommodations in certain situations. This information sheet explores what constitutes a "direct threat" for purposes of the Act, what kinds of behavior have triggered the exclusion in the past, and finally what circumstances will require a reasonable accommodation despite a tenant's admittedly threatening behavior.

I. What constitutes a "direct threat?"

When evaluating whether an individual with a mental disability poses a direct threat to other tenants, courts should not accept "[g]eneralized assumption," "subjective fears," or "speculation" as conclusive evidence of dangerous behavior. H.R. REP. NO. 711, 100th Cong., 2d Sess. 18, 29, *reprinted* in 1988 U.S. CODE CONG. ADMIN. NEWS 2173. Rather, courts will require *particularized* proof of dangerous behavior based on *objective* evidence before the protections of the FHAA will be denied individuals with disabilities. For example, in *Township of West Orange v. Whitman*, 8 F.Supp.2d 408 (D.N.J. 1998), a municipality and homeowners brought a claim against state officials in an attempt to prevent two group homes for individuals with mental illness from locating in residential areas. Based on the profile of the residents that were to live in the group homes,¹ the plaintiffs asserted that these individuals posed a heightened risk of danger to the community. *Id.* at 428. The court, however, held that even had the plaintiffs proven the existence of a correlation between the profile factors and heightened risk of danger, they would have still not met the burden of proving *individualized* dangerousness. *Id.* Thus the residents could not be excluded from the protections of the FHAA based on this evidence alone.

Additionally, in *Wirtz Realty Corporation v. Freund*, 721 N.E.2d 589, 597 (Ill.App. 1999), the court held that the legislative history of the FHAA requires that there be objective evidence either of acts causing harm or of direct threats of harm before a tenant will be excluded from the protections of the Act. Residents' belief that they were in danger, even if that belief proved to be "reasonable," did not satisfy the requirement for objective evidence. *Id.* Therefore, courts should not look to the subjective fears of residents in evaluating the behavior of the allegedly dangerous tenant. Considerations should include only medical testimony and/or an objective analysis of the tenant's behavior. *Id.*

In addition to objectivity, the timing of the allegedly dangerous behavior may be important to some courts. For instance, courts may not consider evidence of inappropriate behavior if the instances cited occurred too far in the past. In *Wirtz Realty Corporation*, 721 N.E.2d at 600, the court refused to consider examples of inappropriate behavior that occurred before a subsequent renewal of the tenant's lease. The court concluded that since the landlord had renewed his lease despite the reports of these actions, the behavior could not have been a part of the landlord's later eviction decision, and thus should not be maintained as evidence that the tenant posed a direct threat to others. *Id.* Thus a landlord's willingness to extend a lease may serve as evidence that previous inappropriate actions did not constitute a direct threat to other tenants.

II. Examples of actions that have triggered the "direct threat" exception

There is no clear-cut way to determine what kinds of behavior will ultimately constitute a direct threat. It is certainly not difficult to see that, when a tenant has struck another resident resulting in emergency treatment, that tenant's behavior likely constitutes a direct threat. See, e.g., *Roe v. Housing Authority of the City of Boulder*, 909 F.Supp. 814, 817 (D.Colo. 1995) (assuming that the trial court was correct in its conclusion that the tenant who struck and injured another resident posed a direct threat). However, a landlord need not wait until a tenant has caused actual physical harm before he may evict a tenant based on the direct threat exception of the FHAA. *Wirtz Realty Corporation*, 721 N.E.2d at 599. For instance, when a tenant's behavior escalates in intensity, ranging from merely inappropriate behavior to increasingly unpredictable and intimidating actions, a court may be satisfied that the tenant poses a direct threat to his fellow residents. *Id.* at 602, 604.

ORS 410.710¹

State policy on persons with disabilities

The Legislative Assembly finds and declares that it is a policy of this state that:

- (1) All persons regardless of any disability have the right to live their lives with dignity and to participate in society and all state programs to the fullest extent possible.
- (2) There is a need for education of state employees and the public generally about the capacity of persons with disabilities to participate and compete in the mainstream of society.
- (3) Stereotypes and negative labels have no place in state laws and words such as "victim," "afflicted," "crippled" and "handicapped" that have connotations of unclean, unworthy, unproductive and begging are judgmental. Wherever possible, words such as these shall be avoided.
- (4) The language of state laws shall reflect a positive outlook about persons with disabilities. The worth and uniqueness of each individual citizen is to be emphasized by using words and phrases that emphasize the person first and then identify any disability when relevant. [1989 c.224 §1; 2005 c.411 §3]

¹ Legislative Counsel Committee, *CHAPTER 410—Senior and Disability Services*, https://www.oregonlegislature.gov/bills_laws/ors/ors410.html (2019) (last accessed May 16, 2020).



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

August 19, 2020

John Anderson
15178 S Carus Road
Beavercreek, OR 97004

Dear Mr. Anderson,

You submitted a registered letter dated June 1, 2020 requesting an ADA evaluation for using a John Deere Gator as a mobility device on roads in Clackamas County. Clackamas County has completed the requested review. Clackamas County Department of Transportation and Development has a goal under our ADA Transition Plan to provide equal and safe accommodation for all transportation system users. Our ADA Coordinator and County Counsel have been assisting me with this response.

Your request pertains to use of a John Deere Gator, Serial Number 1M0825MACJM012203 on public roads as an ADA mobility device. As you have pointed out, there are a few sections within the Code of Federal Regulations (CFR's) that pertain to this question and they are listed below:

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).

- Horizontal and vertical road geometry
- Shoulder width
- Speed differentials between the Off-Highway vehicle and street-legal vehicles
- Weight difference between the off-highway vehicle and street legal vehicles
- Crash Rate

Roadways in your 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 your area of residence, it will occupy the full travel lane due to its width of approximately 60 inches and lack of wide shoulders to drive on. As this off-highway vehicle 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 off-highway vehicle and the person(s) in the street-legal vehicles. A common example includes a roadway with undulating vertical alignment where the off-highway vehicle may be out of sight at the bottom of a hill and a street-legal 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 street-legal 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 the off-highway vehicle and a street legal vehicle. For example, a John Deere Gator XUV825M weighs approximately 1,800 pounds. Street legal 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 an off-highway vehicle such as a John Deere Gator would very likely result in a fatality given the weight difference and lack of occupant protection on the Gator.

In this particular case, the mobility device, a John Deere Gator was not designed by the manufacturer for on-road use and is deemed not safe for operation on public roads per the operator's manual. As a result, the County does not see any options to provide for the safe operation of the off-road vehicle on the county roads except to add a special unpaved area adjacent to each roadway where this device could traverse. Adding an 8 foot-wide gravel shoulder area adjacent to each road permitted for use would be prohibitively expensive, costing well over \$700,000 per mile and also require purchase of a significant amount of right-of-way impacting adjacent properties owners. Based on the County's evaluation, we do not see a feasible way to provide accommodation for the use of the off-highway vehicle because of cost to the County and impacts to adjacent properties.

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 examined 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, also factor that can make seeing large slow moving vehicles, such as a John Deere Gator more difficult.

Conclusions

Clackamas County is committed to provide reasonable access under our ADA Transition Plan. The public roadway network is open to all with a shared responsibility for all. As part of the County's role in operating a roadway system, safety is of paramount importance as everyone deserves to get home safely to their family every night. Based on the County's review of your request and subsequent evaluation, we cannot approve your request for use of a John Deere Gator or similar off-highway vehicle for use on County-owned roadways for the reasons summarized above.

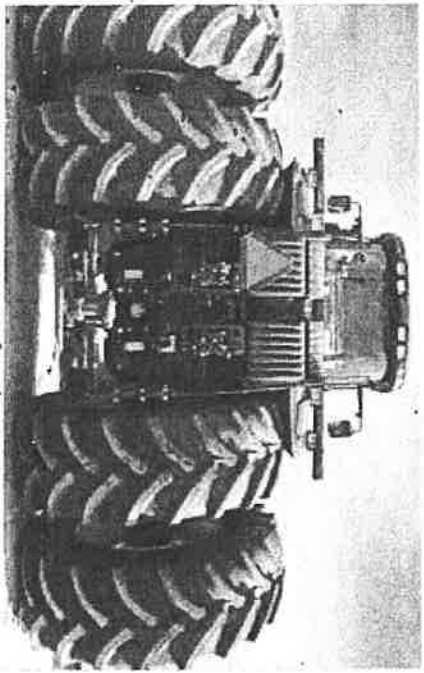
Please let me know if you have any questions.



Be safe.

Joseph F. Marek, PE, PTOE
Transportation Safety Program Manager
Clackamas County Department of Transportation and Development

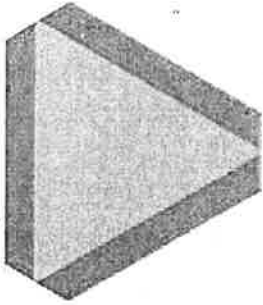
C: County Counsel, Dave Morrissey – ODOT, Capt. Shane Strangfield – CCSO, Steve Williams –
Clackamas County ADA Coordinator



Do you recognize this symbol?

Paying attention to this sign is a matter of life and death for drivers of cars and farm equipment on rural roads.

A slow-moving vehicle sign must be displayed on farm equipment and other vehicles designed to travel at speeds of 25 miles or less.



The sign is not simply a reflector — it is a warning to slow down.

At night, the reflective red border of the SMV emblem is visible. When you see this sign in your headlights, slow down immediately. In low light, it is difficult to judge how fast you are closing in on a slow-moving vehicle, or what its dimensions are.

For more information on road safety, visit the Oregon Dept. of Transportation website at www.oregon.gov/ODOT/TS.

Tips for farmers

Farmers have a role in rural road safety, too. Here are tips to alleviate some hazards when taking wide equipment onto the road:

▲ **Oregon law** requires you to place a slow-moving vehicle reflector on any machine that travels the road slower than 25 mph. Always point the triangle up, keep the SMV emblem clean to maximize reflectivity, and replace the emblem when it fades, normally every 2 to 3 years.

▲ **Mark the edges of tractors and machines with reflective tape and reflectors.** Consider installing retrofit lighting on older machinery to increase visibility.

▲ **Turn on your lights**, but turn off rear spotlights when going onto the road. From a distance spotlights can be mistaken for headlights.

▲ **Be aware of heavy traffic patterns.**

▲ **Use pilot cars**, one in front and one in back, if you are going a considerable distance. Hang a brightly colored flag out the window of these pilot vehicles.

▲ **Consider installing mirrors** on equipment so you can see motorists around you. Be careful where the mirrors are placed.

▲ **When moving multiple farm implements down the highway, leave enough space between each vehicle for cars to pass.**

ATTENTION!

It is illegal for any Oregon resident to display the slow-moving vehicle sign on permanent, stationary objects like mail box posts, driveway entrances, and fences.

To use an SMV sign on anything other than slow-moving equipment is a Class C offense.



Share the road safely

Slow-Moving Vehicle signs

Oregon revised Statute 815.115

effective January 1, 2014

OREGON
FARM
BUREAU

Oregon Farm Bureau
Health & Safety Committee

1320 Capital St. NE, Suite 200

Salem, Oregon 97301

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Farm equipment shares the roads

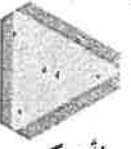
While driving on a rural road, particularly during the summer and fall when many farmers harvest their crops, you may encounter farm equipment. It may be a single vehicle, like a combine, or a tractor with an implement in tow. Farm equipment is often wider than a typical car and can even be wider than the lane. Large equipment is designed to travel at speeds of only 15 to 25 miles per hour.

Sometimes farm equipment must drive on highways to move between fields. Just as motorists can use public roadways, farmers can legally operate farm equipment on these same roads.

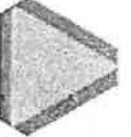
Caution, courtesy, and special attention to the following tips will help ensure the safety of motorists, passengers, and operators of slow-moving equipment.

If you are driving 55 mph and come upon a tractor that is moving 25 mph, it only takes 8 seconds to close a gap the length of a football field between you and the tractor.

Red and orange slow-moving vehicle (SMV) emblems must be visible on large equipment from at least 500 feet away. Because it can be difficult to judge the speed at which you are closing in on a vehicle ahead, you should slow down immediately.

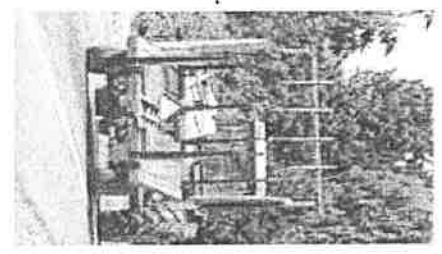


Think of the slow-moving vehicle sign as a warning to slow down.



Be patient

Farmers understand that your trip is being delayed, so they will usually pull off to the side of the road at a safe location to allow you to pass. However, don't assume that the farmer can immediately move aside. Roadway shoulders may be soft, wet, or steep, and this can cause equipment to tip.



Even if you have to slow down to 20 mph and follow a tractor for two miles, it takes only six minutes of your time, which is like waiting for two stoplights.

Yield to wide vehicles

Some farm equipment may be wider than the lane of travel. If you approach a piece of wide equipment traveling in the opposite direction and you cannot pass safely, please stop. Then pull off the road to a location that will allow the vehicle to pass you.

Don't assume the farmer knows you're there

Most farm equipment operators will regularly check to see if there is traffic behind them. However, the driver must spend most of the time looking ahead to keep the equipment safely on the road and watch for oncoming traffic. Also, most farm equipment is very loud. Don't assume that the driver knows where your vehicle is. Before you attempt to pass, use your car's horn to signal you are there.

In Oregon every year there are 25 to 35 serious auto accidents involving farm equipment, particularly during summer and fall harvest months.

Pass with caution

If you decide to pass farm equipment on the road, please do so with caution.

▲ Be watchful of vehicles behind you that may also try to pass.

▲ If you must enter the oncoming lane of traffic, do not proceed unless you can see clearly ahead of both you and the vehicle you will pass.

▲ If there are any curves or hills ahead that may block your view or the view of oncoming vehicles, do not pass.

▲ Do not pass if you are in a designated "No Passing Zone" or within 100 feet of any intersection, railroad grade crossing, bridge, elevation structure, or tunnel.

▲ Do not assume that a farm vehicle that pulls to the right side of the road is going to turn right or is letting you pass. Due to the size of some farm implements, the farmer must make wide left-hand turns. If you are unsure, check the operator's hand signals and look at the left side of the road for gates, driveways, or any place a farm vehicle might turn.

By being aware of farm equipment during your travels on rural roads, you can help make the trip safe for both you and Oregon farmers.

U.S. Department of Justice
Civil Rights Division
Disability Rights Section



Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

People with mobility, circulatory, respiratory, or neurological disabilities use many kinds of devices for mobility. Some use walkers, canes, crutches, or braces. Some use manual or power wheelchairs or electric scooters. In addition, advances in technology have given rise to new devices, such as Segways[®], that some people with disabilities use as mobility devices, including many veterans injured while serving in the military. And more advanced devices will inevitably be invented, providing more mobility options for people with disabilities.

This publication is designed to help title II entities (State and local governments) and title III entities (businesses and non-profit organizations that serve the public) (together, "covered entities") understand how the new rules for mobility devices apply to them. These rules went into effect on March 15, 2011.

- Covered entities must allow people with disabilities who use manual or power wheelchairs or scooters, and manually-powered mobility aids such as walkers, crutches, and canes, into all areas where members of the public are allowed to go.
- Covered entities must also allow people with disabilities who use other types of power-driven mobility devices into their facilities, unless a particular type of device cannot be accommodated because of legitimate safety requirements. Where legitimate safety requirements bar accommodation for a particular type of device, the covered entity must provide the service it offers in alternate ways if possible.
- The rules set out five specific factors to consider in deciding whether or not a particular type of device can be accommodated.

Wheelchairs

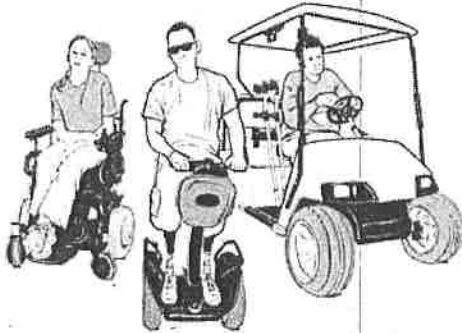
Most people are familiar with the manual and power wheelchairs and electric scooters used by people with mobility disabilities. The term "wheelchair" is defined in the new rules as "a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion."

Other Power-Driven Mobility Devices

In recent years, some people with mobility disabilities have begun using less traditional mobility devices such as golf cars or Segways[®]. These devices are called "other power-driven mobility device" (OPDMD) in the rule. OPDMD is defined in the new rules as "any mobility device powered by batteries, fuel, or other engines... that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices... such as the Segway[®] PT,

or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair". When an OPDMD is being used by a person with a mobility disability, different rules apply under the ADA than when it is being used by a person without a disability

Choice of Device



People with disabilities have the right to choose whatever mobility device best suits their needs. For example, someone may choose to use a manual wheelchair rather than a power wheelchair because it enables her to maintain her upper body strength. Similarly, someone who is able to stand may choose to use a Segway[®] rather than a manual wheelchair because of the health benefits gained by standing. A facility may be required to allow a type of device that is generally prohibited when being used by someone without a disability when it is being used by a person who needs it because of a mobility disability. For example, if golf cars are generally prohibited in a park, the park may be required to allow a golf car when it is being used because of a person's mobility disability, unless there is a legitimate safety reason that it cannot be accommodated.

Requirements Regarding Mobility Devices and Aids

Under the new rules, covered entities must allow people with disabilities who use wheelchairs (including manual wheelchairs, power wheelchairs, and electric scooters) and manually-powered mobility aids such as walkers, crutches, canes, braces, and other similar devices into all areas of a facility where members of the public are allowed to go.



In addition, covered entities must allow people with disabilities who use any OPDMD to enter the premises unless a particular type of device cannot be accommodated because of legitimate safety requirements. Such safety requirements must be based on actual risks, not on speculation or stereotypes about a particular type of device or how it might be operated by people with disabilities using them.

- For some facilities -- such as a hospital, a shopping mall, a large home improvement store with wide aisles, a public park, or an outdoor amusement park -- covered entities will likely determine that certain classes of OPDMDs being used by people with disabilities can be accommodated. These entities must allow people with disabilities using these types of OPDMDs into all areas where members of the public are allowed to go.
- In some cases, even in facilities such as those described above, an OPDMD can be accommodated in some areas of a facility, but not in others because of legitimate safety concerns. For example, a cruise ship may decide that people with disabilities using Segways[®] can generally be accommodated, except in constricted areas, such as passageways to cabins that are very narrow and have low ceilings.
- For other facilities -- such as a small convenience store, or a small town manager's office -- covered entities may determine that certain classes of OPDMDs cannot be accommodated. In that case, they are still required to serve a person with a disability using one of these devices in an alternate manner if possible, such as providing curbside service or meeting the person at an alternate location.

Covered entities are encouraged to develop written policies specifying which kinds of OPDMDs will be permitted and where and when they will be permitted, based on the following assessment factors.

Assessment Factors

In deciding whether a particular type of OPDMD can be accommodated in a particular facility, the following factors must be considered:

- the type, size, weight, dimensions, and speed of the device;



- the facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- the facility's design and operational characteristics (e.g., whether its business is conducted indoors or outdoors, its square footage, the density and placement of furniture and other stationary devices, and the availability of storage for the OPDMD if needed and requested by the user);
- whether legitimate safety requirements (such as limiting speed to the pace of pedestrian traffic or prohibiting use on escalators) can be established to permit the safe operation of the OPDMD in the specific facility; and
- 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.

It is important to understand that these assessment factors relate to an entire class of device type, **not** to how a person with a disability might operate the device. (See next topic for operational issues.) All types of devices powered by fuel or combustion engines, for example, may be excluded from indoor settings for health or environmental reasons, but may be deemed acceptable in some outdoor settings. Also, for safety reasons, larger electric devices such as golf cars may be excluded from narrow or crowded settings where there is no valid reason to exclude smaller electric devices like Segways®.

Based on these assessment factors, the Department of Justice expects that devices such as Segways® can be accommodated in most circumstances. The Department also expects that, in most circumstances, people with disabilities using ATVs and other combustion engine-driven devices may be prohibited indoors and in outdoor areas with heavy pedestrian traffic.

Policies on the Use of OPDMDs

In deciding whether a type of OPDMD can be accommodated, covered entities must consider all assessment factors and, where appropriate, should develop and publicize rules for people with disabilities using these devices. Such rules may include

- requiring the user to operate the device at the speed of pedestrian traffic;
- identifying specific locations, terms, or circumstances (if any) where the devices cannot be accommodated;
- setting out instructions for going through security screening machines if the device contains technology that could be harmed by the machine; and
- specifying whether or not storage is available for the device when it is not being used.



Credible Assurance

An entity that determines it can accommodate one or more types of OPDMDs in its facility is allowed to ask the person using the device to provide credible assurance that the device is used because of a disability. If the person presents a valid, State-issued disability parking placard or card or a State-issued proof of disability, that must be accepted as credible assurance on its face. If the person does not have this documentation, but states verbally that the OPDMD is being used because of a mobility disability, that also must be accepted as credible assurance, unless the person is observed doing something that contradicts the assurance. For example, if a person is observed running and jumping, that may be evidence that contradicts the person's assertion of a mobility disability. However, it is very important for covered entities and their staff to understand that the fact that a person with a disability is able to walk for a short distance does not necessarily contradict a verbal assurance -- many people with mobility disabilities can walk, but need their mobility device for longer distances or uneven terrain. This is particularly true for people who lack stamina, have poor balance, or use mobility devices because of respiratory, cardiac, or neurological disabilities. A covered entity cannot ask people about their disabilities.

Staff Training

Ongoing staff training is essential to ensure that people with disabilities who use OPDMDs for mobility are not turned away or treated inappropriately. Training should include instruction on the types of OPDMDs that can be accommodated, the rules for obtaining credible assurance that the device is being used because of a disability, and the rules for operation of the devices within the facility.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Website

www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the [link](#) near the top of the middle column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m. , Th 12:30 p.m. – 5:30 p.m. (Eastern Time) to speak with an ADA Specialist.

All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. January 2014

The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.

PDF Version of this Document

January 31, 2014

29 CFR § 1910.145 - Specifications for accident prevention signs and tags.

CFR

§ 1910.145 Specifications for accident prevention signs and tags.

(a) *Scope.*

(1) These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) intended to indicate and, insofar as possible, to define specific hazards of a nature such that failure to designate them may lead to accidental injury to workers or the public, or both, or to property damage. These specifications are intended to cover all safety signs except those designed for streets, highways, and railroads. These specifications do not apply to plant bulletin boards or to safety posters.

(2) All new signs and replacements of old signs shall be in accordance with these specifications.

(b) **Definitions.** As used in this section, the word *sign* refers to a surface on prepared for the warning of, or safety instructions of, industrial workers or members of the public who may be exposed to hazards. Excluded from this definition, however, are news releases, displays commonly known as safety posters, and bulletins used for employee education.

(c) **Classification of signs according to use -**

(1) **Danger signs.**

(i) There shall be no variation in the type of design of signs posted to warn of specific dangers and radiation hazards.

(ii) All employees shall be instructed that danger signs indicate immediate danger and that special precautions are necessary.

(2) Caution signs.

(i) Caution signs shall be used only to warn against potential hazards or to caution against unsafe practices.

(ii) All employees shall be instructed that caution signs indicate a possible hazard against which proper precaution should be taken.

(3) Safety instruction signs. Safety instruction signs shall be used where there is a need for general instructions and suggestions relative to safety measures.

(d) Sign design -

(1) Design features. All signs shall be furnished with rounded or blunt corners and shall be free from sharp edges, burrs, splinters, or other sharp projections. The ends or heads of bolts or other fastening devices shall be located in such a way that they do not constitute a hazard.

(2) Danger signs. The colors red, black, and white shall be those of opaque glossy samples as specified in Table 1, "Fundamental Specification of Safety Colors for CIE Standard Source 'C,' " of ANSI Z53.1-1967 or in Table 1, "Specification of the Safety Colors for CIE Illuminate C and the CIE 1931, 2 Standard Observer," of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

(3) [Reserved]

(4) Caution signs. The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1-1967 or Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

(5) [Reserved]

(6) Safety instruction signs. The standard color of the background shall be white; and the panel, green with white letters. Any letters used against the white background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1, of ANSI Z53.1-1967 or in Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

(7)-(9) [Reserved]

(10) Slow-moving vehicle emblem. This emblem (see fig. J-7) consists of a fluorescent yellow-orange triangle with a dark red reflective border. The yellow-orange fluorescent triangle is a highly visible color for daylight exposure. The reflective border defines the shape of the fluorescent color in daylight and creates a hollow red triangle in the path of motor vehicle headlights at night. The emblem is intended as a unique identification for, and it shall be used only on, vehicles which by design move slowly (25 m.p.h. or less) on the public roads. The emblem is not a clearance marker for wide machinery nor is it intended to replace required lighting or marking of slow-moving vehicles. Neither the color film pattern and its dimensions nor the backing shall be altered to permit use of advertising or other markings. The material, location, mounting, etc., of the emblem shall be in accordance with the American Society of Agricultural Engineers Emblem for Identifying Slow-Moving Vehicles, ASAE R276, 1967, or ASAE S276.2 (ANSI B114.1-1971), which are incorporated by reference as specified in § 1910.6.

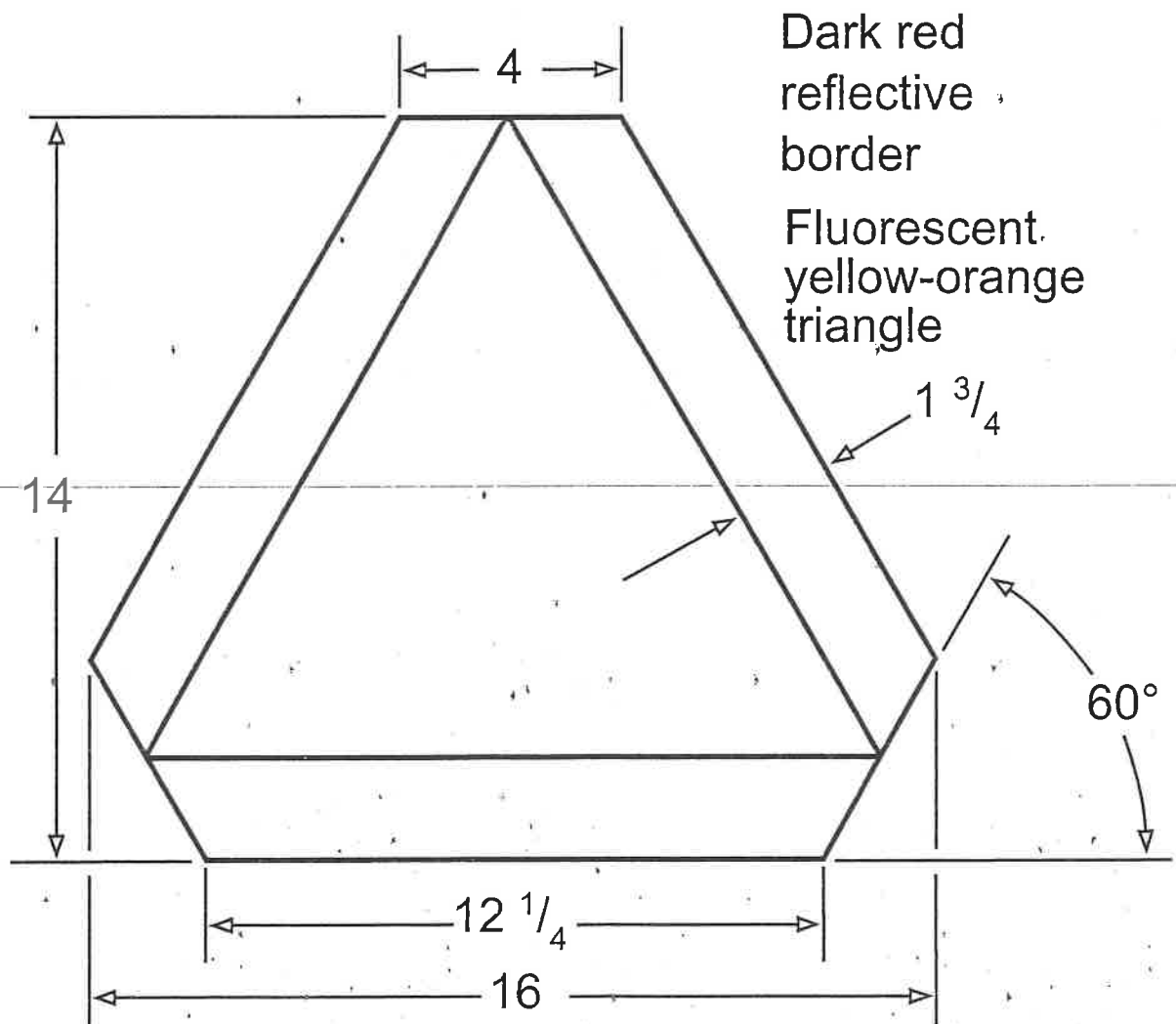


Figure J-7 - Slow-Moving Vehicle Emblem

ORS 815.110¹

Requirements for and use of slow-moving vehicle emblem

This section establishes requirements for ORS 815.115 (Violation of emblem requirements). The requirements under this section are in addition to any other requirements for lighting equipment provided by law. Except as specifically provided by an exemption under ORS 815.120 (Exemptions from emblem requirements), a person violates ORS 815.115 (Violation of emblem requirements) if the person does not comply with any of the following requirements:

- (1) The following types of vehicles must display slow-moving vehicle emblems described under ORS 815.060 (Rules establishing standards for slow-moving vehicle emblems):
 - (a) Vehicles or combinations of vehicles designed for customary use at speeds of less than 25 miles per hour.
 - (b) Golf carts or similar vehicles when operated by a person with a disability.
 - (c) Class I, Class II and Class IV all-terrain vehicles operated on a highway under ORS 821.191 (Operation of Class I, Class II or Class IV all-terrain vehicle on highway) (1).
- (2) Slow-moving vehicle emblems must meet the requirements for such emblems established by the Department of Transportation by rule under ORS 815.060 (Rules establishing standards for slow-moving vehicle emblems).
- (3) Slow-moving vehicle emblems shall be displayed on the rear of the power unit. When a combination of vehicles is being operated in a manner that obscures the emblem mounted on the power unit, an additional emblem shall be displayed on the rear of the rearmost vehicle in the combination. [1983 c.338 §469; 2001 c.529 §5; 2007 c.70 §347; 2007 c.207 §3; 2011 c.360 §19]

¹ Legislative Counsel Committee, *CHAPTER 815—Vehicle Equipment Generally*, https://www.oregonlegislature.gov/bills_laws/ors/ors815.html (2019) (last accessed May 16, 2020).



Newsletter

Make Sure You're On Target When Using Direct Threat Defense

10.2.17

An employer's personnel decisions do not always have to be "correct" in order to avoid liability under most federal and state anti-discrimination laws. If you decide to terminate an employee for engaging in workplace misconduct, the fact the employee was actually innocent of the alleged misconduct should be deemed irrelevant in a subsequent discrimination lawsuit.

For example, in the 2009 case of *Cervantez v. KMGP Servs.*, the 5th Circuit Court of Appeals said "a fired employee's actual innocence of his employer's proffered accusation is irrelevant as long as the employer reasonably believed it and acted on it in good faith." This is because, as the 5th Circuit said in the 2010 *Moss v. BMC Software, Inc.* case, anti-discrimination laws do not protect employees "from erroneous or even arbitrary personnel decisions, but only from decisions which are unlawfully motivated." As long as you genuinely believed the employee was guilty of misconduct and relied on that belief as the basis for the termination, you should not be held liable even if the decision was flat-out unreasonable.

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Direct Threat is Different

ATTORNEYS

> William Brian London

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The same is not true, however, when an employer invokes the "direct threat" defense under the Americans with Disabilities Act (ADA). Generally speaking, the ADA prohibits employers from terminating someone simply because they have a disability. The direct threat defense affords you with a limited defense to liability, permitting you to legally terminate an employee (or at least deem them unqualified) where their disability poses "a direct threat to the health or safety of other individuals in the workplace." The phrase "direct threat" is defined as "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."

To determine whether an employee poses such a threat, you are required to conduct an individualized assessment of their present ability to safely perform the essential functions of the job when you take into consideration the duration of the risk and the nature, severity, likelihood, and imminence of any potential harm. Most importantly, the determination that a disabled employee poses a direct threat must be objectively reasonable and supported by medical evidence. Thus, your honest, good faith belief that an employee poses a safety threat is generally not enough to avoid liability for terminating that worker.

Employer Learns Direct Threat Lesson The Hard Way

A recent decision by the 7th Circuit Court of Appeals provides a good example of the risks employers face when attempting to invoke the direct threat defense to justify a termination. In *Stragapede v. City of Evanston*, Biagio Stragapede, an employee who worked in the City of Evanston's water services department, suffered a traumatic brain injury during a non-work-related accident involving a nail gun. The employer placed Stragapede on medical leave for about nine months until he eventually recovered and felt able to begin working

again. Before returning to work in the water services

department, however, the city required that he undergo a fitness-for-duty exam. The neurologist who conducted the exam found that Stragapede had "mild residual cognitive

deficits,” but ultimately concluded he was able to return to work.

Less than a month later, the city placed Stragapede on administrative leave as a result of issues with his job performance. In particular, the city cited concern over a series of incidents in which Stragapede seemed to be having trouble completing relatively simple tasks, such as changing a water meter and logging into his work computer. He also reported to the wrong locations for two work assignments after misreading street signs and other directional mishaps, and was observed by another city employee allegedly driving through an intersection while looking down at his lap.

The city reported these events to the neurologist, who indicated that they were most likely caused by Stragapede’s brain injury. The neurologist did not re-examine him, but drafted a letter stating that Stragapede was a direct threat and could not perform the essential functions of his job based solely on the city’s account of his performance issues. The city terminated him shortly thereafter, and Stragapede sued for disability discrimination.

After a weeklong trial, the jury found the city liable and awarded Stragapede over \$575,000 on his ADA claims. On appeal, the city argued that it should not matter whether Stragapede *actually* posed a direct threat, but that it should be afforded a valid ADA defense because it honestly believed he did.

The 7th Circuit disagreed. In an opinion released July 31, 2017, the court found the city’s subjective belief that the employee would harm himself or others was insufficient to escape liability because the direct threat defense required “medical or other objective evidence.” The court explained that the jury could have reasonably determined the neurologist’s opinion to be unreliable since it was based entirely on information supplied by the city. The court also noted that just a few months earlier, the same neurologist had evaluated the employee and concluded he was capable of returning to work.

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The other evidence the city offered to establish a safety threat – the two times Stragapede reported to the wrong location for work assignments and the incident in which he reportedly drove through an intersection without his eyes on the road – was either adequately explained in the employee’s testimony regarding those events or was not a safety issue in the first place. Thus, in the court’s view, it was reasonable for the jury to conclude that the employee did not pose a safety threat.

What Should Retailers Take From This Case?

As the *Stragapede* case demonstrates, determining whether an employee poses a direct threat is a process fraught with risk, and, without proper precautions, even well-meaning employers can find themselves on the wrong side of a jury verdict. Below are some tips to help ensure your company will withstand scrutiny the next time you face the difficult decision of whether to remove an employee because of safety concerns:

1. **Seek Out The Experts.** When choosing a medical provider to evaluate an employee’s ability to safely perform the essential functions of their job, seek out someone with specific expertise. Courts are more likely to allow a jury to second-guess the opinion of a primary care doctor or a company physician than the judgment of a doctor who specializes in the exact condition at issue in the case. For example, in the 2003 case of *Echazabal v. Chevron USA, Inc.*, the 9th Circuit discounted the opinions of company doctors who had no expertise and limited experience with chronic liver diseases, which was the basis of the plaintiff’s disability. Also, the Equal Employment Opportunity Commission (EEOC) has published Interpretive Guidance suggesting employers should specifically seek out the “opinions of medical doctors, rehabilitation counselors, or physical

therapists who have expertise in the disability involved

and/or direct knowledge of the individual with the disability.”
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2. **No Cherry Picking.** Always allow the doctor to conduct a complete, in-person examination of the employee, rather than requesting a medical opinion based solely on documents or cherry-picked information you provide to the doctor. One of the defendant's biggest mistakes in the *Stragapede* case was not sending the employee back to the neurologist for a second evaluation. The court was obviously troubled by the fact that the neurologist was never given an opportunity to conduct a follow-up exam before rendering his last opinion. In fact, the neurologist himself seemed uncomfortable with this arrangement, given the caveat in his letter stating he was relying entirely on information from the city.

3. **Look To What *Did* Happen, Not What *Could* Happen.**

The EEOC's Interpretive Guidance states that you should "identify the specific risk posed by the individual," or in the case of individuals with emotional or mental disabilities, "the specific behavior on the part of the individual that would pose the direct threat." Therefore, you should document specific examples of the conduct creating the safety risk, avoiding speculation as to what *could* happen in the worst-case scenario. In *Stragapede*, the city's assessment was based largely on a series of minor incidents, most of which were unlikely to create any kind of safety issue. Instead, the EEOC makes clear that there should be a "high probability of substantial harm" for an employer to establish the defense.

Because *Stragapede* was able to offer a reasonable explanation for at least some of those incidents, there was enough to support the jury's determination that he was not a direct threat.

4. **Provide Solid Information To The Doctor.** Be sure to provide the doctor with a current job description and any relevant information about your workplace and the employee's work history. A physician cannot provide a

meaningful "individualized assessment" of the
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employee's ability to safely perform their job without
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access to accurate and up-to-date information about

work duties and the environment. If an individual has worked with the same disability their entire career without causing any incidents or injuries, it will be difficult for you to show that the employee posed a serious safety threat. For example, in the *Echazabal* case cited above, the 9th Circuit ruled in favor of the employee in part because the company ignored his 20-year, injury-free work history.

5. **Consider Possible Reasonable Accommodations.**

Don't forget that determining whether an employee's disability creates a safety risk is only step one in the direct threat analysis. You must also consider whether there are any reasonable accommodations that could eliminate or reduce the risk to an acceptable level without creating an undue hardship, so you should ask the examining physician to identify any such accommodations.

6. **When In Doubt, Call Your Employment Lawyer.** While this is applicable advice in just about any employment situation, it is especially true when dealing with the direct threat defense. Every direct threat case is different, so the safest approach is to consult with an employment attorney before making any decisions.

*For more information, contact the author at
BLondon@fisherphillips.com or 504:592.3888.*

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ORS 821.191¹**Operation of Class I, Class II or Class IV all-terrain vehicle on highway**

- **unlawful operation of Class I, Class II or Class IV all-terrain vehicle used for agricultural purposes**
- **penalty**

- (1) Notwithstanding any other provision of law, a person may operate a Class I, Class II or Class IV all-terrain vehicle that is not otherwise properly equipped for operation on a highway on the highways of this state if:
- (a) The person is using the all-terrain vehicle for transportation between ranching or farming headquarters, agricultural fields or pastures;
 - (b) The person holds a valid driver license;
 - (c) The person complies with posted speed limits, but in no event exceeds a speed of 20 miles per hour;
 - (d) The person operates the all-terrain vehicle as closely as is practicable to the right-hand edge of the highway, including shoulders, if any;
 - (e) The all-terrain vehicle is equipped with a lighted headlight and taillight; and
 - (f) The all-terrain vehicle displays a slow-moving vehicle emblem described under ORS 815.060 (Rules establishing standards for slow-moving vehicle emblems).
- (2) A person commits the offense of unlawful operation of a Class I, Class II or Class IV all-terrain vehicle used for agricultural purposes if the person operates a Class I, Class II or Class IV all-terrain vehicle on a highway in violation of subsection (1) of this section.
- (3) The offense described in subsection (2) of this section, unlawful operation of a Class I, Class II or Class IV all-terrain vehicle used for agricultural purposes, is a Class D traffic violation.
[2001 c.529 §§2,3; 2007 c.207 §2; 2011 c.360 §25]

Note: 821.191 (Operation of Class I, Class II or Class IV all-terrain vehicle on highway) was added to and made a part of ORS chapter 821 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

¹ Legislative Counsel Committee, *CHAPTER 821—Terrain Vehicles*, https://www.oregonlegislature.gov/bills_laws/ors/ors821.html (2019) (last accessed May 16, 2020).

ORS 811.512¹

Unlawfully operating low-speed vehicle on highway

- **penalty**

- (1) A person commits the offense of unlawfully operating a low-speed vehicle on a highway if the person operates a low-speed vehicle on a highway that has a speed limit or posted speed of more than 35 miles per hour.
- (2) Notwithstanding subsection (1) of this section, a city or county may adopt an ordinance allowing operation of low-speed vehicles on city streets or county roads that have speed limits or posted speeds of more than 35 miles per hour.
- (3) Notwithstanding subsection (1) of this section, a person does not commit the offense of unlawfully operating a low-speed vehicle on a highway if the person operates a farm tractor on a state highway that has a speed limit or posted speed of more than 35 miles per hour.
- (4) The offense described in this section, unlawfully operating a low-speed vehicle on a highway, is a Class B traffic violation. [2001 c.293 §8; 2019 c.59 §1]

¹ Legislative Counsel Committee, *CHAPTER 811—Rules of the Road for Drivers*, https://www.oregonlegislature.gov/bills_laws/ors/ors811.html (2019) (last accessed May 16, 2020).

ORS 815.060¹

Rules establishing standards for slow-moving vehicle emblems

The Department of Transportation shall adopt rules for slow-moving vehicle emblems for purposes of ORS 815.110 (Requirements for and use of slow-moving vehicle emblem) and 815.115 (Violation of emblem requirements). The rules adopted under this section shall:

- (1) Require a slow-moving vehicle emblem that is reflectorized or fluorescent and that is of a standard type.
- (2) Establish design and mounting requirements that the emblem must meet.
- (3) Conform to the nationally accepted standards for slow-moving vehicle emblems. [1983 c.338 §444]

¹ Legislative Counsel Committee, *CHAPTER 815—Vehicle Equipment Generally*, https://www.oregonlegislature.gov/bills_laws/ors/ors815.html (2019) (last accessed May 16, 2020).

Foreman, Sarah

From: Boderman, Nathan
Sent: Wednesday, December 16, 2020 12:15 PM
To: John Andersson
Cc: Coblantz, Martine; Foreman, Sarah
Subject: RE: John Andersson other powerd mobility device denial under 28cfr 35. 137 and 28cfr35. 130

Of course. We will be sure to send a formal notice by both email and mail once we are able to set a date. We want to be sure any date we select works for you, so we will make sure to work with you prior to finalizing the hearing time to avoid the hassle of having to reset and renotece the hearing time if there is a conflict.

~Nate

Nathan Boderman
Assistant County Counsel
2051 Kaen Road, 2nd Floor
Oregon City, Oregon 97045
(503) 655-8364
nboderman@co.clackamas.or.us

Office hours: 7:00 AM - 6:00 PM, Monday – Thursday

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, December 16, 2020 12:10 PM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson other powerd mobility device denial under 28cfr 35. 137 and 28cfr35. 130

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Please notify by email and regular mail about date and time of hearing. Thank you .

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Foreman, Sarah

From: Coblentz, Martine
Sent: Wednesday, January 27, 2021 9:34 AM
To: Foreman, Sarah
Subject: FW: John Andersson other powerd mobility device denial under 28cfr 35. 137 and 28cfr35. 130

FYI

From: Coblentz, Martine
Sent: Wednesday, December 30, 2020 2:22 PM
To: John Andersson <stellabridge1967@gmail.com>
Subject: RE: John Andersson other powerd mobility device denial under 28cfr 35. 137 and 28cfr35. 130

Good afternoon Mr. Andersson,

I am the County's ADA coordinator and will also be working with County Counsel through this hearing process. It is important to us that you have what you need to appeal your case to the Board of County Commissioners. I know that Nate has been in touch regarding scheduling a hearing date, you will be hearing from him soon to finalize that. With COVID, we have had hearings and meetings via the online Zoom platform. If we are unable to have the hearing in person due to COVID guidelines, I would like to work with you to ensure that you have what you need to fully participate in this hearing. Please let us know if you have any accommodation needs.

Thank you,
Martine

Martine Coblentz, (she/her)

County Equity and Inclusion Officer
County Administration
Equity and Inclusion Office

Ph: 503-655-8579
Address: 2051 Kaen Rd. Oregon City, OR 97045

From: Boderman, Nathan <NBoderman@clackamas.us>
Sent: Wednesday, December 16, 2020 12:15 PM
To: John Andersson <stellabridge1967@gmail.com>
Cc: Coblentz, Martine <MCoblentz@clackamas.us>; Foreman, Sarah <SForeman@clackamas.us>
Subject: RE: John Andersson other powerd mobility device denial under 28cfr 35. 137 and 28cfr35. 130

Of course. We will be sure to send a formal notice by both email and mail once we are able to set a date. We want to be sure any date we select works for you, so we will make sure to work with you prior to finalizing the hearing time to avoid the hassle of having to reset and renote the hearing time if there is a conflict.

~Nate

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From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, December 16, 2020 12:10 PM
To: Boderman, Nathan <NBoderman@clackamas.us>
Subject: John Andersson other powerd mobility device denial under 28cfr 35. 137 and 28cfr35. 130

Warning: External email. Be cautious opening attachments and links.

Please notify by email and regular mail about date and time of hearing. Thank you .

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Foreman, Sarah

From: Coblentz, Martine
Sent: Wednesday, January 27, 2021 9:39 AM
To: Foreman, Sarah
Subject: FW: John Andersson other powerd mobility device

FYI

From: Coblentz, Martine
Sent: Wednesday, January 20, 2021 11:32 AM
To: 'John Andersson' <stellabridge1967@gmail.com>
Cc: Foreman, Sarah <SForeman@clackamas.us>; Boderman, Nathan <NBoderman@clackamas.us>
Subject: RE: John Andersson other powerd mobility device

Dear Mr. Andersson,

I am writing to give you an update regarding the process to schedule your hearing. Nate Boderman has put in a request for some dates within the County administration process. Once we have those options, we will run them by you to ensure your availability. It also looks like you will be able to participate in person for the hearing. Our offices will be in touch soon to confirm a date.

Thank you,
Martine

Martine Coblentz, (she/her)

County Equity and Inclusion Officer
County Administration
Equity and Inclusion Office

Ph: 503-655-8579
Address: 2051 Kaen Rd. Oregon City, OR 97045

From: Coblentz, Martine
Sent: Wednesday, December 30, 2020 2:49 PM
To: 'John Andersson' <stellabridge1967@gmail.com>
Cc: Foreman, Sarah <SForeman@clackamas.us>; Boderman, Nathan <NBoderman@clackamas.us>
Subject: RE: John Andersson other powerd mobility device

Thank you for letting us know. If we are unable to conduct the hearing in person, we will work to make sure you have access to communicate at a county building with the technology needed to participate. We will be in touch soon.

Sincerely,
Martine

Martine Coblentz, (she/her)

County Equity and Inclusion Officer
County Administration
Equity and Inclusion Office

Ph: 503-655-8579

Address: 2051 Kaen Rd. Oregon City, OR 97045

From: John Andersson <stellabridge1967@gmail.com>

Sent: Wednesday, December 30, 2020 2:45 PM

To: Coblentz, Martine <MCoblentz@clackamas.us>

Subject: John Andersson other powerd mobility device

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No I do not have internet access I will need Clackamas county to provide access to the ability to communicate with county commissioners at a county building and supply me with adequate communication with county commissioners thank you.

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Foreman, Sarah

From: Coblenz, Martine
Sent: Wednesday, January 27, 2021 9:37 AM
To: Foreman, Sarah
Subject: FW: John Andersson other power mobility device grievance complaint hearing.

FYI

From: Coblenz, Martine
Sent: Thursday, January 21, 2021 7:10 PM
To: 'John Andersson' <stellabridge1967@gmail.com>
Cc: Foreman, Sarah <SForeman@clackamas.us>; Boderman, Nathan <NBoderman@clackamas.us>
Subject: RE: John Andersson other power mobility device grievance complaint hearing.

Good evening Mr. Andersson,

We have heard back about a potential date for the ADA hearing. Does February 3rd between 10a-11:30a work for you? The hearing will probably be scheduled for up to one hour, I just wanted to get a sense of your availability that morning. Please let me know if that would work for you.

Thank you,
Martine
ADA Coordinator

Martine Coblenz, (she/her)

County Equity and Inclusion Officer
County Administration
Equity and Inclusion Office

Ph: 503-655-8579
Address: 2051 Kaen Rd. Oregon City, OR 97045

From: John Andersson <stellabridge1967@gmail.com>
Sent: Wednesday, January 20, 2021 2:24 PM
To: Coblenz, Martine <MCoblenz@clackamas.us>
Subject: John Andersson other power mobility device grievance complaint hearing.

Warning: External email. Be cautious opening attachments and links.

I am curious about the date of my grievance complaint hearing .I've not heard anything for a month I need to file with BOLI in a timely manner please contact me with a date with the commissioners for the procedural hearing thank you.

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Foreman, Sarah

From: Coblentz, Martine
Sent: Wednesday, January 27, 2021 9:35 AM
To: Foreman, Sarah
Subject: FW: John Andersson other power mobility device grievance. Hearing

FYI

From: Coblentz, Martine
Sent: Friday, January 22, 2021 9:22 AM
To: 'John Andersson' <stellabridge1967@gmail.com>
Subject: RE: John Andersson other power mobility device grievance. Hearing

Yes, will do. Thank you.

From: John Andersson <stellabridge1967@gmail.com>
Sent: Thursday, January 21, 2021 8:18 PM
To: Coblentz, Martine <MCoblentz@clackamas.us>
Subject: John Andersson other power mobility device grievance. Hearing

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That would be fine feb 3 2020 10:00 to 11:30 please email conforming date time address thank you.

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