

Anderson Geneva Development Inc.

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August 7, 2009

****via email & US mail****

Eric Cheng, Chief Railroad Engineer
UTAH DEPARTMENT OF TRANSPORTATION
4501 South 2700 West
P.O. Box 143200
Salt Lake City, UT 84114-3200

Re: 400 North Railroad Crossing
DOT No. 254903N
Response to July 13, 2009 Order for Temporary Closure

Dear Mr. Cheng:

This letter acknowledges receipt of your letter of July 13, 2009. We are pleased that UDOT has acknowledged the public crossing status of this Crossing. We appreciate your consideration of all of the issues and history involved and support this decision.

The second part of your letter came as a surprise and we question the basis for the decision in light of the current circumstances and historic use. We do not agree that this Crossing is unsafe at the present time. We find no support for this determination and we hereby request that the Department reconsider this issue, or, in the alternative, issue a decision that is final and appealable so that we can take an appeal to the Public Service Commission.

In reviewing your determination that the Crossing is unsafe we suggest the following facts be fully considered:

1. To our knowledge, during the entire history of the Geneva plant operations (over 50 years), with thousands of crossings daily, there was never an accident at the Crossing.
2. During the four-year period of our ownership of the Geneva plant property, there has been no accident at the Crossing and it was used extensively during the demolition. To our knowledge, since the plant closed in 2001 until we acquired the land in late 2005, there have been no accidents at the Crossing and it was used extensively during that period of time.
3. You indicate in your letter that "...the current conditions at the Crossing are unsafe for the public." We have spoken with the Vineyard Town Engineer and he was unaware of any surveillance or review of the Crossing that has resulted in these findings.

4. You also indicate in your letter that it "...shall remain closed until the Town of Vineyard improves the approach roadways to the standard of the roadway as classified in its current Master Street Plan..." Again, with no surveillance or review by UDOT, how can this determination be made, especially when the current use does not require this level of improvement?

5. During our meeting earlier this year at Vineyard Town it was acknowledged by UDOT that a formal review of safety issues at the crossing had not been conducted and no surveillance has been conducted since that date.

6. Elimination of this access point eliminates a vital access point to the Anderson Geneva property and a vital access for the Town of Vineyard as development occurs.

7. The owners of the property and the Town of Vineyard are concerned that this eliminates a very important roadway that has no historical safety problem and appears to require municipal improvements that are not now required, and may not be necessary for several years. While the Town Road Master Plan may call for a road of a certain size, there is no current need for those improvements. To prohibit use without a showing of need for those improvements seems unfair and overly burdensome.

8. The following statutory provisions place the burden of improvements on UDOT, Union Pacific, and a possibility of apportionment to the Municipality. However, costs for improvement can be placed on the Municipality only to the extent of funds provided under the Act. See: 54-4-15.1; 54-4-15.3 and 56-1-11, Utah Code.

In conclusion, your order of temporary closure is unusual and appears to us to be unnecessary. Your letter did not indicate that it was a final, appealable decision, nor did it advise us of our appeal rights. Please let us know immediately if the temporary closure is a final appealable order, or whether you will reconsider this temporary order.

Sincerely,



Dennis M. Astill, General Counsel

DMA/ss

cc: Renee Spooner

David Church, Town of Vineyard Attorney
Mayor and Town Council, Town of Vineyard