

UTAH PUBLIC  
SERVICE COMMISSION

2010 JAN -4 P 5 31

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Attorneys for Union Pacific Railroad Company

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the matter of Union Pacific Railroad's  
Petition for Relief against the Utah Department  
of Transportation

**Union Pacific's Answer to Counter-petition**

Docket No. 09-888-01

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Defendant Union Pacific Railroad Company ("Union Pacific") submits this Answer to the Counter-petition and Third-party Petition of the "Vineyard Parties" in the above-entitled action.

1. Union Pacific admits the allegations of paragraph 1.
2. Union Pacific admits the allegations of paragraph 2.
3. Union Pacific admits that UTA has acquired certain rights from UP wherein UTA may construct additional rail facilities at the Crossing. Except as so expressly admitted, Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and therefore denies them.
4. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and therefore denies them.
5. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and therefore denies them.

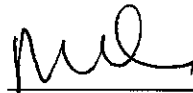
6. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and therefore denies them.
7. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and therefore denies them.
8. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 and therefore denies them.
9. Union Pacific denies that a public road extends over the Crossing. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 9 and therefore denies them.
10. Union Pacific lacks knowledge or information sufficient to form a belief as to the ownership of the property east of the public road. Union Pacific denies that a public road extends over the Crossing. Union Pacific further denies that prior owners of the Geneva Property and the general public have continuously used the Crossing as a public at grade crossing without obstruction or hindrance for more than 90 years.
11. Union Pacific denies the allegations of paragraph 11.
12. Union Pacific admits, on information and belief, that the Crossing was used as a public at grade crossing at some point prior to the 1942 Resolution and Order that quitclaimed the property on the east side the Crossing to Defense Plant Corp. Except as so expressly admitted, Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 and therefore denies them.

13. Union Pacific denies the allegations of paragraph 13.
14. Union Pacific denies the allegations of paragraph 14.
15. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 and therefore denies them.
16. Union Pacific denies the allegations of paragraph 16.
17. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of sentence one of paragraph 17 and therefore denies them.  
Union Pacific denies the remaining allegations of paragraph 17.
18. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 and therefore denies them.
19. Union Pacific admits that the Crossing has been categorized as a public crossing in the database maintained by the Federal Railroad Administration. Except as so expressly admitted, Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 and therefore denies them.
20. Union Pacific admits the allegations of paragraph 20.
21. Union Pacific admits that allegations of paragraph 20 and affirmatively avers that the west side of the Crossing is barricaded pursuant to UDOT's order for a temporary closure of the Crossing.
22. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 and therefore denies them.

23. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 and therefore denies them.
24. Union Pacific admits that UDOT ordered a temporary closure of the Crossing. Except as so expressly admitted, Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 24 and therefore denies them.
25. Paragraph 25 does not state factual allegations but legal conclusions to which Union is not required to respond. If a response is required, Union Pacific denies the allegations of paragraph 25.
26. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 and therefore denies them.
27. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 and therefore denies them.
28. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 and therefore denies them.
29. Union Pacific lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 and therefore denies them.
30. Union Pacific denies the allegations of paragraph 30.
31. Union Pacific admits the allegations of paragraph 24 [sic].
32. Union Pacific denies the allegations of paragraph 25 [sic].
33. Union Pacific denies the allegations of paragraph 26 [sic].

WHEREFORE, Union Pacific prays for the Commission to grant relief in the form of an order that the Crossing is a private crossing, and for such other and further relief as the Commission deems just and proper.

DATED this 4th day of January, 2010.



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Reha Deal



UTAH PUBLIC  
SERVICE COMMISSION

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the matter of Union Pacific Railroad's  
Petition for Relief against the Utah Department  
of Transportation

**Union Pacific's Documents Relevant to  
Decision**

Docket No. 09-888-01

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Defendant Union Pacific Railroad Company ("Union Pacific") submits this preliminary list of documents relevant to the Commission's decision. Union Pacific reserve the right to supplement this list after the close of discovery.

1. 1942 Resolution and Order quitclaiming property on the east side of the Crossing to Defense Plant Corp.
2. Excerpt from Railway-Highway Grade Crossing Handbook.

DATED this 4th day of January, 2010.



Reha Deal

**Certificate of Service**

I hereby certify that on the 4th day of January, 2010, a true, correct and complete copy of the foregoing was served upon the following attorneys in the manner indicated below:

Dennis M. Astill	<input checked="" type="checkbox"/>	U.S. Mail
Dennis M. Astill, PC	<input type="checkbox"/>	Hand Delivered
9533 South 700 East, Suite 103	<input type="checkbox"/>	Overnight
Sandy, UT 84070	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	No Service
David L. Church	<input checked="" type="checkbox"/>	U.S. Mail
Blaisdell and Church	<input type="checkbox"/>	Hand Delivered
5995 Redwood Road	<input type="checkbox"/>	Overnight
Salt Lake City, UT 84123	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	No Service
Bruce Jones	<input checked="" type="checkbox"/>	U.S. Mail
UTA	<input type="checkbox"/>	Hand Delivered
3600 South 700 West	<input type="checkbox"/>	Overnight
Salt Lake City, UT 84119-4122	<input type="checkbox"/>	Facsimile
<i>Counsel for UTA</i>	<input type="checkbox"/>	No Service
Renee Spooner, Assistant General Attorney	<input checked="" type="checkbox"/>	U.S. Mail
4501 South 2700 West	<input type="checkbox"/>	Hand Delivered
Box 148455	<input type="checkbox"/>	Overnight
Salt Lake City, UT 84114	<input type="checkbox"/>	Facsimile
<i>Counsel for UDOT</i>	<input type="checkbox"/>	No Service

  
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On motion of Commission Johnson, seconded by Commissioner Clark, and passed, the following Resolution pertaining to roads within the Geneva Works area was passed:

RESOLUTION and  
ORDER

It appearing to the Board of County Commissioners of Utah County, Utah, that Defense Plant Corporation, a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, has acquired near Vineyard and within the limits of Utah County, Utah, the conveyance to it of an area containing approximately fifteen hundred (1500) acres of land and certain reliction lands adjacent thereto for the purpose of erecting blast furnaces, coke ovens, open hearth furnaces, and other facilities for the production of pig iron and steel, which tracts are commonly called the Geneva Plant Site, Planor 301; and

It further appearing that there are clouds upon the title to said lands resulting from improper redemption certificates or the nonpayment of taxes or conveyances to Utah County for road purposes, and for other reasons; and

It further appearing that certain county roads traverse said plant site, which roads are no longer needed for use by the general public or freeholders living within the vicinity of said plant site, and that it is advisable that such county roads be vacated and abolished, and that Utah County quitclaim said plant site to said Defense Plant Corporation;

NOW, on application of Defense Plant Corporation, good cause appearing therefor, and in consideration of the aid that has been extended by said Defense Plant Corporation in the construction of that certain road beginning at the southerly corner of said plant site and extending northwesterly along the west side of right of way of the Denver & Rio Grande Western Railroad to the southern boundary of Section 8, Township 5 South, Range 2 East, Salt Lake Meridian, it is hereby ordered:

1. That all county highways (except the county road bordering the lake and hereinafter referred to) and easements located within the lands hereinafter described be and the same are hereby declared to be abolished, and any order, ordinance or other action designating any such roads or easements as county highways be and the same is hereby vacated and repealed, and the County Clerk of Utah County is hereby authorized and directed to record a certified copy of this resolution and order in the office of the County Recorder of Utah County, Utah.
2. That Utah County, a body corporate and politic of the State of Utah, quitclaim to said Defense Plant Corporation all of the right, title and interest of Utah County in and to the lands hereinafter described, whether such interest was acquired for road purposes, by reason of nonpayment of taxes, or otherwise, reserving, however, to Utah County its lien upon said lands for general taxes for the year 1942, and the County Clerk of Utah County, Utah, is hereby authorized and directed to execute and deliver, on behalf of Utah County, Utah, such quitclaim deed to said Defense Plant Corporation.

The lands hereinabove referred to are located in Utah County, Utah, and are particularly described as follows, to-wit:

Beginning at a point on the West right of way line of the Union Pacific Railroad, said point being also on the East-West center section line of Section 5, and from which point the quarter corner between Sections 4 and 5, Township 5 South, Range 2 East, Salt Lake Base and Meridian, bears North 89° 32' 30" East 938.64 feet; thence South 89° 32' 30" West 6831.63 feet to the point of intersection of the said center section line produced with the Utah Lake meander line; thence along said meander line as follows: South 4° 41' 50" East 959.17 feet; thence South 11° 26' 40" West 1755.57 feet; thence South 8° 34' 40" West 360.10 feet; thence South 8° 52' 0" East 1039.29 feet; thence South 4° 45' 50" West 1487.45 feet; thence South 7° 18' 10" East 1177.92 feet; thence South 5° 13' 10" East 765.60 feet to the intersection of the said meander line with the East line of County Road, Deed No. 5; thence South 29° 19' East 25.94 feet; thence South 97° 06' East 600.59 feet to the North line of said County Road; thence South 89° 59' 38" East 2079.00 feet along said North line of County Road; thence North 68° 49' East 372.90 feet to the section line between Sections 7 and 8, above Township and Range; thence South 0° 16' 10" East 27.72 feet to the corner common to Sections 7, 8, 17, and 18, above Township and Range; thence North 89° 20' 05" East 2758.11 feet along said Section line to the East right of way of the Denver and Rio Grande Railroad; thence South 30° 10' 10" East 5289.00 feet along said East railroad right of way to the intersection with the West right of way of State Highway No. 114; thence North 0° 30' 40" West 4687.79 feet along the said West right of way of Highway 114, which right of way is parallel to and 33 feet West of the Center line of said highway, to the section line between Sections 8 and 17, above Township and Range; thence North 89° 20' 05" East 103.04 feet along said Section line to the West right of way fence of the Union Pacific Railroad, said right of way fence being parallel to and 33 feet West of the Center line of said railroad track; thence North 7° 54' West 3037.12 feet along said West railroad right of way to the point of beginning, containing 1523.561 acres.

MINUTES-Board of County Commissioners, Utah County, Utah

Also:

Beginning at a point on the Utah Lake Meander Line, said point being at the intersection of the East-West center section line of Section 6, Township 6 South, Range 2 East, Salt Lake Base and Meridian, and said Meander Line, from which point of intersection the East quarter corner of said Section 6 bears North 89° 32' 30" East 2455.69 feet; thence along said Utah Lake Meander Line as follows: South 4° 41' 50" East 959.17 feet; thence South 11° 26' 40" West 1755.57 feet; thence South 8° 34' 40" West 550.10 feet; thence South 8° 52' 00" East 1039.29 feet; thence South 4° 45' 50" West 1487.45 feet; thence South 7° 18' 10" East 1177.92 feet; thence South 5° 13' 10" East 765.50 feet to the intersection of said Meander Line with the East line of County Road, Deed No. 5; thence South 29° 19' East 26.94 feet along said East line of County Road; thence South 9° 05' East 600.59 feet to the North line of said County Road; thence due West to the water's edge 860 feet, more or less; thence Northerly along said water's edge 8100 feet, more or less, to a point which lies due west of the point of beginning; thence due East from said water's edge 1450 feet, more or less, to the point of beginning; it being intended by this instrument to include within the foregoing description all reliction lands West of said meander line as above described and the water's edge of Utah Lake, including or excluding, as the case may be, the area occasioned by the rise or fall of the Lake.

Excepting, however, from the above described lands that certain county road running in a northerly and southerly direction and located west of said meander line, and which road begins at the Southwest corner and terminates at the Northwest corner of the property first above described.

PASSED by the Board of Utah County Commissioners this 3 day of August, A.D. 1942.

R.J. Murdock  
 William J. Johnson  
 Sylvan Clark  
 BOARD OF UTAH COUNTY  
 COMMISSIONERS

ATTEST: C.A. Grant  
 County Clerk  
 (Seal)

On motion of the County Sheriff, Wayne Soffe and Louis Petro, special deputy sheriffs at Geneva Works, were released, and Frank Mitchell, special deputy at Ironton, was also released.

On motion of Commissioner Clark, seconded by Commissioner Johnson, and passed, the County Fair for 1942 was cancelled in keeping with the federal recommendation.

In recognition of the work done by the 4-H Clubs in connection with the annual County Fair (cancelled for this year) the Commissioners agreed to appropriate \$349.00 for the use of the clubs in their work projects.

Claims were presented and approved for payment as per certified lists on file with the County Clerk, County Auditor, and County Treasurer.

ATTEST: C.A. Grant  
 County Clerk.

R.J. Murdock  
 CHAIRMAN OF THE BOARD

August 10, 1942.

The Board of Utah County Commissioners met in regular session in their place of meeting in the City and County Building at Provo, Utah, on Monday, August 10, 1942.

On roll call the following were present:

Chairman R.J. Murdock, Commissioner  
 Wm. J. Johnson, Commissioner  
 Sylvan Clark, Commissioner  
 C.A. Grant, County Clerk.

The Chairman was authorized to sign the following Correction Letters, Nos.: 10660, 10664, 10665, 10666, 10667, 10668, 10669, 10670.

The following hospital bill was approved and ordered paid:

\$40.00 to Dr. W.H. Groves of the L.D.S. Hospital for services for Mrs. Beatrice Fox.

The following special deputy sheriffs without pay were appointed: Clinton H. Roberts, J.F. Johnson, to serve at Geneva Works; Wm. E. Brown at Ironton; Silas V. Ford, D. & R.G.W.R.R. at Thistle.

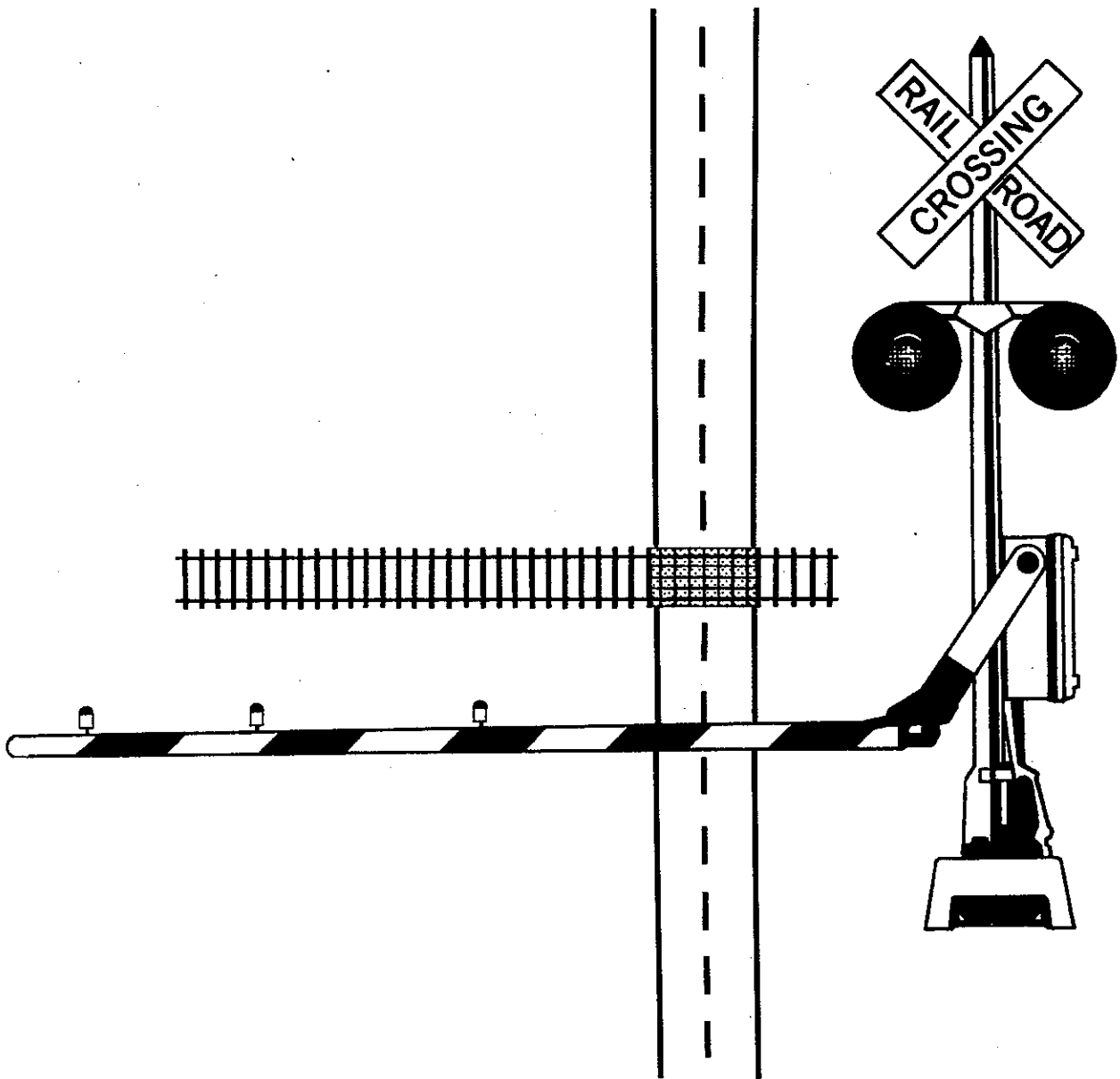
AUG 19



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# RAILROAD-HIGHWAY GRADE CROSSING HANDBOOK

—SECOND EDITION FHWA-TS-86-215  
SEPTEMBER 1986



## IX. SPECIAL ISSUES

There are several issues that are important to railroad - highway grade crossing safety and operations that either were not specifically covered in previous chapters or that warrant special consideration. These include private crossings, short line railroads, high speed rail corridors, pedestrians, bicycles and motorcycles, and special vehicles.

### A. Private Crossings

Private railroad-highway grade crossings are those that are on roadways not open to use by the public nor are they maintained by a public authority. According to the U.S. DOT/AAR National Rail-Highway Crossing Inventory, in 1983 there were 133,011 private crossings in the United States. Usually, an agreement between the land owner and the railroad governs the use of the private crossing.

Typical types of private crossings are as follows.

- o Farm crossings that provide access between tracts of land lying on both sides of the railroad
- o Industrial plant crossings that provide access between plant facilities on both sides of the railroad
- o Residential access crossings over which the occupants and their invitees reach private residences from another road, frequently a public road paralleling and adjacent to the railroad right-of-way
- o Temporary crossings established for the duration of a private

construction project or other seasonal activity

In some instances, changes in land use have resulted in an expansion of a crossing's use to the extent that it has become a public crossing as evidenced by frequent use of the general public. This may occur whether or not any public agency has accepted responsibility for maintenance or control of the use of the traveled way over the crossing. The railroad and highway agency should continually review the use of private crossings so that mutual agreement is obtained on its appropriate classification. If the general public is making use of the crossing, appropriate traffic control devices should be installed for their warning and guidance. Usually, State and Federal funds are not available for use at private crossings.

The number of accidents at private crossings represent a small portion of all crossing accidents; however, safe design and operation at private crossings should not be overlooked. Very few private crossings have active traffic control devices and many do not have signs. Typically, they are on narrow gravel roads often with poor roadway approaches.

In 1983, there were 599 accidents, 33 fatalities, and 156 injuries at private crossings. These represent reductions, since 1979, of 37.4% in accidents, 32.7% in fatalities, and 24.3% in injuries as shown in Table 47.

As with accidents at public crossings, the majority of accidents at private crossings involved automobiles. Table 48 gives the number of

Chapter IX Special Issues

Table 47. Accidents at Private Crossings, 1979 - 1983

Year	Accidents	Fatalities	Injuries
1979	957	49	206
1980	848	45	228
1981	749	31	172
1982	590	27	129
1983	599	33	156

Source: Ref. 3

accidents and casualties by roadway user for 1983.

At private crossings, the majority of motor vehicle accidents, 345 or 61.4%, occurred during daylight, while 185, or 32.9%, occurred during darkness. The remaining 32 accidents occurred during either dusk or dawn. Most of the accidents involving motor vehicles, 244 or 43.4%, occurred at crossings without signs or signals as shown in Table 49. Accident rates (number of accidents at crossings

Table 49. Motor Vehicle Accidents at Private Crossings by Traffic Control Device, 1983

Traffic Control Device	Accidents	Percent
Automatic gates	7	1.24
Flashing lights	26	4.63
Highway signals, wigwags or bells	13	2.31
Special*	37	6.58
Crossbucks	162	28.83
Stop signs	52	9.25
Other signs	21	3.74
No signs or signals	244	43.42
Total	562	100.00

\*"Special" are traffic control systems that are not train activated, such as a crossing being flagged by a member of the train crew.

Source: Ref. 3

Table 48. Accidents at Private Crossings by Roadway User, 1983

Type of Vehicle	Accidents		Fatalities		Injuries	
	No.	%	No.	%	No.	%
Automobile	261	43.57	17	51.52	76	48.72
Truck	189	31.55	11	33.33	50	32.05
Tractor-trailer	111	18.53	1	3.03	20	12.82
Bus	---	---	---	---	---	---
School bus	---	---	---	---	---	---
Motorcycle	1	0.17	---	---	---	---
Pedestrian	2	0.34	2	6.06	---	---
Other*	35	5.84	2	6.06	10	6.41
Total	599	100.00	33	100.00	156	100.00

\*"Other" usually refers to farm equipment.

Source: Ref. 3

with each type of traffic control device divided by number of crossings with that type of traffic control device) cannot be determined for private crossings since no national statistics are kept on the type of traffic control devices at private crossings.

Some States and railroads have established minimum signing requirements for private crossings. Typically, these signs consist of a crossbuck, stop sign, and/or a warning against trespassing. California and Oregon public utility commissioners use a standard highway stop sign together with a sign indicating that the crossing is a private crossing. A typical configuration is shown in Figure 104.

As with public crossings, the first consideration for improving private crossings is closure. Adjacent crossings should be evaluated to determine if they can be used instead

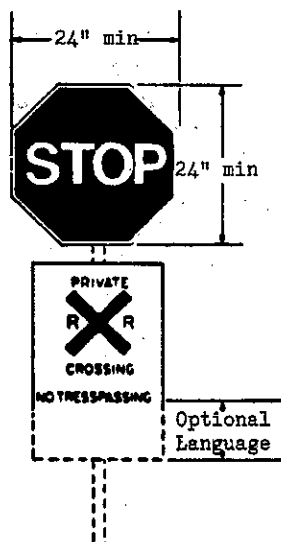


Figure 104. Typical Private Crossing Sign

Source: Ref. 1

of the private crossing. Every effort to close the crossing should be made.

If the private crossing is determined to be essential to the private landowner, then the crossing should be marked with some type of sign. Controversy exists over whether the marking should be identical to public crossings so that the motorist is presented with uniform traffic control devices, or whether the marking should be distinct to notify the motorist that the crossing is private and that use without permission is trespassing. No national guidelines exist; however, it seems reasonable that the crossing should be marked so that it is identified as a private crossing. Supplemental crossbucks or stop signs might also be installed.

Some private crossings have sufficient train and roadway traffic volume that they require active traffic control devices. Considerations for the installation of these devices are the same as for public crossings, as discussed in Chapter IV. Federal funds, and often State funds, cannot be used for the installation of traffic control improvements at private crossings. The railroad and the landowner usually come to an agreement regarding the financing of the devices. In some cases, if the landowner is required to pay for the installation of the crossing and its traffic control devices, the landowner might reevaluate the need for the crossing.

#### B. Short Line Railroads

There are numerous short line railroads and the number is growing due to Federal deregulation. Short line railroads are typically Class III railroads, as defined by the Interstate Commerce Commission (ICC).