

Anderson Geneva

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April 27, 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: Public Road Railroad Crossing at 400 North Vineyard Road
Supplemental Information

Dear Mr. Cheng:

This letter is written on behalf of Vineyard Town and Anderson Geneva to supplement the record and information provided to you in regard to the public crossing located at 400 North and Vineyard Road, in Vineyard Town. We received a copy of the correspondence addressed to you from counsel for Union Pacific ("UP"), Reha Deal. We believe it is important to correct some of the inaccurate information contained in that letter and to highlight the legal issues involved with those inaccuracies.

1. Actions of Utah County in 1942 Regarding Crossing. Ms. Deal's letter refers to a "quitclaim" of a portion of the crossing to the Defense Plant Corp. on August 10, 1942, by resolution of the Utah County Commission. In 1942, as we have previously presented, you are aware that Utah County owned and maintained a public roadway at which traversed the Geneva property and crossed the railroad tracks at 400 North and Vineyard Road. We believe everyone agrees, including UP, the crossing was a public crossing on August 10, 1942.

The Utah County Commission *vacated* and quit-claimed the portion of the roadway that traversed the Geneva plant, but only within the property boundaries, which had the effect of vacating only the east approach to the crossing. At no time did the Commission vacate the crossing itself or the west approach to the crossing. Thus, the public crossing remained a public crossing and the west approach remained a public roadway.

2. Consideration of MUTCD Standards. The Manual of Uniform Traffic Control Devices (MUTCD) has been prepared by the Federal Highway Administration to provide consistent guidance on installation and operation of traffic control devices. In no way does it purport to offer opinions or definitions of whether a crossing is a public crossing or a private crossing. It does offer some insight on what usually is observed in relation to public or private

crossings. But it is absolutely clear that this is a question of state and local law. The guidance cited by Ms. Deal is not in fact found in the MUTCD, it is part of a safety research report that makes passing reference to the characteristics of a public crossing. Stating that this is a definition under the MUTCD is inaccurate and misleading. The report offers definitions solely for the purpose of deciding who has responsibility for installing and maintaining crossing safety devices under federal law (which offers federal funding for designated public crossings).

Offering the language of the MUTCD as being interpretive of public highway-rail grade crossing law is also misleading. The MUTCD is an engineering safety document, and does not in any way purport to offer legal guidance on what is or is not a public road-rail grade crossing. Again, its sole purview is to offer a standard for safety devices under certain conditions, and to assign responsibility for installation and maintenance of safety equipment and the type of safety equipment; in every case deferring to state law interpretations of what is public and private.

The following information provides abundant illustration on this point.

a. In the definitions section of MUTCD, at "59 Public road - any road or street under the jurisdiction of and maintained by a public agency and open to public travel"

b. In interpretation Letter I-44 (Intr.) provided by the FHWA on August 17, 2004, in reference to the RHGCH (referred to below) there were questions answered on what is meant by public travel (and therefore public crossing) as follows:

"2. Does public travel include the access ways and parking lots of shopping centers? Yes, public travel would include the access ways and parking lots of shopping centers. States should address these specific locations in their State codes and statutes.

3. Does public travel include the access ways, travel ways and parking lots of other facilities open to the public (e.g. office parks)? Yes, office parks could also be included in the definition of a private property open to public travel. The decision to include certain locations such as office parks in the legislative code is made at the State and local level."

4. Railroad-Highway Grade Crossing Handbook. Ms. Deal also makes reference to the Railroad-Highway Grade Crossing Handbook, a manual published by the DOT - FHWA (RHGCH). As with the MUTCD, the purpose and character of RHGCH needs to be understood, lest someone read it as a legal authority for defining rights. The first paragraph of the Foreword, published by FHWA states: *This handbook provides general information on railroad-highway crossings, including characteristics of the crossing environment and users, (thus clearly not attempting to define legal rights, only showing characteristics for engineers to be looking for), and the physical and operational requirements for safe and efficient use of the crossing by and for traffic. The handbook will be of interest (again not a treatise on law or rights and certainly not binding) to Federal, State and local highway agency personnel, railroad officials, consulting engineers and educators involved with railroad-highway grade crossing safety and operation (clearly defines what the purpose is: safety of the crossings, not*

Defining legally whether it is public or private – (emphasis added) – an interpretive comment set forth by the undersigned in parentheses.

Notwithstanding the attempts of Union Pacific to use engineering, engineering assessments, manuals to interpret legal rights, even using the RUCCH undercuts the points that were attempted to be made by Union Pacific. Ms. Deid quotes a very small portion of the RUCCH as a definition. However, on page 191 of the text of the RUCCH it expands on the characteristics of a Private Crossing. It states the following:

“1. Most types of private crossings are as follows:

- * farm crossings that provide access between tracts of land lying on both sides of the railroad
- * industrial plant crossings that provide access between plant facilities on both sides of the railroad
- * Residential access crossings over which the catwalks and/or rail ties reach private residences from another road, frequently a public road, paralleling and adjacent to the railroad right-of-way.
- * Temporary crossings established for the duration of a private construction project or other seasonal activity.

It is obvious that none of the foregoing describes the Geneva property situation which began with a public road and public crossing, vacated only the approach on the east side and continued to use the public approach on the west side, and there was continuous public use of the crossing for the last 70+ years.

The RUCCH goes on at page 191 to state further:

“In some instances, changes in land use cause a vacant or underused crossing to use to the extent that it has become a public crossing, as evidenced by frequent use by the general public. This may occur whether or not any public agency has accepted responsibility for maintenance or control of the use of the railroad way over the crossing. If the general public is making use of a crossing, appropriate traffic control devices should be installed and warning and guidance.”

The RUCCH reiterates the definition found in the MUCCH to the effect that a Private Crossing is: “A highway-rail grade crossing that is on a roadway or a path or under the jurisdiction of and controlled by a public authority and open to the general public.”

No one can dispute that during the operation of the Geneva plant that the travelling public traveled on Vineyard Road, turned onto the west approach to the crossing, traveled over the crossing onto the east approach into a Geneva parking area and then returned. This occurred thousands of times each day. This was not limited to Geneva employees or solely to Geneva invitees. Anyone could have traveled here. Further, the above interpretations would hold that

travelling from a public road over a crossing to a clearly private (or nearly private) facility, such as a shopping center or office park would render the crossing a public crossing.

4. Public Maintenance Ms. Deal's letter attempts to assert that it was Geneva that maintained the west approach to the crossing from Vineyard Road. This assertion has the third of four elements to it if not have satisfied us if Geneva Steel and U.S. Steel did not maintain it over the years. They were not good corporate citizens and did many things to benefit the local communities. However, in the interest of accuracy, we contracted independent personnel to see if records were available, and we inspected the roadway approach. The public records weren't readily available to show one way or the other whether the County did road maintenance for the west approach of the crossing. An actual inspection, however, shows that a minor overlay was performed that did not reach the west approach. What is clear is that the base layers of pavement are contiguous from Vineyard Road to the west approach, thus showing that Vineyard Road paving and the west approach paving were done at the same time by the same entity.

In other words, the facts show that the west approach has even maintained by a public entity. And Vineyard Town has already stated that the approach is a public road in Vineyard Town. Thus, Ms. Deal's assertion that the road was not maintained by a public entity is unsupported. Further, if the west approach location was changed, it was obviously done with the concurrence of the public entities responsible for maintenance, and by Union Pacific.

5. East Approach is Public In point of fact, the east approach to the crossing has never been closed to the public until recently, for protection of the public during demolition and while environmental work is conducted. However, during the period of time the plant was owned by the Defense Plant Corp., and during the entire period of time that U.S. Steel Corporation ("USS") operated the Geneva Steel Works, and during the time Geneva Steel, LLC owned the property and operated the plant (a total 59 years, 1942 to 2001), the east approach and the crossing was open to public travel into the Geneva parking areas.

6. Temporary Closure of East Approach Ms. Deal's letter also attempts to argue that since the closure of the Geneva plant, the crossing has not been utilized to a large extent. In fact, she places major emphasis on a fence being placed on the east approach, which is often closed. Public safety demanded that a fence and gate enclose the plant during the demolition and remediation period. It would be completely inappropriate to penalize Vineyard Town, Utah County, and the land owners for their efforts to promote public safety because a bankruptcy occurred and economic dislocation limited the use of the crossing for a period of time.

The argument also ignores the fact that once a public roadway is created, it cannot be taken away without an act of the public entity which owns the rights to that roadway, see Utah Code § 72-5-105(1). See also State of Utah v. Harvey Real Estate, 2002 UT 107 (Utah Supreme Court 2002). Utah County was the original owner and controlled the road and crossing. After Vineyard Town was formed, Vineyard Town became the municipal authority having control of the roadway and crossing. Vineyard Town has done nothing to vacate or abandon its roadway or the crossing. Vineyard Town has, in fact, made it abundantly clear that it has always treated the

road and crossing as a public road and a public crossing and would continue to do so.

7. National Inventory of Crossings - FRA UP acknowledges that the crossing has been categorized as a "public" crossing in the FRA database - for over 38 years. UP then attempts to minimize the effects of the FRA database by stating that "...as UDOT is aware, the FRA database is often incorrect". The FRA is the only public resource available to municipalities and private land owners to determine whether a crossing is public or private. It is also important to note that the interpretive analysis referred to above (part 3) was part of a major governmental effort to seek private and public input, to discuss the safety issues surrounding private crossings. Thousands of responses were interpreted and summarized. The FRA and all of those participants relied on the National Inventory of Crossings for contacts, and for statistical analysis. In fact, as a landowner Anderson Geneva, and as a Town, Vineyard were both denied the opportunity of participating in that project because our crossing was designated as a public crossing.

For UP to attempt minimize the benefit and accuracy of that record all but says that the record is an unreliable nuisance. This is tantamount to a public fraud or at the least gross negligence. Property owners and municipalities make decisions daily in reliance on that record. We dare say that federal officials and others who use the record would not approve of this characterization by UP.

To say the least, if the FRA is unreliable, any penalty for reliance should not be imposed on land owners and municipalities, but on those two parties who have the ability to create or modify that record, i.e., UDOT or UP. In fact, since the FRA was established, the initial record was created by Union Pacific, and then updated four times, twice by Union Pacific and twice by UDOT. We hope that UDOT will not participate in this farce and attempt to minimize the FRA as an unreliable nuisance.

We also point out that as of last month, the FRA continued to show that the crossing was a public crossing. Unfortunately, because of the work being done by UTA on the Frontrunner project, and because of its desire to eliminate maintenance requirements for itself, UP appears to have filed documents with the FRA in December of 2008 to re-characterize the crossing as a private crossing. The crossing is not updated to show the UP update. Since only UP or UDOT can file with the FRA we are helpless to modify this record without litigation. UDOT should exercise its authority to correct this convenient and gross misuse of power by UP.

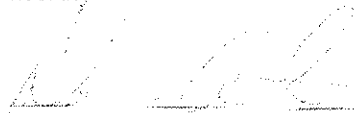
Summary Anderson Geneva and Vineyard Town have provided you with ample evidence and survey plotting of the public roadway as compared to the 1942 Utah County resolution and legal description. It is obvious that the only thing that was vacated by Utah County was the east approach to the crossing, not the crossing itself nor the west approach to the crossing. Neither Vineyard Road nor the road approaching the crossing from the west was vacated. The crossing has been used continuously during the entire period of operation of the plant and continues today to be a public way and public crossing. The fact that there is currently a fence stopping travel into the Geneva property is for public safety, not because of some legal determination over rights related to the crossing. The facts presented in Union Pacific's response

Mr. Eric Cheng
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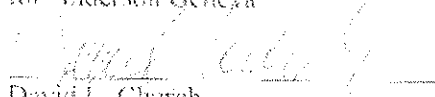
were inaccurate. The references to the MUTCD and RIGCH were only partly accurate and were incomplete. Further, these manuals and handbooks make it clear that it is State law that governs these crossings. State law is clear that this is a public crossing.

There is nothing in Ms. Deal's letter that is persuasive to induce UDOT to reverse its prior determination that this is a public crossing. Please advise us as soon as possible that this is the case.

Sincerely,



Dennis M. Astill
Project Manager & General Counsel
for Anderson Geneya



David L. Church
Attorney for Vineyard Town

DMA is
cc.
Renee Spooner, Attorney General
Carlos Braceros, (UDOT)



State of Utah

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DEPARTMENT OF TRANSPORTATION

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April 21, 2009

Reha Deal
Assistant General Attorney
Union Pacific Railroad
280 South 400 West, Suite 250
Salt Lake City, UT 84101

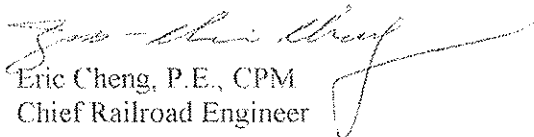
Re: 400 North Railroad Crossing in Vineyard
DOT No. 254903N

Dear Ms. Deal:

Thank you for your letter of April 15, 2009 regarding the 400 North railroad crossing in Vineyard, Utah. As you are aware, UDOT is still in the evaluation process for this crossing in making a final decision on the status of this crossing. The information you provided in your letter will certainly be useful in our evaluation process.

UDOT recognizes this is an important issue to the general public and all the parties involved and will resolve this issue as soon as possible. If you have any questions, please feel free to contact me.

Sincerely,


Eric Cheng, P.E., CPM
Chief Railroad Engineer

Cc: Renee Spooner
Robert Hull
Tracy Conti
Jim Marshall, UP
Jeff Harris, HNTB
Travis Colledge, HNTB

UNION PACIFIC RAILROAD COMPANY
LAW DEPARTMENT



REHA K. DEAL
Assistant General Attorney
(Admitted in Utah and Idaho)

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Salt Lake City, Utah 84101
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April 15, 2009

Eric Cheng, P.E., CPM
Chief Railroad Engineer
Utah Department of Transportation
4501 South 2700 West
Salt Lake City, UT 84119-5998

Re: 400 North Railroad Crossing, Vineyard, Utah – DOT No. 254903N

Dear Mr. Cheng:

The purpose of this letter is to reiterate and supplement Union Pacific Railroad Co.'s ("Union Pacific") position with respect to the railroad grade crossing located near 400 North and Vineyard Road in Vineyard, Utah (the "Crossing").

The MUTCD "defines a public highway-rail grade crossing as any intersection between a public roadway and railroad. The roadway on either side of the crossing must be a public roadway, i.e. under the jurisdiction of, and maintained by, a public authority and open to public travel. If either approach to a crossing does not qualify as a public roadway, then the crossing is typically classified as a private crossing." Private Highway-Rail Grade Crossing Safety Research and Inquiry at 3. For two main reasons, the Crossing at issue here does not meet the definition of a public crossing, and is therefore private.

First, under the definition above, for the Crossing to be public, the roadway on either side must be a public roadway. This Crossing has not been open to public travel since the property on the east side of the Crossing was quitclaimed to Defense Plant Corp. on August 10, 1942. The Resolution and Order quitclaiming the property stated 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"

The 1942 Resolution and Order recognized that the general public no longer needed access to the Geneva Works site. The east side of the Crossing enters the site and was used by Geneva Works as an entrance to the plant for employees and others. Since closure of the Geneva Works site, the Crossing has seen little traffic. In fact, the current landowners, Anderson Geneva, have placed a fence at or near the property line and have blocked off the road entering the property. The fence may have been in place since some time in 2005. Therefore, the crossing has been closed to the public for approximately 67 years. It enters a "privately-owned

Eric Cheng, P.E., CPM
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roadway[] utilized only by the owner's licensees and invitees." Therefore, it is a private crossing under the definition set forth in the Railroad-Highway Grade Crossing Handbook at page 223.

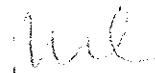
The second requirement of the above definition is that the roadway on either side of the crossing must be under the jurisdiction of and maintained by a public authority. There is no indication that the Crossing has been maintained by a public agency—on either side of the railroad tracks. In fact, it appears that changes to the Crossing were made by U.S. Steel in 1980 without the participation of a public entity.

Public maintenance is required if the road traversing the Crossing is to be considered a public road. The MUTCD defines a "public road" as any road or street under the jurisdiction of and maintained by a public agency and open to public travel. Since public maintenance has not been performed on the approaches to the Crossing, the road over the Crossing cannot be considered public. If the road over the Crossing is not public, the Crossing is not public.

Union Pacific acknowledges that the Crossing has been categorized as public in the FRA database. However, as UDOT is aware, the FRA database is often incorrect. Moreover, the definition of a public crossing in the FRA database is consistent with Union Pacific's analysis and conclusion that the Crossing is private.

As UDOT also is aware, UTA will be operating commuter rail in this location shortly. The addition of commuter rail widens the crossing, increases train volume, and places freight trains and commuter trains, operating at different speeds, at the same crossing. It is important that a careful and accurate determination be made whether the Crossing is public or private. Union Pacific strongly believes that the Crossing is private and urges UDOT to consider the points made in this letter in making its final determination.

Sincerely,



Reha Deal

RD/kl

cc: Dennis Astill, Anderson Geneva Development
David Church, Attorney for Vineyard Town
Steve Meyers, UTA
Renee Spooner



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DEPARTMENT OF TRANSPORTATION

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CARLOS M. BRACERAS, P.E.
Deputy Director

April 8, 2009

Mr. Dennis Astill
Project Manager & General Counsel
Anderson Geneva Development
99 North Geneva Road
Vineyard, UT 84057

RE: 400 North Railroad Crossing Vineyard, Utah – DOT No. 254903N

Dear Mr. Astill:

The Utah Department of Transportation (UDOT) would like to thank you for providing additional information about the status of the 400 North crossing in Vineyard, Utah. In light of the new information provided by you and others, UDOT feels it is necessary to complete a thorough evaluation of that information. UDOT also understands the need to resolve this issue in an expeditious manner and will work toward that end. At the completion of this review, UDOT will issue a final decision on the status of 400 North Railroad Crossing. I will be in contact with you to update on our progress.

If you have additional information regarding the 400 North Vineyard crossing, please forward it to me as soon as possible, and please feel free to contact me if you have any additional questions or concerns.

Sincerely,

Eric Cheng, P.E., CPM
Chief Railroad Engineer

Cc: David Church, Attorney for Vineyard Town
Jim Marshall, UP Railroad
Steve Meyer, UTA
Tracy Conti
Robert Hull
Renee Spooner
Jeff Harris, HNTB
Travis Colledge, HNTB

Anderson Geneva Development Inc.

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March 25, 2009

Renee Spooner, Esq.
Utah Department of Transportation
4501 S 2700 West
Box 148455
Salt Lake City, Utah 84114

Re: 400 North Railroad Crossing
Vineyard, Utah

Dear Renee:

This letter is to submit information which we believe should be determinative of the issues surrounding the public crossing railroad crossing at 400 North and Vineyard Road, Vineyard, Utah (the "Crossing"). I will also address concerns we have involving process and bias which seems evident among UDOT staff.

The information which is available publicly in regard to the Crossing is as follows:

1. Publicly available maps created by Utah County, D&RG Railroad, and Utah State Road Commission (predecessor to UDOT), prior to the Geneva Property acquisition by the Department of Defense show that there was a public road which ran along the section line and over the Crossing.

2. In 1942 the Geneva Property was acquired and a request was made to vacate the public roadway east of the Geneva Property boundary line at the Crossing location. The Geneva Property west boundary line in that area runs along the east boundary of the old D&RG right of way line (now the Union Pacific freight rail boundary line).

3. After the Geneva Property was acquired and the plant built, although the public roadway east of the Geneva Property west boundary line was vacated, the plant continued to use and created an open roadway at the Crossing into the plant property, where a parking area existed, and further entry into the plant from the parking area was governed by gates. This entry was primarily used by employees, but thousands of trips per day, vehicular and pedestrian, occurred at the Crossing by employees of Geneva Steel and by non-employees.

4. The Federal Railroad Administration, U.S. DOT Crossing Inventory Information ("Inventory") reflects the Crossing as a Public at-Grade Crossing No. 254903N as of 1/29/2009. This Inventory shows that the Crossing was entered into the system approximately January 1, 1970, and classified as a "Public at Grade" crossing. The database was updated on December 2, 1988, July 15, 1994, April 1, 1998, April 1, 1999. All of these updates retain the classification of "Public at Grade" crossing. The 1988 and 1999 updates to the FRA database show UDOT to be the initiator of the update, and the 1994 and 1998 updates show Union Pacific to be the initiator of the update. The current database as of March 25, 2009 continues to reflect a "Public at Grade" crossing. As you know, the only parties who can create this Inventory or update this Inventory are the railroad companies themselves, or UDOT. The Inventory was established under federal law to create a registry that State departments of transportation, railroads, municipalities and the public could rely on and review for an inventory and status of crossings within their respective borders. It is curious that Union Pacific or others, at this late date, 67 years after the acquisition of the Geneva Property, and after obvious changes have been made over the years, claim that this is not a Public Crossing.

Union Pacific representatives argue that the Inventory is full of mistakes and is inaccurate, yet they also acknowledge that contacting anyone at Union Pacific who can provide information about crossings is nearly impossible; and it must be remembered that it is their record to maintain. They also acknowledge that internally their own system showed the Crossing as a Public at-Grade Crossing until about 6 months ago (interestingly coinciding with the activities of UTA).

5. A D&RG Railroad Map dated in 1927 (which states that it was correcting a 1919 map) shows the Crossing as a "highway crossing", with a railroad warning sign at the Crossing. It is obviously an at-grade crossing. A copy of this map is shown as a part of Exhibit A at the lower left hand corner of the map (herein the "1927 Map"). The lower left-hand corner of Exhibit A shows an exact copy of the survey information from the 1927 Map. The 1927 Map was filed by requirement of State law, pursuant to Compiled Laws of the State of Utah, 1917, Volume 1, Page 352, Section 1235 (441.) Maps showing location to be filed. *Every company constructing or operating a railroad in this state shall, within a reasonable time after the final location of the road, file a map thereof showing the route decided upon and the land obtained for the use thereof, in the office of the secretary of state; and like maps of the several parts thereof located in the several counties through or into which the road may be extended shall be filed in the offices of the recorders of such counties respectively. Map and profiles, certified by the chief engineer, the president, and the secretary of the company, shall be filed in the office of the secretary of the company, subject to examination by any person interested.*

The law still exists today in modified form at Utah Code Section 56-1-10 .

6. We have previously provided you a copy of a Utah County Commission resolution dated August 3, 1942, vacating the roadway within the Geneva Property to the east boundary of the railroad right of way line, and areas north of the Section line. The vacation did not include any of the railroad right of way, thus retaining the public roadway across the railroad right of way. To assist UDOT in verifying this action, we have used the survey information provided in the 1927 Map, to create an expanded plot of the area showing the surveyed location

of the Highway Crossing centerline, the location of the railroad warning sign, and the boundary line of the vacated area, which clearly shows the roadway across the railroad was never vacated. Exhibit A shows this expanded detail and information that existed when the road was vacated. The expanded plot shows the following:

The Section Line is shown as Station 1389 +54.6' (where 1389 is a RR station coordinate). The Crossing sign was 13' to the South of the Section line at Station 1389 +41'. RR station coordinate numbers decrease as they move south, thus clearly the Crossing sign was south of the Section Line and outside of the 1942 Utah County Commission vacation resolution (which only went to the North of the Section Line). The centerline of the County Road (Highway Crossing) is shown at Station 1389 +20', also south of the Section Line by at least 33.6' and clearly outside of the 1942 Utah County Commission vacation resolution.

7. During the recent meeting with UDOT representatives, UTA representatives and Union Pacific Railroad representatives, Union Pacific acknowledged that the 400 North roadway was public and at that time the Crossing was a public at-grade crossing. In fact, Union Pacific representatives indicated that they had found a 1939 agreement with Utah County to install improvements to the Crossing. Clearly, in 1939 the Crossing was recognized as a public roadway and a public at-grade crossing.

8. To counter the claim of Vineyard Town and Anderson Geneva that the Crossing is a public at-grade crossing, UTA and Union Pacific presented a plot of the 1942 vacation description from Utah County, overlaid on an aerial map showing the current location of the Crossing into the Geneva Property. This overlay map does not reflect the historical crossing location (shown at Exhibit A), and the current location shown on the aerial map was a result of changes made in the Crossing by U.S. Steel in 1980. Since the Crossing safety signals and crossing arms are the property of Union Pacific, Union Pacific obviously consented to and was complicit in this change. What is also clear is that no further act of abandonment of a public roadway was initiated by Utah County or Vineyard Town. What may now become more clear as we consider this new change in 1980, is that this new location established additional public right of way since this new location was a public right of way over the Union Pacific right of way that continued unrestricted by Union Pacific for more than ten years under Section 72-5-104 of the Utah Code.

9. Since Anderson Geneva acquired the Geneva Property in 2005, it has examined all crossings along the freight rail lines of Union Pacific as they impact the Geneva Property. There are multiple crossings across the Provo Industrial Lead spur line along Geneva Road at the east boundary of the Geneva Property. Union Pacific appears to have exercised great care in its efforts to control crossings on that spur line. There are no less than 6 private crossing agreements where Union Pacific attempts to claim its governance over activities at those crossings.

Comparing this to the Crossing, Union Pacific is arguing that this was an unlicensed private crossing. While Union Pacific took great care to assert control over crossings on the spur line, there is no private crossing agreement, nor any controls asserted by Union Pacific over the Crossing, which crosses the main freight line of Union Pacific. In fact, what is clear is that

Renee Spooner

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Union Pacific has over the years upgraded the crossing signals, installed crossing arms, maintained the crossing surface and rails, and allowed the public generally to cross the Crossing without any restriction other than safety features, and without imposing an agreement upon U.S. Steel or Geneva Steel, the predecessors to Anderson Geneva, never asserting that the Crossing is a private crossing. It is also obvious that since 1943, various changes have been made in the exact location and area of the Crossing. Again without objection from Union Pacific or its predecessor, D&RG Railroad. The inescapable conclusion from this is that everyone having a stake in this, D&RG Railroad, Union Pacific, UDOT, Utah County, and now Vineyard Town considered the Crossing to be a Public at-Grade Crossing.

10. The Town of Vineyard has affirmatively stated that it has always considered the Crossing to be a public at-grade crossing.

11. Union Pacific has asserted that under the rules of the FRA Inventory, that where a crossing runs to private property, it is classified as a private crossing. The rules of the Inventory allow for public at-grade crossings running to private property from a public road if the local jurisdiction considers the crossing to be a public crossing. The language reads as follows:

*"In general, a roadway across railroad track for which both approaches are maintained by a public authority and which is open to the public is considered a "public" crossing. These are roadways that are part of the general system of public streets and highways. **Some jurisdictions accept a crossing as "public" when only one approach is publicly maintained. If a public authority accepts a crossing as "public," it is a public crossing.**" (FRA Inventory Instructions and Procedures Manual, Section 1.5, page 1-6).*

A second matter I want to express concern about is concern over process and finality. The February 24, 2009 letter from Eric Cheng states that a review would be conducted under R930-5-7 (Utah Administrative Code). Instead, at the behest of UTA and Union Pacific, a meeting was held yesterday at Vineyard Town where there was further re-hashing of the public crossing issue and there has still been no review of the Crossing under the applicable rules.

Please advise us immediately that there is no change in the position of UDOT as stated in its February 24th letter, that the Crossing is indeed a public at-grade crossing, and initiate the

Renee Spooner

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further review for safety features and crossing improvements required as a result of UTA's new uses under the provisions of R930-5-7.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dennis M. Astill". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dennis M. Astill

Attorney for Anderson Geneva

DMA/ss

Enclosures

cc:

David Church, Vineyard Town

Reha Deal, Union Pacific



State of Utah

JON M. HUNESMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN B. NIORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

February 25, 2009

Dennis M. Astill
Project Manager and General Counsel
Anderson Geneva Development
99 North Geneva Road
Vineyard, Utah 84057

Re: Railroad Crossing at 400 North Vineyard Road

Dear Mr. Astill:

Thank you for meeting with us and providing the information concerning this crossing on February 19, 2009. After reviewing the information, UDOT will conduct another surveillance review on this crossing based upon the crossing being public because of the FRA inventory listing this crossing as public and Resolution and Order passed by the Utah County Board of County Commissioners in 1942. At this point, UDOT considers this crossing as public unless other information is provided that demonstrates that the crossing is private. This review shall be performed in accordance with Utah Administrative Code R930-5-7. Consequently, Union Pacific Railroad, Utah Transit Authority, the Town of Vineyard and Anderson Geneva will be involved in this review with UDOT. These parties will have the opportunity to provide any documentation concerning the crossing for this review. As part of the review, a meeting will be held at the site of the railroad crossing.

If you have any further questions concerning this matter, please contact me or Renee Spooner.

Sincerely,


Eric Cheng, P.E.
UDOT Chief Railroad Engineer

Cc: Tracy Conti
Robert Hull
Dave Nazare
Renee Spooner
David Church, Vineyard Town
Randy Farnworth, Vineyard Town
Josh Stetten, HNTB



January 20, 2009

Attn: Eric Cheng
Chief Railroad Engineer
Utah Department of Transportation
4501 S. 2700 W.
P.O. Box 143200
Salt Lake City, UT 84114-3200

Dear Mr. Cheng,

We recently became aware of UTA's apparent proposal to eliminate an at-grade crossing at 400 North in the Town of Vineyard along the UP main-line track as part of the larger FrontRunner South Commuter rail line project.

The Town of Vineyard vigorously opposes any attempt to close this public crossing that has existed for at least 100 years. It is the only crossing along a nearly 3 mile stretch of rail, and is an important access now for a large property owner in our Town. It is currently shown on our approved transportation master plan as a primary through road and crossing that the Town will rely on for the future development of Vineyard.

We were very surprised to find out about this proposal, as your original notification on this project that you provided pursuant to Administrative Rule R930-5-14 in October and November of 2008, does not indicate that this crossing is affected at all. The only crossings identified within the Town of Vineyard to be affected are Geneva Road and 4000 North. It appears that perhaps your notice is in error, as we know of no 4000 North crossing (or street for that matter) located in the Town of Vineyard. Perhaps the Notice was prepared in error, if so, than it is defective and cannot be considered to have provided legal notice and due process to Vineyard or any other affected party.

In addition, the Notice that was provided for the FrontRunner South Commuter Rail line stated that the changes to any of the 41 crossings considered were "new track, minor grade changes and adding safety upgrades including construction of raised medians (60 to 100 feet in length) and active warning devices at each applicable crossing". No mention is made of any proposal to close any crossings, including 400 North.

Also in the Notice it states that "(a) Surveillance Review Team that included representatives from each local jurisdiction, Utah Department of Transportation (UDOT),

240 EAST GAMMON ROAD • VINEYARD, UTAH 84058
TOWN OFFICE 226-1929



UPRR and UTA, has evaluated each of the 41 crossings affected by construction of the project to ensure that final design meets all applicable safety requirements". The Town of Vineyard is not aware of any appointment made by Vineyard to the Surveillance Review Team. R930-5-7 (2)(c) of the Utah Administrative Code indicates that the team member from Vineyard Town would typically be from the Town Engineer or Public Works department. Don Overson is the Town of Vineyard Engineer and is responsible for public works as well. He was not aware or involved in any Surveillance Review Team involving any of the railroad crossings involving the FrontRunner South Commuter Rail project.

We would formally request a determination by UDOT that it is not appropriate for any closure of the 400 North crossing. Notice regarding this closure is defective, and the procedures required under the Utah Administrative Code involving the Diagnostic/Surveillance Team were apparently not followed.

As you are aware, Section 72-3-104 (4) of the Utah Code specifies that the municipal governing body exercises sole jurisdiction and control of the city streets within the municipality. 400 North, including the crossing, is a city street. Section 9, Article XI of the Constitution of the State of Utah further supports the jurisdiction of the municipality relating to railroads located on city streets. The Town of Vineyard has not currently given UTA any permissions or required permits to modify the 400 North crossing in any way, including removal of safety and crossing structures.

In order to vacate any portion of 400 North as a public highway and street, an extensive notice and hearing process is required under Utah Code 10-9a-208 and 10-9a-609.5. None of the required actions have been taken to legally vacate the road, so closing of the 400 North crossing would not be in conformance with State required procedures.

We would appreciate a timely response.

Sincerely,



Mayor Randy Farnworth
Town of Vineyard

Anderson Geneva

99 N. Geneva Road
Vineyard, UT 84057
Telephone (801) 225-2031
(801) 990-4930
Facsimile: (801) 990-4931

December 31, 2008

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

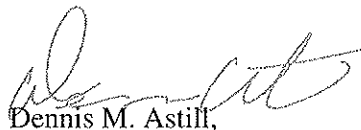
RE: Public Road Railroad Crossing at 400 North Vineyard Road
Vineyard Town, Utah

Dear Mr. Cheng:

This letter is to provide comments and objections to any efforts on the part of UDOT, UTA, or any other agency to close that public railroad crossing located at 400 North Vineyard Road, Vineyard, Utah. We recently noticed, completely by chance, on the UTA Frontrunner website, a reference to a railroad crossing change at "4000 North and Vineyard Road". There is no such address, but we were curious and began to investigate. We discovered a photograph that showed what appears to be the crossing at 400 North and Vineyard Road.

We immediately contacted Vineyard Town and were advised that no notice or information had been provided to Vineyard Town, and certainly no notice or information was provided to Anderson Geneva, the owner of the Geneva property, which is directly serviced by this crossing. This is a vital public crossing and provides access to Vineyard Town and to the Anderson Geneva property. It is used on numerous occasions daily and has historic and future access significance to the Town and the property. Any effort to close this crossing will be defended against by legal action against those involved. Please contact me immediately with any information you have with regard to this crossing.

Sincerely,



Dennis M. Astill,
Project Manager & General Counsel

DMA\ss
cc: Carlos Bracerros, UDOT
Dave Nazare, UDOT

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

R E S O L U T I O N and
O R D E R

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, Plancor 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 6 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 6 South, Range 2 East, Salt Lake Base and Meridian, bears North 89° 32' 30" East 958.64 feet; thence South 89° 32' 30" West 6831.53 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 1756.57 feet; thence South 8° 34' 40" West 350.10 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 765.50 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 9° 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 5269.00 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 4587.79 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 Westerly of the Center line of said railroad track; thence North 7° 54' West 8037.12 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 2453.69 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 350.10 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 25.94 feet along said East line of County Road; thence South 9° 06' 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: Sealant
 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.: 10560, 10564, 10565, 10566, 10567, 10568, 10569, 10570.

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. H. Brown at Ironton; Silas V. Ford, D.A. R.G.W.R.R. at Thistle.

AMBER