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OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL

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Chief Deputy

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Chief Deputy

September 1, 2009

Via e-mail and US Mail

Dennis M. Astill
General Counsel
Anderson Geneva Development
99 N. Geneva Road
Vineyard, Utah 84057

Re: 400 North Railroad Crossing

Dear Mr. Astill:

UDOT received your letter dated August 7, 2009. This letter is to address your inquiry whether the temporary closure is a final appealable order or whether Mr. Cheng will reconsider the temporary order. Please note that Mr. Cheng has thoroughly reviewed the facts surrounding this crossing and a surveillance review was conducted on August 6, 2009 to address the treatments to be used in the temporary closure of the 400 North crossing. The crossing is to remain closed until the approach roadways are improved to the level described in the Town of Vineyard's Master Road Plan and the roadways are open to the public. After reviewing your letter, Mr. Cheng will not reconsider the temporary order.

Please note that this order for the temporary closure of this crossing can be reviewed by the Public Service Commission ("PSC") as the PSC retains exclusive jurisdiction for the resolution of any dispute caused by UDOT's action pursuant to Utah Code Ann. Section 54-4-15. Any person aggrieved by UDOT's action taken pursuant to its authority maybe appealed to the PSC. Consequently, this process does not follow UAPA and Utah Administrative Code R907-1, which does not specifically address this issue.

If you have any further questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Renee Spooner".

Renee Spooner
Assistant Attorney General

cc: Eric Cheng, Chief Railroad Engineer



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

August 25, 2009

Town of Vineyard
c/o Don Overson
City Engineer
240 East Gammon Rd.
Vineyard, Utah 84058

Subject: Surveillance Report: 400 North Crossing, Vineyard City
DOT#: 254903N

Dear: Mr. Overson:

In accordance with Utah Administrative Rule R930-5, a highway railroad grade crossing surveillance review was conducted on August 6, 2009 for the above stated crossings in Vineyard, Utah. The purpose of the surveillance review was to discuss and recommend to the Utah Department of Transportation treatments to be used in the temporary closure of the 400 North crossing.

Diagnostic Team:

Eric Cheng, UDOT; Don Overson, JUB/Town of Vineyard; Bill Ince, UPRR; Jim Marshall, UPRR; Tyson Payne, UPRR; John Blumenkamp UTA/HDR; Jason Bleyl, UTA/PB; Matt Carter, UTA/PB; Jeff Harris, HNTB/UDOT

Background information:

The Utah Transit Authority (UTA) is proposing to construct and operate a commuter rail system from Salt Lake City to Provo (FrontRunner South). The rail line will share a corridor with the Union Pacific Railroad (UPRR). Current freight traffic on the UPRR mainline is 8-20 trains per day. Proposed commuter rail traffic is approximately 60 trains per day. The Department oversees the state's Rail Safety Program, identified in the state's administrative rule R930-5. Part of the Department's responsibility under this article is to ensure highway-rail crossings operate safely for all parties that utilize them.

Historically, the Crossing in the Town of Vineyard accessed the Geneva Steel site. The Geneva Steel site was sold and the property owners closed the eastern leg of the access road with a fence and gate. The Town of Vineyard has adopted a master road plan that shows an upgraded roadway across the crossing at 400 North. However, under present conditions the

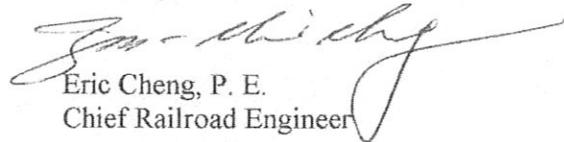
Department has found the crossing poses an un-safe condition and issued an order July 13, 2009, for the temporary closure of the crossing. The Crossing is to remain closed until the east and west approach roadways are improved to level outlined in the Town of Vineyards master road plan and open to the public.

Recommendation: (Reference attached sketch)

1. Remove the west crossing approach pavement.
2. Install concrete barriers with reflective tape along existing west approach.
3. Install Chevron Alignment Sign (W1-8) for both travel directions at the curve.
4. Install double yellow centerline.
5. Place fencing along west side of rail corridor with the construction of the FrontRunner South project.

If you have any questions regarding this letter, please feel free to contact me at 801-965-4284.

Sincerely,



Eric Cheng, P. E.
Chief Railroad Engineer

Cc: Jim Marshall, UPRR
Jason Bleyl, UTA/PB
Jeff Harris, UDOT/HNTB

Attachment

Anderson Geneva Development Inc.

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

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,

A handwritten signature in black ink, appearing to read "Dennis M. Astill", written in a cursive style.

Dennis M. Astill, General Counsel

DMA/ss

cc: Renee Spooner

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



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

July 13, 2009

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

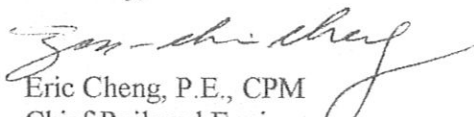
RE: 400 North Railroad Crossing Vineyard, Utah – DOT No. 254903N

Dear Mr. Astill:

The Utah Department of Transportation (UDOT) would like to thank you for providing the documents and information to UDOT regarding the status of the 400 North/Vineyard Road highway-rail crossing (the "Crossing"). After reviewing the documents and pertinent information, UDOT classifies this Crossing as a public crossing. However, the current conditions at the Crossing are unsafe for the public. Pursuant to Utah Code Ann. Section 54-4-15, UDOT is ordering the temporary closure of the Crossing. UDOT will contact the parties within the next two weeks to schedule a Diagnostic/Surveillance Team review for a recommendation as to the type of treatments to be used to close the Crossing. The Crossing 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 and the Crossing has been improved to meet the required safety standards as determined by UDOT with recommendations from the Diagnostic/Surveillance Team review.

Thank you again for your concerns and efforts in this matter. If you have any questions or concerns, please feel free to give me a call.

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

From: <JMARSHAL@up.com>
To: Jeffery Harris <jharris@HNTB.com>
CC: "Eric Cheng" <echeng@utah.gov>, <billince@up.com>, <RKDEAL@UP.COM>
Date: 6/22/2009 2:17 PM
Subject: Re: 400 North

We researched our records... we do not have a public crossing agreement with anyone, I have interviewed some of our older employees and they have no recollection of the City ever doing any maintenance of this crossing. We also checked our records for right of entry's to do work at this crossing from a public agency and we do not show any City or County permits to do work on DRGW or UPRR property. The City has not maintained their roads for an approaching public railroad crossing...there are no pavement marking or advanced warning signs, it doesn't appear that there ever was. If the City believed this to be a public crossing they would have maintained the required advanced warning signs and pavement marking the same time they maintained the crossing asphalt which we can find no evidence of. Looking at google earth and other roadway satellite information sites no one shows a public road going across our tracks. Most public roads show up somewhere on maps.

My understanding is that the legal description plotted by UTA shows the vacancy dividing the crossing in 1/2. We believe if the intention was to keep the crossing open to the public they would have secured a whole crossing... maybe we can close 1/2 the crossing.....

UPRR would oppose installing a physical barrier and still having the crossing be listed as a public crossing until such time as the developer has a roadway plan and then it could be reevaluated for type of warning devices or possible grade separation as presented as an option from UDOT.

...We have no issues with the crossing remaining a private crossing and then in the future the developer request a public crossing , just like any other developer would be required to do in order to get a public crossing. At that time we could weigh all the options.

As we have pointed out in the past, UPRR has issues with the current crossings present condition.. With the locked gates on the east side there is a chance of a vehicle making a right turn and getting blocked in the crossing area.. This could be compounded by a large truck who is unable to maneuver as quick as a smaller vehicle to get off of the tracks when he is stopped by a locked gate. With the construction in the area we are very concerned.. We are not aware of another situation like this and believe there should be some protection recommended by UDOT to keep motorists from entering the tracks.

Jim Marshall
 Manager Special Projects Industry & Public
 Union Pacific Railroad
 280 South 400 West Suite 250
 Salt Lake City, UT 84101
 PH (801) 212-2783 Fax (801) 212-2781

Jeffery Harris
 <jharris@HNTB.com>
 To
 ""J. D. (Jim) Marshall
 (jmarshal@up.com)""
 06/08/2009 08:19 AM <jmarshal@up.com>
 cc
 Subject
 400 North

Jim,

Could you ask Bill if he has sent along any information regarding maintenance, improvements to, or relocations of the 400 North crossing. We are trying to establish who historically maintained the crossing to the west of the railroad right-of-way.

I am in Kansas City on Wednesday, but I will try to give you a call – not sure what time.

My contact information is listed below.

Regards,

Jeffery L. Harris
HNTB Infrastructure
257 East 200 South
Suite 1000
Salt Lake City, Utah 84111

Direct (801) 656-2118
Cell (801) 520-9318
jharris@hntb.com
www.hntb.com

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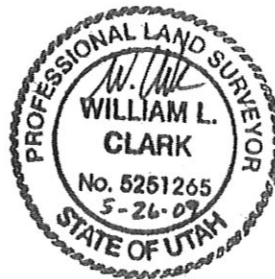
To: Steve Meyer
Manager of Engineering and Construction, Commuter Rail
Utah Transit Authority
669 West 200 South
Salt Lake City, UT 84101

May 26, 2009

Steve,

I have examined the road abandonment document affecting 400 North Vineyard Road and the Railroad Right of Way. The portion of the large legal description affecting the 400 North Road area is found at lines 23 – 25 of the overall legal description. The description calls to and along the existing Section Line common to Sections 8 and 17, Township 6 South, Range 2 East and continuing to the East Line of the Denver and Rio Grand Railroad, then continuing Southeasterly along said East Railroad Right of Way. Psomas has located and measured the subject Section Line and Railroad Right of Way in the field and it's location roughly follows the center of the improved roadway along 400 North Road to it's intersection with the East Line of the Railroad Right of Way. (as shown on survey). The affect of this document would abandon the North Half of 400 North Road, and land lying East of the existing Railroad Corridor (as shown on survey). In my opinion the intent of the document in relation to the road and railroad mentioned above is very clear and unambiguous.

Sincerely, William L. Clark PLS.



Anderson Geneva Development Inc.

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

May 18, 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 written as a supplement to the information previously provided to you with regard to the 400N Crossing at Vineyard Road, in Vineyard Town (the "Crossing"). As you know, the primary issue in relation to the Crossing is whether or not you can have a public crossing where there is private ownership of property on one side of the crossing and public ownership on the other side of the crossing.

As we have demonstrated, the historical maps and the abandonment that occurred at the time of the creation of the Geneva defense plan in 1942, made it clear that the west side of the Crossing remained as a public highway and the east side of the Crossing became private ownership. Notwithstanding the private ownership, one could easily assert and claim that the east side of the Crossing also became a public highway by virtue of its use after the initial abandonment by Utah County. Regardless, it is local law which governs and it is apparent, and has been obvious, that the Crossing has been treated as a public crossing since 1942.

Union Pacific has obviously taken an opposing view to this. It has attempted to use information from the National Register in the description of a public crossing, but it has only provided part of that information. We have provided a complete picture of that for you.

We have recently come across documents that are determinative of this issue. Enclosed with this letter please find two documents which provide determinative information. First is a document bearing a cover letter dated August 7, 1943, from Theodore E. Thain, acting Secretary of the Public Service Commission, to Farnsworth & Van Cott, attorneys for D.& R.G.W.R.R. Co. This letter conveys two certified copies of a Commission Report and Tentative Order in Case No. 2710. The Tentative Order recites that an application by the Denver and Rio Grand Western Railroad Company ("D.& R.G.W. Railroad") was filed with the Commission on July 16, 1943, and recites several findings in relation to the application. The important finding in relation to the Crossing is found under the fifth paragraph of the Findings, which states that the main line of the railroad near Geneva, Utah County, Utah, crosses certain county roads and state highways. The

applicant was proposing to construct a second main track near the Geneva property and parallel to the main track. The importance of the application was that the second main track, when constructed, would make an at-grade crossing across each of the stated highways. One of those crossings is described as follows:

... a[t] county highway crossing to Geneva plant at m.p. 708 plus 995 feet, on section line between Sec. 8 and 17, Twp. 6 South, R. 2 E., Utah County, at a point approximately 2700 feet west from the northeast corner of said Sec. 17."

This is the crossing at 400N and Vineyard Road. The Tentative Order also referenced a blueprint that was attached to the application. The importance of this Tentative Order cannot be overemphasized. D.& R.G.W. Railroad clearly made representations to the Public Service Commission that it considered the Crossing as a public highway and a public crossing.

This is evidenced further by a State of Utah Road Commission memo dated July 20, 1943 (also attached). There, reference was made again to the railroad track being proposed which would "cross eight highways six of which are designated as County roads . . .".

A third document attached to the Tentative Order is comprised of a report from Utah County (Robert L. Wilson, Utah County Surveyor). He refers specifically to the project and makes a specific recommendation with regard to the Crossing. Therein he states, "Highway crossing 708 +995", Entrance into Steel Plant. Visibility clear. Highway grade should be raised on west side."

Finally, the Tentative Order refers to a blueprint, a copy of which is attached. I have marked up the copy enclosed so that you can easily see the location that is specified. Again, this is a blueprint map of the trackage prepared by D.& R.G.W. Railroad.

Please understand that this application was submitted over a year after the abandonment by Utah County. As indicated, D.& R.G.W. Railroad, UDOT's predecessor, the State Road Commission, Utah County, and the Utah Public Service Commission all treat the Crossing into the Geneva property as a public crossing.

The second set of documents enclosed involve an Amended Application, Case No. 2714, before the Public Service Commission, filed by Union Pacific, the successor in interest to D.& R.G.W. Railroad. In this document, there is a service spur being applied for which would cross State Road U-114. The importance of this document is found in the State Highway map attached as a part of the Amended Application bearing the signature block of W.W. Anderson, Chief Design Engineer for the State Road Commission of Utah. This was dated April 1943. The second page of the map shows a State Road map with various highway crossings clearly marked. It is therein shown that the Crossing is reflected as a highway crossing and bears a highway crossing signal. Also shown on that map are hatch marks which appear to mark the private property lines adjacent to the public highway and adjacent to the railroad right of way, internal to the Geneva property.

Ms. Renee Spooner
May 18, 2009
Page 3

I hope that this will help finalize a prompt decision by UDOT so that we can move forward with our development activities and Utah Transit Authority can proceed with its transit development plans.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis M. Astill". The signature is fluid and cursive, with a large initial "D" and "A".

Dennis M. Astill,
Project Manager & General Counsel

DMA/ss
enclosures
cc: David L. Church
Eric Y. Cheng
Reha K. Deal

Anderson Geneva Development, Inc.

99 N. Geneva Road
Vineyard, UT 84057
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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."

3. 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 improvements for safe and efficient use by both highway and rail 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 and interpretive comments set forth by the undersigned in parenthesis).

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

"Typical 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 occupants and their invitees 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 RHGCH goes on at page 191 to state further:

"In some instances, changes in land use have resulted in expansion of a crossing's 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 traveled way over the crossing...If the general public is making use of a crossing, appropriate traffic control devices should be installed for warning and guidance."

The RHGCH reiterates the definition found in the MUTCD to the effect that a Public Crossing is "A highway-rail grade crossing that is on a roadway or a pathway under the jurisdiction of and maintained by a public authority and open to the traveling public."

No one can dispute that during the operation of the Geneva plant that the traveling 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

traveling from a public road over a crossing to a clearly private ownership 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 no factual basis. Frankly it would not have surprised us if Geneva Steel and U.S. Steel did road maintenance over the years. They were both good corporate citizens and did many things to benefit the local communities. However, in the interest of accuracy, we contacted county 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 include 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 been maintained by a public entity. And Vineyard Town has unequivocally 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.


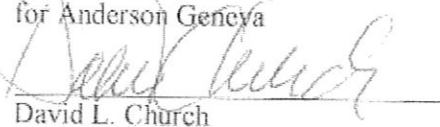
We also point out that as of last month, the FRA continued to show that the crossing was a public crossing. Unfortunately, because of the work being done by UTA on the Frontrunner project, and because of its desire to eliminate maintenance requirements for itself, UP appears to have filed documents with 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

were inaccurate. The references to the MUTCD and RHGCH 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 Gencya
David L. Church
Attorney for Vineyard Town

DMA/ss
cc:
Renee Spooner, Attorney General
Carlos Bracerios, UDOT



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN R. NIORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

April 21, 2009

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

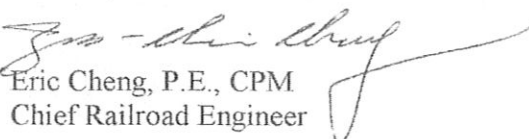
Re: 400 North Railroad Crossing in Vineyard
DOT No. 254903N

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)



280 South 400 West, Suite 250
Salt Lake City, Utah 84101

Tel: (801) 212-3980
Fax: (801) 212-3978

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
April 15, 2009
Page 2 of 2

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 Meyer, UTA
Renee Spooner



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.
Executive Director

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



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DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

April 4, 2008

Jason Bleyl
Civil Design Lead
UTA
669 West 200 South
Salt Lake City, UT 84101

Subject: Surveillance Report
Various Locations in Lindon, Vineyard and Orem
DOT Crossing Nos.: 254902G, 254903N, 806939Y, 254906J, and 806934P

Attendees: Eric Cheng, UDOT; Jim Marshall, UPRR; Adam Cowie, Lindon; Mark Christensen, Lindon/JUB; John Bittenob, HDR; Travis Baxter, UTA; Jason Bleyl, UTA/PB; John Blumenkamp UTA/HDR, Sam Wells, UTA/Parsons; Neal Winterton, Orem; Paul Goodrich, Orem; D Warnock, HNTB

Mr. Stanger:

Background Information:

The Utah Transit Authority (UTA) is proposing to construct and operate a commuter rail system from Salt Lake City through Lindon and Orem, to Provo. The rail line will share a corridor with the Union Pacific Railroad (UPRR). Current freight traffic on the UPRR mainline is 8-20 trains per day. Proposed commuter rail traffic is approximately 60 trains per day. The Utah Department of Transportation has reviewed the existing conditions of the crossings listed in this report in conjunction with UTA, UPRR, and Local Officials. It is UTA's intention to replace all of the existing switches and track and install one or two new parallel tracks next to the existing tracks, in most locations.

General Requirements:

Pursuant to sections 54-4-14 and 54-4-15, UCA, and Utah Administrative Rule R930-5, the Utah Department of Transportation hereby issues the following mandatory requirements to be implemented due to the increase in rail traffic at each crossing. The requirements noted in this report detail the improvements that must be in place to allow for commuter rail traffic.

Required for each at grade crossing in the light rail transit corridor:

1. Installation of insulated concrete surface, extending two feet beyond outside of shoulder/sidewalk. Replace all UPRR non-insulated concrete panels with insulate panels.
2. Installation of standard flashing lights, gates and bells. LED flashing lights to be used in all new and existing installations when a lamp assembly is replaced.
3. Constant Warning Time (CWT) track circuitry to be installed at each crossing.
4. Install new controller houses in neutral quadrants of each crossing.


5. Signs and striping to be installed as per current edition of MUTCD. This includes, but is not limited to, crossbucks, advance warning signs, RxR paint messages, stop bars, and shoulder/lane striping.
6. All medians to be non-mountable barrier curb. Use UDOT type B3 or equivalent. Medians to be constructed beginning at 10 ft. from edge of rail, but effective length of median is measured from the gate arm.
7. Three-Quad and Four-Quad systems to have loop detection for exit gate management and operation.
8. All tracks in the crossing area to cross roadway at the same elevation, or on an even plane to prevent an uneven ride for automobile traffic.
9. Conform to applicable UDOT standard drawings, where applicable.
10. Gate arms must have a gap no greater than 1 foot from tip of gate to edge of median, or no more than 2 feet in places where two gates extend from opposite sides of the lanes.
11. UDOT shall have option to retain all salvage circuitry and controllers. UTA to contact UDOT on each specific crossing about which salvage items UDOT wants.

Crossing Specific Requirements:

1. DOT No. 254902G, 600 South, Lindon
 - a. Remove existing lights and gates and install new flashing lights and gates and raised median barrier.
 - b. Widen road to accommodate the large truck and boat trailer traffic, which uses this crossing.
 - c. When the Vineyard Connector Road is constructed by UDOT, this crossing will be closed and a flyover for the new road will be constructed at this location.
2. DOT No. 254903N, Private Crossing to Geneva, Vineyard
 - a. This crossing is to be closed.
3. DOT No. 806939Y, 400 South, Orem
 - a. Remove existing lights and gates and install new flashing lights and gates and raised median barrier.
 - b. When installing west island, provide two left turn lanes westbound.
 - c. Match cross section of 400 South west of tracks.
 - d. Provide signal preemption for Geneva Road/400 South intersection signal.
4. DOT No. 254906J, 800 South, Orem
 - a. Remove access to house on southwest quadrant. This will probably require purchasing the property.
 - b. Remove existing lights and gates and install new flashing lights and gates and raised median barrier.
5. DOT No. 8/06934P, 2000 South, Orem
 - a. Remove existing lights and gates and install new flashing lights and gates and raised median barrier.
 - b. Remove driveway/road in northeast quadrant.
 - c. Talk to both Orem and Provo Cities about a future tie of the signals with the UPRR tracks to the east. 2000 South is the boundary between the cities.

If you have any questions regarding this letter, please feel free to contact me at (801) 965-4284.

Sincerely,



Eric Cheng, P.E.
UDOT Chief Railroad Engineer

Cc: Jim Marshall, UPRR
D Warnock, HNTB Corporation
John Bittenob, HDR
Mark Christensen, Lindon City
Paul Goodrich, Orem City

Anderson Geneva Development Inc.

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

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.

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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

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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

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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