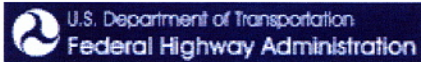
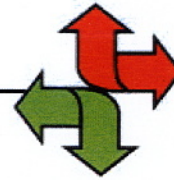


39. **Intersection**—(a) the area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways that join at any other angle might come into conflict; (b) the junction of an alley or driveway with a roadway or highway shall not constitute an intersection.
40. **Island**—a defined area between traffic lanes for control of vehicular movements or for pedestrian refuge. It includes all end protection and approach treatments. Within an intersection area, a median or an outer separation is considered to be an island.
41. **Lane Line Markings**—white pavement marking lines that delineate the separation of traffic lanes that have the same direction of travel on a roadway.
42. **Lane-Use Control Signal**—a signal face displaying indications to permit or prohibit the use of specific lanes of a roadway or to indicate the impending prohibition of such use.
43. **Legend**—see Sign Legend.
44. **Logo**—a distinctive emblem, symbol, or trademark that identifies a product or service.
45. **Longitudinal Markings**—pavement markings that are generally placed parallel and adjacent to the flow of traffic such as lane lines, centerlines, edge lines, channelizing lines, and others.
46. **Major Interchange**—an interchange with another freeway or expressway, or an interchange with a high-volume multi-lane highway, principal urban arterial, or major rural route where the interchanging traffic is heavy or includes many road users unfamiliar with the area.
47. **Major Street**—the street normally carrying the higher volume of vehicular traffic.
48. **Median**—the area between two roadways of a divided highway measured from edge of traveled way to edge of traveled way. The median excludes turn lanes. The median width might be different between intersections, interchanges, and at opposite approaches of the same intersection.
49. **Minor Interchange**—an interchange where traffic is local and very light, such as interchanges with land service access roads. Where the sum of the exit volumes is estimated to be lower than 100 vehicles per day in the design year, the interchange is classified as local.
50. **Minor Street**—the street normally carrying the lower volume of vehicular traffic.
51. **Object Marker**—a device used to mark obstructions within or adjacent to the roadway.
52. **Occupancy Requirement**—any restriction that regulates the use of a facility for any period of the day based on a specified number of persons in a vehicle.
53. **Occupant**—a person driving or riding in a car, truck, bus, or other vehicle.
54. **Paved**—a bituminous surface treatment, mixed bituminous concrete, or Portland cement concrete roadway surface that has both a structural (weight bearing) and a sealing purpose for the roadway.
55. **Pedestrian**—a person afoot, in a wheelchair, on skates, or on a skateboard.
56. **Pedestrian Facilities**—a general term denoting improvements and provisions made to accommodate or encourage walking.
57. **Platoon**—a group of vehicles or pedestrians traveling together as a group, either voluntarily or involuntarily, because of traffic signal controls, geometrics, or other factors.
58. **Principal Legend**—place names, street names, and route numbers placed on guide signs.
59. **Public Road**—any road or street under the jurisdiction of and maintained by a public agency and open to public travel.
60. **Raised Pavement Marker**—a device with a height of at least 10 mm (0.4 in) mounted on or in a road surface that is intended to be used as a positioning guide or to supplement or substitute for pavement markings or to mark the position of a fire hydrant.
61. **Regulatory Sign**—a sign that gives notice to road users of traffic laws or regulations.
62. **Retroreflectivity**—a property of a surface that allows a large portion of the light coming from a point source to be returned directly back to a point near its origin.
63. **Right-of-Way [Assignment]**—the permitting of vehicles and/or pedestrians to proceed in a lawful manner in preference to other vehicles or pedestrians by the display of sign or signal indications.
64. **Road**—see Roadway.
65. **Roadway**—that portion of a highway improved, designed, or ordinarily used for vehicular travel and parking lanes, but exclusive of the sidewalk, berm, or shoulder even though such sidewalk, berm, or shoulder is used by persons riding bicycles or other human-powered vehicles. In the event a highway includes two or more separate roadways, the term roadway as used herein shall refer to any such roadway separately, but not to all such roadways collectively.
66. **Roadway Network**—a geographical arrangement of intersecting roadways.
67. **Road User**—a vehicle operator, bicyclist, or pedestrian within the highway, including persons with disabilities.



Manual on Uniform Traffic Control Devices (MUTCD)



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Interpretation Letter I-44(Intr.)-Applicability of MUTCD to Private Property Open to Public Travel

[DOC Version](#), 24KB

To view DOC files, you need the [Microsoft Word Viewer](#).

August 17, 2004

Refer to: HOTO-1

Mr. David McKee
 Director of Member Services
 American Traffic Safety Services Association
 15 Riverside Parkway, Suite 100
 Fredericksburg, VA 22406-1022

Dear Mr. McKee:

Thank you for resending your letter dated April 1 and we apologize that it somehow got misplaced. In your letter, you have asked us to provide an official interpretation on the applicability of the Manual on Uniform Traffic Control Devices (MUTCD) to private property open to public travel. The following answers are provided to the three questions addressed in your letter:

1. Some roads open to public travel are privately owned. Does the manual apply to these roads? The MUTCD does not apply unless States have adopted legislation to require traffic control devices on their private roadways open to the public to be in conformance with the MUTCD. The last paragraph of MUTCD Section 1A.07 addresses the subject of roads that are privately owned and also open to the public. The MUTCD encourages States to adopt a legislative code similar to Section 15-116 of the Uniform Vehicle Code which indicates that traffic control devices intended to regulate, warn, or guide traffic shall not be installed unless the devices conform with the State manual and the MUTCD. At present, there are 17 States with such laws.
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.

In addition to the questions addressed in your letter, you also expressed your preference that a new Part be developed within the MUTCD addressing urbanization issues. We will keep that in mind and we certainly appreciate your offer to work with us towards this new Part. For record-keeping purposes, we have assigned the following official ruling number to your request for interpretation: "I-44(Intr.)—Applicability of MUTCD to Private Property Open to Public Travel." Please refer to this number in future correspondence.

AE - Ex 23

Sincerely yours,

Regina McElroy

Regina S. McElroy
Director, Office of Transportation Operations



AE - Ex 23

Anderson Geneva Development Inc.

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

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

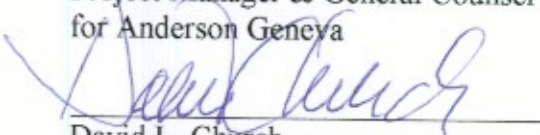
were inaccurate. The references to the MUTCD and RHGCH were only partly accurate and were incomplete. Further, these manuals and handbooks make it clear that it is State law that governs these crossings. State law is clear that this is a public crossing.

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 Geneva



David L. Church
Attorney for Vineyard Town

DMA\ss
cc:
Rence Spooner, Attorney General
Carlos Bracerros, UDOT