

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

)
IN THE MATTER OF THE UNION)Docket No:
PACIFIC RAILROAD'S PETITION)09-888-01-0118
FOR RELIEF AGAINST THE UTAH)
DEPARTMENT OF TRANSPORTATION,)ALJ: Ruben Arredondo
)

* * *

TRANSCRIPT OF HEARING PROCEEDINGS
VOLUME I OF II

August 17, 2010
9:05 a.m.

Location of:

PUBLIC SERVICE COMMISSION

160 East 300 South

Salt Lake City, Utah

* * *

Reported By:

Rossann J. Morgan, CSR, RPR

and

Catherine L. Kennedy, CSR, RPR

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25FOR UNION PACIFIC
RAILROAD:Reha Kamas, Esq.
David Pickett, Esq.
UNION PACIFIC RAILROAD
280 South 400 West
Salt Lake City, Utah 84101
Telephone: (801) 212-3980FOR UTAH DEPARTMENT OF
TRANSPORTATION:Renee Spooner, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
4501 South 2700 West
P.O. Box 148455
Salt Lake City, Utah 84114-8455
Telephone: (801) 965-4168

FOR ANDERSON GENEVA:

Dennis M. Astill, Esq.
DENNIS M. ASTILL, PC
9533 South 700 East, Suite 103
Sandy, Utah 84070
Telephone: (801) 990-4930

FOR VINEYARD TOWN:

David L. Church, Esq.
BLAISDELL & CHURCH, PC
5995 South Redwood Road
Salt Lake City, Utah 84123
Telephone: (801) 261-3407

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WITNESS

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JIM MARSHALL

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1 August 17, 2010

9:05 a.m.

2 P R O C E E D I N G S

3 JUDGE ARREDONDO: Let's go ahead and start,
4 then. We will begin with appearances -- taking
5 appearances beginning with Union Pacific and then going
6 to UDOT and then Anderson Companies. So we can take
7 appearances starting with Union Pacific.

8 MS. KAMAS: Reha Kamas and David Pickett for
9 Union Pacific Railroad.

10 JUDGE ARREDONDO: Thank you.

11 MS. SPOONER: Renee Spooner for UDOT.

12 JUDGE ARREDONDO: Thank you.

13 MR. ASTILL: Dennis Astill for Anderson
14 Geneva entities.

15 JUDGE ARREDONDO: Thank you.

16 MR. CHURCH: David Church for Vineyard Town.

17 JUDGE ARREDONDO: Anything that we need to
18 take care of beforehand, especially with regards to
19 exhibits and entry issues?

20 MR. ASTILL: Yes.

21 JUDGE ARREDONDO: Okay. Why don't you go
22 ahead, Mr. Astill.

23 MR. ASTILL: Your Honor, we have, among
24 counsel, stipulated and we want to make that stipulation
25 a matter of record. That for the exhibits that we've

1 produced to one another that there won't be a need for
2 foundation. So if there are maps, historical maps,
3 library maps, other things that we're presenting as part
4 of these exhibits, we don't have to call, you know,
5 archive personnel to come --

6 JUDGE ARREDONDO: Okay.

7 MR. ASTILL: -- testify and authenticate
8 these exhibits. So we've agreed to -- stipulated to
9 foundation and authentication and the copies are
10 sufficient.

11 JUDGE ARREDONDO: Okay. All right. Just so
12 you know, I think we discussed it at the -- well, I know
13 we discussed it at the prehearing conference in July.
14 And the Commission tends to take a wider view of
15 evidence, we tend to allow more in than not. And then
16 we'll -- really your objections could wait until the end.
17 So just so you know that. We let a lot more in than a
18 court would.

19 MR. ASTILL: One other matter, Your Honor. I
20 notice -- I have Mr. Jerry Grover, who is an Anderson
21 Geneva employee who we believe is essential for our
22 proceeding -- or this proceeding for us. At counsel
23 table, I see Eric Cheng over with Renee Spooner. I
24 suspect she's going to think the same thing about
25 Mr. Cheng, but there are other witnesses that I would

1 request that we exclude from the proceedings so that we
2 don't taint the testimony of one person listening to
3 another.

4 JUDGE ARREDONDO: Okay.

5 MR. ASTILL: And I think if Union Pacific
6 believes they need somebody here, we probably ought to
7 hear that. And, otherwise, we ought to exclude all other
8 witnesses during the period -- course of the hearing.

9 JUDGE ARREDONDO: All right.

10 MS. KAMAS: We have Mr. Marshall here, Your
11 Honor. But this is our expert and he can be excluded.

12 JUDGE ARREDONDO: Okay. Anybody else you
13 feel should be excluded, Ms. Spooner?

14 MS. SPOONER: I have Mr. Jeff Harris here.
15 The likelihood of me calling him, I'm not planning other
16 than Eric.

17 Do you have any objection with that?

18 MR. ASTILL: I do. I think it would be best
19 for him to wait, and when we -- when we need his
20 presence, we'll let him in.

21 MR. PICKETT: Meaning you're planning on
22 calling him as a witness?

23 MR. ASTILL: Yes.

24 JUDGE ARREDONDO: Okay. We'll exclude him
25 unless you want to respond, Ms. Spooner?

1 MS. SPOONER: No, Your Honor, that's fine.

2 JUDGE ARREDONDO: Okay. Anything else we
3 need to take care of at the outset? No. Okay.

4 I believe we also addressed this issue at the
5 prehearing conference in July. It's typical Commission
6 practice to -- we have -- well, since there hasn't been
7 pretrial testimony, to have a brief summary. Especially
8 if you knew already what the testimony is going to be of
9 the witness, you can summarize that up front basically to
10 just get the hearing going, get it moving, if you want to
11 do that, and then really focus on cross. But with that,
12 then, any other matters that we need to resolve at the
13 onset? No. Okay. Then we'll begin with Union Pacific.

14 MS. SPOONER: Oh, I'm sorry, Your Honor.
15 Eric has a hard time hearing. Are these microphones or
16 is that just there to --

17 JUDGE ARREDONDO: Yeah, these are
18 microphones. So that light should be bright green.

19 MS. SPOONER: Okay. So that means it's
20 active then?

21 JUDGE ARREDONDO: It is.

22 MS. KAMAS: But you can push the button to
23 make it inactive.

24 MR. CHENG: Okay. Yeah, just, Your Honor, I
25 cannot hear you very clearly.

1 JUDGE ARREDONDO: No? Okay. I'll try to
2 speak -- yeah, it's a little low. We were going to use
3 that other hearing room, but obviously the other matters
4 -- the commissioners take precedence in that room. So if
5 they're done today, we might be able to move into that
6 room. It is louder.

7 MR. CHENG: Now it's better, I can hear you
8 very well. Thank you. And all of the same thing to you,
9 you know, others -- you know, counsels, that I cannot
10 hear very well on that side. So they can maybe --

11 JUDGE ARREDONDO: Yeah, if you just -- it is
12 a little difficult generally to hear in this room, so if
13 you can just make sure your microphone is close. It is
14 also helpful for the court reporter, as well, so she
15 doesn't have to ask you or your witness to repeat.

16 MS. SPOONER: Would it help if I close the
17 door?

18 JUDGE ARREDONDO: Yeah, if you could, that
19 would be great. Okay. Then we'll begin with Union
20 Pacific.

21 MR. PICKETT: Thank you, Your Honor. Couple
22 questions. One, we're going to be calling witnesses
23 clearly. Do you prefer if we stand at the dais or should
24 we remain seated?

25 JUDGE ARREDONDO: You can sit and your

1 witness can sit here at the witness stand.

2 MR. PICKETT: Okay. Thank you. I appreciate
3 that. And just to clarify your explanation about
4 summarizing witness testimony, would you like a verbal
5 explanation of who the witness would be?

6 JUDGE ARREDONDO: You know what? Actually,
7 I'm thinking about it. Nobody submitted pretrial
8 testimony, did they?

9 MS. KAMAS: No, sir.

10 MR. PICKETT: No.

11 JUDGE ARREDONDO: No. Okay. Then it
12 probably wouldn't be optimal either.

13 MR. PICKETT: Okay. Thank you. Is this
14 moveable?

15 JUDGE ARREDONDO: It is.

16 MR. PICKETT: Okay. Thank you. If you don't
17 mind, I'm going to just slide it forward a little bit so
18 I have a clear line of sight. Is that in your way now,
19 Renee?

20 MS. SPOONER: No, that's fine.

21 (Court reporter interrupted.)

22 MS. KAMAS: If we could ask one more question
23 before we start, Your Honor. As testimony progresses, it
24 will make sense for us to be at our exhibits. Is that a
25 problem with picking up our voice for the record?

1 JUDGE ARREDONDO: Just as long as she can
2 hear you.

3 MS. KAMAS: Okay.

4 JUDGE ARREDONDO: So she'll let you know if
5 she can't hear you.

6 MS. KAMAS: Perfect. Thank you.

7 JUDGE ARREDONDO: It shouldn't -- I think
8 this microphone here and this one, we can move it that
9 way closer to help pick up the voices.

10 MS. KAMAS: We're not making an audio record,
11 a recording? Or are we?

12 JUDGE ARREDONDO: Just -- I mean, other than
13 the -- the record she uses to make her transcript, no.

14 MS. KAMAS: Okay. Thank you.

15 MR. PICKETT: Well, thank you. Union Pacific
16 calls its first witness, Jim Marshall.

17 JUDGE ARREDONDO: All right. Mr. Marshall,
18 can you come up to the front, please. Mr. Marshall, if
19 you could take the stand here and if you could raise your
20 right hand for me.

21 (Whereupon, Mr. Jim Marshall was duly sworn.)

22 JUDGE ARREDONDO: Thank you. Have a seat.

23 MR. PICKETT: I think I may change my mind,
24 Your Honor. Now I'm so far away from the man, I feel
25 like I'm yelling across the room. If you don't mind, I'm

1 going to go ahead and stand.

2 JUDGE ARREDONDO: That's fine.

3 MR. PICKETT: Sorry for the delay. I should
4 have thought ahead and brought a dolly. Can you -- can
5 you hear him?

6 JUDGE ARREDONDO: Well, if you can't hear
7 him, let me know. And then we'll have a microphone
8 brought in. And if Mr. Cheng can't hear him, we can
9 just --

10 MR. PICKETT: I'd be happy to sit back down
11 if that's a problem.

12 JUDGE ARREDONDO: I'll tell you -- if you can
13 -- we'll stop for a quick two minutes and bring a
14 microphone in.

15 MR. PICKETT: Okay. Thanks. It just feels
16 comfortable for me to be a little closer to the person
17 I'm talking to. Is that okay volume-wise?

18 MR. CHENG: Yeah.

19 MR. PICKETT: Okay. I'll try to keep my
20 voice up.

21 DIRECT EXAMINATION

22 BY MR. PICKETT:

23 Q. Good morning, Mr. Marshall. Could you please
24 tell us who is your employer and what do you do for a
25 living?

1 A. Union Pacific Railroad and I'm manager of
2 Special Projects, Industry and Public for Idaho, Montana
3 and Utah.

4 Q. And how long have you been employed by Union
5 Pacific?

6 A. Thirty-three years.

7 Q. And could you give us a short summary of the
8 different positions you've had with the railroad over the
9 years?

10 A. Started back in 1977 as B&B, which is
11 basically building and bridge as a laborer. Moved into
12 transportation, operating trains as a trainman,
13 conductor, from 1979 to 1993. Went into the engineering
14 department in Omaha in the mapping department for four
15 years and then track design for two years.

16 And then I got this -- I got a job out in
17 Salt Lake as manager of Industry and Public Projects in
18 1999. And then, I believe, it was 2004 I was promoted to
19 manager Special Industry and Public. Basically the same
20 type of duties, just a little bit more increase with the
21 commuter rail project and been doing that since -- since
22 that time.

23 Q. What are the typical scopes of your
24 responsibilities in your job?

25 A. My responsibility is to work with all the

1 public agencies on anything that they do with the
2 railroad right of way as far as grade crossings,
3 overpasses, underpasses. I also -- in charge of all the
4 private crossings for the states that I oversee. And
5 part of my duty is to try to consolidate; high priority
6 on our position is to the safety. So we work on
7 consolidating, closing crossings in our areas, and I also
8 oversee a construction and design of industry tracks in
9 my territory for new industries that are coming onto the
10 railroad.

11 Q. And you're aware that the subject of this
12 hearing today is the grade crossing located at about 400
13 North Vineyard -- in Vineyard, Utah?

14 A. Yes, sir.

15 Q. I'd like to ask you some general questions
16 about your understanding of some of the history of the
17 crossing, culminating in the point in time when you
18 became involved. We'll ask you more detailed questions
19 at that point. What is your understanding of when the
20 railroad -- when the railroad acquired the right of way
21 through that area?

22 A. My understanding is it's deeded -- was deeded
23 to U.P., but I'm not sure -- exactly sure on the date it
24 was deeded to us.

25 Q. Do you know generally speaking if it was

1 before or after 1900?

2 A. I thought it was before 1900.

3 Q. Do you have any personal knowledge of when
4 the 400 North road was established as a road in that
5 area?

6 A. I do not.

7 MR. PICKETT: And I will ask counsel to
8 correct me if I get this wrong, but I believe that the
9 parties have stipulated that prior to the 1942 action by
10 the county commissioners that we agree that this was a
11 public road and a public crossing.

12 MR. ASTILL: Yes.

13 Q. (BY MR. PICKETT) In 1942, Mr. Marshall, are
14 you aware of any action taken by the Utah County
15 commissioners related to the site that became Geneva
16 Steel?

17 A. I've seen a resolution or some type of a
18 vacation of the roadway through there.

19 Q. And so what is your understanding -- just
20 generally speaking, am I correct that the right of way in
21 this area runs in a generally north/south orientation?

22 A. Correct.

23 Q. And that 400 North, this crossing, crosses it
24 in a east/west direction?

25 A. More or less.

1 Q. And so that 1942 action by the -- by the
2 county did what in relation to the public right of way
3 for the roads on the east side of the Union Pacific right
4 of way?

5 A. It appears that they vacated everything on
6 the east side of the right of way so Geneva Steel or U.S.
7 Steel could be -- could construct their plant. And then
8 they -- it looks like they built another road along our
9 right of way to reconnect that road so the public had
10 access on the east side -- or west side of the tracks.

11 Q. So that new road that was built was parallel
12 to the right of way?

13 A. Correct.

14 Q. But on the west side?

15 A. Correct.

16 Q. And is it your understanding that the -- that
17 the property bound -- that the railroad right of way has
18 a common boundary on the east side with the west boundary
19 of the -- of the Geneva Steel site?

20 A. That's what it appears to me.

21 Q. And in 1942 it was the Defense Plant
22 Corporation that was the acquiring property owner?

23 A. That's -- that's correct. We all refer to it
24 as U.S. Steel or Geneva Steel, but that's correct.

25 Q. Are you aware of a Public Service Commission

1 proceeding in 1943 related to a double track project?

2 A. I've seen some papers on that.

3 Q. And what is your understanding of the nature
4 of that proceeding? What was the reason that there was a
5 request from the railroad?

6 A. It looked like when we came through with a
7 double track project, as we probably would today, we
8 would ask permission to put tracks through crossing areas
9 to see what stipulations may be enforced on us or
10 requirements for doubling the tracks in that area.

11 Q. And do you have any understanding as to how
12 this crossing at 400 North was characterized in that
13 proceeding?

14 A. I believe it was characterized as a public
15 crossing.

16 Q. Once the Defense Plant Corporation acquired
17 the property on what I believe was the north and the east
18 side of 400 North, in this area, to become that Geneva
19 Steel plant, do you have any information about whether
20 the Defense Plant Corporation fenced the property along
21 the right of way?

22 A. From looking at some photos in that time, it
23 looks like they fenced it right away, but just looking at
24 photos. Otherwise I don't have any.

25 Q. Let me show you a couple of photos to see if

1 you could point out what we're talking about. I'd like
2 to show you what we have marked as Union Pacific Exhibit
3 Page 158. Looking at that photograph, can you tell us
4 what it appears to depict?

5 A. It appears that a fence is constructed on the
6 right of way line or close to it.

7 Q. Can you tell looking at the photograph which
8 direction the photographer is facing?

9 A. It appears that he's facing northward.

10 Q. So is that body of water we see there in the
11 distance Utah Lake?

12 A. Definitely over to the left. I'm not sure if
13 the water right above it -- if the lake went over that
14 far or what happened back then.

15 Q. Okay. The railroad right of way is in the
16 center of the photograph running left to right?

17 A. Correct.

18 Q. And that photograph appears to show a fence
19 along the right of way?

20 A. Correct.

21 Q. On the east side?

22 A. Correct.

23 Q. Thank you. Is it your understanding that the
24 Defense Plant Corporation also installed a gate across
25 the road on the east side of the right of way?

1 A. There is one today. I'm not sure when that
2 was installed.

3 Q. Do you have any information about whether
4 there was a gate across that road during the years that
5 this facility operated as a steel plant?

6 A. My understanding then there was.

7 Q. At some time after 1942, was there a point in
8 time where this grade crossing was reconfigured in the
9 angle and location crossing the right of way?

10 A. I believe it was somewhere in 1971 is my --
11 from what I can tell in the information I received. From
12 looking at the photographs and the crossing today, it's
13 clearly been changed.

14 Q. I'd like to hand you a copy of Union Pacific
15 Page 156 and ask you if you've seen that document before?

16 A. Yes, sir.

17 MR. ASTILL: Your Honor?

18 JUDGE ARREDONDO: Uh-hmm.

19 MR. ASTILL: We don't have copies of these
20 exhibits that are being provided.

21 JUDGE ARREDONDO: Oh, don't you? Do you have
22 copies for Mr. Astill?

23 MS. KAMAS: We don't. I don't, Your Honor.

24 JUDGE ARREDONDO: Let's take a recess.

25 (A brief recess was taken.)

1 JUDGE ARREDONDO: Let's go back on the record
2 if everybody is ready.

3 MR. PICKETT: Thank you. Just to clean up
4 what I think may have been an error in how I identified
5 exhibits, could you please tell me, Court Reporter, what
6 exhibit number I used when I referred to the photograph?

7 JUDGE ARREDONDO: You used 158.

8 MR. PICKETT: 158. Thank you.

9 JUDGE ARREDONDO: And it should have been
10 156?

11 MR. PICKETT: It looks like that should have
12 been 156. And in our exhibits that we've provided, it
13 appears that there was a copying error so that
14 Exhibit No. 155 and 156 in your binder are the same
15 photograph.

16 JUDGE ARREDONDO: Okay.

17 MR. PICKETT: And the photograph dated 1944,
18 that should have been No. 156 omitted. And so we can use
19 the original and look at photocopies of that exhibit, but
20 we'll need to make that correction in the binders by
21 inserting the correct photograph.

22 JUDGE ARREDONDO: All right.

23 MR. PICKETT: So for -- just to confirm the
24 photograph that we earlier referred to, the correct one
25 is the one dated February 23rd, 1944, at the bottom of

1 the photograph page.

2 JUDGE ARREDONDO: Can I see that?

3 MR. PICKETT: That correct photograph?

4 JUDGE ARREDONDO: Yes.

5 MS. KAMAS: Why don't you show him the
6 original? It's right behind you to your left.

7 MR. PICKETT: Thank you.

8 JUDGE ARREDONDO: 156 is November 30th, 1943?

9 MR. PICKETT: Correct. And as you look at
10 the previous exhibit, 155, it's also the same date --

11 JUDGE ARREDONDO: So it should be this?

12 MR. PICKETT: It should be the one you're
13 holding in your hand, yes. February of 1944.

14 JUDGE ARREDONDO: We'll correct that.

15 MR. PICKETT: Right. So we'll just provide a
16 photocopy of the photograph dated February 23rd, 1944, to
17 insert in the binders as the correct No. 156.

18 JUDGE ARREDONDO: All right.

19 Q. (BY MR. PICKETT) All right. I apologize for
20 the delay. All right. Mr. Marshall, I'm going to show
21 you the same document that I approached you with a moment
22 ago, but it's -- this one is correctly marked as Exhibit
23 No. -- Page No. 158 for Union Pacific, a paper described
24 as Commissioner's Minutes at the top of the page. Have
25 you seen this document before?

1 A. Yes.

2 Q. You've had an opportunity to review it?

3 A. Briefly.

4 Q. I'd like to direct your attention to an entry
5 toward the bottom third of the page that says, "Road,
6 U.S. Steel, Blaine Standifird." Do you see that?

7 A. Yes, sir.

8 Q. What I'd like to do is read this with you and
9 then ask you some questions about it. It says,
10 "Mr. Standifird, representing U.S. Steel, met with the
11 commission and presented a map of the road going north
12 and south on the west side of Geneva. Since they have
13 had a fatality on the railroad crossing there at the west
14 gate of Geneva, they would like to change the road to
15 give them a better approach to the crossing and perhaps
16 move the crossing north a little further providing the
17 railroad will approve the new crossing. This is a
18 distance of about 600 feet. They would want the county
19 to take this road over. They will build the road up to
20 grade and fill and would like the county to blacktop it.
21 They were planning on 22 feet of road and Commissioner
22 Thorn suggested it be increased to 24 feet."

23 Based on that description, do you have an
24 understanding as to which crossing they're describing?

25 A. Yes, sir.

1 Q. Which crossing is it?

2 A. 400 North.

3 Q. And having read that first paragraph, what is
4 your understanding of who was approaching whom with what
5 request?

6 A. It appears that U.S. Steel is approaching the
7 county to move the crossing 600 feet to the north.

8 Q. And what is the date at the top of the page?

9 A. November 9th, 1970.

10 Q. Thank you. And it describes it here as a
11 request or an idea to move the crossing up 600 feet?

12 A. Correct.

13 Q. Let's move on to the next paragraph. It
14 says, "The various possibilities of placing the road in
15 this particular area were discussed, and Mr. Standifird
16 expressed that they planned on using reject pipe for the
17 guardrail." Parenthesis, "They were planning on 22 feet
18 of road and Commissioner Thorn suggested it be increased
19 to 24 feet," end parenthesis.

20 The next paragraph, "The various
21 possibilities of placing the road in this particular area
22 were discussed, and Mr. Standifird expressed that they
23 planned on using reject pipe for the guardrail. They
24 would have two angled turns, one left and then one right,
25 the way it is proposed. It would require a stop or a

1 yield sign on the road coming from the west to the plant.
2 It was pointed out that right angle crossings are always
3 better.

4 "Mr. Standifird said they planned on
5 contacting the railroad people about this matter in a few
6 days and would like the county's opinion on it before
7 they meet with the railroad. The commission expressed
8 their willingness to help with this road, and
9 Mr. Standifird will be in touch with the commission after
10 he meets with the railroad people." And does that appear
11 to be the end of the entry for that item?

12 A. Yes, sir.

13 Q. It appears that this conversation either
14 included or contemplated three parties involved in this
15 decision, the county, U.S. Steel and the railroad --

16 A. Correct.

17 Q. -- would you agree with that?

18 A. (Witness nodded head.)

19 Q. Does -- does knowing that those parties were
20 involved, in your mind, give any indication as to
21 whether, at this point in 1970, this was considered a
22 public crossing or a private crossing?

23 A. It does not indicate to me that it -- that it
24 was a public crossing. It does not indicate it was a
25 public crossing.

1 Q. Is there any other party that you believe
2 would have been necessary to this conversation if it were
3 a public crossing?

4 A. Yes. UDOT would have to be included because
5 UDOT regulates all public crossings, any type of changes
6 to a public crossing.

7 Q. So if a crossing is changed in its location,
8 if it's a public crossing, UDOT would have to give
9 permission for that?

10 A. Yes, sir.

11 Q. Would UDOT be involved in that
12 decision-making process if the crossing were to remain in
13 the same location but the warning devices were changed?

14 A. Yes, sir.

15 Q. They have jurisdiction over that?

16 A. Yes, sir.

17 Q. By statute?

18 A. Yes, sir.

19 Q. In the first paragraph, third line from the
20 bottom, beginning of the last sentence in that line, it
21 says, "They would want the county to take this road
22 over." Does that, in your mind, indicate anything about
23 the state of mind of the parties at the time regarding
24 whether the road at that point -- or rather the crossing
25 at that point was public or private?

1 A. No, it's not clear what they're asking for
2 them to take over. They're moving the road 600 feet.
3 That's a lengthy stretch even on the county -- or on the
4 west side of the crossing. So it's really unclear of
5 what they're asking. U.S. Steel, you know, obviously is
6 a big employer for -- or U.S. Steel is a big employer for
7 Utah County. Most instances I've seen, it's not uncommon
8 for an industry to approach an agency to help with
9 construction or -- you know, for their facilities. So I
10 don't see anything here that would lead us to any -- to
11 either way.

12 Q. Do your job duties include what I'll call
13 working out deals or agreements with parties other than
14 the railroad regarding installation or changes to the
15 features of crossings?

16 A. Yes, every day.

17 Q. Both private and public?

18 A. Yes, sir.

19 Q. Is there a hard and fast rule regarding who
20 is responsible for paying for changes at public
21 crossings?

22 A. It's usually always the party that initiates
23 it.

24 Q. In other words, the party who wants the
25 change?

1 A. Exactly.

2 Q. Is that always the case?

3 A. Most generally.

4 Q. If it's a private crossing, is there a hard
5 and fast rule about who would pay for changes?

6 A. Typically the private crossing owner.

7 Q. Is that a hard and fast rule or is it subject
8 to negotiation?

9 A. Everything is subject to negotiation in
10 certain cases, but most generally it's a pretty firm
11 rule.

12 Q. Looking at this entry as a whole, does it
13 provide any other clues, in your mind, other than the
14 ones we've already discussed, about whether at this point
15 in time this was considered a private or a public
16 crossing by the parties involved with it?

17 A. It -- the only thing that strikes me is that
18 UDOT wasn't involved. And, you know, typically UDOT's
19 involved in a front end or any changes on a crossing
20 because they're regulatory. So that to me points more
21 toward a private crossing. But other than that, there's
22 really nothing here.

23 Q. Now, the county is a public entity; right?

24 A. Correct.

25 Q. And it's a road authority for certain roads

1 in Utah County?

2 A. Correct.

3 Q. Including the road on the west side of the
4 grade crossing in -- or rather the west side of the right
5 of way in this area?

6 A. Correct.

7 Q. If this were a private crossing, why would
8 the county be involved in a conversation like this?

9 A. Well, the crossing that comes out of Geneva
10 Steel or U.S. Steel connects into a county road. So
11 you're going to change -- by moving the crossing, you're
12 going to change the approach. They talk about a yield
13 sign or a stop sign being installed at the location of
14 the intersection. So you've got to talk to the -- the
15 road authority that the private crossing and private
16 roadway is connected into. So there is -- got to be some
17 interaction there to get permission to move that
18 entrance.

19 Q. So anytime there's going to be a change in a
20 crossing, whether it's public or private, the road
21 authority that that crossing connects to would need to be
22 involved in the conversation?

23 A. I would say if it's affecting or it connects
24 into the public road right of way or affects the public
25 right of way, then, yeah, they probably would have to be.

1 Q. In this case, they were considering changing
2 the configuration of this crossing including where it was
3 located?

4 A. That's what it sounds like. They're looking
5 at the widths, they're looking at changing it 600 feet.
6 So they were definitely changing the intersection, it
7 looks like.

8 Q. So does that mean that it makes sense that
9 the county was involved in this conversation?

10 A. Sure.

11 Q. Do you have any information about who was
12 maintaining the east or west approach to this grade
13 crossing between 1942 and November of 1970?

14 A. I have no conclusive evidence on either way.
15 We can't find any reports where the county has asked us
16 to come in and do maintenance on -- next to the tracks.
17 I can't find any main -- or any record where the industry
18 did either. So I don't have any conclusive evidence
19 either way.

20 Q. And I'm going to ask you in a moment about
21 your own personal involvement in this area; it began just
22 a few years ago. But generally speaking, do you have any
23 information about -- that would suggest that a public
24 road authority has done any maintenance of the approaches
25 on either side of this crossing since 1970?

1 A. I can't see where any public agency -- they
2 definitely haven't done any signage or road markings on
3 there since that we can tell.

4 Q. Is there currently any striping on the road
5 on the approaches on either side?

6 A. No, sir.

7 Q. And does that give you any indication, based
8 on your experience, whether there is a private or public
9 crossing?

10 A. Typically, a public road, again, is regulated
11 by UDOT. And UDOT makes sure that advanced warnings
12 signs and striping in the counties, the agency that
13 controls the road, would, you know, by statute and MUTCD
14 would want to have all those signs in place if they
15 recognize it as a public crossing.

16 Q. How did you first become involved in
17 conversations regarding redevelopment of the Anderson
18 Geneva site?

19 A. I believe it was early 2006, I think, when we
20 first started working with Dennis and a few others at the
21 Geneva site. And if I remember right, we were -- that
22 was probably when we started looking at the realignment
23 of the Provo Industrial Lead and a grade separation or
24 crossing at Center Street and another one at 800 North in
25 -- on their original plans. I think there's an exhibit

1 that you have that might show that.

2 Q. Let me trade exhibits with you. This is
3 Union Pacific Page No. 138. Do you recognize that
4 exhibit?

5 A. Yeah. It looks like one of the initial plans
6 that CRS Engineering did for Geneva Anderson.

7 Q. If you'll allow me, I'm going to stand next
8 to you because I need to look at your copy of the
9 exhibit. I'd like to ask you some questions about the
10 track configuration in this area. The crossing that
11 we're talking about on 400 North and Vineyard is a
12 crossing over a mainline track; is that right?

13 A. That's correct, mainline Provo Sub.

14 Q. And in this drawing that's marked as No. 138,
15 is that the right of way that we see that runs
16 approximately from the top right corner to the bottom
17 left corner?

18 A. That is correct.

19 Q. And what is the Provo Industrial Lead?

20 A. Provo Industrial Lead is on the other border
21 of the Geneva site. It's on the east side of the Geneva
22 site. So basically this site is sandwiched in between
23 the Provo Sub and the Provo Industrial Lead. And Provo
24 Industrial Lead actually used to be the Union Pacific
25 mainline years ago. And the Provo Sub, which is where

1 the 400 North crossing is, is actually the old DRGW
2 mainline.

3 Q. And what was the nature of the -- the project
4 or the request that brought you into this conversation
5 with Anderson Geneva?

6 A. Well, we -- I think we approached Geneva, I
7 think, on the realignment. I'm not positive how that
8 really came about. But I'm always looking for ways to
9 eliminate and consolidate crossings. When Geneva took
10 over this site, I mean, they're sandwiched in. We just
11 looked like we were going to have issues from -- you
12 know, for ingress and egress of that location over the
13 private crossings.

14 There's probably five or six private
15 crossings on the Provo Industrial Lead, and there was two
16 we recognize far north as a private crossing and another
17 one on the -- on the east side -- or on the west side.
18 So we were looking for -- in my mind, I was looking for a
19 way to eliminate those issues in the future and open up
20 that property. And so we looked at a Provo Industrial
21 Lead realignment.

22 We typically won't do a mainline realignment
23 of this magnitude but an industrial lead, which is just
24 mostly to serve industries, you know, is something we can
25 take a look at. And there's only one customer that was

1 still -- after Geneva got done doing their changes and --
2 and the plant was demolished, there was only -- Geneva
3 Nitrogen was the only customer that was really left on
4 site.

5 And we figured out a way to keep them
6 connected and realign this -- this track over to our
7 mainline. And it was -- it become very expensive, and we
8 just couldn't come to an agreement with all the parties.
9 It was a party -- an agreement between Geneva Anderson,
10 Union Pacific, UTA and UDOT. And it just -- we just
11 never could come to terms on it.

12 Q. And you're using the term "realignment." In
13 this case, was that going to involve actually removing a
14 section of the Provo Industrial Lead so there would no
15 longer be tracks along the stretch of right of way?

16 A. Exactly. It would eliminate approximately
17 two miles -- I believe two or three miles of track that
18 had bordered Geneva property on the east side.

19 Q. And by removing that section of track, you
20 were -- you would have been eliminating a couple of
21 crossings?

22 A. Four or five. And then also on this list
23 here, actually we would have been creating two new
24 crossings on Center Street and 800 North, which connect
25 up to the freeway entrances to be able to get over to the

1 development on the Vineyard area. And there's a list of
2 crossings that Geneva Anderson was going to close
3 including the 400 North crossing.

4 Q. And the list you're referring to is that
5 table that's on the exhibit you're looking at?

6 A. Correct.

7 Q. So at that point, was the conversation
8 touching on this crossing at 400 North yet?

9 A. Only that it was in the list of crossings to
10 close. Most of the focus was on the realignment and the
11 two new crossings.

12 Q. And so at that point in time during your
13 initial contact and discussions with the parties in the
14 area, 400 North was one that was under consideration for
15 elimination?

16 A. Yeah. I think that besides elimination, it
17 was just that we recognized it as a private crossing and
18 they recognized it as a public crossing.

19 Q. Was there any discussion about grade
20 separating the Center Street crossing?

21 A. Yes. We had -- we had several discussions on
22 grade separating Center Street and 800 North crossings.
23 Primarily Center Street. I think 800 North, if I
24 remember right, was something in the future, but they
25 wanted to move forward on the Center Street initially.

1 Q. And did the -- was there a final decision on
2 whether to grade separate Center Street?

3 A. Well, in the beginning discussions, I know it
4 was -- they presented me with some costs, because I think
5 they were trying to go at grade over at Center Street.
6 And the cost was prohibitive for the overpass, so I
7 introduced them to a contractor who could build a grade
8 separation in a nearby vicinity and was working on one in
9 Draper where the cost was substantially lower than what
10 they had quoted me.

11 So I brought in Todd Wadsworth from Wadsworth
12 Construction to take a look at it with them and come up
13 with an analysis from a constructor's -- they had
14 engineering estimates, and I wanted to bring in a
15 contractor to see if we could figure out a way to be
16 creative on the construction to save them some money and
17 get it done.

18 Q. If I may, I'll take that exhibit back now.

19 A. Sure.

20 Q. Did those discussions about that possibility
21 of grade separating Center Street continue or did your
22 discussions dwindle?

23 A. Well, I think they -- I mean, they continued
24 for a while and then they -- looked like in some minutes
25 and notes I've seen where Todd gave them some costs.

1 It's been two or three years now -- or three or four
2 years now, but Todd gave them some costs on a bridge, and
3 we went through some more updated changes on their
4 realignment. And that pretty much, I think, just kind of
5 sat there. And while we were negotiating the rest of
6 this realignment, I don't remember any other discussions
7 after a certain point except for focusing on the
8 realignment and then trying to get it all patched
9 together.

10 Q. Somewhere in the midst of this time period,
11 did you receive a letter from UDOT that -- dated
12 April 8th, 2008, that mentioned this 400 North crossing?

13 A. Yes, sir.

14 Q. As I'm searching for that letter, let me
15 refer you back to one other question I had about the
16 Commissioner's Minutes --

17 A. Yes, sir.

18 Q. -- from 1970. Do you recall that it said in
19 there that the request was to move the crossing
20 approximately 600 feet?

21 A. That's correct.

22 Q. From your review of records, does it appear
23 that that crossing has been reconfigured from its
24 original position?

25 A. Yes, sir. It's been -- it's been changed,

1 the angle of it's been changed.

2 Q. Is it 600 feet away from where it started?

3 A. From my judgment looking at photographs, it's
4 not 600 feet from where it started.

5 Q. Let me show you Union Pacific Exhibit Page
6 119.

7 MR. ASTILL: Surveillance review?

8 Q. (BY MR. PICKETT) And also Page 120 --
9 actually it's a three-page letter. So this is Exhibit
10 Page No. 119, 120 and 121. This is a letter dated
11 April 4th, 2008, from Jason "Bleal" (phonetic), B-L --

12 A. "Blile" (phonetic).

13 Q. "Blile" (phonetic)?

14 A. "Blile" (phonetic).

15 Q. B-L-E-Y-L, of the Utah Department of
16 Transportation, addressed to Mr. Stanger, S-T-A-N-G-E-R.
17 And it appears that you were copied on that letter. Do
18 you recognize that letter?

19 A. Yes, sir.

20 Q. What was the context for that letter?

21 A. We were doing crossing diagnostics or
22 surveillances for all the crossings that are involved in
23 the UTA project. This is a portion. We did areas at a
24 time and so this is an area that we had done, and this is
25 the recommendations from UDOT on the safety upgrade that

1 would have to be done at those crossings in order for UTA
2 to construct their track and run the passenger trains on
3 them in the future.

4 Q. What is the UTA project you're talking about?

5 A. Utah Transit Authority is building a commuter
6 line from Salt Lake City to Provo. It's an extension of
7 the north line that goes from Ogden to Salt Lake, and it
8 runs parallel with the U.P. tracks from Salt Lake to
9 Provo. And we sold them 20 foot of right of way back in
10 2002 in order to construct this.

11 And so we have a lot of joint crossings now
12 that they're going to operate, and we're going to have to
13 maintain and operate our equipment together. So it's
14 very important that UDOT goes out and tells us what kind
15 of equipment and stuff that we're going to have to -- or
16 that UTA is going to have to install in order to
17 accomplish that.

18 Q. How wide is the railroad right of way in the
19 area of the Geneva property?

20 A. It's -- typical right of way through this
21 whole corridor is 100 feet, which I believe is what we
22 have at Geneva.

23 Q. And in the area of the 400 North crossing,
24 was it the east or west 20 feet of the right of way that
25 sold to UTA?

1 A. We sold UTA 20 foot on the west side.

2 Q. Just for the sake of describing the property
3 as it stands today, how many freight tracks are there?

4 A. There's two freight tracks on that location.

5 Q. And has UTA built any tracks yet?

6 A. Yes, sir. They -- they're not operating on
7 them, but they're constructed through that location.

8 Q. One set of tracks?

9 A. One set of tracks.

10 Q. And are all three of those tracks considered
11 mainline?

12 A. They are.

13 Q. So back to the letter, then. You had been
14 involved, as I understood your testimony, in this review
15 of crossings prior to the date of this letter?

16 A. Yes, sir. I'm project manager for Union
17 Pacific on the whole UTA projects. So I'm very involved
18 in all the crossings and the UTA project as a whole.

19 Q. Would you please turn to the second page of
20 the letter? On that page, which I believe is No. 120 --
21 is that right? Yes, 120. Is this crossing at 400 North
22 listed on there in some way?

23 A. Yes, by DOT number.

24 Q. And how is it described?

25 A. DOT No. 254903N private crossing to Geneva

1 Vineyard.

2 Q. And what is the recommendation on that
3 crossing?

4 A. This crossing is to be closed.

5 Q. Prior to that letter being sent, had Anderson
6 Geneva had any representatives at any meetings you
7 attended regarding how to address or make any
8 modifications to these crossings?

9 A. No, sir.

10 Q. And as far as you can tell on that letter,
11 were they copied on this letter?

12 A. It doesn't appear to be copied on this
13 letter.

14 Q. Do you have any recollection of any
15 conversations with Anderson Geneva representatives, prior
16 to that date, regarding how that crossing would be
17 addressed?

18 A. Only in the previous exhibit we looked at
19 where it was inside of the project that we was already
20 working on for the realignment. And that everything I
21 always saw was they were interested in Center Street and
22 800 North, not so much in 400 North.

23 Q. Did you have any disagreement with the
24 recommendation to close this crossing?

25 A. No, sir.

1 Q. When you got this letter, did you disagree
2 with the description of it as a private crossing?

3 A. No, sir.

4 Q. Let me exchange exhibits with you. This is
5 Union Pacific Exhibit Page No. 123, a letter dated
6 January 28th, 2000 -- excuse me, I may not have the right
7 letter there. Just a moment. May I have this exhibit
8 back?

9 It is. Look, if you would, at Exhibit No.
10 122, a letter dated January 20th, 2009, from Mr. Eric
11 Cheng at the Department of Transportation. Have you seen
12 that letter before?

13 A. Yes, sir.

14 Q. Who is it addressed to?

15 A. Dennis Astill.

16 Q. Let me look over your shoulder again. And so
17 he is a representative of Anderson Geneva?

18 A. Correct.

19 Q. And was this a letter that you also received?

20 A. Yes, sir.

21 Q. It shows you copied at the bottom?

22 A. Yes, sir.

23 Q. And in this letter, is it addressing -- is
24 the subject of this letter the crossing at 400 North?

25 A. Yes, sir.

1 Q. And does Mr. Cheng express an opinion about
2 whether this is a public or private crossing?

3 A. Yes, sir.

4 Q. And what does he say?

5 A. He's saying it's a private crossing.

6 Q. Did you attend any site inspections with
7 Mr. Cheng at this crossing prior to this letter?

8 A. I believe we drove by it. I don't have any
9 records showing that we -- gates and stuff that was
10 there, but I think that we drove up to it and looked at
11 it.

12 Q. Do you recall anything specific about a
13 conversation that you may have had with him if that
14 drive-by occurred?

15 A. Well, I believe the gates were locked and
16 there was no-trespassing signs on the crossing. I think
17 it was just this is just obviously a private crossing at
18 that time.

19 Q. Let me show you Union Pacific Exhibit Page
20 No. 154. Do you recognize the area depicted in that
21 photograph?

22 A. Yes, this is looking east off of the crossing
23 into the gate that goes into the Geneva Anderson
24 property.

25 Q. And is that how the area appeared around the

1 time of that January 2009 letter?

2 A. I believe so.

3 Q. Do you know when that gate and fence were
4 erected?

5 A. I'm not sure exactly when the gate and fence
6 were erected, no. I'm not sure if Geneva Anderson -- is
7 that gate or if it was there with the U.S. -- or Geneva
8 Steel. But there's always been some kind of fence on
9 that side.

10 Q. I'm going to show you Union Pacific Exhibit
11 Page No. 123, a letter dated January 28th, 2009. It
12 appears to be on your letterhead.

13 A. Correct.

14 Q. Who is that letter addressed to?

15 A. Dennis Astill.

16 Q. And do you remember writing this letter?

17 A. Yes, sir.

18 Q. What was your reason for writing this letter?

19 A. I was trying to give Dennis a heads-up on the
20 -- on the UTA project. And that the -- and that we was
21 going to have to close that 400 North in a certain time
22 because we're doing signal improvements on the whole
23 line, and the crossing equipment on that crossing would
24 not support our new signal system.

25 Q. Could you please read the first two

1 paragraphs?

2 A. "As per our previous conversation over the
3 past few years concerning closure of the private crossing
4 at the above-referenced location and the construction of
5 a proposed grade separation south of this location, as
6 you're aware, UTA construction has started on the Provo
7 corridor and our signal construction schedule is quickly
8 approaching. Signal construction through this area is
9 estimated to be late 2009, early 2010. At that time we
10 will not be able to support the existing crossing
11 equipment, and the crossing will need to be permanently
12 closed. This letter is to give you advanced notice of
13 the closure. We will forward a formal letter when we
14 have a more defined date."

15 Q. Okay. That's good. Thank you. So in this
16 letter, were you describing this as a private crossing?

17 A. Yes, sir.

18 Q. This letter came -- or rather was sent -- let
19 me say it this way: This letter is dated eight days
20 after Mr. Cheng's January 20th letter. Were you relying
21 on Mr. Cheng's January 20th letter, that described this
22 as a private crossing, to -- to reach your opinion that
23 this was a private crossing?

24 A. No. My opinion has always been it's a
25 private crossing.

1 Q. And at that point in time, based on your
2 previous conversations regarding Center Street and the
3 Provo Industrial Lead, did you believe that this crossing
4 was meant to be closed by Anderson Geneva?

5 A. Yes.

6 Q. Let me show you Union Pacific Exhibit Page
7 No. 124, a letter dated February 25th, 2009, from
8 Mr. Cheng that UDOT addressed to Mr. Astill. Have you
9 seen that letter before?

10 A. Yes, sir.

11 Q. And were you copied on that?

12 A. I don't appear to be.

13 Q. But you are familiar with the letter?

14 A. Yes, sir.

15 Q. Could you please read the body of that
16 letter?

17 A. "Thank you for meeting with us and providing
18 the information concerning this crossing on February" 9th
19 -- "19th, 2009. After reviewing the information, UDOT
20 will conduct another surveillance review on this crossing
21 based upon the crossing being public because of the FRA
22 inventory listing this crossing as a public and
23 resolution, an order passed by Utah County Board of
24 Commissioners, county commissioners, in 1942. At this
25 point, UDOT considers this crossing as a public unless

1 other information is provided that demonstrates that the
2 crossing is private.

3 "The review shall be performed in accordance
4 with Utah Administrative Code R930-5-7. Consequently,
5 Union Pacific," UTA -- or Union -- "Utah Transit
6 Authority and the town of Vineyard and Anderson Geneva
7 will be involved in this review with UDOT. These parties
8 will have the opportunity to provide any documentation
9 concerning the crossing for this review. As part of the
10 review, a meeting will be held at the site of the
11 railroad crossing."

12 Q. Thank you. So this letter refers to a
13 February 19th meeting, you see that in the first
14 sentence?

15 A. Correct.

16 Q. Were you involved in that meeting?

17 A. I was not.

18 Q. Did you know that this letter was coming
19 before you received it?

20 A. I did not. I -- you know, I can't remember
21 for sure if I knew it was coming or not.

22 Q. Did you have any information prior to
23 receiving this letter about UDOT possibly changing its
24 opinion about whether it was a public or a private
25 crossing?

1 A. I think I had heard rumors.

2 Q. And then the letter refers to a later
3 scheduled meeting, I believe.

4 A. Correct.

5 Q. Did you participate in that meeting?

6 A. Yes.

7 Q. Going to that meeting, did you have any
8 interest in whether the conclusion was that it was public
9 or private?

10 A. Yes.

11 Q. What was your interest? In other words, why
12 -- why did you have an interest in that?

13 A. Well, public safety for one. We were trying
14 to -- the determination that it -- that it was a private,
15 in our opinion, because of the nature of the crossing and
16 stuff was very important for us to stay with the private.
17 The whole reason of this letter was that it was because
18 of the inventory, which the inventory is hardly ever
19 accurate -- or I wouldn't say hardly ever accurate, but a
20 lot of times the inventory is not accurate.

21 Q. You're talking about the FRA inventory?

22 A. Exactly. And in the definition of a public
23 and a private crossing, I think, was at stake here, too,
24 and other crossings throughout the state. And so that's
25 -- we had a stake in this being determined right.

1 Q. And at that time did you believe that it
2 would be any more or less difficult to close this
3 crossing if it were private instead of public?

4 A. It's much easier to close if it's private.

5 Q. Let me show you -- let me ask, did you
6 prepare any written materials to take with you to that
7 meeting?

8 A. Yes, sir.

9 Q. Let me show you Exhibit No. -- or Page
10 No. 157. Do you recognize that document?

11 A. Yes, sir.

12 Q. What is that?

13 A. It was a brief summary in -- in Eric Cheng's
14 letter, he had asked for information for regulations or
15 anything that would help decide if it was a public or
16 private crossing from the railroad or anybody else
17 interested in -- in the determination of a public or
18 private. So I prepared nine bullet points real quick to
19 kind of go over some of our positions and some of the
20 definitions of a public and private road.

21 Q. Now, I'm going to come back to that document
22 in just a moment as we -- as I walk through facts related
23 to it. For now, let me ask, did you go ahead and attend
24 that meeting?

25 A. Yes, sir.

1 Q. And were there representatives from Anderson
2 Geneva there?

3 A. I don't believe so.

4 Q. Was there a representative from UTA?

5 A. Yes, sir.

6 Q. From UDOT?

7 A. Yes, sir.

8 Q. Was it Mr. Cheng?

9 A. Yes, sir.

10 Q. Do you remember who it was from UTA?

11 A. I believe it was Jason Bleyl and I think Matt
12 Carter was there. There were several from UTA.

13 Q. Anyone from the town of Vineyard?

14 A. I don't remember for sure, but I thought
15 there was. But I don't remember for a hundred percent.

16 Q. Do you recall if there was anyone from the
17 county?

18 A. Again, I thought there was someone from
19 either the city or the county. I'm not sure.

20 Q. Anyone else from Union Pacific besides you?

21 A. Bill Ince.

22 Q. Anyone else?

23 A. I don't believe so.

24 Q. And what is Bill Ince's job?

25 A. Bill Ince works for me.

1 Q. Similar duties?

2 A. Similar duties, yes.

3 Q. At that meeting, do you recall whether there
4 was anyone there, besides you, who -- you and Bill -- I
5 assume Bill has your same opinion -- who believed that it
6 was a private, not a public, crossing?

7 A. UTA.

8 Q. Did UTA provide any written materials?

9 A. Not that I can remember.

10 Q. Coming away from that meeting, do you recall
11 whether Mr. Cheng expressed any thoughts about where he
12 was in his analysis regarding whether this was a private
13 crossing or a public crossing?

14 A. I think he was just going to take all the
15 information and -- and give us out another letter. And
16 take the opinions that were voiced at the meeting at the
17 crossing and -- information like what I gave him, and
18 come up with his determination. I don't think -- I don't
19 think he -- I don't remember him expressing any one way
20 or another when we was on location.

21 MR. PICKETT: Union Pacific would like to
22 mark an additional exhibit. It doesn't appear to be
23 already in any party's list of exhibits. This is a
24 letter from Anderson Geneva Development addressed to Jim
25 Marshall, dated February 12th, 2009, sent by Dennis

1 Astill. A two-page letter that we will mark as Union
2 Pacific Exhibit Page No. 161 and 162.

3 JUDGE ARREDONDO: You have copies for
4 everyone?

5 MR. PICKETT: You bet.

6 MR. CHURCH: What was the date of that, Dave?

7 MR. ASTILL: February 12th, 2009.

8 MR. PICKETT: Yes.

9 Q. (BY MR. PICKETT) Let me show you another
10 letter around that same time. This is Union Pacific
11 Exhibit Page Nos. 161 and 162 that we're adding, a letter
12 dated February 12th from Mr. Astill to you. Do you
13 recognize that letter?

14 A. Yes, sir.

15 Q. And could you please read the first paragraph
16 of it?

17 A. "I received your letter of January 28th,
18 2009." I am some -- "I was somewhat surprised at your
19 characterization of our conversations over the past few
20 years regarding the closure of 400 North crossing. We
21 have had many discussions with regard to negotiations
22 attempting to remove the spur line on the west side of
23 Geneva Road. Tangential to" the -- "to that was our
24 willingness to allow or encourage closure of a public
25 grade crossing at 400 North and Vineyard Road.

1 "I recall your position during these
2 discussions to be that U.P. was not certain it considered
3 that to be a public crossing or that U.P. would be
4 examining it. We have never considered the crossing to
5 be anything other than a public grade crossing."

6 Q. So do you recall, was there ever a point in
7 time when you agreed with any of the other parties
8 interested in this area, that this was a public, not a
9 private, crossing?

10 A. I don't believe I've ever said this was a
11 public crossing.

12 Q. When you were in those conversations
13 initially regarding the Provo Industrial Lead realignment
14 and the potential grade separation of Center Street, was
15 the 400 North crossing somehow involved in those
16 discussions?

17 A. Yes.

18 Q. In what way?

19 A. It was one of the ones that was going to be
20 closed, but it was always a point of contention whether
21 it was public or private. All their drawings always
22 showed it as a public crossing and we always contended it
23 was a private crossing. But it really was a moot point
24 in a way because it -- in the initial discussions, it was
25 going to be closed as part of the master plan.

1 Q. And was there any financial incentive
2 involved for Anderson Geneva if it was considered a
3 public crossing, in the event that Center Street was
4 grade separated?

5 A. If -- the federal codes make us pay 5 percent
6 of elimination of an at-grade crossing with active
7 warning devices on it, a public at-grade crossing. So if
8 it was determined it was public, and they showed that
9 Center Street or something was an elimination of that
10 crossing, then we probably would have had to participate
11 5 percent in that grade separation project.

12 Q. And so to recap, back in those initial
13 conversations, there was an expectation that that
14 crossing would be closed, but whether it was public or
15 private would affect those funding issues?

16 A. It could affect those funding issues, yes.

17 Q. Let me show you exhibit -- Union Pacific
18 Exhibit Page Nos. 126 and 127, a letter from Mr. Cheng
19 dated July 30th to Mr. Astill. You appear to be copied.
20 Do you recognize that letter?

21 A. Yes, sir.

22 Q. And could you please read the main paragraph?

23 A. "The Utah Department of Transportation, UDOT,
24 would like to thank you for providing documents and
25 information to UDOT regarding the status of the 400

1 North/Vineyard Road highway rail crossing, the crossing.
2 After reviewing the document and pertinent information,
3 UDOT classifies this crossing as a public crossing.

4 "However, the current conditions at the
5 crossing are unsafe for the public. Pursuant to Utah
6 Code Section 54-4-15, UDOT is ordering a temporary
7 closure of the crossing. UDOT will contact the parties
8 within the next two weeks to schedule a diagnostics
9 surveillance team, review of recommendations as to the
10 type of treatment to be used to close the crossing. The
11 crossing shall remain closed until the town of Vineyard
12 improves their approach roadways to the standard of the
13 roadway as classified in this current master street plan
14 and the crossing has been improved to meet required
15 safety standards as determined by UDOT with
16 recommendations from the diagnostic and surveillance team
17 review."

18 Q. Was it your understanding that this was the
19 final opinion from UDOT on the nature of the crossing?

20 A. Yes, sir.

21 Q. And that -- that opinion was it's public, but
22 it was also an order to close it temporarily, I believe
23 was the phrase.

24 A. Yeah, that's what we -- we agreed with.

25 Q. Let me back up at this point and ask you some

1 questions about the document you prepared for that site
2 meeting that was Exhibit Page No. 157. I'd like to step
3 through this with you. Could you please read that first
4 paragraph to us?

5 A. "A private crossing is a highway rail grade
6 crossing that is not a public highway rail grade
7 crossing, such as grade crossings that are on privately
8 owned roadways utilized only by the owners, licensees and
9 invitees. This is coming from the Railroad Highway Grade
10 Crossing Handbook at 223."

11 Q. And so what was your reason for including
12 that? What -- how does that authority affect your
13 conclusion that this is a private crossing?

14 A. The crossing before and after Geneva Anderson
15 took ownership of it was always restricted to -- to
16 people that were employees or invitees of their
17 companies.

18 Q. So there -- in your mind, there was not open
19 public access across that crossing?

20 A. That's correct.

21 Q. Have you ever seen a public -- have you ever
22 seen a crossing that had a gate across it like that, that
23 is deemed to be a public crossing?

24 A. No.

25 Q. Read for us No. 2, please.

1 A. "The FHWA Manual on Uniform Traffic Control
2 Devices, MUTCD, defines a public highway rail grade
3 crossing as any intersection between a public roadway and
4 a railroad. The railroad on either side of the crossing
5 must be a public roadway under the jurisdiction of, and
6 maintained by, a public authority and open to public
7 travel. If either approach to the crossing does not
8 qualify as a public roadway, then a crossing is typically
9 classified as a private crossing. Private highway rail
10 grade crossing, safety research an inquiry at" -- and it
11 just talks about the link to get to it.

12 Q. Thank you. So on the east side of this grade
13 crossing, the east side of the right of way, is it a
14 public or a private road?

15 A. On the east side, that's a private road.

16 Q. And that goes back to that 1942 action by the
17 county?

18 A. Correct.

19 Q. And so here, how does this -- this quote that
20 you have here affect your analysis?

21 A. There's a lot of places where -- in the state
22 of Utah where we have parallel roads going into private
23 crossings and the state or the county or the city may
24 maintain one side of it on its next approach, but the
25 other side goes into private property. So it sometimes

1 -- that's why in their definition on MUTCD here that they
2 require it to be maintained on both sides.

3 So when we looked at the crossing, it's
4 really unclear who is maintaining the east side. But
5 when you lock a gate and fence off the west side, it's
6 pretty obvious that the city is not maintaining into a
7 plant. So it was pretty obvious. That's why we included
8 this section in here because it pointed out --- those
9 facts out.

10 Q. I think I may have -- either you or I just
11 split our directions there. The east side is the
12 privately owned side; right?

13 A. Correct.

14 Q. The west side is the one that connects to the
15 public road at 400 North?

16 A. Right. And I can't tell who has been
17 maintaining that side or if it's private or public. I'm
18 just looking at it.

19 Q. But no question in your mind that the east
20 side of the crossing, that approach is on private
21 property?

22 A. It appears to be in private property; it's
23 signed and gated.

24 Q. Read for us No. 3, please.

25 A. "A public road is defined by MUTCD as any

1 road or street under the jurisdiction of and maintained
2 by a public agency and open to public travel."

3 Q. And so looking at this grade crossing, does
4 it appear to be one that's open to public travel?

5 A. No, sir.

6 Q. Why not?

7 A. At the time we did the diagnostics, the road
8 was closed, locked and gated. And before that, when
9 Geneva Anderson -- or Geneva Steel owned it, it was a
10 guard shack and there was limited access into the
11 facility.

12 Q. Are you aware of any public crossings in the
13 state of Utah where a private entity has been allowed to
14 gate and fence over the road?

15 A. No, sir.

16 Q. All right. No. 4, please.

17 A. "The crossing at issue here is not public
18 because it has not been maintained by a public agency and
19 is not open to public travel. In fact, it is gated. In
20 addition, at least one of the approaches to the crossing
21 does not qualify as a public roadway. The approach on
22 the east side of the crossing is on private property,
23 property that once was Geneva Steel and is now apparently
24 controlled by Anderson Geneva."

25 Q. I think we've already covered that for the

1 most part. Are you aware of whether Anderson Geneva
2 needed to -- or let me phrase it this way: Did Anderson
3 Geneva ask the permission of the county before it put
4 that gate across the road?

5 A. I'm not sure if they asked permission of the
6 county. But I'm pretty sure they never asked permission
7 of UDOT, which would lead me to believe that they didn't
8 even believe that they had a public road if they didn't
9 ask the authority to close the crossing.

10 Q. UDOT has the sole jurisdiction of the site,
11 questions of access over public grade crossings?

12 A. Correct.

13 Q. So in order to -- if this were a public
14 crossing, UDOT would have needed to give permission to
15 gate it?

16 A. Correct.

17 Q. No. 5, please.

18 A. "Because the east side of the crossing enters
19 into the old Geneva site and was used by Geneva Steel as
20 an entrance to property, the crossing had been closed to
21 the public for over 60 years."

22 Q. You would agree, wouldn't you, that that
23 crossing over those years must have received a lot of
24 traffic?

25 A. Correct.

1 Q. Because this was an access to a large
2 facility with a lot of employees.

3 A. Correct.

4 Q. And there were probably contractors and
5 vendors coming and going also?

6 A. I would assume so.

7 Q. Let me show you Exhibit Page No. 20 and 21.
8 These are, with my apologies, very small print copies of
9 the pages from the National Highway Rail Crossing
10 Inventory Instructions and Procedure Manual. I know
11 that's small print, but do you recognize that, those
12 pages from the manual?

13 A. Yes.

14 Q. That's a manual that you work with as part of
15 your job?

16 A. Correct.

17 Q. If I may? Beginning on the bottom of page
18 1-6, item B, do you see where it says "Private crossing"?

19 A. Yes, sir.

20 Q. Going on to page 1-7, item No. 2, where it
21 says "Discussion"?

22 A. Yes.

23 Q. Meaning no reference to the difference in our
24 ages, being younger, I'm going to read this because it's
25 in small print. "A private crossing is one that is on a

1 private roadway which may connect to part of the general
2 system of public streets and highways but is not
3 maintained by a public authority. Usually it is a
4 crossing where the property on both sides, or at least
5 one side, of the railroad tracks is private property. It
6 may also be on a roadway that is publicly owned but which
7 is either restricted or not intended for use by the
8 general public.

9 "Private crossings are generally intended for
10 the exclusive use of the adjoining property owner and the
11 property owner's family, employees, agents, patrons and
12 invitees. Crossings are classified as private where the
13 normal need for use" of it -- excuse me. "Crossings are
14 classified as private where the normal need or use is for
15 residential, farm, recreation, cultural, industrial or
16 commercial activities. Most private crossings exist by
17 virtue of railroad charter provisions, deed covenants,
18 state statute or other prescriptive rights.

19 "If none of these apply, the railroad may
20 require an agreement with the private property owner
21 whereby the railroad may install and maintain the
22 crossing proper and any necessary signs or signals at the
23 property owner's expense. And the property owner will
24 assume liability for the crossing and provide coverage
25 via a liability insurance policy?"

1 Skipping that next paragraph, moving down to
2 item No. 3 where it says, "Private crossings with public
3 access." Do you see that?

4 A. Yes.

5 Q. "A private crossing may exist with permitted
6 or limited public access with a primary purpose of
7 providing public access" to face -- "to facilities,
8 either public or privately owned, such as shopping
9 centers, fair grounds, parks, golf courses, zoos,
10 museums, schools, libraries, hospitals, clinics,
11 airports, bus terminals, beaches, piers, boat ramps,
12 recreational facilities, et cetera. Such crossings
13 permit access or invite use by the general public but
14 usually restrict or discourage general public use by
15 requiring permits or charging admission" in other fees --
16 "or other fees to gain entry for use of the facility.

17 "For such crossings, the primary roadway use
18 is to gain entry to the facility. The entrance may even
19 be equipped with gates to affect seasonal or periodic
20 closures. These crossings generally do not qualify as
21 being open to the general traveling public and should not
22 be deemed as a public crossing. Crossings which exist
23 primarily to provide access to publicly owned facilities
24 for, quote, authorized personal only, end quote, such as
25 military bases, ports, equipment yards,

1 maintenance/storage facilities, water or sewage treatment
2 plants, landfills, levies, service and/or
3 maintenance-only entrances or other facilities are not
4 normally intended for onsite use by the general public
5 and should be deemed a private crossing."

6 So here we have a facility that is privately
7 owned but gets a lot of traffic. There is a gate at the
8 entrance and at least the east side is on privately owned
9 property for the approach. Knowing that these are the
10 standards, does the fact that there's a lot of traffic
11 over that crossing, in your mind, tend to make it public
12 instead of private?

13 A. No, sir. Traffic volume doesn't matter.

14 Q. And if I could draw your attention to the
15 first paragraph under Section 2 where it says
16 "Discussion," referring to a private crossing, fifth line
17 down where the line begins, "Private property."

18 A. Right there?

19 Q. Are you able to read that sentence following
20 private property?

21 A. "May also be on a roadway that is publicly
22 owned, but which is either restricted or not intended for
23 use of the general public."

24 Q. So you can have a private crossing located on
25 a public right of way?

1 A. According to FRA.

2 Q. All right. Let's return to your list from
3 the -- from your site inspection. All right. I believe
4 we're on No. 6, if you'd read that.

5 A. "My understanding is that the roadway on the
6 east side of the tracks was vacated in 1942. There is no
7 existing public crossing agreement between DRGW or UPRR
8 and Vineyard."

9 Q. What is DRGW?

10 A. Denver Rio Grande Western.

11 Q. Was that the railroad that owned the right of
12 way back in 1942?

13 A. That is correct.

14 Q. And then Union Pacific is the successor in
15 interest?

16 A. Yes, sir.

17 Q. What is a public crossing agreement?

18 A. Typically, especially since I've been around,
19 anytime that we modify or we put -- install a crossing or
20 an overpass/underpass, it's all covered -- governed by an
21 agreement for the easements going across this and...

22 Q. Do all public crossings at grade have a
23 public crossing agreement?

24 A. No, sir.

25 Q. Do all private crossings have crossing

1 agreements?

2 A. No, sir.

3 Q. As far as public crossings go, within your
4 territory, can you give us an idea of how many private
5 crossings have agreements in place?

6 A. It's probably less than half that have
7 agreements in place, probably much less than half.

8 Q. And in this instance, is there an agreement
9 of any kind that you've been able to locate?

10 A. No, sir.

11 Q. So is the absence of an agreement any
12 indication to you whether this is public or private?

13 A. No, sir.

14 Q. No. 7.

15 A. "Residents on the west side have not needed
16 public access through this crossing for the past
17 60 years. There is no need for a public road at this
18 location. The new property owners have plenty of access
19 on the east side."

20 Q. What do you mean by that last sentence?

21 A. They -- the new property owners bought -- the
22 majority of the property is on the -- that they bought
23 with the Geneva Ander -- or Geneva Steel site was on the
24 west side -- is on the east side, and there's plenty of
25 access coming off of Geneva Road and into their facility.

1 Q. Am I correct that this paragraph is not so
2 much about whether this is a public or a private crossing
3 as much as it is about whether you need a crossing here?

4 A. Correct.

5 Q. No. 8, please.

6 A. "New public road at this location would be"
7 beneficial -- "would be a financial benefit to Geneva
8 Anderson Development because Geneva Anderson would not be
9 required to construct a new overpass to serve the plan.
10 Development as previously discussed and designed, this
11 would save the developer millions of dollars and put the
12 majority of the liability on UPRR."

13 Q. Could you tell us what you mean by that
14 paragraph?

15 A. Well, just going back to our early
16 discussions on the grade separations that we looked at,
17 they are substantially more in cost than doing an
18 at-grade crossing. Also, you know, if it was deemed a
19 public crossing at the time we were doing the discussions
20 early on, UTA may have been required to install lights
21 and gates if it would have been deemed -- if it would
22 have been planned out.

23 So that would have been saving the developer
24 millions of dollars by -- which is typical on any
25 development site. I mean, the developers are -- make the

1 at-grade crossings, develop the property and then are not
2 there to assume the liability or the repercussions in the
3 future. Then it's left up to the city, county, states
4 and the railroads to accommodate a grade separation if
5 needed in the future, which is much more costly than a
6 green site facility.

7 Q. And at this location, do we have a green site
8 facility?

9 A. Fairly green site facility. There's really
10 no construction on either side of it. It prohibits a
11 grade separation.

12 Q. So this is the point in time where, without
13 surrounding development that we'd be impacting, it's
14 going to be easiest and least expensive to build a grade
15 separation?

16 A. That's correct.

17 JUDGE ARREDONDO: Will you do me a favor?
18 Just for the sake of the transcript, will you have him
19 define green site?

20 MR. PICKETT: Sure.

21 Q. (BY MR. PICKETT) What do you mean by that
22 phrase?

23 A. Something that hasn't been unnecessarily
24 developed to the point where when the approach of a
25 overpass or underpass affects another building or another

1 site where houses have already been constructed.

2 JUDGE ARREDONDO: Thank you.

3 Q. (BY MR. PICKETT) Just to follow up one that.
4 We're not suggesting, as we use that phrase, that this is
5 an area that's pristine and never been touched by humans?

6 A. No.

7 Q. We're just -- you're talking about how there
8 is not a gas station on the corner and homes on other
9 corners?

10 A. Correct. We're building several structures
11 on the north end of this corridor that is costing, you
12 know, tens of millions of dollars because of the right of
13 way acquisitions that have to be taken because of the
14 development that's on either side the approaches. So
15 that's typically where your high cost comes in on a grade
16 separation is right of way.

17 And that's why it makes it almost sometimes
18 impracticable in certain locations to build a grade
19 separation. Even though that's probably the safety thing
20 to do, you just -- if you get too much development, you
21 just never -- you can never make it work.

22 Q. Referring back to the consideration for
23 Center Street to be grade separated, do you recall what
24 the contractor estimated the cost would be for a
25 four-lane grade separation?

1 A. I believe it was two and a half to three and
2 a half million.

3 Q. Any way of projecting what costs would be for
4 a grade separation at 400 North?

5 A. I would say it would be similar. That both
6 numbers were 2006 numbers, I believe.

7 Q. Before moving on to your ninth point, we've
8 kind of been assuming some things; I want to back up.
9 You are called upon, as are others, such as UDOT, to make
10 determinations about whether a crossing is public or
11 private?

12 A. Correct.

13 Q. And we've talked through what I think are
14 probably several of the things you considered. Something
15 that I don't think we have made clear necessarily is any
16 written rules, instructions or guidance that you follow
17 and that others should follow when making that
18 determination.

19 A. I always refer back to the MUTCD, FHWA, FRA
20 on determining characteristics of the crossing. And we
21 did signage programs back in 2002, 2003 in all the
22 western states, and I was over -- oversaw the contractor
23 that installed them for us. And back then our inventory
24 was much to be desired, to say the least, on what
25 crossings we had out there.

1 So we had a lot of questions when the
2 contractor would show up to put up private crossing signs
3 which are typically a stop sign and a -- either passive
4 ones without the lights and gates. And it was obvious to
5 the contractor that he was sitting on a public road just
6 because of the characteristics.

7 So he would call us and say, you know,
8 "You're putting signs up on a crossing that probably
9 isn't supposed to be." So we'd have to go out and make
10 that determination and get with county and make sure that
11 they agree that they were maintaining both sides. It
12 was, in his opinion -- the contractors opinion, it was
13 obvious.

14 So we made that determination many times
15 throughout many different states. And we still do that
16 today. We still find crossings that we -- that's maybe
17 not correctly identified.

18 Q. One of the authorities you mentioned was FRA,
19 does that include the National Highway Rail Crossing
20 Inventory Instructions and Procedures Manual?

21 A. Sure.

22 Q. And we read from that earlier. It's marked
23 as Exhibit Page Nos. 17 through 68, it appears, for
24 reference; we read from just a part of it. Are there
25 other FRA printed materials that you rely on when

1 determining standards for whether a crossing is public or
2 private?

3 A. I think we covered the majority of the ones
4 that I can think of.

5 Q. Okay. And then the MUTCD you mentioned?

6 A. Correct.

7 Q. And I believe there was a third that I
8 missed.

9 A. FHWA.

10 Q. And what are the materials that the FHWA
11 provides?

12 A. They are over the MUTCD, but they have some
13 handbooks out there that basically talk about the same
14 things I've outlined in my information to Eric that we
15 delivered to him.

16 Q. Let me show you Exhibit Page Nos. 70 and 71.
17 Let me show you Page No. 70 first. Do you recognize
18 that?

19 A. Yes, sir.

20 Q. And what is the title of it?

21 A. Private rail -- Private Highway Rail Grade
22 Crossing Safety Research Inquiry.

23 Q. And who published that?

24 A. FRA.

25 Q. I'd like to show you the Page 71 from the

1 exhibits which is page 3 from that manual. Could you
2 please read the first paragraph at the top?

3 A. "The FHWA manual on uniform traffic control
4 devices, MUTCD, defined a public highway rail grade
5 crossing as an intersection between a public roadway and
6 railroad. The roadway on either side of the crossing
7 must be a public roadway under the jurisdiction of, and
8 maintained by, a public authority and open to public
9 travel. If either approach to a crossing does not
10 qualify as a public roadway, then the crossing is
11 typically classified as a private crossing."

12 Q. Is that description from the MUTCD one of the
13 ones you were referring to a moment ago?

14 A. Absolutely.

15 Q. Is it correct to summarize part of your
16 testimony as, throughout your time when you've been
17 familiar with this crossing, you have always considered
18 it a private crossing?

19 A. That is correct.

20 Q. And are your -- are your reasons for that
21 based on your application of the facts to the standards
22 that we've just discussed?

23 A. That is correct.

24 Q. Now, this is a grade crossing that has what
25 are called active warning devices; is that right?

1 A. Yes, sir.

2 Q. Active warning devices includes flashing
3 lights and gates that come down across the road?

4 A. It can.

5 Q. That's in contrast to passive line devices
6 like cross bucks and a stop sign.

7 A. That's correct.

8 Q. So those are not energized by electricity to
9 provide some movement or lighting at the crossing?

10 A. That's correct.

11 Q. Are you aware of any place in your territory
12 where there are private -- putting aside this crossing
13 for the moment. Are there crossings that are
14 unquestionably private crossings, there's no dispute
15 about that, where there are active warning devices?

16 A. Yes, sir.

17 Q. Are there even some in this general area?

18 A. Yes, sir.

19 Q. Where are those crossings?

20 A. There's two more going into the Geneva site
21 on the east side.

22 Q. And you're aware of no dispute over the
23 nature of those crossings as private?

24 A. Not at this time.

25 Q. Are you aware of any place where there are

1 public crossings where there are not active warning
2 devices, only passive ones?

3 A. Probably the majority of our public crossings
4 don't have active warning devices.

5 Q. So in this case, does the fact that there are
6 active warning devices at this crossing give any
7 indication about whether it's public or private?

8 A. Absolutely not.

9 Q. Let's go ahead and move on to that final
10 point in your sheet that you brought to the site
11 inspection. It's No. 9, if you would read that, please.

12 A. "UDOT has determined that the FRA database is
13 correct, but information in the database is often
14 incorrect. And the FRA database gives a clear definition
15 of a public crossing as outlined above."

16 Q. Walk us through, what is this FRA database?

17 A. The FRA database is a database that tracks
18 all public and private crossings in the country.

19 Q. And where does the information contained in
20 that database come from?

21 A. Comes from either the regulating bodies as
22 the state for like UDOT, in this case, they regulate all
23 the crossings. In some other states, they put that over
24 the cities and counties and the railroads have -- are the
25 ones that update that and keep -- give the information to

1 FRA.

2 Q. So have you personally been involved in
3 instances where you were providing information to update
4 that database about crossings?

5 A. Yes, it's almost a daily occurrence.

6 Q. For you?

7 A. Yes, sir.

8 Q. That somewhere in your territory there's a
9 crossing that has either had a change or some error
10 discovered in the database that you correct?

11 A. Correct.

12 Q. And UDOT also has the ability to update that
13 information?

14 A. I believe so.

15 Q. In this case, did -- have you made any
16 changes to the database information regarding the 400
17 North crossing in the last ten years?

18 A. Yes, I have.

19 Q. What changes did you make?

20 A. I changed it from a public to private.

21 Q. When did you do that?

22 A. I believe it was about two years ago.

23 Q. And why did you do that?

24 A. Just to correct the database to what we felt
25 that it was a private -- was obviously, to us, was a

1 private crossing. And I think Eric's first letter came
2 out and identified it as a private crossing.

3 Q. When did that database get established?

4 A. The FRA?

5 Q. Yes.

6 A. I'm not sure.

7 Q. Has it been in existence throughout your
8 career with the railroad?

9 A. Oh, yeah.

10 Q. Have there been other times when you have
11 changed the characterization of a crossing from either
12 public to private or private to public?

13 A. Yes, sir.

14 Q. How often, if you were to give us a sense of
15 it, have you done that?

16 A. It used to be a lot more of an occurrence,
17 you know, back three or four years ago. Our databases
18 are getting a lot better, but there's still -- I can
19 think of a couple here in the last few years, but it's
20 been minimal here in the last few years.

21 Q. What is the -- what is your understanding of
22 the purpose of that database?

23 A. Well, the FRA keeps statistics on collisions,
24 crossing accidents, trespassers; they keep all kinds of
25 statistics. They also regulate the quiet zones going out

1 throughout the country. So that information is used in
2 their calculators and to do their accident histories.
3 And they do a calculation for -- for multiple -- a
4 multitude of different aspects, but -- but I think -- I
5 think it's all related to that.

6 Q. Do you have any -- any information to suggest
7 or reason to believe that the FRA database is intended to
8 serve as a public notice of any kind regarding the nature
9 of a crossing?

10 A. I don't believe so.

11 Q. Any information to suggest that it is a
12 source of information typically relied upon by people who
13 are professional property appraisers?

14 A. I'm not sure if they rely on it or not.

15 Q. Let me refer you back to that drawing that we
16 looked at in relation to your initial conversations with
17 Anderson Geneva regarding access to this area and their
18 plans for development. This was Exhibit Page No. 138.
19 Just to briefly recap for context before some other
20 questions.

21 At this point in time, when you had the first
22 contact and you were discussing the Provo Industrial
23 Lead, was it your understanding that the plan for
24 development of the Anderson Geneva crossing called for
25 closure of the 400 North road crossing?

1 A. Yeah, it called for closure.

2 Q. And is that depicted, as you interpret it, on
3 Exhibit No. 138?

4 A. Yes, sir.

5 Q. And looking at this, are you able to tell if
6 that's dated?

7 A. On the larger print, it -- I think it was --
8 I can't -- I can't read the date. I know it's dated,
9 though. I've seen it on the larger print.

10 MR. ASTILL: Let's see.

11 (Counsel conferring with each other.)

12 MR. PICKETT: Unless there's an objection
13 because the print is small, it sounds like we're in
14 general agreement that it was early 2008 most likely.

15 MR. ASTILL: Uh-hmm.

16 Q. (BY MR. PICKETT) But we're not going to
17 stick you to that.

18 JUDGE ARREDONDO: For Exhibit 138?

19 MR. PICKETT: Yes.

20 JUDGE ARREDONDO: Okay.

21 Q. (BY MR. PICKETT) The size of the copy makes
22 it difficult to read. Let me show you Exhibit No. 139.
23 Do you recognize that document?

24 A. I've seen this document, yes.

25 Q. At the bottom it's titled Town of Vineyard

1 Major Street Plan?

2 A. Yes, sir.

3 Q. Are you able to see a date on it?

4 A. October 2006 -- October 23rd, 2006.

5 Q. And in that drawing can you tell whether the
6 area where the 400 North crossing is currently located is
7 depicted?

8 A. It doesn't show a crossing there, but I can
9 generally tell where it's at.

10 Q. Is that here?

11 A. Yes.

12 Q. So looking at that drawing, is there a
13 crossing depicted on 400 North?

14 A. No, sir.

15 Q. Thank you. Let me show you Exhibit Page
16 No. 140. Do you recognize that document?

17 A. Yeah, I've seen this document.

18 Q. Bottom right corner titled Town of Vineyard
19 General Plan?

20 A. Yes, sir.

21 Q. And can you see if there's a date on it?

22 A. Yes. November 26th, 2008.

23 Q. And does this diagram depict a crossing at
24 400 North?

25 A. There appears to be a crossing at 400 North.

1 Q. Thank you. So based on those documents, does
2 it appear to you that there has been a change in plans
3 regarding whether there would be a crossing at 400 North
4 for this development or not?

5 A. Yes, sir.

6 Q. And when you first came into contact with the
7 Anderson Geneva team, there was not a plan for a crossing
8 at that location. But at least as of November 26, 2008,
9 on -- according to that drawing, at least, there was a
10 crossing contemplated there?

11 A. Yes, sir.

12 Q. Do you have any information about who paid
13 for the lights and gates that are in place currently at
14 400 North?

15 A. No, sir, I don't.

16 Q. Have you seen any documents that suggest that
17 the configuration of that crossing has changed since it's
18 original layout?

19 A. Yes, sir.

20 Q. And, in general, what is the change?

21 A. It looks like they changed the angle to be
22 more perpendicular with the railroad crossing.

23 Q. That's the angle of the road?

24 A. Correct.

25 Q. You'll recall that the county commissioner

1 notes suggested that the discussion contemplated a
2 movement of the crossing perhaps as far as 600 feet. Has
3 the crossing changed in location that far?

4 A. Not that I can see.

5 Q. What is -- what do the current railroad
6 standards require, or what would they require, if there
7 was a private crossing into an industry of the size of
8 Geneva Steel over mainline railroad tracks in terms of
9 whether the railroad required active devices or passive
10 ones?

11 A. I'm doing -- I'm currently -- just to give
12 you an idea, I'm currently doing a project for Monsanto
13 up in Soda Springs, Idaho, on a less-used track. It only
14 has one train a day, up and back, at nine months a year,
15 and we require active warnings devices on that crossing.

16 Q. Why is that?

17 A. Because of the risk. That there's -- there's
18 a -- it's going into a mine site where there's a lot of
19 heavy trucks and stuff going across it. A lot of
20 movements going across the track.

21 Q. Has the Federal Railroad Administration made
22 any statements or recommendations regarding closure of
23 crossings?

24 A. Yes. One of our duties is to partner with
25 both the DOT and the FRA, who in their action plan

1 recommends 25 percent closure of all active public
2 crossings in the United States.

3 Q. That's an FRA initiative?

4 A. Yeah. It's in their safety action plan. I
5 think the last one it might be 2004 that I was able to
6 find. It was actually come out originally from -- I
7 think the first President Bush's secretary put out the
8 letter.

9 MR. PICKETT: I've got an additional document
10 that -- that I received yesterday that I do not believe
11 has been produced to the other parties. And out of
12 fairness, I'm not going to ask questions about specific
13 content for the sake of creating a record, certainly
14 welcoming them to ask any cross-examination they want to
15 about it.

16 I'd like to mark -- it's entitled Secretary's
17 Action Plan, Secretary of Transportation, Highway-Rail
18 Crossing Safety and Trespass Prevention, issued by the
19 U.S. Department of Transportation.

20 MS. KAMAS: I think it would be 163.

21 MR. PICKETT: Let's mark this as Exhibit 163,
22 -64, -65, -66, -67, -68, it appears.

23 Q. (BY MR. PICKETT) Let me show that document
24 to you and ask if you've seen that before?

25 A. Yes, sir.

1 Q. Are you generally familiar with the content?

2 A. Yes.

3 Q. And is this the initiative that refers to
4 that goal of reducing grade crossings by 25 percent?

5 A. That's correct.

6 Q. Why is it that the FRA would have an interest
7 -- or the Department of Transportation would have an
8 interest in reducing the number of grade crossings?

9 A. For safety, public safety.

10 Q. Fewer grade crossings, fewer opportunities
11 for a collision?

12 A. Absolutely.

13 Q. And so is that a program that Union Pacific
14 has pursued?

15 A. Yes, sir.

16 Q. And over the years, in your current position,
17 have you been involved in closing crossings?

18 A. Yes, sir.

19 Q. Was that true for your most recent prior
20 position, also, when you were manager of industry and
21 public projects?

22 A. Yes, sir.

23 Q. When did you become a manager of industry and
24 public projects?

25 A. 1999.

1 Q. So 11 years ago?

2 A. Yes, sir.

3 Q. Just to give us an idea of -- of the
4 application of that program in your own experience, do
5 you have any information about how many crossings that
6 you personally have been involved in closing in your
7 territory in 2010 so far?

8 A. Year to date, 25.

9 Q. Is that a combination of public and private?

10 A. Yes, sir.

11 Q. What about in 2009?

12 A. Thirty-five total.

13 Q. How far back can we go, 2008?

14 A. Twenty-five.

15 Q. 2007?

16 A. Fifty-four or 56.

17 Q. And are there other people who work for the
18 railroad who have similar responsibilities, who are also
19 getting crossings closed?

20 A. Yeah, there's probably about 17 or 18 of us
21 managers that have the same kind of responsibility.

22 Q. And so over time -- occasionally I'd imagine
23 there's a new crossing built, isn't there?

24 A. Occasionally.

25 Q. Occasionally. Over the course of the years,

1 in the past two decades say, has there been a total
2 reduction in grade crossings on the Union Pacific system?

3 A. Absolutely.

4 Q. Do you have any information about percentage
5 or basic numbers?

6 A. I think -- I have basic numbers. I think
7 this year, year to date we're probably about 180. Last
8 year we were 350 something. The year before, 430. The
9 year before, like, 460. So it was -- what you can see is
10 you can see in our targets. Like this year my target is
11 only 14 crossings because back in -- three or four years
12 ago, there was a lot of redundant crossings.

13 A lot of development that happens, like on
14 the Provo Industrial Lead, for example, they'll -- the
15 City of Pleasant Grove, for example, will build a roadway
16 and give access to a farm field for development and no
17 longer is the field crossings that the farmer used to
18 use, needed. So we clean up a lot of those. And as --
19 and just doing our inventory, I mean, there's a lot of
20 crossings out there that just weren't being used for the
21 last 10, 15 years, especially on private crossings.

22 And then -- so we're focusing -- so the easy
23 fruit is pretty much gone and so now they've lowered our
24 goals and we're focusing the more on public crossings.
25 And a lot of my public crossings aren't -- the ones that

1 I actually get closed on public side are from grade
2 separations. I probably got six or seven that this UTA
3 project is closing that's either being closed by a grade
4 separation ahead of the UTA being active, or in other
5 parts of the state. The state of Utah is pretty active
6 in grade separations right now. And so we've closed a
7 lot of crossings that way where they've eliminated an
8 active at-grade.

9 Q. So say, for instance, in this case, we've got
10 a grade crossing currently there. Put aside the volition
11 of whether it's public or private, it is in fact in the
12 ground and you're able to drive across those tracks in a
13 Honda Accord these days, absent the barricades. I know
14 those are up there. It's an existing crossing; right?

15 A. Yes.

16 Q. In the event that this crossing were removed
17 so that through this proceeding, the result was an avenue
18 for that crossing to come out, would that mean that Union
19 Pacific Railroad would never again consider the ability
20 of a road authority to build a crossing over that
21 location?

22 A. UDOT, again, has authority. And we've had
23 some recommendations for new crossings in our locations.
24 But I mean UDOT's been a party to the FRA or FHWA action
25 plans to eliminate crossings. So typically when we get a

1 recommendation for a new crossing, we're looking at a
2 consolidation of other crossings or safety improvements
3 to eliminate the additional hazards that you're creating
4 by that one. So at the end of the day, we have a net
5 reduction in safety -- or an increase in safety, but a
6 net reduction in crossing -- crossings and crossing
7 incidents and possible incidents.

8 So to answer your question, would we ever
9 consider it? I mean, again, it's -- it's UDOT's
10 authority. All we can do is -- is argue our point, and
11 then if we -- if we don't see eye to eye at that point,
12 then that's what brings us to this point with the Public
13 Service Commission. So it's hard to say that we would --
14 we would definitely consider an overpass.

15 We've given an overpass or underpass in
16 Draper today that does not eliminate a crossing for a
17 developer, just similar to what these guys are doing.
18 They want to open up some property on the other side and
19 get access to the developers building an underpass. And
20 they're not eliminating a at-grade crossing, and we still
21 are working with them to make that happen.

22 Q. Let me use your answer then to stage a couple
23 of factual scenarios for you. If I understand what
24 you're saying right is, you look at circumstances in a
25 wider area. And your efforts are aimed at reduced total

1 crossings and improved safety?

2 A. Correct.

3 Q. And so my question was pretty narrow as far
4 as this particular location goes, but you already
5 mentioned one thing I want to ask you about. If there's
6 a grade separation, it's a crossing still, but am I
7 correct that it presents fewer safety concerns for the
8 railroad?

9 A. Exactly.

10 Q. And so assuming that the totality of the
11 circumstances were right, the railroad would -- would, on
12 the surface, not have an objection to the concept of a
13 grade separation across its right of way here or
14 elsewhere?

15 A. Yeah. If they meet our standards, we
16 typically don't object to it.

17 Q. And your standards would include, for
18 instance, a clear stand of the right of way?

19 A. That's correct.

20 Q. And minimum vertical clearances, things of
21 that sort?

22 A. It doesn't always -- I mean, sometimes you
23 can't -- it's not practical to expand a right of way
24 so -- but that's our intention in most cases.

25 Q. And in this particular area, there are

1 several grade crossings that serve just this private
2 property, as well as other grade crossings in the general
3 area?

4 A. There's other private crossings that serve
5 this area, but they're on the Provo Industrial Lead.

6 Q. Right. Those are the ones I was meaning; I
7 wasn't being clear. And so any -- going into the future,
8 whatever the outcome of this proceeding, your job will be
9 to continue evaluating the totality of the circumstances
10 and supporting or opposing recommendations or requests
11 based on the goals that you just described?

12 A. That's correct.

13 Q. Has there been any -- do statistics show that
14 there has been a reduction in grade crossing accidents as
15 grade crossings have been eliminated on the -- on the
16 American railroads?

17 A. Yeah. Since 1980 we've had -- this is
18 through 2007, this isn't current statistics. But in 2007
19 we show a 74 percent decline in railroad grade crossing
20 accidents. And we attribute that directly to the safety
21 programs and elimination of crossings.

22 Q. And so the -- one of the concerns about
23 either expanding or adding new crossings is that that
24 would be in conflict with that safety training?

25 A. That's correct.

1 MR. PICKETT: All right. I believe that I'm
2 finished with my direct.

3 JUDGE ARREDONDO: Okay. Now let's take a
4 quick 15-minute break and we'll come back at around
5 11:30. Let's take a brief recess -- a break. Let's go
6 off the record.

7 (A lunch recess was taken from 11:13 a.m. to 12:30 p.m.)

8 JUDGE ARREDONDO: So then let's begin with
9 the cross. Mr. Marshall, you're still under oath.

10 MR. MARSHALL: Okay.

11 CROSS-EXAMINATION

12 BY MR. CHURCH:

13 Q. Mr. Marshall, my name is David Church. I'm
14 the attorney for Vineyard Town. Nice to meet you. I
15 think we met previously, didn't we?

16 A. We have, yeah.

17 Q. Didn't we meet in the lawyer's office over by
18 Dennis Astill's office when we were talking about the
19 Center Street overpass crossing?

20 A. It could have been. I thought maybe we met
21 in that meeting at the city, too, later on when we were
22 talking more about the 400 North.

23 Q. I think we did then as well. So long as I
24 mention Center Street -- let me just clear up a couple
25 things in my mind on your testimony. You were involved

1 with negotiating with somebody about the Center Street
2 overpass; correct?

3 A. Correct.

4 Q. And do you recall the name Anderson Homestead
5 involved in that?

6 A. I don't recall.

7 Q. You know for a fact whether or not you were
8 negotiating with Anderson Geneva or Anderson Homestead
9 about the Center Street overpass?

10 A. Well, the -- the print that I had I think has
11 Anderson Geneva on it, I believe.

12 Q. When you were talking to whatever entity it
13 was about the Center Street overpass, it's true, is it
14 not, that originally you were approached about having an
15 at-grade crossing at Center Street; correct?

16 A. That's correct.

17 Q. And it's true, is it not, that at that time
18 they were talking about trading the public at-grade
19 crossing at 400 North for public at-grade crossing at
20 Center Street; correct?

21 A. That was their proposal, but that's not --
22 that was their proposal, that they identified it as a
23 public crossing and we identified it as a private.

24 Q. And the railroad refused the at-grade
25 crossing at Center Street. We know that; correct?

1 A. Correct.

2 Q. But right from the start, whoever was
3 negotiating with you was presenting 400 North as a public
4 at-grade crossing; correct?

5 A. I think they've always showed it as a public
6 on their -- in their opinion.

7 Q. And just so it's clear, there is no current
8 crossing at Center Street; right?

9 A. That is correct.

10 Q. And there is no current crossing at 800
11 North; correct?

12 A. That is correct.

13 Q. And are you generally familiar with the
14 Vineyard Town area?

15 A. Somewhat.

16 Q. And you're familiar that there are two public
17 rail crossings that enter into Vineyard Town currently
18 across these tracks we're talking about; correct?

19 A. At 400 South and Geneva Road, would those be
20 the two?

21 Q. Uh-hmm.

22 A. Yes, I am.

23 Q. 400 South and what we call on the Lindon
24 side --

25 A. Oh, 1600?

1 Q. Uh-huh.

2 A. Oh, what about Geneva Road, is that not -- is
3 that not a public road?

4 Q. Well, it's close to Geneva Road, but to get
5 into the property that we're dealing with here, to get
6 across these tracks we're dealing with, there's currently
7 two public crossings.

8 A. I would say three, 400 South is a Vineyard,
9 too.

10 Q. 400 South?

11 A. Geneva Road and 1600 North.

12 Q. And they're all at-grade, are they not?

13 A. Currently. Geneva Road's got a projected
14 overpass.

15 Q. And now the property that we're dealing with
16 directly here that is east of -- on the 400 North line
17 that's west of the current railroad tracks, that
18 particular piece of private property, that's not the --
19 that can only be accessed from, I suppose, what we're
20 calling Vineyard Road; is that correct? If you don't
21 know, you don't know.

22 A. Vineyard Road is the one that turns up
23 parallel with the roadway?

24 Q. Yes.

25 A. Currently, correct.

1 Q. And to access that property, you have to use
2 an at-grade crossing; correct?

3 A. Yes. Can I -- can I restate that?

4 Q. Yes.

5 A. Vineyard Road can also be accessed from 1600
6 North. Correct?

7 Q. And that's an at-grade crossing; correct?

8 A. Okay.

9 Q. So right now, this property that we're
10 talking about, this large area that's west of the
11 railroad tracks, between the railroad tracks and the
12 lake, if anybody accesses it currently, it's with an
13 at-grade crossing?

14 A. No, that's not completely correct. You can
15 -- can't you come up off of, oh, state highway to
16 University Avenue and get over on Geneva Road and come up
17 and not have to go over the tracks to get to it?
18 Certainly you can. You can go that way.

19 Q. Currently it's an at-grade crossing; correct?

20 A. Not at -- not at University Avenue south of
21 there. You can get over on Geneva Road and come up and
22 avoid going across the tracks.

23 Q. And how many miles is that from this
24 property?

25 A. Well, this -- it's a little ways away, but

1 you asked if you could get over --

2 Q. How many miles --

3 A. -- and not cross the tracks.

4 Q. -- to get from this property?

5 A. Probably three or four miles.

6 Q. How long did you say you've been working for
7 the railroad?

8 A. Thirty-three years.

9 Q. And how long have you been in your current
10 position?

11 A. Eleven years.

12 Q. And how long have you been working with the
13 -- in this area that involved with what we say this --
14 the Geneva, the Vineyard area?

15 A. Well, that's been part of my territory for
16 11 years.

17 Q. Are you familiar with all the private
18 crossings in the Geneva/Vineyard area?

19 A. Yes, sir.

20 Q. How many of those have written crossing
21 agreements?

22 A. I couldn't tell you for sure.

23 Q. Are you familiar with the private crossings
24 that are in the Geneva Steel site, the old Geneva Steel
25 site?

1 A. Yes, sir.

2 Q. How many of those have written --

3 A. I couldn't tell you for sure.

4 Q. Isn't it true that most of them have written
5 crossing agreements, the private ones?

6 A. I could not tell you for sure.

7 Q. Is there a process to close the public
8 crossing?

9 A. Typically, yes.

10 Q. Tell me what that process is.

11 A. I think UDOT has to do public hearings and
12 then make a recommendation from that point.

13 Q. I think your previous testimony was that you
14 will admit that in 1942 this 400 North was a public
15 crossing, was it not?

16 A. Prior to?

17 Q. Prior to the county resolution?

18 A. Correct.

19 Q. And I think you'll admit that in 1943 the
20 railroad represented to the Public Service Commission
21 that it was a public crossing post the vacation; correct?

22 A. In the information I saw, it appears that
23 way.

24 Q. And I think you will admit that from 1943
25 until present, 2009/2010, you do not know of, nor have

1 you seen, any records where the railroad at any time went
2 through a process to close the crossing as a public
3 crossing; correct?

4 A. Correct.

5 Q. And it is true, is it not, that in what we've
6 called the FRA, up until your recent change, this
7 crossing was identified as a public crossing; correct?

8 A. On the FRA database --

9 Q. Okay.

10 A. -- that is correct.

11 Q. And is it true, is it not, that the FRA
12 database is information and it is only put in by the
13 railroad and by, in Utah's case, UDOT; correct?

14 A. That's probably correct, yeah.

15 Q. It is true, is it not, that the items that
16 you referred to describing in the FRA instructions and
17 directions that described private and public crossing,
18 that part, instructions to you individuals about how to
19 determine which are private and which are public;
20 correct?

21 A. Instructions to -- I think their -- you can
22 -- anybody can get into those databases, so it's not just
23 directly to us. I mean, I think it's overall for UDOTs,
24 DOTs and...

25 Q. Yeah, whomever is -- whomever is putting

1 stuff into the database; right?

2 A. Well, everybody can put anything into the
3 database and whoever wants to try to decipher what a
4 public road is.

5 Q. Well, the purpose is to instruct you on when
6 you put information in the database about whether you
7 should put -- what you put in as private and what you put
8 in as public; right?

9 A. It might be one of the reasons, yeah.

10 Q. And in spite of those instructions up until
11 this recent time, the database showed this as a public
12 crossing; right?

13 A. Yeah.

14 Q. Let me just talk a little about the crossing
15 itself. You testified somewhat about the fence and the
16 gate. It's true, is it not, that you don't know whether
17 or not that fence and the gate is on the property line of
18 Geneva or off the property line or on public property, do
19 you?

20 MR. PICKETT: Could you please clarify which
21 gate/fence?

22 MR. CHURCH: The gate and fence that you
23 testified about that was in the --

24 MR. PICKETT: The one currently on the
25 property?

1 MR. CHURCH: The one that's currently there.

2 THE WITNESS: The one currently, I haven't
3 had the survey so I couldn't tell you exactly where the
4 fence is located.

5 Q. (BY MR. CHURCH) And the previous gate that
6 you testified about the -- going into the Geneva parking
7 lot, I think you called it, or whatever, you don't know
8 whether that was on public or private property, do you?

9 A. I'm assuming from the vacation there's no
10 public property on that side.

11 Q. But that's an assumption you make?

12 A. From the information I've read on the
13 vacation and stuff, that it vacates right over the north
14 property line.

15 Q. Do you know, of your own knowledge, whether
16 or not there is any property on the west side of the
17 tracks -- or, excuse me, the east side of the tracks that
18 is not Geneva property that was part of the old road
19 right of way?

20 A. From the information I read, I don't know of
21 any right of way.

22 Q. Do you know whether there is or there isn't?

23 A. From what I -- I've read, I'm assuming
24 there's not. From what I've read on the vacation,
25 there's no right of way on that side.

1 Q. Okay. Now, the vacation just vacated
2 whatever's on Geneva property; correct?

3 A. Correct.

4 Q. That's your understanding?

5 A. Correct.

6 Q. It didn't vacate anything that was on, say,
7 railroad property; correct?

8 A. Well, it looked like the section line north
9 there was some that vacated on the railroad line. Is
10 that not correct?

11 MR. PICKETT: And if I could --

12 Q. (BY MR. CHURCH) Well, I'm --

13 MR. PICKETT: -- I'll object to the extent
14 that it calls for a legal conclusion.

15 Q. (BY MR. CHURCH) Well, I'm -- I only want to
16 know what you know.

17 JUDGE ARREDONDO: Overruled.

18 Q. (BY MR. CHURCH) What -- do you know whether
19 any was vacated that was on railroad property?

20 A. Just from the prints I've seen and stuff, it
21 looks like the stuff north of the section line was
22 vacated, but...

23 Q. But?

24 A. I'm just going off what I've read.

25 Q. Let me just -- you testified as to what you

1 assumed was the use of this crossing post the vacation,
2 while the steel mill was there. That's correct, that you
3 were testifying as to what you assumed the use was?

4 You don't, for example, know of your own
5 personal knowledge, do you, about whether or not that
6 gate was used by employees or licensees or vendors or
7 even the public, do you?

8 A. Went into the steel mill, I would assume that
9 they -- that they -- you know, you don't just drive into
10 a steel mill and drive around for a picnic.

11 Q. So it's an assumption on your part as to who
12 was using the crossing; is that right?

13 A. I thinks it's obvious. I don't think it's
14 really an assumption. I mean, it's obvious that
15 invitees, or at least public employees and their families
16 dropping them off, may have went in there, but -- and
17 vendors, but I don't see where the public would ever just
18 go in and...

19 Q. And that's because of what facts that you
20 have knowledge of?

21 A. Of fencing, no trespassing signs, the guard
22 gate that's in the pictures. There's no road going
23 through there for -- to go anywhere. All those things I
24 think would probably, you know, be to my understanding.

25 Q. And those things led you to believe that the

1 public was not using that crossing?

2 A. Correct.

3 Q. And that's it?

4 A. Yeah.

5 Q. There was no -- in fact, no gate or anything
6 keeping the public from crossing the tracks on the west
7 side of the tracks, was there?

8 A. No, sir.

9 Q. And there wasn't in modern times until the
10 barricades were up; correct? In the last couple years?

11 A. Nope.

12 Q. And you don't know, for example, I believe
13 you testified, of who maintained the asphalt, the
14 approach across the tracks from the current public road
15 to the gate, do you?

16 A. No, sir.

17 Q. And your testimony was you just don't know
18 whether it was the county or the city or Geneva; correct?

19 A. I don't have any -- any reports. Typically
20 on county or city they would come to us and ask us
21 permission. I don't -- I don't have nothing on that.

22 Q. And typically if a private person maintained
23 it, you would have somebody come to you and ask
24 permission; correct?

25 A. We could. It's less likely.

1 Q. But the fact is you just don't have any
2 information?

3 A. That's correct.

4 Q. And so you don't know whether or not that was
5 maintained by the public entity; correct?

6 A. All I can do is assume it wasn't because I
7 don't have any records on it.

8 Q. Well, what we do know is in 1970 you reviewed
9 the commission meeting minutes from -- from Utah County,
10 that Utah County felt like they had some say in that
11 crossing, didn't they?

12 A. As far as it connecting to the road,
13 obviously.

14 Q. Well, we don't know why they felt like it,
15 but we know that from their minutes they thought they had
16 some input into that crossing; correct?

17 A. Well, I don't know that they thought they had
18 some input, because they had the industry coming to them
19 asking them for their blessing on -- on moving the road
20 and adjusting their intersection.

21 Q. And, in fact, they felt like they could tell
22 them what width it would be; right?

23 A. They talked about a lot of things, but it
24 didn't appear that none of those happened. Except for
25 the change of the angle.

1 Q. Well, I'm just asking you. At least in 1970,
2 the county felt like they had some say into that;
3 correct?

4 A. Well, a lot of their residents were probably
5 using that to get to work.

6 Q. Perhaps the public was going to the plant,
7 too. Now, do you know when Vineyard was incorporated?

8 A. I don't.

9 Q. Do you know -- well, let me just refer you to
10 -- make it easier. I apologize for being so scattered.
11 I don't want to repeat things I know Dennis will repeat.
12 Let me show you what you've previously been showed as
13 page 139. Do you know what that is?

14 A. Major street plans for the town of Vineyard.

15 Q. And how do you know it's that?

16 A. Because it says on the bottom of the page.

17 Q. And other than reading that on the bottom, do
18 you know what purpose that was done for?

19 A. I would guess to...

20 Q. No, I'm not asking you to guess. Do you know
21 for what purpose that was created?

22 A. Looks like future plans for your streets.

23 Q. But do you know -- I know you say it looks
24 like it, but do you know for what purpose that was
25 created? Yes or no.

1 A. Yes, for major -- for planning your
2 developments.

3 Q. Now, I notice in there, there aren't any
4 streets shown anywhere inside the Geneva property; is
5 that correct?

6 A. 800 North is on the Geneva property, Center
7 Street is on the --

8 Q. Other --

9 A. -- Geneva property.

10 Q. Other than Center Street and 800 North. No
11 local roads; correct?

12 A. Those would be local roads. Other than that,
13 there's no other local roads.

14 Q. And I -- I also notice that in the other
15 areas of Vineyard shown there, that there aren't any of
16 the typical little local roads that you would expect for
17 developed property, are there?

18 A. On which locations?

19 Q. South -- south of the Vineyard property
20 there, in the residential area of Vineyard. Do you see
21 any planned roads down there other than -- than a
22 parkway?

23 A. No, it looks like this is for main -- for
24 your main roads.

25 Q. Yeah. And in fact it shows an intermodal

1 hub. What's an intermodal hub, do you know?

2 A. That's for the transit.

3 Q. Is there a road going to that anywhere on
4 that plan?

5 A. No, sir.

6 Q. Would it make sense then to you for you to
7 assume that this is -- this major streets plan is the
8 plan for future Vineyard roads, when it doesn't have any
9 roads on it except for the major -- the couple of major
10 streets?

11 A. I think it's just -- identify your major
12 roads, that's what it looks like. That's the only thing
13 you've put on here.

14 Q. Let me show you the -- 140. Can you tell me
15 what that is?

16 A. Another general plan.

17 Q. Do you know the difference between a major
18 street plan and the general plan?

19 A. Well, there's -- this is showing -- no, I
20 don't.

21 Q. And in fact it's true, is it not, that you
22 don't have any idea the purpose before -- for Vineyard
23 doing a major street plan or a general plan at that time,
24 do you?

25 A. Well, the roadway -- the major roadways on

1 this are significantly different than the one you just
2 showed me. So this is not a copy of the other one,
3 including the smaller road. So you've made some
4 significant changes here, including adding the smaller
5 roads.

6 Q. It's true, is it not, that this 2006, what
7 you would call the major street plan, you have no idea
8 whether that includes or didn't include any planned
9 future roads by Vineyard on 400 North, do you?

10 A. On the 2008 one?

11 Q. On the 2006 one. You don't know the purpose
12 of the 2006 document for Vineyard, do you?

13 A. I know it's significantly different than the
14 2008.

15 Q. Right. But you don't know the purpose for
16 which it was made, do you?

17 A. Looks like for the major routes.

18 Q. Now, I think you previously testify, for
19 whatever reason, that it seemed significant to you that
20 it didn't show 400 North.

21 A. Correct.

22 Q. Do you know whether or not Vineyard, in 2006,
23 was planning on having an at-grade crossing at 400 North?

24 A. I had discussions about two other crossings,
25 and nobody ever discussed with me about 400 North.

1 Q. I didn't ask you that. I asked you if you
2 know or -- of your own knowledge, whether in 2006
3 Vineyard planned on having an at-grade crossing at 400
4 North?

5 A. I would as -- I would think that -- I would
6 think --

7 Q. Do you know?

8 A. You guys never told me about a crossing at
9 400 North. So, no, I wouldn't know.

10 Q. Okay.

11 A. But I -- the city would tell me if they were
12 going to put a crossing across and only talk about two
13 and not talk about the other one.

14 Q. What year was it that you were talking about
15 the other -- the other two with Vineyard Town, do you
16 remember?

17 A. The Center and 800 North?

18 Q. Uh-hmm.

19 A. I think we started in 2006.

20 Q. And in 2006, date on this major streets plan,
21 was it not?

22 A. Correct.

23 Q. And prior to that, you hadn't had
24 conversations with Vineyard about what they planned to do
25 or not do?

1 A. That's correct.

2 Q. And in 2006 you were talking to Vineyard
3 about grade-separated railroad crossings; correct? At
4 800 North and Center Street; correct?

5 A. Well, you already -- you already talked and
6 first discussion was an at-grade in Center Street.

7 Q. Uh-huh. And when you talked to Vineyard
8 about the at-grade at Center in 2006, they offered to
9 trade the at-grade at 400 North for the at-grade at
10 Center Street; correct?

11 A. Also they talked to me about the cost of the
12 overpass, which was prohibitive, in their opinions. So
13 that's when I brought in an outside consultant, to try
14 and help you guys out on --

15 Q. I'm just trying to establish that Vineyard's
16 plans in 2006 included -- Vineyard assumed included that
17 in 2006 there was a public at-grade at 400 North, did
18 they not? And you disagreed with it.

19 A. That they wanted to trade for Center Street?

20 Q. Correct.

21 A. I disagreed that it was a public road.

22 Q. Did you disagree there was a public crossing
23 or did you disagree that it should be a public crossing?

24 A. I disagreed that it was a public crossing.

25 Q. In 2006, are there any other factors, other

1 than what you've testified to today, that led you to
2 believe that it was not a public crossing in 2006?

3 A. It was just obvious there wasn't a public
4 crossing.

5 Q. Obvious from the gate that you saw?

6 A. From the gate and all the MUTCD-FHWA's
7 definitions of a public/private crossing.

8 Q. Let me just ask you about that MUTCD
9 definition of public -- of private crossing and the other
10 definition. Both of those say that that's typical;
11 correct?

12 A. Correct.

13 Q. What does it mean to you when it says
14 "typical"? Doesn't that mean that there are some that
15 doesn't meet the typical?

16 A. Yes, sir.

17 Q. So it's not definitive. It's not a
18 definition of what one is or what isn't. It's a
19 definition of what a typical one would be; correct?

20 A. Typically, yes.

21 Q. Uh-hmm. And in fact this isn't a typical
22 one?

23 A. Yes, I think it's very typical.

24 Q. How many of them you dealt with before that
25 were existing public roads that had been vacated for

1 purposes of World War II, building a steel plant?

2 A. You know, I never get into history of a lot
3 of these crossings because this never comes up, so I
4 can't tell you. But there is a lot of sites. I know
5 Pocatello has a few crossings going into a site that used
6 to be World War II, just like you're talking about.

7 Q. I'm just asking you is it -- you don't know
8 of any other exactly like this one, do you, where there
9 was an existing public road crossing a piece of private
10 property, an existing crossing and a vacation of a
11 portion of the road? This is unique, isn't it?

12 A. I'm not sure if I know of an exact crossing
13 anywhere that's typically the same as the next crossing
14 next to it, so...

15 Q. And that's the purpose of having a definition
16 of what a typical crossing is; correct? And not a
17 definition of what each crossing is?

18 A. I think you just need to look at each
19 crossing, and if it smells like a duck, it probably is a
20 duck. You know, if it meets all these criteria, then
21 it's pretty obvious to us.

22 Q. If this is -- I think you testified earlier
23 that if -- if this is a public at-grade crossing and
24 you're required to be taken out for some reason, that
25 there's a financial cost to the railroad; correct? You

1 have to participate somehow in the overpass or something
2 like that.

3 A. If it's a public road and you're -- and it's
4 got active warning devices on it and they build a grade
5 separation to eliminate that road, then there is a
6 federal regulation that makes us participate 5 percent.

7 Q. And really what this is all about is who has
8 to pay for grade-separated crossing that you want,
9 whether the railroad has to pay for it or whether UDOT
10 has to pay for it or whether UTA has to pay. This is
11 about money, isn't it? It's not about safety?

12 A. I would say it's extremely about money on the
13 developer's side.

14 Q. And on the railroad side.

15 A. Absolutely not. I pay 5 percent matching all
16 the time. I have not an issue with that, but it's got to
17 be clarified that --

18 Q. Did you pay them --

19 A. -- if we're paying for a public crossing to
20 be eliminated, not a private crossing that is closed at
21 the time. It really has hardly any risk to us.

22 Q. Did you -- did you offer the 5 percent to
23 close this one and put in the Center Street?

24 MR. PICKETT: I'm sorry. Repeat the
25 question.

1 Q. (BY MR. CHURCH) Did you offer the 5 percent
2 matching funds when you were talking with them about the
3 Center Street?

4 A. I'm not sure if it was -- if it was discussed
5 or not. And I'm not sure that I gave a definite answer
6 whether I would or I wouldn't. I -- I don't know if you
7 guys got some meeting minutes that clarify that, but I
8 don't recall whether we said that we would definitely not
9 participate even though -- even if it was private.

10 I mean, it's important to us to close
11 crossings, and we spend a substantial amount of money
12 every year to help facilitate closing a crossing. So it
13 wouldn't surprise me that I even offered a 5 percent on a
14 private crossing, but I would have to go back and look at
15 all my notes. But I -- I don't remember doing that.

16 Q. You personally do not know whether or not
17 there's a public right of way across the rail tracks
18 right now, do you?

19 A. A public right of way?

20 Q. Uh-huh. Whether there's a right of way owned
21 by the public across the rail tracks at 400 North, do
22 you?

23 A. No.

24 Q. And you can testify, and do know, that you
25 were active -- what you've called these active signals at

1 that crossing until you've taken them out in recent
2 times; is that right?

3 A. There was active signals.

4 Q. And that those are indicative of the kind of
5 thing that you'd see at most public crossings?

6 A. That's not true.

7 Q. I think you testified, didn't you -- or
8 perhaps I read it while you were testifying -- that
9 that's one of the indications that there would be a
10 public crossing, is that if it's a public crossing it's
11 one of the indications that you have those kind of active
12 signals?

13 A. That's not what I said.

14 Q. I apologize then. I think you did testify,
15 did you not, that when you personally went and looked at
16 it there was a fence and gate up in recent times; right?

17 A. Yeah. Sometimes the gate was -- before the
18 gate was locked, it sometimes was open, sometimes they're
19 closed.

20 Q. And, in fact, when you went and looked at it,
21 there wasn't a steel plant being operated, was there?

22 A. Not in the last couple three years, no.

23 Q. And, in fact, there was an active
24 deconstruction going on at the steel plant; is that
25 right?

1 A. At some times, yeah.

2 Q. And you wouldn't have thought it was prudent
3 just -- if you'd given a choice, that you'd allow the
4 public free access into the site while it was being
5 deconstructed, would you? If it was your choice.

6 A. Well, it's been several years since they've
7 been -- since they've finished that. I don't know if
8 there's much different than an active mine going on. I
9 wouldn't let them go through an active mine or an active
10 plant either.

11 Q. By the way, do you know that it's finished?

12 A. I don't know it's finished, but I know a lot
13 of the construction equipment is not there anymore.

14 Q. But you don't know if it's finished or not?

15 A. It might not be finished for years. I'm not
16 sure what they're all doing there.

17 Q. And you don't know if it's an active
18 construction site or not, do you?

19 A. I don't.

20 Q. You do know however, though, that if it is an
21 active construction site, it would be the normal,
22 reasonable thing that there would be a fence up around
23 the active construction site to keep the public out?

24 A. Just as it's a steel mill.

25 Q. And so that fence and that gate wouldn't be

1 indicative of whether or not a public entity like
2 Vineyard Town considered it a public right of way or not
3 a public right of way, would it be?

4 A. I don't see too many cities fencing off their
5 public property.

6 Q. When they're under construction, you don't
7 see that?

8 A. When they are under construction or a steel
9 mill's on there, probably not.

10 Q. Probably not what? When they're under
11 construction, it's common for you to see the public
12 entities keep the public off the right of way, isn't it?

13 A. They're -- with road -- I mean, they don't do
14 perimeter fencing. They usually do like road closures,
15 we're doing construction up here, you know. That's what
16 I usually see on public highways, public roadways.

17 Q. Did you review the documents about the change
18 in the crossing that was done in the '70s?

19 A. Some of it, yeah.

20 Q. Do you know if that change was
21 contemporaneous in time with the county commission
22 meetings minutes that discussed the change there?

23 A. It seems like it was a year apart or so.

24 Q. A year later, wasn't it?

25 A. Seems like it, yeah.

1 Q. Tell me, typically when people do that kind
2 of -- that would have been significant construction in
3 that right of way, would it not?

4 A. Probably, yeah.

5 Q. It would have -- would have required the
6 railroad being involved to stop the trains or schedule --

7 A. We don't --

8 Q. -- around them?

9 A. -- stop the trains.

10 Q. Or schedule around them?

11 A. Yeah, you'd probably -- you'd have to have
12 some coordination with the railroad.

13 Q. And there's no way that that kind of
14 construction could have been done without the railroad
15 knowing about it, could there?

16 A. That's correct.

17 Q. And there's no way it could have been done
18 without the railroad coordinating it; correct?

19 A. Yeah. For the most of it, yeah.

20 Q. And there's no way it could have been done
21 without railroad approval, in fact; correct?

22 A. That's probably true.

23 Q. Do you have any records that the railroad
24 approved that?

25 A. I don't.

1 Q. Do you have any records at all, that you
2 found, where the railroad, at that time when it happened,
3 made a decision whether that was going to be a public or
4 a private crossing?

5 A. I don't.

6 Q. And, in fact, it's all an assumption on your
7 part that when the railroad allowed that to be changed
8 that somehow that affected the nature of the crossing
9 from public to private; correct?

10 A. Could you restate that again?

11 Q. I'm -- I'm sorry, I'll withdraw it. It was a
12 terrible question. What we do know is the railroad
13 doesn't have any records concerning that change.

14 A. Anytime that I do -- that we do a change now,
15 especially if it's a public road, there's usually an
16 agreement. Does the city have an agreement that shows
17 that we --

18 Q. 1970, Vineyard Town did not exist. So the
19 answer -- but I'm asking --

20 A. The county --

21 Q. -- you the question.

22 A. -- then or --

23 Q. I'm asking you --

24 A. Oh, sorry.

25 Q. County has a record, county commission

1 minutes. Now let me ask you this.

2 A. It's not a very good record because they
3 didn't do --

4 Q. Have you found any records, at all, that the
5 railroad has about this? About this change in the -- in
6 the crossing?

7 A. No, I don't have any.

8 Q. But you would agree that the railroad must
9 have known about it and must have cooperated in it and at
10 least approved it?

11 A. Yeah. Partly I think some of the records --
12 you know, we change railroads, we -- we bought this
13 railroad, so...

14 Q. I was going to bring that up. In fact, you
15 didn't own the railroad at this time, did you? I mean,
16 the current company.

17 A. Union Pacific did not own that.

18 Q. And you don't know if -- if the predecessor
19 railroad treated this as a public or private crossing
20 because you don't have their records; correct?

21 A. I don't have any records, no.

22 Q. And, in fact -- well, let me ask you this:
23 The database that we talked about, the FRA had predated
24 you acquiring this particular railroad interest, this
25 property; right?

1 A. I would assume so, yeah.

2 Q. So your predecessor in this particular line
3 and that probably put in the database the first entry
4 that this was a public crossing; correct?

5 A. I'm not sure how it became on the database.

6 Q. It was in there -- it was in the database
7 prior to you guys acquiring it, though; right? Acquiring
8 this particular interest?

9 A. Sure.

10 Q. So it was either put in by your predecessor
11 or by UDOT; right?

12 A. Could have been.

13 Q. So what's fair to say is that whenever your
14 current employer, Union Pacific, bought this, they bought
15 whatever -- who was the predecessor?

16 A. DRGW.

17 Q. DRGW. They bought whatever DRGW had; right?

18 A. Yeah.

19 Q. And if DRGW had this as a public crossing,
20 they bought a public crossing; correct?

21 MR. PICKETT: Objection.

22 THE WITNESS: I disagree with that. If they
23 bought a private crossing, they bought a private
24 crossing. I mean, if the database is -- especially FRA
25 was completely bogus on all their --

1 Q. (BY MR. CHURCH) If it's bogus on that, isn't
2 it also bogus on their definitions of what public and
3 private are?

4 A. Well, we've been trying to straighten out
5 their databases for years. There's been a lot of
6 consolidation over the years, tracks have been changed,
7 usage have changed, road's been abandoned. I mean, we've
8 -- that's part of our job, especially the last four or
9 five years or -- actually since I've been in this job
10 11 years is to try to get the database...

11 Q. One of the purposes of the database is to let
12 you know which are public and which are private
13 crossings; right?

14 A. Oh, it's part of it, yeah.

15 Q. And to let UDOT know which are public and
16 which are private and where they're located; right?

17 A. It's supposed to be that.

18 Q. And, in fact, that's why you have the
19 instructions and definitions that you quoted, that guide
20 you on how to decide which is private and which are
21 public. So that you can get it in accurately; correct?

22 A. Exactly. When we find a crossing that's
23 mismarked, like this one, then that's what we're supposed
24 to do.

25 Q. Now, someone at some time classified this and

1 put it in the database that it's a public crossing.

2 That's without dispute; right?

3 A. Maybe they were a little unclear on the
4 definition.

5 Q. During your 11 years, other than this current
6 process, you guys have never initiated a process to close
7 this as a public crossing, have you?

8 A. Close it, period. We never initiated nothing
9 to put -- you know, it went into a steel mill, an active
10 customer of ours.

11 Q. Did you -- did you ever initiate any process
12 to close this as a public or private crossing up until
13 this currently?

14 A. We never identified it as a public crossing,
15 so we never tried to close it as a public crossing.

16 Q. When you say "we never identified it as a
17 public crossing," how do you know that you didn't -- that
18 your company didn't put it in the database as a public
19 crossing? You don't know that, do you?

20 A. I don't know why it was put in there and I
21 don't who put it in.

22 Q. All you know --

23 A. Either one.

24 Q. All you know is that you didn't put it in
25 personally; right?

1 A. I changed it personally.

2 Q. But -- and you changed it personally, but you
3 don't know whether or not the Union Pacific Railroad
4 Company put that in the database as a public crossing at
5 some time, do you?

6 A. I don't know who did it.

7 Q. And you don't know why it was put in as a
8 public crossing, do you?

9 A. It was a mistake.

10 Q. No, you don't know why. In your opinion, it
11 was a mistake; correct?

12 A. To the definitions, it was a mistake.

13 Q. But the definition said "typical."

14 A. This meets every definition we read.

15 Q. Of a typical crossing?

16 A. Of a private crossing.

17 Q. It also meets every definition of an atypical
18 public crossing, too, doesn't it?

19 A. No.

20 Q. Are you telling me right now that there are
21 no public crossings that cross into private property on
22 your system anywhere?

23 A. There's no public crossing that -- crossing
24 to a gated, no-trespassing private property on my system.

25 Q. That you know of?

1 A. That I know of.

2 Q. And you don't know why the gate was put up,
3 do you?

4 A. To secure the site. It's a private property.
5 There's no roadway over there.

6 MR. CHURCH: I don't have anything further.

7 JUDGE ARREDONDO: All right. Thank you,
8 Mr. Church. Mr. Astill?

9 CROSS-EXAMINATION

10 BY MR. ASTILL:

11 Q. Mr. Marshall, you and I have known each other
12 for four or five years now, haven't we?

13 A. Yeah. I think this 2006 date I keep seeing.

14 Q. Yeah, I think it was -- goes back that far.
15 I want to refer you to Union Pacific Exhibit 138 and
16 briefly -- I don't know if you have a copy there. That's
17 the CRG map -- CRS map, I'm sorry.

18 A. The original one?

19 Q. Yeah, the original one.

20 MR. CHURCH: Dennis, would you like me to --
21 to take mine?

22 MR. ASTILL: I can just use this. I think I
23 can refer to it.

24 Q. (BY MR. ASTILL) Jim, on that map on the
25 lower right-hand corner, there's a kind of a log of

1 crossings and status and future intent; correct? One of
2 them says -- well, I'm not going to be able to read the
3 heading now, but it looks like a location or -- oh, it's
4 a milepost; correct? On the left-hand column of that --

5 A. I believe so, yeah.

6 Q. Okay. And then -- then it's got a crossing
7 number, and then it's got private or public, and then it
8 says what's going to be happening to it, and then rail
9 line, if it's the Provo side or the Provo Industrial
10 Lead; correct? The three columns there, the four --

11 A. Correct.

12 Q. Four or five columns there. When we're
13 talking about this particular crossing, it's highlighted
14 in blue. I don't know who did the highlighting on it.
15 It may have been your folks preparing for this, but it
16 shows that as a public crossing and it's the intent that,
17 you know, the opener and closure shows that it's a
18 closure crossing.

19 A. Correct.

20 Q. And at the time that that was -- this map was
21 constructed, isn't it true that Anderson Geneva had
22 approached the railroad and was talking to the railroad
23 about the possible realignment of the Provo Industrial
24 Lead? And in exchange for concessions the railroad was
25 going to make, Anderson Geneva was going to make certain

1 concessions; isn't that correct?

2 A. Yeah, as far as this print goes, I believe
3 you're right.

4 Q. Okay. And so showing that as a closure was
5 part of the negotiation based on other things occurring
6 that we knew would -- that Anderson Geneva knew would
7 impact the railroad so was offering a closure as a
8 possible solution?

9 A. Yes. And also for our participation -- or
10 not participation, but our approvals for the two other
11 crossings you're looking at, whether they were --

12 Q. Right.

13 A. -- agreed separations.

14 Q. Right. And there were some new at-grade
15 crossings there. And then there were some -- a couple of
16 grade-separation crossings that were all part of that
17 discussion and negotiation?

18 A. Correct.

19 Q. And what I want to be clear about, this --
20 this document was referred to at least once during your
21 direct examination as a development plan. And this
22 really isn't a development plan, is it? Isn't it really
23 a negotiating document to identify crossings and possible
24 resolution of various, you know, change -- we were
25 rerouting the Provo Industrial Lead and creating some new

1 at-grade crossings, creating some separated-grade
2 crossings, all of which require the railroad to be
3 willing to do; correct?

4 A. Well --

5 MR. PICKETT: Objection to the extent it
6 calls for speculation about the intent of and the
7 mind-set of the party who created the document.

8 JUDGE ARREDONDO: Sustained.

9 Q. (BY MR. ASTILL) Let me put it this way then:
10 This map doesn't show development on the property, does
11 it? Doesn't show any type of zoning, any type of use on
12 the property?

13 A. It shows a couple proposed roadways.

14 Q. Okay. And it shows crossings and numbers
15 them and talks about opening and closure and -- and it --
16 and it -- doesn't it also show a rerouted Provo
17 Industrial Lead?

18 A. It does.

19 Q. So did this map have anything to do with any
20 development other than changes in the railway design
21 around the Geneva property?

22 A. Shows ingress and egress to future
23 development.

24 Q. You're talking about 800 North and Center
25 Street?

1 A. Correct.

2 Q. Okay. And currently -- currently and when
3 this map was produced in January of 2008, and even today,
4 at 800 North there is -- Provo Industrial Lead crosses
5 the 800 North corridor, doesn't it?

6 A. Correct.

7 Q. And so right now, without having a crossing
8 over the Provo Industrial Lead, there isn't a way into
9 the property; correct? On the east side from Geneva
10 Road?

11 A. Well, there's a private crossing there.

12 Q. There's a private crossing. By the way, that
13 private crossing has a license agreement, doesn't it?

14 A. I can't remember. I know you guys have
15 showed me some agreements. I'd have to go back, refer,
16 that could be one of them.

17 Q. Okay. But right now that has a private
18 crossing?

19 A. Yes.

20 Q. And the intent of this map would have been to
21 move the lead lines so there was no crossing there in the
22 future; correct?

23 A. Exactly.

24 Q. Okay. And -- and it would have also
25 eliminated a crossing at Center Street east of Geneva

1 Road; correct?

2 A. Yeah, correct.

3 Q. Okay. So the -- again, the purpose of this
4 map was to talk about potential railroad closures,
5 railroad openings and railroad -- and ingress and egress
6 designs; correct?

7 A. Yeah. I think in my -- in my mind, the
8 intention was to show the different realignments of the
9 track but also show us where your future needs were to
10 get across our tracks.

11 Q. Okay. Now, I note at the bottom right-hand
12 corner of this map, there's a -- there's a little title
13 there. It says, "AGDI, UPRR, UTA, UDOT." Now, that's
14 the parties there. AGDI stood for Anderson Geneva
15 Development, Inc.; correct?

16 A. Yeah, I guess. I mean, I'm just -- I just
17 recognize you as Anderson Geneva.

18 Q. Right.

19 A. I know when you mention the company, I didn't
20 know the difference.

21 Q. Okay.

22 A. But all I remember is Anderson Geneva.

23 Q. All right. And UPRR refers to your company?

24 A. Sure.

25 Q. UTA is Utah Transit Authority.

1 A. Sure.

2 Q. UDOT is Department of Transportation.

3 A. Exactly.

4 Q. Okay. Now, the rest of the title goes on,
5 "Summary of Obligations/Benefits Anderson Geneva
6 Corridor." I just -- I'm going to test your memory.
7 Isn't it true that this document was attached to a
8 summary of deal terms related to this whole arrangement
9 to realign the Anderson -- or the Provo Industrial spur?

10 A. It could have been, Dennis. It --

11 Q. Okay.

12 A. I don't recall a hundred percent, but it
13 could have been.

14 Q. Okay. So it was all part of the negotiated
15 transaction?

16 A. I think so.

17 Q. And -- and the result of those negotiations
18 were it all fell apart; correct?

19 A. Yes.

20 Q. And we didn't get the deal done?

21 A. We couldn't close the deal.

22 Q. Right. Okay. I think that's it. I'm going
23 to try and -- I'm going through my notes here. I'm going
24 to try not to repeat things that Mr. Church already had
25 went over. So it may take -- I may be a little slow

1 getting to my next question.

2 Isn't it true that the railroad gates and the
3 flashing signal lights in the -- until they were torn
4 out, were owned by Union Pacific, maintained by Union
5 Pacific?

6 A. I can't tell you for definite who owned them,
7 but we did maintain them.

8 Q. Okay. And, you know, again, you may not
9 remember, but they had Union Pacific's name and some
10 number -- identifying numbers on them; is that correct?

11 A. They do. They typically have a DOT number.

12 Q. Okay. All right. And when you removed them,
13 you didn't come bring them to Anderson Geneva, did you?

14 A. We had no information that you were the owner
15 either.

16 Q. Okay. So you assumed ownership?

17 A. Yes, sir.

18 Q. All right. Today if someone were to go to
19 work on the Union Pacific mainline, you wouldn't allow
20 anybody but Union Pacific crews to work on a -- within a
21 mainline right of way, would you?

22 A. That's not correct.

23 Q. Okay. Tell me the exception to that.

24 A. It just depends on what we're doing. Like
25 the roadway on the -- on the U.P. right of way, the

1 easement they got, that can be all constructed by
2 contractors. The sub-grade underneath our tracks can be
3 constructed by contractors. The track and the signal
4 itself have to be done by U.P. employees through labor
5 agreements.

6 Q. Now, is that true, this all -- was all of
7 that true in 1970?

8 A. Things have changed over the years. I'm not
9 sure exactly what the union regulations were back then,
10 but I know the signal and the track were still under
11 union. I'm not sure about roadways. I think -- I -- I'm
12 just speculating, that's a long ways before my time,
13 but...

14 Q. So based on your current -- your -- your
15 knowledge today, there's no way that track could have
16 been reconfigured in the early '70s without Union Pacific
17 crews and participation?

18 A. If they had to move the lights and gates, and
19 they had to move the surface, we would -- DRGW would have
20 most certainly had employees there.

21 Q. Okay. All right. Now, when your company
22 acquired D&RG Railroad -- or DRGW Railroad Company;
23 correct?

24 A. Uh-huh.

25 Q. You acquired all of their records with that,

1 didn't you?

2 A. We did.

3 Q. But you haven't been able to find anything in
4 your records about those?

5 A. We have not. Sometimes we do and sometimes
6 we don't.

7 Q. Now, your legal counsel in briefing of this
8 case has asserted that changes to the crossing and the
9 public road were all done by U.S. Steel, but you don't
10 know whether that's true or not, do you?

11 A. I don't have personal information.

12 Q. And you don't have any records to show
13 whether that's true or not?

14 A. As far as who did what in '71?

15 Q. Yeah -- yes.

16 A. I don't have any records.

17 Q. In fact, really you -- you can't even be sure
18 it was done in 1971, can you?

19 A. Was there some information on the signal
20 system, sent me one? I'm not sure. I can't be for a
21 hundred percent, no.

22 Q. Okay. Now, today UTA is constructing the
23 commuter rail south project, and they're making a lot of
24 changes to a lot of crossings; correct?

25 A. Correct.

1 Q. And some of those crossings, they're changing
2 the angle of -- of the approach to the crossings, some
3 are moving streets and intersections a little bit; isn't
4 that correct?

5 A. That's -- I'm not aware of any -- any angled
6 crossing changes. The -- some of the parallel streets
7 have been moved to -- further away from the tracks so we
8 can accommodate medians. Some of the communities wanted
9 wider crossings so they did betterments on their
10 crossings and went from two lane to four lane.

11 But the majority of it is to improve the
12 streets and the sidewalks and the crossing surfaces and
13 the lights and gates to get ready for these 68-plus
14 trains a day that will be coming through every
15 15 minutes.

16 Q. Let me -- let me ask you this: The original
17 crossing angle on this crossing was something less than
18 90 degrees; correct?

19 A. Correct, appears to be.

20 Q. And the 1970 changes, whenever they were
21 made, changed the angle to closer to a 90-degree angle to
22 the tracks; correct?

23 A. That's what it looks like, yeah.

24 Q. And that would have made it safer?

25 A. It sounds like they had an accident there

1 that kind of brought it to their attention.

2 Q. Yeah. And so -- but you agree that would
3 have been made it safer?

4 A. It makes the line of sight typically
5 better --

6 Q. Okay.

7 A. -- to have a 90-degree angle.

8 Q. So now you've testified that UDOT wasn't
9 mentioned in those commission minutes. But if somebody
10 is wanting to make a change to a crossing, wouldn't it be
11 typical to go to the various stakeholders and get their
12 view of the change first, one by one? Or -- you know, I
13 mean, it could have been done in a lot of different ways.
14 You thought it was pretty significant that UDOT wasn't
15 there at the commission hearings?

16 A. That was pretty significant they didn't
17 discuss UDOT, you know, as far as saying, "We need to get
18 UDOT's approval." They just talked about get the UPRR's
19 -- or the DRGW's approval.

20 Q. Right.

21 A. And it looked to me like, just reading it, it
22 was more like a conversation. Because a lot of the stuff
23 they talked about had never -- they never did do it.
24 They never moved across the 600 feet from what we can
25 tell.

1 Q. Right. And so from those minutes, you really
2 can't tell whether they got UDOT involved or not?

3 A. Eventually we cannot tell.

4 Q. Yeah. And, in fact, they would have had to,
5 wouldn't they?

6 A. If they could -- if UDOT was in -- they would
7 have had to if they recognized it as a public crossing.

8 Q. Okay. All right. And we'll talk about that
9 in a minute. But -- yes, let -- let me ask you to make
10 an assumption for a minute. If in fact it was a public
11 crossing, and the stakeholders all agreed they wanted to
12 change the angle to make it safer, that wouldn't change
13 the nature of the crossing, would it?

14 A. It certainly -- it changes the nature of the
15 crossing, sure.

16 Q. Well, I mean, it makes it safer but it
17 wouldn't change it from a public to a private just
18 because we made it safer?

19 A. No, I don't believe you change the -- the
20 usage. You just change characteristics of the crossing.

21 Q. Right. And made it much safer?

22 A. I would hope so.

23 Q. Well, there were no fatalities after 1971.

24 A. So that's good.

25 Q. Okay. I want to reference, Mr. Marshall, to

1 your -- to Union Pacific's answers to interrogatories.
2 And they referenced that you were one of the persons
3 providing input to those entries to interrogatories. In
4 response to our Interrogatory No. 11, it stated there
5 that your concerns over the hazards at the crossing were,
6 No. 1, that there was a locked gate. And what were your
7 concerns with a locked gate?

8 A. I was concerned for two reasons. For one,
9 the locked gate. We had an opening on the east side --
10 or on the west side where anybody could go through, and
11 then we had a locked gate on the east side that prevented
12 somebody from going any further. So if somebody turned
13 down there not knowing where they were going -- I mean
14 the steel mill had been closed for several -- you're on
15 your way to a boat ramp -- so you probably get a lot of
16 different usage on that roadway going around there. So
17 if somebody got turned around with a boat or something
18 and turned right there and they were -- they were stopped
19 on top of our tracks, then we had a severe -- in my
20 opinion, we had a safety -- a major safety hazard just
21 from that situation.

22 And the other one is that, you know, there's
23 no trespassing signs and no -- and no signs that -- the
24 primary safety concern I had at that time was that we had
25 a blockage on the wrong side of the tracks and not have a

1 blockage on both sides when we closed the road.

2 Q. Okay. But that locked gate was easily
3 remedied, wasn't it? Or could have?

4 A. I didn't have a key.

5 Q. Yeah. But in other words, if somebody would
6 have contacted Anderson Geneva or -- and said, "Hey,
7 you've got a locked gate on the east side of the track
8 that's creating a hazard," it would have been really easy
9 to solve that problem, wouldn't it?

10 A. Well, I'm not sure that that's the total that
11 we -- if the guy pulls over the boat now and he's turning
12 around on your property and coming back out, we still got
13 an issue.

14 Q. But the issues is --

15 A. There's no place for those guys to go.

16 Q. Well --

17 A. Whether the gate was open or the gate was
18 closed.

19 Q. If there's a big turnaround allowed, isn't
20 that the place for them to go and make their move and go
21 back out?

22 A. Yeah, I just didn't notice a big turnaround
23 spot.

24 Q. But it's something that could have been
25 remedied. And in the past there was a big parking lot

1 and drive and all of those facilities still exist today?

2 A. Still exist today?

3 Q. Yeah.

4 A. The parking lot?

5 Q. Uh-hmm.

6 A. I'm not sure.

7 Q. So you haven't been on the property to look
8 for it?

9 A. Can't get through the gate.

10 Q. Except when it's open. And you have observed
11 it being open.

12 A. But it says no trespassing and I usually stay
13 off of it.

14 Q. Okay. All right. Well, you can't even get
15 across the tracks now. Let's see. The original
16 photographs, where are they? Right here. Okay. I think
17 you gave some testimony earlier about these photographs.
18 I'm going to refer you to No. 159. And, you know, before
19 we do that, you had an aerial up there and I just brought
20 it out with -- and Judge, I'm hoping this helps put some
21 context of this whole property for you.

22 So I'm just going to make some
23 representations to the court here. This is I-15 running
24 along the east side here. This is Geneva Road which is
25 the boundary of the Geneva property that we've been

1 talking about, the east boundary. This is the -- this
2 line here is the Provo Industrial Lead, is what the
3 railroad calls it, which is a spur line that runs all
4 along the front edge of this property. It fell right
5 here which is about 400 North in Orem.

6 Now, if you look through to 400 North that's
7 the continuation, down here. This area is called
8 Vineyard Road and runs around the Geneva property and
9 over to 1600 North, approximately what would be a
10 continuation of 1600 North. So their -- the mainline
11 cuts through the entire property through here. Is that
12 an accurate depiction, Jim, of this situation out there?

13 A. Yeah, but 1600 North -- I don't know if it's
14 clear. 1600 North does not come all the way through the
15 property.

16 Q. Yeah, 1600 North stops somewhere in here.
17 With the new development, it's down -- it runs to about
18 down in here where it hits a cul-de-sac.

19 A. Yeah, so you could never come all the way
20 through to there.

21 Q. Correct. Yeah. So that's always been true.
22 Well, I should -- I take that back. Since the steel
23 plant was built, it's been true.

24 A. Okay.

25 Q. I'm going to show you some old maps that show

1 that --

2 A. I'm assuming you're right.

3 Q. -- was a continuation. So right now -- when
4 Mr. Church was talking to you about access, to get
5 anywhere in Vineyard Town, all along this area here for a
6 distance of about four miles, the only access is you have
7 to come over to here -- which I don't remember the name
8 of that street in Lindon City. Come down here past the
9 land -- not the land -- well, I guess it used to be the
10 landfill. Now it's the solid waste disposal location.
11 And then back across this road and across the tracks
12 right here.

13 A. That's correct.

14 Q. That's correct?

15 A. From that side.

16 Q. From that side. And then it's -- it's about
17 two-plus miles to get to Fourth North over here and then
18 another two-some-odd miles to get over here past this
19 crossing here and back onto Geneva Road over at the south
20 end of the property, another two-plus miles. Does that
21 sound accurate to you?

22 A. I'd have to look at the mile posts.

23 Q. Okay.

24 A. But it's -- it's a little ways.

25 Q. It's a long ways.

1 A. I'm not sure.

2 Q. And I'll just represent to you it's about
3 four miles from point to point, 400 South to about 1600,
4 you know. You wouldn't disagree with that, would you?
5 I'm not asking you to --

6 A. I just don't know my numbers in front of me.
7 But yeah, I assume you're correct.

8 Q. Okay. So the crossing we're talking about is
9 this 400 North crossing right here. And so back in 1942
10 when the Defense Corporation acquired the property and
11 started building, this picture -- let's see. This is a
12 19 -- excuse me, one more that I missed? It should have
13 been 156 -- oh, you had it. Okay.

14 All right. So 155 shows what looks like a
15 construction in process of the Geneva Steel Works. It
16 looks like it's dated November 30 of 1943. Can you
17 identify the crossing there? It's pretty small.

18 A. Yeah, it's -- we're just -- from what I can
19 tell, 400 North is in the center of the picture there.

20 Q. And do you see a cross buck there?

21 A. I can't definitely tell you if there's a
22 cross buck.

23 Q. Do you see some flashers in that picture?

24 A. It's -- I'm going to have to have a better
25 view of it than this to tell you if there are flashers or

1 not.

2 Q. Okay.

3 A. In fact, I looked at this the other day and I
4 just couldn't tell for 100 percent what's exactly there.

5 Q. Do you see any kind of a gate?

6 A. I don't. Well, I don't -- I can't tell on
7 that either. I see the fence go up on both sides, and I
8 can't tell if there's a gate flipped against the fence.
9 So I can't tell you on that either.

10 Q. All right. Let me have you look at this one,
11 which is a 1944 picture. I think the crossing may be
12 even smaller in that.

13 A. Yeah.

14 Q. But what -- I want to see if you can identify
15 with me that the roadway coming in --

16 A. Okay.

17 Q. -- right here has an actual roadway coming
18 into a parking area with fencing around the parking.

19 A. Yeah, it looks like there's a roadway going
20 north to -- a roadway north and there's this empty lot.
21 There's no cars parked in there.

22 Q. Right. Do you see any -- again, do you see a
23 gate in there?

24 A. I can't tell a gate from there.

25 Q. So you don't know --

1 A. I don't --

2 Q. -- whether there's a gate or not?

3 A. Yeah. I can't tell if there's a gate that
4 folds over or not. You got fencing up to both sides of
5 the crossing which would lead me to believe there
6 probably is a gate there, but I can't tell for sure.

7 Q. Okay. That was -- by the way, that was
8 Exhibit 159.

9 MR. ASTILL: Judge, do you want to see those?

10 JUDGE ARREDONDO: Yeah.

11 Q. (BY MR. ASTILL) So it's not clear to you
12 from those photos whether there was a gate or not?

13 A. Just that there's a fence there.

14 Q. And until the Geneva plant closed, you -- I
15 think you mentioned there was a guard house. If I
16 represented to you that there was no guard house, would
17 you disagree with that?

18 A. Yeah. I have -- I've seen pictures. I
19 thought that one showed with the guard house there, but
20 I'm not sure.

21 Q. Okay. So you're not sure.

22 A. Yeah, I know I drove by it when Geneva was
23 still going, but I don't know how much attention I paid
24 to it.

25 Q. Okay. All right. I think you've already

1 testified that you don't have public crossing agreements
2 with every city?

3 A. That's correct.

4 Q. You made mention of the fact that with regard
5 to one of the indicia that you see makes a public
6 crossing is that there's public road markers like
7 advanced warnings, signals, either signs or painting on
8 the road; is that correct?

9 A. Yes.

10 Q. Have you -- in driving down Vineyard Road,
11 have you noticed something about Vineyard Road in terms
12 of their signage?

13 A. There isn't none.

14 Q. Right. There's no middle stripe, is there?

15 A. There's no middle stripe.

16 Q. And for a while -- well, periodically
17 depending on how often it gets knocked down, there isn't
18 even a warning sign that there's a right-angle turn at
19 400 North, is there?

20 A. Yeah, I never paid attention. I look for
21 railroad signs when I go to a crossing. I don't really
22 pay attention --

23 Q. You're not looking for road signs?

24 A. Every once and a while, I look for speed
25 limit signs, but...

1 Q. Okay. And so the fact that an entity may or
2 may not have those advanced warning signs is really not
3 indicative of whether there's a public crossing coming up
4 any more than if they don't put a yield sign up or their
5 corner warning sign's down or anything else?

6 A. Well, in this day and age with the work that
7 Eric and UDOT and ourselves have done, because we went
8 through and inventoried all the crossings almost in the
9 state, it's pretty rare that we see a public crossing
10 that doesn't at least have an advanced warning sign. A
11 lot of them are gravelled roads that don't have the
12 striping and the paint on them. But we usually always
13 have. Even as a U.P. employee, one thing we look for
14 every time we go by one is to make sure that we have
15 those public advanced warnings signs because they're
16 important to us.

17 Q. And who -- and that's a sign the city puts
18 up?

19 A. City, county, state, depending on the agency.

20 Q. And what is an advanced warning sign
21 comprised of?

22 A. It's a -- if it's a -- on this one, it would
23 be a -- I think it's an R3 or -- I can't remember for
24 sure, but it would be the one that shows the roadway
25 going straight and a crossing on the right-hand side.

1 And same with the other one because it's a through
2 street. So it would show that if you turned right at an
3 intersection, you would intersect a railroad crossing,
4 so --

5 Q. Okay.

6 A. -- it gives you a warning.

7 Q. So it would be like a yield sign?

8 A. No, it's just an informational sign.

9 Q. Yeah, that's what I'm talking about. Well,
10 yeah, you're right. Yield is more of a traffic control
11 sign.

12 A. Right. And then there --

13 Q. It would be like a curved sign saying there's
14 a curve coming up or --

15 A. Right.

16 Q. Okay. But you haven't noticed that those
17 don't exist in Vineyard Town either?

18 A. They do not exist in Vineyard Town. They
19 have no risk.

20 Q. You mean the railroad signs?

21 A. The railroad signs are not there.

22 Q. But you haven't noticed the other signs
23 either, some of the other informational signs may not
24 exist there either?

25 A. Yeah, I guess I don't pay attention --

1 Q. Okay. Now, you've talked about the FRA
2 database and inventory. And, again, you mentioned that
3 initially it was unreliable or had some inaccuracies?

4 A. You still have to rely on them to make the
5 changes once you send it in, too. So they're still -- I
6 think Eric's got some people working on it right now that
7 are still finding a lot of errors in the database.

8 Q. Okay. But who -- again, who's responsible to
9 -- who was responsible initially to create that
10 inventory?

11 A. I would imagine FRA. I think probably the
12 railroad sent their subdivisions information to them and
13 they probably created it.

14 Q. So --

15 A. But I don't know how far back that was.

16 Q. So wasn't it the railroad that was obligated
17 to created that initial --

18 A. I'm not sure.

19 Q. You're not aware?

20 A. I'm not sure.

21 Q. Okay. So if the FRA documents said that, you
22 wouldn't argue with that? So the --

23 MR. PICKETT: I'm sorry. I don't know what
24 you're referring to. The FRA document said what?

25 Q. (BY MR. ASTILL) If the FRA procedures manual

1 cited the -- the fact that the railroads were responsible
2 for that, you wouldn't argue with that, would you?

3 A. Responsible for the initial?

4 Q. For the initial --

5 A. Or for the inventory now?

6 Q. The initial inventory.

7 A. The very beginning of it?

8 Q. Yeah.

9 A. I guess I would not.

10 Q. Okay. All right. Give me -- give me, if you
11 could, the process for the updating of the FRA today.

12 A. Like I was telling -- I think it was our
13 attorney, that typically we do a lot of these inventory
14 changes in the FRA. And the majority of them are just
15 changes to the existing crossing as far as what's on the
16 crossing. Whether it's -- even down to whether it has a
17 concrete surface or not or if it's got lights and gates
18 or if we change a stop -- one from a stop to a yield or
19 any change you do to a crossing itself. If you paved the
20 road and it used to be gravel, that's also a location on
21 there. So anytime there's any kind of change at the
22 crossing, we do that.

23 Q. And that is your job today?

24 A. That's a part of my job.

25 Q. And you've been doing that since what year

1 now?

2 A. '99.

3 Q. '99. Okay. And other than the 2008 filing
4 with the FRA database that you did, you haven't ever made
5 a change on your database here?

6 A. At this crossing?

7 Q. Yes, at this crossing. I'm sorry.

8 A. That's correct. Not that I can remember.

9 Q. Okay. And who would have done that before
10 you for Union Pacific?

11 A. Dick Rochmeyer was my predecessor. But then
12 I'm not sure who it was at DRGW. Because he didn't have
13 it very long after he took over for DRGW.

14 Q. What year was that again?

15 A. '99.

16 Q. So DRGW would have been doing all of these
17 filings?

18 A. Yeah. I looked back. In fact, it keeps a
19 log on who does any changes in our database that we
20 change and send to the FRA. It puts a log on if somebody
21 did a change, and I can't see where any changes have been
22 made, so it's far back. I don't know when our database
23 was created, but it was before I started, some years
24 before I started. And there's been no changes in --
25 electronically in ours.

1 So it was well before -- before I took over,
2 I believe, that it was changed. Which really nothing has
3 changed on the crossing since '71 as far as lights and
4 gates being modified or crossing angle and all that kind
5 of stuff. So unless you noticed that it wasn't private,
6 like I did, then nobody really -- there was no changes to
7 put in.

8 Q. Okay. But -- all right. Let me -- let me
9 just ask you one more question on the process. It's
10 true, isn't it, that the process for entering something
11 into the FRA database is either UDOT has to initiate that
12 change and get your consent --

13 A. Not our consent.

14 Q. Well, you -- you have to review and sign part
15 of that form, don't you?

16 A. No, sir.

17 Q. You don't?

18 A. No, if they're just updating it because of
19 something that they notice is out there. That's not --
20 that's not correct. I don't even think I've ever seen a
21 form from UDOT that...

22 Q. Okay.

23 A. I don't know if it's just because UDOT's not
24 sending them in and we're just doing it all or what,
25 but...

1 Q. Okay. Let me -- let me refer you to the
2 instruction manual. Now, I believe your counsel
3 submitted an exhibit on this, but I'm going to refer to
4 the Anderson entity's Exhibit No. 21, I believe it is.
5 Yeah. All right.

6 I'm going to hand you this and ask you to
7 read Section 4.4 that's highlighted there. First of all,
8 this is talking about when the change is -- or whether or
9 not the inventory form should be updated; correct?

10 MR. PICKETT: I'm sorry, which exhibit number
11 are you on?

12 MR. ASTILL: Exhibit 21.

13 MR. PICKETT: Thank you.

14 MR. ASTILL: It's Section 4.4 or page 4. --
15 4-6, I'm sorry. Page 4-6 and it's actually referring to
16 Section 4.4 of the instruction and procedure.

17 MR. PICKETT: I'm sorry, hold on. I'm not
18 sure if I'm in the same place as you.

19 MR. ASTILL: Okay.

20 MR. PICKETT: Which -- help me out, if you
21 would. Here's my No. 21.

22 MR. ASTILL: Oh, it's not your 21, it's my
23 21. I'm sorry.

24 MR. PICKETT: Make sure I can follow along
25 with you. Please tell me what section and I'll find it

1 in mine.

2 MR. ASTILL: Yeah. So it's page 4-6.

3 Q. (BY MR. ASTILL) Now, given that, it says,
4 "The railroad and the state agency updates submission
5 procedures. There are three situations which require the
6 recording of changes by railroad or state highway
7 agents." So these include when one or more of the
8 physical, operational or administrative characteristics
9 of the crossing change; right?

10 A. Correct.

11 Q. Okay. And the next one, when a new crossing
12 is opened, and C is when an existing crossing is closed?

13 A. Correct.

14 Q. So you wouldn't have any reason to make a
15 change unless something -- to update it or submit a new
16 form for the FRA database unless there was a change in
17 the physical, operation or administrative characteristics
18 of that crossing; correct?

19 A. Or if we identified something that was wrong
20 with the crossing.

21 Q. Okay. So you -- and that would have been
22 really a correction; correct?

23 A. Correct.

24 Q. Okay. Now, at the bottom of that page 4-6,
25 it says that "The steps necessary to process and update

1 are shown in figures 4-2 and 4-3. The primary
2 responsibility for submitting the data changes to the FRA
3 lies with the state agencies. However, the railroad is
4 responsible for sending updates to the state. The
5 sequence is shown in figures 4-2 and 4-3." I'm going to
6 show you figures 4-2 and 4-3 on page 4-7. Sorry if that
7 sounds confusing.

8 MR. PICKETT: But I followed you.

9 MR. ASTILL: Good. Good.

10 Q. (BY MR. ASTILL) Step one, if it's the
11 railroad initiating the change, they submit it to the
12 state for review. And it's referring to green forms,
13 adding a green, a yellow, pink, and orange. So there's a
14 form that has multiple pages that is colored; correct?

15 A. No, sir.

16 Q. Okay. Has this been changed?

17 A. Yes, sir.

18 Q. All right. So it's -- the forms have been
19 changed, but is the process is the same?

20 A. What we do on the process on our end, like I
21 say, I don't usually see much from the states. But the
22 -- and I worked in multiple states, probably five
23 different states in my career. But typically what we do
24 is we fill out the form and we send the state a copy and
25 the FRA a copy. And some states will initiate the change

1 with the FRA along with our hard copy.

2 What we do is we print out the FRA form off
3 our database, which has been approved by them, and then
4 we circle in yellow what the changes are so they don't
5 have to go through the whole form and try to figure out
6 that we added a stop sign. So we -- if it's closed, we
7 circle the "closed" at the top or whatever we're making a
8 change. So we circle that for them and then send it off
9 to the FRA.

10 Now they're trying to get some stuff even
11 more stream-lined than that and -- to be able to do stuff
12 electronically, but we're really not quite there yet.

13 Q. Okay. And I think those instructions talk
14 about some of the electronic filing possibly.

15 A. But we do send copies to Eric or whoever the
16 state agency is.

17 Q. So although this chart says you're supposed
18 to submit it to the state and then they submit to the
19 FRA, the fact is you're submitting some of that directly?

20 A. To the FRA?

21 Q. To the FRA.

22 A. Yeah, at the same time we submit it to the
23 state.

24 Q. Okay. And likewise in 4-3, it talks about
25 the same process where if the state initiated it, it has

1 to go to the railroad and then back to the state and then
2 to the FRA. So the state is the agency that submits the
3 forms?

4 A. Yes.

5 Q. And you're not following that process?

6 A. Well, I don't know that -- we're more aware
7 of what's going on at crossings than the state. In the
8 past, a lot of the states have been trying to get a
9 little more proactive that way. But that's why we send
10 it to the state. If there's any -- any discrepancies,
11 then the state can also weigh in and send it to the FRA.

12 Q. Okay.

13 A. Just trying to update a little faster.

14 Q. Referring you to page 4 -- or -- yeah, page
15 4-9, middle paragraph, there's some highlighting. It
16 says, "If the crossing is public, the form must be
17 completely filled out." And then if the crossing is
18 private, there's a difference. So is that your process
19 when you submit a change, if it's a public crossing you
20 have a different process you file -- or that you --

21 A. With the FRA? Where are you reading this
22 from?

23 Q. I'm sorry, right here. So it starts here,
24 "If the crossing is public." So there's a different
25 style of how those forms are submitted if it's public

1 versus private; correct? At least, that's what the
2 instructions say.

3 A. Just like the grade separ -- it's also
4 talking about grade separation where there is not near
5 the characteristics associated with the crossing as a
6 public crossing. Public crossing has advanced warning
7 signs that you fill out, has all the other information
8 for asking about the striping or asking about the
9 approach on the roadway. They don't ask you those
10 questions on a private crossing.

11 Q. Okay.

12 A. They don't regulate private crossings like we
13 do the public crossings.

14 Q. Okay. So --

15 A. So it's a lot more information.

16 Q. -- that's why you have a different form?

17 A. A lot more information. Actually the form
18 today is the same, but it's just got less information on
19 it.

20 Q. Okay. All right. Mr. Marshall, in the
21 course of, you know, preparation for this matter -- or in
22 this matter, and in the course of looking at this issue,
23 have you had cause to look at the FRA database with
24 regard to this crossing?

25 A. Not in preparation for this.

1 Q. Okay. But have you looked at the FRA
2 database?

3 A. I pretty much go off of our database which is
4 a -- the only time I really go into the FRA database is
5 when we're making changes or looking for accident history
6 and stuff. We go pretty much off our database which
7 should be a copy of theirs.

8 Q. Should be?

9 A. Yeah. Depending if they've made their
10 updates like we've sent them.

11 Q. Okay. I'm going to refer you to our
12 Exhibit 7. And they're a little -- as I'm looking at
13 them, they're just a little out of order. About four
14 pages back, there's a document headed U.S. DOT crossing
15 inventory information as of -- it says as of 1/29/2009.
16 I suspect that's when it was pulled off of their computer
17 database. But it refers to a filing that was an
18 effective date of 1/1/70 and an end date of the record
19 12/1/88.

20 Now, that probably has some meaning to you,
21 doesn't it? That the original filing record would have
22 been effective in 1970 and then the next change would
23 have been in 1988?

24 A. I'm assuming. I don't really pay that much
25 attention to those dates.

1 Q. Okay. What you will see as you look down
2 through there, it will give you -- let me see if I can --
3 now I'm lost down here. It identifies it as public or
4 private...

5 (Court reporter interrupted.)

6 Q. (BY MR. ASTILL) I'm sorry. It identifies
7 whether it's public or private on this form. Oh, I'm
8 sorry, right at the top. So to the left -- on the
9 left-hand side in the -- at the top, there's an
10 identifying number, 254903N; correct?

11 A. That's the DOT number.

12 Q. Okay. That's the number that's been assigned
13 to this crossing forever and ever as long as it's open?

14 A. Whenever they started giving them DOT
15 numbers, yeah. I'm not sure if that was -- what year
16 that was.

17 Q. And the railroad is identified there as
18 Denver and Rio Grande Western?

19 A. Sure.

20 Q. And the initiating agency, it just says
21 original. So this would have been referring to the first
22 filing of -- by DRGW?

23 A. I -- I -- I don't know.

24 Q. Okay. And in the center kind of down about
25 three lines, it says, "Type and position," and it says,

1 "Public at-grade." Is that referring to the crossing
2 type?

3 A. That says the type of position. Yes, I would
4 say that they're referring to, approximate type.

5 Q. Okay. And there they refer to the city, it
6 says near Orem?

7 A. Yeah. Sometimes that's correct and sometimes
8 it's near Orem, near Lindon.

9 Q. And, you know, in 1970 Vineyard Town wouldn't
10 have been incorporated and so it would have been the
11 county --

12 A. Yeah.

13 Q. -- would have been the approximate --

14 A. Yeah.

15 Q. -- location?

16 A. Fairly close.

17 Q. Okay. And refers to a railroad milepost
18 708.19 and that's the approximate milepost of this
19 crossing?

20 A. Sure.

21 Q. Okay. I'm going to next refer to a similar
22 page, same heading at the top refers to the same crossing
23 number. Railroad is D&RG again. Only at the right-hand
24 -- top right-hand corner, it refers to the effective date
25 of this record of December 2, 1988, and the end date of

1 the record of 7/14/94. So if I understand the
2 instructions in the FRA, that would indicate this record
3 was effective beginning in December 2nd of 1988 and then
4 some change was made in July of '94; is that correct? As
5 you understand the system?

6 A. Yeah. I don't pay a lot of attention to
7 these forms as far as printing them out on those dates,
8 but that's --

9 Q. Okay.

10 A. You could be correct.

11 Q. And again, kind of about three lines down, it
12 says, "Type and" -- let's see -- "position." It says,
13 "Public at-grade."

14 A. Correct.

15 Q. Now, if that was a private crossing, it would
16 have said private --

17 A. No, sir.

18 Q. -- in that location?

19 A. No, sir.

20 Q. It would not?

21 A. Not necessarily. Like I testified earlier,
22 these aren't always accurate.

23 Q. But as far as the database is concerned?

24 A. Well, you've got the --

25 Q. The designation would have been public or

1 private right there; correct?

2 A. You've got the database information on your
3 form here as far as what the database shows. But what's
4 actually out there may not -- I mean, some of this other
5 information isn't a hundred percent correct either.

6 Q. What I'm asking you, though, is if somebody
7 filed -- you know, I'm going to defer to your accuracy
8 for a minute and say if somebody filed it and they were
9 designating a private crossing, it would say "private"
10 here where it says "public" right now?

11 A. It -- probably '88 or '94, they changed
12 something on the crossing. I'm not sure what they did.
13 It could have been as small as how many trains is going
14 through the crossing. And they may not even change --
15 they might not even know the difference between a public
16 and private crossing.

17 Q. You mean that's because the D&RG guys were
18 dumber or what?

19 A. They no longer exist.

20 Q. Okay. But that -- what -- I want you to look
21 at one other thing before we start calling them dumb.
22 The initiating agency in this case was the state.

23 A. Initiating.

24 Q. So we won't call anybody dumb.

25 A. I'm not sure what they changed. We'd have to

1 go through and see --

2 Q. But something --

3 A. They changed --

4 Q. -- got changed; right?

5 A. Yeah.

6 Q. Something changed.

7 (Court reporter interrupted.)

8 MR. ASTILL: Sorry about that. That was me.

9 Q. (BY MR. ASTILL) So something changed.

10 A. I'm assuming it changed, yeah. I'm not sure
11 what -- why they initiated something here.

12 Q. Okay. And again, the location says the city
13 is near Orem. The street or road name is 4000 (sic)
14 North again. So same identifiers as the last sheet;
15 correct?

16 A. Yes. So is Vineyard intact then?

17 Q. Not in 19 -- in '88 they were, but I'm not
18 sure anybody knew it but them.

19 A. Okay.

20 Q. I want to refer you to one other aspect of
21 this sheet. Under part 5, Highway Information, it refers
22 to the annual average daily traffic as being 3,726. Now,
23 is that referring to car traffic, daily car traffic?

24 A. Yeah.

25 Q. Okay. That's a lot of cars going across

1 there?

2 A. Yeah.

3 Q. Okay.

4 A. Yeah, that might have been -- we'd have to
5 look and compare to the other one; maybe that's what
6 changed.

7 Q. Well, and we can do that. Let's -- back to
8 the 1970 form, looking at the annual average daily
9 traffic that's -- again it's 3,725?

10 A. Same number, right?

11 Q. Same number. So there was a lot of cars
12 going over that crossing.

13 A. According to those counts.

14 Q. Okay. And you didn't file them, so you can't
15 tell me if they were accurate or not?

16 A. No.

17 Q. I'm going to refer you to the next -- another
18 page here. That -- this one has an effective beginning
19 date record of July 15th of 1994 with an end date of
20 March 31 of '98; is that correct?

21 A. Correct.

22 Q. And the -- in this case, the initiating
23 agency again was the railroad. So we started out with
24 1970 with the railroad, then we had a state form in 1994,
25 I think it was. And now we've -- or I'm sorry, 1988.

1 And now in 1994 we have the state filing again -- or the
2 railroad filing again.

3 A. We'd have to compare these and make sure that
4 we weren't doing mass updates for the FRA.

5 Q. This was Denver and Rio Grande Railroad.

6 A. Right.

7 Q. Okay.

8 A. But if you pulled it up off of there, you may
9 be able to pull it up off of four or five other crossings
10 consecutive on the line that show that we did a mass
11 update for the line whether for traffic or what. I have
12 a button on mine where I can do mass updates for traffic.
13 I can do them all at once so I can just circle them and
14 send them to the FRA so they can update the traffic
15 counts.

16 So you -- it may not have been appointed
17 either by the state or by us as a individual crossing
18 change. It might have been a whole subdivision.

19 Q. Okay. You make it sound like people were
20 pretty casual about this, Mr. Marshall. And that's
21 really not true, is it?

22 A. That they were casual?

23 Q. Yes.

24 A. They closed 56 crossings in seven -- in 19 --
25 when was it? 2006 because the records were (sic) very

1 accurate.

2 Q. Well, a lot of things have changed since
3 those crossings were created; correct? So there might
4 have been a lot of reasons to change crossings?

5 A. We -- we've tightened up our inventory a lot
6 over the last five, six years.

7 Q. So -- but that's -- I think you've testified
8 that's been your goal. You're given quotas to do that,
9 aren't you?

10 A. I'm given benchmarks, yeah.

11 Q. Yeah. And those benchmarks are pretty
12 important in your management activities, aren't they?

13 A. Absolutely, for safety.

14 Q. You get paid extra for closings?

15 A. No, I don't.

16 Q. Okay.

17 A. I wish I did.

18 Q. It's not tied to your bonus?

19 A. (Witness gesturing.)

20 JUDGE ARREDONDO: Mr. Astill?

21 MR. ASTILL: Yes?

22 JUDGE ARREDONDO: I'm going to have to ask
23 you to end.

24 MR. ASTILL: Well, it is time, isn't it?

25 JUDGE ARREDONDO: Yeah. So let's -- there's

1 a chance we might be finished by 3:30. So if you want to
2 come back around 3:30 -- more than likely it's probably
3 4:00. We'll come back on.

4 MR. CHURCH: Did you say 3:30?

5 JUDGE ARREDONDO: There's a chance I might be
6 done by 3:30. So if you want to come back after 3:30,
7 maybe we can start up there.

8 (A recess was taken from 2:01 p.m. to 3:38 p.m.)

9 (Deposition Exhibit Nos. 161 through 166
10 were marked for identification.)

11 JUDGE ARREDONDO: Ready.

12 Q. (BY MR. ASTILL) Mr. Marshall, I think when
13 we ended, we were looking at these crossing inventory
14 information sheets and I think I'm not sure we got to
15 this one yet. Again, this is still part of Exhibit 21;
16 the Anderson Entities, Exhibit 21. I'm looking at a
17 sheet here that bears a date -- begin date of record of
18 7/15 of '94 and ending record 3/31/98, crossing 254903N.
19 Shows the railroad as Denver Rio Grande Western Railroad
20 Company. The initiating agency is the railroad. And at
21 the top center it talks about the type and position.
22 This shows public at-grade. You're not necessarily
23 agreeing that it's a public at-grade, but what's that
24 this sheet shows; correct?

25 A. That's correct.

1 Q. And what I was trying to ask -- and I'm
2 probably fumbling around a little bit -- is if you were
3 entering -- if you were to report an entry or a crossing
4 with a private -- that was a private crossing, when it
5 shows up on the database report like this, in this same
6 place it would have been, instead of public at-grade, it
7 would show a private at-grade?

8 A. If the FRA made the change when we sent it to
9 them.

10 Q. Yeah. Okay. Well, whether it was an initial
11 one or a change one, if you designate it private, it's
12 going to show up in that same location as private
13 at-grade?

14 A. I designated this private two years ago and
15 it still hasn't showed up. So it could have been
16 designated several times as private and maybe FRA never
17 picked it up. We don't know for sure what's going on
18 there. I don't have any records.

19 Q. I did want to identify one thing that's
20 different on this report from the two that we looked at
21 previously where it says street or road name which says
22 400 North; correct?

23 A. Correct.

24 Q. And on the previous ones, it said 4000 North.
25 Let's see. Now looking at the second page of that,

1 again, the annual average daily traffic was 3,725;
2 correct?

3 A. That's what the paper shows, yeah.

4 Q. Okay. I'm going to show you one last form.
5 Again, it's the same crossing inventory information
6 sheet. Shows an effective begin date of record as
7 April 1, 1999; correct?

8 A. Correct.

9 Q. Shows the railroad as being Union Pacific.
10 Shows the initiating agency as being the state. All
11 that's correct?

12 A. Correct.

13 Q. References the type and position of crossing
14 as public at-grade?

15 A. Correct. Changes the street name.

16 Q. Yeah, the street name is now mentioned as
17 W Gate on W Geneva; correct?

18 A. Yeah.

19 Q. Assuming that's all reference to west.

20 A. Correct.

21 Q. With that exception -- well, I don't want --
22 we're not going to look at everything, but the annual
23 average daily traffic is again reported at 3,725?

24 A. Yeah, it doesn't appear that they're updating
25 that.

1 Q. Okay. Now, as of 1999, as far as you know,
2 the Geneva plant was still operating; correct?

3 A. Yes.

4 Q. Now, I notice that one said that Union
5 Pacific was the railroad at the time?

6 A. '99, yes, we would have been.

7 Q. And would you have been the person
8 responsible for FRA reports at Union Pacific in 1999?

9 A. After September 15th.

10 Q. After September 15th. So this was April 1st
11 of '99, so it would have been prior to your tenure in
12 that position?

13 A. That's correct.

14 Q. Okay. Now, wouldn't -- based on what you
15 mentioned earlier about the records that Union Pacific
16 has, wouldn't Union Pacific have a record of this filing,
17 it's own separate record?

18 A. Of the paper you've got there?

19 Q. Yes.

20 A. Only if it pulls it off of the FRA website as
21 you did.

22 Q. So you don't have your own internal database
23 of crossing inventory?

24 A. We do. We do have an internal database but
25 it doesn't -- doesn't necessarily reflect that the state

1 changed to it a name like that. I'm not sure why they
2 changed the name, but...

3 Q. But again, looking at the procedure in the
4 manual, it requires the state to submit documents to the
5 railroad and the railroad to submit documents to the
6 state before sending them on to the FRA; is that correct?

7 A. That's what the manual says, yeah. That's
8 what we do today.

9 Q. Okay. So presumably Union Pacific would have
10 received a copy of this submittal?

11 A. The only thing I can see on there, that they
12 changed the name to almost -- it's like more or less
13 stating it's a private crossing almost in a way there.
14 So I don't know that they would send -- I mean, the
15 characteristics of the crossing doesn't appear to change.
16 So they may not have sent us a notice on something where
17 they were just changing it to West Gate. They change it
18 from a public road name to West Gate, it doesn't sound to
19 me like it changed anything else that I can see that you
20 showed me. So maybe they wouldn't have sent it to us.

21 Q. Okay. So they would have bypassed the
22 procedure that's required under the FRA?

23 A. Well, there's no -- I think on the
24 procedures, maybe we can look back again, but it didn't
25 really change the characteristics.

1 Q. Well, we don't know. We don't --

2 A. From what I can see on your form, you didn't
3 show me where it changed any characteristics. So maybe
4 -- maybe there was no need for them to send it because
5 there was no characteristics changed.

6 Q. Well, I think the procedure that we looked at
7 requires submittal regardless of what type of change.

8 A. Oh, I thought it listed several different
9 changes.

10 Q. Whether it was administrative or site
11 characteristics or anything, procedure requires submittal
12 to the railroad and likewise.

13 A. Oh, I'd have to review that again. Sorry
14 about that.

15 Q. Okay. Let's see. Now, you've -- you've
16 mentioned several times that the FRA previously was
17 inaccurate. I think you also testified that it's getting
18 better. In your best judgment, is it 50 percent accurate
19 or was it?

20 A. When I took over the job, it was probably
21 50 percent accurate. I mean, there was a lot of
22 crossings that were actually not in existence anymore
23 that still showed up on the FRA database.

24 Q. But where you see a record where at least
25 four different times the crossing record has been

1 updated, wouldn't you expect that to be more updated than
2 some that maybe have never been updated?

3 A. Well, again, you haven't showed me in those
4 four, except for one name change, that really nothing
5 else changed. So I'm not sure if they didn't do a broad
6 thing for the whole subdivision, changing either the
7 name, the amount of trains or whatever they did. I'm not
8 sure what initiated that -- those changes. So it may not
9 be specific to that crossing is what I'm trying to say.
10 It may have been a broad change. And so you're saying --

11 Q. Four different times?

12 A. Could have been.

13 Q. And where they changed the name of the road
14 in at least two of them?

15 A. In at least two of them?

16 Q. Uh-hmm.

17 A. But they haven't changed the city.

18 Q. No. No.

19 A. So some of this is still inaccurate.

20 Q. It always says near Orem.

21 A. So if you want to go for 100 percent
22 inaccurate, probably 90 percent of my crossings are 100
23 percent inaccurate as far as the FRA database goes
24 because they still haven't caught up on some of the stuff
25 I sent them three or four years ago.

1 Q. Yeah. You'd have to agree, wouldn't you,
2 that the type of crossing, whether it's public or
3 private, is one of a really critical issue; correct?

4 A. In some people's eyes, it is. I mean, some
5 people don't -- all they're worried about is the warning
6 devices or the type of surfaces --

7 Q. You mean the FRA doesn't care?

8 A. The FRA doesn't think -- I think the FRA
9 cares, yeah.

10 Q. Don't you care?

11 A. I do.

12 Q. And doesn't the state care?

13 A. I believe the state does care.

14 Q. And I think you referenced the fact that
15 others look at that database and use it to make
16 decisions, don't they?

17 A. Such as?

18 Q. Well, for example, the map that we were
19 looking at earlier that CRS generated. You know, are you
20 aware that they got that information off the FRA
21 database?

22 A. I'm very aware of that, yeah.

23 Q. Okay. So you know engineers typically --
24 regularly use that?

25 A. Yeah, I would say some engineers use that

1 information. Most of them call me up and rely on me to
2 give them what the information is.

3 Q. Yeah, which again, that's a good source too.
4 I'd even agree with that. Okay. In all of your years
5 with the railroad, working in this area of the system,
6 did Union Pacific ever try to instruct or restrict the
7 use of the crossing?

8 A. Of this crossing?

9 Q. Uh-hmm. In other words, did you ever stop
10 the public from traveling on that crossing, anybody from
11 traveling on that crossing?

12 A. I don't believe so.

13 Q. Are you aware that there was a 1939 agreement
14 between D&RGW and the State Road Commission as to
15 signalization of that crossing?

16 A. 1939?

17 Q. Yes.

18 A. I'm not aware of that.

19 Q. Okay. And so you also wouldn't be aware of
20 whether that changed or didn't change as a result of the
21 building of the steel plant?

22 A. No, sir.

23 Q. I think you testified that there were some
24 kind of a surveillance review done to examine that
25 crossing. This is prior for August 6th, 2009. I wasn't

1 clear when that occurred. I think it was the time that
2 you had submitted a document to Eric Cheng at UDOT and
3 you all met on site to review the crossing.

4 A. Okay. So this is in between when Eric first
5 said it was private, and then after, then he asked for
6 additional information.

7 Q. Yes.

8 A. Parties had additional information.

9 Q. Yes.

10 A. Yeah, we had surveillance shortly after that.

11 Q. Do you know who -- again, you testified that
12 you were there and somebody from UTA was there and you
13 said you thought somebody from Vineyard was there but you
14 don't know. You don't remember that for sure?

15 A. No. Those people -- you know, I know a lot
16 of UTA people, so they stick in my mind. But I'm not
17 that familiar with the county or the City of Vineyard.

18 Q. So if I represented to you that the town
19 engineer wasn't there and there were no city officials
20 there, you wouldn't necessarily disagree with that, would
21 you?

22 A. No. I thought they were there but I could be
23 wrong.

24 Q. Okay. And I think you testified that nobody
25 from the Anderson Geneva was there?

1 A. I know you guys, too. So I don't believe
2 that you guys were there.

3 Q. Okay. You spoke some in reference to that
4 particular document you used of that surveillance about
5 definitions of public crossing. And I wanted to refer
6 you to the -- again, this instructions and procedure
7 manual. I'm showing you two pages, one from -- let's see
8 it's page 1-5. If I remember correctly, it is Section
9 1.5 (A)(1) or maybe it's before (1). Yeah, it's under
10 capital A. So if I could -- if you could read those two
11 paragraphs where it defines public crossing?

12 A. "Public crossing is location" -- excuse me.
13 "A public crossing is the location where railroad tracks
14 intersect a roadway which is part of the general system
15 of public streets and highways, and is under the
16 jurisdiction of and maintained by a public authority and
17 open to general traveling public. Public crossings can
18 be at-grade or grade-separated. If they are at-grade,
19 usually both highway approaches are maintained by a
20 public authority, or the public authority accepts the
21 responsibility for the roadway maintenance. Highway is a
22 word used here to include highway, streets, roads into a
23 single word."

24 Q. Okay. So I know in your prior testimony you
25 made a point that there has to be both approaches that

1 are public in order to be a public crossing. As I -- if
2 I can reread that, "If they are at-grade, usually both
3 highway approaches" -- so it says "usually both highway
4 approaches are maintained by a public authority or public
5 authority accepts the responsibility for the roadway"; is
6 that correct?

7 A. That's what the instructions say.

8 Q. All right. If I could, moving to the next
9 page, at the top of that page 1-6. Now, in this one I'm
10 referring to 1.5 (A)(1). And I'm about two-thirds of the
11 way down through the first paragraph on the page 1-6. If
12 you could read those highlighted portions for me.

13 MR. PICKETT: I'm sorry, tell me one more
14 time where you were.

15 MR. ASTILL: I'm on page 1-6 towards the top
16 of the page about midway down through the paragraph,
17 starting with the sentence "Some jurisdictions."

18 THE WITNESS: "Some jurisdictions accept a
19 crossing as public when only one approach is publically
20 maintained. If a public authority accepts a crossing as
21 public, it is a public crossing. All others are
22 considered private."

23 Q. (BY MR. ASTILL) So with that knowledge,
24 Mr. Marshall, I think you've testified that you've got a
25 lot of experience going out on your own and trying to

1 decide what's public and what's not, making decisions.
2 If you knew that Vineyard accepted the east approach --
3 I'm sorry, the west approach as a public crossing and
4 accepted the responsibility for maintenance of that
5 public crossing, you'd have to conclude from this
6 definition that it's a public crossing, wouldn't you?

7 A. If I had an agreement that showed that there
8 was -- I mean, there would be a lot of different aspects
9 to that. I mean, I think that that is a generalization
10 that, you know, you read one section out of the -- out of
11 the guidelines there that -- that maybe not comes to the
12 same conclusion if you included everything else.

13 Q. Well, but if it says very clearly, even if
14 it's just one leg, "If a public jurisdiction accepts it,
15 then it is a public crossing." Didn't it say that?

16 A. Yeah. Again, you know, getting into
17 guidelines, but yeah.

18 Q. And I agree. Those are guidelines, aren't
19 they? And, in fact, these aren't definitive law, are
20 they? They're really just guidelines for engineers and
21 folks to be looking at to try to decide what kind of
22 crossing signalization to do. Isn't that what they're
23 really looking for?

24 A. Yeah. Yeah, I agree.

25 Q. All right. In some of the cross-examination

1 by Mr. Church, it is unclear to me what kind of financial
2 benefit it would be to Union Pacific if this crossing
3 were determined to be private and/or closed. Now, I
4 think you've testified earlier that the signals were
5 maintained by Union Pacific; correct?

6 A. Yes.

7 Q. And so one of the financial benefits to Union
8 Pacific would be that you no longer have to maintain
9 signals on the crossing; correct?

10 A. Yeah, somewhat. I mean, we have people in
11 the area that maintain all the way through there. It's
12 not a substantial amount.

13 Q. Okay. But that's one cost --

14 A. Sure.

15 Q. -- you don't incur anymore. In the course of
16 the UTA Commuter South Project, is Union Pacific
17 participating in any of the crossing reconstruction
18 costs?

19 A. No.

20 Q. Okay. That's all being born by Utah Transit
21 Authority and/or the municipalities?

22 A. Correct.

23 Q. As you're aware, I'm assuming you're aware of
24 the costs and some of the changes that are being made as
25 a result of the -- I think you've testified that you're

1 -- there's a lot of changes to the crossings all the way
2 from Salt Lake to Provo; correct?

3 A. I work with UTA and all the agreements and
4 seen all the estimates.

5 Q. Okay. So you know it costs a lot of money to
6 make these crossing changes, doesn't it?

7 A. It can.

8 Q. So presumably it would cost a lot for UTA to
9 make this crossing -- to make safety changes to this
10 crossing if this were recognized as a public crossing and
11 remained opened?

12 A. It depends on your definition of a lot. I'm
13 not...

14 Q. Well --

15 A. In my business...

16 Q. Yeah. Okay. Not railroad a lot, but Jim
17 Marshall a lot.

18 A. Yeah. They're all a lot to me.

19 Q. Okay. That's what I'm getting at. I mean,
20 we're talking -- are we talking millions of dollars?

21 A. I would say less than millions.

22 Q. If they had to acquire some additional right
23 of way, that could change; is that right?

24 A. Additional right of way?

25 Q. Yes. To make the crossing safe. In other

1 words, if they have to modify the configuration of the
2 road, they would have to buy some right of way from
3 somebody?

4 A. If you had to buy right of way, sure. That
5 would increase your cost. I'm not sure in this instance
6 what we're talking about, but yeah.

7 Q. Okay. Is it a half million minimum?

8 A. You know, you can ask Eric the cost. The
9 complexity with the UTA and U.P. is that you've got two
10 different systems. So you're duplicating a lot of stuff
11 you would have on a single system. So I'm not sure what
12 UTA's costs are, but for us to do it on our side it's
13 probably similar to doing it every other crossing. But
14 then you have to have UTA add theirs, which they can do
15 without Union people. So theirs is typically cheaper
16 than ours, and then both those interact.

17 But what can drive up your cost is the
18 configuration of the crossing; and depending on your
19 roadway design, if you've got meeting gates and if you
20 end up with quad gates to be able to protect -- if UDOT
21 orders quad gates or something like that, then that
22 drives up the cost even higher. But my costs are
23 probably less than what you've stated. But then you've
24 got UTA's cost on top of that.

25 Q. Okay. So for both, would half million be a

1 fair estimate?

2 A. You know, without doing the design, honestly
3 I've got some that run 200,000. I've got some that run
4 700,000. It just depends on what's in those approaches.
5 If Geneva Road is out of the way by the time you did
6 yours, that probably is a less issue that I had to deal
7 with. If they're still there and they have to talk to
8 that crossing, if you head the other direction, you have
9 a control point that goes from one track to two tracks,
10 this crossing has to decide which train is on which
11 track. So all that stuff comes into account. So for me
12 just to throw out a number without doing design is really
13 tough.

14 Q. Okay. I accept that. In your testimony you
15 mentioned that you had two mainlines at the crossing.
16 Well, it's true you have two lines there, they're not
17 both mainlines, are they? Isn't one just a side that you
18 put cars off the side for a while?

19 A. No. They're both considered mainlines in
20 that area. There's a stretch of track that's three or
21 four miles long and they're actually classified as
22 mainlines.

23 Q. Okay. But doesn't the one originate just a
24 few hundred feet to the north?

25 A. It does.

1 Q. Of this crossing?

2 A. It does and it goes all the way -- actually,
3 it's a double mainline all the way above to Helper.
4 Almost to Price.

5 Q. All right. Now, when you have a situation
6 where -- in a city where you have several public
7 crossings close together, is that a situation where you
8 can sometimes go in and close some of those crossings?

9 A. It's -- it's something I always look at now.
10 Closing a public crossing is always -- nobody likes to
11 give up access even if it's only a block away.

12 Q. But you look at it, and then are you aware of
13 circumstances and say anywhere along this commuter rail
14 south line where that's occurring?

15 A. Lehi, we're closing a few crossings but it's
16 not necessarily because of the proximity. I think it's
17 just that they were redundant when they did the crossing
18 diagnostics so it was recommended that they close.

19 Q. And when you do those diagnostics, is there a
20 standard for a closing of redundant crossings like you're
21 talking about? In other words, there's got to be another
22 crossing within some many miles or just feet?

23 A. Yeah. There's some -- there's some
24 guidelines out there, I think, but basically it's the
25 engineering study. You know, you take in information or

1 traffic pattern and the usage of the crossing and, you
2 know, the community.

3 Q. Okay. You know what those standards are? In
4 other words, if there wasn't a crossing for another mile,
5 would you be successful in closing that crossing?

6 A. It all depends on how that crossing is
7 situated. I mean, if there's only one house out there in
8 that mile, if the direction which he travels 90 percent
9 of the time to get to the town, then -- you know, I've
10 closed them out in the middle of no where. But there's
11 only one homeowner and we've been able to successfully --

12 Q. But in a populated area, you wouldn't succeed
13 in that, would you?

14 A. It all depends. I mean, it's all on
15 situation. I mean, you know, the odds change on every
16 situation. They're all unique.

17 Q. I think you testified that Union Pacific
18 didn't own the line until 1999.

19 A. No, that's not correct. I testified that I
20 came on board in 1999.

21 Q. You came on in '99. I thought you testified
22 that Union Pacific acquired the D&RGW in 1999.

23 A. I believe it's '96.

24 Q. Okay.

25 A. But I -- I think is when we did the merger.

1 Q. Now, even though you didn't do the merger in
2 1996, didn't you, in fact, operate along those lines?

3 A. We did.

4 Q. But even with your operating, you didn't file
5 reports, you weren't responsible to do the FRA database
6 for that line? You left that to D&RG?

7 A. Typically, it's the owner of the railroad
8 that does all the changes.

9 Q. So you had some agreement with D&RGW to
10 operate on those lines?

11 A. Yeah, I'm not aware of exactly what the
12 agreement says, but we did have some kind of rights on
13 it.

14 JUDGE ARREDONDO: Mr. Astill, can we take a
15 quick five-minute break so we can change the court
16 reporter?

17 MR. ASTILL: Okay. Actually, I'm finished
18 with my cross.

19 JUDGE ARREDONDO: Are you? All right.
20 Great.

21 MR. ASTILL: Good timing.

22 JUDGE ARREDONDO: Thank you.

23 (Whereupon, this court reporter concluded at 4:05 p.m.
24 and another court reporter started.)

25 * * * * *

1 JUDGE ARREDONDO: Okay. Let's go back
2 on the record. Ms. Spooner, again you said you
3 didn't have any cross.

4 MS. SPOONER: No. No, I don't, your
5 Honor.

6 JUDGE ARREDONDO: Okay. Any redirect?

7 MR. PICKETT: Yes. Thank you.

8 REDIRECT EXAMINATION

9 QUESTIONS BY MR. PICKETT:

10 Q If I could show you the Anderson
11 Entities Exhibit 7, again this is the printout of the
12 crossing inventory information, and what I would like
13 you to do is assume that the Town of Vineyard was
14 incorporated in 1989. Does that make sense?

15 A Okay.

16 Q And look at the entry for the -- in the
17 inventory crossing information with the effective
18 begin date of record of July 15, 1994, and the end
19 date of record March 31st, 1998. Do you see that?

20 A Yes, sir.

21 Q Now, on that entry, what does it state
22 is the city where the crossing is located?

23 A Near Orem.

24 Q Excuse me.

25 And so if the information about the City

1 being incorporated in 1989 is correct, this was five
2 years later that this entry was made?

3 A Correct.

4 Q And it still showed it not as in
5 Vineyard but near Orem?

6 A Correct.

7 Q Then look, if you would, also on the
8 entry that shows an effective begin date of record of
9 April 1st, 1998, and an end date of record of -- is
10 that the one I just did? No, it's not. Thank you --
11 the end date of record of March 31st, 1999. Sorry.
12 Do you see that?

13 A I do.

14 Q And what is the name of the city shown
15 on the database?

16 A Near Orem.

17 Q And on both of those, does that list
18 that the Railroad was the initiating agency?

19 A Yes, it does.

20 Q Then look, if you would, at the one with
21 the effective begin date of record of April 1st,
22 1999, and the end date of record is blank.

23 A Okay.

24 Q And what is the city shown on it at that
25 point?

1 A Near Orem.

2 Q And who was the initiating agency?

3 A State.

4 Q So if the Town of Vineyard was
5 incorporated in 1989, does this show that ten years
6 later, after a -- after three additional updates, the
7 database still showed the city as near Orem and not
8 in Vineyard?

9 A Correct.

10 Q Thank you.

11 Is that a possible example of how, when
12 some information in the database is updated, not all
13 of it is?

14 A That's correct.

15 Q Is it also possible that that
16 information was updated, but, for some reason, it
17 just didn't make it into the database?

18 A It could have been.

19 Q And have you ever found any instances
20 where there is a -- an entry in the database for a
21 crossing that you have discovered no longer exists in
22 the field?

23 A Yes. That's quite common.

24 Q So that, for some reason, even though a
25 grade crossing has disappeared on the ground, the

1 database still reflects that it exists?

2 A That's correct.

3 Q And is deleting those crossings when you
4 discover them in the database one of the -- one of
5 the corrections that you sometimes do?

6 A I do.

7 Q If I could show you the Commissioner's
8 minutes from the 1970 Utah County Commission
9 record -- I thought I brought that one -- that's it.
10 This is Union Pacific Exhibit page no. 158.

11 Could you just to yourself, without
12 reading it aloud, review that last paragraph again in
13 the entry regarding the crossing we are talking
14 about? And then I'll ask you a question.

15 A (Reading document.)

16 Okay.

17 Q Reading that, do you see any information
18 that suggests to you that the County took any formal
19 action or made a formal decision on anything in
20 relation to this conversation that was held in 1970?

21 A No, sir.

22 Q Does it appear that they were going to
23 engage in further investigation or conversations
24 about the idea of realigning the crossing?

25 A They said they planned on contacting the

1 Railroad.

2 Q Okay. Do you have or are you aware of
3 any additional information about which entity did
4 what in relation to the subsequent realignment of
5 that crossing?

6 A No, sir.

7 Q So you don't know if the County, for
8 example, contributed any goods, services, or money to
9 the relocation?

10 A No, sir.

11 Q You also don't have any information on
12 that same subject about whether the Railroad or
13 Geneva Steel made any contribution?

14 A No, sir.

15 Q Thank you.

16 Through all of your experience looking
17 at the many crossings on the Railroad, have you ever
18 encountered one that is exactly identical to any
19 other?

20 A Not exactly, no.

21 Q And so is it fair to say that each
22 crossing requires an individual analysis as to
23 whether it's public or private based on the facts of
24 that crossing?

25 A That's correct.

1 Q You were asked some questions about who
2 would pay for improvements in the event of a grade
3 separation construction at a -- at an existing
4 crossing like this one or a grade separation that
5 would replace an existing crossing.

6 What is the Railroad's or what do the
7 statutes -- federal statutes say about the Railroad's
8 contribution in the event that a -- that federal
9 money is used to build a grade separation that
10 eliminates a public grade crossing with active
11 warning devices?

12 A I'm glad you brought that up because I
13 wasn't as clear as I should have been. But if
14 federal money is used in a grade separation project,
15 then by federal law we have to contribute five
16 percent if that at-grade public crossing with active
17 warning devices is eliminated as part of that
18 project.

19 Q Is that five percent something that is
20 mandatory, or does the law allow for negotiation on
21 that?

22 A There is some room for negotiation on
23 the five percent if federal money is being used.

24 Q What if the same project is being done
25 but it is State money -- Utah State money being used

1 to build the grade separation, is there a law that
2 requires a Railroad contribution?

3 A No, there's not.

4 Q What if the money being used for that
5 project is entirely private money from a developer,
6 for example, is there a mandatory Railroad
7 contribution?

8 A No, there is not.

9 Q And so just because a grade separation
10 is being built, no matter what the funding source is,
11 the Railroad is not necessarily being required to
12 contribute money to that project?

13 A Could you clarify that a little bit?

14 Q Sure.

15 Whether the funding comes from the --
16 for the grade separation, whether it comes from the
17 federal government, the state government, or from
18 private funds, the Railroad does not necessarily have
19 to contribute money to that construction project?

20 A If it's state or private money, that's
21 somewhat true. If it's federal money, we have the --
22 the state has the right to negotiate and try -- you
23 know, there might be something else they want instead
24 of cash, like maybe right-of-way, so there's some
25 room. But it does -- they have to write an

1 explanation typically to the federal saying why
2 they're not getting cash contributions.

3 We've been doing that probably on three
4 or four projects in the valley here in the last year
5 or two where they wanted right-of-way instead of the
6 five percent or something. So it wasn't actually a
7 cash contribution, but those are all federal
8 projects.

9 Q Okay. And so in the event of a federal
10 project, it may end up that the Railroad is paying
11 five percent cash or it could be that there is some
12 other negotiation reached?

13 A Correct.

14 Q And that could be a combination of cash
15 or some other arrangement, including the possibility
16 of no contribution at all, depending on the outcome
17 of the negotiations?

18 A Correct.

19 Can I give you a quick example just to
20 clarify that a little bit?

21 Q Sure.

22 A 114th South is a good example. We
23 agreed to lower our tracks to make the grade
24 separation feasible and less expensive. And in order
25 to do that, they waived the five percent completely.

1 Q So there was some burden for the
2 Railroad?

3 A Sure.

4 Q But it didn't require payment of the
5 cash?

6 A Correct.

7 Q Thank you.

8 So we know that this crossing was
9 reconfigured sometime, apparently, after 1970 when
10 the County had this conversation with Geneva. Do you
11 have any information about whether the changes that
12 were made at that time converted it either from a
13 public crossing to a private crossing or from a
14 private crossing to a public crossing just because of
15 the realignment?

16 A In 1970?

17 Q Or whenever those changes were made
18 around that time.

19 A Oh.

20 Well, all indications to me is it's been
21 a private crossing since 1942, but I wouldn't think
22 that would make any changes to the characteristics of
23 it being private or public. It's still going to
24 private property.

25 Q Okay. We asked you earlier about who

1 paid for the lights and gates that were recently
2 removed from the -- from this crossing, so I don't
3 need to ask you that again. But I don't think anyone
4 has asked, do you know when the lights and gates that
5 were most recently at that crossing were installed?

6 A I can't find any information on that.

7 Q And so we don't know if they were
8 installed in relation -- or, rather, let me withdraw
9 that.

10 We don't know if there were similar
11 lights and gates at that crossing at the time of the
12 reconfiguration or not?

13 A That's -- that's correct.

14 We also don't know that between 1970, or
15 whenever they did install them, if -- you know, if it
16 was before that or after that. You know, we
17 periodically change our equipment out because of the
18 age or the -- so we may have, you know, replaced with
19 similar, just newer technology, circuits and stuff.
20 So we may have paid for it as far as our maintenance
21 goes, you know.

22 Q Let me -- let me take that one step
23 farther with you. Somebody pays for that equipment
24 when it's installed at a crossing. They don't appear
25 for free, right, the lights and the gates?

1 A That's -- yes, somebody.

2 Q If public money is used to purchase
3 those lights and gates, when those warning devices
4 are retired, as these recently were, does the public
5 entity with jurisdiction sometimes take possession of
6 those?

7 A Occasionally. I mean, most of the times
8 when we -- when we upgrade a crossing, it's -- we're
9 upgrading it and the old stuff is obsolete. But
10 there's occasion when UDOT's retained. Especially on
11 a UTA project, there's probably seven, eight
12 crossings that we've upgraded in the last ten years
13 on the line down there, and UDOT's got the authority
14 to salvage that material if they want. So we've been
15 able to salvage some of the newer technology stuff
16 and use it on other crossings in the State.

17 Q And have all of those examples that you
18 are talking about where UDOT has -- I'm sorry. I
19 don't want to mischaracterize it.

20 Has UDOT salvaged any of those grade
21 crossing warning devices that you just described?

22 A Yes.

23 Q And in each of those cases were those
24 devices at public grade crossings?

25 A Yes.

1 Q And in this case has UDOT asked for the
2 -- to take possession of the active warning devices
3 that were removed from this 400 North crossing?

4 A No.

5 Q And do you have any information to show
6 that public money was used to purchase those?

7 A No.

8 Q Just to clarify, I think we just need a
9 little bit more description on the record about the
10 advance warning signs that were discussed earlier.
11 You described what the legend looks like on one, but
12 could you tell us what color are those signs
13 normally?

14 A They are yellow.

15 Q I'm just trying to get a visual for
16 anyone who might not be clear reading the record what
17 we are talking about.

18 What shape do they come in?

19 A Either round or triangle.

20 Q And what would be the difference in the
21 application between those two shapes?

22 A Not triangle. Kind of a diamond.

23 Sorry.

24 Q Okay. A square turned --

25 A Yeah.

1 Q -- on its -- on its end?

2 A I believe so.

3 Q And so why are some circular and some
4 are that diamond shape?

5 A And Eric probably knows this better than
6 I do, since he is the State agency regulating them.

7 But the rounds ones are the ones for an
8 approach if you are going straight on, on a long
9 roadway, coming into a crossing.

10 If you have got a T intersection, like
11 we do on -- so on one side of Geneva, if you had a
12 public road on the east side and it was just one
13 roadway coming in and not branching out, then you'd
14 have the round sign with the crossing -- the railroad
15 sign showing you that there is a railroad -- it's a
16 warning sign, advance warning sign, showing you that
17 there's a railroad crossing coming up. And it's
18 regulated in MUTCD, depending on how far, depending
19 on speed of traffic and that where those are placed.

20 And on the other side, where you've got
21 a T intersection, they use another sign that shows a
22 parallel road and then it shows a T road and then a
23 track going across it so you can see that you're
24 coming up on an intersection and, if you turn right,
25 you are going to turn into a railroad crossing. And

1 so that's what -- that's what the sign would be on
2 the Vineyard side.

3 Q And so whichever shape it comes in, the
4 purpose of that sign is to give a driver early
5 warning that he is -- he or she is coming up on a
6 grade crossing?

7 A Yes.

8 Q Does the shape of the sign have anything
9 to do whether it's a public or private crossing?

10 A Well, you don't have advance warning
11 signs on private crossings.

12 Q Why not?

13 A Because, well, they are typically
14 controlled by state agencies and public agencies who
15 have access to that kind of stuff. To make every
16 farmer and every industry put one up inside of their
17 facility -- I mean, you went into a big parking lot
18 on Geneva's site, what they've showed me, I mean, put
19 up signs and have them be responsible for replacing
20 signs, I mean, I think that would be next to
21 impossible to try to regulate that.

22 Q And let me ask this -- and we'll use
23 this crossing as an example -- on the west side of
24 the right-of-way, we've got a public road, the 400
25 North road that runs for some distance; is that

1 right?

2 A Correct.

3 Q On the east side is the private property
4 acquired by Defense --

5 What was it called? Defense Products?

6 MS. KAMAS: Defense Plant Corporation.

7 MR. PICKETT: Thank you.

8 Q (BY MR. PICKETT) -- Defense Plant
9 Corporation in 1942.

10 If that -- does the private property
11 owner, using Geneva as an example in this case,
12 that's on the east side of the crossing have the
13 authority normally to go down the public right-of-way
14 some distance to install and maintain an advance
15 warning sign?

16 A I would not think so.

17 Q That would normally be the road
18 authority?

19 A Absolutely.

20 Q And so whether there is an advance
21 warning sign or not, is that any indication, a clue,
22 as to whether a crossing is private or public, in
23 your mind?

24 A Well, if I come upon it, I mean, that's
25 one of the indicators, out of many, that when you

1 come to a crossing, there's no -- nobody's been
2 maintaining that site, because their signs or
3 striping, nothing's in place. That's one of the
4 indications that there's been no maintenance. And so
5 that's one of the things we use to determine, along
6 with many of the other things we went over today.

7 Q And during the time that you have been
8 involved in that area, have you ever observed active
9 warning device -- excuse me -- observed advance
10 warning signs on either the north/south Vineyard Road
11 or the east/west 400 North approach to this crossing?

12 A No, sir.

13 Q Do you have any information about
14 whether there have ever been advance warning signs on
15 those two roads for this crossing?

16 A I can't see any outdated painting on the
17 asphalt or anything that would lead us to believe
18 there's been any. But for to say a hundred percent
19 sure, I'm not.

20 Q Mr. Astill asked you some questions
21 about an entry in the Crossing Inventory -- Crossing
22 Inventory Instructions and Procedures Manual. I'd
23 like to draw your attention back to that same
24 section. That's page 1-6, page 20 of Union Pacific's
25 exhibits.

1 At the top, where there's a paragraph
2 that continues from the previous page, do you recall
3 his questions about this section where you began
4 reading "Some jurisdictions accept the crossing as
5 public"?

6 A Sure.

7 Q Okay. Could you read that same portion
8 of that paragraph again?

9 A I will try.

10 "Some jurisdictions accept a crossing as
11 public when only one approach is publicly maintained.
12 If a public authority accepts a crossing as public,
13 it is a public crossing. All others are considered
14 private."

15 Q Could you please continue and read the
16 next three bullet points with the introductory
17 sentence?

18 A "Therefore, public crossings are those
19 on roadways which meet the following three
20 conditions. The roadway is part of the general
21 system of public streets and highways, and under the
22 jurisdiction of the maintain" -- "under the
23 jurisdiction of and maintained by a public authority,
24 and open to the general traveling public."

25 Q Thank you.

1 With those three criteria in mind, does
2 it appear that this crossing meets any of those
3 requirements?

4 A It doesn't meet any of them.

5 Q Are you aware of any action ever taken
6 by the Town of Vineyard that would have formally
7 accepted this as a public crossing under their
8 jurisdiction and responsibility?

9 A No. No, sir.

10 Q There's this FRA database that has an
11 entry stating whether a crossing is public or
12 private, and we've been over the instructions in some
13 measure regarding how that question is determined.

14 Are you aware of any situation where a
15 crossing is considered public in one context
16 officially and private in a different context
17 officially?

18 A No, sir.

19 Q It's one or the other for all purposes?

20 A Sure.

21 Q You were asked some questions about
22 costs of our maintenance or, rather, of Union
23 Pacific's maintenance activities in relation to
24 crossings. Is -- are you able to give any kind of
25 estimate what it would cost in a typical year for the

1 Railroad to maintain a crossing with features like
2 this, speaking of the 400 North crossing?

3 A If -- if we were to give an estimate
4 to like a private crossing on it, which I have done a
5 few of them where we have been paid through the
6 maintenance, it's typically -- I don't know -- 2- or
7 \$3,000 a year is what we charge for on a private
8 crossing or on lights and gates to maintain.

9 Q And in your understanding of the
10 Railroad's state of mind, as a representative who is
11 out in the field dealing with grade crossings and
12 issues of closures or changes, is the Railroad's
13 interest primarily -- in eliminating crossings,
14 primarily that that annual expense for maintaining
15 the crossing that could be eliminated or is it more
16 interested in safety?

17 A It's only interested in safety.

18 Q As you are making recommendations
19 related to crossings, how much do those kinds of
20 costs that you just estimated come into your
21 evaluation?

22 A They don't come into my evaluation at
23 all.

24 Q Another question for you related to the
25 Instructions and Procedures Manual for the database,

1 if we could look on page 1-3. This is Union Pacific
2 Exhibit page 18. And, again, I apologize for the
3 smallness of the text, but if I could ask you to look
4 at the last two paragraphs before Section 1.4 on that
5 page and read those.

6 A "The Railroad companies, with direction
7 and guidance from the Association of American
8 Railroads and American" -- "and the American Short
9 Line Railroad Association, are assigned the
10 responsibility for making a site-specific inventory
11 of each highway-rail grade" -- "highway-rail crossing
12 and for installing a unique identifying number at
13 each location. The Railroads were also identified as
14 being responsible for periodic updates of certain
15 inventory information and maintenance of the crossing
16 number. The State Highway Department assisted in the
17 project by providing site-specific highway location
18 and use data. State Public Utility Commission and
19 other state and local government agencies are
20 also" -- "are agencies also participated in the
21 project. Responsibility of the updating of certain
22 highway information data" --

23 Q I think --

24 MR. ASTILL: Do you want my larger copy?

25 THE WITNESS: This one is much nicer.

1 MR. PICKETT: Have you been holding out
2 on me?

3 MR. ASTILL: It's highlighted.

4 MR. PICKETT: Thanks. Right there.

5 THE WITNESS: Okay.

6 "The responsibility of updating certain
7 highway information data items was determined to be
8 through the efforts of these agencies."

9 Q (BY MR. PICKETT) Okay. Keep that
10 larger text for just a moment.

11 A Okay.

12 Q If those two paragraphs are a
13 description of who did what in relation to creating
14 the original database and gathering the information
15 to populate the database, was -- were the Railroads
16 required to do some of that work?

17 A Yes.

18 Q And was the State Highway Authority also
19 required to do some of that work?

20 A Yes.

21 Q So is it fair to say that the Railroads
22 were not the only source of the information that was
23 contained in the original database?

24 A That's correct.

25 MR. PICKETT: Okay. Thank you. That's

1 all I have.

2 JUDGE ARREDONDO: All right. Thank you.

3 Your next witness?

4 MS. KAMAS: Union Pacific calls William
5 L. Clark, and I will get him from the hall.

6 MR. ASTILL: Could we -- I have got one
7 question on recross.

8 JUDGE ARREDONDO: Okay. Go ahead.

9 Do you want to come back up,
10 Mr. Marshall?

11 MR. CHURCH: We're just not clear on
12 whether you allowed recross or not.

13 JUDGE ARREDONDO: Yeah, I do. It needs
14 to be pretty brief, and then I'll have -- let Union
15 Pacific have the last word.

16 MR. CHURCH: Let me -- and I will try to
17 be brief.

18 RECROSS-EXAMINATION

19 QUESTIONS BY MR. CHURCH:

20 Q Referring you to the FRA database that
21 Mr. Astill referred you to, the listing, and I will
22 give you this section right there. I think you just
23 referred to this with your attorney.

24 In 1970, that sheet I've referred you to
25 there indicates that the crossing was near Orem; is

1 that correct?

2 A This isn't the one that he referred me
3 to in cross, though.

4 Q All right. But the comment about it
5 being near Orem as the city?

6 A On -- okay. On this one, 01/01/70?

7 Q Yes.

8 MR. PICKETT: I'm sorry. Which one?

9 MR. CHURCH: The original one. I
10 apologize.

11 THE WITNESS: It says "near Orem."

12 Q (BY MR. CHURCH) And that one indicates
13 on the top that that's the original entry into that
14 database. Do you see that?

15 A Yes. It says "Initiating Agency
16 Original."

17 Q In 1970, that crossing was near Orem,
18 wasn't it?

19 A Sure.

20 Q That was an accurate entry; correct?

21 A In 1970, I -- I'm not sure what cities
22 are adjacent to it. I would be assuming that Orem is
23 the closest town, but maybe Lindon was. I'm not
24 sure.

25 Q But it was near Orem?

1 A Okay.

2 Q And I think you made the point that, as
3 these databases are updated, unless they change it,
4 they just carry over that kind of field; correct?

5 A If nobody changes it, it keeps the same
6 field.

7 Q And you notice on the original one, the
8 status of the crossing was put in as public; correct?

9 A Type and position, it shows public, at
10 grade.

11 Q Public, at grade.

12 What makes you think that wasn't also
13 accurate in 1970, that it was a public, at-grade
14 crossing then?

15 A Because it went into a private industry.

16 Q And that's it.

17 The fact that this FRA database now
18 referred to it as being near Orem doesn't speak to
19 the accuracy of the database, does it? It speaks to
20 whether or not the people changed that original
21 entry; correct?

22 A The only accuracy is what people put
23 into this.

24 Q And it was accurate that it was near
25 Orem in 1970; correct?

1 A Yes.

2 Q And it's just as accurate that it was a
3 public crossing in 1970 when it was put in the
4 database; correct?

5 A I don't believe so.

6 Q You weren't -- you didn't put it in in
7 1970?

8 A Nope.

9 Q Let me just refer you back to the
10 comments you made about the three criteria in the --
11 and I will get you the good copy of that.

12 You are not saying, are you, that
13 Vineyard City is not maintaining 400 North, are you?

14 A Not that portion west of the -- west of
15 where the Geneva Road turns in.

16 Q And you are not saying that Vineyard
17 Town is not maintaining what the -- the road that
18 parallels the tracks that we call -- that we call
19 Vineyard Road, are you?

20 A I'm not sure who maintains it. I'm
21 assuming Vineyard maintains that. I mean, I was able
22 to drive down it without tearing up my vehicle too
23 bad.

24 Q Okay. And you are not -- and you are
25 not indicating that -- on these three criteria you

1 read, that the roadway is part of a general system of
2 public streets and highways. You wouldn't say that
3 400 North and that the Vineyard Road is not a part of
4 a general system of public streets and highways,
5 would you?

6 A I would say that portion of Vineyard
7 Road and a portion of 400 North that is away from the
8 Railroad right-of-way is parts of the general system.

9 Q And you are not saying that it's not
10 under the jurisdiction of and maintained by a public
11 authority, are you?

12 A Those two roadways are probably
13 maintained by a public agency.

14 Q And they are certainly open to the
15 general traveling public?

16 A Those two roadways, outside of my
17 right-of-way, are probably open to the public.

18 Q All you are saying is that, because
19 there was a gate on this east side, that you are
20 presuming that no one is claiming or maintaining the
21 crossing to that gate; isn't that correct?

22 A The gate, the signage, the
23 characteristics of the crossing, the usage, the plant
24 on the other side, all that stuff I'm saying makes it
25 a private crossing.

1 Q But you have no idea whether or not
2 Vineyard is claim -- has ever claimed or not or
3 disclaimed the portion over your tracks, do you?

4 A I don't have an agreement from Vineyard
5 that says that they -- that they do.

6 Q And you don't have an agreement with
7 many cities for public crossings, do you?

8 A Not -- not old crossings. I mean, all
9 the -- all the new crossings have or -- and all
10 the -- anything we've done work on in the last I
11 don't know how many years usually have a crossing. I
12 mean, if they're 50, 60, 70 years old, there's a lot
13 of crossings I don't have agreements on.

14 Q And it is accurate, however, that you do
15 know that Vineyard in at least 2006, when they met on
16 you, asserted that that was a public crossing, that
17 they wanted to trade you that public crossing for the
18 one at Center Street; correct?

19 A I think the developer is the one that I
20 was dealing with, not the City.

21 Q I think it's true you met with Vineyard
22 City engineer in those meetings?

23 A I can't recall the City engineer. I
24 know Dennis is the common face that I recognize on
25 almost every meeting that I have ever been to.

1 MR. CHURCH: I don't have anything else.

2 JUDGE ARREDONDO: All right.

3 MR. ASTILL: I just have one.

4 JUDGE ARREDONDO: Mr. Astill.

5 RECROSS-EXAMINATION

6 QUESTIONS BY MR. ASTILL:

7 Q I just want to make it clear or be clear
8 about this. According to the FRA Data Inventory
9 Instructions and Procedure Manual, it is the job of
10 the Railroad and the State Department of
11 Transportation to update and maintain an accurate
12 database, isn't it?

13 A Yes.

14 Q And recommendations are made there for
15 frequent updates of that database?

16 A Recommendations?

17 Q Yes.

18 A Can you clarify that a little bit?

19 Q In other words, in the instruction
20 manual there is language that says it should be done
21 frequently?

22 A Yes.

23 Q I can show you that.

24 A That's fine.

25 Q Okay.

1 A I agree with that.

2 Q So if it's not accurate, the two parties
3 who are at fault are either -- are the Railroad and
4 the State Department of Transportation; correct?

5 A Could be the FRA. Like I testified
6 earlier, I sent changes in to this two years ago and
7 they're still not there. And I keep pulling up
8 crossings across the system that I changed five or
9 six years ago that still are not changed on the FRA.
10 So I know they have a lot of issues back there, and
11 they are trying to resolve them in the FRA and it
12 isn't solved. You can't just point at us and the
13 State and --

14 Q But after 30 years, or actually since
15 1970 to 2010, we are talking about 40 years of
16 database. If there's a mistake in there, it's really
17 the fault of UDOT or the Railroad, isn't it?

18 A Or the FRA.

19 Q So you are saying they kept making that
20 mistake for 40 years?

21 A No, I don't keep turning them over and
22 over. I've got thousands of crossings that I oversee
23 and 200 projects at a time. So when I -- I may not
24 get back into this crossing or back into this area
25 for years and years.

1 So for me to notice that it hasn't been
2 updated usually creates something like somebody
3 wanted to do something with the crossing and then we
4 pull up the inventory and say, "Oh, crap, we've got a
5 problem here."

6 Q But on this one we noticed there's four
7 changes that got made, four submittals, four
8 different changes that apparently were made. The
9 location description has been changed, but the one
10 thing that's about been constant was that it says
11 "public, at grade"; correct?

12 MR. PICKETT: Objection.
13 Mischaracterizes the history of the record to suggest
14 that there's only been one thing that's changed --
15 not changed.

16 JUDGE ARREDONDO: Can you restate your
17 question?

18 MR. ASTILL: Yeah, I'll restate the
19 question.

20 Q (BY MR. ASTILL) At least one thing that
21 hasn't changed was that it's continued to say
22 "public, at grade"; correct?

23 A On all of these ones --

24 Q Yes.

25 A -- that you have shown in front of me --

1 Q Yes.

2 A -- they're all consistent with that.

3 MR. ASTILL: Okay. Thank you.

4 JUDGE ARREDONDO: Ms. Spooner, no
5 questions?

6 MS. SPOONER: No, your Honor, I don't
7 have any questions of this witness.

8 JUDGE ARREDONDO: Final chance.

9 RE-REDIRECT EXAMINATION

10 QUESTIONS BY MR. PICKETT:

11 Q A moment ago, when Mr. Church was asking
12 you questions about maintenance of the crossing, his
13 approach suggested that -- a presumption of sorts
14 almost, that somehow the Town of Vineyard has been
15 doing maintenance out there because you have no
16 evidence to show that it hasn't been.

17 Let me ask you this question: In all of
18 your contacts with the parties involved in this
19 action, whether public entities or private entities,
20 since the dispute arose about whether this is a
21 public crossing or a private crossing, has anyone
22 come forward to you with either a person or a
23 document that provides evidence that the City
24 actually has been doing any maintenance on the
25 approach to the west side of this crossing?

1 A No, sir.

2 MR. PICKETT: Thank you.

3 JUDGE ARREDONDO: Okay. Thank you.

4 Thank you, Mr. Marshall.

5 THE WITNESS: Thank you.

6 JUDGE ARREDONDO: Mr. Clark.

7 MS. KAMAS: Your Honor, should we
8 question whether we ought to take Mr. Clark in light
9 of the fact that we only have 30 minutes left?

10 JUDGE ARREDONDO: We can bring him in
11 tomorrow, if you'd like.

12 MS. KAMAS: I would prefer to do that
13 and have everybody start fresh, if there's no
14 objection.

15 JUDGE ARREDONDO: Any objections?
16 Then we'll start tomorrow morning at
17 9:00 with Mr. Clark.

18 MS. KAMAS: Thank you.

19 JUDGE ARREDONDO: Thank you.

20 (Adjourned at 5:05 p.m.)

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C E R T I F I C A T E

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STATE OF UTAH)
 : Ss.
COUNTY OF SALT LAKE)

I, ROSSANN J. MORGAN, Registered Professional Reporter, Certified Shorthand Reporter residing at West Jordan, Utah, do hereby certify:

That the foregoing transcript was stenographically reported by me at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form, and that the foregoing is a true and correct transcript of those proceedings.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 1st day of September, 2010.

ROSSANN J. MORGAN, CSR, RPR

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