

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Union) Docket No. 09-888-01
Pacific Railroad's Petition)
For Relief Against the Utah) Administrative Law
Department of Transportation) Judge:
) Ruben Arredondo

TRANSCRIPT OF HEARING PROCEEDINGS
VOLUME II of II

TAKEN AT: Public Service Commission
160 East 300 South
Salt Lake City, Utah

DATE: August 18, 2010

TIME: 8:17 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

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1 AUGUST 18, 2010

8:17 A.M.

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

3 THE COURT: Raise your right hand for me,
4 Mr. Clark.

5 (Mr. Clark was sworn.)

6 THE COURT: Thank you. Go ahead Ms. Kamas.

7 WILLIAM CLARK,

8 called as a witness, having been duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. KAMAS:

12 Q. Would you state your name for the record?

13 A. William Clark.

14 Q. Thank you. You're here today because you did
15 some survey work on the crossing that's the subject of
16 this, this proceeding, correct?

17 A. Correct.

18 Q. Okay. Let's start by talking about your
19 qualifications a little bit first. Where do you work
20 now?

21 A. I work for Psomas, here in Salt Lake City.

22 Q. And what do you do?

23 A. I'm a license land surveyor.

24 Q. Okay. What's your educational background?

25 A. I have a bachelor's degree from the

1 University of Delaware in geography. And since then
2 I've been in the professional, in the professional
3 realm.

4 Q. Okay. You worked in Delaware for a few
5 years?

6 A. I did, for four years, until '94. And then I
7 moved to Utah. And I've been a surveyor here in Utah
8 since '94.

9 Q. Okay. And what's the license that a surveyor
10 gets?

11 A. It's a series of -- it's, it's comprised of
12 experience, and passing federal and state exams.

13 Q. Okay. And so it's a license that's given to
14 you by the State of Utah?

15 A. It is.

16 Q. And it's a PLS, right? Professional land
17 surveyor?

18 A. Correct.

19 Q. When did you get that license?

20 A. 1996. Or I'm sorry, 2000 (inaudible.)

21 (The reporter asked the witness to speak up.)

22 THE WITNESS: 2006.

23 Q. (By Ms. Kamas) Okay. So how long have you
24 worked for Psomas?

25 A. For 12 years.

1 Q. And what does Psomas do?

2 A. Sort of a fully-faceted engineering company.
3 From, you know, design and development to
4 environmental, water resources. Pretty fully-faceted
5 full-service engineering company.

6 Q. And what's your, your role within Psomas?

7 A. My title is project surveyor. And I've been
8 working exclusively on the FrontRunner commuter rail
9 project since 2007.

10 Q. Before you started working on the FrontRunner
11 project have you ever done any other projects that
12 involved Railroad right-of-way?

13 A. Not Railroad right-of-way. Highway
14 right-of-way, not Railroad.

15 Q. Okay. What's been the nature of your
16 involvement with the FrontRunner project since 2007?

17 A. Our company has been hired to do ex -- design
18 survey for utilities and general topography. In
19 addition to that, we are surveying all the adjoining
20 properties, analyzing the Railroad right-of-way, and
21 creating deeds and exhibits for acquisitions as
22 FrontRunner needs to acquire property outside of the
23 Union Pacific corridor.

24 So I've been surveying all the adjoining
25 properties and creating the acquisition deeds and

1 exhibits for the project.

2 Q. How much of the Railroad right-of-way have
3 you surveyed?

4 A. We've surveyed it entirely from Provo -- the
5 Provo yard to Downtown Salt Lake City. Forty --
6 45 miles of track.

7 Q. And are you the lead surveyor on that
8 project?

9 A. I am.

10 Q. How many people do you have working under
11 you?

12 A. We have about a dozen, about a dozen in our
13 office. And not all of them all the time are working
14 on FrontRunner, but everyone at some point certainly
15 has.

16 Q. And how many of them work under you?

17 A. All but one.

18 Q. Okay. How did you become involved in this
19 case?

20 A. In this case I was contacted by Steve Meyer
21 from UTA, project manager for the FrontRunner project.
22 And he had presented the abandonment document, which I
23 think is one of your exhibits. And he wanted me to
24 create a map, initially, of what the effects of that
25 document were. And then I think at a later time I was

1 asked to produce a written summary of my findings.

2 Q. And by the time Steve Meyer asked you to do
3 that, you had already surveyed the 45 miles of
4 Railroad right-of-way between Salt Lake and Provo?

5 A. We had, correct.

6 Q. Okay.

7 A. The project was not nearly complete. But our
8 right-of-way determination was, for our purposes,
9 complete.

10 Q. Okay. And you did, for Steve Meyer, a
11 current conditions map, correct?

12 A. I did.

13 Q. That we -- we've marked that as Exhibit 133.
14 And this is it right here, right?

15 A. Correct.

16 Q. Okay. So this is Anderson Geneva's --
17 MS. KAMAS: Did you guys have this exhibit
18 marked?

19 MR. ASTILL: Let me see.

20 MS. KAMAS: This one. It's okay. It's our
21 Exhibit 133.

22 MR. ASTILL: It's actu -- yeah, it's yours.

23 Q. (By Ms. Kamas) And then in addition to that
24 you sent Steve Meyer a letter, which we've marked as
25 Exhibit 125. Is that the letter that you sent to

1 Steve Meyer?

2 A. Yes, it is.

3 Q. Okay. You can keep that copy.

4 A. Okay.

5 Q. Then for this hearing today you produced
6 these two exhibits that we have on these boards that
7 we've marked 134 and 135, correct?

8 A. That's correct.

9 Q. And for the hearing today you also got this
10 aerial map that we've marked as Exhibit 136?

11 A. Correct.

12 Q. All right. Well, let's talk a little bit
13 about terminology that will help the Commission to
14 understand the conclusions that you've reached. We'll
15 refer to Exhibit 134. Talk about this.

16 So what is this line right here that you've
17 shown on your Record of Survey? This is also called a
18 current conditions map, right?

19 A. It, well, it's not current to today's
20 conditions. That -- the imagery was taken from the
21 aerial photograph which is -- which you have right
22 behind there. That paragraph produced the line work.
23 These (inaudible.)

24 (The reporter asked the witness to speak up.)

25 MS. KAMAS: These line works.

1 THE WITNESS: Line works.

2 THE REPORTER: You need to keep your voice up
3 for me.

4 THE WITNESS: Yeah, no worries.

5 THE REPORTER: I heard line works, but then
6 something of roads.

7 Q. (By Ms. Kamas) Okay. Hang on one second.

8 A. Okay.

9 Q. So this Exhibit 136 is a 2004 aerial map,
10 correct?

11 A. Correct.

12 Q. And so what you're saying is that that's what
13 formed the line work, the background here for this
14 Exhibit 134?

15 A. That's correct.

16 Q. So when you say it's not current conditions,
17 your point is that it's based on a 2004 aerial map?

18 A. That's right.

19 Q. Rather than a 2010 aerial map?

20 A. Right. And with the exception of what's
21 happened right in that -- within the cor -- within the
22 crossing it's pretty much the same, except where the
23 FrontRunner construction has happened.

24 Q. Okay. So let's focus for a few minutes on,
25 on terminology.

1 A. Okay.

2 Q. This line that you've drawn here on your
3 Record of Survey, Exhibit 134, what is that?

4 A. That is a section line. It is the Southwest
5 quarter section line, Section 8, Township 6 East,
6 Range -- or Township 6 South, Range 2 East.

7 Q. And what's a section line?

8 A. A section line, the government patented land
9 initially for sale first by dividing it into roughly
10 one-mile-square sections.

11 Q. Okay.

12 A. That's the public lands system of survey.
13 It's broken down into one-mile squares with
14 proportionate graduations below that. Portions of the
15 mi -- of the square mile is typically how the land is
16 broken down, but was broken down by government sale.

17 Q. And the way you located this section line on
18 the ground is by monuments that actually exist?

19 A. That's correct.

20 Q. And these monuments are shown on Exhibit 134
21 as -- does this little symbol have a name?

22 A. That's -- yes. There's a, there's a -- in
23 the legend on the bottom right, that's a found section
24 corner.

25 Q. Okay. So the found section corners are

1 actually monuments in the ground, and between the two
2 of them runs the section line?

3 A. That's correct.

4 Q. And you located that on your survey on the
5 ground; correct?

6 A. On the ground, correct.

7 Q. Okay. All right. So then let's talk about
8 Railroad right-of-way. Your survey also marks
9 Railroad right-of-way. And what is Railroad
10 right-of-way?

11 A. It's the corridor that Union Pacific has
12 acquired. I know it happened late 1800s, early 1900s.
13 Clearly I think that it's not a point of contention
14 that Union Pacific has a 100-foot corridor through
15 here. Through this area.

16 Q. And is it private property?

17 A. It is their property.

18 Q. Okay. So 100 feet between what you've marked
19 as existing UPR right-of-way on the east side, and
20 existing U -- UTA right-of-way on the west side?

21 A. That's correct. And the reason that they
22 differ is because UTA purchased the western 20 feet of
23 the corridor from Union Pacific.

24 Q. So act --

25 A. So.

1 Q. Okay. So actually now Union Pacific's
2 right-of-way is, is 20 feet skinnier than it used to
3 be?

4 A. That's correct.

5 Q. Because UTA owns the last 20 feet. The --
6 what would that be? The west 20 feet of the --

7 A. That's correct.

8 Q. -- former Railroad right-of-way, correct?

9 A. Correct.

10 Q. Okay. And right-of-way and Railroad
11 corridor, those are synonymous terms?

12 A. Well, I think the corridor would refer to the
13 entire path, where a right-of-way might refer to one
14 side or the other and not necessarily -- that --
15 they're -- that's just a technicality. But for
16 argument purposes I think that's very, very similar,
17 if not the same.

18 Q. Okay. So when you put your survey together,
19 how did you know where the right-of-way lines were?

20 A. The -- our Railroad right-of-way was created
21 from Union Pacific right-of-way val maps.

22 Q. Okay. And the only exhibit we have that
23 shows any of that -- which we'll talk about in greater
24 detail later -- is this little reproduction right here
25 down in the corner. That's the val map you're talking

1 about, right?

2 A. That is.

3 Q. And that -- this one here is dated 1927?

4 A. Correct.

5 Q. And that, that val map was done by the Denver
6 and Rio Grande Railroad?

7 A. Yes.

8 Q. Okay. Okay. So on Exhibit 134 you've listed
9 a surveyor's narrative of the purpose of the survey,
10 correct?

11 A. Correct.

12 Q. And so you've already told us the purpose of
13 the survey was Steve Meyer wanting you to plot the
14 resolution, the 1942 resolution?

15 A. That's correct.

16 Q. All right. So let me show you that. This
17 has been marked as Exhibit 72 and 73 in Union
18 Pacific's exhibits. Is that the resolution that Steve
19 Meyer asked you to plot?

20 A. Yes, it is.

21 Q. The -- I'm sorry, to be more specific, the
22 legal description within the resolution?

23 A. That's correct.

24 Q. But not the whole legal description, right?

25 A. The whole legal description is not shown on

1 my drawing. Just the portion that -- of the -- of
2 this description that affects 400 North.

3 Q. Okay. Would you take that highlighter and
4 just mark the, the portion of that legal description
5 in that resolution that you actually plotted on
6 Exhibit 134?

7 A. You bet. That's the portion there.

8 Q. Okay, thank you.

9 MS. KAMAS: We'd like to offer this, your
10 Honor, as a replacement to make this the official
11 exhibit that has Mr. Clark's indication on it.

12 THE COURT: U.P. Exhibit 72?

13 MS. KAMAS: Yes, sir.

14 THE COURT: Is that right? Okay.

15 MS. KAMAS: But hopefully the official
16 exhibit will become the one with the highlighting on
17 it is what I'm saying.

18 THE COURT: Okay.

19 MS. KAMAS: Okay.

20 Q. (By Ms. Kamas) Okay. So when you're
21 plotting this legal description that you just
22 highlighted for the Commission, the goal is to figure
23 out what that legal description refers to in relation
24 to other features that exist?

25 A. That's right.

1 Q. In the area?

2 A. Correct.

3 Q. Correct? Okay. So in relation to the
4 section line, which you already have -- I mean in
5 relation to the section line shown here on
6 Exhibit 134, right?

7 A. (Moves head up and down.)

8 Q. You have to say "yes" or "no" out loud.

9 A. I, I -- could you repeat your question?

10 Q. The, the goal of plotting the legal
11 description that we just marked was to figure out
12 where that land being described lies in relation to
13 other features on the ground?

14 A. That's correct.

15 Q. Including the section line?

16 A. That is correct.

17 Q. And including the Railroad right-of-way?

18 A. Correct.

19 Q. Okay. So how do you actually do that? How
20 do you plot a legal description?

21 A. We use AutoCAD. And we can type in the
22 bearings and distances and create the shape that's
23 described on the legal description. The legal
24 description refers to controlling monuments for the --
25 in the section that I've highlighted the controlling

1 monuments affecting 400 North are the southwest corner
2 of Section 8 and the south quarter corner of
3 Section 8.

4 Q. Which are both marked here by your found
5 section corner symbols?

6 A. That's correct.

7 Q. Okay.

8 A. So once we have this figure drawn we move it
9 to -- in, you know, an AutoCAD drawing to these points
10 of reference. And that aligns it and positions it
11 according to the controlling monuments.

12 Q. And plotting a legal description is something
13 you do regularly?

14 A. Yes, very regularly.

15 Q. Some legal descriptions, when you plot them,
16 do they seem ambiguous?

17 A. Oh, yes.

18 Q. So that maybe the legal description isn't
19 exactly perfect?

20 A. In a lot of cases that's the case.

21 Q. And what, what was it like in this case?

22 A. This was very straightforward. The
23 controlling monuments that were referred to were found
24 in the ground. Reference to -- monuments have a
25 surveyor reference sheet so you can find it. And the

1 stamping on the monuments match the date of the
2 information we pulled.

3 My record distance from the southwest corner
4 of Section 8 to the Railroad right-of-way varied from
5 the document by about three-tenths of a foot, which is
6 4 inches.

7 Q. Okay.

8 A. So I had 4 inches of discrepancy in
9 2,757 feet. So that's about the size of my fist over
10 half of a mile. So it's relatively accurate is what
11 I'm getting to.

12 Q. Okay. And --

13 A. I didn't have any reason to think that the
14 monuments weren't the original ones or that there was
15 a problem with the description.

16 Q. And the description -- the legal description
17 ended up showing that the north, the north boundary --
18 well, the south boundary of the property conveyed to
19 Defense Plant Corp. ran along this section line?

20 A. That's correct.

21 Q. And the east -- or the west boundary of the
22 Defense Plant Corp. property ran along the east
23 Railroad right-of-way boundary?

24 A. That's correct.

25 Q. And so that's those two lines right here,

1 right?

2 A. That is correct.

3 Q. Okay. So in addition to plotting the legal
4 description in relation to the Railroad right-of-way
5 and the section line, you're also plotting in relation
6 to 400 North?

7 A. That's correct.

8 Q. Now, does 400 North have a legal description
9 anywhere?

10 A. At the intersection I am -- I have not been
11 able to locate one. I've searched for road dedication
12 on both the four -- Vineyard Road running southeast
13 and northwest, and Vineyard Road running east and
14 west, and couldn't find any in that area.

15 Q. Okay. So you couldn't find any dedication.
16 And you also couldn't find that the road was a deeded
17 right-of-way here in the area of the crossing,
18 correct?

19 A. The Anderson Geneva property -- or the
20 description does not -- there, there was no
21 right-of-way information in my research. For a width
22 of the road in that location there.

23 Q. Okay. Or even a location of the road?

24 A. I could not find a legal description for the
25 bounds of the road, no.

1 Q. Okay. So the road, as shown here on
2 Exhibit 134, you've drawn based on the 2004 aerial
3 map?

4 A. Correct.

5 Q. All right. Now, the aerial map -- explain
6 this to the Commission, how it is that you can overlay
7 your survey line drawings on top of the aerial map and
8 make sure that you've got them matched up properly.

9 A. The -- I can explain the process. This
10 photograph, the large photograph behind -- it was part
11 of the FrontRunner project, so a lot -- the aerial
12 photography company provided these drawings in an
13 orthorectified manner.

14 Meaning when they come -- when we get them,
15 the corners of the drawing have coordinate values that
16 match the FrontRunner project. So when we import them
17 in they come into the right place at the right
18 locate -- rotation.

19 Additionally, the whole -- the entire model
20 is created from aerial targets and aerial photography.
21 I -- in roadways, we people that are familiar with
22 engineering see painted crosses in the roads. Lot of
23 times there's a survey monument in the center of those
24 crosses.

25 Those -- the survey points that are at -- so

1 that's the -- this big feature is called the "target."
2 And there's actually a survey point at the center of
3 the target. That survey point has a position assigned
4 to it through -- this might be getting a little bit
5 deeper.

6 But the -- there -- for this project, for the
7 40 miles, there were 40 high-accuracy control points.
8 And they were process -- so this started physically by
9 just putting points in the ground along the corridor
10 and we create -- and then we distribute a horizontal
11 location to all of those.

12 Then we paint a target on them and it's
13 photographed. And from that photograph and from the
14 targets that are on it the drawing can be scaled up
15 and down and rotated to match the dimensions of my
16 actual survey points. So that's how the photograph
17 gets scaled and rotated into reality.

18 Q. So were any of those targets one of these
19 found section corners?

20 A. Yes. There's -- in 2004 the -- there was a
21 target painted on the south quarter corner of
22 Section 8, which is shown in the aerial photograph.
23 And on these blowups here it's a lot easier to see.

24 Q. Okay. All right. So Exhibit 134 -- I think
25 maybe we already said this. But on Exhibit 134 your

1 line work is -- wait, let me get this straight for a
2 second.

3 So on Exhibit 134 the features shown on the
4 aerial map are drawn?

5 A. That's correct.

6 Q. And then your line work appears as well,
7 right?

8 A. That is correct.

9 Q. But on, on Exhibit 135 you have used the
10 aerial map itself and then superimposed your line work
11 on top of that?

12 A. That is right.

13 Q. Okay. All right, let's look at your letter.
14 So your letter to Steve Meyer that we've marked as
15 Exhibit 125 says that you located and measured the
16 section line.

17 We've already talked about what the section
18 line is. When you say you located it, that means you
19 found these found section corners, correct?

20 A. That is correct.

21 Q. Okay. And when you measured it, that means
22 that you made sure that the distance between these
23 found section corners was the distance that it was
24 supposed to be?

25 A. That's correct.

1 Q. Okay.

2 MR. ASTILL: Which exhibit are you referring
3 to as the letter?

4 MS. KAMAS: The letter is 125.

5 MR. ASTILL: Okay, thank you.

6 Q. (By Ms. Kamas) Okay. And your line work
7 here on Exhibit 134 shows that the section line
8 roughly follows the centerline of the current improved
9 roadway, or the 2004 improved roadway, correct?

10 A. Correct.

11 Q. Okay. So your letter also says, Exhibit 125,
12 that when you plotted the legal description you found
13 that it had abandoned -- that the County had abandoned
14 the north half of 400 North, correct?

15 A. That's correct.

16 Q. Okay. And so what that means is that, based
17 on where the road is in 2004, the section line runs
18 along the middle of the road, and the abandonment goes
19 to the middle of the road, so that means the
20 abandonment would abandon the north half of 400 North,
21 correct?

22 A. Correct.

23 Q. Okay. All right. And just to be absolutely
24 clear. Your survey -- surveyor's narrative here in
25 Exhibit 134 -- well, I think it does show it now. The

1 hatching. These dots are the hatching that you refer
2 to in the surveyor's narrative?

3 A. That's correct.

4 Q. Okay. When we were look -- looking at
5 exhibits earlier I couldn't see the hatching, but now
6 that I see it all blown up I see it does exist. All
7 right. So as a traveler -- and let me, let me make
8 this clear. You've been here to this location that's
9 depicted on Exhibit 134, correct?

10 A. I have.

11 Q. More than once?

12 A. More than once.

13 Q. Okay. As a traveler east on 400 North, a
14 person would get to the intersection and you can't
15 turn left and go, go north, can you?

16 A. I'm not sure if physically you can go there.
17 It's certainly signed and marked. But if you're not
18 with Anderson Geneva you're not supposed
19 to (inaudible.)

20 (The reporter asked the witness to speak up.)

21 THE WITNESS: Oh, I'm sorry. It's -- okay.

22 Q. (By Ms. Kamas) Hang on. Let me just --

23 A. Okay.

24 Q. -- stop you there. Four hun -- this --
25 400 North Vineyard Road does not head northwest?

1 A. It -- at that intersection it does not head
2 northwest.

3 Q. Okay. So a traveler coming here to this
4 intersection cannot turn left and go northwest?

5 A. That's correct.

6 Q. Okay.

7 A. I, I'd like to add a condition. There may be
8 a way for an Anderson Geneva employee to get through a
9 gate there to go north. I, I haven't verified that.
10 I'm not saying it's impossible to go north. But for
11 the general public it's definitely the -- it's
12 definitely not the way.

13 Q. So for the general public traveling east on
14 400 North Vineyard Road the options are to turn right
15 on Vineyard Road and go southeast, or to enter the
16 Anderson Geneva property, correct?

17 A. In theory. However, Jersey barricades have
18 been put across the road --

19 Q. Okay.

20 A. -- so it is impossible to do that right now.

21 Q. All right. So if everything that you have
22 drawn on Exhibit 134 and plotted on Exhibit 134, if
23 everything were the same today -- no, were the same in
24 1942 as we see on 134, your survey would tell us
25 everything we need to know about what Anderson Geneva

1 owns, and where the road is, and how much of the road
2 still goes through the crossing, correct?

3 A. If the conditions were the same?

4 Q. If the conditions were the same.

5 A. Yes, correct.

6 Q. Which raises the question, to what extent are
7 the conditions the same? So let's talk about that.
8 Have you made an effort to determine whether 400 North
9 Vineyard Road, as you have plotted it here on
10 Exhibit 134, was in the same location in 1942 as it
11 was in 2004?

12 A. I did make an attempt to verify that.

13 Q. Okay. What did you do?

14 A. We -- using the information on the Railroad
15 val map.

16 Q. Okay. Let's look at Exhibit 132.

17 A. There is --

18 Q. Now, before you go into that. What is a val
19 map?

20 A. A val map is a map that was created to show
21 what the Railroad owns as -- it's my understanding
22 that the Railroad is taxed by the State of Utah. And
23 these -- this map and dimensions were created to, to
24 know what the Railroad owned. How much acreage they
25 owned.

1 Q. Okay.

2 A. That's why they were created.

3 Q. "Val" stands for --

4 A. Evaluation.

5 Q. -- evaluation?

6 A. Correct.

7 Q. Okay. And, and what we have here, like we
8 were referring to before, this is a little blowup of a
9 1927 D&RGW val map that, that Mr. Barney has placed in
10 the left-hand corner of his exhibit which we have
11 marked as 132, correct?

12 A. Correct.

13 Q. But you've seen this val map in the context
14 of more information going north and south about the
15 Railroad right-of-way, right?

16 A. Correct.

17 Q. In fact, have you looked at 45 miles worth of
18 val maps?

19 A. Yes. I've looked at even more than that.
20 The val map exists from Ogden to Springville, and so
21 I -- and I've seen examples of val maps throughout
22 that whole stretch. The 45 miles that I concentrated
23 on was from Provo to Salt Lake. And they're con --
24 you know, consistent series of maps throughout.

25 Q. All right. So thinking just about the

1 illustrations for a moment and not about the
2 stationing, what does this 1927 val map that appears
3 on Exhibit 132 tell you about the location of
4 400 North in 1927?

5 A. What we have on the, on the right side of
6 this little drawing are what we call in -- stationing
7 callout. And --

8 Q. Let's, let's not talk about the stationing
9 yet, let's just talk about the illustration first.

10 A. Could you repeat your question?

11 Q. Let's just talk about what the illustration
12 shows you about where the road was in 1927. We'll
13 save the stationing for a little bit later.

14 A. Okay. What I see here, this 1927 drawing, is
15 I see the intersection of the section -- this
16 north-south section line, dashed line coming north and
17 south, and the dashed line going east and west --

18 Q. Right here?

19 A. Yes. That intersection point is
20 approximately one-third south of the north edge of the
21 road.

22 Q. Okay. So this line coming through here is
23 the section line?

24 A. That's correct.

25 Q. And this line drawn here would be the north

1 edge of the road?

2 A. Correct.

3 Q. At least as drawn by the D&RGW in 1927?

4 A. That's, that is what I believe, yes.

5 THE COURT: Is there a key on that map that
6 would show us what you just pointed to?

7 MS. KAMAS: What kind of key, Judge?

8 THE COURT: Well, I guess, I guess I can't --
9 I see three keys, so I'm trying to figure out which
10 one you're pointing to for the line versus the
11 section.

12 MS. KAMAS: Okay. Let me just bring it
13 closer to you.

14 THE COURT: So which is--

15 MS. KAMAS: What we're referring to, the road
16 is drawn --

17 THE COURT: Okay.

18 MS. KAMAS: -- in the solid line.

19 THE COURT: Uh-huh.

20 MR. CHURCH: The section line is
21 represented --

22 THE COURT: In the dashed?

23 MS. KAMAS: -- in the dashed line.

24 THE COURT: Okay.

25 MS. KAMAS: So -- and this is the crossing.

1 So as you go through the crossing you see the road
2 line a little bit north of the section line.

3 THE COURT: Okay, thank you.

4 Q. (By Ms. Kamas) Okay. Now, we'll get to this
5 a little bit later, but you understand there's been
6 some suggestion in this case that the road was
7 actually well south of the section line as, as shown
8 in this Exhibit 132, correct?

9 A. Correct.

10 Q. Prepared by Mr. Barney?

11 A. Correct.

12 Q. Did you go onto the ground and try to find
13 evidence of a road having been someplace else than
14 where it is right now?

15 A. I did, yes.

16 Q. What did you look for?

17 A. Initially we thought that one good piece of
18 evidence would be to find some remnants of the road --
19 at the time I figured that the road must -- if an old
20 road existed, that it would have gone over the canal
21 that's present. So we looked at the canal for
22 evidence of a road crossing, but --

23 Q. Where's the canal?

24 A. Canal is not shown on the drawing, but it
25 lies just east of the Railroad corridor.

1 Q. So help, help us see the Railroad corridor in
2 this 136 exhibit.

3 A. Railroad corridor generally exists right
4 here, from southeast to northwest. And this dark
5 streak that tends to have some vegetation along it is
6 the canal that I was referring to.

7 Q. And this is our crossing that we're talking
8 about right here?

9 A. That is correct.

10 Q. Okay. And this is oriented correctly, right?
11 So this is west?

12 A. Yes, it is oriented correctly.

13 Q. Okay, so the canal. You were looking for the
14 canal?

15 A. Right. And we found no evidence of an
16 existing roadway on the canal. Additionally, we went
17 west along 400 North vineyard to look for some
18 evidence of the road -- a historic road leaving its
19 current location.

20 This property that's immediately south and
21 west of our intersection is a sod farm, which gets
22 cultivated and turned over very frequently.

23 Q. This property here?

24 A. That's correct.

25 Q. Okay.

1 A. So I found no evidence of an old road there.
2 And went even farther to the west, to this property
3 that's not cultivated.

4 Q. This property here?

5 A. Right. To look for some evidence of an old
6 roadway there. Did find none. Did find a swamp.
7 Which would, in my opinion, be in con -- if the road
8 existed south and it came -- and it existed south of
9 its current location that far west, there would be an
10 issue with the swamp there.

11 Q. Is this the swamp here?

12 A. Correct.

13 Q. Okay.

14 A. Or wetland. And I -- so I looked in that
15 area for something that would support a road over the
16 wetland if it, in fact, existed that far to the west.
17 Then on the east side of the corridor we -- my
18 surveyors were able to get on site and were able to
19 drive around. And we searched for evidence of the old
20 road connecting through, which we found none.

21 Pulled information off of the telephone poles
22 in the area, thinking that if the area were reworked
23 and poles needed to be removed we could possibly find
24 a date that that had happened. And PacifiCorp was
25 unable to provide that information to us.

1 They've upgraded their -- they had a
2 hard-copy system that tracked the history of these
3 poles. And it's been upgraded to an electronic
4 system, and every piece of information has been put in
5 except for the installation date.

6 So according to PacifiCorp all their power
7 poles were put in in 1999, and that's not the case.

8 Q. So you're saying that you went on the Geneva
9 property, looking for evidence of the old road?

10 A. I did.

11 Q. Would you mark, for purposes of the record,
12 the sod farm, and the canal, and the swamp or wetland,
13 please?

14 A. Okay. The sod farm property is right here.
15 Roughly. And I'm not -- I'm sure the property line
16 goes to the center of the road, but I'm not gonna
17 color in the center of the road for our purposes.
18 This would be the sod farm.

19 And the canal runs just -- it's continuous
20 all the way through here. I don't want to mark up our
21 actual intersection here.

22 Q. That's wise.

23 A. Yeah. And the canal is on the eastern
24 edge -- just off the eastern edge of the Railroad
25 corridor.

1 Q. And the wetlands, please.

2 A. Oh, the wetlands. If I were to outline them
3 I would go roughly something like, roughly a shape
4 like that.

5 Q. And would you write that somewhere in there?

6 A. Yes.

7 Q. Thank you.

8 A. Sure.

9 Q. And hang on to that pen.

10 A. Okay.

11 Q. So in your opinion is it most likely that the
12 road in 1942 was in roughly the same place that it's
13 in now? Or in 2004?

14 A. I found no evidence of an old road in other
15 places. In my opinion, as -- I've -- I found nothing
16 to make me believe that a road physically existed
17 somewhere else. Being on the ground, I found no
18 evidence of an old road.

19 Q. But to be fair, there is some difference
20 between the, the placement of the road on Exhibit 134
21 and the placement of the road in the 1927 val map,
22 correct?

23 A. Clearly there's a difference, yes.

24 Q. And as far as you know, this 1927 val map is
25 the only actual evidence there is of where the road

1 was before the 1942 resolution?

2 A. It is. That I -- of all the evidence I've
3 seen, that's correct.

4 Q. Okay, thank you. Now, one thing that we do
5 know has changed since 1942 is the configuration of
6 the crossing, correct?

7 A. Correct.

8 Q. This val map shows in 1927 that the road went
9 straight through and -- that the road was straight and
10 it didn't angle in order to go across the tracks like
11 it does now, correct?

12 A. Correct.

13 Q. Okay. If 400 North was a public road in
14 1927, that public road went straight through to the
15 other side of the Railroad right-of-way into the
16 property that's now the Anderson Geneva property,
17 correct?

18 A. That's correct.

19 Q. Okay. If, in 1942, 400 North was in the
20 location where you have drawn it on 134, what is left
21 of that public right-of-way that once went straight
22 through across the tracks?

23 A. What would be left is roughly half of the
24 400 North Road. As you approach the intersection
25 that, that half of roadway does not quite make it to

1 the eastern side of the railway corridor just past
2 halfway.

3 Because of the geometry of the paved, of the
4 paved surface in 2004, that southern half of the
5 roadway would come to a point and would not quite
6 reach the eastern side. And the right-of-way going to
7 the south and east would remain unaffected.

8 Q. Can you take this highlighter and highlight
9 the portion of the public road shown on the 1927 val
10 map that remains after the crossing was reconfigured?

11 A. One more time.

12 Q. Can, can you highlight the area that you're
13 talking about? The, the area of the public road that
14 still exists as it goes through the crossing now that
15 the crossing --

16 A. I can.

17 Q. -- has been reconfigured.

18 A. It would be all -- everything existing south
19 of this line here.

20 (The reporter asked the witness to speak up.)

21 THE WITNESS: Okay. I'll draw it now.

22 MS. KAMAS: You can just -- you can draw and
23 then talk.

24 THE WITNESS: Okay.

25 Q. (By Ms. Kamas) That might help.

1 A. So the area remaining would be --

2 MS. KAMAS: Except for he can't.

3 THE WITNESS: (The witness is muttering to
4 himself.) And continuing on south. This is all still
5 the right-of-way.

6 Q. (By Ms. Kamas) And now do you know that this
7 Vineyard Road -- never mind. I'll withdraw that
8 question.

9 Okay. So go ahead, now that you're back at
10 the microphone, explain what you've just highlighted.

11 A. What would re -- what would remain would be
12 the south half of the road, up to the point where the
13 section line and the south edge of the existing road
14 come together.

15 It's just beyond the section corner symbol
16 that I've shown on my drawing. So the south half of
17 the road coming to a point, not quite reaching the
18 eastern side of the corridor. And then Vineyard Road
19 continuing at its full width in a southeasterly
20 direction.

21 Q. Now, what is the width of the road that
22 you've drawn on Exhibit 134?

23 A. The width of the road is -- I can measure it
24 by scale right now. It's a project -- it's a product
25 of the aerial photograph. It was simply -- the edge

1 of the road was simply traced --

2 Q. Okay.

3 A. -- from the aerial photograph.

4 Q. And you haven't measured it?

5 MS. KAMAS: Thank you.

6 MR. PICKETT: You bet.

7 THE WITNESS: This drawing is a 40-scale
8 drawing. And it looks like I've done that accurately.
9 So the remaining -- at which point, Reha, would you
10 like that measurement?

11 Q. (By Ms. Kamas) Um. Well, I --

12 A. Right here, maybe?

13 Q. Okay.

14 A. So in the -- what I would consider the, the
15 portion of the road that has no irregularities, a nice
16 parallel corridor, the distance is roughly 13, 14 feet
17 on the south. South -- lying south of the section
18 line.

19 Q. Okay. But -- and the whole, the width of the
20 whole road.

21 A. Oh, okay. I'm sorry. Where I would deem it
22 to be a consistent width I would say that it is
23 25-feet wide.

24 Q. Can you mark that, please?

25 A. You bet. And that's approximately 25 feet.

1 Q. Okay. And what -- assuming that it's
2 accurate -- or not even assuming it's accurate, just
3 figuring out how it's drawn. On the val map that
4 exists on Exhibit 132, what's the width of the county
5 road that's shown there?

6 A. We measured, we measured this just a moment
7 ago, and it scales out to 50 feet. So I'll just
8 verify that measurement.

9 Yeah, I verified that the image -- the
10 27 image shows roughly a 50-foot corridor at the
11 section corner.

12 Q. For the county road?

13 A. Correct.

14 Q. Okay. And would you mark that on --

15 A. Okay.

16 Q. Oh -- yeah, that's our exhibit. We can do
17 that. Fifty foot.

18 A. It's gonna blot out some of our station.

19 Q. So based on the 2004 aerial map, 400 North
20 was a 25-foot road in width?

21 A. Pavement. Pavement to pavement.

22 Q. Pavement to pavement. And what's drawn on
23 the 1927 val map is a 50-foot road?

24 A. 50-foot road.

25 Q. Okay. So now can you tell, if the road in

1 1942 were in the location in relation to the section
2 line as shown on the val map, would you be able to
3 give an opinion how much of the road is left as it
4 goes through the crossing now that the crossing has
5 been reconfigured?

6 Let me ask it this way. Can you give an
7 opinion whether that would be a bigger slice or a
8 smaller slice than what you've shown here now on
9 Exhibit 134?

10 A. It's probably going to be slightly bigger.

11 Q. Can you give an opinion whether the slice
12 would go all the way through to the Railroad's east
13 right-of-way line?

14 A. It would.

15 Q. It would?

16 A. Yes.

17 Q. Would go all the way to the right-of-way
18 line?

19 A. The southern half as drawn here (inaudible.)
20 (The reporter asked the witness to speak up.)

21 THE WITNESS: No, that's fine. The southern
22 half of the road -- repeat your question one more
23 time, Reha.

24 Q. (By Ms. Kamas) Okay.

25 A. I think I might be missing what you're

1 asking.

2 Q. Okay. Let me see if I can ask it better. If
3 we assume that the road at the time of the 1942
4 resolution was as it is illustrated here in the 1927
5 val map.

6 A. Okay.

7 Q. So we assume that the road lay in relation to
8 the section line as it's drawn here in the 1927 val
9 map.

10 A. Okay.

11 Q. And then we also assume that the crossing was
12 reconfigured as -- as we know it was -- as shown on
13 Exhibit 134.

14 A. Correct.

15 Q. What portion of this county road that used to
16 go straight across the tracks would still exist going
17 through the new crossing as reconfigured?

18 A. Oh.

19 Q. Same question.

20 A. Right.

21 Q. It's the same question about this shape, but
22 if we assume that the county road is where it was in
23 the 1927 val map instead of where you've drawn it.

24 A. It would not -- because of the
25 reconfiguration of the -- because of the new road that

1 was built perpendicularly it would not, in fact, reach
2 the eastern side of the railroad -- railway corridor.

3 Q. Okay, thank you. All right. We have one
4 more area to cover. And this is the part where we get
5 to learn a little bit about (inaudible - someone is
6 coughing.)

7 (The reporter asked Counsel to repeat.)

8 MS. KAMAS: Surveying, sorry.

9 Q. (By Ms. Kamas) Okay. In order to help us
10 understand -- before you wanted to talk about the
11 stationing and I held you off, and now is the time for
12 us to do that.

13 In order to learn a little bit more about
14 what this old 1927 val map might tell us about the
15 location of the road at that time, at least, I'm gonna
16 ask you to explain about stationing and offset.

17 So I've brought this paper for you and you
18 have the pen in your hand. And can you explain to the
19 Commission what these numbers on this 1927 val map
20 actually mean?

21 A. You bet. Okay, three terms that I think --
22 you guys, I know you can't see this very well. But
23 it's very -- I promise you, it's very straightforward.

24 Three terms that we need to know something
25 about. One is an alignment. The second term is

1 stationing. And the third term is offset.

2 And I'm gonna -- the example that I'm gonna
3 use is relative to a subdivision. How engineering
4 companies develop a subdivision and how our, how our
5 design process works.

6 Q. And as you point your voice away from the
7 court reporter make sure you talk louder.

8 A. You bet. So what I'm gonna draw here is just
9 an intersection. A very generic intersection that
10 exists in so many places. When engineers and
11 surveyors design and build something like this, we
12 build these roads off of alignments. This term right
13 here.

14 Q. And I'm gonna ask you to remember, Mr. Clark,
15 that you're talking to the Judge.

16 A. Okay. So when an alignment for a roadway is
17 created --

18 Q. Maybe it makes more sense for you to stand on
19 this side.

20 A. If I were left handed it would.

21 Q. Okay.

22 A. So when roads are designed, and surveyed, and
23 built there's, there's the need to create a beginning
24 point. And the centerline of an intersection is the
25 common point -- is a, is a common point for the

1 beginning of an alignment.

2 And what an alignment is, is the bearings and
3 distances. And let's assume -- let's go this way.
4 We'll go this direction. And let's assume that
5 there's a curve here. So this is the beginning point
6 of our alignment.

7 And the way that this road is defined is from
8 the geometry along its centerline. The centerline of
9 the road. And you can -- so yeah. So the alignment
10 are bearings and distances that go along the road.

11 So in this case we've got a straight section
12 of road to about -- from there to there. Then we have
13 a curved section to about here. And then we have a
14 straight section again.

15 And for this piece we'll have a bearing and a
16 distance. Then we'll have curved geometry. So I can
17 draw this or we can stay on this alignment. Now --

18 Q. And the --

19 A. -- using this theory -- or this concept of an
20 alignment, what stationing is, is if --

21 Q. Before you get there, the alignment is
22 divided into increments, correct?

23 A. Correct. And on the railroad portion we have
24 long tangent sections. And then we have to a point of
25 curvature that is you begin your curve. And then at

1 the end of your curve you have a point of tangency,
2 and then that continues on to another straight line.
3 Just -- this example right here.

4 Q. Okay. So, and these numbers here on the 1927
5 val map that's on Exhibit 132, these are called
6 callouts?

7 A. Stationing callouts, correct.

8 Q. And a callout is just any information that's
9 put on a map that would help to pinpoint a location?

10 A. Yeah. In this case what's labelled here are
11 physical features. We're showing some kind of a pipe,
12 a crossing sign, the actual road crossing, are three
13 features on this map that have been called out with
14 stationing.

15 So the physical features here and its
16 location on the track is referenced by these numbers.

17 Q. So can you explain to the Commission how
18 these numbers relate to the alignment that you're
19 describing?

20 A. I will. So the railroad has an alignment
21 also. And that alignment is a part of these, you
22 know, I've got 45 miles of these val maps with the
23 math that draws this line -- the centerline of the
24 corridor.

25 From -- in most cases U.P.'s corridor is

1 100 feet. Some places it's 60 feet -- 66 feet wide.
2 Most places it's 100.

3 So when we get into -- the term "stationing"
4 would -- if you, if you were to use this alignment
5 concept that we've just talked about and actually lay
6 down a tape measure on the centerline of this road at
7 a one-to-one scale, that is what stationing is.

8 And I'll give you an example. We start our
9 stationing -- at this, at this point of beginning we
10 will pick a number, like 0 plus 001, plus 0010, plus
11 00 -- these are kind of subjective. You can pick any
12 starting point to create the beginning of your sta --
13 any number to designate the beginning of your
14 stationing.

15 And this, this theory of stationing, or this
16 concept of stationing, is if you were to take this
17 alignment and lay a tape measure right along the
18 centerline of this road. In hundred -- in whatever
19 increment of measurement you would like.

20 So let's say that these increments were
21 100-foot increments. So it would take approximately
22 1, 2, 3, 4, 5, 6, 7 -- 800 feet, approximately, to get
23 to this point of curvature. Which is what we call a
24 "PC." And that begins the curved portion of the road.

25 So this station down here would be

1 approximately 7 plus 00. And this -- if I came down
2 to this point and I had 750.37 feet, rather than
3 700 feet even my station would be 7 plus 50, 37.
4 750.37 feet. And that's how that is denoted. That's
5 how we write that.

6 So this concept of alignment and stationing
7 is the same thing that's happening here. I'm not sure
8 exactly where this 0 plus 0 point is. It's someplace
9 south of Provo. I looked from Provo to Salt Lake.
10 Provo has a station that's -- it's gonna be something
11 less than 1390, which is a number that's coming off of
12 this map. And the stationing gets greater as you go
13 to Salt Lake City.

14 So I never got to the very beginning or the
15 very end, but the stationing exists throughout. And
16 that is a real-life measurement along the center of
17 rail. Along the center of rail.

18 Q. And those measurements that are there in the
19 1927 val map on Exhibit 132, those measurements match
20 the centerline of the railroad?

21 A. Correct, they do. And in, in my experience I
22 built the mathematical model from Provo to Salt Lake
23 City. We bring it into our AutoCAD drawing. And I've
24 got to get into this third --

25 Q. Right.

1 A. -- concept of offset. So as a land surveyor,
2 if I were, if I were building this subdivision and I
3 had to go out -- and let's assume there were lots of
4 land that are here, okay? Lots 1, 2, and 3. My
5 handwriting is horrible, I apologize. Lots 1, 2, and
6 3. And I was asked to go and stake this property
7 corner right here.

8 The way I would do that is using these same
9 concepts that we've talked about I would go out and I
10 would find -- and I would calculate a point use --
11 my -- our survey equipment runs on this alignment. We
12 can stake in the ground relative to this alignment at
13 any point.

14 So an example of that would be if I had to
15 stake this property corner I would use this alignment
16 and come down 1, 2, 3, 4 -- approximately 550 feet to
17 this point right here. Would be about 550 feet down
18 the alignment.

19 And we've got to consider -- now, when
20 you're -- when -- and this would be an offset of a
21 certain distance at this station right here.

22 Q. Offset from the centerline?

23 A. Correct. Correct. And it put -- this
24 example may have worked better if I had drawn it going
25 this way. I can draw it going this way also.

1 Q. I think it's fine.

2 A. Okay. And let's assume the road is 50 feet
3 wide. This would be an offset of positive 25 feet to
4 stake that point. Come down this alignment a certain
5 distance and then out over to the edge, an offset of
6 25 feet. And that's how most civil design and survey
7 happens and is, is oriented.

8 Q. So if you were gonna do a map and you wanted
9 to call out on your map this point, this property
10 corner that you've marked, just using arbitrary
11 made-up numbers can you show the Commission what the
12 numbers would look like if they included stationing
13 and offset?

14 A. Yeah. So I, I'm estimating that this point
15 is about 550 feet down the alignment. And it's 25 --
16 it's a 25-foot offset. So that would be -- the
17 station would be 5 plus 50, with a positive 25-foot
18 offset. And we've (inaudible - speaker system
19 interference.)

20 (The reporter asked the witness to repeat.)

21 Q. (By Ms. Kamas) That's the symbol for an
22 offset?

23 A. Yeah. The circle around this would be the
24 symbol for an offset. So.

25 Q. And does the positive tell you whether the

1 offset is east or west --

2 A. It does.

3 Q. -- or north or south?

4 A. The thing that -- yeah. It, it doesn't
5 matter really which direction your line is running. I
6 mean, you can be headed in a south -- we're probably
7 headed east this way and south in this direction.

8 The direction of the line doesn't matter.
9 The stationing starts here and it runs in this
10 direction. If you are right of your alignment it's a
11 positive offset. If you are left of your alignment
12 it's a negative offset.

13 Q. Okay, thank you. So on the 1927 val map --
14 you can probably sit down now.

15 A. Okay.

16 Q. On the 1927 val map we see various callouts.
17 And do they have sectioning and offset?

18 A. There is stationing.

19 Q. Stationing, sorry.

20 A. Yes. There -- stationing does exist. There
21 is no offset information provided.

22 Q. So when you have stationing, the only
23 information the map is telling you is where something
24 is located along the centerline?

25 A. Along the centerline of the rail, that's

1 right.

2 Q. And you can't tell -- you're not given any
3 information whether it's right or left of the
4 centerline?

5 A. I -- no, not, not per the val map.

6 Q. Okay. All right. So we want to talk about
7 those concepts, then, to help us understand a little
8 bit what Mr. Barney has put together on Exhibit 132.
9 Just a couple of concepts here.

10 This is Mr. Barney's exhibit, right?

11 A. Correct.

12 Q. And you've looked at this?

13 A. I have.

14 Q. Analyzed it?

15 A. I have.

16 Q. You're familiar with it?

17 A. I am.

18 Q. Okay. What is Mr. Barney trying to do here?

19 A. He's made a representation of the
20 information -- these -- this stationing information
21 that appears right -- on the right side of the
22 corridor on the old map? He has --

23 Q. These numbers here?

24 A. Correct. He's represented those numbers
25 along -- he's represented the, the spatial separation

1 in these numbers along the centerline of the rail.
2 Again, this is -- this line here is an alignment.
3 It's very similar to this line. It's the centerline
4 definition of the corridor.

5 Q. And the corridor is the Railroad corridor?

6 A. That's correct.

7 Q. This is a Railroad map, so of course that's
8 what they're using as their centerline?

9 A. Correct.

10 Q. Plus Mr. Barney tells us this is the railroad
11 centerline right, right here. The -- well, it's
12 marked "Railroad centerline," correct?

13 A. Right.

14 Q. Okay.

15 A. And he's used the information here and placed
16 it at the centerline of, you know, he's represented
17 the spatial orientation of these callouts along the
18 centerline of the railway here.

19 Q. Okay. And specifically he has seen that
20 there's a callout for a crossing sign, and he's placed
21 that crossing sign along the centerline?

22 A. That's correct.

23 Q. And that's the only place he could place it
24 with the information that he has?

25 A. There isn't -- yeah, correct.

1 Q. Because there's not an offset?

2 A. That's right.

3 Q. So would that railroad crossing sign have
4 been in the centerline of the track?

5 A. No, it wouldn't -- it would not exist in the
6 centerline of the track. Anything that exists in the
7 centerline of the track doesn't exist there long. So,
8 no. There is a lack of offset information, so he's
9 displayed it on the centerline of the track. Problem
10 is that the sign doesn't exist in the middle of the
11 two rails.

12 Q. Right. That sign common sense tells us would
13 have been somewhere outside the, the east-most outside
14 rail?

15 A. Yes. It would -- at a very -- at the
16 absolute minimum, yes.

17 Q. Okay. And so based on this location of the
18 railroad crossing sign here on the center of the rail,
19 what, what assumptions has Mr. Barney made about the
20 location of 400 North?

21 A. The -- and this is obviously positioned
22 incorrectly, because the sign doesn't exist on the
23 centerline of the rail. The assumption that he made
24 in his, in his diagram here is he assumed that
25 the -- he was trying to determine the width of the

1 roadway from this information provided. And he saw
2 that there was a --

3 MR. ASTILL: Your Honor? I'd like to
4 interpose our objection that I don't think that the
5 witness can really testify about what Mr. Barney's
6 intent was or what he assumed, because he wasn't there
7 and he didn't put together that map.

8 I think he can testify about what he's
9 observing on the map, however.

10 THE COURT: I'll sustain the objection.

11 Q. (By Ms. Kamas) So go ahead. And in your
12 explanation explain the diagram, but without reference
13 to what Mr. Barney was thinking.

14 A. What has been done here is there has been an
15 assumption that the sign that existed was just -- I
16 did it again.

17 Q. Yeah.

18 A. What is displayed here --

19 Q. So just the sign is --

20 A. -- is the sign would exist just off of the
21 edge of the roadway. That's what's shown here, is
22 that the sign existed two feet off of the edge of the
23 roadway.

24 Q. Okay.

25 A. That's what's displayed here.

1 Q. Okay.

2 A. Approximately two feet. And using the --
3 using that line of thought that the sign is only two
4 feet off of the edge of the roadway, a roadway --
5 using that logic, a roadway has been drawn in here.
6 We had on this -- the one piece of information that is
7 called out is the center of a highway crossing.

8 So this point is incontrovertible. That's
9 the, that is the centerline. You know, we're holding
10 that. We're accepting that as good information off of
11 here. And the width of the road has been determined
12 by the location of this sign and placing the sign two
13 feet to the north of the paved surface.

14 Q. Okay. So this illustration marks the
15 centerline of the highway crossing from the callout in
16 the 1927 val map, correct?

17 A. Correct.

18 Q. Okay. And then places the railroad crossing
19 sign with the only information provided here along the
20 centerline, correct?

21 A. Correct.

22 Q. Okay. And then places a road boundary two
23 feet south of that railroad crossing sign, correct?

24 A. That's correct.

25 Q. Measures the distance between the centerline

1 and two feet below the railroad crossing sign,
2 correct?

3 A. That's correct.

4 Q. And then doubles it on the south to create a
5 width of road?

6 A. Right, yeah. The north, north edge was
7 created from the position of the sign and then simply,
8 in my opinion, mirrored to the south so you have
9 equidistant from the center.

10 Q. And there's no way that crossing sign was in
11 the middle of that railroad track?

12 A. There's no way.

13 Q. All right. Let's talk about one more thing.
14 Taking the information on Exhibit 132 prepared by
15 Mr. Barney, and also taking the information on the val
16 map, you have prepared one last exhibit, Exhibit 135,
17 where you've tried to figure out where the centerline
18 of this road would be as against the aerial map,
19 correct?

20 A. That's correct.

21 Q. So this point right here as called out in the
22 1927 val map you've plotted on a 2004 aerial map?

23 A. That's correct.

24 Q. And where, where is that centerline?

25 A. Centerline of road, by stationing, exists

1 34 and-a-half -- by this information that's in the
2 stationing callouts the road exists 34 and-a-half feet
3 south of the section line.

4 So this is approximately where that
5 information shows the centerline of a road. Right
6 here. Lying south of the existing road.

7 Q. Okay. So if -- let me ask you this question.
8 The stationing for the centerline of the road as shown
9 on the 1927 val map?

10 A. Crossing sign or center of road?

11 Q. Center of road, sorry.

12 A. Okay.

13 Q. Thank you. Is it somewhat inconsistent with
14 how the road is drawn?

15 A. Yeah, there's definitely -- the way that this
16 information has been illustrated on the centerline of
17 the rail doesn't -- you know, the way -- you can take
18 this information and display it on the centerline of
19 the rail and it's a completely different picture than
20 the illustration that's associated with these
21 stationing callouts.

22 Q. Because the illustration, as we talked about
23 earlier, shows that in the crossing the county road --
24 the north border of the county road is slightly north
25 of the section line, correct?

1 A. That's correct.

2 Q. Okay. But in the sec -- in the stationing,
3 that shows the centerline of the county road as at
4 this point here, correct?

5 A. Correct.

6 Q. Which is on Exhibit 135 at which point?

7 A. Here.

8 Q. Here?

9 A. Right here.

10 Q. Okay. So -- and where's the section line?

11 A. Section line is right here. Thirty, 30 --
12 along the tracks 30 -- approximately 35 feet
13 northwesterly along the tracks is where the section
14 line is here.

15 Q. So this -- so the stationing would put the
16 road more south than the illustration on the 1927 val
17 map?

18 A. It would, yes.

19 Q. Unless it was a really wide road?

20 A. Correct.

21 Q. Okay.

22 A. Correct.

23 Q. If the road really was -- if the center of
24 the road really was right here, as you've shown it as
25 per the stationing on the 1927 val map, where, where

1 is the public right-of-way today?

2 A. Repeat that once more, will you?

3 Q. Well, is -- I mean, your exhibit shows the
4 same -- this is where it would be today as, as well,
5 correct?

6 A. Uh-huh.

7 Q. And is -- are there any streets there?

8 A. No. There, there, there are no streets. I
9 found no evidence of a road --

10 Q. So --

11 A. -- there today.

12 Q. All right. So at the suggested location of
13 the centerline of road based on the 1927 val map
14 stationing that you have illustrated here, if that's
15 where it is, the road today is in the vegetation?

16 A. That's correct.

17 Q. Okay.

18 A. Off the south edge of the existing road.

19 Q. And -- but it would still, if this were a
20 public right-of-way -- even though it's not being
21 used -- it still crosses the Railroad right-of-way,
22 right?

23 A. That's correct.

24 Q. And this is still private property, right?

25 A. That's correct.

1 Q. And it's still been used by the Railroad
2 continuously for as long as you're aware of, right?

3 A. As long as I'm aware of.

4 Q. Okay.

5 THE COURT: Can I interrupt you real quick?

6 MS. KAMAS: Yes.

7 THE COURT: I saw a gentleman come in. Is he
8 a witness? Sir?

9 SPEAKER IN AUDIENCE: No.

10 MS. KAMAS: This is -- that's my boss.

11 THE COURT: Oh, okay. Just making sure it's
12 not somebody that should be excluded.

13 MS. KAMAS: Okay. That's all the questions I
14 have, thank you.

15 THE COURT: All right, thank you.

16 Mr. Church or Mr. Astill, which one of you
17 would like to go first?

18 Actually, why don't we take a quick
19 ten-minute break.

20 MS. KAMAS: Oh. Your Honor, before we break.

21 THE COURT: Uh-huh.

22 MS. KAMAS: I would like to mark and move
23 admission of the explanation of stationing and offsets
24 that Mr. Clark did.

25 THE COURT: Okay. Any objections?

1 MR. ASTILL: No objection.

2 MR. CHURCH: No objection.

3 THE COURT: So we'll mark it UP-169?

4 MS. KAMAS: Yes, sir.

5 (Exhibit No. 169 was admitted.)

6 THE COURT: Thank you.

7 (A recess was taken from 9:20 to 9:33 a.m.)

8 THE COURT: Okay. Go ahead Mr. Astill.

9 CROSS EXAMINATION

10 BY MR. ASTILL:

11 Q. Mr. Clark, I'm Dennis Astill. We met on
12 Monday.

13 A. Hello Dennis.

14 Q. I want you to know I appreciate your survey
15 lecture we, we got. I did some surveying as a young
16 college student. I was the guy on the chain saying
17 "chain" when we came to the end of it. Found the
18 stakes.

19 A. That was the original method.

20 Q. That's right.

21 A. Yeah.

22 Q. That's right. Mr. Clark, I think you --
23 well, isn't it true that you don't have any argument,
24 look -- referring to the Ken Barney map that's marked
25 as Union Pacific Exhibit 132. You don't have any, any

1 argument with the location of the centerline that's
2 been shown -- illustrated there on this map; is that
3 correct?

4 A. Can I answer yes or no, or would you like a?

5 Q. I think that's a yes or no.

6 A. I don't have any problem with the way that
7 it's displayed on the val map. I did not find any
8 evidence of it in the field.

9 Q. You -- oh, okay. I --

10 A. The way that, the way that it's labeled here
11 I've got nothing --

12 Q. Okay. So --

13 A. I really don't have any issues with the way
14 that it's labelled.

15 Q. Let, let me start, then, with the val map.

16 A. It is a little curious, however.

17 Q. The val map, I believe it was -- well, let me
18 just put it this way. You, you agree the val map is
19 highly accurate?

20 A. It is accurate.

21 Q. The callouts on these various stations you
22 believe are very accurate. And you verified that from
23 your surveys of 45 miles of railway for UTA; is that
24 correct?

25 A. That is correct. I found the information to

1 be accurate.

2 Q. Okay. So you don't have any reason to
3 believe that the centerline of the road, as called out
4 on the val map, was in any, any other place besides
5 where it shows?

6 A. I was not -- I was unable -- in theory, yes.
7 But I was unable to physically locate that on the
8 ground. I had no verification physically --

9 Q. Okay.

10 A. -- that it existed.

11 Q. Right.

12 A. Okay? Just to make that distinction. That's
13 correct.

14 Q. All right. But, but again, you, you found no
15 other major discrepancies in the val map as you
16 surveyed --

17 A. I haven't.

18 Q. -- 45 miles?

19 A. I haven't.

20 Q. So you have every reason to believe that the
21 callout for the centerline of this highway crossing is
22 accurate on the val map?

23 A. (Moves head up and down.)

24 Q. Yes?

25 A. Cor -- I have doubt because I was unable to

1 verify that physically. I take it on face value, I
2 plot it, I look for it, it's not there, so. If I did
3 see an old road then I would say yes, without
4 question.

5 So I have a reason to have a bit of
6 apprehension about it.

7 Q. Well, isn't it true that in 45 miles you --
8 if you were to look for evidence of other callouts
9 that evidence might be gone after 80 years?

10 A. That's true. That's true.

11 Q. Okay. So -- and that was over 80 years ago
12 that this --

13 A. Correct.

14 Q. -- map was prepared?

15 A. Right.

16 Q. Okay. And, and you're aware that a plant was
17 built in 1942 and a lot of changes took place?

18 A. Yes.

19 Q. Okay. You were talking about offset. And I
20 want to clarify if we can -- and maybe it's not that
21 important. But is it your testimony then that this --
22 that the location that's shown on this depiction by
23 Mr. Barney is probably not accurate?

24 A. I would say that it's not accurate, yes.

25 Q. Okay. And he's shown it here because he had

1 no other information to go --

2 A. Correct.

3 Q. -- go on? And so he's depicted the, the
4 crossing sign in the centerline of the rail. And I
5 think we all agree that it's not likely that it was
6 there?

7 A. Correct.

8 Q. Now --

9 A. I would agree with that.

10 Q. Using the callout -- or the offset concept
11 you described, how would the Railroad surveyor have
12 shown that callout? I mean -- well, let me, let me.
13 How would he have -- how would you guess the offset
14 would work? Would it be at a perpendicular line to
15 the, to the callout?

16 A. The offset would be a perpendicular line to
17 that point on the, on the centerline alignment,
18 correct.

19 Q. Okay.

20 A. Yeah.

21 Q. So, so again, assuming you -- you know.
22 Let's all agree, you can't find any physical evidence
23 that a road existed there because it's been 80 years?

24 A. Agreed.

25 Q. Okay. Based on what your testimony has been,

1 this road -- county road line that has been depicted
2 by Mr. Barney would be probably the minimum-width
3 north line of the road; is that correct?

4 A. The minimum?

5 Q. In other words, it could be farther north --

6 A. I would say the minimum would have to be
7 outside the rail. So you'd have to offset that at
8 least another two -- what's the typical rail, five
9 feet in width? So you'd have to go another two
10 and-a-half feet off the alignment for that to be --
11 for the minimum to be a possible reality.

12 Q. Okay. So that would extend that line another
13 five to ten feet to the north?

14 A. If, if that -- if the sign was right on the
15 edge of the rail.

16 Q. Right.

17 A. Right on the edge of the steel rail.

18 Q. And I think you told me the other day that
19 more often than not the sign is outside of the
20 right-of-way for that?

21 A. That can be the case.

22 Q. Okay. So, so the minimum width --

23 A. But there is certainly a clearance from the
24 rail with every feature, you know.

25 Q. Sure, okay.

1 A. For safety reasons.

2 Q. Right. Right. So this, you know, without
3 any other information, Mr. Barney's illustrated this
4 road as -- the northbound -- the north right-of-way
5 line of this road, or north pavement line I should
6 say, as being where it shows on this map.

7 And it's north of the centerline of the road.
8 And it could have been ten feet further north, it
9 could have been even further north than that, correct?

10 A. That's correct.

11 Q. Okay. Now, if it went another -- if it went
12 30 feet from the centerline it would have hit the
13 section line, correct?

14 A. Well, yeah. We have about a 34 and-a-half-
15 foot difference between the two. Is that what you're
16 referring to?

17 Q. Yes.

18 A. Okay.

19 Q. Yeah.

20 A. Uh-huh.

21 Q. So, so if that line extended another 20 feet
22 or so, or 30 feet or so, it would have, it would have
23 crossed the section line?

24 A. That's correct.

25 Q. All right.

1 A. If the offset is great enough the north edge
2 of the road would, in fact, be north of the section
3 line.

4 Q. Okay. And now using the same concept, the
5 centerline of the road that's depicted here --
6 assuming that's accurate, because I think we all agree
7 the val map is pretty accurate?

8 A. Uh-huh.

9 Q. Okay. Wherever that north line is, the south
10 line is similar; is that correct?

11 A. Correct.

12 Q. All right. So we would have had a road -- on
13 Mr. Barney's illustration it's probably an approximate
14 distance here of 18 to 20 feet on one side or the --
15 and -- or the other, so we've got about a 40-foot
16 road. Probably more like a 50-foot road after you
17 think about the offset. Is that accurate?

18 A. That offset, if that's 21 feet there, it's --
19 yeah, it could be showing 18 feet -- it's kind of
20 tough for me to calculate that triangle.

21 Q. Yeah, I mean, it's a triangle --

22 A. Yeah.

23 Q. -- so you, you're not gonna be 21 feet --

24 A. No.

25 Q. -- you're gonna be something less than that.

1 A. Yeah, certainly less than 21 feet.

2 Q. So by the time you do the offset and you, and
3 you go north and south you're probably talking about a
4 40-to-50-foot road, correct?

5 A. (Moves head up and down.)

6 Q. As depicted on the survey map?

7 A. Correct.

8 Q. Okay. All right. Now, based on Mr. Barney's
9 representation here of the County vac -- or County
10 resolution vacation line, he's indicated that the east
11 boundary of the Railroad right-of-way was the edge of
12 the vacation line, correct?

13 A. Correct.

14 Q. Okay. And then he's talk -- he's in -- he's
15 indicating here, as the County resolution did, that
16 anything north of the section line was vacated?

17 A. Correct.

18 Q. Okay. And so anything south within the
19 Railroad corridor and continuing to the west, anything
20 south of the section line was not vacated, correct?

21 A. That's correct.

22 Q. Okay. So --

23 A. Lying west of the east line of the -- it's
24 specifying that -- that's a correct statement for
25 everything lying west --

1 Q. Everything lying --

2 A. -- of the east line of the -- yes.

3 Q. Yeah, okay. I'm sorry, I talked over you.

4 A. No worries.

5 Q. But you said everything west of the east line
6 of the Railroad right-of-way?

7 A. In '42.

8 Q. In 1942?

9 A. Correct.

10 Q. Was not vacated?

11 A. That's correct.

12 Q. Okay. Let me refer you back to Union Pacific
13 Exhibit 196. I think you've testified that the lines
14 that you're using here to depict the current roadway
15 were not surveyed in -- this -- your, your -- you, you
16 laid over your coordinates over the top of an aerial
17 map, correct?

18 A. This -- the -- if I might. This line work --
19 and when I refer to "line work" I'm talking about the
20 edge of the roadway. There's a couple edge of
21 roadways that are shown there. There's symbols for
22 utilities and such. That is a direct product of the
23 aerial photo.

24 Q. Of the aerial photo?

25 A. Correct.

1 Q. Okay. And it's not a product of you going
2 out with a -- with your surveying equipment and
3 locating the exact edge of the roadway?

4 A. We verified location of road lying farther
5 west.

6 Q. Okay.

7 A. We verified location of the centerline of
8 track. We verified location of the telephone poles.

9 Q. Okay.

10 A. And all that matches very well.

11 Q. Okay. But, but you don't have the exact --
12 you did not survey the exact locations of these
13 road -- edges of road?

14 A. They've been verified.

15 Q. I thought you just said you didn't.

16 A. It's a product of the same -- what do I want
17 to say? It's a product of the same process. That
18 edge of road is generated the same time and the same
19 way that the power pole symbol is and the center of
20 rail symbol is. So I have no reason to believe it's
21 any less accurate than the other items that I
22 verified.

23 Q. Okay. All right. So, now the sur -- the
24 section corner that you located on this map -- I
25 believe I asked you this the other day. That was --

1 it has a -- some writing on it to tell you when that
2 section corner was placed?

3 A. Correct.

4 Q. Was it 1983?

5 A. It's '89.

6 Q. 1989?

7 A. Correct.

8 Q. So that's not the same section corner that
9 was there in 1942 --

10 A. It's not.

11 Q. -- or 1927?

12 A. That's correct.

13 Q. Okay. Do section corners shift around a
14 little bit when, when they're replaced over time?

15 A. That's certainly been documented. The, the
16 process is to replace it as precisely as it exists.

17 Q. Okay.

18 A. That is the process.

19 Q. Can I -- you, you scaled some roadway
20 surfaces here.

21 A. Correct.

22 Q. And what I'd like you to do is give me a
23 measurement of the crossing width as it's depicted on
24 this map.

25 A. Okay. And I can show you, Dennis, that this

1 scale is relative.

2 Q. Okay.

3 A. We've got a 40-scale drawing. And --

4 Q. Okay.

5 A. -- that shows 40 feet. And current.

6 (The reporter asked the witness to speak up.)

7 THE WITNESS: Current width of the crossing
8 is, in my estimation, 38 feet wide.

9 Q. (By Mr. Astill) Thirty-eight? Okay.

10 Now you, you've testified that the val map is
11 highly accurate?

12 A. (Moves head up and down.)

13 Q. You have no reason to doubt it?

14 A. Correct.

15 Q. But then you expressed some doubt, it seemed
16 like, when you were looking at the depiction on the
17 survey map which evidenced roadway width that crossed
18 over the section line.

19 Let me ask you this. The surveyor that
20 performed this val map survey was really surveying the
21 centerline of rail and calling out features, correct?

22 A. Correct.

23 Q. And he wasn't surveying the road, correct?

24 A. That's not necessarily true, because on these
25 val maps you'll see bearings and distances to the

1 nearest section corner.

2 Q. Okay. And this one -- in fact this one does
3 that, doesn't it?

4 A. Okay.

5 Q. Okay. But he didn't go east and west and
6 survey road widths and, and locations, did he?

7 A. He --

8 MS. KAMAS: I'm gonna object as lacking
9 foundation.

10 THE COURT: Sustained.

11 MR. ASTILL: Okay.

12 Q. (By Mr. Astill) Do you have any -- is it --
13 would it be typical for the road surveyor to go
14 outside the boundaries and survey other features?

15 A. I think you meant to say the Railroad
16 surveyor.

17 Q. Yeah, I'm sorry.

18 A. Okay. Um, to, you know, to a, to a limit,
19 you know. The ob -- I don't, you know. The features
20 and the phenomenon that are happening at that
21 intersection are probably important. There are deeds
22 that have come out of that area. There's probably
23 utility agreements in that area.

24 So I think right around the corridor itself
25 it's very accurate. I don't expect them to have a

1 need to go much beyond what they're showing.

2 Q. The corridor itself?

3 A. Correct.

4 Q. Okay. So --

5 A. Well --

6 Q. -- maybe, maybe a few feet off the corridor
7 so that the features are called out?

8 A. I think that what they show -- what they're
9 showing, they're confident in. That would be my
10 assessment.

11 Q. Now --

12 A. I wouldn't show -- in my -- I wouldn't show a
13 road out that far if I weren't confident that that's
14 where it was. So that's -- I can comment on that
15 basis.

16 Q. All right. Now, as you've gone up and down
17 the rail corridor, are county roads called out in a
18 similar fashion?

19 A. They are.

20 Q. Okay. Do you think this -- do you know
21 whether the surveyors went out and surveyed locations
22 of those roads --

23 A. No, I don't.

24 Q. -- a hundred feet out?

25 A. I don't know.

1 Q. A quarter mile out?

2 A. I don't know that.

3 Q. Okay. All right. Do you know what -- you
4 don't know what their practice was then, do you?

5 A. I, I don't have that knowledge.

6 Q. Okay. Would you agree, then, that the most
7 accurate feature on this map are the centerline
8 callouts that are depict -- that are shown by the
9 Railroad surveyor?

10 A. Is that the most, as in the most accurate
11 piece of information? I think it's as accurate as all
12 the -- I think it's all at the same relative accuracy.

13 Q. Well, but you're not -- you're -- there's no
14 survey points to show points of the road, widths of
15 the road, or anything like that, is there?

16 In other words, the surveyor on the val map
17 has not gone outside this road and called out survey
18 points on the road?

19 A. I don't see, you know, an "X" with a point
20 number and an elevation on it, so I don't see that.

21 Q. Okay.

22 A. But my belief in how it was generated is from
23 the survey data. That's my belief.

24 Q. Okay.

25 A. Rather than just scaled in freehanded? Yeah,

1 it was located. I believe that.

2 Q. At least the centerline was?

3 A. I, I believe the edge of the roads were
4 located.

5 Q. But you don't have any basis for that belief?

6 A. No, I don't have an original -- I don't have,
7 you know, his original fieldwork.

8 Q. Okay.

9 A. But if I were to do it, that's the way I
10 would do it.

11 Q. Okay.

12 A. I would locate the road.

13 Q. All right. Okay.

14 A. Is it possible to speak to a prior point
15 that's been raised?

16 Q. No.

17 A. Okay.

18 Q. We might get to it.

19 A. Okay.

20 Q. You spoke about the County resolution. And
21 have testified that everything -- I think we just went
22 through that. Everything north of the section line
23 was vacated, everything east of the Railroad
24 right-of-way line was vacated?

25 A. That's correct.

1 Q. Okay. If you take your current depiction --
2 and this is, again, using your aerial photograph and
3 showing a centerline of road where it would hit today.

4 Does it seem reasonable that a county
5 commissioner would vacate a county road that -- to the
6 north of that line, knowing that that just took away a
7 county road that was being used at the time by, by the
8 public?

9 MS. KAMAS: Objection, foundation,
10 speculation.

11 THE COURT: Overruled.

12 THE WITNESS: Repeat, please?

13 MR. ASTILL: Could you repeat it back?

14 (The previous question was read back as
15 follows:

16 "If you take your current
17 depiction -- and this is, again, using
18 your aerial photograph and showing a
19 centerline of road where it would hit
20 today.

21 "Does it seem reasonable that a
22 county commissioner would vacate a
23 county road to the north of that line,
24 knowing that that just took away a
25 county road that was being used at the

1 time by the public?")

2 MS. KAMAS: Same objections.

3 THE COURT: Overruled.

4 THE WITNESS: I don't claim to know the way
5 county commissioners think. I know that the document
6 calls along the section line. And that's --

7 Q. (By Mr. Astill) Okay.

8 A. -- concrete in my mind.

9 Q. All right. I'm gonna show you what we've
10 marked as Exhibit 8. I believe -- I don't remember
11 which Exhibit number it is from Union Pacific's
12 exhibits.

13 A. No offense intended on the county
14 commissioner comment.

15 Q. That's why Jerry is a former commissioner.

16 Well, let me -- I think I can find another
17 piece. But let me have you read the last paragraph of
18 the County Commission Resolution?

19 A. Okay.

20 Q. "Excepting"?

21 A. "Excepting, however, from the
22 above-described lands that certain
23 county road running in a northerly and
24 southerly direction and located west of
25 said meander line, and which road begins

1 at the Southwest corner and terminates
2 at the Northwest corner of the property
3 first above described."

4 Q. So as they were vacating and they were
5 calling out a line that was north of the section line,
6 and they go further west, there's -- we come to the
7 lake?

8 A. Correct.

9 Q. And there's a meander line that's been
10 identified by the State of Utah for the lake boundary?

11 A. Correct.

12 Q. And there was a road down there.

13 A. Uh-huh.

14 Q. And the County is saying, We're not vacating
15 that.

16 A. Okay.

17 Q. How did they get to that if they vacated this
18 road?

19 A. How did they get to that?

20 Q. Yeah.

21 A. I imagine maybe -- well, this is purely
22 speculation. I don't know the answer. But --

23 Q. Okay. That's --

24 A. -- it would seem that they wanted to -- the
25 County needed to use that road for some reason so they

1 wanted to retain ownership.

2 Q. Right. But they needed to have access to it,
3 right?

4 MS. KAMAS: Objection, foundation.

5 Q. (By Mr. Astill) They had to have a way to
6 get down there?

7 A. Can I see that again?

8 Q. Uh-huh.

9 A. I'm not sure about those reasons. It seems
10 like that the -- there was an existing road west of
11 the meander line that they did not want to abandon.
12 That's --

13 Q. Right.

14 A. That's what I derived from that.

15 Q. Yeah. Now, that would tell me that the
16 County had looked at the area, and knew where the
17 roads existed, and knew that they needed to
18 specifically preserve that in this legal description,
19 correct?

20 MS. KAMAS: Objection, foundation.

21 THE COURT: Sustained.

22 MR. ASTILL: Okay.

23 Q. (By Mr. Astill) Now, when you went out and
24 did your foot research for a road you mentioned
25 there's -- let's see, does it show on here? Oh yeah,

1 here. There's a swamp down here?

2 A. Correct.

3 Q. You have no idea the location that that swamp
4 existed in 19 -- or 1927?

5 A. I do not.

6 Q. Okay. And so that -- and you do know -- I
7 mean, you did observe the road that extends to the
8 west?

9 A. Correct.

10 Q. And that appears to be a public road? Public
11 travel road?

12 A. Public traveled road, yes. Publicly
13 dedicated road, no idea.

14 Q. Okay. All right. And there's -- do you have
15 any reason to believe that that road couldn't have
16 shifted one way or another over the last 80 years?

17 A. Do I have reason to believe that it couldn't
18 have?

19 Q. Right.

20 A. I imagine a lot of things could have
21 happened. I found no evidence of any of those
22 possibilities.

23 Q. Okay. Now, back to the Exhibit 195. You
24 said something during your testimony that I'm not sure
25 I understood. It sounded like you were saying that

1 the right-of-way that was -- that remained after the
2 County vacated the road didn't come all the way across
3 the Union Pacific property.

4 Now, I think, I think that was your
5 testimony, but I'm not --

6 A. And I think that was the question that I
7 answered. It was -- yeah, I'm -- I know where you're
8 at.

9 Q. Okay. But if we come back to this and say
10 the centerline of the road was this line right here,
11 and the section line is right here?

12 A. Correct.

13 Q. And here is the Union Pacific right-of-way
14 line?

15 A. Right.

16 Q. If the centerline of the road is down here
17 and the section line is here, the vacation occurred
18 north of that section line. And so whatever existed
19 here still exists, doesn't it?

20 A. I, I -- that's correct. That is correct. I
21 think I was -- I wasn't understanding the question
22 very well.

23 Q. Okay. And I think you might have been
24 confused looking at this map --

25 A. Right.

1 Q. -- because based on the current alignment you
2 could argue that anything north of that section line
3 doesn't exist anymore?

4 A. And that's -- I -- that's what I've shaded
5 there.

6 Q. And that's really what your letter to Steve
7 Meyer said?

8 THE COURT: Just to be clear, the -- you're
9 pointing -- you're referencing Exhibit?

10 MR. ASTILL: One ninety-six.

11 THE COURT: One ninety -- and --

12 MR. ASTILL: Thank you.

13 THE COURT: -- a few seconds ago you
14 referenced Exhibit?

15 MR. ASTILL: One ninety-five.

16 THE COURT: Okay.

17 MS. KAMAS: For the record, Dennis, I think
18 you're referring to the Bates numbers, which are on
19 the bottom right-hand corner.

20 MR. ASTILL: Oh, I sure am.

21 MS. KAMAS: What you need to be referring to
22 is the exhibit numbers up at the right -- top right.

23 MR. ASTILL: Oh. That testimony is all
24 screwed up now.

25 THE COURT: Okay, so --

1 MR. ASTILL: Okay, so Exhibit -- when I, when
2 I spoke of 195 I was referring to Exhibit 135. When I
3 spoke of 196 I was referring to 134.

4 THE COURT: Okay.

5 MR. ASTILL: If that helps to correct the
6 record.

7 THE COURT: All right.

8 Q. (By Mr. Astill) Okay. So when you talk
9 about the vacating line didn't leave us a right-of-
10 way -- or leave the public right-of-way that extended
11 all the way across the Railroad property, you were
12 really looking at Exhibit 134 and saying if -- under
13 that alignment the vacating resolution wiped out
14 anything -- it didn't get you all the way across?

15 A. That is what I've illustrated there.

16 Q. Okay. But looking at Exhibit 135, the
17 vacating -- and assuming the road existed south of the
18 section line as depicted in the val map, then
19 everything south of that line -- of that section line
20 continued to exist?

21 A. One thing I want to point out is that the val
22 map does show the road existing north of the section
23 line.

24 Q. Some portion of it, correct?

25 A. Correct.

1 Q. Okay.

2 A. And I think you just stated that it doesn't.
3 So --

4 Q. Okay. Yeah. And let me -- I'll just go back
5 to Exhibit 132. And the drawing, the depiction here,
6 shows some portion of the roadway existing north of
7 the section line?

8 A. Correct.

9 Q. But using the strict callouts of the val map,
10 the majority -- the northern edge of the road from the
11 centerline clearly has some 30 feet before it hits the
12 section line, correct?

13 A. Based on stationing alone, that's correct.

14 Q. Okay. I'm gonna show you what's been marked
15 as the Anderson Entities Exhibit 25. And what you are
16 seeing there appears to be -- this is from the Utah
17 County records. Appears to be a depiction of the
18 crossing as it existed in 1999. Now, in this map the
19 centerline is located, correct?

20 A. Centerline of?

21 Q. Of the -- or I'm sorry, the section line --

22 A. Section line is on this.

23 Q. -- is, is indicated. And that's in about the
24 location that, you know, it looks like it matches the
25 depiction that you have here on Exhibit 134, correct?

1 A. The -- it's, it's similar. It's very similar
2 looking, yes.

3 Q. Okay. And if we, if we look where that
4 section line hits the, the aerial photo
5 depiction it's, it's pretty close if you compare the
6 two maps. They're a little different though, aren't
7 they?

8 A. There, there is a, it looks like the curve of
9 the access road into Geneva. It seems that on this
10 exhibit the point of curvature is right where the
11 monument is. And on this document -- or in this -- in
12 the current condition -- well, 2004 condition it seems
13 like that entrance road might be in a different place.

14 Q. Okay. All right.

15 A. Possibly.

16 Q. Okay.

17 A. Or drawn differently.

18 Q. Drawn differently, correct?

19 A. Drawn differently.

20 Q. Okay. Now, in the 1999 survey depiction as
21 the section line extends west from the section corner
22 the road is depicted there. The roadway. And you can
23 see some portion of the roadway extending a little bit
24 north of the section line, correct?

25 A. Correct.

1 Q. The majority of the roadway, however, extends
2 to the south of that section line, doesn't it?

3 A. It -- yeah, the majority of the east-west
4 road is south of the line.

5 Q. Okay. Now, just in general, as you look at
6 aerial survey maps, aerial photographs?

7 A. Uh-huh.

8 Q. Like Exhibit 136. While a lot is done to try
9 to make them as accurate as possible, they're not as
10 accurate as somebody going out and doing a survey, are
11 they?

12 A. In my quality control for this project we've
13 located -- I'm just gonna pick out one feature, the
14 rail. You know, there are two, three, four, sometimes
15 a dozen rails in the corridor. And this is just one
16 example.

17 When we go out and locate that, either with a
18 GPS unit or with a conventional method of survey, that
19 plots up with -- within the size of a racquetball on
20 that rail.

21 Q. Okay.

22 A. Just to the left of, of the rail. Which is,
23 what, two and-a-half inches wide. Just to the right
24 of it. I've been very, very impressed with the
25 accuracy of both the image and the photograph as

1 compared to field survey measurements.

2 Q. And, and you would expect that, with that
3 aerial survey, to match up as closely as possible with
4 the rail alignment, wouldn't you?

5 A. It does. I've proven it.

6 Q. Okay. And, and I don't doubt that.

7 A. Okay.

8 Q. But it could also vary a little bit outside
9 that rail alignment because they weren't as interested
10 in features, you know, outside of the rail alignment;
11 is that correct?

12 A. Correct.

13 Q. Okay.

14 A. Well, I -- their main focus on --

15 Q. Well --

16 A. As the imagery is produced, or can you
17 qualify that a little bit?

18 Q. No. I, I -- what I -- I guess what I -- I
19 want to come back to my original question. Even you
20 have found some level of inaccuracy?

21 A. Measurable amounts.

22 Q. Compared -- measurable amounts?

23 A. A measurable amount of inaccuracy.

24 Q. Okay. And, and so you would agree with me
25 that an on-the-ground survey with your survey

1 equipment is going to be more accurate than an aerial
2 photograph plotted?

3 A. Slightly.

4 Q. Okay. Now, based on this county surveyor map
5 do you have reason to believe that this all -- this
6 actual aerial overlay is, is -- has some inaccuracies
7 in it?

8 A. You're referring to this?

9 Q. Yes.

10 THE COURT: Referring to Exhibit 25?

11 MR. ASTILL: Yes.

12 THE WITNESS: By looking at this can I
13 tell -- what's the question one more time, please?

14 Q. (By Mr. Astill) The question is -- well, let
15 me, let me rephrase it -- let me just withdraw that
16 question and start over.

17 From this county surveyor map, he's done what
18 you indicated you had done. He's gone out and he's,
19 he's located landmarks?

20 A. What this drawing is, is the surveyor or the
21 County has set one, two, three, four, five, six
22 references to that monument.

23 Q. Okay.

24 A. Which is quite a few. I think that maybe in
25 1989 -- the tie data was reobserved in '99 by the

1 County. Those are a lot of offsets. They probably
2 anticipated its destruction at some point.

3 Q. So, so given that, you would --

4 A. But what this is, is that --

5 Q. Would you agree that that is a pretty
6 accurate map, based on his locating --

7 A. I would --

8 Q. -- six points?

9 A. I would agree that the six points are very
10 accurate to the section corner.

11 Q. Okay.

12 A. That, that's what this -- the high -- the
13 most accurate information on this drawing is the
14 relationship of the reference points to the actual
15 corner.

16 Q. Okay. Now, given that -- and, and you can
17 see that the county road extending west of this
18 crossing is between two poles. Which you agree are
19 accurately located?

20 A. I have no reason to believe those poles do
21 not exist where they say they are.

22 Q. Okay. So isn't it just as likely that the
23 roadway, as depicted, is accurately depicted?

24 MS. KAMAS: Objection, foundation.

25 THE COURT: Overruled.

1 THE WITNESS: Again, the -- I think that the
2 purpose of this document are the accurate ties, and
3 not necessarily --

4 Q. (By Mr. Astill) Well --

5 A. -- the distance that this rail is from the
6 symbol, or the distance that --

7 Q. You have no idea what the purpose of the
8 document was, do you?

9 A. I do. I use these every day.

10 Q. But -- so you can speak to the -- what the
11 county surveyor, his intent was on this document?

12 A. His intent was to show -- in reference to
13 this brace pole, that's 107.64 feet. He was -- what
14 he's showing is that it exists north of the road and
15 it's 164 -- exactly 107.64 feet away.

16 Q. And the road was south of that?

17 A. The road is south of the pole.

18 Q. And the brace pole that's 111.89 feet from
19 the section corner is south of the road?

20 A. The, the one at 111.89 is south -- is shown
21 south of the road.

22 Q. Okay. That's all.

23 MR. ASTILL: I think that's all I have.

24 THE COURT: Okay. Thank you Mr. Astill.

25 Mr. Church?

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CROSS EXAMINATION

BY MR. CHURCH:

Q. Mr. Clark.

A. Sir.

Q. You're experienced in dealing with roadways, the design of roadways, helping people build roadways, that's correct?

A. That is correct.

Q. You've been speaking about the width of a road at times, the edge of asphalt at times, some rights-of-way at times. It's true, is it not, that the pavement portion of a road that we might see in an aerial photograph isn't an accurate representation of the width of the public right-of-way, is it?

A. No. No, it's --

Q. In fact, very common the travel portion or the pavement portion has shoulders on the outside of it that, that are within the public right-of-way that are not paved or wouldn't be seen from an aerial photo, correct?

A. That's true. There are, there are examples of that.

Q. And it would be expected, in fact, that the paved portion of the road, or what some people might call the traveled portion of the road, would not

1 accurately reflect what the public right-of-way would
2 be, correct? Just like on a Railroad right-of-way,
3 the tracks aren't either?

4 A. With a document in place?

5 Q. No, I'm just saying commonly on a road.

6 A. It would seem like that would be a
7 matter -- that the travel way might not necessarily be
8 in the center of an unknown right-of-way?

9 Q. No, not the center. That the public
10 right-of-way is not represented just by the paved
11 portion or the traveled portion of the right-of-way.

12 MS. KAMAS: Calls for a legal conclusion.

13 MR. CHURCH: I'm asking his experience on the
14 roads.

15 THE COURT: Overruled.

16 THE WITNESS: I -- it would seem that --
17 please repeat it. I'm not trying to avoid it, I just
18 want to refresh my memory.

19 Q. (By Mr. Church) No, and I'm not trying to
20 confuse you. I'm just -- let me, let me try to
21 clarify this way.

22 You testified as to what the aerial photos
23 showed as -- and you testified, I believe, as to the
24 width of -- from -- that you calculated from the
25 aerial photo of the paved portion of 400 North as it

1 goes west towards the lake, correct?

2 A. I did.

3 Q. You are not saying, are you, that that paved
4 portion in any way indicates what the public
5 right-of-way is for that road, are you?

6 A. Without a dedication in place, I can't make
7 that decision.

8 Q. And in fact all you can tell us is what the
9 width of payment is -- pavement is from your
10 calculation and your ruler, correct?

11 A. I can. I can do that. And I can --

12 Q. And that's it?

13 A. -- stamp it and send it to you, and it's an
14 official document. I can do that.

15 Q. And to determine what the actual public
16 right-of-way is is beyond what you can do as a
17 surveyor; isn't that correct?

18 A. It's a legal matter. Absolutely. I can be
19 asked for opinion, but it's -- that's not my realm. I
20 don't -- if there's not a dedi -- if there's not a
21 document in place it could be -- it's out of my realm.

22 Q. And as an experienced surveyor who's dealt
23 with roads you know that there are very often public
24 roads that are not represented by documents, correct?

25 A. Very frequently.

1 Q. And there are lots of ways --

2 A. Well, they -- there are use -- roads that get
3 used by the public that don't have a designated
4 right-of-way. I'm not defining that as a public road,
5 it's a roadway with asphalt that the public uses.

6 Q. And in fact that --

7 A. To call it a public road seems like there's a
8 decision that's been made about it. And without a
9 document in place I can't say that that's the case.

10 Q. In fact that would be a legal determination
11 as well?

12 A. Correct. Correct.

13 Q. You are experienced, however, in that there
14 are ways -- many ways that a road might become
15 dedicated to public use, other than just a document,
16 or a deed, or --

17 A. There are ways, correct.

18 Q. And you are experienced that roads can be
19 dedicated to public use, for example, just by use over
20 time, correct?

21 A. I think that, you know if you're referring
22 to --

23 Q. If you know.

24 A. -- right-of-way by prescription, there are a
25 series of stipulations that have, that have to be met,

1 I think, before a boundary by des -- prescription
2 is -- there are -- there is a set of criteria which is
3 evaluated, argued, and a decision is made upon.

4 I'm -- I know of a few, if not all of those
5 criteria, but I am not qualified to evaluate and
6 decide.

7 Q. Okay. Let me ask you a question about -- I
8 believe this is the exhibit we were using, is it not,
9 132?

10 A. I've seen this exhibit today, yes.

11 Q. And is this the section that you're referring
12 to as the "val map"?

13 A. That is the val map portion.

14 Q. Valuation map?

15 A. Correct.

16 Q. And I think you testified that it says it
17 shows county road on that?

18 A. It does say county road.

19 Q. You have no idea what the width of that
20 county road was at that time, do you?

21 A. There is no document in place.

22 Q. And you don't know if that is being depict --
23 being depicted as the traveled portion at that time or
24 the claimed right-of-way by the County at that time,
25 do you?

1 A. I do n -- I have an opinion as to what it is.

2 Q. Okay.

3 A. But definitively, no.

4 Q. And in fact, all you know from that document
5 is that there was a county road in that location,
6 correct?

7 A. According to that map, yes.

8 Q. Now, do you -- have you seen any other maps
9 or any other documents that would indicate to you what
10 the width of the claimed County right-of-way was for
11 that road?

12 A. Um.

13 Q. I'm not talking about the existing traveled
14 portion.

15 A. No.

16 Q. I'm not even talking about pavement or
17 things.

18 A. Okay. Could you, could you repeat it again?

19 Q. The claimed County right-of-way for that road
20 at that time.

21 A. Claimed County right-of-way?

22 Q. Yeah.

23 A. Would have to appear on a document.

24 Q. And you have no idea --

25 A. I have not seen a document.

1 Q. And so you really can't testify at all as to
2 the width of the County -- claimed County right-of-way
3 at that time or in 1942, for example, when it was
4 vacated, correct?

5 A. I would say that I don't have a reason to
6 disbelieve what's being shown there.

7 Q. What is being shown there that you believe?
8 That there was a county road, right?

9 A. I believe there was a roadway there.

10 Q. Okay.

11 A. I think we all believe that, don't we?

12 Q. And -- yes, I do believe that. But what is
13 being shown there is not the pavement, right?

14 A. I -- my opinion, if you're --

15 Q. No, I'm not asking for your opinion.

16 A. Okay.

17 Q. I'm asking for the facts of what's shown by
18 that map.

19 A. Okay, I don't -- I definitively do not know
20 what that line represents, other than the fact that it
21 kind of borders some text that's says "county road."

22 Q. Okay, thank you. Now let me refer you back
23 to --

24 MR. CHURCH: If I might, Dennis?

25 MR. ASTILL: Yeah.

1 Q. (By Mr. Church) -- this document which
2 Dennis showed you, which is their Exhibit No. 25.

3 A. Correct.

4 Q. As a surveyor you do know what that is, don't
5 you?

6 A. I do.

7 Q. And you know the function of the County
8 Surveyor's Office, don't you?

9 A. I do.

10 Q. And you know the purpose of those -- putting
11 those things together, correct?

12 A. I do.

13 Q. And you know, for example, as you testified,
14 that those -- that you have no doubt as a surveyor
15 that those six points, I think you referred to them,
16 are accurate. It's not -- oh, thank you.

17 It's not uncommon -- it's -- the purpose of
18 this would be to accurately place those six points of
19 reference, correct?

20 A. Yeah, the purp -- the purpose of this
21 document is, in the case that this actual section
22 corner is obliterated or lost, it can -- the position
23 can be reestablished by locating two or more of the
24 references.

25 Q. And so we're relatively sure, in your mind as

1 a surveyor, that those reference points are -- were
2 actually there on the ground in relationship to that
3 section line on the date in 12/20/1999?

4 A. The distances from these points to the
5 section corner is -- that's the only information
6 that's provided here. I would expect that to be of
7 the highest accuracy, the distances between feature to
8 section corner.

9 Q. Now, as a surveyor -- and I don't know the --

10 A. From reference to sec -- from reference point
11 to section corner.

12 Q. Okay. It's showing the, the road there,
13 correct?

14 A. Correct.

15 Q. You have no idea whether it's attempting to
16 show the width of the road, or the width of the
17 right-of-way, or the pavement of the road on this, do
18 you?

19 A. It's, it's showing something that represents
20 a roadway. I don't have a callout with a leader that
21 says edge of road. I know that's -- you know. Basic
22 observation tells me that. I am assuming it's an
23 existing roadway.

24 Q. Okay.

25 A. However, it's not crystal clear.

1 Q. And you do know, however though, that there
2 are two brace poles: One north of what they're
3 showing as a road --

4 A. Correct.

5 Q. -- and one south of what they're showing as a
6 road?

7 A. I agree.

8 Q. And you would agree in your experience that
9 those brace poles would not be in the middle of the
10 roadway?

11 A. I'm, I'm not sure what a brace pole is. I
12 don't know what it is. It's a pole, obviously. Piece
13 of metal.

14 Q. Well, if you don't know, you don't know.

15 A. I don't know what that is. Is it something
16 that would resist -- or that would exist in a traveled
17 roadway? I doubt it.

18 Q. Now, in your experience dealing with county
19 surveyors and these kind of documents, when they put a
20 road like they have on this, West Geneva Road, is it
21 generally accurate on the location?

22 A. I would imagine there's a roadway that
23 represents that shape. There's, you know, there's a
24 feature there that repre -- that is similar to the
25 shape that is shown on here. This document is not

1 created to show the road.

2 Q. But in your --

3 A. The document is created --

4 Q. In your experience would it be a -- would it
5 accurate -- would documents such as these accurately
6 reflect the location of the roads that they are --
7 that are drawn there?

8 A. Accurate to what sort of precision?

9 Q. Well, not within inches, of course, but
10 within feet, let's say.

11 A. Within -- I, I really, I really can't comment
12 on that. I mean, if this...

13 Q. Of all the opinions that you've had, you
14 don't have an opinion whether or not the county
15 surveyor accurately put in a road here?

16 A. Well, I haven't -- no, no, no. What I
17 haven't done is taken multiple examples of these
18 surveyor tie sheets and located all the surrounding
19 features and compared them for accuracy.

20 Q. Okay.

21 A. That's the point I'm trying to make.

22 Q. Okay.

23 A. I have --

24 Q. And, and I think --

25 A. -- occupied the references, and those are

1 highly accurate. I have a lot of faith in them.

2 Q. I think you have made your point.

3 A. Okay.

4 Q. The section line though, as it's located, you
5 would trust as being located correctly?

6 A. I would, yes.

7 Q. And if the section line is showing that
8 there, that there's a road south of that section line
9 you'd trust that there's a road south of that section
10 line, wouldn't you?

11 A. There would be something that -- again, I
12 mean, we're getting into terminology.

13 Q. In your experience wouldn't you expect that
14 if you pulled this sheet out that it would be accurate
15 that there would be a road south of that section line
16 there?

17 A. And north.

18 Q. And north of that section line?

19 A. Correct.

20 Q. Okay. Just one other thing that I wanted to
21 clear up in my mind. The Railroad right-of-way hasn't
22 changed from 1942 in this area as far as you know, has
23 it?

24 A. I don't believe it has.

25 Q. Okay. I think -- I thought I heard you

1 testify at one time about the edge of -- the eastern
2 edge in 1942. You're not making a distinction that
3 that eastern edge in 1942 was -- is different than the
4 eastern edge of the right-of-way today, are you?

5 A. The -- I have -- I have an answer to that
6 question, it doesn't directly answer it though. What
7 I -- have seen the, the Moog -- is there a Moog deed
8 that's called out here? That's a hundred-foot-width
9 corridor -- you know, it's a hundred-foot-width deed,
10 if I'm not mistaken.

11 Q. I just wanted to clarify for my mind.
12 There's one thing that you said at one time that
13 you've -- you've referred to this, I believe this is
14 the eastern edge of the corridor?

15 A. That's correct, yeah.

16 Q. And at one point you answered a question and
17 you said the eastern edge as it existed in 1942.
18 You're not making a distinction that somehow that's
19 different than today, are you?

20 A. I'm not, because the val map that I
21 established that right-of-way from is from '27. The
22 same version we're looking at here. So my information
23 is -- and this '27 drawing shows a 100-foot corridor
24 clearly labelled right here.

25 Q. And that's what's there today?

1 A. Fifty feet either side. There's a hundred
2 feet between fences today.

3 Q. And just so I'm clear, because I was blocked
4 out a little bit.

5 No, I'll pass on that. Thank you.

6 THE COURT: Okay. And thank you Mr. Church.

7 Ms. Spooner?

8 CROSS EXAMINATION

9 BY MS. SPOONER:

10 Q. So you spent a large amount of time
11 discussing Exhibit 134.

12 A. Okay.

13 Q. And this is your work, correct?

14 A. It is my work.

15 Q. I just want you to take a look at which is
16 the joint exhibit -- UP/UDOT Exhibit 133.

17 A. Okay.

18 Q. And other than you wrote some -- it looks
19 like approximately 25 feet.

20 A. Some dimensions, right.

21 Q. And the yellow marking, is this the same
22 exhibit as --

23 A. It's --

24 Q. -- 134?

25 A. It's not the same exhibit.

1 Q. Okay. What's the differences?

2 A. The difference is, is that in May of '09 --

3 Q. Uh-huh.

4 A. -- I was showing a 66-foot right-of-way on
5 Vineyard Road. And that was an assumption on my part,
6 because when I wrote the take -- we wrote a take
7 deed about 9,000 feet long and it's 35 feet off of
8 this corridor right here, and I did not know the
9 interest of this roadway.

10 So I used caution and I stayed 33 feet off of
11 it, in case -- because I didn't -- UTA is paying --
12 would be paying for this portion of right-of-way.
13 And, you know, in my opinion, at that point it wasn't
14 clear to me whether there was a right-of-way here or
15 not.

16 So I stopped my description here and split
17 the -- off of the section line I showed our
18 right-of-way.

19 Q. When you were pointing to the section you
20 were unsure of like what UTA wanted to purchase, what
21 area were you pointing to?

22 A. What UTA wanted to pur -- oh.

23 Q. If you could describe it so it shows it on
24 the record other than your pointing to it?

25 A. Right. I, I assumed that there would be some

1 determined right-of-way on that road and that Geneva
2 would not sell to the section line. All the way south
3 to the section line. This was before this -- the
4 determination of this right-of-way here.

5 What I've shown was -- existed in my drawing
6 before Steve asked me to plot -- Steve Meyer asked me
7 to plot the effects of the document on top of it.
8 When the document came out -- you know, when I
9 realized that there was no road dedication here I knew
10 that this was in error. And I've take it off since.

11 Q. When you say "this" you're talking about?

12 A. The assumed right-of-way that I've shown
13 here.

14 MS. KAMAS: May I see, your Honor, what we're
15 talking about?

16 THE COURT: Sure, yeah. You can come pick it
17 up, Ms. Kamas.

18 THE WITNESS: And since, since that has
19 happened in -- through negotiations with, through
20 negotiations with Ken Barney, and I think Mr. Astill,
21 and Bill Fowler I believe is his name, UTA has
22 purchased the rest of this down to the section line.
23 So.

24 Q. (By Ms. Spooner) You're saying from the edge
25 of the Railroad corridor?

1 A. Yeah. Yeah, there's, there's 35 feet. It's
2 a consistent -- and I think as you get farther north
3 it may get even a little bit wider. Down here it's
4 either 25 or 35 feet. And it's been purchased all the
5 way, you know, from outside of the right-of-way,
6 35 feet perpendicular to it, all the way up.

7 Q. And you're talking about the Railroad
8 right-of-way?

9 A. I am talking -- yeah, 35 feet to the west of
10 the existing Railroad right-of-way UTA has purchased.

11 Q. And the lines that are like fainter and it
12 shows -- I'm assuming this is like the edge of the
13 asphalt?

14 A. That is the edge of existing asphalt,
15 correct.

16 Q. And the edge of existing asphalt, there's no
17 errors there, is there?

18 A. I, like I say, I go out and I, I've got
19 errors that if -- you know. It -- would I say that
20 line is more than --

21 Q. Pretty close?

22 A. -- two-tenths in error? It's not more than
23 the diameter of a racquetball in error.

24 Q. On the edge of the pavement?

25 A. Correct.

1 Q. Okay. So the main error you say that would
2 be in Exhibit 133 is just like the edge of
3 right-of-way that you're showing on --

4 A. Yeah. That was -- again, that was before.
5 This --

6 Q. And this is the edge of right-of-way on
7 Vineyard Road and 400 North?

8 A. Which is non-dedicated. What I didn't want
9 to do was buy up the right-of-way not knowing if
10 one -- I figured a decision had to be made here, and
11 so I did not buy beyond that line.

12 And then this document came out. We had
13 negotiations with, with Anderson Geneva. And I think
14 that was the first time I had spoken to Dennis or seen
15 Dennis on one of my email trails.

16 And we worked with Ken Barney. And Ken said,
17 No, you know, the property line goes all the way to
18 the section line and you'll have to buy an additional
19 piece. And that's, that's what's happened. So we've
20 bought down to that section line now.

21 Q. Okay, thank you.

22 A. Uh-huh.

23 REDIRECT EXAMINATION

24 BY MS. KAMAS:

25 Q. Let's go back to Exhibit 25. Anderson

1 Entities Exhibit 25. You have it.

2 A. Okay.

3 Q. The big black dot that's kind of in the
4 middle of Exhibit 25, the illustration on Exhibit 25,
5 is that the found section corner?

6 A. I am going to -- although there's not a
7 leader to it, oddly enough, that says section corner.
8 Yes, I believe that to be the symbol for the section
9 corner.

10 Q. Okay. And you've located the found section
11 corner on Exhibit 134, correct?

12 A. That's correct.

13 Q. The one that's inside the Railroad
14 right-of-way?

15 A. Yes.

16 Q. Okay. Do you know how far it is between the
17 found section corner and the eastern edge of the
18 Railroad right-of-way?

19 A. I could scale it.

20 Q. Okay.

21 A. Approximately 42 feet.

22 Q. Would you write that distance in, please?

23 A. Uh-huh.

24 Q. When Mr. Astill was asking you questions
25 there was a time when you asked him if you could go

1 clarify a prior point. If you still remember what
2 that was, would you clarify that point?

3 THE COURT: No, sorry to interrupt. You just
4 drew that number on Exhibit 135; is that correct?
5 U.P. Exhibit?

6 THE WITNESS: One thirty-four.

7 MS. KAMAS: One thirty-four.

8 THE COURT: Okay.

9 Q. (By Ms. Kamas) If you don't remember, it's
10 okay.

11 A. I don't remember. I don't remember.

12 Q. Looking at Exhibit 132, what's your opinion
13 whether the county road depicted on the 1927 val map
14 depicts the traveled portion or the claimed
15 right-of-way portion?

16 A. Repeat, Reha, one more time, please?

17 Q. What is your opinion whether the county road
18 depicted on the 1927 val map, that's shown in
19 Exhibit 132, what's your opinion whether that shows
20 the traveled portion or the claimed public
21 right-of-way portion?

22 A. I believe that to be a physical edge of
23 asphalt, or traveled way. It's a physical feature
24 that's been -- there's no reference to a document. It
25 has to be a physical feature.

1 Q. Is it because there's --

2 A. In my opinion, it has to be.

3 Q. Is your opinion based on the fact that
4 there's no reference to a document?

5 A. Oh, more -- well, my opinion is based on the
6 fact that, you know, everything that's called out here
7 does have a symbol that's drawn in, you know. The
8 little culverts, the signs, crossbucks. Those kinds
9 of things actually show up in here. So I -- the level
10 of detail is impressive, in my opinion.

11 Q. Is --

12 A. Especially at the scale that it's drawn on.

13 Q. Is your opinion also based on your experience
14 with those 45 miles of val maps that you looked at
15 from between Provo and Salt Lake City?

16 A. It is. Again, I haven't -- I've not, I've
17 not seen information -- incorrect information. So in
18 this case to assume -- you know, to say that the
19 stationing is right yet the illustration is wrong,
20 I've got a hard time believing that.

21 Q. Now, you gave some testimony about legal
22 conclusions that you don't make within your area of
23 expertise. You are qualified to plot legal
24 description as you have done on Section -- on
25 Exhibit 134, correct?

1 A. That's correct.

2 Q. Okay. So let's just talk about one other
3 thing to be clear. In the work that you've done on
4 this case you haven't found anything that would tell
5 you exactly where 400 North Vineyard Road was in 1942,
6 correct?

7 A. No.

8 Q. You do know where it is today?

9 A. Absolutely.

10 Q. And where it's shown today -- where it is
11 today is shown on Exhibit 134, correct?

12 A. That's correct.

13 Q. And you've shown us also on Exhibit 134 -- if
14 the road in 1942 were where it is today, and given the
15 reconfiguration of the crossing, you've shown what's
16 left of the public road going through the crossing,
17 correct?

18 A. That's, that's what's shaded there, correct.

19 Q. Okay. There are two other possible pieces of
20 information that would help us determine where that
21 road might have been in 1942. And they're both on the
22 1927 val map, correct?

23 A. Correct.

24 Q. And one of them is the illustrated county
25 road on the val map?

1 A. Correct.

2 Q. And if the road in 1942 were as illustrated
3 on the 1927 val map, then we would know that the, that
4 the road came somewhat north of the section line as it
5 went through the crossing, right?

6 A. If it existed the same way, yes, that would
7 be true.

8 Q. And you've given your opinion that if that's
9 where the road was in 1942, and given the
10 reconfiguration of the crossing, there would be
11 another section of the remainder of the public road as
12 it comes through the crossing that would be a
13 different shape than what you have in yellow on 134,
14 but it still would not reach the, the eastern edge of
15 the Railroad right-of-way, right?

16 A. That was the point I wanted to readdress, now
17 that you've --

18 Q. Okay. All right. Could you answer that one
19 yes or no first, before you readdress your point?

20 A. The -- rep -- I'm gonna ask you to repeat it.

21 Q. That's okay. Let's do your point first.

22 A. That -- I think that I got a little confused
23 with what you had asked me to shade and what -- and
24 the question that Dennis had asked me.

25 If this section line -- if the section line

1 is the section line. And if this road as shown here,
2 and if the road as shown here, the northern --

3 THE COURT: You're referring to exhibit?

4 THE WITNESS: In reference to Exhibit 132.

5 Q. (By Ms. Kamas) The val map section?

6 A. The val map section. If the road -- if
7 everything north of that section line was abandoned
8 there would be a portion of the existing road, in
9 1927, that would reach the eastern side.

10 Q. And that means also there would have been a
11 portion of the road that was abandoned?

12 A. That's correct, yes.

13 Q. Okay. And you've given your opinion that if
14 the road in 1942, at the time of abandonment, were as
15 it's illustrated on the val map in Exhibit 132, then,
16 given the reconfiguration of the crossing, there would
17 be some public right-of-way coming into -- let, let me
18 rephrase that.

19 There would be some of the old road coming
20 into the crossing, but it would not have reached to
21 the eastern Railroad right-of-way?

22 A. As far as remaining road, no.

23 Q. Okay. So the third option for where this
24 road might have been in 1942 is based on the
25 stationing in the 1927 val map on Exhibit 132, right?

1 A. That's correct.

2 Q. Because there's a stationing number for the
3 centerline of the highway crossing, correct?

4 A. Yes.

5 Q. Okay. And you have plotted the centerline of
6 that highway crossing based on that stationing on
7 Exhibit 135, correct?

8 A. Approximately, yes.

9 Q. And it's this line down here that's marked
10 "Suggested location centerline of road"?

11 A. That is correct.

12 Q. So if this is where the road was in 1942,
13 then today it's somewhere south of the crossing, going
14 over Union Pacific and U -- UTA's private property,
15 and kind of in the grass, and the canal, and the
16 ditch, right?

17 A. That is correct.

18 MS. KAMAS: That's all the questions I have,
19 thank you.

20 THE COURT: Thank you.

21 Mr. Astill?

22 MR. ASTILL: Recross? Thank you.

23 RE CROSS EXAMINATION

24 BY MR. ASTILL:

25 Q. I think I got confused again with that last

1 set of questions. First, I wanted to clarify too a --
2 when Mr. Church was speaking about non-dedicated
3 right-of-ways, we were -- you were speaking -- or
4 maybe you spoke about it.

5 You really meant that there, there is no deed
6 dedicating the public right-of-way, correct?

7 A. It can come, it can come by plat as well.

8 Q. Okay.

9 A. Public right-of-way can be platted.

10 Q. Deed or plat?

11 A. Or deeded, yeah.

12 Q. And, and if -- so if it's non-dedicated, as
13 you speak about it --

14 A. Uh-huh.

15 Q. -- it just means it's been acquired some
16 other way, besides deed or plat?

17 A. If it has -- if it's not by deed, or plat, or
18 by Court decision, it's not dedicated.

19 Q. Okay. And then that's what you mean by
20 non-dedicated?

21 A. Cor -- yeah, I have no problem with that.
22 That's correct.

23 Q. Okay, all right. All right. Let me -- I'm
24 gonna go over -- plow s -- go back over some ground we
25 covered --

1 A. That's fine.

2 Q. -- so I apologize for that, but?

3 THE COURT: Would you do me a favor, Counsel?
4 Just for the record's sake, for the transcript's sake,
5 just try to remember to --

6 MR. ASTILL: Call out the exhibit?

7 THE COURT: -- call out the exhibit.

8 MR. ASTILL: I will. I will.

9 Q. (By Mr. Astill) So I'm, I'm gonna go back to
10 the exhibit that has the shading on it. It's
11 Exhibit 134.

12 I'm gonna refer to that briefly, because I
13 think what I, what I heard Ms. Kamas indicate was
14 that -- and I, and I thought I heard you agree
15 again -- was that under the 1942 vacating ordinance,
16 and then if you assume the road as reflected on the
17 val map --

18 A. Correct.

19 Q. -- which is Exhibit 132, that as it comes
20 across the Railroad property -- the Railroad corridor
21 you called it -- it doesn't reach the eastern edge.
22 But that's not true, is it?

23 A. It -- yeah, the -- I think that the
24 conditions in the question were that is a
25 representation of what is left of the old

1 right -- physically what's left of the old road with
2 the new crossing configuration. So what's shaded
3 would be unaffected by -- in current conditions.

4 Q. Well --

5 A. If that, in fact, is a remainder of the old
6 road, that portion that's shaded would be unaffected
7 by the document.

8 Q. Okay. But --

9 A. Because I ima -- because this area here is --
10 would be -- now, we're assuming this section line
11 (inaudible.)

12 (The reporter asked the witness to speak up.)

13 THE WITNESS: Sorry, okay. Assuming that the
14 section line is in the same place, this portion
15 here --

16 Q. (By Mr. Astill) South of the section line?

17 A. -- south of the section line would be
18 unaffected by the document. The roadway is, is --

19 Q. And again, we're referring to Exhibit 134 --

20 A. Right.

21 Q. -- and the yellow shading area. Okay.

22 A. The val map, which is number.

23 Q. One thirty-two.

24 A. One thirty-two did, in fact, show remainder
25 of the road reaching this eastern side.

1 Q. Okay.

2 A. The current configuration, in combination
3 with what's left of the old road, as we referred to
4 it, is what's shaded here. And I know -- I knew that
5 I got a little bit confused and that's what I wanted
6 to go back and talk about. I didn't understand the
7 question that clearly.

8 If this were a straight corridor going right
9 through, in 1942 conditions there would be a piece of
10 the right-of-way that would reach the eastern side of
11 the corridor.

12 Q. Okay. That's what I wanted to clarify.

13 A. Sorry. Yeah, I wasn't trying to avoid that,
14 I just didn't understand it clearly.

15 Q. All right, thank you.

16 THE COURT: Mr. Church?

17 MR. CHURCH: Nothing further.

18 THE COURT: Ms. Spooner?

19 MS. SPOONER: Nothing further, your Honor.

20 THE COURT: All right. Any follow up,

21 Ms. Kamas?

22 MS. KAMAS: Nothing else, thank you.

23 THE COURT: Okay. Thank you, Mr. Clark.

24 THE WITNESS: You're welcome.

25 THE COURT: Next witness? Mr. Cheng, is that

1 who you're gonna call?

2 MS. KAMAS: Your Honor, I think we -- the
3 Commission had some discussion previously about what
4 the order of the parties would be in calling
5 witnesses. We would like to rest.

6 THE COURT: Okay.

7 MS. KAMAS: On the condition that Ms. Spooner
8 now be able to call Mr. Cheng and that he be the next
9 witness. But we would like to allow her to do the
10 direct.

11 THE COURT: Okay. Are you okay with that?

12 MR. ASTILL: We don't have any objection.

13 THE COURT: All right. Go ahead,
14 Ms. Spooner.

15 MR. CHURCH: May I clarify something?

16 THE COURT: Uh-huh.

17 MR. CHURCH: Your Honor? I notice that
18 Mr. Cheng's also on Mr. Astill's witness list.

19 THE COURT: Uh-huh.

20 MR. CHURCH: It just seems prudent to me that
21 if we could get a stipulation among the parties that
22 we ought to be able to get all the direct testimony
23 done in one sitting and all the cross done in one.

24 And if we just would agree that we're -- the
25 questioning can go beyond the initial direct, so that

1 Mr. Astill isn't calling Mr. Cheng back this afternoon
2 for his own if he's gonna do it. Is that --

3 MS. SPOONER: That's actually what we were
4 trying to achieve, your Honor.

5 THE COURT: Let's do that so we can finish
6 today.

7 MR. CHURCH: Okay.

8 THE COURT: Yeah, that's fine.

9 MR. CHURCH: And so as I understand it
10 everybody can question as if they were the direct
11 witness, regardless who called them?

12 THE COURT: Correct.

13 (Eric Cheng was sworn.)

14 ERIC CHENG,

15 called as a witness, having been duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SPOONER:

19 Q. What's your current position at UDOT?

20 A. I'm the chief Railroad engineer.

21 Q. And what do your job duties entail as the
22 chief Railroad engineer?

23 A. I'm responsible, responsible for almost all
24 of the Railroad issues. Among those I, I'm
25 improvement manager for safety oversight over TRAX

1 light rail system. I am improvement manager for
2 Section 130 Federal Railroad Crossing Section Fund
3 improvement. And also kind of the manager, you
4 know -- I'm in charge of the inventory database.
5 FRA's database.

6 Q. And how long have you held this position?

7 A. This -- I took this position, I think it's,
8 it's been about two years and-a-half. At the end of
9 2008 -- 2007.

10 Q. And have you held any other jobs or positions
11 at UDOT?

12 A. You mean right now?

13 Q. Uh --

14 A. Before? Yeah. Before that, well, actually I
15 was hired in 1988, as a safety engineer, for maybe 12,
16 13 years. Supervised accident and records section and
17 managed the highway hazard elimination program. And
18 responsible for safety improvement.

19 Doing operation report, operation safety
20 report to diagnose problem of highways and make
21 recommendations for improvement.

22 Q. How many years have you spent involving
23 safety of roads?

24 A. Safety of road as -- at the very beginning,
25 except the first three months when I was first hired.

1 Q. The very beginning, could you state a date?
2 Like about how many years?

3 A. Well, I spent three months in Cedar City as a
4 field engineer, and then after that I was transferred
5 back to Salt Lake. Since then, you know, supervise
6 again accident reconstruction and involved as a sort
7 of safety engineer. Actually still, even though
8 I'm -- the title is Railroad engineer, but it's still
9 safety.

10 Q. So could you just give me approximate number
11 of years?

12 A. So 22 years so far from -- with UDOT.

13 Q. And what's your educational background?

14 A. I got my bachelor's degree in Taiwan in civil
15 engineering. I received master degree in
16 transportation in 1988.

17 Q. Are you familiar with 400 North Railroad
18 Crossing and Vineyard?

19 A. Yeah.

20 Q. And how many times did you visit this site?

21 A. Well, probably I would say maybe seven to
22 eight times so far.

23 Q. I want you to look at Exhibit 154. And
24 that's the joint exhibits of U.P. and UDOT.

25 A. One fifty-four. This pic -- this picture?

1 Q. Yes.

2 A. Okay.

3 Q. And what does this picture depict?

4 A. Well, the picture shows a "No Trespassing"
5 sign. And says "Violators Will Be Prosecuted." With
6 the -- the sign is posted on the gate.

7 Q. And is this the gate that's at 400 North when
8 you first observed this crossing?

9 A. As I remember, yes.

10 Q. And when you observed this what did you
11 conclude?

12 A. Well, to me, apparently it's just private
13 property. I want to, to make a comment that, you
14 know, when I -- several times when I visit the site,
15 the gate -- right now it looks like it's open, but
16 when I visited the site the gate is closed.

17 Q. And why did you visit the crossing at
18 400 North?

19 A. Well of course, you know, several times
20 because of this case. And the first time or the
21 second time I believe was in a surveillance review.
22 And I might have passed by that area one or two times,
23 I don't remember.

24 Q. And why were you conducting a surveillance
25 review?

1 A. Well, surveillance review, that was part of
2 the, the surveillance in that corridor with UTA. For
3 their crossings improvement on the FrontRunner
4 alignment.

5 Q. And I want you to look at Exhibit 119, the
6 joint exhibits.

7 A. Okay.

8 Q. Is this a letter you wrote?

9 A. Yes.

10 Q. And why did you write this letter?

11 A. This is a regular surveillance report for all
12 field surveillance that we, we do. And we write the
13 report to the parties.

14 Q. And who was present at this surveillance
15 review?

16 A. The report shows, you know, Jim Marshall and
17 many UTA consultants. And also at the end is HNTB
18 D. Warnock, who is a consultant for me.

19 Q. And --

20 A. And myself.

21 Q. Why was Vineyard City not present?

22 A. Well, because at that time, you know, when I
23 passed there, like I said, I know it's kind of private
24 crossing. One of the impression that -- I attended,
25 when I first took the position I attended a meeting, I

1 believe that is end of 2007.

2 I saw a map that's a master plan, you know.
3 At that time -- again, don't have very clear memory.
4 But at that time the map shows -- I think it's the one
5 the witness talked about yesterday -- show it would be
6 closed.

7 And then in the field when I see -- I have a
8 picture here. This is a picture, you know, it shows
9 here, it says "Do Not Enter," it's "Private Property,"
10 and "No Trespassing," and the gate -- everything is
11 closed.

12 Q. That picture, you're talking about
13 Exhibit 154?

14 A. That one -- no, it's a little bit different.
15 One fifty-four -- no, it's dif -- it's different one.
16 This, this one, this shows the gate is closed. And I,
17 as I said, 154 --

18 Also? Okay. All right, so that, that's the
19 one. Sorry, I was looking at the wrong one.

20 Yes. So at least, you know, as, as engineer?
21 I think everyone would agree with me, if you see this,
22 you know this is a private crossing. And based on my
23 prior knowledge, if the road goes to a private
24 property, it's a private crossing.

25 Q. How many crossings have you reviewed?

1 A. You mean by when, or so far, or what?

2 Q. How many, yeah.

3 A. Hundreds.

4 Q. And based on your experience looking at these
5 hundreds of crossings, you concluded it was private?

6 A. Yeah, basically. And like I said, it's by my
7 prior knowledge that it's, it's private.

8 Q. Have you seen any other public crossings that
9 went into private property that was gated?

10 A. No.

11 Q. You stated earlier you went to a meeting
12 approximately 2007. Do you know where that meeting
13 was located?

14 A. I don't. Maybe Region 3, I'm not sure.

15 Q. Do you know who was at the meeting?

16 A. I know U.P. Jim Marshall was there, with
17 maybe some -- my guess, with cities. Basically we
18 talk about the possible potential development in that
19 area.

20 Q. I want you to look at the Joint Exhibits 138
21 and 139.

22 A. Okay.

23 Q. You indicated you saw some type of master
24 plan or a map?

25 A. Yes.

1 Q. Is 138 or 139 one of those --

2 A. I think so.

3 Q. -- documents you saw?

4 A. Yes.

5 Q. And you testified earlier, once you saw it
6 you concluded it was gonna be closed?

7 A. Yeah, because there it shows, it shows that
8 it will be closed. You know, they are going to
9 realign and put some overpass in the center street or
10 something, so. That's what it shows.

11 Q. And then based upon that map and what you
12 observed on site, you concluded it was private?

13 A. Yeah. Based on that.

14 Q. And because it was private, you didn't invite
15 Vineyard?

16 A. That's right. Because UDOT does not have
17 authority over private crossings.

18 Q. And going back to Exhibit 119, your letter
19 dated April 4, 2008?

20 A. Okay.

21 Q. If you look on, it's Exhibit 120. It's the
22 second page of your letter. You have on No. 2 the DOT
23 No. 254903N, Private Crossing to Geneva, Vineyard?

24 A. Uh-huh. Yes.

25 Q. Crossing to be closed?

1 A. Yes.

2 Q. Which crossing was -- were you referring to?

3 A. I believe that is the 400 North.

4 Q. And you indicated it was gonna be closed
5 based upon?

6 A. The assumption that it's -- in my
7 observation, that's a private crossing.

8 Q. And if you would turn to Exhibit 122? Is
9 this a letter you sent to Dennis Astill?

10 A. Yes.

11 Q. And why did you send this letter?

12 A. Because I think Mr. Astill wrote me a letter
13 saying, you know, protesting it's not a pri -- it's
14 not a private crossing.

15 Q. And then you responded to his letter?

16 A. That's right.

17 Q. And so at that time you wrote this letter on
18 January 20, 2009, what was your opinion concerning the
19 status of that crossing?

20 A. I -- at that time I believed it was a private
21 crossing. And before I wrote this letter I talked to
22 the Railroad, because I believe Railroad would have
23 the best information about what is public and what is
24 private. So I talked to Jim Marshall, discussed the
25 issue, and then I determined it's a private crossing.

1 Q. If you would turn to Exhibit 124? Your
2 February 25, 2009, letter?

3 A. Okay.

4 Q. Why did you write this letter?

5 A. Well, because after that then Vineyard City
6 called a meeting. And I believe UTA was there, and
7 myself, and my consultant. We were there, and the
8 City presented information of the 1942 -- that
9 document, the historical document. And then we
10 thought that is a true document and it show it didn't
11 vacate the, the crossing.

12 And then also we discussed about the records
13 on the inventory shows public. So after talk to the
14 management and then we determined that, okay, so we
15 accept it. We accept the -- Vineyard City's
16 presentations and we feel, Okay, so we'll rule it as a
17 public.

18 Q. And when you're talking about document you're
19 talking about the resolution and order passed by the
20 Utah County Board of County Commissioners in 1942?

21 A. Yes. That, that's what the City presented to
22 us at the meeting.

23 Q. And what did the City present concerning the
24 area that was vacated?

25 A. Well, basically that the comments that, you

1 know, the resolution didn't vacate the, the crossing.

2 Q. Did you have a map that showed that?

3 A. No. At that time I -- I don't recall.

4 Probably not.

5 Q. Were you going to conduct another
6 surveillance review after that?

7 A. Well officially, you know, officially --
8 although even this letter says we are going to conduct
9 a surveillance review -- but UDOT never did
10 officially. But I, myself, I went there.

11 And there was one time after this letter was
12 called by UTA. And U.P. was there also, you know.
13 And that's the one this Jim Marshall was talking about
14 yesterday. That was not called by UDOT, was not a
15 surveillance review.

16 Basically in the meet -- in the field review
17 UTA and U.P. presented their view, their perspective
18 about the public or the, or the private and look at
19 the, the lines.

20 Because I believe at the time of the meeting
21 called by Vineyard City? UTA just simply -- just very
22 shortly, you know, they showed a map saying, Well,
23 our, our records shows, you know, it's vacated. So
24 that meeting was called and basically we looked at in
25 the, in the field. So that was not a surveillance

1 review meeting.

2 So for this one here we refer, refer to a
3 surveillance review meeting. It never happened.
4 Until UDOT make a final decision saying that it's a
5 public crossing but we want to close it temporarily.
6 So we held that meeting in the field to see, you know,
7 what need to be done for the closure.

8 Q. Were you required by UDOT's Rule 930-5 to
9 conduct a surveillance review when you were
10 determining whether it was public or private?

11 A. No.

12 Q. And when you met with UTA and Jim Marshall at
13 Union Pacific were you just gathering more information
14 concerning your decision whether it's public or
15 private?

16 A. Yeah. Basically we look at the field -- in
17 the field, you know. Again, they have a map shows,
18 you know, the line, you know. The -- well, the map
19 shows it's vacated, something like that.

20 And also we have some discussion in the field
21 about of course, you know, it's argument that we've
22 been talking -- what we've been talking about, you
23 know. The public road or private road, everything.
24 So I think -- I believe we had some discussion at that
25 time.

1 So I would, I would consider, you know, for
2 that meeting it's a opportunity for UTA -- for
3 Railroad part to present their perspective. And
4 before that it was the City's opportunity to present
5 their document and their perspective to me.

6 Q. You indicated earlier the FRA database stated
7 it was public?

8 A. Yes.

9 Q. And what's been your experience with the FRA
10 database?

11 A. Well, in the past basically, you know, the
12 updating, the maintaining, the ma -- FRA maintains the
13 database. Updating is the responsibility either by,
14 by the Railroad or by the State.

15 But it's my experience -- although at that
16 time not -- it's not been long enough for me to, to
17 know everything about the system -- but I have
18 knowledge that the system sometime there's some
19 inaccuracy there.

20 Q. How often would you estimate you've run into
21 inaccuracies?

22 A. How often? I'm sorry, can you --

23 Q. How often?

24 A. Occasionally. Sometimes. So it's 5 percent,
25 10 percent. It's hard, it's hard to say. I can't --

1 I, I don't want to make that estimate. Because --
2 right now I may have the statistic because we have
3 finished -- you know, after I took this position we
4 finished -- I believe it's a good faith we finished
5 updating for whole crossing in this state.

6 I don't have the statistic. But if I have
7 the numbers, you know, I'll tell you. But at this
8 point I really don't know how many. And sometimes,
9 you know, how accuracy is in terms of what? Data,
10 traffic data may be inaccurate. Or some geometry may
11 have changed, or signage may be changed or something
12 like that. So it's, it's hard to answer your
13 question.

14 Q. In your experience have you run into the
15 database being inaccurate as far as to whether the
16 crossing is private or public?

17 A. Yes.

18 Q. And at the time you went and did site visits
19 at 400 North crossing did you look at the database?

20 A. I did -- I looked at the report. The report
21 still shows public, of course. You know, through a
22 discussion process.

23 Q. Did you look at the database before you ruled
24 it was private?

25 A. At that time I have to admit I didn't really

1 look at it because, you know, normally -- that is just
2 normal process. I don't really, every time I go to
3 the field, look at that. I don't -- I didn't.

4 Q. Did you not look at it because it's been
5 inaccurate?

6 A. No, not because of that.

7 Q. Then why didn't you look at the database?

8 A. Well, because that -- the issue was raised.
9 And I need to -- I wanted to see what happened there.

10 Q. And what are the requirements from the FRA
11 concerning the database? Was UDOT required to submit
12 information?

13 A. No. No. I -- that -- before they passed --
14 the Congress passed a 2008 Rail Safety Act, I think in
15 October 2008. Require all the -- required at that
16 time -- at that time became mandatory for updating
17 this information, this database. But before that it's
18 a voluntary basis.

19 Q. So the State wasn't required to report any
20 additional information before 2008?

21 A. No, it's not required. I think it's, again,
22 it's voluntary. You know, if you see something, you
23 do it. And since I just took this position two years
24 and-a-half ago, you know, before that I cannot speak
25 for my predecessors.

1 Q. Turning your attention back to the UTA
2 project. Was notification sent out of potential
3 closures or upgrades of various crossings for the
4 FrontRunner project?

5 A. Yes. After I took this position I reviewed
6 930-5 procedure. I understood at that time I would
7 have -- UDOT has to follow the procedure. So we sit
8 down with UTA. We discussed the process, how we going
9 to proceed it. So we put the advertisement on the
10 newspaper as required by the, the rule.

11 Let me apologize. This asthma, so.

12 Q. And based on your letter you discussed
13 previously that 400 North was gonna be closed?

14 A. Yes.

15 Q. Is that what was advertised in the newspaper?

16 A. Yes.

17 Q. And did you receive any comments from
18 Vineyard concerning that advertisement that 400 North
19 was gonna be closed?

20 A. Yes, I did.

21 Q. And I'm gonna call your attention to the
22 joint Exhibit 131.

23 A. Okay.

24 Q. And what is this exhibit?

25 A. That is the list of the comments that we

1 received --

2 Q. And someone compiled them?

3 A. -- from that advertisement. I'm sorry?

4 Q. Someone took all the responses and then
5 compiled them into this format?

6 A. Yeah. I believe it's my -- HNTB, our
7 consultant, did that.

8 Q. And on Comment No. 1, who provided it?

9 A. That is provided by Don Overson, Orem.

10 Q. Is he also the Vineyard town engineer?

11 A. Yes.

12 Q. What was the basis for his comment?

13 A. Basically his comment is that we put a wrong
14 address for two crossings. One is the 400 North and
15 another one is the 1600 North.

16 Q. And what was wrong with, in his opinion, the
17 400 North notification?

18 A. 400 North he says should -- we -- because our
19 record shows -- our advertisement shows 4 --
20 4000 North, and then he said need to be 400 North.

21 The reason we put as 4000 North is that in
22 the Google Earth, you know, I believe even now it's
23 still, you know, very confused about counties, cities,
24 address in that area. And then -- but Google Earth
25 they got location, the 400 North, it does show

1 4000 North.

2 Q. Is there any comment by the Vineyard town
3 engineer objecting to the closure of 400 North?

4 A. No. Doesn't say that.

5 Q. Do you know when the first time the town of
6 Vineyard objected to the closure of 400 North?

7 A. I think Mr. Astill wrote me a letter. Don't
8 remember if I have a list here, or. I believe it's
9 January twen -- January 2009. I'm not sure if that --
10 I have a list here, but maybe that was the first one.

11 Q. I'm gonna call your attention to the Joint
12 Exhibit 126?

13 A. Okay.

14 Q. And this is a letter you wrote to Dennis
15 Astill?

16 A. Is that July 13th you are referring to?

17 Q. Yes.

18 A. Yes.

19 Q. And why did you write this letter?

20 A. Okay, this letter was the, you know, it's,
21 it's our final -- UDOT's final decision. Prior to
22 that, we had some internal discussions. And as I've
23 said earlier, because Vineyard presented their
24 information, Railroad presented interven -- presented
25 their information.

1 And then at that time to -- is confused to
2 UDOT. So I had a meeting with the management to
3 determine what to do. Resolution from that meeting
4 was that we will hire a -- we'll have an independent
5 surveyor to see where the vacation line really is.
6 And then that's how Mr. Bill Clark, you know, that.

7 Then the result of that request, I received
8 this chart here.

9 Q. You are pointing to Exhibit 133?

10 A. Yes. Is this, is this 133?

11 Q. Yes.

12 A. Okay, that's this one here? Yes. Should I
13 explain?

14 Q. Sure.

15 A. Okay. And then, so in this chart basically
16 what we found out, the vacation line is just fall
17 between the existing one to the north. So it, you
18 know, there's no clear line -- no clear-cut saying,
19 okay, it's vacated or it's not vacated.

20 And based on the document that the City
21 pre -- presented, we know, assume, again, we assume
22 it's a correct one. And then but with this, you know,
23 it doesn't show the clear saying it's not making it.

24 So again we -- after this I called a meeting
25 with the management to determine what is the best way

1 to, to do on this issue. And then I made a
2 recommendation that basically I realized both parties'
3 issue.

4 The City, they need this be open for their
5 future -- or the -- for the master plan, so they
6 cannot have that private.

7 Actually, even if I -- if UDOT rule it's a
8 private crossing, in the future when the, when the
9 City, you know, development is going in they can still
10 make application to me to say -- to ask for open for
11 that. It, it's okay.

12 Maybe the process is a little bit lengthy
13 after we revoke -- rewrote -- we have rewrote 930-5
14 this past last year. Maybe a little bit lengthy
15 process. But because of that we address, you know,
16 try to address the City's need for that crossing.

17 And then on the other hand we also understand
18 U.P.'s concern. Because U.P., it is a public
19 crossing, then U.P. has the liability issue. Unless
20 it's a private, then we don't deal with it. So based
21 on these two, and then it's a kind of compromising --
22 compromise, you know. The management, we determined
23 that we want to address both sides' issue.

24 So we don't want -- we can take out U.P.'s --
25 Railroad's liability issue by closing it. We don't --

1 we deal with the risk. And then we keep it as a
2 public, that in the future when the Vineyard City they
3 want development, or Geneva-Anderson, they can just
4 have it.

5 So the letter for -- the purpose for this
6 letter is just to let Mr. Astill know that our
7 decision is that will remain as public, but we want to
8 temporarily close it for safety reasons.

9 Q. I'm gonna call your attention to Joint
10 Exhibit 140. Which is the general plan, Town of
11 Vineyard.

12 A. This one?

13 Q. Have you seen this document?

14 A. Yeah.

15 Q. Is this Document one of the reasons why you
16 decided to declare the crossing public?

17 A. Well, that's not the, that's not the reason.
18 But I -- of course it shows, you know, that's in
19 their, their master plan.

20 But again the public also -- again, you know,
21 according to the first letter we determined it's
22 public because it's a pub -- it's a -- database lists
23 it's a public. You know, and based on the
24 presentation that -- of their document, we say okay.

25 So this is not, of course, not only ones that

1 we, we view as public.

2 Q. I'm pointing to the Joint Exhibit 133. After
3 your numerous site visits, is there a public road to
4 the east of the crossing?

5 A. To me, no. It's -- there's no public road.

6 Q. Is there a road at all?

7 A. No.

8 Q. And what does -- once you get past the gate
9 in the fence, is there anything past there? Any
10 development right now?

11 A. Nothing.

12 Q. Why didn't you recommend improvements instead
13 of closure?

14 A. Well, because number one, UTA know when we do
15 a surveillance review we always recommend improvements
16 to ma -- using the current conditions. Like this one
17 here is the only exception that, you know, even now we
18 rule it's a public. Comparing to other public
19 crossings, other public crossings they have, they have
20 rules. But here, it's nothing.

21 So the existing condition we cannot make any
22 recommendation for improvement beside -- because we
23 don't know the City's plan in the future. Even, you
24 know, they, they may change. Or I don't know the
25 development type inside -- the east side of that

1 crossing.

2 So everything is uncertain. And I don't feel
3 comfortable using the public money to improve a
4 crossing for nothing. That's -- so that's the main
5 reason. I -- we cannot. We cannot recommend any
6 improvement.

7 Q. Is also one of the reasons is you don't know
8 which angle the approach roadway will be?

9 A. Of course. That was also part of my
10 statement, because I don't know what would happen. In
11 the future, in a future road, you know, maybe --
12 sometime, you know, there's some geometric deficiency
13 in that crossings.

14 And then in the future when the development
15 is going in we may make some recommendations. Or even
16 sometime for some cases City want us to -- will, will
17 want to make some improvement to improve the safety on
18 the highway -- roadway or something.

19 So right now we don't know what to do.

20 Q. And did you treat 400 North any different
21 than the other grade crossings on the FrontRunner
22 project?

23 A. In terms of? In terms of what differently?
24 I mean, yeah. Again because -- we don't know what
25 happened, so we don't -- we didn't recommend any

1 improvement. And we just closed it.

2 Q. With the other crossings at FrontRunner at
3 the grade crossings? What, what situation at those
4 crossings is different than from 400 North?

5 A. Well, this one here is a little bit different
6 because we -- let me maybe take a few moments to talk
7 about geome -- geometric deficiencies. Here, because
8 this one here -- and that's the reason I order to
9 temporary close it, because we see some safety
10 problems there.

11 Let me just draw on this here.

12 Q. You're drawing on Exhibit 133?

13 A. Yes. So I'm going -- I'm drawing the edge of
14 the road here.

15 Q. The edge of asphalt?

16 A. Yes. Like this. So the gate is now is
17 around here.

18 Q. And you're --

19 A. It's on the --

20 Q. It's on the east side?

21 A. Yeah, east side of the --

22 Q. Railroad right-of-way?

23 A. The -- yeah. Existing U -- U.P.'s
24 right-of-way. So the problem is this one here, the
25 short storage distance. Number one, while I would say

1 this is unsafe condition, you know, it was -- from two
2 perspective. Number one is general.

3 General perspective why is unsafe? Because
4 if you say this is public road, at least, you know,
5 I've been this -- in this country for 25 years. I've
6 never seen a road in my -- it's a public road. And I
7 drive in it, through -- it goes through.

8 At a point, all of a sudden, the gate is
9 closed and there's "No Trespassing." So this is
10 property -- this is private property. So it's -- as a
11 regular driver, you know, this situation violated
12 driver's expectation.

13 In transportation safety drivers' expectation
14 is very -- it's a big thing, you know. It's -- you
15 are trying to provide uniform -- that's called MUTCD,
16 many -- Manual on Uniform Traffic Devices? The
17 purpose for that manual is you provide a uniform
18 standard, nationwide, to let all drivers know what
19 they can expect.

20 So like this one here, if you drive this
21 through and it goes through this gate -- this crossing
22 and you hit a gate, I don't see -- can anyone tell me
23 if you have seen that in your, your whole life driving
24 experience? Driving and it's, oh, this gate. And you
25 will say -- we are saying this is public road. Which,

1 number one, that violated drivers' expectation.

2 Number two is because all the crossings are,
3 in nature, dangerous. And that's why Federal Railroad
4 Administration they have safety initiated, you know,
5 they set a goal to reduce 25 percent of the crossings
6 nationwide, okay.

7 And why? Because if you have conflict point,
8 transportation safety with that conflict point. The
9 more conflict point you provide, the more dangerous
10 that location is. So like this one, if nothing is in
11 there and you open a road, so you are creating the
12 conflict point with the train -- between the train and
13 the track -- the, the vehicle, vehicle.

14 So that is the general, that's a general
15 term. So let's talk about operation. Movement
16 operation. So now if we say there's a car or two cars
17 going northbound on Vineyard Road. Going this way and
18 then coming here. So they're stopped. They see the
19 gate. They have -- they cannot proceed.

20 Okay. And it's -- the distance here between
21 the fence and the track is, is about, according to
22 this, maybe 40 something. In that area you may have a
23 trailer, a horse trailer or something, or a longer
24 truck or something.

25 So when you get to that point the driver will

1 stop and get panicked or something and then they have
2 to back up. And then at that time if a train come
3 southbound or northbound got hit, okay? That's one
4 danger -- that was one dangerous situation. Going
5 into, going eastbound, okay?

6 Now, secondly, now Anderson --
7 Geneva-Anderson open the gate. Saying, you know, it's
8 not -- You know what? It's not closed. All right.
9 So it's not, not closed.

10 So let's say this same vehicle going in to
11 their property and find out nothing is in there. So
12 they have to come out. Now they come out going
13 westbound, okay? On this road. They -- this is,
14 again, this is the roadway here.

15 So traffic on the Vineyard Road, or on
16 400 North, it's regular traffic. Now this, this
17 guy -- or a few guys maybe, you know, we're talking
18 about because of the opening here? We don't know. To
19 me, you know, maybe there's several youth get several
20 cars going there in the nighttime going party or
21 something and then coming out.

22 So now they come out here and there's traffic
23 on this Vineyard Road making a left turn? They have
24 to stop. Several car has to stop here, as you can
25 see. So what will happen? The car will stop on the

1 track. Again, if a train comes, it will get hit.

2 So there's two dangerous situations, plus the
3 driver's expectation. That is how I see it as my
4 experience as traffic engineer? I was taught the
5 transportation safety class at University of Utah.
6 You know, this is my experience.

7 And of course this is not my own experience.
8 I do things not by myself. I discuss my colleagues,
9 okay? And discuss with the management. So this is
10 the safe -- unsafe situation that's accepted by UDOT.

11 Q. So opening the gate doesn't alleviate the
12 safety concerns?

13 A. No. Actually it's not. As I see it, you
14 know, it's maybe even worse. It creates one more
15 opportunity, you know, for people coming out that way.
16 Because of course, you know, when you going this way
17 you get stopped by the gate. You have to back out or
18 something.

19 Or maybe if you can, can make a turn or
20 something, U-turn that somehow make the same
21 situation, but actually is create more.

22 Q. Is it inviting potential drivers to go and
23 drive in there?

24 A. That's right. That exactly right. So you
25 increase unnecessary danger for this location. And

1 that is why we want to temporary close it.

2 Q. And you talked earlier about you had some
3 geometric concerns about this crossing?

4 A. Yeah, geometric -- okay. Also, according to
5 UDOT access management standard this -- the access,
6 the road, need to be 250 feet away from the edge of
7 the crossing. And this one here right now maybe
8 40 feet to 30 feet only. Okay?

9 That doesn't meet the standard. And again,
10 as I said earlier, sometimes -- you know, we don't
11 know. At the time when the development is going in we
12 may make recommendation or require -- depend on the
13 situation at that time -- may require the City to
14 relocate this road here.

15 Also, you know, as a design, a geo --
16 geometric, geometric design for the crossing here
17 there's some deficiencies there. Because, you know,
18 this -- there's that little, it's called an angle
19 here. Typically we want a right angle to cross the,
20 the crossing. But you can see here it's a skewed
21 angle.

22 And now the safety hazards that, you know,
23 the traffic going this way, making a right turn. To
24 make a right turn going eastbound to enter that
25 property. If the train is going west -- northbound,

1 they cannot see, okay? So the sight distance is also
2 a problem.

3 So this thing, you know, a geometric problem.
4 And this -- all this road alignment right now is
5 basically just misaligned. So in the future it may
6 need to be addressed.

7 Q. And you talked earlier about the storage?

8 A. Yes.

9 Q. You're saying that the storage distance is
10 insufficient?

11 A. Yes. That's, that's very insufficient.

12 Q. What's the general storage that's needed?

13 A. Well like I said, basically, you know, if the
14 road here we want to, to get this away, you know. Two
15 hundred fifty is the ideal UDOT standard. There was a
16 famous crossing accident involved school bus. School
17 bus I believe is maybe -- that one was about 60 feet.

18 Because of this deficiency 37, if I remember
19 right, 37 school children were killed because of that
20 problem. After that, NTSB -- National Transportation
21 Safety Board -- investigated that accident and make
22 strong recommendation, you know, when you design this,
23 you know, you have to look at that, that length.

24 Q. And in regard to the condition of this
25 crossing before the UTA TRAX were laid?

1 A. Uh-huh.

2 Q. Were there safety concerns then?

3 A. Yeah, the condition is the same. The UTA
4 TRAX addition is just increased the likelihood. And
5 other than that, just existing condition geo --
6 geometric problem is there, deficiency is there, it's
7 already unsafe. And so it's nothing to do with UTA.

8 Q. How do drivers' expectation relate to the
9 MUTCD?

10 A. Well, MUTCD emphasizes everything is just
11 drivers' expectation. That's why you want to make it
12 standard. Everything is standard.

13 So like that one here. As I say, you know,
14 when you drive -- you going straight on 400 North
15 going straight -- going eastbound? All of a sudden
16 you end, you end up in a gate. That's just -- I don't
17 expect that. If I drive I don't expect to hit a gate
18 on a road that's public road.

19 Q. Does the lack of accidents at a crossing
20 demonstrate that the crossing is safe?

21 A. No. Not at all. The risk is still there.
22 So that's why we need to have a safety standard. A
23 safety standard because as engineer -- safety engineer
24 we realize the risk, the danger of those deficiencies.
25 So that's why we make a safe standard to apply to

1 everywhere we can.

2 But it doesn't mean, you know, it's -- some
3 locations like, you know, it's a sharp curve. Well,
4 not everyone go there would have accident, you know.
5 You gotta drive carefully or something. But that's
6 the spirit of the standard.

7 So it doesn't mean, you know, that --
8 accident record sometime can show it's a dangerous
9 location. But with location has no accident record
10 doesn't mean it's safe.

11 Q. Is UDOT required to provide notice for a
12 temporary closure pursuant to R930-5?

13 A. No, 930-5 is for the regular closure --
14 permanent closure, or addition of a track, or removal
15 of track. That's permanent. And this, for this case,
16 this is just temporary. If --

17 MR. ASTILL: Your Honor, I'd like to
18 interpose our objection. He's, he's testifying to a
19 legal conclusion of what the regulations require.

20 MS. SPOONER: Your Honor, he has to comply
21 with regulations every day.

22 THE COURT: I'm gonna overrule the objection.

23 THE WITNESS: I have to -- okay, repeat the
24 question again.

25 Q. (By Ms. Spooner) My question was, do you

1 have to provide notice for a temporary closure
2 pursuant to R930-5?

3 A. Okay, I -- again 9 -- dash -- 930-5 just for
4 permanent. And for this case is temporary closure, so
5 I don't see why I have to follow that. Besides, if
6 now the City comes to me next year or even six months
7 later and they say, Okay, now this is what we're going
8 to do. You know, this is our plan. And we are gonna
9 apply op -- opening for this.

10 I can do it. I can review it and approve it.
11 So it depends. So this is just temporary closed.
12 It's not -- I don't think that apply to that.

13 Q. And in other words, you're just waiting for
14 information from the City as far as the -- how the
15 road infrastructure will be aligned?

16 A. Basically, yes. As I see, yes. But the
17 reason is that, you know, we don't -- we can't -- we
18 don't do anything right now because there's so many
19 uncertainties there. And I don't know. And I don't
20 want to use public money to do something that --

21 Maybe if I do -- were to say this I, I
22 recommend put lights and gate there. So next year
23 City comes in and say, Okay, we want to widen this
24 road. So we have to relocate the lights and gate,
25 everything.

1 It just doesn't sense -- doesn't make sense
2 to me, as a public official, to do that way.

3 Q. Now, you indi -- you talked about lights and
4 gates. Is there a certain standard where the lights
5 and gates must be?

6 A. Standard, what do you mean?

7 Q. It's like certain amount of feet from the
8 tracks?

9 A. Oh, yes, yes. That brought up another
10 question. Basically right now the standard is that
11 the gate -- the location of the gate need to be
12 15 feet from the track.

13 So if you, if you calculate 15 feet from the
14 track to the gate, and there's a stop bar, the minimum
15 stop -- the distance between the gate and the stop bar
16 is 8. So it's 23 feet now from the, the track to the
17 stop bar. And some, sometime a car -- of course the
18 car have a strong buffer zone, you know, before --
19 beyond the gate and the stop bar.

20 So basically, again, that is, is not -- that
21 doesn't have enough space here. So in the future this
22 probably, this road here, after, after this UTA TRAX
23 goes in? This road probably need to be relocated.
24 Again, depending on the plan for the City. What they
25 want to do, okay?

1 So if that's gonna -- if you are going to
2 divert lots of traffic and there's not many car using
3 this road here or something. So we'll have to
4 evaluate the situation when everything is set. But at
5 this point, we don't know.

6 Q. I would like you to look at the Joint
7 Exhibit 128.

8 A. Okay.

9 Q. Your August 25, 2009, surveillance report?

10 A. Uh-huh. Yes.

11 Q. You conducted a surveillance review?

12 A. Yes.

13 Q. And why did you conduct that surveillance
14 review?

15 A. Purpose is to determine with the City,
16 because that is a City street, something -- you want
17 to close the, the crossings, some actions need to be
18 taken by the City. So basically we call every parties
19 there, including the Railroad, everything, to discuss
20 what need to be done. And so that's the purpose.

21 Q. Need to be done for the temporary closure?

22 A. Yes.

23 Q. And what did you -- what was the
24 recommendation?

25 A. The recommendation, there are five

1 recommendations. Number 1 is remove the west crossing
2 approach pavement. The reason is that we don't want
3 to invite -- to, to remove that, you know, it would --
4 will remove the confusion of drivers.

5 Right now, drivers see that pavement, they
6 can go straight. So remove that pavement just make --
7 with the following recommendation just tell the
8 drivers that there is no road there, okay? You don't
9 go in there.

10 So remove that. Just make a, basically a
11 U-turn. Make a -- not U-turn. Make, make a turn
12 here. Just --

13 Q. You are pointing to Exhibit 133?

14 A. Yes, 133. So basic make a, a road going
15 northbound and turning left, going westbound. So
16 there's no road going eastbound. That's the purpose
17 for No. 1, take -- remove the pavement.

18 Number 2 is install concrete barriers with
19 reflective tape along existing west approach. That is
20 just closing. Okay? That is typical. We close that
21 road. We don't -- do not allow vehicle to go in
22 there.

23 And sometimes barriers, you know, it's a,
24 it's a hazard. People can hit -- get hit. So you
25 have to put some reflective sheeting to let them know

1 it's closed, okay?

2 Number 3 is install chevron alignment signs
3 for both travel direction on curves. Same thing.
4 Just tell them, this is the alignment. You don't go
5 eastbound. Okay? Number --

6 Q. Now, what's -- I'm sorry. What's a chevron
7 alignment sign? What's that?

8 A. A chevron alignment sign is some where you
9 see at a "T" intersection, you know. Maybe chevron
10 to -- you know, it's a chevron? You know, it just
11 tell the driver to go -- to make a right turn, or make
12 a left turn, or just follow the alignment. That --
13 you see that often at the curved area on the railway.

14 Q. So the sign reflects what the curvature of
15 the road is, or the turn?

16 A. Yeah, that's right. Yes.

17 And then No. 4 is install double yellow
18 centerline. Again, just to kind of try to direct the
19 drivers follow the roadway, the alignment. So all
20 these things is just try to reduce the risk to invite
21 people going eastbound to the place where there's
22 nothing in there.

23 Number 5, place fencing along west side for
24 Railroad corridor with the construction of the
25 FrontRunner. So basically just kind of block it up

1 with a fence and with a gate. Don't go in there.

2 But it's still -- it's actually, as I see it,
3 it's in favor of the City to reduce their efforts and
4 time in the future. Because like I say, you know, if
5 I rule it's private, you can apply. We -- UDOT
6 consider -- will take seriously for a City's need. So
7 we will try our best to address their need.

8 If we see the need for that crossing, if they
9 claim no other access or something, then even it's a
10 private exiting we can still turn it to public. But
11 right now we rule it's a public crossing. That is
12 UDOT's decision to try -- to compromise this
13 situation.

14 Q. I'd like you to look at the Joint Exhibit 152
15 and 153?

16 A. Don't have the tab here. Okay.

17 Q. Okay. And what do these pictures show?

18 A. The pictures shows now the concrete barrier
19 is up, but the gate is open. And 153 shows the
20 picture is still -- the gate is open, but "No
21 Trespassing" and "Violators Will Be Prosecuted" signs
22 still there.

23 Q. On Exhibit 152, has this concrete barrier
24 been moved over closer to Vineyard Road?

25 A. I'm sorry, I, I'm not aware. I don't know.

1 Q. What --

2 A. Apparently before that, before that there's
3 no -- well, I think probably -- I haven't been there
4 for a while. I think, you know, due -- because of the
5 construction? They must have moved.

6 Q. The barrier closer to Vineyard Road?

7 A. Yeah. That's my guess because, as I say, I
8 haven't been there for a while. But I, I understand
9 UTA is doing construction in that area so that
10 probably is not -- moved westbound.

11 Q. In your opinion did you comply with UDOT's
12 rule concerning providing notice --

13 A. Yes.

14 Q. -- in your actions regarding 400 North?

15 A. Yes.

16 Q. And calling your attention back to the
17 FrontRunner project and other at-grade intersections
18 or crossings?

19 A. Uh-huh.

20 Q. Did the other at-grade crossings include a
21 public road that continued over the crossing?

22 A. Yeah. Well --

23 Q. I just --

24 A. That is, that is normal, right? I mean, a
25 public road is -- go across the crossing.

1 Q. And the situation at 400 North is abnormal?

2 A. Yeah, it's abnormal. To me that is just
3 not -- you know, of course now we see controversial
4 issues, you know, the definition of what is public,
5 what is private.

6 But I see this in this way as engineer.
7 Sometime even when the language shows typically of
8 course, you know. Typically, then you say typically.
9 Sometime this engineering thing, you know, is very
10 important to have engineering judgment. That's very
11 important.

12 And sometime -- I understand that the
13 language they cannot just write very strictly so
14 that's why I said typically, you know. And if they
15 said typically something something this is public
16 crossing except something whatever, I accept that.

17 But as an engineer I see that's typically,
18 you know, it's a public crossing. And for this one
19 here it's, it's just not a public road. Because
20 public road means open to the general public.
21 General. I think that's the key word.

22 If you said to the, to the public. Well,
23 yeah, if -- Kennecott, they have, they say, 5,000
24 employees? Well, of course it's open to the public.
25 That's -- their employee is public if you define that

1 way.

2 But as I see it, it's going to the private
3 property. That's -- if there's a crossing, that's a
4 private crossing. Okay? So -- and I realize, you
5 know, sometime use different book, different standard,
6 you know, to def -- for definition and so you may get
7 different result. Or different interpretation.

8 But -- and that's why this is -- case is all
9 about, you know.

10 Q. Aside from UDOT's position. In your own
11 personal opinion as an engineer, exercising
12 engineering judgment --

13 A. Uh-huh.

14 Q. -- what would your opinion be as far as it's
15 public or private?

16 A. Honestly? I think it's private. Because a
17 road going to a private property. Let me just expand
18 this a little bit. I had several cases in -- during
19 the -- updating the inventory database? Our
20 consultant, you know, talked to me saying, In Syracuse
21 area the Freeport crossings appear to be private but
22 is listed as public.

23 So I wanted -- let me add that right now we
24 are trying to improve the system, you know? Okay, I'm
25 not going to address that.

1 So in those crossings, though, they talk to
2 me. I personally make phone call to Syracuse city
3 engineer and say, Are these crossings yours? Are you
4 maintaining those crossings?

5 They say no. No, no, no, no, no. That's
6 not, that's not public, that's theirs. Okay? So I
7 direct my consultant to send the update information to
8 FRA to correct those crossings. That case is just, of
9 course, totally opposite to this one here, the City
10 say it's public. But they in Syracuse say, No, no, we
11 don't want it. It's pri -- it's private.

12 So I do have several cases like that. Also
13 another case is Salt Lake City there's a small street
14 going to a company. I feel it's private. But I call,
15 call Salt Lake City engineer and ask them whether they
16 maintain that crossing -- that road.

17 They said yes, they do. So based on the
18 definition, it's a public road. Even a company at the
19 end. You know, is a dead end. At the end the company
20 there. So it's public crossing.

21 Like this one here also, you know. Of course
22 we talked about, you know, maintenance record,
23 everything, many things. But my honest perspective, I
24 feel -- and it's nothing there. I believe it's
25 private crossing. But we rule this as public because

1 we're compromised to make everyone -- address
2 everyone's need.

3 MS. SPOONER: I have no further questions,
4 your Honor.

5 THE COURT: Okay. Thank you, Ms. Spooner.
6 Why don't we take a lunch break now. And
7 we'll come back about, what, one? An hour and
8 15 minutes?

9 MR. ASTILL: Your Honor, we're trying to get
10 this done today. We can -- why not 12:30? That's
11 nearly an hour.

12 THE COURT: Is that enough time for you?
13 Okay, then let's do 12:30. And we'll come
14 back at, yeah, 12:30. Okay, thank you.

15 (A luncheon recess was taken from
16 11:41 to 12:33 p.m.)

17 THE COURT: Okay Mr. Cheng, you can come back
18 up to the stand, please.

19 And then we'll proceed with Union Pacific,
20 then Anderson, then Vineyard.

21 MS. KAMAS: Thank you.

22 CROSS EXAMINATION

23 BY MS. KAMAS:

24 Q. Mr. Cheng, let's start with talking a little
25 bit more about your qualifications. I, I remember

1 that you testified before you had a degree in Taiwan;
2 is that right?

3 A. A bachelor's degree, yes.

4 Q. And what was that?

5 A. Civil engineering.

6 Q. Okay. And then you have a graduate degree as
7 well?

8 A. A what?

9 Q. A graduate degree?

10 A. Yeah. From the University of Utah.
11 Master's, Yes.

12 Q. And what's your master's in?

13 A. Transportation.

14 Q. And then the position again that you
15 currently hold with UDOT is what?

16 A. It's chief railroad engineer.

17 Q. And how long have you been that -- in that
18 position?

19 A. For that position is two-year and-a-half.

20 Q. Okay.

21 A. But 20 -- for the last 22 years, you know,
22 basically it's safety engineer.

23 Q. Do you have any special qualifications or
24 appointments in the field of railroad engineering?

25 A. Yes. I was just assigned -- appointed by the

1 U.S. Department of Transportation as a member --
2 council member of the track -- the Track Safety
3 Advisory Council. There are 20 members in the whole
4 nation. Selection criteria is based on personal
5 experience in safety.

6 Q. What does the Track Safety Advisory Council
7 do?

8 A. That one -- well, actually it was just, just
9 formed lately by a request of Congress. Ask Federal
10 Transit Administration to form a council -- this
11 Safety Advisory Committee to provide guideline to the
12 Federal Government to -- about rail safety.

13 Because right now, you know, rail safety is a
14 big concern. Several accidents have happened. And
15 then that raise the concern of Congress, so they
16 direct FTA to, to form a committee to provide guidance
17 for national safety policies.

18 Q. And will you have any particular role on that
19 council?

20 A. I -- actually, I, I am. I'm assigned as the
21 chair.

22 Q. Okay.

23 A. As -- no, co-deputy chair.

24 Q. All right. Let's talk about the FRA database
25 a little bit more.

1 A. Okay.

2 Q. You agree with me that Congress also -- it
3 was recommendations of Congress that ended up
4 directing the FRA to create the database, correct?

5 A. Yes.

6 Q. Okay. And the concern there was that there
7 needed to be some way of collecting data and analyzing
8 it to try to determine what kinds of safety concerns
9 and accidents there were at railroad grade crossings,
10 right?

11 A. Right. And also for other -- research.
12 Research purpose too, you know, so.

13 Q. What kind of research?

14 A. Well, for instance you can analyze, you know,
15 what kind of crossings has more accidents or
16 something. Or of course, you know, we -- this country
17 we're doing very good on the statistics, you know.
18 Each state, by state, by railroad, you know. By
19 public, by category. What kind of accident they are.
20 And like you said, to do some maybe improvement.

21 Q. See if this will help. Have as many as you
22 need.

23 The research that you're referring to all
24 relates to safety though, right?

25 A. Yeah.

1 Q. Okay. So the FRA database, one of the pieces
2 of that was that every railroad grade crossing was
3 supposed to have a Department of Transportation number
4 assigned to it, right?

5 A. Yes.

6 Q. And, and then when an incident happened at a
7 crossing, then whoever would be the responders -- the
8 police or whomever -- would be instructed to write
9 that DOT number down in connection with making a
10 report of the incident, right?

11 A. Yes. And normally, you know, you have the
12 location description. Because, you know, middle of
13 nowhere quite often, you know, just people don't --
14 just can't find it. So that's another purpose.

15 Q. To be able to identify the crossing?

16 A. Yes.

17 Q. Okay.

18 A. And location.

19 Q. All right. And then the FRA collects the
20 data that's turned in by first responders to do the
21 kind of analysis that you were talking about, in
22 trying to figure out what kind of safety approaches
23 can be taken in order to reduce and improve safety at
24 grade crossings, right?

25 A. Yes.

1 Q. Okay. So you've read the prehearing
2 statement that Union Pacific submitted, correct?

3 A. Yes.

4 Q. Okay. Did you agree with the analysis that
5 Union Pacific made in that statement of the FRA
6 database and the purposes and uses for it?

7 A. Yes.

8 Q. Do you agree that it's not designed to be
9 consulted by developers in order to determine property
10 rights?

11 A. I agree.

12 Q. Okay. Also not designed to be consulted by
13 developers to determine access?

14 A. That's correct.

15 Q. Now, the FRA database, whatever it says about
16 a crossing in particular -- a particular crossing, it
17 doesn't trump UDOT's statutory authority to decide
18 whether a crossing's public or private, does it?

19 A. No.

20 Q. Okay. You testified a little bit about your
21 experience with the accuracy of the information in the
22 database. Isn't it true that, that you find that
23 mistakes in the database are common?

24 A. Well, I think I have to -- you have to tell
25 me what's your definition for "common."

1 Q. Okay. Well, you, you testified, I believe,
2 on direct that you think that you only find mistakes
3 in the database about 5 percent of the time. Is that
4 accurate, or is it more common than 5 percent?

5 A. No, no, no, that is just my guess. I, I can
6 not really answer that question.

7 Q. Okay.

8 A. Sometime, like you know the Syracuse -- that
9 guy I mentioned earlier, the Syracuse Freeport. Well,
10 there's several. I think there are more than ten like
11 that, you know.

12 And if we don't go there, probably -- because
13 again, we are doing our job to, to update this, you
14 know, thing. So that's why we found, we found out.
15 Otherwise see we don't go there, you know, at the
16 current task -- workforce. We don't really -- we
17 don't have the power -- manpower to, to find that out.

18 Q. When you say there are more than ten like the
19 Freeport location in Syracuse are you saying that
20 you're aware of more than ten crossings right now
21 where an issue has come up because it's designated
22 incorrectly?

23 A. No, I'm just talking about more than ten in
24 that area.

25 Q. Okay.

1 A. Just in the whole area.

2 Q. More than ten crossings in the Syracuse --
3 Freeport Syracuse area where the designation public or
4 private is incorrect?

5 A. That's correct.

6 Q. And you agree that if incorrect information
7 is found in the FRA database that either UDOT, or
8 Union Pacific, or any other railroad can send
9 corrections to the FRA?

10 A. Yes.

11 Q. And so you are aware that Jim Marshall sent
12 corrections in 2008 that have to do with the crossing
13 here that we're talking about, 400 North Vineyard
14 Road?

15 A. Yes, I'm aware.

16 Q. Was there anything improper about what
17 Mr. Marshall did?

18 A. Well, right now of course, you know, if --
19 like I say, you know, personally I feel if it's a
20 pri -- at that time. At that time.

21 Q. Let me clarify my question. Was there
22 anything improper about the process he followed --

23 A. No.

24 Q. -- in sending in the corrective -- the
25 correcting information?

1 A. No.

2 Q. Okay, thank you. Did Vineyard City ever
3 contact UDOT, to your knowledge, about the fact that
4 the east side of the crossing was gonna be closed and
5 gated?

6 A. No.

7 Q. Would you expect a city, if they were going
8 to close the road on one side of the crossing, to
9 contact UDOT if they thought the, the crossing was a
10 public crossing?

11 A. Yes or no. Generally I -- again, it's based
12 on their practice. Some city may feel or if they have
13 knowledge, you know, better let UDOT know, they may
14 contact me. But if their -- if it's their road
15 sometimes they just -- they can go ahead and just
16 close it without notifying me.

17 Q. All right. You're familiar with the crossing
18 at 300 East in Lehi?

19 A. Not really. Like I say, I've reviewed
20 hundreds, you know, so. Sorry.

21 Q. Okay. Are there crossings where the addition
22 of the UTA TRAX created a storage problem similar to
23 what you testified to on direct where you order --
24 ordered permanent closure, closure of the crossing?

25 A. No.

1 Q. You can't recall a situation like that?

2 A. No.

3 Q. Now, if I understood your testimony correctly
4 on direct you would expect that even if the Commission
5 rules that the crossing is private and the crossing is
6 pulled, that Vineyard City and Anderson Geneva would
7 still be able to apply to UDOT to have a crossing put
8 back in the same place?

9 A. That's correct.

10 Q. And at that time you would make a decision
11 whether to allow that and also what kind of safety
12 protections should be placed at the crossing, correct?

13 A. That's correct. With the new, new rule we
14 ask the developer or the city to work with the
15 Railroad first. Because, you know, they get a con --
16 agreement. And then come to us and say, Okay, so we
17 gonna open it. And then we'll make recommendations.

18 Q. Okay. So even if the Commission rules that
19 the crossing is private, that wouldn't limit the
20 ability of the developer or the City to seek access to
21 the development at this same location?

22 A. That's correct.

23 Q. Okay. They would just have to follow the
24 process --

25 A. The process, yes.

1 Q. You testified about this crossing being
2 abnormal. And you showed that, that photo that you
3 have in front of you, which I think is 154?

4 A. Uh-huh.

5 Q. The fact that it's gated and closed. That,
6 that, in your mind, makes it abnormal at least for a
7 public crossing, right?

8 A. Right.

9 Q. Is it also abnormal for a public crossing
10 that half of the road on one side is private property?

11 A. If everything is, is correct, then yeah, I
12 would say it's, it's abnormal. But again, because I
13 have doubt, you know. I was thinking during the whole
14 testimony I feel sometime even, you know, the surveyor
15 you know.

16 If, if you trace back to look at all of the
17 origin? Maybe at the very beginning, long, long time
18 ago, you know, the surveyor that lay, lay out the
19 monument? Maybe is just in bad mood, maybe puts three
20 feet away or something. I don't know.

21 So all these things. But if you ask -- to
22 answer your question, in the middle of that? Yeah, I
23 think it's kind of weird. But I don't know later what
24 happened.

25 Q. If any of 400 North Vineyard Road had been

1 abandoned, even a, even a smaller section at the north
2 boundary, would it still make it an abnormal crossing
3 that some of the road coming into the crossing was
4 private property?

5 A. Yeah. Like the geometry, yeah, it's weird.
6 It's abnormal. Misaligned.

7 Q. Would the property ownership aspect of it
8 make it abnormal? If any part of 400 North Vineyard
9 is private property, does that private property
10 ownership aspect of it make the crossing abnormal?

11 A. No. It's nothing to do with that.

12 Q. In your experience have you seen other public
13 crossings that have private property making up part of
14 the road as it approaches the crossing?

15 A. No.

16 Q. You've never seen that?

17 A. No.

18 Q. Okay. Let's talk about your -- the actual
19 question about the crossing being private or public.
20 UDOT has the statutory authority to make that
21 decision, correct? Of whether the crossing is public
22 or private?

23 A. Let me think.

24 Q. Okay. It's a pretty important thing to know.

25 A. Well. The statute doesn't say that. The

1 statute just say, you know, we have -- UDOT has the
2 authority over all mode of transportation system.

3 Q. Okay. Should I have said regulation?

4 A. Yeah, I think you can. I'm not sure. I have
5 to consult with our -- my counsel.

6 Q. Do you, do you believe it's within your
7 authority as -- in the position that you hold at UDOT
8 to determine whether this crossing is public or
9 private?

10 A. Yeah.

11 Q. Okay. And you are the person at UDOT who has
12 been given the responsibility to make that decision?

13 A. Yes.

14 Q. Now, I understand you've said you consult
15 with others in the process of doing that. But you're
16 the mouthpiece?

17 A. Yes.

18 Q. Okay. Having you turn to, if I could,
19 page 16 of the joint exhibits. The book that's
20 sitting in front of you?

21 A. Which exhibit again?

22 Q. Sorry? Sixteen.

23 A. You mean 116?

24 Q. Just 16, right at beginning. It's -- well, I
25 can show it to you. It's a copy of the Highway-Rail

1 Crossing Inventory Instructions and Procedures Manual?

2 A. Oh, yeah. The problem I don't have that each
3 tab, you know.

4 Q. That's okay. I'm not gonna ask you to read
5 it. I'm showing it to you. You recognize that
6 document, right?

7 A. Yeah.

8 Q. You agree that this document contains
9 standards that should be applied in determining
10 whether this crossing is public or private?

11 A. You may use it. But several parties, you
12 know, there are different resources.

13 Q. Well --

14 A. Sometime make conflict. You know, that's why
15 I mentioned typically, like those kind of language,
16 you know. But yeah, I can use that as a standard
17 for -- because that is specifically for FRA's
18 database.

19 Q. Okay.

20 A. Inventory, so.

21 Q. And then if we look at page 70. I'll just
22 show you that so you don't have to flip through it.

23 A. Okay.

24 Q. This is an excerpt from the Private
25 Highway-Rail Grade Crossing Safety Research and

1 Inquiry manual?

2 A. Okay. Uh-huh.

3 Q. You recognize that document, right?

4 A. Yeah.

5 Q. Do you agree that this document contains
6 standards that should be applied when determining
7 whether this crossing is public or private?

8 A. Yes.

9 Q. Okay. You also would agree that the Manual
10 on Uniform Traffic Control Devices contains standards
11 that should be applied?

12 A. Yes.

13 Q. Okay. Again, you've read Union Pacific's
14 prehearing position statements, correct?

15 A. Yes.

16 Q. You -- do you agree with the analysis that
17 Union Pacific put forth -- well, no, no, no. Withdraw
18 that question.

19 Do you agree with the standards that Union
20 Pacific stated and relied on, do you agree that those
21 are the right standards to use to determine whether
22 this crossing is private or public?

23 A. Yes, I do.

24 Q. Okay. And applying those standards, is it
25 your opinion that the crossing is private?

1 A. I'm sorry?

2 Q. Applying those standards, do you -- is it
3 your opinion that the crossing is private?

4 A. Yes.

5 Q. Okay. You've explained in your direct
6 testimony that the change of the position to the
7 determination that the crossing is public was a
8 compromise position, correct?

9 A. That's correct.

10 Q. Designed to take into consideration the
11 conflicting interests of the Railroad and the
12 developer, who were in conflict with one, one another,
13 right?

14 A. Right.

15 Q. And also the City's interest?

16 A. Right.

17 Q. In fact, what you pointed to was that the
18 compromise was protecting the City's possible future
19 need for access at this point where this crossing is,
20 right?

21 A. That's correct. And I want to, I want to say
22 that basic -- UDOT, you know, our concern, number one,
23 is just safety. That's, that's what we concerned
24 about.

25 And then other than that, you know, all the

1 City's need, and the Railroad's liability issues,
2 everything. We just try to accommodate all these
3 things. But it's still apparently not making everyone
4 happy.

5 Q. Well, you agree with me that the standards to
6 be applied to determine whether the crossing is
7 private or public don't direct UDOT to consider the
8 City's future needs for access, right?

9 A. Can you repeat that?

10 Q. The standards?

11 A. Uh-huh.

12 Q. That should be applied to determine whether
13 the crossing is public or private?

14 A. Okay.

15 Q. They don't direct UDOT to consider the City's
16 future need for access?

17 A. No.

18 Q. They don't even direct UDOT to consider Union
19 Pacific's liability concerns?

20 A. No.

21 MS. KAMAS: Okay. That's all the questions I
22 have.

23 THE COURT: Thank you Ms. Kamas.

24 Mr. Astill?

25 ***

CROSS EXAMINATION

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BY MR. ASTILL:

Q. If I can -- I wasn't intending to start here, but let me just start there. The last question you answered with Ms. Kamas said that the standards -- and I guess she's talking about the MUTCD and the FRA standards?

A. Yeah.

Q. Don't discuss need of the City; correct?

A. Right. So basically the, the standard they cite in the documents.

Q. It's just, it's just an engineering safety guideline?

A. Yes.

Q. Okay. But UDOT's statutory responsibility with regard to crossings does, in fact, address need, doesn't it?

A. I'm sorry, doesn't address -- doesn't?

Q. It -- the requirements of UDOT --

A. Uh-huh.

Q. -- in looking at crossings requires UDOT to address and consider need, doesn't it?

A. Well, it doesn't say that, but we have to take that into consideration.

Q. Okay. But -- and I guess I, in fact, think

1 it does say that. But if you don't remember that,
2 that's fine. I'll leave it at that.

3 A. Okay.

4 Q. Thank you. Mr. Cheng, I'm gonna go back to
5 some of the procedural issues that Ms. Spooner
6 questioned you about. In -- and in particular the
7 R935-7 requirements. It talks about a surveillance
8 team. And I think you've, you've acknowledged that
9 you didn't do a surveillance, per se, of this
10 crossing?

11 A. What time? At what time?

12 Q. I'm sorry. Until --

13 A. At the very beginning, or?

14 Q. At the very begin -- well, until after -- you
15 didn't do a surveillance initially because you said it
16 was private?

17 A. That is not true. Because when we were on
18 that corridor we stopped by there.

19 Q. Okay. You were there?

20 A. Yeah.

21 Q. But, but the team wasn't there?

22 A. Oh, the team was there.

23 Q. Well --

24 A. The whole team.

25 Q. You acknowledged that there was no member of

1 Vineyard Town there?

2 A. No, I mean -- well, Vineyard's not there.
3 But the team, UTA, U.P. --

4 Q. Okay. But isn't -- under, under R935-7 isn't
5 one member of the team somebody from the local
6 jurisdiction?

7 A. If it's a public crossing, yeah.

8 Q. Okay. That's what I'm talking about. So
9 there wasn't anybody from Vineyard Town there?

10 A. No. But at that time it was private.

11 Q. You, you thought it was private?

12 A. Yes.

13 Q. Because you talked to Jim Marshall?

14 A. No. That's, that's after.

15 Q. Okay.

16 A. After -- I talked to Jim Marshall after the
17 City raised the question.

18 Q. After the question?

19 A. But at this time when I, I had this? That's
20 very -- that's at the very initial surveillance
21 review. I didn't talk to Jim Marshall, but the team
22 was there. We stop -- we stopped by.

23 Q. Okay. But you didn't invite Vineyard Town in
24 the first place?

25 A. No, because --

1 Q. So, so at some point you decided it was
2 private, so you didn't invite Vineyard Town?

3 A. That's correct.

4 Q. And, and so until after July 13th, when you
5 sent the letter to me saying we've decided it's
6 public, there --

7 A. Well, decided, actually is we confirmed.
8 Basically before that, before that.

9 Q. You confirmed -- oh, you're right, you're
10 right.

11 A. Yeah.

12 Q. So February 25th you decided it was public
13 and said you were gonna do a surveillance review?

14 A. Right, uh-huh.

15 Q. And then on July 13 you confirmed that once
16 again?

17 A. Right. So that five-months period, yeah.

18 Q. Okay. Now, let me just make sure I
19 understand what -- a surveillance review is intended
20 to invite this team of people: The local
21 jurisdiction, the Railroad, UDOT engineers?

22 A. Uh-huh.

23 Q. And the school district, if needed?

24 A. If, if necessary, yes.

25 Q. If needed?

1 A. Yes.

2 Q. Right. And others. "Other stakeholders" it
3 says.

4 A. Basically not really. Stakeholder we rely on
5 the City, for instance, if it's developer.

6 Q. Right.

7 A. The City determine, you know, decide to
8 invite them, we, we can accept it. But we don't
9 really, you know.

10 Q. Typically aren't inviting private landowners?

11 A. Yeah.

12 Q. Okay.

13 A. But somehow of course if the developer send a
14 request to us, you know.

15 Q. Yeah.

16 A. Generally we don't, yeah.

17 Q. So on February 25th in your letter to me you
18 said, We're gonna do another surveillance now?

19 A. Right.

20 Q. And we're gonna have Vineyard Town?

21 A. Yes.

22 Q. Railroad, UTA?

23 A. Yes.

24 Q. And Anderson Geneva present at that
25 surveillance?

1 A. Right.

2 Q. Okay. That didn't happen, did it?

3 A. No.

4 Q. Okay. Now, in fact there wasn't a
5 surveillance review conducted until you'd already
6 decided to do a temporary closure, correct?

7 A. No. Not --

8 Q. I think that's correct.

9 A. No.

10 Q. No?

11 A. Not this team? Incorrect.

12 Q. Of this team.

13 A. I think you have to repeat your question,
14 yeah.

15 Q. Okay. So based on your February 25th
16 letter --

17 A. Right.

18 Q. -- that said, We're gonna do another
19 surveillance review --

20 A. Right, uh-huh.

21 Q. -- I'm pretty sure you, you testified that
22 there was no --

23 A. That's --

24 Q. -- team surveillance review --

25 A. That's correct.

1 Q. -- between February 25th and July 13th?

2 A. July, correct.

3 Q. Okay. And then the next action, action that
4 occurred was after July 13th, when you conducted a
5 review for the purpose of closing the crossing?

6 A. Correct.

7 Q. Okay. Now, one thing you testified about was
8 the -- you didn't know enough about Vineyard's plans
9 or the developer's plans, and so that's one of your
10 reasons for not recommending improvements to the
11 crossing, correct?

12 A. Part of it.

13 Q. Okay.

14 A. Another reason is that because there's
15 nothing there. I just don't feel comfortable,
16 comfortable spending public money to do something to
17 where there's nothing exist.

18 Q. But you don't know that there's nothing?

19 A. Of course I do. There's nothing.

20 Q. Well --

21 A. Of course there's nothing.

22 Q. There's a gate there today. But you don't
23 know how long that gate's been there, do you?

24 A. No.

25 Q. And --

1 A. How long?

2 Q. And you don't know what the plans of the
3 developer are, or what the plans of Vineyard Town are?

4 A. No.

5 Q. And the reason you don't know that is you
6 didn't do a surveillance review, correct? You never
7 asked. Did you ever ask Vineyard Town, What are your
8 plans?

9 A. Um, yeah. Well, actually I didn't ask, they
10 already presented to me. Afterward I kept their
11 master plan.

12 Q. So you knew part of their plans. You didn't
13 ask what that meant, though?

14 A. Well, I think that is --

15 Q. You didn't ask what kind of road that
16 required?

17 A. I don't think it -- like I said, you know, if
18 it's a private crossing I don't think I have, I have
19 position to -- I cannot just approach to each property
20 and say, Hey, what is your plan? What is your plan?
21 I cannot do that. Only --

22 Q. But if it's a public crossing, Mr. Cheng --

23 A. Uh-huh.

24 Q. -- you are required to do that.

25 A. I know. But it's a private.

1 Q. No, that's, that's not what's -- that's not
2 true. And you even said it wasn't true. On
3 February 25th you said it's a public crossing.

4 A. Well.

5 Q. On July 13th you said it's a public crossing.
6 Isn't that true?

7 A. That is because of the public -- the records,
8 okay? And the document the City presented to me.

9 Q. So --

10 A. So we say, Okay, we accept it. We accept it.

11 Q. So, so you, so you agree it's a public
12 crossing?

13 A. We agree? Well, I, I can --

14 Q. You said it.

15 A. I can --

16 Q. You said it in writing, twice. You're --

17 MR. PICKETT: Your Honor, I'm sorry --

18 THE WITNESS: I don't think I can answer it.

19 MR. PICKETT: -- he's not my witness, but
20 we're getting a lot of overlap in the questions and
21 answers.

22 THE COURT: Are you making an objection?

23 MR. PICKETT: I'm sorry?

24 MR. ASTILL: I apologize, I'll let him finish
25 his answer.

1 THE WITNESS: Yeah, because you say if I
2 agree it's public? I will just tell you that is the
3 Department's decision to be -- that's public.

4 Q. (By Mr. Astill) Okay.

5 A. I -- do I agree or not? Well, I don't.

6 Q. Okay. But, but it's, it's on your
7 letterhead. On your stationery --

8 A. Yes. Uh-huh.

9 Q. -- it says, This is a public crossing?

10 A. Yes, we consider that is a public crossing,
11 yes.

12 Q. Right. All right. So if it's --

13 A. And I also said -- I'm sorry. In, in my
14 letter, in my February 25th letter?

15 Q. Yes.

16 A. I always said at this point we consider it
17 public --

18 Q. I understand.

19 A. -- unless further detail -- further
20 information is gathered. Like that.

21 Q. That's right.

22 A. And, I mean, we did gather lots of
23 information, so.

24 Q. So the decision to make -- to call it a
25 public crossing was based not only on the engineering

1 review standards that we talked about with the MUTCD
2 and FRA. Those are, those are descriptors of what to
3 look for to decide a -- what's a typical crossing,
4 correct?

5 A. Uh-huh.

6 Q. But in addition to that you looked at legal
7 issues, didn't you? And legal rights based on a
8 public road?

9 A. Yeah. Based on the --

10 Q. Is --

11 A. -- the presenting information by the City.

12 Q. Okay.

13 A. And I trust them, you know. The information
14 must be correct.

15 Q. Okay. And so UDOT, collectively, made a
16 decision that it is a public crossing?

17 A. At that point. In Febu --

18 Q. And in -- and on July 13th it made the same
19 decision?

20 A. No. Because on your side, yep, it's support.
21 I think I would, I would like to say basically there's
22 no full -- no fully support for either side.

23 Q. Is that Eric Cheng's personal opinion?

24 A. No. We, we all know in UDOT, we know it.
25 And so basically the Railroad's con -- Railroad's

1 evidence and the City's evidence is just conflicting.
2 That's why we all here arguing this in, you know, the
3 line here. So we just don't know. It just appear --
4 appears to be conflicting.

5 Q. So is, is UDOT withdrawing its decision?

6 A. UDOT what?

7 Q. Is UDOT withdrawing its decision?

8 A. No. Well, we keep the same. It's public.

9 Q. Okay.

10 A. We didn't, we didn't withdraw.

11 Q. Okay. Thank you. You made a decision --

12 A. By compromising considerations.

13 Q. But one of those considerations was the legal
14 issues surrounding the crossing and the road?

15 A. Yeah. Because that is, that is basically the
16 City -- or Geneva-Anderson's side. Your, your
17 supporting information. But on the engineering side,
18 on the Railroad side, you know, the definition, all --
19 everything, I'm sorry, I have to say I support --

20 Q. Okay.

21 A. -- that it's private crossing.

22 Q. Now let, let me take you back 20 years. And
23 there's no gate there.

24 A. Okay.

25 Q. And a road -- there's a, a crossing. It goes

1 across into private property, but it's open and people
2 drive in and out. Thirty-seven hundred cars a day
3 drive in and out.

4 A. Uh-huh.

5 Q. Is it public?

6 A. No.

7 Q. Why not?

8 A. Because it's private property.

9 Q. But you just testified a minute ago that in
10 Salt Lake City --

11 A. Yeah.

12 Q. -- there's a crossing that goes right into
13 private property.

14 A. Right.

15 Q. And the City said, No, that's our road. And
16 you said, Okay, that's public.

17 A. They maintain the road. They said they
18 maintain the road.

19 Q. Right.

20 A. And I checked around. They, they maintain
21 the road.

22 Q. Okay.

23 A. And it's really not -- it's really nothing --
24 it's -- I think two, two locations are different.

25 It's just not like that. It's -- there the company's

1 just at one side, you know, and then there's
2 something -- nothing here.

3 But this one is going into that whole
4 property. So I cannot say -- I disagree with you
5 using that as example.

6 Q. Okay. Don't all roads end up connecting
7 private property?

8 A. I think, Mr. Astill, I -- every time --

9 Q. Just answer my question, yes or no?

10 A. Okay, I'm sorry.

11 Q. Yes or no?

12 A. Can you repeat the question?

13 Q. Don't all roads end up connecting to private
14 property? Can you, can you not think of a single
15 instance where a road goes into private property?

16 A. No, I don't -- I disagree with your, your --
17 no.

18 Q. Okay, thanks. That's all. Now let me, let
19 me refer you to -- in Section 930-5-14 it describes a
20 process including a public notification if there's
21 going to be an action to close a public crossing,
22 correct?

23 A. Correct.

24 Q. Now you, you tried to make a distinction,
25 when Ms. Spooner was questioning you, that a temporary

1 closure doesn't come under that lang -- the language
2 of that --

3 A. Yes.

4 Q. -- administrative rule?

5 A. Uh-huh.

6 Q. Can you show me anything in that
7 administrative rule that says that? Let me -- where
8 did I put it?

9 A. So, you know, you don't have to find that,
10 basically you are saying that word "permanent" or
11 something?

12 Q. No. I'm saying --

13 A. No, it's not -- that "permanent," that word
14 is not there. You don't have to -- I, I know. I know
15 it.

16 Q. Okay. So there's nothing -- you agree with
17 me that there's nothing in Section 930-5-14 that says
18 it's only permanent closures that have to receive
19 public notice?

20 A. That's correct.

21 Q. Okay.

22 A. That is the closure -- temporary closure is
23 at UDOT's discretion.

24 Q. Where do you read that in this rule?

25 A. It's not in there.

1 Q. That's just your decision?

2 A. UDOT.

3 Q. Okay.

4 A. Not me, UDOT.

5 Q. Okay. Now, a few minutes ago you told
6 Ms. Kamas that you agreed with the position of Union
7 Pacific that the MUTCD standards and the FRA standards
8 govern the determination of public or private roads
9 and crossings?

10 A. That's correct.

11 Q. Okay. You agree, however, also that
12 determining whether a road is public is not a question
13 to be determined under the MUTCD or the FRA? In other
14 words, they, they don't provide legal standards, do
15 they?

16 A. Those, those book -- those standards?

17 Q. Yes.

18 A. MUTCD and all the others I, I'm not aware.
19 But MUTCD is abide by the whole nation. That's the
20 Traffic Engineers Bible, basically. Yeah it's, you
21 know, you go to school, you use that. I think.
22 That's what I understand.

23 Q. For, for engineering purposes, correct?

24 A. Yeah, yeah. I don't know what you mean by
25 "engineering purpose" though.

1 Q. You, you don't claim that legal rights of
2 property owners are defined under MUTCD, do you?

3 A. No.

4 Q. Okay. I want to talk about your questions
5 about the safety of this crossing. Now, I think you
6 gave your opinion that the crossing was unsafe prior
7 to closure? Prior to the, prior to the UTA project?

8 A. Right.

9 Q. Okay. And in fact you -- I think you said
10 that even with the gate being open it was still
11 unsafe. Maybe more unsafe?

12 A. Yeah. Because you are inviting traffic into
13 an area that's not, not necessary. So needed traffic
14 going through that crossing, of course, you know, that
15 increase the risk.

16 Q. I see. I, I didn't understand it the way you
17 just said it, so I appreciate that clarification. So
18 you're -- what you're saying is because you are --
19 traffic wasn't crossing it and now it is crossing the,
20 the Railroad right-of-way, that it is inherently less
21 safe than not having people cross?

22 A. Yeah. Just increase the probability, yeah.

23 Q. And that's true of any crossing; if you close
24 the crossing, it's safer?

25 A. Of course. That's why FRA want to close --

1 Q. Okay.

2 A. -- 25 percent.

3 Q. Okay.

4 A. Or less grade separation.

5 Q. All right. Now, let me take you back to the
6 diagram that you drew some arrows on. And this is
7 Exhibit 133? And in this diagram you can see a rough
8 approximation of the Vineyard roadway -- Vineyard Road
9 as it turns the corner at Fourth North.

10 A. Right.

11 Q. And where it approaches the crossing. And,
12 and then it comes in. And you can see a road that
13 extends into the Geneva property.

14 A. Well, right now basically I don't -- you
15 know. I only been there after the gate was opened --

16 Q. Yes.

17 A. -- once or twice. But before that I couldn't
18 see anything. Basically what, what I saw just all
19 dirt. No, no road, nothing.

20 Q. Okay. And that's because you haven't w --
21 you haven't gone in and really walked the property and
22 observed carefully, have you?

23 A. No.

24 Q. So historically -- in fact, let me, let me
25 show you a -- the 2004 overlay that our -- that's

1 Exhibit 135. On this it's a little more clear, isn't
2 it? There --

3 A. Yes.

4 Q. There's a roadway that exists?

5 A. Okay. That's the old, there?

6 Q. Yeah. I'd represent to you that it is.

7 A. Okay.

8 Q. Okay? And I'd also represent to you that
9 this area right here, although it's a little bit
10 wheat strewn today, is a large parking area.

11 A. Okay.

12 Q. That was operated by and was open when Geneva
13 was operating. Okay?

14 A. Okay.

15 Q. So would your testimony be the same if this
16 roadway -- now that you see this roadway exists, and
17 there's a big parking area, and that people can come
18 in and out pretty freely?

19 A. Yeah. You mean right now?

20 Q. Yeah.

21 A. Sir, I don't understand your question. I'm
22 sorry.

23 Q. Okay. No, I, I asked it badly, I'm sorry.
24 Well, let me just take you back another
25 20 years. And let's say --

1 A. Oh, 20 years ago. Okay.

2 Q. -- now, now we're back to when Geneva is
3 operating.

4 A. Okay.

5 Q. Employees and people, and people are coming
6 into this roadway.

7 A. Uh-huh. A parking lot.

8 Q. Coming in, dropping off, picking up, doing
9 other things, coming out. And my guess is there's
10 some people that may not have understood where they
11 were turning in. General public who came in here and
12 said, Oops, I don't really want to be here, so they
13 went back out. Right?

14 A. Yes.

15 Q. And according to the FRA database 3,725 cars
16 a day traveled over that crossing.

17 A. Right.

18 Q. Okay. Was it in -- was it unsafe then?

19 A. Yes.

20 Q. Inherently absolutely unsafe?

21 A. Yeah. Because of that storage length, as I
22 mentioned.

23 Q. Okay.

24 A. But Mr. Astill I want to, you know, that --
25 you keep saying 300 -- 3,075? It doesn't matter. You

1 know, if the company go -- if the road going to the
2 property, if it's just the property -- the property's
3 invitees, the customers or something?

4 I know I get the -- I'd just like to take
5 this opportunity when every time I read the document,
6 you keep saying that's for public. It's not. It's
7 just for the company's --

8 MR. ASTILL: Your Honor, I'd ask you to
9 instruct the witness not to editorialize.

10 THE COURT: Yeah. If you can just keep
11 your -- just answer the questions, Mr. Cheng.

12 THE WITNESS: Agreed, sorry. I apologize for
13 that.

14 Q. (By Mr. Astill) All right. So cars coming
15 to this crossing.

16 A. Uh-huh.

17 Q. If -- there were crossing gates here, weren't
18 there?

19 A. Yeah.

20 Q. And the distance between the rail centerline,
21 or edge of rail, and the gates, do you have any idea
22 what that distance was?

23 A. From the gate to where?

24 Q. To the edge of the roadway here from the
25 turn.

1 A. Twenty, thirty feet.

2 Q. Could it have been more?

3 A. Maybe.

4 Q. You didn't, you didn't measure it, did you?

5 A. No, I didn't really measure it, no.

6 Q. Okay. So at least a couple of cars could
7 have stacked in that area before -- in front of the
8 gate?

9 A. Maybe.

10 Q. Okay. And cars, if they came and saw people
11 were stopped, would have stopped back here?

12 A. Uh-huh.

13 Q. Okay. Now, you also were saying this was
14 inherently dangerous here?

15 A. Yeah.

16 Q. Again, the gate was here?

17 A. Yeah, right.

18 Q. There were flashing lights?

19 A. Uh-huh.

20 Q. Gave people plenty of notice?

21 A. Yes.

22 Q. They were traveling at a reasonable speed?

23 A. Yes.

24 Q. So what, what causes you concern about people
25 entering that?

1 A. Oh. Because after you, after you pass the
2 gate, then the gate comes down. And then you --

3 Q. Well, wait.

4 A. -- then the train -- then the traffic on this
5 Fourth North and -- 400 North and Vineyard? The
6 train -- the traffic, you know, may stop. That car
7 cannot go through. So they, they have to stop after
8 they pass --

9 Q. Well explain to me, isn't that true of every
10 crossing?

11 A. Not every crossing. Unless you have
12 situation like this.

13 Q. No. They --

14 A. And --

15 Q. Tell me where they can't get through.

16 A. Well, after you -- okay.

17 Q. So somebody is coming from the west
18 approach --

19 A. Right.

20 Q. -- and starts across the railroad tracks?

21 A. Yeah. For this, for this one now if it's
22 open here, then yeah. You go there you say, Oh,
23 nothing. You know, it's -- you just keep continuing.
24 For that situation 20 years ago?

25 Q. Uh-huh.

1 A. The risk I mentioned may not exist. But for
2 coming out here? Yeah. Let me explain to you.

3 Because --

4 Q. Okay.

5 A. -- if the gate is here, the car pass the gate
6 and the gate comes down. And then they stop here
7 because they have to stop for traffic here. And then
8 they can, they can stop here. And then they -- let's
9 say there's two, three cars.

10 Q. Uh-huh.

11 A. They just follow this car or something. And
12 then -- but because the first car cannot go through
13 because of the traffic, waiting for traffic, so the
14 car ended up in -- stay on the track.

15 Q. Because you're saying cars couldn't stop
16 here?

17 A. That's right.

18 Q. And, and jam up --

19 A. That's right.

20 Q. -- coming that way?

21 A. Exactly.

22 Q. I, I see -- I understand now --

23 A. Yeah.

24 Q. -- what you're saying.

25 A. That is the --

1 Q. And that's --

2 A. That is not just for this one, it's common
3 risk on the crossings.

4 Q. Okay. That's what I was getting -- wanted to
5 ask you. Now, I -- in the, in the Lehi area
6 there's -- I'm aware there's some similar geometry
7 crossings.

8 A. Uh-huh.

9 Q. So you have the same problem there, don't
10 you? In several crossings in the City of Lehi?

11 A. Well, if, if it's the same configuration it's
12 the same problem, yes.

13 Q. Okay.

14 A. But I'm not, I'm not familiar with that
15 location, so.

16 Q. Okay. So if it was unsafe I guess it was
17 unsafe for the last 60 years?

18 A. Well, no. Depends on occasionally the train,
19 you know. Train speed, train traffic, you know.
20 That's --

21 Q. But freight traffic hasn't changed in that
22 period of time?

23 A. Okay.

24 Q. Okay.

25 A. And the gate, you know. Put a gate, create a

1 problem going that way. So.

2 Q. Yeah. So the gate's a problem?

3 A. Yes.

4 Q. Okay. Now, because there was no surveillance
5 review, you really -- Vineyard Town and Anderson
6 Geneva really didn't have an opportunity to react to
7 the concerns about the gate, did they?

8 A. They did. That's why they called a meeting
9 on -- the letter I mentioned, is that February 19th or
10 something? They called meeting, so we went there.
11 Present to us, you know, this about their concerns.

12 Q. No, is -- but that presentation didn't relate
13 to the safety because you hadn't addressed the
14 safe -- any safety issues at that point?

15 A. That's --

16 Q. That was strictly about the public crossing
17 issues, correct?

18 A. Yeah.

19 Q. Okay. And so until August 6th, when you did
20 a surveillance review with Don Overson, the town
21 engineer, on site --

22 A. Uh-huh.

23 Q. -- you hadn't talked with Vineyard Town or
24 with Anderson Geneva about any of the safety concerns
25 you've just addressed to me?

1 A. That's -- just by, you know, correspondence,
2 you know, from you or something.

3 Q. But there aren't any expressions of concerns
4 with safety in any of that correspondence?

5 A. No. Because at that time we were still busy,
6 you know, reviewing the information presented by both
7 parties and that kind of things, you know.

8 Q. Right.

9 A. So.

10 Q. Okay. Now, I want to talk briefly about the
11 FRA database. You mentioned that the FRA compliance
12 was voluntary prior to 19 -- or 2008, correct?

13 A. As I understand.

14 Q. Isn't it true that in -- under the enabling
15 legislation and regulations relating to the FRA
16 database when it was created is it imposed the
17 responsibility on the states to comply and provide
18 accurate reporting as a condition for funding?
19 Federal fund -- highway funding?

20 A. I'm not aware of that. That's before my
21 time, so.

22 Q. Okay. So you just don't know that?

23 A. Yeah.

24 Q. Okay. But in fact the state had participated
25 in FRA reporting for --

1 A. Yes.

2 Q. -- since it was established?

3 A. Uh-huh.

4 Q. Okay.

5 A. But I would just say because, you know, you
6 said affect the funding? I didn't see that happen,
7 you know. After I took this office, then I didn't see
8 any -- anything happen if we didn't do anything. So I
9 think it's voluntary.

10 Q. So your --

11 A. Pro - pro -- program.

12 Q. Well. Okay. Prior to your position --
13 taking the position of chief engineer, were -- did you
14 have any responsibilities for compliance with the FRA
15 database?

16 A. No.

17 Q. Who did that?

18 A. My predecessor.

19 Q. So it's always been the responsibility of the
20 chief engineer?

21 A. Chief -- well, I would like to say right now
22 I -- the State railroad section is only me, assisted
23 by our consultant.

24 Q. Uh-huh.

25 A. That's UDOT's decision. Before that, my

1 predece -- it's the rec -- predecessor is one. Before
2 that is three people. So -- because I risk this you
3 say chief engineer. So I --

4 Q. Okay.

5 A. -- I'm not sure.

6 Q. All right. So you don't know who was keeping
7 up the FRA database before you took charge?

8 A. That's correct.

9 Q. And since you've taken charge you've taken
10 more resp -- you've taken the responsibility?

11 A. I took responsibility. I have done many
12 improvements. For instance, we're talking about --
13 okay.

14 Q. Yes, please. That's --

15 A. Sure.

16 Q. I just wanted to make sure that, you know,
17 you are taking responsibility and you're com -- in
18 compliance now.

19 A. I understand.

20 Q. So in the, in the FRA database instructions
21 it describes a procedure for updating the database?

22 A. Yes.

23 Q. And it says in there that when, when the
24 State agency is -- initiates an update it's supposed
25 to send a copy of the update form to the Railroad.

1 Then get it back from the Railroad. Then send it in
2 to the FRA. Is that correct?

3 A. For that part, I don't remember. I know the
4 Railroad -- well, we saw it yesterday. Railroad
5 supposed to send to the State.

6 Q. Yes.

7 A. And then they have to respond. If no
8 respond, then --

9 Q. Yes.

10 A. -- you can send -- yeah, right.

11 Q. Okay. That is the procedure that's outlined?

12 A. (Moves head up and down.)

13 Q. It sounded to me like, from your testimony
14 and from Mr. Marshall's testimony, neither one of you
15 are doing that?

16 A. Right now basically I think we send a copy to
17 Railroad and we receive copy from Railroads, yes.

18 Q. Okay.

19 A. So we, we do receive, you know, when --

20 Q. But --

21 A. -- initiated by, by Railroad, I receive a
22 copy. And the consultant is handling that for me. So
23 I look at it, I forward it to consultant to file it,
24 you know.

25 Assuming, you know, there's nothing changed.

1 Because a change normally -- I think according to the
2 instruction is, you know, you look at to see if it's
3 correct. Normally is the Railroad information, or is
4 address, or something close to public so we assume if
5 we accept that, so.

6 Q. Right, right. And you, and you're aware that
7 if there's a change related to the crossing you're
8 supposed to file something?

9 A. If there's something what?

10 Q. If there, if there's a change related to the
11 crossing.

12 A. Uh-huh.

13 Q. You're supposed to file something with the
14 FRA.

15 A. Oh, yeah. That's what, you know, I, I cannot
16 speak for my predecessors, but that -- I was going to
17 say this. I have done several things. That is one
18 part, you know, I've been doing. To improve. To
19 make, make sure the record is accurate.

20 Q. Okay. But in terms of process as between you
21 and the Railroad today, you're not sending a copy to
22 them for review and approval, and they're not sending
23 a copy to you for review and approval --

24 A. Oh, U.P. --

25 Q. -- prior to filing with the FRA?

1 A. No. U.P. send this to us. And as to, like I
2 said, the consultant handle that for me. I just
3 cannot answer that question. Whether we send that to
4 Railroad for review first, I cannot answer that.

5 Q. Okay. Now, you've testified and I believe
6 you heard Mr. Marshall testify that if a city needs a
7 crossing they can always come and apply for one?

8 A. Yeah.

9 Q. Mr. Cheng, in all honesty.

10 A. Okay.

11 Q. What is the likelihood of a city getting a
12 public crossing by request?

13 A. Very likely.

14 Q. Very likely?

15 A. Yeah. I can give you example.

16 Q. And -- okay.

17 A. I know I -- you don't ask me, I don't say.
18 So I --

19 Q. Let me, you know, I'm gonna -- you agree with
20 me that nobody gets a public crossing unless they
21 close two other public crossings. Isn't that the rule
22 of thumb you use and the Railroad uses?

23 A. Rule of thumb -- not in writing.

24 Q. I know.

25 A. Yeah, so.

1 Q. But isn't that the rule of thumb?

2 A. We -- can I expand that answer a little bit?

3 Q. Yeah, that's yes or no. Isn't that the rule
4 of thumb you and the Railroad use?

5 A. We say that. We say that. We ask, yes.

6 Q. All right. And so if Vineyard Town came to
7 you and said, Could I get a public crossing here where
8 there used to be this active crossing? You'd say,
9 What two crossings are you gonna close?

10 A. No, I won't.

11 Q. You won't say that?

12 A. No.

13 Q. What would you say?

14 A. I was -- well, because I already know that
15 the whole master plan? They separate. They grade
16 separated one location or two locations.

17 Q. That's a good dream, isn't it?

18 A. And -- yeah. And there's some, there's some
19 location they show closed. So we consider those. So
20 I won't say no.

21 Q. But the grade separations you're show --
22 you're talking about, there's, there's no crossing
23 there today, is there?

24 A. Well, okay. Then I think again on the list
25 there's several shows the closure. I was there. I

1 know, I know they were talking about close several
2 locations. Even sometime we can --

3 Q. Now, you're talking about a map that we
4 have -- we haven't talked about today that
5 Mr. Marshall testified about yesterday?

6 A. Right. Yeah, that's -- yeah.

7 Q. But not -- you're not talking about the
8 Vineyard Town master plan or the -- or anything like
9 that?

10 A. Just the map we, we talk about.

11 Q. The 2006 Master Plan -- road, road plan that
12 Vineyard had --

13 A. Yeah.

14 Q. -- showed two separated grade crossings?

15 A. It showed sev -- several closure. Well,
16 there's one with a little table. Was a table closure.
17 Close/open. That --

18 Q. Okay. Just so we don't confuse everybody,
19 let's, let's get that exhibit.

20 MR. ASTILL: Do you remember which one it is,
21 Reha? It's the CRS map.

22 MS. SPOONER: It's 138.

23 MR. ASTILL: One thirty-eight? Thank you.

24 Q. (By Mr. Astill) I'm gonna show you what has
25 been marked as Union Pacific 138. Do you have it

1 there?

2 A. Yes.

3 Q. Okay. Is that the map you're talking about?

4 A. Yeah, kind of.

5 Q. Okay.

6 A. Because I understand that in that
7 development, you know, they're going to close
8 something and then.

9 Q. And, and did you also understand that that
10 whole map related to changing the alignment of the
11 Provo industrial spur?

12 A. Yeah.

13 Q. On the frontage?

14 A. Right.

15 Q. So it was a big, big plan that fell apart?

16 A. So I, I got, I got -- I have that knowledge.

17 Q. Okay.

18 A. Not -- I have that information, yeah.

19 Q. Okay. All right. And so if, if this big
20 plan came together, Exhibit 138, you might approve a
21 crossing?

22 A. Yes. It -- that is just additional. Let
23 me --

24 Q. But, but in general, but in general --

25 A. I will.

1 Q. -- you're gonna, you're gonna require --

2 A. I'll look at that it. Look at it, like you
3 say --

4 Q. -- closures?

5 A. -- yeah.

6 Q. In general you're gonna require closures of
7 public crossings, correct?

8 A. Sometime that is impossible. And --

9 Q. Isn't it true, Mr. Cheng, that American Fork
10 City has been attempting to get a public crossing
11 approved for years now, it may have even been maybe
12 ten years?

13 A. I don't -- I'm not aware of.

14 Q. You're not aware?

15 A. No.

16 Q. Okay.

17 A. Which one?

18 Q. All right. Okay.

19 A. I don't ask questions. I'm sorry.

20 Q. All right. But it's -- how many public
21 crossings have you approved, as chief railroad
22 engineer, new crossings?

23 A. New crossing?

24 Q. In the last two years.

25 A. Okay, I can just think right off my head,

1 one.

2 Q. One?

3 A. Approved. West Jordan.

4 Q. Okay.

5 A. There's nothing there. The City shows me
6 this is what -- this road is what we need.

7 Q. Uh-huh.

8 A. We need to have a crossing there.

9 Q. Okay.

10 A. Okay? They said -- we --

11 Q. What did the City have to do to make that
12 work?

13 A. We told them, Look at your area to see, we
14 want two, two for one, like you said.

15 Q. Okay.

16 A. They said, Well, no way to close. Okay.
17 Only -- then we say, All right, so that is not the
18 only criteria.

19 Q. Okay.

20 A. That is not the only one. Then we said, All
21 right, now show me, you know, if you can pick -- look
22 at some other crossings in your, in your city to see
23 any kind of improvement you can make.

24 Q. Okay.

25 A. I sent a letter to them. Then they came back

1 and said, No. All lights and gates, they there.

2 I say, All right. I said, Let me think,
3 okay?

4 So basically the whole purpose is to
5 reduce -- as Mr. Marshall testified yesterday, the
6 purpose is us to reduce, you know.

7 Q. Right.

8 A. And so we say, Okay, so instead of City let's
9 take a look at the corridor. You know, there is a
10 formula. You can type in some information and see the
11 risk index. So it doesn't really change, you know.
12 And then, like that one there, even though of course
13 railroads always oppose, you know that, always oppose
14 new crossings.

15 Q. Right.

16 A. But that is the new crossing from nowhere. I
17 approve it. Even Union Pacific was there. I said,
18 Okay, fine. Just do this, do that.

19 So your -- to answer your question, it's very
20 hard to open -- we have -- we certainly have some
21 criteria. But no, like I said, we address -- we take
22 seriously the Town -- the City's need, you know. So
23 we consider those things.

24 Even though you cannot close two or even
25 close one. Sometime you can show, okay, we close this

1 pub -- private one. I may consider, okay, so it still
2 make some safety improvement.

3 Q. Okay.

4 A. So like that.

5 Q. It's not easy?

6 A. Um.

7 Q. Any others? I mean, you know, how many
8 requests have you had in the last two years?

9 A. Just one or two.

10 Q. Okay.

11 A. Yeah. So this one is the one. And sometime,
12 you know, again. So we, we have ways, you know,
13 criteria and alternatives, you know. I think there's
14 several in Lehi -- Provo or Orem. They're relocating
15 something -- development.

16 So we say, Okay, look at this. And they'll
17 say, All right, we close these two private or
18 something and relocate this one. Sometime we take a
19 trade. Relocation --

20 Q. Uh-huh.

21 A. -- of crossing.

22 Q. Okay.

23 A. So yeah, several ways.

24 Q. So --

25 A. So you say it's very tough. I don't think

1 it's very tough, again, because if the need is there
2 we will address the City's need.

3 Q. Okay.

4 A. And that, that's why I said I try in favor of
5 the City and the public. Because you -- I say if you
6 have saved the time, in the future, if you need it,
7 let's do it.

8 THE COURT: Let's take a break for the
9 reporter.

10 (A recess was taken from 1:30 to 1:37 p.m.)

11 THE COURT: Let's go back on the record.

12 MR. ASTILL: I'm finished with my cross.

13 THE COURT: Oh, are you? Okay.

14 Mr. Church?

15 MR. CHURCH: I choose not to.

16 THE COURT: All right, thanks.

17 Ms. Spooner, any?

18 MS. SPOONER: Yes.

19 THE COURT: Okay, go ahead.

20 And then after Ms. Spooner are you gonna
21 want -- well. If you do ask -- if you do desire some
22 time to question after Ms. Spooner, just keep it
23 short.

24 And go ahead, Ms. Spooner.

25 ***

1 REDIRECT EXAMINATION

2 BY MS. SPOONER:

3 Q. If you would look at Exhibit No. 3? And
4 that's the Rule 930-5-7, Diagnostic/Surveillance
5 Review Team?

6 A. Dash -- 5-7?

7 Q. Uh-huh. Look at No. 3.

8 A. Three -- okay, yeah. Five dash seven, there.

9 Q. Is the purpose of this team to make
10 recommendations to UDOT for changes needed at railroad
11 crossings?

12 A. I'm sorry?

13 Q. Is the purpose of the review team to make
14 recommendations to the Department for changes needed
15 at railroad crossings?

16 A. Yes.

17 Q. And what was the reason why you didn't have a
18 surveillance review at 400 North?

19 A. Because it's not needed.

20 Q. And why weren't changes needed at this time?

21 A. At this time? Because I feel -- you know,
22 I -- in my experience I can -- I see the, the risk.
23 The danger of that. And I think that we just need to
24 just address it.

25 And I don't need -- like there, I don't need

1 people to tell me this is safe, or argue, or maybe
2 they can provide either safe. Which I don't agree.
3 Or either maybe more unsafe, or it doesn't matter. So
4 it's -- so the problem is there. But I don't think we
5 need a surveillance review for that.

6 Q. So you were -- you didn't want to make
7 recommended changes now to this crossing?

8 A. Well, we -- I cannot make any change. Number
9 one, that is a City road. And again I don't know
10 their plan, you know. So the best way is just, you
11 know, just stop the traffic right now.

12 Q. Because you're waiting from the City to get
13 the information where the City road's gonna be on the
14 other side?

15 A. Correct.

16 Q. And to your knowledge is there a City road on
17 the east side of the Railroad right-of-way?

18 A. No.

19 Q. And when you conducted the surveillance
20 review for the temporary closure treatments was Don
21 Overt (sic) there?

22 A. Yeah.

23 Q. And he was representing Vineyard Town?

24 A. I guess so. He is the City's -- engineer for
25 City yes.

1 Q. And during that surveillance review did he
2 ever object to the closure?

3 A. Not that I remember, no.

4 Q. Did he provide any comments?

5 A. Probably not. That was quite simple, you
6 know. Basically I -- I think most of us have agreed,
7 you know, it is unsafe. I explained the situation.
8 No one has objection of my view. And then basically
9 determined, okay, so we do this, do that. To just
10 make it again to, you know, to make it a safer -- make
11 it a better-defined alignment. So that's the purpose.

12 Q. Did Don Overt ever provide any written
13 communication or verbal that he objected to the
14 closure?

15 A. No.

16 Q. I'm -- in regard to the FrontRunner project
17 and any Lehi closings of the at-grade crossings, do
18 you have any recollection of any at-grade crossings to
19 be closed?

20 A. I think, yeah, there's sev -- several. I
21 just cannot identify the location. I think --

22 Q. Would it help if I show you this document to
23 refresh your recollection?

24 A. Lehi, yeah. Not a whole lot, but I kind of
25 remember.

1 Q. And what's the location of this crossing?

2 A. That is 300 East and 8020 North.

3 Q. Did you order that crossing to be closed?

4 A. I think I did.

5 Q. And looking at this diagram do you see safety
6 concerns with this crossing?

7 A. Oh, this is the similar situation like this
8 one here, you know, is very short storage length.
9 Yeah, similar.

10 Q. And because of safety concerns you closed
11 that at-grade crossing in Lehi?

12 A. Without, without any other reasons, yes.

13 Q. Now back to the -- you indicated earlier, was
14 it West Jordan that requested --

15 A. Yes.

16 Q. -- opening?

17 A. A new crossing.

18 Q. Was it an at-grade crossing?

19 A. Yes.

20 Q. And did Union Pacific agree to allow that
21 crossing?

22 A. They, like I said, they always don't agree.
23 But I approved it.

24 Q. Did they object to the new crossing?

25 A. By what? Formal -- you mean legal procedure,

1 or what? No, they, they indicate they don't like it.

2 Q. They didn't agree with it?

3 A. No.

4 Q. And as the chief railroad engineer do you
5 believe, like, UDOT has the authority to close
6 crossings if you think there's safety problems?

7 A. Yes.

8 Q. What happens if there is, like, an immediate
9 safety problem? Would you have to give public notice?

10 A. No, that would take too long.

11 Q. So in order to address safety concerns you
12 view your authority as you have immediate temporary
13 closure authority?

14 A. Yeah. Yes.

15 MS. SPOONER: I have no further questions.

16 THE COURT: Thank you Ms. Spooner.

17 Okay, Ms. Kamas?

18 MS. KAMAS: I just have one. I'll say it
19 from here.

20 THE COURT: That's fine.

21 RE CROSS EXAMINATION

22 BY MS. KAMAS:

23 Q. Mr. Cheng, the new crossing in West Jordan,
24 just to be clear, were there any crossings closed in
25 connection with opening that new crossing?

1 A. No.

2 MS. KAMAS: Thank you.

3 THE COURT: Thank you.

4 Mr. Astill?

5 RE CROSS EXAMINATION

6 BY MR. ASTILL:

7 Q. Just a little follow up on the Fourth -- or
8 I'm sorry, the Lehi crossing that you just spoke
9 about. There are, there are several other crossings
10 within Lehi City, aren't there?

11 A. Yeah.

12 Q. So closing that crossing didn't eliminate all
13 of the access points across the rail for Lehi City,
14 did it?

15 A. I cannot answer that question. You know, I
16 have to, to see what's going on because I don't have
17 much memory in here. So I'm not sure.

18 Q. Okay. Thank you.

19 A. Sure.

20 THE COURT: All right. Thank you, Mr. Cheng.

21 So any -- so let me make sure we -- you
22 wanted to go with Cheng next, but then continue with
23 Anderson -- go back with Anderson? Ms. Spooner, is
24 that right?

25 MS. SPOONER: Well, your Honor, I think as

1 far as UDOT's concerned, like, Eric Cheng was our
2 witness.

3 THE COURT: Uh-huh.

4 MS. SPOONER: So we're done.

5 THE COURT: Okay.

6 MS. SPOONER: As far as direct.

7 THE COURT: Okay.

8 MS. KAMAS: And so are we.

9 THE COURT: Okay. Anderson?

10 MR. ASTILL: Yes.

11 THE COURT: Go ahead with your witness,
12 please.

13 MR. ASTILL: We'll bring in Ken Barney.

14 THE COURT: Welcome Mr. Barney.

15 (Mr. Barney was sworn.)

16 THE COURT: Thank you. Have a seat right
17 there. Just speak right into the microphone.

18 KENNETH BARNEY,

19 called as a witness, having been duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ASTILL:

23 Q. Mr. Barney, you are a licensed surveyor
24 employed by Northern Engineering; isn't that correct?

25 A. Correct.

1 Q. How many years have you been a licensed
2 surveyor?

3 A. For 15 years.

4 Q. Okay. And how many years have you been
5 surveying?

6 A. Approximately 30.

7 Q. Okay. And just briefly, when did you start
8 doing surveying work?

9 A. I graduated from UTC in 1981.

10 Q. Uh-huh.

11 A. Did a little bit of fieldwork while I was in
12 school. Then went to work for an engineering firm in
13 Orem and did fieldwork and drafting work for them.
14 And just continued through the '80s in field and
15 drafting work. And then qualified for my test for LS
16 in 1995.

17 Q. Okay. And so the professional designation
18 you have is a?

19 A. Professional land surveyor.

20 Q. Okay. And -- all right. And then -- and
21 you've been that you said 15 years?

22 A. Yes. Since '95. July of 1995.

23 Q. Okay. And in the course of your work as a
24 land surveyor have you surveyed roads where there were
25 railroad crossings?

1 A. Yes, I have.

2 Q. Okay. And so you're, you're pretty familiar
3 with whatever survey work is required to survey in
4 railroad crossings, and roads, and streets, and those
5 sorts of things?

6 A. Yes, roads, and crossings, and.

7 Q. Okay. Now, in general, as a surveyor what
8 kind of work did you do?

9 A. Construction staking, where we took the
10 information from the plans and staked out road
11 projects, water line projects. Boundary work,
12 retracing surveys for boundaries. Subdivision design.
13 Staking subdivision improvements -- roads, sidewalks,
14 curb and gutter, sewers, water, storm drain --
15 associated with a subdivision. Mining claims. Pretty
16 broad range of things that have been done over the
17 30 years -- nearly 30 years.

18 Q. All right, great. I'm gonna show you -- I
19 wish we'd have used this one before -- what we've
20 marked as Anderson Exhibit 22. And ask you if you are
21 familiar with this document?

22 A. Yes, I am.

23 Q. Okay. And what I'm showing you here is a
24 demonstrative exhibit that has been blown up from the
25 original map that you've created?

1 A. Correct.

2 Q. Okay. And although you're not aware of it,
3 we've had -- we have another one that's a little bit
4 smaller we've been talking about all day today. I
5 wish I'd thought about this. We could have used this
6 bigger one.

7 So tell me how you created this document.
8 Where did you start from?

9 A. I started with the Railroad drawings. The
10 one that is shown in the lower left corner here.

11 Q. Let me, let me just stop you there and
12 interrupt you. Does that Railroad drawing have a
13 name? I've heard the term used "val map." Is that --

14 A. I have heard that term also. I refer to it
15 as a right-of-way or -- map or val map, yes.

16 Q. Okay, all right. So go ahead, continue.

17 A. And then from there I generated the, the
18 other drawing using the stationing that is shown along
19 the track -- control line or centerline of the track
20 of the Denver Rio Grande Railroad. And prepared the
21 enlarged area to show the relationship of the
22 different entities that are called out on the, the
23 Railroad right-of-way map.

24 Q. All right. So on this map I can see a number
25 1390, and then 89 plus 41 Crossing Sign. Tell me what

1 those numbers and depictions mean.

2 A. Okay. The, the 1390 actually depicts a
3 station point on the, on the controller centerline.
4 If you, if you notice, to the left of that on the, on
5 the heavy line in the center there's a small little
6 tick mark. I don't know if I can show you.

7 Q. Yeah, please.

8 A. This little, this small little tick mark
9 right here represents the even station 1390, just as
10 this small little tick mark represents the station of
11 14. There being 100 feet in between there. This
12 80 -- I can sit back down probably.

13 Q. Yeah.

14 A. Yeah, eighty-nine forty-one represents a
15 point on the stationing or along the centerline of
16 that control line or track that they have just
17 truncated, taking the 13 off just for ease in getting
18 the note to fit properly and not being confusing.

19 But that is -- would be 1389 plus 41. So the
20 relationship to that, to that 1390 then would be of
21 course short of it by about 41 feet. Or 51 feet.

22 Q. So the 89 really is, is shorthand for 1389?

23 A. Correct.

24 Q. And 1389 is, is the number of feet from a
25 particular point that was established by the Railroad

1 as this -- on their, on their centerline; is that
2 correct?

3 A. Correct, yes. And there would be a point of
4 origin of 0 plus 00. Or any -- it could be any
5 station, but there is a point on the map that it
6 references to or it's relative to.

7 Q. Okay. And the 41, what does that represent?

8 A. That's 41 feet. That -- it's just all foot.
9 The plus is just there to help -- it's a construction
10 nomenclature, if you would I guess, of constructing
11 along a highway road, railroad. Well, it may be water
12 line. That it's 1389, 41 -- plus 41 feet. So in
13 other words it's 1389 plus 41 --

14 Q. Okay.

15 A. -- feet past 138 -- the 1389.

16 Q. And on this map there's a callout to a
17 section line, isn't there?

18 A. Yes. Down here in the.

19 Q. I'm looking for it. Is that this, this one
20 here?

21 A. Yes, there and on the other side of the track
22 also.

23 Q. Okay. That's --

24 A. There are two calls with identical --

25 Q. -- over here?

1 A. -- yes, stationing.

2 Q. Uh-huh.

3 A. That are referring to a line that is a
4 section line from the Railroad map.

5 Q. Okay. And this call is 1389 plus 54?

6 A. Point 6.

7 Q. Point 6, okay.

8 A. Yes.

9 Q. Okay. And the numbers are increasing to the
10 north; is that correct?

11 A. Correct.

12 Q. So even though this shows up here as 1389
13 plus 41, it's showing up in this location on the map,
14 where it's pointing to on the centerline is actually
15 to the south of this centerline, isn't it?

16 A. Correct.

17 Q. Of the section line?

18 A. Yes.

19 Q. Okay. Now, I'm also seeing a reference here
20 to 89 plus 20 Highway Crossing?

21 A. Correct.

22 Q. What is that telling you?

23 A. That, that tells me that the relationship of
24 that station is 21 feet to the southeasterly along
25 that railroad line from the crossing sign.

1 Q. Okay. And so spatially as you have depicted
2 it over on the right-hand side of your map here you've
3 shown the section line, was 1389 plus 54.6?

4 A. Correct.

5 Q. That's north?

6 A. (Moves head up and down.)

7 Q. Then the crossing sign at 1389 plus 41, just
8 south of the section line?

9 A. Correct.

10 Q. By how many feet?

11 A. By station, 13.6 feet.

12 Q. Thirteen point six feet?

13 A. Or -- yeah.

14 Q. Okay. By, by station on the centerline?

15 A. Correct.

16 Q. And then south of that is the centerline of a
17 highway crossing?

18 A. Correct.

19 Q. At 1389 plus 20?

20 A. Correct.

21 Q. So from your observation on this map and your
22 depiction, you've depicted the crossing sign at --
23 right on the centerline of the road -- of the
24 railroad?

25 A. Yes.

1 Q. Now, crossing sign wouldn't be there
2 naturally, would it?

3 A. Correct. The -- it -- that point was just to
4 represent the relationship along the centerline of the
5 various entities over here off of the right -- or off
6 of the Railroad drawing.

7 Q. Okay. Now, there's no reference on the
8 Railroad map to tell you where the exact location of
9 that sign is, is there?

10 A. No, there's not.

11 Q. Now, you naturally assume it's gonna be
12 offset somewhere?

13 A. Yes. Perpendicular to the centerline.

14 Q. So when you do an offset it's typically a
15 perpendicular --

16 A. Correct.

17 Q. -- direction?

18 A. Uh-huh.

19 Q. So if I can -- so the -- where you show here
20 a -- on the centerline the crossing sign sitting on
21 the centerline, the offset would be running
22 perpendicular this direction?

23 A. Yes, in a northeasterly direction.

24 Q. Northeasterly direction?

25 A. Uh-huh.

1 Q. Okay. And you don't know whether it was
2 5 feet, 10 feet, or 100 feet?

3 A. I, I do not.

4 Q. Okay. And so the reasonable thing to do is
5 depict it there, and it's anybody's guess how far it
6 would have been offset?

7 A. Yes. If, if I would have had an offset then
8 we would have shown it in its location offset from the
9 track.

10 Q. Okay.

11 A. So all, all I was mainly trying to do is just
12 show the relationship along the centerline.

13 Q. All right. So as you've depicted this county
14 road that shows in the dark black lines crossing the
15 railroad crossing, in your judgment that would be the
16 minimum width of what that county road was represented
17 at that time?

18 A. Yes.

19 Q. Okay. I'm gonna represent to you that in
20 prior testimony another surveyor brought in by the
21 Railroad testified that this county road, when he
22 scaled it from this drawing, was about 50 feet wide.
23 Would that surprise you or would you disagree with
24 that?

25 A. It would not surprise me, because a lot of

1 the county roads were about 50 feet wide at that time.

2 Q. Okay. All right. So if we were to expand
3 this depiction you would go to the north 25 feet in
4 a -- at an angle direction, correct?

5 A. Correct.

6 Q. Both directions, south and north?

7 A. Correct.

8 Q. Now, if you, if you expanded this beyond the
9 centerline -- or the section line -- or I'm sorry, let
10 me restate my question.

11 If you expanded this north line of the county
12 road to, to depict a 50-foot road, the likelihood is
13 we would cross over that section line, correct?

14 A. Correct.

15 Q. If -- because that would give you 25 feet
16 straight up, away from the centerline?

17 A. Actually, where we have 21 feet right now
18 showing, if that were rotated to a perpendicular? It
19 would be south of the section line. The half width of
20 the road would be south of the section line.

21 Q. Okay. So you think if you actually rotated
22 this and went up 25 feet you'd be -- still be south of
23 the section line?

24 A. Correct, yes.

25 Q. Okay. Now, there's another representation on

1 this map that's, that shows an August 3, 1942,
2 resolution boundary that's shown in a dotted line over
3 the top of the railroad -- what's shown here I think
4 as the railroad east --

5 A. Correct.

6 Q. -- boundary line?

7 A. Correct.

8 Q. Okay. And, and then it turns to the west and
9 goes west along the section line, doesn't it?

10 A. Correct.

11 Q. Okay. And what -- that line was drawn from a
12 County Commission Resolution that was passed in 1942?

13 A. Correct, from a legal description in that
14 document.

15 Q. Okay. And what you've depicted there is just
16 a small portion of that legal description?

17 A. Yes.

18 Q. Okay.

19 A. The legal description specifically called the
20 boundary along the Railroad right-of-way, and then to
21 a point on the section line, and then following the
22 section line.

23 Q. Okay. So based on this representation, you
24 have nothing -- there's -- is it -- would it --
25 could -- would be your conclusion that there was

1 nothing in the vacating resolution that would have
2 vacated the public road that crossed over the Railroad
3 right-of-way in this location?

4 A. No, there's not.

5 Q. Okay. There's no evidence that you have that
6 would show that public road crossing over into the
7 north, north of the section line?

8 A. I have nothing that would show that.

9 Q. Okay. As you've gone out and surveyed this
10 location and -- have you determined that the county
11 road is currently in this position?

12 A. No.

13 Q. You've determined that it's not?

14 A. It's, it's -- the county road is not in that
15 position.

16 Q. Okay. And is it -- in your experience is it
17 uncommon for -- now, this survey was done originally
18 in 1919. I'm talking about the Railroad survey.

19 A. Right.

20 Q. Was originally done in 1919, and then updated
21 in 1927. And that's what this map represents,
22 correct?

23 A. Correct.

24 Q. Again, referring to my art, Exhibit 22.
25 Would it be uncommon for a road to shift a little bit

1 one direction or another over time?

2 A. It would not be uncommon for that to take
3 place.

4 Q. Okay.

5 A. In my experience.

6 Q. As a surveyor you're, you're familiar with
7 roads that become dedicated to the public by public
8 use, aren't you?

9 A. Yes.

10 Q. Is that fairly common?

11 A. Yes.

12 Q. So all roads aren't created by dedication or
13 plat?

14 A. No. Some are -- later the entity, the City,
15 may call for a dedication. Particularly in outlying
16 county areas where the deed may have went to the
17 middle of the road, and then at a subsequent time they
18 will require a dedication of the roadway to the public
19 entity.

20 Q. Okay. And so, in fact, a lot of roads
21 started out that way, didn't they?

22 A. Correct.

23 Q. Just by public use?

24 A. Right.

25 Q. So if I told you that there isn't a deed that

1 shows a dedication of a public road in this area, you
2 wouldn't be surprised at all?

3 A. I would not.

4 Q. Okay. And have you, in fact, looked for a
5 deed for this area --

6 A. Yes.

7 Q. -- to see if there's a dedication? Did you
8 find anything?

9 A. We have not found one.

10 Q. Okay. Does that make it any less of a public
11 road?

12 A. No.

13 Q. Okay.

14 A. Conveyances can happen without written deeds
15 or conveyances. They can be done in other ways.

16 Q. Okay. Now, if the road at a point in time
17 was shifted, by agreement of the parties or by
18 somebody doing some work on the road, and then it's
19 used for a period of time, can that make the new
20 shifted area a public road as well?

21 A. Yes.

22 Q. Okay. Do you know that because, as a
23 surveyor, you've come across those certain things?

24 A. Yes.

25 Q. Okay. I'm gonna show you what has been

1 marked as Union Pacific Exhibit 135. This is a, an
2 aerial picture of what -- of the crossing. I believe
3 they represented to us that it was done in 2004. Does
4 this, does this show an approximate depiction of what
5 you have observed on the ground at this crossing?

6 A. Yes.

7 Q. Okay. They've attempted to locate a
8 centerline of the roadway on this map that depicts
9 the -- and when it's laid onto this map it depicts
10 that centerline as being down in the, in the brush
11 down here. And the section line is running right down
12 through the middle of that road.

13 Again, given your experience over time and
14 how roads shift as, you know, over a hundred years of
15 use, does that -- would that surprise you to see
16 something like that occur?

17 A. No, it would not.

18 Q. Okay.

19 A. Especially with some of the evidence that we
20 find further to the west.

21 Q. Okay. And what evidence is that that you
22 find further to the west?

23 A. I have personally found some fence lines or
24 fence posts to the west that would appear that they
25 may have been part of an older right-of-way that

1 shifted to the south. And also there's a distinct
2 kink in the road that shifts it to the south.

3 Q. So the road actually, as it goes further
4 west, jump -- turns and goes further south?

5 A. Correct.

6 Q. And what I think I'm hearing you say is it
7 could have been straight in the past and then changed?

8 A. It may have, yes. I have nothing that I --
9 other than, you know, just the experience and what I
10 have with the map. But I have nothing that shows me
11 that other than what is --

12 Q. Okay.

13 A. -- depicted on the plan.

14 Q. All right.

15 THE WITNESS: Can I get a drink of water?

16 THE COURT: Yeah, let's take a quick break
17 for the witness.

18 (A recess was taken from 2:07 to 2:08 p.m.)

19 THE COURT: Okay, we're back on the record.

20 Q. (By Mr. Astill) Mr. Barney, I'm gonna refer
21 you to these two paper maps that I'm showing you here.
22 And ask you if you've seen these before?

23 A. Yes, I have.

24 Q. And is this -- are these the foundation
25 documents for what you prepared the exhibit on?

1 A. Correct.

2 Q. Is -- referring to my Exhibit 22?

3 A. Yes.

4 Q. Okay. And I'm looking at what I guess would
5 be the south end of a sheet labelled No. 16?

6 A. Correct.

7 Q. Which shows this area that we're looking at
8 on your Exhibit 22?

9 A. Yes, the area that was enlarged.

10 Q. Okay, the area -- yeah, the enlarged area.
11 And I want to ask you some questions about this
12 depiction of the county road that exists on this map.
13 Now then, do you see on this road -- on this map
14 there's, there's this line crossing the Railroad
15 right-of-way that is depicted here, and it says county
16 road?

17 A. (Moves head up and down.)

18 Q. Okay. So your assumption would be that
19 that's a county road that crosses over the train, the
20 train right-of-way, correct?

21 A. Correct.

22 Q. Or Railroad right-of-way?

23 A. Yes. Uh-huh.

24 Q. Okay.

25 THE COURT: Are these marked at exhibits?

1 MR. ASTILL: They are not.

2 THE COURT: Okay.

3 MR. ASTILL: These are just foundation for
4 his expert testimony and for preparation of that
5 exhibit.

6 Q. (By Mr. Astill) I'm gonna flip to the other
7 page and ask you if you've seen this document before?

8 A. Yes.

9 Q. And this is the continuation sheet which
10 would be to the south of that No. 16 map we just
11 looked at?

12 A. Correct, yes.

13 Q. And so on this sheet the, the depiction would
14 be to the north, correct?

15 A. Correct.

16 Q. Of this, of this crossing?

17 A. The intersection would be --

18 (The speakers were talking over one another
19 and had to be interrupted.)

20 MR. ASTILL: Oh, sorry.

21 THE WITNESS: I'm sorry. My fault.

22 Q. (By Mr. Astill) All right. So this map
23 would show, at the north end, the same thing as, as
24 what we were looking at on your map, correct?

25 A. Correct.

1 Q. Okay. Now --

2 MR. CHURCH: Dennis, is this your Exhibit 3?

3 MR. ASTILL: Maybe it is. Yes, it is. I'm
4 sorry, I should have numbered it. So it is Exhibit 3.
5 I apologize for not numbering that.

6 Q. (By Mr. Astill) So we're looking at
7 Exhibit 3. Now, I'm noticing on this sheet -- second
8 sheet there's what's called a "match marker" for the
9 next sheet; is that correct?

10 A. Correct.

11 Q. And do I have a similar depiction on this
12 one?

13 A. Yes.

14 Q. Match mark for the next sheet?

15 A. Correct.

16 Q. Okay. And what does that "match mark" mean?

17 A. That means a reference to tie the two sheets
18 together. Usually having something -- it can either
19 be exact, or having common elements on both sheets --

20 Q. Okay.

21 A. -- to show continuance --

22 Q. All right.

23 A. -- of the project.

24 Q. Now, when you look at a map like this
25 Railroad map, is there some kind of a hierarchy for

1 what's accurate and what's just a depiction?

2 A. Yes. Given the date that the map was
3 generated, we would know that it's generated by hand
4 or drafted by hand. And as accurate as the draftsman
5 may have tried to be in representing the, the
6 depiction of the county road, it falls upon his
7 ability to be accurate that size of a scale or that
8 large of a scale.

9 As a surveyor, the numbering -- or the
10 stationing would carry more weight, because we can
11 actually go out and identify and resurvey that
12 information based on those distances and calls along
13 the centerline.

14 Q. Okay. And so unless there's a specific call,
15 as you call -- mentioned, with a, with a point of
16 reference, you really -- the depiction doesn't have
17 any meaning other than that, does it?

18 A. Yeah. It could not even have the depiction
19 of the road on there and just have the point with the
20 station, and that would be -- that would tell us that
21 there is a crossing at that point. A county road
22 crossing.

23 Q. Okay. Now, so as a surveyor with 30 years of
24 experience, you -- if you looked at this depiction of
25 a road would you be willing to say that that's a very

1 accurate depiction of the road?

2 A. No. I would not.

3 Q. And why wouldn't you?

4 A. Because I did a lot of board drafting besides
5 surveying. And I know that we try to get the drawing
6 as accurate as possible, but when you're doing two
7 represent -- two different representations of the same
8 thing, they're not gonna match.

9 In other words, that's not an exact copy of
10 what appears on the other sheet. He had to draft that
11 up twice, because he has two separate sheets showing
12 the same things on it.

13 Q. Okay. So you're saying that if you look at
14 this depiction on Sheet No. 16. And then if you look
15 at the same depiction on the following sheet --

16 A. Uh-huh.

17 Q. -- which has the matching line, you would --
18 you're saying that the depictions are different?

19 A. Correct.

20 Q. There are significant differences?

21 A. Yes, there are.

22 Q. Okay. And so the representations of the
23 county road are quite a bit different on each sheet?

24 A. The representation -- the line work. But
25 again, he has used the same stationing, in order to be

1 consistent --

2 Q. Okay.

3 A. -- so that we know that it matches from one
4 sheet to the next.

5 Q. And then -- and the purpose of this survey
6 was to find and locate anything that affected the
7 Railroad right-of-way, correct?

8 A. Correct.

9 Q. And so depicting accurately a county road
10 plus or minus 50 feet or 100 feet really doesn't
11 matter, does it?

12 A. I, I would rely upon the stationing for my
13 resurvey, and not upon the depiction of the road.

14 Q. Okay. So if somebody were to say to you,
15 I'm, I'm really counting on this road being as
16 represented with the section line and everything here,
17 you wouldn't agree with that?

18 A. No.

19 Q. Okay. And as you look up at other county
20 roads on this map you, you'd say the same thing?

21 A. Correct.

22 Q. You'd say the centerline is accurate?

23 A. (Moves head up and down.)

24 Q. Centerline of the -- as it intersects the
25 railway?

1 A. Based on the stationing that's called out
2 there, yes.

3 Q. Okay. So unless there's a stationing or a
4 survey point that is, that is shown and called out
5 on -- as a north-south border of the road, you really
6 can't tell anything from this map other than there is
7 a road, it intersects the railway, and it's somewhere
8 in that close vicinity?

9 A. Correct.

10 Q. Okay.

11 MR. ASTILL: Okay. I, I think I'm finished
12 with direct, thank you.

13 THE COURT: Thank you, Mr. Astill.

14 Union Pacific?

15 MS. KAMAS: Thank you.

16 CROSS EXAMINATION

17 BY MS. KAMAS:

18 Q. Mr. Barney, what's the nature of your
19 experience in dealing with Railroad right-of-way maps?

20 A. There's been several projects I've worked on
21 in the past that I've had to rely upon the Railroad
22 maps for locating physical features in design work on
23 a Spanish Fork transmission line.

24 A large water line down in Spanish Fork
25 Canyon that's laid within the right-of-way of the, of

1 the Railroad up there that we relied upon the maps in
2 order to locate culverts and other features that were
3 necessary to incorporate in the design.

4 Bangerter Highway, a railroad crossing there
5 that had to be -- the grade had to be changed from an
6 at-grade crossing to what it currently is at this
7 time.

8 Several projects, smaller projects where
9 we've crossed the Railroad right-of-ways where we've
10 had to locate culverts for storm drainage. And to
11 incorporate into design of subdivisions or business
12 park site plans, that sort of thing.

13 Q. In those projects you used val maps just like
14 this?

15 A. Similar to that, yes.

16 Q. Did you use val maps prepared by the Denver
17 Rio Grande Railroad?

18 A. I can't recall if the -- I believe the
19 Spanish Fork line at the time was Denver Rio Grande,
20 but I can't recall exactly.

21 Q. What's your general impression about the
22 accuracy of Railroad val maps?

23 A. I have found them to be accurate within the
24 tolerance that's given there, which is one-tenth of a
25 foot. That they've been very accurate in locating

1 features.

2 Q. Is the county road that's now 400 North that
3 appears here on the Map 16 of Anderson Entities
4 Exhibit 3, are you saying that it's drawn also on --
5 does this map have a number?

6 A. Yes. It doesn't have the...

7 (The reporter asked the witness to speak up.)

8 THE WITNESS: It doesn't have the actual
9 sheet number. But that road --

10 MS. KAMAS: But it's, it's the second page of
11 the exhibit; would that be accurate?

12 MR. ASTILL: Yes.

13 MS. KAMAS: Seventeen is first? Okay.

14 Q. (By Ms. Kamas) Second page of Exhibit 3,
15 that county road appears?

16 A. Yes. And...

17 Q. Okay. So are you saying right here where the
18 word "Road" goes off the edge of the page, of the
19 second page of Exhibit 3, that's our county road that
20 we're talking about?

21 A. Yes.

22 Q. Okay. And you just testified that there are
23 differences between how, how this county road -- how
24 the county road is drawn on page 2 of Exhibit 3 versus
25 page 1 of Exhibit 3, correct?

1 A. Yes. The, the line work is not exactly the
2 same as what appears on page 16 of the, of the
3 exhibit. You can see that there is -- the line
4 converges at a closer point. And there's also a jog
5 in the line.

6 Q. Roughly at the area of, at the area of the
7 crossing on the second page of Exhibit 3 the road
8 roughly straddles the section line, does it not?

9 A. It's depicted that way, yes.

10 Q. Okay. So there is more of the road north of
11 the section line on the second page of Exhibit 3 than
12 on the first page of Exhibit 3?

13 A. Correct.

14 Q. If the, if the centerline of the county road
15 were roughly the same as the section line, this, this
16 depiction here on Exhibit 134 -- strike that and let
17 me start over.

18 The placement of the road in relation to the
19 section line on Exhibit 134? This is similar to the
20 placement of the road in relation to the section line
21 on page 2 of Exhibit 3 that we were just looking at,
22 the val map, correct?

23 A. Correct.

24 Q. Referring to Anderson Entities Exhibit 22.
25 You just testified, if I understood you correctly a

1 few minutes ago, that on Exhibit 22 you're trying to
2 depict what you think the minimum width of 400 North
3 would have been in 1942?

4 A. Approximately, yes.

5 Q. Okay.

6 MR. ASTILL: Did you mean 1927?

7 THE WITNESS: '27.

8 Q. (By Ms. Kamas) 1927? Excuse me, thank you.
9 And you have arrived at this minimum width based on
10 the location of the crossing sign, correct?

11 A. At the time we, we did that, yes. But it was
12 also taken into account that -- most of the width of
13 roads in the county roads and experience that we've
14 had with them in the past. But yes, at the time, that
15 was. We, we assumed that the sign would not be inside
16 of the road --

17 Q. Right.

18 A. -- at the time.

19 Q. So now, if I understood what you just said,
20 your, your opinion about the minimum width of the road
21 is based on common road width; would that be --

22 A. Yes. County -- in outlying areas the county
23 roads, a lot of them are 50 foot in width.

24 Q. So that's what you're showing is a 50-foot
25 road?

1 A. I think approximately, yes.

2 Q. That actually consistent with the val map,
3 isn't it?

4 A. Maybe. I don't -- I have -- there's no
5 dimension on the val map that I could see as far as a
6 width that was given on there.

7 Q. You testified a few minutes ago that you're
8 not aware of anything that shows that, that the county
9 road -- that any part of the county road was north of
10 the section line, correct?

11 A. Well, yes. Other than the depiction -- the
12 line work on this.

13 Q. Two illustrations on the 1927 val maps,
14 correct?

15 A. Correct.

16 Q. Both of the illustrations on the first page
17 of Exhibit 3 and on the second page of Exhibit 3 that
18 we just looked at, right?

19 A. Yes.

20 Q. Okay. You agree that Exhibit 135 accurately
21 shows the relationship of the present road to the
22 section line?

23 A. Approximately, yes. That can be depicted
24 from the aerial. It appears the section line is
25 running through the County brass cap. And then you

1 can see, on the aerial, the approximate edge of the
2 road. The only way to know for sure would be to
3 actually survey and get the exact width of the road.

4 Q. Now, a lot of roads started out life as
5 section line roads, right?

6 A. Correct.

7 Q. Section line farm-to-market road?

8 A. Correct.

9 Q. It wouldn't surprise you if 400 North in this
10 area started out as a section line farm-to-market
11 road?

12 A. I would not know. I couldn't answer to that.

13 Q. I'm looking now at Exhibit 136, which is 2004
14 aerial photograph of the area. Have you -- do you
15 think you've seen that 2004 aerial photograph before?

16 A. I may have. I've seen several aerials of the
17 Geneva property over the last few years.

18 Q. You testified a few minutes ago that further
19 west of the crossing you found evidence of the
20 possibility that the road could have moved?

21 A. Yes. There's a fence line near the wetlands
22 area that's offset further to the south than the
23 current fence line in the trees. And then there's a
24 jog in the road. The other thing is the section
25 corner, the next section corner is north of the road

1 itself in this time.

2 Q. So are you saying that the fence line that
3 you saw is in this area on the map here that's been
4 marked as wetlands?

5 A. Yes, just where the larger trees are. Do you
6 want to point with your finger?

7 Q. These larger trees?

8 A. Yes. Yeah, in that area.

9 Q. You found a fence line in that area?

10 A. Yes. There is a fence line that is further
11 offset than the, than the existing fence along like
12 the sod farm area, or what's designated as that area.

13 Q. Did you survey how, how much offset it is?

14 A. We did not.

15 Q. Can you estimate?

16 A. It's just a visual. I, I, would rather not.
17 I'm not sure, and I'd hate to misrepresent it. But
18 there is evidence of a fence line.

19 Q. Do you know whether that fence line is there
20 because it's on the property owner's property line?

21 A. I do not.

22 Q. Now, you're talking about the jog in the road
23 to the west. Is that this jog right here at the very
24 edge of -- the very left edge of the map on
25 Exhibit 136?

1 A. Yes.

2 Q. Okay. Is it your understanding that that jog
3 is there because this is a deeded right-of-way, begins
4 a deeded right-of-way right here?

5 A. There is a deed for that area, yes.

6 Q. Okay. So the acquisition -- so -- strike
7 that.

8 In this area west there is evidence that
9 there's a deeded public right-of-way for this road,
10 correct?

11 A. Yes. I'm not sure exactly how far to the
12 east it extends towards that jog, though, at this
13 time. I -- without having a map in front of me.

14 Q. The deeded right-of-way to the west doesn't
15 call to the section line, it just calls to the
16 property line of the person from whom the property was
17 purchased, right?

18 A. Correct.

19 Q. Do you disagree with the placement in
20 Exhibit 135 of the suggested location of the
21 centerline of the road from the val map?

22 A. I did not prepare that map. I really have no
23 way of knowing if that is an accurate representation
24 or not.

25 Q. Okay. You haven't analyzed 135 to try to

1 figure out whether it's placed properly?

2 A. No.

3 Q. Okay.

4 MS. KAMAS: That's all the questions I have.

5 THE COURT: Thank you.

6 Vineyard?

7 MR. CHURCH: No questions.

8 THE COURT: All right.

9 No? Okay.

10 So is that it for this witness?

11 MR. ASTILL: Yes.

12 THE COURT: All right, thank you.

13 Thank you.

14 Next witness, Mr. Astill?

15 MR. ASTILL: We'll call Scott Hendricks.

16 THE COURT: Does anybody need to take a
17 break?

18 No? Okay.

19 Welcome Mr. Hendricks. If you could raise
20 your -- Hendricks, right?

21 MR. HENDRICKS: Yes.

22 THE COURT: Raise your right hand for me,
23 please.

24 (Mr. Hendricks was sworn.)

25 THE COURT: Thank you. Have a seat at the

1 stand.

2 SCOTT HENDRICKS,

3 called as a witness, having been duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ASTILL:

7 Q. Mr. Hendricks, can you just give us a brief
8 summary of your background and expertise?

9 A. Yes, I'm a civil engineer with a
10 transportation emphasis. I've been a civil engineer
11 for about 20 years now. Primarily we provide services
12 to local cities and counties for roadway improvement
13 projects, including the State Department of
14 Transportation.

15 Frequently that involves railroad crossings,
16 and so we've had occasion through that period of time
17 to frequently deal with the Railroad as we've had to
18 contend with issues associated with improvements to
19 the roadway and how that impacts the railroad
20 crossings.

21 (The reporter asked the witness to speak up.)

22 THE WITNESS: Sure.

23 Q. (By Mr. Astill) When you say "we," I want to
24 be sure everybody understands. You, you work for a
25 firm?

1 A. Yeah. I'm kind of in the habit of saying
2 "we" all the time, because I represent the company.
3 And normally when I produce a design and a set of
4 plans that, at minimum, includes my draftsmen, who
5 will draw up designs that I've derived, and also other
6 staff.

7 And so I'm sort of in the habit of doing
8 that, even though frequently that might be me
9 personally that's actually been on site and is also
10 responsible for doing the calculations and other
11 aspects of the design work.

12 Q. Okay. So when you were talking about your
13 railroad -- the projects that involve the Railroad and
14 intersections with streets, you used the term "we."
15 That means you and people you supervise, people you
16 partnered with, and?

17 A. Correct.

18 Q. Okay. As, as part of your work experience
19 involving railroad and street intersections, do you --
20 have you gone through a surveillance review process
21 before?

22 A. Yes. Pretty much on every project that we do
23 that involves the Railroad that's about the first
24 meeting that we would have on site with the Railroad
25 is a diagnostic/surveillance review meeting.

1 Q. Now, when you say "with the Railroad," are
2 you -- is anybody else included in that surveillance
3 and diagnostics review?

4 A. Yes. Frequently we will involve -- if it's a
5 local government project we will also involve UDOT,
6 utility, section people. That's inclusive of the
7 Railroad part of the utility section.

8 Often we also are involved with local
9 governments, and so frequently that will involve a
10 representative from either the City, or the County, or
11 whoever is the owner of the roadway that we're working
12 on.

13 Q. Okay. And as a part of your engagement in
14 connection with this, Anderson Geneva -- we engaged
15 you in this matter to review that process and the
16 safety issues with regard to the 400 North crossing
17 as -- and that's really the basis and the scope for
18 your engagement in this matter?

19 A. That's correct.

20 Q. All right. Now, as part of your engagement
21 in this matter did you prepare a report?

22 A. Yes.

23 Q. And that's -- we've provided copies of that
24 report and -- to the Court and to Counsel and we're,
25 we're referring to that as Exhibit No. 25. Do you

1 have that report with you?

2 A. Yes, I do.

3 Q. Okay. And you came to several conclusions in
4 that report, didn't you?

5 A. Yes.

6 Q. All right, let me address Conclusion No. 1.

7 Conclusion No. 1 --

8 THE COURT: Anderson Entities Exhibit 20?

9 MR. ASTILL: Twenty-five.

10 SPEAKER UNKNOWN: Twenty-six.

11 THE COURT: Twenty-six?

12 MR. ASTILL: Oh, 26. Oh. It's wrong in my
13 notes, sorry.

14 Q. (By Mr. Astill) Okay, Conclusion No. 1.

15 You've given your opinion to us that the procedures
16 that UDOT is bound to follow when conducting their
17 surveillance reviews, and in particular this crossing
18 closure, were not followed in making the temporary
19 closure at 400 North.

20 You go on to state this is primarily related
21 to UDOT and UTA's failure to give proper notice to and
22 involve all affected parties in a surveillance review,
23 coupled with a lack of reasons cited for the unsafe
24 designation?

25 A. Yes.

1 Q. Okay. Can you tell me how you came to that
2 conclusion?

3 A. When we were engaged by yourselves to review
4 the circumstances of the -- this crossing, one of the
5 first things that we did was identify documents that
6 were on file with the Public Service Commission. And
7 so there were quite a number of different documents
8 that we were able to look through in an effort to try
9 and see the history of what had transpired.

10 As we approached UDOT -- which typically is
11 something that we would do as, as we undertake a
12 project -- as soon as they were aware that it was this
13 crossing, they wouldn't give us additional
14 information.

15 So most of what we draw con -- drew
16 conclusion on was based on stuff that had already been
17 submitted with the Public Service Commission.

18 And based on that, we saw a number of letters
19 back and forth that the Department of Transportation
20 had written which appeared, to us, to be what they had
21 done in regard to the crossing. And it appeared, on
22 that basis, that there was a gap that really didn't
23 cover what would have been required to identify that
24 they were going to close this crossing.

25 Q. Okay. And from your review of the procedure,

1 is there a particular -- well. In order to do a
2 surveillance review who is required to be present and
3 a party to that surveillance review?

4 A. Well, that responsibility is vested with the
5 Department of Transportation. And typically that
6 involves the chief railroad engineer and also a
7 representative from the Railroad. Usually also a
8 representative from the local government who has
9 jurisdiction for the roadway.

10 Frequently it's our understanding that that
11 might also include the Highway Patrol, other
12 maintenance entities, and other property owners. Who
13 are potential invitees, but probably aren't invited as
14 frequently as the first three.

15 Q. Okay. So if a representative from the town
16 wasn't invited to a surveillance review, the
17 surveillance team that's designated in the rules
18 wouldn't, wouldn't be complete, would it?

19 A. It wouldn't be able to generate all of the
20 information that really is necessary to make a
21 designation. It's probably happened frequently. But
22 part of what the Department is required to do is
23 collect all input from all parties, particularly as
24 that goes toward an improvement of the nature of
25 closing a crossing.

1 Q. You, you referred to closure of a crossing as
2 an "improvement." And I guess, in terms of traffic
3 safety I guess that's a potential improvement, isn't
4 it?

5 A. Yes. That's the way -- really it's listed in
6 several different sources, including Utah
7 Administrative Code. That's one of the charges of the
8 diagnostic team. There's probably also references
9 that way, as I recall, in FHWA's manual for
10 highway-railway -- railway crossings.

11 Q. All right. But in this, in this case we,
12 we've all -- you've also seen, I believe, the
13 surveillance report that was prepared by UDOT's chief
14 engineer for a number of crossings related to the UTA
15 commuter rail south, haven't you?

16 A. That's correct.

17 Q. Okay. And in, in that, in that report
18 there's a number of improvements that are described
19 in -- to various crossings, correct?

20 A. Yes. It was interesting to me how they would
21 kind of cover it all en masse. And because they had
22 many crossings that they were looking at, apparently,
23 at one time they listed a short section of general
24 improvements that should be made at each crossing.

25 And then there was also a listing of specific

1 improvements that would be identified at other
2 specific crossings. And that letter really didn't
3 have anything to say about 400 North, other than it
4 was just slated to be closed.

5 Q. Right, okay. Now, you've, you've stated, and
6 again in Conclusion 1, that the procedures that were
7 identified and -- or identified in the Utah
8 Administrative Code weren't followed as part of their
9 surveillance review -- or weren't followed by UDOT in
10 regard to the temporary closure.

11 Can you elaborate on what those procedural
12 defects were?

13 A. Yeah. It's interesting, because there are a
14 number of different crossings that were dealt with for
15 the UTA project, a good way to, to do that is to
16 contrast it against several crossings in Lehi. There
17 was a public notice issued for those.

18 And it said specifically in that public
19 notice that there was a potential closure being
20 considered for, I believe, three different crossings
21 in Lehi, whereas there was no reference made in regard
22 to this crossing.

23 Q. Okay. And in fact were you able to, through
24 searching newspaper databases and other records, were
25 you able to find any notice of a potential closure or

1 even work activity on this 400 North crossing at all?

2 A. Not other than what we found on file with the
3 Public Service Commission, which is the notice that
4 we've previously been discussing.

5 Q. Okay. And, and in fact the only notice
6 that -- the only public notice that I believe
7 anybody's aware of is, is a notice that UTA published
8 that misidentified this crossing; isn't that correct?

9 A. That's correct.

10 Q. Called it 4000 North?

11 A. Yes.

12 Q. Okay. So that's one area of defect?

13 A. Correct.

14 Q. Is they, they had no -- there was no public
15 notice given?

16 A. Uh-huh.

17 Q. Okay. Is there -- are there -- were there
18 other procedural defects?

19 A. I felt like that was the primary defect that
20 we saw. The Department of Transportation has the
21 autonomy to review and put in their feel to these
22 meetings and render a decision. The only requirement
23 they have is to consider the input from others.

24 In talking with other associates who've been
25 involved with these kind of processes they've said

1 although it's not necessarily written, it seemed like
2 usually as they discussed closures the local authority
3 would sort of have veto authority if they were opposed
4 to that for some reason.

5 I don't think that's a legal standing, but it
6 seemed like that was his opinion.

7 Q. It's a common approach to it?

8 A. Before they wanted to -- before they'd allow
9 a closure to be made they'd want to consider what
10 impacts that had to adjacent property owners and to
11 the local jurisdiction and so forth. They would want
12 to consider, Well, how close is the, the next adjacent
13 crossing. And what kind of impacts are going to be
14 made because of the closure that we're contemplating.

15 Q. Now, when you're contemplating closures are
16 there standards -- any published standards for having
17 adjacent closings, or adjacent crossings, or other
18 crossings within a certain vicinity?

19 A. Yes, that's correct.

20 Q. There are?

21 A. Yes.

22 Q. And do you know what those standards are in
23 general?

24 A. I don't remember off the top of my head, but
25 generally speaking they're less than the distance that

1 you have between the two adjacent crossings to this
2 site. I think on the order of a quar -- quarter mile
3 to three-quarter mile, something in that, that vein.

4 Q. Now, and using that standard in comparison to
5 this site, where are the next closest crossings of
6 this railroad?

7 A. On this site itself, the nearest by rail is
8 1.1 miles to the south, Geneva Road crossing. To the
9 north is 1.9 miles, 1600 North crossing.

10 Q. Now, that's by rail you said?

11 A. That's by rail. You don't just look at that.
12 You also look at, well, what road length do they have
13 to take to get around there? And that's about four
14 miles.

15 Q. Okay. So if this crossing were limited --
16 eliminated?

17 A. It would be beyond the length that normally
18 is considered okay as you consider adjacent crossings
19 being able to meet the needs of the general public.

20 Q. Okay. And, and I think you're testifying
21 that if you have to drive all the way around, without
22 this crossing being present to get from the west side
23 to the east side of the, of the property, you'd have
24 to travel four miles?

25 A. That's correct. If you were to go from

1 1600 North along the nearest route of roadway, you
2 would have to travel four miles before you came to the
3 Geneva Road crossing.

4 Q. Okay. And that's -- based on your knowledge,
5 that's beyond what's an acceptable standard?

6 A. That's correct.

7 Q. Okay. Besides the public notice and
8 advertisement that wasn't fol -- wasn't performed by
9 UDOT about -- in regard to this closure, were there
10 any other procedural defects that you discovered?

11 A. I was just a little bit surprised, as I saw
12 the letter indicating that the crossing was public but
13 was unsafe, that it wouldn't have cited specifics as
14 to what the diagnostic team felt was unsafe about the
15 crossing. It's a little bit generic.

16 Q. Okay. And would it also surprise you and be
17 out of -- a defect in procedure to know that the -- no
18 one from the town of Vineyard was involved in that
19 diagnostic?

20 A. Yeah, that's correct. As you read the
21 official report of the diagnostic review it kind of
22 states the purpose for the review. And that's very
23 helpful, because it gives you an idea of what the team
24 is looking for as they review the crossing.

25 And in the two that were issued, one was

1 really under the, the guise that they were looking at
2 all of the crossings for what improvements need to be
3 made but they were sort of glossing over this one
4 because it was slated to be closed.

5 And the latter one was just strictly, What
6 are we going to do here so that we can safely
7 temporarily close this crossing?

8 Q. Okay. So there --

9 A. And there was never really a look at, Well,
10 what can we do if we need this roadway here, what
11 improvements do we need to make?

12 Q. So there was no surveillance review involving
13 the town or the local stakeholders to determine safety
14 improvements that could have made the crossing safe,
15 was there?

16 A. There was not any that we were aware of.

17 Q. And that, that's unusual?

18 A. Yes.

19 Q. Okay. Now let me move to your Conclusion
20 No. 2. At the time of the closure, the 400 North
21 crossing met applicable standards for public safety
22 except for lacking some advance warning signing and
23 pavement markings, which are easily rectified. You go
24 on to state:

25 "The crossing had existed with this

1 layout and active warning device
2 condition since at least 1972 when gates
3 were likely installed and the skew angle
4 lessened. For nearly 40 years
5 subsequent to 1972 the crossing was not
6 designated as unsafe by any regulatory
7 agency. Neither Vineyard Town nor
8 Anderson Geneva has made traffic jam --
9 changes that would require modifications
10 to the crossing or roadway."

11 A. Uh-huh.

12 Q. Let's go to the first sentence. The
13 statement that the crossing met applicable standards
14 for public safety, except lacking advance warning
15 signing and pavement markings.

16 A. The crossing itself had the appropriate
17 advance warning devices -- gates, and flashing lights,
18 and bells, so forth -- that rendered that an
19 acceptable crossing. And it also had stop bars --
20 well, it had, it had sufficient location that you
21 could stop and see what's coming because the gate was
22 down.

23 If we had been there for review at that point
24 in time obviously we would have observed that it
25 lacked pavement markings and signage on the roadway,

1 which really should be included at this type of a
2 site. But that's easily rectifiable. I'm not sure
3 that that would lead to a conclusion that you ought to
4 close the crossing.

5 More frequently that's a decision that has to
6 factor a lot of things into it, including obstacles
7 that you can't really very easily overcome because of
8 lack of right-of-way to change alignments of the
9 roadway or other types of things that way.

10 And this site doesn't really suffer from
11 those shortcomings. It's not an easy site to develop
12 a good design for. But it's not unlike three or four
13 of the other crossings that they had to contend with
14 that they were able to derive a plan that would make
15 that a safe crossing. Which was done.

16 Q. Now, earlier today Mr. Eric Cheng, the chief
17 railroad engineer for UDOT, testified that the
18 crossing as it was operated by the prior -- while the
19 Geneva Steel plant was operating was inherently
20 unsafe.

21 And if I can represent to you, his concern
22 primarily was as traffic -- first of all, there was
23 not enough stacking room for cars making a right-hand
24 turn going from the northbound lane on Vineyard Road
25 into the crossing area.

1 And then there's the concern that cars that
2 might make it go -- that would be traveling west
3 across the crossing and then having to enter traffic
4 on Vineyard Road might have to stop and wait for
5 traffic, and the crossing gates might come down at
6 that point in time.

7 That's where you could have cars stacked in
8 that vicinity and, and crossing gates coming down, and
9 unable to move out of the roadway. Do you share that
10 concern?

11 A. I think that there are some valid concerns
12 there that this site could have improvements made to
13 it. When you look at a concern for vehicles at a
14 given railroad crossing you want to make sure that
15 they aren't going to become trapped. Some of those
16 concerns that he's cited, if a train were coming I
17 think that a vehicle would probably elect to continue
18 on to the west.

19 So I -- while I would share agreement that
20 there are things that could be done to make it better,
21 I don't think that there's the geometry here that's
22 not able to be fixed so that it can be functional. Or
23 was a big enough concern that any of the entities from
24 the mid -- early '70s, when apparently the last
25 improvements were made, were a big enough concern that

1 anybody would come in and cause it to be changed.

2 Q. Okay. So -- and you've reviewed the FRA
3 reports with regard to this close -- crossing, haven't
4 you?

5 A. Yes.

6 Q. And in those FRA reports they state that
7 there were 3,700 trips per day across that crossing.
8 Do you recall that?

9 A. Yes.

10 Q. And given that, does that give you some
11 comfort to know that it was operating safely for the
12 last -- well, you, you've stated since the early
13 1970s, until the plant closed in early 2000's?

14 A. Yeah, 3,700 vehicles per day is not a very
15 high number of vehicles. If you break that down to
16 the bulk of it being in a 10-hour day and 60 minutes
17 in a day -- or in an hour, you'd recognize that
18 there's some pretty good headway gaps between
19 vehicles, likely.

20 Those things will tend to mitigate. Some
21 other concerns --

22 Q. Now, now would you -- would your opinion be
23 different, though, if you assume that these are shifts
24 that are changing, and a lot of cars are coming all at
25 once and leaving all the once? Does that, does that

1 change some of your thinking?

2 A. It would certainly color your judgment a
3 little bit. The thing you do have to consider is most
4 of your vehicles then would be going in one direction.

5 Q. Right.

6 A. So you wouldn't have as many conflicting
7 movements. You'd sort of have a queue of people
8 trying to head in one general direction. And that,
9 that, I think, plays into the decision making that,
10 that you would make.

11 Q. So that's -- the likelihood is there would
12 have been a careful analysis done when this -- when
13 the geometry was changed. Some engineering review
14 would have been done and people would have considered
15 those things?

16 A. Sure.

17 Q. Okay. And knowing the Railroad as we all do
18 and UDOT as we all do, they would have been very
19 careful about that?

20 A. Well, certainly as we would come in to a
21 project -- say maybe it wasn't an issue on should it
22 be closed or not, just it's a crossing that we need to
23 make improvements to. What would happen is we would
24 meet on site. We'd identify deficiencies. We'd
25 identify things that we could live with or maybe we

1 couldn't.

2 Some of the mitigating factors for poor
3 geometry here is the use of the crossing gates. And
4 that helps to mitigate because it serves to stop
5 people when a train is there. And helps to alleviate
6 the fact that your sight distances are more awkward
7 since you're having to approach and turn your neck, et
8 cetera, to look in certain directions.

9 Q. Okay. And all of those things would have
10 been discussed and dealt with in a surveillance
11 review, correct?

12 A. Correct.

13 Q. Okay. Now, in the typical surveillance
14 review that you've been involved with has, has the
15 Town's or City's future needs been considered as part
16 of that surveillance review so that UDOT, and the
17 Railroad, and the Town have everything out on the
18 table to know what, what the best plan is?

19 A. Yeah. Normally as we go into a project we're
20 designing it for a 20-year life or a 40-year life,
21 depending on the, the pavement type that's being
22 selected. And so we'll look at traffic volumes that
23 far down the road.

24 We'll solicit input from maintenance people.
25 Other interested parties that might have play there on

1 the part of the owner. In other words, certain
2 division -- Parks and Recs Division, or other entities
3 like that.

4 They'll all kind of give their input. But
5 ultimately it's been our experience that in order to
6 get our designs approved, ultimately they go to the
7 Railroad. Unless we have everything exactly the way
8 they want, they just continue to kick it back to us
9 until they're satisfied that we've met those
10 requirements.

11 And usually there's not a big argument about
12 applying elements contained within the MUTCD as far as
13 locations and that kind of thing. Frequently there'll
14 be discussions about, Do you need a central divider?
15 If you have a situation like this, do you do things to
16 prevent areas where vehicles might be trapped?

17 And those things can be employed. And
18 frequently that's kind of derived via back and forth
19 with submittal to the Railroad of what you think was
20 the outcome of your meeting on site with them, coupled
21 with your applying the standards.

22 Q. Have you -- now, a lot of what's been
23 triggered here is a result of the commuter rail South
24 Project. Have you been involved in any of the
25 surveillance reviews or road improvement projects

1 for -- relating to the commuter rail South Project?

2 A. No.

3 Q. Okay. UTA, as you know, is gonna be adding
4 track to the west side of this crossing. And you've
5 been out and observed the crossing and the track's
6 been installed, hasn't it?

7 A. That's correct.

8 Q. And that's changed a lot of the factors
9 relating to this crossing, hasn't it?

10 A. Yes.

11 Q. And that's true about all of the crossings to
12 the north and south of this particular crossing, isn't
13 it?

14 A. Yes. Frequently it's the very same scenario
15 from a geometry standpoint.

16 Q. Okay. So you're aware of other crossings
17 with similar geometry problems that --

18 A. Yes.

19 Q. Where they're having to figure out
20 improvements?

21 A. Yes.

22 Q. And in those activities -- these are -- a lot
23 of the surveillance reviews -- which I think you've
24 indicated you've done -- it's been you working for the
25 City, going to UDOT and Union Pacific for input on the

1 rail, and you initiating the surveillance review?

2 A. That's correct.

3 Q. In this case UTA is initiating all of this
4 activity?

5 A. Uh-huh.

6 Q. Now, without them involving the Town of
7 Vineyard they couldn't do any of the things you've
8 just described, could they?

9 A. They wouldn't get their take on it.

10 Q. Yeah. They couldn't know what the plans are?

11 A. Correct.

12 Q. They couldn't know what the road
13 configurations were? They couldn't know what traffic
14 anticipated was?

15 A. Correct.

16 Q. Because they didn't do anything?

17 A. Which surprises me a little bit. Because
18 normally, as an engineer, I would be contacting the
19 local jurisdiction to see what their standards are.

20 Q. Right.

21 A. What their requirements are. Many different
22 entities have different requirements for planters when
23 you're talking curb and gutter and sidewalk, those
24 kinds of issues. Standards for how wide their roadway
25 should be.

1 And normally that's where we get that
2 information from, is by contacting them.

3 Q. And they just didn't do it in this instance?

4 A. Not that I'm aware of.

5 Q. Okay. Continuing on along the lines that I
6 mentioned about UTA your third opinion is:

7 "When taking into account the new
8 additional track and train traffic
9 created by the railroad (UTA), then the
10 crossing would need safety
11 modifications, likely including
12 realigning the roadway. These
13 modifications would normally be paid for
14 by the entity making the changes, which
15 in this case is UTA."

16 You want to elaborate on that?

17 A. The improvement caused that you no longer had
18 throat enough for a vehicle to physically square up
19 with the, the first crossing at the --

20 Q. So, so you're saying after, after a vehicle
21 coming north on Vineyard Road turns into the crossing,
22 there, there used to be an area where --

23 A. Used to be space that you had one vehicle
24 length that could square up to that crossing.

25 Q. In front of the gate?

1 A. Uh-huh.

2 Q. Okay.

3 A. Yeah.

4 Q. And, and that's not possible with the UTA
5 TRAX there?

6 A. Not with it moving over that additional
7 20 feet or so.

8 Q. Okay.

9 A. That takes away that possibility. That
10 doesn't render the situation un-fixable, it just makes
11 it much more complicated.

12 Q. Okay. And that's, that is true, again, along
13 the other crossings --

14 A. That's correct.

15 Q. -- on the commuter rail South Project, isn't
16 it?

17 A. Yes.

18 Q. So the addition of additional track has now
19 changed the sight distances, and stacking areas, and,
20 you know, all of those -- the geometry of many
21 crossings, hasn't it?

22 A. That's correct.

23 Q. Okay. And is -- to your knowledge, UTA is
24 paying for those improvements in other crossings?

25 A. I, I don't know. I would assume.

1 Q. Okay. Item 4, Conclusion No. 4:
2 "With the exception of Lehi 300
3 East, UTA is making changes to five
4 other comparable crossings involved in
5 the FrontRunner South commuter rail
6 project by shifting roads and adding
7 appropriate warning devices to meet
8 safety standards for crossings. UTA is
9 refusing to make similar changes to the
10 400 North crossing."

11 Let's just start with that. You've,
12 you've -- as a part of your review on our behalf
13 you've looked at other crossings along the commuter
14 rail south corridor, haven't you?

15 A. Yes.

16 Q. And did you find other crossings with similar
17 geometry?

18 A. Yeah. Generally speaking we're talking about
19 a roadway that's kind of paralleling the railroad
20 tracks.

21 Q. Okay. Referring on this map, Exhibit 135 --

22 A. The south, yeah.

23 Q. -- paralleling, that's the -- kind of the
24 north-south leg of Vineyard Road, correct?

25 A. Correct.

1 Q. Okay. And are there other geometry features
2 that these crossings --

3 A. Well, the interesting thing in both of
4 those -- for instance, 1500 South in American Fork.
5 Also 500 West in Lehi. In both those instances
6 they've apparently acquired sufficient right-of-way
7 that allows them to realign the roadway that parallels
8 the tracks to pull it further away from the tracks at
9 the point it intersects the crossing roadway.

10 Q. So one of the fixes they've come up with is
11 to shift the road away from the tracks by acquiring
12 additional right-of-way, and then essentially creating
13 a new intersection?

14 A. That's correct. And then another good
15 example is Provo, 600 South, where apparently the
16 right-of-way is more of a problem to them. In the --
17 as opposed to realigning the roadway they've actually
18 put a -- called for a gate to be placed on the
19 parallel leg before you hit the intersection. Which
20 is a little bit more of a unique solution.

21 Q. So another way to mitigate it is, would be to
22 put a gate across the highway running -- coming to the
23 north, stopping cars before they get to the
24 intersection?

25 A. That's how they were approaching that.

1 Q. Okay.

2 A. Uh-huh.

3 Q. And the other one you mentioned was to add
4 right-of-way. So the road would shift if -- you know
5 using, again, Exhibit 135 as an example. The road
6 could be shifted to the west, creating an intersection
7 further to the west so that you don't have this
8 conflict right at the crossing?

9 A. That's correct.

10 Q. Okay. Others that are similar?

11 A. There are several other crossings in that
12 similar vein, but those three are probably the best
13 examples of what's being done along the corridor to
14 deal with a geomet -- geometry problem like what you
15 see here.

16 Q. Okay. Your final conclusion was the --
17 there's no basis in the Utah Administrative Code or
18 within the FHWA Railroad-Highway Grade Crossing
19 Handbook for the change in status from public to
20 private that was filed by Union Pacific Railroad with
21 the Federal Railroad Administration.

22 This change is -- in status is also contrary
23 to the final design and designation of UDOT for the
24 crossing made in July 2009. What -- tell me how you
25 came to that conclusion.

1 A. Well, neither one of -- the Code nor the FHWA
2 Railroad-Highway Grade Crossing Handbook were derived
3 to well cover delineating between private and public.
4 They're generally written to deal with improvements to
5 crossings usually that are considered public, because
6 private crossings aren't regulated by the State.

7 So there's nothing within those that would
8 contain definitions that were being met or not met
9 that would really allow justification for a switch
10 from one to the other to be made.

11 Q. Okay. And in this case you're aware that
12 Vineyard Town has asserted that this crossing is a
13 Vineyard Town road?

14 A. Correct. If you look at the MUTCD, it just
15 strictly defines what a public roadway is and also
16 what a highway is. Basically that means that it's
17 under the jurisdiction of a public agency, and then
18 it's open for use by the public. That's it. It
19 doesn't get into what's private.

20 The FHWA Railroad-Highway Grade Crossing
21 Handbook has a couple of sentences that try to
22 delineate from one to the other, but it really just
23 draws on that definition as well. If a crossing is
24 under the jurisdiction of a public entity and open to
25 the public, it's a public crossing. It's a public

1 roadway.

2 Q. Okay.

3 A. There's not this connection between crossing
4 and highway in the MUTCD.

5 Q. Now, one of the concerns that -- I'll just
6 represent to you that we at Anderson Geneva heard
7 tangentially is that there was a concern about the
8 fence. Now, we spoke earlier today in testimony with
9 Mr. Cheng about his concerns that there was a --
10 there's a fence with a gate across it over here. And
11 the concern that -- of the safety hazard that created.

12 Now, when Anderson Geneva heard about that
13 safety concern they opened the gate and created a
14 turnaround area so people wouldn't be stopped on the
15 tracks. Based on your understanding of the situation
16 is that a fair mitigation, at least temporarily, to,
17 to resolve that concern?

18 A. Yeah. That's kind of why I cited before my
19 concern that the letter didn't really identify what
20 things in -- what things led the Department to think
21 that the crossing was unsafe, because frequently many
22 things that might be an issue you could rectify. And
23 make a crossing that's considered perhaps unsafe,
24 safe. So --

25 Q. As is being done in the, you know, along the

1 UTA corridor?

2 A. Yeah. So the, the opening of a gate would
3 seem to be a simple thing to mitigate that kind of a
4 concern.

5 Q. Okay. Those similar -- those comparable
6 crossings that you mentioned, I think you stated that
7 they, they had similar geometry to this crossing.

8 Now, when you talk about similar geometry --
9 and I, I mentioned to you some of the concerns of
10 Mr. Cheng that traffic coming out here might have to
11 stop for traffic here, and that could create a
12 conflict.

13 Did you see other crossings with similar
14 problems?

15 A. Well, the thing that's most similar about it
16 is you have a crossing roadway that has an
17 intersecting roadway that's closely paralleling the
18 railroad tracks.

19 Not all situations had a roadway paralleling
20 on both sides, necessarily. Most of them had the
21 cross where it was a straight cross and not -- in this
22 case the predominant road that's left is -- on the
23 east side of the tracks is turning to the north.

24 I understand historically the, the roadway
25 continued into a parking area if you went due east.

1 Q. Right.

2 A. But there's similarities there just because
3 you do have, at least on one side, a roadway closely
4 paralleling the tracks that's intersecting with the
5 crossing roadway.

6 Q. Okay. But that, that concern about
7 entering -- you know, engaging other traffic on this
8 continuation of Vineyard Road is, is really present in
9 some of those other crossings, isn't it?

10 A. On all of them, really. I mean, anytime you
11 have an intersection close to railroad tracks there's
12 concerns that you have, particularly more so if you're
13 gonna signalize the intersection.

14 But there's mitigation that can be provided,
15 such as using advance blackout signs that indicate
16 when a -- the crossing is occupied by a train. So
17 that people coming up on the leg that have poor sight
18 of the rail because they're paralleling it, maybe,
19 they're warned by such signing as they approach it
20 that a crossing is occupied.

21 So there are, there are ways you can deal
22 with that. And, and just looking at the geometry of
23 those other crossings I would say they -- a lot of
24 them fall into the same boat as what you see here.

25 You know, another thing we look at is, is

1 vertical grades. And the nice thing is at least here
2 you have a parallel roadway that's, that's up high,
3 close to the height of the railroad track. The track
4 is close in elevation to the intersection itself. And
5 as you begin to fall off on the west, that's somewhat
6 further removed from the rails.

7 Frequently you have a problem with the
8 railroad crossing pads being much higher than the
9 intersecting roadway, which is a much more difficult
10 thing to contend with.

11 Q. Okay.

12 MR. ASTILL: All right. That's, that's all I
13 have.

14 THE COURT: Thank you.

15 Let's take a 15-minute break and we'll come
16 back following with Union Pacific.

17 (A recess was taken from 3:09 to 3:25 p.m.)

18 THE COURT: All right, beginning with Union
19 Pacific.

20 MS. KAMAS: Your Honor, I'd like to start
21 with what amounts to voir dire of the witness in aid
22 of objection and motion.

23 THE COURT: Okay.

24 MS. KAMAS: We would offer Mr. Hendricks' CV,
25 which I don't think has been marked by -- as an

1 exhibit by anybody.

2 THE COURT: Okay.

3 CROSS EXAMINATION

4 BY MS. KAMAS:

5 Q. I'm showing you your CV, Mr. Hendricks. That
6 is your CV, isn't it?

7 A. Yes.

8 Q. It looks like you have a lot of experience in
9 design and construction of roadways?

10 A. That's correct.

11 Q. Some of the design and construction work
12 you've done on roadways, those roadways have gone over
13 crossings?

14 A. Yes.

15 Q. Okay. Also looks like this is the first time
16 you've ever had occasion to look at a crossing and try
17 to decide whether it's private or public?

18 A. Yes.

19 Q. Have you ever been in a surveillance review
20 with Union Pacific?

21 A. Yes.

22 Q. Okay. Have you ever been in a surveillance
23 review with Mr. Marshall?

24 A. I believe so. Most of them have been with
25 Terrel Anderson. And I think even Jim's predecessor,

1 Dick Rauschmeier. I've been on one, but it was so
2 long ago I can't remember where it was at.

3 Q. So before this case did you ever have
4 occasion to read the Highway-Rail Crossing Inventory
5 Instructions and Procedures Manual to see what it said
6 about private crossings versus public crossings?

7 A. Say the manual again.

8 Q. I can show it to you. I may have skipped a
9 step there. Do you recognize this document that's
10 marked beginning page 16 of Union Pacific and UDOT's
11 exhibits?

12 A. If, if you're referring to the FRA railway
13 inventory sheets, I've looked at the sheets themselves
14 before.

15 Q. Let me ask you the question again. Have you
16 ever seen this document before that I'm showing you?

17 A. At least not this portion of it.

18 Q. Okay. So, so as far as you know, you've
19 never read what this document has to say about public
20 crossings versus private crossings?

21 A. Yeah.

22 Q. Okay.

23 A. That's fair enough.

24 Q. This is just an excerpt but it does show the
25 cover page. Have you ever seen this document that's

1 marked as Union Pacific and UDOT Exhibit 70?

2 A. Yes.

3 Q. Okay. Before this -- did you look at this
4 document in connection with this case?

5 A. Yeah, and only with this case.

6 Q. Right. So before this case you never had
7 occasion to read what the Private Highway-Rail Grade
8 Crossing Safety Research and Inquiry manual says about
9 private crossings versus public crossings?

10 A. That's correct. Our normal course of
11 business is improving public roadways, and so the
12 governing document for that is MUTCD, AASHTO Green
13 Book. Those kind of govern the standards for what we
14 would employ.

15 And usually any other things that were coming
16 in that are of importance to the Railroad frequently
17 would be brought up at the surveillance meeting by the
18 Railroad.

19 Q. Is it accurate also to say that before this
20 case you never had occasion to read the Manual of
21 Uniform Traffic Control Devices to try to figure out
22 whether it says anything about public versus private
23 crossing designations?

24 A. That's correct. That's not the main
25 purpose -- that's not the purpose of that manual. The

1 manual is to give me information for application of
2 signs and pavement markings, et cetera.

3 Q. But the point is you -- in your work you've
4 never had a reason to look at the MUTCD to try to see
5 what it says about private crossings?

6 A. That's correct.

7 Q. Before you worked on this case did you know
8 that there was such a thing as a private crossing?

9 A. Yes.

10 Q. And how had you found that out?

11 A. Well, just by observation. There's many
12 private crossings within the State of Utah, and you
13 see they have a little placard below a stop sign that
14 says "Private Crossing."

15 And so just because of my work as an
16 engineer, usually when you get involved with something
17 it peaks your interest for certain things. And that's
18 one of those things that then I would become aware of
19 and say, Oh, yeah, there's something different about
20 that because it's a private crossing.

21 Q. So before you worked on this case your
22 exposure to private crossings was limited to reading
23 road signs?

24 A. To, to a great extent, certainly. We've had
25 other projects where we've dealt with spur lines and

1 things like that, but really it was still associated
2 with the public roadway.

3 Q. You gave some testimony on direct examination
4 about why various standards were derived. And, and
5 you said that the, that the standards that, that you
6 cite in your report were not derived in order to try
7 to determine whether a crossing is public or private.
8 But you don't actually have any basis for that
9 opinion, do you?

10 A. Well, there's -- in both MUTCD and also in
11 the FHWA Railroad -- Highway-Railroad Crossing
12 Handbook, both of those indicate within just the first
13 couple of pages -- and in an abstract when you do an
14 Internet search -- the purpose of that document.

15 And so both of those shed light on why those
16 documents were created. In the case of MUTCD it's to
17 establish standards nationwide so that the traveling
18 public knows what to expect.

19 In the case of FHWA Roadway -- Highway-
20 Railroad Crossing Manual, it says this is not a
21 standard. This is not a regulation. This is a
22 single-point source of useful information to assist
23 designers in dealing with roadway-railway crossings.

24 Q. So with respect to those two sources of
25 information, you've read their stated -- sort of

1 statements of purpose and you know that it doesn't say
2 anything about private crossings, right?

3 A. Within the -- correct. Private crossing --
4 well, private crossing is --

5 Q. Thank you. Thank you. And you have no idea
6 how individuals who actually, as part of their job,
7 have to figure out whether a crossing is public or
8 private might use those manuals?

9 A. That's really not for me to say. I mean,
10 that's not my purview. My purview as an engineer is
11 to design roadways --

12 Q. Uh-huh.

13 A. -- in accordance with standards.

14 Q. And you don't decide, in your purview,
15 whether a crossing is public or private?

16 A. I can interpret the manuals which I read.
17 There are definitions --

18 Q. But you never had a --

19 A. -- given in MUTCD for a public roadway. I
20 can read and understand that definition. And also
21 understand that it doesn't say anything about private.

22 The FHWA manual does give a sentence
23 specifically to public crossings as opposed to
24 private. Which is drawing on the MUTCD definition
25 that if a jurisdiction governs -- a public agency has

1 jurisdiction on a roadway and it's open to the public,
2 it is therefore a public roadway.

3 Q. And you have never had occasion to read those
4 standards and apply them to determine whether a
5 crossing is public or private until this case?

6 A. That's correct. That's just not normal -- a
7 normal thing that's in our course of business. People
8 are seeking to do -- usually it's well understood and
9 they're coming to us to do a design for them.

10 Q. Thank you.

11 MS. KAMAS: Your Honor, Union Pacific makes a
12 motion to exclude this witness's testimony to the
13 extent he gives -- to exclude the witness to the
14 extent he gives any opinion about whether the crossing
15 at issue is public or private.

16 And along with that, to strike the testimony
17 that has already been elicited that has to do with the
18 public/private distinction. And to strike the area of
19 his report that's been offered as an exhibit that
20 deals with -- is called "Public Crossing Status."
21 It's a little analysis that runs about a page, a page
22 and-a-half.

23 MR. PICKETT: And the final conclusion.

24 MS. KAMAS: To the extent that there are any
25 conclusions that have to do with the public/private

1 distinction, yes, we would move to strike that as
2 well.

3 THE COURT: Mr. Astill?

4 MR. ASTILL: Your Honor, we would oppose that
5 motion, obviously, and for the reason that
6 Mr. Hendricks has made it clear his expertise has been
7 in traffic and safety engineering. He has used the
8 manuals that are being referred to here for traffic
9 safety and engineering purposes.

10 I think he correctly states the purpose of
11 those manuals. He also correctly states that in the
12 course of his employment and his work he is often
13 called upon to read and interpret manuals and
14 understand those guidelines that are described in
15 various manuals.

16 The fact that he doesn't have Mr. Cheng's job
17 or Mr. Marshall's job is not determinative of whether
18 he can render an opinion of -- as to the language of
19 those manuals. And we submit that if they have more
20 experience at that than he does, that's -- may go to
21 the weight of the matter but it doesn't go to the
22 extent of excluding his testimony.

23 THE COURT: All right. I'm gonna, I'm gonna
24 deny the motion to strike. As I mentioned before, we
25 are a lot more permissive in our, in our -- in the

1 evidence that we take. However, we have the
2 opportunity to raise this issue again in post-hearing
3 briefs.

4 I believe it does go to the weight the
5 Commission should give it. His testimony, I think, is
6 completely appropriate for Union Pacific or any, any
7 other party to address the weight we should give his
8 testimony regarding public versus private crossing.

9 So I'm gonna deny the motion.

10 MR. ASTILL: Thank you.

11 MS. KAMAS: Thank you, your Honor. I'll
12 proceed with my cross examination.

13 Q. (By Ms. Kamas) Okay. Just a -- I think
14 we'll clarify the testimony that you've already given,
15 Mr. Hendricks, that every other railroad grade
16 crossing that you've had occasion to deal with has
17 been a public crossing, correct?

18 A. That's correct.

19 Q. You have a statement in your report -- I
20 don't know if you need to look at that or not -- but
21 you use this phrase: "Public rail crossing sign."
22 And by that you mean a crossbuck?

23 A. Yes.

24 Q. A crossbuck is the common railroad sign that
25 looks like an "X" and says "Railroad Crossing," or

1 similar words?

2 A. That is correct.

3 Q. It doesn't actually say that the crossing is
4 a public crossing?

5 A. That's correct.

6 Q. Doesn't indicate that the crossing is a
7 public crossing?

8 A. No. And it was not my intent that that is
9 what it means. Only that that's what's contained in
10 MUTCD for a sign that you would use at a railroad-
11 highway crossing.

12 Q. Okay. Your report also states that vehicles
13 coming from the south on Vineyard Road or from the
14 west on Fourth North cross the railroad crossing, and
15 then your words are "almost immediately enter" the lot
16 on the old Geneva Steel plant, correct?

17 A. That's my understanding, yes.

18 Q. That lot has three to four hundred -- or had
19 three to four hundred parking stalls in it when Geneva
20 Steel was in operation?

21 A. That's my understanding.

22 Q. Okay. You also note in your report that
23 3,000 to 4,200 workers crossed that crossing while the
24 steel mill was in operation in the later years,
25 correct?

1 A. I, I don't remember the exact numbers.

2 Q. Okay. Is -- are you offering an opinion that
3 the, the 3,000 to 4,200 workers that crossed the
4 crossing to go into Geneva Steel constitute use of the
5 crossing by the public?

6 A. Not necessarily. But potentially.

7 Q. Okay.

8 A. Because they might have more than just the
9 workers traveling with them. In the instance of
10 somebody dropping a family member off, or bringing
11 somebody lunch, or whatever.

12 Q. So it's your, it's your opinion that if a
13 family member is dropping off -- or was dropping off
14 an employee at Geneva Steel or bringing lunch to an
15 employee at Geneva Steel, the fact that that family
16 member wasn't actually an employee makes them a member
17 of the public for purposes of the use of the crossing?

18 A. I don't know. I'm not an attorney.

19 Q. Okay. In your report you say that you
20 searched for Utah County and Vineyard records to see
21 if there are any documents that showed maintenance on
22 the adjacent roadways, correct?

23 A. Yes. We also talked with the Vineyard Town
24 engineer, trying to get an idea of what's been done.
25 I don't think there are good records out there for

1 maintenance.

2 That doesn't overly surprise me. That's
3 common for local government maintenance that public
4 works guys just take care of what they need to take
5 care of and don't always necessarily document what's
6 been done.

7 Q. So your report says that you found "little
8 information," but actually you didn't find any
9 information at all on maintenance, right?

10 A. That's correct.

11 Q. So when your report concludes, on page 12,
12 that 400 North has always been maintained by Utah
13 County or Vineyard, there's actually no documentary
14 support for that statement, is there?

15 A. No. It had to be tain -- maintained by
16 somebody. And clearly that is a normal -- in the
17 course of my business I, I understand where -- who
18 maintains roadways. And for that jurisdiction it
19 would either be Utah County or Vineyard Town.

20 Q. It's your understanding and you state in your
21 report that the planned Anderson Geneva development --
22 or the area, you know. I understand Anderson Geneva
23 may not be doing all of the ultimate development,
24 perhaps.

25 But it's your understanding that the

1 development imagines that there may be 27,000
2 residents living on the east and north sides of the
3 crossing someday?

4 A. Yeah, I don't remember specific numbers, but
5 I understand it's rather large.

6 Q. Your report also states that between 2005 and
7 2009, after the steel mill was closed, the gate and
8 fence on the west boundary of the property started to
9 be closed regularly, correct?

10 A. That's our understanding, yes.

11 Q. And you state that that was -- that closure
12 was to control vandalism, protect the public, and
13 manage the demolition and environmental remediation,
14 right?

15 A. That's correct.

16 Q. Your report also observes that for the later
17 half of 2009 the gate that was locked at the entrance
18 that we've been talking about to the property was
19 open?

20 A. Yeah. It's my understanding, when UDOT
21 identified this as a concern with vehicles being
22 trapped on the east side of the roadway, that Anderson
23 Geneva then opened that gate so that that would not be
24 a trapping potential.

25 Q. So based on your work for this case, you've

1 determined that sometimes the gate at the entrance to
2 the property that's at issue here has been open,
3 sometimes it's been closed, right?

4 A. That's our understanding.

5 Q. But would you agree with me that there's
6 never been a time when there wasn't a property -- a
7 private property owner there that could do whatever it
8 wanted in terms of opening a gate or closing a gate?
9 Since 1942.

10 A. I'm sorry, could you restate that, please?

11 Q. Do you agree with me that since 1942 there's
12 never been a time that there wasn't a private property
13 owner who could choose to open or close the gate, lock
14 it or not, whatever they saw fit, on the east side of
15 the crossing that we've been talking about?

16 A. I really don't have information particularly
17 to that, because I've not seen photos or understand
18 the history on the fence line. Understanding the
19 parking lots are there. Understanding on the east
20 side that those parking lots were accessible.

21 And that really the gate protecting the inner
22 workings of Geneva was between the parking area and
23 Geneva Steel itself. So I'm, I'm not clear on, on the
24 history of that gate, and so I couldn't speak to that.

25 Q. You're clear that -- at least by 2005?

1 A. Yes.

2 Q. Are you clear on any period before 2005?

3 A. Only by what I can see on aerial photos.

4 Q. And what have you seen on the aerial photos?

5 A. Parking area is there. Aerial photos
6 sometimes it's hard to detect if there's fence or gate
7 there or not, and so I haven't looked specifically to
8 that. Really much of what we did here was looked at
9 the current conditions, so that's just not an area
10 that I have focussed on as much.

11 Q. So there was some testimony that you gave,
12 and it's actually on page 4 of your report, where you
13 talk about if a crossing is closed that there should
14 be another crossing within a certain distance
15 adjacent, correct?

16 A. Yes. We're citing now the FHWA
17 Railroad-Highway Grade Crossing Handbook.

18 Q. And that standard applies only to public
19 crossing closures, right?

20 A. Well, first of all I'm not sure it's a
21 standard, necessarily. It's contained within that
22 book. And --

23 Q. Okay.

24 A. -- it's guidance information.

25 Q. All right.

1 A. So it's one of those things a surveillance
2 team would consider as they're considering whether
3 they ought to close a crossing.

4 Q. But the consideration would be in the context
5 of closing a public crossing only, right?

6 A. Yeah. That document's primarily written --
7 well, yeah. I suppose it's primarily written for
8 public, because FHWA doesn't have jurisdiction on
9 private crossings.

10 Q. So you give a statement in your report that
11 there were active warning devices. Now, an active
12 warning device means that there are lights, right?

13 A. When, when the train comes there's equipment
14 that detects its presence --

15 Q. And --

16 A. -- and starts flashing the light. Or in the
17 case of a gate, dropping a gate down, et cetera.

18 Q. Right. And you state in your, in your report
19 that active warning devices were placed at this
20 crossing because of train speed?

21 A. I would suspect that yes. As you look,
22 again, in the FHWA manual, it cites a higher warrant
23 for a higher level of active warning device based on
24 traffic volumes as well as train speed. So that would
25 be correct. If you have higher train speeds you're

1 gonna want a higher level of advance warning devices.

2 Q. You mean active warning devices?

3 A. Uh-huh.

4 Q. It has nothing to do with whether the
5 crossing is private or public?

6 A. No, not necessarily. It's my understanding
7 private has both --

8 Q. Okay, thank you.

9 A. -- types of devices.

10 Q. You gave some testimony on direct about
11 crossings in Lehi that you thought were similar to the
12 crossing that we're talking about here?

13 A. Yes.

14 Q. All of those crossings had public roads on
15 both sides?

16 A. There was a highway that crossed the rail.
17 There was a side street that led up to it, yes.

18 Q. Okay. Now, I alluded to this just a second
19 ago when I corrected your terminology. Gates and
20 lights aren't advance warnings, are they?

21 A. No, they're active devices.

22 Q. Okay. An advance warning, I'm sure you're
23 aware, is a specific kind of sign that is placed well
24 before the crossing, right?

25 A. Correct.

1 Q. And there weren't any advance warning signs
2 warning -- on either Fourth North or Vineyard Road
3 warning the approaching traveler that the crossing
4 would be up ahead, were there?

5 A. At the time that we were asked to come in and
6 review it, and from what we could tell, we could not
7 see that there were any such signs. Nor pavement
8 markings.

9 MS. KAMAS: That's all the questions I have.

10 THE COURT: Thank you.

11 Mr. Church, questions?

12 MR. CHURCH: No questions.

13 THE COURT: All right.

14 Ms. Spooner?

15 CROSS EXAMINATION

16 BY MS. SPOONER:

17 Q. Mr. Hendricks, in regard to your CV that you
18 submitted?

19 A. Uh-huh.

20 Q. And you listed the projects? Did you go to a
21 surveillance review on the 820 North Street,
22 Independence Avenue to Geneva Road, Provo?

23 A. Yes.

24 Q. And who was there?

25 A. Turell Anderson, Nick Jones with the City,

1 Mike Seely from UDOT.

2 Q. And what position does Mike Seely hold?

3 A. At the time he was the chief railroad
4 engineer for UDOT.

5 Q. Then obviously that was over two and-a-
6 half years ago, at least?

7 A. It was probably about 2006.

8 Q. Is this the most recent surveillance review
9 you've attended?

10 A. Concurrent sometime around there we also did
11 a project on 900 South in Salt Lake City. I don't
12 remember the exact date. That was both for crossing
13 of Ninth South at the main line U.P. track, right --
14 east of the I-15 freeway. And --

15 Q. Did you meet with Mike Seely?

16 A. I think so. I think that one's been a little
17 bit further dated than that. I don't remember
18 specifically.

19 Q. Before 2006?

20 A. Yeah.

21 Q. What about the 900 West reconstruction
22 project?

23 A. 900 West, that was quite a bit earlier. And
24 that was one that my company was involved with and I
25 did not personally attend that surveillance meeting.

1 I was involved with that project.

2 Q. What was your involvement?

3 A. Just helping putting the plans together.

4 Q. What do you mean "putting the plans
5 together"?

6 A. Roadway plans, so.

7 Q. Were you designing?

8 A. Yes.

9 Q. What about the 111 East SR-89?

10 A. That was the installation of a traffic
11 signal. That's a situation where you have State
12 Street paralleling the railroad track. Because we
13 were installing a traffic signal it needed to be tied
14 into the advance warning equipment for the crossing.

15 It had a blackout, blackout sign to turn all
16 the signals red when a train was present and to tell
17 vehicles on State Street that there was a --

18 Q. Did you have a surveillance review?

19 A. Yes.

20 Q. Did you attend?

21 A. Yes.

22 Q. What year was this?

23 A. It's been a while. I, I don't remember the
24 specific year.

25 Q. Before 2005?

1 A. Yes.

2 Q. Do you think it was before 2000?

3 A. It's around there. I would --

4 Q. 2000?

5 A. 2000, plus or minus a year or two. Things
6 begin to run together.

7 Q. And do you remember who constructed the
8 traffic signal?

9 A. Union Pacific. I remember dealing with Paul
10 Crespin, who's the track manager, to arrange for the
11 work. See, as you well know, there's an agreement
12 prepared that once Union Pacific gets our plan sets
13 they put together an estimate for cost. And an
14 agreement's prepared for them to have their crews come
15 in and do the work.

16 Q. We'll just move on, thank you. What about
17 2700 South reconstruction?

18 A. Again, that's one that our company was
19 involved in that I --

20 Q. And you personally weren't involved?

21 A. Not to the surveillance meeting.

22 Q. What about, is it the Kin...

23 A. Kyune Pass.

24 Q. Kyune Pass?

25 A. Uh-huh.

1 Q. Was there a surveillance?

2 A. Yes.

3 Q. Were you involved?

4 A. Yes.

5 Q. What year was that?

6 A. I don't remember the specific year. It's
7 been --

8 Q. Would it be before 2000?

9 A. I don't remember. It's been much earlier
10 than 2005. Again, 2000 plus or minus a few years
11 would probably be an accurate statement.

12 Q. And who did you meet with?

13 A. I think that was Jim. I apologize, it's been
14 a long time.

15 Q. Jim who?

16 A. Jim Marshall.

17 Q. Who did you meet with from UDOT?

18 A. I don't remember specifically. Normally the
19 way we requested those, since those were local
20 government projects, is we would go through the chief
21 railroad engineer at the time. We also, at that, had
22 the representative from Utah County, Paul Hawker.

23 Q. Is the firm you're at, is it mainly a geotech
24 engineering?

25 A. No, it's a split between civil and geotech.

1 I've been on the civil side in the 20 years I've been
2 employed by RB&G.

3 Q. Would you qualify that most of the work is
4 geotech?

5 A. I would say two-thirds -- right now
6 two-thirds is geotech. Over the years it's been more
7 of a 50/50 split. But at current work levels I would
8 characterize it being two-thirds geotech, one-third
9 civil.

10 Q. So based on your experience of possibly four
11 surveillance reviews --

12 A. There's several others I didn't list on
13 there. Vivian park in Provo Canyon.

14 Q. Did you ever meet with Eric Cheng?

15 A. Not since he's been in that position. I've
16 dealt with Eric before, because he's prepared --

17 Q. As far as any surveillance reviews?

18 A. No.

19 Q. Other than the -- you mentioned once with Jim
20 Marshall. Have you met with Jim Marshall on another
21 surveillance review?

22 A. I don't remember. There's been a number over
23 the years. If it's been more than one or two, I don't
24 recall.

25 Q. It can't that be many if he can't remember

1 you.

2 A. Well, it's been a while. I mean, some of
3 that's ten years ago. There's been a lot of projects
4 that I've worked on.

5 Q. It would be fair to say you don't attend as
6 many surveillance reviews as Eric Cheng?

7 A. Oh, sure. I agree.

8 Q. Or Jim Marshall?

9 A. I agree.

10 Q. I would consider they probably know more
11 about surveillance reviews than you do?

12 A. Yeah. That doesn't mean I don't.

13 Q. You're the one holding yourself out as an
14 expert.

15 So would you agree that highway and railroad
16 crossings are unsafe?

17 A. Pardon?

18 Q. That highway and railroad crossings, as they
19 cross each other, they're unsafe?

20 A. Sure, there's an inherent unsafeness to them
21 because there's conflict potential represented there.
22 That's why one of the objectives of a surveillance
23 team is what they can do to mitigate that.

24 Q. Are you familiar with USDOT's action plan
25 concerning railroad safety?

1 A. I understand that their motivation is to
2 decrease, as well as they can, the number of crossings
3 that exist.

4 Q. Do you know what that goal is?

5 A. Based on the questions asked of me Monday, I
6 assume that's 50 percent.

7 Q. No, it's 25 percent. Would you like to see
8 it? Have you seen this document before that's the
9 Secretary's action plan?

10 A. No.

11 Q. I'm bringing your attention to Exhibit 133.

12 A. Okay.

13 Q. Would you agree that this diagram of the
14 400 North crossing has a geometric problem?

15 A. It's not ideal, correct.

16 Q. And the ideal situation would be 90-degree
17 angles?

18 A. Uh-huh. And that you wouldn't have an
19 intersection so close to the crossing itself.

20 Q. And you're talking about intersection of
21 Vineyard Road?

22 A. Yes.

23 Q. And because it's skewed crossing there's a
24 sight distance problem?

25 A. It makes sight more difficult. The fact that

1 you don't have a lot of vegetation there helps
2 mitigate that to some degree, but you can see there's
3 certain angles and approaches where you're gonna have
4 a hard time turning your head to detect a train. I'm
5 sure that's one of the reasons that automatic gates
6 are placed there.

7 Q. And so if you have a car traveling north on
8 Vineyard Road and they wanted to make a right-hand
9 turn, would that be a sight distance problem? If
10 you're seeing trains coming north -- from south to
11 north?

12 A. That would -- well. If you're traveling that
13 way and a train is coming to the north you're going to
14 have passed the train as you're approaching the
15 crossing, so you would know that the train is there.

16 Q. And what if the vehicle didn't see the train?

17 A. That's why the flashing lights are oriented
18 flashing -- they're -- the flashing lights that were
19 there appeared to be oriented at a 45-degree angle to
20 the crossing and to the roadway. So it's not ideal.
21 But of course the automatic gates come down
22 perpendicular to the crossing once the car make --
23 starts to make that turn.

24 Q. Do you know what the standard is to have --
25 how far this road, like Vineyard Road, should be to

1 the intersection?

2 A. Yes. The gate itself generally is 15 feet
3 off the centerline of track and you'd like to have
4 21 feet, I believe, to the stop bar.

5 Q. The road itself?

6 A. To your stop bar.

7 Q. The road itself? You, you discussed earlier
8 in your testimony about a realignment. How far should
9 this road be moved to the west?

10 A. There's not a hard-and-fast rule on how far
11 that should be away from the intersection. Usually
12 that's a judgment based on the right-of-way available,
13 the preference of the owner, et cetera.

14 Q. So you're not aware of any standards?

15 A. No. There's not a minimum standard that's --

16 Q. Would you be surprised it's 250 feet?

17 A. Yes. And it appears to me that the other
18 crossings that they're realigning aren't providing
19 250 feet.

20 Q. But you're not aware of the standard,
21 because --

22 A. That it's 250 feet? No. No, I'm not aware
23 if it's a standard.

24 Q. You're not aware of it? In regard to opening
25 the gate, you said you're familiar with MUTCD?

1 A. Correct.

2 Q. And MUTCD is all about driver expectations?

3 A. Among other things, yes.

4 Q. So if a driver sees that this is open and the
5 gate is open, would you expect that the driver thinks
6 that he or she could go through?

7 A. If, if the gate is up --

8 Q. It invites --

9 A. -- sure. If the gate is up and they can't
10 see the flashing lights.

11 Q. No, I'm talking about the gate that blocks
12 off to the Anderson Geneva property that goes onto
13 private property.

14 A. And what about it?

15 Q. So if this gate is open -- because you said
16 that helps mitigate the locked gate issue.

17 A. Well, I assume that the reason that the
18 locked gate was a problem is because it would
19 physically prevent vehicles from pulling off of the
20 railroad tracks to the east if they didn't detect that
21 the gate was closed before they come onto the railroad
22 tracks.

23 By opening up that gate, that allows that
24 vehicle to completely clear the track. And so the
25 concern there is the vehicle being stopped on the

1 track, not that an open gate would induce somebody to
2 come through when the gate -- when the automatic gates
3 are down or not down.

4 Q. So in your opinion that's not a problem,
5 opening the gate. And so the driver might have the
6 expectation you can drive through, therefore inviting
7 the driver to cross this crossing?

8 A. No. That gate is separate from the crossing
9 itself. The devices that are in pl -- that were in
10 place there were flashing lights and autom -- active
11 gates, railroad gates, that would come down when a
12 train is occupying the crossing.

13 And those are the features that would warn of
14 the presence of a train on the tracks. I do not
15 believe the, the fact that you have a physical
16 fence-type gate on the east line of the Railroad
17 right-of-way, being open, inducing people to ignore
18 those other devices.

19 Q. I'm not talking about it actually -- the
20 devices being down.

21 A. I understand that.

22 Q. I'm not talking about any of the devices.
23 I'm just saying if someone's traveling along here --
24 I'm not talking whether trains are coming at this
25 moment in time.

1 A. Uh-huh.

2 Q. They're crossing this crossing to go into
3 this property.

4 A. Okay.

5 Q. So wouldn't you say that invites the drivers
6 to cross it?

7 A. If the gate is open?

8 Q. Yes.

9 A. Well, they would understand they could get in
10 there. I mean, if I'm a driver it depends on where
11 I'm wanting to go. I guess I'm not sure what you're
12 getting at.

13 Q. You talked about other crossings in Lehi?
14 I'm gonna show you our Joint Exhibit 154. On the
15 other crossings in Lehi did any of them look like this
16 picture in 154, the other side of the crossing?

17 A. No.

18 Q. And if a driver was coming across -- assuming
19 these locked gates were opened when this picture in
20 154 -- and it said "Do Not Enter" or "No Trespassing,"
21 do you think it would cause the driver to pause?

22 A. If I'm a driver coming across the tracks,
23 again, concerned about the trapping potential, if
24 there's a train coming? I'm going through that gate
25 and figuring out where I gotta go after that. I'm not

1 going to stick on the railroad and try to figure out
2 what I'm gonna do because the gate has a sign on it
3 that says "No Trespassing."

4 Q. Are you talking about yourself personally --

5 A. Yeah.

6 Q. -- or driver expectation?

7 A. Well, normally when I design things I project
8 what would I think driving this. How would I perceive
9 that sign. How would I perceive the openness of the
10 roadway because of elements that I put in there. I
11 think that's beneficial as I derive my designs because
12 I like to think of myself as a logical driver.

13 Q. Or do you follow the expectations and the
14 designs of the MUTCD?

15 A. Well, the MUTCD doesn't specifically talk
16 about a gate being on the far side of a railroad
17 crossing.

18 Q. Is that because normally it's not a public
19 crossing?

20 A. I, I don't have an answer for that. I'm just
21 saying that MUTCD gives me guidance for where signs,
22 and pavement markings, and railroad advance warning,
23 and active warning equipment are supposed to be
24 located. That's its purpose.

25 Q. And in your report you talk about the future

1 planned use?

2 A. Yes.

3 Q. On page 4?

4 A. Okay.

5 Q. And so you're saying basically there's gonna
6 be a substantial change, if you look at build out?

7 A. Yes, I agree.

8 Q. And that would affect -- would that
9 information affect how you would have this --

10 A. Yes.

11 Q. -- crossing design?

12 A. Yes.

13 Q. And would you agree that there's no public
14 road on the east side of the Railroad right-of-way?

15 A. At present, or under their plans?

16 Q. Or like is there a current city street, a
17 dedicated city street?

18 A. Where at? On the Geneva --

19 Q. Is there, is there a current?

20 A. On the Geneva property itself?

21 Q. Yes. On this other side. The east side.

22 A. Not that I'm aware of.

23 Q. And you testified earlier you'd want to know
24 the width?

25 A. As I do a design, definitely, I would want to

1 know the parameters. And, you know, even at this
2 crossing the first thing I would do is go and look at
3 Vineyard Town's master plan.

4 It would call out -- typically master plans
5 would call out the width of the pavement, whether curb
6 and gutter is required or not, and things like that.
7 And yes, I would want to know them because I would
8 design my stuff to be compatible.

9 Q. And so wouldn't you want to know the, the
10 angle of approach on the other side? On the Anderson
11 Geneva property?

12 A. Yes, that's correct.

13 Q. And if we know there's a potential for a huge
14 development here, you have no information on the city
15 road, how would you design this to effectively address
16 what's happening on Anderson Geneva property?

17 A. I would go to the City and see what they
18 wanted us to do. To try and incorporate my project to
19 fit their needs as best I could.

20 Q. And what would you do, because there's no
21 platted city street?

22 A. Really it would be subject to what the City
23 tells me they want to see done.

24 Q. So you testified that because of this skew
25 you'd want to change that because it would make it

1 safer?

2 A. First thing I'd want to look at is the
3 overall alignment of the future roadway.

4 Q. Which would affect how you address the issue
5 with this?

6 A. Sure.

7 Q. Crossing here?

8 A. Uh-huh.

9 Q. And wouldn't you also address the storage
10 length here?

11 A. Yeah. Well --

12 Q. At the --

13 A. -- as a, as a railroad -- it depends on where
14 you're coming from. I understand that there's quiet
15 zones and other things that are being contemplated.

16 Those kind of change how one might approach
17 it. Whether you're UTA's designer or whether you're
18 just a designer for, for Vineyard Town looking at the
19 west side solely, things like that. A lot of those
20 things would factor into it before I made a decision
21 on --

22 Q. The length of the storage here --

23 A. Uh-huh.

24 Q. -- you would put for the crossing?

25 A. Yes. That would -- I would want to know what

1 their needs are that way. In other words, I'm aware
2 that other crossings are putting in a nominal-length
3 median prior to the crossing on, on each leg. And so
4 obviously there's been some rationale or reason why
5 that needs to be employed.

6 And so I would look at what the needs of
7 Vineyard Town is, anything they knew about
8 developments that were coming there, against what my
9 needs as the own -- as the designer for the owner, and
10 try to make those balance.

11 Q. So would it be fair to say if you didn't know
12 the information about Anderson Geneva property and the
13 city street you wouldn't know what to design?

14 A. Not without talking to either Vineyard or
15 Anderson Geneva themselves. And I would undertake to
16 try to do both.

17 Q. If they didn't provide that information to
18 you, you wouldn't know?

19 A. No. It would be --

20 Q. If you didn't have that information, you
21 wouldn't know?

22 A. It would be difficult. But you should -- as
23 a designer you should, at a minimum, go to Vineyard
24 Town and find out what their plans are so that you can
25 make your design compatible with their needs as a city

1 or a town.

2 Q. Would you agree that UDOT has the authority
3 to close crossings?

4 A. Yes.

5 Q. And that's basically the sole jurisdiction of
6 UDOT?

7 A. In the end they actually do have the ability
8 to override the desires of anybody, including the
9 Railroad.

10 Q. And that its -- UDOT's purpose is to provide
11 for the safe efficient operation of vehicles through
12 highway-railway crossings?

13 A. Yes.

14 Q. And to eliminate hazards?

15 A. That's correct.

16 Q. And based on your reading of R930-5-14,
17 anytime UDOT would close a public street at a railroad
18 crossing it would have to publish notice?

19 A. That's correct.

20 Q. And get input?

21 A. That's correct.

22 Q. Any type of?

23 A. Pardon?

24 Q. Any type of closure, whether it's permanent,
25 temporary?

1 A. You know, 930-5 really talks about closures.
2 It doesn't talk about temporary closures.

3 Q. So you would agree that 930-5-14 doesn't talk
4 about temporary closures?

5 A. Yeah, that's correct.

6 Q. Are you aware of any rule or statute that
7 requires UDOT to provide details in its ruling for
8 determination of unsafe condition or crossing?

9 A. Well, what's listed in 930 is they have a
10 certain number of things that they are supposed to
11 look at. And so I would infer, from what I read in
12 there, that their actions ought to be justified. And
13 it's been my experience that that's normally the case.

14 Q. But there's nothing in the rule that says
15 Eric Cheng must write, you know, every possible reason
16 why he wants to close a crossing or says it's unsafe?

17 A. I think he could make things go a lot
18 smoother if he did.

19 Q. Does it say it in the rule, yes or no?

20 A. No -- well. I guess not, no.

21 MS. SPOONER: I have no further questions.

22 THE COURT: Okay, thank you.

23 Mr. Astill?

24 MR. ASTILL: I just have one area that I want
25 to cover.

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REDIRECT EXAMINATION

BY MR. ASTILL:

Q. Now Mr. Hendricks, you just said that UDOT doesn't have to publish in -- under Section 930-5-14 on a temporary closure --

A. Yeah, I guess I should clarify that the section talks about a closure. I don't know that they envisioned circumstances where you would do a temporary closure, so they lay out what's required if you want to close a crossing.

Now, even if you want to close it temporarily I can still see that needing to meet the same requirements because what does that mean, two months, three months, four years, ten years?

Q. So --

A. So if I were UDOT I would probably treat that the same as a closure requirement. Even though, as I testified, 930 doesn't specifically cite "temporary closure."

Q. But it doesn't differentiate between temporary or permanent?

A. Just cites closure.

Q. It just uses that terminology, "closure"?

A. Correct.

Q. Okay.

1 MR. ASTILL: That's all I wanted to clarify.

2 THE COURT: Thank you.

3 Ms. Kamas?

4 MS. KAMAS: Yeah, I just have four questions.

5 THE COURT: Okay.

6 RE CROSS EXAMINATION

7 BY MS. KAMAS:

8 Q. Mr. Hendricks, does the MUTCD require
9 pavement markings in advance of a public crossing?

10 A. It -- in almost all cases. And that's
11 certainly -- if I conducted the surveillance meeting
12 out there that's one of the first things that I would
13 identify is, is needed, and should be included. And I
14 would say that a proper improvement to this
15 intersection would be to place those.

16 Now, pavement markings don't last very long,
17 because of snowplows in our area. So I wouldn't be
18 surprised that they were there at some point in time.
19 The maintenance was probably poor.

20 That's also evidenced by the fact that I can
21 see that there was previously guardrail along edges of
22 the intersection. And clearly one of those edges --
23 one of those end of guardrail has been damaged and was
24 just left lying. Which just speaks to me to be poor
25 maintenance.

1 Q. If pavement markings were gonna be placed,
2 where would they be?

3 A. I'd have to go through and look at MUTCD. It
4 identifies how -- what lengths you do. And it's all
5 based on first identifying where your gates are gonna
6 be located at.

7 Sometimes you have to make engineering
8 judgment, when you have an intersection so close, as
9 to maybe adjustments that you might need to make.
10 Because MUTCD is somewhat of a generic document, and
11 sometimes you have to just apply it as best you
12 understand what it's trying to say.

13 And so without having looked through it
14 specifically I couldn't say exactly where those are
15 located. But I can say that it does identify
16 specifically the lengths that those should be prior to
17 the stop bar. And the stop bar is placed in
18 relationship to the gate.

19 Q. Does the MUTCD require advance warning signs
20 before a public crossing?

21 A. Yes, that falls in the same category. It's
22 definitely something that ought to be there.

23 Q. Can you recall where those are supposed to be
24 placed?

25 A. Again, it kind of falls in the same boat. It

1 is in relationship to that stop bar. And typically
2 there's a yellow "RR" circular sign that's placed
3 between the "X" -- "RR" that's on the roadway in the
4 form of pavement. It falls in that zone. Plus
5 there's another one 150 feet or something in advance
6 of that.

7 Q. And the reason you would recommend that
8 pavement markings and advance warning signs be placed
9 at this crossing is because they're not there now,
10 right?

11 A. Yeah. I mean the society we live in, if
12 there's a problem, the first thing that's gonna happen
13 is the lawyer's gonna say what should have been there
14 and what's not there. So definitely that's something
15 that you would want to place so you can cover yourself
16 a little bit.

17 Obviously from the point of MUTCD it's there
18 intending to warn the public that they're coming up on
19 a crossing.

20 MS. KAMAS: Thank you.

21 THE WITNESS: Uh-huh.

22 THE COURT: Thank you.

23 Ms. Spooner?

24 MS. SPOONER: Nothing further, your Honor.

25 THE COURT: Mr. Astill? Thank you

1 Mr. Hendricks.

2 Anderson Geneva's next witness?

3 MR. ASTILL: That would be Jerry Grover. Can
4 I take just a couple of minutes, your Honor?

5 THE COURT: Sure. Let's come back at about
6 4:20.

7 (A recess was taken from 4:12 to 4:27 p.m.)

8 (Mr. Grover was sworn.)

9 THE COURT: Thank you, have a seat right
10 there.

11 JERRY GROVER,

12 called as a witness, having been duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ASTILL:

16 Q. Mr. Grover, I'm just gonna proffer that
17 you're currently employed by the Anderson Geneva
18 Ownership Group to -- as a site engineer at the Geneva
19 project, correct?

20 A. Yes.

21 Q. And as site engineer your responsibilities
22 include understanding all the utilities, road
23 crossings, railroad crossings, and the engineering
24 information with regard to the site?

25 A. Yes.

1 Q. And in addition to that, you've participated
2 in development designs, and subdivision development
3 and design, and project management, correct?

4 A. Yes.

5 Q. Okay. What's your educational background?

6 A. I have a bachelor's degree in geological
7 engineering from BYU in 1987. I have a master's
8 degree in civil engineering from the University of
9 Utah, 1990. I'm a licensed professional engineer in
10 the State of Utah. I'm a licensed professional
11 geologist in the State of Utah. And also along with
12 the engineering I'm a structural engineer, certified,
13 as well.

14 Q. Okay. So you have the civil engineer,
15 structural engineer, and geologist?

16 A. Yes.

17 Q. Okay. Give me a little of your work history.
18 I know you've worked for Geneva -- or for the -- yeah,
19 for the former Geneva plant owners for a period of
20 time, and then you had some other experience beyond
21 that.

22 A. Yeah. After my bachelor's degree I worked as
23 a title examiner associated with a law firm in Salt
24 Lake. Working on all kinds of titles issues. After
25 my master's degree I was employed by Geneva Steel as a

1 senior environmental engineer. Was responsible for
2 solid waste issues. Wastewater, including drains, et
3 cetera. Culinary water lines.

4 In 1994 I -- well, '95 I became a Utah County
5 Commissioner for Utah County. Served in that capacity
6 till 2006. As a Utah County Commissioner my portfolio
7 assignment, as an engineer, was overseeing public
8 works. Which involved all road construction,
9 upgrading of railroad crossings, building of
10 buildings, and anything related to public works.

11 Q. So during the course of your tenure as a
12 county commissioner did -- within the County was there
13 railroad crossing activities, construction activities
14 that took place?

15 A. Yeah. There was a major initiative, driven
16 by federal funds, to upgrade a bunch of crossings. I
17 can't remember the exact number, but there was
18 something like 28 to 34.

19 And we had to evaluate which crossings to
20 close in order to -- you had to close so many and be
21 approved in order to get the federal funds to do that.
22 That was done -- Paul Hawker was the county engineer.
23 He was kind of the lead on that.

24 Q. Okay.

25 A. But I did review, from a managerial level,

1 all those things.

2 Q. Okay. So you oversaw his department and the
3 work that Mr. Hawker did?

4 A. Yeah. I wasn't direct supervisor. But when
5 it came up to the level of funding, approving, you
6 know, the contracts, all those kinds of things, it was
7 reviewed on our level.

8 Q. Okay. All right. I'm gonna refer you to the
9 County vacating resolution that we've used as -- or
10 marked as Exhibit No. 8. Let me ask you to take a
11 minute to peruse that. And I think you've read that
12 before?

13 A. Yes.

14 Q. Now, we've talked at length and you've been
15 present during the testimony that the -- about the
16 vacation of that -- of the particular portion of the
17 Geneva property, correct?

18 A. Yes.

19 Q. Based on the testimony you've heard, and your
20 understanding, and the -- your review as the site
21 engineer, is it your understanding that the vacating
22 ordinance vacated the crossing as it existed in 1942?

23 A. No.

24 Q. Okay. And in fact doesn't it ref -- doesn't
25 it read in there that the -- that Geneva Steel, or I

1 guess at that time it was the Defense Corporation, was
2 building a new access road for Vineyard Town?

3 A. Yes.

4 Q. And really it wasn't Vineyard Town at that
5 time?

6 A. It was in Utah County at the time.

7 Q. All right, okay. So they were building the
8 new access road. And the new access road they built
9 was, in fact, the north-south leg of Vineyard Road,
10 correct?

11 A. Yes. Along the tracks there.

12 Q. And that was made so that it would connect
13 with the existing east-west travel road that existed,
14 correct?

15 A. Yes.

16 Q. So as you read that does it -- you know, I
17 know you can't get into the minds of the county
18 commissioners at that time. But they were, they were
19 pretty careful to make sure they were reserving access
20 to that -- the existing road and access to the lake
21 road, correct?

22 A. Correct. That's the way you have to connect.
23 There's no other way. You know, if you're vacating
24 this side you've gotta come in the connector road.
25 That's what it would serve to do, is give access.

1 Q. Okay.

2 A. To that other existing road on the lake.

3 Q. And if, as was proposed -- or as suggested by
4 some of the exhibits, including this Exhibit 133, if
5 in fact the road straddled the section line, as is
6 depicted in Exhibit 133, the County would have been
7 vacating half -- the north half of their east-west
8 county road, correct?

9 A. Based on that depiction, yeah.

10 Q. That doesn't seem likely, does it?

11 A. No.

12 Q. And, I mean, given that they went to great
13 lengths to preserve a road that -- within the vacated
14 area at the west end, it seems likely they would have
15 wanted to make sure this was correct, right?

16 A. Yes.

17 Q. All right. Now, in your examination of the
18 records of the Geneva site are you aware that at some
19 point the geometry changed on the site of -- or at the
20 crossing?

21 A. Yes.

22 Q. Okay. And the original crossing geometry
23 would have come -- basically from that east-west road
24 it would have crossed straight across into -- east to
25 the Geneva property, correct?

1 A. It -- yes.

2 Q. Okay. And at some point that's -- that angle
3 changed?

4 A. Correct.

5 Q. I'm gonna refer you to, let's see. What
6 we've marked as Exhibit 24. And have you explain that
7 to me as best you can.

8 A. This is a depiction -- well, actually a
9 survey of the new crossing. In 1972 they did a
10 centerline. They took the shoulders, surveyed it in,
11 and marked it. They also identified certain design
12 features that they observed. And also listed things
13 that Geneva was going to do as part of that
14 realignment. Or at least complete --

15 Q. Okay.

16 A. -- a few other items.

17 Q. And you are aware -- in fact, you -- where
18 did that record come from?

19 A. We have a warehouse of about 120,000 drawings
20 that I went through. So it came from the original
21 Engineering Department of U.S. Steel at the time.

22 Q. Okay.

23 A. It was in '72.

24 Q. So as this crossing issue came up you went
25 through those records and that's what you found?

1 A. Yes.

2 Q. Okay. Now, in that -- you mentioned it
3 refers to something that Geneva Steel was gonna do.
4 Can you tell me what you meant by that?

5 A. In their general notes they note that they're
6 gonna relocate the existing chain-link fence to clear
7 the new road alignment. There's guardrail to be an
8 amer -- Ambridge Highway, beam guardrail.

9 They also talked about installing a 36-inch
10 pipe in the flow line of the existing ditch, which
11 would be on the east side, then backfill to the
12 natural grade and bank run. So those would be the
13 things that are listed in the general notes.

14 Q. Okay. So they were gonna provide fill, is
15 that what you're referring to there?

16 A. Well, they were going to backfill the -- when
17 they -- when you had the skew change there is a
18 culvert that runs, you know, underneath that to
19 accommodate the ditch that's the through ditch. And
20 so they had to do that.

21 There's also kind of a cross-section that
22 indicates -- it's not quite clear, but. It looks like
23 Geneva may have provided the slag, because they do
24 list the grade of slag. But they don't list any of
25 the asphalt pavement grade, which would be unusual if

1 that's, you know, they were the ones doing it. So.

2 Q. And I --

3 A. I don't -- that part was probably done,
4 because they surveyed in the road.

5 Q. Okay. You've also heard the testimony and
6 reviewed the Commission minutes of 1970 where it was
7 being proposed by the management of Geneva Steel to
8 create that new -- or to relocate that --

9 A. Yes.

10 Q. -- crossing and change the skew? And they
11 proposed in that meeting that the County repave the
12 road and take responsibility for the, for the new
13 road, correct?

14 A. Yes. The new alignment.

15 Q. Okay. Now, do you see anything in that map
16 and in those plans that you're looking at that is
17 inconsistent with what was being proposed at that
18 time?

19 A. Well, there was a discussion of it being
20 600 feet to the north. That was one option. That
21 would be inconsistent with this drawing. But
22 everything else seemed to be accurate. They talked
23 about a guardrail.

24 Q. Okay.

25 A. Providing that, which this indicates.

1 Q. Does that map depict any railroad crossing
2 signals, or --

3 A. It does not.

4 Q. -- equipment?

5 A. Does not have them, no.

6 Q. And so would -- do you think you're able to
7 conclude from that that Geneva Steel wasn't
8 constructing or installing railroad equipment, and
9 signage, and control devices?

10 A. If they had installed it, it would have been
11 on the drawing.

12 Q. Okay.

13 A. So.

14 Q. Okay. So nothing there to indicate that the
15 old Geneva Steel owners built all of the improvements
16 for that changed -- change in crossing design?

17 A. The -- repeat that again.

18 Q. Okay. There's nothing in that -- I'm sorry,
19 it was a bad question. But there's nothing in that
20 plan that you have in front of you that reflects that
21 the former Geneva Steel owners provided for the
22 signage equipment and warning equipment that the
23 Railroad would have required for that crossing?

24 A. Yeah, there's no indication.

25 Q. Okay. Now, you've gone out and walked that

1 site and -- to look at, you know, this question of
2 maintenance that has been brought up over and over.
3 And is there any indication in -- I think you've
4 already testified there's no indication in that plan
5 that reflected that Geneva Steel was gonna repave the
6 road, correct?

7 A. Correct.

8 Q. And as you've gone out and walked the site do
9 you see evidence of County maintenance or Vineyard
10 Town maintenance of the roadway?

11 A. Yes.

12 Q. And tell me what -- how you come to that
13 conclusion.

14 A. Well, I examined all the asphalt overlays
15 that are present there. You have a few multiples.

16 Q. Okay.

17 A. And followed them clear out. Clear to the
18 west and clear to the south. You have a continuous --
19 you can -- you look at the asphalt and you can tell,
20 based on the mix and matrix, whether it's a consistent
21 overlay.

22 And you have the overlay that goes down both
23 lengths of the road that continues up to the tracks.
24 There's some patching right on -- well, not anymore.
25 They've ripped all -- a lot of that out. But it went

1 up and then you have an interior, between the tracks,
2 asphalt section.

3 And you also have, on the other side of the
4 tracks, an asphalt overlay. And --

5 Q. Are you talking about both the west and the
6 east approach to the tracks?

7 A. Yes.

8 Q. An asphalt overlay?

9 A. Yes.

10 Q. Multiple overlays?

11 A. Yes. There's -- depending on where you
12 was -- where you're at, there was a number of overlays
13 that you had. But -- and there was also, on top of
14 that, what you call a, a chip seal, BST -- bitumen
15 surface treatment -- that had occurred on top.

16 Q. Okay.

17 A. That went all the way to where the tracks
18 were, continuous all the way down the road and -- both
19 south and --

20 Q. Okay.

21 A. -- and west.

22 Q. So I --

23 A. It was not on the internal, but.

24 Q. In those overlays that seem to be continuous
25 with the county road, both directions -- now the

1 Vineyard Road both directions -- and that -- and the
2 overlays that extended across the east approach to
3 the, to the crossing, you're -- are you saying that
4 those all looked like they were -- there was an
5 overlay placed at the same time?

6 A. Yes. There was, there was one overlay that
7 came in from the east side, top overlay, that came to
8 about -- not quite to the section corner there.

9 Q. Okay.

10 A. So there was at least -- Geneva did one --
11 presumably, you know, based on that. That it was
12 similar to what the parking lot overlay was that came
13 out that far into the right-of-way.

14 Q. Into the right-of-way? So you're saying
15 that --

16 A. You can, you can all see it on the --

17 Q. -- there's, there's overlays that extend to
18 the, to the west that are all consistent --

19 A. Yeah. And I could see --

20 Q. -- style?

21 A. And if you walk down there very --

22 Q. And, and even over across this -- on the east
23 approach?

24 A. Yes. They go at least to here. This one was
25 overlaid on top. I couldn't really see underneath

1 because there wasn't a lot of ability to look at the
2 side section of the overlay.

3 Q. Okay. But you could see the overlay that was
4 consistent with overlays here went all the way across
5 the tracks into this east approach area. You weren't
6 able to see exactly how far it went?

7 A. Yeah. But when I say "across," meaning they
8 obviously weren't paving in the tracks, or between
9 the, between the individual set of tracks. But there
10 is a section right here. There's a cement separation
11 and an, and an asphalt.

12 Q. And an asphalt overlay here?

13 A. Yes. There's one spot in the middle that has
14 an asphalt overlay.

15 Q. Okay. And was that asphalt overlay
16 consistent with any of the other overlays that you
17 saw?

18 A. Yes.

19 Q. Okay. So from that would you conclude that
20 the -- whoever was doing this road overlay --

21 A. Yeah. I mean, it's --

22 Q. -- for Vineyard Road continued across the
23 tracks and made -- and did asphaltting all the way
24 across the railroad tracks?

25 A. Yes.

1 Q. To the east?

2 A. (Moves head up and down.)

3 Q. And it's -- you can't tell for sure how far
4 into the east approach they went?

5 A. Yeah. I would say there -- it did appear
6 there was one overlay under the base level that was
7 further down, or that I observed, that I couldn't
8 trace that one over.

9 Q. Okay.

10 A. Which would be like the third level down, so.

11 Q. Okay.

12 A. At least in between the tracks.

13 Q. All right. So it looked like, again, County
14 maintenance or Vineyard Town maintenance -- really,
15 you know, I guess we're probably going back -- given
16 the age of the asphalt, we're probably going back to
17 Utah County maintenance would have done asphaltting up
18 and down Vineyard Road and across the railroad tracks
19 onto the east approach?

20 A. Yeah. I mean, you would not expect --
21 basically you've got that length of an overlay. It
22 was -- it looked like a complete road overlay that was
23 done at the time.

24 Q. Okay. All right. Now, again going back to
25 your experience as a county commissioner. You were

1 overseeing the Public Works Department. You wouldn't
2 have been involved in their day-to-day business, but
3 does it surprise you that they wouldn't have a
4 specific record of when they did an asphalt overlay of
5 that road?

6 A. It doesn't surprise me, really.

7 Q. And you -- did you find instances of that all
8 the time? Within the County?

9 A. Where they didn't keep? Yeah, they, they
10 didn't rarely -- they rarely would keep a record of
11 maintenance-type overlay.

12 Q. Okay.

13 A. You know, if they're constructing a totally,
14 you know, a mile length of road or something, you
15 know, getting right-of-way and all that, then that
16 would tech -- typically be documented. But whether
17 you would retain those records over time. There was a
18 retention schedule for records, and so some of those
19 may not have been kept.

20 Q. Okay. All right. Okay. Now, during your
21 employment with Geneva Steel, that was in what years,
22 '90 to '95?

23 A. Yes.

24 Q. Okay. During, during those years, 1990 to
25 1995, was, was there ever a closed gate at the east

1 approach to the Geneva property? I'm sorry, it would
2 have been the west approach to Geneva but it's the
3 east approach of the railroad crossing.

4 A. You're talking?

5 Q. So I'm talking about the dividing line
6 between the Railroad right-of-way and Geneva property?

7 A. I never observed the gate closed.

8 Q. Okay. And in fact the road ran continuously
9 into Geneva?

10 A. Yes.

11 Q. And was there a point of control where Geneva
12 essentially monitored who came in to the rest of the
13 plant area?

14 A. Yeah, there was a guardhouse -- you would
15 come in and park. And then there was a guardhouse
16 entry where you would have to, you know, show your,
17 your ID. Who you were going to be seeing if you were,
18 you know, not a Geneva employee, for example.

19 Q. Okay.

20 A. And then they would permit you through. It's
21 typically a walk through, because that's where
22 employees would come and park and then walk. This
23 particular parking lot served the open hearth foundry
24 area.

25 There was also -- you could continue to the

1 north with another parking lot for the rolling mill
2 people. So this would have been their primary -- for
3 those sections of the plant, that would be their
4 primary entrance point.

5 Q. So the majority of employees at Geneva Steel
6 would have used this point of access and entry?

7 A. I don't, I don't know if you can say
8 "majority" exactly, because the coke plant entered
9 from the Geneva Road side.

10 Q. Okay.

11 A. A different gate. The pipe mill, the pipe
12 mill didn't operate all the time. The large foundry
13 was closed. That's clear at the north end. They had
14 a parking lot. They would come in off of Geneva Road
15 and 1600 North.

16 And then your central maintenance and your --
17 things to the south would come in through what's --
18 would be the gate that was by the administration
19 building.

20 Q. Okay.

21 A. So I don't know majority, but a significant
22 number.

23 Q. Now, based on -- you, you've seen the FRA
24 reports and you've heard the testimony that's gone on
25 here. The FRA reports reflecting 3,725 trips per day

1 with automobiles over that crossing. Is that a fair
2 number, based on your knowledge and experience of the
3 site and the activity?

4 A. It would be consistent, yeah.

5 Q. Okay. Could be more or a little less but,
6 you know, it's about right?

7 A. Yeah. Like I say, certain portions of the
8 plant were you open -- you know, they didn't run the
9 structural mill, for example, for a long time. So
10 there would have been some fluctuations in the number
11 of employees.

12 Q. But these particular areas, they would have
13 been active all the time?

14 A. Yeah. Only portions of them would have been
15 inactive, not.

16 Q. Yeah.

17 A. Not the majority of them.

18 Q. And I think you've testified in the four
19 years -- five years that you were employed there you
20 didn't ever observe a closed gate?

21 A. I did not.

22 Q. Okay. As a county commissioner did you ever
23 visit the site?

24 A. Yeah, I did, on multiple occasions.
25 Specifically the west gate. I came in there at least

1 once with some Cub Scouts, just to show them around.

2 I mean --

3 MR. PICKETT: Oh, I'm sorry. Go ahead and
4 finish.

5 THE WITNESS: Just to take a look. We didn't
6 enter through the guardhouse or anything.

7 Q. (By Mr. Astill) You just drove in?

8 A. Yeah.

9 MR. PICKETT: And I apologize, could I
10 interrupt? I didn't hear the question clearly. Could
11 you please read that previous question back?

12 (The previous question was read back as
13 follows:

14 "As a county commissioner did you
15 ever visit the site?")

16 MR. PICKETT: Thank you.

17 THE WITNESS: I mean, it wasn't the context
18 of being a county commissioner. I just, I was Cub
19 Scout leader.

20 Q. (By Mr. Astill) Okay. All right. But
21 during that time as a county commissioner did you have
22 other occasions to visit the site?

23 A. Yes.

24 Q. Did you enter through the west gate?

25 A. I did not.

1 Q. Okay. In living in Utah County did you ever
2 drive by that site from time to time?

3 A. Yeah. As a county commissioner I did, too,
4 because I was on the board of directors of the Solid
5 Waste District, which is found immediately northwest
6 of the transfer station of the Geneva plant. And so
7 often -- if, if the gates were down on Geneva Road,
8 the railroad gates, if you're coming up Geneva Road
9 this was a way you could get around.

10 Q. Okay.

11 A. And still try to be on time. So I did drive
12 by that. I can't tell you exactly how many times, but
13 with some regularity.

14 Q. Okay. And in that -- in those -- in all that
15 time and those drive bys did you ever observe a closed
16 gate?

17 A. I did not notice that it was closed.

18 Q. Okay. All right. As far as you know, once
19 that was -- that crossing was, was modified, you know,
20 is it your understanding that it was used for -- since
21 that -- those plans were -- that survey was done in
22 1972?

23 A. Yes.

24 Q. That was ref -- that reflects a -- does that
25 reflect a survey of -- as it existed then?

1 A. Yes. They went out and surveyed the
2 reconstructed railroad.

3 Q. The reconstructed crossing?

4 A. Yes.

5 Q. Okay. So to your knowledge that was used
6 then since 1972, at least?

7 A. Yes.

8 Q. Okay. Now, as a county commissioner -- I'm
9 gonna rely on some of your experience there again.
10 Are you aware that highway warning signs and pavement
11 markings often go missing on lonely county roads?

12 A. Yes.

13 Q. They get shot?

14 A. Stolen a lot.

15 Q. Stolen?

16 A. Yeah. We actually had --

17 Q. Hit?

18 A. Yes. We had a system where we actually
19 bugged the signs, and then -- they had a radio. Find
20 out where they went and catch the perpetrators. And
21 they usually have a house full of signs.

22 Q. So if --

23 A. Not uniquely railroad, they steal everybody's
24 but.

25 Q. Yeah. So if there were warning signs up

1 there at one point in time, it's -- if nobody was
2 maintaining them or being -- or paying attention they
3 could have gone missing and nobody knew?

4 A. Yeah, very possible.

5 Q. Okay. And are you, are you aware that there
6 were times when, again, some of the less-used roads or
7 less-traveled roads got -- the signs disappeared and
8 they -- nobody knew it -- nobody paid attention for
9 years?

10 A. Yeah. That was something we were trying to
11 improve in the '90s, was to actually do some GIS. Get
12 our signage mapped in properly, so when one went
13 missing we knew it was missing. Have people, you
14 know, our public works employees were supposed to
15 watch for, you know, missing signs and report them.

16 Q. All right. Now, by 1990 Vineyard Town had
17 taken over responsibility for this road; is that
18 correct?

19 A. Yeah, '89 -- incorporated '89, I believe.

20 Q. Okay. So the County wouldn't have been
21 putting up warnings signs in this area after 1989?

22 A. No.

23 Q. Okay. Now, do you know whether there were --
24 I mean -- well, let me. Yeah, let me ask you this.
25 Are you ever aware of having seen an advance warning

1 sign on that road, anytime?

2 A. I don't recall seeing one, no.

3 Q. Okay. All right. I'm gonna refer you to
4 Exhibit 20. Or let's see, 19 and 20. You've seen
5 these documents before, haven't you?

6 A. Yes.

7 Q. Nineteen being the Town of Vineyard Roadway
8 Plan. And 20 being the Town master plan?

9 A. Right.

10 Q. Were you involved in the process of
11 getting -- working with Vineyard Town to get those
12 road plans and master plans adopted?

13 A. Yes.

14 Q. And for how many years were you involved in
15 working with Vineyard Town to get those adopted?

16 A. Since I came to work for Anderson Geneva --

17 Q. And when was that?

18 A. -- in 2000 -- July 2006, I think, is when I
19 was contracted. I probably started August, I think.

20 Q. Yeah, okay. So it took a couple of years to
21 get all that work done?

22 A. Yeah. I was just part time for six months,
23 so.

24 Q. Right. At any time during that period are
25 you aware of anybody in Vineyard Town or at Anderson

1 Geneva speaking about 400 North as a -- anything other
2 than a public crossing?

3 A. No.

4 Q. Okay. Now, you've heard some testimony from
5 Mr. Marshall about a development plan and, and a map
6 that's been shown as an exhibit here that shows
7 different crossings, realignment of the Provo
8 industrial lead spur line, and some closures and
9 crossings, and above -- you know, grade-separated
10 crossings, et cetera. You're aware of that?

11 A. Yes.

12 Q. And you were aware of the discussions going
13 on at the time that that map was created, weren't you?

14 A. Yes.

15 Q. And were you involved in assisting in the
16 creation of that map?

17 A. I wasn't involved in any of the meetings, but
18 yeah, I did review the map from CRS when they prepared
19 it.

20 Q. Okay. And you spoke with the CRS engineers?

21 A. Yes.

22 Q. Okay.

23 A. Aaron, I can't remember his name.

24 Q. Was there ever any intent to offer closures
25 of the 400 North crossing without some -- all of the

1 other events taking place that are displayed there?

2 A. No.

3 Q. Okay. Now, as an engineer and as a former
4 county commissioner are you aware of how public
5 highways are created by use?

6 A. Yes.

7 Q. And what's the standard for that?

8 A. Ten years continuous use by the public.

9 Q. Okay. And if, if for ten years the public
10 crossed the Geneva entry, whether it be Geneva
11 employees or people coming to help -- you know, coming
12 in and out of the Geneva plant -- is that -- does that
13 qualify for that?

14 MR. PICKETT: Objection, calls for a legal
15 conclusion.

16 THE COURT: Sustained.

17 Q. (By Mr. Astill) Now, in the course of your
18 research, Mr. Grover, you came across some 1943
19 decisions of the Public Service Commission, correct?

20 A. Correct.

21 Q. And as part of that did you review those
22 files?

23 A. Yes.

24 Q. And -- let me find this.

25 In those Public Service Commission records,

1 what did you find there?

2 A. There was -- in that '43?

3 Q. Yes.

4 A. Basically, the Railroad was adding an
5 additional line to the crossing, so they had to go to
6 the Public Service Commission to get that approval for
7 a series -- they were crossing a series of, of
8 highways, public highways.

9 That particular crossing was identified as
10 one of those. There was also input sought from -- or
11 input from the Utah County engineer and I think the
12 State Road.

13 THE COURT: Can you tell me which exhibit
14 that is again?

15 MR. ASTILL: You know, I'm, I'm trying to
16 find it, your Honor, but I. I'm not seeing it in my
17 numbered exhibits, and I don't know why.

18 THE WITNESS: It's 1943 Decision or
19 something?

20 MR. ASTILL: Yes, 1943 Decision, and I'm not
21 seeing it on my list. We've certainly discussed it
22 enough.

23 MR. PICKETT: I'm not sure if it's the same
24 pages as you are looking for, but I believe in the
25 U.P. exhibits starting on page 75 there's some

1 documents.

2 MR. ASTILL: Is it? Let's see. Let me
3 review that.

4 MR. PICKETT: It actually may begin on 70 --
5 no. Yeah. It's in that zone if you would like to
6 look.

7 MR. ASTILL: Yeah, okay.

8 MR. CHURCH: Seventy-four.

9 MR. ASTILL: Yeah, it's page 74.

10 MR. CHURCH: Seventy-four of the --

11 MR. ASTILL: And goes through --

12 MR. CHURCH: Seventy-five, seventy-six.

13 MR. ASTILL: I think it goes all the way
14 through to...

15 Q. (By Mr. Astill) Let me hand you this,
16 Mr. Grover. It's marked as Union Pacific Document
17 No. 74. Tell me if you've seen that document.

18 A. Yes.

19 Q. And what is that document?

20 A. It's case file -- or PO, I guess, 2710. Was
21 the -- Denver Rio Grande before the Public Service
22 Commission. I'm not citing all the particulars, but
23 they were basically putting a second line in. Rail
24 line on the west of where they currently had a line.
25 And were crossing highways. Public highways.

1 Q. So apparently the procedure then was to go to
2 the Public Service Commission if they needed a -- to
3 cross a highway with a, with a railroad?

4 A. Yes.

5 Q. Okay. And from that file is this crossing at
6 400 North identified?

7 A. Yes. There's a -- they talk about it in
8 terms of the milepost. There's also a map that
9 depicts it.

10 Q. Okay. And as part of that, part of that
11 hearing record -- or I'm sorry, not -- part of the
12 record of the Public Service Commission, is there a
13 representation made to the Commission by the Railroad?

14 And let me, let me just back up a little bit.
15 Was this a petition filed by the Railroad?

16 A. Yes.

17 Q. By D&RGW?

18 A. Correct.

19 Q. Okay. And in that petition did they
20 represent something to the -- about this crossing to
21 the Public Service Commission?

22 A. The one they were proposing?

23 Q. Yes.

24 A. Yes. They were proposing to cross a series
25 of county highways.

1 Q. Okay.

2 A. So.

3 Q. And so in identifying the crossings they
4 referred to them as public -- as county highways?

5 A. Yeah. The one at issue they called:

6 "A county highway crossing to Geneva
7 Steel Plant at milepost 708 plus
8 995 feet."

9 MR. PICKETT: Your Honor, for sake of clarity
10 could I ask that we refer specifically to where within
11 the document the references are being made?

12 THE WITNESS: Okay. It would be...

13 THE COURT: What page?

14 THE WITNESS: It would be the third page,
15 which is page 2 of the Report and Tentative Order.

16 THE COURT: So Exhibit --

17 MR. ASTILL: Is it marked?

18 THE COURT: -- 76?

19 MR. ASTILL: Oh, yeah, 76.

20 THE WITNESS: It's Exhibit 76? Oh. Oh, I
21 see. Forgive me, I'm.

22 Q. (By Mr. Astill) No, I, I'm challenged.

23 A. I was looking at the actual page number.

24 Q. Okay. So in that document it refers to this
25 crossing, as it existed then in 1943 --

1 A. Yes.

2 Q. -- as a county highway?

3 A. Correct.

4 Q. And that's from --

5 MR. PICKETT: Objection to the extent that --
6 the document speaks for itself as far as what it says.
7 And due to the nature of this proceeding I believe
8 that the testimony expresses a legal opinion as to
9 its, its meaning.

10 THE COURT: Overruled.

11 Q. (By Mr. Astill) There, there are some other
12 pieces of evidence in that file, are there not? Or
13 pieces of information?

14 A. Yes.

15 Q. And isn't there a letter from the Department
16 of Transportation? Or the State Road Commission?

17 A. Yes.

18 Q. And --

19 A. And a departmental memorandum from the State
20 Road.

21 Q. And does the -- what -- does the
22 department -- departmental memorandum refer to this
23 crossing? Or, or does it make a specific reference?

24 A. It, it refers to crossing eight highways, six
25 of which are designated as county roads and two of

1 which are designated at state highways. Namely U-114
2 and SR-78. It says the purpose of the second main
3 line track is to serve the Geneva Steel plant without
4 interruption.

5 Q. Okay. So the State Road Commission was more
6 concerned with their, their state highways that they
7 maintain --

8 A. Yes.

9 Q. -- and didn't reference this particular one?

10 A. Right.

11 Q. Okay. Is there some information from Utah
12 County?

13 A. Yes.

14 Q. And what does that say about this road?

15 A. It -- let's see. Utah County Surveyor Robert
16 Wilson, on Utah County letterhead, said he went over
17 the D&RG Railroad today from the viaduct on West
18 Center Street north to the Geneva Steel plant and
19 inspected the grade crossings as identif -- indicated
20 on the blueprint. And made a report and
21 recommendation.

22 Q. Did he make a recommendation specific to this
23 crossing?

24 A. Yes.

25 Q. And what did he recommend?

1 A. Entrance into steel plant visibility clear.
2 Highway grade should be raised on the west side.

3 Q. Okay. So he's talking about a county
4 highway?

5 A. Yes.

6 Q. Entering the steel plant?

7 A. Right.

8 Q. Okay.

9 A. And that was what's depicted on the
10 blueprints.

11 Q. All right. And then there's a blueprint --
12 or a map and a depiction there?

13 A. Yeah. I mean, the only difference is there,
14 there was yellow ticks. The yellow -- they actually
15 identified those in yellow on.

16 Q. On the originals?

17 A. Yes, on the originals.

18 Q. Okay. So --

19 A. This copy doesn't show the color.

20 Q. Is there another record that you found in
21 the -- at the Public Service Commission?

22 A. Yes.

23 Q. And would you indicate on the top of that
24 what that -- what page number or reference number that
25 is?

1 A. Eighty-three.

2 Q. Okay. And what is that?

3 A. It's Case 2714, Amended Application.

4 Q. Who made that application?

5 A. Union Pacific Railroad company.

6 Q. Okay. So the prior application was by D&RGW
7 Railroad, but what was this application for?

8 A. This was for a line into Bunker Feed on
9 Geneva Road.

10 Q. Okay. And did it make reference to this
11 crossing?

12 A. It had an attached map that was a state
13 highway -- State Road Commission of Utah map showing
14 the area. And they identified that crossing -- let's
15 see if I can figure out.

16 Q. Can you tell me which page that's on?

17 A. Yeah, I'm trying to figure out which page
18 we're --

19 Q. Okay.

20 A. It's upside-down also. Yeah, this would
21 be -- I can't -- page number is covered in black, so.
22 Eighty-three, 84. This would be 85, I'm guessing.

23 Q. Just in sequence it would be page 85 in that
24 exhibit?

25 A. Yeah, you've got 83. It's just the -- where

1 they stamp it it goes into the black, so you can't --

2 Q. Okay.

3 A. -- read it.

4 Q. All right. So that's where -- there's,
5 there's a county highway map there?

6 A. Yes.

7 Q. And does it show this crossing?

8 A. Yes.

9 Q. And does it identify it as a county highway?

10 A. Yes. It says -- it calls it "Highway
11 Crossing." They identify a highway crossing signal.

12 Q. Okay.

13 A. And they have the FACS number associated with
14 it.

15 Q. Okay. Now, that case, you've -- you
16 described what that petition was filed for and I, I'm
17 not sure I remember what you -- what it was about.

18 A. They were just trying to get a spur across
19 Geneva Road over to the Bunker Feed Company.

20 Q. Okay. So it didn't necessarily involve this
21 specific crossing?

22 A. No.

23 Q. But the exhibit they attached has -- shows a
24 county road map with a highway crossing depicted
25 there?

1 A. Yeah, state road map.

2 Q. State road map?

3 A. Yeah.

4 Q. Okay.

5 MR. PICKETT: I'm sorry to interject, but I,
6 I'm not seeing where on here that reference is. If
7 you could just point it out to me?

8 THE WITNESS: Okay, you've got it -- first of
9 all you've gotta turn it upside-down, because -- I
10 don't know why the Railroad does that, but it always.
11 North so north is going up. And --

12 MR. PICKETT: Oh, got it. Thank you.

13 THE WITNESS: And then you kind of see where
14 it comes across. There's a shaded area where they
15 talk about the Defense Plant Corporation/Geneva Steel.
16 You can see its outline.

17 MR. PICKETT: Okay.

18 THE WITNESS: Right here.

19 MR. ASTILL: Yeah. You want to -- why don't
20 we come around up here.

21 THE COURT: Why don't you show him?

22 THE WITNESS: Okay. Yeah, this here. That's
23 (inaudible.)

24 (The reporter asked the witness to speak up.)

25 THE WITNESS: Excuse me. You got Defense

1 Plant Corp. here, which is -- they've kind of
2 shaded -- tick marked the boundary of the plant. Goes
3 down. That would be Geneva Road coming up here. This
4 is the road around on the lake.

5 And then this is 400 North right there. And
6 then that's the -- that little (inaudible.)

7 (The reporter asked the witness to speak up.)

8 THE WITNESS: That little arrow and a label,
9 FACS 164-A. Perhaps a little 1, I can't tell.

10 MR. PICKETT: Okay, thank you.

11 THE WITNESS: Was that clear?

12 THE COURT: Uh-huh.

13 Q. (By Mr. Astill) Mr. Grover, as -- again, as
14 part of your duties as site engineer have you
15 investigated the status of various crossings around
16 the Geneva site?

17 A. Yes.

18 Q. And --

19 A. Also when I was an engineer at Geneva Steel
20 before I had water responsibility, so.

21 Q. Okay.

22 A. Utility crossings as well.

23 Q. Okay. So --

24 A. Licenses.

25 Q. I think you heard Mr. Marshall testify that

1 there's some private crossings and -- into the Geneva
2 property on the -- from Geneva Road; is that correct?

3 A. Correct.

4 Q. Okay. And how many private crossing licenses
5 are there involving Geneva Steel or our predecessor
6 owner and Union Pacific?

7 A. In 1940 -- there were a few that were added
8 since --

9 Q. Okay.

10 A. -- up on the north end, because the pipe mill
11 didn't exist in 1942. That was added in '56.

12 Q. Okay.

13 A. So there are two up there that would have
14 been added then. There's the nitrogen plant entrance
15 on Geneva Road that was sold in -- nitrogen plant was
16 sold in '82. That's a private crossing entrance.

17 There are two south of that on Geneva Road
18 that were to Chemtronics Gas, which then essentially
19 became Air Liquide. Again, this is across the spur,
20 not the main line, on Geneva Road.

21 Then there's an 800 North -- oh, there's
22 Prax -- there's a Praxair. That was added in about
23 '93, when they came in as a lessee to Geneva in
24 support of the Q-BOP furnace that was put in. And
25 that, that one I have not actually seen, it was just

1 represented to me that Praxair had that one.

2 Then the one -- there's 800 North, a private
3 crossing, again on the spur. There was one -- there
4 was actually a footbridge crossing that was granted
5 back in the '50s for a period of time, that expired
6 over that spur line, as a private crossing.

7 Q. Okay.

8 A. And then on the -- and there are multiple --
9 there was also, I believe, a loading dock for the
10 constructor -- I think it was probably early on in the
11 construction, as I recall -- where they offloaded
12 along Geneva Road.

13 As far as utility crossings, there are a
14 bunch on the east side. On the west side there,
15 there's a water line. There's a couple water lines
16 south, I believe, of the 400 North.

17 There was a water line that was just north of
18 the crossing and licensed a 24-inch culvert. What
19 happened, they diverted the ditch. The ditch did not
20 go there. The plant was constructed, they constructed
21 the ditch. So they got a crossing there to divert the
22 water. They brought it up to north of 400 North and
23 then brought it over underneath and under the tracks.

24 There was a large license for, we call them
25 the "tunnels." The west side of the tracks had a

1 330-acre retention pond which handled all the
2 non-contact cooling water for all the furnaces, so
3 there was a large tunnel constructed under the tracks.

4 Basically -- you know. And that required a
5 license. And there was some associated lines with
6 that, like telecom line later. And then there was
7 another culvert to the north, which was our main drain
8 line.

9 Again, all these had license -- private
10 licenses. Utility licenses.

11 Q. So --

12 A. Were combined -- some of them were combined
13 licenses.

14 Q. So to your knowledge is there a single
15 crossing across either the main line or the spur line
16 that surround or, or pass through the Geneva property
17 that wasn't either a public crossing or didn't have a
18 private crossing agreement?

19 A. Yeah, there's none. That's -- the only one
20 that didn't have a private crossing agreement was the
21 west entrance.

22 Q. And --

23 A. The 400 North.

24 Q. 400 North? Okay. All right. And you
25 mentioned the ditch. There, there was some discussion

1 with -- and you heard the testimony of -- I've
2 forgotten the name of the surveyor. Mr. Clark. About
3 trying to locate a ditch somewhere on -- you know, the
4 old ditch crossing on the site?

5 A. I think he was looking for a bridge.

6 Q. Looking for a bridge for the old road?

7 A. Yeah, it wouldn't have existed.

8 Q. Okay. And the reason it wouldn't exist is,
9 is what?

10 A. Because the Lake Bottom Canal, which that's
11 like -- it's called the "Lake Bottom Canal" -- that
12 crossed over clear to the south. And, I mean, I can
13 show you where it went on the diagram if you want.

14 But it, it went down into Vineyard to the
15 west, probably somewhere around Center Street. I
16 mean -- and then it came up in proximity to about
17 where you see that little jog in the existing road.

18 Q. To the west?

19 A. In -- where the retention -- wandered in to
20 where the retention pond currently is, and then
21 discharged down to the lake. That was all diverted.
22 Number one, because Geneva purchased or obtained a
23 pile of water rights.

24 And so what they did is they, they excavated
25 the ditch. And they had to have it at a certain grade

1 because they also utilized it for drain -- drainage of
2 the facility, which was all regraded to a particular
3 grade.

4 And they brought that down near where the
5 tunnels I -- that I talked to you about are. And
6 there was what was called the "untreated water basin,"
7 where they would take that water, take it into the
8 plant, and use it. So they utilized their water
9 rights.

10 They also kept the capability to divert it.
11 And that's why they installed the culvert and
12 constructed a drainage ditch all the way out to the
13 lake --

14 Q. Okay. So --

15 A. -- that goes along 400 North to the north.

16 Q. So that ditch didn't exist prior to 1942, and
17 in fact the --

18 A. It didn't -- not in that location, no.

19 Q. Not in that location?

20 A. Yeah. Lake Bottom Canal existed, but not.

21 Q. Yeah. And then a diversion structure that
22 actually crossed under the railroad tracks, subject to
23 a license --

24 A. Yes.

25 Q. -- was created at that time --

1 A. Right.

2 Q. -- in 1942 to divert that water?

3 A. Yes.

4 Q. Okay. Mr. Grover, I'm gonna show you a
5 document that we haven't marked as an exhibit but we'd
6 like to be marked as Anderson Geneva Exhibit 33.

7 (Exhibit No. Anderson Entities 33 was marked
8 for identification.)

9 Q. (By Mr. Astill) Now, I'm not -- I don't
10 think any of us want to represent that you're an
11 expert, Mr. Grover, on traffic control devices. But
12 in the course of your activities as site engineer as
13 you approached this problem we have with this
14 400 North crossing you did some research, correct,
15 on --

16 A. Yeah, I mean, I was familiar with the MU --
17 MUTCD before coming as a county commissioner. I, I
18 utilized it as I did the handbook --

19 Q. Okay, so --

20 A. -- from time to time. When the issue came
21 up, yeah, I did some res -- a little bit more research
22 on --

23 Q. Okay, and --

24 A. -- that issue.

25 Q. This, this document we haven't seen by any of

1 the experts in, in defining, from the engineering
2 standpoint, what constitutes a public or private
3 crossing, have we?

4 A. No.

5 Q. But it -- but this document is out there as
6 an interpretation letter, correct?

7 A. Yeah. My experience, and why I looked for
8 it, is -- I also work in the environmental area.
9 There's always a lot of confusion when somebody
10 produces a manual, so there's always follow-up
11 questions about interpretation.

12 So I was looking for guidance documents, if
13 you will, relating to, to the MUTCD and the definition
14 of a public road.

15 Q. Okay. So as -- and you mentioned as a
16 commissioner you were familiar with the MUTCD?

17 A. Yes.

18 Q. And in fact I think you told me prior to
19 stepping up there that you had actually read the
20 Railroad Crossing Handbook?

21 A. Yeah. I had a -- I had brought it with me to
22 Geneva from the County when I came. '86 I, you know,
23 2007. I didn't have it at the time, because it didn't
24 exist. But that's what I used.

25 Q. Okay.

1 A. The First Edition.

2 Q. So as a county commissioner you read that
3 manual?

4 A. I was a fairly strange county commissioner.

5 Q. All right.

6 A. But yes, I did.

7 Q. But in the course of -- you came across this
8 document, and maybe you can tell me in your own words
9 what you think this represents?

10 A. Somebody was inquiring as to the definition
11 relating to open to public travel. And -- apparently
12 a Mr. David McKee. And apparently there was, you
13 know, some other letter, I'm not sure, that they
14 misplaced. But they were responding to that question.

15 And again, this was posted on the FHWA
16 website, so I presume that it's something they thought
17 was of value for interpretation of the MUT -- the,
18 the.

19 Q. Okay.

20 A. And basically -- I think the second question
21 is -- or second and third questions and their answer
22 on that are most illustrative, I think. If you want
23 me to read them, I can.

24 Q. Yes. If you would, please?

25 A. Two, it says:

1 "Does public travel include the
2 access ways and parking lots of shopping
3 centers?"

4 "Yes, public travel would include
5 the access ways and parking lots of
6 shopping centers. States should address
7 these specific locations in their State
8 codes and statutes."

9 "Three. Does public travel include
10 the access ways, travel ways, and
11 parking lots of other facilities open to
12 the public (e.g. office parks)?"

13 "Yes, office parks could also be
14 included in the definition of a private
15 property open to public travel. The
16 decision to include certain locations
17 such as office parks in the legislative
18 code is made at the State and local
19 level."

20 Q. Okay. Now, there's been a lot of
21 discussion -- thank you, Mr. Grover.

22 MR. ASTILL: And we'd ask that document be
23 entered as our Exhibit 33.

24 MR. PICKETT: Could I ask just a follow-up
25 question about foundation on this particular one?

1 THE COURT: Uh-huh.

2 MR. PICKETT: It's one page. It's got a
3 caption at the top that looks similar to a letter that
4 would be on normal formatting with a signature block
5 at the bottom, but I don't see a signature block at
6 the bottom. Is this complete?

7 MS. KAMAS: It says "1 of 2" at the top.

8 THE WITNESS: Yeah, there may be a second
9 page here.

10 MR. PICKETT: Good point. My co-counsel has
11 pointed out that at the top it says "Page 1 of 2."

12 THE WITNESS: Yeah.

13 MR. ASTILL: Okay. And if you want -- if
14 you'd like, we could supply the second page. I
15 just --

16 THE WITNESS: Yeah, I.

17 MR. PICKETT: And that's fine. I guess it
18 just leaves me in an awkward spot, because I need to
19 reserve my ability to, to address questions of
20 authenticity and cross examination based on whatever
21 may be on that second page if we don't have it today.

22 THE COURT: Um.

23 MR. PICKETT: I suspect from the -- you know,
24 being candid, I suspect from the way that that last
25 paragraph reads that that second page is unlikely to

1 have material of substance. But I, I can't waive
2 that.

3 THE COURT: What we can do is I can have a
4 secretary enter the, the address and print it off.

5 MR. PICKETT: Good call.

6 THE COURT: If you want to take a break and
7 do that, we'll do that. Have you concluded your
8 direct?

9 MR. ASTILL: I just have one more.

10 THE COURT: We'll do it after direct.

11 MR. ASTILL: Okay.

12 Q. (By Mr. Astill) Mr. Grover, there's been
13 some discussion, you know, during the course of this
14 hearing, on the gate. The fact that there's a gate on
15 the, on the east side of the Railroad right-of-way.
16 And so it's cutting off entry into the Geneva
17 property.

18 And it's -- your understanding is that that
19 gate is there for safety reasons. Who are we trying
20 to -- who are you trying to protect with that gate,
21 Mr. Grover?

22 A. Are you talking the current gate --

23 Q. Yes.

24 A. -- that's there?

25 Q. Yes.

1 A. Well, there's demolition still ongoing on the
2 site. We have some areas -- we are a permitted RCRA
3 facility, if that means anything.

4 (The reporter asked the witness to speak up.)

5 THE WITNESS: A permitted Resource
6 Conservation Recovery Act facility. It's called
7 "RCRA" -- I guess the attorneys and even some
8 engineers -- meaning it's a hazardous waste site
9 that's permitted.

10 So right now we're doing remediation in some
11 areas fairly -- not too far away from, from that gate.
12 And so --

13 Q. So --

14 A. -- there, there is a reason to secure --
15 there was a reason to secure at that time. Most
16 cleanup's, you know, is done. We opened the gate.
17 And there's really no risk there, but. To where they
18 can access.

19 Q. There's still hazards out on the site,
20 however?

21 A. Yes, uh-huh.

22 Q. And we really -- we're not really ex -- you
23 know, Anderson Geneva's not really excited about
24 having the traveling public driving around on those
25 roads and falling into a hole?

1 A. Correct.

2 Q. And so it seems reasonable to protect them
3 with a gate?

4 A. Yes.

5 MR. ASTILL: Okay, that's all.

6 THE COURT: Okay. Take a quick break and
7 then I'll get this printed off.

8 (A recess was taken from 5:25 to 5:31 p.m.)

9 THE COURT: Let's go back on the record then.

10 MR. ASTILL: We'd like to enter -- move that
11 Exhibit 33 be entered.

12 THE COURT: Any objections?

13 MR. PICKETT: No. Just to confirm then on
14 the record, because we talked about it, that your
15 office has now provided us with the two-page version
16 that includes the signature block. And so it appears,
17 from my view, that it's a complete document.

18 THE COURT: Okay, we'll admit Anderson Geneva
19 Exhibit 33.

20 (Exhibit No. Anderson Geneva 33 was admitted.)

21 MR. ASTILL: Your Honor, one more document
22 that I omitted as I was going through direct, and
23 that's Exhibit 27.

24 Q. (By Mr. Astill) I'm gonna show that to you,
25 Mr. Grover, and tell me if you know what that is.

1 A. Yes. That's a 1939 agreement between the
2 State Road Commission of Utah and the Denver Rio
3 Grande Western Railroad Company.

4 Q. Okay. And the subject of that agreement?

5 A. Is the -- they were putting in, it's Federal
6 Aid Grant Crossing Project F.A.G.S. 164-A(1), where
7 they were installing -- upgrading the crossing with a
8 crossing signal on that 400 North crossing.

9 Q. A note just struck my mind as you were
10 reading that. It's FAG what, again?

11 A. Yeah, it's the Federal Aid Grant Crossing
12 Project number. Same reference that's on -- was on
13 that other, Bunker.

14 Q. On the state road map?

15 A. Yes.

16 Q. Okay. And that's, again, between the State
17 Road Commission and D&RGW Railroad?

18 A. Yes.

19 Q. Do you see any reference there about this
20 being a public highway crossing?

21 A. Yes. The first paragraph -- this would be
22 page 1 of Exhibit 27 -- says:

23 "The Railroad Company hereby agrees,
24 subject to the terms and conditions
25 herein stated, to install, or have

1 installed, warning signals and advance
2 warning signs at the following described
3 public highway grade crossing."

4 Q. Okay.

5 A. And then I think it --

6 Q. It talks about --

7 A. It may refer to it later on in the same way.

8 Q. Does it talk about who's supposed to maintain
9 what?

10 A. Yes.

11 Q. Okay. And that, that document, to your
12 knowledge, may still govern the crossing?

13 MR. PICKETT: Objection, calls for
14 speculation.

15 THE COURT: Sustained.

16 MR. ASTILL: Okay. That's good.

17 That's all. Thanks, your Honor.

18 THE COURT: Okay, thank you.

19 Union Pacific?

20 MR. PICKETT: Thank you. If I could have
21 just 30 seconds with my notes.

22 CROSS EXAMINATION

23 BY MR. PICKETT:

24 Q. How are you holding up?

25 A. Good.

1 Q. Five thirty, home stretch, I think. All
2 right. If I could -- excuse me. If I could, I just
3 want to confirm a bit of chronology. Reaching back, I
4 believe you mentioned that it was in 1989 that the
5 Town of Vineyard was incorporated?

6 A. Correct.

7 Q. And then you graduated from college in 1991?

8 A. No. I, I -- well, I graduated with my
9 master's degree in 1990.

10 Q. Okay.

11 A. I started working at the steel mill about
12 four months before. When they hired me I was still
13 completing my master's degree.

14 Q. Okay, thank you. That was part of what I was
15 wanting to --

16 A. Some overlap there, yes. So I worked, I
17 worked part time for four months, I think, till April.
18 In that range.

19 Q. Okay. So just with your employment with the
20 steel mill, let me focus just on that. You started
21 part time for just a few months in 1990?

22 A. Yes.

23 Q. And then did you switch to full time?

24 A. Yes. In April I complete -- I, I graduated
25 in April and went full time.

1 Q. Okay. And from then you worked continuously
2 full time for the steel mill until what date?

3 A. I was -- in about, I'm thinking March of '95.
4 I was elected in '94. I took office January something
5 in 1995. I continued to do a little bit of work for
6 them, just because I had been doing some permitting
7 and things.

8 They needed, you know, some finishing up of
9 some work. And then I was full time with the County
10 Commission as of January of '95, but I did some
11 part-time work into '95.

12 Q. Okay. And that, that was residual work,
13 wrapping things up?

14 A. Yes.

15 Q. On, on responsibilities you had already had
16 before you took your office?

17 A. Correct.

18 Q. And then since taking office as a county
19 commissioner did you ever return to the steel plant as
20 a paid employee?

21 A. No.

22 Q. And what was the ending date of your service
23 as a commissioner?

24 A. It would have been January 2nd or 3rd of
25 2006, something like that. The first Monday. I just

1 don't remember the date.

2 Q. And then it was at that time that you --

3 A. I should, it was a joyous occasion.

4 Q. Okay. And it was at that time that you went
5 to work for Anderson Geneva?

6 A. I actually started after -- I, I had lost a
7 primary election, so it was clear I was no longer
8 going to be maintaining the office in June of 2006.
9 And I can't remember the exact start date, but there
10 were discussions in July about me coming back on a
11 part-time basis.

12 And I think it was end of July/August, as I
13 recall, that I -- I worked part time until I completed
14 the term of office, and then I was full time after
15 that. I think the way it was worded is I could work
16 up to a certain hour.

17 I don't recall exactly if it was full time.
18 But sometimes I would work eight-hour days. It just
19 depended on what my availability was.

20 Q. Okay. And now you've continued until today,
21 and into the future, as an employee of Anderson
22 Geneva?

23 A. Yes.

24 Q. Thank you. While you were at Geneva did you
25 have any direct responsibility for the maintenance or

1 repairs of any roads within the plant?

2 A. No. Other than if we went through one, for
3 example excavating for a pipe or something, we had to
4 oversee and make sure we had bedding and all that put
5 back in for the internal roads, so.

6 Q. So it sounds like your, your function in
7 those events was auxiliary, if I can use that word, to
8 the, to the -- to those who were doing any design
9 or --

10 A. Yes, I was not, I was not in the design of
11 the Road Department at that point.

12 Q. Prior to going to work -- actually, withdraw
13 that.

14 While you were a county commissioner you
15 were -- you mentioned how you were -- you had
16 responsibilities for some, some road projects on a
17 managerial level, I think was the term you used?

18 A. Yeah, we -- the way it -- it was a three,
19 it's a three-man commission, so you split departments
20 up in terms of managerial responsibilities. Full-time
21 job. There's no county manager. So we were the
22 effective county managers, you know, approving
23 personnel, everything within those departments. And
24 would attend staff meetings.

25 And then any projects that were started, it

1 was your responsibility to review. So when it came to
2 the full commission and could be voted on by the full
3 commission you were the one supposedly, you know, that
4 knew all -- what was going on. So.

5 Q. Okay. And so you're probably familiar with,
6 with what a construction and maintenance agreement is?

7 A. You mean on terms of a railroad crossing, or
8 just anything?

9 Q. Just in general, the --

10 A. Yeah.

11 Q. And generally speaking, that is a, an
12 agreement that would be executed between a public
13 entity and a private entity in relation to some kind
14 of a public/private kind of project. Where they're
15 both gonna be involved in the project in some manner.
16 Is that a fair general definition?

17 A. Meaning, meaning we're contracting for work
18 is what you're saying? Or is it --

19 Q. Well, let --

20 A. Or are you talking about a joint project with
21 private/public partnership type of a thing?

22 Q. Let me, let me use the Anderson Entities
23 Exhibit 27, 1939 Agreement, as an example.

24 A. Okay.

25 Q. Here, if you'll permit me to characterize it

1 this way, is an agreement by which a private company
2 was agreeing to do certain things and a public entity
3 was agreeing to do certain things in relation to a, an
4 improvement to a, an active warning device for a
5 railroad crossing.

6 Would you agree that that's an example of a
7 construction and maintenance agreement?

8 A. It doesn't say that, it just calls it an
9 "Agreement." But it seems to characterize -- I mean,
10 you know, I -- I'll be honest with you, I haven't
11 reviewed any, in my experience, that is quite this
12 particular.

13 Q. Okay.

14 A. In it's -- in the way it's set up, to be
15 honest with you, so.

16 Q. And --

17 A. Usually there's probably about seven more
18 pages of liability and severability.

19 Q. Okay, yeah. Give a couple of generations of
20 lawyers a chance to --

21 A. Okay.

22 Q. -- get theirs hands on it and they'll add
23 that to it. Well, let me talk about it just in terms
24 of function. An agreement of this sort, would you
25 agree, is designed to describe which party is going to

1 do what with relation to construction activities, and
2 with funding, and with maintenance responsibilities?

3 A. Yeah. Seemed like there was a section, I
4 believe -- I don't have it in front of me -- that
5 talked about both of those things.

6 Q. And generally speaking, while you were at the
7 County, if there was going to be any participation
8 by -- if there was going to be a project on a public
9 road involving, for instance let me use a -- I'm
10 trying to think of a good example.

11 Let's say a grade separation. A, a road
12 grade separated over another road. You would expect
13 that if one of those roads is a private road that
14 there will be -- or even two public roads but owned
15 and operated by different public entities, for
16 instance the State of Utah and the County -- that
17 there would be some kind of a construction maintenance
18 agreement to set out who's doing what, paying for
19 what, and maintaining what?

20 A. If it was us initiating the contract, the
21 County would have done that.

22 Q. Well, what if, what if the State of Cal -- or
23 State of Utah came to you and said, We would like to
24 have a project for a state road to cross over or below
25 a county road? They'd be the ones initiating it, but

1 you'd still expect there would be a construction and
2 maintenance agreement executed in the end, wouldn't
3 you?

4 A. If we were supposed to have any
5 responsibility, yeah.

6 Q. Well, even if it was crossing your
7 right-of-way. If, if somebody is going to build
8 something on County right-of-way, a permanent
9 encroachment, a permanent improvement, something that
10 is going to be there that was not there before.

11 During the time that you were at the County,
12 as the person with -- on the Commission with
13 responsibility for oversight of the roads, and the
14 crossings, and so forth you would have expected that
15 there be an agreement to describe by what right it's
16 being done, what the project will be, who's gonna pay
17 for it, and who's gonna maintain it, wouldn't you?

18 A. Yeah, or possibly permit. I mean, it depends
19 on the nature of what was being done and how they were
20 using it.

21 Q. Let me ask you about that, that project by
22 which the, the grade crossing on 400 North was
23 reconfigured. And in that case are you aware of a
24 construction and maintenance agreement, or any other
25 contract by whatever name you want to call it, being

1 executed between the County and either Geneva Steel,
2 or the Railroad, or any other private entity in
3 relation to that project?

4 A. I'm not aware of one. But I didn't really
5 look for it. I mean, that, that wasn't during the
6 time I was a county commissioner, so.

7 Q. And in that case, if, if the County was
8 either contributing money or doing services in
9 relation to that realignment -- whether we can find it
10 or not now -- wouldn't you expect there would have
11 been a construction and maintenance agreement?

12 A. Probably, probably. But I, I can't -- in '72
13 I don't know what their, you know. Whether they did
14 joint projects without some sort of agreement. I
15 would expect that they probably would not have.

16 Q. You would agree that at least as long ago as
17 1939 the State Road Commission -- which I realize is
18 not the County -- but they were, they were using
19 construction and maintenance agreements for
20 improvements as simple as installing an active warning
21 device?

22 A. Uh-huh.

23 Q. But you --

24 A. I mean, that, that's evidence.

25 Q. But you're not aware of what the County's

1 practices were back in the early 1970s about that?

2 A. I, I didn't -- I don't know.

3 Q. And let me show you Exhibit 24 from the
4 Anderson Entities. As I understood your testimony,
5 you, you located this document in the Geneva Steel
6 archives; is that right?

7 A. Well, the -- I wasn't there during the
8 bankruptcy. I came in 2006, so I can't really speak
9 to how much information was passed on. But there is
10 a, is a warehouse that has engineering drawings and
11 map drawers that came from U.S. Steel somehow through
12 the bankruptcy.

13 Q. Okay. And my question is simply about the
14 source of this particular document. Is it your
15 understanding that this came from those, those
16 archives or drawers that were --

17 A. Yes, I found it.

18 Q. Okay. You personally located it?

19 A. Yes, uh-huh.

20 Q. And it was, it was among those Geneva Steel
21 documents?

22 A. The U.S. Steel documents, yes.

23 Q. And you agree that Geneva Steel was a private
24 entity, not a public one?

25 A. Yeah.

1 Q. And so the documents that you have before
2 you, this drawing, was in the, was in the custody and
3 records of a private entity?

4 A. Correct.

5 Q. And based on your experience at Geneva Steel,
6 and looking at the legend in the bottom right-hand
7 corner, does it appear to you that this was a document
8 that was produced by Geneva Steel?

9 A. It would have been produced by U.S. Steel.

10 Q. Okay.

11 A. U.S. Steel Corporation, Engineering
12 Department Geneva Works. That was a division of U.S.
13 Steel.

14 Q. Okay. And it even, as part of that
15 caption --

16 A. Yes, Engineering Department.

17 Q. -- says Geneva, Geneva Works United States
18 Steel Corporation Engineering Department?

19 A. Correct.

20 Q. Go ahead and keep that for a moment. As I
21 understood your earlier testimony, your review, as an
22 engineer, of this drawing leads you to believe that it
23 provides some information about what Geneva Steel was
24 doing on this project in terms of materials and so
25 forth?

1 A. Yes.

2 Q. Does it describe on this drawing, anyplace,
3 anything that either the County -- well, I guess just
4 the County at that point. Does it describe anything
5 on this drawing that the County was going to be doing?

6 A. No. Again, the inference is just the asphalt
7 pavement. Does not have a specific mix or type to it,
8 which would have been typical if it was done by U.S.
9 Steel --

10 Q. Okay.

11 A. -- internally, so.

12 Q. But on this document it doesn't say who is
13 going to provide the asphalt?

14 A. No, it does not.

15 Q. And it doesn't say who is going to apply the
16 asphalt?

17 A. Does not.

18 Q. If you would, you'll see that there's --
19 around the border there's a sort of battleship grid --

20 A. Uh-huh.

21 Q. -- or a map grid of letters and numbers. And
22 as I read it, if you go to the quadrant B3, that's
23 where there's the sort of three-way intersection, if I
24 can call it that, is between the north-south -- let me
25 see. I'm gonna orient it so I don't confuse myself.

1 A. Yeah.

2 Q. All right. The north-south Vineyard -- what
3 is today Vineyard Road, the east-west 400 North Road,
4 and what is the entryway into Geneva Steel, that
5 segment. It's a three-way intersection of sorts,
6 right?

7 A. Yes.

8 Q. If you would, look down the, the leg that is
9 today's Vineyard Road as we've been using the
10 description.

11 A. Uh-huh.

12 Q. And at approximately B4. Do you see where it
13 says an abbreviation --

14 A. Existing county road.

15 Q. Thank you. And then if you look down the --

16 A. Exist county road, excuse me.

17 Q. Right. It's an abbreviation of the word
18 "existing," right?

19 A. Yeah.

20 Q. But that's what it means, existing, you would
21 agree?

22 A. Yes, yes, I agree.

23 Q. Looking on the 400 North leg at B3, is the
24 same notation there to describe 400 North?

25 A. Yes.

1 Q. And then looking at the leg that goes over
2 the tracks into the facility, do you see any notation
3 there indicating whether that leg of that three-way
4 intersection is a county or a public road?

5 A. No.

6 Q. And there's also no notation, to be fair,
7 saying it's private --

8 A. No. Right.

9 Q. -- for Geneva? There's --

10 A. There's no notation really at all, other than
11 just calls.

12 Q. So there's, there's no description in terms
13 of that issue on that?

14 A. Correct.

15 Q. But there is for the other two roads? For
16 the other two legs?

17 A. Yes.

18 Q. Would you also agree that on this drawing
19 there's no description of who would be responsible for
20 any kind of future maintenance after this project was
21 completed?

22 A. That's correct.

23 Q. And just to ask the obvious, this is not a
24 contract, right?

25 A. No. I'm not an attorney.

1 Q. Okay. Well, if -- let me ask it this way
2 because it's a, it's a fair point. You don't see
3 anywhere on there where --

4 A. I, I don't know if it was attached to one or
5 no. I don't have any knowledge if it was or is a part
6 of a contract.

7 Q. You don't see anyone's signature anywhere on
8 this?

9 A. There are some initials down here.

10 Q. Yeah, from the legend in the bottom of the
11 drawing?

12 A. Yeah, drawn by CDC.

13 Q. Okay.

14 A. I don't know who that is, but.

15 Q. But that would have been -- on a drawing like
16 this that's the -- that's gonna be related to who
17 prepared it?

18 A. Yes.

19 Q. Or reviewed it?

20 A. Right.

21 Q. And in this case that would have been a
22 Geneva employee, you would expect?

23 A. Yeah. Probably somebody in the Engineering
24 Department would be my deduction.

25 Q. So looking just at this document then. Based

1 on the information contained in it, is there any
2 information there that suggests to you that the leg of
3 the -- that three-way intersection that goes over the
4 tracks and into the Geneva facility was a public
5 crossing after the time that this project was
6 completed? Based just on the content of this exhibit.

7 A. There's no label, if that's what you're
8 asking for, you know, correct.

9 Q. Or anything else that you see that suggests
10 that to you?

11 A. No, I don't think it shows it.

12 Q. Thank you. If I could refer to the enlarged
13 Exhibit 136 for Union Pacific. I'd like to get some
14 help from you identifying exactly where the parking
15 lot was that you would enter after crossing 400 North.
16 Is it on this photograph?

17 A. Are you talking on the other side -- on the
18 east side?

19 Q. On the -- yes.

20 A. You've got 800 North. There's a parking lot
21 there.

22 (The reporter asked the witness to speak up.)

23 THE WITNESS: Okay. There's a parking lot
24 down here. There was another parking lot off of
25 the -- excuse me. The 800 -- there was an 800 North

1 and then to the north.

2 Q. (By Mr. Pickett) Okay. And I apologize, I
3 asked my question poorly and I was pointing to the
4 wrong part of the drawing.

5 A. Okay.

6 Q. What I'm looking is at 400 North.

7 A. Yes.

8 Q. After you cross over the crossing we're
9 talking about in this, in this proceeding there's a
10 parking lot in that area; is that right?

11 A. Correct.

12 Q. And --

13 MR. PICKETT: Do you have that black marker?
14 Thank you.

15 Q. (By Mr. Pickett) Knowing that this is
16 approximately where it is, but could you please use
17 the marker to just outline where that parking lot was?

18 A. Yeah. Went roughly there. Park here.

19 (The reporter asked the witness to speak up.)

20 THE WITNESS: Okay. Just roughly that. I'm
21 not sure how far it goes out to the north.

22 Q. (By Mr. Pickett) Okay, thank you. And for
23 the clarity of reviewing this later could you draw an
24 arrow to that and write "Parking"?

25 A. Yeah.

1 Q. As a person would drive during -- this is
2 during the time that you were an employee there.

3 A. Yeah.

4 Q. These questions, because I want this based on
5 your own personal knowledge. After a person would
6 drive over the crossing they would encounter that,
7 that boundary fence where, as I understand during the
8 time you were there, there was -- the opening in it
9 where a gate was, was always open?

10 A. (Moves head up and down.)

11 Q. Yes?

12 A. The time that I, the time that I saw it, yes.

13 Q. Okay. After driving through that gate, from
14 there where was the, the guardhouse where you had to
15 show your ID?

16 A. I believe it was right there. There may have
17 been another walk entry here.

18 (The reporter asked the witness to speak up.)

19 THE WITNESS: Excuse me, you would park here.
20 I know there was a gatehouse -- guardhouse here.
21 There may have been a walk-through entry with a small
22 checkpoint there.

23 Q. (By Mr. Pickett) Okay.

24 A. A gate.

25 Q. Could you also draw an arrow to the square

1 you drew where the guardhouse is?

2 A. Yeah.

3 Q. Please put "Guard" next to it.

4 A. (The witness complies.)

5 Q. So after coming over the crossing -- and this
6 is, again, during the years of your employment. You
7 would drive through the opening in the fence. And
8 then it was an open area where you would park, but to
9 go past that parking lot area into any other part of
10 the facility you would need to show your employee
11 identification badge at that guardhouse?

12 A. Guardhouse, or they would call in and you'd
13 have a, you know. Like if it was a contractor --
14 whoever it was. If they get authority, they'd sign a
15 ticket, tell them where they were going.

16 Q. Was the parking lot area fenced so that --

17 A. Yes. I didn't go through, to be honest with
18 you, that -- I don't recall going through that. When
19 I was over here I was usually walking across, getting
20 onto this side of the property.

21 Q. Showing the lake side of the?

22 A. Yeah. We had a -- because there was an
23 inversion structure right here that goes underneath.
24 I typically would come in on that side, where my
25 office was.

1 Q. You're pointing to the southeast?

2 A. Yeah, it's down here. I was a man -- in
3 management. I wasn't -- I didn't work in the open
4 hearth or rolling mill areas, so.

5 Q. Okay. As far as this parking lot goes that
6 we're talking about, that fence provided a boundary
7 within the property that would either channel or
8 require a person to get permission from Geneva Steel
9 to go any farther into the plant; is that right?

10 A. Correct. I believe at some point you --
11 there was a little parking lot here to the north as
12 well for the rolling mill, and an entry. I never
13 parked up there, so --

14 Q. Okay.

15 A. -- I don't recall.

16 Q. And that's okay. I'm just talking about your
17 recollection of that one parking lot.

18 A. Yes.

19 Q. So the opening was there in the boundary-line
20 fence. Was there a gate that was just swing open all
21 the time, or was there no gate at all?

22 A. There was a -- as I recall, there was a gate
23 that was swung open.

24 Q. And would you agree with me that in the same
25 way that Geneva Steel could fence the, the

1 right-of-way, they had the legal authority, they could
2 have closed that gate if they wanted to secure that
3 parking lot from outsiders?

4 A. They prob -- again, I'm, I'm assuming they
5 could. I wasn't -- that wasn't anything that had to
6 do with my job, so.

7 Q. Well, Anderson Geneva could, right? They
8 did?

9 A. Yeah. Well, yeah.

10 Q. After they purchased the property?

11 A. Right.

12 Q. And I think we'd all agree that when you buy
13 property you're not -- you don't buy something more
14 than the previous owner had. And so if Anderson
15 Geneva can put a gate up there, Geneva Steel could
16 have?

17 A. Presumably.

18 Q. And would you agree that, that that fence
19 between the Railroad right-of-way and the Geneva Steel
20 property has been in place continuously since 1942?

21 A. I, I don't know that. I mean, in terms of
22 whether they had it go down for a period of time,
23 fixed it, I don't, I don't have any knowledge as to
24 the maintenance or whatever. But the presumption is
25 probably they did.

1 Q. Okay. If that's what, if that's what
2 Anderson said in its discovery responses would you
3 dispute it?

4 A. No.

5 Q. Would it seem consistent to you that, based
6 on what we've been talking about, Geneva could have
7 located a guardhouse at the, at the property line so
8 that anybody coming onto the property from the edge
9 could have been required to show identification to get
10 onto the private property?

11 A. I'm presuming they could have. I don't know
12 that they did, but.

13 Q. During the years that you were there did you
14 observe, at this parking lot, that sometimes an
15 employee's family would come through that, that fence
16 into the parking lot to drop off family members?

17 A. Yeah.

18 Q. Were there contractors employed by Geneva
19 Steel who would come in through that same area to
20 park?

21 A. I don't, I don't know on, on the contractors.
22 I would presume that. I just -- the family I know
23 because I, I did it myself. I had a brother-in-law
24 worked in central maintenance, wanted the open hearth,
25 and I dropped him off.

1 Q. Would a member of the public have any reason
2 to drive over the crossing at 400 North except to
3 enter into the, into the Geneva Steel property?

4 A. That's where they were entering, yes. And so
5 that's.

6 Q. And that's because there's nothing else on
7 the other side of that crossing, right? I mean --

8 A. The plant, yeah.

9 Q. Right. I mean, as soon as you cross over the
10 crossing you -- and reach the boundary of the Railroad
11 right-of-way, the only thing there is Geneva Steel
12 property? Or, or what is now Anderson Geneva
13 property?

14 A. Yeah. We may have had some -- we had
15 regulators that would do smoke readings. I mean, they
16 would come and observe smokestacks. We didn't know
17 where they were. They didn't volunteer that.

18 They could pull into the parking lot to do
19 that because the open hearth was right there. Open
20 hearth building. So we had smokestacks. And they'd
21 do opacity readings from all over the place around the
22 plant.

23 Q. Okay. And so that's one more example of
24 people who would have a, either an official or a
25 business reason to use that crossing, these

1 regulators, right?

2 A. Yeah, presumably.

3 Q. And --

4 A. I don't know if it was a business reason.

5 Q. But -- and that comes back around to the
6 other point --

7 A. They're government, they're government people
8 that are out enforcing the law, so. They're enforcing
9 the air quality regulations.

10 Q. And, and my point that I'm trying to make
11 with you is, there's no reason to cross this crossing
12 except to go into the Geneva Steel property?

13 A. Yeah, or look at it.

14 Q. But that would be either standing in the
15 Railroad right-of-way, or crossing onto the --

16 A. They could go in the parking lot and observe.

17 Q. Which is part of the Geneva Steel property?

18 A. Yes. Yeah.

19 Q. And my point is, there's nothing else there.
20 They don't have the option of going to a 7-Eleven, for
21 example, because there's not one there. All that's
22 there on the other side of that crossing is the Geneva
23 Steel property?

24 A. Yeah. I mean, there was an industrial supply
25 store, internal. I don't know if they sold to outside

1 people, I don't know about that. For safety
2 equipment. I don't think they did, but.

3 Q. You have no, you have no information about
4 that?

5 A. No. I'm just -- you're asking me is there
6 any potential. I'm, I'm thinking, so.

7 Q. Okay. We'll, we'll let that go. So putting
8 aside that speculative possibility, would you agree
9 that everybody crossing over that crossing must have
10 been doing it either because they had some
11 responsibility inside the Railroad right-of-way, or
12 because they had business inside of the Geneva Steel
13 property?

14 MR. ASTILL: Objection, your Honor. I think
15 he's asking the witness to speculate about a multitude
16 of potential people who might cross that crossing. I
17 don't know how he can possibly understand the reasons
18 people might cross the crossing into the Geneva
19 property.

20 THE COURT: Overruled.

21 THE WITNESS: I would -- again, the principal
22 probably reason they'd be going into that parking lot
23 would be, either they're employed there. They --
24 contractors. Salesmen selling to the facility.

25 But you can -- but -- or people wanting to

1 observe the plant close up. You could come in and do
2 that closer than you could from the other side, so.

3 Q. (By Mr. Pickett) And you would agree that
4 all of those types of people, and anybody else in the
5 universe who went past that border fence, was doing it
6 with the either explicit or tacit permission of Geneva
7 Steel, because that's who owned the property?

8 A. I don't know that there was any permission.
9 I mean, I went in there with no permission when I was
10 not a Geneva employee, so. Or had no relation to
11 Geneva --

12 Q. But they could have closed --

13 A. -- with the Cub Scouts, you know.

14 Q. Okay. But even there as a scout leader,
15 would you agree that you would have had to comply if
16 they told you to get out? I mean, this is private
17 property.

18 A. Yeah, I don't think that I ever thought that
19 was gonna happen.

20 Q. Well --

21 A. Or I wouldn't have gone in there.

22 Q. Okay.

23 A. Especially with Cub Scouts.

24 Q. Yeah. And I'm not, I'm not suggesting that
25 you were a trespasser. All I'm trying to get at is,

1 is that because this is private property, anybody who
2 comes on it comes on it with the permission of the
3 property owner.

4 And Geneva Steel, as that private property
5 owner, in the same way that Anderson Geneva has
6 exercised their rights today, can exclude people that
7 it does not want on the property?

8 MR. ASTILL: Your Honor, he's asking for a
9 legal conclusion. We object.

10 THE COURT: Overruled.

11 THE WITNESS: I don't know that they have
12 ability to exclude or not.

13 Q. (By Mr. Astill) Okay. I'll move on.

14 A. I just don't know that. I kind of looked at
15 it like a, just similar to any parking lot at a
16 business or something where you can drive in and drive
17 out.

18 Q. Let me just confirm what I heard in the
19 totality of your testimony. There were examples that
20 you showed us in different documents where roads were
21 labelled different ways. And, and these crossings
22 were described different ways within documents.

23 But you, yourself, are not offering an
24 opinion, are you, about whether this is a public
25 crossing or a private crossing?

1 A. In terms of being an engineer, is that what
2 you're asking me?

3 Q. Well, I'm asking you as a human.

4 A. Oh.

5 Q. Sitting on the stand today. I did not hear
6 you say that in your opinion this is either a private
7 or a public crossing. Just that you were pointing out
8 to us where documents --

9 A. Yeah. An observation --

10 Q. -- seem to suggest something like that?

11 A. -- of the overlay going across, things like
12 that. But I'm not making a legal conclusion.

13 Q. And you also are not making -- expressing any
14 opinions about whether anybody else in this proceeding
15 who has offered opinions on that subject was right or
16 wrong? You're just not touching that subject?

17 A. I don't know that I've rendered that and said
18 anything about any of the other people that have --

19 Q. Okay. When I'm asking that I'm making sure
20 that -- I need to be able to keep this shorter, not
21 longer.

22 A. Okay, yeah. All right, yeah. I'm saying
23 I -- to my knowledge I haven't --

24 Q. Okay.

25 A. -- indicated, or implied, or even referenced

1 anybody else.

2 Q. Thank you. You testified about the number of
3 people who used the, the gate, the open gate during
4 the years you were there. Let me, let me withdraw
5 that.

6 You testified about the number of people who
7 would enter the Geneva property over this crossing in
8 general. You would agree with me, wouldn't you, that
9 an individual person, just one person, can be a member
10 of the public? For example, you are a member of the
11 public, right?

12 A. Yes.

13 Q. And so am I. Everybody on the planet could
14 be described as a member of the public. So that just
15 one person can be a member of the public. So far so
16 good?

17 A. Yeah.

18 Q. But that -- so let me ask it this way. Are
19 you offering an opinion today about whether the
20 people, either in terms of -- I'm sorry. Let me, let
21 me withdraw that.

22 A. Yes.

23 Q. I'm not sure if it's just late in the day or
24 if I need more blood sugar.

25 Do you have an opinion about whether the, the

1 use of that crossing since 1942 by the people coming
2 and going to Geneva Steel amounts to public use of
3 that crossing?

4 A. My opinion would be that the public could go
5 in and out of there without restriction through the
6 gate. That's what -- that's kind of what I'm -- I
7 believe my testimony is -- or was reflecting. Myself
8 being one of them.

9 Q. You've also --

10 A. Kind of, kind of un -- kind of unaffiliated
11 people, as well as all the people that are, you know,
12 going on there for purposes of business and
13 employment.

14 Q. Okay. So do you distinguish, in your mind,
15 between the idea of a, a person -- the people -- all
16 the people who are going into that parking lot, A,
17 were entering onto Geneva Steel property, right?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes.

21 Q. And they were doing it through an opening in
22 a fence that a private property owner had on its
23 property? Yes?

24 A. Yes, uh-huh.

25 Q. Sorry. I have to ask, because --

1 A. Yeah. I just wasn't sure if your --

2 Q. -- the court reporter can't --

3 A. I wasn't sure if you completed your
4 statement.

5 Q. Okay. And in your mind does -- withdraw
6 that.

7 I wasn't following your testimony about the
8 connecting road earlier, when Mr. Astill was asking
9 questions about the meandering line and the road in
10 relation to the 1942 --

11 A. Okay.

12 Q. -- action by the County. Could you just
13 describe for me briefly, what was the connecting road
14 you were talking about?

15 A. There's a better exhibit, perhaps, in here.
16 That one there might.

17 MR. ASTILL: That does show it.

18 THE WITNESS: Yeah, that does show it.

19 Q. (By Mr. Pickett) Okay. So we're looking now
20 at Anderson Entities Exhibit 6?

21 A. Yes. It's this road here, which is the one
22 that runs along -- internally along the lake. And
23 then to here. Then this would be the line. So this
24 was when -- this road was vacated internally --

25 Q. Meaning 400 North?

1 A. 400 North, internally. They had to construct
2 a connecting road so people could get to this road and
3 keep going around.

4 Q. So the connecting road you're talking about
5 is what is today Vineyard Road?

6 A. Ye -- yes.

7 Q. And so from approximately where this crossing
8 is located, the connecting road is where Vineyard Road
9 goes basically south from there?

10 A. Yes.

11 Q. Down far enough that it can give access to
12 other roads?

13 A. You get to, yeah, Geneva Road.

14 Q. Okay. Got it. Thank you. Let me ask you
15 some questions about your, your site visit when you
16 were looking for features that may have suggested any
17 public maintenance. I believe earlier you testified
18 about consistent overlay of asphalt?

19 A. Yes.

20 Q. And as I followed your testimony, what you
21 were describing was how it appeared that the asphalt
22 on the approach up to the, to the rails was, in
23 appearance, laid at the same time as the asphalt out
24 onto 400 North or Vineyard Road?

25 A. Yeah. Clear down the length of the -- both

1 of those legs.

2 Q. In other words, there didn't seem to be a
3 seam or a line where it changed type of asphalt?

4 A. No.

5 Q. You are aware, I believe, because you already
6 mentioned it, that the crossing as it exists today
7 consists of concrete panels between the rails,
8 correct?

9 A. Yeah. There's a little asphalt section in
10 there.

11 Q. And that asphalt -- excuse me, I'm sorry,
12 what asphalt section are you talking about?

13 A. There's concrete here. That's asphalt right
14 there.

15 Q. So you are pointing at Union Pacific Exhibit
16 page 135, and --

17 A. Yeah, and I believe those were planks before
18 (inaudible.)

19 (The reporter asked the witness to speak up.)

20 THE WITNESS: I believe -- I just believe
21 those were planks or wood.

22 Q. (By Mr. Astill) Okay. And so what you're
23 pointing out to me, I believe, if I can express it
24 myself, is that there are two tracks there --

25 A. Yes.

1 Q. -- in the crossing. And that one of them has
2 concrete panels, the other one had wood planks?

3 A. It was wood, yeah.

4 Q. Okay.

5 A. And some -- I believe there was some concrete
6 in there too.

7 Q. Do you have any information about when the
8 asphalt that you're describing was laid?

9 A. Yes. The -- it would have been pre-1989. I
10 observed the section corner that was placed there in
11 '89 was apparently placed into that asphalt.

12 If you kind of looked around it there was --
13 it had been placed in -- the overlay didn't go onto
14 the, the brass -- the structure, it was put into the
15 asphalt. So that would tell you that that was placed
16 after the asphalt.

17 Q. Now, the, the monument that you're talking
18 about is on the Geneva Steel side --

19 A. Yes.

20 Q. -- of the crossing?

21 A. Uh-huh.

22 Q. The asphalt that we're talking about so far
23 is on the west side, correct?

24 A. No, I'm saying the overlay went all the way
25 over to there. Here, that overlay, and there. You

1 can kind of almost see where this road overlay goes
2 right to there.

3 Q. Now, these concrete panels in that one track
4 provide a complete division or separation of the
5 asphalt on two sides of the crossing, doesn't it?

6 A. Yes.

7 Q. Are you able to testify that the, the asphalt
8 on each side of those concrete panels was laid at the
9 same time by the same people?

10 A. It looked like it, yes. Based on the --
11 examining the -- yeah, the continuity of the asphalt
12 itself. Nature of it, the matrix, the aggregate in
13 it.

14 Q. So that was just by the appearance?

15 A. Yeah.

16 Q. You don't have any actual personal knowledge
17 that that's the case. It's just going on appearance
18 of the --

19 A. Correct. Just going out there as an
20 engineer, looking at it.

21 Q. You saw it?

22 A. Yes.

23 Q. Do you know who paid for that asphalt?

24 A. I don't.

25 Q. All right. Do you know when those concrete

1 panels were placed? Whether that was done, for
2 example, before or after the date that the, that the
3 crossing was realigned?

4 A. I don't know that.

5 Q. Do you know if that asphalt was laid before
6 or after the concrete panels were there?

7 A. I'm not, I'm not sure, no. I mean, it's
8 possible they could have placed it, cut it, and
9 inserted them, I don't know.

10 Q. During your time with the County did you ever
11 encounter a situation where there was a paving project
12 where a private driveway was included within the
13 public project either as a, as a donation to the
14 private property owner, or at the incremental cost of
15 the private property owner?

16 A. Yeah. We would -- if, if part of the road
17 project was we're going through an area ripping things
18 up, we would finish out the driveway entrances and
19 stuff. Or the accesses, you know, if we're building a
20 road going into their driveways, taking property, we
21 would redo the curbs and the entrance points to their
22 driveways.

23 Q. And knowing that, it then becomes a
24 possibility that Geneva Steel could have contributed
25 to the cost of the, of the asphalt work done on its

1 property that you're talking about, whether it did the
2 project or not?

3 A. I don't know if they contributed or didn't.

4 Q. I'm not -- and I'm not asking if they did or
5 did not. Just that, from your own experience, you can
6 say that that's in the world of possibilities?

7 A. Yeah, I mean, as county commissioner we would
8 not go into somebody's property and lay it unless it
9 was we were causing damage, or something appurtenant
10 to our project that required us to go do that. And if
11 you're saying would somebody come and lay as -- is
12 that what the -- was that the question?

13 Q. Well --

14 A. Would somebody lay asphalt -- would the
15 County just go do that because Geneva Steel paid for
16 it?

17 Q. Well --

18 A. I wouldn't guess they, they would do that.

19 Q. As I understood your testimony a moment ago,
20 you agreed that if the County was coming through doing
21 a project, if it disrupted the asphalt on neighboring
22 private property, in some circumstances it would, it
23 would take care of replacing that at its own cost?

24 A. Yeah. Up to the point where they had done
25 the disturbance or whatever.

1 Q. And if there was a private part -- excuse me,
2 a public/private partnership kind of a project, it
3 could be possible that the private party paid the
4 incremental cost of the asphalt on its own property,
5 for instance?

6 A. They -- yeah, we'd have to have agreements,
7 et cetera, liability, all of that. I don't know of
8 any, be honest with you, that, as a county
9 commissioner, that we authorized to do that. There
10 was nothing prohibiting, in the law, us from doing
11 that, but.

12 Q. Turn, if you would, to the, the Public
13 Service Commission documents that we were looking at
14 earlier, on page No. 76.

15 A. Okay.

16 Q. Did I follow you correctly that, excuse me.
17 The, the inset paragraphs that are describing the
18 different crossings involved? From the bottom one
19 that starts: At county highway crossing Genev -- to
20 Geneva Steel plant. That's the -- you believe that's
21 the 400 North crossing, right?

22 A. Correct.

23 Q. And could you just skim all of those a
24 moment, and then I'll have a question for you?

25 A. Okay.

1 Q. Or in fairness perhaps, to make it more
2 efficient for you --

3 A. Okay. If you're looking for format or
4 something, I --

5 Q. Exactly.

6 A. Okay. I don't know if you want me to look at
7 the numbers, or.

8 Q. Yeah, I'm looking for a punctuation error.

9 A. Okay.

10 Q. Would you agree that the one that mentions
11 Geneva Steel at the bottom is the only one of those
12 crossings that describes a crossing that enters into
13 private property?

14 A. It just says it enters -- crossing into the
15 Geneva Steel plant.

16 Q. Which is private property, correct?

17 A. As I understand it, yeah.

18 Q. And none of the other ones refer to entering
19 into anything?

20 A. Correct. Well, it says crossing to. Not
21 enter --

22 Q. But there --

23 A. Not entering in. It says crossing to that
24 point.

25 Q. But there's, there's no other entry that says

1 similar language to that?

2 A. Correct.

3 Q. Similarly on page 79, where it's the Utah
4 County Surveyor?

5 A. Yes.

6 Q. In the next-to-last line of the middle
7 paragraph, that same crossing is described as an
8 entrance into steel plant, correct?

9 A. It says highway crossing, the numbers, comma,
10 entrance into steel plant, period.

11 Q. And in that letter also it's the only
12 crossing that's described as an entrance into
13 something?

14 A. It looks like it. Yeah.

15 Q. Okay. Look, if you would, at page 85. This
16 is the drawing you pointed to earlier that has a
17 notation about a highway crossing signal?

18 A. Yes.

19 Q. Looking at this document, what is the date on
20 that?

21 A. Oh, yeah. April some -- nothing, 1943.

22 Q. So that was just a few months after the
23 County had vacated the, the Geneva Steel property,
24 right?

25 A. Would have been, I think August of '42 or

1 something, was that vacation resolution.

2 Q. It was in 1942. I'd have to double check
3 which month it was.

4 A. Yeah.

5 Q. Which we can do.

6 A. Yeah. Again, that's -- I don't know if
7 that's relevant to your question.

8 Q. On page 73 --

9 THE COURT: Mr. Pickett, let's take --

10 MR. PICKETT: Excuse me, sir.

11 THE COURT: Take a break till 6:30, for the
12 court reporter's sake. Till 6:30.

13 MR. PICKETT: Yeah. I've got two minutes and
14 I'm finished.

15 THE COURT: Okay, well let's take a break
16 right now.

17 MR. PICKETT: Okay.

18 (A recess was taken from 6:24 to 6:30 p.m.)

19 THE COURT: Okay Mr. Pickett, any more
20 questions?

21 MR. ASTILL: No. Thank you.

22 THE COURT: Ms. Spooner?

23 MS. SPOONER: No, your Honor.

24 THE COURT: Mr. Church?

25 MR. CHURCH: None.

1 THE COURT: Okay. Any redirect, Mr. Astill?

2 MR. ASTILL: Um.

3 THE COURT: Don't feel obligated.

4 MR. ASTILL: Yeah. I'm, I'm really trying
5 hard not to. I'm looking at these notes and saying,
6 Well, I don't need to do that. I really don't need to
7 do that.

8 I have one.

9 REDIRECT EXAMINATION

10 BY MR. ASTILL:

11 Q. Mr. Grover, we looked at the exhibit that we
12 marked as 33 before. That was the interpretive letter
13 from the -- Mr. -- I can't remember who it was from.
14 The -- I never did get the signature page.

15 THE COURT: It's on the back. Is it on the
16 back of yours?

17 MR. PICKETT: Yeah, it's on the back.

18 MR. ASTILL: No, not on mine. Do you have
19 one?

20 Q. (By Mr. Astill) Okay. It was the
21 interpretive letter from Regina McElroy, Director,
22 Office of Transportation Operations, Federal Highway
23 Administration. Okay? That was the interpretive
24 letter I-44, our Exhibit 33.

25 You, you just had some questions about people

1 coming into Geneva. The only reason they'd be coming
2 to Geneva was to visit Geneva. And I think you
3 answered those correctly. I want to go back to
4 paragraph 2 of that interpretive letter where it talks
5 about entry into shopping centers, and paragraph 3,
6 entry into office parks.

7 In your judgment is entering into Geneva to
8 do some business or not do business, or visit the
9 site, is that any different than going to a shopping
10 center or going to an office park?

11 A. I don't see it as any different, be honest
12 with you.

13 Q. Okay.

14 A. I mean, the access is the same.

15 Q. Thank you.

16 THE COURT: Okay, thank you.

17 MR. PICKETT: Just one follow-up question
18 then.

19 THE COURT: Okay.

20 MR. PICKETT: Two, actually.

21 RE CROSS EXAMINATION

22 BY MR. PICKETT:

23 Q. First, looking at that interpretation
24 letter -- actually, I'm gonna reduce it back down to
25 one. One question.

1 Did Geneva Steel have any, anything for sale
2 at this site for the public? Would the pub -- in
3 other words, would the public go to Geneva Steel to
4 purchase things directly?

5 A. We had some contractors on site that would --
6 had scrap rights. I don't know whether they sold
7 them -- they'd come directly off of the site, that --
8 so they operated their own businesses on site.
9 Meaning they would take the rights.

10 Heck it, we have -- currently have a slag --
11 somebody that crushes slag and markets from the site.
12 And they were there probably from the '50s. So there
13 may have been others that were coming in for -- other
14 business entities that existed on Geneva.

15 Q. And all of that was with Geneva Steel's
16 permission?

17 A. Yeah. They would be lessees or something.

18 MR. PICKETT: Thank you.

19 THE COURT: Mr. Astill?

20 MR. ASTILL: That's it.

21 THE COURT: Okay. Any more witnesses?

22 MS. KAMAS: No, your Honor.

23 THE COURT: No? Okay. The exhibits.

24 MS. KAMAS: Yes.

25 THE COURT: How do you want to do the

1 exhibits?

2 MS. KAMAS: First of all, I'd like to make
3 one clarification about mine.

4 THE COURT: Okay.

5 MS. KAMAS: A couple of mine, anyway. So
6 there are a couple of these that need to be the
7 official -- maybe just one that needs to be the
8 official -- well, no, there are two.

9 So this Exhibit 136, the poster size should
10 be the official exhibit because of the writing that
11 the witnesses have put on it. And that is the --
12 that's true also for Exhibit 134.

13 The other thing about Exhibit 134 is that
14 this is the signed -- this has the surveyor's
15 signature on it, whereas the version that's put in the
16 exhibit books and is on the CD was printed from an
17 electronic copy and it was not signed.

18 So Exhibit 136 and 134, the poster size are
19 the official exhibits.

20 THE COURT: Okay.

21 MR. CHURCH: I'm, I'm personally willing to
22 stipulate that they can use the unsigned one, if
23 that's the only difference between the poster size and
24 the small one, if it would make it easier on the
25 Commission.

1 MS. KAMAS: Yeah, it's --

2 THE COURT: This one's marked.

3 MS. KAMAS: It's not the only difference
4 because of the markings that the witness placed.

5 MR. CHURCH: Oh.

6 THE COURT: Marked and highlighted.

7 MR. CHURCH: Oh, yeah.

8 THE COURT: So initially what we were gonna
9 do is just basically admit the exhibits that we used,
10 but I don't even know if we want to really take that
11 time to do that.

12 So does anybody have any objections
13 essentially to -- my understanding is you didn't --
14 you already agreed to Union Pacific and UDOT's Joint
15 Trial Exhibits.

16 And we added to that U.P. Exhibit 161 and
17 162, which is a February 12, 2009, letter from Jim
18 Marshall -- or to Jim Marshall from Dennis Astill.

19 And then U.P. 163 through 168, which is the
20 Secretary's Action Plan. And then U.P. 169, which is
21 the large kind of post sheet there. Some explanations
22 of, what do you call it, surveying terms?

23 Anybody have anything different than what I
24 just read as far as Union Pacific and UDOT joint trial
25 exhibits? No?

1 MS. KAMAS: No, your Honor.

2 (Exhibit Nos. UP&UDOT 1 through 166 and 169
3 were admitted.)

4 THE COURT: And then Anderson Geneva. The
5 packet you gave me, Mr. Astill, plus Anderson Geneva
6 Exhibit 33, which was admitted today. Interpretation
7 Letter I-44, "Applicability of MUTCD to Private
8 Property Open to Public Travel." Is that right?

9 MR. ASTILL: Correct.

10 THE COURT: Those are all the exhibits?

11 MR. ASTILL: Yes.

12 (Exhibit Nos. Anderson Entities 1 through 32
13 were admitted.)

14 THE COURT: So I'll just remind you the
15 transcript will be out in about two weeks. The
16 initial post-hearing briefs due September 9th.
17 Responsive post-hearing briefs September 16th. All
18 right? Thank you.

19 MR. ASTILL: And your Honor, for whatever
20 benefit it is to the, to the Commission's file?
21 We're -- we didn't -- because of the stipulation for
22 the public crossing -- or the public highway
23 recognition, we haven't used and would withdraw
24 Exhibits 1 and 2 from our exhibit package.

25 (Exhibit Nos. Anderson Entities 1 and 2 were

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withdrawn.)

THE COURT: Okay. Anything else? Any other matters?

MR. ASTILL: No.

THE COURT: All right. Thank you very much.
(The hearing was concluded at 6:37 p.m.)

C E R T I F I C A T E

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 434, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

SIGNED ON THIS 30th DAY OF August, 2010.

Kelly L. Wilburn, CSR, RPR
Utah CSR No. 109582-7801

<p>'09 [1] - 108:2 '27 [3] - 106:21, 106:23, 256:7 '42 [2] - 71:7, 426:25 '43 [1] - 361:2 '50s [2] - 373:5, 430:12 '56 [1] - 372:11 '70s [1] - 277:24 '72 [2] - 341:23, 395:12 '80s [1] - 230:14 '82 [1] - 372:16 '86 [1] - 378:22 '89 [4] - 73:5, 357:19, 420:11 '90 [1] - 350:22 '90s [1] - 357:11 '93 [1] - 372:23 '94 [3] - 6:6, 6:8, 388:4 '95 [6] - 230:22, 337:4, 350:22, 388:3, 388:10, 388:11 '99 [1] - 91:25</p>	<p>131:18 11:41 [1] - 166:16 12 [4] - 6:25, 125:15, 305:11, 432:17 12/20/1999 [1] - 102:3 120 [1] - 131:21 120,000 [1] - 341:19 122 [1] - 132:8 124 [1] - 133:1 125 [4] - 9:25, 23:15, 24:4, 24:11 126 [1] - 141:12 128 [1] - 158:7 12:30 [3] - 166:10, 166:13, 166:14 12:33 [1] - 166:16 13 [4] - 39:16, 125:16, 186:15, 233:17 13.6 [1] - 236:11 130 [1] - 125:2 131 [1] - 139:22 132 [18] - 27:16, 28:11, 29:3, 31:8, 40:4, 46:5, 48:19, 52:8, 57:14, 62:25, 87:5, 98:9, 113:12, 113:19, 117:4, 117:15, 117:25, 120:19 133 [14] - 9:13, 9:21, 107:16, 111:2, 142:9, 142:10, 145:2, 147:12, 159:13, 159:14, 200:7, 318:11, 340:4, 340:6 134 [4] - 10:7, 10:15, 11:14, 12:3, 12:20, 15:8, 16:6, 17:6, 21:2, 22:24, 22:25, 23:3, 24:7, 24:25, 25:9, 26:22, 26:24, 27:10, 35:20, 36:20, 38:22, 41:9, 42:13, 86:3, 86:12, 87:25, 107:11, 107:24, 112:11, 114:25, 115:11, 115:13, 116:13, 120:11, 121:19, 255:16, 255:19, 431:12, 431:13, 431:18 135 [16] - 10:7, 23:9, 57:16, 59:6, 86:2, 86:16, 113:4, 118:7, 201:1, 244:1, 257:20, 260:20, 260:25, 286:21, 288:5, 419:16 136 [9] - 10:10, 11:9,</p>	<p>32:2, 89:8, 258:13, 259:25, 402:13, 431:9, 431:18 138 [6] - 130:20, 131:1, 216:22, 216:25, 217:20, 234:15 1389 [11] - 233:19, 233:22, 233:24, 234:12, 234:13, 234:15, 235:5, 235:12, 236:3, 236:7, 236:19 139 [2] - 130:21, 131:1 1390 [5] - 48:11, 232:25, 233:2, 233:9, 233:20 13th [6] - 141:16, 186:4, 189:1, 189:4, 191:5, 193:18 14 [2] - 39:16, 233:11 140 [1] - 144:10 15 [6] - 157:12, 157:13, 166:8, 230:3, 230:21, 320:2 15-minute [1] - 293:15 150 [1] - 334:5 1500 [1] - 287:4 152 [2] - 161:14, 161:23 153 [2] - 161:15, 161:19 154 [7] - 126:23, 129:13, 129:17, 176:3, 323:14, 323:16, 323:20 16 [5] - 178:19, 178:24, 254:3, 255:2, 295:10 1600 [4] - 140:15, 272:9, 273:1, 352:15 161 [1] - 432:16 162 [1] - 432:17 163 [1] - 432:19 164 [1] - 93:15 164-A [1] - 371:9 164-A(1) [1] - 385:6 168 [1] - 432:19 169 [2] - 62:5, 432:20 16th [1] - 433:13 18 [3] - 5:1, 69:14, 69:19 1800s [1] - 13:12 19 [3] - 83:4, 209:12, 358:4 1900s [1] - 13:12 1919 [2] - 241:18, 241:20 1927 [40] - 15:3,</p>	<p>28:9, 29:2, 29:4, 29:12, 29:14, 30:3, 35:21, 35:24, 36:8, 36:14, 37:9, 40:23, 42:4, 42:8, 42:23, 43:14, 43:19, 46:4, 48:19, 51:13, 51:16, 56:16, 57:22, 58:9, 59:16, 59:25, 60:13, 73:11, 83:4, 113:13, 113:18, 115:22, 116:3, 117:9, 117:25, 241:21, 256:6, 256:8, 257:13 1939 [3] - 385:1, 391:23, 395:17 1940 [1] - 372:7 1942 [42] - 15:14, 26:24, 27:10, 35:12, 36:1, 36:5, 36:19, 41:1, 42:3, 65:17, 71:8, 73:9, 100:3, 105:22, 106:2, 106:3, 106:17, 115:5, 115:14, 115:21, 116:2, 116:9, 117:14, 117:24, 118:12, 120:15, 122:9, 133:8, 133:20, 240:1, 240:12, 256:3, 307:9, 307:11, 338:22, 372:11, 376:16, 377:2, 407:20, 416:1, 417:10, 427:2 1943 [5] - 360:18, 361:18, 361:20, 364:25, 426:21 195 [2] - 83:23, 86:2 196 [2] - 71:13, 86:3 1970 [1] - 343:6 1970s [2] - 278:13, 396:1 1972 [5] - 275:2, 275:5, 341:9, 355:22, 356:6 1981 [1] - 230:9 1983 [1] - 73:4 1987 [1] - 336:7 1988 [2] - 125:15, 126:16 1989 [4] - 73:6, 91:25, 357:21, 387:4 1990 [5] - 336:9, 350:24, 357:16, 387:9, 387:21 1991 [1] - 387:7 1994 [1] - 337:4 1995 [4] - 230:16, 230:22, 350:25, 388:5 1996 [1] - 6:20 1999 [3] - 34:7,</p>	<p>87:18, 88:20 19th [1] - 208:9 1:30 [1] - 222:10 1:37 [1] - 222:10</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 [11] - 12:6, 47:22, 49:4, 49:5, 49:16, 159:18, 381:7, 381:11, 429:4, 433:20, 433:21 2,757 [1] - 19:9 20 [20] - 13:22, 14:2, 14:5, 14:6, 68:21, 69:14, 132:18, 167:21, 168:3, 194:22, 201:25, 202:1, 205:24, 235:20, 236:19, 262:11, 285:7, 316:1, 358:4, 358:8 20-year [1] - 280:20 2000 [7] - 6:20, 314:2, 314:4, 314:5, 315:8, 315:10, 358:18 2000's [1] - 278:13 2004 [16] - 11:9, 11:17, 21:2, 22:20, 24:9, 24:17, 27:11, 35:13, 37:4, 40:19, 57:22, 88:12, 200:25, 244:3, 258:13, 258:15 2005 [5] - 306:6, 307:25, 308:2, 313:25, 315:10 2006 [9] - 6:22, 216:11, 312:7, 312:19, 337:6, 358:18, 388:25, 389:8, 396:8 2007 [6] - 7:9, 7:16, 125:9, 129:1, 130:12, 378:23 2008 [7] - 125:9, 131:19, 138:14, 138:15, 138:20, 173:12, 209:12 2009 [8] - 132:18, 133:2, 141:9, 158:9, 288:24, 306:7, 306:17, 432:17 2010 [2] - 5:1, 11:19 21 [6] - 69:18, 69:23, 70:1, 235:24, 239:17, 320:4 22 [2] - 126:12, 167:21 23 [1] - 157:16 24-inch [1] - 373:18 25 [15] - 39:25, 50:3,</p>
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