

2004

Young Electric Sign Company v. State of Utah, Utah Department of Transportation : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Heidi E. C. Leithead; Parr, Waddoups, Brown, Gee & Loveless; Attorneys for Plaintiff/Appellant.

Mark E. Burns; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Attorneys for Defendant/Appellee.

Recommended Citation

Brief of Appellant, *Young Electric Sign Company v. State of Utah, Utah Department of Transportation*, No. 20040265 (Utah Court of Appeals, 2004).

https://digitalcommons.law.byu.edu/byu_ca2/4883

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

**YOUNG ELECTRIC SIGN
COMPANY**, a Utah corporation,

Plaintiff and Appellant,

vs.

STATE OF UTAH, by and through
the **UTAH DEPARTMENT OF
TRANSPORTATION**,

Defendant and Appellee.

**Appellate Case No.
20040265-CA**

**BRIEF OF APPELLANT
YOUNG ELECTRIC SIGN COMPANY**

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR DAVIS COUNTY, STATE OF UTAH

JUDGE DARWIN C. HANSEN, PRESIDING

Heidi E. C. Leithead
PARR WADDUPS BROWN GEE & LOVELESS
185 South State Street, Suite 1300
Salt Lake City, UT 84111
Telephone: 801/532-7840

Attorneys for Plaintiff/Appellant

Mark E. Burns
Assistant Attorney General
Mark L. Shurtleff
Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114
Telephone: 801/366-0353

Attorneys for Defendant/Appellee

ORAL ARGUMENT REQUESTED

**FILED
UTAH APPELLATE COURTS
AUG 12 2004**

IN THE UTAH COURT OF APPEALS

YOUNG ELECTRIC SIGN)
COMPANY, a Utah corporation,)
))
Plaintiff and Appellant,)
)

vs.)
)

STATE OF UTAH, by and through)
the **UTAH DEPARTMENT OF**)
TRANSPORTATION,)
)
Defendant and Appellee.)

Defendant and Appellee.)

**BRIEF OF APPELLANT
YOUNG ELECTRIC SIGN COMPANY**

JUDGE DARWIN C. HANSEN, PRESIDING

Attorneys for Defendant/Appellee

TABLE OF CONTENTS

JURISDICTION OF THE APPELLATE COURT	1
ISSUES PRESENTED FOR REVIEW	1
A. ISSUES.....	1
B. STANDARD OF REVIEW	2
PRESERVATION OF ISSUES FOR APPEAL.....	3
RELEVANT STATUTES AND REGULATIONS	4
STATEMENT OF THE CASE	5
A. NATURE OF THE CASE.....	5
B. STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW	6
SUMMARY OF THE ARGUMENT	6
ARGUMENT.....	11
I. YESCO’S PROPOSED SIGN LOCATION IS LOCATED IN EXCESS OF 500 FEET FROM THE ANTELOPE DRIVE/I-15 NORTHBOUND INTERCHANGE	13
II. THE DISTRICT COURT ERRED IN DEFINING THE PARAMETERS OF THE ANTELOPE DRIVE/I-15 NORTHBOUND INTERCHANGE	19
A. THE DISTRICT COURT’S INTERPRETATION PLACED THE POINT OF WIDENING WELL BEYOND THE 2,640 FEET ALLOWED BY SECTION 72-7-502(19).....	20

B.	THE DISTRICT COURT FAILED TO ACKNOWLEDGE THE PRESENCE OF THE ACCELERATION LANE.....	22
III.	THE “POINT OF WIDENING” AND THE “POINT OF PAVEMENT WIDENING” ARE SYNONYMOUS	25
	CONCLUSION	28
	CERTIFICATE OF SERVICE.....	30

ADDENDUM

Exhibit A	Complete Copy of UTAH CODE ANN. §§ 72-7-505, 72-7-502(9), 72-7-502(19) (LexisNexis 2001 & SUPP. 2003) and UTAH ADMIN. R. 933-2-3 (2) (LexisNexis 2004).	4
Exhibit B	Ruling on Plaintiff’s Motion for Summary Judgment and Ruling on Defendant’s Motion for Summary Judgment	5
Exhibit C	Aerial Photograph of the Antelope Drive/I-15 Northbound Interchange located in Clearfield, Utah (also located at R54).....	13, 14, 17, 18
Exhibit D	UTAH LEGISLATIVE REPORT 1997, Vol. 2, at 646, 647-48	27-28
Exhibit E	Findings and Order, Application of ROA General, Inc. dba Reagan Outdoor Advertising, File No. 03-03-001	22

TABLE OF AUTHORITIES

Cases

Committee of Consumer Serv. v. Public Serv. Comm’n of Utah, 2003 UT 29, 8, 75 P.3d 481	2
Ekshteyn v. Dept. of Workforce Services, 2002 UT App 74, 10, 45 P.3d 173	2
Grynberg v. Questar Pipeline Co., 2003 UT 8, 30, 70 P.3d 1 (Utah 2003)	25
LKL Assoc., Inc. v. Farley, -- P.3d --, 2004 WL 1380527 (Utah 6/2/2004).....	26
Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602, 606 (Utah App. 1995).....	19
R.A. McKell Excavating, Inc. v. Wells Fargo Bank, N.A., 2004 UT 48, 7, 502 Utah Adv. Rep. 9 (Utah 2004)	2, 19
R.O.A. General, Inc. v. UDOT, 966 P.2d 840, 843 (Utah 1998)	3
State of Utah v. Mooney, -- P.3d --, 2004 WL 1380539 (Utah 6/22/2004)	3
Utah State Bar v. Summerhayes & Hayden, 905 P.2d 867, 872 (Utah 1995)	25

Rules

UTAH ADMIN. R. 933-2-3(2) (LexisNexis 2004)	5, 8, 9, 11, 17-18, 23, 24, 25, 29
--	------------------------------------

Statutes

UTAH CODE ANN. § 41-6-53.5(1)(b) (LexisNexis Supp. 2003).....	24
UTAH CODE ANN. § 41-6-63.30(1) (LexisNexis Supp. 2003).....	22
Utah Outdoor Advertising Act, UTAH CODE ANN. §§ 72-7-501 to 516 (LexisNexis 2001 & Supp. 2003).....	2, 11-12

UTAH CODE ANN. § 72-7-501 (LexisNexis 2001).....	7, 12, 20
UTAH CODE ANN. § 72-7-502(2) (LexisNexis Supp. 2003).....	26
UTAH CODE ANN. § 72-7-502(9) (LexisNexis Supp. 2003).....	1, 4, 8, 15, 16
UTAH CODE ANN. § 72-7-502(12) (LexisNexis Supp. 2003).....	8, 23
UTAH CODE ANN. § 72-7-502(19) (LexisNexis Supp. 2003).....	1, 4, 8, 9, 10, 11, 16, 19, 20, 21, 22, 27, 28, 29
UTAH CODE ANN. § 72-7-504 (LexisNexis Supp. 2003)	12
UTAH CODE ANN. § 72-7-505(3)(c)(i) (LexisNexis Supp. 2003)	1, 4, 7, 9, 10, 11, 13, 15, 16, 18, 25, 26, 28, 29
UTAH CODE ANN. § 72-7-508(4) (LexisNexis 2001).....	5
UTAH CODE ANN. § 78-2a-3 (2)(a) (LexisNexis 2002).....	1
UTAH CODE ANN. § 78-2-2(3)(j) (LexisNexis 2002)	1
UTAH CODE ANN. § 78-2-2(4) (LexisNexis 2002).....	1

Other Authorities

Legislative History

UTAH LEGISLATIVE REPORT 1997, Vol. 2	27-28
UTAH LEGISLATIVE REPORT 1998. Vol. 1, at 331-337	28

Other

Webster’s II New College Dictionary 246 (1995)	21
Webster’s Ninth New Collegiate Dictionary 633 (9th ed. 1989)	16

<i>Findings and Order, Application of ROA General, Inc. dba Reagan Outdoor Advertising, File No. 03-03-002</i>	22
--	----

JURISDICTION OF THE APPELLATE COURT

Young Electric Sign Company (“YESCO”) appealed this matter to the Utah Court of Appeals under Utah Code Ann. § 78-2a-3(2)(a) (LexisNexis 2002) because it was appealing from the district court’s review of informal adjudicative proceedings of the Utah Department of Transportation (“UDOT”). The Utah Court of Appeals entered an Order transferring the appeal to the Utah Supreme Court under Utah Code Ann. § 78-2-2(3)(j) (LexisNexis 2002) on the ground that the appeal was taken from an order, judgment, or decree of a district court in a civil case. The Utah Supreme Court subsequently entered an Order transferring the appeal to the Utah Court of Appeals under Utah Code Ann. § 78-2-2(4) (LexisNexis 2002).

ISSUES PRESENTED FOR REVIEW

A. ISSUES

The following issues are presented for review:

1) Whether the district court erred in defining the “point of gore” as that term is used in Utah Code Ann. § 72-7-502(19).

(2) Whether the district court erred in defining “point of widening” or the point of pavement widening as that term is used in Utah Code Ann. §§ 72-7-502(19) and/or 72-7-505(3)(c)(i).

3) Whether the district court properly applied the definition of an “interchange” as that term is used in Utah Code Ann. §§ 72-7-502(9) and 72-7-505(3)(c)(i).

4) Whether the district court erred in holding that UDOT properly denied YESCO's application for a permit to relocate its outdoor advertising sign.

B. STANDARD OF REVIEW

This is an appeal from a ruling on summary judgment. Each of the issues raised on appeal involves the proper interpretation of the Utah Outdoor Advertising Act, UTAH CODE ANN. §§ 72-7-501 to 516 (LexisNexis 2001 & Supp. 2003).

The appellate court reviews questions of statutory interpretation for correctness, affording no deference to the district court's legal conclusions. *R.A. McKell Excavating, Inc. v. Wells Fargo Bank, N.A.*, 2004 UT 48, ¶7, 502 Utah Adv. Rep. 9. In the context of a summary judgment motion, the court employs a correctness standard and views the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *Id.*

Likewise, unless the legislature has granted discretion to an agency to interpret statutory language, the appellate court reviews the agency's construction of statutory provisions under a correction of error standard, granting the agency no deference. *Committee of Consumer Serv. v. Public Serv. Comm'n of Utah*, 2003 UT 29, ¶8, 75 P.3d 481. Where there is more than one permissible reading of the statute and no basis in the statutory language or legislative history to prefer one interpretation over the other, the agency's interpretation of statutory provisions is entitled to deference. *Ekshteyn v. Dept. of Workforce Services*, 2002 UT App 74,

¶10, 45 P.3d 173; *R.O.A. General, Inc. v. UDOT*, 966 P.2d 840, 843 (Utah 1998).

The appellate court should defer to an agency's interpretation of its own regulation only if it is a reasonable interpretation of the regulatory language, i.e., "only if the regulation 'is not free from doubt' and if the interpretation is 'reasonable' and 'sensibly conforms to the wording and purpose' of the regulation." *State of Utah v. Mooney*, 2004 UT 49, ¶24, 502 Utah Adv. Rep. 16 (citation omitted).

PRESERVATION OF ISSUES FOR APPEAL

Each of the issues set forth above was addressed at length in the parties' briefing on their cross motions for summary judgment and was central to the trial court's decision on those cross motions. *See* Ruling on Plaintiff's Motion for Summary Judgment and Ruling on Defendant's Motion for Summary Judgment [R163-171], Young Electric Sign Company's Memorandum in Support of its Motion for Summary Judgment [R35-57], UDOT's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment [R61-109], Young Electric Sign Company's Reply Memorandum in Support of its Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment [R125-141], and UDOT's Reply Memorandum in Support of Defendant's Motion for Summary Judgment [R148-156].

RELEVANT STATUTES AND REGULATIONS

The statutes and regulations whose interpretation is determinative of or of central importance to this appeal read, in relevant part, as follows. A complete copy of each is found in the Addendum at Tab A:

72-7-505. Sign size – Sign spacing – Location in outdoor advertising corridor – Limit on implementation.

* * * *

(3) Except as provided in Section 72-7-509:

* * * *

(c) (i) (A) Except under Subsection (3)(c)(ii), signs may not be located on an interstate highway or limited access highway on the primary system within 500 feet of an interchange, or intersection at grade, or rest area measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(B) Interchange and intersection distance limitations shall be measured separately for each direction of travel. A measurement for each direction of travel may not control or affect any other direction of travel.

* * * *

UTAH CODE ANN. § 72-7-505(3)(c)(i) (LexisNexis Supp. 2003).

72-7-502. Definitions.

* * * *

(9) “Interchange or intersection” means those areas and their approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route.

* * * *

(19) “Point of widening” means the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic, but the point of widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.

UTAH CODE ANN. § 72-7-502 (LexisNexis Supp. 2003).

UTAH ADMIN. R. 933-2-3(2)

(2) “Acceleration and deceleration lanes” means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

UTAH ADMIN R. 933-2-3(2) (LexisNexis 2004).

STATEMENT OF THE CASE

A. NATURE OF THE CASE

YESCO submitted an application to UDOT to erect an outdoor advertising sign that would be located in excess of 3,000 feet north of the center of the intersection of I-15 and Antelope Drive in Clearfield, Utah. [R2, 19, 32, 39, 54] When UDOT, Region One, denied its application, YESCO sought informal agency review. [R2, 19] After holding the hearing, UDOT denied YESCO’s permit application. [R3, 20] Pursuant to Utah Code Ann. § 72-7-508(4) (LexisNexis 2001), YESCO filed a Complaint with the Second Judicial District Court of Davis County seeking *de novo* judicial review of UDOT’s decision. [R3, 20] On cross-motions for summary judgment, the district court sustained UDOT’s decision. [R163-171] This appeal followed. (A copy of the district court’s decision is attached in the Addendum at Tab B.)

B. STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW.

In 1978, YESCO legally erected an outdoor advertising sign on premises leased from the owner of real property located in Clearfield, Utah. [R30, 37, 39, 53] In 2002, to accommodate its development plans for the property, the property owner required YESCO to move its sign to a new location on the northern end of the property. [R32, 39, 51-52] Accordingly, YESCO sought UDOT's approval to erect a new outdoor advertising sign, which would be located on the east side of I-15 at mile marker 336.18 (the "Sign"). [R2, 20, 62] YESCO's proposed Sign would be located in an industrial and commercial area or an unzoned industrial and commercial area. [R6, 21] The proposed Sign would be located

- in excess of 3,000 feet north of the center of the interchange of Antelope Drive and I-15,
- approximately 1,850 feet north of the point where the paving for the on-ramp of the traffic lane from Antelope Drive meets and begins to parallel the three northbound lanes of I-15, and
- 108 feet north of the point where the traffic lane from Antelope Drive completely merges into I-15.

[R32, 39, 41, 52, 54, 192 (p. 3)]

SUMMARY OF THE ARGUMENT

The Utah Outdoor Advertising Act (the "Act" or the "Outdoor Advertising Act") regulates the placement of outdoor advertising signs along Utah's interstate

corridors. Among other things, the Act recognizes the need to ensure that outdoor advertising in Utah continues as “a standardized medium of communication throughout the state so that it is preserved and can continue to provide general information in the specific interest of the traveling public safely and effectively.” UTAH CODE ANN. § 72-7-501(1) (LexisNexis 2001). The Act provides a statutory basis for the reasonable regulation of outdoor advertising, including the protection of private property rights. *Id.* § 72-7-501(2).

In keeping with those purposes, the Act allows the erection of outdoor advertising signs in commercial or industrial areas located along the interstate corridors. Recognizing the need to balance the various purposes of the Act, the statute regulates the placement of outdoor advertising signs by, among other things, prohibiting signs within 500 feet of an interchange (the “no-sign zone” or “sign-free zone”). UTAH CODE ANN. § 72-7-505(3)(c)(i). The 500-foot no-sign zone is measured from the proposed sign location to the “nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.” *Id.*

Proper application of section 72-7-505(3)(c)(i) requires the Court first to determine the parameters of the interchange. Once the Court establishes those parameters, it can determine whether a proposed outdoor advertising sign falls within 500 feet of the interchange, as measured from the proposed sign.

Defining the interchange turns on the interplay among various statutory and regulatory definitions. The Act defines an interchange as “those areas and their

approaches where traffic is channeled off or onto an interstate route. . . .” *Id.* § 72-7-502(9). By definition, an interchange does not include acceleration or deceleration lanes. *Id.*

The Act does not define acceleration or deceleration lanes. By regulation, however, acceleration and deceleration lanes are defined as “speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way.” UTAH ADMIN. R. 933-2-3(2). Under Rule 933-2-3(2), an acceleration or deceleration lane “begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.” *Id.*

In 1997, the Utah Legislature amended the Outdoor Advertising Act to include definitions for both “point of widening” and “main-traveled way.” Under those amendments, the “point of widening” is defined as “the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic” UTAH CODE ANN. § 72-7-502(19). Under section 72-7-502(19), the point of widening may “never be more than 2,640 feet from the center line of the intersecting highway or the interchange or intersection at grade.” *Id.* The main-traveled way is defined as the “through traffic lanes, including auxiliary lanes, acceleration lanes, deceleration lanes, and feeder systems, exclusive of frontage roads and ramps.” *Id.* § 72-7-502(12).

In 1978, YESCO lawfully erected an outdoor advertising sign on leased property located north and east of the since-constructed intersection of Antelope Drive and I-15 in Clearfield, Utah. [R30, 37, 53] In 2002, the landowner requested that YESCO move its sign to the northernmost boundary of its property to accommodate the landowner's development plans. [R32, 39, 51, 52] UDOT refused YESCO's request for a permit on the ground that the proposed location for the relocated sign violated section 72-7-505(3)(c)(i). [R75-77]

YESCO challenged UDOT's decision in district court. In that action, UDOT argued that the "point of pavement widening" set out in section 72-7-505(3)(c)(i) should be determined without reference to the "point of widening" defined by section 72-7-502(19) and that, under section 72-7-505(3)(c)(i), the relevant point of pavement widening did not occur until the traffic lane allowing traffic to move northward from Antelope Drive to I-15 fully merged into I-15. [R64-67]

Relying on the definitional language of section 72-7-502(19) and the regulatory definition of an acceleration lane, YESCO argued that the point of widening intended by section 72-7-505(3)(c)(i) occurred at the point where the pavement of I-15 widened to meet the traffic lane from Antelope Drive as it turned northward and began to parallel the three northbound lanes of I-15. Five hundred feet past that point, the on-ramp of the traffic lane became an acceleration lane, as defined by Rule 933-2-3(2). Because an interchange, by definition, does not include an acceleration lane, the 500-foot no-sign zone mandated by section

72-7-505(3)(c)(i) continued for 500 feet past the commencement of the acceleration lane, or 1,000 feet north of the point of widening identified by YESCO. YESCO's proposed Sign would be located in excess of 800 feet past the no-sign zone, and UDOT wrongfully refused to issue the permit. [R40-47]

The district court upheld UDOT's decision. In reaching its conclusion, the district court recognized that it could not ignore the definition of point of widening stated in section 72-7-502(19), as urged by UDOT. The district court determined that section 72-7-502(19) identified two possible points of widening, (a) the "point of the gore," in the case where there is no acceleration lane or (b) the point where the intersecting lane begins to parallel the other lanes of traffic, where there is an acceleration lane. Failing to address or recognize the existence of the acceleration lane, and borrowing a definition of gore taken from a National Traffic Safety Administrative website cited by neither party, the district court determined that the point of the gore in this case occurred where the traffic lane from Antelope Drive fully merged into I-15, the same location identified by UDOT. Because YESCO's proposed Sign would be located within 500 feet of that point, the district court concluded that the proposed site would violate section 72-7-505(3)(c)(i). [R163-171]

While the district court properly recognized the application of section 72-7-502(19)'s definition of point of widening, it ignored that portion of the definition which provides that the point of widening "may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or

intersection at grade.” The point of the gore identified by the district court, and by UDOT, is located in excess of 2,900 feet north of the center line of Antelope Drive and I-15. That point, by statutory definition, falls outside the interchange because it exceeds the 2,640-foot limitation mandated by section 72-7-502(19). The point of widening identified by the district court therefore cannot stand. Because the district court measured the no-sign zone from its erroneous point of widening, it improperly upheld UDOT’s decision refusing YESCO’s permit request.

The only viable point of widening that falls within the 2,640-foot limitation is that argued by YESCO. It occurs at the point where the traffic lane turns and begins to parallel the three northbound lanes of I-15, a point well within the 2,640 foot-limitation set out in section 72-7-502(19). Under Rule 933-2-3(2), the acceleration lane begins 500 feet past that point. Because an interchange cannot, by definition, include acceleration lanes, the interchange ends where the acceleration lane begins. Section 72-7-505(3)(c)(i) prohibits outdoor advertising signs within 500 feet of the interchange. Thus, the no-sign zone ends 500 feet past the point where the acceleration lane begins, or 1,000 feet past the point of widening identified by YESCO. Because YESCO’s proposed sign would be located in excess of 800 feet past the end of the no-sign zone, the district court should have ordered UDOT to issue the permit.

ARGUMENT

Outdoor advertising in Utah is subject to the provisions of the Outdoor Advertising Act, UTAH CODE ANN. §§ 72-7-501 to 516 (LexisNexis 2001 and

Supp. 2003) (the “Act” or the “Outdoor Advertising Act”). Among other things, the purpose of the Act

. . . is to provide the statutory basis for the regulation of outdoor advertising consistent with zoning principles and standards and the public policy of this state in providing public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in highways, to preserve the natural scenic beauty of lands bordering on highways, and to ensure that outdoor advertising shall be continued as a standardized medium of communication throughout the state so that it is preserved and can continue to provide general information in the specific interest of the traveling public safely and effectively.

(2) It is the purpose of this part to provide a statutory basis for the reasonable regulation of outdoor advertising consistent with the customary use, zoning principles and standards, the protection of private property rights, and the public policy relating to areas adjacent to the interstate, federal aid primary highway existing as of June 1, 1991, and the national highway systems highways.

Id. § 72-7-501(1) & (2).

Utah Code Ann. § 72-7-504 generally prohibits the erection or maintenance of an outdoor advertising sign that is “capable of being read or comprehended from any place on the main-traveled way of an interstate or primary system” except where specifically allowed by the Act. Among other exceptions, the Act allows the erection or maintenance of an outdoor advertising sign “located in a commercial or industrial area” or “in unzoned industrial or commercial areas as determined from actual land uses.” UTAH CODE ANN. § 72-7-504(1)(d) & (e) (LexisNexis Supp. 2003). The parties do not dispute that the proposed Sign would be located in a commercial or industrial area. [R6, 21]

While outdoor advertising signs may be erected in a commercial or industrial area, a sign may not be located within 500 feet of an interchange. UTAH CODE ANN. § 72-7-505(3)(c)(i). The district court held that YESCO's proposed sign location violated that 500-foot restriction. The district court's decision is wrong because it misapplied and/or ignored definitions critical to determining the outside boundaries of the interchange.

I. YESCO'S PROPOSED SIGN LOCATION IS LOCATED IN EXCESS OF 500 FEET FROM THE ANTELOPE DRIVE/I-15 NORTHBOUND INTERCHANGE.

The essential facts are not in dispute. Subsequent to YESCO's lawful erection of its original sign in 1978, UDOT constructed an interchange to allow the movement of traffic between I-15 and Antelope Drive. [R30, 31, 37, 38, 53] As part of the interchange, UDOT constructed an on-ramp allowing traffic from Antelope Drive to access the northbound lanes of I-15 (the "Antelope Drive/I-15 Northbound Interchange"). [R38, 54]

An aerial photograph of the Antelope Drive/I-15 Northbound Interchange is found in the Addendum at Tab C. [See also R54] As the aerial photograph shows, the traffic lane that allows traffic to transition from Antelope Drive to the northbound lanes of I-15 (the "Traffic Lane") initially curves northward from Antelope Drive toward the three northbound interstate lanes. At the end or bottom of the curve or ramp, the Traffic Lane straightens and begins to run parallel to the three northbound lanes of I-15. While the Traffic Lane from Antelope Drive and the three northbound lanes of I-15 initially are separated by unpaved ground, at or

near the end of the curve or ramp, the pavement for I-15 widens where it meets the pavement from the Traffic Lane, creating a solid field of pavement covering the three northbound lanes of I-15 and the Traffic Lane that flows from Antelope Drive. [R33, 39, 54, 192 (pp. 8-9)] The point at which this occurs is marked on the aerial photograph as the “point of widening.” [R54; *see also* Addendum, Tab C] From this point forward, the Traffic Lane continues to run parallel to the three northbound lanes of I-15, gradually merging into the easternmost, or outside, lane of I-15. [R33, 39-40, 54; *see also* Addendum, Tab C]

The distance from Antelope Drive to the point at which the paving for the through lanes of northbound I-15 widens to meet the pavement of the then-parallel Traffic Lane measures 1,164 feet. [R33, 39, 54] The Traffic Lane then runs parallel to the three northbound lanes of I-15 for another 1,738 feet as it gradually merges into I-15.¹ [R33, 39-40, 54; *see also* Addendum, Tab C] The point at which the Traffic Lane is fully merged into I-15 is in excess of 2,900 feet from the center point of the intersection of Antelope Drive and I-15. [R33, 39-40, 54; *see also* Addendum, Tab C] YESCO’s proposed sign site is located an additional 108 feet beyond that point, or 3,010 feet from the center point of the intersection of Antelope Drive and I-15. [R32, 39, 52, 54]

¹ According to UDOT, YESCO’s proposed sign location is 108 feet north of the point at which the Traffic Lane fully merges into I-15. [R52] Using the measurements noted on the aerial photograph (R54; Addendum, Tab C), YESCO’s figure of 1,738 feet is calculated by adding 500 feet + 500 feet + 846 feet – 108 feet = 1,738 feet.

The Outdoor Advertising Act prohibits outdoor advertising signs within 500 feet of an interchange. Section 72-7-505 states,

(3)(c)(i)(A) Except under Subsection 3(c)(ii), signs may not be located on an interstate highway or limited access highway on the primary system **within 500 feet of an interchange**, or intersection at grade, or rest area measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

UTAH CODE ANN. § 72-7-505(3)(c)(i) (emphasis added).

Thus, the proper application of Section 72-7-505(3)(c)(i) requires that the Court determine what is, and what is not, part of an interchange. UDOT contends that the interchange extends to where the Traffic Lane becomes fully merged into I-15, over 2,900 feet from the center line of the intersection of Antelope Drive and I-15. YESCO contends that the interchange ends 500 feet beyond the point where the paving for the Traffic Lane meets the paving for the through lanes of I-15 and the Traffic Lane begins to parallel I-15.

The legal resolution of the parties' dispute involves the interplay among several interrelated definitions found both in the Outdoor Advertising Act and UDOT regulations. The Outdoor Advertising Act defines an "interchange or intersection" as

those areas and their approaches where traffic is channeled off or onto an interstate route, **excluding** the deceleration lanes, **acceleration lanes**, or feeder systems, from or to another federal, state, county, city, or other route.

Id. § 72-7-502(9) (emphasis added).

Applying the language of sections 72-7-505(3)(c)(i) and 72-7-502(9), the configuration of the Antelope Drive/I-15 Northbound Interchange at issue contains two important points that dictate the confines of that interchange: 1) the point of widening and 2) the beginning of the acceleration lane.

To establish the boundaries of the interchange, the Court first must establish the point of widening. The Outdoor Advertising Act defines the “point of widening” as

the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic, but the point of widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.

UTAH CODE ANN. § 72-7-502(19).²

Antelope Drive runs roughly east and west. The Traffic Lane curves northward off Antelope Drive to a point where the curve ends and the Traffic Lane intersects and begins to run parallel with the three northbound lanes of I-15. Measuring in a straight line from Antelope Drive, the point at which the Traffic Lane intersects and begins to parallel the three lanes of I-15 measures 1,164 feet [R33, 39], well within the 2,640-foot limit defined by the Legislature. This is the point of widening defined by the Utah Outdoor Advertising Act.

² The term “intersect” means (1) to meet and cross at a point or (2) to share a common area or overlap. WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 633 (9th ed. 1989). The definition of point of widening uses the term in both ways, first as a common area or overlap (where the intersecting lane, or the Traffic Lane, meets and begins to parallel I-15) and, second, as a crossing point (the center line of Antelope Drive, the intersecting highway, where it crosses over I-15).

In certain circumstances, an on-ramp may funnel traffic almost directly into the outside interstate lane, generating potential traffic conflicts as the usually slower traffic on the on-ramp attempts to merge with the higher-speed traffic in the interstate lanes. In other instances, however, the on-ramp converts to an acceleration lane (which is not, by definition, part of the interchange), allowing room for traffic in the acceleration lane to adjust its speed to that of the interstate traffic flow before merging into the interstate traffic lanes themselves. Such is the situation here.

The Traffic Lane begins to parallel the I-15 northbound lanes at the point of widening located 1,164 feet from Antelope Drive. [R33, 39, 192 (pp. 8-9)] The Traffic Lane then continues on past the point of widening for another 1,738 feet, gradually narrowing until it fully merges into I-15. [R52, 54 (Addendum, Tab C)] Between the point of widening and the point at which the Traffic Lane completely merges into I-15, the Traffic Lane functions as an acceleration lane. Because an interchange, by definition, does not include acceleration lanes, the point at which the Traffic Lane becomes an acceleration lane marks the end of the interchange.

The Utah Outdoor Advertising Act does not define an acceleration lane. Administrative regulations, however, provide guidance.

R933-2-3. Definitions.

“Acceleration and deceleration lanes” means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than

500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

UTAH ADMIN. R. 933-2-3(2).

At the Antelope Drive/I-15 Northbound Interchange, the pavement of I-15 widens to meet the pavement of the Traffic Lane and the Traffic Lane begins to run parallel to I-15 at the point of widening (1,164 feet) and continues on for 500 feet. [R33, 39, 54 (Addendum, Tab C)] At that point, by definition, the Traffic Lane becomes an acceleration lane – a lane intended to allow a vehicle to increase or decrease its speed to merge into the I-15 northbound traffic. This acceleration lane continues for an additional 1,238 feet for this purpose until it is fully merged with the three northbound lanes of I-15. [R54 (Addendum, Tab C)]

Having established both the point of widening and the commencement of the acceleration lane, the Court now can determine the point at which it is lawful to erect an outdoor advertising sign. Section 72-7-505(3)(c)(i) provides that a sign may not be located within 500 feet of an interchange. The acceleration lane begins 500 feet past the point of widening and marks the end of the interchange. The prohibition on outdoor advertising signs then continues for another 500 feet, or 1,000 feet past the point of widening.

In this instance, the interchange includes the Traffic Lane to the point of widening (1,164 feet from Antelope Drive) plus an additional 500 feet to the point where the acceleration lane begins (1,164 feet plus 500 feet, or 1,664 feet). The no-sign zone continues for another 500 feet, or 2,164 feet from the northern

boundary of Antelope Drive. YESCO's proposed sign would be located over 800 feet past that point, or in excess of 3,000 feet north of Antelope Drive. [R32, 33, 39, 54] UDOT therefore inappropriately denied YESCO's sign application.

II. THE DISTRICT COURT ERRED IN DEFINING THE PARAMETERS OF THE ANTELOPE DRIVE/I-15 NORTHBOUND INTERCHANGE.

In its decision, the district court upheld UDOT's denial on the ground that, measuring from its proposed location, YESCO's Sign would be located within 500 feet of the point where the Traffic Lane fully merged into I-15, which the district court determined was the "point of the gore." The district court's decision cannot stand because its placement of the "point of the gore" exceeds the 2,640 foot limitation required by section 72-7-502(19) and ignores the existence of the acceleration lane.

In matters of statutory construction, this Court is not required to defer to the district court's legal conclusions. *R.A. McKell Excavating, Inc. v. Wells Fargo Bank, N.A.*, 2004 UT 48, ¶7, 502 Utah Adv. Rep. 9. The district court erred in failing to follow applicable rules of statutory construction. One of those rules provides that regulations on the use of private property which are in derogation of the property owner's common law rights to free use of the property are to be strictly construed, with any doubts resolved in favor of the property owner. *See Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 & n.10 (Utah App. 1995). The policy reflected by the *Patterson* decision is expressly included in the Utah Outdoor Advertising Act, which provides that its purpose, among other

things, is the protection of private property rights. *See* UTAH CODE ANN. § 72-7-501(2).

A. THE DISTRICT COURT’S INTERPRETATION PLACED THE POINT OF WIDENING WELL BEYOND THE 2,640 FEET ALLOWED BY SECTION 72-7-502(19).

In its definitional section, the Outdoor Advertising Act defines “point of widening” as the “point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic . . .” UTAH CODE ANN. § 72-7-502(19). Importantly, by definition, the point determined to be the point of widening can “never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.” *Id.*

Although the language of section 72-7-502(19) does not contain the term “acceleration lane,” the district court nonetheless interpreted section 72-7-502(19) to provide two possible points of widening, depending on the presence of an acceleration lane: “(1) ‘the point of the gore,’ in the case where there is no acceleration lane, or (2) the point where the intersecting lane begins to parallel the other lanes of traffic’ where there is an acceleration lane that does run parallel to the main-traveled way.” [R166] The district court then misapplied the statute under the first scenario and disregarded the second.

The district court was presented with two, and only two, points that arguably could be determined as the point of widening. Based on the language of the definition, YESCO argued that the point of widening occurred where the on-ramp portion of the Traffic Lane changed direction to parallel the interstate lanes

and the interstate paving widened to meet the on-ramp paving. UDOT argued that the point of widening occurred where the Traffic Lane became fully-merged into the interstate, some 2,900 feet beyond the center line of Antelope Drive where it intersects with I-15.

The district court selected the point urged by UDOT but based on a different analysis. Starting from its two-part breakdown of section 72-7-502(19), the district court pulled a definition of a “gore” from a National Highway Traffic Safety Administration website that was neither cited to nor relied on by either party. That definition defines a gore as “an area of land where two roadways diverge or converge.” [R166] The district court, on its own, apparently believed that two lanes converge not where they initially meet but where they completely merge into one, which the court then characterized as the “point of the gore.” The district court’s reliance on that definition fails on two grounds. First and foremost, the district court’s reading of the federal definition, with its inaccurate definition of converge³, places the point of the gore well outside the 2,640 foot limitation established by section 72-7-502(19).

Second, the district court’s search for a definition of gore need not have gone any further than existing Utah law. In its traffic regulations, Utah law defines a “gore area” as the “area delineated by two solid white lines that is

³ Converge, a verb, means to (a) meet or approach the same point from different directions or (b) to move together toward union. WEBSTER’S II NEW COLLEGE DICTIONARY 246 (1995). Had the district court properly defined converge, it would have placed the point of widening at the location argued by YESCO.

between a continuing lane of a through roadway and a lane used to enter or exit the continuing lane including similar areas between merging or splitting lanes.” UTAH CODE ANN. § 41-6-63.30(1) (LexisNexis Supp. 2003) (emphasis added). The district court’s reference to a point that does not lie in the area *between* the through lanes of I-15 and the Traffic Lane missed the mark entirely. Under section 72-7-502(19), the point at which the pavement widens occurs at the spot where the unpaved area *between* the two roadways comes to an end and the pavement from I-15 widens to meet the pavement of the Traffic Lane. This is the point of widening identified by YESCO and is fully-consistent with the federal definition cited by the district court.

Because the district court’s decision set the point of the gore at a point well beyond the express 2,640-foot limitation required by section 72-7-502(19), the district court erred, and its decision cannot stand. The only other logical demarcation point that could meet the statutory definition was that urged by YESCO, which is located well within the 2,640-foot statutory limitation.⁴

B. THE DISTRICT COURT FAILED TO ACKNOWLEDGE THE PRESENCE OF THE ACCELERATION LANE.

The district court also failed to address or recognize the existence of the acceleration lane at the Antelope Drive/I-15 Northbound Interchange. The Utah

⁴ Indeed, a UDOT Administrative Hearing Officer recently recognized that, where two possible points of pavement widening exist, UDOT must choose that which falls within the 2,640-foot limitation established by section 72-7-502(19). *See Findings and Order, Application of ROA General, Inc. dba Reagan Outdoor Advertising*, File No. 03-03-002 [attached at Addendum, Exhibit E].

Outdoor Advertising Act does not define an acceleration lane. Utah Admin. Rule 933-2-3(2), however, defines both acceleration and deceleration lanes as “speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way.” UTAH ADMIN. R. 933-2-3(2). Under the Rule, “an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.” *Id.* The main-traveled way means the “through traffic lanes, including auxiliary lanes, acceleration lanes, deceleration lanes, and feeder systems, exclusive of frontage roads and ramps.” *Id.* § 72-7-502(12). Thus, an acceleration lane is *included* in the main-traveled way and *excluded* from the interchange.

In this case, the Traffic Lane meets the northbound lanes of I-15 and then continues on for 1,738 feet before finally merging into the outside lane of I-15. It is manifest that the purpose of such a long approach, nearly the length of six football fields, is to enable vehicles to accelerate to interstate speeds.

UDOT argued to the district court, with apparent success, that the definition of acceleration and deceleration lanes found in Rule 933-2-3(2) is intended to describe only a separate, auxiliary lane that parallels the interstate lanes and runs from an interstate on-ramp to the next interstate off-ramp without the need for traffic on the auxiliary lane to merge into the interstate lanes themselves. [R150, 156] The plain language of Rule 933-2-3(2) does not express this limitation. The

Rule's language defines an acceleration lane as a speed change lane that allows traffic to increase its speed to merge into the traffic on the main-traveled way of the interstate. Under UDOT's reading, there is no need for a speed change lane because the traffic is merely moving from the interstate on-ramp to the next exit ramp, without the need to increase or decrease speed to merge into the traffic flowing on the through lanes of the interstate. Further, UDOT's strained interpretation is inconsistent with Utah statutes governing traffic rules and regulations, which define the type of lane configuration described by UDOT as an "auxiliary lane," a term also used in the Utah Outdoor Advertising Act. *See* UTAH CODE ANN. § 41-6-53.5(1)(b) (LexisNexis Supp. 2003). If the terms were synonymous, it would be unnecessary to have two definitions.

Finally, the internal structure of the Rule's phrasing recognizes two separate types of lanes. In its second sentence, the Rule reads in the disjunctive. It states, "As used in the Act, an acceleration *or* deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning of ending of pavement widening at the exit from or entrance to the main-traveled way." UTAH ADMIN. R. 933-2-3(2) (emphasis added). UDOT's interpretation, which argues for a single, auxiliary lane of traffic, cannot be reconciled with this language. UDOT's strained and arbitrarily-limited reading of Rule 933-2-3(2) to avoid its application to this case is not reasonable and should be afforded no deference.

The Traffic Lane here serves the singular function of an acceleration lane, as defined in the Rule. Under Rule 933-2-3(2), the acceleration lane begins 500 feet north of the point that the pavement from I-15 widens to match that of the Traffic Lane – the point of widening. Because an interchange, by definition, excludes acceleration lanes, the interchange ends at that point. YESCO’s proposed sign relocation site is over 800 feet beyond the interchange, well outside the 500 foot sign-free zone around the interchange. The district court erred by not so finding.

III. THE “POINT OF WIDENING” AND THE “POINT OF PAVEMENT WIDENING” ARE SYNONYMOUS.

UDOT argued to the district court that the “point of widening” definition in the Act is inapplicable because section 72-7-505(3)(c)(i) uses the phrase “point of pavement widening” rather than “point of widening.” UDOT’s argument ignores well-recognized rules of statutory construction and leads to an untenable interpretation of the statute. Indeed, even the district court analyzed the case based on the “point of widening” definition.

When a statute defines words and phrases used in that statute, the court must look to that definition for guidance in interpreting the statute. *See Grynberg v. Questar Pipeline Co.*, 2003 UT 8, ¶30, 70 P.3d 1; *Utah State Bar v. Summerhayes & Hayden*, 905 P.2d 867, 872 (Utah 1995). Further, it is a cardinal rule of statutory construction that courts should interpret statutes to give meaning

to all parts and avoid rendering portions of the statute superfluous. *LKL Assoc., Inc. v. Farley*, 2004 UT 51, ¶7, 502 Utah Adv. Rep. 15.

The term “point of widening,” aside from its inclusion in the definitional section, is utilized nowhere in the Utah Outdoor Advertising Act. A similar phrase is found only in two places, section 72-7-505(3)(c)(ii), the section at issue here, and section 72-7-502(2), the definition of commercial or industrial zone. Both contain a footage limitation “measured from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.” The only meaningful way to give effect to the intent and meaning of the defined term “point of widening,” and to avoid it being superfluous, is to use it to determine the point of pavement widening used in those two sections.

UDOT’s interpretation, which ignores the statutory definition in favor of its own, misapplies the structure of the regulation at issue. Two separate clauses are implicated. Section 72-7-505(3)(c)(i) of the Outdoor Advertising Act provides that (a) signs may not be located on an interstate highway . . . within 500 feet of an interchange . . . (b) measured along the interstate highway . . . from the sign to the nearest point of pavement widening at the exit from or entrance to the main-traveled way.” The first clause sets out the regulatory requirement – signs must be located 500 feet beyond the interchange – with the second clause adding a measuring mechanism by which the 500 feet is measured. Thus, to give effect to the statute, the point of pavement widening must be within the interchange.

UDOT's interpretation of the point of pavement widening focuses on the measuring clause as the governing consideration, rather than on the regulatory requirement. By defining the point of pavement widening without regard to the 2,640 foot limitation required by the definition and the existence of the acceleration lane, and thus beyond the boundaries of the interchange, UDOT is allowed to point to any point of pavement widening it identifies within 500 feet of the proposed sign without consideration of whether that point of pavement widening actually falls within the interchange. The ultimate effect of such an interpretation would allow the no-sign zone to be measured from well beyond the parameters of the interchange, thus impermissibly expanding it beyond the regulatory clause. In essence, under UDOT's interpretation, the measurement mechanism swallows the regulatory requirement. On the other hand, interpreting the point of pavement widening consistently with the definition of point of widening found in section 72-7-502(19) gives effect to the legislative purpose of the statute because it ensures that the no-sign zone will not exceed 500 feet from the interchange.

Further, UDOT's argument ignores recent legislative amendments to the Outdoor Advertising Act. The Utah Legislature amended the Act in 1997. Among other things, the Legislature added the definition for "point of widening," including the 2,640 foot limitation. It also amended the definition of interchange to exclude acceleration and deceleration lanes and added a definition of main-traveled way, which includes acceleration and deceleration lanes. *See* UTAH

LEGISLATIVE REPORT 1997, Vol. 2, at 646, 647-48 (copy attached at Addendum, Tab D).⁵

By ignoring the definition of “point of widening,” as well as the amendment to the definition of an interchange to exclude acceleration lanes, UDOT interprets the Act as if the Legislature never acted, thus allowing it administratively to extend the no-sign zone beyond the Legislature’s dictates. Rules of statutory construction, however, require that the Court give effect to a statutory amendment because to do otherwise would render the amendments superfluous and place administrative discretion above legislative authority. The Legislature’s amendments clarified the statute, adding definitions that provide guidance to determining the limits of the no-sign zone, thereby recognizing the need for public safety while still protecting the rights of property owners to the free use of their property, including erecting outdoor advertising signs. The Court can give effect to the Legislature’s actions only by using the “point of widening” definition to determine the point of pavement widening contained in section 72-7-505(3)(c)(i) and by recognizing that an interchange no longer includes acceleration lanes. UDOT’s attempt to avoid that result must fail.

CONCLUSION

The district court erred in setting the point of widening beyond the 2,640-foot limitation mandated by section 72-7-502(19) and in failing to recognize the

⁵ In 1998, the Utah Legislature renumbered the Utah Outdoor Advertising Act from UTAH CODE ANN. §§ 27-12-136.2 to 27-12-136.14 to UTAH CODE ANN. §§ 72-7-501 to 72-7-515. *See* UTAH LEGISLATIVE REPORT 1998, Vol. 1, at 331-337.

existence of an acceleration lane. As a result, the district court wrongfully concluded that YESCO's proposed sign location would be located within 500 feet of the Antelope Drive/I-15 Northbound Interchange, in violation of section 72-7-505(3)(c)(i).

Only the point of widening identified by YESCO falls within the 2,640 foot limitation required by section 72-7-502(19). From that point of widening, the Traffic Lane continues in excess of 1,800 feet, allowing traffic to match its speed to that of and to facilitate merger into the traffic moving on I-15 – by definition, an acceleration lane. Under Rule 933-2-3(2), the on-ramp portion of the Traffic Lane converts to an acceleration lane 500 feet past the point of widening. Because the definition of interchange excludes acceleration lane, the interchange ends at that point. Under section 72-7-505, the no-sign zone continues for another 500 feet from the end of the interchange, or 1,000 feet from the point of widening identified by YESCO. YESCO's proposed sign is located more than 800 feet beyond the no-sign zone, and its proposed sign location thereby does not violate section 72-7-505(3)(c)(i). The district court's decision therefore should be overturned, and UDOT should be ordered to issue the sign permit to YESCO.

RESPECTFULLY SUBMITTED this 12th day of August, 2004.

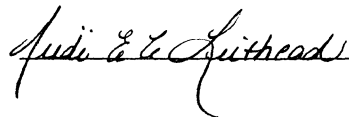
PARR WADDOUPS BROWN GEE & LOVELESS

By: Heidi E. C. Leithead
Heidi E. C. Leithead

CERTIFICATE OF SERVICE

I, Heidi E. C. Leithead, certify that on the 12th day of August, 2004, I served the attached Brief of Appellant Young Electric Sign Company on counsel for appellee State of Utah, by and through the Utah Department of Transportation, by mailing two (2) correct and complete copies thereof by first class mail with sufficient postage prepaid to the following address:

Mark E. Burns
Assistant Attorney General
Mark L. Shurtleff
Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114

_____

ADDENDUM

Tab A

72-7-502. Definitions.

As used in this part:

(1) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following are commercial or industrial activities:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence; and

(e) railroad tracks and minor sidings.

(2) "Commercial or industrial zone" means only:

(a) those areas within the boundaries of cities or towns that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state legislation or comprehensive local zoning ordinances or regulations;

(b) those areas within the boundaries of urbanized counties that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state legislation or comprehensive local zoning ordinances or regulations;

(c) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns that:

(i) are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under comprehensive local zoning ordinances or regulations or enabling state legislation; and

(ii) are within 8420 feet of an interstate highway exit, off-ramp, or turnoff as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way; or

(d) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns and not within 8420 feet of an interstate highway exit, off-ramp, or turnoff as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes.

(3) "Commercial or industrial zone" does not mean areas zoned for the sole purpose of allowing outdoor advertising.

(4) "Comprehensive local zoning ordinances or regulations" means a municipality's comprehensive plan required by Section 10-9-301, the municipal zoning plan authorized by Section 10-9-401, and the county master plan authorized by Sections 17-27-301 and 17-27-401. Property that is rezoned by comprehensive local zoning ordinances or regulations is rebuttably presumed to have not been zoned for the sole purpose of allowing outdoor advertising.

(5) "Directional signs" means signs containing information about public places owned or operated by federal, state, or local governments or their agencies, publicly or privately owned natural phenomena, historic, cultural, scientific, educational, or religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation, that the department considers to be in the interest of the traveling public.

(6) (a) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being.

(b) "Erect" does not include any activities defined in Subsection (6)(a) if they are performed incident to the change of an advertising message or customary maintenance of a sign.

(7) "Highway service zone" means a highway service area where the primary use of the land is used or reserved for commercial and roadside services other than outdoor advertising to serve the traveling public.

(8) "Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of:

(a) places of interest within the state; or

(b) any other information that the department considers desirable.

(9) "Interchange or intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route.

(10) "Maintain" means to allow to exist, subject to the provisions of this chapter.

(11) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure safe and in a state suitable for use, including signs destroyed by vandalism or an act of God.

(12) "Main-traveled way" means the through traffic lanes, including auxiliary lanes, acceleration lanes, deceleration lanes, and feeder systems, exclusive of frontage roads and ramps. For a divided highway, there is a separate main-traveled way for the traffic in each direction.

(13) "Official signs and notices" means signs and notices erected and maintained by public agencies within their territorial or zoning jurisdictions for the purpose of carrying out official duties or responsibilities in accordance with direction or authorization contained in federal, state, or local law.

(14) "Off-premise signs" means signs located in areas zoned industrial, commercial, or H-1 and in areas determined by the department to be unzoned industrial or commercial.

(15) "On-premise signs" means signs used to advertise the major activities conducted on the property where the sign is located.

(16) "Outdoor advertising" means any outdoor advertising structure or outdoor structure used in combination with an outdoor advertising sign or outdoor sign.

(17) "Outdoor advertising corridor" means a strip of land 350 feet wide, measured perpendicular from the edge of a controlled highway right-of-way.

(18) "Outdoor advertising structure" or "outdoor structure" means any sign structure, including any necessary devices, supports, appurtenances, and lighting that is part of or supports an outdoor sign.

(19) "Point of widening" means the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic, but the point of widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.

(20) "Public assembly facility" means a convention facility as defined under Section 59-12-602 and that:

(a) is wholly or partially funded by public moneys; and

(b) requires a person attending an event at the public assembly facility to purchase a ticket or that otherwise charges for the use of the public assembly facility as part of its regular operation.

(21) "Relocation" includes the removal of a sign from one situs together with the erection of a new sign upon another situs in a commercial or industrial zoned area as a substitute.

(22) "Relocation and replacement" means allowing all outdoor advertising signs or permits the right to maintain outdoor advertising along the interstate, federal aid primary highway existing as of June 1, 1991, and national highway system highways to be maintained in a commercial or industrial zoned area to accommodate the displacement, remodeling, or widening of the highway systems.

(23) "Remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution of a new outdoor advertising structure for one permitted pursuant to this

part and that is located in a commercial or industrial area.

(24) "Rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control for the convenience of the traveling public.

(25) "Scenic or natural area" means an area determined by the department to have aesthetic value.

(26) "Traveled way" means that portion of the roadway used for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

(27) (a) "Unzoned commercial or industrial area" means:

(i) those areas not zoned by state law or local law, regulation, or ordinance that are occupied by one or more industrial or commercial activities other than outdoor advertising signs;

(ii) the lands along the highway for a distance of 600 feet immediately adjacent to those activities; and

(iii) lands covering the same dimensions that are directly opposite those activities on the other side of the highway, if the department determines that those lands on the opposite side of the highway do not have scenic or aesthetic value.

(b) In measuring the scope of the unzoned commercial or industrial area, all measurements shall be made from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be along or parallel to the edge of pavement of the highway.

(c) All signs located within an unzoned commercial or industrial area become nonconforming if the commercial or industrial activity used in defining the area ceases for a continuous period of 12 months.

(28) "Urbanized county" means a county with a population of at least 125,000 persons.

History: L. 1967, ch. 51, § 3; 1971, ch. 61, § 2; 1981, ch. 136, § 1; 1988, ch. 239, § 1; 1988 (2nd S.S.), ch. 5, § 1; 1994, ch. 12, § 26; 1997, ch. 263, § 4; C. 1953, 27-12-136.3; renumbered by L. 1998, ch. 270, § 204; 1999, ch. 21, § 93; 2003, ch. 166, § 1.

Amendment Notes. - The 1997 amendment, effective May 5, 1997, substituted "sole" for "primary" in Subsection (3); added the second sentence to Subsection (4); added Subsections (8) and (21) through (25), deleted former Subsection (20), defining "primary system," and redesignated the other subsections accordingly; substituted "excluding" for "including" and added "or feeder systems" in Subsection (11); deleted "auxiliary lanes" from exclusion, added it and other specific traffic lane descriptions applying to the definition, and added the second sentence in Subsection (15); deleted specific examples of outdoor structures and added new language referring to outdoor advertising structures and signs in Subsection (19); rewrote Subsection (20) and deleted allowances for corridors with special circumstances; and made

stylistic changes

The 1998 amendment, effective March 21, 1998, renumbered this section, which formerly appeared as § 27-12-136 3, in the introductory language substituted "this part" for "this chapter", and deleted Subsection (5) defining "department," Subsection (8) defining "federal aid primary highway and national highway systems highways," and Subsection (12) defining "interstate system," making related changes in subsection designation

The 1999 amendment, effective May 3, 1999, substituted "part" for "act" in Subsection (22)

The 2003 amendment, effective July 1, 2003, added Subsection (20), redesignating subsections accordingly, and made stylistic changes

72-7-505. Sign size - Sign spacing - Location in outdoor advertising corridor - Limit on implementation.

(1) (a) Except as provided in Subsection (2), a sign face within the state may not exceed the following limits:

- (i) maximum area - 1,000 square feet;
- (ii) maximum length - 60 feet; and
- (iii) maximum height - 25 feet.

(b) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed the maximum allowed square footage.

(c) Two or more advertising messages on a sign face and double-faced, back-to-back, stacked, side-by-side, and V-type signs are permitted as a single sign or structure if both faces enjoy common ownership.

(d) A changeable message sign is permitted if the interval between message changes is not more frequent than at least eight seconds and the actual message rotation process is accomplished in three seconds or less.

(2) (a) An outdoor sign structure located inside the unincorporated area of a nonurbanized county may have the maximum height allowed by the county for outdoor advertising structures in the commercial or industrial zone in which the sign is located. If no maximum height is provided for the location, the maximum sign height may be 65 feet above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

(b) An outdoor sign structure located inside an incorporated municipality or urbanized county may have the maximum height allowed by the municipality or urbanized county for outdoor advertising structures in the commercial or industrial zone in which the sign is located. If no maximum height is provided for the location, the maximum sign height may be 65 feet above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

(3) Except as provided in Section 72-7-509:

(a) Any sign allowed to be erected by reason of the exceptions set forth in Subsection 72-7-504(1) or in H-1 zones may not be closer than 500 feet to an existing off-premise sign adjacent to an interstate highway or limited access primary highway, except that signs may be erected closer than 500 feet if the signs on the same side of the interstate highway or limited access primary highway are not simultaneously visible.

(b) Signs may not be located within 500 feet of any of the following which are adjacent to the

highway, unless the signs are in an incorporated area:

(i) public parks;

(ii) public forests;

(iii) public playgrounds;

(iv) areas designated as scenic areas by the department or other state agency having and exercising this authority; or

(v) cemeteries.

(c) (i) (A) Except under Subsection (3)(c)(ii), signs may not be located on an interstate highway or limited access highway on the primary system within 500 feet of an interchange, or intersection at grade, or rest area measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(B) Interchange and intersection distance limitations shall be measured separately for each direction of travel. A measurement for each direction of travel may not control or affect any other direction of travel.

(ii) A sign may be placed closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way, if:

(A) the sign is replacing an existing outdoor advertising use or structure which is being removed or displaced to accommodate the widening, construction, or reconstruction of an interstate, federal aid primary highway existing as of June 1, 1991, or national highway system highway; and

(B) it is located in a commercial or industrial zoned area inside an urbanized county or an incorporated municipality.

(d) The location of signs situated on nonlimited access primary highways in commercial, industrial, or H-1 zoned areas between streets, roads, or highways entering the primary highway shall not exceed the following minimum spacing criteria:

(i) Where the distance between centerlines of intersecting streets, roads, or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between centerlines of intersecting streets, roads, or highways is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet.

(e) All outdoor advertising shall be erected and maintained within the outdoor advertising corridor.

(4) Subsection (3)(c)(ii) may not be implemented until:

(a) the Utah-Federal Agreement for carrying out national policy relative to control of outdoor advertising in areas adjacent to the national system of interstate and defense highways and the federal-aid primary system is modified to allow the sign placement specified in Subsection (3)(c)(ii); and

(b) the modified agreement under Subsection (4)(a) is signed on behalf of both the state and the United States Secretary of Transportation.

History: L. 1967, ch. 51, § 5; 1971, ch. 61, § 4; 1981, ch. 136, § 3; 1989, ch. 144, § 2; 1991, ch. 137, § 48; 1997, ch. 263, § 5; C. 1953, 27-12-136.5; renumbered by L. 1998, ch. 270, § 207; 1999, ch. 21, § 94; 2002, ch. 298, § 1.

Amendment Notes. - The 1997 amendment, effective May 5, 1997, in Subsection (1)(a) substituted the exception language for "No" and "may not" for "shall"; substituted "the maximum allowed square footage" for "325 square feet" in Subsection (1)(b); expanded the types of permitted signs in Subsection (1)(c); added Subsections (1)(d) through (2)(b); added the introductory phrase in Subsection (3) and redesignated former Subsections (2)(a) through (2)(e) as Subsections (3)(a) through (3)(e); added Subsection (3)(c)(i)(B) and redesignated Subsection (3)(c)(i) as (3)(c)(i)(A); rewrote Subsection (3)(c)(ii)(B) which required the highway to have been opened by September 1, 1987; redesignated Subsection (3) as Subsection (4); and made stylistic changes.

The 1998 amendment, effective March 21, 1998, renumbered this section, which formerly appeared as § 27-12-136.5; in Subsection (3) made changes to conform to the creation of Title 72; and in Subsection (4)(b) substituted "Subsection (4)(a)" for "Subsection (a)."

The 1999 amendment, effective May 3, 1999, substituted "Subsection (3)(c)(ii)" for "Subsection (c)(ii)" in Subsection (3)(c)(i)(A).

The 2002 amendment, effective March 26, 2002, deleted former Subsection (3)(c)(ii)(A), which read "the sign is at least 500 feet but not more than 2,640 feet from the nearest point of the intersecting highway of the interchange; or," subdivided former Subsection (3)(c)(ii)(B) as (3)(c)(ii)(A) and (B), and made related changes.

R933-2-3. Definitions.

All references in these Rules to Title 72, Chapter 7, Part 5, are to those sections of the Utah Code known as the Utah Outdoor Advertising Act. In addition to the definitions in that part, the following definitions are supplied:

(1) "Abandoned Sign" means any controlled sign, the sign facing of which has been partially obliterated, has been painted out, has remained blank or has obsolete advertising matter for a continuous period of 12 months or more.

(2) "Acceleration and deceleration lanes" means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(3) "Act" means the Utah Outdoor Advertising Act.

(4) "Advertising" means any message, whether in words, symbols, pictures or any combination thereof, painted or otherwise applied to the face of an outdoor advertising structure, which message is designed, intended, or used to advertise or inform, and which message is visible from any place on the main travel-way of the interstate or primary highway system.

(5) "Areas zoned for the primary purpose of outdoor advertising" as used in the Act is defined to include areas in which the primary activity is outdoor advertising.

(6) "Commercial or industrial zone" as defined in of the Act is further defined to mean, with regard to those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns referred to in that subsection, those areas not within 8,420 feet of an interstate highway exit-ramp or entrance-ramp as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes, including the land along both sides of a controlled highway for 600 feet immediately abutting the area of use, measurements under this subsection being made from the outer edge of regularly used buildings, parking lots, gate-houses, entrance gates, or storage or processing areas.

(7) "Conforming Sign" means an off-premise sign maintained in a location that conforms to the size, lighting, spacing, zoning and usage requirements as provided by law and these rules.

(8) "Controlled Sign" means any off-premise sign that is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of any interstate or federal-aid primary highway in this State.

(9) "Destroyed Sign" means a sign damaged by natural elements wherein the costs of re-erection exceeds 30% of the depreciated value of the sign as established by departmental appraisal methods.

(10) "Freeway" means a divided highway for through traffic with full control access.

(11) "Grandfather Status" refers to any off-premise controlled sign erected in zoned or unzoned commercial or industrial areas, prior to May 9, 1967, even if the sign does not comply with the size, lighting, or spacing of the Act and these Rules. Signs only, and not sign sites, may qualify for Grandfather Status.

(12) "H-1" means highway service zone as defined in the Act.

(13) "Lease or Consent" means any written agreement by which possession of land, or permission to use land for the purpose of erecting or maintaining a sign, or both, is granted by the owner to another person for a specified period of time.

(14) "Legal copy" means the advertising copy on the sign that occupies at least 50% of the sign size.

(15) "Nonconforming Sign" means a sign that was lawfully erected, but that does not conform to State law or rules passed or made at a later date or that later fails to comply with State legislation or rules because of changed conditions. The term "illegally erected" or "illegally maintained" is not synonymous with the term, "nonconforming sign", nor is a sign with "grandfather" status synonymous with the term, "nonconforming sign."

(16) "Off-Premise Sign" means also, in supplement to the definition stated in the Act, an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which activity or service occurs or product is sold or manufactured.

(17) "On-Premise Sign", in supplement to the definition stated in the Act, does not include a sign that advertises a product or service that is only incidental to the principal activity or that brings rental income to the property owner or occupant.

(18) "Out-of-Standard" means any sign that fails to meet the standards and criteria set forth in the Utah-Federal Agreement of January 18, 1968 as referenced in the Utah Outdoor Advertising Controls and Rules, current edition, or more restrictive statutes or rules passed after as to size, height, lighting, or spacing.

(19) "Parkland" means any publicly owned land that is designed or used as a public park, recreation area, wildlife or waterfowl refuge, or historical site.

(20) "Property" as used in the definition of "On-Premise Sign" includes those areas from which the general public is serviced and which are directly connected with and are involved in

assembling, manufacturing, servicing, repairing, or storing of products used in the business activity. This property does not include the site of any auxiliary facilities that are not essential to and customarily used in the conduct of business, nor does it include property not contiguous to the property on which the sign is situated.

(21) "Sale or Lease Sign" means any sign situated on the subject property that advertises that the property is for "sale" or "lease". This sign may not advertise any product or service unrelated to the business of selling or leasing the land upon which it is located, nor may it advertise a projected use of the land or a financing service available or being utilized in its development.

(22) "Scenic Area" as used in the Act includes a scenic byway.

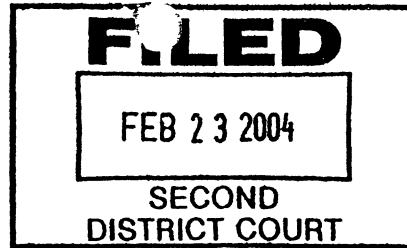
(23) "Transient or Temporary Activity" means any industrial or commercial activity, not otherwise herein excluded, that does not have a prior continuous history for a period of six months.

(24) "Unzoned Area" in supplement to the definition stated in the Act, means an area in which no zoning is in effect. It does not include areas within comprehensive zoning or master plans adopted by local zoning authorities.

(25) "V-Type Sign" means any sign, the center pole of which is nearest the traveled portion of the highway and is a common pole to the two sign faces, or when a common pole is not used, a sign with the sign faces no further than 36 inches apart at the angle of the sign closest to the traveled portion of the highway, and the structure poles at the point nearest the traveled portion of the highway no further apart than 48 inches. Existing V-type signs now controlled and permitted are excluded from this definition.

(26) "Visible" means capable of being seen whether or not readable, without visual aid, by a person of normal visual acuity.

Tab B



IN THE SECOND JUDICIAL DISTRICT, DAVIS COUNTY
STATE OF UTAH

YOUNG ELECTRIC SIGN COMPANY,
INC., a Utah corporation,

Plaintiff,

vs.

UTAH DEPARTMENT OF
TRANSPORTATION,

Defendant.

**RULING ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

AND

**RULING ON DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

Case No. 030700079
Judge Darwin C. Hansen

This matter is before the Court on Young Electric Sign Company's ("YESCO") and Utah Department of Transportation's ("UDOT") cross-motions for summary judgment heard February 12, 2004. The Court has read the moving and responding papers and heard the oral argument of counsel. For the reasons set forth below, the Court denies plaintiff's motion and grants defendant's motion.

BACKGROUND

This de novo review concerns defendant's denial of plaintiff's billboard permit. Plaintiff built the sign at issue in 1978, at a time when there was no freeway interchange nearby. In about 1981, Utah Power & Light installed power lines within six feet of the sign. Defendant later built a freeway interchange to allow traffic on Antelope Drive to enter and exit the Interstate Highway 15 ("I-15") north of Antelope Drive.

Ruling on Plaintiff's and Defendant's cross-Motions fo



VD11497602

030700079 UTAH DEPT OF TRANSPORTATION

Some time in late 2001 or early 2002, the landowner told plaintiff that he wanted to develop the land where the sign was located. The landowner allowed plaintiff to lease a portion of the land for the sign, but at a northern location on the land that would not interfere with the new development. The landowner would not allow plaintiff to move the sign a few feet to the east, as that would place the sign on top of the new building. Plaintiff applied for an application from defendant to move the sign location sometime in later July or early August 2002. Plaintiff then removed the sign to comply with the landowner's requests; a building now stands where the sign formerly stood.

On August 15, 2002, Region One of defendant UDOT denied plaintiff a permit to relocate the sign. A hearing officer upheld the denial after a contested hearing, finding that the proposed location of the sign was 108 feet from the point of pavement widening on the entrance to the main traveled way. Plaintiff contends that defendant's reading of the statute incorrectly led to denial of the application.

The parties do not dispute that the proposed sign location is less than 500 feet from point of pavement widening as defined by defendant UDOT, i.e. the point closest to the sign where the road actually becomes wider.

ANALYSIS

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" *Utah R. Civ. P.* 56(c).

Interpretation of "Point of Pavement Widening"

The Utah Outdoor Advertising Act ("Act") declares: "[S]igns may not be located on an interstate highway or limited access highway on the primary system within 500 feet of an interchange . . . measured along the interstate highway or freeway from the sign to the nearest point of beginning or ending of pavement widening at the exit from or entrance to the main-traveled way." *Utah Code Ann.* § 72-7-503(c)(i)(A) (2002). The Utah-Federal Agreement ("Agreement"), Section III.A.2(b), uses the same measurement standard. In case of any conflict between the two, the Agreement supercedes Utah law. *Utah Code Ann.* § 72-7-515(2).

The Act defines an interchange as "those areas and approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route." *Utah Code Ann.* §72-7-502 (9) (2003). The parties do not have factual disputes, and do not dispute that both State and federal law governing outdoor advertising prohibit new billboards within 500 feet of an interchange. There is also no dispute that there is an interchange between Antelope Drive and I-15. The dispute concerns only the legal definition of the location of the point of pavement widening on that interchange.

When interpreting statutory language, a court looks "first to the plain language of the statute . . . assum[ing] that each term in the statute was used advisedly; thus the statutory words are read literally, unless such a reading is unreasonable confused or inoperable." *State v. Bluff*, 2002 UT 66, ¶¶ 34, 52 P.3d 1210 (citing to *Harmon City, Inc. v. Nielsen & Senior*, 907 P.2d 1162, 1167 (Utah 1995)).

Both the Act and the Agreement have as part of their purpose the "safety . . . of public travel." 23 U.S.C. § 131(a) (2003); *see also Utah Code Ann. § 72-7-501* (1998) (stating the purpose of the Act is to provide for the "public safety, health, welfare, convenience and enjoyment of public travel . . .").

Plaintiff argues that defendant's position, "that the statute requires the 500-foot measurement to be made 'from the sign to the nearest point of the beginning or ending of pavement widening' is a misapplication of the statute." It is unclear, however, how plaintiff could reach this conclusion, given that the plaintiff's characterization of defendant's interpretation of the Act is almost a verbatim statement of the Act itself. Plaintiff seemingly ignores the clear use of the term 'pavement' in the phrase "point of . . . pavement widening" in section 72-7-503(c)(i)(A). "Point of widening" is defined as either (1) "the point of the gore"¹ in the case where there is no acceleration lane², or (2) "the point where the intersecting lane begins to parallel the other lanes of traffic" where there is an acceleration lane that does run parallel to the main-traveled way. *Utah Code Ann. § 72-7-502(19)* (2003). The "point of the gore" in this instance is the point at which the on-ramp tapers to an end on I-15, or in other words, where it completely merges with I-15. Counsel for defendant put it in other words: the point at which the "on-ramp dies into the freeway." The Act plainly states that signs may not be within 500 feet of

¹The U.S. Department of Transportation-National Highway Traffic Safety Administration defines a gore as "an area of land where two roadways diverge or converge." *See NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION: U.S. DEPARTMENT OF TRANSPORTATION, available at <http://www.nhtsa.dot.gov>* (last accessed February 19, 2004).

² Though the Act does not define "acceleration lane", Utah Administrative Rule R933-2-3(2) defines it as "speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way . . . and begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way."

an interchange, measuring *from* the proposed sign location to—in this case—the *point of ending of pavement widening* at the entrance to the main-traveled way, i.e. the point of gore. Defendant's interpretation seems most consistent with the Act and its definitions.

Plaintiff contends that this reading is incorrect, given the language in section 72-7-503(3)(c)(i)(B), that "[i]nterchange and intersection distance limitations shall be measured separately for each direction of travel." Plaintiff suggests that defendant may not measure from the proposed location of the sign to the nearest point of the ending of pavement widening, which in this case lies south of the proposed sign location. Plaintiff argues that measuring in a southbound direction when traffic flows northward, would contravene the Act's language that distance limitations be measured separately for each direction of travel. Plaintiff's interpretation is incorrect. Section 72-7-503(3)(c)(i)(B) merely means that defendant may not use, for example, point of pavement widening on a southbound on-ramp or off-ramp when the sign lies on a northbound lane. If the Court were to adopt plaintiff's interpretation, the whole purpose of the Act and the Agreement—that of providing for highway safety—would be nullified. If defendant could only measure from the sign northward along the highway, plaintiff could place multiple signs on the highway or on-ramp at consecutive points along an on-ramp or interchange, south of where the defendant could even start measuring.

In short, plaintiff's interpretation does not give meaning to the term "pavement" as used in Utah Code Ann. § 72-7-505(3)(c)(i)(A). Defendant's interpretation gives proper meaning to the term and seems most consistent with the plain language and terms used in the Act. Having found that the defendant's interpretation of "point of pavement widening" is correct, and plaintiff

not disputing that its sign is within 500 feet of that point, the Court finds that defendant properly denied plaintiff's permit to relocate the sign. Reaching this conclusion, the Court need not determine whether plaintiff's interpretation of the Act conflicts with language in the Agreement.

Relocation to Minimal Number of Feet Necessary

Plaintiff argues that even if the Court agrees with defendant's interpretation of the Act, plaintiff may still relocate its sign to its proposed location under other provisions of the Utah Code. Plaintiff cites to Utah Code Ann. § 72-7-516, which says:

If an outdoor advertising structure needs to be moved so that the sign can be reposted or maintenance performed without having to comply with the distance or notification requirements of Section 54-8c-2³, or in order to comply with distance or notification requirements imposed by the National Electrical Safety Code or any other similar applicable regulation promulgated by a federal agency, then:
(1) the owner shall have the right to relocate the same or similar type structure to the minimal number of feet necessary:
(a) on the same property; or
(b) if the same property is not available, on another property;

Prior to its removal, the sign was about six feet from a high voltage line. Plaintiff removed the sign not only to comply with the landowner's request to move the sign, but also to prevent its employees from electrocution while maintaining the sign.

Plaintiff, however, interprets the phrase "minimal number of feet necessary" to mean that it may move the sign to the location on the same property as designated by the landowner.

³ Utah Code Ann. § 54-8c-2 states: "No person or thing may be brought within 10 feet of any high voltage overhead line unless: (a) a responsible party has notified the public utility operating the high voltage overhead line of the intended activity; and (b) a responsible party and the public utility have completed mutually satisfactory precautions for the activity."

According to plaintiff, that new location, even though less than 500 feet from the interchange, would still be allowed. It is the only available site on the property with the "minimal number of feet necessary" needed to comply with the landowner's request in light of his plan to develop the property, and given his refusal to allow plaintiff to put the sign atop the new building.

Contrary to plaintiff's interpretation, the "minimal number of feet necessary" is not determined by the needs of the landowner. Neither does some agreement between the landlord and tenant override the explicit provisions of the Utah Code. Plaintiff's non-conforming sign had a "Grandfather Status" in its original location, as it complied with State and federal law when first erected, but due to changed circumstances, is now non-conforming. As a non-conforming sign, the Utah Code prevents relocation to another location as a non-conforming sign; if relocated, it must be a conforming sign. Utah Code Ann. § 72-7-504(4) mandates that signs "shall conform to the rules made by the department under Sections 72-7-506 and 72-7-507." One of those rules is that "[a] non-conforming sign with 'Grandfather Status' may not be relocated, structurally, altered, nor repositioned, including reversing the direction of the sign face." *Utah Admin. Code* R933-2-5(1)(b). The "minimal number of feet necessary" then, is determined by portions of the Utah Code and administrative rules affecting the sign.

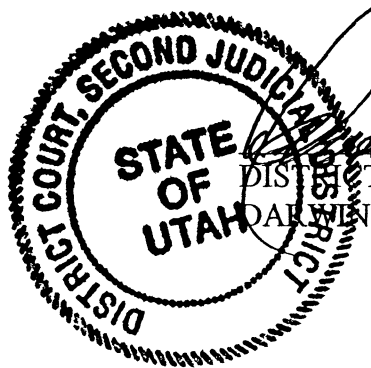
In plaintiff's case, plaintiff had three options once it decided it had to move the sign from its original location. First, it could remove the sign altogether. Second, it could move the sign a few feet to the east to comply with section 54-8c-2 and the National Electrical Safety Code. This would involve placing the sign atop the landowner's new building; that option, however, was denied by the landowner. Finally, it could move the sign to a new location on the property *or*, if

the same property is not available, on another property. Under this third option, the new location would still have to comply with 54-8c-2 and the National Electrical Safety Code *and* with the State and federal laws governing outdoor advertising. The site plaintiff proposes on the current property does not comply with State and federal law; specifically, it is within 500 feet of an interchange. Defendant stated that it would not stand in the way of plaintiff relocating its sign, but that the new location must be consistent with State and federal law. Plaintiff's proposed location complies with neither, and as such, is illegal. Plaintiff cannot under Utah Code Ann. § 72-7-516 relocate its non-conforming sign to another site as non-conforming.

For these reasons, the Court finds that defendant properly denied plaintiff's application.

The Court denies plaintiff's motion and grants defendant's motion.

Dated this February 23, 2004.

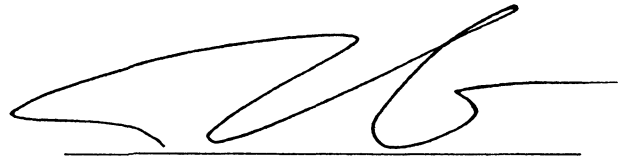
DISTRICT COURT JUDGE
DALE WEN C. HANSEN

MAILING CERTIFICATE

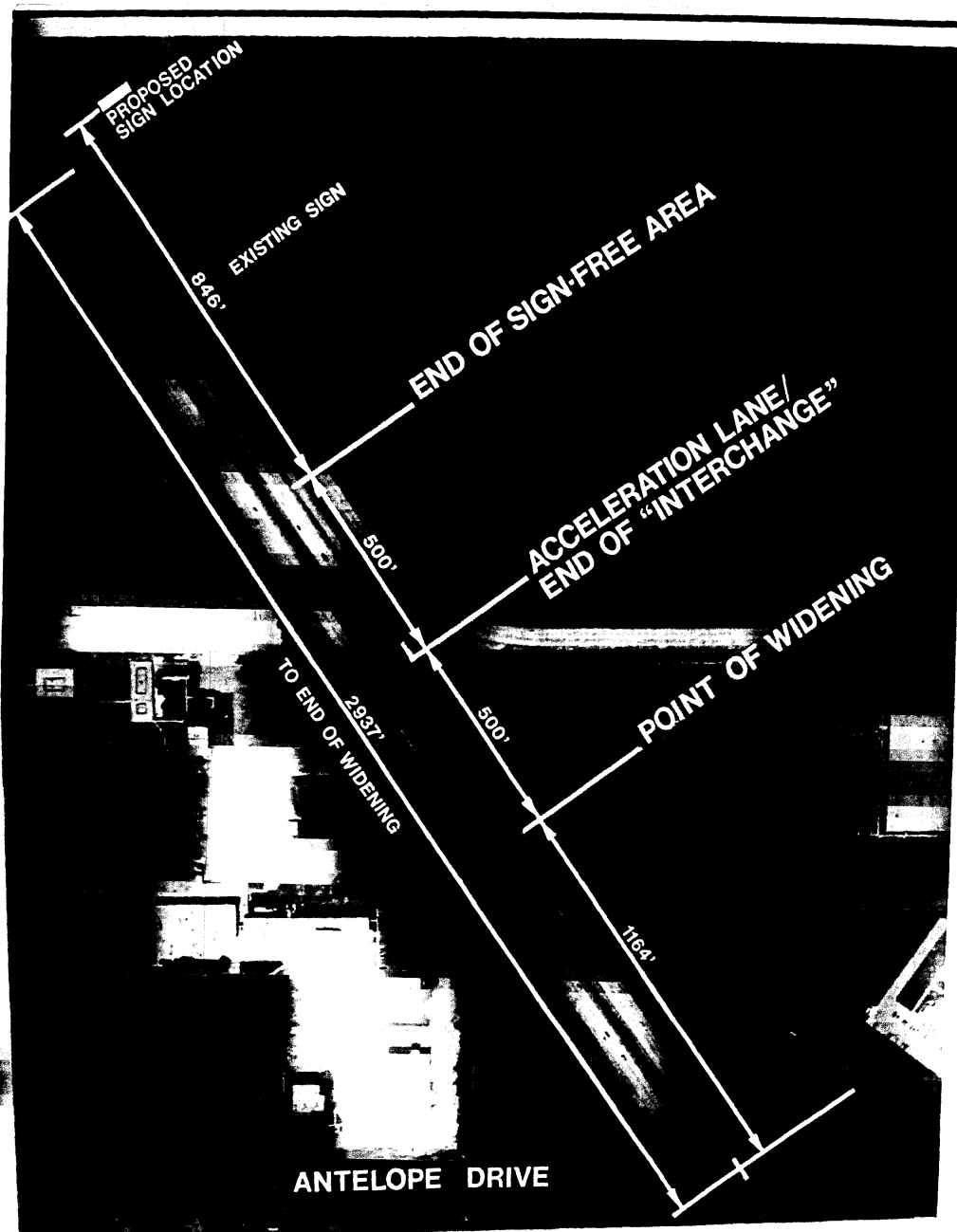
I certify that I sent a true and correct copy of the foregoing RULING ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND RULING ON DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT, postage pre-paid on February 23, 2004 to the following:

Mark A. Larsen
LARSEN & GRUBER
50 West Broadway, Suite 100
Salt Lake City, Utah 84101

Mark E. Burns
Mark L. Shurtleff
Utah Office of the Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857

A handwritten signature in black ink, appearing to be "MB", is written over a horizontal line.

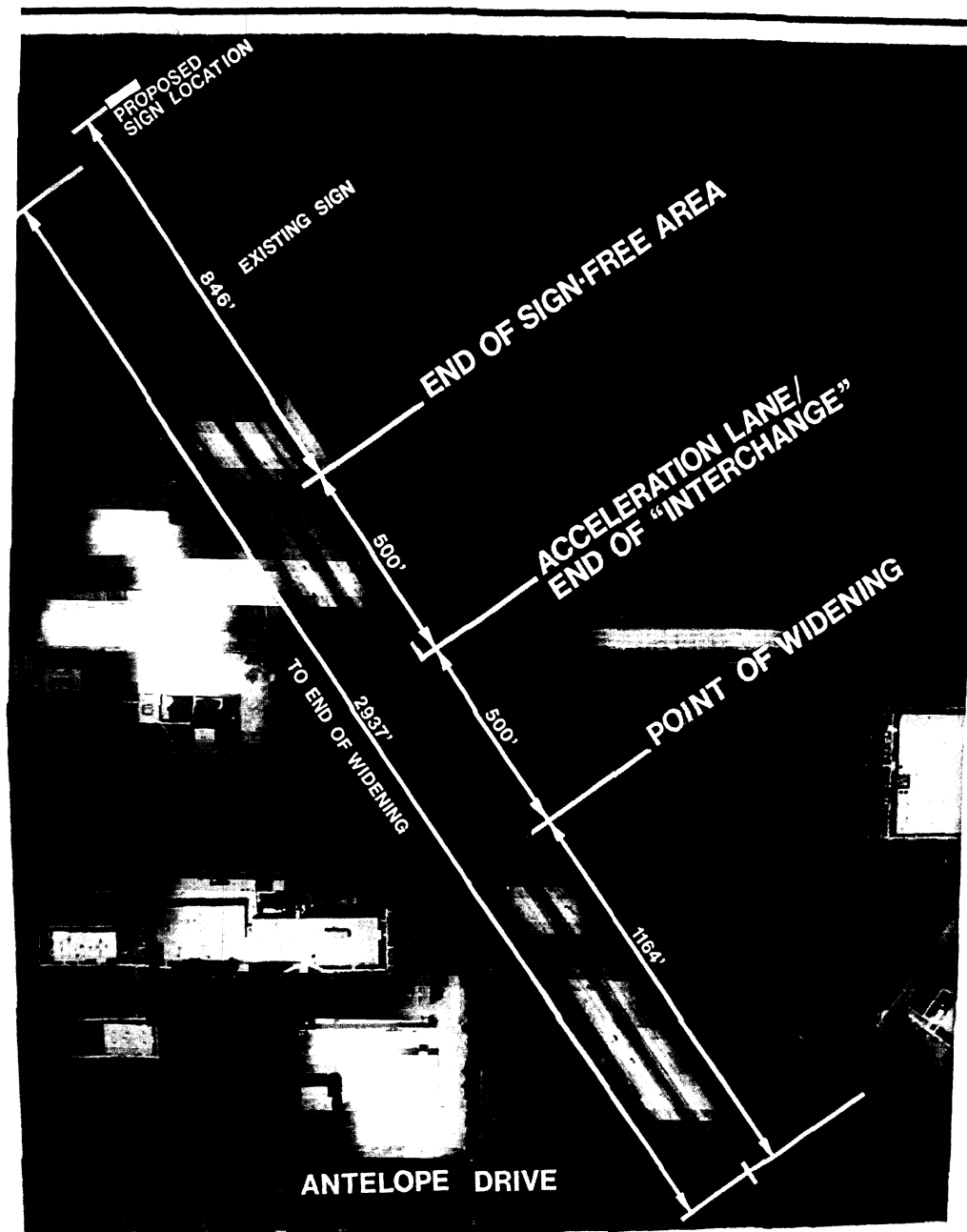
Tab C



CLEARFIELD CITY

PHOTOGRAPHY DATE: JULY 1, 1990
SCALE: 1" = 100'
#33-0

EXHIBIT 1



CLEARFIELD CITY

PHOTOGRAPHY DATE: JULY 1, 1966
SCALE: 1" = 100'
#224

EXHIBIT 1

Tab D

UTAH
LEGISLATIVE
REPORT 1997

Volume 2 - Senate Bills

BILLS
affecting the
UTAH CODE

passed at the

1997

General Session

of the

Fifty-Second Utah Legislature

including

Tables and Indexes

CODE CO.
Law Publishers

equipment approved by the commission consistent with Section 54-7-12.1;

(iii) changes in rules of the Federal Communications Commission, including rules with regard to the separation of interstate and intrastate revenues, expenses, or investments adopted by the commission;

(iv) changes in tax rates applied to the incumbent telephone corporation;

(v) any other change external to the business operations of the incumbent telephone corporation resulting from:

(A) accounting rules adopted by the Financial Accounting Standards Board and approved by the commission; or

(B) laws or rules enacted or adopted by a governmental entity having jurisdiction; or

(vi) any other extraordinary events not reasonably foreseeable as of April 30, 1997.

(6) (a) The incumbent telephone corporation may decrease the price of a tariffed telecommunications service subject to the limitation in Section 54-8b-3.3.

(b) Any decrease in price shall be made by filing a tariff with the commission. The decrease shall become effective 30 days after filing.

S.B. 14

Passed 3/5/97, Approved 3/19/97

Effective 05-May-97

Laws of Utah 1997, Chapter 263

Outdoor Advertising Amendments

Sponsor: L. Alma Mansell

AN ACT Relating to Highways; Amending the Regulation of Outdoor Advertising; Limiting the Authority of Local Governments Relating to Outdoor Advertising Uses; Amending Definitions; Providing for the Relocation of Certain Outdoor Advertising; Requiring the Department of Transportation to Establish a Landscape Control Program Related to Outdoor Advertising; and Making Technical Corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

27-12-136.2, as last amended by Chapter 61, Laws of Utah 1971

27-12-136.3, as last amended by Chapter 12, Laws of Utah 1994

27-12-136.5, as last amended by Chapter 137, Laws of Utah 1991

27-12-136.6, as last amended by Chapter 120, Laws of Utah 1994

27-12-136.7, as last amended by Chapter 120, Laws of Utah 1994

27-12-136.9, as last amended by Chapter 300, Laws of Utah 1990

27-12-136.10, as last amended by Chapter 30, Laws of Utah 1992

27-12-136.11, as last amended by Chapter 30, Laws of Utah 1992

ENACTS:

10-9-409, Utah Code Annotated 1953

17-27-408, Utah Code Annotated 1953

27-12-136.14, Utah Code Annotated 1953

27-12-136.15, Utah Code Annotated 1953

27-12-136.16, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 10-9-409 is enacted to read:

10-9-409. Existing outdoor advertising uses.

(1) A municipality may only require termination of a billboard and associated property rights through:

- (a) gift;
- (b) purchase;
- (c) agreement;
- (d) exchange; or
- (e) eminent domain.

(2) A termination under Subsection (1)(a), (b), (c), or (d) requires the voluntary consent of the billboard owner.

Section 2. Section 17-27-409 is enacted to read:

17-27-409. Existing outdoor advertising uses.

(1) A county may only require termination of a billboard and associated property rights through:

- (a) gift;
- (b) purchase;
- (c) agreement;
- (d) exchange; or
- (e) eminent domain.

(2) A termination under Subsection (1)(a), (b), (c), or (d) requires the voluntary consent of the billboard owner.

Section 3. Section 27-12-136.2 is amended to read:

27-12-136.2. Purpose of act - Utah-Federal Agreements ratified.

The purpose of this act is to provide the statutory basis for the regulation of outdoor advertising consistent with zoning principles and standards and the public policy of this state in providing public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in [such] highways, to preserve the natural scenic beauty of lands bordering on [such] highways, and to ensure that outdoor advertising shall be continued as a standardized medium of communication throughout the state so that it is preserved and can continue to provide general information in the specific interest of the traveling public [is-presented] safely and effectively.

It is the purpose of this act to provide a statutory basis for the reasonable regulation of outdoor advertising consistent with the customary use, zoning principles and standards, the protection of private property rights, and the public policy relating to areas adjacent to the interstate, federal aid primary highway existing as of June 1, 1991, and the national highway systems highways.

The agreement entered into between the governor of the state of Utah and the Secretary of Transportation of the United States dated January 18, 1968, regarding the size, lighting, and spacing of outdoor advertising which may be erected and maintained within areas adjacent to the interstate

[and primary], federal aid primary highway existing as of June 1, 1991, and national highway systems highways which are zoned commercial or industrial or in [such] other unzoned commercial or industrial areas as defined pursuant to the terms of [such] the agreement is hereby ratified and approved, subject to subsequent amendments.

Section 4. Section 27-12-136.3 is amended to read:

27-12-136.3. Definitions.

As used in this chapter:

(1) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following are commercial or industrial activities:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence; and

(e) railroad tracks and minor sidings.

(2) "Commercial or industrial zone" means only:

(a) those areas within the boundaries of cities or towns that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state legislation or comprehensive local zoning ordinances or regulations;

(b) those areas within the boundaries of urbanized counties that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state legislation or comprehensive local zoning ordinances or regulations;

(c) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns that:

(i) are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under comprehensive local zoning ordinances or regulations or enabling state legislation; and

(ii) are within 8420 feet of an interstate highway exit, off-ramp, or turnoff as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way; or

(d) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns and not within 8420 feet of an interstate highway exit, off-ramp, or turnoff as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes.

(3) "Commercial or industrial zone" does not mean areas zoned for the [primary] sole purpose of allowing outdoor advertising.

(4) "Comprehensive local zoning ordinances or regulations" means a municipality's comprehensive plan required by Section 10-9-301, the municipal zoning plan authorized by Section 10-9-401, and the county master plan authorized by Sections 17-27-301 and 17-27-401. Property that is rezoned by comprehensive local zoning ordinances or

regulations is rebuttably presumed to have not been zoned for the sole purpose of allowing outdoor advertising.

(5) "Department" means the Department of Transportation.

(6) "Directional signs" means signs containing information about public places owned or operated by federal, state, or local governments or their agencies, publicly or privately owned natural phenomena, historic, cultural, scientific, educational, or religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation, that the department considers to be in the interest of the traveling public.

(7) (a) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being.

(b) "Erect" does not include any activities defined in Subsection (a) if they are performed incident to the change of an advertising message or customary maintenance of a sign.

(8) "Federal aid primary highway and national highway systems highways" means that portion of connected main highways located within this state officially designated by the department and approved by the United States Secretary of Transportation under Title 23, United States Code.

[(8)] (9) "Highway service zone" means a highway service area where the primary use of the land is used or reserved for commercial and roadside services other than outdoor advertising to serve the traveling public.

[(9)] (10) "Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of:

(a) places of interest within the state; or

(b) any other information that the department considers desirable.

[(10)] (11) "Interchange or intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, [including] excluding the deceleration lanes [or], acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route.

[(11)] (12) "Interstate system" means that portion of the national defense system of interstate and defense highways located within this state officially designated by the department and approved by the United States Secretary of Transportation under Title 23, United States Code.

[(12)] (13) "Maintain" means to allow to exist, subject to the provisions of this chapter.

[(13)] (14) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure safe and in a state suitable for use, including signs destroyed by vandalism or an act of God.

[(14)] (15) "Main-traveled way" means the through traffic lanes, including auxiliary lanes, acceleration lanes, deceleration lanes, and feeder systems, exclusive of frontage roads[, auxiliary lanes,] and ramps. For a divided highway, there is a separate main-traveled way for the traffic in each direction.

[(15)] (16) "Official signs and notices" means signs and notices erected and maintained by public agencies within their territorial or zoning jurisdictions for the purpose of carrying out official duties or responsibilities in accordance with direction or authorization contained in federal, state, or local law.

[(16)] (17) "Off-premise signs" means signs

located in areas zoned industrial, commercial, or H-1 and in areas determined by the department to be unzoned industrial or commercial.

[(47)] (18) "On-premise signs" means signs used to advertise the major activities conducted on the property where the sign is located.

[(18)] (19) "Outdoor advertising" [or "outdoor signs" or "sign"] means any outdoor advertising structure[;] [display, light device, figure, painting, drawing, message, plaque, poster,] [billboard, or other thing designed, intended, or used to advertise or inform] or outdoor structure used in combination with an outdoor advertising sign or outdoor sign.

[(19)-(a)] (20) "Outdoor advertising corridor" means[;-(i)] a strip of land [400] 350 feet wide, measured perpendicular from the edge of a controlled highway right-of-way[;or].

[(ii) where there is a natural or created usage consisting of a frontage road, city street, county] [road, controlled or not controlled service road, railroad track, utility easement, or water course] [running parallel or approximately parallel and contiguous to the controlled highway, the width of] [the corridor shall extend further to a line 100 feet from the edge of the usage.]

[(b) The width of the outdoor advertising corridor may not exceed 350 feet measured from] [the edge of the controlled highway right-of-way.]

(21) "Outdoor advertising structure" or "outdoor structure" means any sign structure, including any necessary devices, supports, appurtenances, and lighting that is part of or supports an outdoor sign.

(22) "Point of widening" means the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic, but the point of widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.

[(20) "Primary system" means that portion of connected main highways located within this] [state officially designated by the department and approved by the United States Secretary of] [Transportation under Title 23, United States Code.]

(23) "Relocation" includes the removal of a sign from one situs together with the erection of a new sign upon another situs in a commercial or industrial zoned area as a substitute.

(24) "Relocation and replacement" means allowing all outdoor advertising signs or permits the right to maintain outdoor advertising along the interstate, federal aid primary highway existing as of June 1, 1991, and national highway system highways to be maintained in a commercial or industrial zoned area to accommodate the displacement, remodeling, or widening of the highway systems.

(25) "Remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution of a new outdoor advertising structure for one permitted pursuant to this act and that is located in a commercial or industrial area.

[(24)] (26) "Rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control for the convenience of the traveling public.

[(22)] (27) "Scenic or natural area" means an area determined by the department to have aesthetic value.

[(23)] (28) "Traveled way" means that portion of the roadway used for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

[(24)] (29) (a) "Unzoned commercial or industrial area" means:

(i) those areas not zoned by state law or local law, regulation, or ordinance that are occupied by one or more industrial or commercial activities other than outdoor advertising signs;

(ii) the lands along the highway for a distance of 600 feet immediately adjacent to those activities; and

(iii) lands covering the same dimensions that are directly opposite those activities on the other side of the highway, if the department determines that those lands on the opposite side of the highway do not have scenic or aesthetic value.

(b) In measuring the scope of the unzoned commercial or industrial area, all measurements shall be made from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be along or parallel to the edge of pavement of the highway.

(c) All signs located within an unzoned commercial or industrial area become nonconforming if the commercial or industrial activity used in defining the area ceases for a continuous period of 12 months.

[(25)] (30) "Urbanized county" means a county with a population of at least 125,000 persons.

Section 5. Section 27-12-136.5 is amended to read:

27-12-136.5. Sign size - Sign spacing -

Location in outdoor advertising corridor - Limit on implementation.

[(1) Sign size:]

(1) (a) [No] Except as provided in Subsection (2), a sign face within the state [shall] may not exceed the following limits:

(i) maximum area - 1,000 square feet;

(ii) maximum length - 60 feet; and

(iii) maximum height - 25 feet.

(b) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed [325 square feet] the maximum allowed square footage.

(c) [Double-faced] Two or more advertising messages on a sign face and double-faced, back-to-back, stacked, side-by-side, and V-type signs are permitted as a single sign or structure if both faces enjoy common ownership.

(d) A changeable message sign is permitted if the interval between message changes is not more frequent than at least eight seconds and the actual message rotation process is accomplished in three seconds or less.

[(2) Sign spacing:]

(2) (a) An outdoor sign structure located inside the unincorporated area of a non-urbanized county may have the maximum height allowed by the county for outdoor advertising structures in the commercial or industrial zone in which the sign is located. If no maximum height is provided for the location, the maximum sign height may be 65 feet above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

(b) An outdoor sign structure located inside an incorporated municipality or urbanized county may have the maximum height allowed by the municipality or urbanized county for outdoor advertising structures in the commercial or industrial zone in which the sign is located. If no maximum

height is provided for the location, the maximum sign height may be 65 feet above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

(3) Except as provided in Section 27-12-136.10:

(a) Any sign allowed to be erected by reason of the exceptions set forth in Subsection 27-12-136.4(1) or in H-1 zones ~~[shall]~~ may not be closer than 500 feet to an existing off-premise sign adjacent to an interstate highway or limited access primary highway, except that signs may be erected closer than 500 feet if the signs on the same side of the interstate highway or limited access primary highway are not simultaneously visible.

(b) Signs may not be located within 500 feet of any of the following which are adjacent to the highway, unless the signs are in an incorporated area:

- (i) public parks;
- (ii) public forests;
- (iii) public playgrounds;
- (iv) areas designated as scenic areas by the department or other state agency having and exercising this authority; or
- (v) cemeteries.

(c) (i) ~~(A)~~ Except under Subsection (ii), signs may not be located on an interstate highway or limited access highway on the primary system within 500 feet of an interchange, or intersection at grade, or rest area measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(B) Interchange and intersection distance limitations shall be measured separately for each direction of travel. A measurement for each direction of travel may not control or affect any other direction of travel.

(ii) A sign may be placed closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way, if:

(A) the sign is at least 500 feet but not more than 2,640 feet from the nearest point of the intersecting highway of the interchange; ~~[and] or~~

~~[(B) the section of interstate highway or freeway was opened for use by the traveling public] [on or after September 1, 1987.]~~

(B) the sign is replacing an existing outdoor advertising use or structure which is being removed or displaced to accommodate the widening, construction, or reconstruction of an interstate, federal aid primary highway existing as of June 1, 1991, or national highway system highway, and it is located in a commercial or industrial zoned area inside an urbanized county or an incorporated municipality.

(d) The location of signs situated on nonlimited access primary highways in commercial, industrial, or H-1 zoned areas between streets, roads, or highways entering the primary highway shall not exceed the following minimum spacing criteria:

(i) Where the distance between centerlines of intersecting streets, roads, or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between centerlines of intersecting streets, roads, or highways is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet.

(e) All outdoor advertising shall be erected and

maintained within the outdoor advertising corridor.

~~[(3)]~~ (4) Subsection ~~[(2)]~~(3)(c)(ii) may not be implemented until:

(a) the Utah-Federal Agreement for carrying out national policy relative to control of outdoor advertising in areas adjacent to the national system of interstate and defense highways and the federal-aid primary system is modified to allow the sign placement specified in Subsection ~~[(2)]~~(3)(c)(ii); and

(b) the modified agreement under Subsection (a) is signed on behalf of both the state and the United States Secretary of Transportation.

Section 6. Section 27-12-136.6 is amended to read:

27-12-136.6. Advertising - Regulatory power of department - Notice requirements.

(1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules no more restrictive than this chapter to:

~~[(4)]~~ (a) control the erection and maintenance of outdoor advertising along the interstate and primary highway systems;

~~[(2)]~~ (b) provide for enforcement of this chapter;

~~[(3)]~~ (c) establish the form, content, and submittal of applications to erect outdoor advertising; and

~~[(4)]~~ (d) establish administrative procedures.

(2) In addition to all other statutory notice requirements:

(a) the department shall give reasonably timely written notice to all outdoor advertising permit holders of any changes or proposed changes in administrative rules made under authority of the Utah Outdoor Advertising Act; and

(b) any county, municipality, or governmental entity shall, upon written request, give reasonably timely written notice to all outdoor advertising permit holders within its jurisdiction of any change or proposed change to the outdoor or off-premise advertising provisions of its zoning provisions, codes, or ordinances.

Section 7. Section 27-12-136.7 is amended to read:

27-12-136.7. Advertising - Permits -

Application requirements - Duration - Fees.

(1) (a) Outdoor advertising may not be maintained without a current permit.

(b) Applications for permits shall be made to the department on forms furnished by it.

(c) A permit must be obtained prior to installing each outdoor sign.

(d) The application for a permit shall be accompanied by an initial fee established under Section 63-38-3.2.

(2) (a) Each permit issued by the department ~~[expires on]~~ is valid for a period of up to five years and shall expire on June 30 of ~~[each]~~ the fifth year of the permit, or upon the expiration or termination of the right to use the property, whichever is sooner.

(b) ~~[Each]~~ Upon renewal, each permit may be renewed for ~~[a period]~~ periods of ~~[one-year]~~ up to five years upon the filing of a renewal application and payment of a renewal fee established under Section 63-38-3.2.

(3) Sign owners residing outside the state shall provide the department with a continuous performance bond in the amount of \$2,500.

(4) Fees may not be prorated for fractions of the permit period. Advertising copy may be changed at any time without payment of an additional fee.

(5) (a) Each sign shall have its permit continuously affixed to the sign in a position visible from the nearest traveled portion of the highway.

(b) The permit shall be affixed to the sign structure within 30 days after delivery by the department to the permit holder, or within 30 days of the installation date of the sign structure.

(c) Construction of the sign structure shall begin within 180 days after delivery of the permit by the department to the permit holder and construction shall be completed within 365 days after delivery of the permit.

(6) The department may not accept any applications for a permit or issue any permit to erect or maintain outdoor advertising within 500 feet of a permitted sign location except to the permit holder or the permit holder's assigns until the permit has expired or has been terminated pursuant to the procedures under Section 27-12-136.9.

(7) Permits are transferrable if the ownership of the permitted sign is transferred.

(8) Conforming, permitted sign structures may be altered, changed, remodeled, and relocated subject to the provisions of Subsection (6).

Section 8. Section 27-12-136.9 is amended to read:

27-12-136.9. Unlawful outdoor advertising - Adjudicative proceedings - Judicial review - Costs of removal - Civil and criminal liability for damaging regulated signs - Immunity for Department of Transportation.

(1) Outdoor advertising is unlawful when:

(a) erected after May 9, 1967, contrary to the provisions of this chapter;

(b) a permit is not obtained as required by this chapter;

(c) a false or misleading statement has been made in the application for a permit that was material to obtaining the permit; or

(d) the sign for which a permit was issued is not in a reasonable state of repair, is unsafe, or is otherwise in violation of this chapter.

(2) The establishment, operation, repair, maintenance, or alteration of any sign contrary to this chapter is also a public nuisance.

(3) Except as provided in Subsection (4), in its enforcement of this section, the Department of Transportation shall comply with the procedures and requirements of Title 63, Chapter 46b, [the] Administrative Procedures Act.

(4) (a) The district courts shall have jurisdiction to review by trial de novo all final orders of the Department of Transportation under this [section] act resulting from formal and informal adjudicative proceedings.

(b) Venue for judicial review of final orders of the Department of Transportation shall be in the county in which the sign is located.

(5) If the Department of Transportation is granted a judgment, the Department of Transportation is entitled to have any nuisance abated and recover from the responsible person, firm, or corporation, jointly and severally:

(a) the costs and expenses incurred in removing the sign; and

(b) \$10 for each day the sign was maintained following the expiration of ten days after notice of agency action was filed and served under Section 63-46b-3.

(6) (a) Any person, partnership, firm, or corporation who vandalizes, damages, defaces,

destroys, or uses any sign controlled under this chapter without the owner's permission is liable to the owner of the sign for treble the amount of damage sustained and all costs of court, including a reasonable attorney's fee, and is guilty of a class C misdemeanor.

(b) This subsection does not apply to the department, its agents, or employees if acting to enforce this chapter.

Section 9. Section 27-12-136.10 is amended to read:

27-12-136.10. Existing outdoor advertising not in conformity with act - When removal required - When relocation allowed.

(1) Any outdoor advertising lawfully in existence along the interstate or the primary systems on the effective date of this act and which is not then in conformity with its provisions is not required to be removed until five years after it becomes nonconforming or pursuant to the provisions of Section 27-12-136.11.

(2) Any existing outdoor advertising structure that does not comply with Section 27-12-136.5, but that is located in an industrial and commercial area, an unzoned industrial and commercial area, or an area where outdoor advertising would otherwise be permitted, may be remodeled and relocated on the same property in a commercial or industrial zoned area, or another area where outdoor advertising would otherwise be permitted under this act.

Section 10. Section 27-12-136.11 is amended to read:

27-12-136.11. Existing outdoor advertising not in conformity with act - Procedure - Eminent domain - Compensation - Relocation.

(1) As used in this section, "nonconforming sign" means a sign that has been erected in a zone or area other than commercial or industrial or where outdoor advertising is not permitted under this act.

~~[(1)]~~ (2) (a) The department ~~[is hereby empowered and authorized to]~~ may acquire by gift, purchase, agreement, exchange, or eminent domain, any existing outdoor advertising and all property rights pertaining to ~~[same]~~ the outdoor advertising which were lawfully in existence on May 9, 1967, and which by reason of this chapter become nonconforming.

(b) If the department, or any town, city, county, governmental entity, public utility, or any agency or the United States Department of Transportation under this chapter, prevents the maintenance as defined in Section 27-12-136.3 ~~[or]~~, requires that maintenance of an existing sign be discontinued, the sign in question shall be considered acquired by ~~[such]~~ the entity and just compensation will become immediately due and payable.

(c) Eminent domain shall be exercised in accordance with the provision of Title 78, Chapter 34, Eminent Domain.

~~[(2)]~~ (3) (a) Just compensation shall be paid for outdoor advertising and all property rights pertaining to the same, including the right of the landowner upon whose land a sign is located, acquired through the processes of eminent domain.

(b) For the purposes of this act, just compensation shall include the consideration of damages to remaining properties, contiguous and noncontiguous, of an outdoor advertising sign company's interest, which remaining properties, together with the properties actually condemned,

constituted an economic unit.

(c) The department is empowered to remove signs found in violation of Section 27-12-136.9 without payment of any compensation.

~~[(3) Nothing in]~~ (4) Except as specifically provided in Section 27-12-136.11 or 27-12-136.14, this chapter ~~[shall]~~ may not be construed to permit a person to place or maintain any outdoor advertising adjacent to any interstate or primary highway system which is prohibited by law or by any town, city, or county ordinance. Any town, city, county, governmental entity, or public utility which requires the removal, relocation, alteration, change, or termination of outdoor advertising shall pay just compensation as defined in this chapter and in Title 78, Chapter 34.

(5) Except as provided in Section 27-12-136.9, no sign shall be required to be removed by the department nor sign maintenance as described in ~~[Section 27-12-136.11]~~ this section be discontinued unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under Section 131 of Title 23, United States Code, if any, with respect to the outdoor advertising being removed, have been appropriated and are immediately available to this state.

(6) (a) If any outdoor advertising use, structure, or permit may not be continued because of the widening, construction, or reconstruction along an interstate, federal aid primary highway existing as of June 1, 1991, or national highway systems highway, the owner shall have the option to relocate and remodel the use, structure, or permit to another location:

(i) on the same property;

(ii) on adjacent property;

(iii) on the same highway within 5280 feet of the previous location, which may be extended 5280 feet outside the areas described in Subsection 27-12-136.5 (3)(c)(i)(A), on either side of the same highway; or

(iv) mutually agreed upon by the owner and the county or municipality in which the use, structure, or permit is located.

(b) The relocation under Subsection (a) shall be in a commercial or industrial zoned area or where outdoor advertising is permitted under this act.

(c) The county or municipality in which the use or structure is located shall, if necessary, provide for the relocation and remodeling by ordinance for a special exception to its zoning ordinance.

(d) The relocated and remodeled use or structure may be:

(i) erected to a height and angle to make it clearly visible to traffic on the main-traveled way of the highway to which it is relocated or remodeled;

(ii) the same size and at least the same height as the previous use or structure, but the relocated use or structure may not exceed the size and height permitted under this act;

(iii) relocated to a comparable vehicular traffic count.

(7) (a) The governmental entity, quasi-governmental entity, or public utility that causes the need for the outdoor advertising relocation or remodeling as provided in Subsection (6)(a) shall pay the costs related to the relocation, remodeling, or acquisition.

(b) If a governmental entity prohibits the relocation and remodeling as provided in Subsection (6)(a), it shall pay just compensation as provided in Subsection (3).

Section 11. Section 27-12-136.14 is enacted to read:

27-12-136.14. Relocation on state highways.

(1) If any outdoor advertising use or structure may not be continued because of the widening, construction, or reconstruction along a state highway, the owner shall have the option to relocate and remodel the use or structure to another location:

(a) on the same property;

(b) on adjacent property;

(c) within 2640 feet of the previous location on either side of the same highway; or

(d) mutually agreed upon by the owner and the county or municipality in which the use, structure, or permit is located.

(2) The relocation under Subsection (1) shall be in a commercial or industrial zoned area or where outdoor advertising is permitted under this act.

(3) The county or municipality in which the use or structure is located shall, if necessary, provide for the relocation and remodeling by ordinance for a special exception to its zoning ordinance.

(4) The relocated and remodeled use or structure may be:

(a) erected to a height and angle to make it clearly visible to traffic on the main-traveled way of the highway to which it is relocated or remodeled;

(b) the same size and at least the same height as the previous use or structure, but the relocated use or structure may not exceed the size and height permitted under this act;

(c) relocated to a comparable vehicular traffic count.

(5) (a) The governmental entity, quasi-governmental entity, or public utility that causes the need for the outdoor advertising relocation or remodeling as provided in Subsection (1) shall pay the costs related to the relocation, remodeling, or acquisition.

(b) If a governmental entity prohibits the relocation and remodeling as provided in Subsection (1)(a), (b), or (c), it shall pay just compensation as provided in Subsection 27-12-136.11(3).

Section 12. Section 27-12-136.15 is enacted to read:

27-12-136.15. Landscape control program.

(1) As used in this section, "landscape control" means trimming or removal of seedlings, saplings, trees and vegetation along the interstate, federal aid primary highway existing as of June 1, 1991, and national highway system right-of-way to provide clear visibility of outdoor advertising.

(2) (a) The department shall establish a landscape control program as provided under this section.

(b) Except as provided in this section, a person, including an outdoor advertising sign owner or business owner may not perform or cause landscape control to be performed.

(3) (a) An outdoor advertising sign owner or business owner may submit a request for landscape control to the department.

(b) Within 60 days of the request under Subsection (3)(a), the department shall:

(i) conduct a field review of the request with a representative of the sign or business owner, the

department, and the Federal Highway Administration to consider the following issues listed in their order of priority:

- (A) safety;
- (B) protection of highway features, including right-of-way and landscaping;
- (C) aesthetics; and
- (D) motorists' view of the sign or business; and
- (ii) notify the sign or business owner what, if any, trimming, removal, restoration, banking, or other landscape control shall be allowed as decided by the department, after consultation with the Federal Highway Administration.

(c) If the sign or business owner elects to proceed, in accordance with the decision issued under Subsection (3)(c), the department shall issue a permit that describes what landscape control may be allowed, assigns responsibility for costs, describes the safety measures to be observed, and attaches any explanatory plans or other information.

(4) The department shall establish an appeals process within the department for landscape control decisions made under Subsection (3).

(5) (a) A person who performs landscape control in violation of this section is guilty of a class C misdemeanor, and is liable to the owner for treble the amount of damages sustained to the landscape.

(b) Each permit issued under this section shall notify the permit holder of the penalties under Subsection (5)(a).

Section 13. Section 27-12-136.16 is enacted to read:

27-12-136.16. Utah-Federal Agreement - Severability clause.

(1) As used in this section, "Utah-Federal Agreement" means the agreement relating to outdoor advertising that is described under Section 27-12-136.2, and it includes any modifications to the agreement that are signed on behalf of both the state and the United States Secretary of Transportation.

(2) The provisions of this act are subject to and shall be superseded by conflicting provisions of the Utah-Federal Agreement.

(3) If any provision of this act or its application to any person or circumstance is found to be unconstitutional, or in conflict with or superseded by the Utah-Federal Agreement, the remainder of this act and the application of the provision to other persons or circumstances shall not be affected by it.

S.B. 15

Passed 3/4/97, Approved 3/21/97
Effective 05-May-97

Laws of Utah 1997, Chapter 339

Public Education Computer Technology Task Force

Sponsor: Robert F. Montgomery

AN ACT Relating to Public Education; Creating the Public Education Computer Technology Task Force; Providing for Membership; Delineating Responsibilities and Procedures; Providing a Reporting

Date; Appropriating \$22,000 from the General Fund; and Providing a Repeal Date. This act enacts uncodified material.

Be it enacted by the Legislature of the state of Utah:

Section 1. Public Education Computer Technology Task Force - Creation - Membership - Quorum - Staff.

(1) There is created the Public Education Computer Technology Task Force consisting of the following nine members:

(a) three members of the Senate appointed by the president of the Senate, no more than two of whom may be from the same political party;

(b) three members of the House of Representatives appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party;

(c) the director of the Utah Education Network; and

(d) two members of the general public who have educational technology expertise, jointly appointed by the president of the Senate and the speaker of the House of Representatives.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

(3) (a) A majority of the members of the task force constitute a quorum.

(b) The action of a majority of a quorum constitutes the action of the task force.

(4) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(b) Members of the task force who are not legislators may not receive compensation for their work associated with the task force.

(5) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

Section 2. Duties - Interim report.

(1) The task force shall review and make recommendations on the following issues:

(a) access or exposure to pornographic programs or materials on the Internet or other computer related mediums as used in a public school setting; and

(b) the capability to block or lock out access to such programs and materials and the costs associated with installing software to accomplish this objective.

(2) A final report, including any proposed legislation, shall be presented to the Education Interim Committee and Information Technology Commission before November 30, 1997.

Section 3. Appropriation.

There is appropriated from the General Fund for fiscal year 1996-1997:

(1) \$3,500 to the Senate to pay for the compensation and expenses of senators on the task force;

(2) \$3,500 to the House of Representatives to pay for the compensation and expenses of representatives on the task force; and

(3) \$15,000 to the Office of Legislative Research

Tab E

FINDINGS AND ORDER

*Application of ROA General, Inc. dba Reagan Outdoor Advertising
(971 South 1160 West, Orem – BJBD DW Davis)
File No. 03-03-001*

Region Three denied an application from Reagan Outdoor Advertising (Reagan) on August 20, 2003 for permission to place a billboard in Orem, Utah on land known as the BJBD DW Davis Property. Region Three's permit officer denied the permit on the grounds that the proposed location of the billboard was inside of the interchange. The region's proposed POW is located at the point where a fourth lane is added to the three-lane highway. This lane leads to the interchange exit. It is not physically impossible for a vehicle to get on this lane and then go back to one of the three lanes that continue south.

Reagan, on the other hand, claims on administrative appeal, that Region Three picked the wrong location as the POW and, thus, the beginning of the interchange. Reagan places the POW at a point much further south. At this location, the fourth lane veers off and goes to the interchange exit. At this point, it is physically impossible for a vehicle to go back into one of the lanes that continue south. As discussed further in this Order, Reagan also claims that its proposed location is within a deceleration lane, and, thus, not included in the statutory definition of interchange.

Additionally, and more important for purposes of this appeal, Reagan asserts that Region Three's proposed POW is incorrect because it is more than "2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade." If this is correct, the sign would not be within the interchange and the only possible POW would be the one proposed by Reagan. Consequently, its proposed sign would be 508 feet from

the interchange and permissible. Both Reagan and UDOT agree that UDOT's proposed POW is more than 2640 feet from the center line of the intersecting highway of the interchange.¹

Based on this fact alone, Region Three's denial is wrong. Utah law expressly says that the point of widening may not be more than 2640 feet away from the center line of the intersecting highway of the interchange. In this situation, where there are two potential points of widening and one of them is more than 2640 feet from the intersecting highway, we must ignore the one that exceeds that distance and use the other potential point of widening as the correct one for purposes of advertising. Since Reagan's suggested POW is more than 500 feet away from the interchange, that POW is the correct point.²

Reagan is also correct in its other argument, i.e., that its proposed location is within a deceleration lane and, consequently is excluded from the definition of "interchange or intersection." In this particular case, the deceleration lane begins at the point that Region Three incorrectly identifies as the POW. Vehicles going into that lane must decelerate as they prepare to exit. The offramp, or beginning of the interchange, is at the POW identified by Reagan. At this point, vehicles are not only decelerating, but they have no choice but to exit and are actually exiting the main stream of traffic.

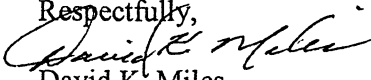
¹ The parties disagree on the exact measurement, but that disagreement is not relevant to the decision since they are both more than 2640 feet.

² The applicability of the 2640-foot limitation has never before been the subject of an appeal to the administrative hearing officer. Since other decisions referred to by the parties did not involve this critical restriction, they are not relevant to this appeal. Further, this decision will probably have limited relevance to future appeals.

Because Reagan's proposed site is within a deceleration lane, and is beyond 500 feet of the interchange's POW, the proposed site is a valid location.³

Consequently, Region Three's denial of the permit is reversed. Either party may petition for reconsideration within 10 days of the issuance of this decision.

DATED THIS 28th day of July 2004.

Respectfully,

David K. Miles
Administrative Hearing Officer
State Operations Engineer

cc: Carlos Braceras
Lyle McMillan
Tracy Conti
Terry Stowell
Fran Rieck
James H. Beadles

³ "Interchange or intersection" means those areas and those approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route." Utah Code Ann. § 72-7-502(9).