From:	Keith Zuspan
To:	Tabitha Mecham
Subject:	Fwd: Notice Regarding Property Boundary Review — Emigration Canyon Road Project PIN 21203 | Preservation of Property Rights Claims
Date:	Monday, June 8, 2026 2:52:41 PM

---------- Forwarded message ---------
From: **R Macfarlane** <robert.c.macfarlane@gmail.com>
Date: Tue, May 26, 2026 at 8:23 AM
Subject: Notice Regarding Property Boundary Review — Emigration Canyon Road Project PIN 21203 | Preservation of Property Rights Claims
To: <thessell@msd.utah.gov>, <mhoward@msd.utah.gov>, <canderson@msd.utah.go>
Cc: Cameron Platt <cameron@utahshieldlaw.com>, emiranda@utah.gov <emiranda@utah.gov>, <keithzuspan@brighton.utah.gov>

Ms. Howard, Mr. Anderson and Mr. Hessell,

I am a property owner at 6102 Emigration Canyon Road (Parcels 10-33-327-009 and 10-33-327-010) within the PIN 21203 project corridor. I write in response to information disclosed at the May 19th, 2026 Emigration City Council meeting, at which MSD staff indicated the District is conducting a review of property boundaries for owners along Emigration Canyon Road.

I am aware that this review is a direct consequence of the concerns I and other affected property owners have raised regarding the project's reliance on an unadjudicated 1917 prescriptive easement as the design baseline for a federally funded road widening project. I write to ensure that MSD's review proceeds with full awareness of the legal posture of this matter.

I. THE PRESCRIPTIVE EASEMENT IS NOT A SUBSTITUTE FOR ADJUDICATED TITLE

The project — designed by Avenue Consultants under Contract No. 268557 — is built on the assumption of a "66 ft. Prescriptive Roadway ROW Easement" established in 1917, with all design improvements measured from 33 feet either side of the roadway centerline. The contract simultaneously concedes that "County parcel GIS data does not align with the assumed roadway right of way" and that no ROW cleanup or acquisition is included in Phase 1 scope.

Under Utah law, a prescriptive easement is not self-executing. It must be formally adjudicated by a court or established through a quiet title action before it is legally enforceable against a property owner's fee title deed. Valcarce v. Fitzgerald, 961 P.2d 305 (Utah 1998). My recorded deed — Limited Warranty Deed, Book 11396, Page 8435, Salt Lake County Recorder, recorded January 19, 2023 — controls my property boundary. No court judgment, quiet title decree, or recorded easement instrument establishing the 1917 easement's legal validity against my parcel has been presented by UDOT, MSD, or their consultants at any point in this process.

II. MSD'S BOUNDARY REVIEW DOES NOT RESOLVE THE LEGAL DEFECT

An internal MSD boundary review — however thorough — does not adjudicate the easement's validity. If MSD's review confirms a conflict between the project's assumed ROW line and recorded parcel boundaries, the legally required remedy is formal eminent domain proceedings under Utah Code § 78B-6-501 et seq. and Article I, Section 22 of the Utah Constitution — not a design workaround or an informal accommodation. Any design alignment adopted without resolving the easement question through the proper legal process will be treated as a taking in progress.

I am also preserving the right to assert that any demand for ROW dedication in connection with this project must satisfy the Nollan/Dolan nexus and rough proportionality standards as codified in Utah Code §§ 10-9a-508 and 17-27a-507. Those standards have not been analyzed, documented, or disclosed.

III. OPEN PROCEEDINGS

For MSD's awareness, the following formal proceedings are currently pending:

— Advisory Opinion Request, Utah Property Rights Ombudsman (filed February 6, 2026; renewed March 2026), addressing five questions including the validity of designing to an unadjudicated easement and whether the Phase 1/Phase 2 structure constitutes a procedural deficiency.

— Formal NEPA/CatEx Challenge to UDOT and FHWA (filed May 1, 2026), documenting extraordinary circumstances including contested ROW, unresolved Section 106 consultation, aquatic delineation, and floodplain encroachment. FHWA responded May 8 without addressing the merits.

— Independent Property Survey, to be completed this week, documenting the actual relationship between my recorded deed boundaries and the project's assumed prescriptive easement line.

— GRAMA Records Request to UDOT for the extraordinary circumstances checklist and CatEx documentation.

IV. DOCUMENT PRESERVATION

I request that MSD preserve all documents, communications, data, and records relating to the property boundary review currently underway, the PIN 21203 project design, and any analysis of conflicts between the project's assumed ROW line and recorded parcel boundaries. This request is made in anticipation of potential administrative and judicial proceedings.

I remain willing to engage constructively. However, constructive engagement requires that the legal process — not internal agency review — resolve the fundamental question of where MSD's rights end and my property begins.

Regards,

Robert Macfarlane

6102 Emigration Canyon Road
Salt Lake City, Utah 84108
(801) 319-0097
robert.c.macfarlane@gmail.com

cc: Cameron Platt, Esq., Outside Legal Counsel, Emigration City (cameron@utahshieldlaw.com)
cc: Keith Zuspan, Chair, MSD Board of Trustees
cc: Eduardo P. Miranda, UDOT Project Manager (eduardo.miranda@utah.gov)
cc: Tolin Hessell, MSD [returning June 8] (THESSELL@SLCO.ORG)