**From:** Gosselin, Danielle
**To:** Tom Wilcox
**Cc:** Wood, Diana
**Subject:** RE: BHR - Reply to your 11-3-2021 request Letter
**Date:** Monday, November 8, 2021 12:36:47 PM

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Tom,

As stated in my letter, you may file an application for a land-use-exemption permit at any time and include arguments regarding the 6-month waiver in the application if and when you file.

Regards,
Danielle

Danielle Gosselin
Acting Director
Office of Environmental Analysis
Surface Transportation Board
danielle.gosselin@stb.gov
(202) 245-0300

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**From:** Tom Wilcox <tom@twilcoxlaw.com>
**Sent:** Friday, November 5, 2021 2:16 PM
**To:** Gosselin, Danielle <Danielle.Gosselin@stb.gov>
**Cc:** Wood, Diana <Diana.Wood@stb.gov>
**Subject:** RE: BHR - Reply to your 11-3-2021 request Letter

Danielle – OK. Thank you. According to this clarification the sole "objection" (not "objections" as your letter states) to the waiver request that could conceivably be before the STB is this generic statement by NAACP. However, NAACP's objection is based entirely on its misunderstanding of the waiver to be for the purpose of getting the STB to "consider this project sooner." This is obviously wrong. The waiver of the 6-month notice relates to OEA's preparation to perform its NEPA duties. The regulation has nothing to do with the Board's consideration of the merits of an application.

Finally, NAACP wrongly believes the 6-month notice is provided to the public rather than just OEA as the regulation explicitly states, but even so, NAACP's filing was made over 5 months ago, and NAACP has had knowledge of the project for at least 6 months now. Consequently, even though NAACP is not entitled to 6 months prior notice under section 1105.10(a)(1), any alleged harm to NAACP that might have been caused by granting the waiver request has vanished and its "objection" is moot.

In short, Brookhaven Rail respectfully disagrees that this single, very generic "objection," which is obviously wrong, prevents OEA from performing its delegated duties and determining that the waiver request is no longer needed as set forth in my letter. On behalf of Brookhaven Rail, I request that you reconsider your conclusion that the NAACP's objection, such as it is, prevents you from acting, and that you indicate your concurrence that the request is no longer necessary. If you still think that action is required on the request, we ask that you grant it.

Regards,
Tom

**Thomas W. Wilcox**
Law Office of Thomas W. Wilcox, LLC
Office: 202.508.1065
Mobile: 202.365.8409
1629 K. Street, NW Suite 300
Washington, DC 20006
tom@twilcoxlaw.com I www.twilcoxlaw.com

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**From:** Gosselin, Danielle <Danielle.Gosselin@stb.gov>
**Sent:** Friday, November 5, 2021 10:59 AM
**To:** Tom Wilcox <tom@twilcoxlaw.com>
**Cc:** Wood, Diana <Diana.Wood@stb.gov>
**Subject:** RE: BHR - Reply to your 11-3-2021 request Letter

Hi Tom,

The letter dated June 2, 2021 from NAACP-NY is addressed to the Commissioners of the Surface Transportation Board and was filed in the formal docket. If you read page 2, you will find a paragraph objecting to the 6-month waiver request.

Thanks,
Danielle

Danielle Gosselin
Acting Director
Office of Environmental Analysis
Surface Transportation Board
danielle.gosselin@stb.gov
(202) 245-0300

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**From:** Tom Wilcox <tom@twilcoxlaw.com>
**Sent:** Friday, November 5, 2021 10:40 AM
**To:** Gosselin, Danielle <Danielle.Gosselin@stb.gov>
**Cc:** Wood, Diana <Diana.Wood@stb.gov>
**Subject:** RE: BHR - Reply to your 11-3-2021 request Letter

Danielle – In response to your letter, I did a quick review of the submissions in dockets FD 36398 and

FD 36399 and did not find any formal objection to Brookhaven Rail's request for waiver of 49 C.F.R. 1105.10(a)(1) for the Application. I did locate a reference to the 6-month notice requirement in a June 2 NAACP NY filing but no mention of Brookhaven Rail's waiver request. Will you please direct me to the sources for your letter's statement that "objections to your waiver request are already before the Board," as opposed to being mentioned in letters to OEA? Thanks in advance.

Regards,
Tom

**Thomas W. Wilcox**
Law Office of Thomas W. Wilcox, LLC
Office: 202.508.1065
Mobile: 202.365.8409
1629 K. Street, NW Suite 300
Washington, DC 20006
tom@twilcoxlaw.com I www.twilcoxlaw.com

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**From:** Wood, Diana <Diana.Wood@stb.gov>
**Sent:** Friday, November 5, 2021 7:49 AM
**To:** Tom Wilcox <tom@twilcoxlaw.com>
**Cc:** Gosselin, Danielle <Danielle.Gosselin@stb.gov>
**Subject:** BHR - Reply to your 11-3-2021 request Letter

Tom,

Please see the attached reply.

Thanks,
Diana

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington DC 20423
202-245-0302
Diana.Wood@stb.gov