



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

PETER A. PFOHL

May 10, 2023

VIA E-FILING AND EMAIL

Ms. Daniel Gosselin
Director
Office of Environmental Analysis
Surface Transportation Board
395 E St. SW
Washington, D.C. 20423

Mr. Alan Tabachnick
Federal Preservation Officer
Office of Environmental Analysis
Surface Transportation Board
395 E St. SW
Washington, D.C. 20423

Re: AB 167 (Sub-No. 1189X) et al.,

Dear Ms. Gosselin and Mr. Tabachnick:

On behalf of the LLCs and the Albanese Organization, Inc., the contract vendee and respected developer (“Albanese”), we are disappointed, but unfortunately, not surprised by the materially misleading and grossly inaccurate assertions by Mr. Montange, counsel for the City of Jersey City, the Embankment Preservation Coalition, and the Rails to Trails Conservancy (collectively “City Parties”) in his email Reply of May 8, 2023 to OEA’s recent announcement of an online Section 106 Consulting Parties meeting on June 8, 2023.

Mistruths by Mr. Montange on Section 110k Findings

Counsel for City Parties continues to lodge spurious and untruthful missives on historic property “destruction.” Respectfully, OEA and the Consulting Parties should not be distracted by these tactics.

For example, even with a definitive, final finding by the Board (STB served Aug. 22, 2022) of no destruction or irreparable harm to historic property, and no improper sale of the property in violation of the NHPA (Section 110(k)), Mr. Montange’s fabricated *ad hominem* attacks appear to have no end and lack any kind of civil restraint. In point of fact, after the City Parties alleged “anticipatory demolition” of historic property, the STB put on hold the Section 106 review process, and ordered briefing, just as the ACHP and NJ SHPO requested. The Board’s August 18, 2022 decision found no improper behavior or violations under Section 110(k) and further stated that it “will proceed with completion of the Section 106 historic review.” The STB decision was appealed by Jersey City, creating further unnecessary delay, but quickly dismissed by the D.C. Circuit in January 2023.

The clear and sole purpose of Mr. Montange’s failure to acknowledge the detailed, careful, and correct Board Section 110(k) findings is to mislead the Consulting Parties by

shamelessly repeating rejected claims in order to impede OEA's attempts to do its job and complete the Section 106 review as the Board has ordered.

Section 106 Process

Mr. Montange further feigns a lack of consultation and opportunity to engage in the Memorandum of Agreement ("MOA"), or even in the Section 106 review process. In point of fact, counsel fails to mention that the MOA, step four of a comprehensive and exhaustive four-step NHPA review process, is largely completed. In October 2020, OEA fully briefed the Consulting Parties on the draft MOA, and provided a full opportunity for comments. All comments on the draft have been received and reviewed by OEA, including those from the City Parties submitted in oral remarks and in two sets of written comments. It bears noting that ACHP and NJ SHPO, two of the four signatories, offered no major, or even material suggested changes to the MOA in their comments.

Mr. Montange's belated, self-serving attempts to restart that process, or to materially alter or revise the MOA, especially in a manner that goes well beyond the Board's jurisdiction over interstate rail lines, are unfounded and unwarranted. Counsel's further assertion that OEA's comprehensive review and public input process, and its plans for completion of the Section 106 review deprive the public of "an opportunity to participate in the Section 106 process as is required by law" are obviously wrong, completely unfounded and disrespectful to an OEA review that has now spanned eight and a half years. That duration far surpasses the STB's own rules, NHPA guidance, and Congressional and Administration directives for timely completion of the review, especially given the short length of the Line.

Mr. Montange's Contravention of his Responsibilities Under 49 C.F.R. § 1103.27

Mr. Montange should know better than to misstate and misrepresent the actual facts, especially as the Board has recently "admonish[ed]" and "caution[ed]" him "to take greater care to avoid incorrect or incomplete representations of matters of fact to the Board," and "strongly advis[ed] counsel to be meticulous and thorough in any future proceedings before the Board." *Michael Williams – Control Exemption – S&S Shortline Leasing, LLC*, FD 36460 *et al.* (STB served Sept. 29, 2021), at 5. Why counsel continues to engage in such behavior is puzzling. Respectfully, given the knowingly false and misleading statements in Mr. Montange's reply email, further sanctions and admonishment of Mr. Montange are warranted.

Preservation of the Embankment and Donation of a Park

Moreover, contrary to Mr. Montange's false assertions, the LLCs and Albanese have worked extensively with the Mayor/City, and neighborhood groups in exhaustive efforts to develop a voluntary mitigation plan centered on Embankment preservation, open spaces, and

a linear park and trail of unsurpassed excellence, similar to the High Line Park in Manhattan. As Mr. Montange is acutely aware, the plan would donate to the City most of the property, and includes preservation that far exceeds the usual conditions for Section 106 NHPA mitigation and what is achievable under the STB's limited jurisdiction.

Settlement Unlikely without Concluding Section 106 Process

My clients believe that settlement is not possible without concluding the Section 106 process because such meaningful settlement has been absolutely thwarted solely by Mr. Montange's continuing disrespect and dubious tactics. These include bold threats to fully restore long-dormant freight operations (including possibly, hazardous materials shipments) over the embankments in a downtown Jersey City residential neighborhood through an "Offer of Financial Assistance" as a desperate means to thwart a settlement and attempt to take the property. Such absurd initiatives and blatant attempts to manipulate and abuse the Board's process to one's own advantage serves only to delay resolution of this proceeding (as clearly intended) and, unfortunately, jeopardize the long-sought preservation plans.

Unfortunately, my clients are convinced that a settlement will never be reached as long as Mr. Montange serves as counsel for the City Parties. If the City Parties truly desire meaningful, negotiated settlement, my clients strongly believe that the only path forward is to remove Mr. Montange from any further settlement discussions and rely instead on its in-house and other outside counsel who have been participating in this matter.

Summary

Mr. Montange's continuing assaults on OEA, the Section 110(k) decision, the careful and coordinated development of the MOA, and the Section 106 review process overall are unwarranted and unproductive, and threaten true preservation.

Enough is enough. No further delays should be allowed,¹ the final MOA to be signed by NJ SHPO, ACHP, Conrail, and OEA should be completed as soon as possible, thus completing the exhaustive Section 106 review. If counsel for the City Parties has continuing concerns, his client's right to appeal any and all aspects of the review is fully preserved.

¹ The LLCs and Albanese do not begrudge Mr. Montange's travel and vacations of his choice, but his decision to be out of the country for an extended period should not become grounds for further delay, especially when his stated position is that no MOA is appropriate, his client is not a signatory party to the MOA, this is not a hearing, and his client has other in-house and outside counsel that can represent them at the Consulting Parties' meeting. Alternatively, if it is convenient for OEA and other Consulting Parties, the LLCs and Albanese have no objection to an earlier Consulting Parties meeting to be held this month.

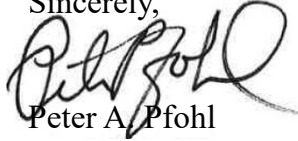
Ms. Gosselin and Mr. Tabachnick

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We ask that this letter be included as part of the record and posted as environmental correspondence in this docket.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Pfohl", written over the printed name.

Peter A. Pfohl

cc: Vickie Hyman
Christopher V. Albanese