

**Wayland, Joshua**

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**From:** C. Montange <c.montange@frontier.com>  
**Sent:** Wednesday, October 31, 2018 5:15 PM  
**To:** Rutson, Vicki; Wayland, Joshua; Michele Donato  
**Cc:** J. Baker Peter; Robert M. Jenkins, III; Kevin Coakley; Jonathan Broder; Eugene T. Paolino; Vickie Hyman; Crandley, Rachael; Keats, Craig; Andrea Ferster; Maureen Crowley; Stephen Gucciardo; Stevie D. Chambers; John Curley  
**Subject:** Re: Harsimus Abandonment Proceedings - STB Docket No. AB 167 (Sub-No. 1189X)  
**Attachments:** Rutson and Wayland 10 31 18.pdf

31 October 2018

Ms. Rutson and others on Ms. Donato's email:

Pardon me for the informality of this reply to Ms. Donato's letter of this date, but I am out-of-country. Since the matter seems to me important to the correct application of section 106 to a variety of historic sites, structures and districts, an immediate reply is nonetheless necessary. I will be back in my office on November 6 should further information exchange seem warranted.

With regret, City et al must dissent from Ms. Donato's letter. STB has not yet analyzed adverse impacts, and so far as counsel can tell, the parties differ on adverse impacts and on mitigation. Thus it seems premature to "streamline review," although that would be a possibility of streamlining if there was some agreement between the parties and with NJ SHPO concerning what the impacts were and how to mitigate with any kind of reasonable assurance. The recent informal exchange of documents to facilitate settlement between Conrail, Albanese Organization (a proxy for the LLCs) and City et al unfortunately has not closed any gaps, but in the view of City et al served to extend them. The LLCs are demanding 50% more development, and on paper not offering any assurances of any mitigation. Both our counterparties seem to wish to reserve the right to clawback or otherwise renege on anything (Conrail) or elements of anything (Albanese) "promise" to the City as mitigation unless the City grants them their unarticulated future demands which they seem to reserve the right some time in the future to state in their sole discretion or unless the City otherwise indefinitely performs as they wish in their discretion. Again, with respect, this means that the adverse impact must be assumed to be demolition and development of the entire H Branch without any real mitigation. City et al have offered several suggestions to abate this dismal and unacceptable result, so far to no avail. Another way to state this is to say that the oral "proposals" by Conrail and the LLCs, which were exciting, have not been reflected in the documents they advanced to City et al, whereas the document that City et al felt embodied their proposals has been apparently rejected.

Rather than call on STB to shorten processes, it is clear at this point that a full analysis of impacts and means to mitigate is still required.

As to what the Board could require, the LLCs and Conrail should be aware, among other things, that the City has invoked the OFA remedy (among other remedies), and City et al believe that STB would violate its precedent if it failed to allow the City to use OFA. Under that remedy, the City could acquire the entire H Branch for zero (if Conrail continues to claim an implied easement over the 8 blocks "sold" to Mr. Hyman) plus the price of the short isolated segment in the Palisades, or at worst about what Mr. Hyman paid. That is an acceptable result and far more consistent with Section 106 than demolition and development. City et al have been prepared to negotiate a mutually

advantageous result, not a result under which the Embankment and the H Branch corridor may or will be destroyed for rail and other public use.

Candidly, I had hoped that conditions would allow a foreshortened process, but Ms. Donato has jumped the gun.

Charles Montange, counsel for City of Jersey City, Rails to Trails  
Conservancy and PRR H Embankment Preservation Coalition

On Wednesday, October 31, 2018, 2:39:01 PM CST, Michele Donato <mdonato@micheledonatoesq.com> wrote:

Please see attached.

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