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Crystal M. Zorbaugh

305451

ENTERED
Office of Proceedings
October 11, 2022
Part of
Public Record

(202) 663-7831 (Direct Dial)
E-Mail: czorbaugh@bakerandmiller.com

October 11, 2022

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Flats Industrial Railroad Company – Abandonment Exemption –
In Cleveland, OH, AB-1327X

Dear Ms. Brown:

Pursuant to 49 C.F.R. Part 1152, Subpart F – Exempt Abandonments and Discontinuances Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company (“FIR”), is filing a verified notice of exemption to abandon rail service over an approximately 1.85-mile-long rail line, extending from Milepost 10 to Milepost 11.85 (near West 41st Street) in the Cleveland, OH (the “Line”). A \$4,600.00 filing fee has been paid via Pay.gov. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com. If I am unavailable you may contact William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Respectfully submitted,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Attorney for Flats Industrial Inc., a Delaware corporation
doing business as Flats Industrial Railroad Company

Enclosures

FILED
October 11, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
October 11, 2022
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

**William A. Mullins
Crystal M. Zorbaugh
Spencer M. Naake
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

October 11, 2022

**Attorneys for Flats Industrial Inc., a
Delaware corporation doing business as
Flats Industrial Railroad Company**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

INTRODUCTION

Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company (“FIR”),¹ hereby submits a verified notice of exemption pursuant to 49 C.F.R. part 1152, subpart F (Exempt Abandonments and Discontinuances) for FIR to abandon rail service over approximately 1.85 miles of rail line, extending from Milepost 10 to Milepost 11.85 (near West 41st Street) in Cleveland, OH (the “Line”).² The Line has been out of service for over two years. Following

¹ FIR was incorporated on August 21, 1996, but amended its corporate name to Flats Industrial, Inc. on February 26, 2002. For consistency with prior Surface Transportation Board decisions, the entity, intending to abandon the Line, will be hereinafter referred to as Flats Industrial Railroad Company or FIR.

² In 1996, FIR became a Class III carrier when it acquired a 4-mile rail line from Conrail that extended north from Knob (milepost 14.0) to the Flats area of Cleveland, OH (Milepost 10.0). See Flats Industrial Railroad Company – Acquisition and Operation Exemption – Consolidated Rail Corporation, FD 33044 (STB served Oct. 11, 1996). The Deed and Bill of Sale for the transaction confirm that FIR’s ownership interest included both 10901 (mainline track) and 10906 (ancillary track). Interestingly, the regulatory record and the deed differ slightly by 0.16 of a mile. The deed refers to Milepost 10.16, while the regulatory record uses Milepost 10.0 as the starting point. FIR’s research has confirmed that by the time FIR acquired the line, Conrail had abandoned the line through Milepost 10.0. See Consol. Rail Corp. – Abandonment Exemption – In Cleveland, Ohio, AB-167 (Sub-No. 1080X) (I.C.C. served Feb. 13, 1987) (granting Conrail authority to abandon a portion of the Clark branch from Milepost 10.0 to Milepost 9.28 (in Cleveland) to allow the City of Cleveland to pursue a City Project for the improvement of both vehicular traffic and trolley service). Because FIR is seeking an entire railroad abandonment extinguishing the entirety of its common carrier obligation and out of an abundance of caution, FIR is using Milepost 10.0 as the starting milepost.

abandonment, FIR plans to remove the Line's rail and salvageable track material (such as tie plates, fasteners, crossties, and, the upper layer of ballast). FIR does not intend to disturb the sub-grade or sub-grade structures, and it will not engage in any excavation activity. Removal of track material will be accomplished by use of the right-of-way for access, along with access via existing public and private crossings as necessary. No new access roads are contemplated. FIR does not intend to disturb any of the underlying roadbed or to perform any activities that would cause sedimentation or erosion of the soil and does not anticipate any dredging or use of fill in the removal of the track material. The crossties and/or other debris, if removed, will be transported away from the Line, and will not be discarded along the rights-of-way; they will not be placed or left in streams or wetlands, or along the banks of such waterways. Also, during track removal, appropriate measures will be implemented to prevent or control spills from fuels, lubricants, or any other pollutant materials from entering any waterways.

The Line traverses United States Postal Zip Code territory 44113. The entirety of the Line is located in Cleveland, Ohio. The Line remains out of service and no customers have been served on the Line for more than two years.

Per the requirements of 49 C.F.R. §§ 1152.50(b) and (d), FIR provides the following information in support of this notice of abandonment:

As part of the 1996 transaction, FIR also acquired 49 U.S.C. § 10906 track (referred to as the "Cereal Lead") that split from the FIR mainline at approximate railroad MP 10.16 and extended in a generally westerly direction crossing the Cuyahoga River for approximately 0.4 miles and ending in a wye. Because the Cereal Lead is § 10906 trackage, STB abandonment authority is not needed for FIR to stop operations over and dispose of it.

Please note - FIR's jurisdictional trackage (10901 trackage) was shortened in 2001 when FIR sold the portion of its mainline line from milepost 14.0 (at Knob) to milepost 11.85 (near West 41st Street), a total distance of approximately 2.15 miles to Norfolk Southern Railway Company ("NSR") to be rebuilt and permanently incorporated into NSR's double-track Cloggsville Connection main line.

Certification: 49 C.F.R. § 1152.50(b)

FIR certifies that the Line satisfies the criteria for abandonment under the exemption provisions at 49 C.F.R. part 1152, subpart F. See Certification of Beth Fournier (Exhibit A). During the past two years, FIR has provided no local or overhead traffic over the Line; overhead traffic, if there were any, could be rerouted over other lines; and no formal complaint has been filed by a user of rail service on the Line or a state or local government entity acting on behalf of such user regarding cessation of service over the Line is either pending before the Surface Transportation Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

The proposed abandonment will be consummated on or after November 30, 2022 (50 days after filing the notice of exemption).

Additional Information Required: 49 C.F.R. §§ 1152.22(a)(1)-(4), (7)-(8) and (e)(4)

Exact name of applicant (49 C.F.R. § 1152.22(a)(1)):

Flats Industrial Inc. is a Delaware corporation doing business as Flats Industrial Railroad Company.

Whether applicant is a common carrier by railroad (49 C.F.R. § 1152.22(a)(2)):

FIR is a common carrier by railroad subject to the Board's jurisdiction under 49 U.S.C. Subtitle IV.

Relief sought (49 C.F.R. § 1152.22(a)(3)):

FIR hereby invokes the Board's two-year-out-of-service class exemption procedures to abandon rail service over approximately 1.85 miles of rail line, extending from Milepost 10 to Milepost 11.85 (near West 41st Street) in Cleveland, Ohio. All of the track is located in Cleveland, Ohio. The Line traverses United States Postal Zip Code territory 44113.

Map (49 C.F.R. § 1152.22(a)(4)):

A detailed map showing the location of the Line is attached hereto as Exhibit B.

Applicant's representatives (49 C.F.R. § 1152.22(a)(7)):

FIR's representatives to whom correspondence should be sent are as follows:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

USPS ZIP codes (49 C.F.R. § 1152.22(a)(8)):

The Line is located in the following United States Postal Zip Code territory: 44113.

Suitability of the Line for Other Public Purposes (49 C.F.R. § 1152.22(e)(4)):

For the right-of-way underlying the Line proposed for abandonment, FIR may have a mix of fee simple ownership and easements; thus, FIR may have a corridor available for redeployment for alternative public use(s). The Line does not contain any federally granted right-of-way. As appropriate, FIR is willing promptly to make available any information in its possession to anyone so requesting it.

Labor Protection

FIR, a small Class III railroad, is undertaking an entire line railroad abandonment. Thus, consistent with ICC and Board precedent, no labor protections should be imposed. See Railway Labor Executives' Association v. ICC, 735 F.2d 691, 702-703 (2d Cir. 1984) (explaining that Congress did not intend to require the Commission to impose labor protection conditions in proceedings involving entire line abandonments. See also Wellsville, Addison & Galetton R. Corp.—Abandonment, 354 I.C.C. 744 (1978), Tennessee Central Ry. Corp. – Abandonment, 333 I.C.C. 443 (1968).

Certifications

Attached hereto as Exhibit C are Certificates of Service and Publication certifying compliance with the advance notice and newspaper publication requirements set forth at 49 C.F.R. § 1152.50(d)(1) and 49 C.F.R. § 1105.12, respectively. Attached as part of Exhibit D is a certificate of compliance with

the advance notice requirements for Environmental and Historic Reports as set forth at 49 C.F.R. § 1105.11.

Environmental and Historic Report

As is reflected in the certificate of compliance with the provisions of 49 C.F.R. § 1105.11 (see Exhibit D), FIR has prepared a combined Environmental and Historic Report (“E&HR”) in anticipation of the proposed abandonment portion of the proceeding, which conforms to the requirements of 49 C.F.R. §§ 1105.7 and 1105.8. A copy of the E&HR is attached hereto as Attachment 1 to Exhibit D (§ 1105.11 certification).

Respectfully submitted,

/s/ Crystal M. Zorbaugh

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

October 11, 2022

Attorneys for Flats Industrial Inc., a Delaware corporation
doing business as Flats Industrial Railroad Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO**

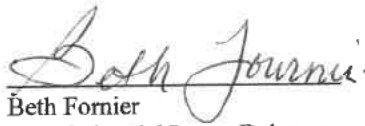
VERIFIED NOTICE OF EXEMPT ABANDONMENT

VERIFICATION

Verification

I, Beth Fornier, for Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company ("FIR") hereby verify under penalty of perjury that to the best of my knowledge, the foregoing abandonment notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of FIR in connection with this proceeding before the Surface Transportation Board.

Executed this 11 day of October 2022

A handwritten signature in cursive script, appearing to read "Beth Fornier", is written over a horizontal line.

Beth Fornier
Flats Industrial Inc., a Delaware corporation
doing business as Flats Industrial Railroad
Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT A

CERTIFICATION

CERTIFICATION

STATE OF OHIO:

ss:

CITY OF CLEVELAND :

Beth Fournier makes oath and says that she is President of Flats Industrial Railroad Company (FIR); that the approximately 1.85 miles of rail line, extending from Milepost 10 to Milepost 11.85 (neat West 41st Street) in Cleveland, Ohio (the “Line”), over which service is to be abandoned, is subject to his supervision and direction; that FIR has not moved any local traffic over the line for at least two years, that FIR has not moved any overhead traffic over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; and that no formal complaint filed by a user of rail service on the line or a state or local government entity acting on behalf of such user regarding cessation of service over the line either is pending before the Surface Transportation Board or any U. S. District Court has been decided in favor of the complainant within the two-year period.

Beth Fournier

Subscribed and sworn to before me
this ____ day of October 2022.

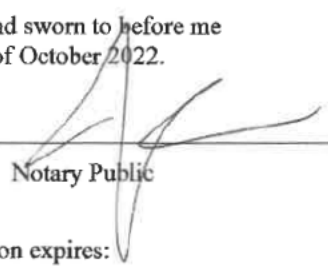
Notary Public

My commission expires:

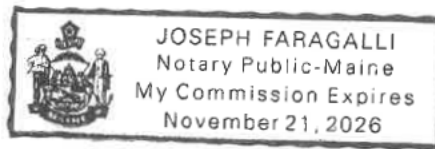
Surface Transportation Board or any U. S. District Court has been decided in favor of the complainant within the two-year period.

Beth Fournier
Beth Fournier

Subscribed and sworn to before me
this 11 day of October 2022.



Notary Public



My commission expires:

11/21/26

☐

☐

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

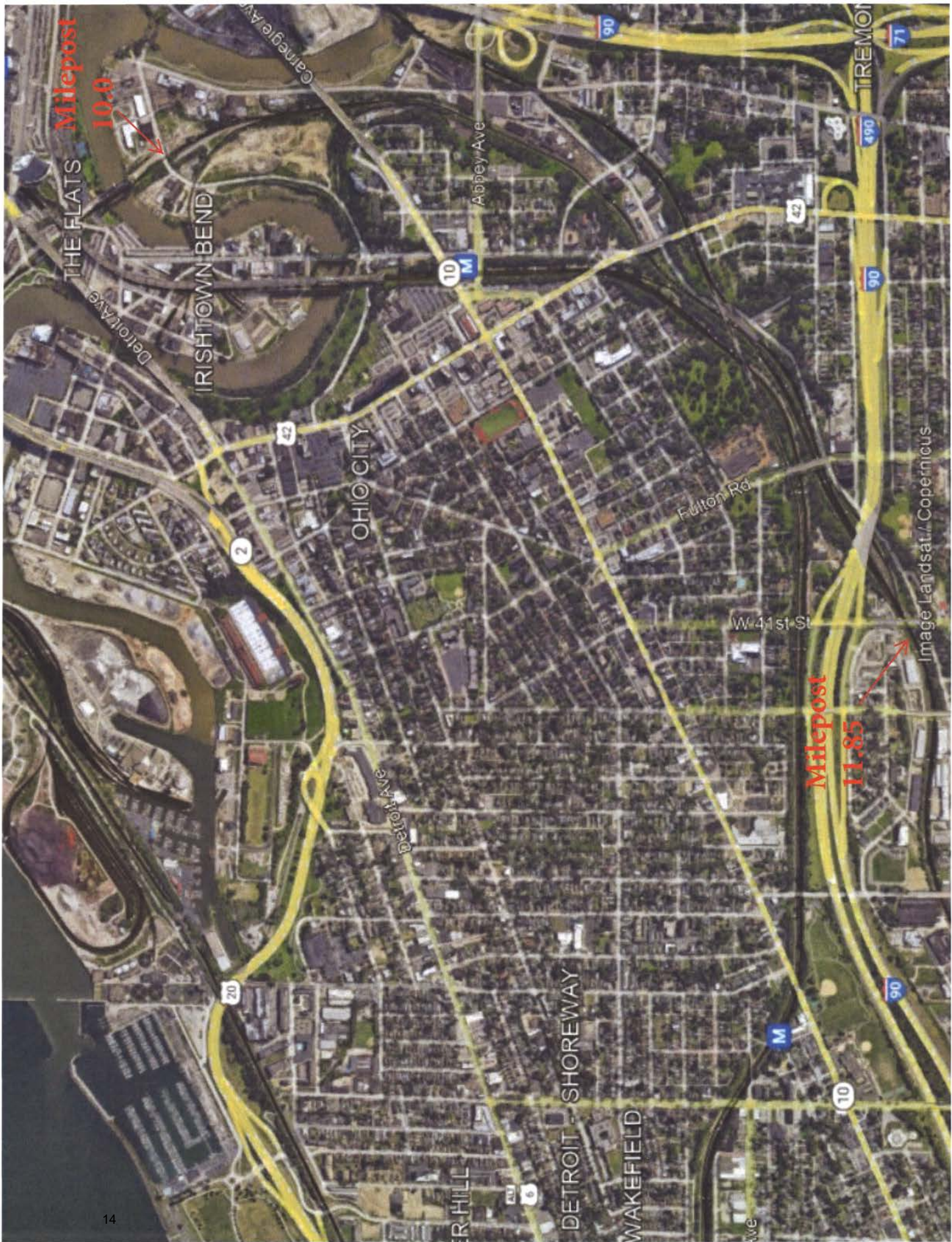
AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT B

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT C

CERTIFICATES OF SERVICE/PUBLICATION

Certificate of Service of Advance Notice

49 C.F.R. § 1152.50(d)(1) – Notice

I certify that, on September 30, 2022, in keeping with 49 C.F.R. § 1152.50(d)(1), I caused the following parties to be served with the written notice of intent of Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company, to invoke the Board's notice of exemption procedures to abandon rail service over approximately 1.85-miles of rail line, extending from Milepost 10 to Milepost 11.85 (near West 41st Street) in Cleveland, Ohio (the "Line"). I further certify that the Line does not contain any federally granted right of way.

Public Service Commission, et al.

Ohio Public Utilities Commission
180 East Broad Street
Columbus, OH 43215

Director Jack Marchbanks
Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223

Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program)

David Dorfman
Headquarters Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA
Railroads for National Defense Program
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

The National Park Service, Recreation Resources Assistance Division

Mr. Stephan Nofield
National Park Service
Rivers, Trails and Conservation Assistance Program
1849 C Street NW, Room 1344
Washington DC 20240

Mr. Bert Frost
Regional Director
Regions 3, 4, and 5
National Parks Service
601 Riverfront Drive
Omaha, NE 68102-4226

U.S. Department of Agriculture, Chief of the Forest Service

Randy Moore, Chief
U.S.D.A. Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, DC 20024

October 11, 2022

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Attorney for Flats Industrial Inc., a Delaware corporation
doing business as Flats Industrial Railroad Company

Certificate of Newspaper Publication

49 C.F.R. § 1105.12 – Newspaper Notice

I certify that a “Notice of Intent to Abandon Rail Service” was published in the form prescribed by the Board for abandonment notices of exemption (49 C.F.R. § 1105.12). The notice was published one time on October 10, 2022, in The Plain Dealer, a newspaper of general circulation in Cleveland, Ohio.

October 11 2022

/s/ **Crystal M. Zorbaugh**

Crystal M. Zorbaugh
Attorney for Flats Industrial Inc., a Delaware
corporation doing business as Flats Industrial
Railroad Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

EXHIBIT D

CERTIFICATE OF COMPLIANCE WITH ENVIRONMENTAL AND HISTORIC REPORT REQUIREMENTS

Certificate of Compliance

49 C.F.R. § 1105.11 – Advance Distribution of Environmental and Historic Report

I hereby certify that, on September 14, 2022, a copy of Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company's, Consolidated Environmental and Historic Report for the proposed abandonment encompassed by AB-1327X, accompanied by a transmittal letter conforming to the requirements of 49 C.F.R. § 1105.11, was served upon the following entities as prescribed by 49 C.F.R. §§ 1105.7(b) and 1105.8(c) (copies of the transmittal letters is also appended hereto as part of Attachment 1):

STATE HISTORIC PRESERVATION
OFFICE
Amanda Schraner Terrell
Deputy State Historic Preservation Officer
Ohio State Historic Preservation Office
800 E. 17th Ave.
Columbus, OH 43211-2474

OHIO CLEARINGHOUSES
Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223

Ohio Rail Development Commission
1980 W Broad St
Columbus, OH 43223

US ENVIRONMENTAL PROTECTION
AGENCY
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

REGIONAL/STATE EPA
Cheryl L. Newton
Deputy Regional Administrator and
Acting Regional Administrator
US EPA Region 5
77 W. Jackson Blvd.
Mail Code RE-19J
Chicago, IL 60604-3590

CITY
Mayor Justin M. Bibb
City of Cleveland
601 Lakeside Ave, Room 227
Cleveland, Ohio 44114

COUNTY
Cuyahoga County Headquarters
2079 East Ninth Street
Cleveland, OH 44115

US ARMY CORPS OF ENGINEERS
U.S. Army Corps of Engineers, Cleveland
1035 East 9th Street
Cleveland, OH 44114

STATE COASTAL ZONE
MANAGEMENT
Ohio Coastal Management Program
Chief Scudder D. Mackey
2514 Cleveland Road East
Huron, OH 44839

U.S. FISH AND WILDLIFE SERVICE
Mary Mertz
Division of Fish and Wildlife
Ohio Department of Natural Resources
2045 Morse Road
Columbus, OH 43229-6693

Ohio Department of Natural Resources
2045 Morse Road
Columbus, OH 43229-6693

NATIONAL PARK SERVICE
Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance
Program
1849 C. Street NW, Room 1344
Washington, DC 20240

Bert Frost, Regional Director
Regions 3, 4, and 5
National Park Service
601 Riverfront Drive
Omaha, NE 68102-4226

NATIONAL GEODETIC SURVEY
Communications and Outreach Branch,
NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East West Highway
Silver Spring, MD 20910-3282

NATURAL RESOURCES
CONSERVATION SERVICE
John Wilson
NRCS, Ohio State Office
200 North High Street
Room 522
Columbus, OH 43215

/s/ **Crystal M. Zorbaugh**

Crystal M. Zorbaugh
Attorney for Flats Industrial Railroad
Company

ATTACHMENT 1

**ENVIRONMENTAL AND HISTORIC REPORT
INCLUDING SAMPLE TRANSMITTAL LETTER**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OH**

ENVIRONMENTAL AND HISTORIC REPORT

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849
wmullins@bakerandmiller.com**

**Attorneys for Flats Industrial Railroad
Company**

**Originally Circulated September 14, 2022
Updated October 11, 2022**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OH**

ENVIRONMENTAL AND HISTORIC REPORT

Pursuant to the above-captioned proceeding, Flats Industrial Railroad Company (“FIR”) ¹ intends to abandon a total of approximately 1.85 miles of rail line (hereinafter, the “Line”) between Milepost 10 to Milepost 11.85 (near West 41st Street) in Cleveland, OH.² In accordance

¹ FIR was incorporated on August 21, 1996, but amended its corporate name to Flats Industrial, Inc. on February 26, 2002. For consistency with prior Surface Transportation Board decisions, the entity, intending to abandon the Line, will be hereinafter to referred to as Flats Industrial Railroad Company or FIR.

² In 1996, FIR became a Class III carrier when it acquired a 4-mile rail line from Conrail that extended north from Knob (milepost 14.0) to the Flats area of Cleveland, OH (Milepost 10.0). See Flats Industrial Railroad Company – Acquisition and Operation Exemption – Consolidated Rail Corporation, FD 33044 (STB served Oct. 11, 1996). The Deed and Bill of Sale for the transaction confirm that FIR’s ownership interest included both 10901 (mainline track) and 10906 (ancillary track). Interestingly, the regulatory record and the deed differ slightly by 0.16 of a mile. The deed refers to Milepost 10.16, while the regulatory record uses Milepost 10.0 as the starting point. FIR’s research has confirmed that by the time FIR acquired the line, Conrail had abandoned the line through Milepost 10.0. See Consol. Rail Corp. – Abandonment Exemption – In Cleveland, Ohio, AB-167 (Sub-No. 1080X) (I.C.C. served Feb. 13, 1987) (granting Conrail authority to abandon a portion of the Clark branch from Milepost 10.0 to Milepost 9.28 (in Cleveland) to allow the City of Cleveland to pursue a City Project for the improvement of both vehicular traffic and trolley service). Because FIR is seeking to abandon the entirety of its common carrier obligation and out of an abundance of caution, FIR is using Milepost 10.0 as the starting milepost.

As part of the 1996 transaction, FIR also acquired 49 U.S.C. § 10906 track (referred to as the “Cereal Lead”) that split from the FIR mainline at approximate railroad MP 10.16 and extended in a generally westerly direction crossing the Cuyahoga River for approximately 0.4 miles and ending in a wye. Because the Cereal Lead is § 10906 trackage, STB abandonment authority is not needed for FIR to stop operations over and dispose of it.

Please note - FIR’s jurisdictional trackage (10901 trackage) was shortened in 2001 when FIR sold the portion of its mainline line from milepost 14.0 (at Knob) to milepost 11.85 (near West

with the procedures set forth in 49 CFR 1105.7 and 1105.8, FIR is required to submit the following consolidated Environmental and Historic Report (“E&HR”).

ENVIRONMENTAL REPORT

49 CFR 1105.7(e)

(1) PROPOSED ACTION AND ALTERNATIVES

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also, describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

FIR proposes to abandon approximately 1.85 miles of rail line between Milepost 10 to Milepost 11.85 (near West 41st Street). This constitutes the entirety of FIR’s common carrier obligation. A map delineating the proposed project is attached as Exhibit 1. Upon obtaining authority to abandon the Line, FIR will salvage the Line’s track and track material and will dispose of the real estate. The Line has been out of service for over two years.

Upon obtaining abandonment authority, FIR plans to remove the Line’s rail and salvageable track material (such as tie plates, fasteners, crossties, and, the upper layer of ballast). FIR does not intend to disturb the sub-grade or sub-grade structures, and it will not engage in any excavation activity. The only alternative to abandonment would be for FIR not to abandon the Line, and to continue to incur losses associated with the ownership of unused rail assets.

A map depicting the Line is attached as Exhibit 1. An example of FIR’s letter to federal, state, and local government agencies along with a list of the consulting agencies that FIR has contacted is attached as Exhibit 2. U.S.G.S. Topographic maps are attached as Exhibit 3.

(2) TRANSPORTATION SYSTEM

Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

There has been no common carrier service over the Line for over two years, and, for this simple reason, the proposed abandonment will have no impact on regional or local transportation systems and patterns. No passenger or freight traffic would be diverted to other systems or modes because of the proposed abandonment.

41st Street), a total distance of approximately 2.15 miles to Norfolk Southern Railway Company (“NSR”) to be rebuilt and permanently incorporated into NSR’s double-track Cloggsville Connection main line.

(3) LAND USE

- (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.**

FIR believes that the proposed abandonment is consistent with, and would promote, existing land use plans. The land adjoining the Line consists of a combination of urban commercial and residential areas.

By letter dated September 14, 2022, copies of this consolidated E&HR have been mailed to the appropriate local and state contacts, including to the representative of Cuyahoga County for their information and comment. See Exhibit 2.

- (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.**

FIR does not believe that there is any prime agricultural land that would be adversely affected by the proposed abandonment. As indicated above, the land through which the Line traverses does not include farmland. Furthermore, the proposed rail line abandonment should not in any way contribute to farmland loss. Nevertheless, FIR has notified the United States Department of Agriculture's Natural Resources Conservation Service ("NRCS") of the proposed abandonment by letter dated September 14, 2022 (to which letter this consolidated E&HR was appended) and has requested assistance in identifying any potential effects on prime agricultural land. See Exhibit 2.

- (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 1105.9.**

FIR has consulted with the Ohio Department of Natural Resources ("ODNR") on whether the Line traverses a designated coastal zone in Ohio. Specifically, to assure compliance with the requirements of section 49 C.F.R. 1105.9, FIR served a copy of this report on ODNR by letter dated September 14, 2022.

- (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10905 and explain why.**

FIR may have a mix of fee simple ownership and easements to the right of way underlying the Line proposed for abandonment; thus, FIR may have a corridor available for redeployment for alternative public use(s). The Line does not contain any federally granted right of way.

(4) ENERGY

- (i) Describe the effect of the proposed action on the transportation of energy resources.**

There has been no common carrier traffic on the Line for over two years, and, for this reason, the proposed abandonment will have no effect on the transportation of energy resources.

- (ii) Describe the effect of the proposed action on recyclable commodities.**

Because no shipper will lose rail service as a result of the proposed action, the abandonment should have no effect on the movement and/or recovery of recyclable commodities.

- (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.**

Because the proposed abandonment involves an out-of-use rail line, the abandonment should not affect overall energy usage.

- (iv) If the proposed action will cause diversions from rail to motor carriage of more than:**

(A) 1,000 rail carloads a year; or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

The Line is inactive and has been for over two years. There will be no diversion of rail traffic to motor carriage, and, by extension, no traffic diversions that would exceed the thresholds stated above.

(5) AIR

- (i) If the proposed action will result in either:**

- (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal , or**
- (B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or**
- (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight**

train a day provision in sub-section (5)(i)(A) will apply.

The above thresholds will not be exceeded.

- (ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:**
 - (A) An increase in rail traffic or at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,**
 - (B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or**
 - (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, the state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction 49 U.S.C. 10901(or 49 U.S.C. 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.**

FIR believes that the above thresholds will not be exceeded in Cuyahoga County.

- (iii) If transportation of ozone-depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills, contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone-depleting materials in the event of a collision or derailment.**

Not applicable.

(6) NOISE

If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

- (i) An incremental increase in noise levels of three decibels Ldn or more; or**
- (ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.**

None of the thresholds in item 5(i) of this section will be exceeded.

(7) SAFETY

- (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).**

The proposed abandonment of an out-of-service rail line should have no material impact on public health and safety.

- (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents, and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.**

No hazardous materials are expected to be transported, and, indeed, no traffic of any kind has moved over the Line in over two years.

- (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way; identify the location of those sites and the types of hazardous materials involved.**

FIR has no knowledge of hazardous waste sites or sites where there have been known hazardous materials spills on the Line's rights-of-way or adjacent sites.

(8) BIOLOGICAL RESOURCES

- (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.**

FIR does not believe that the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat. FIR has notified the U.S. Fish and Wildlife Service ("USF&W") and the Ohio Department of Natural Resources – Division of Wildlife ("ODW") of the proposed abandonment by letters dated September 14, 2022, and has requested assistance in determining whether the proposed abandonment will adversely affect endangered or threatened species or areas designated as critical habitat. A copy of this report was attached to the letters sent to USF&W and ODW. See Exhibit 2.

- (ii) State whether wildlife sanctuaries or refuges, National or State parks, or forests will be affected, and describe any effects.**

Having consulted local maps, FIR is unaware of any wildlife sanctuaries or refuges,

National or State parks, or forests that would be adversely affected by the proposed abandonment. Nevertheless, FIR has notified the National Park Service (“NPS”) of the proposed abandonment by letter dated September 14, 2022. A copy of this report was attached to the letter sent to NPS. See Exhibit 2.

(9) WATER

- (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State, or local water quality standards. Describe any inconsistencies.**

FIR believes that the proposed abandonment will be consistent with applicable water quality standards. In connection with this issue, FIR contacted the Ohio Department of Natural Resources (“ODNR”) and the United States Environmental Protection Agency (“USEPA”) by letters dated September 14, 2022. A copy of this report was attached to each of the letters. See Exhibit 2.

- (ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.**

FIR believes that – (1) no permits under section 404 of the Clean Water Act will be required for the proposed abandonment, and (2) no designated wetlands or 100-year flood plains will be affected. Upon receiving abandonment authority, removal of track material will be accomplished by use of the right-of-way for access, along with access via existing public and private crossings as necessary. No new access roads are contemplated. FIR does not intend to disturb any of the underlying roadbed or to perform any activities that would cause sedimentation or erosion of the soil and does not anticipate any dredging or use of fill in the removal of the track material. The crossties and/or other debris, if removed, will be transported away from the Line, and will not be discarded along the rights-of-way; they will not be placed or left in streams or wetlands, or along the banks of such waterways. Also, during track removal, appropriate measures will be implemented to prevent or control spills from fuels, lubricants, or any other pollutant materials from entering any waterways. For these reasons, FIR believes that a permit under Section 404 of the Clean Water Act will not be required.

FIR has contacted the U.S. Army Corps of Engineers – Cleveland Field Office by letter dated September 14, 2022. A copy of this report was attached to the letter. See Exhibit 2.

- (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.**

FIR believes that no permit under section 402 of the Clean Water Act would be required for the abandonment. (See discussion in section 9(ii) above.) Nevertheless, FIR has contacted the ODNR and the USEPA regarding this item by letter dated September 14, 2022, and has requested guidance in identifying any potential water quality impacts (based on applicable water

quality standards) and in determining whether the proposed abandonment is consistent with such federal, state, or local standards. A copy of this report was attached to the letter. See Exhibit 2.

(10) PROPOSED MITIGATION

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

FIR does not expect any adverse environmental impact from the proposed abandonment and, therefore, is of the opinion that mitigating action is unnecessary. FIR will consult with federal, state, and/or local agencies on any mitigation measures they may recommend to the Board.

(11) ADDITIONAL INFORMATION FOR RAIL CONSTRUCTIONS

Not applicable.

HISTORIC REPORT

49 CFR 1105.8(d):

FIR proposes to abandon approximately 1.85 miles of rail line between Milepost 10 to Milepost 11.85 (near West 41st Street). This constitutes the entirety of FIR's common carrier obligation. A map delineating the proposed project is attached as Exhibit 1. Upon obtaining authority to abandon the Line, FIR will salvage the Line's track and track material and will dispose of the real estate. The Line has been out of service for over two years.

The alternative to abandonment is to not abandon the Line and for FIR to retain the Line. This alternative is not satisfactory. FIR would continue to incur opportunity and other holding costs that would need to be covered by non-existent shippers were the Line to be retained. A map depicting the Line is attached as Exhibit A.

- (1) A.U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;**

U.S.G.S. topographic maps depicting the location of the proposed abandonment are attached as Exhibit 3. There are no structures on the Line proposed for abandonment. On September 14, 2022, FIR provided the U.S.G.S. topographic maps to the Ohio State Historic Preservation Office ("OSHP") as part of a complete copy of this report.

- (2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;**

The right-of-way width ranges from 25 feet to 100 feet along the main track centerline. The Line has a relatively flat topography and the Line and surrounding area are urban in nature. Pursuant to Board policy, the railroad's right of way being abandoned will constitute the Area of Potential Effect ("APE") for this undertaking

- (3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;**

Not applicable as there are no structures on the Line proposed for abandonment.

- (4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;**

Not applicable.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

Per the Deed and Bill of Sale 72041 Between Consolidated Rail Corporation (“Conrail”) and Flats Industrial Railroad Company (“Deed and Bill of Sale”) for Land known as the Flats Industrial Tracks and situated in the County of Cuyahoga and the State of Ohio, executed on October 4, 1996, the Line acquired by FIR was once part of Conrail’s Clark Branch.³

Conrail sold FIR an approximately four-mile rail main line, extending from milepost 10.16⁴ to milepost 14.0 and the Jackass Track industrial track (a.k.a the Cereal Lead) starting at railroad milepost 10.16 and extending in a generally westerly direction crossing the Cuyahoga River for approximately 0.4 miles.

In late 1996, Flats Industrial Railroad Company ("FIR") acquired authority to purchase and operate, the approximately 4 miles of rail line owned by Consolidated Rail Corporation between milepost 14 at Cleveland, Cuyahoga County, OH, and milepost 10 at Carter Road, Cuyahoga County, OH, including the industrial lead to Cereal Food Processors, Inc. See The Flats Industrial Railroad Company -- Acquisition and Operation Exemption -- Consolidated Rail Corp., FD 33044 (S.T.B. served Oct. 11, 1996).

As stated in FN 1, in 2001, FIR sold a portion of the Line from milepost 14.0 (at Knob) to milepost 11.85 (near West 41st Street), a total distance of approximately 2.15 miles, to Norfolk Southern Railway Company (“NSR”) to accommodate and become permanently a part of NSR’s upgrade and establishment of a high-density double mainline. See Flats Indus. R.R. Co. and Norfolk S. Ry. Co. – Joint Relocation Project Exemption in Cleveland, OH, FD 34108 (STB served Nov 15, 2001).

FIR intends, upon the effectiveness of the class exemption, to terminate its rail common carrier obligation over and abandon the Line.

(6) A brief summary of documents in the carrier’s possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

FIR is one of many subsequent owners of these rail assets. FIR was not supplied with and does not have any such historical records.

³ Rail service in the Cuyahoga Valley began over a century ago. In 1880, the Valley Railway began operations, by transporting coal to Cleveland, Akron, and Canton from the Tuscarawas River Valley, while simultaneously providing passenger service. Eventually, the Valley Railway became part of the Baltimore & Ohio Railroad’s operations into Downtown Cleveland.

⁴ As explained in FN 1, the regulatory record and the deed differ slightly by 0.16 of a mile. The deed refers to MP 10.16. The regulatory record uses MP 10.0 as the starting point. By the time FIR acquired the line, Conrail had abandoned the line through MP 10.0.

- (7) **An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);**

FIR believes the Line does not meet the criteria for listing on the National Register of Historic Places. On September 14, 2022, FIR provided OSHPO with a copy of the E&HR for the Line for its consideration.

FIR is unaware of any archeological resources or any other previously unknown historic properties on the Line's rights-of-way.

- (8) **A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic waste), and the surrounding terrain.**

FIR has no records of, and is unaware of, any known subsurface ground disturbance or fill, or environmental conditions that might affect the recovery of archeological resources. Undoubtedly, track work and/or construction has occurred regularly over the many years that the Line has been in operation. Such work may have affected the potential for recovery of archeological resources.

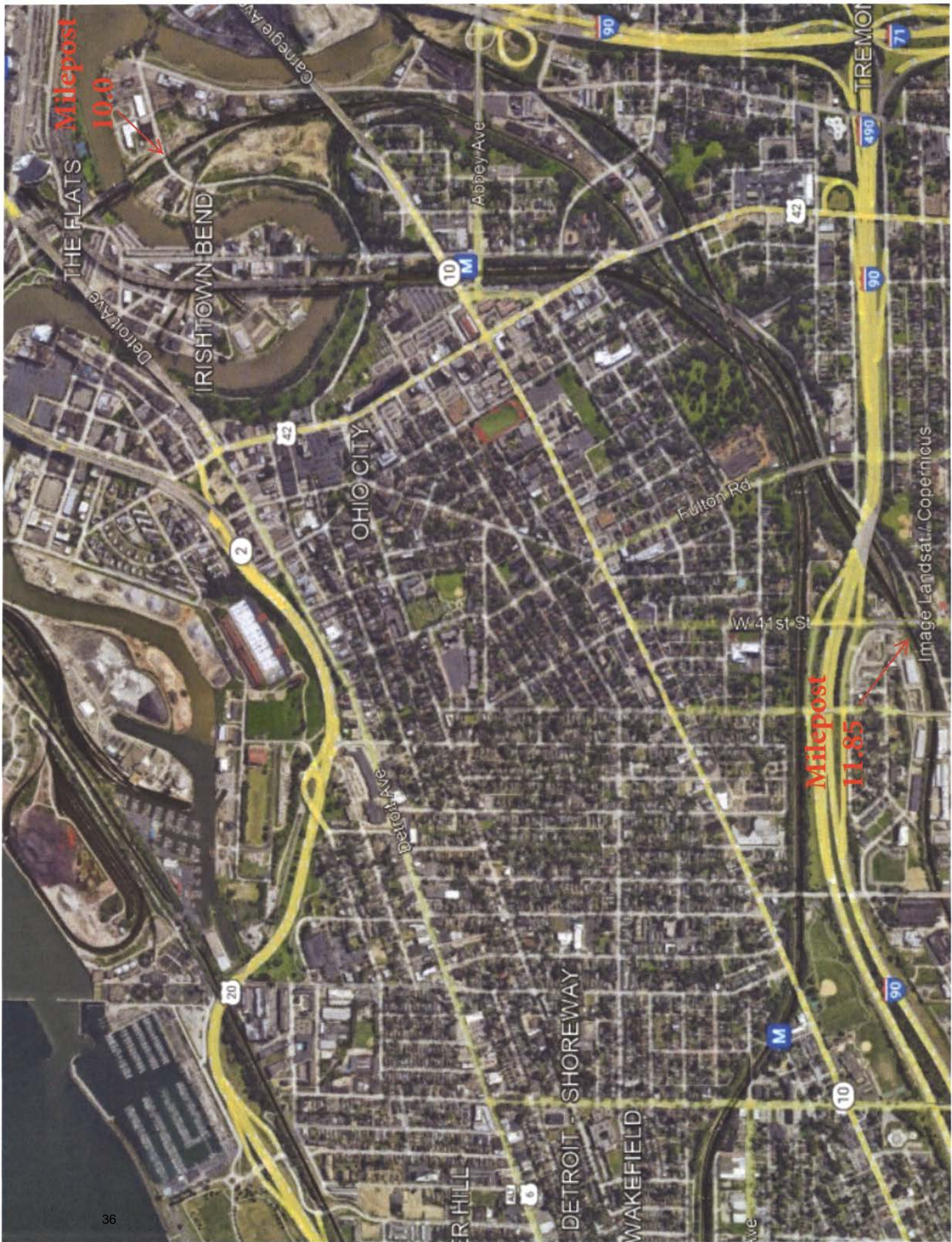
**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OH**

ENVIRONMENTAL AND HISTORIC REPORT

EXHIBIT 1 – LOCATION MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OH**

ENVIRONMENTAL AND HISTORIC REPORT

EXHIBIT 2 – SAMPLE CONSULTATION LETTER & RECIPIENT LIST

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

Crystal M. Zorbaugh

Direct Dial: (202) 663-7831

E-Mail: czorbaugh@bakerandmiller.com

September 14, 2022

[Insert Consulting Party]

Dear Sir or Madam,

RE: Flats Industrial Railroad Company – Abandonment Exemption – Cleveland, OH, AB-1327X

Dear Sir or Madam:

On or after October 17, 2022, Flats Industrial Railroad (“FIR”)¹ expects to file with the Surface Transportation Board (“STB”), a notice of exemption pursuant to 49 C.F.R. Part 1152, Exempt Abandonments and Discontinuances of Services, seeking authority for FIR to abandon approximately 1.85 miles of rail lines (hereinafter, the “Line”)² between Milepost 10 to Milepost 11.85 (near West 41st Street). In accordance with the procedures set forth in 49 CFR 1105.7 and 1105.8, FIR is required to submit the following consolidated Environmental and Historic Report (“E&HR”).

¹ FIR was incorporated on August 21, 1996, but amended its corporate name to Flats Industrial, Inc. on February 26, 2002. For consistency with prior Surface Transportation Board decisions, the entity, intending to abandon the Line, will be hereinafter to referred to as Flats Industrial Railroad Company or FIR.

² In 1996, FIR became a Class III carrier when it acquired a 4-mile rail line from Conrail that extended north from Knob (milepost 14.0) to the Flats area of Cleveland, OH (Milepost 10.0). See Flats Industrial Railroad Company – Acquisition and Operation Exemption – Consolidated Rail Corporation, FD 33044 (STB served Oct. 11, 1996).

Please note - FIR’s jurisdictional trackage (10901 trackage) was shortened in 2001 when FIR sold the portion of its mainline line from milepost 14.0 (at Knob) to milepost 11.85 (near West 41st Street), a total distance of approximately 2.15 miles to NSR to be rebuilt and permanently incorporated into NSR’s double-track Cloggsville Connection main line. See Flats Indus. R.R. Co. and Norfolk S. Ry. Co. – Joint Relocation Project Exemption in Cleveland, OH, FD 34108 (STB served Nov 15, 2001).

Attached is a combined Environmental and Historic Report ("E&HR"), which includes a map of the affected area, and describes the proposed action and any expected environmental and historic effects. If you wish to address any of the information contained in the attached E&HR, or if you have any questions about the Board's environmental review process, please contact the Board's Office of Environmental Analysis, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001; TEL: (202) 245-0295, and refer to AB-1327X. You may also contact the undersigned counsel for FIR.

Questions regarding the abandonment process generally, offers of financial assistance, and/or public use or trail use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0230. Based on information in our possession, the Line does not contain federally granted rights-of-way. However, any documentation in FIR's possession will be made available promptly to those requesting it.

If there are any questions concerning this notice of intent, please contact me, FIR's representative, by mail: Crystal M. Zorbaugh, Baker & Miller, PLLC, 2401 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20037; by FAX: (202) 663-7849; by e-mail: czorbaugh@bakerandmiller.com; or by telephone: (202) 663-7831. If I am not available, you may also contact William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

Crystal M. Zorbaugh
Attorney for Flats Industrial Railroad Company

Enclosure

RECIPIENT LIST - AB-1327X

Proposed Abandonment of approximately 1.85 miles of rail line located in Cleveland, Ohio.

STATE HISTORIC PRESERVATION OFFICE

Amanda Schraner Terrell
Deputy State Historic Preservation Officer
Ohio State Historic Preservation Office
800 E. 17th Ave.
Columbus, OH 43211-2474

Cleveland, OH 44115

US ARMY CORPS OF ENGINEERS
U.S. Army Corps of Engineers, Cleveland
1035 East 9th Street
Cleveland, OH 44114

OHIO CLEARINGHOUSES

Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223

STATE COASTAL ZONE MANAGEMENT

Ohio Coastal Management Program
Chief Scudder D. Mackey
2514 Cleveland Road East
Huron, OH 44839

Ohio Rail Development Commission
1980 W Broad St
Columbus, OH 43223

US ENVIRONMENTAL PROTECTION AGENCY

Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

U.S. FISH AND WILDLIFE SERVICE

Mary Mertz
Division of Fish and Wildlife
Ohio Department of Natural Resources
2045 Morse Road
Columbus, OH 43229-6693

REGIONAL/STATE EPA

Cheryl L. Newton
Deputy Regional Administrator and
Acting Regional Administrator
US EPA Region 5
77 W. Jackson Blvd.
Mail Code RE-19J
Chicago, IL 60604-3590

Ohio Department of Natural Resources
2045 Morse Road
Columbus, OH 43229-6693

Mayor Justin M. Bibb
City of Cleveland
601 Lakeside Ave, Room 227
Cleveland, Ohio 44114

NATIONAL PARK SERVICE

Mr. Stephan Nofield
National Park Service
Rivers, Trails, and Conservation Assistance
Program
1849 C. Street NW, Room 1344
Washington, DC 20240

COUNTY

Cuyahoga County Headquarters
2079 East Ninth Street

Bert Frost, Regional Director
Regions 3, 4, and 5
National Park Service
601 Riverfront Drive

Omaha, NE 68102-4226

NATIONAL GEODETIC SURVEY

Communications and Outreach Branch,
NOAA, N/NGS12
National Geodetic Survey, SSMC3 #9340
1315 East West Highway
Silver Spring, MD 20910-3282

NATURAL RESOURCES
CONSERVATION SERVICE

John Wilson
NRCS, Ohio State Office
200 North High Street
Room 522
Columbus, OH 43215

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

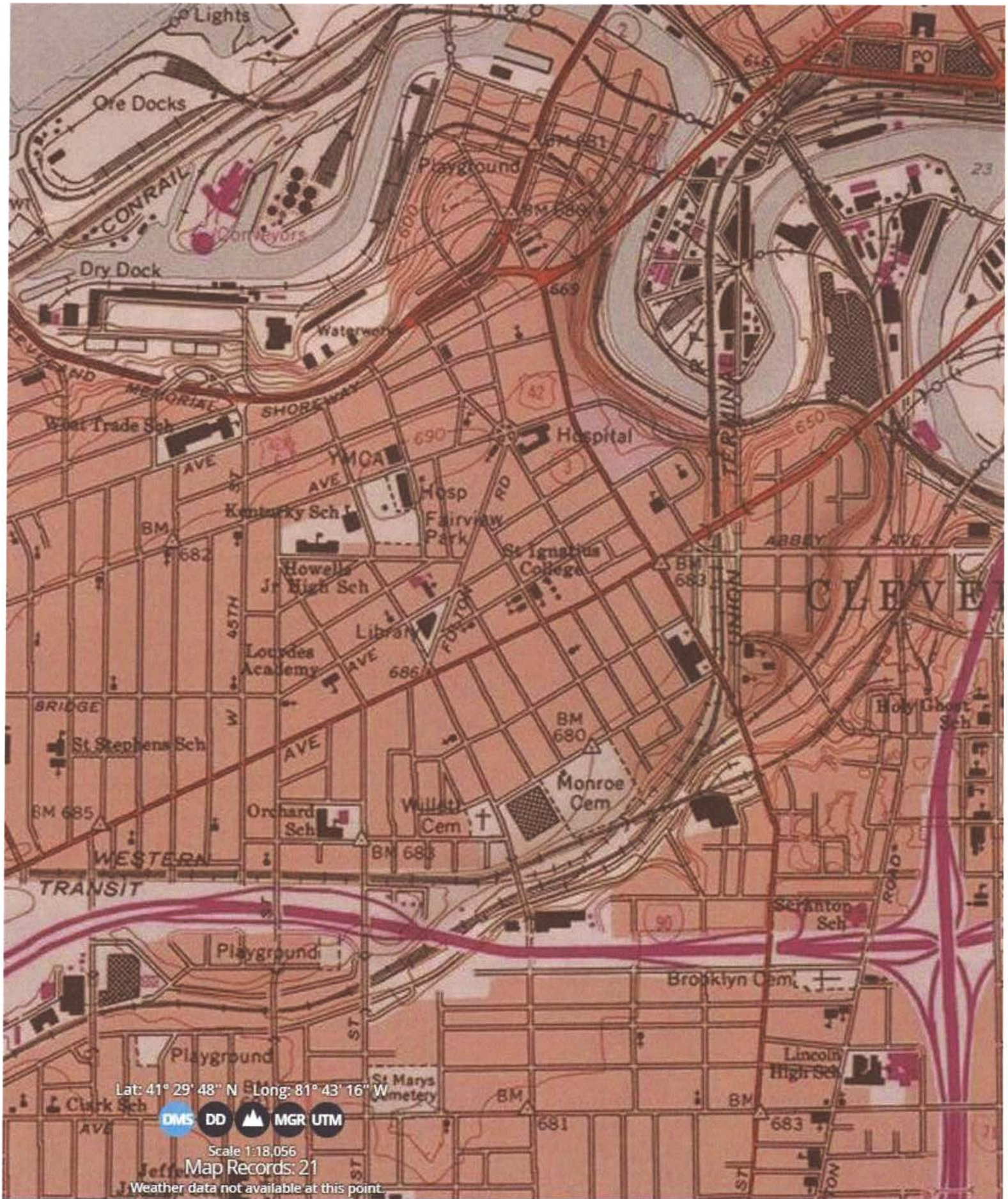
AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OH**

ENVIRONMENTAL AND HISTORIC REPORT

EXHIBIT 3 – U.S.G.S TOPOGRAPHIC MAPS

[Supplied To Ohio State Historic Preservation Office]



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

AB-1327X

**FLATS INDUSTRIAL RAILROAD COMPANY
– ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO**

VERIFIED NOTICE OF EXEMPT ABANDONMENT

**DRAFT NOTICE OF EXEMPTION
[CAPTION SUMMARY]**

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[AB-1327X]

Flats Industrial Railroad Company – Abandonment Exemption – In Cleveland, Ohio

Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company, has filed on October 11 2022, a verified notice of exemption under 49 C.F.R. part 1152 subpart F–Exempt Abandonments to abandon rail service over approximately 1.85 miles of rail line, extending from Milepost 10 to Milepost 11.85 (near West 41st Street) in Cleveland, Ohio (the “Line”). The entirety of the Line is located in Cleveland, Ohio. The Line traverses United States Postal Zip Code territory 44113. There are no customers served on the Line, which has been out of service for over two years.

FIR has certified that: (1) no local FIR traffic has moved over the Line for at least two years; (2) that no overhead FIR traffic has moved over the Line for at least two years and that overhead traffic if there were any, could be rerouted over other lines (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year-period; and (4) the requirements at 49 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

FIR, a small Class III railroad, is undertaking an entire line railroad abandonment. Thus, consistent with ICC and Board precedent, no labor protections should be imposed. See Railway

Labor Executives' Association v. ICC, 735 F.2d 691, 702-703 (2d Cir. 1984) (explaining that Congress did not intend to require the Commission to impose labor protection conditions in proceedings involving entire line abandonments. See also Wellsville, Addison & Galetton R. Corp.—Abandonment, 354 I.C.C. 744 (1978), Tennessee Central Ry. Corp. – Abandonment, 333 I.C.C. 443 (1968).

Provided no formal expression of intent to file an offer of financial assistance (“OFA”) has been received, this exemption will be effective on November 30, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2),⁴ and trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by _____, 2022. Petitions to reopen or requests for public use conditions under 49 C.F.R. § 1152.28 must be filed by _____, 2022, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to FIR’s representative: Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

FIR has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board’s Office of Environmental Analysis (“OEA”) in its independent investigation) cannot be made before the exemption’s effective date. See Exemption of Out-of-Serv. Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption’s effective date.

⁴ Each OFA must be accompanied by the filing fee, which is currently set at \$2,000.00. See 49 C.F.R. § 1002.2(f)(25).

environmental assessment (EA) by _____, 2022. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), FIR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by FIR's filing of a notice of consummation by _____, 2022, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: _____, 2022.

By the Board, _____, Director, Office of Proceedings