

**STATE OF FLORIDA  
BUILDING COMMISSION**

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<small>Department of Business and Professional Regulation</small>	
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File #	

IN RE:

ALL ABOARD FLORIDA –  
OPERATIONS, LLC

CASE NO. **DS 2014-163**

**SUPPLEMENT TO PETITION FOR DECLARATORY STATEMENT  
INCLUDING RESPONSE TO THE COMMISSION STAFF’S REQUEST  
FOR INFORMATION AND SUPPORTING MEMORANDUM**

Petitioner, All Aboard Florida-Operations, LLC (“Petitioner”), submits its Supplement to Petition for Declaratory Statement including Response to the Commission’s Staff’s Request for Information and Supporting Memorandum and states as follows:

**I. Commission staff inquiry of Petitioner**

Upon Petitioner’s filing of its Petition for Declaratory Statement, Case No. DS 2014-163 (the “Petition”), and the initial review of the Petition by the staff to the Florida Building Commission (the “Commission”), Commission staff forwarded the following request for information to Petitioner through Petitioner’s counsel as follows: “[p]lease provide us with a clear list of ancillary facilities

(structures/buildings and type of occupancy/use) that would be constructed as part of the proposed project.”

## **II. Petitioner’s Response to Staff’s Inquiry**

For the All Aboard Florida high-speed rail system, Petitioner’s project will include the construction of (but not necessarily be limited to):

- the corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, *and rail stations* and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system. The project’s construction will also include crew and other railroad staff rest areas and facilities to service the trains such as food supply facilities. These areas may be located within the *rail stations* or other structures.

The above-mentioned *rail stations* to be constructed may include:

- buildings and facilities designed to accommodate the movement of passengers from one mode of transportation to another including platforms and facilities at which passengers board or disembark from transportation conveyances (e.g., trains);
- ticketing facilities, information stands, waiting areas, sanitary facilities for passengers and staff, and offices for railroad staff;
- demised areas and other spaces intended to contain retail sales and/or service establishments, and restaurants and/or other food or beverage service establishments;
- retail sales and/or service establishments, restaurants and/or other food or beverage service establishments that will be tenants in the *rail stations’* “demised areas and other spaces” mentioned immediately above;
- surface or structured parking serving the passengers and railroad staff adjacent to, or integral with the *rail stations*;

- crew and other railroad staff rest areas; and
- facilities to service the trains including food supply (including kitchen) facilities.

The definitions of *railroad* and *ancillary facilities associated with the railroad*, respectively, have considerable overlap in what they include. Since both *railroads* and *ancillary facilities*... are covered by the exemption set forth in both Section 553.73(10)(b), Florida Statutes and Section 102.2(b) of the Florida Building Code (“FBC”), and their definitions include a number of elements in common, Petitioner’s above response therefore includes elements and facilities that fall within the definitions of either *railroad* or *ancillary facilities associated with the railroad*, or both.

Those aspects of All Aboard Florida that Petitioner will be constructing, and which should fall under the exemption in Section 102.2(b) of the FBC are:

- the corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, *and rail stations*<sup>1</sup> and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system. Such *facilities* will also include crew and other railroad staff rest areas and facilities to service the trains such as food supply facilities. These areas may be located within the *rail stations* or other structures.

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<sup>1</sup> Except as set forth below.

*See, e.g., §§ 341.8203(4 and 6), Fla. Stat.*(Emphasis added). The components of the *rail stations* that should be exempt from the FBC are

- the buildings and facilities designed to accommodate the movement of passengers from one mode of transportation to another including platforms and facilities at which passengers board or disembark from transportation conveyances (e.g., trains);
- ticketing facilities, information stands, waiting areas, sanitary facilities for passengers and staff, and offices for railroad staff;
- demised areas and other spaces intended to contain: retail sales and/or service establishments, and restaurants and/or other food or beverage service establishments;
- surface or structured parking serving the passengers and railroad staff may be adjacent to, or integral with the *rail stations*;
- crew and other railroad staff rest areas; and
- facilities to service the trains including food supply (including kitchen) facilities.

§§ 341.8203(4 and 6), Fla. Stat.

Petitioner, however, does not believe that the retail sales and/or service establishments, or the restaurants and/or other food or beverage service establishments, that will be tenants in the *rail stations*’ “demised areas and other spaces,” are subject to the exemption from the FBC found in Section 102.2(b). The exception to this would be when any of such “demised and other spaces” are occupied by ticketing facilities, information stands, waiting areas, sanitary facilities, and offices for railroad staff, as well as crew and railroad staff rest areas and facilities to service the trains including food supply (including kitchen)

facilities —elements that are “essential to the operation of the railroad. These particular types of uses would be exempt from the FBC pursuant to Section 102.2(b) and Section 553.73(10)(b), Florida Statutes.

## MEMORANDUM

The Petition asks the Commission whether All Aboard Florida (as described in the Petition) is exempt from the Florida Building Code (“FBC”) because it falls within the definition of *railroad and ancillary facilities associated with the railroad*.<sup>2</sup> In analyzing the Petition to prepare its staff analysis and recommendation, the Commission’s staff has asked Petitioner to provide a clear list of what would constitute the *ancillary facilities associated with the railroad*. Because of the overlap in definitions, Petitioner responds with a detailed list of elements that fall within either the definition of *railroad* or *ancillary facilities associated with the railroad* (in either case being eligible for the exemption from the FBC that is the subject of the Petition). As an initial matter, the term *railroad* is defined as “any common carrier fixed-guideway transportation system such as the conventional steel rail-supported, steel-wheeled system *as well as the high-*

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<sup>2</sup> There may be other reasons that All Aboard Florida and the ancillary facilities associated with it are exempt from the FBC, and Petitioner does not waive any related positions or arguments regarding exemption or preemption. However, they are outside the scope of the Petition. Please also note that the Petition is in regard to an exemption from the FBC only, and not in regard to any other codes and laws.

*speed rail system defined in s. 341.8203 . § 341.301(12), Fla. Stat. (2012)*  
(emphasis added).

All Aboard Florida is the *high-speed rail system defined in s. 341.8203. See*  
Exhibit B to the Petition. In that section, *high-speed rail system* is defined as:

...any high-speed fixed guideway system for transporting people or goods, which system is, by definition of the United States Department of Transportation, reasonably expected to reach speeds of at least 110 miles per hour, including, but not limited to, a monorail system, dual track rail system, suspended rail system, magnetic levitation system, pneumatic repulsion system, or other system approved by the enterprise. *The term includes a corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, and rail stations and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system.*

§ 341.8203(4), Fla. Stat. (emphasis added). The definition of *railroad* itself therefore covers “a corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, *and rail stations* and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system.” *Id.* (emphasis added).

Petitioner's project anticipates constructing a number of *rail stations*. These stations will include facilities designed to accommodate the movement of passengers from one mode of transportation to another including platforms and facilities at which passengers board or disembark from transportation conveyances (e.g., trains). The rail stations will include ticketing facilities, information stands, waiting areas, sanitary facilities for passengers and staff, and offices for railroad staff. The railroad stations will also have demised and other spaces intended to contain retail sales and/or service establishments, and restaurants and/or other food or beverage service establishments. In addition, *rail stations* include the surface or structured parking serving the passengers and railroad staff that will be adjacent to, or integral with, the *rail stations*.<sup>3</sup> Petitioner's project will also include crew rest areas and facilities to service the trains such as food supply (including kitchen) facilities which may be located within a *rail station* or other structures depending on the particular location of the train stop.

It is Petitioner's position that that the rail stations and these facilities contained within (including the unfinished demised spaces and parking areas and structures for passengers and railroad staff) fall within the definition of *railroads*

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<sup>3</sup> This parking has been associated with the *rail stations* for discussion purposes. Please note however, that *parking facilities* independently falls within the definition of *high-speed rail system* and therefore within the definition of *railroad* for the purposes of Section 553.73(10)(b), Florida Statutes and Section 102.2(b) of the FBC. §§ 341.8203(4), 341.301(13), Fla. Stat.

*and ancillary facilities associated with the railroad.*<sup>4</sup> However, Petitioner does not assert the position that such “retail sales and/or service establishments, and restaurants and/or other food or beverage service establishments” are ancillary facilities associated with the railroad. While the definition of *ancillary development* in Florida’s railroad statutes includes retailers and restauranteurs, the retailers and restauranteurs covered by the definition in Section 341.301(1), Florida Statutes, would have to be lessees or licensees of the department, which the retailers and restauranteurs anticipated to be tenants in the *rail stations* will not be. *Id.*

#### **SUPPLEMENTARY QUESTION AND RESPONSE FOR PETITION**

The questions posed in the Petition by Petitioner and Petitioner’s proposed answer, along with the supporting memorandum, is a complete and legally sufficient petition. However, the instant question posed by staff suggests to Petitioner that an additional question (and proposed answer) added to the Petition might better clarify the issues raised in the Petition lessening the risk of the cost and time to return to the Commission for a clarifying declaratory statement.

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<sup>4</sup> The “demised and other areas” that may house the retail and restaurant house tenants (but not including the tenant improvements themselves) should be covered by the exemption in Section 102.2(b) of the FBC. This is because the definition of *high speed rail system* includes *facilities... used exclusively for the purposes of... financing the high speed rail system.* § 341.8203(4), Fla. Stat. The “demised and other areas” referred to above are intended to generate rent (while making available certain conveniences to passengers) which is essential to the financing of the rail system. *Id.*



Continuing this Petition from the February meeting of the Commission would cause a significant hardship on Petitioner because of the aggressive project time schedule that Petitioner must meet. Accordingly, Petitioner proposes a supplemental question to be added to the Petition (to better clarify the Petition and the resulting declaratory statement, not to add a new subject) but only if so doing will not cause the Petition to be continued from the February 2015 agenda of the Commission. Petitioner's supplemental question (which would become question 3 in the Petition) is as follows:

3. Do some or all of the following elements of the *rail stations* included in the response to Question 2 of the Petition fall within the definition of *railroad and ancillary facilities associated with the railroad* as set forth on Section 102.2(b) of the FBC and Section 553.73(10)(b) of the Florida Statutes and are therefore exempt from the provisions of the FBC including Section 105 of the FBC's permitting requirements:

- buildings and facilities designed to accommodate the movement of passengers from one mode of transportation to another including platforms and facilities at which passengers board or disembark from transportation conveyances (e.g., trains);
- ticketing facilities, information stands, waiting areas, sanitary facilities for passengers and staff, and offices for railroad staff;
- demised areas and other spaces intended to contain retail sales and/or service establishments, and restaurants and/or other food or beverage service establishments;

- retail sales and/or service establishments, restaurants and/or other food or beverage service establishments that will be tenants in the *rail stations*’ “demised areas and other spaces” mentioned immediately above;
- surface or structured parking serving the passengers and railroad staff may be adjacent to, or integral with the *rail stations*;
- crew and other train staff rest areas; and
- facilities to service the trains including food supply (including kitchen) facilities.

Petitioner’s proposed response to this supplemental question is as follows:

3. The elements of the *rail stations* proposed by Petitioner that are exempt from the FBC pursuant to Sec 102.2(b) and Section 557.73(10)(b), Florida Statutes are:

- buildings and facilities designed to accommodate the movement of passengers from one mode of transportation to another including platforms and facilities at which passengers board or disembark from transportation conveyances (e.g., trains);
- ticketing facilities, information stands, waiting areas, sanitary facilities for passengers and staff, and offices for railroad staff;
- demised areas and other spaces intended to contain retail sales and/or service establishments, and restaurants and/or other food or beverage service establishments;
- surface or structured parking serving the passengers and railroad staff adjacent to, or integral with the *rail stations*; and
- crew and other train staff rest areas; and
- facilities to service the trains including food supply (including kitchen) facilities.

Retail sales and/or service establishments, restaurants and/or other food or beverage service establishments that will be tenants in the *rail stations*’ “demised

areas and other spaces” are not exempt from the FBC pursuant to Section 102.2(b). However, ticketing facilities, information stands, waiting areas, sanitary facilities, and offices for railroad staff—elements that are “essential to the operation of the railroad occupying the “demised and other spaces” are exempt from the FBC pursuant to Section 102.2(b) and Section 553.73(10)(b) of the Florida Statutes.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing by

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This 12 th day of January, 2015,

By: /s/ Robert S. Fine  
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