

MEMORANDUM

September 5, 2019

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Doreen Woo Ho
Hon. Gail Gilman
Hon. Victor Makras

FROM: Elaine Forbes
Executive Director

SUBJECT: Approval of the Operations Agreement with Pacific Cycle Inc. ("Pacific Cycle") granting Pacific Cycle authority to operate its two Vacaville, California facilities as a Foreign Trade Zone No. 3 Subzone for a term of five years, with three options to extend for five years each and outlining conditions for the operation of the usage-driven site

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary

The Port of San Francisco has been the grantee of Foreign Trade Zone (FTZ) No. 3 since receiving authorization from the Foreign Trade Zone Board in 1948. As grantee, the Port acts as a facilitator to private entities that may benefit from this public utility. Foreign Trade Zones were established to stimulate economic development in communities by providing businesses with economic advantages to conduct international trade activities in the United States, versus foreign locations, thus increasing the availability of local jobs and exports.

Pacific Cycle Inc., a global bicycle manufacturer and distributor, has requested approval to activate an FTZ "Subzone" under the "Service Area" of the Port of San Francisco FTZ No. 3.

As grantee of this public utility, the Port of San Francisco, is required on a non-discriminatory basis to afford to all those who apply within the FTZ No. service area and receive approval from the FTZ Board and U.S. Customs and Border Protection, access to the benefits of operating an FTZ. The Port assists in the application process of potential FTZ operators and submits an annual report but has no liability or oversight responsibility for operators' FTZ operations.

This Print Covers Calendar Item No. 11A

Background

Foreign trade zones were established by the U.S. Congress in The Foreign-Trade Zones Act of 1934 to stimulate economic development in communities by providing businesses with economic advantages to conduct international trade activities in the United States, versus foreign locations, thus increasing the availability of local jobs and exports. In 1948, the Port of San Francisco received a FTZ Board Grant of Authority to establish, operate and maintain a foreign trade zone. In granting such a designation, the Act allows for the establishment of Subzones outside of Port property.

The Foreign-Trade Zones Act provides for "...the establishment...of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the FTZ Board to grant to qualified corporations the privilege of establishing FTZ sites in or adjacent to U.S. Customs and Border Protection (CBP) ports of entry. Article VII of the Transfer Agreement and Charter Section B3.581(o) authorize the Port of San Francisco "to operate foreign trade zones within the Port area or auxiliary to the Port area, or such zones or subzones as have been operated by the San Francisco Port Authority."

The Port of San Francisco Foreign Trade Zone No. 3 ("FTZ No. 3") "Service Area" includes San Francisco and San Mateo Counties. In 2012, five additional North and East Bay Counties were added to the Port's "Service Area," those being Marin, Sonoma, Napa, Solano, and Contra Costa Counties.

The FTZ Act (Section 14 (19 U.S.C. 81n) mandates that each zone "be operated as a public utility ...and the grantee shall afford to all who may apply for the use of the zone...uniform treatment under like conditions."

Federal law mandates that FTZ grantees, such as the Port of San Francisco, must provide access to zone benefits to businesses and manufacturers on a nondiscriminatory basis unless it has a compelling case not to. Failure to do so could result in the grantee being fined up to \$1,000 per day. The Port currently has five active FTZ users.

In January of 2019, Port staff received a request to apply to the Foreign-Trade Zone Board ("FTZ Board") on behalf of Pacific Cycle, Inc. ("Pacific Cycle") to establish a Foreign Trade Zone (FTZ) Subzone location ("Subzone") for Pacific Cycle's two Vacaville, California distribution facilities. Port staff subsequently applied on April 18, 2019 on behalf of Pacific Cycle to establish this Subzone. The FTZ Board notified the Port on May 20, 2019 through Board Administrative Action No. S-91-2019 that Subzone status has been approved for Pacific Cycle's Vacaville facilities.

Pacific Cycle is the parent company to several well-known bicycle brands such as Schwinn, Mongoose and Iron Horse. Pacific Cycle is headquartered in Madison, Wisconsin with additional locations in California, Illinois, Canada, the United Kingdom, and China. Pacific Cycle uses its Vacaville, CA facilities for general distribution operations such as receiving, inspection, quantity verification, sorting,

warehousing/storing, repacking & relabeling (if necessary) packaging, re-ticketing, and shipment of merchandise (primarily bicycles and bicycle related products).

Pacific Cycle, a bicycle (and bicycle related products) manufacturer and distributor will operate the Subzone pursuant to the proposed Operations Agreement ("Agreement"), a copy of which is on file with the Secretary of the Port Commission. The Agreement confirms that the Port of San Francisco owns the grant of authority for FTZ No. 3, and the Port is providing Pacific Cycle authority to operate its Vacaville facilities, under Port's grant of authority as an FTZ No. 3 Subzone for a term of five years, with three options to extend for five years each at the Port's sole discretion. Under the Agreement, Pacific Cycle assumes responsibility for operation and management of the Subzone in conformance with all FTZ Board and U.S. Customs and Border Protection ("CBP") regulations and guidelines, and all other local, state and federal laws, rules, and regulations applicable to foreign trade zone and Subzone operations. Pacific Cycle must indemnify, protect and hold harmless the Port of San Francisco. Failure to operate the sites in accordance with applicable regulations will constitute a material default, which shall permit the Port to immediately terminate the Agreement. CBP is the oversight agency ultimately responsible for ensuring conformance with regulations. Representatives of FTZ No. 3, the FTZ Board, CBP, and other authorized U.S. Government officers have the right to enter the Operator Sites to determine whether the business is being conducted in accordance with regulations and the procedures established with the Agreement.

Any operating costs or capital improvements associated with the Subzone will be Pacific Cycle's responsibility. No public funds will be required to fund the project.

Strategic Objective and Benefit to the Port

The expansion of the Port's FTZ area to include Pacific Cycle is consistent with the Port's Strategic Plan for Economic Vitality in the region. Foreign Trade Zones promote maritime cargo and related economic opportunities that may be lost to overseas markets which increases local jobs and economic activity.

As grantee, the Port functions as administrative support for all those qualified to operate as an FTZ within the "service area" of FTZ No. 3 which includes seven Bay Area Counties.

The Port benefits from the utilization of FTZ operations that maintain economic vitality in the region, specifically in cargo shipping and the local maritime industry. As grantee of FTZ No. 3, the Port has no oversight responsibility or liability for facilitating this public utility. The fee structure ensures Port time and administrative resources are fully recovered.

Discussion

The use of foreign trade zone procedures at its Vacaville facilities will allow Pacific Cycle's distribution operations to improve its international competitiveness by allowing the company to realize certain administrative and customs cost savings as well as take

advantage of global supply chain efficiencies inherent to the FTZ admission and entry processes.

The Port's FTZ No. 3 Zone Schedule (tariff) provides for below fees to be paid by the Operator to cover the necessary Port staff administrative expenses related to FTZ operations.

Application Fee (one time fee):	\$ 5,000.00
Activation Concurrence Fee (one time fee):	\$ 2,000.00
Annual Operating Fee (paid to Port annually):	\$ 20,000.00

The Port Commission has approved five other FTZ operator agreements.

The FTZ Board processed the Pacific Cycle's application, and found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest, and therefore granted authority for Subzone status through its Board Administrative Action No. S-91-2019 dated May 20, 2019 (Attachment 1).

U.S. Customs and Border Protection who acts as the oversight agency for all FTZ operations has provided its concurrence with activation of Pacific Cycles' Vacaville facilities as an FTZ Subzone.

Recommendation

Port staff recommends that the Port Commission approve this resolution authorizing execution of the Agreement with Pacific Cycle Inc. granting Pacific Cycle authority to operate its two Vacaville, CA facilities as an FTZ No. 3 Subzone for a term of five years, with three Port options to extend for five years each, and outlining conditions for the operation of the Subzone.

Prepared by: Brendan O'Meara, Maritime Marketing Manager

For: Andre Coleman, Deputy Director, Maritime

Attachments:

- 1) Foreign-Trade Zones Board Administrative Action No. S-114-2017 approving usage-driven site status at the leased facilities of Agility Logistics Corp. in South San Francisco, California

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 19-35

- WHEREAS, The grant of authority for Foreign Trade Zone No. 3 (“FTZ No. 3” or the “Zone”) was issued to the San Francisco Port Authority, the State of California’s predecessor port agency prior to its transfer to the City and County of San Francisco, by the Foreign-Trade Zones Board (“FTZ Board”) on March 10, 1948 under Board Order No. 16; and
- WHEREAS, Article VII of the Transfer Agreement and Charter Section B3.581(o) authorize the Port of San Francisco "to operate foreign trade zones within the Port area or auxiliary to the Port area, or such zones or subzones as have been operated by the San Francisco Port Authority;" and
- WHEREAS, As grantee of the FTZ No. 3, the San Francisco Port Commission (“Zone Grantee”) has certain responsibilities to establish and maintain the FTZ No. 3 as stated in the FTZ Board regulations; and
- WHEREAS, The Foreign-Trade Zones Act provides for “...the establishment...of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the FTZ Board to grant to qualified corporations the privilege of establishing foreign-trade zone sites in or adjacent to U.S. Customs and Border Protection ports of entry; and
- WHEREAS, Pacific Cycle Inc. (the “Subzone Operator”) desires to make use of foreign trade zone status and wishes to activate two Vacaville, California facilities as described in its application to the FTZ Board; and
- WHEREAS, The Port of San Francisco has made application to the FTZ Board for authority to establish a subzone FTZ site (“Subzone”) at the Vacaville, California locations; and
- WHEREAS, The FTZ Board found that the requirements of the FTZ Act and Board’s regulations would be satisfied, and therefore granted authority for Subzone status through its Board Administrative Action No. S-91-2019 dated May 20, 2019; and
- WHEREAS, The Port, as Zone Grantee, deems it practicable to limit its participation in the everyday operations of the FTZ Subzone; and
- WHEREAS, the Subzone is an approved site of FTZ No. 3, as designated under FTZ Board Administrative Action No. S-91-2019 of May 20, 2019; and

WHEREAS, Subzone Operator is the lessee of the Subzone locations and wishes to undertake the operational management of FTZ Subzone activities, on its own behalf, pursuant to the authority extended by Zone Grantee; and

WHEREAS, The Port and Subzone Operator have negotiated an agreement granting Subzone Operator exclusive authority to operate the Operator Site for a term of five years, with three options to extend for five years each in Port's sole discretion, a copy of which is on file with the Secretary of the Port Commission (the "Agreement"); and

WHEREAS, Under the Agreement, Subzone Operator agrees to pay the Port as Zone Grantee a \$5,000 application fee, \$2,000 activation fee and \$20,000 Annual Fee that will cover Zone Grantee expenses for oversight of the Subzone Site and submission of the Annual Report summarizing FTZ No. 3 annual activities to the FTZ Board; now, therefore, be it

RESOLVED, That the Port Commission hereby approves the Agreement with Pacific Cycle Inc. granting Pacific Cycle exclusive authority to operate at its leased sites in Vacaville, California as a Foreign Trade Zone No. 3 Subzone and authorizes the Executive Director to execute the Agreement; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to exercise the extension options in her discretion and to enter into any additions, amendments or other modifications to the Agreement that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or City or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

I hereby certify the foregoing resolution was adopted by the Port Commission at its meeting of September 10, 2019.

Secretary