




MEMORANDUM

February 24, 2023

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval of the Operations Agreement with APS West Coast, Inc., dba Amports, (“APS”) granting APS authority to operate its Benicia and Antioch California locations as a Foreign Trade Zone No. 3 Subzone for a term of 5 years, with one option to extend for four years and outlining conditions for the operation of the subzone site.

DIRECTOR’S RECOMMENDATION: Approve Attached Resolution No. 23-09

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 (“FTZ 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 industry.

APS West Coast, Inc, dba Amports, (“APS”) 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. 3 service area

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and receive approval from the FTZ Board and US 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 to the FTZ Board but has no liability or oversight responsibility of FTZ operations.

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 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. 81(n)) 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.

Proposed Agreement with APS

Port staff received a request to apply to the Foreign-Trade Zone Board ("FTZ Board") on behalf of APS to establish Foreign Trade Zone (FTZ) subzone sites for APS's Benecia and Antioch, California locations. In December of 2022, Port staff subsequently applied on behalf of APS to establish one FTZ subzone encompassing four site[s] of which

three are in Benecia and one in Antioch. The FTZ Board notified the Port on December 19, 2022, through Board Administrative Action No. S-220-2022 that FTZ status has been approved for APS's Benecia and Antioch locations.

APS has been a leader in the global automotive service industry for over 60 years. With multiple locations in the United States and Mexico, Amports is one of the largest auto processors in North America, providing customers with seamless logistical solutions. All of Amports deep-water facilities are located near major highway systems serving densely populated regions. Amports operates auto terminals in Benecia and Antioch. APS will operate the FTZ sites pursuant to the proposed Operations Agreement ("Agreement"), a copy of which is on file with the Secretary of the Port Commission. The APS agreement will have a term of five years, with one option to extend for four years in Port's sole discretion.

The Agreement will be on the Port's standard FTZ form agreement and include the following key provisions. The Agreement confirms that the Port of San Francisco owns the grant authority for FTZ No. 3, and the Port is providing APS authority to operate its Benecia and Antioch locations, under Port's grant of authority as an FTZ No. 3 subzone sites. Under the Agreement, APS assumes responsibility for operation and management of the operation 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 FTZ subzone operations. APS must indemnify, protect and hold the Port harmless and must maintain insurance coverages as approved by the City's Risk Manager. Failure to operate the site in accordance with applicable regulations will constitute a material default, which shall permit 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 Site to determine whether the business is being conducted in accordance with regulations and the procedures established with the Agreement. The Agreement includes a covenant regarding good corporate citizenship and a recognition of the City's Campaign and Governmental Conduct Code and California Government Code relating to conflicts of interest.

Any operating costs or capital improvements associated with the FTZ operations will be APS's sole responsibility. No public funds will be used in connection with the Operating Agreement.

Strategic Objective and Benefit to the Port

The inclusion of APS in the Port's FTZ program 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. Operating an FTZ subzone site at their Benecia and Antioch locations will allow APS to be more competitive in the region. As grantee, the Port functions as administrative support for 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 Benicia and Antioch locations will allow APS's terminal and 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
Activation Concurrence fee):	\$2,000
Annual Operating Fee (paid to Port Annually):	\$20,000

The Port Commission has approved 10 other FTZ subzone and usage-driven operator agreements.

The FTZ Board processed the APS'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 Site status through its Board Administrative Action No. S-220-2022 dated December 19,2022 (Attachment 1). US Customs and Boarder Protection who acts as the oversight agency for all FTZ operations has provided its concurrence with activation of APS's Benecia and Antioch locations as an FTZ Subzone Site.

Future FTZ Agreements

Under current practice, the Port Commission approves each FTZ Operator Agreement. Because the FTZ is a public utility and, as the grantee, Port is required to allow all qualified companies to utilize the FTZ and because the operation of the FTZ is heavily regulated and the Port's Operations Agreement is standardized, staff believes that the program could be implemented more efficiently and on a more timely basis for the benefit of the participants if the Port Commission delegated to staff the authority to determine eligibility and enter into future FTZ agreements. Staff plans on returning to the Port Commission to seek delegation to enter future FTZ agreements (similar to the manner in which staff is authorized to enter into routine leases and licenses) on the standard form agreement and subject to the approved FTZ No. 3 Zone Schedule (tariff)

and reporting on agreements executed. Any FTZ agreement that deviates from the form or requires approval by the Board of Supervisors would continue to be subject to Port Commission approval.

Recommendation

Port staff recommends that the Port Commission approve the resolution authorizing execution of the Agreement with APS West, Inc. granting authority to operate its Benecia and Antioch, CA locations as an FTZ No. 3 Subzone Site for a term of five years, with one Port option to extend for four years, and outlining conditions for the operation of the Subzone Site.

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For: Andre Coleman
Deputy Director, Maritime

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

RESOLUTION NO. 23-09

- 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, APS West Coast, Inc., dba Amports (the “Operator”) desires to make use of foreign trade zone status and wishes to activate its Benecia and Antioch, California locations 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 Benecia and Antioch, 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 FTZ status for APS through its Board Administrative Action No. S-220-2022 dated December 19, 2022; and
- WHEREAS, The Port, as Zone Grantee, deems it practicable to limit its participation in the everyday operations of the FTZ Subzone Site; and
- WHEREAS, the Subzone Site is an approved site of FTZ No. 3, as designated under FTZ Board Administrative Action No. S-220-2022 dated December 19, 2022; and

WHEREAS, The Port and Subzone Site Operator have negotiated an agreement granting exclusive authority to operate the Subzone for a term of five years, with one option to extend for four years at 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, APS 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 Driven Site and submission of the Annual Report summarizing FTZ No. 3 annual activities to the FTZ Board, therefore, be it

RESOLVED, That the Port Commission hereby approves the Agreement with APS West Coast, Inc. granting APS exclusive authority to operate at its location in Benecia and Antioch, California as a Foreign Trade Zone No. 3 Subzone Site 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 option 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 February 28, 2023.

Secretary