



UNITED STATES DEPARTMENT OF COMMERCE
The Foreign-Trade Zones Board
Washington, D.C. 20230

March 2, 2012

Byron K. Jackson
Mayor
City of Eloy
1137 W. Houser Road
Eloy, Arizona 85131

FTZ Board
Doc. 35-2011

Dear Mr. Jackson:

This is to inform you under Section 400.27(d)(2)(v)(A) of the Foreign-Trade Zones (FTZ) Board regulations (15 CFR Part 400) that the examiner designated to review your application requesting to establish a new zone in Eloy, Arizona has recommended a finding that the application does not meet the statutory and regulatory standards for approval.

The bases for the examiner's recommendation are delineated in the examiner's preliminary report (attached). Pursuant to Section 400.27(d)(2)(v)(A) of the FTZ Board regulations, you may submit additional evidence in response to this preliminary report within 30 days (*i.e.*, through April 2, 2012). That additional evidence would then be taken into account for the examiner's final report.

If you have any questions, please do not hesitate to contact myself or Christopher Kemp of my staff at (202) 482-2862.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew McGilvray".

Andrew McGilvray
Executive Secretary

Attachment

Preliminary Report of the Examiner – New Zone Application, City of Eloy, Arizona (FTZ Docket 35-2011)

The City of Eloy, Arizona, submitted an application requesting authorization from the FTZ Board to establish a new zone serving the Eloy, Arizona area. The proposed zone was presented as the fourth zone serving the Phoenix port of entry. However, the physical location of the proposed zone is also adjacent to the Tucson port of entry, and could thus potentially be presented for approval as the second zone serving the Tucson port of entry.

Under the Foreign-Trade Zones Act (19 U.S.C. §81a-81u), each CBP port of entry is entitled to a foreign-trade zone upon successful application to the FTZ Board. When there is an existing zone in a port of entry, the FTZ Act and regulations provide that “additional” zones may be authorized if the Board finds that the already authorized zone(s) “will not adequately serve the convenience of commerce” (19 U.S.C. §81b).

The proposed new zone would be comprised of four initial sites, with one site (Site 1) owned by the City of Eloy and the other three sites privately owned. All of the sites are undeveloped at this time, without infrastructure or buildings in place. The zone sites (totaling approximately 918 acres) are located roughly equidistant between the Tucson and Phoenix Customs ports of entry. No *bona fide* expressions of interest from companies requiring FTZ designation at any of the sites being proposed were included in the application. Letters of support were included in the application from a company located outside of the boundaries of Site 2, a commercial real estate developer and a potential FTZ operator.

All of the sites being proposed are located within the established ASF service area of FTZ 75 (City of Phoenix), which includes the northern portion of Pinal County, as described in FTZ Board Docket 24-2010 (75 FR 17692, 04/07/2010). As grantee, the City of Phoenix currently has the capability of securing usage-driven FTZ designation for a company wishing to locate within its service area, including in Eloy/Northern Pinal County. The application indicates that another FTZ project is needed to meet the convenience of commerce, as “local taxing entities have all stated that they prefer locally controlled FTZ management and locally, elected officials to be the grantees instead of a grantee that is not beholden to local taxing jurisdictions.”

Local officials in Eloy have expressed a concern that the City of Phoenix as a potential FTZ grantee for authorized sites in Eloy would not have a vested interest in ensuring that local tax policies and/or Payment In Lieu of Tax (PILOT) agreements were enforced. Local taxing issues are unique in Arizona, as state law provides for a reduction in real property taxes for activated FTZ users. The potential for a reduction in tax revenues associated with activated FTZ users leads the FTZ Board to consider the views of all affected taxing entities as part of the process for considering any application requesting FTZ designation for a site. The City of Phoenix has a history of sponsoring FTZ activity throughout Maricopa County, with numerous FTZ subzones having been established outside the city limits of Phoenix. No issues involving conflicts between the City of Phoenix and other local taxing entities regarding the enforcement (or lack thereof) of local tax policies have been brought to the FTZ Board’s attention to date.

Officials from Eloy have also expressed a concern about relying on the City of Phoenix as the sponsor of FTZ sites for specific users in Eloy because Phoenix and Eloy compete for companies seeking to locate in Arizona. Eloy officials fear the City of Phoenix would use advance knowledge of companies/prospects – resulting from the grantee role in considering potential FTZ applications – to “poach” potential companies/prospects looking to relocate to the Eloy area, and instead steer those companies/prospects to locations within the City of Phoenix. The City of Phoenix has addressed those concerns as part of the record of this proceeding, as well as on the record of FTZ Board docket 24-2010 (referenced above), and – as with all grantees – is required by the FTZ Act to afford “uniform treatment under like conditions” to all companies that seek to use its zone.

Given that the proposed Eloy zone is adjacent to both the Tucson and Phoenix ports of entry, and is no closer to Phoenix than it is to Tucson, it would not be appropriate to limit the “convenience of commerce” analysis to only the port of entry cited by the applicant (given that both the Tucson and Phoenix ports of entry already have “entitlement” grantees). To do otherwise in these circumstances would risk allowing the proposed grantee to “cherry pick” its targeted port of entry in a manner that could ignore the potential for the convenience of commerce to be adequately served by a grantee already approved for the other port of entry. In this context, a letter was sent to the existing FTZ grantees serving either the Phoenix or Tucson ports of entry requesting that they indicate whether their respective FTZ projects would be willing to provide FTZ services to the Eloy area.

In response to the letter to existing FTZ grantees, the City of Phoenix (as grantee of FTZ 75) reaffirmed its commitment to providing FTZ services to the Eloy area in its letter dated December 16, 2011. Tucson Regional Opportunities, Inc. (TREO), grantee of FTZ 174 in Tucson, also indicated in its letter dated December 20, 2011 that it would be willing to provide FTZ services to the Eloy area. Like FTZ 75, FTZ 174 is managed under the alternative site framework (ASF), with a service area which already includes all of Pima County (the county immediately south of Pinal County). FTZ 174 could make use of a simple application process to expand its service area to include the portions of Pinal County adjacent to the Tucson port of entry (including the portion of the county containing the sites of the proposed new Eloy zone), thereby being able to use a simple, 30-day process to bring FTZ designation to any company throughout the served portion of Pinal County. Further, there is no evidence that the type of tax-enforcement or economic competition concerns that the proposed Eloy grantee has cited regarding FTZ 75 would similarly apply to FTZ 174.

Based on all of the evidence and analysis outlined above, it appears that the convenience of commerce for the city of Eloy (including any of the sites associated with its application for a new zone) will be adequately served by at least one of the two existing grantees established as the “entitlement” zones for the Phoenix and Tucson ports of entry, *i.e.*, FTZ 75 and FTZ 174. In particular, if the City of Eloy believes that working with the City of Phoenix to provide FTZ services in the region would not be in its

best interest due to the concerns mentioned above, TREO appears to be a viable alternative grantee organization for Eloy to work with in securing FTZ designation for companies in the area. TREO is a regional economic development organization whose focus is to stimulate economic growth, not only in the Tucson area but in all of southern Arizona.

The applicant's reluctance to work with one existing entitlement grantee (the City of Phoenix) in securing FTZ designation for companies wishing to operate using FTZ procedures in the Eloy area does not constitute an adequate basis for finding that an additional zone is needed to serve the convenience of commerce. Further, the fact that local taxing authorities reportedly have a preference for "locally controlled FTZ management" does not warrant a finding that both the City of Phoenix (FTZ 75) and TREO (FTZ 174) will not adequately serve the "convenience of commerce" in Eloy. The evidence provided in the application and case record to date does not support the recommendation for approving a new zone as requested here.

The "convenience of commerce" question notwithstanding, there is also a lack of demonstrated need for FTZ designation at any of the proposed sites. No interested companies having indicated that they have any intent to utilize FTZ procedures at any of the sites, and the sites are completely undeveloped, with little to no infrastructure in place. Absent actual interested FTZ users specific to the proposed sites, it would appear that the need for FTZ services at the sites being proposed is of a speculative nature (rather than demonstrating the "need for zone services" – 15 CFR 400.23(a)(1)). At some point in the future, should demand for FTZ designation arise at any of the proposed sites from a company ready to activate, FTZ 75 (or FTZ 174) would be able to secure usage-driven designation for the interested company/operator.

Recommendation: The examiner's preliminary finding is that there is not sufficient evidence presented in the application and case record to enable recommending approval of the application.

Date: MAR 02 2012



Christopher J. Kemp
FTZ Analyst