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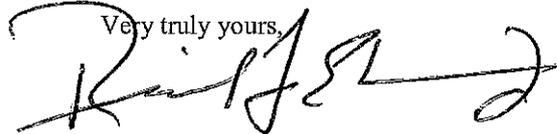
May 25, 2011

Andrew McGilvray
Executive Secretary
Foreign Trade Zones Board
U.S. Department of Commerce, Room 2111
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. McGilvray:

Please find enclosed with this letter thoughts and comments on the Foreign-Trade Zones Board's proposed revision of the Board's regulations.

Very truly yours,



Richard F. Ehmann, Jr.

Encl.

OFFICE OF THE
EXECUTIVE SECRETARY

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FOREIGN-TRADE ZONES BOARD

Comments on Proposed Regulations Introductory Thoughts

Zones – Known Knowns and Known Unknowns

The Congressional record that might offer the so-called legislative intent incorporated into the Foreign-Trade Zones Act to direct how the Act's program is to be conducted is not deep.* The record that does exist and the Act's plain words do establish a set of known principles for constructing a framework for conducting the FTZ program. From the Act itself and the Act's (limited) record (including the proceedings that led to the adoption of the "Boggs" amendment); we know:

1. Foreign-trade zones are not to be smugglers' dens run by pirates – we know this because the Act directs the Secretary of the Treasury "... [to] assign to the zone the necessary customs officers and guards to protect the revenue..." (emphasis added, section 4 of the Act).
2. Foreign-trade zone use is to be a neutral influence in the course of competition between and among U.S. based competitors. We know this because:

- The Act directs that, "Each zone shall be operated as a public utility... and the [zone] grantee shall afford to all may apply for the use of the zone... uniform treatment under like conditions..." (Section 14 of the Act), and
- When the subjects of "competition" and the influence zones might exert among U.S. based competitors were raised in the course of proceedings that led to the Boggs amendment this discussion was conducted:

-- "Mr. Cooper. Well, what about the competitive feature of the thing? I assume that the foreign-trade zone authority would grant permission to manufacturer A to set up a plant and do manufacturing within the zone, whereas manufacturers B, C, D and E outside of the zone might not get permission or might not be able to carry on their manufacturing process within the zone. How about the competitive feature of it, so far as American business is concerned?"

-- Mr. Celler. Well... They [the Board] would have to make a determination between A, B, C, and D ... I am sure they would endeavor to equalize it so that there would not be any unfair competitive features in that regard... whatever the situation, the terms and conditions set up by the Foreign-Trade Zones Board would be fair and just to all and in the interest of the public generally." (emphasis added)

* The absence of a deep record is a strength not a weakness. This limited record and explicit instruction provides the Board/the Program with the wide discretionary latitude needed to resolve our nation's trade friction(s).

-- (Hearing Report House Ways and means Committee, May 10, 1948 – to consider manufacturing amendment to the FTZ Act, to be known as the Boggs Amendment)

3. Foreign-trade zone use is to be consistent with existing trade policy. We know this because:

- Mr. Celler stated this to be the case (during the Boggs proceedings)
 - “Whether a man is high protectionist or a low-tariff man, there is no conflict between the principle of the foreign-trade zone and our tariff laws. The Foreign-Trade Zone Act synchronizes with the tariff law.”
 - (The suggested policy interaction between zone use and U.S. trade policy assumes Celler is using “tariff law” as a general shorthand label for general U.S. trade policy, which at the time (1948) the tariff was the main instrument for enunciating existing U.S. trade policy.)

4. The Foreign-Trade Zones Board was delegated wide discretionary latitude for deciding how zone use will be employed. We know this because:

- “The Board may, at any time, order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.” (Section (15) (c) of the Act.
- The Board’s open-ended authorization to exercise “its judgment” is explicitly preempted/limited by only several sets of circumstances:
 - The Act provides that “Foreign and domestic merchandise of every description, except such as is prohibited by law, may, ... be brought into a zone and may be store, sold, [etc.] ...” (emphasis added) (Section 3 of the Act)
 - The Act includes 12 operational limitations.

At the same time that we know about the Board’s discretionary authority, the need to prevent the loss of customs revenue from zone use, and other matters associated with the Act and the program, there are matters of integral importance to the program’s performance on which the Act and its record are totally silent or offer neutral guidance. These matters include:

- The absence of a meaningful definition for the term, “zone”; the tautology “zone means foreign-trade zone” is left unadorned by the Act.
- The absence of any definition for the activity prohibited by the Act’s (15) (d), “No retail trade shall be conducted ...”; retail trade is undefined.

- The terms, general purpose foreign-trade zone and subzones don't appear in the Act or in any part of Act's record.
- The triggering criteria "convenience of commerce" is undefined by the Act.

The preceding thoughts, observations and conclusions are the foundation blocks for the three subjects presented in this paper:

Defining Zone Status

Defining Retail Trade, and

The Role of Zone Administrators

Redefining Zones: A Status Not a Spot on a Map

The Board/the Board's staff has initiated several measures to diminish the regulatory-procedural burdens impairing access to the program over the course of the last several years. The TIMS and Alternative Site Framework were such initiatives and were undertaken to provide grantees with greater flexibility for delivering zone services to the establishments composing their local economies, i.e., the grantee's flexibility was to be an easier pathway to the program for individual "local" establishments. When these initiatives were proposed, initially, suggestions for expanding their reach to lower the barriers to access even further were greeted generally by a response similar to:

We can't go that far – our efforts are constrained by the regulations --- i.e., the current regulations.

The proposed/pending revision of the regulations in an opportunity to remove regulatory constraints that otherwise impairs access to program use and in doing so impairs the program from contributing the useful function it was organized to provide. This revision is an opportunity for the Board to exercise its "... wide latitude of judgment..."

"... to respond to and resolve the changing needs of [U.S.] domestic and foreign commerce through the trade zone concept." (Armco vs Stans)
(emphasis added)

Accordingly, it is recommended that the Board adopt a revised regulatory definition to be applied to, or for "the trade zone concept." This recommended revision will adopt a policy judgment that a grant of a zone authority confers a status rather than establishing or recognizing a spot on a map. As such this revision will incorporate a revised principle for delivering/establishing zone services so that:

"... a grant [of] the privilege of establishing, operating, and maintaining foreign-trade zones..." confers the authority to provide for the performance of the economic activities enumerated in the Act's section 3 without being subject to U.S. customs laws at a site specific location(s).

As opposed to the current regulations' policy judgment that establishes:

"a grant [of] the privilege..." being the location at which section 3 activities must be conducted.

In brief, the regulations will refocus grants of authority to expedite and encourage economic activity rather than grants that are "landcentric" that constrain zone-economic activity to limited geographic settings.

The adoption of this recommended proposal will be rooted in a policy decision by the Board to exercise its discretionary authority, and it will require specific regulatory measures:

- that focus on the delivery of zone access/status to best serve the nation's economic interest by providing for competition neutral zone authorization on functionally similar or equivalent terms for "A," "B," "C" and "D", and
- that incorporate a functional acceptance of the notion that references in the Act to matters related to sites, locations and geography are expressions of concern for controls required to protect the revenue of the United States and not controls to limit zone service availability.

These specific measures will define "zones" in terms of economics and provide for an application procedure(s) that is equivalent in its burden for establishments conducting the same economic activity.

Within this revised set of regulations, zones, general purpose zones and subzones will be defined to be:

- "Zone" means a status approved by the Board that authorizes the conduct of the activities enumerated by the Act's section 3 with domestic and foreign merchandise of every description except such as prohibited by law or these regulations without being subject to the customs laws of the United States at a delineated location that allows for the protection of the customs revenue of the United States.
- "General Purpose foreign-trade zone" means a zone authorization at a delineated site that can accommodate two or more establishments.
- "Subzone" means a zone authorization at a delineated site that accommodates one establishment.

Within this framework that focuses on a status to conduct economic activity, the revised regulations should establish application procedures that will demonstrate the economic value to be generated by approving a request for zone status (or the absence thereof) with location, i.e., subzone or general purpose zones being a secondary neutral criterion. These regulations will provide an application procedure that separates Section 3 activities into two divisions, manufacturing and non-manufacturing:

- Manufacturing activity will continue to be subjected to a case by case approval process. This process will evaluate the economic value of a proposed manufacturing activity on the same basis regardless whether it is proposed to

be conducted in a subzone or a general purpose zone. The information required, the political analyses performed and any public interest tests imposed will be identical.

- Non-manufacturing subzones will be covered by an application process similar to the procedures currently in place for boundary modifications, general purpose zone site expansions and/or additional sites.
- General purpose zones (original or additions to existing general purpose zones) will continue to be subject to current application procedures.

A policy decision to reorient the Board's regulations towards zones being the establishment of a status for conducting economic activity as opposed to the approval of a spot on a map, will need to address (among other matters) three questions:

1. Does such a shift impose a burden on existing grantees, or zone users?

The adoption of a policy that emphasizes economics over geography will expand grantees' ability to deliver zone status to the user that needs it with limited regard to the user's location. It will lower the burden for a grantee's delivery of zone status for non-manufacturing operations; for manufacturing activity the burden should remain as is. Consequently grantees should be aided by this change in policy orientation.

For existing users this proposed shift will be benign. For potential users, manufacturing users, it will be benign. For non-manufacturing users that require a subzone this change should be helpful.

2. Does such a shift redraw the "special" character of subzones?

The current definition for subzones is a regulatory artifice. The Act itself and the Act's record include no direct reference to "adjuncts" to existing zones. There is nothing "special" about a subzone.

A subzone cannot be put to a special purpose. Subzone activity(s) are limited by section 3 of the Act, and/or by approval orders issued by the Board. Such limitations can and do exist for activity conducted in a general purpose zone.

- A Subzone is different than a general purpose zone because the subzone's approval covers only one venture or establishment, as opposed to a general purpose zone that can accommodate multiple users. Within the context of the Act's economic purpose this difference is meaningless. The meaninglessness

becomes evident when general purpose zones and subzones are examined in the context of current approved practices, e.g.

- A general purpose zone encompassing 100 acres divided into 10 equal lots, each lot owned by an individual enterprise, with each enterprise putting ten acres to their exclusive use, in the context of the purpose of the Act, this general purpose zone is indistinguishable from a series of 10 subzones, each subzone being 10 acres in size and put to one enterprise's exclusive use.

3. How does this proposed definition of foreign-trade zones comport itself with existing regulations and other orations on what characterizes a zone?

The Act itself never defines the term foreign-trade zone. The Act's father, Cong. Celler during the deliberations leading to the Boggs amendment and on other occasions discussed various descriptions and characteristics of "zones." At the same time the father of zones program never put forward "the definition" into the Act.

The current regulatory definition focuses on the physical and operational characteristics of a zone, its location and restricted access. These characteristics are not relevant to the zones economic purpose rather they incorporate physical requirements that satisfy the general need to protect the customs revenue – they do not address the purpose a zone's existence is intended to satisfy. This current definition should be adapted or incorporated within the current definition of "zone site." The current definition's reference to public utility principles should be incorporated within the definition of a grant of authority. The rest of the definition repeats the definition(s) of grantees.

The proposed definition doesn't ignore the statutory requirements for the identification of a site or a site's characteristics. Rather it reflects a change in emphasis. Sites and their characteristics are subject to the "revenue protection" features of the Act, not the economics of zone use. To that end the proper context for geography provides the Board with the opportunity to improve access to zones use and diminish the prospect that "A" will have a competitive advantage over "B," "C" and "D."

This proposed definition is directly consistent with the purpose for which grants of zone authority are awarded, to serve local economies, i.e. serving the establishments composing local economies is an inherent feature of the program and the Act. The requirement that grantees must operate zone authorization's "as a public utility... [for] all who may apply for the use of the zone..." creates a direct line of existential responsibility, that zones exist to serve not be served. As such, this service needs to be provided on a basis that satisfies the "convenience of commerce", the convenience of local establishments, current and future.

The Alternative Site Framework and TIMS were initiated by the Board to improve/expand access to the use of the program. Nothing diminishes access to the program and thereby diminishes the value zone use can contribute to the economy more than the current regulation's landcentric concept of a zone. The current revision of the Board's regulations is an open opportunity to take the next logical step for the program to place "site" into its proper context.

Adopting a "status" vs. a "landcentric" concept for delivering the program's economic value will reinforce the regulations Section 400.13(a)(8). Providing zone authorization in the form of a status for an activity where it is needed will diminish any potential misunderstanding on the value of any land at which this activity is conducted. The diminishment of this potential misunderstanding about land values should diminish the degree to which grantees are motivated to seek zone designations in fairness to competing real estate developments.

Finally, adopting a status concept and the regulatory features incorporated by it will bring the Board's regulations into compliance with the Act. The Act requires that zone grantees "... shall afford to all who may apply for the use of the zone ... uniform treatment under like conditions..." The regulations, current and proposed, prescribe disparate treatment for economically like conditions. Regulations that emphasize function, activity and status rather than spots on a map will move grantees and the Board's regulations closer to the Act's letter and spirit than is presently the case or as proposed.

Specific Regulatory Comments

A. Section 400.2 – Definitions

- (f) Foreign-trade zone (FTZ or zone) means a status approved by the Board that authorizes the conduct of the activities enumerated by the Act's section 3 with domestic and foreign merchandise of every description except such as prohibited by law or these regulations without being subject to the customs laws of the United States at a delineated location that allows for the protection of the customs revenue of the United States.
- (q) Zone means foreign-trade zone Section 400.2(f).
- (v) Zone site means a secure location at which activity authorized to be performed under zone status is conducted.
- (x) General purpose zone (general purpose foreign-trade zone) means a zone authorization at a delineated site that can accommodate two or more establishments.

(y) Subzone (foreign-trade subzone) means a zone authorization at a delineated site that can accommodate one establishment.

B. 400.22 – Applications

400.22(b) An application seeking zone authorization for a single enterprise (subzone) and activities other than the activity at 400.2(1) as part of a proposed or existing zone project shall be submitted in accordance with the following requirements:

(1) If not a part of a proposed zone project a letter from the sponsoring grantee or qualified entity 400.12(d) that contains the following information:

- (i) the name of the enterprise seeking zone status
- (ii) the nature of the establishment's activity
- (iii) the legal address of the party that owns the establishment.
- (iv) the address of the establishment for which zone status is being sought.

400.22(c) Applications seeking zone status for activity covered by 400.2(1), the information required at 400.22(a).

C. 400.25

(b) Subzones. In reviewing proposals for subzones, other than proposals that involve production, the criteria for disapproval will be circumstances in which the proposed activity is not permitted to be performed under the Act, the laws of the United States or a specific existing Board Order.

Subpart D – Procedures for Application Evaluation and Reviews:

This Subsection for nonmanufacturing subzone applications should be modified as follows:

- Timeframes – no longer than 60 days
- Procedure should be administrative and not require a Board Order.
- No Federal Register notice or comment period should be required.

These suggestions are a major departure from present application procedures. However, these proposed procedures greatly exceed the procedures the Board conducts when a new non-production establishment sets up shop in a general purpose zone location. On the basis of similar treatment for like operations the gap between these suggestions and current (and proposed practice) begins to close.

The proposed suggested comments/modifications to the proposed regulations that are enumerated are those that are thought to cover the substantive regulatory changes required to effect the concept of zones being a status not a spot. If the concept is adopted it is likely that technical features of the regulations will need to be modified to reflect this concept's adoption.

Define Retail Trade

The Board's revised regulations should define the span of economic activity(s) covered by the term "retail trade" in the Act at section (15) (d). The regulation's definition should employ the guidance provided by the North American Industry Classification System (NAICS) and define the covered activity to be NAICS subsections 441-453, "store based retail trade", NAICS subsection 454 would not be covered/prohibited and as such remain a class of economic activities permitted to be conducted under zone status.

The Foreign Trade Zones Act as amended at section (15) (d) states:

"No retail trade shall be conducted within the zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods except such domestic or duty paid or duty free goods as are brought into the zone from customs territory."

The program's proposed regulations (at section 400.48) restate the Act's prohibition of retail trade. The regulations include measures to be followed to secure permission for the permitted sale of domestic and duty paid goods. The regulations and the Act do not define the prohibited retail trade activity.

The Act's record provides no hard direct guidance on how this prohibited activity is to be defined or categorized. The Act itself offers conflicting guidance. Retail trade is prohibited but, "Foreign and domestic merchandise ... may be ... stored, sold, exhibited ... repackaged ... distributed ... [and] sent into customs territory of the United States ..." Retail trade per se is prohibited but many of the activities associated with retail trade are explicitly permissible.

The Act and its record provide indirect guidance for implementing and defining this prohibition and its coverage that supports the conclusion this prohibition covers "Store" based retail activity and does not include non-store retail activity. We know:

- The Act's authors were concerned about potential tariff revenue leakage. Stores with routine customer, in and out, traffic present a direct threat to customs revenue collection. Non-store retail activity generates no similar threat.

- The Act's authors were concerned that zone use could provide a competitive advantage for one establishment over its competitors. For example if Gimbels established its store in a zone but Woolworths competing in the same town could not do so Gimbels could have/would have an advantage – especially in 1934. In 1934 the opportunity to defer tariff payments for establishments such as Gimbels would have been a sizable cost advantage. In 1934:
 - Tariffs were three – ten times higher than today's Column one rates (column 2 rates are equivalent to the 1934 rates).
 - Inventory turn-over rates were dramatically slower than today's rates.
 - Higher tariffs and slow inventory rates would have given zone based Gimbels a measurable cost advantage over Woolworth, its non-zone competition because of the opportunity to defer duty payments. In addition there would have been an opportunity for Gimbels to avoid duty payments on goods not sold, returned, damaged, etc. The Act's authors did not want zones to be the source of such advantage/disadvantage.
 - Finally, in 1934 and until 1997 there was no authoritative basis for delineating the activity to be covered by the prohibition versus the activity that could be deemed acceptable. Until 1997 the United States employed the "Standard Industrial Classification" (SIC) system to categorize economic activity. The SIC's Division G, Major Groups 52-59 covered Retail Trade – but its groupings defined activity on the basis of what is being sold not how it is sold. The North American Industry Classification System (NAICS) has two sectors, sectors 44 and 45, that cover Retail Trade. The NAICS system categorization has two main functional divisions Store-Retail Trade and Non-Store Retail Trade. All of the activity covered in the NAICS sector 44 is store based retail trade; subsectors 451-453 cover store based retail trade. Sector 45's remaining subsector, 454 cover, non-store retail trade.

Functionally this proposed definition will provide an explicit opportunity for mail order, telephone and/or computer based distribution operations for personal consumption sales to be conducted under zone status. Using red line drawings and with imaginative thinking the Board has found ways for limited amounts of non-store retail trade to be conducted under zone status. Currently, such practices are commendable but should be made unnecessary.

The Boards current practices suffer because:

- They are time consuming for the Board's staff, custom field staff, grantees and users.

There are 5 reasons for the Board to adopt this proposed definition:

1. The Board has the authority to do it.
2. There is every reason to believe that “stores” and “retail trade” were functionally synonymous in the minds of the Act’s authors.
3. Non-store retail trade activity does not cross any of the red lines of concerns the Act’s authors held.
4. The authoritative definitional difference between store based retail trade vs. non-store based retail trade came into existence in 1997, i.e. six years after the Board’s current regulations were developed.
5. Computer, telephone based, and mail order retail/distribution operations with overnight order-delivery services operating in a status identical to zone status can be conducted in Mexico, Canada and the rest of the world. Zone status exists to provide solutions for the interaction(s) between developments in world trade and U.S. based economic activity for the benefit of the overall U.S. economy.

U.S. based personal consumption channels of distribution/selling have shifted toward non-store services. Because of developments in foreign-trade logistics, these non-store services can be provided from all points of the globe on an operational equivalent basis to a U.S. location and without any U.S. customs treatment until the sold merchandise is sent to a customer in customs territory. The Zones Program is a potential solution for these two developments that can generate an overall benefit for the U.S. economy if defined to do so.

Specific Recommendation:

400.48(d) Retail trade is defined to be those activities described in the North American Industrial Classification System – “Store Based Retail Trade” subsections 441-453, and their successors.

Zone Administrators

The business arrangement conducted by grantees with unaffiliated second parties to conduct zone administration activities, i.e., zone administrators and the zone related business conduct by these second parties are addressed in the Board’s proposed revision of the program’s regulations. In many respects the anecdotes and circulating reports that (appear to) motivate this interest are reminiscent of, or similar

to situations experienced during past periods of time. These times being when zones were generally storage operations and "exclusive zone operators" ruled anointed domains requiring the use of "their warehouse" to obtain access to the foreign-trade zone program, or an even earlier period of time (the 15th and 16th centuries), the Age of Exploration when selected individuals claimed exclusive dominion over "such lands" in the name of some king or queen.

A first rule of management holds that one can delegate authority - responsibility can never be delegated. The Board is responsible to the Act for the conduct of the programs and local zone grantees are responsible to the Board for insuring the proper use of grants of authority. It is a legitimate exercise of the Board's perpetual oversight responsibility to examine and decide how grantees are employing these contracted parties (administrators) within the context of discharging their grantee "non-delegatable" responsibilities for insuring that provisions for zone use within their grant of authority are consistent with public utility principles and fulfilling the program's national purpose, that purpose being to contribute to the development of U.S. based economic activity by serving the nation's foreign trade interests both import and export.

The discharge of these grantee responsibilities and the consequences, positive or negative, administrators contribute to the fulfillment of these responsibilities construct (or should construct) the analytical context for the Board's examination of and any proposed regulations to address this administration matter. The line(s) of inquiry that the Board employs to conduct this examination should incorporate propositions and observations that include:

- Most, if not all, of the grantees that employ administrators do so as the result of a buy/lease decision. A community wants/needs a grant of authority but their level of zone related activity does not justify "buying" a full time in-house zone staff. The alternative for these communities is, to lease the time and competence of some outside party to do the required work for conducting a local zone program.
- The arrangement between the grantee and contracted second parties, administrators should formally acknowledge grantee responsibility that is not subject to second party action and distinguish this responsibility from work efforts to be completed to support the grantee's fulfillment of its responsibilities.
- Any "required use" of zone administrators should be limited to those activities that a grantee may require to maintain the compliance with the program's regulations.
- Use of zone administrators by zone users or other zone parties to conduct routine "consulting" work should be available on terms outside of any arrangements between a grantee and the administrator – This work should

NOT be required by, or for any party using or seeking access to a local zone project.

- The Zone Schedule is a proper instrument for a grantee to set forth the terms of interaction between and among an administrator, users and other parties associated with a zone project, and the grantee itself.
- With respect to such matters as the use of an administrator the schedule should address among other things:
 - A clear principle that the administrator is not a replacement for the grantee.
 - All grantee responsibilities to the community, the Board and the Act remain unaffected by the arrangement with an administrator.
 - Measures/procedures that will preclude any administrator arrangement from impairing the zone from operating consistently with public utility principles, e.g. with respect to procedures for access, charges or fees.
 - (These precluded measures should include the preemption of barriers to the provision of consulting services by other interested parties.)

It is believed that the Board's ultimate interest in this zone administrator matter is not administrators per se. Rather it is a matter, perceived or real, of an administrator creating a dominant position for providing consulting services that can be abused to the detriment of the zone program, the local program/project and the national program. The Board's concern over the prospect for these administrator arrangements becoming abusive practices is legitimate but this concern should be conditioned by the reality that grantees are the public bodies charged to serve a (the) local public interest.

Grantees are local public bodies that organize zones to serve a local public interest. The arrangements concluded with an administrator, the do's and don'ts should be understood to be in the public interest the zone serves. As the first mover, the grantee will be the first to know if the local public interest the zone serves is being abused by the selected administrator and will be in first position to take remedial action. The Board's role is to set regulations that reinforce the grantee's actions not preclude the grantee from deciding if and how an administrator serves the zone's local public interest.

Regulations that direct how grantees may or may not manage zone related services associated with a grantee's zone are likely to be counterproductive for local zone projects and combined together counterproductive for the national program. For example, any such explicit regulations that direct how services are provided would

need to address (anticipate) circumstances in which the grantee establishes itself to be a direct service supplier:

- A zone grantee sets the grantee itself to be the sole acceptable supplier of zone related consulting services for its zone project in order to generate revenue to support a local zone project, or provide such services at no charge to expand zone use, or
- A zone grantee sets out an exclusive qualified suppliers list for zone related services, or
- A zone grantee sets itself to be the sole supplier of services for the grantees projects and subcontracts the actual work to one or a limited number unaffiliated consulting firms.

All three arrangements would be consistent with the Act:

- The grantee would be fulfilling its responsibility/privilege to “manage” its zone projects.
- The grantee would not per se interfere with, or otherwise diminish access to zone status since arguably the selected option was decided to be the most efficient pathway for providing zone use to the grantee’s local economy.
- Finally, any one of these options would be consistent with public utility principles since the same option would be provided (imposed) on the same terms for all zone users.

But does the Board want to impose itself on local public/political entities to direct how they manage their zone’s authority to develop local economic activity and deliver zone services?

Grantees are local public bodies charged to serve a (the) local public interest – this interest includes the responsibility to manage, organize and deliver zone services for the benefit of the local economy. The arrangements a grantee concludes to manage and deliver zone services to a local economy, e.g., “the do’s and don’ts of an arrangement with an administrator or other second parties, or the rules and procedures grantee establishes for itself and zone users (potential or actual) should be understood to be in the public interest of the local economy the grantee and the zone exist to serve. As the prime mover of any zone project, the grantee will be the first body to know if the local public interest the zone serves is being abused or is otherwise being ill-served by an administrator or other arrangement to organize and deliver zone services to the local economy and will be in a prime position to take remedial action. The Board’s role is to set regulations that reinforce the grantees’

actions not preclude grantees from deciding if and how an administrator or other management arrangement serves a zone's local public interest.

Specific Recommendations

400.42(a)

... each zone project shall be operated as a public utility, in that all rates and charges for all services or privileges for zone use shall be fair, reasonable and uniform. (Underline indicates word change from proposed language). Remove all other language from (a).

The Act does not define fair or reasonable. Uniform is implied. Cost plus is and can be fair, reasonable and uniform. A fee based on a small percentage amount of zone generated savings (the same percentage for all uses) is/can be uniform, fair and reasonable. There are many other formulas a grantee could divine that are fair, reasonable and uniform. There is no basis for the Board to decide which formula is the correct one for all zones in all circumstances. The Board can be and should be prepared to remedy fee formulas that are inconsistent with any definition of fair, reasonable and uniform.

400.43

Remove the current (e) and (f).

New (e) and (f)

(e) In the zone schedule or in any other venue or form there must not be any requirement that the zone project's administrator, or other party must be the supplier of zone related services, such as computer inventory control systems, preparations of materials for applications, customs brokerage or consulting, etc.

(f) On the occasion that a potential or current user of a zone project has had its use of zone status impaired or any provision of the Act has not been applied for them, measures provided for at (g) of this section shall be invoked.

Discussion: The current (e) and (f) strike directly at the use of zone administrators. The discussion of this matter at the outset of this subject address the basis for the specific recommendations.