

FOR CONSIDERATION

August 19, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Rochester (Monroe County) – American Packaging Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions; Determination of No Significant Effect on the Environment

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General Project Plan

I. Project Summary

Grantee: American Packaging Corporation (“APC” or the “Company”)

ESD\* Investment: A grant of up to \$150,000 to be used for a portion of the cost of construction and the purchase of machinery and equipment.

\* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Location: 777 Driving Park Avenue, Rochester, Monroe County

NYS Empire Zone  
(or equivalent): Rochester Empire Zone

Proposed Project: The Company will expand, modernize and equip its manufacturing plant to facilitate business expansion.

ESD Incentive Offer Accepted: April 10, 2008

Project Completion: July 2009

Number of Employees at Project Location:

Initial employment (at time of ESD Incentive Offer): 147

Current employment level: 153

Minimum employment on January 1, 2012: 172

Grantee Contact: Steven Montfort, Controller  
777 Driving Park Avenue  
Rochester, NY 14613  
Phone: (585) 719-1592  
Fax: (585) 254-9037

Anticipated  
Appropriation

Source: Empire State Economic Development Fund

ESD Project No.: W113

Project Team:	Origination	Kevin Hurley
	Project Management	Edward Muszynski
	Affirmative Action	Helen Daniels
	Environmental	Soo Kang

## II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Land Acquisition	\$ 530,000
Construction	3,998,000
Machinery & Equipment	<u>6,900,000</u>

Total Project Costs \$11,428,000

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Grant	\$ 150,000	1.3%	
City of Rochester Loan-to-Grant*	230,000	2.0%	
Monroe County Loan-to-Grant*	75,000	0.7%	
Rochester Gas & Electric Grant	300,000	2.6%	
Wells Fargo Foothill/M&T Bank Loan	9,000,000	78.8%	LIBOR/4 yrs w/ baloon/1 <sup>st</sup> on M&E, A/R, inventory
Company Equity	<u>1,673,000</u>	<u>14.6%</u>	
Total Project Financing	<u>\$11,428,000</u>	<u>100.0%</u>	

\*Loan will become a grant if job commitments are met.

## III. Project Description

## A. Background

American Packaging Corporation is one of the largest privately held packaging companies in the United States. Founded in Philadelphia in 1902, it relocated to Rochester in 1966. The Company has grown through acquisitions and has expanded its facility in Rochester several times. APC produces flexible packaging for food products, personal care items, agriculture and lawn care products, and specialty items such as trading cards and license plates. Customers include Unilever, General Mills, GlaxoSmithKline, Kraft Foods and Kellogg.

The Company employs 520 nationwide at its three facilities in New York, Wisconsin and Iowa. Driven by the sustainability initiatives of its customers, the Company has experienced increased business due the demand for “green packaging,” requiring less energy consumption and reduced carbon dioxide emissions. The Company determined that in order to expand in New York, it needed to modernize its aging Rochester facilities. Expansion at the two other locations, which was also being considered, would cost less because these facilities are more modern. In order to make the project financially feasible, the Company approached ESD for assistance to lower the costs of expanding in New York. ESD responded with an offer of a \$150,000 capital grant in February 2008, which the Company accepted on April 10, 2008. Additionally, the Company received incentives from the City of Rochester, County of Monroe and the local utility Rochester Gas and Electric to pursue the project. Based on ESD’s and other local incentives, the Company decided to expand and modernize its Rochester manufacturing facilities. In addition to the new jobs, 15 jobs from Rochester would have been moved if the project had occurred at one of the other locations.

## B. The Project

The Company acquired adjacent land, prepared the site, and completed a 15,000 square-foot plant addition. The general contractor was Mitchell Group of Pittsford, NY. APC also installed new machinery and equipment for extrusion, laminating and coating to add an additional manufacturing line that produces extrusion laminated flexible packaging, giving APC a total of three such lines. Other purchased machinery includes new slitting and finishing equipment needed to handle the increased production. As a result of the project, APC will increase its production capacity and achieve significant cost savings in its Rochester facility. The Company has retained 147 jobs, including 15 that were at risk, and has already created six of the 25 new jobs.

## C. Financial Terms and Conditions

1. The Company shall pay a commitment fee of 1% of the \$150,000 capital grant (\$1,500) upon execution of the grant disbursement agreement. In addition, at the time of disbursement, the Company will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will be obligated to advise ESD of a material adverse change in its financial condition prior to disbursement.

3. The Company or the Company's shareholders will contribute at least 10% in equity to the Project. Equity is defined as any non-debt source of capital, and should be auditable through Company financial statements or Company accounts, if so requested by ESD.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.
5. Up to \$150,000 will be disbursed to the Grantee in three installments as follows:
  - a) an Initial Disbursement of an amount equal to 50% of the grant (\$75,000) upon documentation of land acquisition/construction/machinery and equipment project costs totaling \$8,400,000, including a certificate of occupancy, and documentation of the employment of at least 147 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available;
  - b) a Second Disbursement of an amount equal to 25% of the grant (\$37,500) will be disbursed upon documentation of the employment of at least 160 Full-time Permanent Employees at the Project Location (Employment Increment of 13), provided Grantee is otherwise in compliance with program requirements;
  - c) a Third Disbursement of an amount equal to 25% of the grant (\$37,500) will be disbursed upon documentation of the employment of at least 172 Full-time Permanent Employees at the Project Location (Employment Increment of 12), provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESDC of an invoice and such other documentation as ESDC may reasonably require. Expenses must be incurred on or after April 10, 2008 to be considered eligible project costs. All disbursements must be requested by April 1, 2012.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$150,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an

“Employment Shortfall”), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee’s number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	147
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A	B
Reporting Date	Employment Goals
February 1, 2010	$147+X+Y$
February 1, 2011	$147+X+Y$
February 1, 2012	$147+X+Y$
February 1, 2013	$147+X+Y$
February 1, 2014	$147+X+Y$

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=13, and Employment Goals shall equal  $[147+ X = 160]$  if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee’s Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=12, and Employment Goals shall equal  $[147 + X + Y = 172]$  if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

IV. Statutory Basis

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms.

As a result of this project, the Company will maintain its employment level of 147, including retention of 15 jobs which were at risk of relocation to another state. In addition, the Company will create 25 new jobs.

2. The proposed project would be unlikely to take place in New York State without the requested assistance.

The Company considered expansion at its Iowa or Wisconsin facilities. ESD's assistance helped to reduce costs and make the project feasible in New York.

3. The project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$1,690,426;
- Fiscal cost to NYS government is estimated at \$150,000;
- Project cost to NYS government per direct job is \$5,127;
- Project cost to NYS government per job (direct plus indirect ) is estimated at \$2,282;
- Ratio of project fiscal benefits to costs to NYS government is 11.27:1;
- Fiscal benefits to all governments (state and local) are estimated at \$2,846,854;
- Fiscal cost to all governments is \$150,000;
- All government cost per direct job is \$5,127;
- All government cost per total job is \$2,282;
- The fiscal benefit to cost ratio for all governments is 18.98:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$14,237,305, or \$216,567 per job (direct and indirect);
- The economic benefit to cost ratio is 62.65:1;
- Project construction cost is \$3,998,000 which is expected to generate 39 direct job years and 27 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.25 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

4. The requirements of Section 10(g) of the Act are satisfied.

No residential relocation is required because there are no families or individuals residing on the site.

## V. Environmental Review

The New York State Department of Environmental Conservation has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. This review found the project would not have a significant effect on the environment. ESD staff reviewed the supporting materials and concurs. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

VI. Affirmative Action

ESD’s Non-Discrimination and Affirmative Action policy will apply. The Company is encouraged to include minorities and women in any job opportunities created by the project and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions  
New York State Map  
Cost-Benefit Analysis

August 19, 2009

Rochester (Monroe County) – American Packaging Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) – Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

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RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the American Packaging Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Sections 16-m and 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms;
2. The project would be unlikely to take place in New York State without the requested assistance;
3. The project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs;
4. There are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16 (2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to American Packaging Corporation a grant for a total amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000) from the Empire State Development Fund, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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August 19, 2009

Rochester (Monroe County) – American Packaging Capital – Empire State Economic Development Fund– General Development Financing (Capital Grant) – Determination of No Significant Effect on the Environment

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RESOLVED, that based on the material submitted to the Directors with respect to the American Packaging Capital Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

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