

FOR CONSIDERATION

March 26, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Hicksville (Nassau County) – Kozy Shack MAP 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

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General Project Plan

I. Project Summary

Grantee: Kozy Shack Enterprises, Inc. (“Kozy Shack” or the “Company”)

ESD\* Investment: A grant of up to \$337,000 to be used for a portion of the cost of lease, renovations, and the purchase and installation of machinery and equipment.

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

Project Locations: 27, 50 and 83 Ludy Street, Hicksville, Nassau County

NYS Empire Zone  
(or equivalent): Nassau County

Proposed Project: Building lease, renovations and purchase and installation of new machinery and equipment, associated with increases in production and capacity

ESD Incentive Offer Accepted: November 9, 2007 (initial offer); February 25, 2010 (revised offer)

Project Completion: January 2010

Number of Employees at Project Locations:

Initial employment at time of ESD Incentive Offer: 322

Current employment level: 319

Minimum employment through January 1, 2015: 310

Grantee Contact: Michael Caridi, Vice President, Operations  
83 Ludy Street  
Hicksville, NY 11801  
Phone: (516) 870-3302  
Fax: (516) 870-3303

Anticipated  
Appropriation

Source: Empire State Economic Development Fund

ESD Project No.: V797

Project Team: Origination Barry Greenspan  
Project Management Brendan Healey  
  
Affirmative Action Laverne Poole  
Finance Yang Song  
  
Environmental Soo Kang

## II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Machinery & Equipment	9,336,000
Renovations	864,000
Soft Costs	<u>300,000</u>

Total Project Costs \$10,500,000

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	337,000	3.2%
Company Equity	<u>10,163,000</u>	<u>96.8%</u>
Total Project Financing	<u>\$10,500,000</u>	<u>100.0%</u>

### III. Project Description

#### A. Background

Kozy Shack is a privately and family owned manufacturer of pudding and gelatin treats. The Company also provides refrigerated distribution services to other manufacturers and distributors. Kozy Shack was founded in 1967 in a Brooklyn delicatessen and has grown to become the second largest pudding producer in the United States behind Kraft Foods' Jell-O brand. It currently controls approximately 27.5% market share and had sales of \$176.2 million in 2009. The Company's headquarters is located in Hicksville, which it moved to in 1994 and where it has approximately 124,000 square feet of production space. Its other locations include manufacturing plants in California and Ireland. Kozy Shack's largest customers include major supermarkets, mass merchandisers, club stores and natural food stores. Its significant competitors include ConAgra (Hunt's Snack Pack), General Mills (Yoplait), and Kraft Foods North America (Jell-O).

Manufacturing is the most significant wealth-creating and value-adding sector of the NYS economy outside of the New York City metropolitan area. The purpose of the ESD's Manufacturing Assistance Program ("MAP") is to encourage New York State manufacturers to invest in projects that substantially improve the competitiveness and productivity of their operations, thus increasing their long-term viability and ensuring the health of the state's manufacturing economy.

There is significant pressure in the dairy dessert/snack/pudding marketplace as many of Kozy Shack's competitors are global giants in the food processing industry. These larger global brands are constantly bringing new products to market with the benefit of much larger marketing and advertising budgets. The Company's competitors also benefit from highly efficient supply chains and distribution networks as well as significant economies of scale.

Kozy Shack must continue to innovate and invest in new technology to remain competitive. Effectively tracking and measuring quality in the production process, inventory levels and distribution of product are areas where the Company needs to continue to make investments. The greatest impediment to Kozy Shack's continued success and ability to grow market share had been the lack of production capacity in its existing manufacturing facilities. It became critical that the Company increase its manufacturing operations and production capacity to keep pace with increased product demand, otherwise it would fall behind its competitors in market share and risk not being able to adequately fill large customer orders on a timely basis.

Kozy Shack considered making investments at its California facility and locations identified in Pennsylvania. In order to induce the Company to invest in its Hicksville locations, ESD offered a \$350,000 MAP capital grant. The Company accepted the offer in November 2007. In February 2010, Kozy Shack accepted a revised offer from ESD of a \$337,000 MAP capital grant, which was reflective of employment commitments the Company is able to make. As a result of the project, Kozy Shack will retain 310 jobs through January 1, 2015.

Kozy Shack received two Job Development Authority loans totaling \$1,407,000 in 1996. Both loans were paid in full in May 2002. In addition, Kozy Shack received a \$25,000 grant in 2005 to

cover a portion of the cost of developing an international market development and export readiness plan and participation in foreign trade shows. The Company complied with all requirements of this grant.

## B. The Project

Kozy Shack executed a 10-year lease on 27 Ludy Street and created a dry goods warehouse in this 20,000-square-foot space, which expanded the Company's storage capacity. In addition, Kozy Shack undertook building renovations and purchased and installed machinery and equipment at 27 Ludy Street, 50 Ludy Street and 83 Ludy Street to increase production capacity. New machinery and equipment included batching, processing, and packaging equipment. The new machinery and equipment included batching, processing, and packaging equipment. The new fillers, kettles and cooling equipment have allowed the Company to better measure the efficiency and quality of the manufacturing process. The new equipment has more detailed instruments and provides specific data related to the processing, cooking, and cooling process, which allows much better control over the manufacturing process.

The upgrades have allowed automation of certain processes that had been done manually, which creates greater efficiency and less waste. The new equipment has also allowed Kozy Shack to have a more flexible production process. For example, by using a two-stage filler, Kozy Shack can automatically insert different flavors such as fruit into specific batches of pudding. In addition, the Company can now put various seals and domes on top of various sized containers more effectively. Lastly, the project has enabled Kozy Shack to significantly expand its existing product line shelf line, with the new automatic spiral cooling system allowing for spacing efficiency, which allows the temperature of the product to cool quicker. This will allow Kozy Shack to enter far away markets more efficiently than under its previous manufacturing process.

The project was completed in January 2010. The project has allowed Kozy Shack to increase its annual production to over 75 million pounds of commercially acceptable pudding. In addition, waste has been reduced as a result of the project.

## C. MAP Project Findings and Outcomes

This project qualifies as a Manufacturing Assistance Program project because the Company i) is a resident New York State manufacturer with between 50 and 1,000 employees; ii) exports at least 30% of its production beyond its region or provides at least 30% of its production to a manufacturer that exports beyond the Company's region; and iii) is making a substantial investment of at least \$1,000,000 in order to improve its competitiveness and productivity and thereby enhance its long-term viability in the State of New York.

The project is expected to produce the following measurable outcomes for the Company:

Primary Outcome(s): An increase in annual production to 75 million pounds of commercially acceptable pudding from approximately 66.6 million pounds. This outcome has already been achieved.

Secondary Outcome(s): Reductions in waste and increase in efficiency.

Total estimated value of competitiveness and project outcomes: \$15,503,802 annually.

D. Financial Terms and Conditions

1. The Company shall pay a commitment fee of 1% of the \$337,000 capital grant (\$3,370) 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 demonstrate no 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 \$337,000 will be disbursed to the Grantee in three installments as follows:
  - a) an Initial Disbursement of an amount equal to 33.3% of the grant (\$112,333) will be disbursed upon documentation of renovation and machinery and equipment project costs totaling \$5,500,000, execution of a 10-year lease for 27 Ludy Street, and documentation of the employment of at least 310 Full-time Permanent Employees at the Project Locations, assuming that all project approvals have been completed and funds are available;
  - b) a Second Disbursement of an amount equal to 33.3% the grant (\$112,333) will be disbursed upon documentation that at least 75 million pounds of commercially acceptable pudding has been produced over a 12 month period, documentation of an additional \$1,000,000 in renovation and machinery and equipment project costs (\$6,500,000 total), and documentation of the employment of at least 310 Full-time Permanent Employees at the Project Locations, provided Grantee is otherwise in compliance with program requirements. Production increases shall be certified in a production report by the manufacturing manager and by a Certified Public Accountant, with such additional evidence as ESD may require;
  - c) a Third Disbursement of an amount equal to 33.3% of the grant (\$112,334) will be disbursed upon documentation of an additional \$3,700,000 in renovation and machinery

and equipment project costs (\$10,200,000 total), and documentation of the employment of at least 310 Full-time Permanent Employees at the Project Locations, provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenses must be incurred on or after November 9, 2007 to be considered eligible project costs. All disbursements must be requested by April 1, 2013.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$337,000, 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 ESDC, Grantee shall be obligated to repay to ESDC 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	310
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A	B
Date	Employment Goals
February 1, 2011	310
February 1, 2012	310
February 1, 2013	310
February 1, 2014	310
February 1, 2015	310

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 make significant investments in its manufacturing facility, thereby ensuring its continued viability and the retention of 310 employees. In addition, this project will help make the Company more competitive, and thus increase the economic viability of the state’s manufacturing industry.
  
2. The proposed project would be unlikely to take place in New York State without the requested assistance.  
Without ESD assistance, this project would likely have been relocated to an existing facility in California or a new facility in Pennsylvania.
  
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 \$9,265,766;
  - Fiscal cost to NYS government is estimated at \$337,000;
  - Project cost to NYS government per direct job is \$1,553;
  - Project cost to NYS government per job (direct plus indirect ) is estimated at \$851;
  - Ratio of project fiscal benefits to costs to NYS government is 27.49:1;
  - Fiscal benefits to all governments (state and local) are estimated at \$16,610,203;
  - Fiscal cost to all governments is \$337,000
  - All government cost per direct job is \$1,553;
  - All government cost per total job is \$851;

- The fiscal benefit to cost ratio for all governments is 49.29:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$75,131,128, or \$189,697 per job (direct and indirect);
- The economic benefit to cost ratio is 222.94:1;
- Project construction cost is \$1,164,000 which is expected to generate 9 direct job years and 6 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 0.84 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

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

ESD staff has determined that the project constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

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  
 Project Finance Memorandum  
 Cost-Benefit Analysis

March 26, 2010

Hicksville (Nassau County) – Kozy Shack MAP Capital – Empire State Economic Development Fund – 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 Kozy Shack MAP Capital -- Empire State Economic Development Fund 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 Kozy Shack Enterprises, Inc. a grant for a total amount not to exceed Three Hundred Thirty Seven Thousand Dollars (\$337,000) from the Empire State Economic 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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