

FOR CONSIDERATION

November 19, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Geneva (Ontario County) – Zotos International 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

General Project Plan

I. Project Summary

Grantee: Zotos International, Inc.

ESD* Investment: A grant of up to \$459,000 to be used for a portion of the cost of 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: 300 Forge Avenue, Geneva, Ontario County

NYS Empire Zone
(or equivalent): City of Geneva Empire Zone.

Proposed Project: Purchase of machinery and equipment to improve productivity, to comply with FDA regulations for cosmetics manufacturing, and wastewater treatment improvements

ESD Incentive Offer Accepted: March 24, 2008

Project Completion: June 2009

Number of Employees at Project Location:

Initial employment at time of ESD Incentive Offer:	394*
Current employment level:	464
Minimum employment through January 1, 2014:	394*

*Includes 284 full-time Zotos employees and 110 full-time contract employees.

Grantee Contact: Jack O'Donnell, Director, Manufacturing Accounting Services
300 Forge Avenue
Geneva, New York 14456
Phone: (315) 781-9231
Fax: (315) 789-0744

Anticipated
Appropriation

Source: Empire State Economic Development Fund

ESD Project No.: V931

Project Team:	Origination	Greg Parker
	Project Management	Edward Muszynski
	Affirmative Action	Helen Daniels
	Finance	Amit Nihalani
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Filling & Packaging Equipment	\$3,862,000
Blow Molding Equipment/Upgrades	828,000
Silk Screening Upgrades	295,000
Waste Water Treatment Upgrades	250,000
U.S. FDA Compliance	690,000
Training/Software	<u>225,000</u>
Total Project Costs	<u>\$6,150,000</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$459,000	7.5%
Company Equity	<u>5,691,000</u>	<u>92.5%</u>
Total Project Financing	<u>\$6,150,000</u>	<u>100.0%</u>

III. Project Description

A. Background

Zotos International, Inc. (“Zotos” or the “Company”) is a leading worldwide haircare company. Founded as Sales Affiliates in 1929 to develop, manufacture and sell hair dyes and cosmetics, the Company grew by acquisitions and, in 1963, moved to its current facility in Geneva, New York. Zotos pioneered the use of hair waving products that worked without heat and introduced many hair coloring, bleaching and conditioning products. In 1970, the Company changed its name to Zotos International and, in 1988, was acquired by Shiseido Company, Ltd. (“Shiseido” or the “Parent”), headquartered in Japan. (The U.S. affiliate of the parent company, Shiseido Americas Corporation, is based in Oakland, NJ.) Zotos produces perms and hair colors under the Shiseido name. In the 1990s, Zotos purchased the Helene Curtis and Lamaur professional salon businesses to double its production volume. In 2002, Zotos acquired Joico Laboratories, Inc., of California, and integrated it into the Geneva facility. Major customers include CVS Corporation, Sally Beauty Distribution and Regis Corporation, which owns many salons that operate under such names as Supercuts, Sasoon and Cost Cutters. Major competitors include L’Oreal, Proctor and Gamble, John Paul Mitchell and Estee Lauder.

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.

In 2008, the Parent and its U.S affiliate undertook a global facility review, with an eye on productivity upgrades and possible plant consolidations. The Parent has two manufacturing plants in New Jersey, as well as plants in Europe, Asia and Japan. Certain products being produced overseas were considered for transfer to either Geneva or one of the New Jersey locations. Zotos approached ESD, which offered a \$459,000 MAP Capital Grant in March 2008, which the Company accepted on March 24, 2008. Without ESD’s assistance to reduce manufacturing costs and improve productivity within the timeline set by the Parent, the project would have been unlikely to occur in New York and would have resulted in a significant missed opportunity and the loss of 100 jobs for the Geneva plant.

ESD assisted Zotos in 2002, when the Company acquired Joico Laboratories. ESD’s \$325,000 relocation grant helped to move these operations to Geneva and Zotos gained additional haircare lines. Zotos increased its baseline of 239 permanent full-time jobs to 250 full-time jobs

under that grant, and it complied with all job-related requirements.

B. The Project

The Company has purchased equipment for blow molding, silk screening, filling and packaging operations. Additionally, Zotos has made the production and testing areas compliant with the U.S. Food and Drug Administration's regulations for cosmetic manufacture and, separately, is working toward meeting voluntary "best practice" guidelines referred to as Current Good Manufacturing Practice, as stipulated in the Federal Food, Drug and Cosmetic Act. The Company also completed needed wastewater upgrades and expended funds on training and new software. Zotos will retain 284 full-time permanent jobs, including 100 that would have been lost, and 110 full-time contract employees at the project location. As a result of the project, Zotos has the capacity to accept additional business from other facilities due to its improved productivity and compliance with the latest government regulations for its industry. Zotos has continued to grow by implementing new initiatives, and has already exceeded the job retention requirements under the grant.

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: Production of 54 million units of commercially acceptable haircare product over a ten-month period, currently anticipated to span from October 2008 through July 2009.

Secondary Outcome: Wastewater treatment improvements to ensure that Zotos is compliant with discharge permit levels set by City of Geneva.

Total estimated value of competitiveness and project outcomes: \$1,797,131 annually.

D. Financial Terms and Conditions

1. The Company shall pay a commitment fee of 1% of the \$459,000 capital grant (\$4,590) 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. Shiseido Americas Corporation will guarantee the grant repayment obligation of its subsidiary, Zotos International, Inc., in the event of an Employment Shortfall or other default, as defined in these materials or the Grant Disbursement Agreement.
4. 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.
5. Up to \$459,000 will be disbursed to the Grantee in two installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$229,500) will be disbursed upon documentation of completion of at least \$3,000,000 of the project costs as described in these materials, and documentation of the combined employment of at least 394 Full-time Permanent Employees and Full-time Contract Employees at the Project Location, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of 50% of the grant (\$229,500) will be disbursed upon documentation of completion of an additional \$3,000,000 (for a total of \$6,000,000) of the project costs as described in these materials, documentation of the combined employment of at least 394 Full-time Permanent Employees and Full-time Contract Employees at the Project Location, and the achievement of 100% of the anticipated Primary Outcome (production of 54 million units of commercially acceptable haircare product over a ten-month period), assuming that all project approvals have been completed and funds are available.

Payment will be made upon presentation to ESDC of an invoice and such other documentation as ESDC may reasonably require. Verification of both project expenditures and production will be made by a Certified Public Accountant or other method acceptable to ESD. Expenses must be incurred on or after March 24, 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 \$459,000, 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 and Full-time Contract 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 and Full-time Contract 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	394
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A	B
Date	Employment Goals
February 1, 2011	394
February 1, 2012	394
February 1, 2013	394
February 1, 2014	394

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 394 permanent and contract employees, including retention of 100 full-time jobs which were at risk of relocation to another state. 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.

The Company considered relocating a portion of its worldwide operations to New York or New Jersey. 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 \$6,805,042;
- Fiscal cost to NYS government is estimated at \$459,000;
- Project cost to NYS government per direct job is \$4,804;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$1,217;
- Ratio of project fiscal benefits to costs to NYS government is 14.83:1;
- Fiscal benefits to all governments (state and local) are estimated at \$11,426,169;
- Fiscal cost to all governments is \$459,000;
- All government cost per direct job is \$4,804;
- All government cost per total job is \$1,217;
- The fiscal benefit to cost ratio for all governments is 24.89:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$50,123,221, or \$132,903 per job (direct and indirect);
- The economic benefit to cost ratio is 109.20:1;
- Project construction cost is \$940,000 which is expected to generate 9 direct job years and 7 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 2.97 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 2 years.

(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

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

November 19, 2009

Geneva (Ontario County) – Zotos International MAP 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

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 Zotos International MAP 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 Zotos International, Inc. a grant for a total amount not to exceed Four Hundred Fifty-Nine Thousand Dollars (\$459,000) 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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