

FOR CONSIDERATION

January 20, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Elma (Western New York Region – Erie County) – Steuben Foods 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: Steuben Foods, Inc. (“Steuben” or the “Company”)

ESD\* Investment: A grant of up to \$2,500,000 to be used for a portion of the cost of machinery and equipment.

Project Location: 1150 Maple Road, Elma, Erie County

Proposed Project: Purchase and install new machinery and equipment to produce aseptic and extended shelf life products at the Company’s NYS facility, including retaining and creating jobs.

Regional Council: The Western New York Regional Council has been made aware of this item.

ESD Incentive Offer Accepted: September 28, 2010

Project Completion: December 2012

Number of Employees at Project Location:

Initial employment at time of ESD Incentive Offer:	426
Current employment level:	489
Minimum employment on January 1, 2014:	576

Grantee Contact: Mr. Thomas M. Krol, General Counsel  
1150 Maple Road  
Elma, NY 14059  
Phone: (716) 655-4000  
Fax: (716) 655-4078

Anticipated  
Appropriation

Source: Empire State Economic Development Fund

ESD Project No.: X129

Project Team:	Origination	Will Welisevich
	Project Management	Jean Williams
	Affirmative Action	Helen Daniels
	Finance	Amit Nihalani
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Machinery & Equipment Acquisition	<u>\$26,211,253</u>

Total Project Costs	<u>\$26,211,253</u>
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<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Grant	\$ 2,500,000	9%	
Tetra Pak Equipment Lease 4439-11	3,658,260	14%	5%/84 mos/1 <sup>st</sup> on M&E
Tetra Pak Equipment Lease 4440-11	1,829,130	7%	5%/84 mos/1 <sup>st</sup> on M&E
Tetra Pak Equipment Lease 4441-11	1,679,975	6%	5%/72 mos/1 <sup>st</sup> on M&E
Tetra Pak Equipment Lease 4442-11	664,937	3%	5%/60 mos/1 <sup>st</sup> on M&E
Company Equity	<u>15,878,951</u>	<u>61%</u>	
Total Project Financing	<u>\$26,211,253</u>	<u>100%</u>	

### III. Project Description

#### A. Background

Steuben Foods, Inc., established in 1981, is a contract food manufacturer, packager/bottler of low acid aseptic and extended shelf life food products including milk and soy-based beverages, yogurts, soups, nutritional drinks, and other extended life products for global and regional brand food companies. The Company, headquartered in Jamaica, New York, established a manufacturing facility in Elma in 1985 producing dairy-based cupped food products, primarily yogurt. Steuben has significantly expanded manufacturing operations including a line of refrigerated pudding products for the Hershey Company in 1989; the Nabisco's Snackwell Yogurt line in 1995; and partnering with Horizon Organic Dairy ("Horizon"), a leading producer of organic milk, in 2007 to construct a new organic milk processing plant offering intermediate products such as pasteurized and organic milk, which was previously transported from as far away as Idaho. The Company is one of the largest aseptic and extended shelf life food production facilities in North America, capable of producing up to 20 million cases of product annually. The Company partners with food companies and equipment manufacturers in an effort to maximize technological advances in aseptic processing and packaging options.

The Company's major customers include Horizon Organic Dairy (Boulder, CO); Kroger Stores (Cincinnati, OH); and Albertsons Grocery Stores (now SUPERVALU – Eden Prairie, MN). Primary competitors include Farmland Dairy (Grand Rapids, MI); Kerry Foods (Savannah, GA); and Stremick's Heritage Foods (Joplin, MO).

In mid-2010, Steuben Foods notified ESD of an opportunity to add three new filling lines to produce aseptic and extended shelf life products to allow products to be stored for extended periods without refrigeration. The Company required a significant expansion and renovation of its existing facility and upgrades to its machinery and equipment, however, it lacked sufficient funds to proceed with the investment. As 95% of the Company's product is sold out of state, Steuben was seriously considering establishing a manufacturing facility in either Idaho or Oregon to establish flexibility in production and to reduce logistics costs. The Elma site was at a disadvantage due to New York State's high utility rates. Steuben Foods therefore sought ESD's financial assistance and accepted ESD's September 20, 2010 incentive of a \$2.5 million in capital grant offer as an inducement to proceed with the investment. Without ESD assistance, the project would likely not have taken place in New York State. Moreover, as Steuben obtains 40% of its raw material from New York, the project will have a positive impact on New York dairy industry.

Previously, ESD Directors approved a \$950,000 MAP grant in 2008 to assist the Company with the construction of a milk pasteurization plant and new machinery and equipment. The \$22 million project was complete in 2008. The Company has complied with the terms of the grant and successfully completed the project.

## B. The Project

The \$26 million project involves the purchase and installation of new machinery and equipment, including high speed bottling filling systems, tanks, pipes, and conveyors necessary to establish new filling operations as follows: aseptic plastic bottle line; three Tetra A3 compact fillers; base liter filler; and aseptic food service plastic bag filler. The project is expected to increase manufacturing output by more than 50%. Steuben is also investing an additional \$30 million for plant/process infrastructure and product line improvements necessary to accommodate the new filling machinery and equipment four out of the six filling lines and created 63 new jobs, currently employing 489 people. The project, expected to retain 426 jobs and create 150 new jobs by January 1, 2014, is expected to be fully completed and operational by December 2012.

## C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$2,500,000 capital grant (\$25,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material or adverse changes in its financial condition prior to disbursement.
3. The Company will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Company's acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
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 \$2,500,000 will be disbursed to the Grantee in three installments as follows:
  - a) an Initial Disbursement of an amount equal to 33% of the grant (\$825,000) upon documentation verifying project expenditures of approximately \$12 million in machinery and equipment, and documentation of the employment of at least 426 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 33% of the grant (\$825,000) will be disbursed upon completion of the project substantially as described in these materials; documentation, including but not limited to machinery and equipment leases, verifying additional project expenditures of approximately \$14 million (aggregate total of \$26 million) in machinery and equipment; and documentation of the employment of at least 501 Full-time Permanent Employees at the Project Location (Employment Increment of 75), provided Grantee is otherwise in compliance with program requirements;
- c) a Third Disbursement of an amount equal to 34% of the grant (\$850,000) will be disbursed upon documentation of the employment of at least 576 Full-time Permanent Employees at the Project Location (Employment Increment of 75), 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. Expenditures must be incurred on or after September 28, 2010, to be considered eligible project costs. All disbursements must be requested by April 1, 2014.

- 6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$2,500,000, 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	426
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A	B
Reporting Date	Employment Goals
February 1, 2013	426+X+Y
February 1, 2014	426+X+Y
February 1, 2015	426+X+Y
February 1, 2016	426+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=75, and Employment Goals shall equal [426 + X = 501] 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=75, and Employment Goals shall equal [426 + X + Y = 576] 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 retain its employment level of 426 full time permanent employees and create 150 new jobs by January 1, 2016.

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

The Company considered establishing a manufacturing operation in Idaho or Oregon. 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 \$21,401,160;
- Fiscal cost to NYS government is estimated at \$2,500,000;
- Project cost to NYS government per direct job is \$7,613;
- Project cost to NYS government per job (direct plus indirect ) is estimated at \$2,973;
- Ratio of project fiscal benefits to costs to NYS government is 8.56:1;
- Fiscal benefits to all governments (state and local) are estimated at \$36,529,069;
- Fiscal cost to all governments is \$2,500,000;
- All government cost per direct job is \$7,613;
- All government cost per total job is \$2,973;
- The fiscal benefit to cost ratio for all governments is 14.61:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$196,089,094, or \$233,194 per job (direct and indirect);
- The economic benefit to cost ratio is 78.44:1;
- There is no construction activity related to this project;
- For every permanent direct job generated by this project, an additional 1.56 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is two 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

The Erie County Industrial Development Agency, as lead agency, 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, which determined the project to be an Unlisted Action, 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. Steuben 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  
Benefit-Cost Analysis

January 20, 2012

Elma (Western New York Region – Erie County) – Steuben Foods Capital – Empire State Economic Development Fund Capital – 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 Steuben Foods Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Capital 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Steuben Foods, Inc. a grant for a total amount not to exceed Two

Million Five Hundred Thousand Dollars (\$2,500,000) 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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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January 20, 2012

Elma (Western New York Region – Erie County) – Steuben Foods 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 Steuben Foods Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

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