

FOR CONSIDERATION

June 28, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: New Berlin (Chenango County) – Agro Farma, Incorporated – New Markets Tax Credit Program (Allocation)

REQUEST FOR: Findings and Determinations Pursuant to Sections 12 and 10(g) of the Act; Authorization to Prioritize the Project and Take Related Actions; Authorization and Approval of the Project, as Authorized by the Empire State New Market Corporation; Determination of No Significant Effect on the Environment

I. Program Background

The New Markets Tax Credit Program (“NMTC”), enacted in 2000, offers a non-refundable tax credit intended to encourage private capital investment in low-income communities. NMTCs are allocated by the U.S. Department of the Treasury’s Community Development Financial Institutions Fund (“CDFI”) under a competitive application process. Investors who make Qualified Equity Investments (“QEIs”) reduce their federal income tax liability by claiming the credit.

Community Development Entities (“CDEs”) apply to the CDFI for an allocation of the New Markets Tax Credit. The CDE seeks taxpayers to make QEIs in the CDE. The CDE then makes loans or equity investments in low-income communities and low-income community businesses, all of which must also be qualified. After the CDE is awarded a tax credit allocation, the CDE is authorized to offer the tax credits to its private equity investors. Typically, a CDE will create subsidiary organizations, such as an LLC, and suballocate their NMTCs. Partnerships and LLCs are the preferred way of structuring these programs. These subsidiary organizations must also be certified as CDEs in order to receive such NMTC.

The tax credit value is 39% of the cost of the QEI and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to 5% of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is 6% annually. Investors must retain their interest in a QEI through the seven-year period.

By federal law, the CDE is a domestic corporation or partnership that must go through a certification process to obtain its status. Although both for-profit and not-for-profit CDEs may apply for the NMTC, only for-profit CDEs may pass the NMTC on to investors. To ensure that projects are selected based on economic merit, not-for-profit CDEs awarded NMTCs must transfer their allocations to for-profit subsidiaries before offering NMTCs to investors.

Through the NMTC program, more than \$29.5 billion in New Markets Tax Credits have been awarded to CDEs across the country. Furthermore, as a result of federal legislation enacted in December 2010, the CDFI will be able to allocate an additional \$3.5 billion in NMTCs later this year, resulting in a total allocation authority since inception of \$33 billion.

A number of CDEs, including financial institutions and non-profit entities that are located in New York State, have already successfully utilized these tax credits; however, the CDE that is controlled by a New York State governmental entity, the Empire State New Market Corporation (“ESNMC”), has not. In 2004 and 2007, it did not receive an allocation, but its third application in 2008 was successful. The allocation, made in May 2009, has gone unused because of its inability to form LLCs. Legislation passed in April 2011 now permits the formation of LLCs.

II. Project

On June 24, 2011, the ESNMC Board authorized the following allocation of New Market Tax Credits:

Amount:	Project Sponsor:
Up to \$18,000,000	Agro Farma, Incorporated

Project background and project information can be found in the attached ESNMC materials.

III. Statutory Basis and Findings

New York State legislation requires ESD to select and prioritize projects demonstrating one or more of the following goals or benefits: (a) creating or retaining jobs in low income communities; (b) increasing the provision of goods and services for low income community residents which would otherwise not be available at the same price or quality; (c) supporting minority and women-owned or controlled businesses; (d) expanding housing opportunities for low income community persons; (e) supporting environmentally sustainable outcomes; and (f) supporting efforts that otherwise benefit low income community residents by leveraging further investment in their communities.

This project clearly meets the goals outlined in (a), (e) and (f) above:

- Anticipated retention of 386 jobs and the creation of 450 jobs
- Construction of an anaerobic waste digester, which will convert whey, presently disposed of offsite, into energy that will provide some of the power required by the plant.

- The investment of up to \$18,000,000 of ESNMC New Market Tax Credits, together with allocations from other parties, will leverage nearly \$95,000,000 of other public and private investment in the local economy.

In April the UDC Act was amended to assist NMTC ; specifically, §6262 of the UDC Act was amended to authorize ESDC and its corporate subsidiaries to form LLCs pursuant to Section 203 of the Limited Liability Company Law for the sole purpose of participation in the federal NMTC Program. In addition to applying the State Priorities noted above, the statute requires that projects “be limited to projects that would be authorized under this Act and shall be subject to approval by the Board of the Urban Development Corporation.”

Section 2 provides the effective date and indicates that the legislation will be deemed repealed five years after enactment.

Pursuant to required findings in Section 10 (g) no residential relocation is required as there are no families or individuals residing on the site.

III. Environmental Review

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, ESD staff performed an uncoordinated review. This review determined the project to be an Unlisted Action, which would not have a significant effect on the environment. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

IV. 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.

V. Additional Submissions to Directors

Resolutions
New York State Map
ESNMC Board Materials

June 28, 2011

New Berlin (Chenango County) – Agro Farma Incorporated – New Markets Tax Credit Program (Allocation) – Findings and Determinations Pursuant to Sections 12 and 10(g) of the Act; Authorization to Prioritize the Project and Take Related Actions; Authorization and Approval of the Project, as Authorized by the Empire State New Market Corporation

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 New Berlin (Chenango County) – Agro Farma Incorporated – New Markets Tax Credit Program (Allocation) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby approve the project, in accordance with the requirements of Section 12 and 10 (g) of the Act, based on 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 approve the Project as set forth in the Plan, 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, 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.

* * *

June 28, 2011

New Berlin (Chenango County) – Agro Farma Incorporated – New Markets Tax Credit Program (Allocation) – Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Agro Farma, Incorporated – New Markets Tax Credit Program (Allocation) Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

* * *