

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

Agenda Item #:

6A-3

AGENDA ITEM SUMMARY

Meeting Date: September 1, 2009 [] Consent [x] Regular
[] Workshop [] Public Hearing
Department: County Administration
Submitted By: County Administration
Submitted For: Economic Development Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to Adopt a Resolution approving the application of Oxygen Development LLC, with respect to Recovery Zone Facility Bonds for a certain project; evidencing "official intent" with respect to the issuance thereof; authorizing certain actions related thereto and as to other related matters; and providing for an effective date.

Summary: Oxygen Development LLC (the "Company"), a manufacturer of color cosmetics, skin care, hair care and over-the-counter drug-type products, submitted an application to Palm Beach County for the issuance of RZFB in an amount not to exceed \$24 million (the "Bonds"), for the financing of a manufacturing/global headquarter facility on a site located at 1525 S. Congress Avenue in Palm Springs, which is owned by the Company's affiliate Oxygen Holdings LLC, a real estate alter ego company. The total project investment for facility bond is \$23,110,000. The Company is permitting the bond holders to take a first lien on the above property, which is valued at \$4,000,000, and injecting \$630,000 in cash. The Company will create 800 new full time equivalent jobs within five years of which 51% will be offered to persons with low to moderate income. The County's fees from bond proceeds would pay the County, through the Economic Development Office \$112,400 and the Attorney's Office \$10,000, totaling to a maximum of \$122,400. If issued, the Bonds will be the sole obligation of the Company or said affiliate. **Neither the taxing power nor the faith and credit of the County, nor any County funds, shall be pledged to pay principal or redemption premiums, if any, or interest on the Bonds.** District 3 (PK)

Background and Policy Issues: On February 17, 2009 the American Recovery and Reinvestment Act (ARRA) Section 1401 of Title I of Division B (ARRA) of 2009, Pub. L. No. 111-5, 123 Stat. 115(2009) ("ARRA"), added §§ 1400U-1 through 1400U-3 to the Code authorizing State and local governments to issue Recovery Zone Bonds, which may be issued in an aggregate principal amount of \$15 billion nationwide prior to January 1, 2011 for the purpose of financing depreciable property located in areas characterized by significant poverty, unemployment, general distress, or home foreclosures, including economic distress as a result of a military base closure or realignment. ARRA provides Federal income tax incentives for obligations issued to finance the construction, renovation, or acquisition of Recovery Zone property to be used to qualified business in the Recovery Zone (Recovery Zone Facility Bonds-RZFB). The principal amount of RZFB allocated to Palm Beach County is \$53,988,000, all of which remains to be issued as of this date. On August 18, 2009, the Board of County Commissioners approved a Resolution (R2009-1344) authorizing the issuance of ARRA tax-exempt, private activity Recovery Zone Facility Bonds and providing for the legal process, including application, fees, policy and procedures consistent with Federal Treasury Department Regulations.

Attachments:

1. Resolution
2. Letter of Support from the Business Development Board

Recommended by: [Signature] 8/24/09
Economic Development Director Date
Approved by: [Signature] 8/28/09
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Grant Expenditure	_____	_____	_____	_____	_____
EXTERNAL Revenues	_____	(122,400)	_____	_____	_____
Program Income (PBC)	_____	_____	_____	_____	_____
In-Kind Match (PBC)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS	_____	_____	_____	_____	_____
(Cumulative)	_____	(122,400)	_____	_____	_____

Is Item Included In Proposed budget? Yes _____ No X

Budget Account Number:

Fund Department Unit Object

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____ N/A May 8/24/09

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

me slk 8/21/09
 OFMB 08/26/09 CN 8/25/09
 8/27/09

Jim J. Jewell 8/28/09
 Contract Development and Control

B. Legal Sufficiency:

Paul F. J. 8/28/09
 Sr. Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

RESOLUTION NO. R-2009-_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA APPROVING THE APPLICATION OF OXYGEN DEVELOPMENT, L.L.C. WITH RESPECT TO RECOVERY ZONE FACILITY BONDS FOR A CERTAIN PROJECT; EVIDENCING "OFFICIAL INTENT" WITH RESPECT TO THE ISSUANCE THEREOF; AUTHORIZING CERTAIN ACTIONS RELATED THERETO AND AS TO OTHER RELATED MATTERS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, by pursuant to the Constitution of the State of Florida, Chapter 125, Florida Statutes, Part II of Chapter 159, Florida Statutes, as amended, the Charter of **PALM BEACH COUNTY** (the "County") and other applicable provisions of law (collectively, the "Act"), the County is authorized to issue and sell revenue bonds to finance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under laws of the United States, when such revenue bonds are payable solely from revenue derived from such projects; and

WHEREAS, Section 1401 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), added Sections 1400U-1 through 1400U-3 to the Internal Revenue Code of 1986, as amended (the "Code"), authorizing state and local governments to, among other things, issue Recovery Zone Facility Bonds; and

WHEREAS, pursuant to Section 1400U-1 of the Code, a Recovery Zone is (1) any area designated by an issuer of Recovery Zone Bonds as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by such an issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990; and (3) any area for which a designation as an empowerment zone or renewal community is in effect; and

WHEREAS, the Board of County Commissioners has delegated power to the County Administrator, in consultation with the County Economic Development Office, to designate areas of the County as Recovery Zones; and

WHEREAS, in accordance with Section 1400U-3 of the Code, as added by ARRA, to finance "Recovery Zone Property," there may to be issued, prior to January 1, 2011, for the benefit of "qualified businesses," as such quoted terms are defined therein, Recovery Zone Facility Bonds as an additional category of tax-exempt private activity bonds; and

WHEREAS, pursuant to ARRA, of the \$15 billion of Recovery Zone Facility Bonds that may be issued nation-wide, there is an allocation of \$53,988,000 principal amount of Recovery Zone Facility Bonds that may be issued by the County; and

WHEREAS, **OXYGEN DEVELOPMENT, L.L.C.** has requested that the County consider the issuance of Recovery Zone Facility Bonds for its benefit in connection with the development by it or by Oxygen Holding L.L.C., an affiliate thereof, or by another entity affiliated therewith (collectively, the "Company") of a certain project (the "Project") consisting of the construction on a site owned by the Company at 1525 S. Congress Avenue, Palm Springs, Florida, of an approximately 218,000 square foot facility to be used for the manufacture or distribution of the Company's lines of color cosmetics, skin care, hair care and over-the-counter drug-type products (the "Facility"), with title to the Facility to be held by the Company; and

WHEREAS, the Company has submitted to the County an application with respect to said request by the Company in connection with the Project (the "Application"); and

WHEREAS, the County desires to adopt a resolution describing the Project and the issuance of Recovery Zone Facility Bonds for the benefit of the Company which the County has under consideration with respect to the Project; and

WHEREAS, it is contemplated that the County will hold a public hearing and, to the extent portions of the Project qualify under the Code, issue Recovery Zone Facility Bonds, or

similar bonds, for the financing thereof, in the maximum amount of \$24,000,000 (the "Bonds"), which Bonds are to be non-recourse to the County, the proceeds of which will be loaned to the Company, and which Bonds shall be repaid pursuant to a loan or financing agreement, which are to be obligations of the Company; and

WHEREAS, the Bonds shall not constitute, or be deemed to constitute, a debt, liability or obligation, or a pledge of the faith and credit or taxing power, of the County or of the State of Florida, or of any political subdivision thereof, but, rather, the Bonds shall be payable solely from the revenues and proceeds to be derived by the County from certain payments received under the loan or financing agreement entered into between the County and the Company or from other sources that may be provided as additional security for the Bonds, and shall neither be guaranteed by the County nor assessed against the bonded indebtedness of the County; and

WHEREAS, the Company reasonably expects that it will (1) pay or incur certain capital expenditures in connection with the Project prior to the issuance of the Bonds, (2) use funds from sources other than proceeds of the Bonds which are or will be available on a short-term basis to pay for such capital expenditures, and (3) to the extent permissible under the Code (including the amendments thereto pursuant to ARRA), reimburse itself for the use of such funds with proceeds of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY

COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:

The foregoing recitals are true and correct and are expressly incorporated herein by reference and made a part hereof.

Section I: The Company has presented the Application in a manner and in a form acceptable to the County. Based upon representations made by the Company to the County in said Application and in materials supplemental thereto and in support thereof, the County hereby finds and determines that:

(A) By virtue of the Act, the County has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The County has the authority to take the actions contemplated herein under the Act; and

(C) The actions to be taken by the County will induce the Company to develop the Project, thereby increasing employment opportunities in the County and otherwise furthering the purposes of the County as set forth in the Act, including, without limitation, enhancement of a strong and stable local economy through the creation of new jobs in the County.

Section II. The Application is hereby approved.

Section III. The issuance of the Bonds and the lending of the proceeds thereof to the Company, as contemplated by this Resolution, shall be subject to:

(a) holding a public hearing as required by Section 147(f) of the Code; and

(b) approval by the Board of Commissioners of the County of the issuance of the Bonds in accordance with the provisions of Section 147(f) of the Code; and

(c) agreement by the County, the Company and the purchaser of the Bonds on mutually acceptable terms for the Bonds and for the sale and delivery thereof and mutually acceptable terms and conditions for the security for the payment thereof; and

(d) on the date of sale of the Bonds, that there remains available an amount of the County's original \$53,988,000 Recovery Zone Facility Bond allocation not less than the actual principal amount of the Bonds; and

Business Development Board

PALM BEACH COUNTY'S BUSINESS RESOURCE

Partners in Progress

Palm Beach County Board of County Commissioners

Board of Advisor Members

Akerman Senterfit
Alexandria Real Estate Equities, Inc.
Anspach Effort, Inc.
Bank of America
BIOMET 3i, Inc.
Edwards, Angell, Palmer & Dodge, LLP
Equestrian Sport Productions, LLC
Flagler Real Estate Development
Florida Crystals Corporation
Florida Power & Light Company
Florida Trend Magazine
Gunster
Hardrives, Inc.
KPMG LLC
LRP Publications
Nova Southeastern University
Palm Beach Aggregates, Inc.
Plastridge Insurance Agency
Pratt & Whitney Rocketdyne
Regions Bank
RSM McGladrey McGladrey & Pullen
Templeton & Company
Wachovia Bank, N.A.
Workforce Alliance, Inc.

Corporate Members

1st United Bank
Applefield Waxman, Inc.
Aquila Property Company, Inc. Binks Forest Golf Club
Baron Sign Manufacturing
Brynton Beach Community Redevelopment Agency
Broad and Cassel
C/B Richard Ellis, Inc.
Colgrove Heller Communications
Compton Associates, Inc.
DoubleTree Hotel in the Gardens
Eccleston Organization
Express Employment Professionals
Florida Public Utilities Company
Gatekeeper Business Solutions, Inc.
Gibson Roscoe Owens Advertising
GI Homes
Greenberg Traug, P.A.
Greenspoon Marder, P.A.
Gresham, Smith and Partners
Hedrick Brothers Construction Co., Inc.
JFK Medical Center
K&L Gates
Kaufman Lynn, Inc.
Lockheed Martin Corporation
Mellon United National Bank
Office Depot Foundation
Palm Beach Gardens Marriott
Rendina Companies
RMI Video Production Services
Rutherford Mulhall, P.A.
South Florida Business Journal
Sun-Sentinel Company
TD Bank
Thinsolutions
West Palm Beach Marriott

August 25, 2009

Ms. Shannon LaRocque-Baas, P.E.
Assistant County Administrator
301 North Olive Avenue, 11th Floor
West Palm Beach, FL 33401

Dear Shannon,

The Business Development Board has been working with Oxygen Development since 2005, and it is now ready to move forward with its relocation. The BDB has carefully reviewed the various incentive options open to the company, and advised it on its eligibility for each program. In addition, the BDB has advised the company on the options it has relating to workforce development and is facilitating meeting with Workforce Alliance to evaluate the assistance available. BDB has facilitated meetings with the County's Economic Development Office, and we have worked together to identify various creative financing solutions to assist this project. Having access up to \$24M of Recovery Zone Bonds will provide critical funding for this company to execute its plans.

Oxygen Development plans to relocate its operations to Palm Springs in order to contribute to the overall economy in Palm Beach County, but particularly to the life sciences and headquarter jobs sectors. The company plans to hire 400 new employees which will have a significant positive impact on the area.

The economic impact of attracting Oxygen Development to Palm Beach County is projected to be \$426.6M, with a fiscal impact of \$7.4M. The BDB uses the IMPLAN modeling system to calculate economic impact, and a copy of the report is attached to this letter for your review.

If you have questions or need additional information, please do not hesitate to contact me. Thank you for your support and work on this important project for our community.

Yours sincerely,


Kelly Smallridge
President & CEO

310 EVERNIA STREET, WEST PALM BEACH, FL, 33401
TEL (561) 835-1008 FAX (561) 835-1160 www.bdb.org

**Business Development Board
Economic Impact Projections for Project Oxygen (relocation)**

	Direct	Indirect	Induced	Total
Output	\$591,876,544	\$201,348,621	\$59,944,214	\$853,169,385
Jobs	800.0	1,200.8	490.8	2,491.6
Wages	\$27,600,504	\$75,055,336	\$18,173,357	\$120,829,198
Taxes	\$2,373,941	\$8,337,492	\$4,033,186	\$14,744,619

Avg Wage as % of County Average

	79%	112%
Company Avg Wage	\$34,500	\$48,495
County Avg Wage	\$43,431	\$43,431

Total Economic Impact is an estimated combined effect of a company and the ancillary industries impacted. Direct, indirect, and induced economic effects based on the variables of output, income and employment were examined using IMPLAN Pro Version 2 and 2007 County IMPLAN data from MIG.

Wages based on Florida Agency for Workforce Innovation, 2007 ES-202 program, average county wage of \$43,431 as stated by EFI incentive guidelines.

Taxes estimated are sales, excise, property taxes, fees, licenses and other taxes paid by businesses as derived from U.S. Bureau of Economic Analysis Gross State Product data.