

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

Agenda Item #:

5E

AGENDA ITEM SUMMARY

=====  
Meeting Date: September 15, 2009 [ ] Consent [ ] Regular  
[ ] Workshop [x] Public Hearing  
Department: County Administration  
Submitted By: County Administration  
Submitted For: Economic Development Office  
=====

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to conduct: a Tax Equity and Fiscal Responsibility Act (TEFRA) Public Hearing concerning the issuance of up to \$24,000,000 Recovery Zone Facility Bonds (the Bonds) for the benefit of Oxygen Development LLC (the Company).

**Summary:** On August 18, 2009, the Board of County Commissioners (BCC) approved a Resolution (R2009-1344) authorizing the issuance of the American Recovery and Reinvestment Act (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. On September 1, 2009 (R2009-1443), the BCC approved the Company's application for the issuance of the Bonds in an amount not to exceed \$24,000,000. This transaction will be a tax-exempt, private activity for the financing of a manufacturing/global headquarters facility located at 1525 S. Congress Avenue in Palm Springs. 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. If issued, the Bonds will be the sole obligation of the Company or its affiliate Oxygen Holdings LLC, a real estate alter ego company. **The Bonds will be payable solely from revenues derived from the Company. 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.

**Attachments:**

- 1. Copy of TEFRA Public Notice

=====  
Recommended by: [Signature] 9/2/09  
Economic Development Director Date  
Approved by: [Signature] 9/8/09  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

<b>Fiscal Years</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Capital Expenditures	_____	_____	_____	_____	_____
Grant Expenditure	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (PBC)	_____	_____	_____	_____	_____
In-Kind Match (PBC)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS</b>	_____	_____	_____	_____	_____
<b>(Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included In Current budget? Yes \_\_\_\_\_ No \_\_\_\_\_

**Budget Account Number:**

Fund                      Department                      Unit                      Object

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

C. Departmental Fiscal Review:                     N/A                      8/27/09

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Administration Comments:**

                    9/19/09  
 OFMB                     9/14/09

                    9/19/09  
 Contract Development and Control

**B. Legal Sufficiency:**

                    9/19/09  
 Sr. Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

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

**PUBLIC NOTICE**

**NOTICE OF PUBLIC HEARING BY PALM BEACH COUNTY, FLORIDA, REGARDING THE ISSUANCE BY PALM BEACH COUNTY, FLORIDA OF ITS NOT TO EXCEED \$24,000,000 PALM BEACH COUNTY, FLORIDA RECOVERY ZONE FACILITY BONDS (OXYGEN DEVELOPMENT L.L.C. 2009 PROJECT).**

NOTICE IS HEREBY GIVEN, that the Board of County Commissioners of Palm Beach County, Florida (the "Board"), the governing body of Palm Beach County, Florida (the "County"), will conduct a public hearing at 9:30 A.M. EDT, or as soon thereafter as the same may be heard, on September 15, 2009, concerning the proposed issuance by the County of not to exceed \$24,000,000 principal amount of its tax-exempt Palm Beach County, Florida Recovery Zone Facility Bonds (Oxygen Development L.L.C. 2009 Project), in one or more series (the "Bonds"), the proceeds of which will be loaned by the County to Oxygen Development L.L.C. or to an affiliate thereof (the "Company") to pay costs relating to planning, design, construction and equipping, 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").

The Bonds will be special limited obligations of the County, payable solely from funds received by the County or its assigns from a loan or financing agreement between the County and the Company. The Bonds will also be secured by a mortgage on the Facility.

The public hearing will be held at the following time and location:

**9:30 A.M. EDT, on September 15, 2009  
Palm Beach County Government Center  
301 North Olive Avenue, West Palm Beach, Florida 33401  
Jane Thompson Memorial Chambers – Sixth Floor**

The Bonds will not constitute an indebtedness of the County, the State of Florida (the "State") or any political subdivision of the State within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds shall not constitute a moral obligation of the County or a charge against its general credit. The owners of the Bonds will never have the right to compel the exercise of ad valorem taxing power of the County for the payment of the Bonds. No property of the County, the State, or any political subdivision thereof will be pledged for the payment of the Bonds.

All interested persons are invited to attend the public hearing, which will be the only public hearing concerning the issuance of the Bonds. At such meeting, persons will be given an opportunity to express their views, both orally and through written statements which are submitted to the County Administrator, 11<sup>th</sup> floor, 301 North Olive Avenue, West Palm Beach, Florida 33401, on or before the date of the public hearing. For further information regarding the proposed issuance of the Bonds, contact Paul King, Esquire, Assistant County Attorney at (561) 355-2734. Should any person decide to appeal any decision made by the County with respect to any matter considered at this meeting or hearing, he or she will need a record of the proceedings and may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**In accordance with the Americans with Disabilities Act, persons with disabilities needing special assistance accommodations to participate in this proceeding should contact Paul King, Esquire at (561) 355-2734 no later than five (5) days prior to the hearing for assistance; if hearing impaired, telephone the Florida Relay Service Numbers at (800) 955-8771 (TTD) or (800) 955-8700 (VOICE) for assistance.**

This Notice is published pursuant to the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, and Treasury Regulations Section 5f.103-2.

PALM BEACH COUNTY, FLORIDA

PUB: Palm Beach Post  
August 27, 2009