

PLEASE NOTE - We welcome public comment on the items on the following agenda. To ensure maximum opportunity for participation, speakers representing themselves may speak for up to 2 minutes each, and those representing groups may speak for up to 4 minutes (1 speaker per group). Speakers' comments may address only items considered at today's meeting. Materials relating to matters that are scheduled for discussion in open session will be available at the meeting and will be posted on ESD's website prior to the meeting in accordance with the Public Officers Law

UPSTATE EMPIRE STATE DEVELOPMENT CORPORATION

at the offices of
Empire State Development – Buffalo Regional office
95 Perry Street – Suite 500
Buffalo, New York 14203

Meeting of the Directors

Tuesday

June 26, 2012 – 10:15 a.m.

AGENDA

FOR CONSIDERATION

1. Approval of the Minutes of the May 17, 2012 Directors' Meeting

UPSTATE REGIONAL BLUEPRINT FUND

2. North Tonawanda (Western New York Region – Niagara County) – Audubon Machinery URB Capital - Upstate Regional Blueprint Fund – Business Investment (Capital Loan) – Findings and Determinations Pursuant to Sections 16-q and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Loan and to Take Related Actions

DRAFT – SUBJECT TO REVIEW AND REVISION

UPSTATE EMPIRE STATE DEVELOPMENT CORPORATION

Meeting of the Directors
Held at the New York City Regional Office
633 Third Avenue
New York, New York 10017

and

Syracuse Regional Office
620 Erie Boulevard West
Syracuse, New York 13204

and

Buffalo Regional Office
95 Perry Street
Buffalo, New York 14203

May 17, 2012

MINUTES

**In Attendance
Directors:**

Julie Shimer (Chair)
Kenneth Adams
Sam Hoyt

**Present for Upstate
ESD:**

Stephen Gawlik, Deputy General Counsel
Frances A. Walton, Chief Financial Officer
Eileen McEvoy, Secretary

Present for ESD:

Maria Cassidy, Deputy General Counsel
James Fayle, Director – Central New York Regional Office
Justin Ginsburgh, Chief of Staff
Robert Godley, Treasurer
Edwin Lee, Senior Project Manager – Loans and Grants
Sherri Lippowitsch, Vice President – Loans and Grants
Kathleen Mize, Controller
Susan Shaffer, Vice President – Loans and Grants

DRAFT – SUBJECT TO REVIEW AND REVISION

Chair Shimer then asked Mr. Fayle to present the Owens Brockway Upstate Regional Blueprint Fund Capital grant item for the Directors' consideration.

Mr. Fayle explained that the Directors were being asked to approve a \$525,000 grant to Owens Brockway Glass Container, Inc., a worldwide producer of glass containers for beverages, food and pharmaceuticals.

Mr. Fayle explained that the funds will be used to assist in supporting a \$27.6 million project to rebuild a glass furnace at their plant.

When the Company was analyzing where they wanted to make the investment, Mr. Fayle explained, they approached New York State to see if assistance could be provided to encourage the investment be made in Auburn, New York.

As a result of this grant, Mr. Fayle further noted, the Company did decide to go forward in Auburn. Mr. Fayle added that the grant will assist in retaining 230 jobs and in creating an additional 30 jobs in Auburn, which for a community of that size, is a very significant project.

Following the full presentation, Chair Shimer called for questions or comments. Director Adams commented favorably with regard to the project.

There being no further questions or comments, and upon motion duly made and

DRAFT – SUBJECT TO REVIEW AND REVISION

seconded, the following resolution was unanimously adopted:

Auburn (Central New York Region - Cayuga County) - Owens Illinois URB Capital - Upstate Regional Blueprint Fund - Business Investment (Capital Grant); Findings and Determinations Pursuant to Sections 16q, 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 Owens Illinois URB - Capital - Upstate Regional Blueprint Fund - Business Investment (Capital Grant) Project, (the “Project”), the Corporation hereby determines pursuant to Sections 16q and 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

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 Owens Brockway Glass Container Inc. a grant for a total amount not to exceed Five Hundred Twenty-Five Thousand Dollars (\$525,000) from the Upstate Regional Blueprint 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

DRAFT – SUBJECT TO REVIEW AND REVISION

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.

* * *

There being no further business, the meeting was adjourned at 10:04 a.m.

Respectfully submitted,

Eileen McEvoy
Corporate Secretary

FOR CONSIDERATION

June 26, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: North Tonawanda (Western New York Region – Niagara County) – Audubon Machinery URB Capital – Upstate Regional Blueprint Fund – Business Investment (Capital Loan)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-q and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Loan and to Take Related Actions

General Project Plan

I. Project Summary

Borrower: Audubon Machinery Corporation (“Audubon” or the “Company”)

UESD* Investment: A loan of up to \$300,000 to be used for a portion of building renovations, machinery and equipment and demo test pad construction.

* The Upstate Empire State Development Corporation (the “Corporation”), a subsidiary of the New York State Urban Development doing business as Empire State Development (“ESD”)

Project Location: 814 Wurlitzer Drive, North Tonawanda, Niagara County

Proposed Project: Facility expansion including building renovations, engineering and design costs, and new machinery, furniture, fixtures and equipment necessary to manufacture a new product line.

Project Type: Business expansion involving job retention and creation.

Regional Council: The Western New York Regional Council has been made aware of this item and the project is consistent with the Regional Plan. The Incentive Offer was accepted in April 2010, predating the Regional Council Initiative.

Employment: Initial employment at time of ESD Incentive Offer: 44
 Current employment level: 46
 Minimum employment on January 1, 2017: 76

Loan Financing: The loan will provide permanent financing for a 7 year term at an annual interest rate of 2%.

Security: Unsecured

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Design/Engineering	\$ 535,877
Building Renovations	142,218
Infrastructure Costs	60,000
Machinery & Equipment	248,242
Furniture, Fixtures & Equipment	30,849
Other Costs including ERP software	<u>272,267</u>
 Total Project Costs	 <u>\$1,289,453</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Loan	\$ 300,000	23%	2%/7yrs/unsecured
Company Equity	<u>989,453</u>	<u>77%</u>	
 Total Project Financing	 <u>\$1,289,453</u>	 <u>100%</u>	

III. Project Description

A. Company

Industry: Design and manufacture on-site oxygen generating systems, cage and rackwashing equipment, solar panels, wind turbines and calibration and test equipment.

Company History: The Company was founded in 1995 as a manufacturer of oxygen generating systems, and today consists of four diverse divisions including OGSi, Schlyer Machine, IMT Solar Division, and Starboard Sun.

Ownership: Privately owned

Size: The Company has 46 employees at its combined headquarters and production facility.

Market: Industrial and medical facilities worldwide including Intel Corporation (Hillsboro, OR); West Marine (Sunnyvale, CA), and the University of California at Berkeley (Berkeley, CA). Major competitors include Airsep Corporation (Amherst, NY), Southwest Windpower Inc. (Flagstaff, AZ), and Lynx Product Group (Wilson, NY).

ESD Involvement: In 2009, Audubon notified ESD that it's Starboard Sun division was negotiating with Superwind AG (Bruhl, Germany) to establish a 1050 watt micro wind turbine line manufacturing operation. The new Superwind 1050 product line would significantly expand the Company's renewable energy line, allowing it to increase sales and remain competitive in the emerging green technology industry. However, Audubon lacked sufficient funds to complete the necessary capital investment necessary to accommodate the expanded capacity. The State of North Carolina provided the Company with a proposal in an effort to persuade the Company to establish the new line out of state. In March 2010, ESD provided Audubon with an incentive proposal consisting of a \$300,000 capital loan, which the Company accepted. Without ESD's assistance, the project would likely not have taken place in New York State.

Competition: The Company considered undertaking the project in North Carolina, Virginia or Oklahoma.

Past ESD Support: This is the Company's first project with ESD.

B. The Project

Completion: March 2012

Activity: Infrastructure and building improvements including the installation of an approximate 100-square-foot exterior concrete demo test pad; engineering and design costs; new machinery, furniture, fixtures and equipment including tooling, racking handling, phone systems and IT upgrades; and soft costs necessary to manufacture the new Superwind 1050 micro wind turbine product line.

Results: The Company will retain 44 jobs and create 32 new jobs by January 1, 2017.

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 \$1,224,551;
- Fiscal cost to NYS government is estimated at \$327,818;
- Project cost to NYS government per direct job is \$17,523;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$7,113;
- Ratio of project fiscal benefits to costs to NYS government is 3.74:1;
- Fiscal benefits to all governments (state and local) are estimated at \$1,902,111;
- Fiscal cost to all governments is \$327,818;
- All government cost per direct job is \$17,523;
- All government cost per total job is \$7,113;
- The fiscal benefit to cost ratio for all governments is 5.80:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$7,844,106, or \$170,208 per job (direct and indirect);
- The economic benefit to cost ratio is 23.93:1;
- Project construction cost is \$738,095, which is expected to generate eight direct job years and five indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.47 indirect jobs is anticipated in the state's economy;
- The payback period for NYS costs is three years.

This project is financed by the Upstate Regional Blueprint fund.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

Borrower Contact: Mr. Joseph M. McMahon, President
814 Wurlitzer Drive
North Tonawanda, NY 14120
Phone: (716) 564-5165 Fax: (716) 564-5173

ESD Project No.: X035

Project Team:	Origination	Will Welisevich
	Project Management	Jean Williams
	Legal	Steve Gawlik
	Contractor & Supplier Diversity	Vikas Gera
	Finance	Amit Nihalani
	Environmental	Soo Kang

C. Financial Terms and Conditions

1. The Borrower shall pay a commitment fee of 1% of the \$300,000 loan (\$3,000). In addition, at the time of closing, the Borrower will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Borrower will demonstrate no materially adverse changes in its financial condition prior to closing.
3. Guarantees: Personal Guarantees are required from any individual or family members together owning 20% or more of the Borrower, including Joseph McMahon, Chris Collins, and Robert Schlehr.
4. The Borrower will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Company's written 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.
5. Up to \$300,000 will be disbursed to the Borrower upon completion of the project substantially described in these materials; documentation of \$1.2 million in project costs; and documentation of the employment of at least 44 Full-time Permanent Employees. Expenditures reimbursed by ESD's loan must be incurred on or after March 15, 2010, to be considered eligible project costs. Disbursement of the loan must be requested by April 1, 2013.
6. Prior to disbursement, the Borrower 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 Borrower'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 Borrower to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Borrower'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 Borrower to other employees with comparable rank and

duties.

7. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$300,000, 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.
8. Rate/Term: 2% interest rate over 7 years (eighty-four months). Loan becomes immediately due and payable if Borrower sells or closes the Project Location.
9. Repayment Term: Fully amortizing, Eighty-Four (84) monthly principal and interest payments of \$3,730.23 beginning after disbursement of the subsidized loan.
10. Prepayment penalty: None.
11. In consideration for the making of the Loan, Borrower will achieve the Employment Goals set forth in column B of the table below. If the number (for the preceding calendar year) of Borrower's Full-time Permanent Employees, as defined above, as of each reporting date set forth in column B of the table below, is less than eighty-five percent (85% of the Employment Goal set forth in column B), ESD reserves the right to raise the interest rate on the loan to prime plus 2% at its discretion. The Borrower'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.

Job Commitments:

Baseline Employment	44
---------------------	----

A	B
Reporting Date	Employment Goals
Anniversary Date of Loan Closing 2013	44
Anniversary Date of Loan Closing 2014	44
Anniversary Date of Loan Closing 2015	44
Anniversary Date of Loan Closing 2016	44
Anniversary Date of Loan Closing 2017	76
Anniversary Date of Loan Closing 2018	76
Anniversary Date of Loan Closing 2019	76

12. The Borrower will submit to ESD annual reviewed financial statements and quarterly

internal financial statements certified by an officer of the Borrower.

13. Financial Disclosure: Updated financial disclosure on Borrower and all guarantors acceptable to ESD must be provided prior to closing.
14. Lien/Collateral: Unsecured
15. Due Diligence: Appraisals and engineering and environmental reviews acceptable to ESD must be provided prior to closing, if applicable.

IV. Statutory Basis

This project is authorized under Section 16-q of the New York State Urban Development Corporation Act (the "Act") and satisfies the eligibility criteria in the Act and the rules and regulations for the Upstate Regional Blueprint Fund Program. No residential relocation is required as 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. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business in the performance of ESD contracts. For purposes of this project, however, project performance has already been completed, and therefore, project goals cannot be established.

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

North Tonawanda (Western New York Region – Niagara County) – Audubon Machinery URB Capital – Upstate Regional Blueprint Fund – Business Investment (Capital Loan) – Findings and Determinations Pursuant to Sections 16-q and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Loan 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 Audubon Machinery Capital – Upstate Regional Blueprint Fund – Business Investment (Capital Loan) 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 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 Audubon Machinery Corporation a loan for a total amount not to exceed Three Hundred Thousand Dollars (\$300,000) from the Upstate Regional Blueprint 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 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 loan and grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the loan or grant or collateral securing the loan as he or she may deem necessary or appropriate in the administration of the loan and 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.

* * *

Audubon Machinery URB Capital
North Tonawanda
Niagara County

