



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued July 27, 2020

Devens Enterprise Commission

For the period July 1, 2017 through June 30, 2019





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July 27, 2020

Mr. William P. Marshall, Chairman
Devens Enterprise Commission
33 Andrews Parkway
Devens, MA 01434

Dear Mr. Marshall:

I am pleased to provide this performance audit of the Devens Enterprise Commission. This report details the audit objectives, scope, and methodology for the audit period, July 1, 2017 through June 30, 2019. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Devens Enterprise Commission for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

DEC	Devens Enterprise Commission
MART	Montachusett Regional Transit Authority
MBTA	Massachusetts Bay Transportation Authority
RAHC	regional affordable housing coordinator
RTA	regional transit authority

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Devens Enterprise Commission (DEC) for the period July 1, 2017 through June 30, 2019. In this performance audit, we examined whether DEC had taken measures to accomplish its stated goals related to the oversight and management of new and existing affordable housing in the Devens Regional Enterprise Zone (Devens).¹ We also examined DEC's effort to partner with MassDevelopment,² local businesses, and surrounding communities to establish, support, and improve commuter options for Devens businesses and residents.

Our audit revealed no significant instances of noncompliance by DEC that must be reported under generally accepted government auditing standards.

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1. Section 2 of Chapter 498 of the Acts of 1993 includes the following definition: "‘Devens’ or the ‘Devens Regional Enterprise Zone,’ the regional development zone created by this act, the boundaries of which include all the land area of Fort Devens, except the South Post, and certain land adjacent to Fort Devens owned by the Commonwealth, and certain land adjacent to Fort Devens currently owned by the Springfield Railway Terminal, Inc. or affiliate thereof or successor thereto, and currently used primarily for railroad purposes."
 2. MassDevelopment, a state finance and development authority, was created on September 30, 1998, pursuant to Chapter 23G of the Massachusetts General Laws, by the statutory merger of the Massachusetts Government Land Bank and the Massachusetts Industrial Finance Agency. Section 12 of Chapter 498 of the Acts of 1993 designates the Massachusetts Government Land Bank as "the exclusive public agency or instrumentality authorized and empowered to maintain, operate, administer, manage, and oversee the redevelopment of Devens."

OVERVIEW OF AUDITED ENTITY

The Devens Enterprise Commission (DEC) was created by Chapter 498 of the Acts of 1993 and is the local regulatory and permit-granting authority for the Devens Regional Enterprise Zone (Devens). DEC is administered by 12 commissioners appointed by the Governor, 6 of whom are nominated by the boards of selectmen from the towns of Ayer, Harvard, and Shirley³ (2 commissioners from each town). Chapter 498 also allows for a total of four associate members to be appointed by the Governor: one nominated by the Governor and three nominated by the boards of selectmen of the three towns. Section 9 of Chapter 498 states that all the commissioners “shall have proven expertise in one or more of the following areas: industrial development, housing, finance, business, real estate, environment, planning, transportation or municipal government.” During our audit period, DEC had three full-time staff members: a director / land use administrator, an environmental planner, and an executive assistant. In addition, DEC awards contracts for other services, such as accounting, legal services, and building permit and inspection services.

Devens was created to help provide an orderly and expeditious conversion and development of approximately 4,400 acres that were a portion of a former federal military base, Fort Devens,⁴ into a non-military-use area. According to the Devens Reuse Plan,

[Chapter 498] provides for \$200 million in bonding capacity to fund the redevelopment effort, which is geared to creation of jobs and the protection of the towns from fiscal impacts that might occur if responsibility for the maintenance and redevelopment of Devens were returned immediately to the towns.

Additionally, according to its Independent Auditors’ Report on General Purpose Financial Statements, DEC reported the following revenue and expenses for fiscal years 2018 and 2019.

DEC Revenue

	Fiscal Year 2019	Fiscal Year 2018
Permits and Other Fees	\$ 468,994	\$ 824,842
Taxes*	148,676	136,849

3. The regional development zone created by Chapter 498 includes areas of Ayer, Harvard, and Shirley.

4. Section 2 of Chapter 498 defines Fort Devens as “the lands, including all easements, reservations and rights appurtenant thereto, and all buildings, structures, utilities and improvements located thereon comprising all or a portion of the military base of that name presently located in the towns of Ayer, Harvard, Lancaster and Shirley and within the ownership, control and jurisdiction of the United States government.”

	Fiscal Year 2019	Fiscal Year 2018
Miscellaneous	3,197	–
Intergovernmental	107,428	138,890
Earnings on Investments	10,952	8,645
Total	<u>\$ 739,247</u>	<u>\$1,109,226</u>

* Chapter 498 grants MassDevelopment the authority to assess and collect property taxes. Two percent of the tax collected by MassDevelopment is turned over to DEC to fund its operations.

DEC Expenses

	Fiscal Year 2019	Fiscal Year 2018
Personnel	\$ 310,262	\$ 286,601
Non-Personnel	506,285	494,345
Depreciation	1,727	1,868
Total	<u>\$ 818,274</u>	<u>\$ 782,814</u>

Chapter 498 made the Massachusetts Government Land Bank (later merged into MassDevelopment) exclusively responsible for acquisition, control, maintenance, and redevelopment of Devens. To provide for orderly development, a long-term (20-to-40-year) reuse plan and zoning bylaws⁵ were developed by the Massachusetts Government Land Bank and the towns of Ayer, Harvard, and Shirley. The reuse plan and zoning bylaws provided development goals and planned uses of the property and were passed at town meetings in the three towns, as required by Chapter 498. According to the Devens Reuse Plan,

The Devens Reuse Plan provides a comprehensive framework and strategy to reuse the buildings, infrastructure, land and open space to produce jobs and environmental protection in the Devens Regional Enterprise Zone. The focus of the Reuse Plan is to capitalize on the unique attributes of Fort Devens to attract new businesses and to support existing industry clusters in the region. The scale of Devens and the magnitude of the challenge requires a long-term vision for the reuse, and a pragmatic, flexible Reuse Plan that can respond to the changes that may occur over the 20–40 year time frame to implement the Reuse Plan. . . .

In order to accommodate the needs of a broad range of income groups, and to ensure the stability of the residential core, approximately twenty-five [percent] (25%) of the 282 units to be reused or constructed under the Reuse Plan will be reserved for low and moderate income individuals or families, and/or special needs populations. It is recognized that the success of the residential reuse is dependent on a balance between market rate and the affordable / special needs populations.

5. According to the Devens zoning bylaws, “As provided in [Chapter 498], the By-Laws furnish the legal foundation and procedural structure for the implementation of the planning and reuse goals and objectives set forth in the Reuse Plan.”

The reuse plan allows for a maximum of 282 units to be reused or constructed under the reuse plan. As of June 30, 2019, there were 158 housing units constructed and occupied. Additionally, plans were in place to reuse or construct 107 more housing units, for a total of 265 units.

The reuse plan and zoning bylaws do not provide definitions of low and moderate income. DEC has expanded its definition of “affordable” to identify low-income units as those serving households below 80% of the area median income and moderate-income units as those serving households below 100% of the area median income. DEC’s definition of special-needs populations includes veterans, women who have children and are homeless, and people with disabilities.

DEC has worked with MassDevelopment and the towns of Ayer, Harvard, and Shirley toward providing Devens with additional housing (282 units) to be reused or constructed under the reuse plan. As of June 30, 2019, occupied housing developed under the reuse plan was as follows.

Summary of Devens Occupied Housing Unit Inventory as of June 30, 2019

Project	Total Occupied	Market Rate	Low Income	Moderate Income	Affordable*
Harvard Portion of Devens	75	62	13	0	17.3%
Ayer Portion of Devens	32	21	11	0	34.4%
Veterans Inc. (7 in Harvard, 7 in Ayer)	14	0	14	0	100.0%
Energy-Efficient Single Homes—Harvard	8	8	0	0	0.0%
Energy-Efficient Townhomes—Harvard	12	12	0	0	0.0%
Grant Road Phase 1—Harvard†	17	16	0	1	5.9%
Total Residential Units	<u>158</u>	<u>119</u>	<u>38</u>	<u>1</u>	<u>24.7%</u>

* Low-income and moderate-income units are considered affordable.

† As of June 30, 2019, 107 additional units were planned for Grant Road, 27 of which were to be affordable.

Regional Affordable Housing Coordinator

On October 12, 2016, MassDevelopment contracted with Metro West Collaborative Development, Inc. to retain Metro West as a consultant, providing services related to compliance with affordable housing requirements, for MassDevelopment and DEC. The contract’s Exhibit A (Scope of Services) states,

These services will [be] intended to provide MassDevelopment and the DEC with ongoing oversight to ensure compliance with affordable housing regulatory agreements with respect to tenant and owner eligibility for housing developments in Devens.

As part of these services, Metro West was obligated to mail annual certifications to all affordable housing occupants whose units it was responsible for monitoring (i.e., occupants of all affordable units except Veterans Inc. units) to ensure that applicable restrictions were adhered to. These restrictions include limitations and approval requirements regarding modifications and the leasing or sale of units. The certifications were mailed to the occupants as a reminder of their responsibilities to adhere to affordable housing deed restrictions.

For the purposes of sharing the services and costs of a regional affordable housing coordinator, on January 1, 2018, DEC and MassDevelopment contracted with their local community housing consortium, the Minuteman Advisory Group on Interlocal Coordination. This consortium included the towns of Bolton, Boxborough, Harvard, Hudson, Littleton, and Stow. Under the contract, the town of Hudson, through its municipal affordable housing trust and administrative support from its Planning and Community Development Department, would lead the procurement and oversight of the consulting.

Commuter Options

The Devens zoning bylaws require DEC to conduct progress reviews of the status of Devens redevelopment every five years. As part of these reviews, DEC establishes goals in support of the reuse plan and zoning bylaws, and it reports on progress made toward the accomplishment of goals established in the prior five-year progress review.

According to the Devens Reuse Plan,

The Devens Reuse Plan incorporates several transportation initiatives to reduce vehicle trips and utilize alternative modes of transportation consistent with environmental goals for the project. These include:

- *Promotion of the use of commuter rail for employee access to the site including consideration of on-site shuttle service to [the Ayer commuter rail station].*

In its progress review for the period 2011–2015, DEC identified 18 goals to focus on over the next five-year review period (2016–2020). One of these goals is as follows:

Working with MassDevelopment, local businesses and surrounding communities to support regional transportation plans and establish additional commuter options for businesses and residents to and from Shirley, Devens, Ayer and Littleton. Work on implementation of 2015 [Montachusett Regional Transit Authority] Transportation Plan and fixed route bus service between the train stations in Ayer and Shirley via Devens. Continue to support Fitchburg Line reverse commute early morning service to foster diverse commute options to Devens.

To achieve this goal, DEC has partnered with the Montachusett Regional Transit Authority (MART) to establish, maintain, and support a shuttle bus program to serve Devens and the surrounding communities.

MART

Chapter 161B of the Massachusetts General Laws established regional transit authorities (RTAs) to provide a public transportation system under the control of municipalities. Each RTA supports a number of communities and is governed by an advisory board composed of the chief elected officials from those communities. According to its website, MART’s mission is “to provide safe, reliable, efficient, and cost-effective transit . . . to our customers.” MART’s operations are overseen by an advisory board made up of at least one member from each of the 22 communities⁶ the agency serves.

MART worked closely with DEC to establish the Devens Regional Shuttle Program, which provides fixed-route and demand-response shuttle services⁷ to Devens and surrounding communities. MART relied on research provided by DEC, MassDevelopment, and Devens businesses to help determine where and when to provide these services. The Devens shuttle began operating in April 2017. During the audit period, DEC continued to work with MART to improve the shuttle service by providing input for schedule adjustments; providing marketing and advertising; and obtaining additional funding to support the program, particularly during its inception.

Additionally, DEC took on a lead role to improve the Massachusetts Bay Transportation Authority (MBTA) commuter rail extension in Fitchburg by working with town officials and obtaining federal and state grants to improve the rails. DEC requested from the MBTA additional commuter rail service to Ayer and recommended adjustments to the Devens shuttle service to align with local MBTA commuter rail stops.

According to MART, over the course of our audit period, it became less reliant on outside sources to identify any need for scheduling adjustments to Devens shuttle services and relied more on data it gathered through shuttle drivers.

6. The communities are Ashburnham, Ashby, Athol, Ayer, Bolton, Boxborough, Fitchburg, Gardner, Hardwick, Harvard, Hubbardston, Lancaster, Leominster, Littleton, Lunenburg, Royalston, Shirley, Sterling, Stow, Templeton, Westminster, and Winchendon.

7. Demand-response transportation services are those that run on a flexible schedule and flexible routes based on the needs of passengers with disabilities.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Devens Enterprise Commission (DEC) for the period July 1, 2017 through June 30, 2019.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer and the conclusion we reached regarding each objective.

Objective	Conclusion
1. Has DEC taken appropriate measures to procure the services of a regional affordable housing coordinator (RAHC) to oversee and manage new and existing affordable housing units in the Devens Regional Enterprise Zone (Devens) to ensure that they remain affordable in perpetuity?	Yes
2. Has DEC taken measures to partner with MassDevelopment, local businesses, and surrounding communities to establish, support, and improve commuter options for Devens businesses and residents?	Yes

To achieve our objectives, we gained an understanding of DEC's internal control environment related to our audit objectives by (1) reviewing applicable laws and regulations, the Devens Reuse Plan, and the Devens zoning bylaws and (2) conducting inquiries with management at DEC, the Montachusett Regional Transit Authority (MART), and Metro West Collaborative Development, Inc., as well as members of the DEC board of commissioners from Ayer, Harvard, and Shirley.

Affordable Housing Oversight

To determine whether DEC had taken appropriate measures to procure the services of an RAHC, we interviewed DEC management and reviewed agreements between DEC and its RAHC, in effect during our audit period, to oversee and manage new and existing affordable housing units in Devens.

To determine whether DEC's RAHC had taken measures to ensure that affordable housing units overseen by its RAHC would remain affordable in perpetuity, we compared the inventory of affordable housing units, which we obtained from DEC, to affordable housing deed riders⁸ provided to us by DEC's RAHC and verified that affordability restrictions were in place for all 25 units that were identified as affordable housing.

We reviewed all 25 affordable housing units monitored by DEC's RAHC to determine whether any units had been sold during our audit period and whether affordable housing restrictions remained in place.

The reuse plan requires that approximately 25% of the 282 units be reserved for low- and moderate-income individuals or families and/or special-needs populations. To determine whether DEC was on track to meet this requirement, we calculated the percentage of the 158 housing units already occupied (as of June 30, 2019) that were affordable/special-needs housing units. Next, we added the 107 planned units (as of June 30, 2019) to the 158 occupied units and calculated the total percentage of these 265 units that were, or were planned to be, affordable/special-needs housing units.

Partnerships to Improve Commuter Options

To determine whether DEC had taken measures to partner with MassDevelopment, local businesses, and surrounding communities to establish, support, and improve commuter options for Devens businesses and residents, we reviewed meeting minutes from our audit period for the following: Devens shuttle evaluation meetings, Devens Marketing Committee shuttle meetings, and Fitchburg Line Working Group meetings. We reviewed these meeting minutes for evidence of DEC's participation in activities to improve commuter options and so that we could assess whether MassDevelopment, local businesses, and surrounding communities were represented in the activities. We also determined whether DEC, along with MassDevelopment, solicited voluntary supplemental funding from Devens companies for the Devens Regional Shuttle Program. We obtained from DEC all shuttle funding request letters sent to Devens companies and verified with MART that Devens companies made financial contributions to the Devens Regional Shuttle Program during our audit period.

8. Affordable housing deed riders detail affordability restrictions on areas such as resale, leasing, and remodeling and are intended to ensure that affordable housing units remain affordable in perpetuity.

Data Reliability

To assess the reliability of DEC's inventory of affordable Devens housing units, we traced all 25 affordable housing units on its inventory to the RAHC's list of the affordable housing units the RAHC monitors. We determined that the Devens housing unit inventory was sufficiently reliable for the purpose of this audit.

To determine the reliability of affordable housing deed riders obtained from DEC's RAHC, we traced the total population of deed riders to the registries of deeds of the towns where properties were constructed. We determined that the affordable housing deed riders were sufficiently reliable for the purpose of this audit.

Conclusion

Our audit revealed no significant instances of noncompliance that must be reported under generally accepted government auditing standards.