



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

Making government work better

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TOWN OF AYER
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Official Audit Report – Issued May 6, 2015

Devens Enterprise Commission

For the period July 1, 2013 through January 31, 2015





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

Making government work better

May 6, 2015

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

Dear Chairman Marshall:

I am pleased to provide this performance audit of the Devens Enterprise Commission. This report details the audit objectives, scope, methodology, and conclusions for the audit period, July 1, 2013 through January 31, 2015. My audit staff discussed the contents of this report with management of the agency, whose comments we considered in drafting 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 "SMB", written over a light blue horizontal line.

Suzanne M. Bump
Auditor of the Commonwealth

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EXECUTIVE SUMMARY

Chapter 498 of the Acts of 1993 established the Devens Enterprise Commission (DEC) as the entity that has local regulatory and permit-granting authority over a portion of the former federal military base known as Fort Devens. DEC is overseen by a 12-member board of commissioners, and its day-to-day operations are administered by a staff of three full-time employees.

In 1994, a reuse plan for the site was prepared and approved by the Massachusetts Development Finance Agency, known as MassDevelopment (a state finance and development authority), in collaboration with Devens's three neighboring communities: Ayer, Harvard, and Shirley. The reuse plan anticipated the development of 4,400 acres by the creation of 8 million square feet of commercial space, 7,000 jobs, and 282 units of housing. It provided for these goals to be accomplished within an ecologically and sociologically sustainable framework over 40 years. The plan called for retaining 1,300 of the 4,400 acres as open conservation and recreation space.

Conclusion

Since the approval of the reuse plan, DEC has made significant progress in implementing various aspects of the plan. The commercial space that has been developed is being used by various types of enterprises, including private (74%), nonprofit (20%), and government (7%) enterprises.¹

For the areas we reviewed that were related to our audit objectives, we did not identify any significant deficiencies warranting attention by those responsible for governance. Specifically, we found that DEC had adopted bylaws and developed specific rules and regulations that allowed it to effectively regulate land use, planning, and permitting to be in compliance with the reuse plan. It has also established verifiable measures and procedures to monitor the extent to which these measures are being achieved in accordance with the reuse plan. DEC has established internal controls to provide reasonable assurance that its organizational goals and objectives will be met in compliance with applicable requirements and any associated risks, such as those for fraud, waste, and abuse, are minimized.

1. This information is from the "Profile and Economic Contributions" report prepared by the University of Massachusetts's Donahue Institute, published July 2014. Percentages do not add up to 100% because of rounding.

OVERVIEW OF AUDITED ENTITY

The Devens Enterprise Commission (DEC) was created by Chapter 498 of the Acts of 1993 (the Act) and is the local regulatory and permit-granting authority for the Devens Regional Enterprise Zone (Devens). The Act also provided for another entity, the Massachusetts Development Finance Agency, known as MassDevelopment² (a state finance and development authority), to be the exclusive agency responsible for acquisition, control, maintenance, and redevelopment of Devens. DEC is administered by 12 commissioners appointed by the Governor, 6 of whom are nominated from the neighboring towns of Ayer, Harvard, and Shirley (two commissioners from each town). The Act also allows for a total of 4 associate members nominated by the Governor and the select board of each of the three towns. It states that all the commissioners “shall have proven expertise in industrial development, housing, finance, business, real estate, environment, planning, transportation or municipal government.” During our audit period, DEC had three full-time staff members administering its operations: a director / land use administrator, an environmental planner, and an executive assistant. In addition, DEC awarded contracts for other services such as accounting, legal, 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, into a non-military-use area. To aid in development, Devens³ was designated by the state’s Economic Assistance Coordinating Council, under 403 Code of Massachusetts Regulations 2.00, as both an Economic Target Area and an Economic Opportunity Area.⁴ To provide for orderly development, a long-term (40-year) reuse plan and bylaws were developed by MassDevelopment and the towns of Ayer, Harvard, and Shirley. The plan and bylaws provided for development goals and planned uses of the property and were simultaneously passed by town meetings in the three neighboring towns, as required by the Act.

In accordance with its enabling legislation, DEC promulgated detailed regulations, published in Title 974 of the Code of Massachusetts Regulations, that further define compliance with the reuse plan and bylaws. DEC is designated as the agency responsible for reviewing and approving all future uses of Devens and is a multipurpose regulatory authority that handles a wide variety of land-use and building-

2. The Act named the Government Land Bank, which subsequently changed to MassDevelopment.

3. The legislation also stipulated that the Town of Ayer would receive the same designations.

4. Under these designations, businesses that undertake projects in an Economic Opportunity Area, which by definition must fall wholly within an Economic Target Area, can be certified as entitled to receive certain tax benefits, such as investment tax credits.

related permits as well as certain licenses. It is empowered to carry out functions that are normally performed by numerous city or town boards or departments, such as the planning board, conservation commission, board of health, zoning board, and historic district commission. Consolidating activities under one organization means that interested organizations generally receive expedited permitting for development, since they are only dealing with one permitting entity.

The Act 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.

The original plan provided for about one-third of the property to be retained as open space for either recreation or conservation. It also provided for the creation of at least 7,000 jobs and up to 282 housing units, as well as the development of 8.5 million square feet of commercial or other business-use space. DEC has established a website that promotes the area and provides public disclosure of a wide variety of information, including meeting notices, meeting minutes, reports, and answers to frequently asked questions.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws and Chapter 498 of the Acts of 1993 (the enabling legislation for the Devens Regional Enterprise Zone [Devens]), the Office of the State Auditor has conducted an audit of the Devens Enterprise Commission (DEC) for the period July 1, 2013 through January 31, 2015. In some instances, it was necessary to review records outside our audit period in order to meet our audit objectives.

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; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Has DEC established rules and regulations for Devens to ensure compliance with the reuse plan and its bylaws?	Yes
2. Has progress been made in developing Devens, and are verifiable measures used to support the progress?	Yes

We determined that internal controls over the following areas were relevant to our audit objectives:

- compliance with the reuse plan and related bylaws

To accomplish our objectives, we performed the following activities:

- We reviewed Chapter 498 of the Acts of 1993.
- We obtained and reviewed the 1994 reuse plan and related bylaws and noted key provisions of the plan.
- We obtained the rules and regulations DEC had established for Devens and reviewed them to determine whether they supported the reuse plan and related bylaws.

- We obtained and reviewed the report issued for DEC and MassDevelopment on the topic of jobs created, "Profile and Economic Contributions," issued by the University of Massachusetts's Donahue Institute in July 2014. We determined that this report was sufficiently reliable for the purposes of our audit objectives.
- We reviewed studies and reports prepared by DEC. Specifically, we reviewed the Devens "Sustainability Indicators Report 2012" (a progress report comparing Devens's current status to its status in the last study year, 2000), the "Five-Year Review Report" covering the period 2006 through 2011, and recent annual status update reports. We determined that these reports were sufficiently reliable for the purposes of our audit objectives.
- We interviewed officials from DEC and MassDevelopment.
- We interviewed knowledgeable officials from the three neighboring towns.
- We toured the property to observe physical conditions and familiarize ourselves with the layout of the development.

At the conclusion of our audit fieldwork, we provided a copy of our draft audit report to DEC's director / land use administrator and the chair of its board of commissioners for review and comment.

CONCLUSION

Progress has been made in reuse of the former base.

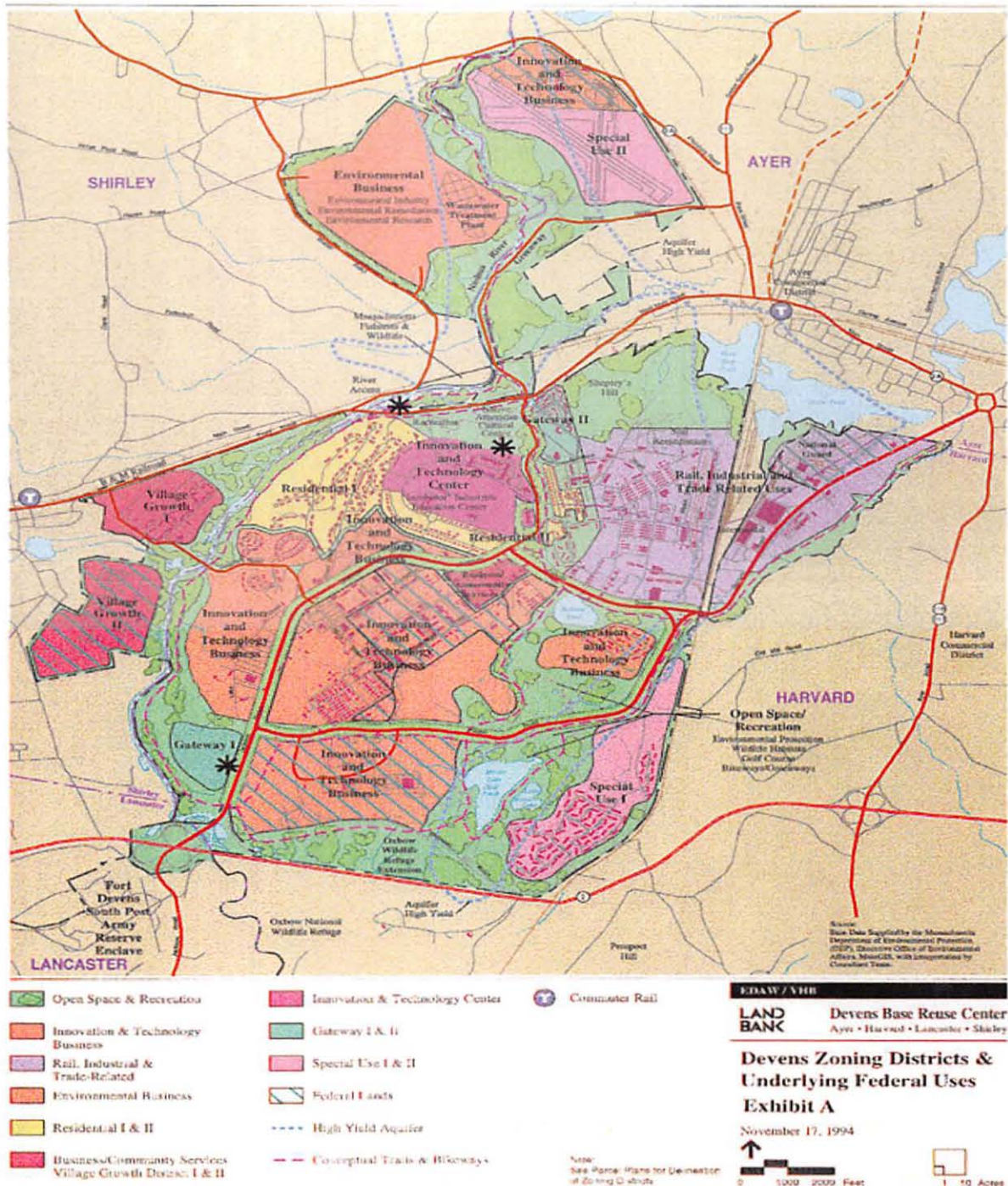
Over the past 20 years, progress has been made in reuse of the former military base. A development plan and bylaws have been adopted, and the Devens Enterprise Commission has developed specific rules and regulations that allow it to regulate land use, planning, and permitting to be in compliance with the reuse plan.

With respect to development, verifiable measures have been established and monitored. Below are some highlights of the goals from the reuse plan and the current status of those goals.

Plan Goal from 1994	Current Status
Create at least 7,000 jobs to replace those lost as a result of the base closure.	As of July 2014, 4,030 jobs had been created in the Devens Regional Enterprise Zone (Devens). It is also estimated that an additional 4,159 jobs in the region are indirectly attributable to Devens and that wages paid to employees exceed \$300 million annually.
Develop 8.5 million square feet of commercial space.	5.5 million square feet of commercial space have been developed.
Develop a maximum of 282 units of housing.	153 units have been developed and occupied, and plans are in place for up to 124 more units.
Ensure that development is sustainable, "achieving a balance of economic, social and environmental needs while maintaining and enhancing the natural resource base."	According to a 2012 report on sustainability, progress continues to be made.

APPENDIX A

District Map of Planned Uses



APPENDIX B

Development Goals from Chapter 498 of the Acts of 1993⁵

Overall Goal Statement. *The Devens reuse challenge demands a visionary planning effort grounded in environmental, social, and economic reality. It must be realistic, pragmatic, market driven, flexible, and future oriented and shall be based on the following goals and objectives:*

Goal Number from Chapter 498	Description of Goal
1	<i>Development must be sustainable, which means achieving a balance of economic, social and environmental needs while maintaining and enhancing the natural resource base.</i>
2	<i>Development must provide a diversity of uses to avoid dependence on one use, and to provide opportunities for a range of skills and experience levels.</i>
3	<i>Development must demonstrate the interdependence of economic development and environmental protection and the symbiosis of public and private uses.</i>
4	<i>Development must balance local, regional and Commonwealth interests.</i>
5	<i>Development must foster uses that will create, at minimum, the number of jobs and value of economic activity at Devens in the year one thousand nine hundred and ninety.</i>
6	<i>Development must take advantage of the skills and experience of the regional work force and work to match the skills of the future work force with the needs of industries of the future.</i>
7	<i>Development must foster a long term mix of uses which will enhance the regional economy through future growth potential.</i>
8	<i>Development must build on Devens' unique characteristics to complement the regional economy and expand the economic base.</i>
9	<i>Development must foster an attitude that supports reuse goals, successful redevelopment and the provision of economic activities for individual and collective prosperity.</i>
10	<i>Development must protect and enhance Devens' historical resources.</i>
11	<i>Development must promote public awareness and enjoyment of Devens' environment.</i>
12	<i>Development must protect and enhance the quality of life of the citizens in the host communities, the region and the Commonwealth.</i>
13	<i>Development must provide education, training and retraining tied to business, industry and institutions on base and in the region.</i>
14	<i>Development must ensure an effective, expeditious and efficient clean-up of hazardous materials, including Superfund areas, tied to the needs of the Reuse Plan.</i>

5. The text of this appendix is drawn from Chapter 498 of the Acts of 1993 as found at <http://www.devensec.com/ch498/dec4981A.html>.

Goal Number from Chapter 498	Description of Goal
15	<i>Development must protect and enhance Devens ecological resources of all kinds, particularly the aquifer and the Nashua River system.</i>
16	<i>Uses which may negatively impact regional natural resources will be allowed only with appropriate technology and proper mitigation.</i>
17	<i>Development must minimize the off-base impacts of development in areas such as water resources, air quality, viewsheds, traffic and noise, limiting the impacts to those necessary to achieve reuse goals and objectives.</i>
18	<i>Development must foster businesses which enhance the environment through technology.</i>

APPENDIX C

Devens Enterprise Commission Board of Commissioners As of January 31, 2015

Commissioner Name	Representing
William P. Marshall, Chairman	Regional
James E. DeZutter	Harvard
William Castro	Shirley
Dix Davis	Regional
Armen Demerjian	Regional
Melissa Fetterhoff	Regional
Christopher Lilly	Regional
John Oelfke	Shirley
Martin Poutry	Ayer
J. Paul Routhier	Regional
Jim Pinard	Ayer
Eric Stoltzfus	Harvard
Duncan Chapman III, Associate Member	Harvard

Note: Three other associate-member positions are currently vacant.