



# The Commonwealth of Massachusetts

## AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819  
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DeNUCCI  
AUDITOR

TEL. (617) 727-6200

NO. 2010-0410-3A

INDEPENDENT STATE AUDITOR'S REPORT ON  
CERTAIN ACTIVITIES OF MASSDEVELOPMENT  
JULY 1, 2007 TO SEPTEMBER 30, 2009

OFFICIAL AUDIT  
REPORT  
JULY 28, 2010

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### INTRODUCTION

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MassDevelopment, formerly known as the Massachusetts Development Finance Agency, was created on September 30, 1998 pursuant to Chapter 23G of the Massachusetts General Laws. MassDevelopment was created by the statutory merger of the Massachusetts Government Land Bank and the Massachusetts Industrial Finance Agency. MassDevelopment is governed by a Board of a Directors consisting of 11 members, nine of whom are from the private sector and are appointed by the governor, and two of whom are public officials who serve ex-officio. The current President/Chief Executive Officer was appointed in March 2004.

The purpose of MassDevelopment is to stimulate economic growth, increase employment, eradicate blight, promote prosperity, and help build communities throughout the Commonwealth of Massachusetts. MassDevelopment does this through its powers to issue tax-exempt bonds for the benefit of industrial and commercial entities as well as for health care and housing facilities. MassDevelopment also makes direct loans and provides credit to various institutional borrowers and aids public and private enterprises in the redevelopment of blighted, open, and underdeveloped properties including surplus federal and state properties. The redevelopment of Fort Devens, a former army base, and the rehabilitation of the Leverett Saltonstall State Office Building are two of MassDevelopment's major revitalization efforts. MassDevelopment also administers specific statutory funds directed at certain economic development needs in the Commonwealth, such as the Brownfields Redevelopment Fund, the Cultural Facilities Fund, the Massachusetts Export Finance Fund, and the Emerging Technology Fund.

Our prior audit (No. 2005-0410-3A) of MassDevelopment concentrated on the activities of the Brownfield's Redevelopment Fund. Our current review focuses on the Emerging Technology Fund (ETF), which provides loans and loan guarantees for the construction or improvement of manufacturing, research and development, and related facilities and equipment which will lead to increased and more rewarding employment opportunities for the citizens of the Commonwealth. We also reviewed MassDevelopment's controls over administrative costs and followed up on our prior audit recommendation regarding severance payments.

Based on our review, we have concluded that, except for the issues addressed in the Audit Results section of this report, during the 27-month period ended September 30, 2009, MassDevelopment has maintained its accounting records in accordance with prescribed requirements and has complied with laws, rules, and regulations for the areas tested.

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### AUDIT RESULTS

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#### **PRIOR AUDIT RESULT UNRESOLVED – INADEQUATE POLICIES, PROCEDURES, AND GUIDELINES OVER SEVERANCE PAYMENTS TO EMPLOYEES**

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Our two prior audits (2005-0410-3A and 2001-0410-3) disclosed that MassDevelopment paid severance payments totaling \$309,778 to 21 departing employees without adopting a written severance policy governing the appropriateness, fairness, and consistency of the

separation payments. We also noted that the severance payments were not presented to the MassDevelopment Board of Directors for approval. We recommended that MassDevelopment implement a policy on severance payments, including obtaining approval from the Board of Directors and establishing criteria for calculating payment amounts. MassDevelopment responded by stating that it had been advised by outside legal counsel not to develop a formal written severance policy because such plans are subject to regulation by the federal government under the Employment Retirement Income Security Act (ERISA). Furthermore, the legal counsel stated that severance plans may create an entitlement for departing employees rather than considering each employee's situation and calculating the amount of severance that is appropriate.

During our current follow-up review, MassDevelopment's Chief Financial Officer told us that due to an oversight, a policy governing separation agreements was not presented to the Board of Directors. As a result, during our audit period, MassDevelopment awarded three severance packages totaling \$44,278 which were not presented to the Board for approval. We again recommend that the Board of Directors implement a written policy on and review and approve all severance arrangements.

## INTRODUCTION

### *Background*

MassDevelopment, formerly known as the Massachusetts Development Finance Agency, was created on September 30, 1998 pursuant to Chapter 23G of the Massachusetts General Laws. MassDevelopment is a body corporate and politic and a public instrumentality, and was created from the statutory merger of, and is the legal successor in all respects to, the previous existing instrumentalities: the Massachusetts Government Land Bank and the Massachusetts Industrial Finance Agency. MassDevelopment is governed by a Board of a Directors consisting of 11 members, nine of whom are from the private sector and are appointed by the governor, and two of whom are public officials who serve ex-officio. The current President/Chief Executive Officer was appointed in March 2004.

The purpose of MassDevelopment is to stimulate economic growth, increase employment, eradicate blight, promote prosperity, and help build communities throughout the Commonwealth of Massachusetts. MassDevelopment does this through its powers to issue tax-exempt bonds for the benefit of industrial and commercial entities as well as for health care and housing facilities. MassDevelopment also makes direct loans and provides credit to various institutional borrowers and aids public and private enterprises in the redevelopment of blighted, open, and underdeveloped properties including surplus federal and state properties. MassDevelopment also administers specific statutory funds directed at certain economic development needs in the Commonwealth, such as the Brownfields Redevelopment Fund, the Cultural Facilities Fund, the Massachusetts Export Finance Fund, and the Emerging Technology Fund. Some of the major projects, programs, and funds administered by Mass Development are described in the following paragraphs.

MassDevelopment was mandated by Chapter 498 of the Acts of 1993 to develop and organize a Reuse Plan for Fort Devens, a former army base. The host communities of Ayer, Harvard, and Shirley adopted the Reuse Plan. Chapter 498 also created the Devens Enterprise Commission, with representatives from the member communities, to act as the “one-stop” permitting authority. MassDevelopment’s functions include providing municipal services and overall stewardship of the property, including the sale or lease of land and buildings. MassDevelopment’s redevelopment efforts have brought new housing, commercial entities, and other institutions to the town of Devens and approximately 7.2 of the 8.5 million square feet of the build-out capacity has been achieved.

In 2000, the Commonwealth enacted Chapter 237 of the Acts of 2000, which authorized MassDevelopment to redevelop the former state-owned Leverett Saltonstall Building located at 100 Cambridge Street, Boston. Chapter 237 created the MassDevelopment/Saltonstall Building Redevelopment Corporation (M/SBRC) as a subsidiary of MassDevelopment to act as the developer for the project. M/SBRC entered into a 50-year ground lease with the Commonwealth as the lessor, with an option for two 15-year extensions. M/SBRC also executed a 50-year office lease with the Commonwealth as lessee for 12 floors of office space. The M/SBRC renovated office space, created 34,500 square feet of new retail space, constructed 75 new residential units, 19 of which are set aside for affordable housing, and expanded the parking garage. The project also included construction of a public memorial garden and other public amenities. Major construction was completed in June 30, 2006. Improvements to office and retail space have continued since then. In fiscal year 2009, lease revenue was approximately \$21 million, of which approximately \$9.5 million was paid by the Commonwealth. Retail and office space was 100% leased at June 30, 2009.

The Brownfields Redevelopment Fund (BRF) was established in 1998 to encourage the reuse of brownfields (abandoned, idled, or underused industrial and commercial facilities whose expansion or redevelopment is complicated by real or perceived environmental contamination) in economically distressed areas of the Commonwealth. MassDevelopment achieves this objective by providing flexible, low-cost financing for environmental actions through the Brownfields Site Assessment Program and the Brownfields Remediation Program. The Legislature has allocated \$60 million to the BRF. The Brownfields Site Assessment Program provides interest-free financing of up to \$50,000 for site assessments in economically distressed areas. In addition, based on the site assessment, the Brownfields Remediation Program provides low-interest financing of up to \$500,000 for environmental cleanup.

The Cultural Facilities Fund was established in 2006 by Section 42 of Chapter 23G of the General Laws. The purpose of the Cultural Facilities Fund is to make grants or loans for the acquisition, design, repair, renovation, or rehabilitation of a cultural facility (e.g. museums, concert halls, theaters, exhibition spaces, zoos, aquariums). As of June 30, 2009, the fund has received \$39.2 million from the Commonwealth and has awarded grants totaling approximately \$13.8 million. The program is administered jointly with the Massachusetts Cultural Council.

The Massachusetts Export Finance Program provides loan programs, loan guarantees, and credit insurance to help companies that export or anticipate exporting their products internationally. Monies are provided to the MassDevelopment by institutional lenders.

Our prior audit of MassDevelopment (No. 2005-0410-3A) concentrated on the activities of the Brownfields Redevelopment Fund. Our current review focuses on the Emerging Technology Fund (ETF), which was created by Chapter 289 of the Acts of 1989 and amended by Chapter 141 of the Acts of 2003 (codified as Sections 27 and 28 of Chapter 23G of the General Laws). The purpose of the ETF is to provide loans and loan guarantees for the construction or improvement of manufacturing, research and development, and related facilities and equipment in the Commonwealth, which will lead to increased and more rewarding employment opportunities for the citizens of the Commonwealth. The fund has been capitalized through state appropriations that totaled \$49.75 million as of September 30, 2009. Since inception, the ETF has received more than 100 requests for funding. The ETF has made 22 loans and one mortgage guarantee totaling \$33,259,615 to 20 companies as of September 30, 2009. The ETF statute requires that the fund invest a minimum of \$2.5 million dollars in each of five geographic locations of the Commonwealth. As of October 15, 2009, the minimum required investment had been made in each region.

ETF targets a broad range of industries, as shown in the following table.

Industry	Loans/Guarantees	No. of Companies
Energy	\$10,000,000	4
Biotechnology	\$ 8,303,657	6
Medical Devices	\$ 5,400,000	3
Advanced Materials	\$ 5,000,000	3
Contact Manufacturing	\$ 2,316,840	2
Defense	\$ 2,000,000	1
Software	<u>\$ 239,118</u>	<u>1</u>
Total	<u>\$33,259,615</u>	<u>20</u>

***Audit Scope, Objectives, and Methodology***

Our audit, which covered the period July 1, 2007 to September 30, 2009, was conducted in accordance with applicable generally accepted government auditing standards for performance audits as issued by the Comptroller General of the United States, and included procedures and tests that we considered necessary to meet those standards.

The objectives of our audit were to review and analyze MassDevelopment's controls over administrative and operating costs, update the status of the prior audit result, review MassDevelopment's administration of the Emerging Technology Fund (ETF), and determine whether it is in compliance with applicable, laws, rules, regulations, and policies.

To conduct this audit, we assessed the system of management controls established and implemented by MassDevelopment over its administrative and operating costs and the ETF. We reviewed ETF loan and related documentation including loan applications, audited financial statements, independent loan portfolio reviews of borrowers, and job creation/retention data. We met with MassDevelopment officials and reviewed organizational charts, internal policies and procedures, and all applicable laws and regulations. We also examined financial information, including cost reports, invoices, credit card statements, and other pertinent financial records to ensure that expenses incurred were reasonable, allowable, properly authorized and recorded, and expended in compliance with all applicable laws, rules, and regulations.

Based on our review, we have concluded that, except for the issues addressed in the Audit Results section of this report, during the 27-month period ended September 30, 2009, MassDevelopment has maintained its accounting records in accordance with prescribed requirements and has complied with laws, rules, and regulations for the areas tested.

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## AUDIT RESULTS

### **PRIOR AUDIT RESULT UNRESOLVED – INADEQUATE POLICIES, PROCEDURES, AND GUIDELINES OVER SEVERANCE PAYMENTS TO EMPLOYEES**

Our two prior audits (2005-0410-3A and 2001-0410-3) disclosed that MassDevelopment paid severance payments totaling \$309,778 to 21 departing employees without adopting a written severance policy governing the appropriateness, fairness, and consistency of the separation payments. We also noted that the severance payments were not presented to the MassDevelopment Board of Directors for approval. We recommended that MassDevelopment consider implementing a policy governing severance payments, including obtaining approval from the Board of Directors and establishing criteria for calculating payment amounts. MassDevelopment responded by stating that it had been advised by outside legal counsel not to develop a formal written severance policy because such plans are subject to regulation by the federal government under the Employment Retirement Income Security Act (ERISA). Furthermore, the legal counsel stated that severance plans may create an entitlement for departing employees instead of evaluating each employee's situation and calculating the amount of severance that is appropriate. The senior management at MassDevelopment indicated, however, that it planned to develop a policy whereby severance arrangements would be presented to the full Board or a committee of the Board to ensure that such arrangements are fair and reasonable.

During our current follow-up review for the period July 1, 2007 to September 30, 2009, we determined that our recommendations regarding severance payments had not been adequately addressed. During our audit period, MassDevelopment awarded three severance packages totaling \$44,278 (see following table) plus three months of paid health and dental insurance premiums. Human Resources put the severance packages together in conjunction with and approval of the Management Committee, which consists of the following administrators: President/Chief Executive Officer, General Counsel, Chief Operating Officer, Chief Financial Officer, Chief of Staff, Executive Vice President of Marketing and Communications, and the Executive Vice President of "Devens." However, during our field work, the Chief Financial Officer told us that due to an oversight, a policy governing approval of severance payments was not submitted to the Board.

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Position	Number of Months of Service	Weekly Salary	Number of Weeks Paid	Total Severance Payments (Rounded)
Legal Secretary	8	\$ 923.08	13	\$12,000
Senior V.P. Human Resources	25	\$1,981.89	12	\$23,782
Accounts Payable Coordinator	37	\$ 707.99	12	<u>\$ 8,496</u>
				<u>\$44,278</u>

***Recommendation***

MassDevelopment's Board of Directors should review and approve all severance packages to ensure that payments made to departing employees are fair and reasonable.

***Auditee's Response***

MassDevelopment's President and CEO provided the following response:

*Your office noted in its draft report that MassDevelopment has not adequately addressed your recommendations regarding severance payments resulting from a previous audit conducted in 2005. We regret that this was an oversight on our part and have taken the necessary steps to ensure proper policies and procedures are being followed for all severance matters. As previously reported to you, our policy is to discuss these matters with the Board of Directors and obtain their approval prior to entering into any severance agreements with any employee.*