

Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

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Audit Survey Results Regarding Mountainland Association of Governments (MAG)

As requested at the April 18, 2005 Audit Subcommittee meeting, we have prepared additional information regarding Senator Bramble's request for an audit of MAG's past use of federal Community Development Block Grant (CDBG) funds. Senator Bramble's letter requested a review of an allegation that MAG inappropriately used \$1.2 million CDBG funds to purchase and construct its office building in 1998 and 1999 (CDBG contract #98-0059). Additionally, Senator Bramble's letter asked for a review of some high fringe benefit requests which were on the same CDBG contract as the building. Since we have reached our allotment of audit survey hours, we are providing general conclusions on the main issues addressed in the audit request (items 1 and 2 to follow). Based on our survey review we conclude the following:

1. We question the usefulness of proceeding with a full audit of the MAG building based on our survey conclusions outlined herein.
2. An audit of MAG's fringe benefits appears unnecessary.
3. Other related audit areas beyond the formal request could be pursued if directed by the Audit Subcommittee.

Usefulness of Auditing MAG Building Questionable

Although there is some question of the basic eligibility of using CDBG funds for the MAG building, a full audit would not likely change the survey outcome we discuss herein. We conducted survey work surrounding three questions regarding the MAG building:

- 1st In acquiring property and constructing the building, did MAG follow an approval process with its governing board?
- 2nd Did the MAG building meet one of the national objectives for serving citizens with low- to moderate-income (LMI) under the CDBG program?
- 3rd Did the MAG building meet general eligibility under the CDBG program?

In our opinion, we have been provided with sufficient documentation to conclude that MAG followed the approval process of its governing board and that MAG met the national LMI objective. There remains, however, a question of whether the MAG building met the general eligibility standard for CDBG. But, since it is not likely that the current federal grant administrators would take any action to have funds repaid, further audit work would not likely be beneficial.

MAG Followed Established Approval Process. Documentation shows that MAG obtained approval from its governing board—the 31 mayors and 9 county commissioners from its three-county region which constituted its Executive Council in June 1997. (This council also constituted the CDBG rating and ranking committee.) MAG provided evidence of proper public notice for meetings where the building was an agenda item and evidence that the process for ranking CDBG projects would be suspended so that funds for 1998-1999 could be used for the building.

At the June 26, 1997 Executive Council meeting, minutes record that MAG Administrator Darrell Cook sought approval to use fiscal year 1998-1999 CDBG funds of between \$1.3 and 1.4 million for the MAG building. He informed the board of estimated savings of “more than \$1 million through reductions in rent and interest payments . . .” if the building were approved. The minutes also record that Mr. Cook had

“approached all members of the Steering Committee and Regional Review Committee to receive their response on this alternative [using CDBG funds for the building], and all members expressed their support of the concept.”

The motion authorizing obligation of the FY 98-99 CDBG allocation “for the purpose of financing the MAG office building . . .” carried with only 8 of the 40 board members present. MAG bylaws define a quorum as “eleven (11) or more members in attendance representing the Mayors and/or Commissioners from at least two counties.” So, because there was not a quorum, the chair requested that a phone poll of the additional required members be conducted to obtain a quorum on the motions. The minutes state that a phone poll of three additional members was conducted on June 27, 1997 in order to obtain an affirmative vote for each of the motions at the June 26, 1997 meeting. We point out that although the 11-member quorum structure is allowed under MAG bylaws, 11 of 40 members constituted less than one-third of the voting members of the council at that time.

While we do not necessarily agree with the quorum structure or the phone poll, MAG did have approval by additional members at two subsequent meetings. For example, at the September 25, 1997 Executive Council meeting, there was a quorum of 11 that supported two motions:

- First, a combining of the 1998-1999 CDBG funds together for a single application to allow for two-year funds for the MAG building.
- Second, a suspension of the usual CDBG application process which otherwise allows cities and counties within MAG’s three-county boundary to apply for CDBG funds. By suspending the application process (which included public notice and opportunity for comment) the council members were essentially agreeing to approve all CDBG funds for the MAG building.

Finally, at the December 4, 1997 Executive Council meeting, minutes state that MAG staff informed the council of the final site selection for the MAG building construction was to be at 800 North 600 East in Orem. A motion was made that the site be ratified by the Executive Councils—the motion carried. While the minutes do not record the number of affirmative votes, there were 30 council members in attendance. None of the minutes discussed herein record any opposing view to MAG’s use of CDBG funds to construct its building.

MAG Building Appears to Have Met National CDBG Objective. Documentation provided by MAG and the Department of Community and Economic Development (DCED) shows MAG's intent to meet the national objective established by federal regulations. MAG applied under national CDBG objective number one: to use the building to provide services to limited LMI clientele. Most of this clientele were either the elderly or those seeking job training—two “special clientele” groups which are generally presumed to meet the standard of 51 percent being of low- to moderate-income. Documentation provided to us shows that a sufficient number of LMI individuals were assumably provided services through the CDBG.

General Eligibility May Have Been Questionable. Despite the documented board approval process, meeting of national objectives and DCED approval, the general eligibility of using CDBG funds for the MAG building may have been questionable. We contacted the current federal community development representative who oversees Utah's CDBG for the Department of Housing and Urban Development (HUD) in the Denver region. This federal official says she may have questioned the MAG building project had she been the federal official at that time. She also said she may question similar buildings for associations of governments (AOGs) if applications are made in the future.

Her reasoning is based on her interpretation of *24 Code of Federal Regulations §570.207* which states that CDBG funds are not to be used for the construction of a building for the general conduct of government. She believes MAG, as an AOG, acts as a general government. However, the representative stated that HUD would not likely take further action because the building project occurred almost seven years ago; HUD's focus of review tends to be on the more current projects one-to-three years past. The representative acknowledged that her views may be different from the administrators who gave the verbal approval at that time.

In her opinion, final resolution of this matter would require an opinion from HUD attorneys. If a violation was then determined, it is not likely that federal administrators would seek repayment of the funds. Rather, HUD would encourage those entities seeking approval to use CDBG funds to construct similar buildings for AOGs, to obtain written approval from HUD; DCED could have obtained written federal approval for the MAG building. Written verification from HUD would be beneficial because of the uncertain interpretation of “general government” as it applies to AOGs

and the buildings which house AOGs. We were told by DCED that federal approval had been given, but no written documents have been provided.

In summary, MAG complied with all required DCED procedures for application. Ultimately, DCED approved and certified the project based on MAG's application and also on verbal direction given from federal officials at HUD's CDBG program. Furthermore, DCED informed us that HUD, as a general rule, does not approve or disprove CDBG projects. Instead, they give "maximum feasible deference" to states in administering the CDBG program.

In our opinion, regardless of whether there was a compliance issue, we concur with the current federal administrator who believes that too many years have passed for the issue of MAG's building eligibility to be a concern which HUD needs to revisit.

Audit of Fringe Benefits Appears Unnecessary

Some initial benefits requests for MAG community planners— which were made on the same CDBG contract as the MAG building—were calculated at a high rate of 72 percent of salary. The benefits were later adjusted to a more reasonable estimate of 40 percent. We were not able to conclusively determine why benefits were initially set so high, other than to accept MAG's explanation that it was an error. MAG reported, "It appears that there may have been an error in the breakdown of salary and fringe, or inclusion of other costs in the fringe category that should have been listed in another category on the original contract and the amendment."

However, there seems to be little effect of the initial high setting of the benefits since it was amended later. Documentation from MAG on the contract's actual reimbursement schedule for the average of the technical planner benefits was 36.5 percent for the period of July 1997 to December 1999. This appears more reasonable given the average benefits percent of salary for core state employees for the same approximate time period was about 44 percent. Based on this documentation, we do not believe an audit of fringe benefits on CDBG contracts is necessary.

Other Audit Areas Could be Pursued

There are other related concerns which were identified during our survey work and from sources including a Utah County Commissioner and

a private citizen. As directed by the Audit Subcommittee at the April 2005 meeting, we have provided scope of such related concerns below. The committee could choose whether to assign an audit in any of these areas:

- **Adequate governance of associations of governments such as MAG.** Our experience with quasi-governmental entities such as MAG is that, at times, their governance may be weak. The example mentioned earlier of less than one-third of MAG's governing board carrying the motion of the MAG building serves as an example. Thus, there is some evidence to suggest that weak governance may exist with other AOGs since they are similarly governed and structured to MAG.
- **Operations and oversight of MAG.** Concerns have been raised by one Utah County commissioner which include MAG's administration of aging services, MAG's bylaws (board oversight) and a perception of excessive executive compensation.
- **Administration of federal aging programs by MAG.** A private citizen has forwarded concerns regarding MAG's administration of federal aging programs. Specifically, there are questions about the cost accounting of mostly federal dollars. Our experience based on previous audits of these type of accounting concerns is that they generally relate to compliance issues, and the financial effect is often minimal. By and large, an audit in this area would be of programs using federal dollars rather than the administration and spending of state dollars.
- **CDBG grant process as administered by state DCED.** This letter identifies some concern with one CDBG contract administered by DCED which may or may not indicate further concern. But by way of information, we have been informed that the State Auditors Office has begun its annual single audit of federal grants administered by DCED. We have made the State Auditors aware of the questionable eligibility of the MAG building. Since they are required to report any possible non-compliance of CDBG back to federal HUD representatives, they will be making additional contact to the Denver region regarding the MAG building and other issues, if any.