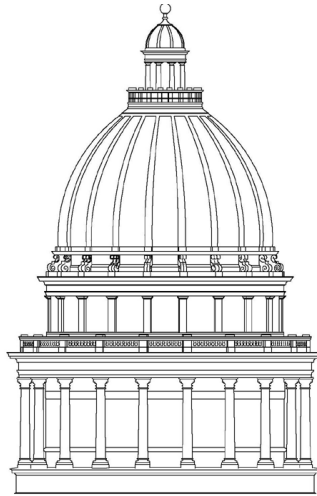


REPORT TO THE
UTAH LEGISLATURE
Number 2020-03



**A Performance Audit of the
Permanent Community Impact Fund**

May 2020

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah



STATE OF UTAH

Office of the Legislative Auditor General

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KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

May 2020

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Permanent Community Impact Fund** (Report #2020-03). An audit summary is found at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "Kade minchey".

Kade R. Minchey, CIA, CFE
Auditor General



PERFORMANCE AUDIT

▶ AUDIT REQUEST

We were asked to evaluate whether Community Impact Board (CIB) funds are used effectively and in accordance with the funds' intended purpose and CIB's project prioritization process.

▶ BACKGROUND

The federal government collects revenues from private producers for the lease of public lands and the extraction of minerals from public lands. A portion of these federal revenues are remitted back to the state where the resource extraction took place. In fiscal year 2019, the Utah CIB received \$36.6 million in revenues.

CIB provides loans and grants from these revenues to state agencies and subdivisions of the state that are socially or economically impacted by mineral resource development. Loans and grants can be used for specific provisions allowed in statute which include planning, construction and maintenance of public facilities, and provision of public services. The board is composed of 11 members, of which six are locally elected officials.

Permanent Community Impact Fund



KEY FINDINGS

- ✓ No CIB policy exists to ensure projects adequately alleviate mineral extraction impact.
- ✓ Board members and other stakeholders desire guidance to ensure consistent funding decisions.
- ✓ Competitive bidding is not always occurring for CIB-funded projects.
- ✓ Internal policies are incomplete and inconsistently followed.

CIB Board Should Implement Policies Ensuring Funds Alleviate Impact

We identified several large projects that highlight the need for improved policy and processes going forward. These projects have substantial economic development elements or provide low-interest government loans to the private sector.



RECOMMENDATIONS

- ✓ CIB should implement, formalize, and follow internal policies for how projects will be reviewed and awarded, maximum award size, and grant/loan mix of all projects.
- ✓ CIB should continue working with staff to ensure consistency in decision-making.
- ✓ CIB should consider providing additional resources towards capital asset inventories and require applicants to complete them.
- ✓ CIB should ensure all projects engage in a competitive bid process.



REPORT SUMMARY

Strengthened Procurement Controls Are Needed for Some Board-Approved Projects

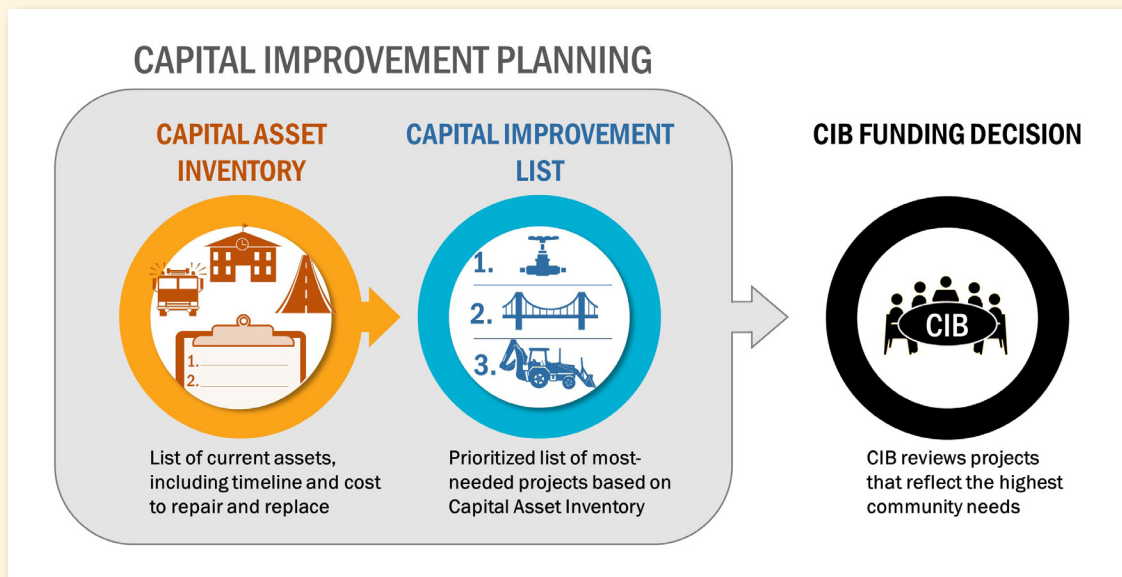
We evaluated the procurement process for a sample of cases to ensure that a competitive bid occurred. Robust competitive bidding was missing from some projects and should be required by the board. Five examples, accounting for \$11.9 million in CIB funding, had only one bid. The Utah Division of Purchasing and General Services has resources available at no cost to applicants that could help strengthen the procurement weaknesses we found.

Internal Policies Are Incomplete and Inconsistently Followed

A number of CIB policies are documented but not consistently followed. Adherence to policies safeguards resources and promotes desired outcomes. Moreover, there are informal policies that, if formalized, would provide additional meaningful controls. CIB's internal guidelines state that the maximum award amount is \$5 million, but the board has exceeded this 54 times while funding over \$500 million in projects. In addition, the board's practice of providing more grants than loans over the last 5 years may not be sustainable.

Enhanced Planning and Consistent Decision-Making Is Needed

Good planning is important to ensure the most-needed, highest-value projects are prioritized and funded by CIB. Planning could improve through the widespread use of capital asset inventories, more meaningful use of capital improvement lists, and stronger public involvement on capital projects. CIB can also improve decision-making through enhanced consistency of award terms.



REPORT TO THE UTAH LEGISLATURE

Report No. 2020-03

A Performance Audit of the Permanent Community Impact Fund

May 2020

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Chapter I

Introduction

The federal government collects revenues from private producers for the lease of public lands and the extraction of minerals such as coal, oil, and gas from public lands. A portion of these federal revenues are remitted back to the state where the resource extraction took place. Utah's Permanent Community Impact Fund Board (CIB) provides loans and grants to state agencies and subdivisions of the state that are socially or economically impacted, directly, or indirectly, by mineral resource development on federal lands for specific provisions allowed in statute which include planning, construction and maintenance of public facilities, and provision of public services.

While local communities cannot collect taxes on federal land, they are required to provide basic public services. CIB returns a portion of mineral lease fees to these impacted communities as a result of activities on the land. Examples of public services provided by local governments for which CIB funds may be requested are shown in Figure 1.1.

CIB provides loans and grants to state agencies and subdivisions that are impacted by mineral resource development.

Figure 1.1 Mineral Lease Funds May Be Used for a Variety of Services that Alleviate the Impact of Mineral Extraction. While not exhaustive, the following examples highlight some of the government services for which CIB funds may be used.



Source: **Utah Code** 40-10-25(2)(d); 63M-5-302(1), 17D-1-201; 78B-2-216; 11-36a-102(16)-(18); 17-27a- 403(3)(b).

CIB is comprised of 11 members, of which six are locally elected officials.

CIB prioritizes funding proposals based on a variety of criteria such as existing facilities and services and the presence of a taxable base.

CIB is comprised of 11 members, of which six are locally elected officials (two members are from the counties with the most mineral lease revenue), and five are government officials from Water Resources, Water Quality, the Department of Workforce Services, the State Treasurer, and the Transportation Commission. We interviewed all board members and the majority of them reported that board composition is balanced and appropriate.

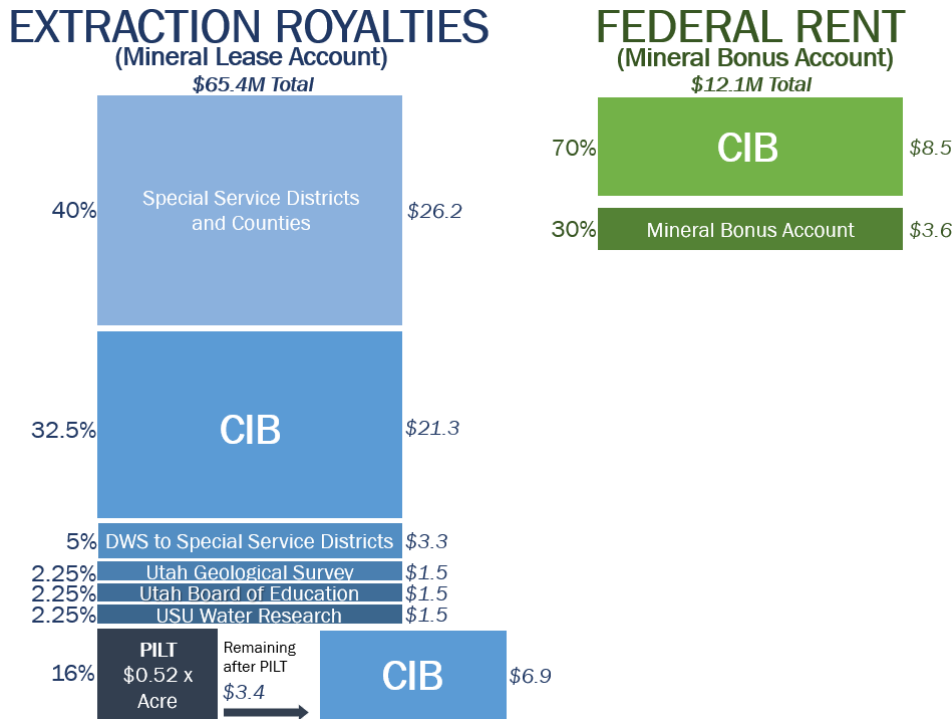
CIB Provides Significant Resources To Utah’s Rural Communities

Mineral lease funds are a significant revenue source for capital projects in rural Utah, both through direct allocations to districts and counties as well as to CIB. CIB prioritizes funding proposals based on a variety of criteria such as the amount of mineral lease money generated by the county, existing public facilities and services, and the presence of a taxable base to fund projects. Funds are disbursed in the form of grants and loans at varying interest rates. Approximately half the funds are distributed as grants and half as loans, although this distribution has shifted towards more grants over the last five years, as highlighted in Chapter V.

Mineral Lease Funds Are Statutorily Allocated to Various Entities

Utah Code requires mineral lease revenues to be allocated to various entities for a variety of statutory purposes as shown in Figure 1.2.

Figure 1.2 Fiscal Year 2019 Mineral Lease Revenues as Allocated in Statute. CIB receives a portion of extraction royalties (money associated with extraction activities) and rent, (money associated with leasing federal land to private entities) along with other distributions of mineral lease funds.



Source: Office of the Legislative Auditor General, based on FINET revenue data and **Utah Code 59-21**.
 Note: Payments in Lieu of Taxes (PILT) are federal payments to local governments that help offset losses in property taxes due to the existence of nontaxable federal lands within their boundaries.

Extraction royalties can be used for grants, zero percent loans, or interest-bearing loans while federal rent (bonus payments) must be used for interest bearing loans. Special service districts and counties impacted by mineral extraction receive a large portion of mineral lease funds. These districts and counties can apply for additional mineral lease money in the form of CIB grants and loans for eligible projects.

For fiscal year 2019, we validated that CIB received the correct amount of funds and verified that all mineral lease money was accounted for. Distributions from the Mineral Lease Account and Mineral Bonus Account were matched to information provided by the Department of Workforce Services to verify all distributions were correct.

Special service districts and counties impacted by mineral extraction receive a large portion of mineral lease funds.

CIB Funds Are Intended to Benefit the Greatest Number of Citizens of the State

Utah statute states that the intent of mineral lease funds is to:

Maximize the long term benefit of funds derived from these lease revenues and bonus payments by fostering funding mechanisms which will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of this state.¹

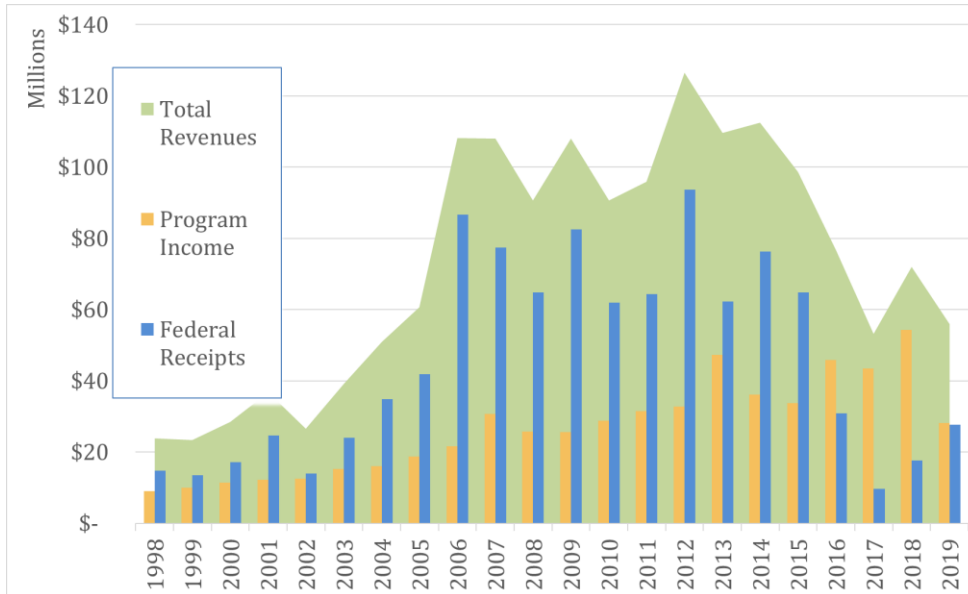
Since this statute also states that there is “priority given to those communities designated as impacted by the development of natural resources,” marginally impacted and marginally producing communities typically receive more CIB assistance in the form of loans, as stated in funding guidelines.

At the start of fiscal year 2020, the mineral lease fund portfolio totaled approximately \$177 million. Approximately \$60 million is being held for large infrastructure projects. Figure 1.3 shows the fluctuation in mineral lease revenue over the last ten years.

Statute gives funding priority to communities impacted by natural resource development.

¹ *Utah Code* 35A-8-301

Figure 1.3 Mineral Lease Funds Are Composed of Program Income and Federal Receipts. Program income is composed of loan repayments and earned interest while federal receipts are composed of extraction royalties and federal rent.



Source: Permanent Community Impact Board revenue data from fiscal year 1998 to 2019.

While most CIB revenue has been generated through the federal mineral lease disbursements, based on the price of oil and gas and mineral extraction occurring, the federal receipts can fluctuate greatly, as shown above. An increasing portion of CIB revenue comes from loan repayment income as a result of lending money at interest to communities.

An increasing portion of CIB revenue comes from loan repayment income.

Other States Allocate Mineral Lease Money in a Variety of Ways

We performed a limited review of neighboring western states and found they use their mineral lease revenues in a variety of ways. Utah appears to have one of the most clearly defined mineral lease programs among the western states. Colorado has the program most similar to Utah’s CIB called the Energy and Mineral Impact Assistance Fund. The mission of this program is “...to promote sustainable community development and to increase the livability and resilience of communities through strategic investments in asset-building activities.” The program funds projects that are urgent, a high priority

In most states we examined, mineral lease revenues are typically added to existing funds.

for the applicant, and in communities with a demonstrated financial need.

In other states we examined, mineral lease revenues are typically added to existing funds and their use is governed by applicable requirements. In Idaho, about 90 percent of the money goes to its Public School Income Fund and the remaining 10 percent goes to the community in which the royalty was generated. Likewise, Wyoming uses most of its mineral lease funds for its School Foundation Program and other state education related programs, with the remainder used for roads, cities and towns, and local governments. In Montana, funds are deposited into the general fund with a portion distributed to affected counties. In California, mineral lease funds are deposited to a renewable resource fund and for a variety of projects related to geothermal resources.

Audit Scope and Objectives

We were asked to evaluate 1) whether CIB funds are used in a way that is consistent with the funds' intended purpose, 2) CIB's project prioritization process, and 3) whether CIB funds are used effectively. This led us to focus on the following chapters:

- Chapter II evaluates the need for enhanced board policies that ensure funded projects align with the Mineral Leasing Act and Utah statute's intended purpose of alleviating impact.
- Chapter III evaluates the need for enhanced planning and consistency in board decision-making.
- Chapter IV evaluates whether funding projects adhere to state procurement code and best practices.
- Chapter V evaluates compliance with board policies and procedures.

Chapter II

CIB Board Should Implement Policies Ensuring Funds Alleviate Impact

Most Permanent Community Impact Board (CIB) projects reviewed align well with the Mineral Leasing Act's (MLA) and state statute's intended purpose of alleviating the impact of mineral development. However, our risk assessment revealed several large projects that illustrate the need for additional policies because they appear to be largely for economic development or provide low-interest government loans to the private sector.

Because the MLA and state statutes are open for interpretation regarding what constitutes impact alleviation and therefore eligibility for public funding, we are unable to directly determine the appropriateness in awarding CIB funds for these projects. In 1993, the Utah Office of the Attorney General issued an opinion clarifying allowable uses of mineral lease funds. While this opinion is helpful, CIB can further improve its processes by establishing clearer policies in selecting and awarding projects. This chapter discusses several CIB-funded projects that highlight the need for improved policy and processes going forward.

Mineral Leasing Act and State Statute Restrict Mineral Lease Funding Uses

Based on a risk assessment, we examined several CIB-funded projects to determine if they were in compliance with the Mineral Leasing Act (MLA) and Utah statute's intended purpose, to alleviate impact. We found that nearly all CIB-funded projects we reviewed align well with this intended purpose and improve the quality of life for Utah residents. However, we identified several large projects that highlight the need for improved policy and processes going forward.

Utah Code says CIB projects should result in the "alleviation of social, economic, and public finance impacts resulting from the development of natural resources in this state²." The Attorney General's office has advised CIB that an economic development

² Utah Code Ann. § 35A-8-301(1)

Several large projects highlight the need for improved policy and processes.

Our recommendations focus on ensuring projects align with state statute requiring CIB funds alleviate impacts from natural resource development.

project “in and of itself, is not eligible for funding with mineral lease monies.” Finally, Utah Administrative Rule requires projects to be “available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.”

We visited many CIB funded projects and interviewed many people who attested to the importance of CIB funds for their communities. The benefits of the MLA funds to communities throughout Utah is clear. Our recommendations in this chapter focus on ensuring that projects going forward clearly align with federal and Utah statutes and that there is a clear standard in policy which can be used to measure projects’ compliance with statute.

CIB Funds Are Intended To Alleviate Impact

The Federal Mineral Leasing Act was enacted in 1920, allowing the government to receive compensation for mineral extraction activities on federal public lands. In 1976, the Department of the Interior requested that congress expand allowable uses of MLA funds beyond “the construction and maintenance of public roads or for the support of public schools or other public educational institutions.” Congress rejected the Department of the Interior’s request to remove all restrictions on the use of the funds but defined allowable uses of the funds which is reflected in the current law. Specifically, the MLA directs states to prioritize the money for:

those subdivisions of the State socially or economically impacted by development of minerals leased under this [Act], for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public services...

State statute closely corresponds with the language in the MLA stating that the Impact Board shall:

Make [subject to the limitations of the leasing act] grants and loans from the amounts appropriated by the Legislature out of the impact fund to state agencies, subdivisions, and interlocal agencies that are or may be socially or economically impacted, directly or indirectly, by mineral resource development for (i) planning, (ii)

Eligible projects include planning, construction and maintenance of public facilities, and the provision of public services.

construction and maintenance of public facilities, and (iii) provision of public services.

State Statute adds that the legislature intends to:

maximize the long term benefit of funds derived from these lease revenues and bonus payments by fostering funding mechanisms which will, consistent with sound financial practices, result in the greatest use of financial resources *for the greatest number of citizens* of this state, with priority given to those communities . . . impacted by the development of natural resources covered by the Mineral Leasing Act (emphasis added).

Federal and State statutes provide direction on how these funds can be used but lead us to ask questions that need clarification in board policies. For example:

1. How does the board determine if a project provides a sufficient impact alleviation when it is touted as an economic development project?
2. How does the board determine if a project alleviates or exacerbates the impact from mineral lease development?
3. What criteria does the board use in determining if a project provides a low interest government loan to the private sector?

This report provides examples of projects that demonstrate these questions and shows the need for CIB to adopt a policy in accordance with the Federal Mineral Leasing Act and Utah statute which provides criteria for how projects will be reviewed and awarded.

Attorney General Opinion States that Purely Economic Development Projects Do Not Qualify for Mineral Lease Funding

The Office of the Attorney General (OAG) has relied upon the analysis and legal conclusions of their 1993 opinion in determining whether a project constitutes economic development and an improper use of public funds for private purposes in violation of federal and state law.

Use of mineral lease funds should result in the greatest use of financial resources for the greatest number of citizens.

According to an AOG opinion, “an economic development project, in and of itself, is not eligible for funding with mineral lease monies.”

According to the opinion, “an economic development project, in and of itself, is not eligible for funding with mineral lease monies because it does not qualify as ‘planning,’ ‘construction and maintenance of public facilities’ or ‘provision of public services.’” In addition, the OAG opinion states, “The use of mineral lease monies for ‘mere’ economic development—usually meaning assistance to private businesses and enterprises in their operations—raises Utah Constitutional issues.” The opinion references the Utah Supreme Court, which has upheld the constitutional principle that “public funds cannot be expended for private purposes” stating:

[T]he fundamental test of the constitutionality of the statute requiring the use of public funds is whether the statute is designed to promote the public interest, as opposed to the furtherance of the advantage of individuals.

While many projects funded by CIB will result in some economic development, we believe that CIB needs to develop policies that have clear criteria for reviewing and awarding funds for projects that provide substantial economic development or that exacerbate impact.

CIB Funds Cannot Be Used as Low-Interest Government Loans to the Private Sector

The Utah Supreme Court has held that the Utah Constitution bars the State from subscribing (or lending its credit) in aid of any private enterprise. This is made clear in CIB Administrative Rule which states:

All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.³

Federal and state statute, the Utah Constitution, Utah Administrative Rules, as well as the OAG opinion provide guidance for CIB in making funding determinations. Because many projects will have private, as well as public benefits, we recommend that the board

Proposed funding should not merely be a device to pass along low interest government funding to the private sector.

³ Utah Admin. Code 990-8-3

develop additional clarity in their policies for determining what factors will be considered when awarding funds.

We also recommend that CIB review the project size, scope, intended beneficiaries, and budget of proposed projects and make a determination that the project is a good value for the community in alleviating impact, in accordance with statute's directive to provide "the greatest use of financial resources for the greatest number of citizens of this state." The Community Development Block Grant, for example, scores applicants based on the proposed project's benefit to their targeted population. Projects that provide the greatest benefit to the target population at the lowest cost are awarded a higher score.

The following section focuses on several projects that demonstrate the need for CIB policies which can clearly determine if a project is adding rather than alleviating the impacts of mineral extraction, primarily promotes economic development, or provides low interest government financing to the private sector.

Some CIB-Funded Projects Reveal the Need for a Clear Policy Governing Projects with Substantial Economic Development Elements

Using a two-step methodology that included searching meeting minutes and reviewing flagged projects for high dollar amounts, we identified several projects that show a need for clearer policies and criteria in determining the appropriateness of CIB-funded projects. We recommend CIB adopt a policy that clearly outlines how projects with substantial economic development elements will be reviewed and awarded.

Risk Assessment Was Used to Identify Concerning Projects

Early discussions with stakeholders indicated potential concerns with how CIB funds are used. To examine whether Utah's mineral lease funds are used as intended, we conducted a risk analysis review that looked for projects which may have a large economic development purpose. To identify these projects, we searched all CIB meeting minutes over the last three years using terms "economic," "development," "private," "benefit," "legal," and "attorney." This yielded examples of projects across the state where board members,

CIB should review project size, scope, intended beneficiaries, and budget of proposed projects and make a determination that the project is a good value.

CIB’s assistant attorney general, CIB staff, or other interested parties raised concerns that a proposed project may be misaligned with the fund’s intended purpose. Of the projects that were flagged by this search, we identified projects that presented the greatest risk due to their significant dollar amount and reviewed detailed documentation surrounding these projects. The following sections discuss these projects, demonstrate the need for CIB to have clear policies in determining the appropriateness of projects, and offer suggestions for ensuring that CIB funds are used as intended.

The Uintah Basin Rail Line Project’s Impact Mitigation Was Questioned by Assistant Attorney General Advising CIB

In 2019, CIB awarded a \$27.9 million application from the Seven County Infrastructure Coalition (SCIC) for Uintah Basin Rail Line planning. Prior to the award, the Office of the Attorney General (OAG) raised “questions and legal concerns about the application.” SCIC’s attorney sent a response letter which resulted in a subsequent OAG letter sent October 30, 2018. Specifically, this letter raised the following primary issues:

- The application and supporting materials do not provide sufficient evidence that the proposed rail line will mitigate impact by alleviating truck traffic.
- The primary purpose of the project appears to be economic development, which is not eligible for funding as clarified by the 1993 Utah Attorney General Opinion of the MLA.

Notably, the OAG letter quotes a study of the project which states, “[T]he ultimate goal of constructing the prospective railroad is to advance the economic development of the Uintah Basin...” The letter states, “because SCIC’s application and its supporting studies place the issue [economic development] at the forefront” and “the MLA expressly forbids the use of mineral lease funds for mere economic development” the proposed project raises Utah Constitutional issues in need of addressing.

Despite significant OAG review regarding the rail study and warning that, “It is possible—perhaps likely, even—that the CIB’s decision on the Application will be challenged in court,” the project was funded with one board member opposing.



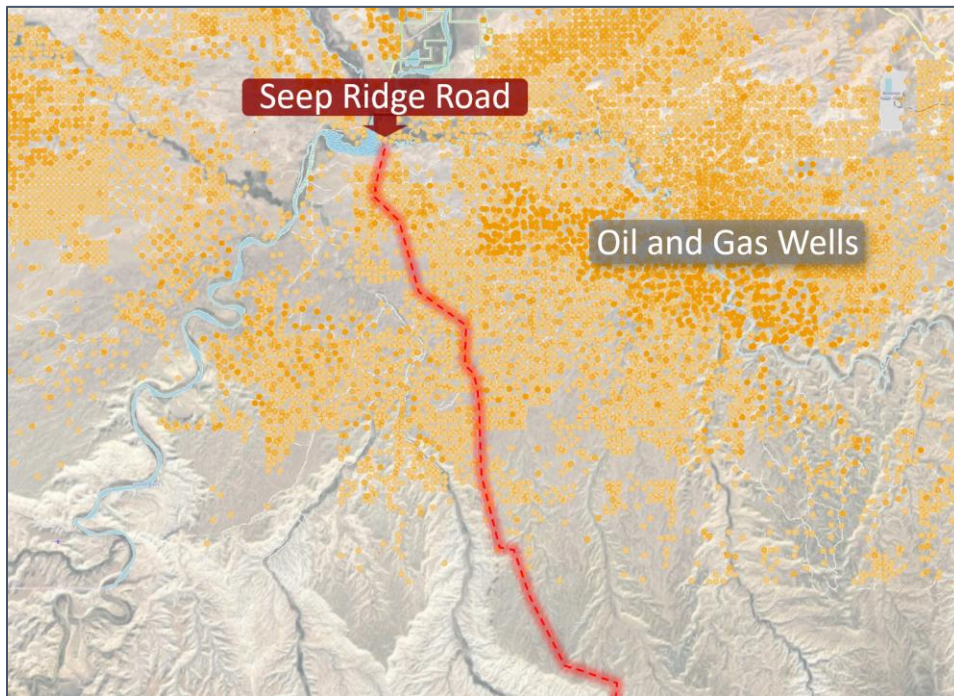
The OAG questioned if the purpose of the SCIC study was primarily economic development.

To provide clear guidance and a legal framework to the board for making funding decisions, we recommend that the board adopt a policy in accordance with the Federal Mineral Leasing Act and state statute that provides criteria for how projects will be reviewed and awarded.

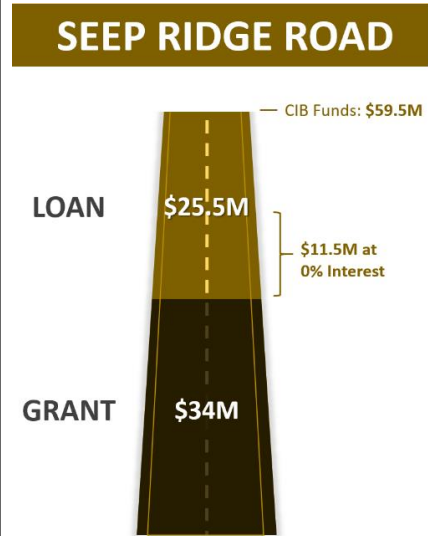
Seep Ridge Road Economic Development Elements Show Need for Clear CIB Policy

Between 2009 and 2019, CIB awarded five grants/loans for contiguous sections of Seep Ridge Road totaling \$59.5 million. Over half, or \$34 million, was awarded as grants and the remainder as loans; \$14 million at 2.5 percent interest and \$11.5 million at zero percent interest. Meeting minutes surrounding the project indicate the project was touted primarily for economic development reasons, although public benefits were also mentioned. Further, the road runs through many oil and gas wells, as evidenced in Figure 2.1.

Figure 2.1 A Map of Seep Ridge Road Indicates the Road Was Upgraded and Paved to Facilitate Resource Extraction. Each yellow dot on the map is an oil or gas well.



Source: Office of the Legislative Auditor General, based on Utah Department of Natural Resources Division of Oil, Gas and Mining database.



The Seep Ridge Road project application stated the road was used for oilfield workers, ranchers, hunters, and travelers.

Seep Ridge Road's primary purpose appears to be enhancing mineral development.

Meeting minutes indicate the road was needed to accommodate oil and gas wells.

Seep Ridge Road is a 48-mile paved road starting from the end of State Route 88 near Ouray, Utah. The Uintah Transportation Special Service District's (UTSSD) initial application in 2009 explains that the proposed project is to reconstruct, upgrade, and improve the drainage issues on the 48 miles of road known as Seep Ridge Road used by "oilfield workers, ranchers, hunters, and travelers."

Seep Ridge Road Application Discusses Increased Mineral Development Possibilities. The Seep Ridge Road application states that because the mining industry generates mineral lease monies, Uintah County and the district support returning, "a large portion of the funding back to the mining industry in the form of road improvements." In their phase two application for CIB funds they state, "This roadway provides access to recreation, hunting, ranching, and the development of abundant natural resources including oil, natural gas, oil sands, and oil shale." The CIB applications also mention public benefits such as enhancing access to recreational and hunting opportunities and enhancing traveler safety. While these public benefits are important to demonstrate, without clear criteria adopted by the board that has been carefully reviewed to ensure it is in compliance with federal and state statute, it is difficult to know whether this project satisfies the MLA's intended purposes of alleviating the burden of impacts from mineral development on local communities. Rather than reducing impacts from mineral development, it appears as though the road's primary intended purpose was to enhance mineral development, which would by extension, increase some impacts on local communities.

Meeting minutes indicate that increased energy production was expected from building the road noting that, "if production increases in the Uintah Basin by about 100,000 barrels a day, that will add another 300 to 500 trucks a day." Further, oil and gas companies were reported to be supportive, with one company pledging \$100,000 towards the road and issuing a challenge grant to other large oil and gas companies, suggesting the private sector anticipated enhanced production.⁴ In meeting minutes from 2019 regarding the most recent installment of the road, the applicant stated the road addition was needed to accommodate 2,864 oil and gas wells, but the oil and gas

⁴ Minutes of The Uintah Transportation Special Service District Administrative Control Board - February 6, 2008

companies did not have any money to help with the project at that time.

Given the large percentage of CIB funding awarded to these expensive projects, we are concerned that the money has not benefited the greatest number of citizens, as required by statute. The board should clearly articulate in policy how it will comply with this requirement in the future and provide information supporting it.

Available Information Shows A Strong Economic Development Component for Seep Ridge Road. According to the Transportation, Environmental Quality & National Guard Appropriations Subcommittee meeting minutes that occurred prior to CIB awarding funding:

The purpose is to get the waxy crude oil from the Uintah Basin to the railroad where it can be shipped to refineries which can handle this kind of crude oil and net a better price per barrel to the suppliers⁵.

The Uintah Basin Energy and Transportation Study reveals the extent to which Seep Ridge Road is predicated on economic development in the form of enhancing oil and gas production. The purpose of the study was to identify if transportation infrastructure is a barrier to oil and gas production. Seep Ridge was identified as one of the “major transportation corridors that serve as primary routes for energy-related development in Duchesne and Uintah counties.” Likewise, the environmental assessment for the project stated that purpose for building the road was, “a continued substantial increase in light and heavy vehicle traffic on the road, primarily associated with energy development in the Book Cliffs area”.⁶

⁵ Minutes of The Transportation, Environmental Quality and National Guard Appropriations Subcommittee February 6, 2008

⁶ United States Department of the Interior, Bureau of Land Management, "Seep Ridge Road Paving Project Environmental Assessment" (2011). Environmental Assessments (UT). Paper 6. https://digitalcommons.usu.edu/utah_enviroassess/6

Supporting documentation did not provide evidence of significant impact alleviation benefits of Seep Ridge Road.

The engineering firm that presented the most recent addition to the road called Ouray Bottoms Road emphasized that 45 percent of gas produced in the Uintah Basin comes from this corridor and that it was necessary to raise the road to prevent the oil and gas industry vehicles from taking a 92-mile detour in the event of a flood. Additionally, one board member asked if the applicant had approached the state for economic development money since the project affects the whole state. The board might have believed that that the impact alleviation benefits were compelling enough to fund the projects. But supporting documentation did not provide evidence of this position. In the future, the board should better document their decisions showing the statutory reason for making their decisions.

CIB Board Should Clarify How Private and Public Benefit Is Evaluated. The 1993 Attorney General Opinion stated the intent of the MLA, indicating that economic benefit is not an appropriate use of mineral lease funds. According to the opinion, assistance to “private businesses and enterprises in their operations. . . raises Utah Constitutional issues.” The opinion further adds that, “private benefits incidental to a dominant public purpose do not detract from the constitutionality of the legislation.” While roads are an expressly permitted use of CIB funds, supporting documents on this road appear to show a dominant private benefit.

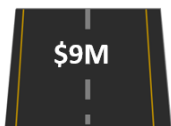
We recommend that the board clarify in their policies how they will evaluate applications with significant private benefits to ensure all CIB-funded projects are in accordance with the Federal Mineral Leasing Act and state statute’s intended purpose and adequately demonstrate the cost of projects is justified by the value for the community in alleviating impact.

The Leland Bench Road Project Raises Questions That Demonstrate a Need for Improved Policies

In 2019, Leland Bench Road was fully funded with a \$9 million CIB grant. The money for this project was initially intended for another project called the South Vernal Truck Route, which was planned to divert heavy truck traffic from main street roads in Vernal. After the project was approved, the applicant determined that there was no longer a need to divert traffic, requesting to use the funding instead for the Leland Bench Road.

LELAND BENCH ROAD

GRANT



The Leland Bench Road project involved realigning and reconstructing the roadway on Leland Bench to utilize, “the soils [that] have a greater capacity and will allow for the continued growth of larger vehicles in this area.” In contrast to the original proposal that focused on the alleviation of mineral extraction impacts by diverting heavy truck traffic out of Vernal, the application for Leland Bench focuses more on the promotion of economic development. Meeting minutes indicate that the applicant anticipated that the road would create jobs and benefit the oil and gas industry.

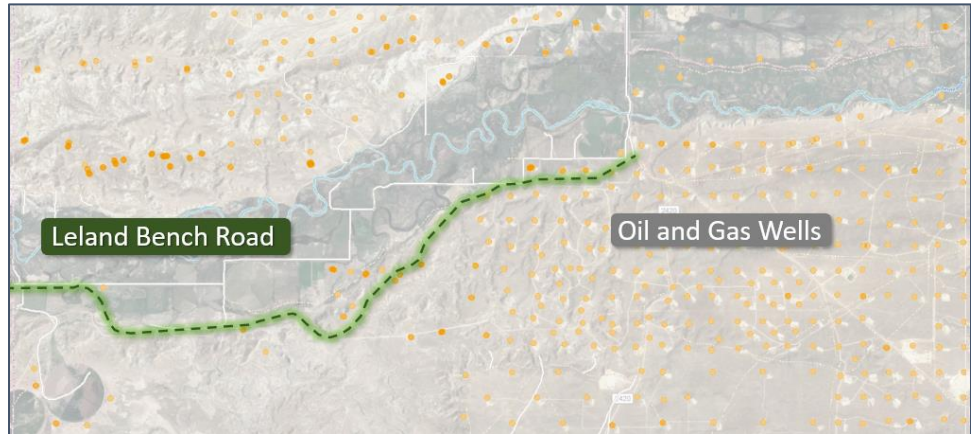
The OAG advised the SCIC in a 2018 letter that, in their opinion, job creation is not an appropriate use of mineral lease money:

The expectation that economic development activity may provide jobs, taxes, and other benefits that may accrue to benefit the community may justify governmental entities in spending their *general fund monies* for economic development. However, it is not a proper use of *mineral lease monies* (emphasis added).

In addition to this economic development concern, rural planners who reviewed the project prior to CIB funding stated, “This road in Uintah County is mainly to provide access to oil and gas production” and the existing road “is not in the best condition to handle the amount of heavy oil and gas traffic.” The planners favorably recommended the project because, “this road will greatly benefit the energy sector that it feeds.” Figure 2.2 illustrates the proximity of the road to oil and gas wells.

Constructing Leland Bench Road was anticipated to result in job creation, which is not an appropriate use of CIB money according to the OAG.

Figure 2.2 Leland Bench Road Appears to Promote Economic Development. Each yellow dot on the map indicates an oil and gas well.



Source: Office of the Legislative Auditor General, based on Utah Department of Natural Resources Division of Oil, Gas and Mining database.

The Leland Bench Road application states the road was needed for heavy truck traffic for the energy industry.

Application documents also suggest that the purpose of the road was enhanced resource extraction, stating that the road was needed, “as a means of providing [truck] access to the southern portions of Uintah and Duchesne Counties for heavy truck traffic for the energy industry.”

This project again points to the need for clear criteria to measure and review projects against the Mineral Leasing Act and state statute. In addition, the project was built without securing the right of way, consequently it is unclear if the public will continue to have access to the road.

Flood Mitigation Project May Be An Inappropriate Pass-Through to Canal Companies

In 2016, CIB awarded \$10.9M (\$8.2M grant and \$2.7M loan at zero percent interest) to Uintah County Municipal Building Authority for a flood mitigation project. In 2018, Uintah County Water Conservancy District applied to take over the project which had not yet begun. The project—which is currently underway—will pay canal companies for a 100-year rights-of-way lease to use the canals to channel flood water should a flood occur. Unlike other projects highlighted in this chapter, the canal project application states a clear public benefit which is flood mitigation and does not appear to have been built to enhance mineral extraction. We are concerned, however,

Flood Mitigation Project



that the money provided for this project may be an inappropriate pass-through to three private canal companies.

CIB may be paying canal companies to pipe their canals when they have already received funding to do so. CIB meeting minutes indicate that the canal companies determined the price for the CIB-funded rights-of-way based on the anticipated cost to purchase pipe for irrigation. Minutes also indicate that canal companies would use the rights-of-way money to purchase the pipe for the project. However, the Bureau of Reclamation awarded the canal companies funding to pipe their canals prior to CIB's decision to fund this project in 2018.

This project raised additional concerns. For example, county minutes show that the county intended to pursue the loan portion of the CIB award in order to pass along money to canal companies at a lower rate than they could obtain elsewhere. Further, a county commissioner in the area also raised this pass-through concern stating that one of the canal companies had already placed pipe in part of their canal and was preparing to finish the piping project. The commissioner raised thirteen concerns with the project including:

- A Storm Water Plan for the Area provides more effective flood mitigation measures than the proposed project
- A legal determination, which had not been performed, may show that the county already has a right of way, eliminating the need to lease the canals.

The commissioner stated, "Even though my county is a beneficiary it seems odd to give such generous terms to a project with so many unstated objectives." We share the commissioner's concern and question if the public is getting a benefit that is comparable to the money spent in addition to the potentially improper pass-through concerns raised by the documentation.

In 2017, the OAG's office, CIB bond counsel, and CIB staff cautioned the board to evaluate whether this project represented an improper pass-through to the private sector. They stated that purchasing the easements would be an improper pass-through if there was no determination of fair market value. The applicant proposed a fair market value based on the cost of installing the pipe, but according to a commissioner closely involved with the project, there were no details behind this estimate. The commissioner wrote a letter to the

The Bureau of Reclamation provided funding to pipe canals that CIB also awarded funds for.

CIB funds were pursued to pass along money to canal companies at a lower rate than they could obtain elsewhere.

A county commissioner stated that the canal project appeared to be paying water companies to upgrade their system.

board raising this concern. Meeting minutes document “that there have been concerns from various entities about this project” and that “it appears to be paying the water companies to upgrade their system.”

Despite unaddressed concerns raised by various parties, the project was approved. Documentation suggests that part of the purpose of this application may have been to pass along a low-interest government loan to privately owned canal companies to do a project that they may have planned to do even without CIB funding.

Administrative Rule states that applicants must demonstrate that “funding assistance is not merely a device to pass along low interest government financing to the private sector.”⁷ Likewise, CIB policy echoes this language in their policies stating:

The CIB may determine to participate in non-culinary water projects where an eligible applicant can demonstrate that the facilities or services provided would be available to or significantly benefit the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

The policy uses “lining canals to prevent water loss to agricultural and industrial users,” as an example of an inappropriate water project. While the canal project provides a public benefit of flood mitigation, the nearly \$11 million cost of this project, combined with the pass-through to private entities that may have completed the projects on their own, raises concerns of the appropriateness of the project. We therefore recommend that CIB review applicant projects to ensure that the project is a good value for the community in alleviating impact.

Other Projects Also Demonstrate a Need For Close Review of Pass-Through Funds to the Private Sector

Our risk analysis led us to identify a number of high dollar projects, which raised concerns since CIB does not have clear criteria for determining the public benefit of projects. The following section provides examples of additional projects we reviewed that share this concern. Due to the relatively small dollar amounts of these projects, our review was limited. We include them to illustrate that the board must ensure their policies are clear on what constitutes impact

Clear policies regarding impact alleviation are needed for projects that appear to largely benefit private sector interests.

⁷ Utah Admin. Rule R990-8-3 (J)

alleviation and then carefully weigh the public benefit when funding projects that appear to largely benefit private sector interests or do not demonstrate impact alleviation.

- **Brian Head Water Line.** This \$1 million project (mostly grant) pays for a new water line in the Cedar Breaks Mountain Estates, a development in the Brian Head area. While CIB funds will provide important infrastructure for fire protection in the Cedar Breaks area, the applicant acknowledged that future development of the area could also benefit by utilizing the line. It is not clear from current board policies and the application if this project primarily benefitted the public or owners of the future development.
- **Charleston Town Road Paving Project.** This \$1,165,000, 15-year loan at 2.5 percent raised several concerns from the board including the OAG. The concern was that the project would benefit only a few private homeowners. Again, better policies and more information is needed to make a determination.
- **Gunnison City Sidewalks.** This \$58,000 grant project was to provide sidewalks and driveways that lead to private homes. The OAG raised the concern that the project appeared to be a pass-through to homeowners who would benefit through increased property values. Clearer criteria in policy would illuminate if this project is appropriate for CIB funds.

The current lack of CIB policies on how these projects should be weighed in conjunction with the private benefits do not give the board clear guidance on how these types of projects should be analyzed. We recommend that the Permanent Community Impact Board adopt a policy in accordance with the Federal Mineral Leasing Act and Utah statute which provides criteria for how projects will be reviewed and awarded.

Board Members Should Provide Extra Scrutiny To Projects That Lack Clear Public Benefits

Because Mineral Lease funds are limited and the need for these funds is great, as evidenced by the many projects that appear on capital improvement lists promulgated by communities, it is crucial the board develop policies that align with the Mineral Leasing Act.

A \$1.1 million CIB loan was used to benefit only a few private homeowners.

CIB policies do not give the board clear guidance for projects with substantial private benefits.

Collectively, the projects highlighted in this chapter raise concerns surrounding how mineral lease funds are used. Projects that promote economic development rather than public benefit, that do not adequately alleviate impact, or provide low-interest government financing to the private sector should be reviewed with an extra level of scrutiny by the board.

Recommendations

1. We recommend that the Permanent Community Impact Board adopt a policy in accordance with the Federal Mineral Leasing Act and Utah statute that provides criteria for how projects providing substantial economic development or that exacerbate impact will be reviewed and awarded.
2. We recommend that the Permanent Community Impact Board review the project size, scope, intended beneficiaries, and budget of proposed projects and make a determination that the project is a good value for the community in alleviating impact.
3. We recommend that the Permanent Community Impact Board require in policy that all applicants clearly identify their project's intended purpose and impacts to the community and that applicants provide evidence that there is clear impact alleviation.
4. We recommend that the Permanent Community Impact Board staff monitor applications to ensure that each project's intended purpose is clearly stated and demonstrates how the project will alleviate impact before it is presented to the Board.

Chapter III

Enhanced Planning and Consistent Decision-Making Are Needed

Good planning is important to ensure the most needed, highest-value projects are prioritized and funded by the Permanent Community Impact Fund Board (CIB). This is especially true in rural communities which may lack resources to implement effective planning. CIB helps rural communities by providing planners in five regions of the state and by providing grants and loans for planning and infrastructure needs. While this is helpful, we found that planning could be further improved through the widespread use of capital asset inventories, more meaningful use of capital improvement lists, and stronger public involvement on capital projects.

We also found inconsistencies in board decision-making resulting in unclear expectations for applicants and potentially subjective decision-making, which can result in the funding of projects that are not the most needed for communities. The board has already begun implementing a new policy for board decision-making that will enhance consistency and transparency. We recommend that the board continue to strengthen and follow its policies for decision-making.

Enhanced Planning Will Optimize Funding By Aligning CIB Projects with Community Needs

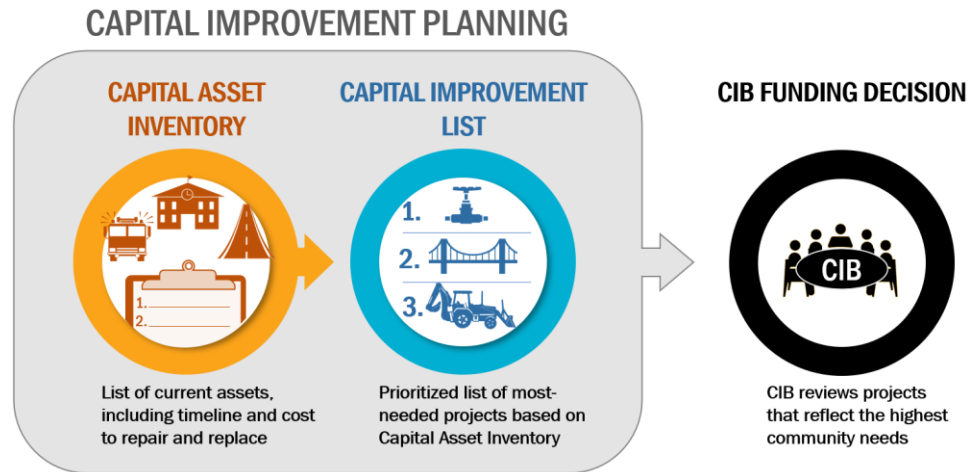
CIB is the primary funding source for rural planning in Utah. CIB pays for five full-time regional planners as well as state-level planners with the goal of providing "...stability for continuous quality planning throughout rural Utah." We surveyed and interviewed all five regional planners, which helped us to identify opportunities for improving the planning process.

CIB's current prioritization process requires key components, as shown in Figure 3.1.

CIB provides funding for planners in five regions of the state.

CIB is the primary funding source for rural planning in Utah.

Figure 3.1 Capital Improvement Planning and Project Prioritization Process. According to the Department of Workforce Services' (DWS) Capital Improvement Planning Guide, sound community planning, which includes performing a capital asset inventory and prioritizing needed projects, should occur prior to petitioning CIB for project funding.



Source: Office of the Legislative Auditor General, based on the DWS Capital Improvement Planning Guide.

Most rural communities lack capital asset inventories.

Despite this established process for capital improvement planning and prioritization, most of Utah’s rural communities lack capital asset inventories (orange), which are essential for planning purposes but not currently required by the board. We also found that required capital improvement lists (blue) do not always reflect a community’s planned and prioritized needs. Finally, robust public involvement could not be documented for some projects. Collectively, these planning deficits prevent communities from identifying their capital asset needs and prevent the board from effectively meeting these needs. CIB should consider providing additional resources to ensure this important tracking and planning can occur.

Critical Capital Asset Inventories Are Missing from the Planning Process

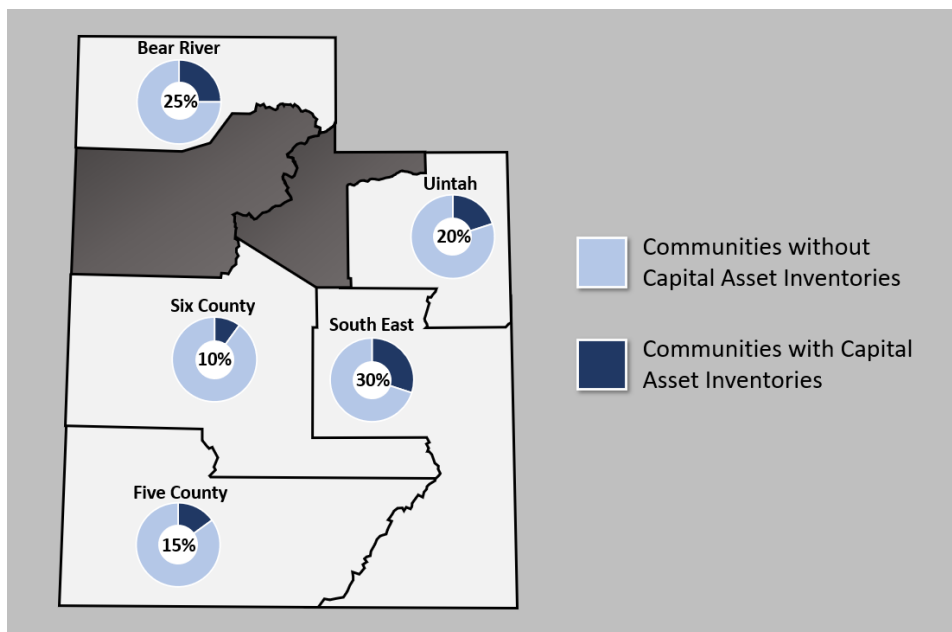
Most of Utah’s rural communities lack capital asset inventories (CAI) which are essential for capital planning and project prioritization. Capital assets are a community’s high-cost assets, such as roads, pipelines, buildings, parks, recreation facilities, and vehicles. CAI’s account for every asset’s current condition, maintenance and replacement timeline, location, and replacement costs.

CIB provides funding for five full-time planners in the more rural regions of the state to enhance the development and implementation of local and regional planning goals. Regional planners are responsible for the following activities:

- Consulting entities on their applications for CIB funding prior to submission to CIB
- Coordinating planning activities that use CIB funds
- Coordinating requests for planning funds from other state agencies (such as Community Development Block Grants and Housing)
- Providing planning services for communities, including assistance with creating capital improvement plans and Geographic Information System mapping

These planners expressed concern that not enough of their communities are tracking assets. According to regional planner estimates, only 20 percent of rural communities manage up-to-date asset inventories, as shown in Figure 3.2.

Figure 3.2 Rural Planner Estimates of the Number of Communities Lacking Up-To-Date Capital Asset Inventories. In the five rural areas that receive CIB funding, planners estimate that approximately 80% of rural communities lack up-to-date capital asset inventories.



Source: This figure shows estimates provided by regional planners. Actual data is not available.

CIB-funded planners enhance the development and implementation of local and regional planning goals.

Although it is not included in CIB policy, according to their rural planning guide, communities should conduct capital asset inventories prior to making new capital funding decisions.

These assets require upkeep to maintain their value to a community—none are free of costs, even when they are ignored. Capital assets should be maintained to ensure financial stability, limit emergencies, and enable long-term strategic planning for cities, counties, and special service districts.⁸

While there is a cost in terms of time needed for CAIs, it is important that rural communities complete these prior to requesting CIB funding to promote more efficient use of funds. If communities, in conjunction with planners, are unable to complete these inventories, CIB should consider funding additional planners. These planners would cost a fraction of the largest projects funded by CIB each year.

The United States Environmental Protection Agency (EPA) has also issued guidance for asset management for local governments. According to the guidance, comprehensive asset management includes the following:

- Building an inventory of assets
- Scheduling and tracking maintenance tasks through work orders
- Managing budgeted and actual annual expenses and revenue

By performing these tasks, local communities can identify the assets that they have, determine how long they will last, determine costs associated with repair, rehabilitation, or replacement, and plan for future needs. This information helps with determining how much money is needed to fund maintenance and asset investments. The information helps local communities determine if rates and other revenue-generating mechanisms are sufficient to cover costs while maintaining agreed-upon levels of service.

⁸ Capital Asset Inventory: Helping Community Leaders Learn What's Under Their Feet. The State of Utah's Rural Planning Group is a project of Housing and Community Development, Department of Workforce Services.

CIB should consider funding additional planners

Comprehensive asset management helps communities determine how much money is needed to fund maintenance and asset investments.

By funding capital projects in communities that have not first conducted an asset inventory, CIB may be unknowingly prioritizing projects that do not accurately represent a community's greatest need. Using CAIs, communities could make more informed requests for major infrastructure funding based on the end of the useful life of the asset. This could help prevent emergencies that arise from asset failure. Additionally, when communities do not have access to information about their needs, they may be more susceptible to private interests such as engineering firms directing planning decisions, as will be discussed in Chapter IV.

Capital Improvement Lists May Not Reflect Community Needs

CIB's process for utilizing capital improvement lists may not result in funding projects that represent a community's highest needs. According to administrative rule, applicants should work together with other entities in the county to create "...a consolidated list of the anticipated capital needs."⁹ Ideally, prioritization occurs at the county level and is then prioritized at the area level as a cooperative venture. After agreeing upon the list of capital projects, county leaders forward their prioritized lists to the regional planner who submits each county's list to CIB by April 1st of each year. Only those projects that have gone through this coordinated prioritization process are eligible for CIB funding. We identified several concerns with how this process is implemented.

Some CIB-Funded Projects Were Not Found on the Capital Improvement Lists. Administrative rule states, "Projects not identified in a county area's or HCD's¹⁰ list, will not be funded by the Board, unless they address a bona fide public safety or health emergency or for other compelling reasons." We found several CIB-funded projects that were not on the capital improvement lists in one region, including a \$40,000 grant for a water system and three road improvement projects totaling \$4.13 million in grants and \$5.6 million in loans. In another region, a project that involved raising a two-mile section of highway was not placed on the capital improvement list because the applicant stated the project was an emergency. As the DWS' Capital Improvement Planning Guide states,

Communities could make more informed requests for major infrastructure funding based on Capital Asset Inventories.

Coordinated project prioritization process is required to receive CIB funding.

Some large projects funded by CIB were not on capital improvement lists.

⁹ Utah Administrative Rule R990-8-5

¹⁰ DWS Housing and Community Development Division

“proper planning will significantly reduce the number of surprises and emergencies communities face, allowing leaders to take charge of the future of their community.”

Planning Regions Are Inconsistent in How Capital Improvement Lists are Prioritized and Amended. While regional planners are required by administrative rule to submit a regional capital improvement list to the board annually, we found that planners vary in their practices for prioritizing and amending lists. One region, for example, requires county leaders applying for CIB funds to participate in regional prioritization of capital improvement lists. Other regions appear to have more relaxed standards for creating, prioritizing, and amending lists.

Regional planners stated that CILs are easily amended. For example, in one region, county commissioners modify capital improvement lists throughout the year. We were told that the list “...is merely a required step in applying for CIB funds” and that prioritization is not important because “board members do not account for the prioritized rank when funding projects.” In addition, we found lists modified after the April 1st deadline. We documented an example of a large project that was added to the capital improvement list after the deadline and just before CIB authorized funding. These examples suggest that capital improvement lists may not be providing the intended control to ensure CIB funds are used for prioritized, planned projects except in emergencies.

Capital Improvement Lists Do Not Reflect Planned Capital Needs. Several regional planners we interviewed raised the concern that the CILs collected from counties and submitted to CIB are not true capital improvement lists because projects have not been vetted through the capital planning process as shown in Figure 3.1. Planners described the capital improvement lists that they submit to CIB as “merely a wish list of projects applying for CIB funding” and as “a hoop to jump through.” Instead of current CILs that are not always based on a prioritized list and are easily modified, CILs need to start with capital asset inventories and be part of a planning process that allows communities to identify and prioritize needs.

Capital improvement lists are easily amended and not viewed as important by some communities.

Public Involvement Requirements Need Enhanced Oversight by the Board

According to rule, all CIB applicants are required to have a “vigorous public participation effort” as a condition of project funding.¹¹ CIB applicants are required to hold “...at least one formal public hearing to solicit comment concerning the size, scope, and nature of any funding request” and submit meeting minutes documenting that they have informed the public prior to its submission to the board.

In our limited review of project applications, we found some applications where meeting minutes lacked documentation that the public has been sufficiently informed about project details and loan possibilities. For example, meeting minutes for the Ouray Bottom Road (the latest segment of Seep Ridge Road) indicate that the public was not sufficiently informed of the size, scope, and loan potential for the project. Proof of adequate public involvement was also missing in the Leland Bench public meeting minutes. While it is unclear how often the public is not sufficiently informed, one board member reported that, frequently applicants’ meeting minutes do not demonstrate that the public has been adequately informed about a project’s details and potential funding contingencies.

Public involvement is an important component of community capital planning. According to the Utah Rural Planning Group’s guidebook, “if decisions such as capital improvement plans are made in a vacuum, long-term plans can separate community direction from collective community desires.”

CIB’s updated policies reflect an awareness of the need for better community involvement. According to policy, applicants must have a noticed public hearing to thoroughly inform the public concerning the size, scope, nature, and potential financial impact of any project and must provide evidence of that public forum through complete and detailed documentation. We encourage CIB to continue monitoring applications to ensure they follow this requirement.

Vigorous public participation is a condition of CIB funding.

Some meeting minutes lacked documentation of the public being sufficiently informed.

¹¹ Utah Administrative Rule R990-8-3(E)

Fifty Percent Match Requirement Is a Barrier to Effective Rural Planning

Proper capital planning is necessary to maximize funds and is especially important in small communities with limited budgets. CIB is an important funding source for planning in Utah's rural communities. CIB contracts for five planners dedicated to promoting planning within participating regional Association of Governments. Utah administrative rule normally requires CIB applicants to contribute 50 percent matching funds for all planning grants and studies.¹² Unfortunately, some rural communities do not have enough revenue to conduct planning grants and studies. CIB staff note that the 50 percent match requirement is important because "...without skin in the game, engineers can end up being the ones driving an expensive plan." While we agree that it is important to prevent private interest from instigating projects and that larger communities are equipped to meet the match requirement, smaller communities may find the match requirement cost prohibitive, resulting in unmet planning needs.

Planners from each of the five areas stated that it is difficult for some small communities to afford the 50 percent matching funds, which can exceed \$40,000. One regional planner explained that the requirements for "...some communities is very onerous because it would take up most if not all of their budget." Mayors from small communities that we spoke with believe the 50 percent match requirement is difficult given their limited budgets. One mayor from a town of 160 people said they needed a new water master plan and have not been able to afford it. Another mayor said his town (population of 330) cannot afford the 50 percent match for a master plan that they need.

CIB appears to consistently enforce this requirement, with 94 percent of planning grants meeting the requirement. In one notable exception, the board approved a \$27.9 million award to the Seven County Infrastructure Coalition for its railway and oil pipeline studies without requiring 50 percent matching funds. Given the significant need for capital planning in Utah's communities and CIB's requirement to use funds for the greatest number of citizens in the state, we recommend that the Permanent Community Impact Board

Planners reported that a 50 percent match requirement for planning grants may be too costly for some communities.

One entity receiving a \$27.9 million award was not required to provide 50 percent matching funds.

¹² Utah Administrative Rule R990-8-3

consider changes to the 50 percent match requirement for planning projects for rural communities with limited funding.

Board Can Improve Decision-Making By Increasing Consistency

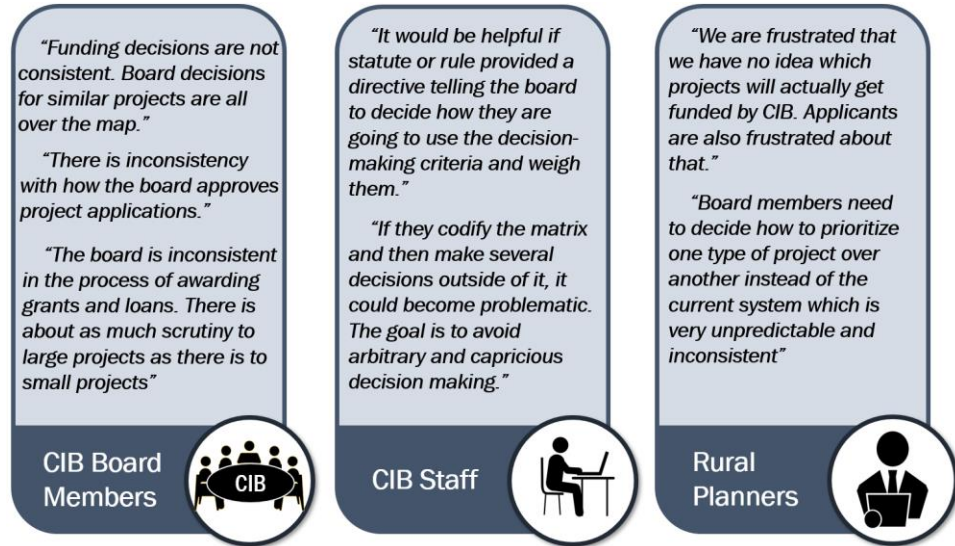
We asked all CIB board members about the decision-making process. Many reported they were inconsistent in their decisions and wanted better guidance for decision-making. This was also a frustration voiced by all the rural planners we met with. We documented several instances of inconsistent board decision-making. Recently, board members and staff have responded to this concern by developing a new funding policy based on applicant and project characteristics, which we believe is a good first step to consistent funding decisions. We recommend that CIB continue to work with its staff to ensure consistency in funding decision-making.

Board Members and Other Stakeholders Desire Guidance to Help Ensure Consistency

Board members are tasked with determining which projects receive funding as well as the terms of the funding. This is a difficult task because the variety of projects that come before the board is large and the board is limited by available funding. Discussions with board members and stakeholders reported that board decision-making is inconsistent and that they do not have adequate guidance for making funding decisions.

CIB has taken steps to improve the consistency of funding decisions.

Figure 3.3 Board Members and Stakeholders Report Inconsistency in Board Decision-Making. The following examples are direct quotes from board members and other stakeholders regarding board decision-making.



Source: Quotes from CIB board members, CIB staff, and rural planners

These quotes demonstrate what we also observed—that board members and stakeholders are aware of inconsistent decision-making and desire further guidance. The following examples document instances of inconsistent board decision-making.

CIB Has Offered Varying Award Terms for Similar Projects

CIB has offered different loan terms for similar projects. For example, as shown in Figure 3.4, two applicants from different counties in the same producing class¹³ received different loan terms for their community centers. Similarly, CIB offered varying loan terms to project applicants for medical clinics in another producing class. These two examples highlight times when CIB has offered inconsistent loan terms to similar projects. These examples support board member, staff, and planner concerns that decision-making is often inconsistent.

CIB has offered varying loan terms for similar projects to counties in the same producing class.

¹³ Counties are divided into five producing classes based on the amount of mineral lease funds produced in the county.

Figure 3.4 Examples of Varying Loan Terms Awarded for Similar Projects. Two entities from counties in the same mineral production class received different loan terms. Similarly, medical clinic projects in a different production class received varying loan terms.

Community Centers in Class-3 Production Counties						
Class	Project	Grant	Loan	Terms	CIB Funds	Project Cost
3	Community Center	\$178,000	\$180,000	20y @ 2.5%	\$358,000	\$748,000
3	Community Center	\$350,000	\$250,000	30y @ 0%	\$600,000	\$700,000

Medical Clinics in Class-4 Production Counties						
Class	Project	Grant	Loan	Terms	CIB Funds	Project Cost
4	Medical Clinic	\$475,000	\$475,000	30y @ 1.5%	\$950,000	\$1,405,000
4	Medical Clinic	\$1,182,000	\$3,548,000	30y @ 0%	\$4,730,000	\$4,850,000
4	Health Building	\$3,000,000	\$1,500,000	30y @ 1.5%	\$4,500,000	\$5,000,000
4	Treatment Facility	\$0	\$350,000	30y @ 2.5%	\$350,000	\$350,000

Source: CIB data

Consistency in board decision-making is important for enhancing transparency and ensuring that CIB applicants have reasonable expectations about the likelihood of receiving funding and the funding terms.

CIB meeting minutes highlight another example of a time when CIB board members decided to offer an applicant terms that were inconsistent with other decisions they have made for similar projects. In 2017, a county applied to CIB for a \$3.5 million loan (at 2.5 percent interest) to build a multipurpose building at its fairgrounds. The applicant contributed \$2.7 million to the project. CIB rejected the applicant’s terms and offered \$3.5 million at 5 percent interest. The board reasoned that the applying county was non-producing and did not contribute to mineral lease funds.

This reasoning is inconsistent with other decisions they have made. Since 2011, interest rates for CIB loans have never exceeded 2.5 percent, indicating that the 5 percent interest rate was an anomaly. Additionally, while CIB prioritizes projects in producing areas, CIB has repeatedly awarded grants and loans to non-producing applicants in contrast to CIB policy, which states that these entities should only receive interest-bearing loans. Figure 3.5 shows examples of projects in non-producing counties that CIB funded in 2017, the same year that CIB rejected the applicants’ requested terms of 2.5 percent for a multipurpose building.

Consistency enhances transparency and ensures applicants have reasonable expectations.

Figure 3.5 CIB Funds Awarded to Non-Producing Counties in 2017. CIB awarded \$1 million in grants and \$4 million in loans to entities that do not contribute to CIB funds through mineral production.

Project Type	ML		Terms	Total
	Grant	Loan		
New Fire Truck	\$315,644			\$315,644
Water system improvements	515,000			515,000
Remodel community center	83,000			83,000
Multi-purpose Civic Complex	170,000	430,000	30Y @ 2%	600,000
Public Works Expansion		3,500,000	30y @ 1%	3,500,000
TOTAL	\$1,083,644	\$3,930,000		\$5,013,644

Source: Office of the Legislative Auditor based on CIB-provided data.

In addition to examples shown in Figure 3.5, CIB has consistently awarded funding to other non-producing entities.

CIB Is Making Efforts to Improve Consistency of Decision-Making

Utah statute requires board members to “...establish the criteria by which the loans and grants will be made.”¹⁴ Statute further requires 12 criteria for determining funding eligibility.¹⁵ According to a poll conducted by CIB staff, board members reported a preference for adopting “...officially established criteria to structure funding packages” as well as determining the loan to grant mix for applicants.

Consequently, the CIB board, in conjunction with staff, adopted a policy in February 2020 for CIB funding criteria based on existing statute and rules as well as board-established criteria. Among the new changes adopted is a “...methodology wherein similar applicants and projects are reviewed with guidelines defined in statute and noted in policy.” Specifically, applicants are assigned minimum and maximum interest rates based on:

- Local mineral production level
- Amount of private, taxable land
- Local population estimates
- Local income levels

Board members reported a preference for adopting established criteria to structure funding packages.

¹⁴ *Utah Code* 35A-8-305(b)

¹⁵ *Utah Code* 35A-8-307(2)

Projects that are considered “essential to the health, safety, and welfare of a community” will be given more favorable award terms. We support these changes and encourage the board to consider additional opportunities to strengthen the transparency and consistency of board funding. Because the new policy justifiably allows discretion within the funding guidelines, we encourage the board to emphasize consistency to ensure similar applications receive similar terms.

Other Boards in Utah Use Stronger Decision-Making Guidance

In reviewing opportunities to strengthen the board’s decision-making process, we reviewed other Utah boards with similar processes. We found that the Community Development Block Grant (CDBG), Wasatch Front Regional Council, and Utah Department of Transportation (UDOT) all have guidelines for their boards’ funding decisions.

The CDBG requires that its board adhere to more stringent decision-making criteria than is currently used by CIB. For example, the CDBG has a rating and ranking process for prioritized projects. This process allows the board to rank projects against a predetermined set of criteria to ensure that the projects that best align with the criteria receive funding. Applicants who demonstrate proactive planning receive additional points in the CBDG ranking process.

The Wasatch Front Regional Council uses weights and algorithms in its funding decisions. Projects with the highest rank are prioritized in accordance with available funding. According to the senior transportation engineer who runs the program planning, because funds are limited, applicants are ranked against each other based on a predetermined set of criteria.

Finally, the Utah Department of Transportation provides technical planning assistance grants. Grants are awarded based on how well they align with the programs’ goals and are based on a discrete set of selection criteria. These other state boards have taken measures to ensure that projects receive funding based on transparent criteria. Likewise, CIB could benefit from enhanced planning, transparency, and consistency in funding decisions.

Projects considered essential to health, safety, and welfare will be given more favorable terms.

Other boards rate and rank projects using established criteria.

Recommendations

1. We recommend that the Community Development Office, in conjunction with regional planners, develop a strategic plan for creating, updating, and implementing capital asset inventories across rural communities. The Permanent Community Impact Board should consider, where appropriate, providing additional resources to assist these efforts.
2. We recommend that the Community Development Office, in conjunction with regional planners in each Association of Government, work with communities to complete asset inventories and further recommend that the board require asset inventories to be completed prior to filing applications for new projects.
3. We recommend that the Community Development Office, in conjunction with regional planners in each Association of Government, coordinate their policies surrounding the process for prioritizing and amending capital improvement lists.
4. We recommend that Permanent Community Impact Board enforce their rule that all applicants document that the public have been thoroughly informed of the size, scope, nature, and potential financial impact of any project prior to awarding funding.
5. We recommend that the Permanent Community Impact Board consider changes to the 50 percent match requirement for planning projects for rural communities with limited funding.
6. We recommend that the Permanent Community Impact Board continue to work with its staff to ensure consistency in funding decision-making.

Chapter IV

Strengthened Procurement Controls Are Needed for Some Board-Approved Projects

We were asked to review whether Permanent Community Impact Board (CIB) funds have been used effectively. To answer this question, we evaluated the procurement process for a sample of cases to ensure that a competitive bid occurred for funded projects and that state or local procurement code was followed. We found that robust competitive bidding was missing from some projects and should be required by CIB. Additionally, the State Purchasing Office offers resources at no cost to procuring entities that could address the following weaknesses we found in the sampled entities' procurement practices:

- Insufficient solicitation of bids
- Lack of proper criteria for bid scoring
- Insufficient controls to ensure a fair bid process

While Essential, Competitive Bidding Is Not Always Occurring

To maximize the effectiveness of CIB funds, entities receiving these funds need strong procurement practices that include competitive bidding of goods and services. Obtaining competitive bids helps control costs by reducing the risk of overpaying, receiving substandard services, or paying for unneeded services. Additionally, competitive bidding "...reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically."¹⁶

Our review of sampled projects indicates a lack of robust competitive bidding and solicitation of bids. Projects funded with CIB grant funds had fewer controls for ensuring competitive bidding than projects funded with CIB loans. CIB could help ensure the effective

¹⁶ American Bar Association – The 2000 Model Procurement Code Regulations for State and Local Governments, page 50.

Competitive bidding was missing from some projects funded by CIB.

Competitive bids help control costs by reducing the risk of overpaying, receiving substandard services, or paying for unneeded services.

use of its funds by requiring proof of competitive bids from all recipients for goods and services purchased using CIB funds.

Some Reviewed Projects Lack Robust Competitive Bid Process

A limited review of CIB-funded projects found examples of little or no competitive bidding. Figure 4.1 highlights some of these examples. Shown below are five examples of projects where entities obtained only one bid. The lack of robust competitive bidding in these cases is troubling, considering the significant funds involved.

Figure 4.1 Sampled Projects with Only One Bid. The five examples of projects lacking competitive bids totaled \$11.9 million.

Project	Total	Funding Type
Seep Ridge Road Segment 5	\$7,200,000	60% Grant 40% Loan
Leland Bench Road Phases 3 and 4	\$2,900,000	100% Grant
Price City Flood Mitigation Project	\$1,300,000	75% Grant 25% Loan
SCIC Legal Services	\$400,000	Grant
Engineering for Junction Town Municipal Building	\$102,900	67% Grant 33% Loan
Total	\$11,902,900	

Source: Procurement Documentation from Sampled Entities

Lack of competitive bidding in these cases may have resulted in higher costs. Notably, the design engineer for the Seep Ridge Road Segment 5 project estimated that the project would cost \$5.5 million. The winning (and only) bid for construction was \$7.2 million, 30 percent higher than the engineer’s estimate. Similarly, the design engineers for the Leland Bench Road (Phase 3) estimated the project would cost \$86,000. Procurement documents show that the only bidder secured the project with a \$129,000 bid, 50 percent higher than the engineers’ estimate. Had the entity secured multiple bids, it would increase confidence that the procurement process was fair and competitive. Further, it would reduce the appearance of favoritism.

Some entities cited exceptions for not following policy to obtain multiple bids. While every entity we examined had a procurement policy that required competitively bidding, entities in our

Multiple bids increase confidence that the procurement process was fair and competitive.

sample used various exceptions in several circumstances. One entity, for example, experienced an emergency and cited an exception in their policy that allowed for single source procurement during emergencies. The entity contacted one engineering firm to design the project and obtained one bid for the construction portion of the project.

The entity's purchasing policy required as much competition as possible in the event of an emergency and written documentation for the emergency exceptions. Given the three months between the time the emergency took place and the time the entity hired the engineer, there might have been time to obtain competitive bids for engineering services. Six months lapsed between obtaining CIB funding and awarding the project to a construction company. We believe that six months provided enough time for the entity to obtain competitive bids for the construction of the project. The entity was unable to provide required written documentation to explain why the emergency necessitated an exemption from competitive bidding.

Another entity reported following a policy that required a minimum of three sealed bids for a project. When asked why they obtained two bids through direct phone calls to contractors rather than following policy requiring three sealed bids, the entity representatives responded that they had made an exception in this case because of the small size of the project and the limited number of contractors available in their area. CIB questioned another entity about their lack of competitive bidding for legal services. Initially, the entity claimed an exception and stated that procurement code did not apply to them. After being questioned by CIB about their procurement practices, the entity has since bid out legal services.

Bid Solicitation for Large Projects Can Be Strengthened. One entity that received \$68.5 million in CIB funds for three road construction projects claims to have solicited bids for engineering these projects using a local newspaper's online legal notices page. While this legal notice in a local paper may meet the policy requirements for soliciting the bid, further solicitation of bids on a broader scale could have resulted in additional interest among potential vendors.

Another entity in our sample did not publish notice of their project despite the policy requirement to do so. Instead, the entity directly contacted two contractors by phone. While directly targeting potential

One entity cited an exception in their policy that allowed for single source procurement during emergencies but didn't hire a company for three months.

Another entity reported that they did not bid out legal services because state procurement code does not apply to them.

bidders through phone calls is allowed, it did not fulfill the policy requirement to publish notice, nor did it fulfill best-practices recommendations to target a large audience.

Entities receiving CIB funding can strengthen confidence in the effective use of those funds by ensuring their bid proposals go out to as many vendors as possible. As discussed later in this report, State Purchasing has offered to post entities' bid proposals on the largest bid solicitation platform in the state at no cost to the entity.

CIB Should Bolster Competitive Bidding Requirements for Grant Recipients

When an entity receives CIB grant money, there are fewer controls for ensuring competitive bidding occurs than there are for entities receiving CIB loan money. When CIB awards a loan to a public entity, the borrowing entity is required to supply a legal opinion from its attorney certifying that the borrower complied with all procurement laws with respect to the project. Before the loan is closed, the borrower is required to submit a bid tabulation to CIB showing bids received for the project. These controls are inherent in the bonding process when CIB awards a loan but are not required in the case of grant funding.

Additionally, loan recipients who must pay back the money they borrow (often with interest) have incentives to seek multiple bids for projects and to use the funding effectively. Conversely, CIB grant recipients (who are not required to pay back awarded funds) have less of an incentive to seek competitive bids as demonstrated in Figure 4.1. Given an increased trend toward awarding more grant money, especially with larger projects, we believe that CIB should implement additional controls to safeguard funds. We recommend CIB review all projects to ensure entities use a robust competitive bid process.

State Resources Could Strengthen Procurement Processes

The Utah Division of Purchasing and General Services (State Purchasing) has resources available that could help entities strengthen the procurement weaknesses found in our review of CIB-funded projects. State Purchasing would provide these services at no cost to procuring entities. In addition to widely soliciting bids on their

CIB loans have controls for checking procurement policy compliance that grants do not.

Grant recipients have less of an incentive to seek competitive bids.

platform, using State Purchasing’s services could strengthen other procurement weaknesses we found in procurement practices relating to bid scoring and potential for bid steering.

State Purchasing Has Staff and Resources Available to Aid the Procurement Process

State Purchasing has resources to assist Utah entities with the process of preparing documents for procurement, soliciting competitive bids, tabulating bids, and ensuring entities follow best practices. These resources are available at no cost to procuring entities and could help promote the best use of CIB-awarded funds through the following services:

- Assistance with drafting solicitation documentation
- Reviews to ensure compliance with Utah Procurement Code and to avoid conflicts of interest
- Solicitation reviews
- Posting solicitation documents on the largest bid solicitation platform in Utah
- Assisting a public entity with evaluation of bids and proposals
- Drafting contract documents
- Providing all other procurement-related events

CIB should review its policies and practices regarding procurement by award recipients to ensure they are sufficiently strong. To further strengthen its procurement policies, CIB should consider requiring entities use State Purchasing if projects exceed a certain threshold or if best practices are not required in local procurement policy.

State Purchasing Services Could Strengthen Weaknesses in Bid Scoring

We found examples of weak bid scoring practices in sampled projects. While these practices may not go against their local procurement policy requirements, Utah State Procurement code requires entities to assign weights to each decision criterion for a proposal. *Utah Code* and best practices also require entities to inform prospective vendors of the criteria to be used in the decision-making process. Disclosing the relative importance of factors provides transparency to prospective bidders. Figure 4.2 shows an example of

State Purchasing offers procurement services at no cost to entities.

Procurement code requires weighted decision criterion and the informing of prospective vendors of the criteria.

the scoring system outlined in code, along with a scoring sheet from a project in our sample.

Figure 4.2 Example of Model Bid Scoring System Compared to Scoring System from Our Sample. Best practice bid scoring involves attributing points to bidders based on transparent weighted criteria. Our sample revealed a simple scoring sheet that lacked clear weighted criteria.

Best Practice Scoring System Utah Code 63G-6a-703f					Sampled Scoring System				
	Selection Criteria	Score (0-5)	Weight	Maximum Points	Selection Committee				
					Firm A	Firm B	Firm C		
1.	Demonstrated Qualifications to meet scope of work (e.g. education, experience, specialized expertise)				Voter	1	3	2	
	a. Project Manager & key team members	5	x 3	15	Voter	2	3	1	
	b. Firm resources	5	x 2	10	Voter	2	1	3	
2.	Responsiveness of Work Plan				Voter	2	2	1	
	a. Clearly defined action and deliverables	5	x 3	15	Voter	2	1	3	
	b. Availability of key team members to schedule requirements	5	x 2	10	Voter	2	3	1	
	Voter				Voter	2	3	1	
3.	Past Performance (consider original & final fee amounts and construction amounts)	5	x 4	20	Voter	3	2	1	
	Voter				Voter	3	2	2	
4.	Fee Amount Score	5	x 6	30					
				Total Score					22 23 16
									100

Source: Utah Association of Special Service Districts procurement training document, and Duchesne Water Conservancy District

We found cases where entities did not select winning bidders based on transparent weighted criteria. One sampled entity obtained three bids for a water master plan funded by a \$137,000 grant from CIB. As shown in Figure 4.2, the entity’s decision committee rated each bidding firm from 1 to 3 and awarded the contract to the firm with the best rating. In cases like this, competing firms may not understand how their proposals would be evaluated and scored. State Purchasing has services available to evaluate entities’ requests for proposals, scoring matrices, and decision-making processes to ensure entities follow these best practices.

State Purchasing Services Could Help Ensure Fair Bid Specifications

Our review also found examples of engineering firms playing a significant role in procuring the construction company for projects. For example, in one of our sample cases, an engineering firm solicited

We found examples of entities selecting winning bidders without transparent weighted criteria.

the town about a project to chip seal the town's roads. The engineering firm prepared the application for funding from CIB. After the entity received CIB funding, the engineering firm conducted the procurement for project construction, including the solicitation of bids and bid tabulation. Representatives from another entity in our sample explained that engineering firms have approached them about potential CIB projects, offering to write up CIB applications for free under the condition that the entity select them as the engineering firm for the project.

Situations like this are concerning since engineering firms may not have the level of expertise that State Purchasing has regarding procurement practices. Further, using State Purchasing would help entities in writing specifications according to best practices and procurement code. If entities do not employ proper controls, engineering firms could exercise undue influence on the procurement practice. According to State Purchasing, "the entities should also ensure that the engineer is not writing a specification that is limiting who can participate in the project. This could be considered steering the contract to a particular vendor."

By using solicitation reviews available through State Purchasing, entities procuring projects with CIB funds would better ensure that all participants in the procurement process are operating according to best practices.

Recommendations

1. We recommend that the Permanent Community Impact Board review all projects to ensure they are engaging in a competitive bid process.
2. We recommend that the Permanent Community Impact Board consider requiring that State Purchasing be used with larger projects and determine a threshold for imposing this requirement.

Engineering companies have played significant roles in requesting CIB funding for entities.

Entities should ensure engineering firms do not limit who can participate in a project.



Chapter V

Internal Policies Are Not Consistently Followed and Are Incomplete

We found that a number of Permanent Community Impact Board (CIB) policies are documented but not consistently followed. Adherence to policies safeguards resources and promotes desired outcomes. Moreover, there are informal policies that, if formalized, would provide additional meaningful controls. CIB's internal guidelines state that the maximum award amount is \$5 million, but the board has exceeded this 54 times while funding over \$500 million in projects. In addition, the board trend of providing more grants than loans over the last five years may not be sustainable.

We also found that CIB needs to improve how it monitors and oversees its grants. Specifically, some projects lacked sufficient details such as performance expectations and timelines in their scope of work, making it difficult for staff to hold grantees accountable. We also found that some recipients had not requested reimbursements for expenditures in over six months, possibly indicating that the project is complete and can be closed out, but suggesting that ongoing contract monitoring is not occurring.

CIB Policies Should Be Formalized and Enforced

Internal policies are important to help ensure that CIB meets its objective in "...the alleviation of social, economic, and public finance impacts resulting from the development of natural resources in this state"¹⁷ by providing loans and grants for qualified projects and studies. CIB maintains and updates internal policies to document its processes and priorities for funding. However, these policies are routinely disregarded, as evidenced by 54 funded projects that exceeded, sometimes by several times, the policy's stated limit of \$5 million per project. There could be valid reasons to fund those

CIB policies are routinely disregarded.

¹⁷ *Utah Code* 35A-8-301

projects, but we believe a process needs to be in place to ensure strong controls especially on high-cost projects.

While CIB staff consider these policies to be informal guidelines, we are concerned that deviating from its policies relaxes the internal control environment. According to the United States Government Accountability Office:

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.¹⁸

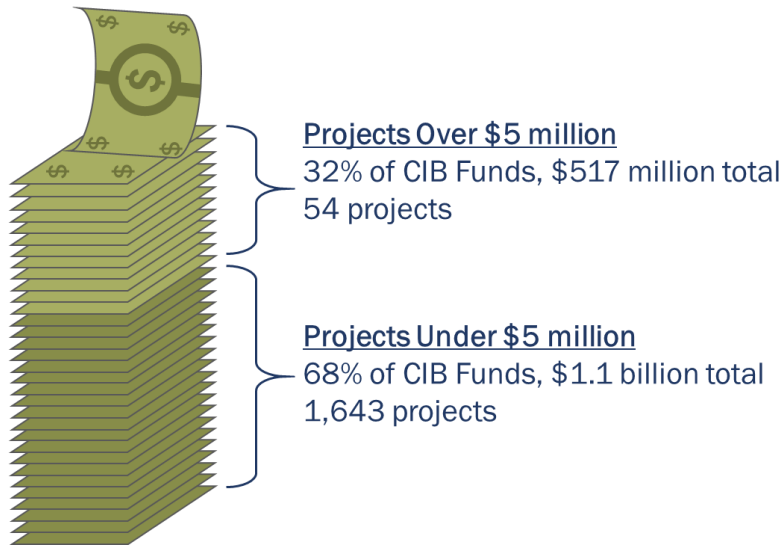
Many Projects Exceed the \$5 Million Threshold

CIB guidelines limit funding for projects to \$5 million or less. Specifically, the policy states, “Total CIB participation in any given project will be limited to a maximum of \$5,000,000 regardless of grant/loan mix.” Other CIB materials, including their website, state that “generally” total participation is limited to \$5,000,000. However, the board has routinely deviated from this policy. We documented 54 out of 1,697 projects funded between fiscal year 2000 and 2020 have exceeded the \$5 million limit. These projects amounted to nearly one-third of all CIB money awarded for all projects, as shown in Figure 5.1.

We documented 54 projects that exceeded CIB’s \$5 million limit on award size.

¹⁸ United States Government Accountability Office *Standards for Internal Control in the Federal Government*

Figure 5.1 Total Amount and Number of CIB-Funded Projects That Exceeded \$5 Million since 2000. While the number of large projects that exceeded \$5 million accounts for only 3 percent of approved projects, these projects cost \$500 million, or 32 percent of the total CIB funds disbursed.

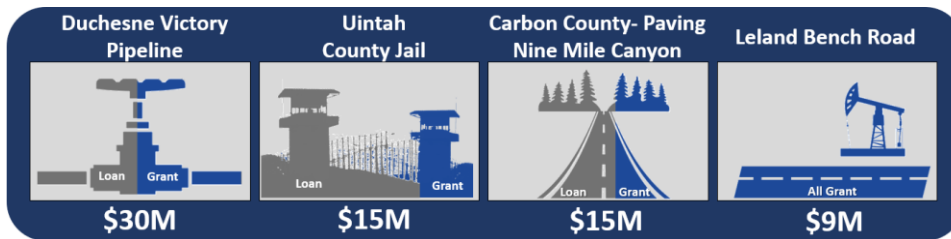


32 percent of CIB funds have gone to projects that exceeded \$5 million.

Source: Office of the Legislative Auditor General, based on Permanent Community Impact Board funding data 2000-2020.

While the vast majority of funded projects did not exceed the \$5 million limit, there are a number of notable and very large projects that exceeded this threshold. Figure 5.2 illustrates four of these large projects:

Figure 5.2 Examples of Projects That Exceeded \$5 Million. Projects that exceeded the \$5 million threshold include a pipeline, a jail, and road projects.



Source: Office of the Legislative Auditor General, based on Permanent Community Impact Board funding data 2000-2020.

While we recognize that large, expensive projects are occasionally necessary, they can be problematic without additional controls such as ensuring sufficient public benefit (Chapter II) and strong procurement

practices (Chapter IV). Several projects over the \$5 million limit had other concerns that we identified in previous chapters.

Other boards have placed limitations on large projects. For example, Colorado’s Energy and Mineral Impact Assistance Fund program, a similar program to Utah’s CIB, provides funding for projects over \$2 million only when the project involves regional or multi-jurisdictional collaboration to solve multi-jurisdictional problems. Recipients of these awards may also be asked to withdraw from future funding cycles. Utah’s Community Development Block Grant, also within the Department of Workforce Services, places a maximum award for any project at \$200,000 unless there is multiple entity collaboration or emergency needs. Applicants who receive the maximum award must wait 24 months before applying for a new grant.

We recognize that occasionally projects over \$5 million will be justified. However, to ensure that internal controls are followed and these projects maximize the use of CIB funds, we recommend the board modify its policies to allow for projects over \$5 million, but require additional justification of the need for the project and ensure best practices are followed.

Fewer Awards Are Being Loaned with Interest

To ensure CIB funds are revolving, statute requires CIB to issue loans at interest. Statute states that the board “...shall administer the impact fund in a manner that will keep a portion of the impact fund revolving.”¹⁹ Statute also clarifies that the purpose of CIB funding:

Is to maximize the long-term benefit of funds derived from these lease revenues and bonus payments by fostering funding mechanisms which will, *consistent with sound financial practices*, result in the *greatest use of financial resources* for the greatest number of citizens of this state (emphasis added).²⁰

Historical award data indicates the board is awarding more grants than loans over the last five years, as shown in Figure 5.3.

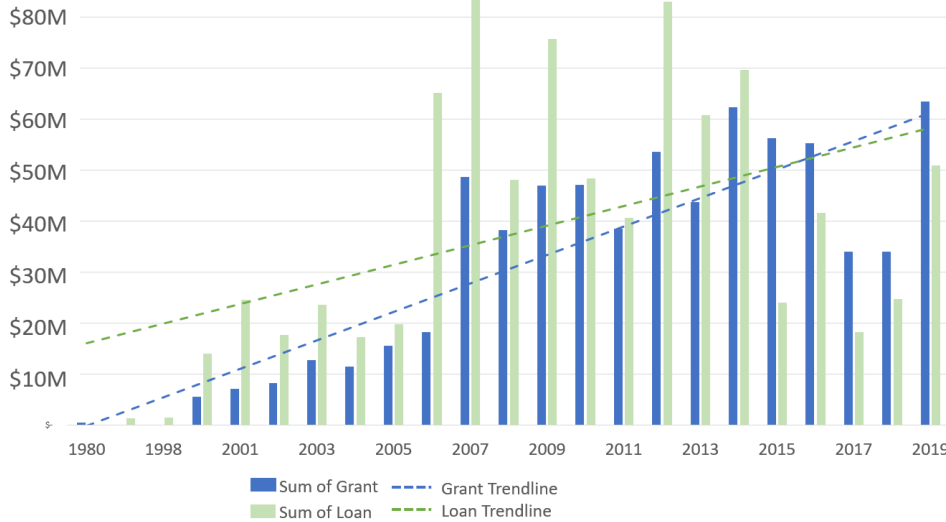
Other boards place limits on maximum award size.

Statute states that the board shall keep a portion of CIB funds revolving.

¹⁹ *Utah Code* 35A-8-307

²⁰ *Utah Code* 35A-8-301

Figure 5.3 More Grants Than Loans Have Been Awarded in Recent Years. The board has provided \$83 million more in grants than in loans over the last five years.



Source: Office of the Legislative Auditor General, based on Permanent Community Impact Board funding data 2000-2019.

In recent years there has been a growing trend toward an increased use of grant money. We are concerned that over time this trend will be unsustainable. Because the board has a statutory responsibility to keep funds revolving, we recommend the board adopt a policy and controls that ensure adherence to this requirement.

Policies on Reimbursements Need to Be Formalized

Award recipients are reimbursed for eligible expenses. Board staff told us that some expenditures are not reimbursable. For example, staff reported that the board does not reimburse legal fees except for bonding and possible project necessities. Despite this, we found instances of CIB funds being reimbursed to entities for legal fees, but since there is not a clear policy governing these reimbursements it is hard to determine the appropriateness of these expenditures. For example, the board reimbursed the Seven County Infrastructure Coalition (SCIC) operational legal fees in the amount of \$993,000 as of February 2020. Some of these legal fees do not appear to be bond related or a project necessity, but instead relate to operational aspects, such as attending CIB board meetings, and there is not a clear policy governing the appropriateness of these reimbursements.

More grants than loans have been issued over the last five years.

CIB reimbursed SCIC almost \$1 million in legal fees, some of which do not appear to be bond related or a project necessity.

Administrative and operating expenses are also ineligible for reimbursement, according to CIB general guidance and grant information. Again, we found that the board has overridden this guidance and approved reimbursements for administrative and operating expenditures. The SCIC rail study requested funding for planning, permitting, legal fees, and engineering costs.

CIB policy does not provide specific language about appropriate reimbursements. While CIB staff advised us that this is intentional, it creates uncertainty and potential disparate treatment for recipients. We therefore recommend that further clarification be made regarding eligible reimbursements.

Contract Monitoring Needs to Be Enhanced

CIB should strengthen the monitoring and oversight of issued awards. Our review to sampled projects (see Chapter II), found projects where the scope of work had insufficient detail, such as expectations and timelines, making it difficult for staff to hold recipients accountable. We also found that monitoring needs to be strengthened; 17 projects that had not been finalized or closed out had submitted no requests for expenditure reimbursement in over six months. It is unclear whether the projects are still ongoing or if they are complete and unused funds can be returned to the board to be awarded to another recipient.

Contracts Do Not Provide Sufficient Details for Effective Monitoring

We found a number of projects with a scope of work that lacked details and meaningful expectations that would allow for project monitoring. Sound project monitoring is necessary to ensure projects have been completed within the scope, on budget, and met the specified deadlines. The Department of Administrative Services' (DAS) *Contract Administration and Monitoring Guide* states:

Tracking the performance of the contractor is the principal function of proper contract monitoring and administration. The purpose is to ensure the contractor is performing all duties in accordance with the contract and for the agency

Some projects had a scope of work that lacked sufficient details.

to be aware of and address any problems or issues promptly.

Project Scope of Work Is Missing Critical Information.

Without a clear scope of work that documents timelines, expectations, and outcomes, CIB staff are unable to effectively monitor contracts. While CIB collects detailed information regarding projects when considering them for funding, these details are not always included in a contract's scope of work. The following provides examples of scope of work sections that lack sufficient detail:

- Seep Ridge Road (Phase 1)—The project consists of reconstructing and upgrading the existing dirt road and improving the drainage issues of 48 miles of the roadway known as Seep Ridge Road extending from the end of State Route 88 near Ouray, Utah southeast to the Uintah/Grande County line used by oilfield workers, ranchers, hunters, and travelers.
- Brian Head Public Safety Building—New Public Safety Building.
- Canal Easements—The project consists of purchasing recordable easements from the Highline, Ashley Upper and Rock Point canals and property for a 219,350 cubic yard detention basin.
- Carbon County Senior Center (\$8.4 million)—The project consists of constructing a new single story 34,000 sq. ft. building for use as a Senior Center with handicap accessibility to be located on property owned by Carbon County near the County Fairgrounds.
- Victory Pipeline Water System Improvements (\$15 million grant)—This project consists of a water transmission line from the Central Water Conservancy District Duchesne Valley Water Treatment Plant in Duchesne and conveys culinary water to Ballard, Myton, and Roosevelt Cities; Cedarview-Montwell, East Duchesne, and Neola Special Districts

Our expectation is that all CIB contracts would have a detailed scope of work, especially for large awards. But, as shown above,

Without timelines, expectations, and outcomes, CIB staff are unable to effectively monitor contracts.

the scope of work sometimes consists merely of a short project description without sufficient detail to determine if projects meet the expected quality and design specifications. We recommend that the board require a detailed scope of work that provides accountability for the award recipient to ensure CIB funds will be used as intended.

Grant Monitoring Needs Strengthening

We are concerned that active monitoring is not occurring on grants. Specifically, we found 19 projects with contracts held in the state's Public Treasurers' Investment Fund (PTIF) account are open despite no activity in over six months. At the end of 2019, these projects accounted for over \$2.3 million and two had funds in excess of \$500,000 each:

- The Duchesne County Special Service District had \$1.2 million remaining in the account with no activity since December 2018.
- The Grand County Transportation Special Service District had \$608,000 left in the account with no activity since January 2018.

DAS' *Contract Administration and Monitoring Guide* states that tracking performance includes "...verifying all performance measures and reports are completed in a satisfactory manner in accordance with the contract." A failure to withdraw funds in a timely manner from the PTIF account might indicate that a project encountered problems or that the funds would not be needed and could be freed for new CIB-funded projects. In either case, it is important that CIB staff actively monitor contracts to ensure that projects are moving ahead as indicated and the board is fully utilizing available funds.

We found 19 open CIB projects that have had no activity in over six months.

Recommendations

1. We recommend that the Permanent Community Impact Board formally adopt and follow policies and controls regarding maximum award size, the total grant versus loan mix of all projects, and reimbursable expenditures.
2. We recommend that the Permanent Community Impact Board staff review its contract monitoring procedures to ensure contracts have a clear scope of work with meaningful performance metrics.
3. We recommend that the Permanent Community Impact Board staff ensure completed projects are closed in a timely manner.

Agency Response



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

**Department of
Workforce Services**

JON S. PIERPONT
Executive Director

CASEY R. CAMERON
Deputy Director

GREG PARAS
Deputy Director

May 5, 2020

Kade R. Minchey, Auditor General
315 House Building
PO Box 145315
Salt Lake City, UT 84114-5315

Mr. Minchey,

I am pleased to respond to the report, **A Performance Audit of the Permanent Community Impact Fund 2020-03**. I appreciate the thoughtful work your staff performed over these many months in reviewing all of the aspects of administering this important program.

I am responding on behalf of the Department of Workforce Services in my role as Division Director. As I am also the chairman of the Board, any recommendations to the board will require further dialogue with them as they have not been party to receiving a copy of these recommendations as of the date of this response. Nevertheless, I anticipate support from the Board in implementing the recommendations and improving the program moving forward.

Our responses are as follows:

Chapter II Recommendations

1. We recommend that the Permanent Community Impact Board adopt a policy in accordance with the Federal Mineral Lease Act and state statute that provides criteria for how projects providing substantial economic development or that exacerbate impact will be reviewed and awarded.

We agree to work with the Board on implementing this recommendation. We would clearly state that every project reviewed, including the few highlighted by the auditors, fully meet the stated eligible purposes of the state and federal statutes. Although in the course of review, applicants at times highlighted the economic benefits of their proposed projects, the staff and board fully vetted these projects to determine they had a public benefit and purpose and met the standards outlined by law. This vetting process is the reason such a robust record exists and is something taken seriously by the staff and Board. However, we recognize that improvements can be made by applicants in clearly defining the public



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purposes to these types of projects and look forward to our further discourse on how to enhance our policies in this regard.

2. We recommend the Permanent Community Impact Board review the project size, scope, intended beneficiaries, and budget of proposed projects and make a determination that the projects is a good value for the community in alleviating impact.

We agree to work with the Board on the implementation of this recommendation. As noted in the prior recommendation, we feel the Board has performed this obligation in the past with projects and is reflected in the amount of due diligence applied to these applications. We do see areas of improvement available and look forward to discussing how to implement such a recommendation as a Board.

Contact: Jonathan Hardy, CIB Chair

3. We recommend that the Permanent Community Impact Board require in policy that all applicants clearly identify their project's intended purpose and impacts to the community and provide evidence that there is clear impact alleviation.

We agree with the recommendation. We will have this policy discussion as a Board. As this process has often involved the Board and staff establishing these things as part of its due diligence process, we look forward to discussing how a policy at the application level can enhance the establishment of impact alleviation.

Contact: Jonathan Hardy, CIB Chair

4. We recommend that the Permanent Community Impact Board staff monitor applications to ensure that project's intended purpose is clearly stated and demonstrates how it will alleviate impact before it is presented to the Board.

We agree with the recommendation. Staff will work on modifications to the application so that this purpose is clearly defined by the applicant prior to being presented to the Board.

Contact: Candace Powers, CIB Program Manger

Chapter III Recommendations

1. We recommend that the Community Development Office, in conjunction with regional planners, develop a strategic plan for creating, updating, and implementing capital asset inventories across rural communities. The Permanent Community Impact Board should consider, where appropriate, providing additional resources to assist these efforts.

Staff agrees with the recommendation and will work with regional planners to develop a plan which may include a presentation to the Board for additional resources if warranted.

Contact: Keith Heaton, Assistant Director

2. We recommend that the Community Development Office in conjunction with regional planners in each Association of Government work with communities to complete asset inventories and that the board require asset inventories to be completed prior to filing applications for new projects.

The Community Development Office will work on this recommendation in conjunction with the above highlighted strategic plan. This recommendation will be implemented if resources are sufficient to execute the strategic plan. Timing of this implementation will be determined according to resources.

Contact: Keith Heaton, Assistant Director

3. We recommend the Community Development Office in conjunction with regional planners in each Association of Government coordinate their policies surrounding the process for prioritizing and amending capital improvement lists.

We agree with this recommendation. Staff will work to ensure consistency is applied across all regional areas.

Contact: Candace Powers, CIB Program Manager

4. We recommend that Permanent Community Impact Board staff enforce their rule that all applicants document that the public have been thoroughly informed of the size, scope, nature and potential financial impact of any project prior to awarding funding.

We agree with the recommendation. As highlighted in the report, the CIB has implemented a new matrix tool to clearly define the terms that should be discussed with communities via their public hearing requirement. This will allow the best possible vetting of information prior to the Board's consideration of the project.

Contact: Candace Powers, CIB Program Manager

5. We recommend that the Permanent Community Impact Board consider changes to the fifty percent match requirement for planning projects for rural communities with limited funding.

We agree to working with the Board to consider changes to this requirement. This rule has its pros and cons and we will facilitate a discussion on whether changes should be made.

Contact: Candace Powers, CIB Program Manager

6. We recommend that the Permanent Community Impact Board continue to work with their staff to ensure consistency in funding decision making.

We agree with the recommendation. As mentioned in the report, our new matrix tool that has been adopted by the Board is designed to produce this very outcome. We look forward to utilizing it to ensure consistency.

Contact: Jonathan Hardy, CIB Chair

Chapter IV Recommendations

1. We recommend that the Permanent Community Impact Board review all projects to ensure they are engaging in a competitive bid process.

We agree with the recommendation. Staff will work with the Board to identify the best ways to implement this recommendation.

Contact: Jonathan Hardy, CIB Chair

2. We recommend that the Permanent Community Impact Board consider requiring state procurement be used on larger projects and determine a threshold for imposing this requirement. Agree and Discuss with Board policies.

We agree with the recommendation. Staff will work with the Board to identify the best ways to implement this recommendation.

Contact: Jonathan Hardy, CIB Chair

Chapter V Recommendations

1. We recommend that the Permanent Community Impact Board formally adopt and follow policies and controls regarding maximum award size, the total grant versus loan mix of all projects, and reimbursable expenditures.

We agree with the recommendation. The Board has adopted our new matrix tool to help provide some controls on some of these elements and we will work with the Board to discuss the enhancement of other policies to implement this recommendation.

Contact: Jonathan Hardy, CIB Chair

2. We recommend that the Permanent Community Impact Board staff review its contract monitoring procedures to ensure contracts have a clear scope of work with meaningful performance metrics.

We agree with the recommendation. Staff will work to enhance scopes of work, contract monitoring and performance metrics.

Contact: Candace Powers, CIB Program Manager

3. We recommend that the Permanent Community Impact Board staff ensure completed projects are closed in a timely manner.

We agree with the recommendation. Staff will implement new procedures to ensure timely closeout of projects.

Contact: Candace Powers, CIB Program Manager

We look forward to the successful implementation of these recommendations in order to enhance this critical program. Where recommendations are directed to the Board, we look forward to a collaborative dialogue and would invite your audit team to help review these items at our June 2020 Board Meeting.

Should you have further questions or concerns, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Hardy", written over a printed name.

Jonathan Hardy
Division Director, Housing and Community Development