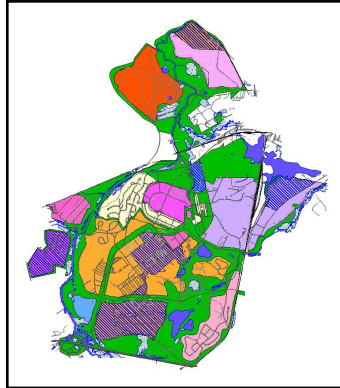


# **TRI-TOWN FIVE-YEAR REVIEW OF THE DEVENS REUSE PLAN**

*Phase II Report*



prepared for the

**JOINT BOARDS OF SELECTMEN OF  
AYER, HARVARD, AND SHIRLEY,  
MASSACHUSETTS**

by

*Community Design Partnership, Inc.*  
Boston, MA

in association with

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May 2002

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## **EXECUTIVE SUMMARY**

### **Project and Process**

Fort Devens was carved out of four Massachusetts towns in 1917. In the transition from a military post to a civilian community, new development activity has focused on the part of Devens in three of those communities: Ayer, Harvard, and Shirley. Through state legislation in 1993 and town votes in 1994 on a Reuse Plan and a Zoning By-law, it was agreed that the state would buy Fort Devens from the federal government. The agency now known as MassDevelopment became the owner of Devens in 1995 and a new unified permitting agency, the Devens Enterprise Commission (DEC), became the regulatory body. The Army continued to have responsibility for remediation of contaminated sites created by its activities.

The By-Law mandates a review of implementation by these two agencies and by the host communities after five years. Although the three towns each have active five-year review committees, the Joint Boards of Selectmen (JBOS) contracted with Community Design Partnership, Inc., (CDP) to assist them and the committees in preparing a joint five-year review document. The review is in two parts. The Phase I review process included meetings with each of the three committees separately, a joint meeting of the committees, meetings with the JBOS, and a public meeting. Phase I focused on developing a set of recommendations on the Five-Year Review that represented the concerns and issues of all three of the communities. Phase II has focused on investigation of the Devens fee structure and a transition to a traditional value-based tax assessment system; a more detailed review of zoning and implementation for each of the sectors; a review and analysis of the 2001 transportation study; a discussion of governance and administration options; recommendations for future organization and work agendas; and a scope for a disposition process. The consultants met regularly with a steering committee made up of the chairs of the three towns' Five-Year Review Committees, a member of each Board of Selectmen, the town administrators, the Community Development Director of Ayer, the Executive Director of DEC, and the Devens Vice President for Community Relations. The meetings were open to the public. A public meeting was held with 45 participants, including Devens residents.

The results of implementation so far and all the changes underway at Devens require a more inclusive planning model for Devens. The Towns, in Phase I of the JBOS Five-Year Review, and DEC, in its Five-Year Review, agreed on the need to begin planning now for the final disposition of Devens. The legislation that created the Devens Enterprise Zone requires that MassDevelopment, the DEC, and the Towns prepare and submit a study on governance options and economic conditions by 2033. The rapidity of the buildout in five years and the ongoing changes in the character of Devens as a physical place and as a human community urgently require more collaboration among the implementing agencies, the Towns, and Devens residents on the evolving character and ultimate jurisdiction and administration of Devens.

Quasi-public agencies like MassDevelopment are designed to emphasize entrepreneurialism, agility, and autonomy, rather than public accountability, responsiveness and consensus-building, and the agency's multiple roles as landowner, developer, planner, and municipal executive creates internal conflicts. However, creation of a more collaborative "planning culture" must begin now because decisions made now can predetermine a final outcome that makes the mandated disposition study moot. The JBOS can assist this move to a more inclusive and collaborative planning model by being more proactive and systematic in its approach to what is happening at Devens now and what may happen in the future. Although many host community residents understandably focus on the possible costs and potential problems of regaining town jurisdiction over Devens lands, it also offers tremendous and unique opportunities available to no other few Massachusetts towns.

## **Phase II Findings:**

### *Municipal Service Fees and Value-Based Taxation*

- In MassDevelopment's existing system of municipal service fees (MSFs), different fees are levied on square feet of land and building space depending on the use. The first 29 commercial property owners have contracts with individually negotiated MSFs that are lower than the base fees. In addition, their contracts state that after July 2002, the rates cannot increase more than 4% a year or the rate of the Consumer Price Index, whichever is lower. Residential MSFs are not negotiated and rate increases are not capped. The commercial contracts are valid until 2035 or until a change of government from MassDevelopment to another entity. The residential contracts contain a notice of MassDevelopment's intent to change eventually to a value-based system.
- MassDevelopment has submitted a plan for a value-based taxation system to the state Department of Revenue for review. The aim is to institute a system that is as much like a standard municipal assessment and taxation system as possible. The contracts with rate increase caps would be incorporated as tax abatements. MassDevelopment is expected to settle on a rate between 11.50 and 14.50 per \$1,000.
- DEC has depended on annual appropriations, developer fees, and small grants to fund its operations and planning activities. DEC will also be collecting a tax from the same properties that MassDevelopment taxes. The DEC fee is expected to be \$2.28 per \$1,000 or less. The amount depends on what rate is needed to raise the \$300,000 in fixed operational costs of the DEC.
- The combined tax rate is likely to be in the 13.0 to 16.0 range.

### *Development Regulation*

- In addition to the Reuse Plan and Zoning By-Law, development at Devens is regulated by the DEC's Rules and Regulations. These regulations are part of the state's regulatory structure, because DEC is a state agency. They were first instituted in 1996, with significant improvements in additions and revisions in 1999. DEC is once again proposing substantial amendments as well as completely new regulations. Unlike zoning changes, the rules and regulations do not require town meeting votes and can be very significant.
- In this round of changes, DEC is proposing mandatory "new urbanist" style development of Phase II housing and other potential new housing, a Transfer of Development Rights district (contingent on approval by Town Meetings, Boards of Selectmen, MassDevelopment Board of Directors, and DEC), important refinements to the stormwater management and landscape standards, and other changes.

### *Economic Development*

- West Rail Industrial Park is nearly full and most development activity has moved to Jackson Technology Park, which offers a somewhat better physical environment and better types of jobs. The Industrial Park is maturing, as evidenced by turnover of sites and buildings. Vicksburg Square has still not been effectively marketed for redevelopment. The site and building design standards that were applied during the early years of redevelopment were more permissive than the post-1999 and newly-proposed standards.
- The fate of the North Post and other so-called "out parcels" has yet to be determined pending a thorough environmental and development assessment and master planning process.

### *Environment and Open Space*

- The Devens Open Space and Recreation Plan needs to be updated.
- Permanent protection of land zoned “open space” but not protected through conservation restrictions is not clear and certain areas require more detailed environmental inventory and assessment than they received during earlier planning processes.
- Consultants are preparing master plans for the Mirror Lake area and the linkage trails, but funding for implementation and maintenance of the trail system has not been committed.
- Devens recreational facilities are used by a wide variety of groups, including town recreation commissions. Numerous events bring in substantial revenue, but the Devens Recreation Division operates at a deficit.

### *Housing*

- Phase I Housing is now about 80 percent sold and Devens now has a new residential community. The type of housing to be built in Phase II has not yet been decided, though the DEC is promoting a new urbanist version of compact development. An overall 25 percent affordable housing level is expected, but statements in some MassDevelopment materials mention the possibility of up to 50 percent affordable housing in Phase II.
- There is considerable market demand for housing in the region and the host communities are not encouraging growth. Shirley and Harvard have annual building caps through 2005 and Harvard’s combination of large lot zoning, poor septic conditions, and expensive land also limits development. Any new housing in Devens should be located in ways that reinforce the existing small residential neighborhoods, provide pedestrian access to amenities, and link to the host communities to the degree possible.

### *Schools*

- Devens residents, who are legally citizens of Harvard, were asked to sign a waiver of their rights to send children to Harvard schools. Devens has its own school district, funded by the state, but Shirley and Ayer will provide schooling from second grade on.

### *“Downtown Devens”*

- MassDevelopment has issued an RFQ for mixed-use development of the entire 27-acre Business and Community Services zone. Residential uses are mentioned as a favored part of the mix, even though the area is not zoned for housing. MassDevelopment states it will help the chosen developer obtain those permits – presumably through a Chapter 40B comprehensive permit. The RFQ cites the results of a market study for retail, office, residential, and hotel space and calls for an “urban ‘lifestyle’ design” character, but the illustrative concept plans prepared for the RFQ are suburban in character.

### *Transportation*

- The 2000 Traffic Study for Devens found that there were 13,000 trips per day at Devens compared to the 22,834 forecasted in the Environmental Impact Report. The MEPA certificate was granted for development that generated up to 59,625 trips per day.
- Increased buildout will bring more traffic and more need to implement effective Traffic Demand Management programs in order to reach 8.5 million sf without generating more traffic than the certificate allows.

- Future traffic growth will be concentrated in the corridor between Jackson Gate and Vicksburg Square. Forty-four percent of all car and truck trips are expected to use Route 2 and Jackson Gate, rather than 68 percent, as estimated in the Environmental Impact Report.
- The MBTA has included the possibility of a major multi-modal facility at Devens in its long-range planning, particularly for a parking lot.
- DEC and MassDevelopment have secured funding to begin organizing a Transportation Management Association (TMA) designed to reduce the number of single occupancy vehicle trips. A TMA shuttle system could be opened to local residents for a nominal fee.

## **PHASE II RECOMMENDATIONS FOR THE JBOS:**

- Draft and send a letter to MassDevelopment and the DEC containing
  - A statement that in principle the towns' goal is to have a return of jurisdiction over Devens lands to the towns
  - An invitation to begin a process to prepare the disposition and governance study required by the legislature
- Provide MassDevelopment and DEC with the proposed scope of a disposition planning process (see a later section of this document) and consider allocating some town funds for this purpose, even a symbolic amount, to signal and reinforce the fact that under Chapter 498 the towns are equal partners in carrying out this study
- Establish for each town a liaison to the JBOS and the DEC who will flag any DEC decisions within 30 days for which the towns should request a reconsideration of the decision, as provided for in the Zoning By-Law. (Harvard has made the appointment; Ayer has asked the Planning Board to delegate a member for this task; Shirley has not made the appointment.) Ask DEC to send project permitting submission packages, meeting notices, and other DEC documents to the liaisons. Ask each liaison to send a report to the town manager every month before the JBOS meeting – even if the report is a simple “nothing to report.”
- Notify MassDevelopment that JBOS has established Transportation and Housing Committees, as provided for in the Reuse Plan, in addition to the Open Space Committee. Ask appropriate state and regional agencies and nonprofit organizations to be members of these committees, as well as representatives from each of the Towns, Devens residents, DEC and MassDevelopment
- Establish a JBOS Development and Finance Committee to work on overall economic development and cost/benefit issues that affect decision-making on the potential return of jurisdiction to the towns
- Formally ask MassDevelopment to provide some staff support for these committees to assist volunteer chairs from the communities in scheduling and announcing meetings, providing information and documents, etc.
- Provide the Committees with a work agenda (see a later section of this plan for recommendations) and ask for quarterly reports from the committees to the JBOS
- Provide MassDevelopment and DEC with JBOS input on the future development of “Downtown Devens” through the Development and Finance Committee while MassDevelopment is selecting and working with a developer
- Strengthen the relationship between the JBOS and the DEC:
  - Ask DEC members from the town to meet quarterly with the JBOS

- Ask DEC members to give a short report on DEC activities at Town Meetings and for inclusion in Town Annual Reports
- Work with the DEC director and DEC members to convey JBOS and committee views on the following issues:
  - comments on proposed changes in regulations
  - refinement of site and building design standards
  - monitoring during construction and post-construction
  - incentives to conserve water, electricity, wastewater capacity and other resources
  - encouragement of existing industrial businesses to improve and upgrade properties
  - recruit future industrial development that is less dependent on auto and truck usage, and maximizes use of rail lines.
- Request an opinion from the state Attorney General's office on whether lands zoned "Open Space and Recreation" at Devens are covered under Article 97 of the state constitution

#### *North Post Master Plan*

The JBOS and the Boards of Selectmen of Ayer and Shirley should request that MassDevelopment fund a detailed environmental study, economic assessment and master plan of the Shirley and Ayer North Post areas in the next two years. As the MassDevelopment Five-Year Review stated, this plan should be prepared in coordination with the JBOS and the two communities. The Development and Finance Committee should oversee this process, with additional representation from the following:

- Ayer Community and Economic Development Director
- Planning Boards
- Conservation Commissions
- JBOS Devens Open Space Committee
- JBOS Devens Transportation Committee
- US Fish and Wildlife Service – Oxbow National Refuge
- MassDevelopment
- DEC

This committee should be involved in developing and approving the scope of the study; community representatives from the committee should participate in selection of consultants; and the committee should meet regularly with the consultants to discuss the emerging study results and alternatives and should participate in review of the draft and final report. The scope should contain, at a minimum, the following:

- a thorough environmental inventory and assessment of both parts of the North Post, building on the Vernal Pools study
- recommendations on areas that should be preserved because of environmental sensitivity and scenic landscape character
- options and appropriate locations for development
- market analysis for development sites, estimated jobs and tax revenues that could be created
- assessment and recommendations on the transportation and other infrastructure improvements necessary to unlock development potential, and their cost
- estimated infrastructure impacts of development and potential mitigation
- traffic study of North Post area under various reuse concepts to evaluate transportation impacts, needed mitigation, and preferred options
- funding sources for protection, infrastructure, and marketing costs



## **1. THE PROJECT AND THE PROCESS**

When the Massachusetts legislature created the Devens Regional Enterprise Zone in 1993 to lead the redevelopment of Fort Devens from an army base into a business and residential community, it envisioned the possibility that the transition might take forty years. Today, more than five years after the state bought Devens from the army, over 50 percent of the allowable buildout has occurred, new jobs have been created, hundreds of acres of natural landscape have been preserved, substantial areas of hazardous materials contamination have been remediated, and new residents have moved into housing at Devens. Compared with expectations in the dark days of the recession in the early 1990s, the Devens story looks like a big success.

Through negotiations with the federal government, the state agreed to take on the transformation of "Fort Devens" into "Devens" - first called a "planned industrial park" and now called a "planned community." In late 1993, the legislature passed M.G.L. Chapter 498 creating the Devens Regional Enterprise Zone to be administered by the state through the then Massachusetts Land Bank (now MassDevelopment) and a new entity called the Devens Enterprise Commission. The Devens Reuse Plan was completed in 1994, as was a Zoning By-Law. The Reuse Plan and the Zoning By-Law were accepted by the four host communities (Ayer, Harvard, Shirley, and Lancaster) in town meeting votes in December 1994. By voting for the Reuse Plan and the Zoning By-Law, the host communities delegated their municipal jurisdiction over Devens in land use and some other matters to MassDevelopment and the DEC. At the same time, they were no longer responsible for municipal services and costs in Devens land.

The Devens By-Laws mandate a five-year review of the implementation of the Devens Reuse Plan by the host communities as well as by MassDevelopment and the Devens Enterprise Commission. The towns of Ayer, Harvard and Shirley organized committees to evaluate the results of the plan after five years as they affected the individual communities, but the Joint Boards of Selectmen (JBOS) also realized that development of a common approach to Devens issues was essential to effective representation of the host communities' concerns and interests in the further development of Devens. The town Five-Year Reuse Committees began meeting in 2000 and held several joint meetings. However, they came to the conclusion that they needed assistance in crafting a joint strategy for the Five-Year Review.

The JBOS contracted with Community Design Partnership (CDP), in association with Bennett Associates, in February 2001 to assist in the preparation of the JBOS Five Year Review. CDP prepared a report in May 2001, known as the Phase I Report, that focused on a preliminary review of Devens documents and implementation, a compilation and integration of the results of the reviews by the three town Five-Year Review Committees, individually and jointly, a brief summary and analysis by the consultant of the Five-Year Review reports issued by the DEC and MassDevelopment, and recommendations emerging from the tri-town review of the Reuse Plan.

After the Towns secured continued funding, CDP began Phase II of the Tri-Town Five-Year Review in January 2002. CDP met twice a month with a Steering Committee made up of the town administrators, a member of each town's Board of Selectmen, the Chairpersons of each town's Five-Year Review Committee, and representatives of DEC and MassDevelopment. A public meeting was held in April, attended by 45 people, including nine residents of Devens. The Phase II project included more detailed investigation of the Devens fee structure and comparison to a traditional value-based tax assessment system; a more detailed review of zoning and implementation for each of the sectors; a review and analysis of the 2001 transportation study; a discussion of governance and administration options; recommendations for a future organization and agenda of work; and a scope for a disposition process. A second public meeting was held on June 20 to discuss the report recommendations and next steps.

## **2. AGENCY AND TRI-TOWN PHASE I FIVE-YEAR REVIEWS**

### **The MassDevelopment Five-Year Review**

As a result of MassDevelopment's Five-Review, the Board of Directors adopted six "strategies" to guide future development at Devens:

- Focus the 8.5 million square feet of non-residential, non-federal buildout in an area they call the "core areas" of Devens, which they define as all those areas except the North Post, the Davao Housing area between Patton Drive and Robbins Pond, and the Special Use District also known as Salerno Circle.
- Future development of those areas that MassDevelopment defines as being "non-core" or peripheral areas "should be planned through a collaborative effort with the host communities."

MassDevelopment staff have suggested that the agency would make the needed infrastructure investments and recruit appropriate phased development, the towns could regain municipal jurisdiction, and then MassDevelopment and the towns could share the revenue that was generated from the new development. Development in the "non-core" areas is envisioned as additional to the 8.5 million square feet in the core, potentially bringing Devens buildout to much more than the current by-law cap permits, exclusive of housing. Additional development would require new environmental impact certificates from the state MEPA Unit.

- MassDevelopment and the host communities should explore expanding housing on Devens beyond 282 units and maximize the development of affordable housing. The agency is being charged by the governor with helping to alleviate the housing shortage in Massachusetts.
- Downtown Devens development should include a mixture of uses including retail, office, residential, hospitality, and cultural and civic activities. Coordinating to mitigate negative impacts on Ayer and Shirley village centers and on Harvard, while providing beneficial opportunities, will be important.
- Municipal services costs and revenues should break even on an annual basis.
- MassDevelopment should analyze its Devens investments from the point of view of a real estate developer seeking return on investment.

The MassDevelopment Five-Year Review is explicit about the need to create a sense of community at Devens. The desire for more housing, the creation of a Devens School District, planning for a mixed-use downtown district, and the focus on a core area all imply the creation of a potentially self-sustaining community. At present, MassDevelopment leaders say that there has been no decision to create a new municipality but that they must plan for both eventualities.

#### *MassDevelopment Implementation of the Five-Year Review:*

- RFQ for development of the Business Services District issued May 2002
- Proposal for housing as part of the Business Services District development
- Plan for a value-based taxation system submitted to the state Department of Revenue
- Creation of a Devens School District
- Creation of Devens Community web site to inform residents

## **The DEC Five-Year Review**

The DEC administers and enforces the Zoning By-Law and associated Regulations, and exercises the functions of municipal boards, such as the Planning Board, Zoning Board of Appeals, Conservation Commission, Historical Commission, and Board of Health. This allows the DEC to provide one-stop, unified permitting to potential new landowners and developers. The Zoning By-Law was enacted by approval of the Town Meetings in 1994; the Rules and Regulations were developed by the DEC and approved in November 1999; and proposed amendments and new regulations have been drafted in early 2002 and are currently under discussion. The Commissioners are appointed by the Governor. However, each of the host communities proposes candidates for two positions on the DEC and the Governor chooses from the nominees for these positions.

The Devens Enterprise Commission regulates land use and development in Devens through a unified permitting system. As a permitting agency, the DEC tends to focus on specific parcels and their layout rather than overall planning initiatives. Currently dependent on annual appropriations for its operations, the DEC is seeking a regular revenue stream through a per square foot fee on Devens development effective July 1, 2002. Ongoing funding would position the DEC to continue its regulatory activities and to take a stronger overall planning role for the future of Devens, as proposed in its Five Year Review.

DEC's Review identified and made general recommendations on some of the same issues that have concerned the host communities. The DEC is also working on ways to incorporate a more rigorous use of sustainability criteria and concepts in the Devens development process. The main recommendations of the DEC Five-Year Review are:

### *Planning*

- Prepare a North Post master plan, including a detailed analysis of the environmental resources and constraints
- Begin disposition planning
- Consider allowing more housing on Devens.

### *Development standards and regulations*

- Prepare zoning bylaw regulations within the next five years under section II.F. Innovative Development Options for downtown development, possibly for corporate campuses, and for open space housing subdivision development options.
- Refine the overall master plan to include better buffering standards both for areas bordering Devens and between lots inside Devens.
- Give sustainability a more prominent role in the development and evaluation of projects:
  - Incentives for green building design using the standardized LEED system developed by the U.S. Green Building Council;
  - DEC Sustainability Indicators
  - DEC Industrial Ecology Project
  - Integrated Pest Management Program

### *Transportation Demand Management*

- Form a Transportation Management Association to deal with the growing employment base at Devens.

### *Development pace*

- Phase in development at a more measured pace

*DEC Implementation of its Five-Year Review:*

- Proposed amendments to the Rules and Regulations particularly on stormwater management, landscape standards, sign control
- Proposed new regulations on Planned Development based on “new urbanist” style, compact residential development; new Historic District regulations
- Grant for solid waste planning
- Eco-Star industrial ecology program planning
- Green building incentives and program promotion
- Invitation to Devens resident participation in committees and the update of regulations

**Tri-Town Reuse Plan Review: Phase I Recommendations**

*General Organization and Planning*

- Establish committees and town designees as provided for in the Reuse Plan and Zoning By-Law
- Towns should decide on the lands they would like to own for municipal uses
- Develop a scope for a disposition process and seek agreement with MassDevelopment and DEC to start the process
- Seek funding to support the disposition planning process
- More detailed physical planning, including North Post planning
- Refine zoning bylaw and regulations
- Give a distinctive character to Devens with a focus on “green” best practices through regulation, incentives, and promotion

*Finances*

- Pursue more detailed understanding of the revenue and cost structure at Devens and any agreements that could constrain future town exercise of governmental powers

*Housing*

- Create JBOS Housing Committee to seek input into Phase II Housing and evaluate housing expansion

*Open Space and Environment*

- Seek MassDevelopment commitment to a detailed environmental assessment of the North Post
- Seek an update of the Open Space Plan, transfer Conservation Restrictions, begin implementation of the Trails Plan

*Transportation*

- Establish JBOS Devens Transportation Committee to seek input into transportation studies and planning for Devens
- Seek establishment of a Transportation Management Association to include services to the towns
- Seek integration of bicycle and pedestrian planning into transportation improvements

*Infrastructure*

- Seek engineering evaluations of infrastructure systems

**Tri-Town Five-Year Review of the Devens Reuse Plan – Phase II**

*Community Design Partnership*

*Implementation of the Phase I Tri-Town Reuse Plan Review*

- JBOS Housing and Transportation Committees (provided for in the Reuse Plan) set up
- Harvard designated a representative to submit town requests for reconsideration of DEC decisions (provided for in the Zoning Bylaw). Other towns are working on this.
- Civic identity of new Devens residents has been established and a representative is serving on the Harvard Devens Reuse Committee
- Continuation of analysis and recommendations in this Phase II of the Tri-Town Review

### **3. MUNICIPAL SERVICE FEES AND VALUE-BASED TAXATION**

The Towns have long wished to understand the fee structure and finances of Devens. Several issues were of concern:

- how the Municipal Service Fee system functions
- possible contracts with property owners that could extend beyond MassDevelopment's jurisdiction over Devens and affect subsequent tax revenues
- how fee changes after July 1, 2002 will function
- the relation of the MSF system to an ad valorem real estate tax system

The consultants and representatives of the Towns met with Tony Arruda, former MassDevelopment finance director and current consultant to the agency, who has developed a value-based revenue plan for properties at Devens. Mr. Arruda provided a briefing to the consultants and representatives of the Towns, but declined to share any reports or documents.

#### **Existing Municipal Service Fee System**

On taking control of Devens in 1996, MassDevelopment hired a consultant to design a fee plan for Devens. At that point millions of dollars were needed to get Devens' support services ready to support new development with municipal-type services, but, of course, there were virtually no businesses there at the beginning to pay fees to fund those services. The fee plan that the consultant designed was put in place and has been operating for the last five years with base fees on land and building square footage according to use as follows:

▪ commercial land	\$0.02 per square foot
▪ residential land	\$0.03 per square foot
▪ industrial/manufacturing space	\$0.63 per square foot
▪ office space	\$0.78 per square foot
▪ retail space	\$1.55 per square foot
▪ residential space	\$1.40 per square foot
▪ affordable residential space (avg.)	\$0.50 per square foot

#### ***Industrial and Commercial Property***

These are base fees. Each of the first 29 property owners at Devens has its own contract, and in many cases, fees were negotiated at lower, incentive rates than the \$0.63 per building square foot. (These arrangements are loosely called TIFs – Tax Increment Financing -- because they serve the same purpose as a tax incentive, although technically they are not.) These properties currently pay considerably less than they would pay if they were located in Ayer or Harvard. They represent less than 2 million square feet of the potential 8.5-million sf buildout of Devens.

Each of these 29 contracts is valid until 2035 or until a change of government from MassDevelopment to something else. Therefore, the companies know that these contracts will no longer be in force if jurisdiction returns to the towns or Devens becomes a separate municipality. If the buildings change ownership, the continuation of the MSF contract depends on how the individual contract is written.

Each of these 29 contracts also has a clause stating that beginning in FY2003, the MSF cannot increase by more than 4 percent or the Consumer Price Index, whichever is less. MassDevelopment therefore had a one-time chance to raise the fee per square foot by more than 4 percent or the CPI on these properties. MassDevelopment ultimately decided on a 5 percent increase.

### *Residential Property*

Residential MSFs are not negotiated with the buyers. In addition, there is no cap on changes in the residential MSF. Residential sales agreements also contain a clause stating that MassDevelopment will at some point change to an ad valorem fee system.

### *Personal Property*

There are no personal property fees at Devens and none are contemplated.

## **Proposed Change to a Value-Based Fee System**

Chapter 498 states that a revenue plan should be put in place (no timeline is given), the Department of Revenue (DOR) should assist in developing the plan, and the plan should be submitted for approval to the Executive Office of Administration and Finance (EOAF). That MassDevelopment has proposed a change to a value-based fee plan so that Devens properties are assessed in a manner congruent with municipal systems and so that the system will come under the tax laws. (Currently, for example, there is no power of lien for any property owner who fails to pay the MSF.) MassDevelopment believes that because Chapter 498 calls for approval of the plan by EOAF, it will not be necessary to go back to the legislature to institute an ad valorem system. DOR finds it difficult to deal with the Devens situation because it is unique and does not fit well under existing tax law. DOR is concerned that the contracts that cap MSF increases not become a cap on valuation.

Mr. Arruda did not describe the details of the plan to us and declined to provide a copy, but discussed some underlying principles. In the short term, MassDevelopment expects to continue subsidy at Devens. Elements of the proposal include the following:

- put an assessed valuation system in place that is as close to a municipal system as possible
- change the 29 existing contracts to a valuation system, but incorporate the rate cap that is in the contracts as a tax abatement
- position residential tax rates in the middle relative to the range of tax rates among towns in the region and try to make the system resemble municipal real estate tax systems as much as possible, with 3-year reevaluations, etc.
- at the change from MSF to ad valorem, MassDevelopment would attempt to make the change as cost-neutral to residents as possible

MassDevelopment hopes to fund its operating expenses with tax receipts by 2008, though that might slip to 2009 or 2010 given a slowdown in the economy. This expectation is based on the current buildout limits of 8.5 million square feet and 282 housing units. At present, breaking even would require something like a \$50 per \$1,000 tax rate, which would be untenable. The objective is to establish a tax system that works like a municipal system and with tax rates that are similar to the rates in the host towns. The commercial rate range being contemplated is between 11.50 and 14.50 per \$1,000. The DEC wishes to raise the \$300,000 of its fixed operating costs by piggy-backing on the MassDevelopment tax rate. The rate is expected to be \$2.28 per \$1,000 or less. The combined rate is therefore likely to be in the 13 to 16 per \$1,000 range, not counting the abatements that would be included to honor the rate increase cap that is included in the 29 property-owner contracts. This rate compares with 2002 tax rates in the communities as follows:

Ayer	9.85 residential	20.73 commercial/personal property
Harvard	11.67 all property types	
Shirley	13.57 all property types	

MassDevelopment has submitted the plan to DOR and is waiting for a response. It is possible that MassDevelopment could institute the new system and come to a final agreement with DOR later.

### **Concept for a Special Taxing Authority for Devens**

Richard Kobayashi of Bennett Associates, a member of the CDP team, proposed that the objective of conversion to a municipal-style tax system could be reached while beginning the disposition process through creation of a special taxing authority for Devens. The disadvantage of this proposal is that it would require state legislative approval.

### **Background**

The state law creating the present governance structure for Devens gave MassDevelopment the right to charge a municipal service fee to recover the costs of providing services to landowners. Devens has used this power to execute agreements with landowners on payment of a municipal service fee. MassDevelopment's contracts with the first 29 landowners in this development project provide for a one-time adjustment this year. In addition, the contracts state that the municipal service fee agreements become invalid when governmental jurisdiction changes.

### **Concept**

At this time it is uncertain when municipal jurisdiction will be reasserted over Devens. But MassDevelopment has stated its desire to complete the buildout within the next ten years. Currently MassDevelopment has submitted a proposal to DOR and A&F asserting that it has the power to tax based on an interpretation of the Devens enabling statute. One of MassDevelopment's objectives appears to be to bring the taxing scheme at Devens under the normal real estate taxing regime of the Commonwealth. Thus, it would have the same taxing powers as a municipality and the same array of tools to spur development through tax breaks every town does. The state has not yet acted on this proposal.

An argument can be made that Harvard, Ayer and Shirley have a direct and substantial interest in whether these powers are granted to MassDevelopment. To address this, one approach could be the establishment of a *special taxing district*. This district would have the following characteristics:

- It would be designed so that it explicitly meets the test of a change in governmental jurisdiction envisioned in the law establishing the project. (There are many special districts in Massachusetts that exercise only one municipal governmental function e.g. fire districts, water districts, etc.) This would set the stage for changing the tax basis for existing and future development at Devens. To the extent that tax incentives continue to be needed the tools in the property tax laws could be used.
- The taxing power, the same powers that local assessors exercise, would be vested in a Board, which would include representatives of MassDevelopment and representative of the Towns. One scenario would be to have a Board of Assessors comprised of one assessor from each Town and two assessors appointed by the MassDevelopment Board. In this scenario both the Town's and MassDevelopment's short and long term interests could be addressed and protected.

While an approach along the lines described would require legislative action, it does set the stage for a long term cooperative approach among the Towns and MassDevelopment in determining how taxation – one of the most important municipal powers will be exercised.



Implementing the approach would require substantive dialog among the JBOS, MassDevelopment, DOR and the region's legislative delegation.

## **4. DEVELOPMENT REGULATION: ZONING, SITE PLAN REVIEW, AND OTHER REGULATIONS**

The regulatory structure of Devens is made up of the Reuse Plan, the Zoning By-Law and the Rules and Regulations. The Reuse Plan serves as the framing and goal-setting document and is explicitly referred to in the By-Law as part of the three elements that “govern land development activities within Devens.”<sup>1</sup> In some cases, such as the descriptions of the zoning districts and the land use categories, much of the language in the By-Law comes verbatim from the Reuse Plan.

The By-Law approved in November 1994 was supplemented in July 1996 with Rules and Regulations (Administrative, Subdivision, Site Plan and Industrial Performance Standards). The Regulations were revised in November 1999 and new sections added on Sign Control, Public Health, and Wireless Communications Facilities. As noted earlier, in 2002 DEC has been developing a new set of amendments and additional regulations.

DEC regulations are much more thorough and detailed than the Zoning By-Law, which is to be expected. However, it is worth noting that some of the elements that appear in existing or proposed regulations are more commonly found in zoning bylaws and ordinances, rather than Rules and Regulations. This is particularly true for the new residential development standards proposed as a new section under Planned Development/Innovation Overlay. The language states that these standards are required, except for small infill projects. The proposed section includes dimensional, density, setback and affordability requirements, which would typically be found in a zoning by-law, as well as the design standards and guidelines that can be found either in zoning or in rules and regulations. A proposed new section of the regulations on creating a Transfer of Development Rights district including Devens and the host communities implicitly recognizes that some issues must be put to a vote. This section would be contingent on approval by the DEC, MassDevelopment Board of Directors, the Boards of Selectmen and the Town Meetings of the three towns.

The significance of this is that changes to zoning would require Town Meeting votes, while changes to regulations do not. These proposed amendments have great potential significance. It is very important that the JBOS committees on Open Space, Housing, and Transportation review and comment on the proposed changes and additions that relate to their area of concern. Throughout the discussions of development sectors that follow, there will be references to both the existing zoning and regulations and the proposed regulations as they affect and potentially affect development character.

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<sup>1</sup> Zoning By-Law, Section I.B. Purpose and I.C. Legal Relation Among the By-Laws, the Reuse Plan, and the Commission Regulations.

2002 Proposed amendments and revisions:	2002 Proposed new sections:
<u>Administrative Rules</u> Home occupations Groundwater Level I Site Plan Criteria Fee Schedule  <u>Subdivision Regulations</u> Stormwater management New residential road class – “lane” Street lights in the historic district  <u>Site Plan Regulations</u> Stormwater management Pavement thickness Truck parking lot standards Landscape Historic district lights  <u>Sign Control Clarifications</u>	<u>Planned Development/Innovation Overlay</u> Planned Unit Development New Urbanist residential development Transfer of Development Rights  <u>Historic District</u> Certificates of Appropriateness and criteria

## **5. INDUSTRIAL AND COMMERCIAL DEVELOPMENT**

### **Buildout**

The Zoning By-Law capped development at 8.5 million square feet of commercial and industrial development and 282 housing units, although the zoning without the cap would permit 15.3 million square feet. The original Environmental Impact Statement approved by the state's MEPA Unit contained three buildout scenarios based on different levels of traffic generation, water usage, wastewater flows, and air emissions. More than half of the buildout expected to take twenty or thirty years when Chapter 498 was written has already been captured in the first five years of the Reuse Plan because of the extremely favorable economic conditions of the second half of the 1990s. Moreover, only 10 percent of that 5.4 million square feet consists of reused military buildings.

### **MassDevelopment Investment**

Much of MassDevelopment's effort has been concentrated on capital improvements such as roadway construction, predevelopment site preparation, landscaping, and remediation specifically or substantially oriented towards fostering industrial development. MassDevelopment by the end of FY 2001 had invested over \$81 million in capital improvements and approximately \$24 million in operations. Of the approved State capitalization of \$200 million, \$142.4 million has been expended from all sources, with \$14.1 million of this anticipated in Fiscal Year (FY) 2001, with an additional \$11.5 million anticipated in FY 2002. Private sector investment at Devens, mostly by industrial users, neared \$450 million as of FY 2001. It is expected that the full \$200 million state allocation will be required to achieve the goals of the Reuse Plan including the development of the so-called "out parcels", the Ayer and Shirley North Post, Salerno Circle, and Davao Circle. More funds will be needed from continued development, contributions from development of the out parcels, increases in the Municipal Services Fees assessed and other operational income.

### **Overall Development**

Since the transfer, MassDevelopment has achieved substantial industrial development and activity at Devens. This development has been concentrated firstly in the Industrial Park area of Independence Avenue, Saratoga Boulevard, and Barnum Road, also called the West Rail area, and secondly in Jackson Technology Park (JTP), oriented towards the Jackson Gate and Route 2 access.

Thirty-two percent is new construction already built, and another 21 percent is accounted for by current prospects and potential expansions, most of which would also consist of greenfield development rather than adaptive reuse of existing buildings. Regional, national and international businesses, including Fortune 500 companies such as GE and Gillette have occupied large development sites, while building reuse activity has lagged substantially behind expectations. Building reuse has been hampered by remediation issues, space and reconfiguration issues, and a perception that cleared sites are being more aggressively marketed. Existing buildings appear to only be appropriate for smaller industrial enterprises with compact equipment, shorter and more flexible production lines, and higher tech orientations.

Of the 5.4 million square feet of development identified through FY 2001, 32% of the 8.5 million sf cap (or 2.74 msf) were due to new construction, while 10% (800,000 sf) can be attributed to reuse of existing buildings. 1.4 msf, or 16% of total buildout, is reserved for potential expansion of existing development sites. Buildout commitments by FY 2001 amounted to 515,000 sf, 440,000 sf of which was industrial. A minimum of 47% of total buildout can now be considered to be in place or obligated. Employment at Devens was expected to surpass 3,100 during 2001, with the bulk of those jobs being in the industrial sector. MassDevelopment currently uses a figure of 3,800 employees – a number that includes federal employees in the remaining federal enclaves

By the close of FY 2001 fully 64% of the gross buildout was expected to be completed or committed, with remaining 36% to be accomplished by the close of FY 2008. While Massachusetts has suffered from the recent economic reversal, and while development at Devens has not proceeded fully in line with initial assumptions, industrial development at Devens has been quite strong.

#### *West Rail Industrial Park*

MassDevelopment concentrated its early recruitment on what it now calls West Rail Industrial Park. Distribution and warehouse facilities have dominated early development. These kinds of uses tend to have a low number of jobs per square foot, and the jobs themselves often do not require a high skill level. The West Rail Industrial Park is now almost built out with more than 2 million square feet of building from 11 sales on 192 acres for companies such as Southern Container, Gillette, North American Logistics and Anheuser Busch. Only Guilford Motor Express has made significant use of the rail access and sidings for its piggy back trailer operation. The industrial areas are showing signs of maturity, with turnover and reuse of buildings, such as Webvan being rapidly supplanted by C&S Wholesale Grocers. More recent additions to the Industrial Park include a manufacturer of precision machine components, Waiteco Machine, and Integra, a manufacturer and distributor of silicon hose and valve fitting. A newspaper publishing and printing company is expected to move to the industrial park soon.

Currently, three identified sites on Barnum Road on 40.4 acres are available for up to 600,000 sf of development. Three sites in the Industrial Park have a potential yield of 390,000 sf of buildings on more than 28 acres of land.

#### *Jackson Technology Park and Robbins Pond*

Industrial character is now gravitating much more towards the high tech manufacturing initially sought. Businesses such as Bionostics, PharmEco, American Superconductor and Parker Hannifin have located in Jackson Technology Park and at Robbins Pond. JTP sales amount to 2.7 million sf of building area achieved through 18 sales totaling 274 acres. Jackson Technology Park has five sites remaining, including the Jackson Gate site and reuse of One Jackson Place. Identified capital costs for site preparation at JTP will amount to \$1.7 million dollars for 52.7 acres representing nearly 750,000 sf of buildings, including the Jackson Gate site.

#### *Sherman Square and Vicksburg Square*

Sherman Square has emerged as the high tech incubator site, with a total of 200,00 sf of existing space, while reuse of Vicksburg Square (409,000 sf total) is more clearly government, social services and education focused, with a few high tech oriented firms. Initial concepts anticipated incubator businesses being able to expand into larger adjacent development sites, and this expectation has not been met so far. Although this may yet happen and no development deals have been concluded in FY 2002 to date, available development sites have rapidly been claimed over the past seven years, no new development has been undertaken by a prior incubator business. Smaller businesses have relocated from Bedford and Lexington, however, suggesting that a more regional view of incubation may be viable

#### *Educational Links to Economic Development*

The synergistic educational links to industrial and high tech development hoped for in the Reuse Plan have been slow to emerge. While Devens has recently created a school system and a charter school has located here, the higher education tie-in to high tech and biotech manufacturing, which was a crucial aspect of the Reuse Plan, has only recently come into play. The jobs ladder for training and advancement of regional residents from blue collar and low skilled work into higher skilled manufacturing and professional positions are the crucial rungs which technical and research oriented educational institutions provide. Mount Wachusett Community College's

Devens Learning center and Western New England College have both recently located to Sherman Square.

### *Environmental Business and Industrial Ecology*

Environmental Business activity has also been slow to emerge at Devens. Many of the businesses at Devens currently use post-consumer and industrial materials for their product feed stocks. But there is little or no coordination between businesses at Devens to turn waste materials from one process into another's feed stock, or to minimize waste generation overall, particularly between businesses. With the diversity of industrial uses on site, it is apparent that there can be many successful initiatives, starting with waste paper and plastics. DEC has secured funding to promote and coordinate this process.

### **Future Development**

With the success of development efforts to date, most of the remaining development opportunities at Devens are quite clear. Approximately five years into the redevelopment effort, nearly half of all potential development has occurred or been permitted. Each development area now has a handful of clearly defined open sites available. If all of the remaining sites in the Industrial Park, Barnum Road, and JTP are activated, plus Sherman and Vicksburg Squares, more than 3 million square feet of development can be anticipated, equaling (and potentially exceeding) the MEPA buildout limit for commercial space. These sites are undergoing site development and marketing efforts currently.

### *"Out Parcels"*

Several sites not included in the prior analysis may also become areas of industrial development. The combined capital development costs anticipated to ready these out parcels for development by MassDevelopment totals to some \$38 million dollars, and exceeds the capital currently available. The full development of Devens and its adequate generation of revenues is considered a baseline requirement for successful development of the out parcels, as is the significant assumption of receipt of the final \$29 million of authorized funding in FY 2008 to pursue this development. Despite current economic conditions and a lessening of site uptake due to restricted choices, there is no reason that full buildout cannot be achieved within several years (either prior or post) of the 2008 horizon.

The Davao Housing area adjacent to Robbins Pond and South of Barnum Road is identified as either housing or for an Innovative Technology use with an unidentified building area. Similarly, the Salerno Circle base housing area was previously identified as a corporate headquarters site and considered an out parcel site. Salerno Circle is now potentially designated as an Innovative Technology use with estimated capital costs for demolition and site-readying at \$15.475 million. Harvard officials have expressed interest in this area for potential municipal or housing uses.

The North Post areas never received the same level of analysis and planning as the rest of Devens during the Reuse Plan. At the North Post current plans call for the redevelopment of Moore Airfield as a Special Use Area, requiring removal of the runways and existing buildings. It is currently in partial use by the Mass State Police for vehicle operations and by the Army for others. Demolition costs are estimated at \$12.5 million dollars. Roadway access to this site is highly constrained and further compromised by remediation concerns. No current additional reuse plans have been advanced. West of the Airfield and the Nashua River lies the Environmental Business District, identified for up to three industrial sites (in addition to the wastewater treatment plant) dedicated to innovative technologies to transform and reuse the varied solid waste stream from other industrial activities at Devens and the region. No development initiatives, outside the recently completed improvement and expansion of the wastewater treatment plant, have been

advanced since the rejection of the sludge plant project. MassDevelopment estimates capital costs of \$4.772 million to prepare the area for private development. However, concern for the sensitive environmental characteristics of the site, access constraints and other difficulties of development have led some parties to recommend that it become protected parkland.

Army Reserve areas West of the Nashua River, and another South of Route 2, may become available for alternate development at some future date. Further contraction of Army activities within their current, centrally located areas at Devens proper, and along Barnum Road, totaling 314 acres, may also free additional lands for redevelopment not currently contemplated.

### **Physical and Design Character of Nonresidential Development**

The success of base conversion efforts, achievement of the goals of the Reuse Plan, and creation of the highest values, whether recreation or land values, is dependent on creating the most attractive and well functioning setting at Devens. Building construction, site planning and landscaping are all governed by zoning and site plan regulations, which are enforced by the Devens Enterprise Commission through the permitting process. Before approval of the DEC's amended Rules and Regulations in November of 1999, site development guidelines were relatively sketchy. The 1999 regulations are more detailed and sophisticated. DEC's proposed further amendments, now in draft form, require even better site planning and design, particularly in the areas of stormwater management, Best Management Practices, protection of existing vegetation and topography, etc. Unfortunately, earlier development at Devens did not benefit from these regulatory improvements. Separate general design guidelines have also been prepared by MassDevelopment for Jackson Technology Park.

The results of these efforts are uneven and their success not fully obvious. The forest and meadow overall design concept of the standards in the regulations is admirable, but lacking in specifics and follow through. Lighting guidelines have been forward looking in regards to illumination levels and scatter, but might be further improved by referring to Connecticut's recent update of street and building illumination standards. Street tree planting regulations are admirable, but permit planting of trees as small as 2" caliper (observed), resulting in a short term appearance of significant openness along roadways, and which will require far more time to fill in sufficiently when compared to trees of larger initial diameter.

Building siting is partially dependent on site characteristics and some deviation from guidelines can be anticipated, but most sites vary considerably from optimal siting and development. Detention basins have been constructed to future Federal standards and can be anticipated to do an admirable job of restricting site runoff and controlling pollutants. However, these detention basins have become a dominant landscape form and are uniformly without any elaboration of outline or depth, have not been planted with any regionally occurring wetland species, and feature visibly prominently concrete settlement outflows. The proposed new stormwater management regulations contain more attention to preservation of existing site character, topography and vegetation; require native vegetation in plantings; and provide enhanced aesthetic standards for detention basins and less obtrusive stormwater management systems where feasible.

Parking lots tend to be very large and are located in highly visible locations at building frontages. Site plantings overall are meager, ineffective in screening or dividing parking areas, and insufficient to provide appropriate buffering of buildings or to provide the appropriate connection to adjacent woodlands and other types of land usages. Primary building entries are often at the furthest end of parking lots and preceded by loading docks. Exterior areas for employees are generally not sheltered by articulation of building masses.

Buffering of identified residential areas from industrial areas, particularly at the Barnum Road Industrial Park, both on site at Devens and potentially to properties in Harvard, appears to be inadequate and counterproductive to redevelopment efforts. These characteristics are apparent most prominently in the Industrial Park areas, but are also prominent at Jackson Technology Park sites, and will only be partially moderated by future growth of planting materials.

Building design guidelines call for high quality structures and materials, which has been quite unevenly carried out in practice. Some structures, notably Parker Hannifin, American Superconductor and PharmEco, have constructed thoughtful buildings that use superior materials and provide a standard that should prevail, regardless of any shortfalls in siting. Buildings in the Industrial Park areas deploy facade materials, particularly metal cladding panels and masonry, inelegantly overall and provide a general impression which is not essentially superior to other industrial parks with lesser ambitions. The moderate articulation of material and building elements, the sharp distinction of treatment of managerial and operational areas of the buildings, all diminish any advantages of planning and siting. The use of sheet metal elements near ground level in many buildings, particularly near truck loading and circulation areas, may wear and age poorly, and will rapidly suffer visibly from impacts. The single grace of these structures is that their embedded value is so low that they can be readily replaced or modified by subsequent operations in future economic cycles. None of the new structures betray significant incorporation of energy conservation or sustainable construction practices.



## **6. ENVIRONMENT AND OPEN SPACE**

The Reuse Plan designated as open space 1300 of the 4400 acres of land on the North and Main Posts, of which 830 acres were subsequently conveyed to the Oxbow National Wildlife Refuge before MassDevelopment took ownership of Devens. The remaining 470 acres are zoned "Open Space" in the Zoning By-Law.

In the Reuse Plan, discussion of the open space zone emphasized preservation of natural resources and opportunities for "a wide range of passive and active recreational needs." The Reuse Plan also mentions a goal to promote tourism. Museum space, the Native American Cultural Center, and conference center are also mentioned as examples of uses in the Reuse Plan. This language has been transferred in several locations to the Zoning By-Law. In the use and dimensional tables in the by-law, the open space zone permits cultural and accessory municipal uses but with no dimensional limits, simply directing that "sub-area open space plans should be followed." There are no other guidelines to regulate the amount and character of cultural or municipal accessory uses on open space land. This wide latitude is potentially damaging to the open space zones in Devens. The By-Law or regulations should be revised to limit the size and footprint of any structures on open space and to require that the uses be accessory to open space uses.

The 1996 Devens Open Space and Recreation Plan analyzed the Open Space zone land and potential linkages to identify sensitive resources, the open space and recreational needs of the region, and the capacity of Devens' open space to support different uses -- buffers, resource protection, and active and passive recreation. Land was classified into four categories: Conservation, Preservation, Intensive Use, and Linkage. Management recommendations were made for the classes as well as for specific parcels. The DEC funded the Devens Regional Trails Initiative in 2000 to identify potential linkages to trail networks in the Towns and a Vernal Pool Habitat Survey of the Shirley North Post and Jackson Gate areas in 2001. Plans for Mirror Lake amenities and trails, funded by Devens Recreation Division, are nearing completion.

Preservation and maintenance of open space for conservation, passive recreation, and active recreation on Devens according to the 1996 Open Space and Recreation Plan has been proceeding, with more progress on active recreation than on passive recreation and permanent conservation restrictions. MassDevelopment has assigned staff and resources to active recreation facilities and appears to be doing a good job balancing the needs of the Towns while maintaining and upgrading the Devens active recreation facilities. Devens Recreation appears to be focusing much of its passive recreation efforts on the Mirror Lake area. Communication with the towns is institutionalized in the Devens Open Space and Recreation Committee, the only one of the three JBOS committees recommended for establishment in the Reuse Plan that has been active during the last five years. Like municipal open space plans, the Devens plan should be updated, now that it is over five years old. If it is being treated like a municipal open space plan by the state Division of Conservation Services, Devens will lose eligibility for state open space grants if the plan is not updated.

### **Ownership and Protection of Lands Zoned "Open Space"**

With the exception of the lands that were transferred to the US Fish and Wildlife Service for the Oxbow Wildlife Refuge, MassDevelopment either owns or, pending remediation, leases from the Army, all the lands in Devens that are currently in designated Open Space zones. Lands that still require remediation by the Army are being leased and maintained, as needed, by MassDevelopment, but will not be transferred to MassDevelopment until remediation is complete.

It is not entirely clear if open space at Devens is protected by more than its zoning designation. MassDevelopment has shown its commitment to the spirit of the Open Space Plan

and rezoning would require the concurrence of MassDevelopment and the Towns at Town Meeting.

However, there is some reason to think that Devens open space may be protected by Article 97 of the state constitution:

*Article XCVII. The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.*

*The general court shall have the power to enact legislation necessary or expedient to protect such rights.*

*In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.*

*Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.*

The Office of the Attorney General has provided an opinion for interpreting Article 97, which is included in an Appendix to this report. Chapter 498 specifically includes conservation and recreation within the list of land uses for which the Devens Enterprise Zone was created and the state acquired Fort Devens lands from the Army. A legal opinion on the applicability of Article 97 to open space zoned lands in Devens should be pursued.

Four areas were designated to be put under permanent Conservation Restrictions (CRs) to be held by the Trustees of Reservations (TTOR):

- Mirror Lake, Little Mirror Lake, and the black spruce bog, with the bog watershed, land between the lakes, and a steep slope east of Little Mirror Lake
- The Eskers area and Patch Road wetlands
- The Ammunition Bog, wetlands and steep slope to the north
- Cold Spring Brook

These sites were among 30 on Devens that were leased to MassDevelopment by the Army, not transferred, because remediation was required. TTOR voted to accept the CRs in early 2001. According to John Marc-Aurele of the Devens Engineering Department, the Mirror Lake and Eskers areas have now been remediated, and it is expected that title to the land will be transferred to MassDevelopment in a matter of weeks, to be followed by a legal transfer of the CRs to the TTOR. The Cold Spring Brook land needs further remediation, so the CRs will not be put in place until the land is in a condition to be transferred to MassDevelopment. The status of the Ammunition Bog CR has not yet been determined and is being researched.

The ownership status of Devens open space upon disposition is unresolved. The lands designated for Conservation Restrictions will continue to be owned by MassDevelopment because the Conservation Restriction grants to the holder (in this case the Trustees of Reservations) an interest in the land, but it does not transfer ownership. A sentence in the 1996 Open Space Plan assumes that the open space lands will be transferred to municipal ownership: "Upon termination of the MDFA's ownership of Devens and devolution to town ownership, the

Trustees of Reservation's role as Holder [of CRs] might be assignable to the Conservation Commission of Harvard." (Chapter 7, page 2.) Other potential alternatives for open space parcels

owned by MassDevelopment include transfer to another state agency such as the Department of Environmental Management; transfer to nonprofit land trusts or conservation organizations; transfer to the Towns based on the town boundaries; or transfer to a joint authority, district, or commission administering Devens for the three towns.

### **Ownership and Protection of Other Open Space and Recreation Facilities**

Rogers Field is a major open space parcel at Devens that lies outside the open space zones. It is included in the Historic District, but DEC has not established any regulations for the Historic District. MassDevelopment also owns all Devens's recreation facilities. Outside contractors manage the Devens Fitness and Wellness Center, the Red Tail Golf Club, Resident and Day Camps, and the Outward Bound facility. Many towns that own public golf courses find them to be good sources of revenue. A nearby golf course is also a very attractive amenity to many potential homebuyers, especially empty-nesters. Ultimate disposition of these publicly-owned lands and facilities has not been determined.

### **Preservation and Conservation Areas**

#### *Additional Land of Conservation Interest for Open Space Zoning*

The starting point for the Open Space Plan was to identify areas of particular environmental sensitivity, significance, and concern. Since the time of the original study, additional research suggests that more areas may be appropriate for designation as conservation open space. Two areas of particular concern to the Towns are on the North Post and south of Barnum Road along Cold Spring Brook. The Vernal Pool Habitat Survey completed in May 2001 found that the North Post, which is currently zoned for Environmental Business, supports vernal pools and provides habitat for Blanding's Turtle, which is listed as a Threatened Species in Massachusetts. In the Barnum Road area, additional study led to the zone boundaries being revised to include additional land in the Open Space zone.

#### *Trail System*

Implementation of the recommended passive recreation elements of the Open Space Plan has been limited to occasional cleanup of existing trails and more detailed planning. DEC commissioned a report on potential connections with trails in surrounding communities, the *Devens Regional Trails Initiative* (2000). According to that study, the current Devens trail system is composed of abandoned army patrol roads on the periphery of the old base and trails in woodland training areas. The Devens Recreation Division has mapped the trails around Mirror Lake, but other trails, primarily in the North Post and around Shepley's Hill, are being used informally. A consultant firm is preparing a plan for pedestrian and bike paths and equestrian trails. The plan will address existing trails around Mirror Lake as well as new paths in the linkage zones along major streets to all four gate areas. Completion of the plan is expected around June 1.

The Open Space Plan discusses the importance of siting, designing, and building all kinds of trails, in areas that are environmentally-suited to supporting them. Trails for pedestrians have the least impact and are the least costly to build and maintain. The bike path system could include sharing roads with other vehicles on designated bike lanes, as well as separated paved bike paths, and unpaved bike trails. This system will be more costly and requires more care in locating appropriate areas for non-paved bike paths. The Open Space Plan includes a

discussion of an equestrian trail system, but states that “development of such a system will require a substantial investment of resources and is not necessarily included as a commitment of the Recreation Plan.” (Chapter 8, p. 20) Equestrian trails should be excluded from the designated Preservation Areas, and located in Conservation Areas with great care.

Funding for implementation and maintenance of the trail systems has not yet been committed. The Recreation Division now employs a part-time grant writer to pursue funding for recreation projects. Since funding is generally not available for ongoing maintenance programs, some discussion of long-term maintenance options for the trail network is needed. In many communities, trail maintenance is a continuing concern and is generally performed by volunteer groups.

#### *Private Property and the Trail System*

DEC requires developers to demonstrate compliance with the Open Space Plan and the Regional Trails Initiative study. However, in some cases, uses allowed in open space such as utilities or stormwater detention ponds have been sited in open space in ways that may interfere with intended uses such as trails and paths. The Anheuser Busch detention pond has been mentioned as one example of a basin sited across a path corridor. The location of a large basin at Jackson Gate reportedly will complicate the site's intended use for a visitors' center for the Oxbow Refuge. DEC regulations (effective November 1999) include preferences for naturalistic design of detention ponds and retention of existing vegetation and topography. Strict application of this language should keep intended natural resource and recreational uses of open space intact.

The zoning bylaws or site plan regulations do not currently require property owners to contribute to implementation by constructing portions of paths and trails crossing their property or performing ongoing maintenance. With the imminent completion of the trails plan, the specific corridors of paths should be sufficiently clear to highlight potential conflicts, and DEC review should prevent siting decisions from interfering with the trail network. Because such recreational amenities enhance the value of private properties, developers as well as the public would benefit from such requirements. The DEC intends to amend the regulations to require developers to build trail/path links on their properties as a condition of approval. Property owners could also be asked to construct trail segments if they come before the DEC for additional development approvals.

#### **Intensive Use / Active Recreation**

One of the key concepts of the Reuse Plan is “no net loss” of recreational resources in place at the time of conversion. Devens Recreation has honored the spirit of this goal by improving the active recreation facilities while keeping them open, and by prioritizing soccer fields consistent with the needs of the Towns. Current status of the Intensive Recreation elements from the Plan is summarized in Table 1.

Two of the three facilities not in operation at the time of the plan have not been replaced. The Willard Park tennis courts were in serious disrepair and will be replaced by parking to alleviate public safety concerns. Renovation of Buker Pool was found to be cost prohibitive (it cost \$100,000 annually to heat and also had asbestos), as has construction of a replacement. The Town recreation committees did not highlight these decisions as area of concern during interviews.

Devens receives revenue from a summer resident camp and a day camp, which draws many children from the host towns, and both operated by outside contractors on Devens property. There is also a Fitness Center, which was in deficit when directly administered but since October

it has been operated on contract. The target market is corporations for employee amenities, with reasonable fees of around \$400 per year. An Outward Bound tower is also leased to an operator who markets team-building exercises for the corporate market. Events from Memorial Day to Labor Day include the Bay State Games, soccer tournaments, and ultimate Frisbee. They are

the biggest source of income at about \$400,000 a year, with the camps providing the second biggest source of income.

Devens Recreation has exceeded the plan in the area of soccer fields – while the plan called for retaining the two existing soccer fields, Devens currently offers 1 game and 5 practice fields, with plans for 5-6 more. This helps to alleviate the deficit of 3 fields found in the 1995 Fort Devens Regional Recreational Management Plan. Ayer and Shirley currently cite additional soccer fields as their most pressing need. Devens is reducing the number of softball/baseball fields, in line with the regional report's finding of a surplus in that area.

Several additional planning activities are currently underway:

- ICON is preparing a Master Plan for the Mirror Lake area including the bath house, boat ramp relocation, and runoff control. Completion is expected around July 1.
- Conceptual planning has been completed for reconfiguring Willard field, including replacing the smallest softball field with a second game field. Detailed design and project phasing has not yet been done.
- Devens Recreation has submitted a capital budget request for improvements to the Sports Arena to include HVAC and boiler improvements, and a partition to allow two simultaneous activities in the space. It is expected that the partition will increase revenue above breakeven by allowing simultaneous rentals of the facility to two different users. Phase 2 will address handicapped access and cosmetic improvements.

### **Working Relationships with the Towns on Recreation**

Relations with the communities regarding active recreation appear generally amicable. Devens' Recreation Manager sits on the JBoS Open Space & Recreation Committee for policy discussions, and the staff work directly with the Town Recreation Committees on scheduling. All the Towns report satisfaction with the quality of the facilities and their maintenance.

Ayer and Shirley offer joint programs in soccer and basketball, and coordinate their use of Devens facilities, although they contract separately. Both Ayer and Shirley need additional soccer fields. Ayer is upgrading some existing fields, but needs more space to avoid overtaxing the turf through continuous use for baseball and soccer. Shirley is investigating purchasing land for its own fields.

The Town of Harvard uses Devens facilities less frequently than Ayer and Shirley. Harvard uses the Sports Arena for indoor soccer practice, but does not regularly use the fields. Reasons cited are the cost of renting the facilities, difficulty in scheduling time on short notice, and relatively poor access to Devens from Harvard. Harvard has its own soccer fields, is building more, and in general does not need additional organized active recreation facilities. However, Harvard is interested in greater use of Devens open space for less intensive recreation, especially hiking, biking, and equestrian trails. Harvard reports that its citizens seem generally unaware of the recreation and open space options available at Devens, and suggests that

providing additional publicity, flyers, etc. would increase interest in using the facilities.

Harvard also suggests that improved foot/bike/equestrian access from Harvard, perhaps at Depot Road, would increase use by Harvard residents and could provide a route for activities such as a "Tri-Town" bike or foot race to draw the communities closer to Devens.

One area that creates frustration for the Towns is scheduling of facilities. Devens' policy is to favor the host communities' recreation committees in making reservations, while providing

equal access among the communities. Town recreation departments have the first opportunity to reserve facilities until a deadline date, after which other groups can reserve space. Devens policy is not to allow any single group to reserve a site for an entire day, which reportedly results in some inconvenience to the Towns, for example, in having soccer on both Saturday and Sunday, rather than on one day. Devens Recreation feels constrained by the need to provide access to all of the host communities as well as to other communities, and notes that all groups prefer to play at essentially the same times.

The Shirley Recreation Committee also expresses concerns about the usage fees charged the host communities. Shirley does not charge for use of its Town facilities, and is trying to hold down the fees it charges program participants. With Devens children now attending the Shirley school system, some Shirley residents feel it is unfair to charge Shirley children for use of Devens facilities. In contrast, Ayer and Harvard feel the rates charged at Devens are competitive with their own costs and other facilities, but Harvard does cite the fees as one reason the Town does not routinely use the Devens soccer fields.

However, Devens does give the host Towns favorable treatment in fees. It charges \$25/hour for use of its facilities by the host Town Recreation Committees and host community schools. Other community groups pay \$35/hour and unaffiliated events \$50/hour. Devens Recreation based their fees on a 1995 survey of other recreation departments, and believes they are competitive and comparable to costs that the Towns would incur to purchase, develop, and maintain properties of their own.

Ayer would like to discuss dedicating fields at Devens to the exclusive use of the Ayer/Shirley soccer program, perhaps with the Towns providing maintenance services in exchange. Ayer also expressed interest in discussing a multi-year contract alternative to the existing reservation process, which might simplify the Town's planning. Harvard likewise expressed interest in exploring ways to exchange some dedicated soccer space at Devens for help from the Town in maintaining fields or trails. Dedicating some new or existing practice fields for the Towns to use as needed could relieve some of the frustration with the long lead time in making reservations. The soccer programs often discover they are oversubscribed just weeks before they begin, too late to book additional space at Devens.

The fee issue does not appear to require action, perhaps beyond better communicating the fee structure to the Towns. While some in Shirley may feel that the school arrangement warrants special consideration, it is managed under a separate contract and has little direct relationship to the Town Recreation Committee's use of Devens facilities. The Towns are receiving a discount rate relative to other users at Devens, and officials at Ayer and Harvard do not feel that the fees are unusually high, although they might prefer not having to pay them.

### **Long-term management, maintenance, and funding**

MassDevelopment currently subsidizes the recreation operating budget. The Devens Recreation Division's 2003 budget shows a deficit of roughly \$87,000 on \$980,000 in expenses, the effective cost of the programs to MassDevelopment. The Division currently has three full-time staff, with 5 summer hires. A part-time grant writer has just been hired to pursue funding for open

space construction. General maintenance is provided by Devens DPW, with Devens recreation staff doing field work such as laying chalk lines and performing some trail maintenance, so the budget figure does not include the cost of general maintenance services provided by Devens DPW. The Sports Arena operates at rough breakeven, and is hoped to show increased revenue with the installation of a dividing curtain. The Fitness Center is also hoped to move out of deficit with focused management attention from Healthtrax.

As noted earlier, events are the biggest source of revenue, accounting for roughly \$400,000. Rogers Field, Willard Park and the Sports Arena are the principal venues for events such as soccer and ultimate frisbee tournaments, the Bay State games, and small indoor exhibitions. While these activities in a sense reduce the Towns' flexibility to use the Devens facilities, the higher fees paid by outside groups enable Devens to charge lower rates to the host communities. Any arrangements to dedicate existing facilities to Town uses without adding additional capacity may as a consequence displace higher-paying customers.

MassDevelopment wants to eliminate operating subsidies overall at Devens by 2008-2010, but demand for recreation facilities may grow as the resident population increases. In addition, a growing trail and open space network may require a more substantial operating subsidy due to the difficulty in charging for its use. Grants may provide for some capital funding, but Devens Recreation also faces a challenge in obtaining capital budget in competition with many other infrastructure projects at Devens. This will become increasingly important if more emphasis is placed on developing Devens as a residential community.

If the towns were to gain not only jurisdiction but ownership of the open space and recreation facilities at Devens, the need for joint administration should be considered. Ayer is the only one of the three towns with a staff Recreation Director. Although Devens Recreation has established regular clients for events who are returning year after year, some administrative staff would be necessary, even if it is no longer necessary to market Devens recreational facilities. In addition, maintenance of all the athletic fields, trails, and recreational facilities on Devens would likely require more staff resources than the three towns currently have.

(A table showing the 2002 status of recreation facilities at Devens is available in the Appendix.)

## **7. HOUSING AND COMMUNITY DEVELOPMENT**

The Devens Reuse Plan provides for 282 housing units, even though some 7,000 people lived at Fort Devens when it was an army base. This number of housing units in the Reuse Plan resulted from the fear in 1994 that the base closing would create a housing surplus in the towns of Ayer and Shirley during a period when Massachusetts still had a depressed real estate market. Under those conditions, there was no desire for more housing on Devens. Eight years later, Massachusetts has a continuing housing shortage and housing affordability crisis. As a state agency, MassDevelopment has been given the mission to promote housing creation because low housing supply has helped make the cost of housing in Massachusetts among the highest in the nation. The potential for more housing on Devens land is under discussion. There is also housing at Devens for special populations. Sylvia's Haven provides 50 units of transitional housing for homeless and battered women and their children and the Central Massachusetts Shelter for Homeless Veterans.

### **Phase I Housing Rehabilitation and Sales under the Reuse Plan**

Phase I, "The Estates at Harvard Hills," consists of 102 housing units rehabilitated by Aspen Square Management and on the market since May 2001. Several housing types are available: 2590 sf colonials; 1625-1765 sf townhouse condominiums; 1800 sf ranches; and 1360 sf bungalows. After a slow start, Aspen Square states that 83 rehabbed units have been sold in the past year. While prospective buyers do not fall into a single segment, many are from the outer Boston suburbs, such as Acton (where prices are higher), and many are empty nesters.

Prices were initially thought to be high by local observers and they were reduced somewhat in fall 2001. At present (May 2002), Colonials are listed at \$355-360,000, Townhouses at \$250,000, Bungalows at \$245,000, and Ranches at \$280,000. This compares with 2001 median sales prices in Ayer of \$222,000 for single family houses and \$158,000 for condos, with corresponding median prices in Shirley at \$211,500 for a single family home and \$173,450 for a condo. Harvard prices were higher at \$525,000 and \$346,500 respectively. Twenty-five percent of the Phase I units are permanently affordable to households with incomes at or below 80% of median income.

Although the structures were rehabilitated, landscaping is limited. Most of the houses have few plantings and no outdoor privacy, appearing bare and exposed. The Colonials at the end of Walnut Street are more attractively sited in a wooded area and are priced higher. The existing bungalows on the east side of Auman Street, are not well buffered from the industrial park, and future truck traffic on MacArthur Avenue may prove a nuisance to the housing along the end of Walnut Street. Because these 102 units are located in several small pockets, within the larger industrial and institutional character of the area, they lack the critical mass that may be needed to create a sense of residential community.

### **Phase II Housing**

The remaining 180 units permitted under the Reuse Plan and Zoning By-Law will be new construction in the Grant Avenue area. Existing ranch houses are being demolished and the pesticide residues in their slabs and underlying soil remediated. MassDevelopment has an agreement with Aspen Square not to put the second phase of housing on sale before January 2003, but expects to identify a developer in 2002.

The type of housing to be built in Phase II has not yet been determined. However, the proposed new DEC regulations under "Residential Planned Development Overlay" would require that all new residential development at Devens, with the exception of infill in existing neighborhoods, be planned in a compact, "new urbanist" style with clustered dwellings,



community parks of various sizes, pedestrian friendly streets, alleys and shared driveways. The objective is to cre-

ate a new neighborhood that is compatible in scale, design, and materials with the rehabilitated Phase I housing.

Mandating a compact subdivision design with a requirement of at least 25 percent usable community open space and pedestrian-friendly circulation is a sensible way to promote a sense of neighborhood, village and community. The new regulations encourage a variety of housing types – single family, duplex, and multifamily (3 to 8 units). Lot sizes for single family and duplex homes must be between 8,000 and 15,000 square feet. Some other elements of the proposed regulations seem excessively prescriptive rather than setting standards that planners and designers could strive to meet in creative ways. Examples of these elements include the requirement for a village green located near the West Road entrance to the Planned Development Overlay District and the requirement that all structures be built in a “colonial revival” style. It would be preferable to provide guidance on scale, massing, and materials that might encourage creatively appropriate design. The current language will encourage developers simply to copy the existing homes, though probably with less durable materials.

### **Housing Affordability**

Like the Phase I housing, Phase II requires that 25 percent of the 180 units be permanently affordable. The proposed regulations are more detailed in this regard:

- at least 20 percent of the single family homes must be affordable
- at least 25 percent of the duplexes must be affordable, but one of the units in each two-family structure has to be market rate
- at least 30 percent of the multi-family units must be permanently affordable.

There is a logic behind making 30 percent of multi-family units affordable. These units would be less costly in the first place and a greater number of affordable apartments would provide a greater number of entry-level ownership units or low-cost rentals. However, there is a danger of creating a perception that Devens housing has concentrations of subsidized units, which would not be beneficial to Devens neighborhoods or to the towns. In MassDevelopment’s marketing sheet “Writing a New History”<sup>2</sup> under “Future Chapters – Building a Sustainable Community,” there is a statement that “a minimum of 25% and potentially up to 50%” of Phase II housing would be affordable. Affordable housing providers and public housing agencies have learned in the last generation that scattered site affordable housing works and concentrations of affordable housing can become problematic. Just when many millions of dollars are being spent by the federal government in HOPE VI programs to “deconcentrate” affordable housing and introduce mixed-income models, it is important that affordable housing at Devens be created with sensitivity to these issues.

The recent Request for Qualifications issued by MassDevelopment for developers interested in creating “downtown Devens,” includes references to the possibility of housing as part of a mixed-use concept for the area. The fact that the area is not currently zoned for housing is acknowledged, but the RFQ states that MassDevelopment supports that use and would assist a developer in obtaining permits. Overcoming the existing zoning without consent of the three Towns would presumably entail a Chapter 40B Comprehensive Permit, with its requirement for 25 percent affordable housing. Since the DEC itself was created to issue unified permits, similar to the streamlining envisioned under Chapter 40B, and the housing permitted under the Zoning

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<sup>2</sup> Available at [www.devenscommunity.com/news/publicdocs/newhistory.htm](http://www.devenscommunity.com/news/publicdocs/newhistory.htm)

Bylaw includes 25 percent affordable units, this appears to be a stratagem to overcome the residen-

tial limits set in the Reuse Plan and the Zoning Bylaw. The DEC is adding a section on Comprehensive Permits to proposed new regulations.

The new Devens residents who attended the public meeting expressed their view that the Devens residential community should not have to include more than the 10% Chapter 40B goal for all Massachusetts communities. They were particularly concerned that Devens would be seen as the place where the host communities could fulfill their Chapter 40B responsibilities without creating affordable housing elsewhere in the towns.

### **More Housing for Devens?**

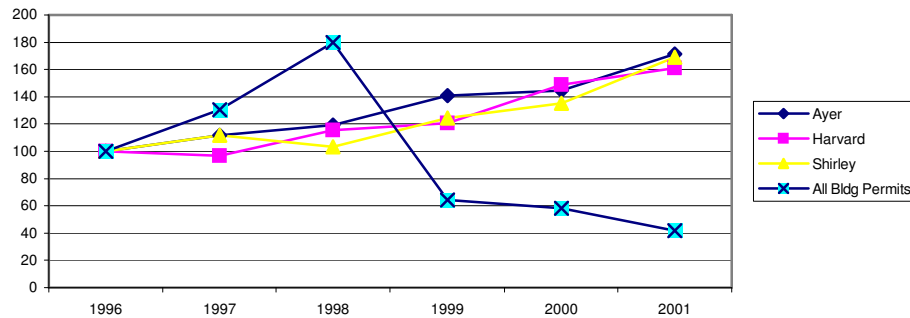
Should the Towns accept more housing at Devens? This question can best be answered by comparing the housing and other goals of the communities with alternative ways of meeting them. Three basic sets of questions need to be addressed -- determining whether the Towns need and want to accommodate more housing, where it should go, and what type it should be. Ayer and Shirley have building caps, indicating their desire to moderate growth. Harvard is currently in a comprehensive planning process. In all three towns there is concern about providing affordable housing as well as about development impacts on open space and sensitive environmental resources. The potential for new housing at Devens provides an opportunity for the towns to establish how Devens could contribute to their local housing goals. Through the JBoS, they can then reach a position that accomplishes their individual objectives and also addresses regional concerns.

#### *Housing Demand*

The number of new housing units being built is limited. Shirley and Ayer have caps of 30 and 36 building permits/year through 2005, with a limit of 5-6 per applicant, and actual permits issued have been even lower in recent years. Harvard has no official growth controls, but development has been running at fewer than 20 units/year due to a combination of large lot zoning, poor soils for septic systems, and expensive land (reportedly now at \$225,000 or more for 1.25 acres). In total, the three towns have been averaging 40-60 building permits/year for the last several years.

The strength of market demand is suggested by the considerable number of units in the pipeline and the dramatic rise in housing prices over the last five years. Ayer has over 100 subdivided units not yet built, with a sizable number of additional applications expected soon. Shirley has an unknown number of units approved (including a considerable number reportedly grandfathered prior to the building cap), and roughly 250 proposed. The Towns' vacancy rates are below or near the very low statewide averages. In 2001 the overall sales activity (new and resale units) for the three towns was 155 sales of single family homes and 75 condo sales. The graph below shows the trend of rising housing prices in all three communities since 1996 simultaneous with a steep drop in the number of building permits.

**Median Housing Prices and Building Permits Issued**  
**Normalized at 1996=100, Single Family & Condo**  
**Source: US Census and The Warren Group**



All the Towns have received buildout information from the state's buildout project last year and should have a general idea of the number and location of new housing units possible under existing zoning. As noted earlier, the fact that Shirley and Ayer have already instituted building caps, with substantial backlogs of building permits, indicates that residents want to slow down development. All of the towns see their town identity as linked, to a greater or lesser degree, to a semi-rural visual character.

At the same time, all of the towns have an interest in expanding their inventory of affordable housing. According to the most recent state listing of affordability for the purposes of Chapter 40B, Ayer has 3.76% affordable units, Shirley 2.66% and Harvard 1.53%, making all three towns vulnerable to Chapter 40B projects that they might not find appropriate. The inclusion of 25 percent affordability for housing in the Devens Reuse Plan reflects the area's need for affordable housing. Inclusionary zoning for any new Devens residential zones would make sense (that is, requiring a percentage of affordable units in all residential developments, as is currently the case), but it is important that the affordable units be indistinguishable from market-rate units and that they not be concentrated in particular locations.

DEC's proposed new Planned Development Overlay regulations include a section on Transfer of Development Rights (TDR), contingent on approval by DEC, MassDevelopment Directors, and the Town Meetings and Boards of Selectmen of Ayer, Harvard, and Shirley (Section 5.04). In TDR programs, developers can buy the development rights from owners of open space in a "sending" zone and then use that development capacity for development in a "receiving" zone. This would be a way to preserve open lands without the expenditure of town funds or reducing property-owners' land value. Tax revenue from the nonresidential development at Devens would help cover the cost of services to the new residents.

Successful TDR programs have often proven extremely difficult to implement because the area covered by the program and associated zoning must be large and varied enough to include both sending and receiving zones with development potential. In Massachusetts towns, there are often many places that would like to be sending areas, but very limited or no locations willing to be receiving zones. A TDR program for Devens and the three Towns would have a much greater chance of success because the overall area is large. Such a program would probably be most successful if tied to other joint arrangements such as management and administration of Devens infrastructure.

When the TDR concept was briefly discussed at the public meeting, Devens residents expressed concern that this would be a way that the Towns might attempt to "dump" unwanted development on them. The TDR concept would need to have considerably more refinement than

the language in the proposed new regulation and a longer period to raise public awareness about its possible benefits before it could be

### **Possible Locations for New Housing**

Any plan to expand housing in Devens must consider the existing distribution and location of uses throughout Devens and connections to recreational trails and facilities as well as the Town centers and neighborhoods. Criteria for locating new housing should include values such as building the critical mass of existing housing to enhance the sense of residential community; access to amenities; and creating linkages with the host towns. A survey of current Devens employees would indicate their likely interest in different types of housing at Devens. Specific demographic groups might be attracted to housing shaped to fit their needs. For example, a sales agent suggested that small, buffered, single family neighborhoods might appeal to seniors' preferences for security, privacy, and nearby walking paths.

The proposed new DEC regulations suggest that the Village Growth I (Shirley Gate) and the Business Services zones would be appropriate for housing. There has been discussion in Shirley about an interest in elderly housing for the Shirley Gate area, and the MassDevelopment RFQ for "downtown Devens" is already broaching the idea of new housing. The market study for "downtown Devens" identified demand for 324 units (though not enough information was given to determine if that is 300 units for that area alone or for all of Devens) and site capacity for 87 units. Both of these areas would be appropriate, particularly downtown Devens, because residents would support and benefit from the retail and service businesses and provide evening activity.

Other possible locations include an expansion of the existing neighborhood around Rogers Field, strengthening the edges of the Field and tying the Vicksburg Square area to the housing on Elm and Walnut streets. Additional units on the south side of the Field could also increase the sense of neighborhood for the residences there, which currently feel rather exposed. Vicksburg Square could lend itself to various housing models, from general market condominiums to over age 55 housing and progressively higher levels of assisted living. This model has been successful in other communities. Because of its proximity to the golf course, the Davao area could also be of interest to active over-55 residents who are particularly attracted to the active and passive recreational offerings of Devens.

### **Schools**

Until September 2001, the only schoolchildren living at Devens since the base closure were living at Sylvia's Haven and MassDevelopment contracted with the Ayer Schools to educate them. Ayer opted not to renew the contract in 2001. MassDevelopment created a Devens School District and contracted with the Shirley School system. Devens residents, whose homes are in Harvard for voting purposes, were asked to sign a waiver of their rights to send children to Harvard schools. Children who live at Devens go to the Barnum Road School in Devens for nursery school through first grade, the Lura White School in Shirley for grades 2-8, and Ayer High School. Because one of the prime criteria for housing buyers with families is the quality and stability of the public school system, the current system of a Devens School District operating under contract with Shirley may become a central issue for Devens residents. At the public meeting, questions were raised about Harvard's refusal to educate Devens children and the legality of the waiver document. As more families move into Devens, the current arrangements will become untenable.

## **8. “DOWNTOWN DEVENS”**

The Business and Community Services Zone, often referred to as “Downtown Devens,” is intended to serve employees at Devens businesses and residents. It currently includes a branch bank, an elementary school, the Harvard Teen Center, and Devens Inn, with space totaling nearly 56,000 square feet. All of the buildings except the bank are owned by MassDevelopment. The Post Office is nearby and would be moved to this zone. Although a preliminary physical master plan was prepared a few years ago, questions about market support remained. In May 2002, MassDevelopment issued an RFQ for mixed-use development of the entire 27-acre zone. This RFQ contains limited information from a market study apparently completed in September 2001. This market study was not made available to the CDP consultant team by MassDevelopment, despite several inquiries.

The market study was an evaluation of market support for retail, professional office, hotel and conference facility, and residential uses in the Business and Community Services Zone. According to the RFQ, there is potential demand for 83,000 to 127,000 square feet of retail uses, a hotel of 100,000 to 130,000 sf (approximately 150 rooms), and 8,000 to 20,000 square feet of conference or meeting space. The site could accommodate this level of retail and hotel use. The assumptions behind these demand numbers are not included in the RFQ. MassDevelopment also states that a 10,000 sf child care center is expected to be sited on 1.75 acres within this zone, and one of the concepts shows 20,000 sf of office space for a potential MassDevelopment Devens headquarters. The existing hotel would be demolished if a new one were to be developed. The RFQ also mentions the possibility of temporary or seasonal cultural or civic uses such as exhibition and performance space.

Residential uses, of course, are not currently permitted in this zone. According to the market study, although there is market demand for at least 324 housing units, the site could accommodate 87, potentially 47 units above retail businesses and 40 three-bedroom townhouses. As noted earlier, the RFQ states that, despite the current zoning ban, “MassDevelopment encourages this use and would work closely with the selected developer to obtain necessary permits allowing this use,” presumably through a Chapter 40B Comprehensive Permit.

The RFQ states that the development will serve business needs, as well as “the personal needs of Devens residents,” but it also says that it must “avoid negative impacts on the nearby central business districts of Ayer and Shirley” and that “retail in this zone is not intended to compete with retail in downtown Ayer and therefore will be business-oriented and small scale.”

The RFQ includes very general statements about the desired character of this development including that the development should create “synergy with and seamless integration of the residential and commercial uses already in place in and around the project site.” There are two conceptual site plans – one with housing and one without – and the RFQ is directed to developers successful with “mixed-use developments in urban, downtown settings.” Mixed-use projects developed in existing urban downtowns, however, are a different product from the development of new downtowns. Many otherwise successful New Urbanist communities, such as Kentlands in Maryland, have had difficulty creating successful town centers.

The only statements about design character in the RFQ are a desire for a “pedestrian-friendly area” and a development that “should reflect an urban ‘lifestyle’ design and be of the highest architectural standards,” and “represent first-rate architectural design using high-quality materials.” The site plan concepts, however, reflect the suburban parking ratios required (1 space per 250 sf), with a substantial area of the site taken up by surface parking lots, including some lots located directly along roadways. The 0.13 FAR represented by the 10,000 sf child care center on a 1.75 acre parcel is completely antithetical to an “urban” character, even with inclusion of a large play area, parking for teachers, and a drop off area for parents. There is no mention of

any future efforts to enhance pedestrian-friendliness with bike routes, pedestrian paths or shuttles that could

permit Devens employees and residents to avoid using their cars to get to the retail center. Moreover, the RFQ says nothing about “green” building or site standards or other sustainability objectives that are supposed to be part of the Devens development model. The models implicit in the conceptual site plans could lead to development that covers the entire site yet does not create the desired sense of a town center.

## **9. TRANSPORTATION**

Traffic impacts of Devens development were a key element in the MEPA certificate granted by the Executive Office of Environmental Affairs to MassDevelopment. As part of the five-year review, a traffic report was prepared by BETA Group for MassDevelopment and completed in April 2001. Had the JBOS Transportation Committee been in existence, it could have participated in the scoping and review of this report.

### **Purpose of the Report**

The principal purpose of the study was to evaluate how development at Devens since the 1994 Environmental Impact Report (EIR) has affected traffic issues in surrounding communities. The study area included the communities of Shirley, Ayer, Lancaster, Harvard, Lunenburg, Groton, Littleton, and Boxborough, with consideration of other communities as needed for the transportation model. The focus of the report was to compare the projections made at the time of the EIR in 1994 to the actual traffic conditions in 2000 and to make projections of traffic conditions based on two buildout scenarios. The report discussed the following issues:

- Evaluation of traffic characteristics at the time of the study (2000)
- Forecasted changes anticipated from planned and projected development,
- Evaluation of the effect of implementing a thorough Transportation Demand Management (TDM) program, and
- Calculation of the maximum buildout levels at which development will be capped by attaining traffic thresholds set by the MEPA certificate

The North Post area was not considered to be a significant contributor to the conclusions of this study, and was not specifically evaluated. Also, although cut-through traffic was measured, it was not included in the discussion of traffic generated by Devens development, because this traffic results from land uses outside Devens.

### **Current traffic conditions**

Traffic in 2000 (considered the present time) was at a level approximately 57% of the volume predicted in the EIR. There were 13,000 trips per day (excluding 3,400 cut-throughs) compared to 22,834 forecasted in the EIR. Consequently, traffic moves with less delay than anticipated and most intersections at Devens function adequately, but this is expected to change significantly as the buildout ceiling is approached. At the time of the report, a full 40% of Devens's maximum buildout had yet to be identified. Current (2001) performance of the regional economy was not factored into the timelines considered by the study.

*Background traffic.* This is the traffic not generated by Devens. It has grown moderately and consistently regionally throughout the study period and is expected to continue this trend to the planning horizon of 2007. Traffic on major roads in the eight-town Impact Area has remained relatively constant over the study period. Regional traffic is expected to grow at an average annual rate of 2%, amounting to a 14% increase by 2007.

*Regional Arterials.* While segments of Rtes 2A and 111 have shown significant declines in traffic volumes, Route 2 shows a consistent upward trend in traffic volumes both generally and related to activities at Devens. This is expected to continue as a long term trend, only partially influenced by the continued buildout of Devens, and is not seen as reducing the serviceability of Route 2.

*Cut-through traffic.* Conversion of Devens has permitted cut through traffic on formerly restricted roads, apparently resulting in a substantial reduction (approximately 20%) on Rte 2A from the rotary through Ayer Center, and Rte 111 in Harvard (14%). This traffic has predictably moved through Devens on a North-South axis from the Verbeck Gate to the Jackson Gate, equally distributed in both directions. This cut through movement is anticipated to stay constant

in percentage with growing Devens traffic, and indicates greater awareness of new route options and the completion of various roadway improvements at Devens.

*Traffic at Devens Gates.* Jackson Gate has received the highest usage, the highest rate of increase and the greatest proportion of truck use, followed by the Barnum Gate. Verbeck Gate has had the greatest fluctuation in truck usage year to year, but has not shown a trend towards increased truck use as a percentage of total traffic. All gates and intersections, excepting the Shirley Gate have experienced strong and consistent increases in overall traffic numbers. Traffic distribution among the gates has remained constant +/- 5% over the study period, where the greatest changes being a reduction at the Barnum Gate from 23% to 16%. The Shirley Gate has had the greatest percentage growth, from 0 to 8.4%, but is still the lowest volume gate.

*Intersection function.* Intersections are evaluated on a Level of Service (LOS) scale from A to F. At LOS F, drivers experience delays at an intersection in excess of 60 seconds. Currently, eight of 12 studied intersections fail during peak hours. In the No-Build Alternative (i.e., no new development at Devens) nine of 12 intersections are projected to fail by 2005 – even if the redevelopment of Devens had not occurred.

*Noise.* Noise measurements were made at a number of locations, and generally indicate that daytime weekday noise has increased, and that nighttime noise levels have declined. Most noise is related to vehicular activity. While traffic noise may be noticeable, and could be perceived as intrusive in some forested or recreational areas, it is not an atypical regional condition and does not approach levels associated with physical harm or emotional distress.

## **The Two Buildout Scenarios**

BETA looked at the traffic impacts of potential buildout at Devens in two ways.

- Scenario I: BETA projected the number of square feet that would result in the maximum number of trips allowed under the MEPA Certificate, 59,625 trips per day (TPD), using standard trip generation rates for particular land uses. The TPD ceiling excluded the additional 20% of cut-through traffic that would not be generated by development at Devens.
- Scenario II: BETA projected the amount of traffic that would be generated if the 8.5 million square feet of development allowed in the Reuse Plan and the Zoning ByLaw were to be developed.

Under the MEPA Certificate, the traffic determinant of buildout is the number of trips per day, without considering qualitative and operational characteristics of travel. So, for example, if Devens development generates 59,625 trips per day when buildout reaches 7 million sf, no more development would be permitted without a new certificate and environmental impact study, or measures to reduce the amount of traffic being generated.

The vast majority of traffic at Devens is and will continue to be related to commercial and industrial uses. Ninety-two percent of employees will originate within Massachusetts, and the majority of their traffic generation and impacts (69%) will occur with the eight towns of the Impact Area. Half of employee traffic will originate in Boxford, Groton, Littleton, and Lunenburg. The host communities of Ayer Harvard, Lancaster and Shirley contribute 19% of employees. Residential and recreational uses will amount to no more than 4% of total Devens trips. The study assumed that 50% of Devens adult residents will work at Devens, which may be over generous, trips by residents will generally be against the major flow of traffic during peak hours or



occur during off peak hours and generally improve traffic qualitatively. Should additional housing be permitted at

Devens, a portion of those residents will probably also work at Devens, further limiting overall traffic generation.

### **Intersection Function**

Intersection failure is considered to be operation at or above a Level of Service F (LOS F), with delays at an intersection in excess of 60 seconds. Delays of over 120 seconds are not measured. As noted above, eight of 12 studied intersections currently fail during peak hours. All future scenarios studied indicate that 11-12 of these intersections will experience peak hour failures. Many of these intersections exceed the top-of-scale 120 second delay in various scenarios. This means that during rush hour, almost all of these intersections are already congested. The fact that the point of failure is generally at relatively low volumes of traffic, ranging up to substantial volumes and heavy turning movements, suggests that appropriate physical improvements to the intersections or roadways might improve flow. Both scenarios anticipate LOS F operations regardless of Transportation Demand Management measures at Devens because of the already existing intersection failures.

### **Transportation Demand Management**

Transportation Demand Management (TDM) strategies can include carpooling, use of public transport, walking and bicycling, vanpools and other techniques. Currently, 95% of Devens employees ride to work alone, suggesting that very little TDM is in practice. Evaluation of the various methods, strategies for implementation and achieving maximum effectiveness was beyond the scope of this study. Efforts which discouraged private car trips to Shirley and Ayer Centers and the commercial portion of Rte 111 in Harvard might significantly improve operations at those stressed intersections.

DEC and MassDevelopment have taken the first steps towards TDM by providing two years of funding for a TDM coordinator. Surveys of the travel behavior and needs of employees at Devens have begun.

By reducing the number of vehicle trips, TDM would allow an additional 1/2 million square feet of development to occur and would extend the time before Devens development would reach a development caps. The EIR assumed that 16% of Devens trips would be shared, but the traffic study used a constant 10% TDM trip share figure because it seemed a level of participation more readily achieved and maintained. The EIR anticipated reaching the trips per day limit in mid-2003. With a 10% TDM participation implemented at the beginning of 2002, the study estimated that Devens traffic would reach the trips per day ceiling in 2005.

In Scenario I, if development were to continue beyond the TPD cutoff, the 8.5m sf building cap could be reached by early 2006. Scenario II expects a daily trip rate of nearly 74,000, approximately 20% above permitted levels. TDM could reduce this to a 10% exceedance. In comparison, the EIR predicted a TPD of over 88,000 at the close of the 2007 time horizon, almost 140% of the permitted rate. Aggressive implementation of an innovative suite of TDM measures to achieve the 16% EIR rate will be needed to reach full buildout. DEC submission requirements for large scale projects (known as Level Two) now include a traffic circulation and mitigation plan that includes estimated vehicle and pedestrian volumes at peak hours and per day.

### **Future traffic conditions**

The trend in increasing traffic volumes on Route 2 is expected to continue as a long term trend, but this is only partially influenced by the continued buildout of Devens, and is not seen as

reducing the serviceability of Route 2. As noted earlier, cut through traffic is anticipated to stay constant at about 20 percent of growing Devens traffic. Cut through traffic indicates greater

awareness of new route options and requires the completion of various roadway improvements at Devens to maintain preferential use.

Effects attributable to Devens are anticipated at local intersections throughout the Impact Area, particularly in Shirley, Ayer, Harvard, Littleton and Lancaster. Several of these intersections, already taxed at peak hours, are anticipated to fail in future conditions. Of the 12 regional intersection studied, the Verbeck Gate had the greatest increase in peak hour volumes, from an 88% increase in the Scenario 1 PM peak ranging up to a 144% increase in the Scenario 2 AM peak. Shirley Center had increase ranging from 71 to 115% above current peaks. Following these, there is a sharp falloff in volume increases and a clustering of the four intersections of Ayer - Main St./111 (37-58%), Ayer - 111/2A (N) (32-58%), Littleton - 2A/495 (36-49%), and Harvard Center (31-48%). Volume increases roughly correlate with declines in Levels of Service. It is important to remember that a minimum of 7 of these 12 intersections would experience failing conditions during peak hours under the 2007 No-Build alternative, and the further degradation of LOS attributable to development at Devens is incremental and relative. While improvements to roadways and intersections might well be undertaken to alleviate these conditions, consideration and evaluation of those actions were outside the scope of the study.

While traffic growth to the present has been centered at the industrial/warehousing areas centered on the Barnum Road Gate, future traffic growth will be concentrated in the corridor between the Jackson Gate and Vicksburg Square. The Jackson Gate and Route 2 will host a plurality of all car and truck trips, at 44% of the total, rather than the 68% predicted by the EIR. Traffic distribution among the gates has remained constant +/- 5% over the study period. The greatest change has been a reduction at the Barnum Gate from 23% to 16% of total traffic. The Shirley Gate has had the greatest percentage growth, from 0 to 8.4%, but is still the lowest volume gate.

Within Devens, development and reuse of previously idle property is expected to generate strong and significant increases of traffic in many of the sub areas. Many of these 12 Traffic Analysis Zones, organized by use type, roads and topographic features, were further subdivided to permit more detailed analysis of specific areas. Zone 2, containing the industrial activities of Gillette, Sonoco and Ryerson among others, currently shows 25% of the traffic generation predicted by the EIR. Zones showing the greatest potential for traffic growth are (in descending order):

- Zone 8- Post Office, Reserve Enclave and Stadium
- Zone 7- Pharm-Eco, Charter School
- Zone 2 – Gillette, Sonoco, Ryerson
- Zone 1- Guilford to Barnum Gate
- Zone 3- Verbeck Gate to Shirley School, including Vicksburg Square and Parade Ground
- Zone 9- Shirley, including MCI
- Zone 4- Conference Center/ SE quadrant – Salerno Circle, Special Use I

### **Public and Semi-Public Transportation**

During the first five years of the Reuse Plan there was discussion about creating a Devens commuter rail station with an associated 500-car garage near the present Shirley Town Offices site in Devens and closing the Ayer and Shirley stations. Both of these communities are vehemently opposed to these proposed closures. In long-range planning documents, the MBTA is still proposing a major inter-modal facility on the Fitchburg Line in the I-495 area, and Devens is

named as a likely spot, particularly for parking. As employment and associated traffic grows at Devens, management of commuter traffic through promoting use of commuter rail will become important. DEC and MassDevelopment secured two years of funding to coordinate Transportation Demand Management and organize a Transportation Management Association (TMA). A shuttle system

could be organized to allow residents at Devens and the host communities to travel on payment of a nominal fee. The model for this public use of a TMA shuttle has been pioneered by the Charles River TMA and the City of Cambridge.

## **10. JURISDICTION AND DISPOSITION SCENARIOS**

During this second phase of the Tri-Town Five-Year Review, the question of ultimate disposition continued omnipresent in discussions about Devens. For many people, it is difficult to make some of the smaller decisions without knowing whether Devens jurisdiction will return to the towns or not. The desire for certainty about all aspects of the future at Devens, however, can become an obstacle to taking any action to advance the towns' interests.

### **Government Structure**

The 1994 amendment (Acts 1994, c. 224) to the Devens legislation (Acts 1993, c. 498) requires the DEC, the Boards of Selectmen and MassDevelopment to "initiate a study...concerning permanent government structure for the ongoing operation and administration of Devens." (Acts 1994, c. 224 §22) The law requires exploration of the following governing structures:

- Town government
- Joint entities
- A combination of town government and joint entities
- The existing Mass. Development-DEC structure

Other government structures may be studied but there is no requirement that other structures be reviewed. As a practical matter these four structures make up all of the structures that can be considered reasonably applicable to Devens and no other structures need to be studied.

Although the legislation does not specifically state that disposition issues shall be addressed, such issues could (and should) be explored. The legislation does not require that all land is to remain in its current municipality, which leaves the door open to other possible arrangements. The legislation expressly asks for the evaluation of alternative government structures without limitation; these would reasonably include governing structures applied to alternative disposition scenarios. The final report to the legislature on the Devens Enterprise Zone must also include an accounting of revenues and expenses relative to the DEC's and MassDevelopment's operations of Devens.

### ***Legislatively Mandated Study***

Section 22 of chapter 224 of the Acts of 1994 requires that the government structure study be initiated by July 1, 2030. The Towns have a clear interest in commencing the study as soon as practicable. The Towns cannot properly plan for the future of Devens or adequately address many current issues without knowing the ultimate jurisdictional disposition and governance of Devens lands.

The legislation specifically requires the participation of five organizations in the study; any study that is not a unified effort of the three boards of selectmen, the DEC and Mass. Development would not satisfy the legal mandate. Thus, anyone of these five groups can delay the initiation of the formal study until July 1, 2030, on which date all parties are obligated to participate in the study. In the best-case scenario for the Towns, the formal study, with the cooperation and participation of all five organizations, would begin as soon as practicable. \

However, if one or more of the parties does not want to initiate the formal study within a reasonable time, there is nothing to prevent the other parties from commencing an informal study. The informal study may ultimately form the basis of the formal study, particularly if four of the five parties participate actively. At the very least an informal study will shed light on the issues and will inform those who participate. Neither an informal nor a formal study can reliably be counted on as a statement of the final disposition/governance structure, however. The results of the study

may or may not form the basis of legislation concerning disposition and governance. The legislature has final authority and the power to draft its own solutions.

The Towns should be reminded that the Boards of Selectmen are required to receive the advice of their planning boards in the preparation of the study. As a practical matter each town will have to conduct an analysis of the costs of providing various municipal services to its Devens lands and the benefits to be achieved through a resumption of authority. This cost/benefit analysis is absolutely necessary if the Towns are to participate meaningfully and intelligently in the government structure study.

### **Disposition Scenarios**

The following are the most likely ultimate disposition scenarios:

1. All Devens land remains part of its current municipality
2. All Devens land reverts to a Tri-Town municipality, but not necessarily the municipality in which it now lies
3. Core area becomes a new municipality; peripheral areas revert to their municipality
4. Core area becomes a new municipality; peripheral land reverts to a Tri-Town municipality, but not necessarily the municipality in which it now lies
5. All of Devens is incorporated into a new municipality whose boundary is contiguous with Devens Regional Enterprise Zone

Each of these disposition scenarios may be readily achieved through legislation. Article II, §8 of the Amendments to the Massachusetts constitution gives the power to change town boundaries and to incorporate new towns to the state legislature. These actions are generally initiated by citizen petitions, with notice to the Secretary of the Commonwealth and publication in local papers (G. L. c. 3, §5) but the legislature is clearly empowered to change boundaries and form towns without petition or notice. Opinion of the Justices, 60 Mass. 578 (1851); Warren v. Mayor and Aldermen of Charlestown, 68 Mass. 84, 104 (1854). A change in town boundaries or the formation of a new town could be contingent upon later approval of voters in affected areas (See, 1989 Acts, c. 385, where a name change for the town of Manchester was contingent upon a majority vote at the next town election).

### **Default Scenario**

If new legislation is not passed the current disposition and government structure will remain indefinitely; Devens land will remain part of its current municipality, but governance will be the responsibility of the DEC and Mass. Development. The current legislation does not mandate an end to the current arrangement, only that new arrangements be studied and a report issued by July 1, 2033 (Acts 1994, c. 489, §23). There is no requirement that the legislature shall mandate a new governing structure to take the place of the current arrangement in 2033. The legislature is not required to act on the report and the current structure will continue until there is new legislation.

### **Municipal Acts**

The ultimate disposition/governance structure should depend both on the towns' level of interest in reclaiming full jurisdiction over the lands within their historic boundaries and a cost/benefit analysis of undertaking municipal services to the parts of the town now within Devens. Although the argument has been heard that Devens was not part of the towns for most of the twentieth century and therefore the historic boundaries are not relevant, this is not accurate. Although the military base was a federally-owned enclave, it was located in the four host towns. The people

who lived on the base were counted as citizens of those towns for purposes of the decennial census and they exercised their rights as citizens by voting in those towns. It is only with the creation of the Devens Regional Enterprise Zone by Chapter 498 in 1993 that the legislature gave to state agencies the right to exercise municipal-type jurisdiction at Devens. However, the Devens residents still exercise their citizenship rights in the town where their residences are located.

### **Intermunicipal Authorities**

Municipal undertakings can be shared under current legislation without the creation of a regional corporate entity. The use of these laws can allow for cooperative provision of services without the need for complex special legislation or a legislatively created special purpose entity. Another benefit of these authorities has to do with control; public corporations are controlled by a board and/or officers, which can be empowered by the legislature to act with a large degree of independence (See discussion of public corporations below). Intermunicipal authorities are generally controlled by member communities. These authorities, unlike public corporations, have less of a 'life' of their own outside the control of the constituent member towns. Subject to reasonable restrictions (e.g., assumption of authority debt) towns can more easily withdraw from intermunicipal authorities.

*G. L. c. 40 §4A* allows towns to contract with other governmental units (including other towns) for the provision of any municipal undertaking. The Boards of Selectmen sign the agreement, which must be confirmed by Town Meeting. Certain agreements also require School Board approval. The term of the agreement may not exceed 25 years. Under this law the Towns may undertake any municipal responsibility or any combination of municipal responsibilities jointly. Two or three of the Towns may participate, and non-Devens communities may be included if desired or necessary. Towns can contract *into* an intermunicipal authority and likewise can contract *out of* an authority (subject to limitations placed in the contract that created the authority).

Aside from this very useful general ability of towns to contract with each under *G. L. c. 40 §4A* there are laws permitting cooperative agreements for specific services.

#### *Regional Refuse Disposal Planning District, G. L. c. 40 § 44C*

Towns in a region begin this process by forming regional refuse disposal committees. The committee from each town can join to form a regional refuse disposal planning board. The board may study and recommend the formation of a regional refuse disposal district served by a single disposal facility. The planning board may be funded by the compact towns in an amount limited to \$10,000 per town, and by grants. By agreement, the regional refuse disposal committee of two or more towns may form a regional refuse disposal district. "The agreement shall contain provisions describing the sharing of construction and operating costs, the number, method of selection and terms of office of the members of the regional refuse disposal committee, the general area in which the refuse disposal facility shall be constructed, the terms by which another city or town may be admitted to the district...."

#### *Regional Water and Sewer District Commissions, G. L. c. 40N § 25*

These are begun through the authorization of a town committee (a district water and sewer planning committee) at Town Meeting. Town funding of this committee is unlimited. Such committees from two or more towns may join to form a regional water and sewer district planning board to study the advisability of establishing a regional water and sewer district commission. The formation of the commission requires a majority vote at town meeting. A commission so

formed constitutes a public corporation and political subdivision of the state. The law mandates that municipal employees whose work is water/sewer related be transferred to the new commis

sion. These commissions are granted a variety of specific governmental powers needed to effectively operate a regional water and sewer collaborative.

#### *Planning Districts, G. L. c. § 40B § 3*

Planning districts are established by the vote of Town Meeting of two or more towns. Each district shall form a district planning commission consisting of one member of the planning board of each town, voted in by two-thirds vote of his or her town's planning board. These boards may raise funds and receive grants; they plan, but cannot regulate development. When a federal military installation of at least five hundred residents exists within the district a representative of the installation may be invited to join the planning board.

#### *Growth and Development Policy Committee, G. L. c. 40 § 4I*

This is a form of planning committee formed for the purpose of intergovernmental consideration of balanced growth and development issues. They are formed by majority vote of the Boards of Selectmen of two or more municipalities and require a minimum of three representatives from each town, appointed by majority vote of Board of Selectmen.

#### *Regional School District, G. L. c. 71 § 14 B*

Formation begins with a vote of Town Meeting authorizing the formation of a regional school district planning committee. Each town's committee is comprised of three members (one of whom must also be a member of the town's school committee) who are appointed by the town moderator. Town funding of the committee is limited to one tenth of one percent of the total valuation of such town. Two or more regional school district planning commissions may join to form a regional school district planning board that may, after study, recommend the formation of a regional school district. The district may be limited to a type of school (e.g., vocational schools only). After approval by the state emergency finance committee and department of education, the district must be "accepted" by the towns.

#### *Education Collaboratives, G. L. c. 40 § 4E*

This is a form of association for school committees to deliver certain services in common to students of two or more school districts. The collaborative may, but is not required to, have a board consisting of one member elected from each school committee. The collaborative may be funded by the towns and may hire staff.

None of these intermunicipal authority arrangements require action by the legislature for their formation.

### **Public Corporations**

Disposition scenarios 1-4 each present the possibility of governance by a regional cooperative entity. The natural form for such an entity is the public corporation. Public corporations in Massachusetts can be established by the legislature and established to provide any and all municipal services and to collect tax and fee revenue.

Public corporations are created by legislation. They are established under, and subject to, the corporation laws of Massachusetts (for example, the corporation must have a board of directors

and must have annual meetings). This type of corporation, like other non-profit organizations, has no shareholders, but some may have bondholders whose financial interests have to be protected. These corporations may be granted exclusive authority to municipal undertakings in a

given area, the towns with jurisdiction in such area being prohibited from delivering certain or all services or from collecting revenue. The area may include land within the jurisdiction of one or several municipalities.

The Devens Enterprise Commission is an example of public corporation with the power to tax and charge fees and the authority to provide municipal services over a multi-town area. Other examples in Massachusetts include the Mystic Valley Development Commission (Acts 1996, c. 294) and the South Shore Tri-Town Development Corporation (1998 Acts, c. 301).

The legislature has extremely broad latitude in crafting the corporation. The corporation may be granted authority to provide a single or a range of municipal services. It also may be funded in any fashion deemed advisable; through taxing power, by legislative appropriation, through bonds, by compulsory contributions from the towns, or by any combination of these or other mechanisms. There are an infinite number of ways in which the corporation may be structured. The decision to form a regional entity should be based on the cost/benefit analysis undertaken by the Towns. The structure of the corporation should be tailored to balance the needs of each town.

The current division of powers between two public corporations, MassDevelopment and the DEC is unstable. As MassDevelopment owns less and less Devens land, it should be removed from the succeeding government structure. The DEC can remain but would have to be refashioned. The powers of the DEC would have to be redrawn to match the balance arrived at by the Towns. The legislature has ample latitude to organize the corporation in a fashion that will well serve the Towns' needs through new legislation or an amendment of the current Devens legislation<sup>3</sup>. The DEC may absorb some of the current exclusive powers of MassDevelopment, or the DEC's current powers may be curtailed, or a whole new combination of powers may be fashioned. Powers removed from the DEC and MassDevelopment would be returned to the Towns. If the DEC is to remain, the way in which the DEC is controlled also must be altered. Alternatively, the DEC could be dismantled and a new regional public corporation could be formed. Either way, the powers granted the succeeding public corporation should be carefully crafted to balance the needs of the Towns and control of the succeeding corporation must be carefully crafted.

Control of a public corporation is a function of the persons within the corporation with management responsibility, the persons granted the power to appoint these key corporate officers and the type of vote required for action (e.g., majority, supermajority or unanimity). For example, the DEC is controlled by a twelve member commission; six members are appointed directly by the governor, the other six must be approved by the governor, and the chair of the commission is designated by the governor. Clearly, the governor controls the DEC. Because there is wide latitude in the way that a corporation is structured, a revamped DEC or a new public entity can be structured to give the control they desire.

Alternative control structures have been fashioned for the South Shore Tri-Town Commission (Acts 1998, c. 301 § 8), the Mystic Valley Development Commission (Acts 1996, c. 294 § 11(c)) and the Berkshire Economic Development Authority (Acts 1996, c. 295 § 16).

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<sup>3</sup> See, Acts 1998, c. 486 which completely refashioned the Berkshire Economic Development Authority.



Management of the South Shore Tri-Town Commission is vested in a five member board, one member appointed by the selectmen of Abington, two appointed by the selectmen of Rockland and two appointed by the selectmen of Weymouth. Directors must have “expertise or education and experience” in real estate development, housing, finance, business, environment, planning,

engineering, transportation or municipal government. No member of the board may be an elected official. A vote of three directors is required for action.

The Mystic Valley Development Commission is managed by a five or seven member board (five members if two towns join the compact, seven if three towns join the compact). The mayor of each member town, a designee of each mayor and the governor or a designee *ex officio* comprise the board<sup>4</sup>. Each mayor may designate an individual to serve in his or her stead. The mayor of each city has an absolute veto over any action of the Commission as that action applies to his or her city. The city counsel of the mayor’s city may not override the veto. No action taken by the Commission is binding on a city unless both of its appointed members voted in favor of the action. No member representing one city may act to prevent the commission from taking action with respect to the other cities.

The board of the Berkshire Economic Development Authority is made up of one resident or municipal employee of each member town. Action is taken by majority vote. A board-appointed executive director assists the board.<sup>5</sup>

The public corporation mechanism is an attractive option for the Towns because it is an exceptionally flexible one. Control is largely a function of the power of appointment, and this may reside in any number of places, including voters, Boards of Selectmen, and public officials *ex officio*. Voting powers of board members can also be carefully drawn; for example, members may have veto power over actions affecting their town. The powers and responsibilities of the corporation can be crafted to balance the needs of the Towns. The great risk with public corporations is that the power to create them resides solely with a legislature that is not required to establish the corporation precisely as desired by the Towns.

The public corporation could be used for the joint provision of some services, while intermunicipal authorities and direct Town servicing can provide all others. The final governing structure may be of a single type or an amalgam of several mechanisms.

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<sup>4</sup> The original proposal was for the governor or lieutenant governor *ex officio* to be a member with no ability for a designee.

<sup>5</sup> The Berkshire Economic Development Board structure was dramatically altered by the legislature in 1998 (Acts 1998, c. 486 § 2) when the authority was changed from a regional board to an authority within the city of Pittsfield.

## **11. RECOMMENDATIONS**

### **PLANNING, DEVELOPMENT AND REGULATION AT DEVENS**

According to the Devens Reuse Plan, there were five major reasons to prepare the Plan:

- Avoidance of adverse fiscal impact on the towns
- Orderly redevelopment
- Accelerated job creation
- Environmental protection
- Strong local control of development

The plan and the zoning bylaws were prepared through a public process that included community workshops and task forces. The Reuse Plan and Bylaws were approved at a Super Town Meeting, although there is some community opinion that the approval process was unduly rushed, and the Plan states that “substantial changes to the Reuse Plan and Bylaws cannot be made without further town meeting approval.” The Plan’s purpose was to provide “the communities with the ability to determine the future of Devens, while leaving the cost of implementation to the state.”<sup>6</sup>

However, the unique and unusual nature of the Devens base redevelopment structure and process contains contradictions that seem destined to create tensions with the host communities. As a quasi-public agency whose mission is promoting economic development, MassDevelopment is designed to act with more efficiency than most government agencies. It was chosen to lead the redevelopment of Fort Devens because it could act in ways that would have been difficult, if not impossible for the host communities. However, it is common for quasi-public agencies and authorities to have contentious community relations because the lack of direct accountability that makes them able to act with agility also can make them less sensitive to community issues.

By the same token, the broad powers given to the DEC have also resulted in complications. This is particularly true in terms of interpretation of what would constitute a “substantial” change to the Reuse Plan or the Zoning Bylaws. The Zoning Bylaw in Section XV states that DEC can make minor revisions to the Reuse Plan and the Bylaws without consulting the Towns or MassDevelopment. Minor revisions are then clearly defined as typographical, clerical errors, renumbering, or tightly described changes to the zoning map. All other proposed revisions to the Reuse Plan and Bylaws are characterized as “substantial” and “requiring the approval of the Towns and the Land Bank [MassDevelopment].” At the same time, however, in Section I.C.3 – Commission Regulations, the DEC is directed to “develop and adopt a comprehensive and detailed set of land-use regulations....including, but not limited to, site design standards, subdivision control standards, watershed and water resource protection standards, standards and procedures required to ensure full compliance with state wetlands protection laws, and historic district regulations.”

Neither MassDevelopment nor the DEC have formally proposed changes to the Reuse Plan or the Zoning Bylaws. However, as noted earlier, many of the new regulations that the DEC is currently proposing would usually be handled as zoning bylaw amendments in most towns – although the Bylaws do provide for regulations to encourage “innovative development” (Sec. III.F.).

More troubling to many is MassDevelopment’s inclusion of a potential housing component in the “downtown Devens” RFQ sent to developers. Residential uses are not permitted in this zone under the current Bylaws, regardless of whether the housing is envisioned

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<sup>6</sup> Devens Reuse Plan, pp. 5-6.

as additional to or part of the 282-unit housing cap currently in place. The only mechanism for including hous

ing without revision of the Bylaw and the Reuse Plan would be use of Chapter 40B, despite the fact that the Devens regulatory system already includes the salient features of Chapter 40B – 25 percent affordability and unified permitting. During the development of the Reuse Plan, the question of how much housing should be permitted at Devens was one of the most sensitive and debated issues. It is difficult to argue that a change in the number of housing units or their location at Devens would not constitute a “substantial” change to the Reuse Plan and Zoning Bylaws.

The question of housing is central to the emergence of community at Devens. Now that Devens has residents as well as commercial property owners, it has become a community, not just an industrial and business park. The military populations that once lived at Devens were part of a community - the Army - that gave them a sense of identity within a physical place organized to reflect that military community. Once again there are people living at Devens. At present, they vote in Harvard – for local officials who have no control over or responsibility for their residential area or the school system that educates their children. They sign a “disclosure” form that spells out the existence of a separate Devens School District with education of children in Shirley and Ayer. The Town of Harvard has invited Devens residents to join its Five-Year Review Committee and other committees, and a number of Devens residents attended the public meeting associated with Phase II of the review. Their presence changed the conversation about Devens in significant ways and they can be expected to take on a more prominent role in discussions about the future of Devens

The experience of the Disney Company in its creation of the New Urbanist town of Celebration, Florida, provides some thought-provoking parallels. Celebration in reality is not a town at all – it is a development district within a Florida county, with no elected town government. Disney’s subsidiary, the Celebration Company, owns commercial property and the many residential property owners are members of an owners’ association that collects fees for privatized municipal-style services and maintenance of common areas. Town “government” consists of a council composed of members of the homeowners’ association and the Celebration Company, but the company effectively has veto as long as it owns any property in or adjacent to Celebration. The first conflicts in Celebration occurred over the school system. Because there was no democratic process to resolve the differences in opinion about the school curriculum and other matters, the company treated the debate and conflict as a public relations problem, and some of the school critics left the town.<sup>7</sup>

Chapter 498 established a system that makes MassDevelopment a landowner and landlord, a developer, a planner, a collector of services fees, and an “acting” municipal executive. The DEC is the regulator, nominally independent of MassDevelopment, but created, organized and funded to facilitate MassDevelopment’s development mission at Devens. In municipalities that have or desire redevelopment, the planning and community development staff typically work for the executive, provide staff support for the regulatory boards and commissions, and prepare and supervise planning studies. Generally speaking, the municipal planners are not also the landowners and developers. The role of public planners is to promote and safeguard the public interest – which clearly includes economic development – and assure the creation a public realm that is functional, harmonious, attractive and highly-valued. The era of top-down planning has long passed, and municipalities today undertake planning with community or neighborhood advisory committees. As the towns, MassDevelopment, DEC and Devens residents embark on

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<sup>7</sup> Michael Pollan, “Town-Building Is No Mickey Mouse Operation,” *The New York Times Magazine*, December 14, 1997.

planning for the future jurisdictional destiny of Devens, the “planning culture” of Devens must be modified in significant ways.

In its role as real estate promoter and developer, MassDevelopment needs confidentiality in its negotiations with potential buyers, but as the municipal executive of Devens it will increasingly need to systematically include community viewpoints – from Devens residents as well as the host communities – in planning and development decision-making. This is also true of the DEC, which in recent years has already made its decision-making processes and planning efforts more open and transparent.

At the same time, the Towns must become more systematic and organized in their approach to Devens and its future – and the Five-Year Review has been instrumental in encouraging the JBOS to take a more active role. Because of the small size of the town governments and limited paid staff, the effort required to organize and sustain this more organized approach may seem beyond the capacity of the JBOS. But without this effort, the JBOS will always remain in a reactive role. The more the JBOS can effectively identify and advocate for the towns’ desires and interests in the ongoing and future development of Devens, the more likely it is that the Towns will have better communications and outcomes with MassDevelopment and the DEC. MassDevelopment in particular needs to become more inclusive in its decision-making, but the JBOS also need to articulate more clearly what they want to have happen at Devens.

MassDevelopment and the DEC will continue to pursue the goals they believe are appropriate for Devens. *This is an important moment as questions about housing and community character will be decided soon. The JBOS must exercise leadership to create a space for more active participation in shaping Devens development and preparing for future disposition.*

## **RECOMMENDATIONS FOR THE JBOS**

### **PROCESS AND PROCEDURE**

There are three fundamental procedural results of the Five-Year Review process:

- The JBOS must take steps to create a more structured and active participatory role for itself and the towns in the ongoing development of Devens.
- The JBOS must take steps to begin disposition planning with MassDevelopment and DEC.
- The JBOS must secure staff and funding support for these activities.

### **Creating a More Active Participatory Role for the JBOS**

As noted elsewhere in this report and in the Phase I report, JBOS must activate the participation and advisory mechanisms provided for in the Reuse Plan and Bylaws, create systems for reporting and accountability, and identify and clearly articulate its viewpoint to MassDevelopment and DEC.

- **July 2002** - Notify MassDevelopment that JBOS has established Transportation and Housing Committees, as provided for in the Reuse Plan, in addition to the Open Space Committee. In addition, the JBOS should establish a Development and Finance Committee to integrate the work of the other committees and relate it to fundamental financial and development issues.

Ask appropriate state and regional agencies and nonprofit organizations to be members of these committees, as well as representatives from each of the Towns, Devens residents,

## DEC and MassDevelopment

- **July 2002** - Provide the Committees with a preliminary work agenda (see the next section of this plan for recommendations) and ask for quarterly reports from the committees to the JBOS. In the case of some issues on the work agenda, the Committees should be explicitly directed to work together, in order to insure that there is sufficient integration of knowledge and approaches.
- **July 2002** - Formally ask MassDevelopment to provide staff support for these committees to assist volunteer chairs from the communities in scheduling and announcing meetings, providing information and documents, etc.
- **July 2002** - Begin negotiations with MassDevelopment on an ongoing funding scheme to support coordination and technical assistance to the JBOS in Devens-related activities. (See below.)
- **By September 2002** - Establish for each town a liaison to the JBOS and the DEC who will flag any DEC decisions within 30 days for which the towns should request a reconsideration of the decision, as provided for in the Zoning By-Law. (Harvard has made the appointment; Ayer has asked the Planning Board to delegate a member for this task; Shirley has not made the appointment.) Ask DEC to send project permitting submission packages, meeting notices, and other DEC documents to the liaisons. Ask each liaison to send a report to the town manager every month before the JBOS meeting – even if the report is a simple “nothing to report.”
- **By September 2002** - Strengthen the relationship between the JBOS and the DEC:
  - Ask DEC members from the town to meet quarterly with the JBOS
  - Ask DEC members to give a short report on DEC activities at Town Meetings and for inclusion in Town Annual Reports

## Starting the Disposition Process

Throughout the Five-Year Review process, members of the review committees and of the wider public in the towns have often expressed their discomfort about making interim decisions about Devens when they do not know whether Devens will ultimately return to jurisdiction of the towns, be administered by a joint entity, or become a separate municipality. The Town of Shirley, by taking steps to acquire for municipal uses land currently under MassDevelopment jurisdiction at Devens has implicitly moved in favor of regaining jurisdiction over the area of Devens within its historic boundaries. Ayer, as the town with the closest economic ties to Devens when it was an army base and the town with the largest business sector, is also disposed toward reasserting jurisdiction, though with significant concerns about funding commitments to support development potential of the Ayer North Post and remediation of contaminated areas. The majority of Devens is located within the boundaries of Harvard and although a general preference for return of jurisdiction also prevails there, the discussion has included a desire for certainty about the potential benefits and costs to Harvard of industrial and commercial tax base and new residential development, as well as the concerns of particular neighborhoods that fear potential traffic impacts of opening road connections to Devens. Devens residents who expressed their views at the May 2002 public meeting tended to want to take a wait and see approach.

It is the view of the consultant team that it is impossible to have certainty about all the potential impacts of a return of jurisdiction to the towns, but that there is sufficient sentiment in favor of a return of jurisdiction to support a statement by the JBOS to the DEC and

MassDevelopment that *in principle*, the towns would like a return of jurisdiction. By making such a state

ment, reviewing ongoing issues and beginning a disposition process with that goal in mind, the towns will be in a much better position to make a final decision when the time comes.

By taking this position, the towns can act to promote changes that might make a return of jurisdiction function better and resist changes that might preclude a return of jurisdiction. They will have a standard by which to evaluate new information and new proposals: How would this information or this proposal advance the return of jurisdiction? What would the likely benefits or costs be to the town if it were to regain jurisdiction – not just financially but also in terms of community values and quality of life? Such a position also does not preclude the possibility that even with a return of jurisdiction, the towns might want to create joint management or administrative arrangements for infrastructure, recreation, permitting, or other activities in the former Devens area.

The study required by Chapter 498 must include an analysis of several potential governmental structures for Devens. By making a statement in principle for return of jurisdiction, the towns are not giving up anything, if at the end, they conclude that they do not want to accept jurisdiction. They are simply making sure that return of jurisdiction remains a completely live option.

- **By September 2002** - Draft and send a letter to MassDevelopment and the DEC containing
  - A statement that in principle the towns' goal is to have a return of jurisdiction over Devens lands to the towns
  - An invitation to begin a process to prepare the disposition and governance study required by the legislature
- **By September 2002** - Provide MassDevelopment and DEC with the proposed scope of a disposition planning process (see a later section of this document) and consider allocating some town funds for this purpose, even a symbolic amount, to signal and reinforce the fact that under Chapter 498 the towns are equal partners in carrying out this study

### **Securing Funding for Devens-Related Activities**

In the Phase I Report of this Tri-Town Five-Year Review, it was recommended that the JBOS seek an ongoing source of funds for Devens-related activities. It was suggested that the JBOS request a per square foot addition to the Municipal Service Fee when the July 2002 changes occurred. Because Chapter 498 explicitly states that the Towns are not to receive taxes from Devens while it is under MassDevelopment jurisdiction, this remedy might require legislative action. MassDevelopment rejected this idea and the JBOS did not pursue any other options.

One alternative is to seek a regular appropriation of MassDevelopment funding for JBOS Devens-related activities plus a small appropriation from each town. There is always a concern that the source of funding will inevitably control the outcome, but there are ways to reduce this concern. Even a symbolic amount of town funding would be important to asserting the JBOS as controlling entity. Moreover, it is not unusual for development entities – public or private – to provide arms-length funding through another entity for the organization and activities of their community interlocutors. For example, MassHighway has provided community groups with funding to hire their own advisors on Central Artery issues. Similarly, developers and institutions have provided funding to the Boston Redevelopment Authority, which uses it for neighborhood planning processes. If the towns together provided \$15,000 a year and MassDevelopment provided \$35,000, the JBOS could hire a half-time planner/administrator for Devens-related

issues as well as independent technical assistance on issues such as disposition planning. The staff person's role would be to give organizational and staff support to the JBOS and its Devens Committees, to

attend DEC and MassDevelopment meetings and public hearings, to manage consultants, to prepare reports on Devens issues, and to prepare grant proposals, if needed.

A third alternative is to ask for permanent MassDevelopment organizational staff support for JBOS Committees on Devens issues and prepare specific funding requests for technical assistance needs. This alternative has the disadvantage that the JBOS would not have a staff person with the responsibility of preparing and administering technical assistance requests, with the result that there would undoubtedly be a time lag while the request was prepared by someone with many other responsibilities and then MassDevelopment could take time to consider it and reply to the JBOS.

- **By October 2002** – Negotiate with MassDevelopment for ongoing annual funding of JBOS Devens-related activities. The funding would be used to hire a half-time planner/administrator and to give the JBOS independent technical assistance.

### **SUBSTANTIVE ISSUES**

As a result of the Five-Year Review, there are a series of substantive issues that need to be addressed. Immediate issues include:

- Potential changes to the amount and location of housing permitted at Devens and agreement on standards for Phase II and any other potential housing.
- The character of the Business Services Zone as a retail and services area and as it relates to other parts of Devens and to the towns.
- Proposed changes to the Devens regulations

These issues must be addressed as quickly as possible because MassDevelopment and DEC have taken steps on these issues.

Issues that will require more time, but that can include initial steps starting this fall are the following:

- North Post Master Plan
- Open Space protection status
- Open Space zone review and potential changes
- Open Space and Recreation Plan Update
- Transportation Demand Management planning and potential community benefits
- Disposition Planning

### **Revision of the Reuse Plan and the Zoning Bylaw**

There are several issues that could require revision of the Reuse Plan and the Zoning Bylaw: more housing, housing in different zones, clarifying restrictions on structures in open space zones, possible adjustment of open space boundaries, changes to uses in the Shirley and Ayer North Posts, as well as other zones that do not yet have development plans.

It is the view of the consultant team that the question of additional housing is the most pressing. Although the open space issues could be resolved through zoning changes, other options, such as changes in regulations and transfer to nonprofit organizations could be less cumbersome and have the desired impact. Throughout the review process there has been no indication that the



towns want anything but more sure and certain protection of open space and implementation of the trails plan and other passive recreational plans. These goals could be attained in ways that provide more certain benefits than open space zoning. In some of the other cases, appropriate

changes will probably not be clear until new and more detailed planning is completed – as would be the case with the Shirley and Ayer North Posts.

The recommendation here is that the JBOS and the towns pursue the organizational and process steps proposed in this report before seeking a broad revision of the Reuse Plan. A more systematic approach and a less reactive posture by JBOS may enhance the possibility of improved communication with MassDevelopment and the DEC. Both agencies are increasingly recognizing that they cannot operate unilaterally. Through structured discussions based on the procedures and work plans suggested in this report, the towns and the agencies may be able to agree on proposed revisions to the Reuse Plan and the Zoning Bylaw that they could jointly bring to town meetings.

### **Issues for Immediate Attention – Summer/Fall 2002**

#### ***HOUSING***

MassDevelopment and DEC are continuing to move forward to fulfill their missions at Devens as they see it. During the next six months, decisions affecting housing at Devens will be under discussion and the communities and Devens residents should be at the table where those decisions are made.

The items that require immediate attention by the JBOS are listed below. It is recommended that the JBOS use the committee structure it has begun to set up to have the Housing Committee and the Development and Finance Committee study these issues during the summer and fall and make recommendations to the JBOS and the towns in mid-fall. Recommendations on the composition and activities of the Housing Committee follow this section.

#### **“Downtown Devens” RFQ and housing**

The RFQ mentions the potential for housing in a zoning district where it is currently prohibited. It has been suggested that MassDevelopment would encourage the use of Chapter 40B to bypass the housing prohibition in this zone.

##### ***Issues:***

- Change in residential zoning as a “substantial change” in the Zoning Bylaw and therefore requiring town approval
- Potential benefits of having housing in this zone to support retail – as part of the Phase II housing quota or as additional housing?

##### ***Recommendation:***

- A change in zones permitting housing and the number of housing units should be considered a “substantial change” requiring a change in the Reuse Plan and the Zoning Bylaw.
- Inclusion of housing in the business services zone – in addition to the currently permitted 282 housing units -- is a good idea. Properly designed, it will help provide the pedestrian-oriented ambience desired, give market support for more diversity of businesses, help connect existing housing areas, and potentially attract Devens

workers as residents. The region's market can support the housing now, as it could not in the early 1990s. Although many communities fear new housing because it often costs more in services than it pays in taxes, it is important to remember that the industrial and commercial development at Devens (particularly if there is a split tax rate, as is the case in Ayer) will offset service costs.

#### DEC proposed regulations and Phase II housing standards and character

DEC has proposed new regulations, characterized as at the "75%, close to finished" level, to regulate the character and site design of new housing. During the summer and fall, MassDevelopment will be developing standards and an RFP for a developer or developers to build the Phase II housing. The JBOS Housing Committee should work closely with DEC and with MassDevelopment on the regulations and the standards to be developed for Phase II housing.

##### *Issues:*

- In Section 5.03 – Residential Development, DEC is proposing that all new residential development at Devens, including the Phase II housing be created according to "new urbanist" principles.
- Phase II housing development can be available as early as January 2003.

##### *Recommendation:*

- Design standards to require compact, pedestrian-friendly neighborhoods that are compatible in design and scale with the existing housing on Devens are a good idea, as are many of the other elements of these regulations, such as conserving natural features and vistas. However, the extremely prescriptive nature of some of the regulations, may have unintended consequences or result in banal fulfillment of the rules. Performance standards that identify the preferred outcome without prescribing the particulars can give superior results.

#### **JBOS Housing Committee**

It is important that the JBOS Housing Committee begin meeting and considering Devens housing issues as soon as possible. The work program for this committee will clearly extend beyond Fall of 2002, but it is essential that the Committee begin working with DEC and MassDevelopment to shape the next phase of Devens housing as soon as possible.

*Membership.* In addition to representatives of the Towns and Devens residents, MassDevelopment, and DEC, this committee would benefit from having members with expertise in the market-rate housing market in the region and in affordable housing.

*Activities.* This committee should make recommendations to the JBOS on housing issues, including additional housing at Devens. It should develop criteria for the character of the Phase II housing and for any additional housing at Devens, including criteria for potential Chapter 40B projects.

- Work with the DEC on appropriate standards that developers must address in the proposed residential overlay district regulations
- Work with MassDevelopment on expectations for the Phase II housing
- Develop standards for potential additional housing with attention to the following:
  - location near to existing housing to reinforce critical mass for neighborhood community
  - pedestrian links to recreational amenities, existing and future trails, retail areas, and schools

- life cycle housing (diversity of unit types to accommodate singles, families, empty-nesters)
  - scattered site affordable housing indistinguishable from the market rate housing
  - visual and noise buffering from industrial sites
- Work with affordable housing organizations such as Citizen's Housing and Planning Association (CHAPA) to develop appropriate design and other guidelines for affordable housing

### ***BUSINESS SERVICES ZONE***

The development of retail and services in the Business Services Zone is important to residents of Devens, the towns, and Ayer and Shirley merchants. Because MassDevelopment has already issued an RFQ for expressions of interest in developing the zone, it is important that the towns and Devens residents have a role in shaping the development of this area. The Development and Finance Committee should have primary responsibility for working on "Downtown Devens" issues.

#### *Issue:*

- The RFQ provides somewhat contradictory guidance on what is desired in this zone, yet how it is developed will have a big impact on the character of Devens as a place to live and work.

#### *Recommendations:*

- The Committee should work with MassDevelopment and DEC to develop a coherent idea of what is possible, both physically and economically in the Business Services Zone ("Downtown Devens") in the short and longer term.
- The Committee should provide MassDevelopment with the design standards that the community would like to see met in any Downtown Development, particularly in terms of connections to other parts of Devens, pedestrian-orientation, parking locations, and so on.
- Among the issues to be considered should be phased, more compact development rather than low-density development of the entire zone, and path and bikeway connections to business, residential, and open space areas on Devens. (See the previous discussion in Chapter 8.)

### ***OTHER PROPOSED REGULATIONS***

DEC's 75% draft of proposed new regulations covers changes on a variety of issues, from stormwater management to sign control and historic district regulations.

#### *Issue:*

- DEC is seeking comment and the JBOS should review the regulations carefully.

#### *Recommendation:*

- The JBOS should ask one member of each town's Planning Board to review the proposed regulations and report back to the JBOS.
- The JBOS should the DEC director to provide a summary of the purpose of each section of proposed changes and state why the change is superior to the existing regulations. The JBOS should also ask the DEC director to explain if and how the

regulations will provide better outcomes on issues about which the JBOS and town residents have been concerned:

- preservation of open space areas and compliance with open space and trails plans
- traffic impacts and mitigation of the proposed development in Devens and in the towns
  
- maximum preservation of existing topography, landscape features and vegetation
- stormwater management to protect natural resources and landscapes
- landscape standards and buffers
- monitoring during construction and post-construction
- incentives to conserve water, electricity, wastewater capacity and other resources
- encouragement of existing industrial businesses to improve and upgrade properties

### **Issues for Consideration Fall 2002 – Spring 2003**

#### ***North Post Master Plan***

In Fall 2002, the JBOS and the Boards of Selectmen of Ayer and Shirley should formally request that MassDevelopment fund a detailed environmental study, economic assessment and master plan of the Shirley and Ayer North Post areas. As the MassDevelopment Five-Year Review stated, this plan should be prepared in coordination with the JBOS and the two communities. The Development and Finance Committee should be the oversight committee for this process, including representatives from the following:

- Ayer Community and Economic Development Director
- Planning Boards
- Conservation Commissions
- JBOS Devens Open Space Committee
- JBOS Devens Transportation Committee
- US Fish and Wildlife Service – Oxbow National Refuge
- MassDevelopment
- DEC

The committee should be involved in developing and approving the scope of the study; community representatives from the committee should participate in selection of consultants; and the committee should meet regularly with the consultants to discuss the emerging study results and alternatives and should participate in review of the draft and final report. The scope should contain, at a minimum, the following:

- a thorough environmental inventory and assessment of both parts of the North Post, building on the Vernal Pools study
- recommendations on areas that should be preserved because of environmental sensitivity and scenic landscape character
- options and appropriate locations for development
- market analysis for development sites, estimated jobs and tax revenues that could be created
- assessment and recommendations on the transportation and other infrastructure improvements necessary to unlock development potential, and their cost
- estimated infrastructure impacts of development and potential mitigation

- traffic study of North Post area under various reuse concepts to evaluate transportation impacts, needed mitigation, and preferred options
- funding sources for protection, infrastructure, and marketing costs

## ***JBOS Devens Committee Work Programs***

The Reuse Plan provided for three ongoing committees to include representatives from the towns: Open Space, Housing, and Transportation. Of these, only the Open Space Committee was operating through 2001. The JBOS have now created the two other committees and all three of the committees are expected to have a more active role in the future, with a work plan and regular reporting to the JBOS. In addition, the JBOS have decided to create Development and Finance Committee to focus on overall development issues and the cost/benefit concerns that must be understood and resolved to evaluate a potential return of jurisdiction to the towns. These committees are an opportunity for the Towns, the new Devens residents, MassDevelopment, and DEC to work together on the remaining planning and implementation elements of the Reuse Plan. The role of the committees would be to serve as a sounding board and advisory group to oversee, review, and help set the direction for future activities.

Activation of these committees would provide an opportunity to inaugurate a new, more inclusive, yet structured “planning culture” at Devens that can serve as the foundation for disposition planning. The committees should have a chair and vice chair who are community residents, meet on a regular schedule, with additional meetings if needed for specific issues, and the town representatives should report at least every two months to the JBOS on committee activities. MassDevelopment should formally be asked to provide staff support for these committees to work with the committee chairs on meeting schedules, announcements, and reserving meeting space and to provide information. Even if MassDevelopment declines to share planning information with the committees, the committees should still develop criteria and standards to the best of their ability, to communicate expectations to MassDevelopment and DEC. Recommendations for the make up and the work plan of the Housing Committee was given in the previous section because JBOS input into housing concerns must occur as soon as possible. Recommendations for the Open Space and Transportation Committees are given below.

### **Open Space and Recreation Committee**

Beginning in fall 2002, the Open Space and Recreation Committee should begin a program focusing on the following issues:

- Open Space protection status
- Open Space zone review and potential changes
- Update of the Open Space and Recreation Plan

*Membership.* The Open Space Committee, in addition to its present membership, should include a Devens resident and representatives of the Recreation Commissions of the three towns, and if possible, local or regional land trusts.

*Activities.* Although this committee has been in operation and overseeing the open space implementation of the Reuse Plan, it could take on a more active role.

- The Committee should advocate for changes that assure more permanent protection for the land zoned for open space and participate in the planning efforts for open space and recreational amenities:
  - Draft a letter for the JBOS to request an opinion from the state Attorney General’s office on whether lands zoned “Open Space and Recreation” at Devens are covered under Article 97 of the state constitution

- Identify those areas of the open space zones where no structures, except those directly in support of the open space purposes, may be permitted and promote the permanent protection of those lands through transfer to a land trust, a town conservation commission, or a governmental parks or environmental agency.
  - Identify those open space areas where limited cultural or municipal uses may be acceptable.
- Identify areas where open space zone boundaries may need adjustment.
- Work with DEC to incorporate zoning language to insure that open space zones include clear language limiting the size and footprint of structures built as accessories to open space and recreational uses and bring this language through the JBOS to town meetings.
- The Committee should serve as an advisory or oversight committee when consultants are engaged to prepare open space plans or designs. This means that the Committee should be regularly consulted at specific points in the planning process – development of the scope, discussion of alternatives, review of draft documents, etc.
- Preserve areas where sensitive habitat and environmental resources have recently been identified. Options include:
  - change in the zoning by-law open space zones – requires approval of MassDevelopment and the towns
  - seek conservation restrictions
  - seek transfer to nonprofit local or state conservation organizations or conservation agencies
- Identify open space resources desired for ownership by the Towns, individually or jointly.
- Identify open space resources appropriate for other government or nonprofit organization ownership.
- Identify potential needs and costs for joint recreation administration (e.g. event scheduling, maintenance ).
- Start discussions with Devens Recreation about long term arrangements about dedicating some fields to Town use in return for Town assistance in maintaining fields or trails.
- By fall 2002 request that MassDevelopment assign resources to begin the update of the 1996 Open Space and Recreation Plan so that Devens remains eligible for state open space and recreation funding. The JBOS Open Space Committee should function as the oversight committee for this plan update. Among other elements, the update should include:
  - assessment of the extent to which implementation and management goals and objectives were met in the areas of Conservation, Preservation, Intensive Use, and Linkage
  - evaluation of whether these categories continue to be appropriate
  - identification of needed changes
  - development and communication of a comprehensive implementation and management plan for passive and active resources, identifying long-term responsibilities and funding mechanisms.
- Encourage Devens and the town's Recreational Commissions to organize a Tri-Town Devens road race to promote knowledge of Devens open space resources by residents of host towns.

## **Transportation Committee**

Transportation issues, though not currently on the front burner, are the controlling element in the MEPA certificate granted to the Devens Reuse Plan. The towns did not have an opportunity to participate in shaping the scope and review of the 2000 Traffic Report. Activation of a Transportation Committee will provide the towns with more opportunity to seek mitigation of traffic impacts and potential benefits for residents of the region.

*Membership.* In addition to representatives from the Towns, MassDevelopment (DPW staff as well as community relations staff), and the DEC, this committee should also include a Devens resident, and representation or formal liaison from the Transportation Management Association (when formed), the MBTA, the Regional Transportation Authority and from the regional transportation planning staff (Montachusett Regional Planning Commission).

*Activities.* This committee's activities should include the following:

- Review of traffic and transportation studies
- Input into scoping of future transportation studies including
  - Recalculate uptake of land for development and traffic generation to adjust and refine the timeline to buildout or to capping of development. Recalculate uptake of land for development and traffic generation to adjust and refine the timeline to buildout or to capping of development.
  - Establish procedures to direct more traffic to use the Jackson Gate and Route 2, to reduce pressure on smaller roads and town centers.
  - Analyze design and operation of roadways, intersections and traffic control devices to encourage use of Devens' roads in preference to other major area roadways. Prioritize and recommend actions.
  - Proactively study and plan for improvements to severely impacted area roads and intersections to appropriately ease traffic operations.
- Participate in scoping and discussion of transportation elements of a North Post Master Plan
- Input into the implementation of Transportation Demand Management (TDM) activities, including organization of a Transportation Management Association (TMA).
- Encourage use of public transportation and non-motorized modes through education, incentives and improved amenities
- Attention to the transportation benefits of bicycle paths and other non-motorized routes in consultation with the Open Space Committee
- Attention to roadway changes occasioned by new projects in order to limit the expansion of parking lots and the need to widen roadways.

Many community benefits can be integrated into a TMA, including the following:

- Access by Devens and tri-town residents to a TMA shuttle bus on payment of a nominal fee, such as \$1 a ride for adults.
- Establishment of a commuter bus and ride share site at Devens with access through Route 2, so traffic does not go through the towns

## **Development and Finance Committee**

The purpose of this committee is to focus on the overall development direction of the remaining implementation period of the Reuse Plan, integrate the results of the activities of the other committees, and evaluate the potential future costs and benefits to assist the towns in understanding the issues surrounding a potential return of jurisdiction to the towns.



*Membership:* The membership of this committee will include the towns' representatives, Devens residents, MassDevelopment, DEC, people chosen for special expertise in areas such as economic development or finance, and, as needed, ad-hoc representatives of federal and state agencies.

*Activities:* The activities of this committee will include oversight of the following:

- "Downtown Devens" development
- North Post Master Plan
- The future of Salerno Circle
- Overall development character
- Financial and fiscal issues

## **SCOPE FOR DISPOSITION PLANNING**

Through the committee structure discussed above, the JBOS can begin to address some of the initial issues that must be confronted in planning for disposition.

- Intensive evaluation of best uses for the so-called Out Parcels with particular concern for environmental issues, impacts on existing, adjacent uses, and achievement of environmental and sustainability objectives.
- Begin discussions of process for permitting of any development in excess of the 8.5 msf MEPA limit, both at Devens and of the Out Parcels, to maximize potential benefits and minimize detrimental impacts.

### **First Priority**

**Time Frame: 0 to 12 months**

- The JBOS send a letter to MassDevelopment and DEC to invite the initiation of the disposition planning process.
- Establish a method for representation of Devens residents and business property owners in the disposition process.
- Secure agreement with MassDevelopment and DEC through a Memorandum of Understanding, or other instrument for participation and funding of the process, including funding for technical assistance to JBOS.
- Establish appropriate procedures for Towns to discuss, ratify and implement disposition decisions
- Enlarge and strengthen JBOS role in representation of Towns and coordination of efforts, for planning and negotiation of Disposition elements, with resources needed to implement
- Create a Disposition Planning Group (DPG) – made up of representatives of MassDevelopment, DEC, JBOS, Devens residents, and Devens businesses
- All parties to present initial statements of preferred disposition outcomes for priority lands, facilities, finances, infrastructure and services. Evaluation of impacts and outcomes to follow as work of the DPG.

### **Second Priority**

**Time Frame: 0 to 24 months**

- Comprehension of financial structure of Devens: values; income; expenditures; liabilities
- Evaluation of condition of infrastructure, future capital costs, management options
- Generation and evaluation of economic models for varying buildout and disposition scenarios
- Establish protocols for transfer and operation of areas, jurisdictions and services

- Creation of a refined and updated, detailed Master Plan for Devens development and anticipated end state. Master Plan is integrated in its elements and goals with updated Master Plans of the Towns
- Establish disposition timeline with attainment milestones for all elements

### **Third Priority**

**Time Frame: 1st to 3rd year**

- Interim Reports and preliminary decisions regarding individual elements of the Disposition Plan, as recommendations by the DPG to Towns, Public and Legislature
- Specific apportionment to appropriate parties of future ownership, jurisdiction and responsibilities for all disposition items
- Submission of full, final Report of the DPG on Disposition to Town Meetings, and the Legislature, for approval
- Secure appropriate action by Town governments and state Legislature
- Manage completion of amended buildout plan in conformance with plans
- Manage the disposition and transfer process

### **Future Disposition Actions**

**Time Frame: 4th year on**

- Regular revisiting of Master Plan and Disposition Plan elements to refine and resolve emerging issues
- Final status report upon completion of the Disposition Process to Towns and Legislature

### **Issue Categories**

There are five primary categories of issues to be identified and reconciled in the disposition process for it to be effective:

- ***Jurisdiction and Governance.*** Identify and empower the body(ies) that will oversee, regulate and provide each municipal service, with clear delineation of the relationships and agreements between and among those bodies.
- ***Ownership of Properties and Assumption of Liabilities.*** Determine future status of current MassDevelopment properties and operations; ownership, tenancies and claims upon properties and activities by other public and private entities; and any federal holdings and responsibility for remediation of prior contamination.
- ***Management.*** Determine the services to be provided, operations administered and tracked, and fees collected by current and future entities, satisfactory for users' needs.
- ***Financial.*** Determine continuing costs of development, the burdens of service provision and capital improvements balanced with adequate, timely funding streams, and fairly apportioned revenues, recognizing the current and future capacities of the Towns and MassDevelopment.
- ***Community Development, Regional Services, and Physical Planning.*** Determine the physical and social networks required to knit together the businesses and employees, residents, educational institutions and students, development, retail and business services, open space and natural resources into the existing local social and economic network, to create a stronger more vibrant economy, without detriment to existing quality of life and social cohesion.

### **Jurisdiction**

- The legislation requires an evaluation and study of the four governmental options: Town government, joint entities, a combination of town government and joint entities, continuation of the existing Devens Enterprise Zone under control of MassDevelopment.
- Identify jurisdictional areas, authority and service provision for all areas of Devens
  - Bounds and resetting of lines for jurisdiction and governmental control - evaluate need and establish protocols, as necessary, to adjust Town boundaries
  - Areas of specific services: life safety, utilities, municipal services, education
  - Rights and responsibilities of residents at Devens
  - Clarify future Federal role at Devens: areas, operations, amounts
- Evaluate options on zoning and project approval
  - Boards and commissions of individual Towns
  - Continuing and/or transformed role for DEC
- Evaluate and recommend procedures and potential phasing options for:
  - Enhancement of a more systematic role and voice for the Towns in ongoing development and planning decisions before final disposition
  - Management of the disposition process, particularly at any phased transition points and at final transfers of governance
- Identify and draft amendments to MGL Ch. 498 and any supplementary legislation, as needed:
  - To ensure Town's voice and role in Disposition Planning;
  - To ensure sufficient resources are available for Disposition Planning;
  - To ensure that Towns can meet any additional financial demands of Devens on them prior to cessation or reconfiguration of MassDevelopment role
- Revise MassDevelopment process of creating reports and studies and achieving a more rapid and full distribution of the data and findings
- Evaluate potential opportunities and problems inherent in possible shared Town actions and operations for land use, infrastructure and services, and administration, such as a "Devens Development Commission," Special District, Authority or other inter-municipal entity for infrastructure planning, management, regulation, taxation, service sharing or joint purchase of materials and services
- Establish residents association of Devens homeowners with full input into planning efforts, through representation of Towns, or directly to JBoS
- Provide for interests of businesses to be voiced during disposition planning and beyond

### **Ownership and Liabilities**

- Ownership of all lands to be identified, currently and as future projections and updated regularly
- Establish and track various liabilities related to land, facilities, activities, and environmental contamination, and create plans to manage and discharge liabilities fully.

- Determine requirements of future environmental remediation, via a comprehensive plan:
- Identify sites and responsible party(ies), with developed chain of liability
- Create appropriate timeline(s) for completion
- Determine Towns' interests in lands for municipal purposes
- Determine disposition and ultimate ownership of lands owned by MassDevelopment or other state agencies
  - Review purpose and impacts of planned future commercial and industrial land sales
  - Disposition of land that is undeveloped or not identified for development - sale, transfer to other state agencies, or conveyed to other parties
  - Establish transfer protocols, and equitable valuation and compensation methodologies

### **Management**

- Identify appropriate and efficient management entities, and responsibilities, for all services and activities at Devens, including but not limited to:
  - Collection, management and disposal of solid wastes
  - Utilities
  - Recreation and open space management
  - Public safety - police, fire, EMS, inspection, health
  - Maintenance of infrastructure - DPW, Parks Dept.
- Evaluate opportunities for new local and regional services, such as the establishment of a regional Transportation Management Association (TMA)
- Create a schools plan to ensure satisfactory education of all children
- Establish methodologies to ensure that all new undertakings are properly planned, financed, staffed, and supplied, at levels equal to current Towns services, or other equitable measures
- Provide for routine review, oversight and modification of ongoing activities and initiatives

### **Administrative**

- Identify and involve all affected parties in a mutually agreed disposition planning process
- Determine willingness of agencies to enter into MOUs with Towns on future development
- Secure and record all agreements relating to disposition planning
- Establish a Disposition Planning Group, with representatives of Towns, MassDevelopment and DEC, with defined roles and purpose
- Determine methods of making further amendments to Plan simpler to enact
  - Amend definition of Major Amendment to Reuse Plan, to lower threshold for consideration, to permit a greater range of activity by the DPG particularly during phases leading to disposition
- Develop a schedule of meetings and coordinate DPG and subcommittee meetings with schedules of Town Meetings, the Legislative calendar, and other factors

- Manage work flow of DPG, commission reports and studies, in a timely fashion
- Record, keep and publish meeting minutes in a timely fashion, providing access to the Public.
- Commission and write report to Legislature
- Ensure thorough review of proposed Disposition Plan by public and governmental entities
- Revise Disposition Plan to reflect concerns and new information
- Seek adoption of Disposition Plan by Towns
- Secure adoption of Report by Legislature.
  - Introduction and passage of any necessary amendments to MGL 498 or successor legislation
- Ensure the pursuit of any needed continuation, follow on, or new activities related to the Disposition Plan and oversight of the Disposition process and provide mechanism(s) for review, revision or extensions

#### **Financial**

- Determine costs and benefits to Towns and Commonwealth of different jurisdiction scenarios
- Evaluate MassDevelopment's cost and income structure
  - Focus on future income sources and liabilities
  - Determine the comprehensive financial status of Devens and operations
  - Provide projections of future revenue and expenditure profiles
  - Examine impact of alternative scenarios
- Evaluate MassDevelopment's agreements with commercial land owners and effect on potential town or joint entity revenues
- Establish long term capital plan(s) for land, infrastructure, facilities and operational needs
  - Establish methodology to make Towns whole should revenues not meet new expenditures
- Create a timeline to establish transfer of fees and responsibilities consistent with other Disposition Plan elements

#### **Community Development, Regional Services, and Physical Planning**

- Identify Town needs, current and future, which can be met with resources at Devens
  - Identify future municipal land needs of Towns that can be satisfied at Devens.
  - Establish terms for transfer of land to municipal ownership
- Evaluate Transfer of Development Rights (TDR) methodology
  - Between areas/purposes of Devens and Towns
  - Appropriateness for implementation under various scenarios

- Continue to monitor and evaluate traffic and transportation issues
- Review transportation generation projections for impacts of future changes to plan
- Manage congestion, limit negative impacts
- Evaluate impacts and opportunities of new neighborhoods and housing creation:
  - Enhance the sense of community between Devens and the surrounding towns
  - Appropriate quantities, scale, siting, services and amenities
  - Structure, method and costs for services needed by residents, businesses, and other during and after the transition period
  - Assist the Towns' need to provide affordable and diverse housing types
  - Evaluate future school needs and potential locations
- Update and implement comprehensive open space and recreational facilities plans
  - Schedule and fund implementation of Devens Open Space Plan and Trails Plan elements with responsibilities identified, including trails and ongoing maintenance
  - Create a Recreational Facilities Plan to identify ownership, management and financial responsibilities and establish criteria for use by various user types
- Complete a detailed physical and economic plan for amended buildup and long range area evolution
  - Evaluate opportunities to transition from predominantly warehouse-based industry to other types of commercial development
  - Determine protocol for any proposed changes to buildout plan which would exceed MEPA thresholds and the regulatory limits of prior approved plans
  - Schedule demolition and removal of identified surplus buildings and infrastructure
  - Incorporate a detailed Master Plan for the North Post into the Reuse Plan
  - Create reuse plan for Vicksburg Square with timetable and disposition strategy, inclusive of financing and needed actions
  - Review Zoning of Devens and draft modifications bring into harmony with zoning and future needs of Towns
  - Revisit Devens plan and amend it to reflect goals of Towns and final state of Devens regarding physical form

# **APPENDICES**

## **ARTICLE 97 AND OPEN SPACE LANDS**

Text of Article 97 of the State Constitution:

Article XCVII. Article [XLIX](#) of the Amendments to the Constitution is hereby annulled and the following is adopted in place thereof: - The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.



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**(The following document is an Opinion of the Attorney General re: Article 97)**

**Public Land Protection (Constitution Article 97, Opinion of the Attorney General)**

The House of Representatives, by H. 6085, has addressed to me several questions regarding Article 97 of the Articles of Amendment to the Constitution of Massachusetts. Establishing the right to a clean environment for the citizens of Massachusetts, Article 97 was submitted to the voters on the November 1972 ballot and was approved. The questions of the House go to the provision in the Article requiring that acts concerning the disposition of, or certain changes in, the use of certain public lands be approved by a two-third roll-call vote of each branch of the General Court.

Specifically, your questions are as follows:

1. Do the provisions of the last paragraph of Article XCVII of the Articles of the Amendments to the Constitution requiring a two thirds vote by each branch of the general court, before a change can be made in the use or disposition of land and easements acquired for a purpose described in said Article, apply to all land and easements held for such a purpose, regardless of the date of acquisition, or in the alternative, do they apply only to land and easements acquired for such purposes after the effective date of said Article of Amendments?
2. Does the disposition or change of use of land held for park purposes require a two thirds vote, to be taken by the yeas and nays of each branch of the general court, as provided in Article XCVII of the Articles of the Amendments to the Constitution, or would a majority vote of each branch be sufficient for approval?
3. Do the words "natural resources" as used in the first paragraph of Article XCVII of the Articles of the Amendments to the Constitution include ocean, shellfish and inland fisheries; wild birds, including song and insectivorous birds; wild mammals and game; sea and fresh water fish of every description; forests and all uncultivated flora, together with public shade and ornamental trees and shrubs; land, soil and soil resources, lakes, ponds, streams, coastal, underground and surface waters; minerals and natural deposits, as formerly set out in the definition of the words "natural resources" in paragraph two of section one of chapter twenty-one of the General Laws?
4. Do the provisions of the fourth paragraph of Article XCVII of the Articles of the Amendments to the Constitution apply to any or all of the following means of disposition or change in use of land held for a public purpose: conveyance of land; long-term lease for inconsistent use; short-term lease, two years or less, for an inconsistent use; the granting or giving of an easement for an inconsistent use; or any agency action with regard to land under its control if an inconsistent use?

The proposed amendment to the Constitution as agreed to by the majority of the members of the Senate and the House of Representatives, in joint session, on August 5, 1969, and again on May 12, 1971, and became part of the Constitution by approval by the voters at the state election next following, on November 7, 1972. The full text of Article 97 is as follows:

Art. XCVII. Article XLIX of the Amendments to the Constitution is hereby annulled and the following is adopted in place thereof: -The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court.

1. The first question of the House of Representatives asks, in effect, whether the two-thirds roll-call vote requirement is retroactive, to be applied to lands and easements acquired prior to the effective date of Article 97, November 7, 1972. For the reasons below, I answer in the affirmative.

The General Court did not propose this Amendment nor was it approved by the voting public without a sense neither of history nor void of a purpose worthy of a constitutional amendment. Examination of our constitutional history firmly establishes that the two-thirds roll-call vote requirement applies to public lands wherever taken or acquired.

Specifically, Article 97 annuls Article 49, in effect since November 5, 1918. Under that Article the General Court was empowered to provide for the taking or acquisition of lands, easements and interests therein "for the purpose of securing and promoting the proper conservation, development, utilization and control" (of) "agricultural, mineral, forest, water and other natural resources of the commonwealth." Although inclusion of the word "air" in this catalog as it appears in Article 97 may make this new article slightly broader than the supplanted Article 49 as to purposes for which the General Court may provide for the taking or acquisition of land, it is clear that land taken or acquired under the earlier Article over nearly fifty years is now to be subjected to the two-thirds vote requirement for changes in use or other dispositions. Indeed all land whenever taken or acquired is now subject to the new voting requirement. The original draftsmen of our Constitution prudently included in Article 10 of the Declaration of Rights a broad constitutional basis for the taking of private land to be applied to public uses, without limitation on what are "public uses." By way of acts of the Legislature as well as through generous gifts of many of our citizens, the Commonwealth and our cities and towns have acquired parkland and reservations of which we can be justly proud. To claim that new Article 97 does not give the same care and protection for all these existing public lands as for lands acquired by the foresight of future legislators or the generosity of future citizens would ignore public purposes deemed important in our laws since the beginning of our commonwealth.

Moreover, if this amendment were only prospective in effect, it would be virtually meaningless. In our Commonwealth, with a life commencing in the early 1600s and already cramped for land, it is most unlikely that the General Court and the voters would choose to protect only those acres hereafter added to the many thousands already held for public purposes. The comment of our Supreme Judicial Court concerning the earlier Article 49 is here applicable: "It must be presumed that the convention proposed and the people approved and ratified the Forty-ninth Amendment with reference to the practical affairs of mankind and not as a mere theoretical announcement." **Opinion of the Justices**, 237 Mass. 598, 608.

2. (2) In its second question the House asks, in effect, whether the two-thirds roll-call vote requirement applies to land held for park purposes, as the term "park" is generally understood. My answer is in the affirmative, for the reasons below.

One major purpose of Article 97 is to secure that the people shall have "the right to clean air and water, freedom from excessive and unnecessary noise, and- the natural, scenic, historic, and esthetic qualities of their environment." The fulfillment of these rights is uniquely carried out by parkland acquisition. As the Supreme Judicial Court has declared,

"The healthful and civilizing influence of parks in or near congested areas of population is of more than local interest and becomes a concern of the State under modern conditions. It relates not only to the public health in its narrow sense, but to broader considerations of exercise, refreshment, and enjoyment." *Higginson v. Treasurer and School House Commissioners of Boston*, 212 Mass. 583,590; see also *Higginson v. Inhabitants of Nahant*, 11 Allen 530,536.

A second major purpose of Article 97 is "the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources." Parkland protection can b ... afford not only the conservation of forests, water and air but also a means of utilizing these resources in harmony with their conservation. Parkland can undeniably be said to be acquired for the purposes in Article 97 and is thus subject to the two-thirds roll-call requirement.

This question as to parks raises a further practical matter in regard to implementing Article 97 which warrants further discussion. The reasons the Legislature employs to explain its actions can be of countless levels of specificity or generality and land might conceivably be acquired for general recreation purposes or for very explicit uses such as the playing of baseball, the flying of kites, for evening strolls or for Sunday afternoon concerts. Undoubtedly, to the average man, such land would serve as a park but at even a more legalistic level it clearly can also be observed that such land was acquired, in the language of Article 97, because it was a "resource" which could best be "utilized" and "developed" by being "conserved" within a park. But it is not surprising that most land taken or acquired for public use is acquired under the specific terms of statutes which may not match verbatim the more general terms found in Article 10 of the Declaration of Rights of the Constitution or in Articles 39,43,49,51 and 97 of the Amendments. Land originally acquired for limited or specified public purposes is thus not to be excluded from the operation of the two-thirds roll-call vote requirement for lack of express invocation of the more general purposes of Article 97. Rather the scope of the Amendment is to be very broadly construed, not only because of the greater broadness in "public purpose," changed from "public uses" appearing in, Article 49, but also because Article 97 establishes that the protection to be afforded by the Amendment is not only of public uses but of certain express rights of the people.

Thus, all land, easements and interests therein are covered by Article 97 if taken or acquired for "the protection of the people in their right-to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources" as these terms are broadly construed. While small greens remaining as the result of constructing public highways may be excluded, it is suggested that parks, monuments, reservations, athletic fields, concert areas and playgrounds clearly qualify. Given the spirit of the Amendment and the duty of the General Court, it would seem prudent to classify lands and easements taken or acquired for specific purposes not found verbatim in Article 97 as nevertheless subject to Article 97 if reasonable doubt exists concerning their actual status.

3. The third question of the House asks, in effect, how the words "natural resources," as appearing in Article 97, are to be defined.

Several statutes offer assistance to the General Court, all without limiting what are "natural resources." General Laws Ch. 21, § defines "natural resources," for the purposes of Department of Natural Resources jurisdiction, as including "ocean, shellfish and inland fisheries; wild birds, including song and insectivorous birds, wild mammals and game; sea and fresh water fish or every description; forests and all uncultivated flora, together with public shade and ornamental trees and shrubs; land, soil and soil resources, lakes, ponds, streams, coastal, underground and surface waters; minerals and natural deposits."

In addition, G.L. Ch. 12, § 11D, establishing a Division of Environmental Protection in my Department, uses the words "natural resources" in such a way as to include air, water, rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources and "seashores, dunes, marine resources, wetlands, open spaces, natural areas, parks or historic districts or sites." General Laws Ch. 214, § 10A, the so-called citizen-suit statute, contains a recitation substantially identical. To these lists Article 97 would add only "agricultural" resources.

It is safe to say, as a consequence, that the term "natural resources" should be taken to signify at least these cataloged items as a minimum. Public lands taken or acquired to conserve, develop or utilize any of these resources are thus subject to Article 97.

It is apparent that the General Court has never sought to apply any limitation to the term "natural resources" but instead has viewed the term as an evolving one which should be expanded according to the needs of the time and the term was originally inserted in our Constitution for just that reason. See **Debate of the Constitutional Convention 1917-1918**, p. 595. The resources enumerated above should, therefore, be regarded as examples of and not delimiting what are "natural resources."

4. The fourth question of the House requires a determination of the scope of activities which is intended by the words: "shall not be used for other purposes or otherwise disposed of."

The term "disposed" has never developed a precise legal meaning. As the Supreme Court has noted, "The word is **nomen generalissimum**, and standing by itself, without qualification, has no technical signification." **Phelps v. Harris**, 101 U.S. 370,381 (1880). The Supreme Court has indicated, however, that "disposition" may include a lease. **U.S. v. Gratiot**, 39 U.S. 526 (1840). Other cases on unrelated subjects suggest that in Massachusetts the word "dispose" can include all forms of transfer no matter how complete or incomplete. **Rogers v. Goodwin**, 2 Mass. 475s; **Woodbridge v. Jones**, 183 Mass. 549; **Lord v. Smith**, 293 Mass. 555.

In this absence of precise legal meaning, *Webster's Third New International Dictionary* is helpful. "Dispose of" it is defined as "to transfer into new hands or to the control of someone else." A change in physical or legal control would thus prove to be controlling.

I, therefore, conclude that the "dispositions" for which a two-thirds roll-call vote of each branch of the General court is required to include: transfers of legal or physical control between agencies of government, between political subdivisions, and between levels of government, of lands, easements and interests therein originally taken or acquired for the purposes stated in Article 97, and transfers from public ownership to private. Outright conveyance, takings by eminent domain, long-term and short-term leases of whatever length, the granting or taking of easements and all means of transfer or change of legal or physical control are thereby covered, without limitation and without regard to whether the transfer be for the same or different uses or consistent or inconsistent purposes.

This interpretation affords a more objective test, and is more easily applied, than "used for other purposes." Under Article 97 that standard must be applied by the Legislature, however, in circumstances which cannot be characterized as a disposition -that is, when a transfer or change in physical or legal control does not occur. Within any agency or political subdivision any land, easement or interest therein, if originally taken or acquired for the purposes stated in Article 97, may not be "used for other purposes" without the requisite two-thirds roll-call vote of each branch of the General Court.

It may be helpful to note how Article 97 is to be read with the so-called doctrine of "prior public use" application of which also turns on changes in use. That doctrine holds that "public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion." **Robbins v. Department of Public Works**, 355 Mass. 328, 330 and cases there cited.

The doctrine of "prior public use" is derived from many early cases which establish its applicability to transfers between corporations granted limited powers of the Commonwealth, such as eminent domain, and authority over water and railroad easement; e.g., **Old Colony Railroad Company v. Framingham Water Company**, 153 Mass. 561; **Boston Water Power Company v. Boston and Worcester Railroad Corporation**, 23 Pick. 360; **Boston and Main Railroad v. Lowell and Lawrence Railroad Company**, 124 Mass. 368~; **Eastern Railroad Company v. Boston and Main Railroad**, 111 Mass. 125, and **Housatonic Railroad Company v. Lee and Hudson Railroad Company**, 118 Mass. 391. The doctrine was also applied at an early date to transfers between such corporations and municipalities and counties; e.g., **Boston and Albany Railroad Company v. City Council of Cambridge**, 166 Mass. 224 (eminent domain taking of railroad land); **Eldredge v. County Commissioners of Norfolk**, 185 Mass. 186 (eminent domain taking of railroad easement); **West Boston Bridge v. County Commissioners of Middlesex**, 10 Pick. 270 (eminent domain taking of turnpike land), and **Inhabitants of Springfield v. Connecticut River Railroad Co.**, 4 Cush. 63 (eminent domain taking of a public way).

The doctrine of "prior public use" has in more modern times been applied to the following transfers between governmental agencies or political subdivisions; (a) a transfer between state agencies, **Robbins v. Department of Public Works**, 355 Mass. 328 (eminent domain taking of Metropolitan District Commission wetlands). (b) transfers between a state agency and a special state authority, **Commonwealth v. Massachusetts Turnpike Authority**, 346 Mass. 250 (eminent domain taking of MDC land) and see **Loschi v. Massachusetts Port Authority**, 354 Mass. 53 (eminent domain taking of parkland), (c) a transfer between a special state commission and special state authority, **Gould v. Greylock Reservation Commission**, 350 Mass. 410 (lease of portions of Mount Greylock), (d) transfers between municipalities, **City of Boston v. Inhabitants of Brookline**, 156 Mass. 72 (eminent domain taking of a water easement) and **Inhabitants of Quincy v. City of Boston**, 148 Mass. 389 (eminent domain taking of a public way), (e) transfers between state agencies and municipalities, **Town of Brookline v. Metropolitan District Commission**, 357 Mass. 435 (eminent domain taking of parkland) and **City of Boston v. Massachusetts Port Authority**, 356 Mass. 741 (eminent domain taking of a park), (f) a transfer between a special state authority and a municipality, **Appleton v. Massachusetts Parking Authority**, 340 Mass. 303 (1960) (eminent domain, Boston Common), (g) a transfer between a state agency and a county, **Abbot v. Commissioners of the County of Dukes County**, 357 Mass. 784 (Department of Natural Resources grant of navigation easement), and (h) transfers between counties and municipalities, **Town of Needham v. County Commissioners of Norfolk**, 324 Mass. 293 (eminent domain taking of common and park lands) and **Inhabitants of Easthampton v. County Commissioners of Hampshire**, 154 Mass. 424 (eminent domain taking of school lot).

The doctrine has also been applied to the following changes of use of public lands within governmental agencies or within political subdivisions: (a) intra-agency uses, **Sacco v.**

**Department of Public Works**, 352 Mass. 670 (filling a portion of a Great Pond), (b) intramunicipality uses,

**Higginson v. Treasurer and School House Commissioners of Boston**, 212 Mass. 583 (erecting a building on a public park), and see **Kean v. Stetson**, 5 Pick. 492 (road built adjoining a river), and (c) introcounty uses, **Bauer v. Mitchell**, 247 Mass. 522 (discharging sewage upon school land). The doctrine may also possibly reach de facto changes in use; e.g., **Pilgrim Real Estate Inc. v. Superintendent of Police of Boston**, 330 Mass. 250 (parking of cars on park area) and may be available to protect reservation land held by charitable corporations; e.g., **Trustees of Reservations v. Town of Stockbridge**, 348 Mass. 511 (eminent domain).

In addition to these extensions of the doctrine, special statutory protections, codifying the doctrine of "prior public use," are afforded local parkland and commons by G. L. Ch. 45 and public cemeteries by G. L. Ch. 114 §§17-41. As to changes in use of public lands held by municipalities or counties, generally, see G. L. Ch. 40 §15A and G. L. Ch. 214 §3(11).

This is the background against which Article 97 was approved. The doctrine of "prior public use" requires legislative action, by majority vote, to divert land from one public use to another inconsistent public use. As the cases discussed above indicate, the doctrine requires an act of the Legislature regardless whether the land in question is held by the Commonwealth, its agencies, special authorities and commissions, political subdivisions or certain corporations granted powers of the sovereign. And the doctrine applies regardless whether the public use for which the land in question is held in a conservation purpose.

As to all such changes in use previously covered by the doctrine of "prior public use" the new Article 97 will only change the requisite vote of the Legislature from majority to two thirds. Article 97 is designed to supplement, not supplant, the doctrine of "prior public use."

Article 97 will be of special significance, though, where the doctrine of "prior public use" has not yet been applied. For instance, legislation and a two-thirds roll-call vote of the Legislature will now for the first time be required even when a transfer of land or easement between governmental agencies, between political subdivisions, or between levels of government is made with no change in the use of the land, and even where a transfer is from public control to private.

Whether legislation pending before the General Court is subject to Article 97, or the doctrine of "prior public use," or both, it is recommended that the legislation meet the high standard of specificity set by the Supreme Judicial Court in a case involving the doctrine of "prior public use":

"We think it is essential to the expression of plain and explicit authority to divert (public lands) to a new and inconsistent public use that the Legislature identify the land and that there appear in the legislation not only a statement of the new use but a statement or recital showing in some way legislative awareness of the existing public use. In short, the legislation should express not merely the public will for the new use but its willingness to surrender or forego the existing use." (Footnote omitted.) **Robbins v. Department of Public Works**, 355 Mass. 328, 331.

Each piece of legislation which may be subject to Article 97 should, in addition, be drawn so as to identify the parties to any planned disposition of the land.

**Conclusions.** Article 97 of the Amendments to the Massachusetts Constitution establishes the right of the people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic and esthetic qualities of their environment. The protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is declared to be a public purpose. Lands, easements, and interests therein taken or acquired for such public purposes are not to be

disposed of or used for other purposes except by two-thirds roll-call vote of both the Massachusetts Senate and House of Representatives.

Answering the questions of the House of Representatives I advise that the two-thirds roll-call vote requirement of Article 97 applies to all lands, easements and interests therein **whenever** taken or acquired for Article 97 conservation, development or utilization purposes, even prior to the effective date of Article 97, November 7, 1972. The Amendment applies to land, easements and interests therein held by the Commonwealth, or any of its agencies or political subdivisions, such as cities, towns and counties.

I advise that "natural resources" given protection under Article 97 would include at the very least, without limitation: air, water, wetlands, rivers, streams, lakes, ponds, coastal, underground and surface waters, flood plains, seashores, dunes, marine resources, ocean, shellfish and inland fisheries, wild birds including song and insectivorous birds, wild mammals and game, sea and fresh water fish of every description, forests and all uncultivated flora, together with public shade and ornamental trees and shrubs, land, soil and soil resources, minerals and natural deposits, agricultural resources, open spaces, natural areas, and parks and historic districts or sites.

I advise that Article 97 requires a two-thirds roll-call vote of the Massachusetts Senate and House of Representatives for all transfers between agencies of government and between political subdivisions of lands, easements or interests therein originally taken or acquired for Article 97 purposes, and transfers of such land, easements or interests therein from one level of government to another, or from public ownership to private. This is so without regard to whether the transfer be for the same or different uses or consistent or inconsistent purposes. I so advise because such transfers are "dispositions" under the terms of the new Amendment, and because "disposition" includes any change of legal or physical control, including but not limited to outright conveyance, eminent domain takings, long and short-term leases of whatever length and the granting or taking of easements.

I also advise that intra-agency changes in uses of land from Article 97 purposes, although they are not "dispositions," are similarly subject to the two-thirds roll-call vote requirement.

Read against the background of the existing doctrine of "prior public use," Article 97 will thus for the first time require legislation and a special vote of the Legislature even where a transfer of land between governmental agencies, between political subdivisions or between levels of government results in no change in the use of land, and even where a transfer is made from public control to private. I suggest that whether legislation pending before the General Court is subject to Article 97, or the doctrine of "prior public use," or both, the very highest standard of specificity should be required of the draftsmen to assure that legislation clearly identifies the locus, the present public uses of the land, the new uses contemplated, if any, and the parties to any contemplated "disposition" of the land.

In short, Article 97 seeks to prevent government from ill-considered misuse or other disposition of public lands and interests held for conservation, development or utilization of natural resources. If land is misused a portion of the public's natural resources may be forever lost, and no less so than by outright transfer. Article 97 thus provides a new range of protection for public lands far beyond existing law and much to the benefit of our natural resources and to the credit of our citizens.

## EOEA ARTICLE 97 LAND DISPOSITION POLICY

February 19, 1998

### **I. Statement of Policy**

It is the policy of EOEA and its agencies to protect, preserve and enhance all open space areas covered by Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts. Accordingly, as a general rule, EOEA and its agencies shall not sell, transfer, lease, relinquish, release, alienate, or change the control or use of any right or interest of the Commonwealth in and to Article 97 land. The goal of this policy is to ensure no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions. Exceptions shall be governed by the conditions included in this policy. This policy supersedes all previous EOEA Article 97 land disposition policies.

An Article 97 land disposition is defined as: a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or license is not considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

### **II. Conditions for Disposition Exceptions**

EOEA and its agencies shall not support an Article 97 land disposition unless EOEA and its agencies determine that exceptional circumstances exist. A determination of "exceptional circumstances" is subject to all of the following conditions being met:

1. all other options to avoid the Article 97 disposition have been explored and no feasible and substantially equivalent alternatives exist (monetary considerations notwithstanding);

Note: The purpose of evaluating alternatives is to avoid using/affecting Article 97 land to the extent feasible. To that end, the scope of alternatives under consideration shall be commensurate with the type and size of the proposed disposition of Article 97 land, and must be performed by the proponent of the disposition to the satisfaction of EOEA and its agencies. The scope of alternatives extends to any sites that were available at the time the proponent of the Article 97 disposition first notified the controlling agency of the Article 97 land, and which can be reasonably obtained: (a) within the appropriate market area for private proponents, state, and/or regional entities; or (b) within the appropriate city/town for municipal proponents.

2. the disposition of the subject parcel and its proposed use do not destroy or threaten a unique or significant resource (e.g., significant habitat, rare or unusual terrain, or areas of significant public recreation), as determined by EOEA and its agencies;
3. as part of the disposition, real estate of equal or greater *fair market value* or *value in use of proposed use*, whichever is greater, and significantly greater re



4. source value as determined by EOEA and its agencies, are granted to the disposing agency or its designee, so that the mission and legal mandate of EOEA and its agencies and the constitutional rights of the citizens of Massachusetts are protected and enhanced;
5. the minimum acreage necessary for the proposed use is proposed for disposition and, to the maximum extent possible, the resources of the parcel proposed for disposition continue to be protected;
6. the disposition serves an Article 97 purpose or another public purpose without detracting from the mission, plans, policies and mandates of EOEA and its appropriate department or division; and
7. the disposition of a parcel is not contrary to the express wishes of the person(s) who donated or sold the parcel or interests therein to the Commonwealth.

### **III Procedures for Disposition**

Although legislation can be enacted to dispose of Article 97 land without the consent of an EOEA agency, it is the policy of EOEA to minimize such occurrences. To that end, and to ensure coordination, EOEA agencies shall:

1. develop an internal review process for any potential Article land disposition to ensure that, at a minimum, the conditions in Section II above are met;
2. develop, through the Interagency Lands Committee, a joint listing of all requests, regardless of their status, for the disposition of Article 97 land;
3. notify the Interagency Lands Committee of any changes to the Article 97 land disposition list;
4. monitor all legislation that disposes of Article 97 land, and communicate with legislative sponsors regarding their intent;
5. recommend to the Secretary that the Governor veto any legislation that disposes of Article 97 land, the purchase, improvement, or maintenance of which involved state funds, on for which the EOEA agency has not been consulted and received documentation (including information on title, survey, appraisal, and a MEPA review, all at the proponent's expense);
6. obtain the concurrence of the Secretary of EOEA for any proposed Article 97 land disposition decision prior to finalizing said decision;
7. if recommending an Article 97 disposition, attach to all Article 97 legislative recommendations and TR-1 forms a justification of the disposition and an explanation of how it complies with this policy, signed by the EOEA agency head;
8. ensure that any conditions approved by EOEA and its agencies to any Article 97 land disposition are incorporated within the surplus declaration statement submitted to and published by DCPO as required by G.L.c.7, ss. 40F and 40F1/2 and throughout the disposition process, and if such conditions are not incorporated in said statement throughout the disposition process, the EOEA agency head shall recommend to the Secretary that the Governor veto any resulting legislation;
9. recommend to the Secretary that the Governor veto legislation that disposes of Article 97 land of which the agency disapproves; and

10. ensure that any Article 97 land disposition is authorize by enacted legislation and approved by all municipal, state and federal agencies, authorities, or other governmental bodies so required and empowered by law prior to conveyance.

#### **IV Applicability of This Policy to Municipalities**

To comply with this policy, municipalities that seek to dispose of any Article 97 land must:

1. obtain a unanimous vote of the municipal Conservation Commission that the Article land is surplus to municipal, conservation, and open space needs;
2. obtain a unanimous vote of the municipal Park Commission if the land proposed for disposition is park land;
3. obtain a two-thirds Town Meeting or City Council vote in support of the disposition;
4. obtain two-thirds vote of the legislature in support of the disposition, as required under the state constitution;
5. comply with all requirements of the Self-Help, Urban Self-Help, Land and Water Conservation Fund and any other applicable funding sources; and
6. comply with the EOEA Article 97 Land Disposition Policy.

After the effective date of this policy, any municipality that proposes, advocates, supports or completes a disposition of Article 97 land without also following the terms of this policy, regardless of whether or not state funds were used in the acquisition of the Article 97 land, shall not be eligible for grants offered by EOEA or its agencies until the municipality has complied with this policy. Compliance with this policy by municipalities shall be determined by the EOEA Secretary, based on recommendations by the EOEA Interagency Lands Committee

Signed by

Trudy Cox, Secretary

Executive Office of Environmental Affairs

February 19, 1998

## **STATUS OF DEVENS RECREATION FACILITIES**

<b>Facility</b>	<b>1996 Open Space &amp; Recreation Plan</b>	<b>2002 Status</b>
Willard Park Football (1)	Retain for recreation	In use; conceptual plan for reconfiguration completed
Willard Park Track	Retain for recreation	Not in use – will be replaced by additional soccer field upon reconfiguration
Willard Park Softball (3)	Retain for recreation	In use; smallest field will be lost upon reconfiguration
Willard Park Tennis (3)	Not Operational - Evaluate	Not in use – will become parking
Sherman Ave. Field	Relocate from development zone	Lost to Construction. To be replaced by new field off Cook Street in 2003
Rogers Field	Protect with development restrictions	In use for events
Queenstown Tennis (4)	Retain for recreation	In use
Queenstown Volleyball (2)	Not Operational – Retain for Recreation	Not currently used
Queenstown Racquetball (4)	Retain for recreation	In use for 2 handball courts and tennis practice
Queenstown Basketball (1)	Retain	In use
Shirley Gate Softball (4)	In development zone – Encourage developers to replace	Lost to construction of Shirley school
Shirley Gate Field	In development zone – Encourage developers to replace	Lost to construction of Shirley school; To be replaced by 1 game and 1 practice field on Saratoga Street in 2003 or 2004
Riggs Gym	Retain for recreation	Devens Fitness & Wellness Center operated by Healthtrax since Oct. 2001
Sports Arena	Retain for recreation	In use
Buker Pool	Not Operational - Evaluate	Demolished; Replacement is not currently financially justified
Mirror Lake	Retain for recreation	In use since 1999 for swimming, boating, fishing; Master Plan to be completed July 1, 2002; trails plan to be completed June 1, 2002.
Robbins Pond	Retain for recreation	In use as picnic area
Golf Course	Relocate	Red Tail Golf Club Opening April, 2002 Land leased to operator
Day and Resident Camps	Not mentioned	Operated by contractors in Washington Hall
Outward Bound	Not Mentioned	Operated under lease by contractor; primarily corporate use at present

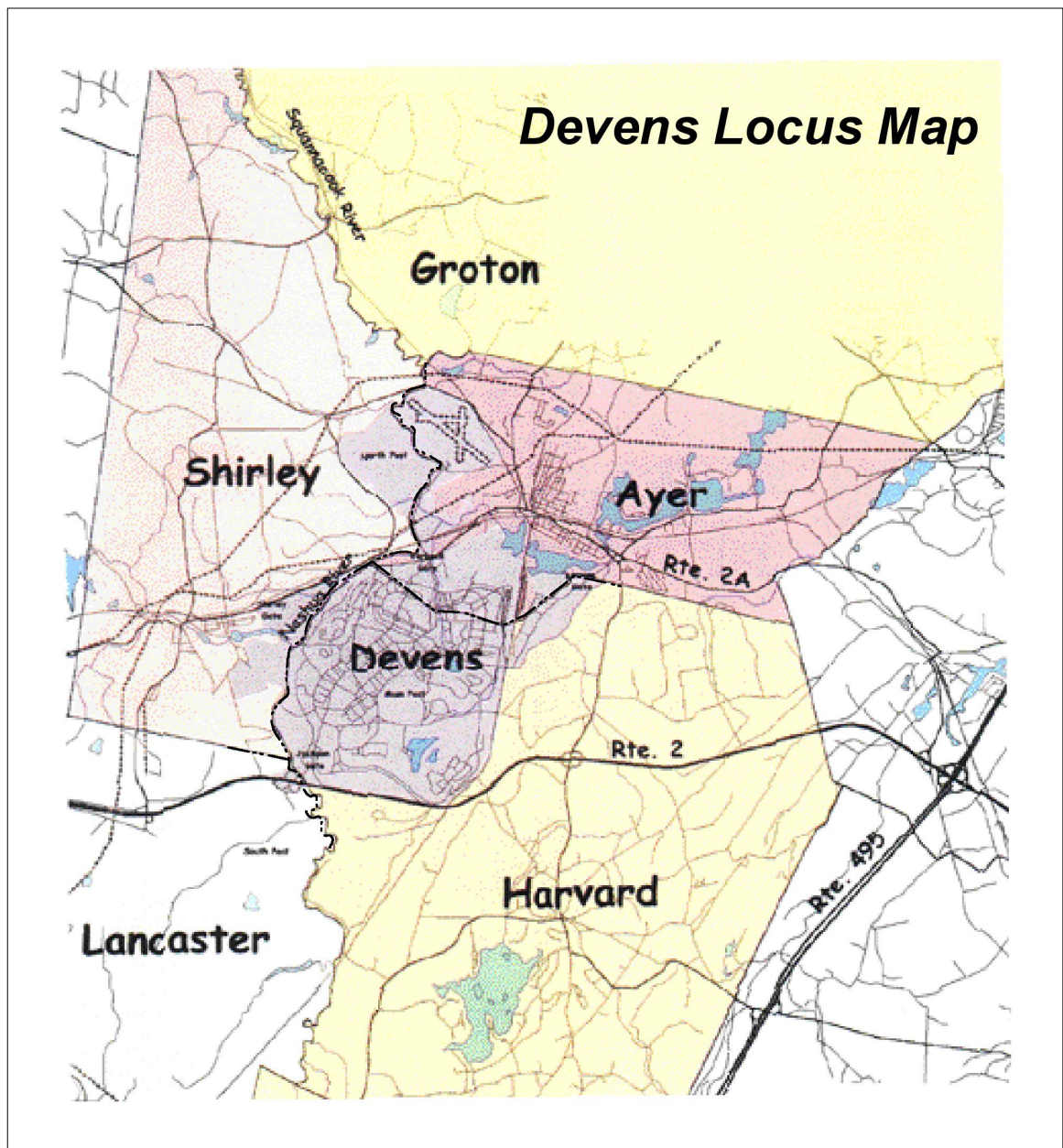
# **MAPS AND ALTERNATIVE DEVELOPMENT CONCEPTS**

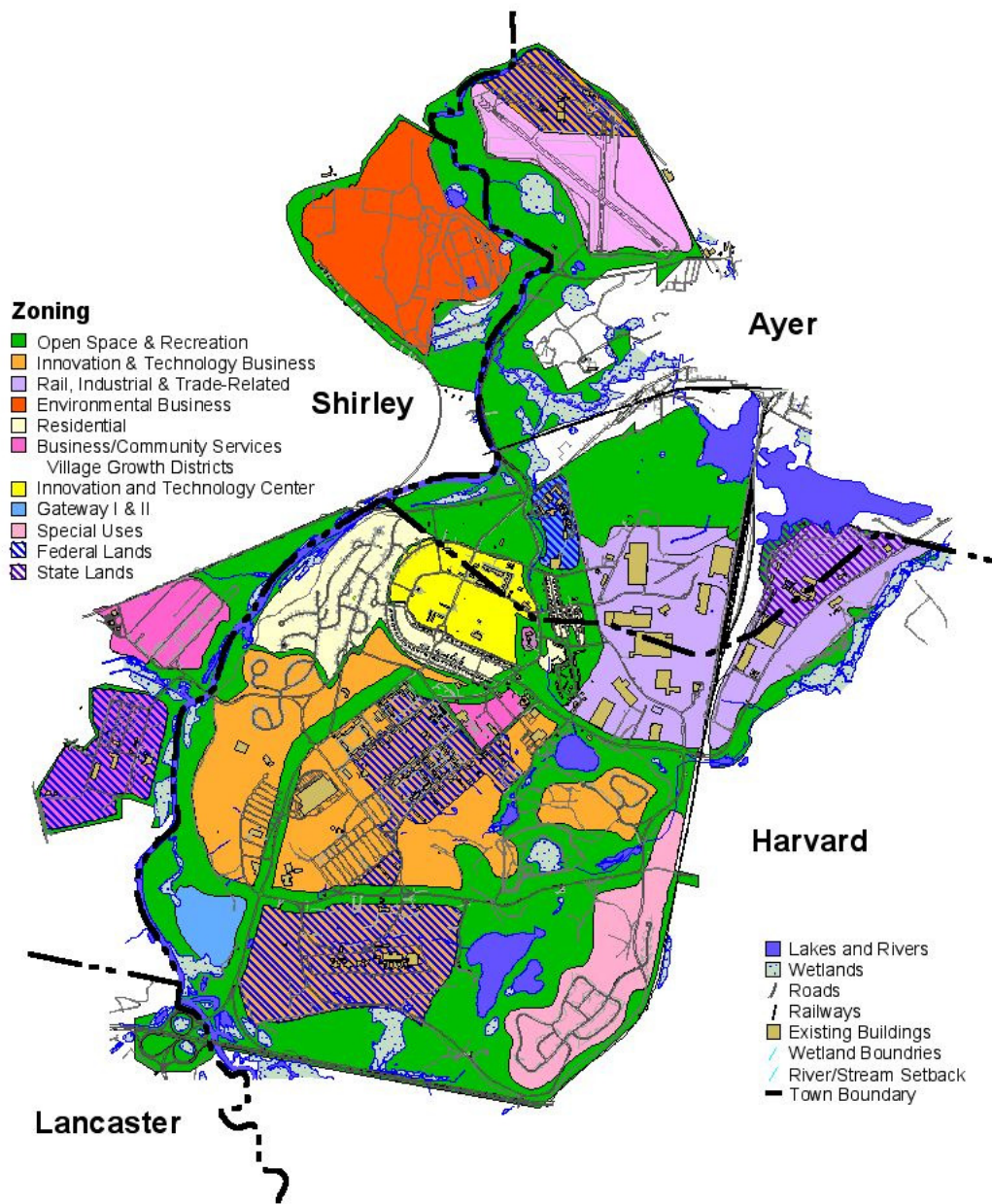
- Locus Map
- Zoning and Town Boundaries
- Federally Owned and Administered Lands
- Restricted Access Areas
- Buildings and Parcels
- Existing Open Space
- Open Space and Connections
- Schools, Recreation and Municipal Services
- Housing and Community Development

*Sources:*

Locus Map – Devens Regional Trails Plan

Others – map datalayers courtesy of MassDevelopment

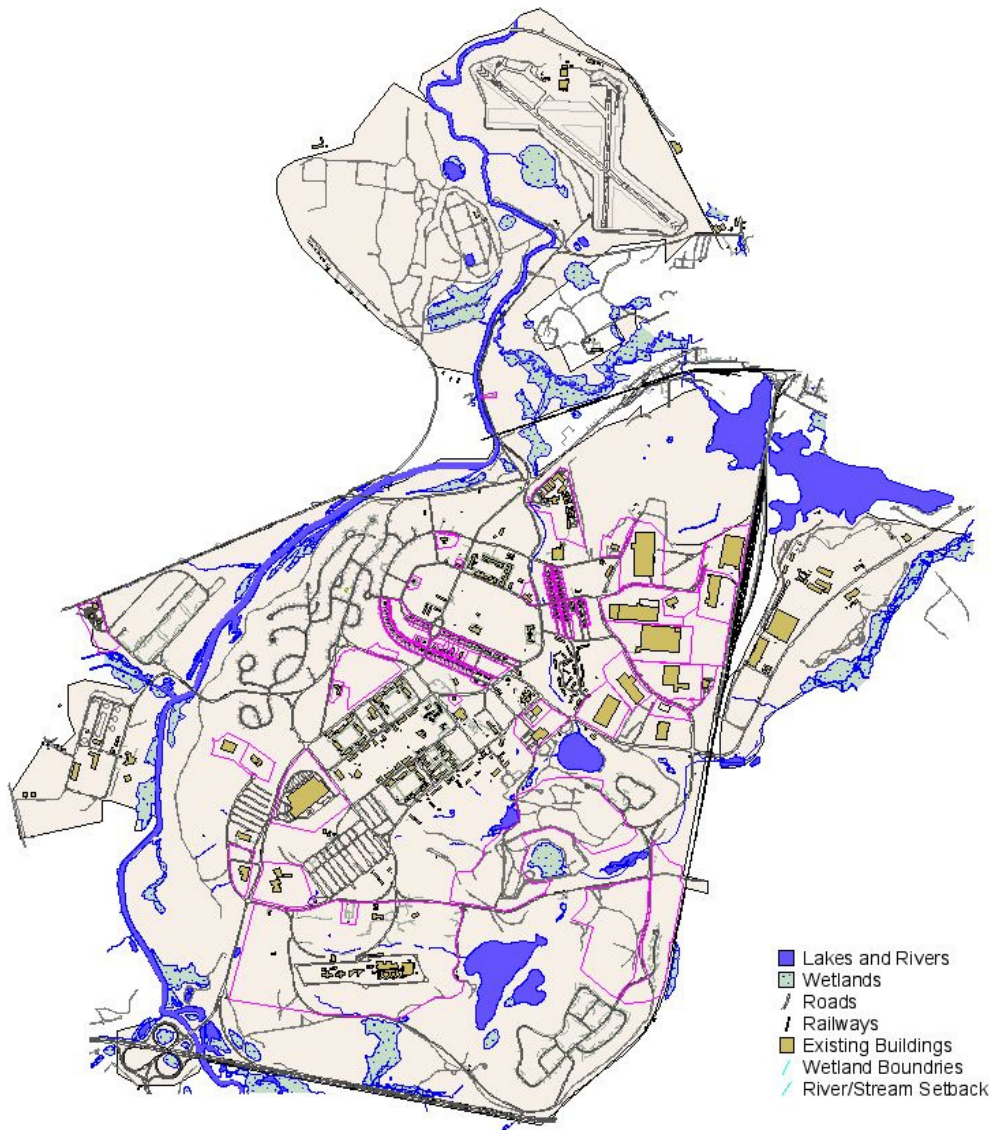




## ***Zoning and Town Boundaries***



**Tri-Town Five-Year Review of the Devens Reuse Plan – Phase II**  
*Community Design Partnership*



## ***Buildings and Parcels***

Buildings scheduled for demolition are NOT shown.



# Existing Open Space

