

DEVENS DISPOSITION EXECUTIVE BOARD

DISPOSITION OF DEVENS

**STAKEHOLDER
MEMORANDUM OF UNDERSTANDING**

FINAL DRAFT

June 8, 2006

COVERING MEMORANDUM

TO: DDEB and Other Interested Parties
FR: Paul Bresnahan, Governance Committee Chair
RE: Final Draft of MOU
DA: June 2, 2006

This memo is from the Governance Committee as sponsor of the Stakeholder Review Committee which has been reviewing the Second Draft of the MOU.

This third revision of the MOU is intended to be the final draft for review and ratification by the DDEB. Prior to the DDEB review, the Stakeholders have scheduled reviews on June 5 through 8 to discuss their intentions regarding ratification of the document.

The DDEB review is planned for Thursday, June 8 at its regularly scheduled meeting at Shirley Town Hall at 4 PM.

The third draft ("Final Draft") will be distributed to the DDEB members on Friday, June 2. In addition, hard copies will be available by at the three town halls and at the Devens MassDevelopment office. Efforts will also be made to post the document on Stakeholder websites.

Please contact your DDEB member if you have any questions.

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MEMORANDUM OF UNDERSTANDING

I. PREAMBLE

A. THE PARTIES

This Memorandum of Understanding (“Agreement”) is dated as of the ____ day of June, 2006, by and among the MASSACHUSETTS DEVELOPMENT FINANCE AGENCY, a Massachusetts body politic and corporate established by Chapter 23G of the Massachusetts General Laws, successor-in-interest to the Government Land Bank under Chapter 289 of the Acts of 1998, having its principal place of business located at 160 Federal Street, 7th Floor, Boston, Massachusetts 02110, and a local place of business at 33 Andrews Parkway, Devens, Massachusetts 01434 (“MassDevelopment”), the TOWN OF AYER, MASSACHUSETTS, a Massachusetts municipal corporation with an address at Ayer Town Hall, 1 Main Street, Ayer, Massachusetts 01432 (“Ayer”), the TOWN OF HARVARD, MASSACHUSETTS, a Massachusetts municipal corporation with an address at Harvard Town Hall, 13 Ayer Road, Harvard, Massachusetts 01451 (“Harvard”), the TOWN OF SHIRLEY, MASSACHUSETTS, a Massachusetts municipal corporation with an address at Shirley Town Offices, 7 Keady Way, Shirley, Massachusetts 01464 (“Shirley”), the DEVENS ENTERPRISE COMMISSION, a body corporate established by Section 9 of Chapter 498 of the Acts of 1993, having its principal place of business at 33 Andrews Parkway, Devens, Massachusetts 01434, (the “DEC”), and THE RESIDENTS OF DEVENS, by and through their authorized representatives, the Devens Citizens Advisory Committee (the “Devens Committee”) having an address c/o MassDevelopment, 33 Andrews Parkway, Devens, Massachusetts 01434 (the “Devens Residents”). MassDevelopment, Ayer, Harvard, Shirley, the DEC, and the Devens Residents are sometimes collectively referred to herein as the “Parties” or the “Stakeholders”.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties hereto agree as follows:

B. PURPOSE OF THIS AGREEMENT

The Parties agree that the purpose of this Agreement is to set forth a single disposition scenario upon which to base the report to be submitted to the Commonwealth as contemplated by Section 23 of Chapter 498 of the Acts of 1993 (the "Report") and to establish the dates on which the votes of the Stakeholders shall be held on the question of whether to submit the Report.

This Agreement is not intended to preclude the further study and analysis of the many important issues attendant to the disposition process that are not addressed within this document; rather, it is meant to focus the Stakeholders on salient matters and agreements that will provide a common basis and context for the Stakeholders' consideration.

To that end, this Agreement shall identify those matters upon which consensus has been reached and shall further commit each Stakeholder to continue to work in good faith to resolve as many unresolved issues as possible before such votes are held.

To the extent the Parties can agree that certain issues remain to be studied, addressed, or finally determined, but that such additional work does not need to be completed before this Agreement can be executed or before certain votes are held, the Parties shall identify those issues and agree to continue to work in good faith to resolve them after such votes are held.

This Agreement is intended to serve as a non-binding statement of intentions, subject to change as the disposition process continues, that will help the parties to focus on issues and efficiently devote resources to the preparation of the Report.

In the event that affirmative votes of 5 of the 6 Stakeholders are not cast (as more particularly described below), this Agreement shall become null and void and shall be of no further effect.

C. SHARED GOALS

The Stakeholders share the goals of (i) reaching consensus on a recommendation for the final disposition of the Devens Regional Enterprise Zone; (ii) educating the public as to the process intended to establish consensus and the reasons for the recommendation for final disposition to enable the voting public to make an informed decision on

questions put before them; and (iii) using this Agreement as a tool to achieve the above stated goals and, with the support of the public evidenced by a series of affirmative votes, to submit a joint study and Report to the Commonwealth as set forth in Chapter 498 of the Acts of 1993.

D. BACKGROUND

In 1991, the federal government decided to close Fort Devens. That decision led to a series of events that resulted in the Commonwealth purchasing and acquiring jurisdiction over much of the land within the Devens Regional Enterprise Zone. A lengthy public process concluded in 1994 with the creation of what is known as the “Reuse Plan”. The process in which we are now engaged seeks to revisit the Reuse Plan, Zoning By-Laws and plot a new course for the future of Devens. A more complete description of these events is included within the “Summary of Facts Leading up to this Agreement” attached hereto as Appendix 1 and made a part hereof.

E. DISPOSITION SCENARIOS CONSIDERED

In the course of its work, the Devens Disposition Executive Board (“DDEB”) created the following six committees: Coordinating, Communications, Governance, Land Use/Open Space/Resource Protection, Housing/Transportation, and Economic Development/Financial Analysis. The DDEB charged each Committee with studying the various disposition issues listed in a certain “Devens Disposition Committee Task Coordination List”.

Beginning in late 2004, the DDEB Committees studied their assigned tasks with each focusing on the subject areas within its assigned purview. This effort resulted in the production of Committee reports to the DDEB that, prior to the votes being held, will be finalized and become an integral component of the Report.

As the result of the work of the DDEB and its committees and after considering each Stakeholder’s criteria for success, four (4) possible “disposition scenarios” or choices for the final disposition of the Devens Regional Enterprise Zone were identified.

Those four scenarios may be broadly described as follows:

1A - Resumption of Governance by the Towns

Ayer, Harvard and Shirley resume governance over Devens land that was historically within its respective jurisdiction; minor adjustments made to historical town boundaries

1B - Resumption of Governance by the Towns

Ayer, Harvard and Shirley resume governance over Devens land that was historically within its respective jurisdiction; significant adjustments made to historical town boundaries; the Devens community to be within a single town's jurisdiction

2A - Creation of a Separate Municipality

Incorporate a new town; town boundaries established by existing boundaries of Devens Regional Enterprise Zone

2B - Creation of a Separate Municipality

Incorporate a new town; town boundaries established by returning jurisdiction of the "out-parcels" to the Towns

In addition to and in connection with this work of the DDEB committees, each Stakeholder produced one or more lists of "criteria for success" describing matters deemed important to achieve or satisfactorily address before consensus could be reached.

Simultaneously, each Stakeholder revised its criteria for success in an effort to reach consensus. (The final criteria for success for each Stakeholder are attached hereto as Appendix 12 and made a part hereof.) The DDEB Coordinating Committee, as directed by the DDEB, identified the areas of common ground among the stated criteria for success and substantive and pertinent matters from the criteria upon which consensus was reached have been incorporated into the body of this Agreement. The DDEB has determined that consensus can likely be achieved on only one of the four scenarios.

F. DISPOSITION SCENARIO ENDORSED

The Stakeholders and the DDEB have endorsed Disposition Scenario 2B (“2B”). The DDEB has determined that 2B best addresses the collective Stakeholder criteria. While 2B may not be each Stakeholder’s most favored scenario to address its needs and desires, the Stakeholders each recognized that 2B was (i) acceptable and (ii) more likely to lead to consensus. Therefore, 2B is the recommended scenario.

The DDEB has endorsed Scenario 2B over the other scenarios for some of the following reasons:

- Only one (1) Stakeholder would support Scenario 1A
- Lack of consensus on the number of additional housing units under Scenario 1A
- Opposition to changing the character of existing towns
- Preference that the existing housing areas within Devens should remain within one town rather than being split into multiple towns
- Acknowledgement of the majority of the existing Devens residents’ stated desire to create a municipality

After reviewing this Agreement and requesting input and comment from each Committee and other interested parties, the DDEB has endorsed and recommended Scenario 2B and forwarded it to each Stakeholder for its endorsement.

Each Stakeholder has held an open and public process to debate the merits of endorsing 2B and this Agreement and has had an opportunity to comment on its content and form.

That process is summarized as follows:

Harvard	Public Hearing (February 7, 2006)
	Town Meeting Warrant Article (March 25, 2006)
	Town Election Ballot (March 28, 2006)
	Public Hearing on MOU (April 18, 2006)
	Public Hearing on MOU (May 2, 2006)
	Public Hearing on MOU (June 6, 2006)

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Ayer Sasaki Public Workshop on North Post (September 22, 2005)
Office of Community and Economic Development (OCED) Public
 Workshop on North Post (October 11, 2005)
Sasaki Concept Plans Public Workshop (November 14, 2005)
OCED Public Workshop (December 20, 2005)
Board of Selectmen Meeting on 2B (January 31, 2006)
Board of Selectmen Meeting on 2B (February 7, 2006)
Ayer Citizens Review Meeting (March 1, 2006)
Board of Selectmen Meeting on 2B (March 7, 2006)
Ayer Citizen Informational Hearing (March 30, 2006)
Public Workshop on MOU (April 13, 2006)
Public Workshop on MOU (May 17, 2006)
Public Hearing on MOU (June 7, 2006)

Shirley Public Forum (November 24, 2005)
Public Forum (December 5, 2005)
Public Forum (February 13, 2006)
Public Hearing (April 10, 2006)
Board of Selectmen Public Hearing (April 10, 2006)
Board of Selectmen Public Hearing (May 1, 2006)
Board of Selectmen Public Hearing (May,15 2006)
Board of Selectmen Public Hearing (May 22, 2006)
Board of Selectmen Public Hearing (June 5, 2006)
Planning Board Hearing (February 2, 2006)
Zoning By-Law Review Comm. Public Meeting 2/22/06)
Zoning By-Law Review Comm. Public Meeting (2/28/06)
Zoning By-Law Review Comm. Public Meeting (3/7/06)
Zoning By-Law Review Comm. Public Meeting (3/14/06)
Zoning By-Law Review Comm. Public Meeting (3/21/06)
Zoning By-Law Review Comm. Public Meeting (4/11/06)
Zoning By-Law Review Comm. Public Meeting (4/18/06)

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Zoning By-Law Review Comm. Public Meeting (4/25/06)
Zoning By-Law Review Comm. Public Meeting (5/02/06)
Zoning By-Law Review Comm. Public Meeting (5/09/06)
Zoning By-Law Review Comm. Public Meeting (5/16/06)
Zoning By-Law Review Comm. Public Meeting (5/22/06)

Devens Committee

Devens Committee Meeting (January 9, 2006)
Public Hearing (January 21, 2006)
Public Hearing (January 25, 2006)
Devens Committee Meeting (February 6, 2006)
Devens Committee Meeting (March 1, 2006)
Public Hearing (March 11, 2006)
Public Hearing (April 19, 2006)
Public Hearing (May 15, 2006)
Public Hearing (June 5, 2006)

MassDevelopment

Meeting of Board of Directors (September 8, 2005)
Meeting of Board of Directors (November 9, 2005)
Meeting of Board of Directors (December 8, 2005)
Meeting of Board of Directors (January 12, 2006)
Meeting of Board of Directors (February 9, 2005)
Meeting of Board of Directors (March 9, 2005)
Meeting of Board of Directors (April 6, 2005)
Meeting of Board of Directors (June 8, 2005)

Devens Enterprise Commission

Meeting of Commissioners/Public Hearings (May 12, 2005)
Meeting of Commissioners/Public Hearings (August 30, 2005)
Meeting of Commissioners/Public Hearings (September 27, 2005)

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Meeting of Commissioners/Public Hearings (October 25, 2005)
Meeting of Commissioners/Public Hearings (November 29, 2005)
Meeting of Commissioners/Public Hearings (December 8, 2005)
Meeting of Commissioners/Public Hearings (January 31, 2006)
Meeting of Commissioners/Public Hearings (February 9, 2006)
Meeting of Commissioners/Public Hearings (March 9, 2006)
Meeting of Commissioners/Public Hearings (March 28, 2006)
Meeting of Commissioners/Public Hearings (April 6, 2006)
Meeting of Commissioners/Public Hearings (April 11, 2006)
Meeting of Commissioners/Public Hearings (May 30, 2006)
Meeting of Commissioners/Public Hearings (June 8, 2006)

A roll call of the formal vote of each Stakeholder on whether to endorse this Agreement is as follows: *[TO BE INSERTED AFTER PARTIES DECIDE WHETHER TO SIGN]*

Harvard
Ayer
Shirley
Devens Committee
MassDevelopment
DEC

Based upon the affirmative vote of X of 6 Stakeholders, the Parties hereby agree that consensus has been reached on Scenario 2B. The Parties further agree that, subject to the satisfactory inclusion of the terms and conditions of this Agreement within the proposed legislation, revised reuse plan and/or amended zoning by-laws, as the case may be, a vote on whether to submit a joint study and Report to the Commonwealth in accordance with the provisions of Chapter 498 shall be put before the towns in a special town meeting, caucus and subsequent ballot question at town elections.

The Report and any accompanying materials submitted to the Commonwealth shall reflect the substance and intent of this Agreement without significant or substantive variation.

II. AGREEMENT

A. THE PROCESS

1. The Parties hereby reaffirm their commitment to holding votes on or before November 2006 on the question of whether to submit the joint study and final Report to the Commonwealth pursuant to Chapter 498.

2. The Parties hereby agree that the final work product of the DDEB and the consultants retained by the DDEB and/or one or more Stakeholders shall collectively constitute the joint "Study" required by Section 23 of Chapter 498.

3. The following materials shall collectively comprise the "Disposition Package":

- (i) the Report;
- (ii) the joint Study;
- (iii) the Reuse Plan as modified;
- (iv) the Zoning By-Laws as modified;
- (v) draft legislation; and
- (vi) any accompanying ancillary materials.

A draft of proposed changes to zoning within the Devens Regional Enterprise Zone shall be substantially complete and made available for public review and comment no later than August 10, 2006. After receiving public comment, changes to zoning within the Devens Regional Enterprise Zone to be included in the Disposition Package shall be substantially complete no later than September 7, 2006.

The Disposition Package shall be agreed upon by the Stakeholders and be substantially complete no later than forty-five (45) days before the scheduled date of the first vote. However, the Disposition Package, or parts thereof, shall thereafter be amended to report the outcome of each of the nine (9) votes held. The Parties also agree

that typographic and other non-substantive changes may be made to the Disposition Package after such date.

Subject to applicable law, the Disposition Package and other pertinent information, if any, shall be compiled in the form of “voter information materials” acceptable to the Parties that shall serve to enable the voters to make an informed decision.

4. In connection with such votes, the parties agree as follows:

(i) All Parties shall vote on the same Disposition Package. The language of the question voted upon shall be identical for each vote taken by each Stakeholder.

(ii) All parties acknowledge and agree that the form of the votes taken on the Disposition Package be simple approval or disapproval; that is, the Parties shall vote “Yes” or “No” on the Disposition Package itself as presented for the votes, with no amendments or revisions, and with no conditional approval permitted to the Disposition Package as a part of such voting process. A vote by a Stakeholder that is conditional, or includes amendments, or revisions to any part of the Disposition Package shall be considered a negative vote by that Stakeholder.

An affirmative vote shall have the effect of approving the submission of the joint study and Report to the Commonwealth in accordance with Chapter 498.

(iii) An affirmative simple majority vote of each vote described herein held shall be required to designate each Stakeholder as having voted in favor of the Disposition Package and related materials.

(iv) If more than one vote as described herein is held by a Stakeholder, one negative vote shall be deemed to mean that the Stakeholder has

