

**DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06**

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:

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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 not intended to be binding on the signatories thereto; it~~ is intended to serve as a non-binding statements 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

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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 Report to the Commonwealth as set forth in Chapter 498 of the Acts of 1993.

D. ~~HOW DID WE GET HERE?~~ 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:

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1A - Resumption of Governance by the Towns

Ayer, Harvard and Shirley resume governance over Devens land that was historically within its respective jurisdiction; ~~M~~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; ~~S~~significant adjustments made to historical town boundaries; ~~T~~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, ~~the each~~ Stakeholders ~~each~~ revised its criteria for success in an effort to reach consensus. (The final criteria for success for each Stakeholder are attached hereto as Appendix 92 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 ~~it is likely that~~ consensus can likely be achieved on only one of the four scenarios.

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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. ~~and~~ Therefore, 2B is the recommended scenario.

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

- ~~5 of 6~~ Only one (1) Stakeholders would ~~not~~ support Scenario 1A
- Lack of consensus on the number of additional housing units under Scenario 1A
- Opposition to changing the character of existing towns
- ~~Opposition to the financial obligations of providing municipal services and education~~
- ~~Opposition to separating the existing housing areas within Devens into multiple 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
- ~~Numerous benefits to each Stakeholder as well as the region and the Commonwealth~~

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 ~~provide~~ comment ~~to~~ on its content and form.

That process is summarized as follows:

~~{ACTUAL DETAILS OF PROCESS LEADING UP TO EXECUTION OF THIS MOU TO BE INSERTED}~~

Harvard Public Hearing (February 7, 2006)

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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)

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)

Board of Selectmen Meeting on 2B (March 7, 2006)

Public Workshop on MOU (April 13, 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)

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)

Zoning By-Law Review Comm. Public Meeting (4/25/06)

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DevensCommittee

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)

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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)

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DECDevens 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)

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)

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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 ~~p~~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, and that a vote on whether to submit a 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 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 “Study” required by Section 23 of Chapter 498.

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3. The language of the (i) Report, (ii) Study, (iii) Reuse Plan as modified, (iv) Zoning By-Laws as modified, (v) draft legislation and (vi) any accompanying ancillary materials (collectively the “Disposition Package”) shall be agreed upon by the Stakeholders and be substantially complete no later than ~~thirty (30)~~ 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 endorsing the Report and its submission to the Commonwealth in accordance with Chapter 498.

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(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 rejected the endorsement of the Report and its submission to the Commonwealth in accordance with Chapter 498.

B. THE VOTES

1. The Towns of Harvard, Ayer and Shirley shall each hold a Special Town Meeting at ____ p.m. on October 24, 2006 (the “Special Town Meeting”).
2. The residents of Devens legally registered to vote in one of the Towns shall hold a Caucus at ____ p.m. on October 24, 2006 using a town meeting format (the “Caucus”).
3. The DEC shall hold a meeting of its Commissioners on or before ~~at~~ _____ p.m. on October 24, 2006 (the “DEC Meeting”).
4. The Board of Directors of MassDevelopment shall hold a meeting on or before _____ p.m. on October 24, 2006 (the “Board Meeting”).
5. The Towns of Harvard, Ayer and Shirley shall each hold an election on November 7, 2006 (the “Elections”).
6. There shall be no separate count of the votes of the Devens Residents on the November 2006 ballot question but the Devens residents legally registered to vote in one of the Towns may vote in the town in which they are registered.

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7. Each Special Town Meeting, the Caucus, the Board Meeting, the DEC Meeting and the ballot at the Elections shall vote on the same question, which shall appear as follows:

~~“SHALL THE (insert “town”, “residents of Devens”, “Board” or “Commission”, as applicable) SUBMIT THE REPORT DESCRIBED IN THE DISPOSITION VOTER INFORMATION PACKET TO THE COMMONWEALTH?”~~

“SHALL THE (insert “town”, “residents of Devens”, “Board” or “Commission”, as applicable) APPROVE THE SUBMISSION TO THE COMMONWEALTH OF THE JOINT STUDY AND REPORT RECOMMENDING “SCENARIO 2B” FOR THE PERMANENT GOVERNMENT STRUCTURE FOR THE ONGOING OPERATION AND ADMINISTRATION OF THE DEVENS REGIONAL ENTERPRISE ZONE?”

YES _____

NO _____”

8. The parties hereby reaffirm and agree that the approval of the submission of a joint study and the Report pursuant to the process described above by a vote of five of the six Stakeholders shall be necessary and sufficient to submit the Report pursuant to the requirements of Chapter 498, and that a single dissenting Stakeholder may attach a dissenting opinion as an addendum to the Report to be ~~so~~ submitted.

THE FOLLOWING SECTIONS OF THE AGREEMENT REPRESENT THE SUBSTANTIVE DISPOSITION ISSUES UPON WHICH THE STAKEHOLDERS HAVE AGREED. ALL OF THESE TERMS SHALL BE CONTINGENT UPON THE AFFIRMATIVE VOTES OF THE STAKEHOLDERS AS DESCRIBED HEREIN. MANY

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*OF THESE TERMS SHALL BE FURTHER CONTINGENT UPON AND SUBJECT TO
THE APPROVAL OF THE LEGISLATURE OF THE COMMONWEALTH.*

C. GOVERNANCE

1. Municipal jurisdiction (excluding the jurisdiction and authority of the DEC as described further below) within the Devens Regional Enterprise Zone (“DREZ”) shall be as is shown generally on that certain “Jurisdictional Boundaries Map” attached hereto as Appendix 3 and made a part hereof. Such jurisdictions may be generally described as follows:

a. With an act of the legislature, on July 1, 2010, the Town of Devens shall be incorporated as a municipality. The Town of Devens shall be comprised of the land within the Devens Regional Enterprise Zone east of the Nashua River and south of West Main Street to Route 2 and all land within ~~the DREZ Devens~~ west of the railroad tracks.

b. Beginning on July 1, 2010, the portion of the Devens Regional Enterprise Zone that shall become a part of the Town of Ayer shall be comprised of the land within ~~Devens the DREZ~~ north of West Main Street and east of the Nashua River; ~~together with jurisdiction and protection of all land encompassed by a 400-foot radius surrounding the town of Ayer’s Grove Pond well fields, including the proposed Grove Pond Well No. 3.~~

c. Beginning on July 1, 2010, the portion of the Devens Regional Enterprise Zone that shall become a part of the Town of Shirley shall be comprised of the land within ~~Devens the DREZ~~ west of the Nashua River.

d. Beginning on July 1, 2010, the portion of the Devens Regional Enterprise Zone that shall become a part of the Town of Harvard shall be comprised of the land within ~~Devens the DREZ~~ east of the railroad tracks existing on the eastern most border of the Devens Regional Enterprise Zone.

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2. In the event of an affirmative vote on the Disposition Package, during the time between the votes on November 7, 2006 and the effective date of any legislation resulting therefrom, there shall be no jurisdictional changes within the Devens Regional Enterprise Zone.

During the period between the effective date of any applicable legislation and the effective date of any change in jurisdiction as ~~is~~ set forth in subparagraph 1 above (or such other date as may be set forth in the enacted legislation), the Parties shall work cooperatively to put into place such inter-municipal agreements, memoranda of understanding, contracts, easements, transfer documents and such other instruments as may be necessary or appropriate to effectuate the change in jurisdiction.

All existing and proposed inter-municipal agreements between MassDevelopment and any of the Towns of Ayer, Harvard, or Shirley, in effect as of the effective date of the legislation shall be listed in Schedule C attached hereto. The agreements shall be reviewed by the affected parties on a case-by-case basis. (The inadvertent omission of any such agreement from Schedule C shall have no bearing on the existence or enforceability of any such agreement.)

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3. Between effective the date of this Agreement and forty-five (45) days before the vote on the Disposition Package, MassDevelopment and the Devens Committee shall work to agree upon the timing and mechanics of a transition to a new municipality. The agreements resulting from such efforts shall be incorporated into the draft legislation and elsewhere in the Disposition Package as may be necessary or appropriate.

The actual transfer of jurisdiction shall occur as set forth in the enacted legislation enabling such transfer. Except as otherwise provided herein, beginning on the effective date of the transfer of jurisdiction, the Towns of Devens, Ayer, Shirley and Harvard, shall each bear all responsibility for providing all municipal services within the land over which they have jurisdiction.

~~The Town of Devens and MassDevelopment shall each bear responsibility for such municipal functions and services as may be agreed upon between authorized representatives of Devens and MassDevelopment.~~

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4. The Devens Enterprise Commission.

During the time between the November 7, 2006 vote and the effective date of any ~~transfer of jurisdiction, legislation resulting therefrom,~~ there shall be no change to the structure, jurisdiction, authority or composition of the DEC and the so-called “unified permitting” process shall remain in place. **[THIS IS A NEW SUGGESTION]** On the last day prior to any transfer of jurisdiction, the terms of all DEC Commissioners shall terminate. Commissioners and a Chair of the DEC shall be appointed to terms beginning on the effective date of any transfer of jurisdiction as described below.

As of the effective date of ~~any transfer of jurisdiction, the disposition legislation,~~ there shall be no change to the jurisdiction or authority of the DEC, however, the composition of ~~its Commissioners- the Commission~~ shall change as follows:

- Four (4) Commissioners shall be residents of Devens;
- Four (4) Commissioners shall be residents of Ayer;
- Four (4) Commissioners shall be residents of Shirley;
- Four (4) Commissioners shall be residents of Harvard; and
One (1) Chairperson who shall be a regional representative.

~~An equal number of One (1) alternate /associate commissioners~~ shall also be designated for each Town. Each Town’s Board of Selectmen shall nominate that town’s Commissioner representatives for the DEC. The DEC Commissioners shall appoint the alternate commissioners. No members of any board of selectmen or any school committee may serve as a DEC Commissioner or alternate commissioner.

The Governor shall appoint all DEC Commissioners. However, in the event the Governor does not act upon such nomination within sixty (60) days after having received all necessary documentation comprising a complete and valid nomination, such appointment shall be deemed to have been made.

[THIS IS A NEW SUGGESTION] Each Commissioner and the Chair serving a term beginning as of the effective date of any transfer of jurisdiction shall be nominated and appointed as described herein irrespective of whether s/he served as a Commissioner or Chair prior to any transfer of jurisdiction.

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~~The term of a Commissioner and the Chair shall be three (3) years, however, the initial appointments of Commissioners shall be for staggered terms of 1, 2, and 3 years.~~

Each Town's Commissioners shall appoint a "Voting Commissioner" among themselves and may temporarily appoint its alternate to serve as its active Commissioner, if necessary its four commissioners.

The Governor body of DEC Commissioners shall appoint a Chairperson, to a term of three (3) years. The Chair shall be deemed to be a regional representative to the DEC but shall not be prohibited from being a resident of the towns of Devens, Ayer, Harvard or Shirley. The Chair shall be a non-voting member of the DEC. ~~have the same voting rights as the other Commissioners as set forth herein.~~

Four (4) Commissioners shall vote upon any matter before the DEC the subject of which is situated within the Town's jurisdiction which those Commissioners represent. The Voting Commissioner from each of the other towns shall vote on that matter, thereby creating a 4-3 voting majority for the Commissioners representing the Town in which the subject matter before the DEC is situated.

Funding for the DEC and its staff shall come from fees generated by the DEC for matters over which it has jurisdiction. The DEC Commissioners shall determine DEC staffing requirements, annual budgets and may request additional funding from one or more of the Towns, any assessments due to budget shortfalls. ~~The DEC shall prepare and make available annual reports and audited financial statements for each fiscal year. The DEC's revenue and expenses shall operate as an "enterprise fund" and it shall be allowed to carry funds remaining in such fund at the end of any fiscal year to the following fiscal year.~~

The DEC shall remain in place as described above for each jurisdiction within the DREZ until the sooner to occur of (i) December 31, 2026 or (ii) until one hundred percent (100%) of the planned housing development described in this Agreement and ninety percent (90%) of the planned commercial/industrial development described in this Agreement has been completed. ~~whichever occurs sooner.~~

~~Upon the event occurring soonest (as described above) within a jurisdiction within the DREZ, that town may elect by vote of its Board of Selectmen to discontinue its representation on the DEC and its use of unified permitting within its jurisdiction. The~~

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DEC and unified permitting shall remain in place in the remaining jurisdictions within the DREZ as provided herein however, the composition of DEC Commissioners shall be modified to equitably maintain the representation and voting rights described herein.

[THIS MAY STILL NEED WORK]

Any DEC budget surplus remaining upon termination of jurisdiction and final dissolution of the DEC shall be distributed to the Towns on a pro-rata basis.

The principles described in this Agreement shall be reflected and further described in regulations validly adopted by the DEC.

~~However, these requirements may be modified by the affirmative vote of both the Board of Directors of MassDevelopment and a 2/3 majority vote of Town Meeting in the town with municipal jurisdiction where the land for which the modification proposed is situated. *[* The subject matters in the highlighted sections have not been finally resolved by the DEC Subcommittee]*~~

Notwithstanding the above, the DEC may seek to amend its regulations in accordance with applicable procedures to reflect any changes to the Zoning By-Laws resulting from the disposition process or otherwise.

D. OWNERSHIP

1. Ownership of Land.

Except as otherwise provided herein, irrespective of any change in municipal jurisdiction of any portion of the Devens Regional Enterprise Zone, all land owned by MassDevelopment within the Devens Regional Enterprise Zone shall continue to be owned, developed, and/or sold, leased, licensed or otherwise transferred by MassDevelopment, consistent with the provisions of the legislation, amended reuse plan and zoning by-laws contemplated hereunder as may be ultimately enacted by the legislature, ~~irrespective of any change in municipal jurisdiction of any portion of the Devens Regional Enterprise Zone.~~

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2. Any interest in real property, interests in private or public ways, easements, etc., to be transferred in connection with this Agreement shall be listed in Schedule A attached hereto and made a part hereof.

3. Any interest in personal property or other assets to be transferred in connection with this Agreement shall be listed in Schedule B attached hereto and made a part hereof.

4. As of the date of this Agreement, ~~it is the intent of~~ MassDevelopment intends to develop the land that it owns in accordance with the Zoning Map attached hereto as Appendix 4 and made a part hereof. However, nothing contained herein shall prevent MassDevelopment from seeking an amendment to such Zoning Map or to otherwise amend its plans for development in accordance with applicable law or the terms of any applicable contractual agreements to which MassDevelopment is a party.

E. BOUNDARIES

1. The boundaries of the Devens Regional Enterprise Zone and jurisdictions therein shall be shown generally within that certain “Jurisdictional Boundaries Map” attached hereto as Appendix 3 and made a part hereof. Such boundaries are also described general in Section II (C) (1) above. The actual boundaries of each jurisdiction within the Devens Regional Enterprise Zone shall be more particularly described and established in accordance with applicable law and by a formal plan including a metes and bounds description or such other type of description as may be acceptable according to recognized standards of professional, licensed land surveyors. Such description shall, upon completion, be filed in the applicable registry of deeds and with the engineering department of each town shown on such plan, etc.

2. Prior to votes on the Disposition Package, the Devens Committee shall inform the DDEB whether it prefers that the Town of Devens become included within Worcester County or Middlesex County and reference thereto shall be made wherever necessary or appropriate.

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F. ZONING

1. The Disposition Package shall include proposed amendments to the zoning by-laws and zoning map for the Devens Regional Enterprise Zone. MassDevelopment shall collaborate with the Stakeholders to create such amendments. The proposals shall generally reflect the following allowable uses and densities.

a. The Town of Devens (a.k.a. “Core Devens”).

New and existing residential and mixed-use zoning districts shall allow the as-of-right development of 1,150 new residential units (as more particularly described in Section II.G below), approximately 6.6 million square feet of commercial/industrial uses and additional ~~commercial, industrial,~~ and civic uses, including open space and recreation. Certain zoning districts may allow residential densities consistent with the state’s so-called “smart growth” Chapter 40R and 40S guidelines. Prior to the incorporation of Devens, funds received under Chapter 40 R and 40S for housing in Devens shall be allocated 75% to a Town of Devens “stabilization fund” and 25% to MassDevelopment. After the incorporation of Devens, 100% of funds received under Chapter 40 R and 40S for housing in Devens shall be allocated to the Town of Devens.

b. The Town of Ayer

At the former Moore Army Airfield, a mixed-use zoning district shall be created to allow the as-of-right development of up to 1.5 million square feet of commercial/industrial uses other than so-called “big-box retail” uses, up to 200 residential units, approximately 20 at least 10 acres of finished recreation fields equipped with basic men’s and women’s toilet facilities, 10 acres of raw land suitable for future recreation space recreational playing fields and open space, and 10 acres of open space (which need not be contiguous), some or all of which may be used as a buffer between types of uses. The district may allow residential densities consistent with the state’s so-called “smart growth” Chapter 40R and 40S guidelines. ~~After the transfer of jurisdiction to Ayer, 100% of all~~ funds

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received under Chapter 40 R and 40S for housing in Ayer shall be allocated to the Town of Ayer.

c. The Town of Shirley.

Within the Town of Shirley's portion of the DREZ, new residential, mixed-use, and commercial zoning districts shall be created to allow the development of 300 units of housing and up to 400,000 square feet of commercial uses allocated between the Shirley Village Growth area and Environmental Business Zone parcels. The Shirley Village Growth zoning district shall allow for as-of-right residential, mixed-use, and commercial uses and may allow residential densities consistent with the state's so-called "smart growth" Chapter 40R and 40S guidelines. After the transfer of jurisdiction to Shirley, 100% of funds received under Chapter 40 R and 40S for housing in Shirley shall be allocated to the Town of Shirley. The Environmental Business Zone zoning district will encourage a "cluster" approach to preserve valuable environmental resources.

[The Parties acknowledge the Town of Shirley's request to include language in this Agreement addressing the collaboration between Shirley and MassDevelopment regarding amendments to zoning within the areas over which Shirley will gain jurisdiction. The Parties agree to work in good faith to review the issues raised by Shirley and to collaborate to find a solution reasonably acceptable to the Parties prior to finalization of this Agreement.]

d. The Town of Harvard.

Within the Town of Harvard's portion of the DREZ (Barnum Road area), there shall be no proposed changes to the uses currently allowed as-of-right (Rail Industrial & Trade Related Uses).

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[The Parties acknowledge the Town of Harvard’s request to include language in this Agreement addressing permanent restrictions and limitations on development of land on Barnum Road, Salerno Circle and the Golf Course. The Parties agree to work in good faith to review the issues raised by the requested language and to collaborate to find a solution reasonably acceptable to the Parties prior to finalization of this Agreement.]

2. Prohibition on Unilateral Changes to Zoning.

The zoning by-laws and legislation included in the Disposition Package shall provide that within each jurisdiction within the DREZ, from the present and continuing until the sooner to occur of (i) December 31, 2026 or (ii) until one hundred percent (100%) of the planned housing development described in this Agreement and ninety percent (90%) of the planned commercial/industrial development described in this Agreement (for each jurisdiction, not the combined jurisdictions) has been completed, ~~whichever occurs sooner~~, any amendment to the zoning by-laws or zoning map within the Devens Regional Enterprise Zone shall require the affirmative vote of both the Board of Directors of MassDevelopment and a 2/3 majority vote of Town Meeting in the town with municipal jurisdiction where the land for which the amendment is proposed is situated.

G. HOUSING AND COMMERCIAL DEVELOPMENT

1. The Parties agree that changes to the Reuse Plan, Zoning By-Laws, ~~the~~ DEC Regulations and any other applicable authority shall allow “as of right” the following:

a. Housing.

(i) One Thousand Eight Hundred (1,800) units of housing may be built within the Devens Regional Enterprise Zone in the following areas:

<u>Devens</u>	
Grant Road Area	233 units
Vicksburg Square	150 units
Willard Heights	257 units
Golf Course	20 units
Salerno Circle	200 units

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Davao Circle	70 units
Town Center	120 units
Buena Vista	100 units

Shirley

Shirley Village Growth &
Environmental/Business Zone combined 300 units total

Ayer

Moore Air Field (Ayer) up to 200 units

Existing Units (Devens) 150 units

- (ii) Within the Town of Devens,
- 1) the ratio of townhouses and multi-family units to single-family units shall not exceed fifty percent (50%);
 - 2) at least 200 units shall be age-restricted;
 - 3) at complete build out, the total number of “Affordable” units, as such term is defined below, shall not be required to exceed ten percent (10%) of the total number of housing units designated for such area; ~~and-~~
 - 4) the rate of housing development will be linked to commercial-industrial development at such ratios as may reasonably be expected to lead to the financial sustainability of the Town of Devens.
 - 5) the number and type of residential units designated for development on a parcel may be altered by 15% provided that the overall ratio of housing types is not altered. These ratios may be modified upon mutual agreement between MassDevelopment and the Devens Committee or the Board of Selectmen of the Town of Devens, as the case may be.

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- (iii) Within the area of the Devens Regional Enterprise Zone over which Ayer shall have municipal jurisdiction,
 - 1) no more than 200 units of housing shall be built;
 - 2) the housing units shall be of a variety of styles and types; and
 - 23) At least ten percent (10%) of such housing units shall be “Affordable”, as such term is defined below;

- (iv) Within the area of the Devens Regional Enterprise Zone over which Shirley shall have municipal jurisdiction,
 - 1) no more than 300 units of housing shall be built;
 - 2) such housing shall include a variety of types and styles, including, but not limited to, rental units;
 - 3) at least ten percent (10%) of such housing units shall be “Affordable”, as such term is defined below;
 - 4) at least ____ % of the units shall be “age-restricted”; and
 - 5) at least ten percent (10%) of any rental units shall be “Affordable” units, as such term is defined below.

- (v) Design guidelines for the housing development described herein shall be incorporated by reference into the amended Reuse Plan.

- (vi) For the purposes of this Agreement, “Affordable” shall mean “low or moderate income” housing as defined by Chapter 40B, Section 20 of the Massachusetts General Laws and Chapter 760, Section 30.02 of the Code of Massachusetts Regulations. Only households with incomes no greater than eighty percent (80%) of area median income, as defined by the United States Department of Housing and Urban Development, shall qualify as affordable housing.

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- (vii) ~~To the extent allowable by law, availability of affordable housing developed in Ayer, Shirley and Devens shall include a primary preference for residents of Ayer, Shirley and Devens respectively, a secondary preference for residents of the other two towns and then, to the extent such housing unit remains available, preference to all other persons residing within the Commonwealth of Massachusetts, for senior/elderly residents as may be allowable and in accordance with applicable state law.~~
Ayer may elect to utilize its local preference policy for up to 70% of affordable units developed within Ayer.

b. Commercial/Industrial

(i) Commercial/Industrial uses shall be allowed in those areas so designated in the Zoning Map. MassDevelopment presently plans to develop approximately 6.6 million square feet of Commercial/Industrial space within the Town of Devens; approximately 1.5 million square feet of Commercial/Industrial space within the Town of Ayer at the former Moore Army Airfield; approximately 400,000 square feet of Commercial/Industrial space within the Town of Shirley in the Environmental Business Zone; and approximately ~~215,000~~ 400,000 square feet of Commercial/Industrial space (including existing build-out) within the Town of Harvard in the Barnum Road area.

(ii) MassDevelopment agrees not to sell property it owns within the DREZ to businesses that seek to relocate from the towns of Ayer, Harvard or Shirley to the “Core of Devens” or to another town within the DREZ unless the applicable town acknowledges that it cannot meet the needs of the relocating business or otherwise agrees to allow the relocation.

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(iii) MassDevelopment agrees not to sell property it owns in the area of Barnum Road to be transferred to the jurisdiction of the Town of Harvard for residential uses.

~~(iiiiv) #N~~o MassDevelopment development shall have an adverse impact on existing stormwater management in Shirley.

(iv) MassDevelopment agrees to phase its development in Ayer as follows: (1) begin reconstruction of McPherson Road/Bishop Road Corridor; (2) begin commercial/industrial development; (3) begin residential development and recreational field construction.

~~No occupancy permits shall issue for any phase of the redevelopment in Ayer until the MacPherson Road improvements are substantially complete so as to allow unimpeded access for automobiles and tractor-trailer trucks between Routes 2, 2A and 111. This phasing schedule may be modified by mutual written agreement of MassDevelopment and the Ayer Board of Selectmen.~~

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2. Within the general parameters described in this section, the Parties agree that there shall be flexibility within the above described plans to allow for redistribution of housing units and commercial/industrial development (but maintaining the allocations given to each jurisdiction), consistent with the zoning then in place, to other areas within each jurisdiction to account for conditions not presently known including, without limitation, market conditions, topographical or other naturally occurring conditions, or environmental contamination.

~~Ayer encourages the pursuit of “land use swapping” to offset the number of housing units planned for the former Moore Army Airfield.~~

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~~The pursuit of land ‘use swapping’ as proposed to the DDEB by the Town of Ayer is encouraged, and, if agreed upon by MassDevelopment and the Town of Ayer Board of Selectmen, may be used to offset the number of residential units planned to be developed at the former Moore Army Airfield.~~

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3. The Parties agree that the limitations on development described herein may be ~~increased~~ modified by mutual agreement of MassDevelopment and the municipal jurisdiction in which the land is situated.

4. The DEC wishes to protect the integrity of the Reuse Plan by retaining “Sustainable Development” as the organizing principle for the redevelopment of this former army post. All aspects of the proposed amendments to the Reuse Plan should be questioned in terms of whether ~~or not~~ future development will continue to balance economic development, environmental protection and social equity issues. The DEC wishes to include this emphasis on sustainable development in any amendments to the Reuse Plan, Devens By-laws and subsequent DEC Regulations.

H. EDUCATION

1. Each municipal jurisdiction shall be responsible for the education of its residents in accordance with applicable law.

2. Upon incorporation, the Town of Devens shall contract with the school district of one or more other municipalities for education of its residents unless it has been authorized by the Massachusetts Department of Education to become an “operating school district” and a school is opened within the Town of Devens.

3. ~~By agreement with MassDevelopment, beginning with the 2006-2007 school year, the residents of Devens shall be educated under contract with the School Committee of the Town of Shirley for grades Pre-K through 8, and under contract with the School Committee of the Town of Harvard for grades 6 through 12. Subject to the terms of the~~

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~~respective contracts, such educational services shall continue to be provided for five (5) school calendar years.~~

~~MassDevelopment is presently negotiating the terms of contracts for educational services with the School Committee of Shirley and the School Committee of Harvard that provide that, beginning with the 2006-2007 school year, the Town of Shirley shall offer educational services to the residents of Devens for grades Pre-K through 8, and the Town of Harvard shall offer educational services to the residents of Devens for grades 6 through 12.~~

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~~4. The legislation included within the Disposition Package shall provide that the Parker Charter Essential School may give preference in enrollment to students from Devens, while maintaining its regional charter school status, and that total charter school tuition payments made to the Parker School on behalf of Devens students shall reflect the number of Devens students enrolled at Parker. The terms, extent, and duration of such preferences must be mutually agreed on by the Parker School, the Devens Educational Advisory Committee, and MassDevelopment.~~

~~45. The legislation included within the Disposition Package shall include provision for the reorganization of the membership of the Devens Educational Advisory Committee (DEAC) to provide that its membership shall consist exclusively of Devens residents.~~

I. REUSE PROJECTS

[MassDevelopment will draft a list of reuse projects with a corresponding priority list that will reflect the amended reuse plan by May 1]

By agreement with MassDevelopment, but at all times, subject to appropriation, the following projects included as part of the Devens Regional Enterprise Zone Reuse Plan, as amended, shall be performed as follows:

A. Devens/Town of Devens

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Prior to the completion of the redevelopment of Core Devens, there shall be constructed a public elementary/middle school within the Town of Devens.

B. Ayer

In the ~~Winter~~Spring
-of 2006, MassDevelopment began the prerequisite environmental study and analysis for the McPherson Road reconstruction project.

MassDevelopment agrees to timetable attached hereto as Appendix 5 for the reconstruction of McPherson Road subject, however, to any and all applicable permits or other consents required, including without limitation, those relating to environmental matters (i.e., EPA, DEP, USFW), and transportation matters (i.e., MBTA grade crossings) and traffic matters (i.e. MEPA).

MassDevelopment shall remain responsible for the maintenance of McPherson Road until the completion of its reconstruction. ~~has been completed.~~

C. Shirley

The bridge in the area of Lovell Road serving the military enclave shall be inspected prior to transfer of jurisdiction.

D. Harvard

The Barnum Road area of Harvard will be developed in accordance with the “Barnum Road Master Plan” adopted in 2002. *[The timeframe for such development shall be determined prior to execution of this Agreement.]*

~~MassDevelopment shall remove the piles of soil stored on land owned by MassDevelopment on Barnum Road prior to July 1, 2010.~~

~~MassDevelopment shall collaborate with the Town of Harvard on the feasibility of entering into agreements to provide the Ayer Road area of Harvard with access to excess water and sewer capacity.~~

J. UTILITIES

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It is the present intention of MassDevelopment to retain ownership of and responsibility for each utility system serving the Devens Regional Enterprise Zone.

Those systems consist of Electricity (including appurtenant uses of poles, wires, conduit, etc.), Natural Gas, Water Supply, and Waste Water Treatment. MassDevelopment has prepared a memorandum addressing its current view on the future of these utilities and the prospects for regionalization of parts or all of these systems. The “Memorandum Regarding Utilities Serving the DREZ” is attached hereto as Appendix 6 and made a part hereof.

K. REMEDIATION OF LAND WITHIN THE DREZ

MassDevelopment has and will continue to work collaboratively with the Army, the Federal Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (DEP) to ensure that the Army remediates the remaining areas within the Devens Regional Enterprise Zone (DREZ) that were contaminated as the result of the Army activities. This work has been ongoing for many years.

The Army was responsible for the remediation of contaminated land in the DREZ to the extent necessary to protect human health and the environment before it was transferred from the Army to MassDevelopment. The Army is also required to remediate contamination that resulted from activities occurring prior to the transfer of land but discovered after the transfer.

To the extent land owned by MassDevelopment is to be developed for uses other than those set forth in the 1994 Reuse Plan and such other use requires additional remediation according to applicable federal and/or state regulations, MassDevelopment will ensure that such additional remediation is performed at no cost to the Towns (unless the condition requiring remediation is shown to have be caused by one or more of the Towns). (highlighted text is new).

Remediation must be performed in accordance with applicable federal and state regulations. The Army’s work is subject to direct oversight by EPA and DEP, and is conducted with the review and comment of MassDevelopment. Public hearings and meetings are also required as part of this process.

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The terms of that certain Administrative Consent Order and Covenant Not to Sue (“ACO”) known and numbered as ACO-CE-96-3001 shall survive this document.

L. ECONOMIC SUSTAINABILITY MODEL

The DDEB Finance Committee has prepared a report and financial model that estimates/projects the factors attendant to the financial sustainability of the Town of Devens. The analysis, break-even report and model are attached hereto as Appendix 7 and made a part hereof.

MassDevelopment and the Devens Committee shall collaborate to create a plan for the “financial sustainability” of the Town of Devens.

M. MEPA CERTIFICATE ISSUES

MassDevelopment has commissioned a report by Epsilon Associates, Inc. that addresses issues relating to the proposed amendments to the Reuse Plan that may affect the current “MEPA Certificate”. The “Epsilon Report” is attached hereto as Appendix 9.

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MassDevelopment will seek MEPA approval for development on the former Moore Army Airfield for 1.5 million square feet of commercial/industrial development, up to 200 housing units, a minimum of 20 acres of recreational playing fields and 10 acres of open space/buffer area.

N. OPEN SPACE/RECREATION LAND USE ISSUES

1. A draft of the Open Space Plan to the DREZ is available upon request from the DDEB or MassDevelopment. The final Open Space Plan shall be incorporated by reference into the amended Reuse Plan that is included within the Disposition Package.

2. MassDevelopment shall work with the DDEB Land Use/Open Space Committee to prepare a recommendation to the DDEB that will designate those parcels of land that (i) shall receive the protections afforded by Article 97 of the Massachusetts Constitution; (ii) shall receive protection by conservation restriction or similar mechanism; (iii) that will be protected by virtue of zoning and (iv) shall be dedicated for recreational uses. A

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draft of that recommendation is reflected in the “Open Space Protection Plan” attached hereto as Appendix 8 and made a part hereof.

~~53.~~ Upon incorporation of Devens, Ayer residents shall have access and pricing second only to Devens residents for the use of Town of Devens recreation facilities. Upon Ayer acquiring jurisdiction of the North Post and upon the opening of recreational facilities on the former Moore Army Airfield, Devens residents shall have access and pricing second only to Ayer residents for the use of Town of Ayer recreation facilities. Ayer, Devens and Shirley and Harvard may further negotiate reciprocal access to recreational facilities, ~~in the Town of Shirley.~~

~~64.~~ MassDevelopment shall collaborate with the Town of Harvard to craft instruments of transfer, easements, conservation restrictions, etc. to provide that in the area of the Cold Spring Brook Conservation Area where jurisdiction will be transferred to the Town of Harvard, there shall be such utility easements as may be necessary or desirable and that the parcel is otherwise adequately protected to the degree and extent requested by the Town of Harvard.

7. MassDevelopment agrees that there shall be no net loss of recreational playing fields resulting from any MassDevelopment development in the Shirley Village Growth area.

III. ACTION ITEMS

THIS SECTION III SHALL SET FORTH THE ITEMS/ISSUES THAT WILL BE STUDIED, REVIEWED, NEGOTIATED OR OTHERWISE ADDRESSED BETWEEN THE EFFECTIVE DATE OF THIS MOU AND THE DATE OF THE OCTOBER, 2006 VOTES.

~~**A. — ECONOMIC SUSTAINABILITY MODEL**~~

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~~— The DDEB Finance Committee shall finalize its report and financial model that estimates/projects the factors attendant to the financial sustainability of the Town of Devens. The DRAFT report and model shall be attached hereto as Appendix 7 and made a part hereof.~~

~~— MassDevelopment and the Devens Committee shall collaborate to create a plan for the “financial sustainability” of the Town of Devens.~~

BA. LEGISLATION

Upon execution of this Agreement by at least 5 of the 6 Stakeholders, the DDEB Coordinating Committee shall direct the DDEB Governance Committee to draft and submit to the DDEB proposed legislation that shall be included within the Disposition Package. The proposed legislation shall address amendments to Chapter 498 of the Acts of 1993 and other matters necessary or convenient to effectuate the meaning and intent of the Parties as set forth in this Agreement. The Parties agree that the provisions of Section 23 of Chapter 498 pertaining to “surplus funds” shall be included in the proposed legislation.

C. ~~MEPA CERTIFICATE ISSUES~~

~~— MassDevelopment shall make available on or before May 15, 2006, a report that addresses issues relating to the proposed amendments to the Reuse Plan that may affect the current “MEPA Certificate”. The report shall reflect the review and analysis of these issues performed by Epsilon Associates, Inc. in March, 2006.~~

~~— MassDevelopment will seek MEPA approval for development on the former Moore Army Airfield for 1.5 million square feet of commercial/industrial development, 200 housing units and approximately 20 acres of recreational playing fields.~~

D. ~~OPEN SPACE/RECREATION LAND USE ISSUES~~

~~1. — A draft of the Open Space Plan to the DREZ shall be made available by MassDevelopment on April 14, 2006. The final Open Space Plan shall be incorporated by reference into the amended Reuse Plan that is included within the Disposition Package.~~

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~~2. — MassDevelopment shall work with the DDEB Land Use/Open Space Committee to prepare a recommendation to the DDEB that will designate those parcels of land that (i) shall receive the protections afforded by Article 97 of the Massachusetts Constitution; (ii) shall receive protection by conservation restriction or similar mechanism; (iii) that will be protected by virtue of zoning and (iv) shall be dedicated for recreational uses.~~

~~3. — The areas of land so designated shall be shown on a map attached entitled “Open Space/Recreation Land” attached hereto as Appendix 8 and made a part hereof.~~

~~4. — The mechanisms of protection of each such parcel and the timing thereof shall be described in this Agreement.~~

~~*[THIS WORK SHOULD BE COMPLETED BEFORE THE MAY DRAFT OF THE MOU IS CIRCULATED, IF POSSIBLE]*~~

~~5. — Upon incorporation of Devens, Ayer residents shall have access and pricing second only to Devens residents for the use of Town of Devens recreation facilities. Upon Ayer acquiring jurisdiction of the North Post and upon the opening of recreational facilities on the former Moore Army Airfield, Devens residents shall have access and pricing second only to Ayer residents for the use of Town of Ayer recreation facilities. Ayer, Devens and Shirley may further negotiate reciprocal access to recreational facilities in the Town of Shirley.~~

~~6. — MassDevelopment shall collaborate with the Town of Harvard to craft instruments of transfer, easements, conservation restrictions, etc. to provide that in the area of the Cold Spring Brook Conservation Area where jurisdiction will be transferred to the Town of Harvard, there shall be such utility easements as may be necessary or desirable and that the parcel is otherwise adequately protected to the degree and extent requested by the Town of Harvard.~~

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~~7. MassDevelopment agrees that there shall be no net loss of recreational playing fields resulting from any MassDevelopment development in the Shirley Village Growth area.~~

EB. TRANSPORTATION

1. MassDevelopment shall collaborate with the interested Stakeholders to study, analyze, prepare and implement recommendations and plans that address increases in vehicular traffic and other impacts resulting from the development within the Devens Regional Enterprise Zone described in this Agreement.

Such collaboration shall include, without limitation, the reconstruction of McPherson Road, ~~and~~ possible relocation of any at-grade railroad crossing associated with that project, ~~and~~ the current and future needs regarding MBTA rail stations, ~~and new or modified roadways within the Core of Devens. MassDevelopment agrees to work with the Town of Ayer to retain the commuter rail service and station in Depot Square in Ayer.~~

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2. MassDevelopment shall collaborate with the Towns of Ayer and Harvard to attempt to facilitate acceptable access to the Barnum Road area within Harvard's jurisdiction. ~~The Town of Harvard agrees to never restrict truck access from any section of Barnum Road. Road upgrades on Ayer North Post, and the Core of Devens shall provide a connection between Route 2 and the Ayer North Post.~~

3. ~~To the extent allowable by law, T~~trucks and other commercial traffic to Devens shall continue to be required to utilize the Jackson Road entrance and exit from Route 2. There will be no public ways constructed connecting the Barnum Road area with commercial or residential properties in Harvard. Other than Barnum Road, all public ways, that may still be in existence providing passage from the Town of Harvard to the area designated to become the Town of Devens are considered discontinued at the new town boundary line as per the provisions of state law. No person or organization may claim any damages as the result of the discontinuation of any road crossing the new town borders. No public way providing passage from the Town of Harvard to the area designated to become the Town of Devens shall be created without an affirmative vote of

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Harvard's Annual Town Meeting and the Town of Devens Town Meeting, or prior to incorporation of Devens, the Board of Directors of MassDevelopment.

4. In Shirley, an alternate route from Hospital Road to Front Street will be developed to alleviate traffic around the school/municipal complex. Access to the Environmental Business Zone will be developed at the northern and southern portions of the site.

FC. ZONING

MassDevelopment shall collaborate with the Parties individually and collectively to create proposed amendments to zoning in the DREZ.

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APPENDICES

- ~~1. Summary of Facts Leading up to this Agreement~~
- ~~2. Final Stakeholder Criteria For Success~~
- ~~3. Jurisdictional Boundaries Map~~
 - ~~a. General Description of Boundaries~~
- ~~4. Zoning Map~~
- ~~5. Utilities Memorandum~~
- ~~6. Financial Model and Scenario Analysis Report~~
- ~~7. Open Space/Recreation Land Map~~

SCHEDULES

- ~~A. Real Property to Be Transferred~~
- ~~B. Personal Property/Assets to be Transferred~~

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APPENDIX 1

SUMMARY OF FACTS LEADING UP TO THIS AGREEMENT

1. Fort Devens, originally called Camp Devens, a military installation under the command of the United States Army (“Army”), was established in 1917 and served as a military training facility until its closure in 1995;
2. The Base Realignment and Closure Commission designated Fort Devens for closure/realignment in April 1991;
3. In anticipation of the closure/realignment of Fort Devens, the General Court of the Commonwealth of Massachusetts (the “Legislature”) enacted legislation known as Chapter 498 of the Acts of 1993 (“Chapter 498”) to address the closure and realignment of Fort Devens;
4. Chapter 498 established the Devens Regional Enterprise Zone (“Devens”), consisting of those parts of the former Fort Devens transferred to the Commonwealth of Massachusetts, exclusive of those areas of Fort Devens retained by the army for military use, and excluding those areas of Fort Devens acquired by other federal entities pursuant to the BRAC screening process;
5. Chapter 498 set forth the purposes of that legislation, which included the promotion of “expeditious and orderly conversion and redevelopment of Fort Devens for nonmilitary uses, including , but not limited to, housing, industrial, institutional, educational, governmental, recreational, conservation, commercial or manufacturing uses, in order to prevent further blight, economic dislocation and additional unemployment, and to aid in strengthening the local economy, the regional economy and the economy of the Commonwealth”;
6. Chapter 498 designated the Massachusetts Government Land Bank as the local redevelopment authority, real estate developer, and the interim form of municipal government at Devens;
7. Chapter 498 created and designated the Devens Enterprise Commission (“DEC”) as the local permitting authority at Devens, responsible, among other things, for issuing and enforcing building and development permits at Devens;

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8. In 1998, by the authority conferred by Massachusetts General Laws Chapter 23G, the Government Land Bank and the Massachusetts Industrial Finance Agency merged to create Massachusetts Development Finance Agency (“MassDevelopment”), and MassDevelopment therefore succeeded the Government Land Bank as the local redevelopment authority for Devens;

9. Chapter 498 prescribes a process for the disposition of Devens pursuant to which the boards of selectmen of the towns of Ayer, Harvard, and Shirley, the DEC, and MassDevelopment shall, on or before July 1, 2030, commission a study addressing a permanent government structure for the ongoing operation and administration of Devens (the “Study”). The Study must evaluate alternative structures for government, ownership and operation of open space, recreation, and other lands and facilities, infrastructure, easements, equipment and records, with such alternative structures, including, but not limited to, town government and joint entities or combinations thereof, or MassDevelopment and the DEC, and shall identify transition costs and further investments needed;

10. Chapter 498 provides that, on or before July 1, 2033, the boards of selectmen of the towns of Ayer, Harvard, and Shirley (collectively, the “Towns”), the DEC, and MassDevelopment shall submit the Study and a joint report to the Governor, the Secretary of Administration and Finance, and the Clerks of the Massachusetts House of Representatives and Senate recommending a permanent government structure for the ongoing operation and administration of Devens (the “Report”);

11. The Report must identify any surplus funds that have been generated during the development of Devens, after considering the costs of retiring all bonds, notes and other debt instruments issues to maintain and develop Devens, and all the DEC’s and MassDevelopment’s unreimbursed costs related in any way to the redevelopment of Devens including, without limitation, all costs incurred in the operation, maintenance and development of Devens, and recommend how any surplus funds and any future surplus funds shall be distributed, which recommendation shall include distributing all or a portion of such surplus funds to the towns of Ayer, Harvard, and Shirley;

12. The Parties have determined that the most effective way to chart a course for the sound and studied redevelopment of Devens requires the Parties to address the

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disposition of Devens prior to the date by which the Study is required, as provided in Chapter 498;

13. The Parties have committed to a process whereby the disposition of Devens will be addressed on or before November 2006 (the “Disposition Process”), which commitment is memorialized in that certain Memorandum of Understanding, entered into by and among the parties and dated as of March 3, 2005, a copy of which is attached hereto as Exhibit A and incorporated herein by reference;

14. As a part of the Disposition Process, six stakeholders in the disposition of Devens were recognized: The Towns, the DEC, MassDevelopment, and the residents of Devens (the “Stakeholders”). It was further decided that the voting interests of businesses located at Devens would be represented in the Disposition Process by MassDevelopment;

15. The Stakeholders formed a Devens Disposition Steering Committee (the “Steering Committee”), comprised of representatives of the Boards of Selectmen and Planning Boards of the Towns, the DEC, the MassDevelopment Board of Directors, the Devens Citizens Advisory Committee, and the Devens business community, to identify the issues and questions to be addressed as part of the Devens disposition recommendation process;

16. The Stakeholders thereafter formed the Devens Disposition Executive Board (“DDEB”), a body comprised of representatives of the Boards of Selectmen, Planning Boards, and citizenry of the Towns, the MassDevelopment Board of Directors, the Devens Committee, the DEC and the Devens business community, charged with studying the issues related to the ultimate disposition of Devens and creating a proposed question to be placed on a ballot to be voted upon and to ensure an informed decision can be made on the final disposition of Devens;

17. The DDEB determined it to be desirable to submit the Report, related draft legislation, and an amended reuse plan, recommending the disposition of Devens, pursuant to Chapter 498, soon after the votes are held, on or about December 2006;

18. The DDEB committed ~~itself themselves~~ to a consensus-building process, whereby salient issues vital to the Disposition Process would be identified, studied, and discussed, in the hopes of achieving consensus among the Stakeholders as to how such

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issues should be resolved and a recommendation as to what should be the final disposition of Devens;

19. The DDEB determined that, despite such commitment to consensus building within the Disposition Process, it may be difficult to achieve consensus on all matters to be addressed in the Report;

20. In light of this determination, the DDEB agreed that an affirmative vote of five ~~out~~ of the six Stakeholders shall be required to cause the submission of a Report and related materials pursuant to Chapter 498; moreover, the DDEB agreed that no single Stakeholder shall have veto power over the submission of the Report and related materials; rather, a Stakeholder casting a negative vote shall have the right to attach a dissenting opinion as an addendum to the Report;

21. The DDEB and/or one or more Stakeholders, have commissioned the services of outside consultants, including, but not limited to planners, environmental consultants, appraisers, architects, attorneys, and other professionals (collectively, the “Consultants”) to provide information and advice to the DDEB in connection with the study, analysis, review and recommendations regarding the many issues attendant to the Disposition Process and thereby to further such process;

22. The DDEB determined that, following careful analysis and study of the issues attendant to the Disposition Process, the narrowing of these issues is the most efficient and expeditious manner to enable the Stakeholder constituents to vote in November 2006 on the question of whether to submit a Study and Report pursuant to Chapter 498;

23. The DDEB determined that a memorandum of understanding among the Parties will provide an effective means to narrow the focus of attention to best position the Stakeholders to arrive at consensus on the form and substance of a Report on or before November 2006;

24. In January, 2006, the DDEB voted to endorse disposition scenario “2B” ~~(described below)~~ and to seek the endorsement of each Stakeholder to proceed with Scenario 2B₃;

25. In February, 2006, the DDEB polled the Stakeholders and determined that each Stakeholder agreed to proceed with the drafting and negotiation of the terms of a

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memorandum of understanding under which as many matters as possible relating to a 2B disposition scenario would be set forth and agreed upon.

[PRIOR TO MAY 1, INSERT FACTS REGARDING ADDITIONAL RELEVANT EVENTS]

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APPENDIX ~~23~~

**JURISDICTIONAL BOUNDARIES MAP
AND
GENERAL DESCRIPTION OF BOUNDARIES**

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**POST JURISDICTION TRANSFER
BOUNDARIES DESCRIPTION**

In the northern part of the Barnum Road area, the Harvard boundary will follow the westerly property lines of the land presently owned by the United States and Commonwealth of Massachusetts and used by the Army and National Guard in a southerly direction, then following the former boundary of Ayer until reaching the Guilford Railroad property then continuing south along the easterly side of the railroad property along the existing boundary of the Devens Regional Enterprise Zone (“DREZ”) until reaching Route 2, then westerly along Route 2 until reaching the boundary of Lancaster.

The land to the east of this boundary in the Barnum Road area and to the south of Route 2 shall be under the jurisdiction of the Town of Harvard.

At the intersection of Route 2 and the Nashua River, the boundary shall then follow the Nashua River in a northerly direction until reaching the bridge over the Nashua River on Front Street. Ayer and Shirley shall share any responsibility for maintenance of that bridge. The land near the “icehouse” that is presently within the jurisdiction of Harvard shall become the jurisdiction of Ayer. The boundary shall continue to follow the Nashua River to the northern most border of the DREZ.

The land to the west of the Nashua River shall be under the jurisdiction of Shirley. The land to the east of the Nashua River south of West Main Street in Ayer shall be under the jurisdiction of the Town of Devens. The land to the north of the southern edge of West Main Street and to the east of the Nashua River shall be under the jurisdiction of the Town of Ayer.

The boundary between Ayer and Devens to the east of Verbeck Gate shall follow the DREZ boundary easterly to the point of intersection with the Guilford railroad tracks and then continue southerly to the point of intersection with the Harvard boundary described above.

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APPENDIX **34**
ZONING MAP

(See next page)

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APPENDIX ~~45~~

**TIMETABLE FOR
RECONSTRUCTION OF McPHERSON ROAD**

(See next page)

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APPENDIX ~~56~~

**MEMORANDUM REGARDING UTILITIES
SERVING THE
DEVENS REGIONAL ENTERPRISE ZONE**

MassDevelopment provides utility services to the Devens Regional Enterprise Zone (“DREZ”) pursuant to Chapter 498 of the Acts of 1993. While MassDevelopment possesses many of the characteristics of a typical utility, it is not regulated as a utility under Chapter 164 of the Massachusetts General Laws.

ELECTRICITY

MassDevelopment owns and operates the electric utility system serving the DREZ. The electric division of Devens Utilities currently has the exclusive rights and the obligation to provide electric energy and distribution services to all consumers within the DREZ.

MassDevelopment has contracted with Dominion Energy Services for the delivery of wholesale electric energy to the DREZ that is sold at retail to Devens consumers. The Dominion contract expires on December 31, 2006. MassDevelopment is presently in the process of selecting a wholesale electric energy provider as of January 1, 2007.

MassDevelopment contracts with the Wellesley Municipal Light Plant to provide operations and maintenance, billing and construction services to ~~our~~ customers under the direction of the Devens Utilities Project Engineer. That contract expires in March of 2009.

Under the Massachusetts Utility Restructuring Act of 1997, the territory serviced by Massachusetts electric utilities on July 1, 1997 shall remain the exclusive service territory of that utility. This effectively prohibits regionalization of electric service.

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Electricity customers in areas returned to the jurisdiction of the towns of Harvard, Shirley and Ayer that were served by Devens utilities on July 1, 1997 will remain customers of Devens utilities.

MassDevelopment also has entered into agreements with Verizon and Comcast allowing the use of and access to certain poles, wires, conduit, etc. for the transmission and delivery of other systems such as telephone, cable television, and other telecommunication systems. MassDevelopment expects to continue to allow such use and access by mutually agreeable contractual arrangements.

NATURAL GAS

MassDevelopment owns and operates the natural gas system serving the DREZ. The gas division of Devens Utilities currently has the exclusive rights and the obligation to provide natural gas energy ~~and~~ distribution services to all consumers within the DREZ. MassDevelopment has a contract with Amerada Hess for delivery of wholesale natural gas to the DREZ that is sold at retail to Devens consumers. The Hess contract expires on November 30, 2006. MassDevelopment is presently in the process of selecting a wholesale natural gas energy provider as of December 1, 2006.

MassDevelopment contracts with Keyspan to provide operations ~~and~~ maintenance, billing and construction and gas transportation services to our customers under the direction of the Devens Utilities Project Engineer. The Keyspan contract expires in May of 2007.

PUBLIC WATER SUPPLY

MassDevelopment owns and operates as a Public Water Supply within the DREZ. MassDevelopment contracts with Earth Tech for the operations and maintenance of the system. Oversight and management of the system and the contract is provided by MassDevelopment employees.

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The DREZ has a water withdrawal permit issued by the Massachusetts Department of Environmental Protection (“MA DEP”) and is designated as a Massachusetts Public Water Supply.

MassDevelopment shall continue to supply water to the DREZ, including without limitation, the North Post.

WASTEWATER TREATMENT

MassDevelopment owns and operates a wastewater (sewage) treatment facility serving the DREZ. Presently, excess capacity is sold to the Town of Shirley, the Town of Ayer and MCI Shirley.

MassDevelopment will retain ownership of land in the area of the existing wastewater treatment plant that shall be reserved for future expansion of the plant.

MassDevelopment agrees to collaborate with the Town of Shirley regarding the creation of any future routes of access to the plant.

UTILITIES SERVICES AFTER DISPOSITION

MassDevelopment will continue to retain ownership of the real and personal property, equipment, systems and plants used for the provision of electricity, natural gas, public water and wastewater treatment services to the DREZ.

MassDevelopment shall continue to provide these utility services to the DREZ after disposition. There shall be capacity available to accommodate the planned development described in this Agreement and to abide by the contractual obligations for such utilities as may be currently in effect.

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It is anticipated that upon completion of the redevelopment of the DREZ, for each utility it owns, MassDevelopment will evaluate the options of retaining ownership, selling or otherwise conveying some or all of the respective utility to one or more municipalities, a regional authority or a private entity.

MassDevelopment agrees to offer to sell the Town of Devens the gas and electric utility systems before selling them to a private entity.

MassDevelopment will continue to support efforts to regionalize utilities (other than electricity as prohibited by current law and regulation) by selling excess capacity to surrounding communities and users.

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APPENDIX ~~67~~
**FINANCIAL MODEL AND
SCENARIO ANALYSIS REPORT**

(See next page)

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APPENDIX **78**
OPEN SPACE PROTECTION PLAN

(See next page)

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APPENDIX 8

EPSILON REPORT ON MEPA CERTIFICATE ISSUES

(See next page)

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APPENDIX 9

FINAL STAKEHOLDER CRITERIA FOR SUCCESS

(Prepared March 15, 2006)

The attached Final Stakeholder Criteria for Success represent input provided by each Stakeholder for use in the negotiation of the terms of the Memorandum of Understanding.

The criteria for success do not themselves create any agreement by or between any of the Stakeholders. In the event of any inconsistency between the criteria for success and the body of the Memorandum of Understanding, the Memorandum of Understanding shall be the controlling document.

Criteria may be amended at any time by mutual agreement of ~~the~~ MassDevelopment and the relevant Stakeholder.

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**DEVENS DISPOSITION EXECUTIVE BOARD
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TOWN OF AYER
APPROVED MOU CRITERIA
For Devens Disposition Executive Board
March 7, 2006

1) GOVERNANCE

A. JURISDICTION

1. Jurisdiction over North Post – defined as all Enterprise Zone land within Ayer’s municipal boundary located north of West Main Street and east of the Nashua River including the former airfield, the Bishop and MacPherson Road corridor, and the MacPherson Well – shall revert to the town of Ayer. Development of North Post is expected to result in mixed-use development including commercial, residential, recreational and open space. MEPA approval capacity shall be retained for North Post.

B. MUNICIPAL SERVICES

1. Adequate municipal equipment, facilities, and access must be in place to provide public safety services (police, fire, ambulance, DPW) to the site.

C. UTILITIES

1. *[see also criteria 3 below]* The MacPherson Well shall service the Town of Ayer, and the North Post, and by the time of completion of the revised Reuse Plan, ownership of the well shall transfer to the town of Ayer. MassDevelopment shall fund rehabilitation of MacPherson Well and required transmission lines.
2. Sewer, water and other necessary regional districts may be established for the operation and maintenance of regional facilities and be adequately funded through user fee revenues.

D. DEC/PERMITTING

2) BOUNDARIES

- A. Agreement on revised municipal boundaries for the towns of Ayer and Harvard in the area south of Grove Pond must be achieved.
- B. Town boundaries should be adjusted to avoid residential areas or individual lots or buildings to be split by jurisdictional boundaries.

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3) OWNERSHIP

- A. *[see also criteria 1(C) above]* The MacPherson Well shall service the Town of Ayer, and the North Post, and by the time of completion of the revised Reuse Plan, ownership of the well shall transfer to the town of Ayer. MassDevelopment shall fund rehabilitation of MacPherson Well and required transmission lines.

4) ZONING

- A. The unified permitting process, and membership of the unified permitting board, must be approved by the town of Ayer Board of Selectmen and will include a majority of Ayer citizens.
- B. Include in the MOU the following language: The pursuit of land “use swapping” proposed to the DDEB by the Town of Ayer is encouraged, and may be used to offset some residential units at North Post.
- C. MassDevelopment and the Devens Enterprise Commission will partner with representatives of the Town of Ayer in developing any zoning Bylaw revisions at the North Post.
- D. Adequate and sustainable buffers/zoning must be in place between incompatible uses within Devens and the Ayer town boundary.

5) HOUSING AND COMMERCIAL DEVELOPMENT

- A. The non-compete agreement concerning business relocation from Ayer shall survive until transfers of jurisdiction, and MassDevelopment will continue to honor it for property it owns.
- B. Residential use must be developed in accordance with a plan that includes affordable units, senior units, subsidized units and/or “over 55” units, and qualifies for state funding under MGL c. 40R/40S if Ayer so chooses.
- C. There must be an affordable housing plan in place for Devens portion. A housing analysis must be completed to ensure the addition of new housing units shall not adversely impact the real estate market or property values in the town of Ayer. Regional needs must be considered in any housing plan.
- D. Housing development, and the rate of development should not occur so as to exceed the capacity of the town to adequately serve the increased population.

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6) EDUCATION

- A. The issue of where children will be schooled shall be resolved.

7) REUSE PROJECTS

- A. Firm commitment from MassDevelopment for timetable and funding to complete MacPherson Road Corridor upgrades, including required infrastructure improvements.
- B. Redevelopment plan for Ayer North Post shall include commercial-industrial development – the particular zoning uses allowed will include Ayer approval (e.g.- no “big box” retail) – together with a maximum of 200 dwelling units, a minimum of 20 acres of recreation space (including ten acres of finished recreational facilities with a “basic” set of men’s and women’s toilets, and ten acres raw), together with an additional 10 acres of open space.
MassDevelopment shall agree with the following stipulation on phasing of work:
- First: MacPherson Road / Bishop Road Corridor (downtown bypass between Routes 2, 2A and 111),
 - Second: Start commercial development, and
 - Third: Recreational facilities and housing component.
(Phasing could be modified by mutual agreement.)
- C. The revised re-use plan must be completed per agreement of the stakeholders. A funded transition plan must be in place.

8) FINANCIAL SUSTAINABILITY

- A. Redevelopment of Ayer North Post must be revenue positive to the town of Ayer; i.e. tax revenue exceeds municipal expense.
- B. Taxation of all properties on Devens must raise revenues at a level so as to cover all operating and ongoing capital costs as well as generating enough revenue to develop a capitalization and stabilization fund which will be sufficient to maintain public infrastructure.

9) ENVIRONMENTAL/HISTORIC PROTECTION

- A. All environmental cleanup shall be completed to applicable statutory standards at no cost to the Town of Ayer. If cleanup to residential standards is not feasible, cleanup shall be completed to applicable statutory standards for commercial-industrial use at no cost to the Town of Ayer.

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- B. An aquifer protection plan will be developed, and in place, for the wellheads at North Post and Grove Pond, prior to development of the North Post.

10) OPEN SPACE/RECREATION

- A. Ayer will have access and pricing second only to Devens residents for use of Devens recreation facilities.
- B. Revised Reuse Plan must include approved Devens Open Space and Recreation Plan.

11) TRANSPORTATION

- A. MassDevelopment will work with the Town of Ayer to retain the commuter rail service in Depot Square in Ayer.
- B. Road upgrades on Ayer North Post, and on Devens proper, shall provide a direct connection between Route 2 and the Ayer North Post including MacPherson Road / Bishop Road upgrades.
- C. MassDevelopment will work cooperatively with the towns of Ayer and Harvard to attempt to facilitate acceptable access to the Barnum Road industrial area in Harvard.
- D. Plan of traffic/transportation improvements shall be designed so as to have no negative effect on Ayer or surrounding communities.

12) OTHER

- A. Any and all existing inter-municipal agreements, including memoranda of understanding, shall be reviewed and properly adjusted if needed.

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3/15/06

TOWN OF HARVARD'S MOU ELEMENTS / CRITERIA

DDEB GOVERNANCE COMMITTEE

MEMORANDUM OF UNDERSTANDING

1. GOVERNANCE

A. JURISDICTION

Beginning on July 1, 2009 (date of jurisdiction), the Town of Harvard will assume jurisdiction over the "Barnum Road" portion of the Devens Enterprise Zone. This is the geographic area comprised of approximately 206 acres of land within Devens located east of the railroad tracks to the former Barnum Gate. The assumption of jurisdiction explicitly includes the right to tax parcels within this area and the obligation to provide municipal services.

MassDevelopment shall provide all data and materials in its possession necessary for Harvard to assert jurisdiction and provide services, including assessor's data, plot plans, utility layouts, etc.

MassDevelopment will conduct land surveys necessary to delineate new town boundaries and the extent of any easements required to effect transfer of jurisdiction.

The Town of Harvard will not be responsible for the cost of legal or other services required to effect transfer of jurisdiction. It is expected these costs will be borne by project funds available to MassDevelopment or by additional funding received by the state or federal government.

Any properties owned by MassDevelopment, or other state agency, and leased or otherwise used as a source of revenue, shall be subject to taxation by the Town of Harvard or shall provide a payment in lieu of taxes directly related to its economic value.

It is expected that the residents of Devens will vote in the Town of Devens starting July 1, 2009.

B. MUNICIPAL SERVICES

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Beginning with the date of jurisdiction, the Town of Harvard will provide police, fire, public works, and all other municipal services for its newly incorporated lands.

C. UTILITIES

Utility services (natural gas, electric, sewer, and water) will continue to be provided to the Barnum Road area of Harvard by the Devens/regional utility providers after the transfer of jurisdiction. Sufficient capacity will be reserved within the utilities to service the Barnum Road area at full buildout, including Army Reserve and National Guard parcels. Assessments, rates, and utility support services to the Barnum Road area shall be the same as for other general users of the utilities.

Capacity* for the sewer and water utilities shall be made available to the Town of Harvard at a future date in the event that the Town of Harvard wishes to provide for these services to its commercial district located on Ayer Road. MassDevelopment agrees to bear all costs related to the acquisition of the easements necessary to provide utility service from the Barnum Road area into Harvard's commercial district, including compensation to property owners within the enterprise zone.

*** Capacity is defined as the Title V generation rates to support a minimum of 800,000 sq. ft. of mixed commercial, industrial, and institutional development.**

The Town of Harvard shall have the right of access to the public water supply or wells in the Salerno and Patton (Well #3) area as a future municipal water supply.

D. DEC/PERMITTING

The unified permitting process shall continue to be provided to the parcels identified as (list) in the Barnum Road area by the Devens Enterprise Commission until the parcels have been developed, but no later than June 30, 2012. In the event the Town of Harvard adopts a unified permitting process and authority for these parcels, the unified permitting authority of the DEC will be assumed by the Town of Harvard's authority.

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2. BOUNDARIES

The Town of Harvard's existing boundaries running through Devens will be adjusted as follows::

In the south to generally follow the layout of Route 2 from the Guilford rail crossing to the current town line where it crosses Route 2. Land south of Route 2 and east of the Nashua River will remain within the geographic boundaries of Harvard.

In the east to follow the Guilford rail line from its crossing with Route 2 until the rail line crosses the current town boundary with Ayer. Then to follow the current boundaries of the Devens Enterprise Zone east of the rail yard and south of Grove Pond.

In the north following the boundary of the Devens Enterprise Zone as it runs south of Grove Pond until that boundary meets the existing boundary with the Town of Ayer.

Approximately 2,600 acres of land now within the geographic boundaries of Harvard and lying north of Route 2, west of the Guilford rail line, and east of the Nashua River will be used to form the Town of Devens..

The Town of Harvard and the Town of Ayer will agree on a plan to protect the Grove Pond Well Field.

3. OWNERSHIP

Upon the transfer of jurisdiction, the Town of Harvard will assume ownership of the lands located with the public ways, sidewalks, the Cold Spring Brook Conservation Area, and any other dedicated open space or conservation lands. The town will grant suitable easements to MassDevelopment or its successors to maintain and provide public utility services to properties in effected area. Ownership of any other parcels will not be affected by this change in jurisdiction.

4. ZONING

A revised re-use plan and zoning bylaws for the Barnum Road area will be developed as part of the disposition legislation. A joint vote of the DEC, or a unified permitting authority established by the Town of Harvard to replace the DEC, and the Town of Harvard Town Meeting may amend the re-use plan and zoning bylaws for the Barnum Road area.

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The Salerno Circle and golf course area of Devens shall be under permanent development restrictions to protect the viewshed and adjacent Harvard residential areas.

All parcels within the current boundaries of the Devens Enterprise Zone that will be subject to jurisdiction by the Town of Harvard shall be explicitly exempt from the provision of Chapter 40B Sections 20, 21, 22, and 23 of the Massachusetts General Laws allowing the bypass of local zoning for the provision of affordable housing. This exemption will come in force with the passage of the legislation implementing the provisions defined in this MOU.

To protect the town of Harvard from adverse development along its boundaries with Devens, MassDevelopment agrees to place deed restrictions limiting certain types of development on the parcels described in this paragraph. These deed restrictions shall go into effect within 24 months of the passage of legislation and the properties subject to the provisions in this paragraph shall be limited by the provisions of the paragraph immediately upon passage of the legislation. MassDevelopment may convey no parcels without including in the deeds these provisions.

- A. Commercial and residential development occurring within the Salerno Circle area (define) shall be subject to a height restriction of 35 feet, shall have no lighted signage, and shall in no other way significantly and adversely impact the viewshed from Harvard or the esthetic enjoyment of property in Harvard as a result of noise, excess or improper lighting, or other activities. A vegetative buffer should be maintained on the edge and slopes of the Salerno Circle area to allow screening of development on Salerno Circle from viewsheds in Harvard.

- B. Development within the golf course area (define) shall be limited to its current use or its conversion to residential use subject to a height restriction of no more than 35 feet, a density no greater than 3 units on any individual acre within the area and a total of no more than 200 units of housing developed within the area.

The Board of Selectmen of the Town of Harvard shall have standing to challenge any violation of these restrictions before the local permitting authorities and through the normal course of legal action that would be available to any resident with standing in the Town of Devens. Harvard's Board of Selectmen shall be considered an abutter to parcels in this area and shall receive any and all legal notices that would be required to be

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transmitted to an abutter by the Town of Devens or the Devens Enterprise Commission acting for the Town of Devens.

5. HOUSING AND COMMERCIAL DEVELOPMENT

The commercial and industrial uses in the Barnum Road area shall be as allowed in the re-use plan and in the zoning bylaws.

There shall be no housing constructed in the Barnum Road area, unless allowed under an amendment to the re-use plan and zoning bylaws by a joint vote of the DEC and the Town of Harvard Town Meeting.

6. EDUCATION

The Town of Harvard shall continue to provide for the education of students who reside within its jurisdiction.

7. REUSE PROJECTS

Reuse of the Barnum Road area will be as provided for in the Barnum Road Master Plan developed in conjunction of the town of Harvard and adopted by MassDevelopment and the Devens Enterprise Commission in 2002(?). Changes to the Master Plan shall only be made with the consent of the DEC or a unified permitting authority established by the Town of Harvard to replace the DEC, and the Harvard Planning Board.

MassDevelopment shall complete improvements to Barnum Road, including the burial of utility lines, granite curbing, stormwater management systems, and landscaping for the Barnum Road area no later than June 30, 2009. The cost of these improvements shall be borne by MassDevelopment.

All parcels designated for development (get parcel numbers) shall be free of contamination, stored soils, or any other impediments to their beneficial development by the time of transfer of jurisdiction.

MassDevelopment will take steps to insure all properties within the Barnum Road area are in compliance with zoning prior to transfer of jurisdiction and will provide all funding required to enforce compliance with zoning for any parcels found not in compliance at the time of transfer.

8. FINANCIAL SUSTAINABILITY

Matters pertaining to the financial sustainability of Devens shall in no way delay or impact the transfer of jurisdiction of the Barnum Road area to the Town of Harvard on July 1, 2009.

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9. ENVIRONMENTAL/HISTORIC PROTECTION

MassDevelopment, the Commonwealth of Massachusetts, and the United States Army shall continue to be responsible for any/all environmental remediation, monitoring, and other costs associated with contamination of any lands located within the Barnum Road area.

10. OPEN SPACE/RECREATION

The conservation land located within the Cold Spring Brook Conservation Area shall receive the protections afforded under Article 97 of the Massachusetts Constitution. The provisions of Article 97 shall be explicitly waived for the limited purpose of allowing easements to be granted and utility lines to be installed for the purpose of providing sewer, water, and other utilities, but not roadways, as may be authorized by a vote of Harvard's Annual Town Meeting. The wetlands bylaws of the state and town shall govern the passage of utility lines through the Cold Spring Brook Conservation Area, but no provisions of these laws shall be interpreted so as to have the effect of prohibiting the use of easements through the area for the purpose of providing utility services.

11. TRANSPORTATION

Trucks and other commercial traffic to Devens shall continue to be required to utilize the Jackson Road entrance and exit from Route 2. There will be no public ways constructed connecting the Barnum Road area with commercial or residential properties in Harvard. All public ways that may still be in existence providing passage from the Town of Harvard to the area designated to become the Town of Devens are considered discontinued at the new town border as per the provisions of Massachusetts General Laws and related case law. No person or organization may claim any damages as the result of the discontinuation of any road crossing the new town borders. No public way providing passage from the Town of Harvard to the area designated to become the Town of Devens shall be created without an affirmative vote of Harvard's Annual Town Meeting.

12. OTHER

The ISO rating of the Devens Fire Department will be extended to the Barnum Road area.

The activities of the Devens Restoration Advisory Board shall continue.

**DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06**

**DDEB GOVERNANCE COMMITTEE
MEMORANDUM OF UNDERSTANDING
TOWN OF SHIRLEY - FINAL MOU ELEMENTS / CRITERIA**

I. GOVERNANCE:

1. Jurisdiction

- a. There shall be a 20-year sunset clause from the date of the passage on the enabling legislation for any proposed development. Any development not underway by year-20 will revert back to the Town and be subject to Town Zoning.

2. Municipal Service

- a. Regionalization of Municipal Services should be explored for economic efficiencies.
- b. Reciprocal Agreement or Contractual Agreements must be made to those services that cannot be performed by the “Town of Devens”.

3. Utilities

- a. Any current stormwater management areas associated with the Shirley Middle School and its infrastructure must remain in place or be redesigned and replaced to accommodate current and future build-out at no cost to the Town of Shirley.
- b. All new construction must have access and be tied-in to the Shirley Water District and the Shirley Sewer District.
- c. The Devens wastewater plant will continue to serve Shirley through a mutually acceptable regional type arrangement. Access routes to and from any land for expansion must be agreed to by the Town of Shirley.

4. DEC/Permitting:

- a. The Unified Permitting Process must be maintained throughout the disposition process.
- b. The make-up of the DEC must be determined prior to final disposition.

II. BOUNDARIES

- 1. All areas west of the Nashua River including the Village Growth District 1, Village Growth District 2, The Environmental Business District and Army Reserve shall return to the jurisdiction of the Town of Shirley.

III. OWNERSHIP

- 1. The Town of Shirley supports Mass Development’s proposed land swap of a small portion next to the municipal complex and school in exchange for town owned frontage on Front Street, with exact details to be worked out.

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IV. ZONING

1. Village Growth: There are approximately 49 acres within the Village Growth Area. The amount of land to be developed needs to be determined and finalized. Development shall be based on current R3 zoning, modified as appropriate. Density may be increased to 4 dwellings per buildable acre, with appropriate common open space.
2. The housing area is generally the 24 acres in the southern area of the parcel and the commercial/mixed use area is generally the 13 acres in the northern area of the parcel.
3. Environmental Business Zone (EBZ): There are approximately 238 acres within the EBZ. The amount of land to be developed needs to be determined and finalized. Development shall be at a density of 1 dwelling per buildable acre using Town of Shirley Low Impact Development (LID) Bylaw, with appropriate common open space. All development must adhere to Massachusetts Endangered Species Act.

V. HOUSING AND COMMERCIAL DEVELOPMENT

1. Housing Development: The actual developable acreage in the Village Growth Area and the EBZ needs to be determined and finalized.
 - a. Housing Styles in the Village Growth Area: The housing units shall be compliant with Town of Shirley, Site Plan review, Section 7.
 - b. Housing Styles in the EBZ: The housing units shall include a variety of styles which are consistent with nearby neighborhoods within Shirley.
 - c. Senior or Elderly Housing in the Village Growth Area: Due to the location and proximity of the land to be developed (Schools, Library, Police Station, Town Offices, Recreation Areas, and the Commuter Rail) Senior or Elderly Housing is preferable for this location.
 - d. Housing Makeup in the Village Growth Area: The housing units shall consist of a mix of market rate housing, senior/elderly housing, and affordable housing. Specific percentages shall be determined prior to town meeting; however, by no means shall the affordable units be less than ten (10%) percent of the total units and no more than twenty five (25%) percent of total units.
 - e. Housing Makeup in the EBZ: The housing units shall consist of a mix of market rate housing and affordable housing. Specific percentages shall be determined prior to town meeting; however, by no means shall the affordable units be less than ten (10%) percent of the total units, nor more than 25 percent (25%).
 - f. Rental Units in the Village Growth Area and the EBZ: Rental Units are permitted provided not less than ten (10%) percent of units affordable to low and moderate income families as defined by HUD and the Commonwealth of Massachusetts definition of affordable housing.
 - g. Unit Pricing in the Village Growth Area and the EBZ: Unit pricing shall support a range of incomes and shall specifically include not less than ten (10%) percent of units affordable to low- and moderate-income families as defined by HUD and the Commonwealth of Massachusetts definition of affordable housing.

**DEVENS DISPOSITION EXECUTIVE BOARD
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- h. Mixed-Use Development in the Village Growth Area: Mixed-Use is permitted, provided such zoning is consistent with the Town's "Shirley Village Business District Regulations".
 - i. Mixed-use Development is permitted in the EBZ, provided such zoning is consistent with the Town's "North Shirley Village Business District Regulations".
 - j. Shirley residents, employees, relatives of Shirley residents will have right-of-first refusal for all Senior/Elderly and Affordable Housing Units as and wherever applicable.
2. Commercial Development: The actual developable acreage in the Village Growth Area and the EBZ needs to be determined and finalized. Areas and types of Commercial Development to be determined prior to town meeting.
- a. The commercial and mixed use area must be governed by design standards such as those employed by the Devens Enterprise Commission (DEC) or the Shirley Site Plan review to ensure a well-planned commercial/mixed use area.
 - b. Mixed-use Development is permitted in the Village Growth Area, provided such zoning is consistent with the Town's "Shirley Village Business District Regulations".
 - c. Areas for commercial campus type development and residential development shall be determined prior to town meeting.

VI. EDUCATION

- a. Sufficient Land must remain open for future Shirley School District expansion.

VII. REUSE PROJECTS

VIII. FINANCIAL SUSTAINABILITY

- 1. A financial analysis must be performed to determine the financial impact on the overall current and future operational budget of the Town of Shirley.
- 2. Development shall not have a negative financial impact on the Town of Shirley.

IX. ENVIRONMENTAL/HISTORIC PROTECTION

- 1. All land and areas must be fully remediated and tested with positive outcomes prior to the transfer of jurisdiction to the Town of Shirley.
- 2. All development must adhere to Massachusetts Endangered Species Act and other conservation restrictions.

**DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06**

X. OPEN SPACE/RECREATION

1. Any recreational fields must be retained or redesigned and replaced to accommodate current and future needs at no cost to the Town.

XI. TRANSPORTATION

1. An access road (collector road) must be developed from the most southerly part of Hospital Road around the Village Growth Area to the most easterly part of Front Street to alleviate traffic around the Middle School and the Municipal Government Complex. Discontinue the re-routed portion of Hospital road.
2. Traffic studies shall be performed to determine any impact to the region of development or the Town of Shirley as a whole.
3. Sidewalks in all developments must be constructed throughout the developed area and must be connected to existing sidewalks in the area.
4. Adequate access to the airport must be through McPherson road and shall not go through Shirley Village, Walker Road or Patterson Road.
5. Primary access to the northern portion of the EBZ shall be established from route 2A.

XII. OTHER

- 1.

DEVENS DISPOSITION EXECUTIVE BOARD
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Devens Resident
Memorandum of Understanding
Criteria

Note: Disposition of all capital assets (i.e. building, land, equipment, infrastructure and open space) will be subject to ongoing negotiations between MassDevelopment and the Devens Residents. Areas identified by (*) pertain to these categories and items being reviewed and negotiated. The term “CORE Devens” refers to the area that will become the town of Devens upon incorporation.

1. Governance

Jurisdiction (*)

- Transition plan between Devens residents and other stakeholders outlining specific phases of jurisdiction transfer
- Transfer of jurisdiction and town incorporation in 2010

Municipal Services (*)

- Contractual agreement (rate sheet plus minimum service fee) to define any services to businesses on Barnum Road.

Utilities (*)

- Co-ownership of regional waste-water treatment facility
- Guaranteed capacity of present and future waste water treatment facility of a minimum of 8.5M sq. ft and 1300 housing units.
- Transfer of Gas and Electric utilities to the Town of Devens

DEC/Permitting

- Unified permitting function maintained during transition and after incorporation on CORE Devens.
 - *Transition period defined as enactment of legislation to incorporation of the town.*
- During transition period immediate “equal” participation by Devens residents (minimum of 2 appointed Devens residents will be placed on the DEC, the other stakeholders can appoint new representation or maintain their present membership, there can be at large participation through appointment by the Governor).
- At incorporation the creation of a unified permitting board made up of appointed Devens residents (possible at large participation but in a minority position, i.e. 3 Devens residents and possibly 2 at large).
 - *Chairmanship maintained by a Devens resident*
- DEC administration and staff maintained throughout and funded on a pro-rata basis between stakeholders

**DEVENS DISPOSITION EXECUTIVE BOARD
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2. Boundaries

- Boundaries to Town of Devens to coincide with DDEB 2B proposal from December 2005. Devens to encompass all parcels loosely defined as CORE Devens including the Golf Course, Salerno Circle extending eastward along Barnum Road to the railroad tracks. Excludes the North Post and parcels west of the Nashua River. Specific mapping and boundary identification required.
- Devens residents will choose a county before November vote.

3. Ownership (*)

- Ownership and transfer of property and facilities necessary for municipal functions to be worked out with MassDevelopment.

4. Zoning

- Legislation to include both a zoning plan and design guidelines
- Zoning freeze based upon disposition legislation to include a sunset clause of 10 years or sooner if build out metric reached. (A specific metric needs to be defined and agreed to.)
- Procedures to amend zoning during the zoning freeze period to be specified in the disposition legislation.

5. Housing and Commercial Development

- DC – Mass Development Plan (1300 units over 20 years)
 - *Grant Road Phase* (approximately 233 units)
 - *Vicksburg Square Phase* (approximately 150 units)
 - *Willard Heights Phase* (approximately 257 units)
 - *Golf Course Phase* (approximately 20 units)
 - *Salerno Circle Phase* (approximately 200 units)
 - *Davao Circle Phase* (approximately 70 units)
 - *Town Center Phase* (approximately 120 units)
 - *Buena Vista Phase* (approximately 100 units)
- Any Parcel removed from scenario reduces housing units from that parcel.
- One housing phase will be an over-55 (minimum 200 units).
- Affordable housing target 10%, not to exceed 10%.
- 40R / 40S revenues to town of Devens stabilization fund.
- Commercial-Industrial build out tied to housing development (100K to 150K per year). (*)
- Ratio of single family to multi family, 50-50.
- Traffic flow patterns within Devens and transportation to Devens will be reviewed and the analysis will be incorporated into the layout of parcels to be developed.

***DEVENS DISPOSITION EXECUTIVE BOARD
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6. Education (*)
 - PK-12 education plan and construction of school facilities
 - Upon enactment of the legislation, the composition of the DEAC will transition to 5 Devens residents.
7. Reuse Projects (*)
 - Identify, prioritize and establish completion dates for projects in Devens coordinated between MassDevelopment and the Devens residents.
 - Coordination of reuse projects of the other stakeholders with those reuse projects in Devens.
8. Financial Sustainability (*)
 - Economic and financial sustainability guaranteed via revenues and resources to at least 2015.
9. Environmental / Historical Protection (*)
 - Areas for environmental historical protection to be determined between MassDevelopment and the Devens residents.
10. Open Space / Recreation (*)
 - Transfer of open space on CORE Devens to the Town of Devens.
 - Provide preferential use of Devens fields upon reciprocal agreement (expectation is that as new Ayer fields come on-line reciprocal agreement can be fully exercised.)
 - During transition Devens residents may participate on recreational teams from Ayer, Harvard and Shirley.
 - Continued participation after incorporation to be determined.
11. Transportation
 - Any potential transportation or traffic impact on CORE Devens derived from disposition stakeholders through the development of or in association with disposition parcels will require review and coordination with Devens to address demands on Devens road ways.
 - Any potential roadwork changes associated with disposition parcels outside of CORE/Town of Devens and requiring changes to roadwork on Devens must be coordinated with road work changes on Devens.
12. Other (*)

**DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06**

DDEB GOVERNANCE COMMITTEE

MEMORANDUM OF UNDERSTANDING

March 15, 2006

**FINAL MOU ELEMENTS / CRITERIA
MASSDEVELOPMENT**

1) GOVERNANCE:

JURISDICTION: Devens to be incorporated as a Town upon achievement of a reasonable level of financial sustainability.

MUNICIPAL SERVICES: All municipal services will be the responsibility of the town which has jurisdiction over the land. The effective date of providing municipal services by all of the towns will be the date of the change in jurisdiction. All inter-municipal agreements will be reviewed on a case by case basis and will either be assigned to the town of Devens from MassDevelopment, terminated or renegotiated between the Towns.

UTILITIES: All Utilities will remain owned and operated by MassDevelopment until development of the Enterprise Zone is complete. At that point, utilities may be conveyed to the Town of Devens, regionalized or sold to a private entity.

DEC/PERMITTING: The Regional Enterprise Zone and the Devens Enterprise Commission with unified permitting will remain in effect with its current composition and appointments made by the governor until such time as the redevelopment of Devens as set forth in the Reuse Plan as amended is complete.

2) BOUNDARIES

The Town of Devens would encompass land within the Enterprise Zone East of the Nashua River, South of West Main Street, North of Route 2, and West of the Railroad tracks owned by Guilford. (See attached boundary map)

The Town of Ayer would have municipal jurisdiction and responsibility over land within the Enterprise Zone North of West Main Street and East of the Nashua River. West Main Street will be owned and maintained by the Town of Ayer East of the Nashua River.

The Town of Shirley will have municipal jurisdiction and responsibility over land within the Enterprise Zone West of the Nashua River.

The Town of Harvard will have municipal jurisdiction and responsibility over land within the Enterprise Zone East of the Guilford railroad tracks. The Town of Harvard will own and maintain Barnum Road as a public way within this parcel.

***DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06***

3) OWNERSHIP

Disposition of all Capital Assets (i.e. buildings, land, equipment, infrastructure, public ways and open space) will be subject to ongoing negotiations between MassDevelopment and the Devens Committee.

4) ZONING

Adopt flexible zoning to achieve the current housing plan and planned commercial development while preserving the possibility of additional future development, if desired by the Town of Devens.

Parcels that are being proposed for housing will be re-zoned to allow the uses and densities proposed. The zoning will reflect the type of housing and the maximum density allowed. The areas currently zoned commercial/industrial that are not identified as parcels for housing development will remain unchanged. Open Space will be identified and the level of protection for each parcel will be identified. The current amount of Open Space land will not be reduced.

Mechanisms will be identified to “freeze” zoning for a specified period of time that will enable the planned development to occur. (i.e. zoning freeze or extended “grandfathered” status) After such date it will remain in effect unless changed by the Town with municipal jurisdiction and in accordance with that Town’s Zoning By-Laws and state law.

MassDevelopment will remain in place during that time as the designated Local Redevelopment Authority.

5) HOUSING AND COMMERCIAL DEVELOPMENT

Enact an interim cap on residential development of 1,800 units, including 1,300 units in the Town of Devens in accordance with the DC and MassDevelopment 10 point housing plan, 200 units on the Moore Airfield, 300 units between the Shirley Village Growth Area and EBZ.

6) EDUCATION Each Town will be responsible for Education services once jurisdiction is transferred.

7) REUSE PROJECTS

MassDevelopment will undertake only those Re-use Projects that are related to the creation of jobs, promotion of economic growth, which includes commercial industrial and residential development, environmental clean-up on property owned and controlled by MassDevelopment.

***DEVENS DISPOSITION EXECUTIVE BOARD
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8) FINANCIAL SUSTAINABILITY:

Ensure that annual operating expenses and revenues are balanced

All expenses, including capital costs, related to the administration and provision of public services for Devens, including education, must be balanced by revenues originating from Devens, State Aid, and Federal Aid on an annual basis.

A commitment to maintain proportionality between residential development and commercial/industrial development in each phase of the plan to assure financial sustainability will be negotiated by MassDevelopment and the Devens Committee.

9) ENVIRONMENTAL/HISTORIC PROTECTION

Remediate site in a manner to coincide with market demand for development. Implement clean up in accordance with applicable regulations and contingent upon available state and federal funding

10) OPEN SPACE/RECREATION

Open Space areas will be identified and the level of protection for each parcel will be determined.

11) TRANSPORTATION

Plan to efficiently accommodate pedestrians, bicycles, cars, and commercial vehicles. Advocate for improved commuter rail service and related parking. Plan for roadway improvements necessary to minimize traffic congestion at Devens and in the surrounding communities

12) OTHER

MassDevelopment, as the party designated to represent the interests of the Devens Business Community at the DDEB presents the items requested by the businesses to be included in the MOU:

1. Zoning in Barnum Road area that is proposed to revert to Harvard under 2B will be no more restrictive as currently zoned under the current reuse plan and will remain valid for at least 20 years (incorporated into the zoning freeze for other areas of DREZ)
2. The ISO rating of the Devens Fire Department will be extended to any Barnum Road businesses under Harvard's jurisdiction.
3. Utility service (gas, electric, sewer, water) will continue under MassDevelopment's management until redevelopment is complete for the entire Devens Enterprise Zone. A change in governance will not change the present utility services to the Barnum Road businesses.

**DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06**

4. The unified permitting process will be continued until redevelopment of the DREZ is complete.
5. Massdevelopment will support the continued use of the Devens, MA 01434 for Barnum Road businesses.
6. Barnum Road improvements will be carried out by a stated date including underground installation of utility wires, granite curbing and landscaping in order to put this entrance into Devens on a par with the West Rail Industrial Park.
7. All annual inspections of existing buildings will be the responsibility of the jurisdiction where the business is located.
8. Harvard will insure that Fire/Police/EMT/DPW services will be provided to the Barnum Road businesses at their current level.

AREAS OF CONFLICT:

1. Unified Permitting- our proposed composition conflicts with the other Stakeholders. MassDevelopment's criteria for unified permitting are for the entire Enterprise Zone regardless of the jurisdictional change.
2. Housing Density at Shirley Village Growth and EBZ.
3. We cannot guarantee that the ISO rating will be extended to any Barnum Road businesses under Harvard's jurisdiction.
4. MassDevelopment expects Harvard to provide public safety services to Barnum Road.
5. MassDevelopment is not committing to any Barnum Road improvements.
6. MassDevelopment is not relinquishing ownership of McPherson Well or any Water Supply wells.

**DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06**

DDEB GOVERNANCE COMMITTEE

MEMORANDUM OF UNDERSTANDING

**FINAL MOU ELEMENTS / CRITERIA
Devens Enterprise Commission Criteria**

GOVERNANCE

JURISDICTION
MUNICIPAL SERVICES
UTILITIES
DEC/PERMITTING

- The DEC Executive Committee feels strongly that Unified Permitting should remain in place at Devens. Regional commissioners represent the interests of the taxpayers of the Commonwealth which support the ongoing redevelopment of Devens. They also represent the interests of the business community through the Governor's judicious use of his/her appointment powers and a regional role should be maintained on the DEC.
- The DEC Executive Committee supports the appointment of two commissioners (and an alternate) who are Devens residents to replace regional representatives on the Commission commencing in the fiscal year starting two years prior to incorporation of Devens as stated in the forthcoming legislation. The two year Devens resident appointments should be one in each year with the Alternate appointed in the first year.
- The Governor can appoint whomever he or she pleases to fill the regional slots as commissioners' terms expire.
- The DEC is willing to consider a lower number of commissioners as long as the ratios of representatives retain regional representation, add Devens representation, retains representation from the three host communities and allows for alternates.

**BOUNDARIES
OWNERSHIP
ZONING
HOUSING AND COMMERCIAL DEVELOPMENT
EDUCATION
REUSE PROJECTS
FINANCIAL SUSTAINABILITY
ENVIRONMENTAL/HISTORIC PROTECTION
OPEN SPACE/RECREATION
TRANSPORTATION
OTHER:**

***DEVENS DISPOSITION EXECUTIVE BOARD
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- The Commission wishes to protect the integrity of the Reuse Plan by retaining Sustainable Development as the organizing principle for the redevelopment of this former army post. All aspects of the proposed amendments to the Reuse Plan should be questioned in terms of whether or not future development will continue to balance economic development, environmental protection and social equity issues. The DEC wishes to include this emphasis on sustainable development in any amendments to the Reuse Plan, Devens By-laws and subsequent DEC Regulations.

**DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06**

SCHEDULE A

INTERESTS IN REAL PROPERTY TO BE TRANSFERRED

[Disposition of interests in real property will be subject to on-going negotiations between MassDevelopment and the Stakeholders. Agreements reached prior to execution of this Agreement shall be included in this Schedule A.]

TRANSFER OF INTERESTS IN REAL PROPERTY FROM MASSDEVELOPMENT TO A MUNICIPALITY SHALL BE SUBJECT TO APPROVAL OF THAT MUNICIPALITY'S TOWN MEETING.

MassDevelopment shall prepare such deeds, easements, bills of sale and other documentation necessary to effectuate transfers of interest in real property described herein. Each municipality shall be responsible for its own legal and other costs relating to the review of such documentation

Ayer

- Approximately a minimum of twenty (20) acres of land at the former Moore Army Airfield for use as recreational playing fields

- Approximately 10 acres of open space (which need not be contiguous), some or all of which may be used as a buffer between types of uses at the former Moore Army Airfield

-The public ways in the North Post

Harvard

-The public ways now known as Barnum Road east of the railroad tracks

***DEVENS DISPOSITION EXECUTIVE BOARD
SECOND DRAFT 5-4-06***

SCHEDULE B

PERSONAL PROPERTY/ASSETS TO BE TRANSFERRED

[Disposition of capital assets will be subject to on-going negotiations between MassDevelopment and the Stakeholders. Agreements reached prior to execution of this Agreement shall be included in this Schedule B.]

***DEVENS DISPOSITION EXECUTIVE BOARD
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SCHEDULE C

LIST OF INTER-MUNICIPAL AGREEMENTS