

**Town of Shirley
Special Town Meeting
March 28, 2012
Warrant**

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, ss.

To any of the Constables of the Town of Shirley in said County,

Greetings:

In the name of the Commonwealth aforesaid, you are hereby required to notify and warn the Inhabitants of said Town, qualified to vote in Town affairs, to assemble in the Auditorium in the Ayer-Shirley Regional Middle School at 1 Hospital Road in Shirley Village on:

Wednesday, the Twenty-Eighth Day of March, 2012, 7:00 p.m.,

then and there to act on the following Article:

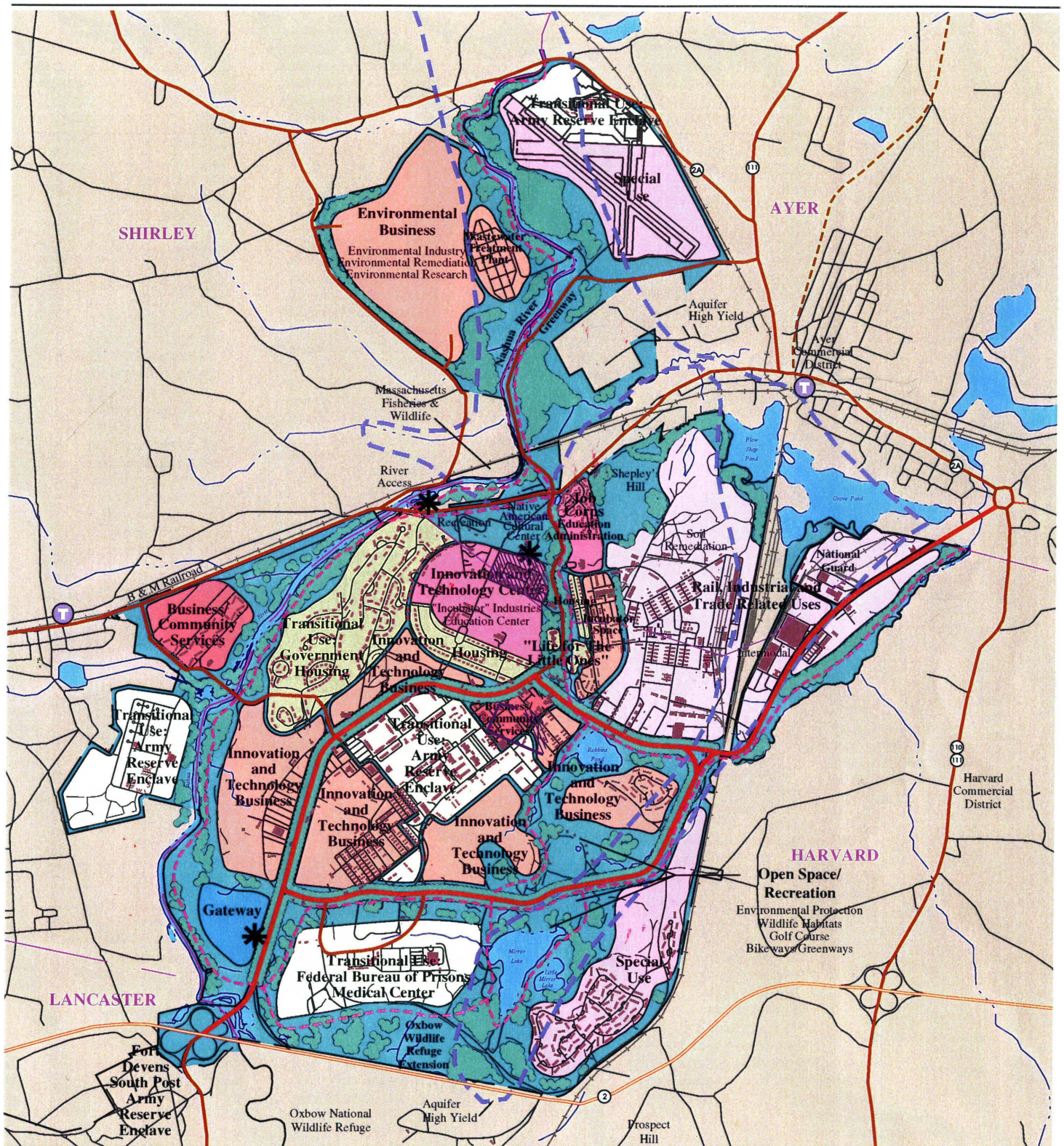
**ARTICLE 1: DEVENS – REVISIONS TO DEVENS REUSE PLAN, ZONING BY-LAWS AND
ZONING MAP – REDEVELOPMENT OF VICKSBURG SQUARE**

To see if the Town will vote to approve revisions to the Reuse Plan and Zoning Bylaws of the Devens Regional Enterprise Zone as follows:

1. In the Devens Reuse Plan, Chapter 1, Introduction, section entitled Highlights of the Reuse Plan, subsection entitled Innovation and Technology Business, by inserting “in the location shown on the Reuse Plan” in the second paragraph and deleting “housed in the Vicksburg Square Quadrangle” from the second paragraph, so that the second paragraph shall now read as follows:

“The Plan includes an Innovation and Technology Center in the location shown on the Reuse Plan. This Center is intended to serve as a catalyst for new development on the large sites located elsewhere in the Devens Enterprise Zone. It will play this role both by providing start-up and incubator space and by fostering connections to academic and research institutions.”

2. In the Devens Reuse Plan, at the end of Chapter 1, Introduction, by replacing the existing Devens Reuse Plan figure dated November, 1994 with a new version dated October 5, 2011. A copy of the new figure follows:



- | | |
|---|--|
| Open Space/Recreation | Transitional Use Army Reserve Enclave & Federal Bureau of Prisons Medical Center |
| Innovation & Technology Business | Gateway |
| Rail, Industrial & Trade-Related Uses | Special Use |
| Environmental Business | High Yield Aquifer |
| Housing | Conceptual Trails & Bikeways |
| Business/Community Services | Commuter Rail |
| Innovation & Technology Center Training & Job Corps | Vicksburg Square Redevelopment |

DEVENS

Devens Reuse Plan

August 18, 1994 -- Revised October 5, 2011



0 1500 3000 Feet



5 25 Acres

3. In the Devens Reuse Plan, Chapter 4, The Devens Reuse Plan, section entitled Patterns in the Reuse Plan, subsection entitled The Core: Innovation and Technology, by inserting “the area shown on the Reuse Plan” in the first paragraph and deleting “historic Vicksburg Square with its campus-like atmosphere” from the first paragraph, so that the first paragraph shall now read:

“The Innovation and Technology theme is the boldest physical reuse pattern in the Plan. The physical and thematic core of the Devens Regional Enterprise Zone is centered on the Innovation and Technology Center (ITC) proposed to be located in the area shown on the Reuse Plan. This environment is expected to generate larger spin-off Innovation and Technology Businesses to be constructed on other locations on the site. Innovation and Technology Businesses are expected to exhibit one or a combination of the following qualities:

- new or improved product or service
- growing
- educational/academic links
- research and development component”

4. In the Devens Reuse Plan, Chapter 4, The Devens Reuse Plan, section entitled Patterns in the Reuse Plan, subsection entitled Housing and Community Facilities, by inserting “original Reuse Plan” and “in addition to all of the other uses permitted under the original Reuse Plan” in the first paragraph, so that the first paragraph shall now read:

“Concerns raised during the original Reuse Plan public workshop process made it clear that housing and community facilities play an important role in the comprehensive land use approach envisioned for Devens. These uses, while not the central themes of the Reuse Plan, are expected to serve important regional needs as well as providing balance in the use mix of Devens, in addition to all of the other uses permitted under the original Reuse Plan.”;

by inserting “At the time the Reuse Plan was approved in 1994” at the beginning of the second paragraph, by deleting the word “currently” from the first sentence of the second paragraph, and by replacing the words “reveals” with “revealed” and “are” with “were” so that the first sentence of the second paragraph shall now read:

“At the time the Reuse Plan was approved in 1994, an inventory of the existing housing units on Devens revealed that there were approximately 1,700 units scattered around the site.”;

by inserting a new paragraph after the second paragraph which shall read as follows:

“In 2012, after a process of public hearings and collaboration between the communities of Ayer, Harvard, Shirley and Devens and MassDevelopment, the 20-acre Vicksburg Square property was rezoned as the “Vicksburg Square Redevelopment District” to allow for multi-family and elderly residential uses. A separate housing “cap” of 246 units was approved for the new district. The location of Vicksburg Square complements the locations of Devens’ other residential districts, creating a “ring” of residential uses around Rogers Field.”;

by inserting “originally allowed” into the first sentence of the third paragraph so that the first sentence of the third paragraph shall now read:

“In order to accommodate the needs of a broad range of income groups, and to ensure the stability of the residential core, approximately twenty-five (25%) of the originally allowed 282 units to be reused or constructed under the Reuse Plan will be reserved for low and moderate income individuals or families, and/or special needs populations.”;

by inserting a new second sentence to the third paragraph which shall read as follows:

“Affordable residential units developed in the Vicksburg Square Redevelopment District shall be credited to the achievement of this twenty-five (25%) commitment.”;

by deleting “balance between” from the last sentence of the third paragraph, by inserting “mixture of” in the last sentence of the third paragraph, and by inserting “and that the historic and current use of Devens has special importance to members of the public who are (i) veterans of the various branches of the U.S. Military Services; (ii) spouses or widows or widowers of such veterans; (iii) active members of the U.S. Military Services; and (iv) spouses of active U.S. Military Service members” in the last sentence of the third paragraph so that the last sentence of the third paragraph shall now read as follows:

“It is recognized that the success of the residential reuse is dependent on a mixture of market rate and the affordable/special needs populations, and that the historic and current use of Devens has special importance to members of the public who are (i) veterans of the various branches of the U.S. Military Services; (ii) spouses or widows or widowers of such veterans; (iii) active members of the U.S. Military Services; and (iv) spouses of active U.S. Military Service members.”; and

by inserting a new last sentence to the fourth paragraph which shall now read as follows:

“At Vicksburg Square, this goal may be served by the conversion of the former theater building to cultural and community uses.”

5. In the Devens Reuse Plan, Chapter 4, The Devens Reuse Plan, section entitled Zoning and Resource Protection Overlay Districts, by inserting a new subsection entitled “Vicksburg Square Redevelopment District” which shall read as follows:

“Recognizing the importance of Vicksburg Square to the Devens Regional Enterprise Zone as a whole, the goal of the Vicksburg Square Redevelopment District is to facilitate the redevelopment of the historic Vicksburg Square structures by allowing for a broad range of uses including office uses; certain types of light industrial and research and development uses; cultural facilities; academic, institutional, and civic uses; “small-scale retail: accessory use”; multi-family residential dwellings; elderly housing; and business incubator uses.”

6. In the Devens Reuse Plan, Chapter 4, The Devens Reuse Plan, section entitled Zone Districts Goals and Objectives, by inserting a new subsection entitled “Vicksburg Square Redevelopment District” which shall read as follows:

“Goals and Objectives

- Preserve the historic Vicksburg Square buildings through adaptive reuse
- Provide for a range of allowed uses

Example Uses

- Office
- Research & Development

- Cultural
- Nursing Home, Elderly Housing
- Academic/Institutional/Civic
- Multi-Family Residential
- Incubator”

7. In The Devens By-Laws, Chapter V, Zoning Districts and Zoning Map, section A, Zoning Districts and Development Goals – General Description, by replacing the number “14” in the second sentence of the first paragraph with the number “15” so that the second sentence of the first paragraph shall now read as follows:

“The description of the development goals applicable to each zoning district are listed in subparagraphs 1 through 15 of this section A.”

8. In The Devens By-Laws, Chapter V, Zoning Districts and Zoning Map, section A, entitled Zoning Districts and Development Goals – General Description, subsection 13 entitled Innovation and Technology Center, by inserting “Rogers Field, specifically excluding” and “(see Section V.A.15, Vicksburg Square Redevelopment District” into the first sentence of the first paragraph so that the first sentence of the first paragraph shall now read as follows:

“Locations: Area designated on the Zoning Map in the vicinity of Rogers Field, specifically excluding Vicksburg Square (see Section V.A.15, Vicksburg Square Redevelopment District).”

9. In The Devens By-Laws, Chapter V, Zoning Districts and Zoning Map, section A, entitled Zoning Districts and Development Goals – General Description, by inserting a new subsection 15 entitled “Vicksburg Square Redevelopment District” which shall read as follows:

- “15. Vicksburg Square Redevelopment District
- a. Location: Area designated on the zoning map.
 - b. Development Goals: Recognizing the importance of Vicksburg Square to the Devens Regional Enterprise Zone as a whole, the goal of the Vicksburg Square Redevelopment District is to facilitate the redevelopment of the historic Vicksburg Square structures by allowing for a broad range of uses including

office uses; certain types of light industrial and research and development uses; cultural facilities; academic, institutional, and civic uses; accessory retail; multi-family residential dwellings; elderly housing; and business incubator uses.

The existing footprints and shells of the existing structures within the district: Allen Hall, Hale Hall, Knox Hall, Revere Hall, Bataan Corregidor Memorial Hall, the former firehouse, and the State Police Building, shall not be expanded; provided, however, that minor additions outside of the existing footprint and shell of these existing buildings are allowed to accommodate improvements required to improve building access and/or circulation and to meet building code or public safety requirements. The State Police Building may be demolished in order to facilitate the redevelopment of Vicksburg Square.

There shall be a deed restriction (which may be imposed in phases, as property is conveyed for development) for the Vicksburg Square Redevelopment District which shall address the affordable housing component of the Vicksburg Square Redevelopment District.

In accordance with a Memorandum of Agreement between MassDevelopment and the developer of Vicksburg Square, as a condition of the conveyance of Vicksburg Square for residential development, there shall be imposed a regulatory agreement upon the conveyed property having a term of at least thirty (30) years, which shall provide for affordable housing restrictions, and may provide for additional matters which will encourage the redevelopment of Vicksburg Square as a financially viable and socially and economically diverse community.

Units must be subject to an Affirmative Fair Marketing and Resident Selection plan that meets DHCD requirements for such plans.”

10. In The Devens By-Laws, Chapter V, Zoning Districts and Zoning Map, section B, entitled Zoning Map, by deleting “official Zoning Map of” from the first paragraph, by inserting “Zoning Districts and Zoning Map” to the first paragraph, and by replacing the date “November 14, 1994” with the date “October 5, 2011” in the first paragraph, so that the first paragraph shall now read as follows:

“The Devens Zoning Districts and Underlying Federal Uses map dated October 5, 2011, is adopted and incorporated herein as Exhibit A. The zoning Map shall be maintained by the Commission.”

11. In the Devens By-Laws, Chapter VI, Permitted Uses, section A entitled General Land Use Categories, subsection 3 entitled Use Categories, by replacing the word “eight” with the word “six” and by replacing the numeral “8” with the numeral “6” in the first sentence of paragraph k and by inserting “multi-family dwellings (containing in excess of six (6) units, only allowed within the Vicksburg Square Redevelopment District)” into the first sentence of paragraph k so that the paragraph shall now read as follows:

“The residential use type refers to the following activities: single and two family dwellings; multi-family dwellings (containing three (3) to six (6) units); multi-family dwellings (containing in excess of six (6) units, only allowed within the Vicksburg Square Redevelopment District); nursing homes and congregate or life care facilities with a permanent health care component; housing for the elderly, including retirement communities and shared living developments; active and passive recreation facilities; and professional offices and service businesses as accessory uses or home occupations where allowed in particular districts.”

12. In the Devens By-Laws, Chapter IX, Density and Dimensional Requirements, section entitled Residential Density, by inserting “exclusive of the Vicksburg Square Redevelopment District. The total number of residential units to be allowed within the Vicksburg Square Redevelopment District shall not exceed two hundred forty-six (246).” at the end of the first paragraph so that the first paragraph shall now read as follows:

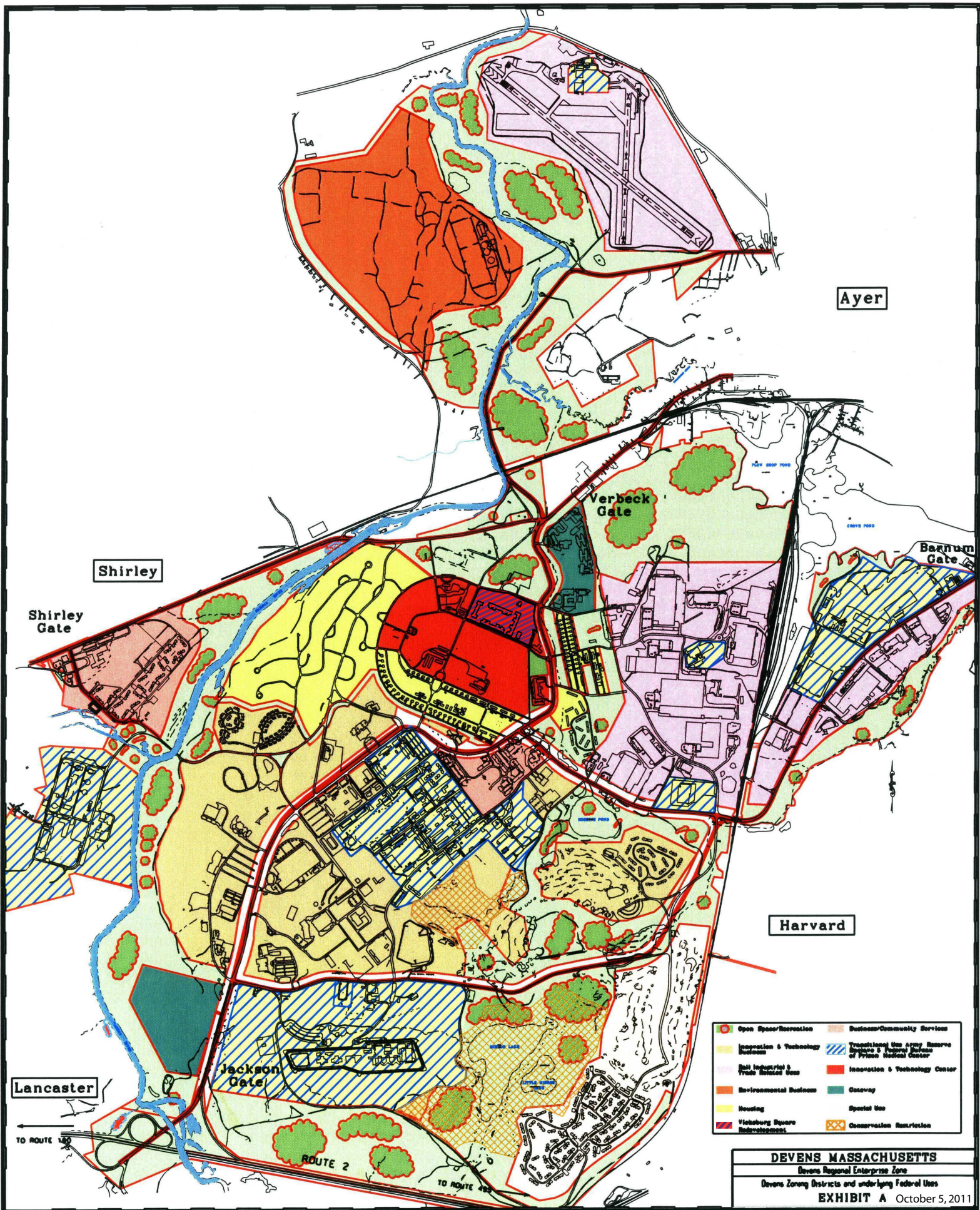
“The total number of residential units to be allowed within Devens shall not exceed two hundred and eighty-two (282) units, exclusive of the Vicksburg Square Redevelopment District. The total number of residential units to be allowed within the Vicksburg Square Redevelopment District shall not exceed two hundred forty-six (246).”

13. In the Devens By-Laws, Chapter IX, Density and Dimensional Requirements, section entitled Setback, by inserting “except in the Vicksburg Square Redevelopment District, in which the minimum setback shall be the lesser of such requirements, or the setback of the existing buildings therein, as the same may

be improved by minor additions outside of the existing footprints and shells to accommodate improvements required to improve building access and/or circulation and to meet building code or public safety requirements.” at the end of the first sentence, so that the first sentence shall read as follows:

“Minimum setback requirements in Devens shall be as required by the Massachusetts State Building Code unless stricter standards are adopted in the Regulations, except in the Vicksburg Square Redevelopment District, in which the minimum setback shall be the lesser of such requirements, or the setback of the existing buildings therein, as the same may be improved by minor additions outside of the existing footprints and shells to accommodate improvements required to improve building access and/or circulation and to meet building code or public safety requirements.”

14. In the Devens By-Laws, Exhibit A, Zoning Map, by replacing the zoning map dated November 17, 1994 with the revised map entitled “Devens Zoning Districts and Underlying Federal Uses” dated October 5, 2011, which revised map is attached hereto.



15. In the Devens By-Laws, Exhibit B, Density/Intensity Controls, by inserting after the end of the table the following:

“The Vicksburg Square Redevelopment District shall have the same Density/Intensity Controls as the Innovation and Technology Center District, except that in the Vicksburg Square Redevelopment District:

- (a) the Maximum FAR for Individual Lots & Users shall be 1.2, and
- (b) the Maximum Height for this District shall be 50’, except that the height of existing buildings may be maintained.”

16. In the Devens By-Laws, Exhibit C, Parking Schedule, by inserting the following at the end of the table:

“USE	REQUIRED PARKING
Multifamily Use In Vicksburg Square Redevelopment District*	1.5 spaces for 1 bedroom units; 2 spaces for 2 and 3 bedroom units
Culture/Community Uses in Vicksburg Square Redevelopment District*	2 spaces/1,000 square feet
Ancillary Uses in Vicksburg Square Redevelopment District*	2 spaces/1,000 square feet

*Parking within the Vicksburg Square Redevelopment District may be located on private streets within the Vicksburg Square Redevelopment District, and may be located on any lot or lots within the Vicksburg Square Redevelopment District by means of easements between lots.”

17. In the Devens By-Laws, Exhibit D, Table of Permitted Uses, by inserting the following at the end of the table:

“The Vicksburg Square Redevelopment District shall have the same permitted, accessory, and not allowed uses as the Innovation and Technology Center District, except that in the Vicksburg Square Redevelopment District, “Multi-Family Dwelling (7 or more units)” and “Elderly Housing” shall be permitted.”

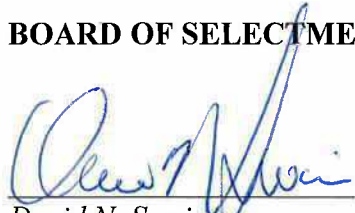
* * * *

And you will serve this Warrant by posting true and attested copies of same at the Town Offices and the Hazen memorial Library in Shirley Village, at the Center Town Hall in Shirley Center, and a like copy at the United States Post Office in Shirley Village, fourteen (14) days at least before the time appointed for said Meeting.

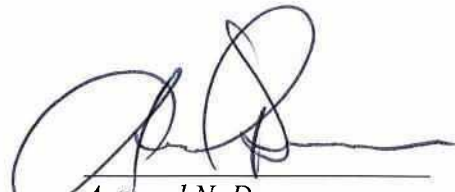
Hereof fail not and make due return of this Warrant with your doings therein to one of the Selectmen, on or before the date of the Meeting.

Given under our hands at Shirley, this 5th Day of March, 2012.

BOARD OF SELECTMEN


David N. Swain
Chair


Kendra J. Dumont
Vice Chair


Armand N. Deveau
Clerk

A true copy.
Attest:


Amy R. McDougall
Town Clerk

* * * *

* * * *

RETURN OF SERVICE

I certify that on the _____ Day of March, 2012, I duly posted true and attested copies of the foregoing Warrant at the following places and times:

Town Offices _____M.

Hazen Memorial Library _____M.

U.S. Post Office _____M.

Center Town Hall _____M.

Signature of Constable

Printed name of Constable

* * * *

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MARCH 5, 2012

MEMORANDUM OF AGREEMENT

BETWEEN

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

AND

TRINITY VICKSBURG SQUARE LIMITED PARTNERSHIP

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the “Agreement”) dated this 5th day of March, 2012 (the “Effective Date”), by and between **MASSACHUSETTS DEVELOPMENT FINANCE AGENCY**, a Massachusetts body politic and corporate established and existing under Chapter 23G of the Massachusetts General Laws, with its office at 160 Federal Street, Boston, Massachusetts 02110 (“MassDevelopment”) and **TRINITY VICKSBURG SQUARE LIMITED PARTNERSHIP**, a Massachusetts limited partnership, with its principal office at 40 Court Street, Suite 800, Boston, MA 02108 (“Trinity”).

RECITALS

WHEREAS, MassDevelopment, under Chapter 498 of the Acts of 1993 (“Devens Act”), was designated as the redeveloper of the Devens Regional Enterprise Zone (“Devens”) and continues to be the owner of certain land at Devens;

WHEREAS, Trinity was selected by MassDevelopment to be the developer of a portion of Devens owned by MassDevelopment known as Vicksburg Square;

WHEREAS, Trinity has proposed housing, cultural, and other allowed accessory uses for Vicksburg Square;

WHEREAS, to implement such uses, amendments to the Devens Reuse Plan and Zoning Bylaws are under consideration by MassDevelopment and by the three towns in which the land constituting Devens is located;

WHEREAS, the parties have agreed that, if the amendments are so adopted, this Agreement will confirm the undertaking of the parties as to certain terms, restrictions, and agreements concerning the housing portion of the Trinity project.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENTS

1. Project Description. Trinity intends to develop, on a phased basis, a project (“Project”) at Vicksburg Square that will include up to 246 housing units, including units restricted to individuals and families with low or moderate incomes. Certain of the units will be age-restricted. In addition, Trinity will provide in its marketing materials and tenant selection lottery a preference for veterans, their spouses or widows/widowers, active U.S. Military Service members, and their spouses. The Project may also contain some cultural uses and potentially other uses permitted by the Reuse Plan and by zoning.

2. Development Regulatory Agreement. The parties agree that the covenants and restrictions described in Section 3 below will be set forth in Development Regulatory Agreements (each, a “DRA”), to be recorded with the Middlesex (North District) County and Worcester (Worcester District) County Registries of Deeds (“Registry”) for each phase of the Project simultaneously with the deed for that phase. The covenants and restrictions in each DRA will run with the land for a term of 30 years.

3. DRA Covenants and Restrictions. The covenants and restrictions to which the Project will be subject are as follows:

- a. Of the approved 246 units in the Project, no less than 25% and no more than 80% will be available for low and moderate income individuals and families earning no more than 60% of area median income. The percentage of affordable units in the Project allocated to each of Ayer and Harvard shall be the same percentage as the percentage of the total number of units in the Project that are located within such town. For example, if 30% of the units in the Project are located within Harvard, Harvard will be allocated 30% of the affordable units in the Project, and if 70% of the units in the Project are located within Ayer, Ayer will be allocated 70% of the affordable units in the Project.
- b. “Area median income” shall be defined as the lesser of (i) the area median income as defined by HUD for the Middlesex County Metro Fair Market Rent Area, or (ii) the area median income as defined by HUD for the Eastern Worcester County Metro Fair Market Rent Area.
- c. At least 75 of the residential units in the Project will be restricted to individuals 55 years or older.
- d. The Affirmative Fair Housing Marketing Plan for the Project will provide that the marketing of all affordable residential units at Vicksburg Square, and the lottery procedures for selecting tenants for affordable units, will give preference to (i) veterans of the various branches of the U.S. Military Services; (ii) spouses or widows or widowers of such veterans; (iii) active members of the U.S. Military Services; and (iv) spouses of active U.S. Military Service members.

4. Phasing. Each phase of the Project shall have a separate DRA, and any default under one DRA shall not constitute a default under any other DRA. If a phase or phases has satisfied any of the requirements set forth in Section 3 (such as, for example, the provision of 75 units of age-restricted housing), such requirement shall be deemed satisfied and such restriction shall not be imposed upon other phases.

5. Land Disposition Agreement. Trinity and MassDevelopment shall execute an agreement regarding the phased disposition of the land for the Project (“LDA”) within ninety (90) days after the date of adoption by the Towns of Ayer, Harvard and Shirley of amendments to the Devens Reuse Plan and Zoning Bylaws under the provisions the Devens Act (“Super

Town Meeting”), or on such later date as may be agreed upon by MassDevelopment and Trinity, but in any case, within one hundred twenty (120) days after the date of the Super Town Meeting. The LDA shall provide that: (a) construction of the first phase of the Project shall commence within two (2) years of the date of execution of the LDA, and (b) construction of the last phase of the Project shall commence within ten (10) years of the date of execution of the LDA.

6. Chapter 40R and 40S Designation. It is intended that the Vicksburg Square Redevelopment District shall be designated as a smart growth district under the provisions of Chapter 40R and Chapter 40S of the Massachusetts General Laws.

7. Enforcement. The Devens Enterprise Commission, a Massachusetts body politic and corporate created under the Devens Act, shall be the enforcing party under each DRA, and may use all of the powers afforded to it by the Devens Act, any other applicable law, and in the Reuse Plan, Zoning By-Laws, and Zoning Regulations for Devens, including, without limitation, pursuing legal and equitable remedies, imposing fines, or utilizing other methods of enforcement within its powers, as well as withhold a building permit for any phase of the Project, until the DRA for that phase has been recorded with the Registry.

8. Term. The term of this Agreement shall commence upon the Effective Date established above and shall expire upon the first to occur of: (a) the recording with the Registry of DRAs for each phase of the Project, and (b) the termination of Trinity as the party designated as developer of the Project.

9. Nature of Relationship. This Agreement does not create a joint venture or partnership or business relationship among the parties hereto other than that set forth herein. The parties understand and agree that the ultimate feasibility or economic viability of the Project or any other project arising out of this Agreement is not being guaranteed or assured by any party hereto.

10. Compliance with Laws. In connection with this Agreement, the parties shall comply with all federal, state, and local laws, regulations, rules, ordinances and orders of any kind which are applicable to their duties hereunder

11. Liability. In no event shall the parties be held liable with respect to:

- (i) any contract or other agreement entered into with a third party by any other party hereto; or
- (ii) any recommendations, proposals, suggestions, comments, or actions taken or omitted in connection with this Agreement.

12. Notices. All notices shall be in writing and shall be deemed given when delivered by hand or when deposited in the United States Postal Service via certified or registered first class mail, return receipt requested, or via overnight delivery with confirmation of process and shall be addressed as follows:

To MassDevelopment: MassDevelopment
 160 Federal Street, 7th Floor
 Boston, Massachusetts 02110
 Attention: Executive Vice President—Real Estate

With a copy to: MassDevelopment
 160 Federal Street, 7th Floor
 Boston, MA 02110
 Attention: General Counsel

To Trinity: Trinity Vicksburg Square Limited Partnership
 40 Court Street, Suite 800
 Boston, MA 02108

With a copy to: Wilmer Hale LLP
 60 State Street
 Boston, MA 02109
 Attention: Katharine Bachman, Esq.

Any party may change any of its notification information for the purpose of this section by giving the other party prior notice thereof in accordance herewith.

13. Amendment; Default and Termination. This Agreement may be:

- a. amended by the parties hereto only upon the unanimous approval of the Boards of Selectmen of Ayer, Harvard, and Shirley (each of such Boards acting by majority vote).
- b. terminated by any party, upon the other party's failure to perform or observe any of its obligations under this Agreement, after a period of thirty (30) days or the additional time, if any, that is reasonably necessary to promptly and diligently cure such failure, after such defaulting party receives notice from the non-defaulting party setting forth in reasonable detail the nature and extent of the failure and identifying the applicable provisions of this Agreement.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

15. Entire Agreement. This Agreement supersedes all earlier letters, conversations, proposals, memoranda and other written and oral communications concerning the Project, and it contains all the terms agreed on by the parties, with respect to the subject matter hereof.

16. Authority to Enter Agreement. Each signatory to this Agreement represents and warrants to the other that it has full power and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement, and this Agreement constitutes the

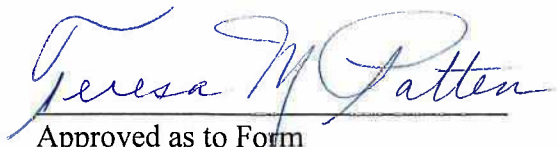
legal, valid, and binding obligation of such party enforceable in accordance with its terms.

17. Severability. If any term or provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable, the remainder of this Agreement or the application thereof to any circumstance other than that to which it is invalid or unenforceable shall not be affected thereby.

18. Dispute Resolution. The parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved in the daily management and implementation of this Agreement shall, if the parties cannot resolve a dispute by negotiations, be submitted by any party to mediation. Within forty five (45) days following the date on which the dispute was first identified, the parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the parties fail to agree upon a mediator, the parties shall request the American Arbitration Association to appoint a mediator. The parties shall be responsible for equal shares of the costs associated with the services of the mediator and agree to mediate the dispute in good faith.

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PAGE IS THE SIGNATURE PAGE.]

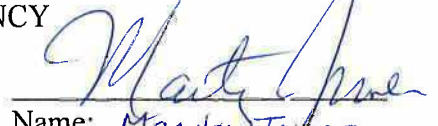
EXECUTED as a sealed instrument as of the Effective Date above.



Approved as to Form
Agency Counsel

MASSACHUSETTS DEVELOPMENT FINANCE
AGENCY

By:

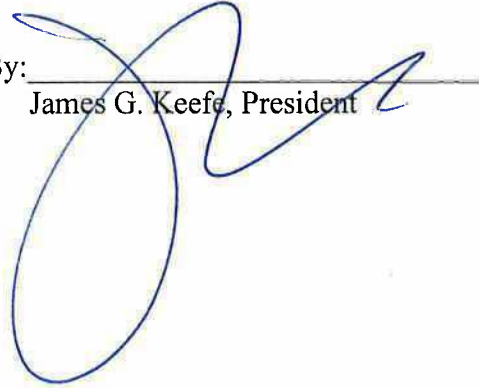


Name: Marty Jones
Title: President & CEO

TRINITY VICKSBURG SQUARE LIMITED
PARTNERSHIP, a Massachusetts limited
partnership

By: TRINITY VICKSBURG SQUARE, INC.,
a Massachusetts corporation, general partner

By:



James G. Keefe, President

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PROPOSED CHANGES TO THE DEVENS REUSE PLAN

to

FACILITATE THE REDEVELOPMENT OF

VICKSBURG SQUARE

MARCH 28, 2012

**Proposed Changes to the Devens Reuse Plan
To Facilitate the Redevelopment of Vicksburg Square**

Revised March 1, 2012 (Trinity)

Note: Proposed new text is shown underlined. Deletions are shown in ~~strike-through~~.

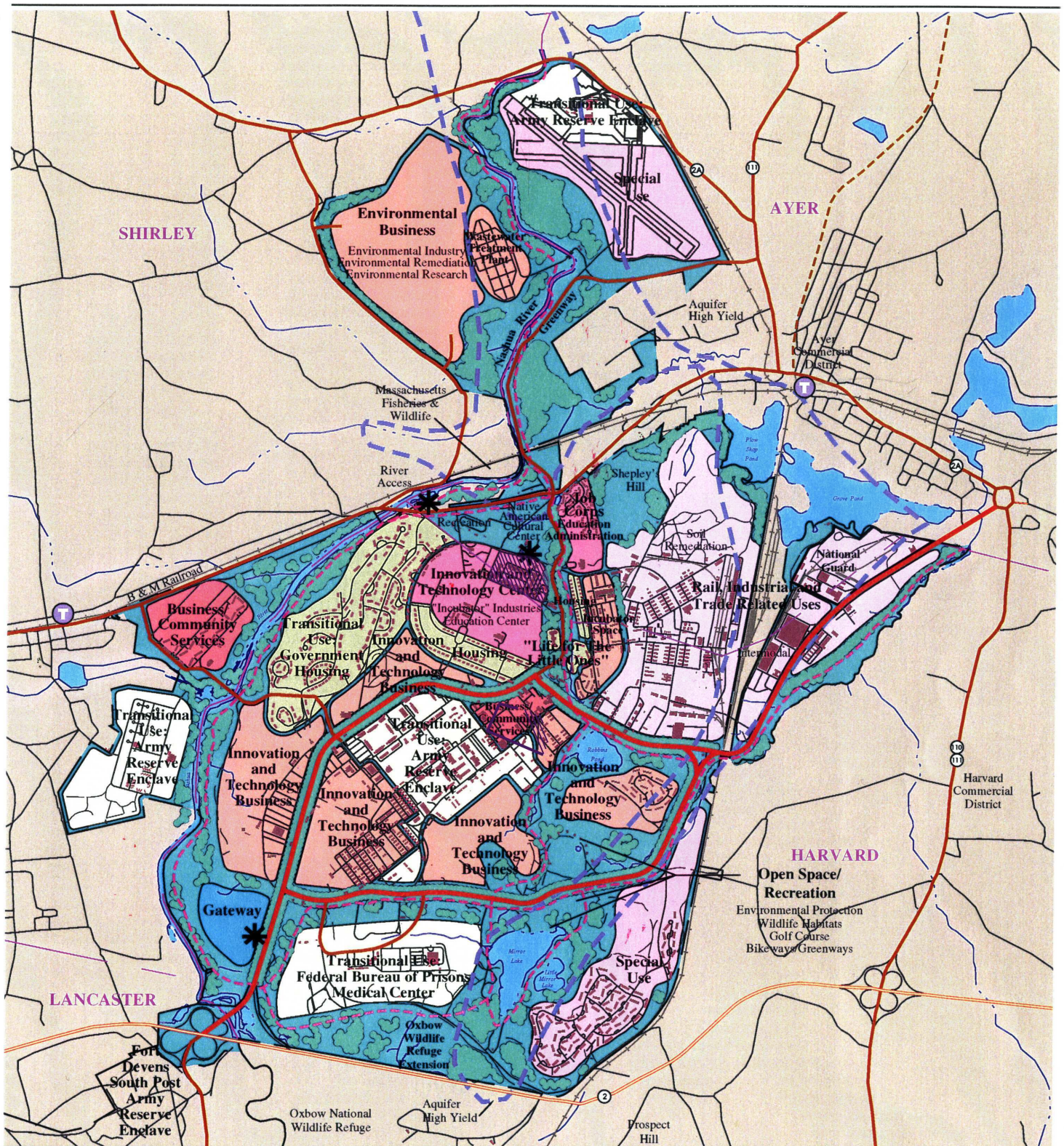
Change #1: Highlights of the Reuse Plan (page 7)

“This central economic theme of the Reuse Plan is based on Massachusetts’ traditional strengths in development of new technologies through the academic and research base of greater Boston. The reuse goal is to encourage businesses that are growing and have new products, technologies, or services to locate at Fort Devens. Large sites with utilities and good vehicular access have been designated for high-profile technology-related users with research and development, manufacturing, and office needs.

The Plan includes an Innovation and Technology Center in the location shown on the Reuse Plan, ~~housed in the historic Vicksburg Square Quadrangle~~. This Center is intended to serve as a catalyst for new development on the large sites located elsewhere in the Devens Enterprise Zone. It will play this role both by providing start-up and incubator space and by fostering connections to academic and research institutions.”

Change #2: Devens Reuse Plan Figure (page 10)

Replace the existing Devens Reuse Plan figure dated November, 1994 with a new version dated October 5, 2011. A copy of the new figure follows:



- | | |
|---|--|
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DEVENS

Devens Reuse Plan

August 18, 1994 -- Revised October 5, 2011



0 1500 3000 Feet



5 25 Acres

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Change #3 The Core: Innovation and Technology (page 25)

“The Innovation and Technology theme is the boldest physical reuse pattern in the Plan. The physical and thematic core of the Devens Regional Enterprise Zone is centered on the Innovation and Technology Center (ITC) proposed to be located in the area shown on the Reuse Plan. ~~historic Vicksburg Square with its campus-like atmosphere~~. This environment is expected to generate larger spin-off Innovation and Technology Businesses to be constructed on other locations on the site. Innovation and Technology Businesses are expected to exhibit one or a combination of the following qualities:

- new or improved product or service
- growing
- educational/academic links
- research and development component

The Innovation and Technology Business (ITB) zones have been designed to serve as a physical and developmental outgrowth of the Innovation and Technology Center (ITC). Physical siting of these businesses and industries are to be located in areas which surround the ITC that provide ample space and resources to further promote the healthy evolution of these uses.”

Change #4: Housing and Community Facilities (page 27)

“Concerns raised during the original Reuse Plan public workshop process made it clear that housing and community facilities play an important role in the comprehensive land use approach envisioned for Devens. These uses, while not the central themes of the Reuse Plan, are expected to serve important regional needs as well as providing balance in the use mix of Devens, in addition to all of the other uses permitted under the original Reuse Plan.

At the time the Reuse Plan was approved in 1994, a An inventory of the existing housing units ~~currently~~ on Devens revealed ed that there ~~awere~~ approximately 1,700 units scattered around the site. A housing plan based on market research and public input was developed to best determine the role of housing in the Reuse Plan. Of the existing 1,700 units, it was determined that a maximum of 282 units of housing, primarily existing units, should be accommodated in the Reuse plan based on a series of factors including regional needs, projected demand, projected land use of the Devens Regional Enterprise Zone, and potential negative fiscal impacts on the host communities and on the off-site housing market. The housing units that will be retained are located in areas that best promote and enhance a stable and diverse residential core. Some of the highest quality housing is currently located in and around the core area. Some of the units are in the historic district. Advantages to locating the housing in the core area include access to recreational

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and community facilities, the strong open space network buffering the residential core, and access to the institutional campus. Only the best housing stock relative to location and compatibility with surrounding land uses was considered for reuse. The areas selected for residential use are already well established neighborhoods that will serve as a natural extension of land use patterns surrounding Devens and will avoid isolation of the residential core.

In 2012, after a process of public hearings and collaboration between the communities of Ayer, Harvard, Shirley and Devens and MassDevelopment, the 20-acre Vicksburg Square property was rezoned as the “Vicksburg Square Redevelopment District” to allow for multi-family and elderly residential uses. A separate housing “cap” of 246 units was approved for the new district. The location of Vicksburg Square complements the locations of Devens’ other residential districts, creating a “ring” of residential uses around Rogers Field.

In order to accommodate the needs of a broad range of income groups, and to ensure the stability of the residential core, approximately twenty-five (25%) of the originally allowed 282 units to be reused or constructed under the Reuse Plan will be reserved for low and moderate income individuals or families, and/or special needs populations. Affordable residential units developed in the Vicksburg Square Redevelopment District shall be credited to the achievement of this twenty-five (25%) commitment.

It is recognized that the success of the residential reuse is dependent on a ~~balance between~~ mixture of market rate and the affordable/special needs populations, and that the historic and current use of Devens has special importance to members of the public who are (i) veterans of the various branches of the U.S. Military Services; (ii) spouses or widows or widowers of such veterans; (iii) active members of the U.S. Military Services; and (iv) spouses of active U.S. Military Service members.

A wide range of community facilities such as schools, meeting halls, libraries, etc. currently exist on Devens. It has been recognized that there is a strong need to retain the majority of these uses not only for the sake of the new users and residential population at Devens, but to serve the needs of the host communities and the region. As a result, many of these uses will be retained and additional uses will be encouraged to better complement and to serve the area needs. These uses should be encouraged in areas that best complement the spirit and intent of the Reuse Plan. At Vicksburg Square, this goal may be served by the conversion of the former theater building to cultural and community uses.

Change #5: Vicksburg Square Redevelopment District (page tbd)

Recognizing the importance of Vicksburg Square to the Devens Regional Enterprise Zone as a whole, the goal of the Vicksburg Square Redevelopment District is to facilitate the redevelopment of the historic Vicksburg Square structures by allowing for a broad range of uses including office uses; certain types of

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light industrial and research and development uses; cultural facilities; academic, institutional, and civic uses; “small-scale retail: accessory use”; multi-family residential dwellings; elderly housing; and business incubator uses.”

Change #6: Vicksburg Square Redevelopment District (page tbd)

“Goals and Objectives

- Preserve the historic Vicksburg Square buildings through adaptive reuse
- Provide for a range of allowed uses

Example Uses

- Office
- Research & Development
- Cultural
- Nursing Home, Elderly Housing
- Academic/Institutional/Civic
- Multi-Family Residential
- Incubator”

PROPOSED CHANGES TO THE DEVENS BY-LAWS

to

FACILITATE THE REDEVELOPMENT OF

VICKSBURG SQUARE

MARCH 28, 2012

**Proposed Changes to the Devens By-Laws
To Facilitate the Redevelopment of Vicksburg Square**

Revised March 1, 2012

Change #1: Section V.A (page 29)

A. Zoning Districts and Development Goals — General Description

The following zoning districts, as further identified on the Zoning Map, are hereby established at Devens. The description of the development goals applicable to each zoning district are listed in subparagraphs 1 through ~~14~~15 of this section A. The development goals reflect the development, marketing, planning, and environmental objectives outlined for Devens in the Reuse Plan. The uses permitted in Devens are described in Article VI. The uses permitted in each zoning district are listed in the Table of Permitted Uses attached at Exhibit D. If there are any inconsistencies or conflicts between the development goals and the permitted uses listed on Exhibit D and described in Article VI, the permitted uses shall control.

Change #2 Section V.A.13.a (page 37)

13. Innovation and Technology Center

- a. Locations: Area designated on the Zoning Map in the vicinity of Rogers Field, specifically excluding Vicksburg Square (see Section V.A.15, Vicksburg Square Redevelopment District).

Change #3: Section V.A.15 (page 38)

15. Vicksburg Square Redevelopment District

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- a. Location: Area designated on the zoning map.
- b. Development Goals: Recognizing the importance of Vicksburg Square to the Devens Regional Enterprise Zone as a whole, the goal of the Vicksburg Square Redevelopment District is to facilitate the redevelopment of the historic Vicksburg Square structures by allowing for a broad range of uses including office uses; certain types of light industrial and research and development uses; cultural facilities; academic, institutional, and civic uses; accessory retail; multi-family residential dwellings; elderly housing; and business incubator uses.

The existing footprints and shells of the existing structures within the district: Allen Hall, Hale Hall, Knox Hall, Revere Hall, Bataan Corregidor Memorial Hall, the former firehouse, and the State Police Building, shall not be expanded; provided, however, that minor additions outside of the existing footprint and shell of these existing buildings are allowed to accommodate improvements required to improve building access and/or circulation and to meet building code or public safety requirements. The State Police Building may be demolished in order to facilitate the redevelopment of Vicksburg Square.

There shall be a deed restriction (which may be imposed in phases, as property is conveyed for development) for the Vicksburg Square Redevelopment District which shall address the affordable housing component of the Vicksburg Square Redevelopment District.

In accordance with a Memorandum of Agreement between MassDevelopment and the developer of Vicksburg Square, as a condition of the conveyance of Vicksburg Square for residential development, there shall be imposed a regulatory agreement upon the conveyed property having a term of at least thirty (30) years, which shall provide for affordable housing restrictions, and may provide for additional matters which will encourage the redevelopment of Vicksburg Square as a financially viable and socially and economically diverse community.

Units must be subject to an Affirmative Fair Marketing and Resident Selection plan that meets DHCD requirements for such plans.

Change #4: Section V.B.1 and V.B.2

1. The ~~official Zoning Map~~ of Devens Zoning Districts and Underlying Federal Uses map dated ~~November 14, 1994~~ October 5, 2011, is adopted and incorporated herein as Exhibit A. The zoning Map shall be maintained by the Commission.

Change #5: Section VI.A.3.k (page 46)

k. Residential

The residential use type refers to the following activities: single and two family dwellings; multi-family dwellings (containing three (3) to ~~six~~eight (68) units); multi-family dwellings (containing in excess of six (6) units, only allowed within the Vicksburg Square Redevelopment District); nursing homes and congregate or life care facilities with a permanent health care component; housing for the elderly, including retirement communities and shared living developments; active and passive recreation facilities; and professional offices and service businesses as accessory uses or home occupations where allowed in particular districts.

Change #6: Section IX.E.1 (page 55)

1. The total number of residential units to be allowed within Devens shall not exceed two hundred and eighty-two (282) units, exclusive of the Vicksburg Square Redevelopment District. The total number of residential units to be allowed within the Vicksburg Square Redevelopment District shall not exceed two hundred forty-six (246).

Change #7 Section IX.G (page)

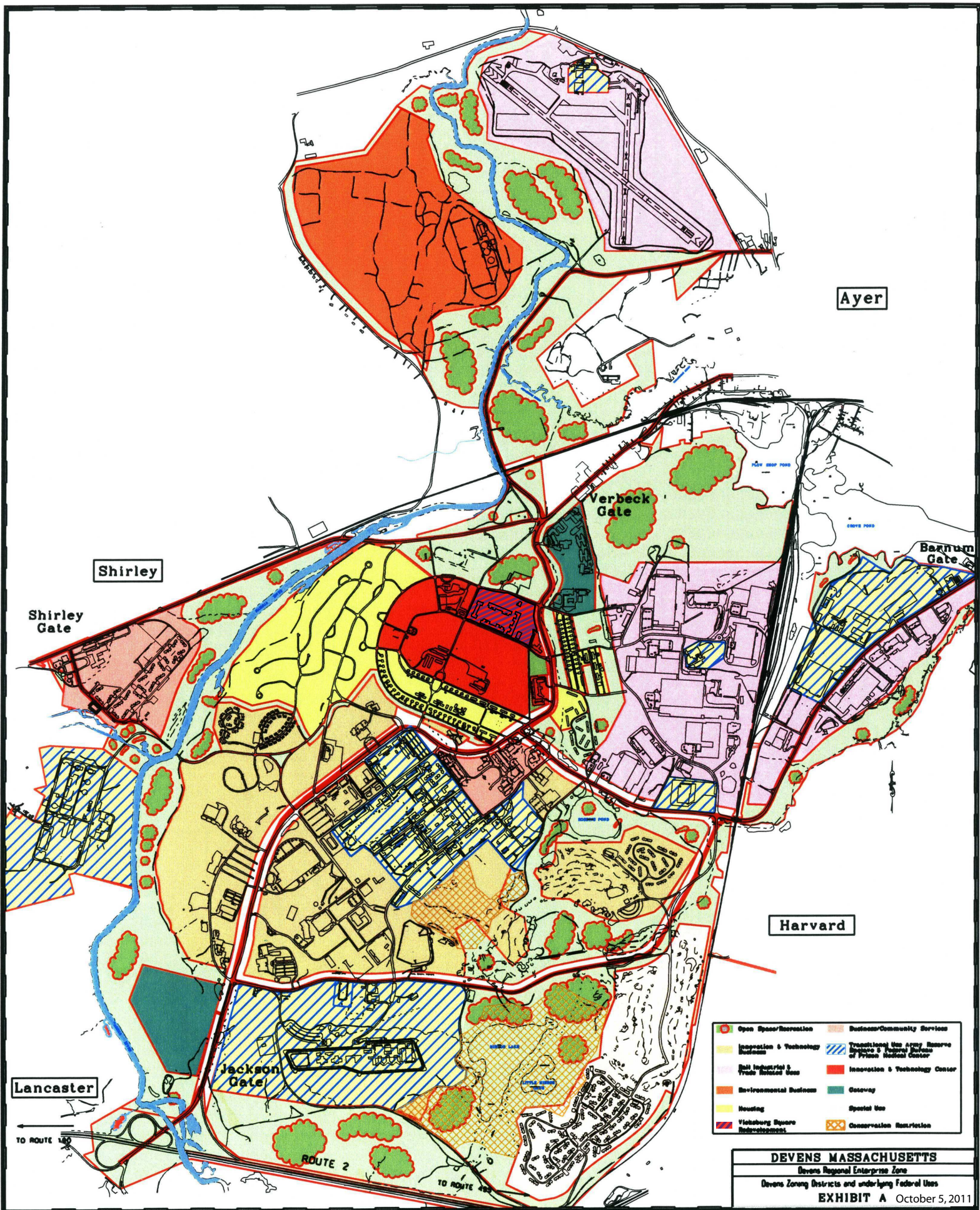
Minimum setback requirements in Devens shall be as required by the Massachusetts State Building Code unless stricter standards are adopted in the Regulations, except in the Vicksburg Square Redevelopment District, in which the minimum setback shall be the lesser of such requirements, or the setback of the existing buildings therein, as the same may be improved by

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minor additions outside of the existing footprints and shells to accommodate improvements required to improve building access and/or circulation and to meet building code or public safety requirements.

Change #8: Exhibit A, Zoning Map

Delete the zoning map dated November 17, 1994 and insert the revised map entitled “Devens Zoning Districts and Underlying Federal Uses” dated October 5, 2011, which revised map is attached hereto.



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Change #9: Exhibit B (Density/Intensity Controls)

Add the following at the end of Exhibit B:

The Vicksburg Square Redevelopment District shall have the same Density/Intensity Controls as the Innovation and Technology Center District, except that in the Vicksburg Square Redevelopment District:

- (a) the Maximum FAR for Individual Lots & Users shall be 1.2, and
- (b) the Maximum Height for this District shall be 50', except that the height of existing buildings may be maintained.

Change #10: Exhibit C (Parking Schedule)

Exhibit C shall be amended by inserting the following:

USE	REQUIRED PARKING
Multifamily Use In Vicksburg Square Redevelopment District*	1.5 spaces for 1 bedroom units; 2 spaces for 2 and 3 bedroom units
Culture/Community Uses in Vicksburg Square Redevelopment District*	2 spaces/1,000 square feet
Ancillary Uses in Vicksburg Square Redevelopment District*	2 spaces/1,000 square feet

*Parking within the Vicksburg Square Redevelopment District may be located on private streets within the Vicksburg Square Redevelopment District, and may be located on any lot or lots within the Vicksburg Square Redevelopment District by means of easements between lots.

Change #11: Exhibit D (Table of Permitted Uses)

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Add the following at the end of Exhibit D:

The Vicksburg Square Redevelopment District shall have the same permitted, accessory, and not allowed uses as the Innovation and Technology Center District, except that in the Vicksburg Square Redevelopment District, “Multi-Family Dwelling (7 or more units)” and “Elderly Housing” shall be permitted.