

Devens Soil Management Policy

The following represents the policy of the Massachusetts Development Finance Agency (“MassDevelopment” or the “Agency”), with regard to the disturbance, excavation, movement and/or removal of soils located in the Devens Regional Enterprise Zone (“Devens”).

MassDevelopment, pursuant to Chapter 498 of the Acts of 1993, has been designated as the public agency responsible for the redevelopment, reuse, and operation of Devens.

Whereas, Devens is a former active military installation, it is possible that unexploded ordnance (“UXO”) or Munitions of Explosive Concern (“MEC”) and environmental contaminants may exist and/or be encountered at Devens. With this policy, MassDevelopment seeks to reduce any risk to human health and safety and the environment.

Until amended or rescinded, it shall be the policy of the Agency that:

1. Prior to commencing any intrusive earth work within Devens (due diligence, construction or otherwise) all personnel to be on site shall view a UXO/MEC video briefing provided by MassDevelopment. This video is intended to instruct on-site personnel as to how to visually recognize UXO/MEC if found during construction activities and to provide instructions on what to do if potential/suspected UXO/MEC is observed.
2. To the extent reasonably practicable, no soil shall leave any construction site at Devens. Construction sites at Devens should be “balanced”, i.e., engineered such that all soils remain on the development site and result in no excess soil.
3. In the event that excess soils must be removed from a development site, the following protocol shall apply:
 - (a) Excess soils may be transported to another suitable location within Devens, provided however, that:
 - i. the soils must be restricted for use only at a commercial site;
 - ii. there is written documentation evidencing the consent and approval of the party agreeing to accept the soils for a specific use and the use, location and disposition of the soils shall be approved in writing by MassDevelopment;
 - iii. chemical testing of soils to be transported must be performed in conformity with the soil management plan

developed by Haley and Aldrich (to be provided by MassDevelopment upon request) and any site specific requirements imposed by the Massachusetts Department of Environmental Protection ("MA DEP"). The MA DEP must review and approve the results of the soils tests prior to the soils being transported;

- iv. upon approval of soil test results by the MA DEP, the owner of the soils shall request that MassDevelopment provide written approval for the soils to be transported; and
- v. any relocation of soils shall be compliant with all applicable DEC regulations and bylaws.

(b) If there is no suitable location on Devens to relocate the soils, the soils may be removed to a location outside of Devens, provided however, that:

- i. the requirements of paragraphs 3(a)(i-v) shall apply; and
- ii. all soils to be relocated outside of Devens shall be passed through a 1" diameter screen under the supervision of qualified personnel;
- iii. all tailings (i.e. debris/matter not passing through the screen) shall be utilized on site; and
- iv. if UXO/MEC is found in the tailings (or elsewhere), operations in the vicinity of the found item shall immediately cease and MassDevelopment and State Police shall be notified by the contractor.

(State Police phone #:978-772-7200)

4. In the event that areas of suspected environmental contamination (i.e. underground storage tanks, foreign materials, substances, etc.) are found, operations in the area in the vicinity of the suspected contamination shall cease and the contractor shall immediately notify MassDevelopment

***(Ron Ostrowski: phone # 978-784-2936 or
Thatcher Kezer: phone # 978-784-2929)***

MassDevelopment shall work with its environmental consultants and MA DEP and/or EPA to promptly agree upon a plan to temporarily relocate the foreign materials, if possible, in order to permit work on the site continue while a permanent disposal/remediation plan is established.

DEVENS UXO PROTOCOL AND PROCEDURES

A. DEVENS UXO PROTOCOL AND PROCEDURES – Prior to performing any intrusive soil work, all personnel on site must view an instructional video describing the types of unexploded ordnance (“UXO”) which could be encountered and providing instruction of the procedures to be followed if a potential UXO item is encountered. The Contractor is responsible for coordinating viewing of the video by all personnel (both contractor and sub-contractors) who will be excavating (either by machine or hand tools), will be working within an excavated area or who will be overseeing or supervising either. Arrangements can be made for viewing of the instructional video by contacting the Devens Fire Department (978-772-4600) located at 182 Jackson Road, Devens, MA. Contact Fire Department to schedule viewing as soon as possible to avoid any delays in Contractor’s proposed construction schedule.

1) If ordnance is found or suspected, Contractor shall follow the following procedures:

I. DO NOT TOUCH

II. STOP ALL OPERATIONS IN THE AREA OF THE ITEM

III. SHUT OFF ALL EQUIPMENT IN THE AREA OF THE ITEM

IV. EVACUATE THE AREA

V. CALL DEVENS DISPATCH @ 978-772-7200

2) Dispatch will notify the appropriate emergency and public safety personnel including notification of the Army UXO response coordinator.

3) State Police, in conjunction with the Devens Fire Chief, and the U.S. Army will determine the course of action to be followed regarding the relocating, removing and/or destroying of found UXO upon further investigation of the item.

4) The Contractor will be notified when personnel can return to the area and/or when and where operation of equipment can resume.

5) The following disclosure and notification is provided by Owner in documentation allowing access to and ground related work to be performed at Devens. In this context, the “Licensee” is the party to be performing the work and the “Licensor” Owner as the owner of the property.

“Licensee acknowledges that Devens is the site of a former active military installation, and that there is a possibility that unexploded ordnance (UXO) may be encountered during activities licensed by this Agreement. Specifically, the Deed pursuant to which the United

States Army conveyed Devens to Licensor, states that “The [Army] completed a comprehensive records search and, based on that search, undertook and completed statistical and physical testing of areas on Devens where the existence of unexploded ordnance (“UXO”) was considered to be present. Based upon said search and testing, the Army represents that, to the best of its knowledge, no UXO is currently present on [Devens]. The [Army] and [Licensor] acknowledge that, due to the former use of [Devens] as an active military installation, and notwithstanding the above –referenced records search and testing, UXO may exist on Devens. Upon due notice, the [Army] agrees to remove any such remaining UXO discovered on [Devens], as required under applicable law and regulation, as expeditiously as reasonable and practicable, subject to the availability of funds.” Licensee acknowledges and agrees that: (1) its right of entry is subject to the Army’s disclosure; (2) UXO have in fact been identified at Devens subsequent to the Army’s testing; (3) Licensee will take appropriate precautions as it deems necessary to be alert to the possibility of UXO; (4) neither Licensee nor its employees, agents, or contractors will touch or otherwise disturb UXO or suspected UXO; and (5) Licensee will cooperate with Licensor with respect to issues relating to UXO or suspected UXO. Without limiting the generality of the foregoing, if Licensee identifies an object that it suspects is UXO, it will immediately stop work and alert Licensor. Licensor will promptly alert the Army or other authorities and ask them to take appropriate further actions. Licensee agrees that any UXO is the responsibility of the Army (not Licensor), and Licensee agrees to follow whatever precautions or other actions are recommended by the Army. Licensee understands that activities authorized under this Agreement may be interrupted, impeded, delayed or prohibited by the Army as a result of the presence or suspected presence of UXO. Notwithstanding, the obligations of Licensee and the Army as specified in this Agreement, Licensee also agrees to cooperate with Licensor with respect to actions Licensor determines are necessary with respect to UXO at the Licensed Premises while this Agreement is in effect. Licensee shall not conduct any intrusive soil work on the Licensed Premises without first viewing Licensor’s instructional video on UXO.