

MA Brownfields Program: A Fresh Look

MassDEP Presentation
LSP Association Meeting
Taunton, MA
February 13, 2018



Agenda

- I. Key Concepts, liability and regulatory considerations— Liz Callahan
- II. MassDEP's Brownfields Program and dealing with common technical issues – Paul Locke
- III. Role of the Regional Brownfields Coordinator and Sources of Funding – Angela Gallagher
- IV. Brownfields Case Study – Gerard Martin

Brownfields: Definition

Brownfields sites are “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

USEPA definition

“Types” of Brownfields Sites







JOHN STRE REPAIR TOWING AND USED TIRES
812-1812 812-1812

OLCHINGEYER





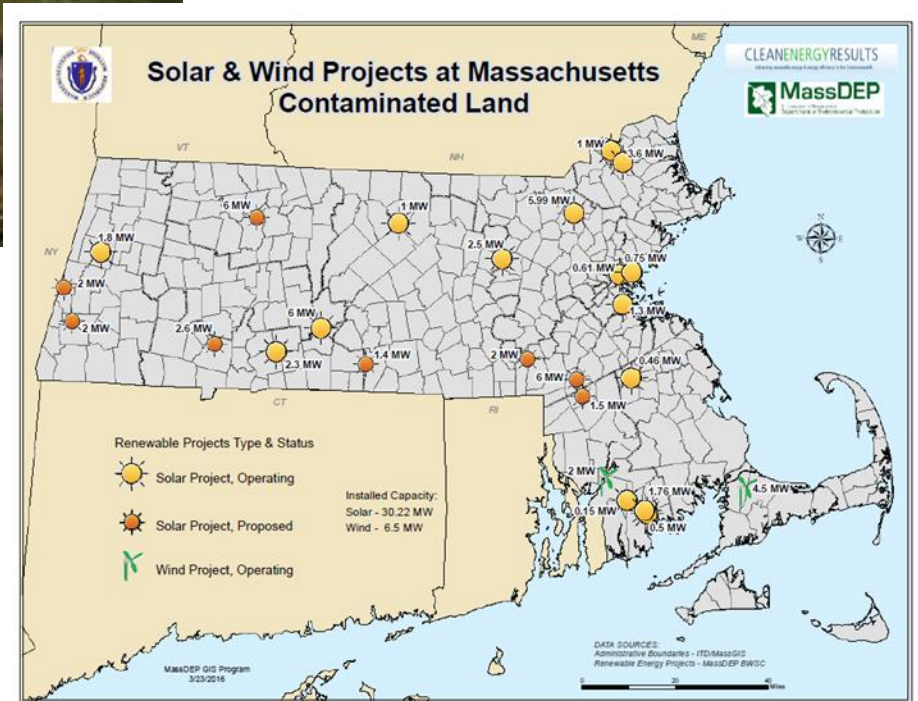
The Silk Mill in the Morningside neighborhood of Pittsfield has been renovated and converted to 45 affordable housing units. (Photos: Developer Jon Rudzinski of Rees-Larkin Development LLC), MassDevelopment Brownfields Redevelopment Fund Fiscal Year 2012 Annual Report.





Nina Scarito Park
Former industrial site, Lawrence



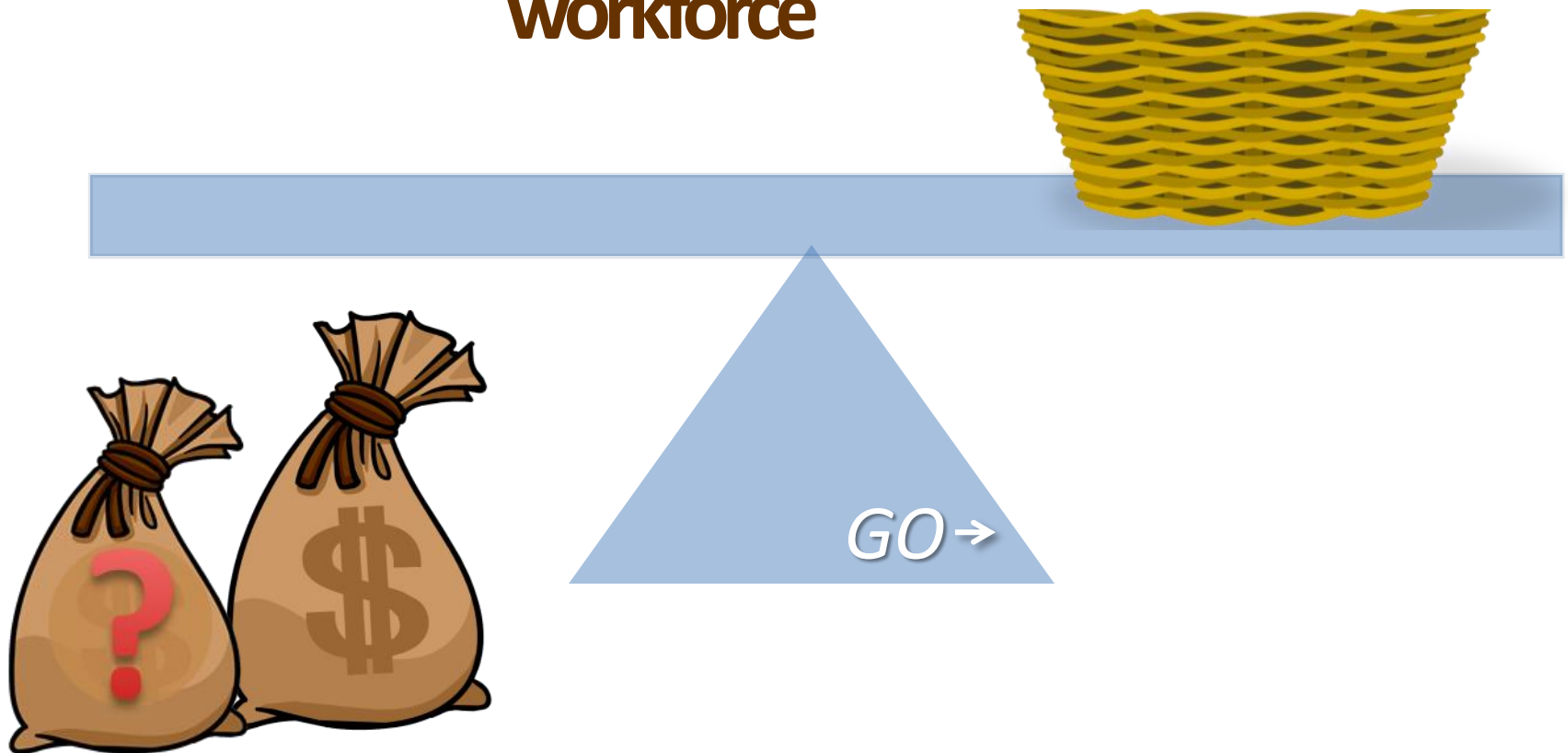


Brownfields Balancing Act

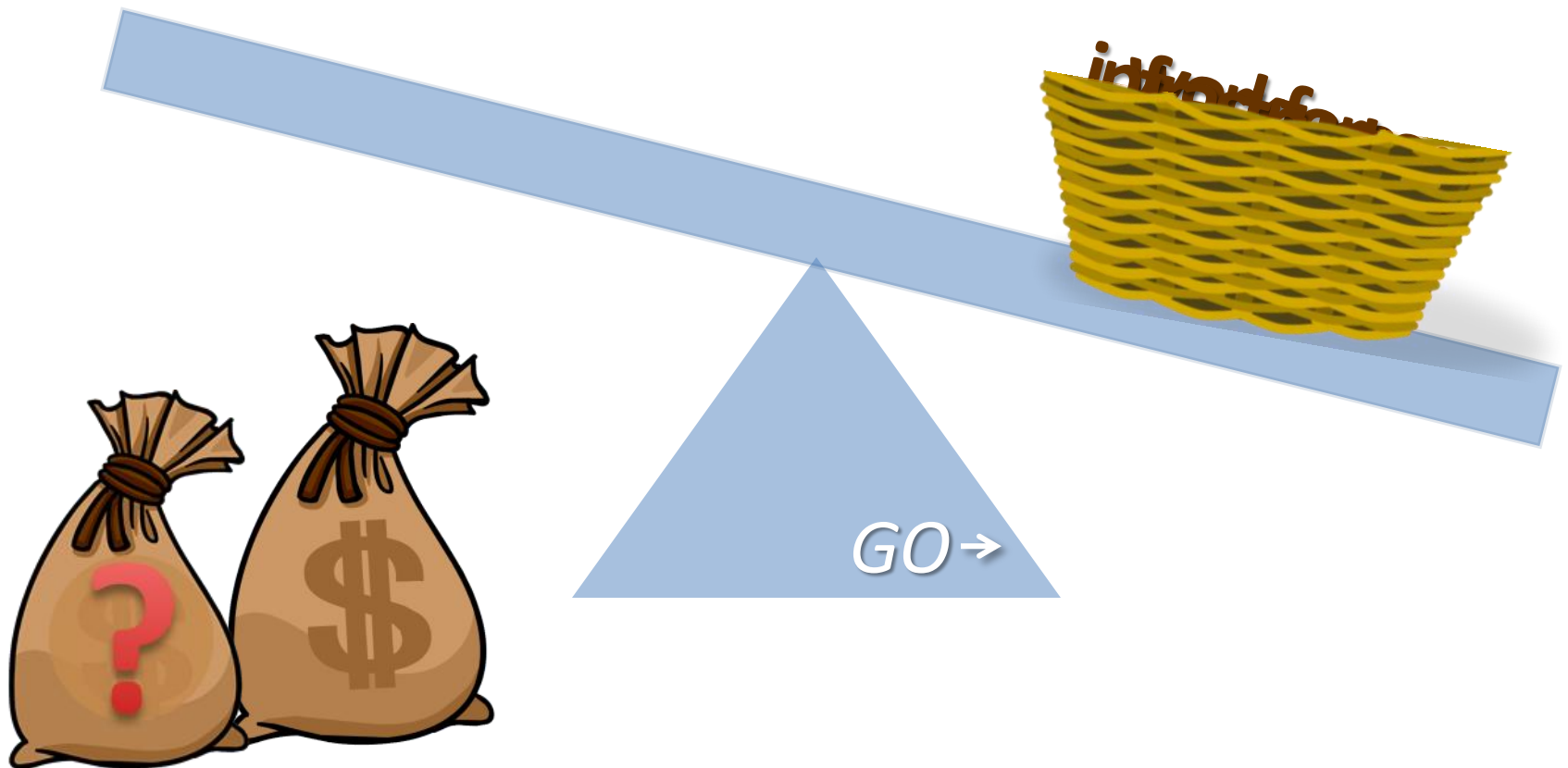
location

infrastructure

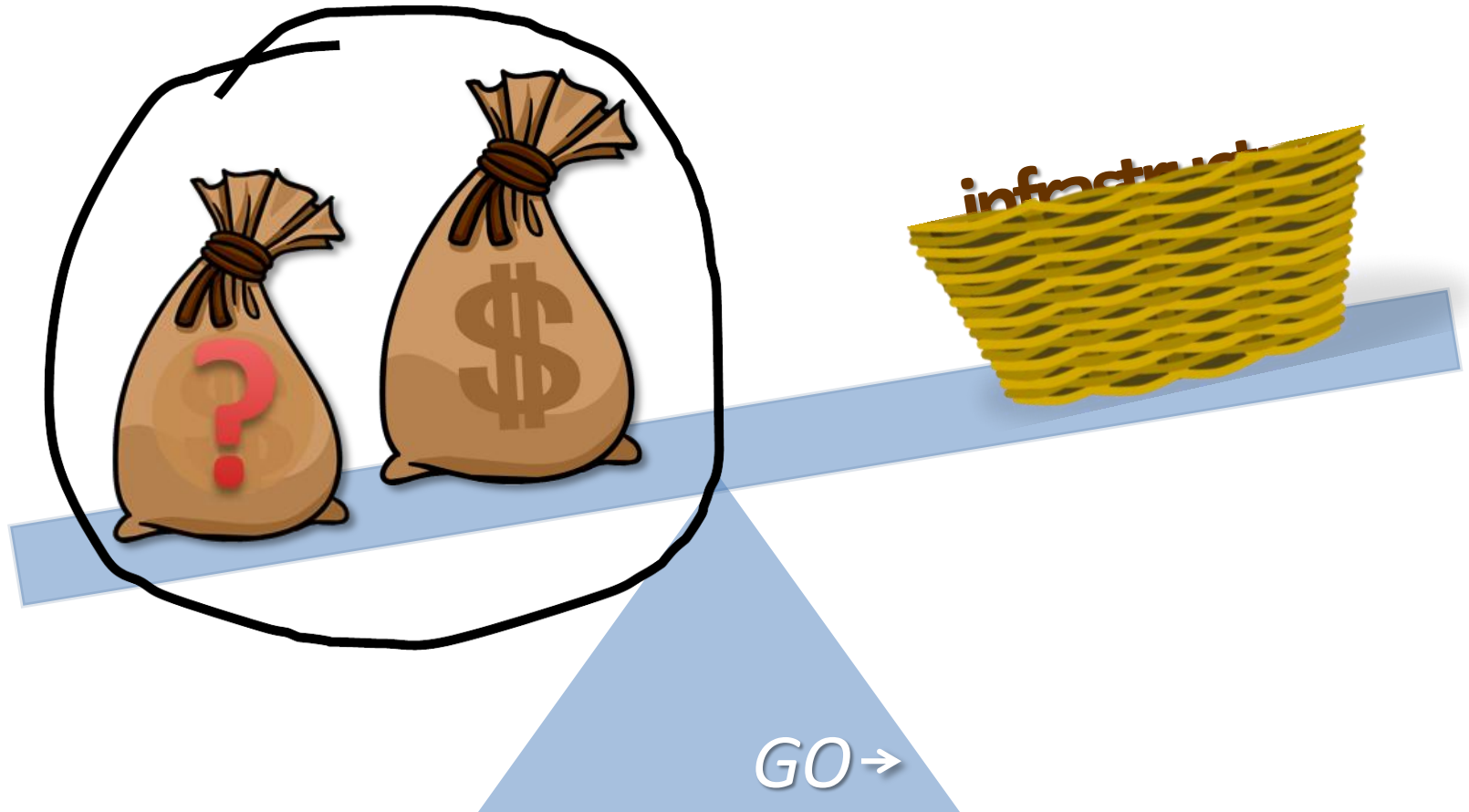
workforce



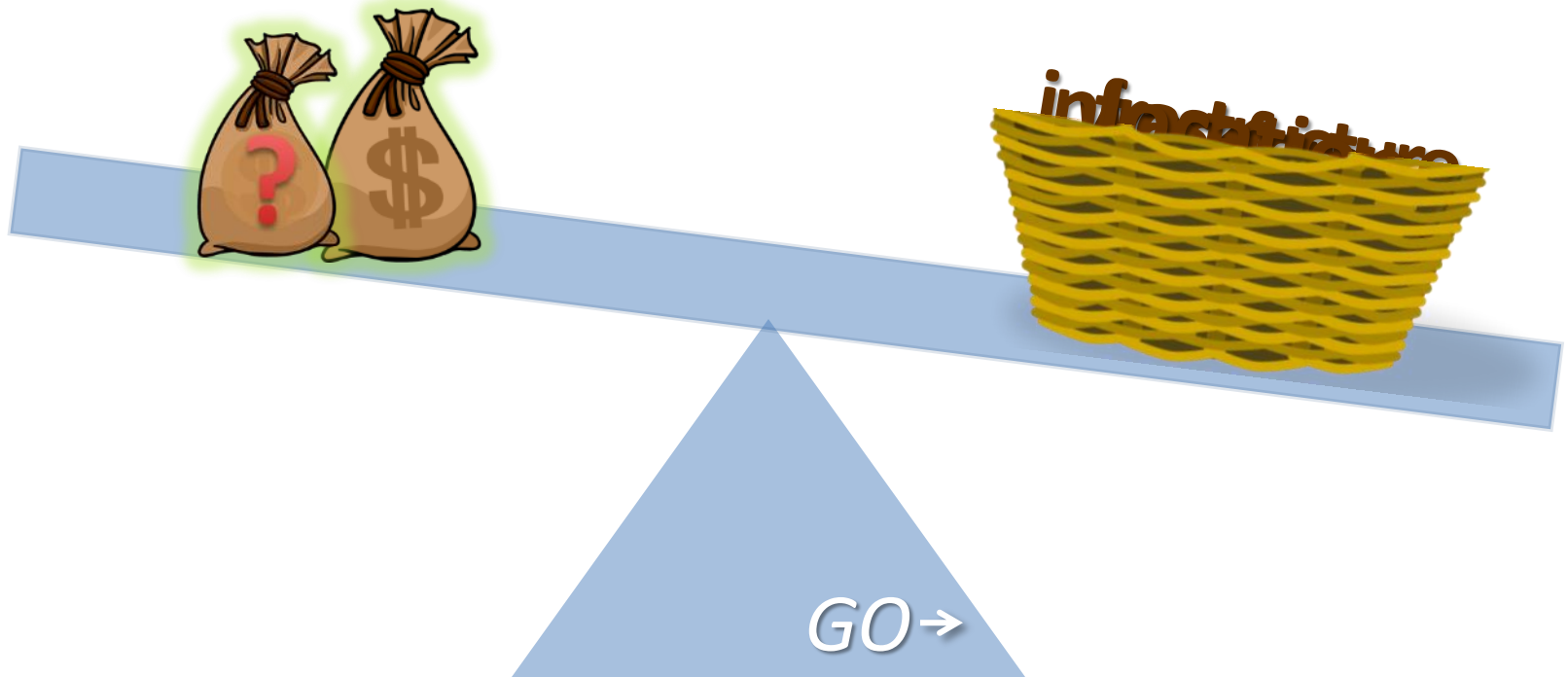
Brownfields Balancing Act



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Brownfields Balancing Act



Public Benefits



Protective cleanup
Tax revenue & property values
Jobs
Housing
Revitalization/Linkages
Historic Preservation
Open Space
Environmental Justice
Energy efficiency
Conserve Greenfields...



Managing Risks and Costs

Liability—The Brownfields Act (1998 21E amendments)

- Liability endpoints for **Eligible Persons** (did not cause or contribute to contamination) who meet cleanup standards
 - Protected from future claims from Commonwealth for additional response action costs & NRD, and property damage claims under 21E and common law
- Liability protection—not be deemed owner/operator if—notify, provide access, prevent exposures, respond to IHs
 - Eligible Tenants**
 - Secured Lenders** and act diligently to sell or divest of ownership
 - City or Town**—purchased or taken property, or acquired an interest for a rail-trail and act diligently to divest/act diligently to develop rail-trail
 - Redevelopment agencies, authorities, CDCs** and act diligently to sell or divest



Managing Risks and Costs

Liability—The Brownfields Act (1998 21E amendments)

- Liability exemption, defense - **Downgradient/Downstream owner**
- Liability protection for **owners/operators** for future AUL violations
- **Brownfields Covenants Not to Sue**



Managing Risks and Costs

Financial

- Grants and Loans (assessment, remediation and redevelopment)
 - MassDevelopment
 - EPA
 - HUD
 - Others
- Brownfields Tax Credits (MassDOR)
- Brownfields Redevelopment Access to Capital (BRAC)
 - subsidized environmental insurance, **ended in 2016**
- Remediation agreements between buyer and seller



Managing Risks and Costs

- **Massachusetts Contingency Plan**
 - LSPs, flexible process, clear standards, AULs

Other Legal Considerations

- Due diligence assessments
- Off-property OHM impacts
- Liens, 21E priority lien, past response costs
- Tax-takings by municipalities

Due Diligence Assessment

- Pre-purchase assessments
 - Decision to purchase, negotiation of sale price, securing financing
 - History of OHM use
 - Prior assessments
 - Back taxes, liens
 - Environmental sampling
 - Notification condition?
- MCP notification, Eligible Persons
 - Upon ownership



On-Property versus Off-Property OHM

re: Eligible Persons

- Eligible Persons where contamination is limited to **SOIL** - limited to **current property boundaries**
- Groundwater contamination/surface water liability for Eligible Persons
 - If the property is not the source of groundwater/surface water contamination, downgradient/downstream liability exemption applies if otherwise addresses soil
 - If property is source, must achieve and maintain PS or ROS for the entire site to achieve liability endpoint



Liens and Cost Recovery

- Back taxes
 - Municipal Tax Abatement Provision allows municipalities to negotiate back taxes for Brownfields projects
- Utility liens, Private liens
- Past MassDEP response action costs
- MassDEP 21E priority liens
 - Settlement of any 21E priority liens and state response action costs
 - Boston Cost Recovery Office

Tax Takings by Municipalities

- Limited 21E liability if no prior affiliation
- Conditions to maintain:
 - notify
 - access for response actions
 - Prevent OHM exposure
 - Address IHs
 - Conduct any response actions in compliance with MCP
 - Act diligently to sell or divest
- MassDEP sends Notice of Obligation
- IRA/RAM/TC submittals required if conducting response actions
- Phase/Permanent Solution deadlines generally not applicable
- Permit fees and ACFs apply if conducting response actions
- If municipality ceases response actions before PS:
 - Must notify MassDEP in writing and provide status report
 - Not leave site in worse condition than previously existed

Brownfields Covenants Not to Sue



Process for Obtaining a Covenant

- **Review** AGO Brownfields Covenants website
 - <http://www.mass.gov/ago/doing-business-in-massachusetts/economic-development/brownfields-covenant-program/>
 - Completed Covenants - <http://www.mass.gov/ago/doing-business-in-massachusetts/economic-development/brownfields-covenant-program/completed-brownfields.html>
 - Documents : Application, Third Party Notice
 - Regulations: [940 CMR 23.00](#)
- **Call** AGO EARLY to discuss covenant
- **Schedule** a Meeting with AGO and MassDEP
- **Provide** AGO with Draft Application after meeting
- **Submit** Final Application to AGO
- **Notify** Third Parties pursuant to regulations

Recent Covenants

2015	2016	2017	2018
<ul style="list-style-type: none"> • Town of Walpole, Walpole • Madison Woburn Holdings, Woburn • Rising Paper Land, LLC, Great Barrington • New Covenant Partners IV, LLC, Sutton • LeBaron Foundry, Brockton • Greylock Mills, North Adams 	<ul style="list-style-type: none"> • Town of West Springfield (at former Standard Plating site) • Truck Stop Land, Stockbridge • 175 North, LLC, Wakefield 	<ul style="list-style-type: none"> • JPLOT1, SSG JP Lot 2, LLC and JP LOT 3, LLC, Jamaica Plain • Town of Holden, Holden 	<ul style="list-style-type: none"> • 206 West Broadway, South Boston

Relevant MCP Provisions



Eligible Person/Tenant/Other Person

310 CMR 40.0570

- Re-establish deadlines for Phase work, PS/TS or ROS
- Not responsible for past fees associated with site
- Can rely on prior Phase I report
- Transmittal Form BWSC107D
- Make submittal with 120 days of taking ownership

Special Project Designation Permits

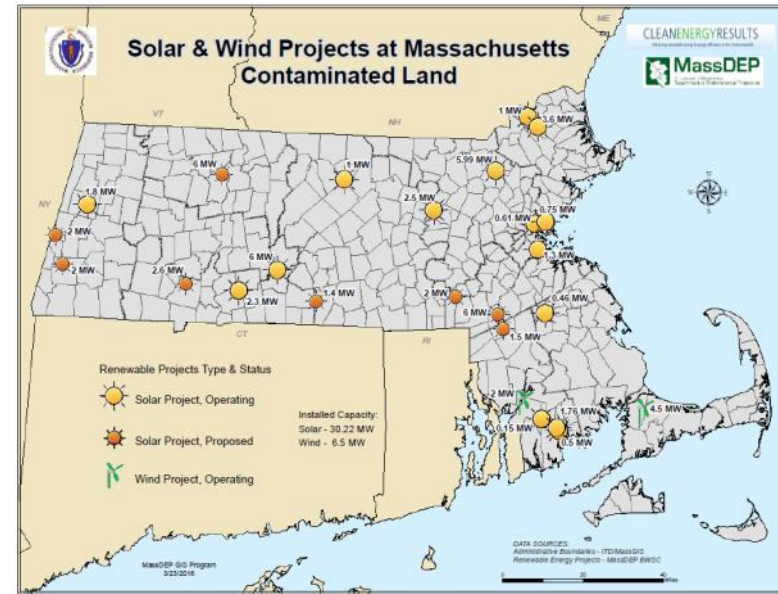
- Extend timeline for Tier Classification **OR** extend Phase Deadlines
- Applicants may be public entity OR Eligible Person/Tenant with Letter of Community Support
- Projects may include infrastructure, redevelopment, coordinated response actions at multiple sites or single site with multiple owners that have secured financing; **compliance with response action deadlines would impact cost-effectiveness or feasibility of project**
- BWSC50

Post-Permanent Solution Provisions

- Permanent Solutions with Conditions
 - What are they?
- Existing AULs– Amending, Terminating, 310 CMR 40.1080
- Post-Permanent Solution remedial actions (310 CMR 40.1067)

Clean Energy Development

- **Solar PV Renewable Energy**
 - **Brownfields Site Incentive**
 - Predetermination by MassDEP & DOER
 - 39 Total Projects (111.5 MWs)
 - 24 (58.0MW) operational;
 - 15 (53.5MW) have DOER “Brownfield Pre-Determination” letters and are seeking financing and interconnection permits



- **Energy Efficient Buildings**
 - U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) for building construction
 - Massachusetts Building Stretch Code
 - Property Assessed Clean Energy (P.A.C.E) for Commercial Buildings
 - Mechanism for financing energy efficiency and renewables
 - Renewable Thermal/Ground-Source Heat Pump applications

Resiliency & Adaptation

Climate-Ready Land & Buildings

- Evaluate Climate Change vulnerabilities (e.g. flooding & storm surge)
- Prioritize Vulnerabilities
- Consider Resiliency & Adaptation Measures
 - EPA's *"Climate Smart Brownfields Manual"*
 - Adapted Buildings
 - Green Infrastructure (e.g. reduce storm water runoff)
 - Remediation Adaptation (e.g. off-grid power, flood controls)



Spaulding Rehabilitation Hospital, Charlestown:

- Designed for 2 ft. of sea level rise as new 100-year flood elevation; first floor is 1.35 ft. higher than that
- Patient rooms have key-operable windows and are not on ground or lower floors
- Mechanical and electrical systems on the roof