

Role of Activity & Use Limitations in Clean Energy Development at Disposal Sites

Elizabeth Callahan

Acting Division Director, Policy and Program Planning, BWSC, Boston



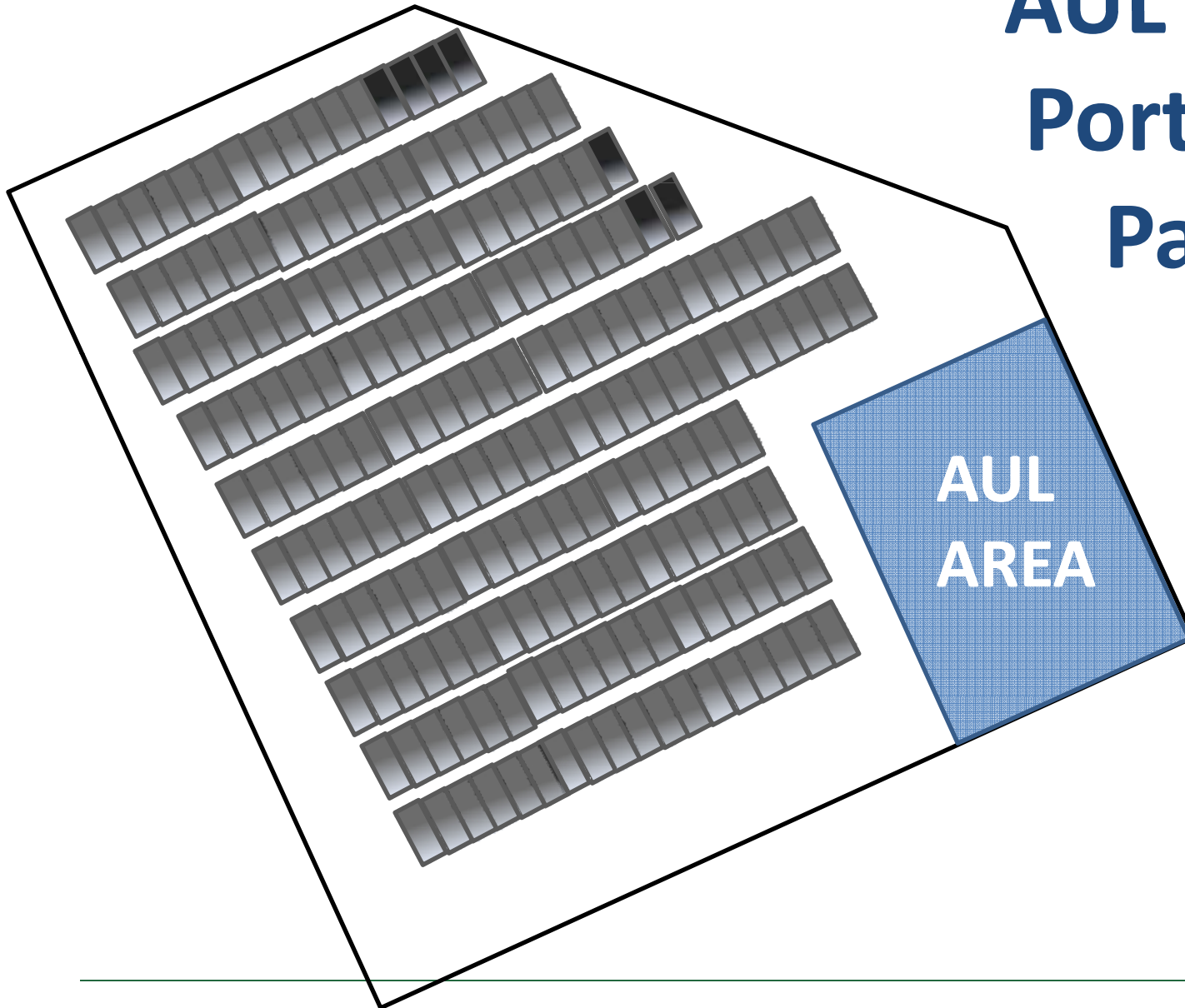
Activity and Use Limitation (AUL)

- Deed notice or restriction recorded at the Registry of Deeds that is part of an MCP closure
- AUL provides notice of residual contamination & specifies “Consistent” and “Inconsistent” site activities and uses
- AUL dictates Obligations and Conditions for maintaining No Significant Risk
- Current property owner is required, under the MCP, to adhere to the terms of the AUL
 - Compliance with AUL is subject to MassDEP audit on an ongoing basis

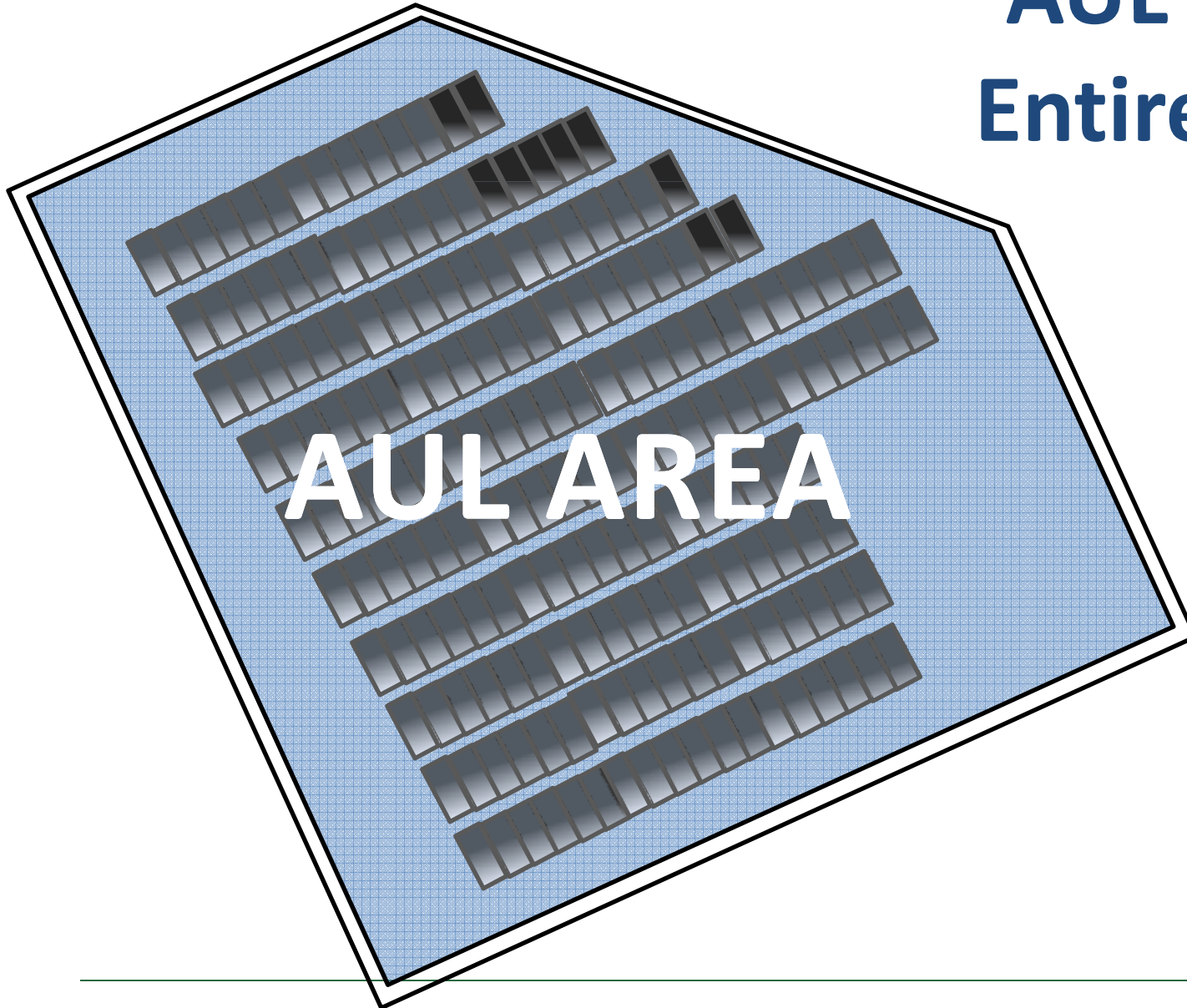
Activity and Use Limitation

- Limitations/Conditions on site activities and uses apply to an “AUL Area”
- AUL area is not necessarily entire parcel

AUL Area – Portion of Parcel



AUL Area – Entire Parcel



Clean Energy Development at Sites with Existing AULs



- Evaluate location of the “AUL area” relative to options for clean energy (solar/wind) development
 - Where proposed development overlaps AUL areas, seek LSP services
 - Also consider activities outside of AUL area that have potential to affect AUL area
- LSP Evaluation (310 CMR 40.1080 & 40.1067(4))
 - Evaluate terms of the AUL relative to the “contemplated use” clean energy development

LSP Evaluation

- Do development plans conform with terms (“Consistent” and “Inconsistent” activities and uses) of the existing AUL?
- Are the obligations sufficient, in terms of type and frequency, to maintain closure conditions?

LSP Evaluation

- Most AULs with “Consistent Uses” that include Commercial/Industrial & Soil Management Plans will accommodate clean energy development proposals
- AULs with restrictions on all excavation or limits on excavation where project requires excavation
>>> LSP Evaluation



SOURCE: Draft AUL Guidance 2011

Media	Risk Char. Method	Conditions	Exposure Assumptions	AUL Limitation/Obligations
Soil	Method 1 or 2	Soil meets S-2 and S-3 standards, but does not meet S-1.	No routine exposure to children.	AUL prohibits residential, school, playground, or day care use of the site.
Soil	Method 1 or 2	Soil at depth does not meet S-3, but does meet S-2 standard.	Excavation could expose construction workers to contamination.	AUL prohibits excavation or prohibits excavation without the development and implementation of an appropriate Health & Safety and Soil Management Plans.
Soil	Method 1 or 2	Soil does not meet the S-1 standard, but such soil is below a solid pavement barrier.	Exposure to soil is prevented by the barrier	AUL requires that the barrier be inspected and maintained.
Soil	Method 3	Soil does not show No Significant Risk for the S-2 soil category.	No direct contact with soils by workers or recreational use.	AUL requires placement and maintenance of a barrier to direct contact, such as 3 feet of clean fill and a demarcation layer. Includes requirement to implement appropriate Health & Safety and Soil Management Plans.

If Evaluation Determines AUL Does Not Support Clean Energy Development...

- Project can still go forward with additional cleanup to support contemplated use
 - Submit remedial plan
 - Conduct remediation
 - Amend AUL to allow for cleanup energy development

Clean Energy Installations

Solid Waste Landfills

- Landfill issues related to Clean Energy Installations. For example,
 - Maintain integrity of cap
 - Stormwater/erosion control
 - Landfill settlement
 - Avoid interference with landfill gas venting systems
 - Protect public health & env.
- Future obligations spelled out in Post-Closure Permit
- MassDEP approval of Post-Closure Permit

21E Sites

- 21E site issues related to Clean Energy Installations
 - Case-specific
 - Likewise concern for maintaining integrity of the remedy and protecting public health & env.
- Where applicable, future obligations contained in an AUL
- Property Owner/LSP develop AUL in compliance with the MCP

CLEANENERGYRESULTS

Advancing renewable energy & energy efficiency in the Commonwealth

Landfills With Post-Closure Use Permits for Renewable Energy

This page contains a listing of all Massachusetts landfills for which the Department of Environmental Protection (MassDEP) has issued post-closure use permits allowing for the development of solar, wind or other renewable energy projects. Landfills are listed alphabetically by community on the table below. Each entry includes:

- City/town and MassDEP Region where located and a link for contact information.
- Applicant(s), landfill name and address.
- A brief description of the proposed renewable energy project.
- The date of MassDEP's decision and approval, relevant document(s), the application Transmittal Number, and public comment period information, if applicable.

Browse by City/Town: [A - C](#) | [D - F](#) | [G - I](#) | [J - L](#) | [M - O](#) | [P - R](#) | [S - U](#) | [V - Z](#)

Communities A - C			
City/Town & MassDEP Region	Applicant(s), Landfill Name & Address	Project Description & Status	Transmittal Number, Date of Decision & Approval Document(s)
Acton Central	Town of Acton & Ameresco Inc. Acton Landfill 14 Forest Road	1.59 megawatt photovoltaic (solar) array on 17.5-acre site	X251838 9/26/2012 Permit Approval with Conditions MS Word PDF
Adams Western	Tecta Solar Quantum LLC Adams Landfill East Road	1.1 megawatt photovoltaic (solar) array on 5-acre site	X239197 1/5/2012 Permit Approval with Conditions MS Word PDF
Agawam Western	Rivermoor-Citizens Agawam LLC Grasso Landfill Main Street	1.98 megawatt photovoltaic (solar) array on 9.5-acre site	X241104 1/6/2012 Permit Approval with Conditions

<http://www.mass.gov/dep/energy/lfpccu.htm>

AUL Considerations – Clean Energy Development Projects

- Excavation for utilities, fencing, construction of access roads
- Worker Health and Safety
- Soil Management Plan/Dewatering
- Ensuring integrity of the remedy, e.g.,
 - Maintaining clean soil layer, geotextile, Engineered Barrier,
 - controlling storm water run-off/erosion
 - Retaining access to existing barriers that require maintenance (e.g. paved areas)
- Post-installation maintenance activities
- Post-installation inspection

Existing AULs v. Contemplated AULs

Contact:

elizabeth.j.callahan@state.ma.us

Tel. 617-348-4056