

MA Brownfields Program: A Fresh Look

MassDEP Presentation
Western LSP Association Meeting
Springfield, MA
September 13, 2018



Agenda

- I. Key Concepts, liability and regulatory – Liz Callahan
- II. MassDEP's Brownfields Program and funding – Paul Locke
- III. Brownfields Case Study – Eva Tor

[https://www.mass.gov/lists/past-training-site-cleanup-resource-material#brownfields-\(2018\)-](https://www.mass.gov/lists/past-training-site-cleanup-resource-material#brownfields-(2018)-)

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





Former Nindas site, Lawrence



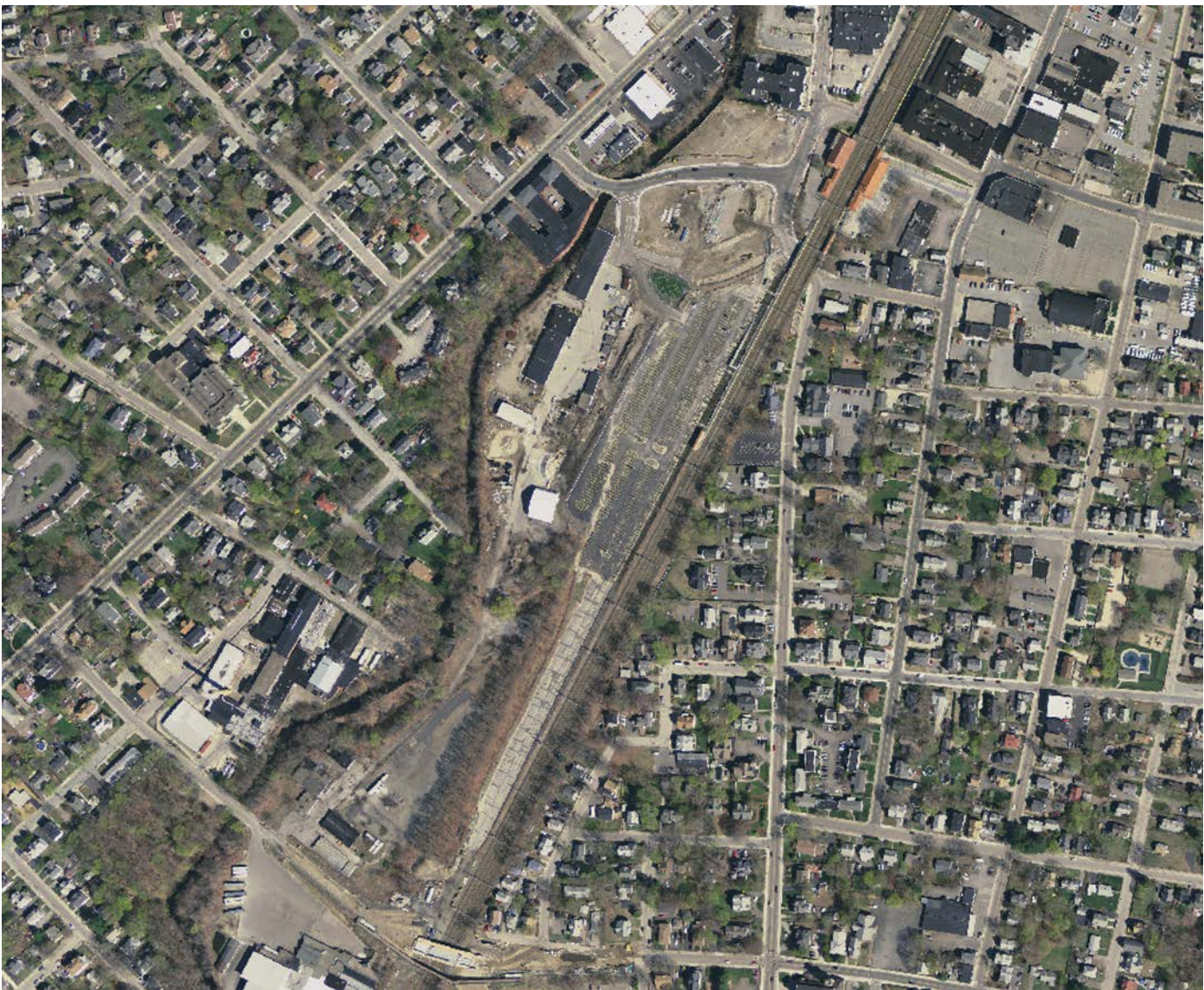
**The Silk Mill in the Morningside neighborhood of
Pittsfield**



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

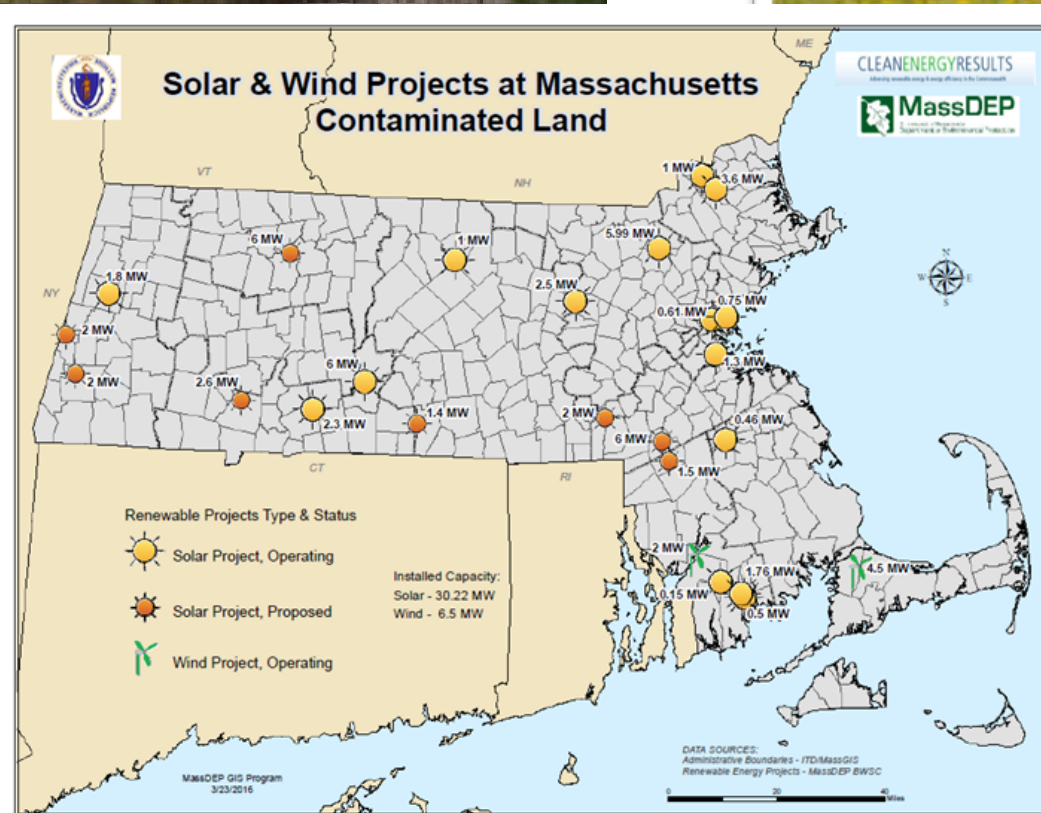
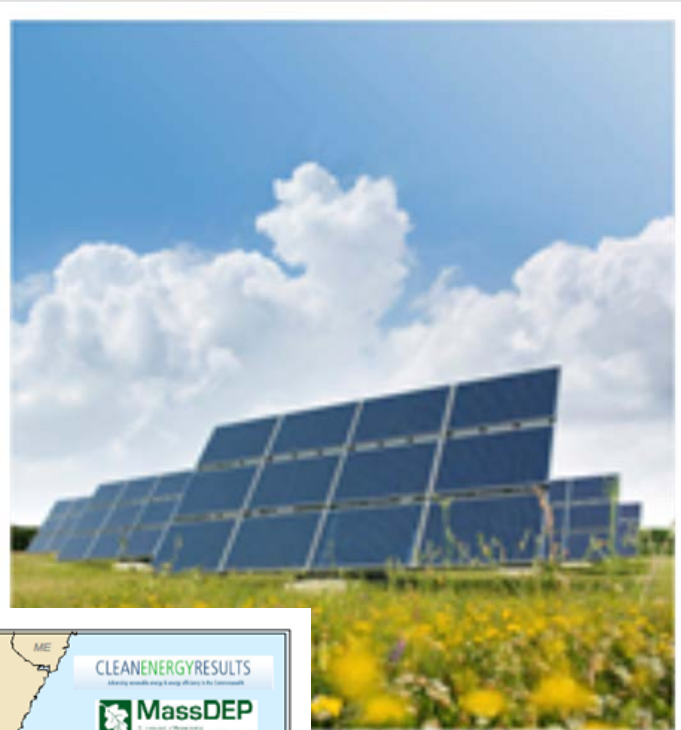




Downtown Attleboro Redevelopment and Revitalization Project

Commonwealth of
Massachusetts
Brownfields Support Team



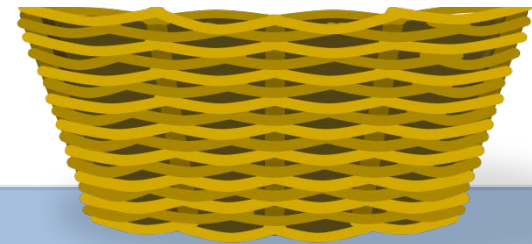


Brownfields Balancing Act

location

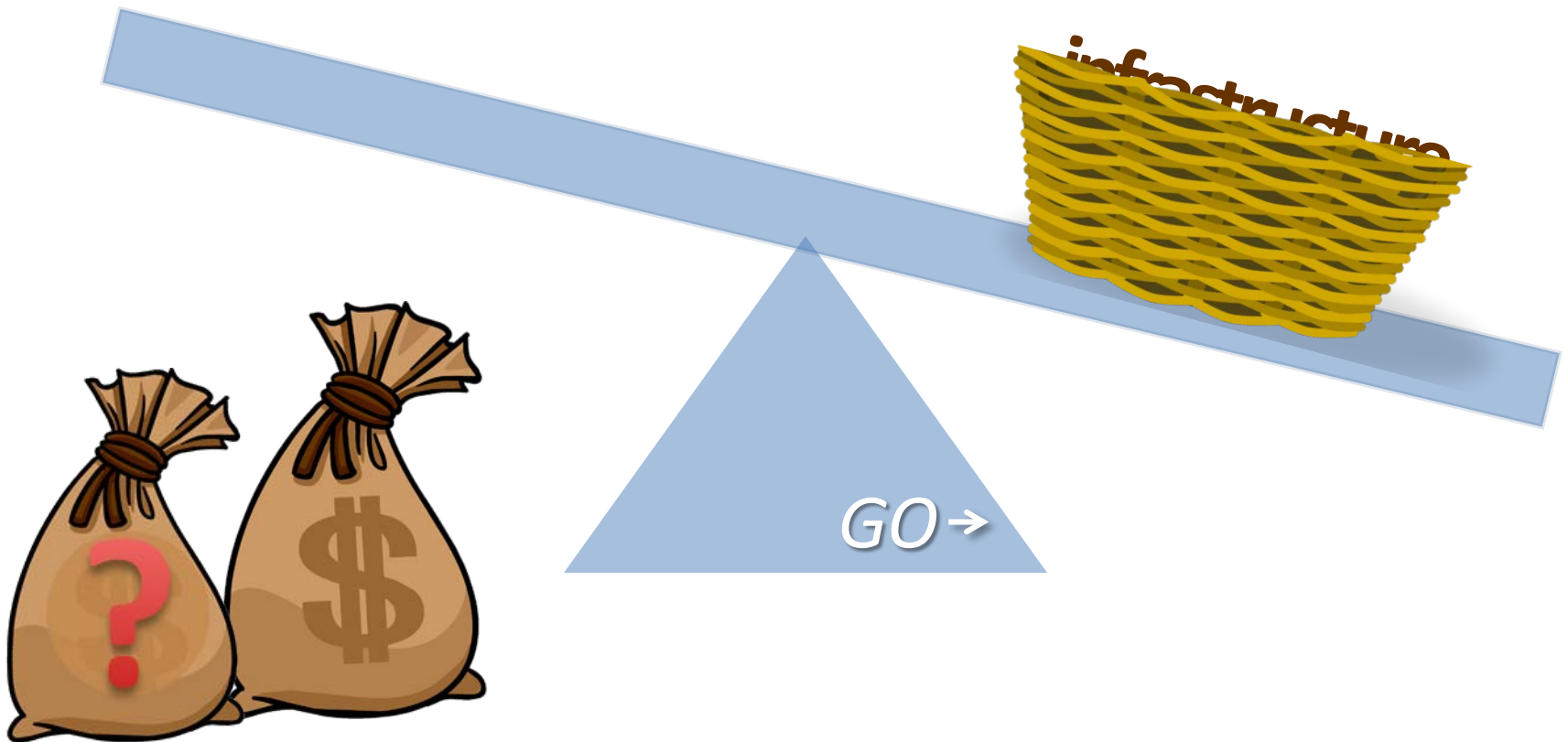
infrastructure

workforce

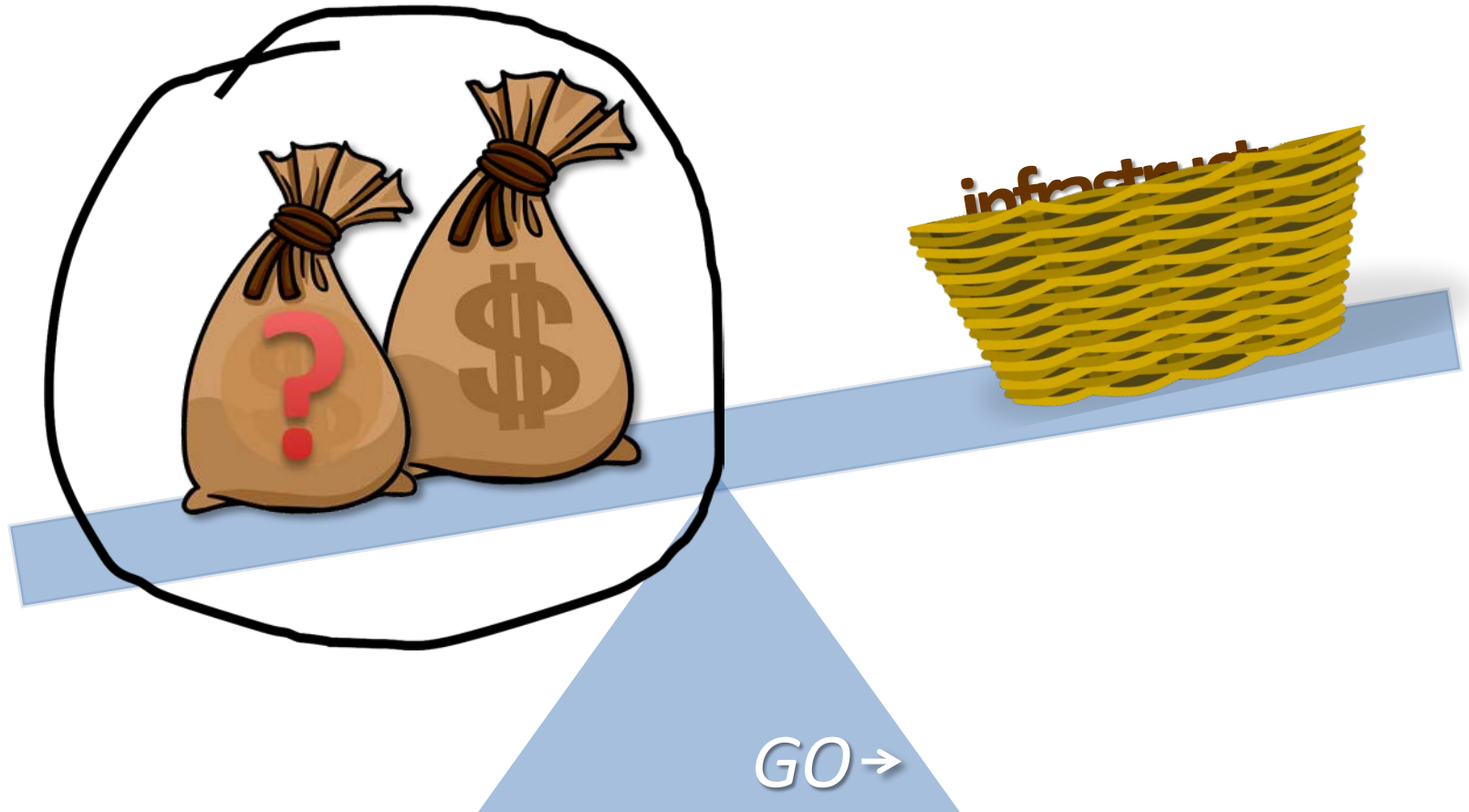


GO →

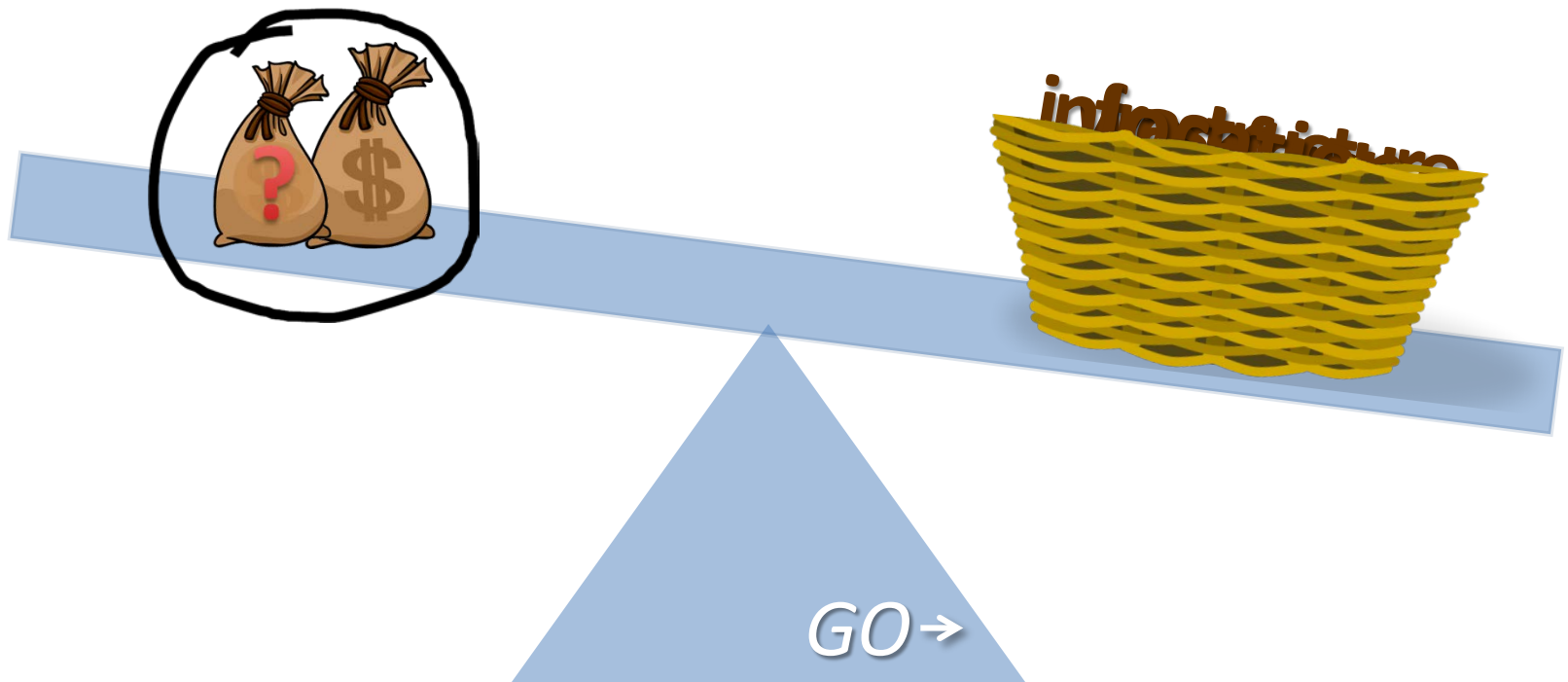
Brownfields Balancing Act



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Brownfields Balancing Act

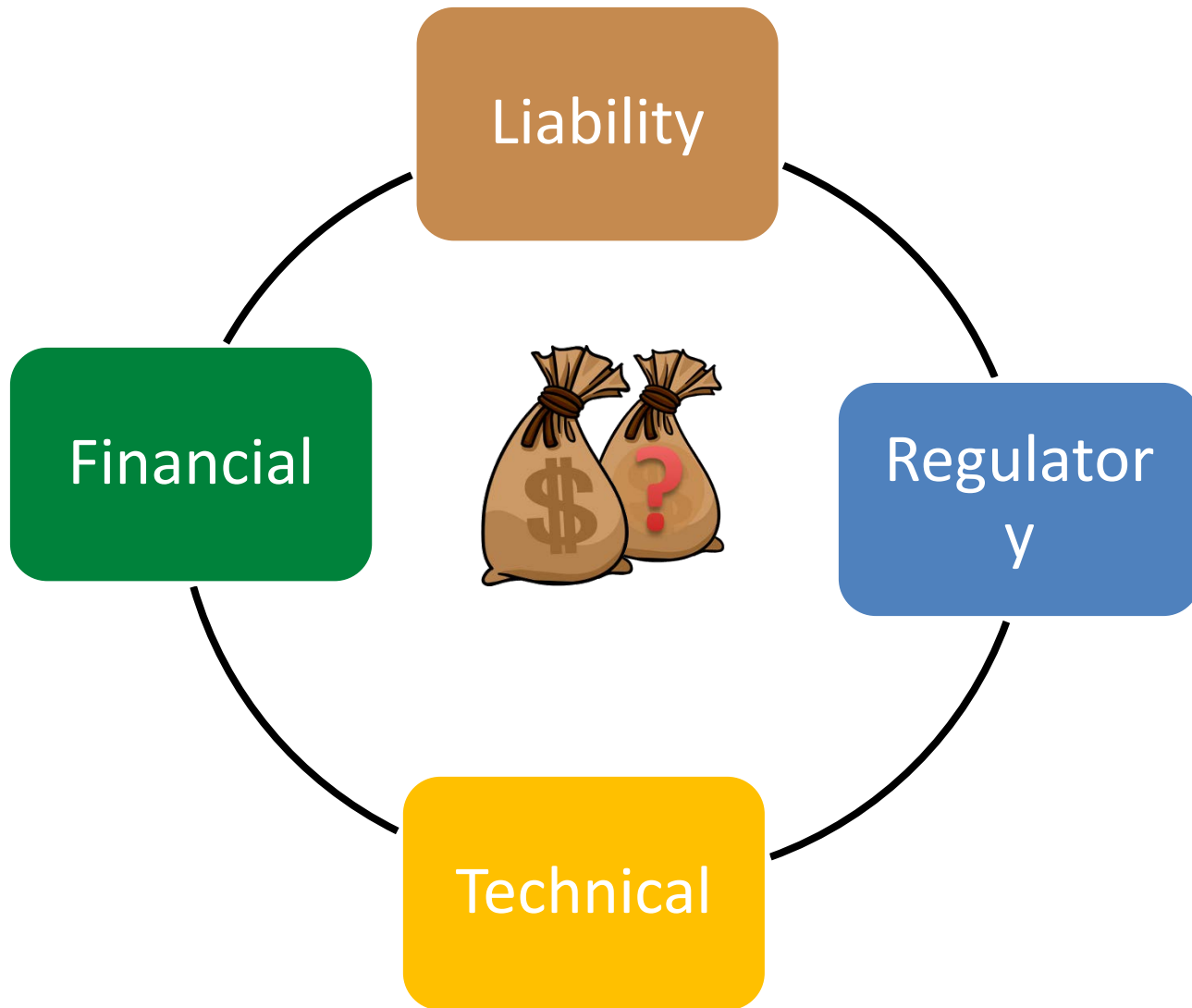


Public Benefits



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



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**

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

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

- **Review** AGO Brownfields Covenants website
 - <http://www.mass.gov/ago/doing-business-in-massachusetts/economic-development/brownfields-covenant-program/>
 - Completed Covenants
 - 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



Regulatory

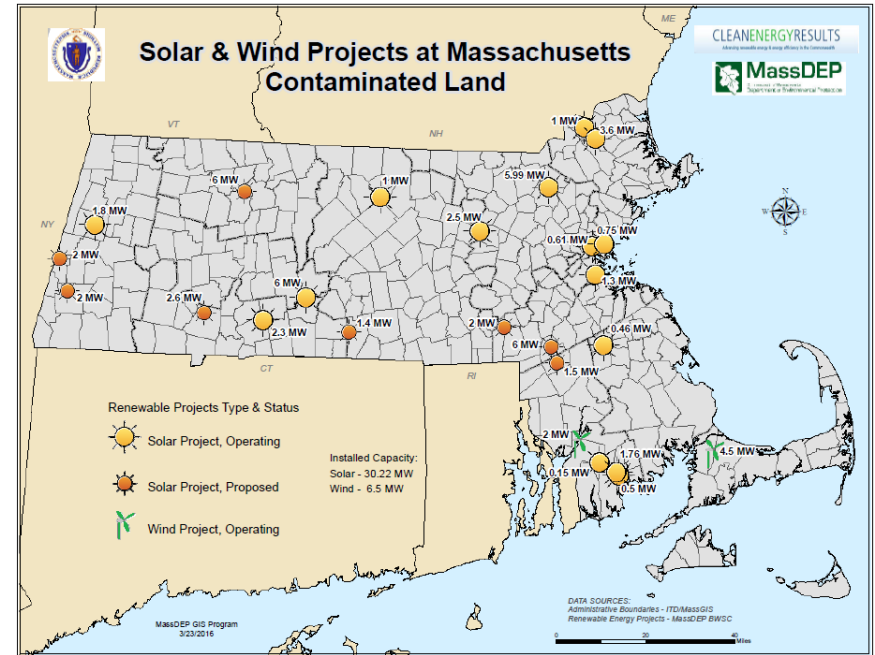
Massachusetts Contingency Plan

- LSPs
- notification thresholds and exemptions
- flexible process, limited approvals
- Special Projects
- RAMS
- DPS provisions
- Eligible Person provisions (40.0570)
- Clear cleanup standards
- AULs
- Options for Permanent Soln
- Post-Permanent Soln
- Public involvement

Clean Energy Development

- **Solar PV Renewable Energy Brownfields Site Incentive**

- Predetermination by DOER in consultation with MassDEP
- 45 Total Projects (111.5 MWs)
 - 29 (78.25MW) operational;
 - 16 (52.0MW) 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 (APS incentive program)

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