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# Beyond AAI: Tools Tips & Technology

ADEM 3<sup>rd</sup> Annual Brownfield Conference



Maggie Parker Weems  
June 7, 2016

# Agenda

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1. Why AAI is Important
2. Moving Beyond the Phase I Opinions
3. Tools to Keep the Project Going
4. Technology to Help You Get There
5. Tips on Managing a Successful Project
6. Revisit and Refresh
7. Q&A



# So you want to buy a property...

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- ▶ What's your first step?
- ▶ Can you just make an offer, agree on a price, and shake hands?



## **Phase I Environmental Site Assessment (ESA)**

*the process of a person or entity seeking to determine if real property is subject to RECs*

- ▶ Fundamental reason for performing a Phase I was the passage of CERCLA in 1980, which imposed liability for the clean up of contamination on owners and operators.



# Why is AAI important?

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- ▶ It's not just to cost you money. In fact, it can SAVE you money!

**Under CERCLA, persons may be strictly liable for cleaning up contamination at properties they own or have owned in the past.**

**Strict liability = Without regard to fault  
You can be liable just by virtue of ownership!**

- ▶ Original defenses:
  - ▶ Act of War
  - ▶ Act of God
  - ▶ Third-Party ←



# CERCLA LLPs

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Innocent  
Landowner

**Did not know or have reason to know.**

- *Must demonstrate AAI compliance.*
- Brownfield Amendments added Continuing Obligations.

Bona Fide  
Prospective  
Purchaser

**Can knowingly acquire contaminated property.**

- *Must demonstrate AAI compliance.*
- Requires Continuing Obligations.

Contiguous  
Property  
Owner

**Adjacent landowner with impacted property.**

- *Must demonstrate AAI compliance (although may qualify as BFPP if no AAI).*
- Requires Continuing Obligations.

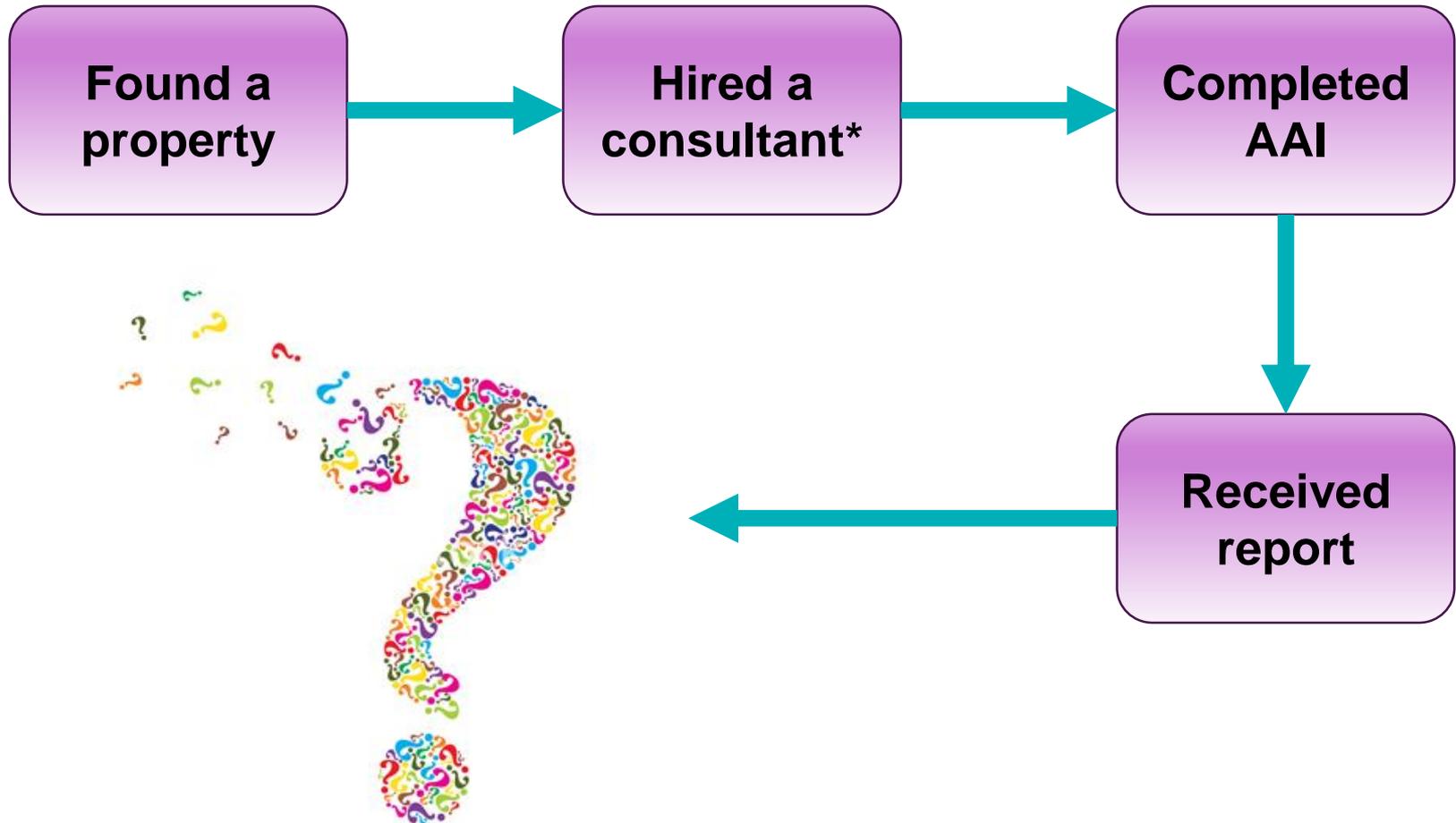
Certain  
Governmental  
Transactions

**Government entities that acquire property by eminent domain or involuntarily.**

- *Typically no AAI but must exercise “due care.”*

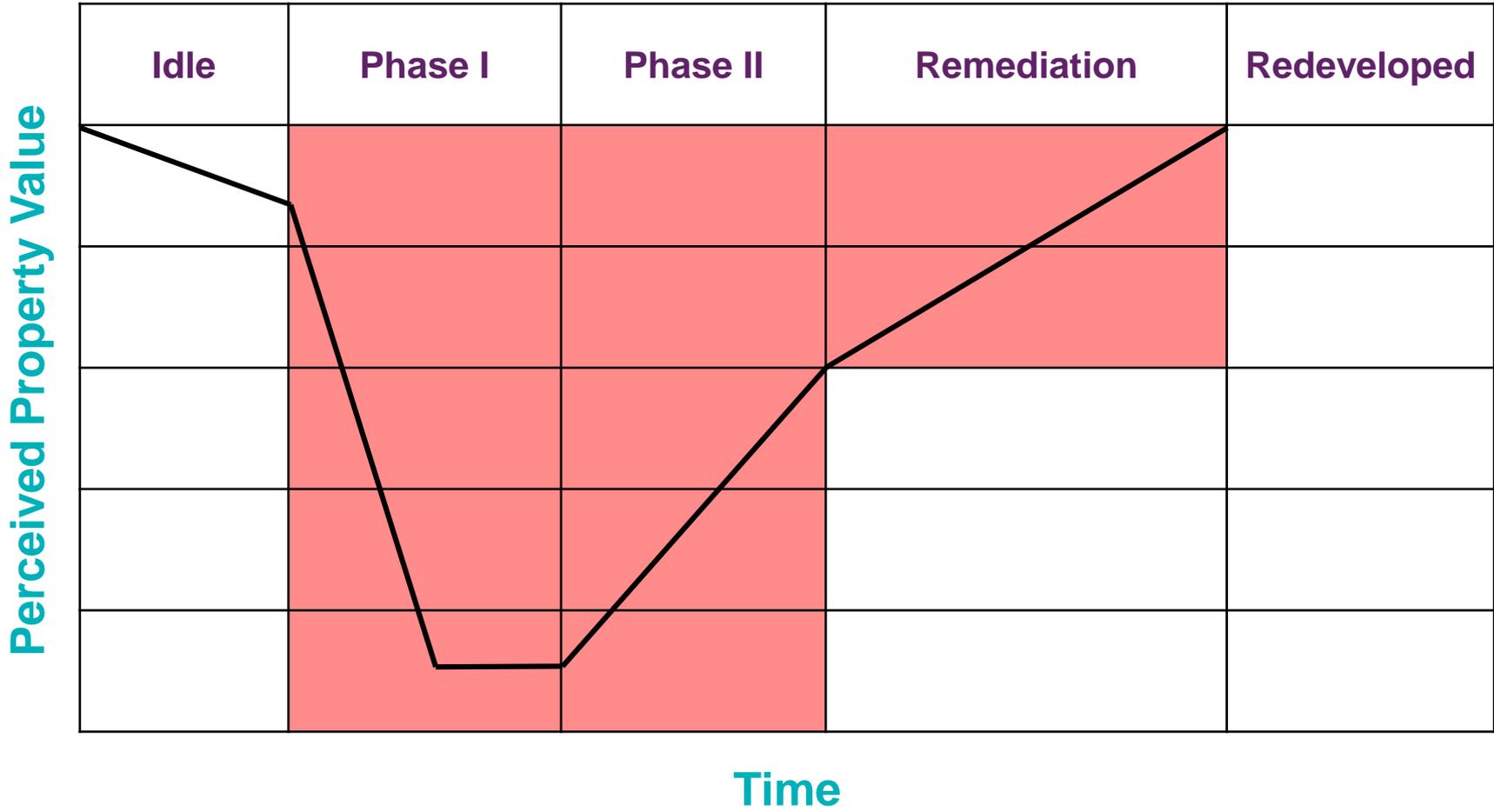


# Moving Beyond the Phase I Opinions





# The Dreaded **RED ZONE**



\*Adapted from Dave Koch/Terracon with Charles Bartsch/USEPA

# Tools to Keep the Project Going

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- ▶ No need for me to rehash:
  - ▶ ADEM Voluntary Cleanup Program – Thanks Sonja!
  - ▶ EPA Brownfield Funds – Thanks David/Cindy/Sonja!
  - ▶ Risk-Based Corrective Action Evaluations – Thanks Brian!
  - ▶ Uniform Environmental Covenants – Thanks Bart!
  - ▶ Alabama Tax Incentives – Thanks Ashley!
  - ▶ Vapor Intrusion Screenings and VISLs – Thanks Trey!
  
- ▶ Other Available Financial Tools:
  - ▶ Leveraged funding sources – grants, in-kind donations
  - ▶ Resources from other agencies –USDA, COE, HUD, DOT, EDA, etc.
  - ▶ Loans or equity capital – SBA microloans or Section 504 or Section 7(a)

# Tools to Keep the Project Going

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- ▶ Infrastructure Reuse Assessment
  - ▶ Identifies salvageable materials to be reused/recycled
  - ▶ Has been approved as part of EPA Brownfields Assessment funding
- ▶ Not just brick or steel or mechanical/electrical items...



# Tools to Keep the Project Going

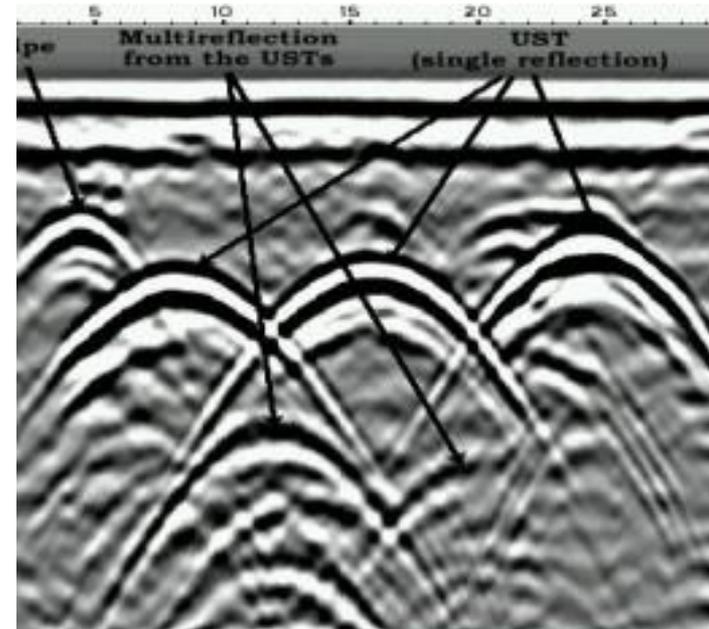




# Technology to Help You Get There

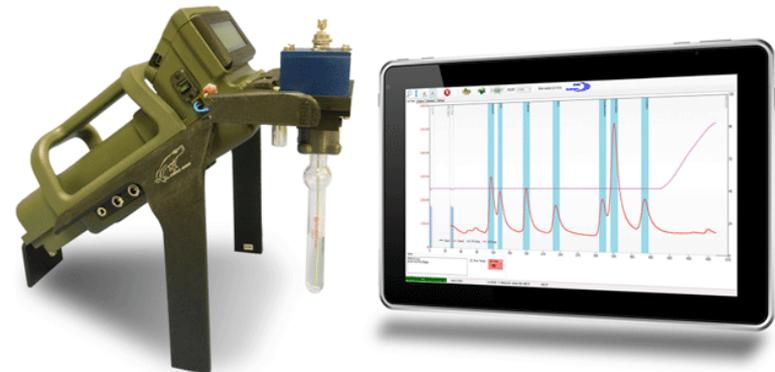
## ► Ground Penetrating Radar

- Find known USTs
  - Sanborn maps are invaluable.
- Look for unknown USTs
- Locate existing utilities
- Clear boring/well locations
- Identify archaeological features
  - Graves
  - Historical buildings



## ► Field Screening Equipment

- Expedite field work
- Save \$\$ on analysis
- Reduce mobilizations



# Technology to Help You Get There

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- ▶ Technology doesn't have to be complicated.
  
- ▶ The simplest software can provide significant insight.
  - ▶ Google Earth
  - ▶ Excel or Microsoft Project scheduling tools
  
- ▶ Familiarize yourself with internet resources.
  - ▶ EPA guidance
  - ▶ Online maps and databases



# Technology to Help You Get There

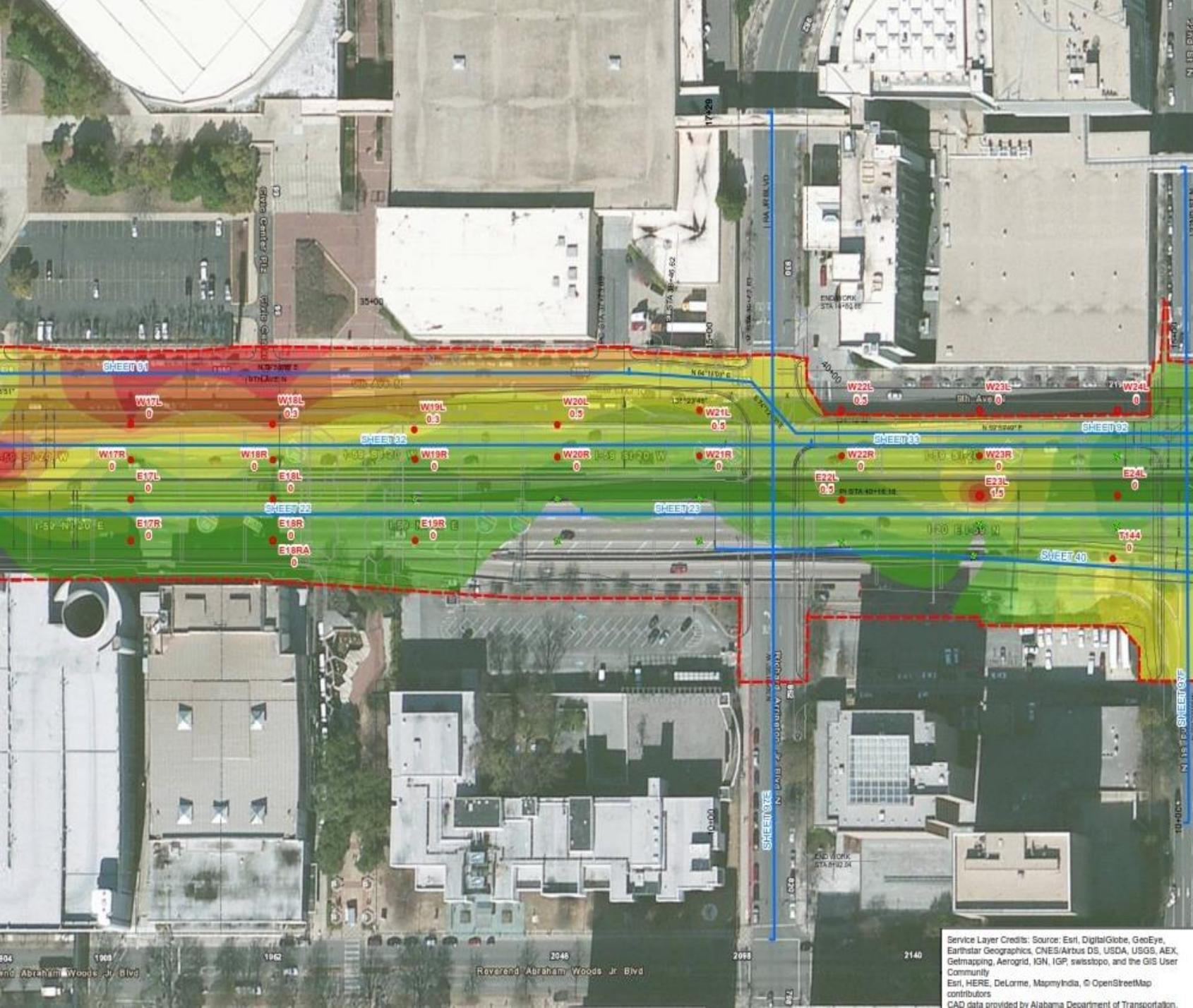
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## ▶ GIS Mapping

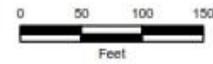
- ▶ Gives you the ability to visualize multiple layers of data
- ▶ Spatially view trends and patterns

## ▶ Benefits:

- ▶ Better decision making
- ▶ Improved communication
- ▶ Better recordkeeping



- Legend**
- 0.2 Depth to Foundry Material (ft)
  - Foundry Material
  - ◆ No Foundry Material Present
  - Profile Line
  - ▭ ROW/Construction Limits
  - ▭ Approx. Foundry Material Thickness (ft)
  - 0.1 - 1
  - 1 - 2
  - 2 - 3
  - 3 - 4
  - 4 - 5
  - 5 - 6
  - 6 - 16



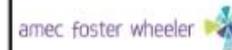
NOTE: Thickness of foundry material shown between borings is interpolated and as such may vary from actual conditions encountered in the field.



**Approximate Foundry Material Within ROW and Construction Limits**

DATE	3/14/2016	SHEET	3
DRAWN BY	KAR	REV	
CHECKED BY	KWR	FIGURE	

Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Gelpmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community  
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 CAD data provided by Alabama Department of Transportation.





# Tips on Managing a Successful Project

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- ▶ **Know your stakeholders and establish a good working relationship.**
  
- ▶ Start with the end goal in mind.
  - ▶ Assessment alone is insufficient.
  - ▶ Successful Brownfields revitalization = sustainable redevelopment
  - ▶ Triple Bottom Line model
  
- ▶ Outcome should be more than a technical report.
  - ▶ Assess
  - ▶ Comply
  - ▶ Protect
  - ▶ Enhance, position, promote



# Tips – Working with Consultants

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▶ Top four tips for selecting a consultant:

1. Look left.
2. Look right.
3. Look forward.
4. Look backward.

\*Caveat – These tips are only applicable to this room. 😊

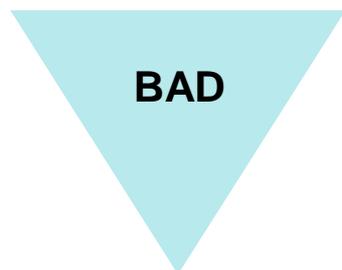
▶ Items to note for Phase I ESA reports:

- ▶ Opinions and recommendations are not the same.
- ▶ Don't forget about non-scope items.
  - ▶ ACM, LBP, radon, wetlands, floodplains, T&E species, historical considerations



# Tips – Enticing/Working with Developers

## ► Developer Investment Perspective



### **Contaminant Management**

**Developers fear petroleum the least** and are not overly turned off by residual soil and marginal groundwater contamination of all types. They do fear free product due to odors and work stoppage effects on construction.

### **Cost Management**

Few fear environmental cleanup could end a project after a thorough environmental assessment with regulatory oversight. **Most fear potential future business loss due to future new discoveries** of unknown conditions.

### **Ability to do Business**

Developers fear delays caused by regulatory processes. Concerned that contamination without No Further Action letters could stigmatize marketability of project. **Comprehensive assessments are INVALUABLE** in avoiding this.

# Revisit and Refresh

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## 1. Why AAI is Important

- ▶ It will save you \$\$ in the long run. Keep up with Continuing Obligations.

## 2. Moving Beyond the Phase I Opinions

- ▶ Don't get stranded in the red zone. It's usually never as bad as it appears to be.

## 3. Tools to Keep the Project Going

- ▶ ADEM and EPA are invaluable resources. Remember to leverage.

## 4. Technology to Help You Get There

- ▶ It doesn't have to be complicated.

## 5. Tips on Managing a Successful Project

- ▶ Choose a qualified, reputable consultant and establish a great working relationship with stakeholders. Understand what developers are looking for.

# Questions?

Maggie Parker Weems

[maggie.weems@amecfw.com](mailto:maggie.weems@amecfw.com)

205.733.7623

