

# LAND RECYCLING & BROWNFIELDS REDEVELOPMENT LEGAL & REGULATORY FRAMEWORK

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El Centro CA



# TOPICS

- Brownfields and Land Recycling in Context
- Integrating Cleanup & Redevelopment
- Managing Risk in Property Transactions
- Risk Management Strategy
- Legal Framework
- Due Diligence (Phase I & II Environmental Site Assessment)
- Cleanup Process

# GETTING THE RECORD STRAIGHT: DEFINITIONS & MYTHS

- **Brownfields**

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

- **Land recycling or reuse**

The reuse of abandoned, vacant, or underused properties for redevelopment

- **Not all sites which use brownfields funds are contaminated**

- **Brownfields funds can be used for land recycling**

# COMMON BROWNFIELDS



# REDEVELOPMENT BARRIERS

Description	Implication
Market Value Exceeds Cleanup Costs	Private Market Completes Cleanup & Redevelopment
Value Close to Covering Development & Cleanup Costs	Targeted Public Investment Can Make Project Feasible
Environmental Liability Far Exceeds Property Value	Requires Significant Public Investment or Market Change

***Cost, Liability & Timing Uncertainty***

# INTEGRATING CLEANUP & REDEVELOPMENT

## Redevelopment Assessment

- Infrastructure & Services
- Air, Water Quality, Congestion
- Natural Resources
- Market Analysis

## Future Use Vision

- Conceptual Site Plan
- Anticipated CEQA Impacts

## Design

- Site Improvements
- Vertical

Community Involvement

## Environmental Assessment

- Remedial Investigation

## Analysis of Cleanup Options

- Feasibility Study

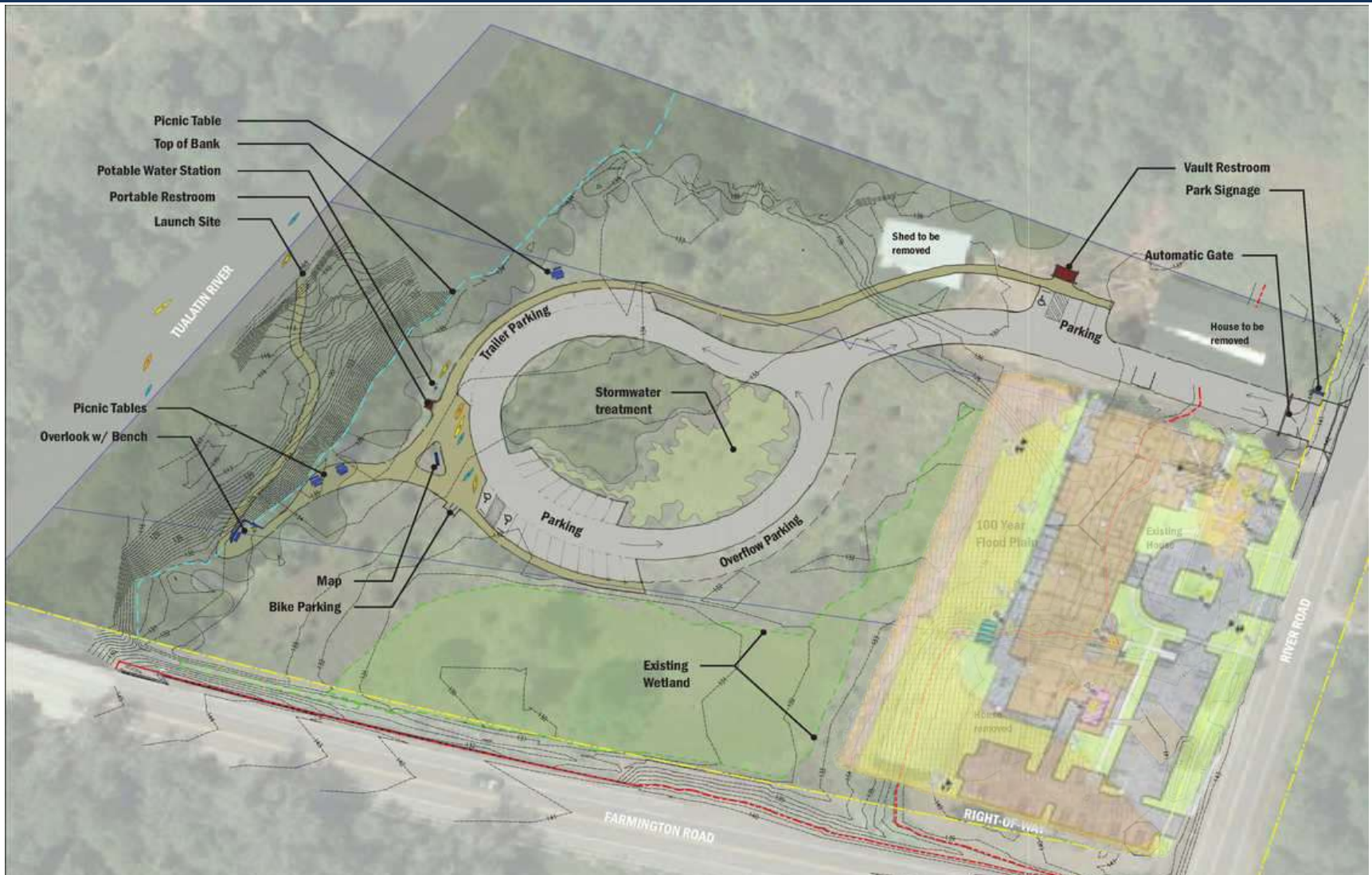
## Cleanup Plan

Risk Management

# INTEGRATING REMEDY & REDEVELOPMENT

- Future Use Drives the Cleanup
  - Unrestricted Standards
  - Industrial Standards
- Preventing Exposure vs. Clean
- Redevelopment can be the Remedy

# INTEGRATING REMEDY & REDEVELOPMENT





# MANAGING RISK IN PROPERTY TRANSACTIONS

## STRUCTURE OF THE DEAL

- Due Diligence – Phase I/II etc.
  - Price Reduction
- Release & Indemnification
- Shared Risk / Cost Allocation
  - Environmental Insurance

## ADMINISTRATIVE PATHWAY

- Consent Decree
- Voluntary Cleanup
- Local government tools

## CLEANUP

- Dig & Haul
- Pump & Treat
- In Situ Treatment
- Capping
- Monitored Natural Attenuation

## FUNDING

- State & Federal Grants
- Cost recovery
- Tax increment tools
- Historic Insurance Recovery
- Low Interest Loans
- Contribution Claims

# LEGAL FRAMEWORK

- Superfund Law (CERCLA)
- CA State Laws
  - DTSC Statutes
  - State Water Board Statutes
- Liability: Owner, Operator, Arranger, Transporter
- Strict—Regardless of fault, lack of diligence or ignorance
- Joint & Several—All parties responsible for all costs
- Retroactive

# LIABILITY DEFENSES

- Innocent Purchaser
  - Didn't cause or worsen contamination
  - Conducted due diligence
- Adjacent property owner
- Lenders
- Local government

# PURPOSE OF A PHASE I ESA

- Liability Defense—All Appropriate Inquiry (AAI)
- Support go/no go decision making
- Lender requirement
- EPA and some state brownfield grants requirement

***Not a requirement of DTSC or RWQCB***

# ELEMENTS OF A PHASE I ESA

- Environmental Records Review
- Review of Historical Land Use Sources
- Site Reconnaissance
- Interview
- Report



# PHASE I ESA OUTCOMES

- Recognized Environmental Conditions
- Controlled Recognized Environmental Conditions
- Historical Recognized Environmental Conditions



# TRANSACTIONAL DOCUMENT

- Phase I ESAs must be completed prior to closing
- Phase I ESAs are valid for 180 days
- Reliance—Typically conducted on behalf of buyer, or specifically identified in report

# LEAD AGENCY SELECTION/DESIGNATION

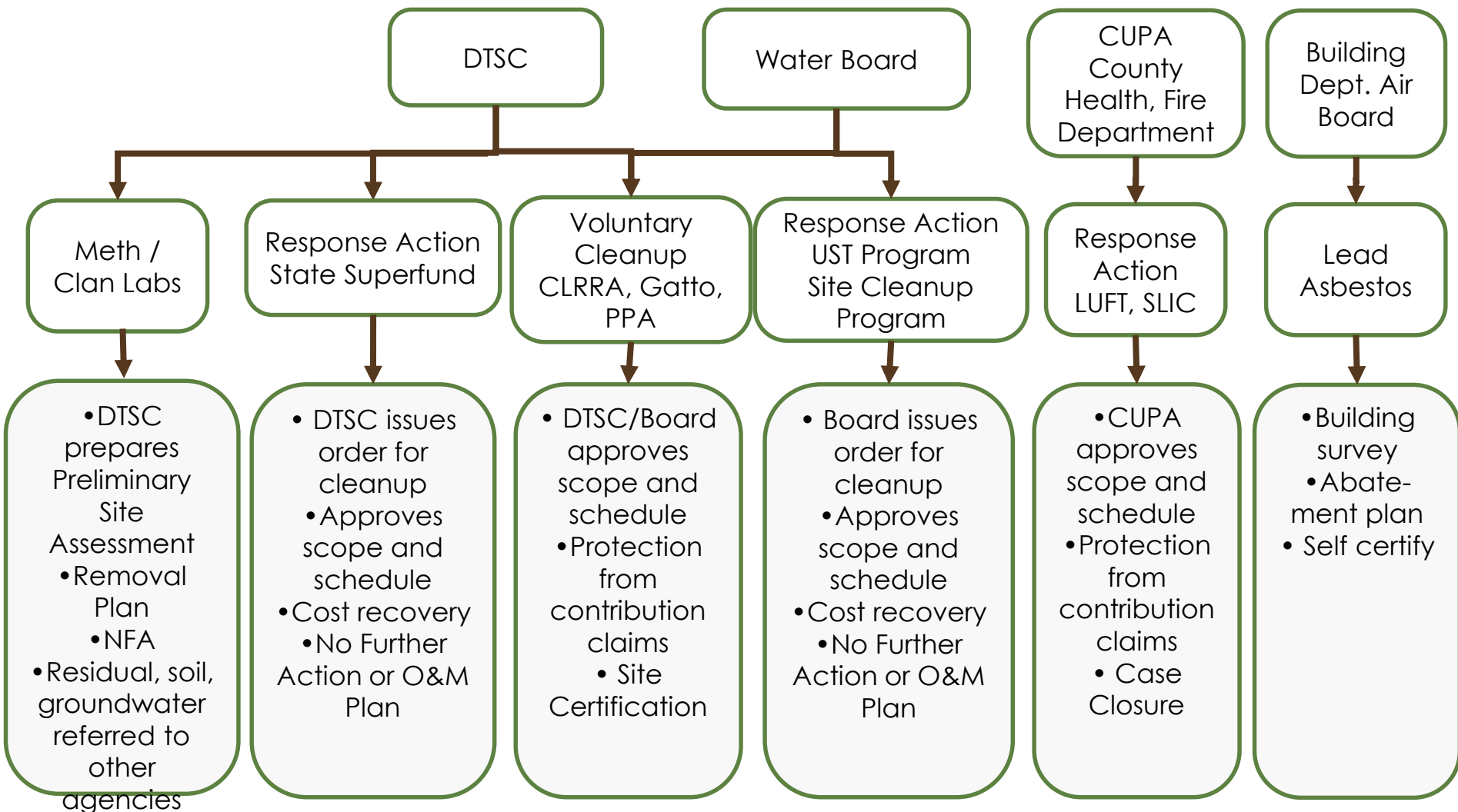
- Contact a regulatory agency
- Request for lead agency oversight
- DTSC and the Water Board determine the Lead Agency
  - Under Memorandum of Agreement
  - Applies to all brownfields, with some exceptions
  - Allows local agency to oversee cleanup of a “simple” investigation or cleanup
  - DTSC or the Water Boards may concur with the local agency, or decide to bring the property in under State oversight



# CHEAT SHEET: FEDERAL STATE & LOCAL PROCESS

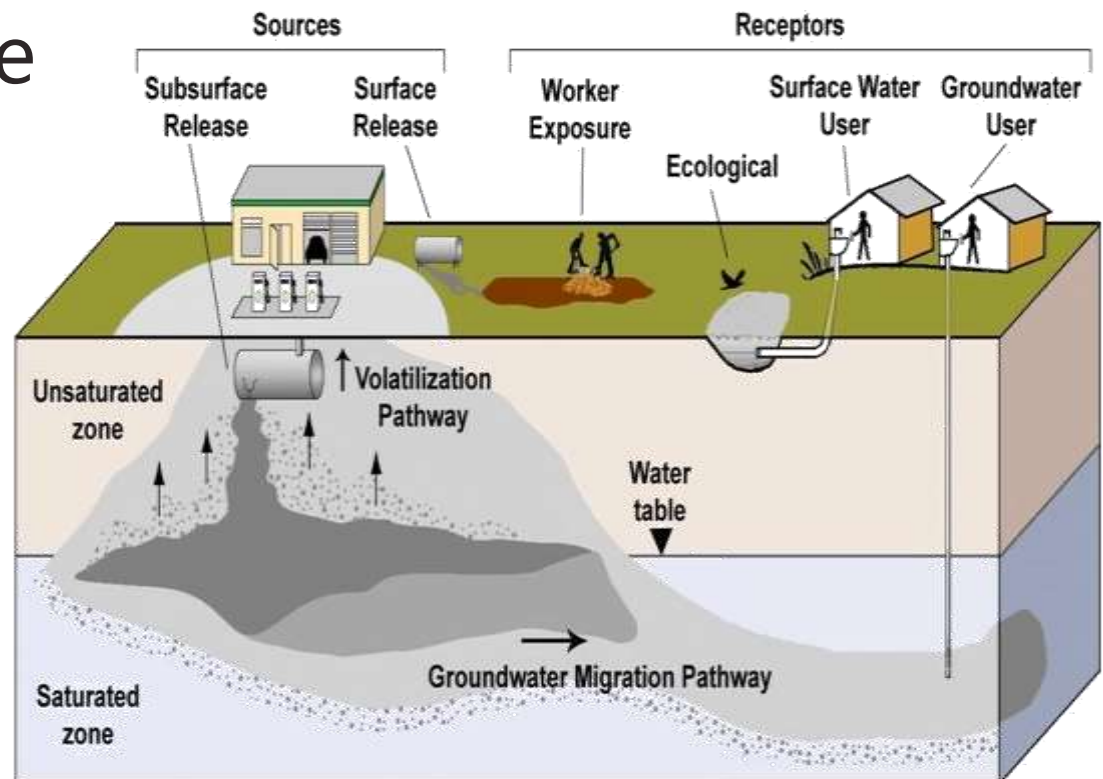
<b>EPA</b>	<b>DTSC</b>	<b>RWQCB</b>	<b>CUPA/County</b>
Phase I Environmental Site assessment	Same, or Preliminary Endangerment Assessment		
Phase II Environmental Site Assessment	Remedial Investigation; Health Risk Assessment	Site characterization report	Site characterization report
Analysis of Brownfield Cleanup Alternatives (ABCA)	Feasibility study; Engineering Evaluation	Alternatives analysis	Alternatives analysis
Cleanup Plan	Removal Action Workplan (RAW), Remedial Action Plan (RAP)	Cleanup & Abatement Plan	RAP, Response plan
Other terms			
Quality Assurance Project Plan	Sampling Analysis Plan	Risk Assessment	Treatability study
Fate and Transport Study	Confirmation sampling	Land Use Control	Institutional Control

# ADMINISTRATIVE PATHWAYS



# PHASE II ESA

- Sampling and data analysis to evaluate Recognized Environmental Conditions
- Assess exposure pathways and cleanup scenarios




# "TYPICAL" REMEDIATION PROCESS

**Remedial Investigation** - Define extent of impacts



**Feasibility Study** - Evaluate cleanup options



**Cleanup Action Plan** - Memorialize preferred option



**Remedial Design** - Plans and specifications



**Implementation** - Construction

# REMEDIAL INVESTIGATION

- Purpose—To characterize the nature and extent of contamination sufficiently to develop and evaluating cleanup action alternatives
- Iterative process of sampling and data gap analysis
- DQOs!

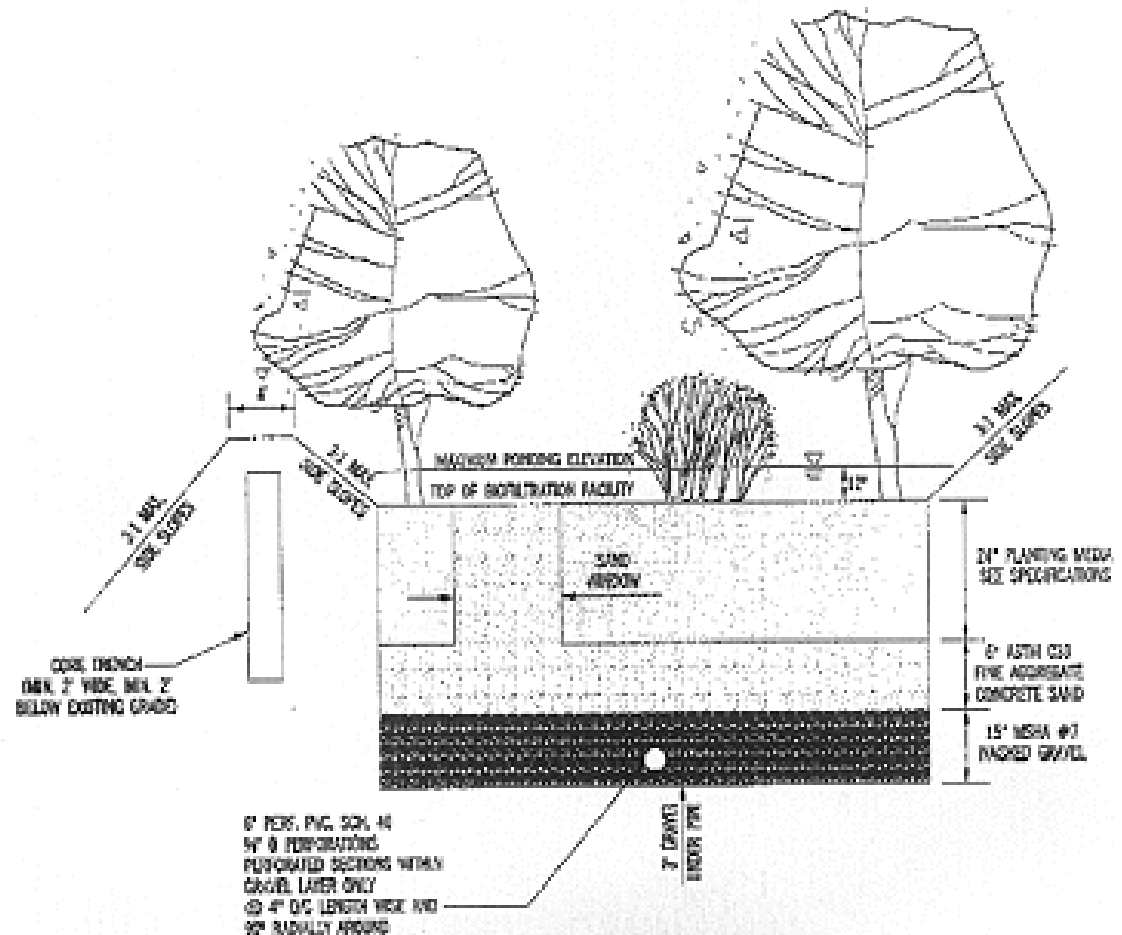


# FEASIBILITY STUDY

- Purpose: To develop and evaluate cleanup action alternatives to enable a cleanup action to be selected for the site
- Threshold Requirements
- Protect human health & environment: Human and Eco-Risk Assessment
- Comply with cleanup standards & laws
- Other Evaluation Criteria
- Protectiveness
- Permanence
- Public Concerns

# CLEANUP ACTION PLAN

- Purpose—To outline the preferred cleanup approach
- Engineering Design Report
- Plan Set & Specifications
- Integrate with construction and redevelopment



# REMEDY IMPLEMENTATION

