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Self-Directed Cleanups: A Brave New World?

PRESENTED BY
ROBERT DOTY, PARTNER, COX CASTLE
MATT WINEFIELD, MS, MBA, PE, WINEFIELD & ASSOCIATES, INC.

COX CASTLE

W&A

Self-Directed Cleanup – the Five W's (slightly reordered)

- What Does "Self-Directed Cleanup" Mean?
    - NJ-style LSRP?
    - Site Investigation
    - Site Remediation
    - O&M

- Who Is/May Be Doing Self-Directed Cleanup?

- When In The Environmental Process Is Self-Directed Cleanup Possible?

- Where In The Life Cycle Of A Loan Might Self-Directed Cleanup Issues Arise?

- Why Self-Directed?

Where in the Life Cycle of a Loan Might Self-Directed Cleanup Issues Arise

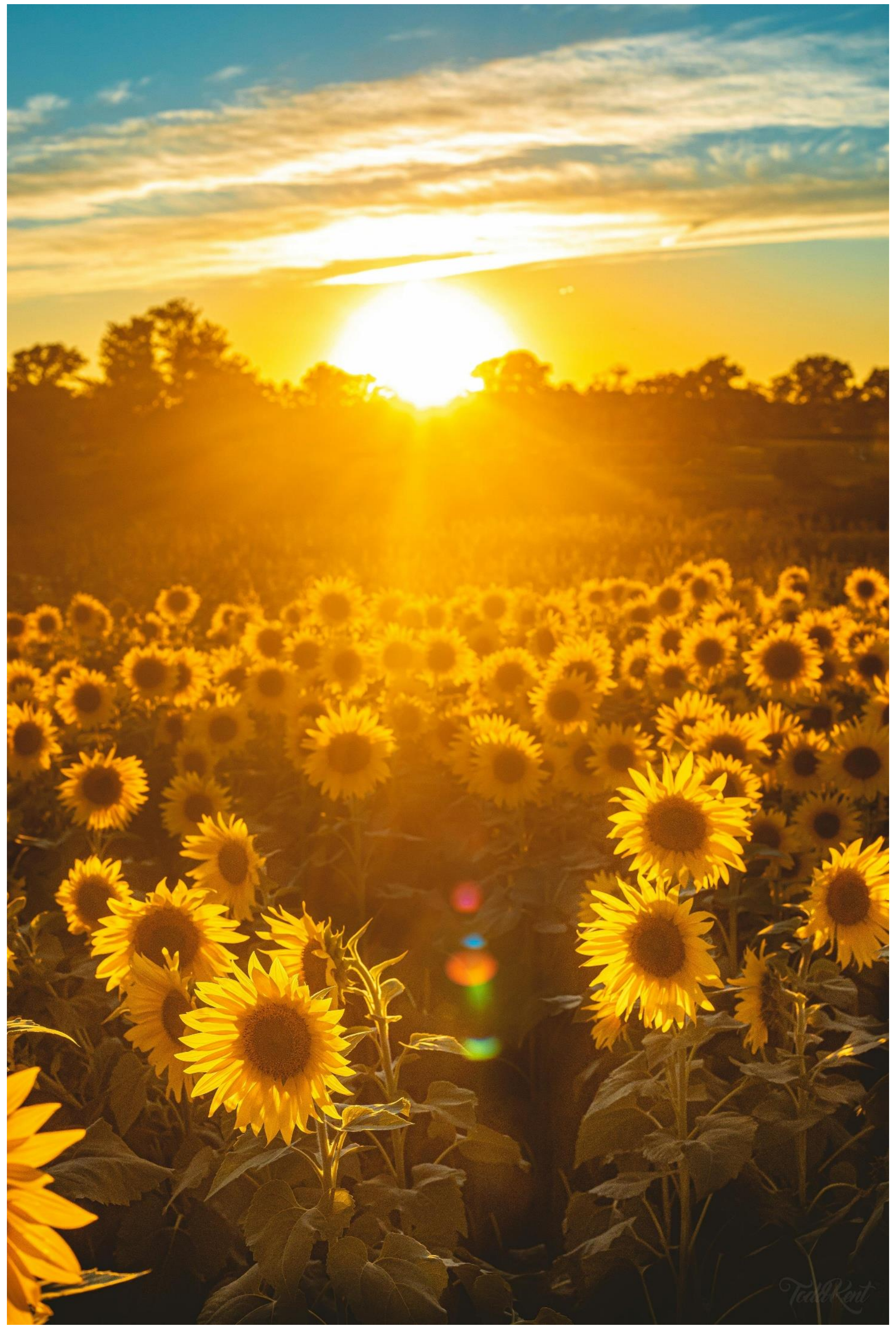
- Pre-funding/credit review
  - Credit quality
  - Collateral

- Loan Agreement/Covenant Monitoring

- Refinance/Take Out

- Pre-foreclosure/Foreclosure

- Other Bank-owned Property???



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The Evolving Legal Framework, Briefly

- 1980: CERCLA Adopted
  - Class-based liability, 42 U.S.C. § 9607
  - Strict, retroactive, and joint and several
  - Secured Lender Exemption, 42 U.S.C. § 9601(20)

- 1988-1993: *Fleet Factors* I, II, and III – The Stuff Hits the Fan!

- 1994: EPA's Lender Liability Rule and *Kelly v. EPA*

- 2002: Federal Brownfield Amendments

- Query: Common Law Nuisance & Trespass

Recurring Issues As We Think About Self-Directed Cleanup Work

- The "RI" or "Site Assessment" Phase
- The Remediation Phase
    - Stabilizing a bad situation
    - Expanding Existing Use
    - Redevelopment to New Use
- Closure, Exit Strategies, Notification & Disclosure
- *NB*: Dry Cleaners and Vapor Degreasers

The Important Role of Environmental Insurance

- Pollution Legal Liability (PLL) Coverage – Classic Form

- PLL in the Era of Self-Directed Cleanup

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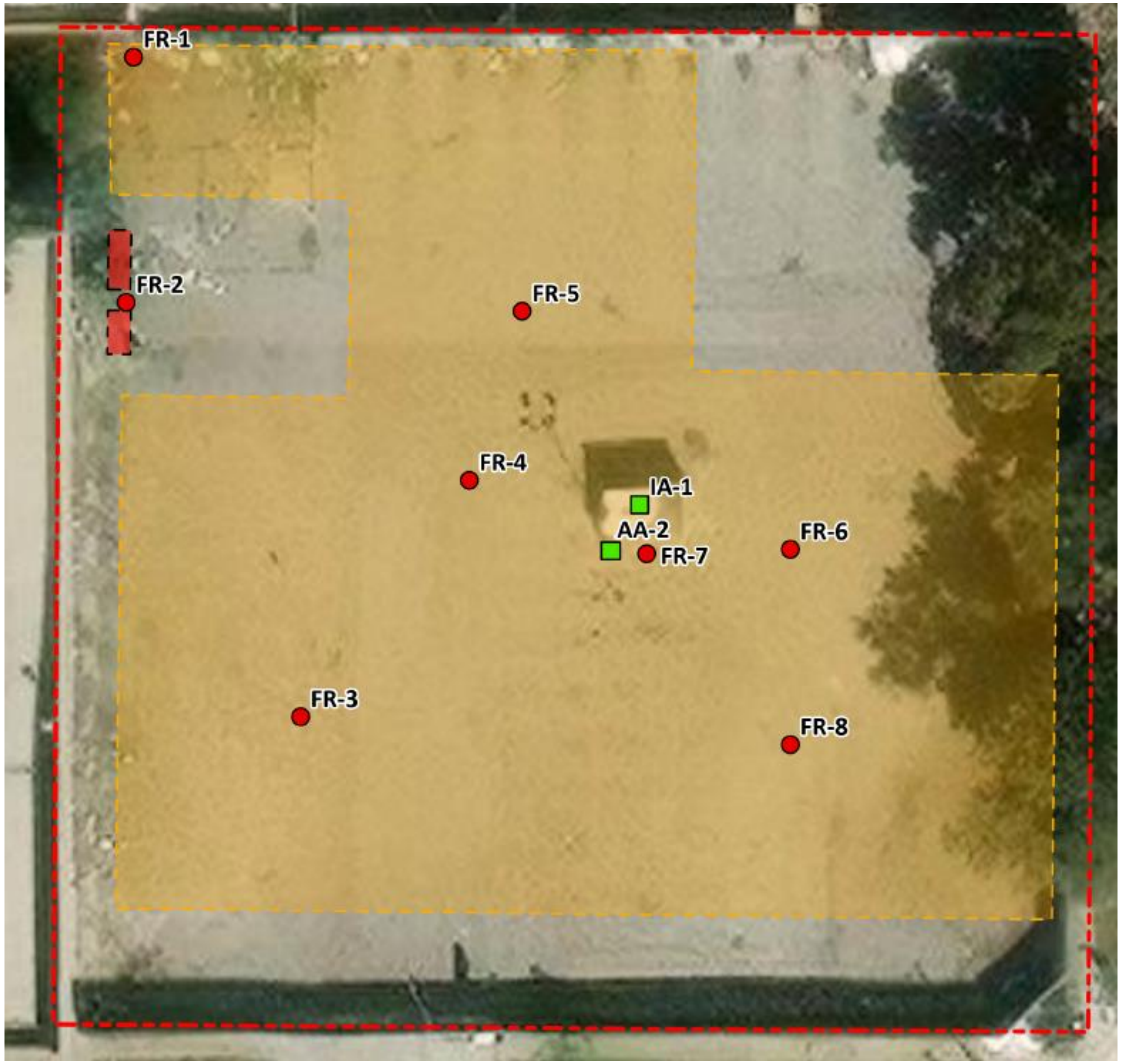
EXAMPLE 1 – FORMER DRY CLEANER SOIL VAPOR AND INDOOR AIR PROBES



EXAMPLE 1 – FORMER DRY CLEANER
REPRESENTATIVE SOIL VAPOR RESULTS

Table 3
SUMMARY OF SOIL VAPOR SAMPLE RESULTS FOR DETECTED VOCS

Analyte	Residential			Commercial/Industrial									
	SFBRWQCB ESL [1]	DTSC SL [2]	EPA RSL [3]	SFBRWQCB ESL [1]	DTSC SL [2]	EPA RSL [3]	SV1-5 5/2/2024	SV1-15 5/2/2024	SV2-5 5/2/2024	SV2-15 5/2/2024	SV3-5 5/2/2024	SV3-15 5/2/2024	SV4-5 5/2/2024
Acetone	*1,100,000*	*NP*	*NP*	*4,500,000*	*NP*	*NP*	**370**	**400**	**500**	**550**	**630**	**620**	**620**
Chloroform	*4.1*	*NP*	*4*	*18*	*NP*	*18*	1.8 J	2.6 J	1.5 J	1.3 J	1.3 J	2.0 J	0.8 J
Heptane	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	**7.8**	3.7 J	ND	ND	ND	ND	ND
4-Ethyltoluene	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	4.2 J	ND	ND	ND	ND	ND	ND
Methylene chloride	*34*	*33*	*3,000*	*410*	*400*	*40,000*	18 J [C-06]	26 J [C-06]	13 J [C-06]	16 J [C-06]	14 J [C-06]	17 J [C-06]	15 J [C-06]
Tetrahydrofuran	*NP*	*NP*	*70,000*	*NP*	*NP*	*293,000*	ND	ND	**4.6**	**3.7**	**6.3**	**4.9**	**4.5**
Tetrachloroethene	*15*	*15*	*367*	*67*	*67*	*1,500*	3.8 J	**13**	**38**	2.2 J	1.9 J	**13**	4.8 J
Trichloroethene	*16*	*NP*	*16*	*100*	*NP*	*100*	1.5 J	0.38 J	0.25 J	ND	ND	**4.7**	ND
1,3,5-Trimethylbenzene	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	1.2 J	0.86 J	0.62 J	0.94 J	0.89 J	0.97 J	0.72 J
1,2,4-Trimethylbenzene	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	4.8 J	3.9 J	3.2 J	4.0 J	3.4 J	4.3 J	2.7 J
2-Butanone (MEK)	*NP*	*NP*	*173,000*	*NP*	*NP*	*733,000*	**41**	**44**	**60**	**66**	**78**	**75**	**74**
Methyl isobutyl ketone	*100,000*	*NP*	*100,000*	*440,000*	*NP*	*433,000*	10 J	16 J	21 J	25 J	29 J	27 J	20 J
Benzene	*3.2*	*3.2*	*12*	*14*	*14*	*53*	**9.6**	ND	2.0 J	ND	ND	ND	ND
Toluene	*10,000*	*NP*	*173,000*	*44,000*	*NP*	*733,000*	**11**	**8.7**	**6.7**	**8.3**	**8.0**	**7.2**	**6.7**
Ethylbenzene	*37*	*NP*	*37*	*160*	*NP*	*163*	**9.5**	1.7 J	1.4 J	1.6 J	1.5 J	1.7 J	1.0 J
m,p-Xylene	*3,500*	*NP*	*3,000*	*15,000*	*NP*	*15,000*	**17**	6.4 J	4.5 J	6.9 J	5.6 J	5.4 J	4.1 J
o-Xylene	*3,500*	*NP*	*3,000*	*15,000*	*NP*	*15,000*	2.3 J	2.1 J	1.6 J	2.1 J	2.0 J	2.1 J	1.3 J

Notes:

Soil vapor volatile organic compounds (VOCs) analyzed via EPA Method TO-15

Analyte concentrations and screening levels expressed in micrograms per cubic meter ($\mu g/m^3$)

Analyte detected at or above laboratory reporting limit

Analyte detected at or above residential screening level

Analyte detected at or above commercial/industrial screening level

ND = analyte not detected above laboratory reporting limit

NP = screening level not published

NA = not analyzed

[1] Refers to Sub-Slab Soil Gas (Table SG-1), Commercial/Industrial and Residential Shallow Gas Exposure for cancer risk or non-cancer hazard, SFBRWQCB ESLs, 2019 (Rev. 2).

[2] California Department of Toxic Substances Control (DTSC) Human and Ecological Risk Office (HERO) Human Health Risk Assessment (HHRA) Note 3, Table 3, June 2020. Based on 0.03 attenuation factor.

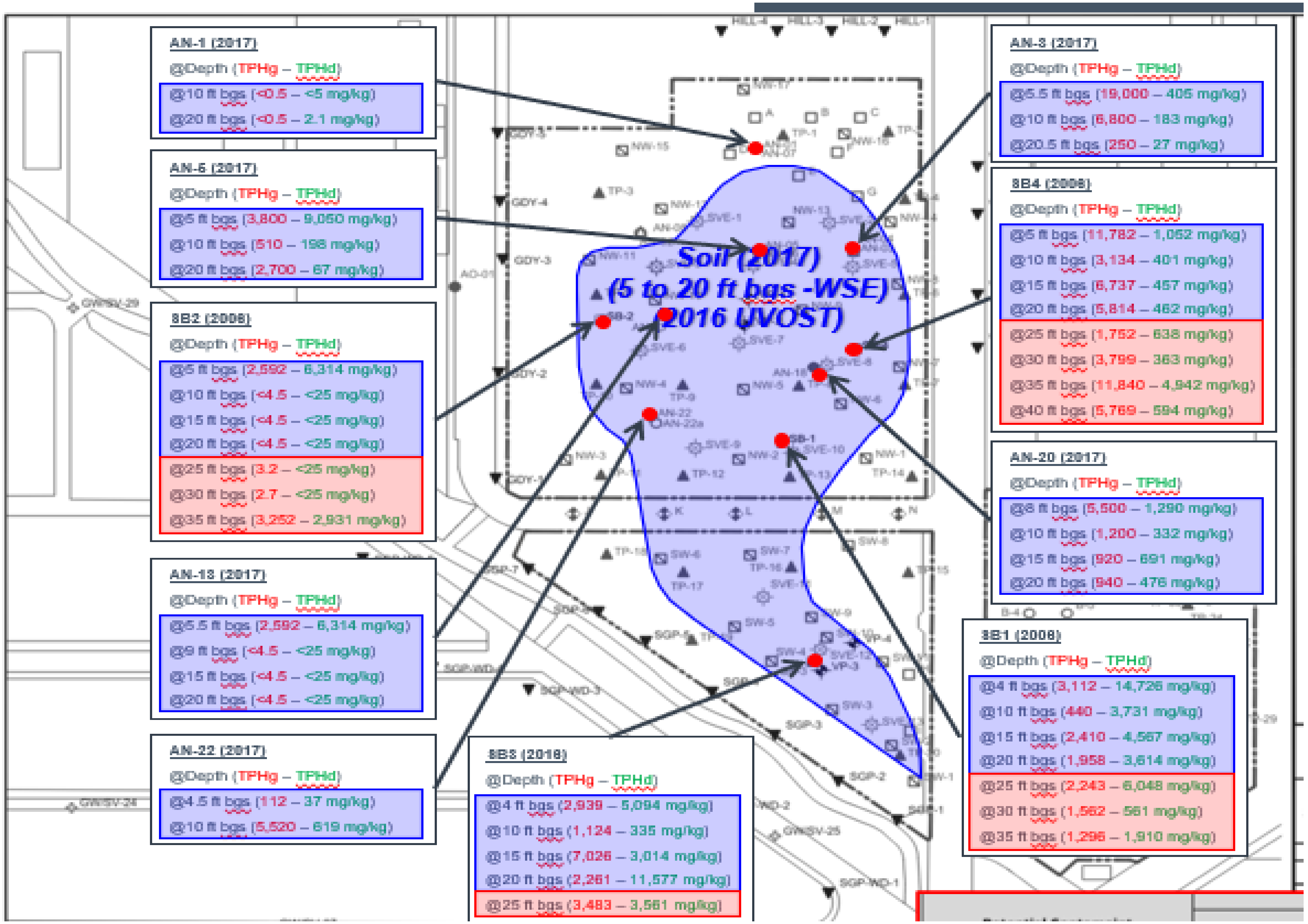
[3] United States' Environmental Protection Agency Regional Screening Levels, November 2023. Based on 0.03 attenuation factor.

J = result detected below laboratory reporting limit, therefore concentration is an estimated result.

C-06 = laboratory contaminant flag.

EXAMPLE 2 – FORMER OIL REFINERY AERIAL PHOTOGRAPH (1994)

EXAMPLE 2 – FORMER OIL REFINERY
REPRESENTATIVE TPH IN SOIL



Example 2 – Former Oil Refinery Planned Townhome Development

Thank You

CONTACT US

Robert P. Doty
Partner
415.262.5115
Rdoty@coxcastle.Com

Matt Winefield, MS, MBA, PE
President
Winefield & Associates, Inc.
Mobile: 562-618-0037