



REGION 4

ATLANTA, GA 30303

ELECTRONIC MAIL

CONFIRMATION OF EMAIL RECEIPT REQUESTED

Patricia Esfeller
Esfeller Properties, LLC
c/o Schuyler Espy
Burr & Forman, LLP
445 Dexter Avenue, Suite 2040
Montgomery, Alabama 36104
sespy@burr.com

Re: Notice of Violations and Opportunity to Show Cause for Esfeller Properties, LLC in Irvington,
Mobile County, Alabama, Pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a);
Docket Number 309-2024-05

Dear Schuyler Espy:

This letter is to inform you that the U.S. Environmental Protection Agency, Region 4 has identified violations of Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), at the property located at or near the northeast corner of Walker Road and Deakle Road, Irvington, Mobile County, Alabama, at or near latitude 30.440641° north and longitude 88.201672° west (Site). The site is indicated on the enclosed Exhibit A.

On December 12, 2023, the EPA issued Esfeller Properties, LLC (Esfeller Properties) an Information Request pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. Esfeller Properties' response to the 308 Information Request was received by the EPA on February 16, 2024. Based on the information in the case file and the 308 Information Request response, the EPA has reason to believe that commencing around 2012 through 2023, Esfeller Properties discharged dredged and/or fill material into waters of the United States while conducting mechanized land clearing and conversion activities on the site without authorization under Section 404 of the CWA, 33 U.S.C. § 1344. The unauthorized activities are associated with mechanized land clearing of forested wetlands and conversion of these wetlands to cattle pasture. The unauthorized activities, as reported by Thompson Engineering (consultant for Esfeller Properties), impacted approximately 24.8 acres of wetlands that have a continuous surface connection to a relatively permanent tributary of the Fowl River (the impacted wetlands are referred to as the "Discharge Area"). The discharge area is indicated on the enclosed Exhibit B.

The EPA believes Esfeller Properties is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) for the following reasons:

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with a permit issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.
2. Commencing around 2012 through 2023, Esfeller Properties, and/or those acting on their behalf, discharged dredged and/or fill material into waters of the United States using earth-moving machinery without Corps authorization by means of a Department of the Army permit pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. To date, the unauthorized dredge and/or fill material remains in waters of the United States.
3. These unauthorized activities impacted approximately 24.8 acres of wetlands that have a continuous surface connection to a relatively permanent tributary of the Fowl River. The Fowl River is a traditional navigable water.
4. At no time during the discharge of dredged and/or fill material into waters of the United States did Esfeller Properties possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material.
5. Each discharge of pollutants into waters of the United States without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
6. Each day the discharged material remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
7. Therefore, Esfeller Properties is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for discharging pollutants into waters of the United States without a permit.

Such violations are subject to enforcement actions pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, including the issuance of compliance orders, the assessment of administrative penalties, and/or the initiation of civil or criminal actions. Any continued work by Esfeller Properties that involves discharges of dredged and/or fill material into waters of the United States without authorization is done at risk of adding to the scope of the violations.

Within 14 calendar days of receiving this letter, contact Michele Wetherington at (404) 562-9613 or wetherington.michele@epa.gov to arrange a meeting to show cause why the EPA should not take formal civil enforcement action against Esfeller Properties for the violations, including the assessment of appropriate civil penalties and injunctive relief. Instead of appearing in the EPA's offices for this meeting, a video or telephone conference may be scheduled.

You should be prepared to provide all relevant information with supporting documentation pertaining to the violations, including but not limited to any financial information which may reflect

an inability to pay a penalty. You have the right to be represented by legal counsel. All information submitted in response to or during the show cause meeting should be accompanied by the following certification that is signed by a duly authorized official:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Please be aware that the EPA may use information provided during the telephone or video conference in any potential enforcement proceeding related to this matter. Notwithstanding the scheduling of a show cause meeting, the EPA retains the right to bring further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein or for any other violation of the CWA.

The EPA appreciates your prompt attention to this matter. If you have questions, please contact Chris Parker at (404) 562-9838, or parker.christopher@epa.gov. Legal inquiries should be directed to Michele Wetherington, Associate Regional Counsel, at 404-562-9613 or via email at wetherington.michele@epa.gov.

Sincerely,

KERIEMA NEWMAN

Digitally signed by KERIEMA
NEWMAN
Date: 2024.05.23 09:43:21 -04'00'

Keriema S. Newman
Director
Enforcement and Compliance Assurance Division

cc: Philip Hegji
U.S. Army Corps of Engineers, Mobile District
philip.a.hegji@usace.army.mil

William McClimans
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Scott Hughes
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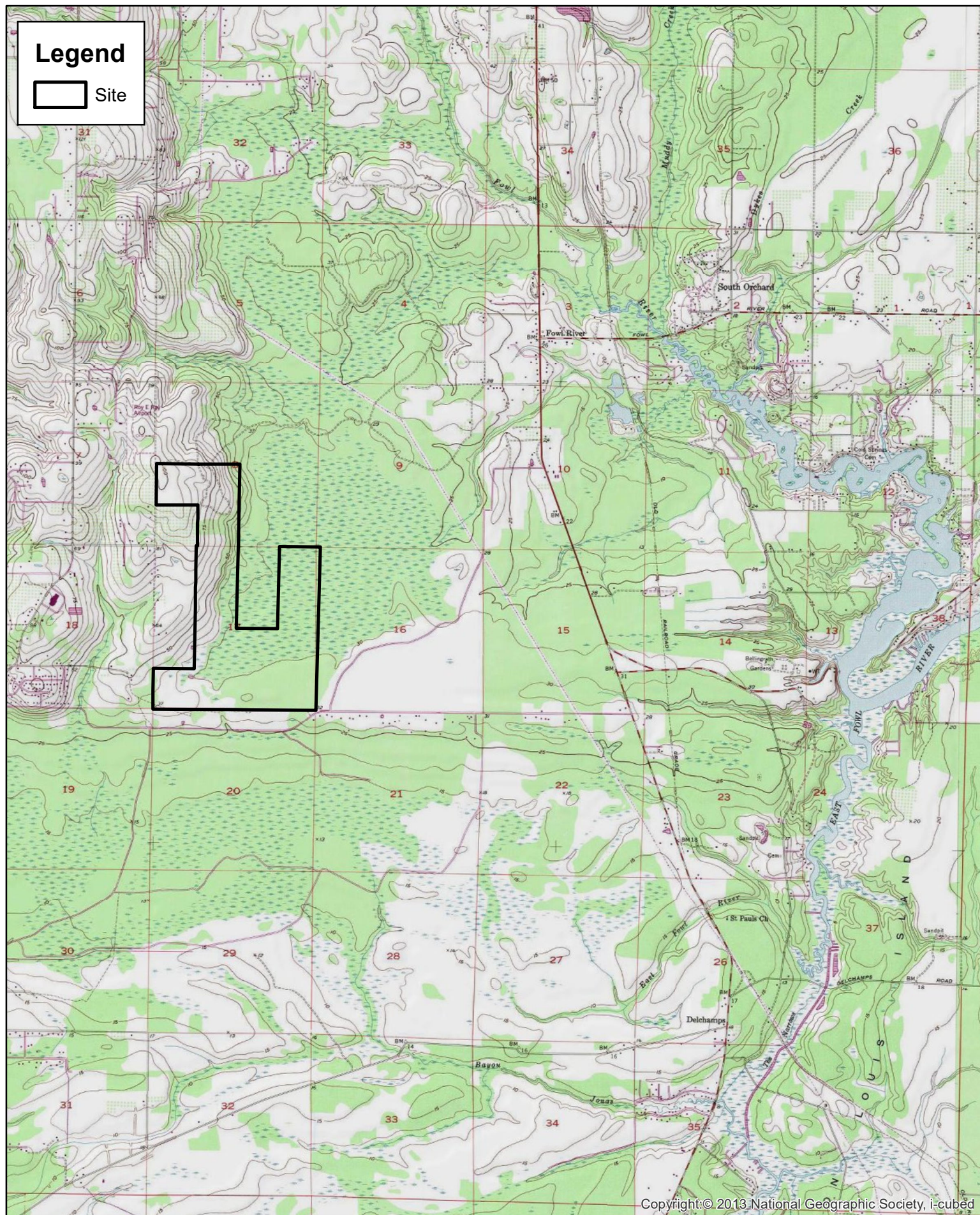


EXHIBIT A - SITE LOCATION MAP
ESFELLER PROPERTIES, LLC
IRVINGTON, MOBILE COUNTY, ALABAMA

0 2,500 5,000 10,000
 Feet



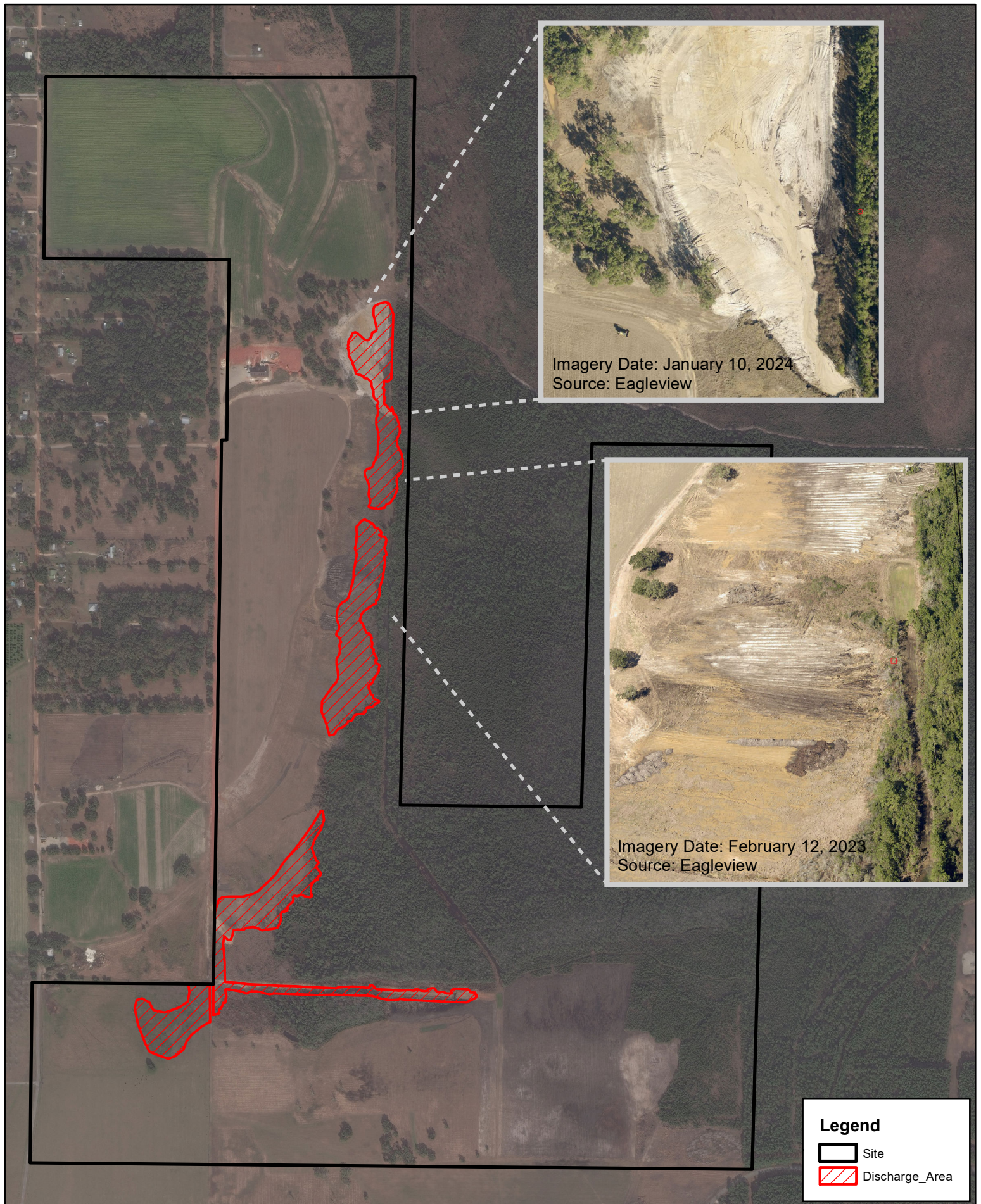


EXHIBIT B - SITE LOCATION MAP & DISCHARGE AREA
ESFELLER PROPERTIES, LLC
IRVINGTON, MOBILE COUNTY, ALABAMA

Imagery Date: January 15, 2024
Source: MAXAR-Digital Globe

