



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

VIA ELECTRONIC MAIL
CONFIRMATION OF EMAIL RECEIPT REQUESTED

Patricia Esfeller
Esfeller Properties, LLC
7140 Highway 188
Codan, Alabama 36523
pesfeller@esfellerconstruction.com

Re: Information Request Letter 308-2024-01
Esfeller Properties, LLC, Irvington, Mobile County, Alabama

Dear Patricia Esfeller:

The U.S. Environmental Protection Agency Region 4 is investigating the recent work performed 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 and further identified in the enclosed Information Request (Enclosure A) and corresponding Exhibits A and B. This investigation concerns impacts to waters of the United States while performing mechanized land-clearing activities and placement of dredged and/or fill material without a U.S. Army Corps of Engineers Clean Water Act (CWA) Section 404 permit, 33 U.S.C. § 1344.

Section 308 of the Clean Water Act (CWA), 33 U.S.C. §§ 1318(a), authorizes the EPA to gather information to determine whether any person is in violation of the CWA. Accordingly, the EPA requests that a response to the inquiries in the Information Request (Enclosure A) be provided within 30 calendar days of receipt of this letter. Submission of the information should be provided in electronic format to Christopher Parker at parker.christopher@epa.gov. If portions are unavailable in electronic format, please notify Chris Parker in your electronic submission that additional information is being sent in hardcopy to:

Christopher Parker
Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303

If you believe that any of the requested information is confidential business information, you may assert a business confidentiality claim covering part or all of the information, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B, and 41 Fed. Reg. 36902 (Sept. 1, 1976), as amended at 43 Fed. Reg. 40000 (Sept. 8, 1978); 50 Fed. Reg. 51661 (Dec. 18, 1985). If no such claim accompanies the information when it is received by the EPA, the EPA may make the

information available to the public without further notice. Also, sending documents covered by a business confidentiality claim electronically to the EPA is done at the risk of the claimant, as the EPA does not have the capability to encrypt electronic information. The EPA requests that any such information be physically mailed to the address provided above.

Compliance with this request is mandatory. Failure to respond fully and truthfully to this Information Request or adequately justify the failure to respond within the time frame specified above may result in an EPA enforcement action pursuant to federal law, including but not limited to Section 309 of the CWA, 33 U.S.C. § 1319, and 18 U.S.C. § 1001. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

The EPA has also enclosed a document that provides information for small businesses that may be subject to an EPA enforcement action. This document is meant to aid in understanding the compliance assistance resources and tools available to your business. Any decision to seek compliance assistance at this time, however, does not relieve Esfeller Properties, LLC, of its obligation to the EPA nor does it create any new rights or defenses and will not affect the EPA's decision to pursue an enforcement action.

If you have any questions regarding this information request, please contact Christopher Parker at (404) 562-9838 or parker.christopher@epa.gov. For legal questions please contact Michele Wetherington, Associate Regional Counsel, at (404) 562-9613 or wetherington.michele@epa.gov. Thank you for your cooperation in this matter.

Sincerely,

Bragan, Mary

Digitally signed by Bragan,
Mary
Date: 2023.12.01 11:03:01
-05'00'

Mary Jo Bragan

Chief

Water Enforcement Branch

Enforcement and Compliance Assurance Division

Enclosure(s)

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

William McClimans, Alabama Department of Environmental Management
wdm@adem.alabama.gov

Scott Hughes, Alabama Department of Environmental Management
ash@adem.alabama.gov

ENCLOSURE A

CLEAN WATER ACT SECTION 308 INFORMATION REQUEST

I. INSTRUCTIONS

1. Identify the person(s) answering these questions on behalf of the Respondent, including the person's full name, business mailing address, business telephone number, and relationship to Respondent.
2. Please provide a separate narrative response for each occurrence of a discharge and to each and every Question and subpart of a Question set forth in this Information Request.
3. Precede each answer with the number of the Question to which it corresponds.
4. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA of this fact as soon as possible and provide the EPA with a corrected response.
5. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds. You may be asked to produce some documents in hard copy and electronically.

II. DEFINITIONS

The following definitions shall apply to the following words as they appear in this Information Request:

1. The term "CWA" refers to the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, also known as the Clean Water Act.
2. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
3. The term "Discharge Area" means any wetlands and streams that have been impacted either through filling, dredging, or mechanical land clearing as a result of the unauthorized activities that are the subject of this Information Request. The Discharge Area is located within the parcel or parcels that make up the Site. The Discharge Area is indicated on the enclosed Exhibit A.
4. The term "Site" means the parcel or parcels of land on which the Discharge Area is located and is indicated on the enclosed Exhibit B. The Site is located at or near the northeast corner of Walker Road and Deakle Road, Irvington, Mobile County, Alabama, and includes parcel numbers 4304170000001.000, 4304170000002.000, 4303080000001.000, 4304170000011.000, and 4304170000012.000, at or near latitude 30.440641° north and longitude 88.201672° west and is identified on the enclosed Exhibit B.

5. The term “Work” means any land clearing activities, ditching, dredging, side casting, road construction, stream crossing construction, dam construction, berm construction, mechanical land clearing, piping of streams or filling activities that have occurred in wetlands or other waters of the United States (to include streams) at the Site since you owned, controlled, or did any Work on the Site.
6. The terms “document” and “documents” shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, cancelled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photostatic or other copy of any documents, microfilm or other film record, any photograph (in color), sound recording on any type of device, any punch card, disc or disc pack; any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc pack, tape or other type of memory); and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosures with any document, and (e) every document referred to in any other document. You may be asked to produce some documents in hard copy and electronically.
7. The term “identify” means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position, or business.
8. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full legal name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
9. The term “identify” means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressee and/or recipient, and the substance or the subject matter.
10. The term “person” shall have the same definition as that contained in Section 502 of the CWA: an individual, firm, corporation, association, partnership, State, municipality, commission, or political subdivision of a State, or any interstate body.
11. The term “you” and/or “Respondent” shall mean Esfeller Properties, LLC, and anyone acting on their behalf.
12. Where applicable, diagrams of the discharge location and copies of maps of the area may be used to explain the answers to the questions.

13. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.
14. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the CWA or regulations, in which case the statutory or regulatory definitions shall apply.

III. REQUESTED INFORMATION

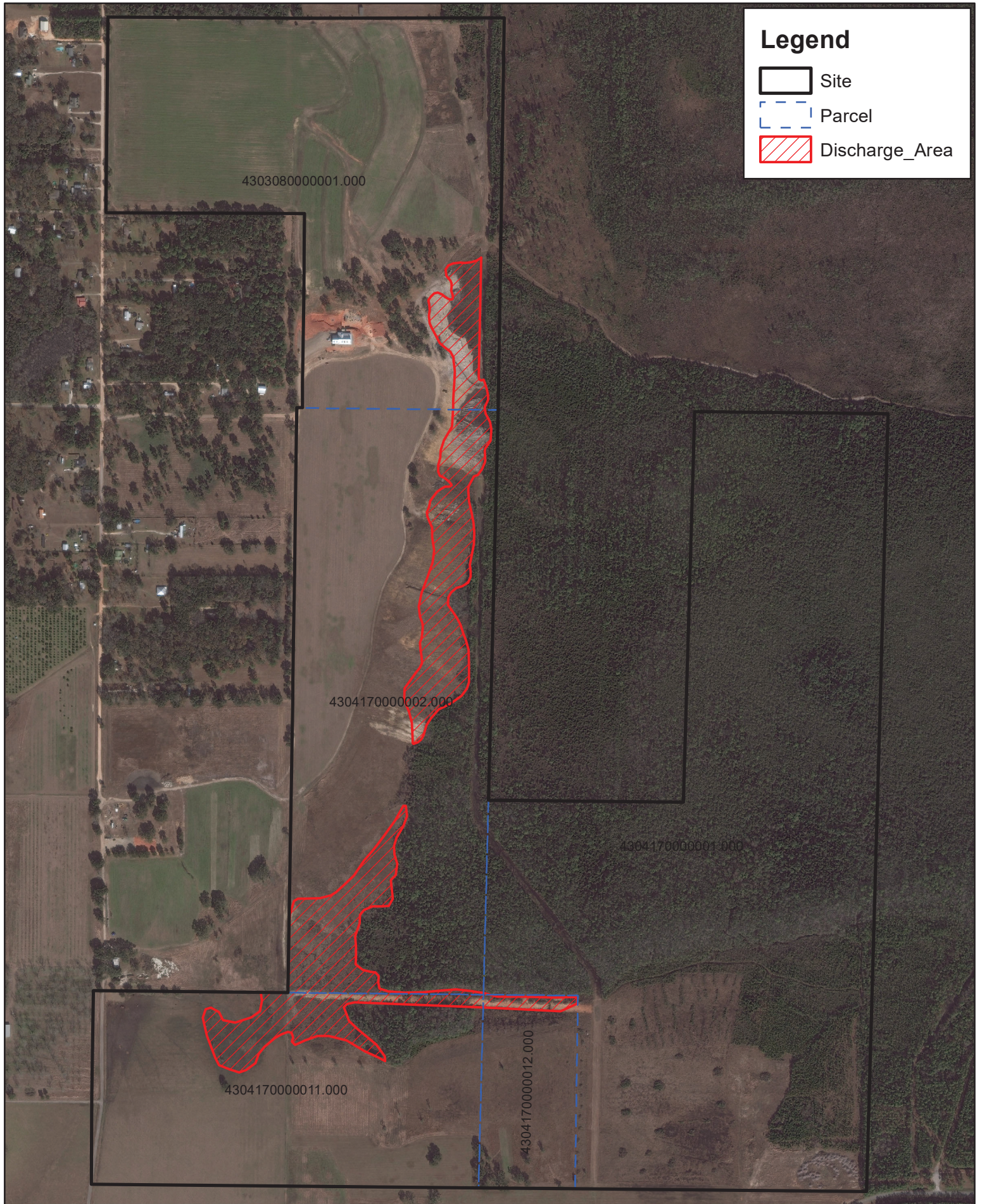
Please provide the EPA with the following information or documents pertaining to the Discharge Area identified in Exhibit A and the Site identified in Exhibit B:

1. Copies of any deeds, leases, easements, or other documents revealing the ownership interest or interests in the Site.
2. The name and address of any company, contractor, subcontractor, consultant, agent, or individual who directed or participated in the Work at the Site. Please provide any invoices for Work conducted on the Discharge Area.
3. The types of equipment used to carry out the Work and the names and addresses of the person and/or companies that own and/or operate the equipment.
4. The date upon which Work was commenced and the date upon which the Work was completed or will be completed.
5. A description of any Work at the Site performed by Respondent, or on behalf of the Respondent, by its contractor(s), subcontractor(s), consultant(s), agent(s), or employee(s). In addition, list any entity or individual other than Respondent, its contractor(s), subcontractor(s), consultants(s), agent(s), or employee(s) who performed any of the Work.
6. A description of all planned activities of which the Work was a part, including, but not limited to, all maps, drawings, and engineering plans. Please include any future plans for Work and/or Work that you would desire to keep in place at the Site.
7. Copies of any on-site environmental assessments that were done on soils, vegetation, or hydrology at the Site.
8. Copies of any Federal, State, or local permits that may have been received for the Work on the Site.
9. Copies of any written or verbal communication with Federal, State, or local agencies regarding the Work (including handwritten notes).
10. Copies of any contracts covering Work at the Discharge Area.
11. A description of all best management practices that were used to prevent dirt, debris, and sediment from entering the waters of the United States located on the Site.

12. Copies of any and all CWA Section 404 permits applied for by Respondent, or on behalf of Respondent, associated with filling, dredging, or land disturbing activities on the Site.
13. Your reasons for not obtaining a Federal permit under Section 404 of the CWA prior to commencing the Work at the Site.
14. Please identify the individual or individuals who prepared the responses to this Information Request.
15. All information submitted must be accompanied by the following signed certification:

“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.”

Name
Title



Legend

-  Site
-  Parcel
-  Discharge_Area

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

Imagery Date: January 7, 2023

0 550 1,100 2,200
Feet



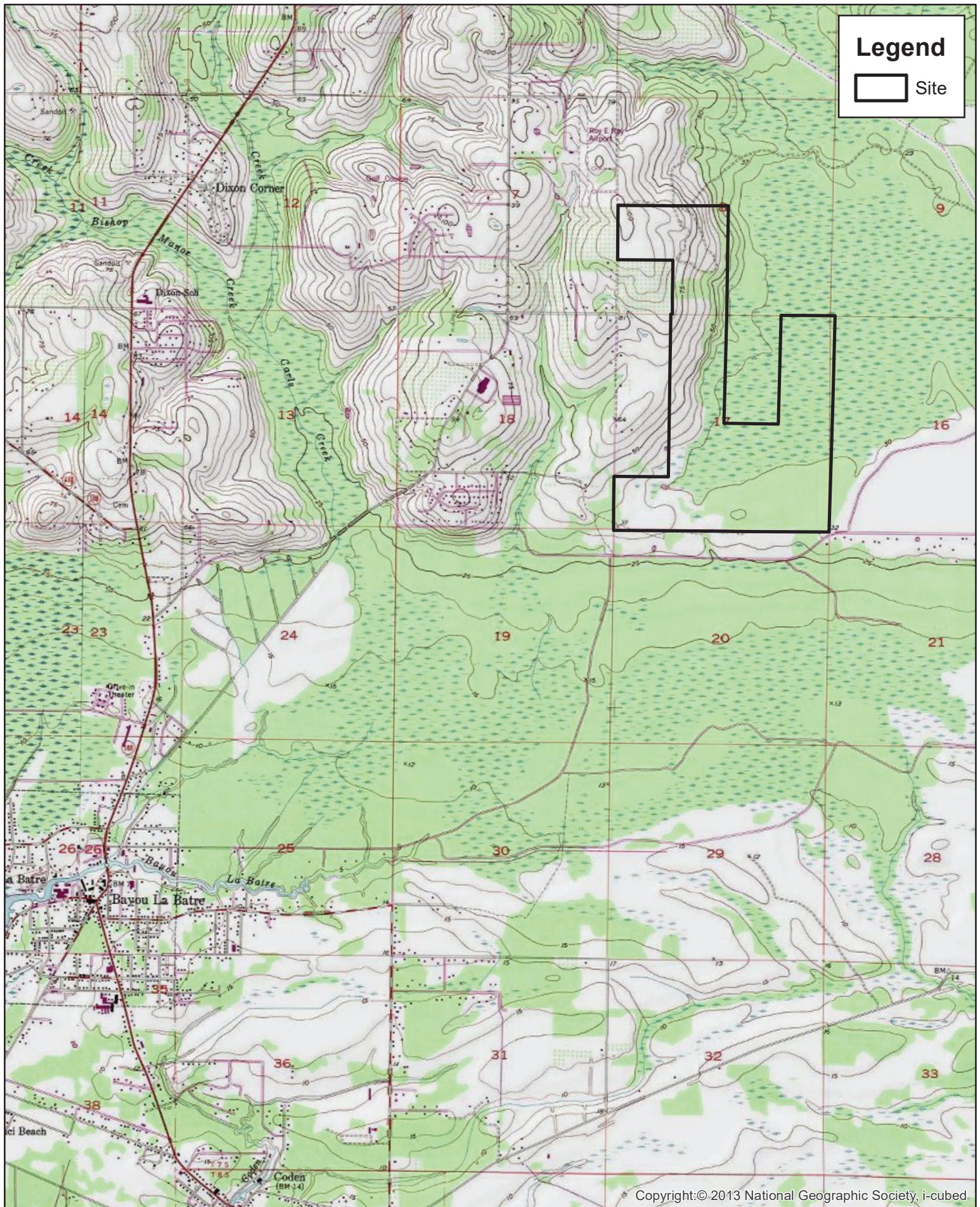


EXHIBIT B - SITE LOCATION MAP
ESFELLER PROPERTIES, LLC
IRVINGTON, MOBILE COUNTY, ALABAMA

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U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Office of Small and Disadvantaged Business Utilization (OSDBU)

<https://www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu>

EPA's OSDBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman (ASBO)

<https://www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman> or 1-800-368-5888

The ASBO helps make technical resources on environmental regulations, asbestos, and compliance assistance information more accessible, while encouraging communication and partnerships with small business on regulatory compliance, and to address asbestos-related questions from the public.

Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

EPA's Compliance Assistance Homepage

<https://www.epa.gov/compliance>

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

Compliance Assistance Centers

<https://www.complianceassistance.net/>

EPA-sponsored Compliance Assistance Centers provide the information you need, in a way that helps make sense of environmental regulations. Each Center addresses real world issues faced by a specific industry or government sector. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

<https://www.epa.gov/agriculture>

Automotive Recycling

<http://www.ecarcenter.org>

Automotive Service and Repair

<https://ccar-greenlink.org/> or 1-888- 476-5465

Beneficial Use

<https://www.beneficialuse.org/>

Construction

<https://www.cicacenter.org/>

Education

<https://www.nacubo.org/>

Hazardous Waste Portal

<https://www.hazwasteportal.org/>

Healthcare

<http://www.hercenter.org>

Local Government

<https://www.lgean.net/>

Oil/Natural Gas Energy Extraction

<https://www.eciee.org/>

Paints and Coatings

<https://www.paintcenter.org/>

Ports

<https://www.portcompliance.org/>

Surface Technology Environmental Resource Center (STERC)

<https://sterc.org/>

Transportation

<https://www.tercenter.org/>

U.S. Border Compliance and Import/Export Issues

<https://www.bordercenter.org/>

Veterinary Care

<https://vetca.org/>

EPA Hotlines and Clearinghouses

www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 919-541-0800

Superfund, TRI, EPCRA, RMP and Oil Information Center

1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or 734-214-4100

National Pesticide Information Center

www.npic.orst.edu or 1-800-858-7378

National Response Center Hotline to report oil or hazardous substance spills

<https://nrc.uscg.mil/>; NRC@uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

ppic@epa.gov or 202-566-0799

Safe Drinking Water Hotline

safewater@epa.gov or 1-800-426-4791

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 202-554-1404

Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

www.envcap.org/srl/

The Locators provide state-specific information on regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

<https://nationalsbeap.org/states>

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

<https://www.epa.gov/tribal>

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has several such policies that may apply to small businesses. More information is available at:

- **EPA's Small Business Compliance Policy**
<https://www.epa.gov/compliance/small-business-compliance>
- **EPA's Audit Policy**
www.epa.gov/compliance/epas-audit-policy

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a Small Business Administration (SBA) National Ombudsman and 10 Regional Fairness Boards to receive comments from small business about federal agency enforcement actions.

If you believe that you fall within the SBA's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, you can call the SBA National Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or submit a comment online at: <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions, or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes, including the right to take emergency remedial actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

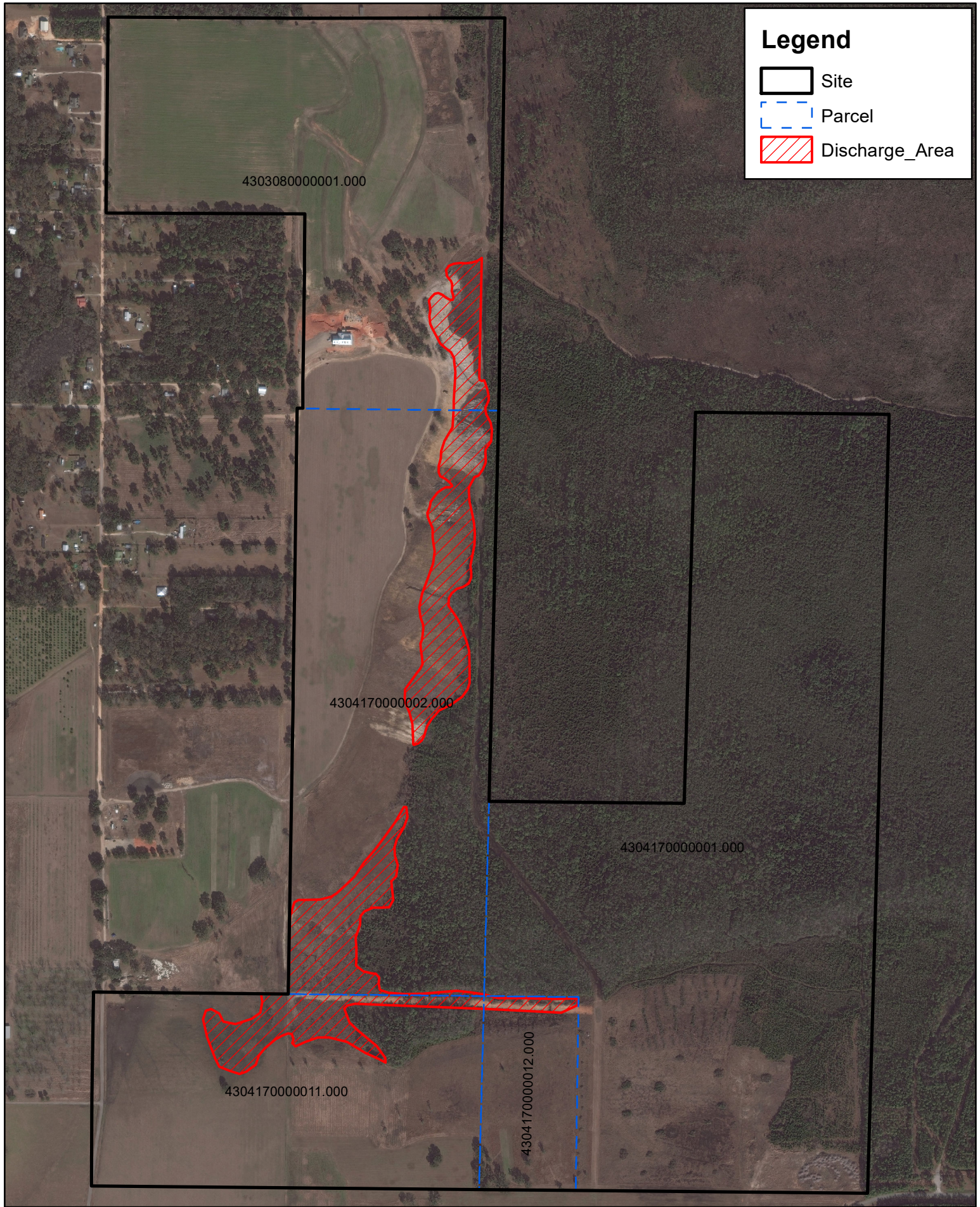


EXHIBIT A - SITE LOCATION MAP AND DISCHARGE AREA
ESFELLER PROPERTIES, LLC
IRVINGTON, MOBILE COUNTY, ALABAMA

Imagery Date: January 7, 2023

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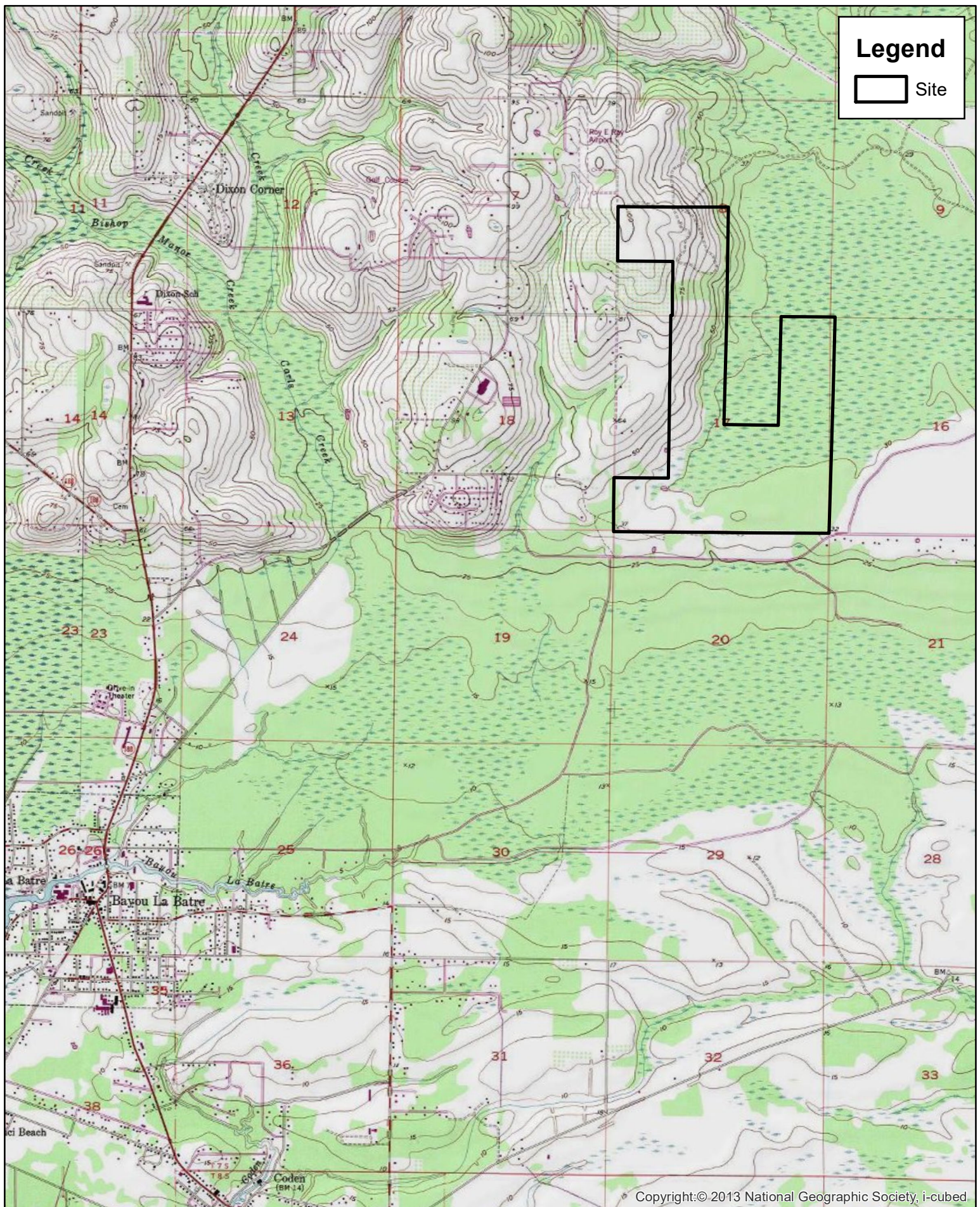


EXHIBIT B - SITE LOCATION MAP
ESFELLER PROPERTIES, LLC
IRVINGTON, MOBILE COUNTY, ALABAMA

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NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.

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Hazardous Waste Portal

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Healthcare

<http://www.hercenter.org>

Local Government

<https://www.lgean.net/>

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Superfund, TRI, EPCRA, RMP and Oil Information Center

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www.epa.gov/otaq/imports or 734-214-4100

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<https://www.epa.gov/compliance/small-business-compliance>
- **EPA's Audit Policy**
www.epa.gov/compliance/epas-audit-policy

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a Small Business Administration (SBA) National Ombudsman and 10 Regional Fairness Boards to receive comments from small business about federal agency enforcement actions.

If you believe that you fall within the SBA's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, you can call the SBA National Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or submit a comment online at: <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions, or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes, including the right to take emergency remedial actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.