



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 10 2015

CERTIFIED MAIL 7007 2680 0000 3272 1450
RETURN RECEIPT REQUESTED

Mr. Ashley Paulk, Owner
Shiloh Pecan Farms, Inc.
1615 Schroer Farm Road
Ray City, Georgia 31645

Re: Consent Agreement and Final Order No. CWA-04-2015-5504(b)

Dear Mr. Paulk:

Enclosed is a copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section V.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Mr. Chris Parker at (404) 562-9838 or via email at parker.christopher@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas McGill".

Thomas McGill, Chief
Ocean, Wetlands, and Streams
Protection Branch

Enclosure

cc: Ms. Sarah E. Wise, U.S. Army Corps of Engineers, Savannah District

Ms. Jennifer Welte, Georgia Department of Natural Resources

6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”

8. Federal regulations under 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands.”

9. Federal regulations under 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(b) define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

III. Allegations

10. The term “Discharge Area” means the jurisdictional waters that have been impacted either through filling or dredging as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area includes approximately 67 acres of forested wetlands located near 31° 6'1.14"N latitude and 83°14'39.71"W and approximately 0.25 acres of forested wetlands located near 31° 4'52.71"N latitude and 83°15'3.26"W. The Discharge Area is indicated in the enclosed Exhibits A, B, and C.

11. The term “Site” means the parcel or parcels of land on which the Discharge Area is located.

12. Shiloh Pecan Farms, Inc. (Respondent), at all times relevant to this Consent Agreement and Final Order (CA/FO), was the owner and/or operator of the Site.

13. Respondent is a corporation duly organized under the laws of the State of Georgia, within the definition set forth under section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Between about April 2012 and May 2014, Respondent, and/or those acting on behalf of Respondent, discharged dredged and/or fill material into forested wetlands on the Site using earth moving machinery during unauthorized activities associated with the conversion of wetlands to a pecan orchard. To date, the unauthorized dredge and/or fill material remains in waters of the United States.

15. Respondent impacted approximately 67.25 acres of forested wetlands that abut an unnamed tributary, which flows to Cat Creek, which flows into the Withlacoochee River, a navigable-in-fact water of the United States.

16. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are “pollutants” as defined under the CWA § 502(6), 33 U.S.C. § 1362(6).

17. The excavators and bulldozers employed by Respondent to deposit the dredged and/or fill material at the Discharge Area are “point sources” as defined under the CWA § 502(14), 33 U.S.C. § 1362(14).

18. Respondent’s placement of the dredged and/or fill material at the Discharge Area constitutes a “discharge of pollutants” as defined under the CWA § 502(12), 33 U.S.C. § 1362(12).

19. At no time during the discharge of dredged and/or fill material at the Discharge Area from June 2013 to the present, did Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondent.

20. Each discharge by Respondent of pollutants into navigable waters 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).

21. Each day the material discharged by Respondent 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 of the CWA, 33 U.S.C. § 1311.

IV. Stipulations and Findings

22. Complainant and Respondent have conferred for the purpose of settlement under 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without gathering any evidence or testimony, making of any argument, or adjudicating any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Administrative Consent Agreement and Final Order (CA/FO) will simultaneously commence and conclude this matter.

23. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

24. Respondent hereby waives his right to contest the allegations set out above and his right to appeal the Final Order accompanying this Consent Agreement.

25. Respondent consents to the assessment of and agrees to pay the administrative penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

26. By signing this CA/FO, Respondent certifies that the information he has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

27. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

28. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

V. Payment

29. Under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19, and considering the nature of the violations and other relevant factors, the EPA has determined that TWENTY TWO THOUSAND DOLLARS (\$22,000) is an appropriate civil penalty to settle this action.

30. Respondent shall submit payment of the penalty specified in the preceding paragraph within 30 days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be submitted by U.S. Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

31. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Ms. Stacy Witherspoon
Water Protection Division
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

32. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

33. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject

Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorneys' fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

VI. General Provisions

34. This CA/FO shall not relieve Respondent of his obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced under federal laws and regulations administered by the EPA.

35. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

36. Except as otherwise set forth in this document, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties under the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained in this CA/FO.

37. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO.

38. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

39. This CA/FO applies to and is binding upon Respondent and any officers, directors, employees, agents, successors and assigns of the Respondent.

40. Any change in the legal status of Respondent including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

41. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CA/FO.

42. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding:

For Complainant:

Suzanne Armor
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9701

For Respondent:

Ashley Paulk
Shiloh Pecan Farms, Inc.
1615 Schroer Farm Road
Ray City, Georgia 31645

43. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

44. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Mississippi was provided a prior opportunity to consult with Complainant regarding this matter.

45. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

VII. Release by Respondent

46. Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the matters addressed and resolved in this CA/FO, including

but not limited to, any claim that any of the matters or actions described in this CA/FO have resulted in a taking of Respondent's property without compensation.

VIII. Effective Date

47. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


For RESPONDENT:



Ashley Paulk, Owner

Date: May 1, 2015

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Thomas McGill, Chief
Ocean, Wetlands, and Streams Protection Branch
Water Protection Division
U.S. EPA Region 4

Date: 7/9/2015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
) ADMINISTRATIVE
) CONSENT AGREEMENT AND
) FINAL PENALTY ORDER
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)
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)
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) Docket No.: CWA 04-2015-5504(b)
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SHILOH PECAN FARMS, INC.
BERRIEN COUNTY, GEORGIA,

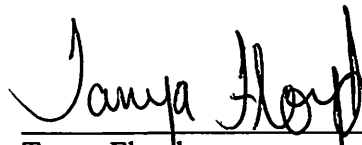
RESPONDENT.

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: July 9, 2015



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Shiloh Pecan Farm, Inc., Docket No. CWA 04-2015-5504(b)** (filed with the Regional Hearing Clerk on 7-10-, 2015) was served on 7-10, 2015, in the manner specified to each of the persons listed below.

EPA Internal Mail:

Jennifer Derby
Ocean, Wetlands, and Streams
Protection Branch
Marine Regulatory and Wetlands
Enforcement Section
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

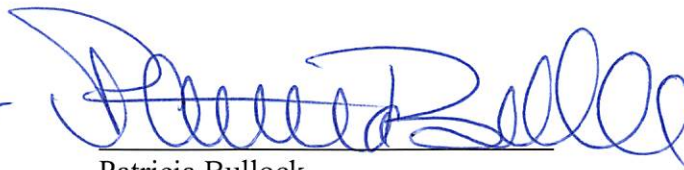
By hand-delivery:

Suzanne Armor
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By Certified mail,
return receipt requested:

Ashley Paulk
1615 Schroer Farm Road
Ray City, Georgia 31645

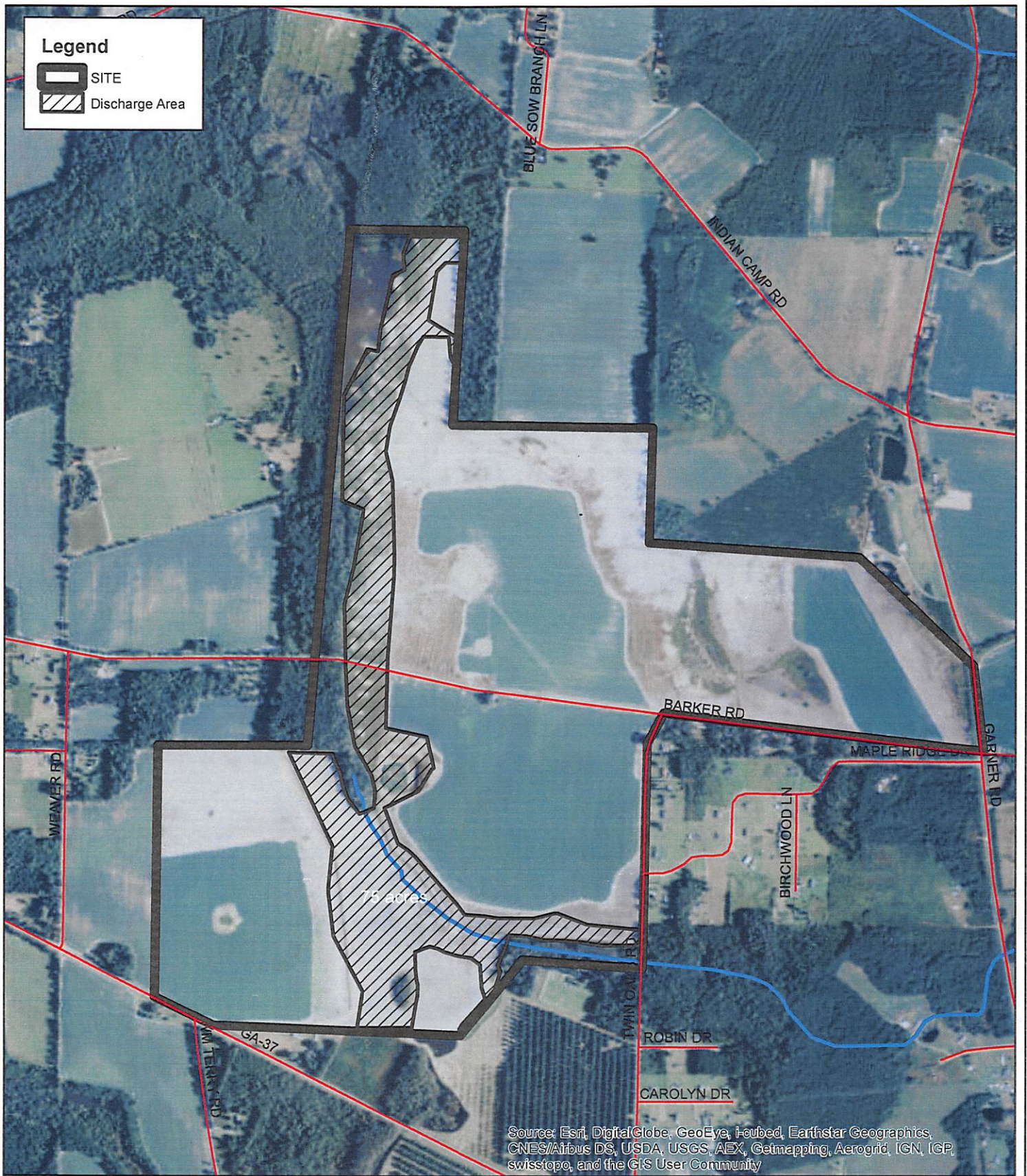
Dated: 7-10-15



Patricia Bullock
Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511

Legend

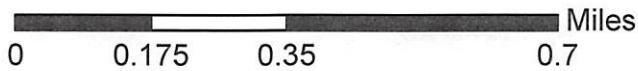
-  SITE
-  Discharge Area

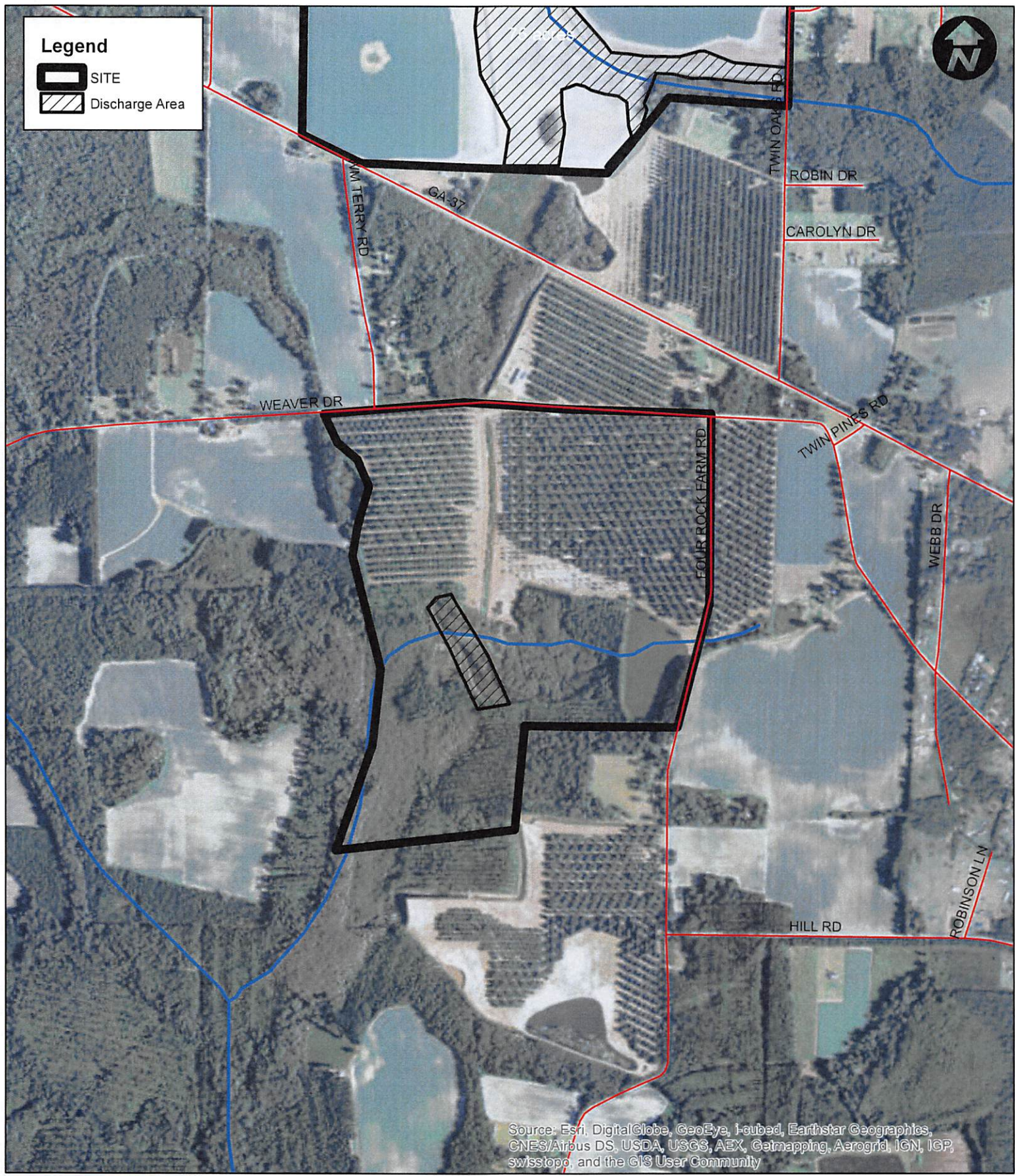


Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



EXHIBIT A
SHILOH PECAN FARMS, INC.
BERRIEN COUNTY, GEORGIA

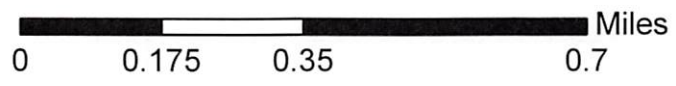




Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

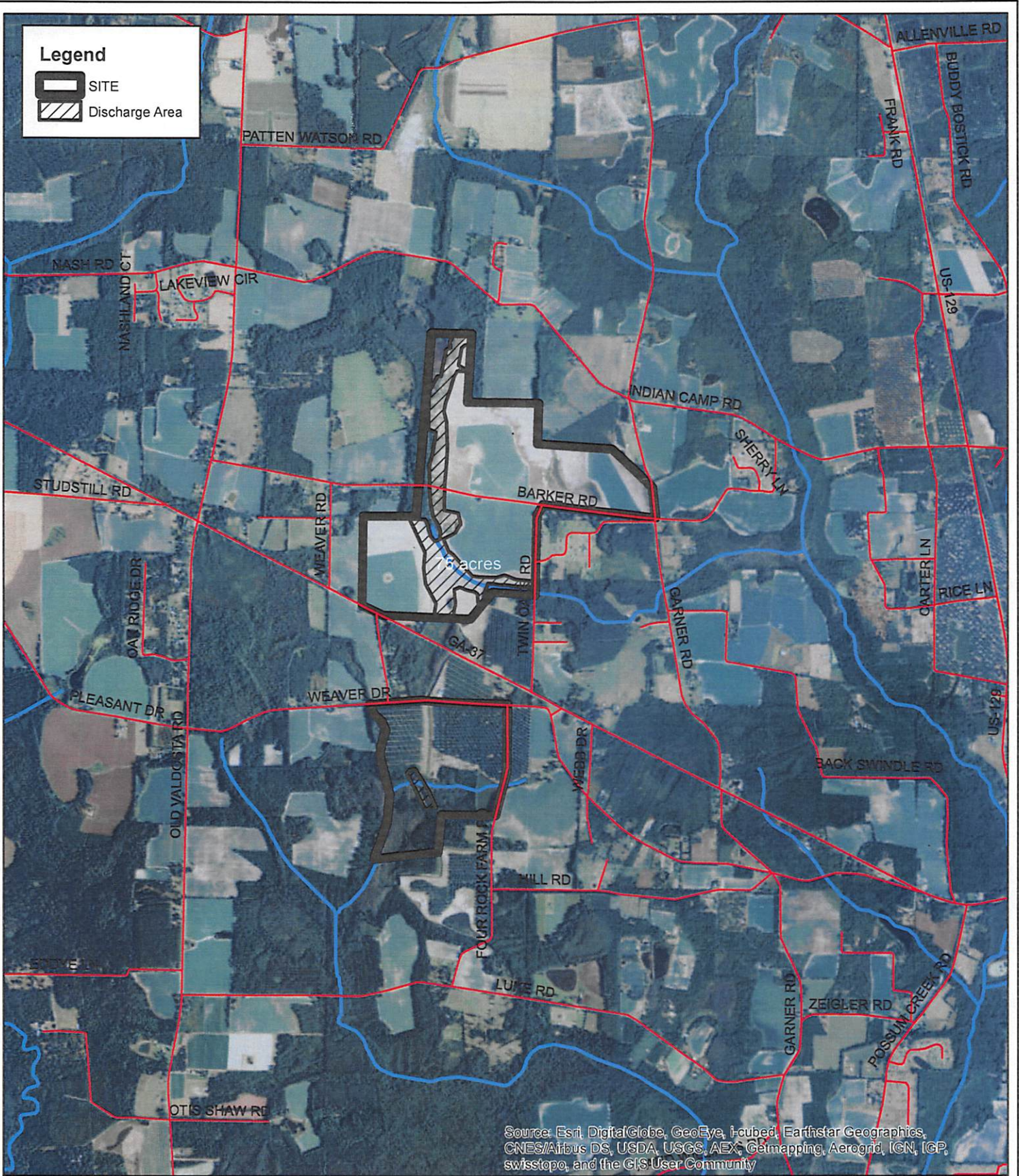


EXHIBIT B
SHILOH PECAN FARMS, INC.
BERRIEN COUNTY, GEORGIA



Legend

-  SITE
-  Discharge Area



Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Geomapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



EXHIBIT C
SHILOH PECAN FARMS, INC.
BERRIEN COUNTY, GEORGIA

