

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

In the Matter of:

CIRCLE OAK EAST, LLC,

Respondent.

Docket No. CWA-04-2024-1201(b)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), (CWA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Water Enforcement Branch of the Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 309(g)(2)(A) of the CWA.
5. Respondent is Circle Oak East, LLC (Respondent), a limited liability corporation formed under the laws of the State of Georgia doing business in the State of Georgia. This proceeding pertains to Respondent's site located off Covered Bridge Road (Parcel 166 011), north of Gay, Georgia, in Meriwether County, Georgia 30218.

III. GOVERNING LAW

6. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, 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 as in compliance with Section 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (USACE), to issue permits for the discharge of dredged or fill material into navigable waters.
7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as "[a]ny addition of any pollutant to navigable waters from any point source . . ."
8. 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."
9. 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."
10. Federal regulations under 40 C.F.R. § 232.2 (1988) and 33 C.F.R. § 328.3(a) (1986) define the term "waters of the United States" to include "wetlands."
11. Federal regulations under 40 C.F.R. § 232.2 (1988) and 33 C.F.R. § 328.3(b) (1986) 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."
12. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Complainant represents that the State of Georgia was provided a prior opportunity to consult with the Complainant regarding this matter.
13. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO prior to issuance of the Final Order.

IV. FINDINGS OF FACTS

14. The term "Discharge Area" means the jurisdictional waters that have been impacted through the discharge of dredged and/or fill material as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area is approximately 100 linear feet of tributary and 20 acres of wetlands that are waters of the United States located at latitude 33.129283° north and longitude 84.555858° west, located off Covered Bridge Road (Parcel 166 011), north of Gay, Georgia, in Meriwether County, Georgia. The Discharge Area is indicated on the enclosed Exhibit A.

15. 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.
16. Commencing on or about January 2019, Respondent, and/or those acting on behalf of the Respondent, discharged dredged and/or fill material into jurisdictional waters within the Discharge Area using earth moving machinery including, but not limited to, excavators and bulldozers, during unauthorized activities associated with the construction of an impoundment. Currently, the unauthorized dredged and/or fill material remains in waters of the United States.
17. Respondent’s unauthorized activities in the Discharge Area impacted approximately 20 acres of wetlands that have a continuous surface connection to Shoals Creek. In addition, the Respondent placed fill material into approximately 100 linear feet of Shoals Creek, which is a relatively permanent tributary to White Oak Creek, a traditional navigable water.
18. On March 21, 2021, the Respondent received the EPA’s Information Request Letter (“Information Request”) pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, requesting information related to Respondent’s discharge of dredged and/or fill material at the Site to assess compliance with the CWA, and the regulations promulgated thereunder at 40 C.F.R. Part 232.
19. In an April 8, 2021, email, the USACE Savannah District notified the Respondent’s agent that it had received the Respondent’s Farm Pond Verification Exemption request for the impoundment at the Site.
20. Respondent stated in its May 5, 2021, response to the Information Request that its contractor operated earth moving machinery, such as excavators and bulldozers, for earth moving and depositing dredged and/or fill material to construct a berm across Shoals Creek to create an impoundment at the Site. Respondent stated in its response that the berm generally consists of fill soil and crushed granite stone with flashboard risers and a culvert.
21. The EPA conducted an inspection of the Site on November 30, 2021, to evaluate Respondent’s discharge of dredged and/or fill material at the Site to assess compliance with the CWA, and the regulations promulgated thereunder at 40 C.F.R. Part 232.
22. The EPA documented unauthorized discharges of dredged and/or fill material into waters of the United States associated with the construction of an impoundment in Shoals Creek in its Inspection Report for the November 30, 2021, Site inspection, and sent the Inspection Report by email to the Respondent’s legal representative on February 8, 2022.
23. On September 23, 2022, the EPA received a Report of Water Needs Assessment and Farm Pond Exemption Package from the Respondent to support the need for the constructed impoundment and requesting a farm pond exemption under Section 404(f)(2)(C) of the CWA, 33 U.S.C. § 1344 (f)(2)(C).
24. The EPA sent the Respondent a Notice of Violation (NOV) and Opportunity to Show Cause pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), dated December 5, 2022. Therein, the EPA notified the Respondent that after reviewing Respondent’s Report of Water Needs Assessment, it determined that the Respondent did not qualify for an exemption under Section

404(f)(2)(C) of the CWA, 33 U.S.C. § 1344(f)(2)(C), and thus, the Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) for discharging dredged and/or fill material into waters of the United States without the required permit under Section 404 of the CWA and without a valid Section 404 exemption.

25. The Respondent provided a written response to the EPA's NOV on January 23, 2023, restating that its Report of Water Needs Assessment justified the farm pond and its exemption under Section 404(f)(2)(C) of the CWA, 33 U.S.C. § 1344(f)(2)(C). In its January 26, 2023, Show Cause meeting with the EPA, and in subsequent email correspondence, dated February 10, and March 14, 2023, information provided by the Respondent's counsel did not change EPA's determination that the constructed impoundment is not eligible for the farm pond exemption under Section 404(f)(2)(C) of the CWA, 33 U.S.C. § 1344(f)(2)(C).
26. In a March 30, 2023, meeting with the EPA, the Respondent agreed to remove the impoundment and to submit a restoration plan to resolve the matter.
27. On May 15, 2023, the Respondent provided a restoration plan to remove the impoundment infrastructure, stabilize the streambank, and replant within the impoundment areas. The agreement to implement this restoration plan was memorialized in an Administrative Compliance Order on Consent, Docket No. CWA-04-2023-0503, between the Respondent and EPA Region 4.

V. ALLEGED VIOLATIONS

28. At all times relevant to this action, Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
29. At all times relevant to this action, the Respondent owned and/or operated the Site that contains the Discharge Area.
30. 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).
31. The earth moving machinery employed by the 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).
32. 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).
33. The impacted waters in the Discharge Area, including Shoals Creek and wetlands adjacent to Shoals Creek, are "navigable waters" within the meaning of that term in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
34. At no time during the discharge of dredged and/or fill material at the Discharge Area from January 2019 to present, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondent.

35. Each discharge by the 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).
36. Each day the material discharged by the 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(a) of the CWA, 33 U.S.C. § 1311(a).

VI. STIPULATIONS

37. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
38. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the conditions specified in this CAFO;
 - (e) waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - (f) waives its rights to appeal the Final Order accompanying this CAFO.
39. For the purpose of this proceeding, Respondent:
 - (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (c) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - (d) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and

(e) agrees to comply with the terms of this CAFO.

40. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.
41. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a proposed CAFO based on comments received during the public comment period.

VII. TERMS OF PAYMENT

42. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of \$35,000.00, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
43. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by standard U.S. Postal Service delivery, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

If Respondent sends payment by non-standard mail delivery (e.g., FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706

Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
REX (Remittance Express): 1-866-234-5681

44. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov

and

Joel Strange, Enforcement Officer, Water Enforcement Branch
strange.joel@epa.gov

45. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and “Docket No. CWA-04-2024-1201(b).”
46. Pursuant to 33 U.S.C. § 1319(g)(9), If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may recover, in addition to the amount of the unpaid penalty assessed, the following amounts on any portion overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at currently prevailing rates.
 - b. Non-Payment Penalty. A 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1319(g)(9); and
 - c. Attorneys’ Fees and Costs of Collection. The United States’ attorneys’ fees and costs of collection.
47. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
- (a) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
 - (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person

owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;

- (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

48. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

49. Effective upon signature of this CAFO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the Effective Date 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 CAFO and that, in any action brought by the EPA related to the matters addressed, the 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.

VIII. EFFECT OF CAFO

50. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

51. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO; but, shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).

52. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

53. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

54. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

55. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
56. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
57. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
58. By signing this Consent Agreement, the Complainant, and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
59. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
60. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
61. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
62. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
63. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
64. 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 CAFO, including but not

limited to, any claim that any of the matters or actions described in this CAFO have resulted in a taking of Respondent's property without compensation.

IX. EFFECTIVE DATE

65. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of CIRCLE OAK EAST, LLC, Docket No. CWA-04-2024-1201(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Mary Jo Bragan, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

CIRCLE OAK EAST, LLC.,

Respondent.

Docket No. CWA-04-2024-1201(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and §22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of CIRCLE OAK EAST, LLC, Docket No. CWA-04-2024-1201(b), were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Clarence Nalley, IV
Circle Oak East, LLC
c/o: Wyatt Kendall (Counsel for Circle Oak East, LLC)
wkendall@mmmlaw.com
Phone number 404-364-7424

To EPA: Joel Strange, Enforcement Officer
strange.joel@epa.gov
Phone number 404-562-9455

Paula Feldmeier, Assistant Regional Counsel
feldmeier.paula@epa.gov
Phone number 404-562-8276

U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Shannon L. Richardson, Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov

EXHIBIT A



Circle Oak East, LLC
Meriwether County,
Georgia

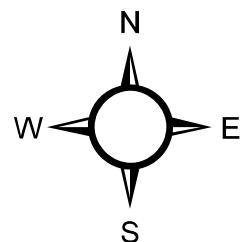
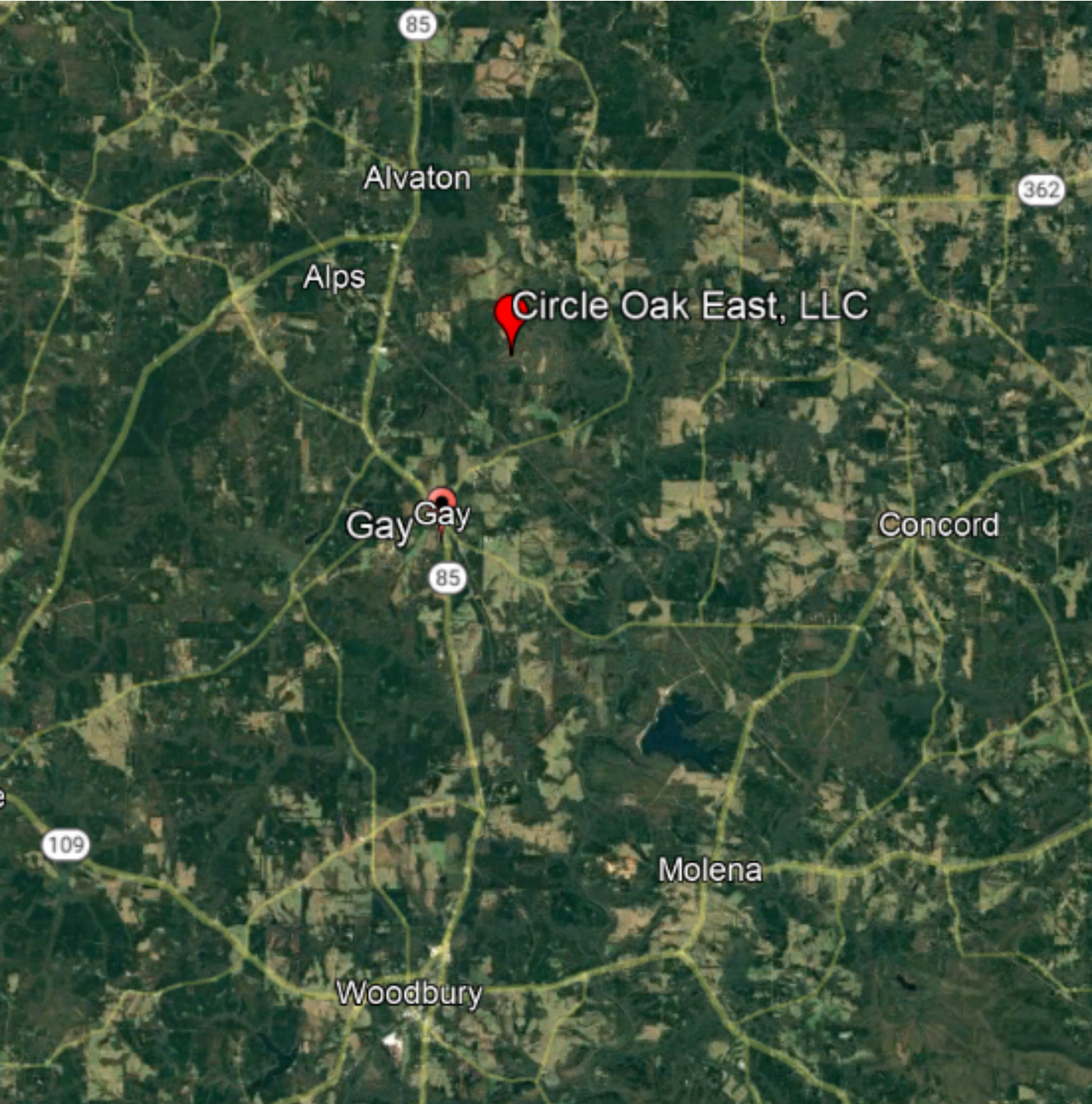


EXHIBIT B



Circle Oak East, LLC
Meriwether County,
Georgia

