



Hatchie/Loosahatchie, Mississippi River Mile 775-736, TN and AR Final Integrated Feasibility Report and Environmental Assessment



Appendix 6 – Real Estate Plan

November 2023

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Section 1

PURPOSE OF REAL ESTATE PLAN

This Real Estate Plan (REP) presents the real estate requirements and costs for the Integrated Feasibility Report with Environmental Impact Statement (IFR-EIS) for the Hatchie/Loosahatchie, Mississippi River Mile 775-736, TN study. The REP is tentative in nature; it is for planning purposes only and both the final real property acquisition lines and the real estate cost estimates provided are subject to change even after approval of the final Integrated Feasibility Report with EIS09. Design optimization and feature prioritization will be performed after project authorization; therefore, this REP may be revised upon further analysis. Detailed maps for access, staging and other specifics relating to project features may not be developed until each project feature or measure undergoes more detailed design analysis. The Project Area is shown in Figure 6-1 below.



Figure 6-1. Hatchie/Loosahatchie Mississippi River Mile 775-736, TN And AR Feasibility Study Area

1.1 PROJECT PURPOSE

The Non-Federal Sponsor (NFS) is the Lower Mississippi River Conservation Committee (LMRCC) which is an Inter-agency committee with the mission to promote the restoration and wise use of the natural resources of the Lower Mississippi River through cooperative efforts involving planning, management, information sharing, public education, advocacy and research.

The purpose and need for the proposed actions are to restore habitat and ecosystem function along an approximate 39-mile reach of the Lower Mississippi River (LMR) and its floodplain in harmony with the existing USACE mission areas of ensuring navigation and flood risk reduction. The Mississippi River has been significantly disconnected from much of its historical floodplain in response to flood risk reduction to protect surrounding communities. There is a critical need to restore habitat and ecosystem function in the Lower

Mississippi River in association with continued operation of significant levee and navigational infrastructure. Hatchie/Loosahatchie Mississippi River Mile 775-736 is the first large-scale ecosystem restoration feasibility study to be completed for the eight priority reaches in WRDA 2018, Public Law 115-270 and will be a valuable reference and framework for the remaining feasibility studies for the priority reaches that are to be completed.

Objective #1: Increase quantity and/or quality of vegetated habitats and maintain a diverse vegetative mosaic in the floodplain to benefit native fish and wildlife resources (e.g., migratory birds and species of conservation concern) focusing on habitat such as: emergent, floating, and submersed aquatic vegetation; rivercane; bottom land hardwoods (BLH).

- Riparian buffer strip (agriculture ditch).
- Riparian buffer strip (MS River).
- Increase quality and quantity of existing stands of rivercane.
- Establishment of rivercane on spoil piles.
- Reduction of ponding in forested communities.
- Creation of canopy gaps.
- Restore/create forest in high elevation areas for wildlife corridor and refugia.
- Private levee setbacks within the batture.
- River training structure at meander scarp entrances to divert flow in low water.
- Water control structure on existing drainages adjacent to non-forested areas for moist soil management.

Objective #2: Improve quantity and/or quality of diverse large river habitats (sandbars, gravel bars, secondary channels, etc.) to support critical life history requirements of priority species.

- Rock structure to maintain and/or scour buried gravel bars.
- Dike notching (existing dike fields).
- Large woody debris traps in chutes/secondary channels.
- Bank protection within secondary channels to reduce scour.
- Pilot channel/plug removal in notched dike field.
- Multiple dike notches at different elevations for different guilds of fish and recreation access.

Objective #3: Increase quality of the diverse mosaic of floodplain waterbodies (including but not limited to meander scarps, sloughs, crevasses, and borrow pits) and optimize their aquatic connectivity with the Mississippi River to support critical life history requirements of priority species.

- Meander scarp plug removal.
- Restore channels connecting floodplain waterbodies to MS River main channel.
- Optimize/maintain isolation of rarely connected floodplain waterbodies.
- Optimize depth and diversity of rarely connected floodplain waterbodies.
- Bridge modification to increase connectivity in meander scarps.
- Levee setback of MS River mainline levee.
- Weir/control structures at slough overflows to hold warmer water in spring.

Objective #4: Improve recreational opportunities and access to public spaces in study area.

- Biking trail across MS River levee.
- Change hunting regulations at Wapvanocca National Waterfowl Refuge NWR to be a refuge/protect wildlife during times when entire study area is inundated.
- Interpretive signage and education.

1.2 PROJECT LOCATION

The study area comprises a 39-mile reach of the Mississippi River and the surrounding batture, the riverside area between the levee and main channel within the Arkansas boundary and the riverside area between the natural ridge and main channel within the Tennessee boundary. The study area begins at the mouth of the Hatchie River and extends south to the mouth of the Wolf River Harbor (River Mile 775-736). The study area intersects several counties in both Tennessee and Arkansas. In Tennessee, the study area encompasses parts of Lauderdale, Tipton, and Shelby Counties. In Arkansas, the study area encompasses parts of Mississippi and Crittenden Counties. The study area contains crossings pools, side channels, old bendways, and wide overbank areas between the west levee and east bluff (2-9 miles). As mentioned above, there are three tributary mouths located within the study area: Hatchie, Loosahatchie, and Wolf Rivers. State parks and refuges that border the study area include Meeman Shelby State Park, Fort Pillow State Park, and the Lower Hatchie National Wildlife Refuge.

The study area was further delineated into 11 separate ecological complexes based on the geomorphic and/or hydrologic evolution of the floodplain using historical maps and existing elevation data. Land ownership and/or management considerations were also factored into

the delineation of the complexes (e.g., Meeman Shelby Forest State Park – Eagle Lake State WMA). Ecological complexes listed in location from north to south include (1) Sunrise Island 34, (2) Hatchie Towhead Randolph, (3) Island 35 – Deans Island, (4) Richardson Cedar Point, (5) Densford, (6) Brandywine, (7) Meeman Shelby Forest-Eagle Lake, (8) Island 40/41, (9) Loosahatchie River – Wolf River, (10) Redman Point – Loosahatchie Bar, and (11) Hopefield Point – Big River Park.

1.3 PROJECT AUTHORITY

Section 1202(a) of WRDA 2018, Public Law 115-270 authorized the study to determine feasibility of habitat restoration for the eight identified priority reaches reported in the LMRRA. One of the eight priority reaches comprises Hatchie/Loosahatchie Mississippi River Mile 775-736 for which the Integrated Feasibility Report and Environmental Impact Statement has been prepared. This study is the first large-scale ecosystem restoration feasibility study to be completed for the eight identified priority reaches. This study not only identifies solutions for USACE participation within the respective priority reach but will further advance interconnection for ecosystem restoration initiatives through participation and collaboration with other conservation-focused organizations both within this reach and the remaining priority reaches. WRDA 2018 language is as follows:

Water Resources Development Act (WRDA) of 2018, P.L. 115-270, Section 1202

ADDITIONAL STUDIES. (a) LOWER MISSISSIPPI RIVER; MISSOURI, KENTUCKY, TENNESSEE, ARKANSAS, MISSISSIPPI, AND LOUISIANA.— (1) IN GENERAL.—The Secretary is authorized to carry out studies to determine the feasibility of habitat restoration for each of the eight reaches identified as priorities in the report prepared by the Secretary pursuant to section 402 of the Water Resources Development Act of 2000, titled “Lower Mississippi River Resource Assessment; Final Assessment In Response to Section 402 of WRDA 2000” and dated July 2015. (2) CONSULTATION. —The Secretary shall consult with the Lower Mississippi River Conservation Committee during each feasibility study carried out under paragraph (1).

Section 2

DESCRIPTION OF THE RECOMMENDED PLAN AND LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL (LERRD) SITES

RECOMMENDED PLAN SUMMARY

The Recommended Plan (RP) as discussed in the main report includes 38 Aquatic Ecosystem Restoration (AER) measures and 2 Recreation Measures. Per USACE Guidance, the Project Delivery Team (PDT) identified the alternatives that reasonably maximize net economic benefits consistent with protecting the nation's environment.

PDT has identified a recommended plan (Alternative C3):

- Best Buy Plan – 38 Measures
- 2 meander scarps – critical, scarce, unique, institutionally recognized
- Rare geomorphology – no longer being created due to river control
- Preferred habitat for T&E species breeding and refugia (e.g. fat pocketbook mussels, young of the year pallid sturgeon)
- Office of Sustainability and Environment (OSE) – Environmental Justice (EJ), accessibility, recreation

2.1 AER-RP STRUCTURAL FEATURES

The AER-RP consisted of 38 measures encompassing 8 habitat types including BLH, cypress-tupelo, meander scarp, moist soil, riverfront, seasonally herbaceous wetland, secondary channels, and slough. Habitats not represented comprise borrow, emergent sand/gravel bars, main channel, and oxbow. Models for measures in C3 included Floodplain Waterbody Bidirectional, LMR Riverine Eddy/River Training Structures, HGM, LMR Riverine Substrate Invertebrate, and LMR Unidirectional Connectivity. Modeling efforts represented all relevant geographic complexes. Average annual habitat units (AAHUs) for C3 were 4637. In comparison to other alternatives, C3 was deemed as a best buy.

The real estate costs presented herein for the structural portion of the AER-RP are based on the estimated acreages and estates shown in the table below. There are a total of 40 landowners holding 3,044 (2948+56+40) acres to be acquired. This includes lands that are in open water. Open water bottom lands are assumed to be state owned lands. The acreage that is assumed to be state owned public land is 51 acres (10 acres of which are water

bottoms). The acreage that needs to be acquired for private land is 2993. Fifty-Six (56) acres of the 2993 acres of private land is allocated for perpetual road easements and forty (40) acres is allocated for temporary work area easements. We have made an assumption that 40 acres of temporary work area will be needed to implement the measures listed below in Table 6-1: AER Structural Features: Real Estate Requirements.

Three (3) acres of the 3,044 acres is allocated for two measures that incorporate recreation features. The measure numbers are LW_1 and M_2 as noted below on page 10.

Note: Arkansas Code Annotated Section § 22-6-201 (d) provides as follows: "It is further the intent of this subchapter to establish the policy that all submerged lands following the navigable waterways of this state shall remain in the state domain." "Submerged lands" shall be those lands found at and below the line of ordinary high water and shall include, but not be limited to, the beds, channels, chutes, and adjoining areas of rivers, lakes, and streams.

Table 6-1: AER Structural Features: Real Estate Requirements

Structural Components for the AER				
Measure #	Measure Type	Landowners	Estate	Acres
BR_1	Dike Notching-Stone and Pile dikes	1	Open Water Bottom/Assumed to be state owned	1
BR_2	Woody Debris Trap	1	Open Water Bottom/Assumed to be state owned	1
BR_4	Meander Scarp Flow Restoration	1	FEE/Assumed to be privately owned	5
BR_5	Hardpoint Bank Protection	1	FEE/Assumed to be privately owned	3
BR_6	Forest Stand Improvement-BLH	1	FEE/Assumed to be privately owned	78
BR_7	Forest Stand Improvement-BLH	1	FEE/Assumed to be privately owned	196
Br_8	Forest Stand Improvement-BLH	1	FEE/Assumed to be privately owned	207
Br_11	Forest Stand Improvement-BLH	1	FEE/Assumed to be privately owned	600
D_3	Woody Debris Trap	1	Open Water Bottom/Assumed to be state owned	1
HB_1	Wetland Complex Restoration	1	FEE/Assumed to be privately owned	39
HB_2ab	Wetland Complex Restoration Flow Restoration to Backwater Slough	1	FEE/Assumed to be privately owned	8
HB_2c	Flow Restoration and Wetland Complex Restoration	1	FEE/Assumed to be privately owned	22
HT_6	MS River Riparian Buffer	1	FEE/Assumed to be privately owned	52
I35_2	Reforestation-BLH	1	FEE/Assumed to be privately owned	42

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I35_6b	Reforestation-BLH	1	FEE/Assumed to be privately owned	11
I35_7a	Dike Notching-Pile Dike	1	Open Water Bottom/Assumed to be state owned	1
I35_7g	Hardpoint Bank Protection	1	FEE/Assumed to be privately owned	1
I35_7h	MS River Riparian Buffer	1	FEE/Assumed to be privately owned	8
I35_9b	Reforestation-BLH	1	FEE/Assumed to be privately owned	12
I35_12a	Reforestation-Cypress/Tupelo	1	FEE/Assumed to be privately owned	14
I35_12b	MS River Riparian Buffer	1	FEE/Assumed to be privately owned	55
I40_1a	Reforestation-BLH	1	FEE/Assumed to be privately owned	37
I40_1b	Flow Restoration to Backwater Slough	1	FEE/Assumed to be privately owned	161
I40_3	MS River Riparian Buffer	1	FEE/Assumed to be privately owned	59
M_5	Forest Stand Improvement-Cypress/Tupelo	1	Assumed to be state owned	6
M_6	Moist Soil Management Creation	1	Assumed to be state owned	30
M_14	Woody Debris Traps	1	Open Water Bottom/Assumed to be state owned	1
RCP_1	Reforestation-Cypress/Tupelo	1	FEE/Assumed to be privately owned	8
RCP_2	Wetland Complex Restoration	1	FEE/Assumed to be privately owned	116
RCP_4	MS River Riparian Buffer	1	FEE/Assumed to be privately owned	11
RL_3	Dike Notching-Stone Dikes	1	Open Water Bottom/Assumed to be state owned	4
RL_4	Forest Stand Improvement-BLH	1	FEE/Assumed to be privately owned	1049
RL_6	Woody Debris Traps	1	Open Water Bottom/Assumed to be state owned	1
S_4	Meander Scarp Flow Restoration	1	Open Water Bottom/Assumed to be state owned	2
S_4	Meander Scarp Flow Restoration	same as above	FEE/Assumed to be privately owned	5
S_6	Dike Notching-Pile Dike	1	Open Water Bottom/Assumed to be state owned	2
S_7	Woody Debris Traps	1	Open Water Bottom/Assumed to be state owned	Part of S_6
S_8	Reforestation-Cypress/Tupelo	1	FEE/Assumed to be privately owned	19
S_10	Reforestation-BLH	1	FEE/Assumed to be privately owned	21

LW_1	Partner with stakeholders to create a display board (Interpretive Media) and possibly a Large Woody Debris Demonstration in Harbor to promote Environmental Restoration Measures with project.	1	FEE/Assumed to be privately owned	2		
M_2	Trail access improvements (1 mile loop paved) (note: There is an existing trail that can be refurbished, educational signage for surrounding Environmental Restoration Measures to include large wood debris trap (boating hazard)).	1	Assumed to be state owned	1		
		Total	40		Total	2948

2.2 ACCESS

Access to all of the project features will have to be defined during planning engineering and design (PED). We have assumed at this stage of the study that 56 acres will be needed for access by way of perpetual and/or temporary road easement to access the project features. This number was calculated by assuming that 28 of the measures would need 2 acres of road easement each. The estimated cost of the 56 acres for access is included in our real estate cost estimate.

2.3 BORROW

At this time, it does not appear borrow will be needed. It is assumed that the contractor will be able to excavate or dispose of material within the measure areas. The estate has been added to the plan as a cautionary measure in case plans change.

2.4 DISPOSAL

At this time, it does not appear a disposal site will not be needed for the project. It is assumed that the contractor will be able to excavate or dispose of material within the measure areas.

Section 3

NON-FEDERAL SPONSOR OWNED LERRD

The State of Tennessee and the State of Arkansas, who are members of the LMRCC coalition, own real property needed for the project. The acreages are identified in Table 6-1 and in the tract maps.

Section 4

ESTATES

4.1 ROAD EASEMENT (PERPETUAL AND TEMPORARY)

A (perpetual [exclusive] [non-exclusive] and assignable) (temporary) easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. _____, and _____) for the location, construction, operation, maintenance, alteration replacement of (a) road(s) and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the locations indicated in Schedule B); subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

4.2 TEMPORARY WORK AREA EASEMENT

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____), for a period not to exceed _____, beginning with date possession of the land is granted to the (Grantee), for use by the (Grantee), its representatives, agents, and contractors as a (borrow area) (work area), including the right to (borrow and/or deposit fill, spoil and waste material thereon) (move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

4.3 BORROW EASEMENT

A perpetual and assignable right and easement to clear, borrow, excavate and remove soil, dirt, and other materials from (the land described in Schedule A) (Tracts Nos. _____, _____ and _____); subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in said land as may be used without interfering with or abridging the rights and easement hereby acquired.

4.4 FEE

The fee simple title to (the land described in Schedule A) (Tracts Nos. _____, _____ and _____), subject, however, to existing easements for public roads and highways, public utilities, railroads, and pipelines.

Section 5

EXISTING FEDERAL PROJECTS WITHIN LERRD REQUIRED FOR THE PROJECT

No lands that are part of an existing federal project are needed for this project.

Section 6

FEDERALLY OWNED LANDS WITHIN LERRD REQUIRED FOR THE PROJECT

There are no Federally owned lands within the Lands, Easements, Right- of- Way, Relocations and Disposals Sites required for the project.

Section 7

FEDERAL NAVIGATION SERVITUDE

The navigation servitude is the dominant right of the Government, under the Commerce Clause of the U.S. Constitution, to use, control, and regulate the navigable waters of the United States and submerged lands thereunder. Based on the information that the PDT has provided to our Office of Counsel, the project does not meet the requirements of the Real Estate Policy for implementation of Navigation Servitude at this time.

Section 8

PROJECT MAPS

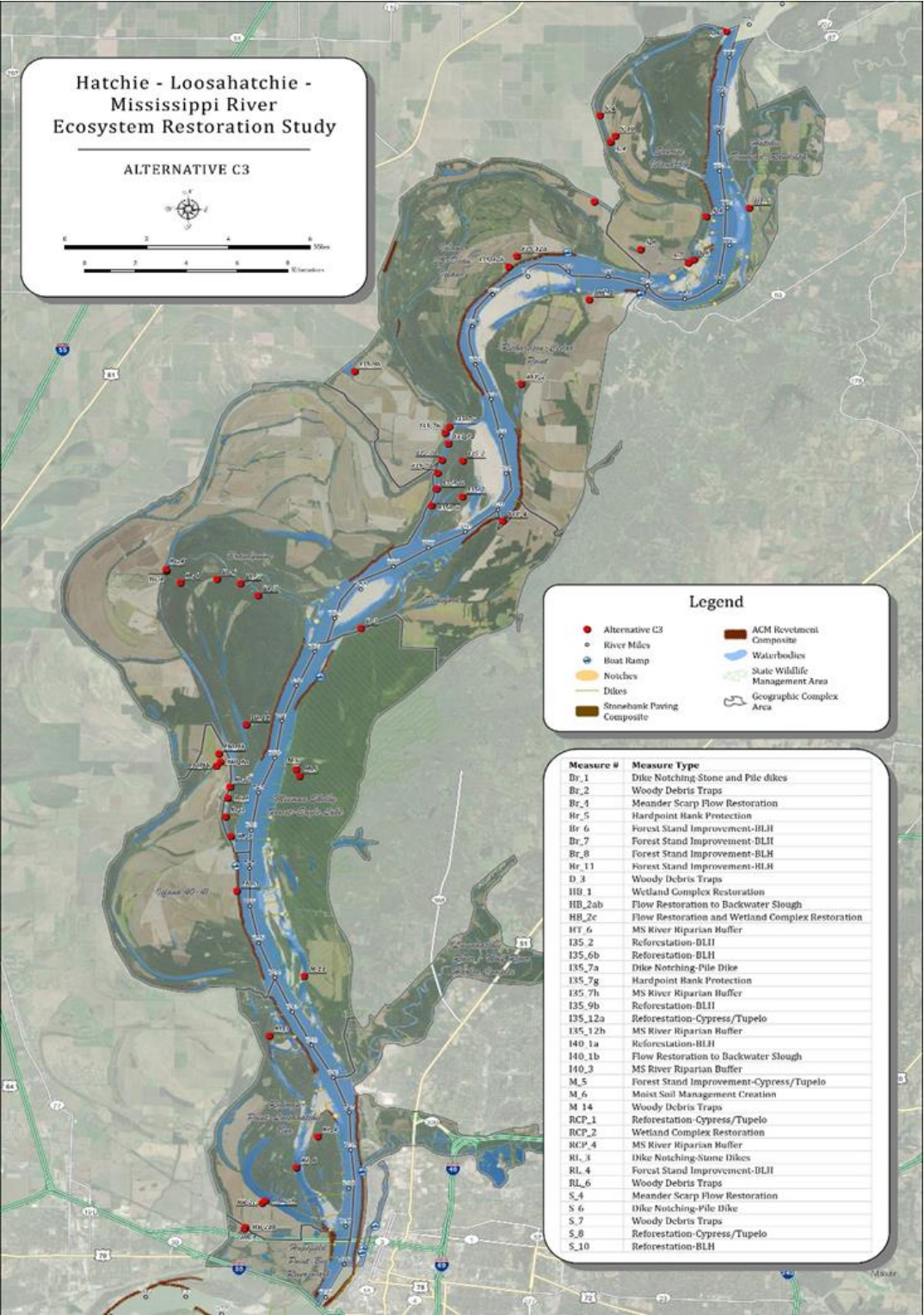


Figure 6-2. Recommended Plan (C3)

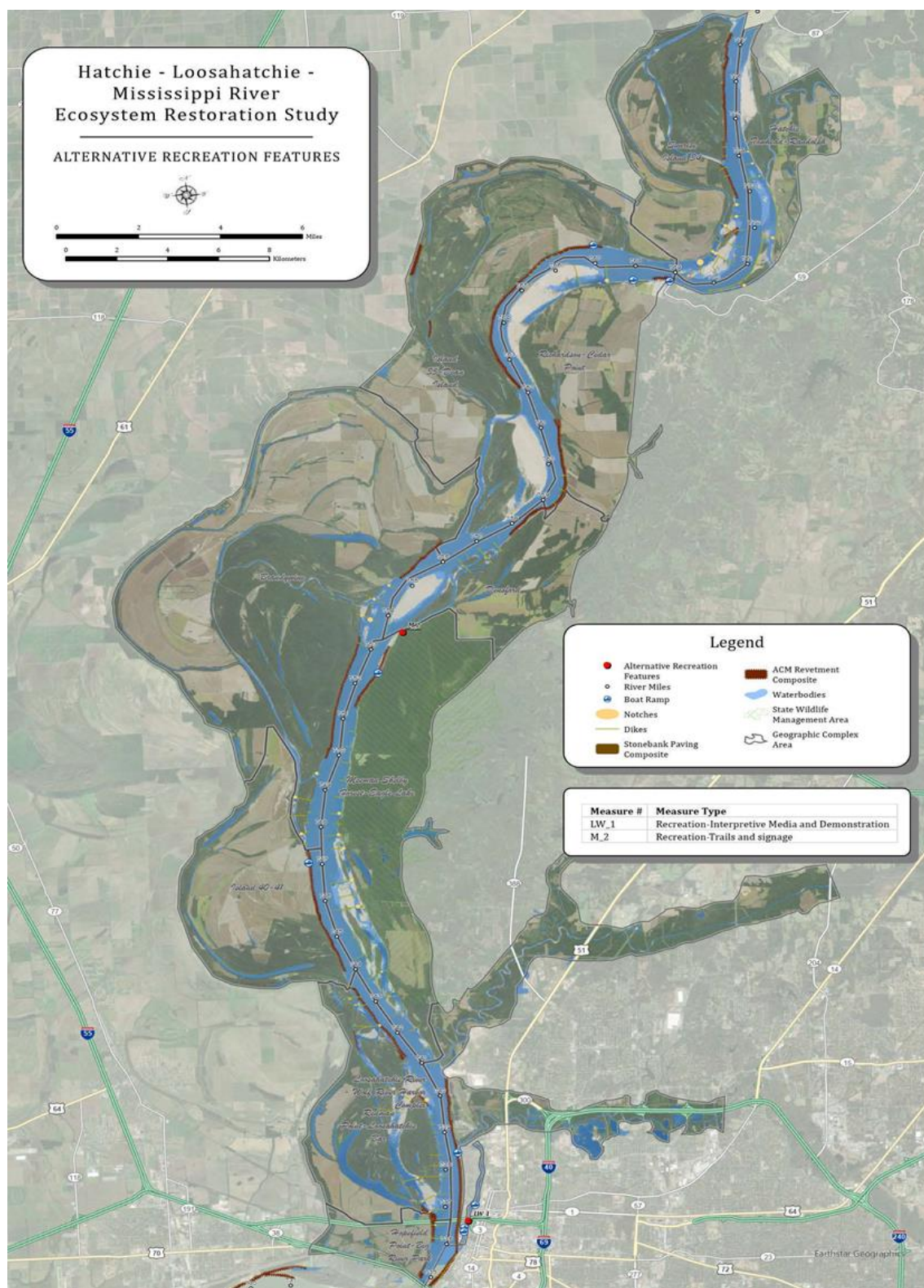


Figure 6-3. Recreation Features

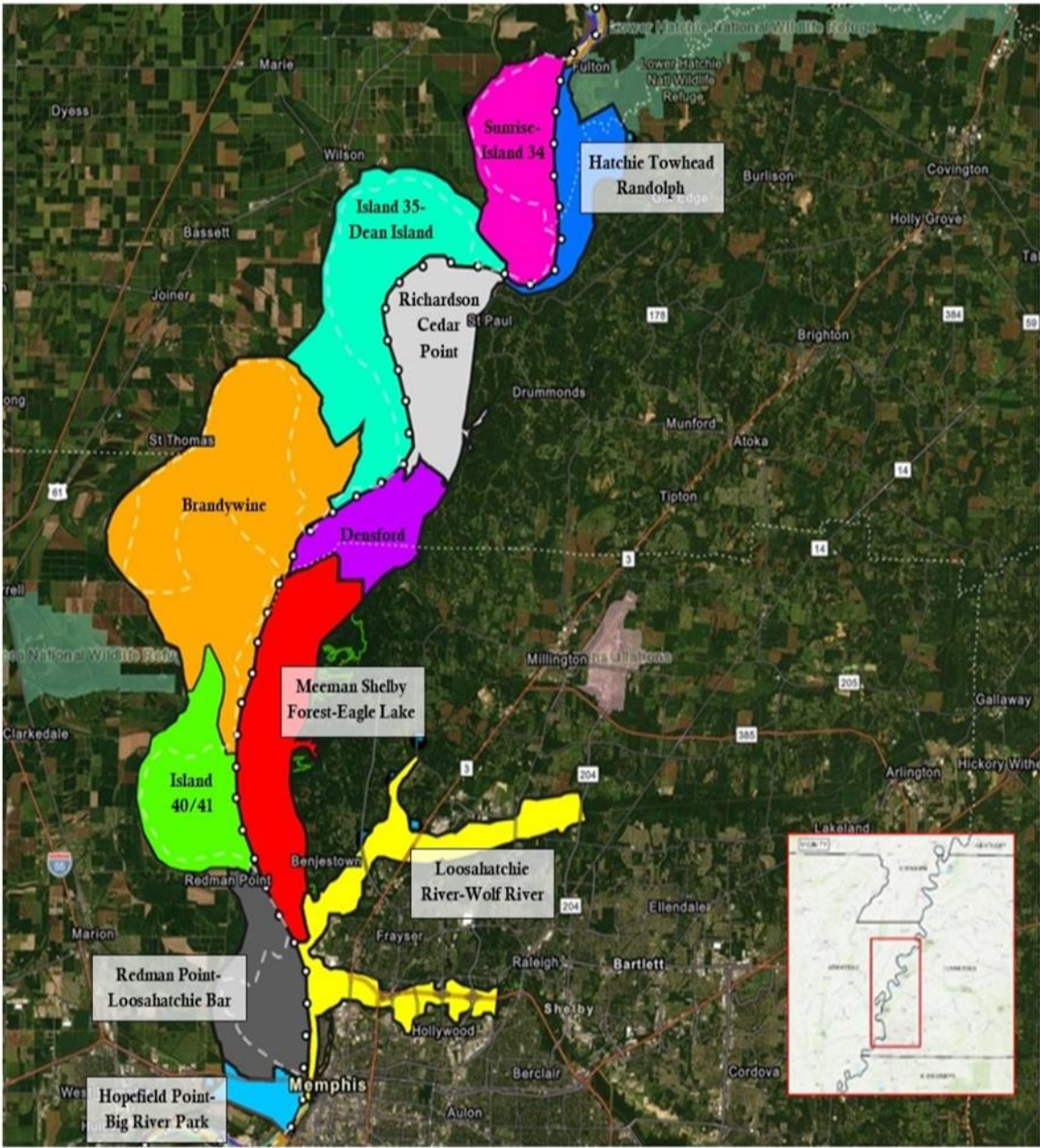


Figure 6-4. Delineation of the Separate Ecological Complexes within the Study Area

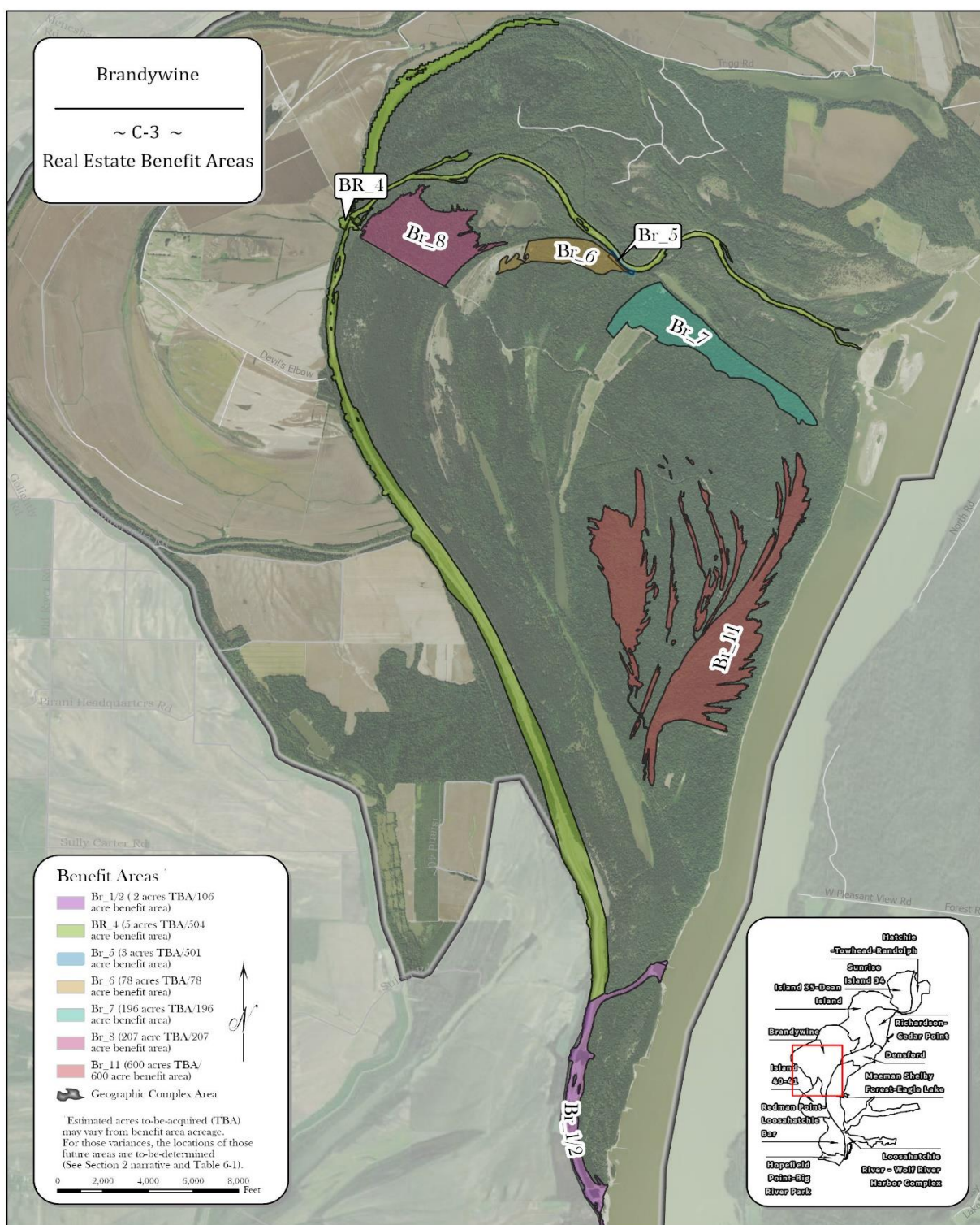


Figure 6-5. Brandywine Complex

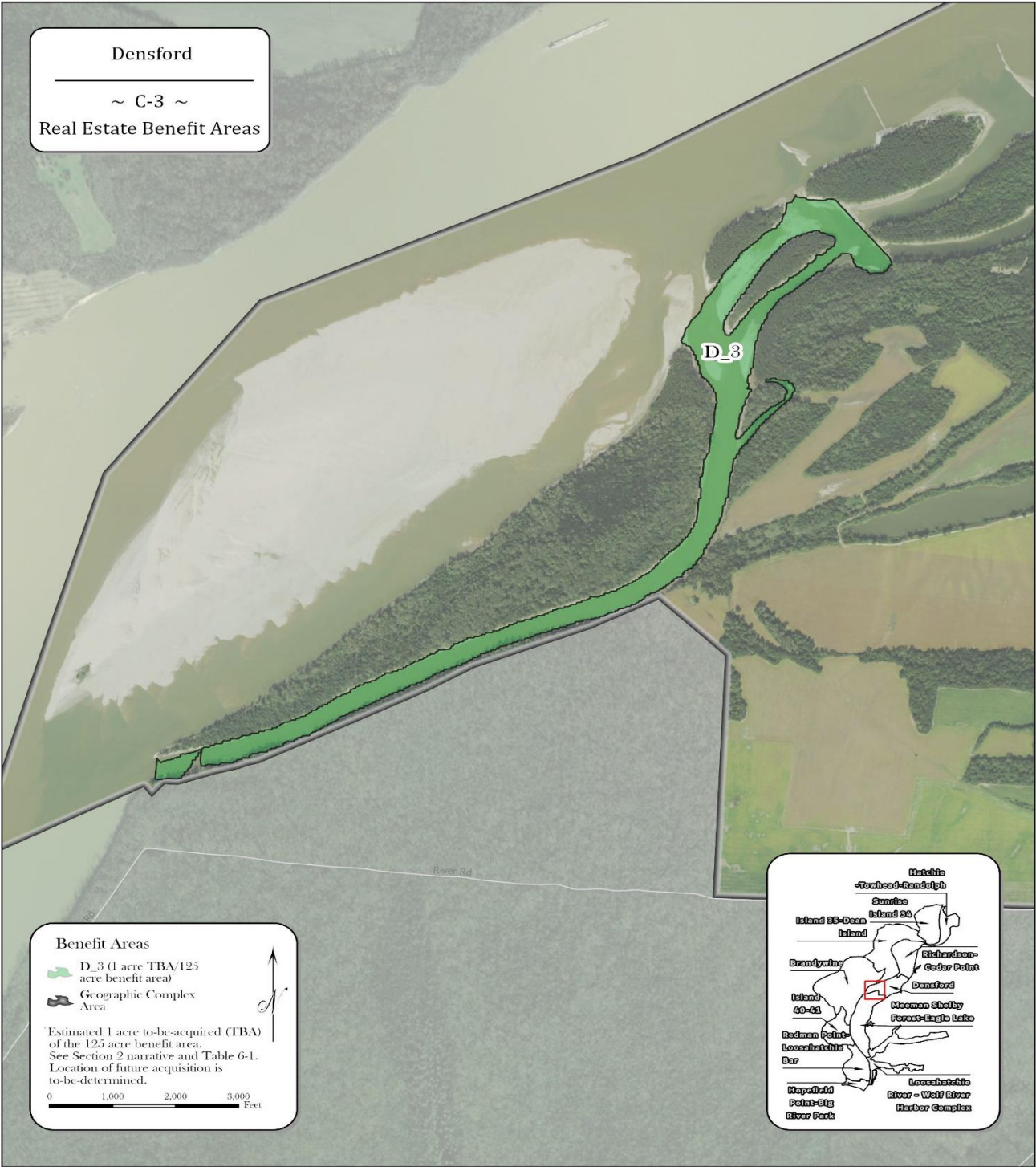


Figure 6-6. Densford Complex

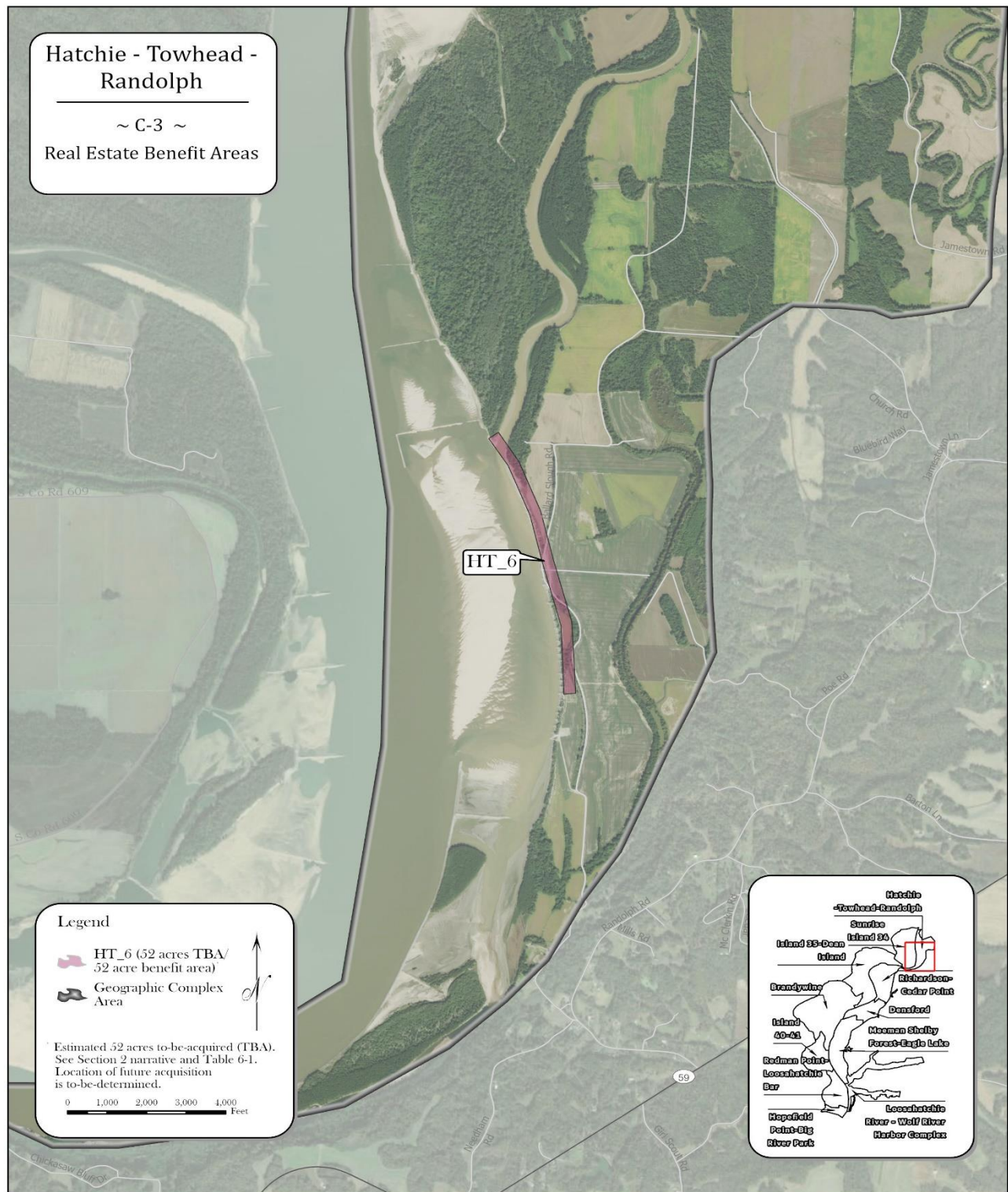


Figure 6-7. Hatchie Towhead Complex

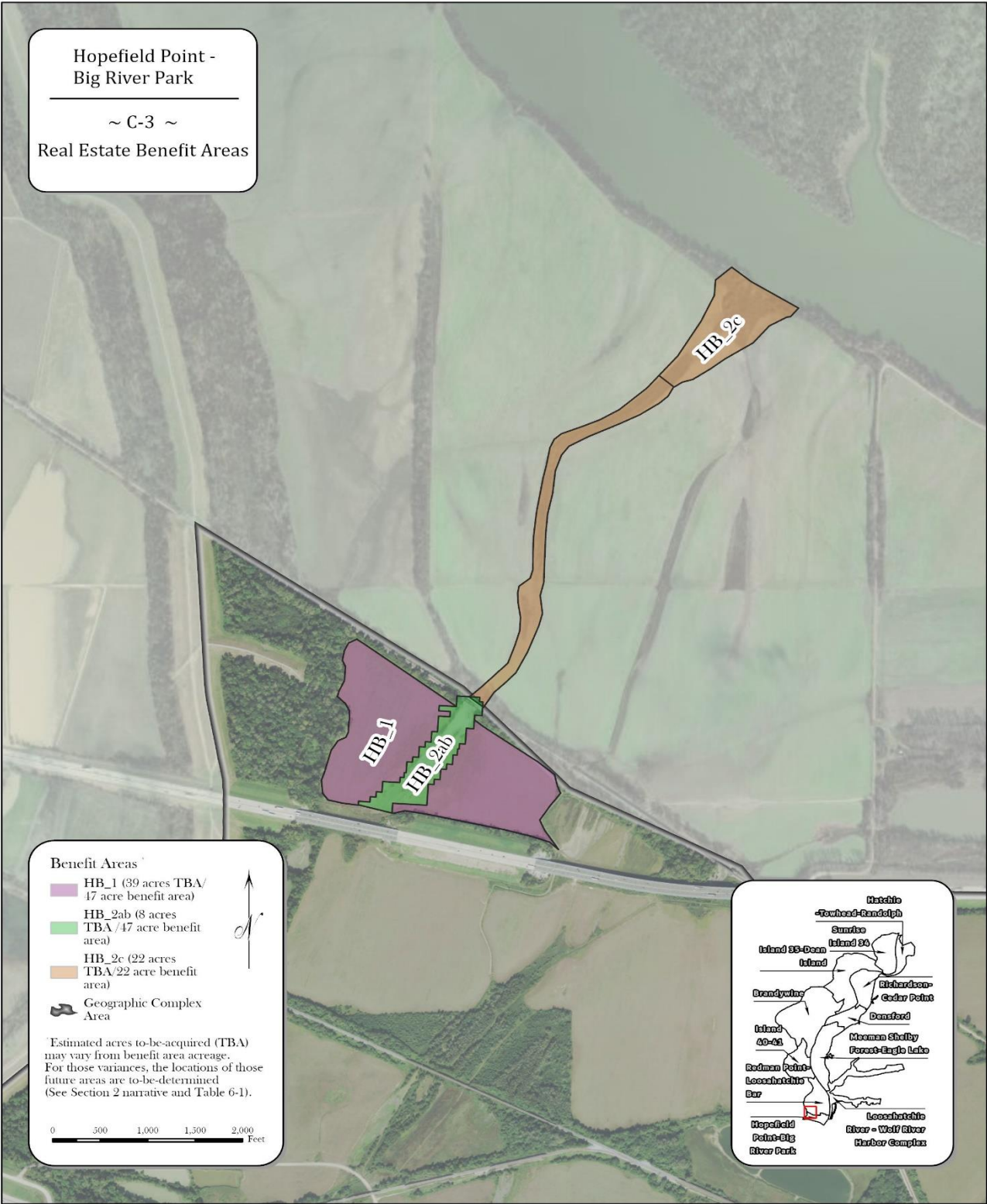


Figure 6-8. Hopefield Point Big River Park Towhead Complex

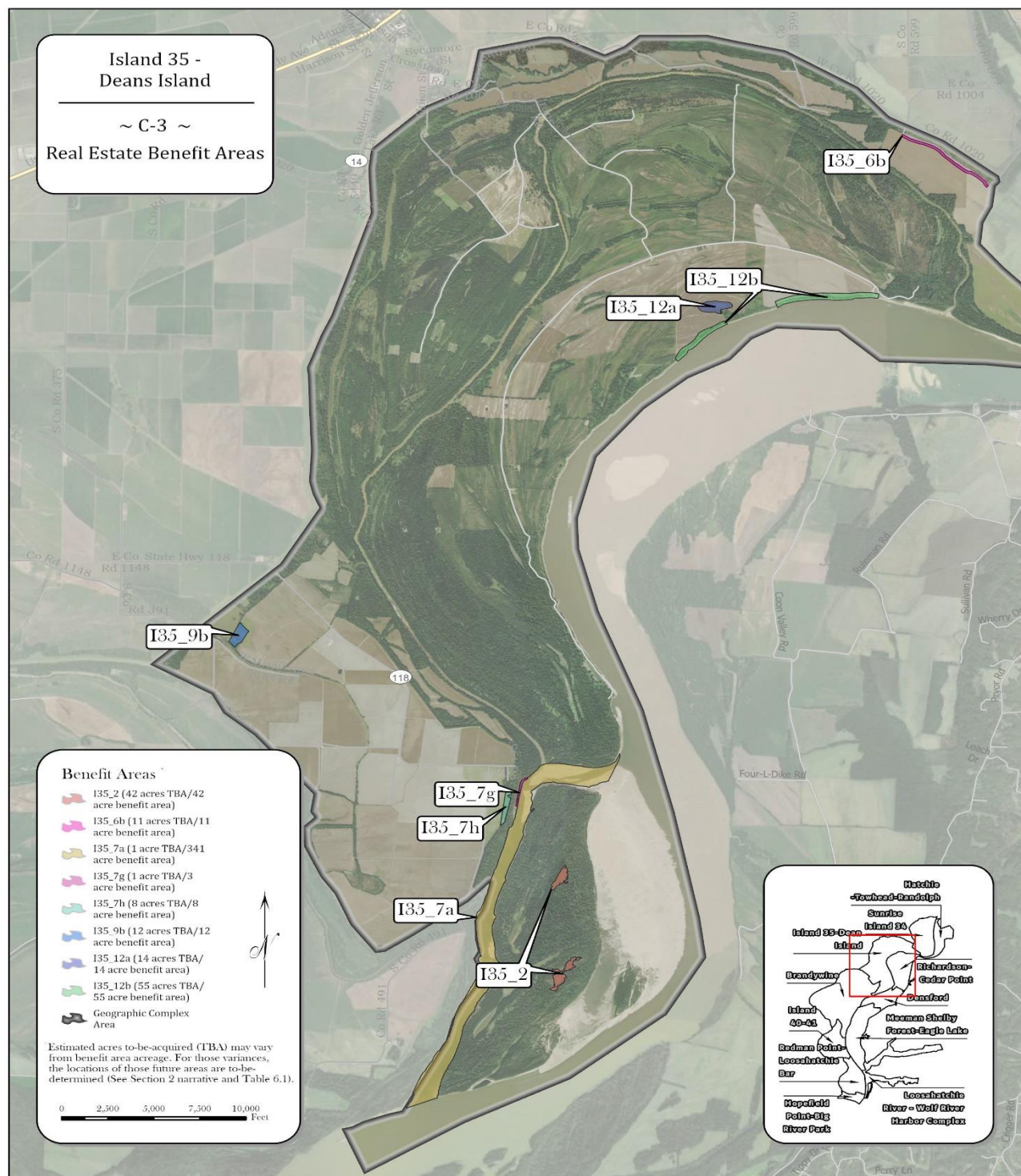


Figure 6-9. Island 35 – Deans Island Complex

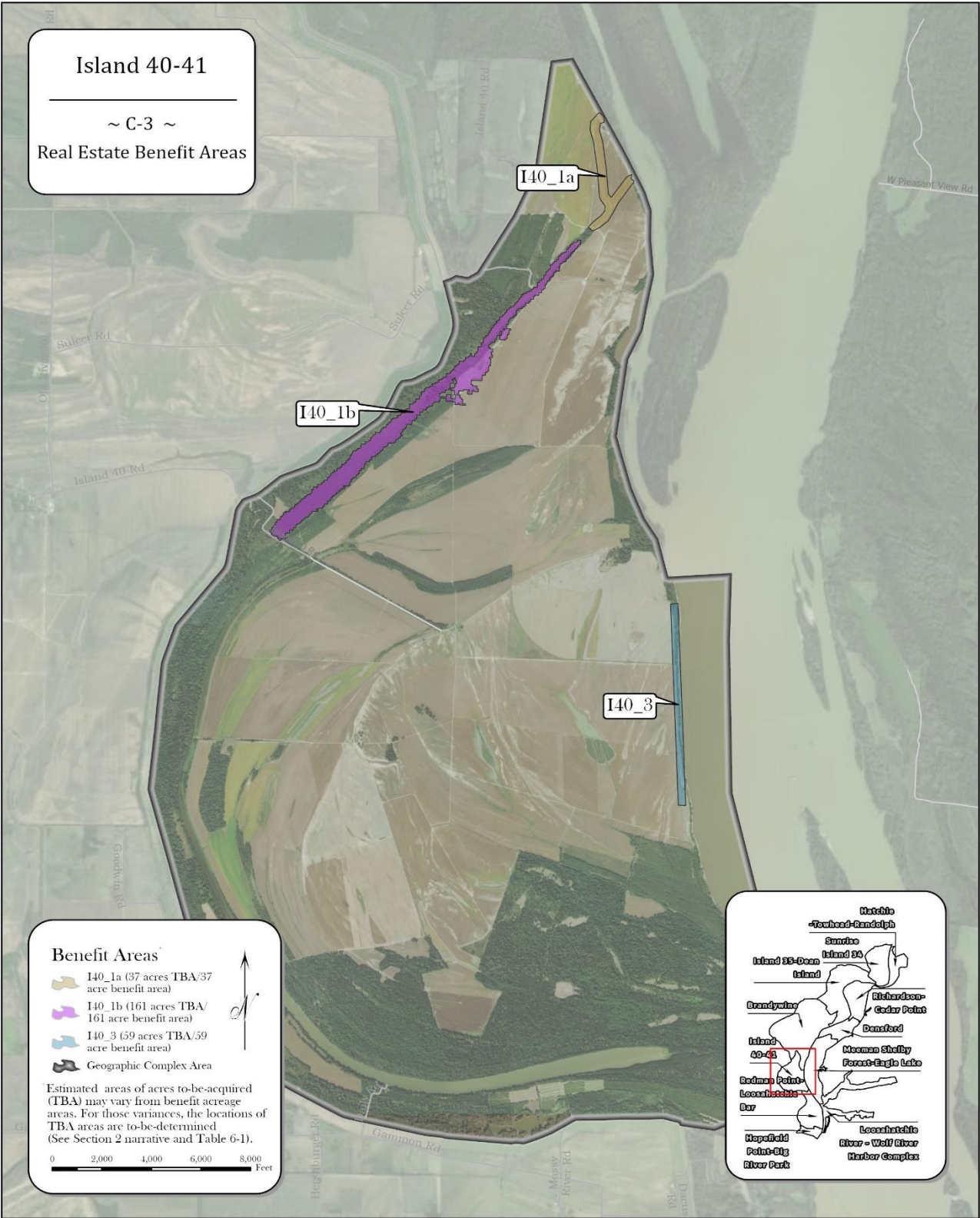


Figure 6-10. Island 40 – 41 Complex

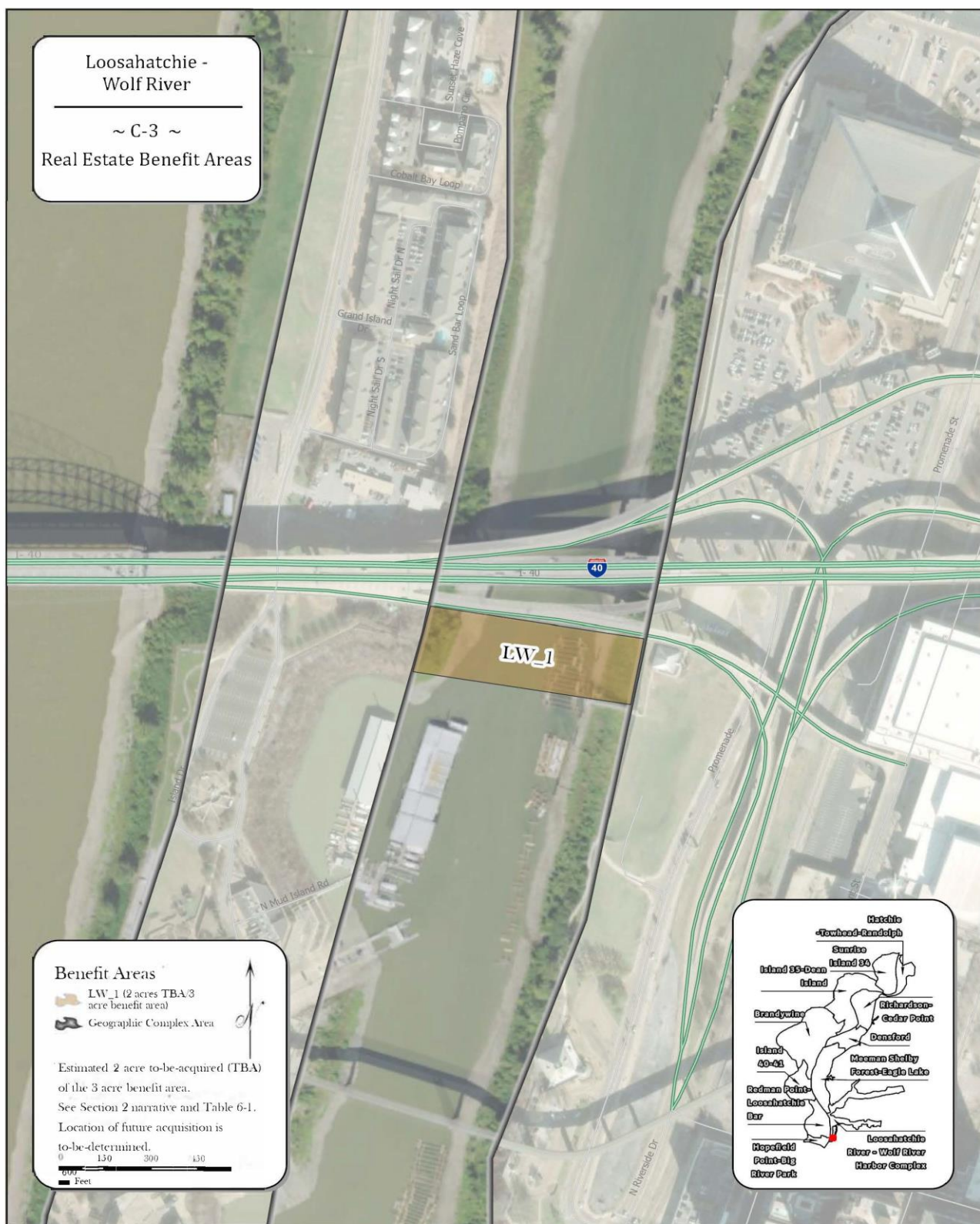


Figure 6-11. Loosahatchie Wolf Complex

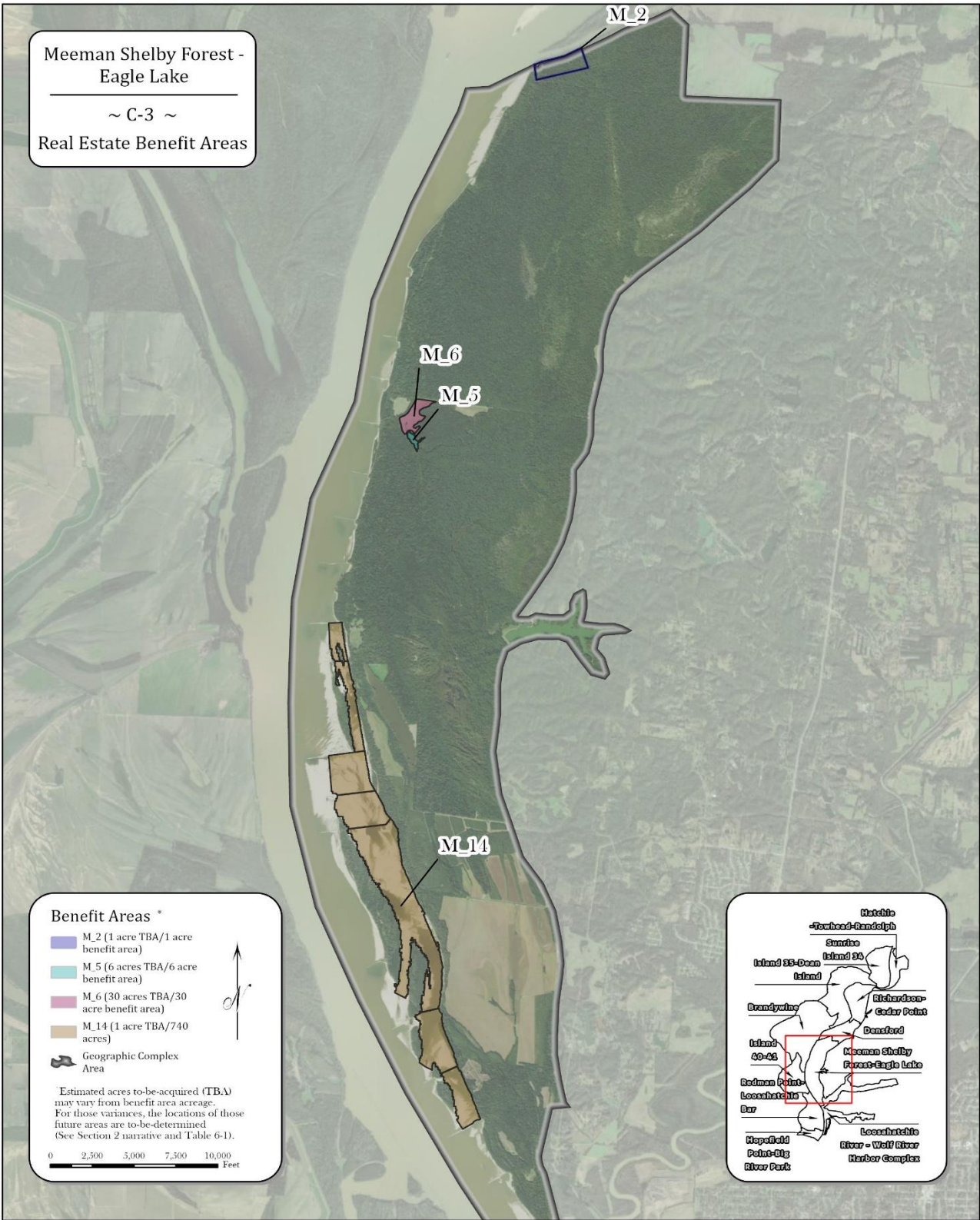


Figure 6-12. Meeman Shelby Forest – Eagle Lake Complex

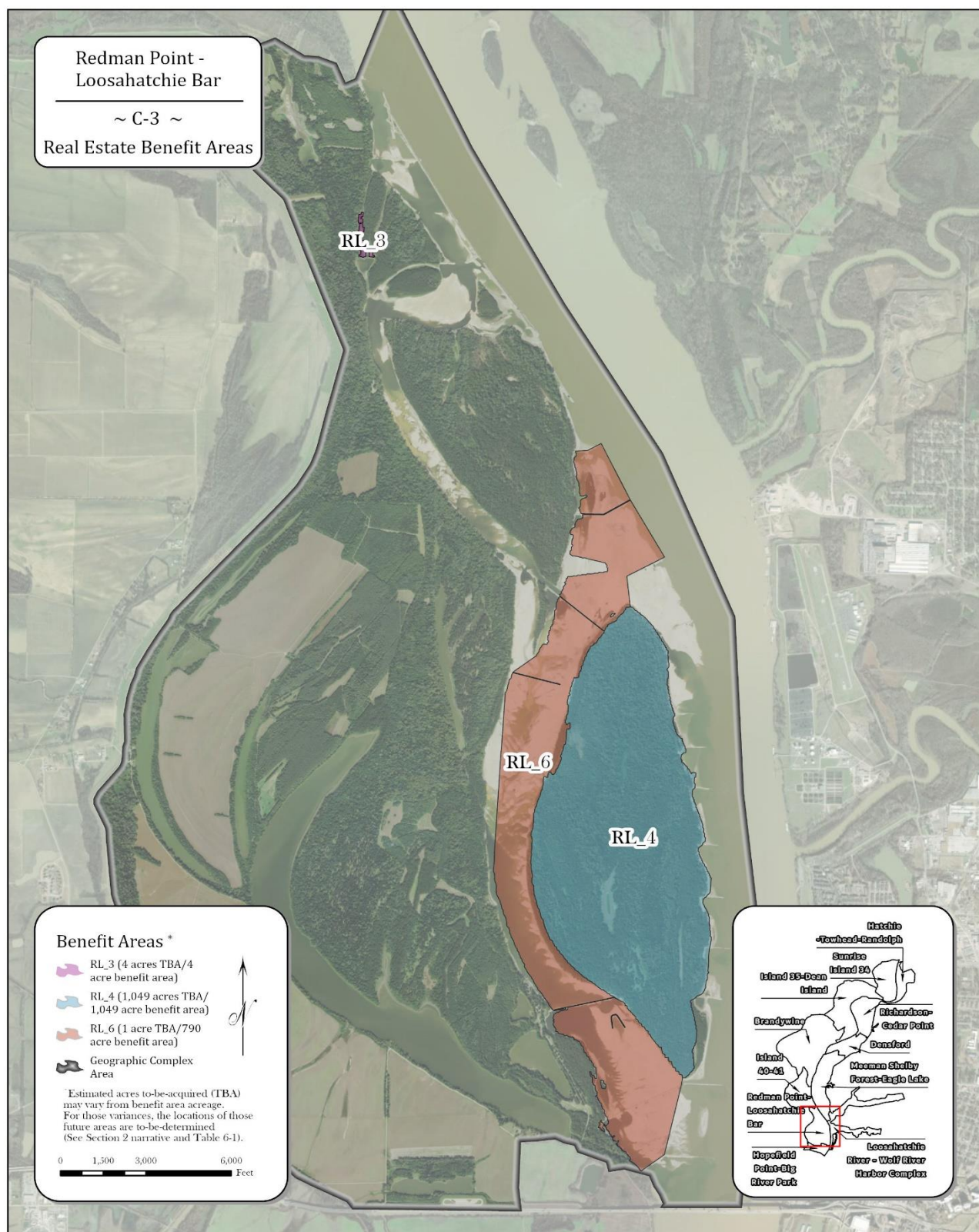


Figure 6-13. Redman Point Loosahatchie Bar Complex

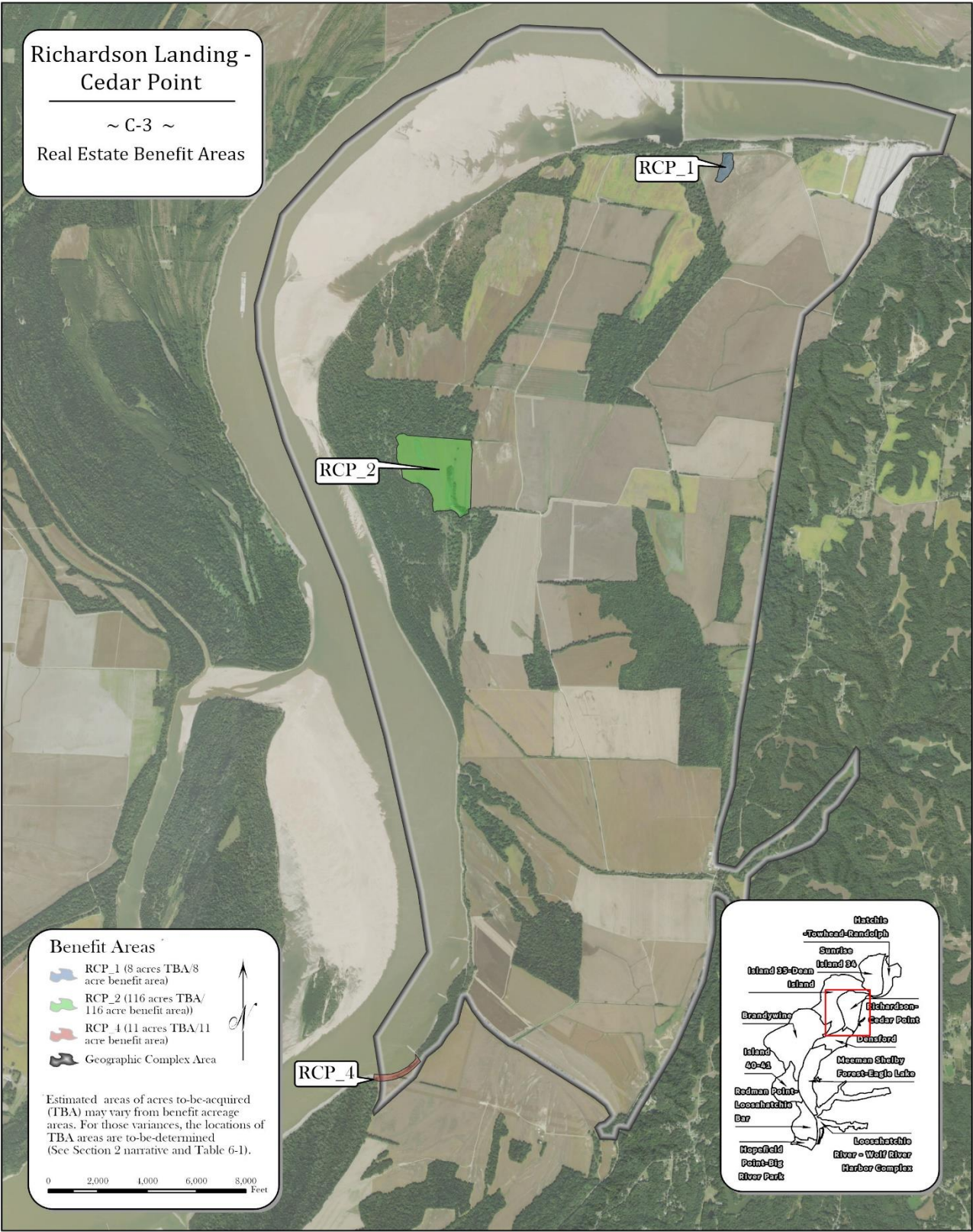


Figure 6-14. Richardson Landing Cedar Point Complex

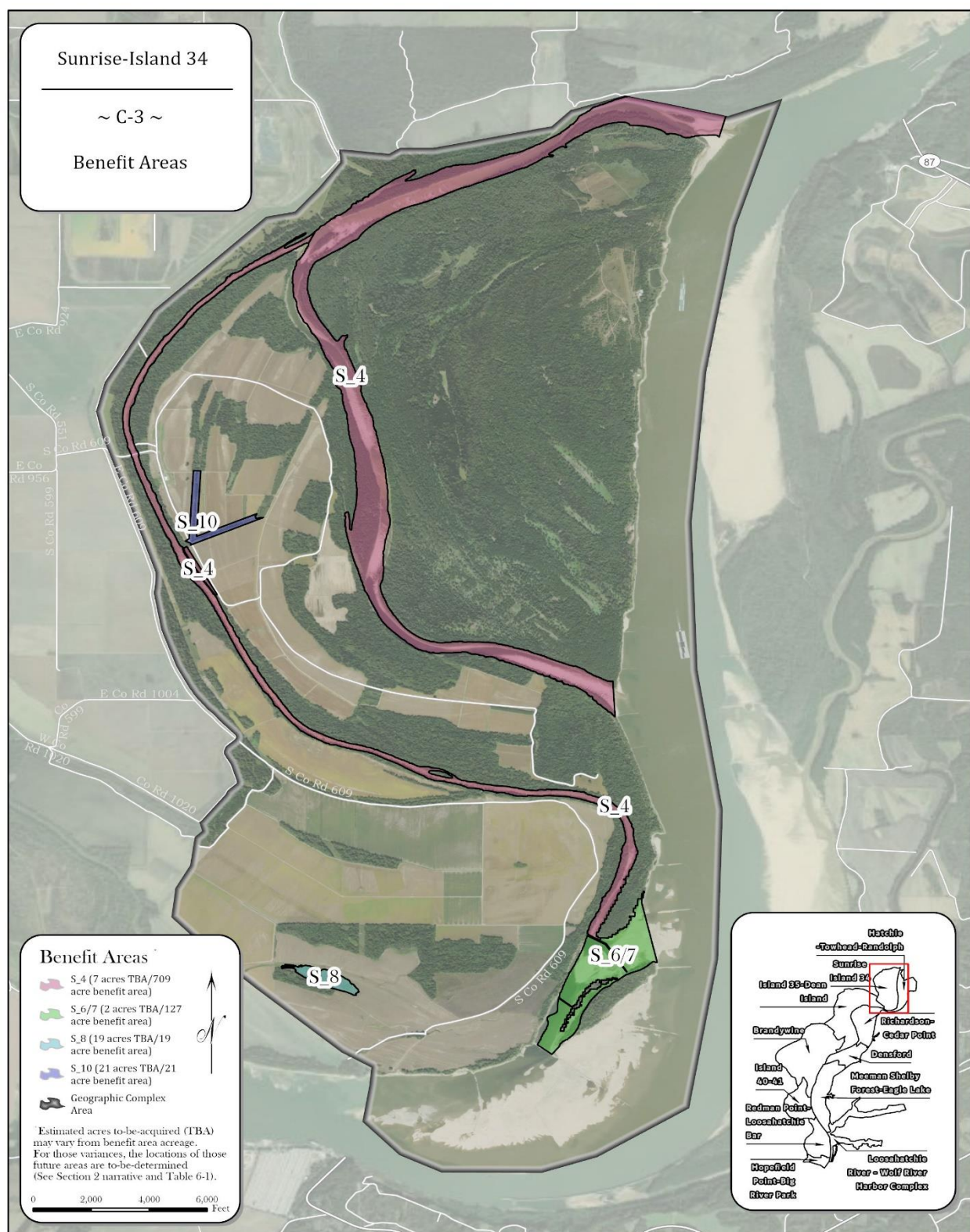


Figure 6-15. Sunrise Island 34 Complex

Section 9

INDUCED FLOODING

No induced flooding is anticipated as a result of the Hatchie/Loosahatchie Project.

Section 10

BASELINE COST ESTIMATE

AER STRUCTURAL

Total real estate costs for the structural components on **private lands** (dike notching, woody debris traps, bank protection, forest stand improvements, wetland restoration, flow restoration, riparian buffers, moist soil management, and meander scarp restoration) is \$17,161,800. This figure encompasses the cost of acquiring real property interest, damages, LERRD administrative costs, and contingencies, as well as cost for potential condemnations.

Total Administrative Cost by Government (30 Account): \$158,400

Total Administrative Cost by Sponsor: \$816,000

Total NFS COST (Includes Administrative Cost by Sponsor) (01 Account): \$17,003,400

In the model PPA for Ecosystem Restoration projects, the non-federal sponsor receives credit for the value of lands the non-federal sponsor owns.

Non-Federal Sponsor – Assumed to own 51 acres of **public land** with an estimated credit value of \$572,520. This number includes administrative cost and contingencies. The Government is estimated to incur \$51,480 in Administrative Cost associated with the crediting of this land.

Total Administrative Cost by Government (30 Account): \$51,480

Total Administrative Cost by Sponsor: \$249,600

Total NFS COST (Includes Administrative Cost by Sponsor) (01 Account): \$572,520

Total Real Estate Costs for the project is \$17,785,800, consisting of \$209,880 for the 30 Account and \$17,575,920 for the 01 Account.

Section 11

P.L. 91-646 RELOCATION ASSISTANCE BENEFITS

AER STRUCTURAL

At this time, there have not been any residential or nonresidential structures identified for the structural portion of the project that would require the application of Public Law 91-646 relocation assistance benefits.

Section 12

MINERAL ACTIVITY/CROPS

AER-RP: For some of the AER project elements, lands with potential agricultural use may be removed from agricultural use. Any timber present within required right-of-way is included in the overall appraised value of the land. In the event the agricultural lands are cultivated, the owner will be allowed to harvest crops prior to acquisition. In the event that project schedules do not allow for such, the contributory value of crops will be included in the estimate of property value in the appraisal.

Section 13

NON-FEDERAL SPONSOR CAPABILITY ASSESSMENT

Capability Assessments have been completed and are included as Exhibit A, B, & C to this Real Estate Plan. The Lower Mississippi River Conservation Committee (LMRCC) is the Non-Federal Sponsor (NFS) for the project. The LMRCC is made up of agencies from 6 different states. The two agencies that are involved in this study are Arkansas Game and Fish Commission (AGFC) and the Tennessee Wildlife Resources Agency (TWRA). TWRA and AGFC have been found to be fully capable of carrying out the requirements of this cost share project. AGFC has participated in and performed satisfactorily on other USACE Projects. TWRA staff is familiar with the Federal process to acquire real property. AGFC and TWRA both have the legal authority to acquire and hold title to real property for the project's purposes. AGFC and TWRA both have the power of eminent domain and are familiar with P.L. 91-646. TWRA would like to coordinate with project staff from USACE to discuss any internal policies or forms that are utilized in this process. These agencies would anticipate regularly scheduled meetings to be sure the property acquisitions are proceeding properly and in a timely fashion. The acquisition schedule for the project was developed with sponsor input and has their support.

The NFS, the LMRCC, is a registered business entity in the state of Mississippi, classified as a 501©(3) nonprofit organization and does have the legal authority to acquire and hold title to real property. However, the LMRCC has not and will not acquire and hold title to real property. For any such project purposes, the LMRCC anticipates the states of Arkansas and Tennessee, or some other agrees-upon partner with legal authority would serve in this role. The LMRCC's role in this study/project will be to provide collaborative partnership by which funding could be acquired to enact restoration projects. It can be expected that the agencies, AGFC (Arkansas) and TWRA (Tennessee), will need to join as co-sponsors for the project to carry out the real estate requirements.

Section 14

ZONING ORDINANCES

During PED, planning and zoning regulations would be further reviewed, and discussions would be conducted with the NFS regarding the development and adoption of land use regulations for future activities within the project area. The NFS would be required to coordinate these matters with local planning commissions.

Section 15

ACQUISITION SCHEDULE

AER STRUCTURAL

The following schedule shows the tasks and duration for acquisition of the LERRD required for the project. This affects 40 total landowners. This schedule is subject to change based on project refinement during planning, engineering, and design. This schedule is for preliminary planning purposes and assumes that all tracts are acquired at the same time. This schedule assumes a staff of 4 negotiators.

1. Preliminary Investigations (i.e., HTRW, structural, surveys, etc.)	6 months
2. Mapping	6 months
3. Title	6 months
4. Appraisals	6 months
5. Negotiations and Closing	18 months
6. Condemnation (time could overlap with negotiation and closing)	12 months
7. LERRD Certification	6 months

Based upon this schedule, all real property interests will be acquired in 4 years, with the exception of real property interests requiring condemnation. It is assumed that all properties will be acquired simultaneously. It could take up to 5 years if the property is condemned.

Negotiations, Closings, and Condemnations (if necessary) will run concurrently.

This schedule was developed with sponsor input and has their support.

Section 16

FACILITY/ UTILITY RELOCATIONS

AER-RP: At this time, no facility/utility relocations are anticipated to be required for the AER features of the Project.

Section 17

HTRW AND OTHER ENVIRONMENTAL CONSIDERATIONS

Based on record searches and land-use history, the risk of encountering Hazardous, Toxic, and Radioactive Waste (HTRW) was determined to be low. While there are no adverse impacts to historic properties identified at this time, a draft Programmatic Agreement is being prepared governing USACE's Section 106 review process for the series of undertakings in regard to cultural resources.

Section 18

LANDOWNER ATTITUDE

Nothing in writing has been received from the landowners. Discussions with landowners so far is generally supportive of the restoration ideas.

Section 19

RISK NOTIFICATION

A risk notification letter has been sent to the NFS. The NFS was notified in writing about the risks associated with acquiring land before the execution of the Project Partnership Agreement and the Government's formal notice to proceed with acquisition. This risk notification letter is included below as Exhibit C.

Section 20

OTHER REAL ESTATE ISSUES

It is not anticipated that there will be any other real estate issues for this project.

Prepared By:

Brian S. Johnson
Realty Specialist

Phillip J. Swiney
Appraiser

Recommended By:

Mark Harkison
Acting Chief of Real Estate, Memphis

EXHIBIT A

Capability Assessment from the Tennessee Wildlife Resources Agency

**HATCHIE/LOOSAHATCHIE
FEASIBILITY STUDY**

**ASSESSMENT OF NON-FEDERAL
SPONSOR'S REAL ESTATE
ACQUISITION CAPABILITY**

I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? (yes/no)

Yes, Tennessee Wildlife Resources Agency (TWRA) has the authority to acquire by purchase, condemnation, lease, agreement, gift or devise, lands or waters suitable for the following purposes and develop, operate, and maintain them as lands or waters suitable for game, birds, fish, or fur-bearing animal restoration, propagation, protection, management, or for access to such lands or waters according to Tenn. Code Ann. § 70-1-302 (a)(3)(b). TWRA can serve as a partner in this study to hold real property for the previously stated conservation purposes provided in our authority.

It is anticipated that the Lower Mississippi River Conservation Committee (LMRCC), of which TWRA is a member, will serve as the primary Non-Federal Sponsor for the Hatchie-Loosahatchie Mississippi River Ecosystem Restoration/ Feasibility Study. LMRCC is not expected to hold any real property, but to provide a collaborative partnership by which funding could be acquired to enact restoration projects.

- b. Does the sponsor have the power of eminent domain for this project? (yes/no)
Yes. TWRA is provided the tool of condemnation through the above stated authority but does not intend to use such authority for acquiring any real property identified in the Hatchie-Loosahatchie Mississippi River Ecosystem Restoration/ Feasibility Study. This practice is not favored by Tennessee State agencies and would require approval from multiple agencies or levels of state government.
- c. Does the sponsor have “quick-take” authority for this project? (yes/no) No, it isn't likely that TWRA has quick-take authority. This may be a process that is available to other agencies within Tennessee State Government but is not likely to be used for the purposes of this project.
- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? (yes/no)
Yes, it is TWRA's understanding that the overall project includes lands outside of Tennessee (i.e., along the Mississippi River in Arkansas) and that other non-federal sponsors likely would participate as to such lands. TWRA would not acquire land or interests in land for this project outside of Tennessee.
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? (yes/no)
Unknown currently. TWRA would have to review real estate ownership records on a case-by-case basis to make such a determination.

II. **Human Resource Requirements:**

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91- 646, as amended? (yes/no)
No, TWRA real estate, federal aid, and legal staff are familiar with this law. However, TWRA staff would want to coordinate with project staff from USACE to discuss any internal policies or forms that are utilized in this process.
- b. If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training? (yes/no) Not applicable.
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? (yes/no)
Yes, TWRA staff are familiar with state and federal process to purchase and hold land for the purposes of conservation.
- d. Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule? (yes/no) Yes, TWRA staffing level for this workload should be sufficient to meet the needs of this project.
- e. Can the sponsor obtain contractor support, if required in a timely fashion? (yes/no)
Yes, TWRA has the capabilities to contract needed work through private contractors via our state procurement and contracting services. TWRA will also be utilizing LMRCC's abilities to provide these services as a project partner and co-sponsor.
- f. Will the sponsor likely request USACE assistance in acquiring real estate? (yes/no) (If "yes," provide description)
Yes, TWRA would expect to work with USACE staff to coordinate required property acquisitions. TWRA also expects to engage in regular meetings with USACE and other project partners to ensure that any required property transactions proceed properly and in a timely manner.

III. **Other Project Variables:**

- a. Will the sponsor's staff be located within reasonable proximity to the project site? (yes/no)
Yes, TWRA has staff located within a reasonable distance to the project site.
- b. Has the sponsor approved the project/real estate schedule/milestones? (yes/no)
No, TWRA or LMRCC has not seen the project/real estate final schedule/milestones at this time.

IV. **Overall Assessment:**

- a. Has the sponsor performed satisfactorily on other USACE projects? (yes/no/not applicable)
Yes, TWRA and LMRCC has had a long history of working with USACE.

- b. With regard to this project, the sponsor is anticipated to be highly capable/fully capable/moderately capable/marginally capable/insufficiently capable. (If sponsor is believed to be “insufficiently capable,” provide explanation).
TWRA should be considered Fully Capable

v. **Coordination:**

- a. Has this assessment been coordinated with the sponsor? (yes/no)

Yes, in draft form. TWRA is familiar with the Lower Mississippi River Resource Assessment (LMRRA) and its recommendations, as well as the Draft Integrated Feasibility Report and the Draft Environmental Assessment (DIFR-DEA) issued by USACE.

- b. Does the sponsor concur with this assessment? (yes/no) (If “no,” provide explanation)

Yes, TWRA concurs in regard to the LMRRA and the DIFR-DEA.

Prepared by:

Brian Johnson

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Brian Johnson
Realty Specialist

Reviewed and approved by:

Mark Harkison

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Mark Harkison Chief of Real Estate,
Acting

Brandon Wear

Brandon Wear
Deputy Director
Tennessee Wildlife Resources Agency

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Jason Allmon
Project Manager

EXHIBIT B

Capability Assessment from the Arkansas Game and Fish Commission

**HATCHIE/LOOSAATCHIE
FEASIBILITY STUDY
ASSESSMENT OF NON-FEDERAL
SPONSOR'S REAL ESTATE
ACQUISITION CAPABILITY**

I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes?
(yes/no)

It is anticipated that the Lower Mississippi River Conservation Committee (LMRCC), of which the Arkansas Game and Fish Commission (AGFC) is a member, likely will serve as the primary non-federal sponsor for the Hatchie-Loosahatchie Mississippi River Ecosystem Restoration / Feasibility Study. In that event, the answer would be "Yes" as to AGFC. This answer is based upon AGFC's understanding that the project purposes include conserving and restoring some of the rarest fish and wildlife habitat types for numerous threatened and endangered species, species of greatest conservation need, and game species that occur within the lower Mississippi River and its floodplain between River Miles 775 and 736. As long as the subject real property in Arkansas would be used in the exercise of AGFC's duties for the "control, management, restoration, conservation and regulation of birds, fish, game and wildlife resources of the State [of Arkansas]," AGFC has legal authority to acquire and hold fee simple title (or any lesser estate) to such real property pursuant to Amendment 35 to the Arkansas Constitution. Ark. Const. amend. 35, §§ 1 and 8.

- b. Does the sponsor have the power of eminent domain for this project? (yes/no)

Yes, subject to the above, AGFC has "the power to acquire by purchase, gifts, eminent domain, or otherwise, all property necessary, useful or convenient for the use of the Commission in the exercise of any of its duties." Ark. Const. amend. 35, § 8.

- c. Does the sponsor have "quick-take" authority for this project? (yes/no)

Possibly. If AGFC decides to use its eminent domain authority, which it has not done in at least the past 25 years and has no present intent to use for this project, it "shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the State Highway Commission." Ark. Const. amend. 35, § 8. By statute, the Arkansas State Highway Commission has "quick-take" eminent domain authority in that possession and title to the land to be condemned immediately vests in it upon filing a declaration of taking and depositing the estimated compensation with the clerk of the circuit court. Ark. Code Ann. §§ 27-67-314 and -315.

- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? (yes/no)

Yes, it is AGFC's understanding that the overall project includes lands outside of Arkansas (i.e., along the Mississippi River in Tennessee) and that other non-federal sponsors likely would participate as to such lands. AGFC would not acquire land or interests in land for this project outside of Arkansas.

- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? (yes/no)

Unknown at this time. AGFC would have to review real estate ownership records on a case-by-case basis to make such a determination.

II. **Human Resource Requirements:**

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91- 646, as amended? (yes/no)

No. P.L. 91-646 is the uniform relocation assistance and real property acquisition law. AGFC staff, including its real estate officer, federal aid coordinator, and legal counsel, are familiar with this law. However, AGFC staff would want to visit with project staff with the U.S. Army Corps of Engineers (USACE) to determine whether they have any specific internal policies they have implemented or forms they use. Nevertheless, the law is generally the same for most property acquisitions.

- b. If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training? (yes/no)

Not applicable.

- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? (yes/no)

Yes. AGFC staff, including its real estate officer, federal aid coordinator, and legal counsel, have participated in a significant number of real estate acquisitions, which acquisitions were subject to state and federal property acquisition laws, including P.L. 91-646. AGFC has routinely used the required waiver form for acquisitions subject to P.L. 91-646.

- d. Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule? (yes/no)

Probably, but without knowing the full scope of the final project and the number of properties to be acquired, this cannot be definitively answered. AGFC will need to review this issue whenever the project scope is finalized.

- e. Can the sponsor obtain contractor support, if required, in a timely fashion? (yes/no)

Yes. AGFC is able to contract with title abstractors, appraisers, engineers, other consultants, and outside counsel, as may be necessary, for land acquisitions.

- f. Will the sponsor likely request USACE assistance in acquiring real estate? (yes/no) (If "yes," provide description)

Yes. AGFC would expect its staff to work closely with USACE staff to coordinate required property acquisitions and seek guidance, when needed. AGFC would anticipate conducting regular meetings with USACE to be sure that any required property acquisitions proceed properly and in a timely fashion.

III. Other Project Variables:

- a. Will the sponsor's staff be located within reasonable proximity to the project site? (yes/no)

Yes, AGFC has staff across the state of Arkansas. The majority of staff who would be principally involved with this project are based out of AGFC's headquarters in Little Rock, Arkansas, which is centrally located in the state and within a three-hour drive of the project area.

- b. Has the sponsor approved the project/real estate schedule/milestones? (yes/no)

No. Neither AGFC nor LMRCC have seen the project/real estate final schedule/milestones at this time and AGFC understands they are not yet finalized.

IV. Overall Assessment:

- a. Has the sponsor performed satisfactorily on other USACE projects? (yes/no/not applicable)

Yes, AGFC has participated in and performed satisfactorily for many other USACE projects.

- b. With regard to this project, the sponsor is anticipated to be highly capable/fully capable/moderately capable/marginally capable/ insufficiently capable. (If sponsor is believed to be "insufficiently capable," provide explanation)

AGFC is fully capable when also using any necessary or desired outside consultants, such as title abstractors, appraisers, engineers, and other professionals.

V. Coordination:

- a. Has this assessment been coordinated with the sponsor? (yes/no)

Yes, in draft form. AGFC is familiar with the Lower Mississippi Resources Assessment (LMRRA) completed in 2015, plus the Draft Integrated Feasibility Report and Draft Environmental Assessment (DIFR-DEA) issued by USACE on or about February 10, 2023.

- b. Does the sponsor concur with this assessment? (yes/no) (If "no," provide explanation)

Yes, with regard to the LMRRA and DIFR-DEA.

Prepared by:

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Brian Johnson
Realty Specialist

Reviewed and approved by:

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Joshua Neisen
Chief of Real Estate, Acting



James F. Goodhart
General Counsel
Arkansas Game and Fish Commission
Sponsor

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Jason Allmon
Project Manager

EXHIBIT C

Capability Assessment from the Lower Mississippi River Conservation Committee

**HATCHIE/LOOSAHATCHIE
FEASIBILITY STUDY**

**ASSESSMENT OF NON-FEDERAL
SPONSOR'S REAL ESTATE
ACQUISITION CAPABILITY**

I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? (yes/no)

Yes, the Lower Mississippi River Conservation Committee (LMRCC) is a registered business entity in the state of Mississippi, classified as a 501(c)(3) nonprofit organization; therefore, we do have legal authority to acquire and hold title to real property. However, the LMRCC has not and will not acquire and hold title to real property. For any such project purpose actions requiring real estate purchases, the LMRCC anticipates the states of Arkansas or Tennessee, or some other agreed-upon partner with legal authority would serve in this role. The LMRCC's role in this study/project will be to provide a collaborative partnership by which funding could be acquired to enact restoration projects. The LMRCC will not acquire or hold property titles.

- b. Does the sponsor have the power of eminent domain for this project? (yes/no)

No

- c. Does the sponsor have "quick-take" authority for this project? (yes/no)

No

- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? (yes/no)

Not applicable. The LMRCC is not a political entity, and therefore we do not have a political boundary.

- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? (yes/no)

Not applicable. The LMRCC does not have condemnation authority.

II. Human Resource Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91- 646, as amended? (yes/no)

Not applicable. The LMRCC will not acquire real estate, so in-house staff would not require the training.

- b. If the answer to II. a. is "yes," has a reasonable plan been developed to provide such training? (yes/no)

Not applicable.

- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? (yes/no)

Not applicable.

- d. Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule? (yes/no)

Not applicable, if the question refers solely to real estate acquisitions. Otherwise, LMRCC will carefully consider the needs as they are clear and finalized.

- e. Can the sponsor obtain contractor support, if required in a timely fashion?
(yes/no)

Not applicable, if the question refers solely to real estate acquisitions. LMRCC will not execute contracts to assist with real estate transactions. Otherwise, LMRCC is able to contract with individuals such as construction contractors, legal counsel, project managers, etc., as needed.

- f. Will the sponsor likely request USACE assistance in acquiring real estate?
(yes/no) (If “yes,” provide description)

Not applicable.

III. Other Project Variables:

- a. Will the sponsor’s staff be located within reasonable proximity to the project site?
(yes/no)

LMRCC membership is made up of six states along the Lower Mississippi River: Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. The members from Arkansas and Tennessee, where this project is located, are housed centrally within each of those states. Additionally, the LMRCC Coordination Office is located in northeast Mississippi, a reasonable distance from the project area near Memphis, TN.

- b. Has the sponsor approved the project/real estate schedule/milestones? (yes/no)

Not applicable, as LMRCC will not be involved in any real estate acquisitions.

IV. Overall Assessment:

- a. Has the sponsor performed satisfactorily on other USACE projects?
(yes/no/not applicable)

Not applicable. The Hatchie-Loosahatchie Mississippi River Ecosystem Restoration Study is the first project in which the LMRCC has been the cost-share sponsor with USACE. The LMRCC does have a long history of working successfully in partnership with the USACE, but this is the first official study or project for which LMRCC has signed as the cost-share sponsor.

- b. With regard to this project, the sponsor is anticipated to be highly capable/fully capable/moderately capable/marginally capable/insufficiently capable. (If sponsor is believed to be “insufficiently capable,” provide explanation)

Not applicable. The LMRCC will not be entering into any real estate acquisitions. LMRCC member states of Arkansas and Tennessee are fully capable of executing real estate transactions.

V. Coordination:

- a. Has this assessment been coordinated with the sponsor? (yes/no)

Yes. The assessment was completed by the LMRCC. We are the sponsor.

- b. Does the sponsor concur with this assessment? (yes/no) (If “no,” provide explanation)

Yes.

Prepared by:

Brian Johnson
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Brian Johnson
Realty Specialist

Reviewed and approved by:

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Mark Harkison
Chief of Real Estate, Acting

Jason Henegar
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Jason Allmon
Project Manager

EXHIBIT D

Risk Notification Letter



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
MEMPHIS DISTRICT
167 NORTH MAIN STREET B-202
MEMPHIS, TN 38103-1894

March 23, 2023

Mr. Jason Henegar
Chair, Lower Mississippi River Conservation Committee
111 Elizabeth Street
Tupelo, MS 38804

Dear Mr. Henegar:

As you are aware, the Hatchie/Loosahatchie, Mississippi River Mile 775-736 Aquatic Ecosystem Restoration Feasibility Study is nearing completion. The Final Feasibility Report with Integrated Environmental Assessment is scheduled to be complete in July 2024. The report contains preliminary maps, which may change once the detail design of the project is completed. For this reason, in accordance with Corps of Engineers Regulation 405-1-12, Chapter 12, dated May 1, 1998, we are hereby formally advising you of the risks associated with acquisition of real estate rights prior to signing of the Project Partnership Agreement (PPA) and receiving a request from our agency for right of entry for construction.

Should you decide to proceed with acquisition of realty interests needed for construction of the subject project prior to the government's request for commencement of acquisition of required right-of-way, the Lower Mississippi River Conservation Committee (LMRCC) will assume full and sole responsibility for any and all costs, responsibility, or liability arising out of such efforts. Generally, these risks include, but may not be limited to the following:

- a. Congress may not appropriate funds to construct the proposed project;
- b. The proposed project may otherwise not be funded or approved for construction;
- c. A PPA mutually agreeable to The Lower Mississippi River Conservation Committee and the government may not be executed and implemented;
- d. The Lower Mississippi River Conservation Committee may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of local, state or Federal laws or regulations, including liability arising out of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended;
- e. The Lower Mississippi River Conservation Committee may acquire interests or estates that are later determined by the Government to be inappropriate, insufficient or otherwise not required for the project, thus incurring costs or expenses which may not be creditable under the provisions of Public Law 99-662 or the PPA; and
- f. The Lower Mississippi River Conservation Committee may initially acquire insufficient or excessive real property acreage which may result in additional negotiations and/or benefit payments under Public Law 91-646, as amended, as well as the payment of additional fair market value to affected landowners, which could have been avoided by delaying acquisition until the PPA execution and the government's notice to commence acquisition and performance of LERRDs.

However, should you decide to proceed with acquisition of real estate interests, you are hereby notified that acquisition activities must conform to Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The Uniform Act describes the rights of landowners impacted by a federally funded project and the responsibilities of government agencies performing acquisition of real estate interests for such projects. Furthermore, in order to ensure that you receive the maximum possible credit once the project alignment is finalized, we suggest that you send for our review the résumé and proposed fees of your intended contractors as well as the following real estate products once completed: ownership plat and legal descriptions, appraisal reports, title reports, proposed negotiated settlements, and relocations assistance payments, if applicable.

If you have questions regarding the acquisition and crediting process, please call Brian Johnson, Lead Realty Specialist, at 901-579-3623.

Sincerely,

**David M.
Slocum, Jr.**

David Slocum
Chief of Real Estate, Acting

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M. Slocum, Jr.
Date: 2023.03.23 07:05:57
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CF:
CEMVM-PM-P (Jason Allmon)