



Bayou aux Carpes 404(c)

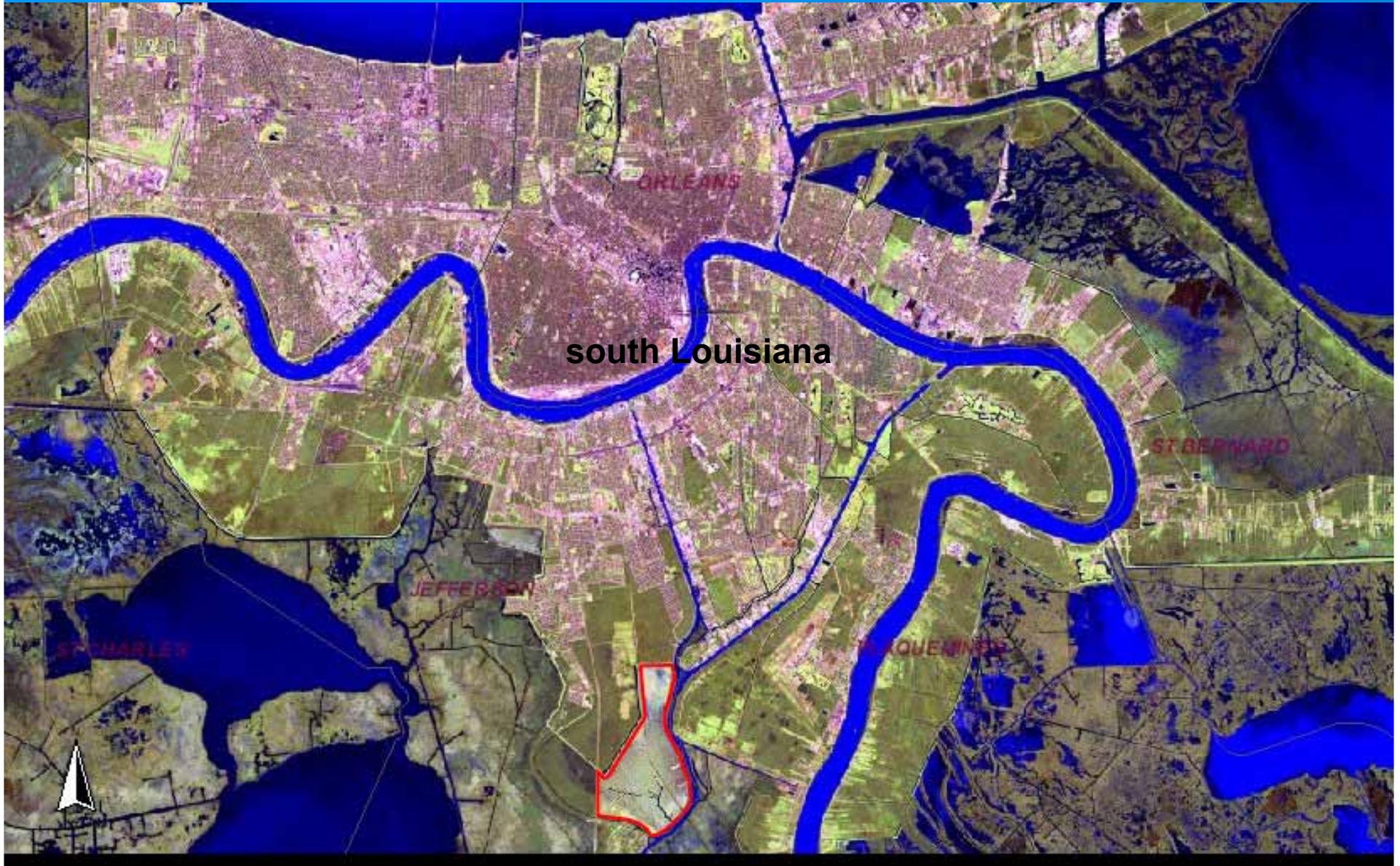
EPA Public Hearing

February 11, 2009

New Orleans, LA



Bayou aux Carpes 404(c) Site





Clean Water Act Section 404(c)

- ▶ **CWA Section 404(c) authorizes EPA to prohibit or restrict the placement of dredged or fill material in waters of the U.S.**

- ▶ **Unacceptable adverse effects:**
 - **Municipal water supply;**
 - **Shellfish beds and fishery areas;**
 - **Wildlife, or;**
 - **Recreation areas.**

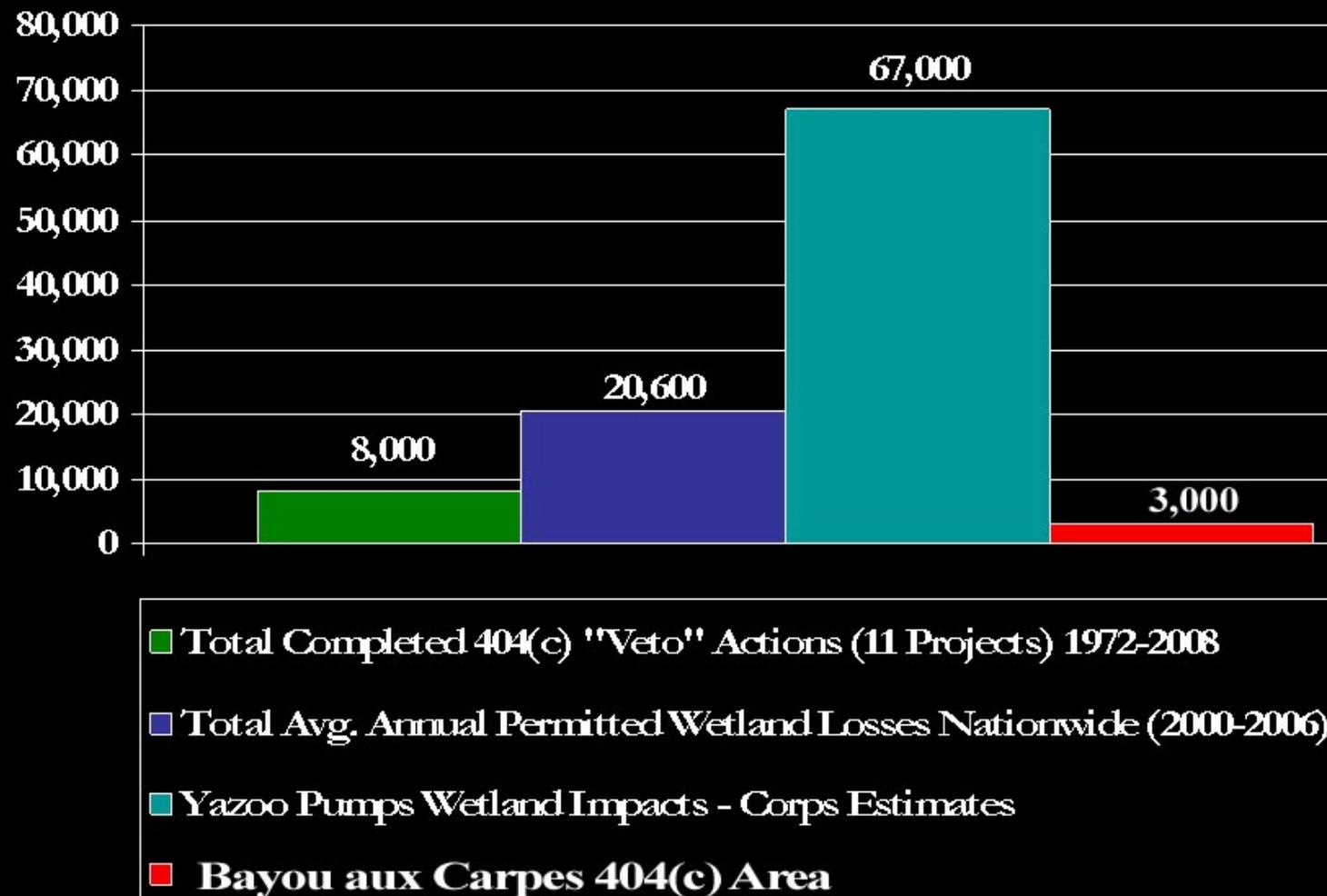


Clean Water Act Section 404(c)

- ▶ **Since 1972, EPA has invoked the authority of the Clean Water Act Section 404(c) a total of 12 times.**
- ▶ **This is an unusual procedure reserved for special circumstances and unique wetlands.**



Putting the Impacts into Context





Bayou aux Carpes 404(c) Overview

**1985: EPA Final CWA 404(c)
Determination**

2005: Hurricanes Katrina & Rita

**2008: Corps requested a modification
to build a floodwall along a portion of
the boundary with the GIWW to provide
100-year flood protection for the West
Bank**



Bayou aux Carpes 404(c) A Brief History

... it all started in the 1960's
as a

Corps of Engineers
flood control & reclamation project

**The Harvey Canal – Bayou Barataria
Levee Project**



Bayou aux Carpes 404(c)

A Brief History: The Early Days...

1970's – EPA Region 6 conducted an ecological assessment and later expressed an interest in pursuing a 404(c) action; EPA recommended a modified design for the Harvey Canal - Bayou Barataria Corps levee project; Corps deleted the reclamation features; Corps was sued by landowners to reinstate reclamation features; EPA rated HUD EIS's for Lafitte – Marrero Waterline as environmentally unacceptable and negotiated MOA with Jeff. Parish to establish a “prohibited service area;” MOA was appended as condition to Corps permit for the waterline

1980's – EPA rated the “V-Levee” DEIS as environmentally unacceptable; Chief of Engineers selected another option

1984 – US Dist. Court Judge Landsing Mitchell stayed his order on HC-BB Corps levee project and gave EPA 90 days to initiate a 404(c) action



Bayou aux Carpes 404(c)

A Brief History Goes On...

Dec. 18, 1984 – R6 initiated 404(c) process

May 10, 1985 – Regional Administrator issued a Proposed Determination

Oct. 16, 1985 – Final Determination signed by EPA AA for External Affairs

June 30, 1988 – Judge Mitchell upheld EPA 404(c) authority, noting **“this court takes up this decision not unlike Sisyphus, once more we shall attempt to dispose of this rocky case.”**

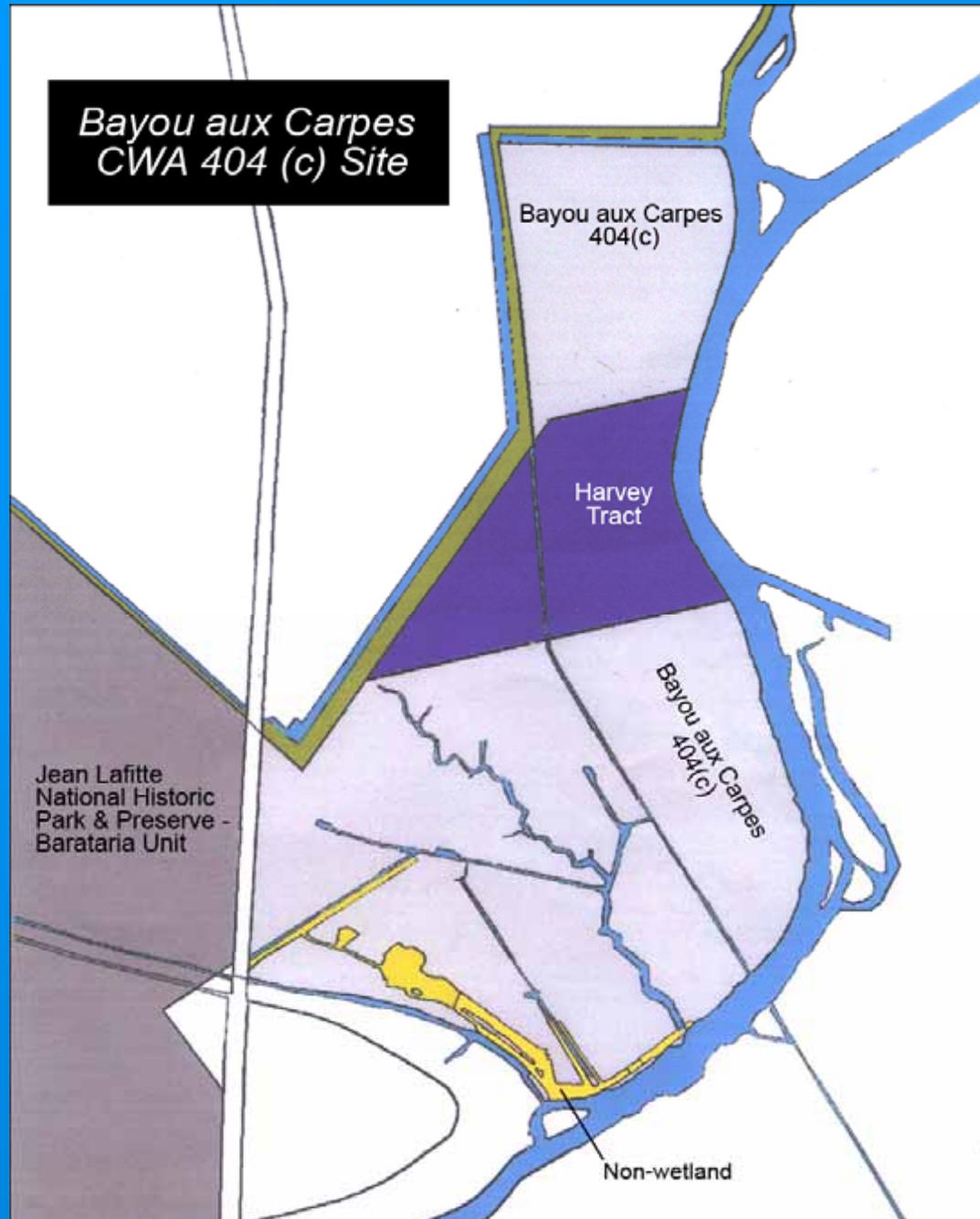
1991-1992 – Several “takings” cases were filed & consolidated

Aug. 30, 1996 – DOJ settled, ~ 2800 acres purchased for > \$8 million

1996 to 1998 – DOJ denied requests by one landowner to regain ownership of wetlands paid for under the settlement agreement.



**Bayou aux Carpes
CWA 404 (c) Site**





Bayou aux Carpes 404(c)

A Brief History

1985 Final Determination – Exceptions

- ▶ 1) Discharges associated with the completion of the modified Harvey Canal – Bayou Barataria Levee Project, with specified conditions**
- ▶ 2) Discharges from maintenance of the Southern Natural Gas pipeline, with specified conditions**
- ▶ 3) Discharges from EPA approved habitat enhancement projects**



Bayou aux Carpes 404(c) A Brief History

Final Determination – Disapproved Exception

▶ **A request by the Corps to dispose of dredged material from maintenance of the Bayou Barataria Waterway**



Bayou aux Carpes 404(c): A Brief History

Modification Requests

- ▶ In 1988, following extensive EPA/Corps coordination, the Chief of Engineers selected an alternative for the “V Levee” expansion that avoided impacts to both the 404(c) area and to Jean Lafitte National Historic Park & Preserve, after EPA denied the Corps’ request**
- ▶ In 1992, EPA amended the Final Determination to allow Shell Pipeline emergency authority to reconstruct & relocate a leaking pipeline – impacts considered minor & temporary, equivalent to existing exemption for SNG**



EPA Responsibility Regarding the Corps' CWA Section 404(c) Modification

Request:

EPA must go through a 404(c) analysis and public review process similar to that conducted for the initial 1985 determination.

EPA has consulted with the Corps on alternatives but has not determined an outcome.



West Closure Complex Alternative

Ecological Planning – CWA 404(c) Site

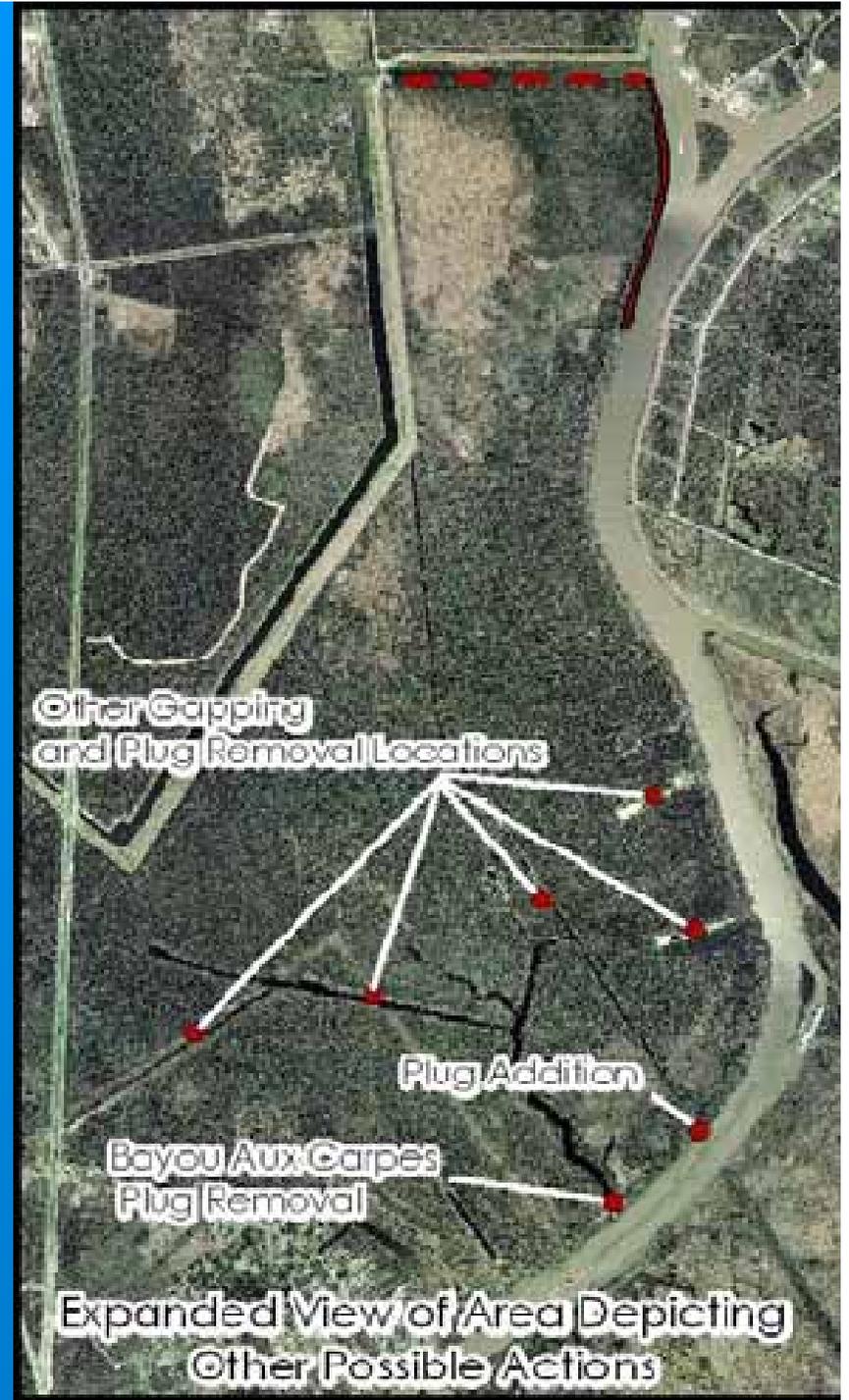
- ▶ **EPA assisted the Corps by identifying a practical alternative for planning purposes**
- ▶ **Wetlands impacts reduced from ~ 636 acres of floatant marsh, cypress swamp, and bottomland hardwoods to < 9.6 acres bottomland hardwoods**
- ▶ **Enhancement, mitigation, & monitoring plans being designed according to EPA, NPS, FWS, State agency guidance**



West Closure Complex Alternative

Current Ecological Analyses: Bayou aux Carpes Area

- ▶ Mitigation features
- ▶ Ecological features
- ▶ Long-term monitoring plan





Bayou aux Carpes 404(c)

EPA Next Steps

- ▶ EPA Region 6 will prepare a recommended determination
- ▶ EPA headquarters Office of Water will prepare final determination
- ▶ Publish FR notice

Senate Bill 22

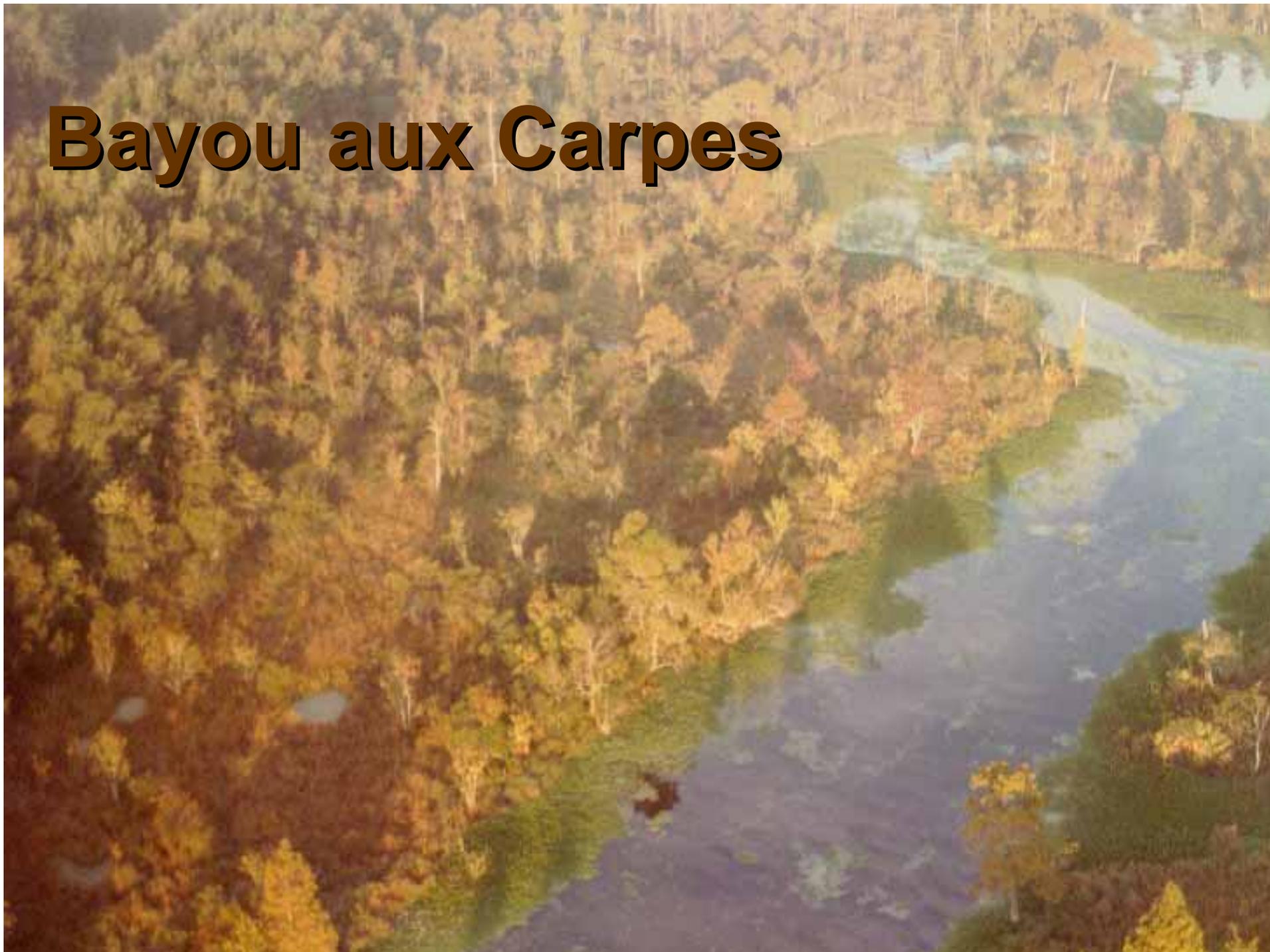
Omnibus Public Land Management Act of 2009
Sponsored by Sen. Bingaman

Title VII, Subtitle B, Sec. 715

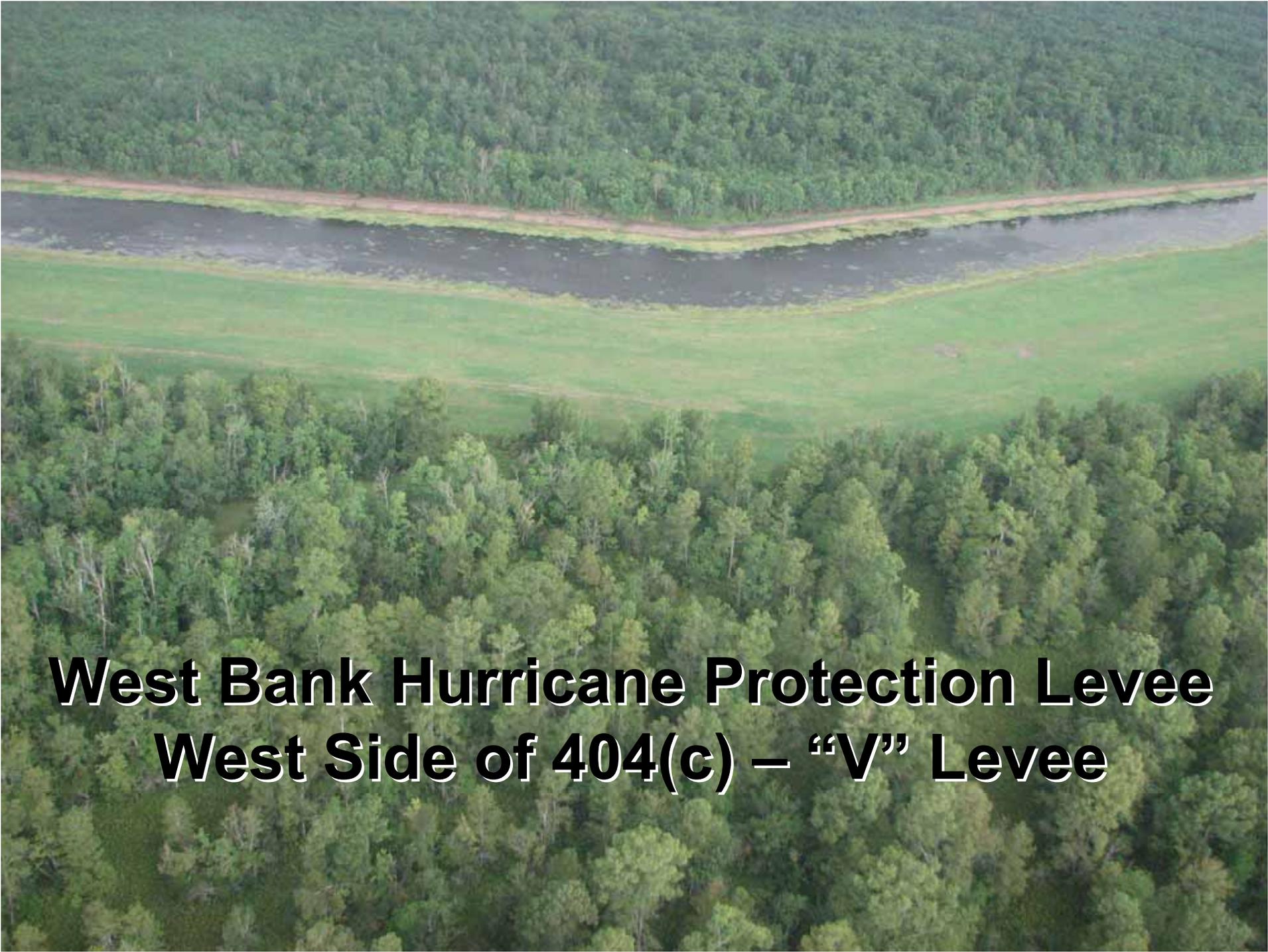
Jean Lafitte National Historical Park and Preserve Boundary Adjustment



Bayou aux Carpes





An aerial photograph showing a wide, dark river or canal winding through a landscape. The river is bordered by a narrow strip of reddish-brown earth, which is the levee. Beyond the levee is a large, flat, green field. The background and foreground are dominated by dense, lush green forests. The text is overlaid on the lower portion of the image.

**West Bank Hurricane Protection Levee
West Side of 404(c) – “V” Levee**

Estelle Pump Station and Outfall Canal



Estelle Pump Station Outfall Canal



Plug at Bayou aux Carpes

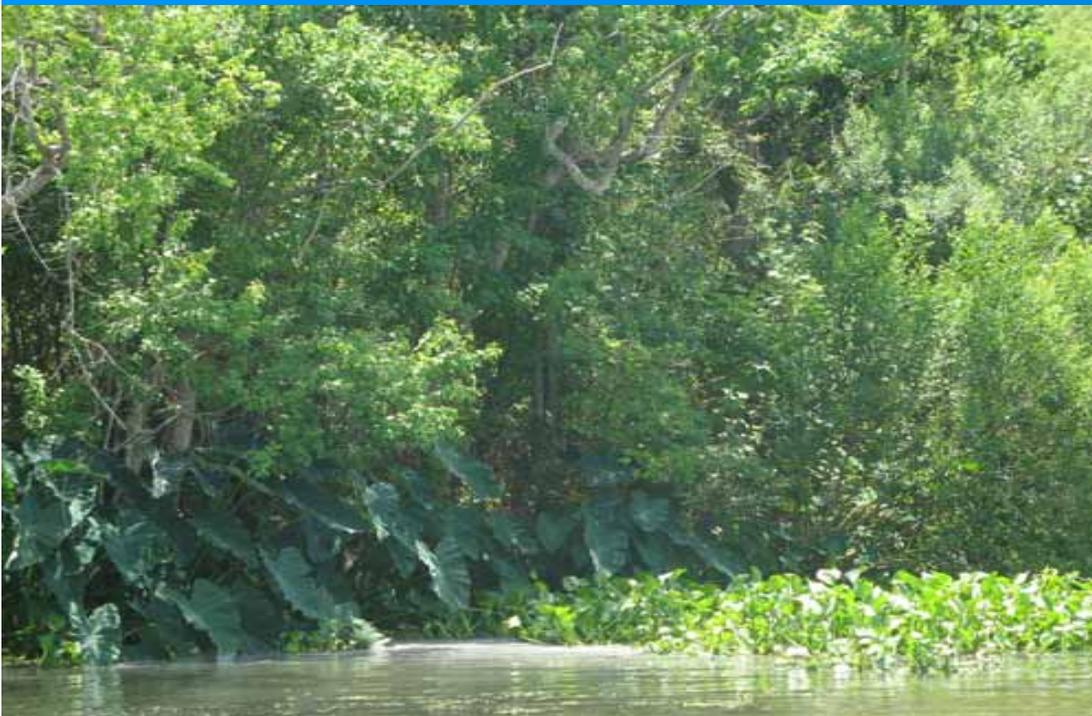


Bayou aux Carpes:

Then



(1985)



& Now

(2008)

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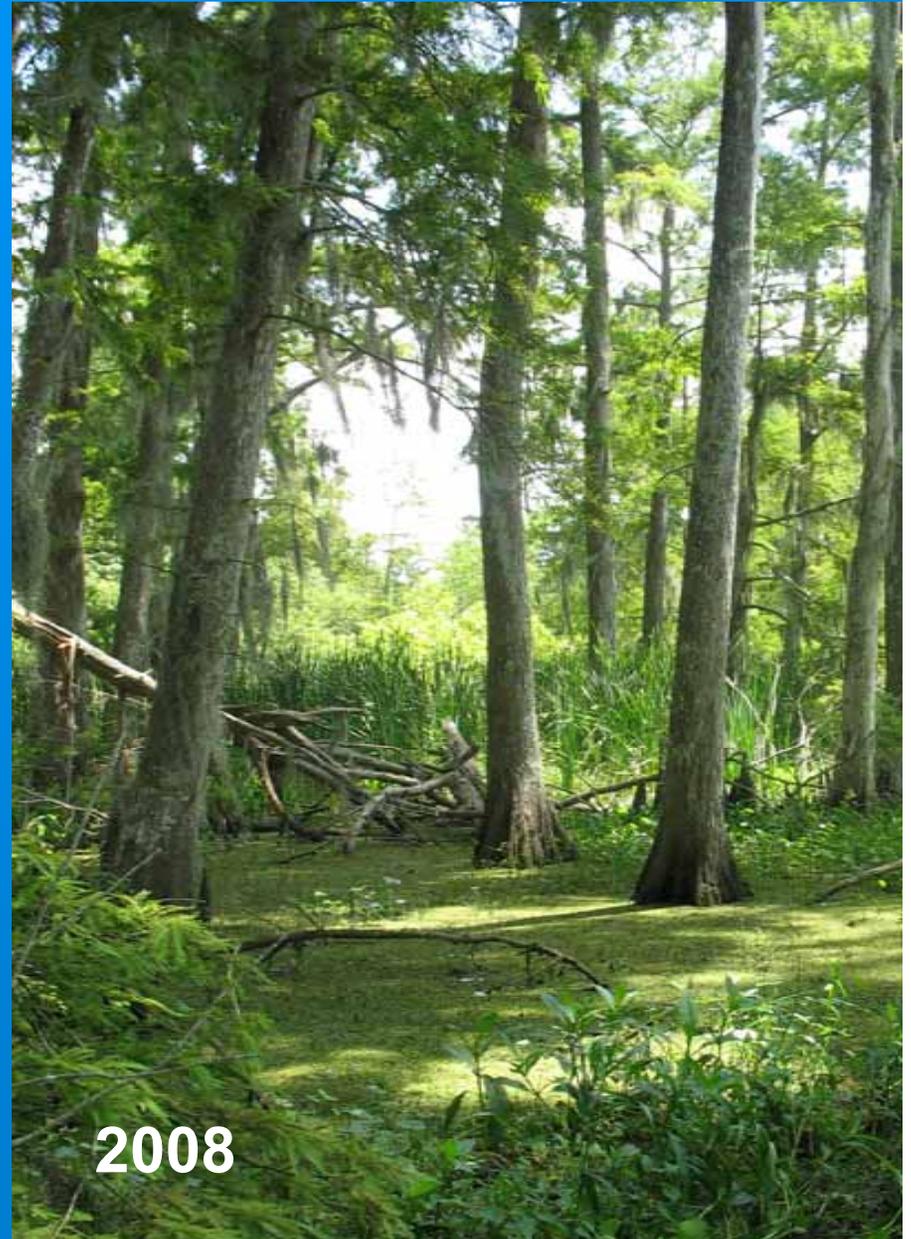


1985



2008

Bayou aux Carpes Cypress Swamp Habitat





Cypress Habitat Along Bayou aux Carpes in 2008

Bayou aux Carpes Bottomland Hardwoods -- 2008



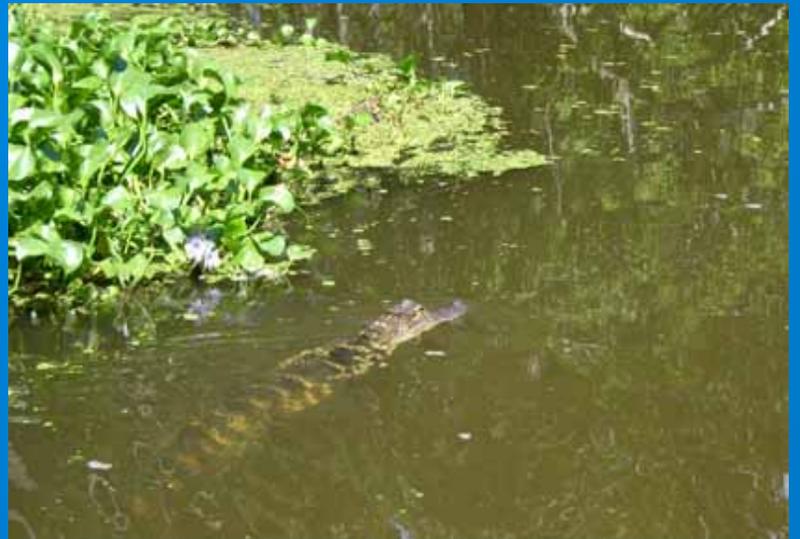


Bayou aux Carpes Swamp

**Regenerating Cypress
In 2008**

Bayou aux Carpes Flotant Marsh







Bayou aux Carpes
A Special Place, a National Treasure