UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF	)	**DOCKET NO. V-404-AO-09-02**
Lucille and Thomas Warfield,	)	
Versailles, Indiana,	)	
	)	**COMPLIANCE ORDER ON CONSENT**
Respondents.	)	

STATUTORY AUTHORITY

1. The Director of the Water Division, United States Environmental Protection Agency, Region 5, is issuing this Order on Consent to Lucille Warfield and Tom Warfield (jointly "Respondents" or "you") , pursuant to Section 309(a) of the Clean Water Act (the "CWA" or "Act"), 33 U.S.C. § 1319(a).

2. Under Section 309(a) of the Act, 33 U.S.C. § 1319(a), the Administrator of U.S. EPA may issue an order to comply to any person who is violating Section 301 of the Act, 33 U.S.C. § 1311. The Administrator has delegated this authority to the Regional Administrator of U.S. EPA, Region 5, who has delegated this authority to the Director, Water Division, U.S. EPA, Region 5.

3. Section 301 of the Act prohibits the discharge of pollutants, including dredged or fill material, into waters of the United States, without a permit issued by the U.S. Army Corps of Engineers ("Corps") under Section 404 of the CWA, 33 U.S.C. § 1344. These permits are called Section 404 permits.

4. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters.

5. Each discharge by you of pollutants into navigable waters on the site described in paragraph 7 below without a Section 404 permit constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

6. Each day the discharged material remains in the wetland without a Section 404 permit constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

FINDINGS OF VIOLATIONS

7. U.S. EPA finds that Respondents and/or those acting on their behalf in August 2003, discharged an unknown amount of pollutants - namely dredged material and organic debris - from excavators, bulldozers and land levelers into approximately 22.1 acres of forested and scrub shrub wetlands adjacent to an unnamed tributary to Little Graham Creek, in the northwest quarter of the southeast quarter of Section 34, Township 27 North, Range 9 East, in Johnson Township, Ripley County, Indiana (the "Site"), without a Section 404 permit, in violation of Section 301 of the Act, 33 U.S.C. § 1311. In addition, the 22.1 acres of forested wetland are also directly connected to Little Graham Creek through grassed swales and surface drains.

8. Respondents neither admit nor deny any of the factual allegations above.

COMPLIANCE ORDER REQUIREMENTS

Pursuant to the authority under Section 309(a) of the CWA, 33 U.S.C. 1319(a)(3), IT IS HEREBY AGREED THAT:

9. You must comply with the Warfield Restoration & Mitigation Plan by the end of

the Spring season in 2009 (or June 1, 2009) to:

A. Restore 3.84 acres of forested wetlands, as identified in Figure 3 of the attached Warfield Restoration and Mitigation Plan (Attachment 1), to their original condition and contours, and in accordance with the planting, monitoring, success criteria and reporting details included in the March 2009 Warfield Restoration and Mitigation Plan (Attachment 1);

B. Plant, maintain and protect a 60 foot or wider riparian corridor (as measured from each top of bank) along Little Graham Creek and two of its unnamed tributaries on your property as identified in Figure 3 of the Warfield Restoration and Mitigation Plan (Attachment 1); and

C. Legally protect with a conservation easement or equivalent legal instrument, in accordance with Indiana law, the restored 3.84 acre forested and shrub scrub wetland, the contiguous approximately 11.66 acres of existing forested wetland; 2.2 acres of the riparian corridor around the northern unnamed tributary and the estimated 13.76 acres of riparian corridor along Little Graham Creek and the southern tributary noted in paragraph 9B and as identified in the attached Warfield Restoration and Monitoring Plan – Figure 3 (Attachment 1). The conservation easement or equivalent legal instrument must contain a survey of these areas by a professional land surveyor registered or certified by the State of Indiana. The survey for the conservation easement or equivalent legal instrument must be completed prior to the completion of Site planting and must include Site monuments to locate the corners or outer boundary of the restoration area and the riparian corridors/filter strips.

10. On or before August 1, 2009, you must certify that you have restored the Site in

compliance with the Warfield Restoration & Mitigation Plan for the 3.84 acres of forested wetlands and approximately 13.76 acres of the riparian corridors/filter strips. Your certification must include photographs and/or videotape and "as built" drawings with planting information showing that you have completed the restoration activities throughout the Site's 3.84 acre forested wetland restoration area and planting activities throughout the Site's approximately 13.76 acres of riparian corridor/filter strip as identified in the attached Warfield Restoration and Mitigation diagram of the Site (Attachment 1).

11. On or before June 2010, Respondent must grant, through the conservation easement identified in 9C, a qualified party the right to protect the approximately 31.5 acres of forested wetland and riparian corridor (the "Easement Property") in its natural condition for preservation of the vegetative cover, wetlands values, habitat for fish and game, hydrology contributing to the Little Graham Creek Watershed and other ecosystem values suitable for the forested wetlands in their natural condition. Additionally, the conservation easement must be binding upon and inure to the benefit of the grantor and grantee and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Easement Property. Respondent shall provide proof of the conservation easement through a certified submittal to U.S. EPA on or before July 31, 2010. Consistent with the requirement to preserve the vegetative cover, wetlands values, habitat for fish and game, hydrology contributing to the Little Graham Creek Watershed and other ecosystem values suitable for the forested wetlands in their natural condition, the Respondent may harvest timber on the Easement Property as follows:

a) no timber may be harvested within 50 feet of any tributary to Little Graham Creek or Little Graham Creek; and

b) harvest must not exceed one cord of wood annually.

Respondent may also hunt game on the Easement Property in a manner consistent with the requirement to preserve the vegetative cover, wetlands values, habitat for fish and game, hydrology contributing to the Little Graham Creek Watershed and other ecosystem values suitable for the forested wetlands in their natural condition.

12. Respondents shall submit to U.S. EPA monitoring reports in Years 1, 3, 5 and 7 detailing implementation of the approved Warfield Restoration & Mitigation Plan beginning in 2009. Such annual reports (pursuant to the Warfield Restoration & Mitigation Plan) shall be due by the fifteenth day of October for Years 1, 3, 5 and 7 beginning on October 15, 2009. The biannual reports shall compare the progress of restoration and mitigation activities with the success criteria of the approved Warfield Restoration & Mitigation Plan.

13. Within 10 calendar days of completion of all obligations of this Order on Consent (including the restoration and mitigation activities), Respondents Lucille and Tom Warfield shall provide written certification to U.S. EPA that the terms of the Order on Consent have been implemented.

14. Send your certified submittals required by paragraphs **10-13,** of this Order to U.S. EPA, the Corps and IDEM at these addresses:

Greg Carlson (WW-16J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

Jason Randolph
IDEM Wetlands Program
100 N. Senate Avenue
MC65-42 WQS, IGCN Room 1255
Indianapolis, IN 46204

Jane Archer, Project Manager
U. S. Army Corps of Engineers
OP-FS, ROOM 752
P.O. BOX 59
LOUISVILLE, KY 40201-0059

15. U.S. EPA may use the information you submit for an administrative, civil, or criminal action.

16. Neither U.S. EPA's issuance of this Order on Consent, nor your compliance with it affects your obligation to comply with the Act, or any other federal statute or regulation, state law, or local or municipal ordinance.

17. Neither U.S. EPA's issuance of this Order on Consent, nor your compliance with it, relieves you of liability for any penalty, remedy or sanction under Section 309(b), (c), or (g) of the Act, 33 U.S.C. § 1319(b),(c) or (g), for any violation of the Act.

18. If you violate any terms of this Order on Consent, U.S. EPA may take further enforcement action under Section 309 of the Act, including seeking administrative penalties, civil injunctive relief and penalties, and criminal sanctions. Specifically, U.S. EPA may assess civil administrative penalties of $11,000.00 per day of violation, up to a maximum of $157,500.00 or civil judicial penalties of $27,500.00 per day of violation and civil injunctive relief under 33 U.S.C. §§ 1319(b) or 1319(g), as increased by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 and 40 C.F.R. Part 19. U.S. EPA may seek criminal sanctions, including fines and imprisonment, for negligent or

knowing violations of the CWA under 33 U.S.C. § 1319(c). Respondents expressly waive their right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.

19. This Order on Consent is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information from specific individuals or entities as part of an administrative action.

Dated: July 7, 09

Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection Agency, Region 5

For Respondents Lucille and Thomas Warfield:

Dated: 6/16/09

Lucille Warfield

Lucille Warfield

Dated: 6/16/09

Thomas Warfield

Thomas Warfield

Attachment 1
Restoration & Mitigation Plan

WARFIELD FARM
RESTORATION AND MITIGATION PLAN
RIPLEY COUNTY, INDIANA

March 20, 2009

Submitted to:

U.S. - E.P.A. (WW – 16J)
77 West Jackson Blvd.
Chicago, Illinois 60604

In Reference to:

U.S. - E.P.A. Docket Number V-404-AO-08-04

On behalf of:

Lucille and Thomas Warfield
4027 S. US 421
Versailles, IN 47042

By:

J. F. New and Associates, Inc.
708 Roosevelt Road
Walkerton, Indiana 46574

WARFIELD FARM
RESTORATION AND MITIGATION PLAN
RIPLEY COUNTY, INDIANA

I. Existing Physical Conditions

Approximately 22 acres of land was cleared for farming during 2004 on the property of Thomas Warfield, 4027 S. US 421 Versailles, Indiana (Figure 1). The 22 acres was cleared of sapling trees and underbrush that had been allowed to grow since farming was suspended in the late 1970's. While the soils map indicates that this 22-acres contains hydric soils (Cobbsfork silt loam), the property had been actively farmed and the drainage maintained using an evenly spaced system of dead furrows which channeled the water off the Cobbsfork plateau and surface drained it onto the well-sloped and non-hydric Avonburg soils (Figure 2). The furrow system of drainage was documented within a 1999 wetland determination on the parcel by JFNew, and is visible in the 1998 aerial. There is no direct connection between the Cobbsfork soils on the plateau and Graham Creek which lies in a valley beyond the Avonburg soils.

Based upon samples taken in an adjacent Forested Wetland reference site, wetland delineations completed by the US Department of Agriculture-Natural Resources Conservation Service and J. F. New and Associates, Inc and discussions with Max Evans (Former NRCS employee), the United States Environmental Protection Agency (USEPA) believes that there is a violation of the Federal Water Pollution Control Act and requests that Warfield perform restoration and mitigation to settle. Although Warfield maintains that the 22 acre field is isolated and that no wetlands under federal jurisdiction were impacted by the clearing activity, he is willing to provide the following restoration and mitigation in order to settle all alleged violations with the USEPA, US Army Corps of Engineers, and the Indiana Department of Environmental Management.

In addition to the 22 acres that was recently cleared, an additional 15-20 acres of the non-hydric Avonburg soils and approximately 10 acres of non-hydric Holton soils have been actively farmed since 1999. The Holton soils are immediately adjacent to Graham Creek and its intermittent tributaries. Until 2004, the Warfield's were involved in the USDA Conservation Reserve Program (CRP) which included a filter strip along Graham Creek. That filter strip was eliminated and subsequently farmed when the Warfield's withdrew from farm program participation in 2004.

III. Monitoring, Success Criteria, and Remedial Action

The monitoring will commence the summer following planting. The monitoring inspections will observe the following guidelines:

- Five randomly located, 30-foot diameter plots will be established within the restoration and mitigation areas. Two plots will be established in the restoration area and three plots within the riparian planted areas- one within each tributary's planted riparian corridor during the first year.
- Within each plot, all trees (including volunteers) will be counted and identified to species.
- Each tree counted will be identified as to whether it is healthy and growing, has tip dieback, is basal sprouting, or is dead.
- The total number of living trees and shrubs within each of the 4 distinct restoration and mitigation areas will be calculated and that number used to estimate the total number of living trees and shrubs in each of the one (1) restoration and three (3) riparian corridors, separately.
- A 1-meter quadrat will be randomly located within each of the 5 plots and an estimate of total percent ground cover made for each plot along with a species list.
- The ground cover percentage for each of the five plots will be averaged together to develop an estimate of the mitigation area ground cover.

A report based on the results of each monitoring inspection will be filed with the USEPA by October 15th for of each monitoring year. This report will include:

- USEPA, ACOE, and IDEM identification numbers.
- Discussion of methods or means used to determine compliance with the success criteria.
- Discussion of tree survival, ground cover species, and percent ground cover.
- Each year's data will be compared to previous year's data as it becomes available.
- Photographs from the same direction and location at each monitoring station.
- Identification of any problems with meeting the success criteria.
- Recommendations for correcting any problems identified.

The mitigation area will be monitored for up to seven (7) years. One inspection will be performed every other year between May and September for a total of 4 inspections (Year 1, 3, 5 and 7). If the success criteria have been met after the final inspection, the project will be released from further inspections. Monitoring will automatically cease after the seventh year unless success criteria have not been met. If success criteria have not been met by the second inspection then remedial actions will be taken.

The following are the success criteria set forth for the mitigation area. A failure to meet these criteria will result in the need for remedial actions that may include supplemental plantings, removal or control of aggressive species, or additional earthwork.

II. Proposed Physical Conditions

An area comprising approximately 31.46 acres of the subject property shall serve as the mitigation. Warfield will preserve 11.66 acres of flatwoods and an adjacent and contiguous 2.2 acres of forested buffer as shown in Figure 3. Additionally, Warfield will restore 17.6 acres of riparian buffer and flatwoods adjacent to the preserved flatwoods and Little Graham Creek (Figure 3). Warfield shall place the preserved area, riparian buffers and the restored area in a permanent Conservation Easement in return for resolving the alleged violation and being allowed to farm the remainder of cleared ground (Figure 3). The approximately 3.84 acre flatwoods restoration and the 13.76 acres of riparian buffer will be planted at a density of 400 trees and shrubs per acre from the following list of species:

Scientific Name	Common Name
Acer rubrum	Red maple
**Carya laciniosa*	Shellbark Hickory
Cercis canadensis	Redbud
Cornus florida	Flowering dogwood
**Liquidambar styraciflua*	Sweet Gum
Liriodendron tulipifera	Tulip Tree
**Platanus occidentalis*	American Sycamore
Quercus alba	White Oak
Quercus macrocarpa	Burr Oak
**Quercus bicolor*	Swamp White Oak
Quercus imbricaria	Shingle Oak
Aralia spinosa	Hercules Club
Asimina triloba	Paw Paw
Cornus foemina	silky dogwood

Note: Shrubs shall be 15% of the entire planting. Trees and shrubs shall be bare root stock with a minimum height of 18 inches and a minimum stem diameter of ¼ inch. Installation shall be by hand or machine planted.
**These species shall be concentrated in the wetter areas of the site.*

Seeding shall occur only after any existing non-native species cover (fescue) has been treated with an appropriate herbicide. The following grass species will be seeded as an under story mix and ground cover:

Scientific Name	Common Name	Amount per acre (lbs)
Elymus virginicus	Virginia wild rye	2.0
Panicum virgatum	Switch grass	1.0
Schizachyrium scoparium	Little bluestem	2.0
Sorghastrum nutans	Indian grass	2.0
Solidago rugosa	Golden-rod	0.05
Aster novae-angliae	New England aster	0.05
Zizia aurea	Golden Alexander	0.05
Campanula americana	Tall Bell Flower	0.05

- Tree survival, including volunteers, must be 75 percent of the original planting at the end of the monitoring period.
- The herbaceous vegetation layer under the developing tree canopy must have a total percent cover of at least 75% excluding the area of stream below the OHWM.
- No more than seven percent of the mitigation area will consist of reed canary grass or Canada thistle and less than one percent of the mitigation area will contain purple loosestrife or common reed.
- The total area of establishing flatwoods and forest riparian buffers shall be a minimum of 17.6 acres (3.84 acres of flatwoods plus 13.76 acres riparian buffer).
- The forested riparian corridor must be free of all individual trees of the following species: Elaeagnus umbellate (autumn olive), Elaeagnus angustifolia (russian olive), Rosa multiflora (multiflora rose), and Lonicera maackii, L. morrowii, L. tatarica (honeysuckles).

If success criteria are not met by the second inspection the following actions will occur:

- Less than 75 percent tree survival - plant additional trees equal to 100 percent survival. The trees and shrubs shall be the same size or larger then 18 inches in height and ¼ inches in diameter at the root collar.
- Herbaceous layer not at 75 percent cover – rake or no-till drill additional seed mix into bare areas throughout mitigation area.
- Aggressive species exceed required percent of total mitigation area – implement a program to eliminate problem species (herbicide, hand pulling, or mowing).

IV. Schedule

The following schedule for restoration will be adhered to and is based on a final acceptance of this restoration and mitigation plan by the USEPA, USACOE, and IDEM.

1) Within the first spring following the mitigation plan approval the planting of the mitigation area will commence.
2) Monitoring of the site will commence during the summer/fall in the first year of planting and a report submitted to USEPA, USACOE, and IDEM by October 15th of the same year.
3) Monitoring will be repeated in year 3, year 5, and year 7 and a report will be submitted to USEPA by October 15th each year.

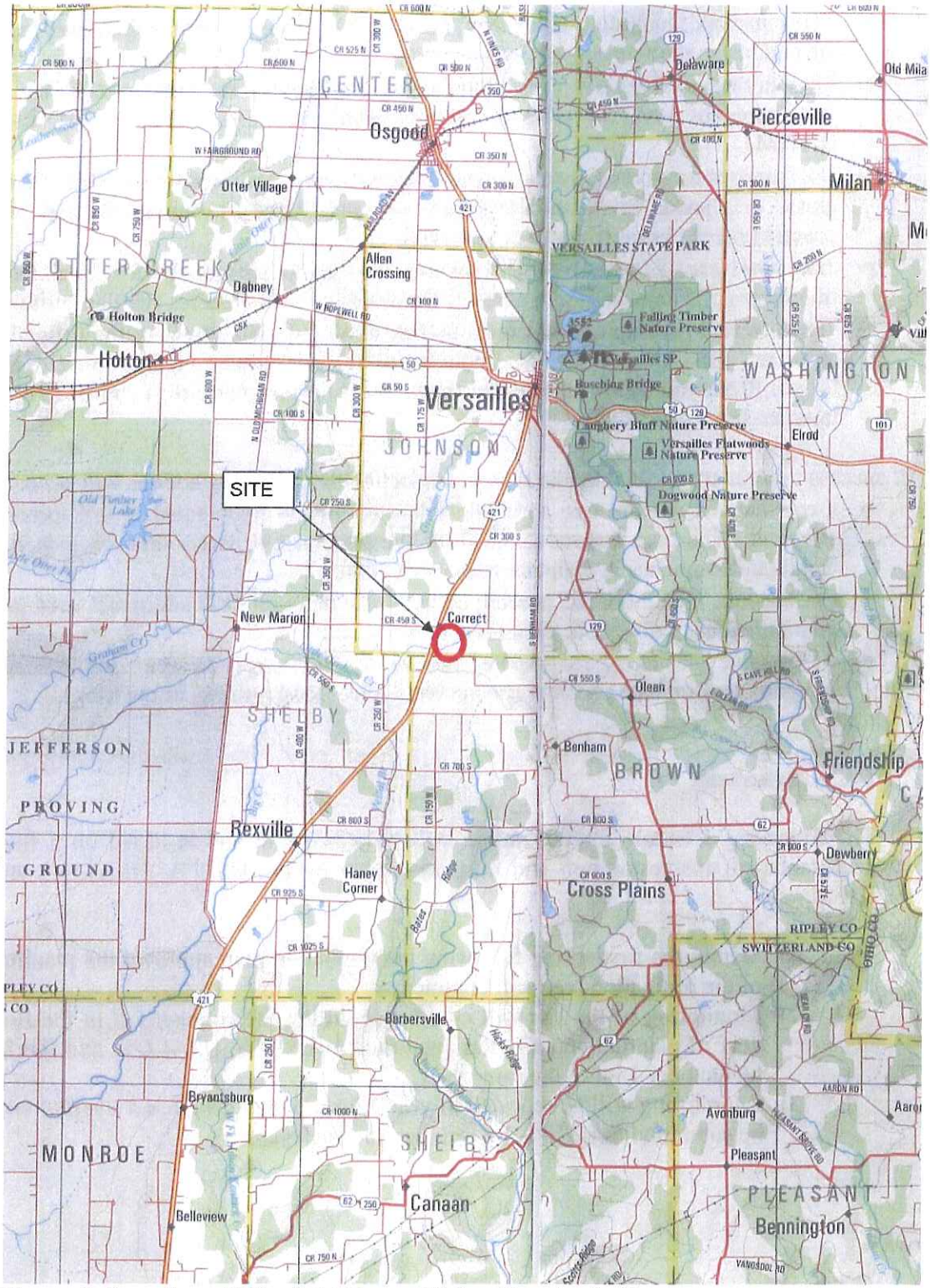

Figure 1: Location of Warfield Farm, Ripley County, Indiana

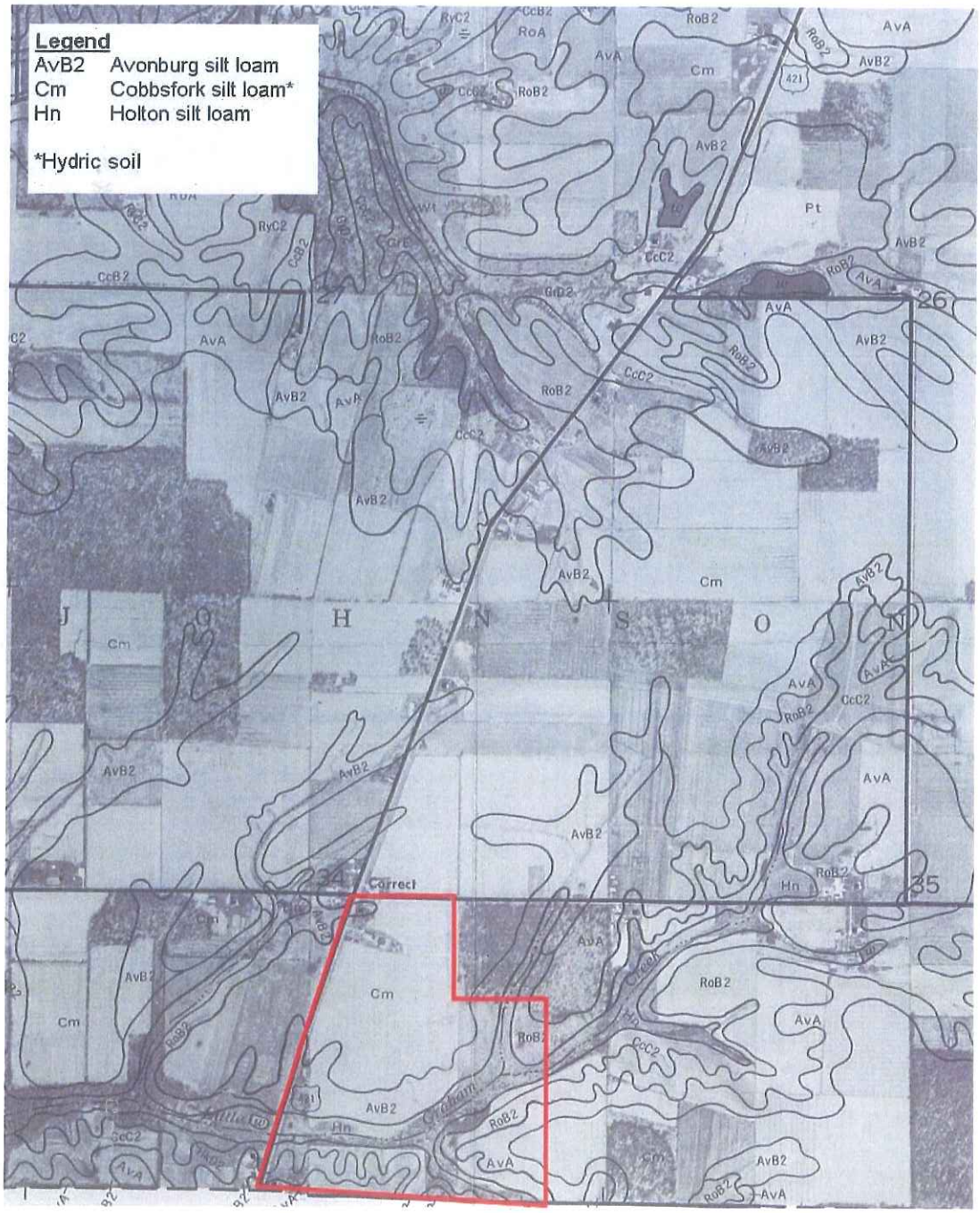

Figure 2: Soils map of Warfield Farm, Ripley County, Indiana

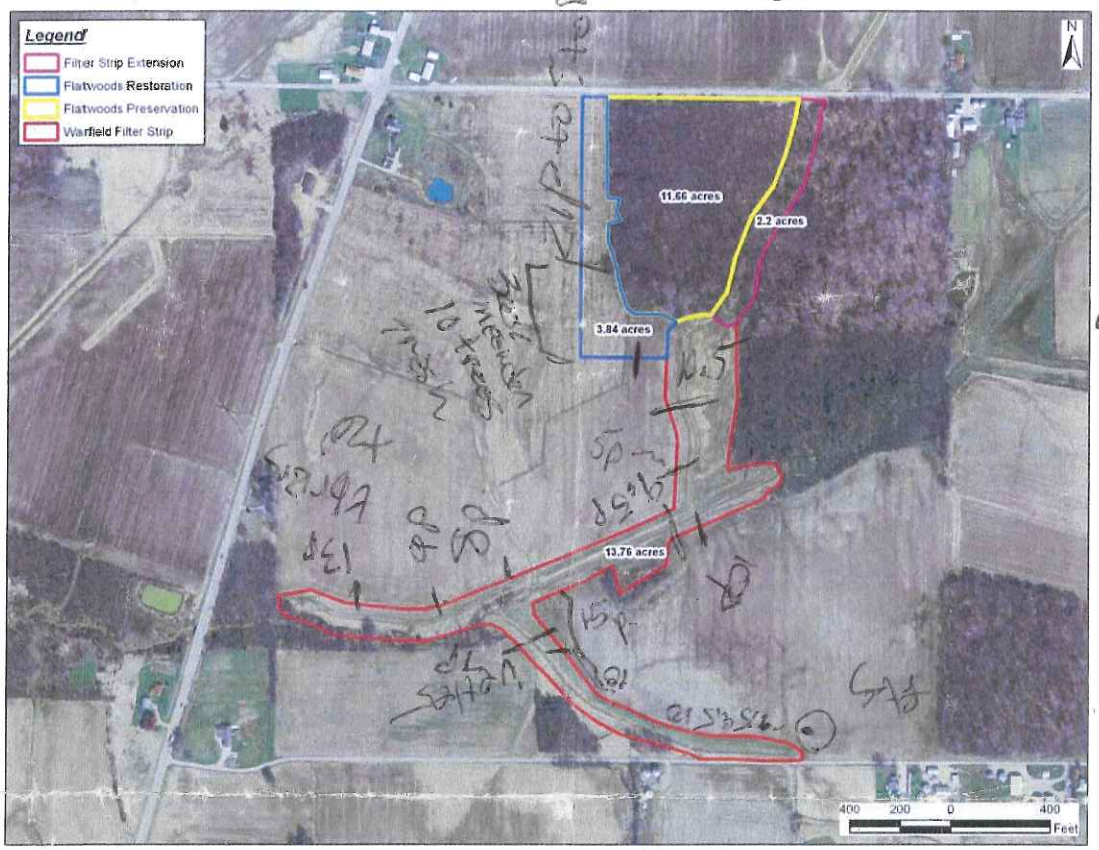

Figure 3. Proposed 31.46 acre mitigation on Lucille and Thomas Warfield property, Ripley County, Indiana. Scale: 1=500 feet.