

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 06-0790 C

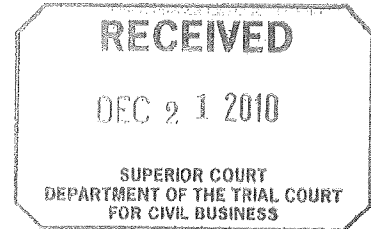
COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant.



**JOINT MOTION BY THE PARTIES TO FILE A REVISED EXHIBIT 2 TO THE FINAL CAD APPENDED TO THE SETTLEMENT AGREEMENT, A NEW EXHIBIT TO APPENDIX A OF THE SETTLEMENT AGREEMENT, AND TO REVISE TWO PARAGRAPHS IN THE FINAL JUDGMENT**

Pursuant to paragraph 39 of the settlement (“Settlement Agreement”) entered along with the Final Judgment ordered on April 30, 2009 by the Court in this action, the Commonwealth of Massachusetts (the “Commonwealth”) and defendant New Ventures Associates, LLC (“New Ventures”) hereby jointly move that this Court allow the filing of technical revisions to Corrective Action Design Plan Sheets (the “Revised Plan Sheets”) attached as Exhibit A to the Crow Lane landfill Final Corrective Action Design Plan (“Final CAD”) appended to the Settlement Agreement. In addition, the parties jointly move to add a new Exhibit 3, “Landfill Berm Construction, Wetlands Restoration and Replication Requirements and Protocol,” to Appendix A of the Settlement Agreement. Finally, the parties jointly move that the Court allow a revision to paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment, and the addition of new language to paragraph 27 of the Settlement Agreement and Final Judgment.

In support of this joint motion, the parties state that these plan sheet revisions became

necessary because New Ventures proposed to improve and simplify construction of a portion of the landfill berm by reducing the height of the berm along Crow Lane, shortening the length of the landfill access road and eliminating the MSE Berm. As part of this design revision, New Ventures proposed to extend placement of the flexible membrane liner (“FML”) cap through the drainage channel along the inside edge of the berm in order to improve storm water control. The Massachusetts Department of Environmental Protection (“MassDEP”) approved these design improvements, and the revisions are incorporated in fourteen (14) oversized Revised Plan Sheets that replace the original design plan sheets attached as Exhibit A to the Final CAD in the Settlement Agreement. In addition, MassDEP approved a new Technical Specifications and Construction Quality Assurance Plan (“CQA Plan”), which replaces the Construction Quality Assurance Plan attached to the Final CAD, as well as a slope stability analysis by McPhail Associates dated October 26, 2010, which includes a plan for monitoring berm slope stability. Thus, the parties respectfully move that the Court allow this joint motion to replace Exhibit A to the Final CAD with the newly revised Exhibit A submitted with this motion, consisting of the fourteen (14) Revised Plan Sheets and a new “Index of Plan Sheets” cover sheet, the replacement of the current Construction Quality Assurance Plan attached to the Final CAD with the attached CQA Plan, and the attachment of the October 26, 2010 McPhail slope stability analysis as a new Exhibit 2 to Appendix A of the Settlement Agreement.

Because these berm design improvements involved some impact to the wetlands adjacent to the north and west side of the Landfill, the parties also jointly move to add a “Landfill Berm Construction, Wetlands Restoration and Replication Requirements and Protocol,” as a new Exhibit 3 to Appendix A of the Settlement Agreement. This Exhibit 3, attached, is necessary in

order to establish requirements, criteria, construction protocols and deadlines for installation of the sand drainage layer and placement of the loam and seed on top of the FML and construction and monitoring of wetlands restoration and replications areas.

Because of these berm design revisions, the parties also jointly move to extend the performance deadline for sand drainage layer construction and loam and seed placement for the Phase I and Phase II Areas of the landfill required by paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment, and to set a deadline for New Ventures' submission for MassDEP approval of a final design plan for storm water basin 1. This extension is required because the FML must be extended through the drainage channel along the inside edge of the berm on the northern and eastern sides of the Phase I Area prior to placement of the sand drainage and loam and seed layers, which work must now wait until next spring. The attached Addendum modifies paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment by requiring that New Ventures shall:

- (d) (i) by no later than two (2) years and thirty (30) days after entry of Final Judgment, complete construction of the sand drainage layer and the placement of loam and seed over the FML cap installed and in place in the areas identified as Phase I and Phase II in the Landfill Closure Phase Plan in accordance with the requirements in the Final CAD;
- (ii) by no later than December 31, 2010, submit for Department review and approval a revised design plan for the completion of storm water basin 1 that includes, but is not limited to, design revisions necessitated by the creation of the sump in the western portion of storm water basin 1 by the prior removal of bedrock. The revised design plan shall include the final design details, specifications, and CQA requirements for storm water basin 1. The revised design plan shall also include the final storm water calculations documenting that the revised design meets the performance standards, including, but not limited to, management of the 100 year storm and the requirements for the discharge of storm water to the vernal pool and the wetlands adjacent to the western end of the Landfill. In demonstrating that the revised design plan meets the performance standards, New Ventures shall utilize either a conservative estimate of the

dimensions of the basin sump or an actual topographic survey of the basin. The revised design plan shall also include the revision of Sheet 3 of the Final CAD to reflect the removal of the head wall from the detail for the Culvert Crossing to storm water basin 1 as shown on Sheet 7 of the Final CAD; the detail for the access road both at the culvert and within the Landfill; and the detail for the energy dissipater at the outfall of storm water basin 1;

(iii) by no later than December 31, 2010, submit for Department review and approval a protocol for a supervised and managed blasting program for completing the removal of bedrock within the remaining area of storm water basin 1 to the approved design elevation of 44.5 feet. The protocol shall meet the requirement set forth in Exhibit 2 to Appendix F of the Settlement Agreement.

Loam placement and seeding of the entire landfill will take place when weather permits next spring.

Finally, the parties jointly move to amend the language in paragraph 27 of the Settlement Agreement and Final Judgment by replacing the current paragraph 27 with the following:

27. The Department and its contractors shall have the right to access the Site at any time and without notice to: respond to odor complaints; conduct inspections; take air quality readings, leachate samples, or other samples; secure the continued installation and full operation of the LFG Pretreatment System in the event that the LFG Pretreatment System has been removed, disabled, or otherwise fails, or if New Ventures has abandoned or stopped operating the LFG Pretreatment System; secure the continued installation and full operation of the enclosed flare, including, without limitation, all piping, gas collection systems, propane tanks, and other components required to operate the enclosed flare; secure the continued construction, completion, stability, integrity, and/or construction monitoring of the Landfill perimeter berm in accordance and compliance with the requirements of the Final CAD in the event that New Ventures has stopped and refused to resume or abandoned any construction or post-construction monitoring required by the Final Judgment and Final CAD for any portion of the Landfill perimeter berm; secure the continued construction, completion and functioning of storm water basin 1 and any discharge structures related to storm water basin 1 in accordance and compliance with the requirements of the Final CAD in the event

that NVLLC has stopped and refused to resume or abandoned any construction of storm water basin 1 or any of its related discharge structures; and otherwise inspect the Site or monitor activity to ensure compliance with all terms, conditions, and requirements of this Final Judgment and the Settlement Agreement, as well as with any other applicable administrative enforcement orders issued by the Department. The Department and its contractors shall have the right to access the Site at any time and without notice to take actions necessary to control leachate releases, pump leachate tanks, remove leachate released to wetlands, and otherwise correct any leachate management violations if New Ventures has not returned to full compliance with the leachate management requirements of Appendix E to the Settlement Agreement, Leachate Control Plan, within seventy-two (72) hours of notice from the Department. The Department and its contractors shall also, within seventy-two (72) hours of notice by the Department, have the right to access the Site at any time to take actions necessary to: (i) assure that the landfill gas system, including, without limitation, the LFG Pre-treatment System, the enclosed flare, and gas collection system, is operating in full compliance with the performance standards in Appendix B to the Settlement Agreement; (ii) patch, repair, or extrusion weld any FML rips, tears, seam openings or other damage; (iii) cover, patch, or otherwise mitigate any breakouts of hydrogen sulfide or other Landfill gases from the Landfill surface; or (iv) place cover over Active or Inactive Areas of the Landfill in order to assure compliance with the requirements of Sections B and C of Appendix C to the Settlement Agreement, Landfill Cover Protocol. The Department also retains all rights of access to the Site under applicable state and federal law.

The Commonwealth and New Ventures state that this joint motion is in the public interest and should be allowed because it will ensure final capping and closure of the Crow Lane landfill in accordance with the Final CAD approved by MassDEP.

WHEREFORE, the parties respectfully request that this Court allow this joint motion and amend the Settlement Agreement by replacing the original Exhibit A to the Final CAD with the new Exhibit A consisting of fourteen (14) Revised Plan Sheets and a new Index of Sheets. In

addition, the parties jointly move to add a new Exhibit 2 and Exhibit 3 to Appendix A of the Settlement Agreement in the form attached to the Addendum to this motion. Finally, the parties also request that the Court allow this motion and replace paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment and replace paragraph 27 of the Settlement Agreement and Final Judgment with the new language quoted above and appended to this motion.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS      NEW VENTURES ASSOCIATES LLC

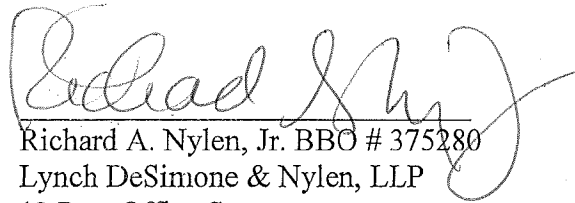
MARTHA COAKLEY  
ATTORNEYGENERAL,

By its Counsel

By:



Matthew C. Ireland, BBO # 554868  
Assistant Attorney General  
Environmental Protection Division  
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617-727-2200, ex. 2434



Richard A. Nylan, Jr. BBO # 375280  
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12 Post Office Square  
Boston, Massachusetts 02109  
617-348-4500

Dated: December 21, 2010

## ADDENDUM

The Court's Order allowing the foregoing joint motion to amend the Settlement Agreement and Final Judgment entered by the Court on April 30, 2009 in this action, *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, Suffolk Superior Court, C.A. No. 06-0790 C, replaces the Paragraph 11 (d) of the Settlement Agreement and paragraph 12 (d) of the Final Judgment with the following replacement language:

### Settlement Agreement:

11. (d) (i) by no later than two (2) years and thirty (30) days after entry of Final Judgment, complete construction of the sand drainage layer and the placement of loam and seed over the FML cap installed and in place in the areas identified as Phase I and Phase II in the Landfill Closure Phase Plan in accordance with the requirements in the Final CAD;
- (ii) by no later than December 31, 2010, submit for Department review and approval a revised design plan for the completion of storm water basin 1 that includes, but is not limited to, design revisions necessitated by the creation of the sump in the western portion of storm water basin 1 by the prior removal of bedrock. The revised design plan shall include the final design details, specifications, and CQA requirements for storm water basin 1. The revised design plan shall also include the final storm water calculations documenting that the revised design meets the performance standards, including, but not limited to, management of the 100 year storm and the requirements for the discharge of storm water to the vernal pool and the wetlands adjacent to the western end of the Landfill. In demonstrating that the revised design plan meets the performance standards, New Ventures shall utilize either a conservative estimate of the dimensions of the basin sump or an actual topographic survey of the basin. The revised design plan shall also include the revision of Sheet 3 of the Final CAD to reflect the removal of the head wall from the detail for the Culvert Crossing to storm water basin 1 as shown on Sheet 7 of the Final CAD, the detail for the access road both at the culvert and within the Landfill, and the detail for the energy dissipater at the outfall of storm water basin 1;
- (iii) by no later than December 31, 2010, submit for Department review and approval a protocol for a supervised and managed blasting program for completing the removal of bedrock within the remaining area of storm water basin 1 to the approved design elevation of 44.5 feet. The protocol shall meet the

requirement set forth in Exhibit 2 to Appendix F of the Settlement Agreement.

**Final Judgment:**

12. (d) (i) by no later than two (2) years and thirty (30) days after entry of Final Judgment, complete construction of the sand drainage layer and the placement of loam and seed over the FML cap installed and in place in the areas identified as Phase I and Phase II in the Landfill Closure Phase Plan in accordance with the requirements in the Final CAD;
- (ii) by no later than December 31, 2010, submit for Department review and approval a revised design plan for the completion of storm water basin 1 that includes, but is not limited to, design revisions necessitated by the creation of the sump in the western portion of storm water basin 1 by the prior removal of bedrock. The revised design plan shall include the final design details, specifications, and CQA requirements for storm water basin 1. The revised design plan shall also include the final storm water calculations documenting that the revised design meets the performance standards, including, but not limited to, management of the 100 year storm and the requirements for the discharge of storm water to the vernal pool and the wetlands adjacent to the western end of the Landfill. In demonstrating that the revised design plan meets the performance standards, New Ventures shall utilize either a conservative estimate of the dimensions of the basin sump or an actual topographic survey of the basin. The revised design plan shall also include the revision of Sheet 3 of the Final CAD to reflect the removal of the head wall from the detail for the Culvert Crossing to storm water basin 1 as shown on Sheet 7 of the Final CAD, the detail for the access road both at the culvert and within the Landfill, and the detail for the energy dissipater at the outfall of storm water basin 1;
- (iii) by no later than December 31, 2010, submit for Department review and approval a protocol for a supervised and managed blasting program for completing the removal of bedrock within the remaining area of storm water basin 1 to the approved design elevation of 44.5 feet. The protocol shall meet the requirement set forth in Exhibit 2 to Appendix F of the Settlement Agreement.

In addition, the Court's order allowing the parties' foregoing joint motion to amend replaces Paragraph 27 of the Settlement Agreement and Final Judgment with the following replacement language:

27. The Department and its contractors shall have the right to access the Site at any time and without notice to: respond to odor complaints; conduct inspections;

take air quality readings, leachate samples, or other samples; secure the continued installation and full operation of the LFG Pretreatment System in the event that the LFG Pretreatment System has been removed, disabled, or otherwise fails, or if New Ventures has abandoned or stopped operating the LFG Pretreatment System; secure the continued installation and full operation of the enclosed flare, including, without limitation, all piping, gas collection systems, propane tanks, and other components required to operate the enclosed flare; secure the continued construction, completion, stability, integrity, and/or construction monitoring of the Landfill perimeter berm in accordance and compliance with the requirements of the Final CAD in the event that New Ventures has stopped and refused to resume or abandoned any construction or post-construction monitoring required by the Final Judgment and Final CAD for any portion of the Landfill perimeter berm; secure the continued construction, completion and functioning of storm water basin 1 and any discharge structures related to storm water basin 1 in accordance and compliance with the requirements of the Final CAD in the event that NVLLC has stopped and refused to resume or abandoned any construction of storm water basin 1 or any of its related discharge structures; and otherwise inspect the Site or monitor activity to ensure compliance with all terms, conditions, and requirements of this Final Judgment and the Settlement Agreement, as well as with any other applicable administrative enforcement orders issued by the Department. The Department and its contractors shall have the right to access the Site at any time and without notice to take actions necessary to control leachate releases, pump leachate tanks, remove leachate released to wetlands, and otherwise correct any leachate management violations if New Ventures has not returned to full compliance with the leachate management requirements of Appendix E to the Settlement Agreement, Leachate Control Plan, within seventy-two (72) hours of notice from the Department. The Department and its contractors shall also, within seventy-two (72) hours of notice by the Department, have the right to access the Site at any time to take actions necessary to: (i) assure that the landfill gas system, including, without limitation, the LFG Pre-treatment System, the enclosed flare, and gas collection system, is operating in full compliance with the performance standards in Appendix B to the Settlement Agreement; (ii) patch, repair, or extrusion weld any FML rips, tears, seam openings or other damage; (iii) cover, patch, or otherwise mitigate any breakouts of hydrogen sulfide or other Landfill gases from the Landfill surface; or (iv) place cover over Active or Inactive Areas of the Landfill in order to assure compliance with the requirements of Sections B and C of Appendix C to the Settlement Agreement, Landfill Cover Protocol. The Department also retains all rights of access to the Site under applicable state and federal law.

The Court's order allowing the parties' joint motion to amend also adds the following new Exhibit 2 and Exhibit 3 to Appendix A of the Settlement Agreement:

**EXHIBIT 2**

**OCTOBER 28, 2010 LANDFILL SLOPE STABILITY ANALYSIS BY McPHAIL ASSOCIATES**

**Attached as EXHIBIT 2:**

**to:**

**APPENDIX A: PERIMETER BERM GEOTECHNICAL INVESTIGATION PROTOCOL**

This Landfill Slope Stability Analysis performed by McPhail Associates Berm, dated October 28, 2010, is attached as Exhibit 2 and incorporated by reference into Appendix A of the Settlement Agreement executed on April 30, 2009 and filed together with the Final Judgment in *Commonwealth v. New Ventures Associates, LLC*, Suffolk Superior Court C.A. No. 2006-00790, as amended by Orders of the Court on May 13 and 27, 2009 and October 7, 2009 (“Final Judgment”).

**EXHIBIT 2**

**OCTOBER 28, 2010 LANDFILL SLOPE STABILITY ANALYSIS BY McPHAIL**

**ASSOCIATES**

**Attached as EXHIBIT 2:**

**to:**

**APPENDIX A: PERIMETER BERM GEOTECHNICAL INVESTIGATION**

**PROTOCOL**

This Landfill Slope Stability Analysis performed by McPhail Associates Berm, dated October 28, 2010, is attached as Exhibit 2 and incorporated by reference into Appendix A of the Settlement Agreement executed on April 30, 2009 and filed together with the Final Judgment in *Commonwealth v. New Ventures Associates, LLC*, Suffolk Superior Court C.A. No. 2006-00790, as amended by Orders of the Court on May 13 and 27, 2009 and October 7, 2009 (“Final Judgment”).



Geotechnical Engineers

September 28, 2010

New Ventures Associates, LLC  
85-87 Boston Street  
Everett, MA 02149

Attention: Messrs. William Thibeault and Steven Trettel

Reference: Crow Lane Landfill Corrective Action Design; Newburyport, Massachusetts  
Summary of Slope Stability Analysis Performed for Concept C Revised Grading

Messrs. William Thibeault and Steven Trettel:

This letter documents the results of our slope stability analysis associated with the proposed revised site grading as a result of the elimination of the mechanically stabilized earth (MSE) wall that was to be constructed as part of the corrective action design for the Crow Lane Landfill located in Newburyport, Massachusetts.

The current proposed corrective action design (Concept C) includes the construction of a 2 horizontal (h) to 1 vertical (v) berm in front of the existing berm. The top of the 2 h to 1 v berm would be at approximately Elevation +86.5. In addition to the proposed landfill cap, portions of the existing landfill above Elevation +86.5 would be flattened to an approximate 3 h to 1 v slope by adding soil.

The existing and proposed berm geometries at Section A-A were obtained from site plans provided by SITEC on September 2, 2010. The soil properties utilized in the slope stability analyses are the same as those utilized in our previous analyses included in our June 10, 2010 letter.

The two-dimensional slope stability computer program SLIDE developed by Rocscience, Inc. was utilized to compute the factor of safety (FS) for existing and proposed conditions. The Bishop Simplified and Spencer Methods of determining the FS were utilized. The results of our slope stability analyses are attached herein in Appendix A.

In accordance with US EPA guidelines for the design of land disposal facilities, developed under RCRA Subtitle D, a FS greater than or equal to 1.25 is considered acceptable for slope stability analyses during construction when site specific soil properties are available. We understand that according to the settlement agreement of April 2009, the required minimum factor of safety is 1.3. The computed minimum factor of safety for the existing conditions is 1.3. The computed minimum factor of safety for the proposed conditions is also 1.3. Therefore, based on our slope stability analyses, construction of the 2 h to 1 v berm will not significantly change the factor of safety against slope failure from the existing conditions. The proposed berm can be constructed immediately without further laboratory soil testing or instrumentation because the proposed earthen berm geometry in Concept C does not decrease the factor of safety against slope failure from that of the existing conditions.

In the event that any changes in nature, design or location of the proposed berm are planned the conclusions and recommendations contained herein should not be considered valid unless the changes are reviewed and conclusions of this letter modified or verified in writing.



Geotechnical Engineers

New Ventures Associates, LLC  
September 28, 2010  
Page 2

We trust that the above is sufficient for your present requirements. Should you have any questions concerning the recommendations presented herein, please do not hesitate to call us.

Very truly yours,

McPHAIL ASSOCIATES, INC.

Jonathan W. Patch, P.E.

Chris M. Erikson, P.E.

Chris M. Erikson, P.E.

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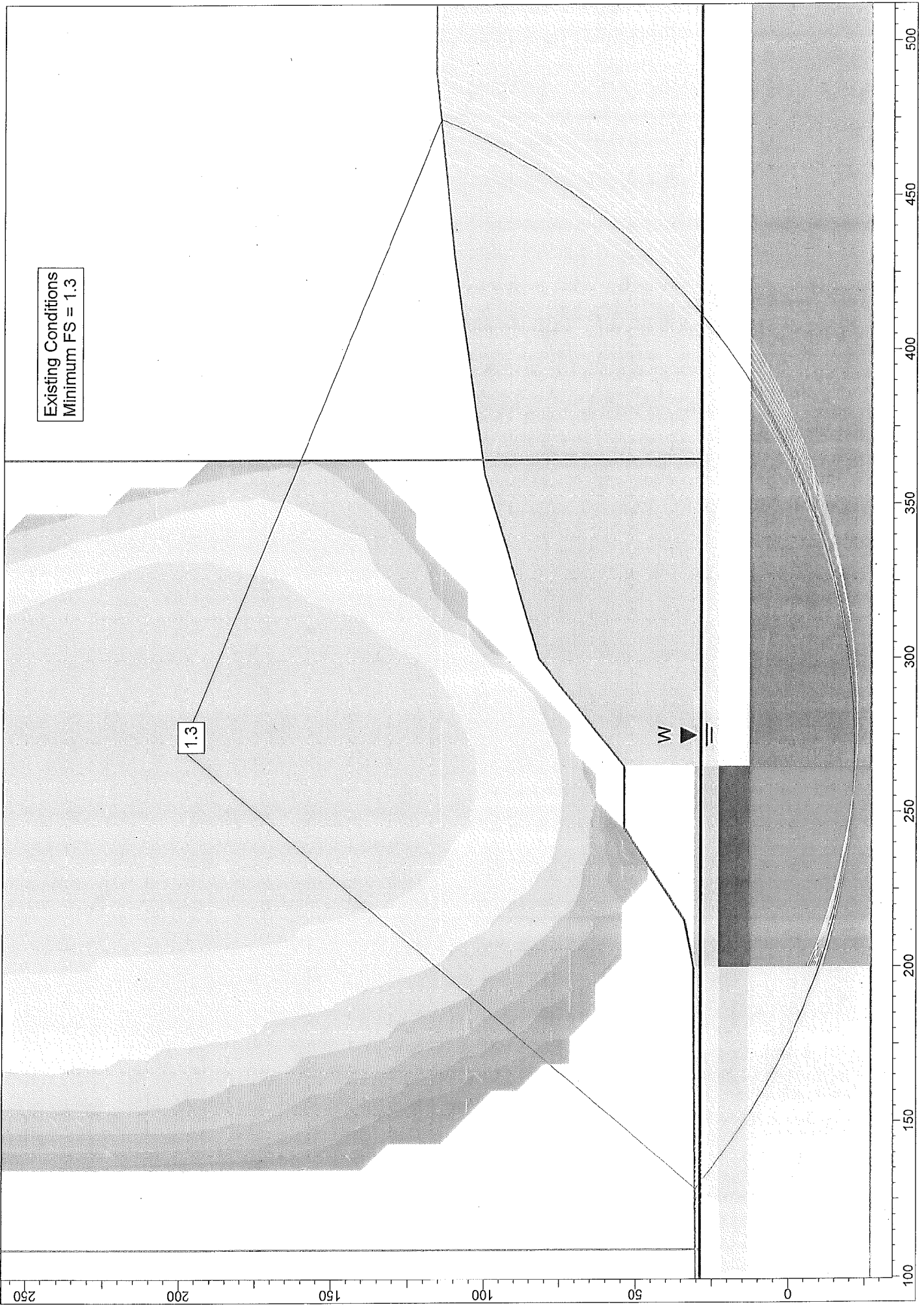
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Geotechnical Engineers

**APPENDIX A**

Slope Stability Analyses Performed by McPhail Associates, Inc.



Existing Conditions  
Minimum FS = 1.3

1.3

W

250 200 150 100 50 0 100 150 200 250 300 350 400 450 500

