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- Counsel for Owner/Operator

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

**IN THE MATTER OF THE BOND FORFEITURE            )**  
**QUALITY LANDSCAPE AND NURSERY, INC.            )**         **Docket No. 22-4503**  
**LMO ET1496                                                    )**

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**NOTICE OF APPEAL AND PETITION FOR HEARING ON BEHALF OF  
QUALITY LANDSCAPE AND NURSERY, INC.**

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Quality Landscape & Nursery, Inc. (“QLN” or “Petitioner<sup>1</sup>”), hereby appeals the following Notices of Violation (“NOV”)<sup>2</sup> issued by the State of Wyoming, Department of Environmental Quality (“WDEQ”), resulting in the issuance of the Notice of Proposed Bond Forfeiture by WDEQ dated March 8, 2023.

<b>NOV Docket No.</b>	<b>Date of Issuance</b>
5970-19	September 20, 2019
6176-22	August 12, 2022
6183-22	October 17, 2022

Petitioner requests a hearing pursuant to the Environmental Quality Act, Wyo. Stat. § 35-11-101, *et seq.*; the Administrative Procedures Act; the Environmental Quality Council’s (“EQC”) Rules of Practice and Procedure; and the Rules and Regulations, Department of Environmental Quality, Chapter 2, Section 4. In support of this appeal, Petitioner advises the EQC as follows:

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<sup>1</sup> In this bond forfeiture proceeding, Petitioner is Quality Landscape & Nursery, Inc. Reference may be made herein to actions taken in the name of Petitioner; the Randy W. Stevens Living Trust; and/or Randy W. Stevens, individually, as the same pertain to the Subject Property (defined herein). In the interests of clarity and brevity, as necessary, Petitioner; the Randy W. Stevens Living Trust; and Randy W. Stevens, individually, shall be referred to collectively as “Stevens”.

<sup>2</sup> The Notices of Violation issued in Docket Numbers 5970-19 (date: September 20, 2019); 6176-22 (date: August 12, 2022); and 6183-22 (date: October 17, 2022) are collectively referred to herein as “NOVs”.

**I. INFORMATION ABOUT THE PETITIONER:**

- a. The Petitioner filing this appeal is:

QUALITY LANDSCAPE & NURSERY, INC.  
P.O. Box 1074  
Saratoga, WY 82331

- b. Petitioner is represented in this matter by:

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Correspondence and information related to this action should be served on the undersigned.

**II. ACTION BEING APPEALED:**

1. Petitioner appeals the NOV's which allege that a violation has not been corrected on LMO ET1496 and that Petitioner is in default of the terms of a voluntary settlement agreement entered into between WDEQ and Petitioner on or about July 23, 2020, to resolve the matters at issue in NOV 5970-19 ("Settlement Agreement"). A copy of the Settlement Agreement is attached hereto as Exhibit 1. The Settlement Agreement provides, generally, for development of the property subject to the LMO or, if there is no development, then for remediation of the limited mining operation. WDEQ now seeks forfeiture of the performance bond posted by Petitioner.

2. In addition to the factual chronology set forth by WDEQ in the Bond Forfeiture Recommendation, Quality Landscape & Nursery, Inc., Stevens Mine, Limited Mining Operation, ET1496, Petitioner provides the following historical facts for consideration by EQC:

**A. HISTORICAL FACTS FOR CONSIDERATION BY EQC:**

i. On June 21, 2010, in the action entitled *Randy W. Stevens Living Trust v. The Governing Body of the Town of Saratoga, Wyoming, et al.*, Civil Action No. CV-13-124 (Consolidated with CV-13-123<sup>3</sup> and CV-09-284) ("District Court Action"), the District Court, Second Judicial District, Carbon County, Wyoming ("District Court"), entered a Consent Decree providing, generally, for the development of the Subject Property ("Consent Decree"). A copy of the Consent Decree is attached hereto as Exhibit 2.

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<sup>3</sup> Quality Landscape & Nursery, Inc. is the named plaintiff under CV-13-123, with the Governing Body of the Town of Saratoga, Wyoming, the named defendant in that action.

ii. On July 22, 2011, the District Court entered an Order Granting Permanent Restraining Order in the District Court Action which, *inter alia*, prohibited Stevens from removing soil located near, in or under the alleyway south of the Subject Property (“Injunction”). A copy of the Injunction is attached hereto as Exhibit 3.

iii. On March 6, 2012, the District Court entered its Order Granting Motion to Alter and Amend (“Order to Amend”) in the District Court Action. A copy of the Order to Amend is attached hereto as Exhibit 4. The Order to Amend provides, in relevant part, as follows:

6. Based upon the pleadings and record properly before it, this Court concludes that:

a. Although the Town’s New Plan (installation of the sheet pile wall) did not comply, in fact, with Section 3314.3 of the 1997 Uniform Building Code, the Town has expressed its acceptance of the Plan and has waived any ability to complain about a UBC Code violation in the future. ***Further, the Town is legally responsible for any issues that may arise, now or in the future, regarding Defendants’ (Petitioners) use of their property, if affected by a failure to comply with Section 3314.3 of the 1997 Uniform Building Code.*** (emphasis added).

b. However, the Court will not require the Town to reconstruct the alleyway in a manner that conforms to the 1997 Uniform Building Code.

iv. On May 13, 2013, the District Court entered its Order Enforcing Settlement Agreement (“Settlement Agreement Enforcement Order”) in the District Court Action establishing various deadlines for the parties to take and/or perform certain actions. A copy of the Settlement Agreement Enforcement Order is attached hereto as Exhibit 5.

v. As it pertains to the instant proceeding, the Settlement Agreement Enforcement Order provides in relevant part as follows:

**23. IT IS FURTHER ORDERED** that the Court approves the parties’ settlement terms and conditions to which they agreed, which are set forth as follows:

\* \* \*

c. Within forty-five (45) days following the Town's receipt of the Defendants' notice that the storage container has been emptied, the Town shall, at its own expense, remove and relocate the storage container from its present location to that area of the Defendants' property indicated on the attached photograph, marked as "Attachment 1." If additional dirt work is required in order to move the container as per this agreement, the Town shall, at its own expense, prepare a dirt access ramp or roadway to facilitate removing and relocating the container. The Town is not required to later remove any dirt access ramp or roadway, or to re-contour or re-grade the property to its pre-construction state.

- (i) Prior to relocating the storage container, the Town shall notify the Defendants in writing of the date the Town will relocate the storage container.
- (ii) The Town shall, at its own expense, smooth and prepare the site for the placement of the storage container where indicated on "Attachment 1." Any dirt that needs to be removed from the new location site shall be transported to the Defendants' deposit site, which is within one (1) mile of the alleyway. The Defendants shall further indemnify and hold the Town harmless for any and all damage which might or could result from the removal and relocation of the storage container, including any damage to the container itself.

d. On or before one-hundred forty (140) from the date of this Order Enforcing Settlement Agreement [September 30, 2013], the Town shall, at its own expense, complete reconstruction of the alleyway adjacent to Lots One (1) through Ten (10), inclusive, Block Eleven (11), Riverside Addition to the Town of Saratoga, Carbon County, Wyoming, in accordance with the finished contours and grades approved by this Court in the Order entered herein on March 1, 2011, as modified by the now-approved sheet piling retaining wall. The Town shall in good faith use its best efforts to complete the reconstruction of the alleyway prior to the designated construction deadline. The Town shall notify the Defendants in writing of the date the Town proposes and/or intends to commence reconstruction of the alleyway.

vi. On October 31, 2019, following a one-day bench trial in the District Court Action, the District Court entered its Findings of Facts, Conclusions of Law and Order generally finding in favor of the Town of Saratoga, Wyoming (“Town”) on Stevens’ claims for inverse condemnation and unconstitutional taking of property (“Judgment”). A copy of the Judgment is attached hereto as Exhibit 6.

vii. In the Judgment, the District Court concluded as follows:

In the present matter, Town, as a governmental entity, possessed the power of condemnation of the subject property adjoining the Town’s alleyway. *Instead of proceeding with a condemnation action, Town sought and obtained a Permanent Restraining Order restraining Stevens from permanent use of a portion of the subject property. Additionally, the parties previously entered into the Consent Decree that contained a clause that Town, at its sole cost and expense, would maintain and stabilize the slopes and grades of the alleyway to minimize stormwater discharge and minimize erosion of the slope of the subject property.* The *Consent Decree*, however, did not authorize Town to permanently encroach upon nor limit Stevens’ full usage of the subject property.

Stevens presented testimony and evidence that the slopes and grades of the Town’s alleyway have failed to minimize stormwater discharge and erosion onto his property, thus damaging the subject property. *The record also shows that Stevens is permanently restrained from removing soil from the subject property that is “in, near, or under” the alleyway, and impedes Stevens’ ability to incorporate the appropriate grades and slopes as required by DEQ, LDQ, and Town to properly develop it, thus diminishing Stevens’ full use of the subject property.*

The Court finds that Town has taken possession of and damaged portions of the subject property. Stevens is entitled to damages for a partial taking upon proof of the same.

See Exhibit 5 (Judgment, pp. 12-13 (emphasis added)).

viii. From and after entry of the Judgment, the Town continues to impede, resist, and obfuscate Stevens’ attempts and efforts to develop the Subject Property including, but not limited to, the following:

a. **ALLEYWAY RECONSTRUCTION.** Despite numerous orders from the District Court and inclusion of the obligation in the Consent Decree, the Town abjectly failed and willfully refused to construct and/or install the rock and gabion slope stabilization structure in the alleyway immediately south of and adjacent to

the Subject Property in order to facilitate Stevens' development of the same. As will be discussed more fully below, Stevens and the Town have been engaged in discussions to potentially resolve this issue.

b. **WATER SERVICE TO SUBJECT PROPERTY.** Stevens has obtained the requisite consent from the Carbon County Joint Powers Board for installation of water service to the Subject Property. Despite obtaining the requisite consent from the Carbon County Joint Powers Board, the Town has steadfastly refused to permit water service to Stevens. To this day, Stevens does not have water service to the Subject Property and has not been granted such right by the Town notwithstanding that Stevens has remitted payment to the Town for a water tap to the Subject Property. As will be discussed more fully below, Stevens and the Town have been engaged in preliminary discussions to potentially resolve this issue.

c. **SEWER SERVICE TO SUBJECT PROPERTY.** Stevens has, on many separate occasions, requested installation of sewer service to the Subject Property from the Town in accordance with the approved site development plan but has been repeatedly denied such service. Despite Stevens' requests, the Town has, until recently, steadfastly refused to consider viable alternatives for sewer service to the Subject Property. To this day, Stevens does not have sewer service to the Subject Property and has been routinely denied such service. As will be discussed more fully below, Stevens and the Town have been engaged in preliminary discussions to potentially resolve this issue.

d. **ELECTRIC SERVICE TO SUBJECT PROPERTY.** Stevens has obtained authority from the State of Wyoming Fire Marshal's Office – State Electrical Inspector to install electrical service to the Subject Property. When the Town commenced work on its initial attempt to install the rock and gabion slope stabilization structure, the Town removed the electrical panel from the Subject Property and has failed and/or refused to restore the electrical service. Despite its failure and/or refusal to restore electrical service to the Subject Property, the Town has rejected and refused to permit Stevens to install electrical service to the Subject Property by a subterranean installation. Stevens is precluded from disturbing, digging in and/or excavating in the alleyway by order of the District Court.

e. **ACCESS TO SUBJECT PROPERTY.** Stevens has, on many separate occasions, attempted to obtain a point of legal access to the Subject Property from the Town but has been repeatedly denied such access. On or about August 25, 2020, Stevens was issued an access approach and permit from the Wyoming Department of Transportation to access the Subject Property from State Highway 130/1<sup>st</sup> Street, over Lots 11 and 12 (owned by WYDOT) to Lot 10 of the Subject Property. Stevens completed construction of the access approach on or about October 9, 2020.

f. **APPURTENANCES TO SUBJECT PROPERTY.** Stevens has, on many separate occasions, requested authority from the Town to remove a four-foot concrete retaining wall traversing the northern boundary of the Subject Property along with toe support. Despite Stevens' requests, the Town has steadfastly refused to consider and/or authorize the removal of the aforementioned retaining wall and/or toe support by Stevens. The aforementioned retaining wall prevents, precludes, and inhibits the ability of Stevens to develop the Subject Property.

ix. On information and belief, the utilities referenced above (water, sewer and electrical) must be installed in the alleyway immediately south of and adjacent to the Subject Property to comply with existing subdivision and commercial development regulations, as adopted by the Town. Town representatives have acknowledged as much to the District Court on multiple occasions. Despite the requirement to install utilities in the alleyway, the Town has not taken any affirmative steps to stabilize the alleyway to facilitate installation of utilities. As will be discussed more fully below, Stevens and the Town have been engaged in discussions to potentially resolve this issue.

x. With regard to LMO ET1496, Petitioner was required by WDEQ to move forward with development of the Subject Property or risk the sanction of forced remediation of the property, which sanction would destroy the commercial value and viability of such property. The Town's repeated failure and/or outright refusal to issue the requisite permits and/or authorizations to facilitate the development of the referenced property has materially delayed and interfered with Stevens' development of the Subject Property.

xi. In addition, WDEQ required Petitioner to post a significant and additional monetary bond to remediate the property should Petitioner not be able to complete development of the Subject Property which bond, in substantial part and amount, is for the construction and installation of support for the sheet pile erected by the Town in the alleyway immediately south of and adjacent to the Subject Property.

xii. The sheet pile wall sits entirely within the alleyway south of and adjacent to the Subject Property; is not within the boundaries of the real property encompassed and included within LMO ET1496; and is situate entirely on real property owned by the Town.

xiii. In late fall of 2022, representatives of the Town and Stevens initiated conversations to address the remediation and potential replacement of the failing sheet pile wall. As a part of those discussions, the Town engaged T-O Engineers to prepare a grading plan for the Subject Property and property owned by the Town to the south of the Subject Property. The Town and Stevens shared evenly in the cost of the preparation of this grading plan. Stevens insisted that the proposed grading plan comply with the grading requirements imposed on the Subject Property by WDEQ.

xiv. During the course of preparing the grading plan, it was determined that given the existing topography on the Subject Property and the Town's adjacent property, it was not possible to proceed with grading until the failing sheet pile wall was addressed.

xv. As a result of that determination, the Town proposed three separate solutions to Stevens. Largely because of logistical and financial issues, Stevens rejected the Town's proposals and made a counterproposal which was similarly rejected by the Town.

xvi. Thereafter, the parties consulted with their separate engineers and conducted at least one Zoom conference call to discuss possible solutions. During the conference call, it was determined by the parties' respective engineers that a gravity block wall was realistically the only available option to preserve the integrity of the Saratoga-Encampment-Rawlins Conservation District building constructed immediately south of the Subject Property; to perform the reconstruction of the alleyway; and to facilitate the development of the Subject Property. After obtaining initial proposals for the cost to install the gravity block wall, the parties' respective engineers determined that it was necessary to obtain geotechnical information for the intended location of the gravity block wall in order to determine the requisite height and length of such a wall. The parties obtained two separate bids for the geotechnical boring and mutually selected the engineering firm proposed by the Town. At present, the geotechnical boring is scheduled to occur between April 18, 2023 and April 21, 2023.

xvii. Once the geotechnical information has been reviewed by the parties' engineers, bids for construction of the gravity block wall will be obtained. At that point, the parties have committed to negotiating for the construction and installation of the gravity block wall. It goes without saying that the purpose of the gravity block wall is to stabilize the area of the alleyway where the failing sheet pile wall is presently located as well as to stabilize the alleyway moving east towards River Street. There are a number of factors which will dictate the height and length of the wall including, *inter alia*, the location of the wall.

**B. PETITIONER'S CHALLENGES TO NOV'S:**

i. Petitioner challenges the NOV's on the following grounds:

a. As more fully detailed above, the claimed delays in Petitioner's development of the Subject Property and, similarly, compliance with the Settlement Agreement are not due to any action, inaction or lack of diligence by Petitioner, but rather are due, in direct and significant part, to the failure, refusal and outright unwillingness of the Town to, in any fashion, to reconstruct the alleyway which necessarily includes addressing the safety concerns posed by the failing sheet pile wall. On this same issue, until the gravity block wall has been designed and the location of the same has been determined, it is not possible to locate utility service to the Subject Property. In other words, the failing sheet pile wall needs to be addressed and remediated as the initial step in allowing Petitioner to move forward with development (installation of utilities) of the Subject Property.



b. WDEQ has taken the position that the failing sheet pile wall located in the alleyway to the south of the Subject Property is a public safety concern. The failing sheet pile wall may well be a public safety concern, but the wall is not the legal or financial responsibility of Petitioner. On information and belief, WDEQ intends to utilize monies from the performance bond for which it seeks forfeiture herein in order to reclaim real property outside the boundaries of LMO 1496ET. More specifically, WDEQ intends to utilize monies from the performance bond to buttress and/or reinforce the failing sheet pile wall which is situate, in its entirety, on real property which is not within the boundaries of the LMO, and therefore, the jurisdiction of WDEQ. In that regard, use of monies from the performance bond to benefit third parties exceeds the statutory and regulatory authority given to WDEQ.

c. WDEQ should be estopped from denying Petitioner the opportunity to reclaim the Subject Property utilizing its own forces, equipment, and materials. Equitable estoppel against a state agency can be distinguished from estoppel in the normal litigation sense. The standard for application of the equitable theory of estoppel against a state agency is higher. *Knori v. State ex rel. Dep't of Health, Office of Medicaid*, 2005 WY 48, ¶¶11-12, 109 P.3d 905, ¶¶11-12 (Wyo. 2005). In the case at bar, Petitioner and WDEQ entered into the Settlement Agreement. See Exhibit 1 hereto. Under the express terms of the Settlement Agreement, Petitioner was provided the opportunity and ability to reclaim the property ***without a resultant forfeiture of the performance bond***. See Exhibit 1, ¶7.d. Prior to the initiation of these proceedings, Petitioner requested specific reclamation standards for the Subject Property from WDEQ. Petitioner did not receive a response in any form or fashion from WDEQ nor was Petitioner provided with the requested information.

d. Petitioner reserves the right to supplement this petition based on new or revised grounds between the date of filing and the hearing.

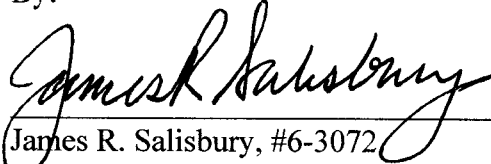
WHEREFORE, Petitioner requests that the EQC grant the following relief:

1. Grant Petitioner a contested case hearing on its appeal pursuant to the Environmental Quality Act, Wyo. Stat. § 35-11-101, *et seq.*; the Administrative Procedures Act; the EQC Rules of Practice and Procedure; and the Rules and Regulations, Department of Environmental Quality, Chapter 2, Section 4.
2. Disapprove, revoke, and repeal the WDEQ's NOV's in this matter.
3. Provide such other and further relief as the EQC determines just and equitable in the premises.

RESPECTFULLY SUBMITTED: April 12, 2023.

QUALITY LANDSCAPE & NURSERY, INC.  
Petitioner

By:

A handwritten signature in cursive script, appearing to read "James R. Salisbury", is written over a horizontal line.

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COUNSEL FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the 12<sup>th</sup> day of April, 2023, to the following via the method indicated below:

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