NOTICE OF DETERMINATION
Aquatic Resource Alteration Permit NRS18.231 -Modification 1

Southern Land Company
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This notice contains the final determination of the Tennessee Department of Environment and Conservation, Division of Water Resources (the Division) and responds to comments received on the application for a modification to NRS18.231, for Southern Land Company’s additional unavoidable stream and wetland impacts associated with the construction of Area D within the Westhaven residential subdivision in Franklin. Additional impacts to Hatcher Spring Creek include reduced linear footage at a higher severity impact associated with two road crossings, 20 feet of temporary impact associated with a sewer line crossing, and reduction in linear footage of stream permittee-responsible mitigation. Modified impacts to wetlands include additional fill of 0.03 acres. To offset the stream impacts, the permittee will conduct permittee-responsible mitigation on 420 linear feet of an on-site upstream reach of Hatcher Spring Creek. To offset the impacts to 0.03 acres of wetland, the applicant has purchased in full 0.10 wetland mitigation credits (greater than a 2:1 ratio) from the Swamp Road II mitigation bank.

Southern Land Company submitted an application to the Division for a modification to the original § 401 water quality certification and an Aquatic Resource Alteration Permit on October 8, 2021, with addenda submitted until January 31, 2022. The Division issued Public Notice for the proposed project on March 8, 2022. The Division has reviewed comments from the public in response to the Public Notice. The following comments have been edited and summarized from their original form to organize the presentation of content. It has not been the Division’s intent to omit or alter content.

Specific comments are itemized and responded to below.

**Comment 1:** Thank you for the opportunity to comment on this permit and proposed construction. I have lived in the Westhaven subdivision since 2007 and have seen numerous requests to fill wetlands and alter streams. I have also watched as these actions have been approved and constructed. Many of the plans submitted have not been followed and currently the development is under a stop work order by the City of Franklin for not following engineering plans submitted for required stormwater infrastructure. I would request that you defer any action on this permit until the required stormwater infrastructure is installed and approved by the City of Franklin to ensure protection of the waters of the State within the Westhaven development.

**Response 1:** The Division appreciates the comment from the concerned local resident. The stop work order was lifted after an inspection by the City of Franklin Engineering Dept. on March 11, 2022. The site was observed to have returned to compliance.
Comment 2: First, how was it determined that the additional disruption to the stream was necessary and required?

Response 2: As described in the permit modification application and the Rationale section of the Draft Permit Modification, engineering for the project found that elements of the design as originally permitted were not feasible and/or would not meet the City’s requirements. Please refer to the Analysis of Alternatives found in the final permit’s Rationale section for details.

Comment 3: Second, how does mitigation in another area offset the damage to the wetlands in a rapidly growing urban area?

Response 3: All mitigation for this project will occur within the Harpeth River watershed.

Under the TDEC Division of Water Resources Rules, Chapter 0400-40-07 “Aquatic Resource Alteration”, “If an applicant proposes an activity in a stream or wetland that would result in an appreciable permanent loss of resource values, the applicant must provide mitigation which results in no overall net loss of resource values from existing conditions.” Further, “Acceptable mitigation mechanisms include any combination of permittee-responsible mitigation, in-lieu fee programs, mitigation banks, or other mechanisms that are reasonably assured to result in no overall net loss of resource values from existing conditions.” The Rule further requires the Division to evaluate proposed mitigation sites based on watershed prioritization, with mitigation to occur as close to the impact location as is practicable, and allows wetland mitigation ratios to be set based on best professional judgement based on values and functions of the affected wetland, anticipated resource value of the proposed mitigation, temporal loss of resource values between the time the impact to resources occurs and the time mitigation is in place, and the likelihood of success of the proposed mitigation.

Comment 4: Third, how will the waterfowl, fish, amphibians, and insects which require wetlands be able to survive and reproduce in this area and what is the long term consequence of their lack of survival in this watershed?

Response 4: Zoning decisions and development priorities for the City of Franklin, including the density of residential development, is not under the purview of the ARAP program. The City of Franklin’s Planning Commission would be likely be a helpful resource on how natural spaces are prioritized relative to development.

Please see Response 3, above, for additional information on how the mitigation plan provided by the applicant fulfills TDEC requirements for compensatory mitigation.

Comment 5: Fourth, what is the long term consequence to humans of removing nature from the environment and is this part of your criteria?

Response 5: As stated above, zoning decisions and development priorities for the City of Franklin, including the type and density of development, is not under the purview of the ARAP program. The City of Franklin’s Planning Commission would be likely be a helpful resource on how natural spaces are prioritized relative to development, including resulting impacts on its residents.

Comment 6: I support the application by Southern Land Development being made under file NRS 18.231 for work at the end of new Mack hatcher for the future Townsend Rd access point to the Westhaven Community. This road is very badly needed for our community. Southern Land has always done a superb job of mitigating waterway routing and flooding.
Response 6: The Division appreciates the comment from the concerned local resident.

Comment 7: The commenter indicated that their constituents would like a diagram of the proposed fill areas and the impact study to determine how stream flow will be impacted and for how long.

Response 7: The previously authorized impacts when this permit was issued in 2019, along with the proposed impacts associated with the present permit modification, are conveniently summarized on p. 3 and described in more detail on p. 28-29 of the Draft Permit Modification.

Comment 8: Although it says short-term, what will the parameters be for filling and removing to restore to the original state?

Response 8: The temporary impacts associated with the proposed permit modification refer to the impacts resulting from a sewer line crossing installed by trenching, and returning the stream bed to original conditions once installation is complete. This will occur within the footprint of the Whitman bridge crossing. Construction plans for this sewer line crossing are available in the permit modification application materials in attachments B and C (PDF pages 16 – 23). The permit conditions related to stream impacts can be found in the Draft Permit Modification, pages 3 – 6.

The applicant has also provided the following narrative: "Originally planned for attachment to the bridge, engineers have deemed this not feasible due to grades in the area, elevation of the bridge, and the requirement in this location for the utility to be a gravity sewer line. Alternatives looked at included Horizontal Directional Drilling (HDD), however the depth the bedrock and angles to existing sewer connections were deemed not feasible by engineering team. To minimize environmental impact, temporary impact in-stream construction is planned to be accomplished in the dry with a diversion channel, see attachments B and C. The placement of the line will include a trench and return to pre-construction grade elevations. Construction of the utility is planned to happen concurrently with road crossing placement and within the footprint of the Whitman road crossing".

The applicant will also be required to submit a post-construction report on the condition of this stream at this location. Any non-compliance with permit conditions would be considered a permit violation.

Comment 9: There is a great deal of concern about this with the flooding that has occurred in our community the past few years in areas where floods have never occurred before.

Response 9: The scope of TDEC's Aquatic Resource Alteration Permit program does not include stormwater quantity. The City of Franklin's stormwater program would be a good resource for information pertaining to flood risk at this site.

Comment 10: Also, what impact is there to wetlands and is it short-term or long-term?

Response 10: The wetland impacts authorized by this permit in 2019 were permanent fill of 0.35 acres, and the newly proposed impacts are the permanent fill of an additional 0.03 acres. This information can be found on p. 3 of the Draft Permit Modification.

Conclusion

For the foregoing reasons, and for the reasons set forth in the rationale for the permit, the Division has determined that issue of Modification 1 to ARAP NRS18.231 authorizing additional stream and wetland impacts for the construction of the Area D section of the Westhaven subdivision in Franklin, Tennessee is
appropriate.