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 made by Westhaven Jewell Owner, LP for the fill of 1.05 acres of wetland associated with the Jewell residential subdivision in Franklin, Williamson County, Tennessee. To offset the losses of resource value resulting from the wetland fill, the applicant has purchased 0.474 wetland mitigation credits from Swamp Road II mitigation bank and will be required to purchase 1.82 advance wetland mitigation credits form the Tennessee Wildlife Fund’s Lower Cumberland Service Area.

Westhaven Jewell Owner, LP submitted an application to the Division for a § 401 water quality certification and an Aquatic Resource Alteration Permit on October 4, 2021, with addenda submitted until February 1, 2022. The Division issued Public Notice for the proposed project on February 22, 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.

Opposition was presented from one local resident during the Public Notice period. 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: Second, how does mitigation in another area offset the damage to the wetlands in a rapidly
Response 2: 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.

The applicant purchased the only remaining wetland mitigation bank credits available directly within the Harpeth River watershed at the time of permit application: 0.474 credits from the Swamp Road II Mitigation Bank. The remainder of the mitigation credits required are to be supplied through a credit purchase from the Tennessee Mitigation Fund in-lieu fee program’s Lower Cumberland Service Area. This service area encompasses the entire Harpeth River watershed. Though the oversight of In-lieu Fee Programs by the U.S. Army Corps of Engineers Interagency Review Team (IRT, in which TDEC participates) potentially allows for the actual site of mitigation to be outside of the Harpeth River watershed, the mitigation will be within the agreed-upon service area mandated by the IRT, and therefore, with appropriate temporal loss modifiers applied to the mitigation ratio, is appropriate to offset the impacts proposed within the Harpeth River watershed. The mitigation plan proposed by the applicant for NRS21.286 fulfills requirements by providing the best mitigation practicable given the availability of mitigation credits and location of mitigation sites of third-party mitigation providers.

Comment 3: 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 3: 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 a helpful resource on how natural spaces are prioritized relative to development.

Please see Response 2, above, for additional information on how the mitigation plan provided by the applicant fulfills TDEC requirements for compensatory mitigation.

Comment 4: Fourth, what is the long term consequence to humans of removing nature from the environment and is this part of your criteria?

Response 4: 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 a helpful resource on how natural spaces are prioritized relative to development, including resulting impacts on its residents.

An analysis of practicable alternatives was provided in the draft permit’s Rationale section, including analysis of alternatives for no development, alternate project design, and alternate project location. Social
and economic justification for the proposed impacts were also provided in the draft permit’s Rationale. The applicant’s analysis of alternatives and social and economic justification for the proposed activity fulfills the Division’s ARAP application requirements.

**Conclusion**

For the foregoing reasons, and for the reasons set forth in the rationale for the permit, the Division has determined that issue of ARAP NRS21.286 authorizing wetland impacts for the construction of the Jewell residential subdivision in Franklin, Tennessee is appropriate.