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August 28, 2009

Mr. David Dell  
Regional HCP Coordinator  
USFWS Regional Office  
1875 Century Blvd, Suite 200  
Atlanta, GA 30345

## Re: Etowah Aquatic Habitat Conservation Plan

Dear Mr. Dell:

On behalf of the members, trustees, and staff of the Georgia Conservancy, I appreciate the opportunity to comment on the U.S. Fish and Wildlife Service's (USFWS) pending approval of the Etowah Aquatic Habitat Conservation Plan (HCP).

The Georgia Conservancy urges the USFWS to approve the Etowah HCP. Our support is based on the following reasons: 1) The plan is based on sound science, 2) The plan protects endangered species, 3) The plan allows development, 4) The plan has had extensive stakeholder input, 5) The plan protects water quality, 6) The plan protects our natural heritage in the Etowah basin, 7) The plan provides the most cost efficient path to compliance with the Endangered Species Act; and 8) The plan provides certainty for developers who act in compliance with it. In addition, the HCP establishes a consistent legal framework to protect private property as well as rivers and streams from the impacts of development through new ordinances designed to provide a uniform approach to growth and development in the watershed.

The Etowah River Basin covered by the HCP is one of the most biologically diverse in the United States, and its diversity is under severe threat from development pressure. From 1991 through 2005, the rate of increase of impervious surface has been one of the highest in Georgia (Cobb, Cherokee, Paulding and Forsyth Counties). The adverse impacts on water quality in the basin have increased rapidly as well, threatening the organisms that depend on good water quality for survival, including people.

### **The importance and benefits of HCPs**

HCPs are important conservation tools. They balance the protection of private property rights and endangered species, bring communities together through voluntary partnerships, and ensure that implementation actions are tailored to the protection of the endangered species where they are found.

Because some 25 percent of the populations of listed species in the United States occur on private land, governments are challenged by the obligation to simultaneously protect private property rights and endangered and threatened species that are protected by law. HCPs meet this challenge and substantially impact the survival and recovery of threatened and endangered species by shifting the conservation efforts from single-species management to broad-based, multi-species and habitat conservation. It is not surprising, therefore, that in 2005, the USFWS issued incidental take permits for 479 HCPs that covered almost 39 million acres and 590 endangered and threatened species.

### **Flexibility in Plan**

The language of the Etowah HCP is flexible at many levels. HCPs can be any size and can consist of multiple or single applicants. In addition, local jurisdictions can submit an application for an Incidental Take Permit (ITP) after the HCP is approved. Local jurisdictions are free to withdraw from the HCP at any time. Finally, prior to signing the HCP, each jurisdiction will adopt its official Priority Areas and Development Node Map that they developed.

Thus, instead of a blanket approach in which one standard is implemented for a whole watershed, the Etowah HCP includes specific policies depending on the level of sensitivity of the endangered species. For example, the Etowah HCP has three priority areas and development nodes. Priority area 1 supports the most sensitive species covered by the Etowah HCP (Etowah and amber darters), and so it has the most restrictive standard. It encompasses the combined ranges of all species covered by the Etowah HCP except for portions of the range of the Cherokee darter. Priority Area 2 supports the less sensitive Cherokee darter, as well as habitat immediately upstream from the less restrictive Priority Area 1. Runoff limits apply to priority areas 1 and 2. Parts of the Upper Etowah that do not currently provide appreciable habitat to any imperiled fish are classified as Priority Area 3 and are not subject to the runoff limits.

In addition to better protection for the Etowah, Cherokee and amber darters, the Etowah HCP will also help protect the quality and quantity of water in the Etowah and its tributaries, minimizing water treatment costs, protecting private property, and maintaining a healthy and safe place for fishing and other recreational activities.

HCPs have also served as an effective means of negotiating consensus among stakeholders and getting agreement between historically polarized interests. HCPs are grounded in the philosophy of engaging private landowners and local governments in conservation planning. Therefore, the HCP approach has the value-added result of bringing communities together to work on a voluntary approach instead of relying on litigation or the intervention of local or state governments. Residents will benefit because the policies of the Etowah HCP protect water quality as well as fish, which helps maintain the high quality of life in the region.

Some organizations like the Defenders of Wildlife and the National Wildlife Federation believe that the HCP program does not go far enough and fails to provide imperiled species with needed safeguards against habitat destruction. With the improvements in monitoring and enforcement and peer reviewed science it is likely that the critiques have been satisfied. It is important to

underscore, however, that more restrictive programs could be the alternative to the HCP. Instead of tying the hands of developers, the Etowah HCP includes avoidance, minimization, and mitigation policies that will limit the amount of incidental take to acceptable levels or levels that will still allow a viable population into the future.

### **Extensive stakeholder involvement and the Etowah HCP**

The Etowah HCP is a prime example of a comprehensive, inclusive, and bottom-up approach to comprehensive planning to ensure the protection of our natural heritage in the midst of sustainable growth.

A truly diverse group of people authored the Etowah HCP including local residents, developers, homebuilders, water authorities and local governments, representing 13 cities and seven counties. Over the course of the development of the Etowah HCP, the steering committee convened more than 100 meetings to ensure comprehensive input. A steering committee appointed by elected officials in counties and cities in the Etowah River Basin oversaw the drafting of the Etowah HCP.

Thirteen jurisdictions have prepared applications to participate in the Etowah HCP: Bartow County, Cherokee County, Paulding County, and Pickens County, as well as the cities of Acworth, Ball Ground, Canton, Dallas, Dawsonville, Holly Springs, Roswell, Waleska and Woodstock. Once the HCP is approved, these jurisdictions will have the opportunity to adopt the HCP policies, although participation is optional. Other jurisdictions in the Etowah can also join in the future if they choose.

This extent of stakeholder involvement over a period of five years is clearly a monumental effort. The support of the local officials indicates that the majority of stakeholders believe in local control and preserving their way of life through local decision making. Although a small portion of the development community has attacked the Etowah HCP on the grounds of limited stakeholder involvement and other reasons, the question remains as to why any decision makers would want a small portion of the development community to impose their views on a broader group of public officials and the people who live there.

### **Aquatic HCPs and protecting water quality**

In many areas covered by HCPs, aquatic species thrive near suburban development. One example of a successful, small HCP is the one covering Lenox Village, a mixed-use subdivision in Nashville, Tennessee. On the other hand, the East Contra Costa County, California HCP encompasses 174,018 acres that harbor 28 aquatic and terrestrial species. Other successful HCPs include the San Diego County (CA) Multi-Species Conservation, the Pima County (AZ) Multi-Species Conservation Plan, and the Coachella Valley Multiple Species HCP.

Currently, many waterways in the Etowah River Basin do not meet water quality standards. Significant portions of the Etowah watershed, including Lake Allatoona, fail to meet their designated uses and water quality standards due to inadequate management practices. The proposed HCP policies will substantially reduce nonpoint source pollution, a major source of the water quality degradation in the watershed.

The Etowah HCP's six mandatory avoidance, minimization, and mitigation of urbanization policies address the following: 1) stormwater management, 2) erosion and sedimentation control, 3) stream buffers, 4) road crossings of streams, 5) utility crossings of streams, and 6) water supply planning.

The Etowah HCP stormwater ordinance contains a stormwater volume control standard which is being widely used in suburban areas around the country. In Mecklenberg County, North Carolina for example, an HCP has been adopted for a variety of stormwater volume control standards similar to those included in the Etowah HCP. The Center for Watershed Protection, one of the nation's leading water resource organizations, in partnership with the U.S. Environmental Protection Agency (EPA), developed "runoff reduction" volume criteria similar to the HCP regulations in their model stormwater ordinance.

Other communities have developed more stringent stormwater regulations according to local community priorities. For example, Lacey, WA (a suburb of Olympia) has passed a "Zero Effect Drainage Discharge" ordinance encouraging site designs that have "zero effective impervious surfaces" through low impact development practices and other stormwater controls.

### **Protecting Our Natural Heritage**

Extensive scientific investigations tell us that fish populations respond to a gradient of urbanization, meaning that as urbanization increases, we will see the disappearance of our most sensitive fishes, mussels, and macroinvertebrate species.

In the Etowah River Basin, there are six major stressors to biotic life: sedimentation, altered flows, extensive loss of riparian buffers, movement barriers, contaminants, and channelization and piping. These stressors impact the viability of the imperiled species in the Etowah because for the most part, the species are riffle-dwelling species, are high-flow specialists, and are either narrowly distributed or are very rare.

We know that 76 native fish (91 historically) can be found in the Etowah Watershed. Amazingly, this diversity is three times the number of species that can be found in the much larger Colorado River Watershed. This incredible biological diversity is part of what makes Georgia a special place. There is substantial evidence that each of the three fish species, the Cherokee darter, Etowah darter, and the amber darter has declined in parts of their ranges. The HCP will allow sensible measures to be in place that will allow growth, ensure cleaner water getting back to our waterways, and protect the Darters habitat.

The goal of the plan is to mitigate the take of the animals and to assure their survival and recovery. Although the Etowah HCP does not cover more than the three darter species, it will benefit many more species in the Etowah River Basin and will help protect those that already are imperiled including six fish species (Coosa chub, Coosa madtom, freckled darter, bridled darter, holiday darter sp. a, holiday darter sp. b, five mussel species (upland combshell, southern clubshell, finelined pocketbook, triangular kidneyshell, and Alabama moccasinshell), and one macroinvertebrate species (Etowah caddisfly). HCPs therefore not only protect unlisted species, thereby reducing the likelihood that listing will be needed, but also promote long-term conservation of species and habitats through protection and management.

### **Sound Science**

The Etowah, Cherokee and amber darters have been the subject of 13 scientific research articles published between 2003 and 2009 in nine national and international scientific journals. In 2008, an independent committee of 16 national and international fisheries scientists found that the three species targeted by the HCP are in imminent danger of extinction throughout all or extirpation from a significant portion of their ranges.

The USFWS initiated the five-year review process this summer and is accepting additional information about the protected species through September 4, 2009. The substantial number of studies that have been conducted on these fish species during the past six years (and which will be cited in the five-year review), however, provides a far greater understanding of these fish and their habitat needs than the cursory five-year review.

**The Etowah HCP is the least-cost alternative**

Recovery of the imperiled aquatic species in the Etowah River Basin depends upon the protection of habitat in various locations. Aquatic species are dependent upon healthy stream and river systems that can only be achieved by sound land management upstream. One way to ensure healthy habitats for imperiled aquatic species is the permanent protection of land to buffer the waterways. In this case, protecting the imperiled species in the Etowah River Basin would require protecting more than 100,000 acres. Such a strategy is not currently affordable.

For these reasons, the avoidance, minimization and mitigation strategies of the Etowah Aquatic HCP focus on the management of development activities in ways that are not only protective of the species but are also protective of property rights, are economically feasible, and provide flexibility to property owners. Although the permanent protection of land is not required under the Etowah HCP, land protection through state or local government acquisition or through conservation easements would enhance the effectiveness of the Etowah HCP.

Currently, most large development projects (for which an individual Section 404 permit or other Federal permit is required) are subject to case by- case consultations with the USFWS, which works with the applicants to avoid, minimize and mitigate impacts to listed species pursuant to Section 7 of the ESA.

In jurisdictions that have adopted the HCP, developers will no longer need to consult with USFWS before proceeding with certain construction projects. This means that the Section 7 consultation process will be dramatically streamlined, saving developers valuable time and money from not having to write individual take plans. Without the Etowah HCP, the consultation with USFWS could take up to 12 months, the cost of writing an individual HCP could be over \$100,000.00, and developers would still be required to meet standards similar to those found in the HCP.

If the Etowah HCP is approved, the consultation process will be greatly expedited for developers in jurisdictions that hold an ITP. The duration of the ITP to each governing body under the Etowah HCP will be 25 years. Developers who hold an ITP would not need to undergo individual biological opinions and individual HCPs for those activities within the Etowah HCP.

Finally, the \$85.00 per developed acre foot will be borne by developers and their clients and will fund the enforcement of the HCP ordinances. No new taxes or fees will be levied on local residents and local jurisdictions will be eligible for federal land acquisition grants as participants in the HCP.

**Conclusion**

The Georgia Conservancy supports the USFWS and applauds the local elected officials who recognize the importance of protecting our natural heritage and our way of life for future generations to come.

The Etowah HCP planning effort has spanned six years and has involved significant scientific research. These efforts and research all point to a similar conclusion — that the Etowah, Cherokee and amber darters are in imminent danger. The HCP will greatly enhance their protection.

The HCP allows us to better protect aquatic habitat while continuing to permit development and economic growth in communities in the Etowah River Basin. Because local governments will hold the incidental take permits, Etowah HCP ensures stakeholders will avoid the hassle and expense of individual permitting for every development project. We must not allow the naysayers to nullify the hard work that local citizens have put into the HCP for the past six years.

Thank you for your attention to our comments. The Etowah HCP will serve as an important model for the state. We look forward to the approval of the Etowah HCP and to moving forward on sound science and resource management in the Etowah River Basin.

Sincerely,

A handwritten signature in blue ink that reads "Pierre Howard". The signature is fluid and cursive, with the first name "Pierre" being more prominent than the last name "Howard".

Pierre Howard  
President