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BY ELECTRONIC MAIL

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Re: Cashiers Canoe Club Development
Corps Action ID Number: SAW-2016-00032

The following comments are submitted on behalf of the Chattooga Conservancy and Mountain True.

The Chattooga Conservancy is a nonprofit grassroots conservation organization working to protect, promote, and restore the natural ecological integrity of Chattooga River watershed ecosystems; to ensure the viability of native species in harmony with the need for a healthy human environment; and, to educate and empower communities to practice good stewardship on public and private lands. The Chattooga Conservancy has an organizational interest in the proper and lawful management of public and private lands within the Chattooga River watershed, and members, staff, and board members participate in a wide range of recreational activities on these lands. The Chattooga Conservancy represents approximately 600 total members that support our work.

MountainTrue is a 36-year old nonprofit organization that champions clean waters, resilient forests, and healthy communities across Western North Carolina. MountainTrue has members and supporters who live in Cashiers and who recreate on the Chattooga River.

I. Need For A Public Hearing

This project should not be approved without a public hearing to determine if the proposal or a practicable alternative is in the public interest. See 15A NCAC 02H .0504. While we respect the applicant's right to reasonably develop the property, that right is limited by the public's shared interest in the Chattooga River watershed's environmental quality. Indeed, it is the Chattooga watershed's superlative environmental and aesthetic quality that makes this area so desirable for development. For that reason, it is critically important that each and every developer be held to the same high standard necessary to provide, collectively, for the protection of the area's environmental amenities and ecosystem services. There will always be a temptation for individual "free riders" to attempt to share in the common benefits that come from the Chattooga's regulatory protections without meeting its common obligations not to diminish the watershed's unparalleled environmental qualities.

Based on the incomplete, self-serving, internally inconsistent, and legally inadequate application, it is not clear that this foreign applicant understands or intends to meet the high standard needed to responsibly develop land in the Chattooga watershed. The Army Corps of Engineers (ACE) and North Carolina Department of Water Resources (DWR) should not allow this proposal to proceed without additional information and a public hearing—a genuine opportunity for local residents to learn about undisclosed information pertinent to the permit application and offer informed input.

Another important reason that ACE should grant a public hearing is related to the administration of the Wild & Scenic Rivers Act. We note that the head of a federal agency—in this instance, the U.S. Forest Service—administering the Wild & Scenic Rivers System shall cooperate with the appropriate state water pollution control agencies "for the purpose of eliminating or diminishing the pollution of waters of the river." 16 USC §1283. The Development Plan for the Chattooga River submitted to the U. S. Congress by the Forest Service notes that the Chattooga Wild & Scenic River Corridor begins only .8 miles below the Cashiers Lake. In the event that the Forest Service fails to make comments on this important issue concerning the application for dredging and filling in a water body that feeds the headwaters of the Wild & Scenic Chattooga River, and associated land disturbing activities for commercial real estate development and related point and non-point source discharges that will affect the Chattooga River, then an important piece of information that is critical in the public decision-making process is lacking, and the public has a right to know the Forest Service's position as mandated by law. A public hearing is an essential forum to inform citizens of the U. S. Forest Service's input, or lack thereof, on the subject application.

In short, without more information, real alternatives, and much better mitigation, this project cannot meet regulatory requirements, and it would not be in the public interest. Some of the proposal's more glaring deficiencies are described below.

II. The Applicant's Proposal Fails To Articulate Alternatives Or Provide A Realistic Baseline For "No Action"

Cashiers Canoe Club has not shown a lack of practical alternatives. An applicant must demonstrate that alternative designs with fewer impacts cannot meet the “basic project purpose.” 15A NCAC 02H .0506(f). According to the application, the basic project purpose here is as follows: “[T]he overall project purpose is to conduct maintenance dredging of Cashiers Lake to restore historic open water conditions.”

This basic project purpose could certainly be met with fewer impacts. Most obviously, this project purpose does not require the construction of roads associated with a future high density development including a 100-room resort hotel, a 55-home subdivision and other buildings and amenities, nor the bulkheads that will allow shoreline development. It is also difficult to see how a quarter-acre of wetland impacts for a parking lot would serve the project purpose. Neither the Corps nor DWR can approve those impacts based on this application. At most, the agencies may approve only the impacts necessary to accomplish the dredging itself. And, as discussed further herein, even those impacts may be unlawful.

III. The Applicant’s Proposal Improperly Segments A Larger Plan Of Development

Of course, the real purpose of the project is not solely to restore open water conditions, notwithstanding the applicant’s certification that its articulation of the overall project purpose is “true and correct.” See 15A NCAC 02H .0502(f). Instead, the dredging is ancillary to an inchoate, unanalyzed, and unmitigated project purpose—building a high-density development with hotel and subdivision. The applicant strains credibility by suggesting that dredging would be undertaken regardless of whether the development is built.

The applicant is therefore attempting to segment a larger development plan, seeking approval for initial development of infrastructure that will make future development a foregone conclusion, but avoiding disclosure of the full extent of the future development’s impacts.

The applicant attempts to dodge this critical issue, stating that “Future additional development plans have not been finalized; however, impacts associated with residential and commercial development are limited to 100 linear feet of stream and 0.01 acre of wetlands strictly for the purposes of access via road crossings.” But these totals hide all the future impacts that “have not been finalized—impacts that must be considered part of this common plan of development.

IV. Impacts To Downstream Values

Because it hides the effects of future development behind a false and limited project purpose, the application’s disclosure of impacts is self-serving and incomplete. It claims “no significant effect” to normal water fluctuations, despite the increase in impervious surface that will be caused by high-density development on a headwater stream of the National Wild & Scenic Chattooga River. It acknowledges only “minor short term” cumulative impacts, ignoring the impacts of the development itself, which will be numerous: chronic erosion and sedimentation runoff during the construction of the nebulous “future

development,” household and commercial detritus washing into a wild and scenic river corridor; oil and other chemical runoff from parking lots; a significant increase in human waste that will ultimately be discharged into the Chattooga; loss of wetlands that serve to reduce downstream pollution and flashiness; decrease in dissolved oxygen that will negatively impact aquatic life; and, likely many other negative impacts that would be inevitable with the proposed project.

Some of the application’s self-serving statements cannot be squared with information DWR has already gathered on the Chattooga headwaters. For example, the Upper Chattooga River “is at risk from ... storm water runoff from increasing residential development.” See 2008 Savannah River Basin Restoration Priorities. In addition, DWR has noted that sandy conditions and infrequent riffles may be attributed to development activities around Cashiers Lake. See 2012 Management Plan. The applicant’s claim that there will be “no impacts” to riffle/pool complexes is therefore unsupported. Strangely, the applicant does not even acknowledge the existence of the Wild and Scenic River Designation, checking the box for “not applicable” when disclosing impacts to protected areas—e.g., wilderness and “similar preserves.”

V. Failure To Acknowledge Need For Extraordinary Stormwater Control Measures

The applicant states that the project will comply with local ordinances and ORW rules, but the application’s brief discussion of Best Management Practices (BMP) does not show how this could possibly be true. Perhaps the applicant is thinking of the basic requirement to control 1 inch of rainfall from high-density developments in ORW watersheds. The applicable Jackson County ordinance, however, requires detention and control of a 25-year, 24-hour storm event. According to information available from NOAA, such an event would produce between 9 and 11 inches of rain in Cashiers. The applicant’s plans do not make room for the structures that would be needed to adequately manage this amount of rainfall.

VI. The Applicant’s Mitigation Plan Is Legally And Practically Inadequate

The mitigation described in the application is utterly inadequate. First of all, there should be much more explanation of the 1:1.5 ratio for wetlands mitigation. Wetlands contiguous to streams designated as ORW must be mitigated at a 4:1 ratio for “restoration,” and even higher ratios for enhancement or preservation. 15A NCAC 02H .0506(h)(7).

Second, the applicant offers no mitigation whatsoever for stream impacts. Nor, as explained above, does the applicant acknowledge what additional stream impacts would result from the “future development,” much less provide mitigation for those impacts.

Third, the proposed mitigation does not meet the requirement to locate mitigation in the same sub-basin unless impractical to do so. See 15A NCAC 02H .0506(h)(9). It appears, instead, that the applicant intends to pay in-lieu fees to claim credits for wetlands restoration in a totally different basin (Tulula

Creek, which drains to the Gulf of Mexico via the Little Tennessee). No attempt is made to show how this mitigation could prevent significant degradation of the special aquatic resources that will be impacted in the Chattooga basin. Nor is there any information provided to show that it would be impractical to mitigate these impacts in the Chattooga River watershed. Indeed, based on comments submitted by Wildlife Resources Commission on June 6, 2018, it appears that there is a practical option for mitigation in the immediate vicinity of the development. The application should be rejected on this basis alone.

VII. Inadequate Information To Allow Public Input On Compliance With Outstanding Resource Water (ORW) Requirements

In addition, the application does not provide enough information to inform public comment on the plans for treating human waste that will come from the proposed hotel and subdivision. The application acknowledges it will tie into the nearby sewage collection system that goes to the Cashiers Waste Water Treatment Plant (WWTP), but does not explain how this would not lead to an “expansion” of a discharge into an ORW, which is prohibited under state law. 15A NCAC 02B .0225(c)(1). Currently the Cashiers WWTP is operating at approximately 50% of permitted flow for the plant. Even if the Cashiers WWTP has the theoretical capacity to handle the increased load, violation of National Pollutant Discharge Elimination System (NPDES) permit conditions have already occurred in the past. The applicant must show why those violations would not be more numerous or serious with the proposed increased load.

VIII. The Project Cannot Be Allowed To Cause Further Impairment Of An ORW

Further, TWSA intends to boost operations of this WWTP to 100% of its permitted flow, to service approved, realized customer allocations including the applicant—effectively doubling its discharge into an ORW (personal communications). While clearly initiating an “expansion” of a discharge into an ORW, the application fails to disclose how NPDES permit compliance would be achieved by operating the Cashiers WWTP at 100% of its permitted flow. Though TWSA asserts that the Cashiers WWTP has been designed to accommodate up to 400,000 gallons per day of inflow (sewer plus infiltration during a storm event), this does not account for the fact that the excess inflow is often “flash treated” with chemicals and released directly into receiving waters, which most certainly will negatively impact Outstanding Resource Waters.

We have grave concerns that heretofore unused allocations will be used in a way that increases the existing discharge from the WWTP. Regardless of how much the permit allows as discharge, the actual discharge has been much lower since the Chattooga River was designated ORW. The regulations prohibit expansion of existing discharges, not expansions of existing permits. We doubt that it is lawful to treat slack in the WWTP permit as a property right that can be bought, hanging as a threat over the water quality of a National Wild & Scenic River, whose water quality is supposed to be maintained or improved.

In addition, the Chattooga River in the project area (from source to the Cashiers Lake dam) is potentially impaired for aquatic life due to low dissolved oxygen (DO). Low DO is caused by impoundment (due to increased temperature, lower surface area interaction, and change in vegetation). Deepening the impoundment and removing the wetlands would exacerbate this violation, which is impermissible in an ORW. 15A NCAC 02H .0506(b)(3); 15A NCAC 02B .0201(e). Indeed, failure to address this issue highlights another defect in the application: the applicant does not explain the proposal's impacts against the "no action" baseline. Without the dredging and development, this lake would continue to naturalize sediment and form wetland habitats until the reservoir fills up, with the Chattooga River restored to surface flow, solving the low dissolved oxygen problem. The applicant must show how it can at least provide comparable water quality to the "no action" scenario.

IX. Conclusion

We request a public hearing to address the obvious inadequacies, deficiencies, failures and lack of information in this proposed project, which include: failure to provide a no-action alternative to the potential negative impacts and degradation to the Wild & Scenic Chattooga River as outlined above; the proposal improperly segments and does not address a larger development plan; failure to address impacts to downstream values caused by inadequate measures to protect against erosion and sedimentation from land disturbing activities, and increased volume of sewage discharges; inadequate information to allow public input on compliance to protect Outstanding Resource Waters; inadequate disclosure of storm water control measures during extreme weather events; a mitigation plan that is legally and practically inadequate; and, the inevitable degradation and impairment of Outstanding Resource Waters and by association the Outstandingly Remarkable Values of the National Wild & Scenic River, which is longest and most pristine National Wild and Scenic River in the Southeastern U. S.

It is essential that ACE grant a public hearing to address these obvious omissions and inadequacies, for the public to give meaningful input on this proposed project in order to protect the Chattooga River and its ORW.

Sincerely,



Nicole Hayler
Executive Director
Chattooga Conservancy

/s/

Julie Mayfield
Executive Director
Mountain True