



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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MEMORANDUM

TO: State Water Control Board Members

FROM: Jutta Schneider, Director
Water Planning Division *Jutta Schneider*

DATE: November 9, 2016

SUBJECT: **Consideration of Petition to Designate a Portion of Laurel Fork as Exceptional State Waters**

Executive Summary

Staff intends to ask the Board at their December 12, 2016 meeting for a decision on whether or not to initiate a rulemaking to amend the Water Quality Standards Regulation, designating a segment of Laurel Fork in Highland County as Exceptional State Waters (ESW). Please refer to the map in Appendix A of Attachment 1 for a depiction of the segment that is the subject of the petition, which lies almost entirely on the property of one land owner. Staff has conducted a site visit and concluded that Laurel Fork would likely meet the required eligibility criteria necessary for consideration of an Exceptional State Waters designation. Please refer to Attachment 1 for the full site visit report.

Riparian landowners were afforded a 30-day comment period (September 26 – October 26) and the locality a 60-day comment period (September 25 – November 25). A general public notice was published in the Virginia Register on October 17 with a comment period ending on November 7, 2016. Three comments were received during the public review period. Two opposed the designation, primarily due to the inclusion of a short length of the stream bordering on the property of a second land owner and any potential negative impacts the designation may have on planned wind farm construction or maintenance activities and/or timber harvesting. One comment was received in support of the petition stating the need to protect the beauty, biological integrity, and the unique ecology and its associated endemic species as reasons. Please refer to Attachment 2 for a summary of comments.

Background

At the September 22, 2016 meeting of the State Water Control Board, staff presented to the Board a petition from McChesney Goodall, IV to designate Laurel Fork in Highland County, from approximately 0.33 miles upstream of the confluence with Collins Run (N38.490051, W79.666039) downstream to a point approximately 0.5 miles upstream from the confluence of Mullenax Run (N38.508322, W79.652757). Laurel Fork is a relatively small mountain stream in Highland County located approximately 10 miles northwest of Monterey and is in the South Branch of the South Fork Potomac River watershed portion of the Potomac River basin. At the September meeting, the Board directed staff to:

1. Proceed with notification to Highland County, and riparian landowners who would be potentially impacted by an Exceptional State Water designation of a portion of Laurel Fork and to provide these potentially impacted parties a 60-day opportunity for comment.
2. Publish in the Virginia Register the required notice of a 21-day comment period for the general public, and
3. Appear before the Board after the close of the comment periods to provide a summary of the comments and the results of the staff site visit so that the Board can decide at that time what course of action to take on the petition.

“Tier 3” is how the public commonly refers to those waters that are protected from water quality degradation through a prohibition on new or increased point source discharges. The equivalent regulatory terms are “Outstanding National Resource Waters” for EPA and “Exceptional State Waters” for Virginia.

Staff Site Visit

DEQ guidance for the exceptional state waters program requires a staff site visit to the nominated waterbody for confirmation that the candidate water meets the Exceptional State Waters (ESW or Tier 3), eligibility criteria. The nominated water body must exhibit an exceptional environmental setting **and** either support an exceptional aquatic community **or** support exceptional recreational opportunities which do not require modification of the existing natural setting.

Attachment 1 presents staff findings from an October 7, 2016 site visit to the petitioned segment of Laurel Fork. The staff site visit report also contains photographs of the segment of the waterbody under consideration. The staff member that conducted the site visit is of the opinion that the segment would likely meet the criteria necessary to be considered for an ESW designation due to the exceptional environmental setting and exceptional aquatic community. In addition, the environment associated with the stream is home to a diverse collection of State rare flora and fauna. Staff that conducted the site visit remarked that the segment was very similar in appearance to a segment farther downstream within the George Washington National Forest that was designated as ESW in 2005.

Most all other existing Tier 3 waters have exceptional recreational components that are directly related to the waterbody such as canoeing/kayaking, rafting, and/or possess an outstanding native trout or other recreational sport fishery. Laurel Fork does not easily lend itself to these types of activities due to being surrounded by private property. Legal access for the general public would be through permission granted by the landowner(s).

This segment of Laurel Fork has been assessed as supporting all designated uses. Laurel Fork is classified by the VA Department of Game and Inland Fisheries as Class ii wild natural trout waters and is considered a good wild trout stream with good habitat, flow, and temperature for a self-sustaining brook trout population. Given the high-quality habitat demands for brook trout, staff are of the opinion Laurel Fork possesses an outstanding aquatic community.

In summary, it may be interpreted that Laurel Fork meets eligibility criteria necessary for designation consideration due to the environmental setting factors outlined above and the aquatic community.

Summary of Comments

The Code of Virginia, section 62.1-44.15:4(B), requires the Board to provide written notification of Exceptional State Waters petitions to each locality in which the waterway lies and to make a good faith effort to provide notice to impacted riparian property owners. The riparian property owners' notices are sent to names and addresses taken from local tax rolls provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions at the request of the Board. A letter of notification and request for comment was sent to the potentially impacted localities and riparian landowners. Riparian landowners were afforded a 30-day comment period (September 26 – October 26) and the locality a 60-day comment period (September 25 – November 25). A general public notice was published in the Virginia Register on October 17, 2016 with a comment period ending on November 7, 2016. Three comments were received during the public review period. A full summary of comments received through November 9, 2016 in response to the notification letters and the 21-day public comment period is provided as an attachment to this memo (**Attachment 2**).

Opposing comment was received from one riparian landowner (Tamarack of Highland, LLC) and from a company leasing land from Tamarack with expectations of constructing a wind farm for electricity generation (Highland New Wind Development, LLC). Both commenters object to the petition to the extent that the petition includes property that is part of Tamarack and their concern that there may be potential negative impacts from the ESW designation to future development of electricity generating wind farm and timbering operations.

Three comments were received in support of the petition stating the need to protect the beauty, biological integrity, and the unique ecology and its associated endemic species as reasons.

Memo to Board
Laurel Fork ESW
Page 4

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Attachments

Attachment 1 – Laurel Fork staff site visit report

Attachment 2 – Comment summary

ATTACHMENT 1

**LAUREL FORK – Exceptional State Waters Eligibility Determination Site Visit
– October 7, 2016 -**

Boundary Description

Laurel Fork in Highland County, from approximately 0.33 miles upstream of the confluence with Collins Run (N38.490051, W79.666039) downstream to a point approximately 0.5 miles upstream from the confluence of Mullenax Run (N38.508322, W79.652757). Total length is approximately 2.5 miles.

Observations

On October 7, 2016, a site visit to the nominated segment of Laurel Fork in Highland County was conducted by DEQ staff as required by Exceptional State Waters guidance. The majority of the nominated segment of Laurel Fork is within the 1,681 acre Rifle Ridge Farm which is private property. A small part near the upstream portion of the segment borders, and affords riparian access from, another private property called Tamarack of Highland, LLC (see Attachment 2). There is no access to the general public. DEQ staff was granted access through the Rifle Ridge Farm property owners.

The stream valley that Laurel Fork flows through tends to have very steep sides and the stream has a moderate meander. The gradient of the stream is moderate and the substrate mostly cobble and gravel. Both sides of the stream are heavily wooded for most of the observed portion of the segment. The habitat immediately surrounding Laurel Fork is a High Allegheny Montane Alluvial Forest, with yellow birch and spruce canopy with a dense understory of rhododendron. Rhododendron is frequently referred to as "laurel" hence the name of the stream, "Laurel Fork". One segment of the nominated section runs through a high montane wet meadow. The environment associated with the stream is home to a diverse collection of state rare flora and fauna.

Laurel Fork is classified by the VA Department of Game and Inland Fisheries as Class ii wild natural trout waters and is considered a good wild trout stream with good habitat, flow, and temperature for a self-sustaining brook trout population. A cursory benthic survey was done and caddisfly (trichoptera), mayfly (ephemeroptera) and stonefly (plecoptera) were observed. Given the high-quality habitat demands for brook trout, staff are of the opinion Laurel Fork possesses an outstanding aquatic community.

Conclusions

After considering observations made during a visit to the site, staff concluded that Laurel Fork satisfies the necessary eligibility criteria to be considered for designation as Exceptional State Waters. The environmental setting and aquatic communities in the nominated segment of Laurel Fork appear to be of exceptional quality.



Riparian montane meadow



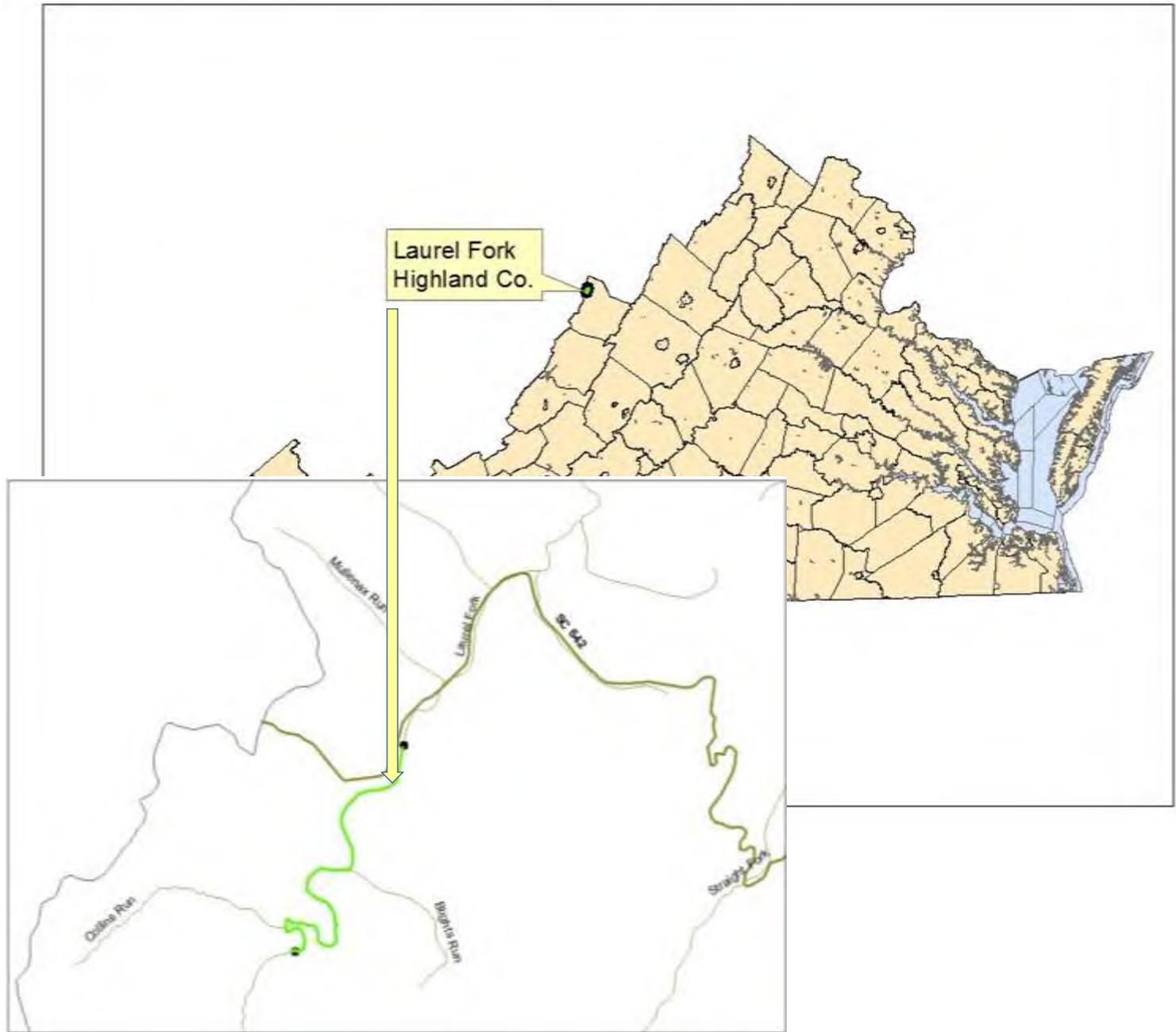


Mature and sapling spruce

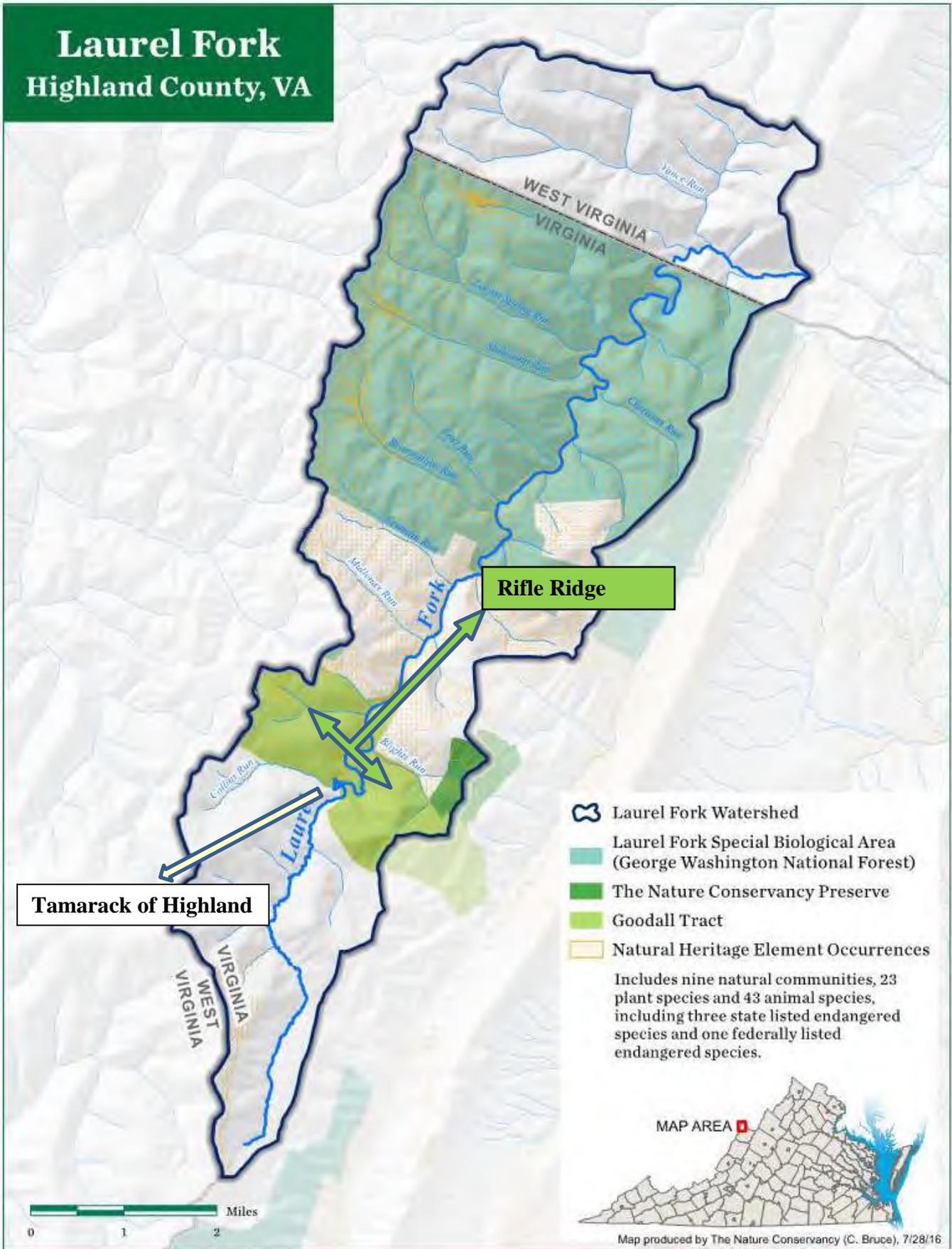


Appendix A.

Nominated Portion of Laurel Fork



Appendix B.



ATTACHMENT 2

Laurel Fork ESW Public Comment Summary

Laurel Fork in Highland County, from approximately 0.33 miles upstream of the confluence with Collins Run (N38.490051, W79.666039) downstream to a point approximately 0.5 miles upstream from the confluence of Mullenax Run (N38.508322, W79.652757).

LOCALITY COMMENT

None.

Comment - Opposing

Comment was received from one riparian landowner (Tamarack of Highland, LLC) and from a company leasing land from Tamarack with expectations of constructing a wind farm for electricity generation. Tamarack and the company that leases the land for a wind farm (High New Wind Development, LLC) are in opposition to the petition. They both request that:

1. Let them know who prepared the Petition and who took the photographs attached to it,
2. Provide them copies of all of the documents in, or comments submitted to, the docket regarding the Petition to date and;
3. Electronic access to those records, or otherwise let them know where those records are kept and when and how we can view and copy them

Tamarack objects to the petition to the extent that it includes property not within Rifle Ridge Farm and that:

1. It imposes any restrictions on our use and enjoyment of property owned by Tamarack not already imposed by:
 - a. Tamarack's participation in the United States Department of Agriculture's Conservation Resource Enhancement Program ("CREP"); or
 - b. The designation of the portions of Laurel Fork downstream contained in the George Washington National Forest.
2. Interferes with timbering operations on Tamarack property, including but not limited to the recently installed timber road with drainage culverts, and any other roads Tamarack deems necessary.
3. In any way restricts Tamarack's ability to comply with its lease obligations with Highland New Wind Development, LLC and its fully permitted development, which includes, but is not limited to, its VSMP- General Permit for Stormwater Discharges from Construction Sites.
4. Limits Tamarack's ability to build on or develop its property to the fullest. Highland New Wind Development opposes the petition for the same reasons.

Comment - Supporting

Comment was received from Lucile S. Miller (not a riparian landowner). She expressed enthusiastic support for the petition to designate stating the need to protect the beauty, biological integrity, and the unique ecology and its associated endemic species as reasons. She said the requested designation would assist the Goodall family's efforts to protect water quality in an area of particular importance.

Comment was received from David and Betty Kiser (not riparian landowners) in support of the petition. Mr. Kiser states he is a Highland County native and he has been fortunate to hunt and fish the property for sixty-seven years which has given him firsthand knowledge of the beauty of the stream and surrounding area. He states that designation of the nominated 2-mile segment would complement the existing designated segment just downstream within the George Washington National Forest.

Comment was received from Patricia Reum in support of the petition. She states that protection afforded by ESW designation is warranted because of the unique ecological characteristics of Laurel Fork and the surrounding habitats and its outstanding and largely undisturbed scenic beauty. She believes that designating this section of Laurel Fork as an ESW is a significant step toward preserving the Laurel Fork watershed in its entirety. She comments that areas of such ecological importance should be preserved in perpetuity.