

AUGUSTA COUNTY SERVICE AUTHORITY

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September 21, 2015

Mr. Matthew Bley
Director, Gas Transmission Certificates
701 E. Carey Street
Richmond, VA 23219

Re: **Docket No. PF 15-6-000**
 Augusta County Service Authority
 Source Water Protection Overlay – Lyndhurst Well

Dear Mr. Toms:

The Augusta County Service Authority has expressed many concerns over the past year regarding the Atlantic Coast Pipeline (ACP) and its proximity to critical water supplies and drinking water recharge areas in Augusta County. Our concerns have previously been expressed to Dominion and to FERC. In particular, we are hoping to ensure protection of our designated Source Water Protection Areas. The program we have developed to identify and protect these Source Water Protection Areas has been recognized by the US Environmental Protection Agency and the Virginia Department of Health. These designated areas have also been protected by the Augusta County Code since 2011.

The current ACP route directly crosses through our most sensitive and highest producing water supply recharge area. The Lyndhurst Well can deliver up to 1,400 gallons per minute of drinking water. It is the primary source of water in a service district that includes over one-half of all Authority customers, but also the regional medical center and major industrial users such as Hershey Chocolate, McKee Bakery, and Hollister, Inc. This source cannot be readily replaced or repaired if damaged in any way, including the loss or decline of either water quantity or quality from the recharge area. The recharge area, a karst area densely populated with sinkholes and other karst features, is a geologically vulnerable area. The construction of the 42 inch ACP, with its associated blasting, heavy construction, and disruption to karst features, has a significant potential to have detrimental impacts on our water supply. This is science, not public relations rhetoric. The Augusta County Service Authority has years of scientific study data related to this recharge area, the groundwater pathways, the geological vulnerability, and the risk to the supply from construction activity such as the ACP will generate. Additionally, the Authority has requested several times that Dominion provide detailed plans for facility/resource protection along with financial bonding that could be utilized immediately in the event of an issue involving Authority facilities along the route of the ACP project. Thus far, the planning documents received have been incomplete and the request for financial bonding has not been recognized as concern for DTI and, therefore, all risk is shifted to the Authority.

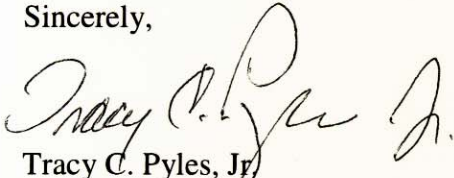
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The attorneys for the Augusta County Service Authority have evaluated the Augusta County Code as related to the Source Water Protection Areas, and have concluded that the Source Water Protection Ordinance contains the language and intention to protect our critical water supplies from activities that may have an adverse impact on our designated recharge areas, particularly where hazardous materials, as defined by the Code, are involved.

The opinion of the Augusta County Service Authority legal counsel is attached to this letter. Their conclusion is that the Ordinance supports the relocation of the ACP to areas outside of the legally defined Source Water Protection Area. Therefore the Board of Directors of the Augusta County Service Authority hereby requests that FERC and Dominion begin working together to identify a new ACP route that does not conflict with any of our Source Water Protection Areas in Augusta County.

Sincerely,



Tracy C. Pyles, Jr.
Chairman – Board of Directors
Augusta County Service Authority

cc: Kevin Bowman, Federal Energy Regulatory Commission
Mr. Emmett Toms, Dominion – State & Local Affairs
Governor Terry R. McAuliff
Senator Timothy Kaine
Senator Mark R. Warner
Senator Emmett W. Hanger, Jr.
Congressman Robert W. Goodlatte
Delegate Richard P. “Dickie” Bell
Delegate R. Steven Landes
Attorney General Mark R. Herring
Lt. Governor Ralph S. Northam
John L. Aulbach, II, P.E., VDH – Office of Drinking Water

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September 15, 2015

The Honorable Tracy C. Pyles, Jr., Chairman
AUGUSTA COUNTY SERVICE AUTHORITY
18 Government Center Lane
Verona, Virginia 24482

RE: *Atlantic Coast Pipeline Project*
Appalachian Trail South Alternative Route
Lyndhurst Production Well Source Water Protection Overlay District

Dear Chairman Pyles:

The Augusta County Service Authority (ACSA) requested a legal opinion regarding the proposed location of portions of a pipeline for the transmission of natural gas within the boundaries of an area designated for the protection of groundwater resources. Specifically, ACSA questions whether the proposed location of a portion of the Appalachian Trail South Alternative Route of the Atlantic Coast Pipeline (Pipeline) within the Source Water Protection Overlay (SWPO) District for the protection of the Lyndhurst Production Well is a use consistent with the applicable zoning ordinances of Augusta County, Virginia.

In this regard, we have reviewed relevant provisions of Title 15.2, Chapter 22, Articles 3 and 7 of the Code of Virginia (1950, as amended); the Augusta County Comprehensive Plan 2007-2027 ("Comprehensive Plan"); Chapter 25, Division H, Article LI of the Code of the County of Augusta, Virginia (2011) ("Augusta County Code"); the document entitled "Staff Comments of Draft Resource Reports 1 through 10," dated July 14, 2015, from Kevin Bowman, Environmental Project Manager, Office of Energy Projects with the Federal Energy Regulatory Commission; and various documents relevant to the proposed Pipeline and the SWPO District protecting the Lyndhurst Production Well.

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Factual Background

The Lyndhurst Production Well is located in the southeastern quadrant of Augusta County. It is the largest public water supply in Augusta County and is capable of providing 1,400 gallons of water per minute. In addition, water from the Lyndhurst Production Well does not require treatment before being added to the distribution system. The well provides water for the densely populated areas of Stuarts Draft and Fishersville, as well some of Augusta County's largest businesses, including Augusta Health Corporation, Hershey Chocolate of Virginia, Inc., and McKee Foods Corporation. I understand that efforts to identify a comparable source of water in this area have been unsuccessful.

Pursuant to Augusta County's applicable zoning ordinances, a SWPO District has been designated to protect the scientifically determined recharge area of the Lyndhurst Production Well.¹ The Lyndhurst Production Well and the SWPO District are depicted on a map entitled "Dominion Atlantic Coast Pipeline, Appalachian Trail South Alternative Route," dated March 17, 2015, a copy of which is attached behind Tab 1.

As a result of issues arising from the proposed location of the Pipeline across a portion of the Appalachian National Scenic Trail, Dominion Transmission, Inc. (DTI), has proposed an alternate route referred to as the "Appalachian Trail South Alternative Route" ("AT Alternative Route") (shown by the yellow line on the map behind Tab 1). I understand that the relevant portion of the AT Alternative Route is located in an "Area 2" SWPO District. The AT Alternative Route winds its way through numerous identified sinkholes located within the SWPO District for the Lyndhurst Production Well. I understand further that construction activities (particularly the effects of blasting on geological features (sinkholes, karst features, etc.)), location, and operation of a natural gas pipeline along the AT Alternative Route within this SWPO District poses significant risks to the viability of the Lyndhurst Production Well.

¹ In 2011, the ACSA was recognized by the United States Environmental Protection Agency for establishing source water protection zones to protect existing and potential drinking water sources, and for exhibiting innovation and leadership in utilizing clean water infrastructure funds. In addition, the ACSA was commended by the Commonwealth of Virginia, Department of Environmental Quality for implementing the Source Water Protection Ordinance in furtherance of the Virginia Local and Regional Water Supply Planning Regulation (9 VAC 25-780, *et seq.*) requirement that localities develop water plans to identify important sources of water supply and to take the steps necessary to manage them so that they are adequate, safe, and reliable in the future.

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By its letter entitled "Staff Comments of Draft Resource Reports 1 through 10," dated July 14, 2015, the Federal Energy Regulatory Commission (FERC) requested that DTI address several issues related to groundwater protection. Specifically relevant to your inquiry to us, FERC requests that DTI:

[d]escribe how Atlantic and DTI propose to comply with the Augusta County Source Water Protection Ordinance regarding the crossing of the source water protection areas.

(See "Staff Comments of Draft Resource Reports 1 through 10," dated July 14, 2015, Comment 47(a)). I understand that a meeting was held on August 12, 2015, between ACSA and DTI to discuss some of the issues raised by the directive from FERC to address the proposed location of the AT Alternative Route within the SWPO District for the Lyndhurst Production Well. As a result of the comments from FERC and the August 12, 2015 meeting, ACSA requested this opinion regarding the applicability of provisions of the zoning ordinances of Augusta County relative to location and operation of the AT Alternative Route of the Pipeline within the SWPO District for the Lyndhurst Production Well.

Virginia Statutory Framework

A locality's planning for development of land within its jurisdiction is governed by Chapter 22 of Title 15.2 under the Code of Virginia. Specifically, localities are required to adopt a comprehensive plan for the purpose of

guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities.

§ 15.2-2223(A). The comprehensive plan shall show the locality's long-range recommendations for the general development of the territory covered by the plan. See § 15.2-2223(C). The General Assembly specifically authorizes a locality to include the "designation of areas for implementation of reasonable ground water protection measures" within its comprehensive plan. See § 15.2-2223(C)(4).

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A comprehensive plan “is merely a guide for development, rather than an instrument of land use control.” Fairfax County v. Williams, 216 Va. 49, 59-60, 216 S.E.2d 33, 41 (1975). The comprehensive plan does not have the status of a zoning ordinance. See Board of Supervisors v. Allman, 215 Va. 434, 441, 211 S.E.2d 48, 52 (1975). Rather, a comprehensive plan “serves as a general guideline for the development and implementation of a zoning ordinance.” Board of Supervisors v. Safeco Inc. Co., 226 Va. 329, 335, S.E.2d 445, 448 (1983), cited in, Op. Va. Att’y Gen., 2010 Va. AG LEXIS 2 (Jan. 11, 2010).

A locality may classify the territory under its jurisdiction into districts to regulate, restrict, permit, prohibit and determine use. See § 15.2-2280. “Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200.” § 15.2-2283. A zoning ordinance may include reasonable provisions to protect surface water and ground water. See id.

Augusta County Regulation

The Augusta County Comprehensive Plan 2007-2027 (“Comprehensive Plan”) identifies thirty-six (36) Source Water Assessment Program (SWAP) Zones based upon standards and policies of the Virginia Department of Health, Office of Drinking Water. A copy of Map 19 from the Comprehensive Plan identifying the ACSA Source Water Protection Zones is attached behind Tab 2.

Pursuant to and in furtherance of the Comprehensive Plan’s identification of SWAP Zones, Augusta County has established SWPO Districts. See Augusta County Code, Chap. 25, Div. H, Art. LI (2011). The purpose of SWPO Districts is:

to protect public health, safety and welfare by preventing adverse impacts due to contamination of water or loss of water in aquifers which currently serve as groundwater supply sources. The aquifers of Augusta County are integrally connected with and recharged by waters at the land surface and are therefore particularly vulnerable to spills and discharges of toxic and hazardous materials.

See Augusta County Code, § 25-511. The zoning provisions applicable to SWPO Districts provide “a framework for certain land use activities that have the *potential* to adversely impact groundwater quality in delineated groundwater recharge areas.” See id. (emphasis added). A copy of provisions of the Augusta County Code applicable to SWPO Districts is attached behind Tab 3.

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SWPO Districts are classified as Area 1 or Area 2. Area 1 SWPO Districts include areas within a 1,000-foot fixed radius around a public groundwater supply source. Area 2 SWPO Districts are the defined areas that contribute recharge to public groundwater supply sources. Area 2 is exclusive of Area 1. See id. § 25-514.

The Augusta County Code prohibits use of “underground petroleum product pipelines” within an Area 1 SWPO District. See id. § 25-516(9). In regard to Area 2 SWPO Districts, § 25-518 identifies certain uses prohibited within an Area 2 SWPO District except upon issuance of a Special Administrative Permit. Special Administrative Permits are issued only for a use where it can be demonstrated that the use will not have an undue adverse impact on the public water supply. Section 25-518(D) incorporates by reference the uses, including underground petroleum product pipelines, prohibited within an Area 1 SWPO District involving the “collection, handling, manufacture, use, storage, *transfer* or disposal of any *hazardous materials*.” See id. § 25-518(D) (emphasis added). The term “hazardous material” is defined under Chapter 25 as “[a] material that *may pose* a present or *potential hazard* to the groundwater supply when improperly stored, *transported* or disposed of or otherwise managed including without exception hazardous materials identified and listed in accordance with the Resource Conservation and Recovery Act of 1976.” See id. § 25-513 (emphasis added).

Analysis

Natural gas is a petroleum product.² Therefore, a pipeline for the transmission of natural gas is a use prohibited in an Area 1 SWPO District. See id. § 25-516(9).

Because a pipeline for the transmission of natural gas is a use prohibited in an Area 1 SWPO District, such use may also be prohibited in an Area 2 SWPO District if such use also involves the transfer of any hazardous materials. See id. § 25-518(D). The applicability of this prohibition requires two findings: (1) that the material to be transferred through the pipeline is hazardous; and (2) that the proposed use would have an undue adverse impact on the public water supply.

The definition of “hazardous material” under this portion of the zoning ordinance is broad. Relevant to this inquiry, a material may be considered “hazardous” if it “may pose” a “present or

² The term “petroleum” is used to describe a broad range of hydrocarbons that are found as gases, liquids, or solids beneath the surface of the earth. The two most common forms of petroleum products are natural gas and crude oil.

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potential hazard” to the groundwater supply when improperly transported. The definition does not incorporate the definition of “hazardous materials” as applied in other state and federal statutes.³ Therefore, the deciding body could properly conclude that natural gas is a “hazardous material” under § 25-513.

Similarly, the deciding body could properly conclude that the proposed pipeline through a SWPO District poses risks of adverse impact on the public water supply. ACSA has confirmed the importance of the Lyndhurst Production Well to the public water supply for Augusta County. Furthermore, ACSA has identified potential adverse impacts to this water source as a result of construction activities (blasting, etc.), and the hazards associated with operating the pipeline through the SWPO District (direct and indirect contamination). Therefore, depending upon the evidence presented, the deciding body could deny a Special Administrative Permit upon a finding that location of the proposed pipeline through an Area 2 SWPO District would have an adverse impact on the public water supply of Augusta County.

Conclusion

The relevant zoning ordinances under the Augusta County Code provide support for the conclusion that the proposed natural gas pipeline is a use prohibited in an Area 2 SWPO District. Upon factual findings (1) that natural gas is a “hazardous material” under §§ 25-513 & 25-518(D) and (2) that portions of the proposed pipeline transmitting natural gas within an Area 2 SWPO District would have an adverse impact on the public water supply (supporting the denial of Special Administrative Permit under § 25-518), the deciding body could properly conclude that location of portions of the Atlantic Coast Pipeline within an Area 2 SWPO District is inconsistent with the zoning ordinance’s legitimate purposes of protecting “public health, safety and welfare by preventing adverse impacts due to contamination of water or loss of water in aquifers which currently serve as groundwater supply sources.”

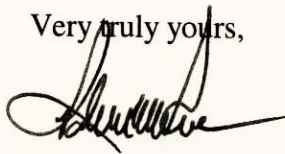
³ “Hazardous materials” identified and listed in accordance with the Resource Conservation and Recovery Act of 1976 are necessarily included in the definition of “hazardous materials” under § 25-513 of the Augusta County Code. However, this reference is not a limitation on the materials that can be considered “hazardous materials” under § 25-513.

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If you have any questions regarding this opinion or would like for us to consider additional information, please contact me.

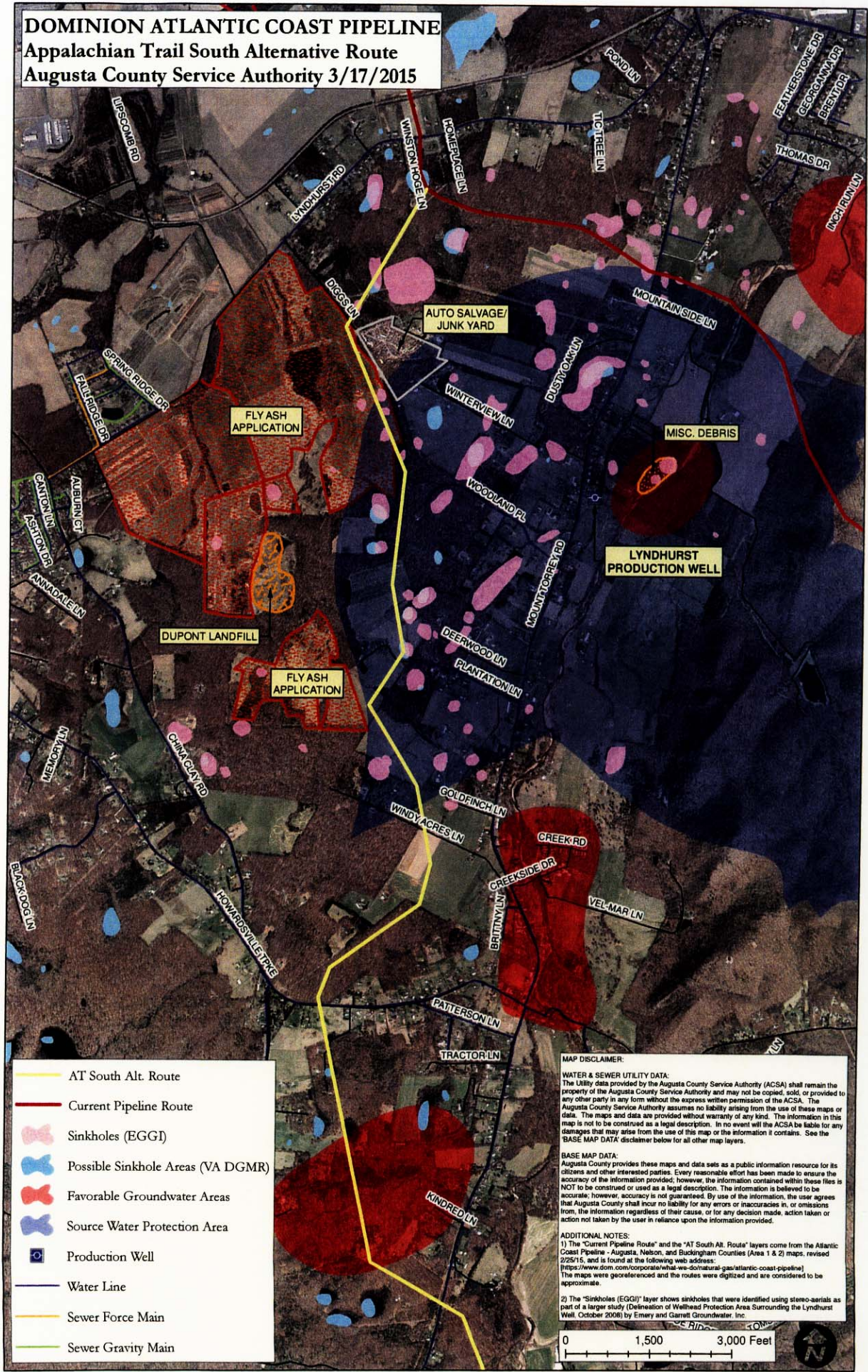
Very truly yours,

A handwritten signature in black ink, appearing to read "Randall T. Perdue", written in a cursive style.

Randall T. Perdue

RTP:pd
Enclosures

DOMINION ATLANTIC COAST PIPELINE
Appalachian Trail South Alternative Route
Augusta County Service Authority 3/17/2015

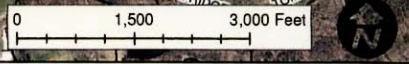


- AT South Alt. Route
- Current Pipeline Route
- Sinkholes (EGGI)
- Possible Sinkhole Areas (VA DGMR)
- Favorable Groundwater Areas
- Source Water Protection Area
- Production Well
- Water Line
- Sewer Force Main
- Sewer Gravity Main

MAP DISCLAIMER:
WATER & SEWER UTILITY DATA:
 The utility data provided by the Augusta County Service Authority (ACSA) shall remain the property of the Augusta County Service Authority and may not be copied, sold, or provided to any other party in any form without the express written permission of the ACSA. The Augusta County Service Authority assumes no liability arising from the use of these maps or data. The maps and data are provided without warranty of any kind. The information in this map is not to be construed as a legal description. In no event will the ACSA be liable for any damages that may arise from the use of this map or the information it contains. See the "BASE MAP DATA" disclaimer below for all other map layers.

BASE MAP DATA:
 Augusta County provides these maps and data sets as a public information resource for its citizens and other interested parties. Every reasonable effort has been made to ensure the accuracy of the information provided; however, the information contained within these files is NOT to be construed or used as a legal description. The information is believed to be accurate; however, accuracy is not guaranteed. By use of the information, the user agrees that Augusta County shall incur no liability for any errors or inaccuracies in, or omissions from, the information regardless of their cause, or for any decision made, action taken or action not taken by the user in reliance upon the information provided.

ADDITIONAL NOTES:
 1) The "Current Pipeline Route" and the "AT South Alt. Route" layers come from the Atlantic Coast Pipeline - Augusta, Nelson, and Buckingham Counties (Area 1 & 2) maps, revised 2/25/15, and is found at the following web address: <https://www.dom.com/corporate/what-we-do/natural-gas/atlantic-coast-pipeline/>
 The maps were georeferenced and the routes were digitized and are considered to be approximate.
 2) The "Sinkholes (EGGI)" layer shows sinkholes that were identified using stereo-aerials as part of a larger study (Delineation of Wellhead Protection Area Surrounding the Lyndhurst Well, October 2008) by Emery and Garrett Groundwater, Inc.

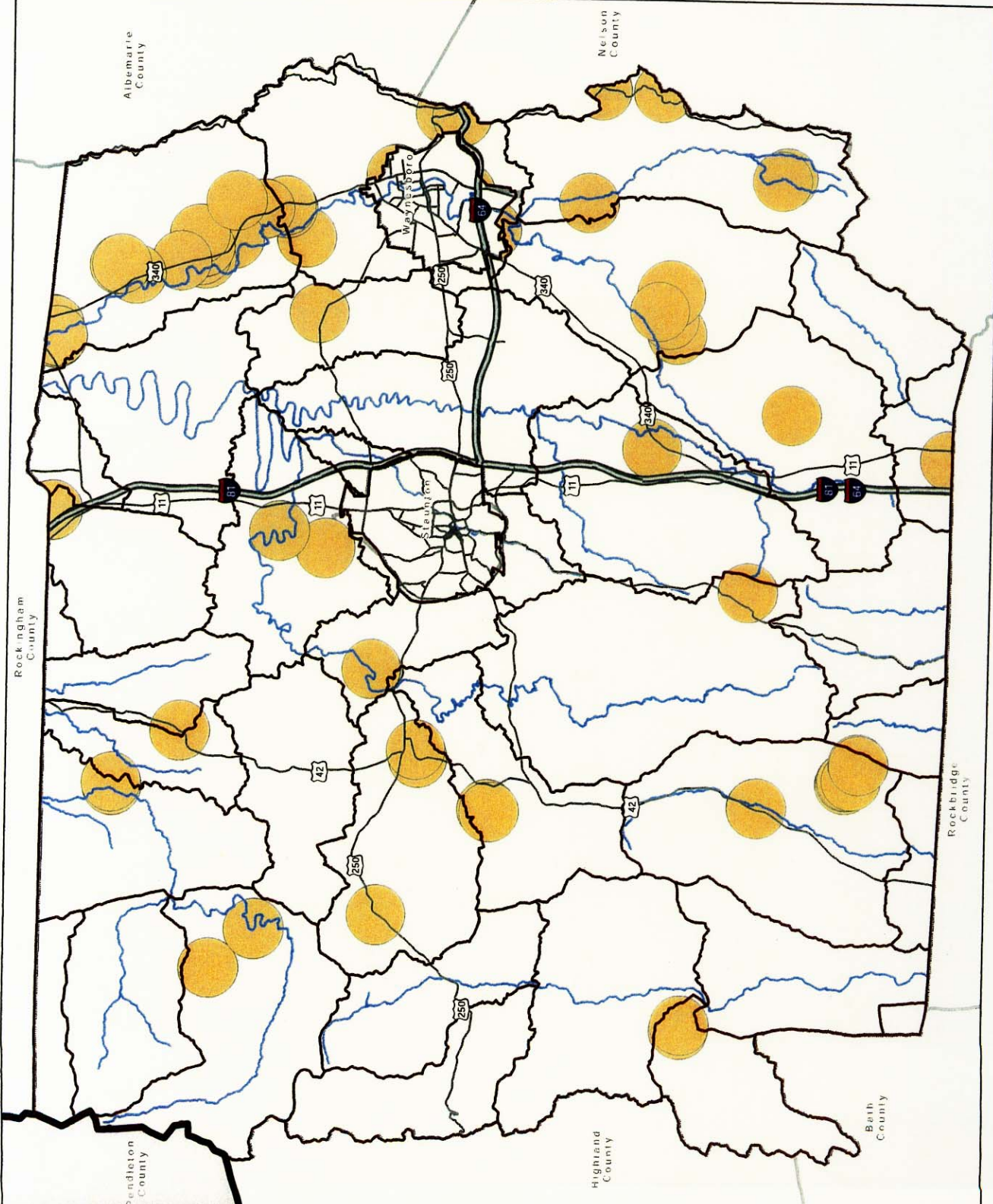


Legend

-  Source Water Protection Zones
-  HUC 12
-  Hydrology
-  Roads - Interstate
-  Roads - Primary



Supplemental Natural Resources Section
Map 19
ACSA Source Water Protection Zones
 Augusta County
 Comprehensive Plan
 2007-2027



CHAPTER 25. ZONING

DIVISION H. OVERLAY DISTRICTS

Article LI. Source Water Protection Overlay (SWPO) Districts

- § 25-511. Purpose and Objectives.
- § 25-512. Applicability and Enforcement.
- § 25-513. Definitions.
- § 25-514. Boundaries of SWPO Areas.
- § 25-515. Exempted Uses in Areas 1 and 2.
- § 25-516. Prohibited Uses in Area 1.
- § 25-517. Prohibited Uses in Area 2.
- § 25-518. Uses Permitted by Special Administrative Permit in Area 2.
- § 25-519. On-site Sewage Disposal System Requirements.
- § 25-520. Prohibitions on Buildings and Structures.
- § 25-521. Criteria for Specific Utilities.
- § 25-522. Conditional Exemptions.
- § 25-523. Sourcewater Protection Overlay Areas.

CHAPTER 25. ZONING

DIVISION H. OVERLAY DISTRICTS

Article LI. Source Water Protection Overlay (SWPO) Districts.

§ 25-511. Purpose and Objectives.

The purpose of the SWPO Districts is to protect public health, safety and welfare by preventing adverse impacts due to contamination of water or loss of water in aquifers which currently serve as groundwater supply sources. The aquifers of Augusta County are integrally connected with and recharged by waters at the land surface and are therefore particularly vulnerable to spills and discharges of toxic and hazardous materials. These overlay districts are intended to preserve existing sources of drinking water to meet present and future public need.

The SWPO District zoning contained herein provides a framework for certain land use activities that have the potential to adversely impact groundwater quality in delineated groundwater recharge areas. The degree of water supply protection sought by the provisions of this article is considered reasonable for regulatory purposes based on the standards and policies of the Virginia Department of Health, Office of Drinking Water, and accepted hydrogeological methods of study. This does not imply that groundwater will not be impacted by natural causes or those unanticipated land uses located within or outside of the SWPO Districts.

§ 25-512. Applicability and Enforcement.

A. This article shall apply to all lands within the County of Augusta which are identified as being in a SWPO District established by this article. Other areas deemed to be essential to the protection of public groundwater supply sources may be included in a SWPO District in accordance with § 25-514. A copy of the Source Water Protection Map Set shall be filed in the Community Development Department and shall be available for inspection by the public. Properties or portions of that property located within a SWPO District shall be governed by the restrictions contained herein.

B. Any person who fails to comply with any of the requirements or provisions of this article shall be subject to the penalties listed in division J of this chapter. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the county to be a public nuisance and abatable as such.

C. Surface water supply protection areas are excluded.

§ 25-513. Definitions.

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this article:

Aquifer. A geological formation, group of formations or part of a formation that contributes to a public groundwater supply source or that is capable of storing and yielding groundwater to public wells and springs.

Best Management Practices (BMPs). Improved environmental protection practices including but not limited to practices applied to stormwater, agriculture, well drilling, industrial, land development, and other land use applications. These are performance or design standards established to minimize the risk of contaminating groundwater or surface waters while managing the use, manufacture, handling or storage of chemicals that could potentially contaminate groundwater.

Class II Injection Wells. Wells that inject fluids associated with oil and natural gas production.

Class V Injection Wells. A shallow well used to place a variety of fluids at shallow depths below the land surface. Examples of Class V injection wells include: motor vehicle waste disposal wells, large capacity cesspools, storm water drainage wells, aquifer remediation wells, and large capacity septic systems.

Large Concentrated Animal Feeding Operation (CAFO). An animal feeding operation that confines or stables at any one time for a total of 45 days or more in any 12-month period at least the number of animals described below and discharges or proposes to discharge from the production or the land application areas and thus would require coverage under a Virginia Pollutant Discharge Elimination System (VPDES) permit. The quantities would include but not be limited to:

- a. 700 mature dairy cattle, whether milked or dry;
- b. 1,000 cattle other than dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow-calf pairs;
- c. 55,000 turkeys;
- d. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- e. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- f. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

Contamination. An impairment of water quality by the introduction of contaminants, including chemicals, radionuclides, biologic organisms, or other extraneous matter into a water source, whether or not it affects the potential or intended beneficial use of water.

Disposal. The deposition, injection, dumping, spilling, leaking, incineration, or placing of any hazardous materials into or on any land or water so that such hazardous materials or any

constituent thereof may enter the environment or be discharged into any waters including groundwater.

Groundwater Recharge. The portion of precipitation and/or surface runoff that infiltrates into the subsurface and reaches the water table or portion of the subsurface that is saturated, and then may ultimately flow to wells, springs, or streams.

Hazardous Material. A material that may pose a present or potential hazard to the groundwater supply when improperly stored, transported or disposed of or otherwise managed including without exception hazardous materials identified and listed in accordance with the Resource Conservation and Recovery Act of 1976.

Karst. Geologic setting where dissolution of bedrock (primarily carbonate bedrock such as limestone or dolomite) forms subsurface voids capable of rapid transmission of water. The subsurface features can be unseen or evident as sinkholes, caves, sinking streams, and springs that make the underlying aquifer particularly susceptible to contamination from activities at the land surface.

Leachable Material. Material, including solid wastes, sludge, and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

Nonconventional Sewage Disposal System. See Augusta County Code Section 11-13.A.2.

On-Site Sewage System. A Type I, Type II, Type III or Type IV sewage disposal system as referenced in 12 VAC § 5-610-250 of the Sewage Handling and Disposal Regulations.

Person or Party. An individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Public Groundwater Supply Source. A well, spring or other groundwater source that is owned or leased by a governmental unit or agency and is currently utilized or is currently under active development as a public water supply. The term shall exclude any source utilized as a water supply for a transient or other non-community water system.

Secondary Containment System. A supplemental tank, catchment pit, pipe, liner or vessel that meets the requirements of 40 CFR § 264.193 or successor requirements and limits and contains liquid or chemical leaking or leaching from a primary containment area, where monitoring and product recovery can be conducted.

Sinkhole. Any surface depression formed by the removal (typically underground) of water, surficial soil, rock, or other material in a karst setting.

Source Water Protection Overlay (SWPO) District. The zoning district established to protect public groundwater supply sources and overlaying other zoning districts in the jurisdiction of

Augusta County. This district includes specifically designated groundwater recharge areas that collect and convey groundwater recharge to public groundwater supply zones.

Spill Containment and Prevention Plan. A working document for the facility which addresses storage and secondary containment, spill response, and waste disposal.

Underground Storage Tank. Any one or any combination of tanks, including connecting pipes, used to contain an accumulation of petroleum products or other products that may adversely contaminate groundwater quality, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground.

§ 25-514. Boundaries of SWPO Areas.

A. Area 1 SWPO Districts include areas within a 1,000-foot fixed radius measured in a flat horizontal plane without regard to changes in ground elevation around a public groundwater supply source. Their purpose is to protect wells and springs from the accidental or intentional introduction of contaminants into the aquifer from spills, surface runoff, or leakage from storage facilities or containers. Any additional Area 1 boundaries shall be established by ordinance adopted by the Board of Supervisors, without hydrogeologic studies upon development of future public water sources by the ACSA, Craigsville, Staunton, or Waynesboro.

B. Area 2 SWPO Districts are the defined areas that contribute recharge to a public groundwater supply source. Area 2 is exclusive of Area 1. Area 2 boundaries may be established as deemed necessary, by ordinance adopted by the Board of Supervisors, based on standard hydrogeologic principles, including water table mapping, analytical solutions, dye tracing, aquifer testing, computer models, or other acceptable means, to ensure protection of public groundwater supply sources.

C. The boundaries of any SWPO Area 2 may be revised by the Board of Supervisors, in consultation with the Augusta County Service Authority, where natural or man-made changes have occurred, where more detailed studies have been conducted or undertaken by any qualified agency, or an individual documents the need for such change. The costs incurred by the County to evaluate materials submitted by a party other than the Augusta County Service Authority, including, without limitation, costs of an outside consultant, shall be reimbursed by such party.

D. Interpretations of the boundaries of any SWPO Area shall be made by the Director of Community Development. Should a dispute arise concerning the boundaries of any district, the Board of Supervisors shall make the necessary determination upon appeal.

§ 25-515. Exempted Uses in Areas 1 and 2.

The following uses shall be permitted within Source Water Protection Overlay Districts:

A. Agricultural and forestry uses, provided that fertilizers, pesticides, manure and other leachable potential contaminants are used according to prevailing Best Management Practices as prescribed by the appropriate regulatory agency, if applicable. All said potential

contaminants must be stored under shelter or in a container or tank. The property owner shall provide specific notification in writing to the applicators under his or her supervision that they are working with pesticides, herbicides, fungicides and rodenticides at a site located in a SWPO District for which particular care is required.

B. Normal on-site residential use.

§ 25-516. Prohibited Uses in Area 1.

The following uses shall be prohibited in Area 1:

1. Asphalt processing plants.
2. Chemical manufacturing.
3. Class II injection wells as it relates to oil and gas sites that inject brine or other fluids below the underground source of drinking water.
4. Class V injection wells, as classified in 40 CFR § 144.6 or successor requirements.
5. Dry cleaners that conduct on-site cleaning and store cleaning agents, unless connected to public sewer. Dry cleaning facilities that utilize non-toxic cleaning agents are exempt.
6. Electrical or electronic manufacturing, on-site disposal or recycling facilities.
7. Electroplating facilities, unless connected to public sewer.
8. Extraction of minerals, rocks, gravel, sand or similar materials.
9. Facilities with underground petroleum storage tanks of over 660 gallon capacity or underground petroleum product pipelines.
10. Fertilizer storage facilities (commercial).
11. Funeral homes and mortuaries, unless connected to public sewer.
12. Hazardous materials treatment, storage, generation, or disposal facilities as defined in 40 CFR 260.10 or successor requirements.
13. Junkyards and demolition facilities.
14. Land application of contaminated soils as defined by the State Code, wastewater residuals (sludge), or septage.
15. Large concentrated animal feeding operations.
16. Machine shops (commercial).
17. Photo processing labs, unless connected to public sewer.
18. Railroad or heavy equipment maintenance or fueling facilities.
19. Storage of chemicals or petroleum products in structures for subsequent resale to distributors or retail dealers or outlets.
20. Stormwater discharge into karst solution features, sinkholes or drainage wells.
21. Uncovered stockpiles of leachable materials, including bulk salt stockpiles.
22. Vehicle service and repair (commercial), including motor vehicles, boats and farm equipment.
23. Wood preserving facilities.

§ 25-517. Prohibited Uses in Area 2.

The following uses shall be prohibited in Area 2:

1. Class II injection wells, unless proof is provided that the use has an appropriate EPA permit
2. Class V injection wells, unless proof is provided that the use has an appropriate EPA permit
3. Junkyards and demolition facilities

§ 25-518. Uses Permitted by Special Administrative Permit in Area 2.

The uses listed in this section shall be permitted within Area 2 only upon the issuance of a Special Administrative Permit by the Director of Community Development in a manner consistent with the provisions of article LVI of division I of this chapter. Special Administrative Permits are to be issued only for uses where the applicant can demonstrate that the proposal meets the standards required by this chapter and the uses will not have an undue adverse impact on the public water supply.

The County may grant approval for a Special Administrative Permit only after written findings of fact are made that all of the following are true:

1. The proposed use is not expected to detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants; and
2. Sufficient recharge to the aquifer is not expected to be inhibited or prevented; and
3. The proposed use complies with all other applicable sections of this ordinance.

The Director of Community Development shall make a determination of whether or not to issue a Special Administrative Permit within 30 days of the receipt of an application.

A. Chemical manufacturing; dry cleaners; electrical or electronic manufacturing, on-site recycling or disposal; or electroplating facilities; which involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials may be permitted by Special Administrative Permit provided:

1. The use is connected to public sewer; and
2. The use installs a secondary containment and spill detection and control system for any bulk storage of chemicals, whether underground or above ground; and
3. The applicant submits a Spill Containment and Prevention Plan; and
4. The use is otherwise permitted by the underlying district regulations or the required permits of the underlying district regulations are obtained.

B. Asphalt processing plants; extraction of minerals, rocks, gravel, sand, or similar materials; facilities with underground petroleum storage tanks; commercial fertilizer storage facilities; commercial machine shops; railroad or heavy equipment maintenance or fueling facilities; storage of chemicals or petroleum products in structures for subsequent resale to distributors or retail dealers or outlets; and wood preserving facilities which involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials may be permitted by Special Administrative Permit provided:

1. The use installs a secondary containment and spill detection and control system for any bulk storage of chemicals, whether underground or above ground; and
2. The applicant submits a Spill Containment and Prevention Plan; and
3. The use is otherwise permitted by the underlying district regulations or the required permits of the underlying district regulations are obtained.

C. Funeral homes and photo processing labs which involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials may be permitted by Special Administrative Permit provided:

1. The use is connected to public sewer; and
2. The use is otherwise permitted by the underlying district regulations or the required permits of the underlying district regulations are obtained.

D. All such uses listed in §25-516. which do not involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials may be permitted by Special Administrative Permit provided:

1. The applicant certifies that the use does not involve the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous materials; and
2. The use is otherwise permitted by the underlying district regulations or the required permits of the underlying district regulations are obtained.

§ 25-519. On-site Sewage Disposal System Requirements.

In Area 1 SWPO Districts, no new on-site sewage systems shall be constructed within 250 feet of a public groundwater supply source.

§ 25-520. Prohibitions on buildings and structures.

In Area 1 SWPO Districts, no new buildings or structures (except those required for transferring water from a public groundwater supply source into the ACSA water distribution system) shall be constructed within 250 feet of a public groundwater supply source.

§ 25-521. Criteria for specific utilities.

- A. On-site sewage systems (applies to Area 1 only).

1. The Health Department shall be provided with maps of established SWPO Districts and shall consider source water protection criteria before issuing a new on-site sewage system construction permit.

2. Subject to §25-519 above, a nonconventional sewage disposal system may be constructed on a lot or parcel only in accordance with Chapter 11 of this Code.

B. Water Wells.

1. The Health Department shall be provided with maps of established SWPO Areas and shall consider whether any special conditions should apply before issuing a new water well construction permit.

2. Any party developing additional or expanding groundwater supplies that in aggregate will use more than 10,000 gallons per day (300,000 gallons per month) and are intended to be developed within the designated Sourcewater Protection Overlay District Areas 1 and 2 must obtain a Special Administrative Permit from the County prior to obtaining a VDH and/or DEQ well construction permit/approval. An application for a Special Administrative Permit shall be forwarded to the ACSA for their recommendation. Any costs incurred by the County to evaluate such materials including, without limitation, costs of an outside consultant, shall be reimbursed by the applicant. The application for Special Administrative Permit shall include the following information:

- a. A graphics section or maps containing:
 - i. Topography with land and water features
 - ii. Proposed development
 - iii. Surrounding property 1000 feet beyond the limits of the intended use, with wells and septic system locations
- b. A narrative containing:
 - i. Activity being proposed.
 - ii. List and quantity of materials being used and stored on site
 - iii. Method of wastewater disposal and quantity of materials being discharged
 - iv. Proposed water supply source and quantity.
 - v. Field survey summary
 - vi. Groundwater management plan addressing practices during and after construction, in addition to a contingency plan if existing wells on surrounding property 1000 feet beyond the limits of the intended use experience a significant reduction in yield or become contaminated
 - vii. Assessment of well drilling and testing, if applicable
- c. New water wells drilled in Area 1 shall meet the Class IIIB well construction requirements of the VDH Private Well Regulations.

In addition, geothermal wells shall meet the Class IIIB grouting requirement of the same regulations.

- d. Unused wells in SWPO Districts shall be properly abandoned in accordance with the applicable private well regulations of the Virginia Department of Health

3. Standards

The County may grant approval for a Special Administrative Permit only after written findings of fact are made that all of the following are true:

- a. The proposed well(s) is not expected to detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.
- b. The proposed well(s), either alone or on a cumulative basis, is not expected to cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;
- c. Sufficient recharge to the aquifer is not expected to be inhibited or prevented.

§ 25-522. Conditional Exemptions.

A. Exemptions shall be granted only after the Board of Supervisors has determined that there is good and sufficient cause for such exemption and that the granting of such exemption will not result in an unacceptable possibility of hazardous material being discharged in the District or additional risks to public health. In addition, the granting of the exemption will not create nuisances or conflict with local laws or ordinances.

B. Such exemptions shall be granted only if the Board of Supervisors has determined that the exemption will be the minimum required to provide relief from any hardship to the applicant.

C. Before any exemption under this section shall be granted, any applicant proposing a petition for any change in land use or activity that involves any prohibited use that would be located either partially or wholly within a SWPO Area must submit an Operations and Contingency Plan to the County for approval. The County will consult with the Augusta County Service Authority for their recommendation on the Operations and Contingency Plan. Any costs incurred by the County to evaluate such materials including, without limitation, costs of an outside consultant, shall be reimbursed by the applicant.

D. The Operations and Contingency Plan shall contain the following aspects of the activity:

1. Types of prohibited use proposed for the site;
2. Types and quantities of hazardous materials or hazardous wastes that may be used or stored on site;

3. Means to be employed to contain or restrict the spillage or migration of hazardous materials or hazardous wastes from the site into groundwater;
4. Means to be used to contain or remediate accidental spillage of such materials;
5. Means to notify the County Emergency Communications Center, ACSA, and any appropriate federal and state agencies, about any accidental spillage of such materials;

E. The applicant must demonstrate that the proposed use and/or activity would employ, to the maximum extent possible, best management practices to minimize the risk of potential groundwater contamination in the SWPO Area. This demonstration shall also include a professional evaluation by a qualified, state-licensed engineer or geologist that the otherwise prohibited use would minimize the risk of potential groundwater contamination based upon the proposed use, site soils, site geology, and any other relevant factors.

F. The County shall review, and shall approve or reject any Operations and Contingency Plan prior to the Board of Supervisors approving or denying the application for a change in land use or activity. Upon receipt of an application for Conditional Exemption and the approved Operations and Contingency Plan, the Director of Community Development shall send written notice to the Augusta County Service Authority and forward the request to the Board of Supervisors for their consideration. In the event that the Operations and Contingency Plan is rejected by the Department of Community Development, the applicant may appeal its decision to the Board of Supervisors. In such a case, the Board of Supervisors shall consider the Operations and Contingency Plan together with the application for a change in land use or activity.

G. Unless otherwise provided by the Board of Supervisors, an exemption granted pursuant to this section, shall be issued to the applicant and shall be non-transferable.

§ 25-523. Sourcewater Protection Overlay Areas.

Sourcewater Protection Overlay Area 1 shall consist of a one thousand foot (1000') radius around each of the following sources and are further identified on maps entitled "SWP Mapsets" which are declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development:

- Augusta Springs Spring
- Augusta Springs Well
- Berry Farm Spring
- Berry Farm Well
- Blue Hole
- Churchville Wells #1-8
- Craigsville Wells #1-4
- Craigsville Old Spring
- Craigsville New Spring
- Crimora Mines Well

Deerfield Spring
Deerfield Well
Dices Spring
Gardner Spring
Harriston Wells #1 and 2
Hershey Well
Hurdis Well
Lyndhurst Well
Middlebrook Well
Ridgeview Well
Vesper View Well

Blue Hole Source Water Protection Area 2- The boundary of the Blue Hole Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled "SWP Mapset- Map #24, which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

Dices Spring Source Water Protection Area 2- The boundary of the Weyers Cave Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled "SWP Mapset- Map #10, which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

Hershey, Hurdis,, Ridgeview Source Water Protection Area 2 - The boundary of the Hurdis, Hershey, Ridgeview Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled "SWP Mapset- Maps #12/13 which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

Lyndhurst Source Water Protection Area 2 - The boundary of the Lyndhurst Source Water Protection Area 2 shall consist of that area highlighted in blue on a map entitled "SWP Mapset- Maps #14 which is declared a part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

(Ordinance 1/27/2011, effective 2/1/2011)