

**Sec. 3.1 Definitions.**

The following definitions shall apply in the administration of this chapter:

**Clean earth fill.** "Clean earth fill" means fill that meets all of the following: (i) it consists of uncontaminated soil material that can be classified as a soil based on the "Unified Soil Classification System", (ii) it contains less than 50 percent rock, and (iii) it does not contain tree stumps. Prohibited materials in clean earth fill are:

1. Any contaminants in toxic concentrations or amounts, based on all applicable laws and regulations; and
2. Construction debris and demolition waste, including asphalt, concrete and other materials not found in naturally occurring soils.

**Clean earth fill activity.** "Clean earth fill activity" means the filling and placing of clean earth fill and all associated on site activities including, but not limited to access, vehicle storage, and vehicle maintenance, but not including the storage or disposal of agricultural excavation material, waste and debris if the excavation material, waste and debris are generated on the farm.

**Dripline.** "Dripline" is the area defined by the outermost circumferences of a tree canopy from where water drips onto the ground. The "dripline" includes the soil and roots that lie within that circumference.

**Fill activity.** "Fill activity" as used in Sec. 5.1.28 means either clean earth fill activity or inert waste fill activity.

**Inert waste fill.** "Inert waste fill" means brick, concrete block, broken concrete, asphalt pavement and uncontaminated minerals. Inert waste can include clean earth fill. Inert waste is nonreactive, physically, chemically and biologically stable from further degradation, and includes fragmented solid material such as rock, concrete, broken bricks, and block.

**Inert waste fill activity.** "Inert waste fill activity" means the filling and placing of inert waste fill and all associated onsite activities including, but not limited to, access, vehicle storage, and vehicle maintenance, but not including the storage or disposal of agricultural excavation material, waste and debris if the excavation material, waste and debris are generated on the farm.

**Reference high elevations.** "Reference high elevations" as used in Sec. 5.1.28 means those high elevations on property that are determined by the Zoning Administrator to be protected from fill activity because to place fill in that area would cause the fill to be visible to adjoining property.

**Tree cutting.** "Tree cutting" includes sawing, burning, bulldozing, poisoning, girdling or any other activity which could reasonably be anticipated to result in the death of a tree.

**SECTION 4.3 TREE CUTTING**

- a. In districts other than the Rural Areas, cutting of trees must be limited to dead trees and trees of less than six inches in diameter measured at six inches above ground; except that trees may be cleared in the preparation of land for the establishment of some other use permitted in the district, provided that:

1. The use is exempt from section 32; or
  2. A site development plan for such permitted use has been approved by the County;
- b. In all zoning districts unless otherwise specifically approved to accommodate development approved through section 32, no tree within 15 feet of any perennial stream or water supply impoundment may be cut, except for the following circumstances:
1. Dead trees or trees of less than six inches in diameter measured at six inches above ground; or
  2. To provide access for livestock or for another permitted use;
- c. The zoning administrator may authorize cutting of trees which:
1. Are deemed by the zoning administrator to pose a clearly demonstrable danger to buildings or other structures, or otherwise a danger to public safety; or
  2. Have been specifically recommended for removal following field investigation by the Virginia Department of Forestry as being virulent or pestilent to other trees in the vicinity;
- d. Within chapter 18, the term "tree cutting" includes sawing, burning, bulldozing, poisoning, girdling or any other activity which could reasonably be anticipated to result in the death of a tree.

*Sec. 4.3.1 Fill areas.*

Clean earth fill activity and inert waste fill activity are not permitted permanent primary uses but are either supportive of an existing use or are preparatory activity to establish a permitted use. All fill activity must comply with section 5.1.28 of this chapter.

**Sec. 5.1.28 Borrow, clean earth and inert waste fill activity.****A. Use allowances**

1. Borrow activity is only allowed in the Rural Areas zoning district, as set forth in Section 10.
2. Clean earth fill activity is permitted in all zoning districts. Inert waste fill activity is a permitted use by-right in all zoning districts except for Rural Areas, Village Residential or Monticello Historic District.
3. By special use permit, the Board of Supervisors may approve the following:
  - a. Any fill activity that will not be completed within one year from its commencement.
  - b. Any fill activity on property that does not directly access a public road that is a collector or arterial based on the Virginia Department of Transportation functional road classification system.
  - c. Inert waste fill within the Rural Areas, Village Residential or the Monticello Historic zoning districts.

**B. Application of regulations**

1. **Exemptions.** These borrow and fill activities are fully or partly exempt from Sec. 5.1.28 as specifically stated:
  - 1) A permitted use in the Natural Resource Extraction Overlay District,
  - 2) Routine yard maintenance activities, including planting a garden and landscaping.
  - 3) Fill or borrow in connection with development of an approved site plan, an approved subdivision plat, or an approved building permit.
  - 4) Clean earth fill or borrow agricultural engineering operations such as farm pond construction or field leveling in connection with an agricultural activity as defined in Section 3.1, that meets all of the following:
    - 1) The parcel, including any adjoining parcels under the same ownership or management, is zoned Rural Areas and is an aggregate of at least 21 acres;
    - 2) Access to the fill activity must come directly from a public road. The use of a privately maintained road that services properties owned by others is not allowed unless the owners give their approval;
    - 3) Trucks involved in the fill or borrow do not exceed more than 10 truck round trips to the site per day. One “truck round trip” is one truck entering and exiting the site. This regulation is based on the number of truck trips without regard to whether they are uniquely different trucks or not; and
    - 4) Fill activity does not last longer than 30 days in a rolling calendar year that begins the first day of fill.
  - 5) Compliance with Section 5.1.28, except Sec. 5.1.28 E (6), (7), (9), (10), (14a), and (17), Sec. 5.1.28 F(2), Sec. 5.1.28 G and Sec. 5.1.28 H(2).

- 6) Sec. 5.1.28 E (13) Days and hours of operation are modified to allow fill activity on Saturday between the hours of 7:00 a.m. and 7:00 p.m.

2. **All other borrow and fill activities.** All other activities are subject to Sec. 5.1.28.
- C. **Administration of regulations.** The Zoning Administrator authorizes the County Engineer to administer these regulations as specified. The Zoning Administrator will enforce Sec. 5.1.28 in consultation with the County Engineer.
- D. **Equipment.** If a special exception or special use permit includes a condition that limits truck traffic, the applicant must provide monitoring equipment such as video cameras, and copies of all footage captured on the monitoring equipment must be provided to the Zoning Administrator upon their request. The type, number, and placement of the equipment must be approved by the Zoning Administrator.
- E. **All clean earth fill activity, inert waste fill activity or borrow.** All borrow and fill activity is subject to the following:
1. **Drainage.**
    - a. Each active fill area must be shaped and sloped so that no undrained pockets or stagnant pools of water are created, to the maximum extent as determined by the County Engineer.
    - b. All undrained pockets and stagnant pools of water resulting from drainage must be treated in compliance with Article 5, Chapter 7 of the County Code to eliminate breeding places for mosquitoes and other insects.
    - c. The activity must be carried out in such a way that it does not cause offsite surface runoff that impacts neighboring properties.
  2. **Maximum fill slope.** The fill slope may not exceed 3:1 or 33%.
  3. **Height of fill.** The height of fill may not exceed fifteen feet above the elevations existing prior to grading. The determination of the reference high elevations on the subject property is based on a field visit and information provided by the applicant and is subject to approval of a plan by the Zoning Administrator in consultation with the County Engineer. The applicant may be required to submit supporting information, including a survey, topographic and/or visibility studies certified by an engineer or surveyor, for the Zoning Administrator to make this determination. No fill may occur on any of the following areas:
    - a. All area between the lot lines and applicable fill activity setbacks on the subject property,
    - b. The reference highest elevations found on the subject property, and
    - c. Any sensitive areas where fill may impact offsite properties, roads or resources.
  4. **Restricted area of fill.** No fill area may be located in any of the following:
    - a. The area between the lot lines and applicable fill activity setbacks,
    - b. The flood hazard overlay district, unless allowed by section 30.3 of this chapter,
    - c. Any stream buffer area as defined by Chapter 17 of the Code of Albemarle, and

- d. On any hydric soils as identified by the United States Department of Agriculture.
5. **Lateral support.** Fill activity must be done safely in a way that keeps the ground stable, preventing sliding, sinking, or collapse. It should also be done so as to reduce the risk of hazards to people, animals, nearby property, and public streets.
6. **Setbacks to fill activity (except for access).** Fill activity must be set back from the following:
- a. A minimum of 150 feet from any entrance corridor street.
  - b. A minimum of 75 feet from all property lines (unless adjoining lots are under the same ownership) in the Rural Areas (RA), Village Residential (VR), Monticello Historic District (MHD), and residential zoning districts, and from all public street rights of way. And
  - c. A minimum of 50 feet from all non-residential property lines, unless adjoining lots are under the same ownership.
7. **Setbacks to fill activity access.** Fill activity must be set back from the following:
- a. Unless adjoining lots are under the same ownership, a minimum of 50 feet from property lines and 100 feet from dwellings on adjacent property.
  - b. There is no setback from public street right of way.
8. **Trees.** The following applies to fill activity related to trees, even if they conflict with Section 4.3. In all other instances, the requirements of Section 4.3 apply.
- a. Except for properties within the Rural Areas district,
    - 1) No fill activity may occur within the drip line of any tree; and
    - 2) Trees up to 36 inches measured at 6 inches above ground may be cut, provided a plan or narrative required by Sect. F (2) is approved. However, no tree of 36 inches or greater in diameter may be cut or covered in fill.
  - b. Tree canopy for area(s) disturbed by fill activity must be established, or re-established, and maintained in compliance with section 32.7.9.8 of this chapter except for properties zoned Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD).
9. **Maximum fill area.** The maximum area for fill activity on any parcel is two acres. The area for fill activity includes all locations used, or designated to be used, for fill, vehicle storage and vehicle maintenance but does not include area used exclusively for access.
10. **Limits of fill.** The approved limits of fill must be clearly marked and staked on the property at all times during fill activity. Stakes or markers must remain in place and be clearly visible for the duration of the project.
11. **Transporting Fill.** All materials must be transported in compliance with section 13-301 of the Code of Albemarle. Before a transporting vehicle leaves the parcel or parcels on which the fill area is located, it must be cleaned so that no materials outside of the vehicle's load-bed can be deposited on a public or private street.
12. **Dust and debris.** The fill area and fill access roads must be treated or maintained to prevent dust or debris from blowing or spreading onto adjacent properties or public streets.
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13. **Days and Hours of operation.** Except in cases of a public emergency as determined by the County Executive, fill activity may only occur Monday through Friday and between the hours of 7:00 a.m. to 7:00 p.m.
14. **Access.** The following applies to access to fill activity:
- The subject property involved in fill activity must directly access a public road that is a collector (major or minor) or arterial based on the Virginia Department of Transportation functional road classification system. Direct access means that the property or adjoining property under the same ownership must have frontage on and use access from a public road that is a collector or arterial.
  - No fill activity may occur until the Virginia Department of Transportation has approved the entrance onto the public road.
15. **Duration.** The placement of fill must be completed within one year of its commencement. The County Engineer may extend the date of completion of final stabilization if the applicant submits a written request demonstrating that factors beyond their control prevented the completion within the one-year period.
16. **Final grading and stabilization.**
- Each fill and borrow area must be seeded within seven days of completion of the activity. The County Engineer may extend this period for stabilization activities of a seasonal nature.
  - Stabilization must include, but not be limited to, shaping and sloping the area and establishing a permanent vegetative ground cover.
  - Fill involving inert waste must be covered with two feet of clean earth fill for permanent stabilization. The County Engineer may allow a minimum depth of one foot of clean soil instead, if the area is unlikely to be used for buildings or pavement and it is not near water bodies.
17. **Performance bond.**
- The County Engineer may require the owner to submit a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the County Attorney, in an amount sufficient for, and conditioned upon the required stabilization work.
  - The amount of the bond or other surety will be based on unit pricing for new public or private sector construction in the County and a reasonable allowance for estimated administrative costs and inflation. Administrative costs and inflation may not exceed 25 percent of the estimated cost to initiate and complete the stabilization of the borrow, fill or waste area, and to comply with all other terms and conditions of the plan or narrative required by Sec. 5.1.28.
  - If stabilization work is required to be taken by the County upon the failure of the owner to do so, the county may collect the reasonable cost of the work directly from the owner, to the extent that the cost exceeds the unexpended or unobligated amount of the surety. Within 60 days after the reclamation work is completed and inspected and approved by the county engineer, the bond or

other surety, or any unexpended or unobligated portion thereof, will be refunded to the owner.

- F. **Fill exceeding 2,500 aggregate square feet.** Fill activity exceeding 2,500 aggregate square feet and up to 10,000 aggregate square feet, is subject to the following:
1. All of Sec. 5.1.28 except subsection G. and
  2. **Plan or Narrative.** County Engineer approval of a plan or narrative that satisfies the applicable requirements of Sec. 5.1.28. In lieu of a plan or narrative, the County Engineer may accept a contractual agreement between the Virginia Department of Transportation and its contractor for a public road project if the County Engineer determines that the agreement satisfies the requirements and intent of this section.
- G. **Fill exceeding 10,000 aggregate square feet.** In addition to the requirements of Sec. 5.1.28 F, Fill activity exceeding 10,000 aggregate square feet is subject to the erosion and sediment control requirements of Chapter 17, the Water Protection Ordinance.
- H. **Special exception.** The Board of Supervisors may approve a modification or waiver of any requirement of this section except subsection A may not be modified by special exception.
1. **Criteria.** A special exception is based on finding the following are satisfied:
    - a. Section 5.1 of this chapter and
    - b. Any of the following factors are satisfied:
      - 1) the proposed fill activity would further agricultural use of the property;
      - 2) the modification or waiver would allow for a more natural appearance of the site after the fill activity has occurred;
      - 3) a reduction in setback from the entrance corridor is recommended by the Architectural Review Board;
      - 4) the modification or waiver is supported by the abutting owners impacted by the modification or waiver;
      - 5) the modification or waiver would be consistent with an approved and valid initial or preliminary site plan or any other land use decision of the County;
      - 6) the proposed fill activity would take less than 90 days and involve not more than 10,000 cubic feet of fill within any 12 months.
  2. **Use of a private road.** If a special exception is requested to allow direct access from the subject property to either a private road or a public road of a lower functional classification, the applicant must provide the following justification:
    - a. Explain how no alternative access is available.
    - b. Demonstrate how the proposed access will not negatively impact other properties served by the road.
    - c. If access using a private street, shared driveway or access easement is proposed, the applicant must demonstrate the following:
      - 1) The access is adequate for the proposed activity, including the finding that the road is a minimum 18 feet wide (to allow passing traffic)

- 2) The applicant has the right to use the access.
- 3) In order for access to be deemed adequate, the owner must limit vehicles associated with the fill activity to not more than 56,000 pounds. In addition, the access must meet the standards of section 4.6.6 of this chapter and have a surface adequate to accommodate a vehicle weighing 56,000 pounds.
- d. The owner may increase the weight of vehicles associated with the fill activity to a maximum of 80,000 pounds, provided that the access meets the standards of section 4.6.6 of this chapter and has a surface adequate to accommodate a vehicle weighing 80,000 pounds.

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## **SECTION 31 ADMINISTRATION AND ENFORCEMENT**

### **Sec. 31.5 Zoning clearance.**

The zoning administrator reviews requests for zoning clearances as follows:

a. When required. Agricultural uses do not require a zoning clearance unless specifically stated otherwise. A zoning clearance is required in the following circumstances:

1. *New use.* A zoning clearance is required prior to establishing any of the following uses:
  - a) *A new non-residential use,*
  - b) *Events and activities at farm wineries, farm breweries, farm distilleries, and agricultural operations.* Prior to the first time that a specific class of event or activity is held at a farm winery, farm brewery, farm distillery, or agricultural operation, if a zoning clearance is required under sections 5.1.25(b), 5.1.57(b), 5.1.58(d), and 5.1.59(b).
  - c) *Outdoor amplified music.* Prior to the first time that outdoor amplified music is generated at an event or activity at a farm winery, farm brewery, or agricultural operation, as provided in sections 5.1.25, 5.1.57, and 5.1.58, respectively.
  - d) *Clean earth fill activity or inert waste fill activity.*
2. *Change or intensification of existing use.* Prior to changing or intensifying an existing non-residential use, including those provided in subsections (a)(6) and (a)(7), other than an agricultural use.
3. *Change of occupant.* Prior to a new occupant taking possession of an existing non-residential use, other than an agricultural use.
4. *Specific buildings, structures or uses.* Prior to establishing any building, structure, or use for which a zoning clearance is required under section 5.
5. *Commencement of extraction activity.* Prior to commencing any natural resource extraction activity within the natural resources overlay district.
6. *Events and activities at farm wineries, farm breweries, farm distilleries, and agricultural operations.* Prior to the first time that a specific class of event or activity is held at a farm winery, farm brewery, farm distillery, or agricultural operation, if a zoning clearance is required under sections 5.1.25(b), 5.1.57(b), 5.1.58(d), and 5.1.59(b).
7. *Outdoor amplified music.* Prior to the first time that outdoor amplified music is generated at an event or activity at a farm winery, farm brewery, or agricultural operation, as provided in sections 5.1.25, 5.1.57, and 5.1.58, respectively.