

## Survey Comment Summary

10/24/2023

LETTER TYPE					
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**VA Farmer**

Dear Albemarle County Board of Supervisors,

As a Virginia farmer, I ask that you suspend or revoke County Ordinance 5.1.28 Clean Earth and Inert Waste Fill Activity until the ordinance can be revisited as promised. I support an ordinance requiring approval for contaminated fill and waste. However, clean earth fill and inert waste (both nonhazardous) as defined by county code used for agricultural and forestall purposes should be exempt from any ordinance.

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Please suspend or revoke County Ordinance 5.1.28 Clean Earth and Inert Waste Fill Activity until the ordinance can be revisited as promised.

Regards,

**Resident**

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Dear Albemarle County Board of Supervisors,

As an Albemarle County Resident, I ask that you suspend or revoke County Ordinance 5.1.28 Clean Earth and Inert Waste Fill Activity until the ordinance can be revisited as promised.

I support an ordinance requiring approval for contaminated fill and waste. However, clean earth fill and inert waste (both nonhazardous) as defined by county code used for agricultural and forestall purposes should be exempt from any ordinance.

Please suspend or revoke County Ordinance 5.1.28 Clean Earth and Inert Waste Fill Activity until the ordinance can be revisited as promised.

Regards,

## Other

Burdensome. Which in turn increases cost for everyone

They are sufficient

Excessive burden

Sec. 5.1.28(7) and Sec. 5.1.28(9) are problematic for many residential fill activities on lots smaller than 5 acres, for example if one was to build a small retaining wall for landscape aesthetic that was not subject to a building permit and then wanted to back fill that retaining wall, that activity would not be permitted per the ordinance. Sec. 5.1.28(7) and Sec. 5.1.28(9) restrict smaller residential properties from engaging in a wide range of fill activity from preparing a small pad for a garden shed, constructing landscape features like screening berms, expanding parking areas with imported dirt, and a variety of other activities.

We think the new regulations are an improvement, but there is inadequate oversight and follow-through. We have made notes on the new regulations about our personal experience and we would like to submit those comments to the BOS.

I do not think under any circumstance that fill should be allowed in the county as a means of waste disposal. Albemarle County's current comprehensive plan has important goals to reduce waste through the reuse and recycling of materials. Reducing waste is essential to addressing greenhouse gas emissions, pollution and resource scarcity. Because of the ways in which our waste contributes significantly to ghgs, and thus climate change, the updated comprehensive plan, AC44, will include even more emphasis on reducing waste and recycling or reusing materials that have already been extracted and processed, rather than landfilling them. Inert materials such as rock, block, and brick can be crushed to produce different grades of gravel, and asphalt can be recycled and reused on roads. Currently Albemarle County has no facilities to recycle Construction and Demolition waste. This seems to be a glaring need. I believe that one local company, S.L. Williamson, recycles asphalt (see <https://www.slwilliamson.com/green-initiatives>). As a responsible community, I think we should be actively pursuing opportunities to recycle and reuse these common construction materials.

I want to point out that asphalt, especially ground up asphalt, is not universally accepted as an inert waste. Although we have used it widely, the more we study it, the more we learn that it's not benign (see <https://www.sciencedirect.com/science/article/abs/pii/S0043135422005371>). Ground up asphalt may leach heavy metals and PAHs (polycyclic aromatic hydrocarbons) into soil and ground water, so I don't believe we want it buried in either populated or rural areas around the county.

Albemarle is engaged in undertaking efforts through policy, education and infrastructure to solve the ever more harmful problems caused by unnecessary waste, pollution, climate change and environmental degradation. I would ask, in this day and age, unless it is deemed necessary to put fill in the ground, why would we ever do it? Why would we bury materials that could be reused? Why would we bury used asphalt underground, knowing that it could cause the contamination of ground water or surrounding soil with heavy metals and PAH chemicals?

I think we need to reconsider whether continuing to allow fill of C&D waste, such as rock, block, brick and asphalt is something we want to do. Far better to stick with our plan of moving toward a circular economy of efficient resource use, reuse and recycling.

Using uncontaminated dirt and rock from excavation as fill is not as concerning to me as using C&D waste for fill. Thank you for consideration of my comments.

More efforts should be taken to restrict fill waste and to encourage the recycling and reuse of these materials. Rather than allowing mini-landfills on private land, we should support recycling efforts like <https://www.vanderlinderecycling.com/recycling> where wood, concrete, bricks and asphalt can be recycled. As a Albemarle Co landowner, I am not in support of allowing the disposal of fill and waste on private land.

As the only special exception approval since the approval of this ordinance I would like to provide the following comments:

First, I would like to volunteer my time to sit down with staff and revisit this ordinance to point out the many issues that are contained in the ordinance as they apply to agricultural and forestall concerns. The clean earth fill and inert waste fill ordinance was a hastily throw together ordinance (7 months from start to approval as stated during the 16 Sept 2020 BOS meeting). It was created by heavily borrowing from other localities and with very little public input. It was during a time when we were still learning to deal with VTC meetings and the Covid pandemic and is full of issues from front to back. Clean Earth fill and inert waste fill (both nonhazardous materials) used for Agricultural and Forestall activities regardless of the location should be exempt from this ordinance. The use of both clean earth fill and inert waste fill have valuable benefits to both agricultural land and activities. This ordinance is in direct contradiction to other County Codes and State Laws. Sec 31.5 of the County Ordinance already exempts fill activity used for agricultural activity from requiring a zoning clearance, but the County is refusing to acknowledge their own code. It states, "A zoning clearance shall be required in the following circumstances: New use. Prior to establishing a new non-residential use, including those provided in subsection (a)(6) and (a)(7), or clean earth fill activity or inert waste fill activity, other than an agricultural activity." Although the State Authorized localities to remove fill activity from the definition of agricultural Albemarle County should not remove fill activity used for agricultural purposes from the exemption. By State Law fill used for agricultural activities is exempt from the E & S requirements of Chapter 17 of the County Code. This was acknowledged by both the County Engineer and the County Attorneys Office in 2021. When this ordinance was passed in Sept 2020 three supervisors stated that they wanted it reviewed in 12 months or sooner if issues arose. This has never occurred and there are many issues with the ordinance. A fourth requested that it be included in the meeting minutes, and it was. Issues (which there are many and these are only a few) Who does this ordinance apply to? Any activity operated in conjunction with a permitted use under section 30.4, or established and operated in conjunction with an approved site plan or subdivision is exempt. Anyone for a fee can obtain a DEQ permit and this ordinance does not apply in any way. During the 17 months while I was trying to get approval I watched numerous fill activities occur on agricultural land and when I asked how I was told they were exempt because they were a part of an approved site plan (at another location) or subdivision. In the past two weeks I have observed 3 ongoing fill activities that required a special exception occur with no approval. Who is in charge of this ordinance?

Throughout the ordinance there are numerous references to the "Program Authority". At first I was told that the program authority was the zoning administrator. Chapter 18 (Zoning) of the County Ordinance definitions states, "Program authority. "Program authority" means the Department of Community Development, including any officer or employee of the department authorized by the County Engineer to act pursuant to County Code Chapter 17." So that would mean it is the County Engineer. It is important to note that because I was using fill for an agricultural activity, I am exempt by state law from Chapter 17 of the County Code. The County engineer approved my project in November of 2021 as an agricultural activity. After months of back and forth (where performance standards often changed meeting to meeting) with the zoning administrator I pointed out that he was not the program authority by the County's own definition. This led to a legal opinion by the County Attorney, and I was informed that the Program Authority was actually the Director of Community Development because of the use of the "means the Department of Community Development". How long does it take for approval?

When this ordinance was approved one of the reasonings behind having a special exception was so it would get in front of the BOS within 90 days, Reality is you can't even get on the calendar in 90 days. It took me 7 months to get a zoning clearance, During that time I was told I was approved and then disapproved 3 times. It took me 12 months to get in front of the BOS the first time where I was disapproved and another 6 months of working with County staff before I went back in front of the BOS where I was approved. Nothing from start to approval changed it was all in how it was presented. A total of 18 months where there was an abundance of clean earth fill being moved around the County and I could have had a large part of the project completed but here I sit waiting on fill. Issues with access: Access should not include any setback if it is an existing private street, shared driveway or access easement and the applicant has the right to use it. The ordinance states that access be 50 feet from property lines and 100 ft from dwellings on adjacent property. Ordinances in the past did not stipulate access distances from property lines or dwellings to be built 100ft from existing access. I am a perfect example. My driveway was a legally recorded right of way dated in 1886. One hundred years later a house was built less than 10 feet from the right of way and I had to ask for a special exception in order to use it. Use of the State Highway System: There should be no local ordinance designed to limit the use of the State Highway System. The primary purpose of the State Highway system is to support vehicular traffic from point A to point B. The maintenance of the State Highway System is paid for through the fuel tax at the rate of 5 cents per dollar (this may have increased). The drivers of these vehicles pay this tax just as any other citizen in the county, typically at a much higher rate than any other vehicle. The majority of the stipulations outlined in this ordinance do not apply to an agricultural activity. I would be happy to sit down with staff and explain why at any point in time. I would also like to point out that some of the Counties' own studies (done at the cost of hundreds of thousands of taxpayer dollars) recommend the use of inert waste in the rural areas on agricultural land.