Sec. 5.1.28 Clean earth and inert waste fill activity.

a. Each clean earth fill activity or inert waste fill activity not established and operated in conjunction with a permitted use under section 30.4 of this chapter or established and operated in conjunction with an approved site plan or subdivision are subject to the following requirements:

1. Each active fill area shall be shaped and sloped so that no undrained pockets or stagnant pools of water are created to the maximum extent reasonably practicable as determined by the program authority. All undrained pockets and stagnant pools of water resulting from drainage shall be treated as required by the Virginia Department of Health to eliminate breeding places for mosquitoes and other insects. Slope may not exceed 3:1. The height of fill may not exceed eight feet above natural grade.

2. No fill area shall be located either within the flood hazard overlay district, except as authorized by section 30.3 of this chapter, or in any stream buffer area as defined by Chapter 17 of the Code of Albemarle or on any hydric soils as identified by the United States Department of Agriculture.

3. Each fill area shall be reclaimed within seven days of completion of the fill activity, or such later time authorized by the program authority for reclamation activities of a seasonal nature. Reclamation shall include, but not be limited to, restoring the area so that it approximates natural contours; shaping and sloping the area to satisfy the requirements of subsection (a)(1); and establishing a permanent vegetative ground cover.

4. Inert waste fill must be topped with clean earth fill to a minimum depth of two feet in order to allow for permanent stabilization and reclamation; and establishing a permanent vegetative ground cover; provided that the program authority may reduce the minimum depth of clean earth fill to one foot if the area is unlikely to be redeveloped.

5. The zoning administrator, or the program authority for those fill areas subject to subsection (b), may require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the county or the program authority at the owner's expense should the owner fail, after notice is given to perform required reclamation work specified in the notice. The amount of the bond or other surety shall be based on unit pricing for new public or private sector construction in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25 percent of the estimated cost to initiate and complete the reclamation of the borrow, fill or waste area, and to comply with all other terms and conditions of the plan or narrative required by subsection (b). If reclamation work is required to be taken by the county or the program authority upon the failure of the owner to do so, the county or the program authority 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, shall be refunded to the owner.

6. Fill activity (except for access) must be set back a minimum of 150 feet from any entrance corridor street.

7. Fill activity (except for access) must be set back a minimum of 75 feet from all property lines in the Rural Areas (RA), Village Residential (VR), Monticello Historic District (MHD), and residential zoning districts, and from all public street rights of way. Access must be set back 50 feet from property lines and 100 feet from dwellings on adjacent property. No setback is required if adjoining lots are under the same ownership. The access to a fill activity is not subject to the setback from public street right of way.

8. Fill activity must be set back a minimum of 50 feet from all non-residential property lines. No setback is required if adjoining lots are under the same ownership.

9. Minimum lot size for fill activity is five acres. Multiple parcels under the same ownership and with the same zoning designation may be considered as a single lot for the purpose of achieving the minimum lot size.

10. No fill activity may occur within the drip line of any tree.

11. The maximum area for fill activity on any parcel in existence on September 16, 2020 is two acres. Determining 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 for exclusively for access.

12. Notwithstanding section 4.3 of this chapter, trees may be cut, provided a plan as required by subsection (b) is submitted. However, no tree of 36 inches or greater in diameter may be cut.

13. If a private street, shared driveway or access easement is used, the applicant must demonstrate that the access is adequate for the proposed activity and that the applicant has the right to use the access. 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. 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.

14. No fill activity may occur until the Virginia Department of Transportation has approved the entrance onto the highway.

15. Except for properties zoned Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD), tree canopy for area(s) disturbed by fill activity must be established and maintained in compliance with section 32.7.9.8 of this chapter.

b. Any fill activity with an aggregate area greater than 2,500 square feet requires a plan or narrative, subject to the prior approval of the program authority, that satisfies the requirements of subsection (a) and the following provisions:

1. All materials shall 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 shall be cleaned so that no materials outside of the vehicle's load-bed can be deposited on a public or private street.

2. The fill area and the access roads thereto shall be treated or maintained to prevent dust or debris from blowing or spreading onto adjacent properties or public streets.

3. Fill activity shall be limited to the hours of 7:00 a.m. to 7:00 p.m., except in cases of a public emergency as determined by the director of emergency services for the county.

4. Fill activity shall be conducted in a safe manner that maintains lateral support, in order to minimize any hazard to persons, physical damage to adjacent land and improvements, and damage to any public street because of slides, sinking, or collapse.

5. The placement of fill shall be completed within one year of its commencement, except for reclamation activities and any other activities associated with the final stabilization of the area. The program authority may extend the date of completion upon the written request of the applicant, demonstrating that factors beyond the control of the applicant prevented the completion within the one-year period. The program authority may then extend the permit for a period of time that, in its sole discretion, is determined adequate to complete the work.

6. In lieu of a plan or narrative, the program authority may accept a contractual agreement between the Virginia Department of Transportation and its contractor for a public road project; provided that the program authority determines that the agreement satisfies at least to an equivalent extent the requirements and intent of this section.

c. Inert waste fill activity is not permitted in the Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD) zoning districts without approval of a variation or exception as permitted in section 33.43 of this chapter.

d. The Board of Supervisors may approve a variation or exception from any requirement of this section.

1. A variation or exception from any requirement of this section may be approved upon a finding that any of the following factors are satisfied: (i) the proposed fill activity would further agricultural use of the property; (ii) the variation or exception would allow for a more natural appearance of the site after the fill activity has occurred; (iii) a reduction in setback from the entrance corridor is recommended by the Architectural Review Board; (iv) the variation or exception is supported by the abutting owners impacted by the variation or exception; (v) approval of any variation or exception is consistent with an approved and valid initial or preliminary site plan or any other land use decision of the County; (vi) the proposed fill activity will be of limited duration (less than 90 days) and involve not more than 10,000 cubic feet of fill within any 12 months.

2. The agent will provide written notice by first class mail or by hand at least five days before the Board hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owners associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent.

3. A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required waives the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

(§ 5.1.28, 7-6-83; Ord. 01-18(6) , 10-3-01; Ord. 02-18(5) , 7-3-02; Ord. 20-18(3) , 9-16-20)