Attachment A - Staff Analysis

STAFF PERSON:	Bart Svoboda, Zoning Administrator
BOARD OF SUPERVISORS:	February 15, 2023
PROJECT:	SE2022-00068 Kindrick Farm – Clean Earth Fill (4394 Carriage Hill Drive, Earlysville)
PROPERTY OWNER:	Kindrick, Alan, and Ada Joint Trust C/O Timothy K Kindrick
LOCATION:	4394 Carriage Hill Drive
PARCEL ID:	03200-00-00-00100 and 03200-00-00-00200
MAGISTERIAL DISTRICT:	White Hall

APPLICANT'S PROPOSAL:
The applicant is requesting special exceptions (SE2022-00068) from the requirements of County Code § 18-5.1.28(a)(7), (a)(11), and (b)(5) for clean earth fill activity on Parcels 03200-00-00-00100 and 03200-00-00-00200 (Attachment B).

CODE REFERENCES:
County Code § 18-5.1.28(a)(7) requires that access to fill activity must be set back 50 feet from property lines and 100 feet from dwellings on adjacent property.

County Code § 18-5.1.28(a)(11) limits the maximum area for fill activity on any parcel to 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 exclusively for access.

County Code § 18-5.1.28(b)(5) requires that the placement of fill 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.

CHARACTER OF THE PROPERTY AND AREA:
The property is located at 4394 Carriage Hill Drive, Earlysville (Attachment C). The request involves two parcels (Parcel IDs 03200-00-00-00100 and 03200-00-00-00200) zoned Rural Areas, containing 155 +/- acres and 77 +/- acres, respectively. The two parcels are mostly open fields with about 1/3 in trees or brush. Chris Greene Lake Park borders the property on its eastern side.

COMPREHENSIVE PLAN:
The property is designated as Rural Area in the Comprehensive Plan. This designation includes preservation and protection of agricultural, forestal, open space, and natural, historic, and scenic resources, as discussed in the Rural Area chapter of the Comprehensive Plan.

BACKGROUND:
Both parcels have historically contained agricultural uses. No dwelling units are located on the parcels. As of this report, there is no record of any zoning violation on either parcel.

On February 6, 2004, the County acquired a conservation easement over this property (Attachment D) to help protect and preserve the rural character of the County, and to further the goals of the Comprehensive Plan that promote the continuation of viable agricultural and forestal uses.

On May 24, 2022, the County issued zoning clearance CLE202200037 (Attachment E), approving the applicant's operation of a two-acre clean earth fill activity on each parcel, as allowed by right in County Code § 18-4.3.1. The activity is required to be compliant with County Code § 18-5.1.28 (Attachment F) and all other applicable requirements. The Kindrick property has maintained compliance with the conditions of this clearance. The County Engineering Division has verified that no sediment has been lost from the fill activity. Below is a copy of the truck trips starting in September 2022, demonstrating the limited availability of clean earth fill to support the fill activity plus the impacts of weather:

Dates		**Loads**	**Average Loads/Day**
Start	**End**		
September 17, 2022	September 25	11	1.3
September 26	October 18	16	Less than 1
October 19	October 22	49	12.25
October 23	November 16	11	Less than 1
December 3	December 16	2	Less than 1
December 17	January 19, 2023	0	0

On July 6, 2022, the Albemarle Conservation Easement Authority (ACEA) heard a presentation about Mr. Kindrick's Natural Resources Conservation Service (NRCS) farm-improvement plan (including the fill) on his property subject to the existing County conservation easement. The NRCS farm improvement plan verifies the steps needed for restoration of Mr. Kindrick's property. ACEA took no action (as the deed doesn't require any prior approval for this work). After some discussion, the ACEA generally indicated that the NRCS farm improvement plan was appropriate under the terms of the easement that allow "establishing, reestablishing, maintaining or using cultivated fields, orchards or pastures (including clearing woodland areas for conversion to crop land or pastureland)" as well as erosion control and restoration. Mr. Kory Kirkland, USDA-NRCS District Conservationist, subsequently performed an inspection on December 16, 2022, with the results reflected in his email dated December 20, 2022 (Attachment G).)

On July 20, 2022, the Board considered Mr. Kindrick's first request for a special exception, SE2022-00018. Staff recommended denial of that SE, and by a vote of 6:0, the Board did deny the SE. The Staff Analysis on SE2022-00018 stated:

> Staff was "unable to support a finding under County Code § 18-5.1 that a modified regulation (or in this case, the complete lack of regulation under County Code § 18-5.1.28) would satisfy the purposes of the Zoning Ordinance to at least an equivalent degree as the applicable requirements. No plan has been provided or proposed that outlines the duration of the clean earth fill activity, identifies the finished grades once the project is complete, or ensures that the amount of soil would be limited to 10,000 cubic feet within any 12 months. Also, 40 +/- acres of the proposed fill area is located along "…Jacobs Run directly upstream of Chris Greene Lake, potentially negatively impacting

those water bodies and downstream properties. Finally, the subject property is under an ACE conservation easement, co-owned by the County, that strictly limits grading, blasting, earth removal, and mining."

Because Mr. Kindrick's proposed special exceptions are the first applications of County Code § 18-5.1.28 after its amendment on September 16, 2020, they have given staff the opportunity to work through the new provisions with a willing property owner. Staff has worked with Mr. Kindrick to try to balance the Comprehensive Plan's support of agriculture with Mr. Kindrick's desire to restore his family's farm.

Staff has met with Mr. Kindrick multiple times at the County Office Building and multiple times onsite. Staff has also spoken with several of the neighbors to gain an understanding of their concerns. Further, staff has researched property history and reviewed information from a variety of sources, including the applicant, neighbors, and external agencies.

Mr. Kindrick's initial special exception application differed from this request in several ways. In working with Mr. Kindrick, he has modified his request as outlined below in this report. Listed below are staff findings, the applicant's responses and proposed mitigations, and any additional staff analysis, organized around key areas of the Code. A staff recommendation follows.

ANALYSIS OF THE APPLICATION FOR EXCEPTION:

Special exceptions are subject to County Code § 18-33.5, under which the Board may either approve or deny an application, defer action to allow for changes before final action or refer the application to the Planning Commission. In addition, staff has analyzed this proposal against *County Code* § 18-5.1.28 in Attachment P, Clean Earth-Inert Waste Breakdown.

To grant the requested special exceptions, the Board is required to make both general and specific findings in support of its action. To waive or modify any supplementary zoning regulation generally, County Code § 18-5.1 requires a finding that the applicable requirement "would not forward the purposes of [the Zoning Ordinance] or otherwise serve the public health, safety, or welfare or that a modified regulation would satisfy the purposes of [the Zoning Ordinance] to at least an equivalent degree as the specified requirement."

1. Regarding the Zoning Ordinance's fill requirements specifically, County Code § 18-5.1.28(d)(1) provides that 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.*

APPLICANT'S RESPONSE: Mr. Kindrick provided a letter from Charles W. Hurt of Virginia Land LLC, in support of this special exception (Attachment J). Mr. Hurt is the owner of the property adjacent to the access easement, Parcel 003200-00-00-00800.

FINDING: Staff finds the following requirements of County Code § 18-5.1.28(d)(1) are satisfied by this application: (i), (ii), (iv), and (v).

2. County Code § 18-5.1.28(a)(7) requires that "Access must be set back 50 feet from property lines and 100 feet from dwellings on adjacent property."

As shown in Attachment H, the existing access easement (which predates the existence of the houses and has existed since 1886) passes through 3 parcels each containing a single-family dwelling. (4405, 4415, 4425 Carriage Hill Drive) and is located along the property lines. The dwellings were constructed in 1987.

The dwelling located at 4405 Carriage Hill Drive received a variance from the County's Board of Zoning Appeals (BZA) (Attachment I) in 1987 to reduce the setback from 25 feet to 10 feet along the easement. Mr. Van Fossen, BZA member, moved in granting the variance that the adverse use of the easement would be on the BZA applicant (Craig Builders), not on Mr. Kindrick. Mr. Van Fossen made the following statement which may be found in the November 11, 1986 BZA transcript VA-86-38,

> *"Well I am going to make a motion that the variance be granted in that the adverse use of this easement is upon the applicant or who they sell their property to, not upon the opposing party (Allan Kindrick) here. I move that the variance be granted."*

FINDING: Based on the 15-foot variance granted by the BZA, staff agrees that the Applicant should be credited with an equal 15-foot reduction in the dwelling setback. However, even with that adjustment, the access is still not set back 50 feet from property lines, or even 85 feet from dwellings on adjacent property.

APPLICANT'S RESPONSE: Applicant acknowledges the easement will remain in its current location.

APPLICANT'S MITIGATION: The applicant offers to mitigate traffic impacts along the easement and through the neighborhood in consideration of this 50-foot access requirement as follows:

1. That only 10 trucks would run each day of operation (Not trips, but trucks).
2. That the hours of operation be limited to 7:30 am to 6:00 pm, Monday through Saturday.

NOTE: The applicant has provided an email describing the recent dump truck activity so that staff may better understand the frequency of the truck traffic to and from the site (Attachment K).

STAFF RESPONSE: The applicant has an existing easement located on other properties. However, the easement currently under consideration cannot meet the 50-foot setback from property lines. This setback provision exists to minimize adverse impacts on adjoining property. The access is used to access a single-family dwelling and an agricultural operation. Due to the existing agricultural operation, it would be normal and customary for large equipment to use the easement. The applicant's fill operations represent a short-term intensification of the agricultural operation. By limiting the number of trucks per day, the hours those trucks can operate, and the number of years that the intensified operations occur, the impacts can be mitigated. Granting

the modification with conditions would serve the public health, safety and welfare to an equivalent degree by minimizing impacts to abutting properties and encouraging agricultural use of rural lands.

3. County Code § 18-5.1.28(a)(11) requires: "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."

FINDING: Staff finds that this maximum fill area exceeds two acres.

APPLICANT'S RESPONSE: In his previous 7-20-2022 application (SE2022-00018), the applicant requested unlimited fill activity. Following Board feedback, the applicant modified his request to have not more than four acres open to activity at any one time. Two acres of activity would be in the reclamation process and two acres would be in the fill activity process.

STAFF RESPONSE: Staff finds this approach reasonable.

4. County Code § 18-5.1.28(b)(5) provides: "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."

FINDING: Staff finds that the length of activity requested in this case exceeds the one-year timeframe.

APPLICANT'S RESPONSE: The applicant has indicated that because he has no control over the availability of clean earth fill or the weather, he cannot estimate the time needed to accomplish his project.

STAFF RESPONSE: Based on this information, staff suggests that if approved and compliant with all the above limits, the activity under these special exceptions be permitted to for up to five years. Like the setback requirements for access, the limitation on how long a fill operation can operate is a method to minimize impacts on abutting properties. However, it is also a method to minimize impacts on the larger community due to increased erosion that can occur from soil disturbing operations that can occur over long periods of time. With conditions, these impacts can be mitigated and result in a modification that satisfies the requirements to at least an equivalent degree as the applicable requirement.

APPLICANT'S MITIGATION: Applicant has requested the following conditions in order to mitigate impacts:

1. Only 10 trucks will run each day of operation (Not trips, but trucks).
2. The hours of operation will be limited to 7:30 am to 6:00 pm, Monday through Saturday. No fill operations or related activity will occur on Sunday.
3. There will be no more than four acres of activity at one time. Two (2) acres will be in the reclamation process and two acres in the fill activity process.
4. Each active area must be completed within one year of commencement.
5. The fill activity must cease by August 31, 2028.

ABUTTING PROPERTY OWNER COMMENTS:
Notices to abutting property owners in Earlysville Forest were sent on December 9, 2022. Public comments are included as Attachment L.

APPLICANT RESPONSES:
The applicant's response to these abutting property owner comments is included as Attachment M.

STAFF SUMMARY:
In summary, this special exception request is to support an NRCS-approved reclamation project on Mr. Kindrick's farm.

Staff has reviewed all the information and takes all concerns seriously. The impacts of a restoration project such as this are both short-term and long-term. The short-term factors include truck traffic, ingress/egress concerns, and the length of time that project may take to complete. The long-term impacts, in this case, are restoration of farmland, allowing for the ability to continue viable agricultural and forestal uses.

A restoration project of this size and scope will take some time. However, the project cannot be open-ended or unchecked. Staff recommends the conditions listed below to bring this project to a successful completion while limiting of the impacts to the surrounding neighborhood.
The applicant remains free to apply for other special exceptions.

RECOMMENDATION:
Staff recommends that the Board adopt the attached Resolution to Approve (Attachment N), which incorporates the following conditions:
CONDITIONS:

1. Hours of operation are limited to 7:30 am to 6:00 pm, Monday through Saturday. Fill operations are prohibited on Sunday.
2. No more than 10 trucks may be used for fill activity on any day of operation.
3. Trucks must access the site through the intersection of Advance Mills Road and Earlysville Forest Drive to the greatest extent possible.
4. The owner(s) must provide evidence to the County of fill activity related to this Special Exception upon request.
5. Fill activity must conform with Best Management Practices and with the standards, specifications, and other special program criteria obtained from the Natural Resources Conservation Service (NRCS).
6. No more than four acres of activity may be active at any one time: no more than two acres may be in the reclamation process and no more than two acres may be in the fill activity process.
7. Each fill activity must be completed within one year of its commencement.
8. All fill activity under this special exception must be completed by August 31, 2028.

If the Board instead chooses to deny the proposed special exception, an alternate Resolution to Deny is provided as Attachment O.

ATTACHMENTS
A. Staff Analysis
B. SE2022-068 Kindrick Special Exception Application and Information

C. Location Map of SE202200068 Proposed Fill Area
D. ACE related information and deed
E. CLE2022-037 Kindrick Fill Area Approved Zoning Clearance
F. County Code § 18-5.1.28 - Clean Earth and Inert Waste Fill Activity Regulations
G. NRCS Maps and Correspondence
H. Access Easement Information
I. BZA Minutes, dated November 11, 1986, for Variance 86-38
J. Virginia Land LLC Letter, dated October 21, 2022
K. Truck Activity Email from applicant
L. Abutting Property Owner Comments
M. Applicant Responses
N. Resolution to Approve
O. Resolution to Deny
P. Sec. 5.1.28 Clean Earth-Inert Waste Breakdown