Definitions:

Sec. 7-103 Definitions. The following definitions shall apply to this article:

(1) Agricultural activity. The term "agricultural activity" means the bona fide production or harvesting of agricultural products as defined in section 3.2-6400 of the Code of Virginia including ~~a lawfully permitted activity pertaining to horticulture, viticulture, or gardening including, but not limited to:~~ tilling soil for raising crops; ~~keeping livestock, poultry, or both;~~ operating agricultural industries or businesses, including, but not limited to, orchards, fruit packing plants, dairies, nurseries, farm sales, farm stands and farmers' markets; or any combination of the foregoing activities~~.~~ but shall not include the above ground application or storage of sewage sludge, or the storage or disposal of non-agricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act.

Sec. 18-3 Definitions

Agricultural activity. "Agricultural activity" means the bona fide production or harvesting of agricultural products as defined in section 3.2-6400 of the Code of Virginia including ~~a lawfully permitted activity pertaining to horticulture, viticulture, or gardening including, but not limited to:~~ tilling soil for raising crops; ~~keeping livestock, poultry, or both;~~ operating agricultural industries or businesses, including, but not limited to, orchards, fruit packing plants, dairies, nurseries, farm sales, farm stands and farmers' markets; or any combination of the foregoing activities~~.~~ but shall not include the above ground application or storage of sewage sludge, or the storage or disposal of non-agricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act.

Clean earth fill activity: Clean earth fill activity includes the filling and placing of clean earth fill and all associated on site activities such as, but not limited to access, vehicle storage, and vehicle maintenance.

Clean earth fill: Fill that consists of any soil material that occurs naturally on the surface of the earth which can be dug, plowed, or planted, that can be classified as a soil in accordance with the "Unified Soil Classification System", which contains less than twenty-five (25) percent rock fragments greater than three inches in diameter, and that contains less than five (5) percent by volume of root or woody material. Clean earth fill shall be free of:

1. Any contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations; and

2. Construction debris and demolition waste including asphalt, concrete and other materials not found in naturally occurring soils.

~~*Fill area or waste area*. "Fill area" or "waste area" means a location at which soil or inert materials is placed on a site other than the site where the material was excavated or removed. The placement of soil or inert materials as necessary to establish a permitted use on the~~

~~parcel or development from which it was excavated shall not be considered a fill area or a waste area.~~

Inert waste fill activity: Inert waste fill activity includes the filling and placing of inert waste fill and all associated on site activities such as, but not limited to, access, vehicle storage, and vehicle maintenance.

Inert waste fill: Brick, concrete block, broken concrete, asphalt pavement and uncontaminated minerals or clean earth fill. Inert waste is physically, chemically and biologically stable from further degradation and considered to be nonreactive, and includes fragmented solid material such as rock, concrete, broken bricks, and block.

General Regulations

Sec. 18-4.2.3 - Location of structures and improvements.

Except as otherwise provided in section 4.2.2, this section applies to the location of any structure for which a permit is required under the Uniform Statewide Building Code and to any improvement shown on a site plan pursuant to section 32 of this chapter or to the placement of clean earth fill or inert waste fill.

a. No structure or improvement shall be located on any lot or parcel in any area other than a building site.

b. No structure, improvement, or land disturbing activity to establish the structure or improvement, or to the placement of clean earth fill or inert waste fill shall be located on critical or preserved slopes except as otherwise permitted under sections 4.2.5, 4.2.6, 4.3.1 and 30.7.4.

~~**Sec. 4.3.1 - Fill areas, waste areas.**~~

~~Fill and waste areas shall be permitted in all zoning districts. Fill and waste activities shall be permitted only in accordance with section 5.1.28 of this ordinance.~~ Clean earth fill activity and inert waste fill activity shall be permitted in all zoning districts. Clean earth fill activity and inert waste fill activity shall be permitted only in accordance with section 5.1.28 of this ordinance.

Section 5.1.28 ~~Borrow, fill or waste areas.~~ Clean earth and inert waste fill activity.

a. ~~Each borrow, fill or waste area shall be subject to the following:~~

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 or established and operated in conjunction with an approved site plan or subdivision shall be subject to the following:

1. Each active ~~borrow, fill or waste~~ 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 shall not exceed 3:1. The height of fill shall not exceed 8 feet above natural grade.

2. No ~~fill or waste~~ 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. (Amended 10-3-01; 7-3-02)

~~2. Each fill or waste area shall be only for the disposal of soil or inert materials. The disposal of any other materials in a fill or waste area is prohibited.~~

3~~4~~. Each ~~borrow, fill or waste~~ fill area shall be reclaimed within seven (7) days of completion of the ~~borrow, fill or waste~~ 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); ~~covering the area with clean fill to a minimum depth of two (2) 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 fill to one (1) foot if the area is unlikely to be redeveloped.~~

4. Inert waste fill shall be topped with clean earth fill to a minimum depth of two (2) 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 (1) foot if the area is unlikely to be redeveloped.

5. The zoning administrator, or the program authority for those ~~borrow, fill or waste~~ 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 ~~he~~ 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 twenty-five (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 sixty (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 setback a minimum of 150 feet from any entrance corridor street.

7. Fill activity except for access must be setback a minimum of 75 feet from all RA, VR, MHD or residential property lines and public street right of way. Access must be setback 50 feet from the property line 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 shall not be subject to the setback from public street right of way.

8. Fill activity must be setback 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 5 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. Maximum area for fill activity is 2 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.

11. Notwithstanding the provisions of Section 4.3 trees may be cut provided a plan as required by section b is submitted. However, no tree of 36 inches or greater in diameter may be cut.

12. If a private street, shared driveway or access easement is used the applicant shall 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 shall limit vehicles associated with the fill activity to not more than 56,000 pounds and the access shall meet the standards of Chapter 18, Section 4.6.6 of the Code of Albemarle and have a surface adequate to accommodate a vehicle of 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 Chapter 18, Section 4.6.6 of the Code of Albemarle and has a surface adequate to accommodate a vehicle of 80,000 pounds.

13. No fill activity shall occur until the Virginia Department of Transportation has approved the entrance onto the state highway.

14. Except for properties zoned RA, Rural Area, VR, Village Residential or MHD, Monticello Historic District, tree canopy for area(s) disturbed by fill activity shall be established and maintained in compliance with Section 32.7.9.8.

b. If the aggregate area of a ~~borrow, fill or waste~~ fill activity will be greater than ~~ten thousand (10,000) square feet~~ two thousand five hundred (2,500) square feet, the program authority shall first approve a plan or a narrative for such activity that satisfies the requirements of subsection (a) and the following:

Deleted: the activity shall be subject to chapter 17 of the Code of Albemarle, then, as part of any permit issued pursuant to ~~section 17-207~~ chapter 17 of the Code of Albemarle,

1. All ~~inert~~ 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 ~~borrow, fill or waste~~ fill area is located, it shall be cleaned so that no ~~inert~~ materials outside of the vehicle's load-bed can be deposited on a public or private street.

2. The ~~borrow, fill or waste~~ 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. ~~Depending on the anticipated intensity and duration of the activity and the character of the development of adjoining properties, the program authority may require setback, fencing and landscaping requirements as deemed appropriate, but which shall not exceed the requirements of sections 30.4.6, 30.4.7 and 30.4.9 of this chapter.~~

3. ~~Borrow, fill or waste~~ Fill activity ~~involving industrial-type power equipment~~ shall be limited to the hours of 7:00 a.m. to 9:00 p.m., except in cases of a public emergency declared pursuant to section 2-1003 of the Code of Albemarle.

Authors note – Section 2-1003 is not the correct reference. Language appears to have been removed from Section 2. Alternative language should be identified.

4. ~~Borrow, fill or waste~~ 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 or waste~~ fill shall be completed within one (1) 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 shall not be permitted in the RA, Rural Area, VR, Village Residential or MHD, Monticello Historic District without approval of a variation or exception as permitted in section 32.3.5.

d. The Board may approve a request for variation or exception from any requirement in this section 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.

e. The agent shall 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. A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive 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.

Sec. 31.5 - Zoning clearance.

The zoning administrator shall review requests for zoning clearances as follows:

a. *When required*. A zoning clearance shall be required in the following circumstances:

1. *New use*. Prior to establishing a new non-residential use, including those provided in subsections (a)(6) and (a)(7), other than an agricultural, use, or clean earth fill activity or inert waste fill activity.