SECTION 3.1 DEFINITIONS

Clean earth fill. "Clean earth fill" means fill that (i) consists of any soil material that occurs naturally on the surface of the earth that can be dug, plowed, or planted, (ii) can be classified as a soil in accordance with the "Unified Soil Classification System"., ~~(iii) contains less than 25 percent rock fragments greater than three inches in diameter, and (iv) contains less than five percent by volume of root or woody material.~~ Clean earth fill must 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~~.~~;

3. More than five percent by volume of root or woody material; and

4. More than twenty-five percent by volume of rock fragments greater than three inches in diameter.

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.

Direct access road classification. "Direct access road classification," as used in Sec. 5.1.28, means the classification of the public or privately maintained road from which the property proposed for fill activity has an entrance that connects directly without using another lot, easement, or internal access road. The public road classification is based on the Virginia Department of Transportation (VDOT) functional classification categories.

Drip line. "Drip line" means the area within the outermost circumference of a tree canopy from where water drips onto the ground, including the soil and roots within that circumference.

Fill activity. "Fill activity," as used in Section 5.1.28, means either clean earth fill activity, inert waste fill activity, or borrow activity.

Inert waste fill. "Inert waste fill" means brick, concrete block, broken concrete, ~~asphalt pavement~~ and uncontaminated minerals or clean earth fill. Inert waste fill 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 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.

Short duration agricultural engineering operations. "Short duration agricultural engineering operations" means borrow or fill activity that supports existing or establishes new agricultural operations, 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. Examples include farm pond construction and field leveling.

Truck round trip. "Truck round trip," as used in Sec. 5.1.28, means one truck entering and leaving a fill site.

SECTION 4.3 TREE CUTTING.

a. Outside of ~~In districts other than~~ the ~~RA~~Rural Areas, Monticello Historic, and Village Residential zoning districts, cutting of trees ~~shall be~~ is 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 ~~as an incident to~~ in the preparation of land for the establishment of some other use permitted in the district, provided that:

   1. ~~Such~~ The use is exempt from ~~the provisions of~~ section 32 ~~hereof~~; ~~or~~

   2. A site ~~development~~ plan for such permitted use ~~shall have~~ has been approved ~~in accordance with the provisions of section 32 of this ordinance~~ by the County; or

   3. The tree cutting complies with section 5.1.28.

b. The following regulations shall apply in all zoning districts:

   1. Unless otherwise specifically approved to accommodate development ~~pursuant to section 32 hereof~~, no tree within 15 feet of any perennial stream or water supply impoundment may be cut, except ~~for~~:

      a. ~~d~~Dead trees or trees of less than six inches in diameter measured at six inches above ground; or

      b. ~~in order to~~ To provide access for livestock or for another permitted use~~;~~.

      c. ~~The foregoing n~~Notwithstanding subsections (a) and (b), 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. For the purpose of this ordinance, the term "tree cutting" ~~shall be deemed to~~ includes sawing, burning, bulldozing, poisoning, girdling or any other activity which could reasonably be anticipated to result in the death of a tree. ~~Fill and waste areas shall not be deemed a permitted use but preparatory activity to establish a permitted use.~~

Sec. 4.3.1 Fill areas, waste areas.
Clean earth fill activity and inert waste fill activity are permitted in all zoning districts. Clean earth fill activity and inert waste fill activity are permitted only in ~~accordance~~ compliance with section 5.1.28 of this ordinance.

SECTION 5.1.28 CLEAN EARTH AND INERT WASTE FILL ACTIVITY.

a. **Applicability.** These regulations apply to both fill and borrow activity. In section 5.1.28 the statement "fill activity" applies to both fill and borrow activity.

b. **Inert waste fill activity.** 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 special exception as permitted in section 33.5 of this chapter.

c. **Administration of regulations**. The Zoning Administrator authorizes the County Engineer to administer this section where specified. The Zoning Administrator will enforce this section in consultation with the County Engineer.

d. **Exemptions.** The following borrow and fill activities are exempt from section 5.1.28:

   1. Borrow or fill in association with a permitted use in the Natural Resource Extraction Overlay District;

   2. Routine non-agricultural maintenance activities, including planting a garden and landscaping;

   3. Agricultural activity such as importing lime and fertilizer to amend the soil;

   4. Borrow or fill in connection with development of an approved site plan, an approved subdivision plat, or an approved building permit; and

   5. Borrow or fill for site preparation that is associated with a Planned Development consistent with section 8.5.5.4.

e. **Short duration agricultural engineering operations.**

   1. Clean earth fill or borrow agricultural operations such as farm pond construction or field leveling is allowed, if it meets all of the following:

      a. The parcel, including any adjoining parcels under the same ownership or management, is zoned Rural Areas;

      b. The property is either an aggregate of at least 21 acres or is enrolled in the agriculture or horticulture categories of the use-value tax deferral program; and

      c. The agricultural engineering operations support agricultural activity on the property.

   2. Short duration agricultural engineering operations must comply with all of the following regulations:

a. Section 5.1.28(g) subsections (1), (2), (3), (4), (8), (10), (12), (13) and (14);

b. A zoning clearance is required by section 31.5 but the fee set forth in County Code § 1-504 will not be charged;

c. Any special exception is reviewed for compliance with section 5.1.28(k)

f. **Summary Table**

	Direct Access Road Classification	**Maximum # of Truck Round Trips Per Day Allowed**	**Maximum Duration within 1 year period (beginning no earlier than 1 year from the last date of fill activity, if any)**	**Days and Hours of Operation**
Short Duration Agricultural Engineering Operations	Principal Arterial, Minor Arterial, Major Collector, Minor Collector	Unlimited	60 days	Monday-Saturday 7am-7pm
	Local Street or Privately maintained road, street or shared driveway	15	60 days	Monday-Saturday 7am-7pm
Fill Activity	Principal Arterial	Unlimited	6 months	Monday-Friday 7am-7pm
	Minor Arterial	25	6 months	Monday-Friday 7am-7pm
	Major Collector	15	6 months	Monday-Friday 7am-7pm
	Minor Collector/Local Street or Privately maintained road, street or shared driveway	Only permitted by Special Use Permit	Only permitted by Special Use Permit	Only permitted by Special Use Permit

~~a~~g. **Regulations applicable to all fill activity.** ~~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~~ All clean earth fill activity, inert waste fill activity, or borrow, regardless of the area involved, are subject to the following requirements:

1. **Drainage.**

   a. Each active fill area ~~shall~~ must be shaped and sloped ~~so that no~~ to minimize undrained pockets or stagnant pools of water. ~~are created to the maximum extent reasonably practicable as determined by the program authority.~~

   b. All ~~undrained pockets and~~ stagnant pools of water resulting from drainage ~~shall~~ must be treated ~~as required by the Virginia Department of Health~~ in compliance with Article 5, Chapter 7 of the County Code 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. **Maximum fill slope.** The fill slope may not exceed 3:1 or 33 1/3%.

~~2~~3. **Restricted area of fill.** ~~No f~~Fill area ~~shall be located either within~~ may not be located in any of the following areas:

   a. Critical slopes or preserved steep slopes.

   b. ~~t~~The flood hazard overlay district, except as ~~authorized by~~ allowed by section 30.3; ~~of this chapter,~~

   c. ~~or in a~~Any stream buffer area as defined by Chapter 17 of the Code of Albemarle; or

   d. ~~on any h~~Hydric soils as identified by the United States Department of Agriculture.

4. **Lateral support.** Fill activity must be carried out safely to: keep the ground stable and reduce the risk of sliding, sinking, collapse; and to minimize risks to people, animals, nearby property, and public streets.

5. **Setbacks to fill activity (except for access).** Fill activity must be set back:

   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.

6. **Setbacks to fill activity access.** Fill haul roads and access points must be at least 50 feet from property lines and 100 feet from dwellings on adjacent property, unless under the same ownership as the property being filled. No setback is required from a public street right-of-way, privately maintained road, private street, or shared driveway.

7. **Trees**. The following provisions apply 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. These provisions do not apply to properties within the Rural Areas (RA), Village Residential (VR) or Monticello Historic zoning districts (MHD):

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

b. Trees up to 36 inches measured at 6 inches above ground may be cut, provided a plan or narrative required by section (h) is approved; However, no tree of 36 inches or greater in diameter may be cut or covered in fill; and

c. 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.

~~3~~8. **Final grading and stabilization.**

a. Each fill and borrow area ~~shall~~ must be ~~reclaimed~~ stabilized and seeded 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~~ The County Engineer may extend this period for stabilization activities.

b. ~~Reclamation shall~~ Stabilization must 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~~ establish~~ing~~ a permanent vegetative ground cover.

c. Fill involving inert waste fill must be covered with a minimum of two feet of clean earth fill for stabilization. The County Engineer may allow a minimum depth of one foot of clean earth fill, if the area is unlikely to be used for buildings or pavement and is not near water bodies.

~~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~~9. **Maximum fill area.** ~~The maximum area for f~~Fill activity ~~on any parcel in existence on September 16, 2020~~ in districts other than the Rural Areas, Village Residential, and Monticello Historic districts is limited to a maximum of two acres. ~~Determining~~ The fill area ~~for fill activity~~ includes all ~~locations~~ areas used, or designated to be used, for fill, vehicle storage and vehicle maintenance but does not include areas used 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~~10. **Entrance onto public road.** No fill activity may occur until the Virginia Department of Transportation has approved the entrance onto the highway.

11. **Days and hours of operation.** Except in cases of a public emergency as determine by the County Executive, fill activity is limited to the hours listed in the summary table in section (f).

12. **Transporting fill.** All fill materials must be transported in compliance with County Code § 13-301. Before a transporting vehicle leaves the parcel(s) on which the fill activity is located, it must be cleaned so that no materials outside of the vehicle's load-bed can be deposited on public or private streets.

13. **Dust and debris.** The fill area and any privately maintained access roads must be treated or maintained to prevent dust or debris from blowing or spreading onto adjacent properties or public streets.

14. **Summary table.** All fill activity must comply with the provisions in the summary table in section (f).

~~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~~h. **Area of fill activity over 2,500 square feet.** 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~~County Engineer, that satisfies the requirements of section 5.1.28. ~~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~~stead~~ ~~lieu~~ of a plan or narrative, the ~~program authority~~ County Engineer may accept a contract~~ual agreement~~ between the Virginia Department of Transportation and its contractor for a public road project; if it ~~provided that the program authority determines that the agreement satisfies at least to an equivalent extent~~ meets the applicable requirements ~~and intent~~ of this section.

i. **Area of fill activity over 10,000 square feet.** Even if it is a listed exemption in County Code § 17-301, any fill activity with an aggregate area greater than 10,000 square feet requires compliance with the erosion and sediment control regulations of Chapter 17 of the County Code.

j. **Performance bond.**

1. 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 to mitigate impacts from the fill activity.

2. The amount of the bond or other surety is based on unit pricing for new public or private sector construction in Albemarle County, Virginia with an allowance for estimated administrative costs and inflation. Administrative costs and inflation will 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.

3. 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 stabilization work is inspected and approved by the County Engineer, the bond or other surety, or any unexpended or unobligated portion, will be refunded to the owner.

~~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.~~

k. ~~d.~~**Variation or exception.** The Board of Supervisors may approve a variation or exception from any requirement of this section other than those listed by special use permit in the summary table in section (f).

1. A variation or exception from any requirement of this section may be approved upon a finding that any of the ~~following~~ relevant 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; and (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 delivery at least five days before the Board hearing to the following:

   a. ~~owner or o~~Owners~~, their agent or the occupant,~~ of each parcel involved;

   b. ~~to the o~~Owners, ~~their agent or the occupant,~~ of all abutting property and property~~y~~ies ~~immediately~~ directly across the ~~street or~~ road from the property proposed for fill, whether within Albemarle County or another locality; and

   c. ~~affected, including those parcels which lie in other localities of the Commonwealth; and, i~~If ~~any portion of the affected~~ property proposed for fill is located within a planned ~~unit~~ development, then notice will be provided to

~~such~~ the 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.~~d. 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.

SECTION 31.5 ZONING CLEARANCE.

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

a. *When required*. A zoning clearance ~~shall be~~ is 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), or prior to commencing a clean earth ~~fill activity~~ or inert waste fill activity, even if involving an agricultural engineering operation. ~~other than a~~An agricultural use that is not associated with a fill activity does not require a zoning clearance unless one is required by section 5.1.28.

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.

b. *Approval*. If the proposed building, structure, improvements, and site, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the zoning clearance.

c. *Circumstance when zoning clearance shall not be issued.* The zoning administrator shall not issue a zoning clearance if, after review of any site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan.

d. *Notice to the owner if the applicant is not the owner*. Within ten days after receipt of a request for a zoning clearance by an applicant who is not the owner of the lot and/or structure to which the zoning clearance pertains, and prior to acting on the request, the zoning administrator or the applicant, at the zoning administrator's request, shall give written notice of the request to the owner. Written notice mailed to the owner's last known address as shown on the current real estate tax assessment records shall satisfy this notice requirement. If the zoning administrator requests that the applicant provide the written notice, the applicant shall provide satisfactory evidence to the zoning administrator that the notice has been given.

e. *Commercial and industrial uses defined*. For the purposes of this section 31.5, production agriculture, production silviculture, and agricultural operations are neither commercial nor industrial uses; a home occupation is a commercial use.

f. *Effect of renumbering and renaming*. Any other section of this chapter that refers to section 31.2.3.2 or to a zoning compliance clearance shall be deemed to be a reference to section 31.5 or a zoning clearance.