

Intensive Livestock Operations
Virginia Association of Counties

VIRGINIA ASSOCIATION OF COUNTIES

COMPENDIUM
(Different County Approaches)

INTENSIVE LIVESTOCK OPERATIONS

VACo Annual Conference November 10, 1997

The following pages comprise a compendium of information which we hope will assist counties that are now considering changes to sections of their zoning ordinances relating to Confined Animal Feeding Operations.

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Moratorium on Hog Farms by: C. Flippo Hicks

I have received a number of inquiries relative to a county adopting a moratorium on hog farms. I have advised these people I have discussed this with as follows:

A county may not adopt a moratorium on hog farms just to say "we don't want hog farms in the county." In my opinion a board of supervisors may request that the planning commission study and make recommendations on amendments or revisions to the county zoning ordinances referring to intensive livestock production. In connection with the planning commission's action the Board of Supervisors may direct the county staff not to approve any permit applications forwarded to the county by the Virginia Department of Environmental Quality. If the county takes this action by emergency ordinance. the emergency ordinance would by law expire in sixty days, then during the sixty day period the board of supervisors should adopt an ordinance in the regular manner with notice and public hearing. The ordinance, whether emergency or regular. should request that the state not issue any general permits for intensive livestock production in the county pending the report of the planning commission and further action by the board of supervisors.

I base the above recommendation on moratoria that counties in northern Virginia have used for rezoning applications while in the process of rezoning all or a portion of the county.

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Intensive Livestock Operations, Comparison of Various County Ordinances

	NC, after 1997 legislation	Virginia General Permit	Virginia Farm Bureau	Annelia County	Brunswick County	Dinwiddie County	Greenville County	Nottoway County
Churches	2500 ft.	n/a	1000 ft.	1000 ft.	1750 ft.	2000 ft.	4500 ft.	1000 ft.
"Other occupied structures"								1000 ft.
Government buildings								
Springs					1750	2000 ft.		
Parks	100 ft.	n/a			1750 ft.	2000 ft.	4500 ft.	
Water intakes			1000 ft.			2000 ft.		
Surface waters	500 ft.	n/a				2000 ft.		
Drinking Water Wells								
Other drinking water source			1000 ft.		yes	2000 ft.	4500 ft.	
Distance from "like" facilities						5280 ft.		
Setbacks for lagoons serving Intensive Livestock Facilities (if specified in ordinance)								
Water impoundment which is source for public water system					5280 ft.			
Source waters flowing into impoundment					5280 ft.			
Enclosure of lagoon					yes			
SETBACKS FOR FIELDS	N/A	200						
SPRAYED WITH WASTE								
Adjacent Prop lines	75 ft.	200 ft.						
Occupied dwellings								
Surface waters	75 ft.	25-50 ft.						

Intensive Livestock Operations, Comparison of Various County Ordinances

Drinking water wells	NC, after 1997 legislation 100 ft.	Virginia General Permit 100 ft.	Virginia Farm Bureau	Amelia County	Brunswick County	Dinwiddie County	Greenville County	Nottoway County
State Inspections Start Up	Bi-annual yes	every 5 years						
During operation								
Minimum # of acres for Intensive Swine Operations			20 non-contiguous acres		50 contiguous acres	100 contiguous acres	100 contiguous acres	
Nutrient Management Plan			yes	yes	yes	yes	yes	yes
Development Plan Certified Plat Required E & S Plan			yes yes yes	yes yes yes	yes yes yes	yes yes yes	yes yes yes	

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 779

An Act to amend and reenact Chapter 293 of the Acts of Assembly of 1991, carried by reference in the Code of Virginia as § 3.1-22.28, and to amend and reenact § 3.1-22.29 of the Code of Virginia, relating to the right to farm. [S 513]

Approved April 11, 1994

Be it enacted by the General Assembly of Virginia:

1 That Chapter 293 of the Acts of Assembly of 1991, carried by reference in the Code of Virginia as § 3.1-22.28, and § 3.1-22.29 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-22.28. Right to farm; restrictive ordinances.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no county shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purpose of this section, "production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge. However, counties may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No county, city or town shall enact zoning ordinances which would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

§ 3.1-22.29. When agricultural operations do not constitute nuisance.

A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in accordance with existing best management practices and comply with existing laws and regulations of the Commonwealth. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

B. For the purposes of this chapter, "agricultural operation" shall mean any operation devoted to the bona fide production of crops, or animals, or fowl, including but not limited to the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity.

C. The provisions of subsection A shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

D. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; however, the provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances.

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 802

An Act to amend and reenact § 15.1-491 of the Code of Virginia, relating to zoning ordinances. [H 1288]

Approved April 11, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-491 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-491. Permitted provisions in ordinances: amendments.

A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

(a) For variances as defined in § 15.1-430 (p) or special exceptions as defined in § 15.1-430 (i) to the general regulations in any district in cases of unusual situations or to ease the transition from one district to another, or for buildings, structures or uses having special requirements, and for conditional zoning as defined in § 15.1-430 (q) and for the adoption, in counties, or towns, therein which have planning commissions, wherein the urban county executive form of government is in effect, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the zoning map of reasonable

conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, in advance of the public hearing before the governing body required by § 15 1-493 by the owner of the property which is the subject of the proposed zoning map amendment. Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

(a1) in the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

(a2) Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subdivision shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subdivision (a1), unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

(a3) The provisions of subdivisions (a1) and (a2) of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation consulted and thereafter refiled. Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or

2. Accept or impose valid conditions pursuant to subsection (c) of this section. subsection H of § 15.1-466, or other provision of law.

(b) For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

(c) For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any city, county or town may reserve unto itself the right to issue such special exceptions.

(d) For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the county or municipality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance, including the authority to make conclusions of law and findings of fact, with concurrence of the attorney for the governing body, in connection with the administration, application and enforcement of the ordinance in specific cases, including determinations of rights accruing under § 15.1-492, and further including the ordering in writing of the remedying of any condition found in violation of the ordinance, and the bringing of legal action to insure compliance with the ordinance, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.1-496.1.

(e) For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000.

(f) For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto

(g) For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice require, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body, (ii) by motion of the local commission, or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and .may further provide that substantially the same petition will not be

reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed twelve months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

(h) For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

(i) For areas and districts designated for mixed use developments as defined in § 15.1-430 (r) and planned unit developments as defined in § 15.1-430 (s).

(j) For the administration of incentive zoning as defined in § 15.1-430 (t).

The ordinance may also provide that petitions brought by property owners, contract purchasers or the agents thereof, shall be sworn to under oath before a notary public or other official before whom oaths may be taken, stating whether or not any member of the local planning commission or governing body has any interest in such property, either individually, by ownership of stock in a corporation owning such land, partnership, as the beneficiary of a trust, or the settlor of a revocable trust or whether a member of the immediate household of any member of the planning commission or governing body has any such interest.

The ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, production agriculture and silviculture is the bona fide production or harvesting of agricultural or silviculture products but shall not include the processing of agricultural or silviculture products or the above ground application or storage of sewage sludge. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification.

2. That the provisions of this act shall become effective on April 1, 1995, and from and after that date, all land zoned to an agricultural district or classification shall be in conformity with this act.

Intensive livestock, dairy, poultry facilities

Section 1 Intent:

It is the intent of this chapter of this zoning ordinance to provide for the continued security of _____ County's agricultural sector by encouraging the orderly and responsible growth of its livestock, dairy and poultry industry.

Section 2. Definitions:

Intensive livestock facility (hereafter, "livestock facility") A livestock facility (as used in this ordinance) with accessory uses or structures, including feed storage bins, litter storage sites, incinerators, manure storage sites which at any one time has _____ head of cattle, or _____ hogs, or _____ horses.

Intensive dairy facility, (hereafter, "dairy facility") A dairy with accessory uses or structures including feed storage bins, litter storage sites, manure storage sties, manure disposal pits which at any one time has _____ dairy cows.

Intensive poultry facility, (hereafter, "poultry facility") A poultry house with accessory uses or structures, including feed storage bins, litter storage sites, incinerators, disposal pits or cold storage chests used for collection of dead birds which at any one time has _____ chickens or _____ turkeys.

Livestock raiser, dairy operator, poultry grower: The owner of the livestock facility, dairy or poultry facility or the land on which the facility or dairy is located.

Existing dwelling: for the purpose of this chapter of the zoning ordinance either the following shall constitute an existing dwelling:

(a) A structure, designed for residential use, which is occupied on the date a completed application for a livestock, dairy or poultry facility permit is received by the office of the zoning administrator; or

(b) A structure, designed for residential use, which is not occupied on the date of completed application is received, but which has been issued a certificate of occupancy or which has been occupied for any period of time within the five (5) years immediately preceding the date on which a completed application for a livestock, dairy or poultry facility permit is received by the office of the zoning administrator.

Existing livestock, dairy, poultry facility (only for the purpose of determining residential setbacks in the Agriculture- 1 district under this chapter,) a livestock, dairy or poultry facility which is occupied or has been occupied by a commercial livestock raiser, dairy or poultry facility for any period of time within the five (5) years immediately preceding

the date on which zoning approval is sought for a dwelling, including sites or structures which are accessories to the livestock facility, dairy or poultry facility.

Parcel.; A measured portion of land separated from other portions of land by a metes and bounds description or described as a separate, discrete tract in an instrument of conveyance or devise and recorded in the offices of the clerk of this county.

Section 3

Acreage requirements.

Livestock facilities: the minimum parcel size on which an initial intensive livestock facility may be placed shall be _____ acres for up to _____ head of livestock. For each subsequent increase in the number of livestock, _____ acres shall be required for each increased _____ of livestock, provided that all other requirements of this chapter are met.

Parcels with livestock facilities in operation as of the effective date of this amendment which do not have sufficient acres, as required above, shall be considered non-conforming existing usage and may continue so long as the operation is not abandoned for as long as two years continuously and there is no increase in the size or number of livestock kept on the parcel at one time and there is no diminution in the size of the parcel of land containing the intensive livestock facility.

Setbacks from existing dwellings:

Each livestock facility shall be set back from all existing dwellings not owned by the livestock raiser, as follows:

1. From an existing dwelling in the A-1 district, _____ () hundred feet.;
2. From an existing dwelling in an adjacent zoning district _____ () hundred feet

Setbacks from property lines and public roads:

1. The setback for intensive livestock facility from property lines and public roadways shall be at least _____ () hundred feet

Other setbacks

All livestock facilities shall be set back at least feet from incorporated towns; plated residential subdivisions and residentially zoned districts; rural service areas; mobile home parks; public schools; churches; county, town and community recreation areas; public wells, springs and water intakes.

Acreage requirements for dairies

Minimum parcel size on which an initial dairy may be placed shall be _____ acres for up to _____ head of dairy cows. For each subsequent increase in the dairy herd located on the subject parcel _____ additional acres are required for each increased _____ of dairy cows provided all the requirements of this chapter are met. Parcels for dairy operations and operations as of the effective date of this amendment which do not have sufficient acreage as required by this chapter are deemed to be non-conforming uses and may continue so as long as the operation is not abandoned for as long as two years continuously and there is no increase in the size of the dairy herd or diminution in the size of the parcel of land containing the intensive dairy facility.

Setbacks from existing dwellings

Each dairy shall be set back from all existing dwellings not owned by the grower, as follows:

1. From an existing dwelling in the A-1 district, _____ () hundred feet.;
2. From an existing dwelling in an adjacent zoning district _____ () hundred feet

Setbacks from property lines and public roads

The setback for dairies from property lines and public roadways shall be at least _____ () hundred feet.

Other setbacks

All dairies shall be set back at least _____ hundred () feet from incorporated towns; platted residential subdivisions; residentially zoned districts; rural service areas; mobile home parks; public schools; county, town, community recreation areas; and public wells, springs and water intakes;

Acreage requirement for poultry facilities

Minimum parcel size on which an initial poultry facility may be placed shall be _____ () acres, for each subsequent poultry house located on the subject parcel _____ () is required, provided all other requirements of this chapter are met. For additions to an existing poultry house on the subject parcel there must be an additional one (1) acre for each _____ () thousand square feet or part thereof of such addition, provided that all other requirements of this chapter are met. Parcels with poultry facilities in operation as of the adoption of this amendment to the zoning ordinance which do not have sufficient acres, as required above, are deemed to be non-conforming use and may continue in operation so long as there is no increase in the number and size of the poultry houses and there is no diminution in the size of the parcel of land.

Setback from existing dwellings

Each poultry facility shall be set back from all existing dwellings not owned by the grower, as follows:

- 1) From an existing dwelling in the A-1 district, _____ () hundred feet
- 2) From an existing dwelling in adjacent zoning districts, _____ () hundred feet

Setback from property lines and public roads

The setback for poultry facilities from property lines and public roadways shall be at least _____ () hundred feet.

Other setbacks

All poultry facilities shall be set back at least _____ () feet from incorporated towns; platted residential subdivisions; residentially zoned districts; rural service areas; mobile home parks; public schools; county, town, community recreation areas; and public wells, springs and water intakes;

Replacement and reconfiguration of livestock, dairy and poultry facilities

Replacement or reconfiguration of livestock, dairy and poultry facilities in operation as of the effective date of this amendment to the zoning ordinance but which do not meet the requirements of this chapter may be permitted provided that"

- 1) there is no increase in the square footage devoted to the livestock operation, dairy or poultry house on the parcel and no increase in the number of livestock or dairy cows kept on the parcel or the number of poultry houses kept on the parcel at any one time.
- 2) Replacement facilities do not encroach upon any setbacks required under this chapter to a greater extent than the facilities being replaced.
- 3) A nutrient management plan is obtained as provided for in this chapter.

Certified plat required

Each application for a livestock, dairy or poultry facility shall be accompanied by a plat of the entire parcel with location of proposed facility prepared and signed by a land surveyor or civil engineer licensed by the Commonwealth of Virginia certifying that the proposed livestock, dairy or poultry facility meets all applicable setback requirements of this ordinance and showing the direction and distances to nearest residences, adjacent zoning districts, platted residential subdivisions, rural service areas, mobile home parks, public school; recreation areas; wells, springs and water intakes listed under other setbacks.

Livestock, dairy or poultry facility development plans

(a) in the agricultural district. a livestock raiser, dairy operator or poultry grower or a potential raiser, owner, grower may file with the zoning administrator a development plan which indicates the number size and location of livestock, dairy or poultry facilities planned for the subject parcel. When such development plan has been approved and filed with the zoning administrator and during the period in which it remains in effect, the planned facilities shall be obliged to meet setbacks only from those dwellings and uses existing at the time the development plan is approved.

(b) The development plan shall be based on the requirements of this chapter and shall be accompanied by a plat prepared and signed by land surveyor or civil engineer certified by the Commonwealth of Virginia verifying the accuracy of the distances shown in the development plan and containing all of the data required on certified plats herein above required.

(c) The development plan shall remain in force only so long as the facilities proposed are constructed in accordance with the development plan and are placed in service in a timely manner.

(d) At least one-third (1/3) of the number of head of livestock or dairy animals, subject to this chapter of the ordinance or one (1) poultry facility indicated in the development plan must be placed into service within twelve (12) months of the date on which the development plan is approved by the zoning administrator, unless at least _____ number of livestock, dairy or one (1) such poultry facility is already in service on the subject parcel at the time the development plan is filed. Zoning approval for any subsequent facilities indicated in the development plan may only be obtained if no more than _____ years have passed since the date on which the development plan was approved for a parcel by the zoning administrator.

e) The grower shall notify the zoning administrator in writing within thirty (30) days of placement into service of any facilities indicated in his development plan.

(f) In the event a grower fails to build or have in place the minimum required in section (d) above facility indicated in the development plan within twelve (12) months of obtaining zoning approval for the facility, or fails to obtain zoning approval for any of the facilities indicated in his development plan within the prescribed _____ () year period the zoning administrator shall revoke the development plan and all future development plans of facilities on the subject parcel shall strictly conform to the requirements of this chapter.

Each parcel for which a development plan has been approved by the zoning administrator shall display at its entrance a sign no smaller than two (2) square feet, or larger than four (4) square feet, clearly visible from the nearest roadway, indicating that a development plan is in effect for the parcel and containing the words "Certified _____ Development Site."

Nutrient management plan

(a) After the effective date of this amendment to the zoning ordinance, no facility permit shall be issued until a nutrient management plan for the proposed facility has been reviewed and accepted by the zoning administrator. Each facility already in operation or approved by the county prior to the effective date of this amendment to the zoning ordinance shall have a nutrient management plan on file with the zoning administrator on or before two (2) years from the effective date of this amendment or at such time an additional area devoted to livestock raising, dairy or poultry housing, litter storage, manure storage, composting of dead birds or other activity which would increase nutrient output of the facility is placed into service on the same parcel, whichever shall occur first. After two years from the effective date of this amendment no facility subject to this chapter of the zoning ordinance shall operate without such a nutrient management plan.

(b) The nutrient management plan shall provide for the safe disposal or use of all manure, animal waste, produced by each facility. Disposal or use shall be accomplished by means of land application at approved locations and agronomic rates, as established by the Virginia Cooperative Extension Service and other appropriate agencies. Alternative methods of disposal may be used, as approved by appropriate state and local agencies. The nutrient management plan shall take into account, among other things, the presence of rivers, streams, public and private wells, springs and sinkholes, and slopes and geological formations that indicate a high susceptibility to ground or surface water pollution and where applicable, to comply with the Chesapeake Bay Preservation Act. Each nutrient plan shall be subject to review by an agent of the Virginia Cooperative Extension Service or other appropriate agency.

(c) If off-site disposal is part of the nutrient management plan, the grower, raiser, operator shall provide, as part of that nutrient management plan, written documentation of an agreement with the receiver of the wastes produced at the grower's facility. Documentation shall specify the duration of the agreement and the nature of the application or use of the wastes. A nutrient management plan containing such an agreement shall be valid only as long as the agreement remains in force and shall be reviewed whenever such an agreement expires or is terminated by either party. The grower shall notify the zoning administrator whenever such an agreement is terminated before its stated expiration date within fifteen (15) days of such termination.

(d) (1) The nutrient management plan shall also provide for a site, with or without a permanent structure, for the storage of animal wastes and shall;

(a) be located on the same parcel as the facility to which it is an accessory use

(b) meet the setback requirements of this chapter

(c) be protected from the elements; and

(d) be certified by a professional engineer registered in Virginia that the site:

1) is located on an impermeable base;

2) is out of all drain ways: and

3) has sufficient capacity to accommodate one hundred (100) percent of the waste produced by each facility in operation on the parcel during the four (4) consecutive months in which the maximum number of heads of animals or number of poultry are on the parcel.

(d) (2) Notwithstanding this section, if a raiser, operator or grower is unable to locate a site on the same parcel because of insufficient acreage or topographical hardship, then the zoning administrator, after consultation with the raiser's, operator's or grower's engineer, may permit the storage site to be located on adjacent land owned by the raiser, operator, grower; or, if there is a valid agreement for off-site disposal as provided in this section, the zoning administrator may permit the storage site be located on a parcel specified in the agreement for off-site disposal.

(e) Notwithstanding the provisions of this section, a raiser, operator, or grower whose facilities were in operation prior to the effective date of this amendment to the zoning ordinance, in attempting to comply with the requirement to provide a litter storage site within two (2) years from the adoption of this amendment may locate an animal waste storage site within any setback otherwise required in this chapter upon satisfaction that the storage site will not encroach upon setbacks to a great extent than the existing facility.

(f) The nutrient management plan shall be reviewed and updated every five (5) years by an agent of the Virginia Cooperative Extension Service or other appropriate agency and by the zoning administrator, and more frequently if deemed necessary or advisable by the county or its agent.

SUGGESTED MODEL ORDINANCE

March 1, 1996

INTENSIVE LIVESTOCK, DAIRY, POULTRY FACILITIES

SECTION 1

1.1 Intent

It is the intent of this chapter of this zoning ordinance to encourage economic development and to preserve farmland by providing for the viability of _____ County's agricultural sector by encouraging the orderly and responsible growth of livestock, dairy, and poultry industry.

Within the _____ Agricultural district and the _____ agricultural classification [list all zoning classifications in which agriculture is contemplated as a use], all agricultural production activities (e.g., tillage, crop production, harvesting, pasturing of animals, etc.), related best management practices and minor processing shall be uses by right to which the provisions of chapter _____ [cite chapter that established agriculture class and district] of the zoning ordinance apply. In addition, any agriculture production activity that is described in chapter _____ of the zoning ordinance and that is undertaken in accordance with the provisions of this chapter within _____ Agricultural district or within the _____ agricultural classification shall also be a use by right.

SECTION 2

2.1 Definitions:

Livestock includes all domestic or domesticated bovine animals, including but not limited to cattle; equine animals, including but not limited to horses; ovine animals, including but not limited to sheep; porcine animals, including but not limited to hogs.

Intensive livestock facility, (hereafter, "livestock facility"): A livestock operation with accessory uses or structures, as defined below, which at an one time has at least 300 animal units as referenced in the below chart and that: 1. such animals are or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve month period; and, 2. crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Intensive dairy facility, (hereafter, "dairy facility"): A dairy operation with accessory uses or structures, as defined below, which at any one time has at least 300 animal units as referenced in the below chart and that: 1. such animals are or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve month period;

and, 2. crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Intensive poultry facility, (hereafter, "poultry facility"): A poultry operation with accessory uses or structures, as defined below, which at any one time has at least 300 animal units as reference in the below chart and that: 1. such animals are or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve month period; and, 2. crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Type of Facility	Equivalent of 300 animal units
Livestock	300 slaughter and feeder cattle
Livestock	750 swine each weighing over 55 pounds
Livestock	150 horses
Livestock	3,000 sheep or lambs
Dairy	200 mature dairy cattle (whether milked or dairy cows)
Poultry	16,500 turkeys
Poultry	30,000 laying hens or broilers

Livestock, dairy, poultry structure: Any building, structure, installation, storage container, or storage site used in the operations of an intensive livestock, dairy, or poultry facility, including, but not limited to, feed storage bins, litter storage sites, incinerators, manure storage sites, poultry houses, poultry disposal pits, and dead poultry cold storage chests.

Livestock raiser, dairy operator, poultry grower, (hereafter, "operator"): The owner or operator of the livestock facility, dairy or poultry facility or the land on which the livestock, dairy, or poultry facility is located.

Existing dwelling: For the purpose of this chapter of the zoning ordinance either of the following shall constitute an existing dwelling:

(a) A structure, designed for residential use, which is occupied on the date a completed application for a livestock, dairy or poultry facility building permit or other zoning approval is received by the office of the zoning administrator; or

(b) A structure, designed for residential use, which is not occupied on the date a completed application is received, but which has been issued a certificate of occupancy or a building permit prior to the date on which a completed application for a livestock, dairy, or poultry facility building permit or other zoning approval is received by the office of the zoning administrator or which has been occupied for a three (3) year period of time within the five(5) years immediately preceding the date on which a completed application for a livestock, dairy, or poultry facility building permit or other zoning approval is received by the office of the zoning administrator.

Existing livestock, dairy, poultry facility: (only for the purpose of determining residential setbacks in the Agriculture - _____ district under this chapter.) A livestock, dairy, or poultry facility which has been in operation for a one (1) year period of time within the five (5) years immediately preceding the date on which zoning approval is sought for a dwelling or where zoning approval is not necessary for such dwelling, the date on which a building permit is sought for such dwelling.

Parcel of land: A measured portion of land separated from other portions of land by a metes and bounds description or described as separate, discrete tract in an instrument of conveyance or devise and recorder in the offices of the clerk of this county.

SECTION 3

3.1 Acreage requirements.

The minimum number of acres on which an intensive livestock, dairy, or poultry facility may be established shall be either the number of acres required by the nutrient management plan and which has been approved pursuant to Section 5 herein or as follows:

1. For an intensive facility in which beef or dairy cattle are confined and fed, 60 acres or;
2. For an intensive facility in which swine are confined and fed, 20 acres;
3. For intensive facility in which poultry are confined and fed, 20 acres.

All such acres for any one intensive facility need not be contiguous, if the operator owns or has the right to possession of all acres on which such facility shall be established. In addition, the operator shall be able to demonstrate that he or she has a right to access between any non-contiguous acres in such operators.

Livestock, dairy or poultry facilities in operation as of the effective date of this amendment which do not have sufficient acres, as required above, shall be considered non-conforming existing uses and may continue so long as the operation is not abandoned for as long as two years continuously.

3.2 Setbacks from existing dwellings:

Each livestock, dairy, or poultry structure shall be set back from all existing dwellings not owned by the operator as follows:

1. From an existing dwelling in the Agriculture - _____ district, three hundred (300) feet;
2. a) From an existing dwelling in an adjacent zoning district, six hundred (600) feet;

2. b) The operator may reduce the above 600 feet setback to 400 feet if he/she plants a 10 foot wide vegetative screen that will grow to at least 6 feet in height in two years unless there is a natural barrier that meets the height and width requirements.

The setback requirements may be reduced by mutual consent of the owner of an intensified livestock, dairy, and poultry structure and the owner of an existing dwelling. Consent shall be evidenced by a notarized affidavit stating the agreed upon setback reduction and any and all proposed livestock, dairy, and poultry structure that are intended to be subject to the setback reduction. The notarized affidavit shall be filed with the zoning administrator.

3.3 Setbacks from existing livestock, dairy or poultry facilities:

Each dwelling not owned by the operator shall be set back from all existing livestock, dairy, or poultry structures as follows:

1. From an existing livestock, dairy, or poultry structure in the Agriculture - _____ district, three hundred (300) feet;

2. a) From an existing livestock, dairy, or poultry facility in an adjacent zoning district, six hundred (600) feet;

b) The owner of the new dwelling may reduce the above 600 feet setback to 400 feet if he/she plants a 10 foot wide vegetative screen that will grow to at least 6 feet in height in two years unless there is a natural barrier that meets the height and width requirements.

The setback requirements may be reduced by mutual consent of the owner of an intensified livestock, dairy, and poultry structure and the owner of an existing dwelling. Consent shall be evidenced by a notarized affidavit stating the agreed upon setback reduction and any and all proposed livestock, dairy, and poultry structure that are intended to be subject to the setback reduction. The notarized affidavit shall be filed with the zoning administrator.

3.4 Setbacks from Property lines and Public roads:

The setback for intensive livestock, dairy, poultry structures from property lines and public roadways shall be at least one hundred fifty (150) feet.

3.5 Other Setbacks

All livestock, dairy, poultry structures shall be set back at least one thousand (1000) feet from incorporated towns; platted residential subdivisions; residentially zoned districts; mobile home parks; public schools; churches; county owned buildings; county, town and community recreation areas; public wells, public springs and public water intakes.

The operator may reduce the setback above 1000 feet to 800 feet if he/she plants a 10 foot wide vegetative screen that will grow to at least 6 feet in height in two years unless there is a natural barrier that meets the height and width requirements.

3.6 Certified plat required

The owner of an intensive facility constructed or completed after the effective date of this chapter shall file with the zoning administrator a plat or similar documentation showing the entire parcels on which the facility is located and also showing the location of the facility within the parcel or parcels. With this plat or similar documentation, the owner shall submit a written statement, sworn to and subscribed before a notary public, by which the owner certifies to the zoning administrator that the intensive facility shown on the plat or similar documentation meets all applicable setback requirements of this ordinance.

SECTION 4

4.1 Livestock, dairy or poultry facility development plans

a) In the Agricultural - _____ district, an operator or a potential operator may file with the zoning administrator a development plan which indicates the number, size and location of livestock, dairy or poultry structures planned for the subject parcel. When such development plan has been approved by and filed with the zoning administrator and during the period in which it remains in effect, the planned structures shall be obliged to meet setbacks only from those dwellings and uses existing at the time the development plan is approved. The zoning administrator shall approve within 30 days of receipt of the development plan, or if the development plan does not meet the requirements of Sections 3 and 4, the zoning administrator shall return the development plan to the person who submitted it, together with a written description of the portion(s) of the development plan that do not comply with such Sections.

b) The development plan shall be in effect for a period of ten (10) years from the date upon which the plan is filed.

c) The development plan shall be based on the requirements of this charter and shall be accompanied by a plat or similar documentation verifying the accuracy of the distances shown in the development plan and containing all of the data required as specified pursuant to Section 3 of this chapter.

d) The development plan on such parcel shall remain in force only so long as the structures proposed are constructed in accordance with the development plan. The development plan shall be transferable from the owner or operator to another owner or operator unless otherwise stated in the plan by the initial owner or operator.

e) The operator shall notify the zoning administrator in writing within thirty (30) days of placement into service of any structure indicated in his/her development plan.

f) Each parcel for which a development plan has been approved by the zoning administrator shall display at its entrance a sign no smaller than two (2) square feet, or larger than four (4) square feet, clearly visible from the nearest roadway, indicating that a development plan is in effect for the parcel and containing the words "Certified Agricultural Development Site."

g) Nothing herein shall be construed to prohibit an operator or a potential operator from submitting amendments to his or her original development plan or to submitting revised development plans at any time. The zoning administrator shall approve the amended or revised development plan, following the standards set for in 4.1 (a) above, according to the terms of the zoning ordinance in effect at the time that the amendments or revisions are submitted to the zoning administrator.

SECTION 5

30 5.1 Nutrient Management Plan

(a) After the effective date of this amendment to the zoning ordinance, no intensive facility shall commence operation until a nutrient management plan if required by the Commonwealth of Virginia for the proposed facility has been reviewed and approved by the Virginia Department of Conservation and Recreation or by the Virginia Cooperation Extension Service or by a person certified or employed by the Commonwealth as a nutrient management planner.

b) If off-site disposal is part of the nutrient management plan, the operator shall provide, as part of that nutrient management plan, written documentation of an agreement with the receiver of the wastes produced at the operator's facility or an affidavit, sworn and subscribed before a notary public, that states his/her intention to dispose of the waste through sale in retail establishments or otherwise marketing to consumers. Documentation shall specify the duration of the agreement and the nature of the application or use of the wastes. A nutrient management plan containing such an agreement shall be valid only as long as the agreement remains in force and shall be reviewed whenever such an agreement expires or is terminated by either party. The operator shall notify the zoning administrator whenever such an agreement is terminated before its stated expiration date within fifteen (15) days of such termination.

(c) (1) The facility shall also provide for a site, with or without a permanent structure, for the storage of animal wastes if required by the Commonwealth of Virginia and meet all applicable standards of the Commonwealth.

(c) (2) Notwithstanding this, if a operator is unable to locate a storage site on the same parcel of land because of insufficient acreage or topographical hardship, then the zoning administrator, after consultation with the operator's engineer, may permit the storage site to be located on adjacent land owned by the operator; or, if there is a valid agreement for off-site disposal as provided in this section, the zoning administrator may

permit the storage site be located on a parcel specified in the agreement for off-site disposal.

(d) The nutrient management plan shall be reviewed and updated every ten (10) years by an agent of the Virginia Department of Conservation and Recreation or by the Virginia Cooperative Extension Service or by a person certified or employed by the Commonwealth as a nutrient management planner.

ARTICLE XXI INTENSIVE ANIMAL CONFINEMENT FACILITIES

21.1 INTENT

The intent of this Ordinance is to provide Amelia County farmers with guidance and standards in locating and operating intensive livestock, dairy and poultry facilities and all other structures used for these intensive agricultural operations. In doing so, the intent is to protect the public health and welfare and environment of Amelia County and its citizens, while providing for the orderly and responsible growth of the agricultural industries. Where permitted by the Zoning Ordinance, agricultural production activities including but not limited to tillage, crop production, harvesting, raising and pasturing of animals shall be permitted Uses as a matter of right subject to the standards of this Article.

21.2 DEFINITIONS

Animal Confinement: The keeping or raising of livestock under cover or in a confined lot for a total of forty-five (45) days or more in any twelve (12) month period. Examples of animal confinement include, but not limited to, dairies, poultry houses, swine or veal operations, or feed lots.

Animal Confinement Development Plan: A plan developed by the grower/operator or potential grower/operator indicating the size, number and location of animal confinement facilities planned during a five (5) year period.

Animal Units: A unit of measurement for general and intensive livestock operations. An animal unit (A.U.) is approximately equivalent to one thousand (1,000) pounds of live animal weight. The following scale will be used to calculate total animal units:

A. Slaughter cattle	each multiplied by 1.00
B. Feeder cattle	each multiplied by 1.00
C. Milking dairy cows	each multiplied by 1.50
D. Young dairy stock	each multiplied by 0.60
E. Swine, breeding stock	each multiplied by 0.40
F. Swine, finishing hog over 55 lbs.	each multiplied by 0.15
G. Swine, piglets under 55 lbs.	each multiplied by 0.03
H. Sheep, lambs and goats	each multiplied by 0.25
I. Horses	each multiplied by 2.00
J. Turkeys	each multiplied by 0.02
K. Laying hens and broilers	each multiplied by 0.01
L. Veal calves	each multiplied by 0.08
M. Other livestock, not listed above	to be determined case by case

Buffer: A strip of land located so that it separates and protects one type of use from another. Natural materials shall be used. Examples include, but are not limited to, several staggered rows of evergreen trees or an earthen berm.

Composter: A structure, reviewed and approved by the Piedmont Soil and Water Conservation District, or other appropriate agency, utilized for the disposal of dead fowl.

Existing dwelling: For the purpose of this Article of the Zoning Ordinance either of the following shall constitute an existing dwelling:

(a) A structure, designed for residential use, which is occupied on the date a completed application for a livestock, dairy or poultry facility permit is received by the office of the Zoning Administrator; or

(b) A structure, designed for residential use, which is not occupied on the date a completed application is received, but which has been issued a certificate of occupancy or which has been occupied for thirty-six (36) months period of time within the five (5) years immediately preceding the date on which a completed application for a livestock, dairy or poultry facility permit is received by the office of the Zoning Administrator.

Existing livestock, dairy, feed lot, poultry facility: A livestock, dairy or poultry facility which is occupied or has been occupied by a commercial livestock raiser, dairy or poultry facility for twelve (12) month period of time within the five (5) years immediately preceding the date on which zoning approval is sought for a dwelling, including sites or structures which are accessories to the livestock facility, dairy or poultry facility.

Existing Natural Buffer: Any hill, trees or combination thereof, which completely blocks the view of the animal confinement facilities from public roads and any existing dwellings located on properties adjoining an animal confinement building.

Feed Lot: A relatively small confined land area for fattening cattle or holding temporarily for shipment.

Intensive dairy facility, (hereafter, "dairy facility"): A dairy operation with accessory uses or structures, as defined below, which at any one time has at least three hundred (300) animal units as referenced in the above chart and that: (1) such animals are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and, (2) crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Intensive livestock facility (hereafter, "livestock facility"): A livestock operation with accessory uses or structures, as defined below, which at any one time has at least three hundred (300) animal units, as referenced in the above chart and that: (1) such animals are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and, (2) crops, vegetation, forage growth or

post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Intensive poultry facility, (hereafter, "poultry facility"): A poultry operation with accessory uses or structures, as defined below, which at any one time has at least three hundred (300) animal units as reference in the above chart and that: (1) such animals are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and, (2) crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility. However, one (1) standard poultry house shall be considered an intensive operation.

Intensive swine facility (hereafter, "swine facility"): A swine operation with accessory uses or structures, as defined below, which at any one time has at least three hundred (300) animal units as referenced in the above chart and that: (1) such animals are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and, (2) crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Livestock, dairy, feed lot, poultry structure: Any building, structure, installation, storage container, or storage site used in the operations of an intensive livestock, dairy, or poultry facility, including, but not limited to, feed storage bins, incinerators, manure storage sites, poultry houses, poultry disposal pits, and dead poultry cold storage chests.

Livestock or swine raiser, dairy or feed lot operator, poultry grower: The owner or operator of the livestock or swine facility, dairy, feed lot or poultry facility or the land on which the livestock, dairy, feed lot or poultry facility is located.

Manure Storage Site: Any storage sites where manure is kept for more than sixty (60) days within a twelve (12) month period.

Nutrient Management Plan: A plan reviewed and approved by the Piedmont Soil and Water Conservation District (PSWCD), the Virginia Cooperative Extension Service or other appropriate agency, that provides for the use and/or disposal of livestock or poultry nutrients from the operation.

Parcel: A measured portion of land separated from other portions of land by a metes and bounds description or described as a separate, discrete tract in an instrument of conveyance or devise and recorded in the office of the Clerk of Circuit Court of Amelia County.

Poultry: Any fowl raised in a confined intensive growing environment.

21.3 SETBACKS

The minimum setbacks for primary structures associated with new animal confinement operations shall be established as follows:

A. Setbacks for Feed Lot, Poultry, Dairy and Livestock Operations

Setback from all property lines shall be 300 feet.

Setback from public roadways shall be 150 feet.

Setback from existing dwellings, schools and churches shall be 600 feet.

Setbacks from adjoining zoning districts, designated on the official zoning maps at the time of the enactment of this Article, shall be 600 feet

B. Setbacks for Swine Operations

Setback from all property lines shall be 500 feet.

Setback from public roadways shall be 300 feet.

Setback from existing dwellings, schools and churches, shall be 1000 feet.

Setbacks from adjoining zoning districts, designated on the official Zoning Maps at the time of the enactment of this Article, shall be 1000 feet

C. Possible Setback Reduction

Setbacks may be reduced to a minimum of two hundred (200) feet from the property line by mutual consent of the intensive Animal Confinement Operator and the affected adjacent landowners. Consent shall be evidenced by written, formal agreement with the following components:

1. Referencing both parcels by deed book reference;
2. Signed by all affected parties;
3. Notarized;
4. Recorded in the Office of the Clerk of the Circuit Court, with a copy provided to the Zoning Administrator at the time of recordation and prior to application for a zoning permit.

D. Setbacks For Divided Parcels

No intensive livestock, feed lot, dairy or poultry facility permitted under this ordinance shall continue in operation if, after meeting the requirements for obtaining an intensive livestock, feed lot, dairy or poultry facility permit, land is divided from the parcel on which the intensive livestock, feed lot, dairy or poultry facility is located, such that the setback requirements no longer conform to this Ordinance.

E. Setbacks for Existing Operations

In the A-5 and RP-5 zoning districts, all intensive livestock, dairy and poultry facilities that exist on the effective date of the revised Zoning Ordinance shall be deemed to be in compliance with all setback requirements. However, all new structures must comply with setback requirements with the exception that owners may construct new structures in the agricultural district that do not provide the minimum setback if existing facilities fail to satisfy that particular setback. When the exception provision is used, setbacks for new structures will be no less than the distance provided by existing facilities.

21.4 REPLACEMENT AND RECONFIGURATION OF ANIMAL CONFINEMENT FACILITIES

Replacement or reconfiguration of animal confinement facilities in operation as of the effective date of this amendment to the Zoning Ordinance but which do not meet the requirements of this Article are permitted provided that:

- A. There is no increase in the square footage devoted to the livestock operation, dairy or poultry house on the parcel and no increase in the number of dairy, feed lot or swine numbers or increase in the area of poultry housing.
- B. Replacement facilities do not encroach upon any setbacks required under this Article to a greater extent than the facilities being replaced.
- C. A nutrient management plan is obtained as provided for in this Article.

21.5 CERTIFIED PLAT REQUIRED

Each application for a livestock, feed lot, dairy or poultry facility shall be accompanied by a plat of the entire parcel with location of proposed facility prepared and signed by a land surveyor or civil engineer licensed by the Commonwealth of Virginia certifying that the proposed livestock, feed lot, dairy or poultry facility meets all applicable setback requirements of this Ordinance and showing the direction and distances to nearest existing dwellings, mobile home parks, mobile home subdivisions, platted residential subdivisions, residentially zoned districts, adjoining zoning districts, schools, churches, public wells or rural service areas listed under other setbacks.

21.6 ANIMAL CONFINEMENT FACILITY DEVELOPMENT PLANS

A. Any intensive livestock raiser, dairy or feed lot operator or poultry grower or a potential raiser, owner, grower shall file with the Zoning Administrator a development plan which indicates the number, size and location of livestock, feed lot, dairy or poultry facilities planned for the subject parcel and the date the facility is scheduled to commence operation. When such development plan has been approved and filed with the Zoning Administrator and during the period in which it remains in effect, the planned

facilities shall be obliged to meet setbacks only from those dwellings and uses existing at the time the development plan is approved. The Zoning Administrator shall approve the animal confinement development plan prior to the construction of the feed lot or animal confinement facility. (It is strongly recommended that new poultry operators consult with representatives of the Virginia Contract Growers Association prior to developing their Animal Development Plan in order to insure knowledge of all aspects of this activity.)

B. The development plan shall be based on the requirements of this Article and shall be accompanied by a plat prepared and signed by land surveyor or civil engineer certified by the Commonwealth of Virginia verifying the accuracy of the distances shown in the development plan and containing all of the data required on the certified plats.

C. The development plan shall remain in force only so long as the facilities proposed are constructed in accordance with the development plan and are placed in service in a timely manner.

D. At least one-third (1/3) of the number of head of livestock or dairy animals, subject to this Article of the Ordinance or one (1) poultry facility indicated in the development plan must be placed into service within twelve (12) months of the date on which the development plan is approved by the Zoning Administrator, unless at least onethird (1/3) of the number of livestock, dairy or one (1) such poultry facility is already in service on the subject parcel at the time the development plan is filed. Zoning approval for any subsequent facilities indicated in the development plan may only be obtained if no more than sixty (60) months have passed since the date on which the development plan was approved for a parcel by the Zoning Administrator.

E. The grower/operator shall notify the Zoning Administrator in writing within thirty (30) days of placement into service of any facilities indicated in his/her development plan.

F. In the event a grower/operator fails to build or have in place the minimum required in section (d) above facility indicated in the development plan within twelve (12) months of obtaining zoning approval for the facility, or fails to obtain zoning approval for any of the facilities indicated in his/her development plan within the prescribed three (3) year period, the Zoning Administrator shall revoke the development plan and all future development plans of facilities on the subject parcel shall strictly conform to the requirements of this chapter.

G. Each parcel for which a development plan has been approved by the Zoning Administrator shall display at its entrance, within thirty (30) days of said approval, a sign not smaller than two (2) square feet, or larger than four (4) square feet, clearly visible from the nearest roadway, indicating that a development plan is in effect for the parcel and containing the words "Certified Agricultural Development Site." Fabrication, installation and all costs of said sign(s) shall be the responsibility of the grower/operator.

H. Nothing herein shall be construed to prohibit an operator or potential operator from submitting amendments to his/her original development plan or to submitting revised development plans at any time. The Zoning Administrator shall approve the amended or revised development plan, following the procedures listed above, according to the term of the Zoning Ordinance in effect at the time that the amendments or revisions are submitted to the Zoning Administrator.

21.7 NUTRIENT MANAGEMENT PLAN

A. On or after the effective date of this amendment to the Zoning Ordinance, no facility permit shall be issued until a nutrient management plan for the proposed facility has been reviewed and approved by the Piedmont Soil and Water Conservation District, the Virginia Cooperative Extension Service, or other appropriate agency and accented by the Zoning Administrator. Each facility already in operation or approved by the County prior to the effective date of this amendment to the Zoning Ordinance shall have a nutrient management plan on file with the Zoning Administrator on or before two (2) years from the effective date of this amendment or at such time an additional area devoted to livestock raising, dairy or poultry housing, litter storage, manure storage, composting of dead birds or other activity which would increase nutrient output of the facility is placed into service on the same parcel, whichever shall occur first. After two (2) years from the effective date of this amendment no facility subject to this Article of the Zoning Ordinance shall operate without such a nutrient management plan.

B. The nutrient management plan shall provide for the safe disposal or use of one hundred (100) percent of the manure or animal waste, produced by each facility. Disposal or use shall be accomplished by means of land application at approved locations and agronomic rates, as established by the Virginia Cooperative Extension Service and other appropriate agencies. Alternative methods of disposal may be used as approved by appropriate state and local agencies. The nutrient management plan shall take into account, among other things, the presence of rivers, streams, public and private wells, springs and sinkholes, and slopes and geological formations that indicate a high susceptibility to ground or surface water pollution and where applicable, to comply with the Chesapeake Bay Preservation Act. Each nutrient plan shall be subject to review by an agent of the Piedmont Soil and Water Conservation District, the Virginia Cooperative Extension Service or other appropriate agency.

C. If off-site disposal is part of the nutrient management plan and is otherwise permitted Under the provisions of this Article, the grower/operator shall provide, as part of that nutrient management plan, written documentation of an agreement with the receiver of the wastes produced at the grower's facility or an affidavit, sworn and subscribed before a notary public, that states his/her intention to dispose of the waste through sale in retail establishments or otherwise to consumers. Documentation shall specify the duration of the agreement and the nature of the application or use of the wastes. A nutrient management plan containing such an agreement shall be valid only as long as the agreement remains in force and shall be reviewed whenever such an agreement expires or is terminated by either party. The grower/operator shall notify the Zoning

Administrator writing at least thirty (30) days before the expiration of any such agreement or within five (5) days whenever such an agreement is terminated before its stated expiration date.

D. The nutrient management plan shall also provide for a site, with or without a permanent structure, for the storage of animal wastes and shall:

- (a) be located on the same parcel as the facility to which it is an accessory use; and
- (b) meet all applicable requirements and standards of the Commonwealth of Virginia or any department or division thereof; and
- (c) meet the setback requirements of this Article; and
- (d) be protected from the elements; and
- (e) be approved by the Virginia Cooperative Extension Service or other applicable agency and shall:

- 1) be located on an impermeable base;
- 2) be out of all drain ways; and
- 3) have sufficient capacity to accommodate one hundred (100) percent of the waste produced by each facility in operation on the parcel during the four (4) consecutive months in which the maximum number of heads of animals are on the parcel. Poultry waste not stored on the parcel may be exempt from a storage facility provided that waste be transported directly from the poultry house to another area, property, or receiver for immediate field application or an approved storage facility located on another parcel.

Notwithstanding this Section, if a grower/operator is unable to locate a site on the same parcel because of insufficient acreage or topographical hardship, then the Zoning Administrator, after consultation with the grower's/operator's engineer, may permit the storage site to be located on adjacent land owned by the grower/operator; or, if there is a valid agreement for off-site disposal as provided in this section, the Zoning Administrator may permit the storage site be located on a parcel specified in the agreement for off-site disposal.

E. Notwithstanding the provisions of this Section, a grower/operator whose facilities were in operation prior to the effective date of this amendment to the Zoning Ordinance, in attempting to comply with the requirement to provide a litter storage site within two (2) years from the adoption of this amendment may locate an animal waste storage site within any setback otherwise required in this Article upon satisfaction that the storage site will not encroach upon setbacks to a greater extent than the existing facility.

F. The nutrient management plan shall be reviewed and updated every five (5) years by the Piedmont Soil and Water Conservation District, the Virginia Cooperative Extension Service or other appropriate agency and by the Zoning Administrator, and more frequently if deemed necessary or advisable by the County or its agent.

G. Best Management Practices shall be employed in the timing of the spreading of nutrients and in the cleanliness and operation of the facility to insure odors are kept to a minimum.

21.8 SCREENING OF INTENSIVE ANIMAL FACILITIES

In siting the location of intensive animal facilities, every effort should be made to use existing natural buffers to screen the facility. Existing natural buffers should be supplemented by newly created buffers to provide screening for the facility over a ten (10) year period. The screening plan shall be part of the Animal Confinement Development Plan.

21.9 EROSION AND SEDIMENTATION CONTROL REQUIREMENTS

An erosion and sedimentation control plan shall be submitted for approval to the Zoning Administrator and shall be reviewed and approved by the Piedmont Soil and Water Conservation District. The plan shall be monitored and the provisions of the plan be enforced by the Amelia County Erosion and Sedimentation Control Officer. The soil erosion and sedimentation control plan shall be approved prior to the issuance of the zoning permit.

21.10 DEAD ANIMAL DISPOSAL

Dead animals shall be disposed of by a procedure approved by the State Veterinarian's Office of the Virginia Department of Agriculture and Consumer Services, Division of Animal Health. Dead bird disposal facilities, such as composters, covered pits or incinerators shall be approved methods of disposal for normal mortality, but shall not be considered sufficient to receive catastrophic mortalities over ten (10) percent or five thousand (5,000) pounds, whichever is greater. At no time shall dead animals in excess of ten (10) percent or five thousand (5,000) pounds catastrophic mortality, whichever is greater, be buried on the parcel, but shall be transported, in accordance with state animal health laws as may be prescribed by the State Veterinarian, if applicable, to the nearest approved landfill or rendering facility for disposal. Such disposal shall be approved by the owner of the birds, who shall bear all expenses of the disposal.

21.11 ZONING PERMIT REQUIREMENTS

A zoning permit shall be required prior to the construction of any poultry facility or the expansion of any poultry facility. The zoning permit, which is issued by the Zoning Administrator, shall not be issued until the applicant has submitted an erosion and sedimentation control plan, a nutrient management plan and a poultry development plan. These items shall be approved prior to the issuance of the zoning permit by the Zoning Administrator and before construction may begin.

21.12 PRIOR PERMITS VALID

The provisions of this Ordinance notwithstanding, a intensive animal facility permit approved by the County prior to the adoption of this Ordinance shall be valid, as issued, on condition that all requirements set forth in the permit are met and construction is completed within twenty-four (24) months from the adoption of this Ordinance. See nutrient management plan requirements.

21.13 VARIANCES

Any variances to the provisions of this Ordinance must be approved by the County of Amelia Board of Supervisors through the same procedures as set forth in Article IV of the Amelia County Zoning Ordinance regarding special exception permits.

BRUNSWICK COUNTY ORDINANCES IN RE: PRESERVATION OF WATER QUALITY AND AIR QUALITY

The Board of Supervisors for Brunswick County, Virginia, hereby ORDAINS that the following are adopted as ordinances for Brunswick County, Virginia.

PRESERVATION OF WATER QUALITY AND AIR QUALITY STATEMENT OF INTENT

The following ordinances for Brunswick County are deemed expedient to secure and promote the health, safety and general welfare of the residents of Brunswick County. It has been determined that the general welfare of Brunswick County residents will be promoted by adoption and enforcement of ordinances calculated to protect and preserve the quality of water and air in Brunswick County.

PROHIBITED LOCATION OF WASTE TREATMENT LAGOONS SERVING INTENSIVE LIVESTOCK FACILITIES

W/AQ 1. No lagoon which serves an Intensive Livestock Facility and is utilized for the treatment of animal waste, whether through aerobic or anaerobic treatment, shall be located within one mile (5,280 feet) of any water impoundment which is utilized, or may be utilized, as a source of water for a public water system, nor within one mile (5,280 feet) of any river, nor within one mile (5,280 feet) of any stream which flows into such impoundment, or into such river.

No storage facility which serves an Intensive Livestock Facility by storing animal waste for off-site treatment/disposition shall be located within one mile (5,280 feet) of any water impoundment which is utilized as a source of water for a public water system, nor within one mile (5,280 feet) of any river, nor within one mile (5,230 feet) of any stream which flows into such impoundment, or into such river.

W/AQ- 1.1. As herein utilized, the phrase "water impoundment" shall include those potential water sources identified on a study entitled "Water and Sewer study for Brunswick County, Virginia," prepared by B & B Consultants and dated June, 1997, which include, although not exclusively, the Great Creek Watershed impoundment, the Ft. Pickett Reservoir, Virginia Power Lake Gaston, the Meherrin River, upstream from Christanna Highway (Route 46 bridge), the Nottoway River, upstream from the Interstate 85 bridge, and the Brunswick County Pond.

W/AQ-1.2 As herein utilized, the phrase "stream" shall include all those perennial and intermittent streams as designated on 7.5 minute series topographic quadrangles as published by the United States Geological Survey.

W/AQ-2. PRESERVATION OF AIR QUALITY

Any treatment lagoon utilized for the treatment of animal waste generated by an Intensive Livestock Facility, whether through aerobic or anaerobic treatment, shall be structurally enclosed. Any storage facility utilized for the storage of animal waste generated by an Intensive Livestock Facility, for off-site disposition/treatment, shall be structurally enclosed.

W/AQ-2.1. Prior to construction of any such sewage treatment lagoon enclosure, or such sewage storage facility enclosure, a detailed plan therefor shall be submitted to the office of the Planning Director for Brunswick County, from which office a certificate of approval must be secured prior to construction of such enclosure.

W/AQ-2.2 Brunswick County shall adopt, and may from time to time amend, standards and regulations which shall constitute the construction standards for such enclosures. The regulations so adopted shall be designed to minimize noxious or offensive odors caused by the lagoon, or by the sewage storage facility, and to reasonably protect and preserve air quality by minimizing the pollution thereof by such aerobic treatment lagoons or sewage storage facilities.

W/AQ 3. PROHIBITED LOCATION OF INTENSIVE LIVESTOCK FACILITIES

No Intensive Livestock Facility as defined in the Brunswick County Zoning Ordinance, may be located within one mile (5,250 feet) of any water impoundment which is utilized, or may be utilized, as a source of water for a public water system, nor within one mile (5,280 feet) of any river, nor within one mile (5,280 feet) of any stream which flows into such impoundment, or into such river.

W/AQ 3.1. As herein utilized, the phrase "water impoundment" shall include those potential water sources identified on a study entitled "Water and Sewer study for Brunswick County, Virginia, prepared by B & B Consultants and dated June, 1997, which include, although not exclusively, the Great Creek Watershed impoundment, the Ft. Pickett Reservoir, Virginia Power Lake Gaston, the Meherrin River, upstream from Christanna Highway (Route 46 bridge), the Nottoway River, upstream from the Interstate 85 bridge, and the Brunswick County Pond.

W/AQ-3.2. As herein utilized, the phrase "stream" shall include all those perennial and intermittent streams as designated on 7.5 minute series topographic quadrangles as published by the United States Geological Survey.

W/AQ 4 SEVERABILITY PROVISION

W/AQ-4.1 Should any section hereof, subsection hereof, or any portion of either be determined by a Court of competent jurisdiction to be unenforceable, then all remaining terms, conditions and provisions hereof shall nevertheless remain in full force and effect, as if the provisions deemed unenforceable had not theretofore been a part hereof.

EFFECTIVE DATE: Each of the above ordinances shall be effective immediately upon adoption this 15th day of October, 1997.

DINWIDDIE COUNTY CODE ZONING

The ground area around any freestanding sign shall be kept free and clear of weeds, trash and other debris.

(Ord. of 11-7-90)

See 22-260. Nonconforming signs.

Any sign erected or placed before the effective date of this article which does not conform to the provisions of this section, shall not be enlarged, structurally altered, reconstructed, or changed in any manner, except as otherwise provided. No nonconforming sign shall be moved on the same lot.

If a nonconforming sign violates any part of this section, it shall be removed and replaced only if it conforms to this article. The zoning administrator shall administer this section of the Code.

(Ord. of 11-7-90)

ARTICLE VIII. AGRICULTURAL PRODUCTION OPERATIONS AND FACILITIES

Sec. 22-261. Intent.

This section is intended to encourage economic development and to preserve farmland by providing for the viability of the county's agricultural sector by encouraging the orderly and responsible growth of its livestock, dairy, and poultry industry. Where permitted by the zoning ordinance, agricultural production activities including, but not limited to, tillage, crop production, harvesting, raising and pasturing of animals shall be permitted uses as a matter of right subject to the standards contained herein.

(Ord. of 3-1-95)

Sec. 22-262. Definitions.

For the purposes of this article, the following definitions shall apply:

Animal unit: A unit of measure used to determine the total number of single animal types or a combination of animal types which are fed, confined, maintained or stabled in an agricultural operation. One animal unit equals one thousand (1,000) pounds of live weight.

Existing dwelling:

- (1) A structure, designed for residential use, which is legally occupied on the date a completed application for a livestock, dairy or poultry facility permit is received by the zoning administrator; or
- (2) A structure, designed for residential use, which is not occupied on the date a completed application is received, but has been issued a valid building permit prior to the application for the facility, or
- (3) A structure, designed for residential use, which has been legally occupied for a cumulative period of at least thirty-six (36) months within the sixty-month period of time prior to the date on which a completed application for a livestock dairy or poultry facility is received.

The zoning administrator may request additional documentation from the applicant or other regulated party to determine if the structure qualifies as an “existing dwelling” as defined.

Intensive livestock, dairy facility: A facility or operation and any accessory uses or structures including, but not limited to, feed storage bins, litter storage sites, incinerators or manure storage sites which at any one time has at least three hundred (300) animal units present at the facility or operation, or any operation or facility determined by Commonwealth of Virginia or any department or division thereof to be an intensive facility or operation, subject to the requirements of section 22-267 of this article. In no case shall a facility as defined herein exceed a cumulative total of one thousand (1,000) animal units.

Intensive poultry facility: A poultry facility or operation and any accessory uses or structures, including but not limited to, poultry houses, feed storage bins, litter storage sites, incinerators, disposal pits or cold storage chests used for collection of dead poultry which at any one time has at least three hundred (300) animal units present at the facility or operation, or a facility or operation determined by the Commonwealth of Virginia or any department or division thereof to be an intensive facility or operation, subject to the requirements of section 22-267 of this article. In no case shall a facility as defined herein exceed a cumulative total of one thousand (1,000) animal units.

Operator, livestock raiser, dairy operator, poultry grower: The owner and/or operator of the livestock, dairy or poultry facility.

Parcel: A piece of land identified as being separate from other pieces of land by a written description or plat of survey in an instrument of conveyance or devise or on a subdivision or plat, recorded in the offices of the clerk of the circuit court of this county.

Livestock, dairy, or poultry facility: Any livestock, dairy or poultry facility or operation and any accessory uses or structures, including, but not limited to, feed storage bins, litter storage sites, incinerators or manure storage sites, which at any one time has at least one hundred fifty (150) animals units and which is occupied or has been previously occupied or operated by an operator for a cumulative total of at least twelve (12) months

during the previous sixty-month period from the date when zoning approval is sought for dwelling or any livestock, dairy or poultry facility or operation.

Immediate family or immediate family member: Any legal sibling, parent, grandparent, grandchild, child or spouse of the operator of the facility. This term shall not include any aunts, uncles, nieces, nephews, cousins or any other next of kin of the operator of the facility.

Sec. 22-263. Minimum acreage requirements.

The minimum number of acres on which a new livestock, dairy, or poultry facility may be established shall be as follows:

(1) Intensive livestock or dairy facility — one hundred (100) acres or the number of acres required by an approved nutrient management plan, whichever amount is greater. All parcels of land which comprise the facility and are used in its nutrient management plan for liquid waste disposal shall be contiguous.

(2) Intensive poultry facility — twenty (20) acres or the number of acres required by an approved nutrient management plan, whichever amount is greater. All parcels of land which comprise the facility and are used in its nutrient management plan need not be contiguous. The operator shall provide evidence acceptable to the zoning administrator of his legal right of access or proof of ownership of any such noncontiguous parcels associated with the facility or nutrient management.

(3) Livestock or dairy facilities with at least one hundred fifty (150) animal units — fifty (50) acres. In addition, the operator shall submit a development plan and a nutrient management plan for waste disposal subject to the guidelines established herein. All parcels of land associated with the facility for liquid waste disposal shall be contiguous.

(4) Poultry facilities with at least one hundred fifty (150) animal units—ten (10) acres. In addition, the operator shall submit a development plan and a nutrient management plan for waste disposal subject to the guidelines established herein. Land associated with the facility and used in meeting the minimum acreage requirements shall be contiguous.

(5) Existing livestock, dairy or poultry facilities in existence and in operation on the effective date of this article as determined by the zoning administrator that do not meet the minimum acreage requirement shall be considered nonconforming uses and may continue only so long as the existing use of the facility is not interrupted for more than twenty-four (24) consecutive months, or the use is not enlarged, except as may be otherwise permitted hereunder. Except as expressly set forth herein to the contrary, non-conforming uses under this article shall be governed by article V of this chapter. (Ord. of 3-1-95)

Sec. 22-264. Setbacks.

(a) Minimum setbacks for new livestock, dairy or poultry facilities established with at least one hundred fifty (150) animal units, including without limitation intensive, dairy or poultry facilities, shall be set back from property lines, structures and other designated areas as follows:

(1) From existing dwellings owned by the facility operator or immediate family member of the operator — three (300) hundred feet. Written documentation of an agreement sworn and subscribed before a notary public between the affected and immediate family member shall be required. Otherwise, the setback requirements of subsection (2) below shall apply.

(2) From existing dwellings not owned by the facility operator or immediate family member of the operator — one thousand (1000) feet.

(3) From other existing like facilities—one mile (5,280 feet) (e g livestock/livestock, dairy/dairy, poultry/poultry).

(4) From public roadways — five hundred (500) feet.

(5) From all other property lines not abutting a public roadway — three hundred (300) feet.

(6) From incorporated towns residentially zoned districts, rural service areas, manufactured home parks, schools, colleges, churches, county, state or federally owned buildings; county, town, or community recreation areas; public wells, springs and water intakes — two thousand (2000) feet.

(7) Any existing livestock, dairy or poultry facilities in operation on the effective date of this article, as determined by the zoning administrator, that do not meet the setback requirements of this article shall be considered nonconforming uses and nonconforming structures so long as the existing use of the facility or structure(s) is not interrupted for more than twenty-four (24) consecutive months. Existing livestock, dairy, or poultry facilities shall be permitted a one-time expansion to an amount not to exceed one hundred fifty (150) animal units above the facility's present number of animal units, so long as the existing setbacks of the facility, if less than prescribed herein, are not further reduced. Said expansion may occur only after a development plan and a nutrient management plan for waste disposal is submitted by the operator and is approved pursuant to the provisions of this article. Any subsequent additions or expansions to the facility that would result in at least a total of one hundred fifty-one (151) animal units shall comply with all applicable setbacks of this chapter.

(b) Setbacks for new dwellings from existing livestock, dairy, or poultry facilities having at least one hundred fifty (150) animal units shall be as follows:

(1) Dwelling and facility owned by operator of the facility or immediate family member of the operator — three hundred (300) feet. Written documentation of an agreement sworn

and subscribed before a notary public between the affected operator and immediate family member shall be required. Otherwise, the setback requirements of subsection (2) below shall apply.

(2) Dwelling and facility not owned by operator or immediate family member of operator — one thousand (1000) feet.

(3) Existing parcels or dwellings on the effective date of this article that do not meet the setback requirements of this article shall be considered nonconforming lots and nonconforming structures. Any new dwellings, or additions to, dwellings on such nonconforming lots that cannot meet the setback requirements of this section need only comply with the setbacks otherwise applicable to the zoning district in which the dwelling or addition is to be located. Parcels created on or after the effective date of this article shall comply with all applicable setbacks of this chapter.

(Ord. of 3-1-95)

Sec. 22-265. Certified plats.

The operator of a livestock, dairy or poultry facility constructed, expanded or completed after the effective date of this chapter shall file with the zoning administrator, a plat or similar documentation acceptable to the zoning administrator showing the entire parcel or parcels on which the facility is located and also showing the location of the facility within such parcel or parcels. With this plat or similar documentation, the operator shall submit a written statement, sworn to and subscribed before a notary public, by which the operator certifies to the zoning administrator that the facility shown on the plat or similar documentation meets all applicable setback requirements of this article and that the plat or similar documentation is a complete and accurate depiction of the facility on the parcel or parcels.

(Ord. of 3-1-95)

Sec. 22-266. Livestock, dairy or poultry facility development plans.

(a) A operator or a potential operator shall file with the zoning administrator, a development plan which indicates the number, size and location of livestock, dairy or poultry facilities planned for the subject parcel and the date the facility is scheduled to commence operations. When such development plan has been filed with and approved by the zoning administrator and during the period in which it remains in effect, the planned facilities shall be obtained to meet setbacks only from those dwellings and uses existing at the time the development plan is approved. The zoning administrator shall approve the development plan within forty-five (45) days of receipt if such development plan meets the requirements of this article. However, if the development plan does not meet the requirements of this article, the zoning administrator shall return the development plan to the person who submitted it, together with a written description of the portion(s) of the development plan that do not comply with this article.

(b) The development plan shall be based on the requirements of this article and shall be accompanied by a plat or similar documentation acceptable to the zoning administrator verifying the accuracy of the distances shown in the development plan and containing all of the data required as specified pursuant to this article.

(c) The development plan shall remain in force only so long as the facilities proposed are constructed in accordance with the development plan and are placed in service in accordance with the development plan and the provisions of this article.

(d) At least one-third of the number of head of livestock or dairy animals, subject to this article or one (1) poultry facility indicated in the development plan must be placed into service within thirty-six (36) months of the date on which the development plan is approved by the zoning administrator, unless at least one-third of the number of livestock, dairy or one (1) such poultry facility is already in service on the subject parcel or parcels at the time the development plan is filed. Zoning approval for any subsequent facilities indicated in the development plan may only be obtained if no more than sixty (60) months have passed since the date on which the development plan was approved by the zoning administrator. Otherwise, a new development plan shall be filed with and approved by the zoning administrator pursuant to the provisions of this article then in effect.

(e) The operator shall notify the zoning administrator in writing within thirty (30) days of placement into service of any facilities indicated in his development plan.

(f) In the event an operator fails to build the proposed facility or have in place the minimum number of animals required or fails to obtain zoning approval for any of the facilities indicated in his development plan within the applicable time, the zoning administrator shall revoke the development plan. All future development plans of facilities on the subject parcel or parcels shall conform to the requirements of this article in effect at the time such future plan is submitted for approval.

(g) Each parcel for which a development plan has been approved by the zoning administrator shall display at its entrance, within fifteen (15) days of said approval, a sign not less than two (2) square feet, or larger than four (4) square feet, clearly visible from the nearest roadway, indicating that a development plan is in effect for the parcel and containing the words "Certified Agricultural Development Site." Fabrication, installation, and all costs of said sign(s) shall be the responsibility of the operator.

(h) Nothing herein shall be construed to prohibit an operator or a potential operator from submitting amendments to his or her original development plan or to submitting revised development plans at any time. The zoning administrator shall approve or reject the amended or revised development plan according to the terms of the zoning ordinance in effect at the time that the amendments or revisions are submitted to the zoning administrator. The approval of a revised or amended development plan does not, however, constitute an extension of time for implementation of the original plan.
(Ord. of 3-1-95)

Sec. 22-267. Nutrient management plan.

(a) On or after the effective date of this amendment to the zoning ordinance, no facility consisting of at least one hundred fifty (150) animal units shall commence operation until a nutrient management plan for the proposed facility has been reviewed and approved by the Virginia Department of Conservation and Recreation or by the Virginia Cooperative Extension Service or by a person certified or employed by the Commonwealth as a nutrient management planner.

(b) If off-site disposal for dry waste is part of the nutrient management plan and is otherwise permitted under the provisions of this article, the operator shall provide, as a part of that nutrient management plan, written documentation of an agreement with the receiver of the wastes produced at the operator's facility or an affidavit, sworn and subscribed before a notary public, that states his/her intention to dispose of the waste through sale in retail establishments or otherwise to consumers. Documentation shall specify the duration of the agreement and the nature of the application or use of the wastes. A nutrient management plan containing such an agreement shall be valid only as long as the agreement remains in force and shall be reviewed whenever such an agreement expires or is terminated by either party. The operator shall notify the zoning administrator in writing at least thirty (30) days before the expiration of any such agreement or within five (5) days after any such agreement is terminated before its stated expiration date.

(c) The nutrient management plan shall also provide for a site, with or without a permanent structure, for the storage of animal wastes which shall meet all applicable requirements and standards of the Commonwealth of Virginia or any department or division thereof. If an operator is unable to locate a site on the same parcel because of insufficient acreage or topographical hardship, then the zoning administrator, after consultation with the operator's engineer, may permit the storage site to be located on land owned by the operator adjacent to the facility; or, if there is a valid agreement for off-site disposal as provided in this article, the zoning administrator may permit the storage site to be located on a parcel specified in the agreement for such off-site disposal.

(d) The nutrient management plan unless sooner required by the provisions of this article or by the Commonwealth of Virginia or any department or division thereof, shall be reviewed and updated every ten (10) years by an agent of the Virginia Department of Conservation and Recreation or by the Virginia Cooperative Extension Service or by a person certified or employed by the Commonwealth as a nutrient management planner. (Ord. of 3-1-95)

GREENSVILLE COUNTY, VIRGINIA, ZONING ORDINANCE
ADOPTED NOVEMBER 17, 1992

ARTICLE 6: MODIFICATIONS TO PRIMARY ZONING DISTRICT REGULATIONS

6 - 10 DEVELOPMENT REGULATIONS FOR CONFINED, INTENSIVE ANIMAL AND FOWL PRODUCTION FACILITIES OR OPERATIONS

A) Area Requirements for Confined, Intensive Agricultural Facilities/Operations

1. The minimum area for the establishment of a confined, intensive agricultural facility/operation shall be One Hundred (100) contiguous acres.

2. Additional acres at the ratio of the following:

One (1) acre per = 15 Cattle 35 Swine 125 Sheep

may be added to the base requirement of One Hundred (100) acres to expand a facility/operation to;

3. A maximum of: 1,000 Cattle 6,000 Swine 50,000 Turkeys 100,000 Chickens

B) Minimum setback for confined, intensive agricultural facilities/operations

* Note - setbacks shall apply to all structures or uses associated with the operation, including but not limited to litter storage, manure storage sites, manure disposal pits, incinerators, cold storage chest(s), or feed storage bins.

1. A confined, intensive agricultural facility/operation shall be located a minimum of 1,000 feet from any primary or secondary street or road as defined by the Virginia Department of Transportation.

2. A confined, intensive agricultural facility/operation shall be setback off the side or rear property lines a minimum of 1,000 feet.

3. A confined, intensive agricultural facility/operation shall be located 4,500 feet from any residence, Residential Subdivision, Residential Zoning District, Public Facility (School, Church, Recreational Area or Well).

C) Development Plan and Zoning approval for confined, intensive agricultural facility/operation

1. A development plan shall be filed by the owner/operator of a proposed or existing confined, intensive agricultural facility/operation with the County Zoning Administrator/Planning Director that indicates the specific number, size, and location of such facility/operation planned for the parcel(s) of land.

2. The development plan shall be accompanied by a survey plat prepared and signed by a land surveyor or civil engineer certified by the Commonwealth of Virginia which shall verify the required setbacks shown in the development plan and shall contain all data required for a certified plat.

3. The development plan shall be and remain in accordance with the plan so long as the development is accomplished within twenty-four (24) months. Approval for any subsequent facilities indicated in the development plan may be obtained if no more than twelve (12) months have passed since the date the development plan was approved for a specific parcel(s) of land.

4. The Zoning Administrator/Planning Director shall be notified in writing a minimum of thirty (30) days in advance of any placement of a facility/operation into service.

5. Failure to comply with a development plan the Zoning Administrator/Planning Director shall have the authority to revoke the development plan or a part thereof.

6. Each approved facility/operation shall erect a sign no smaller than four (4) square feet in dimensions which shall be clearly visible from the public road/highway adjacent to the entrance road of the facility, indicating that the said facility/operation is an "Approved confined, Intensive Agricultural Animal or Fowl Production Facility/Operation. The sign shall display the aforementioned wording.

D. Nutrient Management plan for confined, intensive agricultural facility/operations

1. No facility/operation permit shall be issued until a nutrient management plan for the proposed facility has been reviewed and accepted by the Zoning Administrator/Planning Director.

2. The nutrient management plan shall provide for the safe disposal or use of all manure or animal waste produced by each facility. Disposal or use shall be accomplished by means of land application at approved locations and agronomic rates, as established by the Virginia Cooperative Extension Service and other appropriate agencies. Alternative methods of disposal may be used, as approved by the appropriate state and local agencies. The nutrient management plan shall take into account, among other things, the presence of rivers, streams, public and private wells, springs and sinkholes and slopes and geological formations that indicate a high susceptibility to ground or surface water pollution. Each nutrient plan shall be subject to review by an agent of the Virginia Cooperative Extension Service or other appropriate agency.

3. The nutrient management plan shall also provide for a site, with or without a permanent structure, for the storage of animal wastes and shall:

A) meet the setback requirements of confined, intensive agricultural facility/operations

B) be protected from the elements

C) is out of all drain ways; and

4. If off-site disposal is part of the nutrient management plan, the operator shall provide, as part of that nutrient management plan, written documentation of an agreement with the receiver of the wastes produced at the operator's facility or an affidavit, sworn and subscribed before a notary public, that states his/her intention to dispose of the waste through sale in retail establishments or otherwise marketing to consumers. Documentation shall specify the duration of the agreement and the nature of the application or use of the wastes.

A nutrient management plan containing such an agreement shall be valid only as long as the agreement remains in force and shall be reviewed whenever such an agreement expires or is terminated by either party. The operator shall notify the zoning administrator whenever such an agreement is terminated before its stated expiration date within fifteen (15) days of such termination.

5. The nutrient management plan shall be reviewed and updated every (5) years by an agent of the Virginia Department of Conservation and Recreation or by the Virginia Cooperative Extension Service or by a person certified or employed by the Commonwealth as a nutrient management planner.

E. Replacement and/or modification of livestock/confined intensive, dairy and poultry facilities.

A confined, intensive agricultural facility/operation use in existence as of the effective date of these amendments to the Greensville County Zoning Ordinance that does not meet the requirements/regulations of this Article may be replaced or modified provided that:

a) there is no increase in the square footage devoted to the confined, intensive agricultural facility/operation on the parcel(s) at any one time.

b) replacement facilities do not encroach upon any setbacks required under this Article to a greater extent than the facilities being replaced.

c) a nutrient management plan is obtained as provided in this Article.

ARTICLE 19: DEFINITIONS

include on-site individual lot wells.

19-2-32 Common open space: All open space within the boundaries of a planned development designed and set aside for use by all residents of the planned development and not dedicated as public lands.

19-2-33 Comprehensive plan: The comprehensive plan for Greensville, Virginia, as adopted and as amended.

19-2-34 Conditional use (Refer to Special Use):

19-2-35 Conditional use permit: (Refer to Special Use Permit)

19-2-36 Concrete works: A structure or area used for the manufacture of concrete and concrete products.

19-2-37 Condominium: Ownership of single units of a multiple-unit structure with common elements.

19-2-37.1 - Confined, Intensive Animal and Fowl Production Facility: A facility or farm which includes all structures: feed storage bins, waste storage facilities, waste holding pond and/or tank, or lagoon or treatment means used to digest or reduce the solids or nutrients, litter storage or incinerators, which at any one time has more than: 300 cattle, 150 horses, 500 sheep, 750 swine, 10,000 chickens or 7,500 turkeys, that will be housed, stabled or confined on a site of no less than one hundred (100) acres.

19-2-38 Court: An open, unoccupied space, other than a yard, with a building or group of buildings which is bounded on two (2) or more sides by such building or buildings and every part of which is clear and unobstructed from its lowest point to the sky.

19-2-39 Dairy: A commercial establishment for the manufacture, processing, and/or sale of dairy products.

19-2-39.1 Debris landfill: Land used for the disposal of such waste as demolition waste, construction waste, tires, white goods, brush, tree trimmings, stumps and inert wastes. (Ord. No. 84-03, 4-19-84)

19-2-40 Development: Any man-made change to improved or unimproved real estate including but not limited to buildings or other structures, streets, and other paving, utilities, filling, excavation, mining, dredging or drilling. (Ord. No. 84-02, 2-16-84)

purpose of this Ordinance, dwellings such as a semidetached, garden court dwelling, patio house and town house shall be deemed a single-family attached dwelling.

19-2-48 Dwelling, single-family detached: A single-family dwelling unit which is entirely surrounded by open space or yards on the same lot.

19-2-48.1 Dwelling, town house: A single-family dwelling unit, being one of a group of not less than three (3) nor more than ten (10) units, with such units attached to the adjacent dwelling or dwellings by party walls, with lots, utilities, and other improvements being designed to permit individual and separate ownership of such lots and dwelling units.

19-2-48.2 Electric generating facilities: Any facility that generates electricity and/or steam or other thermal energy for sale to one of more public utilities, municipalities, cooperatives and/or other customers, but not to the general public. Such facilities include, but are not limited to, electric and/or steam or thermal energy generation, transmission and distribution facilities, exhaust emission control facilities and stacks, substations, and related facilities and equipment. (Ord. of 5-21-90)

19-2-48.3 - Existing dwelling - for the purpose of the develop regulations for Confined, Intensive Animal & Fowl production facilities or operations either of the following shall apply:

(a) A structure designed for residential use, which is occupied on the date a completed application for a confined, intensive livestock, dairy or poultry facility permit is received by the office of the Zoning Administrator; or

(b) A structure designed for residential use, which is not occupied on the date which a completed application is received, but which has been occupied for any period of time within the two (2) years immediately preceding the date on which a completed application for a confined, intensive livestock, or poultry permit is received by the office of the Zoning Administrator.

19-2-48.4 Existing livestock, dairy, and poultry facility - A livestock, dairy or poultry facility which has been utilized or been operated as an active facility or commercial livestock raiser, dairy or poultry facility for any period of at least thirty (30) consecutive days since April 1, 1989. In the event of a claim of such utilization or operation since April 1, 1989, the burden of proof shall be upon the party alleging such utilization or operation.

19-2-49 Family: One or more persons related by blood, adoption, marriage, living and cooking together as a single household unit; or a number of persons, but not exceeding four (4) persons, living and cooking together as a single household unit, though not related by blood, adoption, or marriage.

19-2-49.1 Farm building: A structure located on a farm and utilized for the storage, handling or production of agricultural, horticultural and floricultural products normally intended for sale to domestic or foreign markets, and building used for maintenance, storage or use of animals or equipment related thereto. (Ord. Of 9-19-88)

19-2-50 Flood: A general and temporary inundation of normally dry land areas.

19-2-51 Flood, one hundred year: A flood that, on the average, is likely to occur once every one hundred (100) years (i.e., that has a one (1) percent chance of occurring each year, although the flood may occur in any year).

19-2-52 Floodplain: A relatively flat or low land area, adjoining a river, stream or watercourse, which is subject to partial or complete inundation, or an area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

19-2-53 Floodway: The designated area of the floodplain required to carry and discharge floodwaters of a given magnitude. For the purpose of this Ordinance, the floodway shall be capable of accommodating a flood of the one-hundred-year magnitude.

19-2-54 Floor area: The sum of the gross horizontal areas of the several floors of the building or buildings on a lot, measured from the exterior walls or from the center line of party walls separating two (2) buildings.

19-2-55 Frontage: The distance for which the front boundary line of the lot and the street line are coincident.

19-2-56 Garage, private: Accessory building designed or used for the storage of private automobiles owned and used by the occupants of the building to which it is accessory.

Such as by appointment and not to the general public except by mail or phone order only. A home occupation shall not exceed one quarter of one (1) floor and nothing shall be maintained on the premises to indicate from the exterior of the dwelling that it is being used for any purpose other than a dwelling, except one (1) sign is permitted as provided in this Ordinance. For those home occupations carried on in a residential district the following additional requirements shall be met: (1) No equipment or process shall be used which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the premises; and (2) the hours of operation shall be such that the activity shall not be a nuisance or burden to the neighborhood.

19-2-66 Hospital, general: An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.

19-2-67 Hotel: A building designed or occupied as the more or less temporary abiding place for fourteen (14) or more individuals who are, for compensation, lodged, with or without meals, and in which provision is not generally made for cooking in individual rooms or suites.

19-2-67.1 Industrial waste landfill: Land used for the disposal of such wastes as concrete rubble, bricks, broken asphalt, sand, etc., excluding aboveground fire stockpiles or dumps. (Ord. No. 84-03, 4-19-84; Ord. No. 85-13, 10-21-85)

19-2-67.3- Intensive, confined livestock operation means a livestock facility with accessory uses or structures, including feed storage bins, litter storage sites, incinerators, manure storage sites which at any one time has more than 300 head of cattle, or 750 swine which will be stabled, housed or confined in a fenced area.

19-2-67.4 - Intensive, Confined poultry operation means a poultry house with accessory uses or structures, including feed storage bins, litter storage sites, incinerators, disposal pits or cold storage chests used for collection of dead birds which at any one time has more than 10,000 chickens or 7,500 turkeys which will be confined or housed.

19-2-68 Junk: Dilapidated and inoperative automobiles, trucks, tractors, and other such vehicles and parts thereof, dilapidated wagons and other kinds of vehicles and parts thereof, discarded appliances, scrap building material, scrap contractor's equipment, tanks, casks, cans, barrels, boxes, drums, piping, bottles, glass, wood scraps, old iron, tires, machinery, rags, paper, excelsior, hair, mattresses, beds or bedding or any other kind of scrap or waste material which is stored, kept, handled, or displayed.

19-2-68.1 Junk car: Any motor vehicle, trailer, or semitrailer which is inoperable and which, by virtue of its condition, cannot be restored to operable condition with repairs costing less than its current resale value, provided that such vehicle, trailer or semitrailer shall be presumed to be a junk vehicle, if no license plates or stickers are displayed or if the license plates and/or stickers displayed have been invalid for more than sixty (60) days. (Ord. Of 4-15-85)

19-2-69 Junkyard: An establishment or place of business, or an area which is maintained, operated, or used for storing, keeping, buying or selling junk or for the maintenance or operation of an automobile graveyard.

19-2-70 Kennel: A place prepared to house, board, breed, handle, or otherwise keep or care for six (6) dogs or cats, at least six (6) months of age.

19-2-70.1 Keeping of pleasure animals - horses and/or ponies for personal use on no less than three (3) acres, and adjacent to compatible agriculturally related animals. (Adopted Jan. 21, 1991).

19-2-71 Landscaping: The improvement of a lot, parcel or tract of land with grass, shrubs, trees, other vegetation and/or ornamental objects. Landscaping may include pedestrian walks, flowerbeds, ornamental objects such as foundations, statuary and other similar natural and artificial objects designed and arranged to produce an aesthetically-pleasing effect.

19-2-72 Limited (light) industry: Includes warehousing and light manufacturing uses which produce some noise, traffic congestion, or danger, but which are of such limited scale or character that they present no serious hazard to neighboring properties from fire, smoke, noise, or odors. Examples are lumberyards, warehouses, research laboratories, auto repair shops, bakeries, bottling plants, electronic plants, storage of farm implements, contractors' storage yards, steel or metal fabrication plants.

19-2-73 Livestock market: A commercial establishment wherein livestock is collected for sale and/or auction.

19-2-73.1 Livestock and/or fowl production farm: Any farm operation designed for the production of, or feeding and care in preparation for slaughter or sale of, the following: cattle, four hundred (400) or more in any point in time; fowl, twenty thousand (20,000) or more at any point in time; swine, two thousand (2,000) or more at any point in time; sheep, four hundred (400) or more at any point in time. (Ord. of 9-19-88)

19-2-74 Loading space: A space or a portion of any area designated, required, or by its nature used as an area for the temporary parking of motor vehicles while transferring, loading, or unloading goods, merchandise, or products or while performing services. Such place shall be a minimum of ten (10) feet in width, twenty-five (25) feet in length, and fifteen (15) feet in height.

19-2-75 Lot: A parcel of land occupied or to be occupied by a main structure or group of main structure and accessory structures, together with such yards, open space, lot width, and lot area as are required by this Ordinance, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

19-2-76 Lot, corner: A lot abutting on two (2) or more streets at their intersection. Of the two (2) sides of a corner lot, the front shall be deemed to be the shorter of the two (2) sides fronting the streets.

19-2-77 Lot, depth of: The average horizontal distance between the front and the rear lot lines.

19-2-78 Lot, double frontage: An interior lot having frontage of two (2) streets.

19-2-78.1 Lot frontage: The length of the front lot line measured at the street right-of-way line.

19-2-79 Lot, interior: Any lot other than a corner lot.

19-2-80 Lot, width of: The horizontal distance between side lot

19-2-90 Nonconforming use: The otherwise legal use of a building or structure or of a tract of land that does not conform to the use regulations of this Ordinance for the district in which it is located.

19-2-91 Nonconforming lot: An otherwise legally platted lot of record that does not conform to the minimum area or width requirements of this Ordinance for the district in which it is located.

19-2-92 Nonconforming structure: An otherwise legal building or structure that does not conform to the lot area, yard, height, lot, coverage, or other area regulations of this Ordinance, or is designed or intended for a use that does not conform to the use regulations of this Ordinance for the district in which it is located.

19-2-93 Nursing home, or convalescent home: An extended or intermediate resident medical care facility licensed or approved to provide full-time convalescent or long-term care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

19-2-94 Office building: A structure wherein are employed a greater number of people than that allowed in professional offices and where there are no goods offered for sale.

19-2-95 Off-street parking area: Space provided for vehicular parking outside the dedicated street right-of-way.

19-2-96 Parking lot: An open, unoccupied space used or required for parking of automobiles or other private vehicles exclusively and in which no gas or automobile accessories are sold or no other business is conducted.

19-2-97 Pen: A small enclosure used for the concentrated confinement and housing of animals or poultry; a place for feeding and fattening animals; a coop. An enclosure pasture or range with an area in excess of one hundred (100) square feet for each hog or small animal or two hundred (200) square feet for each larger animal shall not be regarded as a pen.

19-2-98 Permanent foundation: Structure made of brick or block and mortar placed on a cement footing.

19-2-98.1 Permanent skirting: Material which shall be brick, block with mortar placed on a poured footing used to enclose the space underneath a manufactured home, which enclosure shall extend from the bottom portion of the unit to grade

GENERAL & INTENSIVE LIVESTOCK STRUCTURES

General & intensive Swine Operation Structures:

4. Front (setback):

General & Intensive 500 feet from the center of Primary Roads and from the center of Secondary Roads.

5. Side: General & Intensive 800 feet

6. Rear: General & Intensive 800 feet

7. Existing residences, except those of the landowner and immediate family, churches, schools or other occupied structures:

General & Intensive 1500 feet

Other General & intensive Livestock Operation Structures:

8. Front (setback):

General & Intensive 500 feet from the center of Primary Roads; 250 feet from the center of Secondary Roads.

9. Side: General & Intensive 250 feet

10. Rear: General & Intensive 250 feet

11. Existing residences, except those of the landowner and immediate family, churches, schools or other occupied structures: General & Intensive 1000 feet

12. Setbacks specified in Section 5.4.4-11 may be reduced to a minimum of 200 feet by mutual consent of the Intensive Livestock Operator and the affected adjacent landowners. Consent shall be evidenced by written, formal agreement with the following components:

1.) Referencing both parcels by deed book reference;

2.) Signed by all affected parties;

3.) Notarized;

4.) Recorded in the Office of the Clerk of the Circuit Court, with a copy provided to the Zoning Administrator at the time of recordation and prior to application for a zoning permit.

5.5 Required Frontage. The minimum frontage for permitted uses shall be:

1. At the street line - 75 feet

2 At the setback line - 200 feet

5.6 Required Area. The minimum area for a permitted uses, with the exception of general livestock/poultry operations and intensive livestock/poultry operations, shall be:

All permitted uses except following - 5 acres

General Livestock Operations - Subject to Nutrient Management Plan

Intensive Livestock Operations - Subject to Nutrient Management Plan

5.7 Building Height. The height of structures in this district shall be as follows:

1. General - maximum of 35 feet.

2. Public building - maximum of 60 feet provided front, side and rear yard requirements increase 3 feet for each increase of 1 foot in height over 35 feet.

3. Exemptions - church spires, silos, barns, water towers, chimneys, flag poles, television and radio antennas.

4 Accessory buildings - less than the main structure, and no more than 1 story if within 30 feet of the lot line.

5.8 Findings of Adverse Impact. Should review of any proposal submitted for this district create reasonable doubt as to its compatibility with the general area for which it is proposed or should review clearly demonstrate adverse impact on the general area for which it is proposed, additional zoning requirements may be imposed. Additional requirements must be based on findings of adverse impact. Production agriculture and forestry are exempted.

5.9 Buffer Zones. Buffer zones may be required if the Nottoway County Planning Commission deems it necessary to protect public safety, public welfare or to preserve the intent of this district. These buffer zones may include, but are not limited to, various types of screens, vegetative plantings or greater setbacks.

5.10 Exemptions. Livestock producers that, on January 1, 1995, could be defined as Intensive Livestock Operations by the definition included in this ordinance will be exempted from the Required Yards as described in Sections 5.4.4-11 for a period of three (3) years after the enactment of this ordinance.

During this three year period, livestock producers that, on January 1, 1995, could be defined as Intensive Livestock Operations by the definition included in this ordinance must meet the Required Yards requirements described in this ordinance in Sections 5.4.1,2,3.

After the three year period has expired, livestock producers that, on January 1, 1995, could be defined as an Intensive Livestock Operation by the definition included in this ordinance will be required to meet the Required Yards as described in Sections 5.4.4-11 for new construction of Intensive Livestock Operation structures.

Other permitted uses must comply with the Required Yards as described in this ordinance in Section 5.4 upon enactment of this ordinance.

MEZZULLO & MCCANDLISH
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October 14, 1997
Via Telecopier and First-Class Mail
Russell O. Slayton, Jr., Esquire
County Attorney for Brunswick County
P O. Box 580
Lawrenceville, Virginia 23868

Re: Emergency Ordinance of Brunswick County Regulating the Location and
Construction of Intensive Livestock Facilities.

Dear Mr. Slayton:

This firm represents Carroll's Foods of Virginia, Inc. which produces hogs for market and contracts with other farmers, including Brunswick County farmers, to raise hogs for market. Our client is very much interested in the Emergency Ordinance which the Brunswick County Board of Supervisors (the "Board") enacted on September 12, 1997, and the consideration the Board will give to that ordinance at its October 15, 1997, meeting. For several reasons, some of which are set out below, the Emergency Ordinance is unlawful. We encourage the Board to allow the Emergency Ordinance to expire and not to adopt the Emergency Ordinance as a permanent Ordinance of the County.

The Virginia Right to Farm Act, Va. Code § 3.1-22.28, et seq., restricts the powers of counties to require a special exception or conditional use zoning permit for any production agriculture activity in an area that is zoned as an agricultural district under the local zoning ordinance. Counties may, however, adopt reasonable setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture activity is occurring in agricultural zoning districts so long as the restrictions or regulation of farm structures or farm practices are not unreasonable and bear a reasonable relationship to the health, safety and general welfare. Va. Code § 3.1-22.28 (emphasis added).

The Right to Farm Act also declares that "no agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in accordance with existing best management practices and comply with existing laws and regulations of the Commonwealth." Va. Code § 3.1-22.29(A). The

General Assembly has defined "agricultural Operation" to mean, in relevant part. "any operation devoted to the bona fide production of. . .animals " Va. Code § 3.1-22.29(B). County ordinances in effect at the time of the effective date of the Act (April 1, 1995), or thereafter adopted, are void if they would make the operation of any "agricultural operation" or its appurtenances a nuisance. Va. Code § 3.1-22.29(D).

Article 17 of the Brunswick County Zoning Ordinance (the "Zoning Ordinance") represents the Board's attempt in 1995 to adopt regulations under the Virginia Right to Farm Act governing certain types of agricultural operations defined in the Zoning Ordinance as "Intensive Livestock Facilities."¹ The provisions of the Zoning Ordinance contain greater restrictions than are required by state law or regulations. See setback requirements for Virginia Pollution Abatement General Permit for Confined Animal Feeding Operations, 9 VAC 25-192-70.² The state regulations are based upon best management practices ("BMPs") for such operations and thus as a matter of state law, agricultural operations, including but not limited to Intensive Livestock Facilities, cannot be a nuisance. If agricultural operations meet the setbacks and operate in accordance with the BMPs set forth in state regulations, then as a matter of Virginia law, by definition they cannot be a nuisance and thus are not a threat to the general health, safety and welfare.

The Emergency Ordinance goes well beyond the Zoning Ordinance's regulations pertaining to intensive livestock facilities and agricultural operations, not to mention the BMPs and other standards set forth in state law and regulations. Our client maintains that the Emergency Ordinance's requirement that a no-discharge animal waste lagoon must be sited a mile or more from any water impoundment, river or stream is unreasonable, arbitrary, capricious, unlawful and bears no more relationship to the protection of the general health welfare and safety than a setback consistent with BMPs. Furthermore, the requirement to enclose such treatment lagoons suffers from the same legal flaws, requires the facilities to operate in a dangerous and unsafe manner and unreasonably regulates farm structures contrary to law. We note that the General Assembly has exempted farm structures from compliance with the Uniform Statewide Building Code, and intends for the USBC to preempt all local ordinances. Va. Code §§ 36-97 (18), -98.

¹ Carroll's Foods of Virginia, Inc. does not concede that the intensive Livestock Facilities article of the Zoning Ordinance is lawful or that it complies with the mandate for reasonable regulation of agricultural operations as required by the Virginia Right to Farm Act.

² The General Permit regulation establishes an elaborate system of buffer zones which must be maintained. including minimum distances from occupied dwellings (200 feet), water supply wells or springs (100 feet), surface water courses (25 to 50 feet), rock outcroppings other than limestone (25 feet) and limestone outcroppings (50 feet). In addition, the General Permit regulation establishes extensive technical requirements for groundwater monitoring, structural standards. nutrient management plans, and inspection and enforcement by the State Water Control Board. 9 VAC 25-192-70.

In addition, the Ordinance is unlawful because it is inconsistent with the general laws of the Commonwealth enacted to safeguard the Commonwealth from pollution. The Attorney General of Virginia has issued a formal opinion which holds that local governments may not adopt ordinances which impose requirements that conflict with conditions imposed in a Virginia Pollution Abatement permit. 1995 Va. Rep. Atty. Gen. 66, 1995 WL 370718 (Va.A.G.).

As the Attorney General observed, any county may adopt such measures as it may deem expedient to secure and promote the health, safety and general welfare of the inhabitants of the county, not inconsistent with the general laws of the Commonwealth. The State Water Control Law contains general laws enacted to safeguard the waters of the Commonwealth from pollution.

While the state and the county have concurrent jurisdiction in this area, the power of the State Water Control Board is paramount, and any local ordinance must not operate in a manner inconsistent with the general laws of the Commonwealth embodied in the State Water Control Law.

Id.³ The Attorney General noted that the facility's use was consistent with its zoning. It was also noted that the State Water Control Board and its staff consider the need for monitoring in the permit, but declined to require such monitoring for the chemical facility in question. After considering factors quite similar in scope to those present with the state regulators program for intensive livestock facilities in Brunswick County and elsewhere, the Attorney General concluded that the county did not have the power to enact an ordinance requiring groundwater monitoring when the permit issued by the state did not impose such a requirement.

An ordinance that operates to impose requirements the State Water Control Board has considered and declined to impose in issuing a VPA permit would be in conflict with § 62.1-44.6. The effect would be to grant the local government an oversight role in the State Water Control Board's decision-making process. Accordingly, it is my opinion that if the VPA permit issued in any particular instance does not require groundwater monitoring, a locality may not, by ordinance, require the facility to install groundwater

³ The opinion addressed whether a county could adopt an ordinance requiring chemical manufacturing facilities to install groundwater monitoring wells and report results to the county, even though the provisions of the Virginia Pollution Abatement permit issued to the manufacturer by the State Water Control Board did not require groundwater monitoring. The opinion cited Va. Code § 62.1-44.6 (administration of any supplemental laws pertaining to pollution of state waters shall be in accord with the purpose of the State Water Control Law and general policies adopted by the State Water Control Board); Va. Code § 1-13.17 (ordinances must not be inconsistent with laws of the Commonwealth); and *King v. County of Arlington*, 195 Va. 1084-1091 (1954) (ordinance may not operate to forbid what legislature expressly has licensed, authorized or required).

monitoring wells. If the VPA permit does require groundwater monitoring, a locality may require the facility to report measurements from the wells to the county, in addition to any reports made to the State Water Control Board.

Id.⁴

Although Carroll's Foods firmly believes in the strength of its legal position, which is given only cursory treatment above, it has no desire to seek redress in the courts unless absolutely necessary. Carroll's Foods merely asks that the existing Emergency Ordinance be allowed to expire and that the Board engage in a meaningful good faith dialogue with the goal of finding common ground that will address the legitimate concerns of the Board and still allow Carroll's Foods and its growers the ability to conduct its agricultural operations productively and with appropriate environmental safeguards.

I appreciate your time and consideration of these issues, which are of extreme concern to our clients. Please contact me so that we may work together to lower the volume of the discussions and reach accommodations which are beneficial to all.

With kindest regards, I am
Very truly yours,

Signature

Brian L. Buniva
BLB/jaw
cc: Adolph Miller, Jr.
R. Bryan David, County Administrator

⁴ The Opinion is consistent with *Old Dominion Land Co. v. Warwick County* 172 Va. 160, 168 (1939) in which the Court found that the General Assembly had intended to retain the authority to regulate pollution in certain waters.

COMMONWEALTH of VIRGINIA

Richard Cullen
Attorney General

Office of the Attorney General
Richmond, 23219
November 12, 1997

900 East Main Street
Richmond, Virginia 23219
804-786-2071
804-371-8946 TDD

The Honorable Mitchell Van Yahres
Member, House of Delegates
223 West Main Street ;
Charlottesville, Virginia 22902

My dear Delegate Van Yahres:

You ask regarding any restrictions a locality may impose on an industrial farming operation within the framework of the Right to Farm Act, §§ 3.1-22.28 and 3.1-22.29 of the Code of Virginia (the "Act"). You ask also whether the Act precludes a locality from denying permits for large scale production of swine or other farm animals.

Section 3.1-22.28, as amended in 1994,¹ prohibits a county from adopting any ordinance that requires a special exception or special use permit for agriculture production in an area zoned agricultural. At its 1994 Session, the General Assembly also amended § 15.1-491, pertaining to matters that may be regulated in a local zoning ordinance, by adding a paragraph containing essentially the same limitation found in § 3.1-22.28.2.² Both §§ 3.1-22.28 and 15.1-491 permit a county to adopt setback

¹ See 1994 Va. Acts ch. 779, at 1202, 1202. The stated purpose of § 3.1-22.28 is "to limit the circumstances under which agricultural operations may be deemed to be a nuisance." Section 3.1-22.29 provides that "[n]o agricultural operation ... shall be or become a nuisance, ... if such operations are conducted in accordance with existing best management practices and comply with existing laws and regulations of the Commonwealth." A county is empowered to cause any nuisance to be abated. See § 15.1-14(5) (applying to cities and towns); § 15.1-522 (vesting county boards of supervisors with same powers and authority as cities and towns); 1983-1984 Op. Va. Att'y Gen. 90, 90: id. at 86, 89 n.2. Depending on the circumstances, the question of what constitutes a public nuisance may be determined by the legislature or by the courts. See 1993 Op. Va. Att'y Gen. 79, 81.

² See 1994 Va. Acts ch. 802, at 1246, 1248.

requirements, minimum area requirements or "other requirements" relating to land on which the agricultural activity is occurring. Section 3.1-22.28 also provides that no locality shall enact zoning ordinances restricting or regulating farm structures or farming practices in an agricultural district "unless such restrictions bear a relationship to the health, safety and general welfare of its citizens."

Sections 3.1-22.28 and 15.1-491 clearly prohibit a locality from requiring a special use permit or exception for agricultural production in agricultural zones or districts. Neither § 3.1-22.28 nor § 15.1-491, however, specifically prohibits all local regulation of industrial farming or large scale production of swine operations. For example, the authority to adopt setback requirements permits a locality to restrict the distance between a facility utilized for swine production and the property line, or between a building utilized for the large scale production of swine and an occupied dwelling on adjacent property. Moreover, the authority to adopt minimum area requirements clearly permits a locality to limit the number of head of livestock per acre that may be maintained.³ Any such restriction, however, must "bear a relationship to the health, safety and general welfare"⁴ of the locality's citizens and, in order to be consistent with the prohibition on special use permits, apply uniformly throughout the particular district. Finally, I can find no language in either § 3.1-22.28 or § 15.1-491 that prevents any agency of the Commonwealth from imposing reasonable regulations on large scale animal operations under other provisions of Virginia law.⁵

With kindest regards, I am
Very truly yours,

Signature

Richard Cullen
Attorney General

5:79; 1:45/54-094

³ A cap on the maximum number of animals permitted on a farm, regardless of the acreage of the farm, would likely be inconsistent with the requirement in § 3.1-22.28 that the restriction bear a relationship to the health, safety and general welfare of the locality's citizens.

⁴ Section 3.1-22.28.

⁵ See, e.g., 9 VAC 25-192-20, 25-192-50 (Law. Co-op. 1996) (requiring large scale feeding operations having 300 or more animal units and utilizing liquid manure collection and storage system to obtain permit from Virginia Department of Environmental Quality).