

MEMO

RE: The Term “Land Disturbing Activity” and Forestry Exemption

The term “Land Disturbing Activity” is found in 43 paragraphs throughout the Matthews UDO, most of which were brought forward from prior separate Town ordinances

Today, just as has been the requirement for many years, a property owner/developer cannot begin any “land disturbing activity” until first receiving any necessary permits or approvals from County LUESA, Town, NCDOT, and/or any other governing authorities – grading, erosion control, wetlands, floodplain, building, etc. It has been a commonly used term in land development regulations for decades, and commonly applies to any activity which requires disturbance of the ground surface. It therefore does not apply to logging/forestry activities which remove trees above the ground level, or to building renovations that do not change the footprint of the exterior of the structure.

In the Matthews UDO, Section 155.213.B. says in part: **“Any proposed land disturbing activity [is action] that will include any grading, removal of trees and existing vegetative ground cover, removal of existing structures, buildings, and/or impervious surfaces, or any on-site work that may impact soil erosion or will take place close to a protected tree. . . .”**

The term is generally used when referring to ground work (grading) on a development site. Matthews uses Mecklenburg County’s Sedimentation and Erosion Control Ordinance, which defines the term as: **“Land-disturbing Activity – means any use of the land by any Person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the Ground Cover or topography and that may cause or contribute to Sedimentation.”**

A “development site”, where active construction will be ongoing until a completed new or expanded building and related improvements are in place, may need some off-site extension of a utility that would require limited trenching or similar ground disturbance. Utility-only disturbance of a parcel is often necessary to connect underground electric, cable, fiber, water, sanitary sewer, or storm water drainage for a development occurring nearby. This activity may require review and/or permits/approvals to proceed from the Town, County, and/or state depending on what physical conditions may be involved (floodplain, wetlands, state rights-of-way, driveway crossings, etc.). Similarly, construction of a completely new road or widening of an existing road will require engineering reviews and approvals at multiple governmental levels. This approval process for utility or road construction often does not require any further zoning review, since the completion of the project will restore the disturbed ground area to pre-activity condition – i.e., same grade, same vegetative ground cover as before, except for new pavement or detention pond space, and no other construction activity is being performed.

In addition to the above, forestry operations that are part of a forest management plan do not fall under Town zoning regulations as long as the property is being maintained in a forested condition per the plan. Such a property is generally taxed on the basis of its “present-use value as forestland” under Article 12 of Chapter 105 of the NC General Statutes. The Town can apply its zoning at whatever time the property owner chooses to stop the forestry tax exemption designation. In the area by the Sportsplex, one large tract of land (almost 73 acres) has been under a forestry exemption since at least 2001.