

**NEW JERSEY DEPARTMENT OF AGRICULTURE
STATE SOIL CONSERVATION COMMITTEE
Chapter 251, PL 1975 as amended,
Administrative Policies Bulletin**

<u>Administrative Bulletin:</u> 2015-1.0	<u>Effective Date:</u> January 1, 2015
<u>Subject:</u> Single-Family Dwelling Unit Lots and Clearing/Grading Activities	<u>From:</u> Frank Minch, Executive Secretary Sean Moriarty, DAG

1.01 PURPOSE

To provide clarification, guidance and consistency in implementation of the “Single-Family Exemption” by the Soil Conservation Districts (“Districts”) under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39, et. Seq. (“Act”).

1.02 SUMMARY

The Act, commonly referred to as Chapter 251, is the regulatory framework for the activities of the Districts addressing and reviewing applications for certification of Soil Erosion and Sediment Control Plans (“Plan”). The purpose and intent of this Administrative Bulletin is to provide consistency in the statewide effort to control soil erosion and sedimentation under the Act. Specifically, this Bulletin provides the State Soil Conservation Committee’s (“SSCC”) interpretation of the scope of limitations of the Act’s so-called Single-Family Exemption.

1.03 STATUTORY AND REGULATORY BACKGROUND

The Act conditions approvals of an application for any project upon certification of a Plan by the District. N.J.S.A. 4:24-43. The Act defines the term “project” as:

any disturbance of more than 5,000 square feet of the surface area of land (1) for the accommodation of construction for which the State Uniform Construction Code would require a construction permit, except that the construction of a single-family dwelling unit shall not be deemed a "project" under this act unless such unit is a part of a proposed subdivision, site plan, conditional use, zoning variance, planned development or construction permit application involving two or more such single-family dwelling units, (2) for the demolition of one or more structures, (3) for the construction of a parking lot, (4) for the construction of a public facility, (5) for the operation of any mining or quarrying activity, or (6) for the clearing or grading of any land for other than agricultural or horticultural purposes.

N.J.S.A. 4:24-41. The Single-Family Exemption stems from the Act's determination that the construction of a "single-family dwelling unit" is not considered a project unless it is part of a "proposed subdivision, site plan, conditional use, zoning variance, planned development or construction permit application involving two or more such single-family dwelling units." Id. The Committee defined the "proposed subdivision" language with the adoption of N.J.A.C. 2:90-1.5, which reads as follows:

(a) An application for a construction permit for any single-family dwelling unit, on any lot that has arisen from a subdivision approved after January 1, 1976 comprising two or more contiguous or non-contiguous single-family dwelling lots, the construction of which would disturb greater than 5,000 square feet is subject to the act, and the applicant/owner shall secure certification of a soil erosion and sediment control plan. The act shall also apply if any lots in the subdivision are conveyed to separate owners or if construction is by the same or a separate applicant, owner, builder or contractor.

(b) The concurrent construction of two or more contiguous or non-contiguous single-family dwelling units, by the same applicant, owner, builder or contractor on lots which were part of a preexisting subdivision approved prior to January 1, 1976, shall be subject to the requirements of the act provided that the proposed cumulative land disturbance is greater than 5,000 square feet.

N.J.A.C. 2:90-1.5; 37 N.J.R. 2313(a) (2006).

1.04 INTERPRETATION

The threshold determination for applicability of the Act is whether the activity in question will disturb "more than 5,000 square feet of the surface area of land." N.J.S.A. 4:24-41. If the disturbance threshold is met, the activity will be subject to the act if it also falls within one of the six enumerated categories:

1. The accommodation of construction for which the State Uniform Construction Code ("UCC") requires a construction permit;
2. Demolition of one or more structures;
3. Construction of a parking lot;
4. Construction of a public facility;
5. Operation of any mining or quarrying activity; or
6. Clearing or grading of any land for other than agricultural or horticultural purposes.

N.J.S.A. 4:24-41. Accordingly, any activity that meets the disturbance threshold but does not fall within one of the enumerated categories is not a project and is therefore not subject to the Act.

The first category – construction requiring a UCC permit - is most relevant to the Single-Family Exemption. Here, the Act expressly exempts the construction of a "single-family

dwelling unit.” This exemption is limited, however, to those single-family dwelling units that are not part of a “proposed subdivision, site plan, conditional use, zoning variance, planned development or construction permit application involving two or more such single-family dwelling units.” The Committee defined this limitation by inquiry into the date of creation of the lot containing the single-family dwelling unit and its relation to the effective date of the Act, January 1, 1976. N.J.A.C. 2:90-1.5. Accordingly, the Single-Family Exemption, applies as follows:

For lots created by a subdivision approved after January 1, 1976: The construction of a single-family dwelling unit is not exempt from the Act if the subdivision created two or more single-family dwelling lots. The exemption applies regardless of whether the all the subdivided lots have been or are being built at the time of application.

For lots created prior to January 1, 1976: Construction of a single-family dwelling unit is exempt unless it is part of concurrent construction of two or more contiguous or non-contiguous single-family dwelling units by a common entity.

In sum, the Single-Family Exemption is limited to those individual dwelling units existing on single-family dwelling lots created before the effective date of the Act, January 1, 1976, that are not part of a larger development by a common entity.

It is important to note that the Act exempts only the dwelling unit and not the entire lot. The usage of the terms “unit” and “lot” in the Act and the rules is instructive on this point. The Act expressly states that the unit is exempt while the rules recognize that the unit exists on the lot and, utilizing the express language of the Act, draw a distinction as to what lots may contain exempt units. To interpret the rules as extending an exemption of the unit to all activities conducted on the lot would be contrary to the express language of the Act.

The determination of whether the Act applies to activities not considered construction of the single-family dwelling unit on a lot that contains an exempt unit requires an examination of the threshold questions: (1) is there a disturbance of more than 5,000 square feet; and (2) does the activity fall within one of the six enumerated categories? In these cases, the date of subdivision of the lot is not relevant.

Further, when considering whether the activity in question falls within the first enumerated category, the determining factor is the requirement of UCC construction permit. The UCC requires a permit for the construction, extension, repair, removal, renovation, alternation or reconstruction of all buildings and structures, as defined therein. N.J.A.C. 5:23.2.2, -1.3, -2.1, -2.14. A structure is defined as “a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land.” N.J.A.C. 2:23-1.4. A building is defined as “a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing shelter, enclosure and

support of individuals, animals or property of any kind.” Id. The UCC uses these terms interchangeably and their definitions evidence that UCC construction permits are generally required for those structures or buildings intended for occupancy. Id.

Relevant activities that would likely require a UCC permit would include reconstruction, addition or expansion to the single-family dwelling unit and construction of sheds, garages or similar structures suitable for occupancy. It is unlikely, however, that a septic system installation would require a UCC permit. Finally, with regard to pool construction, the UCC requires permits only for the plumbing and electrical components (which would presumably not meet the 5,000 square foot disturbance threshold) rather than the construction of the pool itself and must therefore be reviewed on a case-by-case basis.