

CHAPTER 42

PINELANDS DEVELOPMENT CREDIT BANK

Authority

N.J.S.A. 13:18A-30 et seq.

Source and Effective Date

R.1993 d.151, effective March 10, 1993.
See: 25 N.J.R. 223(b), 25 N.J.R. 1511(a).

Executive Order No. 66(1978) Expiration Date

Chapter 42, Pinelands Development Credit Bank, expires on March 10, 1998.

Chapter Historical Note

Chapter 42, Pinelands Development Credit Bank, was adopted as R.1988 d.157, effective April 4, 1988. See: 20 N.J.R. 128(a), 20 N.J.R. 777(b). Subchapter 7, Sale, Transfer, Exchange, Conveyance or Retirement of Pinelands Development Credits Owned by the Board, was adopted as R.1990 d.119, effective February 20, 1990. See: 21 N.J.R. 3691(a), 22 N.J.R. 628(b). Pursuant to Executive Order No. 66(1978), Chapter 42 was readopted as R.1993 d.151. See: Source and Effective. See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS

3:42-1.1 Scope

Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Pinelands Development Credit Bank governing the procedures and standards for carrying out the duties and responsibilities of the Bank pursuant to "The Pinelands Development Credit Bank Act", N.J.S.A. 13:18A-30 et seq.

3:42-1.2 Purpose

(a) The purpose of this chapter is to:

1. Establish an efficient and effective method for documenting the sale, transfer, conveyance, encumbrance, and use of Pinelands Development Credits which are authorized and allocated pursuant to the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-1.1 et seq.; and

2. Facilitate the effective operation of the Pinelands Development Credit program through the Bank's participation in the purchase and use of Pinelands Development Credits.

3:42-1.3 Applicability

The rules contained in this chapter shall apply to all sales, transfers, conveyances, encumbrances and redemptions of Pinelands Development Credits and shall be supplemental to the provisions of the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-1.1 et seq.

3:42-1.4 Construction

These rules shall be liberally construed to permit the Bank to effectuate the purposes of the law.

3:42-1.5 Severability

If any section, part, phrase, or provision of these rules or the application thereof to any person be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the validity of the remainder of these rules or the application thereof to other persons.

3:42-1.6 Duties and powers of the Board of Directors

The Board of Directors is the governing body of the Pinelands Development Credit Bank and bears the ultimate responsibility for implementing and enforcing the provisions of the Pinelands Development Credit Bank Act and these rules. The Board shall exercise the powers necessary to implement the objectives of the Act and these rules.

3:42-1.7 Meetings, hearings, procedures and rules of the Board of Directors

(a) The Board of Directors shall adopt its own bylaws and procedures for the conduct of its business, meetings and hearings not inconsistent with the Pinelands Development Credit Bank Act, these rules and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Copies of those bylaws and procedures shall be available to any person upon request.

(b) The Board shall adopt and revise, as appropriate, the form and content of the Pinelands Development Credit Certificate as provided in N.J.A.C. 3:42-3.3.

(c) The Board shall adopt and revise, as appropriate, rules pursuant to the Administrative Procedure Act to implement the legislative mandates of the Pinelands Development Credit Bank Act.

3:42-1.8 Duties and powers of the Executive Director

(a) The Executive Director shall be the chief administrative officer of the Board and, subject to the approval of his actions by the Board as provided herein, shall be responsible for the administration and enforcement of these rules. In order to effectively implement these rules, the Executive Director shall exercise the following duties and powers:

1. **Administrative Procedures:** The Executive Director shall, consistent with the express standards, purposes and intent of these rules, establish administrative procedures and forms as are necessary to the effective administration and enforcement of these rules and the procedures of the Board.

2. **Pinelands Development Credit Certificates:** The Executive Director shall, consistent with the express standards, purposes, and intent of these rules, issue Pinelands Development Credit Certificates.

3. **Records:** The Executive Director shall maintain:

i. Current and permanent records of the Bank including a registry of all Pinelands Development Credit Certificates issued, sold, conveyed, transferred, encumbered, retired and redeemed; and

ii. A current and permanent record of the Bank pertaining to Pinelands Development Credits the Bank purchases, credit guarantees extended by the Bank and authorities delegated and grants provided to counties.

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS
3:42-2.1 Word usage

(a) In the interpretation of these rules, the provisions of this section shall be observed and applied, except when the context clearly requires otherwise:

1. Words used or defined in one tense or form shall include other tenses and derivative forms.

2. Words in the singular shall include plural and words in the plural shall include the singular.

3. The masculine gender shall include the feminine and the feminine gender shall include the masculine.

4. The word "shall" is mandatory.

5. The word "may" is permissive.

3. A duplicate of the Pinelands Development Credit Certificate or, if a Certificate has not been issued, the information required pursuant to N.J.A.C. 3:42-3.2(c) with the exception of N.J.A.C. 3:42-3.2(c)8.

4. The number of Pinelands Development Credits to be sold;

5. A statement detailing the applicant's basis for believing that the Board can make one of the findings required in N.J.A.C. 3:42-5.3(b)3 and (c)3; and

6. Such other information as the Executive Director may determine is necessary in order to review and act on the application.

3:42-5.3 Standards governing the Board's decision to purchase

(a) The Board shall, after considering the recommendation of the Executive Director, determine whether or not to authorize the purchase of all or a portion of the Pinelands Development Credits proposed for sale in the application in accordance with the criteria set forth in (b) and (c) below, as appropriate.

(b) The Board may authorize a purchase of Pinelands Development Credits to further the objectives of the Pinelands Protection Act and the Pinelands Comprehensive Management Plan if:

1. Adequate funds are available for the purchase; and
2. The expenditure of funds does not substantially impair the Board's ability to carry out its duties and responsibilities with respect to guarantees which have already been extended; and
3. The purchase will result in:
 - i. The protection of property which is of significant ecological or agricultural importance; or
 - ii. The protection of property which serves to complement or buffer publicly owned and managed conservation lands; or
 - iii. The Pinelands Development Credits which the Board purchases are likely to be resold, transferred or conveyed for redemption in a residential development project that satisfies compelling public need or that will result in the protection of other properties which satisfy (b)i or ii above; or
 - iv. The timing and nature of the Board's purchase will result in a significant and positive example of the Pinelands Development Credit Program at work; or
 - v. The proceeds from the sale being used for operating or capital expenditures on the property from which the Pinelands Development Credits are allocated in a manner consistent with the terms of the restriction on the deed to that property; or

vi. The transaction otherwise furthering the purposes of the Pinelands Protection Act and the Pinelands Comprehensive Management Plan.

(c) The Board may authorize the purchase of Pinelands Development Credits to alleviate a hardship if:

1. Adequate funds are available for the purchase; and
2. The expenditure of funds does not substantially impair the Board's ability to carry out its duties and responsibilities with respect to Pinelands Development Credit guarantees which have already been extended; and
3. A hardship exists on the basis of one or more of the following tests:
 - i. The owner's investment in the land to which the Pinelands Development Credits are allocated is substantial in relation to his net worth; or
 - ii. The owner has sought and been denied a waiver of strict compliance from the Pinelands Commission pursuant to the Comprehensive Management Plan, N.J.A.C. 7:50-1.1 et seq.; or
 - iii. The owner is experiencing a unique and extraordinary financial hardship which may only be ameliorated through an expedient sale of his Pinelands Development Credits.

3:42-5.4 Notification to applicant

Upon the Board's decision to purchase or not purchase Pinelands Development Credits, the Executive Director shall notify the applicant, in writing, setting forth the basis for the Board's decision.

3:42-5.5 Completion of Board authorized purchases

(a) The Executive Director is authorized to complete any and all administrative procedures necessary to consummate the purchase of Pinelands Development Credits once approved for purchase by the Board.

(b) No Pinelands Development Credit shall be purchased by the Board after December 31, 1990.

3:42-5.6 Purchase price

(a) The purchase price for Pinelands Development Credits acquired by the Board shall be \$10,000 for each Pinelands Development Credit or fraction of that amount which reflects that portion of a Pinelands Development Credit so acquired.

(b) The Board may increase the purchase price set forth in (a) above if it determines that:

1. The purchase price, as increased, does not exceed 80 percent of the market value of Pinelands Development Credits as determined by examination and analysis of Pinelands Development Credit sales data reported to the Bank pursuant to N.J.A.C. 3:42-3.4; provided, however,

that the Board shall not consider any sales data which does not meet generally accepted real estate appraisal practices; and

2. The purchase price, as increased, will not substantially impair the private sale of Pinelands Development Credits.

SUBCHAPTER 6. PINELANDS DEVELOPMENT CREDIT GUARANTEES (RESERVED)

SUBCHAPTER 7. SALE, TRANSFER, EXCHANGE, CONVEYANCE OR RETIREMENT OF PINELANDS DEVELOPMENT CREDITS OWNED BY THE BOARD

PART 1—SALES OF PINELANDS DEVELOPMENT CREDITS

3:42-7.1 Board decision to hold sale

(a) The Board may from time to time authorize the Executive Director to sell all or a portion of those Pinelands Development Credits owned by the Bank.

(b) The Board shall authorize such a sale and determine how many Pinelands Development Credits will be made available for sale only upon a finding that:

1. There is sufficient interest in the purchase of its Pinelands Development Credits to warrant a sale; and
2. The timing of the sale and the number of Pinelands Development Credits to be sold will not substantially impair the private sale of Pinelands Development Credits.

(c) All sales authorized by the Board will be conducted by open bidding through a public auction or by closed bidding through the receipt of sealed, written bids.

(d) When authorizing these sales, the Board shall determine a minimum acceptable bid pursuant to N.J.A.C. 3:42-7.3(b) and shall also determine which method of sale is most advantageous for the purpose of stimulating competitive bidding.

(e) The Board may establish such conditions for the bidding and sale as are necessary and desirable to advance the Pinelands Development Credit program, provided that any such conditions do not otherwise conflict with the minimum requirements set forth in this subchapter.

3:42-7.2 Notifications of upcoming sales

(a) All sales of Bank-owned Pinelands Development Credits shall be held only after due notice has been given by the Executive Director at least 10 business days prior to the date of the sale.

(b) At a minimum, the Executive Director shall:

1. Have notices of the sale published in at least four newspapers; and
2. Transmit notices to every person who has submitted to the Bank a written request to be informed of upcoming sales.

(c) The notice shall contain, but not necessarily be limited to, the following information:

1. The method by which the sales shall be conducted;
2. The date, time and location for the auction or bid opening;
3. The number of Pinelands Development Credits available for sale;
4. The minimum acceptable bid and deposit;
5. The date, time and location when the sales must be completed;
6. A summary of the rules governing the sale and the terms and conditions of the sale; and
7. How an interested person can obtain a complete set of instructions for, and the terms and conditions of, the sale.

3:42-7.3 Requirements governing all bidding

(a) Bidders who are acting on behalf of another person shall supply to the Executive Director with their sealed written bid or prior to the commencement of an auction the following:

1. If the bidder is representing an individual, a notarized statement from the individual duly authorizing the bidder to act on his behalf; or
2. If the bidder is representing a corporation, public agency, business trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity, a duly adopted resolution or other legal instrument authorizing the bidder to act on the entity's behalf.

(b) The minimum acceptable bid shall be \$2,500 for each one-quarter of one Pinelands Development Credit to be sold, provided, however, that the Board may establish a higher minimum acceptable bid if it determines that, based upon recent Pinelands Development Credit sales prices, a higher amount is necessary to avoid a substantial impairment of the private sale of Pinelands Development Credits.