

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING
PINELANDS DEVELOPMENT CREDIT BANK

Pinelands Development Credit Bank Rules

Proposed Readoption with Amendments: N.J.A.C. 3:42

Authorized By: Pinelands Development Credit Bank Board,
Steven M. Goldman, Chair

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-170

Submit written comments by August 1, 2008 to:

Robert Melillo, Chief
Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
20 W. State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

Pursuant to the requirements of N.J.S.A. 52:14B-5.1c, N.J.A.C. 3:42 will expire on December 22, 2008. The Pinelands Development Credit Bank (the Bank) has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Pinelands Development Credit Bank Act, N.J.S.A. 13:18A-30 et seq., established the Bank for the purpose of regulating and promoting the use of Pinelands Development Credits (PDCs) to further the Pinelands Comprehensive Management Plan (the Plan) which is set forth at

N.J.A.C. 7:50. By facilitating the sale of PDCs, the Bank is providing a source of remuneration for landowners whose property is located within areas of the Pinelands designated by the Plan for conservation or agricultural use.

In exchange for placing an encumbrance on the title to the property, a credit is issued to the owner who may sell or borrow against the value of the credit. Credits are redeemed in the form of increased density allowances for those wishing to build in regional growth areas.

The rules proposed for readoption with amendments establish criteria regarding the sale, transfer, conveyance, encumbrance, redemption and documentation of PDCs. In addition, the rules proposed for readoption with amendments specify the conditions under which the Bank may purchase PDCs.

Subchapter 1 establishes the purpose of the rules. It also enumerates the duties and powers of the Bank Board of Directors (the Board) and its Executive Director. Procedures and rules governing the Board also are set forth in this subchapter.

Subchapter 2 provides interpretations, definitions and word usage.

Subchapter 3 outlines the procedure for the issuance of PDCs. It includes the eligibility criteria for landowners as well as application requirements. It also outlines the procedures for the issuance of PDC certificates by the Bank and the use of conservation or agricultural easements. In addition, it establishes the required procedures involved with the sale, transfer, conveyance, encumbrance and redemption of PDCs.

Subchapter 4 sets forth the requirements of the Registry of Pinelands Development Credits, including its contents, availability to the public and requirement of an annual report. The Department proposes to amend N.J.A.C. 3:42-4.3 and 4.4 to provide that the Registry and

annual report are also available on the Bank's website and make that address known to the public.

Subchapter 5 enumerates the criteria to be considered by the Board in the purchase of credits by the Bank itself, including the definition of a hardship and the per credit price to be paid by the Bank.

The Department proposes to amend N.J.A.C. 3:42-5.5(b). That provision lists December 31, 1990 as the last date on which the Board may purchase PDCs. P.L. 1997, c. 282 extended that date to December 31, 2005. Currently, the Board is awaiting action by the Legislature to extend that date. As proposed to be amended, subsection (b) would track the controlling statutory provision specifying the date through which the Board is authorized to purchase PDCs.

Subchapter 7 establishes procedures and requirements regarding the sale of PDCs owned by the Bank. Two methods for such sales are permitted: open bidding at a duly advertised auction or receipt of written, sealed bids. In addition, this subchapter establishes criteria that govern the conveyance of PDCs at no cost. The Department proposes to amend N.J.A.C. 3:42-7.12(a)4 to correct a statutory reference.

Subchapter 9 addresses amendment of these rules by the Board or by petition of an interested person.

Subchapters 6 and 8 are reserved.

The Department proposes to amend the heading of Subchapter 7 to reflect that it is the Bank and not the Board that owns PDCs.

Lastly, the Department proposes to amend N.J.A.C. 3:42-5.6(a) and 7.3(b). N.J.A.C. 3:42-5.6(a) sets the purchase price to be paid by the Bank when it purchases PDCs. N.J.A.C. 3:42-5.6(b) provides that the Board may increase the price specified in subsection (a). When it

does so, the Board relies on the formula set out in N.J.A.C. 3:42-5.6(b) which tracks the market value of PDCs and permits a purchase price to be set by the Board that does not exceed 80 percent of the market value of a credit. N.J.A.C. 3:42-5.6(a) is proposed to be amended to set the purchase price for PDCs the Board acquires at \$74,000. This reflects the calculation of the market value for a PDC based on calendar year 2007 sales data as \$94,152, 80 percent of which is \$75,321. So as not to exceed the cap of 80 percent of market value as required in N.J.A.C. 3:42-5.6(b), the Board has determined that a \$74,000 purchase price for a PDC acquired by the Board satisfies the provisions of N.J.A.C. 3:42-5.6(b) since it does not exceed 80 percent of the market value for a PDC. The dollar amount currently stated in N.J.A.C. 3:42-7.3(b) is also proposed to be amended to \$74,000, together with the deletion of the reference therein to a one-quarter credit. The current reference for the minimum bid price on a one-quarter PDC is confusing and the Board proposes replacement language referring to fractional shares similar to the existing language in N.J.A.C. 3:42-5.6(a). N.J.A.C. 3:42-7.3(c) is also proposed to be deleted as it also refers to the quarter credit language being deleted, with subsections (d) through (f) being recodified as (c) through (e). The proposed increases in the PDC purchase price referenced in N.J.A.C. 3:42-5.6(a) and the minimum bid amount referenced in N.J.A.C. 3:42-7.3(b), respectively, will not substantially impair the private sale of PDCs, as they merely reflect the substantial appreciation in the real estate market in the years since the current amounts were established.

The Department is also reviewing possible changes to the PDC bidding process and the PDC redemption process. Such changes, if any, will be addressed in a separate notice of proposal in the future.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments will continue to provide a mechanism through which counties and local governments may foster the patterns of development called for under the Plan. The public will continue to benefit since the rules will further the preservation of open space and the conservation of groundwater resources.

Economic Impact

The rules proposed for readoption with amendments will continue to facilitate the use of PDCs as a method of providing equity to landowners whose property lies in areas ill-suited for development activity. The rules proposed for readoption with amendments create a market in which citizens and the Board may buy, sell and redeem credits. This provides an economic benefit to such landowners. The economic impact of the increase in the price at which the Bank may purchase or sell PDCs is discussed above in the Summary.

In addition, the rules proposed for readoption with amendments allow the Board to recoup the funds it expends in purchasing PDCs. These funds may then be used to purchase additional PDCs. Although developers seeking to purchase credits incur costs, these developers realize enhanced economic benefits from the ability to pursue residential development projects in designated growth areas of the Pinelands. The sale of credits is a voluntary program; bids are

submitted by willing participants only. Credits sold for more than the minimum bid should have a positive economic impact upon landowners entitled to PDCs.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for reoption with amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate the creation or loss of any jobs as a result of the rules proposed for reoption with amendments.

Agriculture Industry Impact

The rules proposed for reoption with amendments will have a positive impact on the agriculture industry in New Jersey. They will continue to provide a mechanism for compensation to New Jersey farmers for preserving their properties as agricultural. This, in turn, will ultimately benefit the agriculture industry by preserving agricultural lands in this State.

Regulatory Flexibility Analysis

The only reporting or recordkeeping requirements imposed by these rules proposed for reoption with amendments concern the procedures governing the sale and conveyance of Bank-owned PDCs. No reporting or recordkeeping requirements are imposed upon bidders for such credits or upon applicants for their conveyance at no cost. However, bidders and applicants are required to comply with the bidding and application procedures, respectively. While some of

these bidders and applicants may be “small businesses,” as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., there is typically no cost for professional services incurred. The bidding is conducted in substantially a standard manner, and the information required of a no-cost conveyance applicant is developed in the course of preparation for a Pinelands project. Accordingly, no differentiation is provided for small businesses.

Smart Growth Impact

The rules proposed for re adoption with amendments further the achievement of smart growth and the implementation of the State Development and Redevelopment Plan by encouraging the transfer of growth from designated protected areas to areas with existing infrastructure and support.

Full text of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:42.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:42-4.3 Availability of registry

(a) The Executive Director shall, upon reasonable notice, make the registry available for public inspection at the principal offices of the Bank. **It is also available on the Bank’s website at www.state.nj.us/dobi/pinelands/pinelandsbank.htm.**

(b) (No change.)

3:42-4.4 Annual report

(a) (No change.)

(b) The annual report shall also be made available to any person upon request. **It is also available on the Bank's website at www.state.nj.us/dobi/pinelands/pinelandsbank.htm.**

3:42-5.5 Completion of Board authorized purchases

(a) (No change.)

(b) No Pinelands Development Credit shall be purchased by the Board after [December 31, 1990] **the date, if any, specified in N.J.S.A. 13:18A-48 as the last date on which the Board may purchase Pinelands Development Credits.**

3:42-5.6 Purchase price

(a) The purchase price for Pinelands Development Credits acquired by the Board shall be [\$24,000] **\$74,000** for each Pinelands Development Credit or fraction of that amount which reflects that portion of a Pinelands Development Credit so acquired.

(b) (No change.)

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

3:42-7.3 Requirements governing all bidding

(a) (No change.)

(b) The minimum acceptable bid shall be [\$2,500] **\$74,000** for each [one-quarter of one] Pinelands Development Credit **or fraction of that amount which reflects that portion of**

a 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.

[(c) Pinelands Development Credits will be sold in one-quarter increments to the highest bidder or bidders, unless the Board expressly authorizes sales in larger increments.]

Recodify existing (d) - (f) as **(c) - (e)**. (No change in text.)

3:42-7.12 Application for conveyance of Board-owned Pinelands Development at no cost

(a) - (b) (No change.)

(c) The following information shall be included in applications for conveyance of Board-owned Pinelands Development Credits at no cost:

1. - 3. (No change.)

4. A duly adopted resolution granting preliminary subdivision or site plan approval pursuant to the Municipal Land Use Law (N.J.S.A. [40:55-1]**40:55D-1** et seq.):

5. - 8. (No change.)