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## **Subchapter 5. Determination of Allowable Costs: Fund and Trust**

### 7:22-5.1 Purpose

The rules in this subchapter represent the policies and procedures for determining the allowability of project costs for environmental infrastructure facilities based on Department and Trust policy, appropriate State cost principles and reasonableness.

### 7:22-5.2 Applicability

The cost information contained in this subchapter applies to Fund loan and Trust loan assistance awarded on or after the effective date of this subchapter. Project cost determinations are not limited to the items listed in this subchapter. Additional cost determinations based on applicable law and regulations not otherwise addressed herein shall be made on a project-by-project basis. Further, costs that become allowable as a result of adoption after June 30, 1995 of amendments to this chapter are not allowable costs for a supplemental loan if the project sponsor has received final payment under a Fund or a Trust loan agreement prior to the effective date of such amendments.

### 7:22-5.3 Definitions

Terms used in this subchapter are defined in accordance with N.J.A.C. 7:22-3.4 and 7:22-4.4, as appropriate.

### 7:22-5.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. For loan awards made in State Fiscal Year 1996 and later and for loan awards made in State Fiscal Year 1995 and earlier for which final payment has not been received under Fund or Trust loan agreements, the costs of subagreements for building the project, which may include a contingency line item of up to five percent of the building costs. The funds allocated in the contingency line item must first be used for allowable change orders associated with building activities. The contingency funds can be used for activities other than building provided the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26. A supplemental loan for differing site conditions will not include contingency funds;

2. The costs for establishing or using liaison services for small business concerns owned and controlled by socially and economically disadvantaged individuals pursuant to N.J.S.A. 7:22-9;

3. The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications;

4. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement, provided that:

i. The claim arises from work within the scope of the loan;

ii. Department and Trust approval has been received covering the costs before they are incurred;

iii. The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the recipient;

iv. The Department or Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

v. Meritorious claims are resolved in an expeditious manner.

5. Change orders for increased costs under subagreements as follows:

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i. Change orders provided:

- (1) The costs are within the scope of the project;
- (2) The costs are not caused by the recipient's mismanagement;
- (3) The costs are not caused by the recipient's vicarious liability for the improper action of others; and

(4) The costs, when added to the allowable costs due to the final building cost, do not exceed the allowable costs due to the low bid building cost. This limitation does not apply to increased allowable costs due to differing site conditions and such increased allowable cost may be eligible for reimbursement in accordance with the applicable Trust loan agreement and Trust bond resolution or in instances where a post-construction supplemental Fund or Trust loan is awarded.

ii. Provided the requirements of (a)5i above are met, the following is an example of allowable change orders and contractor claim costs:

(1) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.

iii. Settlements, arbitration awards, or court judgements, which resolve contractor claims shall be reviewed by the Department or the Trust, as appropriate, and are allowable only to the extent that they meet the requirements of (a)5i above, are reasonable, and do not attempt to pass on to the Department or the Trust the cost of events that were the responsibility of the recipient, the contractor, or others.

6. The costs of the recipient required by N.J.A.C. 7:22-3.30 or N.J.A.C. 7:22-4.30, as applicable, during the first year following initiation of operation of the project;

7. The cost of development of a plan of operation including an operation and maintenance manual;

8. Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.

(b) For loan awards made in State Fiscal Year 1996 and later and for loan awards made in State Fiscal Year 1995 and earlier for which final payment has not been received under Fund or Trust loan agreements, the actual costs for items (a)2 through 8 above will be allowable. For projects which received Fund or Trust loan awards in State Fiscal Year 1993, 1994 or 1995 and which have received the final payment under Fund and Trust loan agreements, the sum total of the allowable costs in (a)2 through 8 above, exclusive of building costs, is limited to 12 percent of the allowable building cost.

(c) The recipient's costs for architectural or engineering services or other services incurred in the planning and design of a project may either be reimbursed based on actual costs incurred or through the allowance for planning and design under N.J.A.C. 7:22-5.12.

(d) Unallowable costs related to subagreements include:

1. Except as provided in paragraph (a)5 above, architectural or engineering services or other services necessary to correct defects in a planning document, design drawings and specifications, or other subagreement documents;

2. The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

- i. The claim arises from work within the scope of the loan;
- ii. Department and Trust approval has been received covering the costs before they are incurred;

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iii. The claim cannot be settled without arbitration or litigation;

iv. The claim does not result from the recipient's mismanagement;

v. The Department or the Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

vi. In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.

3. Bonus payments for completion of building before a contractual completion date;

4. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the Fund or Trust loan closing unless an extension is specified in the project schedule approved by the Department or the Trust, as appropriate.

#### 7:22-5.5 Mitigation

(a) Allowable costs related to mitigation include:

1. Costs for measures necessary to mitigate direct, adverse, physical impacts resulting from building of the environmental infrastructure facilities or measures necessary to mitigate indirect impacts of the project as specified in the Fund or Trust loan agreement as a special condition;

2. The costs of site screening necessary to comply with the Environmental Assessment Requirements for State Assisted Environmental Infrastructure Facilities (N.J.A.C. 7:22-10), to complete related studies and plans, or necessary to screen adjacent properties;

3. The cost of monitoring facilities necessary to determine the possibility of water supply depletion, water quality deterioration or other environmental impacts resulting from building the project as specified in the Fund or Trust loan agreement as a special condition.

(b) Unallowable costs related to mitigation include:

1. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the environmental infrastructure facilities nor reflect regional architectural tradition; and

2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under the provisions of N.J.A.C. 7:22-10.

#### 7:22-5.6 Publicly owned small and on-site wastewater treatment systems

(a) Allowable costs for publicly owned small and on-site wastewater treatment systems serving residences and small commercial establishments include:

1. The cost of major rehabilitation, upgrading, enlarging and installing publicly owned small and on-site systems;

2. Conveyance pipes from property line to off-site treatment unit which serves a cluster of buildings;

3. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices;

4. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer;

5. The cost of restoring individual system building sites to their original conditions.

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(b) Unallowable costs for small and on-site wastewater treatment systems include:

1. Modification to the physical structure of homes or commercial establishments;
2. Conveyance pipes from the house to the treatment unit located on user's property or from the house to the property line if the treatment unit is not located on that user's property;
3. Wastewater generating fixtures such as commodes, sinks, tubs, and drains; and
4. The cost of rehabilitation, upgrade, enlarging and installing privately owned small and on-site systems (unless the Department determines that such a system constitutes, or is included within, a septage management district, in which case the Department may deem the public ownership requirement to be satisfied).

#### 7:22-5.7 Real property

(a) Allowable costs for land and rights-of-way include:

1. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement, provided the Department or the Trust, as appropriate, approves the cost and the cost is identified in the Fund or Trust loan agreement.

i. For wastewater treatment and stormwater management facilities, the costs of land that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment are allowable. These costs include:

(1) The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

(2) The cost of land acquired for a soil absorption system for a group of two or more homes;

(3) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment; and

(4) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

ii. For nonpoint source management facilities (except new landfill facilities), the costs of land that will be used to site the proposed facilities and the associated buffer zones and other areas as may be reasonable and necessary to implement the project;

iii. For land acquisition and conservation projects, the costs of fee simple purchase of land or easement acquisition for water quality protection including the cost of purchase or easement acquisition (based on fair market value) of the parcel(s).

iv. For water supply facilities, the costs of land needed to locate eligible water supply facilities in conformance with the Federal Safe Drinking Water Act Amendments are allowable.

2. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services;

3. The cost associated with the preparation of the environmental infrastructure facilities site before, during, and, to the extent agreed on in the loan agreement, after building. These costs include:

i. The cost of demolition of existing structures on the environmental infrastructure facilities site (including rights-of-way) required based on health, safety, aesthetic reasons or by local code requirements;

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ii. The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the recipient is legally obligated to pay under State or local law; and

iii. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction. For wastewater treatment facilities, the allowable cost of pavement restoration is limited to the existing paving width and, in no case, shall the allowable cost exceed the cost of restoring two lanes and abutting shoulders. For water supply facilities, the allowable cost of pavement restoration is limited to the width of the trench in which the pipeline is located.

4. The cost of acquiring all or part of existing publicly or privately owned environmental infrastructure facilities provided all the following criteria are met:

i. The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control or water supply benefits;

ii. The acquired environmental infrastructure facilities were not built with previous State, Federal, Trust or Pinelands Infrastructure Trust financial assistance;

iii. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and

iv. The acquisition does not circumvent the requirements of these regulations, or other federal, State or local requirements.

(b) Unallowable costs for land and rights-of-way include:

1. The costs of acquisition (including associated legal, administrative and engineering, etc.) of land to locate wastewater treatment and stormwater management facilities except as provided in (a)1i above.

2. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of negotiation or any condemnation proceeding, as determined by the Department or the Trust, as appropriate.

3. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

4. The cost of land acquired to site new landfill facilities.

7:22-5.8 Equipment, materials and supplies

(a) Allowable costs of equipment, materials and supplies include:

1. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation;

2. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation;

3. Cost of shop equipment installed at the environmental infrastructure facility necessary to the operation of the facility;

4. The costs of necessary safety equipment, provided the equipment meets applicable federal, State, local or industry safety requirements;

5. A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded by the Fund or Trust loan. This calculation shall be based on:

i. The portion of the total collection system paid for by the loan;

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ii. A demonstrable frequency of need; and

iii. The need for the requirement to preclude the discharge or bypassing of untreated wastewater.

6. The cost of mobile equipment necessary for the operation of the overall environmental infrastructure facility, transmission of water, wastewater or sludge, or for the maintenance of equipment. These items include:

i. Portable stand-by generators;

ii. Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

iii. Septage tankers, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.

7. Replacement parts identified and approved in advance by the Department or the Trust, as appropriate, as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i. Not immediately available and/or whose procurement involves an extended "lead-time";

ii. Identified as critical by the equipment supplier(s); or

iii. Critical but not included in the inventory provided by the equipment supplier(s).

(b) Unallowable costs of equipment, materials and supplies include:

1. The costs of equipment or material procured in violation of the procurement requirements;

2. The cost of furnishings including draperies, furniture and office equipment;

3. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

4. The cost of vehicles for the transportation of the recipient's employees;

5. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

#### 7:22-5.9 Industrial and Federal users of wastewater treatment facilities

(a) Except as provided in (b)1 below, allowable costs for wastewater treatment facilities serving industrial and federal facilities include development of a municipal pretreatment program approvable under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq. and purchase of monitoring equipment and construction of facilities to be used by the municipal wastewater treatment facilities in the pretreatment program.

(b) Unallowable costs for wastewater treatment facilities serving industrial and Federal facilities include:

1. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq.;

2. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal wastewater treatment facilities;

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3. All incremental costs for sludge management incurred as a result of the recipient providing removal credits to industrial users beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.

4. The cost of interceptor or collector sewers constructed exclusively, or almost exclusively, to serve industrial users; and

5. The cost for control or removal of pollutants in wastewater introduced into the wastewater treatment facilities by industrial users, unless the local government unit is required to remove such pollutants introduced from nonindustrial users.

#### 7:22-5.10 Infiltration/inflow and reserve capacity

(a) Allowable costs related to infiltration/inflow and reserve capacity include:

1. The cost of the wastewater treatment facilities' capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-3.35 or 4.35, as applicable, and reserve capacity in accordance with N.J.A.C. 7:22-3.36 or 4.36, as applicable.

2. The cost of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system evaluation survey under N.J.A.C. 7:22-3.35 or 7:22-4.35, as applicable.

(b) Unallowable costs related to infiltration/inflow and reserve capacity include:

1. The incremental cost of the wastewater treatment facilities capacity which is more than 120 gallons per capita per day for existing flows and flow projections calculated in accordance with N.J.A.C. 7:14A-23.3 or 7:15-5.18 is an unallowable cost under a Fund or Trust loan agreement.

2. All costs related to reserve capacity are unallowable except as provided for under the provisions of N.J.A.C. 7:22-3.36 and 4.36.

#### 7:22-5.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. For loan awards made in State Fiscal Year 1996 and later and for loan awards made in State Fiscal Year 1995 and earlier for which final payment has not been received under Fund or Trust loan agreements, the costs of salaries, benefits and expendable materials the recipient incurs for the project. However, the allowable portion of these administrative costs, including the administrative costs listed in (a)3, 4, 5 and 6 below, will be limited to three percent of the low bid building cost. If a project receives a post-construction supplemental Fund or Trust loan for costs arising from differing site conditions, the allowable administrative costs for the portion of the project funded by the post-construction supplemental Fund or Trust loan is limited to three percent of the allowable building costs due to differing site conditions. The three percent limit may be exceeded only in instances where the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve a greater amount through line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26. For loan awards made prior to State Fiscal Year 1996 and for which final payment has been made to the project sponsor, administrative cost funding for this paragraph and (a)3 and 4 below for up to one percent is allowable.

2. The costs of additions to environmental infrastructure facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Federal Safe Drinking Water Act Amendments, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments and/or the Bond Acts and that fail to meet the performance standards as specified in the Fund or Trust loan agreement, provided:

i. The project is identified on the Project Priority List as a project for additions to environmental infrastructure facilities that have received previous State or Federal funds;

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ii. The loan application for the additions includes an analysis of why the environmental infrastructure facilities cannot meet the specified performance standards; and

iii. The additions could have been included in the original grant or loan award; and

(1) Are the result of one of the following:

(A) A change in the specified performance standards required by the State or the United States Environmental Protection Agency (EPA);

(B) A written understanding between the Regional Administrator of EPA and grantee prior to or included in the original Federal grant award;

(C) A written understanding between the Department and the recipient prior to or included in the original Fund loan award;

(D) A written understanding between the Trust and the recipient prior to or included in the original Trust loan award;

(E) A written understanding between the Pinelands Commission and the recipient prior to or included in the original Pinelands grant or loan award;

(F) A written direction by the Regional Administrator of EPA or the Department or the Pinelands Commission or the Trust to delay building part of the environmental infrastructure facilities; or

(G) A major change in the environmental infrastructure facilities' design criteria that the recipient cannot control; or

(2) Meet all of the following conditions:

(A) The environmental infrastructure facilities have not completed their first full year of operation;

(B) The additions are not caused by the recipient's mismanagement or the improper actions of others;

(C) The costs of rework, delay, acceleration or disruption that are a result of building the additions are not included in the loan; and

(D) The loan does not include an allowance for facilities planning or design of the additions.

iv. This provision applies to failures that occur either before or after the initiation of operation. This provision does not cover environmental infrastructure facilities that fail at the end of their design life.

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Department or the Trust, as appropriate.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the environmental infrastructure facilities, if approved in advance by the Department or the Trust, as appropriate.

5. Costs of bond counsel, financial advisor, bond issuance and other expenses incidental to the approval, preparation and sale of bonds, notes or obligations of the project sponsor that are necessary to finance the project and the interest on the bonds, notes or obligations.

6. Costs of fees for permits required for the building of the project.

7. Costs for the construction of that portion of the house connection (service lateral) owned by the project sponsor and to which the project sponsor has access by easement for maintenance and repair.



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8. Costs associated with the purchase and installation of security measures, including, but not limited to, such items as fencing, cameras, lighting or video equipment.

(b) Unallowable miscellaneous costs include:

1. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies;
2. Preparation of applications and permits required by Federal, State or local regulations or procedures;
3. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government;
4. Costs of fees for permits required for the operation of the project, including the NJPDES permit pursuant to N.J.A.C. 7:14A;
5. The costs of replacing, through reconstruction or substitution, environmental infrastructure facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Federal Safe Drinking Water Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments and/or the Bond Acts and that fail to meet their performance standards. This provision applies to failures that occur either before or after the initiation of operation but does not apply to environmental infrastructure facilities that fail at the end of their design life;
6. Personal injury compensation or damages arising out of the project;
7. Fines and penalties due to violations of, or failure to comply with, Federal, State or local laws, regulations or procedures;
8. Costs outside the scope of the approved project;
9. Costs for which grant or loan payment has been or will be received from another federal or State agency for the project;
10. The cost of environmental infrastructure facilities that would provide wastewater treatment capacity or water supply service for new habitation or other establishments to be located on environmentally sensitive land (See N.J.A.C. 7:22-10.5(b)7);
11. The costs of preparing a corrective action report required by N.J.A.C. 7:22-3.30(b)1 or 4.30(b)1, as applicable;
12. The cost of the construction of dams or rehabilitation of dams for water supply purposes;
13. The cost of purchasing water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy in accordance with the Federal Safe Drinking Water Act Amendments;
14. The cost of building reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the water treatment facility is located; and
15. Laboratory fees for monitoring and other routine operation and maintenance expenses.

#### 7:22-5.12 Allowance for planning and design

(a) For projects whose sponsor does not seek reimbursement of actual planning and design costs, this section provides the method the Department and the Trust will use to determine both the estimated and final allowance under N.J.A.C. 7:22-3.34 and 4.34, planning and design. The Fund or Trust loan agreement will include an estimate of the allowance.

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(b) The Fund or Trust share of the allowance may be up to 100 percent of the allowance and shall be based upon the percentage of the Fund or Trust share of the low bid building cost. An increase in the planning and/or design allowance will not be made for increased building costs to address differing site conditions.

(c) The allowance is not intended to reimburse the recipient for costs actually incurred for planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (that is, reimbursement on a dollar-for-dollar basis) will not be appropriate.

(d) The estimated and final allowance will be determined in accordance with this section and Table 1 below. In the event the recipient received a Federal grant, Sewage Infrastructure Improvement Act funding, Pinelands funding, or Safe Drinking Water Act funding for facilities planning, the amount of the allowance is computed by subtracting the amount of the other State or Federal funding for facilities planning from the appropriate allowance computed using Table 1.

(e) The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending environmental infrastructure facilities, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

1. The initial award amount of all prime subagreements for building the project;
2. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project;
3. The purchase price of eligible real property.

(f) The estimated allowance is to be based on the estimate of the initial allowable building cost.

(g) The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

(h) The recipient may request payment of 50 percent of the Fund or Trust share of the estimated allowance immediately after the Fund or Trust loan award. Final payment of the Fund or Trust share of the allowance may be requested in the first disbursement after the recipient has awarded all prime subagreements for building the project, received the Assistant Director's or the Trust's approval, as appropriate, for force account work, and completed the acquisition of all eligible real property.

(i) The allowance does not include architect or engineering services provided during the building of the project, for example, reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or other applicable procurement method authorized under State law.

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TABLE 1

ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

<u>Allowable Building Cost</u>	<u>Allowance</u>
\$1,000,000 or less	25 percent of the allowable building cost; up to a maximum of \$250,000
\$1,000,000 to \$10,000,000	\$250,000 plus 12 percent of the allowable building cost over \$1,000,000; up to a maximum of \$1,330,000
\$10,000,000 to \$100,000,000	\$1,330,000 plus six percent of the allowable building costs over \$10,000,000; up to a maximum of \$6,730,000
over \$100,000,000	\$6,730,000 plus five percent of the allowable building cost over \$100,000,000

7:22-5.13 Planning and design costs for Level 3 projects

For projects which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recipient's costs actually incurred for planning and design activities are allowable for Fund and Trust loans.

7:22-5.14 Waivers

(a) Upon application of any Trust loan recipient or potential Trust loan recipient (the "applicant"), the Trust shall waive the application of any provision in this subchapter as applied to any Trust loan upon finding the following:

1. Unusual circumstance(s) beyond the control of the applicant has or will cause an adverse economic impact on the applicant;
2. The granting of the requested waiver would serve to alleviate the adverse economic impact of such unusual circumstance(s) on the applicant; and
3. The granting of the requested waiver is consistent with the purposes and objectives of the Trust Act, the Bond Act or other appropriations to the Trust for the purpose of providing financing to eligible projects, and any amendatory or supplementary acts thereto.