

FEE POLICY			
Developed by:	Corporate Services		
Policy Applies To:	All Employees/Board Members/Volunteers		
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1.0 Background

Amendments to the *Conservation Authorities Act* were undertaken in 2020 to clarify the programs and services that conservation authorities (CAs) deliver. In 2021, *O. Reg. 686/21 Mandatory Programs and Services* provided additional clarity regarding the programs and services that CAs are required to provide. In April, 2022 the Minister of Environment, Conservation and Parks released *Policy: Minister's list of classes of programs and services in respect of which conservation authorities may charge a fee* ("Minister's List"). CAs may only charge a fee for a program or services that it provides if it is set out in the Minister's List. The Minister's List identifies that CAs may charge a fee for mandatory, municipal and other programs and services where the user-pay principle is appropriate.

The Minister's List replaces the 1997 *Policies and Procedures for the Charging of Conservation Authority Fees* which was approved by the Minister of Natural Resources and Forestry. The new Minister's List will come into effect on January 1, 2023. This policy document is intended to fulfill the requirement for each authority to adopt a written policy with respect to the fees that it charges for the programs and services it provides.

2.0 Legislation

On January 1, 2023, the *Conservation Authorities Act* is amended by enacting section 21.2 (1)-(12) "Fees for Programs and Services". Subsection (1) enables the Minister to determine the classes of programs and services in respect of which an authority may charge a fee and (2) requires to the minister to publish a List in a policy document. CAs may only charge a fee for a program or service that it provides if it is set out on this list.

Under the *Conservation Authorities Act*, programs and services delivered by conservation authorities include:

- Mandatory programs and services
Mandatory programs and services that the conservation authority is required to provide [see 21.1 for further details]. These services are further defined in *O. Reg. 686/21: Mandatory Programs and Services* and may be funded by provincial grants, other sources, municipal apportionment and/or conservation authority self-generated revenue (i.e., user fees) where the user-pay principle is appropriate.
- Municipal programs and services
Programs and services that an authority agrees to provide on behalf of a municipality under a MOU or agreement [see 21.1.1 for further details]. The program or service may be funded by the municipality or by other funding mechanisms (i.e., user fees where the user-pay principle is appropriate) as per the MOU or agreement.
- Other programs and services
Programs and services that an authority determines are advisable to further the purposes of the Act [see 21.1.2 for further details]. The program or service may be funded by the municipality or by other funding mechanisms (i.e., user fees where the user-pay principle is appropriate) as per the cost apportioning agreement and the Minister's List.

3.0 Policy Scope

This policy applies to all classes of programs and services for which NPCA may charge a fee. This policy does not include those instances where NPCA is already authorized under another statute to charge a fee for a program or service (i.e., Building Code Act, the Clean Water Act).

4.0 Policy Principles and Statements

4.1 Minister's Fee Classes Policy

Section 21.2 of the *Conservation Authorities Act* requires a conservation authority to administer the charging of fees in a transparent and accountable manner by adopting and publishing a written fee policy, which includes a fee schedule that lists the programs and services for which an authority charges a fee and the amount to be charged. Conservation authorities must maintain their fee schedule and if an authority wishes to make changes to its fee schedule, it must notify the public of the proposed change

A conservation authority is permitted to charge a fee for a program or service only if the program or service is included in the Minister's list of classes of programs and services in respect of which a conservation authority may charge a fee. The Minister's published list of classes of programs and services in respect of which a conservation authority may charge a fee ("Minister's Fee Classes Policy") is provided as per the provisions set out in section 21.2 of the *Conservation Authorities Act*. From time to time, the Minister may make changes to the list and shall promptly update the policy document and distribute to each conservation authority.

The Minister's Fee Classes Policy does not include those instances where the authority is already authorized under another statute to charge a fee for a program or service (i.e., the *Building Code Act*, the *Clean Water Act*, etc.)

User-Pay Principle

The fees that conservation authorities charge, in accordance with the Minister's Fee Classes Policy, are considered 'user fees.' 'User fees' are fees paid to an authority by a person or organization for a service that they specifically benefit from. This includes use of a public resource (i.e., park access or facility rental) or the privilege to do something (i.e., receive an approval through a permit or other permission to undertake a regulated activity).

For the purposes of this Minister's Fee Classes Policy, a fee may only be applied when the User-Pay Principle is considered appropriate, which is when there is a class of persons that directly benefits from a program or service delivered by an authority.

The following is a list of classes of programs and services in respect of which an authority may charge a fee.

Category 1 Mandatory Programs and Services (CA Act Section 21.1)

Criteria: Category 1 programs and services where the following requirement is met:

- User-Pay Principle is appropriate.

Category 2 Municipal Programs and Services (CA Act Section 21.1.1)

Criteria: Category 2 programs and services where both the following requirements are met:

- User-Pay Principle is appropriate; and
- The parties agree through provisions in a memorandum of understanding, service level agreement, or other agreement governing the provision of the Category 2 program or service that the authority should be permitted to charge a fee for that program or service.

Category 3 Authority Determined Programs and Services (CA Act Section 21.1.2)

Criteria: Category 3 programs and services that are financed in whole or in part by the municipal levy, on Jan. 1, 2024 will require a cost apportioning agreement, and where both the following requirements are met:

- User-Pay Principle is appropriate; and
- Where a cost apportionment agreement has been entered into for a Category 3 program or service, the agreement includes provisions permitting the authority to charge a fee for the program or service. This requirement does not apply where the cost apportionment agreement relates to any of the following Category 3 programs and services:
 - i) Recreational activities that are provided on land that is owned or controlled by the authority with the direct support or supervision of staff employed by the authority or by another person or body, or with facilities or other amenities maintained by the authority, including equipment rentals and renting facilities for special events.
 - ii) Community relations to help establish, maintain, or improve relationships between the authority and community members.
 - iii) Public education services to improve awareness of issues relating to the conservation, restoration, development, and management of natural resources in watersheds in Ontario.
 - iv) The provision of information to the public.
 - v) The sale of products by the authority.

Category 3 Authority Determined Programs and Services (CA Act Section 21.1.2)

Criteria: Category 3 programs and services that are not financed in whole or in part by the municipal levy, and where the following requirement is met:

- User-Pay Principle is appropriate.

5.0 Eligible Costs

Fees are dependent on the complexity of applications and the level of effort required to administer the application or deliver the program or service.

Eligible costs may include (but are not limited to):

- Staff salaries, mandatory payroll taxes, discretionary benefits, training, professional membership dues and other related payroll costs
- Appropriate percentage of salary and overhead for staff or consultants who support the program or service (i.e., administration, (GIS) and information technology, engineering, surface water and groundwater specialists, source water protection, natural heritage, property management, senior staff/management
- Compliance costs (i.e., inspection of approved permits, potential violations and enforcement)

- Overhead costs associated with office space (lease, building maintenance/operations, computers/networks, etc.)
- Vehicle operating costs associated with program delivery (i.e., acquisition, depreciation, maintenance, insurance, gas, etc.)
- Equipment and software (i.e., mobile phones, cameras, GPS, safety equipment, software, etc.)
- Legal expenses (i.e., annual expenses and contingency reserves) and insurance (liability, directors and officers, errors and omissions)
- Maintenance and development of public resources (i.e., website, fact sheets, etc.)
- Other supply costs (paper, postage, courier, etc.)
- Other reasonable indirect costs that are associated with service delivery
- Allocated cost of assets used to deliver services

6.0 Determining Fees

Fees are necessary to finance NPCA's programs and services in the absence of sufficient provincial or municipal funding or as a means of generating revenues to support programs and/or services.

Unless otherwise prescribed by the Minister through regulation, NPCA determines the amount of the fee based on consideration of eligible costs noted above, and the following issues and data, where and when relevant:

- Analysis of trends in workload changes, shifts in market and types of applications
- Consultation with developers/municipalities about work effort, new planning and legislative requirements and streamlining
- Conservation Authority fee recovery direction and standards for programs and services as set by NPCA's Board of Directors.
- Fees for planning and permitting services should be set to recover but not exceed the costs associated with administering and delivering the services on a program basis.
- Statistics of numbers of applications and annual changes, where required
- Level of service and review turn-around timing
- Areas of improvement of level of service/staffing demands
- Cost cutting measures
- Reserve fund requirements
- Identification of specific/specialized municipal requirements
- Trends in legal costs associated with Ontario Land Tribunal (OLT) decisions and other legal services
- Fees charged by the private sector for similar services
- Relevant market considerations
- Nature and level of fees charged by local municipalities and other agencies for related services
- Opportunities to harmonize fees with neighbouring conservation authorities where costs for similar services are comparable

In addition, the Board will consider the impact of fees on program delivery, the nature of the request and fair-market-value of similar services in the private sector to prevent a situation of unfair competition, inappropriate application of taxpayer subsidized services and excessive use of limited staff resources.

7.0 Consultation

NPCA will give public notice on the NPCA website of the date that the proposed Fee Policy will be tabled

at the Board of Directors meeting for review. The public will be provided the opportunity to speak to the proposed policy at the relevant NPCA Board meeting(s), prior to consideration and approval by the Board [CA Act S.21.2 (8): Every authority shall make the fee policy available to the public in a manner it considers appropriate].

8.0 Reconsideration of Fees

The Fee Policy and Schedule has been approved by NPCA Board of Directors and is administered and applied by staff of the NPCA.

Any individual or organization who considers that NPCA has charged a fee that is contrary to the fees set out in the fee schedule, or that the fee set out in the fee schedule is excessive in relation to the service or program for which it is charged, may apply to NPCA in accordance with the procedures set out in the fee policy and request that it reconsider the fee that was charged. Any minor or routine reconsideration can be approved by the CAO.

Upon reconsideration of a fee that was charged for a program or service provided by NPCA, the authority may,

- (a) order the person to pay the fee in the amount originally charged;
- (b) vary the amount of the fee originally charged, as the authority considers appropriate; or
- (c) order that no fee be charged for the program or service.

If NPCA receives a request for reconsideration of a fee charged for an application for a permit made under subsection 28.1 (2), the authority shall make its decision within 30 days after receiving the request.

Any minor or routine reconsideration to plan review or permit fees can be approved by the CAO and/or designated board approved planning and permitting signatory as per CA Act Section 28(2)

On a day to be named by proclamation of the Lieutenant Governor, the CA Act will be amended relative to delegation of power (Section 28.4) as follows:

An authority may delegate any of its powers relating to the issuance or cancellation of permits under the CA Act or the regulations, or to the holding of hearings in relation to the permits, to the authority's executive committee or to any other person or body, subject to any limitations or requirements that may be prescribed by regulation.

Upon the date of proclamation, this policy is deemed to have been updated to incorporate section 28.4 of the CA Act.

Appeals Process

If an appellant wishes to appeal a fee:

- (a) The appellant must submit a written request to the CAO/Secretary-Treasurer for an administrative review of the fee and the reasons for the reconsideration request. The CAO/Secretary-Treasurer shall review the request and notify the appellant of the decision.
- (b) If the appellant is not satisfied with the decision of the CAO/Secretary-Treasurer, the appellant may request reconsideration of the appeal by the NPCA Board of Directors in writing with reasons for the appeal. Once heard or reviewed by the Board of Directors, the appeal will be dismissed or upheld through a resolution. The appellant will be notified accordingly of the Board's decision.

In making their decision, the CAO/Secretary-Treasurer and/or the Board of Directors will consider the scope of work required to administer and review the application and supporting technical reports; the nature of the project or request, and the associated risk to the resource affected.

If NPCA fails to reconsider a fee as described in section 8.0 within 30 days of receiving the request for reconsideration, the individual or organization who made the request may appeal the amount of the fee directly to the Ontario Land Tribunal.

If, after reconsideration of a fee charged for an application for a permit made under subsection 28.1 (2), NPCA orders a person to pay the fee under clause (12) (a) or (b), the person shall pay the fee in accordance with the order.

Further to reconsideration of the fee charge, an individual or organization who pays a fee under may,

- (a) when paying the fee, indicate to NPCA in writing that the fee is being paid under protest; and
- (b) within 30 days after payment of the fee, appeal the amount charged by NPCA upon reconsideration to the Ontario Land Tribunal.

For greater certainty, an appeal of the amount of a fee applies even if the amount charged was set out in the fee schedule prepared by the NPCA.

The Ontario Land Tribunal shall hear the appeal. After hearing the appeal, OLT may,

- (a) dismiss the appeal;
- (b) vary the amount of the fee charged by the NPCA; or
- (c) order that no fee be charged.

The OLT may order that NPCA provide a refund to the appellant in such amount as the Tribunal determines.

The OLT shall dismiss the appeal if it determines that the fee complies with a regulation made under clause 40 (3) (b) of the Conservation Authorities Act.

10.0 Review

10.1 Fee Policy Review

In keeping with the Conservation Authorities Act, S.21.2 (9), the Fee Policy will be reviewed by NPCA Staff every five years and propose any changes to the Policy to the Board of Directors for approval.

10.2 Fee Schedule Review

The Fee Schedule will be reviewed annually in conjunction with the annual budgeting process. NPCA shall give notice of the review and any proposed revisions to the Fee Schedule, by way of posting a notice on the NPCA website and posted in the administrative office, that the Fee Schedule will be reviewed and brought forward for approval on an identified date, at an open meeting of the Authority's Board of Directors.

Once approved, the revised Fee Schedule will be published on NPCA's website and distributed to stakeholders upon request.

If, after a review of a fee schedule or at any other time, the NPCA Board of Directors wishes to make a change to the list of fees set out in the fee schedule or to the amount of any fee or the manner in which a fee is determined, the authority shall give notice of the proposed increases or revisions to the Fee Schedule, by way of posting a notice on the NPCA website and posted in the administrative office, that the Fee Schedule will be reviewed on an identified date, at an open meeting of the Authority's Board of Directors.

Clerical/housekeeping: NPCA reserves the right to make minor deletions, additions or other administrative changes to both the Fees Policy and Fees Schedule in order to ensure records are correct and complete.

11.0 Resources

Conservation Authorities Act, R.S.O. 1990, c. C.27 (<https://www.ontario.ca/laws/statute/90c27>)

Policy: Minister's list of classes of programs and services in respect of which conservation authorities may charge a fee (*April 11, 2022*)

Policies and Procedures for Conservation Authority Plan Review and Permitting Activities
(*May 2010*)