

# Reference Document

## Categories of Conservation Authority Programs and Services

### April 27, 2022

#### Preamble

This document is intended as a reference for conservation authorities (CAs), municipalities and others who want to understand how CA programs and services are required to be classified based on categories of programs and services under the Conservation Authorities Act (CAA) and its regulations. Accurate classification of programs and services by category informs how CAs apportion operating expenses and capital costs to participating municipalities (i.e., “levy”), and where applicable, how CAs determine which amounts are owing by specified municipalities to finance CA programs and services.

The CAA establishes three categories of programs and services that a CA may provide in the area over which it has jurisdiction:

- Category 1: mandatory programs and services, which are those that a CA is required to provide (s. 21.1)
- Category 2: municipal programs and services, which are those that a municipality, situated in whole or in part within a CA’s area of jurisdiction, requests the authority to provide on behalf of the municipality pursuant to a memorandum of understanding (MOU) or other agreement (s. 21.1.1)
- Category 3: other programs and services that the CA determines are advisable to provide to further the purposes of the CAA (s. 21.1.2)

Section 21.1.4 of the CAA and Ontario Regulation (O. Reg.) 687/21 (Transition Plans and Agreements for Programs and Services Under Section 21.1.2 of the Act) require CAs to develop inventories of their programs and services based on the categories set out by the CAA and consult on the inventories with their participating municipalities. Where it is considered advisable, a CA may also choose to circulate the inventory to any other municipality (e.g., a specified municipality) with which they have entered into, or intend to enter into, a MOU or other agreement. O. Reg. 402/22 (Budget and Apportionment) and O. Reg. 401/22 (Determination of Amounts Under Subsection 27.2 (2) of the Act) also require CAs to apportion operating expenses and capital costs based on the category of program or service. In general, participating/specified municipalities are required to fund all mandatory category 1 programs and services through the municipal apportionment but may exercise discretion over which non-mandatory category 2 and 3 programs and services to fund.

## Categories of CA programs and services

### Category 1 – Mandatory Programs and Services

Category 1 programs and services are mandatory programs and services that a CA shall provide within its area of jurisdiction and do not require an agreement with participating or specified municipalities<sup>1</sup> to apportion costs related to these programs or services. As noted above, these programs or services must also be listed as part of the inventory required under O. Reg. 687/21 (Transition Plans and Agreements).

The category 1 programs and services are set out under s. 21.1 of the CAA and in O. Reg. 686/21 (Mandatory Programs and Services). Included are programs and services related to:

- Managing the risk of natural hazards
- Conservation and management of lands owned or controlled by the authority
- The authority's duties, functions and responsibilities as a source protection authority under the *Clean Water Act, 2006*
- Implementation of the provincial groundwater monitoring program and the provincial stream monitoring program

The Lake Simcoe Region Conservation Authority must also provide programs and services related to its duties, functions and responsibilities under the *Lake Simcoe Protection Act, 2008*. Additionally, North Bay-Mattawa Conservation Authority is responsible for the enforcement of provisions related to sewage systems as prescribed under the *Building Code Act, 1992*.

On or before December 31, 2024, CAs are also required, as a mandatory program and service, to develop and implement a watershed-based resource management strategy. The watershed-based resource management strategy must include the components identified in ss. 12 (4) of O. Reg. 686/21, such as guiding principles and objectives that inform the design and delivery of category 1 programs and services, a summary of information on natural resources the CA relies on within its area of jurisdiction/watershed that directly informs and supports the delivery of category 1 programs and services, a review of the effectiveness of the delivery of category 1 programs and services and a process for the periodic review and update of the strategy.

The watershed-based resource management strategy can include category 2 and 3 programs and services, but only if the appropriate agreements are in place with the relevant municipalities that include provisions that those programs and services be included in the strategy. For example, sub-watershed planning for land use planning

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<sup>1</sup> A specified municipality is a municipality that is designated as a participating municipality under the *Clean Water Act, 2006* or the *Lake Simcoe Protection Act, 2008* but that is not one of the authority's participating municipalities under the CAA.

purposes is a responsibility of the planning authority, usually a municipality, under the Provincial Policy Statement, 2020 and provincial plans. This category 2 program/service is outside of the scope of the watershed-based resource management strategy unless an MOU (or such other agreement) with a municipality clearly states that this program or service may be addressed within the strategy.

CAs must list each category 1 program or service as part of the inventory required under O. Reg. 687/21 (Transition Plans and Agreements). CA must also explain why, in the authority's opinion, each Category 1 program or service falls into the specified type of mandatory program and service and, if the authority has concerns about how to classify certain programs and services, explain those concerns.

See the **appendix** of this document for examples of category 1 programs and services.

### Category 2 - Municipal Programs and Services

Category 2 programs and services are municipal programs and services that a CA agrees to provide at the request of and on behalf of a municipality pursuant to s. 21.1.1 of the CAA. Category 2 programs and services are related to the mandate and responsibilities of a municipality and are often, but not always, required by law. These are programs or services for which a municipality has sought a CA's technical expertise and/or project management skills (e.g., in resource management) to support the municipality in satisfying its responsibilities or achieving a specific objective within its jurisdiction. For example, municipalities have broad spheres of jurisdiction under the *Municipal Act, 2001* and *Planning Act*, including over the natural environment, and may wish to engage CAs to fulfill their mandate.

These municipal programs or services are requested by and provided on behalf of individual municipalities in a CA and within their geographic area of jurisdiction. However, multiple municipalities located within the CA's jurisdiction may make similar requests that a CA to provide the same program or service on their behalf. For example, many municipalities may request their CA to assist them with making decisions regarding development proposals under the *Planning Act* and how the proposals impact the natural heritage policies under the Provincial Policy Statement, 2020.

General considerations to assist a CA in determining if a program and service is category 2:

- The program or service is not a mandatory CA program or service prescribed by O. Reg. 686/21.
- Municipalities are required by law to deliver the program or service or a municipality has a local mandate to deliver the program or service.
- If the CA did not deliver the program or service, it would be delivered by the municipality.

Each category 2 program or service is required to have an MOU (or such other agreement) and the program or service must be listed as part of the inventory required under O. Reg. 687/21 (Transition Plans and Agreements). The inventory must also include, for each category 2 program and service, the name of the municipality on behalf of which the program or service is provided and the date on which the authority and the municipality entered into a MOU (or such other agreement) with respect to the provision of the program or service.

See the **appendix** of this document for examples of category 2 programs and services.

### Category 3 – CA-Determined Programs and Services

Category 3 programs and services are those that a CA has determined are advisable to provide within its area of jurisdiction to further the purposes of the CAA. As these programs and services are provided on a CA's own initiative, the geographic scope of the program or service may extend into several participating municipalities or be provided throughout the CA's jurisdiction. These programs and services are determined at the CA level and are beyond those that the province has set out as being required, or that a municipality has indicated it would like the CA to deliver on its behalf.

If the CA wishes to finance a category 3 program and service in whole or in part by apportionment, the CA must seek a decision from each participating municipality about whether they wish to continue funding that particular program or service. If in favour, the participating municipality(ies) would be required to enter into a cost apportioning agreement with the CA in order to continue funding the program or services through municipal apportionment. Depending on independent municipal decisions, this could result in a differing application of the category 3 program or service within the CA's jurisdiction.

A municipality is under no obligation to fund a category 3 program or service in the municipality's jurisdiction through apportionment. A municipality that agrees to fund a category 3 program or service is in essence agreeing with the CA that the program and service has local value and should continue to be provided.

General considerations to assist a CA in determining if a program and service is category 3:

- The program or service is not a mandatory CA program or service prescribed by O. Reg. 686/21.
- Municipalities are not required by law to provide the program or service or a municipality has not requested that the CA provide the program or service to meet a local mandate.
- The program or service is optional and is being delivered at the recommendation of the CA.

Any category 3 program or service must be listed as part of the inventory required under O. Reg. 687/21 (Transition Plans and Agreements). CAs must also indicate whether or not the program or service was financed, in whole or in part, through municipal levies and whether the authority intends to seek to enter into a cost apportioning agreement with one or more participating municipalities to ensure all or part of the financing of the program or service after the transition date (January 1, 2024).

See the **appendix** of this document for examples of category 3 programs and services.

### 'General' functions

To deliver category 1, 2 and 3 programs and services, CAs may perform functions that are not related to the provision of a program or service that they provide. These supporting functions are sometimes described collectively as “corporate administration” or “corporate services,” and are to be grouped under “general operating expenses” and “general capital costs” in accordance with O. Reg. 402/22 (Budget and Apportionment regulation). These functions could include the following where the operating expense or capital cost is not related to the provision of a program or service:

- Governance
- General management
- Clerical or financial (e.g., accounting, payroll) activities
- Legal support
- Salaries or portions of salaries not related to the provision of a program or service
- Office equipment and supplies
- Office space
- Office maintenance
- Insurance and property taxes
- Vehicles, machinery and workshop space

For the purposes of the inventory that CAs are required to prepare, these functions that are not related to a specific category of program or service and may be recorded as “general”.

### **Programs and services that appear to fall into more than one category**

In some cases, CAs conduct activities that cut across more than one category of program or service. For example, a CA could review a single planning application for its consistency with natural hazards policies under the *Planning Act* (category 1) while at the same time review the application for consistency with natural heritage policies in accordance with an MOU (or such other agreement) with a municipality (category 2). Under the *Clean Water Act, 2006*, a CA might oversee source protection authority reports, meetings and governance (category 1) while also performing the Risk

Management Official role on behalf of a municipality (category 2). Another example is when a single piece of equipment, like a tractor, is used to support both passive (category 1) and active (category 3) recreation programs on CA-owned or controlled lands.

Classification of CA programs and services has a direct relationship with when and how CAs are permitted to apportion costs to municipalities to finance those programs and services. For example, a CA may apportion costs to a municipality without an agreement for reviewing planning applications for consistency with natural hazards policies under the *Planning Act* since this is a category 1 program or service that the CA must deliver. However, if the CA is also reviewing applications for their consistency with natural heritage policies, the CA must have MOUs (or such other agreements) with one or some of its municipalities in order to carry out this program or service.

Since a CA cannot provide a category 2 program or service without an MOU (or such other agreement), it follows that the CA cannot apportion costs for a category 2 program or service without such an MOU or agreement. Moreover, for category 3 programs and services, the CA cannot apportion costs to a participating municipality for providing the program or service unless a cost apportioning agreement is in place.

Where a CA program or service is perceived to cross more than one category, **O. Reg. 687/21(Transition Plans and Agreements) requires that CA inventories classify which components of the program or service fall into each category and which costs are associated with each component of the program or service.** For a category 2 component of the program or service, the inventory must name the municipality on behalf of which the program or service is provided and the date on which the CA and the municipality entered into an MOU (or such other agreement). Similarly, for any category 3 component of a program or service, the inventory must indicate whether or not the program or service was financed, in whole or in part, through municipal levies collected from participating municipalities and whether or not the CA intends to seek to enter into a cost apportioning agreement with one or more participating municipalities to ensure all or part of the financing for that program or service after the transition date of January 1, 2024.

## Appendix – Examples of CA programs and services by category

Table 1. Examples of Category 1, 2 and 3 programs and services.

Category	Examples
<p><b>Category 1: Mandatory programs and services</b> provided to fulfill the authority's core mandate (CAA s. 21.1 and <a href="#">O. Reg. 686/21</a>)</p>	<p><b>Programs and services prescribed under s. 21.2 of the CAA and the Mandatory Programs and Services regulation</b></p> <ul style="list-style-type: none"> <li>• Related to the risk of natural hazards, for example:               <ul style="list-style-type: none"> <li>○ CAA s. 28 (unproclaimed s. 28.1) permit administration</li> <li>○ Municipal plan input and review to ensure consistency with the natural hazards policies under the <i>Planning Act</i></li> <li>○ Review of proposals under other legislation (<i>Aggregate Resources Act, Drainage Act, Environmental Assessment Act and Niagara Escarpment Planning and Development Act</i>) for natural hazards risks</li> <li>○ Flood forecasting and warning</li> <li>○ Flood and erosion control infrastructure operation and management</li> <li>○ Ice management</li> <li>○ Drought or low water response</li> <li>○ Natural hazards communications, outreach and education</li> </ul> </li>   <li>• Conservation and management of lands owned or controlled by the CA, for example:               <ul style="list-style-type: none"> <li>○ Conservation area strategy</li> <li>○ Land inventory</li> <li>○ Management, operation and maintenance of CA owned or controlled lands in support of passive recreation (e.g., fencing, signage, patrolling, trail maintenance)</li> <li>○ Programs and services to plant trees on lands owned or controlled by the authority, excluding commercial logging</li> <li>○ Programs and services to enable the authority, in its capacity as an owner of land, to make applications or comment on matters under the <i>Planning Act</i></li> <li>○ Enforcement and compliance associated with s. 29 governing the public use of CA lands</li> <li>○ Land acquisition and disposition policy</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Duties, functions and responsibilities as a source protection authority under the provisions of the <i>Clean Water Act, 2006</i>, for example: <ul style="list-style-type: none"> <li>○ Source protection planning</li> <li>○ Source protection authority reports, meetings and governance</li> <li>○ Operation of source protection committees</li> <li>○ Implementing significant threat policies where the source protection authority is designated as being responsible for implementation</li> <li>○ Proposal review (for significant drinking water threats or on impacts on protected drinking water resources)</li> </ul> </li> <li>• Provincial monitoring: <ul style="list-style-type: none"> <li>○ Provincial groundwater monitoring program</li> <li>○ Provincial stream monitoring program</li> </ul> </li> <li>• Programs assigned to CAs through other legislation, such as North Bay-Mattawa CA's role implementing programs and services for on-site sewage systems as currently set out in the <i>Building Code Act</i>.</li> <li>• Under the <i>Lake Simcoe Protection Act</i>, Lake Simcoe Region CA's duties, functions and responsibilities as set out in the Lake Simcoe Protection Plan.</li> </ul>
<p><b>Category 2: Municipal programs and services</b> provided at the request and on behalf of a participating/specified municipality to support municipal mandate or initiatives in the municipal jurisdiction through an MOU or other agreement (CAA s. 21.1.1)</p>	<p><b>Municipal responsibilities and mandate</b></p> <ul style="list-style-type: none"> <li>• Related to the <i>Planning Act</i>, provincial plans and land use planning, for example: <ul style="list-style-type: none"> <li>○ Sub-watershed planning</li> <li>○ Stormwater management</li> <li>○ Development services to municipalities</li> <li>○ Natural heritage mapping</li> <li>○ Emergency management services mapping</li> <li>○ Tree by-law enforcement</li> </ul> </li> <li>• Related to other statutory responsibilities e.g., operation of on-site sewage system program under the <i>Building Code Act, 1992</i>, the operation of an enforcement program under Part IV of the <i>Clean Water Act, 2006</i> (risk management official/inspector).</li> </ul> <p><b>Local municipal interests</b></p> <ul style="list-style-type: none"> <li>• Related to private land stewardship as a municipal initiative with municipal funding, for example: <ul style="list-style-type: none"> <li>○ Water quality</li> <li>○ Stream bank stabilization</li> <li>○ Tree planting</li> </ul> </li> </ul>



<p><b>Category 3: Programs and services a CA determines is advisable to provide to further the purposes of the <i>Conservation Authorities Act</i> (CAA s. 21.1.2)</b></p>	<p><b>On CA owned or controlled land</b></p> <ul style="list-style-type: none"> <li>• Purchase of land for a CA</li> <li>• Resource development (logging, hydro electric generation)</li> <li>• Land management for ‘active’ recreation requiring the direct support or supervision of CA staff or by another person/body</li> <li>• Land management for education, training, and cultural purposes</li> </ul> <p><b>Other</b></p> <ul style="list-style-type: none"> <li>• Non-mandatory research</li> <li>• Ecological monitoring, benthic monitoring</li> <li>• Fish and wildlife monitoring</li> <li>• Lake management plans</li> <li>• Watershed report cards</li> <li>• Development services to landowners and others</li> <li>• Private land stewardship as a CA initiative</li> </ul>
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