

June 17, 2024

Ministry of Natural Resources and Forestry – Fish and Wildlife Policy Branch
300 Water St.
2nd floor, South Tower
Peterborough, ON
K9C 3C7

Re: Niagara Escarpment Planning and Development Act, R.S.O. 1990

About Us

Good Roads is a municipal association concerned with the quality and design of roads in Ontario. We have been devoted to the cause of better roads since 1894. Originally known as the Ontario Good Roads Association (and still using that name corporately), our members include most of Ontario's municipalities and a growing number of First Nations as well as dozens of affiliated corporate members in the transportation and infrastructure sectors.

For more information, please visit www.GoodRoads.ca.

Comments

Good Roads appreciates the opportunity to provide input on the proposed amendments under the Environmental Registry of Ontario (ERO) **Notice 019-8364**. Good Roads represents municipalities across Ontario and has a vested interest in ensuring that regulatory frameworks support the efficient maintenance and improvement of municipal infrastructure, particularly roads.

Municipalities within the Niagara Escarpment Plan (NEP) area currently face significant challenges. This is a result of a serious legislative conflict regarding the authority over municipal roads between the local municipality and the NEC. The opportunity to amend Ontario Regulation 828 should be used to relieve this conflict.

The conflict arises between the clear statutory authority giving municipalities jurisdiction over, ownership of, and responsibility for the maintenance of all highways, streets and lanes, and road allowances located in the municipality in the *Municipal Act* and the provisions of the *Niagara Escarpment Planning and Development Act* (NEPDA), which prohibit a municipality from undertaking development that is not exempt under the regulations or for which a development permit has been issued.

Good Roads

Good Roads believes that this conflict can be resolved by revising the Proposal so that the maintenance, repair, and renewal of municipal roads is subject to a clear exemption under Ontario Regulation 828.

To that end, Good Roads believes that by removing the authority to “renew” a road, the proposed amendments will limit a municipality’s ability to properly maintain a safe and functional local road network. In addition, we believe that the proposal requires clarification to avoid confusion as to who is entitled to the exemption and should be revised to remove the reference to other approval processes.

Recommendations

1. THE PROPOSAL BE REVISED TO INCLUDE THE RENEWAL OF ROAD WORKS

The regulation, as it now stands, exempts the “maintenance, repair or renewal” of highways or municipal roads. Good Roads believes that the ability of our members to renew their roads is vital to the health and safety of its residents and important to the competitiveness of the local economy.

However, the proposal does not include the ability to “renew” a road and it can be assumed that this would be removed from the regulation. Good Roads believes the proposal should be revised to continue this exemption, for the following reasons:

- The exemption in section 4.3 of the regulation implicitly acknowledges the fact of existing roads in the NEP area and provides a test as to how they can be preserved, while remaining a part of the natural environment through repair, maintenance, and renewal. In doing so, the Regulation balances the purposes of the NEPDA and the transportation needs of local municipalities. (This is in contrast to the development of a new highway or municipal road through an undisturbed natural environment in the NEP area; development that would not respect the purposes of the NEPDA.)
- Limiting the exemption to only the “repair and maintenance” of highways and municipal roads is unduly restrictive, presumably allowing only minor improvements such as the filling of potholes or the patching of asphalt and prohibiting any meaningful improvements. Imposing such a drastic restriction on a municipality’s ability to encourage and respond to growth through the renewal of its existing road network will inevitably lead to unsafe and obsolete roads, followed by demands for new roads.

2. THE PROPOSAL BE REVISED TO INCLUDE A DEFINITION OF A “PUBLIC BODY” TO MEAN AN UPPER OR LOWER TIER MUNICIPALITY

In addition to the need to continue to allow road renewal, Good Roads is also concerned with some of the terms and language used to identify who qualifies for the exemption and what approval processes are included.

Clarification is needed to make it clear that a “public body” includes a municipality. The following references to the related legislative provisions illustrates the potential problem:

- The *Environmental Assessment Act* (EAA) defines a “public body” to mean “a body other than a municipality that is defined as a public body by the regulations” and includes a municipality as part of the definition of a “person”.
- The regulation itself contains no definition of a “public body” and the proposal does not include the addition of such a definition.
- Section 1. (2) of Ontario Regulation 51/24, also made under the EAA, reveals a list of six “public bodies”, which does not include a municipal government. In similar fashion, section 1 of Ontario Regulation 53/24 refers back to the definition in Ontario Regulation 51/24 and, accordingly, does not define a public body as including a municipality.

3. THE PROPOSAL BE REVISED TO REMOVE ANY REFERENCE TO OTHER APPROVAL PROCESSES AS A TEST FOR AN EXEMPTION

Good Roads believes the requirement that the work be approved by “other processes such as an environmental assessment”, is vague and inappropriately delegates an important approval to an unnamed and undefined third party.

As a result of the recent proposal by the Ministry of the Environment, Conservation and Parks (MECP) to revoke the Municipal Class EA (MCEA) in favour of a streamlined EA regulation for municipal infrastructure, it appears that some projects which are currently subject to the MCEA would no longer have EAA requirements. This includes “all municipal roads in any location”. While Good Roads and its members certainly support this approach, the reference in the proposal to an environmental assessment as a requirement for an exemption appears to be redundant.

Furthermore, the proposal’s reference to some other, unspecified approval processes, implies that there are, in fact, other approval processes, when, apart from the MCEA classification, there are no approval processes required for a municipality to repair, maintain or renew a municipal road.

Revised Proposal

Good Roads recommends that the proposal be revised to the following:

“public body” means a municipality.

The following classes of development, if listed as permitted uses under the land use policies established in the Niagara Escarpment Plan and not in conflict with a development permit issued under the Act, are exempt from the requirement of obtaining a development permit:

- *Maintenance, repair and renewal road works conducted by public bodies.*

Thank you for your time and consideration.

Good Roads