

**Ministry of the Environment,  
Conservation and Parks**

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**Ministère de l'Environnement de la Protection de  
la nature et des Parcs**

Division de la conformité en matière d'eau potable  
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August 12, 2022

City of Port Colborne

via Blair Holinaty, Supervisor, Recreation and Marina [Blair.holinaty@portcolborne.ca](mailto:Blair.holinaty@portcolborne.ca)

via Steve Shypowskyj, Manager of Roads & Parks Recreation

[Steve.shypowskyj@portcolborne.ca](mailto:Steve.shypowskyj@portcolborne.ca)

Dear Mr. Holinaty, Mr. Shypowskyj:

### **Violation Notice: 1-1VTUJB**

**Re:** Violation Notice, Destruction of Fowler's Toad Habitat at Nickel Beach, City of Port Colborne

The Ministry of the Environment, Conservation and Parks (Ministry) takes protecting species at risk (SAR) seriously and recovering their habitat is a key part of conserving Ontario's biodiversity.

Observations: On July 7, 2022, the Niagara District Office of the Ministry received complaints regarding the potential destruction of Fowler's Toad habitat at Nickel Beach in Port Colborne (Site).

Fowler's Toad is listed as an endangered species in Schedule 2 of [O. Reg. 230/08](#) (Species at Risk in Ontario List) under the [Endangered Species Act](#) (ESA).

Nickel Beach, Port Colborne is within Lots 25 and 26 Concession 1 Humberstone Township and meets the definition of Fowler's Toad habitat within [O.Reg. 832/21](#) made under the ESA.

I attended the Site on July 11, 2022 and observed a gravel parking lot had been constructed on the west side of the beach access road off of Lake Road. I also observed the following,

- members of the public were parked directly on the beach,
- a large pile of sand was located on the west side of the beach near a new looking chain link fence which ran north south to the water line.

On July 12, 2022 it was confirmed with the ministry's Species at Risk Branch that no permits had been issued for any of the above noted work in this area of confirmed Fowler's Toad habitat.

In an email dated July 26 2022 from the City of Port Colborne's Blair Holinaty to the ministry's Lisa Benvenuti (attached), the City confirmed they had constructed an approx. 988.3 m<sup>3</sup> gravel parking lot to accommodate non-beachfront parking and two mobile washroom units at Nickel Beach. This email referenced and included a letter dated July 25, 2017 from the Ministry of Natural Resources and Forestry (MNRF) to City of Port Colborne's Blair Holinaty for annual beach maintenance activities at Nickel Beach and included conditions to be followed to protect the Endangered Fowler's Toad.

A project proposal for sand fencing, submitted on July 18, 2022 to the ministry's Species at Risk Branch by Niagara Coastal Community Collaborative in partnership with City of Port Colborne, confirmed that prior to May 13<sup>th</sup>, 2022, beach grading occurred and sand from the nearshore area was pushed inland against the eroding dune complex along the entire Western extent of the beach.

A letter dated September 17, 2020 from ministry's Species at Risk Branch to City of Port Colborne explained that municipal beaches along the north shore of Lake Erie are known habitat of Fowler's Toad and maintenance activities have the potential to adversely impact the species and its habitat and therefore contravening the ESA prohibitions.

Both a Fowler's Toad and its habitat are protected under sections 9 and 10 of the [Endangered Species Act](#) (ESA).

Specifically, Fowler's Toad habitat is protected from damage and destruction by any person. Activities such as constructing a gravel parking lot, allowing vehicle traffic to drive through Fowler Toad habitat and park on land used as habitat , beach maintenance (including grading and sand movement), and erecting fences within the habitat that prevents ease of movement, results in damage and destruction to the Fowler Toad habitat. These activities are prohibited unless authorized under the ESA. Section 10 of the ESA states

*10 (1) No person shall damage or destroy the habitat of,  
(a) a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species;*

Set out below is the definition for habitat listed in the Endangered Species Act, 2007, S.O. 2007, c. 6 (ESA):

*"habitat" means,*

*(a) with respect to a species of animal, plant or other organism for which a regulation made under clause 56 (1) (a) is in force, the area prescribed by that regulation as the habitat of the species, or*  
*(b) with respect to any other species of animal, plant or other organism, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding,*

*and includes places in the area described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences;*

More information on SAR can be found on the Ministry's website at [Species at risk | ontario.ca](https://www.ontario.ca/species-at-risk) with additional information on Fowler's Toad [Fowler's toad | ontario.ca](https://www.ontario.ca/fowler-toad).

It is the responsibility of the proponent to ensure that any activities they undertake do not adversely impact SAR or their habitat. The destruction of Fowler's Toad habitat at the Site was not authorized by an ESA permit, nor was it registered to a conditional exemption under [O. Reg. 242/08](https://www.ontario.ca/regulation/24208). As such, this file has been referred to the Ministry's Environmental Investigation and Enforcement Branch for consideration of a contravention of the ESA.

When habitat has been harmed or destroyed, it is appropriate for the person(s) responsible to retain a qualified consultant/biologist to consider possible steps to restore the habitat, mitigate the harm and/or provide alternative habitat. If this qualified person has questions regarding the potential steps for the specific site, they may contact the Species at Risk Branch at [SAROntario@Ontario.ca](mailto:SAROntario@Ontario.ca) with a copy to me at [kelly.tonellato@ontario.ca](mailto:kelly.tonellato@ontario.ca).

By September 12, 2022 please email [kelly.tonellato@ontario.ca](mailto:kelly.tonellato@ontario.ca) the plan prepared by the qualified consultant/biologist to prevent the continued damage or destruction caused by activities in and around Nickel Beach to Fowler's Toad habitat and/or to Fowler's Toad, rehabilitate habitat damaged or destroyed by the activities, mitigate the harm and/or provide alternative habitat including implementation timing and plan to obtain applicable ESA authorizations.

Please be advised that there may be additional requirements under the federal [Species at Risk Act, S.C. 2002, c. 29](https://www.sar.gov.ca/)