

LCA Environmental Consultants

September 9, 2022

Bryan Boles CPA, CA, MBA, Director of Corporate Services/Treasurer
City of Port Colborne – Vale Health & Wellness Centre
550 Elizabeth Street
Port Colborne ON L3K 2C3

Dear Mr. Boles

**Re: Violation Notice 1-1VTUJB
Nickel Beach, Port Colborne**

In response to the Violation Notice 1-1VTTUJB issued on August 12, 2022, LCA Environmental Consultants has reviewed the details of the Notice regarding Destruction of Fowler’s Toad habitat at Nickel Beach. Additionally, we have reviewed MNRF correspondence dated July 25, 2017 regarding proposed beach maintenance and the extent of Fowlers Toad habitat (GU-L-025-17) and MECP correspondence dated September 17, 2020 pertaining to the annual beach activities, including maintenance. All relevant correspondence has been included in Appendix C for ease of reference.

Based on my communication with the City of Port Colborne (“City”) and MECP, it is well understood and acknowledged by all parties that there is Fowlers Toad habitat within portions of Nickel Beach and that Fowlers 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.

The historical correspondence and consultation with City staff confirm that typically the City communicated and completed a site visit at the start of each beach season to review the maintenance works needed. Historically, this communication was completed with MNRF staff and more recently with NPCA since the transition of Species at Risk (SAR) protection from MNRF to MECP. As MECP is now responsible for protecting SAR, it is crucial that any activities beyond the approved annual maintenance be reviewed and approved by MECP, the governing agency.

The provisions and conditions for annual maintenance activity on the beach, including dunes, is well documented in the MNRF correspondence dated July 25, 2017 and the City confirms that most of these provisions are adhered to annually, with exception of the staff training programs which we will address later in this report.

Two site visits were completed on August 24, 2022 and September 7, 2022 to assess the current site conditions and uses, to assess the issues identified in the Violation Notice and to map the features of concerns and any other relevant information. These visits were completed to assess the potential impacts during an active period of use and after the beach was closed for the season.

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The intent of this report is to provide the City and MECP with our review of the issues detailed in the Violation Notice and provide information, including alternatives and proposed recommendations to address these issues. As there are several concerns identified, we will systematically identify each issue and provide recommendations for clarity purposes. Since the issues are related to some extent in terms of potential impacts to Fowlers Toad, there may be some redundancy in the strategies suggested therein but we believe that the City can implement a variety of recommendations to address the current concerns.

1) Parking Lot Construction

As indicated in the Violation Notice and confirmed through site visits, a parking lot was recently constructed at the park entrance, west of the entrance driveway as indicated in Figure One (below and larger in Appendix A). The limits and nature of the parking lot and surrounded area was mapped and photographed (See Appendix B).

The City confirmed that intent of the parking area was to provide alternative off-beach parking spaces and additional amenity area for washrooms and potentially a food service truck. This area was chosen as the previous uses included unsafe and underutilized playground equipment that was consistently vandalized, and the area was close to the entrance of the park, away from the active dune area. It was also noted by the City that there were several large dead trees in this area that were creating safety issues for patrons.

Correspondence from MNRF dated September 25, 2017 included a map which highlighted the areas where the presence of Fowlers Toad had been documented and the areas where no works was to occur. Extrapolation of the MNRF sensitive area limits from the 2017 map onto the current mapped parking area map confirmed that the **parking area is located outside the mapped sensitive area** and the existing sand, trees and vegetation between the parking lot and the identified habitat zone was not disturbed through the construction activities, as indicated on Figure One.



Figure One: Nickle Beach Parking lot and MNRF Fowler Toad sensitive areas (larger image in Appendix A)

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The parking lot was constructed on May 4, 2022. It was confirmed with the contractor that the entire area was walked with City staff prior to any site clearing to ensure there were no toads or wildlife present. Following removal of the playground equipment and dead trees, the area was stripped of topsoil which was piled along the southern and eastern limits of the lot to create berms and granular material was added to the parking lot area. The contractor confirmed that the stripped topsoil consisted of sand and some silt and was generally compacted material with remnant vegetation. The extent of vegetation coverage on the berm (>90%) support that the topsoil material removed contained soil properties and seed source sufficient to provide robust herbaceous vegetation coverage on the berm after a single growing season.

It is our opinion, while the parking lot falls within the surrounding potential habitat zone (within 300 m) for Fowlers Toad under the provisions of the Recovery Strategy, the substrate was not conducive to Fowler Toad for breeding or hibernation and thus the area of the parking lot does not constitute Fowlers Toad habitat other than potentially providing a limited movement corridor during migration periods.

The parking lot provides the potential for parking of up to 40 vehicles if the additional amenities (washroom and food truck) are placed on the northern grassed area adjacent to the gravel. The City intends to bring in mobile washrooms on trailers that can be removed seasonally. Locating washrooms in this area will alleviate the need for servicing trucks to enter onto the beach area and minimize disturbance through the active season. If the amenities are located on the gravel area, the parking space available will be reduced accordingly. WE understand that hydro poles area needed at the park entrance for the intended amenities and see no issue with installation of the poles given the existing site conditions in that area.

It was noted during the field site visits that, based on the location of the portable washrooms placed on the entrance road through 2022 season, there are several walking paths established through the identified habitat zone west of the driveway as indicated on Figure One (dashed lines). The City should address this issue and implement provisions before the next season to eliminate foot traffic through these sensitive areas. Roping off these areas and educational signage will significantly help to deter foot movement through this area. Establishing a safe walking path along the main road is also recommended. We are happy to assist the City with the design specifications to help isolate this area from pedestrians and the design of appropriate signage. Similar efforts were implemented at Bay Beach in Fort Erie and have proven effective to control foot traffic.

It was further noted during the field site visits that there are invasive species growing west of the beach entrance throughout the dune area. There are opportunities to improve the vegetation species composition and densities which will also deter movement in this area and assist in dune formation which will provide a net benefit to the existing toad population.

We understand that the City has been working cooperatively with the Niagara Coastal Community Collaborative and NPCA to improve the dunes on this site and overall habitat for the Fowlers Toad and other species. We recommend continued work with these organizations to assist in restoring portions of the beach and dunes west of the entrance and are happy to facilitate these discussions.

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Given the current state of the sensitive areas, there are numerous opportunities to improve the conditions and habitat at Nickel Beach.

2) Beach Entrance Driveway and On-beach Parking

The Violation Notice raised the issue of driving through the identified habitat zone and parking on the beach within land used as habitat. While the entrance driveway does extend through the habitat zone identified in the 2017 MNRF correspondence, the vast majority of the beach parking is at the water's edge, not within the active dune area at the north limit of the beach. The area along the water's edge is graded at the beginning of the season and typically compacted. The daily parking activity likely contributes to the compaction. It is unlikely that the toads are burrowing in this area under these circumstances; however, when water levels are high the parking would need to move north into the looser sandy area and closer to the established dunes which has the potential to create a negative impact.

It was noted through the field site visits that the compacted beach areas only extend down the beach approximately two-third of the beach after which the sand is loose from the water's edge to the dunes. Very few cars were seen in this area, likely due to the traction limitations. It was also noted that the location of the parked cars were south of the identified Fowlers Toad habitat mapping provided in the MNRF correspondence of 2017 with exception of the three cars located further south associated with the splash pad rental trailer. The trailer was observed to be on blocks and is removed seasonally as verified on the September 7, 2022 site visit.

While the new parking area was intended to provide off-beach parking in close proximity, there are not sufficient spaces available based on the number of cars typically observed using the beach area. We encourage the City to initiate communication the Vale Canada Ltd. (the owners of these lands and most adjacent lands) to determine if there are any additional lands within relative proximity to the beach that could be leased by the City to create additional off-beach parking for beach users.

We understand that agencies and individuals have been monitoring this beach for about 20 years, however, we have not been provided with any of the annual data and location-specific information of toad utilization, nor is it available online. In the absence of locational data regarding the Fowlers Toad utilization of this beach, the direct impacts from on-beach parking cannot be determined at this time. Given that the City has not received any historical information on the extent of beach utilization by Fowlers Toad, it is important that monitoring be completed to help support future uses on the beach and provide the best management options. Again, this may be an opportunity to work with partners such as the Niagara Coastal Community Collaborative and NPCA and we are happy to assist in establishing a long-term annual monitoring program to measure both the improvements and impacts from the continued beach use.

We strongly recommend that the City initiate communication with MECP to determine parking options, mechanisms and interim measures available while consulting with Vale Canada Ltd.

Regarding the entrance road that permits vehicle access to the on-beach parking, the road itself is paved until it reaches the sand and there is active sand that blows onto the paved portion such that

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the extent of paved road is not visible. The access does pass through the identified sensitive areas mapping provided by MNRF in 2017. However, the road itself does not provide direct habitat but allows movement of the Fowlers Toad west to east through the sensitive.

Should vehicles not be permitted on the beach in the future, the road access becomes a walking path and there are very limited impacts to the Fowlers Toad during the hours of operation. However, should allowance for on-beach parking be permitted, there are a number of provisions that should be in place prior to letting vehicles pass through this area. Daily inspections each morning prior to opening the gates should be completed to remove any toads from entrance area. Additionally, installation of rope barrier and signage along both sides of the entrance will help minimize the width of the entrance and direct foot traffic to the single entrance point on route to the amenities throughout the day.

3) Beach Maintenance Activities

Beach maintenance activities typically include grading and cleaning accumulated algae. The conditions and limitations to complete these activities have been well defined in the MNRF correspondence dated July 25, 2017 and in the MECP correspondence dated September 17, 2020.

Each year, the timing of the maintenance activities is dependent on the weather and the extent of maintenance required is based on the weather and storms the area endured through the previous fall, winter and spring months. As indicated in the agency correspondence, maintenance activities should be completed prior to May 1st annually. In 2022, the beach grading was completed on May 5th and 6th as this was the first opportunity to complete the work. The contractor confirmed that no additional grading is done at this location after the beach opens to patrons.

In the event that the maintenance is required after May 1st, it is essential that MECP be contacted to ensure compliance with the Endangered Species Act (ESA). MECP will be able to assist in determining if the proposed activities will contravene Section 9 or Section 10 of the ESA and any required measures that should be in place prior to commencing work.

The MECP requirements for beach maintenance activities have specific details pertaining to the machinery use and maintenance, time of activities and provision for the materials moved such that no materials leave the site. Communication with City staff and the contractor confirm that these provisions are in place annually and that the works are completed in a responsible manner given the sensitivity of the area.

The MNRF 2017 correspondence also specified that worker training program be established to ensure all staff are aware of the sensitivity of the area and the trained to recognize Fowlers Toad and fully understand and implement the measures required to protect this species. Given that this training practice does not currently exist at the City, we recommend that a **beach-specific operational manual and associated training program** be developed and delivered to existing staff, new hires and at the beginning of each season for seasonal employees. The operational manual should include the, at a minimum, the MECP conditions for maintenance and contact information at MECP should the timing window or requirements differ from the standard maintenance practices, an information section regarding Fowlers Toad and habitat sensitivity

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(including ID information, the relevant legislation and recovery strategy details), and a schedule of for training the employees. The intent of the operational manual and training program is to ensure that all City employees and management understand and implement appropriate management strategies to protect Fowlers Toad over the long term, regardless of staff turnover.

4) Fencing along the western limit

It was noted by MECP and confirmed through our site visits that a new fence was erected at the western limit of the beach. The City confirmed that this fence replaced an existing fence that had been in place to delineate the beach lands from the adjacent lands and uses (Transport Canada lands with industrial uses). We understand that Vale Canada Inc. required the fence replacement as part the most recent lease negotiation with the City. The fence replaced an existing fence that was in poor condition.

LCA Environmental assessed and mapped the fence as indicated in Figure One. The field assessment confirmed that the fence is located at the extreme west end of the active beach area and that the limit of the beach in this area is defined by large rocks and boulders. The fence location is topographically located approximately three or four feet about the beach grade on an earthen vegetated berm (see photos in Appendix B). While there are gaps in the bottom of the fence that would permit movement of small wildlife, it is highly unlikely that Fowler Toad are moving through this area given the impediment to movement from the large boulders and topography of the area. Based on the large boulders, rocky area and dry earthen berm, the location of the fence is not considered sensitive Fowler Toad habitat and the fence itself is less an impediment to movement than the rocky foundation which has been in place for more than 20 years based on the aerial imagery for this area. The earthen berm and rocks suggest the historical placement of these materials was for separation from the adjacent industrial uses. The fence serves both to delineate the property limits, as well as, providing a safety measure for beach patrons.

Conclusions and Recommendations:

Based on our assessment of the beach area and with regard to the Violation Notice discussed herein, we provide the following as a summary of our recommendations:

- i) The new parking lot is located outside of the sensitive habitat previously established by MNRF and serves to benefit the area by providing additional parking off the beach and a location for amenities also off the beach. Provisions need to be in place (rope fencing, signage) to better control foot traffic to the proposed entrance amenities and keep the public off the dunes and sensitive habitat. It is recommended that foot traffic be limited to the main entrance road.
- ii) Communication with Vale Canada Ltd. and MECP is recommended to discuss and evaluate opportunities to reduce the number of vehicles that access the beach.
- iii) Monitoring of the active beach area is recommended to determine the extent of active/sensitive habitat. This information is critical to provide data that can support the best management practices at the beach. An ongoing monitoring program will help

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- assess the direct and indirect impacts and provide a measure of the effectiveness of any restoration and habitat enhancement initiatives.
- iv) Continued communication and partnerships with the Niagara Coastal Community Coalition and NPCA will provide additional opportunities for restoration initiatives, such as dune restoration, removal of invasive species and the ongoing monitoring initiatives.
 - v) All amenity services should be limited to mobile and raised (i.e. trailer) units that can be installed and removed seasonally. Prior to removal, site surveys should be completed at each mobile amenity to ensure there are no toads beneath the trailer as these will introduce a shaded area which may be preferred by toads. No permanent structures or pads should be permitted on the beach.
 - vi) An Operational Manual specific to the operations at Nickel Beach should be created and distributed to all relevant staff that details the permitted maintenance and use activities, all contact information for relevant agency to ensure there are no future compliance issues, details regarding Fowlers Toad and their habitat and a detailed training program that is delivered to all staff, new staff and seasonal staff each year.

This report has been prepared to address the concerns raised in the MECP Violation Order. We believe the information provided herein has highlighted the major issues and provided direction for immediate measures, short term measures and long-term measures that will assist in addressing the issues raised by MECP. We strongly encourage the City to engage with MECP and Vale Canada Ltd. as soon as possible to ensure that the concerns are addressed in the near future.

We are happy to assist with facilitating these discussions so that we can move forward in compliance with the ESA and in a manner that exemplifies the best management strategies for the protection of SAR. We trust that a balanced approach can be achieved through open dialogue and communication.

Should you have any questions regarding the information provided in this report, please contact our office through email or I can be reached at 905-687-4400.

Sincerely,







Lisa Price, M.Sc.
Director

APPENDIX A

Figure One: Site and Feature Mapping

Legend

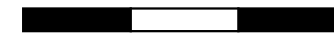
-  Areas of no impact
-  Gravel Parking Lot
-  Walking Paths
-  New Fence



Notes: Areas of no impact extracted from MNR Letter re Nickel Beach to City of Port Colborne dated July 25, 2017.

GPS coordinates of gravel pad and new fence along southeast corner of the beach taken September 7, 2022.

0 10 20 30 m



APPENDIX B
Site Photographic Records



Photo 1: Park Entrance (view north) with parking lot to the west



Photo 4: Eastern limit of entrance road (view south)



Photo 2: Lands immediately north of parking lot



Photo 3: Soil quality of lands surrounding the parking lot



Photo 5: Parking area (view west)



Photo 6: Vegetated berm at western limit of parking lot



Photo 7: Pedestrian foot trail from washroom through dune (view south)



Photo 8: Transition area between southern limit of parking lot and the dunes within the identified sensitive area



Photo 9: Second pedestrian foot trail through sensitive area (view south)



Photo 10: Dune habitat at west limit of the beach



Photo 11: Western limit of beach at constructed berm



Photo 12: Rocks and berm at west end fence



Photo 13: Gaps at the base of the fence



Photo 14: Extent of earthen berm and rocks at base of fence



Photo 15: Vegetation and substrate at the base of fence on top of berm.



Photo 16: View of beach when not in use (taken September 7, 2022 view west to east)

APPENDIX C
MECP Violation Notice and Historical Correspondence

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

Drinking Water and Environmental
Compliance Division, West Central Region
Niagara District Office
9th Floor, Suite 15
301 St. Paul Street
St. Catharines, ON L2R 7R4
Tel.: 905-704-3900
1-800-263-1035
Fax.: 905-704-4015

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

Division de la conformité en matière d'eau potable
et d'environnement
Direction régionale du Centre-Ouest
Bureau du district de Niagara
9^e étage, bureau 15
301, rue St. Paul
St. Catharines, ON L2R 7R4
Tél.: 905-704-3900
1-800-263-1035
Télééc.: 905-704-4015

August 12, 2022

City of Port Colborne

via Blair Holinaty, Supervisor, Recreation and Marina Blair.holinaty@portcolborne.ca

via Steve Shypowskyj, Manager of Roads & Parks Recreation

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 m³ 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 13th, 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](#). 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 with a copy to me at kelly.tonellato@ontario.ca.

By September 12, 2022 please email 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](#)

Ministry of the Environment,
Conservation and Parks

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

Species at Risk Branch

Direction des espèces en péril

40 St. Clair Avenue West
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Toronto, ON M4V 1M2

40, avenue St. Clair Ouest
14^e étage
Toronto, ON M4V 1M2



September 17, 2020

Nicole Halasz
The Corporation of the City of Port Colborne
66 Charlotte St.
Port Colborne, Ontario
L3K 3C8

Dear Ms. Halasz,

SUBJECT: Annual Municipal Beach Activities 2020

The Ministry of the Environment, Conservation and Parks (MECP) has received numerous inquiries from local residents regarding the status of maintenance activities on municipal beaches along the north shore of Lake Erie. These properties are known habitat of Fowler's Toad and likely to contain Fowler's Toads, a species at risk listed as Endangered under the Species at Risk in Ontario List (O. Reg. 230/08) under the *Endangered Species Act, 2007* (ESA).

In Ontario, the Fowler's Toad inhabits open beaches, dunes, sandy shorelines, rocky pools, creek and stream mouths, backshore wetlands, and marshes along the northern shore of Lake Erie. Fowler's Toad is restricted to only three localities in Canada, all found in Ontario: Rondeau, Long Point and Niagara. The main threat to Fowler's Toads is habitat loss and degradation. The loss and degradation of dunes, beaches, and wetlands as a result of shoreline development and recreation use reduces areas for breeding, foraging, burrowing, and hibernating. Beach maintenance activities occurring during the active season for Fowler's Toad pose a risk of killing toads that are using these habitats, particularly individuals that are buried in the sand.

MECP does have some knowledge of and information about the nature of the beach maintenance activities carried out annually by the City of Port Colborne (hereinafter referred to as "the City"), and that the Ministry of Natural Resources and Forestry has provided guidance in the past to the City and other area municipalities about species at risk and the ESA requirements. We are also aware that there are circumstances this year where annual beach maintenance activities normally carried out in the spring have been deferred into the summer.

In general, the guidance for Fowler's Toad and its habitat has been that annual maintenance activities initiated and completed before the May 1 active window for Fowler's Toad have a low likelihood of adversely impacting the species and its habitat and therefore contravening the ESA prohibitions.

Maintenance activities proposed to be carried out beyond May 1 of any year do have the potential to adversely impact Fowler's Toad and its habitat, and authorization to proceed would need to be sought under the ESA from the Minister of the Environment, Conservation and Parks in order to avoid contravening the ESA.

The City may assess whether some beach maintenance activities might be carried out in Fowler's Toad habitat without adversely impacting the species or its habitat and therefore avoiding contravening the ESA. The City may consider conducting the following activities, understanding that it is the responsibility of the City to ensure that the ESA is not contravened and that the following list does not encompass all activities allowed or disallowed in Fowler's Toad habitat.

- General beach maintenance activities such as the removal of garbage and debris so long as work or access does not occur in/through any standing water in the active season (e.g. ponds, pools, drain outlets), that sand or rock material are not removed from the beach, and that deposits of soft-sand are not disturbed during the active season.
- General beach maintenance activities completed when toadlets are not present; toadlet emergence varies from year to year but is generally in late June or early July.
- Beach maintenance activities carried out on sunny days between the hours of 7am and 6pm as Fowler's Toads are most active during dusk and dawn and during the day on cloudy days. Care should be taken during all maintenance activities as juvenile toads and toadlets may be out during all times of day.

MECP is committed to providing guidance to the City and other affected stakeholders to explore the necessary requirements for beach maintenance activities.

If municipalities or other stakeholders are considering undertaking beach maintenance activities in a manner that cannot avoid causing adverse impacts to the species and/or its habitat, they are encouraged to reach out to SAROntario@ontario.ca to discuss authorization options under the ESA.

Please note that there may be requirements under other legislation that may be applicable and should be explored by the City.

[3]

If you have any questions, please contact the Species at Risk Branch directly at SAROntario@ontario.ca.

A handwritten signature in black ink, appearing to read "Paul Heeney". The signature is fluid and cursive, with a small horizontal line at the end.

Paul Heeney
Manager, Permissions and Compliance
Species at Risk Branch, Land and Water Division
Ministry of the Environment, Conservation and Parks

Ministry of Natural
Resources and Forestry

Box 5000
4890 Victoria Ave. N.
Vineland Station, Ontario
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Ministère des Richesses
naturelles

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GU-L-025-17

July 25, 2017

Blair Holinaty
City of Port Colborne - Vale Health & Wellness Centre
550 Elizabeth Street, Port Colborne, ON L3K 2C3

Dear Blair,

RE: Proposed beach maintenance and the *Endangered Species Act, 2007*

The Ministry of Natural Resources and Forestry (MNR) has reviewed the information provided on your proposed project, and met with you on site to assess the potential impacts of the proposal on Fowler's Toads and their habitat. From the information provided, it is our understanding that the proposed project falls within the following parameters:

- a) The works will be on the sections of the beach captured in Maps 1 and 2 (below), but no work shall occur in the red hatched areas shown in the maps.
- b) The works will entail movement of sand to allow safe passage of public to the public washrooms.
- c) The works will also entail movement of sand in the sections of beach closer to the shoreline.
- d) All equipment and materials will be stored offsite.

Based on a review of the above information, Ministry staff have determined that the activities associated with the project, as currently proposed, **will likely not contravene** section 9 (species protection) and/or section 10 (habitat protection) of the *Endangered Species Act, 2007* (ESA 2007) for Fowler's Toad **provided the following conditions are implemented:**

- a) Heavy machinery will be restricted to front portion of the beach and will not be permitted on the dune area;
- b) Checks should be performed for the presence of Fowler's Toad prior to and during undertaking the work. If any are found, MNR shall be contacted immediately for direction;

- c) This work must be done between the hours of 7am and 6pm. Fowler's Toads are most active during dusk and dawn; however, the toads may also be active during the day under cloudy conditions. Care must be taken during work as juveniles and toadlets may be out during all times of the day;
- d) Equipment and vehicles shall arrive at the site in clean condition and shall be checked and maintained free of fluid leaks;
- e) Any refueling, storage or maintenance of equipment (i.e., tractor) should take place at a minimum of 30m away from the beach to avoid contamination;
- f) All work will be done in a manner that prevents any soil and chemicals harmful to reptile and amphibians from entering the shoreline;
- g) No sand or rock material is to be removed from the beach area;
- h) The sand dune areas are not to be disturbed throughout the duration of this project;
- i) A worker training program will be delivered to all staff onsite during construction to ensure that all staff are aware of the potential for Fowler's Toad to occur onsite, the protected status of this species, as well as information about how to identify the species;
- j) The worker training program will include photos and information about the biology of the species as well as the consequences of killing, harming or harassing a species listed as threatened or endangered under the Endangered Species Act; and
- k) If any species at risk are observed within the work area, work will halt and the Vineland Area- Guelph District Office will be contacted immediately at esa.guelph@ontario.ca. If any species at risk are observed adjacent to the work area, the Vineland Area Office should also be notified within two (2) business days.

This letter does not relieve you from compliance with any other legislation that may be applicable.

If you have any concerns or questions please contact me directly at 905-562-0041.

Yours truly,



Michelle Karam
Management Biologist

CC: Mike Graybeil - City of Port Colborne Parks and Facilities Foreman

If you have any questions regarding this letter please contact me by phone or at kelly.tonellato@ontario.ca or Environment.Niagara@ontario.ca .

A handwritten signature in black ink, appearing to read 'K. Tonellato', is centered on a light gray rectangular background.

Kelly Tonellato | Senior Environmental Officer | Provincial Officer # 799 | Niagara District Office | Ontario Ministry of the Environment, Conservation and Parks | 301 St.Paul Street, Floor 9, Suite 15 | St. Catharines, ON | L2R 7R4 | 289-407-7936
Kelly.Tonellato@ontario.ca

Sensitive Areas - Map 1



Sensitive Areas - Map 2

