

LCA Environmental Consultants

October 20, 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 (Aug. 12, 2022)
Nickel Beach, Port Colborne

LCA Environmental Consultants (“LCA”) have been retained by the City of Port Colborne (hereinafter referred to as “the City”) to prepare a mitigation and restoration plan to address the Violation Order noted above. An initial letter report completed by LCA Environmental was provided to the City on September 9, 2022 which detailed potential strategies to address the items identified in the Violation Order. MECP correspondence dated September 28, 2022, indicated that the initial report did not provide the steps or the detail required to mitigate or restore the harm and/or destruction of Fowlers Toad habitat at Nickel Beach.

As stated in the previous LCA correspondence, it is well understood and acknowledged by the City that there are Fowlers Toad and associated 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.

Since the initial LCA Environmental report dated September 9, 2022, LCA has had the opportunity to review three reports prepared by 8trees Inc. which document the research completed between 2018 and 2020 at Nickel Beach. These reports documented the success of the Fowlers Toad population under various pressures, outlined some of the outreach initiatives completed and provided recommendations to address some of the existing human impacts at Nickel Beach. These reports have been helpful in providing more current data, as well as documentation regarding the impact of natural conditions (i.e., storms and high water) and human induced impacts.

This report has been prepared to provide the detailed strategies proposed to restore disturbed habitat at Nickel Beach, mitigate future impacts to the SAR and their habitat and increase the awareness and protection of Fowlers Toad and associated habitat at Nickel Beach. We understand that the City will be addressing beach access and on-beach parking at a later date after consultation with Vale Canada Inc., the property owners, and City council. As such, initiatives to address these issues have not been discussed herein.

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The opinions and recommendations proposed in this report are based on information provided by the City and site evaluations in conjunction with the following sources:

- 1) MECP historical correspondence
- 2) The Fowler Toad Recovery Strategy
- 3) 8trees Inc. Reports (2018- 2020)
- 4) The Endangered Species Act (Schedule 2 of O. Reg. 230/08)

The information sources have been listed at end of this report.

Background & Approach

Nickel Beach is a privately owned, publicly operated beach that typically operates annually from May 24th to Labour Day weekend (September) with open access to the public between 9 am and 8 pm daily. Beyond these windows, the beach is accessible for walking and general activities but without vehicle access or fees. The beach is well known and draws both locals and tourists during the open season.

Historical correspondence and consultation with City staff confirm that typically the City communicates and completes a site visit at the start of each beach season to review the maintenance works needed. Historically, this communication and site visit has been completed with MNR staff who also provided input based on their monitoring efforts (see Appendix C). The City received correspondence dated September 17, 2020 which detailed and reinforced the limitations applicable to completion of the annual maintenance activities that would minimize adverse impacts to Fowler's Toad and its habitat, as well as providing contact information in the event that maintenance was required beyond the prescribed May 1st active window (see Appendix C).

Four site visits were completed by LCA - August 24, 2022, September 7, 2022, October 3, 2022 and October 12, 2022 (with 8 trees Inc. staff and City staff) to assess the issues identified in the Violation Notice and map the features of concerns and any other relevant information.

The information garnered through the site visits, consultation with City staff and review of the historical correspondence and reports completed by 8trees Inc. have provided the basis for the mitigation and restoration strategies outlined below. These strategies serve to address the following items:

- 1) The gravel parking area;
- 2) The replacement fencing at the western limit of the beach;
- 3) Beach maintenance practices; and
- 4) Communication – internal and external

The proposed strategies for each item are detailed below with a summary table at the end that outlines the proposed timelines for development and implementation of each strategy.

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1) Gravel Parking Area

As indicated in Violation Notice 1-1VTUJB and confirmed through site visits, a gravel parking exists at the park entrance, west of the entrance driveway as indicated in Figure One (see below and larger image in Appendix A). The limits and nature of the parking lot and surrounded area was mapped and photographed (See Appendix B). The City did consult with NPCA prior to the construction of the gravel area.

The City has confirmed that intent of the gravel parking area was to provide some alternative off-beach parking spaces and additional amenity area for washrooms and a food service truck. This area was chosen as the previous uses included unsafe and underutilized playground equipment and the area was close to the entrance of the park and 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. This area was historically a compacted grassed area similar to the existing conditions immediately adjacent to the north and south limits of the gravel area and verified in the aerial imagery.

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 (Appendix C). Extrapolation of the MNRF sensitive area limits from the 2017 map onto the current mapped parking area map confirmed that the gravel area is located outside the mapped sensitive area but does fall within the regulated habitat area Ontario Regulation 242/08 and therefore would be subject to MECP approval prior to alteration.

According to the Fowler's Toad Habitat Protection Summary, the following areas are protected (<https://www.ontario.ca/page/fowlers-toad-habitat-protection-summary>).

The habitat regulation for Fowler's Toad protects:

- *any parts of wetlands, ponds or other bodies of water, including vernal or other temporary pools that are being used for breeding, egg laying or tadpole development as well as the 30 metres around such areas;*
- *natural or man-made hibernation sites;*
- *in the geographic township of Walsingham: suitable habitat is protected up to a distance of 150 metres up and down the shoreline from known occurrences of Fowler's Toad and up to 700 metres inland from the shoreline.*
- *in all other listed geographic townships: suitable habitat is protected up to a distance of 150 metres up and down the shoreline from known occurrences of Fowler's Toad and up to 300 metres inland from the shoreline;*
- *the dispersal corridor along the water's edge, where the distance between two occupied areas is less than one kilometre; and*
- *in naturally occurring areas used by Fowler's Toad to migrate between breeding areas, hibernation sites and/or seasonally used beach areas, where at least two such features are within 1 km of each other.*

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The above areas are protected until five consecutive years of documented non-use. Suitable habitats for Fowler's Toad include open, shrub, or treed sand or pebble beaches, sand dunes, and sand barrens; marshes; ponds; other bodies of water, including vernal or other temporary pools; or rock shoals.

The regulation applies in the geographic townships of Harwich and Howard within the Municipality of Chatham- Kent, the geographic townships of Bertie, Humberstone and Wainfleet within the Regional Municipality of Niagara, the geographic townships of Cayuga, Dunn, Moulton, Rainham and Sherbrooke within Haldimand County, the geographic township of Charlotteville, Houghton, and Walsingham within Norfolk County and the geographic township of Bayham within Elgin County.



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

The parking lot was constructed on May 4, 2022. LCA 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 the grassed topsoil which was piled along the western limits of the lot to create berm 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 grass and 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.

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As the gravel lot was already constructed prior to our site visit, we examined the areas north and south of the gravel lot to determine the nature of the substrate. Our assessment confirmed that these areas did not contain the loose sand observed on the active dune area further south. The reports prepared by 8trees Inc. for Nickel beach were reviewed to determine if the data collected through 2018 and 2020 identified the sensitive areas of use or provided any additional information regarding the gravel area. Unfortunately, the reports do not provide any mapping of the portions of the site that are utilized by the toad. The 8trees Inc. 2019 report did confirm that this area was a grassed area that was used as an alternate parking location for the second evening bon fire event in order to keep vehicles from the dune area through the evening events when Fowler's toad are actively moving through the beach area. This recommendation and use suggest that they did not consider the gravel area to be sensitive through the summer months in the evening.

It is our opinion, that while the parking lot falls within the surrounding potential habitat zone (within 300 m) for Fowler's Toad under the provisions of the Recovery Strategy, the gravel area is not suitable for Fowler Toad critical life stages (breeding or hibernation) due to the historical uses and compaction of the substrate but may be utilized for some portion of the movement or dispersal of the local toad population during the spring and fall months.

As currently constructed, the gravel 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 of the dune areas through the active season. We understand that hydro poles are 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 but recommend that MECP be consulted with regard to any further works or changes in this area to ensure compliance with the Ontario Regulation 242/08.

Given the current and historical state of the gravel area, we strongly recommend that the gravel lot remain in its current location and opportunities for restoration or enhancement of the degraded and disturbed areas to the north be explored through a Stewardship Agreement. Stewardship Agreements provide authorization for activities that would otherwise be prohibited under the ESA but that assist in the protection and recovery of a species listed on the Species at Risk in Ontario list and includes *actively managing an area and enhancing it to create species at risk habitat* (<http://www.onario.ca/page/government-ontario>).

The gravel lot was historically a compacted area that has been further compacted by the gravel and it is very unlikely that removal of the gravel will result in natural sand accumulation or burrowing potential in this area due to the existing topography and trees south of the gravel lot. There are also long-term benefits to Fowler's Toad by maintaining washrooms and amenities off the active beach/dune areas and controlling the foot traffic of patrons away from the dune areas.

The Stewardship Agreement would involve two components: i) mitigation of further toad impacts in the gravel area through installation of a barrier for movement into the gravel area; and ii) restoration and enhancement of the dune area at the western limit of the beach which is in close

proximity to the documented breeding area just beyond the earthen berm at the west limit. Figure 2 below depicts the areas that could be enhanced through a Stewardship Agreement.



Figure Two: Western area proposed for restoration through removal of invasive species and installation of native grasses and fencing around gravel area. The restoration area will be restricted from public use as indicated by the dashed orange limit. Signage will be posted along the roped off area to explain the restricted use.

Currently, the dune area along the western portion of the beach is degraded from vegetation succession which has resulted in an increase in the coverage of invasive species, predominantly Silver Poplar (*Populus alba*), and a loss of native grasses. Invasives species and vegetation succession have been identified as one of the major contributing factors to habitat loss and degradation according to the Fowler's Toad Recovery Strategy. There is also evidence of pedestrian foot traffic through this dune area during our field assessments (blue dashed lines in above figure) which was likely due to access to the portable washrooms located near the entrance road in 2022.

Restricting human access from the proposed restoration area will greatly assist in reducing the human impact in this area, allowing for the restoration works while also permitting for any approved beach maintenance such as the clean-up of dead fish.

i) Mitigation of Impacts to toads in the gravel lot

Installation of a fence with wildlife exclusion mesh fencing at the base should be installed along the western and southern limits of the gravel area as indicated in Figure 2 (below). Figure 3 provides a cross section of the fence specifications. Similar fencing has been approved and installed in Niagara to help limit the movement of amphibians and other wildlife into active areas.

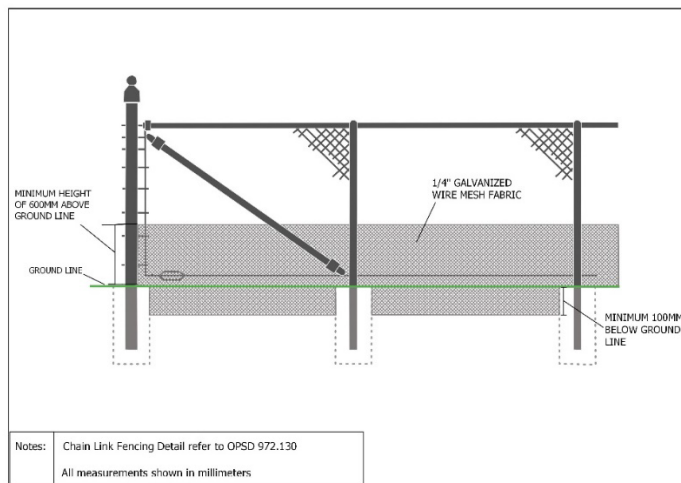


Figure 3: An example of the mesh barrier fencing that is typically used to keep amphibians and small animals out of an area of potential impact.

ii) Restoration and Enhancement of western dune area

The reports completed by 8trees Inc. (2018-2020) identify the active dune area south of the gravel lot at the western limit of the beach as a highly disturbed/degraded area (2019-2020 Report, 8trees Inc., Figure 1). Our field site visits also recorded extensive invasive species in this area limiting the dune formation and outcompeting native grasses.

The restoration and enhancement plan for the western dune area would include fencing/roping off this area to eliminate any future human access to the western dunes and lower beach area where the algae on the beach helps supports toadlets (see Figure Two above). The elimination of invasive species and installation of native beach grasses can be completed by hand or with a small tracked-based machine to avoid bringing heavy equipment into this area. The removal of invasive species should be completed through late spring and early summer once any adults occupying the area for hibernation have moved to the breeding grounds and after the barrier fencing has been installed. Native beach grass can then be installed in late summer before the young and adults move into the area to hibernate.

If the Stewardship Agreement is accepted by MECP to address the Violation Notice, the activities involved in the restoration of the western dune area will be more thoroughly detailed through additional field assessments, determination of the extent of removal and planting needed and details on the implementation will be provided through consultation with MECP.

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Both restrictive and educational signage will significantly help to deter foot movement through this area. Examples of signage are presented below. The signage serves both to protect the area and educate the patrons as to the sensitivity of the area. We understand that there was extensive public outreach between 2018 and 2020 as part of the research completed by 8stress Inc. There is likely some additional materials already prepared or available that is specific to Fowler's toad and Nickel Beach that can be used or adapted by the City to educate the public on the initiatives.



Figure 4: Examples of signage for dune protection (personal photos, PEI 2022)

A monitoring program to assess the effectiveness of the mitigation and restoration initiatives detailed above should be established so that any corrective actions can be implemented in an efficient manner. Monitoring should include assessments of the integrity of the toad barrier fencing along the gravel lot and visual inspections to assess the vegetation community in the restored dune area, any changes in the dune habitat. As well, visual inspections will assess whether the fencing/roping and signage is an effective deterrent to keep human impacts out of the restoration area. Establishing a safe and properly signed walking path along the main road is also recommended to help direct patrons to the proposed amenity area.

2) 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 along the top of the manmade earthen berm. The City confirmed that the current fence replaced an existing fence that had been in place to delineate the terminus of the

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beach lands and provides a public safety measure. We understand that Vale Canada Inc. required the fence replacement as part the most recent lease negotiation with the City.

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 at the base of the earthen berm which extends into the water at the shoreline. The fence location is topographically located approximately three or four feet about the beach grade (see photos in Appendix B).

There is a Fowler's Toad breeding area just beyond the western berm on the rocky shoals near the shoreline. While the toadlets that mature and move towards the dunes would not likely be able to traverse the large rocks and earthen berm, it is possible that adults hibernating or dispersing through the Nickel Beach area may move over ground to reach the breeding grounds beyond the point. To provide passage at the base of the chain link fence, we recommend cutting the at the base a length of 18 inches long and 6 inches high to provide a passageway through the fence. Each length of fence between the posts will have an opening such that the structural integrity of the fence is maintained to function in the intended use which includes public safety.

3) Beach Maintenance Practices

Beach maintenance activities typically include grading and cleaning accumulated algae and debris along the shoreline adjacent to the water. The conditions and limitations to complete these activities have been well defined in the MNR 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 area identified above for restricted use and restoration should have no maintenance or cleaning as the toadlets rely on the accumulated algae for cover upon dispersal. This area would be

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restricted from any works not identified under the provisions of the Stewardship Agreement in order to preserve the function and integrity of this area.

The previous MNRF correspondence (2017) also specified that an employee training program be established to ensure all City staff and contractors 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, 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 (including ID information, the relevant legislation and recovery strategy details), and an annual schedule 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) Communication

It has been noted that the improved communication among the City departments and between the City and the agencies is needed to ensure compliance with the SAR regulations and to manage this property in a responsible manner. The operational manual and proposed training program provide the framework to ensure that internal communication regarding the operations at Nickel Beach are understood by all staff and departments and will also ensure regulatory compliance for any future initiatives.

We understand that the City has been working cooperatively with the Niagara Coastal Community Collaborative and NPCA to improve the dunes on the eastern portion of this site. We recommend continued work with these organizations to assist in restoring portions of the beach and dunes. Development of a City and partners group/committee may assist in improving ongoing communication and data sharing, resulting in a more comprehensive management strategy for Nickel Beach.

There are extensive opportunities to inform and educate the public of the sensitivity of this beach area through appropriate signage on the beach and near the amenity areas and there are existing materials and resources available to support this initiative. Ongoing communication with MECP is essential to ensure compliance for any proposed activities on Nickel Beach.

Table One below details the various tasks and strategies proposed to address the identified issues and provides timelines for completion and implementation.

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Table One: Summary of issues and proposed strategies

No.	Issue	Proposed Task/ Strategy	Timeline	Outcome
1	Gravel Parking Area Mitigation and Restoration Strategy	<p>The gravel area will be fenced on the southern and western limits and will include barrier fencing at the ground to deter toads from entering that area.</p> <p>The lands along the western portion of the beach will be roped off with appropriate fencing and signage to deter human movement through this area and facilitate restoration of the dunes through removal of invasive species (see Figure 2).</p> <p>Monitoring program to assess the effectiveness of the fencing and restoration initiatives</p>	<p>March 2023 (winter months weather permitting)</p> <p>Spring/summer 2023</p>	<p>Effective barrier to toad dispersal that will improve survival rates and eliminate public access from gravel area to the sensitive area.</p> <p>Creation of a restoration area that is off limits to human foot traffic and beach use. Improve public awareness of the sensitivity of the species and habitat features through appropriate signage.</p> <p>Information to allow for adaptive management if additional measures are needed to protect the restoration area.</p>
2	Western Fence Mitigation	The fence bottom will be cut/removed to a height of six inches and length of 18 inches in each fence panel	December 2022	The fence will not be an impediment to toad movement/dispersal at the western limit of the beach; maintains intended public safety and integrity of the fence.
3A	Beach Maintenance Seasonal Impact Mitigation	Beach-specific operation manual which details the permitted activities, timelines and contact information	January 2023	An internal manual with instructions to maintain consistent operations for permitted activities annually
3B	Beach Maintenance Training Sessions	Training of all staff (FT, PT and seasonal) and contractors regarding the operational manual and the legislation governing SAR	March 2023 and prior to open season for new staff	All staff will be trained regarding the permitted beach operations and the SAR legislation
4	Internal and External Communication	<p>Installation of barrier fencing to limit access to sensitive areas and public education signage regarding the SAR and beach initiatives</p> <p>City to create a Partners Group that includes City staff and partners to improve communication/information and data sharing</p>	<p>March 2023</p> <p>January 2023</p>	<p>Area restricted to the public to allow for restoration and long-term habitat improvement for Fowler's toad</p> <p>Creation of a stewardship plan with all interested parties and improve communication for the net benefit of SAR</p>

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Conclusions and Recommendations:

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

- i) The Gravel Area – Mitigation and reduction of further impact in the gravel area through exclusion fencing and restoration of the western portion of the beach through restrictive fencing and removal of invasive species. The restored area will be left in a natural state, aside from any proposed works required for the restoration and any approved maintenance at the waters edge. Public access will be restricted from this proposed restoration area. It is recommended that the proposed initiatives be approved through a Stewardship Agreement and will include a monitoring component to assess the effectiveness of the restoration and mitigation measures in place. There are extensive net benefits to the Fowler’s Toad and associated habitat by maintaining the amenities in an already-degraded area with limited function while reducing the impacts to the active dune areas which are acknowledged to support Fowler’s Toad habitat.
- ii) Western Fence - Mitigation of any impediment to amphibian movement through the western fence by removal of a portion of the fence base as described above. This mitigation will allow for amphibian movement while maintaining the integrity of the fence and public safety.
- iii) Beach Maintenance - An Operational Manual specific to the operations at Nickel Beach to 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.
- iv) Communication - Continued communication and partnerships with the Niagara Coastal Community Coalition and NPCA may provide additional opportunities for restoration initiatives, such as dune restoration, removal of invasive species and the ongoing monitoring initiatives. Opportunities for information and sign installation will assist in informing the public of the initiatives underway and the sensitivity of the beach.
- 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.

This report has been prepared to respond to the issues raised in the MECP Violation Notice 1-1VTUJB and provide recommendations to mitigate and compensate for any habitat degradation through appropriate strategies and site restoration that will provide a net benefit to Fowler’s toad

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and associated habitat. A more fulsome restoration plan can be developed if the Stewardship Agreement is accepted as the preferred route to address the issues. The summary table provides timelines for the development and implementation of the required remedial activities. 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 discussions amongst stakeholders 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 and recommend that the violation issues detailed in this report be remedied through a Stewardship Agreement.

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

LCA Environmental Consultants

Literature Reviewed

Endangered Species Act. <https://www.ontario.ca/laws/statute/07e06>

Fowler's Toad Habitat Protection Summary. <https://www.ontario.ca/page/fowlers-toad-habitat-protection-summary>

Fowler's Toad Recovery Strategy. <http://www.ontario.ca/page/government-ontario>

8trees Inc. (2021). Fowler's toad Recovery Project: Assessing Human Impacts at Niagara Beaches - Year 3: 2020-2021 Final report for the Ontario Species at Risk Stewardship Program

8trees Inc. (2020). Fowler's toad Recovery Project: Assessing Human Impacts at Niagara Beaches -Year 2: 2019-2020 Final report for the Ontario Species at Risk Stewardship Program





8trees Inc. (2019). Fowler's toad Recovery Project: Assessing Human Impacts at Niagara Beaches - Year 1: 2018-19 Final report for the Ontario Species at Risk Fund

APPENDIX A

Figure One: Site and Feature Mapping

Figure Two: Proposed Restoration Area and Mitigation Features

Legend

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



Notes: Areas of no impact extracted from MNRF 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.





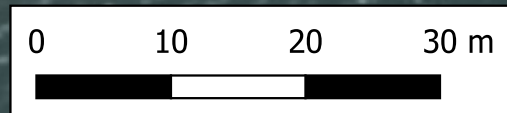
Legend

- Gravel Parking Lot
- Existing Walking Paths
- Existing Fence
- Proposed Chainlink Barrier Fence
- Proposed Rope Barrier Fence
- Habitat Restoration Area



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.



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: Existing successional vegetation in restoration area.



Photo 17: Density of invasive species in the proposed restoration area to be removed and replaced with native grasses.



Photo 18: 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](#)

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

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
14th Floor
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
LOR 2E0

Tel: (905) 562-4147
Fax: (905) 562-1154

Ministère des Richesses
naturelles

C.P. 5000
4890 avenue Victoria Nord
Vineland Station, Ontario
LOR 2E0

Tél : 905-562-4147
Télééc.: 905-562-1154



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

Sensitive Areas - Map 1



Sensitive Areas - Map 2

