

Prepared for	Council-in-Committee	Report No.	CDS-32-12
Agenda Date	May 7, 2012	File No.	350309-0328

Subject	Draft MNR Overall Benefit Conditions- Fowlers Toad-Bay Beach
----------------	---

Recommendations	<p><u>THAT</u> Report CDS-32-12 be received by Council for information purposes; and</p> <p><u>THAT</u> A copy of Report CDS-32-12 be forwarded to the Molinaro Group and Town's Environmental Advisory Committee for information purposes.</p>
------------------------	---

Relation to Council's 2011-2014 Corporate Strategic Plan	<p>Priority: Infrastructure Goal 2: Enhance the ability of existing assets to meet future community needs. Initiative 2.4: Maintain and enhance our parks and associated amenities; Priority: Economic Development Goal 7: Promote Fort Erie as the place to invest and do business. Initiative 7.4: Continue to utilize the development team process to attract private investment and expedite key projects. Goal 8: Increase tourism to Fort Erie Initiative 8.3: Support and promote community events, festivals and facilities. Priority: Waterfronts Goal 9: Increase public access to our waterfronts Initiative 9.5: Enhance the appeal, sustainability and profile of existing public waterfront access points. Goal 10: Broaden the range of uses of our waterfronts. Initiative Explore opportunities to develop new attractions and supporting facilities on the waterfronts.</p>
---	---

List of Stakeholders	<p>Town of Fort Erie, Town of Fort Erie Economic Development & Tourism Corporation Molinaro Group, Residents of Fort Erie Ministry of Natural Resources, Region of Niagara, Niagara Peninsula Conservation Authority</p>
-----------------------------	--

Prepared by:	Submitted By:	Approved by:
<i>Original Signed</i>	<i>Original Signed</i>	<i>Original Signed</i>
Dave Heyworth, MCIP, RPP Manager, Land Use Policy	Richard F. Brady, MA, MCIP, RPP Director of Community and Development Services	Ron Tripp, P.Eng Acting Chief Administrative Officer

Background

The purpose of this report is to provide Council with an update on the Overall Benefit Permit (OBP) application for Fowlers Toad associated with the Crystal Beach Gateway Development (South Beach Condominium). This report provides information on draft permit conditions established to date and the Ministry of Natural Resources (MNR) permit process moving forward.

Reason For Permit

As Council is aware, because of the presence of the Fowlers Toad (Endangered Species) on site, an Overall Benefit Permit (OBP) under the *Endangered Species Act* is required for any proposed site alteration of the lands or structures whether for the proposed South Beach Condominium or any other development proposal. The purpose of the OBP is two fold. First, to minimize short-term impacts to individual toads from the development itself, through design and conditions associated with construction. Second, implementation of the permit is expected to provide a longer term benefit to the Fowler's Toad through habitat enhancement and having the public learn about the species and its status, as well as the acquisition of academic knowledge through monitoring.

Chronology

Administrative Report CDS-41-10 was prepared for Council's consideration at the July 12, 2010 Council-in-Committee meeting. This report, attached as **Appendix 1**, highlighted the fundamental components to be included in the OBP application and sought authorization for the Director of Community and Development Services to be authorized to submit the application. The recommendations in the report were approved. The fundamental components of the OBP application identified in the report were:

- Location and extent of new toad habitat areas (toad protection areas);
- Development conditions associated with the development to minimize impacts to existing toads, such as toad fencing and toad evacuations from the development area;
- The design of shore protection to maximize toad use;
- Proposed monitoring; and
- The use of educational signage and information about the toad status and habitat.

An OBP Application was submitted to the Ministry of Natural Resources on July 23, 2010. A Revised-Addendum application was submitted on behalf of the Town and Molinaro Group on June 1, 2011 to address questions raised by Ministry of Natural Resources staff.

A memo was provided to Council on August 22, 2011 answering several questions submitted by Councillor Lubberts regarding the OBP application. An Open House for the South Beach Condominium Site Plan application was held on August 24, 2011. The toad protection areas were illustrated on the Landscape Plans associated with the Site

Plan Application. Planning staff received no further questions from Council on this matter since time of the Open House.

Since the time of the Site Plan Open House, the Province has posted a Notice of Application on the Environmental Registry and Ministry of Natural Resources web site inviting comments on the application. Notification of these postings was provided on the Town's Blog. Council was informed of the posting on the Registry by Memo to Council on November 23, 2011. It is our understanding the Ministry of Natural Resources (MNR) received numerous comments through this process and the MNR staff has reviewed and considered these comments.

OBP Process Moving Forward

The Ministry of Natural Resources (MNR) staff, with the input of MNR biologists, MNR Legal Division, Town staff and Molinaro Group, has drafted a summary of Permit conditions to seek further public comments on possible conditions of approval. Planning staff expect the MNR summary of conditions to be posted on the MNR web page for comment shortly. Once the posting has occurred, staff will inform Council of the posting and place a link to the posting on the Town's Blog. This report essentially provides the summary list of draft conditions. It is important to note permit conditions can be revised based on: public input, further review by MNR and by the Minister prior to approving the Permit. The ultimate approval or denial of the Permit Application cannot be appealed.

It is important for Council to note that Section 4 of the Purchase and Sale Agreement with the Molinaros states: "The completion of this transaction is conditional upon:

- b) i) Issuance of a permit from the Ministry of Natural Resources pursuant to Section 17 of the Endangered Species Act, 2007, S.O. 2007, c. 6 (the "MNR Permit"), with conditions acceptable to the parties, on or before December 31, 2012, failing which this Agreement shall be at an end;
- ii) Any party who determines that the conditions with respect to the MNR Permit are unacceptable shall have ten (10) days from the date of issuance of the MNR Permit to deliver to the other party a notice terminating this Agreement, failing which the MNR Permit shall be deemed to be acceptable to such party;"

Analysis

Proposed Permit Structure

The general draft permit structure is as follows:

- The Term of the Permit is until December 31, 2027 or until all post construction requirements are completed, whichever comes first.
- The Permit will be in the Molinaros name and authorizes the Molinaros, including all contractors, employees, volunteers and agents of Molinaros to engage in the activities specified in the Permit that would otherwise be prohibited by the Endangered Species Act, 2007 in relation to Fowler's Toad.

- The Permit would authorize the Molinaros to:
 - a) Damage and destroy the habitat of Fowler's Toad on the Site as necessary to construct a condominium and associated Community Benefits on behalf of the Town of Fort Erie; and
 - b) harm, harass, kill, possess, collect and transport Fowler's Toad as is necessary to:
 - i. relocate them from identified areas;
 - ii. incidentally kill, harm or harass individuals that were not relocated prior to beginning construction of the condominium and Community Benefits;
 - iii. fulfill the conditions of this permit, including monitoring and maintenance of the Toad Enhancement Area.
- Molinaros are to undertake reasonable steps to allow the MNR to enter the site before, during and after construction to observe the areas for Fowlers Toad use.

Key Draft Conditions of Permit approval

Key draft conditions require the Molinaros to complete the following:

- Install toad-proof fencing around the construction area one month prior to the beginning of construction or one month prior to the end of the Fowler's Toads' Active Season (time of year that Fowler's Toads are not hibernating, from May 1st to August 30th) whichever comes first.
- Surveying of the fenced area for Fowler's Toads nightly under the supervision of a qualified professional for capture and relocation outside of the fenced area to an undisturbed location on Bay Beach, as approved by the MNR. No construction or alteration of the site shall take place until surveys and relocation of Fowler's Toad is complete based on an MNR established framework for searches and surveys;
- Educate, with the assistance of a qualified professional, all construction staff on Fowlers Toad identification and handling.
- Maintain a temporary public access to the beach at the eastern most side of the Site at a maximum of 9 metres in width until the boardwalk, illustrated on the Landscape Plan, has been constructed.
- To construct a large toad enhancement area, after construction of the development, that incorporates sand dune habitat with sand mounding, landscaping and revetment wall design in accordance with the Site Plan Design Drawings.

- Construction of a 6 metre wide, cedar decked, boardwalk a minimum of 0.3 metres above the sand, as depicted on **Appendices 2 and 3**, over the toad enhancement area to allow for public access to the beach and podium. Council should refer to **Appendix 2** which provides a Landscape Plan of the toad enhancement areas and boardwalk.
- The provision of educational signage on Fowlers Toad along the boardwalk;
- The roping off and provision of signage at the southern end of the large toad enhancement area and the linear toad enhancement areas, lakeside of the shore revetment, to discourage pedestrian trespassing and educate the public on the toads presence in the area.
- The provision of Fowlers Toad educational brochures for the public and stewardship guidelines for the owners and surrounding neighbours.
- Maintenance of the toad enhancement areas consisting of: removal of weeds, invasive plants or garbage; repairs as needed; maintaining landscaping, signage and roping.
- Monitoring and reporting to MNR on the use of toad enhancement areas by the toads consisting of: spring monitoring and reporting each year on the physical conditions of the site, corrective measures to vegetation and thermal conditions of sand; and
- Ensure a qualified professional completes Fowlers Toad surveys within the toad enhancement areas at least 5 times between May and September in the year the areas are constructed as well as years 2, 5, 7 and 10 following construction of the areas.

Key Points Of Interest

The following are important components for Council to consider going forward:

- An Overall Benefit Permit (OBP) under the *Endangered Species Act* is required for **any** proposed site alteration of the lands or structures whether for the proposed South Beach Condominium or any other development proposal, including the removal of old foundations.
- The draft structure of the OBP has the permit being in the Molinaro's name and the Molinaros being responsible for its proper implementation. The Molinaros are knowledgeable about the draft conditions/permit framework and are agreeable to same.
- The draft conditions will allow for temporary public access during construction and permanent 6 metre wide boardwalk access over the large toad enhancement area to ensure public access to the public beach throughout the construction period and beyond.
- It is intended that the roped off toad enhancement areas will be signed.

- The larger toad protection area is currently primarily a fenced in berm area not significantly utilized by the public. The final constructed toad enhancement area will remain publicly owned and will blend in well aesthetically with the public beach (See **Appendix 3-** Concept Plans).
- There will be a narrow linear beach area along the south side of the new revetment which would be roped off as a protected toad enhancement area. A large portion of the area to the west incorporates the area where the existing dancehall foundation is currently situated as well as the sand area between the dancehall foundation and Nowak property (less currently utilized areas). It should be noted that the design of the revetment at the south end of the large easterly toad enhancement area actually creates approximately 100 sq.m of new public beach.
- The MNR recognizes Bay Beach is a highly utilized public beach and do not intend to prohibit its operation as a public beach.
- The draft list of permit conditions does not prevent the delivery of the open space improvements set out in the Community Benefits Agreement.
- Based on the draft conditions no changes to the site plan are required.
- The Community Benefits Agreement requires a Maintenance and Cost Sharing Agreement to be entered into between the Town and Molinaros.
- Maintenance costs associated with toad enhancement areas are not expected to exceed costs that would be associated with maintaining a manicured park.
- With the combination of anticipated beach grooming refinements, and completion of this development incorporating protected toad enhancement areas, educational information and monitoring; Town staff intend to request Council to apply for a “Blue Flag” designation for Bay Beach to recognize the environmental achievements and increase the marketing potential of this attraction further. The Blue Flag program is run by the non-government, non-profit Foundation for Environment Education. The Blue Flag recognizes sustainable development of beaches through strict criteria regarding water quality, environmental education, environmental management and safety and other services. Details regarding the Blue Flag criteria are attached as **Appendix 4**. There are currently 16 Blue Flag beaches in Ontario.

Financial/Staffing Implications

The Community Benefits Agreement requires a Maintenance and Cost Sharing Agreement to be entered into between the Town and Molinaros. Town staff will finalize the details of a draft Agreement with the Molinaros and report back to Council on same.

Policies Affecting Proposal

The Overall Benefit Permit (OBP) is required under Section 17 (2) (c) of the Endangered Species Act. An OBP is required for any proposed site alteration of the lands or structures whether for the proposed South Beach Condominium or any other development proposal. The Zoning By-law contains provisions that require an OBP to be issued by the MNR. This ensures that no development or site alteration can occur until the Permit is issued. In addition, the Site Plan Agreement states that the Toad Permit shall prevail in the event there is a conflict with the Site Plan Agreement. Based on the draft conditions no changes to the site plan are required.

The Town has the opportunity to decide if it concurs with the conditions associated with an approved OBP relative to the proposed development. Town Council has been aware of the fundamental components of the permit application for some time.

The OBP is associated with the proposed South Beach Condominium development which provides for valuable community benefits. The permit approval will result in the creation of toad habitat that blends aesthetically with the public beach and enhances the habitat of an Endangered Species. The draft OBP components identified can assist in providing for a landmark focal point development that enhances the beach user experience and provides for a development that addresses many of Council's Corporate Strategic Plan initiatives outlined on Page 1 of this report.

Comments from Relevant Departments/Community and Corporate Partners

A preliminary version of this report was made available to the Town's Acting Chief Administrative Officer, as well as the Infrastructure Services, Finance and Legal Divisions and Town of Fort Erie Economic Development and Tourism Corporation. Relevant Town staff and the Molinaro Group continue to participate in discussions relative to this initiative with the MNR.

Alternatives

The Overall Benefit Permit is required under Section 17 (2) (c) of the Endangered Species Act. The proposed draft conditions and framework are the result of a fluid, consultative approach by MNR and significant deliberation. There are no alternatives to the Overall Benefit Permit.

Conclusion

Council has supported the proposed zoning amendment for the development and the zoning by-law for the development has been approved by the Ontario Municipal Board. Council has supported the Site Plan for the development. The draft framework would have the Permit issued in the Molinaro's name and the Molinaros are knowledgeable of the permit conditions. The draft conditions provide an overall benefit to the toad and allow a landmark development to proceed.

Attachments

- Appendix 1 - Administrative Report CDS-41-10
- Appendix 2 - OBP-Landscape Plan
- Appendix 3 - Concept Plans Illustrations Showing Large Toad Enhancement area
- Appendix 4 - Blue Flag criteria

Town of Fort Erie
Our Focus: Your Future

Community & Development Services

Prepared for	Council-in-Committee	Report No.	CDS 041-10
Agenda Date	July 12, 2010	File No.	350309-0328

Subject

UPDATE ON OVERALL BENEFIT PERMIT APPLICATION-FOWLERS TOAD - CRYSTAL BEACH GATEWAY PROJECT

Recommendations

THAT The Director of Community and Development Services be authorized to submit an application for an Overall Benefit Permit to the Ministry of Natural Resources pertaining to Fowlers Toad and the Crystal Beach Gateway project.

THAT This report be forwarded to the Town's Environmental Advisory Committee and Molinaro Group for information purposes

Relation to Council's 2007-2010 Corporate Strategic Plan

Priority: Development and Land Use and Economic and Business Development
Goal: A1 Increase waterfront accessibility and parkland
Initiatives: Develop a site plan for the Bay Beach lands
Goal A4 Ensure environmentally sound development
Initiatives: Implement the Official Plan policies

List of Stakeholders

**THE MOLINARO GROUP
TOWN OF FORT ERIE
RESIDENTS AND RATEPAYERS OF FORT ERIE**

Prepared by:	Submitted by:	Approved by:
D. Heyworth, MCIP, RPP Senior Policy Planner	R. Mostacci, MCIP, RPP Director, Community & Development Services	Harry Schlange, MBA Chief Administrative Officer

Purpose

The purpose of Administrative Report CDS-041-10 is to provide Council with an update relative to the Overall Benefit Permit Application (the Permit) to the Ministry of Natural Resources (MNR) for Fowlers Toad as part of the approval process for the Crystal Beach Gateway Project. Further the Report seeks authorization for the Director of Community and Development Services to submit the application on behalf of the Town.

Background

Administrative Report CDS-08-01 provides a recommendation relative to the planning merits of the proposed Crystal Beach Gateway Project. The Report indicates AECOM Consulting Services has been retained to undertake the "Overall Benefit Permit" to address the requirements of the MNR relative to the Fowler's Toad habitat. The MNR must agree to a Permit prior to any development and site alteration being permitted. It is important to note the permit requirement would apply to any proposed site alteration/removal of the lands or structures whether for the subject proposal or any other development proposal.

The application will be formally reviewed by the MNR local office, then the District Manager and Species At Risk Branch. The process is somewhat fluid in that revisions can be made to the application by the Town to address concerns the MNR considers important that are identified through the review process. Prior to deciding on whether to approve the Permit application, the Minister will consider a recommendation report from MNR staff and public comments from the posting of the application on the Environmental Registry. The ultimate approval or denial of the Permit Application cannot be appealed.

Analysis

The purpose of the Permit is two fold. First, to provide a longer term benefit to the Fowler's Toad through habitat enhancement and minimizing impacts through beach operations, education and monitoring. Second to minimize short-term impacts to individual toads from the development itself, through design and conditions associated with construction.

As part of the process, the Town's Benefit Permit consultant, the MNR Species At Risk biologist (local office), Town planning staff and consultants involved with the development application have had several meetings to discuss rationale, and work out a conceptual framework and site plan. The details of the permit application are being finalized. The fundamental components of the Permit Application will contain the following:

- Minimizing impacts to individual toads through pre-construction fencing surrounding the development area followed by toad searches and evacuations. Fencing will be phased to accommodate beach access and use.
- Increasing the amount of quality toad habitat. Much of the site, namely, parking lot, berm and fill area, is considered as habitat for Permit purposes. However particular areas are only marginal in quality. The permit application shall involve creation of a sizeable block approximately (0.22 ha) of dune vegetation, which will form high

quality habitat for Fowler's Toads providing important foraging, hiding and hibernation functions for the local Fowler's Toad population. This enhancement area will take place on the Town owned lands between Erie Road and the beach. The beach at Crystal Beach/Bay Beach is heavily used by beach goers in the summer leaving the toad's minimal area where they can find diurnal cover without being trampled. A raised boardwalk will traverse the area to allow access while minimizing impacts to the toads. There will be a formalized landscaping strip on the south side of Erie Road to provide an attractive welcoming to beach users and demarcate the limit of the created dune area. Discussions have taken place with MNR staff regarding the use of this area for more active public space. However, this area is critical to meeting Permit objectives that can be supported by MNR staff and the Town's consultant.

- New shore protection works will be designed to perform their required protective function, but also maximize toad use and accommodate toad access to the dune protection area to the best extent possible. There will likely be smaller identified toad protection areas in front of shoreline protection.
- The MNR Species at Risk biologist, Town's consultant and Town Infrastructure Services staff have discussed minor refinements to the Town's beach maintenance operations for Town beaches inhabited by Fowlers toad to be more sensitive to the toad while also allowing safe, practical beach maintenance. These refinements will be part of the permit application.
- Ongoing monitoring will be part of the permit process and will likely take place over several years during the toad's active months of June, July and part of August. Monitoring sessions are likely to take place a couple of times per month.
- Educational signage and information will be provided on site. Areas identified for toad protection will be signed and access restricted. Educational information will be supplied by the Ministry of Natural resources.

Financial/Staffing Implications

The fee for the consultant assisting with the Overall Benefit Permit has been budgeted for as part of the fees for the project.

Policies Affecting Proposal

The Overall Benefit permit is required under Section 17 (2) (c) of the Endangered Species Act.

There have been erroneous comments that an Environmental Impact Study should have been completed in support of the development. The Town's new Official Plan states:

"The required scope and or content of an EIS may be reduced in consultation with appropriate agencies, where: the environmental impacts of the development are thought to be limited; or other environmental studies fulfill all or some of the requirements; "

Town Staff met with the Niagara Peninsula Conservation Authority staff to scope potential impacts. The NPCA reviews development applications for the Region with respect to the Region's natural heritage policies. The NPCA identified studies necessary to addressing hazard issues and the only natural heritage issue identified was the Fowlers Toad. No other natural heritage issues are present on site. This is largely due to the high level of disturbance to the site from the historical development and ongoing public beach use. Town Staff was referred to the MNR since the Fowlers Toad is a Species at Risk. The Overall Benefit Permit application is the appropriate approach to addressing the Fowlers Toad. The MNR has complete authority and the expertise to ensure an overall benefit is provided. The MNR staff indicated they did not require additional ecological information on the toads to address Permit requirements. MNR staff has conducted nocturnal surveys of Fowlers toad on and around the subject property on several evenings in 2007, 2008 and 2009.

In addition, as part of Council's approval of the zoning application, implementing Site-Specific Zoning By-law No.26-10 contains a Holding provision which can not be removed until a Site Plan Agreement has been approved and the Site Plan Agreement must contain appropriate provisions to address the requirements of the Overall Benefit Permit. This ensures that no development or site alteration can occur until the Permit is issued and allows the MNR to be involved in the implementation of any associated conditions.

Alternatives

Council has supported the proposed zoning amendment for the development. The Permit components identified can assist in providing an Overall benefit to the Fowlers Toad. The Overall Benefit permit is required under Section 17 (2) (c) of the Endangered Species Act. It is important to note the permit requirement would apply to any proposed site alteration of the lands whether for the subject proposal or any other development proposal.

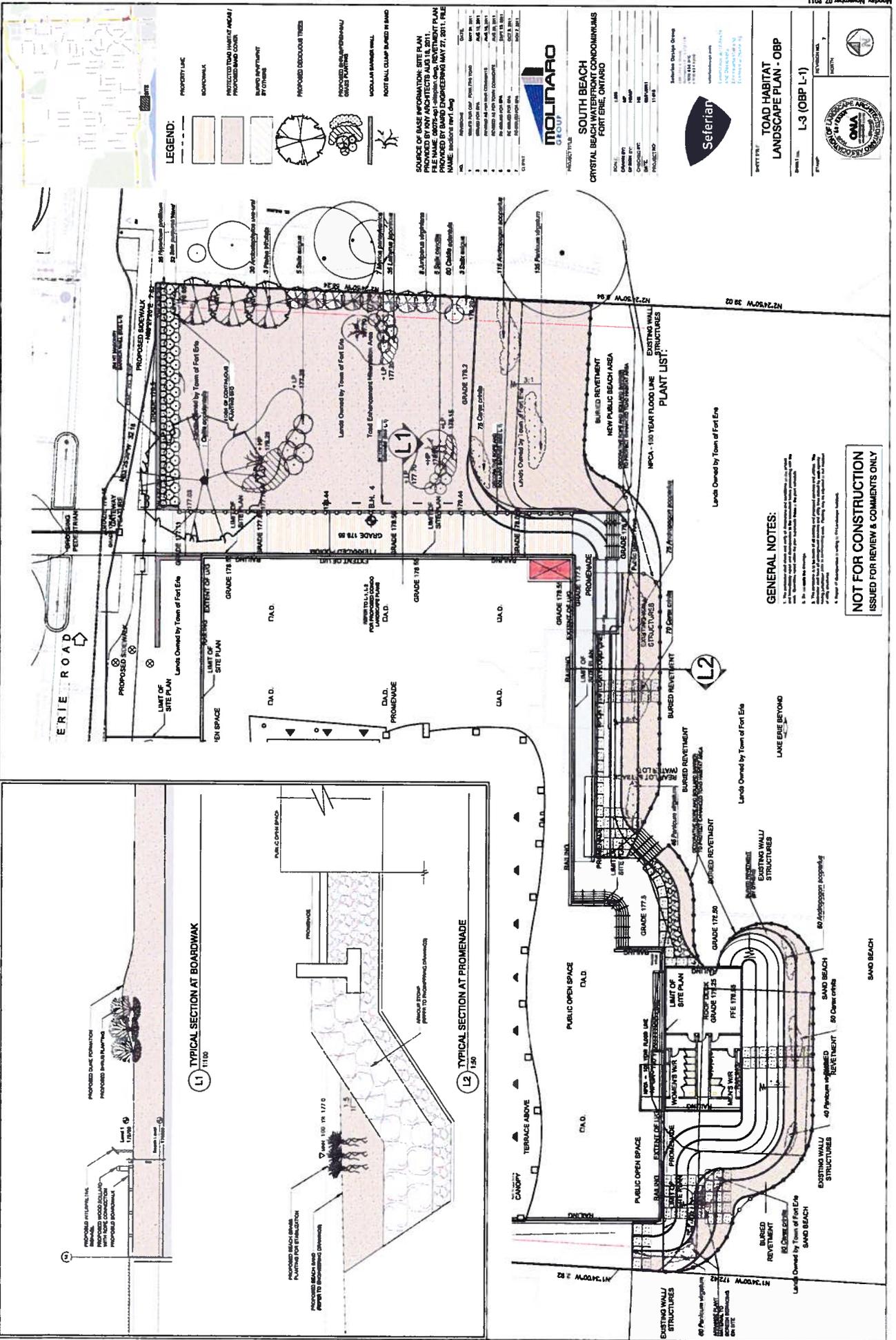
Conclusion

The Overall Benefit Permit is required by legislation. The above Permit components form the basis of a Permit application that would be necessary for success. While the Town could submit an application with significantly different components a successful recommendation from MNR staff would be highly unlikely.

Staff is refining details regarding the various Permit components and intends to submit the application prior to the end of July. This report authorizes the Director of Community and Development Services to do so.

Attachments

N/A



APPENDIX "3" TO ADMINISTRATIVE REPORT NO. CDS-32-12 DATED MAY 7, 2012

CONCEPT PLANS SHOWING LARGE TOAD ENHANCEMENT AREA



1) Environmental Education and Information

- Information about the Blue Flag must be displayed.
- Environmental education activities must be offered and promoted to beach users.
- Information about bathing water quality must be displayed.
- Information relating to local eco-systems and environmental phenomena must be displayed.
- A map of the beach indicating different facilities must be displayed.
- A code of conduct that reflects appropriate laws governing the use of the beach and surrounding areas must be displayed.

2) Water Quality

- The beach must fully comply with the water quality sampling and frequency requirements.
- The beach must fully comply with the standards and requirements for water quality analysis.
- No industrial, waste-water or sewage-related discharges should affect the beach area.
- The beach must comply with the Blue Flag requirements for the microbiological parameter faecal coli bacteria (E.coli) and intestinal enterococci/streptococci.
- The beach must comply with the Blue Flag requirements for physical and chemical parameters.

3) Environmental Management

- The local authority/beach operator should establish a beach management committee.
- The local authority/beach operator must comply with all regulations affecting the location and operation of the beach.
- The beach must be clean.
- Algae vegetation or natural debris should be left on the beach.
- Waste disposal bins/containers must be available at the beach in adequate numbers and they must be regularly maintained.

- Facilities for the separation of recyclable waste materials should be available at the beach.
- An adequate number of toilet or restroom facilities must be provided.
- The toilet or restroom facilities must be kept clean.
- The toilet or restroom facilities must have controlled sewage disposal.
- There should be no unauthorised camping, driving or dumping of waste on the beach.
- Access to the beach by dogs and other domestic animals must be strictly controlled.
- All buildings and beach equipment must be properly maintained.
- Coral reefs in the vicinity of the beach must be monitored.
- A sustainable means of transportation should be promoted in the beach area.

4) Safety and Services

- An adequate number of lifeguards and/or lifesaving equipment must be available at the beach.
- First aid equipment must be available on the beach.
- Emergency plans to cope with pollution risks must be in place.
- There must be management of beach users and events to prevent conflicts and accidents.
- There must be safety measures in place to protect beach users.
- A supply of drinking water should be available at the beach.
- At least one Blue Flag beach in each municipality must have wheelchair and accessibility features.
- Wheelchair access and accessibility features must be in place for at least one Blue Flag beach in each municipality.

About the criteria

Beaches are awarded the Blue Flag based on compliance with 32 criteria covering the following:

- 1) Environmental Education and Information
- 2) Water Quality

3) Environmental Management

4) Safety and Services

All Blue Flags are awarded for one season at a time.

If the criteria are not fulfilled during the season or the conditions change, the Blue Flag may be withdrawn.

Detailed criteria

You can download FEE's detailed explanation of the criteria here:

[Beach criteria in detail](#) (pdf)

A part of FEE International



The Foundation for Environmental Education (FEE) is a non-government, non-profit organisation promoting sustainable development through environmental education.

FEE is an international umbrella organisation with one national member organisation per country representing FEE on the national level and in charge of implementing FEE programmes nationally. FEE currently has 74 member organisations in 64 countries worldwide.

Contact

Foundation for Environmental Education

Danish Outdoor Council

Scandiagade 13

2450 Copenhagen SV [See map](#)

Denmark

Tel: +45 3328 0411

Fax: +45 3379 0179

Mail: coordination@blueflag.org

 Blue Flag on Facebook

Sponsors



BeachTech

shipmate