

Water Lots, Watercourses & Wetlands (Nova Scotia)
An Aide Memoire for Reviewing Title & Uses
Real Estate Section at The 2010 Annual Meeting, Nova Scotia Barristers' Society
Garth C. Gordon, Q.C.
June 18, 2010.

1. Resources:
 - a. Professional Standard 1.1 Legislative Review;
 - b. Professional Standard 2.6 Tidal Waters / Non-tidal Waters; and
 - c. Papers:
 - i. Chapman, Anthony L, Q.C., "Of Wharves, Water Lots and Kings", Canadian Bar Association Nova Scotia Branch, Real Property Section Meeting, November 16, 2004.
 - ii. Corsano, Gary J., and Risk, Robert F., "The Ebb and Flow of Water Law In Nova Scotia", Canadian Bar Association Nova Scotia Branch, 2008 Professional Development Conference, January 11, 2008.
 - iii. Gordon, Garth C., Q.C. "Access - Red Flag Issues Under LRA (revised March 2, 2007)", 2007 RELANS Conference: Year III - The Junior Year, March 2, 2007. Refer to the section dealing with Navigable Waterway. See also *Knock v. Fouillard*, 2007 NSCA 27 in which access benefitting a dominant tenement was established by a reservation in the chain of title of the servient tenement.
 - iv. Gordon, Garth C., Q.C., "Comments about Underlying Crown Interests", Real Property Conference: Crown Interests and Due Diligence under LRA: "The Sophomore Year", February, 2006. Refer to *Brill v. Nova Scotia (Attorney General)*, 2008 NSSC 330, November 7, 2008 now before the NSCA on appeal. *Brill* deals with the ability of the Crown in Nova Scotia to enforce its claims in lands under the Royal Prerogative. See the "Overview, Nova Scotia Crown Interests in Land, Nullum Tempus / LAA & the *Marketable Titles Act*", June 19, 2010 (Rev 7), (with edits to Revision 6 circulated at the June 18, 2010 presentation) annexed to this paper reflecting further consideration after observing the parties' submissions at the Appeal on May 31, 2010.
 - v. Gordon, Garth C., Q.C., "Affidavit Templates & Comments for Documenting Possessory Interests", Real Property Conference: Crown Interests and Due Diligence under LRA: "The Sophomore Year", February 2006.
 - vi. Robinson, K.H. Anthony, "Alteration of a Water Course", The Continuing Legal Education Society of Nova Scotia, Real Estate, April 21, 1994.

- vii. Ballantyne, Dr. Brian, "Re-establishing boundaries: Ambiguities and Riparian Rights", Association of British Columbia Land Surveyors, Kelowna, February 27, 2008. http://abcls.ca/wp-content/uploads/pdfs/CPD_Handout-Dr_Brian_Ballantyne-AGM081.pdf

2. Crown Grants of water lots:

- a. Did Nova Scotia have the right to convey? Refer to the Chapman paper to review possible "Inland Waters", "Territorial Waters" and other issues regarding the extent of Nova Scotia lands. The dissenting decision of Duff, J., in *Cunard v. R.* (1910), 43 S.C.R. 88, 8 E.L.R. 94, 1910 CarswellNat 27 contains a legislative history and discussion about the Nova Scotia Crown's ability to grant lands.
- b. What is the extent of the Grant? Review the description, sketch (if any), and any exceptions (e.g. roads) contained in the Grant. Did the Grant include the foreshore? See *Esquimalt & Nanaimo Railway v. Treat*, [1918] 3 W.W.R. 685, 26 B.C.R. 275, 43 D.L.R. 653, 1918 CarswellBC 105 (B.C.C.A.). Refer to the Ballantyne paper re survey issues.
- c. Common law limitations on Crown Grants of water lots include:
- i. the public right of navigation (*Esson v. Wood*, 1884 CarswellNS 8 and *Friends of the Oldman River Society v. Canada (Minister of Transport)*, 1992 CarswellNat 1313 (see paras. 74-76)); and
- ii. the public right to fish (*Donnelly; v. Vroom*, 42 N.S.R. 327, 1907 CarswellNS 166).

3. Public Harbour Issues. If the water lot was part of a public harbour at Confederation in 1867 consider BNA, s.108:

- a. If granted to a third party by the provincial Crown before Confederation title to the public harbour bed did not pass to Federal Government under BNA, s.108. See *R. v. Saint John Gas Light Co.*, 1895 CarswellNat 2.
- b. If the waters were a potential public harbour but not a public harbour on Confederation BNA s.108 does not apply: *Esson v. Wood*, 1884 CarswellNS 8.
- c. If purportedly granted by Nova Scotia after Confederation, the grant of a public harbour bed by the Province was *ultra vires*. See *Kennelly v. Dominion Coal Co.*, 1904 CarswellNS 10, *Esson v. Wood*, 1884 CarswellNS 8, and *Holman v. Green*, 1881 CarswellPEI 1.
- d. Title to water lots in public harbour beds may be founded on adverse possession against the Federal Crown in some circumstances: *Nickerson v. Canada (Attorney General)* (2000), 185 N.S.R. (2d) 36; 575 A.P.R. 36 32 R.P.R. (3d) 141, 2000 Carswell NS 160.

- e. Annexed is a copy of correspondence with the Regional Director Harbours and Ports Atlantic Region in 2005 with Federal plans of 12 of 13 of what they considered to be their harbour beds.

4. Watercourses. Was any part of the granted parcel a "watercourse"?

- a. If any part of a parcel granted by the Crown on or before May 16, 1919 is a watercourse that part reverted to the Crown (Nova Scotia) by the 1919 *Water Act*. Illustration attached.

- b. The Nova Scotia *Environment Act* provides:

103 Notwithstanding any enactment, or any grant, deed or transfer made on or before May 16, 1919, whether by Her Majesty or otherwise, or any possession, occupation, use or obstruction of any watercourse, or any use of any water by any person for any time whatever, but subject to subsection 3(2) of the *Water Act*, every watercourse and the sole and exclusive right to use, divert and appropriate any and all water at any time in any watercourse is vested forever in Her Majesty in right of the Province and is deemed conclusively to have been so vested since May 16, 1919, and is fully freed, discharged and released of and from every fishery, right to take fish, easement, profit à prendre and of and from every estate, interest, claim, right and privilege, whether or not of the kind hereinbefore enumerated, and is deemed conclusively to have been so fully freed, discharged and released since May 16, 1919. 1994-95, c. 1, s. 103. (Ed Note: the language of this section is different from its predecessor section - R.S.N.S. 1989, c.500, s.3.)

...

108 (1) Possession, occupation, use or obstruction of any watercourse, or any use of any water resource by any person for any time whatever on or after May 17, 1919, shall not be deemed to give an estate, right, title or interest therein or thereto or in respect thereof to any person.

(2) Notwithstanding subsection (1), possession, occupation or use of a watercourse where the land is no longer covered by water, for a period of not less than forty years continuously, may give an interest therein in accordance with the principles of adverse possession or prescription. 1994-95, c. 1, s. 108; 2001, c. 6, s. 103.

- c. "Watercourse" was held not to include harbours in *Corkum v. Nash* (1990), 71 D.L.R. 391 (N.S.S.C.) but consider statutory definitions in *LRA*, *Environment Act* and *MGA* carefully as they may apply to the parcel in question.

"42 The words river, stream, lake, creek, pond, spring, lagoon, swamp, march, wetland, ravine, gulch are interior bodies of water, for the most part non tidal and non brackish, which (except incidentally with respect to some rivers) are not

directly connected to the sea. A harbour does not fall into the same genus or category and, in my opinion, does not fall within the definition of watercourse in the *Water Act*."

- d. Anthony Chapman observed at p.13 of his paper that:

"Based upon the reasoning in the *Corkum. v. Nash* decision and the history of the statutory provision, one could argue that a water lot on the coast in an area where the provincial Crown has jurisdiction, if properly granted by the Crown prior to 1919, would not have reverted in the Crown by virtue of Section 103 of the *Environment Act*. However, the matter is not free from doubt."

- e. *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*, 2007 NSSC 291, 63 R.P.R. (4th) 134, 2007 CarswellNS 449 dealt with the status of Cow Bay Pond near Dartmouth. The court held at paragraph 77 that:

"... Cow Bay Pond is not a harbour. Resort need not be had to the catch-all phrase interpreted in *Corkum v. Nash* because this natural body of water is part "lagoon" and mostly "lake" or "pond", each of which is explicitly in the definition."

Upheld on Appeal 2010 NSCA 28 with particular reference to the trial judge's dealing with *Corkum v. Nash*.

- f. *Silver Sands* provides a history of "watercourses" legislation in Nova Scotia law at paragraphs 68-77. See also *Corkum v. Lohnes* (1981), 43 N.S.R. (2d) 477, 81 A.P.R. 477, 121 D.L.R. (3d) 761, 1981 CarswellNS 109 (C.A.). Section 1(k) of the *Water Act* (the vesting section corresponding to s.103 of the present *Environment Act*) was amended by S.N.S. 1972, c.58, effective September 25, 1973. This amendment appears to purposefully nullify the interpretation of "watercourse" in *George v. Floyd*¹ based on the former "small rivulets or brooks unsuitable for milling, mechanical or power purposes" exception in the statutory definition.

5. Infilling

- a. If a Nova Scotia **watercourse** is in-filled consider Sections 103 and 108(2) of the *Environment Act*. Also refer to the papers by Chapman, Corsano and Risk and Robinson cited in paragraph 1.c. Consider the effects of Sections 21 and 22 of the *Limitation of Actions Act*, "LAA".
- b. For infilling of other provincial Crown lands - e.g. **foreshores** - consider Section 38(1)(c) of the *Crown Lands Act* prohibiting dumping of materials on Crown lands as follows:

¹ (1972), 6 N.S.R. (2d) 306, 26 D.L.R. (3d) 339, 1972 CarswellNS 113 (March 6, 1972) affirmed by (1973), 6 N.S.R. (2d) 299, 45 D.L.R. (3d) 212, 1973 CarswellNS 105 (August 6, 1973).

38 (1) A person who without legal justification or without the permission of the Minister or a person authorized by the Minister, the proof of which rests upon the person asserting justification or permission,

...

(c) dumps or deposits materials on or over Crown lands or causes, suffers or permits material to be dumped or deposited on or over Crown lands,

is guilty of an offence.

See *R. v. Loomis*, 2006 NSPC 14, 772 A.P.R. 90, 243 N.S.R. (2d) 90, 2006 CarswellNS 144 for a prosecution under this section that failed.

- c. Federal Crown lands. The *Federal Real Property and Federal Immovables Act*, s.14, states:

"No person acquires any federal real property or federal immovable by prescription."

This provision became effective June 1, 1950 under the *Public Land Grants Act*, S.C. 1950, c.19. One must establish 60 years adverse possession against the federal Crown before June 1, 1950 - the *Nullum Tempus Act* of 1769 applies to the Crown in right of Canada in Nova Scotia².

6. Restrictions on Use. Consider the myriad of restrictions on the use of water lots, watercourses, wetlands and other protected lands including:
- a. Public rights by which the Crown and Her Subjects are bound:
- i. navigation – the common law right cited above and the *Navigable Waters Protection Act*³ - see the Navigable Waters section of the Gordon Access paper; and
 - ii. fishing – the common law rights cited above, Canada fishing legislation, and Nova Scotia fishing legislation. Refer also to the *Fisheries and Coastal Resources Act*.
- b. Environmental and other protective legislation - federal and provincial. The Corsano and Risk paper cited above has an extensive list of "Statutory Obligations and Prohibitions" at pp. 20-23. A starting point for required permits, licences and

² *Nickerson v. Canada (Attorney General)* (2000), 185 N.S.R. (2d) 36; 575 A.P.R. 36 32 R.P.R. (3d) 141, 2000 Carswell NS 160. The Court found possessory title against the Federal Government respecting a parcel in Sydney Harbour.

³ The *Navigable Waters Protection Act* first became law on May 17, 1882.

applications is the Nova Scotia Permits Directory on the Nova Scotia Government website at <http://www.gov.ns.ca/snsmr/paal/default.asp>.

- c. Refer to both the Nova Scotia *Beaches and Foreshores Act* and the *Beaches Act*. As to the latter refer to LRA s.73(2) providing that "...a designation pursuant to the *Beaches Act* is not an overriding interest and has no effect with respect to a parcel registered pursuant to this Act until it has been recorded in that parcel's register.." Refer to the Chapman article for a discussion on the *Beaches Act*.
- d. Check the Department of Natural Resources website (refer to both the Restricted & Limited Use Lands database and the Significant Habitats of Nova Scotia database) and the Department of Environment and Labour website for current restrictions and required permits for an array of activities.

Miscellaneous.

- e. **Structures on water lots.** Consider which government has jurisdiction over structures on a water lot in a public harbour. In *1588145 Nova Scotia Ltd. v. Cape Breton Regional Municipality et al.* (2002), 206 N.S.R. (2d) 285 (C.A.) the court considered the application of Section 355 of the *Municipal Government Act*; the section states:

355. All docks, quays, wharves, slips, breakwaters and other structures connected with the shore of any part of a municipality are within the boundaries of the municipality. 1998, c. 18, s. 355.
- f. **Navigable waterways and Zoning By-laws.** In *Dominion Diving Ltd. v. Dartmouth (City)*⁴ the court held that the navigable waters of Halifax Harbour were not a street as defined in the zoning by-law. The word "street" as defined in the bylaw is to be interpreted in accordance with: (a) the common everyday meaning of the word, (b) the *Planning Act*, (c) the *Public Highways Act* and (d) the meaning of the same word elsewhere in the by-law.
- g. **NSPI Flooding Rights.** The Small Claims Court of Nova Scotia held that certain flooding rights held by Nova Scotia Power Corporation at Murphy Lake, Hants County, Nova Scotia "...did not materially affect the enjoyment of the property nor do those rights affect marketability of the property." *Phillip and Wanda Ohri v. R. Michael MacKenzie and Alexander, MacKenzie and Proudfoot, a Partnership*, S.C.K. No. 11371, October 9, 2002, James A.D. Armour, Adjudicator.
- h. **Riparian rights.** Refer to: the Corsano & Risk paper; *Lockwood v. Brentwood Park Investments Ltd.* (1970), 1 N.S.R. (2d) 669, 10 D.L.R. (3d) 143 (N.S. C.A.); *George v. Floyd* (1972), 6 N.S.R. (2d) 306, 26 D.L.R. (3d) 339, affirmed (1973), 6 N.S.R. (2d) 299, 45 D.L.R. (3d) 212, and *Hoyt v. Loew*, 2008 NSSC 29, 2008 NSSC 29.

⁴

(1993), 125 N.S.R. (2d) 378, 349 A.P.R. 378, 1993 CarswellNS 363 (S.C.) (Nathanson, J.).

- i. **Access over non-tidal waters in Nova Scotia.** See the Gordon Access paper for a more complete discussion of this subject. It appears to be an open question whether there is a public right of access over **non-tidal Nova Scotia waters** that are *de facto* navigable. In *Anger & Honsberger Law of Real Property, Third Edition*⁵, at pages 19-22 and 19-23, the author states:

"In England the public has a natural right to navigate in tidal waters but, though non-tidal streams may be *de facto* navigable, the public has no right to navigate on them except as authorized by statute or immemorial custom or unless the owner of the bed has dedicated the stream as a highway. In most of Canada the rule is that if waters are *de facto* navigable, the public right of navigation exists there, whether the waters are tidal or non-tidal. **In the Atlantic provinces, however, the courts have long assumed that the English rule applies, and the Supreme Court of Canada has left the point open.**" (Emphasis added)

The Supreme Court of Canada's 1992 decision referred to in this quotation is *Friends of the Oldman River Society v. Canada (Minister of Transport)*⁶.

In its earlier 1991 decision, *Hirtle v. Ernst*⁷, the Nova Scotia Supreme Court dealt with access by non-tidal water. The Court's finding that the plaintiff had "no right to use or pass over the waters of Big Mushamush Lake", *simply because Big Mushamush Lake is vested in the Crown* is problematic. The Court's other finding that there was no evidence that the lake could be used for transportation of things needed for the plaintiff's land - *i.e.* there was no evidence the lake was navigable - appears to be sufficient grounds for its decision.

If there is a public right of navigation over *de facto* navigable non-tidal waters in Nova Scotia it applies notwithstanding the province's ownership of watercourses in Nova Scotia - as is the case in most parts of Canada. If the public right of navigation exists, that right of navigation is subject to the federal government's legislative authority over navigation⁸. If the "English rule" applies in Nova Scotia there is no public right of access over non tidal waters. As *Hirtle v. Ernst* was decided the year before *Friends of the Oldman River Society* and the Supreme Court of Canada left the question open, it is not clear that *Hirtle v. Ernst* settles this question.

⁵ Anne Warner La Forest, *Anger & Honsberger Law of Real Property, Third Edition*, (Aurora, Canada Law Book Company, 2005).

⁶ (1992), 84 Alta. L.R. (2d) 129, [1992] 1 S.C.R. 3, [1992] 2 W.W.R. 193, 7 C.E.L.R., (N.S.) 1, 132 N.R. 321, 88 D.L.R. (4th) 1, 3 Admin. L.R. (2d) 1, 48 F.T.R. 160, 1992 CarswellNat 1313.

⁷ (1991), 21 R.P.R. (2d) 95 (N.S. T.D.).

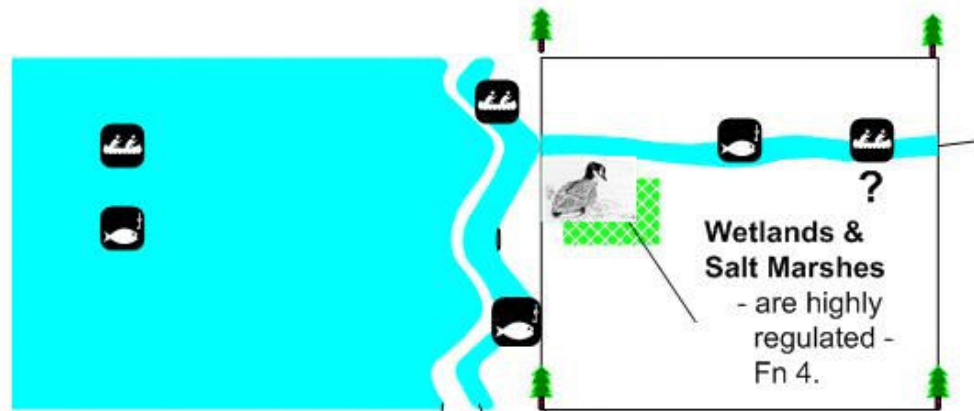
⁸ *Reference re Waters & Water-Powers*, [1929] S.C.R. 200, [1929] 2 D.L.R. 481, 1929 CarswellNat 35.

In the meantime one solution for lawfully traveling on non-tidal watercourses is to be a Nova Scotia resident with a fishing rod and line trolling for fish as you travel; Section 3(2) of the *Angling Act* permits Nova Scotia residents with rod and line to go on watercourses for lawful fishing.

Postscript

- j. At the presentation, but not included in the presentation paper, was the attached "VARIATION (Declination) NOTE & WORKSHEET" that can be used to reconcile magnetic bearings in old descriptions with true or grid bearings in modern surveys.

Water Lots, Water Courses & Wetlands



Watercourse

- Public right to fish (*Angling Act*).
- Public right of navigation except to fish is not certain in non-tidal NS watercourses - Fn 3.
- NB - the 1919 *Water Act* may have "clawed back" prior watercourse grants.
- *Environment Act*, ss. 103, 108

Wetlands & Salt Marshes

- are highly regulated - Fn 4.

Ordinary High Water Mark

- Beginning of foreshore.

Foreshore

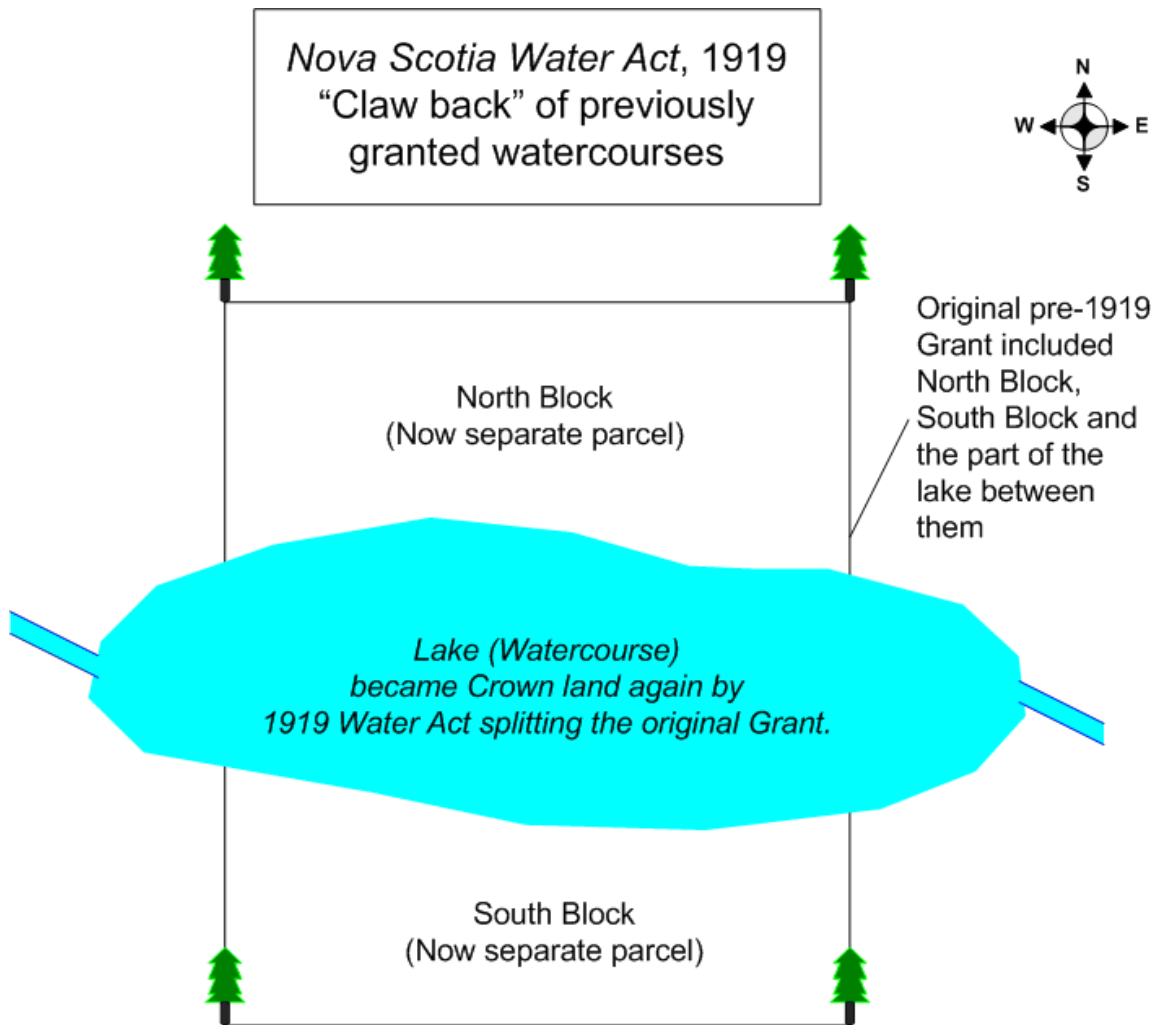
- Provincial lands except for
 - (a) 1867 public harbours not previously granted (Federal lands under BNA, s.108) &
 - (B) water lots granted by the Crown (NS).
- Crown interest is subject to common law public rights of navigation and fishing - Fn 3.
- Use of foreshore water lots is highly regulated.

Ordinary Low Water Mark

- End of foreshore.
- Crown interest is subject to common law public rights of navigation - Fn 3 - and fishing.
- Use of water lots is highly regulated.

Resources:

- 1 Chapman, Anthony, Q.C., "Of Wharves, Water Lots and Kings", CBANS Presentation November 16, 2004, CBANS website.
- 2 Corsano, Gary J., and Fisk, Robert F., "The Ebb and Flow of Water Law In Nova Scotia", Canadian Bar Association Nova Scotia Branch, 2008 Professional Development Conference, January 11, 2008.
- 3 Gordon, Garth C., Q.C. "Access - Red Flag Issues under LRA (revised March 2, 2007) RELANS conference: Year III - The Junior Year, March 2007.
- 4 NS Department of Environment and Labour and Department of Natural Resources websites.



CAUTION
Silver Sands Case

Under *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*, 2007 NSSC 291, lawyers and surveyors should consider the Crown's ownership of watercourses when reckoning the extent of parcels when the parcel descriptions of those parcels purport to include watercourses. As in *Silver Sands* this is especially so when taking advantage of the 10 hectare parcel exemption from subdivision approval under Section 268(2)(a) of the *Municipal Government Act*.

OVERVIEW
Nova Scotia Crown Interests in Land, Nullum Tempus / LAA
&
the Marketable Titles Act June 19, 2010 (Rev 7)
Garth C. Gordon, Q.C.

Crown Lands -
The Crown holds its
lands & interests by
Royal Prerogative.

Nullum Tempus, 21
Jac. I., c.2, c.1623.
Retrospective, 60 yrs.

Nullum Tempus, 1769
9 Geo. III., ch. 16
Prospective &
retrospective. 60 yrs.

Common law search -
Cunard v. Irvine
(NSCA, 1853) – trace
title to either of:

A
Crown
Grant /
Release.

A deed from a
person in
possession of
the land or
interest –
Tobin v.
McDougall.
(NSCA, 1914)

21 Jac. I., c.14, 1623, limited
Crown recovery of land. If
Subject had 20 years
possession, the burden of
proof shifts to The Crown.
***Maddison v. Emmerson* (SCC,**
1904), *Walsh v. Smith* (NSCA,
1918)

Replaced by LAA,
in 1830s,
LAA, ss.21 & 22
now 40 years –
LRA, ss.115,115A

Nemeskeri -
(NSCA, 1993)
constructive
dispossession -
trace title to a
Warranty Deed
dated before the
LAA limitation
period runs prior
to the search
date. Burden of
proof shifts to
Crown.

There is
recorded
proof of
adverse
possession
sufficient
for LAA,

C. MacIntosh, 1987:
The traditional search
period of 60 years was
developed to protect
against the possibility
of double claims of
title and to establish a
standard, short of a
chain continuous
from a grant from the
Sovereign, which
would be recognized
as one which a
purchaser would not
be able to reject.

LAA, 1830s
ss 10, 20 & 22
Limitation periods
amended by LRA ss.
115, 115A.
Now 20/25 years

Lands & Interests
held by Subject(s)

60 yr common law
search originating
in Writs of Right,
1540

MTA, 1996
1) Reduces search
period to 40 years,
& 2) Root of title
becomes an
instrument dated
more than 40 years
before the title
search purporting
to convey title. S.4
is a defence to pre-
MTA competing
claims *Penny v*
***Hartling* (NSSC);**
Ontario Hydro v.
***Tkach* (Ont. CA)**
subject to s.7.

S.9 preserved 60
year Crown
limitation period
before LRA
amendments.

MTA, s.4(1)
Common Law

MTA, s.4(1)
Equity

MTA, s.4(1)
Otherwise

LRA, 37(9)(b)
RG “Lower
Standard”

LRA, 37(9)(b)
Other
Enactment

LRA,
37(9)(b)
LAA

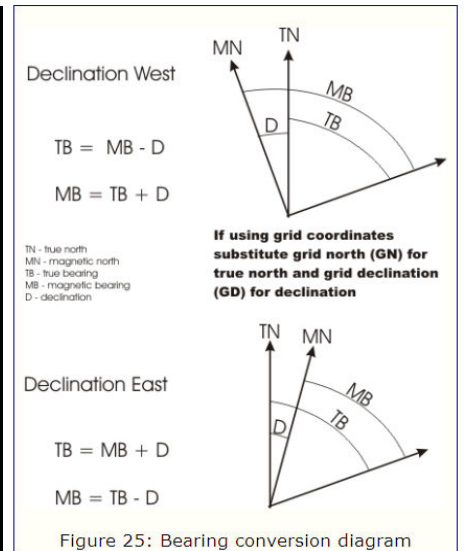
LRA, 37(9)(b)
Common law

LRA, 37(9)(b) - MTA

VARIATION (Declination) NOTE & WORKSHEET
 Can be used to reconcile magnetic bearings in old descriptions
 with true or grid bearings in modern surveys.

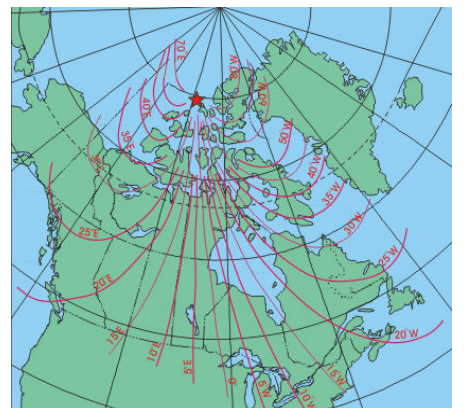
In Kentville, Nova Scotia, the North Magnetic Pole lies approximately 18° West of the True North Pole. To adjust magnetic bearings in older descriptions to True or Grid bearings in modern surveys (or vice versa) you need to convert the bearings by adding or subtracting "Variation" (called "Declination" by Natural Resources Canada). For historical variation values from 1900 forward use the Natural Resources (Canada) calculator below. You can use this worksheet: (Example conversion on grey line):

True/Grid Bearing	Variation	Magnetic bearing
067° T N67E	(T to M → Add Variation of 18° West) Kentville NS - Variation ~18° West 2010 Natural Resources (Canada) Calculator	085° M N85E



From Natural Resources (Canada):

- Variation (Declination) calculator (1900-2010):
<http://geomag.nrcan.gc.ca/apps/mdcal-eng.php>
- Diagrams (2) (Right).



From ANSLs website: "True north and astronomic north are generally determined by an astronomic observation of the sun or star with the appropriate calculations. The magnetic north is reference to the Magnetic North Pole and its relationship to true north varies with the geographical location of the observation. Local magnetic attractions can also result in anomalous readings. Grid north is the term used when the bearings are referenced to a local or recognized map projection. "Grid bearings" are referenced to the central meridian (longitude line) of the projection. The map projection results in an exaggerated grid of longitude lines that in reality is coincident at the North Pole. See "The Deed Description" by Fred Hutchinson, BA, NSLS, CLS.

Wikipedia: Variation changes 1590 -1990 (Air Navigation Heading): http://en.wikipedia.org/wiki/Magnetic_declination

Garth Gordon
 May 23, 2010

Garth Gordon

From: Garth Gordon
Sent: Friday, January 21, 2005 11:56 AM
To: 'Mosher, Brian'
Subject: RE: Harbour Beds in Nova Scotia remaining under federal ownership.

Mr. Mosher,

Thank you so much for your prompt and thorough reply. If you could fax me the list of materials you are preparing for your meeting that you have offered the materials would give us the names of the 13 Harbours and the extent of them we will have to consider as Federal harbour beds in addition to whatever Provincial claim there may be

Our fax number is (902) 678-6082.

Thank you again.

Garth

-----Original Message-----

From: Mosher, Brian [mailto:MOSHERB@tc.gc.ca]
Sent: Friday, January 21, 2005 11:49 AM
To: Garth Gordon
Subject: RE: Harbour Beds In Nova Scotia remaining under federal ownership.

The harbour beds in Nova Scotia have always been quite an issue with clear ownership between the Province and the federal Crown being a grey area. A number of years ago an attempt was coordinated by the federal department of Public Works and Government Services Canada (PWGSC) to at least come to an agreement of what was federal and what was provincial. This initiative was titled the Nova Scotia Harbours Agreement and I believe discussions are still taking place however no agreement has been reached that I am aware of.

In the meantime, under Transport Canada's divestiture program we have transferred all of our port facilities in Nova Scotia to local interests and now have only 13 harbour beds remaining. A meeting is scheduled between Transport Canada and the Province on February 15, 2005 to officially offer these remaining harbour beds to the Province before moving to local interests. The provincial contact who is arranging this meeting is:

G. Jo-Anne Himmelman
Executive Director, Lands Branch
e-mail: himmeigj@gov.ns.ca
Phone (902) 424-4267
Fax (902) 424-3173

At this meeting we will be presenting details on the actual 13 harbour beds including what the federal crown views as the limits of each harbour bed, along with any revenues sources (lease/licenses) that exist

As there is nothing online that can describe the limits, I can either mail or fax you reduced copies of what we are preparing for the above meeting, that will show the limits of each harbour bed

Another source of information might be Mr. Wayne MacLean who is a DOJ lawyer assigned to PWGSC Mr. MacLean has been involved in the NS Harbours Agreement and as well handles most of our property issues in Nova Scotia.

Mr. MacLean may be contacted as follows:

Dominion Public Building, 1713 Bedford Row
Halifax, Nova Scotia
Canada

01/21/2005

B3J 3C9
Telephone:(902) 496-5471
Fax:(902) 496-5474
wayne.maclean@pwgsc.gc.ca

Regards: Brian

Brian K. Mosher
Regional Director, Harbours and Ports, Atlantic Region
Directeur régional, Havres et Ports, Région de l'atlantique
Transport Canada (MH) Transports Canada (MH)
45 Alderney Dr. Dartmouth, Nova Scotia, B2Y 4K2
Tel: (902) 426-2588 / Fax: (902) 426-3904
E-Mail: mosherb@tc.gc.ca mailto:mosherb@tc.gc.ca
Web Site: <<http://www.tc.gc.ca/atl/marine/menu.htm>>

-----Original Message-----

From: Garth Gordon [mailto:gordon@tmclaw.com]
Sent: Friday, January 21, 2005 11:27 AM
To: Mosher, Brian
Subject: Harbour Beds In Nova Scotia remaining under federal ownership.

Mr. Mosher,

I am a lawyer in Nova Scotia and, with our new Land Registration System, we are encountering questions about Crown ownership foreshore lands more frequently. Some is owned by the Crown in right of Canada and some by the Crown in right of Nova Scotia.

I have searched the Transport Canada Site and found many resources about public harbours and divestiture of them. One report from 2002 indicated the Department held only 15 Nova Scotia harbour beds in inventory at the time.

Is there a list of which harbour beds remain in federal ownership and if so may I have a copy or direction to where I can find it on-line? Is there a resource that states the boundaries of those harbour beds?

I appreciate your help.

Garth C. Gordon



Garth C. Gordon, Q.C.
Partner

gordon@tmclaw.com | [www tmclaw.com](http://www.tmclaw.com)

KENTVILLE OFFICE:
50 Cornwallis Street
Kentville, NS B4N 2E4
Phone: 902.678.6158 Ext #225 FAX: 902.678.8010

YARMOUTH OFFICE:
The Pler One Complex, Drawer#5, 101 Water St., 3B West, Suite A
Yarmouth, Nova Scotia, B5A 4P4
Phone: 902.742.4360 FAX 902.742.4964

Important Notice

This Electronic Mail message and any attachment is confidential and may be subject to solicitor-client privilege. It should only be read by the person to whom it is addressed. If you received this communication in error, please notify TMC LAW by reply and delete the email. Thank you in advance for your cooperation.

01/21/2005



Date JANUARY 21/05

Number of pages including cover sheet: 13

TO: GARTH C. GORDON

PHONE

FAX (902) 678-6082

CC

FROM THE OFFICE OF

Brian K. Mosher - MH-DAR
Regional Director
Harbours and Ports
Atlantic Region

PHONE: (902) 426-2588 FAX: (902) 426-3904

E-Mail: mosherb@tc.gc.ca

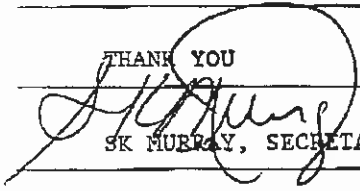
REMARKS: Urgent For your review Reply ASAP Please comment

MR. GORDON:

PLEASE FIND ATTACHED THE INFORMATION YOU REQUESTED. SENT THIS DATE

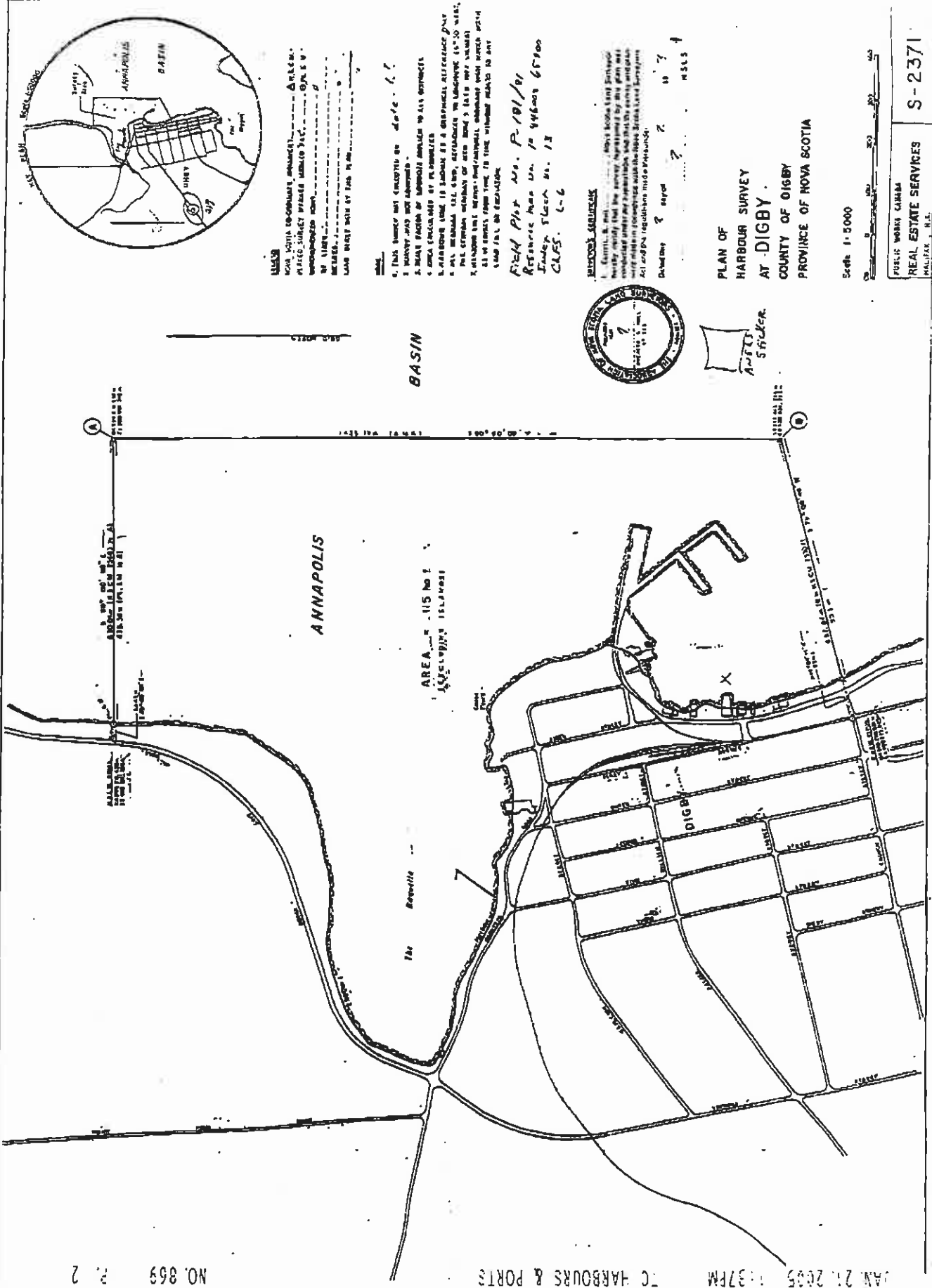
BY BK MOSHER. REGIONAL DIRECTOR, HARBOURS AND PORTS, ATLANTIC

THANK YOU



SK MURRAY, SECRETARY TO REG DIRECTOR

Visit Us Online: <http://www.tc.gc.ca/atl/marine/menu.htm>



NOTES
 1. THIS SURVEY WAS EXECUTED BY DATE 1910.
 2. ALL DISTANCES ARE IN METERS.
 3. ALL BEARINGS ARE TRUE BEARINGS.
 4. THE AREA SURVEYED IS APPROXIMATELY 100 HECTARES.
 5. THE SURVEY WAS COMPLETED BY DATE 1910.

GENERAL CONDITIONS
 1. THE SURVEY WAS EXECUTED BY DATE 1910.
 2. ALL DISTANCES ARE IN METERS.
 3. ALL BEARINGS ARE TRUE BEARINGS.
 4. THE AREA SURVEYED IS APPROXIMATELY 100 HECTARES.
 5. THE SURVEY WAS COMPLETED BY DATE 1910.

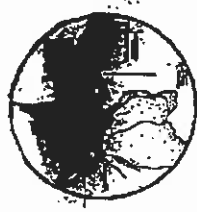
PLANNING AND CONSTRUCTION
 1. THE SURVEY WAS EXECUTED BY DATE 1910.
 2. ALL DISTANCES ARE IN METERS.
 3. ALL BEARINGS ARE TRUE BEARINGS.
 4. THE AREA SURVEYED IS APPROXIMATELY 100 HECTARES.
 5. THE SURVEY WAS COMPLETED BY DATE 1910.

LEGAL AND ADMINISTRATIVE
 1. THE SURVEY WAS EXECUTED BY DATE 1910.
 2. ALL DISTANCES ARE IN METERS.
 3. ALL BEARINGS ARE TRUE BEARINGS.
 4. THE AREA SURVEYED IS APPROXIMATELY 100 HECTARES.
 5. THE SURVEY WAS COMPLETED BY DATE 1910.

PLAN OF HARBOUR SURVEY AT DIGBY COUNTY OF DIGBY PROVINCE OF NOVA SCOTIA

Scale 1:5000

PUBLIC WORKS DEPARTMENT
 REAL ESTATE SERVICES
 HALIFAX, N.S.
 S-2371



Scale 1:50,000
 1 cm = 500 m
 1 inch = 1250 m

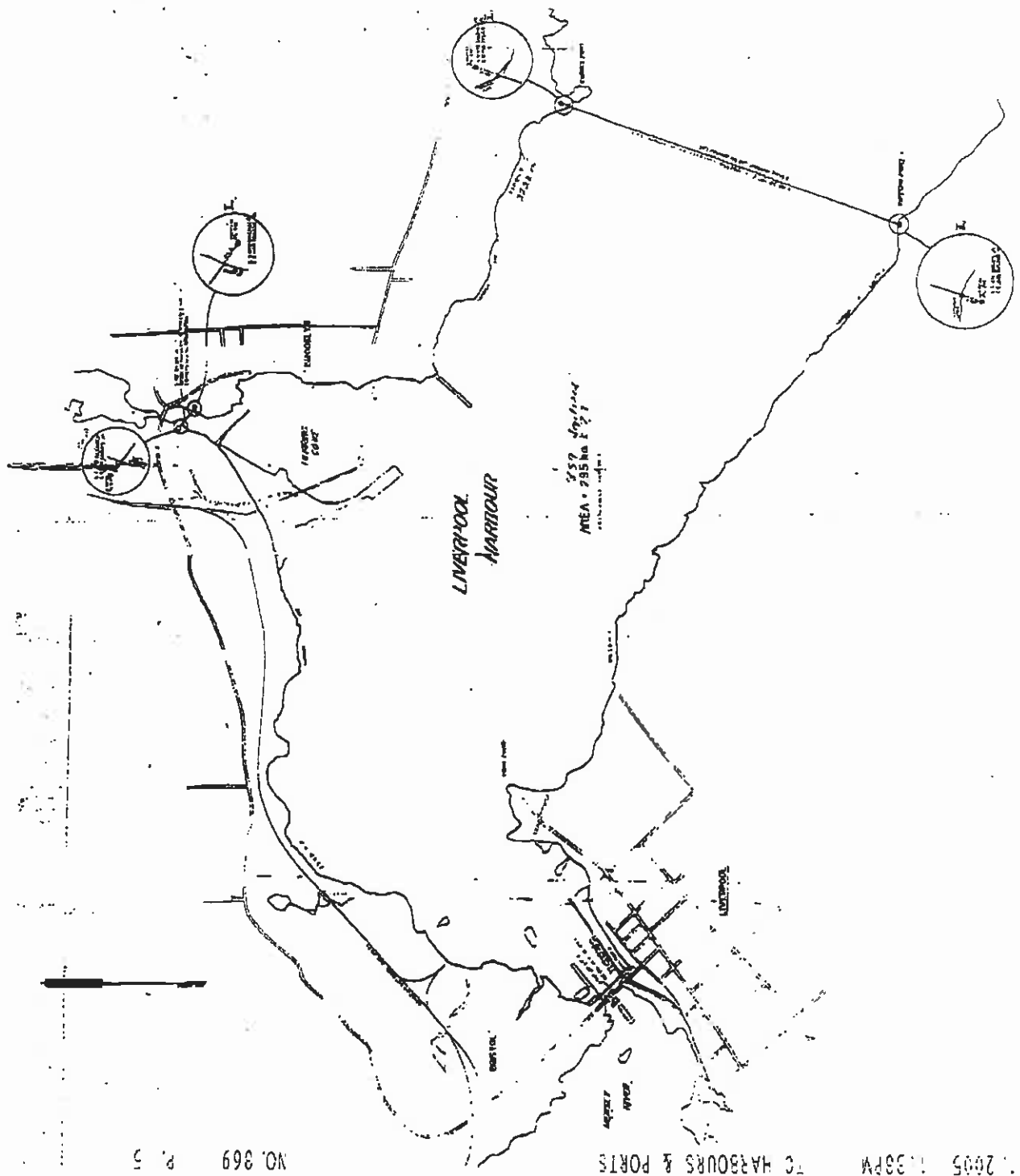
Notes:
 1. The boundary of the District is shown by a dashed line.
 2. The boundary of the Survey Area is shown by a solid line.
 3. The boundary of the Township is shown by a dotted line.
 4. The boundary of the County is shown by a dash-dot line.
 5. The boundary of the Province is shown by a long-dash line.

Index:
 1. The Survey Area is bounded by the following coordinates:
 North: 54° 15' 00" N
 East: 110° 00' 00" W
 South: 54° 00' 00" N
 West: 110° 15' 00" W



REAR OF...
 HARBOUR SURVEY 41
LIVERPOOL

COUNTY OF QUEEN
 PROVINCE OF NOVA SCOTIA





REMARKS:
 A THE SURVEY WAS MADE ON THE 15th OF JULY 1871
 BY THE SURVEYOR GENERAL AND HIS ASSISTANTS
 AND THE SURVEY WAS MADE IN ACCORDANCE WITH
 THE ACT IN THAT RESPECTIVE.
 THE SURVEY WAS MADE IN ACCORDANCE WITH
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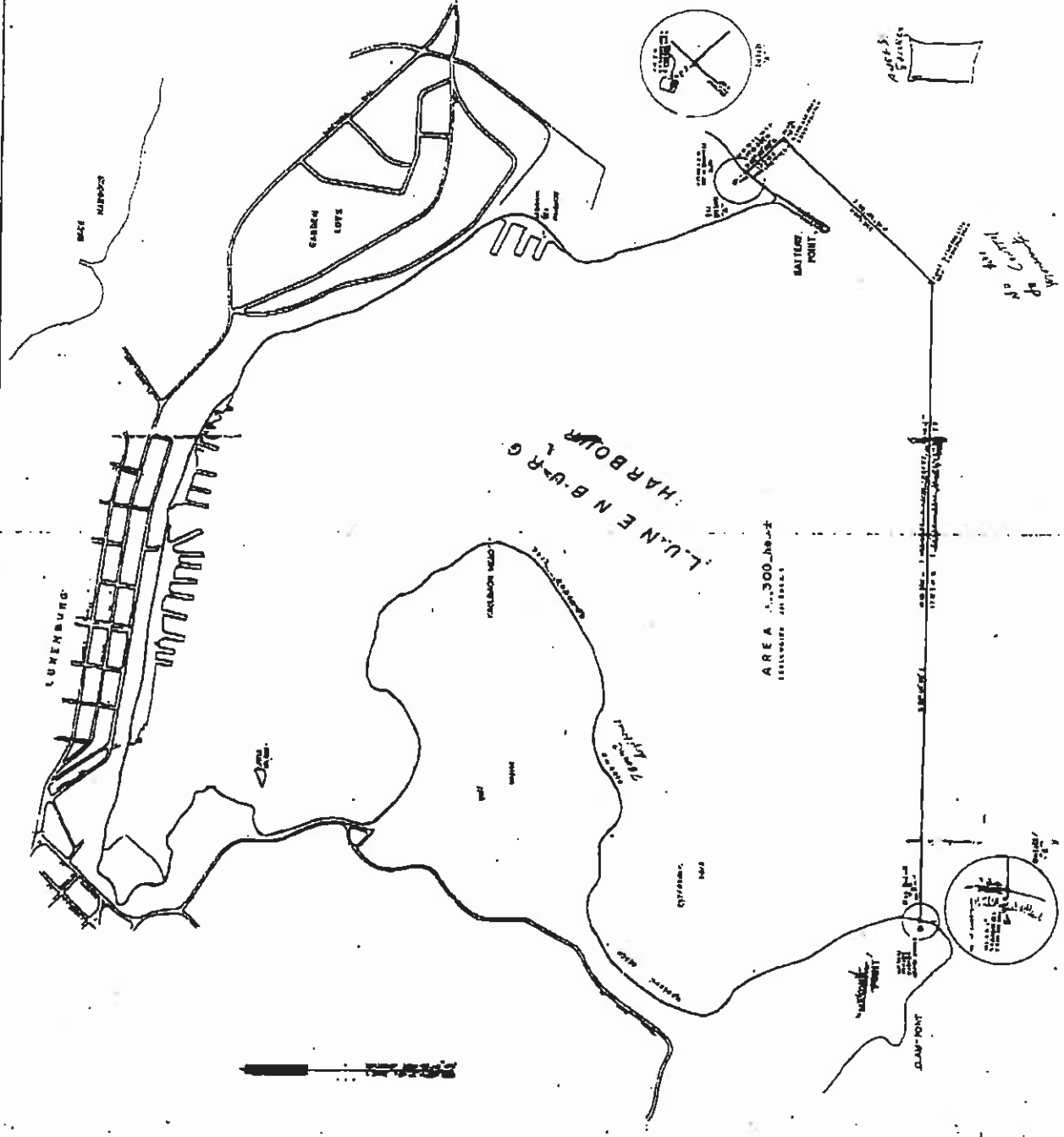
PLAN OF HARBOUR SURVEY AT LUNENBURG COUNTY OF LUNENBURG PROVINCE OF NOVA-SCOTIA

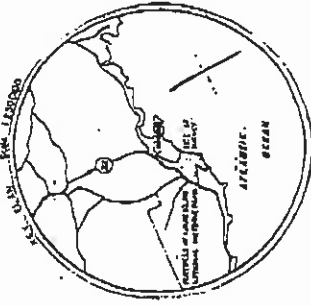
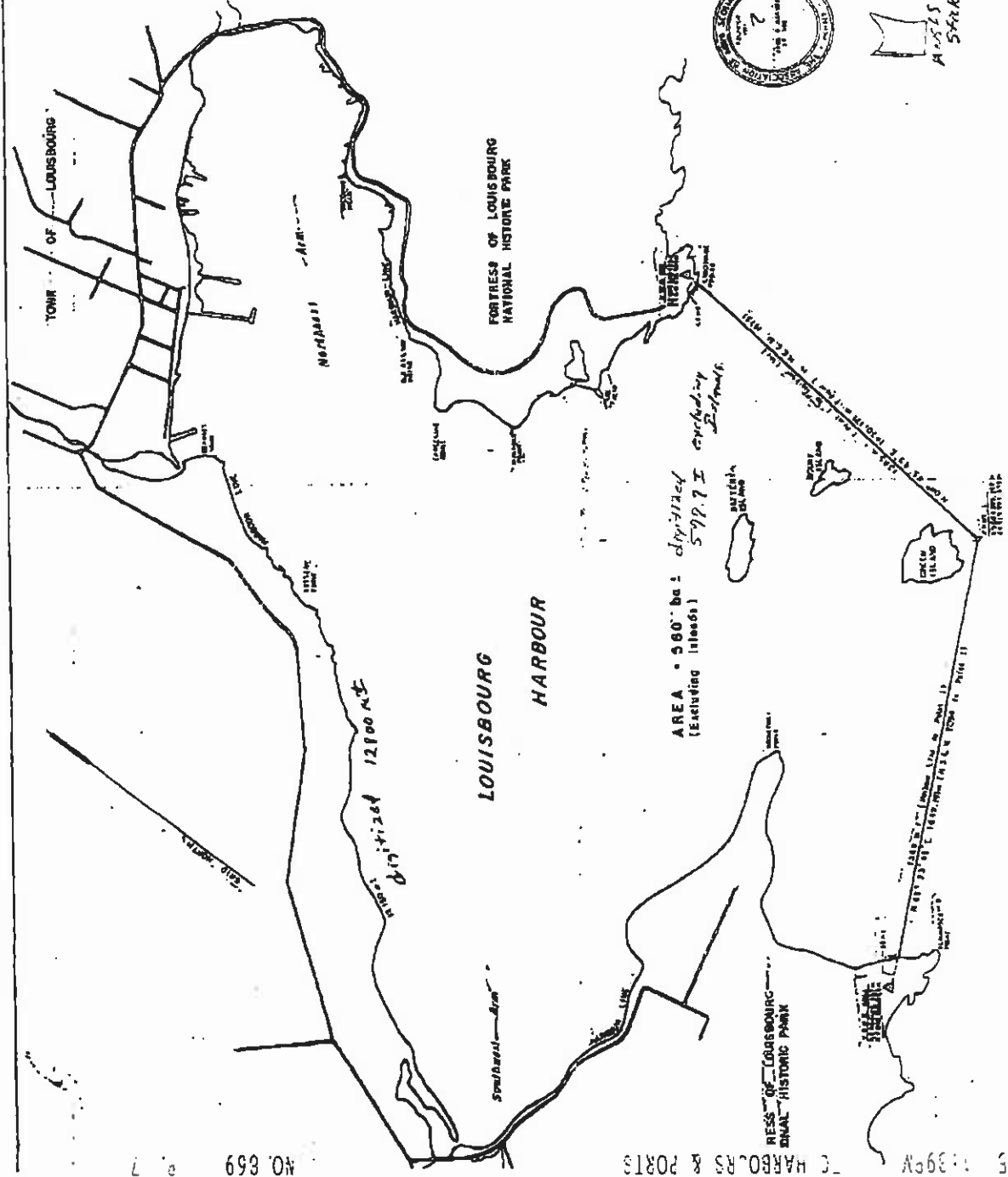


PLAN OF HARBOUR SURVEY AT LUNENBURG COUNTY OF LUNENBURG PROVINCE OF NOVA-SCOTIA



NOVA SCOTIA
 METRIC SERVICES
 S-2278





LEGEND
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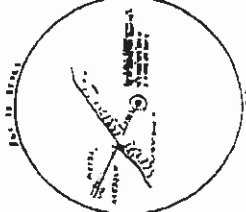
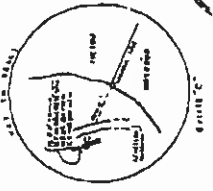
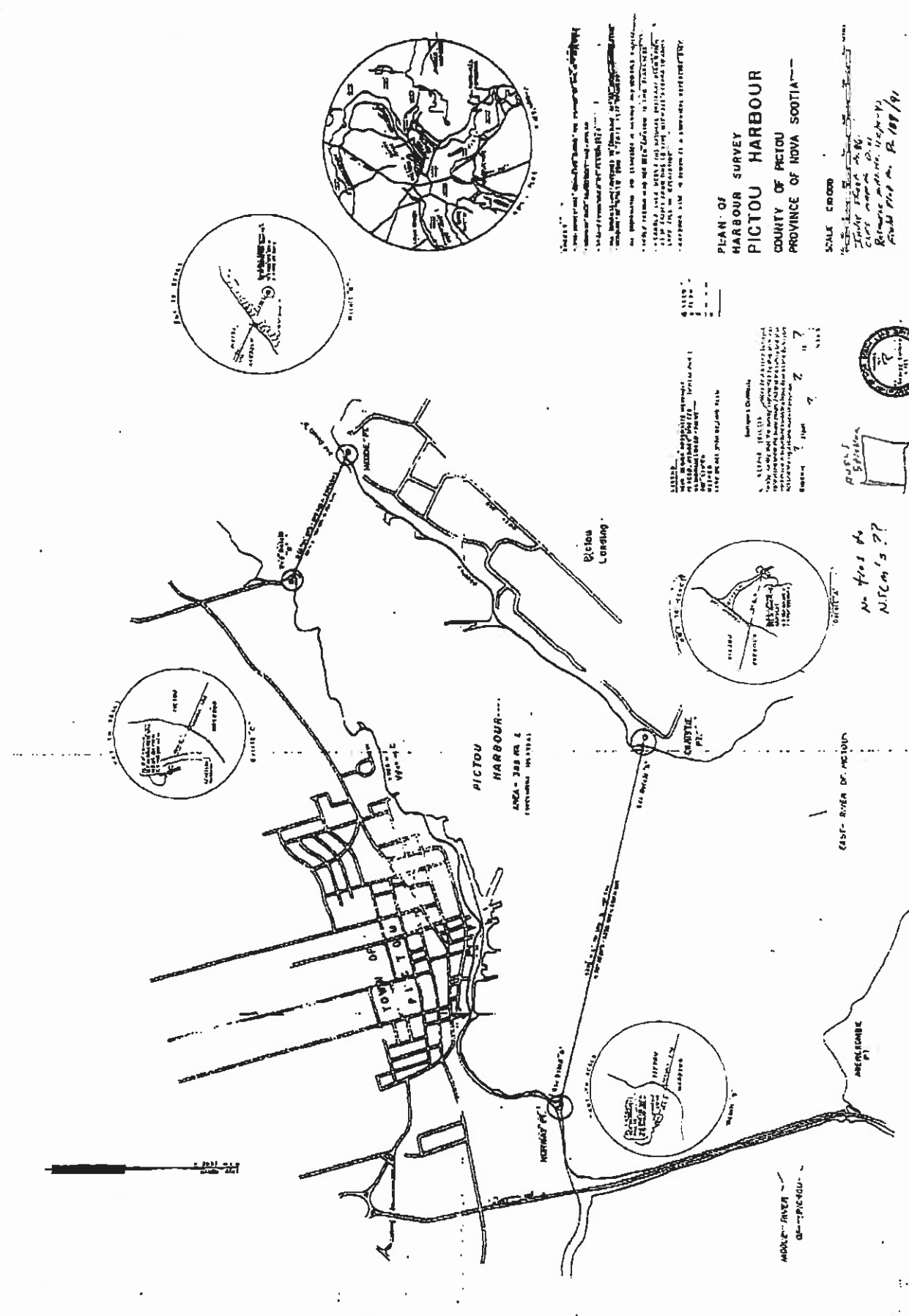
SCALE
 1. THE MAP WAS DRAWN ON SCALE 1:50,000.
 2. THE MAP WAS DRAWN ON SCALE 1:50,000.
 3. THE MAP WAS DRAWN ON SCALE 1:50,000.
 4. THE MAP WAS DRAWN ON SCALE 1:50,000.
 5. THE MAP WAS DRAWN ON SCALE 1:50,000.

FIELD NOTES
 Field Plot No. P-103/91
 Trudy Street No. 140
 CLFS Map No. C948
 Reference to map 116/12-03, 21

PROVINCE OF NOVA SCOTIA
 I, **M. A. HANDEL**, Registrar General,
 do hereby certify that the above described land parcels
 were lawfully acquired by the persons named therein
 and that the same are now lawfully owned by them.
 Witness my hand and the seal of the Province of Nova Scotia
 at Halifax, N.S., this 1st day of January, 2005.

PLAN OF HARBOUR SURVEY AT-LOUISBOURG COUNTY OF CAPE BRETON PROVINCE OF NOVA SCOTIA
 SCALE 1:10000
 1:50,000 1:100,000 1:200,000 1:500,000 1:1,000,000

REGISTRATION DIVISION
 REAL ESTATE DIVISION
 HALIFAX, N.S.
S-2463



Notes:
 1. The boundary shown on this plan is for the purpose of the survey only.
 2. The boundary shown on this plan is for the purpose of the survey only.
 3. The boundary shown on this plan is for the purpose of the survey only.
 4. The boundary shown on this plan is for the purpose of the survey only.
 5. The boundary shown on this plan is for the purpose of the survey only.
 6. The boundary shown on this plan is for the purpose of the survey only.
 7. The boundary shown on this plan is for the purpose of the survey only.
 8. The boundary shown on this plan is for the purpose of the survey only.
 9. The boundary shown on this plan is for the purpose of the survey only.
 10. The boundary shown on this plan is for the purpose of the survey only.

PLAN OF
 HARBOUR SURVEY
PICTOU HARBOUR
 COUNTY OF PICTOU
 PROVINCE OF NOVA SCOTIA

SCALE CROSS

1 inch = 40 feet
 1 foot = 12 inches
 1 mile = 5,280 feet
 1 mile = 1,760 yards
 1 mile = 1,609.34 meters

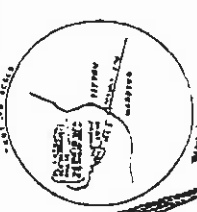
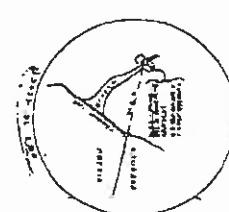
REALTY SERVICES
 S-2-3-115

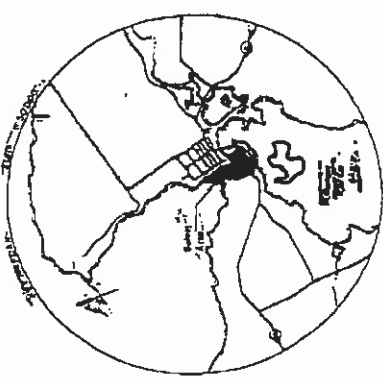
1:1000
 1:500
 1:250
 1:125
 1:62.5
 1:31.25
 1:15.625
 1:7.8125
 1:3.90625

Scale of Contours
 1:1000
 1:500
 1:250
 1:125
 1:62.5
 1:31.25
 1:15.625
 1:7.8125
 1:3.90625



No. 1000 to
 NTCM's ??



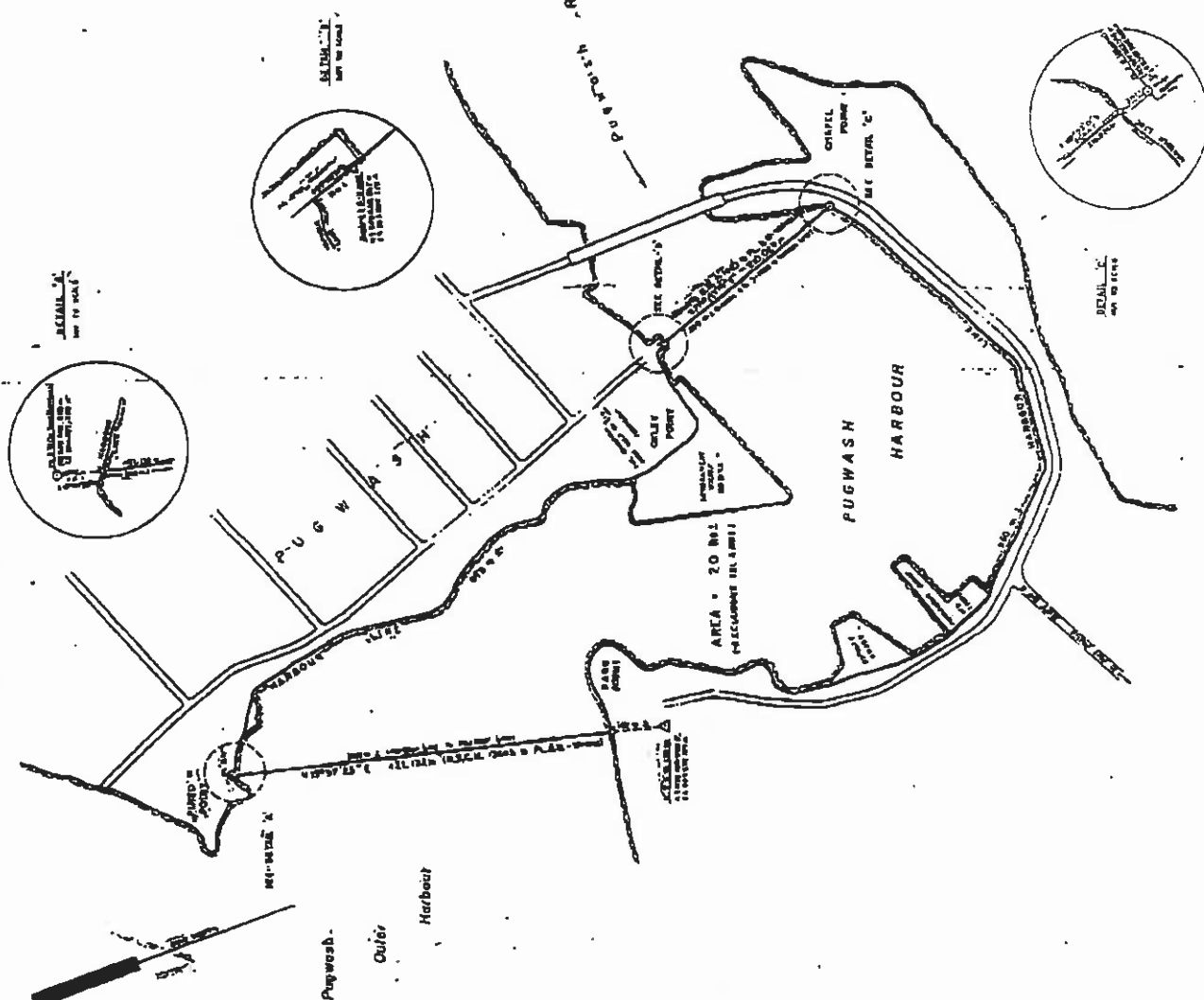


LEGEND
 "X" marks "to be done" buildings.
 "O" marks "to be done" wharves.
 "S" marks "to be done" streets.
 "L" marks "to be done" land.

NOTES
 1. THIS HARBOUR WAS SURVEYED BETWEEN THE YEARS OF 1908 AND 1910.
 2. THE SURVEY WAS NOT ACCURATE.
 3. SOME PORTION OF SURVEY APPLIES TO ALL OWNERS.
 4. ALSO CORRECTIONS BY PLANETTER.
 5. SURVEY MADE BY JAMES J. & CHARLES R. BROWN.
 6. THE SURVEY WAS MADE BY JAMES J. & CHARLES R. BROWN.
 7. THE SURVEY WAS MADE BY JAMES J. & CHARLES R. BROWN.
 8. THE SURVEY WAS MADE BY JAMES J. & CHARLES R. BROWN.
 9. THE SURVEY WAS MADE BY JAMES J. & CHARLES R. BROWN.
 10. THE SURVEY WAS MADE BY JAMES J. & CHARLES R. BROWN.

**PLAN OF
 HARBOUR SURVEY
 AT PUGWASH
 COUNTY OF CUMBERLAND
 PROVINCE OF NOVA SCOTIA**

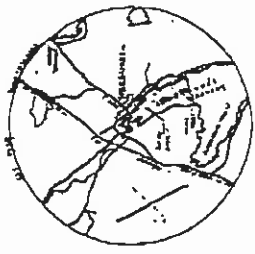
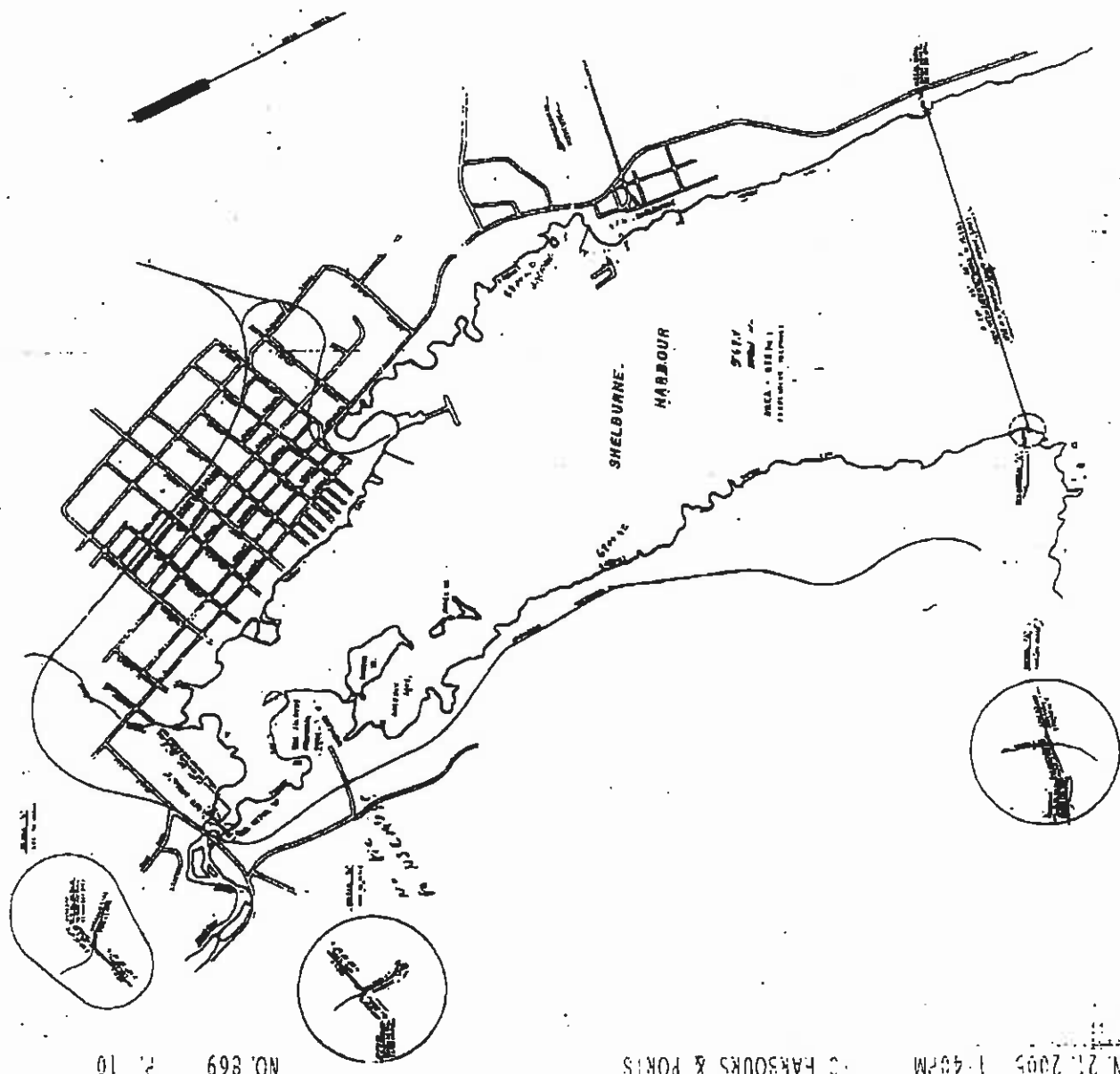
SCALE 1:5000



NO. 869 P. 10

TO HARBOURS & PORTS

JAN. 21. 2005 1:40PM



NOTE: The above plan is subject to the provisions of the Act in relation to the Survey of the County of Shelburne, and the provisions of the Act in relation to the Survey of the Province of Nova Scotia.

THE ABOVE PLAN IS SUBJECT TO THE PROVISIONS OF THE ACT IN RELATION TO THE SURVEY OF THE COUNTY OF SHELburne, AND THE PROVISIONS OF THE ACT IN RELATION TO THE SURVEY OF THE PROVINCE OF NOVA SCOTIA.

Scale: Sheet No. 10
 C.E.P. No. 100, 101, 102
 Reference: No. 100, 101, 102
 East of No. 100, 101, 102

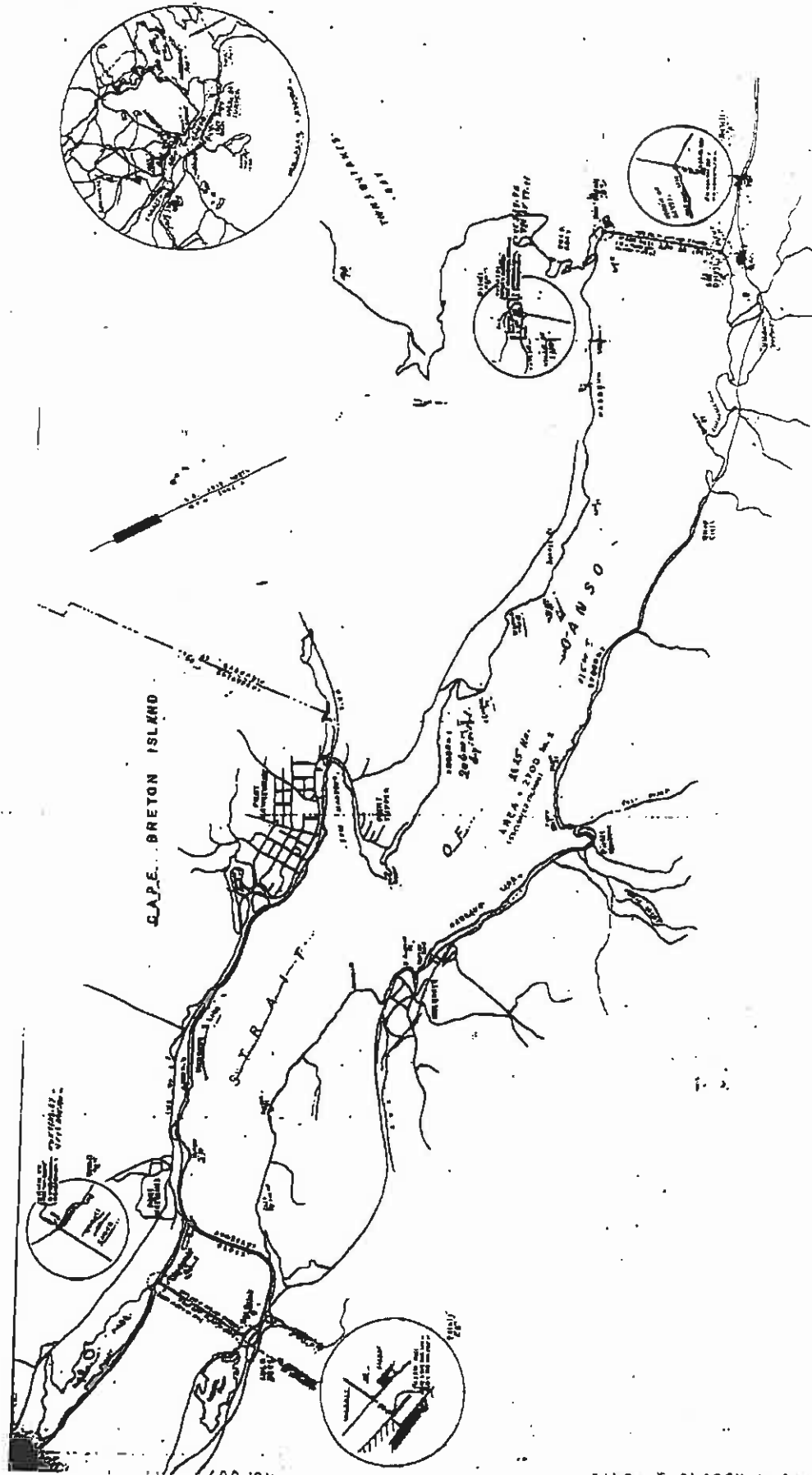
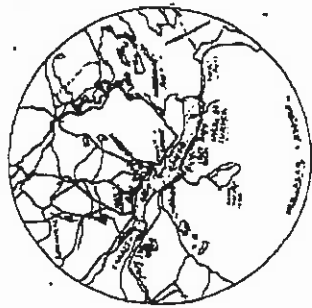


DEPARTMENT OF HARBOURS AND PORTS
 HARBOUR SURVEY
 SHELBURNE
 COUNTY OF SHELBURNE
 PROVINCE OF NOVA SCOTIA

PLAN OF
 HARBOUR SURVEY
 AT SHELBURNE
 COUNTY OF SHELBURNE
 PROVINCE OF NOVA SCOTIA

SCALE - 1:10,000

PLAN, MAP, CHART, SURVEY, S. 2342



PLAN OF
HARBOURS SURVEY
AT STRAIT-OF-CANSO
GUYSBOROUGH COUNTY,
NEWBRUNSWICK COUNTY & RICHMOND COUNTY
PROVINCE OF NOVA SCOTIA
SCALE 1:25,000

ROYAL CANADIAN MOUNTED POLICE
REAL ESTATE SERVICES
S-2262

- NOTES:
1. ALL DISTANCES ARE IN METERS.
 2. ALL DISTANCES ARE TO THE CENTER OF THE STRAIT-OF-CANSO.
 3. ALL DISTANCES ARE TO THE CENTER OF THE STRAIT-OF-CANSO.
 4. ALL DISTANCES ARE TO THE CENTER OF THE STRAIT-OF-CANSO.
 5. ALL DISTANCES ARE TO THE CENTER OF THE STRAIT-OF-CANSO.
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 10. ALL DISTANCES ARE TO THE CENTER OF THE STRAIT-OF-CANSO.



APPROVED FOR THE SURVEY BY THE
COMMISSIONER OF LANDS AND FORESTS
PROVINCE OF NOVA SCOTIA
DATE: 1962

NO. 869

TO HARBOURS & PORTS

JAN. 21. 2005 1:40PM

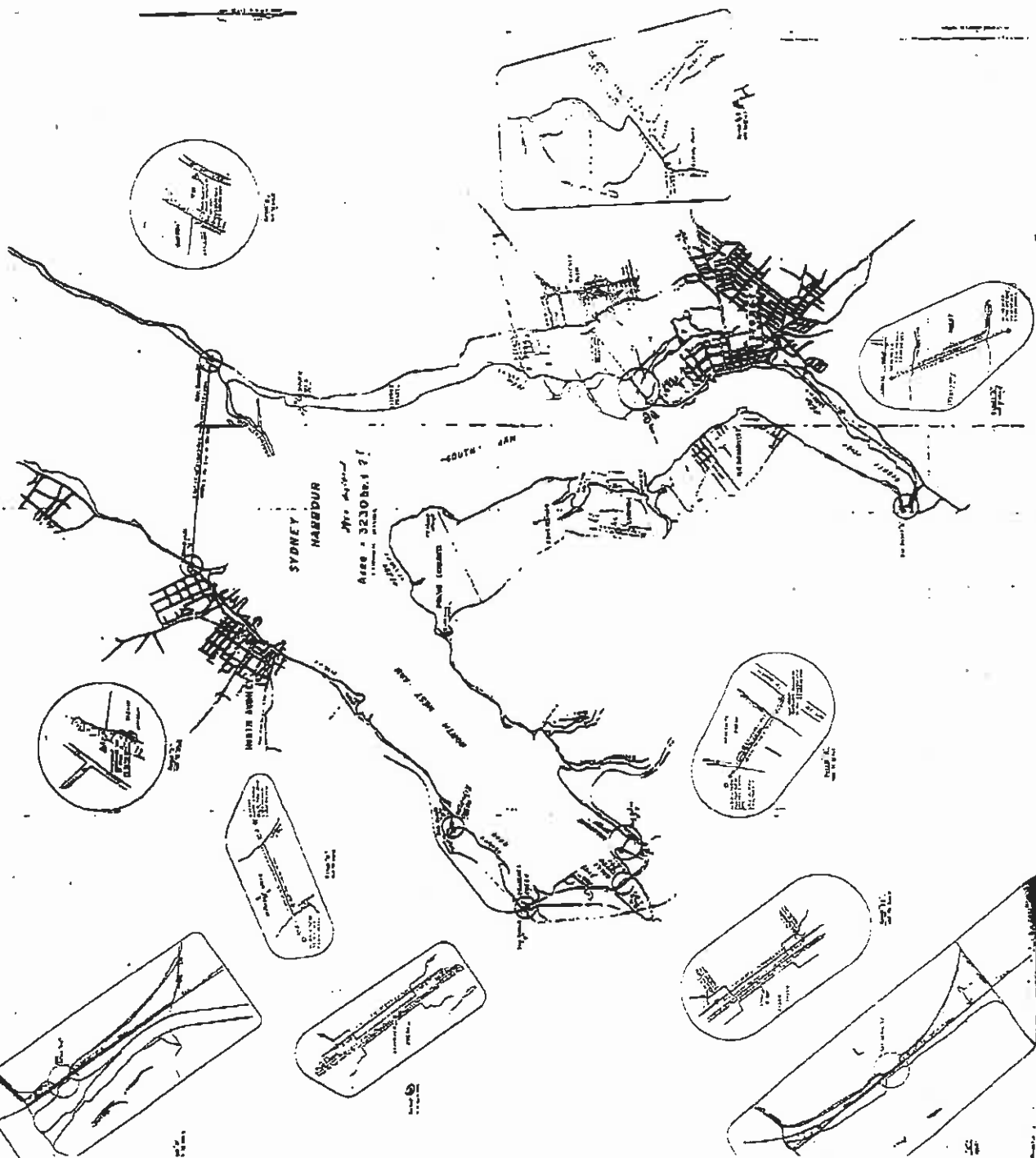


SYDNEY HARBOUR
 1. The Harbour is bounded by the North Head, Middle Head, and South Head.
 2. The Harbour is divided into three basins: the North Basin, the Middle Basin, and the South Basin.
 3. The Harbour is connected to the Pacific Ocean by the Bosphorus Strait.
 4. The Harbour is a major shipping port and is one of the busiest in the world.
 5. The Harbour is a major source of water for the city of Sydney.



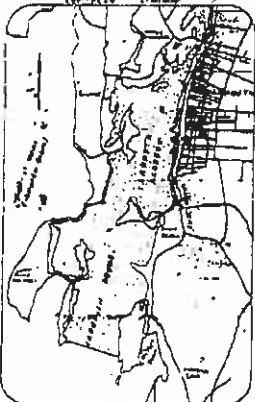
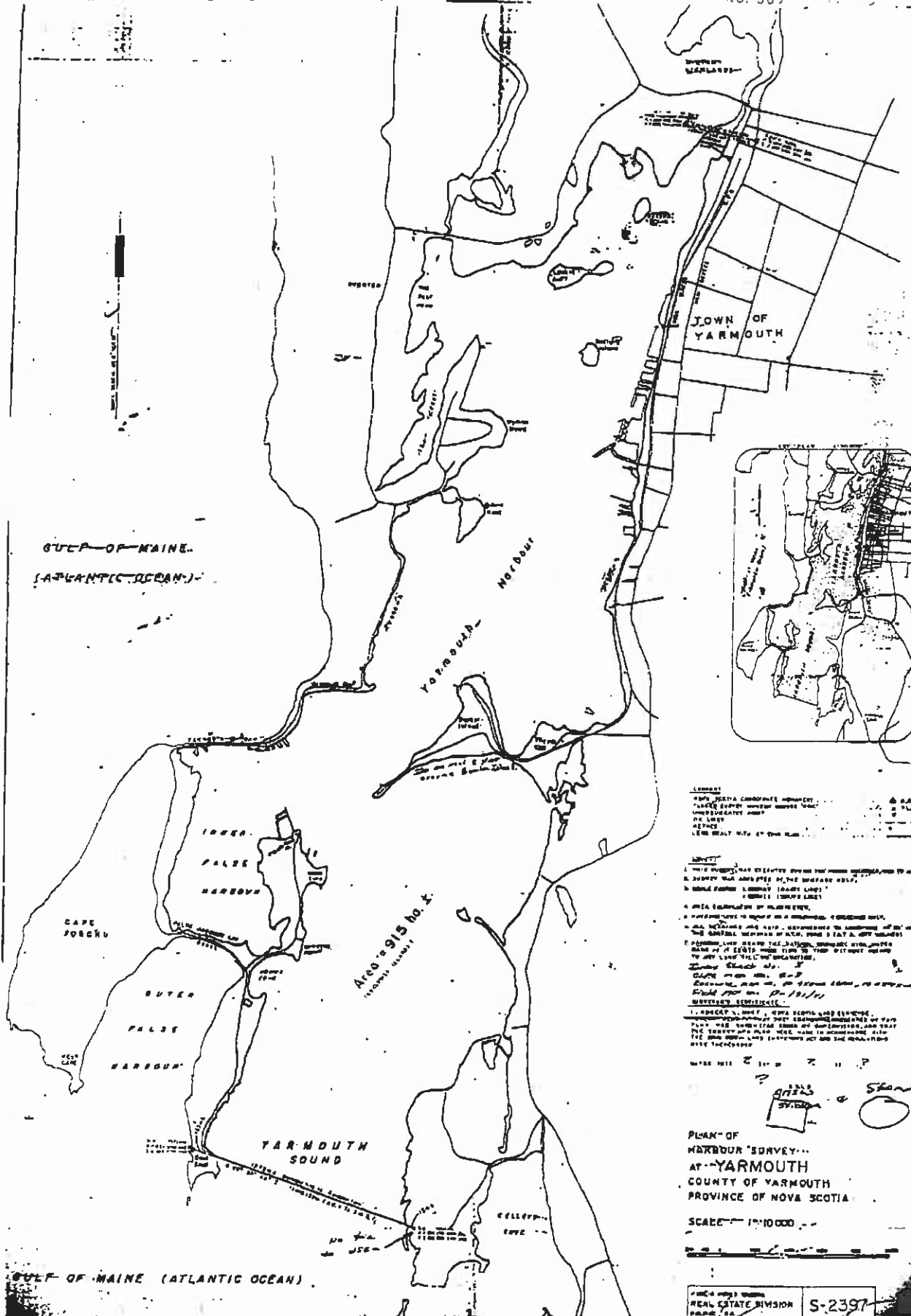
PLIN O. HARRISON SURVEY
 AT SYDNEY HARBOUR
 COUNTY OF CARLISLE
 DISTRICT OF NEW SOUTH
 WALES

NO. 369 P. 12



NO. 369 P. 12

PLIN O. HARRISON SURVEY
 AT SYDNEY HARBOUR
 COUNTY OF CARLISLE
 DISTRICT OF NEW SOUTH
 WALES

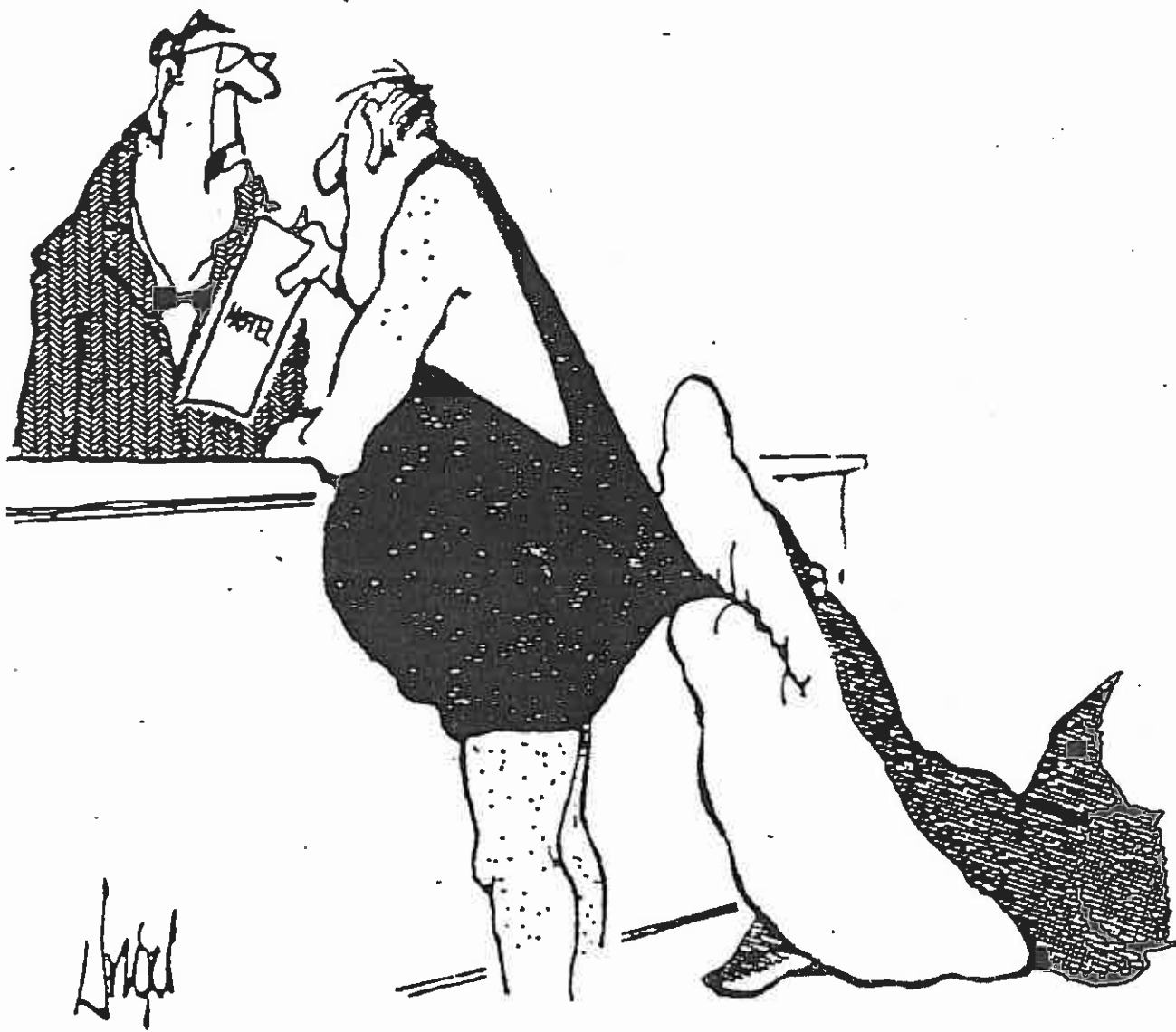


LEGEND
 SHIP LIGHTS AND LIGHTS
 LIGHTS
 LIGHTS
 LIGHTS

NOTES
 1. THIS CHART HAS BEEN REVISED TO SHOW THE LATEST INFORMATION...
 2. THE CHART HAS BEEN REVISED TO SHOW THE LATEST INFORMATION...
 3. THE CHART HAS BEEN REVISED TO SHOW THE LATEST INFORMATION...
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 9. THE CHART HAS BEEN REVISED TO SHOW THE LATEST INFORMATION...
 10. THE CHART HAS BEEN REVISED TO SHOW THE LATEST INFORMATION...

PLAN OF HARBOUR SURVEY AT YARMOUTH COUNTY OF YARMOUTH PROVINCE OF NOVA SCOTIA
 SCALE 1:10,000

REAL ESTATE DIVISION 5-2397



"I think you'll find, Sir, our brochure says 'safe beach.' You must have gone into the 'water.'"