

SUPREME COURT OF NOVA SCOTIA

Between:

MUNICIPALITY OF THE DISTRICT OF GUYSBOROUGH



APPLICANT

and

**THE HEIRS AT LAW OF JOSEPH FOGARTY, JAMES P. FOGARTY and
FRANK FOGARTY**

RESPONDENTS

Affidavit of Barry Carroll

I **Barry Carroll** of the Municipal District of Guysborough, Province of Nova Scotia make oath and give evidence as follows:

Evidence in Support of the Motion for Date and Directions

1. I am the Chief Administrative Officer of the Municipality of the District of Guysbough ("MODG"), the Applicant in this matter.
2. I have personal knowledge of the evidence in his Affidavit except where otherwise stated to be based on information and belief.
3. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief in that source.
4. I make this Affidavit in support of the Applicants' motion for directions.
5. The heirs at law of Joseph Fogarty may have an interest in the matters raised by the Application but are not parties.
6. The list of possible witnesses in support of the Application includes: Marion Bryson and Betty Dobson.
7. The Applicant will require documentary disclosure from James Fogarty, Frank Fogarty and such heirs at law as may appear in response to the motion for directions. The Applicants plan to produce all the relevant documents in their possession by such date as the court may require once the heirs at law of Joseph Fogarty have been notified of this proceeding in accordance with the Court's directions.
8. The Applicant does not anticipate requiring any discovery at this time.

9. The Applicant anticipates that this Application can be completed with one additional motion for date and directions and one hearing lasting up to four days, depending on what issues, if any, may arise between the heirs at law of Joseph Fogarty.
10. The Applicant anticipates that the parties can appear for a second motion for date and directions by December, 2014 and be ready for a hearing by January 2014, subject to any issues which may arise as a result of the notification of the heirs at law of Joseph Fogarty.
11. I am not aware of any other information that could significantly affect the estimate of time needed to prepare for the hearing or the length of the hearing itself.

Background to this Application: The Black Point Development

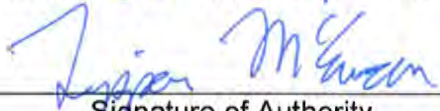
12. A developer is currently working on the development in preparation for the operation of a quarry and aggregate manufacturing facility at Black Point, Guysborough County on the tide head of a deep water port (the “Black Point Development”).
13. Black Point Development is of enormous importance to the MODG in terms of the employment it will create both directly and indirectly during the construction and operation of the undertaking as well as the property tax and royalty revenue it will generate.
14. This area of Guysborough has suffered significant levels of unemployment and loss of population through out-migration in recent years.
15. The dissolution of the nearby Town of Canso is a symptom of this economic malaise.
16. The Black Point Development is a major component of the economic strategy of the MODG.
17. Two pairs of two properties are required for the Black Point Development but were held in private ownership.
18. One pair of properties consists of two lots originally granted to Joseph Fogarty (the “Fogarty Properties”). The other pair of properties consists of two lots originally granted to Peter Lukeman (the “Lukeman Properties”).
19. Each pair of properties consists of one original Crown grant that has since been bisected by an abandoned public highway. None of these four lots had been recently occupied or conveyed.
20. It appears that all the heirs of Peter James Lukeman have signed off their interest in the Lukeman Properties.
21. In the case of the Fogarty Properties, proponents of the Black Point Development were unable to make contact with all potential interest holders in the land.
22. To promote the certainty of title necessary to support the investment required for the Black Point Development, the MODG elected to expropriate both Fogarty and Lukeman lands. It released them to the proponents of the Black Point Development.

Further evidence for the Assistance of the Court in determining issues of service pursuant to s. 17(1) of the *Expropriation Act*

23. On or about November 1, 2013, I wrote to the Respondent, James P. Fogarty requesting his assistance in locating the heirs at law to the Fogarty Properties. A true copy of this correspondence is attached hereto as **Exhibit "A"**.
24. To date, I have not received any response from Mr. Fogarty identifying the heirs at law of Joseph Fogarty.
25. On or about August 21, 2014, I received an email message from Frank Fogarty, wherein he identified himself as an heir. A true copy of this correspondence is attached hereto as **Exhibit "B"**.
26. The expropriation of the Fogarty Properties was the subject of a lengthy article in the Chronicle Herald, a true copy of this article is attached hereto as **Exhibit "C"**.
27. In response to the article in Exhibit "C", the MODG ran a press release in the Chronicle Herald on June 26, 2014. A true copy of the text of this press release is attached as **Exhibit "D"**.
28. A second press release was subsequently issued in two local papers, the Guysborough Journal and The Reporter. A true copy of these press releases is attached as **Exhibit "E"**.
29. I am aware of several social media sites with respect to this project, and it is my understanding that these sites are operated in part by, or to promote the views of, members of the Fogarty family who may have an interest in the Fogarty Properties as heirs at law of Joseph Fogarty. These sites are:
 - (a) Save Fogarty's Cove – FaceBook. An excerpt of the materials from this website are attached as **Exhibit "F"**.
 - (b) Black Point Quarry Project – FaceBook. An excerpt of the materials from this website are attached as **Exhibit "G"**.
 - (c) @BlackPtQuarry - Twitter. An excerpt of the materials from this website are attached as **Exhibit "H"**.
 - (d) Black Point Quarry Project – Website. A true copy of the materials from this website are attached as **Exhibit "I"**.

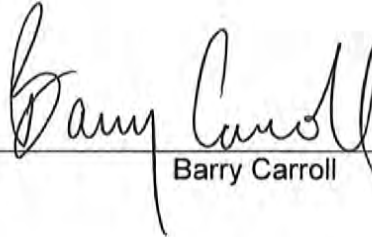
30. The Fogarty Properties were appraised in 2011 by Ingram Varner, as having a market value of \$140,000. A true copy of this Appraisal is attached as **Exhibit "J"**.

Sworn to/Affirmed before me at Halifax
Regional Municipality, Province of Nova
Scotia this 24th day of Sept, 2014


Signature of Authority

Print Name: Tipper McEwan
Official Capacity: A Barrister of the
Supreme Court of Nova Scotia

TIPPER McEWAN
A Barrister of the Supreme
Court of Nova Scotia


Barry Carroll

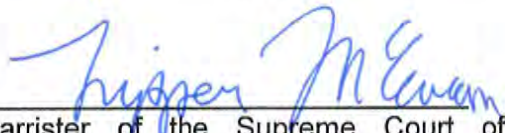
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Tab	Description
A	Correspondence dated November 1, 2013 from myself to the Respondent, James P. Fogarty
B	Email correspondence dated August 21, 2014 from Frank Fogarty to myself
C	Chronicle Herald article dated June 25, 2014
D	Press Release from MODG to the Chronicle Herald dated June 26, 2014.
E	Second press release issued in the Guysborough Journal and The Reporter
F	Excerpt of the materials from Save Fogarty's Cove – FaceBook
G	Excerpt of the materials from Black Point Quarry Project – FaceBook
H	Excerpt of the materials from @BlackPtQuarry - Twitter
I	A true copy of the materials from Black Point Quarry Project – Website
J	Appraisal prepared by Ingram Varner in 2011

2014

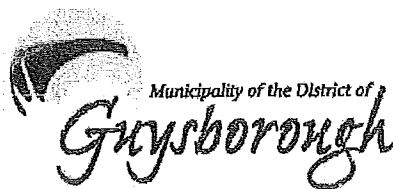
Hfx. No.

This is Exhibit "A" to the Affidavit of Barry
Carroll, sworn before me on the 29th day
of Sept, 2014.



A Barrister of the Supreme Court of
Nova Scotia

TIPPER McEWAN
A Barrister of the Supreme
Court of Nova Scotia



Chief Administrative Officer

November 1, 2013

James P. Fogarty
9 Donovan Crescent
Dominion, NS
B1J 1C5

Dear Mr. Fogarty:

Re: Lands of the Estate of Joseph Fogarty, PID's 35044056 and 35214014

I write further to the representations that you made to Council for the Municipality of the District of Guysborough on October 10, 2013.

As the resolution expropriating the land has passed, we will be moving forward with the expropriation. As part of this process, we will be bringing a motion before the court to clarify the state of the title to the land, prior to dealing with the issue of compensation. We would appreciate your cooperation in identifying all of the heirs that may have an interest in the property.

Our Deputy CAO Gary Cleary and our Development Officer Deborah Torrey will be in touch with you to discuss this. Alternatively you may reach them at 533-3705.

Yours truly,

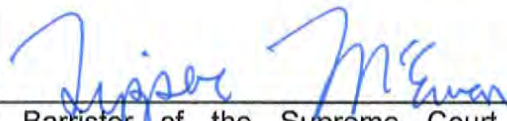

Barry Carroll,
Chief Administrative Officer

c: Gary Cleary
Deborah Torrey
Robert G. Grant

2014

Hfx. No.

This is Exhibit "B" to the Affidavit of Barry
Carroll, sworn before me on the 24 day
of Sept, 2014.


A Barrister of the Supreme Court of
Nova Scotia

TIPPER McEWAN
A Barrister of the Supreme
Court of Nova Scotia

Redacted

From: Frank Fogarty <FFogarty@ittelecom.com>

Date: August 21, 2014 at 11:41:21 AM ADT

To: <bcarroll@modg.ca>

Subject: Copy of Appraisal PID 35044056

Mr. Carroll;

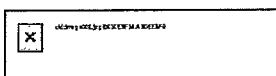
I would like to request, as an heir, a copy of any appraisal carried out for the Municipality of the District of Guysborough on the above-noted property in preparation for the expropriation or otherwise. Please forward this to me at the following address:

Frank Fogarty
512 Parkland Dr.
Unit 418
Halifax, NS.
B3S 1N1

Or, alternatively, a scan of the complete document to me in an E-Mail would suffice. Thank you.

Frank Fogarty CPA, CMA
Depot Manager
Vessel Agent
Commissioner of the
Supreme Court of NS
IT International Telecom Canada Inc.
3481 North Marginal Rd.,
Halifax, NS
Canada B3K 5M8

 +1 902 222-3570
 +1 902 422-5594 x222
 +1 902 425-0225
 ffogarty@ittelecom.com



ISO 9001, ISO 14001, OHSAS 18001 Certified
www.ittelecom.com

2014

Hfx. No.

This is Exhibit "C" to the Affidavit of Barry
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of September, 2014.



A Barrister of the Supreme Court of
Nova Scotia

TIPPER McEWAN
A Barrister of the Supreme
Court of Nova Scotia

Special report: Family fights to save storied Fogarty's Cove

EVA HOARE STAFF REPORTER

Published June 25, 2014 - 7:44pm

Last Updated June 25, 2014 - 8:50pm

The land was in their family for nearly 200 years. With a pen stroke, it was gone.



Brian and Frank Fogarty hold stacks of paperwork concerning the expropriation of their family's land in Guysborough County. (INGRID BULMER / Staff)

Timothy William Fogarty arrived in Guysborough County back in 1820.

The Irishman settled in a picturesque area, now known as Fogarty's Cove.

By the 1850s, his son, Michael, was granted by the Crown 100 acres that would thereafter bear the family's name.

SEE ALSO: [Expropriation difficult to fight in Nova Scotia](#)

TIMELINE: [The expropriation of Fogarty's Cove](#)

Heirs would be born there, settle, go to church and fish. In all, almost 800 people once called it and the surrounding area home.

Folk legend Stan Rogers was so enamoured of the coastal site that he penned a tune about it. Thousands of Rogers fans come to nearby Canso every summer to hear it.

Now the area, which some call pristine, is on the verge of becoming part of a quarry. A mining firm from the United States, in concert with a Nova Scotia developer, plans to mine granite gravel there and ship it to the U.S. and the Caribbean.

Municipality of the District of Guysborough council believes the operation will fire up the region's sagging economy and create jobs, likely more than 100, according to the quarry developers.

But the Fogarty family, which has owned the property for 194 years, claim they barely received warning that their land was about to be taken from them.

"They just blindsided us," said Brian Fogarty, one of three family members shocked at how quickly they lost title.

NO TIME TO FIGHT EXPROPRIATION

Last October, municipal council expropriated the land, and the family had no time to fight it, said Brian's cousin, Jim Fogarty, of Dominion, near Glace Bay.

Jim, the most recent Fogarty heir to pay property taxes on the land, said he received one visit in 2011 from a man with the last name MacDonald who said he was from the Guysborough municipality.

Some time later, a Halifax lawyer contacted him to offer \$15,555 for his share of the land. Around then, expropriation was brought up.

"They wanted to buy my interest," said Jim Fogarty.

"The letter (from the lawyer) states they were talking to the county about expropriation."

He turned down the offer.

MacDonald made no mention about expropriation or a quarry, said Fogarty, now 70.

He said he later contacted the municipality in person and by letter to check on MacDonald and expropriation. Municipal officials didn't know of a MacDonald, he said.

"I went down and the gentleman at the tax office ... he went and checked. ... He came back and said, 'No, there's nothing going on there.' So I believed there was nothing going on."

Then came the summons to attend a council meeting last October.

Fogarty went, spoke about the property for a few minutes and then a vote was taken. Councillors were solidly in favour of the Black Point quarry project.

The Fogartys lost their land.

"Everybody's arm shot up and that was it," said Brian Fogarty, describing the council vote.

They just blindsided us.
- Brian Fogarty

In April, Morien Resources Corp. of Dartmouth announced a deal with Guysborough to develop a coastal quarry with Vulcan Materials Co. of Birmingham, Ala. (Morien is a spinoff firm of Erdene Resource Development Corp.)

According to a report filed to the Canadian Environmental Assessment Agency, Morien expects construction to begin on the 280-hectare project in April 2018, with full operations starting in 2021.

Morien will get a total of \$1.8 million from Vulcan — \$1 million up front and the balance after environmental approvals. Royalties will also flow to Morien over the life of the project.

Developers expect operations could end in 2070.

Barry Carroll, chief administrative officer for the Municipality of the District of Guysborough, said nothing was done incorrectly regarding the expropriation, but he wouldn't reveal how it came to be.

"We follow all steps as detailed in the act," Carroll said in a recent interview, referring to the provincial Expropriation Act.

"There's a process in place and we followed it."

Jim Fogarty was the only heir officials could find, said Carroll.

"We were aware of one heir to the property because that person had been paying taxes to the municipality. We had sent two correspondences to him."

One message was the invitation to speak at the council meeting, he said.

"Council took his comments into consideration."

No one should be surprised about the venture, said Carroll, noting the area was zoned heavy industrial in 2007.

"This has been on the radar for a long, long time."

Municipal records show the regional development authority, with the Natural Resources Department, decided in 2006 that the land had potential for development.

Six months before the Fogartys lost their land, an amended spring 2013 municipal planning strategy report stated officials were on the hunt for properties held "for generations" that hadn't been developed.

The land in question has been listed for years as being held by the estate of Joseph Fogarty.

"The municipality needs to take advantage of its legislative authority to purchase land for subdivision and sale," the report said.

Morien chairman Peter Akerley recently told The Chronicle Herald that he had worked on the project for more than seven years, and documents show Premier Stephen McNeil and Lloyd Hines, the MLA for the area, met with Morien in February to discuss the project.

There's a process in place and we followed it.

- Barry Carroll, CAO, Municipality of the District of Guysborough

A joint Morien-municipal core drilling program was done in 2007-08, and Guysborough swapped some land it owned for neighbouring Crown property. Morien purchased another family's property nearby, with the adjacent Fogarty land the only location standing in the way.

Documents filed to the Canadian Environmental Assessment Agency from a company hired by Morien said meetings with municipal officials began in 2008 and have continued.

But the Fogartys, who don't live in Guysborough and use the land for recreation, maintain they weren't notified about any such plans.

"Why didn't they call one of us?" said Brian, a sixth-generation Fogarty, who, with his brother, Frank, only recently learned about the rezoning.

"It's been seven years it's been going on, and no one (in the family) knew anything about it," said Frank, who lives in Halifax.

During an initial meeting about rezoning, some residents voiced worries regarding tourism. Municipal records note that but add that another session drew no detractors.

By law, the family can't fight the expropriation because Nova Scotia's Expropriation Act doesn't allow for appeals.

Carroll said Guysborough was acting for the public good, as required by the act.

"The municipality takes its role ... very seriously and weighs the pros and cons of every decision it makes, and that's what it did in this case."

ECONOMIC BOOST

John Budreski, Morien president and CEO, said everything was done correctly by the municipality.

He said the project will inject \$10 million to \$20 million into the economy annually, along with up to 150 jobs, depending on the season. The facility expects to take 3.5 million tonnes or more from the quarry annually.

The Fogartys have gone to the Canadian Environmental Assessment Agency, arguing the operation will destroy the offshore fishery, wetlands, flora and fauna. They have contacted local fishermen, First Nations groups, the Sierra Club and the Ecology Action Centre in Halifax. They've also alerted the provincial ombudsman.

"The only thing left to do is register our disapproval of the quarry on environmental grounds," said Frank Fogarty.

The family is also keeping its legal options open as members research the process behind the expropriation, Brian Fogarty said.

Acting ombudsman Christine Delisle-Brennan confirmed there is a file open on the case, saying her office is investigating whether appropriate steps were taken by authorities during the expropriation process.

The Fogartys also said there are home foundations and graves on the site, as family ancestors lived there for decades after first settling and built a church.



Fogarty's Cove Beach (CONTRIBUTED PHOTO)

At a recent open house in Queensport, Brian Fogarty said a Vulcan official disputed that foundations were on the site. A report prepared for Morien, however, notes the family lived in the area in the 1870s and records show a church erected there was used in 1891.

Budreski said he didn't attend that session and couldn't speak to that conversation.

Mi'kmaq Rights Initiative officials are urging the agency to conduct an environmental impact and subsurface study to search for ancestral evidence.

"It is strongly recommended that a survey for petroglyphs in the barrens be conducted," the Truro organization said.

"The Mi'kmaq have genuine concerns," Chief Sidney Peters, co-chair of the Assembly of Nova Scotia Mi'kmaq Chiefs, said in a statement.

"We are concerned with how this quarry could impact our harvesting and fishing activities, its environmental impact, and have stressed the importance of a proper archeological study before any work begins."

DEVELOPMENT VS. ENVIRONMENT

Aecom, an engineering firm hired by Morien, told the agency in a February report that the plant — expected to run 16 hours a day, seven days a week for nine months of the year during peak production — will affect the environment. (An adjacent marine shipping terminal will run 24 hours daily, seven days a week, said Aecom.)

"Construction of the marine terminal is anticipated to result in the destruction of marine fish habitat," the consultants wrote.

"Harm to or death to fish may occur during operation from collisions or other interactions with vessels, accidental aggregate spillage, or other accidents or malfunctions (e.g. fuel spills)."

Whales, turtles and seals might also be adversely affected, and pollution and noise might also harm migratory bird patterns and harlequin ducks, which are a protected species, they said.

The Guysborough County Inshore Fishermen's Association has asked the agency for a full environmental review, saying there are 72 "multi-species" licence holders in the area, not just four lobster fishermen, as the Morien report stated.

"These fisheries could be impacted from poor water quality, gear silting, noise and increase of ship traffic from tugs, pilot or container vessels."

While the association supports economic growth, it shouldn't come at the cost of the fishery, president Eugene O'Leary said.

"These are real, sustainable, existing jobs that should be protected first and foremost from detrimental impact."

Budreski said everything would be done to ensure the environment is looked after.

"We will build a plan with experts and industry and experts from government to minimize the impacts," he said in an interview.

"It's a good project, it's a clean project," said Budreski, who walked the site with agency officials last Wednesday.

Quarry developers expect full environmental approvals by September.

It's not clear if approvals will come by fall. The agency is conducting an environmental assessment, a spokeswoman said. There have been two rounds of public commenting to date, said Sofie McCoy-Astell.

Morien must now return with a report, she said. After that, the public may again make comments. In total, there are four rounds of commenting, McCoy-Astell said.

Dozens of submissions came in during the first two rounds this spring.

Morien officials said the majority of submissions in the first round — about 100 — supported the project. Up to 60 people or groups didn't.

I'm furious. It's a veritable Eden.

- June Jarvis, Stan Rogers's aunt

Quarry proponents include Hines, Warden Vernon Pitts, the Guysborough council and a lawyer who has done work for the county. The Mining Association of Nova Scotia, the Strait-area campus of the Nova Scotia Community College, the Guysborough County Community Business Development Corp. and the nearby Melford International Terminal also back the project. Others supporters include area companies.

The prospect of jobs in a cash-strapped area where more people leave than stay is the motivation.

"The (municipality), like many rural communities in Nova Scotia, has experienced a gradual decline," Pitts said in his letter of support.

"The proposed Black Point operation offers the potential to mitigate some of these impacts and create opportunities for individuals to provide for their families."

The majority of support messages appear to be form letters, with printed names inserted in a provided blank space, followed by one or two identical paragraphs.

Budreski said he didn't know any of the specifics of those letters. Morien spokesman Sean Lewis said in an email that "the municipality co-ordinated many of the letters."

Stan Rogers's aunt, June Jarvis, who lives near the site, opposes the quarry.

"I'm furious. It's a veritable Eden," Jarvis said in a recent interview. "It is so beautiful and basically untouched."

She said the community was hoodwinked and the environment will pay.

"It happened behind all of our backs. It has been very slickly done. I think it's disgusting to announce this as a done deal.

"They're saying it's going to be a wonderful thing for Guysborough. Please tell me how it's going to be a wonderful thing to have huge acreage blasted off the face of the Earth for the next 50 years."

Jarvis calls the touted jobs numbers "hogwash," claiming the forecast has been inflated.

Gretchen Fitzgerald, head of the Sierra Club's Atlantic chapter, wonders about a possible conflict because the municipality will lease the land to quarry operators.

"We need to find out what the relationship is between the company and the municipality and what is going to be the financial gain they're going to get," she said in an interview.

Carroll refused to disclose how much money Guysborough, aside from property and other taxes, would receive. The municipality has a lease option agreement with Morien/Vulcan.

"It's commercially confidential," he said. "The terms of agreements are not made public. There's no conflict."

Budreski agreed. "There is not a conflict," he said.

The Fogartys and their supporters want the property declared a protected wilderness area, something a wildlife group tried in 2000. It was voted down by councillors, including then-warden Hines.

Newspaper accounts from 2000 quote Hines as arguing the designation would bar locals from hunting, camping or using all-terrain vehicles there. An article said licensing for such activities would be available even if the land was protected.

"You realize how much money's behind this company that wants that land?" said Jim Fogarty. "The truth of the matter is that it's always been whoever has the most money wins."

The Fogartys wonder about the final outcome.

"After they're done mining or developing, they walk away and leave it and the government ends up on the hook for remediation," said Jim Fogarty.

"All you got to do is look around. It happened with the Sydney Steel plant, it happened with Devco."

Said Jarvis: "Nothing is going to spring up around a deep, deep quarry."

Ann Marie Rhynold, owner of the Seabreeze Campground on nearby Fox Island Main, fears visitors won't come.

"Stan Fest is a very big part of our business. Stan wrote his songs about here," Rhynold said in a recent interview.

"When blasting starts, I can't see it being good for my business."

Budreski said the quarry won't pull up stakes without remediation.

"In planning to start a quarry, you have to promise how you're going to finish a quarry. The plan is a full-life plan, not a startup plan."

Brian Fogarty said he had hoped his granddaughter would be an eighth-generation land holder.

"The only reason we're doing it is for my father and grandfather," said the 63-year-old, who lives in Halifax. "It's a beautiful, beautiful property. It wouldn't matter if they offered us \$15 million, it's not for sale."

About the Author

EVA HOARE STAFF REPORTER

E-Mail: ehoare@herald.ca

Twitter: [@CH_EvaHoare](https://twitter.com/CH_EvaHoare)

<http://thechronicleherald.ca/novascotia/1218315-special-report-family-fights-to-save-storied-fogarty-s-cove>

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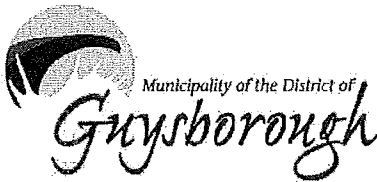
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TIPPER McEWAN
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Court of Nova Scotia

PRESS RELEASE



Re: "Blindsided – The Chronicle Herald, June 26, 2014"

GUYSBOROUGH, NOVA SCOTIA (June 26, 2014)

Recent media reports related to the Municipality of the District of Guysborough (MODG) role in the development of the Black Point aggregate development paint a very unflattering and inaccurate portrayal of the manner with which this file was handled.

In the coming days the MODG will communicate factual information related to our efforts to both identify the opportunity and to solicit community input and investor interest.

The genesis of this project has been well known to residents of the MODG. Initially identified by the Guysborough County Regional Development Authority and the Nova Scotia Department of Natural Resources in 2006 there have been broad community consultations in the years to follow, leading up to a land-exchange negotiated between MODG and the Province of Nova Scotia.

As a result of this land-exchange the MODG effectively owned all of the land with the exception of one property representing less than 20 percent of the project footprint. Two properties, both having unclear title were located within the MODG properties and had no legal access, other than by water. In each circumstance the only means of clearing title on these estate properties was via expropriation. In fact we were approached by a member of the Fogarty family asking the MODG to place the property up for tax sale so that he alone could obtain clear title.

"We are very conscious and respectful of our responsibility to follow Provincial legislation and communicate with potentially impacted land-owners and with the local community. Our recently completed planning process provided significant opportunities for input by local residents and we have had strong local support" said Warden Vernon Pitts.

"It is important to note that Vulcan Materials, named eight times in ten years as one of the world's most admired companies, were not involved in any manner in the acquisition of the properties at Black Point. We, as a local government, representing the best interests of the community at large, have fulfilled our responsibility to consult and facilitate development that is supported by the local community so that we can provide opportunities for economic growth. It is in this manner that we provide the services and amenities that are desired by our residents" said Warden Pitts.

PRESS RELEASE

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For more information contact:

Warden Vernon Pitts
MODG
Home: 902.533.3597
Mobile: 902.870.6975
Email: vpitts@modg.ca

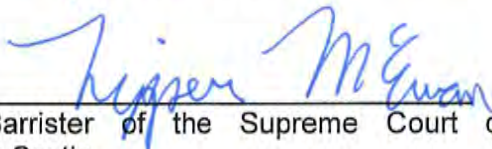
Or

CAO Barry Carroll
MODG
Office: 902.533.3705 Ext 228
Mobile: 902.870.0121
Email: bcarroll@modg.ca

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Hfx. No.

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of September, 2014.



A Barrister of the Supreme Court of
Nova Scotia

TIPPER McEWAN
A Barrister of the Supreme
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PROPOSED TIDEWATER QUARRY DEVELOPMENT – BLACK POINT

On Thursday, June 26, 2014 a three (3) page article identified as "Special Report – Blindsided" appeared on the front page (as well as Page A4 & A5) of the Chronicle Herald. Also, on Friday a one quarter page editorial by the Herald identified as "Fogarty's Landtaking – Bulldoze Unfair Law" was printed on page A13 of the "Herald Opinions" section. The Municipality felt "Blindsided" by these articles as we were not allowed ample opportunity to provide specifics related to the statements in those articles. The purpose of this article is to provide the Municipality's position and clarification of the facts related to many of the statements in the two extensive Chronicle Herald articles. Following are statements from the Herald and related facts:



The Chronicle Herald front page on June 26th showed Fogarty's Cove Beach, Guysborough County (Photo courtesy of the Fogarty Family), which indicates this would be the quarry site.



This photo appears to be of a beach west of the proposed Black Point quarry and not representative of the sheer rock face of the proposed quarry site.



"Heirs would be born there, settle, go to church and fish. In all, almost 800 people once called it and the surrounding area home"



Canso is the nearest community with 800 residents and is located approximately 12 km east of Black Point. The Fogarty land is located approximately 1 km from the main road and has no legal access.



"They just blindsided us, said Brian Fogarty"



The Municipality engaged a land agent and legal representation to research ownership of the "Estate of Joseph Fogarty" property. It was determined that Mr. James Fogarty of the Glace Bay area may have a one-ninth interest in the land identified as Estate of Joseph Fogarty. James Fogarty, by way of letter in 2012, stated "It is my intention to allow the above property to go to tax sale with the intention of obtaining a Tax Deed in my name". James Fogarty was the only contact identified by both the land agent and the solicitors researching the title. The research also indicated that there was potentially a very long list of heirs with a minor interest in the property.



"Six months before the Fogartys lost their land, an amended spring 2013 municipal planning strategy report stated officials were on the hunt for properties held for generations that hadn't been developed."..... "The Municipality needs to take advantage of its legislative authority to purchase land for subdivision and sale, the report said."



The 2013 amendment did not impact Black Point. This amendment rather added the former Town of Canso to the existing Plan.



To provide clarification and to put the quote in perspective taken

from the Municipal Planning Strategy adopted in 2011 we provide the following section in its entirety: Goal #7: Improve the Availability of Land: The Municipality has the highest percentage of Crown Lands in Nova Scotia. With more than half of the municipal territory under Provincial control, the availability of land is severely restricted. In addition, many parcels of privately-owned land are held for generations without being sold or made available for development. The Municipality needs to take advantage of its legislative authority to purchase land for subdivision and sale in order to open lands for new development.



"But the Fogartys, who don't live in Guysborough and use the land for recreation, maintain they weren't notified about any such plans. Why didn't they call one of us? said Brian, a sixth-generation Fogarty, who, with his brother Frank, only recently learned about the rezoning. It's been seven years it's been going on and no one (in the family) knew anything about it, said Frank, who lives in Halifax."



The only contact identified was Mr. James Fogarty and the land agent and solicitor had requested any information he could provide regarding other potential heirs. Mr. James Fogarty was notified as required by the Expropriation Act and in addition there were

a number of letters sent to Mr. Fogarty. The Fogarty parcel of land is located nearly 1 km from the main road and has no right of way access and there is no evidence of any use on the property for at least the past 100 years.



"By law, the family can't fight the expropriation because Nova Scotia's Expropriation Act doesn't allow for appeals."



The Expropriation Act does not allow the ownership of the property to be appealed but it does allow any party identified as an owner (any interest) to appeal the compensation offered and under most circumstances the legal costs are paid for by the Expropriator, which in the Fogarty matter would be the Municipality.



"It should be stripped of unfair clauses that ensure owners are not paid true market value for their assets."



The Expropriation Act does ensure the landowner the right to appeal the amount of compensation offered and under appeal the Nova Scotia Utility and Review Board establishes the level of compensation with legal costs in most cases being paid by the Expropriator.



"All the local land owner gets is an expropriation notice

when the Municipality is ready to proceed and a short pitch to a council that's already committed to a vote for its own pet project and the promise of jobs."



Expropriation is only used by the Municipality after all efforts to negotiate a purchase from a registered land owner have been expired or if no owner can be identified. In the Fogarty land matter, only Mr. James Fogarty was identified as the contact and research indicated he may have a one-ninth interest in the Estate of Joseph Fogarty property. Under the Act any party with an interest has an opportunity to exercise a claim for compensation under a Nova Scotia Utility & Review Board process.



"The Fogartys and their supporters want the property declared a protected wilderness area."... "an Article said licensing for such activities (hunting, camping, using all-terrain vehicles) would be available even if the land was protected."



The Municipality already has one of the highest percentages of protected wilderness area in the Province and all-terrain vehicles are strictly prohibited in Wilderness Protected Areas.



"A Chinese firm has just unveiled plans for a resort that

markets Guysborough County's unspoiled wilderness to China's rising affluent class."



The resort proposed by a Chinese firm is not proposed for the Municipality of the District of Guysborough. The proposed development would be located in the Municipality of the District of St. Mary's and would be approximately 50 km from the proposed quarry site.



"But today's statute, which is the only protection people have against unfair treatment by expropriating bodies (since there is no common-law right to compensation) doesn't do the job."



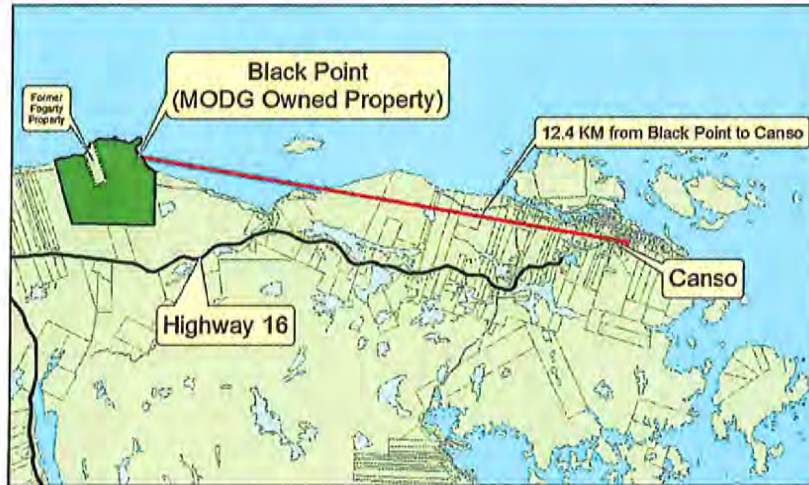
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In summary, the Expropriation Act for Nova Scotia may not be ideal for all circumstances but if municipal units or other expropriating authorities did not have any expropriating powers then any uncooperative land owner or opportunist could demand totally unrealistic amounts for lands that were required for roadways, sewer lines, waterlines or development projects required to sustain the local economy. The Ivany Report, which was supported by the Chronicle Herald, encouraged all levels of government to encourage, promote and assist with economic development opportunities that will sustain the local economy. The Black Point tidewater quarry project is consistent with the intent of the recent Ivany Report.

Proposed Tidewater Quarry Development – Black Point

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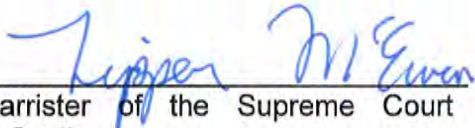
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✓ The Municipality already has one of the highest percentages of protected wilderness area in the

2014

Hfx. No.

This is Exhibit "F" to the Affidavit of Barry
Carroll, sworn before me on the 29 day
of September, 2014.


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A Barrister of the Supreme
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ABOUT

Fogarty's Cove is a part of Nova Scotia heritage. Stan Rogers immortalized it in song. But its beauty is now in danger. Save Fogarty's Cove!

<http://blackpointquarry.com/>

PHOTOS



POSTS TO PAGE



Dale Dickinson
July 4 at 7:58am

sounds like something US gov't would do

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Dale Dickinson
July 4 at 7:58am

sounds like something US gov't would do

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Save Fogarty's Cove shared a link.
August 12



TIMELINE: The expropriation of Fogarty's Cove
thechronicleherald.ca

2006 The Guysborough County Regional Development Authority, with the Nova Scotia Natural Resources Department, determines there is a geological formation at Black Point. 2007-08 Drilling program begins to check if there is the possibility for a granite aggregate development, or

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Dan Hutt likes this.



Dan Hutt Business Plan: 1) suck in naive Nova Scotia politicians to get resource for free. 2) have dimwits expropriate land, 3) see if there is a market for gravel in the Caribbean. Brilliant!
August 12 at 1:24pm



Save Fogarty's Cove shared a link.
July 3

Follow @BlackPtQuarry on Twitter for the untold story of the Fogarty's Cove/Black Point quarry proposal, expropriation of lands and how big business pushes interests over environmental concerns.



Real Quarry Story (BlackPtQuarry) on Twitter
twitter.com

The latest from Real Quarry Story (@BlackPtQuarry), the untold story of the Fogarty's Cove/Black Point quarry proposal, expropriation of lands and how big business pushes interests over environmental concerns. Nova Scotia

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Save Fogarty's Cove
July 2

We have two main issues with the Black Point Quarry Project. First, that the Municipality of the District of Guysborough was able to expropriate private lands that had been in the Fogarty family for generations; and second, the environmental damage that will result from drilling, blasting and mining.

Like · Comment

9

Save Fogarty's Cove shared a link.
June 30

Should our heritage be for sale?
Bizlivesolutions



EDITORIAL: Bulldoze unfair expropriation law
thechronicleherald.ca

Nova Scotia's Expropriation Act is a gross affront to the rights of every landowner and citizen in this province and it's time to bring it out of the Dark Ages. For starters, it should be overhauled to provide that basic element of fairness and due process — a right of appeal.

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4

Save Fogarty's Cove shared a link.
June 30

#SaveFogartysCove #Heritage #NovaScotia



Stan Rogers - Fogarty's Cove
Stan Rogers - Fogarty's Cove

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4

Save Fogarty's Cove shared a link.
June 30

#SaveFogartysCove #StanRogers #NovaScotia



thechronicleherald.ca
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4

Save Fogarty's Cove shared a link.
June 30



Special report: Family fights to save storied Fogarty's Cove
thechronicleherald.ca

Timothy William Fogarty arrived in Guysborough County back in 1820. The Irishman settled in a picturesque area, now known as Fogarty's Cove. By the 1850s, his son, Michael, was granted by the Crown 100 acres that would thereafter bear the family's name.

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3



Save Fogarty's Cove

June 30

Fogarty's Cove embodies all that is Nova Scotian with every fiber of its being. To strip the family of this picturesque and historic land and to hand it over to a mining company is not only appalling, it is un-Nova Scotian. If this land is not to remain in the Fogarty family, at the very least it should be declared a heritage site, not turned over to a mining company to rape and destroy.

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Save Fogarty's Cove changed their cover photo.

June 30



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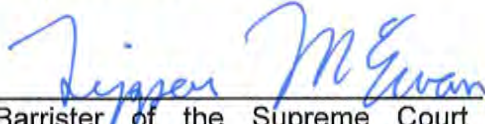
4

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2014

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of September, 2014.



A Barrister of the Supreme Court of
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About

Fogarty's Cove is a part of Nova Scotia heritage. Stan Rogers immortalized it in song. But its beauty is now in danger. Save Fogarty's Cove!

Basic Info

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Facebook 06/30/2014

Contact Info

Website <http://blackpointquarry.com/>

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Black Point Quarry Project



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ABOUT

Environmental impact of a granite quarry proposed for Black Point, Guysborough County, near Fogarty's Cove will be huge.

<http://www.twitter.com/BlackPtQuarry>

PHOTOS



English (US) · Privacy · Terms · Cookies · More · Facebook © 2014



Black Point - Fogarty's Cove Quarry Environmental Concerns shared a link.
August 17 · 🌐

makes you want to break out into song "it's a small world after all..." and not in a good way... <http://thetyee.ca/News/2014/08/01/Public-Fracking-Review/>



University Handling Public Fracking Review Tied to Firm Training LNG Workers | The Tyee
thetyee.ca

Questions about conflict of interest in Nova Scotia.

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Gail Parker Rogers, MaryAnn Nøbben, Larry Sargent and 16 others like this.

Top Comments · ▾



Avril MacNaughton So much for independent, seems to be a clear conflict of interest here
👍 4 · August 17 at 11:19am



Jeff Fogarty I shake my head!!!!
👍 1 · August 17 at 4:43pm



Sharon Kilburn Grant This should be made law. For any new industry that may cause harm to the environment, before they get the blessing of government (ie \$\$\$), have the company put up a \$1 Billion dollar Surety Bond that can be used for clean-up should any environmental disaster occur. I'm just throwing out that amount for example; would probably amount to much greater than that.

I'm pretty sure if foreign companies were required to do so with their own funds, they wouldn't go ahead with their project. They would find somewhere else to do their dirty work.

August 30 at 1:56pm



Wendy Kearley Every level of government is complicit in the destruction of our environment. Their vision is short sighted and focused on the quickest & easiest dollar. We have to take action to stop them.

👍 1 · August 19 at 3:33am



Black Point - Fogarty's Cove Quarry Environmental Concerns
August 16 · 🌐

This picture of the Guysborough Journal may be better. — with Gail Parker Rogers and 2 others.....

Jul 13, 2014

www.guysboroughjournal.com

LETTERS

Stand up for NS culture

To the Editor,

Culture is the driving force of Nova Scotia; at least we thought it was before these last few months. We are proud to say that Nova Scotia and our local region has held integrity when preserving the history of our culture. Locally, you see the past come to life at Sherbrooke Village, The Whiteman Museum and Grassy Island Historical Site. These are some examples of how our local history has presented opportunities that our previous leaders realized. But now two enormous cultural icons are being abandoned and we think enough is enough!

The Commercial Cable Building in Hazel Hill has had its fate decided this year and is scheduled for demolition. We are dead against this decision. This building was once the life line of communications between Europe and North America. The old brick building restored could come alive and tell its stories, as the history of the world becomes local brought in through cable, in a way you cannot replace with a simple monument or modern building.

The proposed Black Point Quarry is more of the same. In our opinion the location chosen for this project is a spit in the face; a hit below the belt; a cheap shot to Nova Scotia culture and those who love, foster, and support it. Fogarty's Cove is a holy grail of folklore in music boasted by the late great Stan Rogers whose lyrics are known internationally. Now it will be next to an unsustainable hole with a destroyed ecosystem covered by rock and other material, and water polluted so bad it becomes toxic. Fogarty's Cove will eventually fade away and become an ill-fated piece of land not salvageable for anyone or anything. We are all for new jobs and a quarry but why there? With this rocky ridged coast line we have been blessed with can we not find one alternative spot equal to, or even better than, this cultural gem? Imagine a tourist asks you, "Where is Stan singing about in the song Fogarty's Cove?" and you have to show them the desecrated destroyed hole and mangled coast that was once that sandy beach where you could sit and watch the waves roll in and be at peace. To anyone who does not believe us, take a drive down to Philips Harbour and go on a boat tour. When you see that view just visualize "She will walk the sandy shore so plain, watch the combers roll in" and maybe you will see what is really at stake!

Culture makes Nova Scotia that special gem of the East coast. We cannot gamble or step on it for greed and a small profit. We say small profit because eventually a hole becomes too deep or a business goes away, but history and culture will prevail past our mistakes and accomplishments. Please stand up for culture. Do not remain quiet. The time to stand up is now.

Coady Avery and Alicia Horton,
Canso



Published every Wednesday by
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Publisher
Alan Murphy
alanm@guysboroughjournal.ca

Editor in Chief
Helen Murphy
helenm@guysboroughjournal.ca

Advertising
alanm@guysboroughjournal.ca

Production Coordinator
alanm@guysboroughjournal.ca

Circulation and Office Manager
alanm@guysboroughjournal.ca

Graphic Design
alanm@guysboroughjournal.ca

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John LeBlanc, Steve Ide, Isabel James and 55 others like this.

Top Comments ·



Frank Fogarty So very well said. If only these words could get out to the silent majority. Maybe, just maybe, a politician or two would start to understand. Maybe they would look to the precious history of the region rather than the \$\$\$. Thank you Coady & Alicia.

10 · August 16 at 5:28am



Pastor Landry Greed always destroys something of value and never looks back as it leaves for yet another conquest!...Sharing!

5 · August 16 at 6:35am



Black Point - Fogarty's Cove Quarry Environmental Concerns We need more people like Coady and Alicia forward thinking....

2 · August 16 at 4:28pm



Andy Boyle Actually, people have to understand it could be their home next, and what benefits actually come back directly to the area above and beyond "normal" budget allocations? Our latest fight in Avonmore, (see SOS Avonmore on facebook) a small rural town in Ontario, was to save our Scotia Bank branch - we lost - but went down fighting and accepting their word to install an ATM (not happened). Rent a bus, go to Halifax, leaflet the people tell your story bring the media focus on your situation, get wider support. You are more influential than you know.

1 · August 17 at 4:15am



Jill Delany Jeddrie I hope this is not only shared on FaceBook but also sent to every newspaper in Nova Scotia and beyond.

1 · August 17 at 2:23am



Al Varty Anything for a Buck

1 · August 16 at 8:07am



FireHouse Ironworks Just wait till they "magically" discover gold while they're digging....

August 16 at 2:24pm · Edited



Black Point - Fogarty's Cove Quarry Environmental Concerns shared Scott M. Hart's photo.

August 16 ·

Hopefully if you click on this it will be fully readable... once it is posted, we will check and see what else we can do to make it available. Many thanks to Coady Avery and Alicia Horton in Canso for expressing their thoughts!

<https://www.facebook.com/photo.php?fbid=10154508953555578&set=a.10153016032930578.1073741826.701260577&type=1&fref=nf>

Letter to the Guysborough Journal by Coady Robert Avery and Alicia Danielle Horton about the proposed Black Point Quarry sheduled to open near Fogarty's Cove

AL **LETTERS**

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Cathy Avery and
Alicia Horton,
Canada

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Alexander
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Publisher
John Murphy
john@alexanderjournal.ca

Editor in Chief
Henry Murphy
henry@alexanderjournal.ca

Advertising
henry@alexanderjournal.ca

Production
Coordinator
henry@alexanderjournal.ca

Circulation and
Office Manager
henry@alexanderjournal.ca


Graphic Design
henry@alexanderjournal.ca

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 Martha Murphy, Jill Gass, Alicia Danielle Horton and 36 others like this.


Top Comments ·

 **Natalie Wood** It was indeed Stan Rogers' music and the excitement of seeing the beautiful landscape of Fogarty's Cove that was and is the appeal to visit NS. Keep Fogarty's Cove the natural wonder that it is.

 3 · August 16 at 5:21am

 **Black Point - Fogarty's Cove Quarry Environmental Concerns** if you can't read the text, you can enlarge it if you're on a computer... we will try to get a scan or other version of this.

August 16 at 5:04am

 **Don Murie** One letter writer thinks it's hopeless, so why fight it? If you don't fight, you have no chance to win.

August 16 at 6:21pm

 **Black Point - Fogarty's Cove Quarry Environmental Concerns** shared a link.

August 10

sharing another environmental story... they just keep coming...

<http://alexanderknight.ca/articles/20140809-fracking-flowback-to-be-dumped-into-dieppe-sewers.html>

IDERKNIC

ANYWHERE, SHO

Fracking flowback to be dumped into Dieppe sewer system.
alexanderknight.ca

If this treated flowback water is no longer permitted to be discharged in Nova Scotia then why should it become the problem for those living in another province? This is ironic since fracking flowback water from New Brunswick was transferred to the Debert facility in Nova Scotia for discharge. The in...

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Black Point Quarry Project



Black Point - Fogarty's Cove Quarry Environmental Concerns Community

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About

Environmental impact of a granite quarry proposed for Black Point, Guysborough County, near Fogarty's Cove will be huge.

Description

What does this Proposed Project mean for the future of the coastline, the waters of Chedabucto Bay, the fishery in the area, and the health and well-being of the residents who live downwind?

Morlen Resources Corp. proposes the construction, operation, decommissioning, and abandonment of a granite quarry at Black Point in Guysborough County, Nova Scotia, and the construction and operation of a 200 metre-long marine terminal and load-out facility, adjacent to the quarry, in Chedabucto Bay. The quarry is expected to have a production capacity of up to 7.5 million tonnes of granite per year, over a mine life of approximately 50 years.

Basic Info

Joined Facebook 06/08/2014

Contact Info

Website <http://www.twitter.com/BlackPtQuarry>

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This is Exhibit "H" to the Affidavit of Barry
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A Barrister of the Supreme Court of
Nova Scotia

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Black Point

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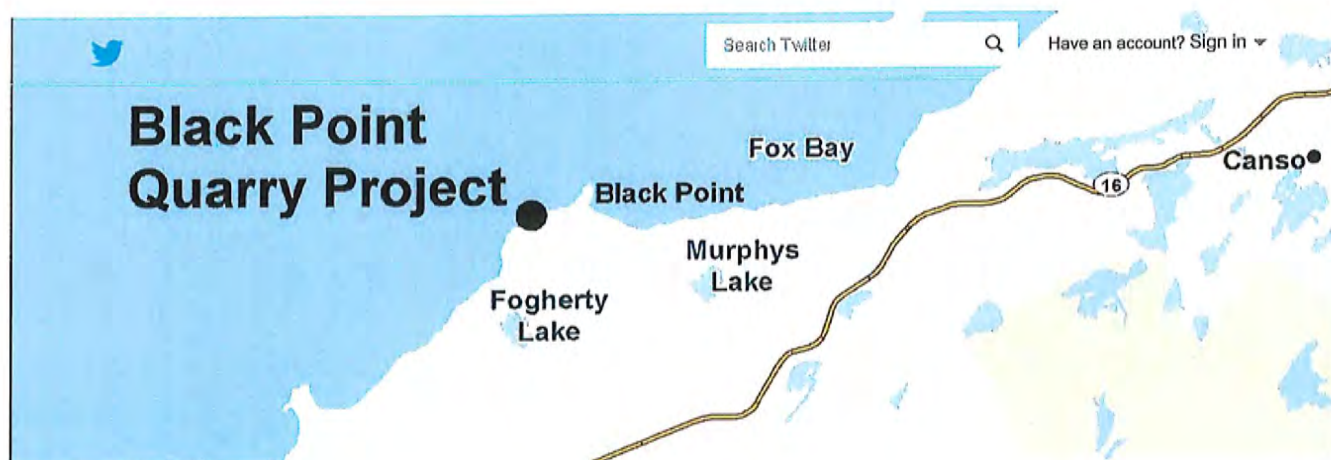
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Real Quarry Story @BlackPtQuarry · Jul 15
[#holinguacamole](#), check out amazing news!
 July 15, 2014 pinned to top of our facebook
 page facebook.com/pages/Black-Po...

↩ 1 ⭐ ...

Real Quarry Story @BlackPtQuarry · Jun 29
[#halifax](#) this wasn't in the city edition... nice that the municipality is being
 so informative NOW... modg.ca/node/69

↩ 1 ⭐ ...

Real Quarry Story @BlackPtQuarry · Jun 28
thechronicleherald.ca/novascotia/121...
[#quarrystory](#) no one's land is sacred our
 expropriation act stinks

↩ 3 ⭐ ...

Retweeted by Real Quarry Story
 Sarah Simpson @skwsimpson · Jun 27
 How could you not want to protect [#100WildIslands](#)? Help
[@NSNatureTrust](#) spread the word 100wildislands.ca/share/



↩ 12 ⭐ 2 ...


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Real Quarry Story @BlackPtQuarry · Jun 27
[#halifax](#)
thechronicleherald.ca/editorials/121... yup,
 time to stop grinding up scenery for gravel!

↩ 1 ⭐ 1 ...

Real Quarry Story @BlackPtQuarry · Jun 26
 and you thought your land was safe... live in Nova Scotia? not so much...
thechronicleherald.ca/novascotia/121...

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 Real Quarry Story @BlackPtQuarry · Jun 26


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this is where the story starts...
thechronicleherald.ca/novascotia/121...
 we need re-tweets!

↩ 4 ★ 1 ...


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 Chris Miller @NSwilderness · Jun 25

This is important. Huge conservation project underway along Eastern Shore by @NSNatureTrust. bit.ly/1mrL5uG #100wildislands

↩ 15 ★ 6 ...


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 Pam Bower @pammygb · Jun 25

Nova Scotia Islands to be protected forever by the Nova Scotia Nature Trust! Proud to represent major land donor... fb.me/2PwGZC4zq

↩ 1 ★ ...

 Real Quarry Story @BlackPtQuarry · Jun 16


#CBC Jim Fogarty spoke of the land expropriation this morning on Halifax's @infomorning

↩ 1 ★ ...

 Real Quarry Story @BlackPtQuarry · Jun 14


#environment #nature #halifax our post with amazing photos of coastline that could soon be a quarry... facebook.com/pages/Black-Po...


↩ 1 ★ ...

 Real Quarry Story @BlackPtQuarry · Jun 12

#TimeToAct let's hear the real story... let's go back in time a bit...to an old tourism quote...on our page facebook.com/pages/Black-Po...


↩ 1 ★ ...

 Retweeted by Real Quarry Story

 Joanne Cook @johalifax · Jun 9

NEW: Call for oil/gas moratorium in Gulf of St. Lawrence:
 @FondDavidSuzuki + @ecologyaction + NB/NL/PEI
m.thetelegram.com/News/Local/201... #SavetheGulf

↩ 4 ★ ...

 Real Quarry Story @BlackPtQuarry · Jun 10

no time like the present to address this issue... #TimeToAct ceaa-acee.gc.ca/050/details-en... input is crucial on this behemoth proposal

↩ 1 ★ ...

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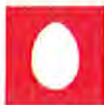


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This is my personal/local twitter account.
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interesting reading... [ehow.com/info_8564941_n...](#)

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these are pictures of what granite quarries can look like [google.ca/search?q=what+](#)...

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Wilderness Committee @wildernews · Jun 9

The true cost of [#LNG](#) in [#Squamish](#): [#Fracking](#), [#climate](#), [#water](#) + a
 clean new economy at risk [ow.ly/xNDIt](#) @EoinWC #bcpoli

1

Real Quarry Story @BlackPtQuarry · Jun 9

this is what workers and people in the area could be breathing...
[wiki.answers.com/Q/Is_it_danger...](#)

Real Quarry Story @BlackPtQuarry · Jun 9

here's what a quarry can look like... [ciaqc.com/news/images/1-...](#)

Real Quarry Story @BlackPtQuarry · Jun 9

Here is the link to the project on the CEAA website... [ceaa-acee.gc.ca/050/details-en...](#)

 Real Quarry Story followed [Anne Murray](#), [the fifth estate](#), [EnvironmentalDefence](#) and 48 others



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**Anne Murray** ✓

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Singer/Author

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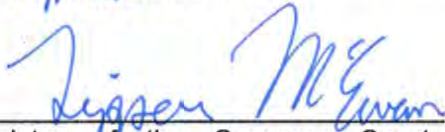
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A Barrister of the Supreme Court of
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Fogarty's Cove area quarry environmental concerns[HOME](#)[QUARRY AT BLACK POINT?](#)

BLACK POINT QUARRY PROJECT

*June 30, 2014*

Seven Miles Upwind

*by**blackptquarry*[0 comments](#)

Chuck Brodsky has been a favourite singer/songwriter of me and my wife for many years. There are lines from his songs that we still quote. You can learn more about Chuck and his music at: [Chuck Brodsky](#).

The song that this whole quarry fiasco brought to mind is Seven Miles Upwind. You can read the lyrics here:

[Seven Miles Upwind;](#)

The line that reminded me of this song is "Jobs...that's all you need to say around here
Babies'll let you kiss them and a marching band appears...jobs...". I get

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tired of hearing this rationale for whatever crap some company or politician wants to do that has no other redeeming qualities. Read all the lyrics and you will see how well he has expressed it. Better yet buy the CD **Color Came One Day (2004)** Recorded in Cape Breton, Nova Scotia. Produced by J.P. Cormier.

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June 30, 2014
by
blackptquarry
[0 comments](#)

Bruce MacKinnon cartoon

The Chronicle-Herald's brilliantat editorial cartoonist always captures the essence.

[The Chronicle Herald Editorial cartoon 2014-06-27.](#)

Categories: [Uncategorized](#) | [Permalink](#)

June 26, 2014
by
blackptquarry
[0 comments](#)

Excellent Article by Eva Hoare at the Chronicle-Herald

Eva Hoare has written an excellent article about how one family's land was expropriated by local politicians.

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PAGE FOR
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POINT
QUARRY**

The story is at the following link:

[http://thechronicleherald.ca/novascoti:
special-report-family-fights-to-save-
storied-fogarty-s-
cove#.U6v4g2qAO0E.email](http://thechronicleherald.ca/novascoti:special-report-family-fights-to-save-storied-fogarty-s-cove#.U6v4g2qAO0E.email)

Categories: [Uncategorized](#) | [Permalink](#)

June 17, 2014
by
blackptquarry
[0 comments](#)

No picture can do justice...



A view along the coast of Chedabucto Bay, where a proposed quarry and marine terminal will impact the land, water and air in an area so unspoiled, it is a national treasure.

How do you even begin to describe a place so wild, unspoiled and beautiful? A picture can speak a thousand words, but there are not a lot of pictures of this stretch of coast along the south eastern side of Chedabucto Bay, a few miles west of Canso, Nova

RECENT POSTS

- [Seven Miles Upwind](#)
- [Bruce MacKinnon cartoon](#)
- [Excellent Article by Eva Hoare at the Chronicle-Herald](#)

Scotia. It is a place where whales, birds and other wildlife live undisturbed, a place where hikers, boaters and fishermen have respected the land and shoreline for hundreds of years.

▫ [No picture can do justice...](#)

RECENT COMMENTS

Stan Rogers' song **Fogarty's Cove**, which there is no need to quote here, so ingrained is it in the minds of many, made reference to this coast and many of its geographic landmarks. He may not have known that Fogarty's Cove was a real place on a map... but he knew this coast – the coves, harbours and islands – the many reaches of this bay lying between the mainland of eastern Nova Scotia, with Canso at its windy tip, and the islands of Cape Breton and Isle Madame. The name Fogarty went back for many generations and was a perfect fit. Just like the cove, the Fogartys belong to this coast.

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Although they have spread far and wide, their history is deep along the shore and the Municipality of the District of Guysborough had no trouble sending a tax bill every year to the heirs of the Fogarty Lands that are now at stake.

There is a story here – many stories in fact – and we might have an opportunity to tell some of them... but right at this very moment, the wheels are turning rather quickly, and

Fogarty's Cove/Black Point and the whole coast east of this area, needs your help.

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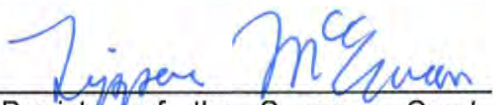
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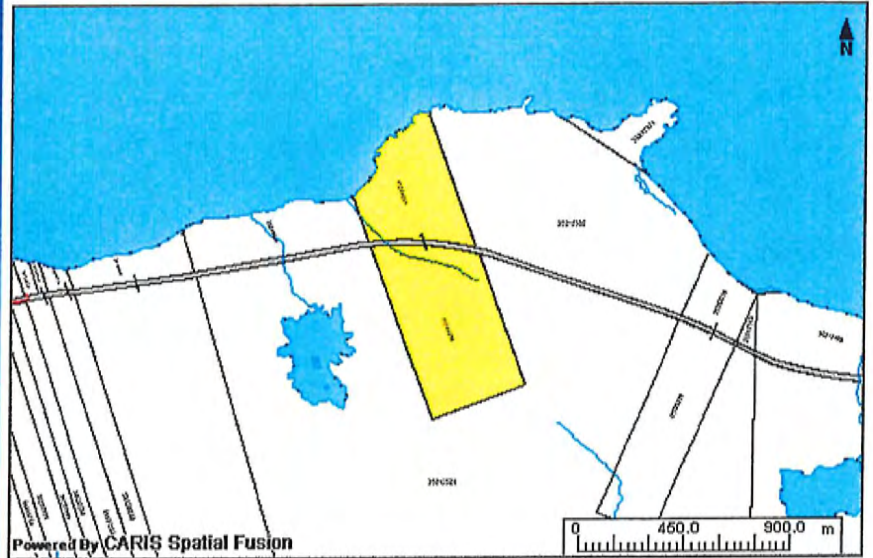
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This is Exhibit "J" to the Affidavit of Barry
Carroll, sworn before me on the 24 day
of September, 2014.



A Barrister of the Supreme Court of
Nova Scotia



Appraisal Report

**Lands of Joseph Fogarty
PID 35044056
Fox Island, Nova Scotia**

Prepared for:

McInnes Cooper

By:

INGRAM VARNER

and Associates

15 Dartmouth Road, Suite 310
Bedford (Halifax), Nova Scotia B4A 3X6

Phone: (902) 835-5383
Fax: (902) 835-3732

www.ingramvarner.com

File no. 3I11194-1

July 2011



July 27, 2011

McInnes Cooper
Purdy's Wharf Tower II
1300-1969 Upper Water Street
Halifax, NS B3J 2V1

Attention: Peter Rogers

Dear Mr. Rogers:

Re: Valuation of Vacant Land - PID 35044056, Highway 16, Fox Island, Nova Scotia

As per your instructions, we have completed an investigation and analysis of the above-mentioned property and herewith submit our report for your consideration.

The Appraisal was made for the purpose of expressing our *Current Value Opinion* of the *Market Value* of the Fee Simple Interest in the subject property. The definition of *Market Value*, as employed in this report, is outlined under the *Terms of Reference* section of this report.

This report complies with the Canadian Uniform Standards of Professional Appraisal Practice and is subject to the Contingent and Limiting Conditions outlined in section 2.0 of the report.

Based on our interpretation and analysis of the data outlined in this report as well as a personal inspection of the property, it is our considered opinion that the *Market Value* of the Fee Simple Interest in the subject property as of July 25, 2011 is:

ONE HUNDRED AND FORTY THOUSAND DOLLARS (\$140,000.00)

If you have any questions regarding this report, please contact the undersigned at your convenience.

Respectfully Submitted,

John A. Ingram, AACI, P. App., MRICS
President
NSREAA - Registration no. 251790

INGRAM VARNER
and Associates

15 Dartmouth Road, Suite 310
Bedford (Halifax), Nova Scotia, B4A 3X6

Phone: (902) 835-5383
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1.0 EXECUTIVE SUMMARY

Property Identification:	Property of Joseph Fogarty Highway 16 Fox Island, Nova Scotia PID 35044056
Property Type:	Vacant land.
Current Registered Owner:	Joseph Fogarty
Assessed Value (2011):	\$26,000.00
Zoning:	Industrial Heavy (M-2)
Highest and Best Use:	Holding for future Industrial Heavy use.
Site Area:	107.0 acres \pm
Value by Direct Comparison:	\$140,000.00
Final Value Estimate:	\$140,000.00
Effective Date:	July 25, 2011
Date of Report:	July 27, 2011

2.0 CONTINGENT AND LIMITING CONDITIONS

1. This report has been prepared at the request of the client for the purpose of providing an estimate of the market value. It is not reasonable for any other person to rely upon this appraisal without first obtaining written authorization from the author. There may be qualifications, assumptions, or limiting conditions in addition to those set out below relevant to that person's identity or his intended use. The report is prepared on the assumption that no other person will rely on it for any other purpose and that all liability to all such persons is denied.

2. The author is not qualified and does not purport to give legal advice. It is assumed that:

- i) the legal description employed in this report is correct;
- ii) title to the property is good and marketable;
- iii) there are no encroachments, encumbrances, restrictions, leases or covenants that would in any way affect the valuation, except as expressly noted herein;
- iv) the existing use is a legally conforming use which may be continued by any purchaser from the existing owner;
- v) rights-of-way, easements, or encroachments over other real property and leases or other covenants noted herein are legally enforceable.

Because these assumptions have been made, no investigation, legal or otherwise, has been undertaken which would verify these assumptions except as expressly noted herein.

3. The author is not a qualified surveyor. Sketches, drawings, diagrams, photographs, etc. are presented in this report for the limited purpose of illustration and are not to be relied upon in themselves.

4. The author is not qualified to give engineering advice and no soil tests have been done.

5. No investigation has been undertaken with the local zoning office, the fire department, the building inspector, the health department or any other government regulatory agency unless such investigations are expressly represented to have been made in this report. The subject property must comply with such government regulations and, if it does not comply, its non-compliance may affect market value. To be certain of compliance, further investigations may be necessary.

6. Neither possession of this report nor a copy of it carries with it the right of publication. All copyright is reserved to the author and is considered confidential by the author and his client. It shall not be disclosed, quoted from or referred to, in whole or in part, or published in any manner, without the express written consent of the appraiser. This is subject only to confidential review by the Appraisal Institute of Canada as provided in the Code of Ethics, Standards of Professional Conduct and Standards of Professional Practice of the Institute.

7. Market data has been obtained, in part, from documents at the land registry office, or as reported by the real estate board. As well as using such documented and generally reliable evidence of market transactions, it was also necessary to rely on hearsay evidence. Except as noted herein, a reasonable attempt has been made to verify all such information. Where information has been supplied by others, absolutely no obligation is assumed by the author for its accuracy.

8. Because market conditions, including economic, social and political factors, change rapidly and, on occasion, without warning, the market value expressed as of the date of this report cannot be relied upon as of any other date except with further advice of the author.

9. The compensation for services rendered in this report does not include a fee for court preparation or court appearance, which must be negotiated separately. However, neither this nor any other of these limiting conditions is an attempt to limit the use that might be made of this report should it properly become evidence in a judicial proceeding. In such a case, it is acknowledged that it is the judicial body which will decide the use of the report which best serves the administration of justice.

10. The author reserves the right to review all calculations referred to in this report and, if necessary, revise his opinion in the light of any new facts, trends, or changing conditions existing at any date prior to or at the effective date which became apparent to him subsequent to the date of this report.

11. Unless otherwise noted in this report, the author is not qualified to comment on environmental issues that may effect the market value of the property appraised, including but not limited to hazardous materials, pollution or contamination of land, buildings, water, groundwater or air. Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildews or the conditions which may give rise to either, and in compliance with all regulatory environmental requirements, government or otherwise, and free of any environmental condition, past, present or future, that might effect the market value of the property appraised. If the party relying on this report requires information about environmental issues then that party is cautioned to retain an expert qualified in such issues. We expressly deny any legal liability relating to the effect of environmental issues on the market value of the subject property.

3.0 TERMS OF REFERENCE

3.1 PROPERTY RIGHTS APPRAISED

The property rights being appraised in this report are those which will accrue to the owner of the property described herein. This encompasses the rights normally attached to the freehold (or fee simple) interest in the property. The property has been appraised on a debt-free basis.

3.2 PURPOSE OF THE ASSIGNMENT

This investigation and appraisal was made for the purpose of estimating the market value of the subject property as of July 25, 2011.

3.3 INTENDED USE OF THE REPORT

This report is intended for the use of McInnes Cooper and Erdene Resource Development to assist in a potential acquisition of the subject property.

3.4 DEFINITION OF MARKET VALUE

3.4.1 Canadian Uniform Standards of Professional Appraisal Practice Definition

The term "Market Value" as used in this report is defined as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1) buyer and seller are typically motivated;*
- 2) both parties are well informed or well advised, and acting in what they consider their best interests;*
- 3) a reasonable time is allowed for exposure in the open market;*
- 4) payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto; and*
- 5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*

3.5 EXPOSURE TIME

The value estimate assumes that the subject property was exposed for sale on the open market in a manner typical for this class of property for at least 12 months prior to the effective date.

3.6 SALES HISTORY

The subject property has been owned by the current owner for in excess of three years.

It is not known to be under agreement, option or offer and is not currently being actively marketed for sale.

3.7 SCOPE OF THE APPRAISAL

The scope of this appraisal encompassed those methods, procedures and investigations considered to be typical and appropriate for this class of property and the intended use of this report.

A physical inspection of the subject property was undertaken on May 28, 2009 as well as on May 5, 2008 by means of a helicopter over-flight. The neighbourhood was inspected noting relevant competition characteristics and general physical make-up. Zoning information was obtained from the Municipality of the District of Guysborough as were the property tax rates. Ownership and assessment information were obtained from the *Service Nova Scotia Property Online* database. Comparable sales data was obtained from vendors, purchasers and brokers as well as MLS data and information retained on file.

4.0 LOCATIONAL OVERVIEW

4.1 MACRO-MARKET CHARACTERISTICS

The subject property is located within the community of Fox Island in Guysborough County, Nova Scotia. Selected statistics from the 2006 census are summarized in the following table:

	Guysborough (Municipal District)	Guysborough (County)	Nova Scotia
Land Area (km ²)	2,111.42	4,044.23	52,917.46
2006 Population	4,681	9,058	913,462
Population Change from 2001	-9.4%	-7.8%	0.6%
Median Earnings (full year, full time)	\$33,672	\$34,016	\$36,917
Number of Private Occupied Dwellings	2,045	3,890	376,845
Percent Rented	9.3%	11.7%	27.6%
Avg. Value of Private Occupied Dwellings	\$97,515	\$91,800	\$158,000

The current unemployment rate for Nova Scotia (June 2011) is 8.7% with a participation rate of 63.7% and a total labour force of 496,000. The APEC forecast for Nova Scotia in 2011 projects real GDP growth at +1.6%.

The Nova Scotia economy is predominantly service-based. The Province's services sector is proportionally larger than that of Canada. In 2005, 76.8% of the provincial economy was within the services sector, compared to 68.9% for Canada. The goods producing sector accounted for 23.2% of Nova Scotia's economy in 2005, compared to 31.1% for Canada in 2005. This represents Nova Scotia's position as the principal private sector service centre for Atlantic Canada and the centre for regional public administration and defense.

The following table summarizes statistical and financial information for the subject area:

	Market Area	Date	Current Figures	Change over Previous Year
Labour Force	North Shore	Jun-11	79,400	2.1%
Unemployment Rate	North Shore	Jun-11	8.90%	+70 basis points
Participation Rate	North Shore	Jun-11	61.10%	+130 basis points
Consumer Price Index (all items)	Nova Scotia	Jun-11	122.5	4.4%
Non-residential Construction	Nova Scotia	Q1-11	\$218,900,000	23.5%
Retail Trade	Nova Scotia	May-11	\$1,065,500,000	2.3%
Bank of Canada Rate	Canada	Jul-11	1.00%	up 50 basis points
Chartered Bank Prime Rate	Canada	Jul-11	3.00%	up 50 basis points
Long-term Canada Bond Yield	Canada	Jul-11	3.55%	down 10 basis points

The subject is situated in the political jurisdiction of the Municipality of the District of Guysborough (MODG). MODG is one of four municipal units in Guysborough County and takes in the eastern half of the county. Some of the key statistical information for the Municipality is outlined in the foregoing table. The existing economy is largely primary resource-based. MODG is endeavouring to diversify the local economy and expand employment prospects by creating an environment favourable to large scale industrial development. The Maher Melford Terminal port and container terminal in Melford is in the planning stages. Goldboro is the site of the SOEI natural gas processing plant and the landfall site for the Sable natural gas pipeline as well as the origination point of the Maritime and Northeast Pipeline (M&NP) main line and Point Tupper lateral line. The planned Maple LNG facility in Goldboro was cancelled in late 2010.

4.2 LOCATION MAPS

Neighbourhood Location



Regional Location



4.3 MICRO-MARKET CHARACTERISTICS

The subject property is located on the south coast of Chedabucto Bay to the north of Highway 16. The area is sparsely developed. Existing development consists primarily of a mix of rural residential and recreational uses. The Canso Coastal Barrens Wilderness Area is located immediately to the south.

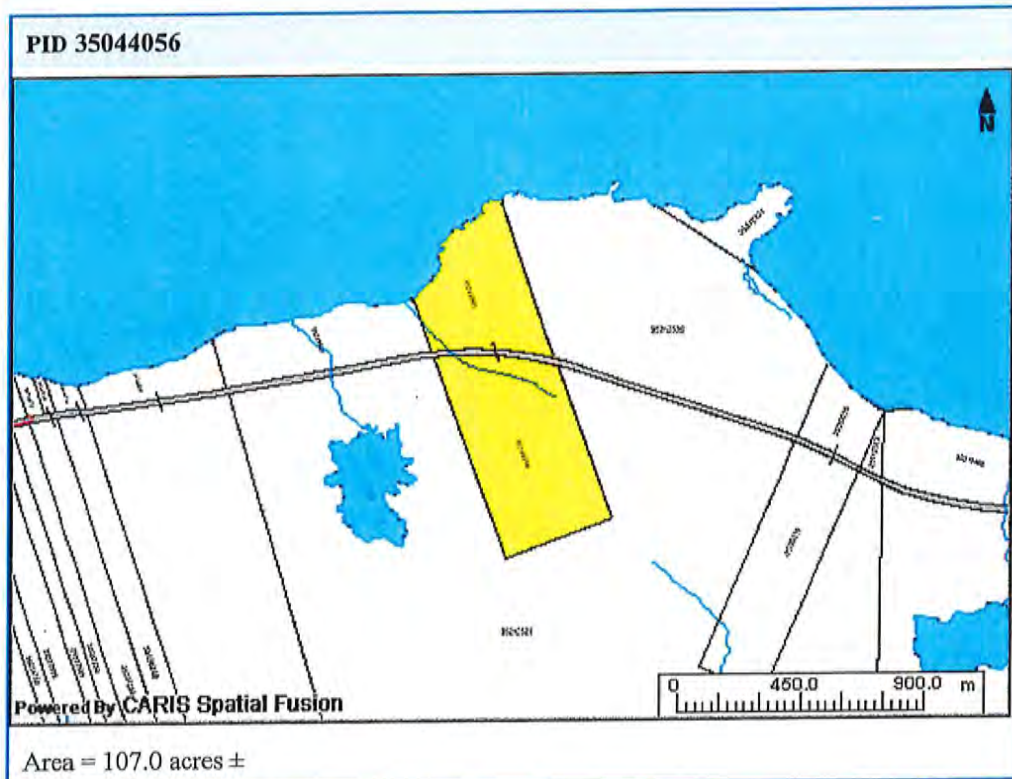
Highway 16 is a two lane, two way asphalt paved trunk highway which runs from Highway 104 at exit 37 to the north through to the Town of Canso. Canso is located about 7 km to the east and Guysborough is located about 40 km to the northwest.

5.0 PHYSICAL AND FUNCTIONAL DATA

5.1 SITE DETAILS

5.1.1 Site Description

The subject site is situated on the south coast of Chedabucto Bay to the north of Highway 16. The parcel is depicted in yellow in the following *SNS Property Online* plan:



The overall subject parcel is basically rectangular with an irregularly shaped northern boundary. There is ocean frontage on Chedabucto Bay with rugged and rocky coastline. Fogherty Lake is located immediately west of the subject. Tree cover consists of small softwood with an intermixing of hardwood with sparse coverage in some areas. There are large barren areas as well as a number of areas of rock outcroppings.

The property has limited accessibility with no active public road frontage. The site is bisected by a provincially-owned road reserve corridor. However, the corridor is undeveloped wood land and does not provide any functional access to the property.

5.1.2 Site Improvements

None.

5.1.3 Services

The subject has the following services available:

- No central water and sewer - on-site well and septic would be required.
- Electricity is available in the area to the south on Highway 16.

5.1.4 Easements and Rights-of-way

None known.

5.1.5 Environmental Considerations

The value indicated in this report assumes an environmentally clean site. No environmental assessment reports have been reviewed.

5.2 MUNICIPAL DATA

5.2.1 Assessed Value and Annual Taxes

		Resource Taxable
2010	Assessment	\$26,000.00
	Tax Rate (\$/100)	0.5900
	Property Tax	\$153.40
2011	Assessment	\$26,000.00
	Change over 2010	0.00%
	Proposed Taxes	not yet set

5.2.2 Zoning and Planning Considerations

The zoning for the subject lands is governed by the Land Use By-law for the District #1, 2, 4, 5 and 6 Planning Area of the Municipality of the District of Guysborough. The permitted uses and zone requirements for the M-2 zone are summarized as follows:

Industrial Heavy (M-2)	
Permitted Uses:	<ul style="list-style-type: none"> • All uses permitted within the M-1 zone subject to the M-1 zone requirements (manufacturing, assembly, warehouse, service industry, related office uses). • Auto salvage yards. • Rock quarry operations. • Refineries and raw material processing and manufacturing.
Minimum Lot Area:	40,000 ft ²
Minimum Frontage:	200 feet
Minimum Front Yard:	25 feet
Minimum Side Yard:	15 feet
Minimum Rear Yard:	25 feet

The subject lot meets the minimum requirements of the M-2 zone.

6.0 HIGHEST AND BEST USE

The *Highest and Best Use* of a property is defined for the purposes of this report as “the use, at the time of appraisal, from among reasonably probable and legal alternative uses found to be physically possible, appropriately supported and financially feasible, that is likely to produce the greatest net return over a period of time.”

6.1 AS IF VACANT

The highest and best use of the vacant site would be a holding use in anticipation of assembly for an Industrial Heavy use in accordance with the permitted uses and requirements of the M-2 zone. The parcel size is potentially sufficient for independent development with an M-2 use. However, the property does not have functional road access which would limit its utility. No development of the road corridor is anticipated and the cost of developing road access, if it were to be permitted, would be prohibitive for independent development of the subject site. Therefore, assembly with adjoining parcels would be anticipated.

6.2 AS IMPROVED

The subject property is unimproved vacant land.

7.0 VALUATION METHODOLOGY

7.1 VACANT LAND

There are four basic approaches available to the appraiser in the estimation of the market value of vacant land. The procedures for these approaches are briefly summarized as follows:

- **Land Value by Abstraction**

This method involves subtracting depreciated building value from the sale price of an improved property, the remainder being site value. The method is most applicable when no vacant land sales exist.

- **Land Development Method**

This method is best applied to undeveloped tracts which have an imminent highest and best use in a developed state and where few comparable land sales exist. The basic procedure is to determine the most probable type of development for the land, determine the costs and time involved in attaining the fully developed stage, and determine the value for the developed land through Direct Comparison. The development costs are deducted from the developed market value arriving at a value for the land in its undeveloped state.

- **Land Residual Method**

This method is similar to the abstraction method but intended for income producing properties. Net income is determined and the portion attributable to improvements is determined. The remainder of the income is capitalized into an indication of site value.

- **Direct Comparison Approach**

This is the most commonly used and generally most reliable approach for valuing vacant land providing a sufficient number of comparable land sales exist. Sales of similar types of vacant land are derived from the market and reduced to an appropriate unit of comparison (i.e. price/ft², price/acre, price/lot.) Where necessary, the unit sale prices are adjusted for differences such as date of sale, location, and physical factors. The adjusted unit prices are applied to the subject land to arrive at an indication of market value.

The Direct Comparison Approach has been utilized in the valuation of the vacant land.

8.0 DIRECT COMPARISON APPROACH

8.1 COMPARABLE SALES DATA

Schedule of Vacant Land Sales					
# Property	Sale Date	Sale Price	Area (acres)	Price /acre	Remarks
1] Lawlors Lane Upper Whitehead PID 35037860	May-11	\$31,500	54.4	\$579	930' of ocean frontage on the Northwest Branch of Whitehead Harbour as well as frontage on Spears Lake. No functional road access with frontage on undeveloped road reserve. Zoned R-1. Vendor: John and Heather Fleming Purchaser: Sandra Winter
2] Highway 16 Phillips Harbour PID 35036425	Apr-11	\$11,000	30.0	\$367	Cut-over wood land with no water frontage. Extensive road frontage on Highway 16 and Canso Branch Road. Zoned R-1. Vendor: James Hattie Purchaser: Sean Leland
3] Lot 4-10 Highway 16 Half Island Cove PID 35036748	Sep-09	\$127,000	24.8	\$5,121	2,300' of ocean frontage on Chedabucto Bay. Public road frontage. Mix of cleared and wooded land. Zoned R-1. Vendor: Harvey and Reginald Hendsbee Purchaser: Scott and Janice Kupsch
4] Lands of J. Cummings Highway 344 Manchester PID 35004456	Sep-08	\$200,000	138.40	\$1,445	Ocean frontage on Chedabucto Bay. No direct road frontage. Zoned R-1. Estate sale. Subject to a Protected beach designation. Vendor: Estate of John Cummings Purchaser: Faith Crandall
5] 7035 Highway 16 Halfway Cove PID 35034537	Nov-07	\$43,000	199.0	\$216	Long narrow parcel with frontage on Highway 16. Wooded lot. Property is crossed by 2 brooks. Gravel driveway and well on property. Zoned R-1. Vendor: Bank of Montreal Purchaser: Barry and Sandra Potter
6] Lands of Eugen Franz Highway 16 Half Island Cove PID 35037290, 35037266, 35077791, 35077775, 35203025 35203033, 35203058, 35203066 and 35203041	Sep-07	\$140,000	164.2	\$853	Group of 9 contiguous lots ranging from 0.15 to 49.0 acres. Overall property has frontage on Highway 16 and Half Island Cove Road. Ocean frontage. Zoned R-1. Vendor: Eugen Franz Purchaser: Loren Yaremchuk
7] Grant 16651 Dover Road Little Dover PID 35046283	Jan-07	\$200,000	115.0	\$1,739	Wooded lot with no road frontage. Boat access. Over 4,700' ocean frontage + 1,300' on coastal inlet. 2 lakes located on the property. Zoned R-1. Vendor: Estate of Mabel Varzeas Purchaser: Darrin and Virna Kneller
8] Lands of A. Walters Highway 316 Goldboro PID 35066208, 35066232, 35066281, 35066380, 35066406 35088939, 35094481 and 35196278	Jan-06	\$148,000	24.26	\$6,101	Acquisition of 8 parcels from a single owner. Parcels formed part of a proposed residential subdivision. M-3 Industrial zoning at time of sale. Vendor: Antoinette Walters Purchaser: Municipality of the District of Guysborough

8.2 COMPARATIVE ANALYSIS AND ADJUSTMENT

The foregoing schedule outlines sales of comparable properties in the general area of the subject property and the sales have been evaluated based on the price/acre of site area for Direct Comparison purposes. The rates/acre range from \$216.00 to \$6,101.00/acre averaging \$1,934.00/acre with a median rate of \$1,149.00/acre.

The relative merits of the sales are discussed as follows:

- **Index 1** - Comparable location. Ocean frontage. No road frontage. Residential zoning.
- **Index 2** - Comparable location. No water frontage. Road frontage. Residential zoning.
- **Index 3** - Comparable location. Ocean frontage. Road frontage. Residential zoning.
- **Index 4** - Comparable location. Ocean frontage. No road frontage. Residential zoning.
- **Index 5** - Comparable location. No water frontage. Road frontage. Long and narrow configuration. Residential zoning.
- **Index 6** - Comparable location. Ocean frontage. Road frontage. Long and narrow configuration. Residential zoning.
- **Index 7** - Comparable location. Ocean frontage. No road frontage. Residential zoning.
- **Index 8** - Superior location. Ocean frontage. Road frontage. Inferior configuration due to non-contiguous lots. Industrial zoning.

Due to the variances in sale dates a market conditions adjustment has been undertaken. Due to a lack of paired sales data in the subject market, consideration has been given to generalized index information. The CMHC Land Price Index for Nova Scotia has been considered for this adjustment. Between January 2006 (oldest transaction) and May 2011 (most current reporting data), the index shows an average increase in land values of 0.33% per month or 4.0% per annum. This adjustment has been applied to each of the comparables.

After applying the foregoing market conditions adjustment, the rates per acre range from \$247.00 to \$7,430.00/acre averaging \$2,345.00/acre with a median rate of \$1,295.00/acre. Removing the high and low extremes from the range reduces the average to \$1,848.00/acre.

In addition to the foregoing time adjustment, qualitative rankings have been made to the comparable sales for ocean frontage, location, access and physical characteristics (lot size, configuration and other physical characteristics). A single point system has been assigned for each factor based on whether a comparable sale is superior, inferior or comparable to the subject in these factors (+1 = superior, -1 = inferior, 0 = comparable).

All of the transactions have zoning that differs from the subject. Sales 1-7 have R-1 residential zoning while sale 8 has M-3 industrial zoning. No sales of M-2 zoned sites have been identified. The M-2 zone permits M-1 uses as well as auto salvage yards, rock quarry operations and refineries. The R-1 zone also permits some limited M-1 uses in addition to residential uses. The M-3 zone is comparatively specialized and limited in that it permits a narrow group of uses related to petrochemical processing and power generation. No market evidence has been identified to support an adjustment for variances in zoning between R-1, M-2 and M-3 designations and no adjustment has been made for this consideration.

Based on the foregoing, the ranking process is summarized in the following table:

Ranking Analysis							
Index no.	\$/acre	Time Adjusted	Ocean Frontage	Location	Access	Lot Size Physical	Point Total
5	\$216	\$247	-1	0	1	-2	-2
2	\$367	\$371	-1	0	1	-1	-1
Subject			0	0	0	0	0
1	\$579	\$583	0	0	0	0	0
6	\$853	\$982	0	0	1	-1	0
4	\$1,445	\$1,607	0	0	0	0	0
7	\$1,739	\$2,049	0	0	0	0	0
3	\$5,121	\$5,493	0	0	1	1	2
8	\$6,101	\$7,430	0	1	1	0	2

Sales 2 and 5 have an overall inferior ranking. The upper end of the range from the inferior ranked sales is \$371.00/acre after the market conditions adjustment which suggests that the subject would be represented at a unit rate above this level.

Sales 1, 4, 6, and 7 have an overall comparable ranking. The unit rates from these transactions range from \$583.00 to \$2,049.00/acre averaging \$1,305.00/acre with a median rate of \$1,295.00/acre. Based on the comparable rankings, the subject would be characterized as being reasonably represented at a unit rate in the range reflected by these transactions.

Sales 3 and 8 have an overall superior ranking. Both rates are significantly above those from the comparably ranked transactions with the lowest rate at \$5,493.00/acre. The subject would be reflected at a rate below the adjusted level from these two transactions.

Based on the foregoing, the subject is considered to be most reasonably represented by a unit rate in the range bracketed by sales 1, 4, 6 and 7. No single sale within this group is considered to provide the strongest basis for comparison to the subject. Approximately equal weight has been given to these indicators which have a midpoint of approximately \$1,300.00 per acre. This rate has been rounded to the nearest \$100.00 for calculation purposes.

8.3 SUMMARY AND VALUE CONCLUSION

Based on the foregoing analysis of market data, a rate of \$1,300.00/acre is considered to be reasonably representative of the market position of the overall subject site. Therefore, the estimate of value by the Direct Comparison Approach is calculated as follows:

107.0 acres @ \$1,300.00 /acre	\$139,100.00
Rounded	\$140,000.00

9.0 CONCLUSIONS

9.1 FINAL VALUE ESTIMATE

Based on the foregoing, the market value of the subject property, as of July 25, 2011, is considered to be fairly represented at:

ONE HUNDRED AND FORTY THOUSAND DOLLARS
(\$140,000.00)

10.0 CERTIFICATION

Subject Property: Vacant Land - PID 35044056, Highway 16, Fox Island, Nova Scotia

I certify that, to the best of my knowledge and belief,

- The statements of fact contained in this report are true and correct.
- The property was personally inspected on May 28, 2009 as well as on May 5, 2008 by means of a helicopter over-flight and I have not withheld any comments or observations which might affect the opinions stated in this report.
- The analyses, opinions and conclusions reported herein are my personal and unbiased views and are limited only by the Contingent and Limiting Conditions contained herein.
- I have no past, present or contemplated future interest in the real estate which is the object of this report and that I have no personal interest or bias with respect to the property or the parties involved.
- My compensation is not contingent upon any action or event resulting from the analyses, opinions or conclusions in, or the use of, this report.
- This report has been made in conformity with, and is subject to, the Canadian Uniform Standards of Professional Appraisal Practice as well as the By-laws and regulations of the Appraisal Institute of Canada and the Nova Scotia Real Estate Appraisers Association. The report is subject to review by duly authorized representatives of this Institute.
- I have the knowledge and experience to complete the assignment competently.
- No one provided significant professional assistance to the person signing this report.
- I have fulfilled the requirements of the Appraisal Institute of Canada Continuing Professional Development program for designated members.

In my opinion, the market value of the subject property, as of July 25, 2011, was:

ONE HUNDRED AND FORTY THOUSAND DOLLARS (\$140,000.00)

ARA Ingram Varner



John A. Ingram, AACI, P. App., MRICS
NSREAA - Registration no. 251790

July 27, 2011
Date of Report





Aerial view of subject area (circa 2007)



View to northwest toward subject ocean frontage



View to east over subject lands



View to west over subject lands



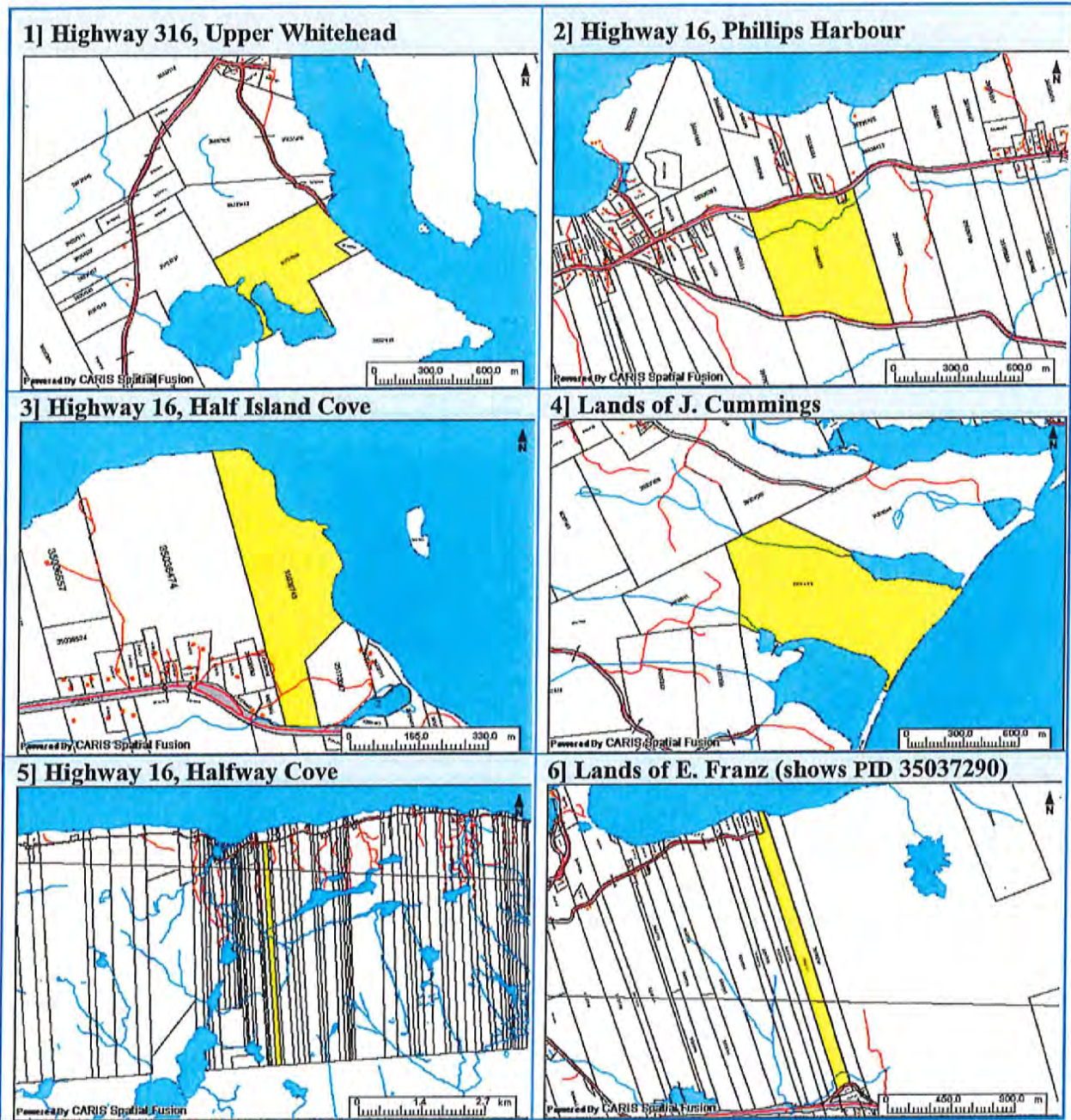
View to south over subject lands

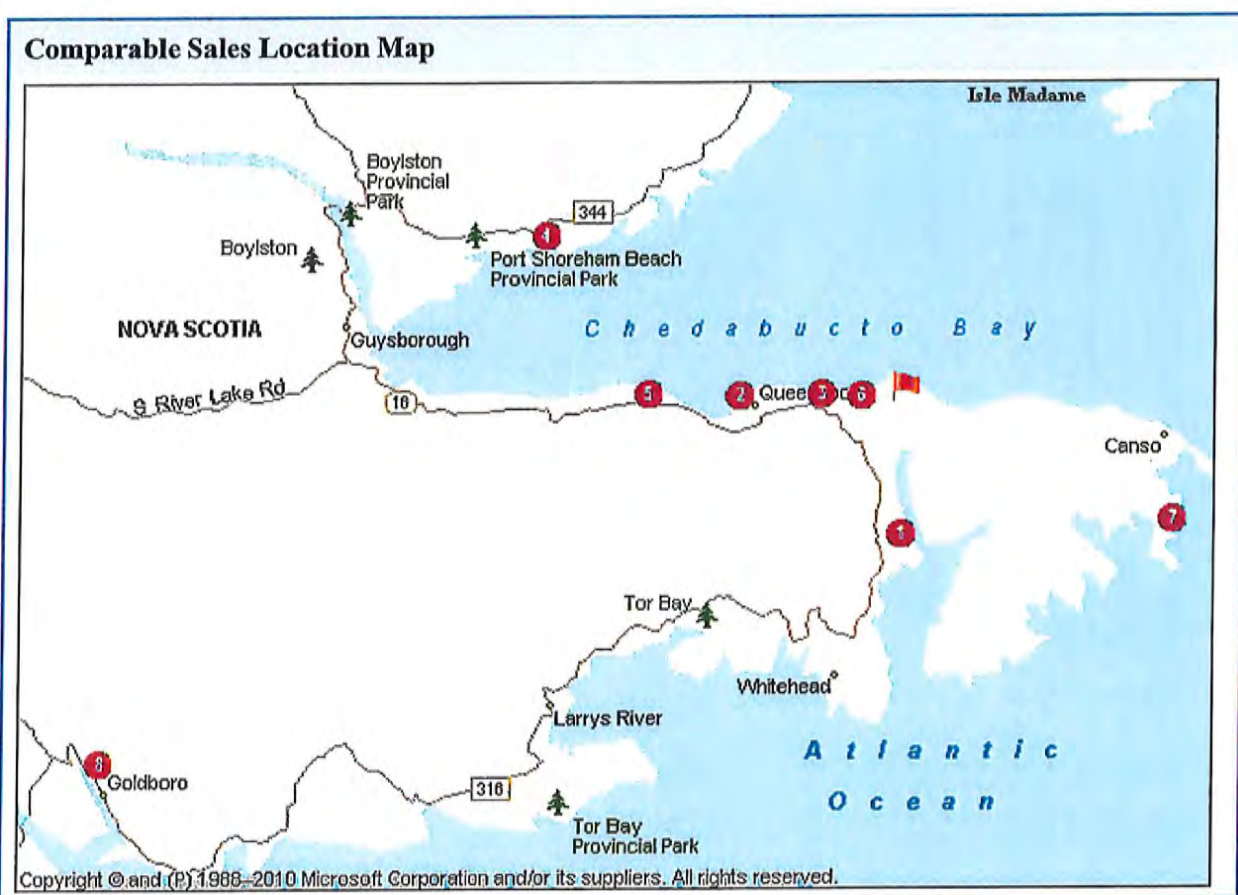
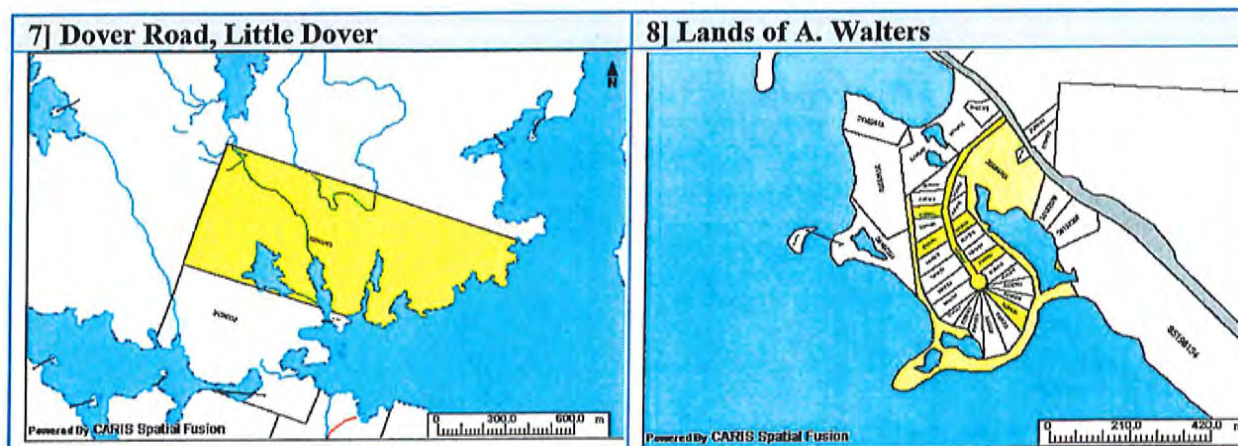


View west on Highway 16 in area of subject lands



View east on Highway 16 in area of subject lands





QUALIFICATIONS OF JOHN A. INGRAM, AACI, P. APP., MRICS

- Professional Designations:** Accredited Appraiser Canadian Institute (AACI)
Member of the Royal Institute of Chartered Surveyors (MRICS)
- Position:** President - ARA Ingram Varner
- Experience:** Property Types - All classes of income and investment property including office, retail, industrial, multi residential and hospitality industry as well as special purpose, institutional properties and land.
- Valuation Purposes - Portfolio and Asset Valuation
Assessment Review and Appeal
Expropriation
Purchase/Sale, Financing, Foreclosure
Market Studies and Feasibility Analysis
Replacement Cost for Insurance Coverage
Litigation Support and Arbitration
- Client Categories - RBIT's and Pension Funds
Chartered Banks, Life and Trust Companies
Property Mangers and Private Individuals
Federal, Provincial and Municipal Governments
- Expert Testimony:** Nova Scotia Regional Assessment Appeal Court
Nova Scotia Utility and Review Board
Federal Court of Appeal
- Related Education:** Diploma of Appraisal - Assessment Technology
Cabot Institute - St. John's, NL
- Numerous seminars and courses covering a broad range of appraisal related topics
- Professional Background:** Past President - Nova Scotia Association of the Appraisal Institute of Canada (AIC)
Past Member - Professional Liability Insurance Committee of the AIC
Past Chair - NSREAA Committee of Examiners
Past Chair - Adjudicating Committee of the AIC
Tutor/Grader for BUSI 499 Guided Case Study course - UBC Faculty of Commerce and Business Administration - Real Estate Division.
Delivered seminars, speeches and authored articles on appraisal related topics.
- Memberships:** Appraisal Institute of Canada (AIC)
Royal Institute of Chartered Surveyors (RICS)
Nova Scotia Real Estate Appraisers Association (NSREAA)