

NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 28

(2009, chapter 31)

An Act respecting the boundaries of the waters in the domain of the State and the protection of wetlands along part of the Richelieu River

Introduced 25 March 2009
Passage in principle 11 June 2009
Passed 18 June 2009
Assented to 19 June 2009

EXPLANATORY NOTES

This Act determines the location of the boundaries of the waters in the domain of the State along part of the Richelieu River.

This Act is also intended to protect the River's ecosystems by granting protected status as a proposed biodiversity reserve to certain wetlands along the River, and introducing other measures designed to better safeguard certain zones identified as being of ecological interest.

The part of the Richelieu River affected by this Act lies between the Québec-U.S. border and the southern boundary of lands located near the Gouin bridge in the territory of Ville de Saint-Jean-sur-Richelieu. It runs through seven municipalities in the territory of the Municipalité régionale de comté du Haut-Richelieu: Municipalité de Lacolle, Municipalité de Henryville, Municipalité de Noyan, Municipalité de Sainte-Anne-de-Sabrevois, Municipalité de Saint-Blaise-sur-Richelieu, Ville de Saint-Jean-sur-Richelieu and Paroisse de Saint-Paul-de-l'Île-aux-Noix.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting administrative justice (R.S.Q., chapter J-3).

Bill 28

AN ACT RESPECTING THE BOUNDARIES OF THE WATERS IN THE DOMAIN OF THE STATE AND THE PROTECTION OF WETLANDS ALONG PART OF THE RICHELIEU RIVER

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

OBJECTS AND SCOPE

1. This Act determines the location of the boundaries of the waters in the domain of the State along part of the Richelieu River. In doing so it seeks to reinforce the legal status of titles of ownership along that part of the River.

The Act also seeks to ensure the protection of the River and its ecosystems. Through the boundaries chosen and the other measures set forth, the Act recognizes the remarkable ecological interest of certain wetlands along that part of the River and the need to preserve them for the benefit of present and future generations.

2. The part of the River to which this Act applies crosses the following seven municipalities situated in the Municipalité régionale de comté du Haut-Richelieu: Municipalité de Lacolle, Municipalité de Henryville, Municipalité de Noyan, Municipalité de Sainte-Anne-de-Sabrevois, Municipalité de Saint-Blaise-sur-Richelieu, Ville de Saint-Jean-sur-Richelieu and Paroisse de Saint-Paul-de-l'Île-aux-Noix.

The part of the River in question lies between the Québec-U.S. border and, at Saint-Jean-sur-Richelieu:

(1) on the west shore, the cadastral boundaries of the city of Saint-Jean and the parish of Saint-Jean in the registration division of Saint-Jean; and

(2) on the east shore, north of the Gouin bridge, the southern boundary of lot 643 in the cadastre of the town of Iberville in the registration division of Saint-Jean,

as shown on the map tabled in the National Assembly on 11 June 2009 in two versions, one on hard copy and one containing information on a computer medium, as Sessional Paper No. 109-20090325. The same map, in both versions, is also filed with the office of the Surveyor General of Québec.

3. If there is a discrepancy between the two versions of the map referred to in section 2, the computer version prevails. The map is reproduced, in a smaller version, in Schedule I.

The photographs that appear as a background on the map and the lot numbering and similar information given on the map to facilitate understanding are for information purposes only and without legal value.

CHAPTER II

BOUNDARIES OF THE WATERS IN THE DOMAIN OF THE STATE

DIVISION I

LOCATION OF THE DIVIDING LINE

4. As of 19 June 2009, the boundary of the waters in the domain of the State along the part of the River covered by this Act is the line appearing on the map referred to in section 2.

The first paragraph applies despite articles 919, 965 and 966 of the Civil Code and any other general or special provision of that Code or of an Act, title, deed, judgment or other document.

5. As of 19 June 2009, a reference, for property purposes, in any Act, title, deed, judgment or other document, to the boundary of the waters in the domain of the State, to the high-water mark or to the shore of the River as a property line must be understood as a reference, for the part of the River covered by this Act, to the boundary defined in section 4, subject to the corrections provided for in section 9 and to any alienation or other act that may affect the position of that boundary, in accordance with the law, after 19 June 2009.

As of the same date, for the same purposes, and subject to the same conditions, any description or representation of the boundaries of a lot or immovable appearing in a document that exists on 19 June 2009, including a cadastral plan, location certificate, or minutes of boundary determination, and that does not already respect the line referred to in section 4, is deemed to be modified and the boundaries described or represented, rectified as required.

6. Titles of ownership, instruments transferring authority, administration or other rights, leases, servitudes, or any other right, charge or obligation of a person, including the State, that relate to the area extending away from the River, beyond the line established in section 4, and that were entered into or

established before 19 June 2009 may not be invalidated by sole reason of an erroneous map reference to the waters in the domain of the State.

In addition, if an acquisitive prescription may be applied in that area, the duration of possession for a period preceding 19 June 2009 may not be reduced or denied on the grounds that the land concerned was not subject to prescription during that period because it was in waters in the domain of the State.

7. Legal action may not be taken against the State or any other person to claim, directly or indirectly, a reimbursement of costs or other sums, nor to obtain any compensation, indemnity or reparation as a result or because of the effects of this Act and the boundaries it provides for.

8. The line referred to in section 4 of this Act is not pertinent and may not be cited in legal proceedings undertaken for or against any person, including the State, in order to support contentions as to the location of the high-water mark for a period preceding 19 June 2009, to determine the location of that mark on a part of the River other than that covered by this Act, or to determine the location of that mark or of the waters in the domain of the State in relation to the islands in the part of the River covered by this Act.

Similarly, the line referred to in section 4 is not pertinent and may not be cited in legal proceedings to determine the line the waters of the River may reach for purposes other than property purposes. In particular, it may not be used to establish water levels or flood levels when applying measures for public safety or when applying measures for environmental protection, including the identification of the limits of the land protected by the Marcel-Raymond ecological reserve.

9. The Minister may, before 19 June 2011 and with the permission of the owner concerned, make minor changes to the line referred to in section 4 in order to resolve a technical problem or locate with greater precision in the area the boundary of the waters in the domain of the State.

A notice of any changes made must be published in the *Gazette officielle du Québec*. In addition to briefly describing the changes, the notice must state where a person may go to examine or obtain a hard copy or a computer version of the map with changes included. Section 3 applies, with the necessary modifications, to any map changed in this way.

If the Minister decides to reject a request for a change or decides not to accept the requested change as formulated, the person concerned may contest the decision before the Administrative Tribunal of Québec within 30 days after the decision has been rendered.

A decision rendered by the Minister under the first paragraph with regard to a request for a change addressed to the Minister must be sent by registered mail to the person concerned. If unfavourable, the decision must state that the person has the right to appeal before the Administrative Tribunal of Québec.

10. When a cadastral plan is established for an area that includes or adjoins the part of the River covered by this Act, the line referred to in section 4, as modified if applicable, must be reproduced on the plan as representing the boundary of the waters in the domain of the State. The plan must be made in accordance with this section and, more specifically, so that

(1) the boundaries of the lots concerned are redrawn in accordance with the line referred to in section 4 and do not extend beyond it toward the middle of the River; and

(2) any lot, other than one relating to an island, that would be situated entirely beyond that line toward the middle of the River must be registered as being owned by the Gouvernement du Québec.

This section applies despite any general or special provision of an Act or other document to the contrary, including the provisions of the Act to promote the reform of the cadastre in Québec (R.S.Q., chapter R-3.1).

11. The Minister must ensure that a copy of this Act and of both versions of the map referred to in section 2 is entered in the Register of the domain of the State. This may be done without further formality or procedure.

The first paragraph applies, with the necessary modifications, to any version of the map that is changed by the Minister under section 9. Any changed version of the map is also sent to the office of the Surveyor General of Québec.

12. With the exception of the requirements of section 11, and despite the provisions of any general or special Act, including the Civil Code, no additional measure is required to publicize the boundary set in this Act between the waters in the domain of the State and the lands along the part of the River covered by this Act.

13. To increase awareness of the boundaries of the waters in the domain of the State established by this Act, the Minister sends to the registry office, on the basis of the information at the Minister's disposal and as it becomes available, a notice containing the text set out in Schedule II and specifying the lots the Minister considers likely to be affected by the boundary provided for in section 4 and the names of the cadastres and registration divisions in which the lots are situated, so that the registrar may enter the notice for each lot.

The first paragraph applies, with the necessary modifications, to any changes made to the line under section 9, in which case the text to be reproduced for the notice is that published in the *Gazette officielle du Québec* under that section.

Subject to the fees payable for the publication of notices, it is not necessary to follow the prescriptions of the Civil Code or its regulations regarding the publication of rights when making these applications and entries.

In addition to making the information available to the public via the office of the Surveyor General of Québec, the Minister may use any other means he or she judges appropriate to increase awareness of the boundaries of the waters in the domain of the State on the part of the River covered by this Act.

DIVISION II

COMPENSATION PAID BY THE REGIONAL COUNTY MUNICIPALITY

14. As compensation for the boundary delimitation carried out, including cartographic work, the Municipalité régionale de comté du Haut-Richelieu must pay a sum of \$725,000, of which \$400,000 is paid to the fund established in Chapter IV, in accordance with the provisions of that chapter, and \$325,000 is paid to the Minister of Sustainable Development, Environment and Parks not later than 17 September 2009. Any balance not paid to the Minister by that date bears interest, capitalized monthly, at the rate set under the first paragraph of section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

Despite the first paragraph, the Minister and the regional county municipality may agree to another schedule for payments made to the Minister in order, for example, to permit payment by instalments or to review the moment at which an unpaid balance begins bearing interest.

15. The Municipalité régionale de comté du Haut-Richelieu may require the local municipalities identified in section 2 to reimburse the sums paid under section 14.

The regional county municipality and the local municipalities concerned must agree on the sharing criteria to be used to determine the contribution of each local municipality, as well as the payment schedule, the interest and the other applicable terms of payment.

If no agreement is reached, the Minister, at the request of the regional county municipality or one of the local municipalities, sets the contribution of each local municipality, determines the payment schedule, the interest and the other applicable terms of payment, and notifies the local municipalities, as well as the regional county municipality in writing of his or her decision. To this end, the Minister may take into account the linear metres of shore affected by the boundary provided for in section 4, the use or zoning of the immovables concerned, or their value.

In order to finance its contribution, a local municipality may impose any tax or other method of financing at its disposal. It may, for instance, impose a special tax and establish to that end any criterion or distinction it judges pertinent, such as the imposition of such a tax only on taxable immovables affected by the boundary provided for in section 4. However, a general or

specific tax introduced to finance a local municipality's contribution may not be imposed on immovables that are adjacent to areas established as a proposed biodiversity reserve under section 16, and that would be riverfront property were it not for the reserve.

CHAPTER III

PROTECTION OF THE RIVER AND ITS WETLANDS

DIVISION I

CREATION OF A PROPOSED BIODIVERSITY RESERVE

16. The area in the zones marked “A” on the map referred to in section 2 and reproduced in Schedule I is deemed to be a proposed biodiversity reserve on 19 June 2009, in accordance with Title III of the Natural Heritage Conservation Act (R.S.Q., chapter C-61.01), for a period of four years beginning on that date. This proposed reserve is provisionally called the “Samuel-De Champlain proposed biodiversity reserve”.

Not later than six months after 19 June 2009, but subject to an extension authorized by the Government, the Minister has the government-approved conservation plan for the proposed reserve published in the *Gazette officielle du Québec*. During the period preceding the publication of the plan, the activities permitted or prohibited on the proposed biodiversity reserve are those provided for in subparagraphs 1 and 2 of the first paragraph of section 92 of the Natural Heritage Conservation Act, with the necessary modifications.

The other provisions of that Act also apply, with the necessary modifications. For the purposes of section 42 of that Act, the date of the notice for the setting aside of a reserve is that provided for in the first paragraph.

Despite the regulations on waters in the domain of the State made under the Watercourses Act (R.S.Q., chapter R-13) and in order to ensure proper management of the protected area, the Minister may stipulate the conditions under which rights in that area may be granted or transferred.

DIVISION II

SPECIAL PROTECTION SCHEME FOR CERTAIN ZONES OF ECOLOGICAL INTEREST

17. This division applies to the zones of ecological interest marked “B” on the map referred to in section 2 and reproduced in Schedule I.

18. In a zone of ecological interest referred to in section 17, despite any provision to the contrary and without restricting other requirements or authorizations provided for in an Act or its regulations, the following activities may not be carried on unless a certificate of authorization is first obtained

from the Minister under section 22 of the Environment Quality Act (R.S.Q., chapter Q-2), regardless of the purpose for which they are undertaken:

- (1) the removal of vegetation cover or the cutting of trees or shrubs;
- (2) all land development, including filling, clearing, digging, burying and earthworks, as well as the creation, development or maintenance of a watercourse;
- (3) the use, spreading or depositing, by any method whatsoever, of materials or substances to control the presence, growth or number of plant or wildlife species; and
- (4) the construction, erection, addition or alteration of a building, facility or work; however, repair and maintenance of a building, facility or work are not subject to this section unless the repairs or maintenance require authorization under one of the preceding paragraphs or is such as may result in a significant disturbance of soil, water or surrounding ecosystems.

Subparagraph 2 of the first paragraph does not apply to maintenance work on a watercourse carried out in a zone of ecological interest by a municipal authority, which remain subject to the general system set out in the Environment Quality Act.

The provisions of the Environment Quality Act and its regulations on applications for authorization and certificates of authorization apply, with the necessary modifications, to applications for authorization and certificates of authorization for the activities covered by this section. Without restricting the generality of the foregoing, the following apply to such activities, applications and certificates: sections 23, 24, 106, 107, 114, 115, 119, 119.1, 122.1, 122.2 and 123.1, as well as the other provisions of Divisions XI, XIII and XIV of Chapter I of that Act relating to recourse before the Administrative Tribunal of Québec, the penal provisions and other sanctions, as well as the general provisions, including those on powers of inspection.

19. In evaluating an application for authorization filed under section 22 of the Environment Quality Act for a project located in a zone of ecological interest referred to in section 17, the Minister must take into consideration the fact that such a zone, located in the littoral zone of the River, must, in principle, be maintained in its natural state.

In addition and without limiting the consideration of any other relevant element, the Minister may not issue a certificate of authorization for such a project unless of the opinion that activities or works in the zone are justified by the impossibility or great difficulty of engaging in them or carrying them out elsewhere, or by the necessity or manifest interest of engaging in them or carrying them out within the zone.

A certificate of authorization issued for a project in such a zone may specify, among other things, the procedures and conditions imposed by the Minister in order to reduce the prejudicial impact of the activity or works to a minimum, given the significance and characteristics of the zone which, among other functions,

(1) acts as a pollution filter, controls erosion and retains sediments, thus preventing and reducing surface water and ground water pollution and sediment input;

(2) acts as a regulator of water levels by retaining meteoric water and allowing part of it to evaporate, thus reducing the risk of flood;

(3) helps preserve a rich biological diversity by providing food, protection and habitat to the numerous plant and animal species it harbours;

(4) acts as a natural sun screen and wind-shield by maintaining vegetation, which in turn prevents excessive warming of water temperatures and protects soils and crops from wind damage; and

(5) preserves the natural beauty of the watercourse and the countryside associated with it, thus contributing to the value of land in surrounding areas.

CHAPTER IV

FUND FOR THE PROTECTION, RESTORATION AND ENHANCEMENT OF THE RICHELIEU RIVER AND ITS WETLANDS

20. The Fund for the Protection, Restoration and Enhancement of the Richelieu River and its Wetlands is hereby established in the Municipalité régionale de comté du Haut-Richelieu.

The Fund is dedicated to the financing of measures taken by the regional county municipality to promote the protection, restoration and enhancement of the part of the River covered by this Act, as well as its wetlands, including its shores and flood plain.

With the authorization of the regional county municipality and under the conditions it determines, the Fund may also be used to finance measures taken by the local municipalities identified in section 2.

The measures financed by the Fund must be aimed first and foremost at restoring to their natural state the zones identified by the committee formed under section 21.

21. The regional county municipality must create a committee responsible for advising it on any question involving the management of the Fund submitted to the committee, in particular questions as to which projects or works should be financed and how such projects or works can best be carried out to ensure the protection or restoration of ecosystems.

The committee may also advise the regional county municipality on these matters on its own initiative.

22. The committee, whose members are appointed by the regional county municipality, comprises, aside from the representatives of the local municipalities identified in section 2, at least one person in each of the following categories:

(1) a person with recognized expertise in the protection or restoration of wetlands, shores, littoral zones or flood plains;

(2) a person involved with local or regional environmental protection groups; and

(3) a person chosen from among those, in the territory of the regional county municipality, who are responsible for applying or enforcing urban planning by-laws designed to protect shores, littoral zones or flood plains.

The regional county municipality may also appoint to the committee, as non-voting members, employees of the Ministère du Développement durable, de l'Environnement et des Parcs or the Ministère des Ressources naturelles et de la Faune, designated by those departments.

23. Sections 148.4, 148.5 and 148.7 to 148.13 of the Act respecting land use planning and development (R.S.Q., chapter A-19.1) apply to the committee, with the necessary modifications.

24. The regional county municipality sets the date on which the Fund begins to operate and determines its assets and liabilities and the nature of the costs that may be charged to it.

If the regional county municipality chooses to spread payment of the initial amount provided for in paragraph 1 of section 25 over two or more instalments rather than pay the whole amount at the outset, it must also provide the dates or intervals of payment.

25. The Fund is made up of

(1) the sums paid into it by the regional county municipality, including an initial amount of \$400,000, and the other amounts paid into it by the local municipalities identified in section 2;

(2) the gifts, legacies and other contributions paid into it to further the achievement of the objects of the Fund;

(3) the sums paid into it by a Minister or a government body out of the appropriations granted for that purpose by Parliament;

(4) the revenues allocated to that purpose by the Government, and any contribution determined by the Government on a proposal of the Minister of Finance;

(5) the fines paid by those who commit an offence under an Act or regulation applied by the regional county municipality or one of the local municipalities identified in section 2, if the offence relates to the development, management or protection of the shores, littoral zone or flood plain of the River;

(6) the fees or other amounts collected after 31 December 2009 by the regional county municipality and the local municipalities identified in section 2 to compensate expenditure or reimburse costs incurred for the measures they are authorized to take for the development, management or protection of the shores, littoral zone or flood plain of the River, such as costs and other amounts related to recourse taken under section 227 and following of the Act respecting land use planning and development; and

(7) the income generated by the investment of the sums making up the Fund.

26. The management of the sums making up the Fund is entrusted to the Municipalité régionale de comté du Haut-Richelieu.

The regional county municipality keeps the Fund's books and records its financial commitments. The regional county municipality also ensures that those commitments and the payments arising from them do not exceed and are consistent with the available balances.

Article 203 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) applies to the Fund, with the necessary modifications.

27. The fiscal year of the Fund ends on 31 December.

28. Despite paragraph 1 of section 25, if the Fund's activities have not begun on 19 December 2009, the regional county municipality must pay the sum of \$400,000 provided for in that paragraph to the Minister of Sustainable Development, Environment and Parks, to be deposited in the Green Fund created under section 15.1 of the Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs (R.S.Q., chapter M-30.001) and used first and foremost to manage and protect the wetlands and waters of the Richelieu River.

Sections 14 and 15 apply, with the necessary modifications, to the payment of that sum by the regional county municipality.

CHAPTER V**AMENDING AND FINAL PROVISIONS**

29. Schedule III to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting “section 9 of the Act respecting the boundaries of the waters in the domain of the State and the protection of wetlands along part of the Richelieu River (2009, chapter 31),” after “under” in paragraph 3.

30. The Minister of Sustainable Development, Environment and Parks must examine without delay any draft management plan under the protection policy for riverbanks, littoral zones and floodplains that is presented to the Minister for the area covered by this Act.

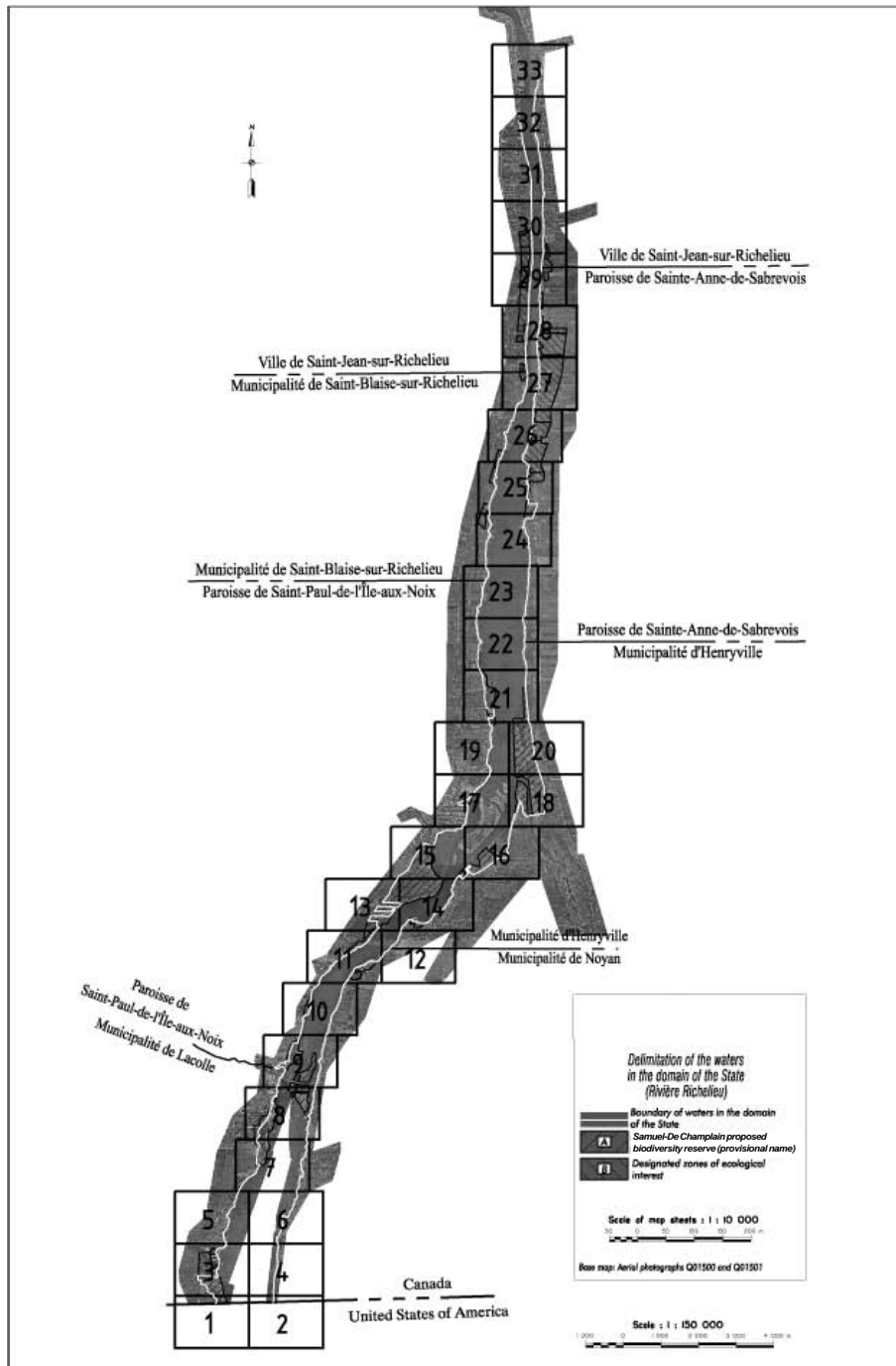
As portions of the plan come in, the Minister, without prejudging the final decision, must inform the authority concerned and any interested department of the result of the Minister’s summary assessment of the admissibility of each portion of the plan.

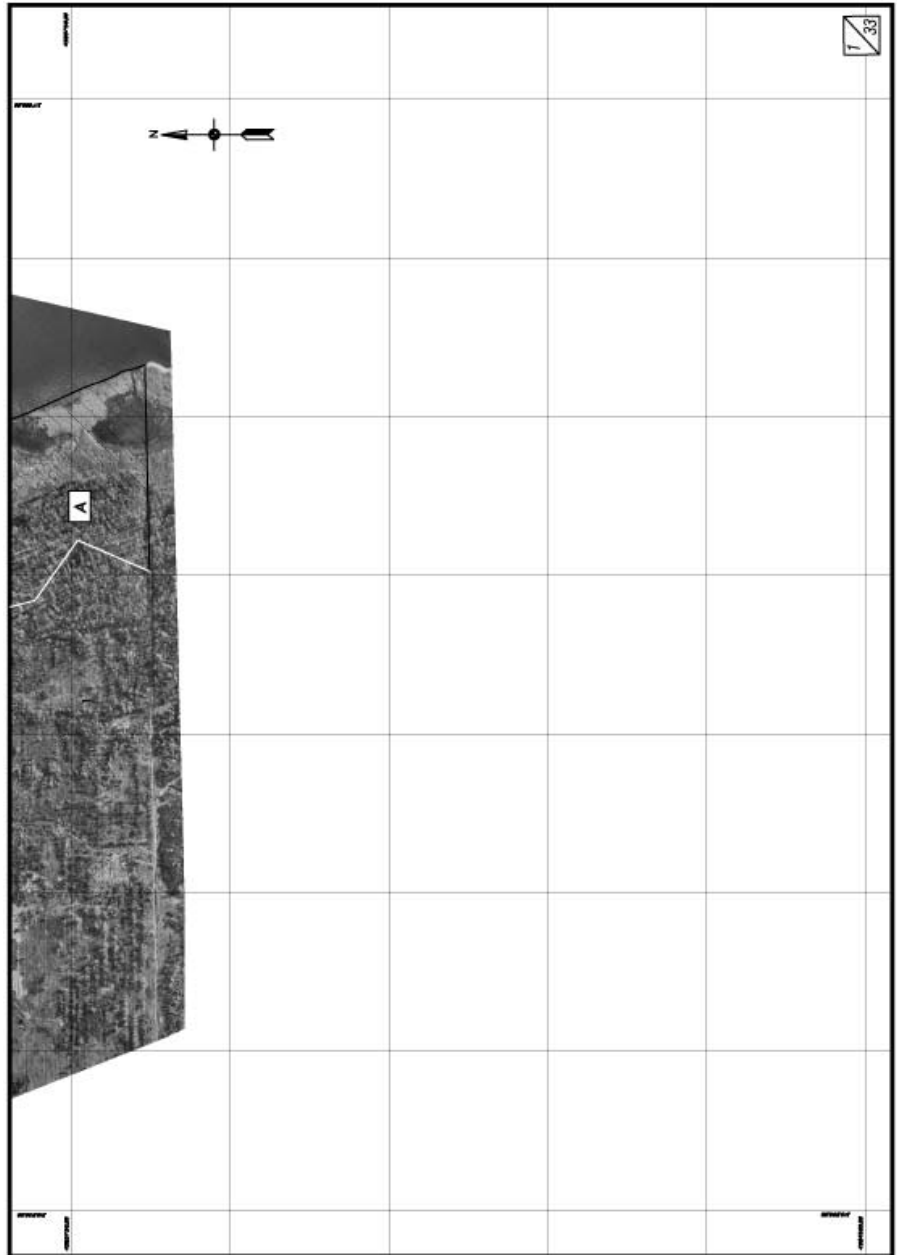
31. The Minister of Sustainable Development, Environment and Parks is responsible for the administration of this Act.

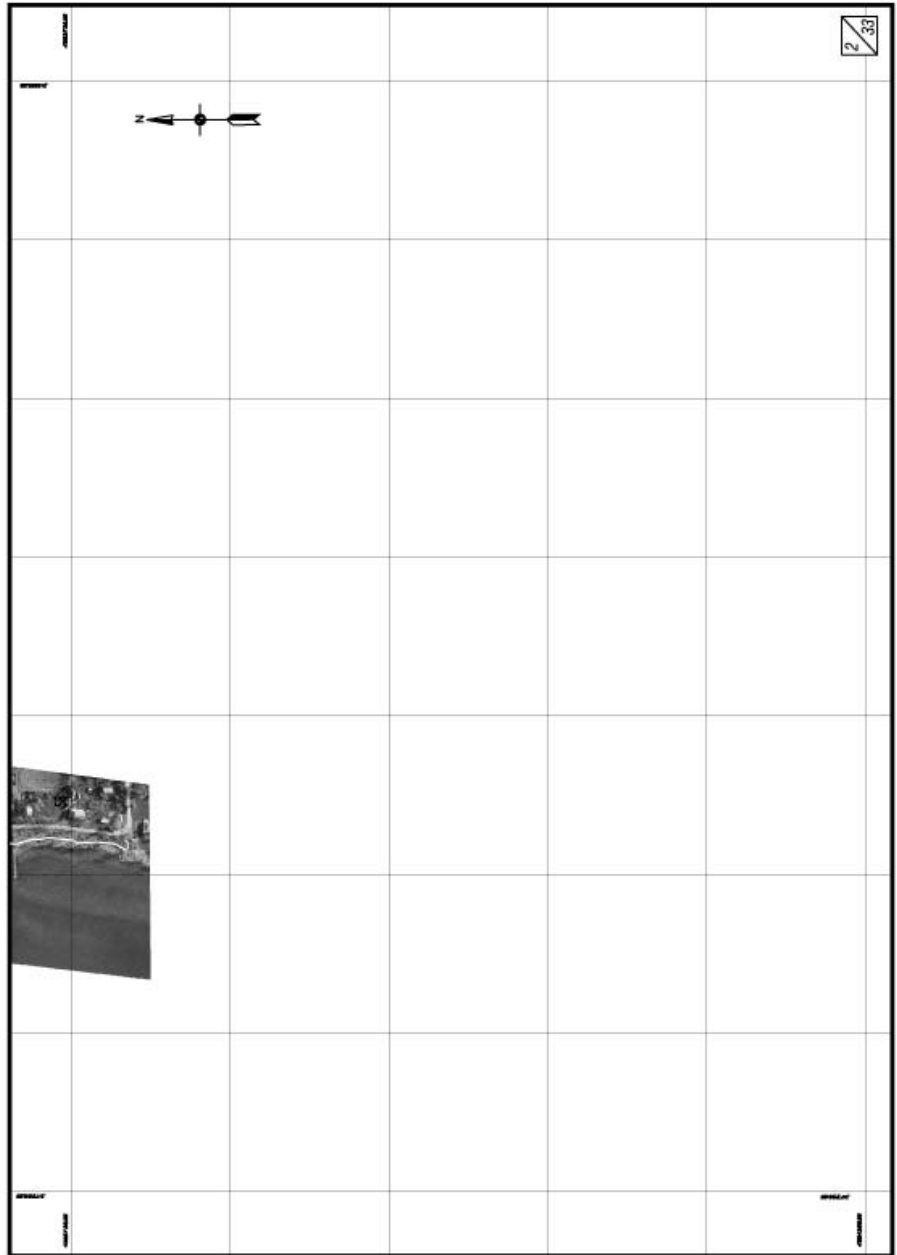
32. This Act applies to the Government, its ministers, and bodies that are mandataries of the State.

33. This Act comes into force on 19 June 2009.

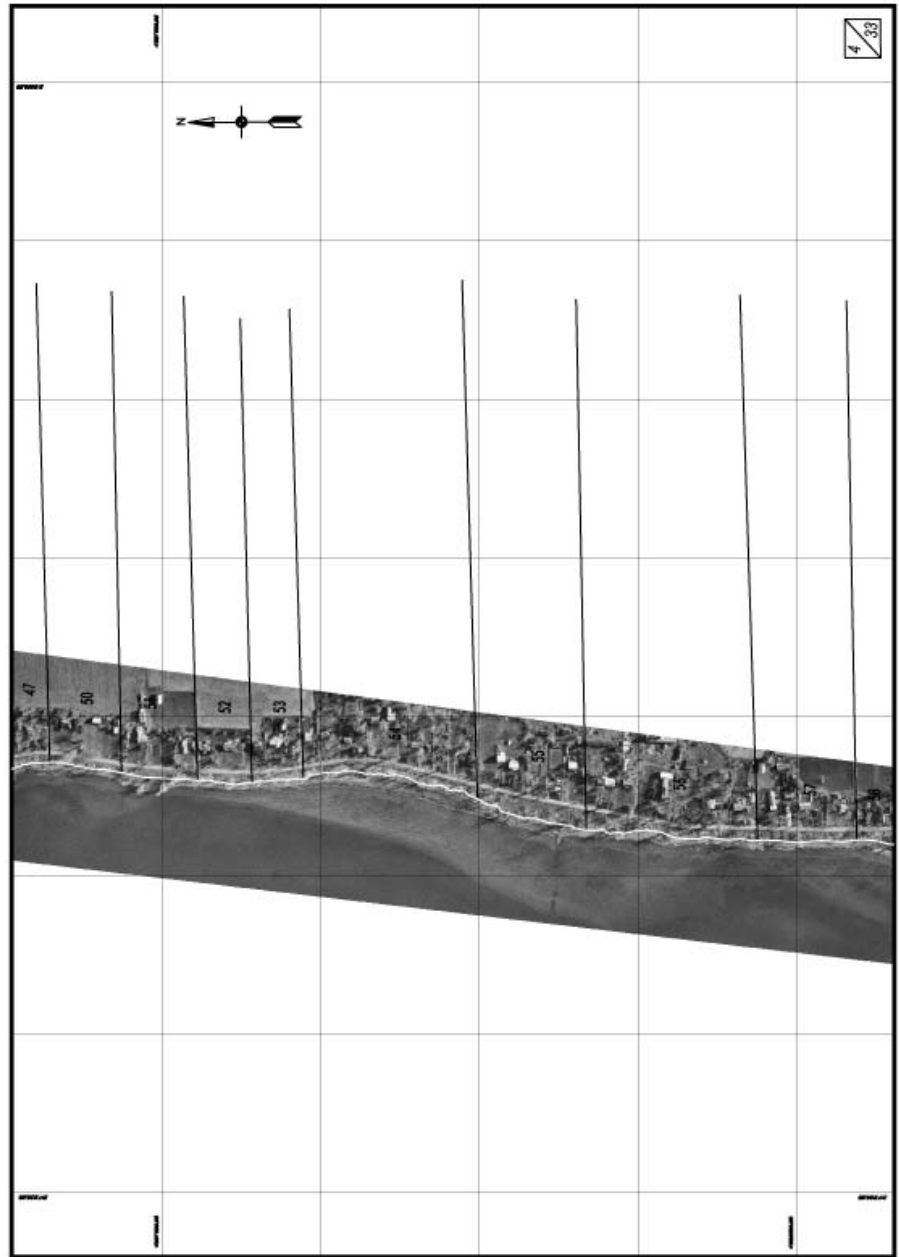
SCHEDULE I
(Section 3)



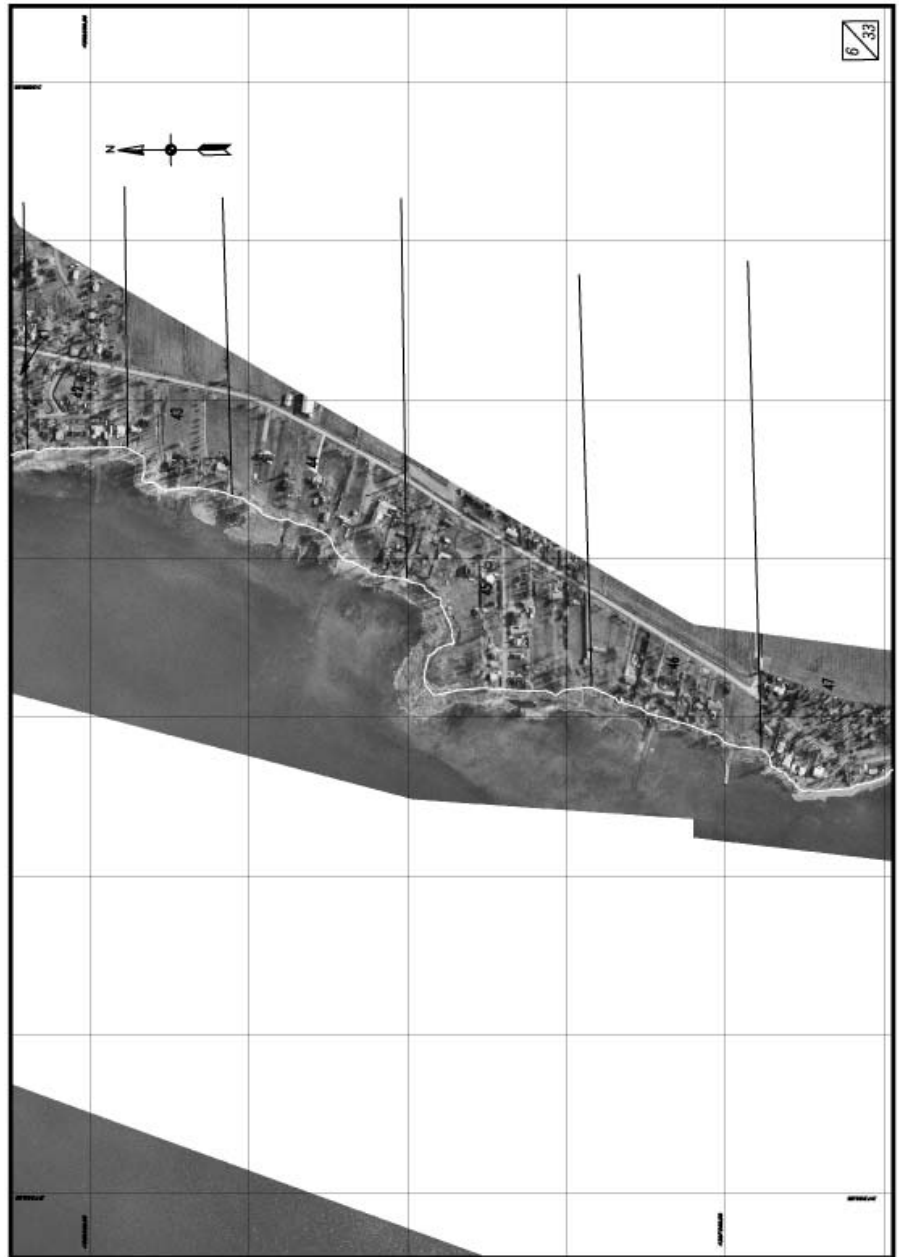


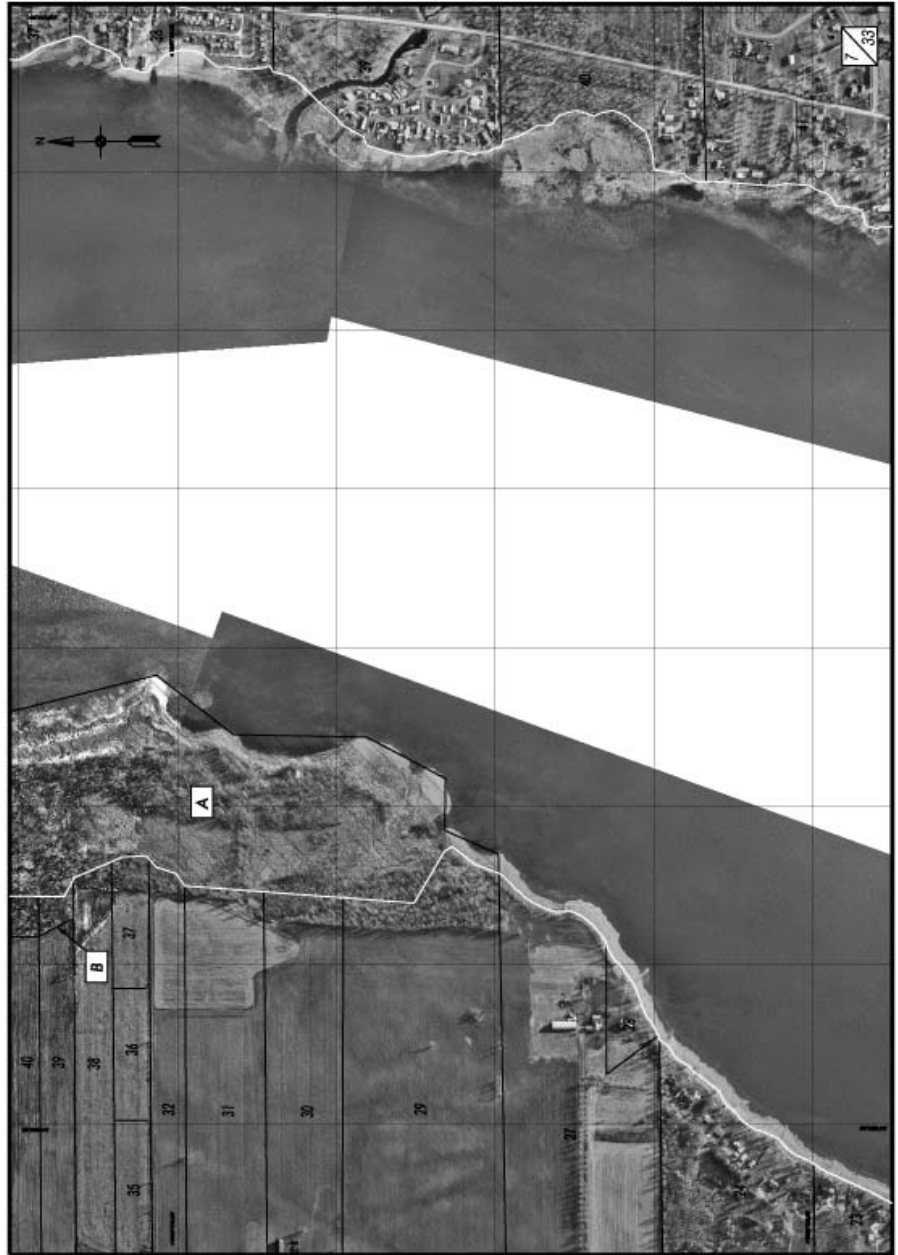




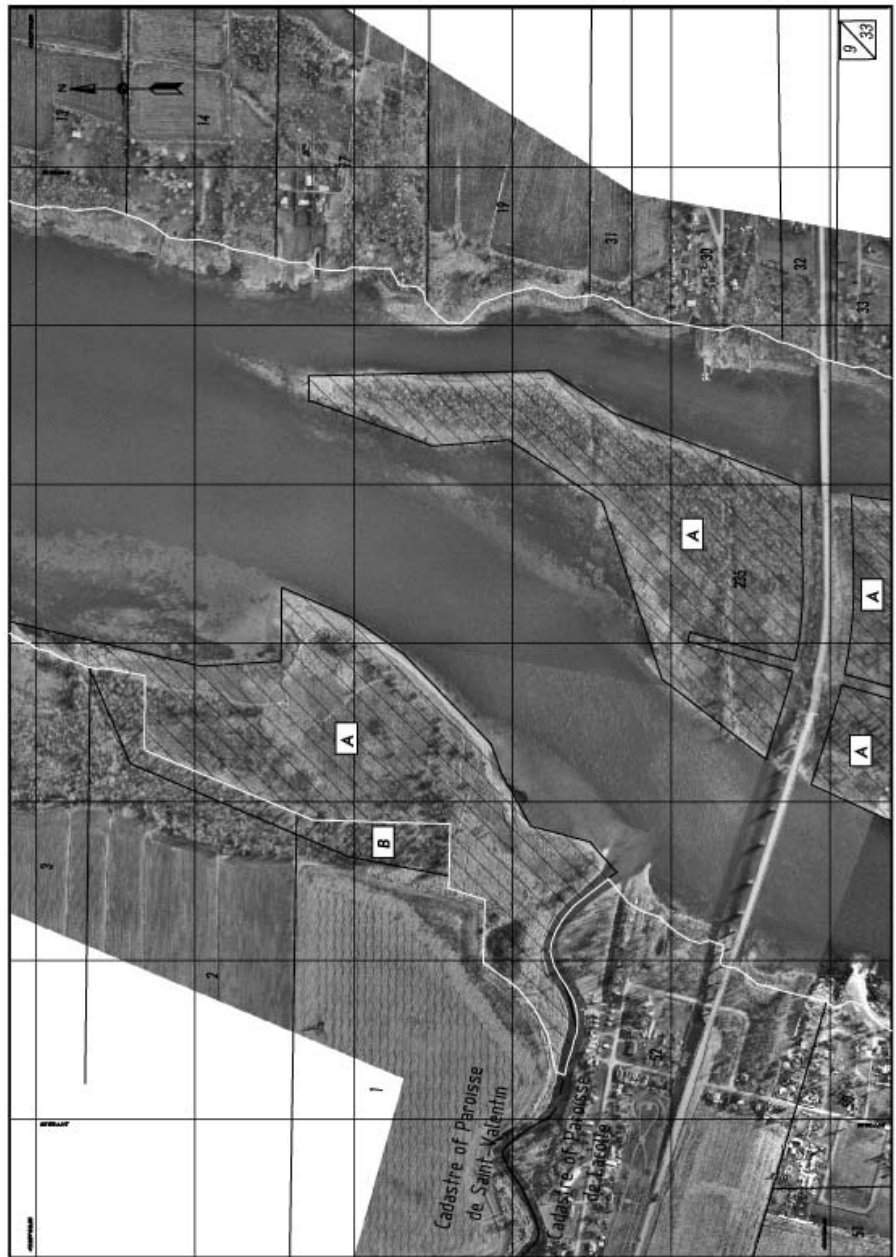






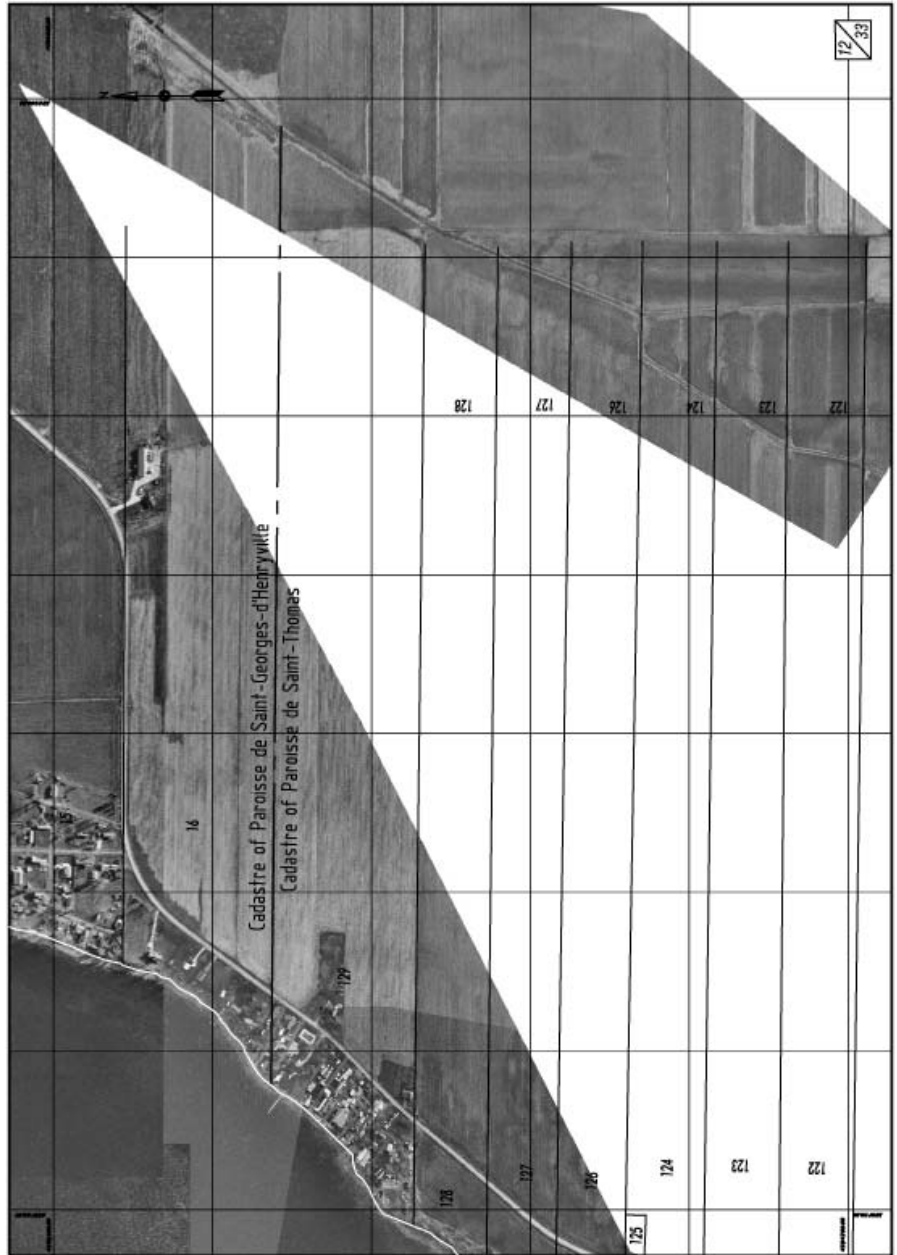


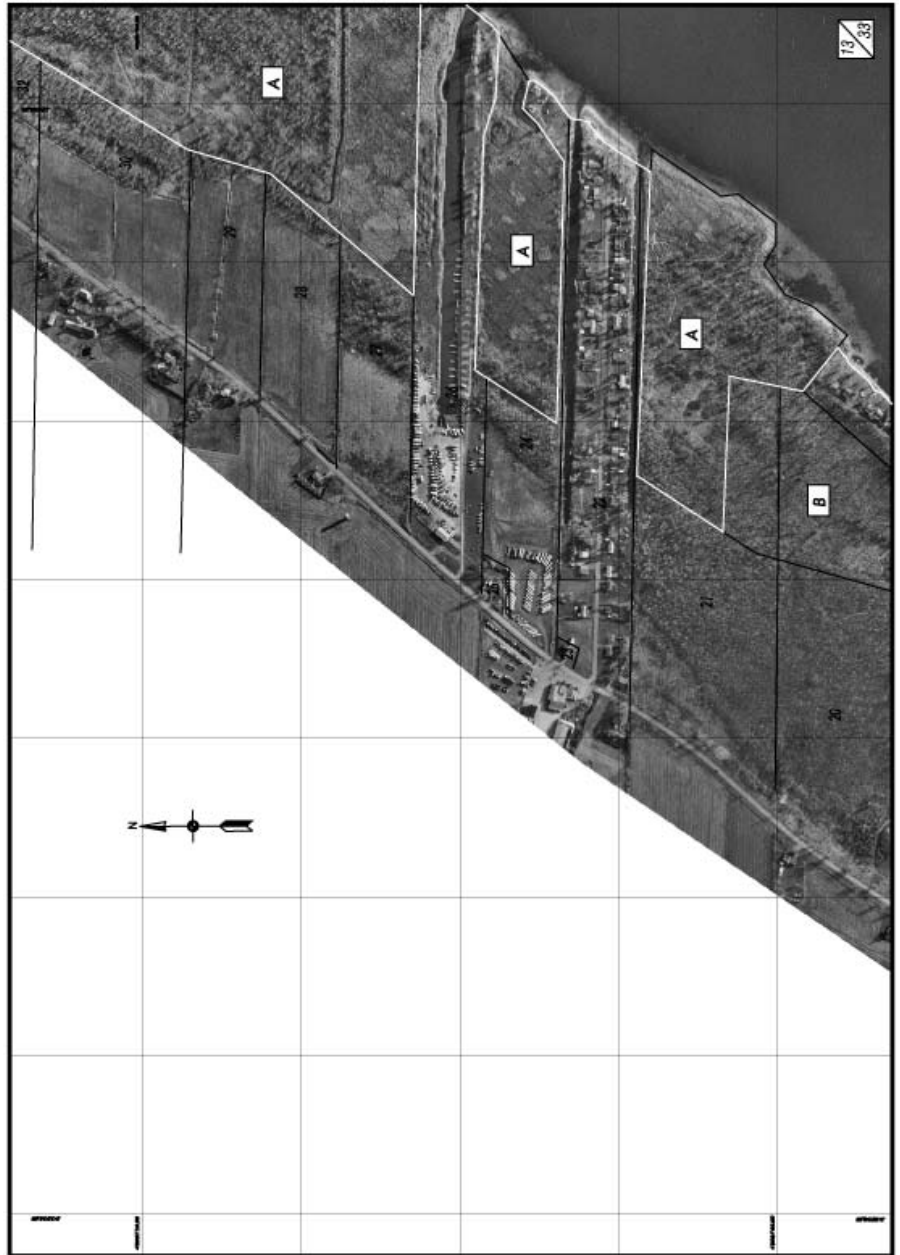




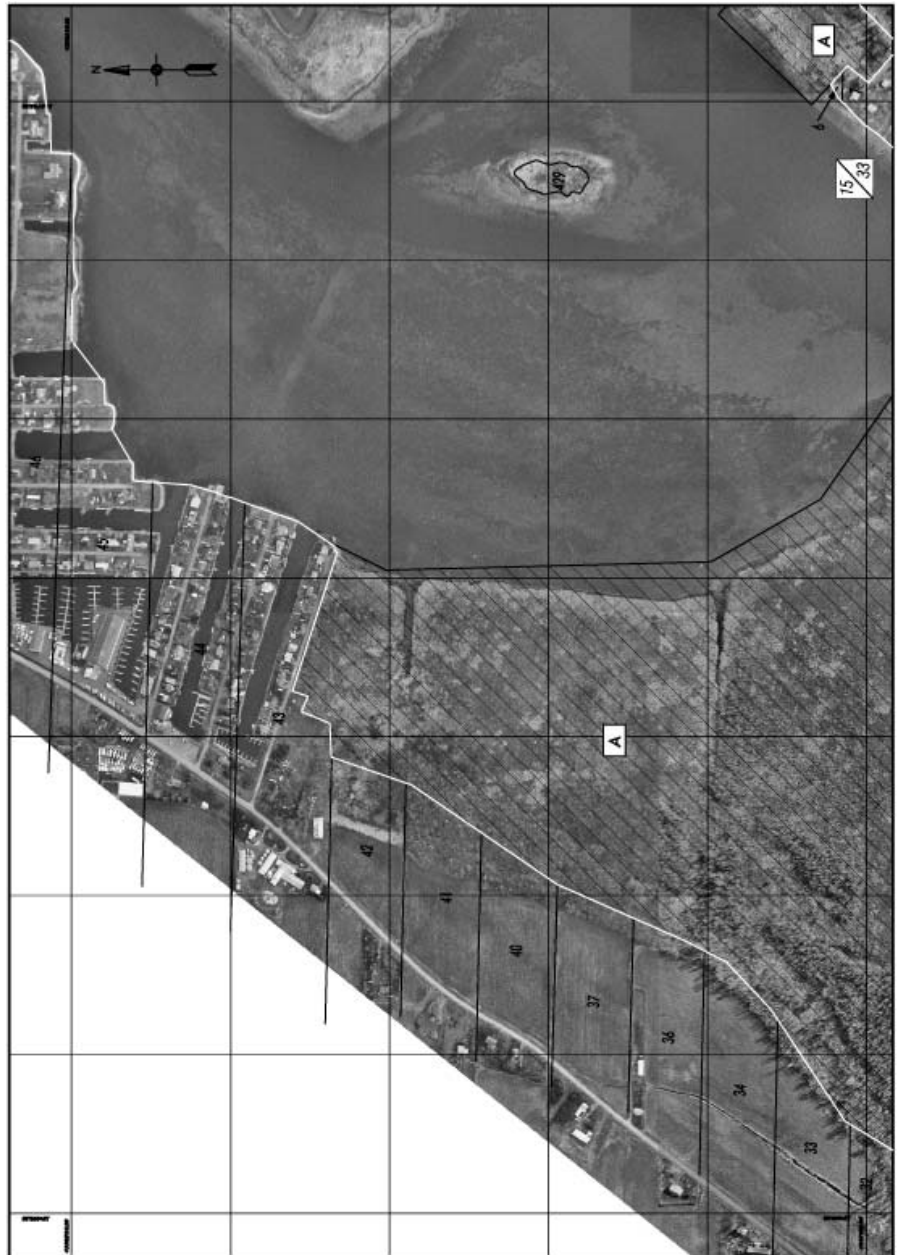




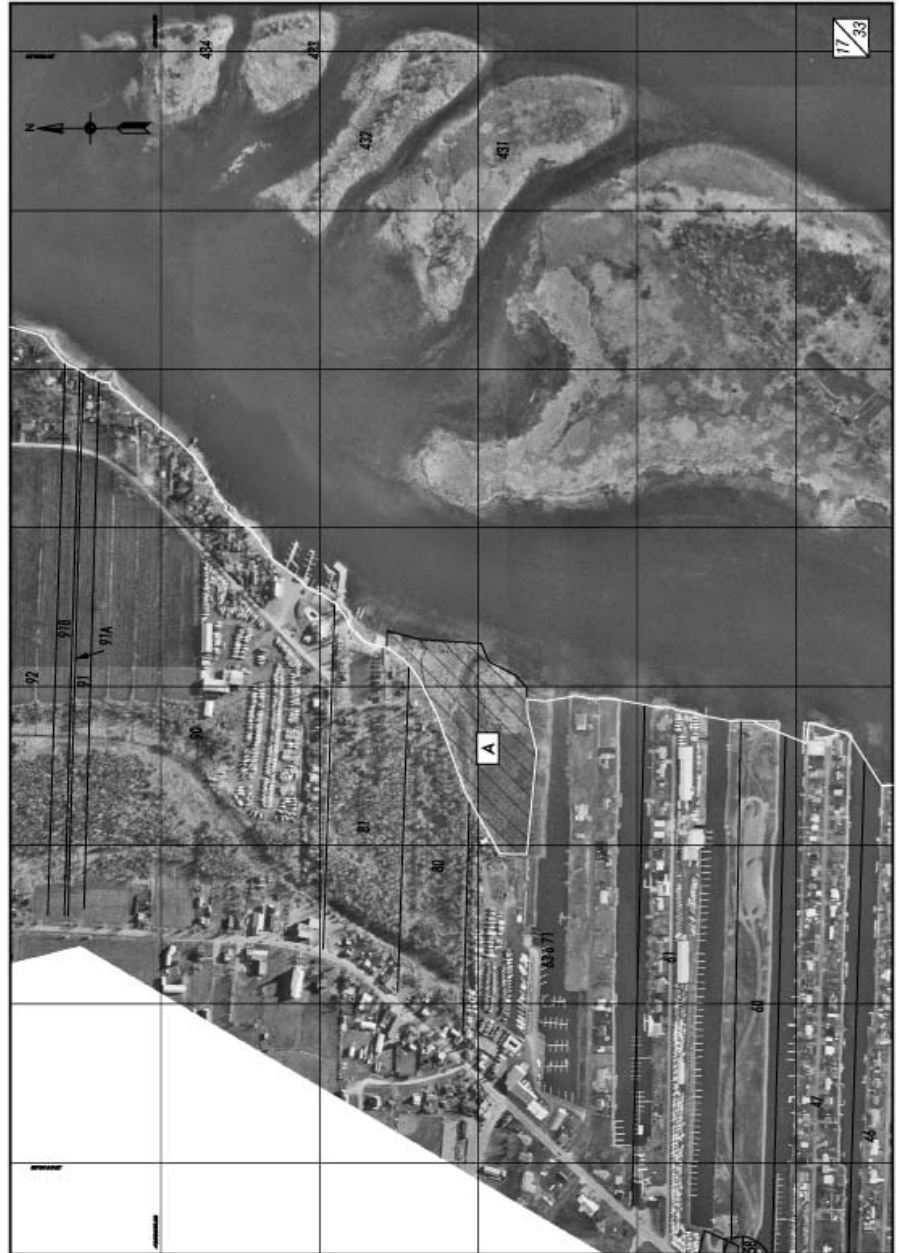


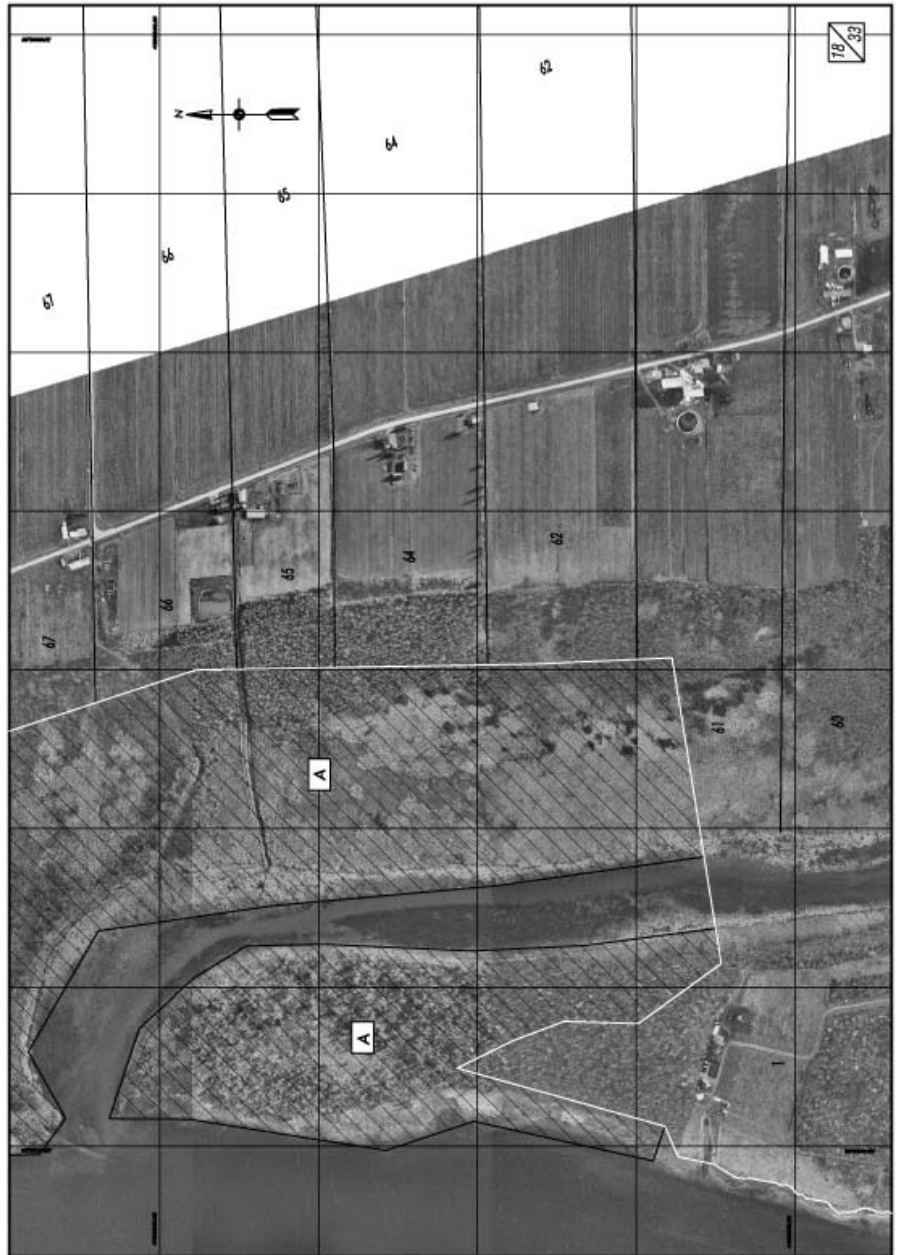




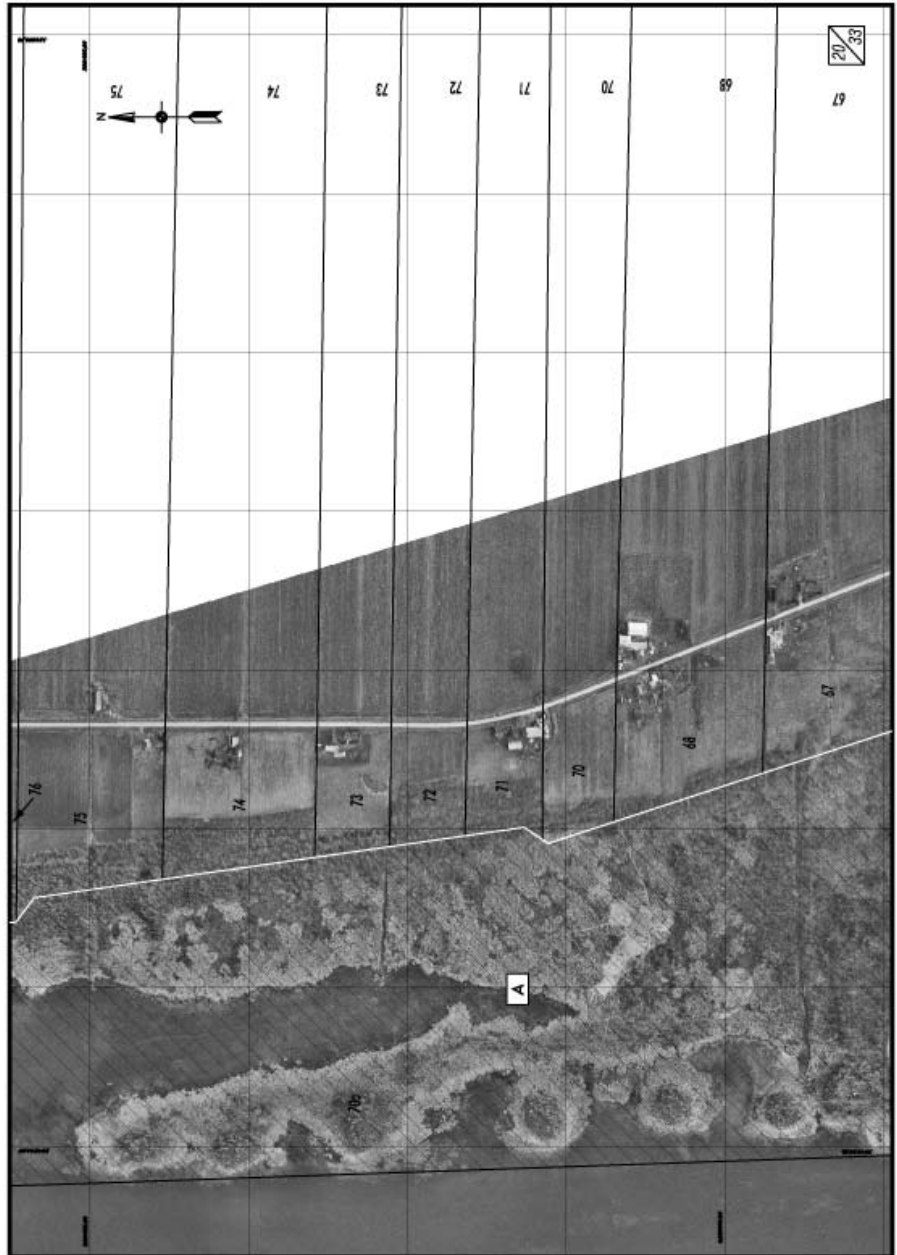




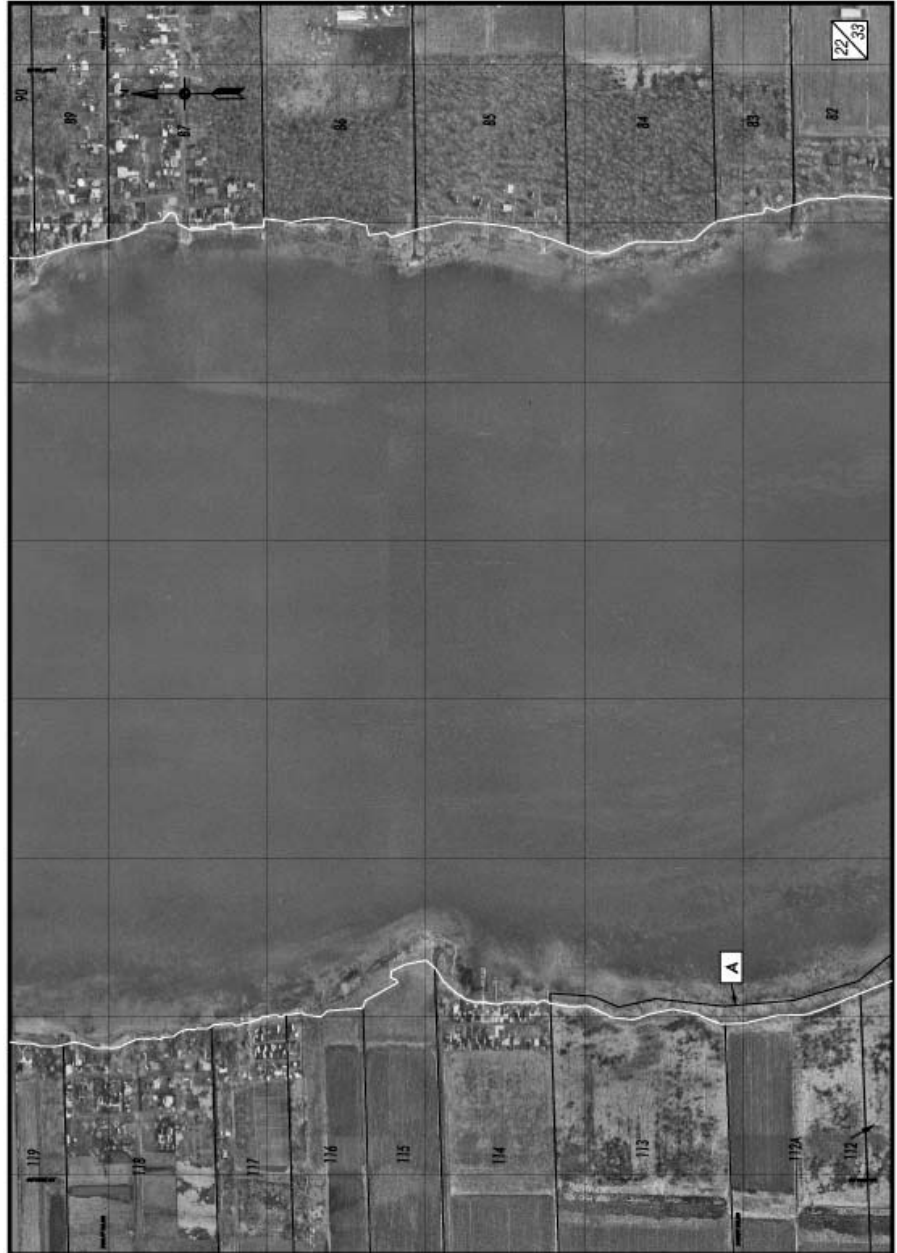






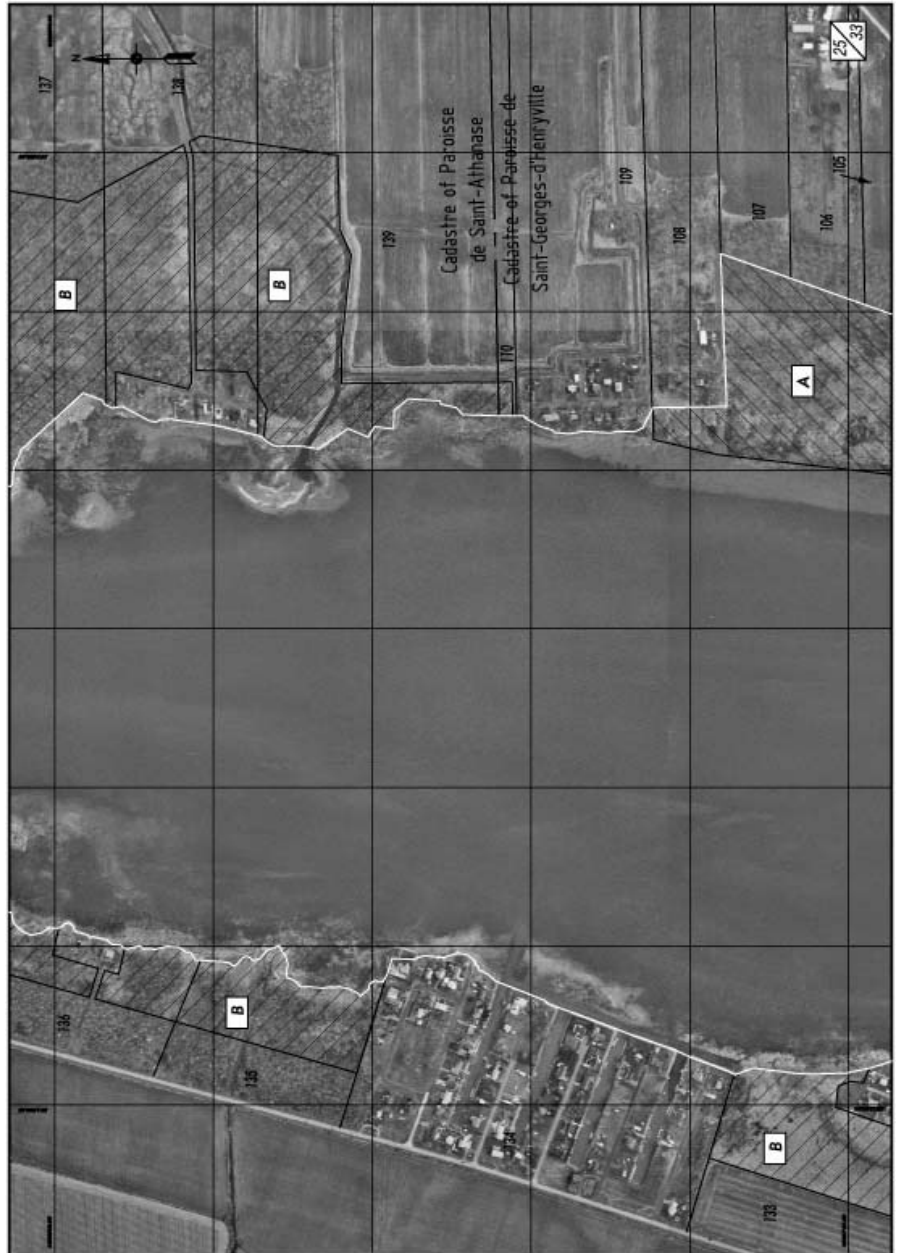


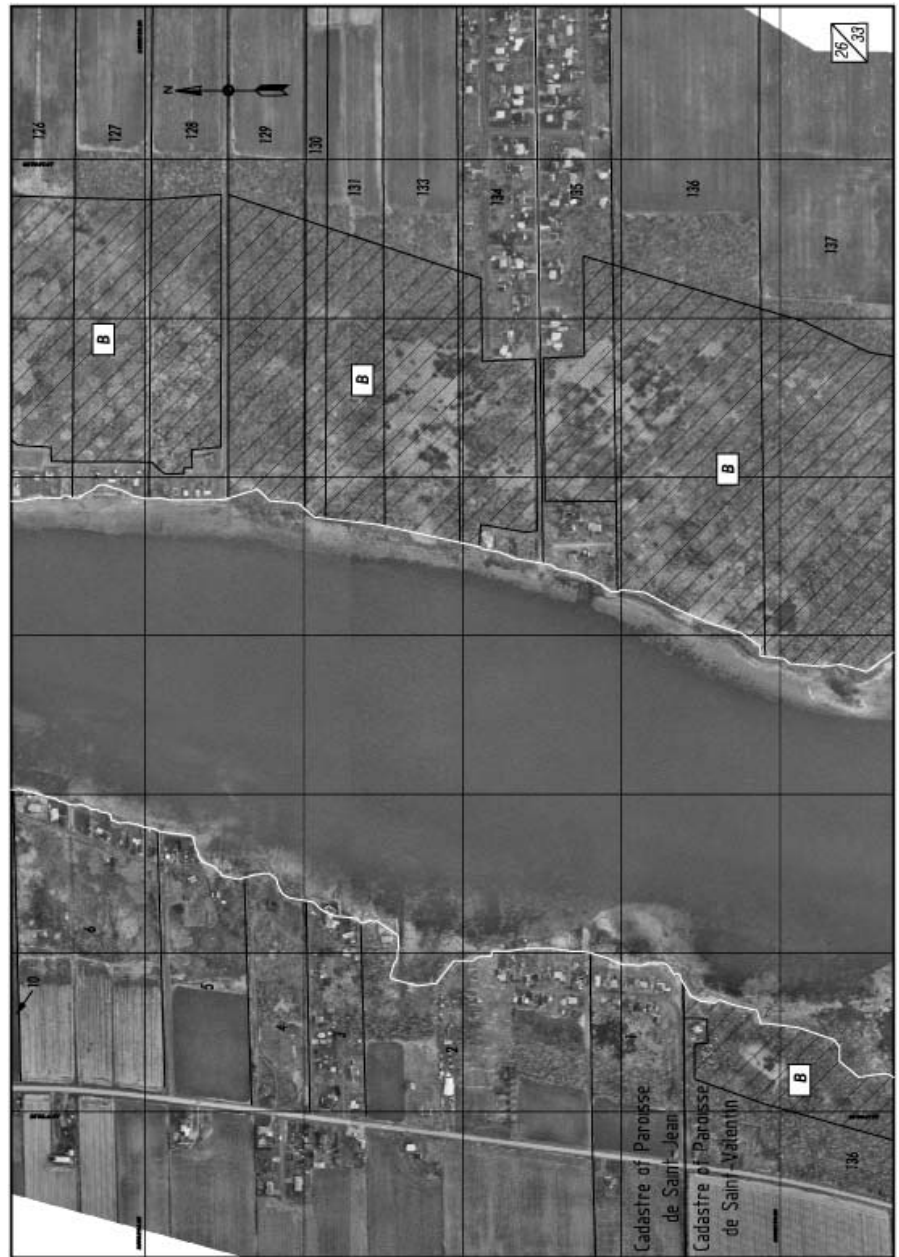


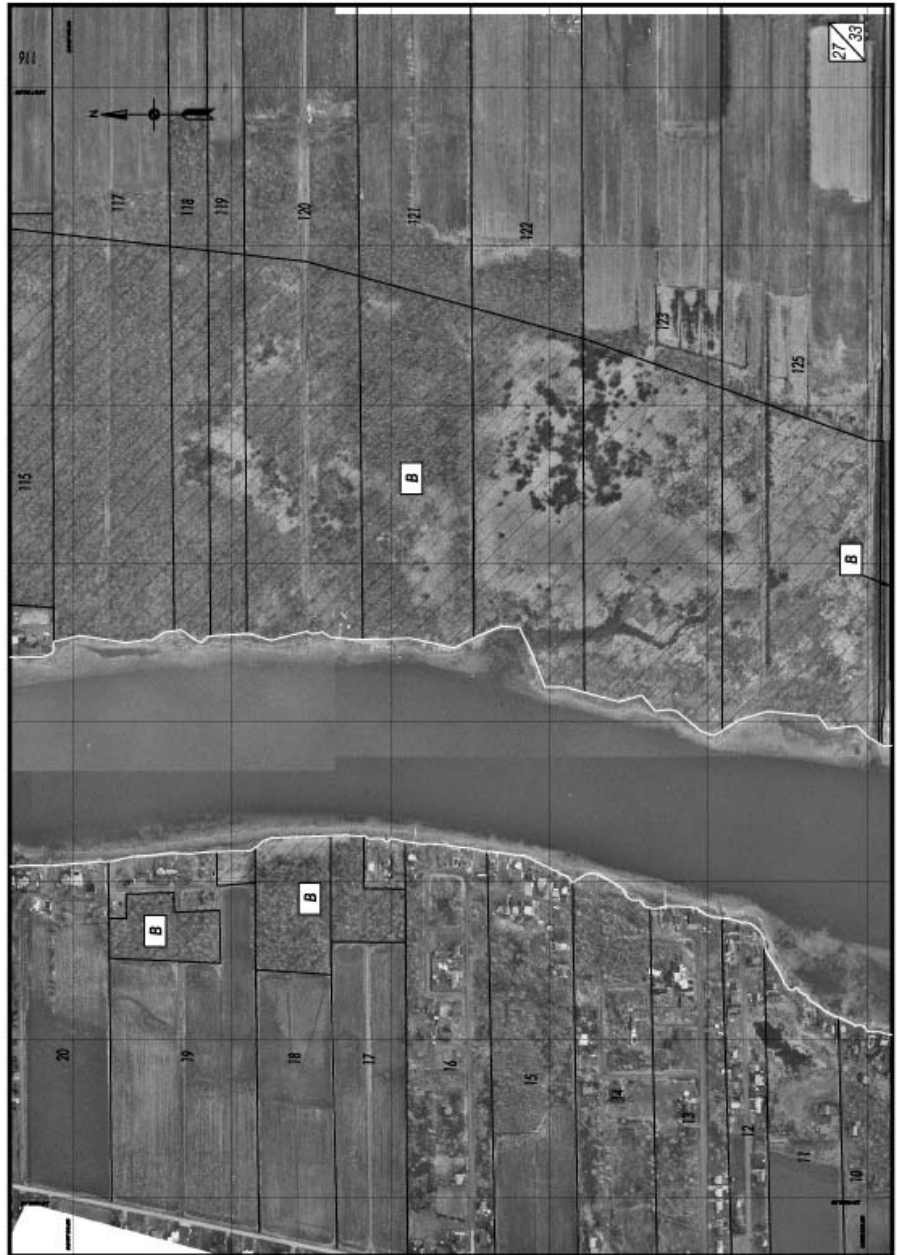


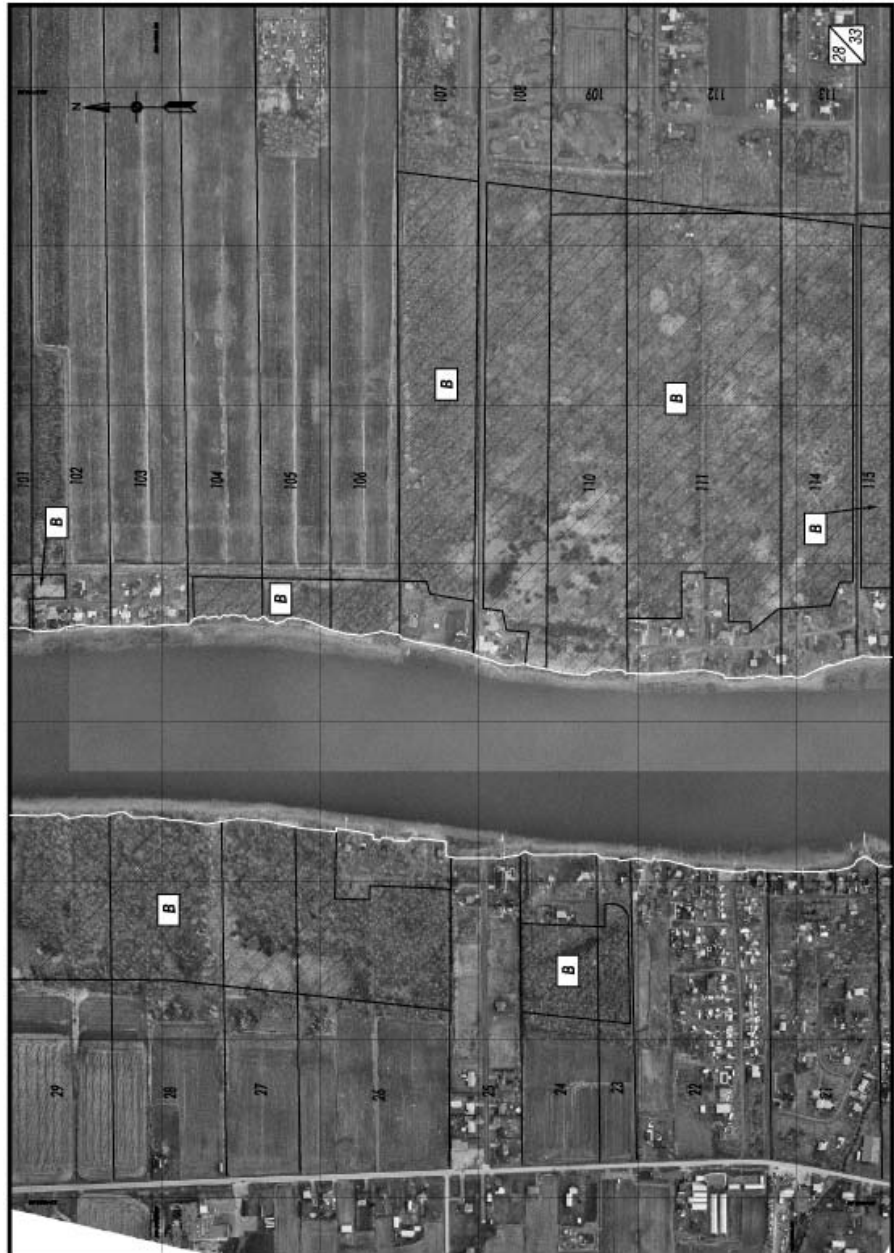


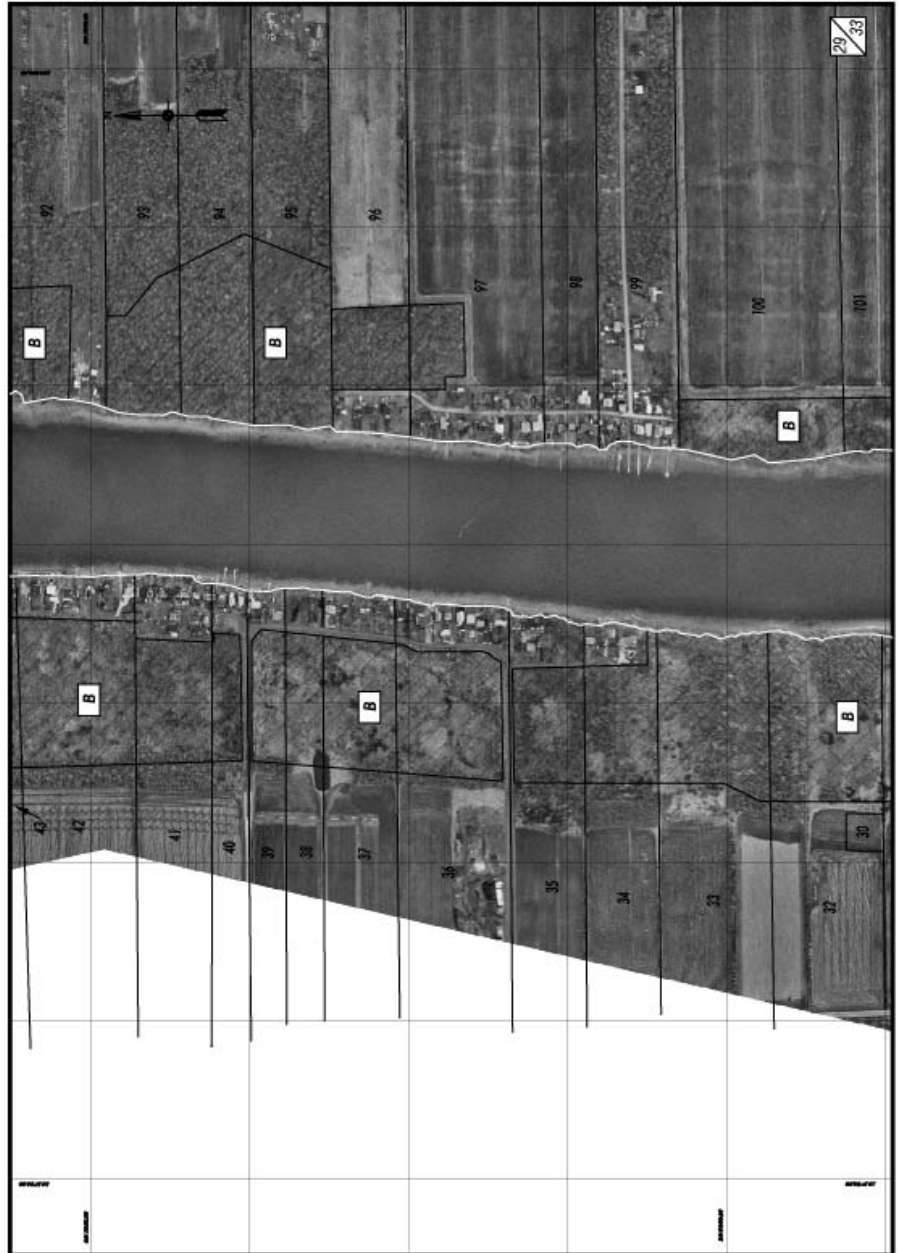








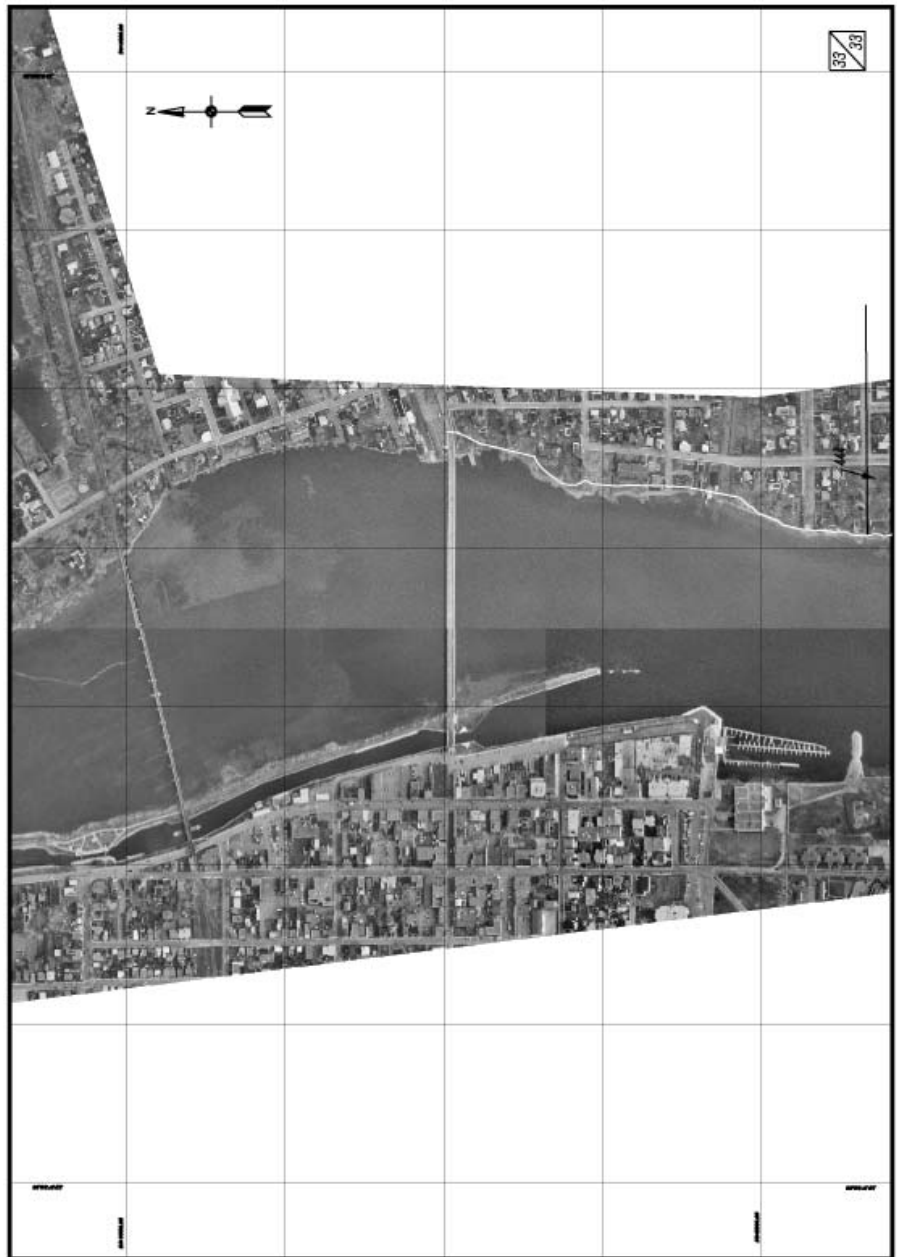












SCHEDULE II
(Section 13)

Notice

The Act respecting the boundaries of the waters in the domain of the State and the protection of wetlands along part of the Richelieu River (2009, chapter 31) determines the boundaries of the waters in the domain of the State along certain parts of the Richelieu River. Its provisions may apply in particular to the lots mentioned below. Under the Act, the boundaries of the lots may have changed on or after 19 June 2009. It is therefore important to consult the Act, in particular section 4 and the map it refers to.