



**US Army Corps  
of Engineers**®  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

# PUBLIC NOTICE

**Comment Period Begins: 23 June 2020**  
**Comment Period Ends: 7 July 2020**  
**File Number: NAE-2019-02222**  
**In Reply Refer To: Richard Kristoff**  
**Phone: (978) 318-8171**  
**E-mail: Richard.C.Kristoff@usace.army.mil**

The District Engineer has received a permit application to conduct work in waters of the United States from Tracy Shattuck, State of New Hampshire, PDA Port Authority, 555 Market Street, Portsmouth, New Hampshire. This work is proposed in Rye Harbor off of Ocean Boulevard (Route 1A), Rye, New Hampshire. The site coordinates are: Latitude 43.000928 Longitude -70.750344.

The work involves maintenance dredging of Rye Harbor. The work involves the removal of approximately 8,154 cubic yards of sand and fine grained material within an 85,137 square foot area, with disposal at one of two potential open-water disposal sites; Isles of Shoals North Disposal Site (IOSN), if IOSN becomes designated, or Cape Arundel Disposal Site (CADS). The work will be performed by a private contractor, most likely using a mechanical dredge. Dredge material will be transported by scow to the proposed open-water disposal location. The proposed dredge depth is -8 mean lower low water with a 1 foot over dredge. The dredge area is within coordinates 1229555.69 E 183984.70 N, 1229630.65 E 183786.24 N, 1229355.13 E 183910.70 N, 1229123.05 E 183828.99 N, 1228981.97 E 183892.72 N, and 1229113.71 E 184184.38 N.

The work is shown on the enclosed plans entitled "RYE HARBOR RYE, NEW HAMPSHIRE" on 1 sheet and dated "3/8/2019", "Rye Harbor Cross Section" on 2 sheets and not dated, and "RYE HARBOR MAINTENANCE DREDGING PROJECT" on 1 sheet and not dated.

No mitigation is being proposed for this work. The work impacts have been minimized by keeping the dredge footprint within the original foot print of the State Anchorage.

## **AUTHORITY**

Permits are required pursuant to:

- Section 10 of the Rivers and Harbors Act of 1899
- Section 404 of the Clean Water Act
- Section 103 of the Marine Protection, Research and Sanctuaries Act.
- Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408)

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonably accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural value, fish and wildlife values, flood hazards, flood plain value, land

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use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

The U.S. Army Corps of Engineers, New England District (Corps), is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. The Corps will consider all comments received to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Where the activity involves the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposing it in ocean waters, the evaluation of the impact of the activity in the public interest will also include application of the guidelines promulgated by the Administrator, U.S Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972, as amended.

The activities proposed herein will also require permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project known the Rye Harbor Federal Navigation Project (FNP). The proposed alteration involves dredging in areas within the designated setback of the FNP. The proposed alteration is within the Rye Harbor State Anchorage, adjacent to the Federal 8' channel and 8' anchorage . A permit pursuant to Section 10/404/103 shall not be granted until the Section 408 permission is issued. Through this public notice we are soliciting information necessary to inform the Corps evaluation and review.

The alternatives considered in the dredged material disposal analysis fall into four general categories: beneficial use, upland disposal, confined disposal, and open-water disposal. The feasibility of disposal alternatives was analyzed relative to the physical and chemical quality of the dredged material, the volume of material to be dredged, the availability of suitable disposal and beneficial use sites, and the cost of disposal. When applicable, the biological quality of the disposal of the material at the disposal site was also used to evaluate the feasibility of the open-water disposal alternative.

Based on the characteristics of the dredged material, the lack of suitable alternate disposal or beneficial use sites and costs, the most feasible, practical, cost-effective and environmentally acceptable alternative for the disposal of dredged materials from the proposed dredging is disposal at the requested disposal site.

The dredged material has undergone physical and chemical analysis and has satisfied Part 227.13(b) of exclusionary criteria of the Ocean Dumping Act regulations regarding biological testing. It is our preliminary determination that the material is acceptable for disposal at this disposal site.

The Cape Arundel Disposal Site was used infrequently until 1984 for disposal of bottom sediments dredged principally from the Kennebunk River and Cape Porpoise Harbor areas. Since 1984, a yearly average of approximately 125,000 cubic yards of suitable sediments (the suitability was determined with a project-specific evaluation with an established interagency review process) have been deposited at this site. The site has been

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monitored through the Corps' Disposal Area Monitoring System (DAMOS) program. DAMOS studies show that the site is a low energy environment such that sediment deposited at this location will remain within the site's boundaries. Levels of metals and organics in the sediments within the disposal site are generally low and not substantially greater than background levels, indicative of the relatively uncontaminated nature of the areas dredged that utilize the site. Previous research has shown that areas outside the disposal site have not been found to be affected by sediment deposited within the site. WRDA 2013 allows the Cape Arundel site to be reopened as an alternative dredged material disposal site under the Marine Protection, Research, and Sanctuaries Act of 1972.

The IOSN, which is currently under consideration for designation as an ocean dredged material disposal site (ODMDS) by the EPA, has been sized to provide sufficient capacity to accommodate material dredged from the Federal Navigation Projects in northern Massachusetts, New Hampshire and southern Maine, as well as material from smaller private projects. The size of the IOSN was calculated based on the requirement to provide at least 20 years of disposal capacity, without the site accumulating dredged material to a height that could potentially interfere with navigation, and allow for both management of dredged material placement within the site and monitoring of the placement mounds and adjacent areas. The site covers a shallow basin area bounded by a slope to higher ground on the west and by small ridges to the north and southeast, leaving a deeper area in the central and east areas of the site. This topography, and the significant depth of the site (about 300 feet) should allow for long term containment of material placed there.

Any permit issued for this project will include special conditions requiring scows to come to a complete stop when disposing of the material at the disposal site. There will also be a time of year restriction included as a special condition which prohibits dredging during ecologically sensitive times of years.

**ESSENTIAL FISH HABITAT**

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). Essential Fish Habitat describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

The dredging portion of this project will impact approximately 85,137 SF of EFH. Habitat at this site can be described as sandy fine grain material. Loss of this habitat may adversely affect species that use these waters and substrate. However the District Engineer has made a preliminary determination that the site-specific adverse effect will not be substantial. Further consultation with the National Marine Fisheries Service regarding EFH conservation recommendations is being conducted and will be concluded prior to the final decision.

The dredged material disposal is proposed for IOSN or CADS. These are open water sites, which provides EFH. Habitat at the IOSN site is described as mainly silty clay with some sand and having a relatively flat substrate. Habitat at the CADS site is described as having hard rock outcrops in the shallower areas and relatively soft sediment in the deeper basins. Loss of this habitat may adversely affect species that use these waters and substrate. However, the District Engineer has made a preliminary determination that the site-specific adverse effect will not be substantial. Further consultation with the National Marine Fisheries Service regarding EFH conservation recommendations is being conducted and will be concluded prior to the final decision.

## **NATIONAL HISTORIC PRESERVATION ACT**

Based on his initial review, the District Engineer has determined that little likelihood exists for the proposed work to impinge upon properties with cultural or Native American significance, or listed in, or eligible for listing in, the National Register of Historic Places. Therefore, no further consideration of the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, is necessary. This determination is based upon one or more of the following:

- a. The permit area has been extensively modified by previous work.
- b. The permit area has been recently created.
- c. The proposed activity is of limited nature and scope.
- d. Review of the latest published version of the National Register shows that no presence of registered properties listed as being eligible for inclusion therein are in the permit area or general vicinity.
- e. Coordination with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer(s).

## **ENDANGERED SPECIES CONSULTATION**

The Corps has reviewed the application for the potential impact on Federally-listed threatened or endangered species and their designated critical habitat pursuant to section 7 of the Endangered Species Act as amended. It is our preliminary determination that the proposed activity for which authorization is being sought is designed, situated or will be operated/used in such a manner that it is not likely to adversely affect a listed species or their critical habitat. We are coordinating with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service on listed species under their jurisdiction and the ESA consultation will be concluded prior to the final decision.

## **OTHER GOVERNMENT AUTHORIZATIONS**

The states of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island have approved Coastal Zone Management Programs. Where applicable, the applicant states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. By this Public Notice, we are requesting the State concurrence or objection to the applicant's consistency statement.

The following authorizations have been applied for, or have been, or will be obtained:

- Permit, license or assent from State.
- Permit from local wetland agency or conservation commission.
- Water Quality Certification in accordance with Section 401 of the Clean Water Act.

## **COMMENTS**

In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date. If you have any questions, please contact Richard Kristoff at (978) 318-8171, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

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Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

**THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.**

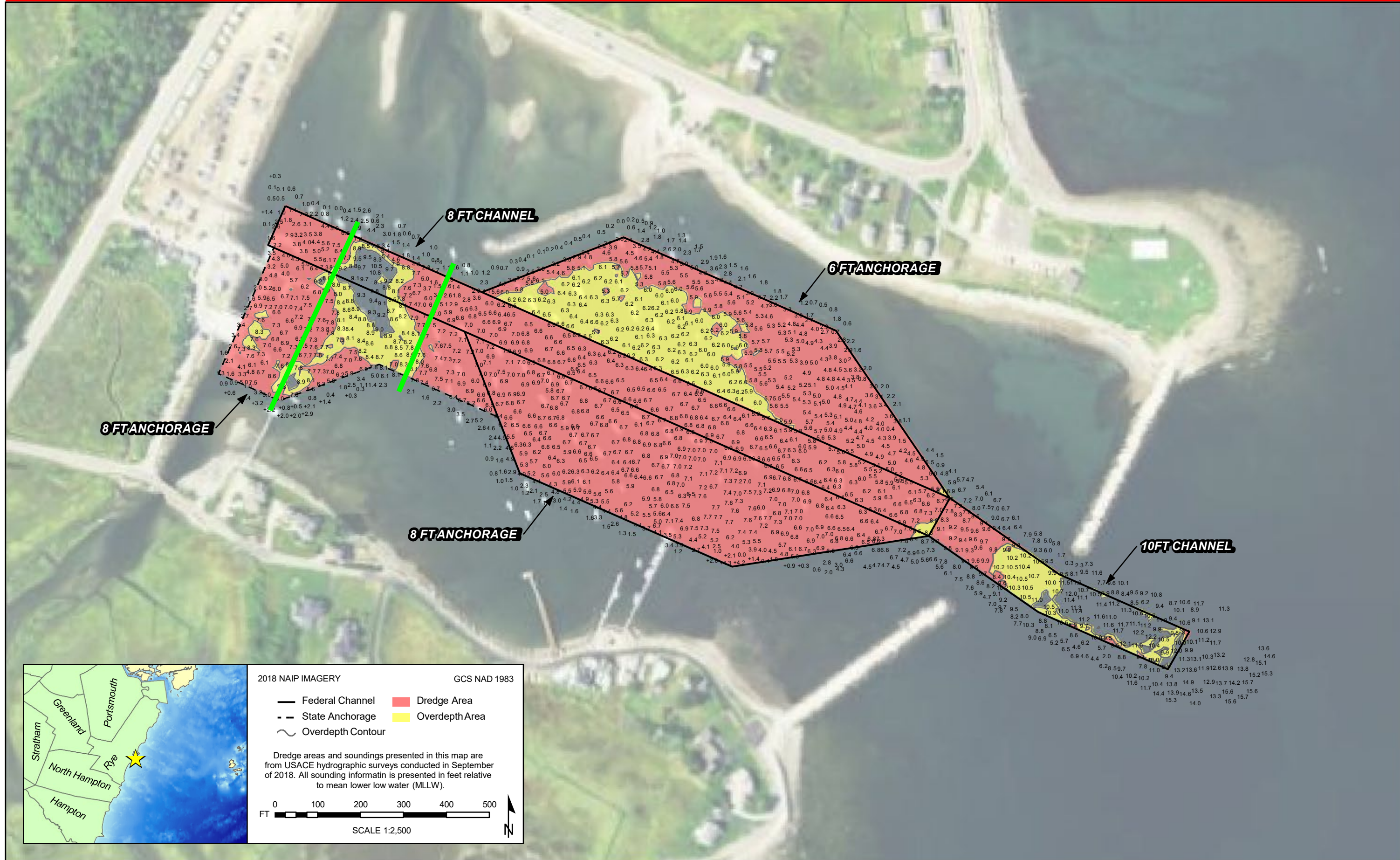
**Frank J. DelGiudice**  
**Chief, Permits and Enforcement Branch**  
**Regulatory Division**

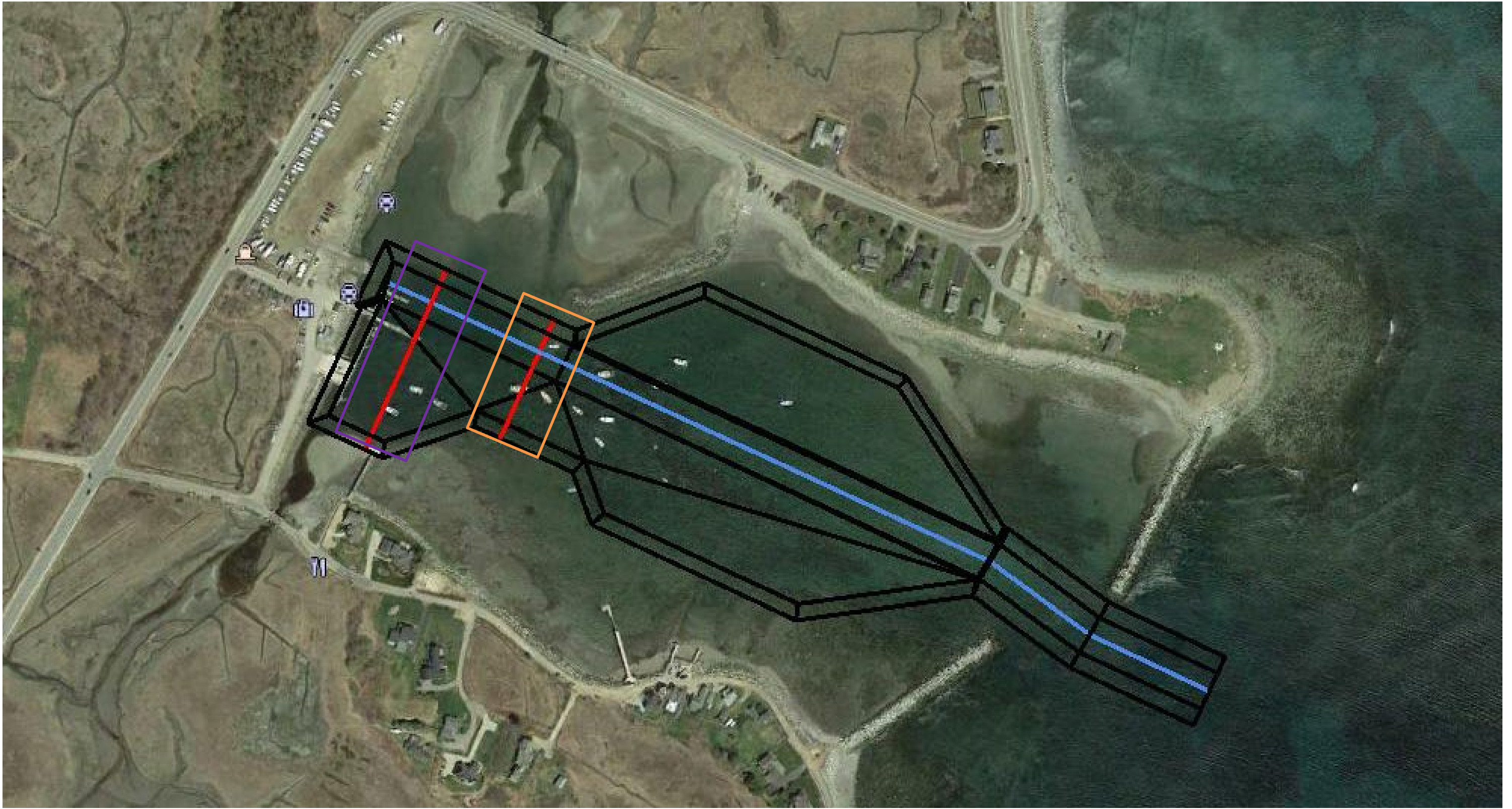
If you would prefer not to continue receiving Public Notices by email, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at [bettina.m.chaisson@usace.army.mil](mailto:bettina.m.chaisson@usace.army.mil). You may also check here ( ) and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

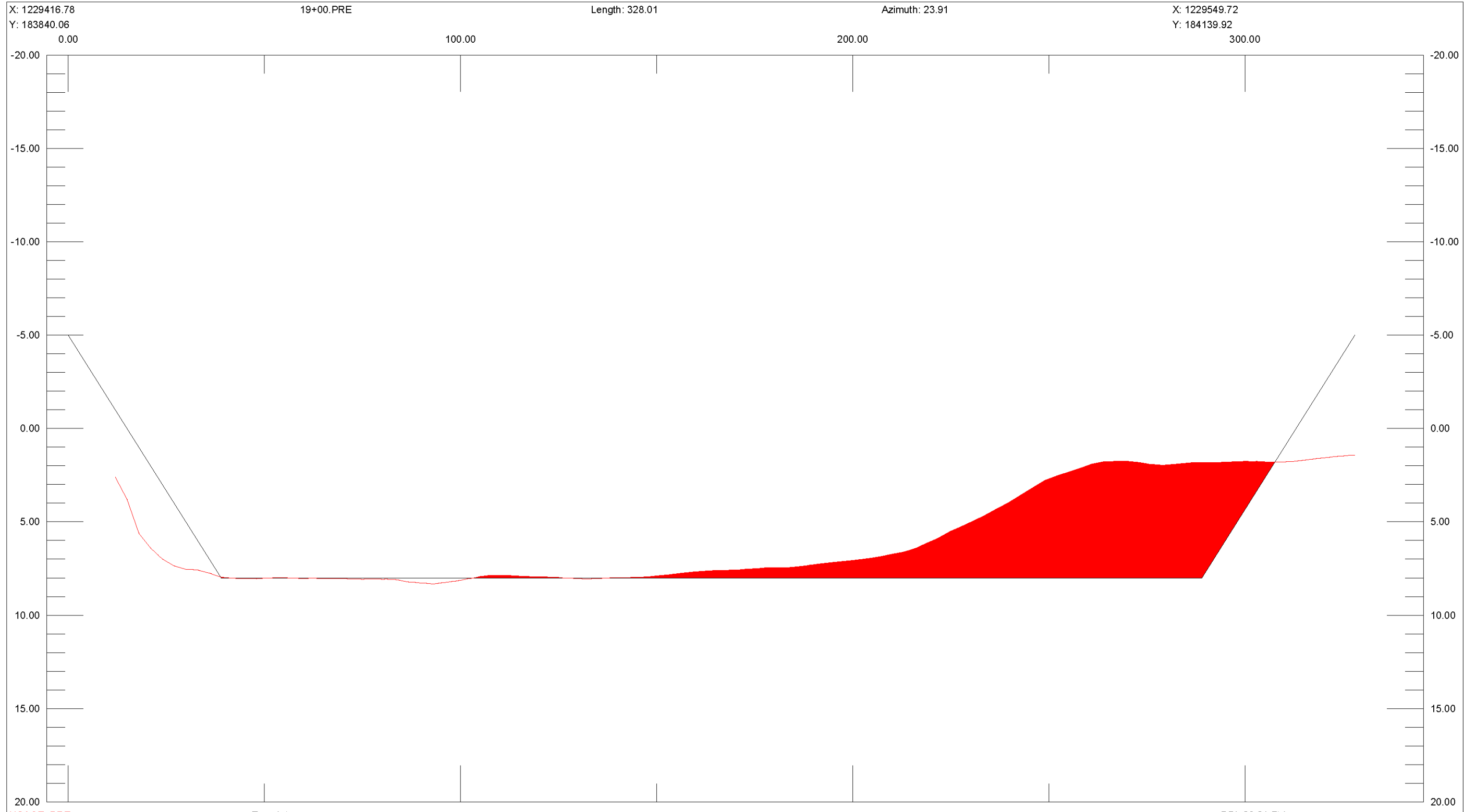
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PHONE: \_\_\_\_\_





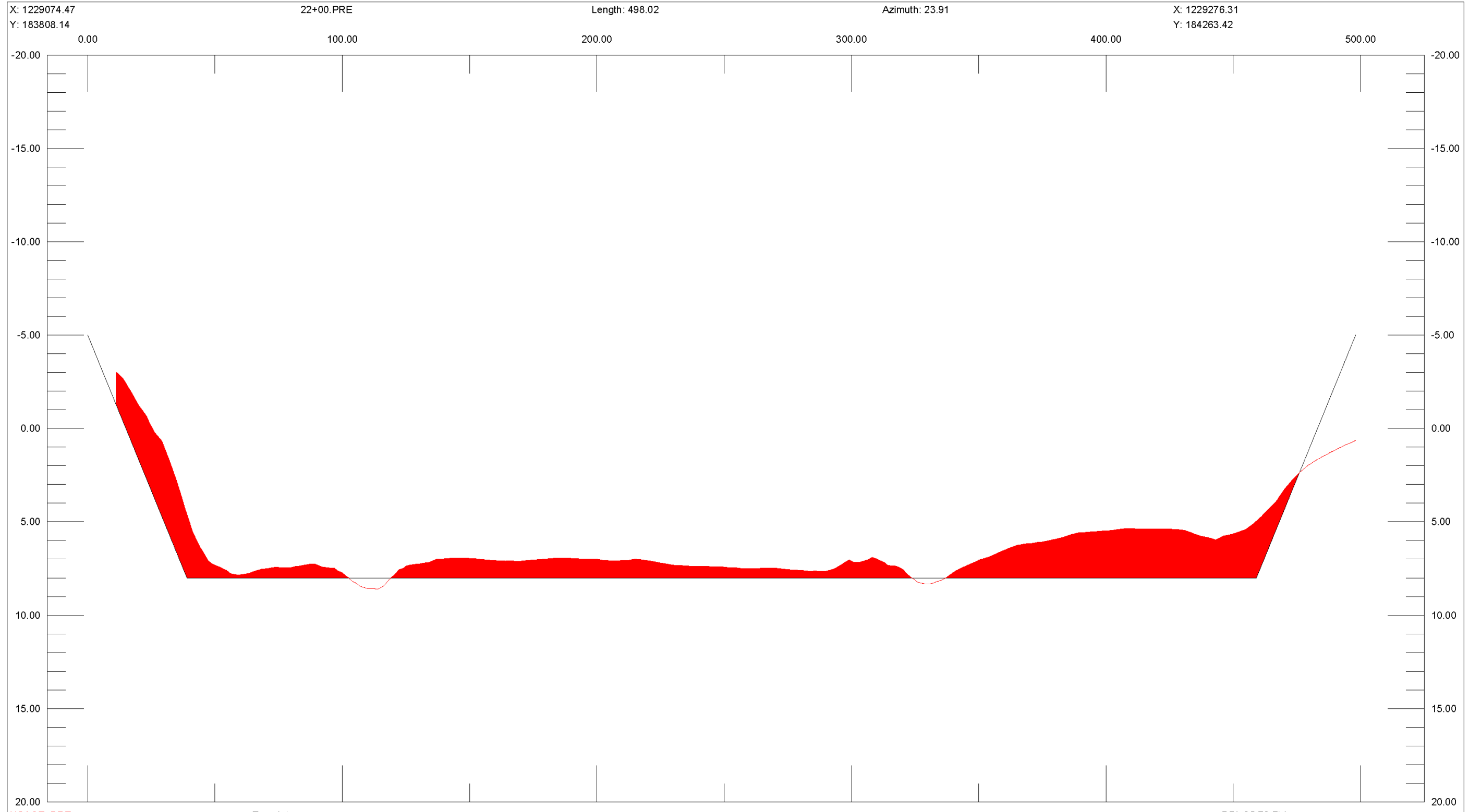


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Area	0.00	107.23	288.18	57.84	974.63	Area	0.00	0.00	0.00	0.00	0.00
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DBL 23.21 Ft:In  
Depth 4.87 Ft:In

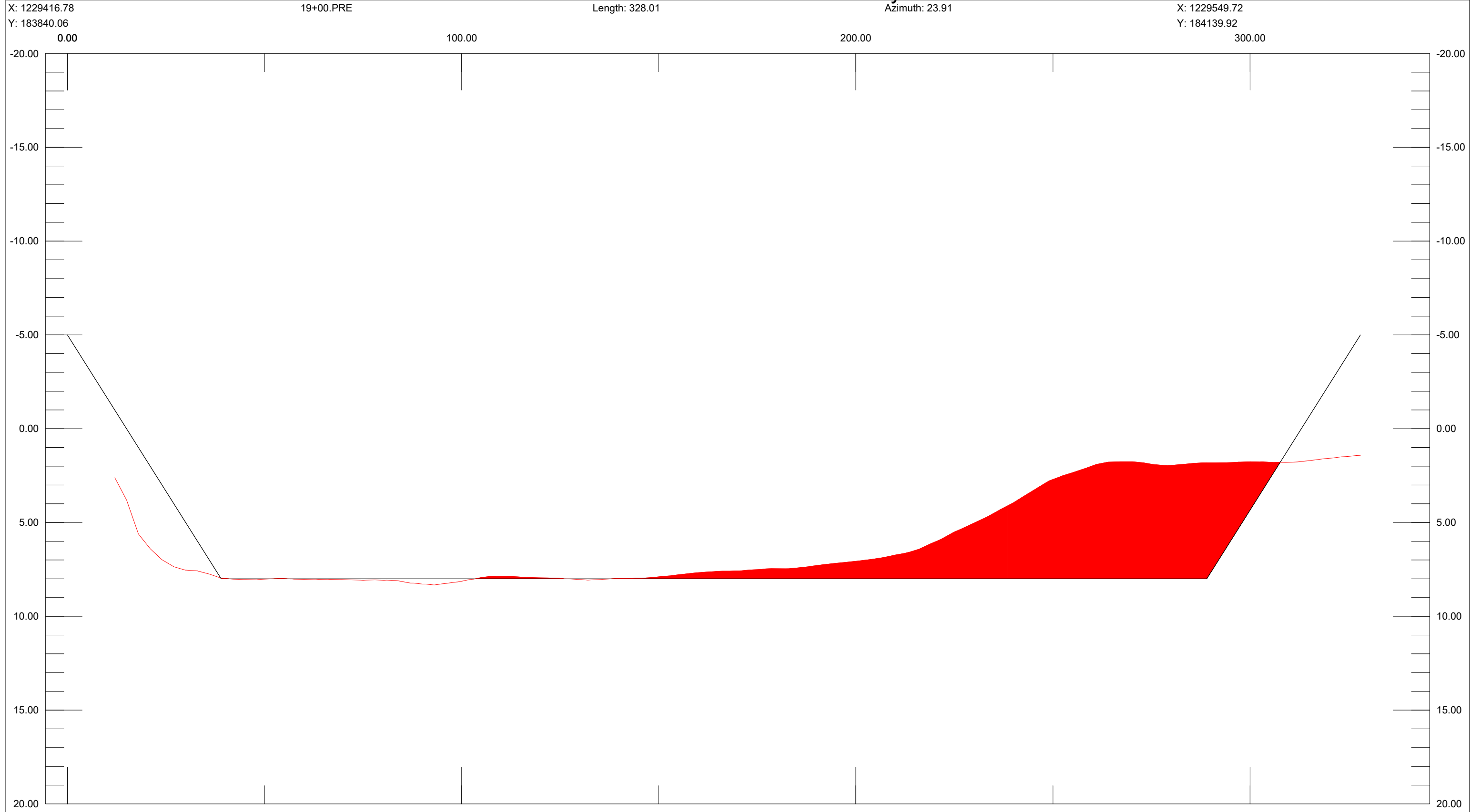




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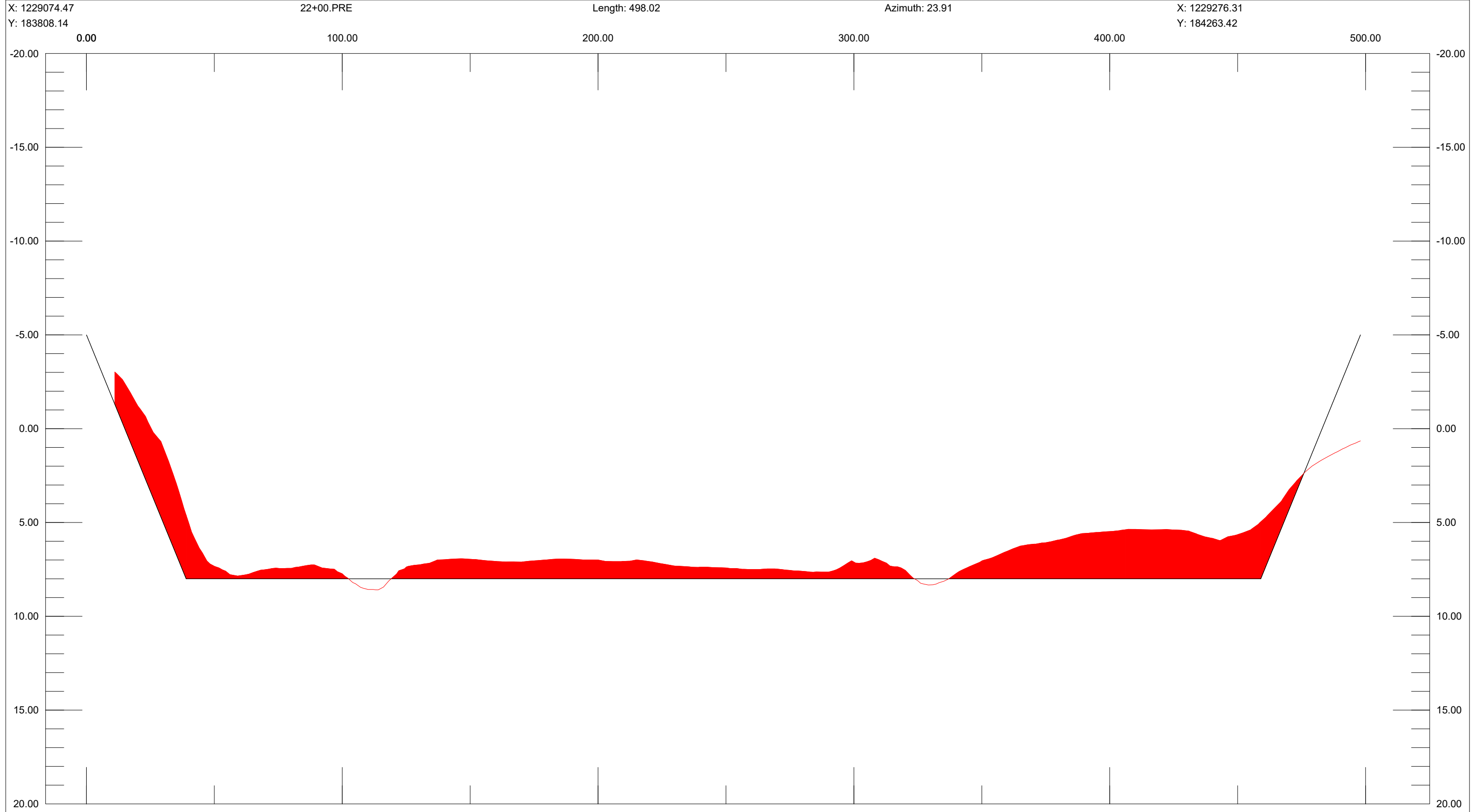
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# Rye Harbor Cross Section

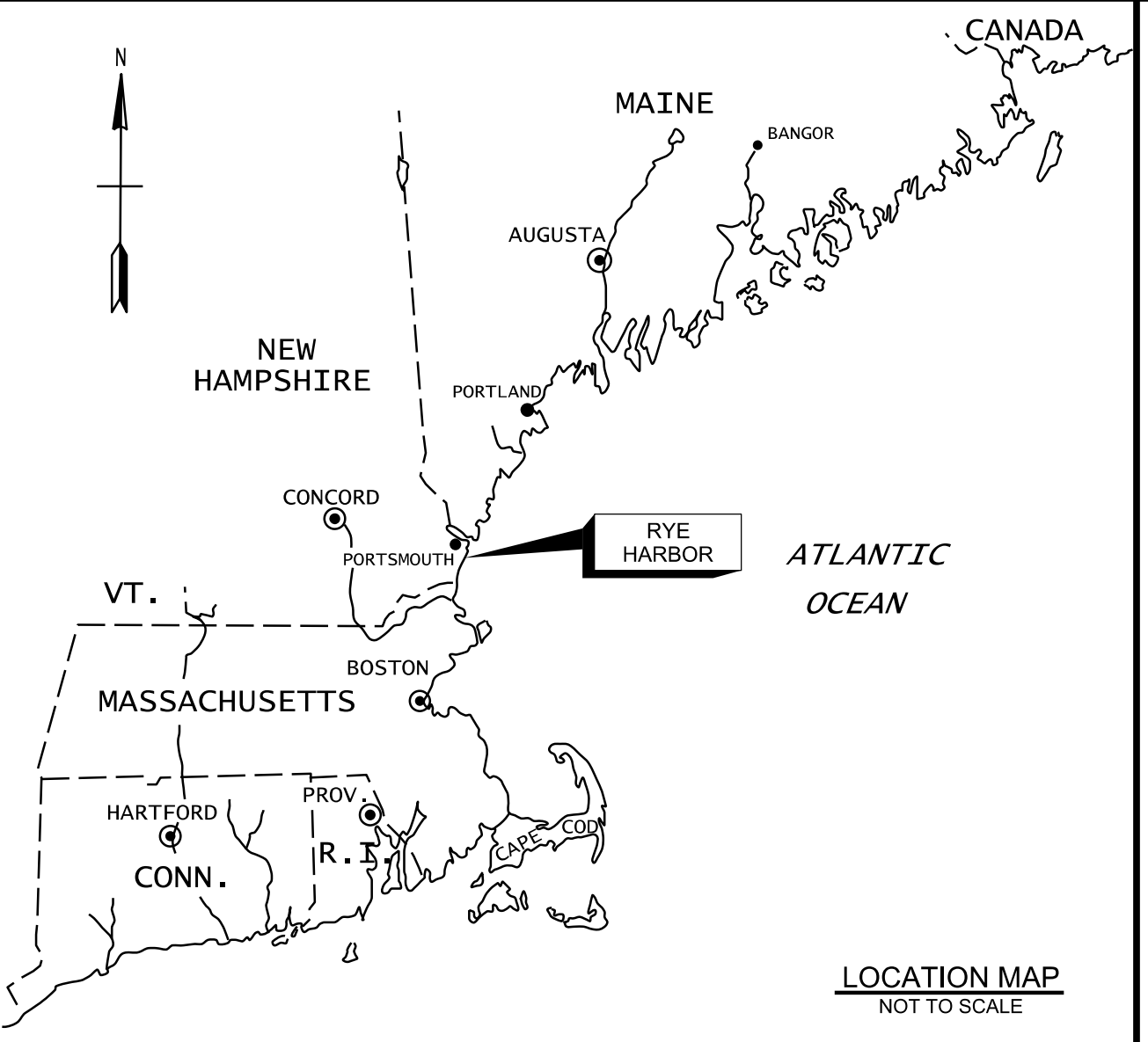
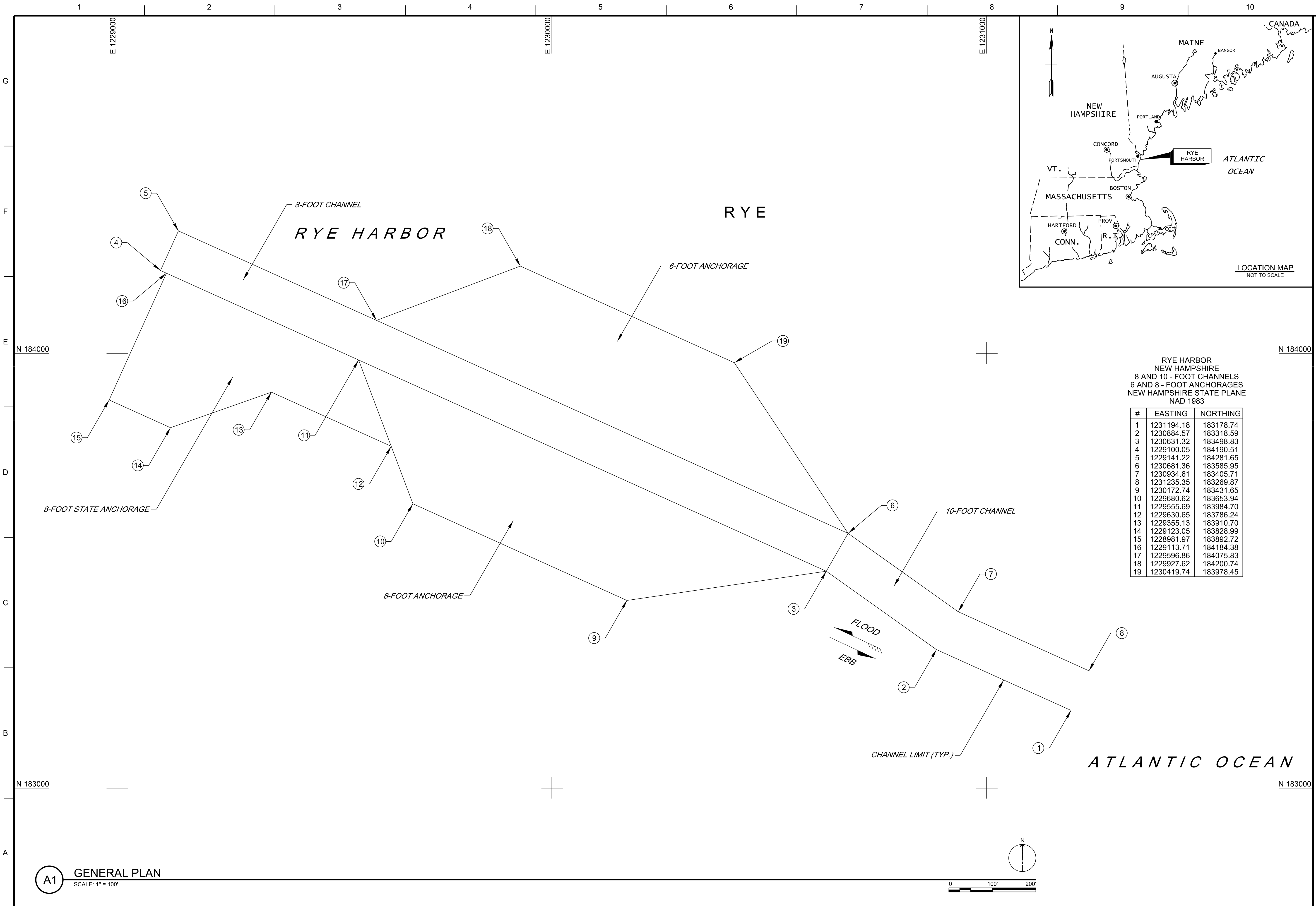


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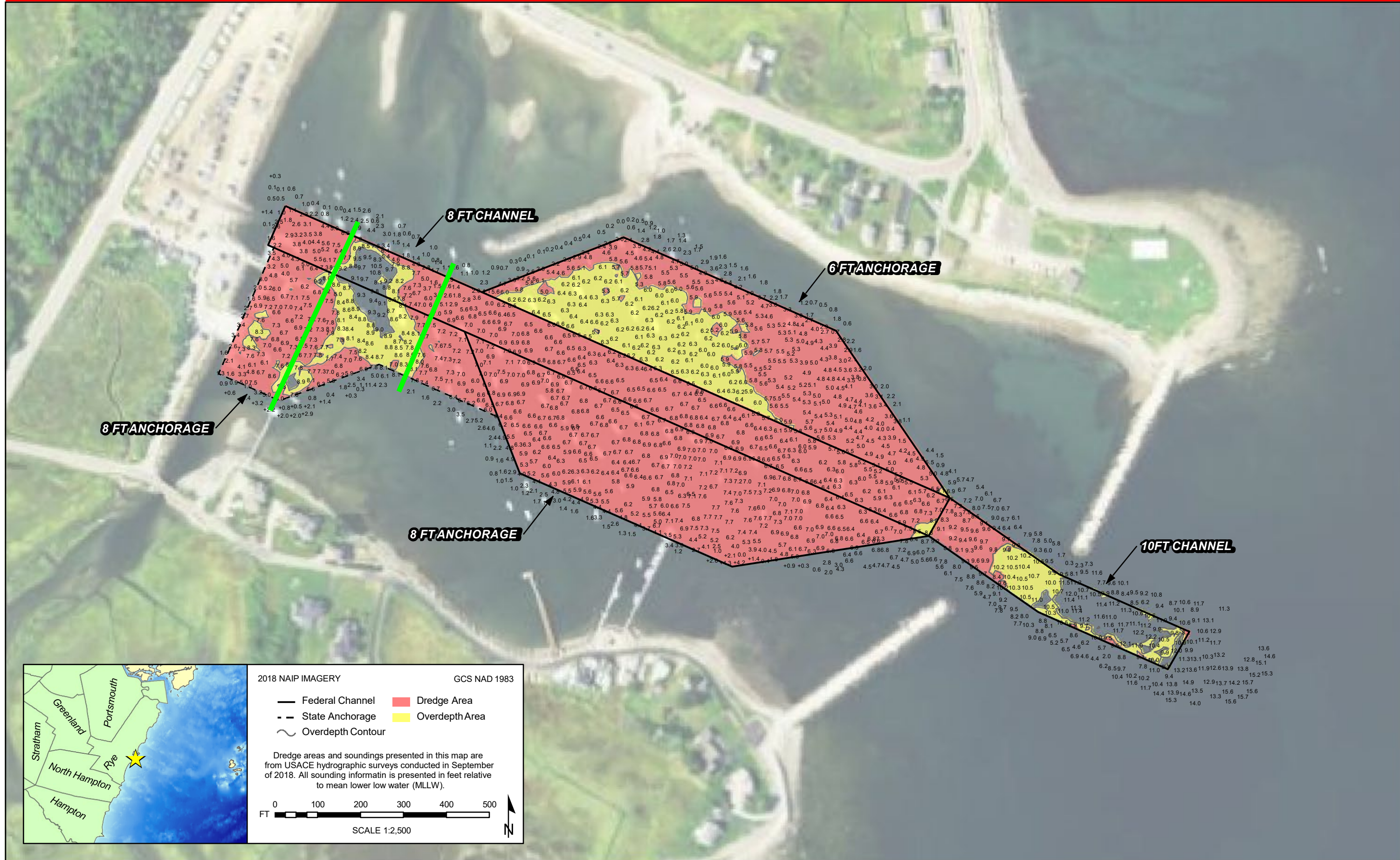


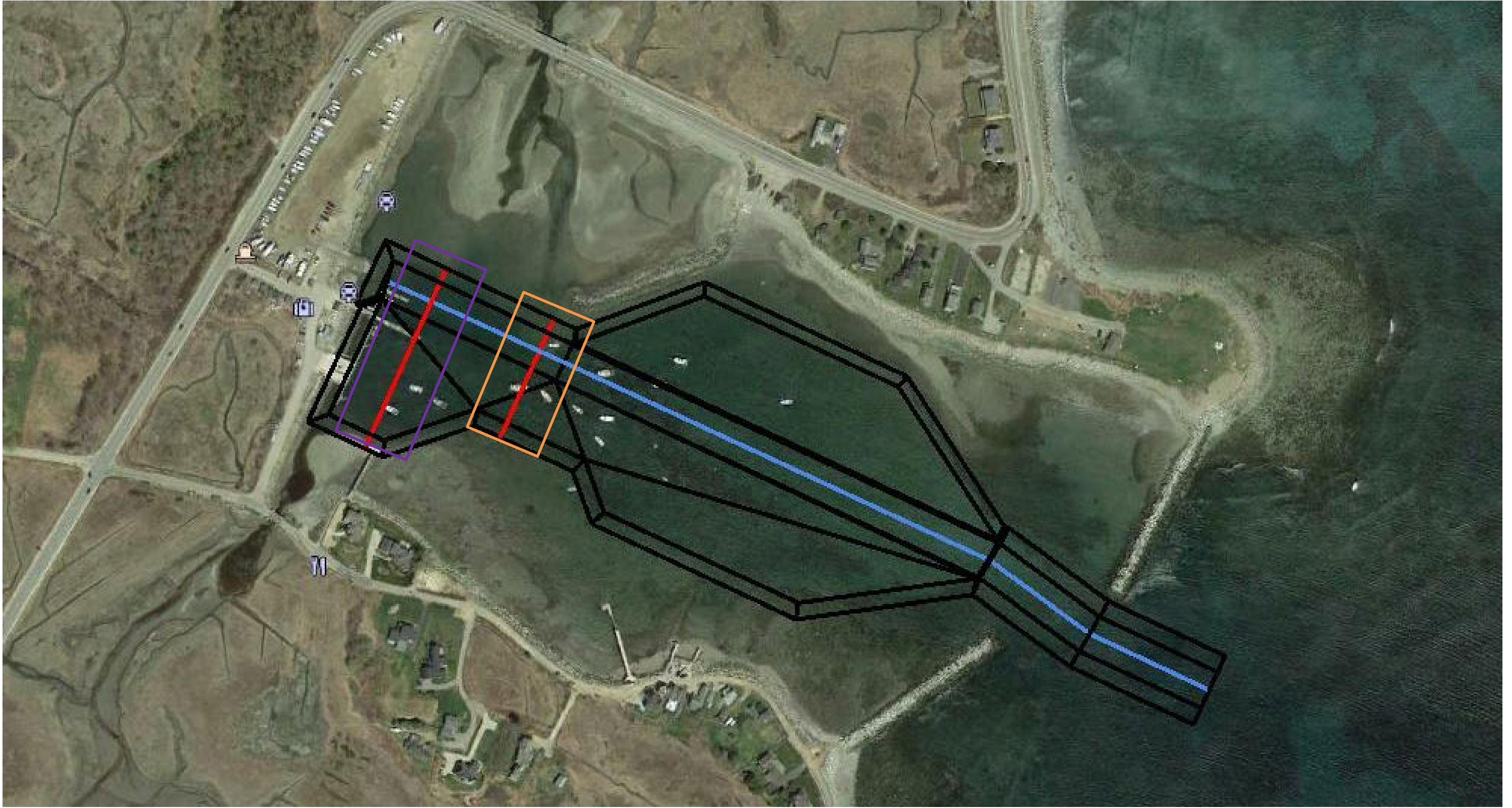
RYE HARBOR  
 NEW HAMPSHIRE  
 8 AND 10 - FOOT CHANNELS  
 6 AND 8 - FOOT ANCHORAGES  
 NEW HAMPSHIRE STATE PLANE  
 NAD 1983

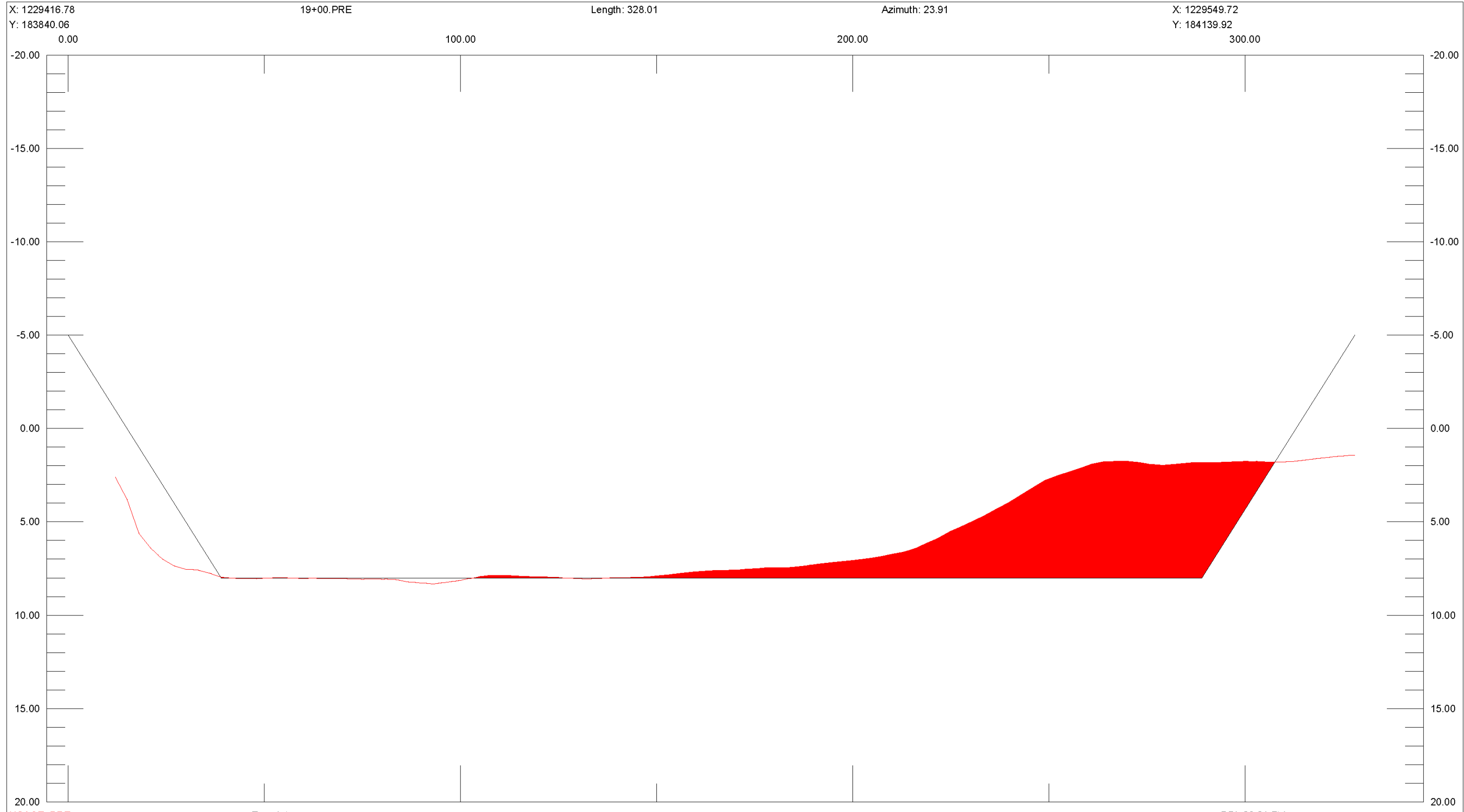
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2	1230884.57	183318.59
3	1230631.32	183498.83
4	1229100.05	184190.51
5	1229141.22	184281.65
6	1230681.36	183585.95
7	1230934.61	183405.71
8	1231235.35	183269.87
9	1230172.74	183431.65
10	1229680.62	183653.94
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17	1229596.86	184075.83
18	1229927.62	184200.74
19	1230419.74	183978.45

 <b>US Army Corps of Engineers</b>		ISSUE DATE:	DATE
		DWN BY: CHK BY:	DESCRIPTION
U.S. ARMY CORPS OF ENGINEERS NEW ENGLAND DISTRICT 696 VIRGINIA ROAD CONCORD, MA 01742-2751	SOLICITATION NO.: CONTRACT NO.: DRAWING CODE: SHEET 1 OF 1	REVIEWED BY: ASST. CHIEF, SURVEY SEC.: APPROVED BY: CHIEF, SURVEY SECTION SCALE: 1" = 100' SIZE: 11" x 17"	MARK
RYE HARBOR RYE, NEW HAMPSHIRE FEDERAL NAVIGATION CHANNEL 8 AND 10-FOOT CHANNELS 6 AND 8-FOOT ANCHORAGES		SHEET ID	
		V-001	

**A1** GENERAL PLAN  
 SCALE: 1" = 100'



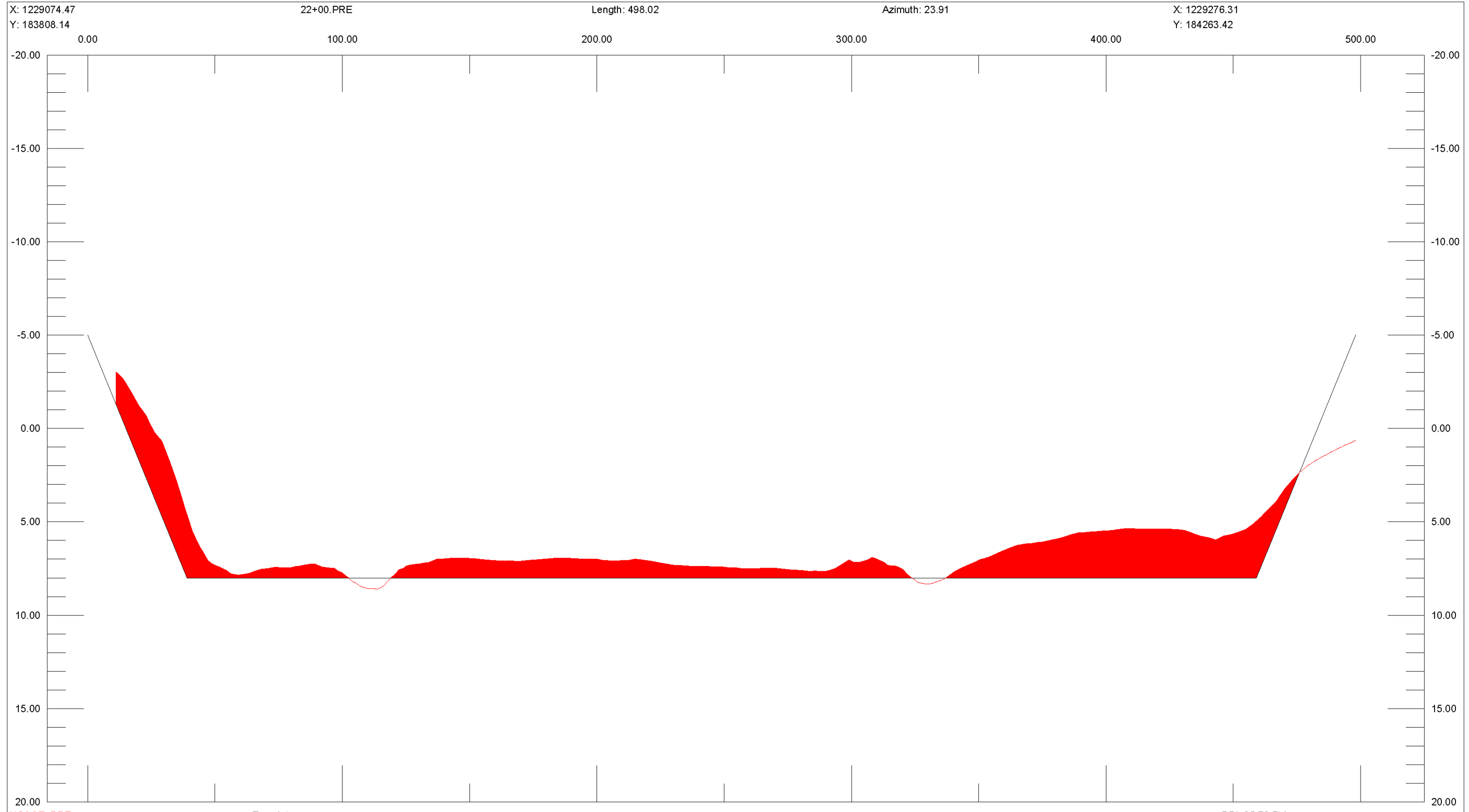




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DBL 23.21 Ft:In  
Depth 4.87 Ft:In



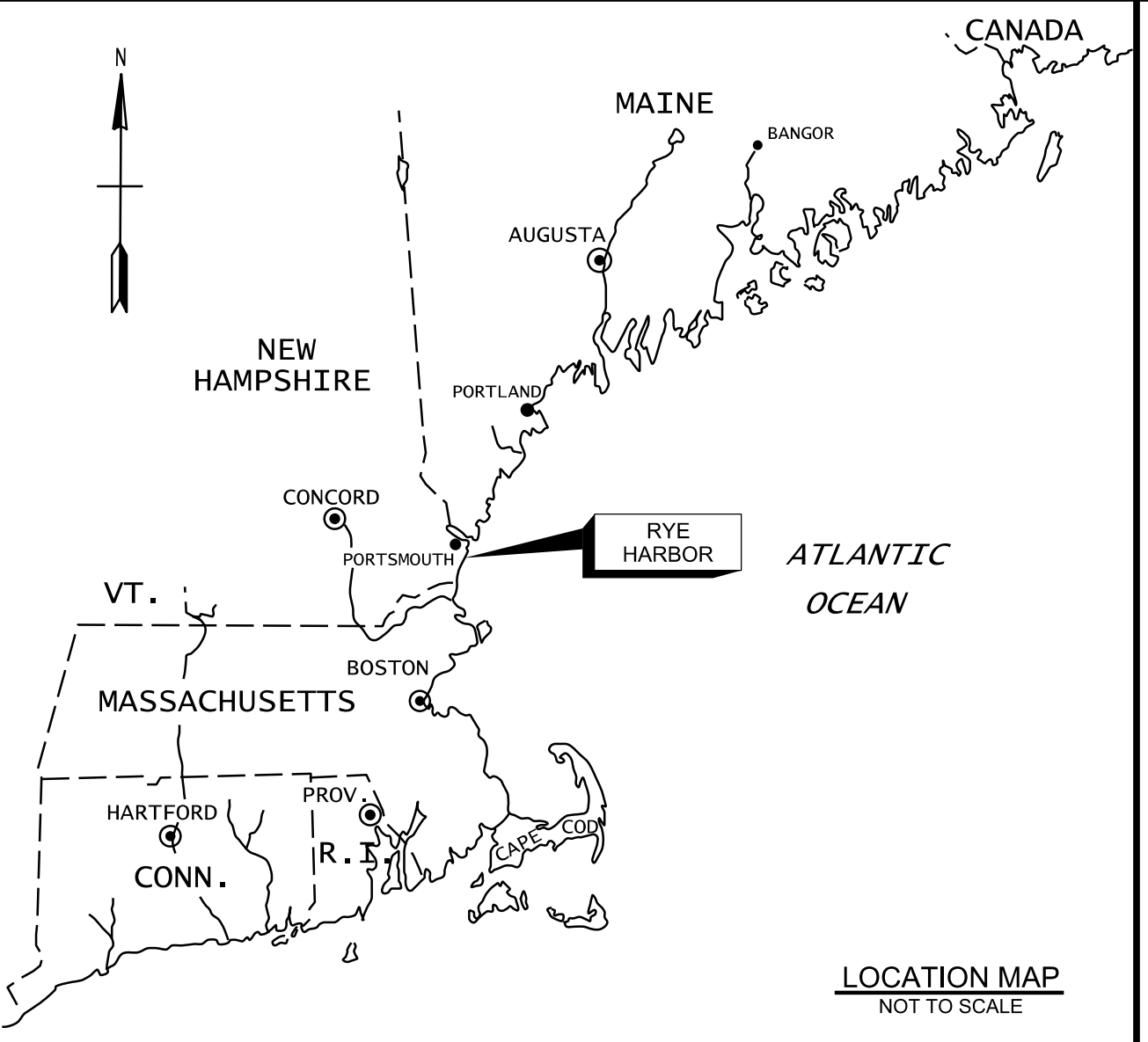
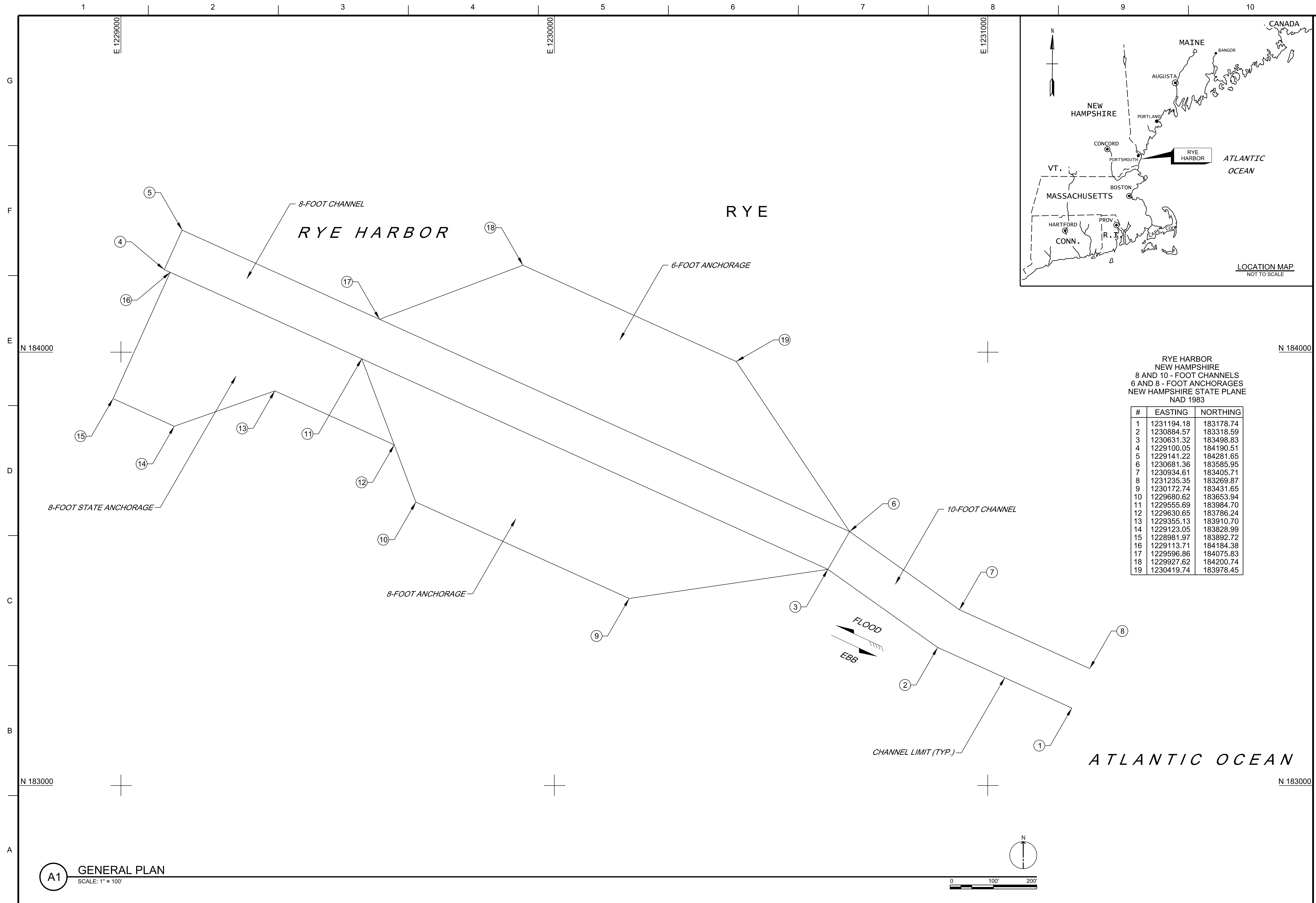
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Offset	-406.35	-367.35	52.67	91.66							

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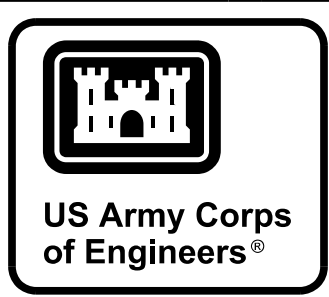
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Depth 4.87 Ft:In





RYE HARBOR  
NEW HAMPSHIRE  
8 AND 10 - FOOT CHANNELS  
6 AND 8 - FOOT ANCHORAGES  
NEW HAMPSHIRE STATE PLANE  
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MARK	DESCRIPTION	DATE

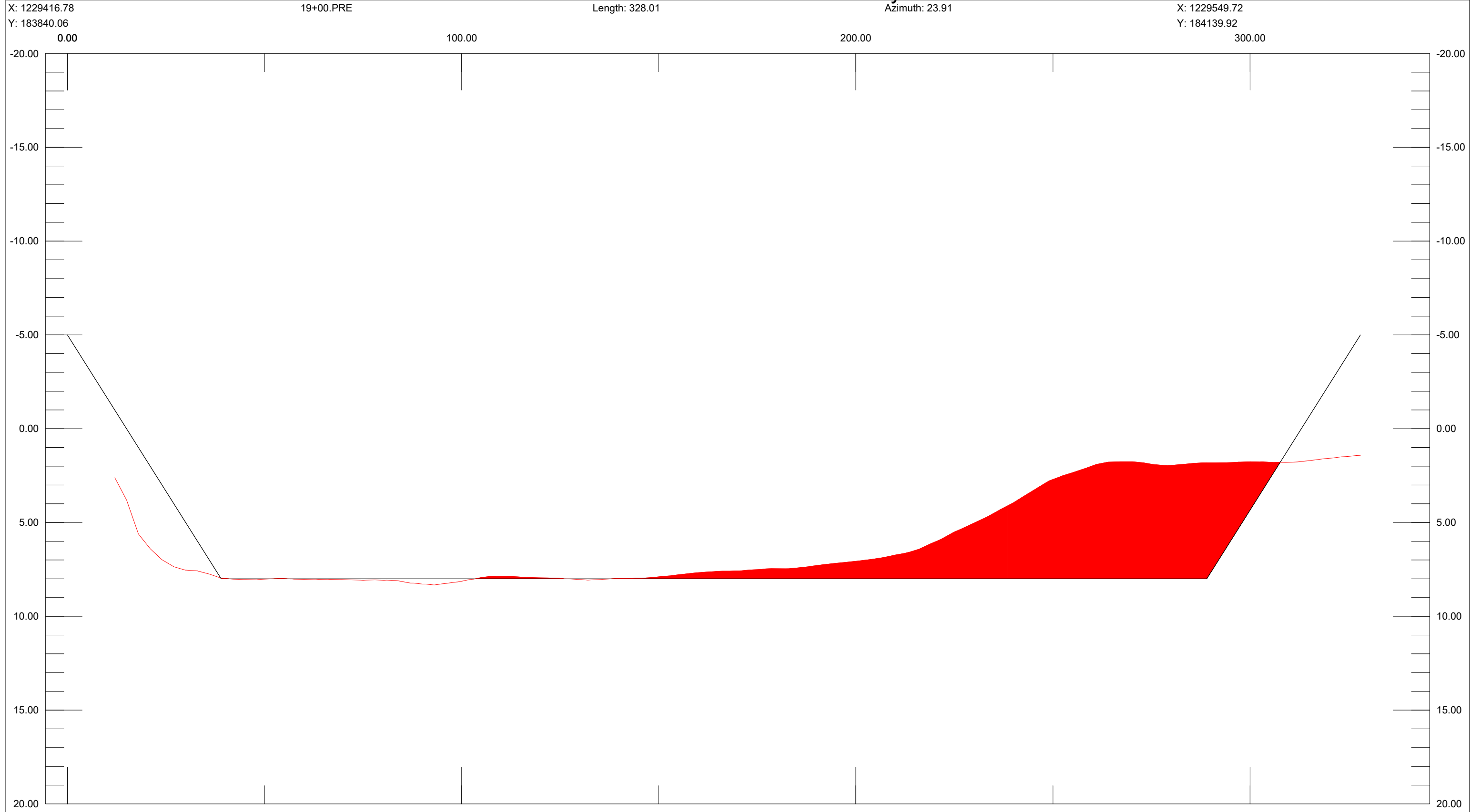
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DWN BY:	CHK BY:	SCALE:
REVIEWED BY:	Asst. Chief, Survey Sec.:	SIZE:
APPROVED BY:	Chief, Survey Section:	ANSI D:
		SHEET 1 OF 1

RYE HARBOR  
NEW HAMPSHIRE  
FEDERAL NAVIGATION CHANNEL  
8 AND 10-FOOT CHANNELS  
6 AND 8-FOOT ANCHORAGES

SHEET ID  
V-001

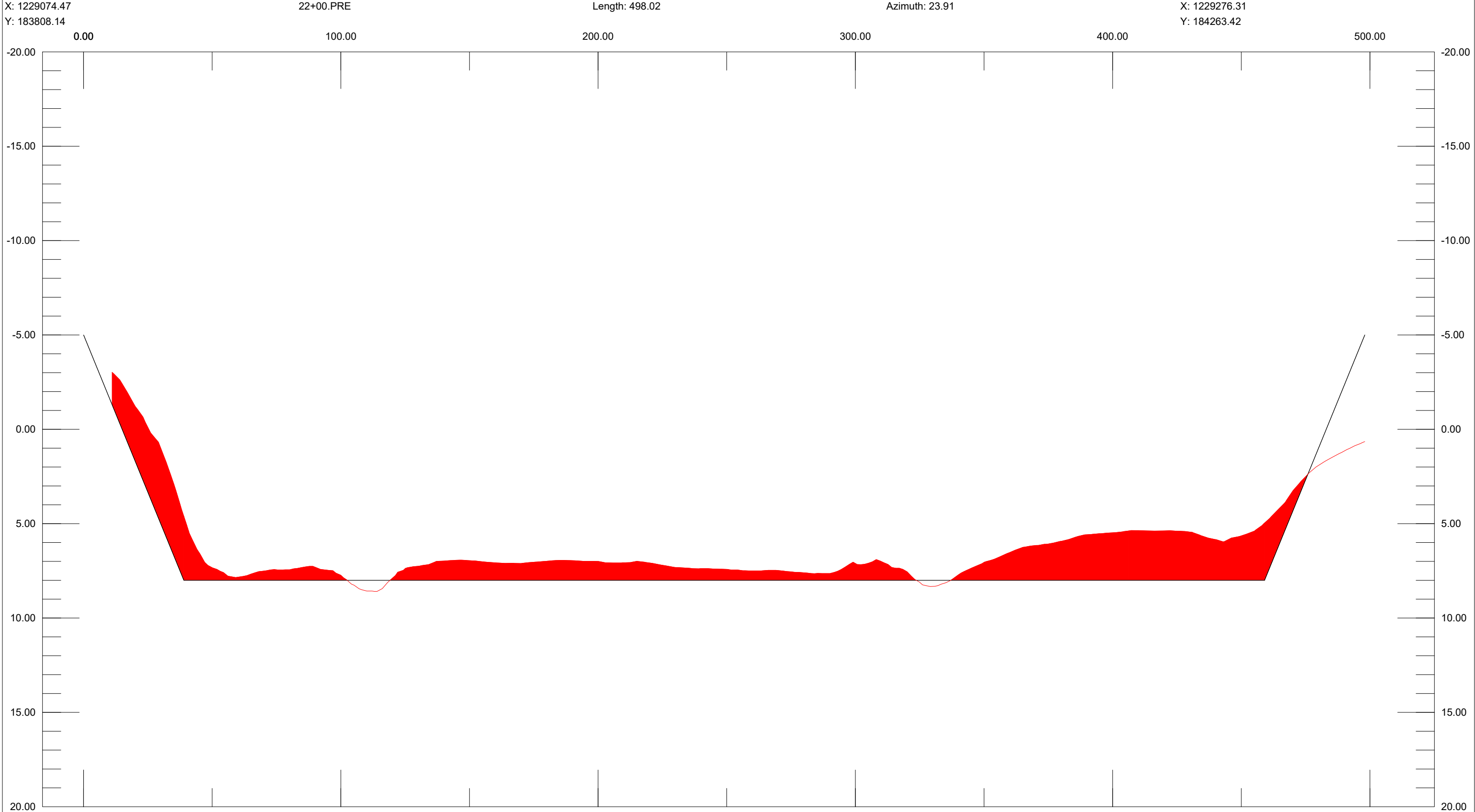
A1 GENERAL PLAN  
SCALE: 1" = 100'

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USACE_PRE 22+00.PRE						DBL 35.76 Ft:In Depth 4.87 Ft:In					
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