

*Presented at the FIG Working Week 2016,
May 2-6, 2016 in Christchurch, New Zealand*

The Current Status of Land Rights in the Transkeian Territories of South Africa

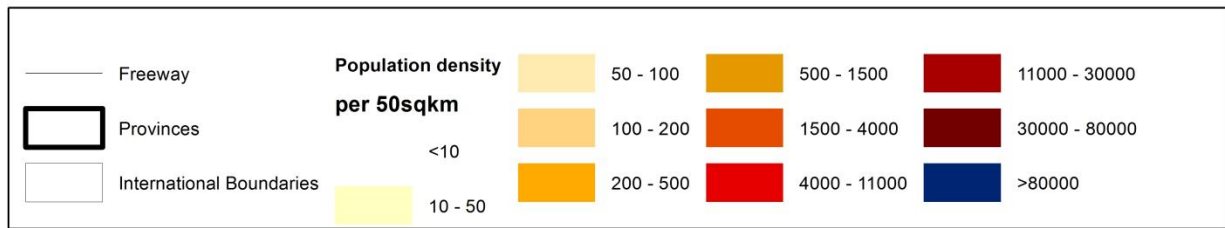
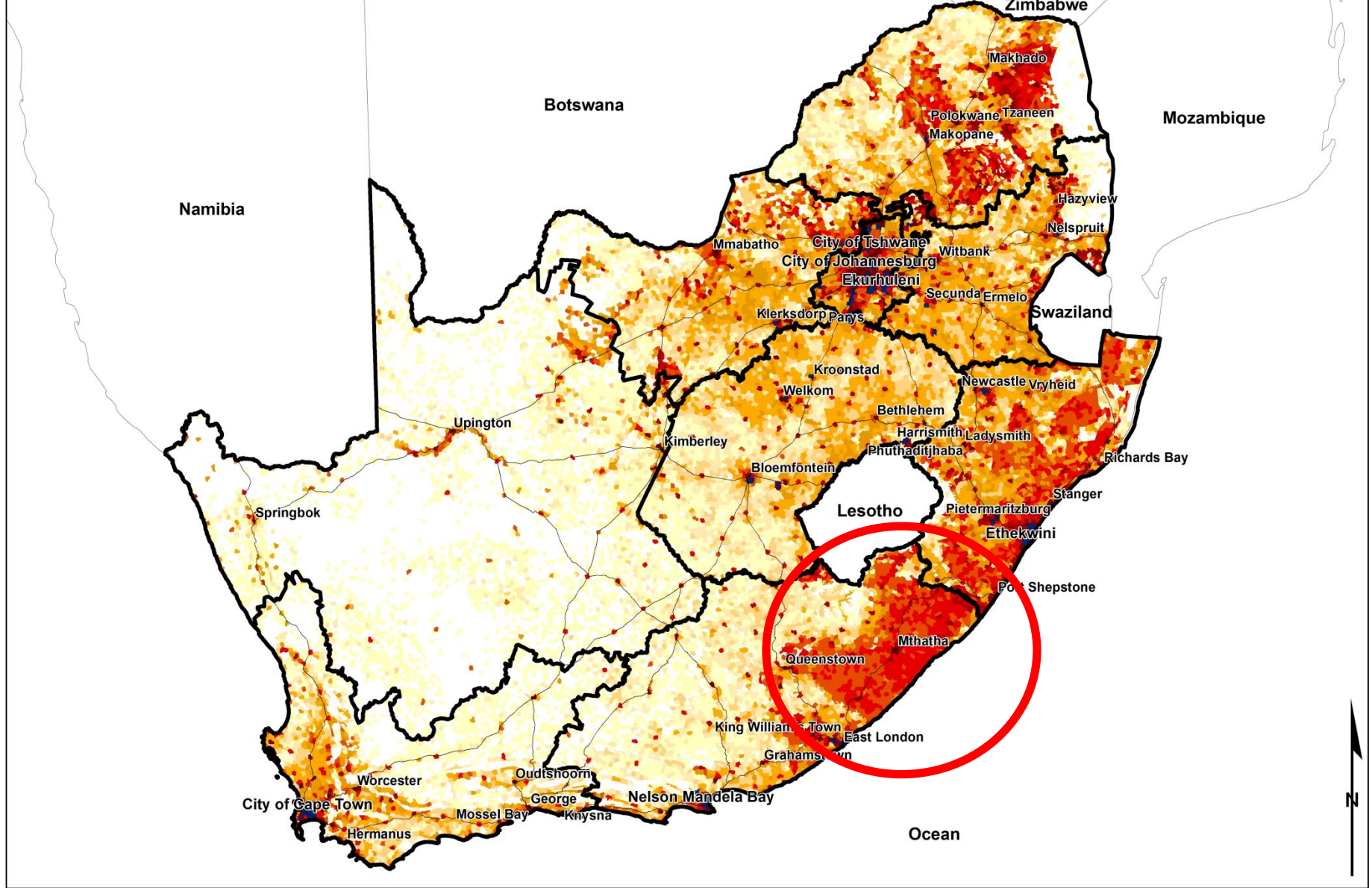
Chris Williams-Wynn
Surveyor-General: Eastern Cape

East London
Republic of South Africa
May 2016

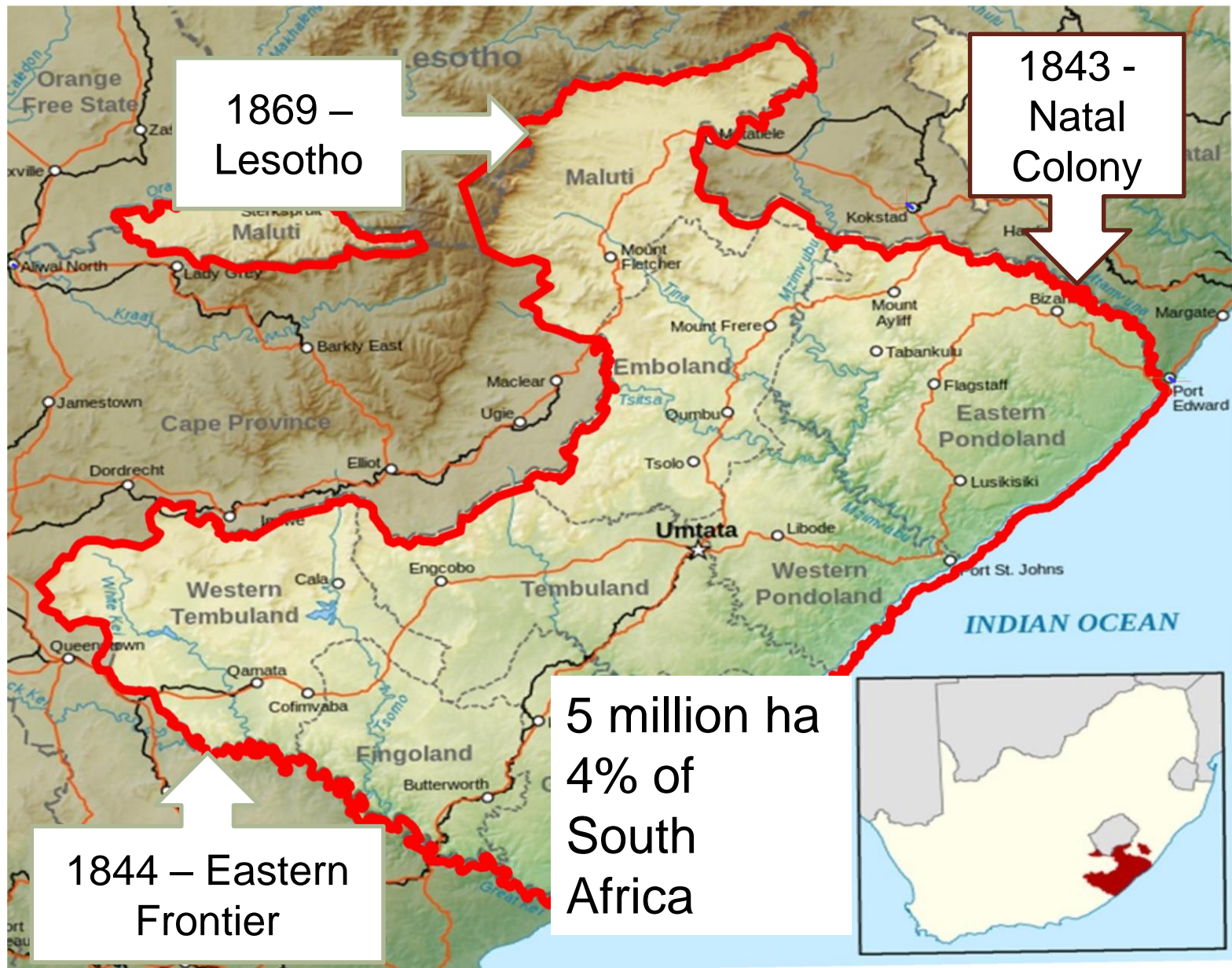


Recovery from Disaster

- What disaster?
 - Layers of conflicting/overlapping land rights
 - Registered title ignored
 - Forced settlement
 - Multiple land allocations
- Recovery
 - Proposed solution to the land issue



Areas in Question – Transkeian Territories



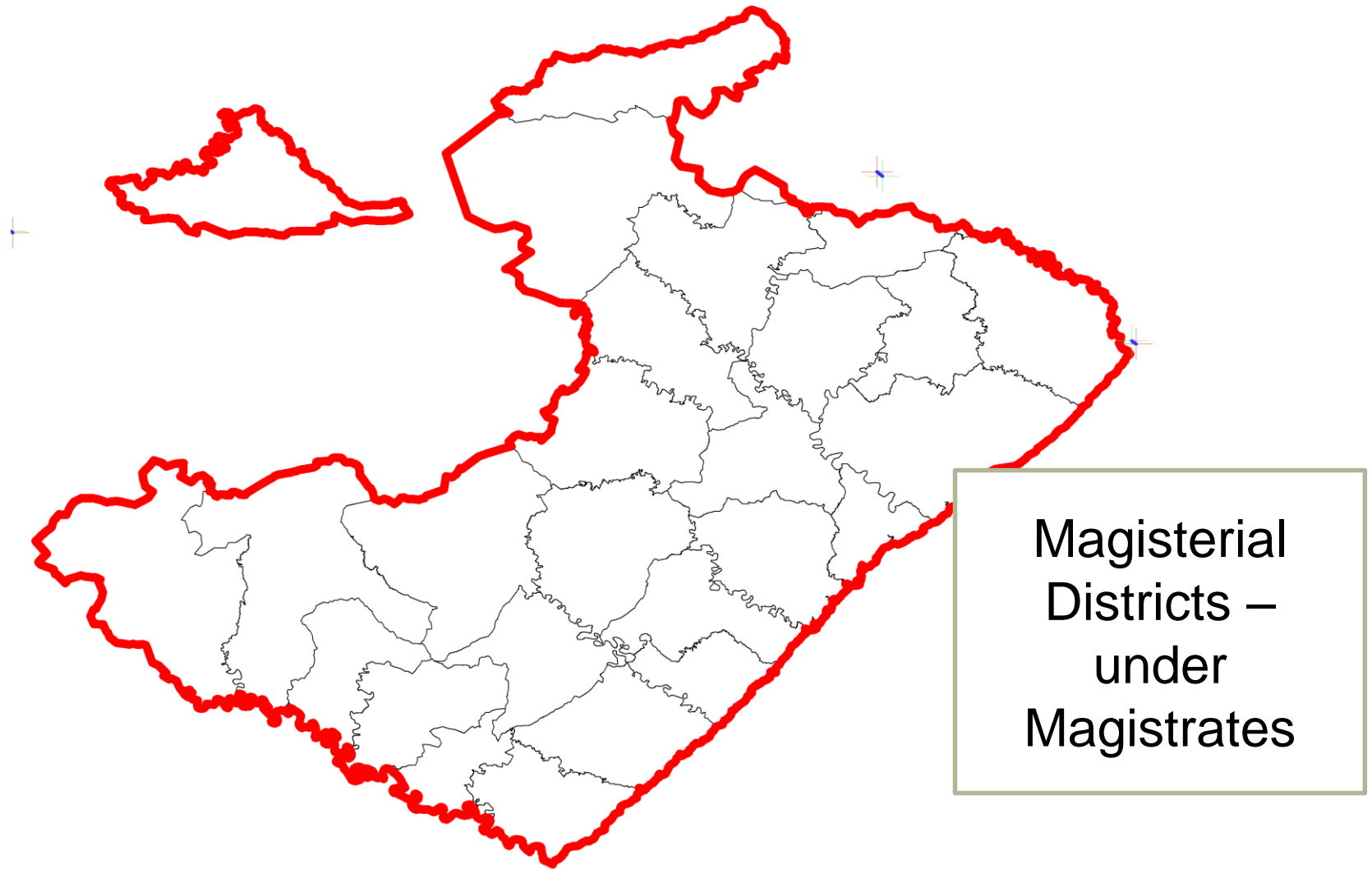




Colonial Land Administration System

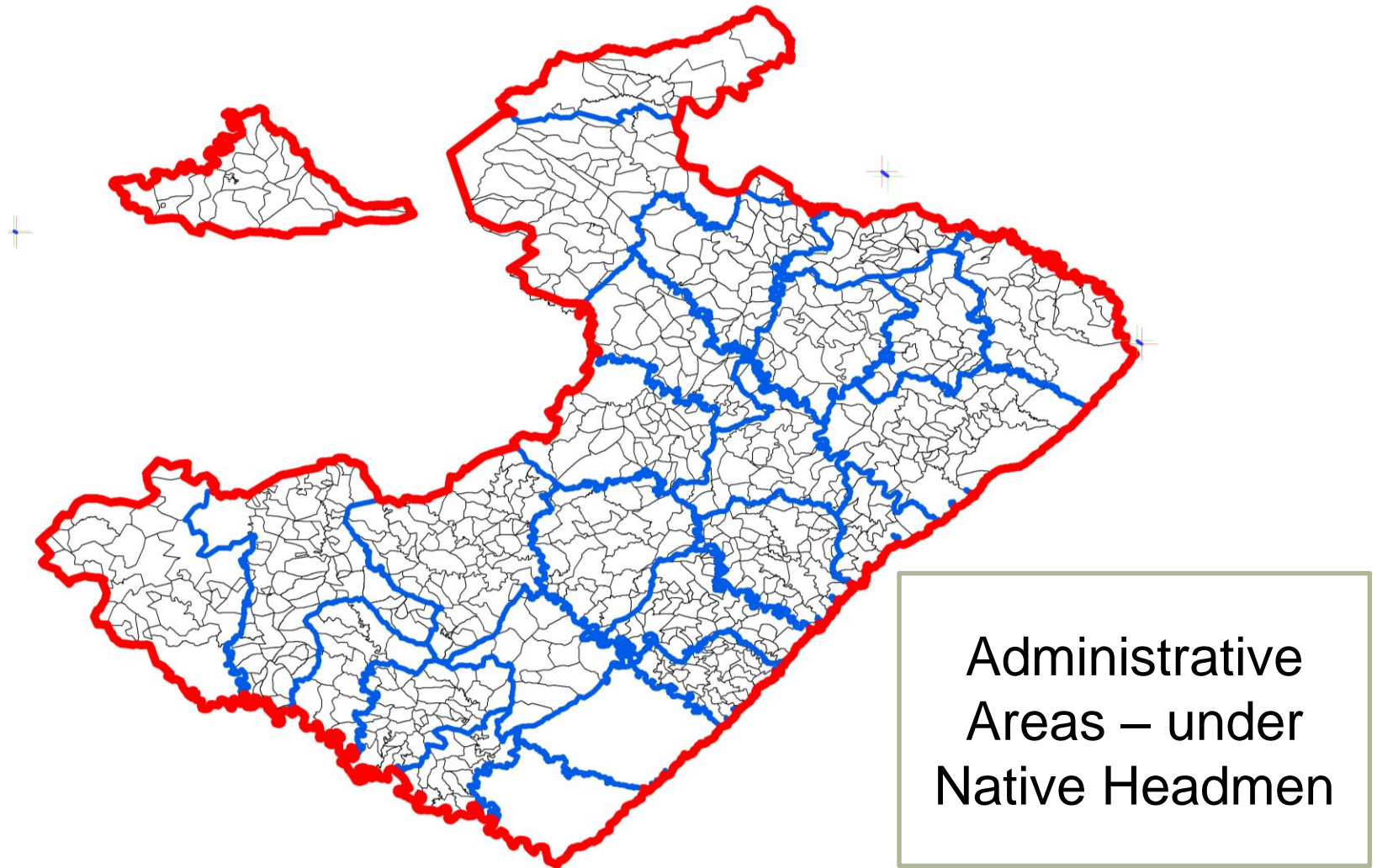
- Territory (as in Transkeian Territories)
 - Land substantially occupied by “Native people”
- Native people (in the Transkeian Territories context)
 - A conglomeration of predominantly Nguni peoples
 - Mixed with other groups, including Khoi and San
 - Had settled or were resettled in the Transkeian Territories
 - Substantially make up what is now known as the “Xhosa Nation”,
 - Today, more commonly identified as “Indigenous people”

Complications – Colonial Land Administration



Magisterial
Districts –
under
Magistrates

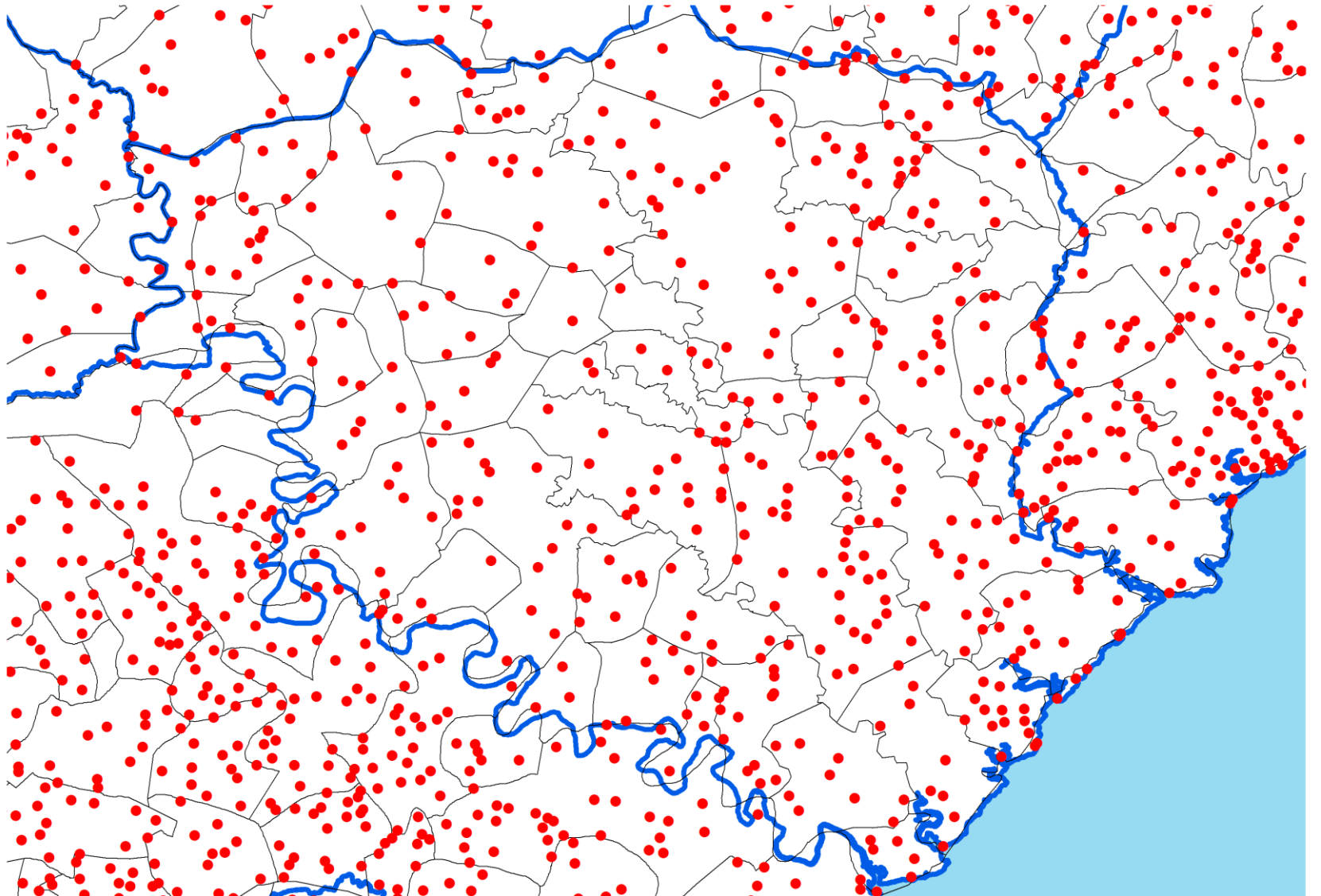
Complications – Colonial Land Administration



Magisterial District with Administrative Areas



Intensity of Villages





Formal System of Land Rights

- Transkeian Territories
 - 27 Magisterial Districts
 - ± 20 Administrative Areas
 - On 8 of the Districts, ± 160 Administrative Areas
 - ± 300 Quitrents per Administrative Area (± 48,000 total)
- Quitrent
 - Individual tenure with title – each approx. 2,5 hectares
 - Granted to a subject loyal to the Crown, in recognition of service
 - Conditional on payment of annual tax to fund the British administration

Extract of original 1901 Quitrent plan

7484 TRANSKET

REGISTRATION

S. 8476/12

(TOLENI ALLOTMENT AREA)

For alteration of description See Proc. 192-04 (2471)

SECTION PLAN N

of

LOCATION W 12

called

TOLENI B

District of Butterworth.

Sept. 1901

By me

J. B. ...
1901

NOTING PLAN 5 OR (See Key to Locations 180R)

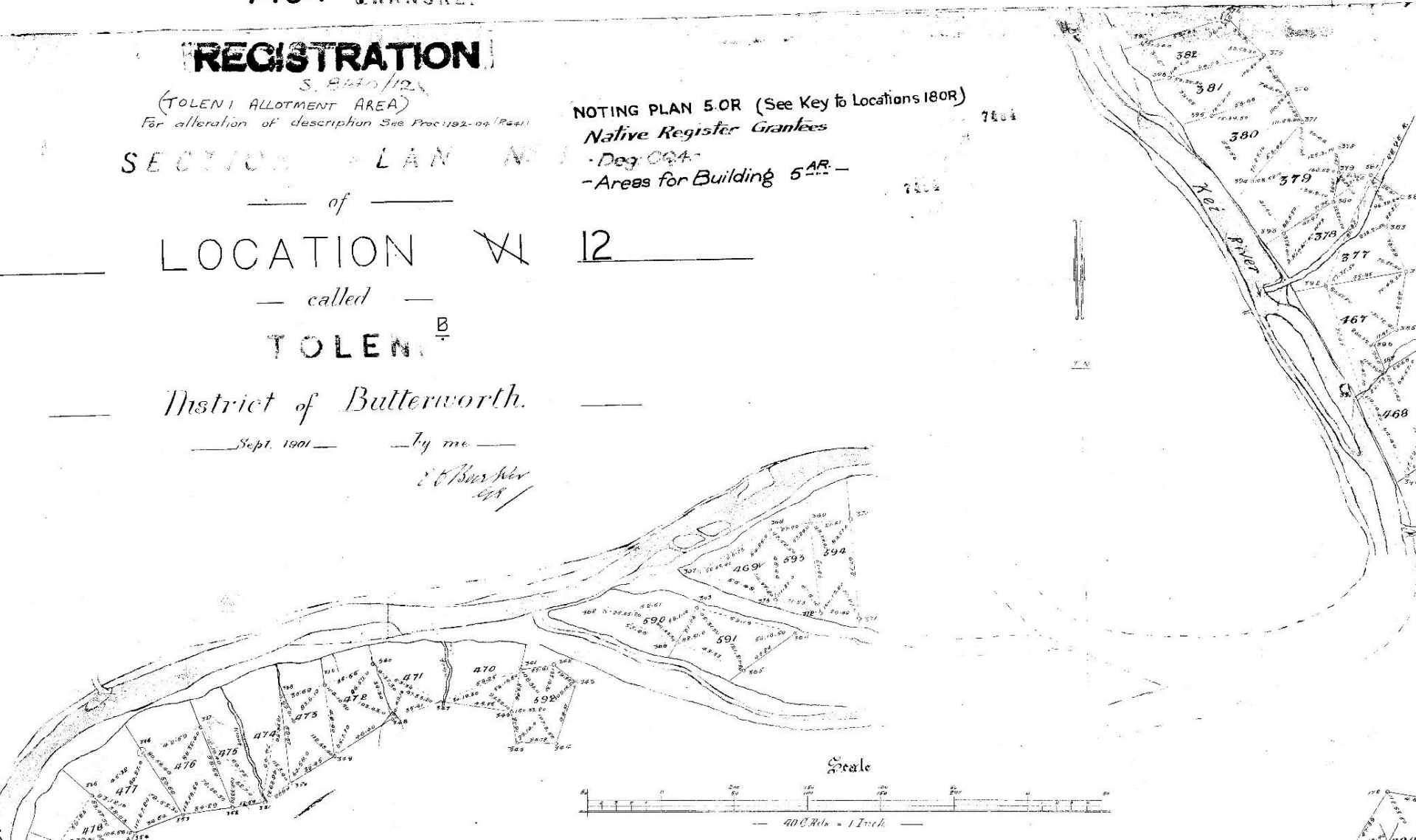
Native Register Grantees

- Dog COT -

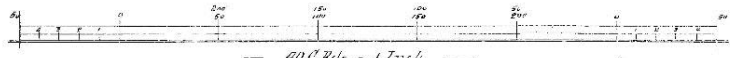
- Areas for Building 5 AR -

7484

7502



Scale



Subsequent Land Occupation

- Restriction of all native people into “Administrative Areas”
 - By 1919, the notion that only Quitrent title owners had access to land was abandoned
 - By 1923, the last of the Quitrents were surveyed
 - Became overcrowded, dependent on work in cities, mines
- Alternative forms of Land Right:
 - Permissions to Occupy – registered by magistrate
 - “Informal” Land Allocations by Headman/Community leaders
 - Government-run agricultural “Betterment Schemes” relocated people into villages
 - Resettlement of people forcibly removed from elsewhere
 - Politically motivated land invasions

Mix of Land Rights = Disaster!

- Rights of original title holder and successors – ignored
- State adopted ownership of community land (communal land, held “in trust”)
- Registered owner of a PTO
- Unregistered PTO allocated by Headman
- Land allocation under Betterment Scheme
- African community leadership (king, chief, headman, council)
- Every person residing on community land, no matter how they got there (birth / voluntarily / forcibly)
- Community registers of local leaders
- Political structures and allegiance

Following the letter of the law?

- South Africa law based on Roman-Dutch law
 - All land, unless granted, was Crown land (Now State land)
 - Places the rights of the property owner above the rights of the occupant
 - Upholds existing, registered land rights
- Holder of a Quitrent title must have
 - the right to occupy and use his or her land, or
 - be compensated for any encroachment or removal of that right
- Would leave the majority of the people occupying land in the Transkeian Territories landless...

Recovery from Disaster!

- Communities are more likely to preserve, protect and manage land if it is theirs
- Claims by state to own land occupied by indigenous communities is the retention of colonial systems
- Land occupied by communities should be re-designated as “Community Land”
- The community must decide on all overlapping rights
 - Land Rights Enquiry...
 - Land Rights Commissioner (State appointed?)
 - FAO voluntary guidelines call for:
 - *“Effective and meaningful consultation with indigenous people”!*

Thank you

