
PLANNING ADVISORY COMMITTEE



The City of Saint John

May 23, 2019

His Worship Mayor Don Darling and
Members of Common Council

Your Worship and Councillors:

**SUBJECT: Rezoning Application
1003 Latimore Lake Road**

On April 23, 2019 Common Council referred the above matter to the Planning Advisory Committee for a report and recommendation. The Committee considered the attached report at its May 22, 2019 meeting.

Staff presented the application, noting that it consisted of a request for Council to rezone a 13 hectare parcel of land that was substantially different than a 2018 rezoning application and a request for the Committee to modify a rehabilitation deadline as part of a temporary approval application. The applicant was in attendance and in full support of the staff recommendation. In response to the Committee, the applicant clarified that rehabilitation work should be conducted in June, 2019. The Committee voted in support of staff's recommendation.

RECOMMENDATION:

1. That Common Council rezone a 13 hectare parcel of land located at 1003 Latimore Lake Road, also identified as a portion of PID No. 00331124 and a portion of PID No. 00333757, from Rural (RU) to Pit and Quarry (PQ).
2. That, pursuant to the provisions of Section 59 of the Community Planning Act, the use of the parcel of land with an area of 13 hectares, located at 1003 Latimore Lake Road, also identified as a portion of PID No. 00331124 and a portion of PID No. 00333757, be subject to the following conditions:

- a. Site development not be undertaken except in accordance with a detailed site plan, which includes a phasing plan and method of excavation.
- b. All access to the site be limited to the existing driveway access located at 1003 Latimore Lake Road (PID No. 00329409). No access to the site is to be permitted through Pipeline Road East or at any other location.
- c. In addition to a 30 metre treed buffer separating the subject property from municipally-owned land to the north, a berm be constructed to provide further separation from the municipal water transmission main.

Respectfully submitted,



Eric Falkjar
Chair

Attachments

1 – Staff report and presentation



The City of Saint John

Date: May 17, 2019

To: Planning Advisory Committee

From: Growth & Community Planning
Growth & Community Development Services

For: **Meeting of Wednesday, May 22, 2019**

SUBJECT

Applicant: Hughes Surveys & Consultants Inc.

Owner: Thomas Construction Ltd.

Location: 1003 Latimore Lake Road

PID: Portions of PID Nos. 00333757 and 00331124

Plan Designation: Rural Resource

Existing Zoning: Rural (RU)

Proposed Zoning: Pit and Quarry (PQ)

Application Type: Rezoning and Temporary Approval

Jurisdiction: The *Community Planning Act* authorizes the Planning Advisory Committee to give its views to Common Council concerning proposed amendments to the Zoning By-law. Common Council will consider the Committee recommendation at a public hearing on **Monday, June 3, 2019**. The Zoning By-law also authorizes the Planning Advisory Committee to permit, for a temporary period of up to one year, a development otherwise prohibited by the By-law. The Committee can impose or modify conditions.

SUMMARY

The applicant has submitted a proposal to rezone 13 hectares of land located off 1003 Latimore Lake Road from Rural (RU) to Pit and Quarry (PQ). In July 2018, Common Council denied a rezoning application for a 21 hectare area. The Planning Advisory Committee granted temporary approval for aggregate extraction activities on a 1.5 hectare area in October 2018. Consistent with the previous 2018 rezoning application, staff recommend approval of the rezoning on the basis of the proposal meeting the standards set out in the *Zoning By-law* and policies of the *Municipal Plan*.

The applicant has also submitted an application to the Planning Advisory Committee to modify conditions and extend a deadline set for rehabilitation. The applicant has requested the deadline be extended to July 31, 2019 because of weather conditions. Staff are supportive of the extension. The property owner has indicated willingness to contract and pay for the work in advance as proof of intention to rehabilitate once weather permits.

RECOMMENDATION

1. That Common Council rezone a 13 hectare parcel of land located at 1003 Latimore Lake Road, also identified as a portion of PID No. 00331124 and a portion of PID No. 00333757, from Rural (RU) to Pit and Quarry (PQ).
2. That, pursuant to the provisions of Section 59 of the *Community Planning Act*, the use of the parcel of land with an area of 13 hectares, located at 1003 Latimore Lake Road, also identified as a portion of PID No. 00331124 and a portion of PID No. 00333757, be subject to the following conditions:
 - a. Site development not be undertaken except in accordance with a detailed site plan, which includes a phasing plan and method of excavation.
 - b. All access to the site be limited to the existing driveway access located at 1003 Latimore Lake Road (PID No. 00329409). No access to the site is to be permitted through Pipeline Road East or at any other location.
 - c. In addition to a 30 metre treed buffer separating the subject property from municipally-owned land to the north, a berm be constructed to provide further separation from the municipal water transmission main.
3. That the Planning Advisory Committee amend condition 3(b) of the temporary approval granted on October 2, 2018, thereby extending the deadline for rehabilitation from May 31, 2019 to July 31, 2019.

DECISION HISTORY

On October 2, 2018 the Planning Advisory Committee authorized the temporary approval of a 1.5 hectare area to enable aggregate extraction, subject to conditions.

On August 31, 2018 Common Council received and filed a report and denied a request to present by Thomas Construction Ltd. The report clarified on a number of points discussed at the July, 2018 public hearing, in particular, regarding excavation, permitting, and enforcement history. Furthermore, the report outlined planning options available to Thomas Construction Ltd, which included submitting a substantially different application and temporary approval application.

On July 30, 2018 Common Council held a public hearing for a rezoning application made on behalf of Thomas Construction Ltd. to expand an existing gravel pit operation at 1003 Latimore Lake Road and voted to deny the rezoning application.

On July 17, 2018 the Planning Advisory Committee considered a rezoning application by Thomas Construction and voted unanimously to recommend approval of the application to Common Council.

Prior to 2018, a number of approvals were made related to the rezoning of a long existing gravel pit to the Pit and Quarry (PQ) zone and granting setback variances.

ANALYSIS

Background

In 2018, a rezoning application for a 21 hectare area located off 1003 Latimore Lake Road was made on behalf of Thomas Construction Ltd. to expand an existing gravel pit. The application originated because of formal enforcement action in 2018 caused by unauthorized excavation of lands located closer to Latimore Lake Road that were not zoned Pit and Quarry (PQ). Staff was supportive of the rezoning application in order to remedy the situation and provide a legal and more appropriate location for excavation. The proposal was evaluated based on its capability of meeting the Pit and Quarry (PQ) zone standards and other land use related considerations. Staff also recommended a rehabilitation deadline of October 31, 2018 in the area where unauthorized excavation had occurred; however, this condition never came into effect.

Following denial of the application at public hearing on July 30th, 2018, staff advised Common Council and Thomas Construction Ltd. of additional procedural options available to the applicant under the *Zoning By-law*, including submission of a temporary approval application and/or submission of a “substantially different” rezoning application. On October 2, 2018, Thomas Construction obtained temporary approval from the Planning Advisory Committee for excavating a 1.5 hectare area, which provided the operator an interim measure to continue to operate and fulfill contracts. The authority to grant temporary approval is set out in the *Community Planning*

Act, and there are precedents outlined in the report dated September 28, 2018 to the Committee.

The temporary approval was granted on a number of conditions, among these that it “cease to be in effect should the area where unauthorized excavation occurred not be rehabilitated to the satisfaction of the Development Officer by May 31, 2019.” This deadline was intended to give enough time to hydro-seed the area should a fall seeding not be possible.

Proposal

The proposal is to expand an existing gravel pit by rezoning 13 hectares of land from Rural (RU) to Pit and Quarry (PQ) off 1003 Latimore Lake Road. The expansion would use the same haul road as an existing gravel pit that has been owned and operated by Thomas Construction Ltd. since the 1980s. The proposal is generally located in the same area as the previous rezoning application to the northeast of the existing gravel pit. Subsequent to the denial of the previous application, test pits were dug to isolate the excavation area to a smaller area where good material resided. As a result, the proposal is substantially smaller in area than the previous proposal. It is set back further from Latimore Lake Road and an area to the northwest has been removed.

Site and Neighbourhood

The subject area is located between Pipeline Road East and Latimore Lake Road in the City's east side. The subject area represents 13 hectares of land, with 9 hectares used for excavation and the remaining area representing the 30 metre buffer area. Should the operator receive the same demand for material as this past year, the rezoned area would provide for an estimated 5-10 years of material.

Within the subject property, 1.5 hectares has been excavated over the past year and is nearing exhaustion. The remainder of the property is largely forested and undisturbed. There is a major municipal water transmission line to the north and therefore a condition on maintaining a berm between the properties has been retained. The nearest residentially-zoned property lies approximately 350 metres to the east, north of Pipeline Road East. To the southeast, residential properties located off Eldersley Avenue are buffered by at least 350 metres of trees. These residences are further buffered by provincially-designated wetlands, which are located a suitable distance away from the subject property. The owner/operator shares a driveway access off Latimore Lake Road with an adjacent gravel pit operator. The subject area proposed for rezoning continues to represent a logical area of expansion given the distance maintained from any nearby residential use.

Municipal Plan and Rezoning

The subject property is designated Rural Resource Area under the *Municipal Plan* and zoned Rural (RU) under the *Zoning By-law*. Policy LU-96 of the Plan provides guidance for such types of rezoning applications and requires that applicants demonstrate compliance with all provisions of the Pit and Quarry (PQ) zone, which include the following:

Policy LU-96	
Criteria	Response
Compatibility with and/or minimal impact on existing adjacent land uses	Operations would have minimal impact as adjacent uses are vacant lands and the property is an appropriate distance from a residential land use.
An appropriate location and acceptable hours of operation	The proposal is appropriately located. The outlying area is vacant land and the gravel pit represents a longstanding use over the decades. Hours of operation are limited from 7:00 a.m. to 8:00 p.m. as per the (PQ) zone standards.
A stormwater management plan	The Zoning By-law requires a closed-loop storm drainage system be implemented by the owner/operator.
Incorporation of site development measures which will assist in the control of smoke, dust, odour, toxic materials, vibration and noise	As per (PQ) zone standards, these measures will be incorporated and detailed on site development plans prior to issuance of a development permit. The driveway of the haul road is paved beyond the required 30 metres.
Compliance with required setback, yard, and separation distances from existing roads or uses	The proposal meets the 30 metre setback from property lines, including Pipeline Road East and exceeds the 150 metre requirements for any adjacent residential-zoned lot. A variance was issued in 2001 to reduce the setback to nil on the property line to the west (Quality Concrete pit).
The provision of visual screening	As per (PQ) zone standards, the proposal will be required to adhere to the 30 metre treed buffer surrounding the site, as indicated on the site rehabilitation plan. In addition, a berm is required between Pipeline Road East and the excavation area.
Acceptable location for buildings and equipment	The proposal will make use of the existing gravel pit operation.
Inclusion of necessary safety and protective measures	The pit operator is required to adhere to the Workplace Safety Standards, as per the <i>Occupational Health and Safety Act</i> , for the operation of a gravel pit of this nature.
Acceptable location of entrances and exits, and the designation of acceptable hauling routes	The access would be provided through the same haul road as used for the existing gravel pit. Secure access is provided through a gated entrance.
Demonstrated compliance with signage and landscaping provisions	n/a
Measures to ensure future rehabilitation of the site	The operator is required to post a security for the 13 hectare site that will ensure the City is protected against default of the site rehabilitation requirements

outlined in the (PQ) zone.

Substantially Different Application

It is Council's prerogative to determine whether the proposal is substantially different than the 2018 rezoning application. Section 2.10c of the *Zoning By-law* states: "When an application has been received that seeks approval of a matter that has been denied within the immediately preceding 12 months, it will not be reconsidered unless the Council, the Committee, or the Development Officer, as the case may be, is of the opinion that it is substantially different from the previous application."

The term "substantially" is not defined in the *Zoning By-law* or *Community Planning Act* and therefore its definition is based upon the ordinary meaning. The concise Oxford Dictionary (9th Ed.) defines "substantial" as: "Of real importance, value, or validity (made a substantial contribution). b. Of large size or amount (awarded substantial damages). The proposal is to rezone a 13 hectare area, whereas the 2018 rezoning application sought to rezone a 21 hectare area. This represents a substantial difference in size of the subject area. Therefore, staff are of the view that under the circumstances this difference in size represents a substantially different application and consequently is appropriate for Council to consider. Furthermore, in terms of location, the proposal is set back even further from residences of Latimore Lake Road, adjacent wetlands, and represents a logical and appropriate area for expansion.

Temporary Approval

The owner has adhered to the conditions required by the Planning Advisory Committee and standards outlined in the Zoning By-law in the area granted for temporary approval in 2018. The applicant has noted in the proposal that wet weather and early onset of freezing temperatures in the fall of 2018 caused the hydro-seeding to be postponed. With the combination of spring weight restrictions and then onset of extremely wet conditions in early spring of 2019, the rehabilitation work was delayed. A site visit on April 29, 2019 confirmed ground conditions to be wet with water pooling at the base of the site's slopes. The owner has undertaken much of the sloping required and moved overburden onto the site in preparation for the hydro seeding. A second site visit on May 7, 2019 noted that conditions had not yet improved. The property owner has agreed to pay the contractor in advance and provide proof of all rehabilitation work to be done. It is not anticipated by the applicant that the rehabilitation work will occur until June 2019 once the ground has dried. It is important that conditions applied are followed through with; however, a level of flexibility is also required. Provided security that rehabilitation work will occur over the next two months, staff recommend approval of modification to the temporary approval conditions.

Conclusion

The gravel pit at 1003 Latimore Lake Road has sought means of expansion since 2018. Appropriate lands were identified at that time and were redefined further in this application. The

13 hectare area is capable of meeting all of Council's standards as set out in the Pit and Quarry (PQ) Zone. On this basis, staff recommend approval of the rezoning.

ALTERNATIVES AND OTHER CONSIDERATIONS

None recommended.

ENGAGEMENT

Public

In accordance with the Committee's Rules of Procedure, notification of the proposal was sent to landowners within 100 metres of the subject property on May 8, 2019. The public hearing for the rezoning was advertised on the City's website on May 10, 2019.

SIGNATURES AND CONTACT

Prepared:



Andrew Reid , MCIP, RPP
Planner

Reviewed:



Kenneth Melanson, BA, RPP, MCIP
Manager, Community Planning

Approved:



Jacqueline Hamilton, MURP, MCIP, RPP
Commissioner

Contact: Andrew Reid
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E-mail: andy.reid@saintjohn.ca
Project: 19-59

APPENDIX

Map 1: **Site Location**

Map 2: **Municipal Plan**

Map 3: **Zoning**

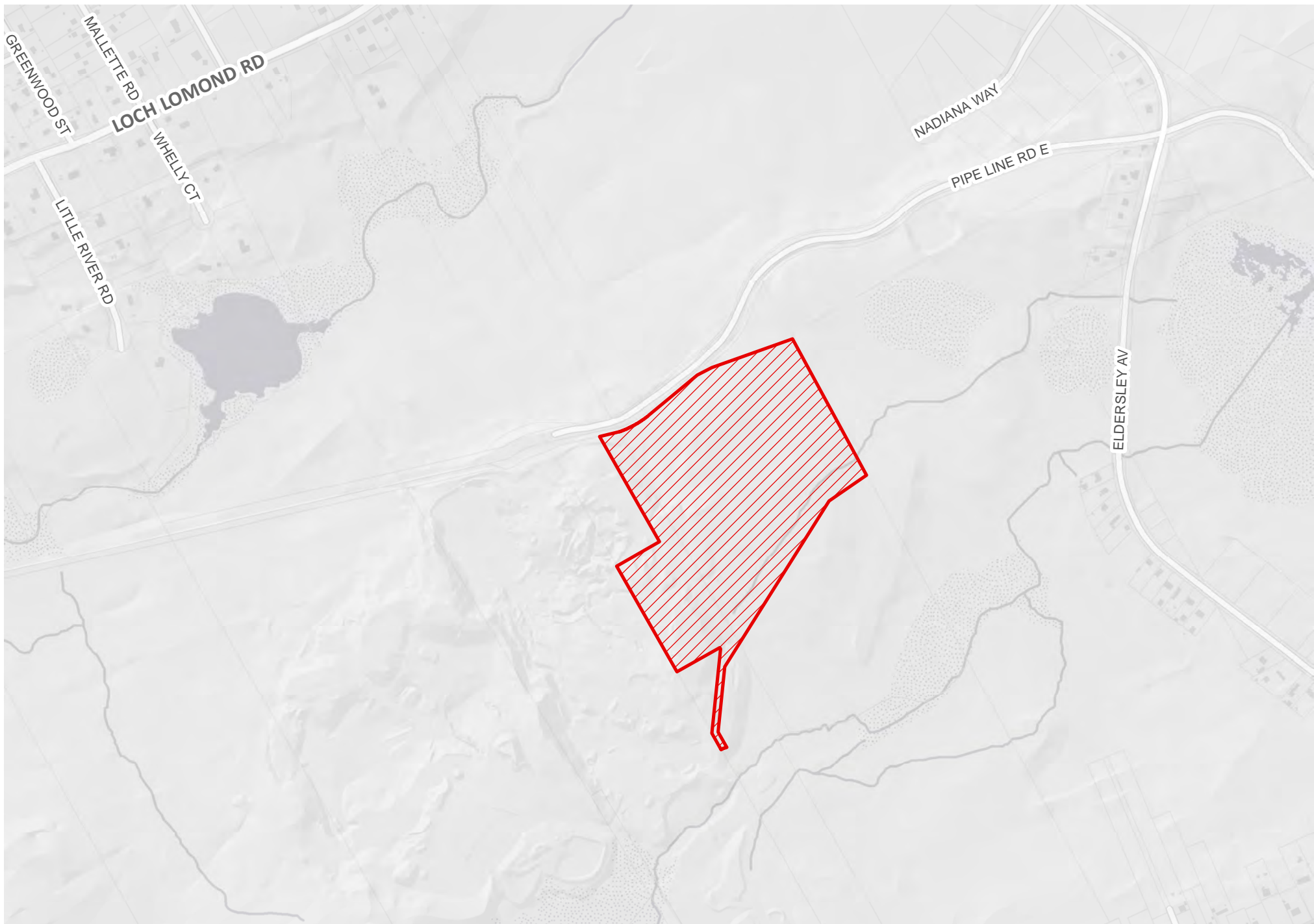
Map 4: **Aerial Photography – 2019 Rezoning Application**

Map 4B: **Aerial Photography – 2018 Rezoning Application**

Map 5: **Site Photography**

Map 6: **Aerial Photography – Area to be Rehabilitated**

Submission 1: **Site Plan – 13 hectares**



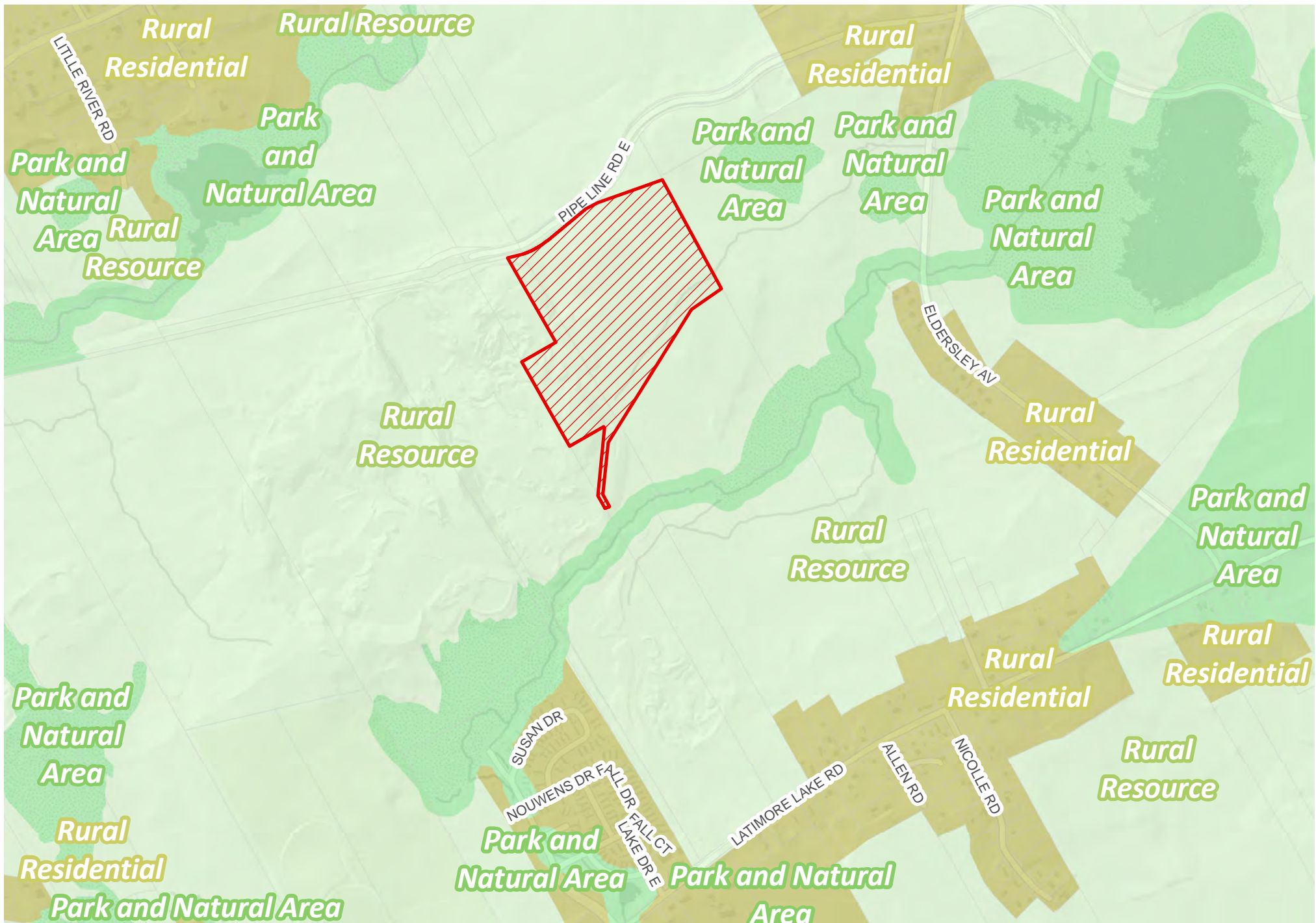
Map 1 - Site Location

Hughes Surveys Inc. (on behalf of Thomas Construction) - 1003 Latimore Lake Road

The City of Saint John
Date: April-23-19

0 200





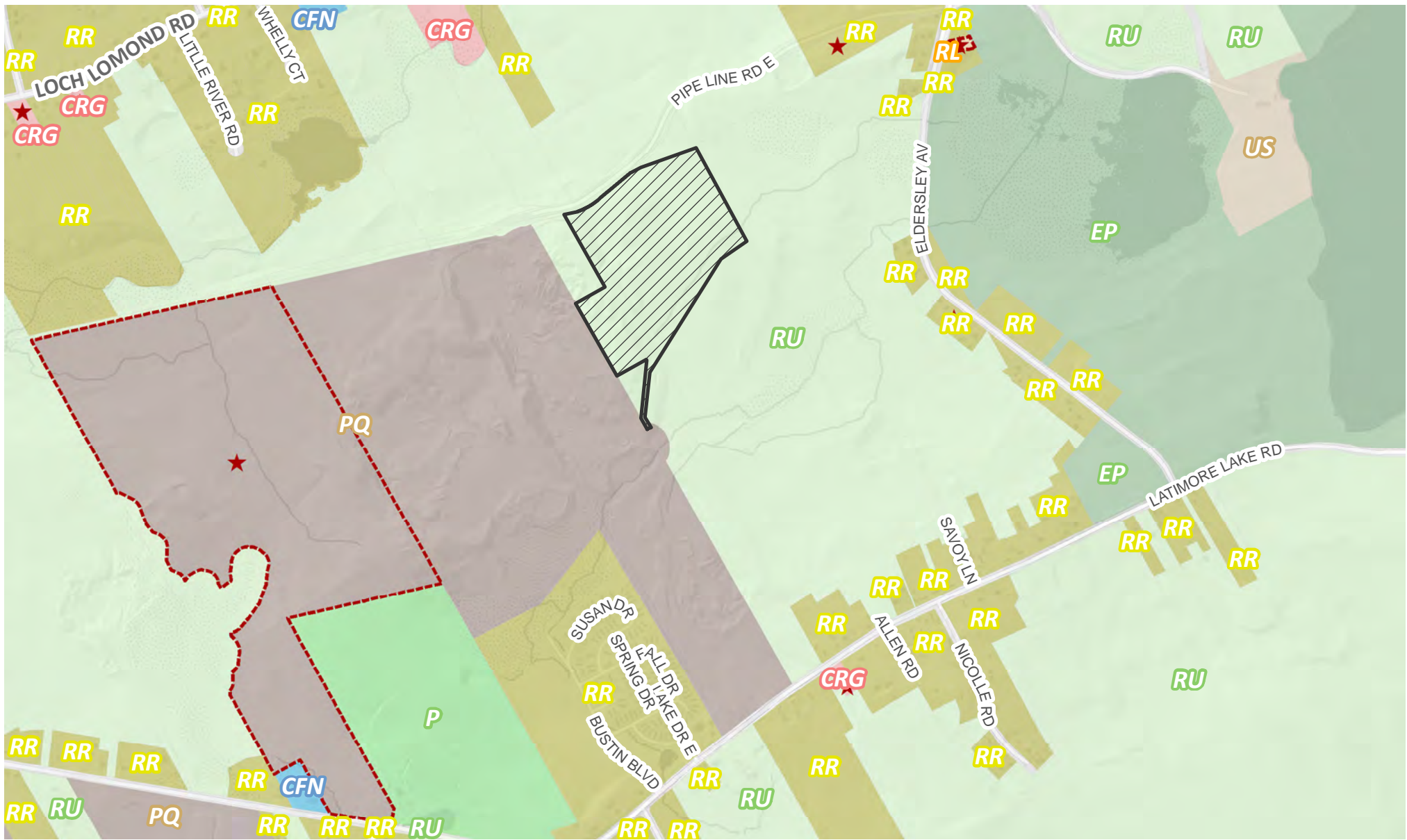
Map 2 - Future Land Use

Hughes Surveys Inc. (on behalf of Thomas Construction) - 1003 Latimore Lake Road

The City of Saint John
Date: April-23-19

0 250 m





- | | |
|--|---------------------------|
| (CFN) Neighbourhood Community Facility | (RL) Low-Rise Residential |
| (CRG) Rural General Commercial | (RU) Rural |
| (EP) Environmental Protection | (RR) Rural Residential |
| (P) Park | (US) Utility Service |
| (PQ) Pit & Quarry | |

★ Section 59 Conditions

Map 3 - Zoning

Hughes Surveys Inc. (on behalf of Thomas Construction) - 1003 Latimore Lake Road

The City of Saint John
Date: April-23-19

0 200 m





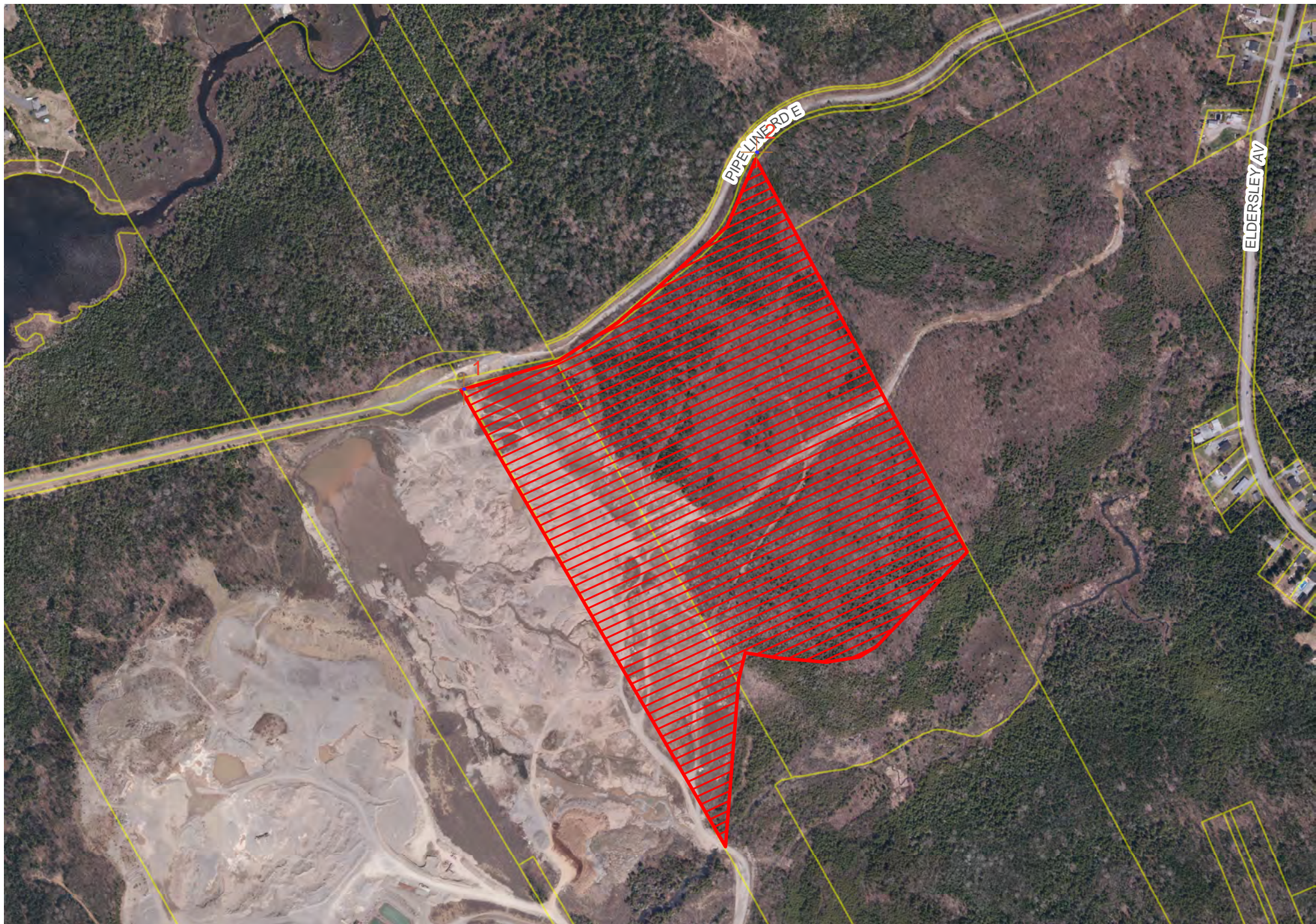
Map 4 - Aerial Photography

Hughes Surveys Inc. (on behalf of Thomas Construction) - 1003 Latimore Lake Road

The City of Saint John
Date: April-23-19

0 275 m





Map 4B- 2018 Rezoning Proposal

Hughes Surveys Ltd. for Thomas Construction

The City of Saint John
Date: July-03-18

0 150 m





Map 5 - Area to be Rehabilitated

Hughes Surveys Inc. on behalf of Thomas Construction

The City of Saint John
Date: May-14-19

0 50 m





1.5 Hectare Temporary Approval Site - at center of 13 Hectare Area proposed for Rezoning



April 29 Site Visit - Area to be Rehabilitated

Site Photography

Hughes Surveys Inc. (on behalf of Thomas Construction) - 1003 Latimore Lake Road

The City of Saint John
Date: May-03-19



