



## REQUEST FOR BOARD ACTION

ITEM NO. 21.

**DATE OF MEETING:** August 19, 2013

**REQUESTED BY:** Ed McCarthy, Planner II, Planning & Community Development

**SHORT TITLE:** Resolution Authorizing Approval of a Special Use Permit (SUP) for the Operation of a Private Recreation Club, Including a Pheasant Shooting Tower.

**BACKGROUND:** Burney Wing and Gun Club, applicant, on behalf of John J Burney, owner, is requesting approval of a Special Use Permit for the use of a private recreation club, including a pheasant tower, which stands approximately sixty feet (60') tall. The property is located on the western side of Old Maple Hill Road, approximately 1,600 feet north of the intersection of Shaw Highway and Old Maple Hill Road. The property may be identified as Pender County PIN 3361-13-7426-0000. The property is zoned RA, Rural Agricultural, and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses, All Other Amusement and Recreation Industries are permitted via Special Use Permit in the RA zoning district.

**SPECIFIC ACTION REQUESTED:** To hold a public hearing and consider the approval of a Special Use Permit for the operation of a private recreation club, including a pheasant shooting tower.

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that:

the Board hereby (approved, modified, denied) a special use permit for the operation of a private recreation club, including a pheasant shooting tower as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Brown \_\_\_ McCoy \_\_\_ Tate \_\_\_ Ward \_\_\_ Williams \_\_\_

\_\_\_\_\_  
George R. Brown, Chairman      8/19/2013  
Date

\_\_\_\_\_  
ATTEST      8/19/2013  
DATE

## PLANNING STAFF REPORT

### Special Use Permit

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#### SUMMARY:

**Hearing Date:** August 19, 2013

**Applicant:** Burney Wing and Gun Club

**Property Owner:** John J Burney

**Case Number:** 10987

**Land Use Proposed:** The applicant is requesting the approval of a Special Use Permit (SUP) for the use of a private recreation club, including a pheasant tower, which stands approximately sixty feet (60') tall.

**Property Record Number and Location:** The property is located on the western side of Old Maple Hill Road approximately 1,600 feet north of the intersection of Shaw Highway and Old Maple Hill Road. The property may be identified as Pender County PIN 3361-13-7426-0000. There is one tract associated with this request totaling approximately 247.61 acres.

**Zoning District of Property:** The property is currently zoned RA, Rural Agricultural, and All Other Amusement and Recreation Industries are permitted via Special Use Permit in the RA zoning district.

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#### PROJECT DESCRIPTION:

Burney Wing and Gun Club, applicant, on behalf of John J Burney, owner, is requesting approval of a Special Use Permit for the use of a private recreation club, to include hunting, skeet shooting and a pheasant shooting tower, which stands approximately sixty feet (60') tall. The property is located on the western side of Old Maple Hill Road approximately 1,600 feet north of the intersection of Shaw Highway and Old Maple Hill Road. The property may be identified as Pender County PIN 3361-13-7426-0000. The property is zoned RA, Rural Agricultural, and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses, All Other Amusement and Recreation Industries are permitted via Special Use Permit in the RA zoning district.

According to the applicant's submitted documents, the site will be used as a private club operation, with available activities to include (dove, deer, duck and turkey) hunting, a pheasant shooting tower and two skeet shooting ranges. In addition, the applicant intends to remodel the existing farm house into a clubhouse and bring the existing pheasant tower into compliance, as it was constructed without approvals from the Planning and Community Development Department.

The subject parcel is approximately 247.61 acres in area and has a single family structure located near the center of the parcel. The pheasant tower is located near the eastern quarter quadrant of the tract in question, approximately 2,000 ft from the single family structure located on site. According to the applicant, "Pheasant Tower- Starts Oct and runs to March with two tower shoots a month for a total of 12 throws. Usually starts around 2:00 pm, shooting for around an hour a shoot and then serve oysters and cook the pheasants killed along with a social gathering around the outside fire pit." This particular area is bordered by a significant amount of vegetation, as shown on the 2012 aerials. The pheasant shooting tower is the only activity on site allowed for non-member use. One must be a private club member in order to participate in any of the other activities (deer, turkey, dove hunting, skeet shooting etc.), detailed below.

The two (2) skeet shooting ranges are located near the center of the property and are open from September through February. The hours of operation run from approximately 9:00 a.m.-11a.m. and 3:00 p.m.-6:00 p.m, and generally on Saturdays and Sundays.

According to the applicant, the hunting activities are as follows:

1. Dove Hunting: Would begin September 1<sup>st</sup> and would continue every Saturday through the end of first season; which is customarily the first Saturday in October. The dove hunting area is shown on the provided site plan
2. Deer Hunting: Starts in middle of October till January 1st.
3. Still Hunting: Would be available only on Tuesdays, Thursdays and Saturdays, mainly during the afternoon in marked deer stands.
4. Duck Hunting: Would begin the 2<sup>nd</sup> Saturday in November and continue through the end of January. Hunting time would be Saturday mornings located around the duck impoundment.
5. Turkey Hunting: Is available in April on the entire tract. Hunting days would be on Wednesday and Saturdays.

The property houses six (6) deer stands, with the closest stand located approximately 500' from the nearest residential property line. To date, there are 22 club members and no paid employees, however, the applicant may hire maintenance staff at a later date.

Prior to the issuance of final zoning approval, a site development plan must be submitted and approved in accordance with applicable provisions of the Pender County Unified Development Ordinance. In addition, all other applicable permits and approvals must be obtained including inspections and health department regulation compliance.

Use Type	Ref NAICS	Zoning Districts									
		RA	RP	RM	MH	PD	GB	OI	IT	GI	EC
<b>MISCELLANEOUS USES</b>											
All Other Amusement & Recreation Industries	71399	S				P	P		P		

**EVALUATION:**

- A. **Public Notifications:** Advertisements for the proposal have been placed in the *Pender-Topsail Post & Voice*. Adjacent property owners were notified by first class mail.
- B. **Basis for Granting SUP:** See attachment A for approval procedures (§3.12.3 of Unified Development Ordinance) and revocation procedures (§3.12.4 of Unified Development Ordinance).
- C. **Unified Development Ordinance Compliance:** The property is currently zoned RA, Rural Agricultural, All Other Amusement & Recreation Industries are permitted in the RA zoning district by Special Use Permit, as prescribed by the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses.
- D. **2010 Comprehensive Land Use Plan Compliance:** The subject property is classified as Conservation in the *2010 Comprehensive Land Use Plan*. The Conservation land use classification designates areas that are owned in fee simple or have protective easements. These areas represent areas of special significance and unique characteristics that make them worthy of preservation. Current conservation areas are typically owned by Federal or State agencies or private conservation groups and are often designated as Areas of Environmental Concerns (AECs).

Currently, conservation areas comprise approximately 131,393 acres (24.7%) of the land area within the Pender County zoning jurisdiction.

E. The SUP request may be supported by the following within the *2010 Comprehensive Land Use Plan*:

- **Policy 10A.1.7** – *Protection enhance and encourage a high quality of life, including the conservation and management of natural and man-made resources as an effective component of an economic development diversification strategy.*
- **Policy 10A.1.8** – *The County shall seek to foster a travel and tourism (including ecotourism) industry that is compatible with a high quality of life- as a means to facilitate diversification in the local economy.*

F. **Existing Land Use in Area:** The properties to the north and northeast are primarily wooded conservation tracts. The land to the west and southwest include heavily wooded gameland tracts owned by the State of North Carolina. The parcels to the south and southeast include two heavily wooded tracts with a single residential home and a trailer on each parcel, respectively.

G. **Site Access Conditions:** The proposed use lies on a tract adjacent to Shaw Hwy and Maple Hill School Road.

H. **Conditions To Consider In Issuing the Special Use Permit For This Project:**

1. The project shall comply with all requirements of the Pender County Unified Development Ordinance.
2. Unless approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void, if a final zoning permit has not been issued for the project within 12 months.
3. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
4. The applicant shall meet all other local, state and federal regulations.
5. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.
6. Approval for the use and location of the Pheasant Tower shall be contingent upon an approved height variance for said tower.

## **Attachment A**

### **3.12.3 Procedures for Reviewing Applications**

- A. The special uses, as specified in the various districts, may be established only after review and approval by the Board of Commissioners.
- B. The Board of County Commissioners, acting in a quasi-judicial manner and setting, shall hear evidence from the applicant and any interested members of the public.
- C. The Board of Commissioners shall hold a public hearing on the application for a Special Use Permit within sixty (60) days after the completed application is filed.
- D. The Administrator shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing.
- E. All Special Use Permit applications must be presented to the Administrator for a determination of completeness.
- F. An appeal from a completeness determination may be made to the Board of Adjustment within twenty (20) days of the determination.

- G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:
1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;
  2. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;
  3. The proposed use shall not constitute a nuisance or hazard;
  4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;
  5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;
  6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;
  7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and
  8. The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

#### **3.12.4 General Provisions Concerning Special Use Permits**

A. Compliance With Other Codes - Granting of a Special Use Permit does not exempt the applicant from complying with all of the requirements of building codes and other Ordinances.

B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the provisions of this Ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified. After a public hearing has been held, the Board of Commissioners may revoke the Special Use Permit upon finding any of the following:

- 1) That the approval was obtained by fraud.
- 2) That the use for which such approval was granted is not being executed.
- 3) That the use for which such approval was granted has ceased to exist or has been suspended for one year.
- 4) That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.
- 5) That the permit granted is in violation of an Ordinance or Statute.
- 6) That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

C. Expiration - Unless a request for additional time is granted or approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void if final Zoning Approval has not been issued for the project within 24 months after the Notice of Approval of the Special Use Permit has been served on the applicant. The Administrator may provide one extension of the expiration date by no more than 6 months, for complex projects requiring major state or federal permits, upon receipt of a written request for such extension by the applicant detailing the reasons for delay in completion of the requirements for the Zoning Approval.

D. Duration of Special Use - Any conditions imposed on a special use authorized and exercised shall be perpetually binding upon the property unless expressly limited by the Pender County UDO 3-28 Article 3 – Review Procedures Special Use Permit or subsequently changed or amended by the Board of Commissioners after application to the Board of Commissioners and a public hearing.

E. Conditions and Guarantees - Prior to the granting of any special use, the Board of Commissioners may stipulate such conditions and restrictions upon the establishment, location, or construction, maintenance, and operation of the special use as it deems necessary for the protection of the public and to secure compliance with the standards and requirements specified in this Ordinance. In all cases in which special uses are granted, the Board of Commissioners shall require such evidence and guarantees as it may deem necessary to assure that conditions stipulated in connection therewith are being and will be complied with.

1) Such conditions may include a time limitation.

2) Conditions may be imposed which require that one or more things be done before the use requested can be initiated. For example, "that a solid board fence be erected around the site to a height of six (6) feet before the use requested is initiated".

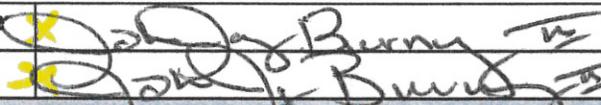
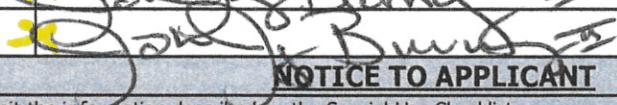
3) Conditions of a continuing nature may be imposed. For example, "exterior loud speakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m."

F. Filing of Special Use - The Administrator shall file the approved or disapproved application forms with the decision of the Board of Commissioners.

G. Appeals from the Board of Commissioners - Appeals to the Superior Court may be taken by any person, firm, or corporation aggrieved, or by any officer, department, board of the county affected by any decision of the Board of Commissioners, provided such appeals shall be taken within thirty (30) days after the decision of the Board of Commissioners is filed in the office of the Administrator, or after a written copy thereof is delivered to the applicant, whichever is later. The decision of the Board of Commissioners shall be delivered to the applicant by certified mail, return receipt requested.

H. Revisions - Major revisions to a Special Use Permit must be submitted to the Board of Commissioners. All legal notice and application fee requirements must be met for major revisions. Revisions that are considered minor revisions to an approved Special Use Permit may be reviewed and approved by the Administrator after basic submission requirements have been completed. All revisions approved by the Administrator must meet the original conditions of the permit as approved by the County Commissioners and current provisions of the Zoning Ordinance. The addition of an accessory structure less than 1000 sq. ft., addition of parking or other ancillary facilities or uses or the addition of similar product lines are examples of revisions that may be considered minor revisions.

## APPLICATION FOR SPECIAL USE PERMIT

THIS SECTION FOR OFFICE USE			
Application No.	SUP 10987	Date	6/28/13
Application Fee	\$ 300	Receipt No.	
Pre-Application Conference	5-31-13	Hearing Date	8-19-13
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	Burney Wing and Gun Club	Owner's Name:	John J Burney III
Applicant's Address:	11870 Shaw Highway	Owner's Address:	2144 Echo Lane
City, State, & Zip	Burgaw, NC 28425	City, State, & Zip	Wilmington, NC 28403
Phone Number:	910-471-9436	Phone Number:	910-471-9436
Legal relationship of applicant to land owner: Tenant			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	3361-13-7426-0000	Total property acreage:	247.61 acres
Zoning Classification:	RA, Rural Agricultural	Acreage to be disturbed:	0.009 acres/400 sq. ft.
Project Address :	11870 Shaw Highway, Burgaw, NC 28425		NAICS Code: 71399
Description of Project Location:	Off Shaw Highway		
Describe activities to be undertaken on project site:	Operation of a private recreation club including a pheasant shooting tower		
	NAICS 713990		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature			Date: 6-27-13
Owner's Signature			Date: 6-27-13
<b>NOTICE TO APPLICANT</b>			
<ol style="list-style-type: none"> <li>1. Applicant must also submit the information described on the Special Use Checklist.</li> <li>2. Applicant or agent authorized in writing must attend the public hearing.</li> <li>3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing.</li> <li>4. Applicant may wish to review the required findings for approval of a Special Use Permit found on page 1 of this application</li> <li>5. <b>Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing.</b></li> </ol>			

My name is John Jay Burney III. I own a farm that consist of approximately 250 acres between Shaw Highway and the Old Mable Hill Road in Pender Co. Access to property is with one entrance off Shaw Hwy. and one entrance of Old Maple Hill. We have been using this farm for hunting since 1969. My father John Jay Burney, Jr., started putting together the tracts of land in 1967. We cleared, rooted and plowed a 50 acre field till it was clean enough to plant and started a dove field. We thinned timber and built food plots and deer stands. My father used the farm to take clients and friends hunting. He was an Attorney in Wilmington. In 1990 we put the total acreage into The NC Coastal Land Trust to protect it and ensure that it would remain just for hunting and outdoor activities. In 1995 I formed an informal club just to pay operation cost. I then flooded part of the corn field and built a duck impoundment. There are 20 members just like a regular deer hunting club that help pay overhead and expenses. I then built a skeet range for extra activities and gatherings. In 2011 I applied to NC Wildlife Commission and obtained a control shooting preserve license. Then we built a Pheasant tower to release pheasant and conduct controlled tower shoots. I inadvertently built the tower and got controlled shooting preserve license without checking zoning requirements with the idea I was legal due to NC wildlife and Holly Shelter game lands are bordering the farm. I built the tower with the thinking it fell under farm structures which are exempt from building permits. I did not try to hide or disguise the structure. I didn't understand I was violating any rules. And I apologize for that.

All activities that will be conducted will be regular hunting (dove, deer, ducks, and turkeys) during legal hunting seasons and hours. This will not be a commercial operation per say. The farm will be used to release pheasants for club members and their quest. We hope to release quail for club members in a few years. We have work to do to prepare woods for quail hunting. It is my intentions to operate this as a private club operation. There are no paid employees at this time. However it is my intention to hire a grounds person to keep grass mowed and general maintenance. Most likely a part time position.

Only construction planned is to build a new bunk house (permit has been obtain) and remodel old farm house into club house.

The only utilities that serve the property are Four Co.

The only permits that are valid at this time are the controlled shooting license.

There should not be any potential impacts on the surrounding area due to the fact that Holly Shelter game lands is public hunting land and all adjoining property owners use their land for hunting now. We will not be increasing traffic or noise. The positive side is we provide a place for hunters and their families to go where it is controlled , clean and safe.

The pheasant tower built on my farm is on four 60 foot telephone poles with a platform built at top. A box 8 X 8 is constructed on platform. Four or five sections of steps are built to walk up to top. A pulling system is engineered to carrying the crates of birds to a trap door built in floor. The tower was constructed to release pheasant for a controlled pheasant shoot for club members and their quest. The structure does not have any utilities hooked up or involved in operation. There are four security cables fascine on all four corners. The poles are augured in ground 10 feet.



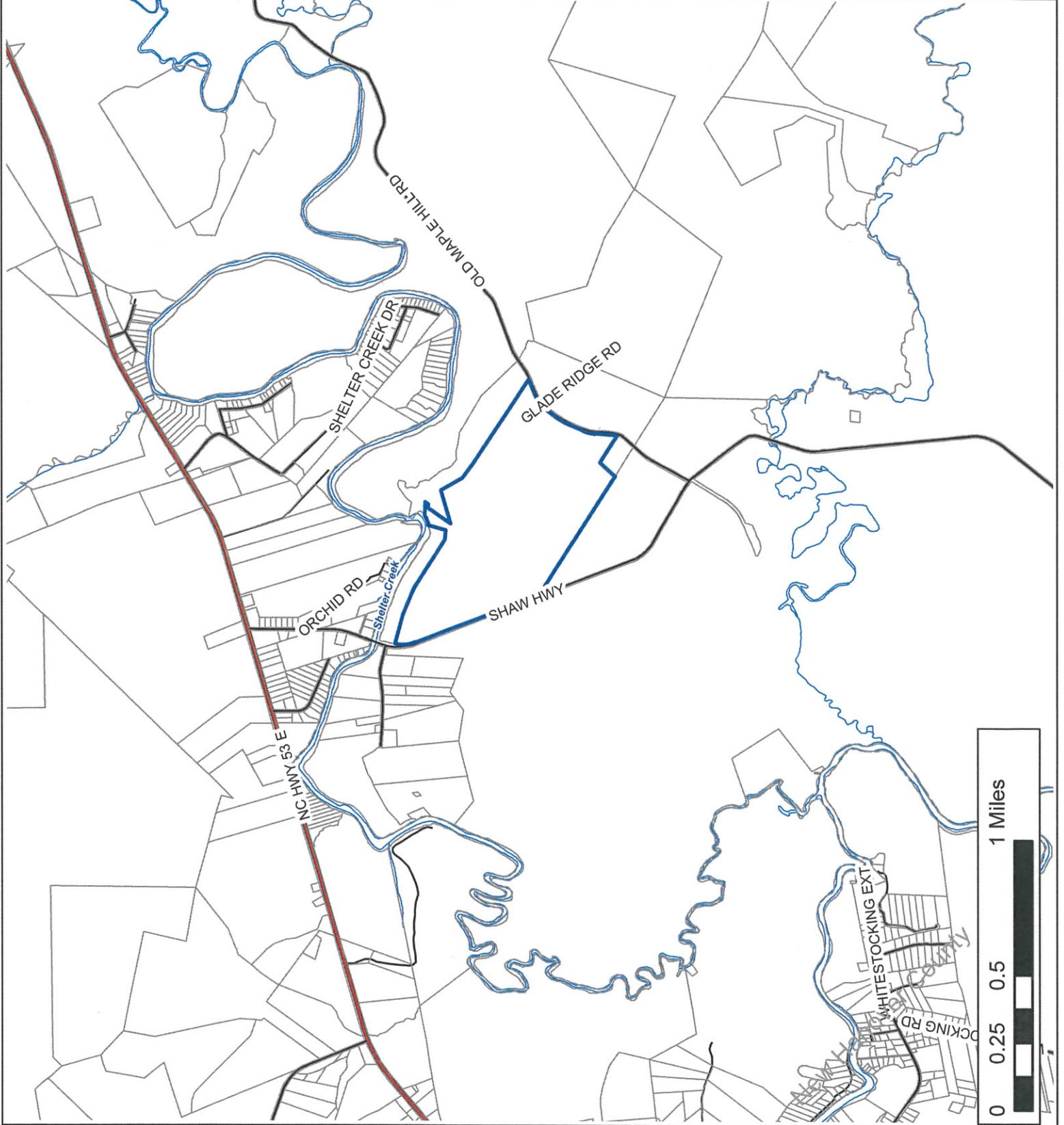
**Applicant:**  
Burney Wing  
and Gun Club

**Owner:**  
John J Burney III

**Special Use  
Permit  
# 10987**



**VICINITY**





**Applicant:**  
**Burney Wing**  
**and Gun Club**

**Owner:**  
**John J Burney III**

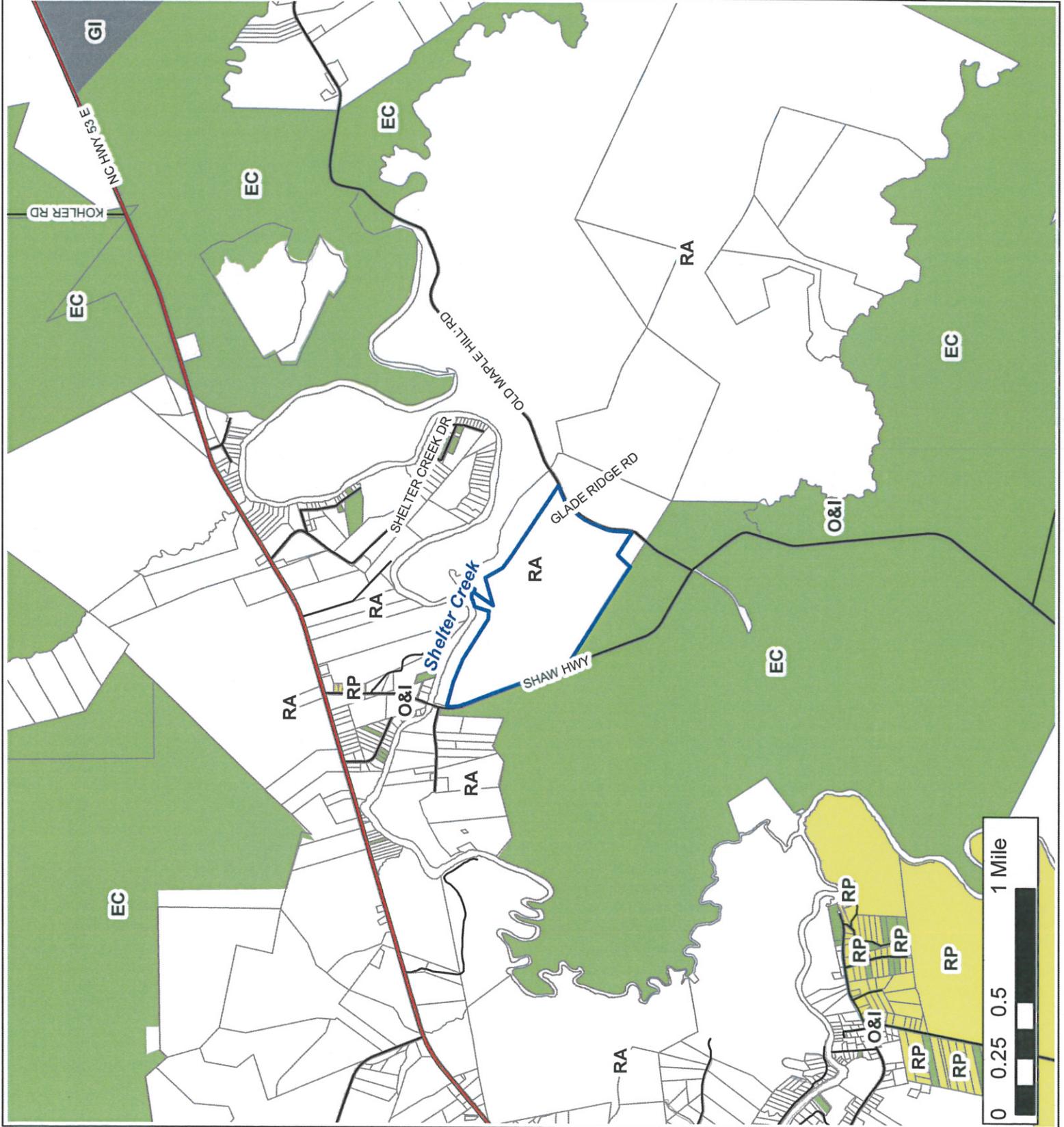
**Special Use**  
**Permit**  
**# 10987**

**Zoning Classification**

- General Business (GB)
- General Industrial (GI)
- Industrial Transition (IT)
- Office & Institutional (OI)
- Rural Agricultural (RA)
- Planned Development (PD)
- Residential Performance (RP)
- Environmental Conservation (EC)
- Incorporated Areas (INCORP)
- Manufactured Home Park (MH)
- Residential Mixed (MF)



**ZONING**





**Applicant:**  
Burney Wing  
and Gun Club

**Owner:**  
John J Burney III

**Special Use  
Permit  
# 10987**

- 2010 Land Use Classification**
- Conservation
  - Industrial
  - Mixed Use
  - Office, Institutional, Business
  - Rural Growth
  - Suburban Growth



# LAND USE CLASSIFICATION





**Applicant:**  
Burney Wing  
and Gun Club

**Owner:**  
John J Burney III

**SUP:**  
# 10987



**2012 AERIAL**



