



**STAFF REPORT**  
**PB 22-13 ASHBROOK ESTATES**  
**REZONING**  
**BOARD OF COMMISSIONERS**  
**JANUARY 17, 2023**

**APPLICATION SUMMARY**

<b>Property Owners:</b> Ashbrook Estates LLC PO Box 85 Moyock NC 27958	<b>Applicant:</b> Ashbrook Estates LLC PO Box 85 Moyock NC 27958
<b>Case Number:</b> PB 22-13	<b>Application Type:</b> Zoning Map Amendment
<b>Parcel Identification Number:</b> 0052-000-0012-0000	<b>Existing Use:</b> Cultivated farmland
<b>Imagine Currituck Classification:</b> O-2 (Reserved Lands)	<b>Parcel Size (Acres):</b> 130.73 (Application)
<b>Small Area Plan:</b> Maple-Barco	
<b>Current Zoning:</b> Agricultural (AG)	<b>Zoning History:</b> A-40 (1974); A (1989); AG (2013)
<b>Request:</b> Request for a conventional (not conditional) rezoning	<b>Proposed Zoning:</b> MXR
<b>Overlay:</b> Airport Overlay District	

**REQUEST**

**Narrative**

The applicant is requesting a conventional rezoning of approximately 130 acres from Agricultural (AG) to Mixed Residential (MXR). The applicant is submitting the application to be allowed to develop the property with all specific uses that are allowed in the MXR zoning districts.

A list of all uses allowed in MXR zoning districts is included at the end of this report for reference.

**Community Meeting**

A community meeting was held June 29, 2022, at the COA Maple Campus. There were four people in attendance. Most questions were concerning density and drainage. Other topics included minimum one acre lot size preferences, water pressure, undersized culverts under Maple Road, traffic concerns, infrastructure capacity, and school capacity.

SURROUNDING PARCELS		
	Land Use	Zoning
North	Low Density Single Family Dwellings, Vacant Wetlands	AG
South	County Water Plant	AG
East	Low Density Single Family Dwellings, NCDOT Yard	AG
West	Vacant Wetlands	AG

## LAND USE PLAN

Imagine Currituck classifies this property as O-2 Reserved Lands. The O-2 classification is comprised of wetlands, environmentally sensitive areas, significant natural heritage areas, sensitive habitat areas, and prime agricultural lands that should be targeted for conservation or farmland preservation. The O-2 classification also allows for limited development of low-density single family residential. This area should not be targeted for public or private water and sewer infrastructure or other growth inducing activities. Appropriate Land Uses and Development Types: County parks, public water access, and related amenities; greenways; forestry; cultivated farmland and accessory agricultural structures; low-density single family rural residential that prioritizes preservation of open space and natural landscapes.

Since this is a conventional rezoning and a plan is not required as is with a conditional rezoning, it is not possible to determine if the following policies relevant to the zoning map amendment request are being met:

<b>INFRASTRUCTURE AND COUNTY SERVICES</b>	<p><b>GOAL AND POLICY 1:</b> Ensure sufficient provision of services to support associated growth and development and continue to enforce the adequate public facilities ordinance.</p> <p><b>GOAL 8:</b> Ensure that all public services remain at sufficient level to provide superior service to the growing population.</p>
<b>TRANSPORTATION</b>	<p><b>GOAL AND POLICY 1:</b> Improve safety, traffic flow, access, and appearance of major highways and roads.</p>
<b>ENVIRONMENT</b>	<p><b>GOAL AND POLICY 1:</b> Preserve and protect the county's environmentally significant and sensitive lands and surrounding areas.</p> <p><b>GOAL AND POLICY 2:</b> Ensure the protection and preservation of prime agricultural lands to the extent possible.</p> <p><b>GOAL AND POLICY 3.1:</b> Preserve riparian buffers along canals, wetlands, sounds, rivers, and the Atlantic Ocean.</p>

## MAPLE-BARCO SMALL AREA PLAN

The Maple-Barco Small Area Plan designates this property as Conservation, Rural, and Transitional. The purpose of the Maple-Barco Small Area Plan is to balance growth and economic expansion with the integrity and character of the existing community. This includes taking into account the growth of the airport facility, protecting county resources such as drinking water, preserving the agrarian heritage of the area, and maintaining a high quality of life for current and future residents.

Since this is a conventional rezoning and a plan is not required as is with a conditional rezoning, it is not possible to determine if the following policies relevant to the zoning map amendment request are being met:

LU1	Provide for very low density development in close proximity to the airport facility and in designated approach zones. Additionally, promote an appropriate mix of development types in the Maple/Barco area.
LU3	Encourage and allow neighborhood serving commercial in the 158/168 area.
LU4	Encourage and allow small, locally, owned businesses to locate in the area.
LU5	Preserve and promote agricultural related operations/businesses in the airport approach zones, along Maple Road, and 168.
LU6	Encourage buffers for uses that are developing adjacent to environmentally sensitive areas.
LU9	Evaluate development proposals using the future land use map and policies for the Maple-Barco study area to determine the desired density, character of growth, and level of services appropriate for the study area.
TR4	Integrate infrastructure into new developments that promote multimodal transportation interconnecting employment centers, businesses, and neighborhoods.
EN2	Stormwater should be treated prior to entering environmentally sensitive areas including but not limited to wetlands, canals, creeks, swamps, and the Currituck Sound.
EN3	In approving development within the study area, water quality and ground water recharge should be of the utmost importance.
CH2	Preserve open space, agricultural lands, and waterfront view sheds within the study area.
CH4	Preserve and encourage use of local architectural vernacular (homestead) that promotes and enhances compatible development.
SD1	Explore ways to encourage and incentivize the use of sustainable development techniques in commercial/industrial development.

## **AIRPORT OVERLAY DISTRICT**

The purpose of the Airport Overlay District is to protect and preserve the Currituck County Regional Airport and surrounding land from incompatible land uses and to:

- (1) Protect and promote the general health, safety, welfare, and economy of the airport area;
- (2) Promote and encourage aviation related industries and compatible nonresidential uses to locate in close proximity to the airport;
- (3) Protect the character and stability of existing land uses in the vicinity of the airport;
- (4) Promote interconnectivity among parcels that encourages the use of multimodal transportation and creates an integrated transportation network;
- (5) Preserve natural resources that may be affected by harmful land uses or airport operations;
- (6) Promote sustainable development patterns that are consistent with the Maple-Barco Small Area Plan and Airport Layout Plan Update.

This property is in Airport Overlay District Compatibility Use Zone 3. Zone 3 allows subdivisions of land for residential purpose subject to the maximum gross density requirements of the base zoning district (Current zoning - AG = 1 unit/3 acres) and that the allowable uses be limited to those permitted in the base zoning district.

Since this is a conventional rezoning and a plan is not required as is with a conditional rezoning, it is not possible to determine if the above purposes of the Airport Overlay District are being met.

## **UDO**

In North Carolina, it is illegal to impose conditions on rezonings to conventional zoning districts; therefore, this conventional zoning map amendment is a legislative decision of the Board of Commissioners and is not controlled by any one factor.

For reference, Section 2.4.3.C of the UDO advises that an amendment to the Official Zoning Map is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a proposed map amendment, the Board of Commissioners may weigh the relevance of and consider whether and the extent to which the proposed amendment:

1. Is consistent with the goals, objectives, and policies of the Land Use Plan, other applicable county-adopted plans, and the purposes of this Ordinance;
2. Is in conflict with any provision of this Ordinance, or the County Code of Ordinances;
3. Is required by changed conditions;
4. Addresses a demonstrated community need;
5. Is compatible with existing and proposed uses surrounding the land subject to the application, and is the appropriate zoning district and uses for the land;
6. Adversely impacts nearby lands;
7. Would result in a logical and orderly development pattern;

8. Would result in significant adverse impacts on the natural environment— including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment;
9. Would result in development that is adequately served by public facilities (e.g., streets, potable water, sewerage, stormwater management, solid waste collection and disposal, schools, parks, police, and fire and emergency medical facilities);
10. Would not result in significantly adverse impacts on the land values in the surrounding area; and,
11. Would not conflict with the public interest, and is in harmony with the purposes and intent of this Ordinance.

## RECOMMENDATION

### PLANNING STAFF

Beginning in 2007, conditional zoning has been a tool to help guide development to align with the community values and character recognized in officially adopted plans. Conditional zoning applications are generally preferred because it allows the applicant to impose conditions or restrictions to the property that are mutually agreed upon by the Board to more appropriately address the impacts expected to be generated by the development. It provides predictability in the rezoning application to ensure that the development and use will conform to the county's adopted plans including the Imagine Currituck goals and policies listed above. This request does not allow for conditions to be placed that would ensure that the result of development of these parcels will be compatible development.

A conventional rezoning application is only required to meet the minimum standards of the UDO. The purpose of the Mixed Residential (MXR) zoning district is to accommodate a wide variety of residential use types at moderate densities as well as very low intensity neighborhood-serving commercial, personal service, and institutional uses outside of community and village centers on the mainland and the outer banks. The district is intended to provide moderate-cost housing options for county residents within well-designed neighborhoods and developments that incorporate open space resources and may also include limited nonresidential uses proximate to housing. The district accommodates all forms of residential development, including detached dwellings, apartments, townhouses, manufactured homes on individual lots (only on the mainland), accessory dwelling units, and live/work developments. The district also accommodates offices, neighborhood-oriented personal service uses, and retail uses (subject to maximum tenant size limits). In addition, the district allows neighborhood-supporting institutional uses like parks, marinas, religious institutions, schools, recreational facilities, and utilities. Development in the MXR district is subject to various design standards, including community compatibility standards applied to multi-family and nonresidential uses proposed adjacent to existing single-family dwellings.

The conditional zoning process can tailor a permitted use in such a way as to accommodate the property owner's interest, community values, and neighborhood character. It can also address impacts that may be associated with the particular property and intended land use. Since the adoption of the 2013 UDO, conventional rezoning approvals included properties that are downzoned to a less intense zoning district, properties that contain bifurcated districts, and one property adjoining the same district on all sides.

In order to subdivide any lot below three acres, the BOC must first approve an amendment to Imagine Currituck's O-2 classification to a classification suitable to whatever plan density the applicant has in mind. This conventional rezoning request results in a substantial density increase for the property. Assumptions below approximate maximum lot count comparison calculations:

- Approval by the BOC of amendment to Imagine Currituck LUP FLUM classification from O-2 to a classification suitable for the proposed development.
- 130.73 acres
- 10% acreage reduction to account for infrastructure (13.07 ac)
- Roughly 18 acres of wetlands based on soils map at the rear of the property
- Suitable soils for septic systems
- NOTE: These numbers are merely rough estimates as true lot counts can only be rendered by a design professional with all known factors provided in a master plan.

<b>AG (Existing)</b>		
<b>Traditional Development Conservation Subdivision</b>		
<b>Single Family</b>	<ul style="list-style-type: none"> <li>• 43 lots</li> <li>• Minimum lot size 30,000 sf</li> <li>• 50% open space (58.5 ac)</li> <li>• Max Density: .33 u/ac</li> </ul>	<ul style="list-style-type: none"> <li>• 52 lots</li> <li>• Minimum lot size 30,000 sf</li> <li>• 60% open space (83.319 ac)</li> <li>• Max Density: .4 u/ac</li> </ul>
<b>Multi-Family</b>	<ul style="list-style-type: none"> <li>• 0 Lots</li> </ul>	
<b>Nonresidential</b>	<ul style="list-style-type: none"> <li>• 0 Lots</li> </ul>	
<b>MXR (Requested)</b>		
<p>*Without knowing the requested Imagine Currituck LUP classification amendment requested, it is not possible to give an accurate estimate. These numbers are using the G-2 Controlled Growth classification that adjoins this property.</p> <p>*The applicant has indicated a mixed-use development comprised of multiple components of the classifications below.</p>		
<b>Single Family</b>	<ul style="list-style-type: none"> <li>• 130 Traditional Subdivision lots</li> <li>• 15,000 sf minimum lot size</li> <li>• 30% open space (39.22 acres)</li> <li>• Max Density: 1 du/ac</li> </ul>	
<b>Multi-Family</b>	<ul style="list-style-type: none"> <li>• 175 units</li> <li>• Minimum lot size: N/A</li> <li>• 30% open space (39.22 ac)</li> <li>• Max Density: 1.5 u/ac</li> </ul>	

<b>Nonresidential</b>	<ul style="list-style-type: none"> <li>• 229 Lots</li> <li>• 20,000 sf minimum lot size</li> <li>• 10% open space (13.07 acres)</li> <li>• Max Floor Area Ratio: .4 (up to 8,000 sf commercial on each lot)</li> </ul>
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There are also school capacity concerns since the September 2022 report shows that Committed Capacity for Moyock/Shawboro/Central Elementary schools is at 135% and the high schools are at 106% committed capacity.

To provide assurances that address the Imagine Currituck Plan, Maple-Barco Small Area Plan, and the purpose of Airport Overlay District, staff recommends the applicant submit a conditional zoning application with a development plan that is conceptual in nature. The conceptual plan could provide desired flexibility for the applicant with assurances that the application maintains the community values and consistency with the officially adopted plans, policies, and standards.

Also, the Board may determine that the location, size of the property, and general district allowable uses are consistent with plans and compatibility can adequately be addressed through the site plan and subdivision review process and requirements of the UDO.

**RECOMMENDATION**  
**PLANNING BOARD**

The Planning Board recommended denial of PB 22-13 Ashbrook Estates on December 13, 2022 with a 4-1 vote.

Mr. Bass motioned to recommend **denial of PB 22-13 Ashbrook Estates** because it is not possible to determine if the request is consistent with:

- Imagine Currituck Land Use Plan policies and goals:
  - Infrastructure and County Services 1 and 8
  - Transportation 1
  - Environment 1, 2, 3.1
- Maple-Barco Small Area Plan policies: LU1, LU3, LU4, LU5, LU6, LU9, TR4, EN2, EN3, CH2, CH4, SD1
- Airport Overlay District purpose

And the request is not reasonable and not in the public interest because:

The request is not reasonable and not in the public interest because without a conceptual plan, it is not possible to provide assurances that address the Imagine Currituck Land Use Plan, Maple-Barco Small Area Plan, and the purpose of the Airport Overlay District. This is a low-density agricultural community and the rezoning from AG to MXR could potentially triple density and allow nonresidential uses. Without a plan, it is not possible to determine compatibility with the surrounding neighborhood. Mr. Hurley seconded the motion, and the motion was approved 4-1 with Chairman Ballance voting nay.

## **CONSISTENCY AND REASONABLENESS STATEMENT**

**A zoning map amendment is a legislative decision of the Board of Commissioners. In determining whether to approve or deny a zoning map amendment the Board of Commissioners shall adopt a written statement of consistency and reasonableness.**

It is staff's opinion that in the absence of a development plan, it is not possible to determine consistency and reasonableness of the proposed development with adjoining properties, the neighborhood, Imagine Currituck, the Maple-Barco Small Area Plan, the UDO, including the Airport-Overlay District in place to protect the airport and its associated uses.

## USE COMPARISON

U=Use Permit

CZ=Conditional Zoning

Uses Allowed in AG	Uses Allowed in MXR
Agriculture/Horticulture	Agriculture/Horticulture
Animal husbandry	Agricultural processing (U)
Agri-education	Siviculture
Agri-entertainment	Dwelling, duplex
Agricultural processing	Dwelling, live/work
Agribusiness	Dwelling, mansion apartment (CZ)
Equestrian facility	Dwelling, manufactured
Farmers market	Dwelling, multi-family (CZ)
Nursery, production	Dwelling, single-family detached
Roadside market	Dwelling, townhouse (CZ)
Agricultural research facility	Dwelling, upper story
Distribution hub for agricultural and agronomic products	Dormitory
Farm machinery sales, rental, and service	Family care home
Agricultural retail facility	Rooming or boarding house
Stockyard/Slaughterhouse (U)	Community center
Silviculture	Cultural facility
Dwelling, manufactured	Library
Dwelling, single-family detached	Museum
School, elementary	Senior Center
School, middle	Youth club facility
Government office	Adult day care center
Religious institution	Childcare center
Arboretum or botanical garden	School, elementary
Community garden	School, middle
Park, public or private	School, high
Law enforcement, fire, or EMS facility	Government office
Security training facility (U)	Assisted living facility
Airport (U)	Club or lodge (U)
Solar energy facility (U)	Halfway house (U)
Telecommunications antenna collection on tower or building	Nursing home
Telecommunications tower, freestanding (U)	Psychiatric treatment facility (U)
Utility, major (U)	Religious institution
Utility, minor	Arboretum or botanical garden
Kennel (U)	Cemetery, columbaria, mausoleum
Veterinary clinic (U)	Community garden
Outdoor shooting range (U)	Park, public or private
Outdoor tour operator, Aviation	Law enforcement, fire, or EMS facility
	Telecommunications antenna collocation on tower or building
	Utility, major (U)
	Utility, minor
	Restaurant, with indoor or outdoor seating

## USE COMPARISON

U=Use Permit

CZ=Conditional Zoning

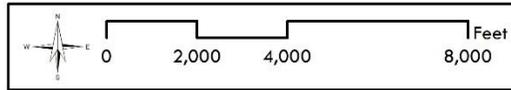
<p>(U)                  Hunting lodge (U)                  Private campground (CZ)                  Extractive Industry (U)                  Crabshedding                  Public convenience center/transfer station (U)                  Waste composting (U)</p>	<p>Specialty eating establishment                  Business and sales                  Professional services                  Fitness center                  Recreation, indoor                  Theater                  Athletic facility                  Golf course (U)                  Golf driving range                  Marinas (U)                  Recreation, outdoor (U)                  Convenience store                  Drug store or pharmacy                  Entertainment establishment                  Financial institution                  Grocery store                  Laundromat                  Personal services establishment                  Retail Sales establishments                  Shopping center                  Bed and breakfast inn                  Hunting lodge                  Crabshedding                  Public convenience center/transfer station (U)</p>
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THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE

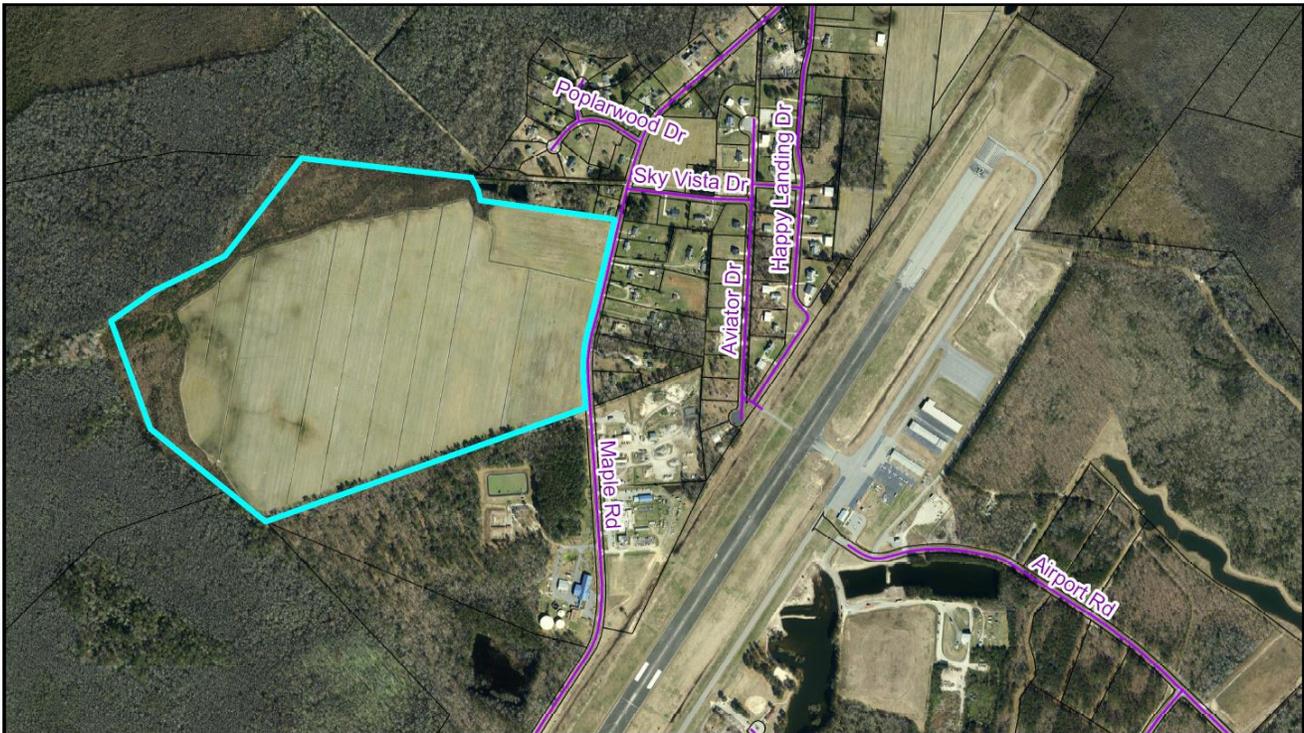
Board of Commissioners: [www.co.currituck.nc.us/planning-board-minutes-current.cfm](http://www.co.currituck.nc.us/planning-board-minutes-current.cfm)



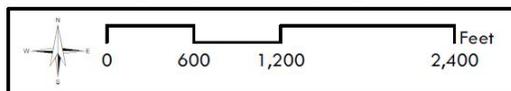
PB 22-13 Ashbrook Estates  
Rezoning  
Context Map



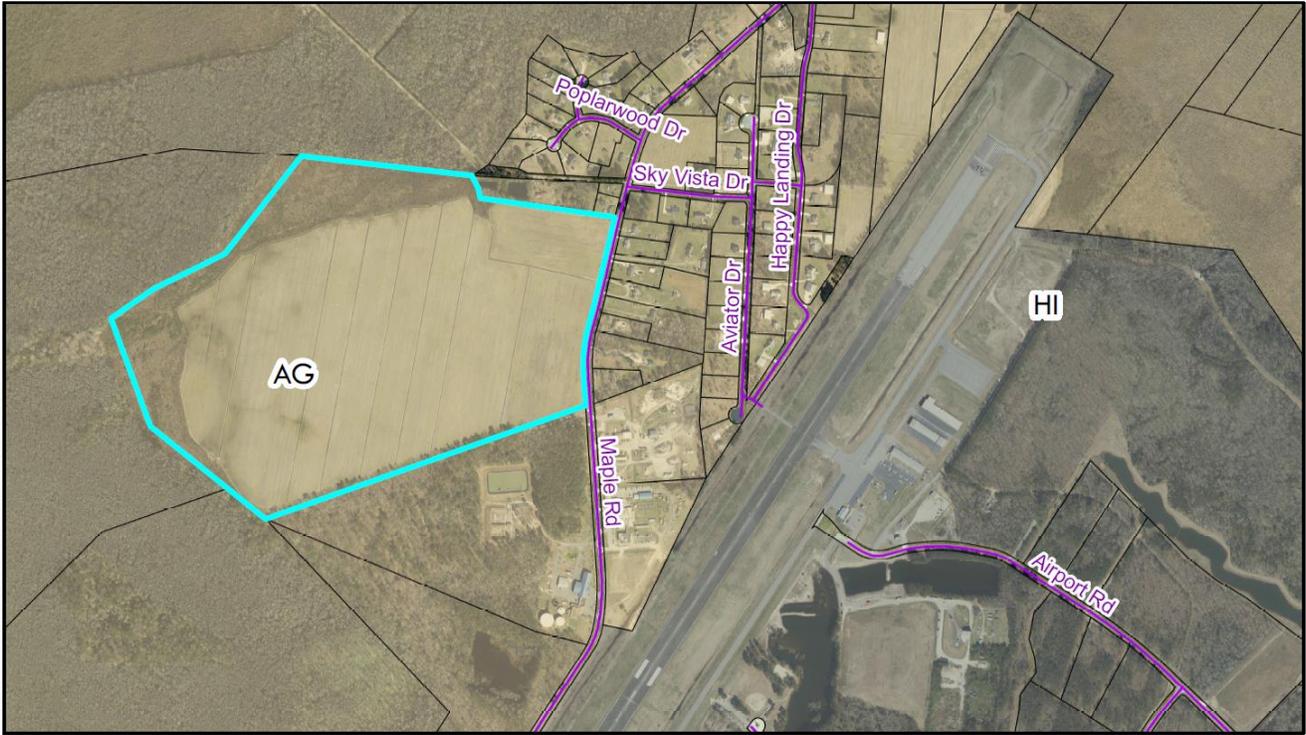
Currituck County  
Planning and  
Community Development



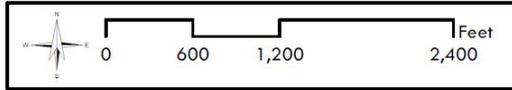
PB 22-13 Ashbrook Estates  
Rezoning  
2020 Aerial Photography



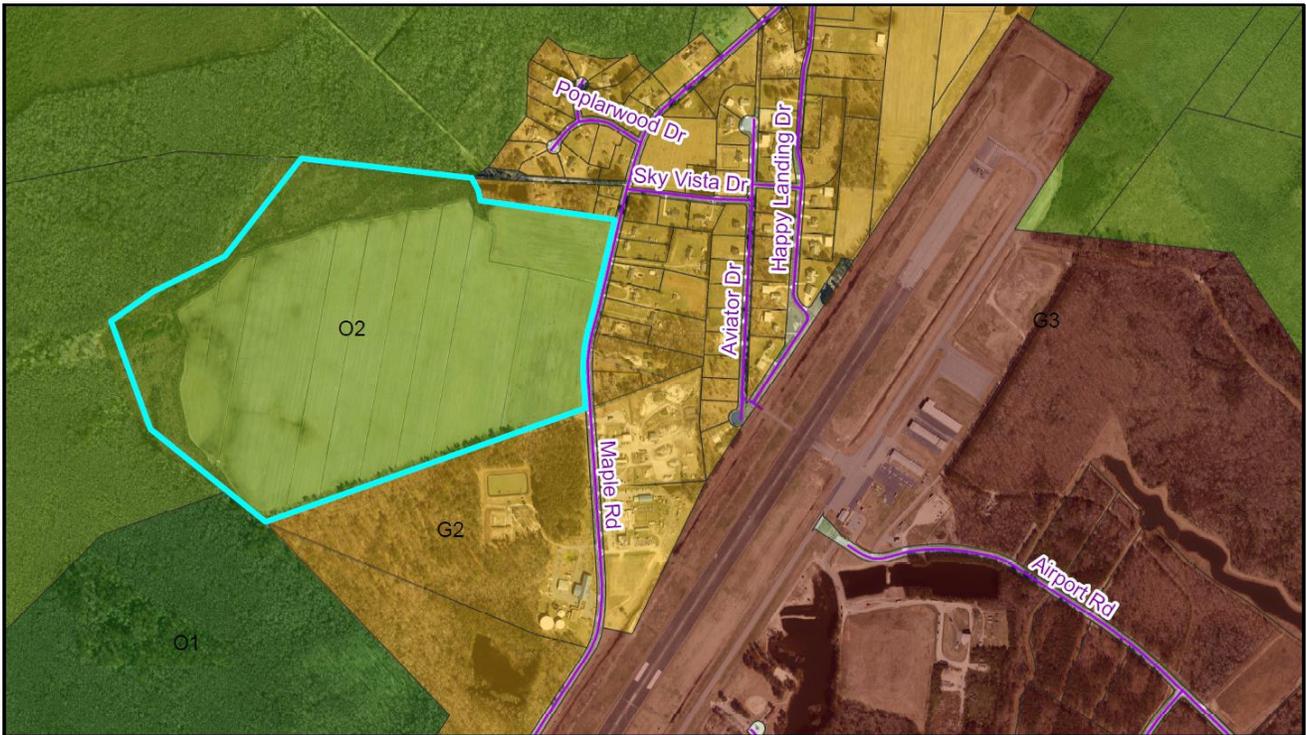
Currituck County  
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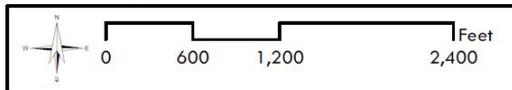
PB 22-13 Ashbrook Estates  
Rezoning  
Zoning



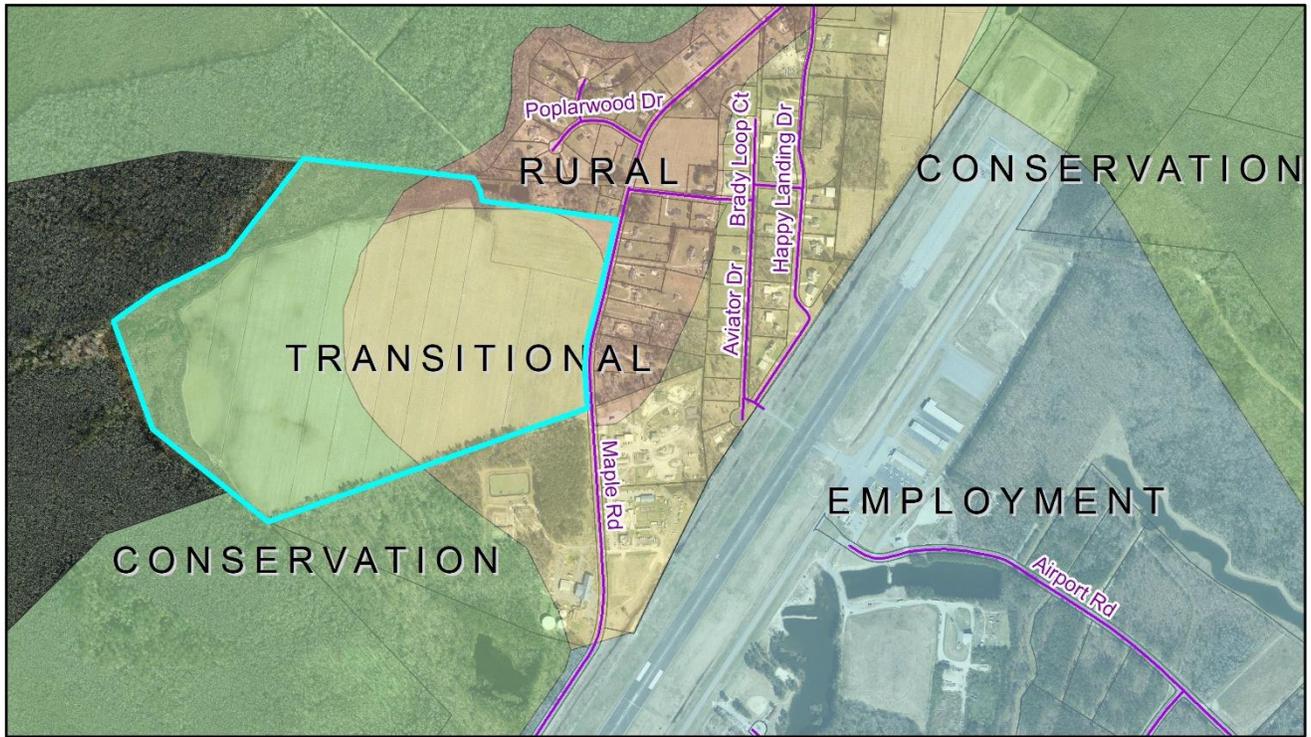
Currituck County  
Planning and  
Community Development



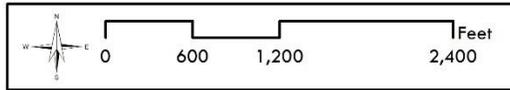
PB 22-13 Ashbrook Estates  
Rezoning  
Imagine Currituck Classification



Currituck County  
Planning and  
Community Development

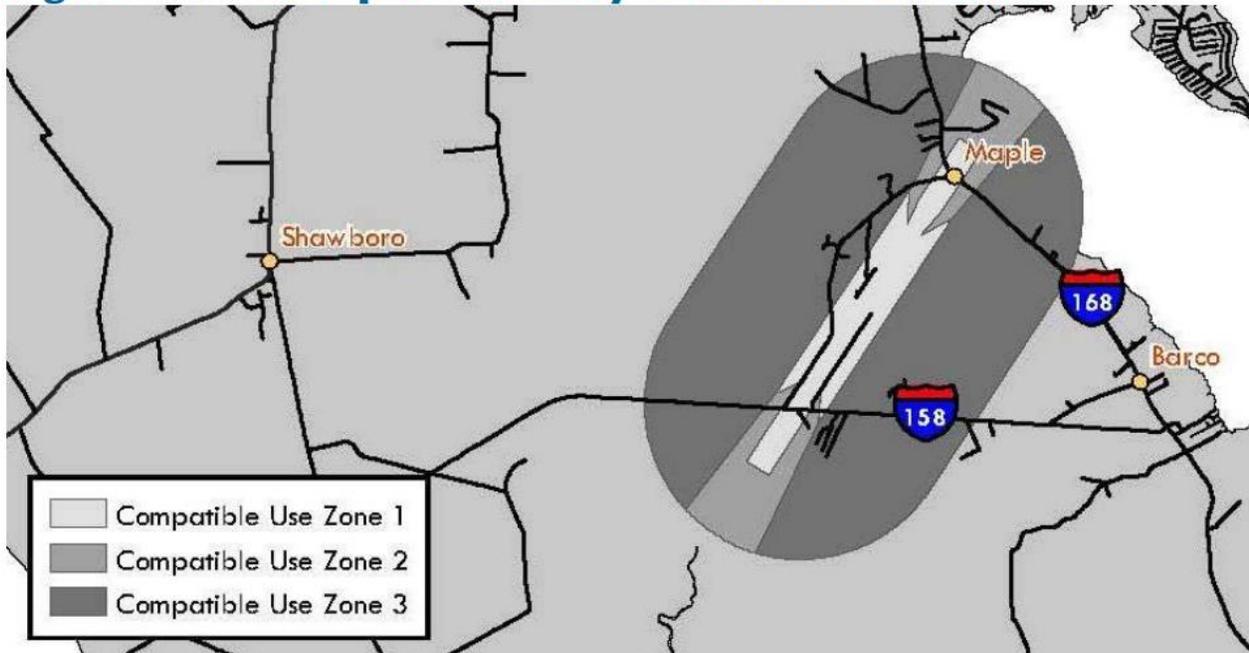


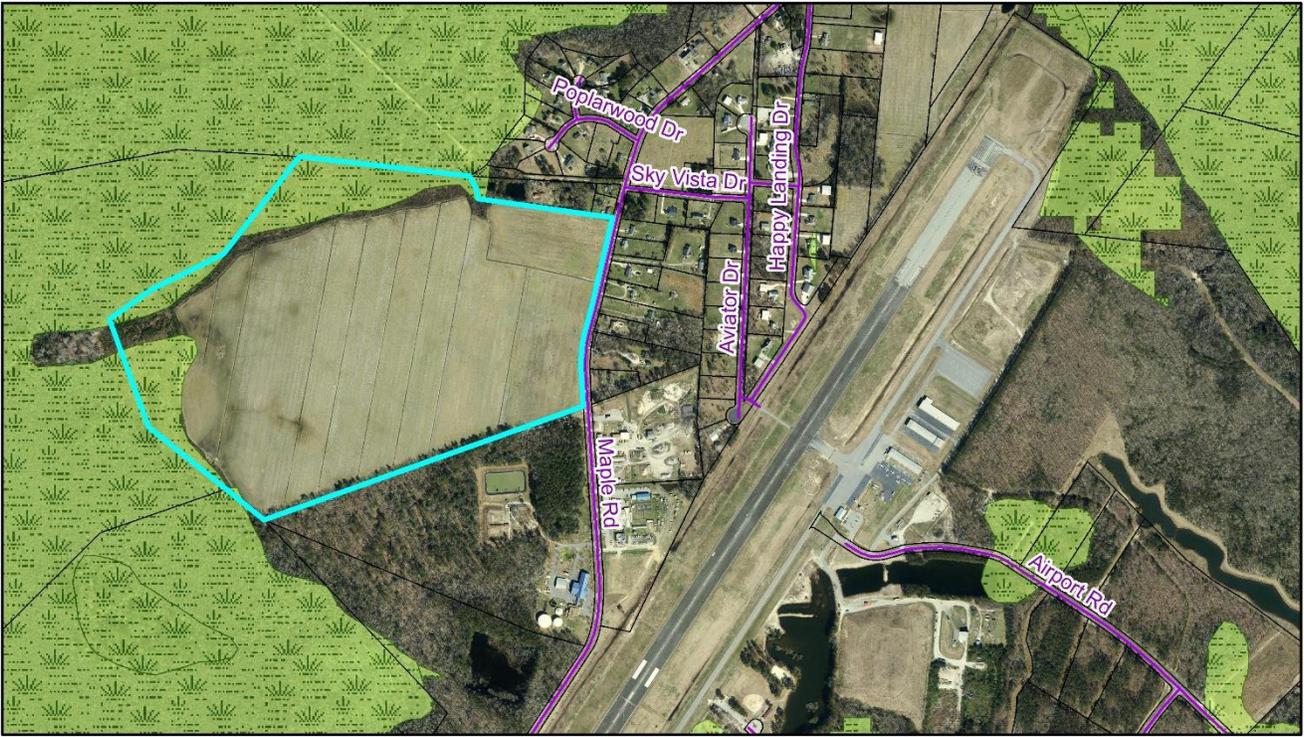
PB 22-13 Ashbrook Estates  
Rezoning  
Maple-Barco SAP



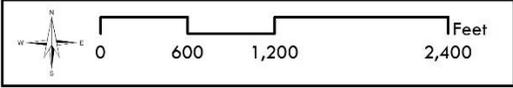
Currituck County  
Planning and  
Community Development

**Figure 3.8.5: Airport Overlay District Boundaries**





PB 22-13 Ashbrook Estates  
 Rezoning  
 Wetlands Layer



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 Community Development