

as filed 8/17/07

Application for Conditional Use Permit

GENERAL SHALE BRICK, INC.
APPLICANT

August 17, 2007

STATEMENT OF PURPOSE

General Shale Brick Company, Inc. ("Applicant") is applying to Chatham County for approval of a Conditional Use District and Permit associated with the existing mining operation that serves its Chatham County brick manufacturing plant. Applicant desires to add contiguous property to its existing mine. *For existing zoning, see EXHIBIT A.* Some of the property to be added is located in a Heavy Industrial Conditional Use District but is not subject to a conditional use permit. As to this property, Applicant requests only a conditional use permit. The balance of the property to be added is currently zoned for residential. As to the residential property, applicant desires both a conditional use district (CU-Ind.-H) and a conditional use permit (CUP-Ind.-H). *For a map of proposed zoning, see EXHIBIT B.* A separate conditional use district application is being filed contemporaneously with this application for a conditional use permit.

Applicant currently has two mines located in Chatham County that are used to derive raw material for use in its Chatham County brick manufacturing plant. The mine that is the subject of this application is located on Moncure-Flatwood Road (the "Flatwood Mine"). The other mine is located off of Corinth Rd. (the "Corinth Mine"). Both mines and the plant are located within a two to three mile radius of one another in the Moncure/Corinth area. Applicant has already acquired four parcels contiguous to the Flatwood Mine and seeks to expand its mine into these contiguous parcels. Upon approval of this conditional use permit request, Applicant will close the Corinth Rd. mine and commence the reclamation process for that mine.

The brick plant has been in operation in Chatham County for over 80 years. It is a significant employer and tax payer in the County. Applicant employs 206 people within its Chatham County operations and has a Chatham County annual payroll of \$8,784,775.00. The conditional use permit request is made pursuant to Section 15 of the Chatham County Zoning Ordinance. As is set forth in detail in this application, the proposal is consistent with the provisions of the zoning ordinance and the county land use plan.

APPLICATION FOR
ZONING DISTRICTS
CONDITIONAL USE PERMITS

Chatham County Planning Department
P.O. Box 54
Pittsboro, NC 27312

Tel: 919-542-8204
Fax: 919-542-0527

- (1) Applicant Information:
Name General Shale Brick Inc.
Address 1600 Colon Road
Sanford, NC 27330
Phone No. (w) (919) 774-5306
E-Mail _____
- (2) Landowner Information:
Name Same as Applicant
Address _____
Phone No. (h) _____
(W) _____
E-Mail _____

- (3) Property Identification:
911 Address: _____
S.R. Name: Moncure-Flatwood Rd.
S.R. Number: 1924
Township: Cape Fear Township
Acreage: See Property Description
- P.I.N.# See Property description
Parcel # See property description
Deed Book _____ Page _____
Plat Book _____ Page _____
Zoning District: See Statement of Purpose

- (4) Requested Zoning District, Conditional Use District and/or Conditional Use Permit: See Statement of Purpose in appended document. Applicant seeks a conditional use PERMIT for the property as indicated on the attached maps.

- (5) Directions to Property: South on US 15-501 from Pittsboro. Left on Pittsboro-Moncure Road. Left on Old US 1. Right on Corinth Rd. Left on Moncure-Flatwood Rd. Property on left.

- (6) Attach the following, if requesting a zoning map amendment: Conditional Use District and associated map amendment applied for simultaneously by separate application.

List of names and addresses or current adjoining property owners (see Adjacent Landowners form)

Written legal description

Map of the property at a scale of not less than 1 inch equals 200 feet

Explanation of request addressing applicable portions of Section 17.3B of the Chatham County Zoning Ordinance

-
- (7) Attach Submission Materials Checklist information. (see attached)

I hereby certify that I am the owner or authorized agent of said property and that the information provided is complete and the statements given are true to the best of my knowledge.

Warren Paschall

Signature

General Shale Brick, Inc.

Owner/Authorized Agent

8/17/07

The owner must sign the following if person other than the owner is making this application.

I hereby certify that _____ is an authorized agent for said property and is permitted by me to file this application.

Owners Signature

Date

LEGAL DESCRIPTION OF PROPERTY

Conditional Use District Property:

1. Chatham County PIN 9697-62-5389.000; Chatham County AKPAR #85332.

109.17 acres as more particularly described on that certain plat prepared by Thomas J. Matthews, Professional Land Surveyor, entitled "Subdivision Survey for General Shale," dated 12-28-2006, recorded in plat book 2007-141, Chatham County Registry.

2. Chatham County PIN 9697-30-6864.000; Chatham County AKPAR #5361:

51 acres. Being Tract No. 94 – The Thomas Tract, containing 51.00 acres, more or less, described in Deed of Bargain and Sale from Albemarle Paper Company to Halifax Timber company, dated October 31, 1968, and recorded in Book 339, Page 135, Chatham County Registry. Also being more particularly described in deed from E. D. Smith, at al., to Halifax Paper Company, Incorporated, dated October 25, 1950, recorded in Book K-N, Page 333, Chatham Public Registry.

Also being "Parcel Two" of the "Utley/Thomas Tract (#5)" conveyed to ITAC 27, LLC by International Paper Company by deed recorded at Book 908, Page 583, Chatham County Registry. 141, Chatham County Registry.

3. Chatham County PIN 9697-21-8247.000; Chatham County AKPAR #5362:

32.38 acres. Being Tract No. 68-H-Utley-32.38 acres, more or less, described in Deed of Bargain and Sale from Albemarle Paper Company to Halifax Timber Company, dated October 31, 1968, and recorded in Book 339, Page 135, Chatham County Registry. Also being more particularly described in deed from T. H. Harrington, et al., to Halifax Paper Company, Incorporated, dated January 22, 1948, recorded in Book J-V at Page 160, Chatham Public Registry.

Also being "Parcel One" of the "Utley/Thomas Tract (#5)" conveyed to ITAC 27, LLC by International Paper Company by deed recorded at Book 908, Page 583, Chatham County Registry.

Conditional Use Permit Property:

1. Same property as above as well as the following two parcels.
2. Chatham County PIN 9697-74-3879.000: Chatham County AKPAR #5368:

72 acres. Being Tract No. 139 – The R. M. Cotton Tract, containing 72.00 acres, more or less, described in Deed of Bargain and Sale from Albemarle Paper Company to Halifax Timber Company, dated October 31, 1968, and recorded in Book 339, Page 135, Chatham County Registry. Also being part of the property more particularly described in deed from R. M. Cotton, et ux., to Halifax Paper Company, Incorporated, dated July 28, 1952, recorded in Book L-C, Page 434, Chatham County Public Registry.

Also being the “R. M. Cotton Tract (#4)” conveyed to ITAC 27, LLC by International Paper Company by deed recorded at Book 908, Page 583, Chatham County Registry.

3. Portion of Chatham County PIN 9687-43-5854.000; AKPAR # 61577:

143 acres. Being the northernmost portion of the tract that is currently within a Conditional Use District (CUD-Ind.-H) as depicted on the Chatham County Zoning map. The northernmost portion is created by a line that runs generally due west from the northwest corner of the property known as AKPAR Parcel 85332 until said line reaches the western property line of AKPAR parcel number 61577.

ADJOINING PROPERTY OWNERS

1. Moncure Holdings, LLC
c/o David F. Kaplan
6288 Porterdale Drive
Malibu, CA 90265
Parcel 5842
2. Chatham Ridge, LLC
3301 Benson Drive, Suite 601
Raleigh, NC 27609
Parcel 5842
3. Ola B. Taylor
1781 Moncure Flatwood Road
Moncure, NC 27559
Parcel 67946
4. Colon Russell Taylor, Jr.
Ola Taylor
1781 Moncure Flatwood Road
Moncure, NC 27559
Parcel 5363
5. John C. Smith
Rosie B. Smith
1751 Moncure Flatwood Road
Moncure, NC 27559
Parcel 5365
6. Donald Brown
1715 Moncure Flatwood Road
Moncure, NC 27559
Parcel 68034
7. George W. Brown
2666 Corinth Road
Moncure, NC 27559
Parcel 68036
8. Carolina Power & Light Company
Real Estate Management
P. O. Box 1551-PEB3A
Raleigh, NC 27602-1551
Parcel 65272

9. Ellis M. Mansfield
1149 Moncure Flatwood Road
Moncure, NC 27559
Parcel 5359
10. General Shale Brick Inc.
P. O. Box 3547
Johnson City, TN 37602
Parcel 61577
11. Douglas E. Utley
1704 Falls River Avenue
Raleigh, NC 27619
Parcel 5179
12. Frank Kent Dickens
Kim Cross Dickens
2503 Corinth Road
Moncure, NC 27559
Parcels 5749 and 69452

DESCRIPTION OF THE PROJECT

Applicant seeks to add four contiguous parcels to its mine property for the purpose of continuing its clay mining operation in Chatham County. Upon approval of the requested district rezoning and permit and commencement of the mine expansion, Applicant will close its other Chatham County mine (Corinth Rd.) and begin the reclamation process in accordance with the permit requirements and procedures outlined by the North Carolina Department of Environment and Natural Resources (“NCDENR”) Division of Land Quality. Applicant seeks a conditional use district (CUD-Ind.-H) for the property indicated on the maps filed herewith and a conditional use permit (CUP-Ind.-H) to allow for mining and brick manufacture.

Location:

(1) Public Highways. The property adjoins State Road 1924 (Moncure-Flatwood Rd.).

(2) Private Roads. There are private driveways serving the site.

(3) Current Zoning. The current zoning of the site is as depicted on EXHIBIT A hereto.

(4) Watershed Classification. The watershed classification is WS-IV-PA. Up to thirty-six percent (36%) impervious surface is allowed.

(5) Major Wildlife Areas. This site is not in or adjacent to any area designated as a natural area according to the “Inventory of the Natural Areas and Wildlife Habitats of Chatham County, North Carolina.”

(6) Size in Acres of Site. The overall tract size (including newly added parcels is approximately 646 acres. The size of the site to be permitted is approximately 407 acres¹. The additional 239 acres comprises the present mine tract which is grandfathered as a pre-existing, non-conforming use.

(7) Utility or Other Easements. A right of way for State Road 1924 serves the site. Progress Energy has a 100’ transmission line easement (as depicted on EXHIBIT A).

¹ Approximately 143 of those acres are subject to expansion of the non-conforming use as a mine pursuant to the zoning ordinance. Out of caution, but without waiving any rights, the Applicant is seeking a conditional use permit for that property as well.

(8) Current Use. The properties for which both a conditional use district and permit are sought are comprised of vacant land not currently in use. As to the property for which a conditional use district already exists, the 143 acre tract is being used by the applicant for mining purposes. The 72 acre tract is vacant land not currently in use.

(9) Current Contents of Site. There are no buildings or structures located on the Conditional Use District or Conditional Use Permit sites.

(10) Other Conditional Use Permits Granted for the Site. The Applicant believes that the northernmost 143 acre tract and the entire 72 acre tract were included in a prior conditional use permit for heavy industrial uses, which permit may have expired.

Description of Use:

The proposed use of the conditional use district and permit property will be for all operations necessary for clay mining and brick manufacturing.

Site Plan and Drawing:

The site plan attached as EXHIBIT C describes the plans for the site in detail.

(1) Existing Buildings. See EXHIBIT C.

(2) New Buildings. No new buildings are planned for the site.

(3) Landscape Plan. The existing natural landscape buffers are sufficient to meet the landscaping requirements. See Landscape Plan attached as EXHIBIT D.

(4) Screening/Buffering Plan, Setbacks. See Landscape Plan attached as EXHIBIT D.

(5) Natural Preserved Areas. See the buffered areas shown on the landscape Plan attached as EXHIBIT D.

(6) Site Boundaries with Adjacent Properties. The boundaries between the site and adjacent properties are shown on the site plan. The names and addresses of adjoining land owners are provided with this application.

- (7) Parking. Existing mine has sufficient parking.
- (8) Sign Location, Type and Size. The size of existing signage will not be modified. Any additional signs (directional or informational) will comply with the zoning ordinance.
- (9) Areas Reserved for Future Development or Improvements. None.
- (10) Lighting Plan. Hours of operation are during daylight hours. No lighting is necessary.
- (11) Percentage of Impervious Surface. The extension mine property will have little or no impervious surface other than dirt roads. The impervious surface is expected to be less than 1% of the total land, well below the allowed 36% under the Watershed Protection Ordinance.
- (12) Topographical Description of Site. A topographical map is provided as part of the site plan attached as EXHIBIT C.
- (13) County Road Map. A county road map identifying the location of the property is provided as EXHIBIT E.
- (14) County Tax Map. A copy of the county tax map of this site is provided as EXHIBIT F.

Start and Completion Projections:

The extension of the mine will begin immediately and continue throughout the useful life of the mine after which an approved NCDENR reclamation plan will be implemented.

Adjoining Property Owners:

The names and addresses of the adjoining property owners are on the attached schedule.

Reference to Existing County Plans:

This proposed mining expansion into contiguous lands is entirely consistent with the vision contained in the Chatham County Land Conservation and Development Plan (the "Land Use Plan").

The first of the two fundamental policies of the Land Use Plan is to encourage balanced growth by making sure that growth consists of a mix of different kinds of development and by ensuring that development is guided to suitable locations. *Land Use Plan, p. 1.* One of the "major recommendations" of the Land Use Plan is to "designate Economic Development Centers for new business and industry to allow effective planning and marketing for employment sites." *Land Use Plan, p. 3, para. 9.* The chart of activities and allowed locations within the Land Use Plan specifically allows for manufacturing plants within Economic Development Centers. *Land Use Plan, p. 5.* Of course, this Chatham County clay mine is integral to the operations of the nearby brick manufacturing plant.

This site is located within the Moncure-Haywood Economic Development Center reserved for industrial uses as set out on the draft map that was to be adopted with the Chatham County Land Conservation and Development Plan (the "Land Use Plan"). See EXHIBIT G (Draft Land Use Map). Further, the expansion of the mine into contiguous properties funnels the industrial use to the appropriate part of the County where it is evident that the use does not detract from surrounding uses.

Perhaps most importantly, in discussing Economic Development Centers such as the Moncure-Haywood Economic Development Center, the Land Use Plan lays out the following principles:

- Economic centers should be situated in planned locations. *Land Use Plan, p. 27.*
- Economic Centers should allow for "continued development within other areas currently zoned for commercial or industrial." *Land Use Plan, p. 27.*
- It also provides that "continuation of current activities will be supported in existing industrial and commercial areas." *Land Use Plan, p. 27.*

In designating Economic Development Centers, the Land Use Plan specifically identified this location: "The Moncure-Haywood area. This area may

take advantage of industrial potential in the area, together with extensive transportation water/sewer infrastructure.” *Land Use Plan, p. 33.*

There can be no doubt that this proposal fulfills the specific language of the Land Use Plan and is consistent with and promotes the purposes and intent of the Land Use Plan.

FINDINGS REQUIRED BY ZONING ORDINANCE

The Chatham County Zoning Ordinance provides, in Section 15.1, that: “In considering an application for a conditional use permit the Board of Commissioners shall give due regard that the purpose and intent of this Ordinance shall be served, public safety and welfare secured and substantial justice done.” This application is consistent with all of the purposes of the Ordinance set forth in its preamble.

The Ordinance requires that the Board of Commissioners make five affirmative findings in establishing a conditional use district and in granting a conditional use permit. All five findings are supported by this application.

Finding #1: The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.

(1) Validation of Use in Zoning Ordinance: The subject property would be located within a conditional use district “Ind. H.” Both mining and clay manufacturing are allowed uses within such a district. *Chatham County Zoning Ordinance, section 10. 7 A.* The uses are not only allowed conditional uses but they are generally allowed uses within the district as well.

(2) Land Development Plan Reference: This application is consistent with the Land Use Plan. Please see the discussion under “Reference to Existing County Plans,” above.

Finding #2: The requested conditional use permit is either essential or desirable for the public convenience or welfare.

(1) Need and Desirability: General Shale Brick, Inc. is a large Chatham County employer, employing over 200 people in its Chatham County operations. The Chatham County payroll itself exceeds \$8,000,000.00 annually. A convenient source of clay mining is necessary for brick manufacturing. Approval of the requested permit will help to assure this necessary source of clay and that Applicant remains one of the biggest employers in the County. With the amount of growth

forecasted for Chatham County, a plentiful supply of bricks manufactured in Chatham County will allow our local market economy to reap some of the benefits of growth within the County. Sustaining General Shale's ability to employ and pay employees in Chatham County as well as its ability to supply local contractors with necessary material for construction within the County is both necessary and desirable. This kind of contribution to the Chatham economic engine, without commensurate costs of County services is ideal.

(2) Survey of Similar Uses: The Applicant has its own mine located nearby, but that mine will close upon approval of this permit and commencement of expansion of the Moncure-Flatwood mine. Triangle Brick operates a similar mine in Merry Oaks.

(3) Public Provided Improvements: No additional public improvements will be needed for this project.

(4) Tax Considerations: According to the Chatham County Tax Assessor's office, General Shale Brick Company is within the top ten ad valorem tax payers in Chatham County and as high as number three when public utilities are excluded. Also according to the Tax office, Applicant pays upwards of \$270,000 in ad valorem taxes each year. That number will likely grow upon approval of the requested permit. Although it is difficult to predict with precision the tax revenue benefit to Chatham County, it is expected that this project will result in an increase in assessed value of the subject property. This use will not increase the County school population, will not require infrastructure improvements from the County and will have no significant impact on County fire, law enforcement or rescue services.

(5) Employment: It is not anticipated that new employees will be added but approval of the permit will allow continued employment of the over 200 employees within the Chatham County operations.

***Finding #3:** The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health safety and welfare of the community.*

(1) Emergency Services: The project is expected to make very limited demands on fire and police protection and emergency services. This is certainly true as compared to other possible uses of the subject property, such as residential.

(2) Traffic: The truck traffic entering and departing the area will not be increased over current traffic counts. This is true even with the closing of the

Corinth Rd. mine. This is because the clay materials produced by the current mine and the Corinth Rd. mines are different but both necessary for brick production. Currently, each truck that loads clay material from the present mine (2/3 load), also travels down Corinth Road to the Corinth Rd. mine and loads harder clay material (1/3 load). Upon approval of the permit, each truck will be able to load both types of material at the one mine. Thus, truck traffic from the Corinth Rd. mine will be virtually eliminated very soon and truck traffic to the Moncure-Flatwood site will not increase significantly. Also, the number of trucks entering Corinth Rd. will decrease because of the closing of the Corinth Rd. mine. The surrounding area should not perceive any increase in truck traffic as a result of approval of the requested permit but may experience a decrease in traffic in the area between the Corinth Rd. mine and the plant itself.

(3) Visual Impact and Screening: This project will have a minimal impact on neighbors and passers-by. The landscape plan imposes a natural buffer of 80 feet around the entire perimeter of the CUP property. This provision meets the landscape buffer requirements set forth in the Chatham County Design Guidelines.

(4) Lighting: No additional exterior lighting will be utilized.

(5) Noise: There should be no additional type of noise associated with this use other than what is already associated with the mine.

(6) Chemicals, Biological and Radioactive Agents: The operation will generate no chemical, biological or radioactive agents.

(7) Signs: No new signs will be utilized other than perhaps interior directional signs.

***Finding #4:** The requested permit will be consistent with the objectives of the land development plan.*

(1) Land Use Plan Reference: This application is consistent with the Land Use Plan. Please see the discussion under "Reference to Existing County Plans," above.

(2) Watershed Considerations and Flood: The watershed classification is WS-IV-PA. Because this project does not have a curb and gutter street system, up to thirty-six percent (36%) impervious surface or "built-upon area" is allowed. The

actual projected impervious surface is less than 1%. None of the property is within a flood plain. The land is all Zone X on the flood maps.

***Finding #5:** Adequate utilities, access roads, storm drainage, recreation, open space and other necessary facilities have been or are being provided consistent with the County's plans, policies and regulations.*

(1) Water Source and Requirements: No water is necessary for the operation. No public water will be used.

(2) Wastewater Management: No additional wastewater management is needed in connection with the requested district and permit.

(3) Water/Sewer Impact Statement: Not applicable. No public utility involved.

(4) Access Roads: No change to the existing access is necessary nor requested. No driveway permit is necessary.

(5) Storm water Runoff: The stormwater detention basins are shown on the site plan.

Any facilities necessary for operation have been provided and no additional facilities, other than stormwater control structures, are anticipated.

BRADSHAW & ROBINSON, LLP

BY:

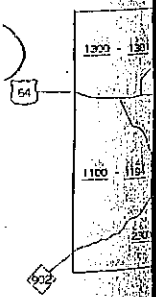


Nicolas P. Robinson
Attorney for Applicant
Post Office Box 607
Pittsboro, NC 27312
(919) 542-2400

EXHIBIT E



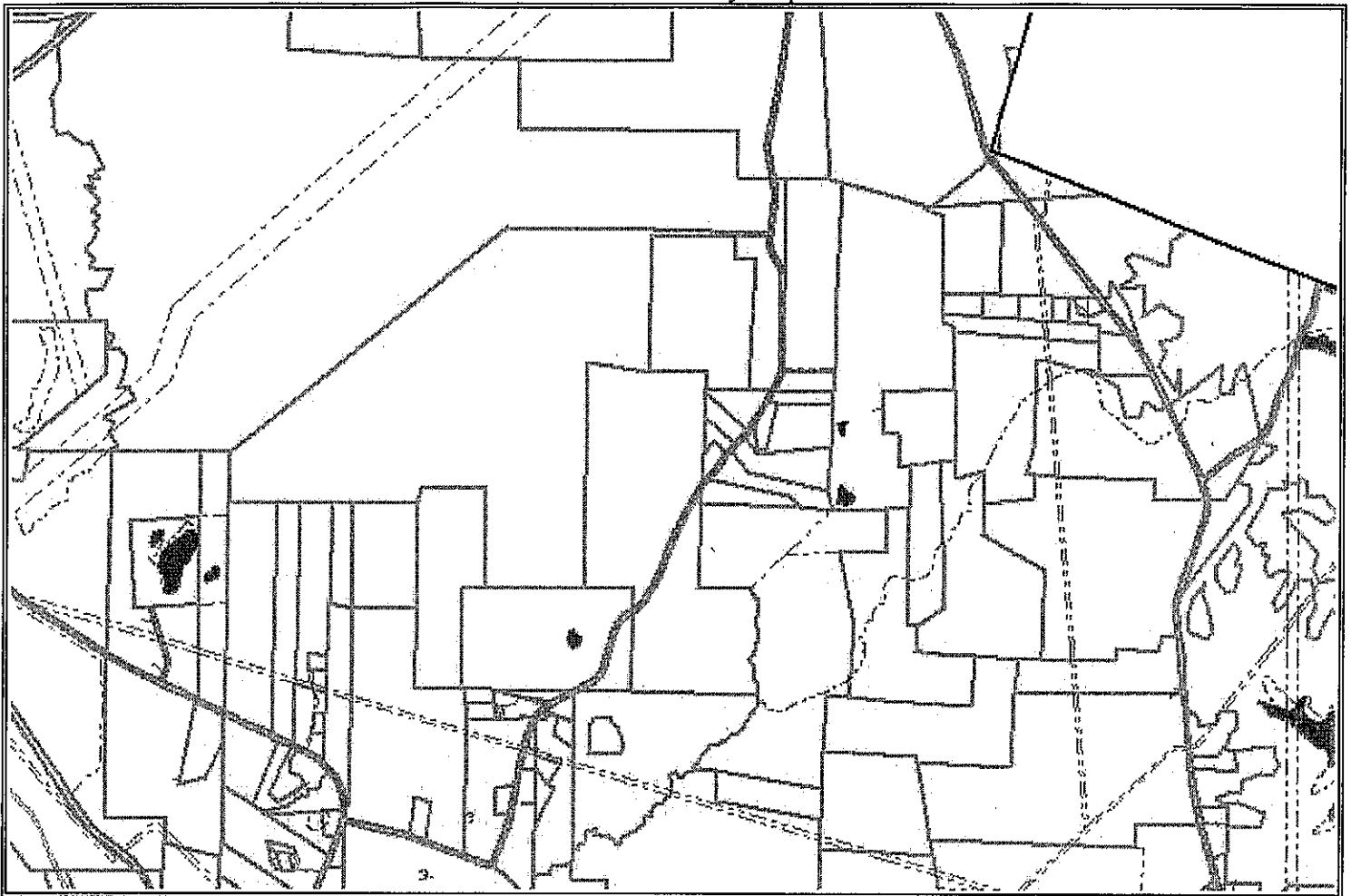
* Mine Site (Moncure - Flatwood Rd.)



NOTE: MAP INCLUDES ONLY STATE MAINTAINED ROADS OR IMPORTANT NON-SYSTEM ROADS. MILEAGE NOT SHOWN ON FRONTAGE ROADS. ROADS SHOWN AS OF JAN. 1, 1996.

ALSO NUMBERED

Chatham County Map



Disclaimer: This map is prepared for the inventory of real property found within this jurisdiction and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The County and the mapping companies assume no legal responsibilities for the information contained on this map.

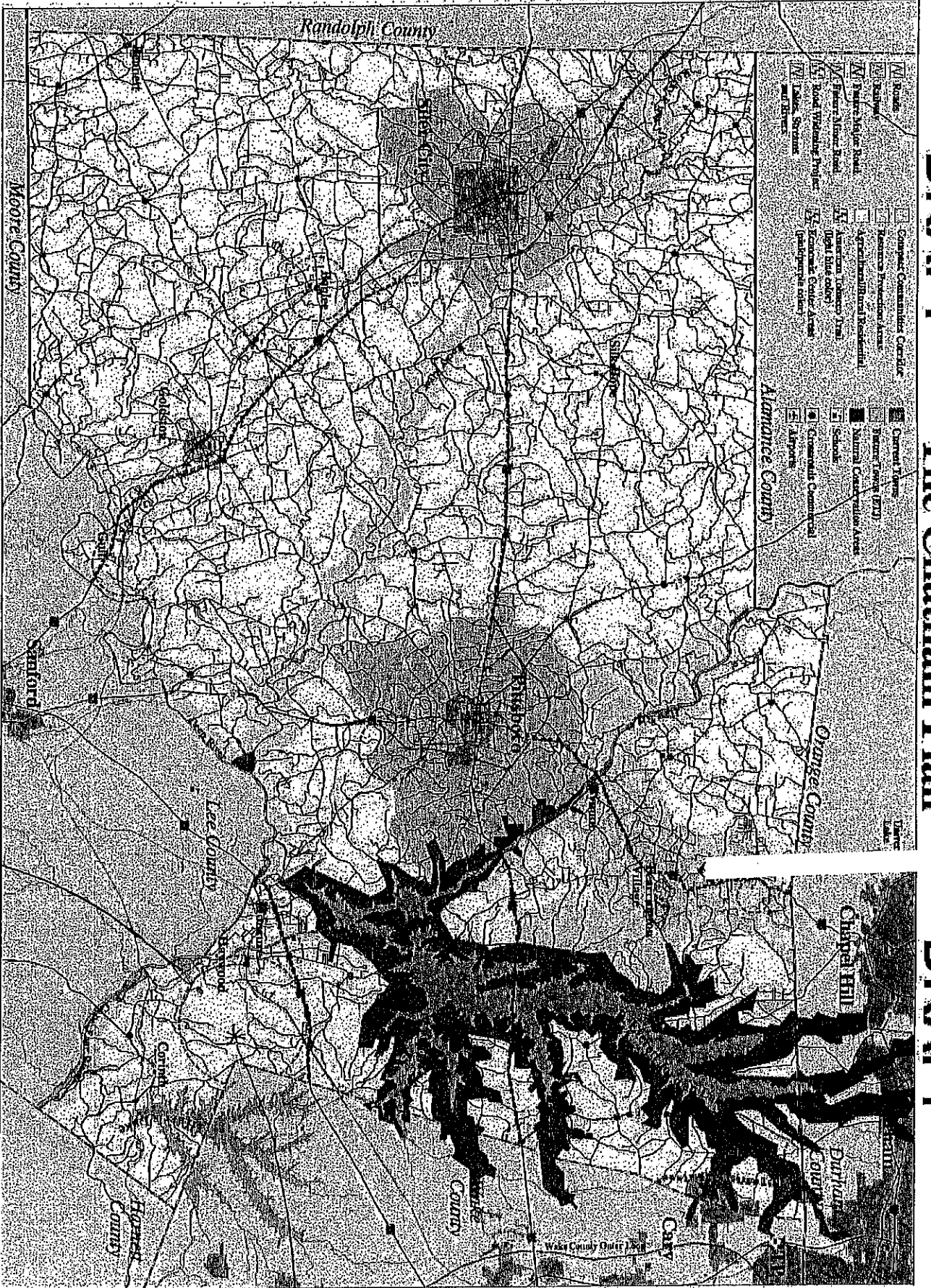
Map Scale
1 inch = 2825 feet
Grid based on the North
Carolina State Plane Coordinate
System, 1983 North American
Datum.



EXHIBIT G

DRAFT The Chatham Plan

DRAFT



DRAFT

DRAFT

February 01, 2000



Tri-County Council of Governments
 Georgia's Administrative System

General Shale Brick, Inc.

Site

Economic Development Center