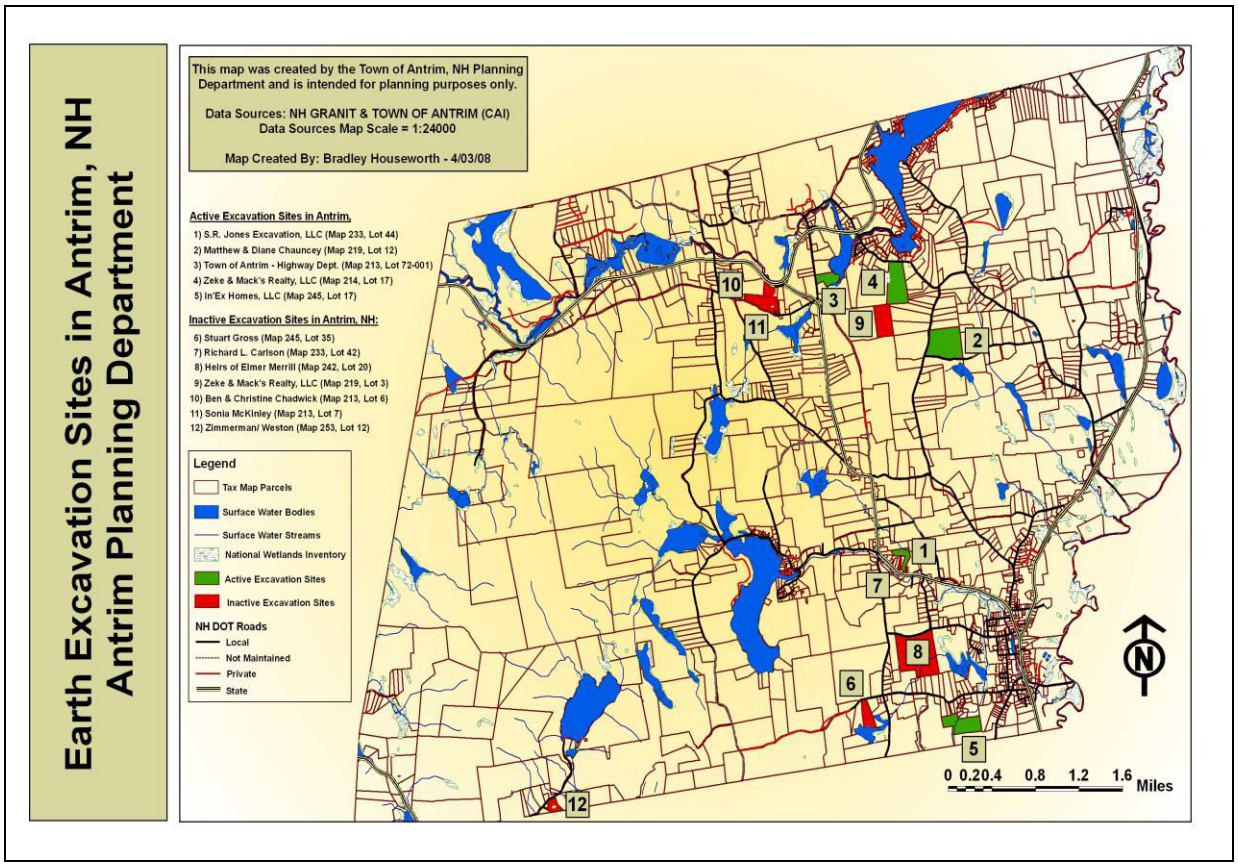
Earth Excavation Sites

Introduction

Pursuant to RSAs 674:2, 155-E and 155-E:2.I.(d), the following information is provided regarding the locations and sources of earth excavation materials in Antrim. There are five earth excavation sites which are currently active within the Town of Antrim and one additional site which has filed a Notice of Intent for incidental excavation of a property for the construction of an 11,000 sq. ft. warehouse/storage facility. Seven other earth excavation sites have been operated over a period of years but have since been abandoned, closed, and/or reclaimed.

The 2001 Master Plan inaccurately listed nine active excavation sites and two inactive sites. Since that time, the Planning Board has undertaken a thorough review of the files to insure that all of the sites comply with RSA 155-E and the Town of Antrim's Earth Excavation & Reclamation Regulations, adopted October 15, 1992 and amended January 20, 2005. The results of the review identified twelve total earth excavation sites, in addition to the incidental excavation operation noted above. A map showing the location and status of the various earth excavation sites is provided below and is pictured in a larger format in the Appendix.



Map VI-1: Earth Excavation Sites in Antrim

Active Earth Excavation Sites

1) Tax Map 233 Lot 044. Location: 123 Clinton Road (Route 31) in the Rural Zoning District. Owner/Operator: S. R. Jones Excavation, LLC. The total acreage of the lot is 9.75 acres, with 1.5 acres reportedly being used for earth excavation operations. A quarter of an acre has been reportedly reclaimed. The landowner estimates that approximately 30,000 cubic yards remain on the site as of April 1, 2008. The material is mostly sand and gravel. No time frame has been established for removal of material or reclamation as activity is based on market demand. A five (5) year Town of Antrim Earth Excavation Permit was issued by the Planning Board for this operation, which Permit is valid through March 31, 2010.

2) Tax Map 219 Lot 012. Location**:** 119 Bridle Road (on the corner of Smith Road and Bridle Road) in the Rural Zoning District. Owners: Matthew & Diane Chauncey. Operator: Landsite Corp. The total acreage of the lot is 49 acres, with 5 acres reportedly being used for earth excavation operations of the total permitted excavation area of 11.6 acres. The existing excavation and reclamation plan calls for the 11.6 acres to be excavated and reclaimed in three (3) phases: Phase I, 3.3 acres; Phase II, 4.4 acres; Phase III, 4.2 acres. Reclamation is ongoing as new pit faces are opened and operations move from one phase to another. Six acres have been reportedly reclaimed to date. No time frame has been established and excavation is based on market demand. The operator estimates that approximately 61,395 cubic yards remain. A five year Town of Antrim Earth Excavation permit was issued by the Planning Board for this operation on August 18, 2005, which Permit is valid through August 18, 2010.

3) Tax Map 213 Lot 072-001. Location: On the east side of Old North Branch Road (between the intersections of Old North Branch Road with Route 9 and Route 31) in the Lakefront Residential and Rural Zoning Districts. Owner: Steele Pond Development, LLC. Operator: Town of Antrim - Highway Department. The total acreage of the lot is 14.1 acres, with 2 acres reportedly being used for earth excavation operations of the total permitted excavation area of 5 acres. There has been no reclamation of the site to date. The Town of Antrim is currently excavating sand from this site for use on public ways and proposes to remove approximately 140,000 cubic yards over a twenty plus (20+) year period. It is estimated that the removal will be completed by the year 2035. An application was filed with the Planning Board by Steele Pond Development, LLC to excavate and reclaim a portion of the site. The application was withdrawn pending negotiations with the town to develop the property over the long term. The town has entered into a mineral purchase agreement and leasing program with Steele Pond Development, LLC, which will turn full ownership of the property over to the town in 2013 for $1. In accordance with RSA 155-E:2.IV, the Town of Antrim Highway Department has not been required to obtain a Town of Antrim Earth Excavation Permit from the Planning Board because the excavation is being performed exclusively for construction, reconstruction, and maintenance of town roads. However, RSA 155-E:2.IV does requires a pit agreement to be executed, which agreement has been drafted and signed by the Town of Antrim and the current owner, Steele Pond Development, LLC, and has been properly submitted to the Planning Board.

4) Tax Map 214 Lot 017. Location: On the south side of Elm Avenue (just east of 332 Elm Avenue) in the Rural Zoning District. Owner/Operator: Zeke & Mack's Realty, LLC (also known as Francestown Sand and Gravel)**.** This site was formerly owned by Smith Harriman, now deceased. The total acreage of the lot is 36 acres, with 3.3 acres reportedly being used for earth excavation operations of the total permitted excavation area of 3.4 acres. One-fifth ($\frac{1}{5}$) of an acre has been reportedly reclaimed. The landowner estimates that approximately 291,496 cubic yards

remain on the site as of April 1, 2008. The material is mostly sand and gravel. No time frame has been established for removal of material or reclamation as activity is based on market demand. A five (5) year Town of Antrim Earth Excavation Permit was issued by the Planning Board for this operation, which Permit is valid through February 1, 2012.

5) Tax Map 245 Lot 017. Location: On the south side of Pleasant Street (just east of 80 Pleasant Street) in the Rural Zoning District. Owner: IN'EX Homes, LLC. Operator: Francestown Sand and Gravel. This property was formerly owned by the estate of Smith Harriman, who previously excavated sand, gravel, and clay from the property for many years. The total acreage of the lot is 29 acres, with 7.8 acres reportedly being used for earth excavation operations. Portions of the property have been naturally reclaimed by nature. The landowner estimates that approximately 50,000+ cubic yards remain on the site as of April 1, 2008. The material is mostly sand and gravel. No time frame has been established for removal of material or reclamation as activity is based on market demand. IN'EX Homes, LLC is excavating material from the site in preparation for a 6-Lot Residential Cluster Housing Subdivision. A five (5) year Town of Antrim Earth Excavation Permit was issued by the Planning Board for this operation, which Permit is valid through October 11, 2012.

Active Incidental Earth Excavation Sites

Tax Map 232 Lot 048. Location: 4 Contoocook Valley Avenue (off Route 202) in the Village Business District. Owners: Joseph and Katharine Koziell. Operator: Landsite Corp. The total acreage of the lot is 1.57 acres and a Notice of Intent to Excavate was filed with the Town of Antrim and State of New Hampshire to incidentally excavate approximately 3,000 cubic yards of material in order to erect an 11,000 square foot warehouse/ storage facility. No time frame has been established for removal of material as activity is based on market demand.

Inactive Earth Excavation Sites

6) Tax Map 245 Lot 035. Location: 250 Pleasant Street, in the Rural and Rural Conservation Zoning Districts. Owner/Operator: Stuart Gross. The total acreage of the lot is 14.3 acres. The original permit was granted in 1992 for a one (1) acre pit. A half-acre (½) site has been excavated and reclaimed. In 1998, a half-acre (½) site was active and the landowner estimated that approximately 20,000 cubic yards of material remained, with no time frame established for removal. The five (5) year Town of Antrim Earth Excavation Permit issued by the Planning Board for this operation expired on July 1, 2004. Therefore, this operation has lost its grandfathered status. A Notice of Intent to Excavate was submitted to the Town of Antrim for the period from April 1, 2005 through March 31, 2006 but was not signed by the Board of Selectmen because a new Earth Excavation Permit had not been obtained from the Planning Board. No Notice of Intent to Excavate has been submitted to the Town of Antrim since 2005-2006 and it is unknown if this site has been reclaimed.

7) Tax Map 233 Lot 043. Location: 127 Clinton Road, in the Rural Zoning District. Owners: Allison L. & Cynthia A. Gould (formerly owned by Mary I. Cuddihy). The total acreage of the lot is 2.29 acres. The operation has lost its grandfathered status and the excavation site has been reclaimed by nature according to an inspection conducted by Spencer Garrett, the Planning Board's agent hired to conduct earth excavation site inspections.

8) Tax Map 242 Lot 020. Location: On the south side of West Street (across the street from 107 West Street), in the Rural Zoning District. Owners: the heirs of Elmer W. Merrill. The total acreage of the lot is 60 acres, with material consisting mostly of sand. The 1991 application for grandfathered approval stated that only a half-acre (½) of the Merrill Pit was being worked and that there was very little material left. The operation has lost its grandfathered status and the excavation site has been reclaimed by nature, according to an inspection conducted by Spencer Garrett, the Planning Board's agent hired to conduct earth excavation site inspections.

9) Tax Map 219 Lot 003. Location: Landlocked parcel near Elm Avenue (south of Map 214, Lot 17), located in the Rural Zoning District. Owner: Zeke & Mack's Realty, LLC (also known as Francestown Sand and Gravel)**;** formerly owned by Smith Harriman. The total acreage of the lot is 26 acres. Anecdotal information suggests that the site was excavated many years ago but there are no town records documenting this. The operation has lost its grandfathered status and the excavation site has been reclaimed by nature, according to an inspection conducted by Spencer Garrett, the Planning Board's agent hired to conduct earth excavation site inspections. The current owners have no plans to operate an earth excavation site on this lot.

10) Tax Map 213 Lot 006. Location: On Brown Avenue (near the intersection of Route 9 and Route 31) in the Highway Business District. Owners: Ben & Christine Chadwick, Trustees of the Revocable Family Trust. The total acreage of the lot is 6.1 acres. The property was an excavation site but the designation of the property was changed from "Gravel" to "Agricultural/Retail" on March 4, 1999. The operation has lost its grandfathered status and it is currently unknown if the excavation site has been reclaimed by nature.

11) Tax Map 213 Lot 007. Location: On Brackett Road (just south of Map 213, Lot 6), in the Highway Business and Rural Zoning Districts. Owner: Sonja M. McKinley. The total acreage of the lot is 20 acres. The operation has lost its grandfathered status and the excavation site has been reclaimed by nature, according to an inspection conducted by Spencer Garrett, the Planning Board's agent hired to conduct earth excavation site inspections.

12) Tax Map 253 Lot 012. Location: On Willard Pond Road (just east of 93 Willard Pond Road) in the Rural Conservation District. Owners: Charles E. Zimmerman and Ellena N. Weston. The total acreage of the lot is 7.5 acres. This is an abandoned excavation site. Mr. Zimmerman did apply to the Planning Board several years ago for a permit to renew excavation on a portion of the land but never provided the Board with the information required, in particular, a reclamation plan. Therefore, a Town of Antrim Earth Excavation Permit was not issued. Nor was a Notice of Intent to Excavate submitted to the Town of Antrim. The operation has lost its grandfathered status and it is currently unknown if the excavation site has been reclaimed by nature.

Opportunities for Earth Excavation Operations

There are few areas elsewhere in Antrim which may be suitable for earth excavation operations. Antrim's zoning ordinances make no provisions for the permitting of new earth excavation sites. Therefore, an applicant wishing to open a new earth excavation operation is required to obtain a special exception from the Zoning Board of Adjustment in accordance with RSA 155-E:4, III.

An application for a special exception to operate an excavation site in the Rural District was denied by the Zoning Board of Adjustment in April of 2007. Advice of Town Counsel was

solicited regarding the following wording in RSA 155-E:4, III: " …excavation shall be deemed to be a use allowed by special exception as provided in RSA 674:33, IV, in any non-residential areas of the municipality…". Town Counsel's interpretation is that if there are residences in the area of a proposed excavation site, there may be grounds to deny an application to operate an excavation site. It is Town Counsel's opinion that the only zoning districts in Antrim which permit an excavation site in accordance with RSA 155-E are the Village Business and Highway Business Districts. Counsel's reasoning is outlined in the Upton & Hatfield letter dated April 9, 2007, at the conclusion of this chapter. For these reasons, it is recommended that the Planning Board determine which zoning districts should permit new earth excavation sites in Antrim, if any, as either a permitted use or as a special exception use with additional requirements. We note here that all existing excavation sites are in the Rural District.

Due to natural events including glaciation and geomorphologic processes, many of the sand and gravel deposits within Antrim have been deposited on, above, or near aquifers and therefore earth excavation activities must be conducted in a manner to prevent and/or minimize potential disturbances and contamination of aquifers. The aquifers and groundwater resources provide important drinking water sources for various residents and are potential future sources for public water supply wells. Although RSA 674:2 allows towns to adopt a Water Resource Management Plan, Antrim has not yet done so. A regulation was adopted in 2005 which states that there shall be no earth excavation of materials within four (4) feet of the average high water table. In 2008, the Town of Antrim also formally adopted a new zoning ordinance, Article XI-B Aquifer and Wellhead Protection District, which further regulates potentially damaging uses from operating in areas identified as overlying an aquifer or within a NH DES designated wellhead protection area for a few existing public water supply wells in town. Earth excavation operations are not uses prohibited by the Aquifer and Wellhead Protection District, but it is recommended that the Planning Board draft regulations and ordinances which encourage those earth excavation operations within this district to be managed in a manner which prevents contamination of these vitally important groundwater resources.

Recommendations

- Determine in which zoning districts new earth excavation sites will be allowed, either by permitted use or as a special exception with conditions. In considering the districts, note that all existing earth excavation sites presently in operation are in the Rural District.

- Consider making revisions to the Town of Antrim's Earth Excavation and Reclamation Regulations so that the regulations are less ambiguous. Specifically, the addition of more definitions are needed to help clarify various earth excavation activities (e.g., clearly define such terms as 'hours of operation', 'commercial', 'incidental excavation', 'minor topographical adjustment', 'normal landscaping', etc.). In addition, the current Town of Antrim Earth Excavation and Reclamation Regulations are essentially a concise version of the state statutes (RSA 155-E) and could be revised to be more specific and to clarify those areas of RSA 155-E which are considered gray areas and/or are often misinterpreted.

- Consider making revisions to the Town of Antrim's Earth Excavation and Reclamation Regulations and/or Aquifer and Wellhead Protection zoning

ordinance in order to add specific language and restrictive regulations governing the operation of earth excavation sites in areas overlying an aquifer or within a NH DES identified wellhead protection area.

- Consider revising the current Town of Antrim Earth Excavation and Reclamation Inspection Checklists for both operating standards and reclamation standards, to ensure more thorough annual inspections of active earth excavation sites in Antrim.

- Conduct inspections of inactive earth excavation sites to determine if they are in fact inactive, reclaimed, and/or abandoned in such a manner that nature will reclaim them.

- Draft a Water Management Resource Plan to protect existing surface and subsurface water resources from potential contamination sources.

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Please respond to the Concord office

April 9, 2007

Bradley Houser, Planning Technician
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RE: RSA 155-E:4, III

Dear Bradley:

This letter is intended as a follow-up to our recent telephone conversation regarding the proper interpretation and application of the provisions of RSA 155-E:4, III. That paragraph provides that when excavation is not permitted by a town's zoning ordinance or where the subject of excavations is not addressed, then "excavations shall be deemed to be a use allowed by special exception … in any non-residential area of the municipality … ." The question presented is how does one define "non-residential area."

The statute does not resolve this question. However, given the context (zoning), I am persuaded that the best interpretation of the statute is that "area" should be viewed through the zoning ordinance's various zoning districts. Thus, a special exception would be available for excavation purposes within the Town's Village Business and Highway Business Districts. If it were otherwise, it is impossible to identify what attributes are necessary in order for an area to be defined as non-residential. Is it measured by virtue of density? Distance from residential properties? If so, should any consideration be given to the fact that the excavation material would need to be transported through residential areas? Indeed, wouldn't every excavation site be a "non-residential area," given the fact that there are no residences on the excavation site?

The courts could construe the statute otherwise; but at this point, I believe that the most appropriate interpretation of the statute is by reference to the Town's zoning districts.

Sincerely,

Barton L. Mayer
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