

Town of Otis

Landfill Area Protection Ordinance

Section 1. General Provisions

- A. **Title**
This ordinance shall be known and cited as the landfill area protection ordinance of the town of Otis, Maine and will be referenced to as "this ordinance".
- B. **Authority**
This ordinance is adopted pursuant to the enabling provisions of Article 8, part 2, section 1 of the Maine Constitution, the provisions of title 30-A, MRSA Section 3001 (home rule).
- C. **Purposes**
The purposes of this ordinance:
1. To promote the health, safety, and general welfare of the residents of Otis;
 2. To encourage the most appropriate use of land adjacent to solid waste disposal facilities;
 3. To avoid the contamination of new groundwater drinking supplies and close proximity to potential contamination sources; and
 4. To avoid the potential hazard gas migration from solid waste facility to nearby dwellings.
- D. **Applicability**
The provisions of this ordinance shall govern all land and certain structures within the boundaries of the town of Otis which exist or are proposed within 1500 feet, horizontal distance, of the solid waste boundary of the landfill closed out in accordance with the Maine solid waste management regulations chapter 401.7 and 8, or within 1500 feet of the solid waste boundary of any new solid waste disposal facility licensed in accordance with chapter 401.
- E. **Availability**
A certified copy of this ordinance shall be filed with the municipal clerk and shall be accessible to any member of the public at reasonable cost at the expense of the person making the request. Notice of this availability of this ordinance shall be posted.
- F. **Conflicts with other Ordinances**
Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other applicable ordinance, regulation, or statute, the more restrictive provision shall apply.
- G. **Validity and Severability**
Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.
- H. **Effective Date**
The effective date of this ordinance shall be the date of the adoption at a regular or special town meeting on Saturday, May 11, 1996.
- I. **Amendments**
This ordinance may be amended only by the procedure required for its original enactment.

J. Vested Rights

Non-conformance status cannot arise by the mere filing of a notice of intent to build, an application for building permits, or an application for required state permits and approvals. Such rights usually arise when actual substantial construction has begun, or, in the case of pending applications pursuant to this ordinance, when the substantive review against performance standards on a complete application commences. Such construction must be legal at the time it is commenced with all valid issued permits, both state and local.

Section 2. Non-Conformance

A. Purpose

It is the intent of these provisions to promote land use conformities, except that legally existing non-conforming structures shall be allowed to continue, subject to the requirements set forth in this section.

B. General Requirements

1. Transfer of ownership: Non-conforming structures may be transferred, and the new owner may continue the use of the non-conforming structure subject to the provisions of this ordinance.
2. Repair and maintenance: This ordinance allows, without a permit pursuant to this ordinance, the normal upkeep and maintenance of non-conforming structures including repairs or renovations which do not involve expansion of the non conforming structure, and such other changes in a non-conforming structure as federal, state, all local building and safety codes may require. Normal upkeep and maintenance includes any work not involving the expansion of the volume or floor area.

C. Non-conforming structure

1. Expansions: A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure pertaining to all applicable land use requirements. Expansions of non-conforming structures are limited to the thresholds established in section 3.C.below.
2. Relocation, Reconstruction Replacement: a non-conforming structure may be relocated, reconstructed, or replaced within the boundaries of the parcel on which the structure is located provided that the site of relocation, replacement or reconstruction conforms to all setback or other dimensional requirements to the greatest practical extent as determined by the planning board. In determining if the relocation, replacement or reconstruction will be accomplished to the greatest practical extent, the planning board shall base its decision on the size of the lot, the physical condition and type of foundation present, if any, the relationship to neighboring properties, the slope of the land, presence of limiting factors such as the presence of ledge or wetlands, the amount of vegetation to be removed, and the location of the septic system and other on-site soils suitable for a septic system. If there is a foundation present and in a condition capable of supporting a replacement structure, relocation is not required. And in no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.
Any non conforming structure which is damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, maybe reconstructed in place with a permit from the code enforcement officer.

Section 3. Special Approvals

Notwithstanding the setback requirements established in section 4 below, a single-family dwelling and the well serving the same only, may be permitted within the required setback provided the applicant demonstrates that all the following criteria are met:

1. That there is no location on the property, other than a location within the required setback area, with a structure can be located.
2. The lot on which the structure is proposed is undeveloped and was established and recorded in the Hancock County Registry of Deeds prior to the adoption of this ordinance.
3. The total floor area of the single-family dwelling unit is less than 1000 square feet or the septic system design is for 360 gallons per day or less.
4. All structures are setback from the solid waste boundary to the greatest practical extent. In determining the greatest practical extent, the planning board shall base its decision on the size of the lot, the physical condition and type of foundation present, if any, relationship to neighboring properties, presence of limiting factors such as presence of ledge or wetlands, the amount of vegetation to be removed, and the location of the septic system and other on-site soils suitable for a septic system, the configuration of the lot, the slope of the land in relation to the disposal facility, and the movement of groundwater if the information is made available.

Missing page 4

7. Notwithstanding the setback requirements of this section, no structure shall be required to meet a setback requirements which would cause the structure to be placed in non-conformity with a structural set back distance established in the town of Otis Shoreland Zoning Ordinance.

The applicant shall use table 1 to determine the total number of points. The total number of points will determine the total set back distance of the well location. A total of 0 -- 7 points requires a 300-foot minimum setback, 8 -- 11 points require a 600-foot setback, 12 -- 14 points require a 900-foot setback, and 15 -- 18 points requires a 1500-foot setback from the solid waste boundary.

B. Establishment of Uncertainty of Setback Boundary Locations

Where uncertainty exists as to the solid waste boundary or measured setbacks as determined by the code enforcement officer the following rules shall apply:

1. The solid waste boundary shall be as depicted on any drawings submitted as part of a closure plan submitted to the Department of Environmental Protection in accordance with Maine solid waste regulations chapter 401.7 and 8 or other plans developed by a registered engineer or surveyor.
2. The code enforcement officer shall use the plans mentioned in subsection 1. Above and the total number of accumulated points in section 4.A. as a beginning reference for establishing the structure setback distances from the solid waste boundary. If for any reason of uncertainty on the part of the CEO or at the applicant's request, a survey shall be completed to determine the set back distance from the solid waste boundary.
3. Where physical or cultural features existing on the ground are at variance with those shown on the plans referenced in subsection 1. Above, or in other circumstances where uncertainty exists with respect to the location of a boundary, the Board of Appeals shall interpret the district boundaries and be the final local authority as to their location.

Section 5. Administration, Enforcement, Penalties and Appeals

A. Administering Bodies and Agents

1. Planning Board: The Planning Board of the town of Otis, hereinafter called the "Board", shall be responsible for reviewing and acting upon applications which require a special approval for the expansion, replacement, or relocation of a non conforming structure.
2. Code Enforcement Officer:
 - a. It shall be the duty of the Code Enforcement Officer to issue all land use permit's other than those issued by the Planning Board.
 - b. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this ordinance. If the Code Enforcement Officer shall find that any provision of this ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
 - c. The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this ordinance.
 - d. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations filed, and fees collected.
 - e. Legal actions, when the above action does not result in the correction or abatement of the violation of nuisance condition, the municipal officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recording fines without court action. Such agreements shall not allow an illegal structure to continue unless there is clear and convincing evidence that the illegal structure was constructed or conducted as a result of erroneous advice by an authorized municipal official and that there is not evidence that the owner acted in bad faith or unless the removal of the structure or use will result in substantial environmental damage.
 - f. Fines. Any person, including but not limited to a landowner, a land owners agent or a contractor, who orders or conducts any activity and violation of this ordinance shall be penalized in accordance with title 30-A MRSA section 4452.
3. Board of Appeals: The Board of Appeals shall be responsible for deciding administrative and variance appeals in accordance with state law and the provisions and requirements of section 16 of the town of Otis Shoreland Zoning Ordinance.

B. Permit Required

After the effective date of this ordinance no person shall without first obtaining a permit engage in the placement of a structure or well requiring a permit, or expand, change or replace an existing structure; or renew or discontinued non-conforming structure.

1. Land use permit. A land use permit shall be obtained from the Code Enforcement Officer unless the land use activity involves a special approval or a non-conformity. In cases of a special approval or non-conformity, a permit shall be obtained from the planning Board. If the Code Enforcement Officer determines that the proposed structures exceed applicable setbacks by more than 100 feet, no formal land use permit is required. The party proposing the land use and or measurements to determine exemption from applying for a permit, shall sign an intent to build form consenting awareness of this ordinance and its requirements. Exemption from obtaining a permit pursuant to this subsection does not relieve individuals, from obtaining permits as required by other codes or ordinances if applicable.

C. Permit Application

1. Application form. Every applicant for a permit shall submit a written application, including a scaled site plan and a completed worksheet with the total accumulated points on a form provided by the municipality, to the appropriate officials as indicated by this ordinance.
2. Authorization. All applications shall be signed by the owner or owners of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property than that person shall submit a letter of authorization from the owner or lessee.
3. Date. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate shall note upon each application that date and time of its receipt.
4. Plumbing permit if the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the plumbing inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.
5. Application fee. The application fee for a building permit shall be \$10 this application fee shall be made by check payable to the town of Otis. No land use permit shall be issued until the fee is paid. This fee shall not be refundable.

D. Procedure For Administering Land Use Permits

1. Determination of complete application. Within 35 days of the date of receiving a written application requiring planning Board approval, the planning Board shall notify the applicant in writing either that the application has been accepted as a complete application, or if the application is incomplete, that specific additional material is needed to make the application complete. For permits requiring Code Enforcement Officer approval, this time period shall be 14 days.
2. Timing of actions. For applications requiring planning Board approval, the planning Board shall approve, approve with conditions, or deny all permit applications in writing within 35 days of a public hearing or, if no

public hearing is held, within 35 days of the date of acceptance of the application as complete. For applications requiring approval from the code enforcement Officer, he/she shall approve or deny the application within thirty days of accepting the application as complete.

3. Burden of Proof. The applicant shall have the burden of proving that a proposed land activity is in conformity with the purposes and provisions of this ordinance.
4. Decision. If the Planning Board or Code Enforcement Officer finds that the proposed project complies with all applicable standards it shall issue in order granting land use permit approval subject to such terms and conditions as the Board considers advisable to insure conformity with the criteria of this ordinance, or to protect the public's health, safety, or general welfare. If the Planning Board or Code Enforcement Officer find that the proposed structure do/does not comply with all applicable review standards, it shall issue in order denying the land use permit application. In either case, the planning Board or code enforcement Officer shall, within 10 working days after the completion of its deliberations, issue specific written findings of fact supporting its or his/her decision.

E. Public Hearing Procedures

The Planning Board may decide to hold public hearing on an application. Public hearings and notice thereof shall comply with the following procedures:

1. Notice of said hearing shall be published in a newspaper of general circulation at least ten days prior to the hearing date.
2. Mailed Notice. At least 14 days prior to the hearing date, written notice of said hearing shall also be mailed to the applicant, to the owners of all property within 300 feet of the property in question, to the chairperson of the Otis Board of Selectmen. The owners of property shall be considered to be those shown on the town's tax list as the persons against whom taxes are assessed. The Code Enforcement Officer shall, in each case, maintain a list of property owners so notified. Notice shall be deemed received if mailed to an owner's last known address according to the town tax records. Failure of any property owner to actually receive notice shall not necessitate another hearing or invalidate any actions of the Planning Board as long as this notification process was undertaken in good faith.
3. Content of Notice. Notice of said hearing shall identify the applicant and the property involved, describe the specific nature of the proposal, state the date, time and place of the hearing, and explain how the recipient of the notice may attend and present evidence.
4. Rules. Said hearings shall be conducted according to rules adopted by the Planning Board.
5. Representation. At any hearing a party may be represented by an agent or attorney provided, however, if any party is not present, any person acting as that party's agent or attorney shall provide written evidence of such authority.
5. Continuation. Any hearing may be continued or recessed to another time of good cause shown or upon written or recorded agreement of the Board and the applicant.

I. Professional Review

1. Additional studies. In the case of a special approval or the re-establishment of a nonconforming structure, the planning Board may

require the applicant to undertake any additional hydro geological studies, which it seems reasonable and necessary to insure that the requirements of this ordinance are met. The cost of all such studies shall be borne by the applicant.

2. Independent Technical Review. The Code Enforcement Officer may require that an independent consultant review one or more submissions of an application pertinent to establishing required setback on the ground as described in section 3.

J. Failure To Act

Failure of the Planning Board or Code Enforcement Officer to act within any of the time requirements set forth herein shall constitute a denial of the application.

K.

L. Other Permits

The granting of the land use permit approval does not relieve the applicant from the need to obtain any other permits or approvals required prior to the commencement of any activity or use. The fact that the applicant may have obtained or may have been granted such permits or approvals prior to the site plan review may be considered by the planning Board as evidence as to the plans compliance with applicable review standards, but shall not be deemed conclusive evidence as to compliance.

M. Access to Site and Records

The town shall have access to the site at all times to review the progress of the work and shall have the authority to review all records and documents related to the project. The applicant, by accepting a land use permit, waives any objection to the town having access to the site to review the progress of the work or to review all records and documents related to the project.

N. Installation of Public Utility Service

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located within 1500 feet of a solid waste boundary unless written authorization for attesting to the validity and currency of all local permits required under this or any previous ordinance has been issued by the appropriate municipal officials. Following installation of service, the Company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

Section 6. Definitions

Floor area -- The sum of the horizontal areas of the floor of a structure enclosed by exterior walls.

Non-conforming structure -- A structure that does not meet one or more of the setback requirements of this ordinance, but which is allowed solely because it was in lawful existence at the time this ordinance of subsequent amendments took effect.

Single Family Dwelling Unit -- A room or group of rooms under a common roof designed and equipped for use as a permanent, temporary, or seasonal living quarters for the family living as a single housekeeping unit.

Solid Waste -- Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing, including but not limited to, rubbish, garbage, refuse, derived fuel, scrap metals, junk, refuse, inert fill material and landscape refuse. The fact that a solid waste or constituent of

the waste may have value or any other use or may be sold or exchanged, does not exclude it from this definition.

Solid Waste Boundary -- The outermost limit of the solid waste, projected on horizontal plane, as it would exist at completion of a Department of Environmental Protection approved solid waste disposal facility, whether opened or closed for the exceptions of solid waste materials.

Solid Waste Disposal Facility -- Means a solid waste facility for the land filling of solid waste.

Structure -- Anything built for the support, shelter or enclosure of persons, goods, animals or property of any kind inclusive of wells.

Well -- Any groundwater derived for human drinking water supply, whether public or private, or water source for commercial applications.