SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

_____

LAW COURT DOCKET NO. And-25-441

_____

TOWN OF SABATTUS

Plaintiffs/Appellees

- v. -

L.P. POIRIER & SON, INC., et al.

Defendants/Appellees

_____

ON APPEAL FROM THE
MAINE DISTRICT COURT

BRIEF OF NEIGHBORS GROUP INTERVENORS/APPELLANTS CHRISTOPHER TWEEDIE, JANE EDEN GUTHRO, LESLIE COOK, RICHARD CHAREST, GERALD HAGERTY, JAMES MONTRONE, JONNA WILSON, TIMOTHY RICHARD, MICHAEL TODORSKY, AND SCOTT FYFE

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INTRODUCTION AND ARGUMENT SUMMARY

For nearly twenty years, L.P. Poirier & Sons, Inc. extracted gravel, expanding the size of the excavation pit well beyond the four-acre limits of a conditional site plan approval granted by the Town of Sabattus Planning Board in 2003. (A. 237-38.) By the time the Town of Sabattus commenced enforcement in 2023 by issuing a notice of violation, the steep edges of the gravel pit extended to the limits of a right of way that numerous abutting property owners use to access their homes on Sabattus Pond. (A. 233, 237-38.) Intervenors and Appellants are among those property owners directly impacted by the gravel pit and the Town's dilatory enforcement action. The Town eventually reached two identical Consent Judgments ("the Consent Judgment")[1] that are plainly inconsistent with the legal standards that govern a court's review of a consent judgment and limit municipal discretion to resolve a land use violation. Despite objections raising the Consent Judgment's deficiencies, the Town ignored those concerns and fought Intervenors' efforts to even have the opportunity to be heard in court. (A. 4-5.) The Town argued that because the Town does not enforce the state statutory standards, those

[1] For simplicity, this brief refers to the Poirier Consent Judgment (A. 25-34) and Berube Consent Judgment (A. 35-43) in the singular, "Consent Judgment." Both judgments are nearly identical except for the party. It is unclear why the Town prepared separate judgments when a judgment could apply to multiple parties.

standards do not apply in Sabattus and do not limit the Town's authority to enter a consent decree that violated state statutes.

Following oral argument, the District Court ultimately approved the Consent Judgment, reasoning, in part, that because the Town did not have primary enforcement authority, and a state agency hypothetically could pursue a separate enforcement action to seek compliance with that statutory standard, the Town was therefore permitted to enter into a consent agreement that violated multiple state statutes. In addition to contravening well established principles of statutory interpretation and preemption doctrine, the trial court failed to undertake the important judicial review and scrutiny that this Court's precedent requires.

In *Pike Industries v. City of Westbrook*, 2012 ME 78, ¶ 24, 45 A.3d 707, this Court enumerated several elements that must be met to ensure that a consent judgment is fair, adequate, reasonable, and an appropriate exercise of a court's equitable authority. This appeal provides this Court an opportunity to guide courts in their review of consent judgments, and make clear, as *Pike* should have made clear, that a municipality cannot enter into a consent agreement that is inconsistent with and preempted by state law.

STATEMENT OF FACTS AND PROCEDURE

In 2003, L.P. Poirier & Son, Inc. obtained a Conditional Approval to extract gravel just to the east of Sabattus Pond on a four-acre site. (A. 232.) Raymond Poirier and Kristie J. Berube are spouses and record owners of the gravel pit.[2] (A. 25, 35.) The conditional approval required Poirier to maintain a buffer zone between a right-of-way surrounding F. Sanborn Road and the limit of the excavated area and to meet all setback requirements in the site plan ordinance. (A. 232.) The buffer zone and setback in existence in 2003 was 100' wide. The Planning Board expressly stated that "a field inspection of the 100ft setback from the private road was done and the board told the Poiriers they must have a setback pin in place." (A. 237.) Since the issuance of the 2003 Conditional Approval, Poirier has significantly expanded the size of the gravel pit from 4 acres to 5.7 acres and removed the entire 100' buffer. (A. 28, 38, 237-38.)

The Town officials investigated the site beginning in November 2023, and in December 2023, Poirier agreed to cease further excavation at the pit. (A. 238.) The Town's code enforcement officer issued a Notice of Violation (NOV) for violations of the 2003 Conditional Approval and the Town's Shoreland Zoning Ordinances. (A. 237-38.) The NOV stated, "The current

[2] For simplicity, this appeal refers to L.P. Poirier & Sons, Inc., Raymond Poirier, and Kristie J. Berube collectively as "Poirier."

excavation has reached the line on the site plan indicating the eastern edge of the right of way for [F. Sanborn Road]. The Buffer Zone no longer exists." (A. 238.) The Town then authorized the Town's attorney to file a land use citation and a complaint but stayed the complaint to allow time to negotiate a resolution. (A. 27-28, 38.)

In February 2025, the Town entered into identical Consent Judgments with the Poirier and Berube,[3] identifying several remaining violations including that Poirier (1) expanded beyond the four acres conditionally approved in 2003, (2) expanded into the buffer zone in violation of the Conditional Approval, (3) expanded into the shoreland zone in violation of the Town's Shoreland Zoning Ordinances, and (4) failed to maintain a stable berm that formed the limit of the excavation. (A. 28, 38-39.) In addition to ceasing mineral extraction, the Consent Judgment required Poirier to pay attorney fees and civil penalties. (A. 30-31, 40.) The Consent Judgment also required Poirier to meet the requirements of section 15(M)(3) of the Town's Shoreland Zoning Ordinance, including removing debris, stabilizing the land to the edge of the Berm, and

[3] Poirier, as the owner and operator of the gravel pit, is the party that will be undertaking the reclamation, and his spouse Kristie Berube was included to ensure that all record owners of the property were subject to the judgment. The District Court's finding and conclusion that Intervenors did not object to the Berube judgment is inaccurate and wholly unsupported by any evidence or representations by counsel in the record. To be clear, Intervenors *do* also object to the Berube judgment for the same reasons and would not want their objections to be undermined by failing to apply to some but not all record owners.

developing a graded slope. (A. 30.) Finally, the Consent Judgment required Poirier, by August 2028, to (i) stabilize the berm, (ii) construct a reclaimed buffer in the 30 feet east of the berm, and (iii) stabilize the reclaimed buffer. (A. 30.) The Town and Poirier submitted the Consent Judgment to District Court on April 9, 2025. (A. 5.)

The Appellants own property and homes located between F. Sanborn Road and Sabattus Pond.[4] (A. 237.) A hillside that features an unstable and steep cliff on the pit side is all that remains between the gravel excavation site and F. Sanborn Road, which the Appellants use to access their properties. *See* (A. 233-35 (providing a survey illustration of the Gravel Pit Expansion, the Appellants' homes, and the F. Sanborn Road right-of-way. Red indicates the extent of the expansion within the Shoreland Zone; green elucidates additional expansion of the gravel pit beyond the area permitted by the 2003 Conditional Approval). Over the Town and Poirier's objections, the Appellants were granted intervenor status on April 17, 2025, and filed a written objection to the Consent Judgment on May 27, 2025. (A. 5.) A non-testimonial hearing and oral argument was held on June 5, 2025. (A. 6.)

[4] The Appellants and Intervenors are Christopher Tweedie, Jane Eden Guthro, Leslie Cook, Richard Charest, Gerald Hagerty, James Montrone, Jonna Wilson, Timothy Richard, Michael Todorsky, and Scott Fyfe.

On September 18, 2025, the District Court overruled the Appellants' objection and approved the Consent Judgment. (A. 9-18.) The Appellants timely appealed. (A. 7.)

STATEMENTS OF ISSUES PRESENTED

1) **Whether the District Court erred in approving a consent judgment that violated several applicable state statutes.**

2) **Whether the District Court erred in approving a consent judgment that violated the Town's ordinance.**

3) **Whether the District Court erred in concluding, given the violations of state statute and municipal ordinances, that the Consent Judgment did not cause a legally impermissible effect on the Intervenors.**

STANDARD OF REVIEW

In reviewing a consent decree, "a court must be satisfied that it does not violate the United States and Maine Constitutions, statutes, or other relevant sources of law." *Pike Industries*, 2012 ME 78, ¶ 14, 45 A.3d 707 (citation omitted). "Whether a consent decree comports with legal requirements is a question of law that [this Court] review[s] de novo." *Id.*

This appeal challenges the District Court's interpretation and application of *Pike* and the conclusion that the Consent Judgment comported with applicable legal requirements for a consent decree, including compliance with state statutes. This appeal accordingly turns upon questions of law that are reviewed *de novo*.

"In interpreting a statute, [this Court] look[s] to the plain meaning of the statute, interpreting its language to avoid absurd, illogical or inconsistent results and attempting to give all of its words meaning." *Jackson Lumber & Millwork Co. v. Rockwell Homes, LLC*, 2022 ME 4, ¶ 10, 266 A.3d 288 (quotation marks omitted). The Court "construe[s] the terms of an ordinance reasonably, considering its purposes and structure and to avoid absurd or illogical results." *Stiff v. Town of Belgrade*, 2024 ME 68, ¶ 12, 322 A.3d 1167 (citations and quotation marks omitted).

Maine courts apply a five-element standard to evaluate the legality of a negotiated consent decree to ensure that the result is "fair, adequate, and reasonable, and an appropriate exercise of the court's equitable authority":

> (1) The parties have validly consented; (2) reasonable notice has been given to possible objectors and they have been afforded a reasonable opportunity to present their objections; (3) the consent decree will not violate the United States or Maine Constitutions, a statute, or other authority; (4) the consent decree is consistent with express legislative objectives and other zoning-related public policy considerations; and (5) the consent decree is reasonable and is not legally impermissible in its effect on third parties.

Pike Industries, 2012 ME 78, ¶ 24, 45 A.3d 707. Although public policy favors the settlement of disputed claims, that public policy is tempered by the countervailing public policy "favoring uniform applicability and enforcement of zoning ordinances." *Id.* ¶ 25. This is especially true when the ordinances are intended to protect third parties and the public generally. *Id.*

I. The District Court erred when it determined that the Consent Judgment did not violate state law.

The primary error by the District Court here was to conclude that because the Judgment did not immunize Poirier from legal requirements and another governmental agency could hypothetically take enforcement action in the future, nothing more was required to approve the judgment. (A. 15-17.) The court reached this conclusion despite that the Consent Judgment violates several state statutes and express legislative objectives governing gravel pits.

Effectively, the trial court abdicated the responsibility to ensure compliance with clearly applicable requirements that the Consent Judgment did not satisfy. *Pike* requires more and requires this Court to vacate the Consent Judgment.

A. Title 38 M.R.S. §§ 490-A to 490-K (2025) apply to Poirier's pit.

As a threshold matter, certain state statutes apply to Poirier because the gravel pit exceeds five acres. Sections 490-A through 490-K of Title 38 regulate and provide performance standards for the "excavation for borrow, clay, topsoil or silt, whether alone or in combination, including reclaimed and unreclaimed areas, if the total excavated area on a parcel is 5 acres or more."[5] 38 M.R.S. § 490-B (2025). The District Court found[6] that the Poirier gravel pit is approximately 5.7 acres in area, which means that these statutes and the performance standards therein apply to Poirier.

B. The Consent Judgment violates statutory performance standards applicable to gravel pits and therefore violates a statute and is inconsistent with express legislative objectives.

[5] Title 38 M.R.S. § 482(1-A) (2025) defines "Borrow Pit" as "a mining operation undertaken primarily to extract sand, fill or gravel."

[6] The Consent Judgment that the District Court adopted and signed stated "On December 11, 2023, Maine DEP notified the Town that in October, 2023 it completed a field survey of the site and GPS mapping of the mining area. The results showed that the affected area is approximately 5.7 acres." (A. 27, 37.) No evidence in the record supported the District Court's less concrete characterization that "the affected area *could be* as large as 5.7 acres." (A. 16 (emphasis added).) The 5.7 acre measurement was taken by the Maine Department of Environmental Protection using survey and GPS technology and there was no basis to question the accuracy of the measurement. In any event, the clear and concrete finding in the Consent Judgment that was adopted by the Court, not the Court's ambiguous characterization in its order, is controlling here.

The Consent Judgment violates statutory performance standards applicable to gravel pits and therefore violates "a statute" and express legislative objectives within the meaning of *Pike*. This required the District Court to reject the Judgment and for the Parties to submit an amended judgment that complied with law. As explained further below, to allow a court to accept and adopt a consent decree that violates a statute would render judicial review pursuant to *Pike* meaningless.

1. The Consent Judgment violates private road setbacks imposed by statute.

Section 490-D(6-A) provides the following performance standard:

> "Public and private roads. A natural buffer strip must be maintained between the working edge of an excavation and a road or right-of-way as follows."
> . . . .
> C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any private road or right-of-way. If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way. The width of the natural buffer strip adjacent to a private road may be reduced if the applicant receives written permission from the person or persons having a right-of-way over the private road.
>
> Except for paragraph B, the department may not grant a variance from the provisions of this subsection.

38 M.R.S. § 490-D(6-A) (2025). The statute further provides: "If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way."

Here, Poirier excavated and extracted materials well beyond the permitted four-acre area and removed the natural vegetative buffer strip that existed between the pit and the right-of-way. The undisputed evidence—namely Poirier's own survey—depicts the excavated area extending to the limit of the F. Sanborn right-of-way along most of the length. (A. 234.) As shown on the survey presented to the District Court (A. 233-34), the area of excavation comes within a few feet of the F. Sanborn Road right-of-way limit along the northerly portions of the pit and along the southerly portions of the pit, the excavation clearly overlaps with or encroaches over the line and into the right-of-way.

Although Poirier has attempted to dispute that he was responsible for removing the buffer strip, the evidence shows otherwise. There is no disputing that the buffer existed at the time of permitting in 2003 and is now gone. The Town's NOV, which was incorporated by reference into the Consent Judgment and thus adopted by the trial court as a finding, expressly stated, "The Buffer Zone no longer exists." (A. 238; *compare* (A. 232) which provides a survey depicting the buffer zone as it was conceived of in 2003 *with* (A. 233), which

provides a survey of the current extent of the excavation.) The fact that the buffer was removed is beyond reasonable dispute.[7]

The Consent Judgment requires Poirier to "construct a Reclaimed Buffer in the 30 feet east of the Berm." (A. 30.) "Berm" is defined as "the limit of the excavated area closest to F. Sanborn Road; specifically it means the easterly line of the F. Sanborn Road right-of-way . . . ." (A. 29.) The Consent Judgment therefore only requires Poirier to reestablish a thirty-foot buffer from the edge of the F. Sanborn Road right of way. (A. 30.) This is approximately twenty feet short of the minimum that 38 M.R.S. § 490-D(6-A) requires.

Because the Consent Judgment does not require Poirier to reestablish a fifty-foot buffer strip,[8] but instead requires only thirty feet of buffer, the Judgment violates section 490-D(6-A). In addition, the statute is clear that the Legislature sought to impose minimum standards and expressly limited the Department of Environmental Protection's ("DEP") ability to waive or relax minimum standards. This fifty-foot setback is one such standard. Section 490-

[7] The District Court's finding that "it is not clear . . . if any other buffer currently exists in the area," (A. 16), was a clearly erroneous given the overwhelming and undisputed record evidence that the buffer was removed and thus is no longer in existence. *See Young v. Legasse*, 2016 ME 96, ¶ 8, 143 A.3d 131 ("A finding of fact is clearly erroneous if there is no competent evidence in the record to support it.").

[8] Note that the original buffer that existed and was not to be disturbed as a condition of approval was 100 feet, and Poirier was fully aware of his obligation to respect that buffer. Requiring 50 feet would have been a compromise on the part of the Town that would have complied with state law.

D(6-A)(C) states "the department may not grant a variance from the provisions of this subsection." 38 M.R.S. § 490-D(6-A). The Consent Judgment is inconsistent with an express legislative objective to provide adequate setback and buffer—without exception—between an excavation site and a private road. In permitting a thirty-foot buffer, the Consent Judgment effectively granted a variance from the performance standard in violation of the statute. This sort of action is beyond the authority of the DEP and, correspondingly, the Town to grant. Said differently, if DEP cannot grant a variance from this fifty-foot standard, neither can the Town of Sabattus. The trial court erred in not holding the parties to that standard.

2. The Consent Judgment violates natural buffer strip requirements imposed by statute.

Relatedly, the Consent Judgment does not require Poirier to adequately restore the trees and vegetation that formed a natural buffer strip between the right of way and excavation, in violation of the following performance standard:

> **Natural buffer strip.** Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to the excavation before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply. The department may not grant a variance from the provisions of this subsection.

38 M.R.S. § 490-D(4) (2025). A "natural buffer strip" is defined as "an undisturbed area or belt of land that is covered with trees or other vegetation." 38 M.R.S. § 490-A(2-A).

The Poirier removed the natural buffer strip, resulting in a substantial loss of the protective screening and barrier that previously existed between the pit and the Abutters' property and access road. (A. 28, 238.) Section 490-D(4) is clear that operators of borrow excavations are prohibited from removing these natural buffer strips and further that in the event that they are removed, the operator must restore and reestablish the buffer strip that was removed "as soon as practicable." The Consent Judgment requires no restoration of the natural buffer strip beyond thirty feet from the right-of-way. (A. 30.) This violates a clear mandate of state law by failing to restore at least a fifty-foot buffer.

Like the road setback requirement, state law also prohibits any variance from the requirements of maintaining and restoring this natural buffer strip. *See* 38 M.R.S. § 490-D(4) ("The department may not grant a variance from the provisions of this subsection.") The Consent Judgment adopted by the District Court effectively grants an unlawful variance by reducing the buffer by at least twenty feet despite the Legislature's clear intent to prohibit variances or other exceptions from the minimum fifty-foot standard.

C. The District Court committed legal error by adopting a consent decree that violated applicable statutes.

In approving the Consent Judgment, the District Court cleared the way for a legally deficient restoration and reclamation plan that violates state law. The trial court's reasoning for doing so, if affirmed by this Court, would effectively overrule *Pike* and render judicial review of consent decrees a meaningless exercise.

1. The trial court's analysis of state law compliance was fundamentally flawed and misapplied *Pike*.

The District Court stated, "The Proposed Consent Judgment only references a reclamation plan requiring Poirier to construct a reclaimed buffer in the 30 feet east of the Berm; the Berm is the limit of the excavated area closest to F. Sanborn Road. It is not clear, however, if any other buffer currently exists in that area."[9] (A. 16.) The court then stated, "To the extent that the Town wishes to bargain for a thirty foot wide reclamation buffer that they believe will satisfy the Town that a suspended fine should remain suspended that will not exempt Poirier from compliance with other laws and requirements or immunize him from liability with other enforcement agencies." (A. 17.)

[9] As made clear by the Notice of Violation, the survey, and the Consent Judgment's findings, the Court's statement raising whether there might still be some buffer out there was clearly erroneous.

Based on that reasoning, the District Court concluded that despite the Consent Judgment clearly violating stricter state standards, the Town and the Court could nonetheless adopt the Consent Judgment. The Court erroneously left the authority and prerogative to ensure compliance with the law to hypothetical and speculative enforcement actions by other state agencies in the future. The trial court thus wholly abdicated the responsibility to undertake the review that *Pike* requires—that "the consent decree will not violate United States or Maine Constitutions, a statute, or other authority," and "the consent decree is consistent with express legislative objectives and other zoning-related public policy considerations." *Pike Industries*, 2012 ME 78, ¶ 24, 45 A.3d 707.

2. The Consent Judgment is preempted by state law.

Notwithstanding the Town's arguments otherwise,[10] Title 38 applies in the Town of Sabattus and to Poirier. The Consent Judgment, in addition to failing to satisfy the relevant *Pike* elements, would frustrate a clear purpose of state law and is therefore preempted.

[10] The Consent Judgment states "[t]he Town has not otherwise adopted an ordinance regulating borrow, topsoil, clay or silt excavation and has no authority to enforce statutory Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt, see 38 M.R.S. §§ 490-A through 490-N." (A. 26, 36.) This legal conclusion is disputed and properly reviewed by this Court de novo. *See Pike Industries*, 2012 ME 78, ¶ 14, 45 A.3d 707.

"[T]he inquiry on a preemption question is whether the local action would frustrate the purpose of any state law." *Sawyer Env't. Recovery Facilities, Inc. v. Town of Hampden*, 2000 ME 179, ¶ 27, 760 A.2d 257 (quotation marks omitted); *see also* 30-A M.R.S. § 3001(3) (2025). Local action will be preempted by implication where it "prevents the efficient accomplishment of a defined state purpose." *E. Perry Iron & Metal Co. v. City of Portland*, 2008 ME 10, ¶ 15, 941 A.2d 457. Title 38 M.R.S. § 490-D sets minimum setback and buffer standards that the Legislature has imposed without exception or variances; the Consent Judgment thus violates the letter and purpose of the statute and is preempted.

Although DEP has primary enforcement responsibility for section 490-D, *see* 38 M.R.S. §§ 490-H, 490-I, the statute is still applicable and operative statewide, including in the Town of Sabattus. The "Applicability" provisions of the statute state unequivocally that the performance standards (including Section 490-D) apply to "any excavation for borrow" that exceeds the five-acre threshold and further that "[t]his article applies if the excavation is located in whole or in part within an organized area of this State." 38 M.R.S. § 490-B. To hold that the statute only applies in those municipalities where DEP has delegated enforcement authority, as the Town has argued, would create an

absurd result and undermine the Legislature's objective in enacting uniform standards regulating borrow pits and excavation activities statewide.

By the plain terms of the statute and as a matter of common sense, enforcement and applicability are distinct issues. Enforcement authority refers to the ability of a governing entity to exert continuing power, investigate, and impose penalties. *See* 38 M.R.S. §§ 490-G, 490-H (granting the Department of Environmental Protection the authority to inspect a site, issue stop-work orders and penalties, and require reclamation). Regardless of the limit of local authority to enforce state law, municipalities cannot ignore mandates of state law or enter into land use agreements that purport to allow activities that are inconsistent with and thus preempted by state law requirements. *See Dahlem v. City of Saco*, 2024 ME 32, ¶ 36, 314 A.3d 280 (holding that a Town contract zone agreement was preempted by state law establishing minimum standards for shoreland zoning).

The *Pike* elements clearly contemplate that there may be—as there are here—express statutory and legislative standards that constrain the municipality's authority to resolve a land use violation. Judicial review for those issues is precisely the role of the trial court in undertaking a *Pike* analysis.

Contrary to the District Court's conclusion, applying the state statutory standards is not conferring broad enforcement authority on municipalities to

enforce state law or regulations. Nor is the possibility that state agencies may separately take action or that third parties could file claims sufficient for the court to ignore or excuse a violation of state law. *Pike* requires courts to broadly review all applicable sources of law (not only local ordinances) to ensure that the consent decrees is *consistent* and thus a legal exercise of the municipality's authority to settle litigation. *Pike Industries*, 2012 ME 78, ¶¶ 14, 24, 45 A.3d 707 ("[A]s is true with every court order, a consent decree must not conflict with the requirements of applicable laws. . . ."). "Must" is a mandatory command, which cannot be ignored or excused.

In this case, the District Court approved the Consent Judgment that, in resolving a zoning violation that removed a 100-foot buffer, required Poirier to construct and maintain only a thirty-foot-wide buffer when at least a fifty-foot buffer is required. (A. 30.) No buffer between the F. Sanborn right-of-way and the excavation currently exists. (A. 238.) Although the District Court correctly stated that the Consent Judgment "will not exempt Poirier from compliance with other laws and requirements or immunize him from liability with other enforcement agencies," (A. 17), the court nonetheless adopted a Consent Judgment that exempted Poirier from compliance with clearly applicable performance standards. *Pike* requires that all five elements be met before a Court approves a consent judgment. *Pike Industries*, 2012 ME 78, ¶ 24, 45 A.3d

707. The Court erred by accepting and approving the Consent Judgment given that the judgment violates a statute and is inconsistent with law.

II. The District Court erred when it determined that the Consent Judgment does not violate the Town's own Ordinances.

In considering whether a consent decree is the appropriate exercise of a court's equitable authority, *Pike* requires a court to determine that the consent decree (3) does not violate a constitution, statute, or other authority, (4) "is consistent with express legislative objectives and other zoning-related public policy considerations," and (5) "is reasonable and is not legally impermissible in its effects on third parties." *Pike Industries*, 2012 ME 78, ¶ 24, 45 A.3d 707. In *Pike*, this Court clarified that the fifth element, which relates to reasonableness, "calls upon the court to consider among other things, whether the extent to which a consent decree will interfere with a municipality's land use regulatory scheme is no greater than that reasonably needed to achieve the consent decree's objectives."

Here, the Consent Judgment violates both state law and the Town's own ordinance as set forth in more detail below. The Consent Judgment is inconsistent with zoning-related public policy considerations, unreasonably interferes with a municipality's own land use regulatory scheme, and accordingly fails to satisfy *Pike's* third, fourth, and fifth elements.

A. The Town of Sabattus is constrained by ordinance to settle a land use violation.

As a threshold matter, the Town's ordinances require the elimination of zoning violations and the Consent Judgment violates applicable setback requirements.

> Legal Actions. When the above action [Notice of Violation] does not result in the correction or abatement of the violation or 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 recovering fines without Court action. *Such agreements shall not allow an illegal structure or use to continue* unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

Town of Sabattus, Me. Shoreland Zoning Ord. § 16(I)(3) (May 30, 2009) (emphasis added); (A. 173.)

Although municipalities generally have prosecutorial discretion in land use enforcement matters, this Court has interpreted similar ordinance language to render that general rule inapplicable. *See Clark v. Town of Phippsburg*, 2025

ME 25, ¶ 35, 334 A.3d 623 ("[T]he specific language in the LUO regarding the BOS's authority with respect to consent agreements appears to limit the BOS's prosecutorial discretion. The LUO language 'direct[s]' the BOS to take all actions necessary or appropriate to enforce the NOV, and it prohibits entry of consent agreements that do not meet the prescribed limits set forth in the LUO.").

The Town of Sabattus cannot enter into a consent agreement that would violate an ordinance standard. Even if *Pike* generally recognizes and allows municipalities flexibility to negotiate a settlement, the Town is constrained from doing so here.

B. The Consent Judgment violates a buffer and setback requirement in Town's Site Plan Review Ordinance.

Town of Sabattus, Me. Site Plan Review Ord. § 5(B)(1)(d)(1) (April 27, 2015) requires that "[a] buffer strip of not less than 50 feet shall be maintained between the location of extraction materials and all property lines."[11] (A. 76.) The 2004 version of the Town's Site Plan Review Ordinance requires that "minimum setbacks for all excavation operations shall be maintained 100 feet from the public road or right of way, 50 feet from adjacent property lines and

[11] A subsequent sentence in the Town's ordinance makes clear that a right-of-way of a road is included within the meaning of "all property lines." (*See* A. 76 "The Board may reduce the front setback to twenty-five feet from the right-of-way of a public road, if in the opinion of the Board, suitable buffers and fencing are provided.")

200 feet from occupied residences." Town of Sabattus, Me. Site Plan Ord. § VI(A)(22) (June 4, 2004); (A. 97).

1. The setback and buffer provisions in the Town's ordinance applies to Poirier and must be reflected in the Consent Judgment.

This provision of the Site Plan Review Ordinance applies to Poirier's gravel pit because it expanded beyond the limits that were approved in the 2003 Conditional Approval. Between 2003 and 2023, Poirier expanded the size of the gravel pit from 4 acres to 5.7 acres. (A. 233-35.) It is important to note that the original four-acre site required no Shoreland Zoning permit because the site was entirely outside the 250-foot setback from Sabattus Pond and thus outside the Shoreland Zone. (A. 232.) Poirier's expansion entered the Shoreland Zone and eliminated the entire buffer zone that was part of the 2003 Conditional Approval. The Conditional Approval required Poirier to "return to the planning board if there is any further expansion of the mining area beyond this application of the four acres." (A. 232.) Poirier never returned to the Town's Planning Board for approval. (A. 28.) The provision of the Site Plan Review Ordinance requiring a fifty-foot buffer was enacted in 2004, shortly after Poirier received his conditional approval. (A. 89,97.) Had Poirier returned to the Town's Planning Board, as was required in his conditional approval, his new application would have been subject to the 2004 Site Plan Review Ordinance

and the provision requiring the maintenance of a 100-foot setback from a right-of-way and fifty-foot setback from adjacent property lines.

Poirier has never argued nor was there any evidence establishing that Poirier undertook the nearly two-acre expansion to 5.7 acres between the 2003 site plan approval date and the effective date of the ordinance in 2004. The burden to establish a preexisting nonconforming use was on Poirier. *See Town of Orono v. Lapointe*, 1997 ME 185, ¶ 13, 698 A.2d 1059 ("The nonconforming user has the burden to prove the nonconforming status.").

The District Court erroneously concluded that the setback and buffer provisions did not apply to the Consent Judgment based on a retroactivity analysis. (A. 14-15.) The 2004 and current versions of the site plan review ordinances do not expressly provide that the provision has a retroactive effect. (*See* A. 44-102.) Thus, because the fifty-foot buffer provision was enacted after the 2003 Conditional Approval, the District Court determined that the Site Plan Ordinance did not apply.

The Court's analysis was flawed because retroactivity—applying a newly enacted legal standard to an existing land use—was not the issue: Poirier's pit was in existence prior to 2004 *but the excavation activities in the land area over which the expansion occurred was not*. Poirier expanded beyond the 2003 approval and his activities outside the four acres were not a preexisting gravel

pit exempt from the 2004 ordinance. By the trial court's reasoning, a preexisting nonconforming use could expand in size or land area without limit. Expansions would be exempt from current law and the municipality would be powerless to regulate enlarging and intensifying nonconforming uses. In addition to being absurd, that result is contrary to black-letter law regarding nonconformities. *Farley v. Lyman*, 557 A.2d 197, 198 (Me. 1989) ("Nonconforming uses are a thorn in the side of proper zoning and should not be perpetuated any longer than necessary. The policy of zoning is to abolish nonconforming uses as swiftly as justice will permit."). Moreover, section VI(24)(c) of the 2004 Site Plan Review Ordinance provides that "[t]he mining activity provisions of this ordinance shall not apply to . . . [e]xisting operation, *as long as no expansion occurs since the date this ordinance is adopted*." (A. 97 (emphasis added).) Thus, the 2004 ordinance's plain language confirms that even preexisting pits are subject to the ordinance *if expanded* and there is no dispute that Poirier's pit was expanded.

The District Court's conclusion failed to account for the fact that Poirier expanded beyond the four-acre approval and into the Shoreland Zone, which is the land use violation that necessitated the enforcement action in the first place. The plain language of the 2003 conditional approval expressly required Poirier to return to the Planning Board if there was any further expansion of the mining

area beyond the four acres. The Board clearly intended to keep the excavation outside the Shoreland Zone and to require Poirier to seek new approvals if he expanded his gravel pit, subjecting him to whatever ordinance might be in effect at the time of his expansion application. Because Poirier expanded the gravel pit significantly between 2003 and 2023 beyond what was approved, (*see* A. 236 (visually demonstrating the expansion since 2006)), and Poirier has offered no evidence that the full extent of his expansion preceded the 2004 effective date of the ordinance, the buffer and setback provisions apply and the Town must comply with the current standards in entering any consent decree.

2. The Consent Agreement is inconsistent with the fifty-foot buffer provision.

Section 5(B)(1)(d)(1) of the Town's current Site Plan Review Ordinance requires that at least a fifty-foot buffer be maintained. (A. 76.) Similarly, section VI(A)(22) of the Town's 2004 version of the Site Plan Review Ordinance required gravel pits to maintain a 100-foot setback from a right-of-way and a fifty-foot setback from adjacent property lines. (A. 97.) The Consent Judgment requires Poirier to "construct a Reclaimed Buffer in the 30 feet east of the Berm." (A. 30.) No buffer or setback currently exists between the F. Sanborn right-of-way and the limit of Poirier's gravel extraction. (A. 238.) Accordingly,

the Consent Judgment is plainly inconsistent with the Town's own ordinances. *See Stiff*, 2024 ME 68, ¶ 12, 322 A.3d 1167.

3. The District Court's flawed analysis was premised, in part, on a misinterpretation of *Pike* and the effect of the Consent Judgment.

The District Court's legal and analytical errors appear to have stemmed in part from a misreading of *Pike* and a misinterpretation of the Consent Judgment's effect. The Court's failed to recognize that Poirier was obtaining approval for a remediation and reclamation plan applying ordinance standards that the trial court concluded did not apply to Poirier. The trial court stated "there are important distinctions between the proposed consent judgment in *Pike* and the proposed consent judgment in this case." (A. 11.) The court stated that whereas in *Pike*, "the consent decree allowed the property owner to conduct quarrying activity for which it had no permit . . . supplanting the applicable ordinance and allowing the property owner to continue in an unpermitted use of the land," the Consent Judgment purportedly conferred no right to Poirier to use the premises and any activities undertaken would be done in accordance with the ordinances and applicable law. (A. 11-12.)

However, that is not accurate—Poirier will access and use the property to implement the remediation and reclamation plan, including those areas outside the original four-acre approval. No Shoreland Zoning permit was

obtained, and no reclamation plan for those areas was prepared or submitted in connection with the 2003 Conditional Approval. Accordingly, the Consent Judgment operates as after-the-fact permitting, and the current ordinance standards apply to Poirier and his remediation and reclamation of the site. Contrary to the trial court's analysis, this *is* analogous to the unpermitted activity at issue in *Pike.* The Consent Judgment is "supplanting" the site plan review ordinance with a consent decree that operates as a permit and renders certain ordinance requirements applicable that would otherwise be inapplicable if Poirier was grandfathered. The Town and the Consent Judgment also recognized that the site is not grandfathered:

> The current Site Plan Review Ordinance requires that '[u]pon cessation of the extraction of materials or upon the expiration of the Board approval, the site shall be rehabilitated in accordance with a plan approved by the Board.' The reclamation plan approved in connection with the Conditional Approval is no longer fully applicable because the excavation of the pit went beyond the Conditional Approval. However, the Town Selectboard recognizes that it is in the best interests of the Town to utilize those portions of the previously approved reclamation plan that are consistent with current site conditions, law, and standards.

(A. 28, 38.)

If Poirier must comply with the Town's ordinance and the ordinance requires a fifty-foot setback, the trial court erred in concluding that "the Town

and Poirier are not attempting to circumvent the zoning procedures or the land use regulation statutes." (A. 12.)

III. The Consent Judgment is inconsistent with zoning-related public policy considerations and unreasonably departs from its own land-use standards.

This Court has explained that "[f]orceful policy reasons militate against restricting the enforcement of municipal zoning ordinances. Zoning ordinances are written to promote the public health, safety, welfare, convenience, morals, or prosperity of a community. Such ordinances should apply equally to all citizens; non-uniform enforcement of these ordinances tends to frustrate their purposes and to injure the public that these ordinances are designed to protect." *Pike Industries*, 2012 ME 78, ¶ 19 n.3, 45 A.3d 707 (quoting *City of Auburn v. Desgrosseilliers*, 578 A.2d 712, 715 (Me. 1990)).

The fifty-foot buffer and setback provisions in state law and the Town ordinance are intended to shield the public and abutters from the hazards and impact of mining and gravel extraction—concerns that continue throughout the life of the land use, from breaking ground through the implementation of a legally valid remediation and reclamation plan. The land use standards and buffer requirements are intended to lessen the burden of incompatible land uses like heavy industrial excavation uses and residential uses. Appellants in this case own property directly below a steep hill from the gravel pit and have

legitimate concerns that a legally inadequate buffer threatens their quiet enjoyment and the value of their property. In an ideal world, Poirier would restore the original 100-foot buffer, but at a minimum, Appellants insist that Poirier meet the minimum mandatory legal requirements. The Legislature has spoken clearly on the subject by imposing strict fifty-foot buffer standards that have been violated several times over by this Consent Judgment.

In reaching the Consent Judgment, the Town failed to offer an adequate justification for diverging from the requirements and performance standards and no explanation for why discarding those standards was reasonably necessary to achieve the Consent Judgment's objective in settling the case. This imbalance becomes particularly clear when considering that the land use standards are designed to protect the public from the hazards associated with gravel extraction and Poirier has so unmistakably violated the Town's rules and his Conditional Approval.

The equities tip overwhelmingly against Poirier. The Court would be creating perverse incentives for pit and quarry operators to quickly extract as much material as possible from a pit before the enforcement shoe drops. Like Poirier, the owner could expand their operations and avoid complying with current standards simply by agreeing to stop after they had already extracted all useful materials available on the site. This would allow them to argue, as the

District Court apparently accepted, that because no further mineral extraction would occur on the site into the future, that they did not have to comply with clearly applicable laws that would never have allowed the extent of excavation to occur in the first place had they sought permits. If one goal of zoning enforcement is deterrence, it would be an understatement to say that this result falls short.

Appellants have been deprived of the setbacks intended to protect the road and to preserve vegetation, providing some buffer between their property and the excavation. Accepting and entering this Consent Judgment as proposed would work an unacceptable injustice upon the parties most affected and do so contrary to express legislative intent as stated in Title 38. The Consent Judgment must be rejected because the law requires more of Poirier and the Town in rectifying the violations and restoring what was taken from his neighbors on Sabattus Pond.

Because the Consent Judgment violates the Town's own ordinance, is inconsistent with land-use public policy considerations, and unreasonably interferes with the Town's own land use regulatory scheme, the District Court's approval of the Consent Judgment constitutes an inappropriate exercise of its equitable authority that must be set aside.

CONCLUSION

For all the foregoing reasons, the Appellants request that the Court vacate the District Court's approval of the Consent Judgment.

Dated in Portland Maine, this 14th day of January 2026.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Colin Hull, hereby certify that an electronic of copy of the Brief of the Intervenors/Appellants and an electronic copy of the Appendix were served on the following at the addresses set forth below by email on the 14th day of January, 2026.

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