STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Docket No. And-25-441

TOWN OF SABATTUS
Plaintiff–Appellee

v.

L.P. POIRIER & SON, INC., et al.
Defendants–Appellees

CHRISTOPHER TWEEDIE, JANE EDEN GUTHRO, LESLIE COOK, RICHARD CHAREST, GERALD HAGERTY, JAMES MONTRONE, JONNA WILSON, TIMOTHY RICHARD, MICHAEL TODORSKY, AND SCOTT FIFE
Intervenors-Appellants

On Appeal From The District Court (Lewiston)

BRIEF OF APPELLEE – TOWN OF SABATTUS

Eamonn R. C. Hart, Esq. (Bar #5936)
Michael E. Carey, Esq. (Bar #5483)
BRANN & ISAACSON
113 Lisbon Street, P.O. Box 3070
Lewiston, ME 04243-3070
Telephone: (207) 786-3566
Email:ehart@brannlaw.com
mcarey@brannlaw.com

Attorneys for Plaintiff–Appellee the Town of Sabattus

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INTRODUCTION

When the Town of Sabattus became aware of violations at a gravel pit owned and operated by Defendant-Appellees Raymond Poirier and L.P. Poirier & Sons, Inc. (collectively "Poirier"), it acted swiftly.[1] It served a Notice of Violation, worked with Poirier to address problems at the site, and ultimately, reached a Consent Judgment whereby Poirier would pay substantial civil penalties and attorneys' fees, develop a reclamation plan, and obtain approval of that reclamation plan. The Consent Judgment carries the prospect of exponentially higher civil penalties in the event of breach. Sabattus filed a complaint pursuant to M.R. Civ. P. 80K, together with the proposed Consent Judgment, for the district court's review.

Despite having participated extensively in the public meetings where the violation and possible consent judgment were discussed, a group of abutting landowners, Appellants in this matter (collectively "Abutters"), sought to intervene in the district court case, asserting that the Consent Judgment did not go far enough.

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[1] As Abutters note, the Town reached separate Consent Judgments with Defendant-Appellees Raymond Poirier and L.P. Poirier & Sons, Inc., on the one hand, and party-in-interest Kristie Berube, on the other. Abutters' Br. at 5. No party or abutter objected to the entry of the Berube judgment and the Poirier judgment is the only one at issue in this appeal. Due to a clerical error, it appears that the Berube judgment was never docketed in the district court. The parties have filed a separate motion to direct the district court to correct this error

The district court permitted them to intervene, over the other parties' objection, but rejected their substantive arguments and entered the Consent Judgment. The abutting landowners now appeal.

The Consent Judgment meets all the factors set out in *Pike Indus., Inc. v. City of Westbrook*, 2012 ME 78, ¶ 24, 13 A.3d 784. Abutters' arguments to the contrary rely on misunderstandings about which government (the State or municipality) enforces which laws, misunderstandings as to what ordinances even apply, and the improper purpose of essentially litigating a nuisance claim in the context of a land use proceeding, which is squarely prohibited by Rule 80K. This Court should reject these arguments and affirm the district court's judgment.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

In 2003, the Town of Sabattus Planning Board conditionally approved L.P. Poirier & Sons Inc.'s application to operate a gravel pit in Sabattus, and the conditional approval was recorded in the Androscoggin County Registry of Deeds at Plan Book 43, Page 32. Joint Appendix ("JA") 232. The conditional approval included approval of a Reclamation Plan. JA 28.

In November 2023, an attorney representing Christopher Tweedie, one of the Abutters, wrote the Town of Sabattus, Code Enforcement Office to demand that the Town and Maine Department of Environmental Protection review the Conditional

Approval and the actual activity at the Premises. JA 26. (Abutters have provided no evidence that Mr. Tweedie also wrote to the Maine Department of Environmental Protection nor of any response from the Department.). Town officials inspected the gravel pit and observed that the pit face had a steep slope, and that the land on the top of the pit—the Berm—was unsupported by earth below, was unstable, and was collapsing. JA 27. The Town contracted with a certified Code Enforcement Officer to serve as Interim Code Enforcement Officer and demanded that Poirier immediately cease excavation, which it did. *Id*. Maine DEP notified the Town that, after a field survey and GPS mapping, it determined that the affected mining area was approximately 5.7 acres. *Id*. On December 23, 2023, the Interim Code Enforcement Officer issued a Notice of Violation. JA 27, 237-239. The Notice of Violation demanded that Poirier immediately cease and desist from any operations in the gravel pit, and it repeatedly affirmed that it had not engaged in new mining or excavation on the Premises, and that the only activity related to existing stockpiles. JA 27.

In January 2024, the Town requested that Poirier provide a civil engineer's certification of the safety of F Sanborn Road and prepare a reclamation plan. *Id*. Over the next month, Poirier hired an engineer, a surveyor, and a Land Use consultant, as well as a soils scientist to map the wetlands on the Premises. *Id*. In

August 2024, Poirier provided the Town with a stamped letter from a Professional Engineer stating the opinion that the existing gravel pit excavation has not impacted Sanborn Road. *Id*.

On February 7, 2025, Poirier signed a consent judgment, JA 33, and the Town provided notice of the judgment to Abutters, the Sabattus Fire Chief, the Interim Sabattus Police Chief, the Sabattus Pond Dam Commission, the Mining Division of the Maine DEP, and later to the Shoreland Zoning Program of the Maine DEP. Response of Plaintiff Sabattus to Abutters' Objections to Entry of Consent Judgment (June 3, 2025) at 3 & Ex. C. On March 3, 2025, the Town notified those recipients that the Town Selectboard would take public comment on the consent judgment before considering whether to authorize its execution. *Id.* & Exh, D. On March 18, 2025, the Town Selectboard took public comment on the consent judgment. *Id.* at 3. Counsel for Abutters spoke, as did one of the Abutters, and others gave written comment. *Id.* The next day, Abutters submitted written objections to the proposed consent judgment. JA 251-252, 246-250. On April 9, 2025, the Selectboard signed the Consent Judgments, JA 34, which incorporated a reclamation plan to be approved by the Town Planning Board, JA 30, ¶ B.

The Town then filed a Land Use Citation and Complaint, pursuant to M.R. Civ. P. 80K. JA 19. The Abutters moved to intervene, which the Town opposed. JA

4-5. The Abutters also filed an opposition to the proposed consent judgment, to which the Town responded. JA 5. The district court held a hearing on June 5, 2025, at which the Abutters appeared through counsel. JA 6-7. On September 18, 2025, the district court issued an order adopting the Consent Judgment. JA 9. Abutters then filed this appeal.

Reclamation Plan

Prior to Poirier's execution of the Consent Judgment and the later filing of the 80K action, and concurrently as these proceedings have progressed, Poirier and the Town went forward with the reclamation plan process. The Town Selectboard directed Poirier to submit a reclamation plan for Planning Board approval. JA 30, ¶ B(1). In November 2024, the Planning Board adopted procedures for its consideration of Poirier's application for a reclamation plan, and, in January 2025, it set forth requirements that the reclamation plan must meet in addition to the requirements of the Maine Erosion and Sediment Control Best Management Practices. JA 28.[2]

[2] The Selectboard found that the current Town Site Plan Review Ordinance is not applicable to Poirier. *See* JA 45 (sec. 2(B)(5) of the Site Plan Review Ordinance, adopted April 27, 2025, reads "Site plan review is not required by the Board for the following: . . . Sand and gravel pits approved or established prior to the adoption of this ordinance. . .").

On November 25, 2025, the Planning Board adopt a Reclamation Plan after a significant process. *See* Supplemental Appendix (SA) at 3–15. On November 26, 2024, it heard Poirier's pre-application submittal regarding its anticipated reclamation plan and heard comment from Abutter Jonna Wilson. *Id.* at 4. On December 14, 2024, it conducted a site walk. *Id.* On January 6, 2025, the Planning Board held a public hearing on Poirier's anticipated reclamation plan, at which it heard from Abutters' attorney and directly from Abutters Chris Tweedie and Jonna Wilson. *Id.* at 5. And on January 28, 2025, it deliberated. *Id*.

On June 18, 2025, Poirier submitted an Application for a Reclamation Plan, stamped by a Maine Professional Engineer, which included a site plan, a stormwater analysis, an analysis of the gravel pit on the stability of F Sanborn Road. *Id.* at 5–6. On September 23, 2025, the Planning Board heard the Town's Code Enforcement Officer's analysis of the application and held a public hearing. *Id.* at 6. Abutters Jonna Wilson and Jane Guthro testified at the public hearing. *Id*. at 6. On October 28, 2025, the Planning Board heard from the Town's Code Enforcement Officer and a professional engineer contracted to advise the Planning Board. *Id*. At that meeting, the Planning Board directed Poirier to write the Maine Historic Preservation Commission about whether historic structures or archaeological resources are

present on the Premises; Poirier received a response from the Maine Historic Preservation Commission on November 17, 2025. *Id.* at 7.

The Planning Board issued findings of fact, conclusions of law and an order, which found that the reclamation plan met the requirements of the Consent Judgment, *Id.* at 12, and approved Poirier's Application for a Reclamation Plan, *Id.* at 12, on the condition that, among other things, Poirier plant trees and shrubs on any disturbed or reclaimed area on the Berm and Reclaimed Buffer, *Id.* at 13, 15.

The Poirier Consent Judgment is now before this Court on appeal.

STATEMENT OF THE ISSUES

A. Whether the district court erred in determining that the Consent Judgment does not violate state law.

B. Whether the district court erred in determining that the Consent Judgment does not violate Sabattus ordinance.

C. Whether the district court erred in determining that the Consent Judgment did not cause a legally impermissible effect on Abutters.

D. Whether the Consent Judgment may be affirmed on the alternative basis that Abutters should not have been permitted to intervene in the first instance.

SUMMARY OF THE ARGUMENT

This Court should affirm the district court's entry of the Consent Judgment, for a variety of reasons.

To begin with, the district court correctly concluded that the Consent Judgment does not violate state law. While Abutters contend that the Consent Judgment violated several subsections of 38 M.R.S. § 490-D because it requires insufficient remediation by the violator, they are incorrect because they confuse the responsibilities set forth in the statute. It is enforced by the Department of Environmental Protection ("DEP")—not municipalities. And the Consent Judgment does not purport to limit DEP's enforcement abilities; to the contrary, it requires that all work done at the site comply with state law. Moreover, even if a violation of § 490-D existed, responsibility of remediation under the state statute falls to the state, not the violator. Because nothing in the Consent Judgment limits the application of state law or its enforceability, the Consent Judgment does not violate state law, and therefore, state law does not preempt the Consent Judgment.

Abutters' argument that the Consent Judgment violates local ordinance is similarly misplaced. Abutters rest this argument on the contention that the Consent Judgment violates several versions of Sabattus's Site Plan Review Ordinance. But that ordinance applies to applications for development. Here, the activity was previously approved under a conditional approval, and the cited violations related to that approval, not to a failure to comply with subsequent site plan review ordinances. Moreover, the current Site Plan Review Ordinance does not even apply to gravel pits

approved or established before 2015. And what's more, Abutters contention that the presence of a violation amounts to an ongoing "use" is simply inconsistent with the applicable statue and case law, which permit prosecutorial discretion.

Abutters' final argument—that the Consent Judgment has a legally impermissible effect on them—fares no better. Abutters essentially make a nuisance argument by another name. They may have a nuisance cause of action, but it is not this case. The Consent Judgment does not preclude Abutters from filing a nuisance claim against the landowner if they feel the facts merit it. And their arguments about incentives are essentially a straw man; this Consent Judgment contains significant penalties against the violator, and the prospect for more penalties if there is noncompliance, and there is no reason that it will incentivize violations.

Finally, there is an alternative basis to affirm the judgment. Abutters should not even have been in this case in the first place. The district court erred in permitting them to intervene, because it apparently assumed that their status as abutters and the (completely unsupported) assertion that the Consent Judgment permitted ongoing mining gave them sufficient connection for mandatory intervention. These conclusions were clearly erroneous. Abutters have had ample ability to participate in the process, and have in fact done so; that should have been sufficient and

intervention was thus inappropriate. That provides an alternative basis for affirming the Consent Judgement.

ARGUMENT

A. Standard of Review.

Whether a consent judgment comports with legal requirements is a question of law that this court reviews *de novo*. *See Pike*, 2012 ME 78, ¶ 6. To the extent that a party challenges factual findings of the trial court, these findings are reviewed for clear error. *Vermont Mut. Ins. Co. v. Ben-Ami*, 2018 ME 125, ¶ 11, 193 A.3d 178.

B. Legal Standard

This Court has set out the proper test courts must follow when evaluating a proposed consent judgment between municipalities and alleged ordinance violators. Courts must ensure that:

> (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 effects on third parties.

Pike, 2012 ME 78, ¶ 24.

C. The district court did not err in determining that the Consent Judgment did not violate state law.

1. The Consent Judgment does not violate the only two statutes Abutters identify because Abutters cannot establish that these statutes actually apply, and in any event Abutters mis-identify the entity charged with enforcement of those statutes.

Abutters only identify two state statutes that they contend the Consent Judgment violates. These are, respectively, 38 M.R.S. § 490-D(6-A) (which deals with road setback requirements) and § 490-D(4) (which deals with natural buffer strip requirements). Both of these statutory provisions sit in Chapter 3, Subchapter 1, Article 7 of Title 38, which addresses "Performance Standards for Excavations for Borrow, Clay Topsoil or Silt." These standards only apply where the "total excavated area" of a parcel is five or more acres. 38 M.R.S. § 490-B. Article 7 also contains a provision specifically addressing enforcement, which states that "[e]xcept as provided in section 490-I, the department [of Environmental Protection] shall administer and enforce the provisions of this article." 38 M.R.S. § 490-H. Section 490-I provides the only exception to § 490-H, and states that a municipality may "register for authority to enforce this article by adopting and submitting to the commissioner an ordinance that meets or exceeds the provisions of this article." *Id*. Abutters do not assert that Sabattus has registered to enforce § 490-H, and in fact, a DEP official confirmed that is has not done so. JA 253. Accordingly, because

Sabattus has not registered and, absent registration, exclusive administration and enforcement authority of Article 7 lies with the State, Sabattus has no enforcement authority of § 490-D. That fact alone is dispositive of this issue on appeal.

The Consent Judgment is explicit: Poirier agreed that there was no further right of mineral extraction, and that indeed, the Consent Judgment "grants [Poirier] no right to use the premises," JA 29, at all. Further, the Consent Judgment requires all work at the premises "to be performed in accordance with the Reclamation Plan, Sabattus Code, Maine law, and the Maine Erosion and Sediment Control Best Management Practices." JA 30.

Against this backdrop, Abutters' arguments as to violation of state statute fail. Contrary to Abutters contention, Sabattus has not "granted a variance" from § 490-D. Sabattus has no enforcement authority over § 490-D, and thus cannot "grant a variance" even if it wanted. *See* 38 M.R.S. § 490-E (regarding the granting of variances by the DEP). It is DEP, and DEP alone, who manages administration and enforcement of § 490-D. If DEP believes that the conditions at the premises violate § 490-D, nothing stops it from initiating an enforcement action today. Were DEP to do so, the Consent Judgment would provide no defense to Poirier.

The Consent Judgment does not permit Poirier to do anything prohibited by state law; in fact, it states the opposite. That Sabattus is not affirmatively enforcing

a law that *it has no duty or power to enforce* does not mean that this law ceases to be applicable. Simply put, § 490-D(6-A) and § 490-D(4) continue to *apply to the violator*. Moreover, to the extent Abutters are concerned that Poirier will somehow argue that the Consent Judgment estops DEP from enforcement, their concern is unwarranted. In its brief supporting the Consent Judgment in the district court, Sabattus took the position that the Consent Judgment does not prevent DEP from enforcing the § 490-D standards. Sabattus Response to Objection at 10. And Poirier incorporated Sabattus's brief by reference in his own filing. Thus, Poirier would be judicially estopped from subsequently asserting that the Consent Judgment prevents a DEP action. *See* Response of Defendants Raymond Poirier and L.P. Poirier & Sons, Inc. to Abutters Objections to Entry of Consent Judgment (June 3, 2025) at 1.

Setting aside the fact that Sabattus is not the proper enforcer of § 490-D, Abutters simply hand-wave at a broader threshold question of whether § 490-D even applies at all. The Performance Standards of Article Seven only apply to excavations where the "total excavated area" is five or more acres. Here, the record does not even sufficiently establish this to be the case.

Abutters continually state that the relevant area here was 5.7 acres. However, the sole source of that figure is a paragraph in the Consent Judgment that states that "Maine DEP notified the Town that in October 2023 it completed a field survey at

the site and GPS mapping of the mining area. The results showed that the *affected area* is approximately 5.7 acres." JA 27 (emphasis added). The underlying survey was not placed into the record, so there is no record evidence as to the degree of approximation, the definitions used by DEP in conducting that survey, or any findings made by DEP. Moreover, "Affected area" is not defined and there is no clarity one way or another as to whether "affected area" as described in the Consent Judgment is congruent with "total excavated area" as described in § 490-B. Further, the parties to this judgment have no way to know whether DEP, the enforcement agency, has sufficient certainty that an estimate of "approximately 5.7 acres" of "affected area" grants it jurisdiction.

This matters, for two reasons. First, on a narrow level with respect to the present case, if the "total excavated area" is not 5 acres or greater, § 490-D has no application and all of Abutters' arguments relating to that statute lack merit. Second, more broadly, this vagueness simply illustrates why it would be inappropriate to require municipal consent judgments to affirmatively adopt standards from statutes for which those municipalities have no enforcement role. If that were the requirement, municipalities would be constrained in enforcing their ordinances by the need to expend vastly more resources, and utilize expertise they may not even possess, to assess whether conditions at a site violate statutory standards which they

are not even tasked with enforcing. The superior approach is to stick with the statutory division of labor. If a municipality seeks to enter into a Consent Judgment that (1) does not purport to immunize the counterparty from state law enforcement and (2) in fact, requires the counterparty to follow state law, there is no reason to stand in the way.

Even if the Town could properly enforce § 490-D, which it cannot, Abutters' assertion is inaccurate that "the Consent Judgment does not require Poirier to adequately restore the trees and vegetation that formed a natural buffer strip." The Consent Judgment, in subparagraphs 25(f), B(2), and B(3), JA 30 and 32, requires Poirier to comply with Shoreland Zoning Ordinance, section 15(M)(3), JA 142 (all disturbed land areas "shall be reseeded and stabilized with vegetation native to the area."). Further, Poirier represented to the Planning Board that it will comply with requirement of ordinance, SA at 6, and the Planning Board conditioned approval of the Reclamation Plan on a Soil Restoration and Revegetation Plan, *id,* at 9-10, 12. Failure to revegetate the Premises as required by the Reclamation Plan will constitute a default of the Consent Judgment and give rise to additional civil penalties beginning at $1,225,000.

Finally, Abutters statutory argument falters on the inconvenient fact that under the statute, the violator is not the party responsible for remediation. Section 490-H,

which addresses enforcement and remediation, states that "if the commissioner determines that the owner of an excavation site or the person who was engaged in the excavation activity at the excavation site has violated this article, the commissioner shall direct the department staff or contractors under the supervision of the commissioner to enter on the property and carry out the necessary reclamation." 38 M.R.S. § 490-H(3). Abutters argue that the Consent Judgment should direct remediation of alleged violations of § 490-D, but even if Abutters were correct that there is such a violation, the operative statute directs DEP, not the violator, to manage that remediation. There is simply no basis for a municipal consent judgment to purport to direct a remediation process managed by a state entity.

Abutters, in essence, argue for a "Frankenstein's Monster" version of enforcement; municipal governments should evaluate sites for violations of state law (which they do not enforce) and direct remediation by the violator (even though state law removes the violator from the remediation process). Instead, the proper process is for individuals to raise concerns about potential violations to the enforcement agency and participate in that agency's enforcement process as appropriate. While Abutters complained to *the Town* (Abutter Tweedie did just this in November 2023, when he complained to the Town about the violation), the record lacks any evidence

that Abutters have raised their concerns to DEP. Even if they had, any complaints as to DEP's enforcement would be properly directed to DEP, not the Town. The remedy would *not* be to attack a consent judgment that is collateral to any action DEP might choose to take.

The bottom line is thus: if site conditions *do* amount to a violation of state statute—a fact which is not conclusively established by the record—nothing about the Consent Judgment limits the state's ability to pursue those violations. And Abutters' preferred course would require municipal governments to evaluate and enforce standards beyond their jurisdiction, while simultaneously demanding remediation from the party not charged with doing so. It is this proposed course of action, and *not* the Consent Judgment, that is inconsistent with the applicable statutory scheme. The Consent Judgment is wholly consistent with state law.

2. Because there is no violation of state law, the district court did not commit legal error by adopting the Consent Judgment.

Abutters next assert that because the Consent Judgment "violate[d] state law" the district court erred in approving it. For the reasons discussed above, the Consent Judgment *does not* violate state law, so this argument fails out of the gate. Nonetheless, we address Abutters' arguments on the point separately.

Abutters argue that the district court "erroneously left the authority and prerogative to ensure compliance with the law to hypothetical and speculative

enforcement actions by other state agencies." This is incorrect. The district court did not leave this authority to DEP; the *legislature* did, in passing § 490-H. The logic of Abutters' position is that any time a municipality enters into a consent judgment, it must also agree to enforce state standards on issues relating to the consent judgment, *even where it otherwise has no enforcement authority*. While Abutters' argument would have more force if the Consent Judgment purported to immunize Poirier from state enforcement, Abutters point to no provision of the agreement that does so. None exists.

Abutters next argue that the Consent Judgment is preempted by state law. Abutters are wrong. As Abutters acknowledge, preemption arises when a local action "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. There is a presumption against finding preemption. *Id*. ¶¶ 14, 24.

The Consent Judgment does not come close to preventing a state purpose. As noted previously, the state laws at issue are enforced by DEP, not by Sabattus. Abutters grudgingly acknowledge this, Abutters' Br. at 22, yet still imply that somehow, the Consent Judgment means that § 490-D is not applicable in Sabattus. This is not correct; if DEP believes the premises violate § 490-D, it continues to have full enforcement ability to address any violation by Poirier. That Sabattus has not

taken it upon itself to do so on behalf of the state does not mean that the law no longer applies. By analogy, the Sabattus town attorney does not prosecute violations of the Maine Criminal Code; that does not mean that crime is legal in Sabattus.

The only case Abutters cite purporting to relate to agreements between municipalities and landowners, *Dahlem v. City of Saco*, 2024 ME 32, 314 A.3d 280, is not on point. In *Dahlem*, the City of Saco entered into a contract zoning agreement purporting to allow development on a lot that did not conform to minimum guidelines enacted by the Board of Environmental Protection, as required by 38 M.R.S. §§ 435, 438-A(1)-(2). First, there is a critical factual difference; in that case, the Saco Planning Board ostensibly permitted a future use at the property, but here Sabattus is enforcing penalties for past land violations. Second, § 438-A expressly provides that, while the state establishes minimum standards, these minimum standards are enacted *through a municipal ordinance*, and thus, with the municipality as the enforcer. That is a critical distinction. Had the contract zoning agreement been permitted to go forward in *Dahlem*, the municipality would have effectively immunized a violation of state standards, because the state is not the enforcer of local ordinances.

That is different from the instant case, where the DEP retains full jurisdiction to investigate and enforce, as appropriate, any alleged violation of § 490-D. It is

simply untrue that the Consent Judgment restricts the state in any way from enforcing state law, and thus, there is no preemption concern.

Abutters assert that *Pike* requires that courts review consent judgments to ensure they are "consistent" with state law. Respectfully, that is not what *Pike* says, at least not in the form which Abutters seem to imply. As Abutters note, *Pike* states that "a consent decree must not *conflict with* the requirements of applicable laws." *Pike*, 2012 ME 78, ¶ 14 (emphasis added). However, "must not conflict with" is not the same as "must affirmatively adopt," which seems to be the standard Abutters are asking this Court to use. That is not, and has never been, the standard for evaluating consent judgments, and this Court should not make it so in this matter.

D. The Consent Decree does not violate town ordinance.

1. Abutters confuse the applicable ordinances.

At the outset, Abutters case falters because the ordinances they claim the Consent Judgment violates are not the relevant ones. Abutters only identify two specific ordinances they allege that the Consent Judgment violates, these being the 2004 and 2015 Site Plan Review Ordinances. Because site plan review ordinances are at issue, it is worth pausing to consider what, exactly, site plan review is. A handbook published by the State of Maine Planning Office states: "In simple terms, **site plan review** is a locally developed system for new commercial, industrial, and

other nonresidential development to ensure that it meets public health, safety, and environmental concerns. It is **not** zoning." State Planning Office, "Site Plan Review Handbook at 7, available at https://www.maine.gov/dacf/municipalplanning/docs/siteplanfull.pdf (accessed March 7 (bold text in original).[3] The crux of site plan review is that it is the process by which a municipality evaluates *newly proposed* projects and uses; it is *not* a stand-alone zoning ordinance. Thus, to violate a site plan review ordinance, an action must stem from an inconsistency from a site plan approved *under that ordinance*.

With that background in mind, we turn to the Consent Judgment itself. The Consent Judgment identifies four violations: (1) the gravel mining area was alleged to have expanded beyond the 4 acres shown in the Site Plan and the owner did not receive Planning Board approval for that expansion; (2) the gravel operation expanded into the buffer zone in violation of the Site Plan; (3) the gravel operation expanded into the Shoreland Zone without Planning Board approval, in violation of

[3] The State Planning Office was eliminated effective July 1, 2012, *see digitalmaine repository*, https://digitalmaine.com/spo_docs/, but this document is currently linked on the web page of the Maine Dept. of Agriculture, Conservation & Forestry's Municipal Planning Assistance Program, https://www.maine.gov/dacf/municipalplanning/technical/index.shtml. (Both sites accessed March 11, 2026).

the Sabattus Shoreland Zoning Ordinance; and (4) the mining area has not maintained a 2-1 slope from the mining area, in violation of Condition 19 of the Site Plan. JA 28 ¶¶ 29(a)–(d).

As is apparent, three of the four were violations of the 2003 conditionally approved Site Plan. And the one cited violation of a different ordinance—expansion into the shoreland zone without Planning Board approval—is not one that Abutters now contend is unsatisfied by the Consent Judgment. The 2004 and 2015 Site Plan Ordinances apply to site plan applications made *under those ordinances*, which the conditional approval here was not. Thus, the relevant question for those violations is not whether conditions at the site would have violated a *subsequent* site plan review ordinance—that is to say, whether Poirier's operation would have been approved if it had sought approval in 2004 or 2015—but rather, whether they violated the conditions of the Site Plan that actually was approved. And nowhere do Abutters contend that the Consent Judgment does not satisfy the terms of the 2003 conditional approval. That is enough to close the door on Abutters' case.

It is no answer to say, as Abutters do, that "Poirier's pit was in existence prior to 2004 but the excavation activities in the land area over which the expansion occurred was not." Abutters' Br. at 29. That may or may not be true, but it is beside the point. Poirier had obtained a conditional approval in 2003, and nothing in future

ordinances indicated that such ordinances would displace *preexisting* conditional approvals. Indeed, quite the opposite; the 2015 Site Plan Review Ordinance does not apply to previously approved sand and gravel pits. If, as Poirier admitted here, Poirier violated the conditional approval, it could be prosecuted for land use violations. But Abutters offer no authority for the proposition that a violation of the approval would then require mitigation to different standards than what had been previously approved.

Instead, Abutters make a straw-man argument that "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." Abutters' Br. at 30. This is, to put it bluntly, nonsense. The Consent Judgment is clear that "there is no further right of Mineral Extraction" and it "grants [L.P. Poirier and Raymond Poirier] no right to use the Premises." JA 29. If a nonconforming use expands beyond what was originally approved, the Town can and will enforce the terms of the original approval against the landowner, as it did here. And to the extent that a particular use is not permitted by a preexisting site plan, such use would have to meet current zoning requirements if the landowner intends to actually continue that use. The rule Abutters actually appear to argue for, though, is a rule whereby

conditional approvals cease to exist once the Town alleges a violation and the question instead is whether the conditions at the site would satisfy site plan review if the owner sought a *new* approval. That is not the law, and Abutters offer no authority to the contrary.

Making matters worse for Abutters is the fact that the 2004 and 2015 Site Plan Review Ordinances—by their own terms—do not apply to the gravel pit at issue here. As noted above, with respect to the 2015 ordinance, it expressly exempts "sand and gravel pits approved or established prior to the adoption of this ordinance, including the expansion of those pits approved or established on the same or adjacent parcels." JA 46. And the 2004 Site Plan Review Ordinance does not apply here, for three reasons:

First, Abutters did not raise argument about this ordinance in the district court, and therefore, have waived it. *See Teele v. West-Harper*, 2017 ME 196, ¶ 11 n.4, 170 A.3d 803.

Second, to reiterate: the Town *has not alleged a violation of this ordinance*. Its Consent Judgment identifies only violations of the conditional approval and the Shoreland Zoning Ordinance; it did not reference any version of a Site Plan Review Ordinance, let alone the 2004 one. And this makes sense; the Site Plan Review Ordinance is the vehicle under which the Planning Board assesses and approves new

proposals; it is not the vehicle by which the Town enforces violations of *previously approved* conditional permits that came before its adoption.

Third, Abutters omit a material part of the ordinance that negates its application. Abutters latch on to the portion of the ordinance stating that it may apply to existing operation if there is "expansion" of the operation after the ordinance was passed. However, they ignore the very next sentence, which states that "Expansion shall be defined, for purposes of this section, as excavation which continues beyond the *property lines* of the *lot* which contains the existing operations described and recorded at the Androscoggin County Registry of Deeds." JA 97. While there is record support for the idea that the operation at the Poirier pit has expanded beyond the original 4 acres, there is no adjudicated support for the contention that the operation now extends beyond lot lines. Abutters point to JA 233 - JA 235, which are demonstrative exhibits that Abutters attached to the Objection that it filed in the district court, ¶¶ 25-26 at 4-5 and Exh. B(1) and Ex. B(2). Abutters' demonstrative exhibits were drawn on a document from Poirier labeled "Progress Print", were not admitted into evidence, and were never subject to proof. Thus, there are no record facts from which this Court could conclusively determine that the 2004 ordinance even applies here, and therefore, it cannot serve as a reason to set aside the Consent Judgment.

2. Abutters' arguments about *Pike* confuses use and abatement, and if accepted, would eliminate prosecutorial discretion in contravention of statute and case law.

Abutters contend that the district court misapplied *Pike* in finding that Poirier has no ongoing right to use the land, and thus, there will be no "continu[ing]…unpermitted use of land," as prohibited by *Pike*. JA 11-12. But their only argument on this point is that Poirier will continue to "use" the property to implement the reclamation plan. Abutters' Br. at 32. This is not a "use" in the sense of how the term is used in ordinances. The "use" that was the subject of the original conditional approval was the operation of a gravel pit. Per the Consent Judgment, there is no ongoing mining and no further right to use the property.

If the mere continued existence of conditions violating an approval were a "use," than any solution amounting to less than 100% abatement would be allowing an unpermitted use to continue, in violation of *Pike*. That is not the law. Under 30-A M.R.S. § 4452(3), the subsection regarding civil penalties, monetary civil penalties for land use violations are mandatory, but abatement (which is a civil penalty) is not. The statute simply says that "the violator may be ordered to correct or abate the violations." *Id*. § 4452(3)(C). And the use of the permissive "may" is not accidental; the same section states that if the violation was "willful" the violator "shall" be ordered to abate the conditions. Abutters' position—that an unabated

violation amounts to a continuing illegal use—completely upends the discretionary and multilayered civil penalty scheme and eliminates principles of prosecutorial discretion this Court has embraced.

Indeed, the very case on which Abutters principally rely, *Pike*, embraces prosecutorial discretion. *Pike* noted that: "the enforcement discretion envisioned by 30-A M.R.S. § 4452 (2011) entails the discretion to prosecute a possible violation of existing land use law, and it permits municipalities to settle enforcement actions by, for example, agreeing to waive or reduce the penalties that *may* be ordered, *including fines and correction of the violation*, in exchange for some action on the part of the violator." 2012 ME 78, ¶ 36 n.8 (emphasis added). That language could not be clearer: "correction of the violation" is a "penalty" that may be "waive[d] or reduce[d]" by agreement. *Id*. If complete correction of all violations were mandatory, this language would make no sense. Contrary to *Pike*, where the facts regarded a continuing use, here there is no continued "use" whatsoever. Abutters essentially assert that a violation must be one hundred percent abated to comply with state law and ordinance, but that is not the law under § 4452 or *Pike*.

It is also not the law under Sabattus's ordinances, contrary to Abutters' assertion. Abutters argue that two provisions in the Shoreland Zoning Ordinance restrict the ability of Sabattus to enter into consent judgments, these being the

provision that "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 "such agreement shall not allow an illegal structure or use to continue." Again, Abutters make a category error in confusing extant conditions with ongoing "use." Distilled to their essence, the violations alleged in the 80K complaint were that (1) the mining operation had expanded without approval of the planning Board and in violation of the Site Plan, and (2) the proper slope had not been maintained. Poirier has ceased all operations, so the complained-of use has been "eliminated" and does not "continue," to use the wording of the cited ordinance. And the slope issue is specifically addressed by the Consent Judgment. Thus, even assuming the 2009 ordinance cited applies—a stretch, because, again, Abutters point to no language suggesting it applies retroactively to projects approved under an older ordinance—the Consent Judgment does not violate it.

E. The Consent Judgment does not cause a legally impermissible effect on Abutters.

Abutters' final argument is that the Consent Judgment is "inconsistent with zoning-related public policy considerations" and "unreasonably departs from its own land-use standards." Abutters' Br. at 34. This section of the brief is largely repetition of previous arguments concerning the statutory and ordinance standards that

Abutters contend the Consent Judgment violates, incorrectly as described above. In service of this argument, Abutters raise various concerns that, even if legitimate, are better raised through alternative procedural means.

Abutters argue that the site in question "threatens their quiet enjoyment and value of their property." Abutters' Br. at 33. In essence, Abutters suggest that the status of the pit, even after reclamation work is completed, will represent a nuisance. *See* 17 M.R.S. § 2701 (civil action for nuisance is available when a person is "injured in his comport, property or the enjoyment of his estate by … a private nuisance"); *Johnston v. Maine Energy Recovery Co., Ltd. Partnership*, 2010 ME 52, ¶ 15, 997 A.2d 741 (identifying interference with use and enjoyment as element of nuisance). However, if that is true, Abutters remedy lies in a nuisance action. And *absolutely nothing* in the Consent Judgment prevents this. If Abutters feel that conditions at the pit represent a nuisance, they should file a nuisance action against Poirier.

What they should not do—and indeed, under the Rules of Civil Procedure, *cannot* do—is functionally litigate a nuisance action in an 80K proceeding. The purpose of 80K proceedings is to provide a summary process for efficiently litigating land use complaints. *See Town of Otis v. Derr*, 2001 ME 151, ¶ 4 n.2, 782 A.2d 788 ("Rule 80K of the Maine Rules of Civil Procedure provides an expedited procedure for adjudicating violations of land use laws and ordinances."). Rule 80K has a clear

no joinder rule: "proceedings pursuant to this rule shall not be joined with any action other than another proceeding pursuant to this rule, nor shall an alleged violator file a counterclaim or cross-claim." M.R. Civ. P. 80K(e)(2). Yet Abutters' position in this case implicitly requires that district courts engage in mini-trials on nonparties' potential nuisance claims during the 80K process. This is inconsistent with both the text of 80K and its purpose. The fact that an abutting landowner may have concerns about a violator's property that sound in nuisance is not a reason to restrict municipalities and violators from resolving 80K complaints by agreement, which is itself a favored public policy under *Pike*. *See Pike*, 2012 ME 78, ¶ 18 (quoting *Vose v. Inhabitants of Frankfort*, 64 Me. 229, 234 (1875)) for the proposition that municipalities "clearly have the right to settle disputed claims against them, thus saving the cost, vexation and uncertainty necessarily attendant upon litigation" (alterations omitted) and noting that "It would be a strange public policy that authorized municipalities to sue and be sued, but then compelled them to fully litigate every case to a final judgment with no possibility of resolving the dispute through good-faith settlement negotiations.").

Abutters' other public policy arguments fare no better. They argue that approving this Consent Judgment would create "perverse incentives for pit and quarry operators to quickly extract as much material as possible from a pit before

the enforcement shoe drops." But this ignores the fact that the prospect of substantial financial penalties is itself a significant incentive not to violate conditional approvals or zoning ordinances. In this case, the Consent Judgment contains a civil penalty of fee shifting; $25,000 payable immediately; a suspended civil penalty of $1,225,000, which remains suspended so long as the violator successfully complies with the requirements of the Consent Judgment (which includes an approved Reclamation Plan); and, additional civil penalties of $250 per-day, per-violation. These create a massive incentive to comply.

Finally, it is important to recognize the significant degree to which Abutters have already made themselves heard in this process. Abutters have attended (either themselves or through counsel) multiple town board meetings (both Board of Selectmen and Planning Board) and offered commentary on the pit and the proposed reclamation plan. There have been multiple meetings where the plan was discussed, and the Abutters have submitted comments both in writing and in person on multiple occasions before the Planning Board, before the Selectboard, and before the district court. On November 25, 2025, the Planning Board approved the final reclamation plan. Abutters did not file an appeal of that plan.

Contrary to Abutters' assertions, the Consent Judgment does not apply unequally, create perverse incentives, or harm Abutters' interests in any legally

cognizable way. Abutters have had full rights to participate in the Planning Board's process of review and approval of the reclamation plan, and have not appealed that plan. And Abutters' rights to protect their property from nuisance or statutory violations remain; nothing about the Consent Judgment precludes a nuisance action by one or more of the Abutters. The Consent Judgment is an appropriate exercise of Sabattus's discretion, and the district court did not err in approving it.

F. This Court may affirm on the alternative basis that Abutters should not have been granted intervenor status in the first instance.

While the foregoing is ample enough reason to affirm the district court's adoption of the Consent Judgment, this Court may affirm for any reason supported by the record. *See Clardy v. Jackson*, 2024 ME 61, ¶ 27, 322 A.3d 1158 ("[W]e may affirm the trial court's order for reasons different from those the trial court relied on when we determine, as a matter of law, that there is another valid basis for the judgment."). Here, another such reason exists: Abutters should never have been granted intervenor status in the first place. A trial court's decision to allow intervention is reviewed for error of law or abuse of discretion. *Almeder v. Town of Kennebunkport*, 2014 ME 139, ¶ 16, 106 A.3d 1099.

Under M.R. Civ. P. 24, a party may intervene as of right when "the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may, as a

practical matter, impair or impede the applicant's ability to protect *that interest*." M.R. Civ. P. 24(a) (emphasis added).

Here, the district court found that Abutters "have an interest in their own parcels that relates to the property at issue in the proposed consent judgment, in that they allege that their close proximity to the property adversely affects their own property rights." JA 4. This conclusion was clearly erroneous and insufficient as a matter of law to permit intervention as of right under M.R. Civ. P. 24(a).

The "property" at issue in this case is the gravel pit. And the "transaction"—if it can even be characterized that way—is the Consent Judgment. Abutters have no interest in the gravel pit property; they do not claim ownership of it, nor assert other property rights (such as an easement) in it. Further, Abutters are not parties to the Consent Judgment; it neither grants them rights nor imposes obligations.

Mere status as an adjacent landowner is, as a matter of law, insufficient by itself to have an interest worthy of intervention. This Court held as much in *Almeder*. In that case, beachfront property owners filed an action seeking a declaratory judgment against the Town of Kennebunkport as to their exclusive ownership and right to use a portion of Goose Rocks Beach. Landowners with property in the Goose Rocks Zone, but not directly on the beach, intervened. The trial court determined that intervention was appropriate based on these landowners' "location [in relation]

to the beach, their treatment of the beach as if it were their own, their ability to access the beach without permits (parking), their ability to rent their homes based on their proximity to the beach, their inflated tax assessed values based on their location and their ability to access the beach through various public and private rights of way." *Id*. ¶ 16 (brackets in original). This Court vacated the grant of intervenor status, writing that: "[n]otwithstanding their proximity to the Beach, the Backlot Owners did not demonstrate any interest in the Beach itself—as opposed to any paths leading to the Beach in which they might claim an interest—beyond that of any member of the public who has a history of using the Beach or, even more broadly, of any person who happens to live near a scenic location." *Id*. ¶ 17. The Court also noted that "To the extent any Backlot Owner sought a private easement over any Beachfront Owner's property, none sufficiently pleaded or proved the elements necessary to obtain an easement as to any specific parcel of Beach property …. To the extent that the Backlot Owners instead sought to establish a public easement to the Beach, those rights were identical to those claimed by the public, and the Town represented those public rights." *Id*.

The situation here is analogous. Whatever interest they may have in property *near* the pit, Abutters have no interest in the pit itself. And their allegations as to the legal insufficiency of the Consent Judgment are not different than allegations that

could be raised by any aggrieved citizen who is concerned about the Town not being more aggressive in its enforcement. Even assuming that the potential of negative impacts on their own property from the pit, such impacts could be addressed via a private nuisance action. Again, Abutters have never demonstrated that the Consent Judgment somehow immunizes Poirier from nuisance liability.

Moreover, the district court's decision on intervention was colored by at least one clear factual error. The district court wrote that "Abutters allege that the proposed Consent Judgments 'would purport to allow zoning violations to continue, including an unpermitted mineral extraction use within the Shoreland Zone.'" However, the text of the Consent Judgment does no such thing; it is explicit that Poirier agreed that there was no further right of mineral extraction and that the Consent Judgment "grants [Poirier] no right to use the premises. JA 29. The district court was not required to uncritically accept a flatly incorrect characterization of a document that was in the record before it.

The district court did not analyze permissive intervention, presumably because it granted mandatory intervention, but permissive intervention should not have been available in any event. Permissive intervention is available when there is a "question of law of fact" in common between the applicants' claims or defenses and intervention will not "unduly delay or prejudice the adjudication of the rights of

the original parties." M.R. Civ. P. 24(b). Here, there is no "question of law or fact" in common between the Abutters' theory—essentially, that the pit is a private nuisance—and the underlying action, which dealt with addressing specific violations of a conditional approval and the Shoreland Zoning Ordinance. And intervention does indeed delay the proceedings; here, it has required significant additional briefing and occasioned this appeal. Moreover, this must all be understood in the context of Rule 80K, which is designed to produce rapid and efficient resolution of land use issues and to that end, precludes joinder of other claims. Permitting intervention on what is essentially a nuisance theory is nothing more than an end-run around that restriction.

If not permitted to intervene, landowners situated similarly to Abutters here are not without recourse. Consent judgments, and reclamations plans associated with them, are matters decided by public bodies, in public meetings, with participation rights. Here, Abutters participated extensively in that process, and continued to do so even while the 80K action was pending. Properly restricting intervention to individuals whose actual property rights are affected does not undermine the ability of the public at large and adjacent landowners to participate in the process by which consent judgments are reached.

CONCLUSION

For the foregoing reasons, Appellees respectfully request that the Court affirm the judgment of the district court.

Dated: March 12, 2026

Respectfully submitted,

/s/ Eamonn R. C. Hart
Eamonn R. C. Hart, Esq. (Bar #5936)
Michael E. Carey, Esq. (Bar #5483)
BRANN & ISAACSON
113 Lisbon Street, P.O. Box 3070
Lewiston, ME 04243-3070
Telephone: (207) 786-3566
Email:ehart@brannlaw.com
mcarey@brannlaw.com

Attorneys for Plaintiff–Appellee the Town of Sabattus

CERTIFICATE OF SERVICE

On March 12, 2026 I served an electronic copy of the foregoing brief on Appellants' counsel, Keith Richard and Colin Hull, Poirier's counsel, Gerald Schofield, and Berube's counsel, Zack Brandwein, by email to: krichard@archipelagona.com; chull@archipelagona.com; gschofield@hablaw.com; and zack.brandwein@dentons.com.

Dated: March 12, 2026

/s/ Eamonn R. C. Hart
Eamonn R. C. Hart (Bar #5936)