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

REPLY 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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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

SUMMARY OF THE REPLY ARGUMENT

The Town concedes the central flaw of the Consent Judgment—clear inconsistency with state law. Rather than demonstrate that the decree complies, the Town argues, as the District Court concluded, that compliance does not matter because the Town does not have primary enforcement authority over the state statutes and because some other agency might take enforcement action later. To make that theory work requires improbable legal, factual, and practical assumptions. The Town (1) interprets state law in a manner that lacks support in the text and would clearly frustrate the Legislature's intent to regulate gravel pits uniformly; (2) adds significant qualifying language to the *Pike* factors that lack specific support in that case and would generally render judicial review of consent decrees an empty exercise; and (3) attempts to create ambiguity on a threshold factual issue based on zero evidence in the record and for the first time on appeal contrary to multiple prior representations.

The issue here is not enforcement authority but whether the court may approve a consent decree that conflicts with applicable law.

ARGUMENT

I. There is no basis in the record for the Town's attempt to create ambiguity regarding the factual finding that the excavated pit area exceeds five acres.

The Town asserts that "Abutters simply hand-wave at a broader threshold question" of whether the excavated area is five or more acres and thus Section 490-D applies; asserting that "the record does not even sufficiently establish this to be the case." (Red Br. 17.) But other than sowing doubt to suit a broader legal argument, the Town points to no evidentiary basis in the record that would support the factual suggestion that perhaps the excavated area is *less than* five acres. (Id. 17-18.) All the available information in the record on this subject—in addition to the Consent Judgment itself—confirms that the excavation exceeds five acres.[1] (A. 22, 27, 238, 242-43.)

Perhaps the best source on this point is what the Town said before. The Town *wrote* the Consent Judgment, including the statement that "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.) It is fair to assume that (1) DEP has knowledge of an applicable authorizing statute and is aware of

[1] The attempt to probe a distinction between "affected area" and "excavated area" is hair-splitting legal analysis that defies common sense. There is no evidence that the Poirier pit was "affected" by any other land use activity than excavation in connection with gravel extraction.

the applicable five-acre jurisdictional threshold; (2) the measurement was taken for reasons beyond sheer agency curiosity; and (3) the agency's surveying and mapping tools are accurate and reliable. The Town had no doubts when writing the Consent Judgment and adopting the DEP's measured area as a fact.

At the trial court, the Town submitted a detailed opposition to Abutters' objection to the Consent Judgment, but did not challenge the applicability of the state statutes on grounds that the Poirier pit fell below the five-acre threshold. (Town Opp. 9-10 (June 3, 2025).) In submitting evidence and making argument to the District Court, Abutters reasonably relied on the Town's position, believing the 5.7 acre DEP measurement, as an undisputed finding in the Consent Judgment, was not at issue. The District Court accepted and entered the Consent Judgment, thereby fully crystalizing as a factual finding (now reviewed for sufficiency of the evidence and clear error) that the area affected by the Poirier gravel pit excavation exceeds 5.7 acres. The Abutters have asserted since at least January 2025 that the performance standards in Title 38 apply (A. 246-50), yet the Town failed to contest DEP jurisdiction below or introduce any evidence that would contradict the factual finding of 5.7 acres—presumably because there is no basis for such a finding. The Town offers no explanation for why that factual finding was acceptable and never in doubt until this appeal, nor why the Town failed to introduce any evidence or raise any

argument to the District Court that would support the argument that is now pressed on appeal.[2]

The Town does not argue that the finding by the District Court was unsupported by the evidence or clear error, but instead conjures clouds of doubt where there should be none. The Town's assertion of "vagueness" (Red Br. 18) and shoulder-shrugging at cold factual assertions and measurements by a state agency has arisen seemingly because of a strategy choice to set up a legal argument rather than present evidence to support it. This Court should not countenance argument at odds with the factual record and prior positions.

II. There is no reasonable argument that a Consent Judgment that requires only thirty feet does not conflict with a legal requirement of at least fifty feet.

The Town argues that the Consent Judgment meets the *Pike* factor that "a consent decree must not conflict with" state law. (Red Br. 24.) The Consent Judgment requires only thirty feet of buffer and setback when multiple provisions of state law require at least fifty feet and no variance is permitted from these minimum standards. *See* 38 M.R.S. § 490-D(4) (natural buffer strip); 38 M.R.S. § 490-D(6-A) (private road). This is a clear conflict and fails *Pike*. To affirm this Consent Judgment, this Court would have to read the language of

[2] This Court could alternatively conclude that the Town waived this argument, but the dearth of any supporting evidence in the record should be more than enough to reject it.

Pike and the statutes out of existence or insert qualifying language that cannot be found in the express language or apparent intent of the rules stated in those sources of law.

This Court must consider what *Pike* means and what a reviewing trial court is charged with doing if a consent judgment violates or conflicts with a state law. Accepting the Town's argument, the trial court would merely be confirming what is already independently true with no meaningful or practical consequences—the trial court would be free to accept and enter the judgment regardless of whether the judgment conflicts with or violates state law. What to do about that becomes the problem of non-party state agencies. The question becomes: why would the trial court be required to undertake this analysis under *Pike* if a violation of state law posed no prohibition or limitation on entering the judgment? The Town offers no persuasive rationale.

It is the Town, not Abutters, that attempt to rewrite the clear language of *Pike* to instead say that "a consent decree must not conflict with state law *provided that the municipality has assumed primary enforcement authority over that state law*." That is not what *Pike* says or implies. It will almost always be the case that some state agency is directly charged with enforcement by the Legislature and could pursue separate enforcement action; that possibility does not excuse a local municipal consent decree that clearly conflicts with state law.

The Court should reject the Town's proposed interpretation, which would significantly dilute *Pike* and undermine state policies and objectives on land use and environmental standards.

III. DEP's enforcement role and statutory authority is not material or even relevant to whether the District Court could approve the Consent Judgment.

The Town places much emphasis on DEP's role in enforcing the performance standards for borrow pits and the fact that Consent Judgment "does not immunize" Poirier from an enforcement action.[3] The Town does not meaningfully respond to the argument that this narrow view of whether those performance standards are implicated conflates the clearly distinct "Applicability" provisions of the statute, 38 M.R.S. §§ 490-B & 490-D, with the "Enforcement" provisions, 38 M.R.S. §§ 490-H & 490-I. (Blue Br. 22-23.) The Town's reading would essentially merge the enforcement provisions into the applicability provisions, making them conditional and dependent, contrary to the language and structure the Legislature enacted.

Not only does the Town argue that DEP is responsible for enforcement, but that any remedial action to reclaim the pit consistent with the statutory

[3] The Town's analogy to the criminal code (Red Br. 23) is inapt because the issue here is not some unrelated violation of law in the abstract, but a municipal refusal to acknowledge and yield to a clearly applicable and controlling standard governing the exact subject matter that the Consent Judgment regulates.

performance standards is the *sole* and *exclusive* responsibility of DEP—not the Town nor Poirier. (Red Br. 19-20 (citing 38 M.R.S. § 490-H(3)).) Here too, the Town offers a perverse and absurd statutory interpretation.

Section 490-H authorizes DEP to, in its discretion, undertake the reclamation and then charge the violator for the expenses of that work. *See* 38 M.R.S. § 490-H(3). Granting discretionary authority to DEP does not by implication preclude other parties from undertaking the reclamation. Nothing in the statute states that management of the reclamation is the exclusive responsibility of DEP. Instead, the Legislature provided DEP with the *option* to reclaim and then seek costs if the pit owner or operator failed or otherwise refused to meet the applicable performance standards. This is a logical and reasonable regulatory tool to encourage voluntary compliance.

The District Court misapplied *Pike* by accepting and entering the Consent Judgment on the basis that maybe, hopefully, some other governmental entity will hold Poirier accountable for a violation of these statutes and a remediation plan inconsistent with express legislative objectives. Although not directly relevant given the trial court's legal and analytical error, it is (or should be) common knowledge that the Maine DEP is underfunded and understaffed. Agency resources are limited and inadequate to pursue every potential violation of a statute within DEP's broad charge, particularly in areas of

enforcement that overlap with local municipal land use regimes. The idea that DEP would allocate limited resources to undertake a second, duplicative enforcement action whenever a Town's resolution of a land use violation by consent decree fell short is unrealistic at best.

IV. The Town's site plan and ordinance arguments are confusing.

The Town's site plan and ordinance-based arguments are difficult to untangle, but the Town's position appears to be that regardless of what happened and when, the Consent Judgment does not violate any local ordinance. (Red Br. 24-30.) However, reduced to its essence, the Poirier Pit was required to maintain a 100-foot buffer from F. Sanborn Road, or at least a 50-foot buffer, either pursuant to the 2003 Site Plan approval's express terms[4] or the requirements of the 2004 Site Plan ordinance. (Blue Br. 28-29.) The Consent Judgment requires only a thirty-foot buffer and therefore permits a legally-deficient gravel pit reclamation that fails *Pike*.

Moreover, the Town is incorrect that the Consent Judgment authorizes no land use activity subject to regulation. Abutters maintain that the implementation of a legally deficient reclamation plan is part-and-parcel and

[4] Among other confusing matters, the Town mischaracterizes Abutters' arguments. The Town asserts that (1) Abutters do not argue that the Consent Judgment is consistent with the 2003 conditional approval and (2) Abutters do not allege a violation of the Shoreland Zoning ordinance. (Red Br. 26.) In fact, Abutters argued both. (Blue Br. 28-30.)

an extension of the underlying excavation activity that constitutes a regulated "use" even if active operation of the gravel pit has ceased. Under all the potentially applicable local ordinance or state regulatory standards, no gravel pit can be approved without a reclamation plan, which ensures that the site will be restored to an environmentally sound and appropriate condition. *See, e.g.*, 38 M.R.S. § 490-D(14); (A. 93, 98, 211). It was for this reason that the Town not only prepared and entered the Consent Judgment, but parallel proceedings to review and approve the Reclamation Plan occurred at the Planning Board. (A. 28, 38; S.A. 4-14.) If there is no contemplated future "use" of the property, there would be nothing for the Planning Board to consider and regulate.

To the extent that the record is ambiguous about the timing of Poirier's expansion activity (a source of some confusion affecting applicable ordinances), Abutters do not wish to extend these proceedings and thus do not want the possibility of a remand. On that basis, Abutters would accept the 50-foot buffer also required by the state statutes above, rather than press for the full 100-foot buffer that we believe is required.

V. The Town's attempt to recast Abutters' position as a disguised nuisance claim overlooks that the effect on abutters, which overlaps with nuisance concepts, is the fifth *Pike* factor.

The Town criticizes Abutters for raising a few well-supported legal objections to the Consent Judgment, arguing that the sole remedy is to pursue

a separate nuisance action. (Red Br. 32-36.) The articulated concerns do not undermine but justify Abutters' position. The fifth *Pike* factor, which the Court is required to apply, significantly overlaps with nuisance concepts. *Pike Industries v. City of Westbrook*, 2012 ME 78, ¶ 24, 45 A.3d 707 (stating "the consent decree is reasonable and is not legally impermissible in its effect on third parties.") If the Court rejects the Town's arguments and agrees that the Consent Judgment violates and is inconsistent with the 50-foot requirement, then it follows that the judgment has a legally impermissible effect on third parties given the policy purpose and justification for buffer and setback requirements to mitigate impacts upon neighboring residential property owners like the Abutters.

VI. The Court did not abuse its discretion in granting the Abutters' motion to intervene.

The Town argues that the District Court abused its discretion in granting the Abutters' motion to intervene because Abutters do not have an "interest" in the matter and their participation in public proceedings at the Town level related to the Consent Judgment was adequate to the extent they have an interest.[5] (Red Br. 36-40.)

[5] Not all municipal attorneys agree that a consent decree is subject to public comment and process, so although Abutters disagree with the Town, the effort to allow public meetings and comment deserves mention. That said, our comments were largely ignored and not shared with the

The District Court, by order dated April 17, 2025, correctly concluded that Abutters had an adequate interest in the property at issue to intervene and that the Town was not adequately representing their interests. The trial court's findings were amply supported by the record. (Order 2-5 (April 17, 2025).)

Contrary to the Town's argument, in addition to their ownership of abutting property, the Abutters have a *direct property interest* in the Poirier property due to their easements over F. Sanborn Road to access their properties. (Mot. Intervene 1-2 (March 20, 2025).) Part of F. Sanborn Road crosses over the Poirier property. The Poirier pit unlawfully expanded into the right-of-way of F. Sanborn Road and thus directly affected Abutters' easement rights over the road. (A. 233-35, 238 ("The current excavation has reached the line on the site plan indicating the eastern edge of the right of way for Andken Shores Drive[6]. . . . The condition of this area has the potential of threatening the existing road . . .")) That alone brings this case outside of the Rule 24 analysis in *Almeder*. *See Almeder v. Town of Kennebunkport*, 2014 ME 139, ¶ 17, 106 A.3d 1099 ("[T]he 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

District Court by the Town so our interests were not adequately represented. The opportunity to object in the District Court must be upheld as valid.

[6] F. Sanborn Road and Andken Shores Road refer to the same private road. (A. 26.)

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.").

Rather than the unique circumstances of *Almeder*, Abutters stand on a different footing than any member of the general public. Even without a direct interest in the property at issue, this Court should consider Rule 24 intervention through the lens of *Pike*, which contemplated and allowed a party with adequate prudential standing to intervene for purposes of stating an objection to the consent decree. Abutters do not contend that independent claims could be brought or joined in the Rule 80K proceeding,[7] but that their meritorious objection was and is properly lodged, regardless of their formal party status, such that the legality of the Consent Judgment is properly scrutinized in this appeal. *See Pike*, 2012 ME 78, ¶ 28, 45 A.3d 707 (intervenor status and objections not dispositive of the court's "overall inquiry into the lawfulness of the decree").

[7] The other potential avenue here was an administrative appeal. M.R. Civ. P. 80B. For efficiency and judicial economy purposes, Abutters chose this means of judicial review instead of filing a Rule 80B appeal from the Town decision adopting or implementing the Consent Judgment, including adoption of the Reclamation Plan by the Planning Board. The language in the Planning Board's decision specifically reserves the possibility that Plan will be amended, pending disposition of this appeal (S.A. 14), which obviated for all parties the need for additional or separate legal proceedings.

CONCLUSION AND REQUEST FOR RELIEF

For all the foregoing reasons and those in the Blue Brief, the Abutters request that the Court vacate the District Court's approval of the Consent Judgment, direct the District Court to order the parties to submit an amended consent judgment that modifies the width of the buffer to at least fifty (50) feet consistent with law, and for future amendment of the approved Reclamation Plan (S.A. 14) by the Planning Board consistent with the consent judgment as amended by this Court's opinion.

Dated in Portland Maine, this 2nd day of April 2026.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Colin Hull, hereby certify that an electronic 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 2nd day of April, 2026.

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