

1. Planning Board Meeting Materials 2022-05-11

Documents:

[2023-05-11 PLANNING BOARD AGENDA.PDF](#)

[LD 2003 100C005 \(1\).DOCX](#)

[LD2003 SUMMARY OF COMMENTS FOR CH. 5 FINAL.DOCX](#)



AGENDA
York Planning Board Meeting
Thursday, May 11, 2023
7:00 PM
York Public Library

- 1. Call to Order; Determination of Quorum; Appointment of Alternates**
- 2. Field Changes**
- 3. Public Forum**
- 4. Discussion**
 - A. Application Outside Technical Review Billing
 - B. Fall 2023 Potential Ordinance Amendments
 - a. Open Space Conservation Subdivision
 - b. Board of Design Review
 - c. LD2003
 - d. ADU
 - C. Potential Site Plan and Subdivision Regulations Amendments
 - a. Datum 1923
 - D. Committee Creation
 - a. GEROD Design Charettes Committee
 - b. Land Use Committee
 - c. Comprehensive Plan Implementation Committee
- 5. Minutes**
- 6. Other Business**
- 7. Adjourn**

Chapter 5: HOUSING OPPORTUNITY PROGRAM: MUNICIPAL LAND USE AND ZONING ORDINANCE RULE

Summary: This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.

Note: This chapter incorporates by reference certain material. The Appendix lists the material that is incorporated by reference, the date for each reference, and the organization where copies of the material are available.

SECTION 1. PURPOSE AND DEFINITIONS**A. PURPOSE**

1. This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.
2. Municipalities need not adopt this rule language or the statutory language in P.L. 2021 Ch. 672 word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community and the minimum requirements of this legislation. Municipalities may wish to adopt ordinances that are more permissive, provided that such ordinances are equally or more effective in achieving the goal of increasing housing opportunities. If a municipality does not adopt ordinances to comply with P.L. 2021 Ch. 672, this legislation will preempt municipal home rule authority.
3. These rules do not:
 - a) Abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this rule, as long as the agreement does not abrogate rights pursuant to the United States Constitution or the Constitution of Maine;
 - b) Exempt a subdivider from the requirements in Title 30-A Chapter 187 subchapter 4;

- c) Exempt an affordable housing development, a dwelling unit, or accessory dwelling unit from the shoreland zoning requirements established by the Department of Environmental Protection pursuant to Title 38 Chapter 3 and municipal shoreland zoning ordinances; or
- d) Abrogate or annul minimum lot size requirements under Title 12 Chapter 423-A.

B. DEFINITIONS

All terms used but not defined in this chapter shall have the meanings ascribed to those terms in Chapter 187 of Title 30-A of the *Maine Revised Statutes*, as amended. Municipalities need not adopt the terms and definitions outlined below word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities.

Accessory dwelling unit. "Accessory dwelling unit" means a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land. An accessory dwelling unit must be a minimum of 190 square feet and municipalities may impose a maximum size.

Affordable housing development. "Affordable housing development" means

1. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and
2. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the *United States Housing Act of 1937*, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.
3. For purposes of this definition, "majority" means more than half of proposed and existing units on the same lot.
4. For purposes of this definition, "housing costs" include, but are not limited to:
 - a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and

- b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

Area median income. "Area median income" means the midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing & Urban Development.

Attached. "Attached" means connected by a shared wall to the principal structure or having physically connected finished spaces.

Base density. "Base density" means the maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in a local land use or zoning ordinance. This does not include local density bonuses, transferable development rights, or other similar means that could increase the density of lots not used for affordable housing.

Centrally managed water system. "Centrally managed water system" means a water system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, *Rules Relating to Drinking Water*. This water system may be privately owned.

Certificate of occupancy. "Certificate of occupancy" means the municipal approval for occupancy granted pursuant to 25 M.R.S. §2357-A or the *Maine Uniform Building and Energy Code* adopted pursuant to Title 10 Chapter 1103. Certificate of occupancy may also be referred to as issuance of certificate of occupancy or other terms with a similar intent.

Comparable sewer system. "Comparable sewer system" means any subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

Comprehensive plan. "Comprehensive plan" means a document or interrelated documents consistent with 30-A M.R.S. §4326(1)-(4), including the strategies for an implementation program which are consistent with the goals and guidelines established pursuant to Title 30-A Chapter 187 Subchapter II.

Density requirements. "Density requirements" mean the maximum number of dwelling units allowed on a lot, subject to dimensional requirements.

Designated growth area. "Designated growth area" means an area that is designated in a municipality's or multi-municipal region's comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combination of those types of development, and into which most development projected over ten (10) years is directed. Designated growth areas may also be referred to as priority development zones or other terms with a similar intent. If a municipality does not have a comprehensive plan, "designated growth area" means an area served by a public sewer system that has the capacity for the growth-related project, an area identified in the latest Federal Decennial

Census as a census-designated place or a compact area of an urban compact municipality as defined by 23 M.R.S. §754.

Dimensional requirements. “Dimensional requirements” mean requirements which govern the size and placement of structures including, but limited not to, the following requirements: building height, lot area, minimum frontage and lot depth.

Dwelling unit. “Dwelling unit” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

Existing dwelling unit. “Existing dwelling unit” means a residential unit in existence on a lot at the time of submission of a permit application to build additional units on that lot. If a municipality does not have a permitting process, the dwelling unit on a lot must be in existence at the time construction begins for additional units on a lot.

Housing. “Housing” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments. For purposes of this rule, this does not include dormitories, boarding houses or other similar types of housing units. This also does not include transient housing or short-term rentals, unless these uses are otherwise allowed in local ordinance.

Land use ordinance. “Land use ordinance” means an ordinance or regulation of general application adopted by the municipal legislative body which controls, directs, or delineates allowable uses of land and the standards for those uses.

Lot. “Lot” means a single parcel of developed or undeveloped land.

Multifamily dwelling. “Multifamily dwelling” means a structure containing three (3) or more dwelling units.

Potable. “Potable” means safe for drinking as defined by the U.S. Environmental Protection Agency’s (EPA) Drinking Water Standards and Health Advisories Table and Maine’s interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82, *Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Level for Certain Substances and Contaminants*.

Principal structure. “Principal structure” means a structure in which the main or primary use of the structure is conducted. For purposes of this rule, principal structure does not include commercial buildings.

Restrictive covenant. “Restrictive covenant” means a provision in a deed, or other covenant conveying real property, restricting the use of the land.

Setback requirements. “Setback requirements” mean the minimum horizontal distance from a lot line, shoreline, or road to the nearest part of a structure, or other regulated object or area as defined in local ordinance.

Single-family dwelling unit. “Single-family dwelling unit” means a structure containing one (1) dwelling unit.

Structure. “Structure” means anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons as defined in 38 M.R.S. §436-A(12).

Zoning ordinance. "Zoning ordinance" means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.

SECTION 2. AFFORDABLE HOUSING DENSITY

A. GENERAL

This Section requires municipalities to allow an automatic density bonus for certain affordable housing developments approved on or after July 1, 2023, as outlined below. This section only applies to lots in zoning districts that have adopted density requirements.

B. ELIGIBILITY FOR DENSITY BONUS

1. For purposes of this section, a municipality shall verify that the development:
 - a) Is an affordable housing development as defined in this chapter, which includes the requirement that a majority of the total units on the lot are affordable;
 - b) Is in a designated growth area pursuant to 30-A M.R.S. §4349-A(1)(A) or (B) or served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system;
 - c) Is located in an area in which multifamily dwellings are allowed per municipal ordinance;
 - d) Complies with minimum lot size requirements in accordance with Title 12 Chapter 423-A; and
 - e) Owner provides written verification that each unit of the housing development is proposed to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:
 - i. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

- ii. If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.
- iii. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- iv. If a housing unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

2. Long-Term Affordability

Prior to granting a certificate of occupancy or other final approval of an affordable housing development, a municipality must require that the owner of the affordable housing development (1) execute a restrictive covenant that is enforceable by a party acceptable to the municipality; and (2) record the restrictive covenant in the appropriate registry of deeds to ensure that for at least thirty (30) years after completion of construction:

- a) For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and
- b) For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

C. DENSITY BONUS

If the requirements in Section 2(B)(1) and (2) are met, a municipality must:

- 1. Allow an affordable housing development to have a dwelling unit density of at least 2.5 times the base density that is otherwise allowed in that location; and
- 2. Require no more than two (2) off-street parking motor vehicle spaces for every three (3) dwelling units of an affordable housing development.

If fractional results occur when calculating the density bonus in this subsection, the number of units is rounded down to the nearest whole number. Local regulation that chooses to round up shall be considered consistent with and not more restrictive than this

law. The number of motor vehicle parking spaces may be rounded up or down to the nearest whole number.

SECTION 3. DWELLING UNIT ALLOWANCE

A. GENERAL

This section requires municipalities to allow multiple dwelling units on lots where housing is allowed beginning on July 1, 2023, subject to the requirements below. The requirements listed in Section 3 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, lot size, set back, density, septic requirements, minimum lot size, additional parking requirements, growth ordinance permits, shoreland zoning and subdivision law, may also apply to lots.

B. REQUIREMENTS

1. Dwelling Unit Allowance

- a) If a lot does not contain an existing dwelling unit, municipalities must allow up to four (4) dwelling units per lot if the lot is located in an area in which housing is allowed, meets the requirements in 12 M.R.S. Ch. 423-A, and is:
 - i. Located within a designated growth area consistent with 30-A M.R.S. §4349 A(1)(A)-(B); or
 - ii. Served by both a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.
- b) If a lot does not contain an existing dwelling unit and does not meet i. or ii. above, a municipality must allow up to two (2) dwelling units per lot located in an area in which housing is allowed, provided that the requirements in 12 M.R.S. Ch. 423-A are met. The two (2) dwelling units may be (1) within one structure; or (2) separate structures.
- c) If a lot contains one existing dwelling unit, a municipality must allow the addition of up to two (2) additional dwelling units:
 - i. One within the existing structure or attached to the existing structure;
 - ii. One detached from the existing structure; or
 - iii. One of each.
- d) If a lot contains two existing dwelling units, no additional dwelling units may be built on the lot unless allowed under local municipal ordinance.

- e) A municipality may allow more units than the minimum number of units required to be allowed on all lots that allow housing.

2. Zoning

With respect to dwelling units allowed under this Section, municipalities with and without zoning ordinances must comply with the following:

- a) If more than one dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density except as allowed by the municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision.
- b) Municipalities may establish a prohibition or an allowance for lots where a dwelling unit in existence after July 1, 2023, is torn down and an empty lot results.

3. Dimensional and Setback Requirements

- a) A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed pursuant to this Section that are more restrictive than the dimensional requirements or setback requirements for single-family housing units.

- 4. A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit.

Water and Wastewater

- a) The municipality must require an owner of a proposed housing structure to provide written verification that each proposed structure is to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:
 - i. If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;
 - ii. If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

- iii. If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- iv. If a housing structure is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

C. MUNICIPAL IMPLEMENTATION

In adopting an ordinance, a municipality may:

- 1. Establish an application and permitting process for dwelling units;
- 2. Impose fines for violations of building, site plan, zoning, and utility requirements for dwelling units; and
- 3. Establish alternative criteria that are less restrictive than the requirements of Section 3(B)(4) for the approval of a dwelling units only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C).

SECTION 4. ACCESSORY DWELLING UNITS

A. GENERAL

- 1. A municipality must allow, effective July 1, 2023, one accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is allowed, subject to the requirements outlined below. The requirements listed in Section 4 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, set back, density, septic requirements, shoreland zoning and subdivision law may also apply to lots.
- 2. A municipal ordinance that allows more than one accessory dwelling unit or that allows accessory dwelling units to be established in relation to duplex, triplex and other multi-unit buildings shall be considered consistent with the goals of P.L. 2021 Ch. 672.

B. REQUIREMENTS

- 1. Accessory Dwelling Unit Allowance

An accessory dwelling unit may be constructed only:

- a) Within an existing dwelling unit on the lot;

- b) Attached to a single-family dwelling unit; or
- c) As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

A municipality may allow an accessory dwelling unit to be constructed or established within an existing accessory structure, except the setback requirements of Section 4(B)(3)(b)(i) shall apply.

2. Zoning

With respect to accessory dwelling units, municipalities with zoning ordinances and municipalities without zoning must comply with the following conditions:

- (a) At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; and
- (b) If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density, except as allowed by the municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision.

3. Other

With respect to accessory dwelling units, municipalities must comply with the following conditions:

- a) A municipality must exempt an accessory dwelling unit from any density requirements or lot area requirements related to the area in which the accessory dwelling unit is constructed;
- b) For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to a single-family dwelling unit, the dimensional requirements and setback requirements must be the same as the dimensional requirements and setback requirements of the single-family dwelling unit;
 - i. For an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, the required setback requirements in local ordinance of the existing accessory or secondary building apply.
- c) A municipality may establish more permissive dimensional requirements and setback requirements for an accessory dwelling unit.
- d) An accessory dwelling unit may not be subject to any additional motor vehicle parking requirements beyond the parking requirements of the

single-family dwelling unit on the lot where the accessory dwelling unit is located.

4. Size

- a) An accessory dwelling unit must be at least 190 square feet in size, unless the Technical Building Code and Standards Board, pursuant to 10 M.R.S. §9722, adopts a different minimum standard; if so, that standard applies.
- b) Municipalities may set a maximum size for accessory dwelling units in local ordinances, as long as accessory dwelling units are not less than 190 square feet.

5. Water and Wastewater

A municipality must require an owner of an accessory dwelling unit to provide written verification that the proposed accessory dwelling unit is to be connected to adequate water and wastewater services prior to certification of the accessory dwelling unit for occupancy or similar type of approval process. Written verification must include the following:

- a) If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;
- b) If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*;
- c) If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- d) If an accessory dwelling unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

C. MUNICIPAL IMPLEMENTATION

In adopting an ordinance under this Section, a municipality may:

- 1. Establish an application and permitting process for accessory dwelling units;

2. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and
3. Establish alternative criteria that are less restrictive than the above criteria in Section 4 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C).

D. RATE OF GROWTH ORDINANCE

A permit issued by a municipality for an accessory dwelling unit does not count as a permit issued toward a municipality's rate of growth ordinance pursuant to 30-A M.R.S. §4360.

STATUTORY AUTHORITY:

PL 2021 Ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B.

EFFECTIVE DATE:

April 18, 2023 – filing 2023-056

APPENDIX

List of Reference Material

Reference Material	Location to Obtain Document
U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table, March 2018.	U.S. Environmental Protection Agency Office of Water Drinking Water Hotline 1-800-426-4791
10-144 C.M.R. Ch. 231, Rules Relating to Drinking Water, May 9, 2016	Maine Department of Health & Human Services Maine Center for Disease Control & Prevention 11 State House Station Augusta, Maine 04333 207-287-8016
Resolve 2021, Ch. 82, Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Levels for Certain Substances and Contaminants	Maine State Legislature Legislative Information Office- Document Room 100 State House Station Augusta, ME 04333 207-287-1408 webmaster_house@legislature.maine.gov
01-672 C.M.R. Ch. 10, Land Use Districts and Standards, December 30, 2022	Maine Department of Agriculture, Conservation & Forestry Bureau of Resource Information and Land Use Planning Land Use Planning Commission 22 State House Station Augusta, Maine 04333 207-287-2631
10-144 C.M.R. Ch. 241, Subsurface Wastewater Disposal Rules, August 3, 2015	Maine Department of Health & Human Services Maine Center for Disease Control & Prevention 11 State House Station Augusta, Maine 04333 207-287-8016

SUMMARY OF COMMENTS AND RESPONSES AND LIST OF CHANGES TO THE FINAL RULE

19-100 C.M.R. Chapter 5, Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule

The Maine Department of Economic and Community Development opened this rule for public comment on February 8, 2023. The Department held a virtual public hearing on March 1, 2023. Written comments were accepted through March 13, 2023. This document summarizes the comments that were received during this time, the Department's responses, and the changes that were made to the final rule as a result of the comments.

Commenters

1. Maxwell Johnstone, Planning Consultant, Midcoast Council of Governments, Damariscotta, Maine
2. Deb Brusini, Town of Bridgton, Maine
3. Rebecca Graham, Senior Legislative Advocate, Maine Municipal Association, Augusta, Maine
4. Cynthia Dill, Cape Elizabeth, Maine
5. Ed Libby, Yarmouth, Maine
6. DeCarlo Brown, Land Use Planner, York, Maine
7. Katlin Hilton, Town Clerk & Planning Board Member, Town of Chesterville, Maine
8. Jeremy Martin, Planning and Development Director, Camden, Maine
9. Christine Bennett, Eliot Planning Board Member and Jeff Brubaker, Town Planner, Eliot, Maine
10. Ryan Smith, Code Enforcement Officer, Mechanic Falls, Maine
11. George Theborge, Planner, Durham, Maine
12. Tim Reiniger, Resident of Cape Elizabeth, Maine
13. Elizabeth Caruso, First Selectman of Caratunk, Maine
14. Chris Bilodeau, Code Enforcement Officer, Norway, Maine
15. Dan Davis, Code Enforcement Officer, Porter, Maine
16. Katie Reis, Chair of New Sharon Planning Board, New Sharon, Maine
17. Robert Trabona, Terence Taylor, Robert Arledge, Lisa Sabatine, Julie Pankey, The Georgetown Planning Board, Georgetown, Maine
18. Kendra Amaral, Town Manager, Matt Brock, Chairperson, Kittery Housing Authority, Drew Fitch, Member, Kittery Housing Authority, Kittery, Maine
19. Will Berry, Homeowner and Homebuilder, Kennebunk, Maine
20. Cathy Johnson, Vice Chair of Alna Planning Board, Alna, Maine
21. Ed Pentaleri, Town of Alna Select Board Chair, Alna, Maine

22. Jennie Franceschi, Planning and Code Enforcement Director, Dan Stevenson, Economic Development Director, Rebecca Spitella, Senior Planner, Westbrook, Maine
23. Legislative Policy Committee, Maine Association of Planners
24. Legal Services Department, Maine Municipal Association, Augusta, Maine
25. Wayne Berry, Contractor, Kennebunk, Maine
26. Michael Foster, Associate Planner, Town of Old Orchard Beach, Maine
27. Carol White, Hydrogeologist and Resident of Chebeague Island, Maine
28. Agnieszka A. (Pinette) Dixon, Esq. and Amy Tchao, Esq., Drummond Woodsum, Portland, Maine
29. Natalie Thomsen, Land Use Planner, Brunswick, Maine
30. Lee Holman, Member of the Selectboard, Hartford, Maine

Commenter 1:

1. Commenter strongly encouraged the Legislature to delay the implementation date in P.L. 2021, ch. 672 because municipalities, especially rural municipalities, do not have enough time to review the proposed standards and implement an ordinance change with the four months left. There are several communities that will hold their town meetings prior to the completion of the public hearing process, resulting in towns likely having to conduct a special town meeting, at their own expense, to rush through ordinances that might not be accepted by residents. There are also towns who have missed the deadline to place warrant articles.

Response: The Department thanks the commenter for this comment. Establishing the implementation date in P.L. 2021 ch. 672 is outside the Department's rulemaking authority. The Department did not make any changes to the rule as a result of this comment.

2. Commenter stated that in Section 3(B), a lot that contains one existing dwelling unit is allowed to have an additional two units, but lots with two existing dwellings would not be allowed to have any additional dwelling units under the local ordinance. If this lot is outside of a growth area, why is the limit not two dwelling units regardless of the number of existing units. Commenter states that this difference punishes individuals who already tried to add more dwelling units.

Response: The Department thanks the commenter for this question. The Department's rulemaking authority for this section is bound by the statutory language in 30-A M.R.S. § 4364-A(1), which distinguishes between a lot with existing units compared to a lot without existing units. The statutory language does, however, give a municipality the discretion to allow more lots than the minimum if it so chooses. The Department did not make changes to the proposed rule as a result of this comment.

3. Commenter asked the Department the following question: If a town's most up-to-date approved Comprehensive Plan does not precisely show the Growth Areas, how should these communities proceed to have the correct spots to allow Affordable Housing or the 4 new units on undeveloped lots?

Response: The Department thanks this commenter for the comment. The Department encourages municipalities to use their best judgment using the growth area maps and comprehensive plans

that they do have to determine where affordable housing developments or 4 units are allowed per LD 2003, regardless of whether these plans are up to date. The Department did not make any changes to the rule as a result of this comment.

4. Commenter asked the Department the following question: Some towns have “Accessory Apartments” or other terminology similar to “Accessory Dwelling Unit”. Is this difference in terminology acceptable?

Response: The Department thanks the commenter for this question. P.L. 2021, ch. 672 and the rule uses the term “accessory dwelling unit.” Municipalities need not adopt the terms and definitions outlined below word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities. The Department amended Section 1(B) of the rule to clarify.

5. Commenter asked the Department the following question: How precise must the town’s language be in sync with the State language regarding definitions?

Response: The Department thanks the commenter for this question. Municipalities need not adopt the terms and definitions outlined below word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities. The Department amended Section 1(B) to clarify.

6. Commenter asked the Department the following question: Will a list be provided of groups that would enforce the affordability covenant?

Response: The Department thanks the commenter for this question. A list of groups will not be provided but once rulemaking is complete, the Department will provide additional guidance on this provision. The Department did not make changes to the final rule as a result of this comment.

7. Commenter asked the Department the following question: Can a municipality or county enforce the affordability covenant?

Response: The Department thanks the commenter for this question. P.L. 2021, ch. 672 requires an owner of the affordable housing development to execute a restrictive covenant “for the benefit of and enforceable by a party acceptable to the municipality.” 30-A M.R.S. § 4364(3). This allows the municipality the discretion to determine the individual or entity that enforces the covenant. A municipality could enforce the affordability covenant, however, the Department encourages municipalities to speak with legal counsel about the enforceability of restrictive covenants. The Department did not make changes to the final rule as a result of this comment.

8. Commenter asked the Department the following question: There are some communities that have separate requirements/ incentives for elderly housing (55 or older), would this be considered discrimination language that should be removed?

Response: The Department thanks the commenter for this question. The Department encourages municipalities to consult with legal counsel to determine whether ordinances comply with the Federal Fair Housing Act and the Maine Human Rights Act. The Department did not make changes to the final rule as a result of this comment.

9. Commenter asked the Department the following question: Are communities allowed to have less restrictive standards for elderly housing or for other private covenant restrictions that do not conflict with the Maine nor US Constitution?

Response: The Department thanks the commenter for this question. The Department encourages municipalities to consult with legal counsel with questions about restrictive covenants and standards for senior housing. The Department did not make changes to the final rule as a result of this comment.

10. Commenter asked the Department the following question: Can municipalities establish on-street parking bans and/or limited hours in municipal parking lots near affordability housing projects?

Response: The Department thanks the commenter for this question. P.L. 2021, ch. 672 does not state requirements related to on-street parking bans or municipal parking lots. Municipalities have discretion to establish this type of requirement, assuming the affordable housing development does not exceed 2 off-street spaces per every 3 units pursuant to 30-A M.R.S. § 4364(2). The Department did not make changes to the rule as a result of this comment.

11. Commenter asked the Department the following question: Can municipalities require evidence for how to address an overflow in parking for Affordable Housing?

Response: The Department thanks the commenter for this question. 30-A M.R.S. § 4364(2) states that a municipality “may not require more than 2 off-street spaces per every 3 units.” Municipalities have the discretion to determine how best to meet this requirement. The Department did not make changes to the rule as a result of this comment.

12. Commenter asked the Department the following question: Are municipalities allowed to create additional standards beyond the standard rulemaking that has been presented by the state?

Response: The Department thanks the commenter for this question. Municipalities, assuming they meet the minimum criteria listed in P.L. 2021, ch. 672 and this rule, are allowed to create additional standards. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt ordinances that are more permissive, provided ordinances are equally or more effective in achieving the goal of increasing housing opportunities.

13. Commenter asked the Department the following question: Based on the language under Section 3(B) and Section 4(B)(2)(b), would an individual that is permitted to build 2 additional dwelling units on a developed lot also be allowed to have an accessory dwelling unit to have a combined total of 3 additional units?

Response: The Department thanks the commenter for this question. This is not a requirement of P.L. 2021, ch. 672, but a municipality has discretion to allow two additional dwelling units and an ADU on a lot, for a total of 3 additional units. Section 3(B)(2)(a) and 30-A M.R.S. § 4364-A(2)

(A) prohibits a municipality from allowing a lot owner to take advantage of both the ADU section and the “Up to 4 Dwelling Unit” section on one lot, unless the municipality allows otherwise. The Department did not make changes to the final rule as a result of this comment.

14. Commenter asked the Department the following question: If a proposal in an undeveloped Growth Area parcel would construct 4 dwelling units, would that qualify for permitting of a Multifamily dwelling unit as it is defined under Section 1(B)?

Response: The Department thanks the commenter for this question. If a lot meets certain criteria, a municipality must allow the addition of up to four units on a lot without an existing residential unit. These four units could be a multifamily dwelling, as defined in rule, but are not required to be. Subdivision law may apply to this scenario as well. The Department did not make changes to the rule as a result of this comment.

15. Commenter asked the Department the following question: Are municipalities allowed to place a restriction/condition of approval on Accessory Dwelling Units/residential units under LD 2003 to prohibit conversion to short-term rentals?

Response: The Department thanks the commenter for this question. A municipality cannot restrict the approval of an ADU, if all criteria of P.L. 2021, ch. 672 and the municipal permitting process are met. The Department’s feels that the best practice for a municipality would be to regulate short-term rentals in a separate short-term rental ordinance to reduce confusion and encourage the production of housing. The Department did not make changes to the final rule as a result of this comment.

16. Commenter asked the Department the following question: If a municipality allows “Multi-Family” in the Shoreland, does a municipality have to allow the Affordable Housing? The question is based on the DEP Chapter 1000 only having “Multi-Family” and Section 1(A)(2)(c) of the rulemaking saying that affordable housing development is not exempt from the DEP standards and municipal shoreland zoning.

Response: The Department thanks the commenter for this question. A municipality must allow developers to take advantage of the density bonus for affordable housing developments on a lot if the lot allows multi-family housing and the lot is in a designated growth area or has access to water and sewer. This provision also applies to lots in the shoreland zone only if the above mentioned criteria are met. The caveat is that shoreland zoning requirements may restrict the development of an affordable housing development on only lots in the shoreland zone. The Department did not make changes to the final rule as a result of this comment.

Commenter 2:

17. Commenter stated that the timeline for implementation does not enable Bridgton to amend their land use ordinances to comply with LD 2003 in a purposeful manner, allowing for significant input by July 1, 2023.

Response: The Department thanks the commenter for this comment. Please see the response to comment #1. The Department did not make changes to the final rule as a result of this comment.

18. Commenter stated that the P.L. 2021, ch. 672 and the rules are an “unfunded mandate.” Bridgton’s implementation fees will be greater than what might be received in a grant. Bridgton has already incurred \$14,000 in fees and anticipates additional fees of \$10,000 plus.

Response: The Department thanks the commenter for this comment. The Department's rulemaking authority is limited to interpreting the language of this legislation and 5 M.R.S. § 13056-J. To help with costs, the Department was allocated about \$2.5 million from the Legislature to support with municipal ordinance development. Part of this funding includes funding to provide direct reimbursement to towns, in addition to grants funding. For more information on grant funding, please see the Department's rule 19-100 C.M.R. ch. 4, Rule Regarding Housing Opportunity Program Grants. The Department did not make changes to the final rule as a result of this comment.

19. Commenter stated that the definition for "accessory dwelling unit" in the rule is contrary to a commonly used definition requiring accessory structures that are 'subordinate and customarily incidental' to the principal structure. Commenter asks if this common definition can be used instead of the rule definition.

Response: The Department thanks the commenter for this comment. Please see the response to comment #4.

20. Commenter stated that the definition of "affordable housing development" leaves a loophole which may not result in an increase in affordable unit because the language allows the developer to 'designate' how many units are affordable.

Response: The Department thanks the commenter for this comment. The Department interprets the definition of "affordable housing development" to mean that a developer must ensure that, at a minimum, more than half of the proposed units meet the definition of affordable. The Department did not make changes to the final rule as a result of this comment.

21. Commenter asked the Department for more clarification around non-conforming lots, non-conforming structures, and nonconforming uses.

Response: The Department thanks the commenter for this comment. A municipality may allow development of ADUs, affordable housing developments and dwelling units on nonconforming lots; within nonconforming structures; or on lots/structures with nonconforming uses. The Department removed Section 4(B)(3)(d) as a result of this comment. The Department will update its guidance document.

22. Commenter is concerned about the increased growth on small lots, especially haphazard and unplanned growth.

Response: The Department thanks the commenter for this comment. P.L. 2021, ch. 672 allows the addition of additional units on lots in areas where housing is permitted, subject to certain state, local and private requirements. Municipalities can establish requirements for lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit. This provision may allow municipalities to restrict additional units on smaller lots. The Department encourages individuals to contact the Housing Opportunity Program at housing.decd@maine.gov to learn more about the applicability of P.L. 2021, ch. 672. The Department did not make changes to the final rule as a result of this comment.

23. Commenter asked the Department to clarify the "up to 4 dwelling unit section," specifically the allowance of up to four dwelling units on a lot without an existing unit. The law does not say anything about commercial units and whether or not you can have up to four dwelling units on a lot with a commercial unit.

Response: The Department thanks the commenter for this comment. The statute allows the addition of “up to 4 dwelling units per lot if that lot does not contain an existing dwelling unit.” 30-A M.R.S. § 4364-A(1). The Department interprets this to mean a lot without an existing residential unit. Therefore, if a commercial unit is on a lot, a lot could include the addition of up to four dwelling units, assuming the requirements of Section 4364-A are met. The Department added the definition of “existing dwelling unit” in Section 1(B) to clarify this.

24. Commenter asked for additional clarification about commercial units and the provision that municipalities have discretion to determine the allowance for lots where a dwelling unit has been torn down after July 1, 2023.

Response: The Department thanks the commenter for this comment. 30-A M.R.S. § 4364-A(2) states that “a municipal zoning ordinance may establish a prohibition or an allowance for lots where a dwelling unit in existence after July 1, 2023, is torn down and an empty lots results.” Per the statutory language, this provision is only applicable to “dwelling units,” as defined in rule, that were torn down after July 1, 2023. This does not apply to commercial units. The Department did not make changes to the final rule as a result of this comment.

25. Commenter stated that the rules do not provide confirmation of municipal home rule to regulate short-term rentals. Commenter 2 proposes that the July 1 deadline is delayed until after the legislature addresses the November 2022 recommendations for Short-Term Rentals.

Response: The Department thanks the commenter for this comment. P.L. 2021, ch. 672 allows municipalities to regulate short-term rentals if they choose to do so, but it is not a requirement to comply with the legislation. The Department does not have the rulemaking authority to extend the implementation deadline. The Department did not make changes to the final rule as a result of this comment.

26. Commenter stated that the rules appear to over-ride well accepted, logical and legal municipal principles of non-conformance for the ADU allowance.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #21.

27. Commenter stated that the rules will require additional staffing in order to review and manage accessory dwelling unit and dwelling unit increases and to enforce long-term affordability of affordable housing developments through restrictive covenants, as well as to implement the municipal actions that may be required to further the fair housing mandate.

Response: The Department thanks the commenter for this comment. This comment goes beyond the scope of rulemaking. The Department did not make changes to the final rule as a result of this comment.

Commenter 3:

28. Commenter thanked the Department for undertaking rulemaking to provide clarity on P.L. 2021, ch. 672, but expressed concerns that the rule extends the scope of the Department’s authority and should require a legislative review or Department direction to correct the statute.

Response: The Department thanks the commenter for this comment. The Legislature designated these rules as “routine technical.” This type of rule does not require legislative review. The Department did not make changes to the final rule as a result of this comment.

29. Commenter expressed concerns that it is impossible for many towns and cities to meet the July 1, 2023, deadline because of a lack of finalized rules and unattainable requirements established under the rule that increase the level of burden and time constraints on communities.

Response: The Department thanks the commenter for this comment. Please see the Department's response to comment # 1. The Department did not make changes to the final rule as a result of this comment.

30. Commenter expressed concern that LD 2003 is a mandate for municipalities. Per the Maine Constitution, state mandates are required to have a two-thirds override of both house of the Legislature and state mandates need to be funded up to 90%. The Department is only offering a grant program for this purpose, but this does not meet the constitutional standard. Without the appropriate funding, LD 2003 is voluntary.

Response: The Department thanks the commenter for this comment. This comment is beyond the scope of this rulemaking. Furthermore, the Department's rulemaking authority is limited to interpreting the language of this legislation and 5 M.R.S. §13056-J. The Department did not make changes to the final rule as a result of this comment.

31. Commenter stated that in Section 1(A), the Department establishes a mandate that requires municipalities to create or amend local ordinances to comply with P.L. 2021, ch. 672. This is not clear if municipalities must adopt ordinances or replace ordinances with the law, meaning planning board and code enforcement officers are unable to know whether to apply ordinance requirements or statutory requirements.

Response: The Department thanks the commenter for this comment. Municipalities need not adopt this rule language or the statutory language in P.L. 2021, ch. 672 verbatim. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community and the minimum requirements of this legislation. Municipalities may wish to adopt ordinances that are more permissive, provided that such ordinances are equally or more effective in achieving the goal of this legislation of increasing housing opportunities. If a municipality does not adopt ordinances to comply with P.L. 2021, ch. 672, this legislation will preempt municipal home rule authority. The Department amended Section 1(A) to clarify the minimum expectations for a municipality.

32. Commenter stated that it is a source of confusion for municipalities as to whether or not they need to adhere to the definitions provided in rule, as opposed to common definitions used within municipalities. Implementing state definitions will require a look at other land use provisions, which is a significant burden and an additional mandate that was not imagined by statute.

Response: The Department thanks the commenter for this comment. Please see the Department's response to comment # 5.

33. Commenter stated that the definition of "attached" in rule conflicts with the statute, Section 4364-B(2).

Response: The Department thanks the commenter for this comment. The Department amended the definition of "attached" to remove the conflict and amended Sections 4(B)(1)(b) and 4(B)(3)(b).

34. Commenter stated that there is confusion about Section 1(A)(2)(b), which states that the legislation does not exempt a subdivider from the subdivision law but also appears to provide that dwelling unit subdivisions are not exempt under the rules. This changes lot size requirements, setbacks and road development requirements. Commenter stated that it is unclear whether development restricted areas based on non-conforming road standards would open communities up to challenges.

Response: The Department thanks the commenter for this comment. P.L. 2021, ch. 672 requires developers and lot owners to adhere to subdivision law when developing additional dwelling units on a lot. 30-A M.R.S. § 4364-A(7). Lot size requirements, setbacks and road development requirements under subdivision law would apply, if applicable. The Department amended Sections 3(A) and 4(A) to note private, local or state standards that may apply to lots.

35. Commenter asked for clarification on setback requirements. Some municipalities use the centerline as a setback requirement. Others use the edge of the right of way. Requiring the adoption of a new definition that changes that, would require updating all other ordinances.

Response: The Department thanks the commenter for this comment. The Department acknowledges that municipalities do not use the same definitions for setback requirements and that there is not a requirement in rule that a municipality adopt a new definition of “setback.” See the Department’s response to comment #5. The Department, however, amended the definition of “setback requirements” in Section 1(B) in the final rule to add additional clarity.

36. Commenter stated that the “Affordable Housing Density” statute applies only to municipalities that have adopted density requirements.

Response: The Department thanks the commenter for this comment. The Department agrees with the commenter, in part. The density bonus in 30-A M.R.S. §4364(2) only applies to lots in zoning districts that have adopted density requirements. Lots in zoning districts that do not have density requirements, including lots in districts that utilize a form-based code, are not subject to the requirements listed in 30-A M.R.S. § 4364(2). The Department amended Section 2(A) to provide additional clarity on this point.

37. Commenter stated that the definition of principal structure conflicts with the definition that is used in shoreland zoning and does not provide clarity on whether or not this applies to commercial buildings. Commenter would like clarification on which definition applies.

Response: The Department thanks the commenter for this comment. The definition of “principal structure” used in rule is based on the definition of “principal structure” found in Title 30-A, the title where the LD 2003 statutes are located. Municipalities are not required to adopt the rule definition verbatim, provided that the definition adopted aligns with the goals of the legislation. See Department’s response to comment #5. The Department amended the definition of “principal structure” to (1) clarify that principal structures, for the purposes of this rule, does not include commercial buildings and (2) to remove the term “building” which is not a defined term in rule.

38. Commenter stated that single family non-conforming housing on a non-conforming lot is grandfathered under the current law and additions to these lots is permissible only if it does not make the building or lot more non-conforming. The rules prohibit the more restrictive setback and conforming status.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #21.

39. Commenter stated that there is no statutory requirement for an approval process or certificate of occupancy based on affordability in communities that do not have identified density bonuses. This would be a challenge for municipalities to adopt if they do not have full time staff or occupancy review processes currently. Also, further clarity is needed on other final approval process.

Response: The Department thanks the commenter for this comment. The Department acknowledges that not all communities use a “certificate of occupancy” process and P.L. 2021, ch. 672 does not require that communities adopt a “certificate of occupancy” process. Instead, the Department included the phrase “or other final approval” to acknowledge that municipalities have different methods of approving housing developments. The term “or other final approval” is intended to require municipalities to follow the procedures that they do use to approve housing developments. The Department did not make changes to the final rule as a result of this comment.

40. Commenter stated that the rules conflict with statute regarding the dwelling unit allowance. Commenter stated that the rule allows a dwelling unit within or attached, one detached or one of each. The statute, 30-A M.R.S. § 4364-B, however, states that a dwelling unit can be within or detached.

Response: The Department thanks the commenter for this comment. P.L. 2021, ch. 672 establishes different requirements for placement of dwelling units versus accessory dwelling units. 30-A M.R.S. § 4364-A(1) states that “a municipality shall allow on a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling within or attached to an existing structure or one additional detached dwelling unit, or one of each. This statutory provision is reflected in rule in Section 3(B)(1)(c). The Department amended Section 3(B)(1)(c) to mirror the statutory language in 30-A M.R.S. § 4364-A(1). 30-A M.R.S. § 4364-B states that “[a]n accessory dwelling unit may be constructed only within an existing dwelling unit on the lot; attached to or sharing a wall with a single-family dwelling unit; or as a new structure on the lot for the primary purpose of creating an accessory dwelling unit. This statutory provision is reflected in the rule in Section 4(B)(1). The Department’s language in Section 4(B)(1) is copied directly from statute.

41. Commenter stated that the rule conflicts with statute regarding the applicability of the accessory dwelling unit section. The statute states that the legislation only applies to municipalities with zoning and the rule expands to those municipalities without zoning.

Response: The Department thanks the commenter for this comment. 30-A M.R.S. § 4364-B(3) (A) states the following: “With respect to accessory dwelling units, municipal zoning ordinances must comply with the following conditions: At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure.” Furthermore, 30-A M.R.S. § 4364-B(1) states that “a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is permitted.” The Department interprets these two sections-- when read together-- to mean that all municipalities must allow at least one ADU on any lot with an existing single-family dwelling unit, regardless of whether or not a municipality has zoning ordinances. But, if a

municipality has zoning ordinances, then those zoning ordinances must be amended to comply with this section. The Department did not make changes to the final rule as a result of this comment.

Commenter 4:

42. Commenter stated her excitement with LD 2003 and affordable housing in her community of Cape Elizabeth but asserts that the problem in her community is that the ordinance committee has been working on the changes to the local zoning ordinance but that it is creating a division because some people feel that the zoning ordinance goes above and beyond the requirements of LD 2003. Commenter urges the Department to create a “safety valve,” that in the event a town cannot change their zoning ordinance, then the state law would apply.

Response: The Department thanks the commenter for the comment and support of LD 2003. The Department encourages communities to amend or create ordinances to comply with LD 2003. But, in the event that a community cannot come to an agreement on a municipal ordinance, P.L. 2021, ch. 672 will preempt local ordinances. The Department encourages municipalities to discuss compliance concerns with legal counsel. The Department amended Section 1(A) to clarify the minimum compliance requirements for municipalities.

Commenter 5:

43. Commenter stated that there is confusion around the language in the “density bonus” section of the law about whether or not a developer has the complete discretion to designate the number of affordable units in the development as “affordable” housing development

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment # 20.

44. Commenter stated that this portion of the legislation would be more impactful if the definition of “majority” in rule were changed to mean ‘50% or more.’ For small projects, the use of “more than half” will short circuit the intent of the density bonus because it will not allow enough market rate units to ‘subsidize’ the affordable unit. Commenter asks the Department to consider two unit projects. Under the “more than half” definition, both units would have to be affordable, which means the project would not get built. Under the “50% or more definition, the market rate unit subsidizes the affordable unit. For larger projects, the mix of affordable and market rate is less impacted. Alternatively, the commenter suggests an exception for smaller projects to use the “50% or more” definition of “majority.”

Response: The Department thanks the commenter for this comment. Without a definition of majority provided in Title 30-A, the Department utilized the common dictionary definition of the term “majority,” which means more than half. The Department does not have rulemaking authority to amend the statutory language to provide exceptions for smaller project. The Department did not make changes to the final rule as a result of this comment.

Commenter 6:

45. Commenter stated that York has an affordable housing development mandate in which 100% of those units have to be affordable. The commenter is concerned that the provision in rule that allows municipalities to adopt definitions that are “not more restrictive” than the definitions provided in rule creates a problem. Under this provision, York will actually result in getting less affordable units.

Response: The Department thanks the commenter for this comment. Municipalities have the discretion to require that 100% of the units in an “affordable housing development” be “affordable,” as opposed to requiring that only “more than half” must be pursuant to the language in 30-A M.R.S. § 4364. Municipalities are not required to adopt the provisions of this Chapter and P.L. 2021, ch. 672 verbatim. Instead, municipalities can adopt ordinances that are more permissive. See the Department’s response to comment #12. The Department did not make changes to the final rule as a result of this comment.

46. Commenter asked the Department to provide additional clarity on dwelling unit allowances, especially for small lots.

Response: The Department thanks the commenter for this comment. Please see Department’s response to comment # 22. The Department did not make changes to the final rule as a result of this comment.

47. Commenter asked the Department to provide additional clarity on non-conforming structures and non-conforming lots.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #21.

Commenter 7:

48. Commenter expressed concern about LD 2003 and the potential increase in population. Commenter lives in the small town of Chesterville. Commenter was concerned about LD 2003’s impact on roads and stores without adequate tax revenue to support an increase in population.

Response: The Department thanks the commenter for this comment. This comment goes beyond the scope of rulemaking. The Department did not make changes to the final rule as a result of this comment.

49. Commenter urged the Department to delay implementation of LD 2003 because their town is struggling to get LD 2003 components on their warrant for town meeting in March.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #1. The Department did not make changes to the final rule as a result of this comment.

Commenter 8:

50. Commenter stated that the deadline for implementation should be extended.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #1. The Department did not make changes to the final rule as a result of this comment.

51. Commenter expressed concern over the fiscal impact on municipalities including staff time and advertising ordinance changes.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #18. The Department did not make changes to the final rule as a result of this comment.

52. Commenter stated that there is a bill in the legislature that would change the law to apply to only municipalities of a certain size, which the commenter feels is “probably prudent” because not all communities are in the same situation.

Response: The Department thanks the commenter for this comment. This comment goes beyond the scope of rulemaking. The Department did not make changes to the final rule as a result of this comment.

53. Commenter expressed concern about the usurping of home rule and there is too much of an emphasis on zoning, instead of viewing this as a workforce or financial issue.

Response: The Department thanks the commenter for this comment. This comment goes beyond the scope of rulemaking. The Department did not make changes to the final rule as a result of this comment.

Commenter 9:

54. Commenter appreciated the need for state legislation, especially in Southern Maine which is seeing large levels of population growth.

Response: The Department thanks the comment for this commenter and their support of LD 2003. The Department did not make changes to the final rule as a result this comment.

55. Commenter stated that there is an ambiguity in statute because it seems as if the developer can designate the affordable housing units. Commenter is concerned that a developer could propose a development that only has two units out of 60 that are affordable.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment # 20.

56. Commenter also asked for clarity in 30-A M.R.S. § 4364(3), which requires municipalities to ensure long-term rental or ownership affordability. The commenter asked the Department to clarify the following: (1) Do municipalities retain home rule authority to require a specific percentage of units in an affordable housing development remain affordable? If this percentage is solely at the discretion of the applicant of an affordable housing development, would this potentially allow for underproduction of permanently affordable units and hamper the overarching principles of LD2003 and (2) Section 4364(1) defines what it means for a unit to be affordable, either owned or rented, but only requires that “a majority of” those units meet that specific affordability standard. Section 4364(3), on the other hand, requires that municipalities ensure that “all of the units” remain “limited to” households using the same income standard as § 4364(1) – max. 80% AMI for rental housing, max. 120% AMI for owned housing. Attempting to read these two paragraphs together, would that income standard apply to all of the units, or could an applicant propose a different standard for some (a non-majority) of the units, e.g. max. 100% AMI for rental, max. 140% AMI for owned?

Response: The Department thanks the commenter for these questions 30-A M.R.S. § 4364(3) requires the following:

Long-term affordability. Before approving an affordable housing development, a municipality shall require that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the

benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

A. For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

B. For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

This definition does not require municipalities to enforce the restrictive covenants, but municipalities can enforce these covenants if they choose to do so. The Department encourages a municipality to contact legal counsel about its options regarding the enforcement of restrictive covenants.

Per P.L. 2021, ch. 672, units designated as affordable at the time of initial occupancy must remain affordable for at least 30 years after the complete of construction. This means occupancy of *all* the units designated affordable will remain limited to households at or below 80% AMI for rental housing and 120% of AMI for owned housing.

Finally, affordable units must be at or below 80% of area median income (AMI) for rental units and 120% AMI for owned units. Any other percentage of AMI would not be considered affordable. The Department did not make changes to the rule as a result of these comments and questions.

57. Commenter urged the Department to define the terms “comparable sewer” and “centrally managed water system.”

Response: The Department thanks the commenter for this comment. The Department agrees with this comment. The Department added a definition for “comparable sewer” and “centrally managed water system” in Section 1(B) of the rule.

58. Commenter expressed concern that the proposed rule defines dimensional requirements and setback requirements, thus splitting the definition of dimensional standard. The commenter stated that this differential treatment of dimensional and setback requirements in rule will have the impact of pre-empting home rule authority pursuant to 30-A M.R.S. § 4353 which allows communities to allow variances for approval of developments.

Response: The Department thanks the commenter for this comment. To remain consistent with P.L. 2021, ch. 672, which uses both the terms “setback requirement” and “dimensional requirement,” the Department defined those terms separately. Municipalities, however, do have discretion to define those terms, assuming the terms and definitions align with the goals of the legislation. See Department’s response to comment #5. The Department does not interpret its decision to separate the terms to preempt home rule authority for municipalities to allow for variances. The Department did not make changes to the final rule as a result of this comment.

59. Commenter expressed concern that Section 4(B)(3)(c) allows more permissive dimensional requirements, but not setback requirements.

Response: The Department thanks the commenter for this comment. The Department agrees that the term setback requirements should be included in this provision. The Department amended this section of rule to include setback requirements.

60. Commenter expressed concern that they have a drafted ordinance for accessory dwelling units that will go to public hearing in 2.5 weeks. The drafted ordinance would allow individuals the opportunity to convert an existing structure to be an ADU, with the requirement to meet the setbacks, which are less in our ordinance.

Response: The Department thanks the commenter for this comment. Municipalities should discuss implementation concerns with legal counsel. The Department did not make changes to the final rule as a result of this comment.

61. Commenter asked the Department to codify future flexibility to change zoning and land use ordinance in Section 2(B)(1)(c) so that municipalities can change where multifamily units are allowed in the future, optimize the use of expensive built infrastructure and adapt to our land use ordinance to environmental challenges.

Response: The Department thanks the commenter. The Department amended Section 2(B)(1)(c) to add the phrase “per municipal ordinance” and to remove the July 1, 2023, date to indicate that municipalities may adjust municipal ordinances after July 1, 2023, to indicate where multifamily housing is permitted per comprehensive plans.

Commenter 10:

62. Commenter expressed concern about the parking requirement in the affordable housing development section because his community does not have public transportation and is not walkable. Commenter also urged the Department to consider only applying these parking requirements to larger municipalities who have the infrastructure to support the parking requirements.

Response: The Department thanks the commenter for this comment. The Department does not have the authority to adjust the parking requirements in 30-A M.R.S. § 4364(2) for smaller municipalities. The Department did not make changes to the final rule as a result of this comment.

Commenter 11:

63. Commenter requested that accessory dwelling units should be counted as dwelling units per 30-A M.R.S. § 4364-A because the concept of allowing three standalone homes on a single lot is challenging for some municipalities.

Response: The Department thanks the commenter for this comment. Per 30-A M.R.S. § 4364-A, the definition of dwelling unit does not include accessory dwelling units. A municipality cannot treat an “accessory dwelling unit” as a “dwelling unit” to comply with Section 3(B)(1)(b). The Department does not have rulemaking authority to amend this in rule. The Department did not make changes to the final rule as a result of this comment.

Commenter 12:

64. Commenter urged the Department to define “multifamily dwelling” as a building with five or more units to better align with federal and private financial options.

Response: The Department thanks the commenter for this comment. The Department used the common planning definition of the term “multifamily dwelling,” which typically applies to three units or more. The Department did not make changes to the final rule as a result of this comment.

Commenter 13:

65. Commenter urged the Department to amend P.L. 2021, ch. 672 to exempt small towns. The commenter expressed concerns about the undue hardship on her small community, namely the lack of infrastructure to support increased density.

Response: The Department thanks the commenter for this comment. The Department does not have the authority to exempt smaller communities from the requirements of P.L. 2021, ch. 672. The Department did not make changes to the final rule as a result of this comment.

Commenter 14:

66. Commenter requested that the Department provide guidance on E 911 and postal addressing of additional dwelling units allowed under the provisions of LD 2003.

Response: The Department thanks the commenter for this comment. This is outside of the scope of rulemaking and the Department’s authority. The Department did not make changes to the rule as a result of this comment.

67. Commenter asked the Department to clarify the following concerns related to the impact of putting an ADU on a lot: septic costs/usage, ownership/landlord tenant issues, and easements.

Response: The Department thanks the commenter for this comment. These concerns are outside of the Department’s rulemaking authority because they are likely related to agreements between private actors. The Department did not make changes to the final rule as a result of this comment.

68. Commenter asked for clarification on ADU placement in relation to the principal structure.

Response: The Department thanks the commenter for this comment. Municipalities have the discretion to determine setback requirements and ADU placement in local ordinance. The Department did not make changes to the final rule as a result of this comment.

69. Commenter asked for clarification on the parking requirements for ADUs.

Response: The Department thanks the commenter for this comment. Municipalities are not permitted, pursuant to 30-A M.R.S. § 4364-B(4)(C), to place additional parking requirements for the addition of an ADU beyond the parking requirements for the single-family dwelling unit on the lot. The Department did not make changes to the final rule as a result of this comment.

Commenter 15:

70. Commenter asked the Department to consider the vehicular impact when restricting local regulation of parking needs with respect to “mixed-use.” A municipality needs to assure that traffic and parking impacts are in addition to the parking requirements restrictions in this law.

Response: The Department thanks the commenter for this comment. P.L. 2021, ch. 672 establishes parking requirements for specific housing types/developments. See 30-A M.R.S. §§ 4364(2), 4364-B(4)(C). Local review of parking needs and traffic impacts of non-residential uses can still

be assessed, however, it is not within the purview of these rules. The Department did not make changes to the final rule as a result of comment.

71. Commenter asked the Department to confirm if this legislation overrides net residential density, impervious percentage and parking needs for cluster developments, campgrounds, mobile home parks and modular housing communities.

Response: The Department thanks the commenter for this comment. LD 2003 could apply to cluster developments. Net residential and impervious percentage may also apply if municipalities decide to have this type of requirement. If LD 2003 does apply to a specific cluster development, the parking requirements listed in LD 2003 apply. See 30-A M.R.S. §§ 4364(2), 4364-B(4)(C). The Department encourages municipalities to discuss concerns about cluster developments with legal counsel.

LD 2003 does not apply to campgrounds.

LD 2003 could apply to mobile home parks. Net residential and impervious percentage may also apply if municipalities decide to have this type of requirement. If LD 2003 does apply to a specific mobile home park, the parking requirements listed in LD 2003 apply. See 30-A M.R.S. §§ 4364(2), 4364-B(4)(C). The Department encourages municipalities to discuss concerns about mobile home parks with legal counsel.

LD 2003 could apply to modular housing communities. Net residential and impervious percentage may also apply if municipalities decide to have this type of requirement. If LD 2003 does apply to a specific modular housing community, the parking requirements listed in LD 2003 apply. See 30-A M.R.S. §§ 4364(2), 4364-B(4)(C). The Department encourages municipalities to discuss concerns about modular home communities with legal counsel.

The Department did not make changes to the final rule as a result of this comment.

72. Commenter stated that there are two definitions of affordable housing in state law. Commenter inquired which definition applies.

Response: The Department thanks the commenter for this question. 30-A M.R.S. § 4364 provides a definition of “affordable housing development.” This definition applies to affordable housing developments that wish to take advantage of the affordable housing density bonus. The Department urges municipalities to discuss the relationship between LD 2003 and other planning legislation with legal counsel. The Department did not make changes to the final rule as a result of this comment.

73. Commenter stated that there is another definition of single-family dwelling in Maine law. Commenter asked: Will there now be two definitions and which definition controls?

Response: The Department thanks the commenter. P.L. 2021, ch. 672 does not define the term single-family dwelling unit. The Department defined the term in rule to help municipalities interpret this legislation. Municipalities, however, are not required to adopt rule definitions verbatim. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the

goal of increasing housing opportunities. The Department urges municipalities to discuss the relationship between LD 2003 and other planning legislation with legal counsel. The Department did not make changes to the final rule as a result of this comment.

74. Commenter stated that there is another definition of multi-unit dwelling in state law. Commenter asked: Will there now be two definitions and which definition controls?

Response: The Department thanks the commenter. P.L. 2021, ch. 672 does not use the phrase “multi-unit dwelling,” instead it uses the term “multifamily dwelling.” The Department defined the term “multifamily dwelling” in rule to help municipalities interpret this legislation.

Municipalities, however, are not required to adopt rule definitions verbatim. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities. The Department urges municipalities to discuss the relationship between LD 2003 and other planning legislation with legal counsel. The Department did not make changes to the final rule as a result of this comment.

75. Commenter stated that there are seven definitions of dwelling unit in state law. Commenter asked: Will there now be eight definitions and which definition controls?

Response: The Department thanks the commenter. P.L. 2021, ch. 672 does not define “dwelling unit.” The Department defined the term in rule to help municipalities interpret this legislation.

Municipalities, however, are not required to adopt rule definitions verbatim. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities. The Department urges municipalities to discuss the relationship between LD 2003 and other planning legislation with legal counsel.

76. Commenter stated that there are 8 definitions of structure in state law. Commenter asked the following: Will there now be a ninth definition and which definition controls? Further, commenter stated that the definition of structure crosses many facets of government and areas of law. What elected entity makes the call for the definition?

Response: The Department thanks the commenter. P.L. 2021, ch. 672 does not define “structure.” The Department defined the term in rule to help municipalities interpret this legislation. Further, the Department has the rulemaking authority to define terms in rule not defined in the authorizing legislation. Municipalities, however, are not required to adopt rule definitions verbatim. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities. The Department urges municipalities to discuss the relationship between LD 2003 and other planning legislation with legal counsel.

77. Commenter asked the Department to define the term “affirmative furthering.”

Response: The Department thanks the commenter for this comment. The Department did not use the term “affirmatively furthering” in rule. This phrase is used in 30-A M.R.S. § 4364-C(1). The Department encourages municipalities to discuss this provision with legal counsel.

78. Commenter stated that the definition of “principal structure” has been substantively altered by this rule and negates the lot the structures sit on. Commenter also inquired how other state agencies have responded to this definition.

Response: The Department thanks the commenter for this comment. The Department has rulemaking authority to define terms not defined in the authorizing legislation. Please see the Department’s response to comment #37.

Commenter 16:

79. Commenter expressed concerns about the impact that P.L. 2021, ch. 672 will have on their town’s budget, as well as roads and fire department.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #48. The Department did not make changes to the final rule as a result of this comment.

80. Commenter commented that the rules need more clarity to help small towns that do not have the same resources that larger southern Maine communities have.

Response: The Department thanks the commenter for this comment. The Department encourages municipalities to reach out to the Housing Opportunity Program at housing.decd@maine.gov for assistance with LD 2003 implementation. The Department did not make changes to the final rule as a result of this comment.

Commenter 17:

81. Commenter expressed concern about the impact of increased density per LD 2003 on the island of Georgetown and urged the Department to amend LD 2003 to exclude municipalities without water and sewer or municipalities with less than 6,000 people. Georgetown has no public transportation, shopping, trash pick-up, and limited road infrastructure. Furthermore, commenter expressed concern about the demands on water and sewer with increased density. Georgetown relies on groundwater and does not have a public sewer system, only individual septic systems. Finally, commenter was concerned about the further demands on schools, fire, and EMS.

Response: The Department thanks the commenter for this comment. The Department’s rulemaking authority, pursuant to P.L. 2021, ch. 672, is limited to interpreting the language of this legislation. The Department does not have the authority to amend P.L. 2021, ch. 672 to exclude small communities or communities without water and sewer. The Department encourages municipalities to reach out the Housing Opportunity Program at housing.decd@maine.gov to learn more about what provisions of the legislation may apply to each municipality. The Department did not make changes to the final rule as a result of this comment.

Commenter 18:

82. Commenter stated that “housing costs” may vary in price and use over the calendar year. Furthermore, commenter inquired as to why “loan-to-value ratio and interest rates” were excluded from the definition.

Response: The Department thanks the commenter for this comment. The Department agrees that housing costs can vary over time. Furthermore, the Department did not purposefully exclude loan-to-value ratio and interest rates from the rule. The Department amended the definition of “housing costs” to indicate that that the “housing costs” example list is not intended to be exhaustive.

83. Commenter inquired about the Department's role in the enforcement of restrictive covenants and the Department's expectation that a municipality will monitor affordability over the 30-year life of the covenant.

Response: The Department thanks the commenter for this comment. The Department will not monitor or enforce restrictive covenants over the course of 30 years to ensure affordability. The rule and the Department do not require municipalities to enforce restrictive covenants. The Department encourages municipalities to discuss restrictive covenants with legal counsel. The Department did not make changes to the final rule as a result of this comment.

84. Commenter asked the Department to provide additional guidance on that municipal enforcement option that address rent and sales process over the 30-year period.

Response: The Department thanks the commenter for this comment. Once rulemaking is complete, the Department will provide additional guidance on this. The Department did not make changes to the final rule as result of this comment.

85. Commenter stated that the implementation of the law and technical assistance grant program have been issued too late to be beneficial to Kittery to achieve compliance by July 1. Commenter asked the Department to advocate for an amendment to delay the law's implementation date until 2025.

Response: The Department thanks the commenter for this comment. This comment goes beyond the scope of rulemaking. The Department did not make changes to the final rule as a result of this comment.

Commenter 19:

86. Commenter asked if the concept of ‘net lot area’ uphold under the law? Commenter further explained that in his town, the current zoning ordinance requires 3 acres in order to meet 1 ‘net’ acre of upland (the other two being wetland).

Response: The Department thanks the commenter for this comment. Municipalities have the discretion to maintain “net lot area” requirements. The Department did not make changes to the final rule as a result of this comment.

87. Commenter asked if a town could require ‘primary residency’ in order to build an ADU?

Response: The Department thanks the commenter for this comment. Municipalities have the discretion to determine residency/owner-occupancy requirements for ADUs. The Department did not make changes to the final rule as a result of this comment.

88. Commenter inquired about the State's housing production goals.

Response: The Department thanks the commenter for the comment. The Department, in coordination with the Governor's Office of Policy, Innovation and the Future and MaineHousing are working with a consultant to help the State establish housing production goals. More

information about this process will be available this fall. The Department did not make changes to the final rule as a result of this comment.

89. Commenter asked how a town can regulate short-term rentals.

Response: The Department thanks the commenter for this comment. P.L. 2021, ch. 672 provides municipalities with the discretion to regulate short-term rentals but does not provide specifics for how a municipality must do this. Municipalities have discretion to regulate short-term rentals in a way that is most beneficial to their own community. For more information and examples of communities that have adopted ordinances, please contact the Housing Opportunity Program at housing.decd@maine.gov. The Department did not make changes to the final rule as a result of this comment.

Commenter 20:

90. Commenter asked for further clarification on the relationship between “accessory dwelling unit” and “dwelling unit.” There seems to be requirements that are unique to one section, but that overlap in other sections.

Response: The Department thanks the commenter for this comment. The accessory dwelling unit section, 30-A M.R.S. 4364-B, is separate from the “Up to 4 Dwelling Unit” section, 30-A M.R.S. 4364-A. There is no overlap of the provisions. Municipalities have the discretion to determine what type of housing structure is projected to be built on a lot pursuant to LD 2003. The Department did not make changes to the final rule as result of this comment.

91. Commenter asked if the term “dwelling unit” includes an “accessory dwelling unit.” If the town were to allow one dwelling unit and one accessory dwelling unit does that comply with Section 3(B)(1)(b)?

Response: The Department thanks the commenter for this question. The definition of dwelling unit does not include accessory dwelling units. A town cannot treat an “accessory dwelling unit” as a “dwelling unit” to comply with Section 3(B)(1)(b). The Department did not make changes to the final rule as a result of this comment.

92. Commenter asked if Section 3(B)(1)(c) is met if a town allows the addition of two “accessory dwelling units” if a lot already one dwelling unit on it.

Response: The Department thanks the commenter for this question. For purposes of this law and rule, accessory dwelling units, as discussed in 30-A M.R.S. § 4364-B, are not the same as dwelling units pursuant to 30-A M.R.S. § 4364-A. A municipality can allow the addition of two dwelling units to meet 30-A M.R.S. § 4364-B, but this does not meet the requirements of Section 4364-A. The Department did not make changes to the final rule as a result of this comment.

93. Commenter asked about the reference to 12 M.R.S. ch. 4230-A in Section 3(B)(1)(b) which they could not find in Maine law.

Response: The Department thanks the commenter for this comment. Section 3(B)(1)(b) erroneously cited to 12 M.R.S. ch. 4230-A. The Department amended the citation in this provision to read 12 M.R.S. ch. 423-A.

94. Commenter asked if the requirements in Section 4 permitting ADUs is an additional requirement that a town must comply with in addition to the second and third dwelling units required in Section 3(B)(1)(b) and (c).

Response: The Department thanks the commenter for this question. The requirement in Section 4 to allow one accessory dwelling unit on a lot with an existing single-family home is not an additional requirement of Section 3. These are separate statutory sections. A lot with an existing dwelling unit can either have: (1) one accessory dwelling unit; or (2) up to two additional units. Municipalities can allow a lot to have both (1) one accessory dwelling unit; and (2) up to two additional units, but it is not a requirement to do so. This is discussed in Sections 3(B)(2)(a) and 4(B)(2)(b). The Department amended Section 3(B)(2)(a) and Section 4(B)(2)(b) to provide needed clarity.

95. Commenter asked if a lot has two dwelling units, must both dwelling units allow accessory dwelling units.

Response: The Department thanks the commenter for this comment. Section 3 of the rule does not require a lot to have two dwelling units and two accessory dwelling units, but a municipality can choose to do this. This is discussed in Sections 3(B)(2)(a) and 4(B)(2)(b). The Department did not make changes to the final rule as a result of this comment.

96. Commenter asked if a municipality could limit the square footage of an ADU if there is no maximum square foot limit to the single-family dwelling unit.

Response: The Department thanks the commenter for this comment. A municipality can set a maximum size requirement for ADUs, even if there is no maximum square foot limit to the single-family dwelling unit. There are a variety of ways that a municipality can determine maximum size. The only requirement in 30-A M.R.S. § 4364-B is that an ADU cannot be less than 190 square feet. The Department did not make changes to the final rule as a result of this comment.

97. Commenter inquired that if Section 3(B)(1)(c) and Section 4(A) both apply, that it would appear that a lot could have between 4 and 6 total dwelling units (3 dwelling units and 3 ADUs).

Response: The Department thanks the commenter for this question. Section 3(B)(1)(c) and Section 4(A) both do not apply to the same lot, unless a municipality allows otherwise. As stated in Sections 3(B)(2)(a) and 4(B)(2)(b), a developer/homeowner can take advantage of *either* Section 3 or Section 4 of the rule, but not both, unless a municipality is more permissive in its ordinance. Therefore, a lot could not have 3 dwelling units and 3 accessory dwelling units, unless a municipality allows this type of density increase. The Department amended Section 3(B)(2)(a) and Section 4(B)(2)(b) to provide needed clarity.

98. Commenter stated that their community is a small, rural town. While they support the legislation, allowing the addition of units on lots could double the number of new residences and create development that is out of scale with the community.

Response: The Department thanks the commenter for this comment. The Department welcomes individuals to contact the Department for additional resources and to learn more about LD 2003 by contacting the Housing Opportunity Program at housing.decd@maine.gov. The Department did not make changes to the final rule as a result of this comment.

Commenter 21:

99. Commenter stated that this legislation is well intentioned but is not appropriate for smaller communities. This legislation should not be applied to larger communities with populations greater than 10,000. Commenter expressed concern that LD 2003 applies urban strategies to rural communities and that this is a misplaced strategy, which could result in unintended consequences, such the undermining of climate initiatives.

Response: The Department thanks the commenter for this comment and for their support of LD 2003. The Department does not have authority to make a legislative amendment amending which municipalities must comply with P.L. 2021, ch. 672. The Department did not make changes to the final rule as a result of this comment.

100. Commenter expressed concern about the “density bonus” portion of the legislation, namely that the indiscriminate increases in allowed density could lead to sprawl and climate concerns. LD 2003 supports patterns of development that do little to improve affordability, but nevertheless end up increasing vehicle miles traveled.

Response: The Department thanks the commenter for this comment. P.L. 2021, ch. 672 does allow for an increase in density on certain lots. The Department encourages municipalities to review comprehensive plans and work with regional planning organizations to think about the strategic implementation of LD 2003. The Department did not make changes to the final rule as a result of this comment.

Commenter 22:

101. Commenter suggested that the Department amend the definition of accessory dwelling unit to the following:

"Accessory dwelling unit" means a self-contained dwelling that is clearly subordinate to a primary unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land. An accessory dwelling unit must be a minimum of 190 square feet and municipalities may impose a maximum size. Accessory dwelling units are permitted where a single-family dwelling unit is the principal structure and subject to the provisions of Section 4. Accessory Dwelling Units.

Response: The Department thanks the commenter for this redline. Please see the Department’s response to comment #4.

102. Commenter suggested that the Department amend the definition of base density to the following:

“Base density” means the maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements of the base district in a local land use or zoning ordinance, not inclusive of any overlay district standards or density bonuses/increases currently allowed.

Commenter also stated that the Department did not address in rule how existing density overlaps with LD 2003’s density bonus.

Response: The Department thanks the commenter for this comment. The Department amended the definition of “base density” in rule for additional clarity. The Department further will update

its guidance document to clarify how existing density bonuses overlap with the density bonus described in LD 2003.

103. Commenter 22 asked the Department to amend Section 2(B)(1)(b) to the following:

Is in a designated growth area pursuant to 30-A M.R.S. § 4349-A(1)(A) or (B) and served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system.

Response: The Department thanks the commenter for this comment. The Department's rulemaking authority is limited to the statutory language in 30-A M.R.S. § 4364(2) and the Department does not have authority to change the "or" to an "and" which would change the meaning of the statute. The Department did not make changes to the final rule as a result of this comment.

104. Commenter requested that the 2.5 density bonus only apply to those units that are designated as affordable, not market rate units. The provision is problematic because it supersedes local comprehensive plan growth patterns and will result in communities calling for moratoriums and major land use changes to reduce housing units overall. In the alternative, commenter suggested that the Department allow an exemption for communities that are consistent with the goals of this provisions and have ordinances that do promote density and affordability.

Response: The Department thanks the commenter for this comment. The Department's rulemaking authority is limited to the statutory language in 30-A M.R.S. § 4364(2), which does not specify that the 2.5 density bonus applies only to affordable units. Furthermore, the Department recently updated its guidance document to clarify how existing density bonuses overlap with the density bonus described in LD 2003. The Department did not make changes to the final rule as a result of this comment.

105. Commenter asked the Department to amend the parking requirement in Section 2 to the following:

For units designated as affordable in the development, require no more than two (2) off-street parking motor vehicle spaces for every three (3) dwelling units ~~of an affordable housing development.~~

Commenter stated that allowing all units to be afforded this parking reduction is irresponsible and will create problems for municipalities in dealing with off premise parking. In the alternative, commenter requested that the Department remove the parking provision in its entirety or asks for an exemption for communities that allow for waiver provisions if an application can demonstrate that their project does not need the full parking.

Response: The Department thanks the commenter for this comment. The Department's rulemaking authority is limited to the statutory language in 30-A M.R.S. § 4364(2) and the Department does not have the authority to amend this statutory provision. The Department did not make changes to the final rule as a result of this comment.

106. Commenter requested that the Department replace the word "or" with "and" in Sections 3(B)(1)(a)(1) and 3(B)(1)(a)(1)(b) to allow development in growth areas with sewer.

Response: The Department thanks the commenter for this comment. The Department’s rulemaking authority is limited to the statutory language in 30-A M.R.S. § 4364-A(1) and the Department does not have the authority to amend this statutory provision, which would change the meaning of the provision. The Department did not make changes to the final rule as a result of this comment.

107. Commenter requested that the Department amend Section 3(B)(1)(c) to better align with the statute:

(c) If a lot contains one existing dwelling unit, a municipality must allow the addition of up to two (2) additional dwelling units. The additional dwelling unit(s) may be:

i. One Within the existing structure or attached to the existing structure;

ii. One Detached from the existing structure; or

iii. One of each.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #40.

108. Commenter requested that the Department remove the no additional parking prohibition in the accessory dwelling unit section of the rule because this will create problems in suburban areas. In the alternative, parking standards could be waived by the local review authority.

Response: The Department thanks the commenter for this comment. The Department’s rulemaking authority is limited to the statutory language in 30-A M.R.S. § 4364-B(4). The Department does not have the authority to amend this language to allow for different parking standards. The Department did not make changes to the final rule as a result of this comment.

Commenter 23:

109. Commenter requested that the Department amend the definition of accessory dwelling unit to include the following phrase: “Local ordinance that defines Accessory Dwelling Units in relation to duplex, triplex, or other multi-unit principal structures shall be considered consistent with and not more restrictive than this definition.”

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment # 4. The Department will also discuss other scenarios where a municipality could allow an ADU in its guidance document.

110. Commenter requested that the Department amend the definition of affordable housing development by removing the words, “a majority of the units that the developer designates as affordable” and replace it with “the units that the developer designates as affordable, which shall be no less than a majority of units in the development” regarding both rental and owned housing.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #20.

111. Commenter requested the Department to amend the definition of affordable housing development definition, by clarifying that the term “majority” means more than half of proposed and existing units on the same lot.

Response: The Department thanks the commenter for this comment. The Department's agrees with this comment. The Department amended Section 1(B) in the final rule as a result of this comment.

112. Commenter requested that the Department amend the language in 30-A M.R.S. § 4364 regarding housing costs as follows:

For purposes of this definition, "housing costs" means: a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, internet, and/or trash) that the household pays separately from the rent including any costs or fees that are required for tenancy but paid separately from rent such as but not limited to: required parking fees, required furniture rentals, or required membership fees; and b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including utility and other assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees, and the following utilities: electric, heat, water, sewer, internet, and/or trash.

Response: The Department thanks the commenter for this comment. The Department amended the definition of "housing costs" to indicate that that the "housing costs" example list is not intended to be exhaustive.

113. Commenter requested the following amendment to the definition of "base density":

"Base density" means the zoning district's maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in a local land use or zoning ordinance. This does not include local density bonuses, Transferable Development Rights, or other such means that could increase the density of lot not used for affordable housing.

Response: The Department thanks the commenter for this comment. Please see the Department's response to comment #101.

114. Commenter requested the following amendment to the definition of "principal structure":

"Principal structure" means a building or structure in which the main or primary use of the lot is conducted.

Response: The Department thanks the commenter for this comment. Please see the Department's response to comment #37.

115. Commenter requested the following amendment to the definition of "restrictive covenant":

Restrictive covenant" means a provision in a deed, easement, or other legal instrument restricting the use of the land.

Response: The Department thanks the commenter for this comment. The Department amended the definition of "restrictive covenant" to clarify that other legal documents, besides only deeds can restrict the use of land.

116. Commenter requested the following amendment to the definition of "structure":

"Structure" means anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind as defined in 38 M.R.S. § 436-A(12).

Response: The Department thanks the commenter for this comment. The Department adjusted the definition of “structure” found in Title 30-A in the proposed rule to reflect that the use of term “structure” throughout the rule is only intended for “structures” that allow human habitation. The Department did not make changes to the final rule as a result of this comment.

117. Commenter requested the following amendment to the definition of “zoning ordinance”:

"Zoning ordinance" means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district or that applies regulations across all districts.

Response: The Department thanks the commenter for this comment. The Department used the term “zoning ordinance” found in Title 30-A in the proposed rule. To maintain consistency with the statute, the Department did not make final changes to the rule as a result of this comment. Municipalities have the discretion to adjust this definition in local ordinance. See Department’s response to comment #5. The Department did not make changes to the rule as a result of this comment.

118. Commenter requested the following amendment to Section 2(B)(1)(a):

“Is an affordable housing development as defined in this Chapter, which includes the requirement that a majority of the total units on the lot are affordable”

Response: The Department thanks the commenter for this comment. The Department agrees and amended Section 2(B)(1)(a) as a result of this comment.

119. Commenter requested the following amendment to Section 2(B)(1)(c):

“Is located in an area in which multifamily dwellings are allowed prior to July 1, 2023.”

Response: The Department thanks the commenter for this comment. The Department agrees with amending the provision, but only to remove the addition of the phrase “prior to July 1, 2023.” The Department removed the addition of the date to clarify that municipalities may amend zoning ordinances to update where multifamily housing is permitted after July 1, 2023. The Department amended Section 2(B)(1)(c) to clarify this provision.

120. Commenter requested amendments to Sections 2(B)(1)(e), 3(B)(4)(A), 4(B)(5) to clarify that a proposed housing development, proposed ADU, or proposed dwelling unit can only be proposed to be connected to adequate water and wastewater.

Response: The Department thanks the commenter for this comment. The Department agrees with this addition. The Department updated these sections in the final rule.

121. Commenter requested the following amendment to Section 2(C) by adding:

“Local regulation that chooses to round up shall be considered consistent with and not more restrictive than this law.”

Response: The Department thanks the commenter for this comment. The Department agrees and updated Section 2(C) in the final rule as a result of this comment.

122. Commenter urged the Department to amend the rule to clarify that the law does not require that municipalities allow up to four dwelling units on a lot, but instead that it cannot prohibit 4 or

fewer. Commenter requested the following amendment to Section 3(B)(1)(a) by removing the phrase, “must allow up to four dwelling units per lot” and replacing with “must not prohibit four or fewer dwelling units per lot”.

Response: The Department thanks the commenter for this comment. The Department’s rulemaking authority is limited to the statutory language in 30-A M.R.S. § 4364-B(4). To maintain consistency with the statutory language, the Department did not make changes to the final rule as a result of this comment.

123. Commenter requested the following amendment to Section 3(B)(1)(a)(ii) by clarifying that a lot needs to be served by both a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.

Response: The Department thanks the commenter for this comment. The Department agrees and amended Section 3(B)(1)(a)(ii).

124. Commenter urged the Department to amend the rule to clarify that 30-A M.R.S. § 4364-A(1) allows two dwelling units to be added onto a parcel not located in an area with public water and sewer or within a designated growth area only within a single structure and not multiple structures.

Response: The Department thanks the commenter for this comment. The Department’s interprets the provision in 30-A M.R.S. § 4364-A(1) “a municipality shall allow *structures with up to 2 dwelling units per lot* if that lot does not contain an existing dwelling unit” to not require that units must be within a single structure. Instead, municipalities have the discretion to allow the up to two units in one structure or separate structures. The Department did not make changes to the final rule as a result of this comment.

125. Commenter requested the following amendment to Section 3(B)(1)(e) by clarifying that a municipal regulation that allows for a more permissive arrangement of additional dwelling units, such as allowing two attached additional dwelling units, shall be considered consistent with and not more restrictive than this law.

Response: The Department thanks the commenter for this comment. The Department agrees that municipalities have the ability to be more permissive in the creation of local ordinances. The Department will highlight common examples in the guidance document. The Department did not make changes to the final rule as a result of this comment.

126. Commenter stated that the law produces a contradiction with respect to Section 3(B)(2) and the interaction of Section 4(B)(2) regarding the construction of 4 units, which this law will allow in some areas, but this subsection would limit to 3. Commenter urged the Department to amend the rule to clarify that development on a lot can only utilize either the density provision in Section 2 or the ADU provision in section 3.

Response: Department thanks the commenter for this comment. The Department amended Sections 3(B)(2)(a) and 4(B)(2)(b) to clarify that lots cannot take advantage of multiple density increases, unless otherwise allowed by the municipality. This issue has also been addressed in the Department’s updated LD 2003 guidance document.

127. Commenter stated that the Department erroneously included the term “requirements” in Section 3(B)(2)(a).

Response: The Department thanks the commenter for this comment. The Department agrees and amended Section 3(B)(2)(a).

128. Commenter requested the following amendment to Section 3(B)(3)(b) to clarify the lot area requirement for dwelling units contained within the section as follows:

A municipality may establish requirements for a lot area per dwelling unit as long as the additional lot area required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit.

Response: The Department thanks the commenter for this comment. The Department agrees and amended Section 3(B)(3)(b).

129. Commenter requested that the Department include the following in Section 4(A):

A municipal regulation that allows more than one accessory dwelling unit or that allows accessory dwelling units to be established in relation to duplex, triplex and other multi-unit buildings shall be considered consistent with and not more restrictive than this law.

Response: The Department thanks the commenter for this comment. The Department agrees that this amendment clarifies the ability for municipalities to be more permissive than state statute. The Department amended Section 4(A) as a result of this comment. The Department will also highlight common examples in the guidance document.

130. Commenter requested the following amendment to Section 4(B) regarding the addition of an ADU to a single-family home:

A municipality must allow an accessory dwelling unit to be constructed only:

- a) Within an existing dwelling unit on the lot;
- b) Attached to or sharing a wall with a single-family dwelling unit; or
- c) As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

A municipality may allow an accessory dwelling unit to be constructed or established within an existing accessory structure, except the setback requirements of 3(b)(i) shall apply.

Response: The Department thanks the commenter for this comment. To maintain consistency with 30-A M.R.S. § 4364-B(2), the Department did not make changes as a result of this comment. The Department, however, agrees with including the following provision: “A municipality may allow an accessory dwelling unit to be constructed or established within an existing accessory structure, except the setback requirements of 3(b)(i) shall apply. The Department amended Section 4(B) as a result of this comment.

131. Commenter requested the following amendment to Section 4(B)(3)(b) (i): For an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, the required setback requirements for such a structure apply.

Response: The Department thanks the commenter for this comment. The Department agrees and amended Section 4(B)(3)(b)(i) for clarification.

132. Commenter requested the following amendment to Section 4(B)(3)(d) to clarify that setback requirements in this chapter and in local ordinance would apply to a new structure: An accessory dwelling unit must be allowed on a lot regardless of whether the lot conforms to existing dimensional requirements of the municipality. Any new structure constructed on the lot to be an accessory dwelling unit must meet the existing dimensional requirements and setback requirements as required by the municipality and this chapter for an accessory structure.

Response: The Department thanks the commenter for this comment. Based on another comment, the Department removed this section of the rule.

Commenter 24:

133. Commenter stated that the draft rule is not consistent with the statutory language in that the rule requires municipalities to create or amend local ordinances, while the statutory language requires municipalities to “apply” the requirements contained in statute. Commenter further stated that even if the draft rule and law can be read consistently, it is not clear whether the draft rule and law only require municipalities to amend/create ordinances or whether the draft rule and law have the effect of automatically replacing inconsistent ordinance provisions. Municipalities need clarity on this issue to support in disputes between parties.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #31.

134. Commenter commented that the rule states that municipalities must adopt ordinances that are consistent with and no more restrictive than the requirements of P.L. 2021, ch. 672. Commenter stated that there are multiple places in the draft rule where the rule is not consistent with the requirements of P.L. 2021, ch. 672. As a result, if the draft rule is adopted, it will not be clear if municipalities will be required to comply with the requirements in the law or rule when amending or adopting land use ordinances or provisions.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #31. The Department amended Section 1(A) of the rule to clarify compliance obligations for municipalities.

135. Commenter stated that first two sentences of Section 1(B) contradict one another because it is not clear if a municipality can adopt its own definitions or if municipalities must adopt the definitions in the rule verbatim.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #32. The Department removed the second sentence of Section 1(B) to remove the contradiction.

136. Commenter asked for additional clarity on what the phrase “must adopt definitions that are consistent with and no more restrictive.” Under this language in the draft rule, it is possible that a municipality would be prohibited from adopting a definition that would create more housing because it is technically more restrictive than the definition provided in the draft rule.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #32. The Department amended Section 1(A) to clarify the compliance obligations for municipalities.

137. Commenter requested that the Department only enact definitions that are required to help interpret and apply the requirements in the law and rule because in practice, this rule will likely require many municipalities to amend local definitions to be consistent with the rule, which could entirely uproot local regulations. Commenter further commented that it is probably unnecessary to define comprehensive plan, designated growth area, land use ordinance, lot, restrictive covenants, setback requirements, structure, and zoning ordinance in the rule.

Response: The Department thanks the commenter for this comment. The Department acknowledges that municipalities have adopted their own definitions for common land use planning terms. However, the Department disagrees that it is unnecessary to define certain terms used in statute. Certain terms are essential to understanding how this statute applies to individual municipalities. The Department's definitions used in rule serve as a starting point for understanding the requirements of LD 2003. Municipalities, per the rule, are allowed to modify the Department's definitions to better meet the needs of their communities. See Department's response to comment # 5. The Department did not make changes to the final rule as a result of this comment.

138. Commenter stated that the definition of ADU used in rule does not distinguish between dwelling unit or single-family dwelling unit. Commenter recommends that this definition be revised to add the term "subordinate" in order to make a clear distinction between ADU and other dwelling units.

Response: The Department thanks the commenter for this comment. Please see the Department's response to comment #4.

139. Commenter stated that the rule defines the term "attached" as "connected by a shared wall" by 30-A M.R.S. § 4364-B(2)(B) states that an ADU may be attached to OR sharing a wall with a single-family dwelling unit. This indicates that the term "attached" means something beyond "sharing a wall."

Response: The Department thanks the commenter for this comment. Please see the Department's response to comment #33.

140. Commenter stated that that it is not clear if the rule treats base density and density requirements as separate and distinct terms or how these two terms relate to each other.

Response: The Department thanks the commenter for this comment. The Department interprets "base density" and "density requirements" to be two distinct terms. The Department did not make changes to the final rule as a result of this comment.

141. Commenter stated that the definition of "designated growth area" in rule does not meet the requirements in 30-A M.R.S. § 4349-A(1)(A) and (B).

Response: The Department's definition used in rule is from 30-A M.R.S. § 4301, the general definition section of Chapter 187. To clarify further, the Department amended the definition to include Section 4349-A(1)(A)-(B), to provide a definition for municipalities that do not have comprehensive plans.

142. Commenter stated that the rule uses both the terms "dimensional requirements" and "setback requirements," indicating that they are intended to be distinct terms. The Department's definition of dimensional requirements is broad enough that it could include setback requirements.

Response: The Department thanks the commenter for this comment. The rule defines both “dimensional requirements” and “setbacks requirements” because P.L. 2021, ch. 672 distinguishes between the two terms. E.g., 30-A M.R.S. § 4364-A(3). The Department acknowledges that dimensional requirements could include setback requirements. Municipalities have discretion to define dimensional requirements and setback requirements to best fit the needs of their own municipality, as long as the definitions promote the goals of P.L. 2021, ch. 672. See Department’s response to comment #5. The Department did not make changes to the final rule as a result of this comment.

143. Commenter commented that the rule uses the definition of dwelling unit cited in subdivision law, which is not workable for broader application to land use developments authorized under P.L. 2021, ch. 672. The commenter recommended that the Department should revise the definition to state that “a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and contain cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.”

Response: The Department thanks the commenter for this comment. The Department used the definition of “dwelling unit” in Title 30-A. Municipalities may adopt a different definition of dwelling unit. See comment #5. To maintain consistency with Title 30-A, the Department did not make changes to the final rule.

144. Commenter stated that the definition of “lot” is unclear because the terms “parcel” and “other legal instrument” do not have a clear and apparent meaning in the context of this definition.

Response: The Department thanks the commenter for this comment. The Department amended the definition of “lot” in Section 1(B) to remove the terms “parcel” and “other legal instrument.”

145. Commenter stated that the definition of “multifamily dwelling” defines the word in terms of the “a building.” However, the term “building” is not defined in rule.

Response: The Department thanks the commenter for this comment. The Department amended the definition of “multifamily dwelling” to use only the term “structure,” which is defined.

146. Commenter requested that the term “principal structure” be amended to replace the term “structure” with “lot,” “premises,” or “property.”

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #37.

147. Commenter requested that the definition of “restrictive covenant” be amended to include covenants in any type of real property conveyance, as opposed to only by deed.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #114.

148. Commenter requested that the definition of “setback requirement” should be removed from rule to allow municipalities to define this term. In the alternative, if the definition is left in rule, it should be further clarified.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #35.

149. Commenter stated that the term “single-family dwelling unit” defines the term using the word “building.” Building is not defined in rule.

Response: The Department thanks the commenter for this comment. The Department amended the definition of “single-family dwelling unit” to use the word “structure” instead of “building.”

150. Commenter stated that the affordable housing density does not apply to all municipalities as stated in the draft rule. The law only applies to municipalities with density requirements.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #36.

151. Commenter commented that the draft rule states that a development must be located in an area in which multifamily dwellings are allowed “as of July 1, 2023.” This seems to mean that if a municipality rezones an area to prohibit multifamily housing following July 1, a municipality would still be required to allow affordable housing developments in that area, which is inconsistent with the law. The commenter asked the Department to remove the phrase “as of July 1, 2023.”

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #118.

152. Commenter commented that Section 3(B)(1)(b) erroneously cites to 12 M.R.S. ch. 4230-A.

Response: The Department thanks the commenter for noticing this error. Please see the Department’s response to comment #92.

153. Commenter requested that the Department amend Section 3(B)(1)(c) to better align with 30-A M.R.S. § 4364-A(1) by clarifying that one additional dwelling unit may be located within the existing structure, one may be detached from the existing structure, or one may be within and one may be detached.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #40.

154. Commenter commented that the draft rule states that municipalities with and without zoning must comply with the ADU provisions in Section 4(B)(2). This is inconsistent with the law which only requires municipalities with zoning ordinances to comply.

Response: The Department thanks the commenter for the comment. Please see the Department’s response to comment #41.

155. Commenter stated that Section 4(B)(2) is inconsistent with Section 3(B)(2)(a) which only requires municipal zoning ordinances to contain a provision stating that if more than one dwelling unit has been constructed on a lot as a result of the allowance pursuant to the section governing additional dwelling unit or the section governing ADUs, the lot is not eligible for any additional increase in density, unless allowed by the municipality.

Response: The Department thanks the commenter for the comment. The Department agrees and amended Sections 3(A) and 3(B)(2) to clarify that its provisions apply to both municipalities with and without zoning.

156. Commenter commented that in Section 4(B)(3)(b)(i) the rule states that for ADUs permitted in an existing accessory building, “the required setbacks apply.” Commenter asked for additional clarification if this means the setbacks required for ADUs under law or the setbacks required under local ordinance.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #131.

Commenter 25:

157. Commenter asked for clarification if “net lot area” is upheld under the law.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #85. The Department did not make changes to the final rule as a result of this comment.

158. Commenter asked the Department to answer the following question: Can a town require “primary residency” in order to build an ADU?

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #86. The Department did not make changes to the final rule as a result of this comment.

159. Commenter asked the Department for clarification regarding the state’s housing production goals and requests some examples of how a town can regulate short-term rentals to meet them.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #87. The Department did not make changes to the final rule as a result of this comment.

Commenter 26:

160. Commenter stated that this is unfunded mandate. Local participation should be voluntary. Even with the proposed grants, funding availability will be limited due to short time period between potential funding release and the required July 1, 2023, effective date.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #18. The Department did not make changes to the final rule as a result of this comment.

161. Commenter stated that it is unclear if ADUs are exempt from subdivision law.

Response: The Department thanks the commenter for this comment. P.L. 2021, ch. 672 requires developers and lot owners to adhere to subdivision law when developing additional dwelling units on a lot. 30-A M.R.S. § 4364-B(3) states that at least one accessory dwelling unit must be allowed on a lot in which a single-family dwelling unit is the principal structure. The requirements in this section should not trigger subdivision review. The Department did not make any changes to the final rule as a result of this comment.

162. Commenter stated that the Department did not define some terms, or the defined terms lack clarity. These include: base density; setbacks; principal structure; centrally managed (water); comparable sewer system; and majority.

Response: The Department thanks the commenter for this comment. The Department amended the terms “base density,” “setback requirements,” and “principal structure” to add additional clarity to Section 1(B). The Department added definitions in Section 1(B) for the terms “centrally managed water system” and “comparable sewer system.” For explanation of the definition of “majority”, please see Department’s response to comment #44.

163. Commenter asked the Department to clarify if under the dwelling unit density allowance, would a commercial lot be considered vacant, with no housing, and allowed increase dwellings to the max density allowed?

Response: The Department thanks the commenter for this comment. Please see the Department’s response to commenter #23.

Commenter 27:

164. Commenter stated that Maine island communities and some coastal peninsulas rely on groundwater for drinking water and for treatment of septic system wastewater. Increased groundwater withdrawal may exacerbate inadequate supplies of water and lead to degradation in groundwater quality. The rules as written do not take into account cumulative impacts, potentially resulting in water quality and quantity impacts over time, particularly in areas with limited groundwater. Several communities are in the process of conducting studies to assess the sustainability of their groundwater supplies, to serve as a source to guide future development.

Response: The Department thanks the commenter for this comment. The statute and the Department’s rule require the owner of housing units and developments to provide written verification to the municipality that there is an adequate water supply before the municipality issues a certificate of occupancy (or similar process). Verification of adequate water supply is a process determined by the municipalities and code enforcement officers. Municipalities must take into account state plumbing codes, subsurface wastewater rules, and shoreland zoning when determining the adequacy of water and sewer. However, the Department does not have the authority to amend the statute to account of cumulative impacts of increased development on water quality. The Department did not make changes to the final rule as a result of this comment.

165. Commenter stated that the rules should reference Maine’s Drinking Water Standards, which includes standards for Perfluoroalkyl and polyfluoroalkyl substances (PFAS), instead of the federal guidelines.

Response: The Department thanks the commenter for the comment. The Department agrees with adding Maine’s interim drinking water standards for the six different PFAS to the definition of “potable,” in addition the EPA standards. The Department amended the definition of “potable” to include the following citation: Resolve 2021, Chapter 82, Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Levels for Certain Substances and Contaminants.

166. Commenter suggested that there should be a phased approach to implementing the new law. The first year could be limited to cities and towns over 10,000, the next year to towns 10,000 to 1,000 and the third year to towns 1,000 and smaller.

Response: The Department thanks the commenter for this comment. The Department does not have the authority to amend the implementation date or which municipalities must comply with the law. The Department did not make changes to the final rule as a result of this comment.

Commenter 28:

167. Commenter urged the Department to define the term “housing” to be synonymous with ‘dwelling unit’ and to clarify that it does not means transient housing or short-terms rentals, unless uses are included in the local definition of housing.

Response: The Department thanks the commenter for this comment. The Department agrees with adding the definition of the term “housing” in rule. The Department added this definition to Section 1(B).

168. Commenter stated that although “dwelling unit” and “multi-family dwelling” are defined in rule, that most local land use and zoning ordinances and Maine case law provided definitions for these terms. Commenter requested that the Department not define these terms through rulemaking and instead expressly state that municipalities define these terms.

Response: The Department thanks the commenter for this comment. The Department defined terms not defined in the legislation to provide a starting point to help municipalities interpret the legislation. Municipalities may adopt their own definitions of terms. See the Department’s response to comment #5. The Department did not make changes to the final rule as a result of this comment.

169. Commenter stated that municipalities use different methods to define density, setback and dimensional requirements pursuant to their growth ordinances, case law, and other ordinance provisions. Commenter requested that the Department allow municipalities home rule authority to define these terms.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #167.

170. Commenter stated that the statutory definition in rule of “accessory dwelling unit” is at “odds with most local definitions” and recommended that the Department clarify in rule that an ADU must be accessory or allow municipalities to implement an appropriate definition.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #4.

171. Commenter stated that the definition of “affordable housing development” in statute and rule allows a developer to designate as affordable as many, or as few, of its housing units as they wish. Under this interpretation, a developer could designate only one unit affordable and benefit from the density bonus. Commenter urged the Department to address this loophole through legislative amendment.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #20.

172. Commenter requested that the Department clarify through guidance or rulemaking that municipalities have authority to address how the extra dwelling unit allowance, the ADU allowance and the density bonus will operate with respect to nonconforming uses, structures, and lots.

Response: The Department thanks the commenter for this comment. Please see the Department’s response to comment #21.

173. Commenter requested that the Department clarify that municipalities have home rule authority to address whether the extra dwelling unit allowance is ‘rolling’ or ‘fixed.’ This is a concern because a municipality could grant additional dwelling units based on the development status of a lot as of the date of the submissions of a complete application (rolling allowance) or municipalities could grant additional units based on the configuration and development status of lots as of a certain date.

Response: The Department thanks the commenter for this comment. The Department interprets P.L. 2021, ch. 672 to allow for the “rolling allowance” scenario commenter described. The Department amended the rule to add a definition of “existing dwelling unit.”

174. Commenter requested that the Department adopt a ‘no double-dipping’ rule to explain the interaction between the “Up to 4 Dwelling Units” section and the ADU section.

Response: The Department thanks the commenter for this comment. The Department amended Sections 3(B)(2)(a) and 4(B)(2)(b) to clarify that lots cannot take advantage of multiple density increases, unless otherwise allowed by the municipality. This issue has also been addressed in the Department’s updated LD 2003 guidance document.

175. Commenter stated that 30-A M.R.S. §§ 4364-A(2) and 4364-B(3) inclusion of the phrase “municipal zoning ordinances” is likely a “scrivener’s error” and suggests a legislative amendment to ensure that all municipalities abide by these provisions.

Response: The Department thanks the commenter for this comment. While the Department does not have the authority to amend the legislation, the Department agrees that despite the inclusion of “municipal zoning ordinance,” 30-A M.R.S. §§ 4364-A(2) and 4364(B) apply to all municipalities, even those municipalities without zoning ordinances. The Department did not make changes to the final rule as a result of this comment.

176. Commenter asked the Department to clarify that municipalities have home rule authority to determine if the lot owner or municipality has the ability to label an extra dwelling unit as a dwelling unit pursuant to 30-A M.R.S. § 4364-A or an ADU pursuant to 30-A M.R.S. § 4364-B.

Response: The Department thanks the commenter for this comment. The Department agrees that municipalities have the discretion to define ADU to distinguish between which provision of LD 2003 applies to a development. Furthermore, the Department amended Sections 3(B)(1)(a) and 4(B)(2)(b) to clarify that municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot.

177. Commenter asked the Department to clarify in rule that “any area in which housing is allowed,” in context of mixed use zoning, means “only that portion or area of a building in which residential uses are allowed, not the entire lot.”

Response: The Department thanks the commenter for this comment. 30-A M.R.S. § 4364-A(1) allows additional units in “any area in which housing is allowed.” The statutory provision further requires municipalities to set certain requirements for a “lot that does not contain an existing dwelling unit” versus lots with “existing dwelling units.” Per the statutory language, municipalities must assess the addition of units in relation to the lots, not areas of buildings. Furthermore, in mixed use areas, a lot owner can only add additional units if the lot contains an “existing dwelling unit.” Dwelling unit is defined in rule to mean a structure intended for human habitation, which would exclude commercial structures. Also, the statute allows the addition of

“up to 4 dwelling units per lot if that lot does not contain an existing dwelling unit.” 30-A M.R.S. § 4364-A(1). The Department interprets this to mean a lot without an existing residential unit. Therefore, if a commercial unit is on a lot, a lot could include the addition of up to four dwelling units, assuming the requirements of Section 4364-A are met. The Department did not make changes to the final rule as a result of this comment.

178. Commenter stated that the dwelling unit allowance allows additional dwelling units to be placed on commercial lots, even if they are not developed with any dwellings. The commenter requested an update on these issues in the LD 2003 guidance document.

Response: The Department thanks the commenter for this comment. Please see the Department's response to comment #23. The Department will adjust its guidance documents to reflect this.

179. Commenter stated that it is not clear which lots the ADU allowance can be applied to.

Response: The Department thanks the commenter for the comment. 30-A M.R.S. § 4364-B(1) states that “a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is permitted.” Furthermore, subsection 3 states that “[a]t least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure.” The Department interprets these two provisions to mean that a municipality is required to allow at a minimum one accessory dwelling unit on the same lot as an existing single-family dwelling unit. The Department further notes that a municipality can, but is not required to, be more permissive with this section. The Department will add to its guidance materials to provide examples of how a municipality can be more permissive with this provision. The Department did not make changes to the rule as a result of this comment.

180. Commenter asked the Department to clarify in rule the specific scenarios where the ADU allowance may be applied and whether the allowance is intended to apply differently in municipalities with and without zoning.

Response: The Department thanks the commenter for this comment. The Department agrees with this comment and has amended the rule to clarify that provisions of 30-A M.R.S. § 4364-B do not apply differently to municipalities with or without zoning. The Department contends that all municipalities likely will have to allow, at a minimum, one accessory dwelling unit on a lot with a single-family dwelling unit in any area where housing is allowed. The Department suggests that municipalities who feel that this provision does not apply to them speak with legal counsel or contact the Housing Opportunity Program at housing.decd@maine.gov.

181. Commenter stated that most Maine municipalities lack the in-house expertise to enforce--or find a third party to enforce--restrictive covenants to ensure long-term affordability of an affordable housing development. The commenter requested that the Department provide written guidance on how municipalities can comply with this provision.

Response: The Department thanks the commenter for this comment. The Department will create additional guidance on this issue. The Department also urges municipalities to discuss this provision with legal counsel. The Department did not make changes to the final rule as a result of this comment.

182. Commenter urged the Department to support legislative efforts to postpone July 1, 2023, implementation date because of the unclear date when rulemaking will conclude. This leaves

municipalities with the choice of either engaging in rushed ordinance adoption process or running the risk of litigation by not meeting the deadline.

Response: The Department thanks the commenter for this comment. This comment is outside of the scope of rulemaking. The Department did not make changes to the final rule as a result of this comment.

Commenter 29:

183. Commenter expressed concern that under Section 3 in the rule that Brunswick would be required to allow lots outside of their designated growth areas to add up to two additional units. The town's comprehensive plan identifies rural zones that are protected from development. Brunswick is concerned that they would not be able to protect the rural characteristics of their designated rural zones.

Response: The Department thanks the commenter for this comment. Section 3 may require the allowance of additional units on lots in designated rural areas, subject to the other requirements listed in Section 3. The Department does not have authority to amend 30-A M.R.S. § 4364-A(1) to remove this requirement. The Department did not make changes to the final rule as a result of this comment.

Commenter 30:

184. Commenter requested that the implementation of LD 2003 be delayed because of the impact of small, rural communities. In Hartford, for instance, this law impacts fire and rescue, as well as water systems.

Response: The Department thanks the commenter for this comment. Please see the Department's response to comment #1. The Department did not make changes to the final rule as a result of this comment.

185. Commenter stated that implementing LD 2003 would conflict with Hartford's comprehensive plan.

Response: The Department thanks the commenter for this comment. The Department encourages municipalities with concerns about comprehensive plans and their interaction with LD 2003 to contact legal counsel. The Department did not make changes to the final rule as a result of this comment.

List of Changes to the Final Rule

Section 1:

1. The Department amended Section 1(A) to clarify the requirements for municipalities to update and amend ordinances to comply with P.L. 2021, ch. 672 and this rule.

2. The Department amended Section 1(B) to clarify the requirements for municipalities to update and amend definitions to comply with P.L. 2021, ch. 672 and this rule.
3. The Department amended the definition of “majority” in the definition of “affordable housing development” in Section 1(B) to include the phrase “of proposed and existing units on the same lot.”
4. The Department amended the definition of “housing costs” in the definition of “affordable housing development” in Section 1(B) to include that the list is not exhaustive.
5. The Department amended the definition of “attached” in Section 1(B).
6. The Department amended Section 1(B) of the rule to amend the definition of “base density.”
7. The Department amended Section 1(B) of the rule to add a definition for “centrally managed water system.”
8. The Department amended Section 1(B) to add a definition for “comparable sewer system.”
9. The Department amended the definition of “designated growth area” in Section 1(B) to align with 30-A M.R.S. § 4349-A(1)(A)-(B).
10. The Department added a definition of the term “existing dwelling unit” in Section 1(B).
11. The Department amended Section 1(B) to include a definition for the term “housing.”
12. The Department amended the definition of the term “lot” in Section 1(B) to remove the terms “parcel” and “other legal instrument.”
13. The Department amended the definition of “potable” in Section 1(B) to include the following citation to Maine’s interim PFAS drinking water standards.
14. The Department amended the definition of “principal structure” in Section 1(B) to clarify that principal structures, for the purposes of only this rule, do not include commercial buildings, and to remove the “word” building.
15. The Department amended the definition of “restrictive covenant” in Section 1(B) to include other covenants in any type of real property conveyance, as opposed to only by deed.
16. The Department amended the definition of “setback requirements” in Section 1(B) to include “or other regulated object or area as defined in local ordinance.”
17. The Department amended the definition of “single-family dwelling unit” in Section 1(B) to remove the term “building” and replace with “structure.”

Section 2:

18. The Department amended Section 2(A) to clarify which municipalities the affordable housing development section applies to.
19. The Department amended Section 2(B)(1)(a) to clarify that a majority of the total units on the lot are affordable.
20. The Department amended Section 2(B)(1)(c) to add the phrase “per municipal ordinance.”
21. The Department amended Section 2(B)(1)(c) to remove the phrase “as of July 1, 2023.”
22. The Department amended Section 2(B)(1)(e) to clarify that the owner of a housing development must provide written verification that the proposed housing development will be connected to adequate water and wastewater.
23. The Department amended Section 2(C) to add “[l]ocal regulation that chooses to round up shall be considered consistent with and not more restrictive than this law.”

Section 3:

24. The Department amended Section 3(A) to state the private, local, and state standards may also apply to lots.

25. The Department amended Section 3(A) to clarify that its provisions apply to both municipalities with and without zoning.
26. The Department include the word “both” to Section 3(B)(1)(a)(ii).
27. The Department amended the citation in Section 3(B)(1)(c) to 12 M.R.S. ch. 423-A.
28. The Department amended Section 3(B)(1)(c) to mirror the statutory language of 30-A M.R.S. § 4364-A(1).
29. The Department amended Section 3(B)(2)(a) to clarify that if more than one dwelling unit is constructed on a lot per the requirements of Section 3, a municipality is not required to allow that lot to take advantage of additional density increases or allow the addition of units.
30. The Department amended Section 3(B)(2)(a) to clarify that municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot.
31. The Department amended Section 3(B)(2)(a) by removing the word “requirements.”
32. The Department amended Section 3(B)(3)(b) to add additional clarity to this provision.
33. The Department amended Section 3(B)(4)(a) to clarify that the owner of a proposed dwelling unit must provide written verification that the proposed dwelling unit will be connected to adequate water and wastewater.

Section 4:

34. The Department amended 4(A) to state that private, local, and state standards may also apply to lots.
35. The Department amended Section 4(A) to clarify that the rule applies to both municipalities with zoning and those without.
36. The Department amended Section 4(A) to include a phrase clarifying that a municipality may be more permissive in allowing ADUs.
37. The Department amended Section 4(B) to add the following: “A municipality may allow an accessory dwelling unit to be constructed or established within an existing accessory structure, except the setback requirements of 3(b)(i) shall apply.”
38. The Department amended Section 4(B)(1)(b) to remove the phrase “or sharing a wall with.”
39. The Department amended Section 4(B)(2)(b) to clarify that municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot.
40. The Department amended Section 4(B)(2)(b) to clarify that if more than one accessory dwelling unit is constructed on a lot per the requirements of Section 4, a municipality is not required to allow additional density increases.
41. The Department amended Section 4(B)(3)(b) to remove the phrase “or sharing a wall with.”
42. The Department amended Section 4(B)(3)(b)(i) to clarify that municipal ordinance setback requirements of the existing accessory or secondary structure apply.
43. The Department amended Section 4(B)(3)(c) to add the term “setback requirements.”
44. The Department removed Section 4(B)(3)(d).
45. The Department amended Section 4(B)(5) to clarify that an owner of ADU must provide written verification that the proposed ADU will be connected to adequate water and wastewater.