

# MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

June 14, 1979

James C. Pitney, Jr.  
Staff Attorney  
Maine State Housing Authority  
320 Water Street  
Augusta, Maine 04333

Re: Covenant Community Land Trust

Dear Mr. Pitney:

This letter responds to your May 1, 1979 request for an opinion as to whether the proposed Covenant Community Land Trust ("CCLT") housing project, described in your April 19, 1979 memorandum (entitled "Mortgage Purchase Authority") and accompanying CCLT documents, is governed by the limitations on the financing of "farm dwellings" contained in 30 M.R.S.A. §4763. We have concluded that, if the Maine State Housing Authority (the "Housing Authority") can make a determination that the land portion of the proposed project will be used for purposes incidental to housing, this limitation does not apply.

From your memorandum, we understand that the proposed project will consist of 8 single family, detached dwelling units clustered on approximately 25 to 40 acres of land. The project will be owned and operated by CCLT, a non-profit corporation, pursuant to the CCLT Articles of Incorporation and By-Laws, and will be occupied by individuals under Lifetime Lease Agreements. Most of the land, we understand, is covered by forest, which will be managed pursuant to a forest management plan and used to produce wood for fuel by lessees in their homes. Some of the land will be used by the lessees for vegetable gardens. Your memorandum also states that there will be no "commercial space" in the developments and neither CCLT nor its tenants will undertake commercial activities. In this connection we note, as you do, that Art. V, §2 of CCLT's By-Laws restricts the land to personal uses, except as otherwise authorized in accordance with the By-Laws, and that §3.1 of the Lifetime Lease Agreements restricts the use of the leased land as a homestead, meaning for use as a "residence and activities related to residence, including agriculture . . . ." Also see, §1.2 of the Lifetime Lease Agreement.

The Housing Authority proposes to finance the project pursuant to section 4756 of the Housing Authority Act, 30 M.R.S.A. §4551, et seq. (the "Act"), which authorizes the purchase of mortgages which are a "first lien on land and improvements in Maine constituting residential housing or a housing project . . . ." A "housing project" is defined by section 4552(12)(B) of the Act to mean:

[A]ny work or undertaking . . . [t]o provide decent, safe and sanitary dwellings, apartments or other living accommodations for persons of low income. \* \* \* Such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, including private commercial activity compatible with residential use as determined by [the] authority, so long as development costs related to such activity do not exceed 20% of the amount of debt financing provided by [the] authority . . . . [Emphasis added].

The question that has been raised is whether, in addition to these provisions, the proposed project is also governed by section 4763 of the Act ("Farm dwellings") which specifies that:

A house and its appurtenant land not exceeding one acre constituting a dwelling as part of a farm shall be considered a dwelling house for all purposes within the meaning of this subchapter. [Emphasis added].

As you point out, the term "farm" is not defined in the Act, and we too are unable to find any legislative history to the "farm dwellings" provision to guide us in determining how the term ought to be defined for purposes of the Act. In the abstract, the term "farm" has a broad meaning, including any use of a tract of land for agricultural purposes or for a tree farm. Webster's Third New International Dictionary (1961) ("Webster's"), Definitions 5.b and 6.c, p. 824. The term also has been given various narrower or specific meanings as your memorandum explains in its discussion of the Internal Revenue Code, the Uniform Commercial Code, various Maine statutes and other sources. The proper method of interpretation, under these circumstances, is to formulate a definition that comports with the statutory scheme being examined. See, Finks v. Maine State Highway Comm., Me., 328 A.2d 791, 798 (1974)

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1/ Also see, United States v. Norman G. Jensen Inc., 550 F.2d 662 (C.C.P.A. 1977) interpreting the word "agriculture" to include the harvesting of timber crops.

("Absent a legislative definition, the terms [of a statute] must be given a meaning consistent with the overall statutory context, and be construed in the light of the subject matter, the purpose of the statute, the occasion and necessity for the law, and the consequences of a particular interpretation.") In the context of this Act, which is designed to promote low income housing and drawing upon the broad definition of a "housing project" in the Act, you have concluded that the term "farm" means a business enterprise carried on for the purpose of producing revenue and profit and does not include the practice of forestry.

Adopting the same approach we reach a similar conclusion based on a slightly different rationale. The wording of section 4763 appears designed to limit the financing of land which is principally devoted to an agricultural use. Because we are interpreting a housing act, the emphasis in our interpretation of the term "farm" is the use of the land for non-residential, agricultural purposes, not incidental to housing. Where land, in the words of the statute, is "part of a farm," the statute carves out one acre and treats that acre as incidental to the use of the farm dwelling and not the larger farm for purposes of qualifying for financial participation by the Housing Authority.

In contrast, the definition of a "housing project" in section 4552(12)(B) of the Act defines the amount and type of land use that qualifies to be treated as part of a housing project from the opposite end of the spectrum. This definition, as pointed out above, includes land which is a necessary, convenient or desirable "appurtenance" to a residential dwelling, apartment or other living accommodations, specifically including compatible commercial activity. Construing the term "appurtenance" according to its commonly accepted non-technical meaning,<sup>2/</sup> rather than as used in the technical legal parlance of conveyancing, we are of the opinion that the intent of the Legislature<sup>3/</sup> was to include land which is "incidental" to residential housing.<sup>3/</sup>

Accordingly, when the Housing Authority considers the financing of a housing project that includes land to be used for agricultural purposes, it must make a determination as to whether housing is incidental to the land use, in which case the "farm dwelling" limitation applies, or whether the agricultural use is incidental to

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<sup>2/</sup> See, Union Mutual Life Insurance Co. v. Emerson, Me., 345 A.2d 504, 507. (1975); Town of Arundel v. Swain, Me., 374 A.2d 317, 320 (1977)).

<sup>3/</sup> See, e.g., Webster's definition of "appurtenance" as a "subordinate part". Also see, definitions in 3A West Publishing Co., Words and Phrases, and Black's Law Dictionary, 4th ed. 1951.

residential use, in which case it does not.<sup>4/</sup> In most cases where the principal use of the land is for farming, one would expect the farm to be a commercial business venture. However, it is possible to find a principal farm use where the agricultural activities are intended to furnish an independent or self-sufficient economic activity for one or more persons. The 20% limitations in the definition of a "housing project" in §4552(12)(B) of the Act may also serve as a guide. In the end, however, the issue is a factual one. It would appear from the facts known to us that the Housing Authority would be justified in making a determination that the use of CCLT land is intended to be incidental to housing and not for the principal purpose of farming.<sup>5/</sup>

I hope this opinion serves your needs. If you need further assistance, please don't hesitate to call.

Sincerely,



RICHARD S. COHEN  
Attorney General

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- 4/ Implicit to the foregoing discussion and the conclusion reached in the text is our opinion that when the Housing Authority makes a determination that an agricultural use is incidental to housing, it is also authorized to make the further determination that the agricultural use is a "desirable appurtenance" within the meaning of section 4552(12)(B) of the Act defining a "housing project."
- 5/ If the Housing Authority does make such a determination, we would suggest that it do so in a manner that would prevent CCLT from changing the uses of its land so as to disqualify the project from being eligible for financing.