

Johnson, Janice C.

802.4; 802.2(e)(802.2(f))

From: [Redacted]  
Sent: Tuesday, January 23, 2007 2:35 PM  
To: Johnson, Janice C.  
Subject: HSR Applicability to Hawaii RE Transaction

802.2(f)

I agree with this analysis.  
JJ

Janice,

RV concurs,

Thank you for taking the time on January 12, 2007, to discuss the applicability of certain exemptions under the Hart-Scott-Rodino Antitrust Act of 1976, Pub L. 94-435, 90 Stat. 1390, as amended, (the "HSR") to our client's circumstances. This correspondence shall confirm our discussion and your conclusion that the HSR does not apply to our client's proposed real estate transaction described below.

As we discussed, our client is offering the following real property and assets for sale in [Redacted] as part of a single purchase transaction: (i) a hotel; (ii) golf courses; (iii) surrounding vacant lands adjacent to the hotel and golf courses; and (iv) stock in a public utilities company owning a wastewater treatment plant, pump station and appurtenant transmission lines and easements located on the above lands (the "Wastewater Treatment Plant"). The "surrounding vacant lands" are bare lands which have not produced revenues in excess of \$5M over the most recent three year period. The Wastewater Treatment Plant services the hotel, golf courses, residences and County comfort stations. The value of the Wastewater Treatment Plant is significantly below \$50M.

In our discussion, you confirmed our understanding that the hotel and golf courses are exempt from the HSR pursuant to the exemptions under 16 C.F.R. §802.2(e)(1) (for hotels) and 16 C.F.R. §802.2(f) (for golf courses). Additionally, you confirmed that the surrounding vacant lands adjacent to the hotel and golf courses are likewise exempt pursuant to the "unproductive real property" exemption contained in 16 C.F.R. §802.2(c). You confirmed that the exemption applies despite the limitation in 16 C.F.R. §802.2(c)(2)(iii), which provides that the exemption does not apply to "real property that is either adjacent to or used in conjunction with real property that is not unproductive real property and is included in the acquisition." You stated that the limitation in 16 C.F.R. §802.2(c)(2)(iii) is limited to circumstances where unproductive real property is adjacent to non-exempt property, which is not the case here.

The Wastewater Treatment Plant is not exempt, but does not trigger the HSR notification requirements since its value is well below the \$50M threshold.

Accordingly, it is our understanding that the HSR does not apply to our client's above proposed transaction and the pre-merger notification requirements under the HSR do not apply. Should you have any questions regarding the above, please do not hesitate to contact me directly.