802.1

[redacted]

material may be [redacted] confidentiality [redacted] Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act

September 20, 1990

Federal Trade Commission
7 Pennsylvania Avenue, N.W.
Room 301
Washington, D.C. 20580

Attention: Marian Burno, Esq.

Gentlemen:

This letter is to confirm the advice which you gave to us in our telephone conversation today regarding the Federal Trade Commission's position with respect to the raw land exemption under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act").

As discussed, a client of this firm is the personal representative of an estate which is a joint owner of certain real estate located in [redacted] The other joint owner is an individual. Together, the two beneficiaries of the estate and other joint owner of the real estate do not have assets exceeding $10,000,000. Our client (the estate) has agreed to sell approximately 40 acres of raw land which is zoned conservation to an individual who does not have assets in excess of $100,000,000. The purchase price is $17,000,000 cash. A very small portion of the land has been leased to an individual who conducts tours for visitors. This lease will be cancelled at closing. This tour operation is conducted from a grass hut, which constitutes the only improvement (other than a caretakers house and beach cottage, neither of which is leased) located on the 40 acres. The total value of these improvements is less than $20,000.

The question we raised with you was whether the Federal Trade Commission considers the transactions described above to be subject to the reporting requirements of the Act.

You advised us that the transactions as described above would fall under the raw land exemption under Section 802.1 of the Federal Trade Commission's Rules. Your advice was based upon the 40 acres being non-income producing property. We understand that if the property is partially income producing, so long as less than $15 million of the purchase price could be reasonably and properly allocated to the income producing portion of the property, the transaction would not meet the Federal Trade

or equal to

Commission's size of the transaction test and, therefore, would not be subject to the reporting requirements of the Act.

Although we did not discuss this issue, it is possible that the buyer or a subsequent buyer may develop the property with a resort hotel, golf course, shopping center or other similar development. It is our understanding that the eventual development of the property in this fashion would not vitiate the raw land exemption since the Federal Trade Commission's position is based upon the character of the land at the time of the transaction, i.e., is it non-income producing.

We understand that the advice of the Justice Department's Antitrust Division need not be sought regarding the matters described above since it follows the Federal Trade Commission's advice on such matters.

The parties would like to consummate the above-mentioned transaction in the very near future. Therefore, if you are unable to concur with any part of the foregoing summary of our telephone conversation, or if you have any further comments bearing on the Federal Trade Commission's position on this proposed transaction, we would appreciate it if you would contact us by September 27, 1990.

Thank you for your assistance.

Very truly yours,

[redacted]

bcc: [redacted]

9-24-90 Called him back. Clarified that since the size-of-person test isn't met, there is no need to go to the exemption under 802.1 for realty. It's really a 2 step process - 1) do you have to file under the statute then 2) is there an exemption

MBruno