

[REDACTED]

This transaction is not reportable. However, concerning interest in the island's water and sewer companies (page 3, #1) the sale of the client's interest in the water and sewer companies is exempt if there are no sales to 3rd parties not owned by the LLC. If there are such sales, this part of the transaction should be analyzed separately.

MEMORANDUM

TO: Janice Johnson, FTC Staff Attorney
FROM: [REDACTED]
DATE: May 30, 2012
RE: Sale of 97% of an island

CONFIDENTIAL COMMUNICATION

As we discussed briefly this morning, we would like to confirm with you our understanding of the applicability of the Hart Scott Rodino Act ("**HSR**") and its various exemptions to the transaction briefly summarized below. We look forward to discussing this with you at your earliest convenience.

J. Johnson
M. Vance
concerns

Background

Our Client owns 97% of an island which amounts to about [REDACTED] acres of land. Historically, the island was used primarily for agricultural purposes and at present the island is mostly fallow land that has in part been developed for resort and residential use. Our Client is selling all of its interest in the island to one buyer. Our Client's interest includes direct title to approximately [REDACTED] acres of unproductive land and all of the membership interest in an LLC that directly and through other entities owns hotels, golf courses, retail rental space, and office and residential property on the island.

We understand five categories of real property on the island fall squarely into the following HSR § 802.2 real property exemptions: Hotels, Recreational Land, Retail Rental Space, Office and Residential Property, and Unproductive Property.

- *Hotels:* [REDACTED] major hotels and [REDACTED] small hotel.
- *Recreational Land:* [REDACTED] championship golf courses and [REDACTED] municipal golf course.
- *Retail Rental Space:* [REDACTED] acre town retail center.

EXEMPT



- *Office and Residential Property:* Approximately [redacted] single family residential rental units consisting of [redacted] single family residences originally built for employees of Client and its affiliates and [redacted] single family residences originally built for sale but currently rented.
- *Unproductive Real Property:* Approximately [redacted] acres of land consisting of now fallow agricultural land, and substantial tracts of open and conservation land that has not been developed or used for other purposes.

EXEMPT

Issues

There are three types of property and interests we would like to confirm are exempt from the HSR notification requirements as follows:

1. Property held for residential development in various stages of development.
2. The island water and sewer companies.
3. Certain revenues generated from a solar farm.

Property Held for Residential Resort Development

The LLC our client is selling owns itself and through a subsidiary the real property held for residential resort development. The property that is currently held for residential resort development falls primarily into three categories as follows:

- One completed condo unit.
- [redacted] completed vacant lots which are ready for sale.
- [redacted] acres designated for future development that have not been subdivided into individual lots and have no infrastructure, e.g., no roads, sewer, etc.

All exempt under RESIDUAL

We would like to confirm that the property described above is exempt from the HSR notification requirements either (a) entirely under the Office and Residential Property exemption, or (b) under the Office and Residential Property exemption as to the condo unit and [redacted] completed vacant lots and under the Unproductive Property exemption as to the [redacted] acres of vacant land designated for future development. The [redacted] acres would not be subject to the revenues that the Client has received from the sale of the developed lots within the 36 months prior to the closing of the sale.



Interest in the Island's Water and Sewer Companies

The LLC our Client is selling owns the island's water company and sewer company. The water and sewer companies sell water and provide sewer services to the hotels, golf courses and office and residential property on the island.

We would like to confirm that the sale of the Client's interest in the water and sewer companies would be exempt from the HSR notification requirement under one of the following real property exemptions:

1. The water and sewer companies are considered property owned incidental to the hotels, recreational facilities and office and residential property;
2. The water and sewer companies are considered a part of the unproductive property (e.g., the water shed and sewer facilities are located on the unproductive property) subject to the threshold of \$5 million in revenues during the 36 months prior to the sale.

If no subs to 3rd parties not owned by LLC

If the water and sewer companies do not fall under a real property exemption, the transaction may still be exempt from the HSR notification requirements if the value of the water and sewer companies is less than the current \$68.2 million size of transaction threshold. For the purpose of the size of transaction test, the value of the exempt real property would not be included.

To the extent it is determined that the water and sewer companies are considered Unproductive Real Property subject to the \$5 million revenue threshold, we would like to confirm that the calculation of revenue does not include intra-company sales. As we discussed, the water and sewer companies provide service both to the hotels, resorts and residential and office property owned by the Client as well as third party users. If intra-company sales are not included in the revenue calculation, the water and sewer companies will have generated less than \$1 million in revenue over the 36-month period prior to the closing of the sale.

Solar Farm

Our Client leases approximately [redacted] acres of the unproductive real property to a third-party owner of a photovoltaic solar farm that sells power to the public power company on the island. The Client owns a 20% interest in the owner of the solar farm. Over the 36 months prior to the closing of the sale, the Client will have received revenues of approximately \$1.2 million from the solar farm in the form of land rent charged to the third-party owner, management and accounting fees, and revenue from the sale of power to the power company. The Client has also received approximately \$3.5 million in tax

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credits arising from its interest in the solar farm. We would like to confirm that the tax credits are not included in the calculation of revenue for purposes of the \$5 million threshold under the unproductive property exemption. *right*

After you have had a chance to review this summary of the contemplated transaction, please email us at [redacted] or give us a telephone call to discuss this matter further. Thank you for your time.

Sincerely,

