



March 15, 2004

Patrick Sharpe, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

FEDERAL TRADE
COMMISSION
COMMUNICATION
PREMERGER NOTIFICATION
OFFICE
2004 MAR 19 P 12:19

Re: Section 202.2(c) Unproductive Real Property Exemption

Dear Mr. Sharpe:

The purpose of this letter is to confirm our Monday, March 8, 2004 telephone conversation regarding the applicability of the exemption under Section 202.2(c) of the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act") rules to conservation easements.

802.2(c)

As I explained, our client is a non-profit corporation exempt from taxes under Section 501(c)(3) of the Internal Revenue Code, whose mission includes the preservation of wilderness property. Our client proposes to acquire certain conservation easements from the fee owner and options to acquire additional conservation easements. The land subject to such conservation easements is currently used as timberland. The fee owner will continue to engage in forestry activities on the land, but subject to what are termed "sustainable forestry limits." The fee owner will be permitted to sell a very limited number of parcels for residential development. Otherwise, except for the limited forestry activities, no commercial activity and no development will be permitted on the easement property.

With respect to the options, you and I discussed the fact that a possible HSR Act notification and filing requirement does not come into play until our client exercises such options. Further, any acquisition pursuant to the options will be considered a separate transaction from the conservation easements now being acquired if the transactions are separated by more than 18 months.

802.2(c)

We also discussed the applicability of the Section 202.2(c) exemption to conservation easements. To be more specific, we dismissed the inapplicability of the \$5 million/36 month test in Section

cannot dismiss



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We also discussed the applicability of the Section 202.2(c) exemption to conservation easements. To be more specific, we dismissed the inapplicability of the \$5 million/36 month test in Section 202.2(c)(1) because the interest being acquired did not generate any revenue for the seller and will not generate any revenue for the acquiring person.

202.2(c)

202.2(c)

ok

202.2(c)(1)

Section 202.2(c)(1) provides:

(1) Subject to the limitations of (c)(2) unproductive real property is any real property, including raw land, structure or other improvements (but excluding equipment), associated production and exploration assets incidental to the ownership of the real property, that has not generated total revenues in excess of \$5 million during the thirty-six (36) months preceding the acquisition (emphasis ours).

16 C.F.R. 202.2(c)(1).

In this instance, the acquiring person is not acquiring an ownership interest in the property. Instead, the fee owner will continue to receive the revenue generated by any forestry activities. Thus, the \$5 million/36 month test in Section 202.2(c)(1) does not apply to the interest being acquired in this transaction.

202.46(b)

the easement

If you believe that this letter does not reflect the substance of our conversation accurately or your conclusions, please give me a call.

Thank you for your attention to this matter.

Very truly yours,

[Redacted signature area]

called [Redacted]
I concur with this letter
w/ the clarification noted.
3/22/2004 (PS)

[Redacted]

[Redacted]

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