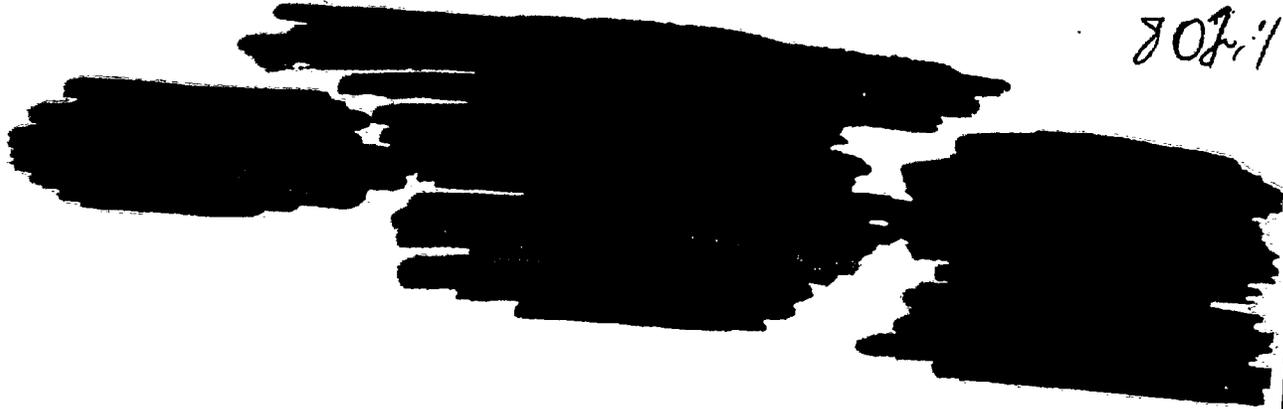


802/1



December 31, 1987
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VIA FEDERAL EXPRESS

Mr. Patrick Sharp
Federal Trade Commission
Pennsylvania Avenue at Sixth Street, NW
Washington, D.C. 20580

Dear Sir:

We are writing on behalf of our client, [redacted],
affiliate of [redacted] a Nebraska corporation, an
the [redacted] acquiring from
California partnership consisting of [redacted] a
a Delaware corporation which is an affiliate of [redacted]
California partnership, certain real property (the "Property")
for the sum of Fifty Seven Million Dollars (\$57,000,000).

The Property consists of approximately 395 acres of
land located on contiguous parcels in San Diego County,
California, as follows: a) two hundred and ten (210) acres of
raw, undeveloped land; b) one hundred and eighty five (185)
acres of land developed with site improvements, such as streets,
curbs and utilities, and on which are located five (5) buildings.
Of the five buildings, one is an office building valued at
approximately Two and One-half Million Dollars (\$2,500,000). The
other four are industrial buildings, together valued at approxi-
mately Two and One-Half Million Dollars (\$2,500,000), suitable

Mr. Patrick Sharp
December 31, 1987
Page 2

ately Two and One-Half Million Dollars (\$2,500,000), suitable for research and development and light industrial uses. Each industrial building sits on a separate parcel. These buildings, currently leased out, are the only income generating property being transferred. No residential or retail buildings exist. However, after acquisition, [REDACTED] intends to construct some commercial retail space, but such space will be a very small percentage of the total development.

[REDACTED] is engaged in the business of acquiring undeveloped or partly developed land for development, developing such land and selling the land and its improvements upon completion of development. [REDACTED] are engaged in the business of acquiring undeveloped or partly developed land, developing such land, and reselling such land upon development. The Property being transferred, and other assets incidental to the ownership of the Property, are the sole assets of [REDACTED]

Under Section 7A of the Clayton Act, certain acquisitions of assets or securities must be preceded by notification from both parties to the Federal Trade Commission. Section 7A(c)(1) exempts acquisitions of goods or realty transferred in the ordinary course of business from this requirement. Section 802.1(b) of the rules promulgated under Section 7A of the Clayton Act, and the comments thereto, indicate that purchase of all of the assets of an entity whose assets consists solely of real property, and other assets incidental to the ownership of realty, may be considered as a transaction made in the ordinary course of business.

The Federal Trade Commission ("FTC") adheres to the view that real property consisting of raw land, partially developed land from which no income stream has been derived, and office buildings ("Exempt Realty"), but not any other developed or partially developed land from which an income stream has been derived ("Non-Exempt Realty"), come within the exemption of Section 7A(c)(1).

Accordingly, in the case of [REDACTED] we believe that the transfer of 210 acres of raw, undeveloped land, and the transfer of 185 acres of land developed with site improvements, including one office building, but excluding those parcels on which four industrial buildings are located, as described above, are exempt from the notification requirements of Section 7A.

The transfer of any remaining Non-Exempt Realty is subject to the notification requirements of Section 7A only if the size of the parties to the transaction and the Non-Exempt

Mr. Patrick Sharp
December 31, 1987
Page 3

Realty exceeds the limits set forth in Section 7A(a). Rule §802.206 states that a transaction which would be subject to the requirements of Section 7A and which satisfies Section 7A(a)(3)(A), but which does not satisfy Section 7A(a)(3)(B), shall be exempt from the requirements of the Section 7A if as a result of the acquisition the acquiring person would not hold assets of the acquired person valued at more than \$15 million. It is our understanding that only Non-Exempted Realty is valued in deciding whether acquired assets exceed a value of more than \$15 million.

Four industrial buildings constitute the only Non-Exempt Realty being transferred. The transfer of these four industrial buildings involves consideration of approximately \$2,500,000, and is therefore well below the \$15 million reporting threshold. Accordingly, we believe that the transfer of such realty is not subject to the notification requirements of Section 7A.

On behalf of [REDACTED] we request that you confirm our understanding that the entire transaction described herein is not subject to the notification requirements of Section 7A of the Clayton Act.

Please feel free to contact me if you require any additional information.

[REDACTED]

[REDACTED]

[REDACTED]

called [REDACTED]

1-9-58

Office buildings should be carved out of the value of real estate for purpose of size of transaction (except 302)

The 210 acres parcel of raw land appears to be separable and can be carved out as well. (except 302)

As to the 185 acre parcel (minus the office building) you must make a determination here. Where the land is an integral part of the operation of the business, then it must be included as a part of the business. There may not be a clear way ^{they may not} or be able to draw a clear line to separate the industrial park from the rest of the land and thus the whole 185 acre parcel must be included in the size of transaction. W.K. had input into this analysis.

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