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May 8, 2017

Re: Security Subdivision Tracts of Land Montgomery County, Texas  
Owner: Atakapa, LLC

Dear

You have asked that I provide a legal opinion with respect the prospect of marketing and selling land contained within the Michael Hinch Survey Nos. 1, 2, 3, 4, 5 & 6, also known as the town site of Security which is currently owned by your client Atakapa, LLC.

As you know, the town site of Security was created by the South Texas Development Company in July 1913 out of Abstract 253, Michael Hinch Survey, Montgomery County, Texas. This acreage appears to encompass several real estate accounts at the Montgomery County Central Appraisal District including but not limited to R226314 (containing 317.366 acres more or less); R 43182 (containing 200.486 acres more or less); R 43228 (containing 5.00 acres more or less); R 43230 (containing 10.00 acres more or less); R 43232 (containing 5.0 acres more or less). This acreage is very close to Highway 105 in the eastern portion of Montgomery County. It is physically located near old highway 105 as you approach State Highway 69.

This acreage has historically been an abandoned town site that was sold in the early 1900's prior to the depression to land speculators and/or investors from out of state. The South Texas Development Company went out of business and many people were left holding lots and blocks in a town site that was never formally incorporated and/or developed.

It appears that the Baptist Foundation of Texas owned significant portions of this acreage before it sold the property to Campbell Ready Mix concrete plan in the 1990's. Campbell applied for an order of partial cancellation of Security Subdivision and Townsite of Security Subdivision. According to the Texas Local Government Code Section 232.008(b) a person owning real property can ask the County Commissioners to cancel all or part of the subdivision to re-establish the property as acreage tracts as it existed before the subdivision. Attached hereto is a copy of the Order canceling the subdivision on September 26, 1994. By virtue of this cancellation, the roads, easements and rights of purchasers who own any property in the

subdivision are eliminated. There are several parcels or lots and blocks contained wholly within the Atakapa, LLC acreage owned by third parties and/or unknown heirs and successors.

Many of these parcels are landlocked and/or cannot be accessed by any roadways or easements. Thus, third parties are without access to their property without an express or implied easement. Generally, a written instrument is required to validly convey an estate in land. *See* Texas Property Code § 5.021. In Texas, an easement is a non-possessory interest in another's property that authorizes the holder to use the property for a particular purpose. *See Seber vs. Union Pacific Railroad Company*, 350 S.W.3d 640, 646 (Tex. App.—Hou [14<sup>th</sup> Dist] 2011). An easement does not convey the property itself. For an easement appurtenant to exist by implication or writing, there must be a (1) a dominant estate to which the easement is attached; and (2) a servient estate which is subject to the use of the dominant estate. *Id.*

There are various types of implied or quasi easements under Texas laws that are judicially created as follows: (1) easement by prescription; (2) easement by estoppel; (3) easement by way of necessity; and (4) easement by way of prior use.

Easement by prescription requires the claimant prove by a preponderance of the evidence that he has been in possession of the easement in a manner that is (a) open; (b) notorious, (c) exclusive, (d) adverse, (e) continuously (f) for a period of ten years or more. *See Brooks vs. Jones*, 578 S.W. 2d 669, 673 (Tex. 1979).

Easement by estoppel requires the following basic elements (a) a misrepresentation by the alleged servient property owner communicated to the easement claimant, that the claimant has a right to use the property; (b) the communication is believed; and (c) the claimant detrimentally relies on this representation. *See Cambridge Holdings, Ltd. vs. Cambridge Condo council of Co-Owners*, 2010 WL 2330356 (Tex. App.—Austin 2010) at \*16.

An easement by necessity can be implied when the conveyed or retained parcel cannot be accessed except by traveling over the remaining tract of land. An easement by necessity requires (a) unity of ownership of both the dominant and subservient estate by the same owner prior to separation; (b) access must be a necessity and not a mere convenience; and (3) the necessity must exist at the time of severance. *See Seber vs. Union Pacific Railroad Company*, 350 S.W.3d 640, 648 (Tex. App.—Hou [14<sup>th</sup> Dist] 2011). For instance, in one Texas court case it was held that the State of Texas held unity of ownership and then it patented two properties into two different surveys. There was no evidence established that a road was necessary at the time of either patent and the Court denied the appeal of the one seeking an easement by implication. *See McClung vs. Ayers*, 352 S.W.2d 723 (Tex. App—Texarkana 2011).

Based on this case law, we do not believe that Atakapa LLC has to legally provide access to any party claiming an interest in land locked land absent an express written easement or hunting lease to allow access. Thus, Atakapa LLC and its successors in interest are free to exclude persons from coming onto their property without express permission and consent.

However, Atakapa, LLC is not at liberty to sell title to property that it does not own or have a deed of conveyance. Thus, if Atakapa LLC desires to clean up the title in these Security

Townsite tracts, it should locate find and offer consideration to take deeds to parcels of realty contained within its tract.

If Atakapa LLC desires to obtain legal title to property it may be able to take advantage of the Texas Adverse Possession statutes and seek legal title to property by establishing that it is in actual possession and control of the subject land locked parcels hostile to the actual true owners without their legal permission. This possession must be exclusive to Atakapa, LLC. It must be open and notorious. For instance, fencing the property and using it for timber operations for the requisite statutory period in Texas (typically 10 years). By statute, any land acquired under Texas Civil Practice and Remedies Code is limited to 160 acres. Thus, this might be a possible way to obtain title to the acreage you seek in the old Security subdivision.

### **Plans for Marketing and Sell**

It is always best to sell property without providing any warranty express or implied to parcels that Atakapa LLC does not own complete legal title. However, as more time elapses and as Atakapa openly and notoriously holds this property and continuously occupies and uses it to the exclusion of the original owners and/or their successors, this would give Atakapa LLC the right to claim property by adverse possession. This would require a legal proceeding in order to obtain legal title to the disputed tracts.

If Atakapa LLC does not desire to undertake to clear title by adverse possession suits (this would require litigation), the other possibility is to seek to obtain title to property through various tax sales and/or tax auctions by the local taxing authorities. This is a good way to acquire acreage through a sheriff's deed or constable's sale.

Moreover, it would be recommended that in any sale that you notify potential purchasers with a disclaimer and inform them that there are adverse interests and/or potential third parties but you cannot warrant or defend against any of those claims or rights. In other words, any potential purchaser will take subject to the existing rights of the parties who claim legal title and/or rights to these outparcels.

I hope that this assists you as you contemplate placing this acreage or acreages for sale which has currently been used for agricultural timber production. If you would like to explore and/or desire to take further legal action to obtain title, we can certainly assist you in those endeavors.

I look forward to visiting with you further on this matter.

Very Truly yours,



R. Kyle Hawes  
Shareholder