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All By Email Only

Lawrence C. Callaway III, Esq.

For Marion County:

County Administrator and Acting County Engineer Tracy Straub

County Attorney Guy Minter

Assistant County Attorney Russell Ward

Chief County Planner Christopher D. Rison

RE: 95th Street Holdings, LLC – Partial Termination and Amendment of Developer’s Agreement
 (“BFP”) – Three Hiatuses

Dear Larry¹ and County Staff:

Whom the Gods would destroy, they first make mad. – Euripides 484-406 B.C.

You will recall the extensive discussions that we have had before the County Commission at two recent hearings concerning the 25 foot gap between the southern boundary of Pioneer Ranch and the northern boundary of Countryside Farm. At the last hearing, I told the Board that, to my knowledge, “everyone agreed” that the gap (which we refer to as a “Hiatus”) arose under a deed to the County recorded in Deed Book 310, Page 151.² And it had appeared we had worked out what to do about that Hiatus: the County would impose a buffer/conservation easement on it, my client would apply to abrogate it, and then offer to deed it to the Countryside Farm HOA.

At the conclusion of the last hearing, however, Chris Rison addressed the Board and pointed to other boundaries between Pioneer Ranch and Countryside Farm. I thought, but was not certain, that he said that we were fixing those areas too and suspected that he believed that there were hiatuses in those areas. Because we had not looked at that area, however, I realized I needed to do so. I did and found that there are, in fact, three hiatuses, which I have (admittedly unimaginatively) named “West Hiatus,” “Middle Hiatus,” and “East Hiatus.” We had only discussed the deed at Deed Book 310, Page 151 (for the West Hiatus). I quickly found a deed to the County for the East Hiatus (Deed Book 310, Page 150), but have been unable to find a deed to the County for the Middle Hiatus.

I spent hours at the First American title plant looking through its tract index, as well as old microfiches of grantor indexes and grantee indexes. I then met with County Right of Way staff to see what the County had. Having been unable to locate anything through those means, we have retained First

¹ Larry is aware of most of the following information based upon our meeting on August 29 but I am including him in this letter because of his role in this matter.

² I will be happy to provide you with all the deeds referred to in this letter and the attachments.

American to do a “professional” search; I have not yet received the results of that at the time I write this letter, but anticipate that First American will not be able to find anything. If it does, then much of this letter will be meaningless (but the solution will be simpler: we can deal with the Middle Hiatus as we are the East and West Hiatus).

Attached hereto as **Exhibit A** is an *Analysis Concerning Middle Hiatus* attached to which is a sketch which depicts, not only the Hiatuses on the Pioneer Ranch property (the “PR Hiatuses”), but also Hiatuses that previously existed on the Countryside Farm property (the “CF Hiatuses”). The latter are important for reasons discussed in the Analysis which I will elaborate on here.

1. When I was unable to locate any deeds to the County for the PR Middle Hiatus, I attempted to determine the ownership of the Pioneer Ranch parcels contiguous to the PR Middle Hiatus during the relevant time periods, and then looked for all instruments that were executed by the owners during their period of ownership thinking that, perhaps, the County Clerk had misstated the name of the grantee in its records and that, in fact, there was a deed to the County; I was wrong. I further analyzed the deeds into and from those parties pursuant to which they conveyed their interests and looked for exceptions for the Hiatuses; that process at least allowed me to determine when parties started to refer to the PR Middle Hiatus. I have attached as **Exhibit B**, a table entitled *Table Analyzing Recorded Docs* (the “Table”). The Table lists only the most important documents that concern the issue in this letter, which are only a few of the documents that I actually reviewed.
2. The attached Analysis and Table shows the following:
 - 2.1. The CF Hiatuses and the PR West Hiatus and PR East Hiatus were part of a County effort to establish a 50 foot wide right of way extending from State Road 200 to the east. (In fact, I have located other deeds that extend the right of way farther to the east and will be shortly filing an application to vacate those rights of way for another client.) The PR West Hiatus and the CF West Hiatus were each 25 feet wide north and south, as were the PR East Hiatus and the CF East Hiatus. The CF Middle Hiatus, however, was 50 feet wide, east and west. I believe that is significant and is discussed below.
 - 2.2. The Analysis and Table show that during the relevant time period, portions of the Pioneer Ranch property adjacent to the PR Middle Hiatus were owned by Clarence and Margaret Taggart and other portions by Edwin and Dorothy Krungsieg. In fact, the Taggarts also owned property to the west and had granted the County the West Hiatus. The Krungsiegs had granted to the County the East Hiatus. None of the deeds into the Taggarts or Krungsiegs contained an exception for the PR Middle Hiatus. Further, there was no exception for the PR Middle Hiatus when the Krungsiegs conveyed their interest in this property to the Taggarts in 1955 or when the Taggarts subsequently conveyed it to Mitchell and Frances Miller in 1956. That is, all of the deeds during this time period contained exceptions for Hiatuses that had been previously created (i.e., the PR West Hiatus and the PR East Hiatus) but none of them contained an exception for the PR Middle Hiatus.
 - 2.3. In 1976, Charles and Mary Marks obtained a deed from the County pursuant to which they acquired the CF Hiatuses under a right of reverter for the deed that created them. Thus, at that point, the County owned no right of way on the property now occupied by Countryside Farm.
 - 2.4. In 1986 (i.e., 30 years after they acquired title to the portion of the Pioneer Ranch property adjacent to the PR Hiatuses), the Millers conveyed the property to Oakwood Investments.

This deed contained an exception ó not only for the PR East Hiatus and PR West Hiatus, as one would expect ó but also for the PR Middle Hiatus!³ Since this was the first time that there was an exception for the PR Middle Hiatus in any deeds, I assumed that the Millers must have conveyed it to the County during their 30 year period of ownership. However, despite looking again in First American's records (and on the Clerk's Web page), I was unable to find such a deed.⁴ All subsequent deeds contained exceptions for all of the PR Hiatuses.

- 2.5. To summarize, the property now known as the PR Middle Hiatus was conveyed to the Millers but was excepted from their subsequent conveyance, thus leaving them with apparent title.
3. County information.
 - 3.1. Reviewing information at the County Right of Way Department was helpful.
 - 3.2. The County file had several sketches that showed all of the Hiatuses except the PR Middle Hiatus. I believe that omission is significant.
 - 3.3. Further, some of the sketches showed the Taggarts and Krunsiegs as owning the property adjacent to the PR Middle Hiatus, while others showed the Millers. Again, that was consistent with what I had found.
 - 3.4. Further, there was a document in the County file that referred to all of the various right of way deeds in this area. None of those were for the Middle Hiatus.
4. The above analysis prompts two questions:
 - 4.1. First, why did the County not acquire the PR Middle Hiatus?
 - 4.1.1. I believe the answer to that is clear: the County did not need it.
 - 4.1.2. Recall that, together, the East Hiatuses and West Hiatuses on both the Pioneer Ranch and Countryside Farm property were 25 feet in width, thus, creating a 50 foot right of way.
 - 4.1.3. The CF Middle Hiatus, however, was 50 feet wide itself.
 - 4.1.4. Since all the County needed was a 50 foot right of way, and since it had gotten all of it on the Countryside Farm part of the boundary, there was no need to get any from the Pioneer Ranch property.
 - 4.2. The second question is more problematic: why did the Millers except the PR Middle Hiatus from their deed conveying the rest of the Pioneer Ranch property?

³ The legal description for the Middle Hiatus that we are using is the exception that describes it in the deed from the Millers. I have confirmed that it is in the correct location that one would expect it to be.

⁴ If First American finds a deed for the PR Middle Hiatus, I suspect it will be a deed from the Millers. They have a common name and the microfiche at First American was very hard to read. So if I missed something, I bet it will be a deed from them. We'll see.

4.2.1. I can only assume that: (a) by virtue of the conveyances to them, they were aware of the PR West Hiatus and the PR Middle Hiatus, and the fact that the County was seeking to establish a 50 foot wide right of way in this area⁵; and (b) they assumed that, like the CF East Hiatus and the CF West Hiatus, the CF Middle Hiatus was 25 feet wide. Thus, they believed that, either the County had already obtained the CF Middle Hiatus (which they should not attempt to convey), or that the County would eventually seek a 25 foot right of way in the location of the PR Middle Hiatus. Thus, they excepted it from their conveyance of the rest of the Pioneer Ranch property.

4.2.2. And once it was excepted from that deed, it continues to be excepted.

4.2.3. I acknowledge that this involves quite a bit of speculation on my part but I think that it makes sense.

5. Conclusion.

5.1. Thus, I believe that the Millers still hold title to the PR Middle Hiatus. Their last known address from a document recorded in the Marion County Public Records is what appears to be an apartment co-op in Manhattan. I am going to do a "people search" for them to see if I can find out if they are still alive or dead, but, in the meantime, I believe it is sufficient for us to know that the County does not hold title to the PR Middle Hiatus. Thus, the County cannot establish an easement on it.

5.2. Which obviously presents a problem: Mr. Callaway, the attorney for the Countryside Farm HOA, is concerned about these Hiatuses. Specifically, he was concerned that if the PR East Hiatus and the PR West Hiatus reverted to my client (each of the deeds contain a right of reverter), my client could somehow use them in a manner inconsistent with the easement it is required to establish. Alternatively, the County could try to build a road in those Hiatuses or otherwise permit development to occur. We have avoided all of these scenarios by having the County establish its own buffer/conservation easement in the PR East Hiatus and the PR West Hiatus.

5.3. We obviously cannot do the same thing with the PR Middle Hiatus because the County does not own it. So what do we do? I suggest the following:

5.3.1. The PR Middle Hiatus is a strip of land 25 feet wide and approximately 1320 feet long. Its only access is over the 25 feet wide PR West Hiatus and PR East Hiatus⁶; that access is insufficient to support development. Further, once the rights of way for those Hiatuses are abrogated, there will be no access to the PR Middle Hiatus. Finally, a parcel of these dimension, even with access, could not be developed.

5.3.2. Nor is there any threat of the PR Middle Hiatus reverting to my client; there was no deed to the County that contained a right of reverter.

⁵ Again, the County file had a sketch that showed that the Millers owned the property adjacent to the PR Middle Hiatus and had an address for them in the file. Thus, it is possible that the County had corresponded with the Millers.

⁶ I believe that the PR East Hiatus is a "road to nowhere," and that, in fact, its only access would be through the PR West Hiatus which goes to State Road 200 (although I believe there may be a County DRA that would block the road).

- 5.3.3. Finally, I believe it is significant that the Millers have done nothing with this property since they acquired it in 1956; thus, I suspect (justifiably, I believe) that they do not know they own it.
- 5.3.4. Therefore, I do not believe that any action is required concerning the Middle Hiatus.⁷ I have, however, modified the draft Partial Termination to require my client to deliver to the Countryside Farm HOA a quit claim deed for the Middle Hiatus.
- 5.3.5. Mr. Calloway has only been recently made aware of this situation and has not indicated that he agreed with my opinion.

6. Summary:

- 6.1. To my surprise (and partial dismay), there are three Hiatuses, not one.
- 6.2. The County owns two of the Hiatuses which we can deal with utilizing the County buffer/conservation easement that will be considered by the County Commission at the next meeting.
- 6.3. The third Hiatus, however, is not owned by the County and thus, neither my client nor the County can impose an easement on it. In my opinion, however, no action need to be taken concerning this Hiatus because it shortly will lack access and is too small to develop (even if the current owners of it knew that they owned it, which does not appear to be the case).

Larry has left town for a wedding but before he did, I reviewed this material with him. I am going to try to set up a meeting with the County staff, however, to go over this information so that you can better understand what I am talking about.

In the meantime, I would appreciate you putting copies of this letter and the attachments in the County Commission agenda for the September 19 meeting.

Sincerely,

GOODING & BATSEL, PLLC

/s/ Jimmy Gooding /s/

W. James Gooding III

WJG/ban

Attachments: as stated

cc: Mr. Chris Armstrong
Mr. Tim Brooker, PE

(All by email only with attachments)

⁷ I have discussed with Mr. Callaway, however, the possibility of the Countryside Farm HOA entering into possession of it and eventually claiming it through adverse possession. That is, of course, a matter that is not up to me.

EXHIBIT A
ANALYSIS AND SKETCH

See attached.

ANALYSIS CONCERNING MIDDLE HIATUS

1. Description of Middle Hiatus:

The West 25.00 feet of the SW 1/4 of NW 1/4 of Section 20, Township 16 South, Range 21 East and
The South 25.00 feet of the West 25.00 feet of the NW 1/4 of NW 1/4 of Section 20, Township 16 South, Range 21 East

2. Definitions.

- 2.1. *CF Hiatuses* – The hiatuses on the Countryside Farm property, consisting of the following as depicted on the attached sketch; because of the deed referred to in paragraph 3.4 below, County no longer owns the CF Hiatuses:
 - 2.1.1. *CF West Hiatus* – 25 feet wide (north and south).
 - 2.1.2. *CF Middle Hiatus* – 50 feet wide (east and west).
 - 2.1.3. *CF East Hiatus* – 25 feet wide (north and south).
- 2.2. *PR Hiatuses* – The hiatuses between the northern boundary of the CF Property and the southern boundary of the PR Property, consisting of the following as depicted on the attached sketch:
 - 2.2.1. *PR West Hiatus* – 25 feet wide (north and south).
 - 2.2.2. *PR Middle Hiatus* – 25 feet wide (east and west) – To assist discussion, it is noted that the CF Middle Hiatus is located entirely in the NW 1/4 of 20/16/21.
 - 2.2.3. *PR East Hiatus* – 25 feet wide (north and south).

3. Source of PR Middle Hiatus.

- 3.1. The portions of the parent tracts for the PR Middle Hiatus were owned, during the period when the other ROW deeds were executed, by Clarence and Margaret Taggart (“Taggart”) and Edwin and Dorothy Krunsieg (“Krunsieg”).
 - 3.1.1. At one point, Taggart owned the portion of the parent tract contiguous to the north 1/2 of the PR Middle Hiatus and Krunsieg owned the south 1/2 of such parent tract.
 - 3.1.2. Krunsieg was the grantor for the East Hiatus.
 - 3.1.3. Taggart also owned property to the north and west and was the grantor of the West Hiatus.
- 3.2. On 12/30/1955, Krunsieg conveyed his property in the NW 1/4 of Section 20 to Taggart except for the PR East Hiatus. There was no exception for the PR Middle Hiatus. Thus, Taggart owned the entire Parent Tract east of the CF Middle Hiatus including the PR Middle Hiatus but excluding the East Hiatus.

- 3.3. On 3/5/1956, in 340/335, Taggart conveyed the parent tract for a lot of JB Ranch to Mitchell and Frances Miller. The legal descriptions excluded the PR West Hiatus and PR East Hiatus but there was no mention of an exception for the PR Middle Hiatus.
- 3.4. In 1976 pursuant to 741/299, County deeded to Charles and Mary Marks the CF Hiatuses.
- 3.5. On 9/29/86, the Millers conveyed, to Oakwood Investments, a Florida general partnership, the property that it acquired from Taggart. As expected, the deed contained exceptions for the PR West Hiatus and the PR East Hiatus. Further, and for the first time, there is an exception for the PR Middle Hiatus. There is no reference as to any of the instruments that created the PR Hiatuses that were excepted in this deed.
 - 3.5.1. I could find no deed from the Millers to the County for the PR Middle Hiatus.
 - 3.5.2. Subsequent deeds all contained exceptions for the PR Middle Hiatus.
4. **County Documents.**
 - 4.1. The County Right of Way Department has no indication that the PR Middle Hiatus exists.
 - 4.2. Rather, they have a series of maps that show all of the Hiatuses except the PR Middle Hiatus. Some of these maps show Taggart and Krunsieg owning the parent tract for the PR Middle Hiatus, while others show Miller.
 - 4.3. County deed table showed all deeds in this area, including through JB Ranch deed for 95th Street, but no deed for PR Middle Hiatus.
5. **Analysis.**
 - 5.1. I think it is particularly significant that the CF Middle Hiatus is 50 feet wide. That is, there was no reason to get the PR Middle Hiatus in order to get a 50 foot right of way in this area.
 - 5.2. There is no deed from Miller to County
 - 5.2.1. There was no indication in the County file that there should be such a deed.
 - 5.2.2. The County was obviously aware of the fact that Miller owned the Parent Tract for the PR Middle Hiatus as evidenced by the fact that it is shown as the owner on at least one map in the County file.
 - 5.2.3. Further, Miller – who owned other property in the area – had deeded other parcels to Marion County (in 17/16S/21E), for right of way.
 - 5.2.4. On the other hand, the exception for the PR Middle Hiatus was carefully drawn; in that it included not only the part of the PR Middle Hiatus in the south 1/2 of the NW 1/4, but also the 25x25 foot rectangle contiguous to the PR West Hiatus.

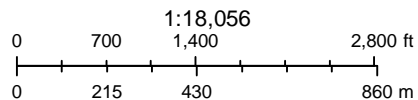
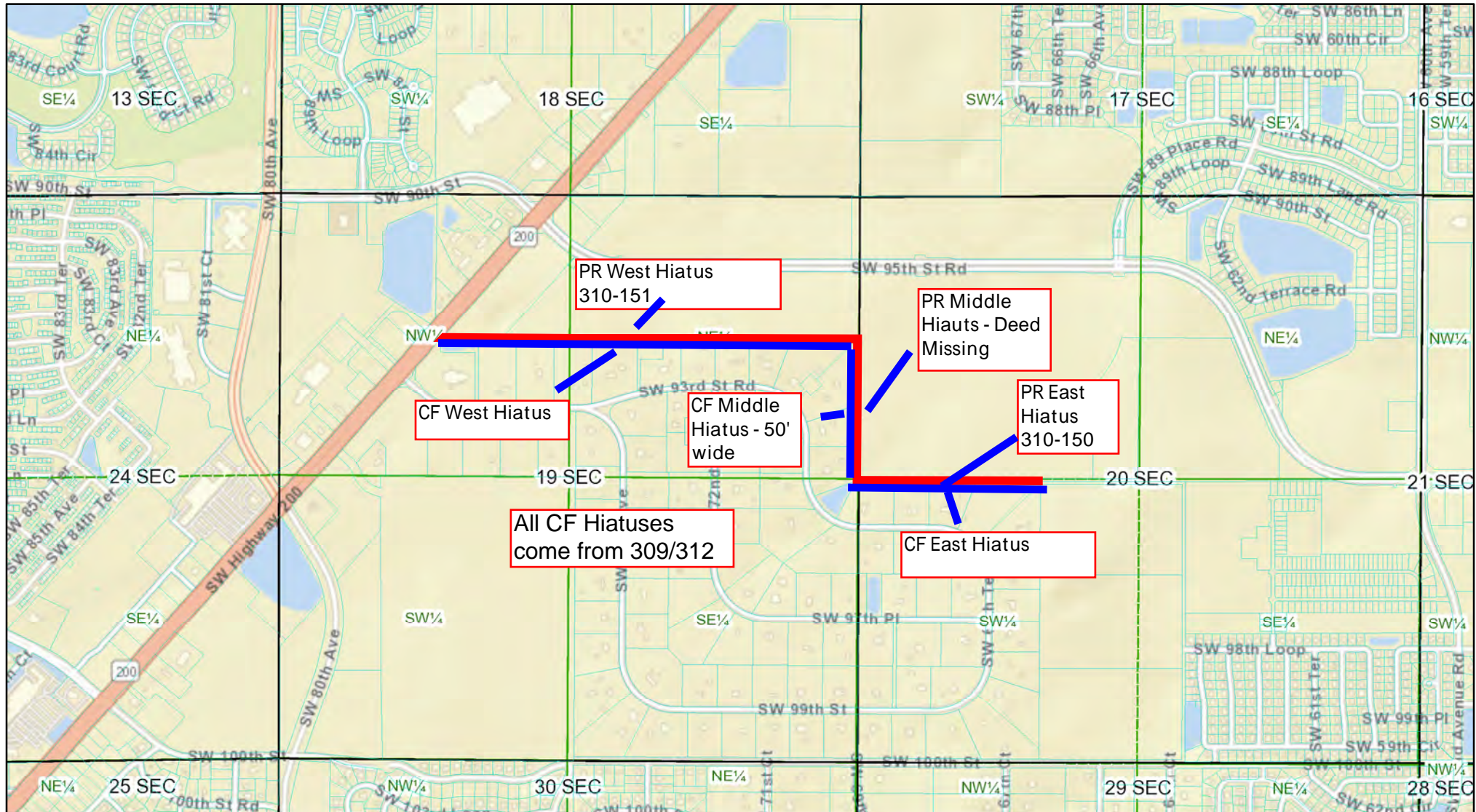
If this analysis is correct, the Middle Hiatus is owned by Mitchell Miller and Frances A. Miller.



Jimmy H. Cowan, Jr., CFA

Marion County Property Appraiser

Updated every 24 hours



Print Date: 09/16/2021
Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

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EXHIBIT B
TABLE

See attached.

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TABLE ANALYZING RECORDED DOCS
(Highlighted Rows Concern Property Adjacent To Pioneer Ridge Hiatuses Through Deed From Miller)

	Recording Info (if Any)¹	Date	FS or ROW	Grantor	Grantee	Summary/Significance
1.	DB 236/286	03/24/1939	FS	Earl & Landt, Inc.	Edwin C. Krunsieg	South 1/2 of SW 1/4 of NW 1/4 of 20 and South 1/2 of SE 1/4 of NW 1/4 NE 1/4 of SE 1/4 of NE 1/4 All in Section 20
2.	DB 230/148	03/04/1937	FS	E.R. Bailey's Tungland, Inc.	Clarence M. Taggart	NW 1/4 of NW 1/4 of Section 20
3.	DB 230/316	04/29/1937	FS	E.R. Bailey's Tungland, Inc.	Clarence M. Taggart	West 1/2 of NE 1/4 of NW 1/4 NW 1/4 of SE 1/4 of NW 1/4 All in Section 20
4.	DB 230/317	04/29/1937	FS	E.R. Bailey's Tungland, Inc.	Clarence M. Taggart	North 1/2 of SW 1/4 of NW 1/4 of 20
5.	DB 299/593	09/01/1951	FS	George Ebert	Clarence Taggart	North 1/2 of NE 1/4 of Section 19 NE 1/4 of NW 1/4 south and east of SR 200 in Section 19 Not relevant for easements.
6.	DB 309/311	02/25/1953	ROW	Fred Landt	County	Farther to the east.
7.	DB 309/312	02/28/1953	ROW	Kenneth H. MacKay	County	Conveys 25 foot strip immediately south of West Hiatus (Tract F of Countryside Farm), and other property. This shows County was trying to get a 50 foot wide right of way (when added to the Hiatus).
8.	DB 310/150	03/12/1953	ROW	Edwin C. Krunsieg	County	East Hiatus.

¹ Instruments are recorded in Official Records Book except where prefaced by "DB" in which case they are recorded in Deed Book.

	Recording Info (if Any) ¹	Date	FS or ROW	Grantor	Grantee	Summary/Significance
9.	DB 310/151	03/06/1955	ROW	Clarence Taggart	County	West Hiatus.
10.	DB 340/332	03/03/1956	FS	Grace and Fred Landt	CM Taggart	NW 1/4 of NW 1/4 of Section 20 This was conveyed to Taggart in 230/148. How did it get to Landt?
11.	DB 340-334	12/30/1955	FS	Edward C. Krunsieg	CM Taggart	NE 1/4 of SE 1/4 of NW 1/4 of Section 20 and S 1/2 of S 1/2 of NW 1/4 of Section 20 except the south 25 feet for road.
12.	DB 340/335	03/05/1956	FS	CM Taggart a/k/a Clarence Taggart	Mitchell and Frances Miller	[North part of JB Ranch in Section 19 except West Hiatus.] NW 1/4 of 20 except E 1/2 of NE 1/4 of NW 1/4 S 25 feet for road – this includes all the land needed for the Middle Hiatus and the South Hiatus. But they do not exist yet.
13.	OR 741/299	04/27/1976	FS	Marion County	Charles Marks	Property that parallels our hiatuses.

	Recording Info (if Any)¹	Date	FS or ROW	Grantor	Grantee	Summary/Significance
14.	1377/1513			Mitchell Miller	Oakwood Investments	Most of JB Ranch including: In Section 19 except West Hiatus N 1/2 of Section 20 except: SW 1/4 of NE 1/4 S 25 feet East Hiatus and Hiatus farther to the East West 25 of SW 1/4 of NW 1/4 South part of Middle Hiatus S 25 of W 25 of NW 1/4 of NW 1/4 North part of Middle Hiatus This is the first appearance of the Middle Hiatus
15.	1377/1519			Mitchell Miller	Oakwood Investments	Appears to be the same as 1377/1513, except this is a quit claim deed.

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