Exhibit 3
Secondary Living Units

Second Floor

First Floor

Front Elevation

Right Elevation

Rear Elevation

Left Elevation

Preliminary
Plan and Elevations-
Semi-Custom Prototype
Plan 4A

Main House - 4,200 sq ft
Secondary Unit - 615 sq ft
Habitable Gross SF Total - 4,815 sq ft
3-Car Garage - +760 sq ft

Exhibit C
Secondary Unit location

Robert Hidey **Architects**

PALOS COLORADOS

Moraga, Ca

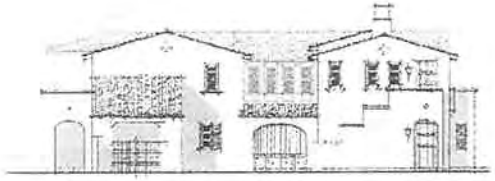
A5

Richfield Investment Corporation

3/04/2008
Updated 4/22/2008
Updated 9/09/2008

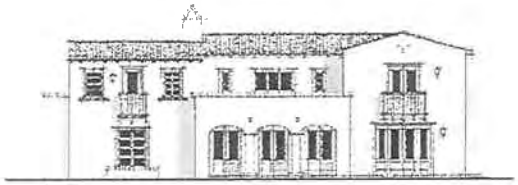
Second Floor

Front Elevation

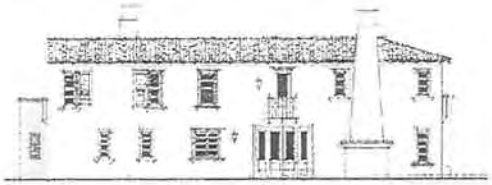


Right Elevation

First Floor



Rear Elevation



Left Elevation

Preliminary
Plans and Elevations-
Semi-Custom Prototype
Plan 5A

Main House 1st Floor - 2,450 sq ft
Main House 2nd Floor - 2,370 sq ft
Main House Total - 4,820 sq ft
Secondary Unit - 480 sq ft
Habitable Gross SF Total - 5,300 sq ft
3-Car Garage - 700 sq ft

A6

Robert Hidey **Architects**

PALOS COLORADOS

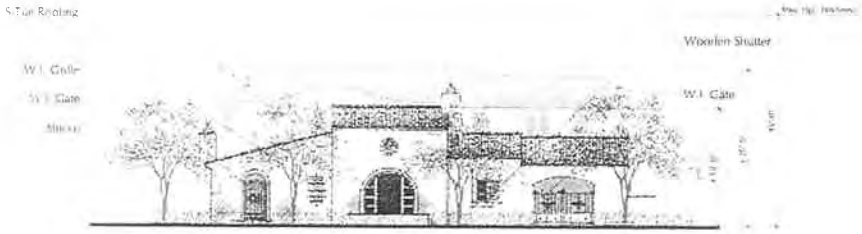
Richfield Investment Corporation

Moraga, Ca

3/04/2008
Updated 4/22/2008
Updated 9/09/2008

Second Floor

First Floor



Front Elevation

Right Elevation

Rear Elevation

Left Elevation

Preliminary
Plans and Elevations-
Semi-Custom Prototype
Plan 6A

Main House 1st Floor - 3,615 sq ft
Main House 2nd Floor - 1,605 sq ft
Main House Total - 5,220 sq ft
Secondary Unit - 740 sq ft
Habitable Gross SF Total- 5,960 sq ft
3-Car Garage - 670 sq ft

A7

Robert Hidey **Architects**

PALOS COLORADOS

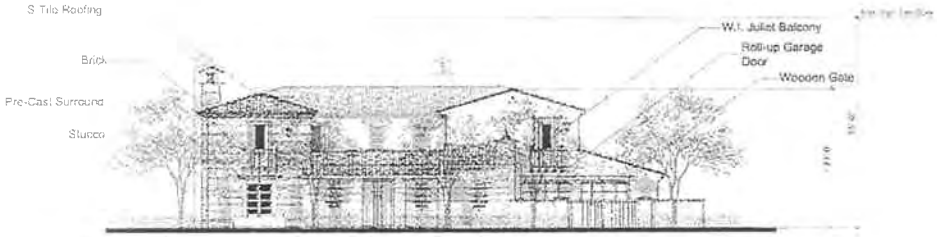
Richfield Investment Corporation

Moraga, Ca

3/04/2008
Updated 4/22/2008
Updated 9/09/2008

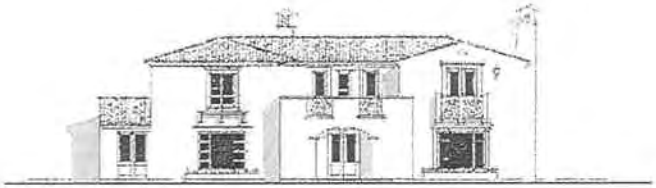
Second Floor

First Floor

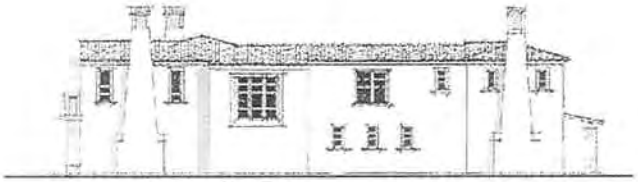


Front Elevation

Right Elevation



Rear Elevation



Left Elevation

Preliminary
Plans and Elevations-
Semi-Custom Prototype
Plan 7A

Main House 1st Floor - 2,800 sq ft
Main House 2nd Floor - 3,410 sq ft
Main House Total - 6,210 sq ft
Secondary Unit - 740 sq ft
Habitable Gross SF - 6,950 sq ft
Garage - 740 sq ft

A8

Robert Hidey Architects

PALOS COLORADOS

Richfield Investment Corporation

Moraga, Ca

3/04/2008
Updated 4/22/2008
Updated 9/09/2008

ON-STREET PARKING

A 33 LOTS (3 UNITS)

B 64 LOTS (5 UNITS)

C 18 LOTS (2 UNITS)

D 8 LOTS (1 UNIT)

USPS OUTDOOR PEDESTAL MAILBOXES
13 Tenant Door Cluster Box Unit With Pedestal
Product Number F181570-13
COLOR: Sandstone (PMS 7501C)

On Street Parking / Cluster Mail

Patos Colorados

Image 3

A 33 LOTS (3 UNITS)

B 64 LOTS (5 UNITS)

C 18 LOTS (2 UNITS)

D 8 LOTS (1 UNIT)

USPS OUTDOOR PEDESTAL MAILBOXES
13 Tenant Door Cluster Box Unit With Pedestal
Product Number F181570-13
COLOR: Sandstone (PMS 7501C)

Lori Salamack

From: Debi Chung [dchung@rfld.com]
Sent: Monday, November 17, 2008 1:22 PM
To: Lori Salamack
Subject: Palos - Lot 106
Importance: High

Hi Lori,

I left you a message this morning regarding the option that Rick is willing to consider to resolve Lafayette's concern. I am following up with this e-mail to elaborate on that message.

The option Richfield is proposing is for the Town to approve the PDP with a condition deferring the building permit for Lot 106 and requiring a photosimulation until such time as the screening landscaping has matured sufficiently to screen the views. In that way, the photosimulations would represent actual landscaping conditions. The Settlement Agreement doesn't actually specify a time for performance of the photosimulations so to defer them until later when the landscaping has matured would provide a more accurate representation of the views. This option obviates Lafayette's requests for additional conditions including the need for the landscaping mitigation plan to be included in the PDP, the deed restriction, the landscape maintenance agreement and the condition regarding the timing of landscape installation. All of these conditions impose new obligations on the project beyond the terms of the Settlement Agreement and at a level of detail that cannot be ascertained with certainty at this point. In fact, the landscape mitigation plan that Richfield submitted to Lafayette as back-up for the photosimulations is conceptual at best.

We believe this option is reasonable and consistent with the terms of the Settlement Agreement. Please let me know if you are available to discuss this option at your earliest convenience.

Debi Chung, AIA
Project Manager

RICHFIELD INVESTMENT CORPORATION
1990 North California Blvd.,Suite 830
Walnut Creek, CA 94596

925-932-7072 (phone)
925-932-7073 (fax)
415-374-0389 (cell)
dchung@rfld.com

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SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of the 14th day of February, 2007 by and among: Petitioner CITY OF LAFAYETTE ("Lafayette"), Respondent TOWN OF MORAGA ("Moraga") and Real Parties In Interest RICHFIELD INVESTMENT CORPORATION ("Richfield") and BIGBURY COMPANY ("Bigbury") in Contra Costa County Superior Court Case No. N06-1194.

The City of Lafayette, together with its City Council, also may be referred to herein as the Petitioner, the Town of Moraga, together with its Town Council also may be referred to as Respondent, and Richfield and Bigbury together with all other real parties named in Case No. N06-1194 may be referred to as the "Real Parties." Collectively, the Petitioner, Respondent, and Real Parties may be referred to as the "Parties."

RECITALS

A. On October 30, 1996, the Town of Moraga Town Council denied an appeal and approved a Conceptual Development Plan for a 146-lot residential development project with an 18-hole golf course known as the Palos Colorados project.

B. Following the Town's approval of the Palos Colorados project, a petition requesting reconsideration of the Town's approvals was filed by the City of Lafayette, and the Town of Moraga later reconsidered its decision and denied the Palos Colorados Project.

C. Richfield is successor-in-interest to Richland Development Corporation, the former developer of the Palos Colorados project. Hereinafter, all references to Real Parties or Richfield refer to Richfield and Richland Development Corporation. Richfield is proposing the development of the Palos Colorados project on an approximately 484-acre site in the Town of Moraga involving the development of 123 residential homes and the preservation of more than 460 acres of habitat and open space.

D. Following several years of litigation, on August 23, 1999 Lafayette, Moraga, and Bigbury, and Richland Development Corporation entered into the Palos Colorados Settlement Agreement to resolve all litigation associated with the Palos Colorados project (the "1999 Settlement Agreement"). The 1999 Settlement Agreement provided for the development, and established a process for obtaining the entitlements necessary for a 123-unit residential development project with an 18-hole golf course. Among other requirements, Richland agreed to the future golf course operator's payment of the Golf Course Municipal Fund as further defined below in Recital J, and the mitigation of visual impacts from the Lafayette BART Station platform.

E. For more than 6 years after entering into the 1999 Settlement Agreement, Richland attempted unsuccessfully to obtain approvals from the state and federal agencies related to the development of the Palos Colorados Project. After its failed attempts to obtain agency

approvals to proceed with the project due to new significant impacts to wetlands and endangered species, and as a result of potential geotechnical instability on the site, at the request of Moraga, Richfield filed an application on March 15, 2006 for approval of a General Development Plan ("GDP") for the Palos Colorados project. In its GDP application, Richfield proposed to eliminate the 18-hole golf course and proceed with a project consisting of 123 residential units and the protection of more than 460 acres of open space and habitat (hereinafter, the "Project").

F. Lafayette appealed the Planning Commission's determination that elimination of the golf course was consistent with the 1999 Settlement Agreement and that it allowed Richfield to proceed with a General Development Plan application. On May 24, 2006, the Moraga Town Council denied Lafayette's appeal and authorized Richfield to proceed in processing the General Development Plan application without the golf course in accordance with the 1999 Settlement Agreement and Moraga Municipal Code.

G. On August 1, 2006, Lafayette filed a Petition for Writ of Mandate and Complaint in Contra Costa County Superior Court entitled *City of Lafayette v. Bigbury Investment Corp., et al.* (Case No. N06-1149) alleging that Moraga violated the 1999 Settlement Agreement and Moraga's municipal ordinances in allowing Richfield to proceed with a General Development Plan application for the Project. On September 6, 2006, Richfield filed a cross-complaint alleging that Lafayette's action constituted a breach of the 1999 Settlement Agreement. The Petition/ Complaint and Cross-Complaint are collectively referred to as the "Action."

H. Since May 2006, Moraga conducted public hearings and study sessions, processed the application and prepared the necessary environmental review document for the Project. Moraga adopted an Addendum to the Palos Colorados EIR and approved the General Development Plan for the Project (the "General Development Plan") on or about February 5, 2007. A Notice of Determination was timely posted.

I. Prior to Moraga's approval of the Project on February 5, 2007, the Parties negotiated a settlement of the disputes. The Parties have agreed to settle the above disputes in order to avoid the necessity of further legal proceedings and the time, expense and uncertainty that such proceedings would involve. The Parties acknowledge that the money paid and other valuable consideration for settlement is solely for the purpose of preventing further involvement in protracted litigation, thereby fully and finally resolving the claims and ending the Action.

J. Consistent with the voluntary settlement, Moraga imposed as a condition of approval of the General Development Plan, Condition GDPSA.6. entitled, "The Golf Course Municipal Fund," attached hereto as **Exhibit A** and incorporated herein by reference ("Golf Course Fund"). This condition implemented and clarified the requirements of Section 11 of the 1999 Settlement Agreement and Condition 6 in Exhibit 2 of the 1999 Settlement Agreement which set forth the terms and conditions for the golf course operator's payment of the Golf Course Fund.

K. Also consistent with the voluntary settlement, Moraga imposed as a condition of approval of the General Development Plan, Condition GDP2, and Condition 3 in each of Resolution No. XX-2007, No. XX-2007, XX-2007, and XX-2007 ("Condition 3") – In the Matter of: Approval of a Conditional Use Permit to establish the Site Development Standards for

the construction of a single-family residence on Lot 22, Lot 23, Parcel F and Parcel G in the Palos Colorados subdivision, respectively (the "Conditional Use Permit Resolutions"). The text of GDP2 and Condition 3 of the Conditional Use Permit Resolutions is attached hereto as **Exhibit B** and incorporated herein by reference. Collectively, Condition GDP2 and Condition 3 of each of the above-referenced Conditional Use Permit Resolutions are referred to in this Agreement as, the "Lafayette BART station viewshed condition." The Lafayette BART station viewshed condition provided for the maximum building heights for certain lots that can be viewed from the Lafayette BART station platform. This condition implemented and clarified the requirements of Section 6 of the 1999 Settlement Agreement and Exhibit 2, Condition 1 of the 1999 Settlement Agreement which set forth the terms and conditions of the processing requirements for the Lafayette BART station viewshed condition.

NOW THEREFORE, in consideration of the above Recitals, which are an essential part of the Parties' Agreement and are therefore incorporated by reference into the Settlement Agreement set forth below, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, it is hereby agreed as follows:

AGREEMENT

1. Dismissal of the Action; Waiver of Attorneys' Fees and Costs

1.1 Petitioner City of Lafayette and Real Party in Interest Richfield shall each file with the Contra Costa County Superior Court a request for dismissal with prejudice of their respective Petition/Complaint and Cross-Complaint Actions with prejudice no later than Five (5) business days of execution by all Parties of this Settlement Agreement.

1.2 Each Party shall bear its own costs and attorneys' fees incurred in connection with the Action and the negotiation and drafting of this Settlement Agreement.

2. Richfield Payment of Golf Course Fund

2.1 **Amount of Payment.** In accordance with Condition GDPSA.6, Richfield shall pay each to Moraga and Lafayette the sum of Two Million and Five Hundred Thousand Dollars ($2,500,000) for a total sum of Five Million Dollars ($5,000,000) which will fully satisfy the Golf Course Operation Municipal Fund payment requirement pursuant to the 1999 Settlement Agreement. If full payment is not made by April 30, 2008, the date Moraga and Richfield anticipate final vesting map approval for the Project, any remaining unpaid amount shall accrue interest as provided for in Section 2.2 of this Agreement. It is agreed by the Parties that the payment to Lafayette will fully reimburse Lafayette for expenses incurred pursuant to the 1999 Settlement Agreement for the Moraga Road Corridor Improvements and will fully satisfy all requirements of the Golf Course Operation Municipal Fund as defined in the 1999 Settlement Agreement.

2.2 **Timing of Payment.** Richfield shall be obligated to make an initial payment of Two Hundred and Fifty Thousand Dollars ($250,000) each to Moraga and Lafayette, for a total

of Five Hundred Thousand Dollars ($500,000), within Ten (10) days of approval of the Palos Colorados Vesting Tentative Map, which payments shall be non-refundable. The remaining Two Million and Two Hundred and Fifty Thousand Dollars ($2,250,000) payments of the Golf Course Operation Municipal Fund shall be made payable to Moraga and Lafayette, for a total amount of Four Million and Five Hundred Thousand Dollars ($4,500,000), within Thirty (30) days of the issuance of all local, state and federal agency approvals, including issuance of the grading permit for the Project but excluding design review and building permits. In the event payment of the remaining Four Million and Five Hundred Thousand Dollars ($4,500,000) of the Golf Course Fund is not made by April 30, 2008, Richfield shall pay simple interest on any unpaid portion at the rate of Five Percent (5%) annually which shall begin accruing on April 30, 2008, even if Richfield has not received final vesting map approval by that date.

2.3 **No Obligation for Payment.** Richfield shall have no obligation to pay any portion of the Golf Course Fund unless Lafayette has dismissed with prejudice the Action and any other outstanding lawsuits against this Project in accordance with Section 1 of this Agreement and Lafayette agrees not to file any other administrative appeals or other lawsuits or challenges relating to this Project, except as provided for in Sections 3.1 and 3.2 of this Settlement Agreement. Except for the $500,000 to be paid within 10 days of Vesting Tentative Map approval, Richfield shall have no obligation to pay any remaining portion of the Golf Course Fund until all local, state and federal permits including the grading permit, but excluding design review and building permit, have been obtained as set forth in Section 2.2 of this Agreement. The Parties further agree that in the event Richfield determines not to proceed with the Project prior to receiving Vesting Tentative Map Approval, Richfield shall have no obligation to make the Golf Course Fund payments. In addition, the Parties further agree that in the event Richfield fails to obtain the necessary approvals from any local, state, or federal agency following Vesting Tentative Map approval or determines not to proceed with the Project, Richfield shall have no obligation to pay the Golf Course Fund, except for those payments made upon approval of the Vesting Tentative Map for the project pursuant to paragraph 2.2 above.

2.4 **Force and Effect.** This Agreement is of no force and effect unless fully executed by all of the Parties on or before February 14, 2007.

3. Lafayette Obligations

3.1 **No Challenges.** Lafayette agrees to not challenge any approvals related to the Project. Notwithstanding the foregoing, Lafayette may file, and shall bear the cost of, an administrative appeal to the Moraga Town Council, of any approval by the Moraga Planning Commission, if in its determination substantial evidence (as defined by *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506) supports a determination that any such approval fails to substantially comply with the approved General Development Plan only as it relates to the Lafayette BART station viewshed condition set forth in Exhibit B to this Settlement Agreement which condition implements and clarifies Section 6 and Condition 1 of Exhibit 2 of the 1999 Settlement Agreement. Any such challenge, however, shall be limited solely to issues related to the BART station viewshed condition set forth in Exhibit B to this Settlement Agreement which condition implements and clarifies Section 6 and Condition 1 of Exhibit 2 of the 1999 Settlement Agreement. It is also understood by the Parties that Lafayette

shall not be precluded from participating in any public meeting or communicating with Moraga staff so as to present its position related solely to the Lafayette BART station viewshed condition set forth in Exhibit B to this Settlement Agreement, which condition implements and clarifies Section 6 and Condition 1 of Exhibit 2 of the 1999 Settlement Agreement. However, it is specifically understood by Lafayette that its participation in public meetings and/or communications with Moraga staff shall be strictly limited to those issues related solely to the Lafayette BART station viewshed condition set forth in Exhibit B to this Settlement Agreement, which condition implements and clarifies Section 6 and Condition 1 of Exhibit 2 of the 1999 Settlement Agreement.

3.2 No Lawsuits. Lafayette further agrees that it will not sue Moraga and/or Richfield regarding the Vesting Tentative Map or final map for the Project, so long as each map is in substantial compliance with (1) this Settlement Agreement; and (2) the General Development Plan related to the Lafayette BART station viewshed condition set forth in Exhibit B to this Settlement Agreement which condition implements and clarifies Section 6 and Condition 1 of Exhibit 2 of the 1999 Settlement Agreement. Lafayette further agrees that any such future legal challenge shall be limited to the project's substantial compliance with (1) this Settlement Agreement; and (2) the General Development Plan approved by the Moraga Planning Commission on February 5, 2007 solely as it relates to the processing requirements for the Lafayette BART station viewshed condition in Exhibit B to this Settlement Agreement which condition implements and clarifies Section 6 and Condition 1 of Exhibit 2 of the 1999 Settlement Agreement.

4. Moraga Obligations

In light of the Parties' understandings regarding Richfield's obligation to make the Golf Course Fund payments, Moraga hereby agrees to exercise its best efforts to process the Palos Colorados Vesting Tentative Map on or before June 18, 2007.

5. Mutual General Release

5.1 Lafayette Release. Except as provided in this Settlement Agreement, Lafayette, on behalf of its officials, officers, employees, agents, attorneys, representatives, assigns and successors-in-interest, hereby releases and forever discharges Richfield, Bigbury and Moraga and their current and former officials, officers, employees, agents, attorneys, representatives, assigns, and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees, of every kind and character, known or unknown, existing or contingent, latent or patent, including, but not limited to, any matter alleged in, arising from or related to the Project or the Action.

5.2 Richfield and Bigbury Release. Except as provided in this Settlement Agreement, Richfield and Bigbury, on behalf of their respective officials, officers, employees, agents, attorneys, representatives, assigns and successors-in-interest, hereby releases and forever discharges Lafayette and its current and former officials, officers, employees, agents, attorneys, representatives, assigns, and successors-in-interest from any and all claims, causes of action,

actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees, of every kind and character, known or unknown, existing or contingent, latent or patent, including, but not limited to, any matter alleged in, arising from or related to the Project or the Action.

5.3 **Moraga Release**. Except as provided in this Settlement Agreement, Moraga, on behalf of its officials, officers, employees, agents, attorneys, representatives, assigns and successors-in-interest, hereby releases and forever discharges Lafayette and its current and former officials, officers, employees, agents, attorneys, representatives, assigns, and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees, of every kind and character, known or unknown, existing or contingent, latent or patent, including, but not limited to, any matter alleged in, arising from or related to the Project or the Action.

6. Civil Code Release

The Parties acknowledge that they are familiar with the provisions of California Civil Code Section 1542, which provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge that they may have sustained damages, losses, costs or expenses that are presently unknown and unsuspected. Nevertheless, the Parties acknowledge that this Agreement has been negotiated and agreed upon in light of this situation, and hereby expressly waive any and all rights which they have under California Civil Code Section 1542 or any other statute or common law principle of similar effect.

7. Attorneys' Fees

If enforcement of this Settlement Agreement is required, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. The Parties may agree to engage in mediation of any dispute in advance of litigation, but no pre-litigation mediation shall be required and this provision shall not prevent any party from seeking injunctive relief.

8. No Admission

Nothing in this Settlement Agreement shall be deemed as an admission or denial as to the validity of any claims or defenses.

9. No Modification.

No addition to or modification of any term or provision of the Agreement shall be effective unless set forth in writing and signed by the Parties.

10. Entire Agreement

The Parties agree that this Settlement Agreement sets forth the final entire agreement between them and relating to the subject matter and that this document merges and supersedes all prior discussions, agreements, understandings, representations, and all other communications between them relating to the subject matter of this Settlement Agreement.

11. Warranty of Authority

Each Party represents and warrants that it has the right, power and authority to execute this Settlement Agreement. Each Party further represents and warrants that it has the exclusive right to prosecute and compromise the claims released by this Settlement Agreement and that it has neither made nor suffered to be made any sale, assignment, transfer, conveyance, pledge, hypothecation, or encumbrance of any kind whatsoever of any right, claim, demand, obligation, cost, expense, sanction, grievance, action, cause of action, controversy, debt, damage, arbitration, liability, duty, penalty, attorney fee, charge, suit, punitive damage, injury, loss, agreement, contract, promise, or lien released, canceled, rescinded or discharged hereby, and that it is the sole and absolute legal and equitable owner thereof, free and clear of any interest of any other person or entity. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this Settlement Agreement for it, to enter into this Settlement Agreement.

12. Written Waiver

A waiver of any Party's right to enforce any provision of this Settlement Agreement shall not be effective unless such a waiver is made expressly in writing. An express waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Settlement Agreement.

13. Legal Representation

The Parties affirm that they have been represented by counsel of their own choosing regarding the preparation and negotiation of this Settlement Agreement and the matters and claims set forth herein, and that each of them has read this Settlement Agreement and is fully aware of its contents and its legal effect. Neither Party is relying on any statement of the other Party outside the terms set forth in this Settlement Agreement as an inducement to enter into this Settlement Agreement.

14. Joint Preparation

The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Settlement Agreement, or any part thereof, shall be applicable or invoked.

15. Equal Dignity

This Settlement Agreement may not be altered, amended, modified or otherwise changed except in writing duly executed by an authorized representative of each of the Parties.

16. Binding on Assignees

This Settlement Agreement shall be binding on and inure to the benefit of the heirs, successors and assigns of the Parties to the Settlement Agreement.

17. California Law

This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of California.

18. Counterparts

This Settlement Agreement may be executed in counterparts, each of which will be deemed an original. This Settlement Agreement shall be binding upon the receipt of facsimile signatures.

19. Captions

Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this Settlement Agreement.

20. Survival of Obligations

None of the releases contained in this Settlement Agreement is intended to release any Party from any obligation or understanding to be performed pursuant to this Settlement Agreement, all of which obligations and understandings shall survive the execution hereof.

////

////

////

IN WITNESS WHEREOF this Settlement Agreement is executed and agreed to by the following, as of the last date set forth below.

It is so agreed.

RICHFIELD INVESTMENT CORPORATION, a TEXAS CORPORATION

By: _____
Ricardo Sabella, President

Date: _____

CITY OF LAFAYETTE

By: _____
Name: _____
Mayor of City Council
Date: _____

BIGBURY COMPANY

By: _____
Ricardo Sabella, Attorney-In-Fact

Date: _____

APPROVED AS TO FORM:

_____

City Attorney
City of Lafayette
Date: _____

TOWN OF MORAGA

By: _____
Name: _____
Mayor of Town Council
Date: 2/14/07

APPROVED AS TO FORM:

_____

Town Attorney
Town of Moraga
Date: 2/14/07

IN WITNESS WHEREOF this Settlement Agreement is executed and agreed to by the following, as of the last date set forth below.

It is so agreed.

RICHFIELD INVESTMENT CORPORATION, a TEXAS CORPORATION

By: _____
Ricardo Sabella, President

Date: FEB. 14, 2007

CITY OF LAFAYETTE

By: _____
Name: _____
Mayor of City Council
Date: _____

BIGBURY COMPANY

By: _____
Ricardo Sabella, Attorney-In-Fact

Date: FEB. 14, 2007

APPROVED AS TO FORM:

_____

City Attorney
City of Lafayette
Date: _____

TOWN OF MORAGA

By: _____
Name: _____
Mayor of Town Council
Date: _____

APPROVED AS TO FORM:

_____

Town Attorney
Town of Moraga
Date: _____

IN WITNESS WHEREOF this Settlement Agreement is executed and agreed to by the following, as of the last date set forth below.

It is so agreed.

RICHFIELD INVESTMENT CORPORATION, a TEXAS CORPORATION

By: _____
Ricardo Sabella, President

Date: _____

CITY OF LAFAYETTE

By: Carol Federighi
Name: Carol Federighi
Mayor of City Council
Date: 2-14-07

BIGBURY COMPANY

By: _____
Ricardo Sabella, Attorney-In-Fact

Date: _____

APPROVED AS TO FORM:

_____

City Attorney
City of Lafayette
Date: 2/14/07

TOWN OF MORAGA

By: _____
Name: _____
Mayor of Town Council
Date: _____

APPROVED AS TO FORM:

_____

Town Attorney
Town of Moraga
Date: _____

Exhibit A

Condition GDPSA.6

[see next page]

GDPSA.6 The Golf Course Municipal Fund

Settlement Agreement General Development Plan Condition No. 6

The property owner shall make a payment to the Town of Moraga equivalent to the amount of the Golf Course Operation Municipal Fund ("Fund") as set forth in the Settlement Agreement. Based upon analyses conducted by Deloitte FAS and Jim McHale, the Town of Moraga estimates that the net present value of the Fund is equivalent to $5 million to be shared equally among Moraga and Lafayette with $2.5 million payable to the Town of Moraga and $2.5 million payable to the City of Lafayette. It is understood that the City of Lafayette has filed a lawsuit challenging the project and Richfield has filed a cross-complaint against the City of Lafayette for such challenge. Payment of any portion of the Fund shall not be made by Richfield unless the City of Lafayette has dismissed with prejudice all outstanding lawsuits against this project and agrees not to pursue any other administrative appeals or legal lawsuits relating to this project.

This agreement shall be memorialized in a written agreement to be executed by the City of Lafayette and Richfield on or before February 14, 2007. Richfield shall be obligated to make an initial payment of $250,000 to both the Town of Moraga and the City of Lafayette (total of $500,000) within 10 days of approval of the Vesting Tentative Map for the project, which money shall be non-refundable; the remaining $2,250,000 of the Fund shall be made payable to the Town of Moraga and the City of Lafayette ($4.5 million total) within 30 days of the issuance of all local, state and federal agency approvals, including grading permit but excluding design review and building permits. In the event payment of the remaining $4.5 million is not made by April 30, 2008, Richfield shall pay interest on any unpaid portion of the Fund at the rate of 5% annually which will begin accruing on April 30, 2008.

Exhibit B

Condition GDP.2

GDP.2. The maximum building height for General Development Plan Lots 13, 14, 15 and 16 shall be 19 feet provided that the elevation of the lots is between 706 and 712 feet. If the elevation of the lots is lowered, then the building height can increase equal to the lowering of the lots. The maximum building height for General Development Plan lot 83 shall be 19 feet provided that the elevation of the lot is 780 feet. If the elevation of the lot is lowered, then the building height can increase equal to the lowering of the lot. The maximum building height for General Development Plan lot 106 shall be 19 feet provided that the elevation of the lot is 748 feet. If the elevation of the lot is lowered, then the building height can increase equal to the lowering of the lot. At the design review stage, story poles shall be installed by the applicant on lot 106 to evaluate visual impact from the Lafayette BART station. If the proposed residence is visible from the Lafayette BART station, modifications to the design shall be required to fully mitigate the visual impact or screening landscaping shall be installed to eliminate the impact.

Condition 3 for Conditional Use Permits for Lots 22, 23, F and G which establish the Site Development Standards for the construction of single-family residences on Lots 22, 23, F and G in the Palos Colorados subdivision:

3. The following Site Development Standards shall be adhered to:

****	****
****	****
Maximum Building Height	19 feet (one story) unless it can be demonstrated to the satisfaction of the Town of Moraga that a higher building height (up to a maximum of 25 feet) is not visible from the Lafayette BART station

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CITY COUNCIL
Mike Anderson, Mayor
Don Tatzin, Vice Mayor
Brandt Andersson, Council Member
Carl Anduri, Council Member
Carol Federighi, Council Member

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MORAGA PLANNING DEPT.

September 10, 2008

Moraga Planning Commission
Attn: Lori Salamack
Town of Moraga Planning Department
329 Rheem Boulevard, Suite 2
Moraga, CA 94556

Re: Palos Colorados Visual Simulations

Dear Chair Hays and members of the Moraga Planning Commission:

On behalf of the City of Lafayette, I would like to thank Debi Chung of Richfield and her team for providing us with the data to conduct our evaluation of the proposed homes in Palos Colorados.

On Monday, September 8th, the Lafayette City Council evaluated the photo simulations prepared by Richfield Investment Corporation as part of its Precise Development Plan (PDP) submittal, as well as a report from Lafayette's visual consultant Robert Staehle (exhibits attached). This evaluation was conducted to determine whether the PDP met the conditions of the 2007 Settlement Agreement and the General Development Plan (GDP). The Council directed staff to forward its comments to the Moraga Planning Commission for its consideration.

2007 Settlement Agreement

In 2007, when the General Development Plan for Palos Colorados was under review, Lafayette entered into a Settlement Agreement with the Town of Moraga and Richfield Investment. Exhibit C of that agreement listed the following conditions relating to the visual impacts of the project:

> GDP.2. The maximum building height for General Development Plan Lots 13, 14, 15 and 16 shall be 19 feet provided that the elevation of the lots is between 706 and 712 feet. If the elevation of the lots is lowered, then the building height can increase equal to the lowering of the lots. The maximum building height for General Development plan Lot 83 shall be 19 feet provided that the elevation of the lot is 780 feet. If the elevation of the lot is lowered, then the building height can increase equal to the lowering of the lot. The maximum building height for General Development Plan Lot 106 shall be 19 feet provided that the elevation of the lot is 748 feet. If the elevation of the lot is lowered, then the building height can increase equal to the lowering of the lot. At the design review stage, story poles shall be installed by the applicant on Lot 106 to evaluate visual impact from the Lafayette BART station. If the proposed residence is visible from the Lafayette BART station, modifications to

3675 MT. DIABLO BLVD., SUITE 210, LAFAYETTE, CA 94549
TELEPHONE: (925) 284-1968 FAX: (925) 284-3169
http//:www.ci.lafayette.ca.us

the design shall be required to fully mitigate the visual impact or screening landscaping shall be installed to eliminate the impact.

Condition 3 for Conditional Use Permits for Lots 22, 23, F and G which establish the Site Development Standards for the construction of single-family residences on Lots 22, 23, F and G in the Palos Colorados subdivision: The following Site Development Standards shall be adhered to: Maximum Building Height: 19 feet (one story) unless it can be demonstrated to the satisfaction of the Town of Moraga that a higher building height (up to a maximum of 25 feet) is not visible from the Lafayette BART station

Lafayette's Comments

Lafayette's visual consultant has evaluated the photo simulations for these lots and we have determined that:

1. Lots 13[1], 14, 15, 16 and 83 comply with the Settlement Agreement.

2. The proposed house on Lot 106 will be fully visible from the BART station as it is not obstructed by either foreground or background vegetation[2]. It is recommended that the lot be relocated to a less visible location. If that is not possible, storey poles shall be installed at design review stage to evaluate and fully mitigate the visual impacts from the Lafayette BART station. We request that this become a condition of approval of the Precise Development Plan.

3. Lots 22, 23 and F comply with the Settlement Agreement but not with the GDP (see below).

4. Lot G has been relocated in the PDP.

General Development Plan

The General Development Plan (GDP) contains the following conditions of approval relating to visibility from the BART station:

C.VTM.37 The Precise Development Plan Submittals shall demonstrate that the rooflines of homes on Lots 22 through 27, E, F, G and 29 do not protrude above the elevations of the existing skyline behind them as viewed from the platform of the Lafayette BART Station. The detailed Precise Development Plan and guidelines provide the means by which to eliminate potential visual impacts of the proposed

[1] Lot numbers are from the GDP

[2] Foreground vegetation: the green line in the attached exhibits indicates the foreground elements that obstruct the view of some of the homes. Background vegetation: the magenta line indicates vegetation much closer to the homes.

residential structures as viewed from the platform of the Lafayette BART Station. In order to meet this requirement, each lot shall have a home elevation limit of one story and each home shall not exceed 19 feet or 25 feet in height from the approved subdivision lot grade to the highest point of the roofline, excepting chimneys in accordance with the Conditional Use Permit.

C.GDP.2-R-VTM. Prior to approval of the Precise Development Plan (PDP) and subsequent design review applications, the Applicant shall demonstrate compliance with the limitations on building height set forth in this condition. The maximum building height for General Development Plan Lots 13, 14, 15 and 16 shall be 19 feet provided that the elevation of the lots is between 706 and 712 feet. If the elevation of the lots is lowered, then the building height can increase equal to the lowering of the lots. The maximum building height for General Development Plan Lot 83 shall be 19 feet provided that the elevation of the lot is 780 feet. If the elevation of the lot is lowered, then the building height can increase equal to the lowering of the lot. The maximum building height for General Development Plan Lot 106 shall be 19 feet provided that the elevation of the lot is 748 feet. If the elevation of the lot is lowered, then the building height can increase equal to the lowering of the lot. At the design review stage, story poles shall be installed by the Applicant on Lot 106 to evaluate visual impact from the Lafayette BART station. If the proposed residence is visible from the Lafayette BART station, modifications to the design shall be required to fully mitigate the visual impact or screening landscaping shall be installed to eliminate the impact. The maximum building height for Lots 22, 23, F and G shall be 19 feet (one story) unless it can be demonstrated that a higher building (up to a maximum of 25 feet) is not visible from the Lafayette BART Station Platform.

Lafayette's Comments

1. Condition C.VTM.37 states that PDP submittals shall demonstrate that the *rooflines of homes on Lots 22 through 27, E, F, G and 29 do not protrude above the elevations of the existing skyline behind them* as viewed from the platform of the Lafayette BART Station (italics added for emphasis).With the exception of Lot G which has been relocated, the proposed houses on all other lots *break the horizon.* This is inconsistent with Condition C.VTM.37.

   The applicant's consultants have stated that this is inconsequential because the background and foreground vegetation will screen these houses from view. While this may be the case, we believe that as proposed, the Precise Development Plan does not meet the condition of approval of the General Development Plan which specifically requires that the *rooflines not protrude above the horizon.* Vegetation either foreground, background or planted at the time of construction is not a means that will insure 100% screening of the units. Vegetation by its nature can have transparency and can allow viewing through it, thus potentially making the units visible. Additionally vegetation can die, become

diseased or simply be removed, thus not provide permanent visual protection. We recommend that the lots be graded down to a lower elevation to prevent the rooflines from breaking the horizon.

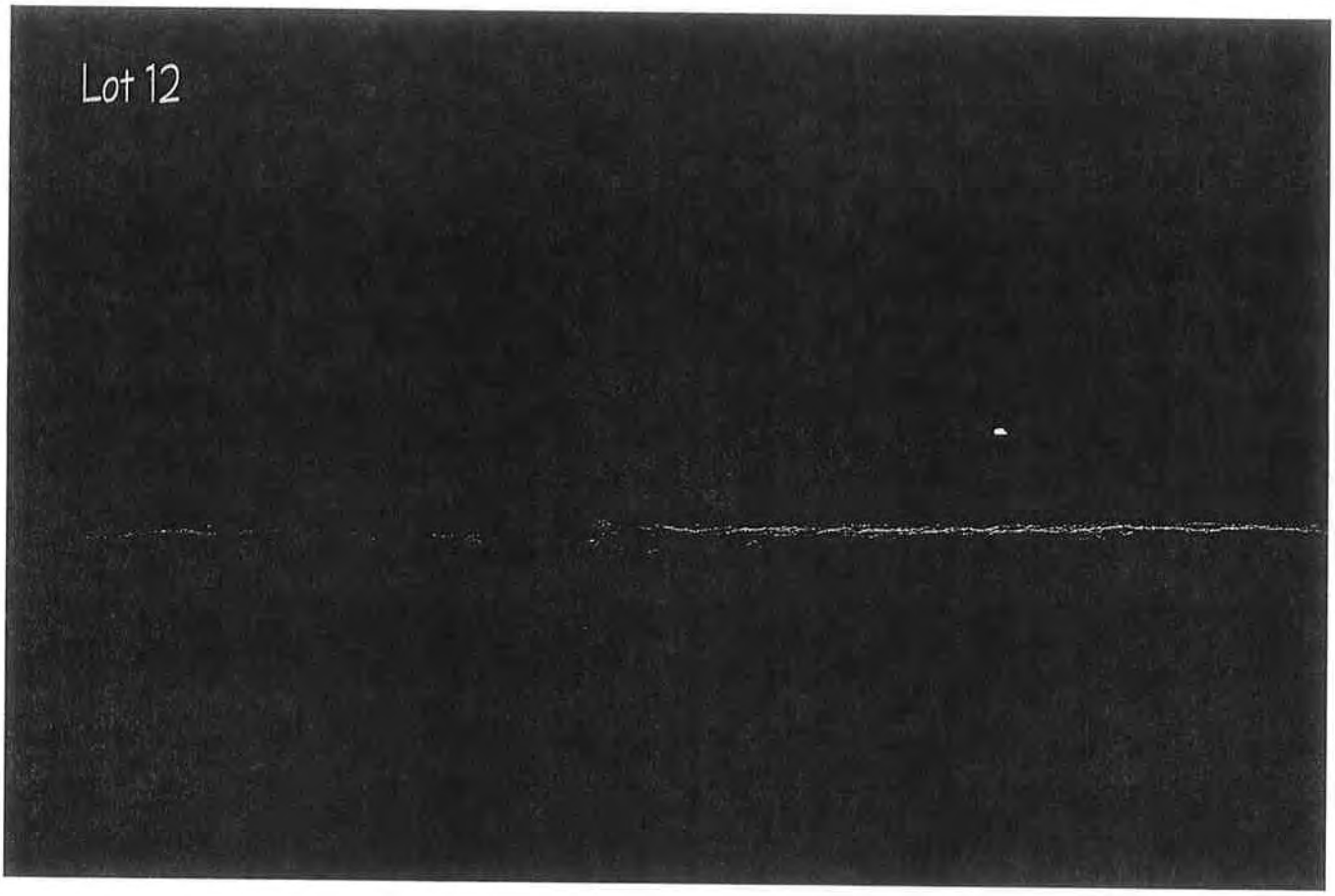
Finally, it is our understanding that in order to develop the photo simulations for the PDP application, Richfield's engineers installed story poles on these lots earlier this year. It is regrettable that Lafayette was not informed when the story poles were installed. It would have been beneficial to both Moraga and Lafayette to have had the opportunity to use the story poles to assess the visual impacts of the proposed homes from the Lafayette BART station.

Once again, on behalf of the City of Lafayette and the Lafayette City Council, I thank you for giving us the opportunity to review this application and appreciate your attention to our comments.

Sincerely,

Niroop K. Srivatsa
Planning and Building Services Manager

Attachment: Visual assessment by Robert Staehle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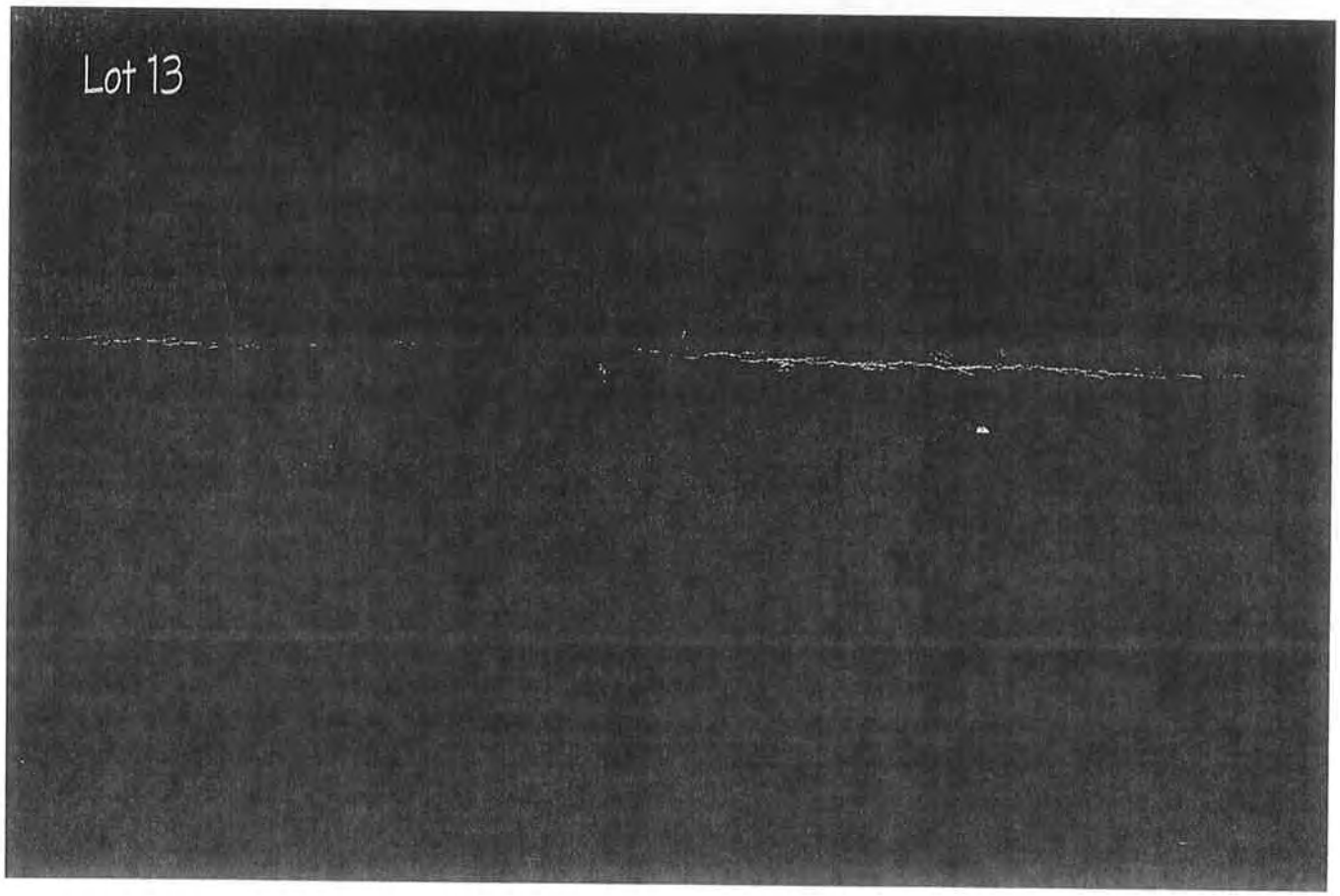
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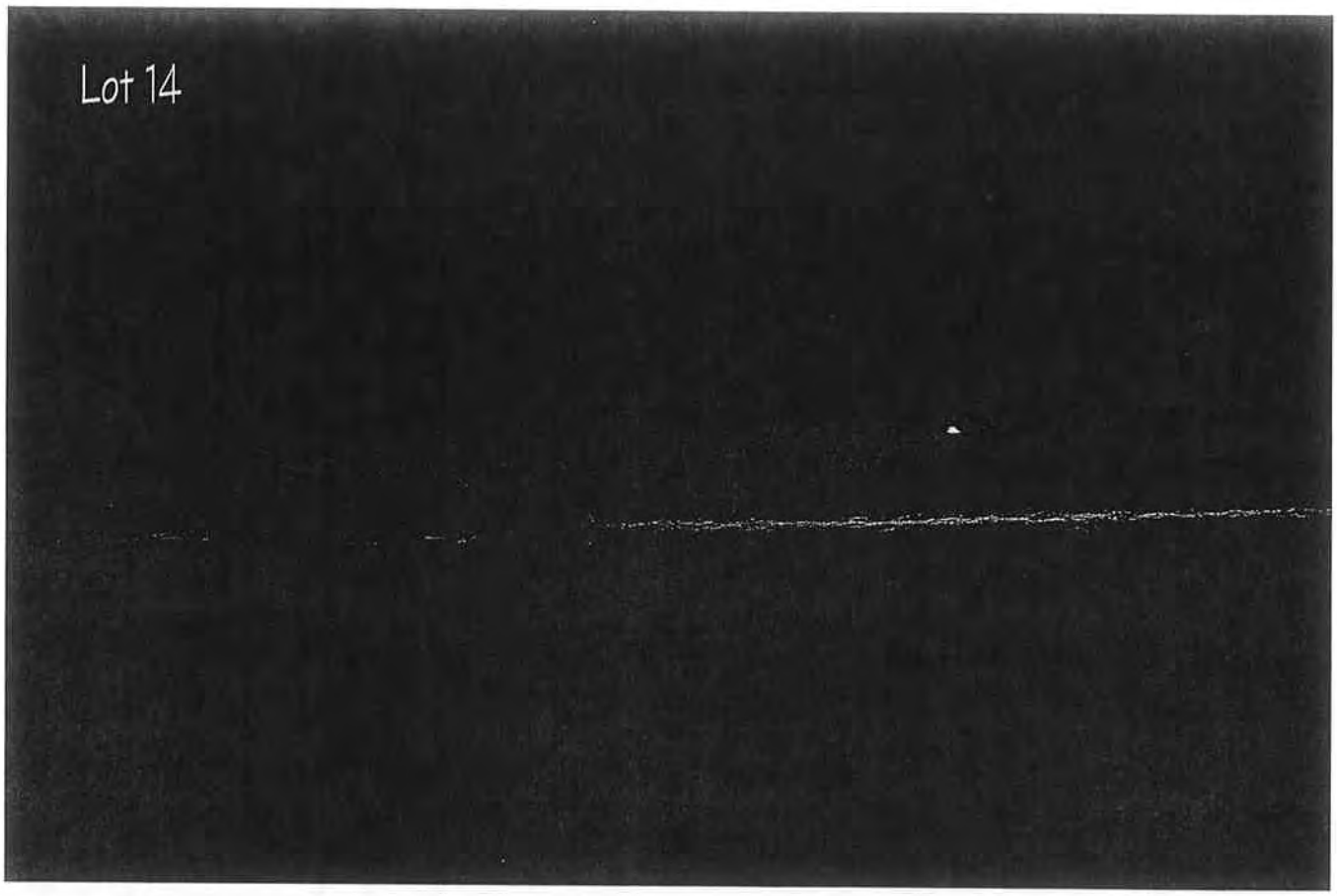
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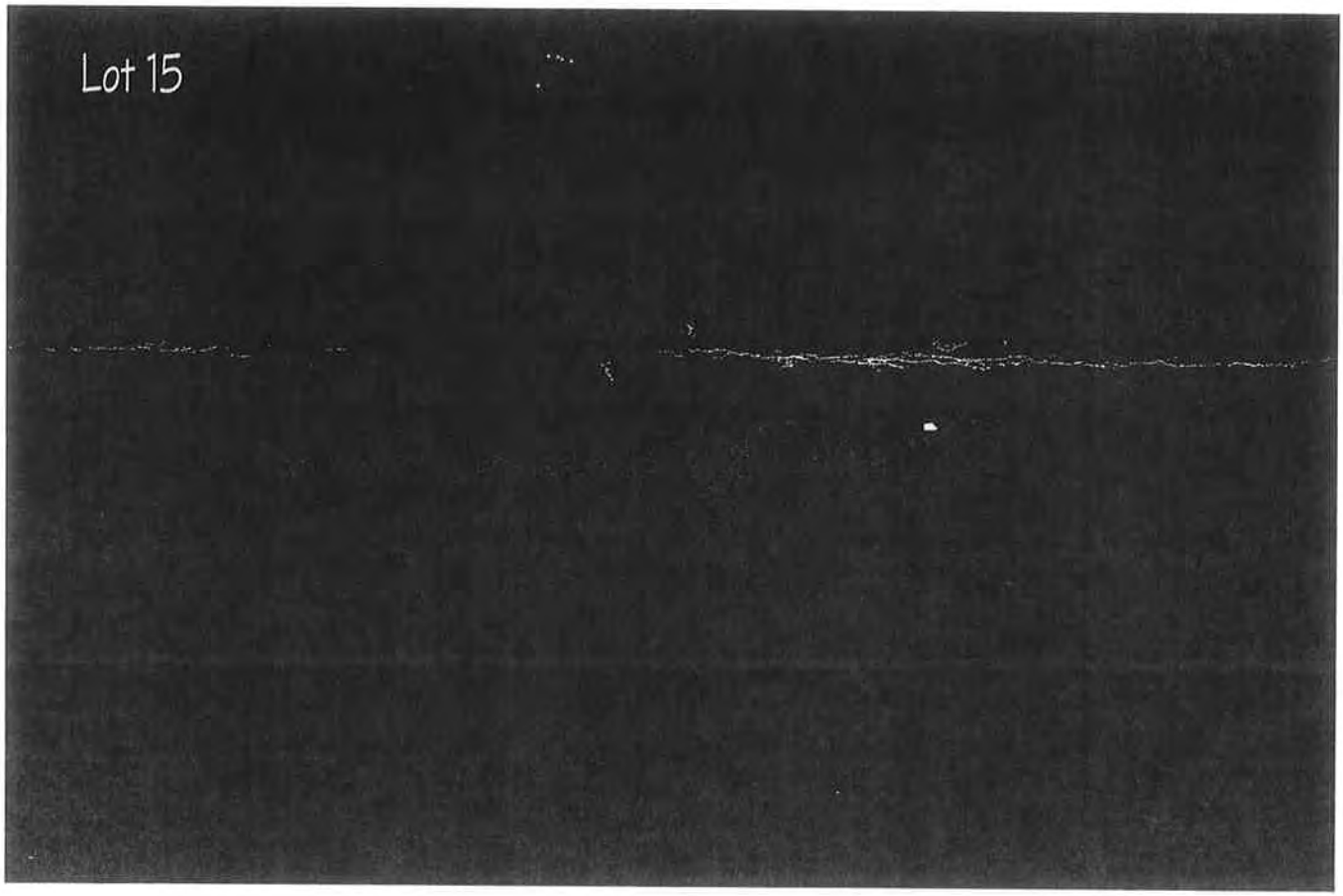
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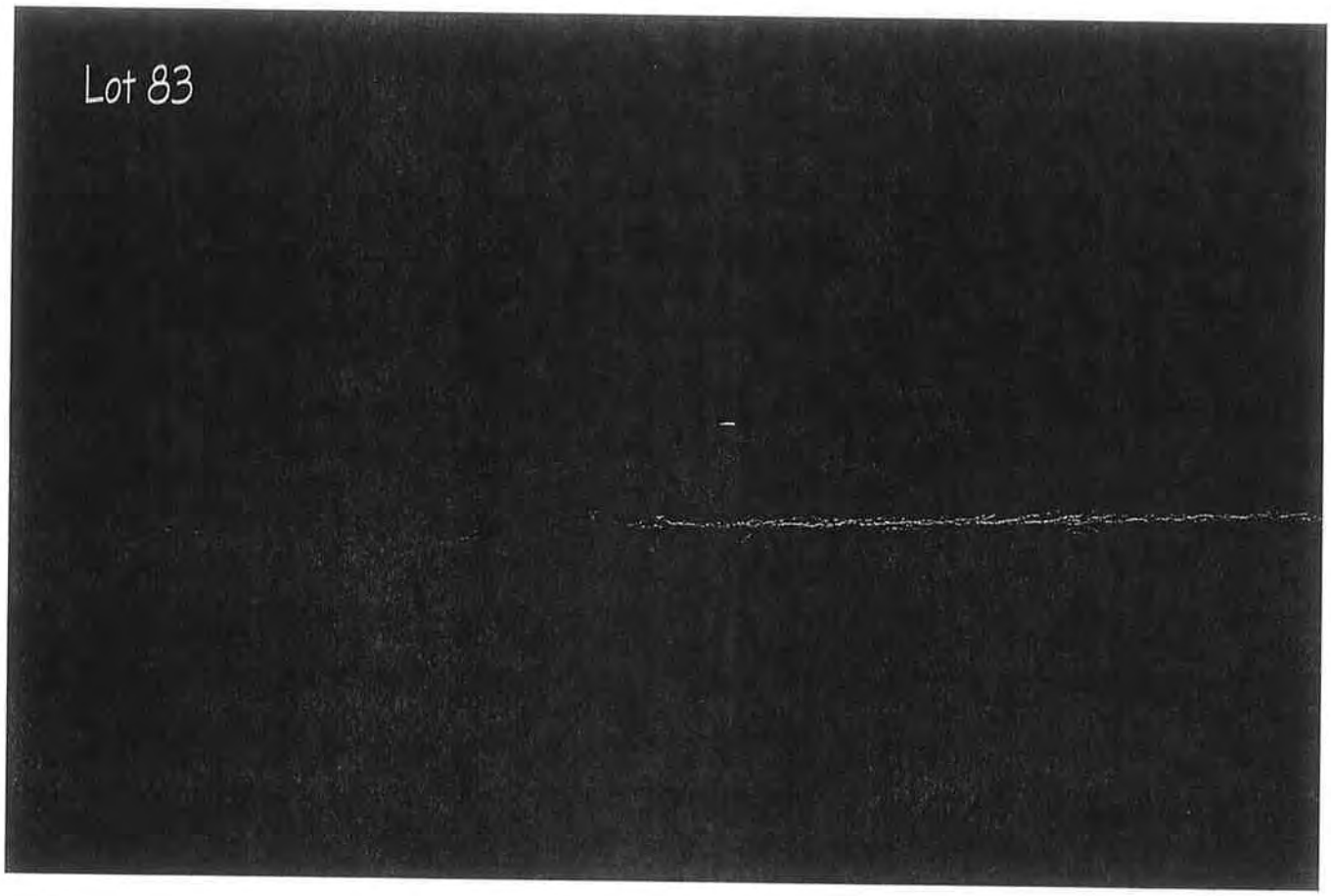
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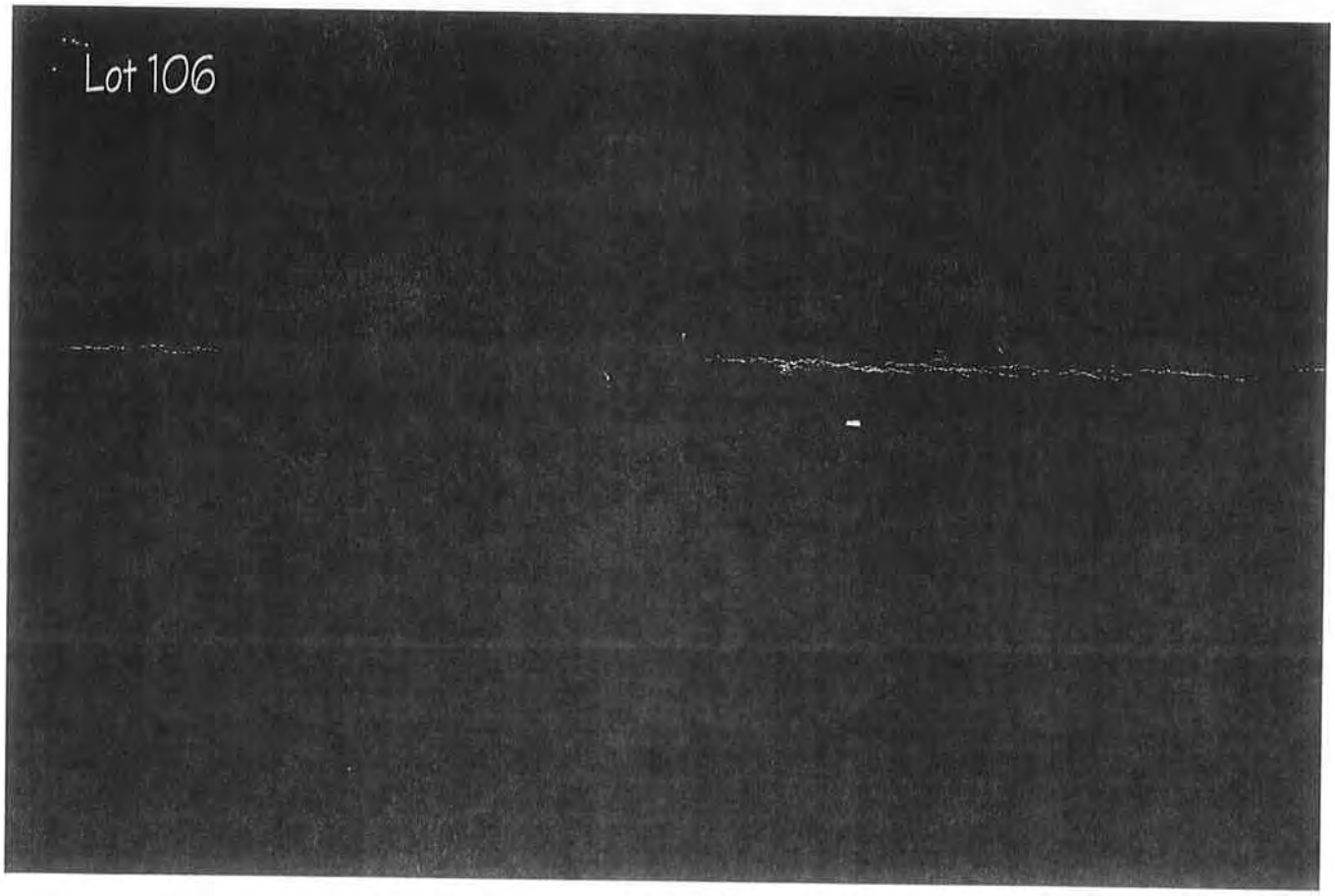
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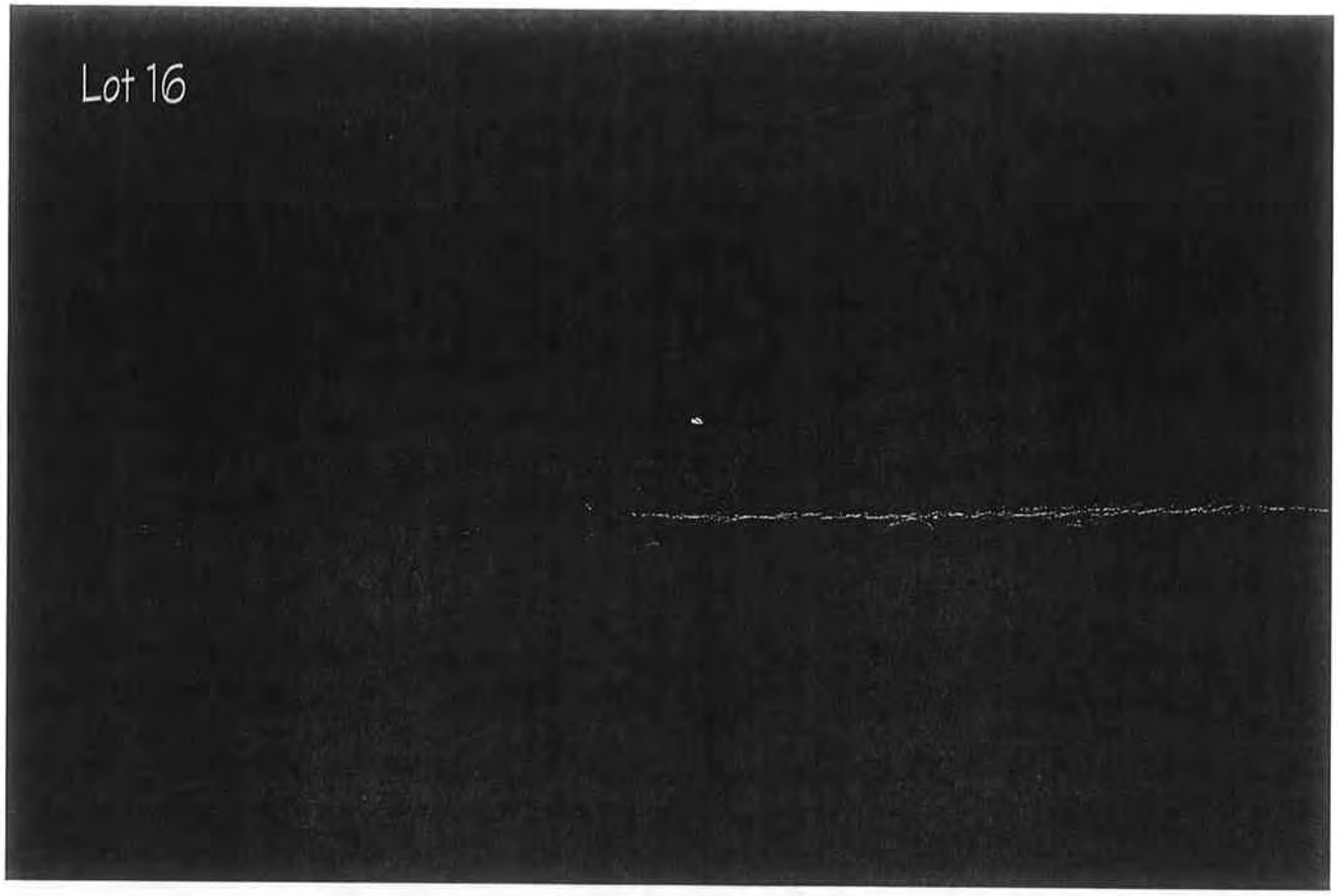
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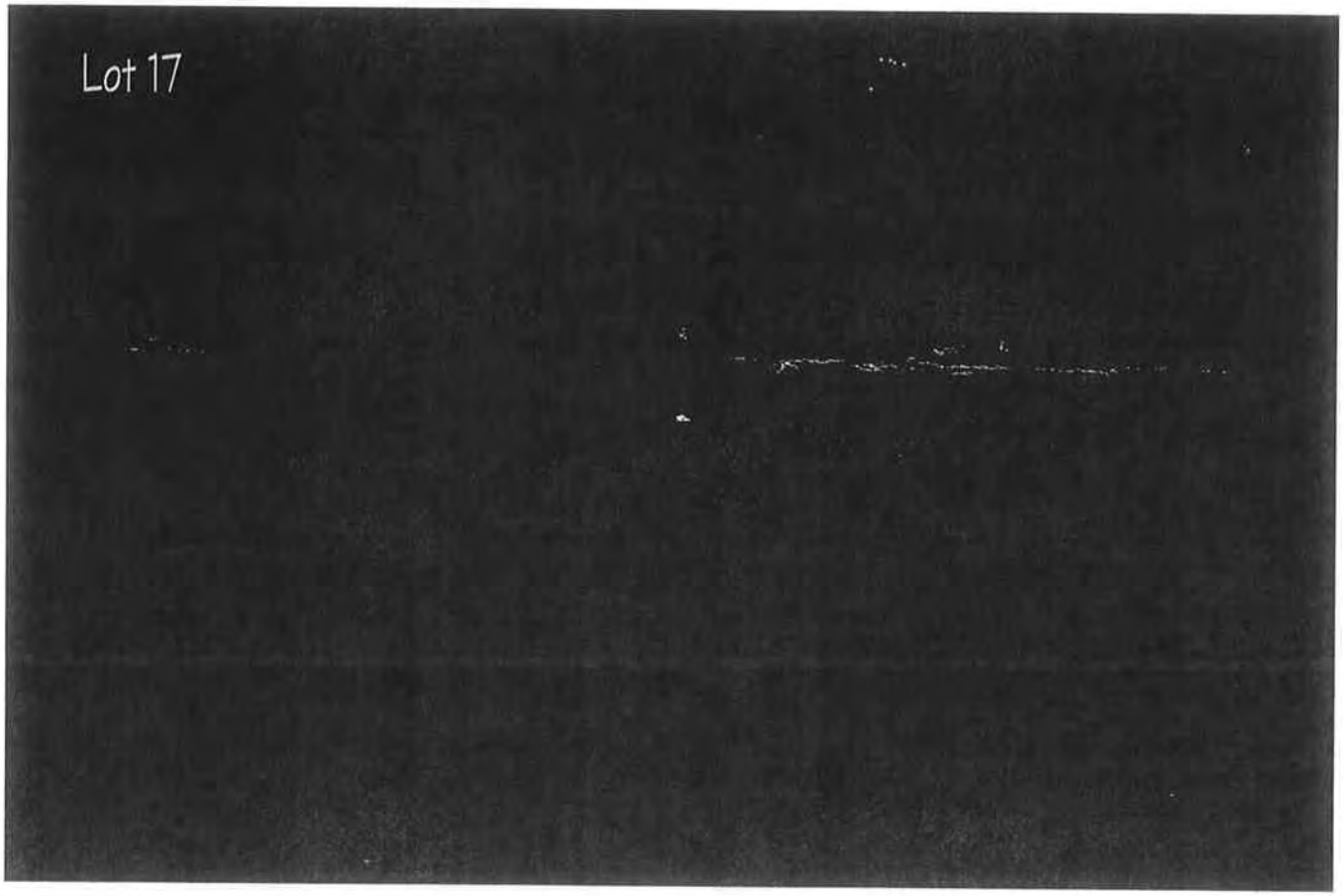
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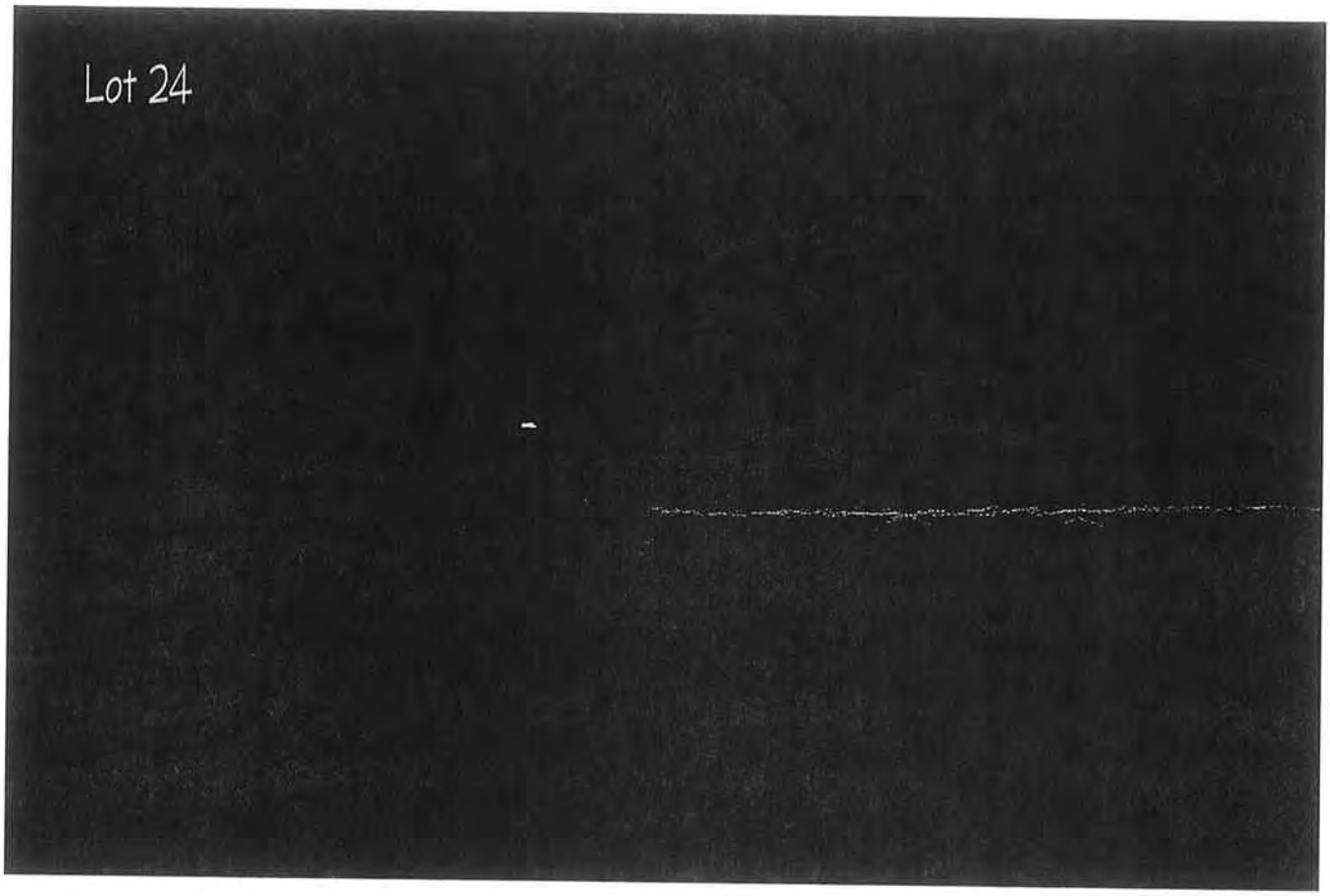
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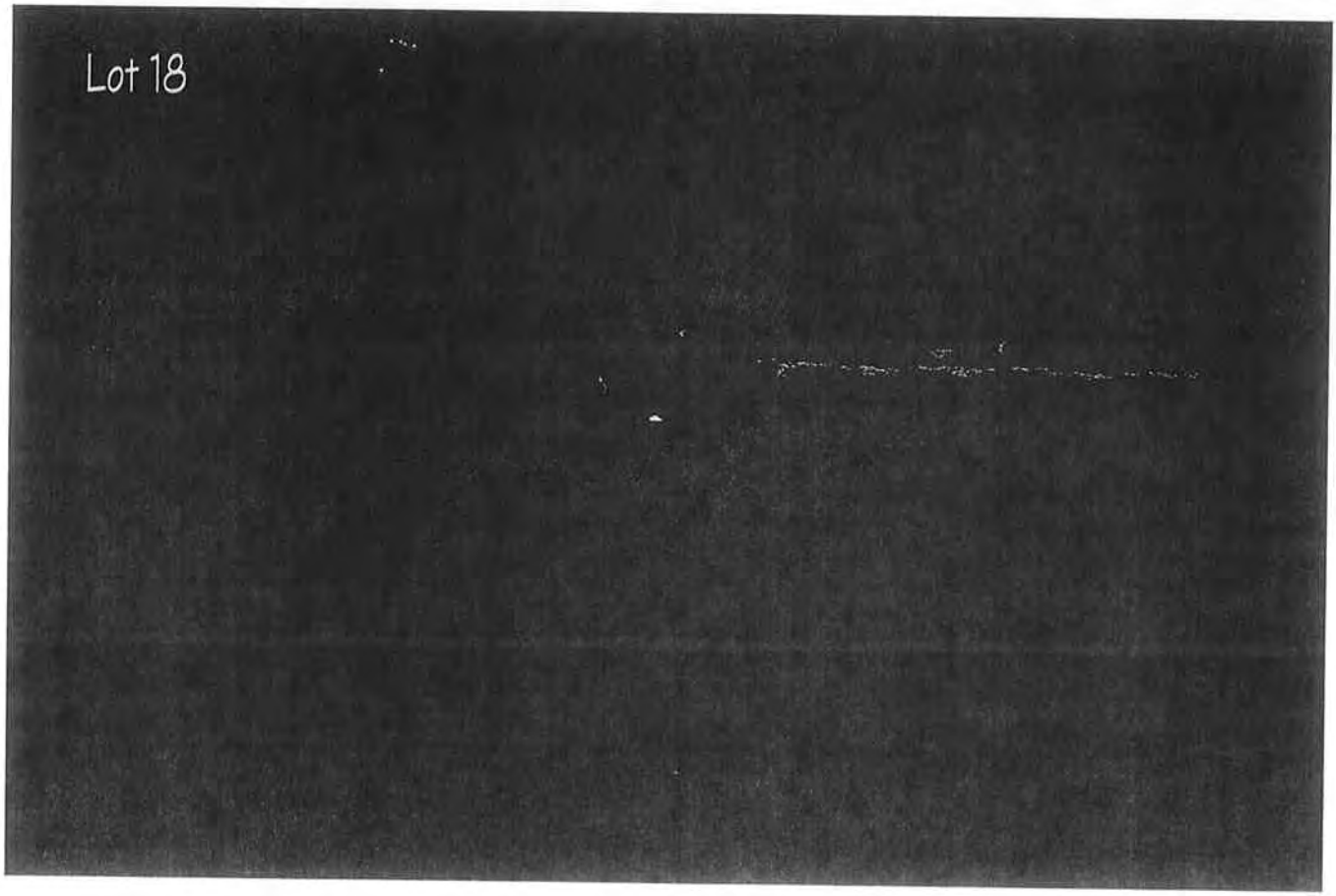
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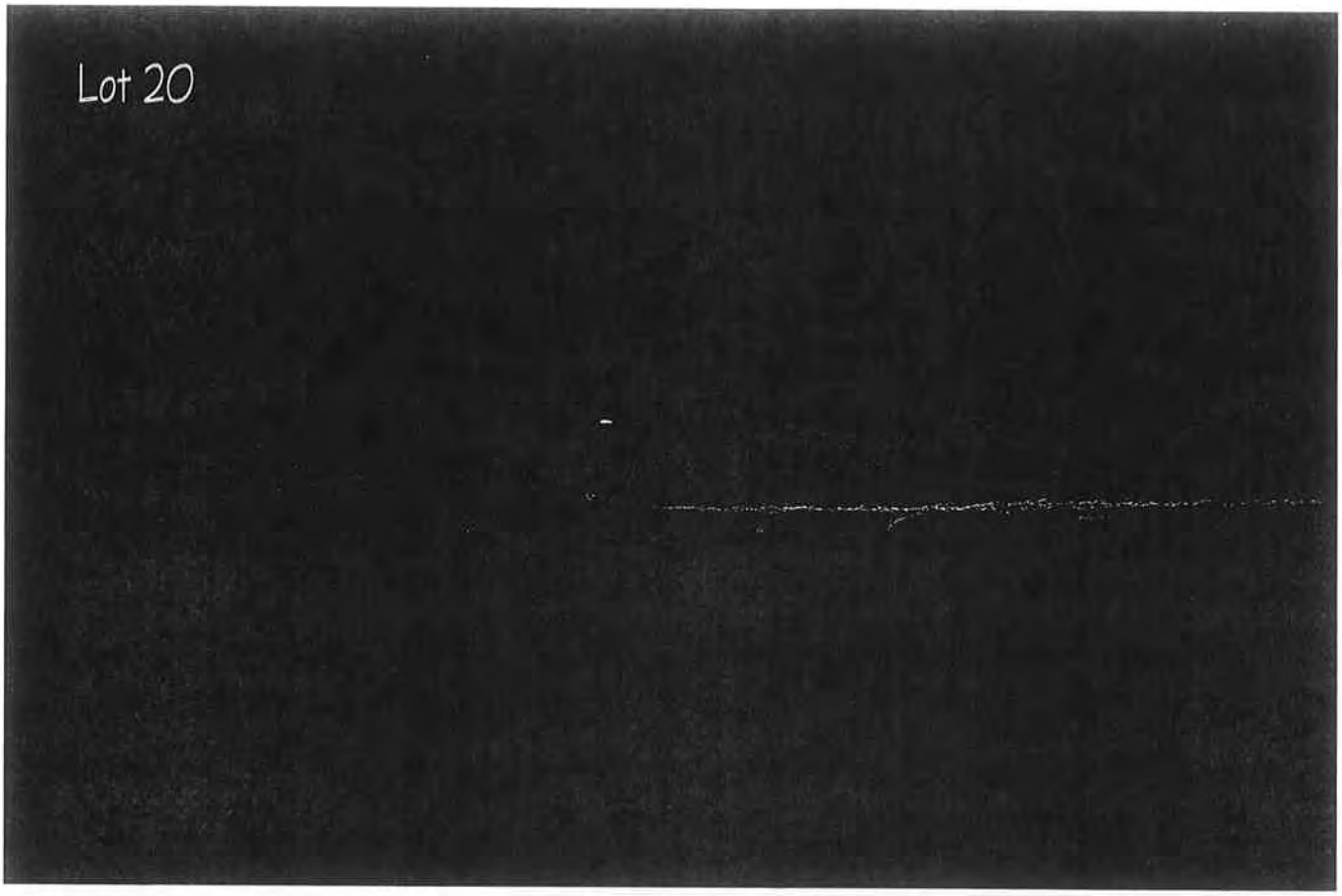

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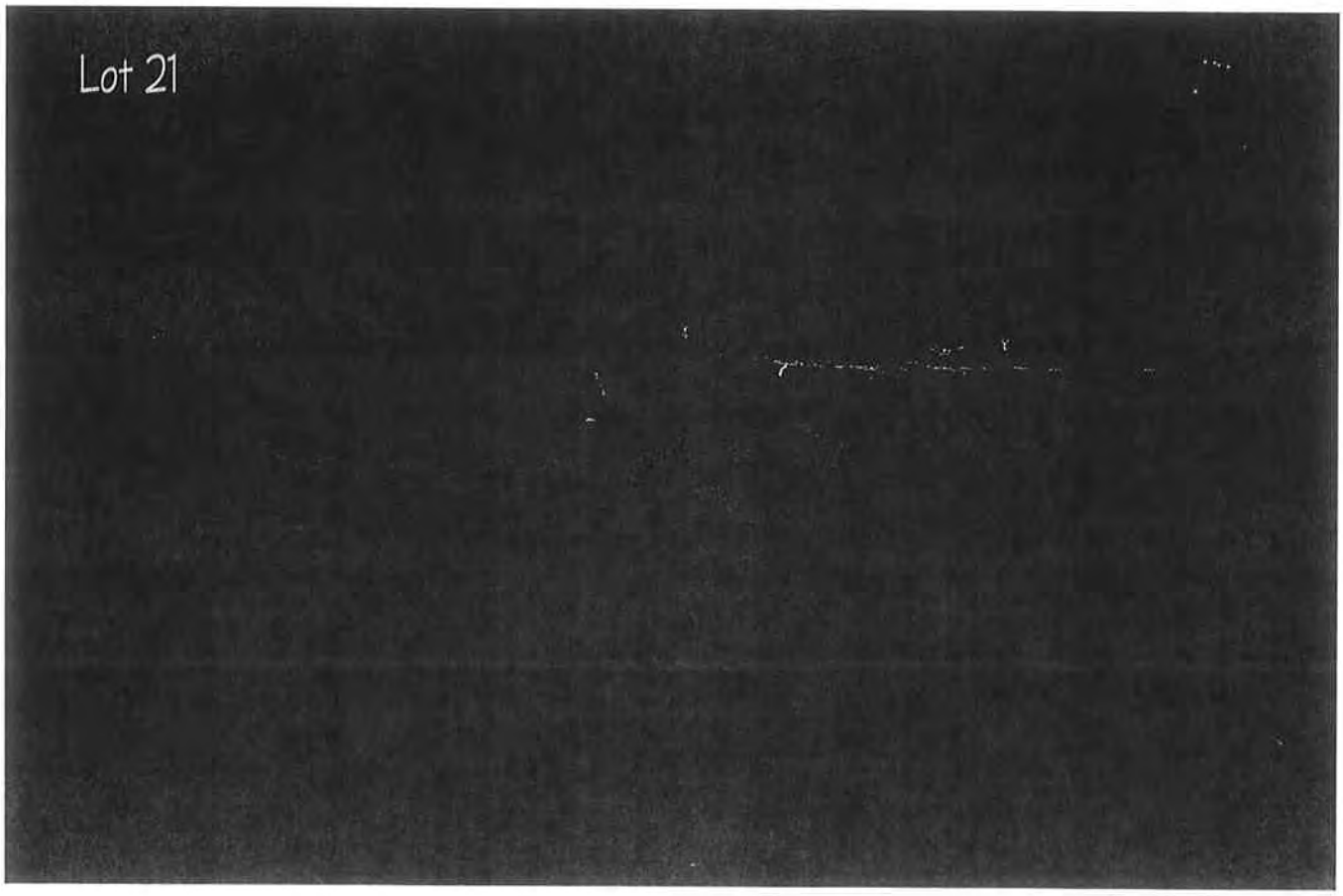

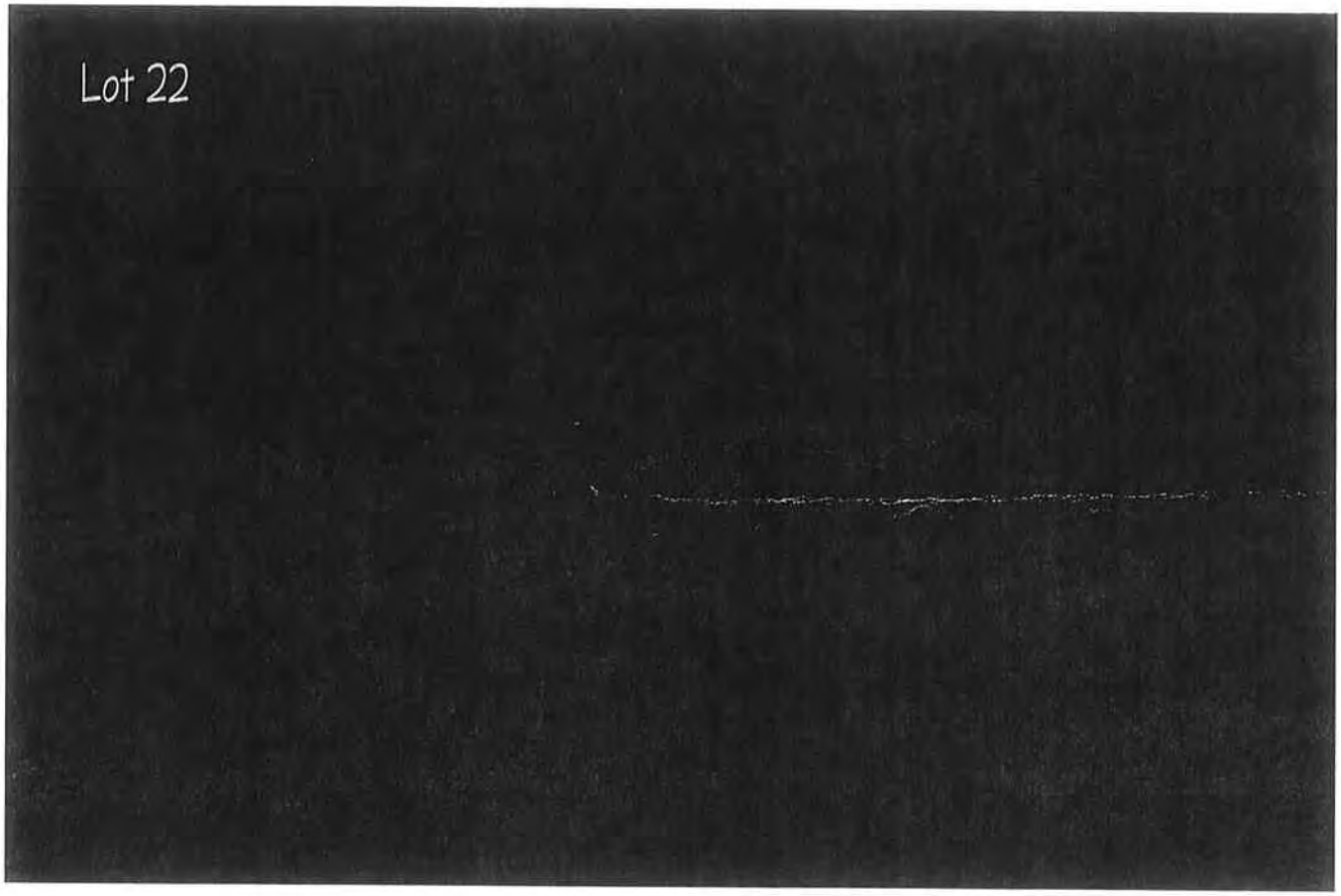
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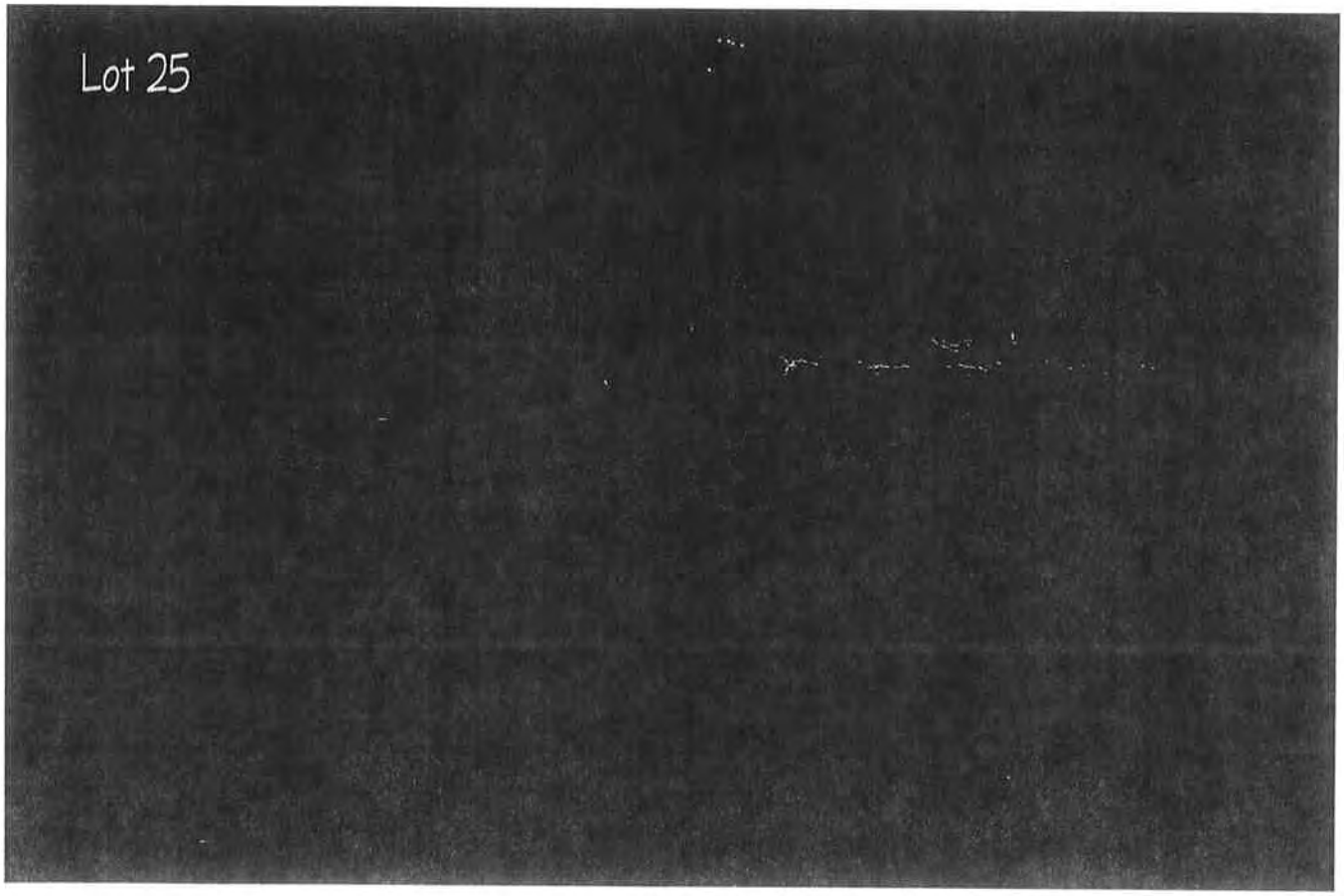
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