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5 Attorneys for Defendants HIDDEN LAKES ESTATES
HOMEOWNERS ASSOCIATION, MICHAEL BONNIE,
6 DAVE STINSON, KAREN SUTHERLAND,
SUZIE MASON, KELLY PETERSON,
7 CATHI BARRETT, RIVERSIDE MANAGEMENT
& FINANCIAL SERVICES, INC.
8
9

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER
11

12 TONY and DONNA WOOD and TED and
CHERI ALLEGRA

Case Number: SCV 16896

13 Plaintiffs,

**DECLARATION OF SCOTT
STEPHENS, P.E. IN SUPPORT OF
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**
[C.C.P. §2015.5]

14 vs.

15 HIDDEN LAKES ESTATES
HOMEOWNERS ASSOCIATION,
16 BRUCE YEOMAN, MICHAEL BONNIE,
17 DAVE STINSON, KAREN
SUTHERLAND, SUZIE MASON, KELLY
18 PETERSON, CATHI BARRETT,
RIVERSIDE MANAGEMENT &
19 FINANCIAL SERVICES, INC., and DOES
1 through 20, inclusive,

Date: July 20, 2004
Time: 8:30 a.m.
Dept: 2

20 Defendants.
21 _____ /

22 **HLE EXHIBIT 19**

23 I, SCOTT STEPHENS, hereby declare:

24 1. I am a geotechnical engineer, and a true and correct copy of my curriculum vitae
25 describing my professional training and experience is attached as Exhibit W. I am a senior
26 engineer and principal at Miller Pacific Engineering Group in Novato, California. I have personal
27 knowledge of the facts set forth herein. I have qualified, and have testified at trial, as an expert
28 witness relating to my professional qualifications in the Superior Court of California. I have also

1 formed professional opinions based upon my observations. If called upon as a witness, I can and
2 will competently testify as follows:

3 2. The Law Offices of David F. Beach, P.C. retained me to investigate plaintiffs'
4 claims in this matter including the nature and extent of water intrusion on to plaintiff's property;
5 the nature, extent and adequacy of plaintiffs' mitigation measures; the nature and extent of
6 "damage" to plaintiffs' property; the nature and extent of "loss of use" of plaintiffs' property; and
7 the development of scope and costs of repair.

8 I understand that the Law Offices of David F. Beach P.C. and attorney John Fritsch
9 represent defendants in this lawsuit including the Hidden Lakes Estates Homeowners Association.

10 3. I visually inspected plaintiffs' lots on June 18, 2004 for approximately 1.5 hours
11 beginning at about 11:00 a.m. It was a warm, summer day. Plaintiffs' attorney Thomas was
12 present during my inspection. During the course of my inspection, attorney Thomas represented
13 to me in the presence of attorney Ken Jones of the Beach office that the Woods' property "had not
14 been watered in a long time" and that the Allegras' property "had not been watered in over a year."

15 My opinion is that, in fact, both the Allegras' property and the Woods' property had been
16 watered via sprinklers thoroughly shortly before our arrival for the inspection.

17 4. I photographed various aspects of Lots 71 and 72, and the lake. Attached hereto as
18 exhibits A through V are true and correct copies of photographs with a photograph key. I offer the
19 following comments:

20 A. View southwest from top of embankment at Lots 71 and 72.

21 Depicts lower lake and banks.

22 B. View easterly on top of embankment on Association
23 property. Drainage culvert (Corrogated Metal Pipe)
24 embedded in embankment at extension of property line
25 between Lots 71 and 72. Fencing beginning on left upper
26 side of photo is on Lot 72. Lake level is approximately 5
27 feet higher than level of rear, southerly portions of, Lots 71
28 and 72.

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- C. Close up of CMP culvert embedded in embankment.
- D. View northeasterly from top of embankment along fence at property line between Lots 71 and 72 showing Lots 71, and a recently constructed play structure, lawn, fill gravel, fill soil, a fence, and trees in the Meandering Drainage Easement between the lake and street. A Meandering Drainage Easement is generally a depressed swale that is free of vegetation, open, broadly graded, and sloping towards the drainage direction to permit surface waters to drain. The Meandering Drainage Easement at Lots 71 and 72 is not free from vegetation; it is not open; it has been filled (raised) with various materials; and does not slope to drain from the lake and towards the street.
- E. View northeasterly in Meandering Drainage Easement on Lot 72 depicting damaged embedded drainage culvert in mid photo. Fence at left is on property line. All soil on Lot 72 was firm though water droplets were visible at many locations evidencing very recent surface watering. All soil was hardened dry except where the darkened soil area at the culvert inlet appeared slightly moist, but was firm. This soil is fill over a natural, historic streambed. The grade appears raised, and does not appear to slope to drain.
- F. View of sprinkler head in lawn of Lot 71 depicting water at head of sprinkler shortly after 11:00 a.m. on June 18, 2004. Though attorney Thomas stated that the lot had not been watered recently, the presence of water droplets on the sprinkler head and grass blades long after all dew and nighttime moisture had evaporated proves that the lawn was

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watered very recently.

G. View southwesterly on Lot 71 depicting sprinkler spray patter evidencing recent deep watering at Meandering Drainage Easement. Fence at left is property line, and toe of embankment at lake in background. At upper right of photo, old concrete steps are visible. Adjacent to the left of the steps is recent excavation apparently part of recent lawn and sod installation. At mid photo is embedded sump pump. Attorney Thomas stated that interceptor drain was installed from the box towards the right of the photo. All visible surfaces were firm and dry except for sprinkler water residue.

H. View of sump pump box recessed in Meandering Drainage Easement. I observed the pump operate through several cycles. There was no evidence of soil saturation.

I. View of culvert in Meandering Drainage Easement on Lot 72 embedded in fill and near tree.

J. View northeasterly on Lot 71 at recent gravel fill in Meandering Drainage Easement. Gravel appears to be placed on top of raised earth fill, and does not slope to drain. Play structure and fence in Meandering Drainage Easement.

K. View depicting water on play structure slide exposed to sprinklers where attorney Thomas represented that no watering took place for a long time. Photo taken shortly after 11:00 a.m. on June 18, 2004.

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- L View easterly of play structure and gravel fill on Lot 71 at Meandering Drainage Easement. A patch of lawn approximately 5 feet by 5 feet at the base of the slide was spongy when walked upon. By early afternoon, the area had firmed significantly. The sponginess is consistent with over-watering. All other areas were firm.
- M. View depicting plastic fly swatter found *in situ* on lawn at Lot 71 with residual water droplets from watering before inspection.
- N View northeasterly on Lot 71 depicting fill area in Meandering Drainage Easement and apparently recently installed concrete walk. The nature and extent of excavation and fill is unknown. A green monitoring well is present in mid photo.
- O. View depicting monitoring well and high ground water level that is expected in the historical stream bed.
- P. View northeasterly at Lot 71 showing concrete apron poured up to property fence line and into Meandering Drainage Easement.
- Q. View easterly from Lot 71 into Lot 72 where concrete apron extends to property fence line and completely over Meandering Drainage Easement. Visible through wire is concrete pad used for boat storage on Lot 72, completely disrupting surface drainage.
- R. View northeasterly on Lot 71 at property line showing raised bed garden that is filled approximately 2 feet above grade and into Meandering Drainage Easement. The corner of the

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garden drops 2 feet to grade.

S. View southwesterly from street at Meandering Drainage Easement depicting appropriate Meandering Drainage Easement grade, slope, construction and details. This approximately 20 feet of easement is the only portion of the 259.49 foot long property line that is of appropriate construction.

T. View of dry and apparently abandoned sump pump on Lot 72 in Meandering Drainage Easement. Again, Lot 72 showed no evidence of ground water saturation at surface level.

U. View of sprinkler at Lot 72 showing ponded water in sprinkler from recent use. Water droplets were present on grass blades on Lot 72 lawn areas notwithstanding attorney Thomas' representation that the Allegras' had not watered for over one year.

V. View of boat and concrete apron poured close to property line and into Meandering Drainage Easement at northerly portion of Lot 72.

5. In part, I reviewed Sheets 1 through 12 of the Improvement Plans for Hidden Lakes Unit No. 2 bearing the stamp of James G. Gee, P.E. number 16990 and stamped AS BUILT dated June 28, 1978. In part, the plans depict contour lines showing a historical waterway, and naturally occurring streambed at the approximate location of the Meandering Drainage Easement between Lots 71 and 72. The contour lines depicted on Sheets 4 and 5 show the waterway sloping from the location of the present lake embankment to and through the intersection of the Meandering Drainage Easement and the street.

I would expect the natural waterway to continue to have a high natural ground water level notwithstanding the construction of a lake. I would expect the historical waterway to consist largely of gravels and sands. My observations on June 18, 2004 are consistent with the existence

1 of a natural waterway at the Meandering Drainage Easement on Lots 71 and 72, and the existence
2 of a naturally occurring high subsurface water level in the former stream bed.

3 6. In part, I reviewed 1 sheet of the Hidden Lakes Unit 2 marked Book L of Maps,
4 page 18. The sheet depicts generally lot lines, and road and utility improvements. The map of
5 Unit 2 also bears the mark of "M.D.E" at Lot 71, and the legend describing the abbreviation as a
6 "Meandering Drainage Easement." In my opinion, the designation of a Meandering Drainage
7 Easement between Lots 71 and 72 implies an original design intended to provide drainage for both
8 surface and subsurface waters. With regard to surface waters, "Meandering" implies that surface
9 water drainage flows change, or "meander", over time.

10 7. Assuming that the original construction was in accordance with the design, in my
11 opinion, the Meandering Drainage Easement has been impaired by various types of fill and raised
12 elevations; pouring of concrete pads at raised elevations; plantings; and construction of
13 improvements in the Easement, and the Meandering Drainage Easement no longer slopes to drain
14 from the embankment to the street. Until further investigation is undertaken, the nature and extent
15 of the destruction of the easement cannot be determined.

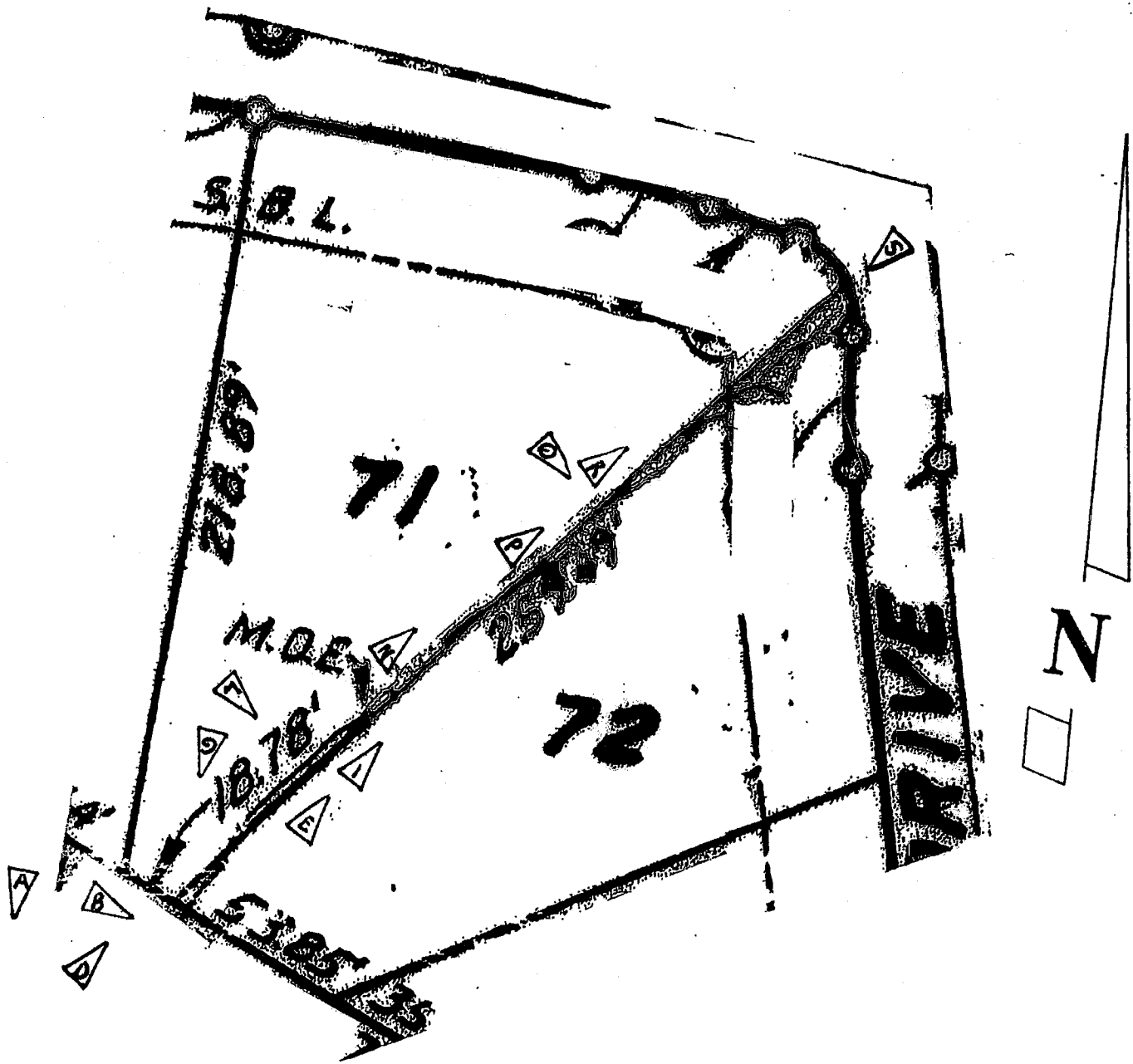
16 8. In my opinion, earthen embankments such as the embankment between the lake and
17 Lots 71 and 72 are not totally impervious to water penetration whether lined with bentonite or other
18 liner. Water generally penetrates earthen embankments to a greater or lesser degree. Water may
19 penetrate such an embankment, and enter subsurface ground waters without surfacing. Water may
20 also penetrate such an embankment and become surface water. A design providing a Meandering
21 Drainage Easement downslope from such an earthen embankment in anticipation of minor surface
22 leakage, and the avoidance of dispute between property owners, reflects good design practice.

23 I declare under the penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 EXECUTED on July 8, 2004, at Santa Rosa, California.

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SCOTT STEPHENS, P.E.



HLE EXHIBIT 19

PHOTOGRAPH KEY

HLE EXHIBIT 19

EXHIBIT A



HLE EXHIBIT 19

EXHIBIT B

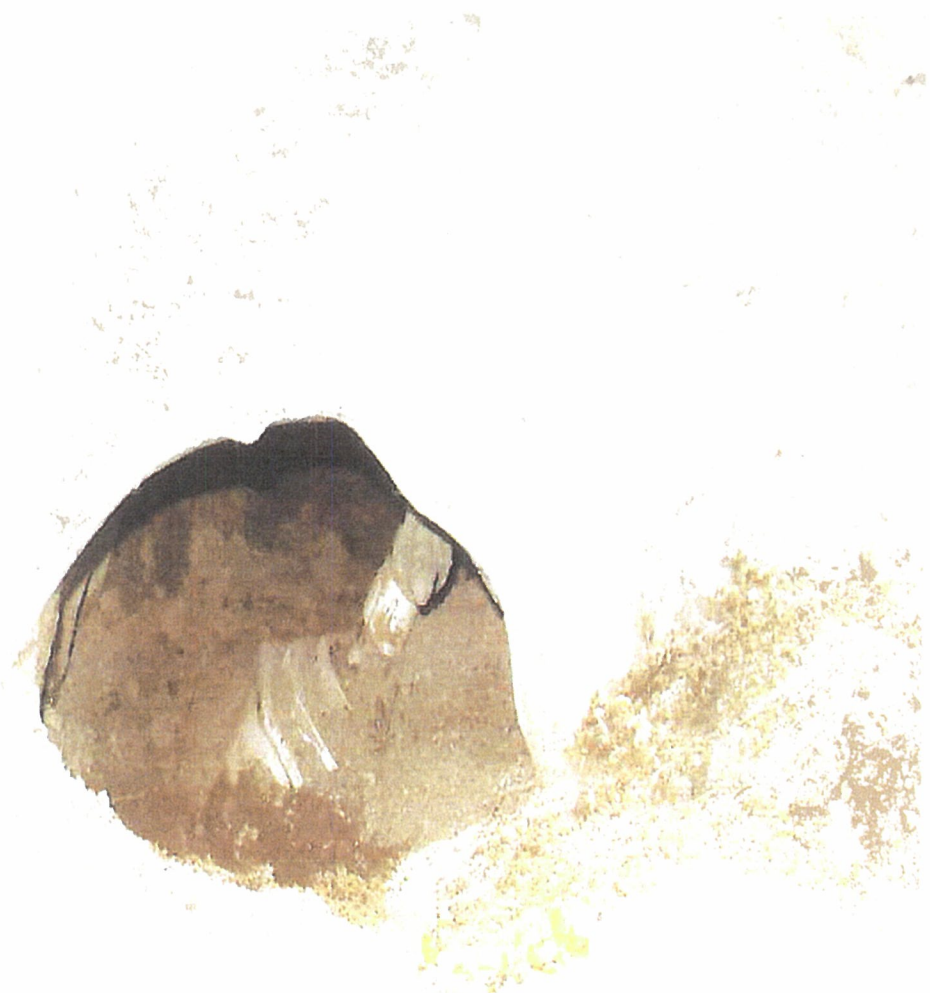
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EXHIBIT C

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EXHIBIT G

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EXHIBIT H

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EXHIBIT I

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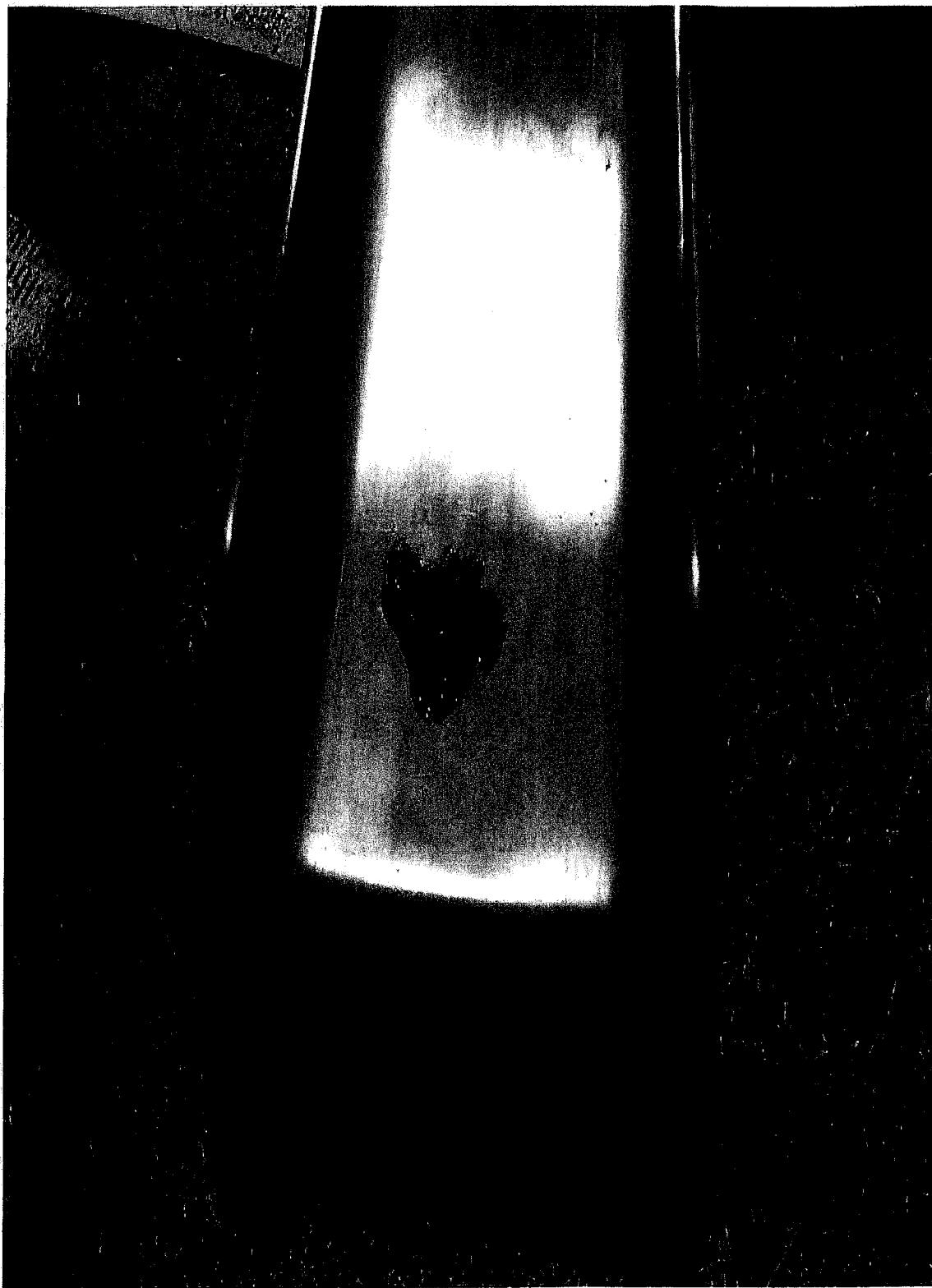


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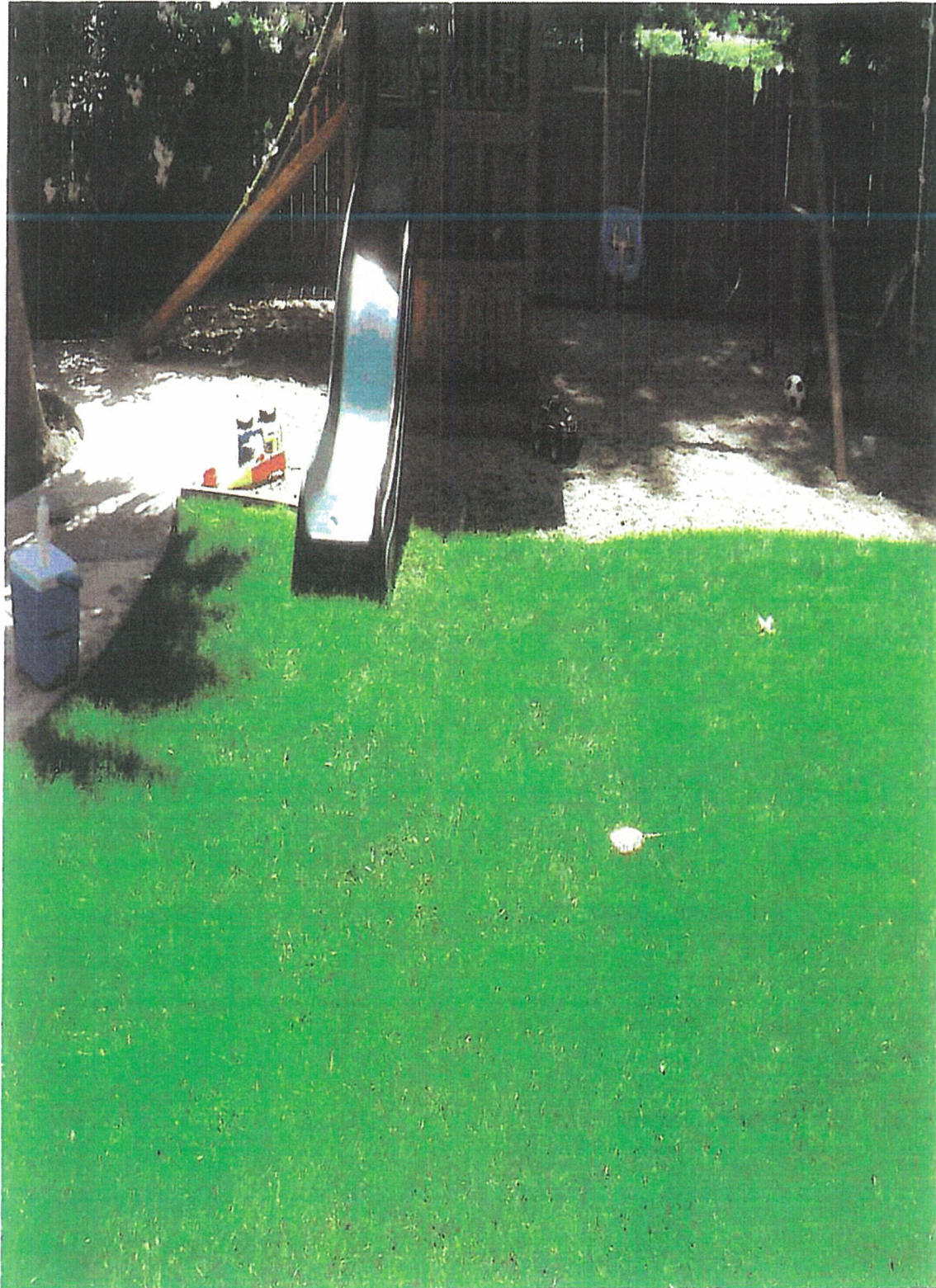
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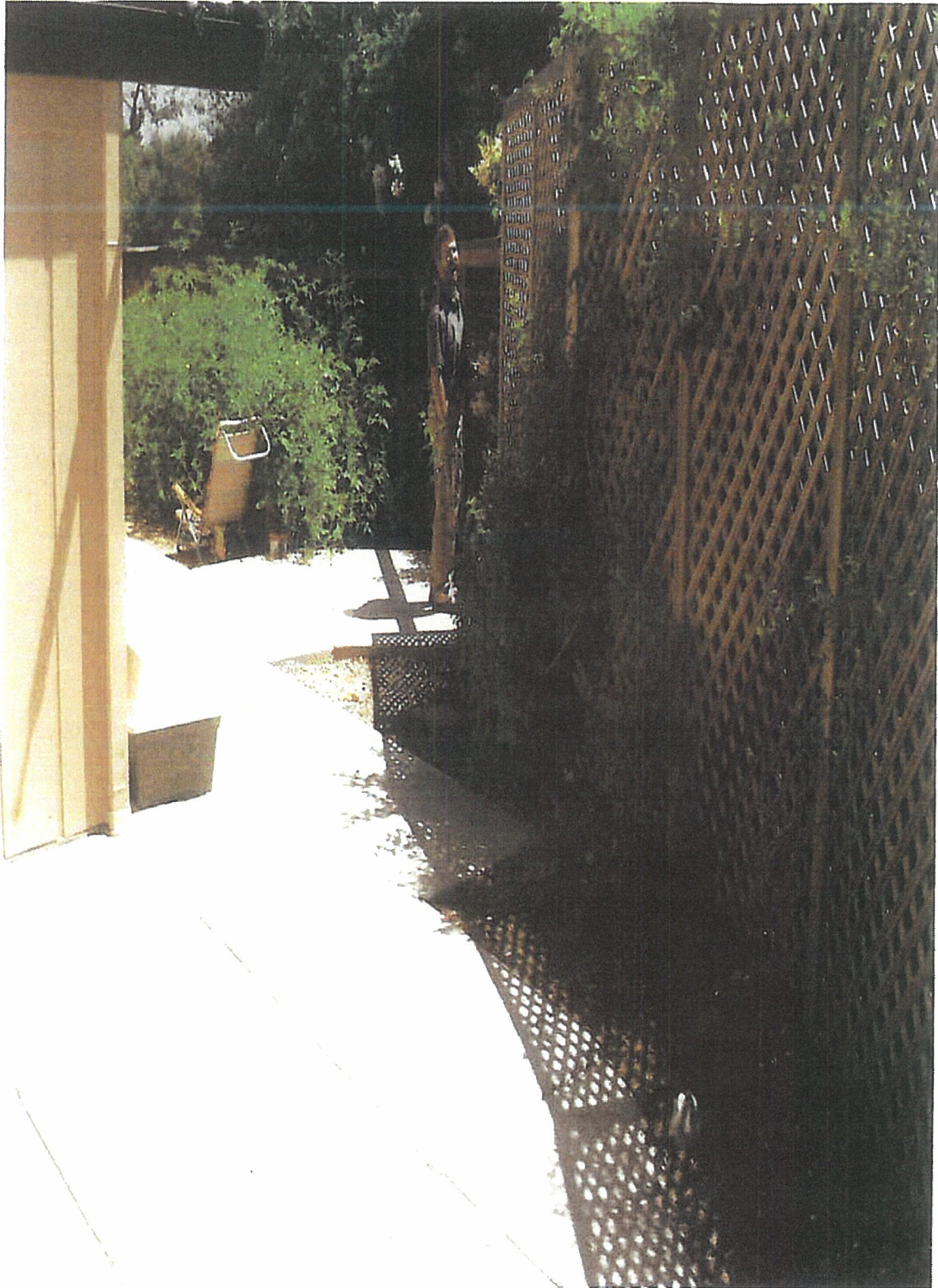


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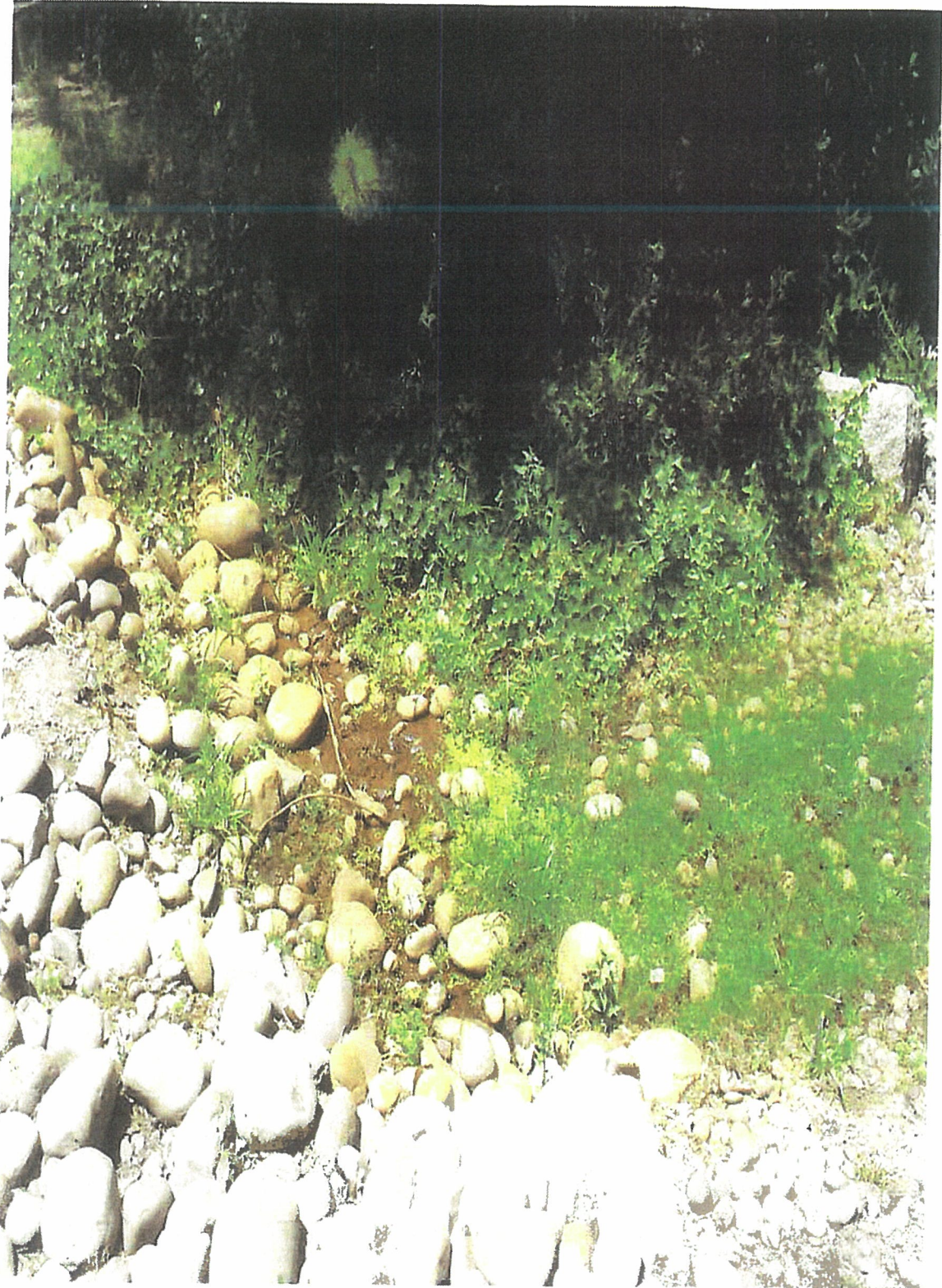
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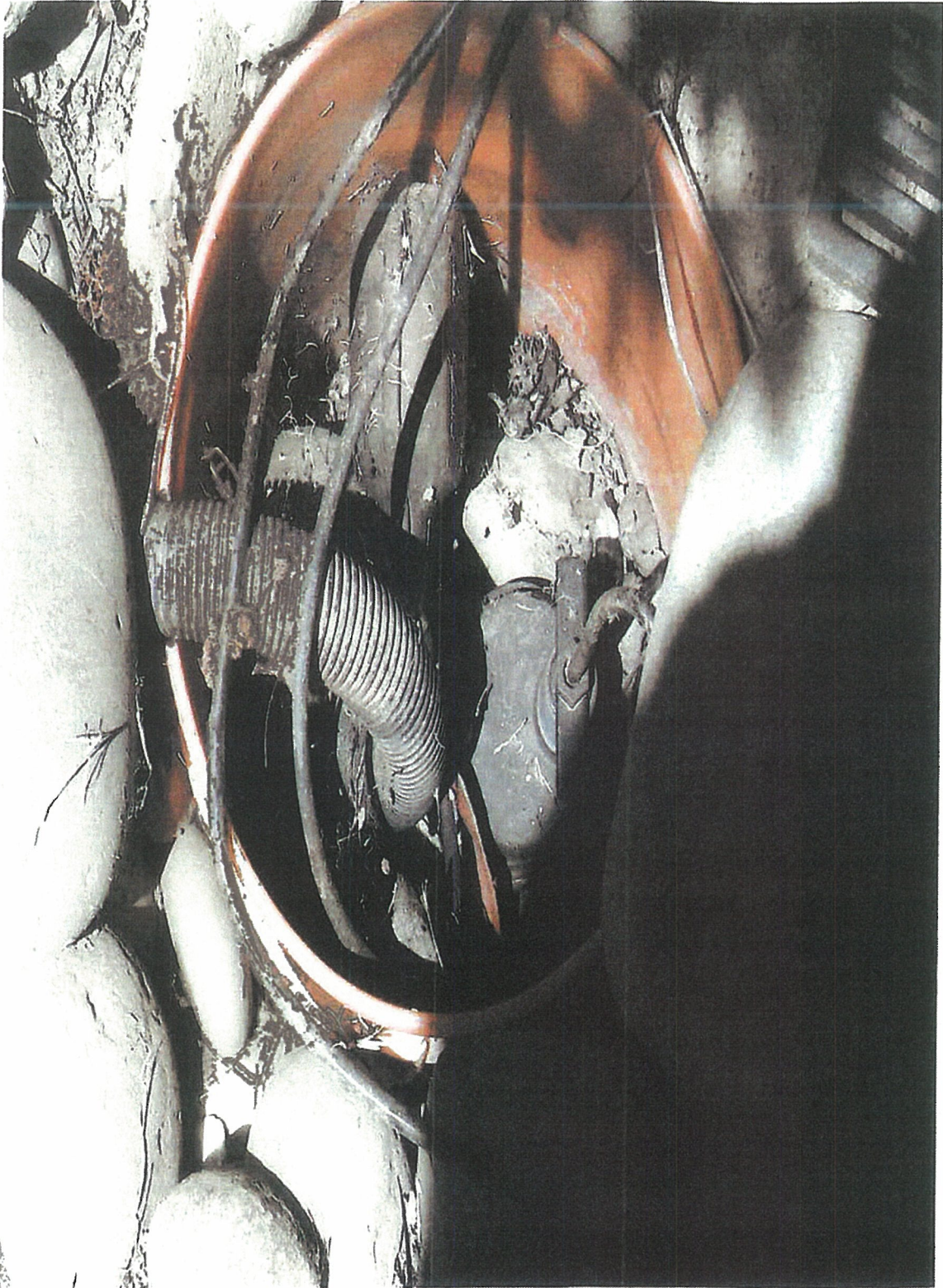


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