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Australian Government
Department of Defence

INVESTIGATION REPORT

Directorate of Investigations & Recovery
Fraud Control & Investigations Branch

INV-DWS01-DI-2014-6

PROBITY INVESTIGATION INTO PROCUREMENT PRACTICES WITHIN THE

s47E

Purpose:

1. The purpose of this report is to document the findings of an investigation into the probity of procurement practices within the

s47E

Background:

2. On 3 March 2014, the Commonwealth Ombudsman referred a disclosure pursuant to the *Public Interest Disclosure Act 2013* to the Inspector General Defence (IGD) (now the Fraud Control and Investigations Branch or FCIB) for investigation. The disclosure related to alleged impropriety by the

s47F

3. On 19 May 2015, the FCIB received a further disclosure in relation to the. The disclosure related to widespread procurement and policy failings within the including the failure to manage conflicts of interest; the improper release of commercially sensitive information; shortcomings in the mediation of the

s47E

and the misuse of Commonwealth funds.

4. On 6 July 2015, the Audit Branch referred information to the FCIB. The information related to an allegation that submitted invoices as a contractor while claiming payments at the same time.

Allegations:

5. The following allegations were the focus of the investigation and were deduced during the assessment:

Allegation 1: failed to comply with the Commonwealth Procurement Rules (CPRs) relative to

s 47G

Allegation 2: failed to declare a conflict of interest when exercising delegation to approve contracts for

s 47G

Allegation 3: asked to backdate a contract.

Allegation 4: failed to submit a letter of notification prior to being engaged by

s 47G

Allegation 5: failed to submit a letter of notification prior to being engaged by

s 47G

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Allegation 6: s47F failed to submit a letter of notification prior to being engaged by s 47G

Allegation 7: s 47F failed to manage a conflict of interest s 47F
s 47G, s 47F

Allegation 8: s47F colluded with s 47G during the s 47E

Allegation 9: s47F caused a loss to the Commonwealth by committing the Commonwealth to a contingent liability during the remediation of the s 47E

Allegation 10: s47F inappropriately authorised the use of Commonwealth funds to s 47G at the conclusion of the s 47E
s 47E

Allegation 11: s47F claimed travel allowances beyond s47F entitlement while engaged as a contractor.

Allegation 12: s47F failed to comply with the provisions of the s 47E Deed of Standing Offer.

Conduct of the Investigation:

6. The investigation examined s 47E
s 47E

Persons Involved:

7. The following table identifies witnesses that were approached to provide information during the investigation.

Name:	Position:	Statement or Interview:	Date:
s47F		Interview	14/04/2015
		Interview	03/05/2015
		Interview	04/05/2015
		Interview	04/05/2015
		Interview	13/04/2015
		Interview	01/04/2015
		Email	19/02/2015
		Interview	13/02/2015
		Interview and written response	16/02/2015 08/01/2016

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Interview	05/05/2015
Interview	17/02/2015
Interview	18/02/2015
Written response	10/03/2016
Interview	08/04/2015
Interview	09/04/2015
Interview	08/04/2015
Interview	09/04/2015
Declined	09/04/2015
Interview	26/11/2015
Interview	15/04/2015
Interview	14/04/2015
Interview	12/02/2016
Written response	11/12/2015
Written response	11/12/2015
Written response	14/12/2015
Written response	25/01/2016
Written response	03/12/2015
Declined	05/01/2016
Written response	11/02/2016
Declined	04/01/2016
Email	08/02/2016
Email	03/03/2016 04/03/2016
Interview	20/04/2016
Email	04/05/2016
Written response	06/05/2016

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Relevant Policy:

8. The CPRs provide policy in relation to Defence procurement activities. Section 6.6 of the CPRs states:

In particular, officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes:

- a. recognising and dealing with actual, potential and perceived conflicts of interest;*
- b. dealing with potential suppliers, tenderers and suppliers equitably, including by*
 - i. seeking appropriate internal or external advice when probity issues arise; and*
 - ii. not accepting inappropriate gifts or hospitality.*

9. Section 9.2 of the CPRs states:

The expected value of a procurement must be estimated before a decision on the procurement method is made. The expected value is the maximum value (including GST) of the proposed contract, including options, extensions, renewals or other mechanisms that may be executed over the life of the contract.

10. Section 9.5 of the CPRs states:

A procurement must not be divided into separate parts solely for the purpose of avoiding a relevant procurement threshold.

11. Section 9.7a of the CPRs states:

...for non-corporate Commonwealth entities, other than for procurements of construction services, the procurement threshold is \$80,000.

12. Section 10.3 of the CPRs states:

A relevant entity must only conduct a procurement at or above the relevant procurement threshold through limited tender in the following circumstances:

- a. when in response to an approach to market*
 - i. no submissions, or no submissions that represented value for money, were received,*
 - ii. no submissions that met the minimum content and format requirements for submission as stated in the request documentation were received, or*
 - iii. no tenderers satisfied the conditions for participation,*
- and the relevant entity does not substantially modify the essential requirements of the procurement; or*
- b. when, for reasons of extreme urgency brought about by events unforeseen by the relevant entity, the goods and services could not be obtained in time under open tender or prequalified tender.*

13. The Defence Procurement Policy Manual (DPPM) is a reference guide and provides mandatory policy for Defence Procurement officers. Section 4.8(11) of the DPPM states:

The DMO has established the DMO Support Services (DMOSS) Panel to provide DMO and Defence, and participating Commonwealth entities, with access to a broad range of specialist support services from prequalified suppliers.

14. Section 4.10(26) states:

Where contracted personnel are required to travel in order to perform a contract, Defence contracts can contain clauses that agree to reimburse the contractor for travel, accommodation and living costs incurred up to the standard Defence non-SES travel Allowance rates which have been adjusted to include GST.

15. Section 4.10(28) states:

All claims for reimbursement of travel, accommodation and living costs are to be submitted on a valid tax invoice, showing the GST exclusive price, with GST then being charged on the total amount. The total GST inclusive claim for such reimbursement shall not exceed that of the total allowable Defence non-SES travel Allowance rates.

16. Defence Instructions (General) PERS 25-6 (DI(G) PERS 25-6) Conflicts of interest and declaration of interests provides policy to Defence in relation to conflicts of interest.

Part 10 of the Instruction states:

A conflict of interest can arise from Defence personnel avoiding personal losses or detriment, as well as gaining personal advantage – whether financial or otherwise – for themselves or a third party.

17. Part 17 of the Instruction states:

There are many situations where a conflict of interest may occur. Defence has specific policies on some of these matters, as follows:

- c. post separation employment;*
- f. personal and family relationships within the workplace or with contractors;*
- j. employment decisions*

18. Part 19 of the Instruction states:

Defence Personnel must:

- a. disclose to their supervisor and take reasonable steps to avoid any conflicts of interest (actual, potential or perceived) in connection with their official duties;*
- b. act transparently when making work-related decisions, reflecting the probity and ethical standards of the Commonwealth, Defence and/or APS values and behavioural codes; and*
- c. take reasonable steps to restrict the extent to which a private interest could compromise, or be seen to compromise, their impartiality when carrying out their official duties.*

19. Part 20 of the instruction states:

Defence personnel must not, either by action or inaction:

- a. make improper use of their authority, status, power, position or access to information in order to solicit or obtain a benefit or advantage or to cause a disadvantage for themselves or any other person or group (including relatives and friends);*

- b. use Defence resources to gain, or seek to gain, a private benefit or advantage or to cause a disadvantage for themselves or any other person or group;
- c. accept any benefit that might lead a reasonable person to view such acceptance as a conflict of interest;
- d. behave in a manner in which their action or inaction could be construed as favouritism, bias or coercion;
- e. cause an unfair advantage or disadvantage to any person or entity actually or potentially doing business with Defence; or
- f. take improper advantage of their official position or privileged information gained in that position when seeking or participating in employment or business outside of Defence.

20. Defence Instructions (General) PERS 25-4 (DI(G) PERS 25-4) *Notification of Post Separation Employment* provides policy to Defence in relation to personnel considering employment with external service providers. Part 6 of the Instruction states:

Where an offer of employment could result in an actual or perceived conflict of interest, Defence personnel:

- a. must fully inform Defence of the situation before accepting the offer; and
- b. should at the earliest opportunity notify their prospective employer of their conflict of interest disclosure obligations to Defence.

21. Part 22 of the Instruction states:

Letter of notification. Defence personnel considering post separation employment in circumstances in which business is, or is likely to be, done with Defence, including work as a self-employed contractor, or any other circumstances where there is a possibility for a perception, of a conflict of interest must submit a letter of notification.

22. Part 27 of the Instruction states:

While the notification of post separation employment procedures applies to all Defence personnel whose post separation employment could give rise to a conflict of interest, it is most pertinent to Defence personnel who are in senior positions or have a Significant Role in Procurement Decisions, where an actual or perceived conflict between their Defence service/employment and proposed private employment is more likely.

23. The Australian Public Service (APS) Code of Conduct provides standards of behaviour for all APS employees. The Code of Conduct states:

The Code of Conduct requires that an APS employee must:

- behave honestly and with integrity in connection with APS employment.
- act with care and diligence in connection with APS employment.
- when acting in connection with APS employment, comply with all applicable Australian laws.
- disclose, and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with APS employment.

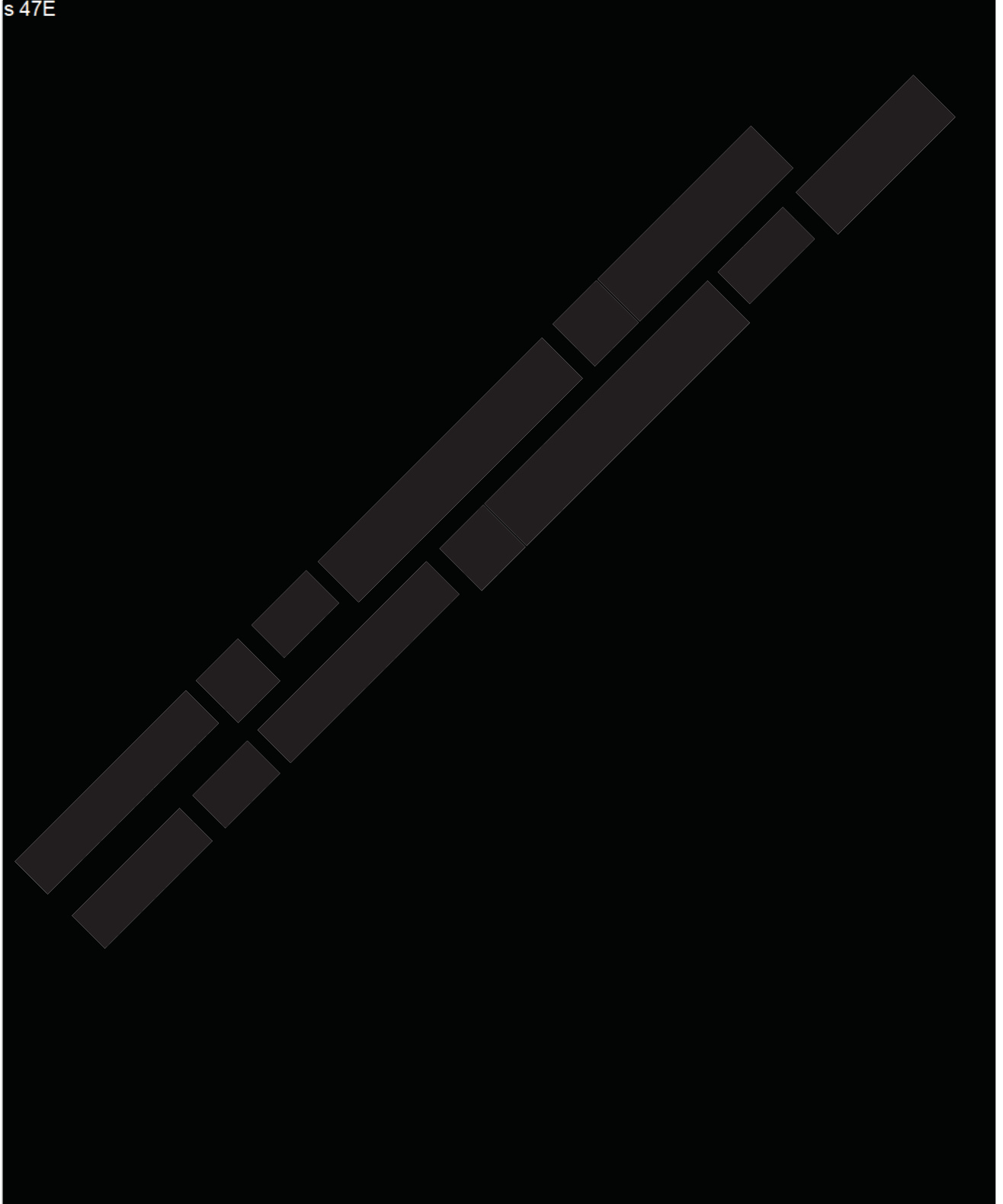
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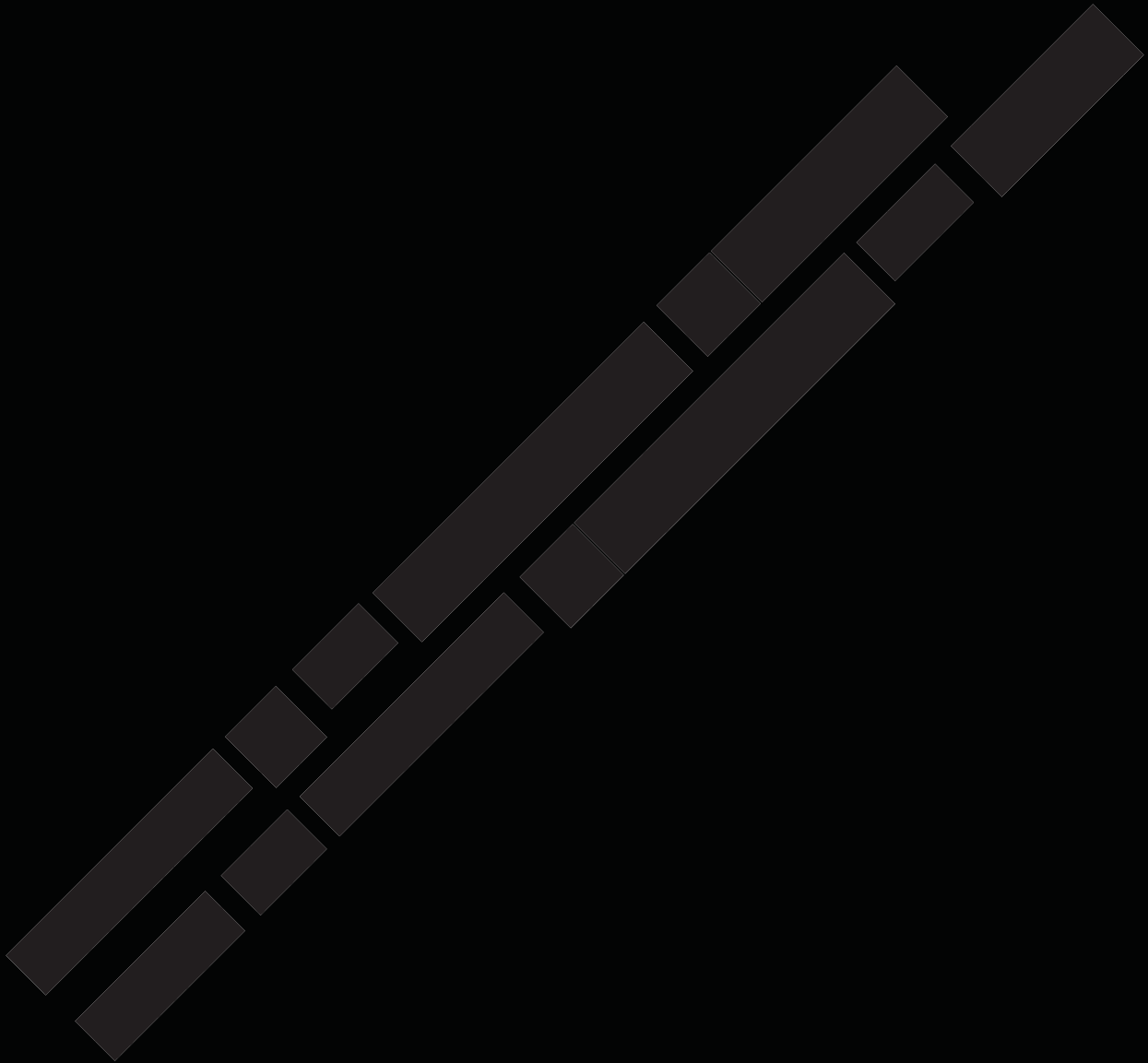
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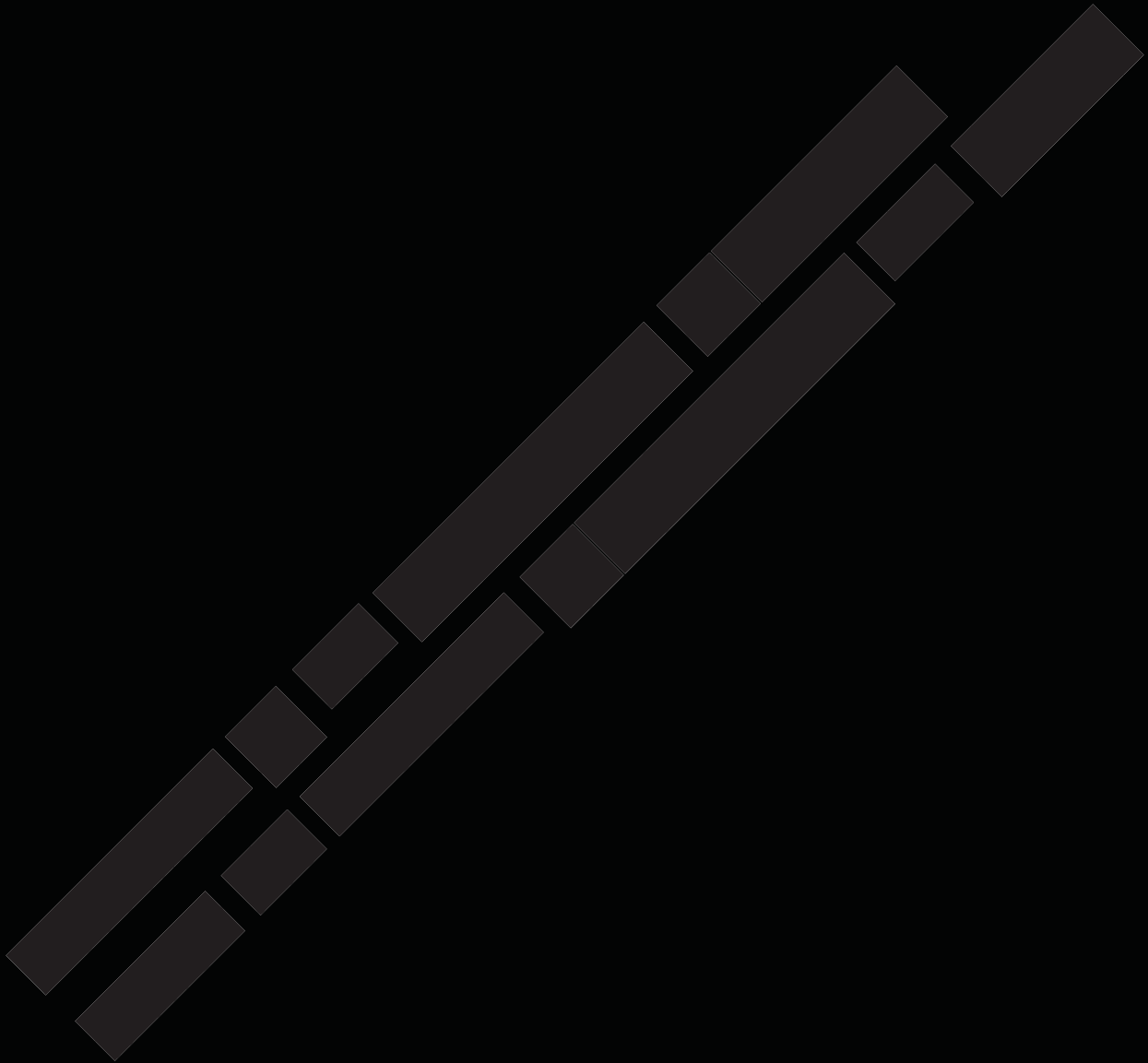
- *not make improper use of: a. inside information b. the employee's duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.*

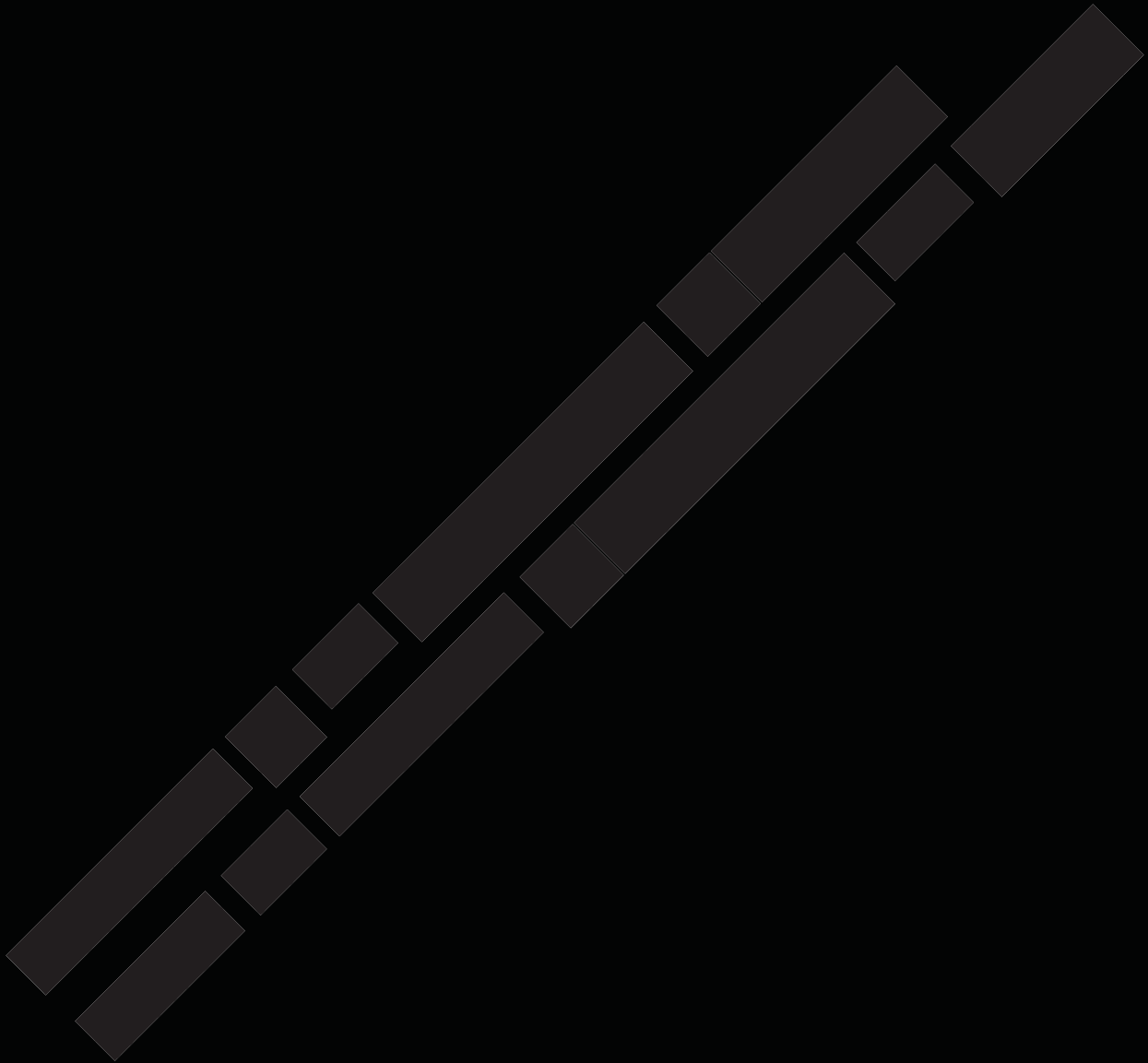
Investigation Findings:Information relating to the s 47E

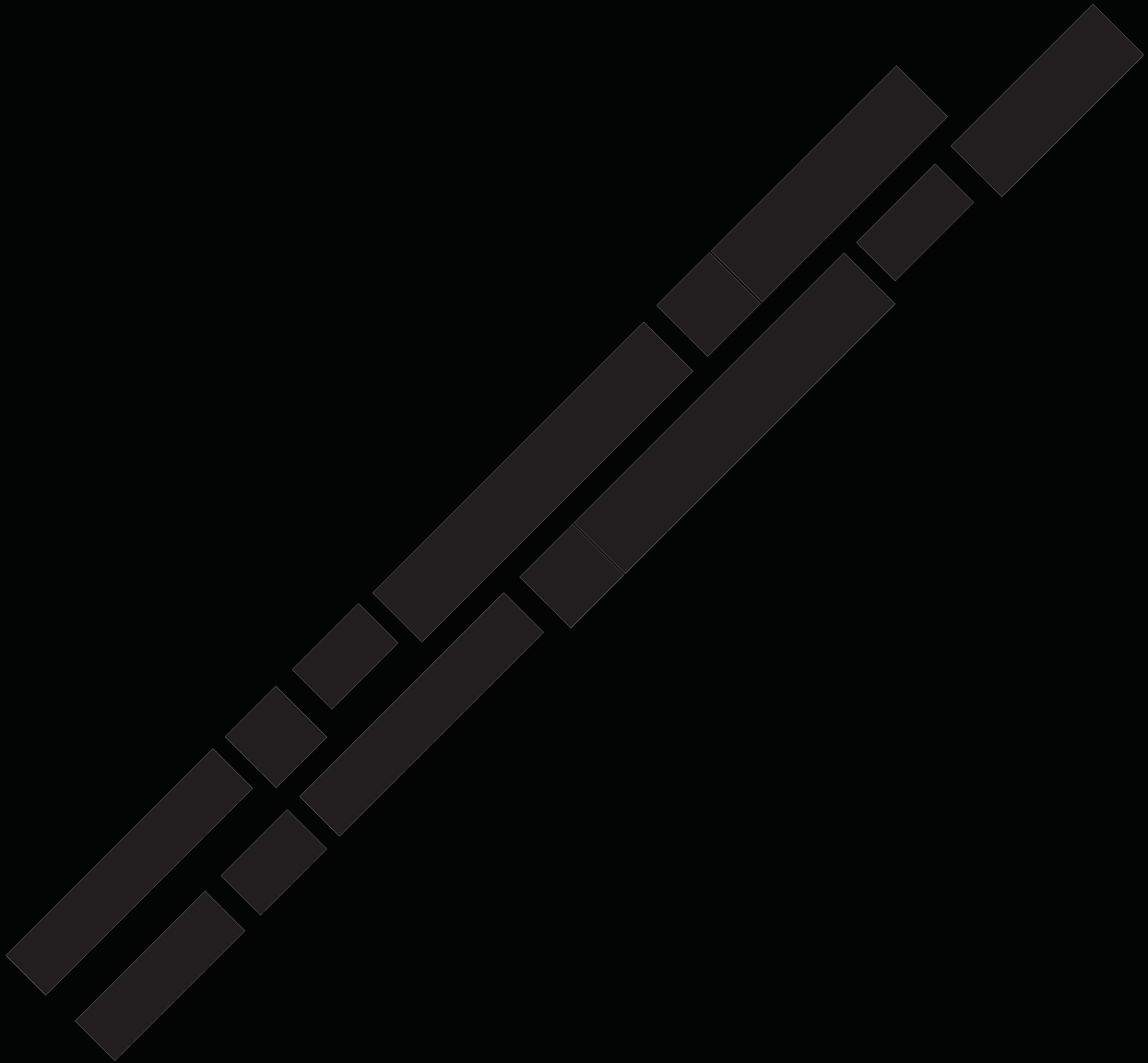
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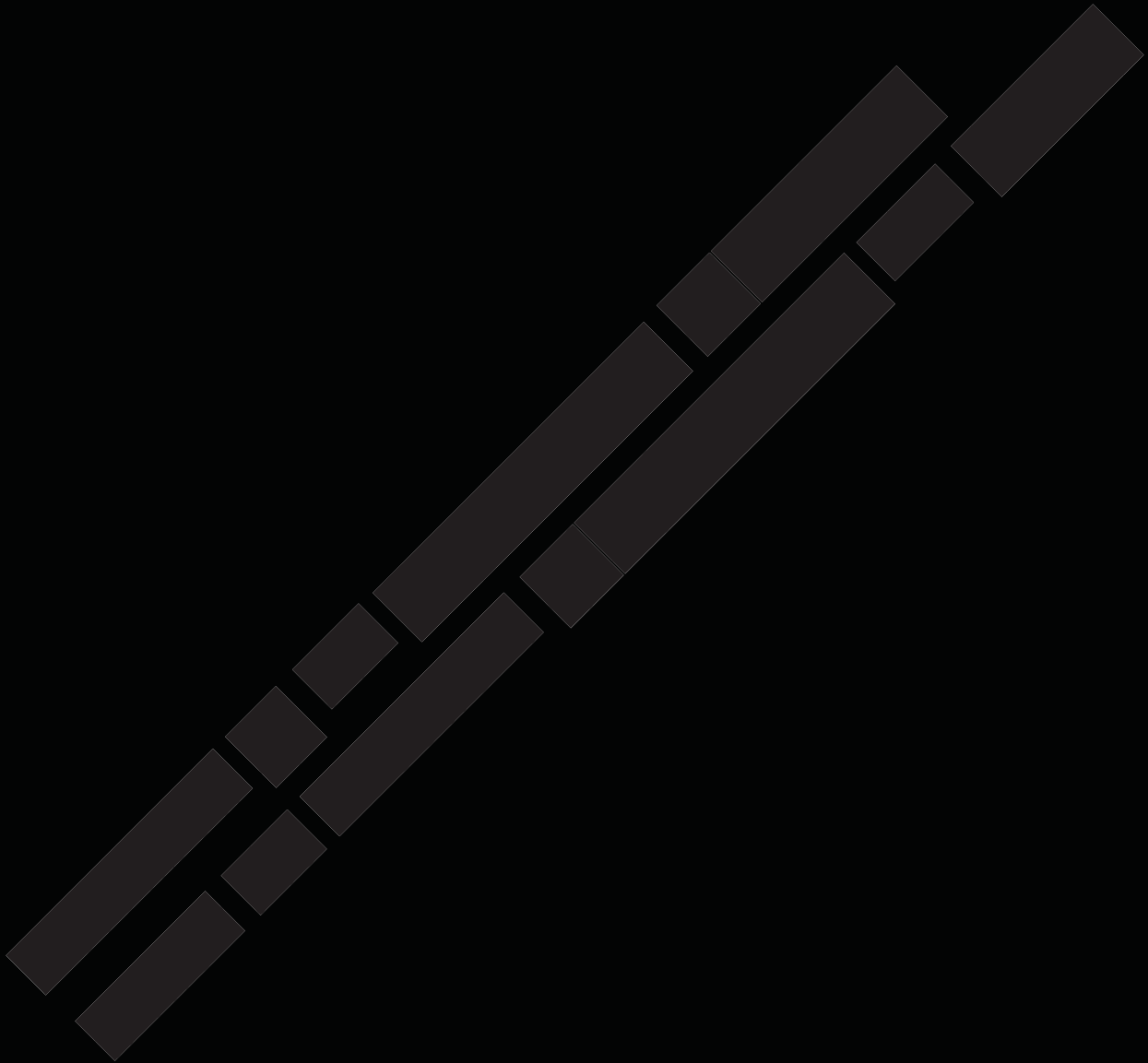
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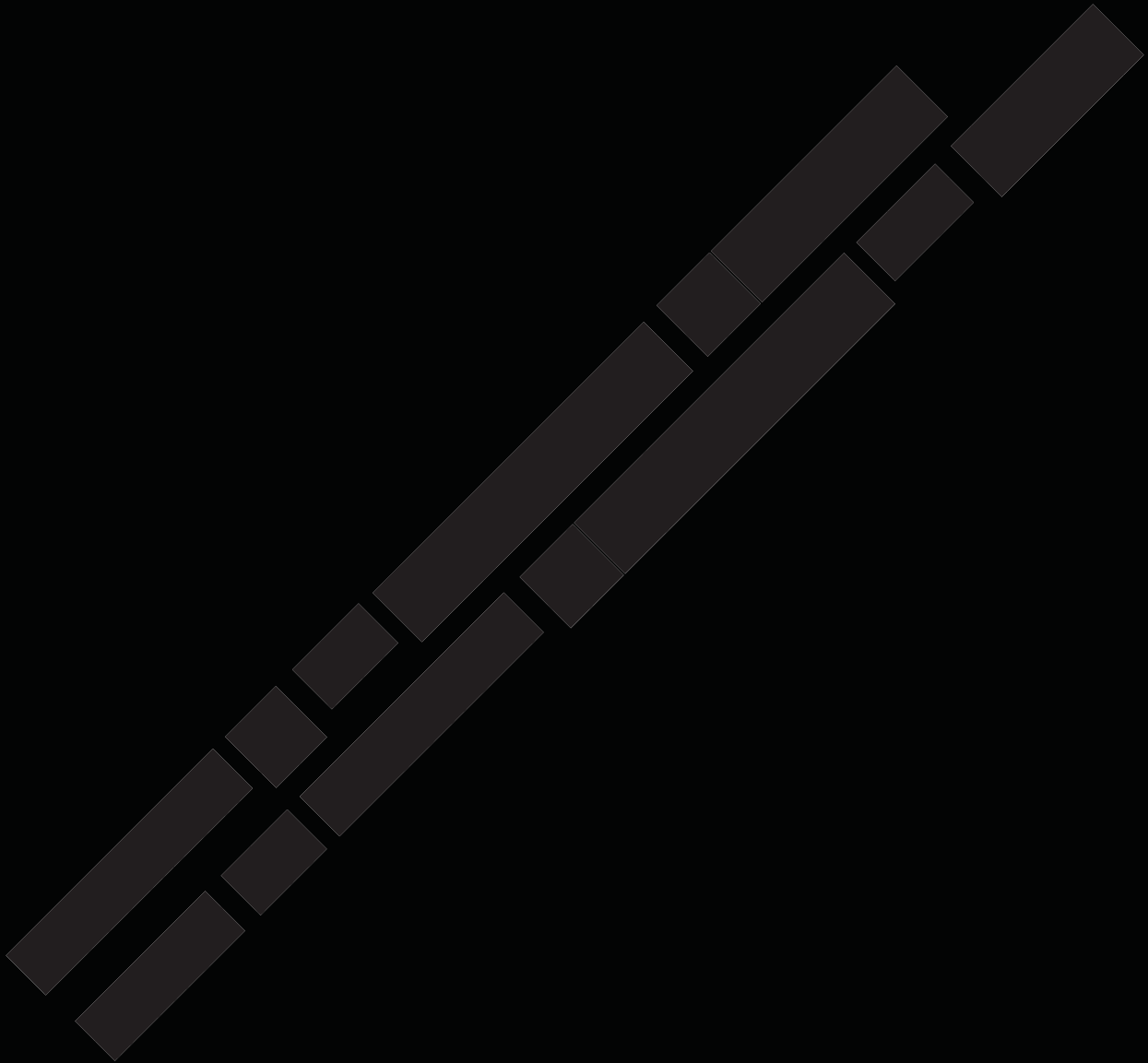


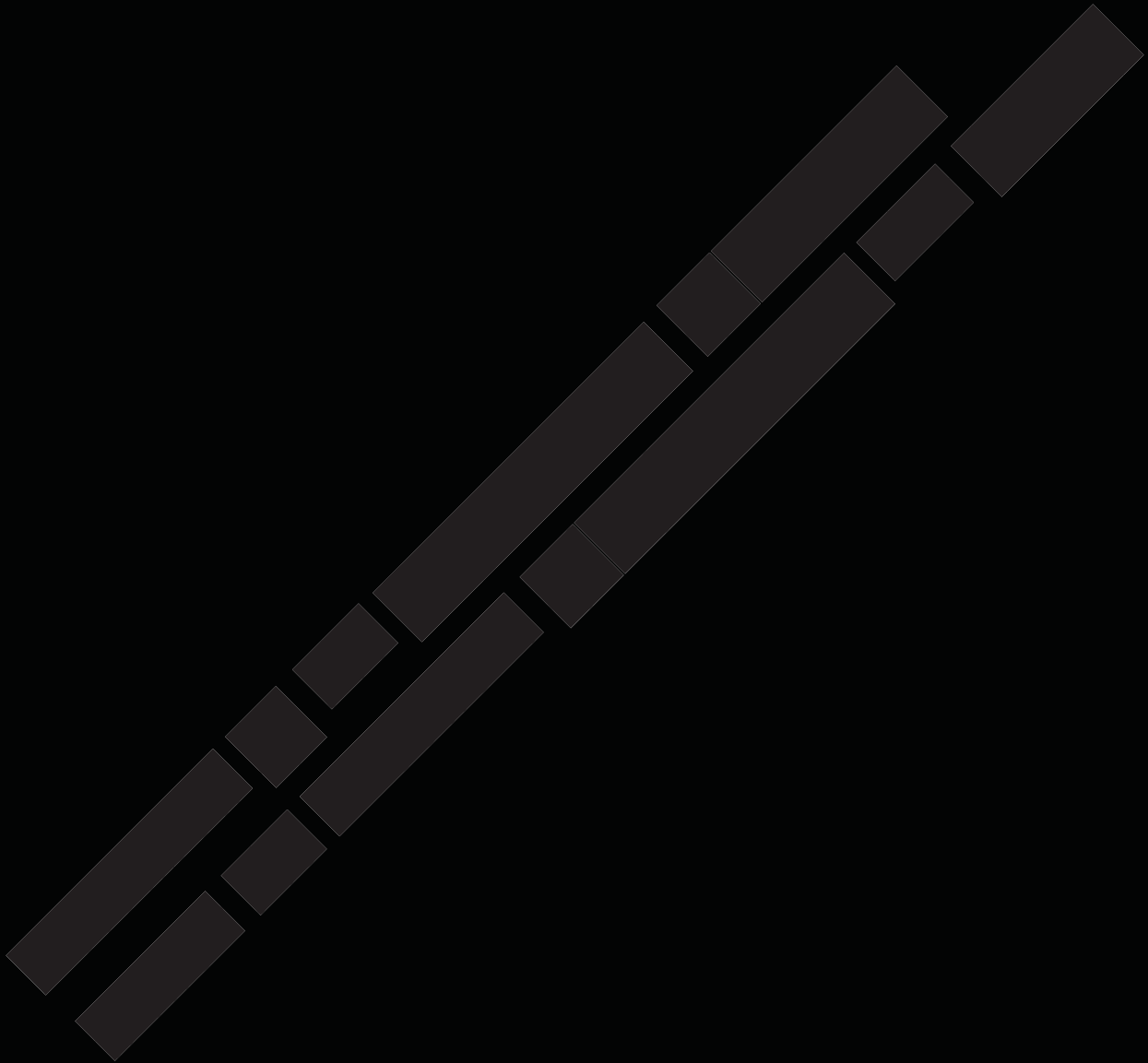


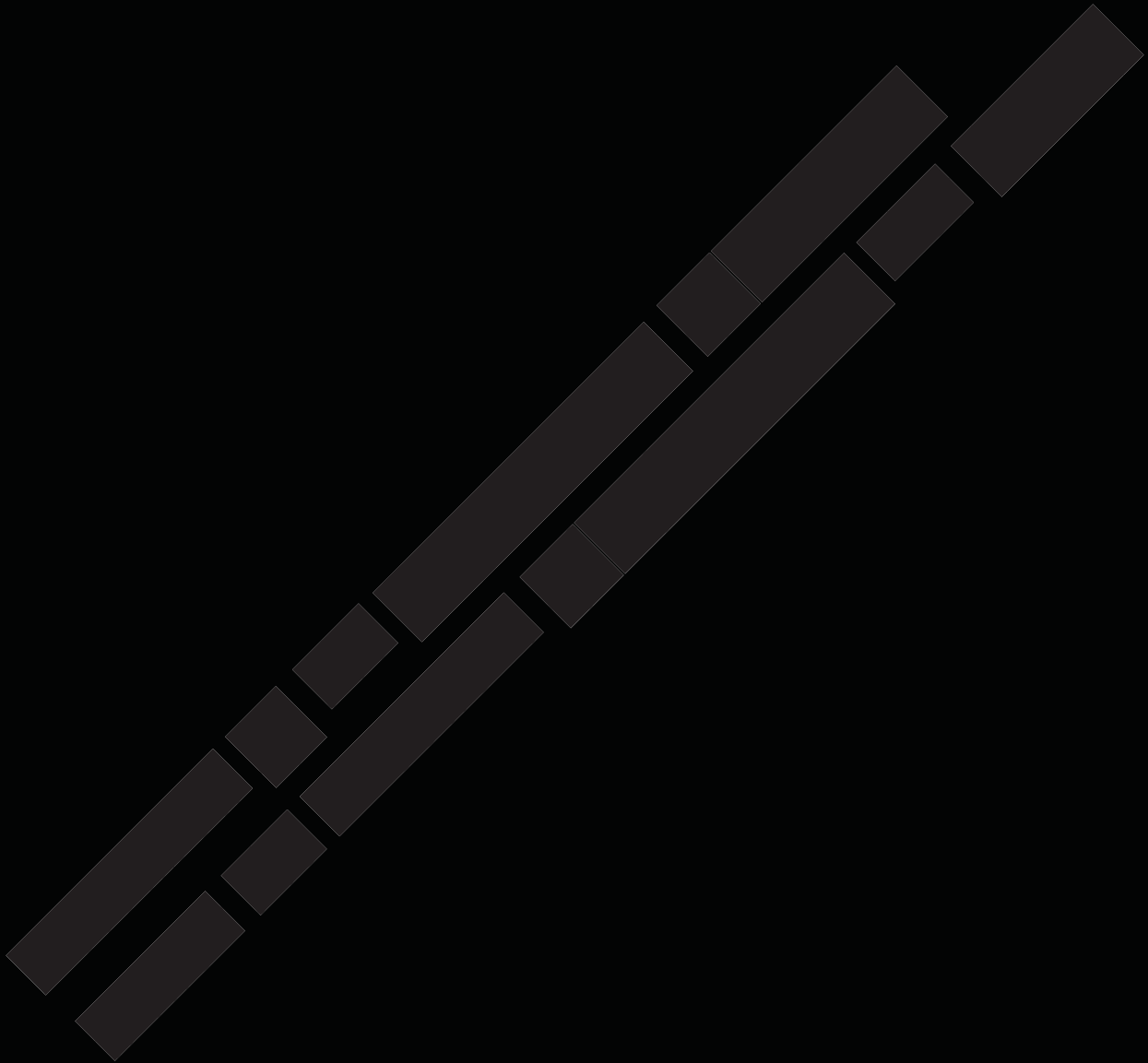


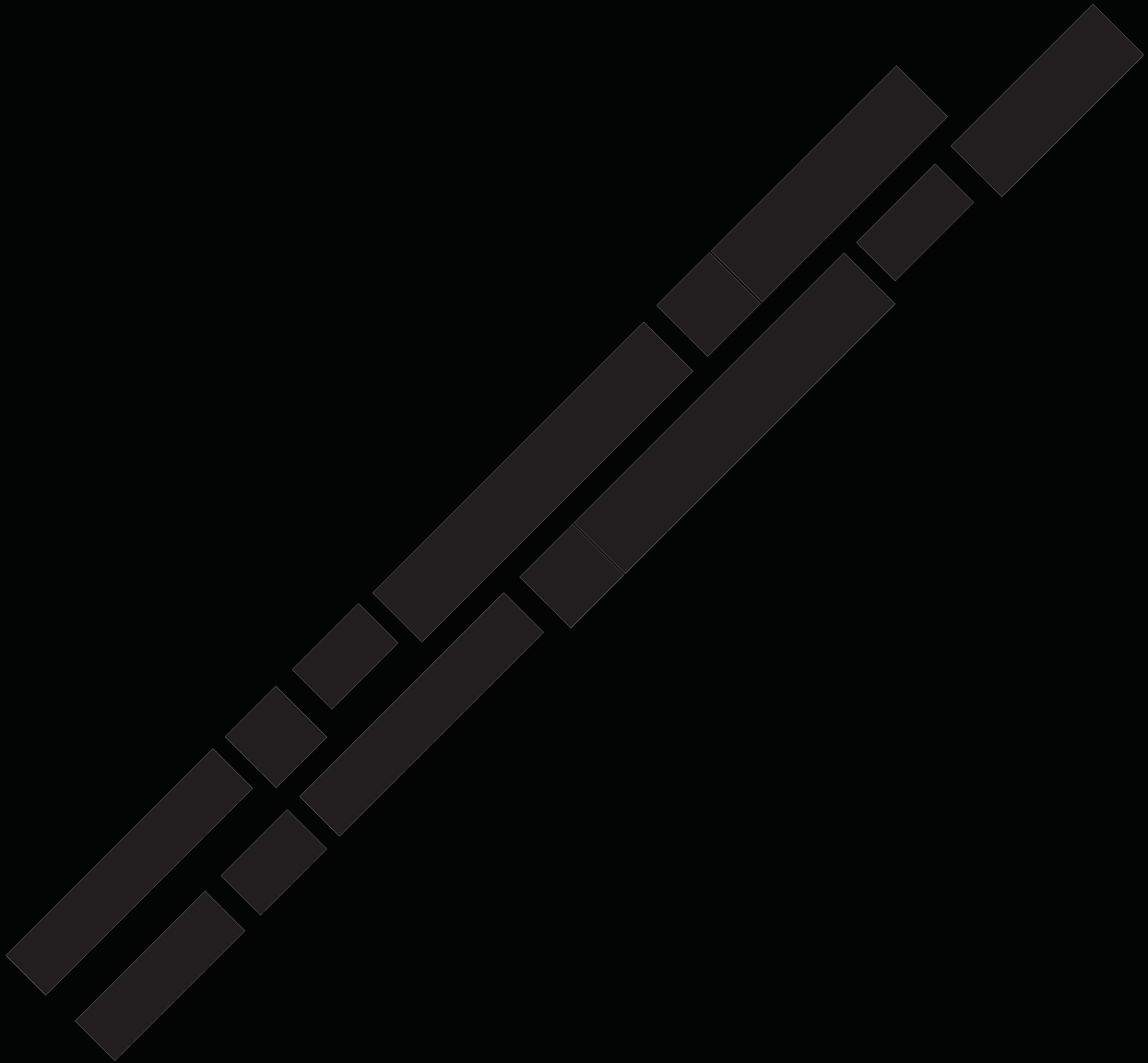


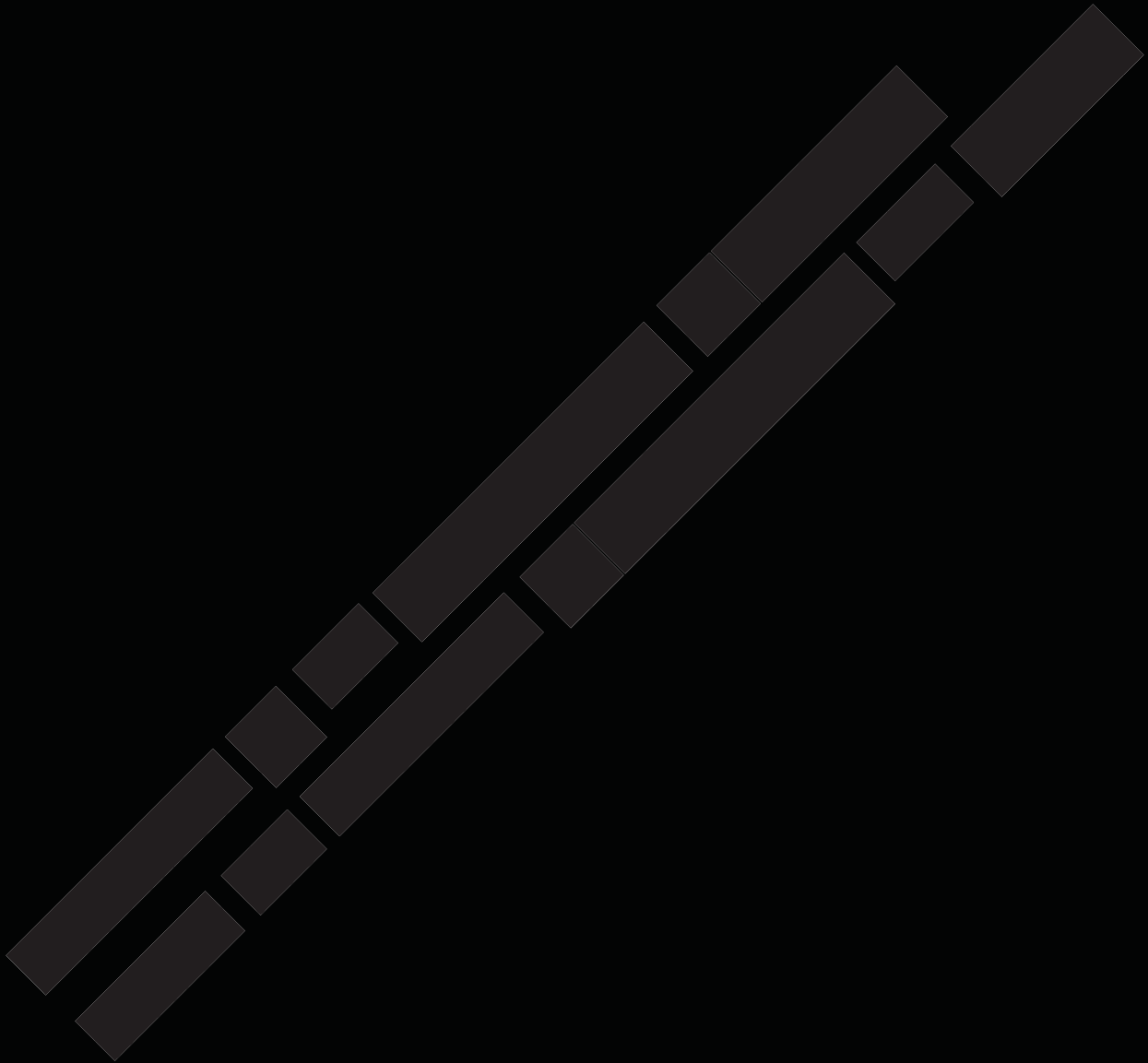


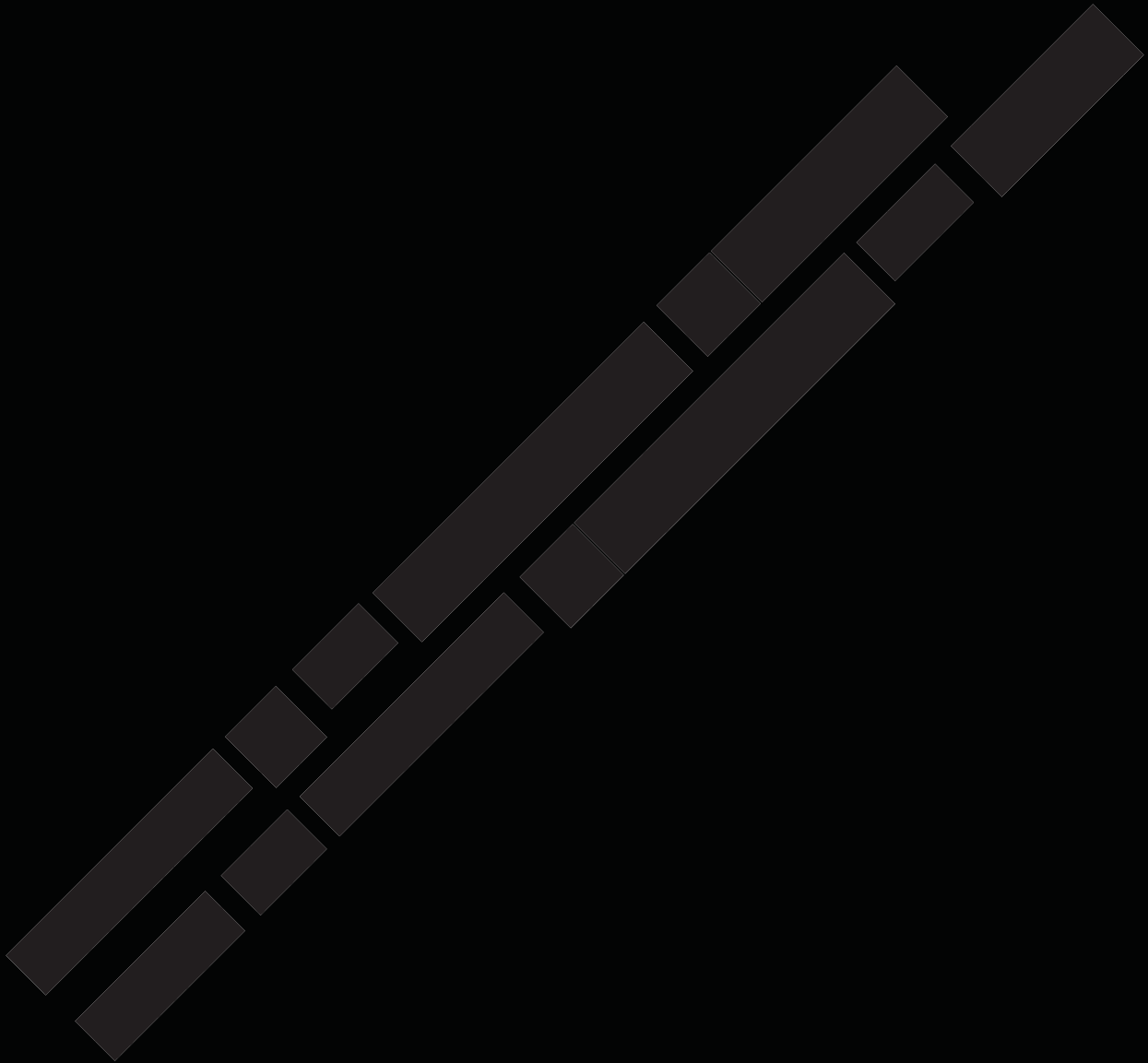


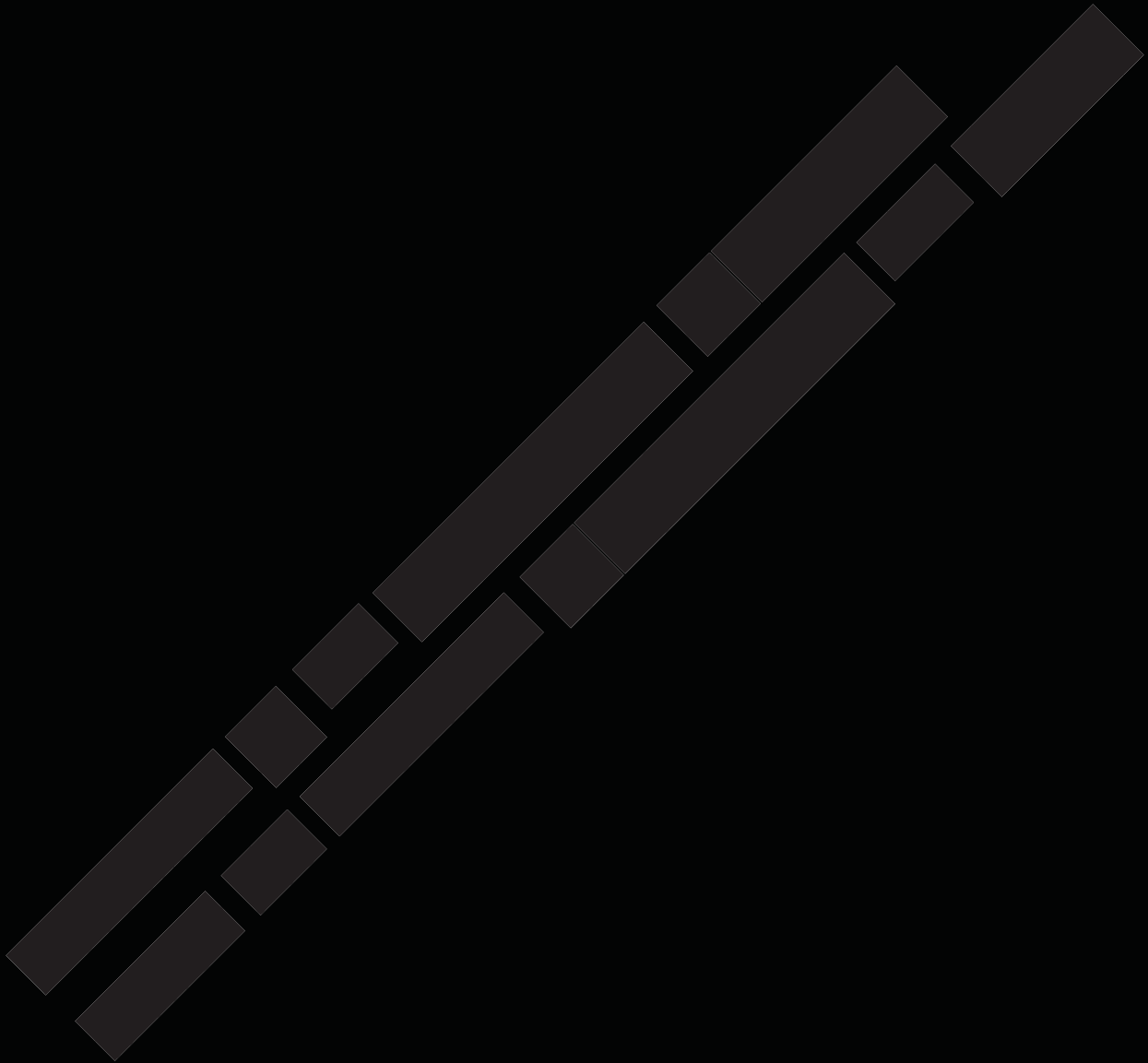


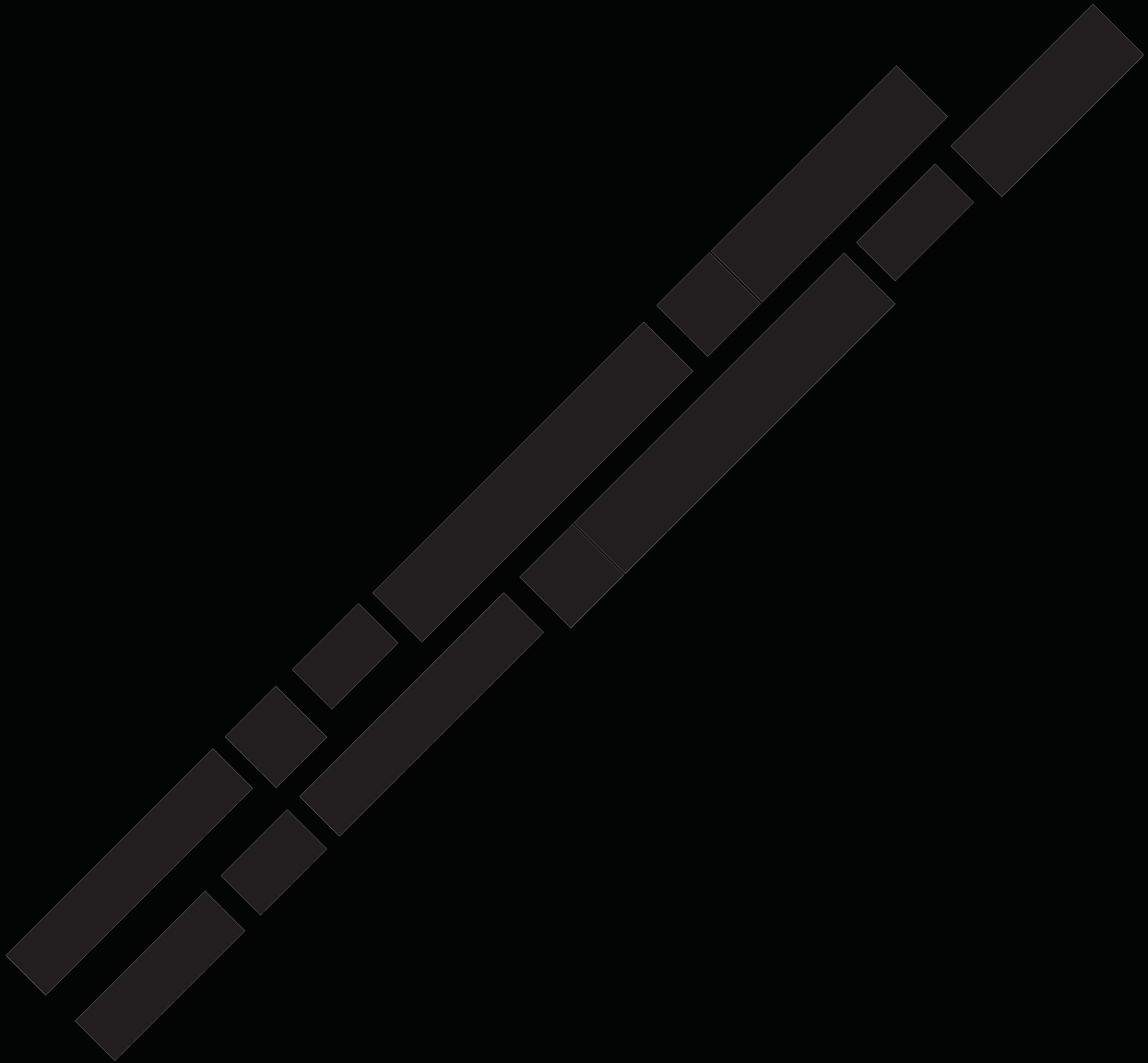


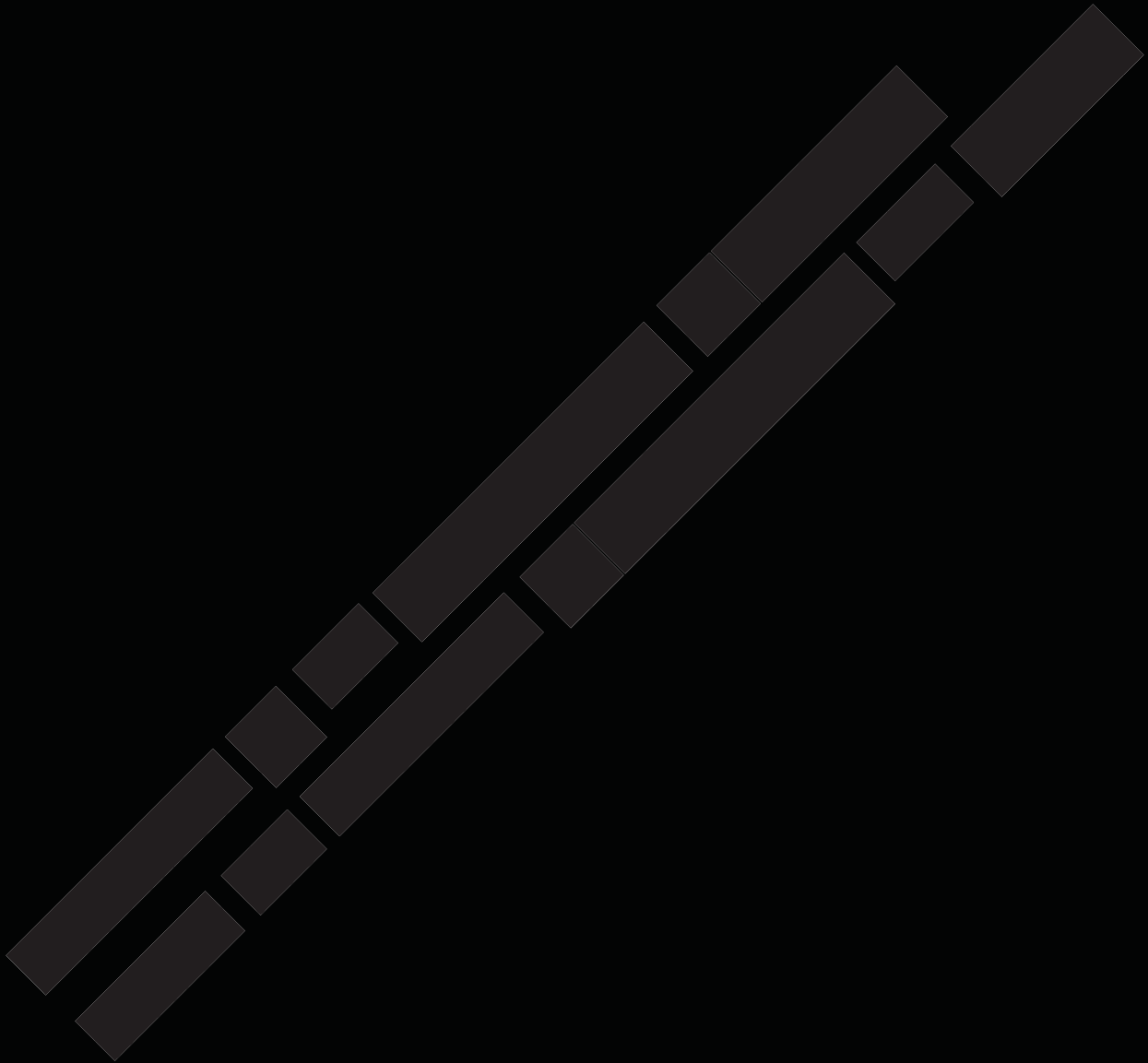


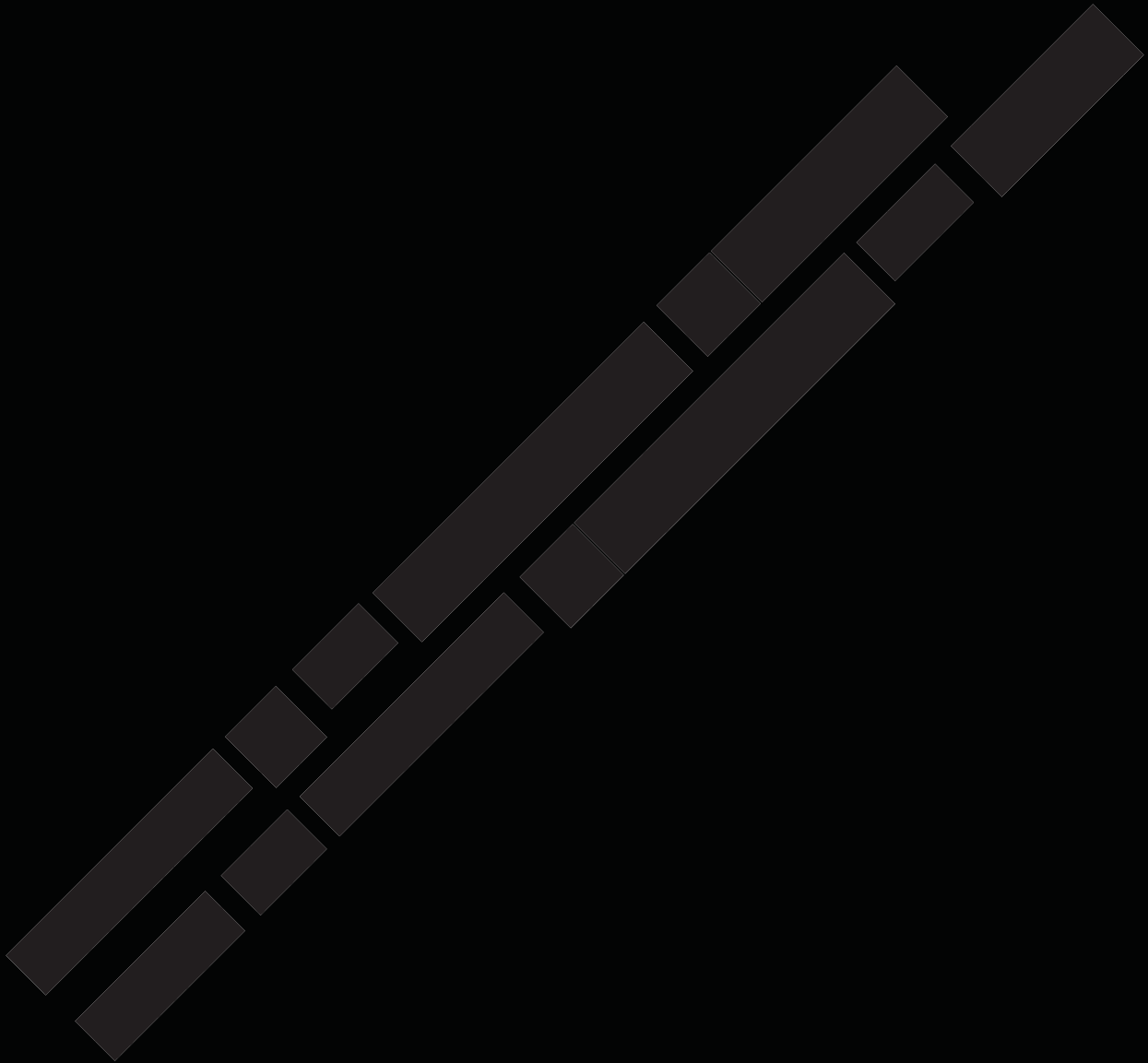


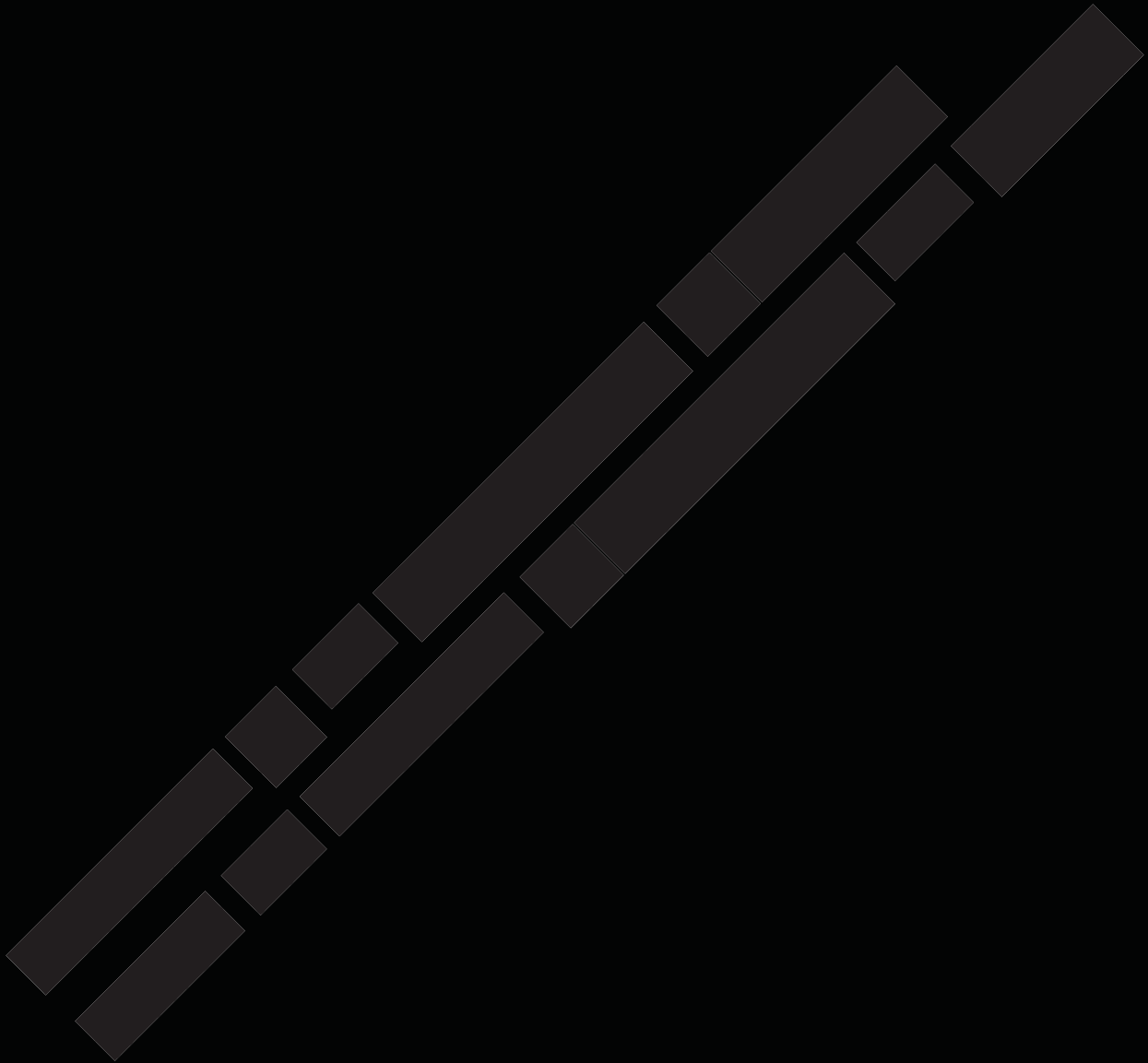


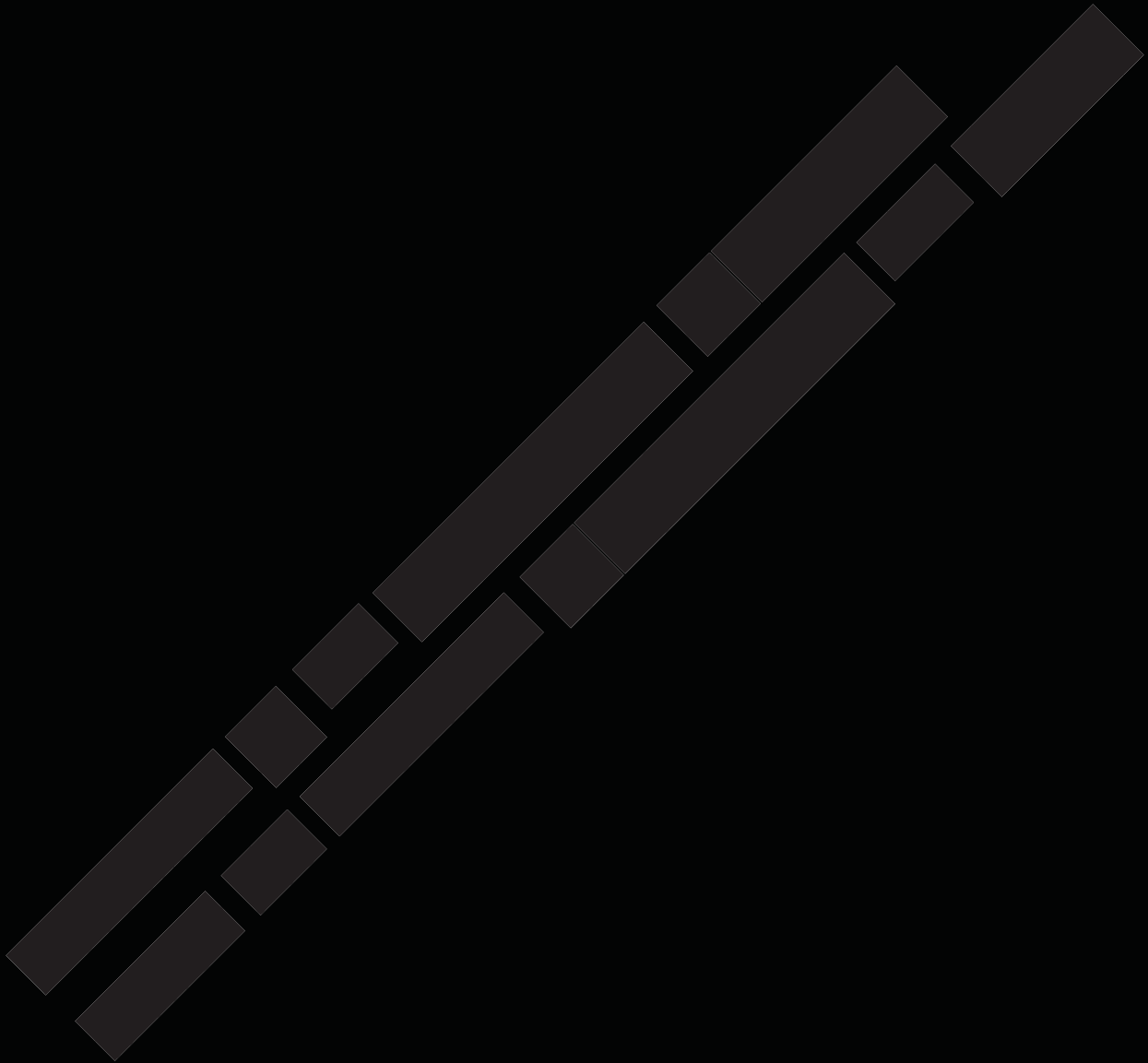


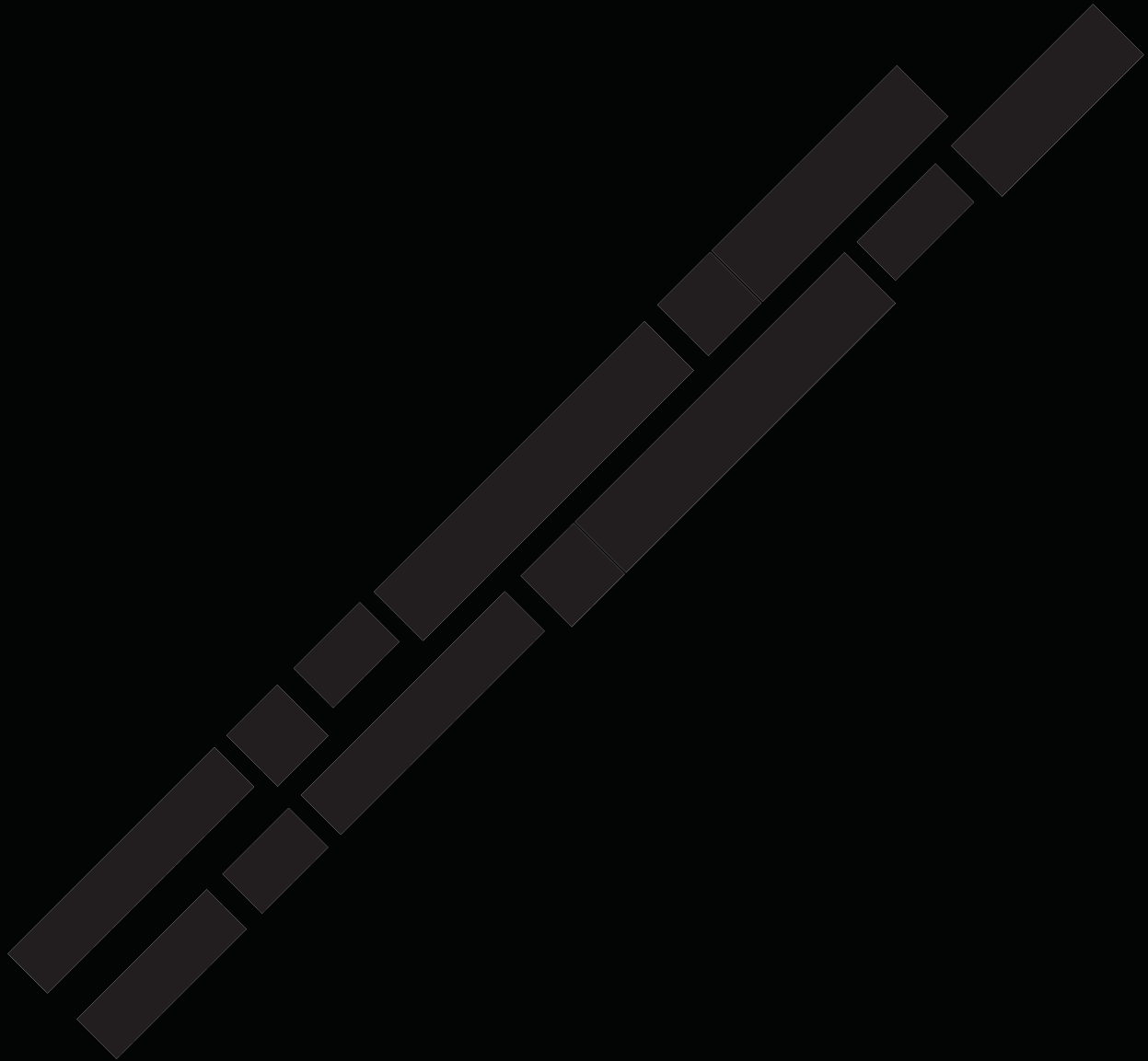


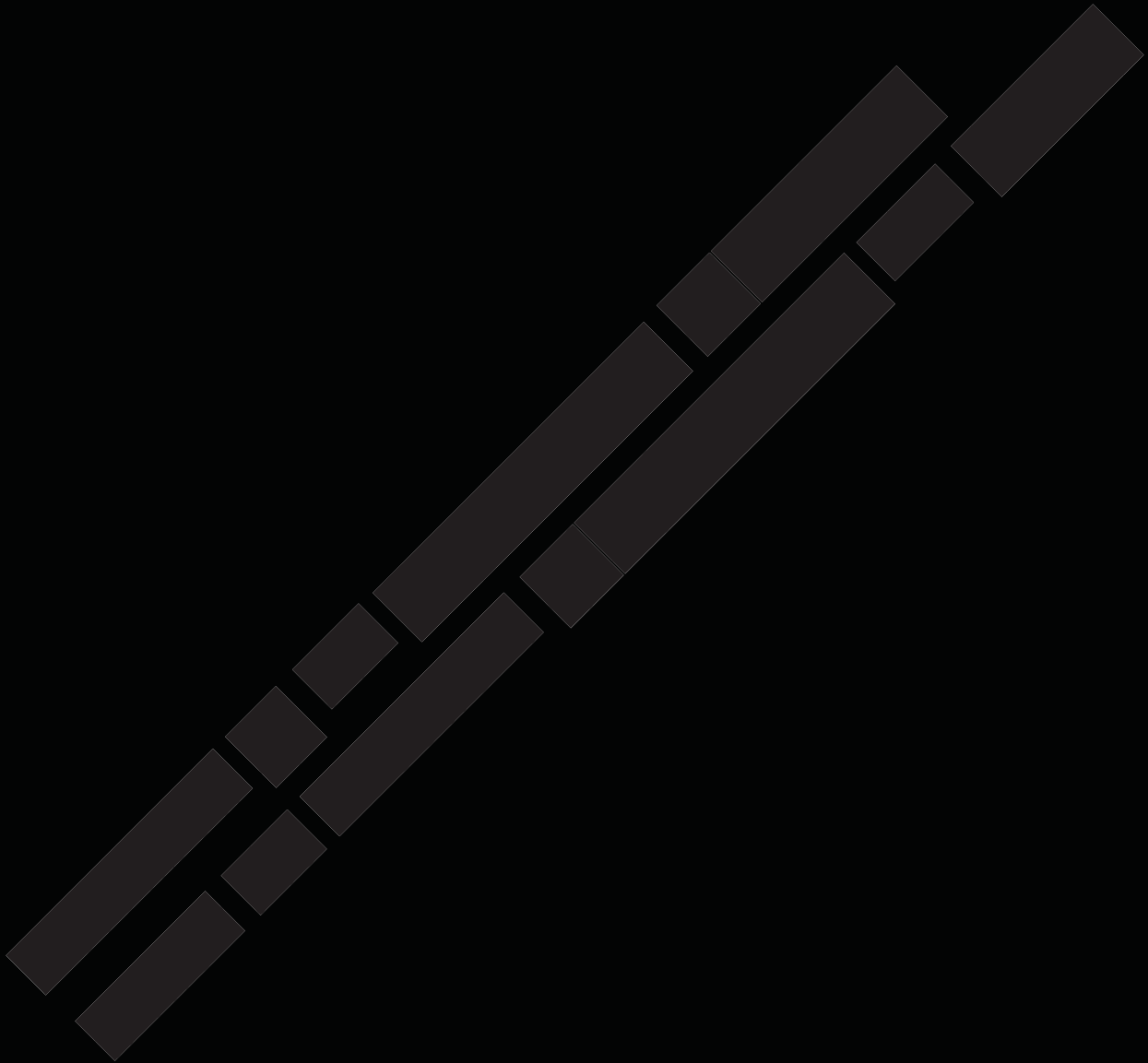


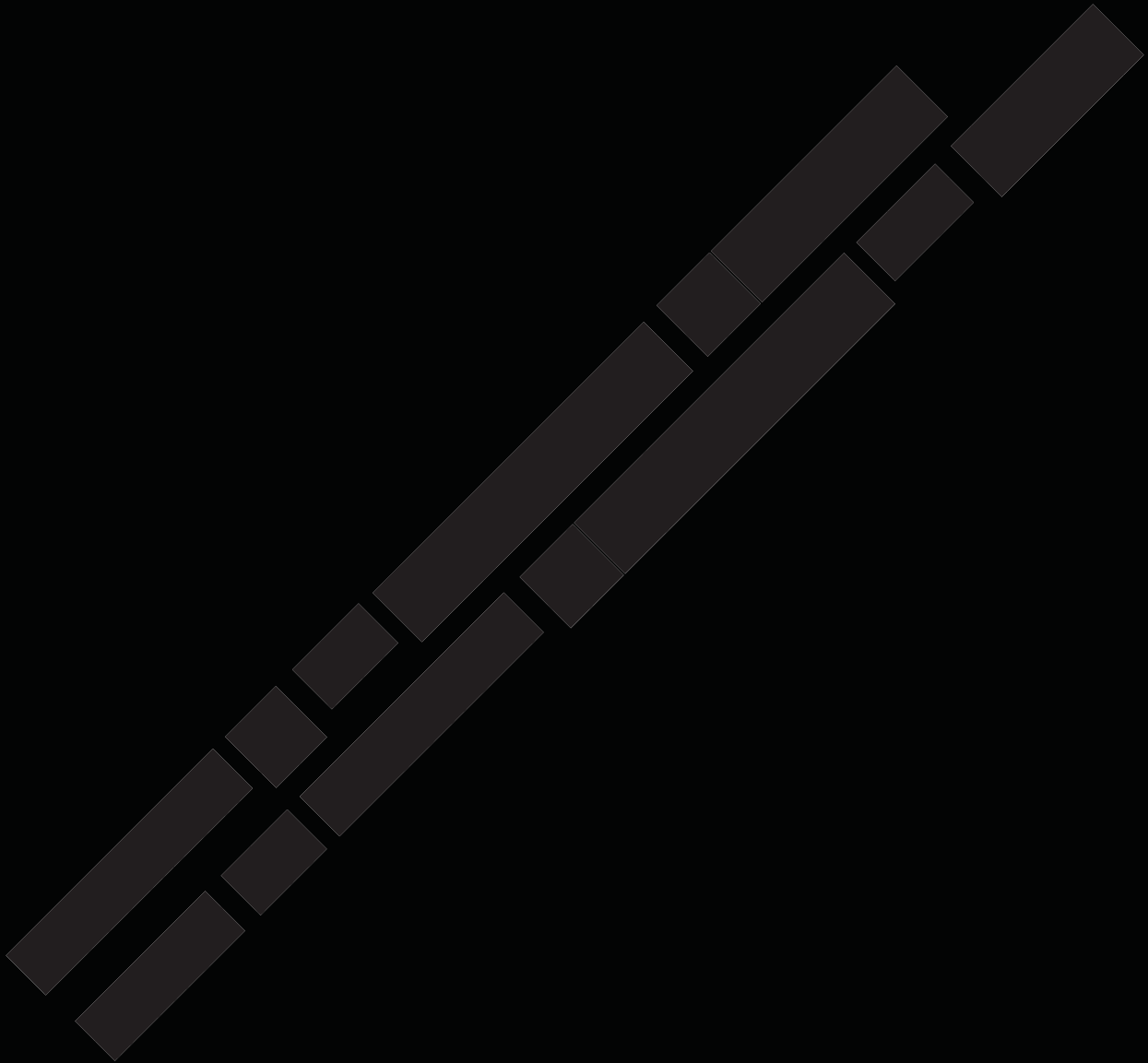


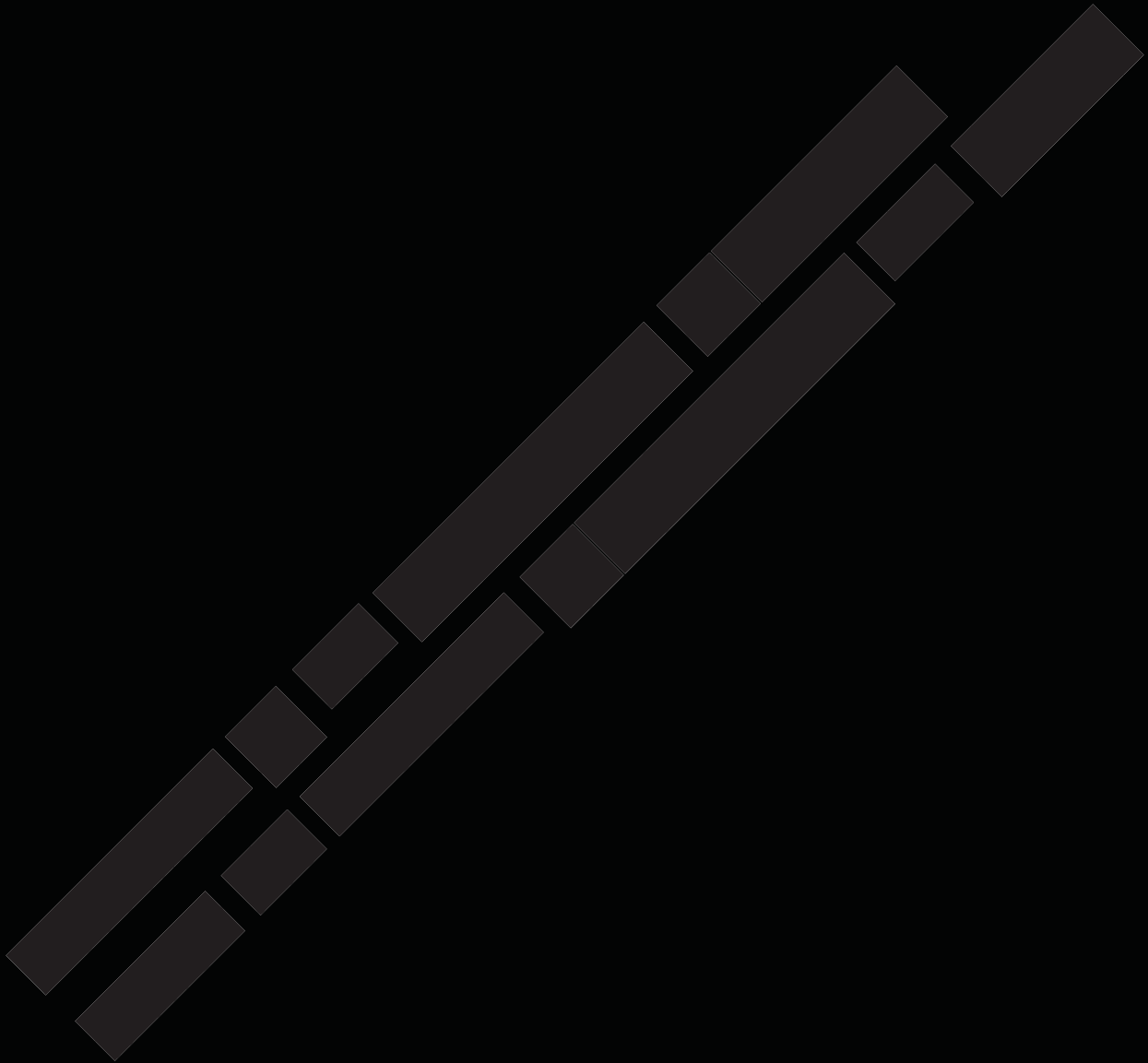


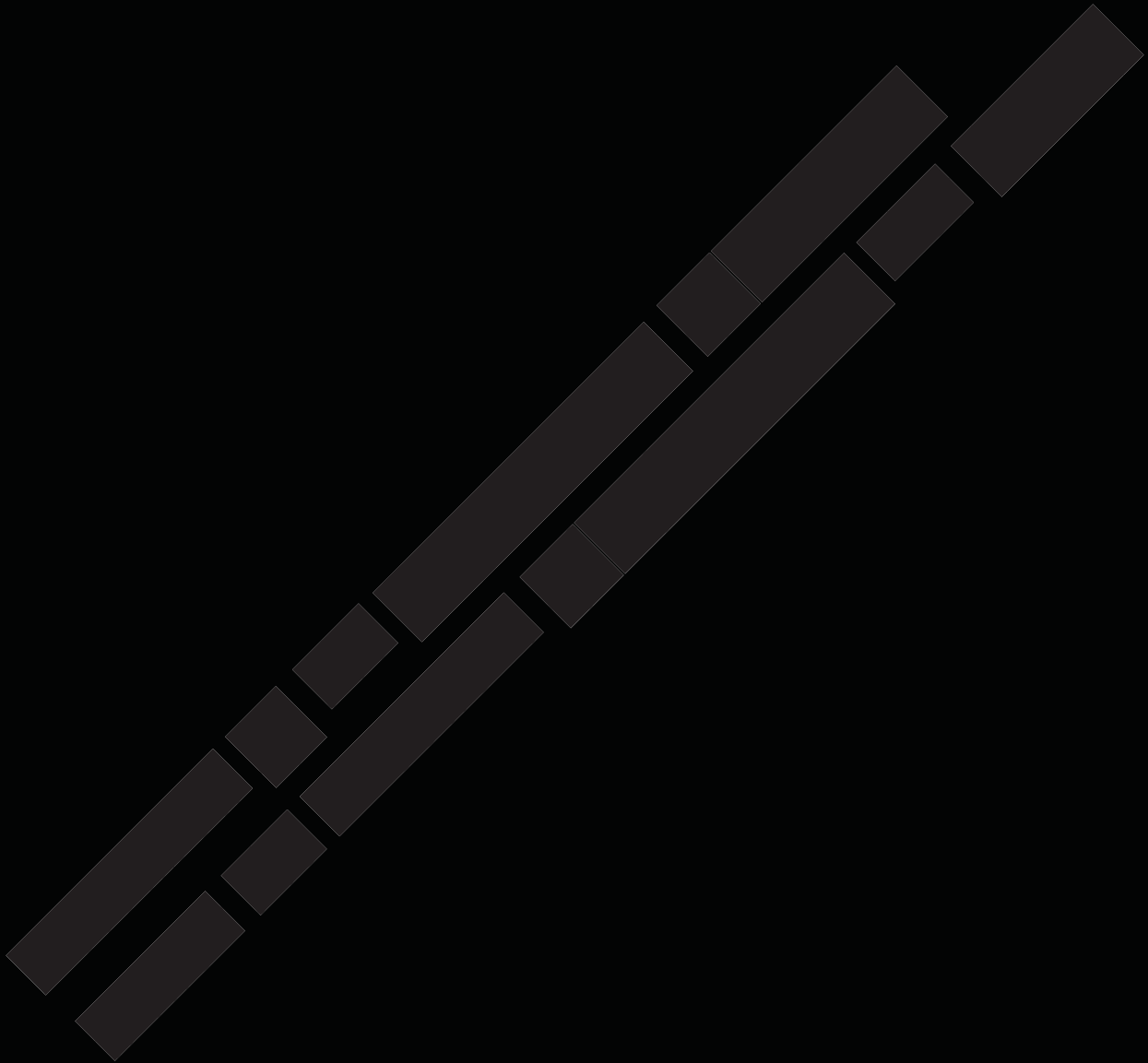


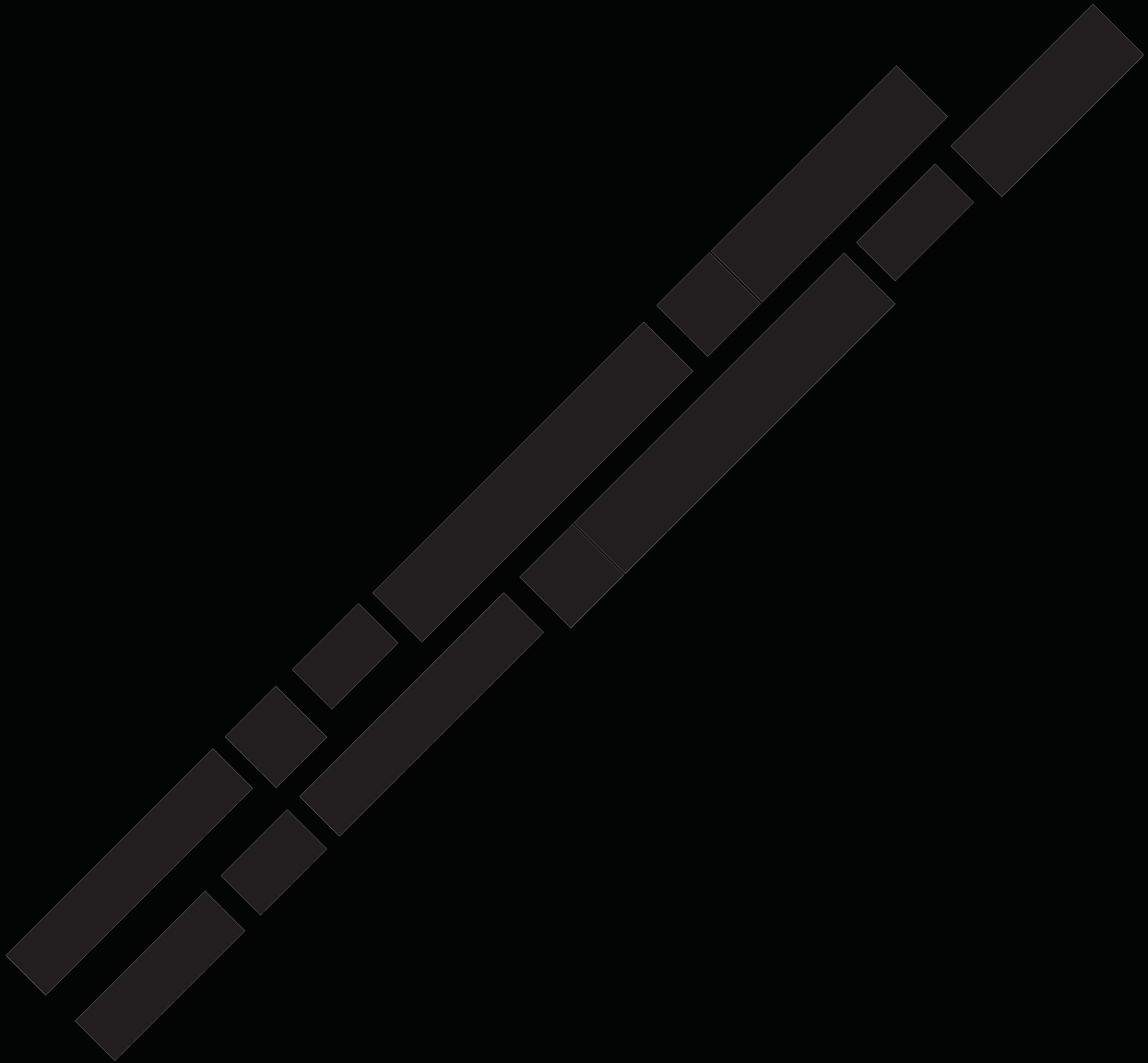


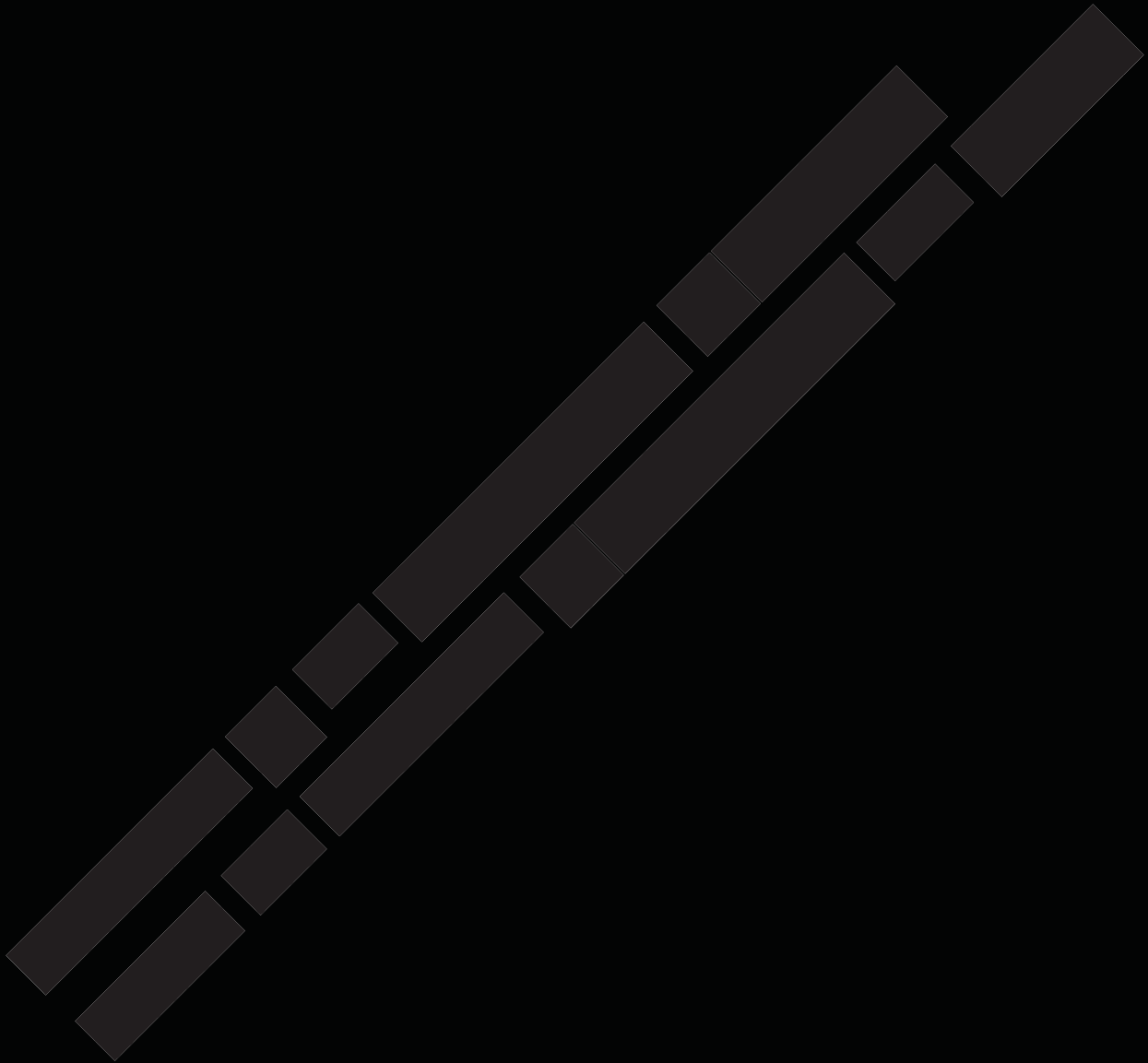


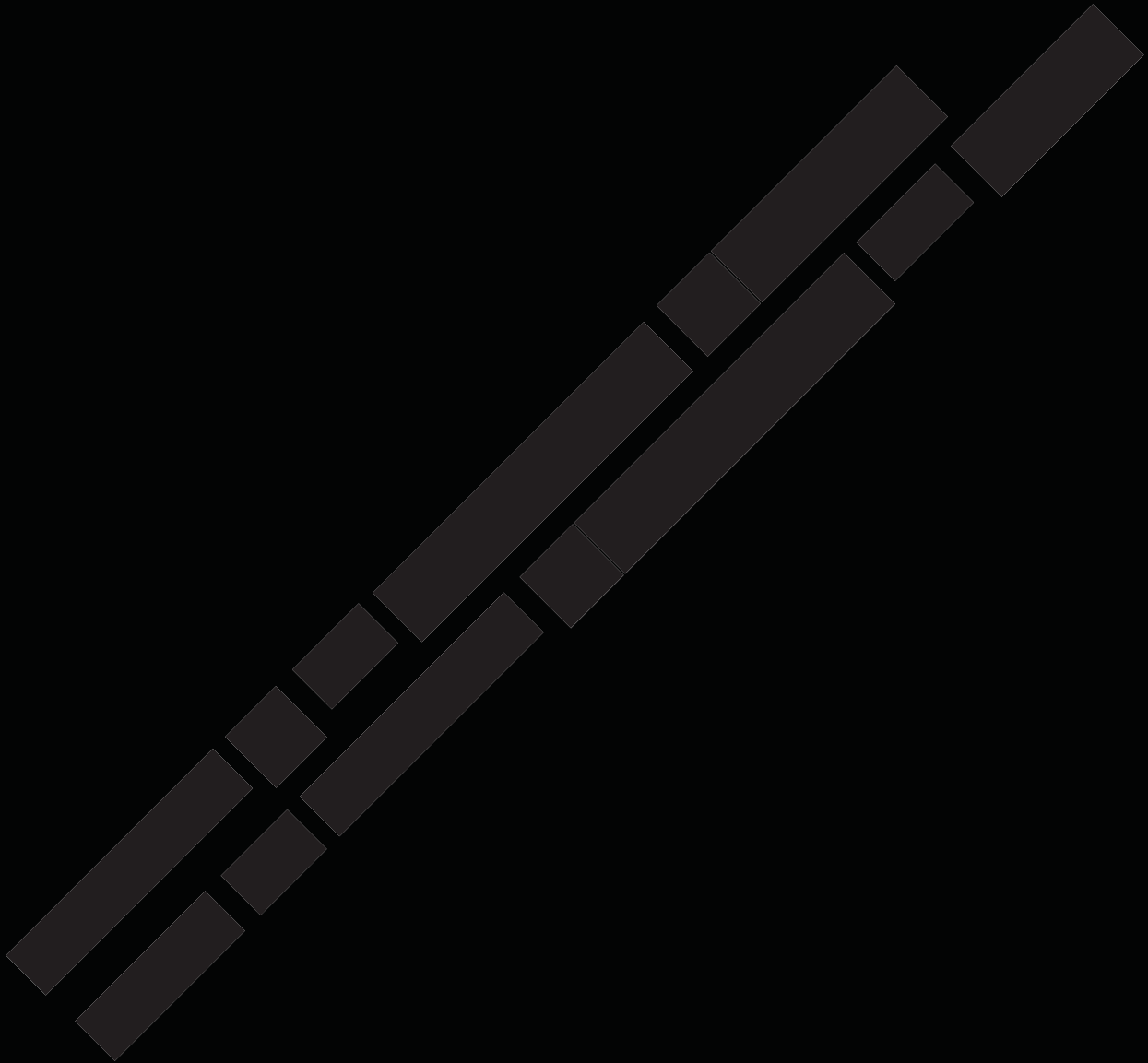


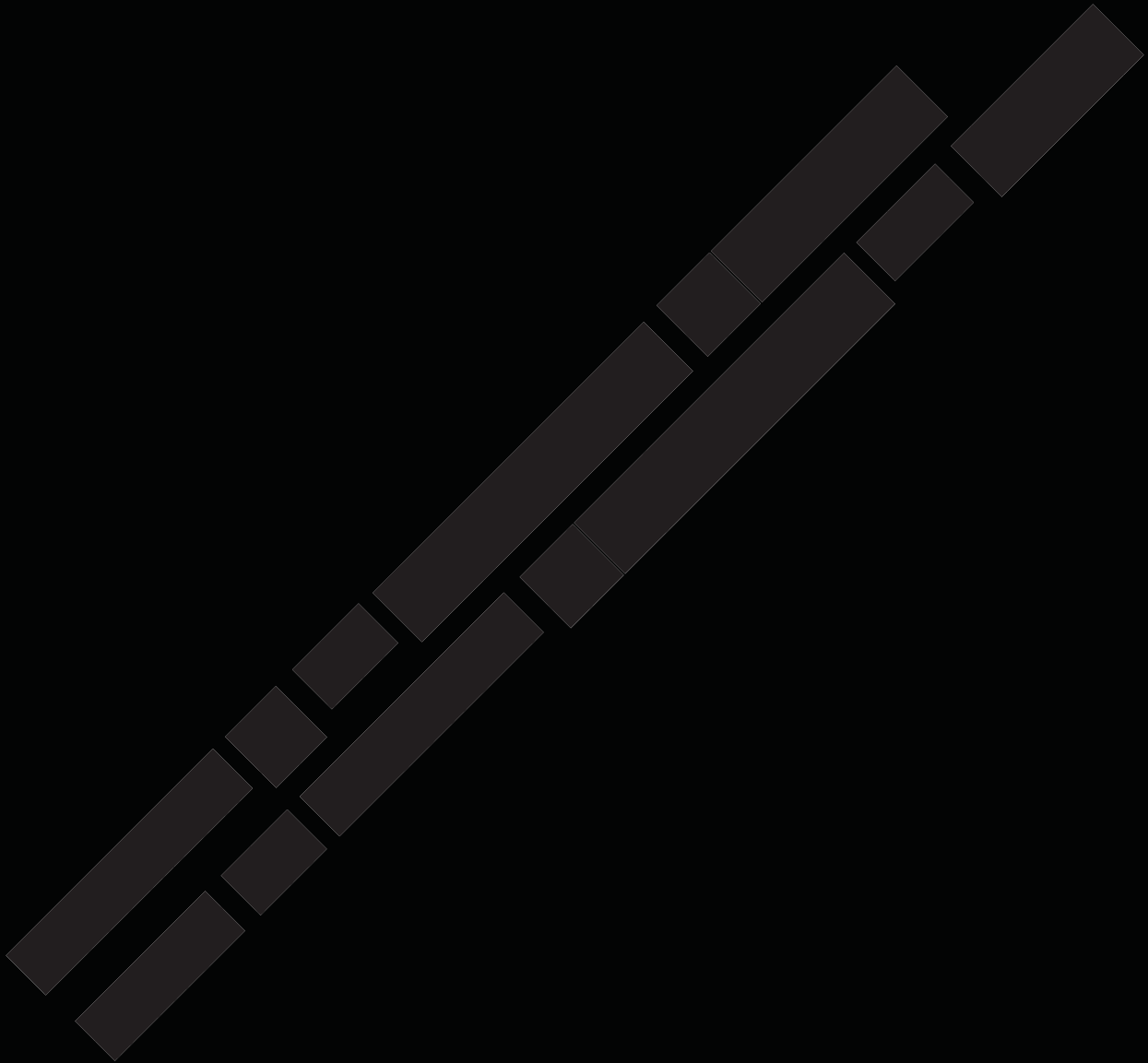


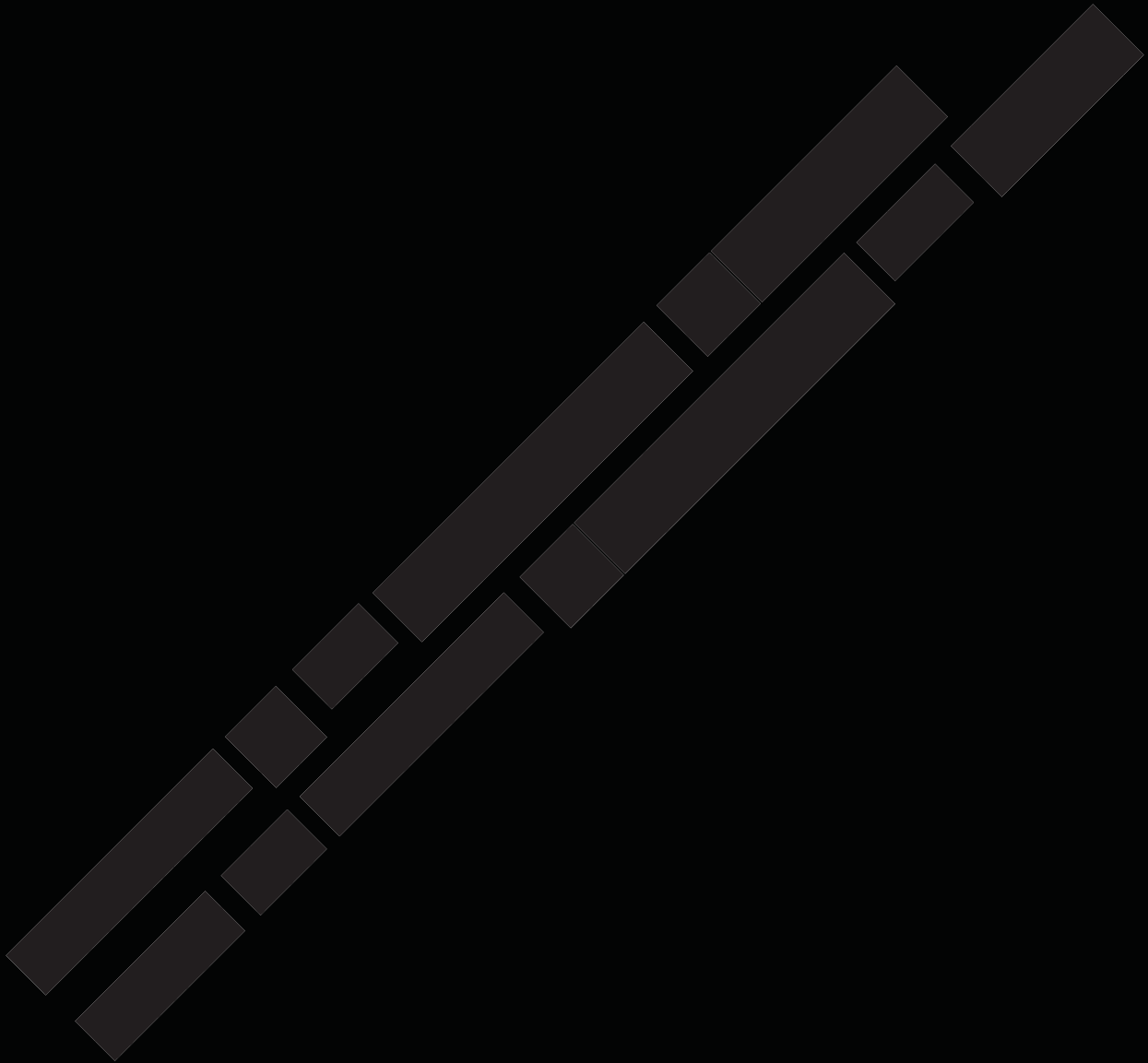


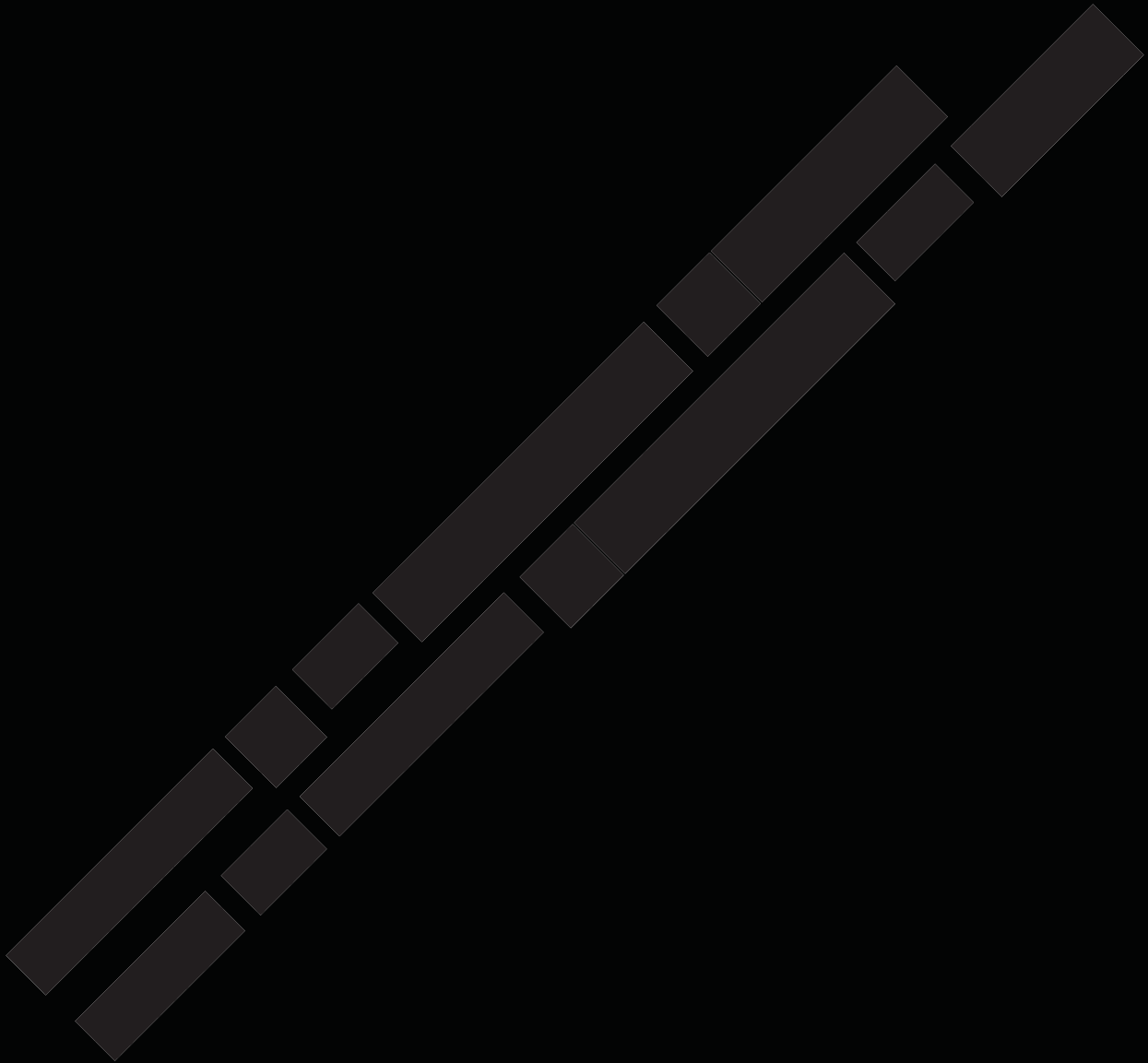


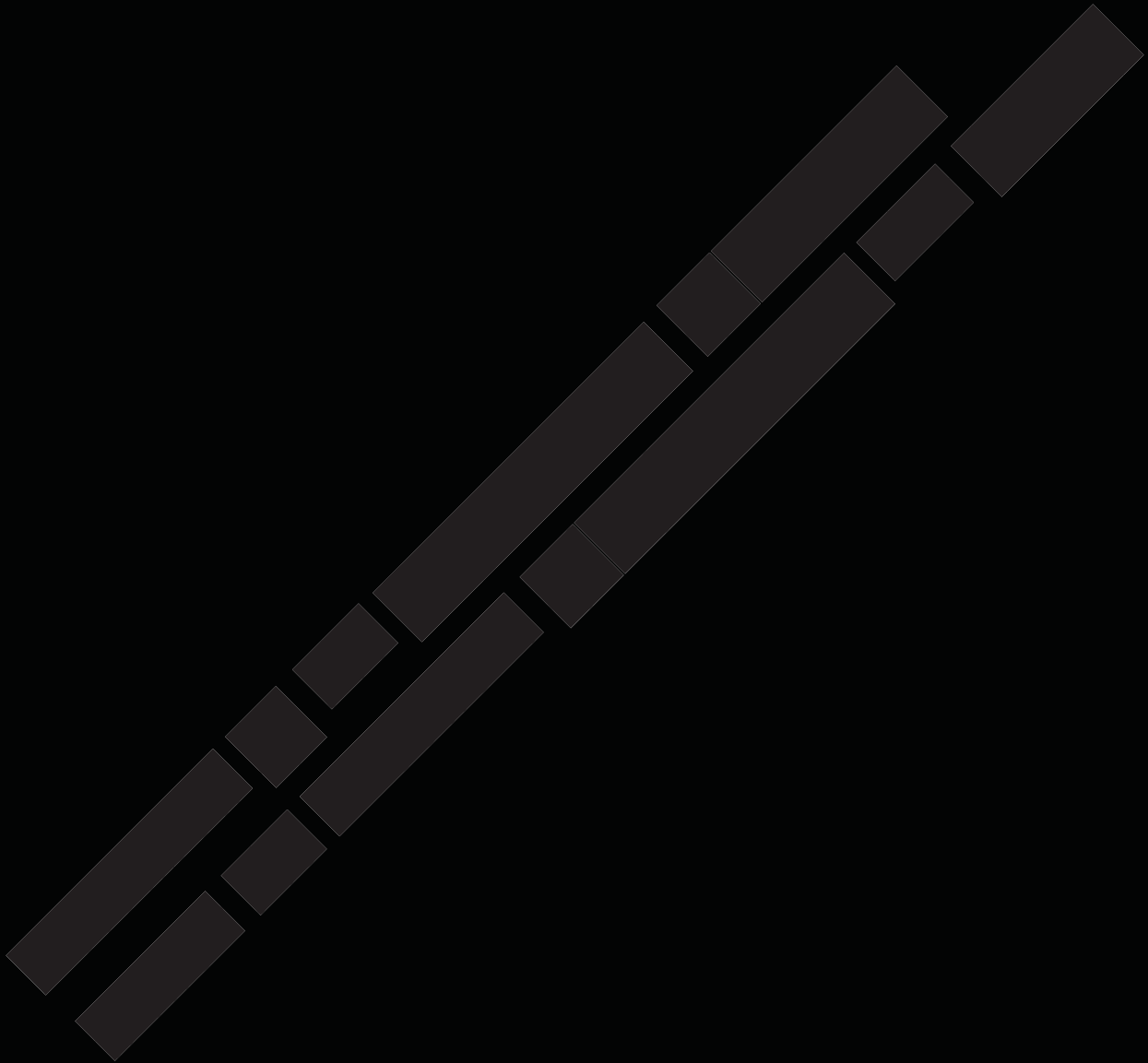


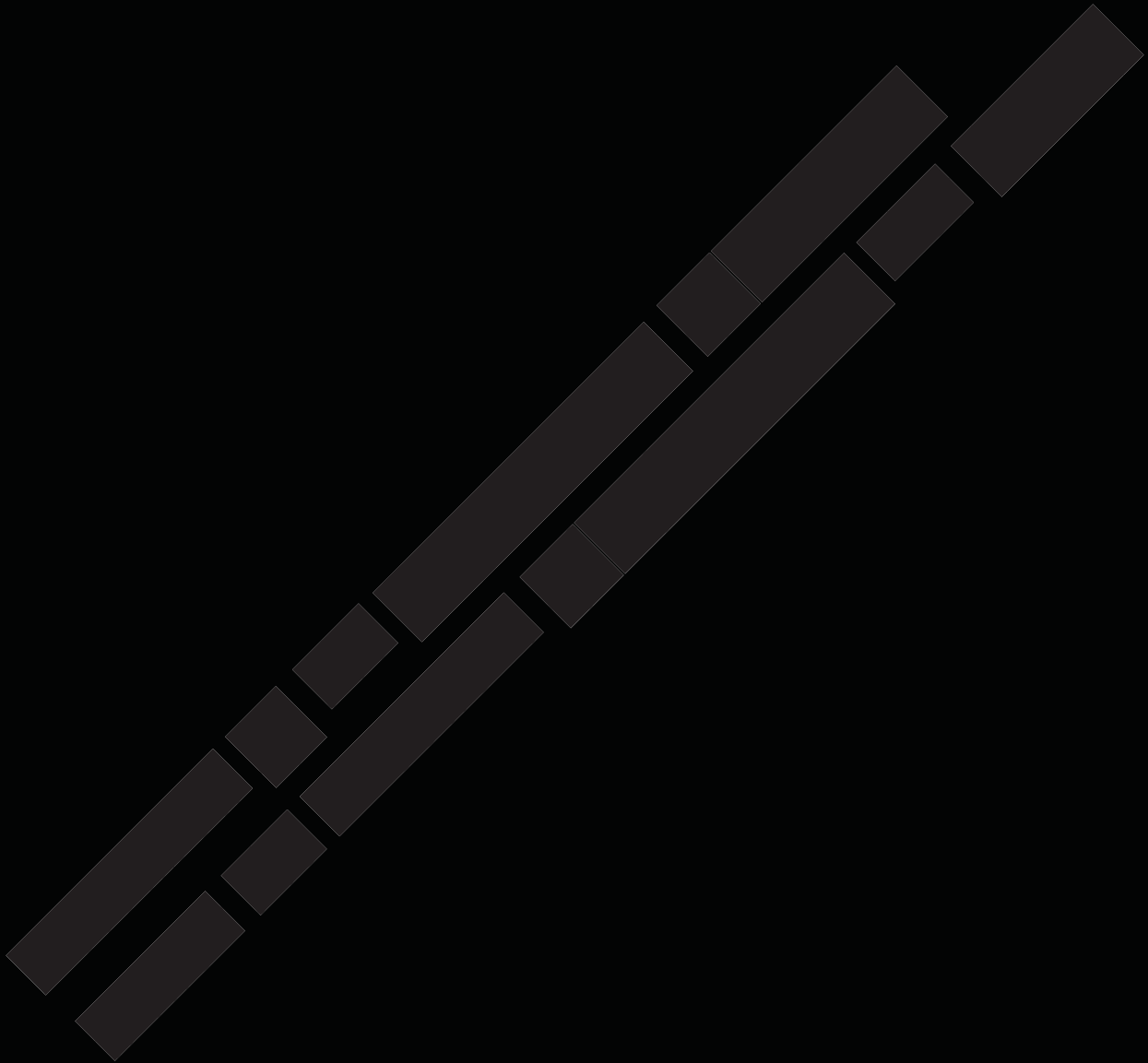


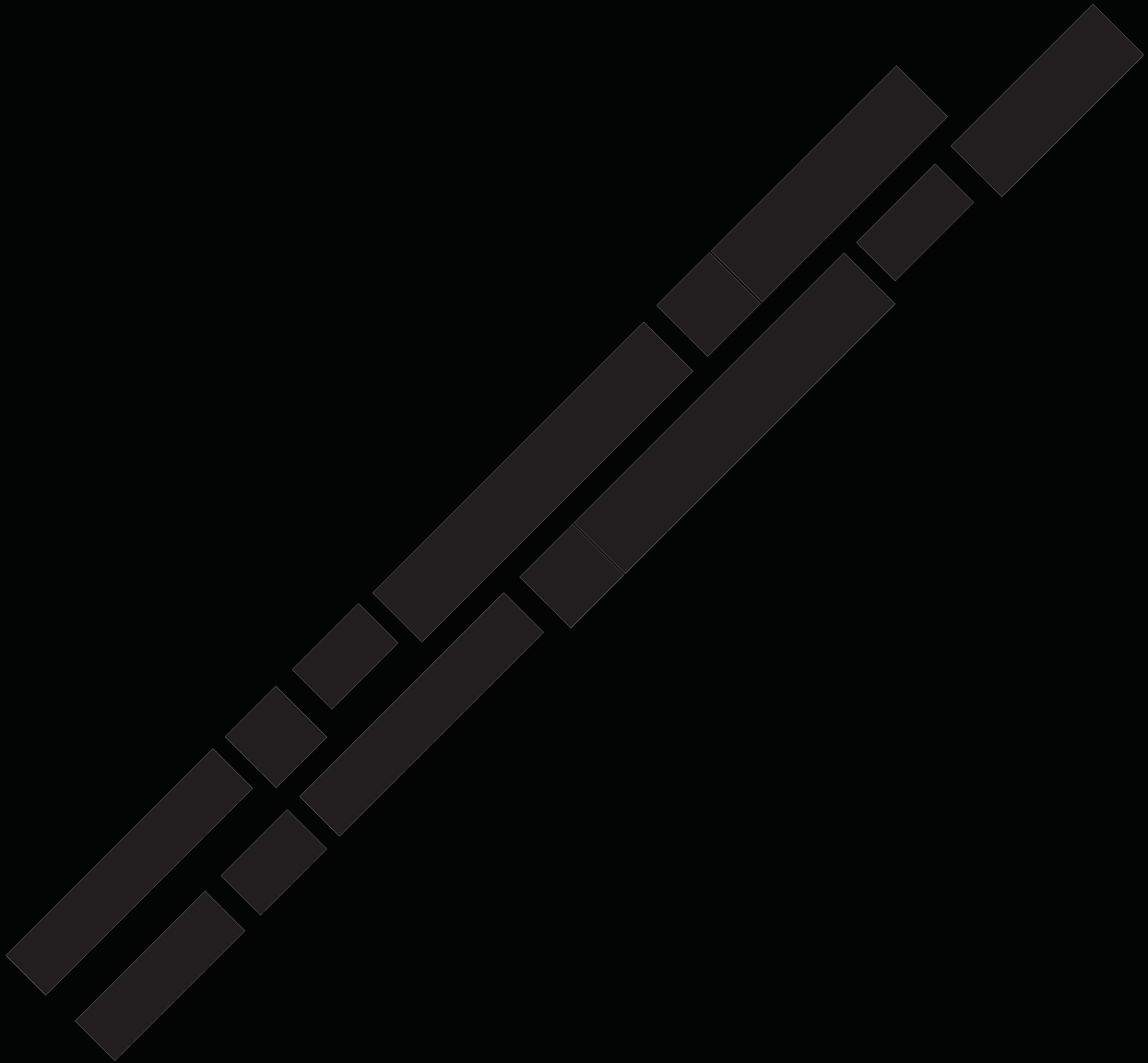


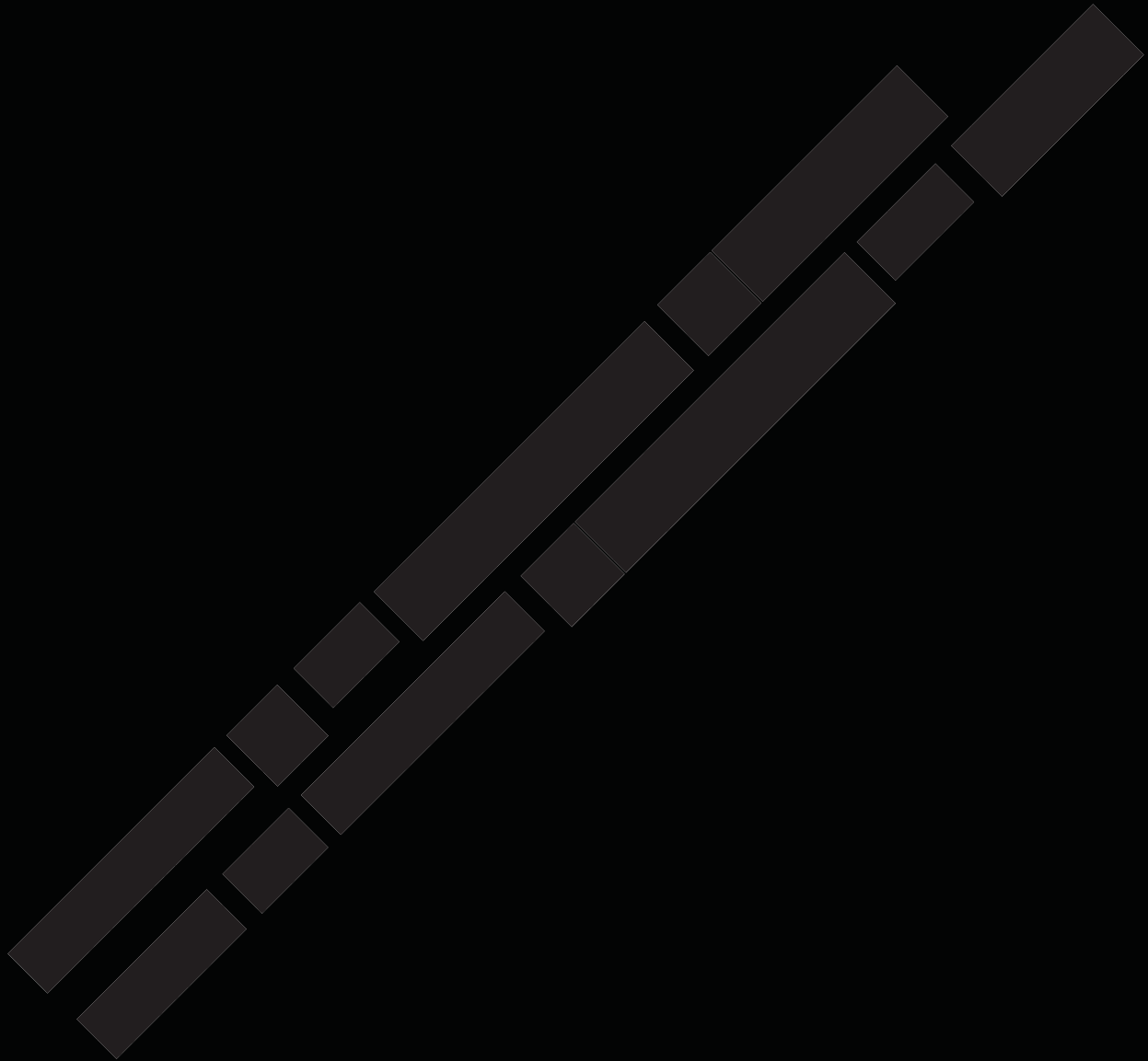


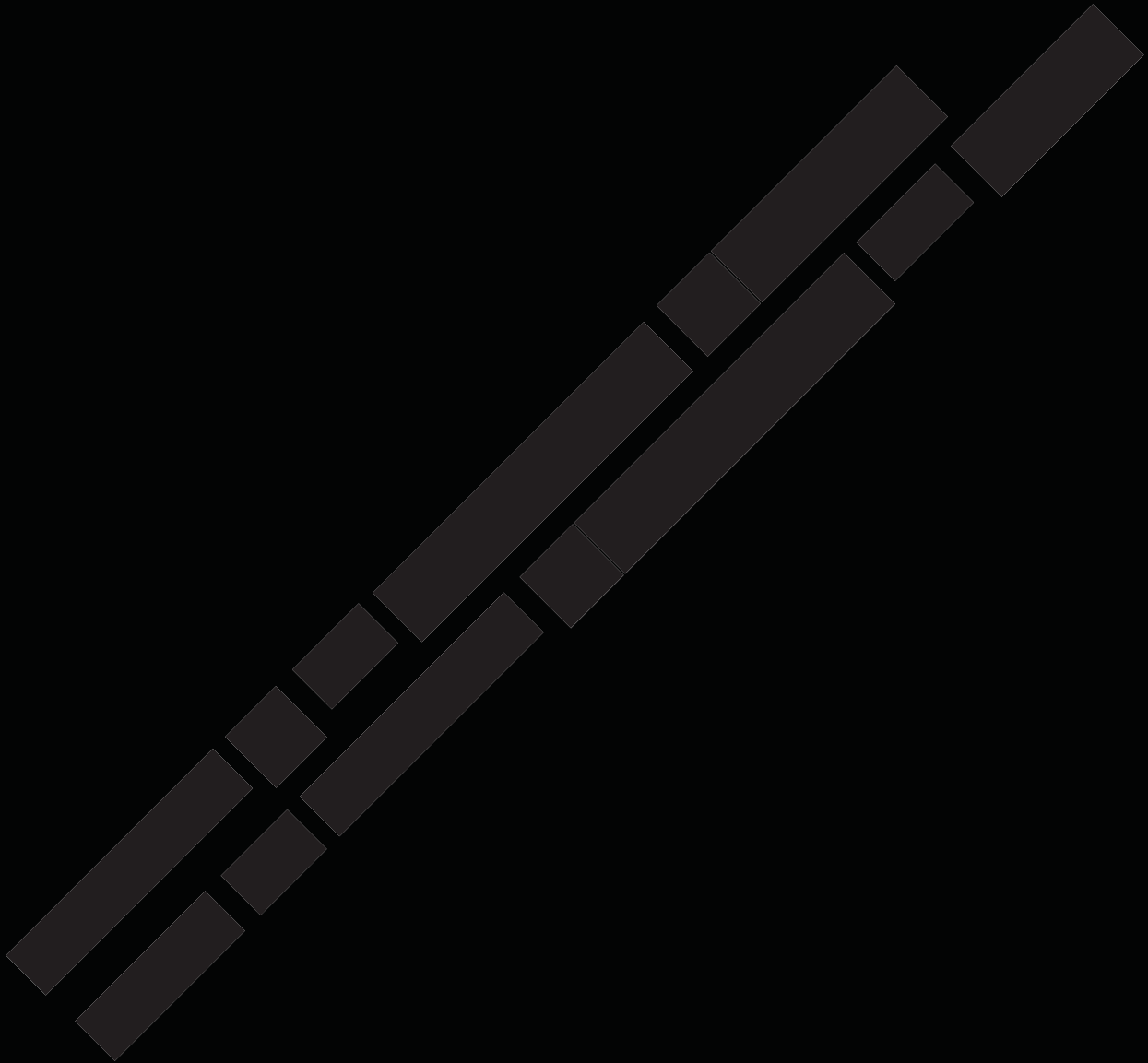


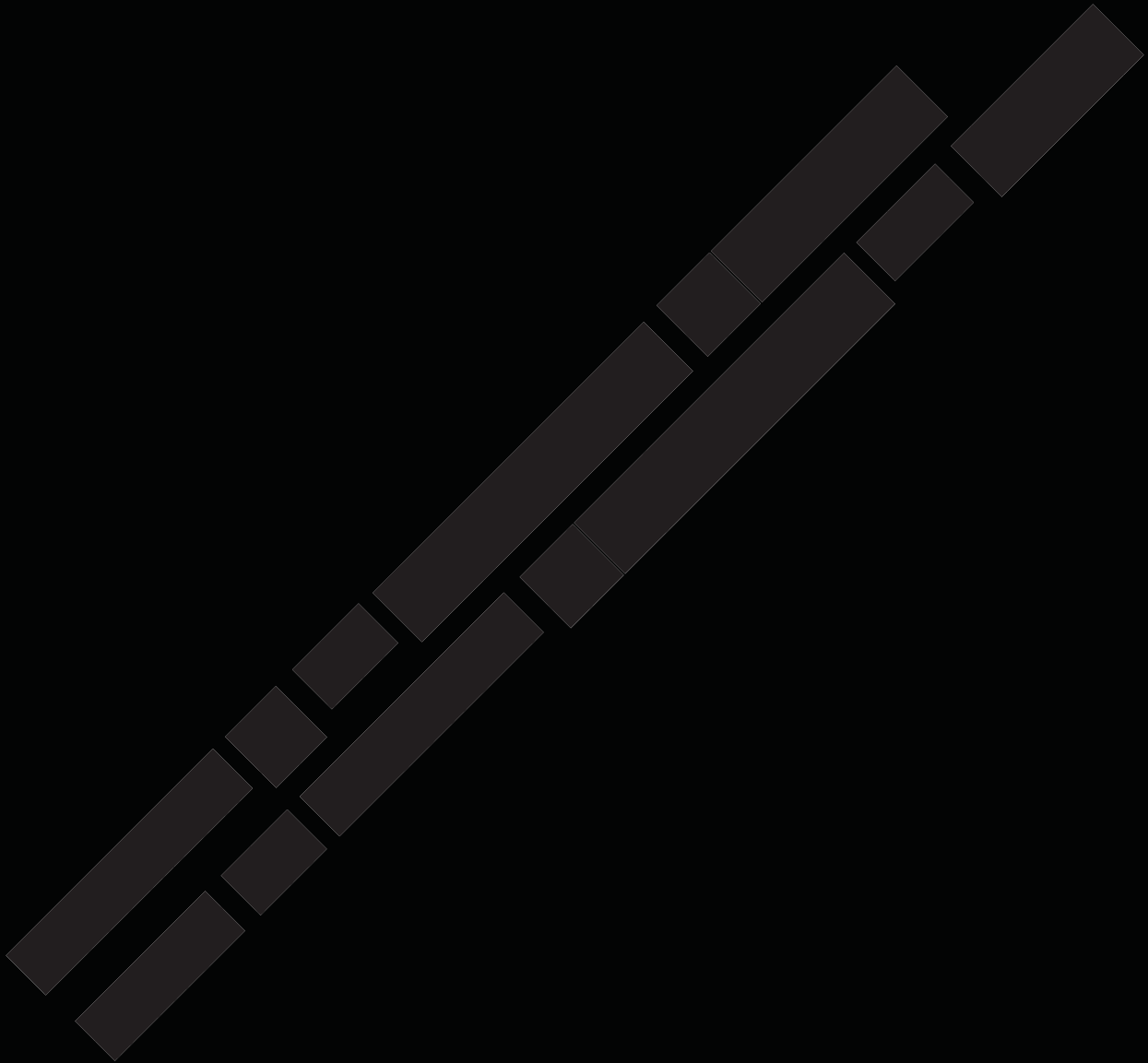


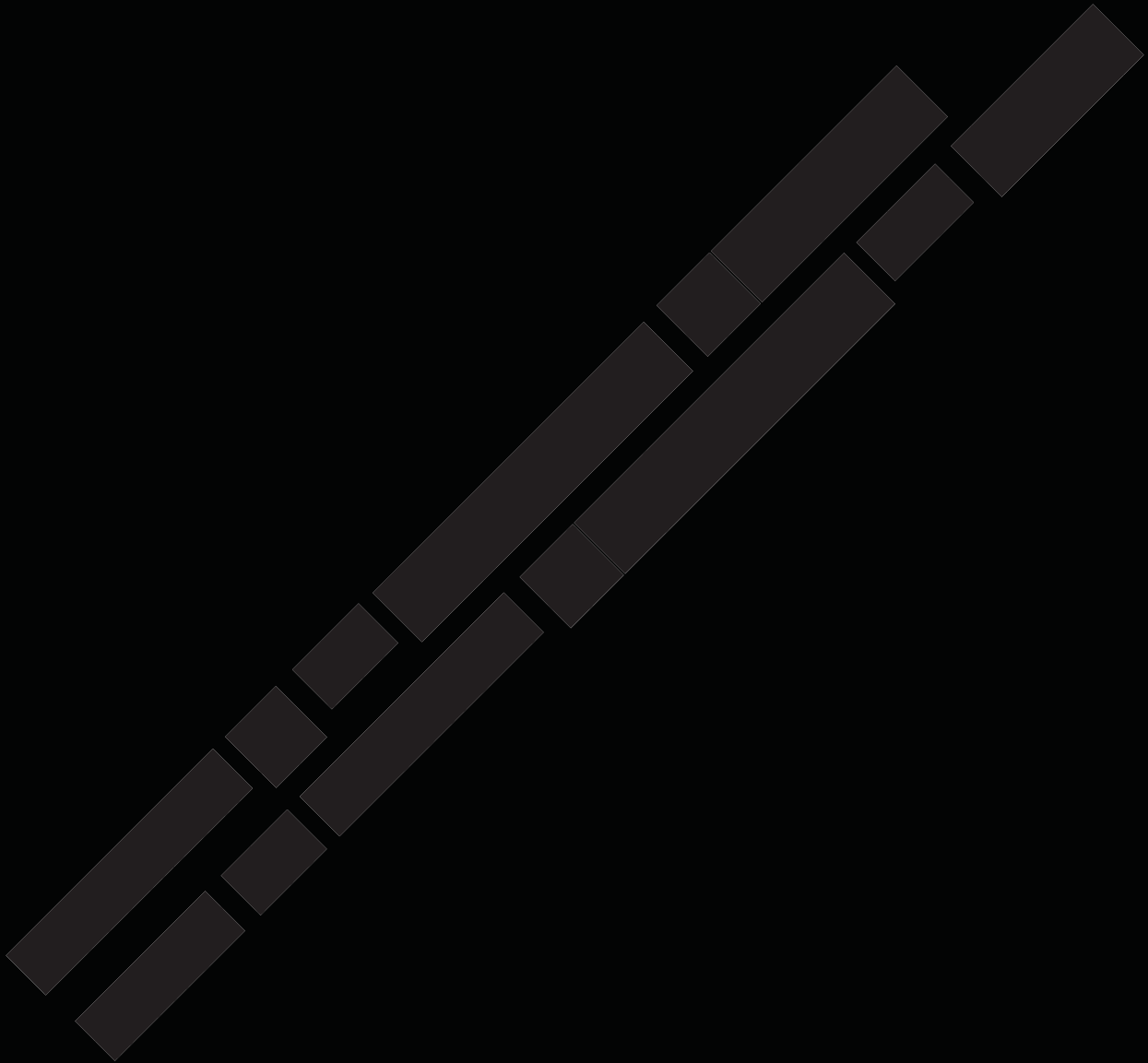


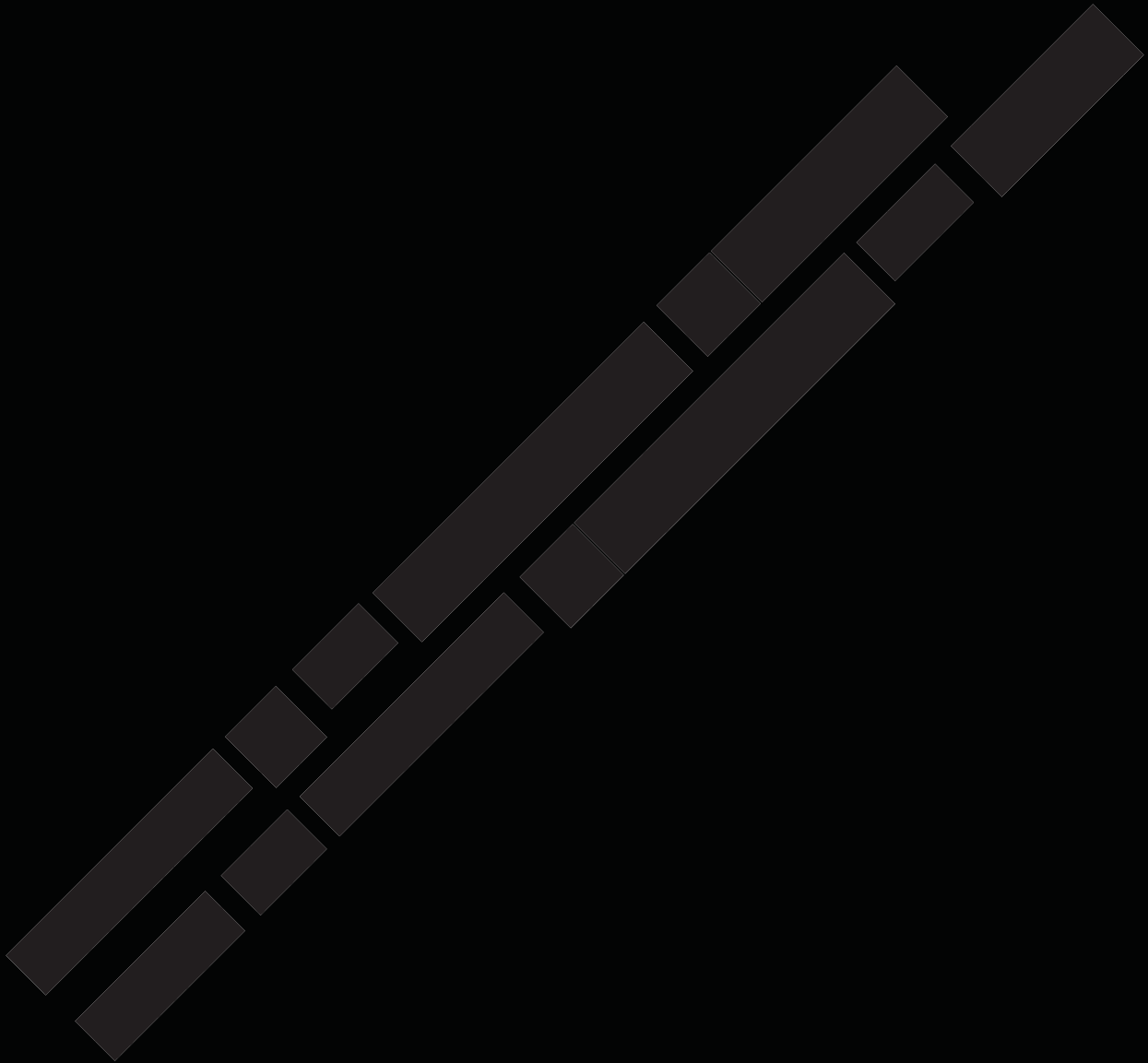












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s 47E

Principal Findings

Allegation 1: s47F failed to comply with the Commonwealth Procurement Rules relative to s47G

292. The allegation is NOT sustained.

s 47E

Allegation 2: s47F failed to declare a conflict of interest when exercising delegation to approve contracts for s47F

297. The allegation is sustained.

s 47E

Allegation 3: s47F asked s47F to backdate a s47F contract.

300. The allegation is NOT sustained.

s 47E

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s 47E


Allegation 4: s47F failed to submit a letter of notification prior to being engaged by s47F

305. The allegation is sustained.

s 47E


Allegation 5: s47F failed to submit a letter of notification prior to being engaged by s47F

308. The allegation is NOT sustained.

s 47E


Allegation 6: s47F failed to submit a letter of notification prior to being engaged by s47F

311. The allegation is NOT sustained.

s 47E


Allegation 7: s47F failed to manage a conflict of interest between s47F s47F

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314. The allegation is sustained.

s 47E



Allegation 8: s47F, s47F and s47F colluded with s47F during the
s47E

320. The allegation is NOT sustained.

s 47E



Allegation 9: s47F caused a loss to the Commonwealth by committing the Commonwealth to a contingent liability during the remediation of the s47E

324. The allegation is NOT sustained.

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s 47E



Allegation 10: s47F [redacted] inappropriately authorised the use of Commonwealth funds to
s 47G [redacted] at the conclusion of the s47E [redacted]

332. The allegation is NOT sustained.

s 47E

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s 47E

Allegation 11: s 47F claimed travel allowances beyond his entitlement while
s47F

338. The allegation is sustained.

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s 47E

Allegation 12: s47F failed to comply with the provisions of the s47E Deed of Standing Offer.

346. The allegation is sustained.

s 47E

s 47E

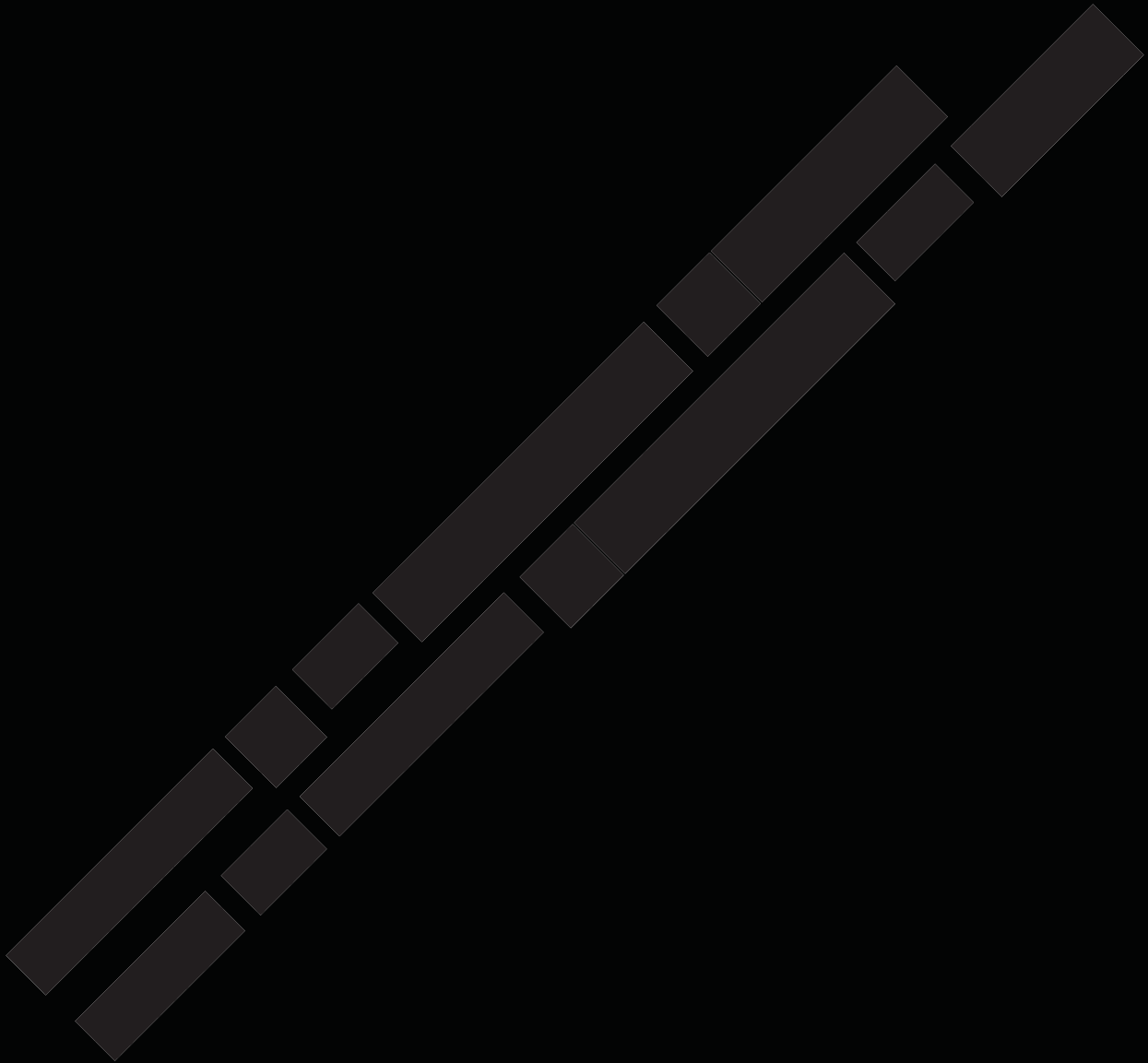
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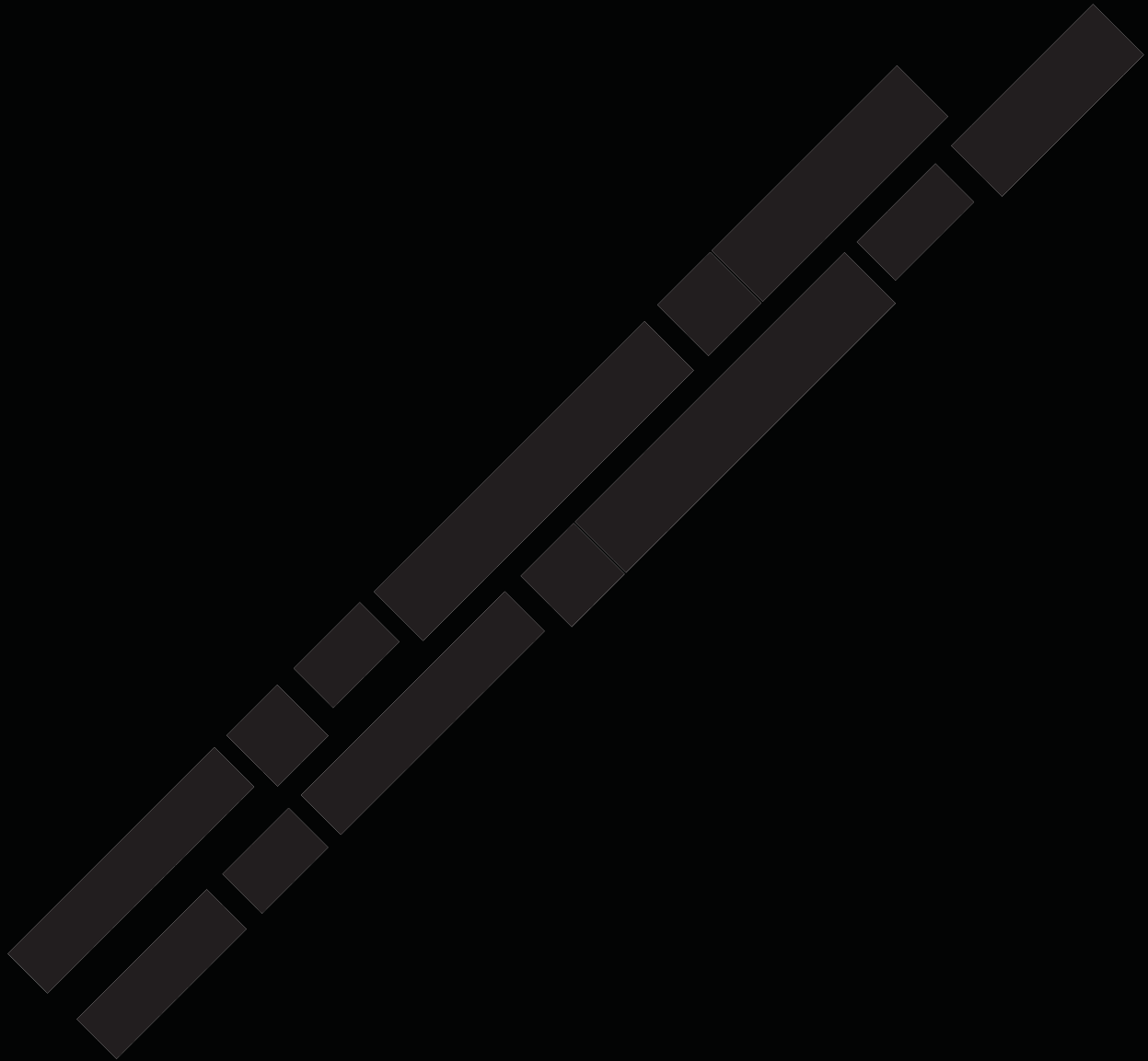
Consideration of Criminal Offences:

354. The investigation did not establish any criminal offences.

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s 47E

Conclusion:

381. The investigation established the following:

- s 47F conduct throughout s 47E engagement s 47E was unsatisfactory.
- s 47F failed to declare a conflict of interest when s 47E was involved in the engagement of s 47G
- s 47F failed to submit a letter of notification prior to being engaged by s 47G
- s 47F exercised poor judgement in managing the conflict of interest between s 47F
- s 47F claimed travel allowances beyond s 47E entitlement while engaged as a contractor.
- s 47F did not comply with the provisions of the s 47E Deed of Standing Offer when s 47E engaged s 47F by failing to declare conflict of interest.

Recommendations:

382. In light of the findings of this investigation, it is recommended that:

- s 47E is provided with a copy of the investigation report s 47E, s 47F
- s 47F s 47E, s 47F
- s 47F s 47E is provided with a copy of the report s 47F
- Deputy Chiefs of the three services are advised of the issues identified in relation to excessive hours being worked by s 47F
- DFC is notified of the findings for the purpose of reviewing the fraud risks.

s 22(1)(b)(ii)

James Williams
ADI
CP2-1-163

s 22(1)(b)(ii)

Terry Rileys
ADI
CP2-1-154

22(1)
(b)(ii)

26 July 2016

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Attachments:

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