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October 4, 2006

VIA FACSIMILE AND U.S. MAIL

Mr. Denis Weber, Mayor Councilmembers City of Agoura Hills 30001 Ladyface Court Agoura Hills, CA 91301

Re: Riopharm USA, Inc.

Dear Mayor Weber and Councilmembers:

We appreciate the City Council's extension granted at the September 13, 2006 meeting to allow our project team to make additional changes to our project based on the feedback we heard at the hearing. You will be pleased to know that we have made significant changes to our project that we believe directly respond to each of the concerns raised.

## Some of these changes include:

- \* Reducing density again on Agoura 1 by one unit. Fourteen legal lots have been reduced to 11 lots, thereby only 11 homes are proposed for development.
- \* One more single story home replacing a two story has been incorporated thereby a total of seven single story units have been integrated into Agoura 1 where previously no single story homes were originally proposed. This change results in significant massing reduction and preserves views over units adjacent to the project's neighbors to west.

We have attached an exhibit that describes in greater detail the changes made in each of the tracts.

Mr. Denis Weber October 4, 2006 Page 2

We respectfully request your due consideration of the enclosed information and hope that we have warranted your vote in favor of the project.

Very truly yours.

Phomas S. Cohen

WESTON, BENSHOOF,

ROCHEFORT, RUBALCAVA & MacCUISH LLP

TSC/MSOffice Enclosure

ce: Jack and Alan David

## ADDITIONAL PROJECT CHANGES FROM SEPTEMBER 13, 2006 CITY COUNCIL HEARING CONTINUED TO OCTOBER 11, 2006

#### AGOURA 1 TRACT:

- 1. Deleted Lot 12
- 2. New Lot 11
  - a. Converted to a single story home. Project will now have 7 single story units and 4 two story units.
  - b. Garage to face westerly onto north-south internal drive aisle. No garage door will face entry street.
  - c. Greater setback distances, all meeting or exceeding City standards for this zone.
  - d. Results in more landscape area, an increase of approximately 1,000 square feet.
- 3. Install mature landscaping to screen the project in a shorter period of time and add larger trees in strategic locations to soften the two story units on the southern perimeter of the tract boundary.
- 4. 15 guest parking stalls provided. Code requires 11 spaces.
- 5. East-west drive aisle width increased to 34 feet.
  - a. Former 90 degree parking stalls now parallel.
  - b. An additional 9.5 feet in width of landscaping with the removal of 90 degree parking stalls. This results in an increase in landscape area of approximately 700 square feet.
- 6. Aesthetic and environmentally-preferred decorative pavers (facilitates infiltration and reduces potential for erosion and stormwater pollution) will be used in
  - a. Driveways of each unit.
  - b. Guest parking stalls.

- 7. Decorative interlocking pavers will be used in the main entry driveway.
- 8. Lot 7 home reduced in height from 26 feet to 22 feet.
- 9. Privacy wall along northern perimeter of Lot 1 will be modified to taper or step down rather than end abruptly.
- 10. CC&Rs will be drafted and provided for review and approval by the Planning Department and the City Attorney, and will, among other things, provide for:
  - a. All common areas including, but not limited to, landscaping in front yards of each home, guest parking, main entry drive, drive aisles, fences, walls, recreational facilities and lighting within the project shall be maintained through the formation of a homeowner's association and right of assessment to assure payment and continuous quality maintenance.
  - b. Garages shall be restricted as follows:
    - 1. Garage doors may not be left open, except as temporarily necessary or while used for entering or exiting.
    - 2. Garage space shall not be converted into any use that would prevent its use as parking for the number of vehicles the space was designed to contain.
  - c. Guest parking may not be used on a long-term or routine basis by owners or tenants in the project.

#### MINUTES REGULAR MEETING OF THE AGOURA HILLS CITY COUNCIL

Civic Center - Council Chambers 30001 Ladyface Court, Agoura Hills, CA 91301 September 13, 2006 at 7:00 p.m.

The meeting was called to order at 7:04 p.m.

The flag salute was led by Councilmember Koehler.

Present were:

Mayor Denis Weber, Mayor Pro Tem Dan Kuperberg,

Councilmember John Edelston, Councilmember William Koehler,

and Councilmember Harry Schwarz.

Also Present were:

City Manager Greg Ramirez, Assistant to the City Manager Nathan Hamburger, Assistant to the City Manager Louis Celava. City Attorney Craig Steele, City Engineer Ken Berkman, Director of Planning and Community Development Mike Kamino, Assistant Director of Planning and Community Development Doug Hooper, Senior Planner Allison Cook, Associate Planner Valerie Darbouze, Oak Tree and Landscape Consultant Kay Greeley, Planning

Technician Sally Schneider, and City Clerk Kimberly Rodrigues.

## REPORT OF CLOSED SESSION

City Attorney Steele reported on the Closed Session pursuant to Government Code Sections 54956.9(a) and 54956.8. The City Council did not discuss the matter under 54956.9(b). Direction was given to staff and no reportable action was taken.

## APPROVAL OF AGENDA

On a motion by Council number Edelston to change the order of the Agenda and move Item No. 9 to the end of the Agenda, was seconded by Mayor Pro Tem Kuperberg, and the amended Agenda was approved without objection.

## ORAL COMMUNICATIONS

There were no speakers.

## **PRESENTATIONS**

Mayor Weber, on behalf of the City Council, presented a Certificate of Appreciation to Thom Bancroft for his years of dedication and service to the City of Agoura Hills and its residents and recognized his leadership in the formation of the Agoura Hills Men's Tennis League.

Captain Jerry Reese and the Fire Station #89 Crew presented the City Council and City Attorney with t-shirts in recognition of their generous donations of a computer and barbecue to the Fire Station and thanked the residents for welcoming them to the community.

# INTERGOVERNMENTAL, SPECIAL PURPOSE COMMITTEE & DEPARTMENTAL REPORTS

Mayor Weber, on behalf of the City Council, recognized five years of outstanding service and dedication to the City of Agoura Hills by City employee, Valerie Darbouze, of the Planning and Community Development Department.

Mayor Weber announced that, preceding the Council meeting, the City Council had attended a training session and completed their certification requirements to take the Federal National Incident Management System (NIMS) training which is incorporated with the State Emergency Management Systems (SEMS) training.

#### CONSENT CALENDAR

City Manager Ramirez requested an amendment to the recommendation of Item No. 8 to read: "Staff respectfully recommends the City Council approve the additional expenditures of \$2.5 million in Fiscal Year 2005/2006 rather than in the Fiscal Year 2006/2007 adopted budget and reduce the budgeted expenditure by the same amount in Fiscal Year 2006/2007."

On a motion by Councilmember Edelston second by Councilmember Schwarz, the Consent Calendar was approved, as amended, 5-0.

1. Approve Minutes of the Regular City Council Meeting of August 23, 2006

ACTION: Approved 5-0

2. Approve Demand Warrant Register No. 547

ACTION: Approved 5-0

3. Approve Agreement with Southern California Edison for Relocation of Facilities for the U.S. 101/Kanan Road Interchange Project

ACTION: Approved 5-0

4. Approve Rejection of Claim for Damages - Bryan Berri

ACTION: Approved 5-0

5. Approve Rejection of Claim for Damages - Natalie Turner

ACTION: Approved 5-0

6. Approve the Addition of a Non-Voting Student Representative to the Agoura Hills/Calabasas Community Center (AHCCC) Joint Powers Authority

ACTION:

Approved 5-0

7. Approve the Installation of Illuminated Street Signs

ACTION: Approved 5-0

8. Receive Update No. 3 and Approve Additional Expenditures for the U.S. 101/Kanan Interchange Project

**ACTION:** 

Approved 5-0

#### PUBLIC HEARING - CHANGE IN ORDER OF AGENDA

9. This item was moved to the end of the Agenda

#### DISCUSSON/ACTION

10. Approve <u>Resolution No. 06-1430</u>;\A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ESTABLISHING CHARGES FOR SERVICES RENDERED IN RELAVION TO PROCESSING APPLICATIONS IN THE AGOURA VILLAGE SPECIFIC PLAN AREA

Upon presentation of the staff report and a question and answer period, Mayor Weber opened the floor for public comment.

There were no public speakers on this item.

ACTION:

Following discussion, the motion by Councilmember Schwarz, to adopt **Resolution No. 06-1430**, was seconded by Mayor Pro Tem Kuperberg, and approved on a roll call vote of 5-0.

11. Approve the Contract Award for the 2006-2007 Street Resurfacing Project; NIB 06-01

Upon presentation of the staff report and a question and answer period, Mayor Weber opened the floor for public comment.

There were no public speakers on this item.

**ACTION:** 

Following discussion, the motion by Councilmember Edelston, to award the 2006-2007 Street Resurfacing Project; NIB 06-01, to Hardy and Harper, Inc., authorize the use of up to \$163,107 from the SB 1132 "Local Street and Road Improvements" Fund for the project, and authorize the transfer of \$137,603 of Gas Tax funds into the project's account, was seconded by Councilmember Koehler, and approved on a roll call vote of 5-0.

#### PUBLIC HEARING - CHANGE IN ORDER OF AGENDA

9. Conduct a Public Hearing Regarding an Appeal of the Planning Commission's Denial of Conditional Use Permit Case Nos. 03-CUP-010 and 98-CUP-007, Oak Tree Permit Case No. 98-OTP-011, which was a Request to Develop 27 Detached Single-Family Residences on Two Recorded Residential Tracts, to Remove 33 Oak Trees and Encroach within the Protected Zone of 15 Oak Trees for the Proposed Construction on the South Side of Agoura Road, East of Calle Montecillo and West of Liberty Canyon Road, and Adoption of a Mitigated Negative Declaration. (Riopharm USA, Inc., Applicant) – This Public Hearing was continued from the Regular City Council meeting of June 28, 2006

City Attorney Steele announced that Councilmember Koehler and Councilmember Schwarz do not have any statutory conflict of interest in this matter and based on the fact that they considered and voted on this particular project while serving as Members of the Planning Commission and out of respect for the due process rights of both the applicants and anyone else interested in the matter, they decided to recuse themselves.

#### Councilmember Koehler and Councilmember Schwarz left the meeting at this point.

There were no ex parte communications disclosed by the City Council.

Following presentation of the staff report and a question and answer period, Mayor Weber opened the Public Hearing.

- Charles Cohen, 2801 Townsgate, #215, Westlake Village, representing the applicant, provided an overview of the revised project.
- Yair Koshet, 5226 Medina Road, Woodland Hills, architect representing Riopharm, spoke about the revisions to the project.
- Joan Yacovone, 27328 Country Glen, Agoura Hills, suggested for the Agoura I tract placing 1-story structures across the front lots and 2-story structures towards the rear and spoke about her concerns related to the front yard setbacks, the liability and maintenance of the landscaping in the common areas, the orientation of the garage doors and access to the garages from the street, and the number of Oak trees proposed to be removed from both tracts.
- Rudy C'Dealva, 4062 Jim Bowie Road, representing the Liberty Canyon Homeowners Association, spoke about concerns with the potential impacts on the Oak trees.

There were no further speakers.

### The City Council recessed at 9:00 p.m. and reconvened at 9:13 p.m.

ACTION:

The motion by Mayor Pro Tem Kuperberg to deny the appeal and direct staff to bring back all documents necessary to effectuate the denial of the project, failed for lack of a second.

ACTION:

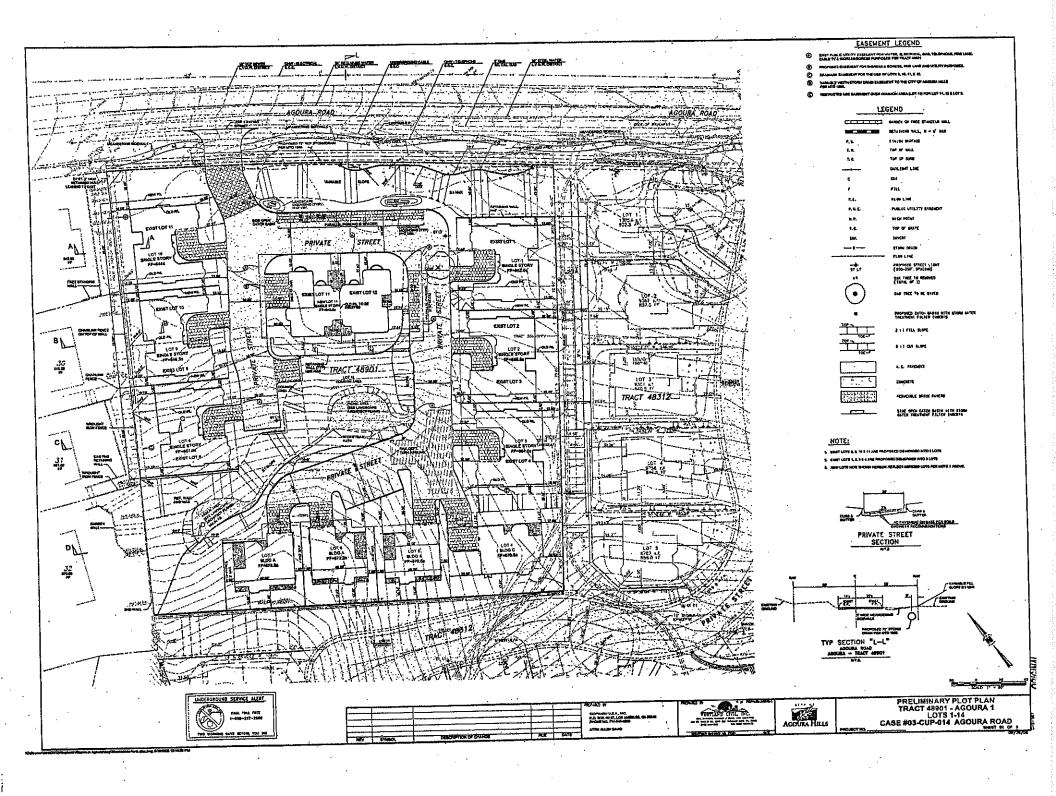
The motion by Councilmember Edelston, to continue the Public Hearing to October 11, 2006, to allow for the applicant to return to Council and present modifications to the project, and direct staff to bring back draft resolutions for the adoption of the project approval or denial based on the modified project plans presented by the applicant, was seconded by Mayor Weber and approved on a roll call vote of 2-1; with Councilmember Edelston and Mayor Weber in favor, Mayor Pro Tem Kuperberg opposed, and Councilmember Koehler and Councilmember Schwarz abstaining.

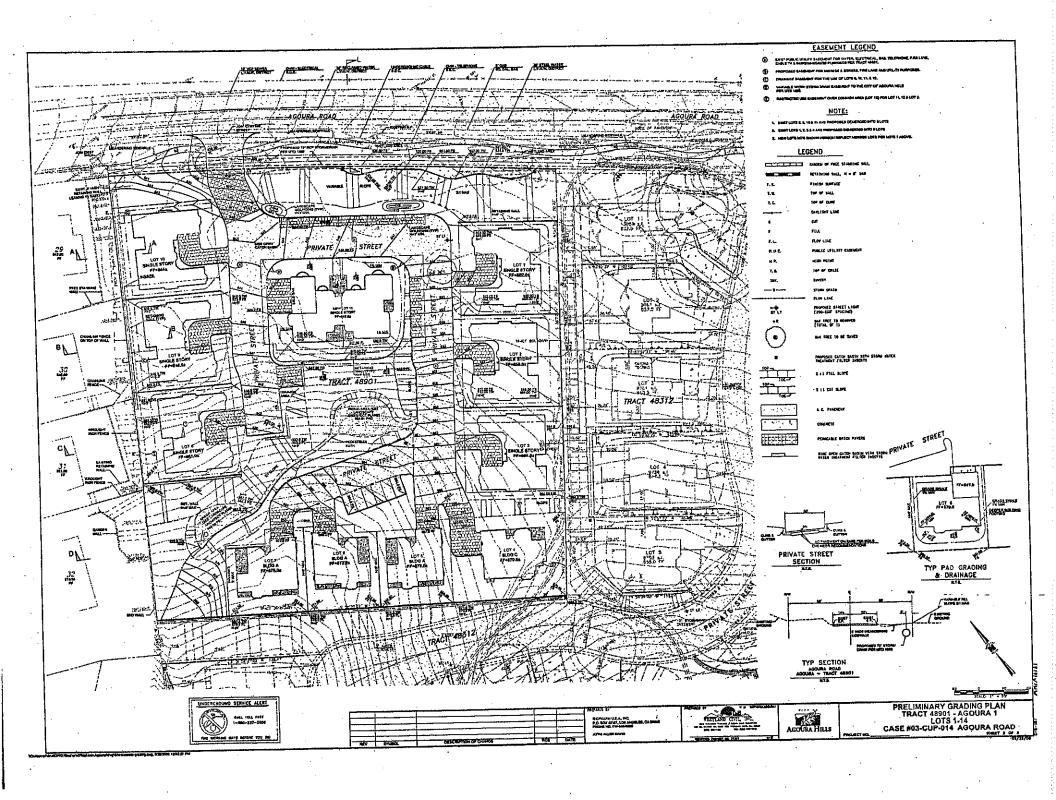
## COUNCIL, STAFF COMMENTS

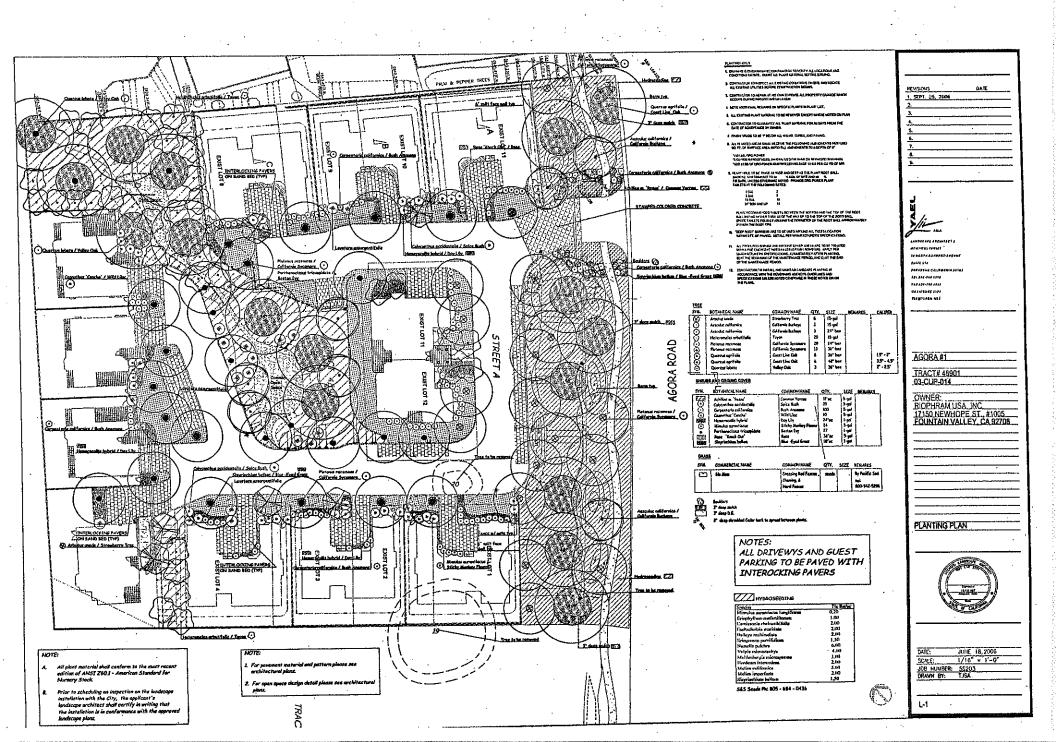
City Attorney Steele announced that staff became aware of the fact that a dispensary for medicinal marijuana opened in the community and this type of use is not currently allowed under the City's Municipal Code. Staff is taking steps to address that particular use and recommending that the City Council adopt a temporary moratorium on the establishment of that type of use in the City, while the City takes a study on whether or not the use is legal under existing law and whether or not the City intends to permit or prohibit that type of use, and, if permitted, under what conditions. City Attorney Steele requested authorization, to place on the next Agenda, for the consideration of such temporary moratorium for the purpose of allowing staff the time to compile the information. The motion by Mayor Pro Tem Kuperberg for staff to bring the item forward for consideration on the next Agenda, was seconded by Councilmember Edelston and approved by consensus, with Councilmember Koehler and Councilmember Schwarz absent.

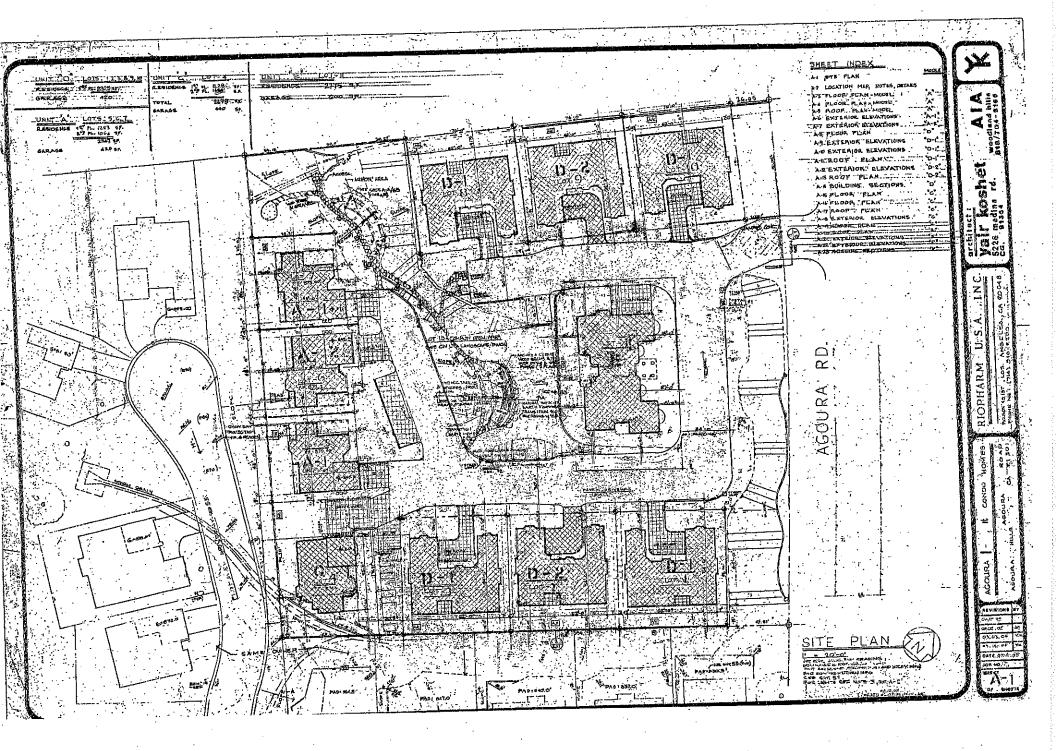
#### ADJOURNMENT

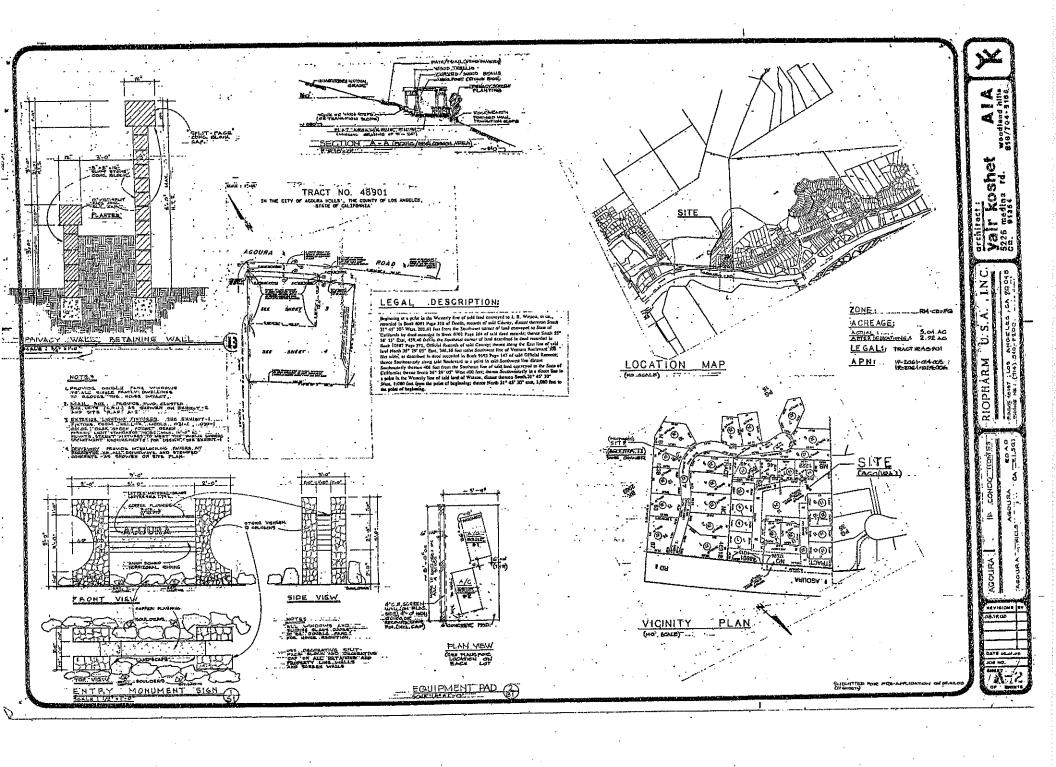
At 9:35 p.m., on a motion by Mayor Pro Tem Kuperberg, second by Councilmember Edelston, the Council, with Councilmember Koehler and Councilmember Schwarz absent, unanimously consented to adjourn the meeting to 7:00 p.m., Wednesday, September 27, 2006, for a Regular Meeting of the City Council in the Council Chambers of the Civic Center with a Closed Session at 6:00 p.m. The Civic Center is located at 3000 Ladyface Court, Agoura Hills, California.

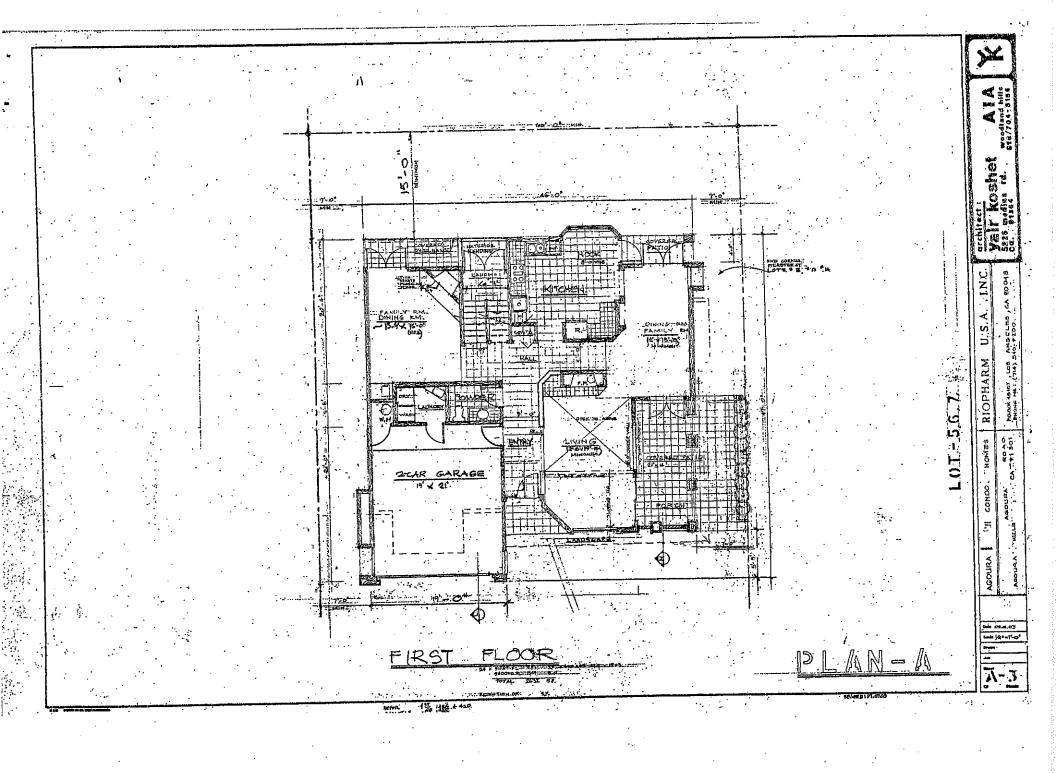


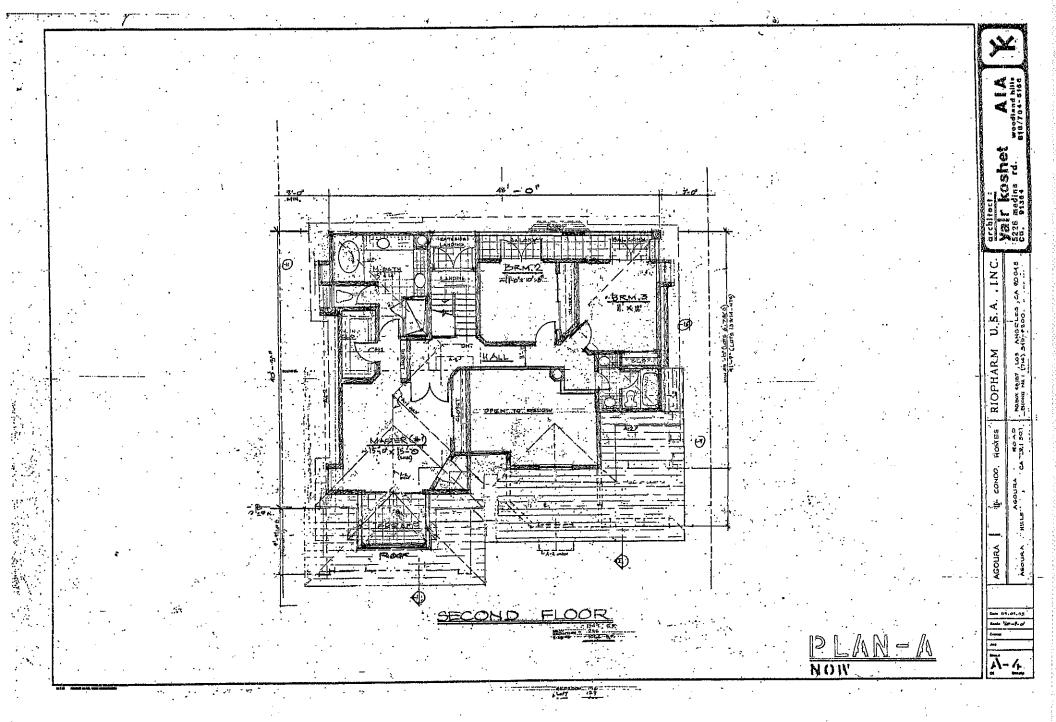


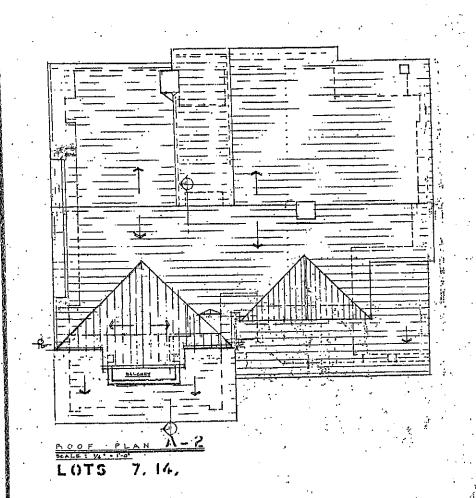












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PLAN-A

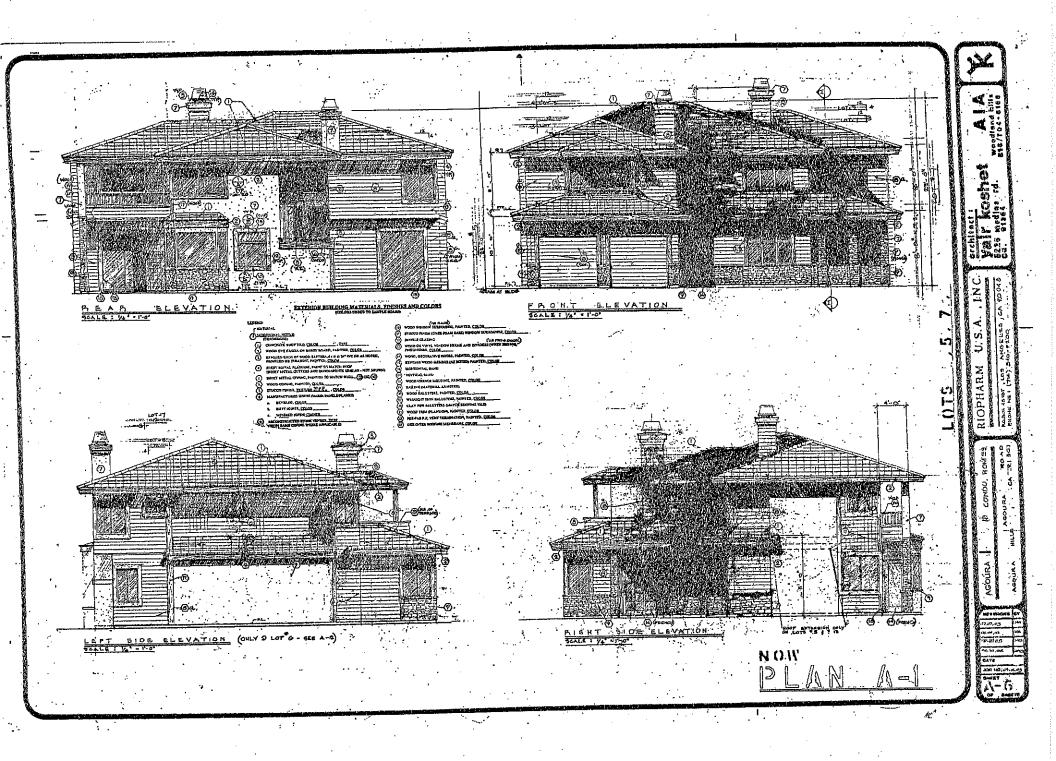
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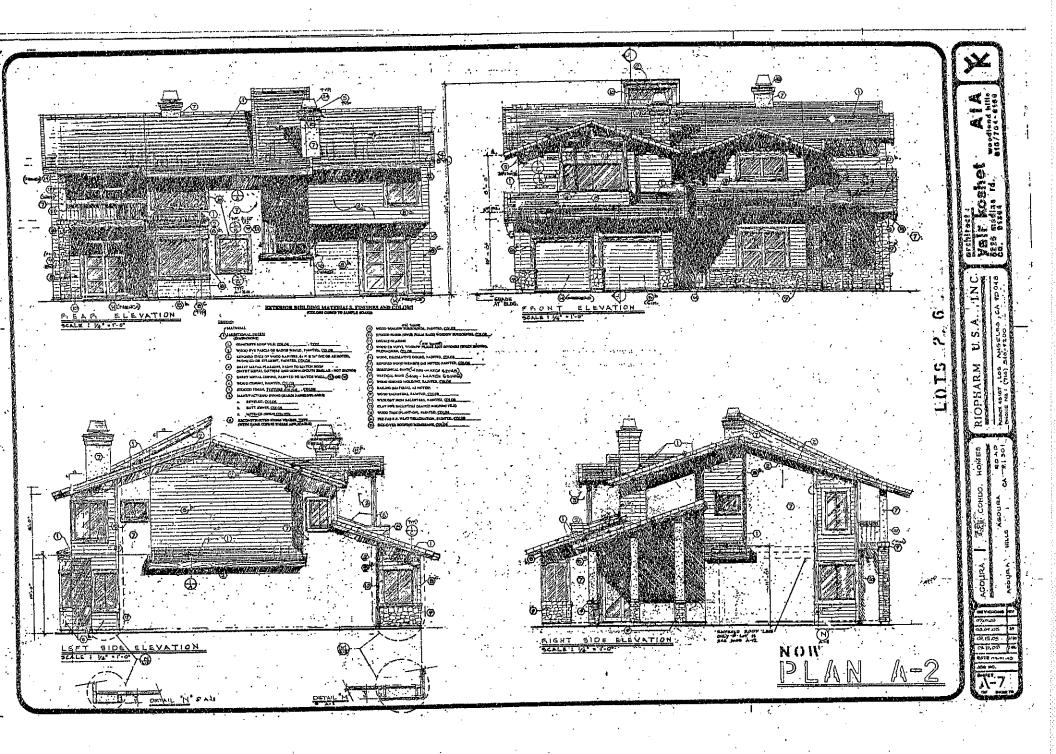
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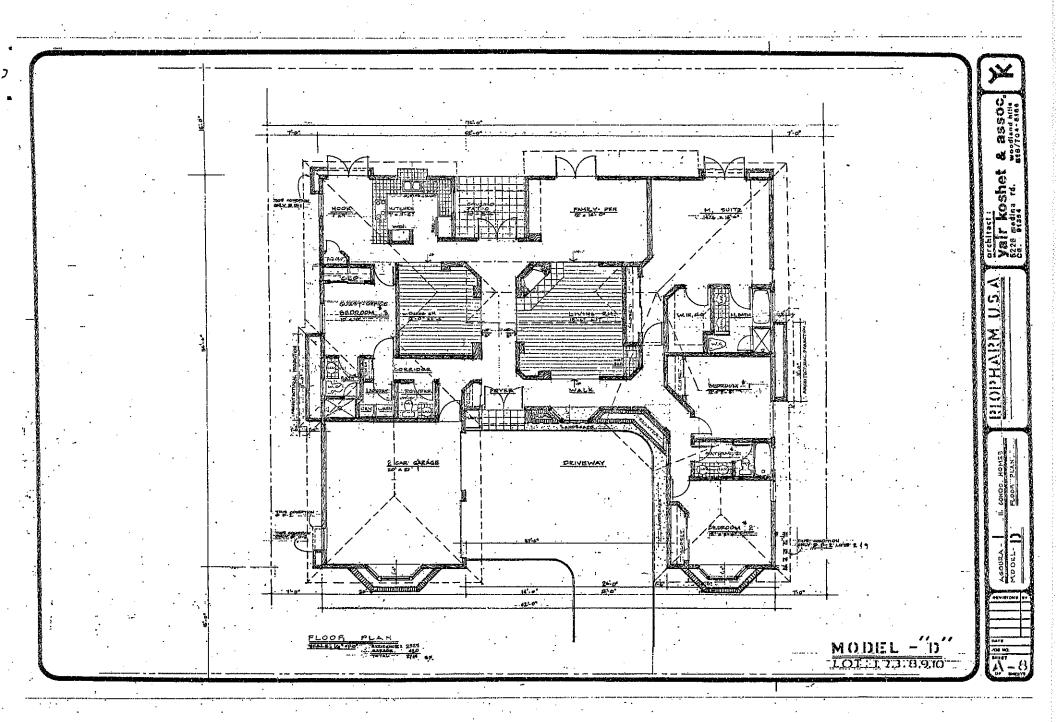
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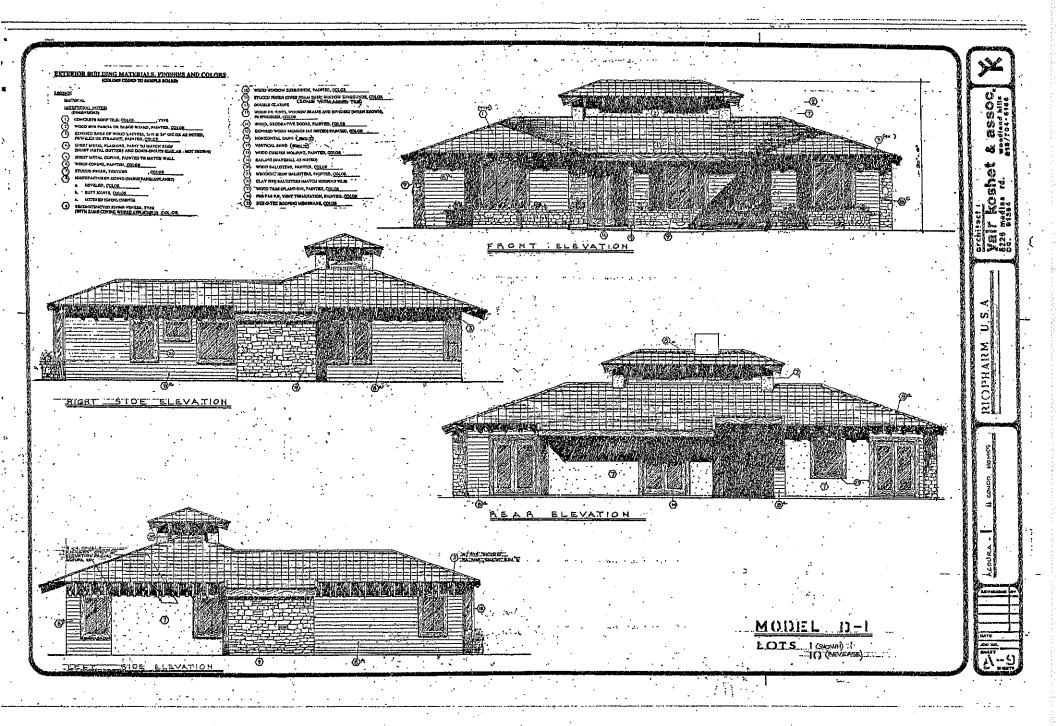
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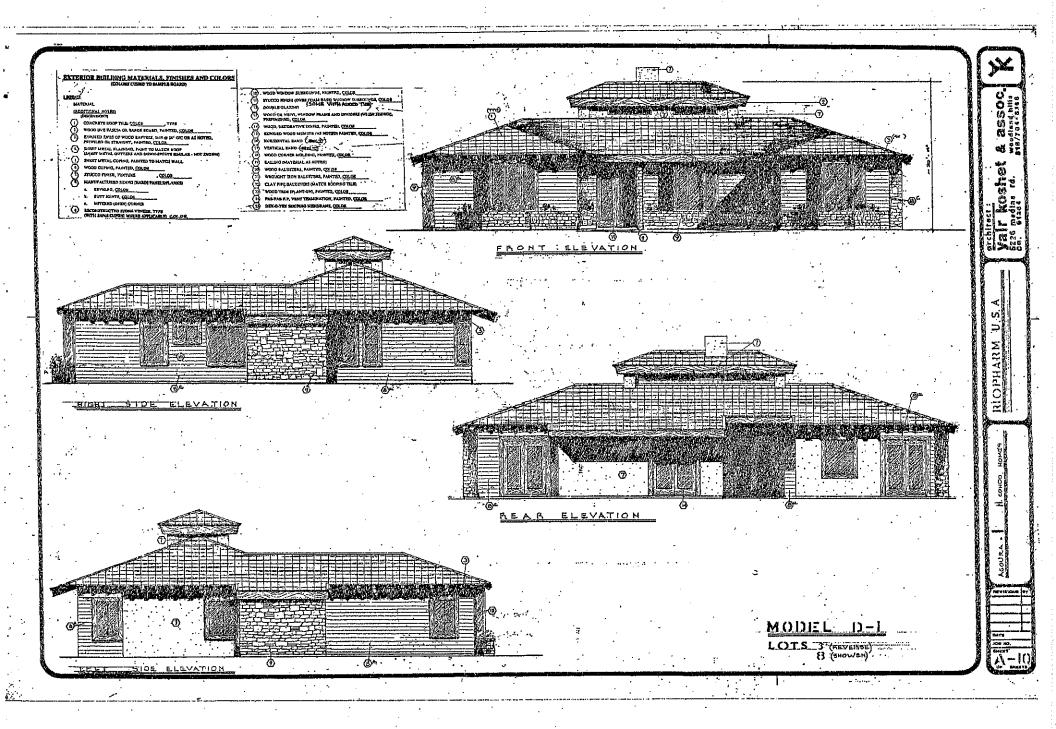
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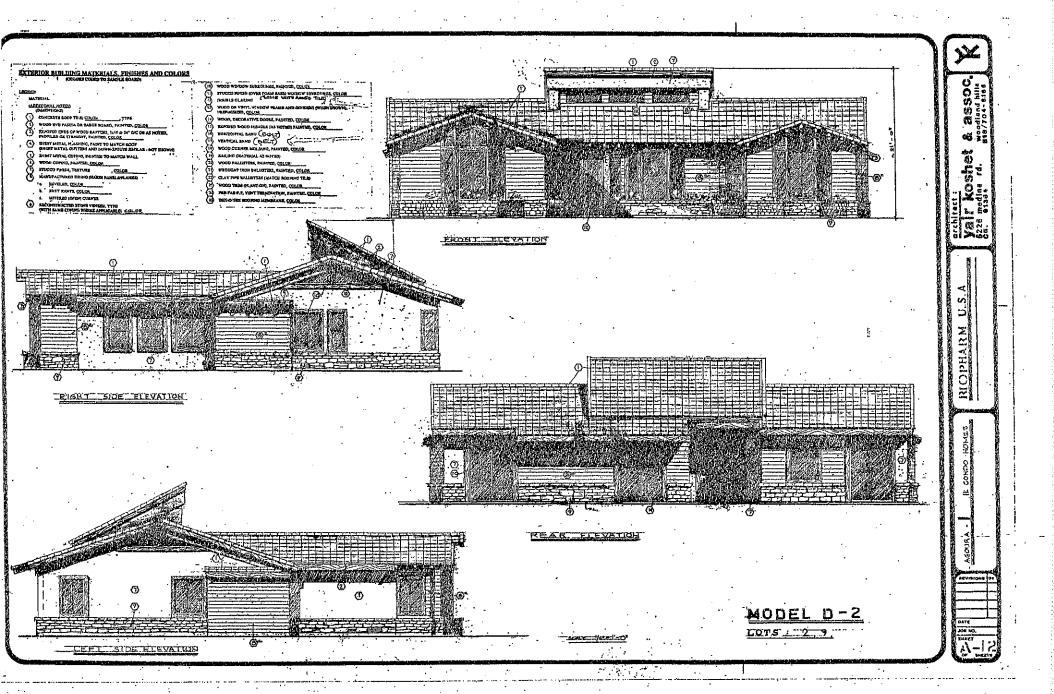


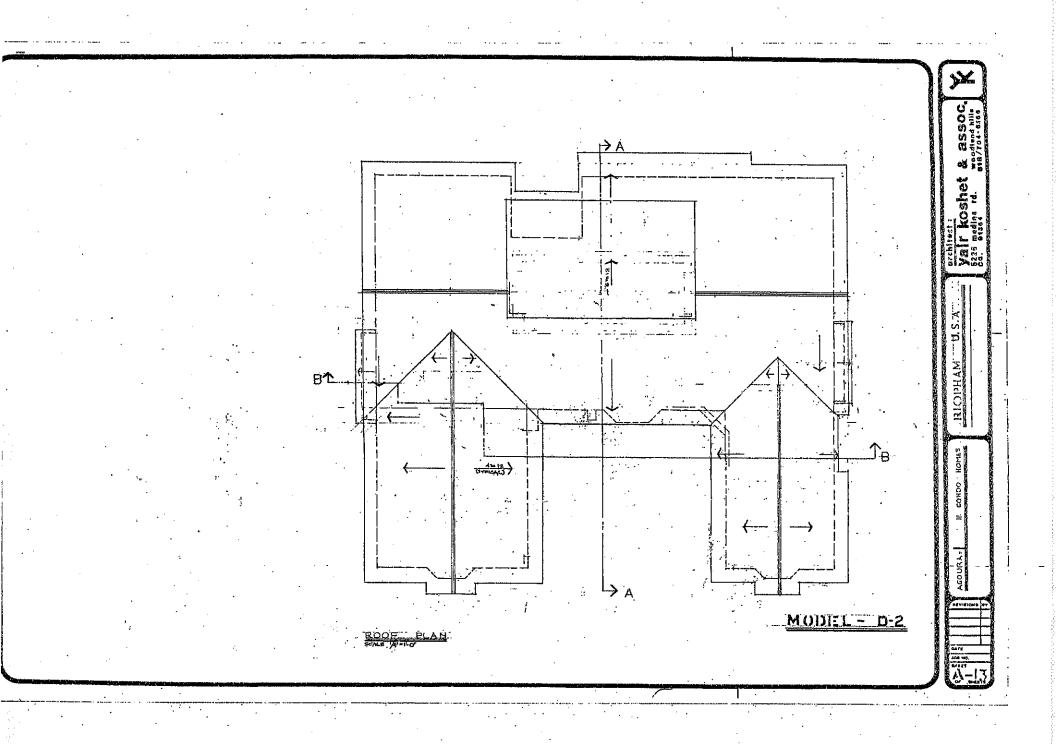


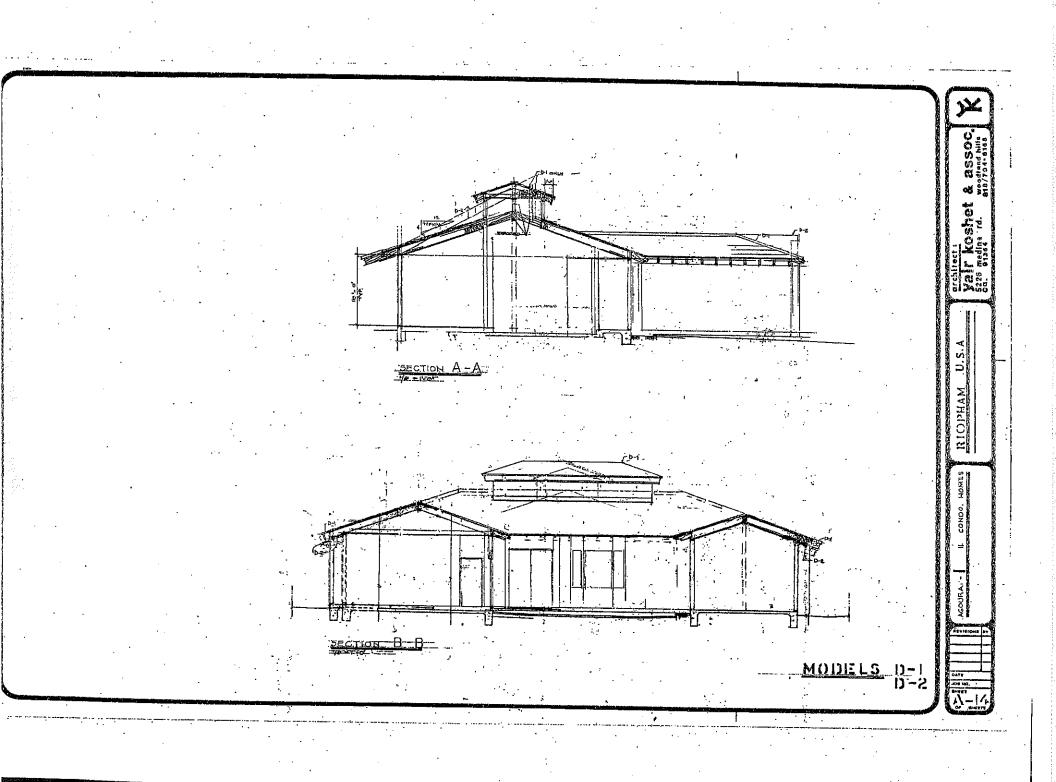


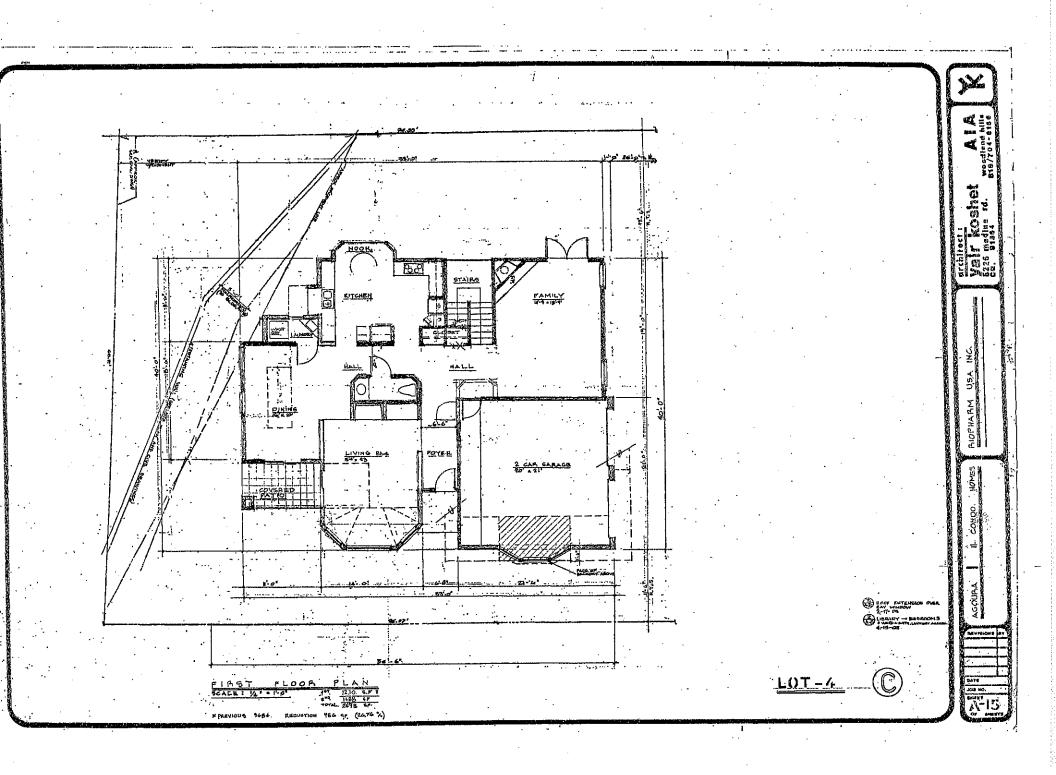


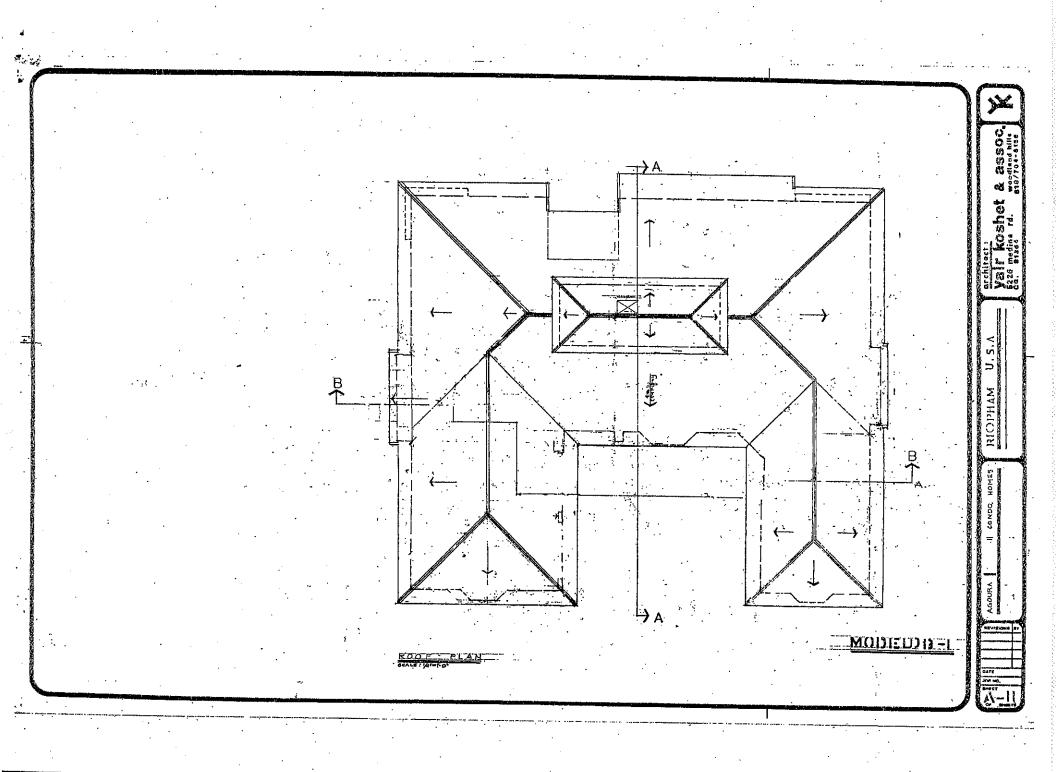


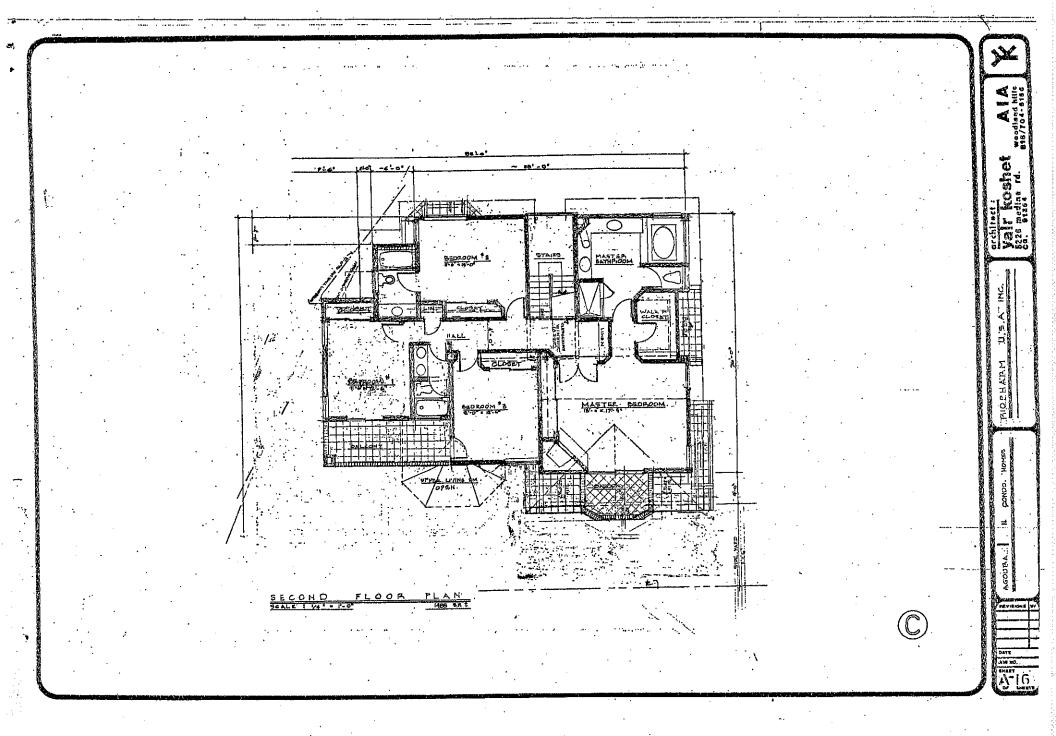


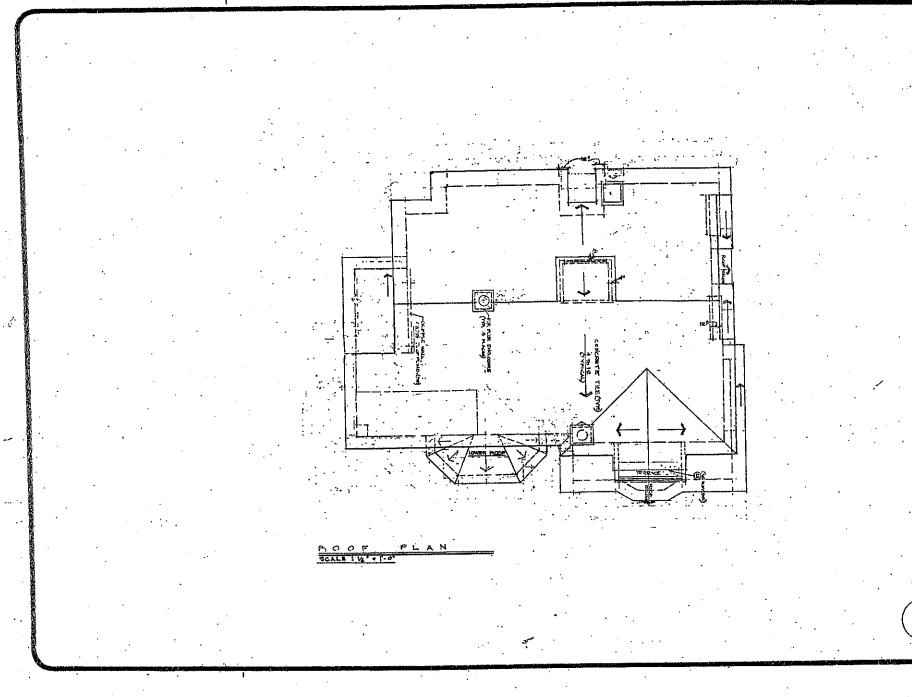


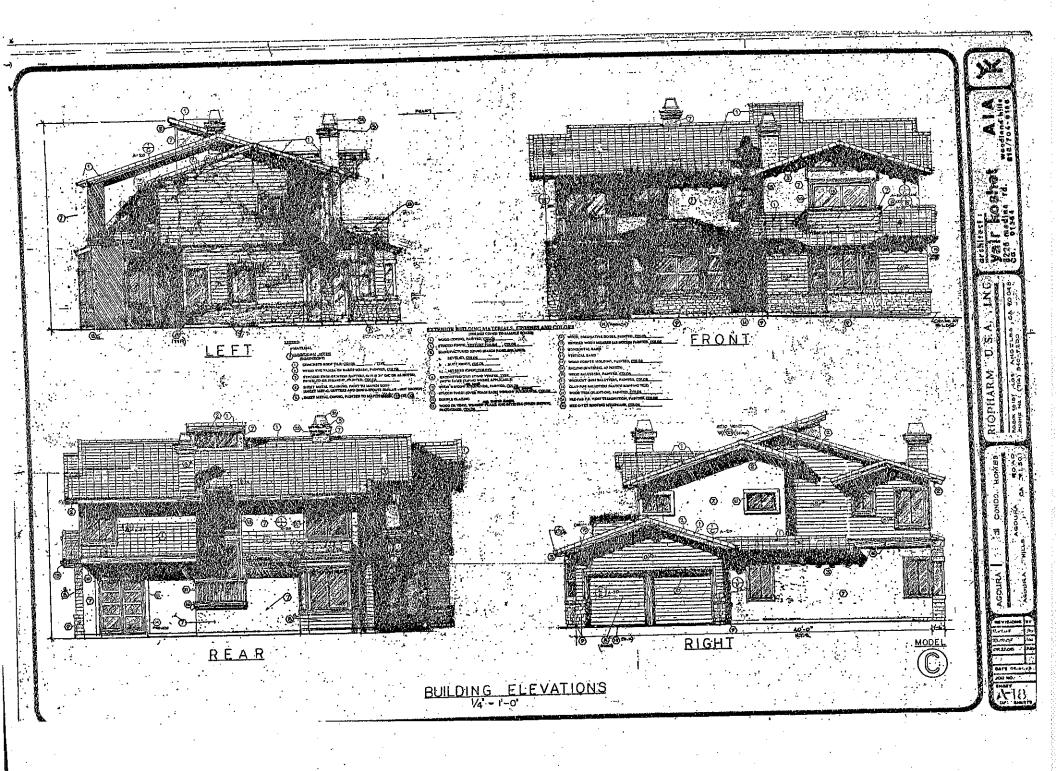


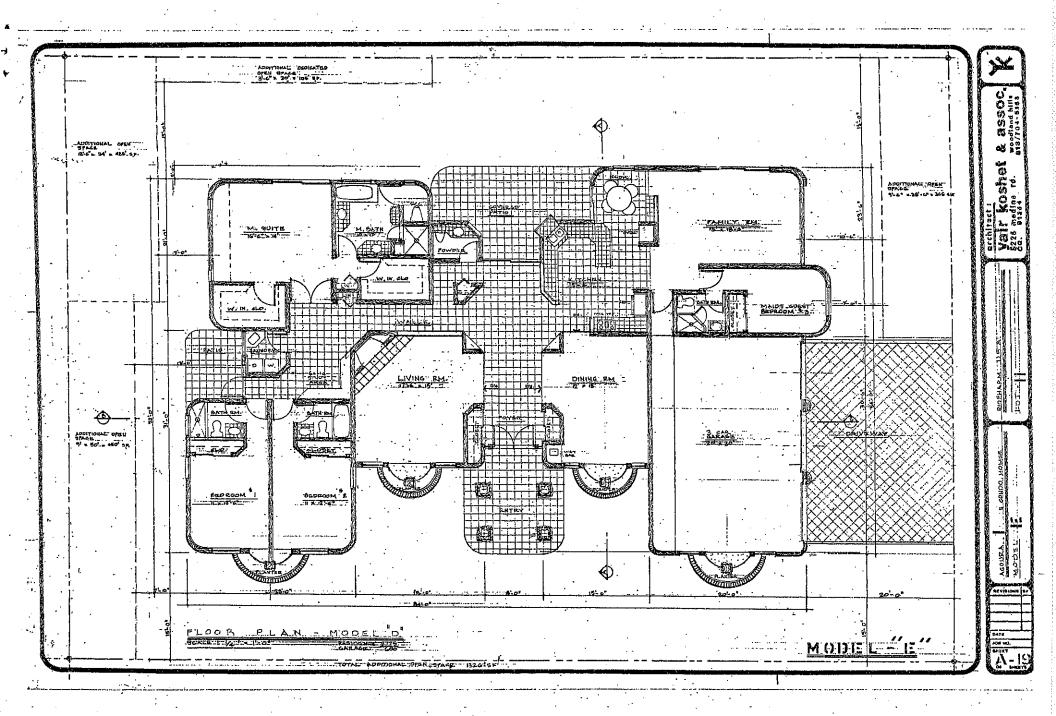


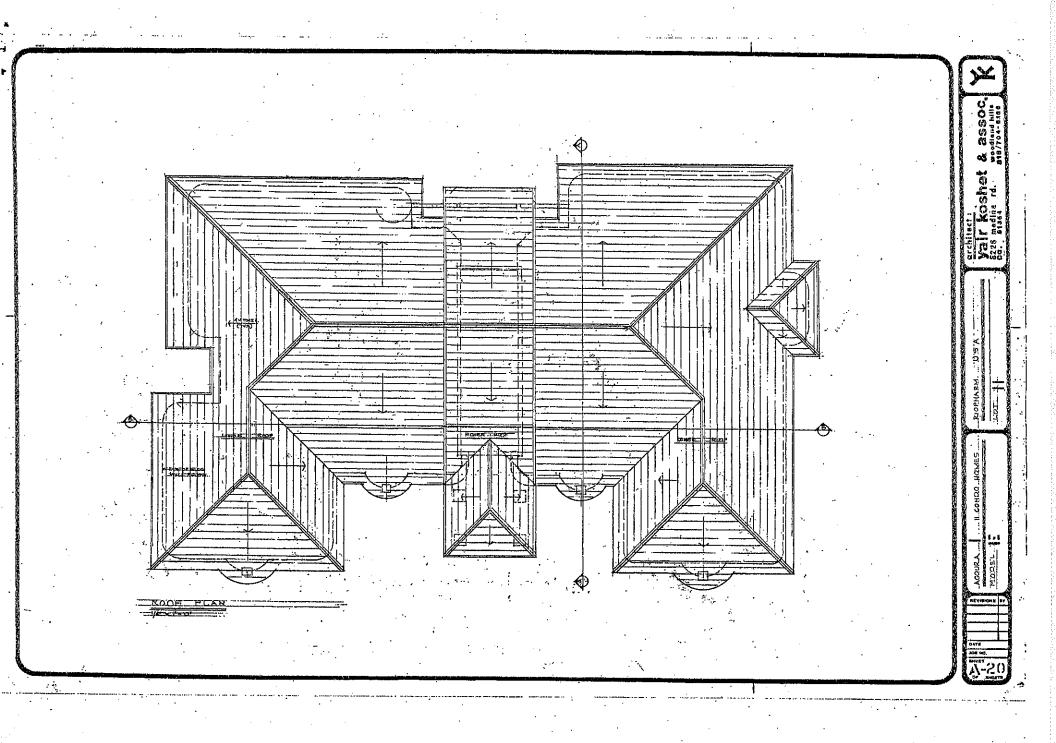


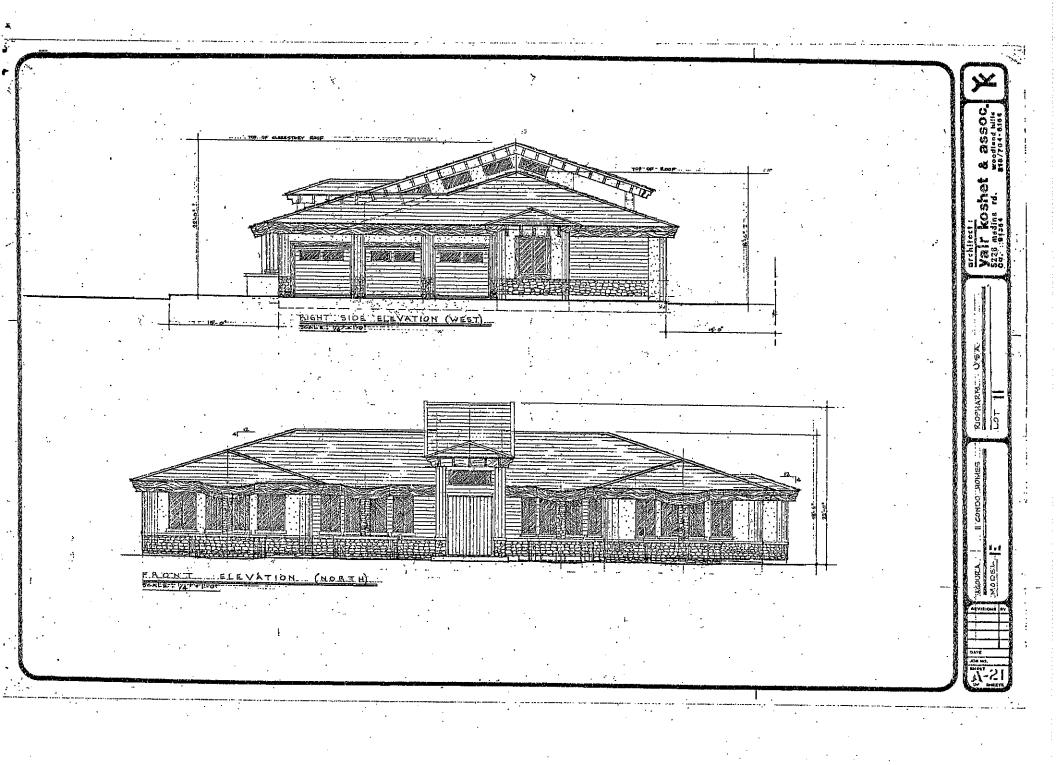


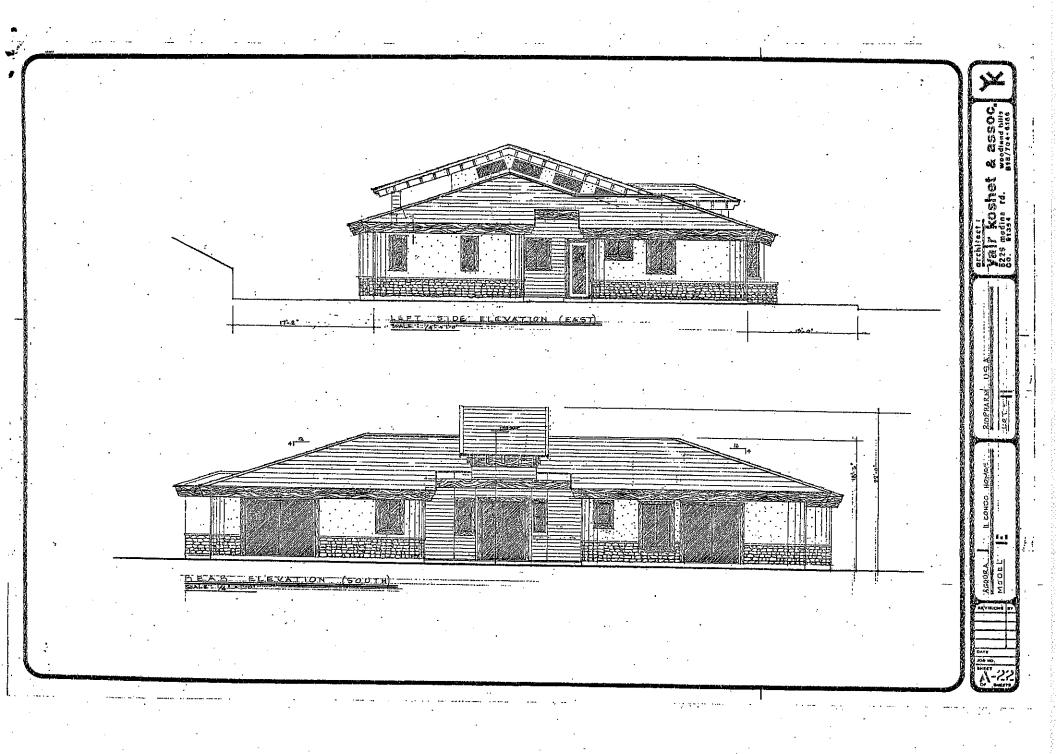


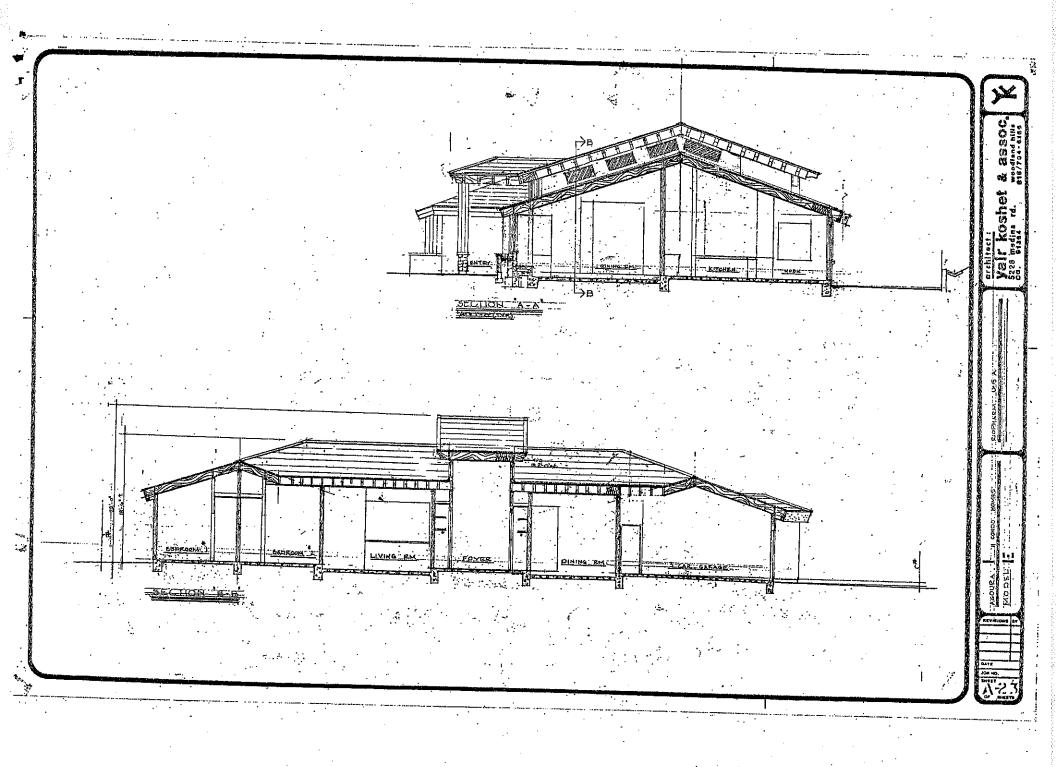


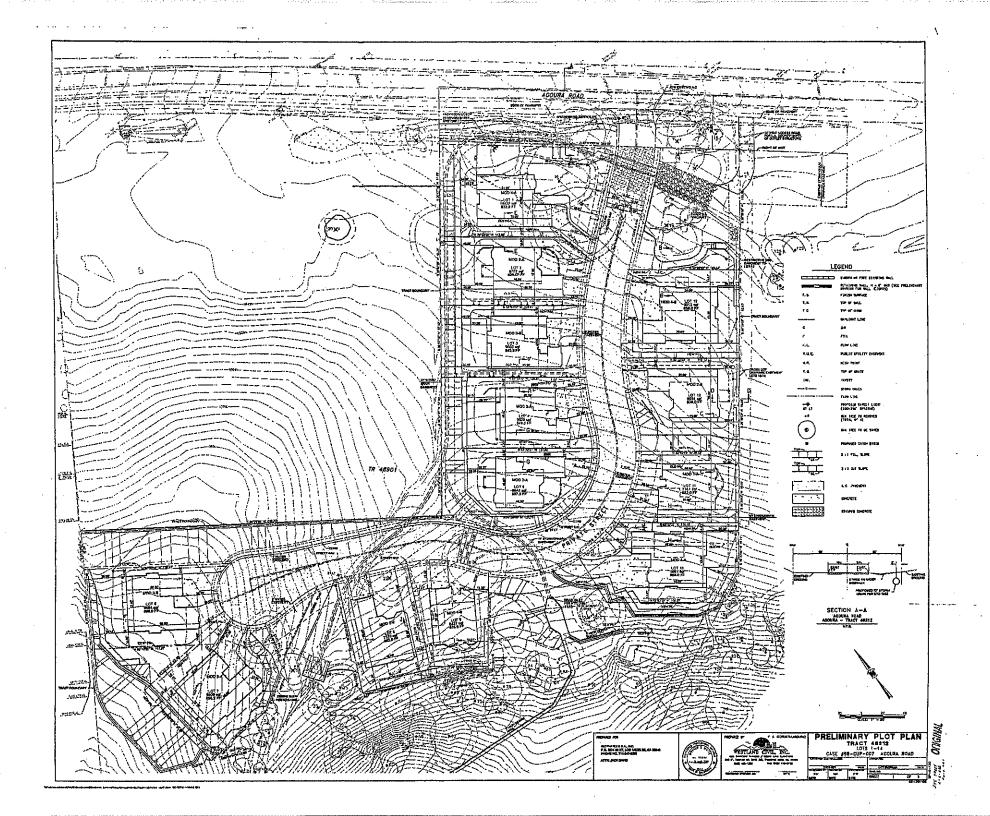


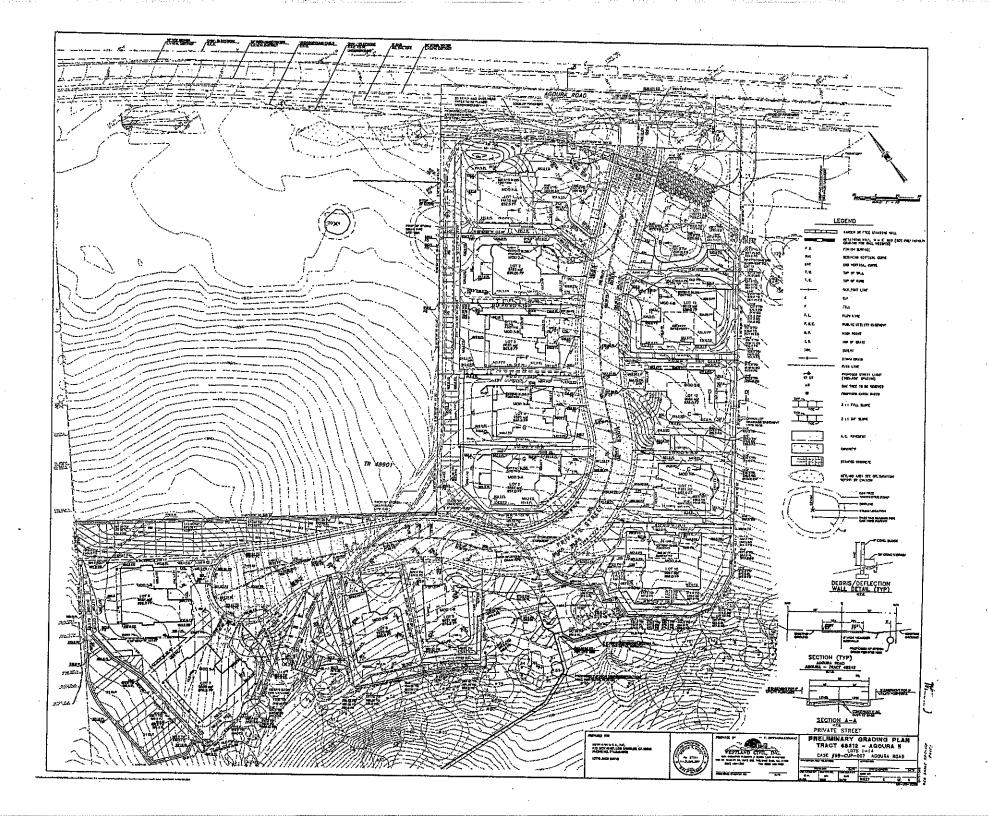


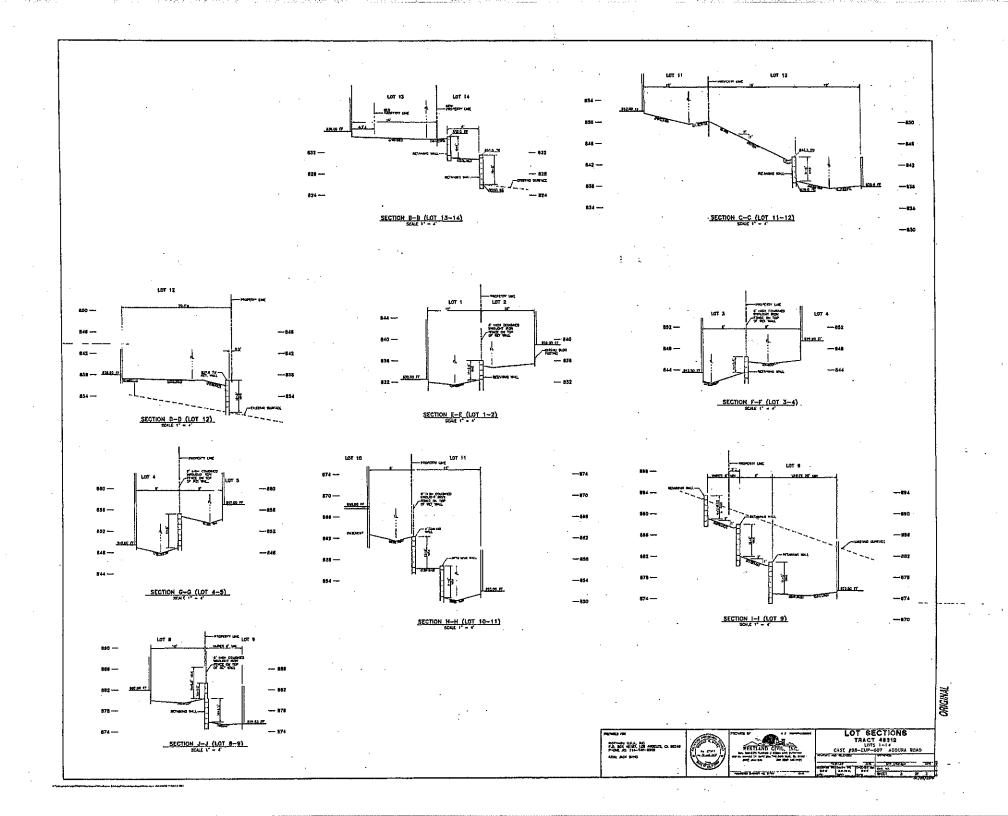


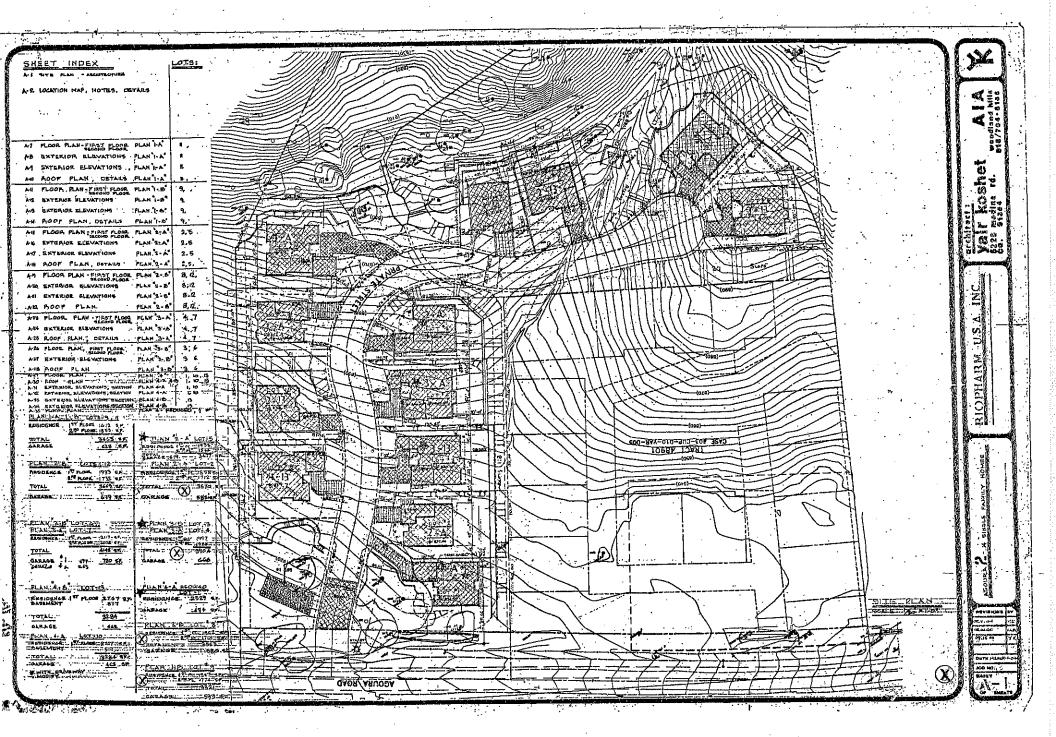


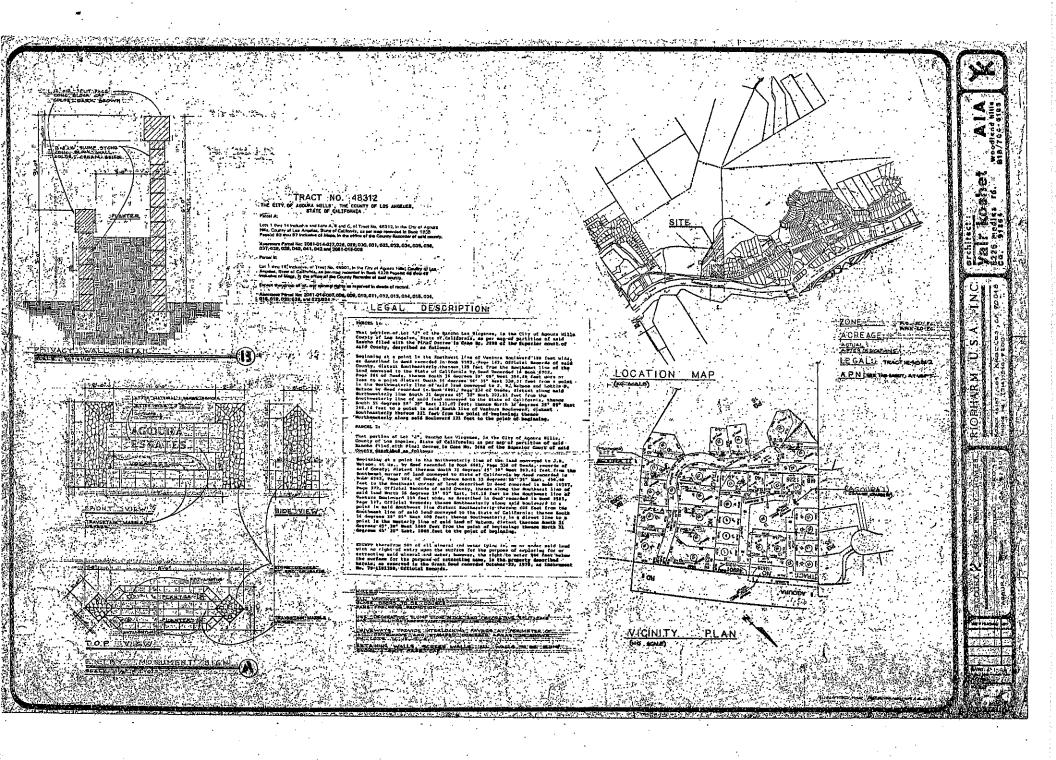


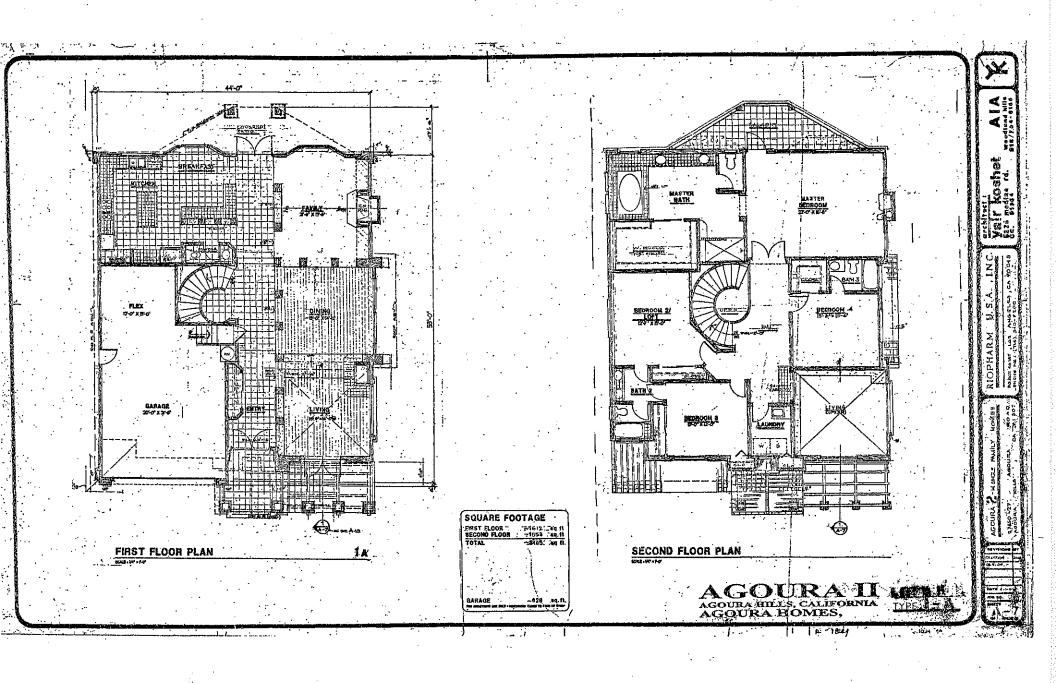


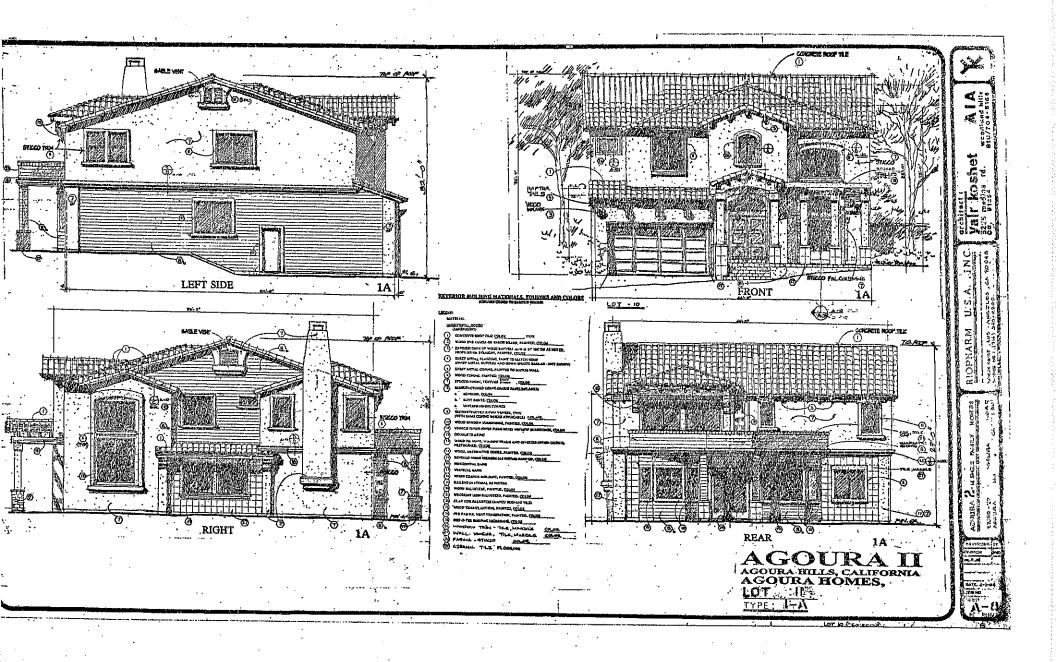


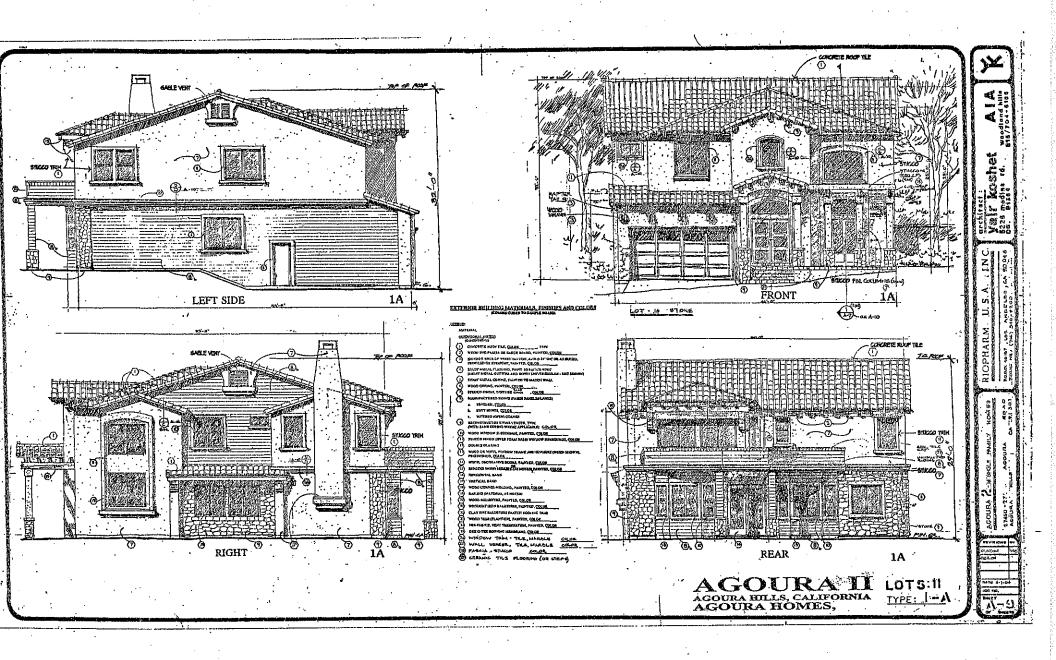


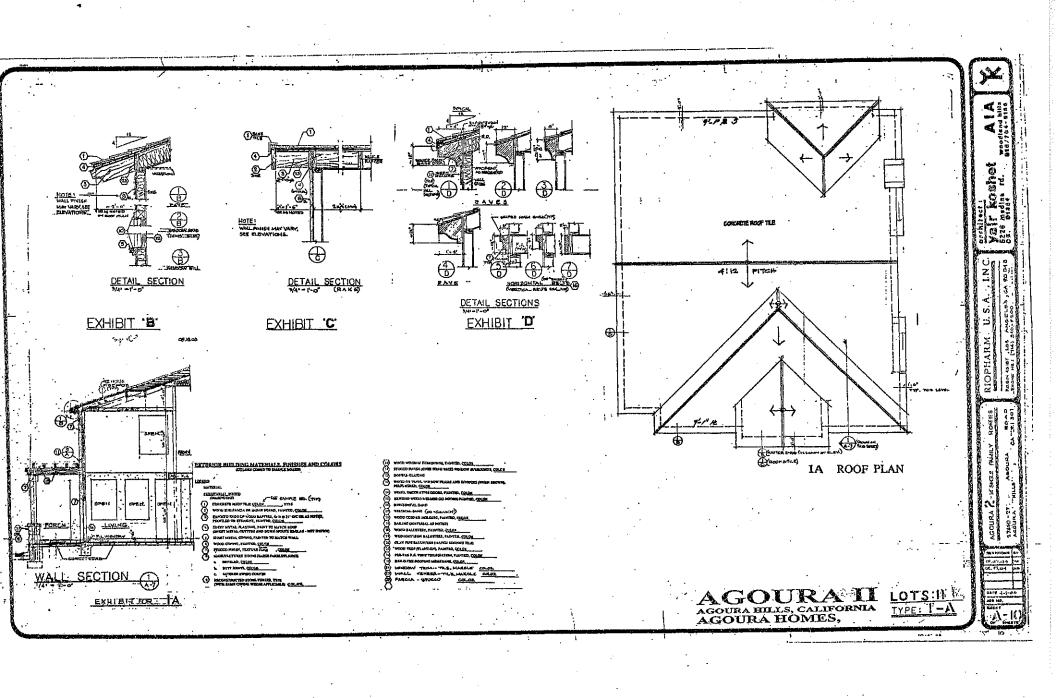


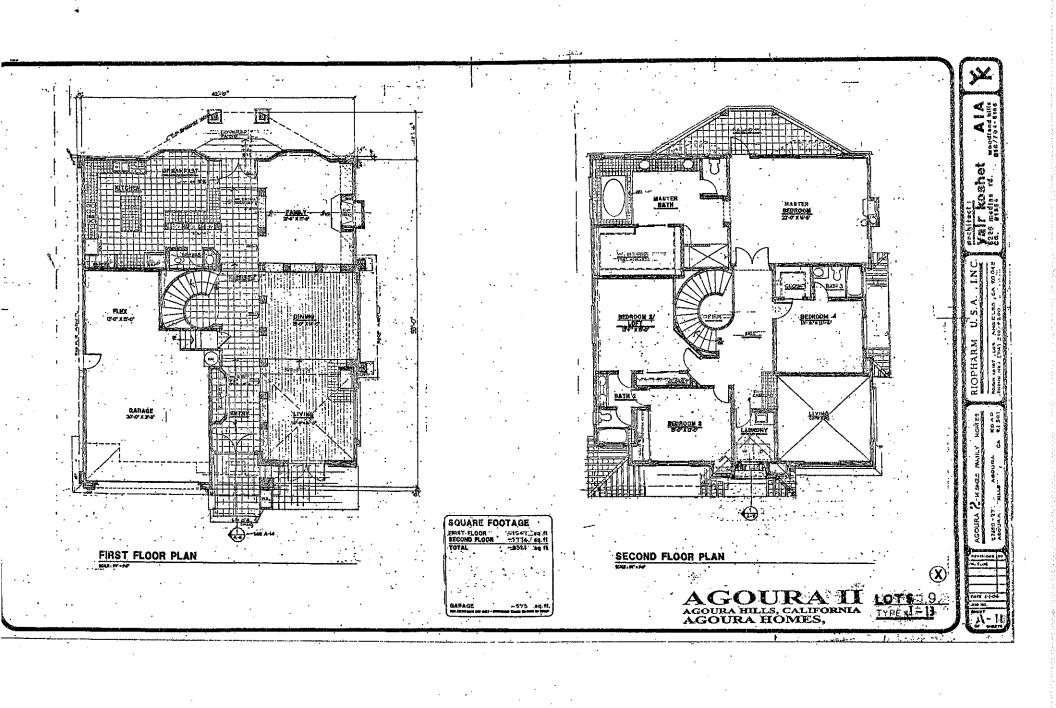


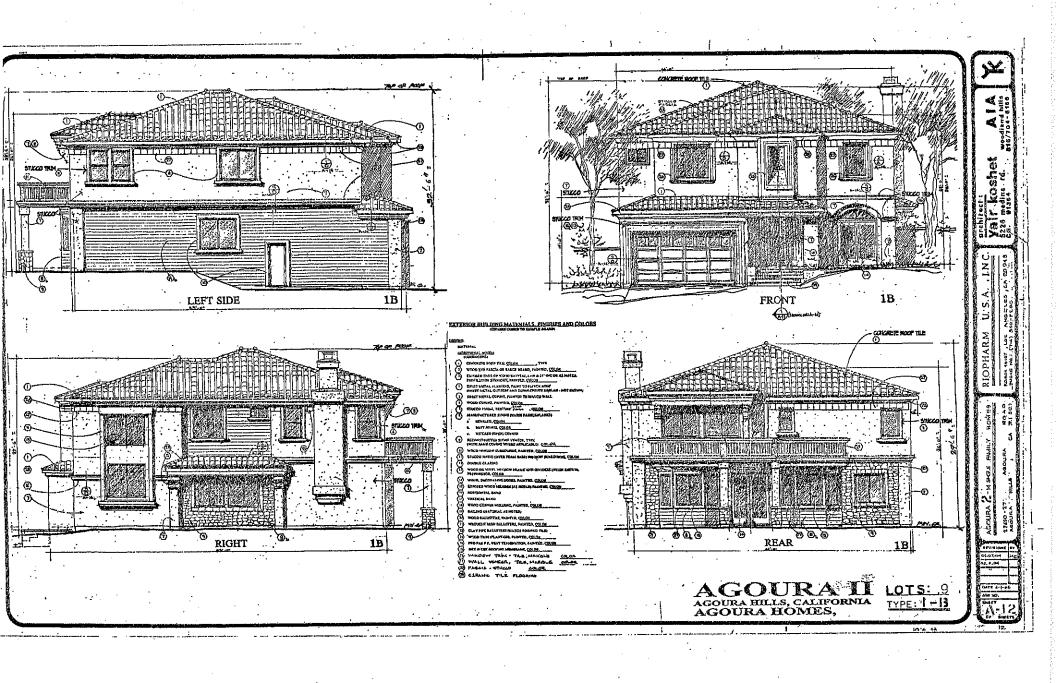


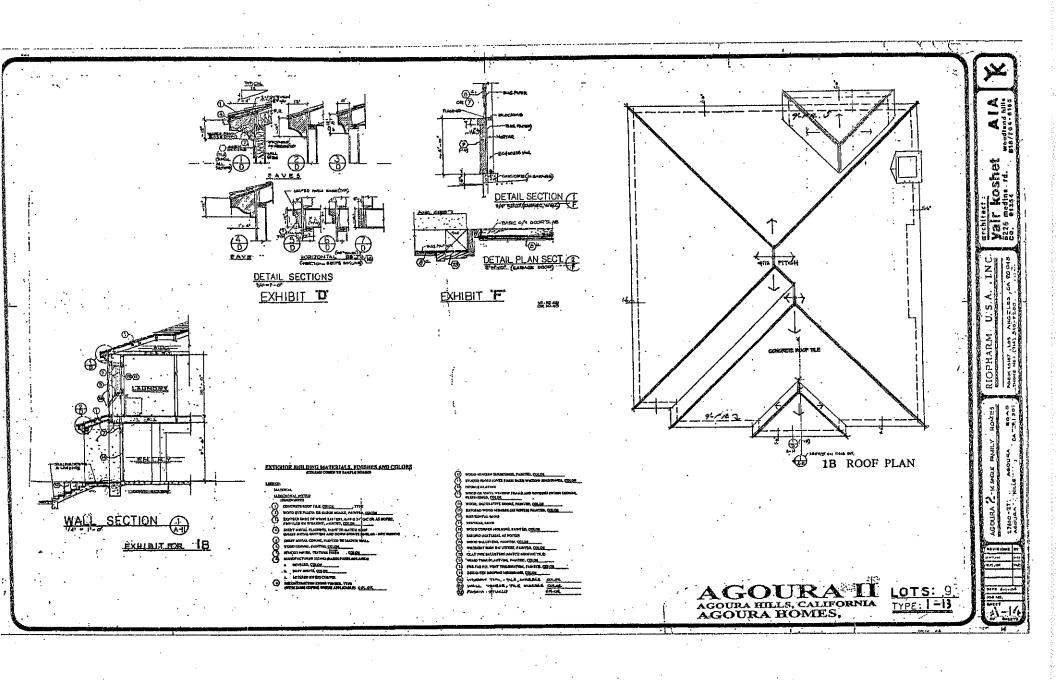


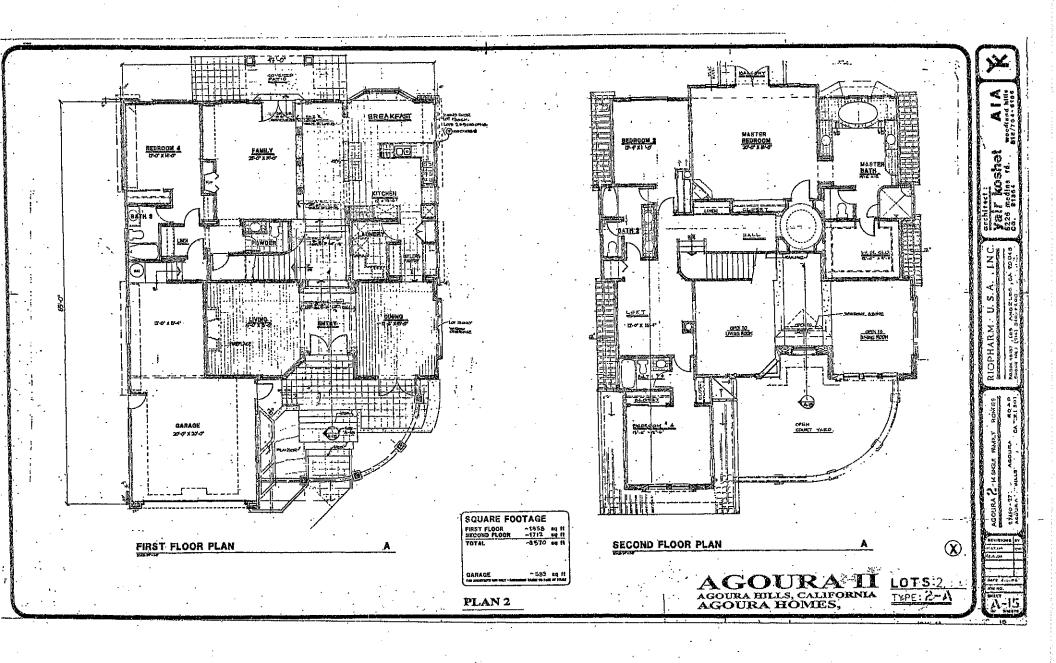


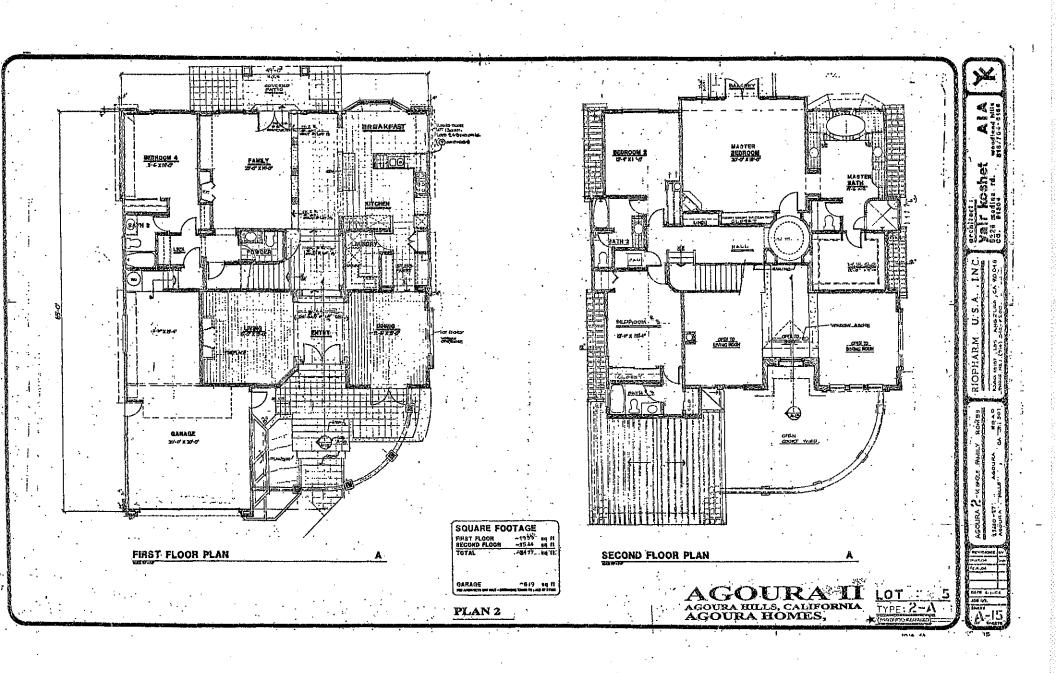


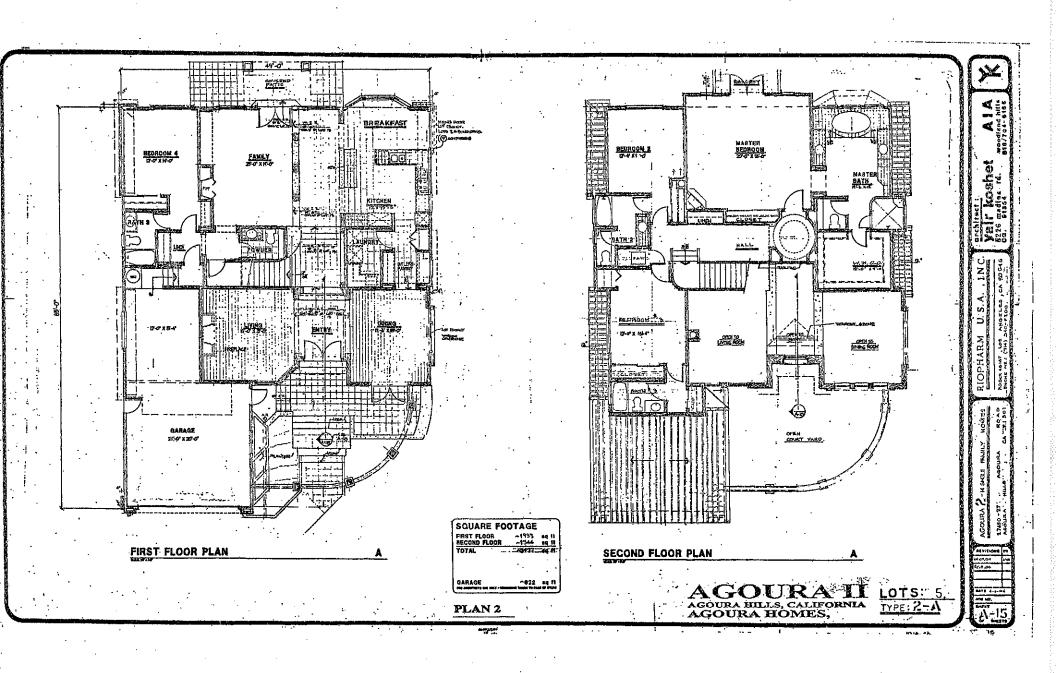


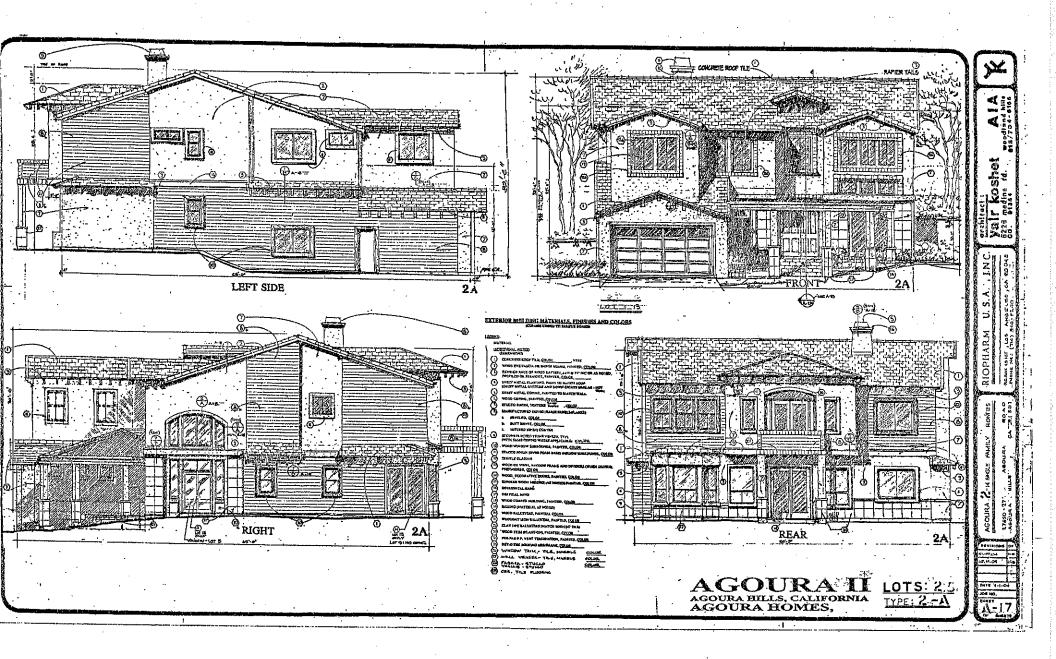


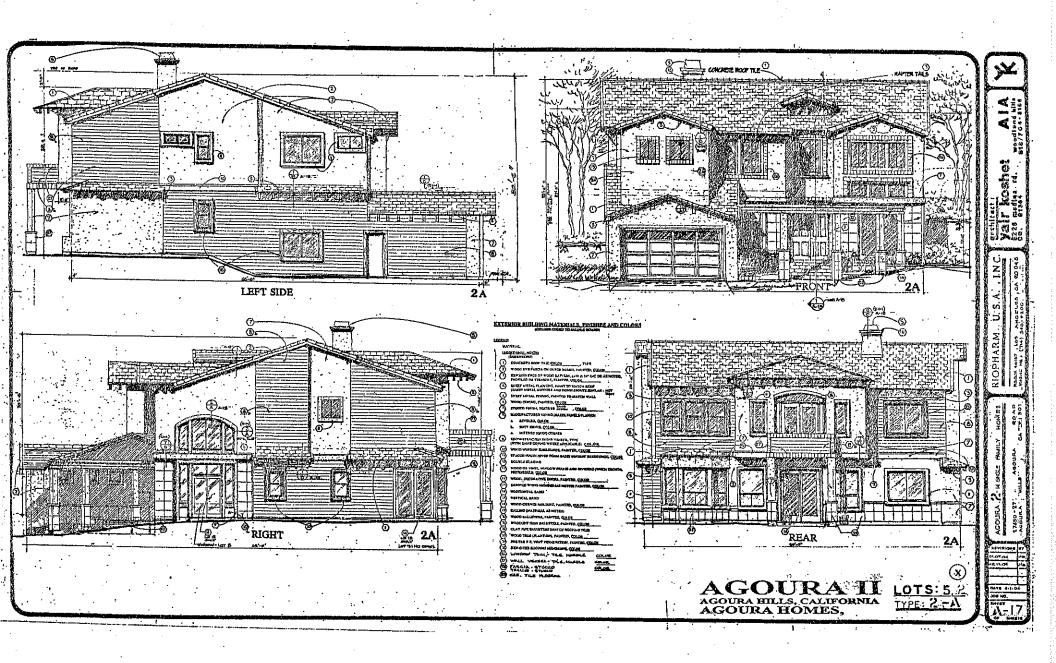


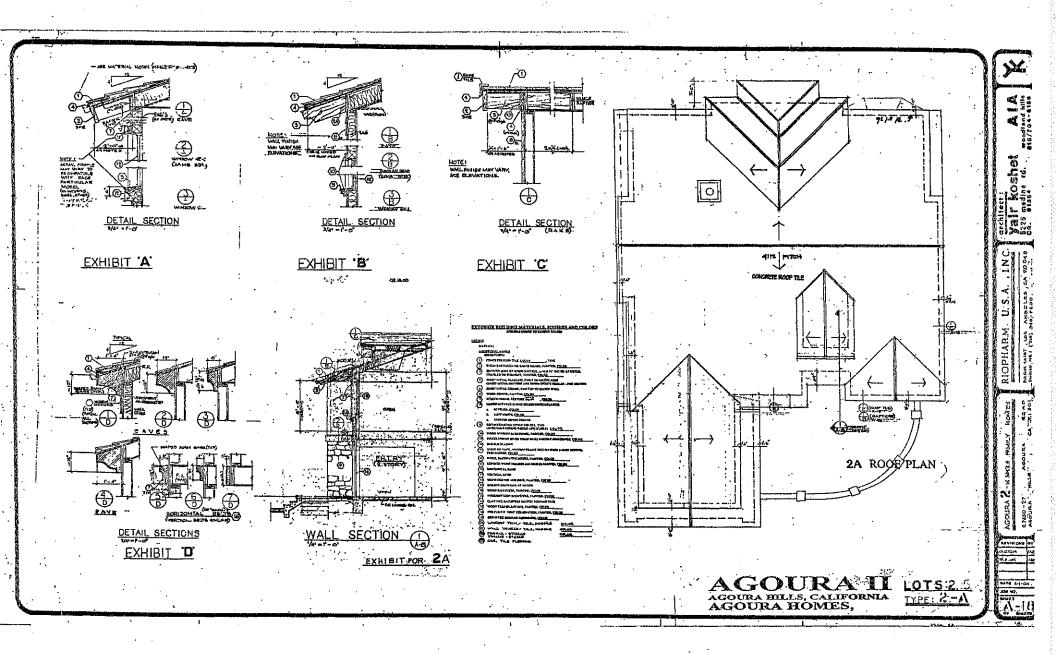


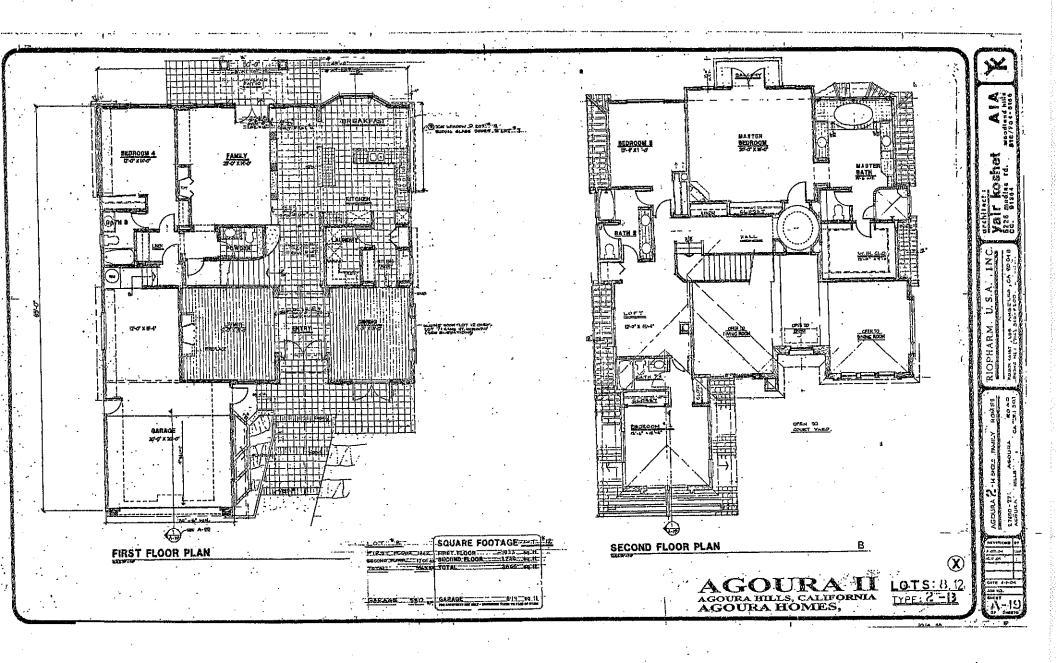


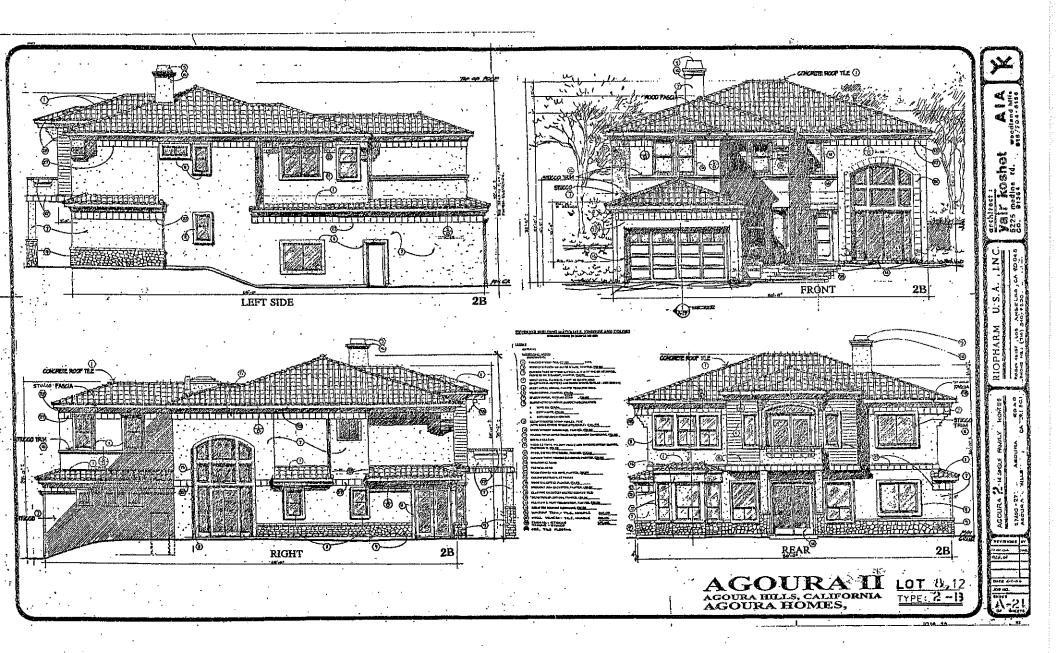


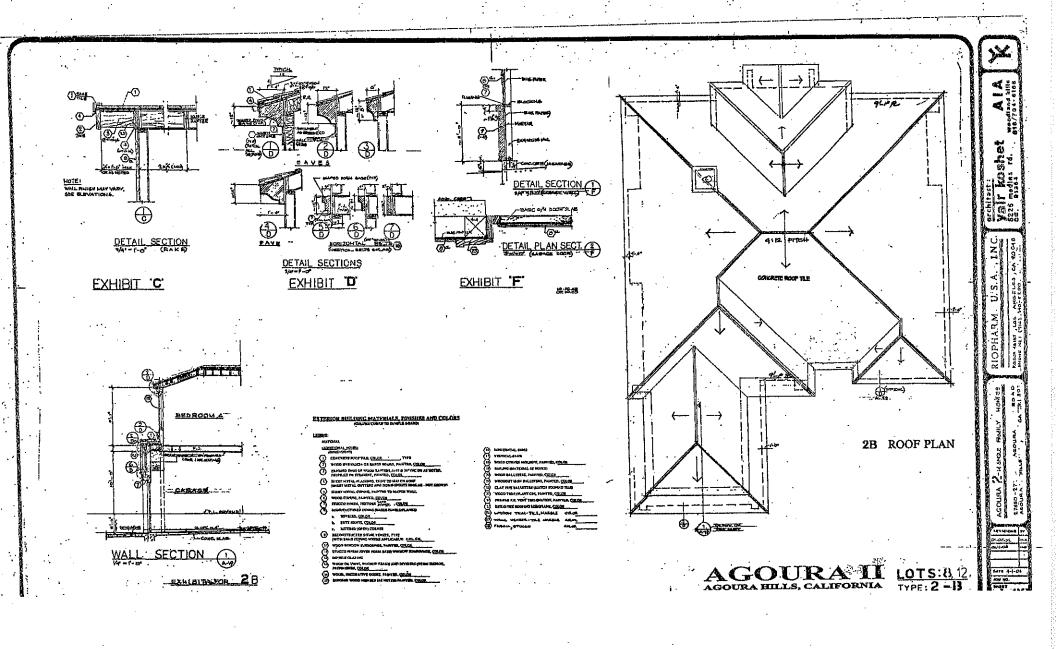


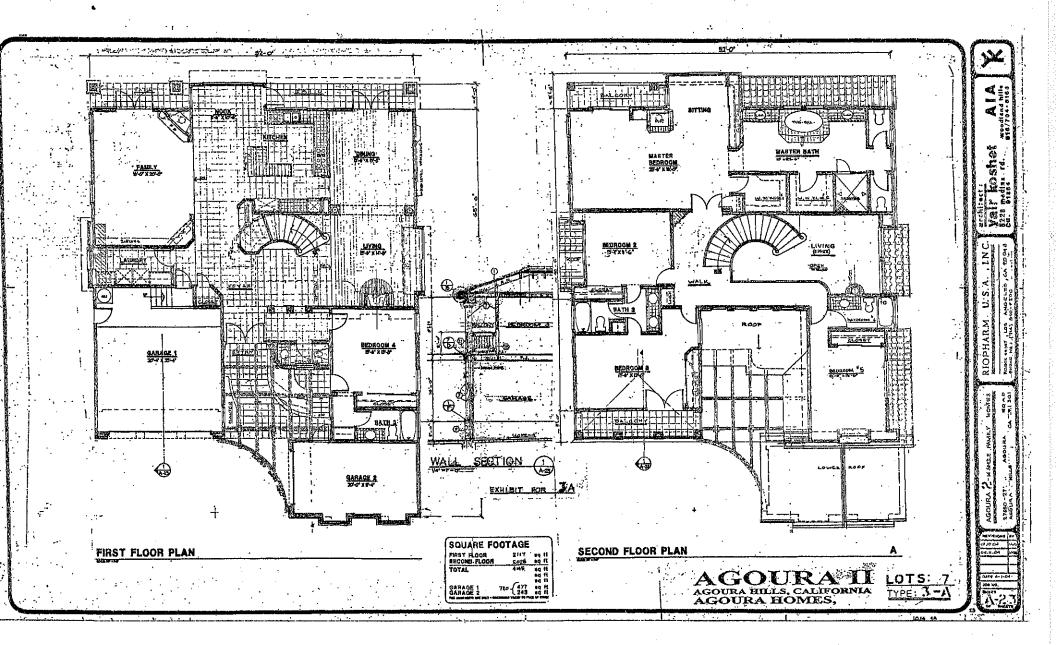


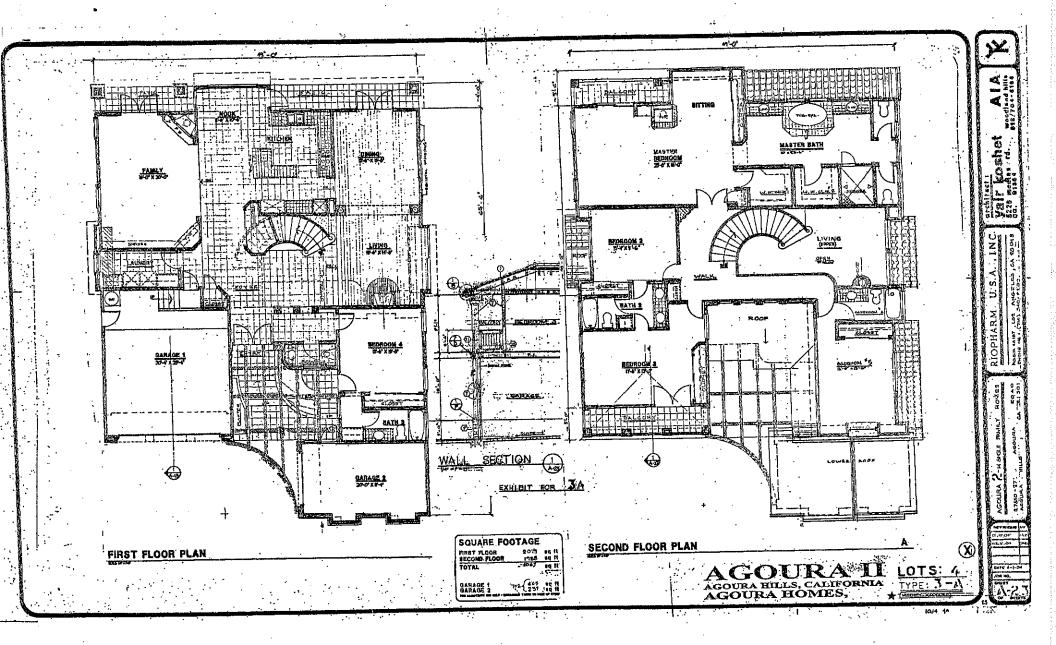


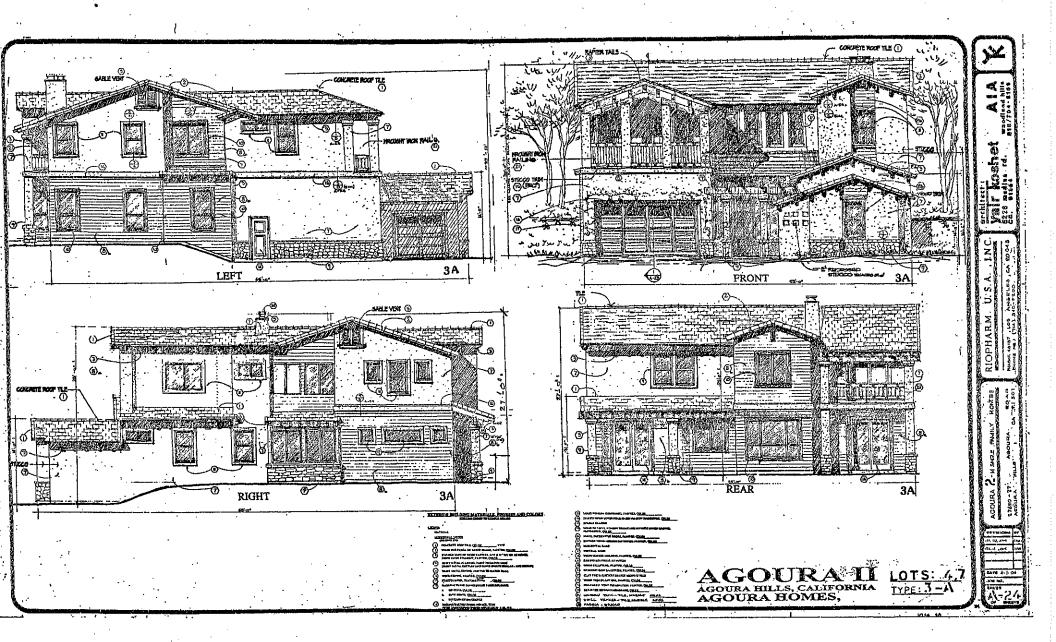


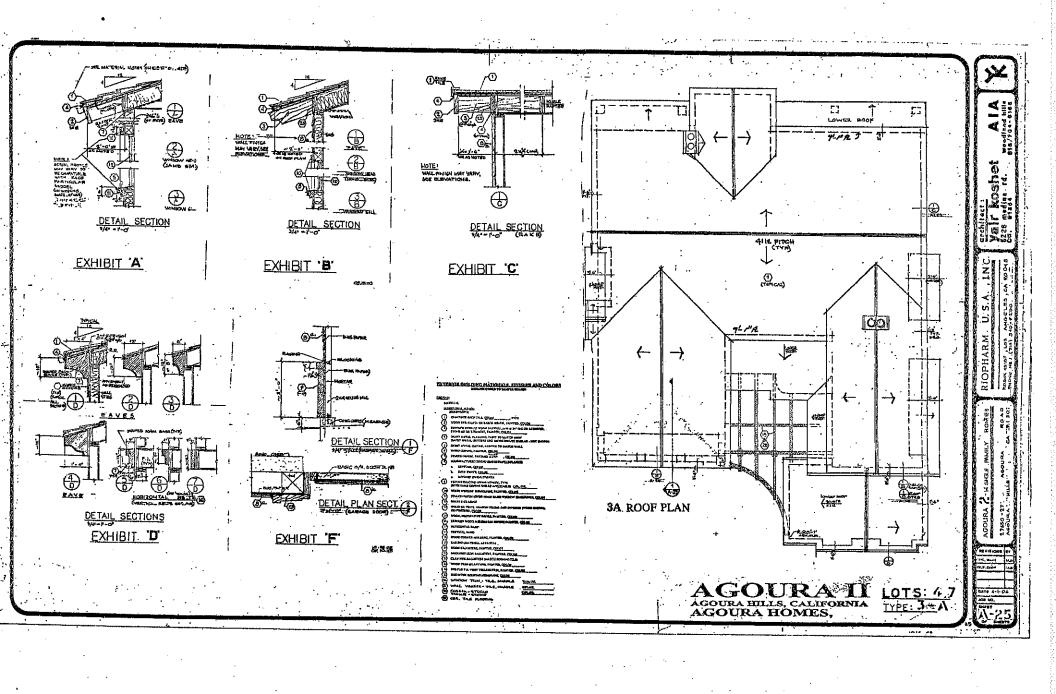


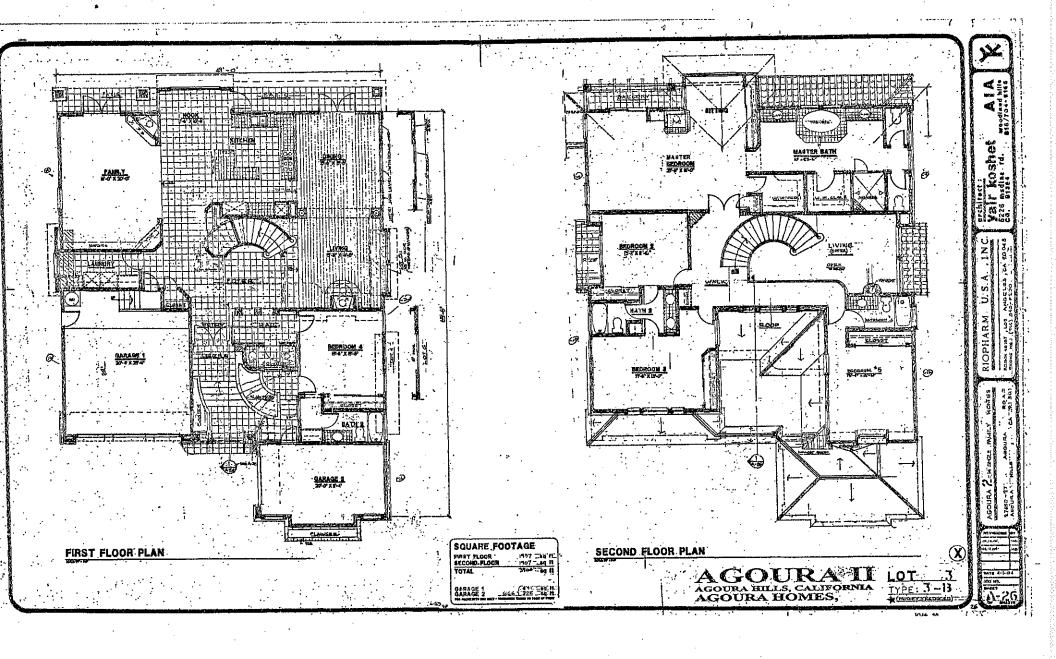


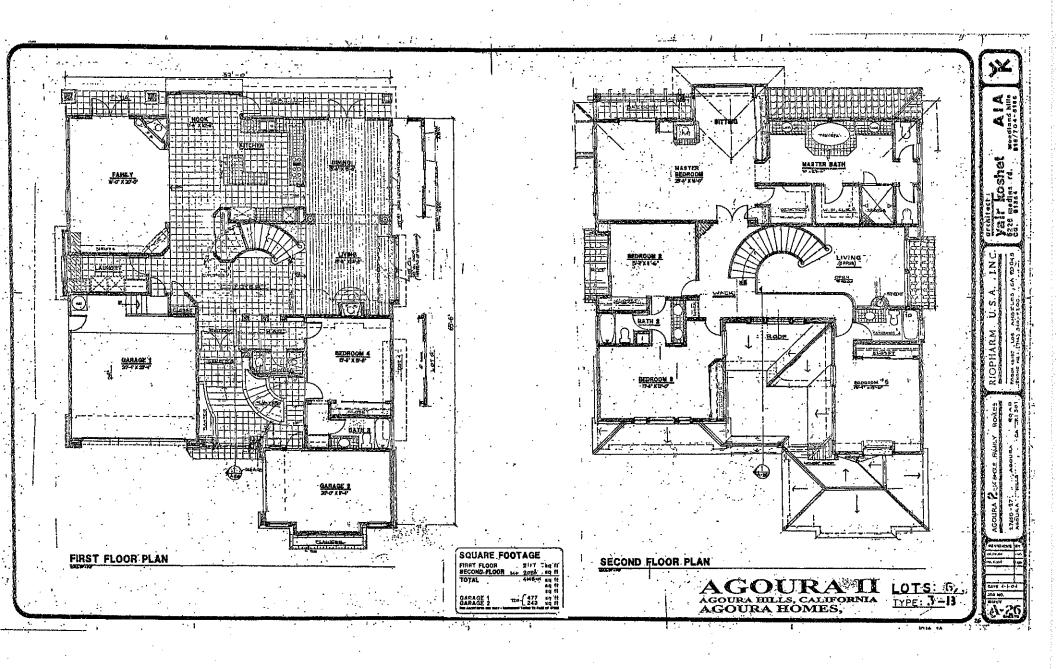


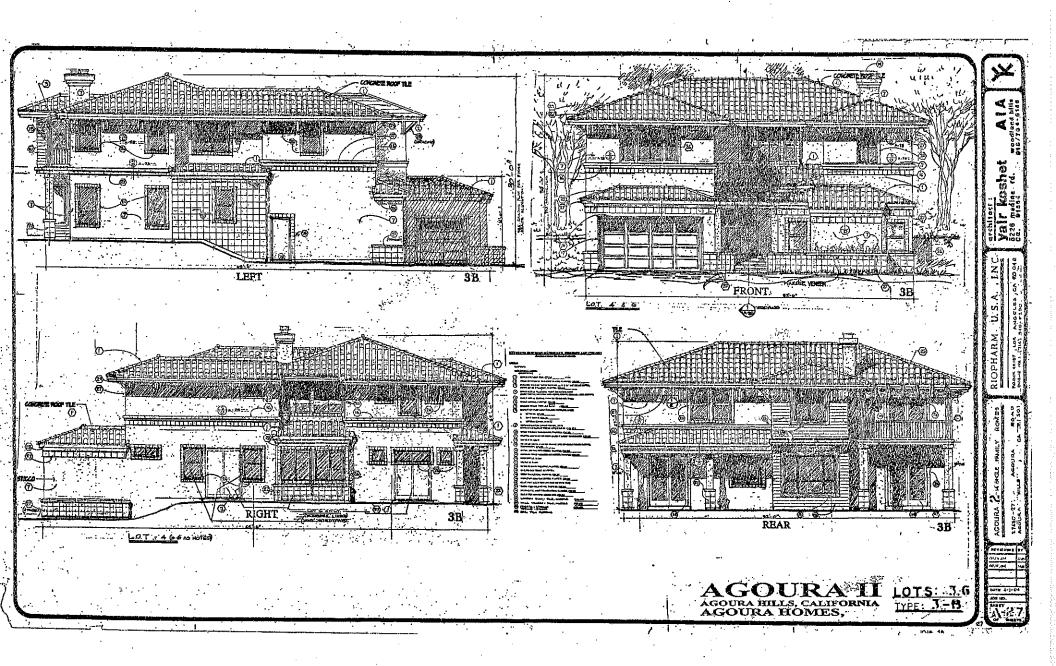


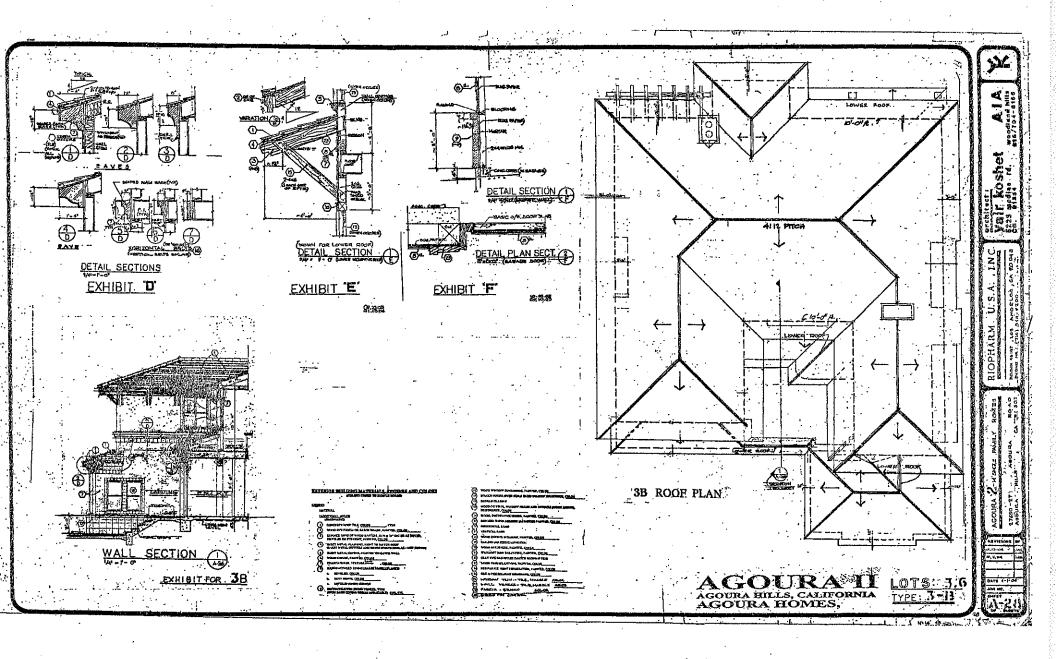


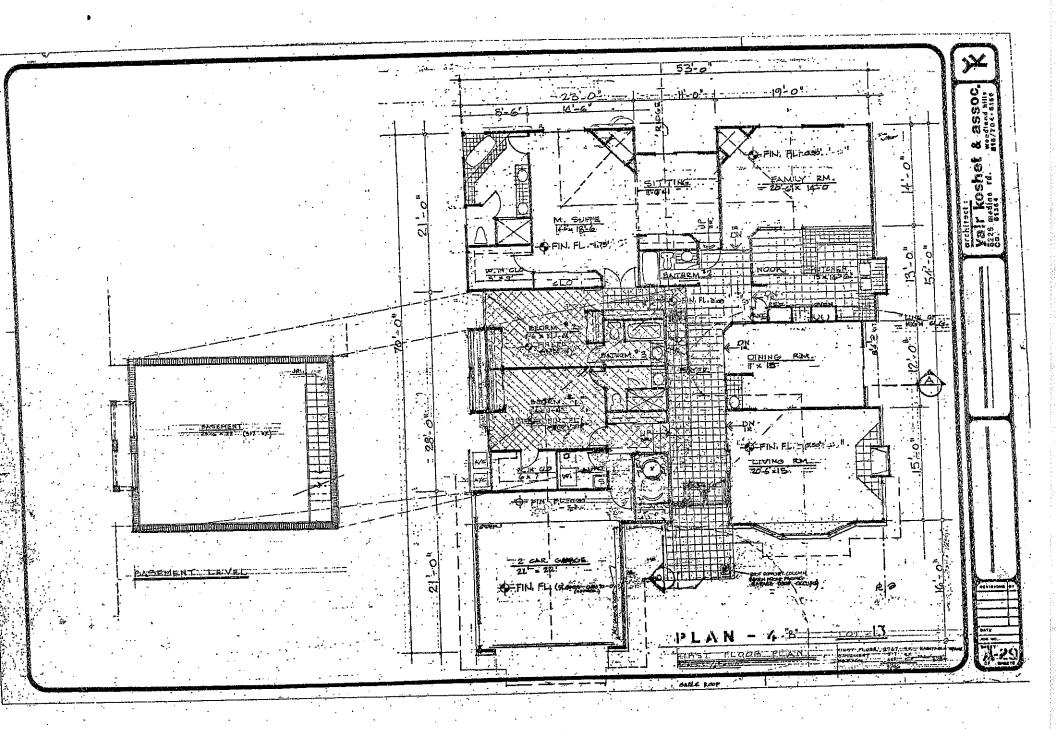


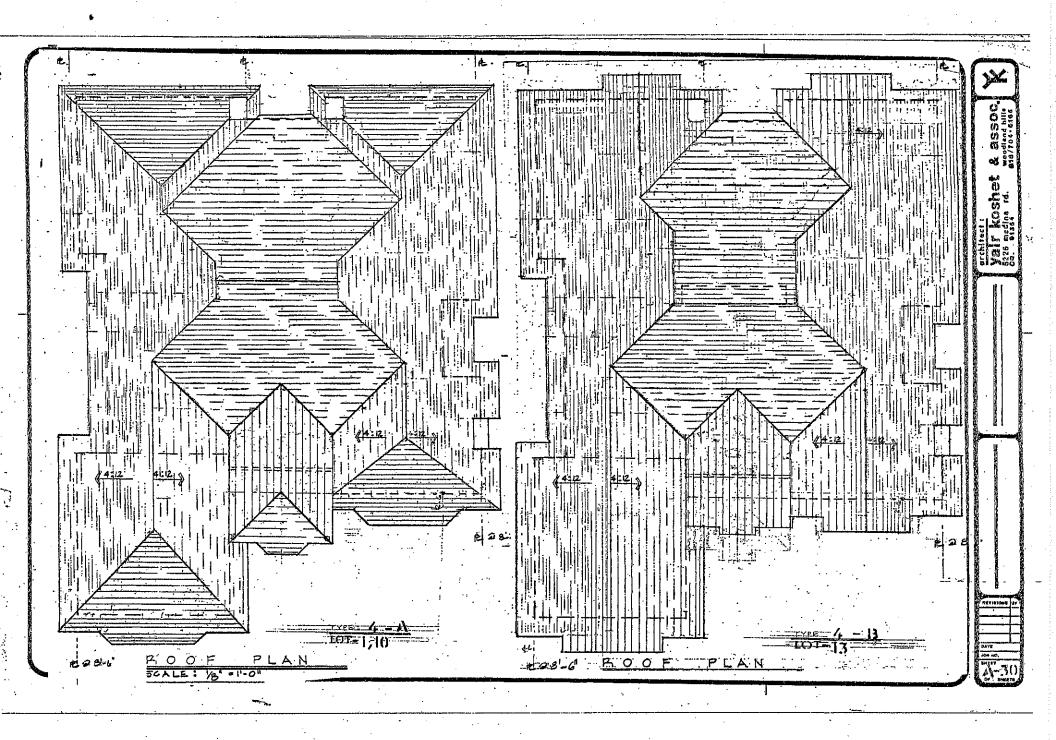


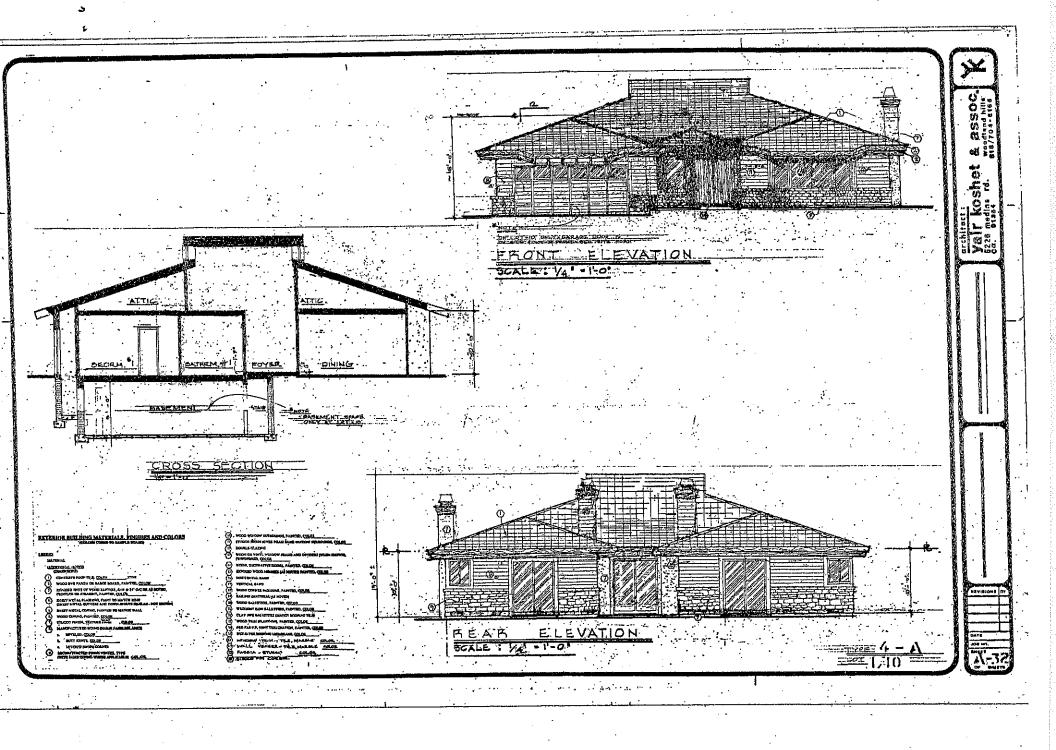


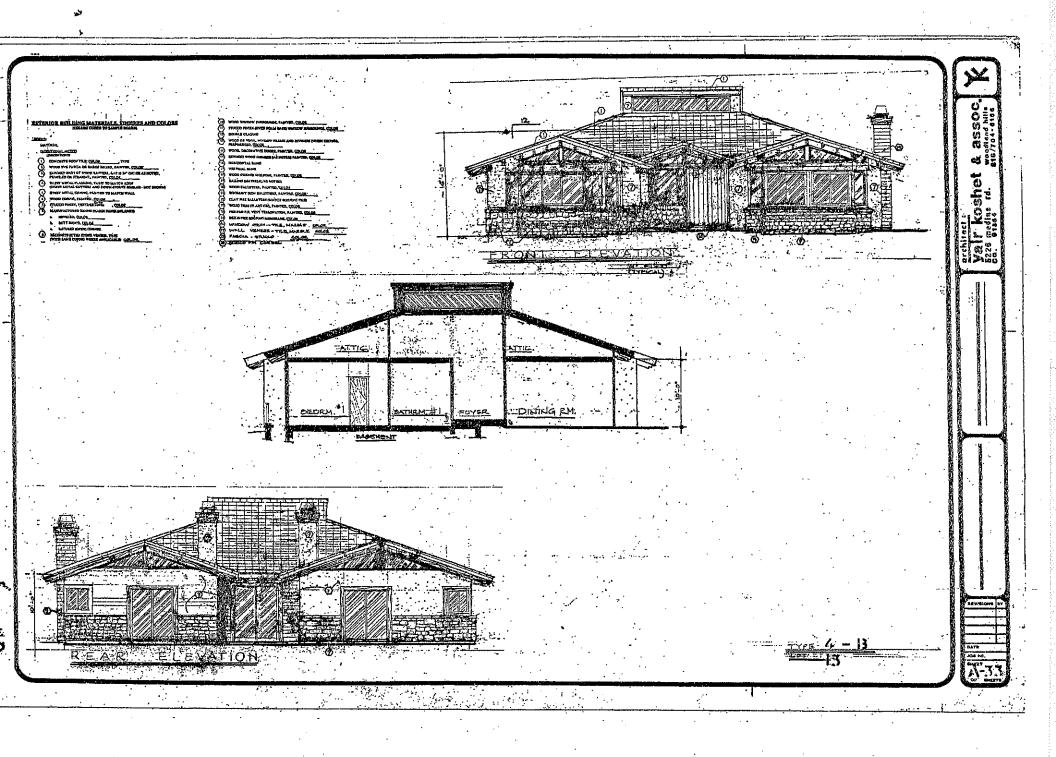


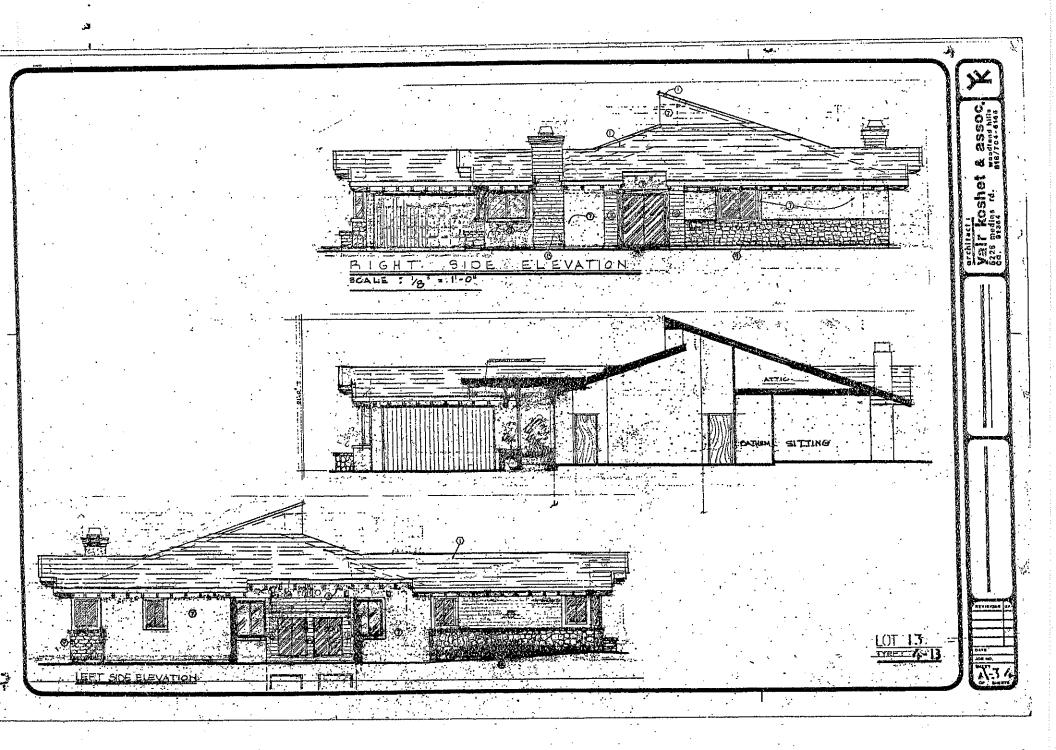


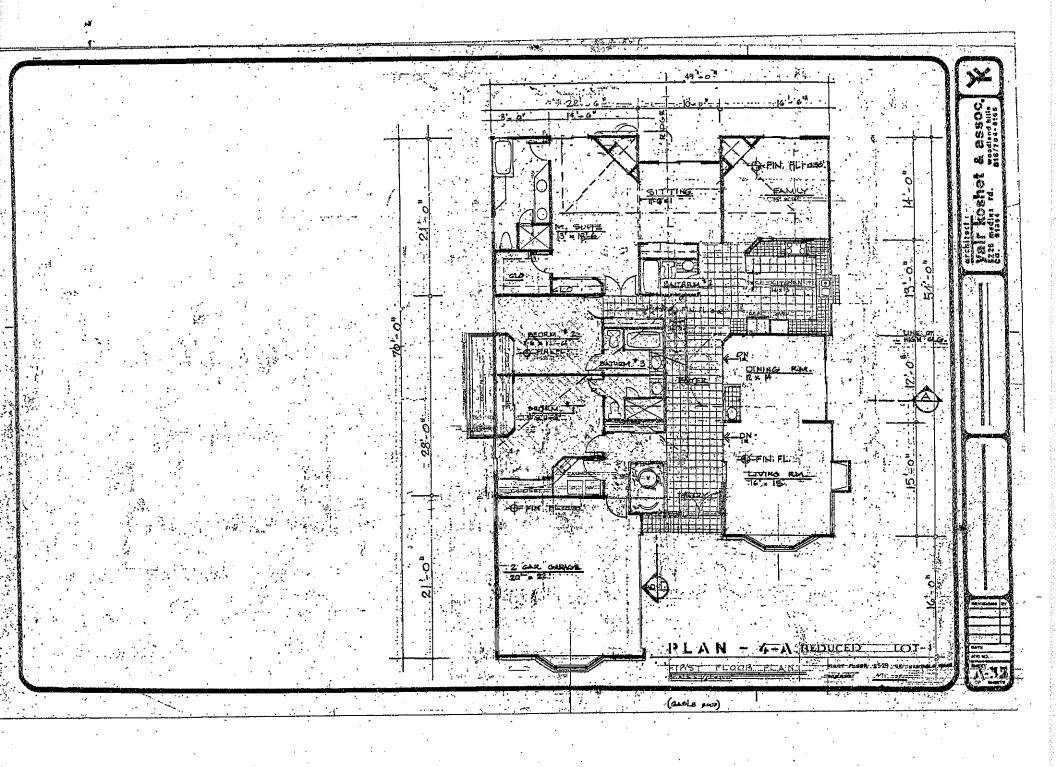




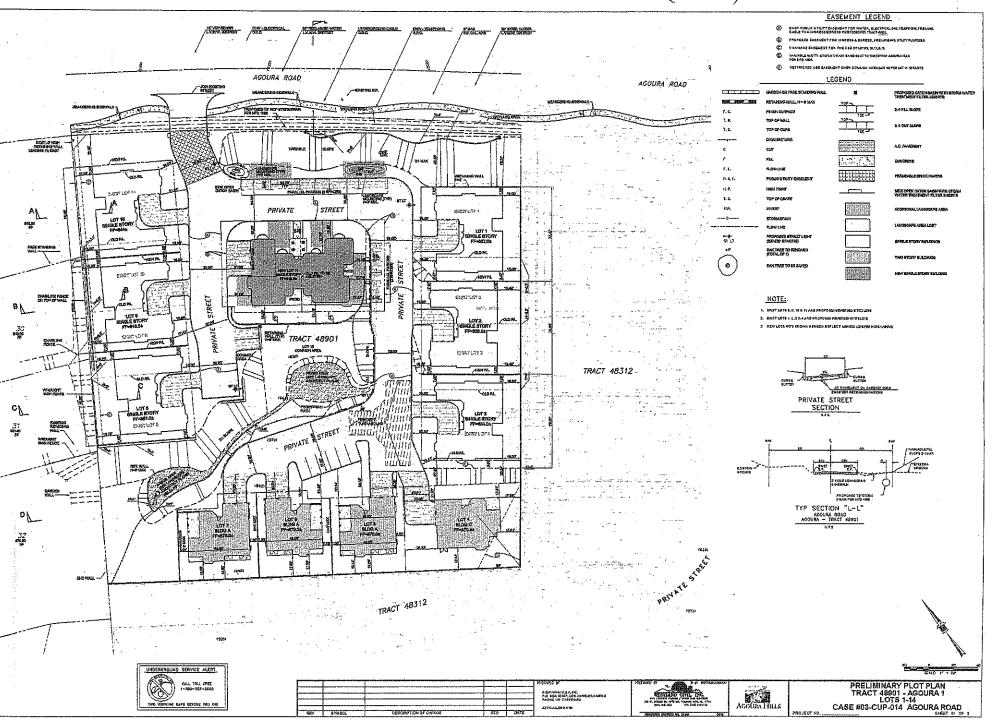


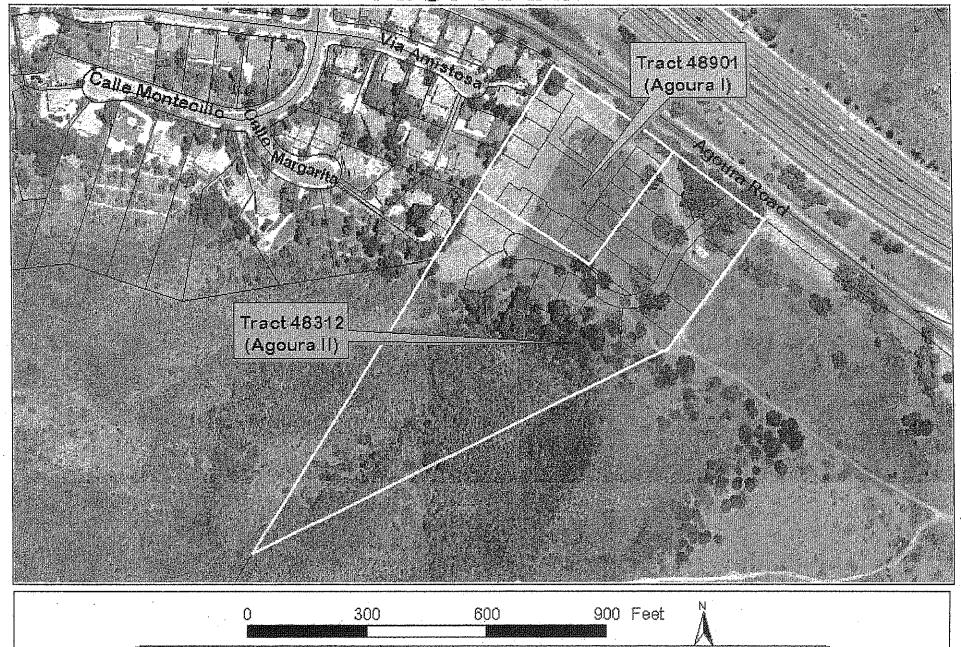






(Staff) DOJ. 11, 2006 #8





Legend

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Suggested revision to Condition No. 22 for both Agoura I and Agoura II:

22. Plantings in all common areas and rights-of-way shall be of adequate size at installation to achieve immediate screening of the project prior to any certificate of occupancy. The overall effect shall be consistent with the exhibit provided by the applicant (entitled "Tentative Tract 48312 & 48901 – View from Agoura Road Eastbound at Westerly property line. Trees shown at approximately 3-5 Years of growth.") and presented at the September 13, 2006 City Council meeting depicting plant growth after three to five years. It is expected that this effect will be accomplished primarily through the installation of specimen size boxed trees of forty-eight inches (48") and larger as well as fifteen gallon size shrubs. Proposed plant material shall be approved as to size, species, condition and form by the City Landscape Consultant and the Director of Planning & Community Development.

### **Kimberly Rodrigues**

From: Mike Kamino

Sent: Wednesday, October 11, 2006 4:52 PM

To: Doug Hooper; Kimberly Rodrigues

Cc: Greg Ramirez

Subject: Riopharm Revised Landscape Condition

I had John preview the revised landscape condition. He was ok with the revision and asked about tightening up to more clearly reference the exhibit. The attachment has been revised to reflect this. Tom Cohen has been made aware of this suggested revision.

Kimberly, I will make several copies of this for you to place on the dais.

(805) 230-2302 tcohen@wbcounsei.com

October 4, 2006

VIA FACSIMILE AND U.S. MAIL

Mr. Denis Weber, Mayor Councilmembers City of Agoura Hills 30001 Ladyface Court Agoura Hills, CA 91301

AND THE REPORT OF THE PARTY OF

Re: Riopharm USA, Inc.

Dear Mayor Weber and Councilmembers: 1997

We appreciate the City Council's extension granted at the September 13, 2006 meeting to allow our project team to make additional changes to our project based on the feedback we heard at the hearing. You will be pleased to know that we have made significant changes to our project that we believe directly respond to each of the concerns raised.

Some of these changes include:

- \* Reducing density again on Agoura 1 by one unit. Fourteen legal lots have been reduced to 11 lots, thereby only 11 homes are proposed for development.
- \* One more single story home replacing a two story has been incorporated thereby a total of seven single story units have been integrated into Agoura 1 where previously no single story homes were originally proposed. This change results in significant massing reduction and preserves views over units adjacent to the project's neighbors to west.

We have attached an exhibit that describes in greater detail the changes made in each of the tracts.

Mr. Denis Weber October 4, 2006 Page 2

We respectfully request your due consideration of the enclosed information and hope that we have warranted your vote in favor of the project.

Very truly yours,

Phomas S. Cohen WESTON, BENSHOOF,

ROCHEFORT, RUBALCAVA & MacCUISH LLP

TSC/MSOffice Enclosure

cc: Jack and Alan David

#### ADDITIONAL PROJECT CHANGES FROM SEPTEMBER 13, 2006 CITY COUNCIL HEARING CONTINUED TO OCTOBER 11, 2006

#### AGOURA 1 TRACT:

- 1. Deleted Lot 12
- New Lot 11
  - a. Converted to a single story home. Project will now have 7 single story units and 4 two story units.
  - b. Garage to face westerly onto north-south internal drive aisle. No garage door will face entry street.
  - c. Greater setback distances, all meeting or exceeding City standards for this zone.
  - d. Results in more landscape area, an increase of approximately 1,000 square feet.
- 3. Install mature landscaping to screen the project in a shorter period of time and add larger trees in strategic locations to soften the two story units on the southern perimeter of the tract boundary.
- 4. 15 guest parking stalls provided. Code requires 11 spaces.
- 5. East-west drive aisle width increased to 34 feet.
  - a. Former 90 degree parking stalls now parallel.
  - b. An additional 9.5 feet in width of landscaping with the removal of 90 degree parking stalls. This results in an increase in landscape area of approximately 700 square feet.
- 6. Aesthetic and environmentally-preferred decorative pavers (facilitates infiltration and reduces potential for erosion and stormwater pollution) will be used in
  - a. Driveways of each unit.
  - b. Guest parking stalls.

- 7. Decorative interlocking pavers will be used in the main entry driveway.
- 8. Lot 7 home reduced in height from 26 feet to 22 feet.
- 9. Privacy wall along northern perimeter of Lot 1 will be modified to taper or step down rather than end abruptly.
- 10. CC&Rs will be drafted and provided for review and approval by the Planning Department and the City Attorney, and will, among other things, provide for:
  - a. All common areas including, but not limited to, landscaping in front yards of each home, guest parking, main entry drive, drive aisles, fences, walls, recreational facilities and lighting within the project shall be maintained through the formation of a homeowner's association and right of assessment to assure payment and continuous quality maintenance.
  - b. Garages shall be restricted as follows:
    - 1. Garage doors may not be left open, except as temporarily necessary or while used for entering or exiting.
    - 2. Garage space shall not be converted into any use that would prevent its use as parking for the number of vehicles the space was designed to contain.
  - c. Guest parking may not be used on a long-term or routine basis by owners or tenants in the project.

#### Kimberly Rodrigues

From: K

Kimberly Rodrigues

Sent:

Wednesday, October 11, 2006 2:25 PM

To:

Council Members; 'Craig A. Steele'

Cc:

Greg Ramirez; Nathan Hamburger; Mike Kamino; Doug Hooper; Allison Cook

Subject: Altmann - Riopharm

#### Greetings!

The attached letter, objecting the FMND and Expanded Initial Study for the Riopharm project, was received from Mary Altmann this afternoon, with a request to "provide to the Councilmembers before tonight's hearing."

Ms. Altmann provided one copy for distribution and has been asked to bring a sufficient number of copies (10) for future distributions.

In the interim, please see the attached and note that copies have been placed at the Council dais for this evening.

Kimberly M. Rodrigues, CMC City Clerk

Boldness has genius, power and magic in it. Whatever you do; or think you can do; DO IT.

~Goethe

×

City of Agoura Hills 30001 Ladyface Court Agoura Hills CA 91301-2583 P: 818/597-7303 / F: 818/597-7352 krodrigues@ci.agoura-hills.ca.us

Please provide to Councilmembers
Before tonight's hearing. Thank you

Mary Altmann 1857 Lookout Drive, Agowra CA 91301 1: 15

CITY CLERK

October 10, 2006

Agoura Hills City Council Hand-delivered

Re: Final Mitigated Negative Declaration and Expanded Initial Study for Riopharm Single Family Residential Development

**Dear City Council Members:** 

This letter is to object to the Final Mitigated Negative Declaration "FMND" and Expanded Initial Study for the Riopharm Single Family Residential Development and Conditional Use Permit ("CUP") No. 03 CUP – 010, CUP No. 03 CUP-007, and Oak Tree Permit No. 98-OTP-011, because the document fails to contain a study for endangered species among other issues. Because the Initial Study is fatally flawed in this way, there is no way to assess impacts on endangered species, or address secondary or indirect impacts that might occur to them. Furthermore, with this project as proposed, the City is approving "hard channel improvements" along the riparian zone on the northern perimeter of the project adjacent to Agoura Road. Both the Army Corps of Engineers and the Department of Fish and Game requested a more natural drainage channel using such techniques that would enable re-growth of riparian vegetation. This issue as well has is significant because virtually all the riparian habitat and wetlands habitat on this site will be destroyed, and no adequate mitigation is required, and the mitigation is illegally deferred to other agencies.

The initial checklist for the mitigated negative declaration is fatally flawed because the first question in the biological resources category: Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local and regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Wildlife Service?"

The answer is "not known", because a study was never done on the project area to identify these resources, which is mandatory for any initial study. This is what an initial

study is for, to study if in fact, these resources will be impacted. The answer provided by the City is "no impact" on these resources. We are reminded that in the California Environmental Quality Act, mere conclusions without substantiated evidence is not acceptable. As reasoning for this erroneous conclusion in the FMND, the Initial Study states "Although no formal in-season survey of the subject site was conducted for rare and endangered plants, periodic visits by the MND preparation Staff and several jurisdictional reviews of the property for riparian resources were conducted during the spring months. Most of the habitat on the property is comprised of ruderal vegetation, non-native grasses, and stands of oak trees, (in addition to two riparian corridors, discussed below)." It is not clear when these informal studies were done, who did these studies, and if the people doing this study were competent biologists. Below that statement the report goes on: Riparian communities support high plant and animal species diversity, serve as breeding and germination areas, and as areas of general wildlife movement. Small stream convey smaller species...The riparian area along Agoura Road is likely primarily used by smaller mammals and amphibians for movement along Agoura Road.. The project will eliminate approximately 0.2 (.1627 ac.) of an acre of "wetlands or waters".. and about 1 acre (0.932 ac) of riparian area..."

One of the Initial Study questions for a finding of significance is "Would this project have a substantially adverse effect on any riparian habitat..?" Seeing that one acre of riparian habitat will be removed, yes, this is a potentially significant impact. Although the applicant is donating the steep slopes to the back of his property to the Santa Monica Mountains Recreation Authority (SMMRA), this does not mitigate the loss of riparian habitat and wetlands. The project could include preserving this area, but the possibility was not even looked at. The FMND did not adequately examine alternatives to the project. Therefore, this is a significant and unmitigated impact. The paragraph in the initial study goes on to state "these impacts would not be subject to mitigation through on-site design modifications."

The report further states, "Impacts to riparian areas on the property will generate significant impacts that require mitigation." Yet, the mitigation suggested is paying an 2

in-lieu fee, and then resting the ultimate decision (after the project is approved) on how the mitigation for riparian corridor impacts will be structured to regulating agencies. This appears to be inappropriately deferring mitigation for a significant impact that was not even disclosed on the checklist.

As this project will have a significant impact to riparian habitat, an Environmental Impact. Report must be prepared for biological resources. The checklist answers for the Initial Study in the FMND is fatally flawed because it does not recognize that this project may a have a substantially adverse effect on "any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California or Fish and Game or U.S. Wildlife Service"? The initial study further illegally defers mitigation to other agencies, as no suitable mitigation is proposed in the Mitigation and Monitoring program. Therefore, the answer to the question would be yes, it has the potential to be a Significant Impact. The project is in a wildlife corridor area, and the riparian habitat in the project area will be completely destroyed with bulldozing and a storm drain channel. The S.M. Mountains Conservancy has invested time and money to save habitat in this area for a critical wildlife corridor. In fact, this property is adjacent to this parkland. Don't you think it deserves a survey of biological resources, and an adequate approach and mitigation to preserve these resources?

Furthermore, there was no formal study for endangered species despite the 10 or so years this project has been in development. This is just unacceptable. This FMND also relies on information that is too old to be considered accurate. The Agoura Hills General Plan allows for 14 homes on this project site. It is unclear how this parcel was divided and rezoned to accommodate 27 residences. It appears this project violates the General Plan in a number of ways.

The project will presumably have a significant effect on Oak Woodlands not disclosed in the FMND.

**This project's approvals and tract maps have all expired.** To base many of the City's conclusions about aesthetics, biology and other concerns on the General Plan 3

which only allowed 14 homes for the site is not founded in logic. Also unfounded is the logic that these tentative tract maps cannot be altered for environmental, aesthetic, and other concerns. Therefore, the conclusion that the City is stuck with this development as proposed is in error. The zoning for the project could be interpreted to allow for a lesser density, and mitigation of significant impacts.

The Geological impacts have not adequately been addressed. The City approved a development adjacent to this one which involved slope failures and millions of dollars worth of damage. I am sure the failed development cost residents and taxpayers millions of dollars to fix got a similar approvals from the City when the adjacent failed project was approved.

This project is not "semi-rural" in nature, and does not comply with the General Plan. The Initial Study on Page 20 states that the zoning ordinance allowed for the exclusion of slopes greater than 35% which would have allowed 4 homes on the site." I do not see in the Zoning element of the Municipal Code or General Plan an exclusion to label a part of a parcel open space zoning to get out of the allowable number of residences appropriate to a site given slope formulas.

Furthermore, many of the conclusions made about his project are based on the General Plan analysis for this project, which only included 14 homes. The Agoura Hills General Plan allows for 14 homes on this project site. The new information on noise, aesthetics, air quality, and traffic and parking, and biology for this upzoning should to be incorporated in the Environmental Impact Report, and reasons why this upzoning is being allowed involves statements of overriding consideration. The FMND does not take into consideration cumulative impacts regarding these issues with the surrounding approved projects. The FMND does not state where the imported dirt will be coming from. Just to be clear on CEQA law, these are some of the articles of significance relating to this project:

§ 21064.5. Mitigated negative declaration

"Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

The FMND for this project fails to adequately disclose or address the significant impacts of this project, therefore an EIR needs to be prepared.

## 15065. Mandatory Findings of Significance

(a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

(1) The project has the potential to: substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels;; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.

The proposed project has the potential to substantially reduce the number or restrict the range of endangered rare or threatened species. A study needs to be done clarifying these issues.

(2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

The short term environmental goal may be seen as saving the five acres of sloped area in the back of the property of the project to the disadvantage of long-term environmental goals of protecting riparian habitat, wetlands, and watercourses as defined by city, state, and federal guidelines and laws.

(3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The question of cumulative impacts have not adequately been addressed in this FMND.

- (4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.
- (b)(1) Where, prior to the commencement of preliminary review of an environmental document, a project proponent agrees to mitigation measures or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.
- (2) Furthermore, where a proposed project has the potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species, the lead agency need not prepare an EIR solely because of such an effect, if:
- (A) the project proponent is bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan or natural community conservation plan;

# Since no study was done, it is impossible to calculate the effects to rare habitats or endangered species in this FMND.

- (B) the state or federal agency approved the habitat conservation plan or natural community conservation plan in reliance on an environmental impact report or environmental impact statement; and
- (C) 1. such requirements avoid any net loss of habitat and net reduction in number of the affected species, or
- 2. such requirements preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species to below a level of significance.
- (c) Following the decision to prepare an EIR, if a lead agency determines that any of the conditions specified by subdivision (a) will occur, such a determination shall apply to:
- (1) the identification of effects to be analyzed in depth in the environmental impact report or the functional equivalent thereof,
- (2) the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment,
- (3) when found to be feasible, the making of changes in the project to substantially lessen or avoid the significant effects on the environment, and
- (4) where necessary, the requirement to adopt a statement of overriding considerations. Authority cited: Section 21083, Public Resources Code. Reference: Sections 21001(c), 21082.2, and 21083, Public Resources Code; San Joaquin Raptor/Wildlife Center v. County of Stanislaus (1996) 42 Cal.App.4th 608; Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1024; and Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98.

In the General Plan, it allows 14 homes for this project. It appears these tentative tract maps for both projects have expired, and are from some subsequent approval. The environmental review in the initial studies contained in the addendum declares false and misleading data related to the project, in fact it discloses none of the environmental impacts. The environmental review in the report is outdated and in need of review. To only address the dominant species, and not rare and endangered species is not reasonable.

This development needs to be addressed with the cumulative impacts of projects approved in the surround area. For instance, this project should be combined with the office buildings approved within 1000 feet of this development, with Hershel West, and the Agoura Village Specific Plan to show the cumulative impacts of traffic, parking, and other cumulative impacts.

This project has been brought to my attention by concerned citizens who care deeply about this area, and want to make sure all the environmental concerns are addressed before development commences. Please make sure the necessary studies are done before this project receives final approval.

Thank you,

Mary Altmann