

In the matter of:	) Docket No. HSA-O&MEA 06/07-202
	)
	)
Jefferson at Marina del Rey	) OPERATION AND MAINTENANCE
3211,3217-3221 &3237 Carter	) AGREEMENT
Avenue; 3224-3226, and Thatcher	)
Avenue, Marina del Rey, California	)
	) Health and Safety Code
A Hazardous Waste Site	) Section 25395.80 and 25395.97
_____	)

This Agreement is made and entered into, by and between the State Department of Toxic Substances Control ("Department") and Jefferson at Marina del Rey, L.P. ("Respondent"), 5796 Armada Drive, Suite 300, Carlsbad, CA 92008. Department and Respondent are collectively the "Parties."

#### RECITALS;

1.0 On September 20, 2006, the Parties entered into an agreement under California's Land and Revitalization Act ("CLRRA"), docket No. HAS-A 05/06-112 ("CLRRA Agreement"), for the Jefferson at Marina del Rey, L.P. Site ("Site") located at 3211, 3217-3221 & 3237 Carter Avenue; and 3224-3226 Thatcher Avenue, Los Angeles, California, Los Angeles County. The Site is currently owned by Respondent. A site location map and the assessor's parcel map are attached as Exhibit A. A site map showing the location of the residential development and groundwater monitoring wells is attached as Exhibit B. Certain operation and maintenance of the groundwater monitoring program and soil management remain to be performed on the Jefferson at Marina del Rey Site

#### AGREEMENT

2.0 The Parties, based upon the foregoing and in exchange for the mutual performances and forbearances described below, agree as follows:

2.1 Obligations of Respondent. The obligations of Respondent are set forth below.

2.2 Continuing Obligations. Respondent will comply with all conditions of HSC §25395.80 as they become applicable and as they continue to apply. In the event that any provision of the Agreement conflicts with the CLRRA Agreement, the CLRRA Agreement will prevail.

2.3 Implementation of Operation and Maintenance Plan. Respondent shall implement the Operation and Maintenance Plan ("OMP", QORE Property Science, April, 2007) as approved by the Department on June 1, 2007 (Exhibit C). In accordance with the provisions of Section 21.0 of this Agreement, the OMP is hereby incorporated into this Agreement by reference. References herein to implementation of and compliance with

the OMP are intended to include such modifications to the OMP as may be approved by the Department from time to time as communicated pursuant to Section 8.0 of this Agreement. The groundwater monitoring program as defined in the OMP shall be left in place and operated by Respondent until the Department authorizes Respondent in writing to discontinue, move or modify some or all of the monitoring well locations because Respondent has evaluated trends in groundwater, or because the modifications would better serve evaluation of trends in groundwater, or because the groundwater monitoring program could not determine trends in groundwater.

2.4 Financial Assurance: Respondent must assure that sufficient monies are available to: implement the activities described in Section 2.2 and 2.3 above; and pay costs as outlined in paragraph 19.0. [Respondent shall select a financial assurance mechanism and propose language to this Agreement which meets the criteria set forth in the regulations for the selected mechanism. Financial assurance mechanisms are outlined in Title 22 of the California Code of Regulations section 66264.140 et seq.] The dollar amount of the financial assurance mechanism shall be sufficient to ensure that the requirements of the CLRRA Agreement and the O&M Agreement are fully complied with, based upon anticipated future costs.

2.5 Modifications. Respondent shall give the Department at least sixty (60) days advance written notice prior to the intended date of any proposed modifications, discontinuation or other disruption of the groundwater monitoring program and/or excavation of soils. The written notice shall be sent by certified mail to the Department at the address set out in Paragraph 7.0 of this Agreement. The written notice to the Department shall include a detailed description of the work to be done or modifications to be made and a map showing the exact location of the proposed work and the reasons for modification, disruption or discontinuation. The requirements of this paragraph do not apply to emergency work covered by paragraph 2.6 of this Agreement.

#### 2.6 Endangerment.

2.6.1 In the event of any action or occurrence (such as a fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance) during the course of this Agreement, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the Project Manager. Respondent shall take such action in consultation with the Project Manager and in accordance with all applicable provisions of this Agreement. Within seven days of the onset of such an event, Respondent shall furnish a report to the Department, signed by Respondent's Project Coordinator, setting forth the events which occurred and the measures taken in response thereto. In the event that Respondent fails to take appropriate response and the Department takes the action instead, Respondent shall be liable to the Department for all costs of the response action. Nothing in this section shall be deemed to limit any other notification requirement to which the Respondent may be subject.

2.6.2 Respondent shall notify DTSC's Project Manager immediately upon learning of any previously unknown condition that endangers public health or safety or that poses an unreasonable risk to human health and safety or the environment.

2.7 Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors and consultants of the Department. Access to laboratories (if owned by Respondent's consultants) used for analyses of samples under this Agreement shall also be provided as outlined above. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that the Department or any other agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytical data, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Agreement; and conducting such tests as the Department may deem necessary.

2.8 Compliance With Applicable Laws: Respondent shall carry out this Agreement in compliance with all applicable local, state, and federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety.

3.0 Obligations of the Department: The Department agrees to review and oversee the measures to be performed by Respondent(s) pursuant to this Agreement.

4.0 Project Coordinator. The responsibilities of the Respondent's Project Coordinator, Heidi Mather, will be to receive and submit all notices, comments, approvals, and other communications from and to the Department. Respondent shall promptly notify the Department of any change in the identity of the Project Coordinator.

5.0 Project Engineer/Geologist. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified professional engineer/geologist in the State of California with expertise in hazardous substance site cleanup. Within [5] calendar days from the date this Agreement is signed by the Department, Respondent must submit: a) The name and address of the project engineer chosen by the Respondent; and b) in order to demonstrate expertise in hazardous substance cleanup, the resume of the engineer/geologist, and the statement of qualifications of the consulting firm responsible for the work. Respondent shall promptly notify the Department of any change in the identity of the Project Engineer.

6.0 Quality Assurance /Quality Control (QA/QC). All sampling and analysis conducted by Respondent under this Agreement shall be performed in accordance with QA/QC procedures submitted by Respondent and approved by the Department pursuant to this Agreement.

7.0 Submittals: All submittals and notifications from Respondent(s) that are required by this Agreement shall be sent to:

Sayareh Amir, Chief  
Southern California Cleanup Operations Branch - Glendale Office  
Attn: Steve Friet (2 copies)  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, CA 91201

8.0 Communications: All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Southern California Cleanup Operations Branch Chief, Department of Toxic Substances Control, or his/her designee. Confirmation of a designation shall be provided in writing by the Department in order to validate any approvals or decisions made by a Branch Chief's designee. No informal advice, guidance, suggestions or comments by the Department regarding reports, plans, specifications, schedules or any other writings by Respondent shall be construed to relieve Respondent of the obligations to obtain such formal approvals as may be required.

9.0 Department Review and Approval: If the Department determines that any report, plan, schedule or other document submitted to the Department for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, the Department will consult with the Respondent and either (1) return comments to the Respondent with recommended changes or (2) with Respondent's concurrence, modify the document, as deemed necessary and approve the document as modified.

10.0 Stop Work Order. In the event that the Department determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Agreement for such period of time needed to abate the endangerment. In the event that the Department determines that any activities (whether or not pursued in compliance with this Agreement) are proceeding without Department authorization, the Department may order Respondent to stop further implementation of this Agreement or activities for such period of time needed to obtain Department authorization, if such authorization is appropriate. Any deadline in this Agreement directly affected by a Stop Work Order, under this section, shall be extended for the term of the Stop Work Order.

11.0 Department Required Modifications. The Department may require modification, replacement, or additions to the ground water monitoring system if that system is not achieving response action objectives of protecting the public health, safety or the environment, including those identified in the Response Plan. The Department may

require additional evaluations, designs and the construction and operation of facilities to achieve these objectives.

12.0 Respondent Liabilities. Except as provided by CLRRRA, nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current or future operations of Respondent. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site. Nothing in this Agreement is intended or shall be construed to limit or preclude the Department from taking any action authorized under CLRRRA to protect public health or safety or the environment and recovering the cost thereof. Notwithstanding compliance with the terms of this Agreement, Respondent may be required to take further actions as are necessary to protect public health and the environment, as provided by CLRRRA.

13.0 Sampling, Data and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring or other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Agreement. Respondent shall submit all such data upon the request of the Department. Respondent shall inform the Department at least fourteen (14) days in advance of all field sampling under this Agreement, and shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Agreement. Respondent shall maintain a repository of the data, reports, and other documents prepared pursuant to this Agreement.

14.0 Record Retention. All such data, reports and other documents shall be preserved by Respondent for a minimum of ten (10) years after the conclusion of all activities under this Agreement. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request or deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six (6) months prior to destroying any documents prepared pursuant to this Agreement.

15.0 Government Liabilities: The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 24.0, Parties Bound, in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Agreement.

16.0 Additional Actions. By entering into this Agreement, the Department does not waive the right to take any further actions only as authorized by law.

17.0 Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Agreement, Respondent may, prior to expiration of the time, request an extension of the time in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due, unless an emergency or other event outside the control of Respondent prevents or delays submission of the extension request. The Department shall endeavor to respond, when possible, prior to the scheduled performance of the activity.

18.0 Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. Respondent shall comply with the new schedule, which is then incorporated in this Agreement.

19.0 Cost Recovery: Respondent is liable for all of the Department's costs incurred in responding to the contamination at the Site (including costs of overseeing response work performed by Respondent) or costs to be incurred in the future. Cost recovery may also be pursued by the Department under CLRRRA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law. The Department will invoice Respondent for Department's costs on a quarterly basis.

20.0 Severability: The requirements of this Agreement are severable, and Respondent shall comply with each and every provision hereof notwithstanding the effectiveness of any other provision.

21.0 Incorporation of Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by Respondent pursuant to this Agreement are incorporated in this agreement upon the Department's approval or as modified (with Respondent's concurrence) pursuant to Paragraph 9.0, Department Review and Approval, and shall be implemented by Respondent. Any noncompliance with the documents incorporated in this Agreement may be considered a material deviation pursuant to HSC §25395.81(c) and CLRRRA Agreement Docket No. HSA-A 05/06-112 shall be deemed a failure or refusal to comply with this Agreement.

22.0 Modification and Termination. Respondent may, upon written request, seek modification or termination of this Agreement at any time. In addition to modification as provided elsewhere in this Agreement, this Agreement may be modified or terminated by mutual written agreement of the parties at any time.

23.0 Time Periods and Effective Date: Unless otherwise specified, time periods begin from the effective date of this Agreement and "days" means calendar days. The effective date of this Agreement is the date the Agreement is signed by the Department.

24.0 Parties Bound: This Agreement applies to and is binding upon Respondent and its business entity successors, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement.

25.0 Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

26.0 Counterparts. This Agreement may be executed and delivered in any number of counterpart, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Signed on the 3<sup>rd</sup> day of August, 2007.



Sayarah Amir, Chief  
Southern California Cleanup Operations Branch – Glendale Office  
Department of Toxic Substances Control

I acknowledge receipt of the foregoing Agreement and consent to its terms and conditions.

Jefferson at Marina del Rey, L.P.  
a Delaware limited partnership

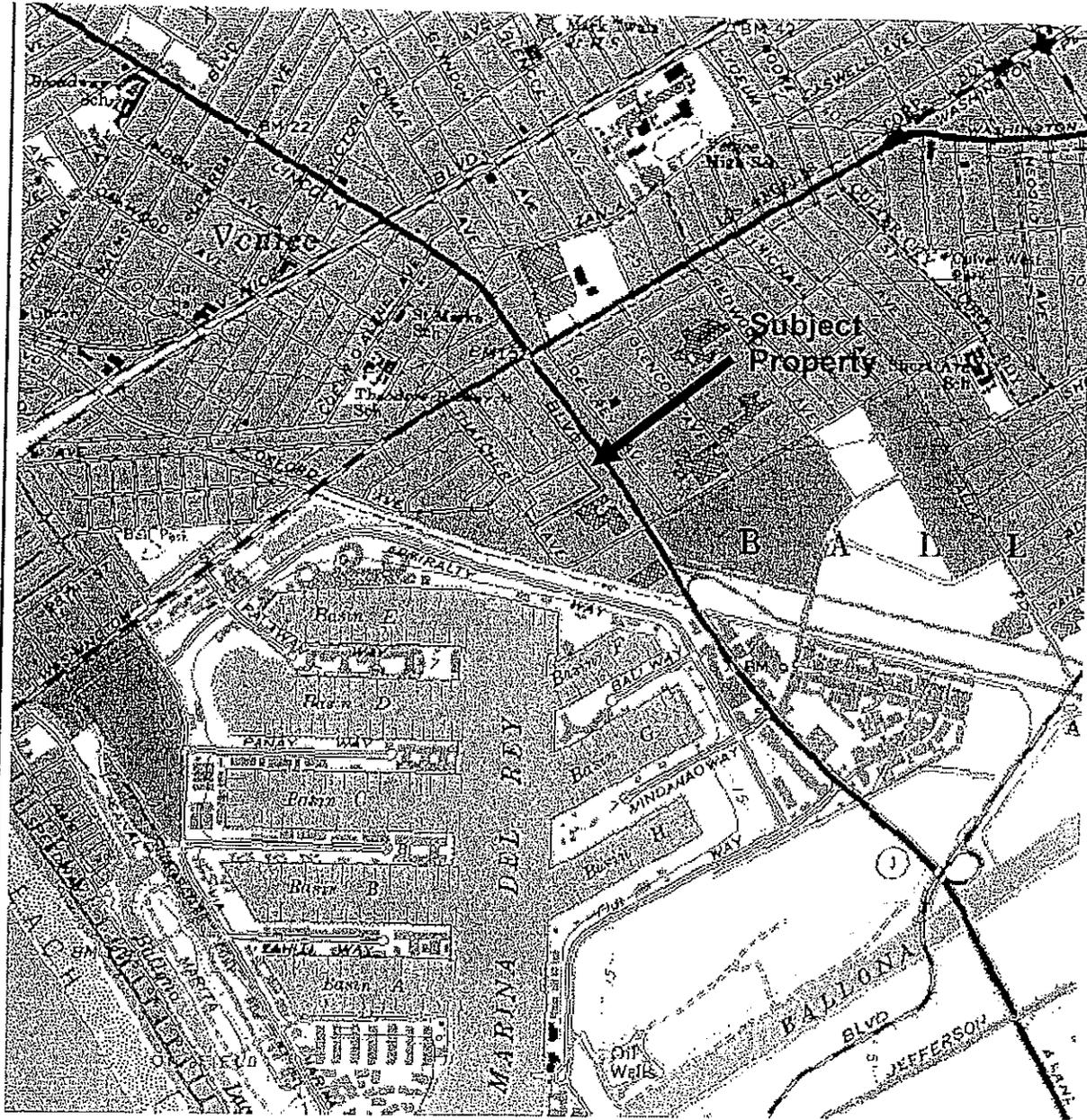
By: Jefferson at Marina del Rey LLC,  
a Delaware limited liability company,  
its general partner

By: Heidi W. Mather

Heidi W. Mather  
Area Vice President

For Respondent

EXHIBIT A  
SITE LOCATION MAP



Source: Venice Quadrangle, USGS California 7 5 minute series Topographic Map, dated 1978 (Photorevised - 1981)  
Scale: 1"=1,600'



FIGURE 1 - SITE (VICINITY) MAP

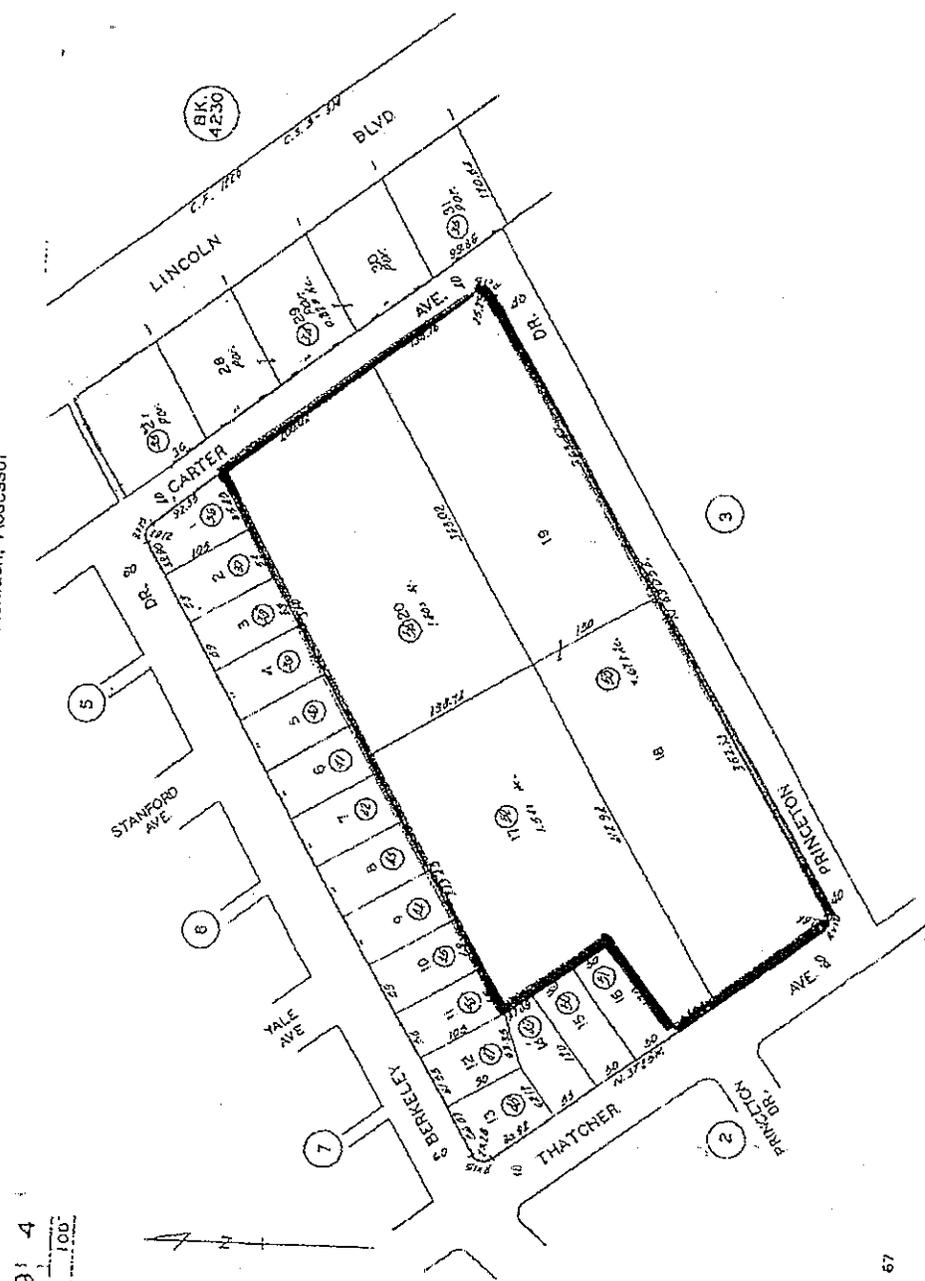
JEFFERSON AT MARINA DEL REY  
3217-3221 & 3237 CARTER AVENUE, 3224-3226 THATCHER AVENUE,  
and 4101 LINCOLN BOULEVARD  
MARINA DEL REY, CALIFORNIA 90292

QORE Project 150-0873

EXHIBIT A  
ASSESSOR'S MAP

**View Enlarged Map**  
**View Printing Instructions**

County of Los Angeles: Rick Auerbach, Assessor



4229 4  
100'

67

WHIGHI'S ADDITION TO OCEAN PARK  
M.B. 5-174  
TRACT NO. 20660 M.B. 610-77-78

4229 253.30

**FIGURE 4A - TAX ASSESSOR PARCEL NUMBER MAP**  
**JEFFERSON AT MARINA DEL REY**  
**GORE PROJECT 150-0873**

<http://assessormap.co.la.ca.us/mapping/gifimage.asp?val=4229004.00>

4/3/2006

# EXHIBIT B (Map of Groundwater Monitoring Wells)

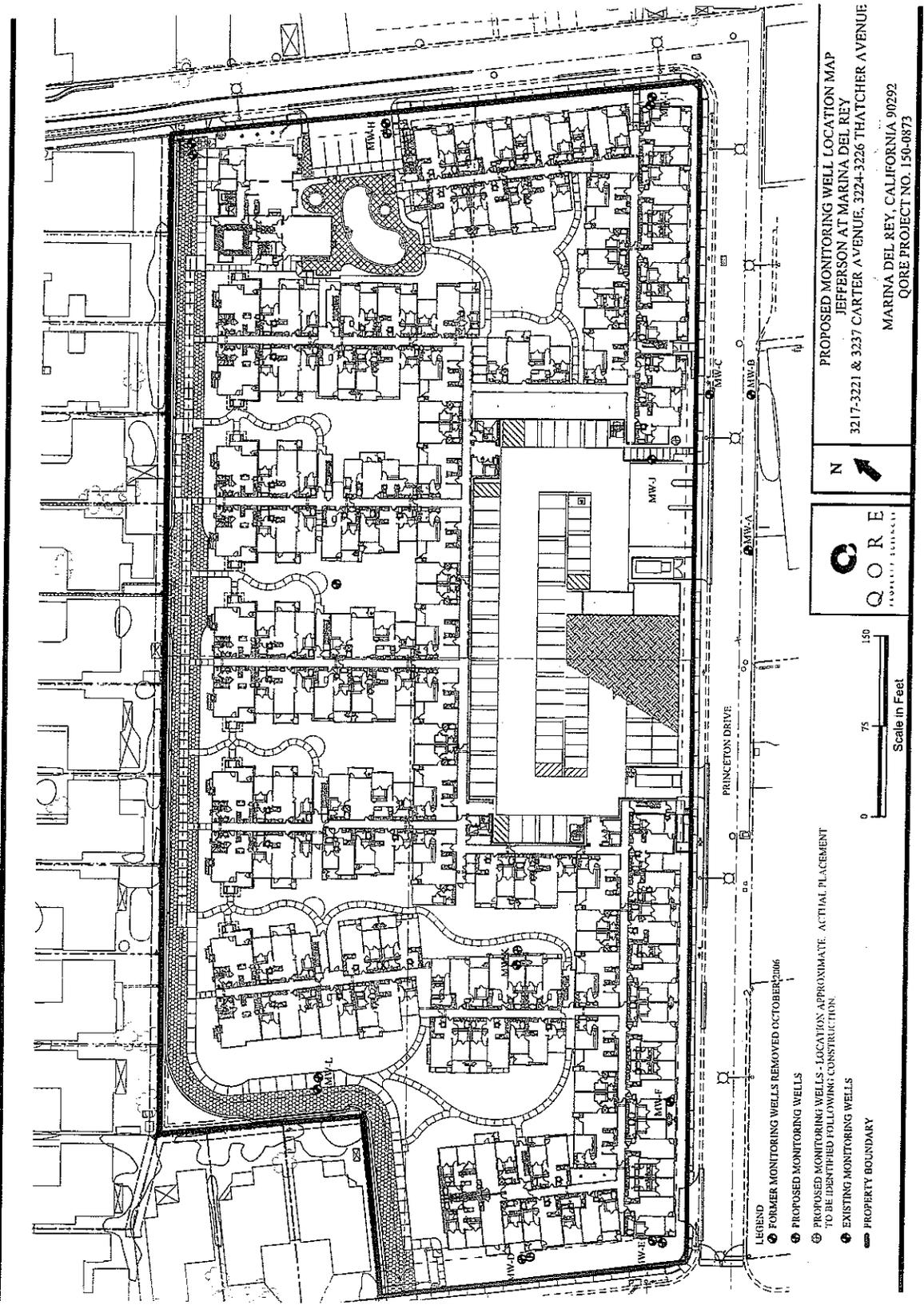


EXHIBIT C  
OPERATION AND MAINTENANCE PLAN