

KOGAN COUNSEL APC

June 11, 2026

Sender's email: gavin@kogancounsel.com

City of Del Rey Oaks
Attn: City Manager John Guertin; Mayor Scott
Donaldson; and Members of the City Council
650 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940

SENT VIA EMAIL

Via Email: kminami@delreyoaks.org; cityclerk@delreyoaks.org

Re: Enforcement of Settlement Agreement and Deed Restriction – Del Rey Oaks Habitat Reserve (APN 031-191-013); Monterey County Superior Court Case No. 20CV001529 Demand to Cure Breaches and Permit Invasive-Species Removal

Dear City Manager Guertin, Mayor Donaldson, and Members of the City Council:

This firm represents the California Native Plant Society, Monterey Bay Chapter (“CNPS”), in connection with the *Settlement Agreement and General Release* dated May 15, 2023 (the “Settlement Agreement”), and the *Deed Restriction* recorded June 13, 2024, as Monterey County Document No. 2024020589 (the “Deed Restriction”), both concerning the 4.628-acre Del Rey Oaks Habitat Reserve, APN 031-191-013 (the “Property”). The Settlement Agreement resolved CNPS’s petition in *California Native Plant Society v. City of Del Rey Oaks* (the “City”), Monterey County Superior Court Case No. 20CV001529 (the “Action”).

CNPS has on more than one occasion asked the City for permission to send trained volunteers onto the Property, at no cost to the City, to remove invasive French broom (*Genista monspessulana*) that is encroaching on and degrading the rare-plant habitat the Settlement Agreement and Deed Restriction were created to protect. Most recently, on January 13, 2026, CNPS again solicited the City’s cooperation together with an agreement permitting CNPS volunteers access for habitat conservation without any cost to City and offering the City comprehensive indemnification.

The City has consistently refused, taking the position that the instruments prohibit removal of “any vegetation” and that the City has “no affirmative duty” to manage the Property. As explained below, the City’s refusal to engage with invasive-species removal, where the invasive species is allegedly degrading the enumerated conservation values, turns the “no affirmative duty” clause into an obstruction clause, a construction contrary to the plain terms and stated purpose of the Settlement Agreement and Deed Restriction. This letter constitutes CNPS’s formal demand that the City cure its breaches.

I. The Governing Instruments and the Court’s Retained Jurisdiction

The May 15, 2023, Settlement Agreement was fully executed by both parties and, at Section 18, the parties expressly stipulated that the Court “shall retain jurisdiction over this matter pursuant to” California Code of Civil Procedure section 664.6. The Deed Restriction, recorded as Document No.

2024020589, incorporates the Settlement Agreement as Exhibit B and recites that the City “irrevocably covenant[s] with CNPS for the benefit of the public” to impose the stated restrictions “in perpetuity for the purpose of habitat protection and resource conservation.” The Deed Restriction runs with the land and binds the City and all successors and assigns (Deed Restriction, § 2).

Because Section 18 expressly requests retained jurisdiction under Code of Civil Procedure section 664.6, and because that request was included in the parties’ signed settlement while the Action was pending, CNPS may seek enforcement by motion in the existing Action. See Code Civ. Proc., § 664.6; *Wackeen v. Malis*, 97 Cal.App.4th 429, 439–440 (2002).

II. The City Is in Material Breach of the Settlement Agreement and Deed Restriction

A. The Perpetual-Protection Covenant (Deed Restriction § 1.3; Settlement Agreement § 1.2.3)

Section 1.3 of the Deed Restriction (and the parallel Section 1.2.3 of the Settlement Agreement) provides that the Property “is hereby protected in perpetuity for its conservation values” and that “nothing shall be done that may degrade or adversely impact the Property and its conservation/biological values in perpetuity.” The conservation values are defined in Section 1.7 as the Maritime Chaparral habitat and its rare constituent species, including Seaside Bird’s Beak (*Cordylanthus rigidus ssp. littoralis*), Monterey Spineflower (*Chorizanthe pungens var. pungens*), Eastwood’s Goldenbush (*Ericameria fasciculata*), Toro Manzanita (*Arctostaphylos montereyensis*), Sandmat Manzanita (*Arctostaphylos pumila*), and Hooker’s Manzanita (*Arctostaphylos hookeri*).

French broom is an aggressive invasive that outcompetes these native species for light, water, and nutrients. The City’s refusal to permit its removal is not mere passive inaction. By using its exclusive control over access to the Property to block the only entity willing and able to perform the conservation work—at no cost to the City—the City has made an affirmative decision that permits and accelerates the very degradation Section 1.3 forbids. That is an act, not an omission, and it places the City in ongoing breach of the perpetual-protection covenant.

B. The Conservation-Enhancement Mechanism (Deed Restriction § 1.4(b); Settlement Agreement § 1.2.4(b))

Section 1.4(b) expressly authorizes “the use of prescribed fire to stimulate rare plant growth and enhancement of habitat or other scientifically acceptable methods that restore or stimulate rare plant growth and enhancement of habitat,” provided the method is “first agreed to in a writing between the City and the California Native Plant Society prior to any actions at the Property.” Invasive-species removal is among the most fundamental and widely accepted methods of habitat restoration in conservation biology, and it falls squarely within this provision. That Section 1.4(b) was included strongly underscores that habitat enhancement is a central purpose of the Agreement;

Even if Section 1.4(b) requires the City’s written agreement before restoration work proceeds, that requirement does not confer on the City arbitrary veto power. Where a contract gives one party discretion affecting the other party’s contractual benefits, the discretion must be exercised in good faith and consistently with the agreement’s purposes. More pointedly, by refusing even to engage with CNPS’s proposed scientifically accepted restoration work, the City is using the written-agreement mechanism in Section 1.4(b) to frustrate the very conservation purpose that mechanism was included to serve. Every

contract includes an implied covenant of good faith and fair dealing, and where one party has discretion affecting the other party's contractual benefits, that discretion must be exercised in good faith and consistently with the agreement's purposes. (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371–373; *Locke v. Warner Bros., Inc.* (1997) 57 Cal.App.4th 354, 363–367; *Storek & Storek, Inc. v. Citicorp* (2002) 100 Cal.App.4th 44, 55–56.)

C. The Vegetation-Modification Prohibition Protects Native Species, Not Invasives

The City's contention that the instruments bar removal of "any vegetation" misreads them. The prohibition on "the cutting, pruning, masticating, removal or harvesting of vegetation" in Section 1.3 exists to protect the conservation values defined in Section 1.7—the native Maritime Chaparral species. Reading that prohibition to shield invasive French broom, a species that actively destroys those enumerated values, would defeat the instruments' stated purpose and produce an absurd result.

California law forbids such a reading. A contract must be construed to give effect to the mutual intention of the parties and to the instrument as a whole, with every clause given effect where reasonably practicable. (Civ. Code, §§ 1636, 1638, 1641; *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473.) An interpretation that leads to an absurd result, or that renders the contract's central purpose impossible to achieve, must be rejected. (Civ. Code, § 1638.) Interpreting a perpetual conservation covenant to protect the very invasives it was designed to eradicate is nonsensical, it's like reading a fire code's ban on "discharging materials in a building" to prohibit the use of a fire extinguisher.

CNPS' reading is also consistent with California's statutory policy favoring enforceability of conservation easements and conservation restrictions. (Civ. Code, §§ 815–816.) Recorded conservation restrictions are construed in light of their conservation purpose, and courts will enforce such restrictions where the instrument shows an intent to preserve land for conservation or open-space values. (*Canyon Vineyard Estates I, LLC v. DeJoria* (2022) 78 Cal.App.5th 995.) Here, the Deed Restriction expressly states that the Property is protected "in perpetuity" for habitat protection and resource conservation, so its vegetation provisions are logically read to protect the enumerated native habitat values, not invasive species that degrade them.

D. The "No Affirmative Duty" Clause Does Not Authorize Obstruction (Deed Restriction § 1.8)

Section 1.8 provides that the City "shall have no affirmative duty to actively manage the Property." That clause means only that the City need not initiate or fund management activities itself. It does not authorize the City to prevent others from performing conservation work under the Section 1.4(b) framework. There is a fundamental difference between "we are not required to do it ourselves" and "we will prevent anyone else from doing it," and the City conflates the two.

Moreover, Section 1.8 cannot be read in isolation to nullify the perpetual-protection covenant (§ 1.3), the conservation-enhancement mechanism (§ 1.4(b)), the enumerated conservation values (§ 1.7), and the public-beneficiary designation (§ 1.9). A construction that allows one clause to render the remainder of the instrument meaningless is impermissible. (*City of Atascadero*, supra, 68 Cal.App.4th at p. 473 [contract construed as a whole so as to give effect to every part]; Civ. Code, § 1641.) Section 1.8 must be harmonized with, not allowed to swallow, the instruments' core conservation obligations.

Section 1.8 should be treated as a funding/management disclaimer, not as an anti-restoration veto. Reading it otherwise would nullify Section 1.3’s perpetual-protection covenant and Section 1.4(b)’s express restoration mechanism, contrary to Civil Code § 1641 and *City of Atascadero*.

E. The Concertina-Wire Fencing Violates the Express Prohibition (Deed Restriction § 1.3)

Section 1.3 states plainly: “Barbed-wire fencing is prohibited. However, a low wooden fence through which wildlife can pass easily may be erected on public property at the property boundaries.” The Property continues to have concertina (razor) wire fencing along portions of its perimeter. Such fencing is both within the prohibition on barbed-wire fencing and inconsistent with the required wildlife-permeable, low wooden fence. This is a separate and continuing breach of the recorded Deed Restriction.

F. The Required Interpretive Signage Has Not Been Installed (Deed Restriction §§ 1.10–1.10.4)

Section 1.10 requires the City to install interpretive signage at the northerly, southerly, and westerly boundaries of the Property, with perimeter signs no more than 125 feet apart, no later than 60 days after execution of the Settlement Agreement. Well past that deadline, the required signage has not been installed. This is a further breach of both instruments.

III. Demand

On behalf of CNPS, we demand that the City cure the foregoing breaches by executing the proposed Property Access and Indemnity Agreement (a draft of which CNPS provided to the City on January 13, 2026, and is also attached for reference) and otherwise complying with the Settlement Agreement and Deed Restriction. Specifically, we demand that, within thirty (30) days of the date of this letter, the City:

- (1) Execute the proposed Property Access and Indemnity Agreement, or otherwise authorize CNPS’s trained volunteers to enter the Property to remove invasive French broom at no cost to the City, and engage in good faith to reach the written agreement on method contemplated by Section 1.4(b);
- (2) Remove the concertina/barbed-wire fencing from the Property and replace it, if any fencing is to be maintained, with a low wooden fence through which wildlife can pass, as required by Section 1.3; and
- (3) Install the interpretive and perimeter signage required by Sections 1.10 through 1.10.4 in the form and at the intervals specified therein.

Please also confirm in writing, within the same thirty-day period, whether the City recorded the repudiation and quitclaim of Document No. 2009070771 as required by Settlement Agreement Section 1.5, and whether the Deed Restriction was recorded prior to any other recordation related to the Property, as Section 1.2 requires. If either obligation remains unfulfilled, CNPS demands that the City cure those breaches within the same thirty-day period. CNPS reserves all rights with respect to these and any other instances of non-compliance.

IV. Attorneys’ Fees and Next Steps

Section 15 of the Settlement Agreement provides that, in any action to enforce the agreement or the Deed Restriction, “the prevailing party shall be entitled to attorney fees, expert fees, and out-of-pocket

expenses regardless of whether litigation is filed as part of the enforcement efforts.” This fee-shifting provision materially affects the cost calculus of continued non-compliance, and CNPS will seek its full fees and costs if it is required to move to enforce.

CNPS sends this letter in a sincere effort to resolve this dispute without court intervention. Consistent with Section 16 of the Settlement Agreement, CNPS hereby formally requests the City agree within the thirty-day cure period to participate in a mutually scheduled mediation. Should the City fail to cure or to schedule or participate meaningfully in mediation within the thirty-day period, CNPS is prepared to move to enforce the Settlement Agreement under Code of Civil Procedure section 664.6 in the existing Action (Case No. 20CV001529), seeking a judicial determination that the City’s refusal to permit invasive-species removal breaches Section 1.3 and that such removal is a “scientifically acceptable method” within Section 1.4(b), together with orders compelling good-faith engagement, removal of the non-compliant fencing, installation of the required signage, and an award of fees and costs.

We would welcome the opportunity to discuss a prompt resolution. Please direct your response to the undersigned.

Sincerely,

KOGAN COUNSEL APC



Gavin Kogan, Esq.

ENCL.

Property Access & Indemnity Agreement

Attachment

[Proposed]

PROPERTY ACCESS AND INDEMNITY AGREEMENT

This PROPERTY ACCESS AND INDEMNITY AGREEMENT (“Agreement”) is made effective this October __, 2025 (“Effective Date”), by and between the California Native Plant Society (CNPS) and the City of Del Rey Oaks (the CITY).

RECITALS

WHEREAS, On or about May 15, 2023, the CNPS and the CITY entered and thereafter recorded that Deed Restriction and Settlement Agreement (“Settlement Agreement”) concerning the permanent protection and conservation of Del Rey Oaks Habitat Reserve (APN 031-191-013) (the “Property”);

WHEREAS, subsequent to the Settlement Agreement the CNPS has requested (1) the CITY remove barbed wire fencing (“Fencing”) expressly forbidden by the Settlement Agreement and (2) permission to enter the Property to remove non-native invasive plant species (“Invasive Plants”) from time to time that are degrading the conservation/biological value of the Property;

WHEREAS, The City and CNPS have expressed disagreement concerning the scope of the City’s obligations under the Settlement Agreement, however, mutually recognize the conservation goals intended by the Settlement Agreement;

NOW THEREFORE, CNPS and the CITY have negotiated and desire to enter into this Agreement to permit CNPS authorization to enter the Property and remove the Fencing and Invasive Plants upon the following terms and conditions.

AGREEMENT

1. **Recitals Integration.** The above recitals are hereby incorporated into this Agreement and made a part hereof.
2. **Definitions.** The following definitions shall control in this Agreement.
 - a) **Fencing.** Fencing is any structural element on the Property having the primary purpose of suspending barbed wire.
 - b) **Invasive Plants.** Non-native invasive plants are plant species that were introduced—intentionally or accidentally—from outside the Monterey geographic range and that establish self-sustaining populations in Monterey wildlands, agricultural areas, or urban environments. These species spread aggressively without natural controls, outcompete native vegetation, disrupt ecosystem functions, degrade wildlife habitat, alter fire regimes and hydrology, and often cause significant economic or ecological harm. Examples of such plants in Monterey’s coastal regions are genista, yellow veldt grass, ripgut brome, ice plant, cape ivy and the like.
3. **Purpose.** The purpose of this Agreement is to foster the conservation/biological value of the property by permitting City to enter the Property to accomplish the removal of Fencing and Invasive Plants (“Removal”) without amending, modifying or interpreting the Settlement Agreement, imposing upon either Party any

obligation outside the Settlement Agreement or establishing a course of conduct that could be construed as a waiver of either Parties' rights under the Settlement Agreement.

4. CNPS Property Access. In exchange for CNPS promises herein, the City shall allow CNPS expressly authorized representatives to enter the Property to accomplish Removal, subject to the following process:

- a) CNPS Request. CNPS is entitled to make not more than six (6) request per annum seeking to accomplish Removal (each a "Request"). Each Request shall be in writing and identify (i) preferred dates and times of Property access, (ii) identify CNPS authorized representatives by first and last name, (iii) state the specific Removal activity contemplated and (iv) the Property location where such activity is to occur with reasonable specificity.
- b) CITY Authorization. Within a reasonable time, following CNPS Request, not to exceed fifteen (15) days, the CITY shall by writing identify not less than four specific dates (within 30 days of the Request) and hours (not less than five (5) hours of daylight each day) that CNPS representatives are authorized to accomplish Removal.
- c) CNPS Confirmation. CNPS shall confirm in writing the dates and times authorized by City that CNPS will access the Property to accomplish Removal.
- d) Good Faith Cooperation. The Parties shall exercise good faith in scheduling CNPS access and be reasonably flexible to adjust dates and times as either of the Parties may need from time to time.

5. No Partnership or Joint Venture. This Agreement solely grants access to the Property for the specific purpose of accomplishing Removal and shall not be construed to create any partnership, joint venture, agency relationship, or any other form of legal association between the Parties, except for the limited access rights explicitly stated herein. Neither Party shall have the authority to bind or obligate the other in any manner not expressly provided for in this Agreement.

6. No Easement. This Agreement and the access rights granted herein shall not be construed to establish or imply any easement by proscription or otherwise. The Parties expressly agree that CNPS's access to the Property is limited to the terms and conditions set forth in this Agreement, and nothing contained herein shall be interpreted as granting CNPS any easement, right, or interest in the Property beyond the specific permissions explicitly stated.

7. CNPS Representations and Warranties.

- a) Limited Activity on Property. CNPS acknowledges that it is exclusively permitted to do the foregoing on the Property and that all other activity is in violation of this Agreement:
 - i) remove Fencing;
 - ii) remove Non-Native Plants; and
 - iii) any other activity authorized in writing by City.
- b) No Planting or Manicuring. CNPS acknowledges that it shall not engage in any activity on the Property that could reasonably be construed as planting or manicuring flora, except for activities necessary for the removal of Non-Native Invasive plants and the protection of native species directly impacted by such removal.
- c) Insurance. CNPS shall procure and maintain, at its own expense, comprehensive general liability insurance, including coverage for bodily injury, property damage, and environmental liability, with a minimum coverage amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. This insurance shall

name the City of Del Rey Oaks, its officers, agents, employees, and representatives as additional insureds. CNPS shall provide the CITY with certificates of insurance and endorsements evidencing such coverage prior to accessing the Property and shall ensure that such insurance remains in effect throughout the term of this Agreement. CNPS shall promptly notify the CITY of any changes, cancellations, or non-renewals of the insurance required herein. Failure to maintain the insurance required under this Agreement shall be considered a material breach of this Agreement.

8. Indemnification of City. CNPS shall indemnify, defend, and hold harmless the City of Del Rey Oaks, its officers, agents, employees, and representatives from and against any and all claims, demands, damages, liabilities, losses, costs, or expenses, including reasonable attorney's fees, arising out of or related to CNPS's access to, activities on, or use of the Property, including but not limited to claims for personal injury, property damage, or environmental liability, except to the extent caused by the negligence or willful misconduct of the City, its officers, agents, employees, or representatives. This obligation to indemnify and hold harmless shall survive the termination or expiration of this Agreement.

9. Confidentiality & Non-Disparagement. The Parties hereto agree not to make any disparaging comments about each other, whether directly or indirectly, through any medium or format. Nothing in this Agreement shall prevent either Party from making required disclosures under applicable public records laws or from reporting violations of the Settlement Agreement.

10. Effect on Settlement Agreement. The Settlement Agreement shall remain in full force and effect. In the event of any conflict between this Agreement and the Settlement Agreement, the terms of the Settlement Agreement shall govern and control.

11. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any legal action shall lie exclusively in the state or federal courts located in Monterey County, California, and the Parties agree to submit to the personal jurisdiction of such courts.

12. Dispute Resolution. Any disputes arising strictly from this Agreement shall prior to any action other than by equity be first submitted to not less than one full day of mediation. The Parties agree to engage in mediation before a mutually agreed-upon mediator within thirty (30) days of a written request by either Party. The mediation shall take place in Monterey County, California, and the costs of the mediation shall be shared equally between the Parties. If a Party fails to schedule or participate in the mediation in good faith, that Party shall waive any right to recover attorney's fees in any subsequent legal proceedings related to the disputes

13. Notices. All notices under this Agreement shall be delivered as follows:

CITY

City of Del Rey Oaks
650 Canyon Del Rey Blvd.
Attn: City Clerk
(831) 394-8511
kminami@delreyoaks.org

CNPS

CNPS
2707 K Street, Suite 1
Sacramento, CA 95816
Attn: Jue Bando
(916) 447-2677
CNPS@CNPS.org

14. Entire Agreement. This Agreement together with the Settlement Agreement constitutes the entire agreement of the Parties with respect to the subject matter thereof and supersedes all prior and contemporaneous oral or written understandings concerning the terms reflected herein.

15. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures transmitted by PDF or electronic means shall be deemed original.

16. Authority and Execution. Each Party represents and warrants that it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The individuals signing below on behalf of each entity are duly authorized to do so.

[Signature Page Follows]

WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY

City of Del Rey Oaks, California

By: _____
Name: Name, title

CNPS:

California Native Plant Society
a California non-profit corporation

By: _____
Name: Name, title