

ENDORSED  
FILED  
ALAMEDA COUNTY  
JUN 10 2015

CLERK OF THE SUPERIOR COURT  
By Lynella M. Irvin, Deputy

Susan Brandt-Hawley/SBN 75907  
Skyla V. Olds/SBN 241742  
BRANDT-HAWLEY LAW GROUP  
P.O. Box 1659, Glen Ellen, CA 95442  
707.938.3900, fax 707.938.3200  
susanbh@preservationlawyers.com

Attorneys for Petitioner  
Whittier Conservancy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

**WHITTIER CONSERVANCY,**  
a non-profit California corporation;

Case No. **RG 15773639**

Petitioner,  
v.

**Petition for  
Writ of Mandamus**

**California Public Works Board;  
California Department of General  
Services, Esteban Almanza in his  
capacity as Acting Director of the  
Department of General Services;  
California Department of Finance,  
Michael Cohen in his capacity as  
Finance Director; and Does 1 to 5;**

California Environmental Quality Act  
(CEQA); Government Code

Respondents.

**BHCSP LLC aka Brookfield  
Residential; California Department  
of Corrections and Rehabilitation;  
and Does 6 to 10;**

Real Parties in Interest.

BY FAX

Petitioner Whittier Conservancy alleges:

1. The Whittier Conservancy brings this action in the public interest to enforce mandatory state laws that protect the former Fred C. Nelles Youth Correctional Facility (“Nelles”), California Historic Landmark No. 947. Nelles is the oldest juvenile facility in the state and houses numerous historically-significant resources on a 74-acre site in Whittier. The State of California violated state laws in extending escrow for the sale of Nelles until 2017, for a total of six years, without environmental review mandated by Chapters one and two of the California Environmental Quality Act or compliance with mandates of the Government Code. The pending sale at a 2011 recession-market value is against the interests of the state, provides no affordable housing, and continues demolition by neglect of the abandoned landmark property.



- 1 Administration Building
- 2 Workshop Building
- 3 Barracks Building
- 4 C. C. Nelles Cottage
- 5 Recreation Building
- 6 Chapel - 1st Fl.
- 7 Nelles' Dining Room
- 8 Class House
- 9 Cracker
- 10 Post Shop
- 11 Laundry & Tailor Shop
- 12 Storage & Warehouse
- 13 Gymnasium
- 14 Carpenter, Bakery, Plumbing
- 15 Quonset Shop
- 16 Messing Hall Passage Cottage
- 17 New Refectory Building
- 18 Sewer, or Bath Cottage
- 19 Messer Cottage
- 20 Laundry Cottage

Image 5. c.1933 Aerial Photograph  
(Source: California Youth Authority)

1  
2  
3  
4  
5  
6  
7  
8  
9

## Jurisdiction

2. This Court has jurisdiction under Public Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5. The petitioner and the historic resources at issue are located in Los Angeles County. Venue is proper in Alameda County because the respondent state agencies and their directors are represented by the California Attorney General who maintains offices in Oakland.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## Parties

4. The Whittier Conservancy is a California nonprofit organization formed in 1988 after the Whittier Narrows earthquake damaged local historic buildings. The Conservancy is committed to the preservation and enhancement of Whittier's unique character and quality of life and the promotion of awareness and appreciation of Whittier's historic, aesthetic, and natural resources. The Conservancy works for the preservation and sensitive adaptive reuse of Whittier's significant structures, landmark buildings, and notable landscapes. The Conservancy's members include community residents and concerned citizens who personally enjoy and appreciate the historic and cultural importance of buildings and property in Whittier, including the landmark Nelles site. The Conservancy brings this petition on behalf of all others similarly situated that are too numerous to be named and brought before this Court as petitioners. Conservancy members and representatives repeatedly requested that the respondent state agencies protect the Nelles buildings from demolition and that the escrow for the Purchase and Sale Agreement for Nelles not be extended, and otherwise



1                    ***Environmental Setting and Project Application***

2                    9.        The Whittier State School was founded in 1891 to reform juvenile  
3 offenders. It operated continuously until closing in 2004. In 1941, the California Youth  
4 Authority took over its management, renamed as the Fred C. Nelles School for Boys.  
5 It is the oldest juvenile facility in the state and operated for 113 years. In 1997, the  
6 74-acre site was honored with listing as California Historic Landmark #947. By virtue  
7 of its designation as a California Landmark, Nelles is also listed in the California  
8 Register of Historical Resources. Eight buildings have individual historic significance,  
9 as does the athletic field and the site. The buildings were constructed from 1919-1934.  
10

11                    10.       After the state closed the operation of Nelles as a juvenile facility in 2004,  
12 the Governor declared the site to be surplus. The Department of General Services then  
13 determined that no other state agency needed the property and that it could be sold.  
14

15                    11.       In August 2009, the Department of General Services issued a Request for  
16 Proposals for Nelles to be developed pursuant to a mixed-use master plan. The Request  
17 for Proposals noted that the property had 64 buildings, eight of which “may be  
18 considered historically significant.” The Request also noted that any buyer should  
19 anticipate 15% affordable housing as a component of the project.  
20

21                    12.       Brookfield successfully offered to purchase the surplus property. In June  
22 2011, the Public Works Board authorized the Department of General Services to sell  
23 Nelles to Brookfield, with conditions. That same month, the Department of General  
24 Services and Brookfield entered into the Agreement at a market price of \$42.5 million.  
25

26                    13.       In August 2012, the Public Works Board extended the Agreement’s 1200-  
27  
28

1 day escrow to March 2015 via a First Amendment. Boardmember Pedro Reyes  
2 expressed concern that the extension of escrow would tie up the land without benefit to  
3 the state and noted that this was the last extension he would support. Along with the  
4 escrow extension, in response to the elimination of redevelopment agencies in  
5 California the First Amendment altered terms relating to “the impossibility of the  
6 [redevelopment agency] approval of an owner participation agreement including terms  
7 and conditions for the tax increment financing and affordable housing set aside funds.”  
8  
9

10 15. Brookfield has applied for entitlements from the City of Whittier (“the  
11 City”) to develop the Nelles site, proposing preservation of four of the identified nine  
12 historic buildings and features. The demolition and removal of five historical resources  
13 – the auditorium, infirmary, maintenance garage, gymnasium, and the athletic field –  
14 are proposed to be mitigated with archival documentation. Environmental impacts of  
15 the demolitions will therefore be significant. In the years since the Purchase and Sale  
16 Agreement has been pending, these historic resources have not been maintained and  
17 continue to deteriorate without environmental review or permits.  
18  
19

20 16. The City’s environmental review process for Brookfield’s proposed  
21 demolition project and related entitlements is ongoing and the Environmental Impact  
22 Report (EIR) has not yet been certified. The draft EIR issued in October 2014 noted  
23 that “no regular maintenance of the site occurs”, that “onsite buildings appear to range  
24 from poor to good condition” and that “as the buildings have been vacant for some  
25 time, visible cracks, peeling paint, possible roof leaks, and other indications of potential  
26 deterioration have occurred.” Further, “portions of the site show signs of deterioration  
27  
28

1 due to the facility's age and lack of maintenance since the facility's closure in 2004.”

2  
3 ***The Second Amendment***

4 17. In 2015, the Department of General Services negotiated a Second  
5 Amendment to the Agreement to extend escrow for an two additional years to March  
6 2017. The Public Works Board approved action acknowledging the Second Amendment  
7 following a public hearing on March 13, 2015. Approval of the Second Amendment was  
8 not preceded by environmental analysis, or review of the original and changed  
9 circumstances of the 2011 Agreement conditions, or assessment of market value.  
10  
11

12 18. Following the 2011 Agreement, the housing market in California has  
13 strengthened significantly. And while the housing market in Whittier rebounded in  
14 kind, the need for affordable housing has increased. The City's recent General Plan  
15 Housing Element Update 2014-2021 relies on the Nelles site to provide 110 units of  
16 affordable housing. Yet Brookfield's proposed project provides no affordable housing.  
17  
18

19 ***Notice to State Respondents***

20 19. The Conservancy has objected to the agencies' failure to consider and  
21 protect the historical buildings at Nelles for years. In a May 2011 letter to the Public  
22 Works Board, the Conservancy expressed concerns that the Request for Proposals  
23 process failed to require preservation or adaptive reuse of all Nelles historic resources.  
24 In a 2013 letter to the Department of General Services, the Conservancy requested that  
25 the sale of the state-owned historic site must ultimately benefit the citizens of California  
26 while complying with state codes, noting that “[a]t a time when land values are  
27  
28

1 increasing almost daily, we feel that the benefits to be gained by a for-profit company  
2 should not come at the expense of 125 year old California cultural resources that have  
3 been overlooked in this transaction.”  
4

5         20. In anticipation of the Public Works Board’s proposed action to extend the  
6 Brookfield Purchase and Sale Agreement via a Second Amendment, the Conservancy  
7 sent letters of objection on March 12 and June 4, 2015. The Conservancy’s attorney and  
8 its executive director also appeared before the Board and provided comments at the  
9 hearing on March 13, 2015, requesting that the Board deny and rescind the Second  
10 Amendment. The Conservancy has also objected to the ongoing neglect of the historic  
11 property: “the historic Nelles buildings are not being adequately maintained, despite  
12 the Conservancy’s repeated requests, to the point of imminent demolition by neglect.”  
13 In an earlier letter to the Department of Corrections, the Conservancy noted that the  
14 Infirmary building was missing a portion of the roof and was therefore exposed to the  
15 elements and being compromised. “Things took a dramatic turn for the worse when  
16 water was eliminated about five years ago. This has resulted in the deterioration of the  
17 historically documented landscape and has left the historic buildings at serious risk.”  
18 The Conservancy noted that a two-year extension would likely exacerbate these issues.  
19  
20  
21  
22

23         21. The Conservancy has no plain, speedy, and adequate remedy in the  
24 ordinary course of law. Issuance of a peremptory writ and immediate injunctive relief  
25 are imperative to prevent further irreparable harm to Nelles and the interests of the  
26 State of California. The Respondent agencies have the capacity to correct their  
27 violations of law but refuse to do so.  
28



## Violations of the California Environmental Quality Act

22. The Conservancy incorporates all previous paragraphs as if fully set forth.

23. The Respondent state agencies failed to conduct environmental review required by the California Environmental Quality Act (CEQA) before approving the Second Amendment to the Purchase and Sale Agreement. The agencies neither took nor provided notice of any CEQA action or claimed exemption prior to approval of the Second Amendment and therefore exhaustion of remedies was not required. The agencies were aware of significant changed circumstances and new information arising between 2011 when the Agreement was approved and 2015 when the agencies took discretionary action to approve the Second Amendment. In that time period, the historic site has deteriorated through neglect and use by film crews, and Brookfield pursued a project that proposes to demolish a significant portion of the historic site and fails to provide affordable housing.

24. The sale of state surplus property is exempt from CEQA's Chapters 3-6 of CEQA (pursuant to Government Code Section 11011(k)), but remains subject to Chapters 1 and 2. Those chapters require that the agencies consider and adopt feasible mitigation measures and alternatives to reduce significant impacts of their discretionary actions. The state's discretionary act to approve the Second Amendment materially altered the sales transaction and was undertaken without compliance with the substantive requirements of Chapters 1 and 2 and failed to address or mitigate the proposed demolition of five historic resources and the likely continuation of demolition by neglect during the proposed extended 6-year escrow.

1 **Violations of the California Government Code**

2 25. The Conservancy incorporates all previous paragraphs as if fully set forth.

3  
4 26. The Government Code dictates how the state manages and disposes of  
5 surplus state property. The Second Amendment fails to comply with state law requiring  
6 that, except under specified circumstances not here applicable, disposition of surplus  
7 property be made for fair market value. Further, despite its awareness of the Brookfield  
8 proposed project, the Respondent state agencies approving the Second Amendment  
9 failed to give priority, or even to consider, giving priority “to the disposal of surplus  
10 state real property to housing for persons and families of low or moderate income,  
11 where land is suitable for housing and there is a need for housing in the community.”  
12  
13


14 27. When the Respondent agencies entered into the initial form of Agreement  
15 with Brookfield during the 2011 recession, the real estate market in Whittier was weak.  
16 Land values in the area have since risen significantly. Four years after the original  
17 Agreement, Brookfield has failed to secure project entitlements from the City, and the  
18 selling price set in 2011 is now significantly under-market and violates the financial  
19 interests of the state. The extension of escrow until 2017 via the Second Amendment  
20 effects a material change to the transaction in the original Agreement and mandates  
21 determination of current fair market value 30 days before approval. That did not occur.  
22 Instead, the Second Amendment violates the state’s interests in receiving market value  
23 for the sale of Nelles and in advancing affordable housing priorities, among other  
24 violations of the mandatory duties of the Respondent state agencies.  
25  
26  
27  
28

1                   **Wherefore, the Whittier Conservancy prays:**

- 2                   1. That the Court issue a peremptory writ of mandate ordering the Respondent  
3 state agencies to rescind their approvals of the Second Amendment to the Agreement,  
4 and to refrain from further approvals pending full compliance with CEQA, the  
5 Government Code, and all other state laws and regulations governing discretionary  
6 projects involving sale of surplus state property and maintenance of historic resources;  
7  
8                   2. For injunctive relief to require the Respondent state agencies to protect and  
9 maintain all historic resources on the Nelles site in compliance with the *Secretary of*  
10 *the Interior's Standards*, pending issuance of the writ;  
11  
12                   3. For costs and attorney fees pursuant to CCP section 1021.5; and  
13  
14                   4. For such other and further relief as the Court finds proper.

15  
16 June 10, 2015

BRANDT-HAWLEY LAW GROUP

17  
18  
19 By  \_\_\_\_\_  
20 Susan Brandt-Hawley  
21 Skyla V. Olds  
22 Attorneys for the Whittier Conservancy  
23  
24  
25  
26  
27  
28

1 **Verification**

2 I, Susan Brandt-Hawley, am an attorney for the petitioner Whittier Conservancy,  
3 whose members are located outside of Sonoma County where I have my law offices,  
4 and so I verify this petition on its behalf. I have read this petition and know its contents.  
5 The matters stated are true and correct based on my knowledge, except matters stated  
6 on information and belief that I believe to be true.  
7

8  
9 I declare under penalty of perjury that the above is true and correct to the  
10 best of my knowledge and that this declaration is executed on June 10, 2015  
11 at Glen Ellen, California.

12 

13 Susan Brandt-Hawley  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Whittier Conservancy v. California Public Works Board, et al.*  
Alameda County Superior Court Case No. \_\_\_\_\_

## **PROOF OF SERVICE**

I am a citizen of the United States and a resident of the County of Sonoma.  
I am over the age of eighteen years and not a party to the within entitled action;  
my business address is P.O. Box 1659, Glen Ellen, CA 95442.

On June 10, 2015, I served one true copy of:

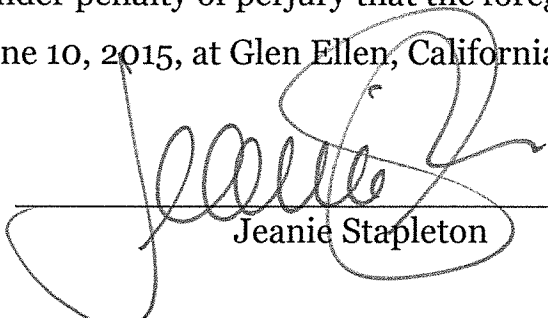
### **Petition For Writ Of Mandamus**

by placing a true copy enclosed in a sealed envelope with prepaid postage in the  
United States mail in Glen Ellen, California addressed as follows:

SALLY MAGNANANI, Deputy Attorney General  
State of California  
Department of Justice  
P.O. Box 944255  
Sacramento CA 94244-2550

### **PURSUANT TO PUBLIC RESOURCES CODE § 21167**

I declare under penalty of perjury that the foregoing is true and correct and  
is executed on June 10, 2015, at Glen Ellen, California.

  
\_\_\_\_\_  
Jeanie Stapleton