

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME : AUGUST 1, 2011
JUDGE : LLOYD G. CONNELLY
REPORTER : NONE

DEPT. NO : 33
CLERK : C. BEEBOUT
BAILIFF : NONE

THOMAS BOLLAY AND NANCY BOLLAY,
Petitioners,

VS. Case No.: 34-2008-80000072

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW,
Respondent,

CALIFORNIA STATE LANDS COMMISSION,
Real Party in Interest.

Nature of Proceedings: COURT'S CHANGES TO PROPOSED JUDGMENT & WRIT

In entering judgment and issuing a peremptory writ of mandate herein on this date, the Court has revised the proposed judgment and writ of mandate. In addition to stylistic changes, the Court has made the following substantive changes:

- Paragraph 2 of the proposed judgment is unnecessary in light of the Court of Appeal's reversal of the judgment previously entered by this Court.
- Paragraph 3 of the proposed judgment and the proposed writ unnecessarily require respondent to set aside and reissue 2008 OAL Opinion No. 22 in accordance with the holding of the Court of Appeal, that real party's policy is an invalid underground regulation not exempt from the rulemaking procedures of the Administrative Procedure Act ("APA"). The published opinion of the Court of Appeal effectively invalidates and replaces 2008 OAL Opinion No. 22.

The writ granted in the judgment entered this date implements the declaration that real party's policy is an invalid underground regulation by precluding respondent and real party from taking any action to validate, implement or enforce the policy before its adoption in accordance with APA rulemaking procedures. Because the writ is prohibitory rather than mandatory, no return to the writ need be filed by either respondent or real party, but petitioners may challenge any noncompliance with the writ pursuant to Code of Civil Procedure section 1097 in this court, which has continuing jurisdiction to enforce the writ. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 205.)

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DATE : AUGUST 1, 2011
CASE NO. : 34-2008-80000072
CASE TITLE : BOLLAY V. OFC OF ADMIN LAW

Superior Court of California,
County of Sacramento

BY: C. BEEBOUT,
Deputy Clerk

CASE NUMBER: 34-2008-8000072

DEPARTMENT: 33

CASE TITLE: BOLLAY V. OFC OF ADMIN LAW

PROCEEDINGS: COURT'S CHANGES TO PROPOSED JUDGMENT & WRIT

- Paragraph 4 of the proposed judgment inappropriately includes an award of costs on appeal. Costs on appeal are awarded by the Court of Appeal in its judgment and remittitur and must be claimed by petitioners pursuant to Rule 8.278, subdivisions (b) through (d).
- Paragraph 6 of the proposed judgment unnecessarily reserves the Court's jurisdiction to determine whether respondent's return to the writ demonstrates compliance with the writ. As indicated above, no return is practicable because the writ is prohibitory, but the Court retains jurisdiction to enforce the writ by statute and case law.

Dated: August 1, 2011



[Signature]
 Honorable LLOYD G. CONNELLY
 Judge of the Superior Court of California
 County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of **this minute order, the Judgment After Appeal, and the Peremptory Writ of Mandate** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 Ninth Street, Sacramento, California.

BRUCE S. FLUSHMAN
 WENDEL, ROSEN, BLACK & DEAN
 1111 BROADWAY, 24TH FLOOR
 OAKLAND, CALIFORNIA 94607-4036

ALICE BUSCHING REYNOLDS
 ATTORNEY GENERAL
 PO BOX 70550
 OAKLAND, CA 94612-0550

Dated: August 2, 2011

Superior Court of California,
 County of Sacramento

By: C. BEEBOUT, *[Signature]*
 Deputy Clerk

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Superior Court of California,
 County of Sacramento

BY: C. BEEBOUT,
 Deputy Clerk

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FILED / ENDORSED
AUG - 1 2011
By Christa Beebout, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

THOMAS BOLLAY and NANCY BOLLAY, Case No. 34-2008-80000072-CU-WM-GDS
Department 33

Plaintiffs and Petitioners,

v.

JUDGMENT AFTER APPEAL

CALIFORNIA OFFICE OF
ADMINISTRATIVE LAW,

Defendant and Respondent.

CALIFORNIA STATE LANDS
COMMISSION,

Real Party in Interest.

Pursuant to the opinion and directions of the Court of Appeal in *Bollay v. Office of
Administrative Law* (2011) 193 Cal.App.4th 103, 113,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The policy of real party in interest California State Lands Commission, that development on property upland of state tidelands be sited landward of the most landward location of the mean high tide line, is an invalid underground regulation because it has not been adopted in compliance with the rulemaking procedures of the Administrative Procedure Act. As held by the Court of Appeal in *Bollay v. Office of Administrative Law*, (2011) 193 Cal.App.4th 103, 111-112, the policy is not the only legally tenable interpretation of applicable law and,

1 hence, is not exempt from the Act's rulemaking procedures pursuant to subdivision (f) of
2 Government Code section 11340.9.

3 2. A peremptory writ of mandate shall issue from this court requiring respondent
4 and real party in interest to refrain from taking any action to validate, implement or enforce the
5 policy of real party in interest unless and until the policy is adopted as a regulation in compliance
6 with the rulemaking procedures of the Administrative Procedure Act.

7 3. Petitioners shall recover their costs of suit pursuant to rule 3.1700 of the
8 California Rules of Court.

9 4. The court reserves jurisdiction to determine a motion by petitioners for an award
10 of attorney fees pursuant to rule 3.1702 of the California Rules of Court

11 Dated: August 1, 2011



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LLOYD G. CONNELLY
Judge of the Superior Court

1 ORIGINAL

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4 SUPERIOR COURT OF CALIFORNIA
5 COUNTY OF SACRAMENTO

6 THOMAS BOLLAY and,
7 NANCY BOLLAY

Case No. 34-2008-80000072-CU-WM-GDS
Department 33

8 Plaintiffs and Petitioners,

9 v.

PEREMPTORY WRIT OF MANDATE

10 CALIFORNIA OFFICE OF
11 ADMINISTRATIVE LAW,

Defendant and Respondent.

12 CALIFORNIA STATE LANDS
13 COMMISSION,

14 Real Party in Interest.
15

16 TO RESPONDENT CALIFORNIA OFFICE OF ADMINISTRATIVE LAW AND REAL
17 PARTY IN INTEREST CALIFORNIA STATE LANDS COMMISSION:

18 Judgment after Appeal having been entered in this proceeding, ordering that a
19 peremptory writ of mandate issue from this court,

20 You are hereby commanded immediately upon receiving service of this writ to
21 refrain from taking any action to validate, implement or enforce the policy of real party in
22 interest, that development on property upland of state tidelands be sited landward of the most
23 landward location of the mean high tide line, unless and until the policy is adopted as a
24 regulation in compliance with the rulemaking procedures of the Administrative Procedure Act.

25 Dated: August 1, 2011



26 DENNIS JONES
27 EXECUTIVE OFFICER OF THE SUPERIOR COURT
By Christa Beebout
28 CHRISTA BEEBOUT, DEPUTY