

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

COUNTY OF HUMBOLDT,

**Plaintiff, Cross-defendant
and Appellant,**

v.

ROBERT C. McKEE et al.,

**Defendants, Cross-complainants
and Respondents;**

LINDA HILL, as Assessor, etc.,

Cross-defendant and Appellant.

A117325

**(Humboldt County
Super. Ct. No. DR020825)**

**ORDER MODIFYING OPINION
AND DENYING REHEARING**

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on August 15, 2008, be modified as follows:

On page 13, at the end of the statutory reference, “(§ 51231.),” following the fifth complete sentence in the paragraph beginning “The construction suggested,” add as footnote 11 the following footnote, which will require renumbering of all subsequent footnotes:

¹¹ Section 51231 provides, in pertinent part, “For purposes of this chapter, the board or council, by resolution, shall adopt rules governing the administration of agricultural preserves, including procedures for initiating, filing, and processing requests to establish agricultural preserves. Rules related to compatible uses shall be consistent with the provisions of Section 51238.1.” McKee argues this statute authorizes only

resolutions prescribing procedural rules, but the statutory language is to the contrary. First the statute states that the authorized rules may impose certain procedural requirements, without limiting the rules to nonsubstantive areas. Second, the statute specifically authorizes rules “related to compatible uses . . . consistent with the provisions of Section 51238.1.” Such rules would be substantive in nature.

Pursuant to this modification, the paragraph now reads as follows:

The construction suggested by McKee, however, would lead to an absurd result. The final provision of the 1978 Guidelines rescinds the 1973 Guidelines, rendering them void and inoperative. If the 1978 Guidelines were intended to apply only to preserves established from 1979 onward, as McKee suggests, then the passage of the 1978 Guidelines would have left County with no operative regulations for preserves established before 1979. This result is contrary to the apparent purpose of the 1978 Guidelines, to establish revised regulations governing agricultural preserves. Moreover, County’s failure to maintain operative regulations for pre-1979 preserves would violate the Williamson Act, which *requires* local governments to adopt rules governing the administration of agricultural preserves. (§ 51231.)¹¹ We construe the 1978 Guidelines so as to avoid this consequence, and conclude the 1978 Guidelines were intended to apply to both 1979 preserves and preserves already “under contract,” that is, both preexisting and future preserves. Therefore, the 1978 Guidelines were intended to apply to the Tooby Preserve, which had been established in 1977.

¹¹ Section 51231 provides, in pertinent part, “For purposes of this chapter, the board or council, by resolution, shall adopt rules governing the administration of agricultural preserves, including procedures for initiating, filing, and processing requests to establish agricultural preserves. Rules related to compatible uses shall be consistent with the provisions of Section 51238.1.” McKee argues this statute authorizes only resolutions prescribing procedural rules, but the statutory language is to the contrary. First the statute states that the authorized rules may impose certain procedural requirements, without limiting the rules to nonsubstantive areas. Second, the statute specifically authorizes rules “related to compatible

uses . . . consistent with the provisions of Section 51238.1.”
Such rules would be substantive in nature.

There is no change in the judgment.

Respondent’s petition for rehearing is denied.

Dated: _____, P. J.