

148.878 Limitations on activities within boundaries of trail -- Motorized vehicles -- Permissible land uses -- Ingress and egress -- Roads -- Rights of persons from whom property acquired -- Permit for change of use.

- (1) Within the boundaries of the trail, as designated by the department and once acquired:
 - (a) The natural vegetation shall be kept undisturbed except for any clearing required for construction of the trail, occasional vistas, or trail-use facilities described in KRS 148.870 to 148.892, except as provided under paragraph (c) of subsection (3) of this section. Development and management of each segment of the trail shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to ensure continual maximum benefits from the land;
 - (b) Hunting of wild game shall be permitted only on or along areas as identified and permitted in administrative regulations as promulgated by the Department of Fish and Wildlife Resources after consultation with the Department of Parks, and as permitted under paragraph (c) of subsection (3) of this section; and
 - (c) The use of motorized vehicles by the general public within the boundaries of the trail shall be limited, and nothing in KRS 148.870 to 148.892 shall be construed as authorizing the use of motorized vehicles in this area, except upon existing or newly constructed public roadways within the boundaries of the trail and as provided under paragraph (c) of subsection (3) of this section.
- (2) The department may promulgate administrative regulations authorizing the use of motorized vehicles on areas other than public roadways, when these vehicles are required to meet emergencies where life or health is at risk, or to enable adjacent landowners to have access to their lands or mineral rights, as provided under paragraphs (a) and (c) of subsection (3) of this section.
- (3) (a) Except as expressly authorized in KRS 148.870 to 148.892 or in the administrative regulations promulgated by the department, or as may be allowed under a change of use permit issued by the department, permissible land uses within the boundaries of the trail as designated by the department shall be as set forth in this section. Uses that lawfully existed on July 15, 2002, may continue. After the trail boundaries are designated, new or additional uses shall be in compliance with the policy and purposes of KRS 148.870 to 148.892 and shall minimize disturbance to the trail. Above-ground blasting operations authorized under the provisions of KRS 351.315 to 351.375, except those operations conducted on sites utilizing no more than a total of ten thousand (10,000) pounds of explosives or the equivalent on the site, shall be prohibited for new or additional uses within an area of one thousand two hundred fifty (1,250) feet outward from the crest of Pine Mountain on the portion of the trail from Breaks Interstate Park to Bad Branch State Nature Preserve and within an area of five hundred (500) feet outward from the boundary of the trail on the portion of the trail from Bad Branch State Nature Preserve to Pine Mountain State Resort Park. Select cutting of

timber or other resources removal may be allowed pursuant to KRS 148.870 to 148.892 and administrative regulations promulgated by the department upon the issuance of a change of use permit. Unless the property is purchased by the department, any net revenue from the cutting of timber or other resources removal shall inure to the benefit of the owner of the property or property rights from which the Commonwealth acquired the property. In promulgating administrative regulations related to KRS 148.870 to 148.892 and in developing the management plan as set forth in KRS 148.882, the department shall schedule public hearings in the county in which the trail lies that is affected by the administrative regulations and management plan.

- (b) In the development of management plans as set forth in KRS 148.882, the department shall include provisions to allow for means of ingress and egress as provided in paragraph (c) of this subsection by owners of property rights affected by the creation of the trail, and for the construction of new roads, utility facilities, and pipelines that would encroach upon the trail. The department shall promulgate administrative regulations setting forth the procedures required to establish means of ingress and egress relating to obtaining rights-of-way, easements, and permits necessary for the construction of new roads, utility facilities, and pipelines that encroach upon the trail.
- (c) When the Commonwealth acquires land for the trail authorized by KRS 148.870, regardless of whether the trail property is acquired by purchase, eminent domain, donation, or otherwise restricted, the person from whom the property is acquired or restricted or their successor in title shall have the following rights with regard to the property which has been acquired or restricted by the Commonwealth:
 - 1. Ingress, egress, and access to trail property for purposes specified in this section or any other provision of law;
 - 2. An easement to use trail property for the purpose of access to adjacent land of the same property owner or their successor, including but not limited to motorized travel;
 - 3. To hunt, fish, or trap on that portion of trail property formerly owned, in accordance with applicable law and administrative regulations;
 - 4. To gather and remove edible, medicinal, or ornamental plants and herbs from that portion of the trail property formerly owned, in accordance with applicable law and administrative regulations; and
 - 5. To access and maintain a cemetery and burial grounds on that portion of trail property formerly owned.
- (d) The rights specified in this section or other provisions of law or administrative regulation shall be included in any judgment when property or an interest therein is taken or restricted by eminent domain and shall be included in any contract for purchase, donation, or other acquisition of the property or an interest therein unless voluntarily waived in that document.

- (4) Any person owning property or property rights within the boundaries of the trail may apply to the department for a change of use permit. The secretary or the secretary's designee shall hold a public hearing after public notice on the application within sixty (60) days. Any person shall be allowed to present evidence as to whether the use proposed by the applicant is in accordance with the management plan developed pursuant to the provisions of KRS 148.870 to 148.892, the administrative regulations promulgated pursuant to KRS 148.870 to 148.892, and other applicable law.
- (5) The secretary shall, within sixty (60) days after a hearing, issue an order and accompanying opinion granting the permit, denying the permit, or recommending an alternative use to which the land may be put that is more consistent with the provisions of KRS 148.870 to 148.892 than the use for which the application was made. Any aggrieved party to the hearing shall have the right to petition the local Circuit Court in which the property lies within thirty (30) days after issuance of the secretary's order.

Effective: July 15, 2002

History: Created 2002 Ky. Acts ch. 118, sec. 5, effective July 15, 2002.