

#### **146.290 Land uses permitted in stream area.**

- (1) The provisions of this section shall not apply to those uses existing at such time as a stream is included in the system.
- (2) Land uses to be allowed within the boundaries of a designated stream area shall be as follows:

New roads, structures or buildings may be constructed only where necessary to effect a use permitted under the other provisions of KRS 146.200 to 146.360. Utility lines or pipelines may be constructed as approved by the secretary in writing and under provision that the affected land be restored as nearly as possible to its former state. This provision, however, shall in no way affect the rights between a landowner and a utility company or pipeline company. There shall be no strip mining as defined in KRS 350.010, and select cutting of timber or other resource removal and agricultural use, may be allowed pursuant to regulations promulgated by the secretary upon the granting of a permit under the other provisions of KRS 146.200 to 146.360. All instream disturbances such as dredging, shall be prohibited. Except for the management agency and any existing uses which do not conform to the purposes and intent of KRS 146.200 to 146.360, travel upon a wild river or any public lands within the designated boundaries thereof, shall be by foot, horseback, canoe, boat or other nonmechanical modes of transportation. If there are existing agricultural areas within the boundaries of the area, such areas may continue to be used for agricultural purposes.

- (3) Any landowner within the boundaries of the area may apply to the secretary for a change of use to permit the select cutting of timber, a resource removal or an agricultural use upon his property located within the area and the secretary shall hold a public hearing after public notice on the application within sixty (60) days. The landowner or any interested person shall be allowed to present evidence as to whether the proposed use by the applying landowner is in accordance with the management plan developed pursuant to KRS 146.270, the purpose and intent of the Wild Rivers Act as expressed in KRS 146.220, and other applicable law.
- (4) The secretary shall, within sixty (60) days after said hearing, either:
  - (a) Issue an order, with accompanying opinion, denying the permit; or
  - (b) Issue an order, with accompanying opinion, granting the permit with such restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the wild rivers area and the public trust therein within the intent of KRS 146.220; or
  - (c) Recommend an alternate use to which the land may be put under KRS 146.200 to 146.360 which is more consistent with the purposes and intent of KRS 146.200 to 146.360 than the use for which application was made; or
  - (d) Institute condemnation proceedings in the circuit court of the county in which the land is located or else negotiate a purchase of the land affected, or any interest therein.
- (5) On or before thirty (30) days from the date of the secretary's ruling, the landowner may file with the department a written objection to the ruling. If, within the next

sixty (60) days the landowner and the secretary are unable to reach an agreement with respect to a modification of his ruling, the secretary must either permit the use applied for, condemn the property, or petition the Franklin Circuit Court for an order restraining the proposed use. The order shall be entered immediately upon the filing of the petition and the execution of a bond without surety by the Commonwealth in an amount satisfactory to the court to indemnify the landowner against loss of profits from any wrongful restraint of the use of his property during the period from the filing of the petition until such time as the matter is concluded by the courts. The court shall review the decision as to both law and fact; but no factual finding shall be reversed unless clearly erroneous or else arbitrary, capricious, or an abuse of discretion.

**History:** Amended 1976 Ky. Acts ch. 197, sec. 9. -- Amended 1974 Ky. Acts ch. 74, Art. III, sec. 13(9). -- Created 1972 Ky. Acts ch. 117, sec. 10.