

### **262.910 Use of restricted land during term of easement.**

- (1) During the term of an easement, the restricted land shall be used solely for the production of crops, livestock and livestock products, and nursery and greenhouse products including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products if more than fifty percent (50%) of the processed or merchandised products are produced on the subject land, and for the raising and stabling of horses for commercial purposes. For the purposes of this section and administrative regulations promulgated under its provisions, "crops, livestock and livestock products, and nursery and greenhouse products" include, but are not limited to:
  - (a) Tobacco;
  - (b) Wheat, soybeans, corn, and all commercially-produced fruits and vegetables;
  - (c) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees, and flowers;
  - (d) Livestock and livestock products, including horses, cattle, poultry, milk, swine, and eggs; and
  - (e) Aquatic plants and animals and their by-products.
- (2)
  - (a) During the term of an easement the landowner and the landowner's assigns, agents, or leasees shall not perform, nor knowingly allow others to perform, any act on or affecting the restricted land that is inconsistent with the provisions of this section. The landowner shall be deemed to have authorized the PACE board to enforce these provisions.
  - (b) Unless otherwise specified, the landowner shall not be required to take any action to restore the condition of the restricted land after any act of God or other event over which the landowner had no control.
  - (c) Nothing in the PACE Program shall relieve the landowner of any obligation or restriction on the use of the property imposed by law.
  - (d) The Commonwealth shall not locate landfills, sewage treatment plants, or other public service facilities that are not compatible with or complimentary to agricultural production on restricted lands.
- (3)
  - (a) To retain the agricultural viability of the restricted land, the PACE board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the soil and water conservation district. This plan shall be updated every ten (10) years and any time the basic farming operation conducted on restricted lands is changed. All farming operations shall be conducted substantially in accordance with the plan.
  - (b) In addition to the requirements established by the soil and water conservation district, the conservation plan shall require that:
    1. The use of the land for growing sod, nursery stock, and ornamental trees and shrubs does not remove excessive soil from the restricted land;
    2. The excavation of soil, sand, gravel, stone, or other materials for use in agricultural production on the restricted land is consistent with

subsection (4)(h) of this section and is conducted in a location and manner that retains the viability of the restricted land for agricultural production; and

3. The mining of minerals is consistent with subsection (4)(h) of this section and is conducted only through the use of methods which will not interfere with the viability of the restricted land for agricultural production.
- (4) The construction or reconstruction of any building or other structure, except those existing on the date of the easement or previously approved by the PACE board, is prohibited except in accordance with this subsection.
- (a) Existing fences may be repaired and replaced, and new fences may be built anywhere on the restricted land for purposes of reasonable and customary management of livestock and wildlife, without approval of the PACE board.
  - (b) New buildings and other structures and improvements to be used solely for agricultural purposes including the processing or sale of farm products predominantly grown or raised on the restricted land, but not including any dwelling or farm labor housing, may not be built on the restricted land without the advance approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that the proposed building, structure, or improvement would not be properly located or would significantly diminish the agricultural production capacity of the restricted land.
  - (c) All existing single-family residential dwellings may be repaired, reasonably enlarged, and replaced at their current locations without further permission of the PACE board. No new single-family residential dwellings may be built on the restricted land without the advance approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that a proposed dwelling would not be properly located or would significantly diminish the agricultural production capacity of the restricted land.
  - (d) The subdivision of the restricted land, whether by physical or legal process, is prohibited without the advance written approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that the proposed subdivision will diminish or impair the agricultural productivity of the restricted land.
  - (e) The granting of rights-of-way through restricted land for the installation of, transportation of, or use of, lines for water, sewage, electric, telephone, gas, oil or oil products is permitted. The term "granting of rights-of-way" includes the right to construct or install the lines. The construction or installation of utility lines other than the types stated in this paragraph is prohibited on the restricted land.
  - (f) No portion of the restricted land shall be paved or otherwise be covered with concrete, asphalt, gravel, or any other paving material, nor shall any road for access or other purposes be constructed, without the advance written approval of the PACE board. The PACE board shall give approval within a reasonable

time, unless it determines that the proposed paving or covering of the soil, or the location of any road, will substantially diminish or impair the agricultural productivity of the restricted land.

- (g) Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the restricted land. Trees may also be cut to clear land for cultivation or use of livestock, but only if done in accordance with the conservation plan required by subsection (3) of this section. Any commercial timber harvesting on the restricted land shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.
  - (h) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance written approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that the proposed mining or extraction will substantially diminish or impair the agricultural productivity of the restricted land.
  - (i) The dumping or accumulation of any kind of trash or refuse on the restricted land is prohibited. However, this shall not prevent the storage of agricultural products and by-products on the restricted land, so long as it is done in accordance with all applicable laws, administrative regulations, and ordinances.
  - (j) Golf courses are prohibited on the restricted land. Buildings and facilities for any other public or private recreational use may not be built on the restricted land without the advance written approval of the PACE board. The PACE board shall not give approval unless it determines that the proposed use or facilities will not substantially diminish or impair the agricultural productivity of the restricted land.
- (5) Landowners shall retain the right to perform any act not specifically prohibited or limited by this section and administrative regulations promulgated under its provisions. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the restricted land and the right to sell or otherwise transfer the restricted land to anyone of the landowner's choice.

**Effective:** July 15, 1994

**History:** Created 1994 Ky. Acts ch. 390, sec. 24, effective July 15, 1994.