

CHAPTER 66**(HJR 192)**

A JOINT RESOLUTION supporting the restoration and management of the Brush Mountain Trail.

WHEREAS, in 1845, Kentucky Governor William Owsley granted 500 acres of land to the Bales brothers, at the headwaters of Martin's Fork and Shillalah Creek, a plateau atop Cumberland Mountain in Harlan and Bell counties. In May, 1903, the Hensley family purchased the property and in 1904, began to build a pioneer community known as the Hensley Settlement in the Cumberland Gap near Brush Mountain. The community, which had no electricity, plumbing nor paved roads into and out of the community, transported all their goods either by foot, or on mule or horseback for the next 50 years; and

WHEREAS, in 1940 Congress authorized the Cumberland Gap National Historical Park, mandating that the region's nationally significant historical and natural resources, such as prehistoric and historic trails, and other features, be preserved. Congress further authorized the Secretary of the Interior to accept donations of land and other property within boundaries of the park. In 1950, the Kentucky National Park Commission filed action against Sherman Hensley and other relatives to transfer the Hensley Settlement lands by condemnation to the Commission for a payment of \$3,750, to insure that these lands would be donated to become part of the national historical park. Because of subsequent lack of funding, in 1960, the National Park Service designated only a portion of Hensley Settlement. The remaining areas adjacent to the national historical park are held in public trust by the Kentucky Division of Water, the Kentucky State Nature Preserves Commission and the Kentucky Department of Fish and Wildlife Resources; and

WHEREAS, in 2005, the Harlan County Fiscal Court authorized formation of the Harlan County Outdoor Recreation Board Authority to promote and develop outdoor recreation and adventure tourism, including equine-based tourism, to improve the county's economic viability in the best long-term interests of the people and the county's economic, cultural, historic and natural resources; and

WHEREAS, the Brush Mountain Trail, which begins in Harlan County and continues along the boundary of the Martin's Fork State Natural Area and Wildlife Management Area, is owned by the Kentucky Division of Water's Wild and Scenic Rivers program. The Brush Mountain Trail also borders the Kentucky Department of Fish and Wildlife Resources' Shillalah Creek Wildlife Management Area, which was purchased for watershed protection and wildlife-related recreation. The Brush Mountain Trail terminates at the Hensley Settlement. The trail remains unprotected and presents opportunities for equine tourism and natural resource education; and

WHEREAS, the Kentucky General Assembly recognizes that state wildlife management areas are managed by the Kentucky Department of Fish and Wildlife Resources primarily for the protection and conservation of the Commonwealth's wildlife resources to insure a permanent supply of wildlife resources to furnish hunting, fishing and wildlife viewing opportunities for present and future Kentucky residents. The General Assembly further recognizes that the primary, intended use of Kentucky's wildlife management areas derives from the special covenant between the Department of Fish and Wildlife Resources and the sportsmen and sportswomen who provide hunting and fishing license dollars and the match for Sport Fish and Wildlife Restoration funds derived from federal excise taxes. The General Assembly agrees that the wildlife management areas with existing equine trails are appreciated by all citizens and that the expansion of equine trails onto other lands owned by the Kentucky Department of Fish and Wildlife Resources are not required. Furthermore, the General Assembly does not intend for actions taken through this resolution to risk the loss of federal funding for these lands; and

WHEREAS, the General Assembly enacted laws authorizing Kentucky's state nature preserves to be held in trust for present and future generations as "living museums of the natural landscape," and as "places where people may observe nature's web of life and our natural heritage, and as reminders of the vital human dependence upon unspoiled natural areas." The General Assembly recognizes and respects the tremendous expertise and management strategies which the Kentucky State Nature Preserves Commission has implemented to hold these lands in special trust for future generations. Moreover, the General Assembly recognizes the opportunities to educate and inform more citizens about the unique natural areas and the critical need for their protection. Further, the General Assembly agrees that due to the special and unique historical and cultural values of the Brush Mountain Trail, that this resolution and any subsequent memorandum of agreement do not set a precedent for allowing horse access or other prohibited activities on any other state natural area or state nature preserve; and

WHEREAS, the General Assembly recognizes that certain streams of Kentucky possess outstanding and unique scenic, recreational, geological, fish and wildlife, botanical, historical, archaeological and other scientific,

aesthetic, and cultural values and that the Kentucky Division of Water may impose reasonable regulations as to the use of private and public land within the authorized boundaries of wild rivers for the general welfare of the people of the Commonwealth; and,

WHEREAS, the unique opportunity presented for enhancing tourism and outdoor recreation opportunities by allowing equine and pedestrian access to the Brush Mountain Trail must be prudently managed in order to assure that the primary purposes for which these lands, including state nature preserves, wildlife management areas and wild rivers, are held in public trust and are not compromised;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. The General Assembly recognizes, particularly in these times of economic stress which impacts every taxpayer and all state and local budgets, the critical importance of state and local governments working cooperatively to demonstrate interagency communication, intergovernmental partnerships, and mutually supportive solutions. The General Assembly also recognizes the significant natural resource protection implemented through Kentucky's Department of Fish and Wildlife Resources, the Division of Water's Wild and Scenic Rivers program, and the Kentucky State Nature Preserves Commission and commends these agencies in efforts to work cooperatively and seek additional outdoor experiences for Kentuckians and other visitors to the state.

➔Section 2. The General Assembly encourages the Tourism, Arts and Heritage Cabinet's Kentucky Department of Fish and Wildlife Resources, and the Kentucky Environmental and Public Protection Cabinet's Division of Water and the Kentucky State Nature Preserves Commission to develop a memorandum of agreement with the Harlan County Fiscal Court to allow, for a period not to exceed one year from the date of execution of the agreement, equine access to the Brush Mountain Trail. The General Assembly encourages these agencies, and their designated representatives, to seek additional involvement of other federal, state, educational or nonprofit organizations in accomplishing the goals of trail restoration, including the Cumberland Gap National Historic Park, the Kentucky Horse Council, the Kentucky Backcountry Horsemen, and the Kentucky Chapters of the Sierra Club.

When entered into by the parties described in this section the memorandum of agreement shall include:

(1) A mutually agreed upon statement of the goals and objectives of the Brush Mountain Trail restoration and maintenance project;

(2) Limitations on access to the segment of the trail through the Martin's Fork State Natural Area and Wildlife Management Area and the Shillalah Wildlife Management Area, as necessary to prevent equine access during certain hunting seasons. The memorandum may address methods by which the Tourism, Arts and Heritage Cabinet will assist the Harlan County Fiscal Court in notifying the public about trail access during certain hunting seasons;

(3) Any maintenance or improvements to the trail or trail access road deemed necessary by the agencies in order to prevent erosion or sedimentation of Martin's Fork or other streams and tributaries;

(4) A baseline survey of invasive plant species along the trail and adjacent areas, which shall be conducted by staff of the State Nature Preserves Commission, and which shall be repeated one year after the memorandum of agreement is executed. The memorandum of agreement shall further address the extent to which other entities, including representatives identified by the Harlan County Fiscal Court, may be involved in these surveys. The State Nature Preserves Commission is authorized to seek involvement and support from state universities and qualified nongovernmental entities, to the extent that resources are available and are required for accomplishment of the inventory;

(5) A provision that all costs associated with the surveys and any needed maintenance or improvements in the trail and trail access shall be furnished by the Harlan County Fiscal Court. The agreement shall indicate the manner in which the Harlan County Fiscal Court may request assistance with grants or other funding or in-kind services to assist with these responsibilities, if needed;

(6) Terms and conditions through which the agreement may be amended or revised by agreement of the parties. Additionally, the memorandum of agreement shall include provisions allowing any party to terminate the agreement, providing that the agreement allows at least 30 days notification to be given, in writing, and with duly authorized signatures; and

(7) Other terms and conditions as needed to assure that the use of the trail for equine access shall not adversely affect the values and purposes for which these lands are held in trust.

➔Section 3. Upon execution of the memorandum of agreement under Section 2 of this resolution the Harlan County Fiscal Court shall devise and use a system, agreed to by the agencies, to monitor horseback riding on the Brush Mountain Trail. This may be by a non-fee registration, license, permit or similar system that will provide data on the use of the trail and to help inform an evaluation of the project after one year from the date of execution of the memorandum of agreement.

➔Section 4. One year from the date of execution of a memorandum of agreement under Section 2 of this resolution, the Tourism, Arts and Heritage Cabinet's Department of Fish and Wildlife Resources and the Kentucky Environmental and Public Protection Cabinet's Division of Water and State Nature Preserves Commission shall meet and confer with the Harlan County Fiscal Court as to consider possible extension of the memorandum of agreement, and any changes needed:

- (1) To assure that the use of the trail for equine access does not adversely affect the values and purposes for which these lands are held in trust; or
- (2) To accomplish the mutually agreed upon goals of the Brush Mountain Trail restoration and maintenance project.

➔Section 5. On or before October 1, 2011, the Tourism, Arts and Heritage Cabinet's Department of Fish and Wildlife Resources, the Kentucky Environmental and Public Protection Cabinet's Division of Water and State Nature Preserves Commission, and the Harlan County Fiscal Court shall prepare and present a report to the Interim Joint Committee on Economic Development and Tourism of the Kentucky General Assembly on the status of the Brush Mountain Trail restoration and maintenance project, identifying the projects goals, challenges or obstacles encountered in achieving those goals, actions implemented and recommendations on future equine activities at the Brush Mountain Trail.

Signed by Governor April 7, 2010.